

The Florida Bar

Commission on the Legal Needs of Children

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THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN:

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INTRODUCTION:

"Children are our prized possession. They hold the key to the future, but frequently we overlook what needs to be done to nurture them. They have no voice of their own. They have to wait patiently for adults to take up their calling. Our state laws already recognize that children have special needs, yet they flounder in our system. It is for this reason that I have appointed a Commission on the Legal Needs of Children." — **Edith Osman, president of The Florida Bar, 1999.**

"The Bar has made it its policy that our children are our greatest resource. With your work, if you can give some of these children back their childhood, we will accomplish great things together." — **Herman Russomanno, Bar president, addressing the Bar Commission on the Legal Needs of Children, September 16, 2000.**

"I can't think of anything that is more important than trying to get our arms around and understand the legal, physical, and emotional needs of our children, and where and how we can better serve them as lawyers and as a profession." — **Terry Russell, Bar president, addressing the Bar Commission on the Legal Needs of Children, Bar Midyear Meeting, January 11, 2002.**

Tonight in Florida, over 14,000 children sleep in foster care homes, and what is supposed to be a temporary stay, for many, drags on for more than three years.

Numerous 10-year-olds are among the 15,000 drug arrests for possession each year.

Florida leads the nation in the number of children under 18 that prosecutors transfer to adult criminal court, where punishment, not rehabilitation, is typically the goal.

At a detention hearing in a delinquency proceeding, children are released to their parents, even though a judge had earlier terminated parental rights in dependency court. The computers at the Department of Juvenile Justice and the Department of Children and Families cannot communicate with each other.

Too many children must be labeled "delinquent" or "dependent" just to receive desperately needed mental health services. Parents give up custody of their children to the state in order to get them help.

Although children have the right to counsel at all stages in delinquency proceedings, of the children who are embroiled in abuse and neglect cases in dependency court and are taken from their families, only half are afforded the services of a guardian ad litem — and most have no representation at all.

Since October 29, 1999, members of The Florida Bar Commission on the Legal Needs of Children have educated themselves on these issues, listened to children's advocates who were experts from as far away as Seattle and Ontario, grappled with setting priorities, and worked at making recommendations.

Chaired by The Honorable Sandy Karlan, Eleventh Circuit Court judge, the Commission is composed of diverse members who care deeply about what happens to children in Florida's courts: a law professor and director of a youth law clinic, juvenile and family court judges, a director of a Guardian Ad Litem program, the secretary of the Department of Children and Families, an attorney in charge of social services for a public defender's office, a civil and probate attorney, a matrimonial lawyer, a chief assistant state attorney, a lobbyist, two Florida Supreme Court justices, an appellate judge, a school board member, two legislators, a child psychologist, the general counsel for the Department of Juvenile Justice, a juvenile sexual abuse victim specialist, a director of a legal aid society, and two young adult survivors of the foster care system.

The varied membership of the Commission was intended to include all voices regarding children's legal needs — including the voices of children heard at visits to an Orange County

juvenile detention center, a Dade County high school, and by opening the floor to comments at public hearings throughout the state.

Created by 1999 Bar President Edith Osman and supported by 2000 Bar President Herman Russomanno and 2001 Bar President Terry Russell, the Commission had an ambitious mission: to help children who appear in Florida's courtrooms in any capacity, whether as victims, witnesses, defendants, or respondents.

In the beginning, each commissioner was able to identify children's legal needs within the confines of their own areas of expertise. But the overall vision of this Commission was to address children's legal needs without the barriers of a court division. During the Commission's work in reaching consensus as to the children's needs, those barriers were erased, and it became apparent that children in the court system — in all divisions — have consistent, persistent, identifiable needs.

As debate and research progressed over nearly three years, commissioners transcended particular points of view or knowledge of only one or two parts of the system. Some had to give up strongly held commitments on particular ways of doing things. In the end, the Commission was able to reach a consensus of how the system should work as a whole to best address the legal needs of children, and formulate recommendations to serve as a road map for future action.

The Commission's mission was three-fold:

- Identify all of the legal needs of children in all of the state's court divisions, while considering all of the different roles in which children appear as victims, witnesses, criminal defendants, plaintiffs in civil suits, or wards in guardianships.
- Identify which of those identified needs are being met and which needs are not being met.
- Propose solutions to address the unmet legal needs of children.

The Commission identified five priority areas that needed to be addressed and five subcommittees were formed: Representation, Treatment and Services, Confidentiality, Education and the Role of The Florida Bar, and Technology and the court. The complete subcommittees' findings and recommendations for future action were adopted by the Commission and are included in the appendix. The following is a summary of the Commission's findings and recommendations:

I. REPRESENTATION OF CHILDREN

Let the child meet the judge and let the judge know the child, is common-sense advice from the voice of experience, Alex Victorero, who was bounced around more than 20 foster homes since age 10. He remembered the day he was 11 and the judge invited him back into chambers for a chat and took off that intimidating black robe.

"He didn't look so menacing," Alex said. "The experience for me was real. This man of power dropped to my level. He was a friend. He asked me what I wanted, what I felt about things. It lightened up my load, and I felt someone cared and was doing something for me. When you don't even take the time to talk to the kid, the kid gets lost."

It was Alex's guardian ad litem who helped him navigate the system and listened to him, no matter what.

"I knew he was my outlet, and I knew I had people behind me... Fortunately for me, my guardian was an attorney, and he stayed in contact with me," said Alex, who thinks every child in foster care and the dependency court system needs a guardian ad litem, too.

"My suggestion is to let the child participate, assess the child and determine how mature he is, let him participate in his case plan, give him a sense of control. You can positively affect the child, you can positively affect the parents. It's a win-win situation when you involve a child in the courtroom." — Alex Victorero, former member of the state Youth Advisory Board from Orlando and member of The Florida Bar Commission on the Legal Needs of Children.

Children are entitled to the same zealous advocacy adult clients expect of their lawyers. Yet, too often, children come to court powerless, with no one representing them at all.

Children have the right to counsel at all stages in delinquency proceedings, even though a disturbing number waive such representation. When children are embroiled in abuse and neglect cases in dependency court, only 54 percent are afforded the services of a guardian ad litem, even though Florida statutes provide that children in Chapter 39 dependency proceedings shall be represented. Even when judges appoint guardians ad litem – in family law, criminal delinquency, domestic violence and dependency cases – guardians were provided in only 58 percent of those cases, according to the Office of the State Courts Administrator.

If children are lucky enough to have lawyers, too often those lawyers are underpaid, inexperienced, and overwhelmed by huge caseloads. Judges are left to make life-altering decisions about a child without sufficient information to back up sound decisions.

For these reasons, the Commission identified the issue of how best to represent children in court as its Number One priority, whether in dependency, delinquency, civil, probate and guardianship, domestic violence, or high conflict custody proceedings.

The search for the best representation model proved to be an emotional, contentious issue, with strong differences of opinion among commissioners. What kind of representation do children deserve? Lawyers, guardians ad litem, a combination? What kinds of cases should trigger mandatory representation so that children no longer get lost in the court system without a voice?

Most commissioners agreed that if a child was properly represented, that child would have access to the services he or she needed whether in state custody or not. The challenge was how best to adequately protect children's personal rights, liberties, and the preservation of children's assets.

Commissioners wrestled with the issue of whether every child in Florida should have a lawyer in every dependency case, when children have been abused, abandoned or neglected -- or was a lay guardian ad litem adequate to protect the child's well-being?

The debate has been framed by some in the dependency area as "best interest" of the child as represented by the guardian ad litem versus the "expressed wishes" of the child. This is an oversimplification of this complex issue.

Children in court proceedings have specific legal needs and rights, and often they are the only unrepresented party.

As part of this raging national debate, the Commission heard from many experts in the field who discussed the pros and cons of various models of representation in dependency cases: lay guardian ad litem, attorney for the guardian ad litem, attorney and guardian ad litem, attorney guardian ad litem, and attorney.

At Nova Southeastern University's Shepard Broad Law Center, Professor Michael Jeffrey Dale told the Commission he had recently written a law review article on representation for children and found a mix around the country: Twenty-two states provide a guardian ad litem in dependency cases, 23 states use the Court Appointed Special Advocates (CASA) model of volunteer representation, and 11 states use a mix of both. He said there is no definitive study on which model works best. Two dozen states have laws that there shall be some form of appointed counsel, and that could be the guardian ad litem.

"With our constitution and our traditions, we have an adversary system," Dale said, so children need representation.

"What's the one thing we can't legislate?" Dale asked. "Skill, talent, and commitment. That's why, irrespective of the type of system, if you don't have skilled, talented, and committed people, nothing will happen. This piece of the problem can't be reached by writing a statute."

The Commission tackled issues that have not been adequately addressed in the national debate: the significant additional need for children to be represented in other court proceedings, including custody, paternity, adoption, visitation, probate, domestic violence, civil and criminal, when children are victims or witnesses.

Directing its focus beyond dependency proceedings, the Commission heeded the experiences of one expert, Willson McTavish, The Children's Advocate of Ontario, Canada, about a representation model for children in additional court proceedings. Mr. McTavish's office has provided legal representation for children in abuse/neglect proceedings and high conflict dissolution cases since the 1970's, and legal representation of children in tort and probate proceedings since the late 1800's.

Because Commissioners wanted to hear what children have to say, they surveyed and listened to students at Miami Senior High School. When the topic turned to when should children have

lawyers, 78 percent of the 144 students surveyed said "yes" when divorcing parents are accused of abuse or neglect; 65 percent want a lawyer if they are being expelled from school; and 79 percent say kids should have lawyers if questioned by police or school officers.

Alarming to many commissioners was that children entitled to representation in delinquency cases often waive that right. University of Florida researchers Lonn Lanza-Kaduce, at the Center of Studies in Criminology and Law, and Jodi Lane, an assistant professor of criminology and sociology, shared preliminary findings on juveniles transferred to adult court who have no lawyer because they waived their constitutional right to counsel.

"About five percent of the transfers (to adult court) and about 23 percent of juvenile detainees with relatively serious offenses had no counsel of record," Lanza-Kaduce said. "There is a representation issue that might be important to look into a little more, and it ties with recidivism. Be careful. The controls haven't been done. But the preliminary results show that among the transfers to adult court who didn't have counsel, 70 percent of them re-offended. And 44 percent of the juvenile justice detainees re-offended when they didn't have counsel. In both instances, this is the highest percentage of re-offense. Failure to have counsel or legal representation is linked, at least at this basic analysis, to higher rates of recidivism."

Some commission members were stunned and asked how this could happen.

"One of the things that surprised some of us when we went to local courthouses was this little form in the file that said, 'We will appoint counsel for you, but we could recoup some of these costs against you and your parents.' I don't know what impact that has on some of the decision-making processes of whether to waive or not. Some of us came away from the courthouse wondering what kind of impact that has," Lanza-Kaduce said.

The Commission agreed that further controlled research needs to be done on this issue.

The researchers also shared their findings that juveniles transferred to adult court are more likely to commit more crimes after age 18 than counterparts of similar age, race, background and crimes who stayed in the juvenile system.

Robert Merlin, a board certified marital and family lawyer from Coral Gables, addressed a clash in laws that makes the reports of guardians ad litem inadmissible hearsay in court and therefore useless to help judges making important decisions about children's lives.

Commissioner Richard C. Milstein, a Miami lawyer, asked to address the sticky ethical situation when attorneys are appointed as guardians ad litem.

"If I am appointed as a guardian ad litem, do I take off my Florida Bar credentials when a child who is 15 tells me he is using drugs and will continue to use drugs? Am I not obligated at that point because I'm an ad litem, not an attorney, to expose that child to criminal prosecution because of Florida Bar rules? Yet, I am there for the protection of the child because he is in a custody battle with his parents and may go into Baker Act," Milstein said.

"As an ad litem, when a child tells you something and you get deposed, do you have to disclose it? Absolutely. There's no confidentiality privilege. . . .I think we really need an in-depth study of the ad litem issue."

Gerald Glynn, director of clinical programs at Barry University law school, talked about Barry's role in doing the attorney ad litem piece of the Ninth Judicial Circuit legislature-funded pilot project in both counties. In Osceola, the guardians ad litem are a traditional staff-run program. In Orange, the GAL program is unique in the state in that it is an attorney guardian ad litem.

Even though the legislation restricts the attorney ad litem representation to dependency court, Glynn said, the judges have expanded their representation, with court approval, such as in school discipline and special education matters.

"In your (March 2001) interim report, one of the things you've said is that children need to be heard. I believe that was one thing listed as an overwhelming consensus of this committee. And if we do nothing else, I think the attorney ad litem project is allowing children to be heard," Glynn told the Commission. Children are treated as clients, informed about the process every step of the way, he added.

"These children's lives have been horribly disrupted because of the actions of their families, and unfortunately, too often because of the actions of some of us in the system. And they have important things to say, and they have incredibly creative solutions to come up with if people would listen."

Because of that pilot project, Chris Andriacchi, senior attorney at the Osceola GAL program, told commissioners, there is 100 percent representation of children for the first time in Florida. Children in Osceola are assigned a professional guardian, as well as represented in court by an attorney at every legal event and not just in court.

"It's nice to have volunteers do it, but why do the children not deserve the same things the parents get in court?" Andriacchi asked.

John Crouch, of the American Bar Association's Family Law Section, came from Virginia to talk about representing children in custody proceedings and described the ABA's work in better defining standards for the child's attorney and the guardian ad litem.

"My problem with the adversarial system is that there's not too many lawyers, but too little," Crouch said. "Attorneys help bring evidence out and get at the truth. An important duty of the guardian ad litem is to bring evidence forward. The lawyer has more knowledge, experience, and tools to do that."

However, Crouch warned, many lawyers have no family law background and no training in the best interest of the children.

And Howard Talenfeld, a Ft. Lauderdale attorney who lobbies the legislature to fund advocacy programs and represents children in foster care, told the commission he did not want to engage in what he called "the holy war issue" of child's expressed wishes versus child's best interest.

The issue, he stressed, is "not the model, it's the lawyer. Every child needs a well-trained lawyer. . . . We can't pick and choose which children should be saved."

Every child coming into state custody, he stressed, should have a lawyer.

"Sometimes, the most important hearing in a child's life is the shelter hearing. We know from experience that one out of four children who came into custody in Broward County was returned home. It is so crucial that the Department of Children and Families be held to its obligation to provide protective services to a family where appropriate in advance of a decision to take a child into custody. The other thing is a judge never knows when a child has been harmed. By the time the court finds out, it may be too late. The attorney for the child provides the ability to have children trust and communicate their nightmares about their stay in foster care," Talenfeld said.

After three years of extensive debate, a recommendation was unanimously approved by the full Commission for a comprehensive model of representation for children.

The full text of the Commission's recommendations is attached at Appendix A.

Here are the highlights of the Commission's recommendations regarding representation:

- 1) In order to secure the fundamental rights of children to physical and emotional well-being and safety, and to protect children's legal interests, constitutional and statutory rights, Florida should fully fund independent advocacy that includes the availability of Legal Counsel and Guardians Ad Litem for children in certain legal and administrative proceedings.
- 2) Children should have Legal Counsel and/or a Guardian Ad Litem represent them in court whenever their interests may be at stake in the following proceedings:
 - Delinquency.
 - Children in need of services and families in needs of services (CINS/FINS).
 - Child abuse, neglect, and termination of parental rights.
 - The child's custodial or parental visitation status, including but not limited to dissolution of marriage, annulment, separation, and custody.
 - Establishing paternity or establishing or modifying parental support.
 - Adoption.
 - Commitment of the child to a psychiatric or residential substance abuse treatment facility.
 - Obtaining mental health services, including representation before Family Service Planning Teams and Case Review Committees.
 - Mental retardation proceedings (Chapter 393) and Baker Act proceedings.
 - Disciplinary actions in a public or charter school, including suspension and expulsion, and entitlement to special education and related services, where there is a corresponding dependency or delinquency case.
 - Probate or inheritance where a child has a financial stake in the outcome.
 - The child is a victim or a witness in a criminal or delinquency case.
 - The child has an interest in the outcome of litigation in a case where the child is not a party.
 - A civil legal action for money damages where the child is a party due to injuries the child sustained.

- Permanent injunction for domestic violence where the child is the victim or the accused perpetrator.
 - Any other actions related to securing rights and entitlements afforded to the child under state and federal statutory and constitutional law.
- 3) While judges retain discretion to appoint legal counsel for children in certain proceedings, such as dissolution of marriage, child custody, domestic violence, and adoption cases, the Commission recommends that Legal Counsel for Children *shall* be appointed to represent the child's legal interest in specific matters, including:
- Children in Need of Services/Families in Need of Services (CINS/FINS) cases, whenever the child's liberty interests are at stake.
 - In cases where the state is seeking commitment or placement of a dependent child, for longer than 24 hours, into a staff-secure or physically secure residential treatment facility, including those licensed under Chapter 394 and 395, for substance abuse or mental health treatment.
 - All termination of parental rights cases, unless the court determines that the legal interests of the child are otherwise being protected.
- 4) Florida should ensure that Legal Counsel for Children and Guardians Ad Litem have sufficient training, qualifications, compensation, time and authority to do their jobs properly, and the support and cooperation of the courts and other institutions and agencies that may be involved in their cases.
- 5) To adequately promote and protect the legal rights of children, Florida should develop a comprehensive system and structure for child representation, which includes, legal counsel for children, guardians ad litem, and public defender representation. The Commission recognizes that Florida already provides legal representation to children in delinquency proceedings through the public defender offices and recommends public defenders continue to represent children charged with crimes.
- 6) To meet the legal needs of children in proceedings other than delinquency, and particularly in dependency proceedings, Florida should create a "Statewide Office of the Children's Advocate" to oversee representation in all cases, except in

delinquency, to provide legal representation and guardian ad litem representation to children. The Office will play a critical role in providing a voice for children, including a meaningful opportunity to present their positions, needs, and wishes to the court.

- 7) The statewide office would be comprised of two divisions:
 - The Division of Legal Counsel. This office would enter into contracts with private entities, not-for-profit agencies, public or private colleges and universities, law school clinics, and public defender offices to provide legal representation for children. The Division of Legal Counsel shall represent children in proceedings where legal counsel has been appointed by the court, unless the court chooses to appoint private counsel.
 - The Division of the Guardian Ad Litem. This office would include the existing Florida GAL Program and expand it to ensure that every child in Chapter 39 dependency proceedings has a guardian ad litem assigned, whether staff GAL or volunteer GAL. The division shall also have sufficient legal staff to be represented at all hearings.
- 8) The independence of the Office of the Children's Advocate is of paramount importance. To help ensure that the Office of the Children's Advocate is not compromised in its actions on behalf of child clients, the office should be independent from other participants in the litigation. The Office should be insulated from undue influence by outside agencies, the executive, legislative and judicial branches. The system of appointment should not denigrate independence of counsel or the guardian ad litem. Judges should not be able to select which publicly funded attorney or guardian ad litem to appoint in a specific case.
- 9) The existence of the Office shall not prevent a court from continuing to appoint private attorneys to serve as guardians ad item or legal counsel for children when the court deems that to be appropriate.
- 10) The Commission drafted a rule of juvenile procedure providing standards to be used before a child in delinquency proceedings may waive right to counsel. (The proposed

amended *Fla.R.Juv.P. 8.165* is attached to the Representation Subcommittee's report in the appendix.)

II. A CHILD'S RIGHT TO TREATMENT AND SERVICES

A child should not have to steal \$20 from Grandma or be beaten by a parent to be labeled delinquent or dependent to qualify for desperately needed mental health services.

Yet, too often, the court must adjudicate a child dependent or delinquent, just to get services to help a child in crisis.

Because Medicaid is the biggest resource to pay for mental health services and no child has the absolute right to mental health services, parents are often forced to give up their children to the state in order to help them.

"Many parents have to give up custody of their kids to get them services," Ira Burnim, legal director for the Judge David L. Bazelon Center for Mental Health Law in Washington, D.C., told the Commission.

A recurring theme in all matters dealing with children's treatment and services is inadequate funding. All of the stakeholders -- the children; the agencies charged with their care and supervision; the legal entities charged with prosecuting, defending or judging them -- cite the lack of adequate funding as a major barrier to providing for the best interest of each child and protecting public safety.

Notwithstanding the Department of Juvenile Justice's and the Department of Children and Families' requests for funding each year, the need for services continues to significantly increase.

The majority of children charged with crimes are in need of treatment and services. As Sixth Judicial Circuit Public Defender Bob Dillinger noted, half of the children in that circuit's detention facilities have mental illness (DSM-IV diagnoses), and 65 percent tested positive for marijuana, alcohol, or cocaine.

Ted Tollett, chief of the Department of Juvenile Justice Bureau of Research and Data, reported that of children committed to a juvenile facility, 89 percent do not have both parents, 20 percent have a serious mental illness, and 75 percent have a substance abuse problem. Sixteen percent of "chronic offenders" (those with at least three cases) were responsible for committing 46

percent of juvenile crime, Tollett said, adding that one in six juvenile crime careers begins before the age of 13.

Unfortunately, despite new programs in intensive early intervention services touted by the Department of Juvenile Justice, Florida focuses most of its resources on the smallest percentage of offenders, rather than on prevention efforts.

In Florida, prosecutors have the power to decide whether children charged with crimes should continue receiving help in the juvenile justice system, or to transfer them to adult court, where the mission is punishment, not rehabilitation.

Many of these decisions are made because prosecutors and judges believe certain juvenile offenders need longer sentences that are not available in the juvenile court system.

"The most troubling question is the child-versus-adult question," Robert Schwartz, executive director of The Juvenile Law Center in Philadelphia, told the Commission.

"And that's a Florida question par excellence, given the direct-file numbers."

When it comes to the use of prosecutorial discretion, Florida transfers more juveniles to the adult system than any other state. And there is scant, if any, treatment available in adult prison.

However, other states transfer as many or more juveniles to the adult system by reducing the age of juvenile jurisdiction, such as in New York, where a child becomes an adult at age 16, and certain youthful offenders as young as 14 are tried as adults for certain crimes.

Nationwide, approximately 275,000 children under the age of 18 are tried as adults, under a variety of systems.

In Florida, the number of juveniles tried as adults is declining from a peak of 5,350 in fiscal year 1995-96 to 2,077 for fiscal year 2000-01, a 61-percent decrease, according to the Department of Juvenile Justice.

While recent reports indicate that the number of children being transferred to adult criminal court is decreasing, the reason for this apparent decrease is still being studied. Notwithstanding this decrease and an investigation into the factors that may have influenced the reduction, there remains a significant debate on the subject of the prosecution of children as adults.

National experts told the Commission that direct filing does not reduce crime, but rather, direct-file practices actually punish the wrong kids. Direct files are used mostly against juveniles who commit property crimes and drug offenses, not violent or chronic offenders.

Research shows that juveniles in adult prison are at greater risk of becoming victims; they are less likely to get treatment for their problems; and recidivism is higher once the young people come out of adult prison.

In addition, direct filing juveniles to adult prison is rife with racial over-representation. More African-American children are direct-filed as adults than white juveniles for the same crimes, said Dr. Delbert Elliot, who served as senior scientific editor of the report "Youth Violence: A Report of the Surgeon General," released January 17, 2001, by U.S. Surgeon General David Satcher.

While most prosecutors make direct-file decisions based on race-neutral rationales, the facts in Florida show minority youth make up more than half of the referrals to adult court. The causes are myriad and cry out for additional studies.

In fiscal year 2000-01, out of a total of 152,060 juvenile justice referrals, 2,617 juveniles were transferred to adult court, and, of those, 1,462 – or 56 percent – involved black youths, according to the Department of Juvenile Justice.

Overall, in Florida's juvenile justice system, minority youth are over-represented, statistics show. In fiscal year 2000-01, of the total 152,060 juvenile justice referrals, 60,364 – or 40 percent – involved black juveniles.

Department of Juvenile Justice officials say they hope their recent prevention efforts will help address the minority over-representation problem, citing new programs that focus on at-risk kids who live in high-crime neighborhoods; live in significantly troubled families; have school problems; use drugs or alcohol; and exhibit pre-delinquent behavior, such as running away, stealing or gang affiliation.

Another troubling fact is that the number of girls in Florida's juvenile justice system has skyrocketed, yet gender-specific programs are lacking. As Eileen Nexer Brown, co-chair of the Girls Advocacy Project (GAP) Community Advisory Board in Miami, told the Commission: "It's hard to have a diversion program when there's nothing set up for girls."

Often underlying their delinquency status, Brown said, are personal tragedies as the girls are victims of abuse. Eighty percent of girls in the juvenile system are victims of physical abuse, and 70 percent are victims of sexual abuse. The girls are very emotionally damaged before they come into the system, Brown said.

In Florida, one out of every four juveniles arrested is a girl, according to the Department of Juvenile Justice. Girls are a substantial and growing proportion of the state's juvenile justice system, DJJ statistics show:

There were 28,531 females involved in delinquent acts in fiscal year 2000-01, accounting for 28.6 percent of the 99,770 total juveniles referred for delinquency that year. But the rise in female crime was largely for minor crimes. The majority of those arrests – 19,207 – were for misdemeanors.

Nonetheless, the number of girls arrested for violent felony offenses almost doubled over the past decade in Florida. Girls were arrested for 1,609 violent felony offenses in 1991-92, compared to 3,044 in 2000-01.

“We have a growing problem with serious delinquency among girls,” said Department of Juvenile Justice Secretary W.G. “Bill” Bankhead. “We also know that a successful program for girls isn't a copycat of a boys' program. Girls need specialized attention and direction on dealing with issues like peer pressure, self-image and goal-setting.”

Commissioners heard an array of perspectives on the gaping unmet needs of children who appear in Florida's courts, and concluded that too many children – whether in dependency court or delinquency court – are not receiving the mental health treatment and other social services they so desperately need and are entitled to receive.

The full text of the Commission's recommendation is attached at Appendix B.

Here are the highlights of the Commission's recommendations regarding treatment and services:

1) The Commission determined that under current Florida law, too many juveniles are mandated to go to adult court. Rehabilitation should be the goal in most juvenile cases, however that is not the goal in adult court with its punitive sentences. Therefore, the Commission recommends several alternatives to the current system, some of which are not necessarily consistent with one another, but any of which would be more likely to accomplish the original goals of the juvenile court system.

Some of the alternatives are:

- Allow judges to make all transfer decisions.
- Repeal mandatory direct filing of juveniles.

- Eliminate 10-year minimum mandatory sentences for juveniles convicted as adults for the first time and allow judicial discretion to waive other minimum mandatories for juveniles in adult court.
 - Give judges alternative sentencing options not currently available, including:
 - The use of secure detention as a condition of juvenile probation; or
 - The sanction of commitment to a juvenile commitment facility as a condition of adult probation; or
 - Consider a blended sentencing format where the court has jurisdiction over the juvenile for a longer period of time and may use juvenile and adult sanctions where appropriate.
- 2) Too many parents and guardians place children with mental illnesses under the jurisdiction of a state agency – the Department of Juvenile Justice (DJJ) or the Department of Children and Families (DCF) – solely because they cannot afford the mental health services their children need. In other instances, judges need disposition options that can be immediately accessed. Too often waiting lists for state-funded programs hinder prompt action. The Commission therefore recommends that mental health insurance coverage be on parity with physical health insurance. The Commission recommends that legislation that provides mental health services for children should be accompanied by adequate legislative funding.
 - 3) Children in the custody of the Department of Juvenile Justice or Department of Children and Families who are discharged from a detention facility or psychiatric facility shall be removed from such facilities within 72 hours of discharge and placed with the appropriate department or responsible legal guardian.
 - 4) Legislation is needed to provide procedures to ensure that psychotropic drugs are administered to children in the foster care and juvenile justice system only when medically necessary, rather than to control behavior of children who simply need mental health counseling or services.
 - 5) The Commission recommends, once mental health treatment has been ordered by a court for a child in foster care, the Department of Children and Families have an ongoing obligation to report to the court, beginning within thirty (30) days of the order, the specific manner in which the Department has provided for those needs.

- 6) Children, as victims or as perpetrators of domestic violence, present complex, potentially dangerous, long-term challenges to the justice system. Because of significant differences in the occurrence of domestic violence among Florida's 20 judicial circuits, and the resources available to address the problem within those circuits, the Commission recommends that each circuit develop a protocol for children arrested for domestic violence. This protocol should detail intervention efforts, with the dual purposes of ensuring the safety of all family members and attempt, only when appropriate, to keep the family unit intact. Additionally, all circuits should develop a protocol for intervention when juveniles are listed as witnesses in domestic violence incident reports, because social scientists agree that being a domestic violence victim or witness greatly increases the likelihood that a child will become an abuser.
- 7) National research demonstrates that youth of color are over-represented at every stage of the juvenile justice process, and Florida is no exception to this disturbing trend. According to recent data from the Building Blocks for Youth initiative in Washington, D.C., the custody rate for African-American youth in Florida's juvenile system was four times the rate for white youth. The racial disparities in Florida's juvenile justice system, according to a Department of Juvenile Justice study, found that black youth were more than twice as likely as white youth to be transferred to adult court. The Commission recommends that the Florida Supreme Court Commission on Fairness or other legislative and judicial groups be funded sufficiently to address this problem. The Fairness Commission had begun this specific task when its funding was eliminated.
- 8) Of equal concern to the Commission is the dramatically increasing number of females entering the juvenile justice system, without sufficient gender-specific programs in place to intervene and rehabilitate. The Commission also recommends that this disturbing trend be specifically addressed with a focus on developing and making available appropriate services to young women in the juvenile justice system. The Supreme Court Commission on Fairness had begun this specific task when its funding was eliminated.
- 9) The Florida Bar should adopt and endorse the American Bar Association's opposition to "zero tolerance policies" that mandate either expulsion from school or

referral of a student to juvenile or criminal court without regard to the circumstances or nature of the offense or the student's history or lack of a disciplinary history, as well as the nature and circumstances of the offense.

- Florida Statute §230.235 should be amended as follows:

In determining whether a student shall be expelled, due consideration shall be given to the student's disciplinary history or lack of a disciplinary history and the nature and circumstances of the offense which is the subject of the possible expulsion.

- 10) Florida's policymakers and legislators must focus its resources on early intervention, evaluation, treatment and prevention, rather than expanding deep-end, restrictive facilities, and should adopt the recommended "blueprint" programs detailed in the report, "Youth Violence: A Report of the Surgeon General," released January 17, 2001. The programs reviewed in that report have demonstrated success in achieving the goals of ensuring public safety, punishing the offender, and preventing recidivism.
- 11) The Commission recommends that judges assigned to serve in the family court or juvenile divisions have a desire to serve in those important areas of the courts that affect children's lives, and that they undergo specific training in the multi-disciplinary approach to treatment and services, including cross-training and expertise in mental health issues.

III. CONFIDENTIALITY/COMPETENCY:

The police found 5-year-old Sara wandering on a four-lane highway near Ocala foraging for food, a homeless kindergartner trying to take care of her alcoholic bi-polar father and her mother with a child's mind. She was a foster child at age 5; adopted at 8; "unadopted" at age 13 and back in foster care. During a stay at a Christian school, she was sexually molested, but no one listened to her.

While in foster care, she was out of the loop about her own natural father, and she did not know he had died until years later.

When she left foster care, she described it as "a swift kick into your own life without money" and little information. "If I could have gone to court, then

I could have at least told the judge what was going on. — Sara Bennett, former state Youth Advisory coordinator and liaison member of The Florida Bar Commission on the Legal Needs of Children.

Children at the center of court cases have a right to know what is being said about them, so they can speak up about inaccuracies and let their voices be heard.

Too often, foster children are made to feel like pieces of furniture, moved from home to home with little advance notice or information.

At the same time, government agencies embrace confidentiality laws that serve to protect children from being branded as "dependent," "delinquent," "mentally ill," or "learning disabled," and then discriminated against because of those labels.

Adding to the troubling mix is that Florida's statutes are inconsistent and uncoordinated when it comes to confidentiality. For example, records that are kept confidential in delinquency and dependency proceedings, are open in CINS/FINS cases (Children and Families in Need of Services, a designation which gives statutory authority to provide services when there has not been a case filed in any court proceeding). In some instances, records in probate court are kept from guardians who are representing children and who need access to that information.

Because children and their families are often served by many agencies, sharing information in a spirit of interagency collaboration — rather than shortsighted turf-guarding — would help avoid inconsistent or misguided services that harm children. It is difficult to provide the proper treatment and services for children when certain players in the system are operating with only part of the child's story, such as a CINS/FINS child caught up in school expulsion proceedings.

The same confidentiality laws designed to protect children's privacy also serve to hide from public view when children are abused by the very system that is supposed to protect them.

Confidentiality laws have the inadvertent effect of allowing inaccurate information about a child to be placed into the case file, and thereby misguide some important decisions about a child's future.

There are compelling reasons to protect certain information about children from public disclosure — such as the child is HIV positive — but agencies serving that child need to know such information.

The primary issue reduces down to striking a proper balance between the need to know and the need for confidentiality.

The Florida Bar Commission on the Legal Needs of Children Confidentiality/Information Sharing Subcommittee faced the challenge of finding that balance.

The Commission had the benefit of consulting with Mark Hardin, director of Child Welfare at the American Bar Association Center on Children and the Law, in examining Florida confidentiality laws and those in other jurisdictions, reviewing extensive literature on the subject, and in regard to testimony from children's attorneys and child-serving professionals regarding the many challenges of collecting and sharing information they face, while seeking to protect the best interests of children.

At the heart of the matter is the strong belief that children are parties to their own cases and need access to information — just as the court needs access to that information.

In making its recommendations, the Commission attempted to reconcile a number of competing interests involving the child's (and the family's) need for privacy, and the state's (and family's) need for information to best serve the child's health, safety, and well-being.

Underlying the issue is the core right to privacy imbedded in the Florida Constitution, which unlike the U.S. Constitution explicitly guarantees that "every natural person has the right to be let alone and free from government intrusion into his private life." Fla. Const. Art. I, §23.

Many children involved with service agencies have suffered repeated violations of their sense of personal privacy. They have been abused by parents or relatives, or transferred from one foster care placement to another, or treated like commodities on an assembly line by harried or overworked agency staff.

Respect for confidentiality rights is particularly crucial for such children. These rights allow them to exert some measure of control over their world, and to develop a degree of trust in those around them. Similarly, children in the foster care system have a vital interest in being able to view records generated by agencies in order to establish a measure of control over personal information about them that is routinely generated and shared by these social service agencies and to have an opportunity to correct prejudicial, misleading, or erroneous information contained in those records.

The interests of children and families in personal privacy are of undeniable importance, yet represent only part of the equation. When children and families need public social services, the individual's "right to be let alone" is balanced by the agency's need to share information for the effective and efficient provision of services. Moreover, children and families also have an interest in the effective and efficient provision of services.

Robert G. Schwartz, founder of the Juvenile Law Center in Philadelphia, and one of the experts who testified before the Commission, cautions against a categorical system of treatment by

agencies and courts that labels children, accords them different rights to services or benefits, or subjects them to varying degrees of coercive governmental interference, based on the label that the child wears.

Schwartz, like other critics of this phenomenon of the "labeled child," observes: "Children and their complex needs are consigned to a reductionist list of labels that some have characterized as 'Bad, Sad, Mad, or Can't Add.' It is like a mailing label: The Bad child gets sent to the juvenile justice system. The Sad child into the child welfare system. The Mad child into the mental health system. Can't Add goes to special education."

He concludes: "We can continue to operate within our own systems of child welfare or juvenile justice, or we can think of children as whole children warranting attention from schools, and drug treatment programs, and mental health providers."

These fundamental principles of integrated, comprehensive case management and decision-making to address the needs of the whole child are at the core of the Florida Supreme Court's adoption of recommendations of the Family Court Steering Commission to establish a Model Family Court in Florida. Therefore, the proper role of confidentiality provisions in interagency collaborations depends upon balancing those interests.

Many children and families are involved with several different service systems at the same time, with workers from each of these systems independently developing service plans and strategies. These efforts often overlap. Unless they are coordinated and integrated, children and families may be faced with an array of confusing, and potentially conflicting, expectations and responsibilities. Agencies sharing information could identify such issues for resolution, ideally with the full participation of the family.

While information sharing between agencies is important, there is a growing emphasis in statutes and practice to maintain and share only information that is directly relevant to an agency's purpose. Limited sharing of needed information stems from a growing realization that more information is not necessarily better for case management purposes, particularly when it is shared across agency lines.

The full text of the Commission's recommendations is in Appendix C.

Here is a summary of the Commission's recommendations regarding confidentiality:

- 1) Agencies' interests in obtaining and sharing confidential records call for the following recommended statutory changes (whenever the Department of Children and Families, DCF, appears, it includes that agency or its successors.):

- Require mandatory reporters under Chapter 39 to answer relevant questions by the Department of Children and Families (DCF) regarding abandonment, abuse, or neglect, subject to evidentiary prohibitions.
 - Enable DCF to obtain a civil warrant, authorizing it to obtain information to help it complete its investigation. Authorize DCF to issue subpoenas.
 - When a child is under the court's jurisdiction, authorize DCF to obtain relevant information concerning parents or adults involved in that child's life.
 - Before placing a child, under court jurisdiction, in the home of relatives, conduct a criminal records check of relatives and other adults living in the home.
 - Develop state interagency agreements for exchanging information concerning children and families. (A sample interagency sharing agreement is part of the appendix of the Commission's final report, which may also be accessed at The Florida Bar Web site: www.flabar.org.)
 - Clarify statutes requiring consent of parents, guardians, and children regarding the release of confidential information.
 - When seeking informed consent from a child, full information as to the reason the information is sought should be provided to the child.
- 2) Court's Interests in Obtaining and Sharing Confidential Records:
- Amend Chapters 39, 61, 984, and 985 of Florida Statutes to authorize information sharing among courts handling cases involving custody, delinquency, truancy, child abuse, and neglect.
 - Courts should have access to school and dependency records in family and delinquency cases.
- 3) Public's Interest in Assessing Agencies' Performance of Duties:
- The public should have access to DCF critical incident reports and other information needed for studies regarding child fatalities and serious injuries.
 - The public has a right to gain access to the information to properly scrutinize DCF's performance of its statutory duties to protect children from harm.
- 4) Children's Interests in Information and Privacy of Records:
- Children, with the capacity to consent or withhold consent to the release of confidential information concerning health care treatment, should be consulted prior to an agency releasing those records.
 - Children should be provided information about their legal status, social information, health information, and other important personal or family

information from the courts or agencies, unless a guardian ad litem can demonstrate at a hearing that such information would not be in the child's best interest.

- The Commission recommends a procedure for the court to follow to resolve the matter when an agency refuses to provide a child with requested information about the child.
 - Children over the age of 14 should be allowed to request that private information not be disclosed when the disclosure involves extraordinarily sensitive issues.
 - Children should be allowed access to reports and financial information under the Florida guardianships statutes and probate rules, unless the guardian can show that it is not in the child's best interest to have access.
- 5) Juvenile and family courtrooms should remain open to the public in all proceedings, with the exception of termination of parental rights and adoption hearings. However, the courts and court personnel should develop a culture of decorum and respect for the intimate privacy interests of children and families.
 - 6) The court should allow the child or any party to request closure of the courtroom when particularly sensitive and private information is heard by the court. Judges should be discouraged from using the courtroom as a waiting room in dependency proceedings.
 - 7) The Florida Bar Continuing Legal Education Committee should develop training materials for the judiciary, members of the bar and the general public concerning state and federal confidentiality and records laws.

IV. EDUCATION AND THE ROLE OF THE BAR:

Justice for children demands that lawyers who represent them and the judges who decide their fate know the basics of child development, understand the dynamics of child abuse and neglect, and are familiar with services in the community.

Sadly, such common-sense criteria are not always evident in the adults who have power over the lives of children in court. Some lawyers advocating for children – and some judges – are inexperienced in communicating with children or understanding what they really need.

“It's not unusual for lawyers to first meet their child clients the morning of the court appearance. Inexperienced public defenders just don't know what to give the judges,” Sixth Judicial Circuit Public Defender Bob Dillinger told the Commission.

As Ann Haralambie, president of the Arizona Association of Counsel for Children, told the Commission: "Most of us who represent children are not social workers, we are not child psychologists, and we have no in-depth training to determine what's in the best interests of children."

Some judges in family courts rotate in and out of the division as part of that circuit's operation and therefore the families' issues lose the continuity of one decisionmaker.

"We have judges making decisions about where children should live, and parenting plans for their families, who know nothing about childhood development. Education is important," stressed Judge Raymond McNeal, chair of the Family Court Steering Committee of the Florida Supreme Court.

Also, because of incomplete or flawed data on complex issues, well-meant legislation and funding is developed that inevitably does not adequately help children.

Parents of troubled children often don't know where to go for help, unless a crisis forces those children into the juvenile system.

The crying need for education sweeps across all of these areas. The Commission believes The Florida Bar should play a leading role in providing and promoting that education through a network of information available to the public, as well as continuing legal education and certification of lawyers specializing in representing children.

Here are the Commission's recommendations regarding education and the role of the Bar:

- 1) Encourage the development of programs in law schools to educate students in children's law, particularly in the problem-solving model for approaching children's issues and developing interdisciplinary collaboration for successful child representation.
- 2) Provide scholarships and grants to encourage participation in law school programs regarding children's issues.
- 3) Train lawyers who are dealing with systemic solutions, such as class actions, in problem-solving techniques, because the adversarial system takes money away from the care and treatment of children.
- 4) Create an interdisciplinary group within local bar associations where social service, psychology, medical experts and lawyers can meet and exchange information and ideas about children's issues. This would provide an opportunity to learn about other professionals in the community dealing with children's issues, and would provide

interdisciplinary training that would foster the problem-solving, rather than the adversarial, approach.

- 5) Expand Continuing Legal Education courses to cover children's medical and social issues and provide necessary funding so that lawyers from small firms or government lawyers have resources to attend seminars and training.
- 6) Develop computer, video or audio materials for widespread, cost-effective training. Maintain The Florida Bar Web site on the Commission on the Legal Needs of Children with links to other research facilities regarding "pediatric law."
- 7) Train in child-welfare issues and child development all public attorneys, including public defenders, state attorneys, attorneys general, and attorneys on court-appointed lists who deal with children.
- 8) Require as a prerequisite to appointment as any kind of child advocate (lawyer or guardian ad litem) minimum education requirements in children's issues.
- 9) Encourage internships and externships within family and juvenile courts from law schools.
- 10) Create a separate certification in child law, titled "pediatric law," and review existing criteria for certification in family law to ensure that knowledge of appropriate children's issues is included in qualifying exams. Determination of adequate experience in this area should emphasize problem-solving and a wide array of cases involving children and their families at all stages of the proceedings, rather than the current emphasis on the number and length of contested final hearings.
- 11) Review criteria of criminal law certification to make sure that knowledge of appropriate children's issues is included in tests and in experience qualifications.
- 12) Train judges who sit in family and/or juvenile court in child development, abuse, impact of domestic violence and other social issues. Not only should this training be mandatory, judges also need to know about resources available in the community to serve children.
- 13) Develop forms, training manuals and checklists for lawyers and judges.
- 14) Create a directory of children's lawyers and mentors. Make this list of child advocate lawyers available through The Florida Bar referral number and on The Florida Bar Commission on the Legal Needs of Children Web site.
- 15) Develop model court curriculum for juvenile and family court.

- 16) Train judges who sit in criminal court about juvenile programs and juvenile development.
- 17) Educate lawyers, judges and the public about open records and confidentiality laws. Encourage judges to manage their courtrooms in juvenile court to create an atmosphere that is respectful to the litigants and children who appear there.
- 18) Develop continuing legal education courses regarding specific roles of Legal Counsel for Children and the Guardian Ad Litem.
- 19) Develop standards of practice for lawyers who represent children in abuse and neglect cases, using for guidance the *ABA Standards for Lawyers Who Represent Children in Abuse and Neglect Cases*.
- 20) Develop standards of practice for lawyers who represent children in custody and visitation cases using for guidance the *ABA Standards on Independent Representation of Children's Interest in Custody and Visitation Cases*.

V. TECHNOLOGY AND THE COURTS:

Florida's family courts are disjointed. Judges handling dependency, delinquency and divorce cases operate in separate worlds. Judges assigned to different cases involving the same family often issue conflicting orders. And children and their families are often summoned to multiple court appearances on the same issues.

Not only is such lack of coordination a drain on judicial resources, this communication gap erodes the public's confidence in the court system and can harm families and children.

When the Florida Supreme Court asked the Family Court Steering Committee to address these problems, the result was a report detailing "A Model Family Court for Florida," which was released in June 2000 and adopted by the Florida Supreme Court on May 3, 2001. [794 So2d 518 (Fla. 2001)]. The Commission fully supports one of the key recommendations of "A Model Family Court": "The court needs an integrated management information system to monitor and coordinate cases in the family division. The system should be integrated with the clerk of court and be able to provide information on all pending and closed cases involving the member of a family."

Because the Family Court Steering Committee has done such a comprehensive job of laying the foundation to create a unified family court, the work of this Commission was free to focus on the lack of technology connecting the courts.

The commissioners asked several questions as part of their work: How does one court find out that a child or family has an open matter in another court? How do judges communicate from one court to another in order to protect the child's legal rights?

The need for better communication to better serve children involved in the courts goes beyond better coordination between judges.

All decisionmakers on a child's case — social workers, teachers, police, prosecutors and public defenders — need to be able to share information, when appropriate, through a seamless communication system that flows to the clerk of courts and judges who need good information to make good decisions.

"Currently, clerical staff, employed by clerks of court, track and cross-reference cases manually. This is a time-consuming process. It is difficult for them to keep up with the files and to determine when cases involving the same family members are pending in different divisions. Technology is available to automate those tasks. Ideally, the system should be integrated statewide, with law enforcement agencies, the Department of Children and Families, the Department of Juvenile Justice and any other agencies that interact with the family court on a regular basis," according to "A Model Family Court in Florida," (June 2000).

The judicial system can better meet the legal needs of children if all of the various agencies involved can share information in a timely way.

A \$25,000 Administration of Justice grant from the Florida Bar Foundation was used to contract with the Gartner Group, an information technology consultant, to create a "snapshot" of the current information technology enterprise, identifying areas that need further research. The Commission worked with the State Technology Office, Department of Management Services, and state policymakers to advance a forum for stakeholders to reach preliminary agreement on integration. Results of a research survey and questionnaire, developed by The Gartner Group and provided to select stakeholders, is included in the appendix with their final report.

Among the key findings of the report is that the primary impediment to the effective exchange of information regarding the legal needs of children is the wide technical diversity in the state and the continued reliance of many organizations on paper as the primary medium for the transfer of information. Contributing factors include the absence of a clear statement of the vision, objectives, and priorities for improvements in the automated processing of information related to the legal needs of children, and a governance structure to facilitate a continuing dialog regarding strategies to address the immediate and long-term opportunities.

The final report is in the appendix.

Here are the Commission's recommendations regarding technology and the courts:

- 1) The Commission voted to unanimously support the concepts of "A Model Family Court for Florida," the blueprint for a unified family court adopted by the Florida Supreme Court on May 3, 2001 [794 So2d 518 (Fla. 2001)]. Proponents of the Model Family Court recognized that without access to information about children and families in the system, people are not well-served, and may even be harmed as victims of duplicate or conflicting court orders.
- 2) The Commission recommends that the Florida Legislature make improving technology between the courts and the executive agencies that work with families a priority in the next years, to better serve our citizens.
- 3) The Florida Bar Web site should provide electronic access to an inventory of children's services within the state. This service would be a valuable resource to the court system and other stakeholders, as well as the general public seeking information.

OTHER ACHIEVEMENTS OF THE COMMISSION:

In addition to reaching consensus on recommendations on the five priority areas outlined above, the Commission accomplished the following:

- The Commission, with the assistance of the legal team at Gator TeamChild at the University of Florida Levin College of Law, produced a Children's Law Work Book, which cites the numerous and sometimes conflicting statutes that address the most frequently researched issues regarding children.
- The Commission established a Web page, providing ready access to the Commission's work, including: The Interim Report, The Children's Law Workbook, the Commission's Final Report with full appendix, a model interagency information sharing agreement as well as additional information about the Commission.
- The Commission was awarded an Administration of Justice grant from the Florida Bar Foundation to fund the technology project creating a "snapshot" of current information technology of various "legal needs of children" stakeholders.

- The Commission reached agreement with The Children's Center for the Law at the University of Florida, directed by Dr. Barbara Woodhouse, to maintain Commission archival materials including research, video tapes of the meetings, testimony of national and international experts, and all other documentary work of the Commission, so that legal scholars and policymakers may access the Commission's extensive resources.
- By invitation, the chair of the Commission testified before the Florida Joint Senate Committee on Representation of Children.

IMPLEMENTATION PROJECTS:

The scope of the Commission's work was so broad that many areas representing the legal needs of children were not fully addressed and resolved. In some instances, after identification and discussion of the issues, the Commission recommended specific statutory changes. In other instances, the Commission recommended new procedures, and for yet others, the commission developed guidelines for further study. The Commission identified some issues outside of the scope of this Commission's charge and the expertise of The Florida Bar.

Here is a summary of the Commission's recommendations for future work:

1) Representation:

In order to enhance the competence of attorneys representing children, the Commission recommends that:

- Florida should look to the *ABA Standards on Independent Representation of Children's Interest in Custody and Visitation Cases* for guidance in developing its own standards.
- Florida should look to the *ABA Standards for Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* for guidance in developing its own standards.
- Through the Florida Public Defender Association, Florida should develop its own standards for representation of children in delinquency proceedings using the guiding principles of the National Legal Aid and Defender Association's *Performance Guidelines for Criminal Defense Representation*, the ABA's *Standards for Criminal Justice*, and the Oregon State Bar's *Principles and*

Standards for Counsel in Criminal Delinquency, Dependency and Civil Commitment Cases.

- An appropriate rules committee must address the clash in laws that makes the reports of guardians ad litem inadmissible hearsay in court and therefore useless to help judges making important decisions about children's lives.
- Every applicable court rules committee of The Florida Bar should develop rules of procedure, consistent with the Commission's findings and recommendations, that ensure that children involved in all court proceedings have the right to appear in court and be heard.
- Further empirical study needs to be conducted into the issue of juveniles in delinquency court waiving their right to counsel.

2) Treatment and Services:

- A comprehensive study should be conducted of the CINS/FINS system statewide to determine the extent to which services and programs are available, including the timeliness of provision of services. This study should also measure the effectiveness of the truancy programs statewide.
- Substantial work needs to be done to address the issue of the over-representation of minorities in the juvenile justice system. The Commission recommends that the Florida Supreme Court Commission on Fairness or other legislative and judicial groups be funded sufficiently to address this problem. The Commission on Fairness had begun this specific task when its funding was eliminated.
- Of equal concern to the Commission is the dramatically increasing number of females entering the juvenile justice system, without sufficient gender-specific programs in place to intervene and rehabilitate. It is also recommended that this disturbing trend be specifically addressed with a focus on developing and making available appropriate services to young women in the juvenile justice system. The Commission on Fairness had also begun this inquiry, but its funding was eliminated.
- The Commission strongly believes that blended sentencing options should be considered. However, there is considerable work to be done before any specific blended sentencing legislation can be recommended. A committee with

representatives from the prosecution, defense, judiciary, Department of Juvenile Justice, and Department of Corrections should be formed to examine the most appropriate form of blended sentencing.

3) Confidentiality:

- The Florida Legislature should study the ramifications of a policy which allows medical decisions to be made by minors based on specific identified factors.
- The Florida Legislature should review the privacy and public access of information contained in court records and other official records to create greater uniformity and consistency in terms of principles and procedures. This should include, among others, provisions regarding court proceedings, education, substance abuse, mental and physical health, juvenile justice, and public benefits.
- The Florida Legislature should form a study committee regarding access to public records and confidential and/or privileged information and to the admissibility/nonadmissibility of such information, including court records and reports generated pursuant to proceedings governed by Chapters 39, 61, 63 and 741 of Florida Statutes and various social services statutes.

4) Education and The Florida Bar:

- The Commission recommended the creation of a standing committee on children's law within The Florida Bar to continue to address the numerous issues raised by the Commission's work and to implement its recommendations.
- Florida needs to develop uniform standards of representation of children.
- The Florida Bar Continuing Legal Education section should develop training materials for the judiciary, members of the bar, and the general public concerning state and federal confidentiality and records laws.
- The Florida Bar, in conjunction with the Florida Conference of Circuit Judges, should sponsor training seminars that provide confidentiality education to court personnel and persons appearing in juvenile court. The Bar should produce written materials and provide training sessions for court personnel, parties, and persons and agencies frequently appearing and testifying in court.
- The Florida Conference of Circuit Judges, in conjunction with The Florida Bar, should sponsor periodic seminars for family and juvenile court judges regarding the privacy and confidentiality laws pertinent to family and juvenile court proceedings

and develop interdisciplinary training materials for judges concerning their role in maintaining decorum and respect for the privacy interests of children in these proceedings.

- The Florida Bar should develop training materials and provide for ongoing education geared toward employers, licensing authorities, credit companies, insurance companies, banks, and educational records, dependency records, mental health records, substance abuse records, and other private, confidential records pertaining to children.
- The Florida Bar, in conjunction with the Florida Association of Drug Court Professionals, the Department of Children and Families, the Florida American Civil Liberties Union, and other appropriate organizations or entities, should develop multi-disciplinary training materials regarding federal and state substance abuse and mental health confidentiality laws.
- The Florida Bar should develop booklets and sponsor or co-sponsor continuing legal education training seminars on federal and state records confidentiality laws and appropriate uses of confidential information geared to lawyers and other professionals who deal with children and families who intersect with child welfare and juvenile justice systems.
- The Florida Bar, in conjunction with the Department of Children and Families and the Department of Juvenile Justice, should develop training materials and training seminars for agency staff on Florida records laws.

VOICES OF CHILDREN:

Early in their work, commissioners agreed they must seek answers from the children involved in the legal system.

That philosophy of sincerely wanting to listen to the children brought Carlos Martinez, Bernard Perlmutter, Nancy Barshter, and Robert Sechen to the Orange County Juvenile Detention Center in June 2001.

A second opportunity to capture children's views and attitudes regarding issues of relevance to them was seized at Miami Senior High School, when Martinez, an assistant public defender, walked with a microphone among the students gathered in the media center on Law Day and prodded them to speak their minds.

The children at both the high school and detention center filled out surveys, designed by Dr. Craig Mason of the University of Maine (formerly with the University of Miami).

At Miami Senior High, the students voiced their opinions on everything from body piercing as self-expression to disdain for curfews to mental health treatment.

When the topic turned to when children should have lawyers, 78 percent of the 144 students surveyed said "yes" when divorcing parents fight over custody; 89 percent want their own counsel when their parents are accused of abuse or neglect; 65 percent want a lawyer if they are being expelled from school; and 79 percent say kids should have lawyers if questioned by police or school officials.

"Everyone is speaking of lawyers, but who should pay for these lawyers?" asked one student.

"The government should pay," shouted another child.

"But are we taxpayers? Are we paying?" asked another girl.

"The government is spending money on a lot of unnecessary stuff, like things in space when they can't even fix what's here on earth," said another girl.

At the high-security detention facility in Orange County, boys were segregated from girls into separate rooms for two discussion sessions that lasted more than two hours. There were between 20 and 30 children in each group, and they represented a cross-section of juveniles in custody. Some had been in detention for days; others had been locked up for months. All had been arraigned on criminal charges ranging from violent felonies to status offenses. Some children were big and street-wise, knowing all of the legal terms and phrases of the legal process. Others were small and meek, and seemed totally lost.

As each child entered the high-security room, their slip-on shoes were checked for weapons, they were ordered to walk with their hands behind their backs, and they were issued pencils to fill out the surveys that had to be returned.

Children barely four feet tall were swallowed by rolled-up regulation jumpsuits designed for much taller kids.

Department of Juvenile Justice employees sat in the back of the rooms and obliged the commissioners by not interceding in the discussions.

Most of the children were very eager to talk to the lawyers who came to listen. Most were actively involved in the discussion, and even if they didn't say anything, most appeared to listen to the others with great interest.

Only a couple shrunk back along the fringes and refused to participate. Those who entered the vigorous dialogue appeared to speak from the heart, and they had a varied range of experiences to share.

Once in a while, the children got so animated in telling their views that they jumped up and down in their seats to be recognized.

A few of the girls volunteered they had been victims of abuse – sexual, physical and emotional. They seemed to understand implicitly that their earlier victimization had something to do with breaking the law.

They spoke of growing up with little supervision and no adult role models, and living in situations of neglect where they had to commit crimes in order to get along.

With blunt frankness, many tossed out deeply personal facts about themselves, such as, “They told me I was crazy and put me on medication and I would drool.”

After the discussion, the children were given surveys to fill out, and they were told they were under no obligation to fill them out and didn’t have to answer a particular question if they didn’t want to.

Some kids were bright and outspoken, and others obviously couldn’t read the written surveys, put their heads on their desks and waited in silence.

As the lawyers left the detention center, they were all struck by the level of enthusiasm and the amount of involvement and information the kids were willing to share in wholehearted participation. They seemed to appreciate that lawyers had come to hear what they had to say.

“They were clearly receptive and open to being listened to. We felt listening to children was respectful and the right thing to do,” said Nancy Barshter, special counsel to the Attorney General.

Notes, quotes, and survey results from the children who participated at the Miami Senior High School and Orange County Detention Center surveys and discussions follow in the Appendix. Complete materials may be accessed at www.flabar.org.

CONCLUSION:

Reaching consensus as a Commission on these priority issues required commissioners to look beyond the status quo and their own area of expertise, and to open their thought process to unusual approaches. The Commission has learned that while there has been much valuable work done on dependency and delinquency courts and their procedures, no other state bar has attempted to review children in all courts in such a comprehensive manner.

The Commission's mandate was a huge undertaking — one that leaves many identified areas still open for exploration and discussion.

During the nearly three years of service by the Commission on the Legal Needs of Children, the most striking lesson for all of the commissioners was to keep an open mind and to remove the barriers structured into our courts while looking for solutions.

Commissioners determined early in their work that they must seek answers from the children involved in the legal system. Commissioners listened to the children, to the experts, and to each other in finding ways to leave behind the familiar system where too often children's legal needs go unmet.

Together, the Commission found common ground to reach an appropriate vision and recommendations where children have the right to be represented, defended, protected, served, and heard.

The Commission sincerely hopes that by its work a new door will be opened to the needs and rights of Florida's children.

APPENDIX A
REPRESENTATION SUBCOMMITTEE REPORT

**THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
REPRESENTATION SUBCOMMITTEE**

Chair

Carlos J. Martinez, Esq., Assistant Public Defender, Eleventh Circuit

The Honorable Daniel Paul Dawson, Ninth Circuit Court

Joni Goodman, Guardian Ad Litem Program, Eleventh Circuit

The Honorable Michael T. Jones, First Circuit Court

Gerald I. Kornreich, Esq.

Sharon Lynne Langer, Esq.

Gary A. Woodfield, Esq.

**THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
RECOMMENDATIONS OF THE REPRESENTATION SUBCOMMITTEE**

Florida Shall Promote and Protect Legal Rights and Remedies for Children

- I. In order to secure the fundamental rights of children to physical and emotional well-being and safety, and to protect children's legal interests, constitutional and statutory rights, Florida should fully fund independent advocacy that includes the availability of Legal Counsel and Guardians Ad Litem for Children in certain legal and administrative proceedings as recommended herein. The Commission recommends that Florida takes steps to improve the system of representation and advocacy on behalf of children.
 - A. The threshold issue to be addressed by Florida is the need for adequate funding to secure the rights and entitlements to children under state and federal laws and constitutions.
 - B. When appropriate as specified later in these recommendations, and at the court's discretion, children should have Legal Counsel and/or a Guardian Ad Litem appear and participate in court proceedings whenever their interests may be at stake in proceedings relating to:
 1. Delinquency,
 2. Children in need of services and families in need of services,
 3. Child abuse, neglect and termination of parental rights,
 4. The child's custodial or parental visitation status, including but not limited to dissolution of marriage, annulment, separation, and custody,
 5. Establishing paternity or establishing or modifying parental support,
 6. Adoption,
 7. Commitment of the child to a psychiatric or residential substance abuse treatment facility,
 8. Obtaining mental health services, including representation before Family Service Planning Teams and Case Review Committees,
 9. Mental retardation proceedings (Chapter 393) and Baker Act proceedings,

10. Disciplinary actions in a public or charter school, including suspension and expulsion, and entitlement to special education and related services, where there is a corresponding dependency or delinquency case,
11. Probate or inheritance where child has a financial stake in the outcome,
12. The child being a victim or a witness in a criminal or delinquency case,
13. The child having an interest in the outcome of litigation where the child is not a party,
14. A civil legal action for money damages where the child is a party due to injuries the child sustained, and
15. Permanent injunction for domestic violence where the child is the victim or the accused perpetrator; and
16. Any other actions related to securing rights and entitlements afforded to the child under state and federal statutory and constitutional law.

C. Florida should ensure that Legal Counsel for Children and Guardians Ad Litem have sufficient training, qualifications, compensation, time and authority to do their jobs properly, and the support and cooperation of the courts and other institutions and agencies that may be involved in their cases.

II. To adequately promote and protect the legal rights and remedies for children, Florida should develop a comprehensive system and structure for child representation, which includes guardian ad litem, legal counsel for children and public defender representation. The Commission recognizes that Florida already provides legal representation to children in delinquency proceedings through the public defender offices and recommends they continue to provide such representation.

A. To meet the legal needs of children in other areas of law, particularly in dependency proceedings, Florida should create a "Statewide Office of the Children's Advocate (Office)," to oversee the representation of children in all areas of law except delinquency, provide guardian ad litem representation and legal representation to children. The Office will play a critical role in providing a voice for children, including a meaningful opportunity to present their positions, needs and wishes to the court. The Office shall include a Division of Legal Counsel to represent children and a Division of Guardian Ad Litem. The Division of Legal Counsel shall be newly created and shall enter into contracts with private entities, not-for-profit agencies, public or private colleges or universities, or public defender offices to provide legal representation for children. The

Division of Legal Counsel shall represent children in proceedings where legal counsel has been appointed by the Court. The Division of Guardian Ad Litem (GAL) will include the Florida Guardian Ad Litem Program.

The Office will have the responsibility for providing oversight of, and providing guidance, training, technical, administrative support and direction to the Circuit Divisions of Legal Counsel and GAL. In creating the Office, consideration should be given to setting a term of office for the statewide director that is long enough to ensure consistency in administration and insulate the Office and director from changes in the political climate. The existence of the Office shall not prevent a court from continuing to appoint private attorneys to serve as guardians ad litem or legal counsel for children when the court deems that to be appropriate. These recommendations recognize that some circuits have successful GAL programs that rely on pro bono attorneys.

1. Independence. The independence of the Office is of paramount importance. To help assure that the Office of Children's Advocate is not compromised in its actions on behalf of child clients, the office should be independent from other participants in the litigation. "Independence" does not mean that the Office may not receive payment from a court, a government entity or the legislature. Independence means that plans for providing counsel for children must be designed to guarantee the professional independence of counsel and the integrity of the lawyer-client relationship. There is no justification for judicial preference to compromise a lawyer's relationship with a child client, and judges and others involved in legal proceedings should not direct the lawyers' performance and thereby compromise their independence in the representation of child clients. The Office should be insulated from undue influence by outside agencies, the executive, legislative and judicial branches. The system of appointment should not denigrate independence of counsel or the guardian ad litem. Judges should not be able to select which publicly-funded attorney or guardian ad litem to appoint in a specific case. To further ensure its independence, the Office should:
 - a. Be under the Justice Administrative Commission for budget and administrative purposes.
 - b. Be overseen by a board or commission, whose primary functions would be to support and protect the independence of the Office and to assist with policy and decision-making. Within budgetary, statutory and other legal constraints, the functions of the board should include the following:
 - 1) Specifying the qualifications for the position of administrator of the system;
 - 2) Defining the function of the administrator and authorizing sufficient staff to support that function;

- 3) Adopting appropriate rules or procedures for the operation of the board itself, as well as general guidelines for the operation of the Office;
 - 4) Adopting standards of representation for guardians ad litem and legal counsel;
 - 5) Acting as a selection or recommendation committee for the appointment of an administrator;
 - 6) Seeking and maintaining proper funding of the system;
 - 7) Ensuring the independence of the administrator and the representation function;
 - 8) Monitoring compliance with statutory and other reporting requirements; and,
 - 9) Encouraging the public, the courts, and the funding sources to recognize the significance of the child representation function as a vital and independent component of the justice system.
2. **Support Services.** The Office should have adequate resources to effectively carry out its mission, including funding for support and other services critical to the Office's mission. Supporting services necessary for providing quality representation should be available, including investigatory, expert, and other necessary services. These should include not only those services and facilities needed for an effective representation in court but also those that are required for effective participation in every phase of the process.
 3. **Facilities and Operating Resources.** Every office should be located in a place convenient to the courts, have adequate space for staff, be furnished in a manner appropriate to the dignity of the legal profession, and have equipment necessary to efficiently operate. Access to online research and a library of sufficient size, considering the needs of the office and the accessibility of other libraries, and other necessary facilities and equipment should be provided.
 4. The Office should provide for the effective training, professional development and continuing education of all counsel, staff and volunteers. Continuing education programs should be available, and public funds should be provided to enable all counsel, staff and volunteers to attend such programs.

5. Professional Responsibilities of the Office. The Office shall:
- a. Protect the legal rights of children through adequate and competent representation. To provide competent and effective legal and GAL representation, the Office must ensure that its attorneys and guardians possess the skills, thoroughness, preparation and knowledge of services available for children.
 - 1) At a minimum, Legal Counsel for Children and Guardians Ad Litem should:
 - Observe the child, and, dependent upon the child's age and capabilities, interview the child;
 - Engage in regular meaningful communication with the child; and,
 - Where appropriate, provide opportunities for the child to participate in making decisions that affect his/her case.
 - b. Whenever possible assign the same advocate to represent the child for as long as the child is subject to the court's jurisdiction.
 - c. Encourage legal counsel and guardians ad litem to provide coordinated services to children where appropriate.
 - d. Develop internal structures to facilitate coordination of services and appropriate communication between the Divisions.
 - e. Ensure that the advocate is competent, independent and zealous.
 - f. Ensure that children have judicial review of adverse decisions and the opportunity to appeal.
 - g. Ensure reasonable caseload limits and adequate compensation for representing children.
 - h. Work with the Public Defender or defense counsel to reduce duplication of effort in delinquency cases.
 - i. Provide multi-disciplinary training to its attorneys, support staff, volunteers, and interns. Competent legal representation of children

requires a wide variety of skills which can be augmented and supplemented with effective use of lay personnel, including social workers, investigators, paralegals, interns and volunteers.

- j. Recruit, train and supervise attorneys, support staff, volunteers, and interns who work in or with the Office.
 - k. Ensure that the Division of Legal Counsel provides adequate safeguards for the protection of attorney-client communications while assisting children to make informed decisions which are in their best personal and legal interest.
 - l. Develop performance and outcome measures that adequately reflect the Office's workload.
 - m. Develop a funding and resource allocation formula to ensure that budget requests reflects the actual needs of the Office.
 - n. Prepare an annual report for the governor, legislature, judiciary and other funders.
6. **Standards and Guidelines.** Well-defined standards, administrative guidelines and Supreme Court directives should be developed so that the attorneys and guardians ad litem clearly understand their roles and duties and are held accountable according to professional standards.
7. **Conflict situations.** When a conflict arises because the guardian ad litem is presenting a position or recommendation to the court that is contrary to the expressed wishes of the child, the court shall appoint the Office of Legal Counsel, or other legal counsel for the child.
- B. Legal Counsel.** As part of implementing a comprehensive system of child representation, Florida should create a Division of Legal Counsel to represent children in dependency, probate, civil and other proceedings where their legal interests, constitutional or statutory rights need to be protected. The court's appointment of legal counsel for the child should not restrict the independence of the child's attorney. As with any other attorney, the child's legal representation should be independent from the court, court services, the parties, and the state. In creating the Office and amending statutes, rules and procedures, attention should be paid to ensuring that children's communications with the Division of Legal Counsel are privileged and confidential in accordance with legal rules of ethics.
- 1. The appointment of legal counsel to represent the child's legal interests shall be as follows:

- a. In all termination of parental rights cases the court shall appoint counsel, unless the court determines that the legal interests of the child are otherwise being protected.
- b. In Children in Need of Services/Families in Need of Services (CINS/FINS) cases, the court shall appoint legal counsel any time that the child's liberty interests are at stake. The court, in its discretion, may appoint legal counsel if the child, parent or legal guardian requests counsel for the child.
- c. In abuse, neglect and abandonment cases, the court shall appoint legal counsel for the child whenever a capacitated child disagrees or conflicts with the Guardian Ad Litem's interpretation of the best interests of that child. A child who is at least 14 years of age is presumed to be capacitated, i.e., capable of communicating his/her expressed wishes or considered judgment. This presumption is rebuttable. In cases where no presumption exists, the court shall consider the child's age, maturity, cognitive development, level of education, cultural context, and degree of language acquisition when determining whether a child has the capacity to participate in the proceedings, express his/her wishes, direct the representation, or communicate with the court.
- d. In cases where the state is seeking commitment or placement of a dependent child, for longer than 24 hours, into a staff-secure or physically-secure residential treatment facility, including those licensed under Chapter 394 and 395, for substance abuse or mental health treatment, the court shall appoint counsel.
- e. In cases affecting the child, including dissolution of marriage, annulment, custody, paternity, adoption, child support, probate, permanent injunctions for domestic violence, and in cases where a child is injured or a party to a civil action for money damages, the court may appoint legal counsel for the child if it finds that the child's legal interests:
 - 1) Are not being adequately protected;
 - 2) Require legal advocacy; or
 - 3) The legal issues are complex.

- f. The court may appoint legal counsel in a dependency case in cases where:
 - 1) The child is facing disciplinary action in a public or charter school, including suspension and expulsion;
 - 2) The court has ordered an educational evaluation of the child and the school has not complied with the court's order;
 - 3) The child is or appears to be entitled to special education and related services but has not been evaluated by the school; or
 - 4) The Guardian Ad litem Division makes a recommendation to the court that the appointment of legal counsel to represent the child in school-related matters is in the child's best interest.

- 2. When the court has discretion to appoint legal counsel, the court should consider, when present, the following factors:
 - a. History of violence in the family;
 - b. Special physical, educational, or mental health needs of a child that require an especially demanding investigation for which an attorney's skills and qualifications are particularly suited;
 - c. Allegations of mental illness or a history of mental health problems on the part of the child;
 - d. Allegations of custodial or visitation interference, or allegations or fears of future child abduction, with some basis in fact;
 - e. Allegations of detriment to the child from illegal or excessive drug and alcohol abuse by a parent or guardian;
 - f. Cases dealing with relocation that could substantially curtail or change the child's time with a parent or sibling;
 - g. The court is considering ordering that a parent have supervised visitation, or no visitation;
 - h. The court is considering granting custody to anyone other than a natural or adoptive parent, in a contested case;
 - i. A child, a party, or the court seeks to make the child's concerns or preferences known to the court, by testimony or otherwise;

- j. A specific issue or issues that would best be addressed by legal counsel for the child appointed to address only that issue or issues;
 - k. In order to ensure the thorough production and consideration of evidence regarding the best interests of the child when one or more litigants are not represented by counsel;
 - l. When otherwise helpful due to the acrimony of the parties towards each other, the length and complexity of the case, the fierceness or bitterness with which the case is being litigated, or the difficulty of discerning the truth of allegations concerning the child and what is in the child's best interests;
 - m. When necessary in order to minimize the harm to the child from the processes of family separation and litigation;
 - n. When the failure to make such an appointment would impede the judge's capacity to decide the case properly; and
 - o. Any and all other factors or circumstances the court wishes to consider.
3. The court may appoint independent legal counsel and guardians ad litem who are not part of the Office, and who will not be paid through state or other public funds, when appropriate.
 4. The court should permit the child to be represented by a retained private attorney if it determines that the attorney is the child's independent choice and such counsel should be substituted for the appointed lawyer.
 5. If requested, the court may appoint the Legal Counsel Division in school matters, including disciplinary actions and issues relating to Exceptional Student Education when there is a corresponding dependency or delinquency case. Circumstances in which appointment is appropriate include, but are not limited to,
 - a. The child is facing disciplinary action in a public or charter school, including suspension and expulsion;
 - b. The court has ordered an educational evaluation of the child and the school has not complied with the court's order;
 - c. The child is or appears to be entitled to special education and related services but has not been evaluated by the school;

- d. In a dependency case, the GAL Division makes a recommendation to the court that the appointment of legal counsel to represent the child in school-related matters may provide additional dispositional options for the court and/or protect the child's best interests.
- e. In a delinquency case, defense counsel makes a recommendation to the court that the appointment of legal counsel to represent the child in school-related matters may provide additional dispositional options for the court and/or protect the child's best interests.

C. **Guardians Ad Litem.** As part of implementing a comprehensive system Florida should strengthen Guardian Ad Litem representation by providing adequate funding, developing a structure that guarantees its independence, and developing standards of practice that includes caseload limits.

- 1. The Florida Guardian Ad Litem Program shall become the Guardian Ad Litem Division of the Office of the Children's Advocate. The GAL Division shall be funded and staffed so that every child in Chapter 39 proceedings would have a guardian ad litem assigned, whether a staff GAL or a volunteer GAL.
- 2. The GAL Division shall also have sufficient legal staff to be represented at all legal proceedings, where any other party would be represented by legal counsel, including depositions and appeals, unless the court has appointed the Legal Counsel Division or other independent legal counsel and the court has made a finding that a GAL is unnecessary to protect the best interests of the child. Consistent with bar rules regarding unbundling of legal services, and mindful of potential conflicts, the Office should develop guidelines to facilitate the use of the Legal Counsel Division whenever the GAL Division needs an attorney to file motions or pleadings.
- 3. The court shall appoint the Guardian Ad Litem Division in all cases where a child is alleged to have been abused, abandoned, neglected and when appropriate, when the child has been a victim of a crime.
- 4. If the child's defense counsel requests, the court may appoint the Guardian Ad Litem Division in delinquency proceedings such appointment due to the child's inability to assist in the preparation of his/her defense, participate in court proceedings, express his/her wishes, direct the representation, or communicate with defense counsel.
- 5. If requested, the court may appoint the Guardian Ad Litem Division in school matters, including disciplinary actions and issues relating to Exceptional Student

Education when there is a corresponding dependency or delinquency case. Circumstances in which appointment is appropriate include, but are not limited to,

- a. The child is facing disciplinary action in a public or charter school, including suspension and expulsion;
- b. The court has ordered an educational evaluation of the child and the school has not complied with the court's order;
- c. The child is or appears to be entitled to special education and related services but has not been evaluated by the school;
- d. In a dependency case, the GAL Division makes a recommendation to the court that the appointment of legal counsel to represent the child in school-related matters may provide additional dispositional options for the court and/or protect the child's best interests; or
- e. In a delinquency case, defense counsel makes a recommendation to the court that the appointment of legal counsel to represent the child in school-related matters may provide additional dispositional options for the court and/or protect the child's best interests.

6. The GAL should supplement but not supplant the need for children's attorneys in the instances outlined in other recommendations herein. The GAL should continue to serve the important role in protecting children, investigating, and presenting to the court recommendations that reflect the child's best interests.

D. **Public Defenders.** Florida should continue to appoint the Public Defenders to represent children in delinquency matters. Appointment of defense counsel to represent children in delinquency proceedings is mandatory, unless the child is not indigent. The Commission supports the Delinquency Court concept as started over 100 years ago. That philosophy holds children accountable for their offenses, but does not treat them as adult criminals, but rather balances consequences and punishment with rehabilitation and redemption. Because involvement with the police and the delinquency system have the potential for significant long-term implications for children, legal counsel should be provided to them to protect their constitutional, statutory, and other rights.

1. Florida should strengthen legal representation of children in delinquency proceedings by adequately funding the Florida Public Defenders and making statutory changes that would authorize representation in critical areas where children are not currently represented.

2. Children should continue to receive legal representation through the Public Defender Offices in all phases of the delinquency case where there has been a determination of indigency or where representation is permissible in a statute, rule of procedure or case law, including but not limited to the following phases:
 - a. Arrest (or being "taken into custody"),
 - b. Booking and processing,
 - c. Interviewing or questioning regarding the alleged delinquent act,
 - d. Assessment or evaluation of the child in connection with the alleged delinquent act (charged or uncharged),
 - e. Admission into a diversionary program (pre- and post-arrest),
 - f. Detention hearings,
 - g. Competency hearings,
 - h. Statutorily authorized or court-ordered psychological and other evaluations, including but not limited to risk assessment,
 - i. Waiver to adult court hearings,
 - j. Filing and presentation (arraignment/sounding) of formal charges,
 - k. Plea negotiations,
 - l. Defense trial and disposition preparation,
 - m. Adjudicatory hearing (trial),
 - n. Preparation of pre-dispositional report (PDR),
 - o. Disposition (sentencing) hearing,
 - p. Placement in a commitment or residential program,
 - q. Transfer from a commitment or residential program,
 - r. Probation violation hearings, and
 - s. When direct filed (prosecutorial transfer) to adult court.

3. Florida should strengthen statutory provisions relating to the transfer of a juvenile in the Department of Juvenile Justice's custody from a commitment or residential program to a higher level program, to ensure that the court and the child's counsel is promptly notified and the child has an opportunity, after transfer, to be heard in court through counsel when requested by the court or counsel.
4. Children should continue to receive legal representation through the Public Defender Offices in mental retardation proceedings (Chapter 393) and Baker Act proceedings.
5. Florida law should specifically create a right for children to consult counsel, short of an outright appointment for the duration of the case, in the following instances:
 - a. Regarding waiver of right to counsel or other right or legal interest in a delinquency proceeding, prior to the appointment of the Public Defender by a judge, or at any time thereafter where waiver is sought;
 - b. Regarding informed consent, if the child, parent or guardian request to speak to an attorney, prior to the appointment of the Public Defender by a judge.
6. Florida law should specifically authorize the Public Defender to provide the consultation services outlined in #5 above. This recommendation would necessitate the legislature appropriating additional funds for the Public Defender to adequately provide consultation services.
7. The Florida Bar, Florida Association of Criminal Defense Lawyers and the Florida Public Defender Association should develop professional standards for conflict counsel who represent children in delinquency proceedings.
8. Due to the increasingly harsh consequences of delinquency cases, the Juvenile Divisions of Public Defender Offices should be staffed by experienced attorneys on long-term assignment and should rarely be used solely as a training ground. Because funding and staffing levels, and turnover rates affect the ability of Public Defenders to immediately shift their practices to meet this recommendation, the Commission recommends that in the interim, Public Defenders at least assign an adequate number of experienced attorneys to mentor, train and supervise newly-hired delinquency attorneys. The Commission recognizes that some Public Defender Offices are already using the "mixed" assignment approach.

9. The Florida Public Defender Association should:
 - a. Update juvenile delinquency caseload standards to reflect the significant changes in the law since their adoption by the Florida Public Defender Association, and develop workload measures to reflect the actual workload of juvenile delinquency attorneys and staff.
 - b. Consider adopting guidelines that establish reasonable client and caseload limits for assistant public defenders representing children in delinquency and adult criminal court matters.
 - c. Request adequate funding and allocate sufficient resources for the effective representation of children in delinquency matters.
 - d. Hire social workers to assist the assistant public defenders in the many aspects of delinquency cases where attorneys do not possess the necessary skills, training or education to assess their child clients' strengths, psycho-social history, needs and developmental competency, in a cost-effective manner.
 - e. Provide multi-disciplinary training to its attorneys, support staff, volunteers, and interns. Competent legal representation of children requires a wide variety of skills which can be augmented and supplemented with effective use of lay personnel, including social workers, investigators, paralegals, interns and volunteers.
 - f. Work with the Office of the Children's Advocate or other counsel representing the Public Defender client in other legal or administrative matters to reduce duplication of effort and enhance the representation.
 - g. Work with the GAL to reduce duplication of effort where the court has appointed a GAL to investigate and present the best interest of the Public Defender client in other legal or administrative matters.
10. To adequately implement the recommendations in this section the legislature must appropriate additional funds to carry out the additional responsibilities.

III. Other Statutory Changes. To protect children's rights and provide guidance to the judiciary, Florida law should be amended to:

- A. Include the following definitions:
 1. **Capacitated Child.** A child who is at least 14 years of age is presumed to be capable of communicating his/her expressed wishes or considered judgment.

This presumption is rebuttable. In cases where no presumption exists, in determining whether a child has the capacity to participate in the proceedings, express his/her wishes, direct the representation, or communicate with the court, the court shall consider the child's age, maturity, cognitive development, level of education, cultural context, and degree of language acquisition.

2. Guardian Ad Litem (GAL). A person appointed by the court to advocate for the child's best interests and assist the court in discerning and protecting those interests, without being bound by the child's expressed preferences. The GAL performs four functions: information gathering (investigative), reporting, monitoring, and spokesperson/special advocate. The GAL has the responsibility to report the child's wishes to the court. See proposed *Standard 1.1 Definition and Role of Guardian Ad Litem*, Standards of Operation, State of Florida Guardian Ad Litem Program (Spring 2001)].
 3. Legal Counsel for the Child. An attorney appointed by the court or retained to provide independent legal representation in a traditional attorney-client relationship. It is an attorney who provides independent legal counsel for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child as are due an adult client. Legal counsel for the child must advocate the child's articulated position, and owes traditional duties to the child as client, consistent with the ethical obligations of attorneys as prescribed by the Florida Supreme Court. In all but the exceptional case, such as with a pre-verbal child, the attorney will maintain this traditional relationship with the child client. As with any client, the attorney may counsel against the pursuit of a particular position sought by the child. The attorney should recognize that the child may be more susceptible to intimidation and manipulation than some adult clients. Therefore, the attorney should ensure that the decision the child ultimately makes reflects his or her actual position. See working draft, *American Bar Association Family Law Section, Standards of Practice Regarding Lawyers who Represent Children in Custody and Visitation Cases* (October 31, 2001).
- B. Clearly authorize the guardians ad litem, legal counsel for the child, public defenders, privately retained or conflict counsel, immediate access to the child and to all otherwise privileged or confidential information about the child, without the necessity of any further order or release, including but not limited to social services, drug and alcohol treatment, medical, evaluation, law enforcement, school, probate and court records, records of trusts and accounts of which the child is a beneficiary, and other records relevant to the case, except information covered under the protections of attorney-client privilege and work product.

IV. In order to enhance the competence of attorneys representing children, the Children's Commission recommends that:

1. Florida should look to the *ABA Standards on Independent Representation of Children's Interest in Custody and Visitation Cases* for guidance in developing its own standards.
2. Florida should look to the *ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* for guidance in developing its own standards.
3. Through the Florida Public Defender Association, Florida should develop its own standards for representation of children in delinquency proceedings using the guiding principles of the National Legal Aid and Defender Association's *Performance Guidelines for Criminal Defense Representation*, the ABA's *Standards for Criminal Justice*, and the Oregon State Bar's *Principles and Standards for Counsel in Criminal Delinquency, Dependency and Civil Commitment Cases*.
4. The Florida Bar should develop continuing legal education courses regarding the specific roles of Legal Counsel for Children and the GAL, as well as the multi-disciplinary aspects of representing children.

Respectfully submitted,

**The Florida Bar Commission on the Legal Needs of Children
Representation Subcommittee**

Carlos J. Martinez, Esq., Chair, Assistant Public Defender, Eleventh Circuit
The Honorable Daniel Paul Dawson, Ninth Circuit Court
Joni Goodman, Guardian Ad Litem Program, Eleventh Circuit
The Honorable Michael T. Jones, First Circuit Court
Gerald I. Kornreich, Esq.
Sharon Lynne Langer, Esq.
Gary A. Woodfield, Esq.

**Amendment to rule as approved by the Commission on the Legal Needs of Children on
October 6, 2001**

Florida Rules of Juvenile Procedure

RULE 8.165. PROVIDING COUNSEL TO PARTIES

(a) **Duty of the Court.** The court shall advise the child of the child's right to counsel. The court shall appoint counsel as provided by law unless waived by the child at each stage of the proceeding. Waiver of counsel can only occur after the child has had a meaningful opportunity to confer with counsel regarding the child's right to counsel, the consequences of waiving counsel, and any other factors that would assist the child in making the decision to waive counsel. ~~This w~~Waiver of counsel shall be in writing if made ~~at the time of a plea of guilty or no contest or at the adjudicatory hearing.~~

(b) **Waiver of Counsel.**

(1) The failure of a child to request appointment of counsel at a particular stage in the proceedings or the child's announced intention to plead guilty shall not, in itself, constitute a waiver of counsel at any subsequent stage of the proceedings.

(2) A child shall not be deemed to have waived the assistance of counsel until the entire process of offering counsel has been completed and a thorough inquiry into the child's comprehension of that offer and the capacity to make that choice intelligently and understandingly has been made. If the child is entering a plea to, or being tried on, a delinquent act, the written waiver shall also be submitted to the court in the presence of a parent, legal custodian, responsible adult relative or an attorney assigned by the court to assist the child, who shall verify on the written waiver the child's decision to waive counsel has been discussed with the child and appears to be knowing and voluntary.

(3) No waiver shall be accepted where it appears that the party is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(4) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the party appears without counsel.

Commission's Commentary: To adequately implement this rule, the legislature may have to 1) amend Chapter 27, which authorizes the appointment of the Public Defender, to allow for appointment solely for the purpose of advising children of their right to counsel, and 2) appropriate additional funds that would be necessary to carry out the duties set forth in this rule.

APPENDIX B

TREATMENT AND SERVICES SUBCOMMITTEE REPORT

**THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
CHILD'S LEGAL RIGHT TO TREATMENT AND SERVICES SUBCOMMITTEE**

Chair

The Honorable Ronald V. Alvarez, Fifteenth Circuit Court

The Honorable Brian Jordan Davis, Fourth Circuit Court

The Honorable Norman Stuart Gerstein, Eleventh Circuit Court

The Honorable R. Fred Lewis, Supreme Court of Florida

Allen Jay Plotkin, Chief Assistant State Attorney, Fourth Judicial Circuit

Azim Ramelize, Esq., Department of Juvenile Justice

The Honorable Burt Sanders, Florida Senate

Edward S. Sczechowicz, Jr., Ph.D.

The Honorable Lois Wexler, Broward County School Board member

Some of our concerns:

The majority of children charged with crimes are in need of treatment and services. . . . half of the kids in detention facilities have mental illness (DSM-IV) diagnoses, and 65 percent tested positive for marijuana, alcohol, or cocaine in that order.

When it comes to the use of prosecutorial discretion, Florida transfers more juveniles under the age of eighteen to the adult system than any other state there is scant, if any, treatment in adult prison.

Increasingly greater numbers of females are entering the juvenile justice system. Often underlying their delinquency status are personal tragedies as victims of abuse. Eighty percent of girls in the juvenile system are victims of physical abuse, and 70 percent are victims of sexual abuse. The girls are very emotionally damaged before they come into the system.

Minority youth are over-represented at every stage of the juvenile justice process.

THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN RECOMMENDATIONS OF THE TREATMENT AND SERVICES SUBCOMMITTEE

In the March 2001 Interim Report, the Treatment and Services Subcommittee stated that in preparation for the final report it would examine the present state of a number of areas that directly impact upon the treatment of and services provided to children within the juvenile justice and dependency systems. At that time, the subcommittee identified five different areas in which their study would concentrate. Those areas were:

- Prosecution of juveniles as adults;
- Mental health, substance abuse services for juveniles;
- Minority over representation in juvenile court;
- Education; and
- Early intervention, evaluation, treatment and prevention of juveniles entering the juvenile justice system as goals for public and private agencies.

Based upon information received from a number of agencies, nationally recognized speakers and the anecdotal experiences of a number of the commission members, a sixth subject of inquiry was added:

- The increasing population of females in the juvenile justice system.

I. PROSECUTION OF JUVENILES AS ADULTS

Largely based on several high profile cases in our state involving treatment of children as adults in the juvenile and criminal justice systems, Florida is once again a focal point for the national debate on this topic.

Florida leads the country in the number of children under the age of 18 who are transferred to adult criminal court by prosecutors. Recent reports indicate that the number of children that have been transferred to adult criminal court has decreased. The reasons for this apparent decrease is presently being studied. Notwithstanding this decrease and an investigation into the factors that may have influenced it, there remains a significant debate on the subject of the prosecution of children as adults.

Numerous studies of Florida's children who are sent to adult criminal court and are incarcerated in adult prisons conclude that the recidivism rate for these children are higher than for

the children who remain in the juvenile court. Prosecutors and others take exception to these studies (see study from the State Attorney for the Fifteenth Judicial Circuit attached) and point out that certain juvenile offenders need longer sentences that are not available in juvenile court.

Under either view, neither the public's safety nor the potential future of the children are being adequately or consistently provided for at this time. There is general agreement amongst all members of the Commission that current Florida law, which increasingly mandates prosecution of juveniles as adults, appears to be based more on rhetoric than on reality, anecdotal evidence rather than scientific proof.

There are a wide variety of views concerning the issue of prosecuting juveniles as adults. Reaching a universally accepted position is difficult. However, there is a consensus that the committee's goal is to insure that a proper balance is maintained between protecting the public's safety, punishing the chronic or violent juvenile offender and insuring the best efforts to "rehabilitate" juvenile offenders. With this in mind, below are several suggestions that may allow this goal to be more easily achieved under Florida law. It should be noted that the adoption of some of these recommendations precludes the adoption of one or more of the other:

- **Empower The Court to Make Decisions to Transfer**

One manner of maintaining a proper balance between protecting the public's safety, punishing the chronic or violent juvenile offender and insuring the best efforts to "rehabilitate" juvenile offenders is to mandate that the only method a child could be transferred to adult court would be by judicial waiver. This would involve an evidentiary hearing presided over by the juvenile judge who would determine if transfer is appropriate;

- **Mandate "Jacksonville Program" by Statute**

Duval County's State Attorney, Harry Shorstein, implemented a program designed to effectively combine punishment and rehabilitation for juveniles prosecuted as adults. In Jacksonville, some children who are transferred to the adult system receive a prison sentence. However, the majority are sentenced to a maximum sentence of one year in the county jail followed by a term of probation. While in jail, the children attend school full time and participate in programs, such as substance abuse treatment and anger management and life skills classes. As a condition of probation, they are ordered to continue their education and participate in aftercare programs.

Unfortunately it may be difficult for most jurisdictions to replicate the Jacksonville model. Much of what Jacksonville has been able to accomplish is based on local resources, including available jail space. There are, however, some changes that could allow more jurisdictions to try to emulate Jacksonville, such as:

- Amend sentencing guidelines so that guidelines do not apply to children prosecuted as adults (currently there is a minimum that typically mandates a prison sentence; the maximum is the statutory maximum).

In some cases, Jacksonville's local jail sentences are below the guidelines. Many judges and prosecutors are unwilling to sentence below the guidelines. Removing the requirement of the imposition of a minimum sentence, would grant adult judges the discretion to sentence children to a county jail.

- Amend statutes to more clearly mandate separation of juveniles in the Florida State Prison system. The statute mandating separation of juveniles from adults is F.S. §944.1905, entitled *Initial inmate classification; inmate reclassification*. This act took effect July 1, 2001. It is recommended that the portion of the statute that appears in bold be amended to read ". . . the department shall provide any food service, education, *mental health services* and recreation, *which shall be appropriate for the inmate's age, health, maturation and rehabilitation*, for such inmate separately from inmates who are 18 years of age or older. Section 944.1905, Florida Statutes, states:

The Department of Corrections shall classify inmates pursuant to an objective classification scheme. The initial inmate classification questionnaire and the inmate reclassification questionnaire must cover both aggravating and mitigating factors....

(5)(a) Notwithstanding any other provision of this section, the department shall assign to specific correctional facilities all inmates who are less than 18 years of age and who are not eligible for and have not been assigned to a facility for youthful offenders. Any such inmate who is less than 18 years of age shall be housed in a dormitory that is separate from inmates who are 18 years of age or older. Furthermore, **the department shall provide any food service, education, and recreation for such inmate separately from inmates who are 18 years of age or older.** The department shall report to the Legislature on compliance with this paragraph by April 1, 2002.

(b) Notwithstanding the requirements of s. 958.11, any inmate who is less than 18 years of age, who was 15 years of age or younger at the time of his or her offense, and who has no prior juvenile adjudication must be placed in a facility for youthful offenders until the inmate is 18 years of age. At the discretion of the department, such an inmate may be placed in a facility for youthful offenders until the inmate is 21 years of age.

(c) Any inmate who is assigned to a facility under paragraph (a) or paragraph (b) shall be removed and reassigned to the general inmate population if his or her behavior threatens the safety of other inmates or correctional staff.

- Make more effective and invest additional funds into statutes mandating services for juveniles in local jails and the Florida State Prison (Senate Bill 912 that was effective 7/1/01, appears to be a start).
- **Give Judges Alternative Sentencing Options Not Currently Available**
 - Give juvenile judges more *dispositional* options. This may dissuade some direct files. One idea would be to allow the use of secure detention as a condition of juvenile probation.
 - Allow adult judges to *utilize as a sanction commitment to a juvenile* commitment facility as a condition of adult probation.
 - Statutorily authorize judges to impose a "blended sentence".

The Commission strongly believes that blended sentencing should be seriously considered. However, there is considerable work to be done before any specific blended sentencing legislation can be recommended. If Florida were to provide judges, who would be imposing sentences upon juveniles who were filed on as adults, with a blended sentence option, there would be numerous potential implications, including fiscal ramifications.

Those directly involved in the prosecution, defense, sentencing and housing of juveniles who would be sentenced under any new sentencing scheme should be requested to provide their input. In order to accomplish this, it is recommended that the Florida Legislature create a commission to examine the most appropriate form of blended sentencing.

One example of blended sentencing is in Minnesota where prosecutors have the authority to designate certain juveniles as "extended jurisdiction juveniles" (EJJ). If a defendant is found to be an EJJ offender, he receives both an adult and a juvenile disposition. The adult sentence is stayed and the juvenile sentence is imposed. If the juvenile violates the provisions of the juvenile disposition before age 21, the previously stayed adult sentence can be imposed.

The primary advantages of legislation such as the Minnesota statute (**See attachment**);

1. Considers Public Safety and treatment needs of young offenders.
2. Brings Judiciary back into sentencing. Options based on #1
3. Provides compromise between present Florida practices and returning to the "Waiver" proceedings.
4. Extended Jurisdiction Juvenile(EJJ) gives court options to impose both a pure Juvenile sanction and an adult prison term at same time and retain sentencing jurisdiction.

5. Allows prosecutors to make designation of EJJ status and continue to have jurisdiction to bring case back to court if Child does not successfully complete juvenile sanctions.
6. Provides for development of expanded Juvenile resources to deal with this population and incentives for better outcomes - Adult sanctions hanging overhead.

Other examples of blended sentencing simply involve allowing offenders to stay in a juvenile facility until a certain age and then transferring them to an adult facility to serve the remainder of their sentence.

- **Repeal of Mandatory Direct Files**

Over the years the Legislature has delineated several scenarios where a juvenile must be direct filed. They have also eliminated the possibility of adult criminal court judges giving juvenile sanctions in many circumstances. The Commission recommends that we return to a system with no mandatory direct files and judicial discretion to impose juvenile sanctions on most if not all juveniles prosecuted in adult court. This would involve amending several sections of Florida statutes including:

- 985.225 A juvenile indicted and found guilty of an offense punishable by death or life in prison must be sentenced as an adult.
- 985.226(2)(b)1 The State must request a juvenile judge to transfer any juvenile who is at least 14 and charged with a violent crime against a person, who has previously been adjudicated for an enumerated violent offense.
- 985.226(2)(b)2 The State must request a juvenile judge to transfer any juvenile who is at least 14 who has been previously found to have committed three separate felonies one of which involved the use or possession of a firearm or violence against a person.
- 985.227(2)(a) The State must direct file any juvenile 16 or older, who has previously been adjudicated for an enumerated violent offense and who is charged with a violent crime against a person.
- 985.227(2)(b) The State must direct file any juvenile 16 or older charged with a "forcible felony" who has previously committed three felonies which occurred 45 days apart from each other.
- 985.227(2)(c) The State must direct file any juvenile of any age charged with an act that involves stealing a motor vehicle if during the time the child was in possession of the stolen car serious bodily injury is caused to a person not involved in the theft of the car.

- 985.227(2)(d) The State must direct file any juvenile 16 or older charged with an enumerated serious felony if the child possessed a firearm.
- If a juvenile is transferred pursuant to 985.226(2)(b), 985.227(2)(a), or 985.227(2)(b) the adult court judge must impose adult sanctions.

- **Amendment to Minimum Mandatory Sentencing as Applied to Juveniles**

Currently a juvenile, who possesses a firearm during the commission of a felony, may only receive a ten-year minimum mandatory sentence if he has a prior forcible felony and has been previously committed to a residential facility. If a juvenile discharges a firearm, 10/20/LIFE sanctions apply regardless of prior record. The Legislature should consider changes to the 10/20/LIFE laws as it applies to juveniles prosecuted in adult court. The following are among the possible amendments:

- Elimination of 10 year minimum for juveniles convicted as adults for the first time.
- Allowing judicial discretion (using specific criteria) to waive other minimum mandatories for juveniles.

II. MENTAL HEALTH, SUBSTANCE ABUSE SERVICES FOR JUVENILES

Studies conducted by the United States' Department of Justice, Office of Juvenile Justice recognize that the majority of the children who are involved in the juvenile justice system nationally suffer from mental health problems. These problems range from children with diagnosed psychiatric illnesses to those that require psychological services in order to cope with parental abuse, neglect or abandonment.

Whether in the dependency or delinquency systems, a recurring theme in all matters dealing with children and treatment and services is adequate funding. All of the stakeholders, whether they be the children, the agencies that are charged with their care and supervision, or the legal entities who are charged with prosecuting, defending or judging them, cite the lack of adequate funding as a major barrier to providing for the best interest of each child and protecting the public safety. Notwithstanding the State of Florida's Department of Juvenile Justice's and the Department of Children and Families' request for funding each year, the need for services continues to significantly increase. Legislation that provides mental health services for children should be accompanied by adequate legislative funding.

As an example,

- Mental Health Insurance coverage

The Florida Bar should endorse legislation which places mental health insurance coverage on parity with physical health insurance coverage. If a child suffers from a psychiatric illness, the terms of insurance coverage should be no less than the insurance coverage afforded for a physical illness.

All too often, parents and guardians place children with mental illnesses under the jurisdiction of a public agency, such as the Department of Juvenile Justice or Department of Children and Families, solely because the insurance benefits cease. Such legislation would assist in shifting the cost of mental health care from the public to the private sector.

- All children shall have equal access to treatment services regardless of race, creed, color, sex or sexual orientation.
- Statutory provisions that apply to the Department of Children and Families and those which apply to the Department of Juvenile Justice, specifically Sec.985.21, (1)(a),2 Fla. Stat. should be amended to provide specific safeguards for children with mental health concerns that enter the dependency or juvenile justice systems:
- All children who are placed in the custody or under the supervision of the Department of Children and Families or the Department of Juvenile Justice shall be assessed by a qualified mental health professional employing an appropriate screening instrument to determine mental health needs.

This assessment shall be done in a timely fashion, unless there is evidence that the child is a danger to him/herself or to others. In the latter situation, a qualified mental health professional employing an appropriate screening instrument to determine mental health needs shall evaluate the child within twenty-four (24) hours. When a child poses a danger to him/herself or others, in depth evaluation and/or treatment shall be commenced immediately. The results of the in depth evaluation and treatment shall be reported to the Court within seven (7) days of the original evaluation. In all other cases and when deemed reasonably psychologically or psychiatrically necessary, in depth evaluation and treatment shall commence no later than thirty (days) of the original evaluation .

These assessments shall also screen for possible psycho-educational problems. If indicated, children shall be referred within thirty (30) days for in depth evaluations and/or treatment.

- Juveniles adjudicated delinquent on a charge that is related to drugs or alcohol shall receive appropriate treatment and/or educational classes. This section shall not be interpreted to limit the judge's dispositional alternatives.
- Children discharged from a detention facility or psychiatric facility, who are in the custody of the Department of Children and Families or the Department of Juvenile Justice, shall be removed from such facilities within seventy-two (72) hours of discharge and placed with the appropriate department.
- Legislation is needed to provide procedures to ensure that psychotropic drugs are administered only to children in the foster care and the juvenile justice system when medically necessary. In some cases, psychotropic medications may be essential to treatment. However, based upon published reports, such medications have been used as a method of controlling behavior among children who simply needed mental health counseling or services. This occurs notwithstanding the fact that this medication has not been specifically approved for use by children.

It is recommended that the Commission encourage the legislature to consider laws that regulate the administration of psychotropic drugs to children in the dependency and the juvenile justice system. Such legislation was proposed during the 2002 legislative session, but removed because of varying concerns. This statutory change revises the process for seeking court approval prior to the department exercising the authority to dispense prescribed psychotropic medication by clarifying the court's role to preview and approve the need for the dispensation based on an assessment of the child's medical history and medical recommendation. Additionally, this proposal would expand the opportunities for more periodic review of a child's progress and status while on prescribed psychotropic medication.

- Children, as victims or as perpetrators of domestic violence, present complex, potentially dangerous, long term challenges to the justice system. Social scientists concur that being a domestic violence victim or witness greatly increases the likelihood that a child will become an abuser. One study estimates that a child, as either victim or perpetrator, is fifty-seven times more likely to become a perpetrator of domestic violence. Jaffe and Sudermann, 1995; Cappell and Heiner, 1990; Rosenbaum & O'Leary 1981; Widom, 1989. Domestic Violence, a national curriculum for children's protective services by Anne L. Ganley, Ph.D., Susan Schechter, and produced by The Family Violence Prevention Fund; Susan Schechter and Jeffrey L. Edleson. 1994. "In the best interest of Women and children: A call for collaboration between Child Welfare and Domestic violence constituencies." Briefing paper prepared for the conference Domestic Violence and Child Welfare: Integrating Policy and Practice for families. Wingspread, Racine, Wisconsin.

Because of significant differences in the occurrence of domestic violence among circuits and the resources available to address the problem within circuits, the

Commission recommends that each circuit be urged to develop a protocol for handling children arrested for domestic violence.

This protocol should detail intervention efforts with the dual purposes of ensuring the safety of all family members and simultaneously attempting, when appropriate, to keep the family unit intact. The protocol should also describe family intervention efforts.

Additionally, all circuits should develop a protocol for intervention as to those juveniles listed as witnesses in domestic violence incident reports. **(See attachments of sample programs)**

- The Committee acknowledges and supports the recommendations of The System of Care Principles as described in section 394.491, Florida Statutes, which should be adhered to whenever reasonably possible. The System of Care Principles should apply equally both to the Department of Juvenile Justice and the Department of Children and Families.
- Sec. 985.224 provides a judge with the authority to order physical and mental health care for a child against whom a detention petition or a petition for delinquency has been filed. Absent from this power is the judge's authority to require that the court be informed whether the treatment that was ordered has been provided. With frequency, judges are not informed whether the ordered care was provided, until the child reappears before the court, usually on a new charge. It is recommended that the statute in question be amended to provide that:

The Department has an on-going obligation to report to the Court the specific manner in which the Department has provided for said needs. This obligation shall commence no later than thirty (30) days after the date of the entry of an order which orders physical and mental health care for a child.

- All children in facilities operated by the Department of Juvenile Justice or contracted by the Department of Juvenile Justice shall have access to mental health treatment in a timely manner. Facilities that do not have a mental health professional on staff and on location shall have procedures in place for regular visitation of mental health professionals. Such facilities shall also be required to offer annual training to all staff on identification of individuals in need of mental health treatment. Those individuals who are in need of mental health treatment shall be seen by a mental health professional within five (5) working days.
- The Committee acknowledges and supports the recommendations of the Children's Work Group of the Florida Commission on Mental Health and Substance Abuse.

- Legislation should be introduced that mandates the Department of Juvenile Justice and the Department of Children and Families to compile statistics concerning the number of children entering their respective systems that have identifiable mental health needs and substance abuse problems, type of treatment services provided, the cost of such services, the length of time such services were provided and the effectiveness of such services, measured by recidivism, reentry into mental health or drug programs. Additionally, the agencies shall also be required to collect statistics on the number of children who have identifiable mental health needs and substance abuse problems that are under the jurisdiction of both agencies or similar organizations or institutions.

III. MINORITY OVER-REPRESENTATION IN JUVENILE COURT

- Increasingly sophisticated research demonstrates that youth of color are over-represented at every stage of the juvenile justice process.¹ Florida is no exception to this disturbing national trend. There is encouraging information, however, from work done in several jurisdictions that minority over-representation can be addressed successfully, improving both the system's fairness and effectiveness.
- More African-American children are direct-filed as adults than white juveniles for the same crimes, said Dr. Delbert Elliot, who served as senior scientific editor of the report "Youth Violence: A Report of the Surgeon General," released January 17, 2001, by U.S. Surgeon General David Satcher.
- While most prosecutors make direct-file decisions based on race-neutral rationales, the facts in Florida show minority youth make up more than half of the referrals to adult court. The causes are myriad and cry out for additional studies.
- In fiscal year 2000-01, out of a total of 152,060 juvenile justice referrals, 2,617 juveniles were transferred to adult court, and, of those, 1,462 – or 56 percent – involved black youths, according to the Department of Juvenile Justice. Overall, in Florida's juvenile justice system, minority youth are over-represented, statistics show. In fiscal year 2000-01, of the total 152,060 juvenile justice referrals, 60,364 – or 40 percent – involved black juveniles.

¹Other sources of such information is *Building Blocks for Youth* which is an alliance of children's advocates, researchers, law enforcement professionals and community organizers that seeks to protect minority youth in the justice system and promote rational and effective justice policies. About Building Blocks For Youth

The partners in the initiative are the Youth Law Center, American Bar Association Juvenile Justice Center, Center on Juvenile and Criminal Justice, Juvenile Law Center, Minorities in Law Enforcement, National Council on Crime and Delinquency and Pretrial Services Resource Center.

Building Blocks for Youth has a website at <http://www.buildingblocksforyouth.org/statebystate/florida.html>

- Department of Juvenile Justice officials stated that they hope their recent prevention efforts will help address the minority over-representation problem, citing new programs that focus on at-risk kids who live in high-crime neighborhoods; live in significantly troubled families; have school problems; use drugs or alcohol; and exhibit pre-delinquent behavior, such as running away, stealing or gang affiliation.

IV. THE INCREASING POPULATION OF FEMALES IN THE JUVENILE JUSTICE SYSTEM

- In Florida, one out of every four juveniles arrested is a girl, according to the Department of Juvenile Justice. Girls are a substantial and growing proportion of the state's juvenile justice system, DJJ statistics show that there were 28,531 females involved in delinquent acts in fiscal year 2000-01, accounting for 28.6 percent of the 99,770 total juveniles referred for delinquency that year. But the rise in female crime was largely for minor crimes. The majority of those arrests -- 19,207 -- were for misdemeanors. Nonetheless, the number of girls arrested for violent felony offenses almost doubled over the past decade in Florida. Girls were arrested for 1,609 violent felony offenses in 1991-92, compared to 3,044 in 2000-01.

- In the past three years, the number of female juvenile offenders arrested for violent felonies has begun to level off, in this case at slightly more than 3,000. "We have a growing problem with serious delinquency among girls," said DJJ Secretary W.G. "Bill" Bankhead. "We also know that a successful program for girls isn't a copycat of a boys program. Girls need specialized attention and direction on dealing with issues like peer pressure, self-image and goal-setting."

V. EDUCATION

- The Florida Bar should adopt and endorse the American Bar Association's Criminal Justice Section, Section of Family Law, Steering Committee on the Unmet Legal Needs of Children, Commission on Mental and Physical Disability and Young Lawyers Division position on "zero tolerance". That position is that it "opposes, in principle, "zero tolerance" policies that mandate either expulsion or referral of students to juvenile or criminal court, without regard to the circumstances or nature of the offense or the student's history."

The recently enacted Fla. Stat. §230.235, Policy of Expulsion for crime and victimization should be amended as follows:

(2) In determining whether a student shall be expelled, due consideration shall be given to the student's disciplinary history or lack of a disciplinary history and the nature and circumstances of the offense which is the subject of the possible expulsion.

- The Florida Bar should encourage the enforcement of existing federal and state legislation that deals with special educational needs of children.

VI. EARLY INTERVENTION, EVALUATION, TREATMENT AND PREVENTION OF JUVENILES ENTERING THE JUVENILE JUSTICE SYSTEM AS GOALS FOR PUBLIC AND PRIVATE AGENCIES.

- CINS/FINS: Anecdotal evidence provided by commission members indicates that the implementation of services and programs under CINS/FINS appears to be inconsistent throughout the numerous DJJ districts. Due to the lack of public awareness, few parents access these services. Dispositional alternatives are currently limited. Distinct issues exist as to access and services for ungovernable children, chronic runaways and truants.

The committee recommends a comprehensive study of CINS/FINS system statewide, with an eye toward uniformity and the determination of the extent to which services and programs are available. Consideration should also be given as to whether services and programs are being accessed in a timely manner. Finally, the effectiveness of existing services and programs, including truancy programs, needs to be measured and reported with the goal of selecting the most appropriate and effective interventions.

- Shootings and deaths in schools throughout the United States have left parents believing that their communities are no longer safe from the most extreme examples of youth violence (Gallup, 1999). This perception, combined with the increased lethality of youth violence in the early 1990s, has lent urgency to the search for effective violence prevention efforts. Hundreds of youth violence prevention programs are being used in schools and communities throughout the country, yet little is known about the actual effects of many of them (Gottfredson et al., 2000; Tolan & Guerra, 1994). Few such programs have been rigorously evaluated, including many ongoing efforts (Elliott, 1998). The evaluations that have been done indicate that much of the money America spends on youth violence prevention is spent on ineffective—sometimes even harmful—programs and policies (Mendel, 2000).

At the same time, researchers know much more today about how to prevent youth violence than they did two decades ago, when some declared that "nothing works" to prevent violence (Lipton et al., 1975; Sechrest et al., 1979).

This is clearly no longer the case. Over the past few decades, social scientists have made great strides in uncovering the causes and correlates of youth violence.

Unfortunately, the news about effective programs has been slow to bring about change in school, community, and juvenile justice system prevention efforts, where precious resources continue to be spent on ineffective programs. Some experts believe that youth crime and violence rates could be "substantially" reduced simply by reallocating the money now spent on ineffective policies and programs to those that do work (Mendel, 2000, p. 1).

The strategy of using prevention resources to their fullest potential presents many challenges. The first lies in identifying effective prevention approaches and programs. Differentiating between effective and ineffective ones can be a difficult chore for schools, communities, and juvenile justice authorities. Numerous agencies and organizations have published recommendations on "what works" in youth violence prevention, but in many cases there is little consistency regarding the specific programs they recommend. The reason for this inconsistency is a lack of uniformly applied scientific standards for what works.

Youth Violence: A Report of the Surgeon General, Chapter 5, Prevention and Intervention, 2001

The Department of Juvenile Justice gives noticeably less attention and funding to the prevention of juvenile crimes and the effective rehabilitation of children who become involved in the juvenile justice system. Numerous programs funded by the department have little, or no, effect on reducing the rate of recidivism. Such programs as boot camps and residential programs, have been found to lose any positive effects which the program may have had upon release of the child. The aftercare component of these programs are all too frequently brief, fail to involve the parent or guardian and offer little incentive to continued success except a violation of probation.

Recent legislative cuts in Department of Juvenile Justice' funding further decreases the potential to provide Florida with an effective policies and programs that reduce a child's entry or reentry into the juvenile justice system. However, the manner and purpose in which available funding is used is more critical to improving the public safety and the future of the children of this state.

In attempting to meet the legislatively mandated goals of the juvenile justice system and the Department of Juvenile Justice, the amount of money that is available is not necessarily the most important factor that will increase the likelihood of success. Of most importance is the manner in which the money is utilized and the timely providing of such services and programs. Programs and services that are ineffective in reducing the likelihood of a child's entry or reentry into the juvenile justice system should be discarded and replaced with those programs and services that have proven to be effective.

- DJJ should comply with the goals enunciated by the statutory law and redirect its' policies and mission. The department can gain guidance and models for programs that have been proven effective in reducing children's entry or reentry into the juvenile justice system by employing those programs described in the U.S. Surgeon General's Report on Youth Violence should be adhered to in re: programs that are and those that are not effective in decreasing juvenile delinquency. Blue print programs, such as the Functional Family Therapy (FFT), Multisystemic Therapy (MST) and the Multidimensional Treatment Foster Care programs, should be studied and instituted.

- **Functional Family Therapy (FFT)** is a program that targets youths 11 to 18 years old at risk of or already demonstrating delinquency, violence, substance use, conduct disorder, oppositional defiant disorder, or disruptive behavior disorder. FFT is a multi-step, multi-phasic intervention plan that includes 8 to 30 hours of direct services for youths and their families, depending upon their individual needs. The phases of this intervention include engagement of the children to reduce the risk of early dropout from school, motivation to change maladaptive beliefs and behaviors, assessment to clarify interpersonal behavior and relationships, behavior change including skills training for youths and parents, and generalization in which individualized casework is used to ensure that new skills are applied to functional family needs.

- **Multisystemic Therapy (MST)** is an intensive family and community based treatment plan that addresses multiple determinants of antisocial behavior. This approach is implemented within a network of interconnected systems that includes one or more of the following contexts: individual, family, peer, school, and neighborhood. MST targets families with children in the juvenile justice system who are violent, substance-abusing, or chronic offenders and at high risk of out-of-home placement. Four types of services are delivered through a home-based model: strategic family therapy, structural family therapy, behavioral parent training, and cognitive-behavioral therapy. While the intensity of services ultimately depends on individual youth and family needs, the average MST family receives 60 hours of direct services delivered over a period of four months. The effect of this approach in serious delinquents include reductions in long-term rates of rearrest, reductions in out-of-home placements, improvements in family functioning, and reductions in mental health problems among treated youths, compared to controls.

- **Multidimensional Treatment Foster Care** is a multisystemic, multi-contextual clinical intervention that targets teenagers with histories of chronic and severe criminal behavior as an alternative to incarceration, group or residential treatment, or hospitalization. Numerous studies and analysis demonstrate that community-based treatment is more successful than residential treatment for this population of youths. (Lipsey) Multidimensional Treatment Foster Care implementers recruit, train, and supervise foster families to offer youths treatment and intensive supervision at home, in school, and in the community. The program

also provides parent training and other services to the biological families of treated youths, helping to improve family relationships and reduce delinquency when youths return to their homes. Youths who participate in this program also receive behavior management and skill-focused therapy and a community liaison who coordinates contacts among case managers and others involved with the youths. Evaluations indicate that Multidimensional Treatment Foster Care can reduce the number of days of incarceration, overall arrest rates, drug use, and program dropout rates in treated youths versus controls during the first twelve months after completing treatment; it can also speed the placement of youths in less restrictive, community settings.

- Section 985.412, Florida Statute, 1998, Quality Assurance, should be amended. Specifically, sub-sections (1)(a), "It is the intent of the legislature to:" and (1)(b)3, "Program effectiveness" should be amended to read:

(1)(a):

1. Ensure that each program is effective in reducing the rate of recidivism of clients.

(1)(b)3:

"Program effectiveness" means the ability of the program to achieve a reduction in recidivism by the client and the desired client outcomes, goals and objectives.

- Both the Department of Juvenile Justice and the Department of Children and Families should be statutorily required to gather and disseminate statistical information in regard to the number of children who begin under the jurisdiction of one department and continue on to become clients of the other department. This information is essential in determining the effectiveness of each of the departments as it relates to their client's ability to progress after being involved with one department.
- The Commission recognizes that the needs of families who come to the Courts are multi-faceted legal, social, and psychological. It is also apparent that some judges are more suited to this work than others.

Utilizing a judge who is educated, experienced and serves enthusiastically in the juvenile and family divisions has proven to be effective at safeguarding the public and the children who are unable to protect themselves. Across the country, judges who volunteer to serve in the juvenile and family division are providing for the public's safety and making a substantial contribution to the best interests of the children who come before them.

Consistent with the recommendations of the Family Court Steering Committee, we agree with the following:

Recommendation #6 – Family Law Judge

#6(a) Judicial Commitment. The Florida Supreme Court should require chief judges to assign to the family division only those judges who are committed to children and families, and, to the extent possible, who volunteer to serve in the division.

#6(b) Term in the Division. The Florida Supreme Court should encourage chief judges to assign judges to the family division for at least a three-year term, give them the opportunity to rotate out at the end of their term, and stagger rotation to ensure that a significant portion of the family division judges are experienced in family law.

In re: Report of the Family Court Steering Committee, 749 So.2d 518 (Fla. 2001).

The Supreme Court agreed with these recommendations, however, they referred these recommendations to the Rules of Judicial Administration Committee for consideration to ensure consistency with Florida Rule of Judicial Administration 2.050(b)(3) and (b)(4) which address the authority of the chief judge to appoint division judges.

Nevertheless, the Commission believes that judges who have this interest should be allowed to serve. As reported in the Commentary to these recommendations:

Judges assigned to the family division must have expertise in all matters involving children and families. They must be motivated to learn multi-disciplinary skills in the areas of domestic violence, family dynamics, child development, psychology, and mediation. Chief judges should give special consideration to the aptitude, demonstrated interest, and experience of each judge assigned to family court. Chief judges should be encouraged to refrain from assigning new judges to dependency or delinquency unless the judge volunteers.

We recommend that the Florida Bar participate with the Rules of Judicial Administration Committee in drafting rules regarding placement of judges in family cases that consider this commentary.

Respectfully submitted,

**The Florida Bar Commission on the Legal Needs of Children
Child's Legal Right to Treatment and Services Subcommittee**

The Honorable Ronald V. Alvarez, Chair, Fifteenth Circuit Court
The Honorable Brian Jordan Davis, Fourth Circuit Court
The Honorable Norman Stuart Gerstein, Eleventh Circuit Court
The Honorable R. Fred Lewis, Supreme Court of Florida
Allen Jay Plotkin, Chief Assistant State Attorney, Fourth Judicial Circuit
Azim Ramelize, Esq., Department of Juvenile Justice
The Honorable Burt Sanders, Florida Senate
Edward S. Sczechowicz, Jr., Ph.D.
The Honorable Lois Wexler, Broward County School Board member

APPENDIX B
TREATMENT AND SERVICES SUBCOMMITTEE REPORT
ATTACHMENTS

TREATMENT AND SERVICES SUBCOMMITTEE

APPENDIX A

**MINNESOTA STATUTES ANNOTATED
EXTENDED JURISDICTION JUVENILE PROSECUTIONS**

APPENDIX A

MINNESOTA STATUTES ANNOTATED
PUBLIC WELFARE AND RELATED ACTIVITIES
CHAPTER 260B. DELINQUENCY
EXTENDED JURISDICTION JUVENILE PROSECUTIONS

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Current through End of 2001 1st Sp. Sess.

260B.130. Extended jurisdiction juvenile prosecutions

Subdivision 1. Designation. A proceeding involving a child alleged to have committed a felony offense is an extended jurisdiction juvenile prosecution if:

(1) the child was 14 to 17 years old at the time of the alleged offense, a certification hearing was held, and the court designated the proceeding an extended jurisdiction juvenile prosecution;

(2) the child was 16 or 17 years old at the time of the alleged offense; the child is alleged to have committed an offense for which the sentencing guidelines and applicable statutes presume a commitment to prison or to have committed any felony in which the child allegedly used a firearm; and the prosecutor designated in the delinquency petition that the proceeding is an extended jurisdiction juvenile prosecution; or

(3) the child was 14 to 17 years old at the time of the alleged offense, the prosecutor requested that the proceeding be designated an extended jurisdiction juvenile prosecution, a hearing was held on the issue of designation, and the court designated the proceeding an extended jurisdiction juvenile prosecution.

Subd. 2. Hearing on prosecutor's request. When a prosecutor requests that a proceeding be designated an extended jurisdiction juvenile prosecution, the court shall hold a hearing under section 260B.163 to consider the request. The hearing must be held within 30 days of the filing of the request for designation, unless good cause is shown by the prosecution or the child as to why the hearing should not be held within this period in which case the hearing shall be held within 90 days of the filing of the request. If the prosecutor shows by clear and convincing evidence that designating the proceeding an extended jurisdiction juvenile prosecution serves public safety, the court shall grant the request for designation. In determining whether public safety is served, the court shall consider the factors specified in section 260B.125, subdivision 4. The court shall decide whether to designate the proceeding

an extended jurisdiction juvenile prosecution within 15 days after the designation hearing is completed, unless additional time is needed, in which case the court may extend the period up to another 15 days.

Subd. 3. Proceedings. A child who is the subject of an extended jurisdiction juvenile prosecution has the right to a trial by jury and to the effective assistance of counsel, as described in section 260B.163, subdivision 4.

Subd. 4. Disposition. (a) If an extended jurisdiction juvenile prosecution results in a guilty plea or finding of guilt, the court shall:

(1) impose one or more juvenile dispositions under section 260B.198; and

(2) impose an adult criminal sentence, the execution of which shall be stayed on the condition that the offender not violate the provisions of the disposition order and not commit a new offense.

(b) If a child prosecuted as an extended jurisdiction juvenile after designation by the prosecutor in the delinquency petition is convicted of an offense after trial that is not an offense described in subdivision 1, clause (2), the court shall adjudicate the child delinquent and order a disposition under section 260B.198. If the extended jurisdiction juvenile proceeding results in a guilty plea for an offense not described in subdivision 1, clause (2), the court may impose a disposition under paragraph (a) if the child consents.

Subd. 5. Execution of adult sentence. When it appears that a person convicted as an extended jurisdiction juvenile has violated the conditions of the stayed sentence, or is alleged to have committed a new offense, the court may, without notice, revoke the stay and probation and direct that the offender be taken into immediate custody. The court shall notify the offender in writing of the reasons alleged to exist for revocation of the stay of execution of the adult sentence. If the offender challenges the reasons, the court shall hold a summary hearing on the issue at which the offender is entitled to be heard and represented by counsel. After the hearing, if the court finds that reasons exist to revoke the stay of execution of sentence, the court shall treat the offender as an adult and order any of the adult sanctions authorized by section 609.14, subdivision 3, except that no credit shall be given for time served in juvenile facility custody prior to a summary hearing. If the offender was convicted of an offense described in subdivision 1, clause (2), and the court finds that reasons exist to revoke the stay, the court must order execution of the previously imposed sentence unless the court makes written findings regarding the mitigating factors that justify continuing the stay. Upon revocation, the offender's extended jurisdiction status is terminated and juvenile court jurisdiction is terminated. The ongoing jurisdiction for any adult sanction, other than commitment to the commissioner of corrections, is with the adult court.

Subd. 6. Inapplicability to certain offenders. This section does not apply to a child excluded from the definition of delinquent child under section 260B.007, subdivision 6, paragraph (b).

TREATMENT AND SERVICES SUBCOMMITTEE

APPENDIX B

PALM BEACH COUNTY DOMESTIC VIOLENCE DIVERSION PROGRAM

Helpful Numbers:

Department of Juvenile Justice
Juvenile Assessment Center Intake Dept.
(561) 682-0000 ext. 137

Detention Center
(561) 881-5020

CINNS / FINS
Children in Need of Services and Family in Need
of Services at Children's Home Society
(561) 844-9785
(800) 433-0010

Parent Child Center
(561) 688-9113

Youth Service Bureau
(561) 712-6640

Teen Hotline
930-TEEN (8336)

The Center For Information
& Crisis Services, Inc.
(561) 930-1234

Victim Services Program
(561) 355-2418

24 hour Crisis Intervention
(561) 833-7273

Safe Harbour (Temporary Shelter)
& Crisis Line
(561) 833-2400 or (800) 433-0010

Florida Domestic Violence Hotline
(800) 500-1119 or (800) 621-4202

National Domestic Violence Hotline
(800) 799-7233 or (800) 787-3224

Note: In accordance with the Americans With Disabilities Act, if you are a person with a disability who needs any accommodation in order to utilize the services of the Domestic Violence Intake Unit, you are entitled, at no cost to you, to the provision of certain assistance. Please contact the:

ADA Coordinator
205 N. Dixie Highway, Room 5.2500
West Palm Beach, FL
Telephone (561) 355-4380
for more information and to confirm that reasonable accommodations are available.

Visit our Website at:
www.pbcgov.com/cadmin

What to expect....

Juvenile Domestic Violence Mediation Program

*A Juvenile Court
Diversion Program*

*in the
Fifteenth Judicial
Circuit*



*The Fifteenth Judicial Circuit Court
of Florida in and for Palm Beach County
Administrative Office of the Court*

Juvenile Domestic Violence Mediation Program:
Palm Beach County Courthouse
205 North Dixie Highway, Room 5.1715
West Palm Beach, Florida 33401
(561) 355-1664
(561) 355-1662
Fax: (561) 355-1673

What is the Juvenile Domestic Violence Mediation Program (JDVMP)?

The Juvenile Domestic Violence Mediation Program is a Court Diversion Program for first time Juvenile offenders who have been charged with Domestic Battery / Assault.

Cases are only accepted upon referral from the State Attorney's Office.

The JDVMP makes contact with eligible juveniles and their families during detention hearings, where the child and family are informed of the terms of the program. Participation is voluntary. Parents and guardians must be willing to adhere to the JDVMP's requirements.



How does it work?

- The child must agree to no violent contact with anyone (in or out of the home). This includes verbal and physical violence, destruction of property, threats and spitting.
- The child must agree to attend and complete an anger management program with a minimum of 12 sessions. (The participant is to be enrolled in anger management within two week's of the intake date).
- The child must agree to improve school attendance and behavior, and/or seek employment.
- The family must agree to attend the *Case Planning or Mediation / Arbitration conference*.
- The parents or guardians must be willing to have the youth back in their home, as well as provide transportation to anger management or other required services on the case plan.

Case Plan

The case plan is devised during a one time mediation / arbitration conference. A JDVMP representative will attend the mediation conference along with the mediator and the family members. After exploring what conflicts the families are experiencing other conditions may be added to the case plan to help remedy these conflicts. These conditions may include: substance abuse counseling and testing, family or individual counseling, curfew, chores (restitution), psychiatric or psychological evaluation, etc.

Can a case be sent back to court?

If the youth commits another violent offense, commits another criminal offense, or runs away, the case is immediately sent back to court. Non-compliance of the case plan by the participant or family may also result in sending a case back to court for prosecution.

Case Management

Supervision is provided for each case by an assigned case manager. If problems arise in either the home, school or community the case manager needs to be kept informed. Home or school visits are conducted on an "as needed basis".



**FIFTEENTH JUDICIAL CIRCUIT
JUVENILE DOMESTIC VIOLENCE MEDIATION PROGRAM**

205 N. Dixie Highway
Fifth Floor/Room 1715
West Palm Beach, Florida 33401
(561) 355-1664
Fax: (561) 355-1673

I PROGRAM DESCRIPTION:

The Juvenile Domestic Violence Mediation Program is a diversion program for juveniles charged with the offense of Domestic Battery /Assault. The program is for **first time offenders**. The majority of juvenile offenders of domestic violence will not become habitual offenders if appropriate services are sought immediately after the incidence of violence has occurred, thus, the reason for our existence. Our immediate goal is to provide an alternative to court intervention. Our long term goal is to promote healthy family functioning by reducing family violence.

II PROCEDURE:

- A. To accept court referrals, and screen for eligibility at daily detention hearings. A Waiver of Speedy Trial is signed upon acceptance into the program.
- B. To provide immediate intervention to help the family determine placement of the Juvenile and then refer the family to a more extensive mediation conference within seven business days.
- C. Attend Family Mediation to devise a case plan (mediation will be provided by the Palm Beach County Alternative Dispute Resolution Office). A program representative is always present at the mediation conference.
- D. A case manager will be assigned to the family to assist with the case plan's successful completion.
- E. School and/or home visits will be provided as needed and upon request.

III PROGRAM GOALS:

- A. **Reduce Family Violence**
- B. Provide victims of the violent incident (usually parents) with immediate services and appropriate referrals for the family and juvenile.
- C. Reduce the number of juvenile first-time offenders held in expensive and limited secure detention beds, which will allow space for more serious offenders.
- D. Reduce the hours of court time spent on 48- hour judicial reviews and detention dockets.
- E. Conserve resources of the Department of Juvenile Justice.

Juvenile Domestic Violence Mediation Program Executive Summary

The Juvenile Domestic Violence Mediation Program (JDVMP) is an existing program in Palm Beach County which targets juveniles charged with a first time offense of domestic violence. This dual purpose program subsequently diverts the cases from further court activity while utilizing alternative resources such as qualified volunteers and college interns who supervise and refer the offender to appropriate treatment programs. As a result, the offender is not only ~~diverted~~ diverted from the court process, but also from expensive secure detention beds and Department of Juvenile Justice supervision.

The JDVMP provides the victim and offender mediation and case management services that are directed at addressing issues that are at the core of the offense. As a result, the court and community are served by treating these issues and thus preventing future violent acts. The JDVMP recidivism rate of 4.8% reflects this has been a successful trend, thus resulting in a significant fiscal benefit through cost avoidance, and the social benefit of reducing violence in our families and community.

A significant aspect of the program is it's efforts toward resolving conflicts and addressing alternative resources to serve the offender and family, reserving the courts for the juvenile offenders who poses serious threats to the community at large. Not that the domestic violence offender's potential should be underestimate, but it may be more economically and socially feasible to address this offender and family's specific needs through a dispute resolution environment, rather than through the court.

The outcome expected of program participants is that 85% of will complete the case plan agreed in mediation and 80% of successful participants will not be involved in acts of domestic violence within eighteen months of completing the program. Further, the program will accept 75% of all eligible Juvenile Domestic Violence Cases referred by the Office of the State Attorney.

The JDVMP has functioned for three years supported by various state and federal grants, and as a result, the program continuously investigates potential funding sources. The Palm Beach County Board of County Commissioners (PBCBOCC) has committed to fund one-half of the program's salaries commencing FY 2001-2002. The program will again approach the PBCBOCC for the balance of salary funding for FY 2002-2003. But, the program will continue to explore other funding resources, including federal, state and private grant opportunities.

PROJECT NARRATIVE

Problem to be addressed: *Juvenile Domestic Violence in Palm Beach County* - Based on data collected from the juvenile first appearance or detention dockets, which indicates the offenders name, age and charges, the number of juveniles in Palm Beach County charged with domestic violence offenses rose from 5.5% of all juvenile charges in January of 1997 to 8.5% in January of 1998. This 3% increase translates into a total of 780 domestic violence cases a year. The number of cases continued to increase through 1998-1999 to more than 9% of all juvenile offenses. In response to this increase, the Juvenile Domestic Violence Mediation Program was created to relieve the court, State Attorney and Public Defender's Offices and the Department of Juvenile Justice (DJJ) of the burgeoning caseload of complex domestic violence cases.

Under Florida law relating to juvenile offenders, children charged with the offense of Domestic Battery are removed from the home by law enforcement and placed in a secure juvenile detention or authorized respite/shelter facility. The offender is entitled to a detention hearing, or first appearance before the court within twenty-four hours of being taken into custody. At the detention hearing, the court determines if the family will allow the child back into the home, the home were the victim, usually a parent, stepparent, grandparent or sibling also resides.

If the family (victim) refuse to accept a child back into the home, the child will remain at the Juvenile Detention Center or authorized respite/shelter facility if available. By Florida Statute, the child and family must return to court every forty-eight hours for a judicial review. Or in other words, if a victim of the juvenile offender does not want the child to return home, an alternative placement such as shelter care or other relative or adult placement must be explored. In the courtroom environment, there is not sufficient time for the judges and counsel to negotiate placement agreements. If no alternative placement is established, the child will remain in secure detention or a respite/shelter facility, which means the court must review the case every forty-eight hours. This involves appearances of all parties and their counsel.

When domestic violence cases are disposed through the court using the traditional methods, there is no resolution of issues between the child and family, or in other words, the offender and victim. The common practice is to place the child on juvenile probation, order the offender to attend anger management classes, perform community service, write a letter of apology to the victim, and have no violent contact with family members. A probation officer may see the offender once during the term of probation, and it may be weeks or months before that contact is made. Often, jurisdiction will run out before the offender completes or even attempts to complete the court ordered sanctions. But, the most common flaw with this type of disposition is that the issues surrounding the offense have not been addressed or resolved and difficulties remain, as does the potential for continued incidents of domestic violence.

The Juvenile Domestic Violence Program (JDVMP) provides the victim and offender mediation and case management services that are directed at addressing issues that are at the core of the

offense. As a result, the court and community are served by treating these issues and thus

preventing future violent acts. The JDVMP recidivism rate of 4.8% reflects this has been a successful trend, thus resulting in a significant fiscal benefit through cost avoidance, and the social benefit of reducing violence in our families and community.

Project objectives: *The JDVMP utilizes resources alternative to the court to address and reduce Juvenile Domestic Violence Offenses in Palm Beach County* - The Juvenile Domestic Violence Mediation Program provides the victim and offender mediation and case management services that are directed at addressing issues that are at the core of the offense, such as family violence, divorce, substance abuse, mental health, and financial issues. As a result, the court and community are served by offering substantial opportunities for treatment of these issues, thus preventing future violent acts. The JDVMP recidivism rate of 4.8% reflects this has been a successful trend, thus resulting in a significant fiscal benefit through cost avoidance, and the social benefit of reducing violence in our families and community.

Working toward resolving conflicts and addressing resources alternative to the court to serve the offender and family has remained a main objective of the program. Reserving the courts for the juvenile offenders who poses serious threats to the community at large remains paramount in the program's philosophy. Not that the program underestimates the severity of the offense of domestic violence, but the program retains the perspective that it may be more economically and socially feasible to address this offender and family's specific needs through a dispute resolution environment, rather than through the court.

Another positive aspect of the JDVMP is fiscal. As a result of the availability of mediation/diversion services from May 1999 through January of 2000, 212 offenders were released from secure detention, avoiding an average of three days per offender in the facility at \$91.00 per day or \$57,876. In addition, case diversion deferred the cost of traditional juvenile probation supervision, \$12.00 per day averaging ninety days, or \$228,960. The total of all cost avoidance at \$773.96 per case as related to juvenile justice services was estimated at \$286,836.00.

Description of proposed project: *The JDVMP offers a concise process of referral and intervention in Juvenile Domestic Violence cases* - The Juvenile Domestic Violence Mediation Program targets juvenile offenders charged with a first time offense of domestic violence. As previously mentioned, in the realm of Juvenile Court children charged with the offense of Domestic Battery are removed from the home by law enforcement and placed in a secure juvenile detention facility. The offender is entitled to a detention hearing, or first appearance before the court within twenty-four hours of being taken into custody. At the detention Hearing, the court determines if the family will allow the child back into the home, the home were the victim, usually a parent, step-parent, grandparent or sibling also resides.

The JDVMP program representative attends detention hearings daily, and provides immediate placement arbitration with the family and offers referrals to services. Also, when the JDVMP program representative meets with offenders and their families, a concise intake is completed which evaluates the home situation including, but not limited to issues of family violence, substance abuse, mental health, education, divorce, or financial difficulties. If the case is appropriate, that is the youth is a first time offender, a Palm Beach County resident and both the child and family are interested and committed to working on family issues at the core of the offense, JDVMP program representative will request the State Attorney's Office divert the case to the program and remove it from the court's docket. If the case is not appropriate, such as the child or family requests judicial intervention or a trial, if a parent or child refuses to participate, if there is grave safety issues on the part of the child or family, or if the child is not a Palm Beach County resident, the case is immediately referred back for judicial intervention.

The next step in the process is the case plan mediation conference. The JDVMP program representative, the child, family and any other significant individuals participate in a formal family mediation to establish a case plan which includes referrals for mental health or substance abuse treatment, curfew, anger management education, parenting classes, individual or family counseling, medical screenings, or school attendance. The plan includes tasks for both the offender and family.

Once the mediation conference is successfully completed, the child and family are supervised by JDVMP representatives, including the program coordinator, case manager, or by qualified MSW or social service college interns. The interns who are recruited from local colleges and universities commit three to nine months, minimum 20 hours per week and are considered program staff. They work for college credit, not salary and are formally supervised by the JDVMP Coordinator. Supervision includes monitoring of compliance with the case plan, crisis intervention and additional referrals if necessary. The average term of supervision is four to six months.

If the child and family comply with the case plan and remain free of new incidents of violence, a successful termination report will be forwarded to the State Attorney's Office for their consideration. Cases that fail to comply with the case plan, including parents or guardians, are reported in writing to the State Attorneys Office and returned for prosecution.

Expected outcomes: *The Majority of Juvenile Domestic Violence Offenders in Palm Beach County will benefit from the JDVMP* - The outcome measures will be as follows; 1) 85% of participants will complete the case plan agreed in mediation. 2) JDVMP will accept a minimum of 75% of all eligible Juvenile Domestic Violence Cases 3) 80% of successful participants will not be involved in acts of Domestic Violence within eighteen months of completing the program. All measurements and data is collected through hard copies of detention logs obtained daily through Department of Juvenile Justice and case intake rosters maintained through the JDVMP. Statistics are calculated quarterly based on the Palm Beach County fiscal year.

Juvenile Domestic Violence Mediation Summary-March, 2000

In response to the increase of juveniles charged with the offense of domestic violence, the Juvenile Domestic Violence Mediation Program was created. Specifically, the program addresses both the offender and victim/family. This dual purpose program subsequently diverts the cases from further court activity while utilizing alternative resources such as qualified volunteers and college interns who supervise offenders at no cost. As a result, the offender is not only diverted from the court process, but also from expensive secure detention beds and Department of Juvenile Justice supervision.

The Juvenile Domestic Violence Mediation Program, which has operated to date through a grant awarded by the State Alternative Dispute Resolution Office that will expire July 1, 2000, has successfully mediated and referred for services offenders and victims of 94% of the cases received. This represents 27.8% of all domestic violence charges filed in Palm Beach County from January to June of 1999. Subsequently, these cases were removed from the court docket and other government juvenile justice services.

As a result of the availability of mediation/diversion services from May 1999 through January of 2000, 212 offenders were released from secure detention, avoiding an average of three days per offender in the facility at \$91.00 per day or \$57,876. In addition, case diversion deferred the cost of traditional juvenile probation supervision, \$12.00 per day averaging ninety days, or \$218,960. The total of all cost avoidance at \$773.96 per case as related to juvenile justice services was estimated at \$286,836.00.

By offering services that are directed at addressing issues that are at the core of the offense, with both the victim and the offender, serves both the court and community by treating issues and preventing future violent acts. The low recidivism rate of 4.2% reflect a successful trend, thus resulting in a significant fiscal benefit through cost avoidance, and the social benefit of reducing violence in our families and community.

TREATMENT AND SERVICES SUBCOMMITTEE

APPENDIX C

JACKSONVILLE DOMESTIC VIOLENCE PROGRAMS

HUBBARD HOUSE SERVICES

Hubbard House is a full service domestic violence center providing a safe, nonviolent place for victims to plan their futures.

EMERGENCY SHELTER

Safe, Confidential Housing
24-Hour Hotline
Advocacy and Referrals
Group and Individual Counseling
Parenting Skills
Housing and Employment Referrals

CHILDREN'S PROGRAM

Violence Prevention in Schools
Therapeutic Child Care
Violence-Free Environment
Educational and Recreational Activities
Support Groups
Individual Counseling
Case Management

OUTREACH PROGRAM

Counseling for Non-Residents in Duval, Baker and Nassau Counties
Support Groups at Safe, Confidential Locations
Advocacy and Referrals

EMERGENCY RESPONSE TEAM

Advocates available in Hospital Emergency Departments and Clinics; at scenes of domestic violence incidents when contacted by police

FIRST STEP PROGRAM FOR BATTERERS

Batterers' Intervention (Adults and Teens)
Nonviolent Communication Skills
Accountability
Partner Contact:

~~Safety Checks~~

Support Groups

Individual Counseling

COMMUNITY EDUCATION

Our Mission:
Every Relationship Violence Free



HUBBARD
HOUSE
SAFE HAVEN SINCE 1976

24-Hour Hotline

904-354-3114

1-800-500-1119

Outreach Counseling 904-354-3114

Administration 904-354-0076

First Step Program 904-354-0076

Thrift Stores

904-346-3888

904-388-4805

904-924-8844

P.O. Box 4909

Jacksonville, FL 32201



HARK

H Helping

A At

R Risk

K Kids



HARK

HELPING AT RISK KIDS

Q. What is H.A.R.K.?

A. H.A.R.K. is a program designed to educate children and youth about domestic violence, explains how to break the cycle of future occurrences, and provide counseling to children who have witnessed/experienced domestic violence.

Q. Who will H.A.R.K. serve?

A. H.A.R.K. serves groups of children and youth, ages 3 through 17.

Q. Where will it be located?

A. It will be held in convenient locations throughout Duval County - Northside, Southside, Eastside, Westside and Downtown.

Q. Who will lead the groups?

A. H.A.R.K. groups will be led by qualified and skilled facilitators.

Q. What types of materials will be used?

A. Domestic violence prevention/intervention curriculum with age appropriate activities.

Q. How are children and youth selected for H.A.R.K.?

A. Referrals to H.A.R.K. will be made by anyone working with children; self-referrals are also welcome.

Q. What does the H.A.R.K. program offer?

- A.
- Individual Assessment
 - Parent Involvement
 - Educational Groups
 - Support Group
 - Case Management
 - Individual Counseling

COMMUNITY NEED:

10 million American children, ages 3 through 17, are at risk from exposure to violence.

The Jacksonville Sheriff's Office documents approximately 8,500 cases of domestic violence annually. They report that more than 4,000 children are witness to the violence.

In homes where spouse/partner abuse occurs, children are abused at a rate 1,500% higher than the national average.

Boys who witness their father's violence are 10 times more likely to engage in spouse abuse in later adulthood than boys from non-violent homes.

These alarming statistics reveal the need to break the cycle of domestic violence and educate youth about its damaging effects. H.A.R.K. does just that.

In a 12 week program, H.A.R.K. educates children ages 3 through 17:

- * to identify abuse
- * to resolve conflicts without using violence
- * to build self-esteem
- * develop plans for safe living
- * In addition, H.A.R.K. encourages children to break the silence about violence at home to help prevent future occurrences.

FOR MORE INFORMATION
PLEASE CALL 354-0076



THE PROGRAM:

- A. Serves children ages 3 - 17 who have witnessed/experienced domestic violence.
- B. Serves youth ages 12 - 17 who have continued the cycle of violence and participates in the "first offenders program" with the State Attorneys Office.
- C. Serves Juveniles who are in the Pre-Trial Detention Facility.

SOME EFFECTS OF VIOLENCE ON CHILDREN ARE

- Anxiety
- Low Self Esteem
- Poor Social Skills
- Poor Grades - Quit School
- Violent Outbursts of Anger
- Withdrawn
- Dependent
- Runaways
- Poor Judgment
- Males hitting girlfriends and females accepting the behavior

HUBBARD HOUSE SERVICES

EMERGENCY SHELTER

Safe, Confidential Housing
24-Hour CRISIS Hotline
Advocacy and Referrals
Group and Individual Counseling
Parenting Skills
Housing and Employment Referrals

CHILDREN'S PROGRAM

Therapeutic Day Care
Violence-Free Environment
Educational and Recreational Activities
Support Groups

OUTREACH PROGRAM

Counseling for Non-Residents in Duval, Baker and Nassau Counties
Support Groups at Safe, Confidential Locations
Advocacy and Referrals

EMERGENCY RESPONSE TEAM

Advocates available in Hospital Emergency Departments and Clinics; at scenes of domestic violence incidents when contacted by police

FIRST STEP PROGRAM FOR BATTERERS

Batterers' Intervention (Adults and Teens)
Nonviolent Communication Skills
Accountability
Partner Contact:
Safety Checks
Support Groups
Individual Counseling

Printing provided by
The Ida and William Rosenthal Foundation

Our Mission:
Every Relationship Violence Free



Hubbard House
24-Hour Hotline
904-354-3114

Administration 904-354-0076

P.O. Box 4909
Jacksonville, FL 32201

Other Helping Numbers:

Child Abuse Hotline
1-800-96-ABUSE

Youth Crisis Center, Inc.
Southside

3015 Parental Home Rd.
Jacksonville, FL 32216
(904) 725-6662

Family-Youth Info. line
(904) 721-9394

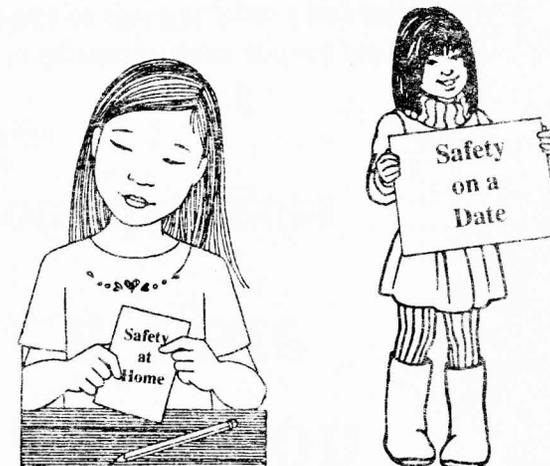
Northside
4819 Soutel Drive
Jacksonville, FL 32208
(904) 766-3040



Hubbard House programs are funded in part
by the City of Jacksonville

Hubbard House, Inc.

YOUTH SAFETY PLAN



Safety at Home

When Family Violence Occurs:

1. Find a safe place in your house away from the violence.
2. Never try to stop the fight because you could get hurt.
3. Call 911 for help.
4. Tell the operator the following:
 - Where you are.
 - Your address.
 - What is happening in your house.

Make Your Own Safety Plan

Safety at School

When Conflicts Arise...

1. During a conflict, use words to communicate your feelings. (e.g., Use "I" statements; "I disagree...", "I understand, but...")
2. Consider your choices and the consequences of fighting (e.g., Fighting equals suspension). Instead of fighting: stay calm, avoid swearing, shouting, or name calling. You may choose to back away from the conflict.
3. Choose nonviolent ways when solving conflicts (e.g., communicating with words).

People you can contact for help resolving a conflict:

- guidance counselor
- resource officer
- teacher

Safety on a Date

If your date goes bad...

1. Go to the nearest store and ask them to call 911 or dial 911 from a pay phone (you don't need any money for this call). Call your parents or guardian.
2. If there is no phone or store nearby, scream as loud as you can "Fire" (People will help you sooner if you yell "fire" instead of "help me").
3. Always carry emergency money (change) on a date.
4. **Warning:** Date or Acquaintance rape is forced sexual intercourse by a friend or acquaintance. It is an act of violence and a crime that should be reported immediately!

Safe Dating Tips:

- Get to know your date before being alone with him or her.
- Tell someone where you are going and what time you will be home (call if your plans change).
- Know your sexual boundaries and stick to them.

I. DESCRIPTION OF THE H.A.R.K. PROBATION/JAIL PROGRAM

H.A.R.K. (Helping At Risk Kids) was designed in 1995 to educate children and youth about domestic violence, to explain how to break the cycle of future occurrences, and to provide counseling to children who have witnessed/experienced domestic violence. The program serves children, ages 3-17, who have witnessed domestic violence. The Jacksonville State Attorney's Office has collaborated with, and continues to support Hubbard House, Inc., throughout the implementation of the program. This collaboration has resulted in addressing the problems and meeting the needs of young people who have unresolved issues due to growing up in violent homes.

As part of the State Attorney's efforts to address multiple causes of juvenile crimes, H.A.R.K. Probation/Jail Program was developed. A male and female team facilitates group weekly for 90-minutes, in order to complete a twelve-week curriculum designed to provide understanding of domestic violence and non-violent conflict resolution. A domestic violence survey was conducted among incarcerated juveniles and of the teens surveyed, 66% were from homes that were violent. H.A.R.K. Probation/Jail Program was implemented at the Pre-Trial Detention Facility to serve unsentenced/sentenced teens ages 14-17. If the juvenile is released before the completion of the twelve weeks, as a condition of his/her release, the juvenile is court-ordered into the H.A.R.K. Probation Program's group which meets weekly on Saturday, in order to complete the program. Saturday group consist of youth, ages 12-17, who have continued the cycle of violence and participates in the "first offenders program" with the State Attorney's Office.

The objectives and methods of the H.A.R.K. Probation/Jail Program are:

A. OBJECTIVES

1. To demonstrate an understanding of domestic violence and non-violent conflict resolution.
2. To identify and utilize the appropriate skills required when faced with violence at home, school, or in the community.
3. To demonstrate an understanding that the abuser is responsible for his violent behavior.
4. To utilize appropriate and non-violent expressions of anger.
5. To have the youth be accountable and take responsibility for their violent actions.

B. METHODS

1. Pre and Post Test
2. Assessment/Parent Interview
3. Age appropriate educational support groups using group activities such as videos, role-playing, worksheets, group discussions, and activities.
4. Youth Status Report provided to referral source.
5. Individual counseling available as needed for youth.

II. WEEKLY GROUP CURRICULUM TOPICS

- | | |
|---------|---|
| WEEK 1 | Getting To Know Each Other; Understanding Domestic Violence |
| WEEK 2 | What Is Abuse? |
| WEEK 3 | Power and Control |
| WEEK 4 | Power and Control II: Equality |
| WEEK 5 | Who and What Taught Me Violence |
| WEEK 6 | When People Fight |
| WEEK 7 | Anger Control |
| WEEK 8 | Conflict Resolution with Peers |
| WEEK 9 | Conflict Resolution with Adults |
| WEEK 10 | Self-Esteem/Assertiveness |
| WEEK 11 | Healthy and Unhealthy Dating Relationships |
| WEEK 12 | Responsibility, Ownership, and Accountability |

TREATMENT AND SERVICES SUBCOMMITTEE

APPENDIX D

FLORIDA STATUTES §394.491

APPENDIX D

Florida Statutes §394.491:

It is the intent of the legislature that the following requirements regarding the development and implementation of publicly funded child and adolescent mental health treatment and support systems be adhered to:

1. *The system should be centered on the child, adolescent and family, with the needs and strengths of the child or adolescent and his or her family dictating the types and mix of services provided.*
2. *The families and surrogate families of children and adolescents, including, but not limited to foster parents, should be active participants in all aspects of planning, selecting and delivering mental health services at the local level, as well as in developing statewide policies for child and adolescent mental health services.*
3. *The system of care should be community based, with accountability, the location of services, and the responsibility for management and decision making resting at the local level.*
4. *The system should provide timely access to a comprehensive array of cost effective mental health treatment and support services.*
5. *Children and adolescents who receive services should receive individualized services, guided by an individualized service plan, in accordance with the unique needs and strengths of each child or adolescent and his or her family.*
6. *Through an appropriate screening and assessment process, treatment and support systems should identify, as early as possible, children and adolescents who are in need of mental health services and should target known risk factors.*
7. *Children and adolescents should receive services within the least restrictive and most normal environment that is clinically appropriate for the service needs of the child or adolescent.*
8. *Mental health programs and services should support and strengthen families so that the family can more adequately meet the mental health needs of the family's child and adolescent.*
9. *Children and adolescents should receive services that are integrated and linked with schools, residential child caring agencies, and other child*

related agencies and programs.

10. *Services should be delivered in a coordinated manner so that a child or adolescent can move through the system of services in accordance with the changing needs of the child or adolescent.*
11. *The delivery of comprehensive child and adolescent mental services must enhance the likelihood of positive outcomes and contribute to the child's or adolescent's ability to function effectively at home, at school, and in the community.*
12. *An older adolescent should be provided with the necessary supports and skills for preparing for coping with life as a young adult.*
13. *An adolescent should be assured a smooth transition to the adult mental health system for continuing age appropriate treatment services.*
14. *Community based networks should educate people to recognize emotional disturbances in children and adolescents and provide information for obtaining access to appropriate treatment and support services.*
15. *Mental health services for children and adolescents should be provided in a sensitive manner that is responsive to cultural and gender differences and special needs. Mental health services should be provided without regard to race, religion, national origin, gender, physical disability or other characteristics.*

TREATMENT AND SERVICES SUBCOMMITTEE

APPENDIX E

**RESPONSE TO INQUIRY CONCERNING LEGAL REPRESENTATION
FLORIDA DEPARTMENT OF JUVENILE JUSTICE**



STATE OF FLORIDA
DEPARTMENT OF JUVENILE JUSTICE

Interoffice Memorandum

DATE: August 21, 2000

TO: W. G. "Bill" Bankhead, Secretary

FROM: Ted Tollett, Chief
Bureau of Data and Research

Bill Bankhead
for Ted Tollett

SUBJECT: Inquiry from the Commission on the Legal Needs of Children

In response to the July 27 letter from Judge Karian, we have prepared the following responses to the questions concerning legal representation (Question 1) and the mental health needs of youth entering the juvenile justice system (Questions 2 and 3). Staff from the Bureau of Data and Research, the Office of the General Counsel, and Residential and Correctional Facilities contributed to this response.

- Question 1a) How many children are unrepresented in delinquency cases, transfer (or direct file) cases and diversion matters?

Answer: The DJJ Juvenile Justice Information System (JJIS) does not track whether a youth referred is represented. Data with regard to representation is collected by the Office of State Courts Administrator (OSCA) for youth who are handled judicially. It is not known how comprehensive this data is, especially with regard to youth who are diverted. The Bureau of Data and Research has developed some of this data used in 2 prior studies:

- The DJJ Bureau of Data and Research has archived data from a study of youth 18 and under who according to the Offender-Based Tracking System (OBTS) maintained by OSCA were either detained or sentenced to county jails. For calendar years 1996, 97 and 98, there were 6,233 of these youth found in the OBTS data. According to the data, 54% were represented by attorneys. Of the remainder, 1,961 (31%) represented themselves or were represented by non-legal personnel. No data was recorded for 921 (15%).
- The Department is currently involved in a research grant comparing recidivism rates for youth retained in the juvenile system with those of youth transferred to the criminal system. Researchers from the University of Florida did extensive file reviews to match 475 youth transferred with 475 of those retained, based on demographic and offender characteristics from the year 1995. They found that 92% of the youth transferred had attorneys representing them. Of those retained, 68% were represented by attorneys. Please keep in mind that these youth were more serious offenders, and hence more likely to be represented.

2737 CENTERVIEW TALLAHASSEE, FLORIDA 32399-3100

JEB BUSH, GOVERNOR

W. G. "BILL" BANKHEAD, SECRETARY

Inquiry from the Commission
Page 2

If youth who are disposed to JASP or other programs as an alternative to judicial processing are considered "diverted," then there may be data in OSCA's Offender-Based Tracking System. The OBTS has a field for pre-trial diversions that includes dispositions to teen court or other diversion programs for juveniles. The Bureau has requested a data extract from OSCA containing records from the last two years for use in the annual recidivism study. This data could be analyzed for a better picture of rates of representation among the general population of youth that are referred to the juvenile system. (Most of the youth in the aforementioned studies had been treated as adults. Those youth retained in juvenile in the Transfer Study should not be considered representative of all youth in the juvenile system.)

- *Question 1b) Under what circumstances do children receive representation?*

Answer: The DJJ Bureau of Data and Research has no management reports focused on this issue. Judge Frank Orlando with Nova Southeastern University's Center for the Study of Youth Policy may be developing a study on this topic at this time.

- *Question 2a) How many children in the juvenile justice system suffer from mental health problems?*

Answer: In the Fall of 1998, the Department conducted the Juvenile Offenders in Need of Specialized Services Survey to identify and respond to juvenile offenders with specialized needs, including mental health needs (see Survey, attached). The 2,624 survey participants were selected to be representative of the entire residential commitment population, and constituted 28% of the total commitment budgeted bed capacity (9,286) for all districts.

The survey results indicated that for the commitment programs surveyed, 1,286 youth, representing 49% of the youth in the programs, had a diagnosed DSM-IV mental disorder. The survey results also indicated that an additional 354 youth, representing 14% of youth in the programs surveyed, did not have a DSM-IV diagnosis but exhibited behaviors which suggested mental or emotional disturbance.

Applying statistics from the survey to all currently committed youth, it can be estimated that 5,183 youth (49%) have a diagnosed mental disorder and an additional 1,481 (14%) exhibit behaviors or risk factors which suggest emotional disturbance.

- *Question 2b) Does the Department keep statistics on children who "self-report" mental health problems?*

Answer: The Department's residential intake mental health screening process includes recording of youth's self-reported mental health problems, staff behavioral observations and clinical or case management record information indicating a possible mental health problem and need for further in-depth mental health evaluation. The Department is developing a system to track the number of youth receiving residential intake mental health screening and comprehensive mental health evaluation in residential commitment programs.

Inquiry from the Commission
Page 3

- *Question 2c) What is the statistical relationship between children with mental health problems and the recidivism rate?*

Answer: The Juvenile Justice Information System did not contain adequate data to perform this analysis on the last cohort of youth in the recidivism study. The information exists in hardcopy files across the state, and would be difficult to collect, automate and match.

- *Question 3a) What facilities or programs are in place for juveniles with mental health problems?*

Answer: The Department has established the following facilities/programs for youth with mental health problems:

Intensive Mental Health Services Facilities/Programs for youth with serious to severe mental health problems;

Specialized Mental Health Services Facilities/Programs for youth with moderate to serious mental or emotional disturbance;

Residential Commitment Facilities with Behavioral Health Overlay Services for youth in general DJJ commitment programs who receive Medicaid reimbursed mental health services;

Residential Commitment Programs with Intensive Mental Health Overlay Services for youth in general DJJ commitment programs who are in need of intensive mental health treatment overlay services; and

Residential Commitment Programs with Specialized Mental Health Overlay Services for youth in general DJJ commitment programs who are in need of mental health treatment overlay services, but not at the level of intensive mental health services.

- *Question 3b) Are the juveniles with mental health problems identified as they enter the system? That is, is there any prescreening?*

Answer: The Department requires preliminary mental health and substance abuse screening upon each youth's intake into the juvenile justice system. Administration of both the Substance Abuse and Mental Health Screening Form (SAMH) and Suicide Risk Screening Instrument are required at intake. See the the SAMH-1 and SAMH-2 forms, attached.

APPENDIX C

CONFIDENTIALITY SUBCOMMITTEE REPORT

THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
CONFIDENTIALITY SUBCOMMITTEE

Chair

Bernard P. Perlmutter, Esq., Director, Children & Youth Law Clinic, University of Miami

Richard C. Milstein, Esq.

The Honorable Sandra Murman, Florida House of Representatives

Azim Ramelize, Esq., Department of Juvenile Justice

Alex Victorero, Youth Representative

Sara Bennett Nelson, Liaison

THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN RECOMMENDATIONS OF THE CONFIDENTIALITY SUBCOMMITTEE

In the March 2001 Interim Report of the Florida Bar Commission on the Legal Needs of Children, the Confidentiality Subcommittee stated that in preparation for the Final Report it would: (1) identify the agencies and branches of government involved with the care and control of children and the information about children and their families each possess; (2) identify what information should be shared in order to serve the best interests of children; (3) make recommendations regarding the need for statutory changes, if any, to facilitate information collection and sharing; (4) make recommendations for education and training of professionals as to the availability, use and access to information; (5) identify that information which needs to be confidential in order to protect the privacy and best interests of children; and (6) recommend the development of interagency agreements and protocols for the appropriate sharing of information.

Since March 2001, the Subcommittee has had the benefit of consulting with Mark Hardin, Director of Child Welfare at the American Bar Association Center on Children and the Law, examining Florida confidentiality laws and those in other jurisdictions, reviewing extensive literature on the subject, and hearing testimony from children's attorneys and child serving professionals regarding the many challenges of collecting and sharing information, while seeking to protect the best interests of children.¹

In making its recommendations, the Confidentiality Subcommittee has attempted to reconcile a number of competing interests involving the child's (and the family's) need for privacy and the state's (and family's) need for information to best serve the child's health, safety, and well-being. These interests are described below, followed by the Subcommittee's recommendations²

I. INTERESTS OF CHILDREN AND FAMILIES IN PROTECTING INFORMATION FROM DISCLOSURE

Children and families have numerous interests in protecting private and confidential information from disclosure by and among government agencies:

- **The Core Interest in Privacy -- The Right to Be Let Alone**

In *Olmstead v. United States*, 277 U.S. 438, 478 (1928), Justice Brandeis summarized the principles underlying the constitutional guarantees of privacy:

The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings and of

¹The Confidentiality Subcommittee gratefully acknowledges the advice and suggestions of the A.B.A.'s Mark Hardin, whose contributions to these recommendations do not necessarily represent official positions of the American Bar Association or the Department of Health and Human Services.

²Sections I-III of this Report and Recommendations are based on portions of a Youth Law Center study by Mark Soler, et al., *Glass Walls: Confidentiality Provisions and Interagency Collaborations* (March 1993), with substantial modifications.

his intellect. They knew that only a part of the pain, pleasure, and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, *the right to be let alone* -- the most comprehensive of rights and the right most valued by civilized men. (Emphasis added).

The language and reasoning of this opinion are the foundation for the right to privacy embedded in the Florida Constitution, which unlike the U.S. Constitution explicitly guarantees that "every natural person has the right to be let alone and free from government intrusion into his private life." Fla. Const. Art. I, §23.³

When children and their families become involved with human service agencies, they are often asked to share some of the most intimate and private information about themselves. This information may include medical or mental health history, alcohol or other substance abuse information, income and employment status, and criminal record. Often children and their families are also the subjects of agency investigations conducted to determine eligibility, level of assistance, or the kinds of services needed. Confidentiality restrictions have developed as a way to protect the privacy of individuals and to insure that personal information is disclosed only when necessary.

- **Avoiding Embarrassment and Humiliation**

Some information requested by agencies is embarrassing and humiliating -- histories of emotional instability, marital conflicts, medical problems, HIV status, physical or sexual abuse, alcoholism, drug use, limited education, immigration status or erratic employment. It is difficult for children and families to share intimate information even with agencies that are authorized to receive it and need it to provide effective services. It is much more difficult if children and families think the information will be revealed to others, especially in the absence of any perceived benefit.

- **Avoiding Exposure of Inflammatory Information**

Confidentiality provisions also are designed to protect children and families from the improper dissemination of inflammatory information about them. Such information -- about HIV status, mental health histories, use of illegal drugs, or charges of child abuse -- can do great harm, even if (perhaps especially if) the records clearly show that the information is unproven or inaccurate.

- **Protecting Personal Security**

Sometimes protecting confidential information is necessary for protecting personal security.

³See generally Gerald B. Cope, Jr., *Privacy--Proposed Right to Be Let Alone*, 6 Fla.St.L.Rev. 149 (1978).

For example, in domestic violence situations, once the victim has left her home, if law enforcement personnel disclose her new location (e.g., with friends or family, or at a shelter), she may be in great danger.

- **Protecting Family Security**

Disclosure of certain information may also jeopardize family security. Many immigrant families are reluctant to use public health clinics or other social services, or sometimes even to register their children for public school. Even if they are assured that information they provide will be kept confidential they fear that the Immigration and Naturalization Service (INS) will learn of their lack of citizenship or lawful permanent resident status and take action to remove them from the U.S.

- **Protecting Job Security**

Information given to human service agencies can also be harmful if a person's employer or potential employer learns of it. While the information -- such as history of mental health treatment or HIV status -- may have no connection with a person's actual job performance, it may nevertheless jeopardize the individual's job security, likelihood of promotion, or ability to find a new position.

- **Avoiding Discrimination or Differential Treatment**

Children and families also have an interest in avoiding prejudice or differential treatment from people like teachers, school administrators, and service providers. For example, if teachers learn that certain students are eligible for food stamps or free school lunches, they may lower their academic expectations of the students simply because their families are poor. This can set in motion a self-fulfilling prophecy in which lowered expectations are met with lowered performance. Similarly, juvenile court records and proceedings have long been kept confidential, on the ground that a child labeled "delinquent" or "dependent" will suffer from prejudice and discrimination for years afterward.

- **Preventing Denial of Discretionary Services**

Children and families also have an interest in preventing the denial of discretionary services. For example, the Florida Department of Juvenile Justice has an obligation to monitor youth under its jurisdiction, which includes the duty to verify that they are satisfactorily attending school. School records are covered by federal educational privacy restrictions under the federal Family Educational Rights Privacy Act, so the Department must obtain consent from the youths' parents for release of attendance information. Parents whose children are attending private or parochial schools, however, may be reluctant to sign the consent,

because they fear the schools will expel the youth if they learn they are in trouble with the law. This is not the same problem in cases involving public school students, given the compulsory (as opposed to discretionary) nature of public education.⁴

- **Encouraging Adolescents to Seek Medical Care**

Aware of the growing problems of teenage pregnancy, alcohol and substance abuse, and HIV and other sexually transmitted diseases, many courts and state legislatures have created special procedures to encourage adolescents to seek medical care. Some adolescents worry that asking for contraceptives or abortion information will upset or anger their parents, and consequently they will not seek medical advice if their parents are going to be told. Other adolescents are concerned more about the opinions of their peers, and will not go to a public health clinic if they think others in their peer group will find out. Still others are struggling with growing feelings of independence, want to be treated like adults, and won't see a doctor if they are going to be treated like children. The special laws and procedures recognize the critical need for confidentiality if adolescents are to have meaningful access to health care.⁵

- **Reestablishing Privacy Boundaries for Children**

Many children involved with service agencies have suffered repeated violations of their sense of personal privacy. They have been abused by parents or relatives, or transferred from one foster care placement to another, or treated like commodities on an assembly line by harried or overworked agency staff. Respect for confidentiality rights is particularly crucial for such children. It allows them to exert some measure of control over their world, and to develop a degree of trust in those around them.⁶ Similarly, children in the foster care system have a vital interest in being able to view records generated by agencies, in order to establish a measure of control over personal information about them that is routinely generated and shared by these social service agencies and to have an opportunity to correct prejudicial, misleading or erroneous personal information contained in those records.

⁴See, e.g., §230.2316(8), Fla. Stat. (2001)(authorizing public school dropout prevention programs to share information contained in students' school records and juvenile justice records with other social services, law enforcement, prosecutorial, and juvenile justice agencies in the school district, provided the agencies use the information only for official purposes connected with the certification of students for admission into dropout prevention programs, without need for parental consent).

⁵In accordance with this recognition of the need for privacy and confidentiality for minors in medical matters, the Florida Supreme Court has held that minors are "persons" in the eyes of the law, and that "[c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, ... possess constitutional rights." *In re T.W.*, 551 So.2d 1186, 1193 (Fla. 1989)(holding that the right to privacy under the Florida Constitution encompasses an unemancipated minor's right to consent to an abortion, without seeking prior consent from a parent or authorization from a court because of the need to ensure the minor's rights to confidentiality and meaningful access to an essential medical procedure).

⁶In accordance with this principle, the Florida legislature has set forth as a goal for dependent children the right "[t]o enjoy individual dignity, liberty and privacy, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state." §39.4085(2), Fla. Stat. (2001).

II. INTERESTS OF AGENCIES (AND FAMILIES) IN SHARING INFORMATION

The interests of children and families in personal privacy are of undeniable importance, yet represent only part of the equation. When children and families need public social services, the individual's "right to be let alone" is balanced by the agency's need to share information for the effective and efficient provision of services. Moreover, children and families also have an interest in the effective and efficient provision of services.

Robert G. Schwartz, founder of the Juvenile Law Center in Philadelphia, and one of the experts on children's law and policy who testified before the Commission, cautions against a categorical system of treatment by agencies and courts that labels children, accords them different rights to services or benefits, or subjects them to varying degrees of coercive governmental interference, based on the label that the child wears. Schwartz, like other critics of this phenomenon of the "labeled child," observes: "Children and their complex needs are consigned to a reductionist list of labels that some have characterized as "Bad, Sad, Mad or Can't Add."⁷ "It is like a mailing label -- the Bad child gets sent to the juvenile justice system. The Sad child into the child welfare system. The Mad child into the mental health system. Can't Add goes to special education."⁸ He concludes: "We can continue to operate within our own systems of child welfare or juvenile justice, or we can think of children as *whole children* warranting attention from schools, and drug treatment programs, and mental health providers."⁹

These fundamental principles of integrated, comprehensive case management and decision-making to address the needs of the *whole child* are at the core of the Florida Supreme Court's adoption of the Family Court Steering Committee's recommendations on the model family court in Florida. See *In re Report of the Family Court Steering Committee*, 794 So.2d 518 (Fla. 2001) ("[W]e strongly endorse the guiding principles and characteristics of the model family court [and] ... [i]n so doing, our goal continues to be the creation of 'a fully integrated, comprehensive approach to all cases involving children and families. ...'" quoting *In re Report of the Commission on Family Courts*, 633 So.2d 14, 17 (Fla. 1994)).¹⁰

Thus, the proper role of confidentiality provisions in interagency collaborations depends upon the balancing of these interests.

⁷Theresa Glennon and Robert G. Schwartz, *Foreword: Looking Back, Looking Ahead: The Evolution of Children's Rights*, 68 Temple L.Rev. 1557, 1565 (1995)(quoting Robert M. Friedman of the Florida Mental Health Institute).

⁸Robert G. Schwartz, *The Development and Direction of Children's Law in America*, 17 Children's Legal Rights Journal 2, 6 (1997).

⁹*Id.* at 9. (Emphasis added).

¹⁰See also Gartner Consulting, *Preliminary Report: Assessment of Statewide Opportunities to Improve the Exchange of Information*, prepared for Technology Subcommittee of the Florida Bar Commission on the Legal Needs of Children (January 9, 2002)(recommending "[t]he development of a holistic view of the justice process [to] facilitate the development and implementation of methodologies to improve the flow of information between the participating agencies and thus improve the timeliness, accuracy, and availability of information needed to make informed decisions.") *Id.* at 4.

- **Conducting Comprehensive Assessments and Evaluations for Services**

Most children and families at risk have multiple needs. Children in the juvenile justice system may need family support and mental health services. Children in the child welfare system may need medical treatment and special education. Children and families may be involved with or get services from different branches of the Department of Children & Family Services, Department of Juvenile Justice, the Department of Health, and school districts. Typically, each agency collects limited, categorical information on clients. To adequately assess a family's full need for services, case workers must have access to information from a variety of agencies. It is also in the family's interest for the agency to conduct comprehensive assessments and evaluations for services.

- **Providing All Necessary Services**

Just as each agency collects limited information on children and families, each generally provides limited services to meet their needs. Increasingly, human service agencies are working together to provide more comprehensive services to clients, a process that requires information sharing. Again, it is clearly in the family's interest to receive all necessary services.

A common mechanism to facilitate broader coordinated efforts is the interdisciplinary team, in which members of different agencies come together to assess the service needs of clients, decide who will provide which services, and designate the agency that will oversee or serve as "case manager" for the family. This process requires considerable information sharing among members of the team.

- **Coordinating Services Plans and Strategies and Avoiding Duplication of Services**

Many children and families are involved with several different service systems at the same time, with workers from each of these systems independently developing service plans and strategies. These efforts often overlap. Unless they are coordinated and integrated, children and families may be faced with an array of confusing (and potentially conflicting) expectations and responsibilities. Agencies sharing information can identify such issues for resolution, hopefully with the full participation of the family.

Information sharing also allows agencies to avoid wasteful duplication of services. Further, sharing resources may allow agencies to create a more "seamless" system of supports and services for families by establishing one consistent, primary connection with the family, able to access other professionals for specific needs and also able to spend the time needed with the family to comprehensively respond to the family's needs.

- **Monitoring the Provision of Services**

After a family's needs are assessed and a service plan is designed, information sharing may

be necessary to monitor the provision of services. The shared information can enable agencies to adjust the "mix" of services to the family, discontinue services no longer needed, begin new services as needs arise, and evaluate the effectiveness of services that have been provided.

In many communities, for example, it is common for a family to receive social services at the same time that one or more individuals in the family is receiving separate drug treatment services. The social services agency wants to monitor the participation in the drug treatment program, while the drug treatment program wants to monitor whether the family functioning is improving. Information sharing is likely to improve the effectiveness of both services.

In Florida and other states, particular issues pertain to children with disabilities. For example, if a child is eligible for special education, but there is no parent available (e.g., the child is in foster care), a surrogate parent must be appointed to monitor the provision of special education services to the child. But the school district may not be aware that the child is in foster care, and foster care information is confidential, so the Department of Children & Families may be reluctant to provide the school district with that information. In some districts, this problem may be resolved by informal exchanges (i.e., telephone confirmation that the child is in foster care) or by interagency agreements to share the necessary information.¹¹

• **Making Services Family-Focused**

Most services are oriented to the individual client: juvenile justice systems try to change the delinquent child's behavior; medical and mental health services provide individual treatment; school districts provide special education through an "individual education program" (IEP); the child welfare system spends its resources on individual children in foster care under the protective supervision of the Department of Children and Families. These services, however, are plagued by fragmentation and ineffectiveness, in part because the problems identified in children often involve the entire family. Consequently, there is an increasing trend toward family-focused services for children and families.

Thus, information sharing among agencies promotes a family-centered focus for services. It broadens the scope of information available and enlarges the perspective on services needed by the family. While it is easy, for example, to focus on an individual delinquent youth's behavior when that behavior is seen in isolation, it is more appropriate and ultimately more helpful to see that behavior in the context of family problems such as unemployment, inadequate housing, substance abuse, or emotional instability. Sharing of information among

¹¹An example of one such interagency agreement, prepared by the Broward County Public Schools in cooperation with District X of the Department of Children & Families, was presented to the Commission as a model for inter-agency cooperation, and as recommended below, the Commission urges this type of information sharing and collaboration to be replicated statewide, by courts and by community-based agencies serving foster children and other children who are the clients of multiple state agencies. See also Mason Burley and Mina Halpern, *Education Attainment of Foster Youth: Achievement and Graduation Outcomes for Children in State Care*, Washington State Institute for Public Policy, Report No. 01-11-3901 (Nov. 2001) (discussing options for information sharing between state agencies).

agencies allows case workers to gain that broader perspective, and is thus in the family's interest as well.

- **Allowing Research on Community Needs and Program Effectiveness**

Agencies also need to share information if they are to accurately assess and evaluate their community's cumulative need for services. Comprehensive community assessment and evaluation includes the compilation of information on the needs and characteristics of children and families currently receiving a variety of services from different agencies, research on effectiveness of the multitude of programs already in place, and projections of the need for existing and additional services in the future.

In addition to driving policy decisions, such jointly developed information is also quite useful in discussing allocations of limited fiscal resources with local and state legislators. As budgets get tighter, the agencies that can best document the need for their services may be in the best position to argue for financial support.

- **Promoting Public Safety**

Agencies are also interested in sharing information to protect public safety. Child welfare agencies want to know if individuals applying for licenses to operate residential facilities have been the subjects of child abuse reports. School authorities want to know if students have engaged in delinquent behavior. Mental health agencies may need to notify law enforcement authorities if clients pose serious and specific threats to others in the community. In recent years, these concerns have prompted increased interest in greater access to juvenile and adult probation records, and greater sharing of records among education and probation agencies. Indeed, the move to increase access has frequently come from the educational and probation communities.¹²

Most state juvenile codes were first enacted in the early part of this century when the rehabilitation philosophy was the guiding force in juvenile court decision-making. Laws controlling access to juvenile records reflected this protectionist view. In recent years, however, public safety concerns have resulted in exceptions to this protectionist stance.

- **Securing Full Reimbursement for Services Provided**

Sometimes agencies need to share information to secure full reimbursement for services rendered. For example, children with disabilities receiving special education are entitled to "related services" that are necessary for their individual education programs. Some related services, such as orthopedic therapy and psychological counseling, are covered by Medicaid. Thus while the education agency is required to provide the related services, it may obtain

¹²See, e.g., Rapp, et al., *The Need to Know: Juvenile Record Sharing*, 36. National School Safety Center (1989).

reimbursement for them from the agency that administers Medicaid. But because Medicaid information is confidential, the education agency will not know which children receiving related services are Medicaid-eligible unless the agencies share information with each other.¹³

III. IMPORTANCE OF LIMITED SHARING OF NEEDED INFORMATION

There is growing emphasis in statutes and practice to maintain and share only information that is directly relevant to an agency's purpose. For example, §39.4085, Fla. Stat. (2001), encourages "the sharing of all *necessary information* between the school board and the department [of Children and Family Services] including information on attendance and educational progress," as a legislative finding and declaration of goals for dependent children. (Emphasis added). The legislature appropriately found that limited sharing of needed information between these agencies was an important vehicle "to assure a free and appropriate education for dependent and foster children, minimal disruption of their education and retention in the home school wherever possible." *Id.*

The recognition of the need for different agencies to share information stems from a growing realization that more information is not necessarily better for case management purposes, particularly when it is shared across agency lines. As more information is collected, the danger of improper disclosure of protected information increases. Excess and irrelevant information may simply thicken the files and make them more cumbersome to work with, without corresponding benefits for evaluating client needs or providing services. In addition, more confidential information maintained by an agency requires more staff time for adequate and legal management of that information. Finally, there is the danger that unreliable data may be shared with other agencies.

Limited information sharing is also important to the client's perceptions of the service delivery process. Most clients will agree to the release of personal information to particular agencies for specific beneficial purposes. They are not, however, willing to share confidential information generally with "the government."

Agencies and courts successfully balance the privacy interests of clients and their own needs for information sharing through a variety of means. These include informal exchanges of information, information-sharing authorized by statute, consents to release of information, and memoranda of understanding, interagency contracts, and similar agreements, along with the implementation of the principles enunciated by the Florida Supreme Court in adopting the Family Court Steering Committee model family court recommendations. By using such mechanisms individually or in combination, agencies and courts are able to share virtually

¹³See generally Chapter 381, Florida Statutes, entitled the "School Health Services Act" (authorizing state health department and school agencies to cooperate in the development of a "total school health program" to "appraise, protect, and promote the health of students."). The statute additionally requires the school to obtain written consent to screening of students by the parents or guardians and permits parents to exempt their children from receiving specified health services.

all necessary information while protecting confidentiality.

Accordingly, the Confidentiality Subcommittee makes the following recommendations for adoption by the Bar Commission. The recommendations for changes in existing law and policy are grouped into categories by interests involved, i.e., agency's, court's, public's, child's and family's, followed by a series of recommendations concerning public education by the Florida Bar concerning records and confidentiality laws:

IV. RECOMMENDATIONS OF THE CONFIDENTIALITY SUBCOMMITTEE

Agencies' Interests in Obtaining and Sharing Confidential Records

1. Amend Chapter 39, Fla. Stat., to improve DCFS or its successors (hereafter DCFS) access to information in investigations of child abuse, abandonment, or neglect, as follows:

- Amend §39.201 to require such mandatory reporters to answer relevant questions by DCFS regarding abandonment, abuse or neglect, subject to existing privileges under the Florida Evidence Code, Chapter 90, Fla. Stat., and to provide relevant records requested by DCFS following a report.¹⁴
- Amend §39.201 to require those listed as mandatory reporters to provide information promptly (within 72 hours), upon the request of DCFS, that may prove or disprove whether a child has been abused, abandoned, or neglected or may establish the nature and extent of such maltreatment. This would include relevant records as well as other written and oral information. The following examples explain:

DCFS has received a report from mandatory reporter #1. Mandatory reporter #2 does not have reason to suspect that a child has been abused, abandoned, or neglected. Mandatory reporter #2 does, however, have information that would help DCFS determine whether the child really has been abused, abandoned or neglected. If the suggested amendment is enacted, mandatory reporter #2 must provide that information on DCFS' request.

A child's teacher sees bruises on a child and reports it to DCFS. After taking the report, DCFS learns that the child had a physical examination two weeks before the report by the teacher. If the suggested amendment is passed, the physician would be required to tell DCFS whether or not she observed anything that might prove or

¹⁴See generally Mark Hardin, *Legal Barriers in Child Abuse Investigations: State Powers and Individual Rights*, 63 Wash. L. Rev. 493 (1988) (recommending procedures and creating remedies, consistent with constitutional, statutory and evidentiary doctrines regarding confidentiality and privilege, for child protection investigators to obtain needed information to conduct thorough investigations and overcome non-cooperation with child abuse investigations)

disprove that the child had been abused. In addition, if asked by DCFS, the physician would be required to provide records, if any, that would be helpful to DCFS.

- Amend §39.302 to authorize DCFS to seek and obtain a civil warrant, authorizing it to obtain information to help it complete a child abuse, abandonment, or neglect investigation. A court should issue such a warrant when there is [reasonable suspicion] [probable cause] to believe that a child may have been abused, abandoned, or neglected and that the execution of the warrant will produce evidence establishing whether or not this has occurred. DCFS should be able to obtain such a warrant when needed to gain access to the child's residence. Note: §39.301(10) already allows DCFS to get a court order if needed to gain access to the child. This amendment would allow a court order to gain access to the residence.
- Amend §39.302 to authorize DCFS to seek and obtain an investigative subpoena to compel individuals, organizations, and agencies to provide information and records, upon filing appropriate notice with the court and giving the individual, organization or agency an opportunity to object to the release of such information or records. A court should issue such a subpoena following a hearing only if, upon DCFS request, a person or organization refuses to provide information or records to DCFS that might tend to prove or disprove a report of child abuse or neglect. A court may refuse to issue such a subpoena following a hearing at which the individual, organization or agency has an opportunity to object to release of such information or records on the grounds that disclosure would reveal embarrassing, humiliating or inflammatory information (e.g., treatment for history of emotional instability, marital conflict, physical or sexual abuse, HIV status, alcoholism or substance abuse, immigration status or erratic employment history) that outweighs the value of the information sought by DCFS through the investigative subpoena.
- Amend Chapter 39 to authorize DCFS to seek and obtain a court order to compel a person suspected of abuse, abandonment, or neglect to submit to substance abuse testing, physical examination, or mental health examination if there is [probable cause] to believe that such examination will help prove or disprove whether a child is abused, abandoned, or neglected. The results of such court-ordered testing may only be used in proceedings brought pursuant to Chapter 39, Fla. Stat., and may not be used to prosecute the person in any related criminal or delinquency proceedings.
- Amend Florida statutes to provide the following:
 - (a) Subject to paragraphs (b) and (c), no state legislation, regulations or policy will bar release of records or information about a child's parent or guardian to DCFS if there is [probable cause] that (1) a child is abused, abandoned, or neglected; and (2) the information or records will help prove whether or not

the child was abused, abandoned, or neglected.

- (b) If such records concern a parent or guardian's mental health, medical condition or treatment, application for or receipt of government benefits, or substance abuse, DCFS must obtain a court order approving the disclosure of the information or records. Where records concern substance abuse, DCFS must comply with federal law, i.e., 2 C.F.R. §§ 2.61, 2.63-2.64.
- (c) The following are exceptions to paragraph (a):
 - (1) An ongoing criminal justice investigation may be compromised;
 - (2) Disclosure will seriously endanger other persons, under circumstances specified in state agency regulations;
 - (3) Based on the specific facts of a case, a court determines that the invasion of privacy or the prejudicial or confidential nature of the records outweighs the likely value of the information or records to secure the child's health, safety, or permanent placement;
 - (4) Other state statutes, specifically referring to abuse, abandonment, or neglect cases, specify an exception;
 - (5) Disclosure would violate federal law; or
 - (6) Based on specific case facts, court sustains objections invoking constitutional privileges or evidentiary privileges under Chapter 90, Fla. Stat.

2. Amend Chapter 39 to ensure that DCFS can get access to information and records when needed to determine or recommend: (a) the best protection, care, and services for a child under court jurisdiction; (b) the most helpful services to the child's parents and other family and household members; and (c) the child's disposition, placement, custody, visitation, guardianship, or adoption.¹⁵

- When a child is under the court's jurisdiction, empower DCFS to obtain relevant records and information relating to abuse, abandonment or neglect concerning parents and other adults in the home or caring for the child, including, among others, mental health, physical health, and substance abuse records, subject to the requirements of notice and the opportunity to object.
- Establish court procedures to enable DCFS to procure court orders when necessary to obtain such records and information. Create standard forms for motions, subpoenas, applications, and court orders to assure access to such records, when parents or other adults living in the home do not consent and the custodians of such

¹⁵See generally Robert Weisberg and Michael Wald, *Confidentiality Law and State Efforts to Protect Abused or Neglected Children: The Need for Statutory Reform*, 18 Fam.L.Q. 143 (1984) (proposing legislative reforms that strongly favor the ability of child protective agencies and juvenile courts to obtain potentially relevant information concerning child abuse or neglect, while avoiding the problem of vesting too much unguided discretion in medical and social service professionals).

records require a court order. Develop specific forms for obtaining substance abuse records consistent with the requirements of federal substance abuse records laws, 2 C.F.R. §§ 2.61, 2.63-2.64.

- Before a child under court jurisdiction is placed in the home of relatives, whether or not the relatives are to be licensed as foster parents, conduct a criminal records check of the relatives and of other adults living in the relatives' home, and conduct a home study. Conduct home studies of relatives within [five] days after relatives request or agree to have a child placed in their home.
 - When a court has granted DCFS custody or protective supervision of a child, DCFS will be considered the parent and guardian of the child for the purpose of obtaining records and other information concerning the child. This will govern other state laws that authorize release of records and information concerning children to children's child's parents and guardians. Records and information governed by this will include, but not be limited to, educational records, mental health records, medical records (including "medical passports" containing records of immunizations, allergies, medical and dental problems, medications and physical exams which are included in the child's resource record)¹⁶, social service records, and records concerning the child's developmental disabilities.
3. Amend Chapters 39 and 985 and other pertinent statutes to require a state task force to develop state interagency agreements for exchanging information concerning children and their families and to develop model local interagency agreements.
- The task force should include officials of state agencies serving children and families who are authorized to develop recommendations to the governor and cabinet. The task force should have sufficient staff support to develop and propose interagency agreements. The task force should include representatives from DCFS, DJJ, AHCA, DOE, other state agencies and private contract providers of services to children and families in addition to groups such as the Florida Association of Criminal Defense Lawyers, the Florida Public Defenders Association, the Florida ACLU, the Advocacy Center for Persons With Disabilities, Human Rights

¹⁶As defined in Florida Administrative Code 65C-12.00(18), the medical passport is a "written health history of a child in shelter status or foster care, which is used to document health care. The medical passport is to be kept with the child's caregiver (in the child's resource record) and updated at each health care provider visit." The compilation and maintenance of these records is required in a number of sections of the Florida Administrative Code, including but not limited to 65C-12.007 F.A.C., 65C-13.010 F.A.C. and 65C-13.016 F.A.C. Specifically, the Florida Administrative Code related to health care foster children outlines the information to be compiled as well as requiring the information accompany the child on all health provider visits. 65C-13.016 F.A.C. The foster care family services counselor is required to review this record quarterly (i.e., every 90 days) to insure that the information is current, legible and accurate. 65C-13.016(1)(j)(5) F.A.C. Under federal law, DCFS is required to compile, update, and provide to each foster parent or caregiver the child's education and health records. See 42 U.S.C. § 675(1)(C). However, DCFS has often been remiss in maintaining and updating health and education records of child in its care. See, e.g., Megan O'Matz, *Judge Warns of Risks to Kids: DCF Ordered to Provide Health Records on Foster Children*, Sun-Sentinel, Aug. 17, 2001 at 1B (describing Omnibus Order Relating to "Medical Passports" and Medical History entered by Broward County Juvenile Court Judge John Frusciant, requiring DCFS to make available within 90 days to the court, treating doctors and medical personnel current medical records pertaining to all children in the court's docket); Carol Marbin Miller, *Many Kids in Foster Care Don't See Doctor*, Miami Herald, Sept. 4, 2001 at 1A (describing lapses by DCFS in providing basic medical and dental care to foster care children).

Advocacy Committees, and Florida Legal Services. The Commission expresses its preference for laws and regulations that strike a proper balance between the need to have accurate aggregate data regarding the treatment needs of children and families, the effectiveness of interventions, the privacy interests of children and families and law enforcement's access to and control over identifiable individual and family information. The Commission is also concerned that unlimited police access to identifiable treatment information may chill the ability of government agencies to work cooperatively with substance abuse programs, mental health providers, schools, health service providers, and other agencies serving youth.

- The state interagency agreements will: (a) establish interagency procedures for the exchange of information and records concerning individual children and families; (b) be designed to protect children from harm and provide better services and decisions for children and their families; and (c) prevent redisclosure of information exchanged, except to those who need the information to protect children from harm or provide better services and decisions for children and families.
- State law should authorize DCFS and DJJ to exchange information on specific cases, preferably with the informed consent of parents, guardians and children who are the subjects of inter-agency information sharing, and require that both keep such information confidential.
- State law should require school districts to provide information regarding school attendance, educational performance and other pertinent information to DCFS and DJJ, consistent with federal educational privacy law, 20 U.S.C. §1232g.¹⁷ It should require districts to apply the best technological approach available to provide this information. It should also require DCFS and DJJ to have a liaison assigned to each public school with the responsibility to assure the educational stability of any DCFS or DJJ child.

¹⁷For example, the Florida statute on serious habitual juvenile offenders provides for a centralized information system maintained by local law enforcement authorities or counties: "The [offender's] central identification file shall contain, but not be limited to, pertinent dependency record information maintained by the Department of Children and Family Services and delinquency record information maintained by the Department of Juvenile Justice; pertinent school records, including information on behavior, attendance, and achievement; pertinent information on delinquency and dependency maintained by law enforcement agencies and the state attorney; and pertinent information on delinquency and dependency maintained by those agencies charged with screening, assessment, planning, and treatment responsibilities. The information obtained shall be used to develop a multiagency information sheet on serious habitual juvenile offenders. The agencies and persons specified in this paragraph shall cooperate with the law enforcement agency or county in providing needed information and in developing the multiagency information sheet to the greatest extent possible." §985.08(1)(b), Fla. Stat. (2001). This is an excellent example of multiagency cooperation and planning to serve the multiple needs of habitual offenders. The Commission recommends that this concept be adapted systemically to serve DJJ children in settings other than just habitual offender programs.

The Commission additionally recommends that the legislature do more comprehensive, systemic analysis of other means of encouraging information sharing between school districts and DJJ in order to further the important legislative goal "that youth in the juvenile justice system continue to receive a high-quality education." §230.23161, Fla. Stat. (2001)(Educational Services in Department of Juvenile Justice Programs). The Commission particularly recommends more cooperative planning between DJJ and the Department of Education designed to enhance the delivery of educational services to adjudicated delinquent youth in the custody of DJJ in detention or commitment facilities.

- The legislature should also study the feasibility of amending §985.08, Fla. Stat., to expand multi-agency information sharing, joint planning on diversion and early intervention strategies not just for juveniles at risk of becoming serious habitual offenders, and the intervention strategies for serious habitual offenders, but for all children entering the juvenile justice system at their first arrest. This would assist the courts, DJJ and community partners to obtain needed information about the youth in their communities, their families, and the problems they face and to provide appropriate interventions to develop multi-disciplinary collaborations and information-sharing as the crucial elements of success in helping at-risk and delinquent juveniles.¹⁸
4. Amend Chapter 39.202 to clarify the process of obtaining consent from parents, custodians, and guardians of children, and children themselves, or their legal counsel, concerning the release of confidential information.
- When any court acting pursuant to Chapter 39 or any other applicable statute is relying on the consent of parents, custodians, guardians or children to obtain or release information or records, such consent will be informed consent.
 - When an agency such as DJJ acting pursuant to Chapter 984 or 985 seeks informed consent from a child, the agency should explain to the child the purposes for which the information is sought, and explain to the child, in developmentally appropriate language,¹⁹ that information may be shared with law enforcement agencies.
 - Informed consent means that the agency or court has explained and the parent, guardian, custodian or child has understood the ways that the information may be used and the types of organizations, persons, and agencies, to which the records may be made available in accordance with such factors as the individual's age, educational level, language, and culture.
5. Amend Chapter 39 to require DCFS to provide current educational, medical, mental health and other necessary personal information regarding children to foster parents.
- Amend §39.202, Fla. Stat., to require DCFS to provide the child's educational, medical, and mental health records to foster parents. Amend the statute to allow foster parents to communicate directly with schools and health care providers about the educational and health needs of children in their care, in accordance with the requirements of 42 U.S.C. §675(1)(C).

¹⁸See generally JAIBG Bulletin, Establishing and Maintaining Interagency Information Sharing, U.S. Dept. of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (March 2000).

¹⁹See generally Anne Graffam Walker, Handbook on Questioning Children: A Linguistic Perspective, ABA Center on Children and the Law (1999) (explaining linguistic guidelines for communicating with children in developmentally appropriate ways).

- Amend Chapter 39 to ensure that DCFS has access to such records to enable DCFS to provide them to foster parents (see other recommendations above).
6. Amend Chapter 39 to authorize and direct DCFS to provide records and information to other agencies with an interest in these records for the purpose of providing services and treatment for children.
- Authorize DCFS to share information with other agencies and professionals (a) when needed to help DCFS get needed information about children or their families and (b) when needed to arrange help or services for children and their families.
 - Bar re-disclosure by those receiving the information, except to the extent needed for the purposes described in (a) and (b).
 - Specify that DCFS can release information to professionals or agencies acting as its agents or under contract to DCFS. Require that disclosure to agents and contractor will be permitted when they need to know in order to provide treatment, services, studies, or evaluations concerning the child or family.
 - Prohibit such professionals or agents -- and others who directly or indirectly receive information or records from such professionals or agents -- from disclosing information about the child or family except when necessary to provide treatment, services, studies, or evaluations.

Courts' Interests in Obtaining and Sharing Confidential Records

7. Amend Chapters 39, 61, 984 and 985 and other pertinent statutes to authorize information sharing among courts handling cases involving custody, delinquency, truancy, child abuse and neglect.
- Courts hearing cases concerning abuse, abandonment, or neglect; children in need of services; delinquency; guardianship of the person of a child, and child custody should be authorized to share and exchange information about cases involving the same parents or children.
 - Whenever courts receive confidential information from other courts, they must preserve the confidentiality of such records to the same extent that the court sending the information must do so.
8. Courts should have access to school and dependency records in family and delinquency court cases.
- Consistent with the records privacy and consent requirements of the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, the legislature should

amend Florida law to authorize family courts addressing child custody, placement and visitation issues, and delinquency courts addressing school attendance and other education issues, to have access to information concerning the school attendance and educational needs of children before the court.²⁰ To the extent permissible under federal law, confidentiality restrictions should not bar the judge from receiving this information.²¹

- Consistent with federal law, amend §985.224, Fla. Stat., and other pertinent Florida laws, to permit juvenile court judges to have access to information concerning school attendance, truancy, tardiness of children appearing before the court at any time after filing of detention petition or petition for delinquency.
- Authorize delinquency court judges to receive information on dependency and TPR status of a child, and to provide that the confidentiality provisions of §39.202, Fla. Stat, do not bar such information.

Public's Interest Assessing Agencies' Performance of Duties

9. The public has a right to know how agencies are performing their statutory duties to protect and serve children and families. The broad confidentiality that statutes have provided for the benefit of children and families should not be used to deprive the public of access to needed information about how agencies perform these duties. For example, the public should have access to information such as DCFS critical incident reports and other information involving child disappearances from state foster care, child fatalities and serious injuries in order to be able to assess how the agency is carrying out its statutory duty to assure child safety and protection, while also assuring the privacy interests and identities of child victims.
- In cases involving child disappearances and fatalities and serious injuries suffered by children in the care and custody of DCFS, the Commission supports a policy of public (and news media) access to DCFS records in accordance with the Florida

²⁰Under federal law, an educational agency or institution must obtain written consent from parents of dependent students before releasing any of that student's educational records. The written consent must specify the records that may be disclosed, state the purpose of the disclosure, and identify the party or class of parties to whom the disclosure may be made. Written consent of a parent of a student is not required before educational records can be released when they are released in response to a subpoena issued for law enforcement purposes, on the condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution. (20 U.S.C. § 1232g(b)(1)(J)). Even when records are requested pursuant to a lawfully issued subpoena, the student's privacy interest must be weighed by the court against the need of the party requesting the information. *See, e.g., Rios v. Read*, 73 F.R.D. 589 (E.D.N.Y. 1977). *See also F.A.T. v. State of Florida*, 640 So.2d 1347, 1350 (Fla. 1st DCA 1997)(school records could not be used in contempt proceedings because they did not fall under exception to disclosure of school records without parental consent by way of interagency agreement between State Department of Health and Rehabilitative Services [precursor to DJJ] and law enforcement authorities; "attendance records herein, consisting of records of absences and an absence and warning summary, fall within the definition of 'reports and records,' not subject to public disclosure" and are therefore inadmissible in any court proceedings prior to a dispositional hearing under § 228.093(3)(d)12 Fla. Stat. (1997)).

²¹*See generally In re Report of the Family Court Steering Committee*, 794 So.2d 518, 522 (Fla. 2001)(Family Court Guiding Principles recommending consolidation and coordination in cases involving inter-related family law issues to maximize use of court resources to avoid conflicting decisions and to minimize inconvenience to family, and the establishment of linkages to community resources).

Public Records Act, Chapter 119, Fla. Stat., and believes that agencies should not hide behind the cloak of confidentiality to deprive the public of access to this information in derogation of Florida Sunshine laws.²²

- The public has a right to gain access to this information in order to properly scrutinize DCFS's performance of its statutory duties to protect children from harm. While child welfare records should be kept confidential to protect the interests of children whom the agency is charged with protecting, DCFS should not use the confidentiality requirement as a means of shielding its own policies and practices from public scrutiny. The public interest in the operation of DCFS is significant, not only because Florida citizens and residents have an interest in the well being of their children, but because DCFS expends huge amounts of public tax dollars.
- The news media also has an important role to play in monitoring the effectiveness of DCFS; greater press access to the workings of the public child welfare system may uncover system failures and mistakes and lead to reform.
- While the public and the media have a right to assess how the agency is carrying out its duties, in light of the generally policy on confidentiality, the privacy interests and identities of child victims should be maintained.²³
- While the public and the media should be able to examine aggregate data collected and maintained by state agencies such as DCFS and DJJ in order to be able to evaluate trends in the delivery of services and treatment programs, and to be able to assess community needs and client group needs, private identifying information about children and other clients should not be made available to the public.

Children's Interests in Information and Privacy of Records

10. Children with the capacity to consent or withhold consent to the release of confidential information concerning health care treatment (e.g., records concerning mental health treatment, treatment for sexually transmissible diseases or HIV) should be consulted prior to an agency releasing such records and should be asked to give informed consent to the release of such information.
- The Florida legislature should comprehensively review state laws and policies

²²See Megan O'Matz, *Child-Abuse Report Fee a Shocker: Florida Agency Demanded \$481,118 From Parent for Detailed Records*, Sun-Sentinel, Aug. 6, 2001 at 1B; Editorial, *Agency Mocks Transparency*, Sun-Sentinel, Aug. 13, 2001 at 18A.

²³See generally *AGO 2001-54 Advisory Legal Opinion* (July 23, 2001)(Attorney General Opinion stating that records relating to the licensure of foster homes, or assessing how the department is carrying out its duties, including references to incidents of abuse, abandonment, or neglect contained in such records, do not fall within the parameters of the confidentiality provisions of §39.302, Fla. Stat., in that these records are in the nature of quality assurance reports); see also Bill Grimm, *Cloak of Confidentiality Prevents Scrutiny of Child Protective Services*, XIII Youth Law News 4 (July/August 1992).

concerning the right of children to provide consent to the release of confidential health care information or to withhold consent to release of such information, without their parents' or the state's prior authorization. In its review of these laws, the legislature should give consideration to whether the policies promote family integrity, the rights of parents to be involved and active in the lives of their children, the right of the state to protect children from harm, balanced against the privacy and confidentiality interests of children to obtain treatment without conflicting parental or state interests.²⁴

11. Parents should have a right to information about their child and a correlative right to share information with or withhold information from their child.

- The fundamental right of parents to share or not share information with their children derives from decades of family and constitutional law jurisprudence, which “historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children.” *Parham v. J.R.*, 442 U.S. 584, 602 (1979)(observing that “the law’s concept of the family rests on a presumption that parents possess what a child lacks in maturity, experience and capacity for judgment required for making life’s difficult decisions.”).²⁵
- Until the child reaches the applicable age of majority, the law presumes the parents’ right to share, or to withhold, crucial and sensitive information with the child. Under Florida law a child is a person who not attained the age of 18. *See* §1.01(13), Fla. Stat. (2001). By contrast, with respect to property and other assets under the Florida Transfers to Minors Act, Chapter 710, Fla. Stat. (2001), the child attains adulthood at age 21. §710.102(1), Fla. Stat. (2001). Florida law provides a means for a child to remove the disability of nonage at an earlier age. *See* Chapter 743, Fla. Stat. (2001)(stating that “[a]n order removing the disabilities of nonage shall have the effect of giving the minor the status of an adult for purposes of all criminal and civil laws of the state, and shall authorize the minor to thereafter exercise all of the rights and responsibilities of persons who are 18 years of age or older.” §743.015(6), Fla. Stat. (2001)).

12. Children who are subject to court jurisdiction should be provided information about their legal status, social information, health information, and other important personal

²⁴*See Attorney ad Litem for D.K. v. the Parents of D.K.*, 780 So.2d 301 (Fla. 4th DCA 2001)(holding that a mature adolescent could assert a statutory privilege in the confidentiality of her communications with her psychotherapists and that her parents were not entitled to either assert or waive the psychotherapist-patient privilege on child’s behalf in dissolution action; recommending comprehensive review by the legislature of the “substantial policy issues” implicated in this decision regarding the child’s need for confidentiality and privacy and the need of the court for information to inform its judgment as to the child’s best interests).

²⁵*See e.g., Doe v. Public Trust of Dade County*, 696 F.2d 901, 905 (11th Cir. 1983)(holding that parents have the right to challenge a psychiatric hospital’s policy preventing parents from communicating with their minor child in the facility and limiting their access to information concerning the facility’s treatment of the child).

or family information from courts or agencies.

- The right of a child who is subject to the jurisdiction of the juvenile court to gain access to this information results from the limitations on the parents' authority concerning disclosure of information to their children is circumscribed when subject to the intervention of the juvenile court. *See generally Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982)(declaring that a natural parent's "'desire for and right to the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it," quoting *Lassiter v. Dept. of Social Services*, 452 U.S. 18, 27 (1981)). Once the juvenile court intervenes, there is no one to help make that decision in place of the parents. Yet all kinds of information is being disseminated about the child to other agencies and entities and the child and parent lose control over the dissemination of such information.²⁶
- A dependent or delinquent child should have the right to control personal and confidential information pertaining to the child's legal status, medical status, mental health status, social status, family status that enables the child to qualify for government benefits such as parents' social security death benefits, inheritance and enables the child to obtain other information that is crucially important to that child, such as information about siblings.²⁷
 - (1) DCFS has an affirmative obligation to keep the child informed about any matter pending in court, to the extent that it is in the child's best interests and the child can understand such information.²⁸

²⁶*Cf. In the Interest of J.D.*, 510 So.2d 623, 629 (Fla. 1st DCA 1987)(holding that the parent of a child adjudicated dependent retains the right to make decisions regarding educational placement of the child based upon a "historical recognition that freedom of choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment," quoting *Santosky v. Kramer*, 455 U.S. 745, 753 (1982), and that the parent's rights trump those of child's guardian ad litem).

²⁷In framing these recommendations on the rights of foster children to have access to information about their lives and families, the Confidentiality Subcommittee was particularly moved by the experiences of our colleague Sara Bennett Nelson, a liaison from the Youth Advisory Board to this Commission, who grew up in the state foster care system, was adopted and later placed back in foster care, and who did not learn about the death of her biological father until years after he passed away, after she had aged out of foster care. Sara expressed to Subcommittee members what it felt like to be kept in the dark by DCF about her life and her family, and she urged the Subcommittee to recommend changes in law and policy that will help foster children like her gain access to information that they need in order to have a voice in decisions about their lives. Similarly, as another child who grew up in foster care has stated: "[W]hen you're young and you don't have nobody explain nothing to you... then that discourages you." Janet A. Chaplan, *Youth Perspectives on Lawyers' Ethics: A Report on Seven Interviews*, 64 Fordham L. Rev. 1763, 1768 (1996)(reporting on seven interviews with foster children represented by lawyers in New York child protective proceedings).

²⁸*See Birken v. C.E.B.*, 566 So.2d 907 (Fla. 4th DCA 1990)(holding that former dependent child has clear right to inspection of official records absent any showing that it would be against her best interests to see court file). *See also* §39.0132(3), Fla. Stat. (2001)(allowing a child the right to "inspect and copy any official record pertaining to the child," except for adoption records, pursuant to § 63.162, Fla. Stat. (2001); and DCF Operating Procedure No. 175-37 (12/1/98)(setting forth the procedures regarding records that may be shared with children, subject to review and approval of child welfare legal services. Records, which must be shared, include any documents filed with the court and which are also in the department's case record (this includes petitions, orders, PDRs, judicial review social study reports, psychological reports, CPT reports, medical reports, and any other reports or records filed in the official court record).

- (2) If DCFS withholds sensitive information when it believes doing so is in the child's best interests, DCFS must document the reason in writing when refusing the request by the child and the child should be given the opportunity to request such information at a court hearing.
- (3) When a child asks a caseworker for information but DCFS decides that it would not be in the child's best interests to disclose it, DCFS must present the issue to a judge at the next regularly scheduled hearing, or earlier, if the failure to disclose the requested information would result in irreparable harm to the child. The child will be represented at that hearing.
- (4) Children's guardians ad litem and attorneys ad litem should be entitled to all records and information concerning the child.²⁹ GALs should share information with the child client when such sharing is deemed in children's best interests. Attorneys ad litem should share information and counsel the child to make an informed decision based on the information shared with the client, in accordance with the Rules of Professional Conduct.³⁰ An attorney appointed to represent a child in a delinquency matter is under a similar ethical obligation to keep the child reasonably informed about the status of representation.³¹
- (5) Attorneys should always respect client confidentiality, and whenever possible, should ask the child client for permission to view and share confidential records.³²

²⁹The Commission was provided examples of juvenile court orders utilized by the Barry University School of Law Attorney ad Litem Project, directed by Professor Gerard Glynn, that authorize the release of privileged and confidential information concerning foster care clients to the project concerning foster care clients. The Commission recommends utilization of orders such as this to authorize lawyer and guardian access to privileged and confidential information concerning the child, without necessity for further release. See A.B.A. Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, Standards K-1 (recommending orders authorizing attorney access to privileged information) and K-2 (recommending that the authorization order grant attorney broad access to social service, psychiatric, psychological treatment, drug and alcohol treatment, medical, evaluation, law enforcement, school, and other records relevant to the child's case).

³⁰See *DCF v. I.C.*, 742 So.2d 401, 406 (Fla. 4th DCA 1999) ("The trial courts often are not alerted to the difficulties of the child in dependency proceedings until the situation for the child is intolerable and drastic action may be called for. What would help considerably is if each child could have a guardian ad litem or attorney ad litem who could be in contact with the child on a more regular basis and serve as the child's advocate. Parents are represented in these proceedings, but the child, the alleged object of everyone's concern has no voice and no capacity to reach the court in many cases."). See also §39.4085(20) & (21), Fla. Stat. (2001) (stating as a legislative goal the right of all dependent children to have a guardian ad litem and, where appropriate, an attorney ad litem; and setting forth as a goal the right of the guardian ad litem and attorney ad litem to have all records pertaining to the child available for review if they deem such review necessary).

³¹See Rule 4-1.4, Florida Rules of Professional Conduct; see also Standard 3.5, Standards Relating to Counsel for Private Parties, IJA-ABA Juvenile Justice Standards ("Duty to keep client informed").

³²See Jean Koh Peters, Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions (Lexis, 1997) ("A primary duty area for the lawyer is keeping client confidentiality.... The client must be reassured over and over again about the lawyer's strict understanding of her duty of confidentiality. The lawyer should explain her duty in initial discussions and also reinforce the child's understanding in many ways: when asking the child for permission to talk to different people, when asking for signed waivers for release of records, and when discussion with a client what the lawyer plans to tell other parties or the judge. The lawyer must put forth, concretely and specifically, the way in which she understands her confidentiality requirement, and stick by that understanding." *Id.* at 82).

- (6) If a child expresses a desire for information and the guardian ad litem declines to share it, the guardian ad litem [must] seek a ruling from the court at the next hearing.
- (7) An interdisciplinary board or commission should be established to report to the legislature concerning: (a) when it is and is not appropriate to share sensitive information with children, (b) what procedures should be in place to address this issue, and (c) what recommendations, if any, should be made to the legislature.
- (8) DCFS staff should be trained in the implementation of Operating Procedure No. 175-37 (Dec. 1, 1998)(setting forth the procedures regarding records that may be shared with children) and children should be given information from DCFS about their rights to see records.
- (9) Codify into Chapter 39 the requirements of Operating Procedure No. 175-37 in order to disseminate these requirements more widely to DCFS case workers and make them binding Florida statutory law.
- (10) Enact procedures in Chapters 39, 984 and 985 that enable a child under the juvenile court's jurisdiction to correct, seal, supplement or remove from a court file any information that is incorrect or information that might subject the child to embarrassment, humiliation, discrimination or differential treatment, or that compromises the child's privacy, personal security or future job security interests, etc. (e.g., information about mental health diagnosis, health status, immigration status, etc.).³³ Provide a hearing procedure to allow the child the opportunity to challenge the content of such records.³⁴

13. **Capacitated or mature minors should have the ability to make informed decision regarding health care and other important matters.**³⁵

³³See Institute of Judicial Administration-American Bar Association, *Juvenile Justice Standards Annotated: A Balanced Approach* (1996)(Part XVI, Standards Relating to Juvenile Records and Information Services: "Rules and regulations should be promulgated which provide a procedure by which a juvenile, or his or her legal representative, may challenge the correctness of a record and which further provide for notice of the availability of such a procedure to be given to each juvenile who is the subject of a record.").

³⁴See 34 C.F.R. § 99.20, et seq. (describing procedures, including hearing rights, under the Family Educational Rights and Privacy Act for requesting amendments of any educational records relating to a student that contain information that is inaccurate, misleading or in violation of student's rights of privacy).

³⁵Under existing jurisprudence, mature minors are allowed to consent to reproductive health care decisions. See *Bellotti v. Baird*, 443 U.S. 622 (1979) (pregnant minor seeking an abortion does not need parental consent to obtain abortion, and is entitled to court proceeding to show that she is mature enough and well enough informed to make her own abortion decision in consultation with her physician, independently of her parents' wishes); see also *In Re T.W.*, 551 So.2d 1186 (Fla. 1989) (broadening the privacy zone of reproductive health care decisions, permitting minors rights to terminate pregnancies without prior parental consent or judicial approval, pursuant to Art. L §23, Fla. Const.). Minors in Florida and other states are also permitted to give informed consent to treatment for sexually transmitted diseases. See, e.g., §384.30, Fla. Stat. (2001) (providing that minors may consent to treatment for sexually transmitted diseases without prior notification of their parents or legal guardians). Some have argued for broadening of the informed consent authority reposed in children to respond to public health needs of children and adolescents. See, e.g., Janine P. Felsman, Note, *Eliminating Parental Consent and Notification for Adolescent HIV Testing: A Legitimate Statutory Response to the AIDS Epidemic*, 5 J.L. & Pol'y 339 (1996).

- Children over 14 should be allowed to request that private information not be disclosed when the disclosure involves extraordinarily sensitive issues concerning the child's privacy.³⁶
 - Children should also have the right to make decisions concerning medical treatment in matters beyond reproductive health care decisions.³⁷
 - The Florida legislature should undertake a comprehensive study of policies regarding medical decisions by minors and consider the follow factors: Clear and convincing evidence that (1) the minor is mature enough to appreciate the consequences of her actions, and (2) that the minor is mature enough to exercise the judgment of an adult. The rights of the child to make such decisions should be balanced against four State interests: (1) the preservation of life; (2) protecting the interests of third parties; (3) prevention of suicide; and (4) maintaining the ethical integrity of the medical profession.³⁸
 - In studying this proposed policy, the legislature should hear testimony and consider evidence from mental health, child development and other experts to examine and consider the age, experiential, educational, developmental, cognitive and other relevant factors for a proper evaluation of the criteria for determining the level of child's maturity in order to allow such decisions to be made by the minor. The experts should address issues including: When a child has a disease that is life threatening to the young person or to others. For example, what if a young person has HIV and is involved in unprotected sex? Should that be an exception? Should a young person have the right to decide on HIV treatment? What about treatment for other fatal diseases where a child has a short life span?
14. Children should be allowed access to reports and financial information under the Florida guardianship statute and probate rules, unless the guardian can show that it is not in the child's best interests to have access these reports and information.
- Florida probate and guardianship judges have expressed concern about

³⁶See Randi Mandlebaum, *Rules of Confidentiality When Representing Children: the Need for A "Bright Line" Test*, 64 Fordham L.Rev. 2053 (1996)("Children who have been abused or neglected often arrive at the legal proceeding in an incredibly disempowered state. They have been violated and hurt by the people who are supposed to love and protect them. They have had their private lives and stories publicized and repeated by those who promised to keep it secret. They have been moved from person to person and from place to place and now find themselves in a courthouse with no clear reason as to why or what may occur Integral to treating a child client as one would an adult, and thereby empowering the child, is strict adherence to all the ethical rules and provisions, especially those concerning the confidentiality of communications....")

³⁷See, e.g., *In re E.G.*, 549 N.E.2d 322 (Ill. 1989)(holding that a mature minor may exercise a common law right to consent to or refuse medical treatment for leukemia)

³⁸This proposal on mature minor medical decision-making is borrowed from the test enunciated by the Supreme Court of Illinois in *In re E.G.*, *supra* note 36.

inconsistencies in the dissemination of financial information and guardianship plans to minors under the age of 18 and the ramifications of allowing minors to gain access to assets and information contained in a guardianship file. Under §744.3701, Fla. Stat. (2001), a minor under the age of 18 may not inspect any report or other financial in his guardianship file. In contrast to this provision barring access to financial information by a minor under 18, §§744.362(1), 744.363(3), and 744.367(3) provide that financial reports *must* be served on a ward over the age of 14. The probate and guardianship bench has expressed concern about the inconsistencies in this statutory scheme and concern about the dissemination of this information to minors over 14, specifically the motivational deterrent on the minor who knows about the extent of his assets because he has access to this information in the guardianship file (e.g., minors will demand funds to buy cars, lose motivation to stay in school, make unreasonable demands for use of their money to buy expensive clothes, and rebel against the reasonable and lawful limits placed on them by parents or guardians).

- To address concerns of probate court judges, the legislature should amend §§744.362(1), 744.363(3), and 744.367(3), Fla. Stat., and Supreme Court rules committee should amend 5.690(b) and 5.695(b), to make them consistent with §744.3701, to allow minors under age 18 to receive financial reports, unless the guardian can present evidence to the probate or guardianship court that it is not in their best interests to have access to this information.
15. The legislature and courts should promulgate comprehensive, standard policies regarding confidentiality statutes and rules of court relating to families and children.
- Consistent with the precepts of the model family court, i.e., a fragmented legal system is damaging to families, the system should focus on the needs of children who are involved in litigation, refer families to resources that will make their relationships stronger, coordinate their cases to provide consistent results, and strive to leave families in better condition than when they entered the system, the Commission recommends comprehensive study by the legislature to establish uniform, standard policies regarding confidentiality laws relating to children and families.
 - The legislature should establish a board, commission, or other entity to comprehensively reexamine confidentiality provisions to create greater uniformity and consistency in terms of principles and procedures. This should include, among others, provisions regarding court proceedings, education, substance abuse, mental and physical health, juvenile justice, public benefits.
 - The Commission supports initiatives such as CS/HB 1679 (2002), which creates a study committee to review the privacy and public access of information contained in court records and official records. The issues enumerated in the charge to the

committee include information related to children, specifically “how to ensure the privacy, security, and full participation of children and families within the judicial system without undermining the fairness of the judicial process. In addition, the committee is charged with examining how to ensure that sensitive personal information may be “effectively and efficiently disseminated to the judiciary.”³⁹

- The Commission urges that other study committees be formed to examine the statutory provisions relating to the availability of and access to public records and confidential and/or privileged information and to the admissibility/nonadmissibility of such information, including court records, social services and counseling records, and agency records and reports generated pursuant to proceedings governed by chapters 39, 61, 63, and 741, Fla. Stat., and various social services statutes.
16. Juvenile and family courtrooms should remain open to the public in all proceedings with the exception of termination of parental rights and adoption hearings, but the courts and court personnel should develop a culture of decorum and respect for the intimate privacy interests of children and families. The court should allow the child or any party to request closure of the courtroom when particularly sensitive and private information is heard by the court.
- Consistent with existing Florida law regarding the confidential nature of juvenile records, courts and court personnel should strictly maintain the confidentiality of proceedings involving children and families, but consistent with the public’s right of access to juvenile and family court proceedings, hearings should remain open as a constitutional guarantee of access to the functioning of the judicial system and to enable the public to assess the juvenile justice and child protection systems in our state.⁴⁰
 - Courts and court personnel should instill a culture in the juvenile and family courts that respects the intimate, private nature of information disclosed in these hearings and allows children the opportunity to close hearings to protect the privacy of evidence and information heard by the court.
 - The Florida Conference of Circuit Court Judges, in conjunction with the Florida Bar, should sponsor periodic seminars for family and juvenile court judges regarding

³⁹For example, the need for detailed personal financial information in most family cases is freely available from the Clerk of Court, but there is growing concern about the potential misuse of such personal financial information that would be readily available through the Internet and other computer technology devices. See, e.g., Judge Judith L. Kreeger, *Financial Affidavits in Domestic Relations Cases: Sunshine Trumps Privacy—A Proposed Solution*, 76 Fla. Bar. J. 45 (March 2002).

⁴⁰Florida law currently provides generally that all juvenile court proceedings, except for termination of parental rights and adoption hearings, are open to the public unless the court closes them upon determining that the public interest or welfare of the child is best served by so doing. See, e.g., §39.507, Fla. Stat. (dependency adjudications are presumptively open to the public). Cf. *J.B. v. DCFS*, 780 So.2d 6 (Fla. 2001) (holding that statute providing for mandatory closure of TPR proceedings does not violate U.S. or Florida constitution).

the privacy and confidentiality laws pertinent to family and juvenile court proceedings and develop interdisciplinary training materials and protocols for judges concerning their role in maintaining decorum and respect for the privacy interests of children in these proceedings, including discouraging the use of courtrooms as "waiting rooms" in dependency proceedings.

- The re-disclosure of confidential information from court proceedings, when not authorized by law, should be subject to civil and criminal penalties and subject violators to strict enforcement.
 - Chief judges of each circuit should develop protocols to inculcate a culture of respect for the privacy and confidentiality of dependency proceedings, including posting of notices in courtrooms regarding penalties for unauthorized disclosure.
 - While closure of juvenile court hearings to the public may be seen as a means of protecting the privacy interests of children and reducing adversarial nature of the court process, allowing the public access to these proceedings can help raise public awareness of and involvement in juvenile court and serve as a check against abuse of judicial or government power, etc.).⁴¹
 - In weighing the public's right to know with the strong public policy in favor of the confidentiality of juvenile court records, incident reports about youths should be redacted to preserve the identity of youths before releasing them to the news media.
17. Subjects of child abuse, abandonment, and neglect reports should have access to records concerning investigations of abuse or neglect.
- Amend §39.202 to allow subjects of reports to review records concerning investigations of child abuse, abandonment, and neglect, whether or not such reports are substantiated. The subjects of reports should not, however, be allowed to review information in such records that might lead to the identification of a confidential reporter.

Florida Bar's Role in Educating Public About Confidentiality And Records Laws

18. The Florida Bar Continuing Legal Education section should develop and sponsor training programs and materials for the judiciary, members of the bar, other child-

⁴¹ See Barbara White Stack, *Opening Juvenile Courts: Children Should Not Be Numbers*, Columbia Journalism Review, March/April 2002 at 62 (favoring open hearings in juvenile court as "a good way to inform the public about an important function of the judicial system."); Paul Carrier, *Florida Child Hearings Effective; Open Child Hearings Are A Novel Concept in Maine, But Most Experts Point to the Benefits of Florida's Law*, Maine Sunday Telegram, June 3, 2001 at 1B (endorsing the Florida statutory policy allowing dependency proceedings to be open to the public). See also Jan L. Trasen, *Privacy vs. Public Access to Juvenile Court Proceedings—Do Closed Hearings Protect the Child or the System?* 15 B.C. Third W. L.J. 359 (1995) (arguing that a policy of opening juvenile court to the public leads to more accurate fact-finding and serves a vital and beneficial role by ensuring that incompetent case work is subject to public scrutiny).

servicing professionals, and the general public concerning state and federal confidentiality and records laws.

- The Florida Bar, in conjunction with the Florida Conference of Circuit Judges, should sponsor training seminars that provide confidentiality education to court personnel and persons appearing in juvenile court. The Bar should produce written materials and provide training sessions for court personnel, parties, and persons and agencies frequently appearing or testifying in court.⁴²
- The Florida Conference of Circuit Court Judges, in conjunction with the Florida Bar, should sponsor periodic seminars for family and juvenile court judges regarding the privacy and confidentiality laws pertinent to family and juvenile court proceedings and develop interdisciplinary training materials for judges concerning their role in maintaining decorum and respect for the privacy interests of children in these proceedings.
- The Florida Bar should develop training materials and provide for ongoing education geared toward employers, licensing authorities, credit companies, insurance companies, banks, and educational institutions about the confidential nature of records relating to juvenile arrests, delinquency records, sentencing records, educational records, dependency records, mental health records, substance abuse records, and other private, confidential records pertaining to children.⁴³
- The Florida Bar, in conjunction with the Florida Association of Drug Court Professionals, the Department of Children and Family Services, the Florida ACLU and other appropriate organizations or entities, should develop multi-disciplinary training materials regarding federal and state substance abuse and mental health confidentiality laws.
- The Florida Bar should develop booklets and sponsor or co-sponsor CLE and CEU training seminars on federal and state records confidentiality laws and the appropriate uses of confidential information geared to lawyers and other professionals who deal with children and families who intersect with the child welfare and juvenile justice systems.

⁴²This recommendation and the following recommendation are especially important to the broad therapeutic jurisprudence principles espoused in *In re Report of the Family Court Steering Committee*, 794 So.2d at 522 (recommending the use of therapeutic jurisprudence processes in judicial proceedings that empower families through skills development, assist them to resolve their own disputes, provide access to appropriate services, and offer a variety of dispute resolution forums where the family can resolve problems without additional emotional trauma).

⁴³For example, §985.05(2), Fla Stat. (2001), provides that all juvenile delinquency records maintained by the clerk of court are not open to public inspection, and may be inspected only upon order of the court by persons deemed by the court to have a proper interest therein (such records may, however, be inspected by child, parents, guardians, legal custodians, attorneys, law enforcement personnel, DJJ, Parole Commission, and Dept of Corrections). Many employers and other entities routinely seek such information even though Florida law explicitly restricts their access to this information.

- The Florida Bar, in conjunction with legal staff at DCFS, DJJ and other state agencies, should develop training materials and training seminars for agency staff on federal and Florida records laws.

Respectfully submitted,

**The Florida Bar Commission on the Legal Needs of Children
Confidentiality Subcommittee**

Bernard P. Perlmutter, Esq., Chair
Richard Milstein, Esq.,
The Honorable Sandra Murman
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Alex Victorero
Sara Bennett Nelson (Youth Advisory Board Liaison)

APPENDIX D

**EDUCATION AND THE ROLE OF THE FLORIDA BAR
SUBCOMMITTEE REPORT**

**THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
EDUCATION AND THE ROLE OF THE FLORIDA BAR SUBCOMMITTEE**

Chair

The Honorable Lynn Tepper, Sixth Circuit Court

The Honorable Kathleen Ann Kearney, Secretary of Department of Children & Families

Gerald I. Kornreich, Esq.

**The Honorable Frank Orlando (ret.), Director, Youth Policy Center, Nova Southeastern
University**

The Honorable Martha C. Warner, Chief Judge Fourth District Court of Appeal

The Education and the Role of The Florida Bar Subcommittee's recommendations are fully incorporated in the Commission's Final Report.

APPENDIX E

TECHNOLOGY AND THE COURTS SUBCOMMITTEE REPORT

**THE FLORIDA BAR COMMISSION ON THE LEGAL NEEDS OF CHILDREN
TECHNOLOGY AND THE COURTS SUBCOMMITTEE**

Chair

Pat G. O'Connell, Senior Government Consultant

Robin A. Abraham, Esq.

The Honorable Barbara Pariente, Supreme Court of Florida

Robert N. Sechen, Esq., General Counsel, Department of Juvenile Justice

**The Florida Bar Commission on the Legal Needs of Children
Technology and the Courts Subcommittee submits the following report:**

*Final Report: Snapshot of the Technology Environment Supporting the Legal Needs of Children,
Engagement: #220155650*

Respectfully submitted,

Pat G. O'Connell, Chair, Senior Government Consultant
Robin A. Abraham, Esq.
The Honorable Barbara Pariente, Supreme Court of Florida
Robert N. Sechen, Esq., General Counsel, Department of Juvenile Justice

**The Florida Bar Commission on the Legal Needs of
Children**

**Final Report:
Snapshot of the Technology Environment Supporting the
Legal Needs of Children**

June 6, 2002

Engagement: #220155650

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EXECUTIVE SUMMARY

This document, entitled Final Report: Snapshot of the Technology Environment Supporting the Legal Needs of Children, has been prepared by Gartner for the Technology Subcommittee of the Florida Bar Commission on the Legal Needs of Children.

The objectives of the report are to:

- (1) Provide a conceptual overview of the challenges and opportunities related to the effective exchange of information between the information systems supporting the organizations responsible for the legal needs of children;
- (2) Review information regarding the present technology environments supporting the legal needs of children. This information was developed through the review of documents, interviews conducted with key stakeholders across the State, and a survey of organizational and technical information that was completed by a representative sampling of organizations; and
- (3) Based on the information collected and best practices in industry and government, provide insights as to possible further steps that could be taken to facilitate the exchange of information.

Among the key findings of the report are that the primary impediment to the effective exchange of information regarding the legal needs of children is the wide, technological diversity in the State and the continued reliance of many organizations on paper as the primary medium for the transfer of information. Contributing factors include the absence of a clear statement of the vision, objectives, and priorities for improvements in the automated processing of information related to the legal needs of children, and a governance structure to facilitate a continuing dialog regarding strategies to address the immediate and long-term opportunities.

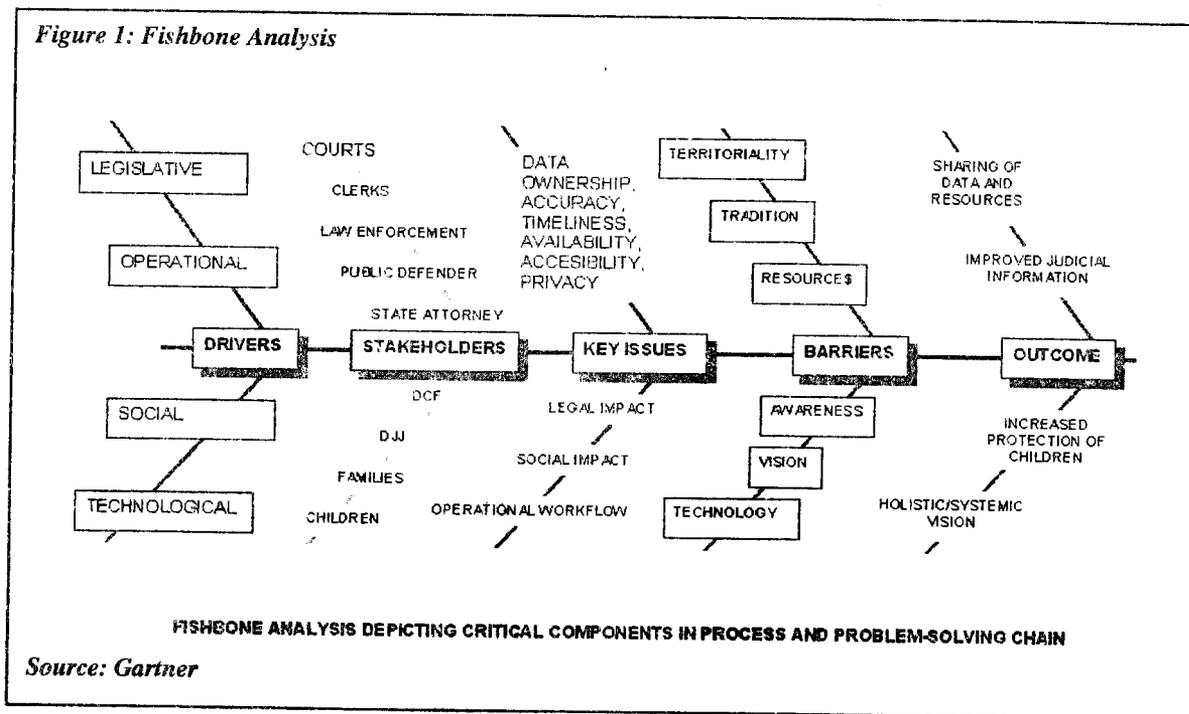
Recommendation: There is an immediate need for the development of a Strategic Plan to identify, assess and prioritize the actions that the "Community of Interest" should take to facilitate improvements in the automated exchange of information regarding the legal needs of children.

CONCEPTUAL OVERVIEW

The purpose of this section of the report is to provide a conceptual overview of the drivers, stakeholders, key issues, barriers, and outcomes related to the existing technology environments supporting the legal needs of children and of the prospects for increasing this support. Figure 1: Fishbone Analysis provides an overview of the conceptual model and includes the following components. These concepts are important for the purpose of creating chronological, causal, and thematic context for our view of the environment. As such, our recommendations use these components as the touchstones for action items:

- **Drivers:** The drivers include the legislative, operational, social, and technological factors that have combined to significantly raise public expectations regarding the availability, accuracy, and timeliness of information as they relate to social and legal impact.
- **Stakeholders:** A wide variety of organizations are involved in matters relating to the legal needs of children, including elected officials, appointed officials, state agencies, not for profit organizations, volunteer groups, families, and children.
- **Key Issues:** The key issues that need to be addressed by the stakeholders in advancing the benefit of creating systemic solutions include those related to data (ownership, accuracy, timeliness, availability, accessibility, and privacy), legal and social impacts, and constraints imposed by inter-organization, operational workflow.
- **Barriers:** Examples of barriers, which can impede change within or among organizations, include an uncompromising adherence to traditional roles and inter-agency relationships, a limited interpretation of organizational charters, a limited vision of the overall process that impedes cooperation, limited resources, and technology environments that are not sufficiently flexible or purposely focused to meet new requirements.
- **Outcomes:** The desired outcomes related to the increased support for the legal needs of children are a function of improved sharing of information and improved judicial information resulting from a holistic view of the legal environment in meeting the needs of children.

Each of these components is discussed in more detail below.

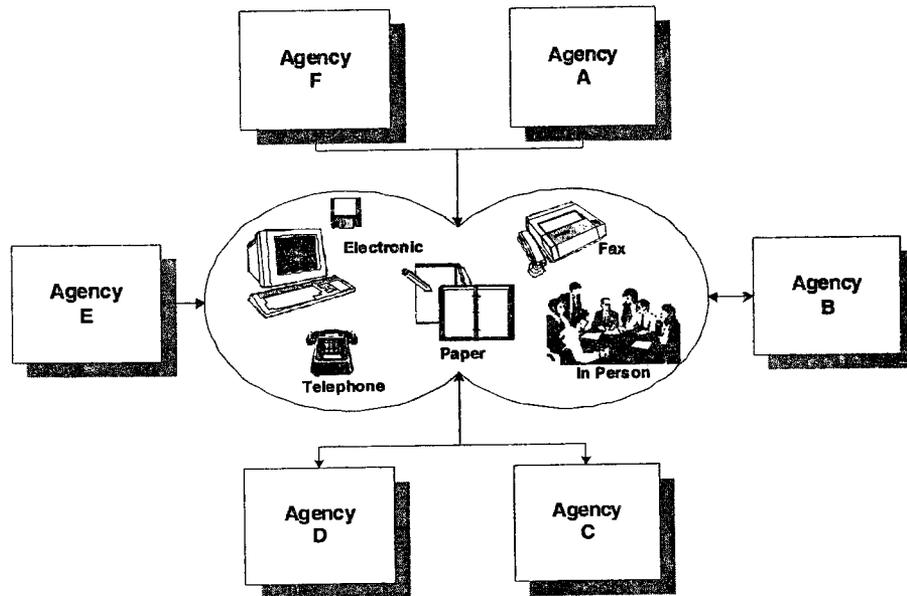


Drivers

Technology is one of the most significant factors driving change in our society. Of all the technological advancements that have been introduced, the Internet and the overall movement to electronic commerce, by far, are seen as having very substantial effects on public expectations. Unfortunately, changes in community expectations are not easily quantified. Nonetheless, community expectations regarding the ability of government to solve problems more effectively through the use of technology are increasing. Gartner has projected that the “digital divide” that separates members of the community who have access to the Internet from those who do not, will continue to diminish through 2005.

As the Internet and electronic commerce become ubiquitous, increases in the public's expectations of government will be driven by the everyday use of technology. The public is already accustomed to the ATM machine and electronic pay-point solutions in all aspects of shopping and commerce. Even amidst significant societal concern about privacy and confidentiality, customers expect customer service representatives to have rapid access to the information needed to respond to their requests. There is substantial anecdotal evidence that our "connected society" is becoming less tolerant of public agencies that are unable to provide similar access to information and services or to effectively exchange information across city, county, and eventually, state boundaries.

Figure 2: Inter-agency Data Sharing



Strategic Planning Assumption: "By 2003, knowledge workers in enterprises that do not bring internal and external content under control will waste 30% to 40% of their time on document-related, non-value-added tasks (0.8 probability)"

Source: Gartner

Operationally, as a result of these expectations, government agencies are being increasingly faced with the need to share information. Figure 2: Inter-Agency Data Sharing, depicts the logistical complexities faced by government agencies seeking to do so. In addition to the complexities resulting from the development and implementation of separate (or "stovepipe") information systems that may not be designed to readily exchange information with other information systems, information moves through a number of additional and separate channels: These channels include paper (mail), electronic documents (faxes and document images), telephone, and in-person communication. It would logically seem that the use of multiple channels to exchange information is not efficient, and Gartner research confirms this.

This strategic planning assumption was originally developed as a result of an assessment of the impact of multiple document delivery channels on the productivity of knowledge-workers such as judicial officers, attorneys, probation officers and case workers who gather information in order to make decisions. Gartner estimated in 1997 that knowledge workers were wasting 20% of their time on non-value-added tasks and we have assessed that this ranges from 20-30% today.

Our research confirms that:

- The average document is copied, either physically or electronically, nine to eleven times at a cost of \$18
- Documents cost about \$20 to file
- Retrieving a misfiled document costs about \$120

Stakeholders

The immediate stakeholders in this community of interest include the Courts, the Court Clerks, law enforcement agencies, Children's Advocates, Florida Department of Children and Families (DCF), Department Juvenile Justice (DJJ), local resources and programs (including not for profit organizations), families, and children. External stakeholders include elected officials in the legislative and executive branches, schools and educators, and members of the community who have some stake in the juvenile justice process. The range of stakeholders is significant and

includes every branch of government. Each of the stakeholders represents organizations that have distinct statutory missions, operational objectives, and value-driven priorities.

Key Issues

The key issues related to obtaining improvements in the exchange of information in the legal processes involving children include concerns regarding data (ownership, accuracy, timeliness, availability, accessibility, and privacy), legal and social impacts, and constraints imposed by operational workflows. These issues largely stem from the highly heterogeneous systems utilized by the various participants who receive, create, store or exchange information. The issue regarding ownership is often quite complex in the case of common items of information such as name and address or physical characteristics and its solution is often found in the formulation of data sharing agreements. These agreements, commonly known as “publish and subscribe” agreement specify which organizations should update the information and under what circumstances.

The ability to successfully overcome concerns regarding the accuracy, timeliness and consistency of information that is collected from different sources is a critical milestone in the successful implementation of common repositories and is as much a function of good operational practices as it is a function of technology. Privacy primarily relates to compliance with the statutory requirements for the protection of information from unauthorized access and disclosure. The social and legal impacts of integrating this information need to be identified and planned for as well as the impact that integration may have on operational workflows.

Barriers

The potential barriers to improvements in the exchange of information relevant to the needs of children are related to organizational and individual behaviors (territoriality, tradition), the availability of resources and technology, and strategy (awareness and vision). The most critical of these barriers is likely to be strategy since, in Gartner’s view, communities of interest that are able to integrate business and IT planning under common strategies will realize greater benefits than those that do not. Thus, the mitigation of the barriers to the development of common

strategies is a critical success factor. Gartner sees the use of a steering committee (a mechanism very familiar to public sector managers) as being an effective means of forging and maintaining both the vision and the plans required to realize the vision. We have noted that, "To better align business and IT planning, many enterprises have established an IT strategy council, whose role it is to ensure that the business strategy is supported by an IT plan that is timely, feasible and affordable. In support of this effort, IT and business planners are asked to develop baseline IT plans to be adopted by the IT strategy council."

Similarly, barriers to the effective exchange of information can arise from organizational and individual behaviors. The behaviors that create barriers to inter-agency cooperation and the actions that can be taken to mitigate them are generally well known to public sector managers since these behaviors often play a role in intra-agency and intra-unit cooperation as well. The barriers that result from problems in acquiring sufficient and stable resources (including funding, staffing and equipment) to consistently pursue long-term strategic technology goals through multiple budget-years and funding-cycles are also all too familiar to public sector managers and executives.

The technological barriers to the effective integration of information are also significant. Gartner has noted that "Regardless of the motivation, the integration of independently developed applications is a challenge. Integration would be straightforward if all of the applications conformed to the same set of standards - used the same operating systems, database management systems (DBMSs), programming languages, communication protocols, data models and semantics. But they do not. "Legacy" and "purchase" are two words that strike fear in the hearts of IS planners seeking to bring order to heterogeneous application portfolios. In modern computing environments, most mission-critical applications are more than three years old, purchased or both. The task of connecting them so that they can work together is daunting."

A recent Gartner Research Note profiled the work performed by Florida's Department of Health (FDH) to rapidly define an enterprisewide integration of information. Many of the conclusions in the research note are equally applicable to the automation supporting the legal needs of

children. Gartner noted that “Many HCOs [Healthcare Organizations] have several minor to major applications that have evolved over time independent of other applications, such as small, PC-based applications on which the HCO has become dependent and large applications forced together by mergers or acquisitions. These stand-alone, stovepipe applications can limit an organization’s productivity by:

- Forcing dual entry of data
- Producing a lag in processing with “unconnected” applications
- Creating data synchronization problems
- Producing inconsistent reports across the organization
- Preventing a common terminology.”

Outcome

The desired outcomes related to increasing the automated support for the legal needs of children result from the successful realization of a number of goals, each of which must build upon its predecessor and provide the foundation for its successor similarly to building blocks. As a consequence, the development of a holistic view of the legal needs of children will facilitate the development and implementation of the building blocks needed to improve the flow of information between the participating agencies. Improvements in the flow of information provide the foundation for efforts to improve the timeliness, accuracy, and availability of the information needed to make informed decisions.

SUMMARY OF INTERVIEW FINDINGS

Based on group and individual interviews with key stakeholders the approach for this project was refined and a survey was developed. The interviews included representatives from the following organizations:

- Florida Bar Commission on the Legal Needs of Children
- Florida Department of Law Enforcement
- Florida Association of Court Clerks
- Florida Department of Children and Families
- Florida State Technology Office
- Florida Supreme Court

The Standard Interview Outline presented below identifies the questions used in the interviews to elicit information as consistently as possible.

- 1) Does your organization directly work with, receive a feed of information, or provide information to, any information systems that processes data regarding matters involving children?
- 2) If so, are any of these feeds automated or are they dependent on the movement of paper from an agency to the Court?
- 3) If so, please identify the information systems, the organization that is the proprietor of the system and the type of information that is received from or entered into the system?
- 4) Are any of these information systems more critical than others to the timely and effective processing of cases, and if so, could you please briefly explain why this is so?
- 5) Are any of these systems scheduled for renovation or replacement, if so, when, and have funds been identified and budgeted? What is the projected schedule for renovation or replacement?
- 6) Is the information obtained from each of these systems critical to the effective and timely processing of matters before the Court?
- 7) If the information is critical to the Court, is it accurate, timely, complete and consistent with information received from other information systems?
- 8) Are there any barriers to the effective exchange of information that are related to automation or technical considerations?

- 9) Are there any other barriers (such as resources, statutory requirements, etc.) to the effective interchange of information between the agencies and the Court?
- 10) Are there any other thoughts, notes, or observations that you feel will be helpful to this process?

Key Interview Findings

(1) **Generally, data is not uniformly stored, documented, or accessible.** One of the primary barriers to the effective exchange of information between the organizations that have roles in the legal needs of children is a lack of uniformity in the information contained in their information systems. Some of these information systems were purchased from different solution providers; others were custom developed at different times by different individuals. Overall, this lack of uniformity has its roots in a number of factors, including:

- The organizations often use different identifiers. Some use “soft” identifiers such as a Social Security Number or Case Number that are not tied to an individual through biometric data, while other organizations such as the Florida Department of Law Enforcement and the Florida Department of Corrections, use identifiers based on a positive identification. The use of different identifiers, some more accurate than others, makes it difficult to retrieve and consolidate information about children and their parents/guardians and other adult associates from different sources with a consistent degree of accuracy.
- Many of the information systems store information in ways that are inconsistent. The stakeholders have a wide range of custom-developed and commercial off-the-shelf (COTS) information systems and the systems represent a wide range of design philosophies, logical models, data models and technologies. As a result, some systems may store specific types of information, even simple ones such as name and address, differently than other systems. Similarly, some of the systems may provide a historical record of changes to the information while others do not, and some may capture information in different ways or formats that make it difficult and costly to translate the information so that it can be used in other environments.

- Florida is a large and populous state with a high degree of diversity, including highly urbanized areas and areas that are largely rural. As a result of this diversity, there is no single information system that could provide a reasonable fit for the needs of all of the various agencies, organizations, Court Clerks, or Courts in the state. Although the Florida Association of Court Clerks has made significant progress in standardizing solutions statewide with the development of the Case Management System (CMS), some of the Clerks, particularly in larger counties, do not use these systems. The additional case management systems include systems from solution providers such as Maximus (installed in 14 counties), a solution from Tiburon (formerly PSI) that is installed in approximately six counties, and two other systems that are deployed in 7 counties.¹
- Just as the information systems are inconsistent, so too is the documentation that is maintained by the organizations regarding who enters specific pieces of information into the systems, at what points in the workflow the information is updated, and what controls (both system-based and manual) are in place to ensure the accuracy and consistency of the information.

A notable exception to this pattern of “stovepiped” solutions and isolated “islands of information” is the Integrated Public Access System (IPAS) that has been developed by the Florida Association of Court Clerks and which provides an index to information stored in some 20 separate information systems. Future development plans for IPAS include both broader public access as well as secured access for the Florida Department of Revenue.

(2) The justice process relies primarily on paper for the exchange of information. It should be no surprise that much of the information exchanged between the courts and the

¹ At the time of the interview, the CMS solutions supported by the Florida Association of Court Clerks had been widely deployed statewide with all 67 counties using the same solution for child support. Additionally, 34 counties (going to 37) were using the criminal system, 26 counties were using the same juvenile system, 21 counties were using the civil system and 22 counties were using the traffic system.

state, local, community, and not-for-profit organizations that are involved in the legal needs of children, is transferred using paper documents and reports. Even as electronic means of information exchange such as faxes and sophisticated electronic interfaces have come into general use, paper remains as the "lowest common denominator" providing a link between those organizations that have highly automated environments and those that do not. Since organizations, clients, members of the Bar and the public do not adopt technology at the same pace, organizations in the State find that they need to receive as well as to transmit information through multiple means, or channels, receiving or sending some information by paper, some information by fax, and some information electronically.

Documents and information are stored in a number of different ways including:

- Traditional storage of documents in paper form in either file cabinets or storage boxes. These can be located in central offices or at remote, off-site locations
- Manual entry of information into automated systems from forms, notices, reports, and correspondence
- Manual entry of information into word processing documents or spreadsheets
- Conversion of paper documents into analog formats (such as microfilm and microfiche)
- Conversion of paper documents into digital formats (including scanning documents to produce an image or scanning the document to digitize the text)

(3) There is presently no governance structure or other support mechanisms to facilitate the exchange of information between the agencies and departments dealing with the legal needs of children. One of the interviewees best summed up this by stating that *"Typically the sharing of information has always been a contentious issue among agencies... Specifically, agency command and control practices, budgetary parameters, and [the] lack of affordable personnel often restrict information sharing."* In the absence of both a compelling mandate or motivation to share information and an organization to actively champion and facilitate the sharing of information, there is no sustainable, long-

term commitment among agencies and departments to find ways to more effectively share information. Given that resources (people, funding, equipment, and time) are highly limited and that there is a continual competition for these resources (both within and between organizations), resources are generally allocated based on mandates and then to discretionary programs based on their relative priorities. In the absence of a mandate to share information and/or a strong advocate to promote the importance of information sharing, other programs have taken priority and resources.

- (4) **The multiplicity of matters, both related court and other, which involve the legal needs of children argues for a continued emphasis on a holistic approach.** Increasingly, the participants in the justice process support a more holistic approach in which all matters relating to a child would be heard before the same judicial officer or in a manner that provides a high degree of consistency between hearings. In this way, matters relating to delinquency and dependency, "co-defendants," and other family and/or household members can be more appropriately adjudicated. The Florida Courts have several initiatives in this area, such as the development of business requirements for a Unified Family Court (UFC) in Pinellas County that would hear matters related to Juvenile Dependency, Juvenile Delinquency, Civil Family, Domestic Violence Injunctions, Criminal Domestic Violence, and other family cases.
- (5) **The most immediate opportunities for improvements in the automated exchange of information regarding the legal needs of children are at the State level rather than through improvements in peer-to-peer exchanges at the local level.** This is largely a consequence of two factors. First, State agencies such as the Department of Juvenile Justice or the Department of Law Enforcement, tend to have more automation in place than local organizations (with the possible exception of the Court Clerks), and second, there is already a flow of information from the local level to a number of statewide information systems and central repositories. The most immediate concerns with information held at the State level are the inconsistent reporting practices at the local level (which result in the reporting of incomplete information or delays in reporting), and

the limited amount of access presently provided to the statewide repositories. Additionally, the ability to immediately improve peer-to-peer exchanges at the local level may be limited as many organizations have little or no automated support or that the existing systems may not be readily adapted to exchange information.

SUMMARY OF SURVEY FINDINGS

Subsequent to the completion of the initial interviews a survey was developed to elicit responses from organizations regarding the processes that they performed on behalf of the legal needs of children, the percentage of their workload that was related to children, and the degree to which these processes were supported by automation. Survey responses were received from:

- The Florida Department of Corrections
- The Circuit Court of Florida, Pinellas County
- The Florida Department of Law Enforcement
- The Legal Aid Society, Dade County
- The Florida Department of Children and Families
- The Florida Department of Juvenile Justice

Additionally, supplemental interviews were conducted with:

- The Florida Association of Court Clerks and Comptroller
- The Florida Guardian Ad Litem Program

The surveys and the supplemental interviews have provided information that largely confirms and amplifies the key findings developed in the course of the stakeholder interviews, as well as information regarding planned technology initiatives and directions. While not all of the surveys were returned for analysis, we do not feel that that absence of that agency-specific information would have changed our recommendations. Neither would it have changed our findings, which indicated that paper is the lowest common denominator in the information exchange, nor that there is no "champion" for the governance of this community of interest. Nonetheless, the survey data that was provided to us provides a clearer picture of the technology environments supporting the legal needs of children in the state. We expect that the additional survey

information, which we did not receive, would have reflected a similar environment to that which we assessed in that the environments maintain disparate systems, they are internally focused, and have no plans for sharing. Our recommendations include the further gathering of data, using a tool very similar to our survey instrument, under the direction of a governance group and within the framework of a strategic plan.

Organizational Assessment

The respondents provided a variety of information regarding work units within their organization who are involved in some way in the processing of information related to the legal needs of children. Figure 4, Summary of Survey Results – Organizations, itemizes the responses.

Figure 4: Summary of Survey Results - Organizations

Organization / Agency	Work Units
Circuit Court, Pinellas County	<ul style="list-style-type: none"> • Judges • General Master • Hearing Officer • Guardian Ad Litem • Mediation • Case Managers
Florida Department of Law Enforcement	<ul style="list-style-type: none"> • Missing Children's Information Clearinghouse • Florida Crime Information Center • User Services Bureau, Criminal Justice Information Services • Crimes Against Children, Investigations and Forensics
Legal Aid Society, Dade County	<ul style="list-style-type: none"> • Various
Florida Department of Children & Families	<ul style="list-style-type: none"> • Not Available
Florida Department of Corrections	<ul style="list-style-type: none"> • Classification / Institutions • Community Corrections
Florida Department of Juvenile Justice	<ul style="list-style-type: none"> • Residential • Probation • Detention

Although the information provided by the respondents does not permit statistical comparisons, all of the work units identified are dependent in some way on the manual transmission of information via forms. In particular, many critical items of information such as Pre-Disposition Reports (PDR), Sentencing Documents, Inmate Files, Court Files, Guardian Ad Litem and Mediation Reports, Orders and Recommendations, and Outcome Reports have been reported as

being manual. While the limited scope of the survey may not fully represent the statewide handling of information related to the legal needs of children, it certainly suggests that the absence of automation in many organizations could well be the single most critical barrier to improved support.

Technical Assessment

The technical information gathered through the survey graphically illustrated the wide range of automation available from State agencies that are generally well automated to local agencies and organizations, such as the Legal Aid Society in Dade County, that have no automation at all to support the legal needs of children. One of the consequences of this “gap” in automation is that even agencies, such as the Florida Department of Law Enforcement, that support significant technology environments must continue to accept and process information provided to them via paper. Other organizations share this dilemma. The Guardian Ad Litem Program in the 11th Circuit, for example, receives paper copies of petitions filed by the Florida Department of Children and Families and of the case files from the Court. Working from these paper copies, they enter information into their own database and create word processing documents.

The situation of the Guardian Ad Litem Program in the 11th Circuit illustrates the problems related to the scalability of solutions and to the accessibility of information. The National Guardian Ad Litem Program has developed the Court Appointed Special Advocate (CASA) System, and while this system has worked well in mid-size programs in the State, it has not worked for the 11th Circuit. The Guardian Ad Litem in the 11th Circuit also has access to information stored in the FPSS system supported by the Florida Department of Children and Families, but must physically walk over to their offices to use the system. The Guardian Ad Litem Program in the 11th Circuit also illustrates the problems presented by the need to use multiple channels to obtain information since they use the telephone to obtain information from the Florida Department of Children and Families regarding the present location of children.

Figure 5: Summary of Survey Results – Information Systems, provides a very high-level snapshot of the technology environments that were identified in the survey. For each of the respondents we have listed the information systems that they identified, whether the system was custom developed or was purchased, the year it was implemented, whether a data dictionary is available, whether there is a project presently underway to facilitate the exchange of information between the system and other systems, and the maturity of the system.

Figure 5: Summary of Survey Results – Information Systems

Agency / Information System	Package (P) or Custom (C)	Year Implemented	Data Dictionary Available (Y/N)?	Current Project to Share Information (Y/N)?	System is in Development (D), Mature (M), or Stated for Replacement (R)
Florida Department of Corrections					
• QBIS	C	1973	Y	Y	R
Circuit Court of Florida, Pinellas	None				
Florida Department of Law Enforcement					
• Florida Crime Information Center (FCIC)	C	1999	Y	N	M
• Computerized Criminal History (CCH)	C	1971	Y	N	R
• Missing Children Information Clearinghouse (MCIC)	C	1996	N	N	Y
• Automated Investigation Management System (AIMS)	C	1999	N	N	R
Dade County Legal Aid	None				
Florida Department of Children & Families					
• Interim Child Welfare Information System (ICWSIS)	C	1990	Y	N	R
• HomeSafenet (HSn)	C	1999	Y	N	D
• Initial Child Safety Assessment	C	1999	N	N	R
• Adoption Exchange System (AES)	C	1998	N	N	R
• Mental Health Data Warehouse	C	1990's	Y	N	M
• Substance Abuse Data Warehouse	C	1990's	Y	N	M
• Florida On-line Recipient Integrated Data Access (FLORIDA)	C	1990	Y	N	M
• Allocation, Budget & Contract Control (ABC)	C	1992	Y	N	R
Guardian Ad Litem (GAL) National Program					
• Court Appointed Special Advocate (CASA) System	C				M
• GAL Data Base System	C				M
Florida Association of Court Clerks					
(1) Case Management Information System (CMIS)					M
(2) Offender Based Transaction System (OBTS) (Criminal Cases)					M
(3) Traffic Citation Accounting and Transmission System (TCATS)					M
(4) Child Support Payment Tracking (CLERC)					M
(5) Clerk of Court Information System (CCIS)					D
Florida Department of Juvenile Justice					
Juvenile Justice Information System (JJIS) and CJ-Net	C	1999	Y	Y	M

Of the twenty-two information systems identified in the survey, 12 (just over half) are reported as being mature, that is, the information system is in production with no immediate plans for its replacement. Eight, or better than one-third, of the information systems are slated for replacement, some sooner than others. Two of the information systems are in development. Although it is encouraging that half of the information systems reported to have data dictionaries (a document that will greatly assist in facilitating the exchange of information), it was discouraging to note that these tend to be the older, rather than the newer, information systems. Once more detailed county-by-county information can be obtained through the Florida Association of Court Clerks, the Bar Commission on the Legal Needs of Children will have a complete picture of statewide automation.

A number of highly promising and innovative technical initiatives underway to improve the availability and accuracy of information were identified through the survey. Among these are:

- (1) The Clerk of Court Information System (CICS) being developed by the Florida Association of Court Clerks. This far-reaching project envisions the coupling of the existing case management solutions (child support, official records, traffic, criminal, civil/probate, and juvenile) in a County to a statewide data warehouse. Access will be provided to the warehouse through a secured internet website (IPAS) and the CJ-Net system supported by the Florida Department of Juvenile Justice. It is also planned that the CICS system will be able to interface with a variety of external information systems;
- (2) An electronic interface for the transfer of commitment information from the Courts to the Florida Department of Corrections;
- (3) The Florida Department of Law Enforcement is working with other government entities to expand the use of "live scan" fingerprint capture and electronic submission for criminal history background screening;
- (4) The HomeSafenet system being developed by the Florida Department of Children and Families will combine the functionality of several separate systems being used by the organization and provide improved access and reporting; and

- (5) The Florida Department of Children and Families is also developing a front-end, or common user interface, Unity One, that will provide common access to a number of disparate systems.

RECOMMENDATIONS

There is an immediate need for the development of a Strategic Plan to identify, assess and prioritize the actions that the "Community of Interest" should take to facilitate improvements in the automated exchange of information regarding the legal needs of children. Using the conceptual framework provided early in the report, we have mapped our recommendations to each component. The most critical, structural issues that should be addressed by the Strategic Plan include:

(1) OUTCOME

A clear statement of the vision, objectives, and priorities for improvements in the automated processing of information related to the legal needs of children should be developed. Since support for the legal needs of children is provided by a wide array of private and public organizations including all branches of the government, it is difficult to sponsor, promote, and facilitate the adoption of an over-arching vision with associated objectives and priorities. This may be an instance where taking a customer focus, rather than a service provider focus, could provide an opportunity for those who represent the legal needs of children to help focus attention on a holistic approach to support the legal needs of Florida's children. Although the Bar should consider supporting the concept of a long-term migration to highly common, shared sources of information, the most expedient approach is to move towards the desired vision in a number of well-planned steps. Each step should provide the foundation for the next as well as deliver some immediate benefits to the participating agencies. In this way, support and funding for the long-term can be sustained and justified through incremental improvements in the process.

(2) BARRIERS

A governance structure should be implemented to facilitate a continuing dialog regarding strategies to address the immediate and long-term opportunities to realize

improvements in the automated support for the legal needs of children or to advocate for and sponsor the prioritization and funding of key technology initiatives. Many of the methodological approaches being taken to sponsor statewide improvements in the integration of justice information in general (including the formation of multi-agency and multi-jurisdiction steering committees at the State level) could be adopted for children. The governance charter of role and responsibility will include the empowerment to address Key Issues.

(3) KEY ISSUES

The findings of the survey from the sample population of organizations requires additional analysis and involvement by the stakeholders to move the understanding of the environment from a “snapshot” to a “portrait”. The survey tool should continue to be used, but in a format refined by the stakeholders under the direction of the governance body.

(4) STAKEHOLDERS

A charter of stakeholder roles and responsibilities should be developed as an adjunct advisory resource to the governance body. The Supreme Court and the Florida Association of Court Clerks and Comptroller need to be major participants in this endeavor based on their significant roles in the workflow systems and control of court records.

(5) DRIVERS

These recommendations are essential for not only getting to root cause, but for identifying systemic root solutions. The combination of the steps we have suggested need to sustain a focus on their collective approach for affecting the drivers of the environment. As such, action plans at each step must include a component which not only recognizes the need for change in each parochial process, but the need for transformation within the institutional statutes, charters, and policies as well.



The Florida Bar

Commission on the Legal Needs of Children

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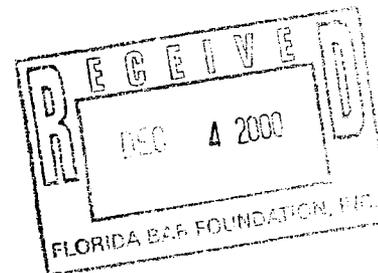
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November 15, 2000



Ms. Jane E. Curran, Executive Director
Florida Bar Foundation
Post Office Box 1553
Orlando, Florida 32802-1553
Via Fax: 407-839-0287

Dear Jane:

The Florida Bar Commission on the Legal Needs of Children requests consideration of the enclosed Grant Proposal and Application for an AOJ grant from The Florida Bar Foundation in the amount of \$25,000. If awarded, the funds would support a state of technology report of all judicial circuits and relevant stakeholders and the design, development and agreement regarding a plan of implementation of integrated information management systems to ensure that judges, attorneys, advocates, educators, parents and others have access to the appropriate information regarding individual children and their cases. Addressing this need is the Commission's second highest priority. Further, the grant would directly make a measurable difference in The Florida Bar Foundation's first and second area of AOJ funding i.e. A.) Improvement in the operation and management of the court and B.) Improvement and reform of the criminal, civil, and juvenile justice systems.

The Commission believes that with this Foundation funding, it can secure advance agreement and adoption of a plan for implementation of integrated data and electronic linkages between state agencies and relevant courts, including agreements regarding standards between clerk of courts offices.

The Commission appreciates the Foundation's consideration of support and would consider it an honor to partner with the Foundation to advance this critical AOJ management information system issue.

If the Commission may provide any additional information prior to the upcoming AOJ grant committee meeting, please let us know.

Sincerely,

Judge Sandy Karlan, Chair
Florida Bar Commission on the Legal Needs of Children

RSK:rk:cs

cc: John F. Harkness
Camille Stawicki
Pat O'Connell
Rhoda Kibler

THE FLORIDA BAR FOUNDATION
INTEREST ON TRUST ACCOUNTS PROGRAM
IMPROVEMENTS IN THE ADMINISTRATION OF JUSTICE

GRANT APPLICATION FORM

Name of Applicant Organization The Florida Bar

Chief Executive Officer John F. Harkness, Jr.

Telephone (850)561-5600 Fax (850)561-5826 E-mail jharkness@flabar.org

Address 650 Apalachee Parkway

City Tallahassee County Leon Zip 32399-2300

Project Name Florida Bar Commission on the Legal Needs of Children
Technology Subcommittee / AOJ Grant

AOJ Area of Funding A.) Improvement in the operation and management of the court system.
B.) Improvement and reform of the criminal, civil, and juvenile justice systems.

Amount Requested \$25,000.00 Project Duration N/A

Payable To The Florida Bar Attention Of John F. Harkness, Jr.

Address 650 Apalachee Parkway

City Tallahassee, Florida Zip 32399-3400

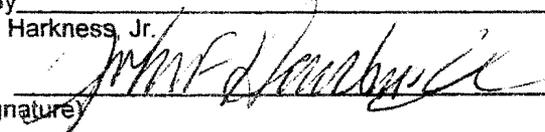
Tax Exempt Eligibility _____ (Attach copy of IRS exemption letters, or
a statement evidencing the charitable purposes of the Project/Organization)

Information Contact Rhoda Smith Kibler Title Staff Director of FBCLNC *

*The Florida Bar Commission on the
Legal Needs of Children

Telephone (850)561-5809 Fax (850)561-5818 E-mail rkibler@flabar.org

Submitted By John F. Harkness, Jr. Title Executive Director, The Florida Bar

(Signature)  Date 11-17-00

If you have been asked to submit a concept paper, please do not submit a Grant Application Form and proposal until you receive further instructions from Foundation staff. If you have been asked to complete a grant proposal, please submit: (1) a Grant Application Form; (2) **two copies** of your Grant Proposal (see Grant Proposal Format); and (3) your most recent audited financial statements, including your audit's annual "management" letter. All proposals should be on 8 1/2" x 11" paper and mailed to The Florida Bar Foundation, Attention: Jane Elizabeth Curran, Esquire, P.O. Box 1553, Orlando, Florida 32802-1553. Approval of any grant application will include a provision that the grantee provide The Florida Bar Foundation with progress reports concerning the project/organization for which the grant is made.

**THE FLORIDA BAR COMMISSION
ON THE
LEGAL NEEDS OF CHILDREN**

**INTEGRATED MANAGEMENT INFORMATION SYSTEMS TO IMPROVE
ACCESS TO THE APPROPRIATE INFORMATION REGARDING INDIVIDUAL
CHILDREN AND THEIR CASES**

GRANT PROPOSAL

I. PROPOSAL SUMMARY

- A. Created by Former Bar President Edith Osman, The Florida Bar Commission on the Legal Needs of Children is dedicated to providing a comprehensive review of our children's interaction with the court system in all divisions. The Commission has spent its first year studying the system, identifying the needs, and delineating areas for improvement. Currently, the group is considering multiple issues including representation, standing, and competency of children. The Commission is also attempting to identify the information sharing needs of the court divisions that stand in the way of appropriate seamless electronic communication within the system. The Commission's report will include recommendations for the judicial, legislative, and executive branches and The Florida Bar.

The Technology Subcommittee is charged with creating a snapshot of the current information technology enterprise supporting the interaction of children with the court system. Additionally, the Commission is prepared to provide a forum for system stakeholders to work together to identify areas for improvement that will

allow Florida to better serve its children.

- B. The Florida Bar Commission on the Legal Needs of Children will provide a forum for pertinent state agencies and participants in the judicial system to reach preliminary agreement as to systems design and to facilitate the integration of essential information systems to ensure that judges, attorneys, advocates, educators, parents and others have access to the appropriate information regarding individual children and their cases. (This effort will by necessity address interagency collaboration as well.)

Participants will also include representatives of the clerk of the courts and other stakeholders to reach consensus on standards, formats, and definitions necessary for information system integration. The Florida Bar Commission on the Legal Needs of Children will facilitate meetings, secure information technology experts, and with consultants, prepare resultant recommendations. The Commission will utilize the services of an information technology consulting group to be paid with the IOTA grant funds. The consulting group will be one already holding a state contract and in the process of reviewing the state of information technology in Florida. This group will provide a pre forum report and snapshot of our current technology system by determining what each circuit and stakeholder agency is doing and describing, technologically, how far circuits and stakeholders are from an ideal seamless information technology system.

The problem of the sheer numbers and multiplicity of family cases and the resultant and compounded problems caused by the inadequacy of information sharing between courts and agencies is a much discussed and analyzed problem. A particularly succinct ABA Commentary is excerpted in pertinent part below:

“Throughout our nation, people are increasingly concerned about the multitude of problems within families — domestic violence, substance abuse, abuse and neglect, divorce, mental illness, and violence — which often leads to greater problems in the community.

A few statistics dramatize the importance of the problem. In 1994 domestic relations cases ... filed in state courts, comprised 25% of civil filings... the fastest growing segment of state civil court caseloads. Cases included divorce, support/custody, domestic violence, paternity, the Uniform Reciprocal Enforcement of Support Act (URESA), adoption, and miscellaneous matters. An additional, 1.9 million juvenile cases were filed in state courts including juvenile delinquency, truancy, and abuse and neglect.

While the sheer numbers of these cases is a problem in and of itself, additional problems exist at the state level. For one, although courts are becoming computerized, different districts or jurisdictions are not necessarily able to take advantage of the technology to share information and cross

reference cases. Some domestic relations, substance abuse, and juvenile matters involving the same family are heard in different courts by different judges. As a result, family members must traipse to numerous hearings in different locations while conflicting court orders sometimes arise and incomplete information impedes informed decision-making.

Key issues involving children, families, marriages, and other relationships often end up as a proliferation of cases and controversies in our justice system. Families are often frustrated and hurt by the bewildering array of courts and social service agencies that are typically involved in family matters. Services are fragmented: the same family may have caseworkers from a child welfare agency, a school, a juvenile delinquency program, and a domestic violence advocate. Lack of communication between courts and social service agencies results in unnecessary delay, duplication, and contradictory rulings and recommendations."

The Commission on the Legal Needs of Children voted unanimously to support the work of The Family Court Steering Committee. (Reference Florida Bar News re June 9, 2000 meeting at Appendix.) The report titled "A Model Family Court, Recommendations and Commentary," issued recently, provides a timely impetus and momentum to overcome interagency and court integrated management information barriers in Florida.

In regard to technology, the Family Court Steering Committee recommended and commented in pertinent part:

"The family court's need for technology is a priority. Without appropriate technology, the court cannot obtain the information necessary to manage and coordinate cases effectively. Currently, clerical staff employed by clerks of court, track and cross-reference cases manually. This is a time consuming process. It is difficult for them to keep up with the files and to determine when cases involving the same family members are pending in different divisions. Technology is available to automate these tasks. Ideally, the system should be integrated statewide with law enforcement agencies, the Department of Children and Families, the Department of Juvenile Justice, and any other agencies that interact with the family court on a regular basis."

It is contemplated that the Commission will provide peer leadership, and with the expert services of grant-provided information technology consultants, will serve as a catalyst to enhance information technology court and interagency collaboration and integration as is necessary and desirable for any unified family court.

It is contemplated that Florida Bar Foundation Administration of Justice grant funds will be used to leverage existing state information technology consulting infrastructure on standards and technical aspects.

Further, the IOTA grant monies will be leveraged by the funds and efforts of like minded groups and stake holders. Specifically, The Florida Bar Commission on the Legal Needs of Children will work with substantive law groups within the organized Bar, Florida Supreme Court and Florida Supreme Court's Family Court Steering Committee and recently ordered Children's Court Improvement Project, other court initiatives, The Office of the State Courts Administrator, (hereinafter OSCA) and the Florida Association of Court Clerks as well as targeted state agencies, (including law enforcement agencies, as may be practicable)

- C. Last three paragraphs of **I. B** (immediately above) are incorporated herein by reference.

II. PROJECT DESCRIPTION AND IMPLEMENTATION STRATEGY

- A. Target Audience: N/A except as to stakeholders and participants described elsewhere in this Grant Proposal. In short, the audience is comprised of stakeholders and therefore forum participants. Circuit Courts, and various stakeholder agencies i.e. The Florida Department of Children and Families, (hereinafter DCF), the Florida Department of Juvenile Justice, (hereinafter DJJ), and other groups working on like minded court improvement projects, Office of State Courts Administrator, (OSCA) and the Supreme Court's Family Court Steering Committee and Children's Court Improvement Project. The target audience may be broadened, as necessity dictates, in regard to any recommendations to the judicial, legislative and executive branches

and The Florida Bar.

- B. An ideal court information technology system is one which enables a court to track families through the state system, for example, to be able to determine whether a family had been involved in domestic violence, dependency or delinquency cases. An ideal system enables different districts or jurisdictions to take advantage of technology to share information and cross reference cases. The ideal system will be integrated statewide with DCF, and DJJ, and any other agencies interacting regularly with the family court, (including law enforcement agencies as may be practicable), Thus, an ideal system enables courts to make decisions based on more complete information and to treat families without having conflicting orders and duplicative hearings. At this time the technology is not in use in the court system and interagency to allow retrieval of this information.
- C. 1. Organize meeting with Court Administrators Association for initial discussion regarding establishing a technology based communication system allowing stakeholders to better address the legal needs of children. Status: The initial meeting held the week of November 13, 2000 was positive in this regard.
2. Meet with representatives of Technology Consulting Group, to determine feasibility of contracting for analysis of existing technology based communications system; providing blueprint for creating system that would

provide communications to support legal needs of children; and serving as facilitator among stakeholders. Status: Preliminary discussions are positive in this regard.

3. Meet with State Technology Office staff to determine how this technology initiative may fit into the Governor's long term plan for e-government and enlist their support for this project. Status: All initial indications are positive in this regard in that our project "... is right in line with State of Florida information technology objectives."
4. Work with OSCA staff, utilize survey protocol prepared by OSCA and survey results due back to OSCA at the end of November (survey results will provide a snapshot of the state of technology in all State Court Administrator Offices in Florida). Status: Communication and collaboration are positive in this regard. The Technology Subcommittee contemplates continued collaboration with OSCA to advance our mutual goal of an improved information infrastructure for a Unified Family Court.
5. Make an assessment of the state of technology and on what each circuit and relevant agency is doing based on review of survey results or similar reliable technical information.

6. Based on review and analysis of current technology, make a technical assessment of how far away stakeholders are from the ideal seamless information technology system.
7. Prepare an aspirational Technical Plan and Proposal for all stakeholders towards the ideal seamless information system.
8. Contracted Consultant will facilitate round table discussion/s with all stakeholders i.e., Clerks (of the Courts), Bar, DJJ, DCF, OSCA, etc., and facilitate agreement among stakeholders regarding an approach to implementation.

III. PROJECT EVALUATION

- A. Criteria which will be used to determine whether the project is successful will be both subjective and objective. All participants will complete a subjective and objective snapshot at the initiation of the project to be funded and at the end of the grant funding period.

The survey will be drafted by the IT consulting firm, selected by the Technology Subcommittee, building upon the OSCA technology survey and an organization with particular expertise in program evaluation. The group will work in collaboration

with The Florida Bar and OSCA contingencies involved in court improvement projects.

- B. The Project contemplates an initial report which collects all available information regarding the current state of information technology from the Office of the State Courts Administrator (survey information due back to OSCA by the end of November) and other targeted stakeholder agencies by mid-January. The Commission on the Legal Needs of Children will prepare a report on this comprehensive information on the current state of technology of stakeholders and stakeholder barriers, if any. Further the Commission, through its consulting contract, will produce dynamic meeting materials facilitating comprehension and agreement regarding design, standards, implementation, price, guidelines and timelines for the forum. The materials and forum will be designed to facilitate circuit, interdepartmental and interagency collaboration towards the "ideal" information management system.

The last two paragraphs of **I. B.** (reproduced in relevant part immediately below) are incorporated herein by reference.

It is contemplated that IOTA grant funds will be used to add on services to The Technology Group's pre-existing information technology contracts with the State of Florida and other stakeholders. The grant funds will be used to augment pre-existing

contracts in order to leverage existing state information technology consulting infrastructure on standards and technical aspects.

Further, the IOTA grant monies will be leveraged by the funds and efforts of like minded groups and stakeholders. Specifically, The Florida Bar Commission on the Legal Needs of Children will work with substantive law groups within the organized Bar, Florida Supreme Court, Florida Supreme Court's Family Court Steering Committee and Children's Court Improvement Project, other court initiatives, OSCA and the Florida Association of Court Clerks as well as DCF, DJJ and other stakeholder state agencies, (including law enforcement agencies as may be practicable).

- C. Dissemination of information and distribution of key materials to stakeholders is inherent in the project design as discussed in greater detail elsewhere in this Grant Proposal and Application.

IV. Attachments

- A. The entire Florida Bar Foundation Administration of Justice Grant (AOJ Grant), if awarded, will be used to build upon existing state held Information Technology Contracts, thereby affording benefit of information consulting far greater than the AOJ funds would otherwise afford.

The Commission on the Legal Needs of Children will collect survey data, report on pre- and post-forum technology capability and facilitate agreement between stakeholders towards a seamless system using the entire \$ 25,000 AOJ Grant for the above described consulting fee. (The total allocation of grant funds will be applied to payment for the Information Technology Consultant's fee) . The grant funds will be augmented by The Florida Bar Commission on the Legal Needs of Children on an as needed basis, for example, with dissemination of information and stakeholder communication.

Re: The Term of Project

This project will be substantially completed by mid-May of 2001 and, in any event, no later than within two months of the end of the 2000-2001 Legislative Session.



The Florida Bar

Commission on the Legal Needs of Children

Chair

Hon. Sandy E. Karlan

April 22, 2002

Vice Chairs

Gerald I. Kornreich, Esq.
Sharon L. Langer, Esq.

Supreme Court Liaison
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Lois Wexler
Gary A. Woodfield, Esq.

Staff Director

Rhoda Smith Kibler, Esq.
650 Apalachee Parkway
Tallahassee, FL
32399-2300
(850) 561-5800
FAX (850) 561-5818
rkibler@flabar.org

Mr. Mike Love
CIO, State Court's Administrator's Office
Florida Supreme Court
500 S. Duval Street
Tallahassee, Florida 32399-1900

Dear Mr. Love:

Gartner, an independent technology consulting and advisory services firm, has been engaged by the Florida Bar Commission on the Legal Needs of Children to create a "snapshot" of the current information technology environment supporting the interaction of children within the court system. This is intended to be a first step in developing a "comprehensive" review of our children's interaction with the Court system including the Courts and other public and private organizations. The Commission is also attempting to identify the information sharing needs of the stakeholders that may be part of effective seamless electronic communication within the system. It is hoped that this work will assist all stakeholders in coordinating their efforts on behalf of children.

As part of this effort, Gartner has developed the attached surveys for organizations that are involved in the judicial process on behalf of children. The objectives of the surveys are to develop a "snapshot" of:

The general nature of the types of information regarding children, the sources of the information, and how it is obtained and stored by the various work units within your organization and exchanged with other organizations.

The computer technologies that are being used in each organization.

The changes that are currently being considered or developed by stakeholders.

Given the size and diversity of the state, it is not feasible to collect, review, and collate information regarding every information system in Florida, or to chart every local variation. As a result, we are attempting to initially focus on a representative survey of the most critical stakeholders and information systems that support children's interaction with the Court system.

Attached are two survey forms and a set of instructions for your organization. We have tried to make the forms as easy to complete as possible; however, should you experience any difficulties or have any questions, please contact Ms. Verly Brown, Gartner Consulting, at 407-893-5933, or by email to verly.brown@gartner.com. Ms. Brown will refer your questions for immediate follow-up. The summarized results of the survey will be made available to all organizations responding to the survey. We are respectfully requesting that you complete the surveys and return them by May 10, 2002 to Ms. Rhoda Kibler, Staff Director, FL Bar Commission on the Legal Needs of Children, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399, rkibler@flabar.org.

Thank you in advance for your assistance and cooperation, and for helping us better meet the legal needs of Florida's children.

Thank you,


The Honorable Sandy Karlan

SK/rk:dsm3

Attachments

Florida Bar Commission on the Legal Needs of Children

Survey Recipients (as compiled by the Commission Subcommittee):

Mr. Roger Alderman, Executive Director, Florida Association of Court Clerks, 3544 Maclay Boulevard, Tallahassee, Florida 32312 (850-921-0808)
thompson@flclerks.com

Mr. Wayne Blanton, Florida School Boards Association, 203 South Monroe Street, Tallahassee, Florida 32301-1823 (850-224-5304)

Ms. Joni Goodman, Guardian Ad Litem Program, 3302 N.W. 27th Avenue, Miami, Florida 33142-5824 (305-638-6861)
jgoodman@j11.flcourts.org

Ms. Sharon Lynne Langer, Vice Chair, Dade County Legal Aid Society, 123 N.W. 1st Avenue, Suite 117, Miami, Florida 33128-1836 (305-579-5733)
slanger@dadelegalaid.org

The Honorable Richard Fred Lewis, Supreme Court Liaison, The Supreme Court of Florida, 500 S. Duval Street, Tallahassee, Florida 32399-6556 (850-488-0007)
poseyg@flcourts.org

Mr. Mike Love, CIO, State Court's Administrator's Office, Florida Supreme Court, 500 S. Duval Street, Tallahassee, Florida 32399-1900 (850-488-6568)
lovem@flcourts.org

Mr. Carlos Jesus Martinez, Public Defender's Office, 11th Judicial Circuit, 1320 N.W. 14th Street, Miami, Florida 33125-1609 (305-545-1600)
cmartinez@pdmiami.com

Mr. Scott W. McPherson, CTO, Department of Corrections, Public Safety Knowledge Group, 2601 Blairstone Road, Tallahassee, Florida 32399-2500 (850-410-4740)
mcperson.scott@mail.dc.state.fl.us

Mr. Randy H. Niewenhous III, CIO, Florida Department of Children and Families, 1940 North Monroe Street, Tallahassee, Florida 32399 (850-922-5404)
randy_niewenhous@dcf.state.fl.us

Mr. Robert N. Sechen, General Counsel, Florida Department of Juvenile Justice, 2737 Centerview Drive, Tallahassee, Florida 32399-0999 (850-921-4129)
robert.sechen@djj.state.fl.us

The Honorable Lynn Tepper, Pasco County Courthouse, 38053 Live Oak Avenue, Room 106C,
Dade City, Florida 33523-3819 (352-521-4370)
ltepper@co.pinellas.fl.us

Ms. Donna M. Uzzell, Director, Criminal Justice Information System Program, Florida Department of
Law Enforcement, Post Office Box 1489, Tallahassee, Florida 32302 (850-410-7100)
donnauzzell@fdle.state.fl.us

The Honorable Martha Curtis Warner, 4th District Court of Appeals, Post Office Box 3315, West
Palm Beach, Florida 33402-3315 (561-242-2000)
warnerm@flcourts.org

SURVEY INSTRUCTIONS

We are providing two survey forms, one entitled "Organizational Information Survey", and the other entitled "Information Systems Survey." Each survey form has a separate function and we have tried to make them as self-explanatory as possible.

❑ **Organizational Information Survey:**

The Organization / Agency Summary worksheet is intended to capture information regarding your organization's role with regard to the legal needs of children and the information that it exchanges with other organizations. This can be information that is provided to you, and information that you provide to others. Often the patterns of interaction can be very complex.

We are not looking for a detailed itemization of each and every time that information is exchanged, rather, the purposes of this study are best served through a summarized, high-level and general view of how information is exchanged and who is involved in the exchange.

❑ **Information Systems Survey:**

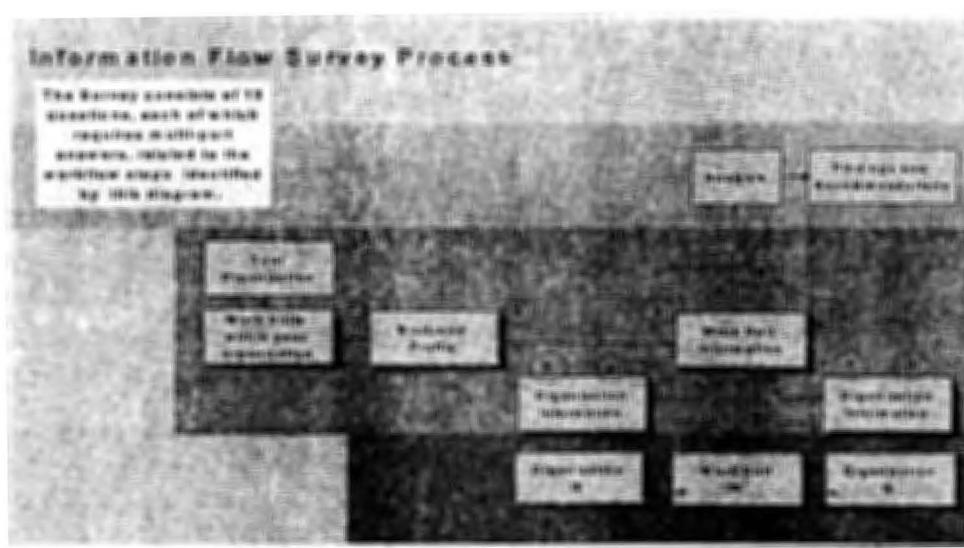
We are also asking that you to identify the information systems (if any) that are used to facilitate the exchange of this information regarding the legal needs of children. Again, we do not need information regarding every computer system used by your organization, only the most significant ones.

For each of the computer systems that you identified on the Organizational Information Survey, we would like you to provide some additional, technical information in the Information Systems Survey. You may need a member of your technical staff to help in the completion of this form.

Please return the completed survey by May 10, 2001. Thank you again for your time and consideration in assisting the Florida Bar to better support the legal needs of children.

Survey Process - Florida Bar Commission for the Legal Needs of Children

We are interested in identifying, mapping and quantifying, to the extent practical through a limited survey process, the flow of information among a variety of agencies, organizations, and third-party service providers, which pertains to the legal needs of children. The information we are seeking will help us understand the role of your organization in addressing and processing the needs of children who enter the legal system. In this context, children (persons under the age of 18) may be directly or indirectly considered as "clients" by your organization across a spectrum of roles (i.e. parties affected by the legal issues of others, victims, defendants, witnesses, etc.).



The questions below are designed to assist us in identifying "information" and the flow of information among the community of stakeholders, as it directly or indirectly affects legal issues pertaining to children. The information relating to children refers to **any form, report, record your organization creates, receives from others, stores, provides to other organizations or shares with other organizations, from a manual or automated file system.**

In this survey, for the purpose of consistency, we use the term "organization" to refer to any distinct entity, operating within the state of Florida, which might otherwise be considered a public or private agency, department, division, bureau, firm or company. Further, we use the term "work unit" to refer to any distinct sub-division within an organization. Some organizations may have only one work unit whose work entails legal issues related to children; others may have multiple work units.

Organizational Information Survey

Organization Name:
Prepared by:
Title:
Date:
Telephone Number:
Fax Number:
e-Mail Address:

1. Please identify the Work Unit(s) within your organization which fit the profile for the information processing, as described above (add Work Units to the list if necessary):
 - 1A.
 - 1B.
 - 1C.

2. For each Work Unit identified in Item #1, please provide your best estimate of the total percentage of the Work Unit's effort that is focused on working with children. (The Work Units described above in Item #1 are referenced below.)
 - 1A. %
 - 1B. %
 - 1C. %

3. If the information is available and to the extent practical, please provide the data or your best estimate of the volumes and percentages of the work that is processed or managed around the needs or concerns of children for each of the following categories:

	1A	1B	1C	1D	1E	1F
Total number of Work Unit staff						
Percentage who work with children						
Total number of clients/cases						
Percentage of clients/cases involving children						
Total number of intake cases per year						
Percentage of total intake cases involving children						

4. With regard to each of your organization's Work Units identified above, Item #1, please identify:

- A. the names/numbers of the forms or reports used by the Work Unit,
- B. please indicate whether the information is handled through Manual (paper) or Automated (electronic) processes (M or A)

Work Unit	Name and/or Number of Form or Report	M or A
1A		
1B		
1C		

5. With regard to the first Work Unit identified above as 1A, please identify:

- A. each organization that provides information to 1A,
- B. the names/numbers of the forms or reports, as applicable and,
- C. please indicate whether the information is provided through Manual (paper) or Automated (electronic) process (M or A)

Name of Organization	Name/Number of Form/Report	M or A

6. With regard to each subsequent Work Unit beginning with 1B, please identify each organization that provides information to 1B:

Name of Organization	Name/Number of Form/Report	M or A

7. With regard to the first Work Unit identified above as 1A, please identify:
 A. each organization to which 1A provides information,
 B. the names/numbers of the forms or reports, as applicable and,
 C. please indicate whether the information is provided through Manual (paper) or Automated (electronic) process (M or A)

Name of Organization	Name/Number of Form/Report	M or A

8. With regard to each subsequent Work Unit beginning with 1B, please identify each organization to which 1A provides information,:

Name of Organization	Name/Number of Form/Report	M or A

9. With regard to information accessed by each of your work units through an on-line system, which is owned by your organization, please identify the name or acronym of the information system used by each work unit (add work units to the list, if needed):

9A. Work Unit (1A) uses:

9B. Work Unit (1B) uses:

10. With regard to information provided to your Work Units, through an on-line system, which is owned by another organization, please identify the name of the organization, and the name or acronym of the information system used by each Work Unit (add Work Units to the list, if needed):

10A. Work Unit (1A) has access to:
system owned by:
and uses:

10B. Work Unit (1B) has access to:
system owned by:
and uses:

11. With regard to information provided by your Work Units, through an on-line system, to another organization, please identify the name or acronym of the information system used by each Work Unit to generate the information, and the name of the organization that has access to the system (add Work Units to the list, if needed):

10A. Work Unit (1A) uses this system:
and the information is available on-line to:

10B. Work Unit (1B) uses this system:
and the information is available on-line to:

12. Please feel free to provide a general comment about your perspective of the impact of the information you process and maintain as it may relate to legal issues affecting children for whom your work organization is responsible.
13. Please identify any current projects or initiatives, which your organization believes will have an impact on the legal needs of children as described in this survey.
14. Please identify any issues or concerns that your organization has expressed or needs to address with regard to the processing of information related to children.
15. Please feel free to provide any recommendations, which may be helpful to the Florida Bar Commission for Children.

Thank you.

Information Systems Survey

Prepared by:
Date:
Telephone Number:
e-Mail Address or Fax number:

For each of the information systems containing information about children, of which your organization is the proprietor, please provide the following information:

a. Please provide the acronym and name of the information system:	
b. Was the system acquired or custom developed?	
c. If acquired, from what firm / source?	
d. In what year was the system originally acquired or implemented?	
e. How many users are on the system?	
f. Do users in other organizations / agencies access the system?	
g. What type of computer does the system run on (such as a mainframe, departmental computer / server, or PC)?	
h. What operating system (such as MVS, Unix, or Windows) does the computer use? If the system utilizes a client/server architecture, please specify the operating system for each:	
i. Please identify any commercial database software the systems uses (such as DB2, Oracle, Sybase, Access, FoxPro, etc.):	
j. Is there a data dictionary available for the system?	
k. Are you planning to replace the system or presently working on a replacement?	
l. If so, when do you expect the new system to be available for use?	
m. Are you presently working with any other organization(s) for the purpose of extending mutual access to data or sharing infrastructure resources? If so, please describe the initiatives.	

Thank you.

Gartner

**The Florida Bar Commission on the
Legal Needs of Children**

**Preliminary Report:
Assessment of Statewide Opportunities to
Improve the Exchange of Information**

January 9, 2002

Engagement: #220155650

2290 Lucien Way, Suite 300
Maitland, FL 32751



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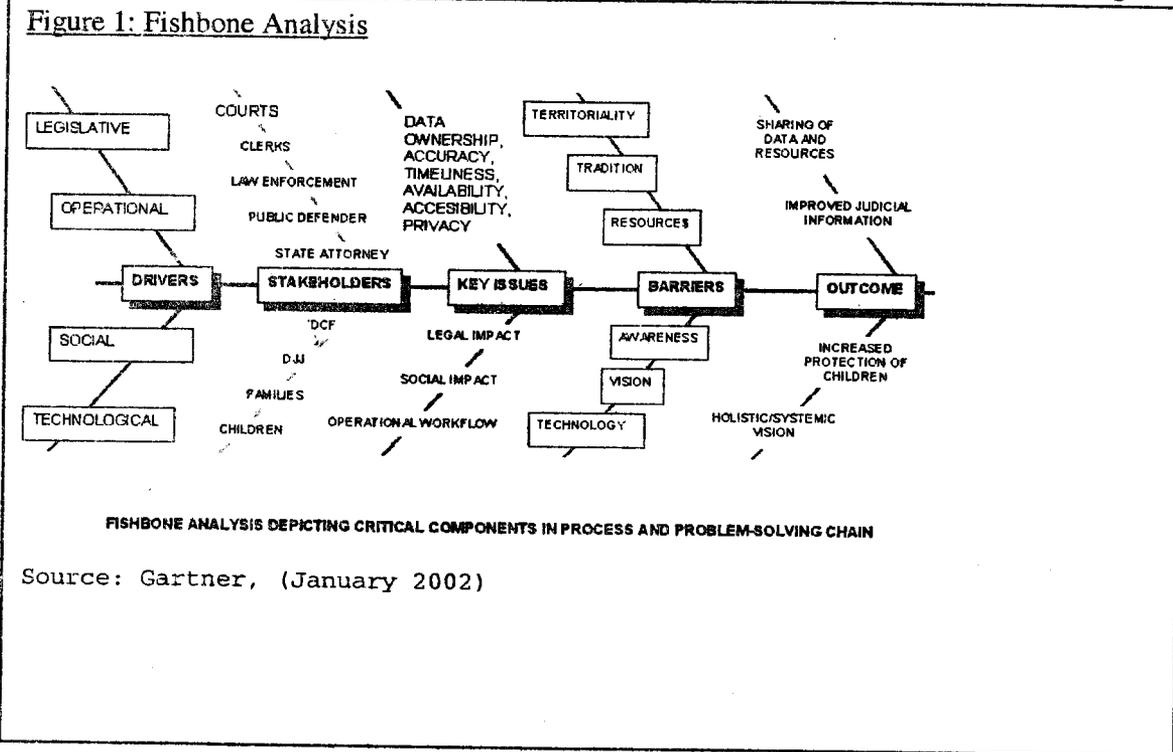
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Introduction

This document, entitled Preliminary Report: Assessment of Statewide Opportunities to Improve the Exchange of Information, has been prepared by Gartner for the Technology Subcommittee of the Florida Bar Commission on the Legal Needs of Children. Pending the completion of a survey of participating organizations, the objectives of this preliminary report are to:

- Review information developed in the course of interviews with key stakeholders
- Present a preliminary assessment of the present environment and provide some insight as to possible further steps that could be taken.

Figure 1: Fishbone Analysis, provides an overview of the conceptual model of the drivers, stakeholders, key issues, barriers, and outcomes involved in improving the exchange of



information about children in Florida’s court systems. The drivers include legislative, operational, social, and technological factors that have combined to significantly raise public expectations regarding the availability, accuracy, and timeliness of information. The stakeholders in the judicial system include elected officials, appointed officials, state agencies, not for profit organizations, volunteer groups, families, and children. The key issues to be addressed by the stakeholders in advancing the benefit of creating systemic solutions include those related to data (ownership, accuracy, timeliness, availability, accessibility, and privacy), legal and social impacts, and constraints imposed by operational workflows. Examples of

barriers, which can impede change within or among organizations, include uncompromising adherence to tradition, a limited interpretation of charter, a parochial vision, and inflexible technology or its deployment. The desired outcome of increased protection of children in the judicial system is a function of improved sharing of information and improved judicial information resulting from a holistic view of the legal environment in meeting the needs of children. Each of these is discussed in more detail below.

Drivers

Irrespective of the quantitative changes in the number of incidents that are committed each year by juveniles or against juveniles or the number of incidents that involve children in some way, there have been changes in the public's expectations of the agencies involved in court processes. Unfortunately, changes in community expectations are not as easily quantified. Nonetheless, community expectations regarding the ability of government to solve problems more effectively through the use of technology are increasing. In part, these expectations are being driven by the public's experience in the use of technology in their everyday lives. The public is already accustomed to the ubiquitous ATM machine and electronic pay-point solutions in all aspects of shopping and commerce. Gartner has projected that the "digital divide" that separates members of the community who have access to the Internet from those who do not, will continue to diminish through 2005. By that time, Gartner projects that approximately 90% of households will have access to some form of Internet access.¹

Irrespective of case load trends, reductions in public sector revenue sources as a result of the domestic and international economies, government managers are faced with finding innovative approaches to handling existing workloads with, at best, the same funding levels as prior years or, at worst, with greatly reduced funding. Government remains largely a paper-driven process and, as we note below, paper is expensive to handle. When the need to handle paper documents is combined with the need to handle the increasing number of documents filed electronically in some form, managing content becomes a highly labor-intensive activity for government. Additionally, the public, children's advocates, and participants in the process are less inclined to accept situations where informed decisions cannot be made due to the failure to effectively integrate information.

Stakeholders

The immediate stakeholders in this community of interest include the Courts, the Court Clerks, law enforcement agencies, Florida Department of Children and Families (DCF), Department Juvenile Justice (DJJ), local resources, families, and children. External stakeholders include elected officials in the legislative and executive branches, schools and educators, and members of the community who have some stake in the juvenile justice process. The range of stakeholders is significant and includes every branch of government, each of which has distinct statutory missions, operational objectives, and value-driven priorities.

¹ Living With the Digital Divide, Research Note EMGV-US-DP-0003, Mark Smolenski, 7 August 2000

Key Issues

The key issues related to improvements in the exchange of information in the court processes affecting children include issues regarding data (ownership, accuracy, timeliness, availability, accessibility, and privacy), legal and social impacts, and constraints imposed by operational workflows. Issues regarding the accuracy, timeliness, availability, and accessibility of information are discussed below. These largely stem from the highly heterogeneous systems utilized by the various participants who receive, create, store or exchange information. The issue regarding ownership is related to the logistics of integration and the formulation of agreements regarding the organization(s) that can update the information and under what circumstances. Privacy primarily relates to the statutory requirements for the protection of information about children from unauthorized access and disclosure. The social and legal impacts of integrating this information need to be identified and planned for as well as the impact that integration may have on operational workflows.

Barriers

The potential barriers to improvements in the exchange of information relevant to the needs of children are related to organizational and individual behaviors (territoriality, tradition), the availability of resources and technology, and strategy (awareness and vision). Of these, the most critical is likely to be strategy. The participants at any given step in the process are likely to be familiar with the organizational and individual behaviors that inhibit cooperation and actions that can be taken to mitigate them since these behaviors also manifest themselves within organizations as well as between organizations. Problems in acquiring sufficient resources are also all too familiar. The activities related to forging and maintaining a common vision of the future as well as developing the plans required for the migration from the present environment to a target environment in a series of steps over time, are less familiar. Additionally, the forging of a common vision is also dependent on the participants being able to overcome behavioral and resource constraints.

The benefits of effective planning for technology initiatives have been demonstrated far less often than the consequences of failing to do so. Gartner published a strategic planning assumption recently that "Through 2005, enterprises that integrate business and IT planning under common strategies will outperform those that do not (0.7 probability)."² Fortunately, Gartner sees the use of a steering committee (a mechanism very familiar to public sector managers), as being an effective means of forging and maintaining both the vision and the plans required to realize it. We have noted that, "To better align business and IT planning, many enterprises have established an IT strategy council, whose role it is to ensure that the business strategy is supported by an IT plan that is timely, feasible and affordable. In support of this effort, IT and business planners are asked to develop a baseline IT plan to be adopted by the IT strategy council." In this context, the issue is less about the "ownership" of the data and more about the ownership and availability of the information created from the data in meeting the

² Driving IT Planning With Business Strategy, Decision Framework, DF-14-3059, M. Gerrard, B. Gomolski, 31 October 2001

needs of the many agencies who serve children, specifically at the time of disposition. A strategy council or governance body, invested with the responsibility of optimizing the use of resources to produce current and comprehensive information about a particular child, can create the kind of alignment described above. The Florida Bar Commission on the Legal Needs of Children has adopted an ad hoc advocacy role in calling attention to the issues of representation and the protection of interests of children in courts and in court proceedings. Their recommendation for the creation of an Office of Public Advocacy goes a long way toward empowering a systemic solution for the identification of data and its respective owners for the purpose of causing a powerful tool for the protection and support of children.

Outcomes

The desired outcome of increasing the protection of children within the judicial system is a product of a number of building blocks. The development of a holistic view of the justice process will facilitate the development and implementation of methodologies to improve the flow of information between the participating agencies and thus improve the timeliness, accuracy, and availability of the information needed to make informed decisions.

Preliminary Assessment

Introduction

A number of group and individual interviews were conducted in the course of this study with representatives from the following organizations:

- Florida Bar Commission on the Legal Needs of Children
- Florida Department of Law Enforcement
- Florida Association of Court Clerks
- Florida Department of Children and Families
- Florida State Technology Office
- Florida Supreme Court

A standard outline was used for each of the interviews to elicit information as consistently as possible. Questions in the standard outline included:

- (1) Does your organization directly work with, receive a feed of information, or provide information to, any information systems that processes data regarding matters involving children?
- (2) If so, are any of these feeds automated or are they dependent on the movement of paper from an agency to the Court?
- (3) If so, please identify the information systems, the organization that is the proprietor of the system and the type of information that is received from or entered into the system?

- (4) Are any of these information systems more critical than others to the timely and effective processing of cases, and if so, could you please briefly explain why this is so?
- (5) Are any of these systems scheduled for renovation or replacement, if so, when, and have funds been identified and budgeted? What is the projected schedule for renovation or replacement?
- (6) Is the information obtained from each of these systems critical to the effective and timely processing of matters before the Court?
- (7) If the information is critical to the Court, is it accurate, timely, complete and consistent with information received from other information systems?
- (8) Are there any barriers to the effective exchange of information that are related to automation or technical considerations?
- (9) Are there any other barriers (such as resources, statutory requirements, etc.) to the effective interchange of information between the agencies and the Court?
- (10) Are there any other thoughts, notes, or observations that you feel will be helpful to this process?

In the course of these interviews, a number of findings were developed; these are documented below. Where applicable, we have leveraged information from Gartner Research to better illustrate and support the findings.

Key Interview Findings

Data is Not Uniformly Stored, Documented, or Accessible

One of the primary barriers to the effective exchange of information between the organizations that have roles in the legal needs of children is a lack of uniformity in the information contained in their information systems. Some of these information systems were purchased from different solution providers; others were custom developed at different times by different individuals. Overall, the results are generally that:

- The organizations often use different identifiers. Some use "soft" identifiers such as a Social Security Number or Case Number that cannot be tied to an individual through biometric data while other organizations use identifiers based on a positive identification. The use of different identifiers, some more accurate than others, makes it difficult to match and combine information about children and their parents / guardians and other adult associates from different sources with a consistent degree of accuracy
- Many of the information systems store information in ways that are inconsistent. The stakeholders have a wide range of custom-developed and commercial off-the-shelf (COTS) information systems. These systems have been architected to a wide range of approaches and technologies. Some store specific types of information, such as historical address information, differently than others. For example, some systems may provide a historical record of addresses while others do not. Some information systems may capture information in different ways or formats that make it difficult and costly to translate the information so that it can be used in other environments.

Gartner has noted that "Regardless of the motivation, the integration of independently developed applications is a challenge. Integration would be straightforward if all of the

applications conformed to the same set of standards - used the same operating systems, database management systems (DBMSs), programming languages, communication protocols, data models and semantics. But they do not. "Legacy" and "purchased" are two words that strike fear in the hearts of IS planners seeking to bring order to heterogeneous application portfolios. In modern computing environments, most mission-critical applications are more than three years old, purchased or both. The task of connecting them so that they can work together is daunting."³

- Florida is a large and populous state with a high degree of diversity, including highly urbanized areas and areas that are largely rural. As a result of this diversity, there is no single information system that could provide a reasonable fit for the needs of all of the law enforcement agencies, Court Clerks, or Courts in the state. This has contributed to the wide proliferation of solutions
- Just as the information systems are inconsistent, so is the documentation that is maintained by the organizations regarding who enters specific pieces of information into the systems, at what points in the workflow the information is updated, and what controls (both system-based and manual) are in place to ensure the accuracy and consistency of the information.

A recent Research Note profiled the work performed by Florida's Department of Health (FDH) to rapidly define an enterprisewide integration of information.⁴ Gartner noted that "Many HCOs [Healthcare Organizations] have several minor to major applications that have evolved over time independent of other applications, such as small, PC-based applications on which the HCO has become dependent and large applications forced together by mergers or acquisitions. These stand-alone, stovepipe applications can limit an organization's productivity by:

- Forcing dual entry of data
- Producing a lag in processing with "unconnected" applications
- Creating data synchronization problems
- Producing inconsistent reports across the organization
- Preventing a common terminology."

The dilemma and obstacles faced by FDH are very similar to the obstacles being faced in the integration of information regarding children. The approach taken by FDH to resolve the problems, the development of information flow maps that diagram the business flow of information through an application, an organization or an enterprise, provided a means to quickly facilitate the development of plans to break down the information barriers. This approach is highly similar to the approach being promoted by SEARCH (a program funded by the Office of Justice Programs of the U.S. Department of Justice) to map information exchange points in the justice process. This approach would seem to be highly applicable to the juvenile justice process and well worth considering given a highly visible success within the State.

³ Message Brokers: A Focused Approach to Application Integration, R. Schulte, June, 1996

⁴ Rapid Development of Application Integration Plans Case Studies, CS-14-5400, J. Gabler, 9 October 2001

The Justice Process Relies Primarily on Paper for the Exchange of Information

It should be no surprise that much of the information exchanged between the courts and the state, local, community, and private organizations that are involved in the legal needs of children, is done through paper documents and reports. Indeed, until recently, paper was the only effective means of record for the exchange of information. More recently, electronic means of information exchange have come into general use ranging from the use of faxes to more sophisticated electronic interfaces between information systems. Since not all organizations are adopting technology at the same pace, organizations find that they need to receive as well as to transmit through multiple means, or channels, receiving or sending some information by paper, some information by fax, and some information electronically. As a result, it is likely that some organizations have multiple processes in place to route these documents for processing and then to store them.

Documents and information are stored in a number of different ways including:

- ❑ Traditional storage of documents in paper form in either file cabinets or storage boxes. These can be located in central offices or at remote, off-site locations
- ❑ Conversion of paper documents into analog formats (such as microfilm and microfiche)
- ❑ Conversion of paper documents into digital formats (including by scanning documents or entering the information on the document into an information system).

The significance of the proliferation of documents and formats is underscored by a Gartner projection that "By 2003, knowledge workers in enterprises that do not bring internal and external content under control will waste 30% to 40% of their time on document-related, non-value-added tasks (0.8 probability)."⁵ Our research confirms that:

- ❑ The average document is copied, either physically or electronically, nine to eleven times at a cost of \$18
- ❑ Documents cost about \$20 to file
- ❑ Retrieving a misfiled document costs about \$120

The Multiple and Related Court Appearances for Children Present Challenges

Increasingly, the participants in the justice process support a more holistic approach in which all matters relating to a child would be heard before the same judicial office or in a manner that provides a high degree of consistency between hearings. In this way, matters relating to delinquency and dependency, "co-defendants," and other family and/or household members can be more appropriately adjudicated. The Florida Courts have several initiatives in this area, such as the development of business requirements for a Unified Family Court (UFC) in Pinellas County that would hear matters related to Juvenile Dependency, Juvenile Delinquency, Civil Family, Domestic Violence Injunctions, Criminal Domestic Violence, and other family cases.

⁵ Document Management: Assessing Costs and Benefits, Research Note SPA-11-9200, September 2000

One of the primary obstacles to the successful implementation of this concept is the need to overcome technological, logistical, and organizational barriers to integrate all of the information needed by the Court in a timely manner. This is especially critical since as these matters may originate from multiple law enforcement agencies within a county or regional area.

The Participants Need to Identify, and Plan For, Short-Term "Wins" to Maintain the Momentum of the Project

Although the Bar should consider supporting the concept of a long-term migration to highly common, shared sources of information, the most expedient approach is to move towards the desired vision in a number of well-planned steps. Each step should provide the foundation for the next as well as deliver some immediate benefits to the participating agencies. In this way, support and funding for the long-term can be sustained and justified through incremental improvements in the process.

APPENDIX F
VOICES OF CHILDREN

Law Day at Miami Senior High School (video available)
April 30, 2001

Is there violence in this school? Yes. There's violence in our school. The law can't do much more about it, it has to be done by the individual.

Want more safety in school.

School police are witnessing violence and ignoring what they see.

The following student comment generated a lot of discussion about police presence in schools.

"We need violence or the school police wouldn't have jobs."

Is it true that there are no lockers at Miami Senior High? Yes. Not having lockers is not making a difference as far as the violence in this school.

Police violence: There is lots of brutality (law & order) in certain neighborhoods and (protect & serve) in other areas.

Questioning by police without a parent or guardian present - It's hard to express ourselves at times, or to say the right words so having a parent there during questioning would definitely be helpful.

Take teacher threats seriously - still shouldn't question without a guardian. Police Officers may put words into child's mouth.

Child Abuse: Every child should have an attorney, where you can speak even against your parents if necessary. But who should pay for these attorneys?

Chastising is not the same as child abuse - students should have lawyers, being under 18 doesn't make you less of a person.

Kids could also consider a psychologist.

Medication to control behavior: No response.

"Everyone's speaking of lawyers but who should pay for them?"

"The government should pay! The government is spending money on a lot of unnecessary stuff, like things in space when they can't even fix what's here on earth."

Foster care/Home: Too many kids, no equal treatment and not always getting what you need/want. If there wasn't foster care where would kids go.

Guardians ad litem: No comments.

Tattoos & Piercing: Most who expressed their feelings said that they can make their own decisions. Parents are letting them work so let them make their own decisions also. Tattoos are only an expression, if you are living with your parents some feel that the minors need to get parent's consent.

Juveniles being transferred into adult court: Some didn't have a problem with it. It's not the age, it's your crime. In the same breath, the student said "the law treats under 18 as children, so why consider trying them as an adult when you feel like it." All who expressed their feelings, for and against, said that the individual characteristics of the youth had to be examined. Several expressed their feelings that anyone acting in self-defense should not be tried as an adult.

Communication: We must learn how to speak to each other and see where the child's mind is before you can determine morals and values of child to see whether you're going to try them as an adult.

Zero Tolerance: Should be allowed only for certain circumstances. Most feel that they should be given more of a chance. The school expects so much out of us, well we expect a lot out of them also.

Mental Health Treatment w/o Permission: Yes we agree that it should be allowed, sometimes you don't want your parents to know.

Curfew: We feel it's unconstitutional, we have the right to assembly in the 1st amendment. "It doesn't say in parentheses except anyone under 18). Others expressed their feelings about curfew at home -- as long as you live with your parents, you live by their rules.

Self-Defense: If someone violates you or hits you and you hit them back, you get in trouble for fighting them back. Both parties are punished for what one party started.

Going out for lunch: People skip school to go out for lunch and if someone gets killed we feel it's the school's fault because we should be allowed.

FCAT Test: Schools who score the lowest on FCAT test should be the schools that require more assistance.

Notes from Florida Bar Commission on Legal Needs of Children Hearing:
Orange County Juvenile Detention Center (boys' group)

June 22, 2001

Bernie Perlmutter and Carlos Martinez

Problems in School

Most of the juveniles said that they had had problems in school, including bullying from classmates and unfair discipline by school administrators

Their comments ranged as follows:

- "It's important to keep bad kids apart from the good kids in school, send them to another school"
- "It's not what you do, but how you do it"—keep separated from others who are bad influences
- Bullying is a big problem in school—"Guys who stole my lunch money and lunch box were scary"
- "I was always scared in school"

They also resented teachers and administrators going through their personal things and lockers searching for drugs and other contraband and judged you based on your appearance rather than what you did:

- "Teachers shouldn't be going through personal things and lockers unless they know for a fact that you have drugs"
- "You shouldn't be judged on how you look/outer appearance"
- One student's teacher said "I don't like niggers"
- Another student had problems with a particular dean at his school, who kept suspending him for petty acts—"I tried to avoid him, but he would always suspend me"

Once suspended, or expelled, students got caught up in arrests and the delinquency system:

- "I got expelled from school, had charges pressed, got in the system, and can never get out"
- "Once you're in the system, you're in and you're trapped—can't avoid it, your name is in it... There should be a way to clear my name..."

Problems with Police and Juvenile System

Many of these comments had to do with harassment by police and law enforcement. Frustration with not being able to develop sound job skills and find employment because of their arrest records, the restrictiveness of probationary sentences, which are frequently violated, the lack of adequate supervision by juvenile probation officers, and the dearth of good community based programs for kids on probation:

- "All the police know my name, just because I'm on probation"
- "Littlest thing can land you back in detention, because I'm considered a threat to the community"
- "It's not about police nagging you, it's about them showing you no respect"
- "Can't get a job if I have felony charges"

- “How am I supposed to make a living?”
- “You can’t even vote, even if you straighten your life out”
- “Part of probation shouldn’t just be ‘go out and get a job’; if it’s hard to get work with a felony arrest record, you need help from the JPO to find work”
- “What’s the point of a ‘second chance’ if you’re never going to find a job with a criminal record”
- “Probation is a big old recycling bag”
- “Probation is a set-up...it should be less strict or restrictive”
- “Parents should be the probation officers...they should look after their own children to make sure we follow probation”
- “Probation gives so many restrictions, they can violate you for anything”
- “I’m trying to help my mama pay bill—by me helping her, I violate probation by going to the labor pools and having a curfew violation”
- “When I turn 18 they send me to Level 10 program that didn’t help”
- “People go to jail because they were five minutes late getting home their job”
- “There should be a system making jobs available for youth on probation—job fairs—so that you can get better jobs than working at Burger King”
- “There wasn’t good supervision by my JPO’s—no drug tests, services, visits—before I was bumped up to a [commitment] program. I needed more supervision and services”

Commitment Program

Comments about residential commitment programs varied¹, with much criticism about the punitive, non-therapeutic character of the programs, long waiting lists to get into programs, poor staff training, to positive comments about the schooling in these programs:

- “Programs are more strict—more security than treatment”
- “Staff throw you on the ground and restrain you”
- No therapy offered
- “Program staff had bad days and good days—on bad days they mistreated me and bruised my arm”
- Couldn’t call the Abuse Hotline to register complaints
- Need better training for staff, officers, JPOs (everyone in the DJJ system needs better training)
- “Best schooling I had compared to my home school”
- “Less distractions in class”
- Smaller classes (12-24 students)
- “Teachers worked to help you—more caring and understanding”
- “Teachers sat down with you and helped break the subjects down”
- “Teachers made you feel better as a person”
- Not enough (or any) drug treatment was available in programs
- Staff taunted and encouraged one kid who was depressed to kill himself
- “Need more therapy for kids who are depressed”

¹ Some of the comments were directed at the detention center and its staff, rather than commitment programs and their staff.

- “Staff shouldn’t through you down on the ground and then, when you fight back to protect yourself, be able to press charges for battery”
- “Juvenile should be able to press charges against abusive staff and file grievances”
- Non-violence (MLK) training would be very helpful
- Want more consistency from staff routines in dealing with youth in programs/JDC
- Time served in JDC stressed kids out—because of the long waiting lists (up to eight months) for getting into commitment programs

Crime Prevention Programs

The comments and recommendations for crime prevention programs in the community were extremely interesting and revealing:

- “Not enough substance abuse program in schools”
- “Need more drug prevention programs for older kids—DARE was the only one, and that was for younger kids”
- Need Boys and Girls Clubs—after school programs and field trips, instead of building big programs and jails”
- “Need programs in neighborhoods to help youth and others to get along with their neighbors”
- “Need better aftercare programs after they’re discharged or case is dismissed without court supervision to make sure kids aren’t rearrested”
- “Florida is a big money making state—it wants to keep tourists’ dollars coming so instead of building good prevention programs in the neighborhoods, it builds big lockup programs and jails to keep youth away from tourists”
- “Need prevention programs—stop it before it happens”
- “Little kids have church programs in their community. Kids in middle school could benefit from the same kinds of programs—field trips, after-school programs---so they wouldn’t have to be on the streets”
- “Mentors could help kids out—and get them on the right track”
- “Could have used a mentor in middle school—[age] 10 and up”
- “Should have positive role models (Big Brothers/Big Sisters, mentors, tutors), rather than drug dealers/peer pressure”
- Role models—parents (fathers) “on certain things”
- Worst influence—peers; peer pressure
- “Should be taught to be able to identify poor behavior or conduct and prevent it before it happens”
- “Young people should learn to listen to people, especially positive influences”
- “Need to develop better listening skills”
- “Should make it easier to pass high school—more help needed to get through high school so that we don’t settle for GED or drop out”
- “Reading is a very important skill that we needed help with in school and growing up”
- “Having tutors to help us with reading would make a difference”

Juveniles Charged as Adults

Some of the comments (adult time for adult time) were a little surprising:

- “Kids should do serious time if they do a serious (violent) crime”
- “Electric chair for kids who kill other kids in school”
- “Mental health treatment is better than adult court for a 16 year old with a mental age of a 12 year old”

Parents and Kids

- “Parents should pay closer attention to their kids”
- “I tell my parents everything—the truth”
- “You’ll do better if you tell your parents the truth”

Orlando Detention (girls' group)

June 22, 2001

Nancy Barshter

Problems Mentioned about Words used in Survey

Role Of Lawyer- represents you and makes arguments with state, will help you get out of trouble, gives advice, They know what to do

1. When should Corporal punishment be allowed?
Parents only! Only when you do something wrong, and not too harsh.
2. Parents involvement in the arrest process.
Parents know best/ sometimes parents need help.
3. Parents being charged with child abuse.
Child should be represented, but children may try to block out bad things.
4. In school suspension:
No lawyer is necessary.
5. Out of lawyer for out of school suspension.
Possibly lawyer necessary.
6. Probation officer visits at school:
 - A. Problem with school mates& class time.
 - B. Should be in a private setting.
 - C. Arrest in classroom problems.
 - D. JAM units being aggressive.
7. Questioning by school resource officers, should a lawyer be present.
Yes, due to incrimination.
No, you don't have to answer.
8. Felony Expulsion.
Since they are taking away your educational rights you should be defended by a lawyer.
9. Zero Tolerance.
Self Defense?
When we report Abuse on bullying nothing is done, but when self defense and zero tolerance are not appropriate.
Respect of police lacking.
10. Lawyers:
Money necessary for lawyers unavoidable. Lawyers are just there to be paid.
Public defenders doesn't focus only on you.
Private lawyers spend more times with lawyers.

11. Counselors:

- Some like a mother but I already have one.
- Hasn't done any good.
- Sending you a person you don't know and there is no trust.
- Counselors never went through what we went through.
- Court ordeal Counselors not meaningful.
- Privacy/confidential a big issue.

12. Medicine "Meds"

- Make people crazy
- like a drug and bad
- Not necessary
- Counselors experimenting with peoples brains

2001 Teen Opinion Survey

This survey was created by lawyers to learn more about how you feel and think about legal and other issues that are important to you. We want to know **your** opinion. Please do not write your name on this survey so your answers can be anonymous and confidential. Feel free to answer as many questions as you want.

How old are you? _____ What is your gender? () M () F Race? () Black () White () Other

What is your cultural or ethnic background or country of origin?

() Hispanic () Asian () Other _____

Please read each of the following questions and circle one response which most closely reflects your feelings or opinion.

Youth under 18 years old need to have a lawyer or an adult arguing on their behalf:

1. When their parents are getting a divorce:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

2. When their parents or others are fighting in court over who should have custody:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

3. When their parents or guardians are accused of child abuse or neglect:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

4. When they are being adopted:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

5. If they are over 16 years old and no longer want to be under the control of a parent or guardian, and want a judge to declare them independent adults:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

6. When facing indoor school suspension:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

7. When facing outdoor school suspension:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

8. When facing expulsion from school:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

9. When facing transfer to an alternative school:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

10. When being questioned by the police or a school resource officer:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

11. The police and school resource officers should be allowed to question a person under 18 years old without having the youth's parent or guardian in the same room.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

Youth under 18 years old need to have a lawyer or an adult arguing on their behalf:

12. Whenever a judge or the Department of Children and Families is considering to move the youth from the current foster home to residential treatment or to another foster home.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

13. When during the course of their family's Juvenile Dependency Court Case, they are offered a dependency court case plan with a goal of adoption or independent living.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

14. When the Department of Children and Families wants the young person to take medication to control his/her behavior or mood.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

Youth under 18 years old need to have a lawyer or an adult arguing on their behalf:

15. When they are being committed against their will to a substance abuse treatment or a residential mental health treatment program.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

16. When they are being charged in court for running away from home, being truant from school, or being "ungovernable" at home.

strongly agree somewhat agree unsure somewhat disagree strongly disagree

Please write statements that reflect your knowledge, feelings, views, experiences and suggestions about the following topics.

17. Searches of students' personal items, including lockers, cars, backpacks, wallets, purses, desks.

18. Free speech in schools.

19. Youth under 18 years old being sentenced to die (death penalty) for committing a crime.

- 20. Violence in schools.
- 21. Zero tolerance in schools.
- 22. Having police and resource officers in schools.
- 23. Police, prosecutors and judges having access to school records of youth who are arrested.
- 24. Arrested youth being questioned personal and family information, when their parents or guardians are not present, and the police keeping that information forever.
- 25. Juveniles charged as adults.
- 26. Teenager curfew laws.
- 27. Driver's license suspensions.
- 28. Needing a parent's or guardian's permission to get tattoos and body piercing.
- 29. Corporal punishment in schools.

Please circle an answer in each of the following questions and feel free to explain your answer, and to make comments and suggestions.

- 30. Youth under 18 years old should be allowed to get treatment for sexually transmitted diseases without getting their parent's or guardian's permission or consent.

Yes No Unsure

31. Youth under 18 years old should be allowed to get treatment for mental health or psychological problems without getting their parent's or guardian's permission or consent:
 Yes No Unsure
32. Youth under 18 years old should be allowed to keep their substance abuse, psychological or mental health treatment records secret from their parents or guardians.
 Yes No Unsure
33. Youth under 18 years old should not have to get their parent's or guardian's permission, to get tested for HIV, receive results of the HIV test, and receive treatment for HIV and AIDS, and should be allowed to keep their medical records confidential or secret from their parents or guardians.
 Yes No Unsure
34. Youth under 18 years old should be allowed to refuse to be placed in an in-patient (residential) mental health, psychological or substance abuse treatment program, even when their parents or guardians want them to have this treatment:
 Yes No Unsure

Have you, your family, or your friends ever been:

- | | | |
|--|-----|----|
| 35. Witness to a crime? | Yes | No |
| 36. The victim of a crime? | Yes | No |
| 37. Accused of committing a crime, but not arrested? | Yes | No |
| 38. Accused of committing a crime and arrested for it? | Yes | No |

Have you, your family, or your friends ever been involved in one of the following types of court cases or lawsuits? Please circle all that apply.

- | | | |
|---|-----|----|
| 39. Divorce | Yes | No |
| 40. Child custody dispute | Yes | No |
| 41. Adoption | Yes | No |
| 42. Delinquency | Yes | No |
| 43. Foster care | Yes | No |
| 44. Shelter care | Yes | No |
| 45. Termination of parental rights | Yes | No |
| 46. Domestic violence | Yes | No |
| 47. Traffic (driving offenses) | Yes | No |
| 48. Criminal | Yes | No |
| 49. Personal injury | Yes | No |
| 50. Emancipation (release from parent/guardian's control) | Yes | No |
| 51. Child in Need of Services (for example, running from home, truancy, or ungovernable behavior) | Yes | No |
| 52. Baker Act (mental health commitment) | Yes | No |
| 53. Marchman Act (substance abuse commitment) | Yes | No |
| 54. Other _____ | Yes | No |

QUESTIONS 55 - 75

55. Do you now have or have you **ever had your own attorney?** Yes No

Answer the following questions **only if you have had your own attorney in the past, or if you have an attorney now.** Please indicate the type of case in which you had or have your own attorney. Circle all that apply.

56. Divorce	Yes	No
57. Child custody dispute	Yes	No
58. Adoption	Yes	No
59. Delinquency	Yes	No
60. Foster care	Yes	No
61. Shelter care	Yes	No
62. Termination of parental rights	Yes	No
63. Domestic violence	Yes	No
64. Traffic (driving offenses)	Yes	No
65. Criminal	Yes	No
66. Personal injury	Yes	No
67. Emancipation (release from parent/guardian's control)	Yes	No
68. Child in Need of Services (for example, running from home, truancy, or ungovernable behavior)	Yes	No
69. Baker Act (mental health commitment)	Yes	No
70. Marchman Act (substance abuse commitment)	Yes	No
71. Other _____	Yes	No

Please indicate your feelings about the following statements **only if you have had your own attorney in the past, or if you have an attorney now.**

72. My lawyer did a good job in my case:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

73. My lawyer treated me with respect:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

74. My lawyer was prepared to represent me and fight for me:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

75. My lawyer fought for the result I wanted:

strongly agree somewhat agree unsure somewhat disagree strongly disagree

QUESTIONS 76 - 96

76. Have you ever had your own guardian ad litem (an adult who was told by the judge to look out for your best interests)? Yes No

Answer the following questions **only if you have had your own guardian ad litem in the past, or if you have a guardian ad litem now.** Please indicate the type of case in which you had or have your own guardian ad litem. Circle all that apply.

- | | | |
|---|-----|----|
| 77. Divorce | Yes | No |
| 78. Child custody dispute | Yes | No |
| 79. Adoption | Yes | No |
| 80. Delinquency | Yes | No |
| 81. Foster care | Yes | No |
| 82. Shelter care | Yes | No |
| 83. Termination of parental rights | Yes | No |
| 84. Domestic violence | Yes | No |
| 85. Traffic (driving offenses) | Yes | No |
| 86. Criminal | Yes | No |
| 87. Personal injury | Yes | No |
| 88. Emancipation (release from parent/guardian's control) | Yes | No |
| 89. Child in Need of Services (for example, running from home, truancy, or ungovernable behavior) | Yes | No |
| 90. Baker Act (mental health commitment) | Yes | No |
| 91. Marchman Act (substance abuse commitment) | Yes | No |
| 92. Other _____ | Yes | No |

Please indicate your feelings about the following statements **only if you have had your own guardian ad litem in the past, or if you have a guardian ad litem now.**

93. My guardian ad litem did a good job in my case:
- strongly agree somewhat agree unsure somewhat disagree strongly disagree
94. My guardian ad litem treated me with respect:
- strongly agree somewhat agree unsure somewhat disagree strongly disagree
95. My guardian ad litem was prepared to represent me and fight for me:
- strongly agree somewhat agree unsure somewhat disagree strongly disagree
96. My guardian ad litem fought for the result I wanted:
- strongly agree somewhat agree unsure somewhat disagree strongly disagree

Please use the back of this page to tell us **your feelings, views, experiences** and anything else that you would like lawyers and advocates in Florida to know about the legal needs of youth in your community.

July 11, 2001

**2001 Teen Opinion Survey
Responses***

*Additional responses from the 2001 Teen Opinion Survey, Teen Survey Responses (46 pages), may be accessed at The Florida Bar website, www.flabar.org.

Please write statements that reflect your knowledge, feelings, views, experiences and suggestions about the following topics.

17. Searches of students' personal items, including lockers, cars, backpacks, wallets, purses, desks.
- I feel shouldn't check anything without the parents being there."
 - "Students have a right for personal space or in other words private or confidential."
 - "I don't think it is acceptable for your things to be searched."
 - "I feel no one should go in there. Unless they have done something bad."
 - "Only school I school or whoever has a search warrant."
 - "I don't think they should be allowed to look in our personal stuff, it is personal."
 - "I feel they should not go through our things without our permission."
 - "The way I feel is that if we are not allowed to go into the principle's or staff's belongings. Then they shouldn't have the right to go through our belongings unless it's a drug-related search or if someone stole something."
 - "I really think they should search the student's items because you never know what they have in their backpacks and purses."
 - "Searches are a definite plug. So many illegal things could be minimized if you figure out where they come from."
 - "I feel if they know that the student has something they should be able to search."
 - "I feel like that's invading our spaces. Back packs and lockers are ok to be searched."
 - "Find out who belonged to the person."
 - "Thinking that they should not go in other people's personal stuff without asking them."
 - "Yes, because the law should know about your history for the safety of other people."
 - "I think that you should have your privacy and not let anybody invade your property."
 - "I don't feel if they should search other people's things unless they know for sure they have something bad."
 - "I feel that the resource officers should have no right to go through any of your things, unless they have the suspicion that you have something illegal in your possession."
 - "If someone for example is a car is stolen the person should have a plate so they could look it up on profile."
 - "I think it's wrong to go into our personal things, but it's right because they could have a weapon."
 - "Only with reason and it has to be on property."
 - "I think they shouldn't go in a students personal items because that means that a lot to students or youth is personal."
 - "Hell no."
 - "Violating the students rights."
 - "They cannot do that."
 - "I don't think it's right because children are having personal stuff and who is ever searching your stuff and be taking kids personal stuff."

REFERENCE MATERIALS

June 11, 2002

REFERENCE MATERIALS

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