

Legal Representation of Dependent Children A 2012 Report on Florida's Patchwork System

- How We Got Here
- Who "Should" be Represented Today
- Who is Providing Legal Services & Where

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1801 N. University Drive, 3rd Floor, Suite B, Coral Springs, FL 33071 Phone: 954-796-0860 Fax: 954-796-0862 floridaschildrenfirst.org Legal

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Fewer than 10% of Florida's neglected, abused and abandoned children have access to attorneys to represent them in the courtrooms where their fundamental rights are at stake. In the absence of a statewide system of representation, there is no assurance that the children who most need lawyers in each community have access to them.

Instead, the likelihood of any particular child being able to have his or her own attorney is based in the largest part on the accident of geography. Children "fortunate" enough to come into state care in South Florida, especially in Palm Beach County, have a decent chance of getting their own lawyers. But for children in the rest of the state, the prospect of obtaining counsel ranges from slim to none.

This report describes how Florida reached the current situation, which children "should" be getting attorneys under our current system, and who is actually providing counsel and where. This report is not intended argue the merits of the types of representation or the efficacy of the Guardian Ad Litem Program. We intend for this document to provide information on the current "system" of representation to help inform the policy discussion.

I. BACKGROUND

Brief History of Child Welfare Legal Proceedings

Florida's treatment of abused, abandoned and neglected children has evolved substantially over the last thirty years. Unfortunately, the failure to provide counsel for children is the last vestige of the old system.

Florida began using civil dependency courts in the late '70s, early 1980s. At the outset, those children whose parents were charged with **criminal** abuse or neglect were entitled to the appointment of an attorney who served as a guardian ad litem to make best interest recommendations to the court.¹

Civil dependency proceedings began with very little lawyer involvement. Parents were not entitled to attorney representation in all proceedings. Even the State, (HRS), was routinely represented by lay people. Courts thought that proceedings could best serve families by being informal and non-adversarial.²

In contrast, today's Dependency Court is a formal, adversarial proceeding. The State (DCF) always has counsel.³ All indigent parents in all dependency proceedings are entitled to appointed counsel.⁴ The Guardian Ad Litem ("GAL") or Guardian Ad Litem Program is a party to dependency proceedings and is represented by counsel. In some communities the privatized child welfare provider, though not a party, may also have a lawyer in the courtroom. The child is the only party without a statutory right to counsel.

In 1980 a dependency proceeding could have occurred with the judge being the only lawyer in the courtroom. Today, every party - except the child around whom the proceeding revolves - is represented by counsel.

Instead, children are statutorily entitled to be "represented" by a GAL.⁵ The State has never fully complied with the statute, and today **30% of children in state care do not have a GAL.**⁶

When I was in the system (group home), my caseworker was the only person representing me in the courtroom. I started to feel like I was not getting any information on my case. I was lost. If I had a person, like a lawyer or someone with a legal background, I would have known many things like what I can do and cannot do with my case. When I got a little older, I asked my caseworker "Can I come to one of my court hearings" and she said no! She told me that she would give me the info when she was out of court. Well, I waited and she called me with some info but she did not have the legal background to explain it to me the right way.

--Jeffrey R.

The term Guardian Ad Litem has multiple meanings under Florida law, in some circumstances a GAL is a lawyer who acts as a lawyer on behalf of a child. In dependency court, however, GALs do not represent the **legal interests** of children. GALs gather facts, speak with the child and make recommendations to the court about what is in a child's **best interests**. There is no attorney-client privilege between the GAL and the child, and most GALs are lay people.⁷ Lawyers for the GAL Program technically represent the Program. GAL lawyers seldom represent the child in other proceedings such as Medicaid hearings, public benefits or school matters.

In 1980 a dependency proceeding could have occurred with the judge being the only lawyer in the courtroom. Today, every party - except the child around whom the proceeding revolves - is represented by counsel. Despite the concerted efforts of many, Florida still has no statewide mechanism to ensure meaningful and effective direct legal representation for children in dependency proceedings.

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Efforts To Obtain Counsel for Dependent Children

Over a decade ago, the Florida Bar created a Commission on the Legal Needs of Children that issued a comprehensive report addressing the legal needs of children.⁸ The Commission recommended that many children in dependency proceedings be provided access to counsel.

In the late 1990s advocates attempted to get a Foster Care Bill of Rights created. Although the Legislature was unwilling to delineate rights for children, in 1999 it did pass Fla. Stat. §39.4085 – which sets out the Legislative findings and goals for dependent children, which includes: "(20) To have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests. ..." The next year the Legislature created a "Pilot program for attorneys ad litem for dependent children" in the Ninth Judicial Circuit. Fla. Stat. §39.4086 (2000).

Some communities have no organized program to provide counsel for children; others have enough attorneys to represent a substantial percentage of children.

In 2004, the Legislature created the Statewide Office of Guardian Ad litem to provide infrastructure and support to what had previously been 20 separate circuit court based guardian ad litem programs. Fla. Stat. §39.8296. Two years later, Florida's Children First and others lobbied for \$14 million in additional appropriations in the GAL Program budget to add lawyers to directly represent dependent children with complex needs.⁹ The Senate Committee on Children and Families concurred with the request for lawyers for children.¹⁰ and the Legislature ended up adding \$7 million dollars to the GAL Program budget, with a specific note that the money could be used for lawyers for children.

The GAL Program used some of those additional funds in 2006 to add 49.5 new lawyers.¹¹ All of those lawyers, however, were assigned to represent the Guardian Ad Litem Program, and not to represent children. In the year they received an additional \$7 million dollars, the GAL Program spent \$309,000 on attorneys for children, currently they have contracts to spend \$317,000 on attorneys for children.¹²

After it became clear that the GAL Program was not going to be the platform for systematically providing lawyers to children who needed them, the Florida Bar Committee on the Legal Needs of Children took up the matter of representation. Starting with the recommendations in the original Commission on the Legal Needs of Children Report, the Committee was instrumental in introducing legislation in 2010 that would have provided attorneys to many categories of children in state care.¹³ Although there was some ideological opposition, the bill was defeated primarily due to the expense involved and the fear that funding for attorneys would be provided at the detriment of funding for the Guardian Ad Litem Program.

In the absence of a statewide, funded mechanism to provide counsel for children, efforts to provide counsel for children have grown piecemeal across the state. The Florida Bar Foundation has made the largest and most sustained effort to promote and fund attorneys for children (not just dependent children) by making grants to legal service providers around the state. Numerous law schools have established clinics, and at least three counties have Children's Services Councils (taxing districts) that fund lawyers for children. The Public Defender for Pinellas/Pasco obtained pilot project funds to pay his attorneys to represent "crossover" youth in their dependency proceedings as well as their criminal or delinquency proceedings. The Guardian Ad Litem Program also funds some attorneys to represent children. Under this current patchwork, some communities have no organized program to provide counsel for children while others have enough attorneys to represent a substantial percentage of children in state care.

I had an attorney when I went through the foster care system and I am sure that because of his hard work on my behalf I was able to stay with my foster parents and not return home. When a child is involved in the DJJ (Juvenile Justice) system they have an attorney that represents them and advises them of their rights. Why would it be any different for a child involved in the dependency process?

--Derek R.

II. WHICH CHILDREN ARE SUPPOSED TO GET ATTORNEYS NOW?

Currently there is a set of children for whom counsel is required or recommended based on Administrative or Judicial Rule, or policy. The absence of a statewide system of representation makes it impossible to assure that all of the children who should be getting lawyers are in fact getting lawyers. It is difficult to quantify children in these categories, but where possible, we have provided relevant data.

a. Children Who Oppose Placement in Residential Treatment:

Children who disagree with a proposal to place them in locked mental health facilities (often called RTCs – Residential Treatment Centers) comprise the only population of children for whom there is a Legal R

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requirement of appointment of counsel. Fla. R. Juv. Pro. 8.350. On any given day there are approximately 170 children who are in mental health facilities.¹⁴ Presumably some of these children objected to placement, as did their peers who were successful in opposing proposed residential treatment.

b. Children Who Object to Psychotropic Medication.

There is no statute or court rule that requires appointment of counsel for children who object to psychotropic medication. The Department of Children and Families, however, has a rule that directs DCF attorneys to seek appointment of counsel for children who do not agree to take psychotropic medication prescribed to them. Fla. Admin. Code 65C-35.005. Counsel is critical in that circumstance because Florida statutes and Rules of Juvenile Procedure require parties who disagree with a medication recommendation to file an objection within two days of the motion for court authorization of medication – a daunting task for an unrepresented child.¹⁵ As of September, 2011 there were 2,519 children in out-of-home care who were prescribed psychotropic medication.¹⁶

c. Children for Whom the Guardian Ad Litem Program has a Conflict.

These are primarily children whose parents who are or were themselves dependent and assigned a Guardian Ad Litem. Conflicts also arise when the best interests of siblings (or unrelated children) diverge and the GAL cannot pursue the best interests for some children without harming the interests of other children. The GAL Standards of Operation require the GAL Program to withdraw when they have a conflict. They may, but are not "obligated" to seek appointment of another GAL or an attorney for the child upon their withdrawal. Standard. 2.4, GAL Standards of Operation, Effective March 1, 2006.

d. Children Who Object to the GAL's Effort to Disclose Confidential Psychotherapeutic Records.

The GAL Standards of Operation require the GAL Program to request the appointment of an attorney, "if available" for a child if the child objects to the disclosure of therapy records. Standard. 4.2(5)(b), GAL Standards of Operation, Effective March 1, 2006.

As a child I was subjected to many beatings. My foster parents beat me as a child. In school I got beat up by a security guard, and when I complained about it to my case worker I was told I was delusional, and put on more medication. I didn't even want medication as a child but was unaware of the proper avenues to voice my concerns.

--Mez P.

e. Children Who Disagree with the Guardian Ad Litem's Position.

The Executive Director of the GAL Program asserts that the GAL Program will seek appointment of counsel

for children whose express wishes are different than with the GAL position.¹⁷ That position is not presently reflected in any written standards or directives. Moreover, the GAL Program does not have a quality assurance program that measures compliance with this, or any other of its policies. Anecdotal reports from around the state assert that this policy is breached as often as it is observed, and in fact in late 2011 the GAL Program took the opposite position in an appellate brief.¹⁸

f. Children with Unmet Civil Legal Needs.

Both the GAL Program and the Department of Children and Families will seek the appointment of counsel for children who they identify as having civil legal needs. Civil legal needs encompass a large range of matters, but the most common issues include guardianship, probate, immigration, education, and access to medical or developmental services. DCF has an agreement with Florida's Children First and Florida Legal Services through which DCF lawyers can obtain assistance locating counsel for children as needed.¹⁹

It is impossible to quantify the number of children who currently fall in to one of the above categories. It is equally impossible to quantify the number of those children who "should" have counsel and actually do. We know there is a gap – we just don't know how large that gap is. Without a uniform system of representation, we will never know how many children are slipping through the cracks.

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III. REPRESENTATION TODAY

Despite the lack of a unifying state system, there are a number of organized programs that provide counsel for children in dependency proceedings. This report attempts to quantify the availability of representation through those programs. We tried, but could not capture data reflecting the direct appointment of attorneys by judges that did not flow through an established program or GAL contract.

Methodology

In the summer and fall of 2011, Florida's Children First in conjunction with the University of Florida, Levin College of Law Center on Children and Families surveyed the existing legal services providers. We obtained the Guardian Ad Litem Program's data on contracts for legal services.²⁰ We queried the Regional Counsels regarding their representation of children.²¹ We also sought, but were unable to obtain, data on the appointment of individual attorneys who are not affiliated with an organized program or paid by the GAL Program. **Dependent Children in Florida**

With regard to directly appointed counsel we know these numbers are an undercount of represented children. On the other hand, we also know that in the short time since we completed this survey, a number of the providers discussed herein have had to eliminate positions due to funding cuts. We believe that this report, is therefore, an over-estimate of the number of children with access to counsel via organized programs.

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The Providers:

Six different types of organizations supply counsel for children in Florida. Legal aid/legal services providers work in sixteen of the twenty judicial circuits; seven law school clinics represent children; the Public Defender in the Sixth Circuit represents "cross-over" children (those with both dependency and criminal or delinquency charges); the Guardian Ad Litem Program contracts with legal aid programs and private attorneys in 14 circuits; the Office of Criminal Conflict and Civil Regional Counsel represents some children; and courts appoint pro bono counsel.

The first table lists the providers in each circuit, briefly describes the type of representation each offers and lists the number of lawyers providing services and the number of clients served. Many of the providers also serve children who are not in state care – so the number of clients served is our best estimation of the number of dependent children represented.

Three days before my 18th birthday, I learned that my caseworker had lost my Road to Independence Application. As a result, my paperwork wasn't processed and I was facing homelessness on Thanksgiving Day. It was one of the scariest moments of my life. But, my lawyer was on my side. Within two days, she managed to schedule an emergency hearing before my 18th birthday. On that day, I also received emergency funds and spoke up for myself for the first time, becoming the successful youth and advocate that I am today.

--Julia V.

The Funders

The Florida Bar Foundation is the largest statewide funder of legal services for children in Florida. Their current grants (which include services for children not in Florida's Patchwork of Representation

Ad Litem Program contracts with legal services programs and private attorneys for children in the amount of \$317,173.²³ Children's Legal Services Councils (special taxing districts) fund legal services attorneys for children in three counties, Broward, Palm Beach and Hillsborough.²⁴

The Results

All legal service providers combined provide attorney representation for approximately 2,523 children and youth in state care each year. The availability of counsel to represent children varies dramatically by Circuit. The Tenth Circuit has no programs that provide counsel to children. At the other end of the spectrum, the Palm Beach Legal Aid Society represents around 800 children each year.²⁵

The number of trained and supervised lawyers in organized programs barely scratches the surface of the needs of Florida's dependent children. Currently an average of 1,100 children are removed from their parents each month.²⁶ There were 32,507 children who were in out-of-home care in FY 2010-11.²⁷ Table 2 calculates the percentage of dependent children in each circuit who potentially had access to counsel. Those percentages are reflected in the map of Florida by judicial circuit.

Despite the imprecision of the data available, there can be no doubt that Florida's patchwork system of representation results in extreme inequality of access to counsel. The ability of a child to obtain counsel should not rest on the accident of geography.

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Organized Providers of Attorney Representation to Dependent Children by Judicial Circuit

Funders: CSC – Children's Services Council; FBF – The Florida Bar Foundation, GAL –Guardian Ad Litem Nature of Representation: IL- Independent Living; RTC -Residential Treatment Center commitment; Misc. includes public benefits, guardianship, education, immigration)

Circuit	Providers	Funders	Nature of Representation	# of Attorneys & Clients Served	
1,2 &	Legal Services of North	FBF, GAL	RTC, IL, Misc.	3.5 attorneys. 150 clients (not all dependency).	
14	Florida				
2	Florida State Univ. Public	FBF	Health care, special	8 students. 20 clients.	
-	Interest Law Center		education		
3	GAL contracts with private counsel	GAL		1 attorney. 3 clients.	
4	Jacksonville Area Legal	FBF	Special education, mental	1 attorney. 40 clients (not all dependency).	
+	Aid	1 DI	health	1 atomey. 40 chemis (not an dependency).	
	Florida Coastal Law			9 students. 11 clients.	
	School Family Law Clinic				
	GAL Contracts w/ private counsel			5 clients.	
5	Community Legal Services of Mid Florida	FBF, GAL	Special education, RTC, Misc.	1 attorney. 25 clients.	
6	Public Defender		Dependency & Delinquency/criminal	2.5 attorneys. 135 clients.	
	Gulfcoast Legal Services- GLS Child	FBF	Immigrant children	2 attorneys. 18 clients.	
	Community Law Program (Transitioning Youth)	FBF, GAL	IL, Special Ed, RTC, Misc.	1 attorney. 50 clients.	
	GAL Contracts w/private counsel			3 clients	
7	Community Legal Services of Mid Florida	FBF, GAL	Special Education, RTC, Misc.	1.25 attorneys. 35 clients.	
8	UF Gator Team Child		Dependency, special ed, cross over children	8 students. 18 clients.	
	GAL contracts w/2 private attorneys on monthly basis			60* ¹	
9	Legal Aid Society of Orange County Bar	FBF	Attorney GALs for all dependent children		
	Private attorney under contract with GAL		All areas needed	1 attorney 55 clients	
	Barry Univ. Law School		All areas needed	1 professor, several students. 11 clients.	
10					
11 &	Legal Services of Greater	FBF	Special Education	4 clients.	
16	Miami				
	FIU Family & Children Advocacy Clinic	FBF	Dependency & education	3 students. 4 clients.	
	Dade Legal Aid	FBF, GAL	IL, Misc.	4 attorneys. 120 clients	
	U of M Children & Youth Law Clinic		dependency, education, IL. disability, mental health, medical, immigration,	3 attorneys, 24 law students. 76 clients.	
	Lawyers for Children	FBF, CSC	Dependency, primarily 13-	300 Pro bono attorneys supported by staff	
	America		18	attorneys. 240 clients	

^{*} The number was not provided. The contracts total \$40,000 and the GAL pays between \$500 and \$1,000 per case. So average between 40 and 80 clients, so we used 60 as the average.

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Circuit	Providers	Funders	Nature of Representation	# of Attorneys & Clients Served	
12	Gulfcoast Legal Services	FBF	Immigration	(See Cir. 6)	
	GLS Child				
	GAL contract with private			1 client.	
	counsel				
13	Bay Area Legal Services	FBF, CSC	Children 0-5 and older sibs	2.5 attorneys. 128 clients	
15	Palm Beach Legal Aid	FBF, CSC			
	Foster Children Project		0-12 and older siblings	11 attorneys. 350-400 clients.	
	Juvenile Advocacy Project		Teens, IL crossover, misc	4 attorneys + pro bonos. 305 clients.	
	Education Advocacy		Special ed, discipline	2 attorneys. 60 clients (not all dependency). 1 attorney. 35 clients.	
	Minor Mothers		Pregnant/parenting teens		
17	Legal Services of Broward	FBF	Dependency, cross-over,	5 attorneys. 370 clients	
	County		education		
	Nova Law School Child.	FBF	Education, IL	3 students. 5 clients.	
	& Families Clinic				
18	Brevard County Legal Aid	FBF	IL, education, disability,	1 attorney, 26 pro bonos. 100 clients.	
			misc. (teens only)		
19 &	Florida Equal Justice	FBF	IL, RTC, Education,	2 attorneys. 10 clients in the 19 th , 42 in the	
20	Center		Immigration, Misc.	20th Cir.	

Sources:

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Providers were queried in June 2011, some programs updated their information in January 2012.

Statewide office of the Guardian Ad Litem provided a spreadsheet of its attorney contracts on October 21, 2011.

Several Offices of Criminal Conflict and Civil Regional Counsel were queried in December, 2011 / January, 2012 but had no data to report.

Percent of Children in Out of Home Care Potentially Represented by Counsel Through an Organized Program or GAL Contract.

Circuits	Children in Out of Home Care*	Lawyers (FTE)◆	# of Children Represented	% of Children Represented
1, 2, & 14	3,208	4	170	5
3	341	0	3	.08
4	1,959	1.25	56	.02
5	1,902	1	25	.1
6	3,234	4	206	.6
7	1,792	1.25	35	.02
8	758	1.5	78	1
9	2,444	1.5	66	.3
10	1,650	0	0	0
11 &16	2,813	15	444	16
12	1,460	0	1	0
13	3,160	2.5	128	4
15	1,496	18	800	53
17	2,491	5	370	15
18	1,201	2	100	8
19 & 20	2,598	2	52	.2
Total	32,507	27	2,523	8%

* The number of children in out of home care was calculated for FY 2010-11 (Child Welfare Services Trend Report available at USF Center for Child Welfare Practice, http://centerforchildwelfare.fmhi.usf.edu/Pages/Default.aspx).

• Does not include pro bono attorneys.

The available legal services providers may have clients who reside at home under state supervision. Moreover, many programs represent children who are not in the dependency system. So the actual percentages of children being represented is likely to be lower than reflected in this chart.

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References and Citations

¹ In re D.B., 385 So. 2d 83, 91 (Fla. 1980) citing Fla. Stat. §827.07(16) (1979).

Id. At 94-95.

³ See, The Fla. Bar re: Advisory Opinion - HRS Nonlawyer Counselor, 547 So.2d 909 (Fla. 1989).

⁴ See, Fla. Stat. §§ 39.013(9)(a), 39.807(1)(a).

⁵ Fla. Stat. §39.822(1)

⁶ Florida Guardian Ad Litem Program 2011 Annual Report, page 5. Available at:

http://www.guardianadlitem.org/documents/GALAnnualReport20 11.pdf

⁷ The primary exception is in the Ninth Judicial Circuit where all GALs are lawyers and act as lawyers in their own cases -e.g.

filing motions and taking deposition. ⁸ Fla.Bar, Comm'n on the Legal Needs of Children (2002),

available at http://

www.floridabar.org/TFB/TFBResources.nsf/Attachments/071834 6282810A0985256BEA00684438/

\$FILE/finalLNCversionfromJan%20website%20file.pdf?OpenEle ment

⁹ See testimony of Andrea Moore, available from Florida's Children First upon request.

¹⁰ Letter dated 1/12/06, from the Chair of the Senate Committee on Children and Families to Chair of Senate Ways and Means "The members of the Committee on Children and Families have written to you expressing support for full funding of the Statewide Guardian ad Litem program's FY '06 -'07 legislative budget request and in support of additional funding specifically targeted for attorneys ad litem. The additional funding necessary to provide attorneys ad litem for those foster children with particularly complex legal needs is \$14 million." Available from Florida's Children First upon request.

Guardian Ad Litem Program 2006 Annual Report, page 6 available at

http://www.guardianadlitem.org/documents/GAL2006AnnualRep ort-web2_000.pdf

Id. at pg 22 and response to public records request provided by Charlie Nelson, Statewide Director of Operations on 10/21/2011, available from Florida's Children First upon request. ¹³ S.B. 1860 2010 Leg. (Fla. 2010)

¹⁴ Point-in-time data provided by the Department of Children and Families in response to a public records request on September 9, 2011.

¹⁵ Fla. Stat. § 39.407 (3)(d); Fla. R. Juv. Pro. 8.355.

¹⁶ See note 14.

¹⁷ Email from Alan Abramowitz to Robin Rosenberg 12/27, 2011, available from Florida's Children First upon request.

¹⁸ See Guardian Ad Litem Program's Response brief to Petition for Writ of Certiorari, S.S. v. Dept. Children & Families, Fla. 1st DCA, case no. 1D11-5455, filed 11/4/2011.

¹⁹ The GAL position is stated in the Email from Alan Abramowitz to Robin Rosenberg 12/27, 2011. Children's Legal Services

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division of the Department of Children and Families has a "Counsel for Kids" agreement with Florida's Children First and Florida Legal Services which can be found on the DCF website at: http://www.dcf.state.fl.us/admin/cls/refGuides.shtml

²⁰ Response to public records request provided by Charlie Nelson, Statewide Director of Operations on 10/21/2011, available from Florida's Children First upon request.

²¹ The offices of Criminal Conflict and Civil Regional Counsel that we were able to reach informed us that the numbers of dependent youth represented were small and that no data was maintained. ²¹ <u>http://www.flabarfndn.org/grant-</u>

programs/grantees/childrenslegalservicesgrants.aspx last viewed October 22, 2011.

²¹ Response to public records request provided by Charlie Nelson, Statewide Director of Operations on 10/21/2011, available from Florida's Children First upon request.

²¹ Broward

http://www2.cscbroward.org/docs/AboutOurPrograms/FULL_DO CUMENT_web_12-11.pdf; Hillsborough,

http://www.childrensboard.org/funded_agencies.aspx,; Palm Beach http://www.cscpbc.org/funded-programs.

²¹ See Table 2 below.

²¹ Child Welfare Services Trend Report, available at Center for Child Welfare Practice,

http://centerforchildwelfare.fmhi.usf.edu/kb/PerfData/Forms/AllIt ems.aspx.

Calculated using data from Child Welfare Services Trend Report, available at Center for Child Welfare Practice. http://centerforchildwelfare.fmhi.usf.edu/kb/PerfData/Forms/AllIt ems.aspx.

http://www.flabarfndn.org/grant-

programs/grantees/childrenslegalservicesgrants.aspx last viewed October 22, 2011.

²³ Response to public records request provided by Charlie Nelson, Statewide Director of Operations on 10/21/2011, available from Florida's Children First upon request.

²⁴ Broward

http://www2.cscbroward.org/docs/AboutOurPrograms/FULL_DO CUMENT_web_12-11.pdf; Hillsborough,

http://www.childrensboard.org/funded_agencies.aspx,; Palm Beach http://www.cscpbc.org/funded-programs.

²⁵ See Table 2 below.

²⁶ Child Welfare Services Trend Report, available at Center for Child Welfare Practice,

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