

# **The Florida Bar**

## **Commission on the Legal Needs of Children**

**Final Report  
June 2002**

***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.

AtNova 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 be accessed at The Florida Bar Web site: [www.FLABAR.org](http://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 should children 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.

The complete 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.

## **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.