

REPRESENTATION OF CHILDREN IN A UNIFIED
FAMILY COURT SYSTEM IN FLORIDA

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I. INTRODUCTION

Florida is moving toward a unified family court system. In its May 3, 2001 order adopting findings of the Report of the Family Court Steering Committee, the Florida Supreme Court declared:

If the judicial system encourages alternatives to the adversarial process, empowers litigants to reach their own solutions, and assists in crafting solutions that promote long-term stability in matters involving children and families, the likelihood of future court intervention in the family should be decreased — whether this be through minimizing post-judgment litigation or preventing the dependent child of today from becoming the delinquent child of tomorrow. Our ultimate goal remains to facilitate the resolution of disputes

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involving children and families in a fair, timely, effective and cost-efficient manner.¹

The Florida Supreme Court continued: “We therefore reaffirm our continued commitment to the broad principles espoused for a model family court in Florida. . . .”²

This movement presents Floridians with an opportunity to right a long-standing wrong by extending fundamental due process protection, particularly the right to counsel, to children who are taken from their families and placed into the custody of the state. This Article will describe the proposed unified family court, present a constitutional rationale for extending the right to counsel to dependent children and suggest how, as a practical matter, this extension of due process might be accomplished.

II. THE IDEA OF THE UNIFIED FAMILY COURT

Two goals of a model, or unified, family court system are to strengthen families and to protect children. Families in trouble come to the attention of the courts in a variety of ways: through divorce, domestic violence, abandonment or abuse of children, or misbehavior of children. Such families may spin from courtroom to courtroom caught in a process that depletes time, money, and energy, and yet never really addresses the core of the problem. Ironically, children, the intended beneficiaries of our family courts, suffer most as a result of this phenomenon. It is common, certainly in our experience at Gator TeamChild, for children to simultaneously be the subject of cases in the delinquency, dependency, divorce, and even criminal courts, and to also be facing severe educational and medical challenges. These children regularly have their interests considered by an army of judges and bureaucrats and have their liberty restricted by the state. Still, they may have no stable place to live, no adequate school program, no medical or dental care, or no family. In our present system, no single court or agency has a complete picture of the family and the relationships that affect its members. The idea of the unified family court is to bring the child and his or her family before a court, preferably one specialized court, to solve problems. If the problems cannot be solved, then at least the child can be protected. Because the child is the center of the concerns of the family court, every legal issue affecting a child should be resolved in one court,

1. *In Re* Report of Family Court Steering Comm., 794 So. 2d 518, 535-36 (Fla. 2001).

2. *Id.* at 536.

before one judge who can then coordinate agencies and access all the services that might be available.

The underlying philosophy of such a court is called therapeutic justice.

Therapeutic justice should be a key part of the family court process. Therapeutic justice is a process that attempts to address the family's interrelated legal and nonlegal problems to produce a result that improves the family's functioning. The process should 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.³

Because of the imbalance of the traditional family power structure, an advocate for the child is essential in this educational and empowerment exercise.

Provision of services is an important component of the unified family court. Both referrals and direct services offered by the current court system are contemplated in the proposed model. In Recommendation #3 — Essential Elements, the proposal requires an array of services including case management, self-help programs, domestic violence programs, alternative dispute resolution programs, custody evaluations, supervision of visitation, education programs for parents, and counseling and treatment programs.⁴ An attorney may be the only player in this system with the ability to broker these services so that they benefit, rather than oppress, the child.

It is beyond doubt that the vision of the Florida Supreme Court and the Family Court Steering Committee will improve the lives of Florida families if fully realized. However, it must be noted that this innovative model also presents opportunities for abuse, particularly in cases of dependency and delinquency, and especially in cases involving crossover children — those children who have active cases in both dependency and delinquency court.

A recent example from the true-life files of Gator TeamChild: Johnny Doe is eleven years old and has been in foster care since he was an infant. His parents' rights have been terminated and his brother and sister have been adopted by different families. He has not found a new family, and as he began to approach adolescence, his behavior started to reflect his anger and frustration with his circumstances. His caseworker lost the ability to

3. Recommendation #1 — Family Court Guiding Principles. *In re* Report of Family Court Steering Comm., 794 So. 2d at 522.

4. Recommendation #3 — Essential Elements. *In re* Report of Family Court Steering Comm., 794 So. 2d at 526.

control him. He stopped going to school, even though he had been an excellent student. He began to bounce from temporary foster home to temporary foster home, spending his days sitting in the lobby of the Department of Children and Families' (DCF) offices waiting for his next change of placement.

One day, as Johnny was sitting in the DCF lobby, he became enraged. He had asked repeatedly to be allowed to go to the office of his caseworker to ask her to take him to the park to play basketball. The lobby doors were locked, and he was not allowed to speak with his caseworker or anybody else. When the receptionist was away from her desk, he crawled through the small sliding-glass window in front of her desk and entered the restricted area. He appeared at his caseworker's office and demanded that she give him a ride to the park. She refused, but her supervisor happened along and drove Johnny to the park.

Johnny was peacefully playing basketball a half hour later when the police arrived and arrested him on the charge of Burglary of an Occupied Dwelling (for entering the restricted area of the DCF offices). Even though he had no prior juvenile court record, because the charge was a second degree felony and because the judge considered special circumstances to add points to the risk assessment instrument, Johnny was ordered to secure detention. The DCF moved quickly to have Johnny placed in a residential treatment center. This move was described to Johnny's counsel as "caseworker respite." The dependency court judge ordered that Johnny be placed in residential treatment. The delinquency court judge, although aware of the dependency court ruling, refused to release Johnny from detention, even though the charges had not been filed by the State Attorney. The delinquency court judge held Johnny in detention for a full twenty-one days. Subsequently, the judge allowed Johnny to be transported, under maximum security by the Department of Juvenile Justice, to a treatment center more than two-hundred miles away. The transport required Johnny to stay overnight at two detention centers in foreign jurisdictions. He was finally released from secure detention to the facility personnel from the residential treatment center at 5:00 p.m. on the twenty-first day of his incarceration.

This abusive use of delinquency detention to control dependent children for the convenience of the DCF will only be more tempting to well-meaning but frustrated judges in the unified family court. Movement of children between the delinquency and dependency systems is common and often improper. The ability of counsel to move similarly between the systems, to advocate against such abuse and to appeal improper orders, will provide a vital check on the new system. Because children are at the center of the new model, it is necessary that there be an actor in this drama charged with

the responsibility of making the system work for each individual child. Someone must be duty-bound to insist that the child be heard, and that the child's rights be acknowledged and protected. Because lawyers have ethical obligations to each client beyond that of other advocates, only legal counsel for the child can fully accomplish this role.

III. THE CONSTITUTIONAL RATIONALE FOR APPOINTMENT OF COUNSEL TO CHILDREN IN DEPENDENCY

Fundamental due process protection was extended to children in 1967 in *In re Gault*.⁵ Justice Fortas wrote that, in a case in which a youth faces commitment "to an institution in which his freedom is curtailed,⁶ . . . neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."⁷ Justice Fortas continued:

A proceeding where the issue is whether the child will be found to be "delinquent" and *subjected to the loss of his liberty for years* is comparable in seriousness to a felony prosecution. The juvenile needs the assistance of counsel to cope with the problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel at every step in the proceedings against him."⁸

The requirement of appointed counsel for every child who appears in delinquency court is now accepted without question.⁹

5. 387 U.S. 1 (1967).

6. *Id.* at 12.

7. *Id.* at 13.

8. *Id.* at 36 (citing *Powell v. Alabama*, 287 U.S. 45, 69 (1932)) (emphasis added).

9. Although counsel is required in delinquency court, many children still appear without a lawyer. Waiver of counsel in delinquency court was a matter of deep concern for the Florida Bar Commission on the Legal Needs of Children. See FLORIDA BAR, COMMISSION ON THE LEGAL NEEDS OF CHILDREN, FINAL REPORT 4-12, A.1-A.19 (2d ed. 2002). On January 23, 2003, the Juvenile Rules Committee of the Florida Bar voted to submit an amendment to Rule 8.165, Fla. R. Juv. P. to the Florida Supreme Court which would require that a child in delinquency court have "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" before a waiver could be accepted by delinquency court.

In *Argersinger v. Hamlin*,¹⁰ a Florida case decided by the U.S. Supreme Court in 1972 which extended *Gideon v. Wainwright*¹¹ to petty criminal cases, Justice Douglas wrote: “We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”¹² Justice Douglas continued: “The run of misdemeanors will not be affected by today’s ruling. But in those that end up *in the actual deprivation of a person’s liberty*, the accused will receive the benefit of ‘the guiding hand of counsel’¹³ so necessary when one’s liberty is in jeopardy.”¹⁴ Justice Burger, concurring in the opinion, agreed, noting that “any deprivation of liberty is a serious matter.”¹⁵ It is clear that in these early, foundational cases regarding the right to counsel, the concern of the U.S. Supreme Court was the deprivation of liberty rather than the specific type of case or offender. The issue was, and continues to be, custody.

In *Schall v. Martin*,¹⁶ the U.S. Supreme Court held that a child could be detained before trial without bail. After balancing the “desirability of protecting the juvenile from his own folly,”¹⁷ with the infringement upon the liberty interest of the child, Justice Rehnquist wrote that “[i]n this respect, the juvenile’s liberty interest may, in appropriate circumstances, be subordinated to the state’s *parens patriae* interest in preserving and promoting the welfare of the child.”¹⁸ Here, where the interference with liberty is meant to protect the child and not to punish, the U.S. Supreme Court noted that the deprivation of liberty was constitutionally permissible only because the state provided due process protections, including the right to counsel. “He is first informed of his rights, including the right to remain silent and the right to be represented by counsel chosen by him or by a law guardian assigned by the court.”¹⁹

10. 407 U.S. 25 (1972).

11. 372 U.S. 335 (1963). *Gideon* is the landmark case that first required counsel to be provided by the state to all criminally accused people who could not afford to hire their own attorneys.

12. *Argersinger*, 407 U.S. at 37.

13. The U.S. Supreme Court is referring to *In re Gault* and *Powell v. Alabama*. *In re Gault*, 387 U.S. 1 (1967); *Powell*, 287 U.S. at 69.

14. *Argersinger*, 407 U.S. at 40 (emphasis added).

15. *Id.* at 41.

16. 467 U.S. 253 (1984).

17. *Id.* at 265.

18. *Id.*

19. *Id.* at 275.

In *DeShaney v. Winnebago County Department of Social Services*,²⁰ the U.S. Supreme Court held that the state was not responsible for devastating injuries inflicted upon a child by his father. The child had been returned to the father after having been held in the custody of the state as a dependent child. The Court implied in its opinion that the state would have been held responsible if the child had remained in its custody. Justice Rehnquist again described the legal relationship between individuals and the state where personal freedom is concerned:

[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being. The rationale for this principle is simple enough: when the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs — *e.g.*, food, clothing, shelter, medical care, and reasonable safety — it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause. The affirmative duty to protect arises not from the State's knowledge of the individual's predicament or from its expressions of intent to help him, but from the limitation which it has imposed on his freedom to act on his own behalf.²¹

The U.S. Supreme Court has not directly addressed the due process rights of children in dependency proceedings, but *DeShaney* comes awfully close. Due process protection should be required because of the interference with the liberty of the child, the same reason due process is required in delinquency. Appointment of counsel should be required for all of the same reasons outlined in *Gault*.²² In both instances the child is in custody; his rights result from that status.

The deprivation of the liberty of a child who is taken from his or her family and placed into the custody of the state because he or she has been abused, neglected, or abandoned is, if anything, more severe than that suffered by a delinquent child. In dependency the child loses everything — home, family, personal belongings, friends, school — involuntarily and indefinitely. In *S.B. v. Department of Children and Families*,²³ the Florida

20. 489 U.S. 189 (1989).

21. *Id.* at 199-200.

22. *In re Gault*, 387 U.S. 1, 34-42 (1967).

23. 825 So. 2d 1057, 1060 (Fla. 4th D.C.A. 2002).

Fourth District Court of Appeal remarked, while considering the level of competency that should be required from counsel for the parents, We note “that dependency proceedings are designed not to punish the parents, but to protect the children who are, themselves, prisoners.”

For a brief shining moment children facing dependency proceedings in Florida were afforded the right to counsel. In 1977, the Federal District Court for the Southern District of Florida found that due process required the appointment of counsel to parents in dependency actions.²⁴ In response to the federal court directive, the Judges of the Juvenile and Family Court of the 11th Judicial Circuit Court of Florida in Dade County, who were the defendants in the class action case before the Southern District Court, began to appoint counsel to all parents facing dependency actions, and, apparently *sua sponte*, decided to appoint counsel to all the children who were the subjects of the dependency cases. “It is inconceivable to this Court that while it is required to appoint counsel for indigent parents in dependency proceedings, that an indigent child, whose interests may be adverse to the desires of his parents and the State, would not have an attendant right to appointed counsel.”²⁵

Earlier, in a case that still stands as good law, a three-judge panel of the U.S. District Court for the Middle District of Alabama found the child welfare laws of the state unconstitutional and said: “The Plaintiffs maintain that the Alabama child custody procedure violates the due process clause of the Constitution because that procedure does not provide for the appointment of independent counsel to represent a child in a neglect proceeding, and none was appointed here. We agree.”²⁶ The Alabama district court referred to *In re Gault* and explained that “[m]uch the same reasoning applies to a neglect determination proceeding. The juvenile court judge should, however, independently appoint counsel for the child,

24. *Davis v. Page*, 442 F. Supp. 258 (S.D. Fla. 1977). *Davis* was affirmed by the Fifth Circuit, 618 F.2d 374 (5th Cir. 1980) and on rehearing en banc, 640 F. 2d 599 (5th Cir. 1981), but was finally reversed in the wake of the U.S. Supreme Court ruling in *Lassiter v. Department of Social Services of Durham County, North Carolina*. *Lassiter v. Dep’t of Soc. Servs. Of Durham County, N.C.*, 452 U.S. 18 (1981); see *Davis v. Page*, 714 F.2d 512 (5th Cir. 1983). The Fifth Circuit ordered the Florida circuit court to dismiss the case. It is interesting to note that throughout the arduous history of this case in the federal courts there is no mention of the right of subject children to counsel in dependency cases, except for a footnote in the original U.S. district court opinion that states that “the question of whether the Court should provide for appointment of independent counsel to represent the child in dependency proceedings is not before this Court.” *Davis*, 442 F. Supp. at 265.

25. The original orders of the circuit court were not published. This quote from the orders appears in *In the Interest of D.B. and D.S.*, 385 So. 2d 83 (Fla. 1980).

26. *Roe v. Conn*, 417 F. Supp. 769, 780 (M.D. Ala. 1976).

requiring the parents, if they are financially able, to pay for this legal representation. If the parents are indigent, free counsel should be afforded the child.”²⁷

Back in Florida, the Florida Supreme Court rendered its opinion in an appeal, brought by the state of Florida, of the Dade County judges’ orders which required the state to pay for the attorneys that the circuit court, in response to a federal court order, was appointing to every parent and child in its dependency cases. In *In the Interest of D.B. and D.S.*,²⁸ it held simply that “there is no constitutional right to counsel for the subject child in a juvenile dependency proceeding.” This is the law that still stands today in Florida. A review of the history of these events reveals that this holding is an obiter dictum, based solely on an obiter dictum from an order in the lower court. The issue of counsel for the children was not raised by the parties in the original case before the lower court. Such an important ruling should not stand without full exposition of the facts, briefing and argument.

Justice Pariente stated in her recent opinion, requiring “a meaningful opportunity to be heard”²⁹ for children in the custody of the state and facing placement in residential mental health facilities, that “[a]lthough in *D.B.* [the Florida Supreme Court] discussed the constitutional rights of parents whose parental rights the Department sought to terminate, [the Florida Supreme Court] did not discuss the nature and extent of the child’s constitutional rights in a dependency proceeding except to find that there was ‘no constitutional right to counsel.’”³⁰ The constitutional right of children facing involuntary placement into the custody of the state to be assisted by legal counsel is an issue that begs to be discussed fully as soon as possible.

Commentator Michael J. Dale concludes in his comprehensive review of the status of legal representation of children in dependency proceedings that “[t]he need for attorney representation of children in the context of dependency proceedings is irrefutable.”³¹ The decisions made in a dependency proceeding are of much greater consequence to children, especially in reference to the fundamental right to liberty, than they are to any of the adults involved.

27. *Id.*

28. *In the Interest of D.B. and D.S.*, 385 So. 2d at 91.

29. *M.W. v. Davis*, 756 So. 2d 90, 108 (Fla. 2000).

30. *Id.* at 97.

31. Michael J. Dale, *Providing Counsel to Children in Dependency Proceedings in Florida*, 25 NOVA L. REV. 769, 813 (2001).

A child placed in the custody of the state has important rights regarding the conditions and duration of care that must be monitored and enforced. Dale observes:

The need for counsel was recently rendered more urgent by the federal district court's opinion in *Foster Children Bonnie L. v. Bush*. The court dismissed the central claims in a statewide class action challenging conditions in foster care in Florida in part on grounds that there was an adequate state forum in which the children could obtain relief. The federal court abstained in light of "the ongoing jurisdiction and ability of plaintiffs to raise constitutional claims in dependency court." The federal court never discussed who would raise these claims or how they would do it.³²

Children who come before the circuit court in dependency surely must be entitled to fundamental due process protection, including the right to counsel. There simply is no good reason for due process to be denied. It is only a matter of time, and of the right case finding its way to the U.S. Supreme Court or Florida Supreme Court, before the law will require fundamental due process protection for all children whose liberty is restricted by the state, whether the restriction results from delinquency or dependency. Florida should act now through its legislature to extend this protection.

The unified family court system will make it possible to provide such legal services to children. Having one court for all of these cases will allow the lawyers for children to focus on the child and his or her legal needs, rather than the particular legal pigeonhole into which the problem may fit. One lawyer can represent one client (or group of sibling clients, if there are no conflicts in their interests) on all the issues before one judge — delinquency, dependency, custody, visitation, child support resulting from divorce, emancipation, mental health³³ — everything that comes before the

32. Dale, *supra* note 31, at 777 n.46 (citing *Foster Children Bonnie L. v. Bush*, 108 F. Supp. 2d 1321 (S.D. Fla. 2001)).

33. Subsequent to its ruling in *M.W.*, the Florida Supreme Court decided that the appointment of counsel to a child in state custody facing placement in a residential mental health treatment facility is mandatory rather than discretionary, and ordered the Juvenile Rules Committee of the Florida Bar to draft a new Rule of juvenile procedure to accomplish this purpose. See *Amendment to the Rules of Juvenile Procedure*, Fla. R. Juv. P. 8.350, 804 So. 2d 1206 (Fla. 2001). The new rule was finally adopted on March 6, 2003. See *Amendment to the Rules of Juvenile Procedure*, FLA. R. JUV. P. 8.350, Supreme Court of Florida No. SC00-2044 (Mar. 6, 2003).

family court. This system will lead to comprehensive solutions that will benefit the child, the family, the court, and the community.

IV. A SYSTEM FOR PROVIDING COUNSEL FOR CHILDREN IN THE UNIFIED FAMILY COURT

The Florida Supreme Court has commented in detail on the Report of the Family Court Steering Committee and accepted almost all of its recommendations.³⁴ The mandate of the Florida Supreme Court is broad. When fully implemented, the unified family court will undoubtedly result in a sea of change in the way families are treated and in the way they respond to the unified family court. Consolidation and coordination of cases is “critical”³⁵ to accomplish these goals while conserving the resources of the unified family court. Case management, self-help programs, alternative dispute resolution, Guardians ad Litem, social and educational programs, and technology are all characterized as essential elements of the new system.³⁶ This is going to be expensive. The Florida Supreme Court said: “Although we endorse these essential elements, we also note that the failure to adequately fund the necessary services ultimately will result in the failure of the model family court concept.”³⁷ The Florida Supreme Court also mandates training and continuing education of judges and court personnel.³⁸ This will be expensive as well. Can we also provide experienced and well-trained attorneys for children? We can, and we must.

Children sometimes appear in dependency court with counsel now. Most of the judicial circuits in Florida have Guardian ad Litem programs (GALs). In a few of the circuits those GALs are lawyers. In those cases, the GAL may choose to represent the child in a traditional attorney-client relationship. However, because in Florida the GAL is part of the circuit court, it is not clear whether an attorney acting as GAL must resolve divided loyalties. For example, is an attorney/GAL to report to the circuit court on the best interests of the child, or is the attorney/GAL to present the wishes of the child? Even more important, in most circuits GALs are not lawyers but are lay volunteers who are unable to act as attorneys. In most instances, if the GAL program has access to attorneys, those attorneys represent the GAL program and its volunteers, not the child. Although

34. *In re* Report of Family Court Steering Comm., 794 So. 2d 518 (Fla. 2001).

35. *Id.* at 526.

36. *Id.* at 526-27.

37. *Id.* at 527.

38. *Id.* at 533-34.

Guardians ad Litem are “essential elements”³⁹ of a model family court system, they cannot adequately represent the constitutional rights and legal interests of the children before the circuit court.

Occasionally, judges will appoint a lawyer to represent a child in a dependency case in which the circuit court is concerned about protection of the rights of the child or when the circuit court wants to hear from the child. Our experience at Gator TeamChild has shown that judges who do appoint lawyers to represent children find that their ability to make more fully informed and comprehensive decisions is enhanced. Well-trained lawyers who can provide information to the circuit court by filing motions and legal briefs, presenting evidence, conducting thorough investigations, and bringing in expert witnesses serve to improve the quality of the decision-making process.

Generally, lawyers who represent children come from a variety of sources. They may be found in a law school clinical program, like Gator TeamChild. Student attorneys generally display a deep commitment to their clients. They are often wonderfully talented and enthusiastic advocates. They are able to devote the time and attention to a child client that a busy, practicing attorney could not. However, law school clinic students can handle only a few cases during their limited time in the program. Law school clinics will provide the training for the child advocates of the future, but cannot fill the current need for lawyers in the current day-to-day operation of the model family court.

A few Florida legal services programs have lawyers who represent child clients exclusively.⁴⁰ These programs tend to emphasize one area of law or take only one type of client. This representation is valuable and important. However, because legal services lawyers typically represent parents in dependency cases, the legal services system may not be available to provide representation to children in those cases.

Court-appointed Attorneys ad Litem in dependency cases may be volunteers who receive pro bono credit through local bar or legal services programs, or may even be paid court-appointed counsel. These attorneys are often inexperienced in the complexities of the law from the point of view of the child. If paid, they are quite expensive. No complete system for appointment of counsel for children, except for the public defender system for children in delinquency court, exists in Florida. For the unified family

39. *In re* Report of Family Court Steering Comm., 794 So. 2d at 527.

40. Examples are the Teamchild program in Tallahassee, a collaboration between Legal Services of North Florida and the Second Circuit Public Defender, and the Special Education and Mental Health Unit of Central Florida Legal Services in Daytona Beach.

court model to work, the training, experience, and accountability of attorneys must be consistent, and sufficiently qualified lawyers will have to be available to handle the job.

We should first look to our existing public defender offices to provide the experienced counsel that will be needed to represent children within the model family court. Public defenders who work in the juvenile departments of their various offices are the only lawyers within our public advocacy systems who are trained and experienced in representing child clients in a traditional attorney-client relationship. The public defender system infrastructure is vast. This infrastructure would be fiscally advantageous because it makes it possible to use existing resources to provide facilities and personnel that are already in place.

Using existing resources would also make it possible for representation of children in dependency court to start immediately, especially in the most problematic cases — the crossover cases. In those cases in which the child already has a relationship with a public defender on his or her delinquency case, the court could simply appoint the same lawyer to be present and represent the child on the dependency matters. We have found at Gator TeamChild, where we often represent a child on both dependency and delinquency matters, that this dual, overlapping representation enhances our ability to help our clients find real solutions to the problems they face. Access to both systems allows us to increase the options for services that are available to our clients. Finding solutions through the dependency system keeps our clients out of harsh, punitive programs that are now the order of the day in the delinquency system.

This will be a significant burden upon the already stressed office of the public defender in Florida. Funds will have to be found for the addition of new lawyers to already existing offices, and for training for lawyers already employed and working. But doing so will be less expensive than other options, and will be cost effective.

Further, juvenile public defenders throughout the state share a reputation for professionalism. Through their training and experience, they develop an ethic of loyalty to their child clients that is sometimes difficult for lawyers who generally represent adults to internalize. We should take advantage of the wealth of talent and experience that exists now to assist children in delinquency court and make those talented and committed lawyers available to dependent children. We need to do this *now*.

V. CONCLUSION

A new day is dawning in the family law courts in Florida. The adoption by the Florida Supreme Court of the recommendations of the Family Court Steering Committee for a unified family court based on the philosophy of therapeutic jurisprudence will, once fully implemented, result in a court system actually capable of supporting families and children and helping them find solutions to their problems.

The extension of fundamental due process rights — particularly the right to counsel — to children who are the subject of cases in the unified family court is long overdue. The provision of an attorney for every child who is faced with placement into the custody of the state is not only constitutionally mandated, but it will contribute to the success of the enterprise. Attorneys for the children involved will serve to keep the new system honest.

Implementation of this expansive and progressive idea of a new court system will be expensive. A commitment by state government to fund the system will ultimately prove cost effective, but start-up will be difficult. Use of our already existing and excellent public defender system to provide representation to children in the most difficult crossover cases could happen immediately, without tremendous start-up costs. This first step toward a more effective, more fair system for children should be taken immediately.

