



Fighting for Children's Rights

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**Remarks prepared for the Child Protection Task Force
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Thank you to the Task Force for allowing me the opportunity to present the concerns of Florida's Children First.

First, for those of you who do not know, Florida's Children First, Inc. is a 5 year old, not for profit, statewide, children's legal advocacy organization. FCF was founded by advocates who were trying to pool their time, money, talent to make a coordinated, meaningful and sustained difference in the lives of children in Florida. FCF's Board of Directors is comprised of child advocates from all over the state with a broad reach and depth, beginning with 24 Board members and continuing with a 50 member Advisory Board. The depth does not stop there, as many others volunteer on particular projects.

Florida's Children First has a number of recommendations we would like you to consider as you do your work. The overarching principle we propose is, quite simply, Common Sense. When the State inserts itself into a family and removes a child for abuse, abandonment or neglect, it takes on the concurrent duty to provide a better place for that child. That doesn't just mean a safer place - - safety is only the beginning of the state's obligation. The State must provide children with nurturing caregivers, decent food, a constitutionally mandated quality education, appropriate medical and mental health care. It must look not only to the child's immediate needs, but plan for his or her future with good transition assistance.

We know you have received the Blue Ribbon Report and Operations Safe Kids Study among other material and public comment. We hope you will develop recommendations consistent with those studies as well. Even more, we hope this Task Force will see its work through to more than a report that gathers dust on a shelf.

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Interagency Coordination:

Systems that serve children in Florida are fragmented among a variety of agencies. At the state level alone, children are served by the Department of Children & Families, the Department of Juvenile Justice, the Department of Education, the Agency for Workforce Innovation, the Agency for Health Care Administration and the Agency for Persons with Disabilities. Additionally, a myriad of local governmental and non-profit agencies as well as for-profit companies deliver services directly to children. Agency staff may maintain contact with some of their partner agencies, but they rarely have a clear understanding of those agencies' legal mandates, policies, procedures, and resources. The agencies and programs serving children generally do not perceive that they can accomplish more by working together than they can on their own. Good collaboration would result in a more effective use of resources and improved services.

In our experience, current efforts, although well intentioned, lack coordination.

FCF recommends that:

- ***This Task Force adopt as a core principle the need to improved communication and collaboration with, among and between all of the agencies providing prevention, protection and treatment services for children.***

Information Sharing:

Child Protection, Child Welfare and other youth-serving agencies often have difficulty receiving timely and reliable information needed for determining eligibility; conducting assessments; and determining appropriate supervision, case plans, placements and services for children and youth. In advocating information sharing, we note it is important that confidentiality must be maintained even when information is properly shared among agencies. *Any disclosure of youth or family specific information needs to be based on appropriate legal authorization.*

Sharing information should result in: better comprehensive assessments, referral to the most appropriate services, coordination of services, the avoidance of duplication. Information sharing will also facilitate the monitoring of service plans and serve the needs of the

broader community for accountability and safety. Florida needs to join with state and local jurisdictions across the United States that have begun working to improve information sharing among key agencies responsible for the health and wellbeing of at-risk children and youth for these purposes.

Information sharing is a national concern. The federal Office of Juvenile Justice and Delinquency Prevention (OJJDP), and other federal departments such as the Substance Abuse and Mental Health Services Administration and the U.S. Department of Education, have begun promoting information sharing among juvenile justice, education, and other youth-serving agencies to support a comprehensive continuum of care and services. Reportedly, 35 states have enacted new legislation regarding juvenile records. In addition, policymakers have (rightfully) begun requesting that agencies provide accurate data to measure program effectiveness, costs, gaps, or redundancy that can best be provided through information sharing.

Any disclosure of youth and family specific information needs to be based on appropriate legal authorization.

FCF recommends that:

- ***This Task Force join with the Governor’s Commission on Open Government and update Florida laws regarding confidentiality practices, privacy protections and information sharing relevant to:***
 - *Child welfare and child protection records.*
 - *Education records.*
 - *Medical and behavioral health records.*
 - *Juvenile Justice records*
 - *Specialized services.*

FCF recommends key decision-makers or stakeholders from the following groups be involved in developing a new and better approach to information sharing:

- ◆ *Child welfare.*
- ◆ *Community services.*
- ◆ *Education.*
- ◆ *Law enforcement.*
- ◆ *Juvenile justice and corrections.*

- ◆ *Mental health.*
- ◆ *Primary health care.*
- ◆ *Substance abuse.*
- ◆ *Developmental Disabilities.*
- ◆ *Technology.*
- ◆ *Legal advisors, e.g., general counsels, prosecutors, public defenders, attorneys for children.*
- ◆ *Other advocacy organizations serving youth.*
- ◆ *Other youth-serving agencies and organizations.*

We also suggest other possible stakeholders be included, such as:

- *Business representatives.*
- *First Amendment Foundation Representatives.*
- *Elected officials.*
- *Youth and Family Representative.s*
- *Judges or representatives from the Office of State Court Administration.*

Informed Consent/Common Release:

FCF urges the immediate creation and implementation of a common process for obtaining informed consent for information release and sharing among all state agencies and their sub-contractors that serve children and families.

A common consent form used by all participating agencies can reinforce the respect for the privacy rights of the children and the informed consent process while facilitating the prompt sharing of information needed to provide services.

“Informed consent” requires that the youth and/or parent(s), or legal guardian provide consent with a full understanding of what information is likely to be shared, with whom and under what circumstances, what information can be released to whom without their consent, and consequences for unauthorized disclosure. To ensure that the consent is “informed,” participating agencies need to be aware of any cultural or linguistic factors that may impact the youth and/or parent or legal guardian’s ability to understand the consent process, including the need for interpretive services.

The criteria¹ for a common release should include:

- Explanation of the purpose(s) of the information sharing.
- The reason(s) for disclosing the information.
- The way(s) that the disclosed information will be used, including other agencies to which it might be disclosed.
- Any limitations on the disclosure or use of the information.
- Agency practices regarding sharing of non-confidential, as well as confidential information, and the privacy protections that will be used.
- The way(s) youth and/or the youth's parent/legal guardian can revoke their consent.
- Policies for youth and/or youth's parent/legal guardian to review, revise, correct or supplement their information.
- Identification of the expiration date of the consent to release information or the circumstances upon which the consent automatically expires (e.g., when a youth is successfully reunited with family or in a permanent placement).
- Grievance procedures for suspected unauthorized disclosure or use of the information.
- Penalties for unauthorized disclosure or use of information.
- Provisions for the subject of the information and/or his/her attorney to exercise the right to a copy of the release.

Despite assurance of privacy protection, the youth, parent(s), or legal guardian may not want specific personal information disclosed. In cases when a youth, parent(s), or legal guardian refuses to provide consent, in part or in total, they should not be denied services based on their refusal unless the information is necessary to determine eligibility for services. The agency must be responsible for ensuring that the youth, parent(s), or legal guardian understand that they are not required to consent to the release of any personal information; the consequences, if any, of not providing consent; and if their refusal may hinder the delivery of services.

We also recommend informational materials about confidentiality policies and procedures be "user friendly," that is, written in language that is developmentally appropriate, easily understood, and available in the primary languages of most affected youth and families. A user-friendly approach should also be used for materials that inform youth

¹ The elements noted are derived from relevant statutes and regulations, such as the Health Insurance Portability and Accountability Act (HIPAA), and 42 C.F.R. Part 2: Federal Alcohol/Drug Confidentiality Regulations and as contained in the DOJ,OJJDP Report, Guidelines on Information Sharing, October, 2006.

and their families on how to assert their privacy rights and correct errors in the records.

Youth Access To Records:

The State must revise its practices with regard to providing youth with access to their records. Although the law and administrative code require that youth be provided numerous documents, many still exit state care without those mandated records. Moreover, youth suffer the negative consequences of poor record keeping when they try to obtain access to health care and education. Youth in Florida Youth SHINE have described their difficulties in learning their own history as a form of “identity theft”. The youth tell us of difficulty filling out job, college and financial aid applications that require disclosure of each place they have lived in the past five years or other personal history information. Surely confidentiality was never meant to harm the children in care which is exactly what current practice does.

The State must also improve its practice concerning providing children’s records to the child’s legal counsel. Again, while the law is clear concerning access to records, in practice, attorneys for youth often have to battle to obtain records to which they are plainly entitled.

FCF recommends:

- ***DCF and CBCs immediately stop any practice or interpretation of law that prohibits youth and their attorneys from obtaining their records.***

Engage Youth and Family Representatives:

It is critical to involve youth and families in the planning and development of system improvements. By participating, youth and their families are included in the development of solutions that affect their lives. Engaging and learning from youth and families also results in better decision-making. Typically, at-risk youth and their families are engaged with multiple agencies, each of which collects similar information as part of intake and processing. They know when agency decision-makers ask for information necessary to make good decisions, they know when duplicate information is requested, they know when they receive the services and assistance they need. They know what is working, and what is not.

FCF recommends that:

- ***This Task Force recommend all other task forces and work groups follow its lead and include youth in or aging out of the system, and where feasible, family representatives.***

Safe & Nurturing Residences:

Most communities do not have enough foster homes to care for all of the children who are removed from their parents. Caseworkers scramble to find a placement, any placement, without the luxury of selecting the home most suitable for a particular child or sibling group. As a consequence, too many youth sleep in shelters, group homes or over-crowded foster homes. Many more bounce from placement to placement. Moving children from place to place and warehousing them in facilities are two of the most psychologically damaging things we can do to children.

DCF and the CBCs need to undertake a massive effort to develop more foster homes. In addition to enhancing recruiting efforts, they must work hard to improve the processing of prospective foster families so eager recruits do not become discouraged and drop out during the lengthy licensing process.

Relative and non-relative caregivers relieve a tremendous amount of pressure on the system. However the state must pay more attention to the quality and adequacy of these placements. Substantially more training and supervision needs to take place to make sure that these are appropriate places for children.

All caregivers, whether foster, relative or non-relative must have greater access to services to help them cope with the special demands of children who have been abused, abandoned or neglected.

Having said the above, we acknowledge that common sense and the data indicate children do better in their parental homes. We urge every effort be made to strengthen families and provide services while children remain in the home, consistent always with the safety of the children.

FCF recommends that:

- ***Serious attention be paid to "marketing" and recruiting foster homes, especially for sibling groups, minorities and children with disabilities.***
- ***DCF strengthen oversight of over-capacity and unlicensed placements.***
- ***DCF and CBCs establish clear understandings regarding the waiver of capacity limits for foster homes and phase out such waivers except in true emergencies.***
- ***DCF and CBCs reconsider the criteria used to determine when a non relative foster placement is allowable. CBCs examine the practices when a non-relative placement is used. FCF suggests such placements only be utilized if there is a demonstrable relationship between the child and the proposed placement and then only if the non-relative agrees to become a licensed placement. If there is a need for MAPP classes and other requirements for out-of-home care, and we believe there is a strong basis for the requirements, then non-relative placements should be required to meet the same standards as others.***
- ***DCF and lead agencies have a zero tolerance for youth sleeping in offices or spending days in offices with each night in a different bed/residence.***
- ***DCF and CBCs expedite licensing consistent with safety and otherwise support new candidates for foster parents.***
- ***CBCs should evaluate whether a child is bonded to a foster parent before changing the child's placement. Efforts should be made to leave a child in the foster home with out-of-home services, if necessary.***
- ***DCF and CBCs provide additional services and supports to relative and non relative care givers.***

Education:

The child welfare system does not coordinate well with the education system. Professionals in the child welfare system have not responded with any urgency to repeated reports that children in out-of-home care perform worse than children in the general population on a number of academic achievement measures. The Office of Program Policy Analysis and Government Accountability (OPPAGA) collected statewide

data on the educational performance of teenagers in out-of-home care. We commend that report to you.

For the 2003-04 academic year, OPPAGA found that foster youth in Florida:

- Scored substantially lower than other youth on the Florida Comprehensive Assessment Test (FCAT), with less than a quarter performing at grade level in math and reading;
- Were nearly twice as likely to be held back a grade;
- Were two-and-a-half times more likely to be diagnosed with a "less severe" learning disability, such as a hearing, speech or visual impairment;
- Were seven times more likely to have been diagnosed with a "severe" disability, such as being educably mentally disabled or severely brain injured;
- Were twice as likely to have school disciplinary problems, ranging from being suspended, to being placed in an alternative school, to being expelled;
- Were three times more likely to be involved in drop out prevention programs for youth who were parents, under the supervision of Department of Juvenile Justice, or deemed unmotivated or unruly in the classroom; and
- Were less likely to attend vocational schools and community or four-year colleges after high-school: only 21% sought post-secondary education compared to over half of those in the same-aged general population.

If children are to truly become productive adults, they need an education. Florida's Children First and its partner the University of Miami have issued a report on education of foster children through the implementation of Fl. Stat. 39.0016. We commend that full report to you as well.

In sum, in examining the education/child welfare collaboration, we found that:

- Children in state care are often not enrolled or experience significant delays in enrollment in a school program;
- Children are moved from school to school as shelters and placements change;
- Children are not receiving special education services when required;
- There are delays in the transfer of school records;

- Credit for courses taken while in out of home care often do not transfer to the next school, putting the youth even further behind in efforts to complete school;
- In too many cases, there is a failure to identify school needs and provide appropriate services;
- Most children in care lack an educational advocate, and
- Children who have or are suspected of having a disability that affects their learning, generally, do not have lawfully appointed Educational Decision-Makers.

The study also cites issues with information sharing and collaboration among the Education, Child Welfare and Court Systems.

FCF recommends that:

- ***All children receive an education while in DCF custody, and those children with disabilities receive special education services***
- ***No child leave DCF custody without an education transition plan to include enrollment in the local school and transfer of credit for work undertaken while in care.***
- ***DCF, DOE and AWI should:***
 - ***Work together to coordinate and provide needed services to children in out-of-home care.***
 - ***Fully implement the state level interagency agreement including designating an administrator to administer and monitor compliance with the interagency agreement, as well as provide technical assistance to districts.***
 - ***Promulgate administrative rules regarding educational case planning requirements for children in out-of-home care and collaborate on appropriate rules within the purview of DOE and AWI.***
 - ***Develop quality assurance measures to assess local implementation of interagency agreements.***
 - ***Ensure maximum utilization of available federal and state money, and explore public-***

private partnerships and other funding sources to promote educational stability.

- ***Local school districts, DCF Regions and Circuits, CBCs and other stakeholders should:***

- ***If they have not already done so, enter interagency agreements regarding the education of children in out-of-home care. Review existing interagency agreements to assess whether the agreement meets the goals discussed in the "Assessing Interagency Agreements" section of the UM/FCF report.***
- ***Develop policies and procedures to implement interagency agreements.***
- ***Collect data to assess the effectiveness of the agreement's initiatives.***
- ***Meet, at least semi-annually, to collaborate and assess implementation of the agreement.***

- ***The Florida Legislature should:***

- ***Conduct regular oversight on implementation of Florida Statute § 39.0016.***
- ***Expressly include all children in out-of-home care in the statutory definition of "homeless child" in Florida Statute § 1003.01(12) of the Education Code to facilitate enrollment.***
- ***Create a dedicated funding stream for transportation to improve school stability or add the requirement to proviso language for school transportation funding.***
- ***Mandate that dependency courts hold a hearing, or include in Judicial Reviews, testimony to determine who holds educational rights for children in care and appoint a surrogate parent if necessary.***
- ***Dependency courts should adopt a uniform order addressing educational issues and for the appointment of surrogate parents.***
- ***Amend Florida law to provide that juvenile courts may appoint surrogate parents, as required by the Individuals with Disabilities Education Act (IDEA). Provide standards for***

the appointment of surrogate parents consistent with IDEA.

- ***Require that publicly funded post-secondary institutions provide housing for current and former foster youth during school breaks.***

Health and Mental Health Services:

A. Health Insurance / Medicaid Enrollment:

It should go without saying that children in the custody of DCF need to have adequate medical, psychological, dental and vision care. The Child's medical history and medical records while in custody must be complete and correct, and provided to the youth upon exiting the system. To do otherwise risks their health while providing problems for treating doctors

All children who come into the dependency system should have health insurance. Most children who enter the dependency system are eligible for Medicaid.

Undocumented immigrant children are routinely thought to be excluded from receiving Medicaid; however immigrant children from Cuba and Haiti are eligible for Medicaid as parolees as well as children who have received Special Immigrant Juvenile status.

Community Based Care (CBC) providers routinely apply for Medicaid when children come into their care and custody. However, they report that there are frequently delays in obtaining Medicaid.

CBCs do not routinely apply for Medicaid or seek KidCare for eligible children who are released to their parents (under supervision), relative or non-relative care givers. Some CBCs assist the caregivers with health care applications, others do not. Without assistance, caregivers sometimes fail to fill out the forms properly resulting in the child being denied Medicaid or other health insurance programs.

CBCs are not routinely assisting transitioning youth with securing Medicaid and where eligible, continuing the coverage until they reach age 21.

FCF recommends that:

- ***The State create a "presumptive eligibility" status for children entering the system providing full coverage immediately.***
- ***AHCA and DCF work together to streamline the Medicaid approval so that children entering state care are enrolled in Medicaid within a week of entering care.***
- ***The State requires that CBCs enroll all children who are not eligible for Medicaid or receiving private insurance in the low-income health insurance program.***
- ***All CBCs ensure that all caregivers apply for Medicaid or other appropriate low-income health insurance program for children in the dependency system not in the state's care and custody, unless the child is otherwise insured. The CBCs should be further required to assist caregivers with completing the initial application, and follow up to correct problems if Medicaid is denied.***
- ***The State provide seamless medical and behavioral health care coverage, with consideration of a managed care concept including full risk assumption, that allows foster children to maintain the same coverage and plan throughout their stay in foster care as well as after they are either re-united or placed in a permanent home, when eligible. Children must receive needed services regardless of changes in locale -- the availability of medically necessary services should not depend on where a child lives.***
- ***The State establish specific transfer criteria to ensure continuity of medical and behavioral health coverage for children leaving foster care.***
- ***Health care records must be kept current, complete and accurate for every child in care.***
- ***Health care records from time in custody must be provided to the family or the transitioning youth.***
- ***CBCs assist transitioning youth in access to Medicaid when the youth is eligible and provide information regarding maintaining eligibility.***

- ***CBCs apply for Medicaid for undocumented immigrant children who have been awarded Special Immigrant Juvenile status in the State's care and custody.***
- ***The State expand its low-income health insurance program to include undocumented immigrant children.***

B. Screening / Referral for Assessment:

All children who come into the dependency system should be screened for mental (behavioral) health and substance abuse needs.

The Department of Children and Families agreed, in settling *M.E. vs. Bush* that it would skip screening and provide a comprehensive behavioral assessment for children in the state's "care and custody." That includes children in paid substitute care, shelter care and foster care.

Children who are returned home under supervision or placed with relatives or "non-relative caregivers" do not automatically receive comprehensive behavioral assessments. Nor are they routinely screened for mental health and substance abuse needs.

FCF recommends that:

- ***Children who enter the dependency system but are not into placed into the state's "care and custody" be routinely provided comprehensive behavioral assessments.***
- ***If those children are not provided complete assessments, they should be screened for mental health and substance abuse needs and referred for services.***

C. Comprehensive Behavioral Health Assessments:

A CBHA is an in-depth assessment of a child's emotional, social, behavioral, and developmental functioning within the family, home, school and community. The assessment should include direct evaluation of the child as well as interviews with caregivers and other persons with knowledge of the child.

The purpose of the CBHA is to inform the child's case plan. It should provide guidance on placement, behavioral issues and treatment needs.

Comprehensive behavioral health assessments (CBHA) are supposed to take place within thirty-one days of a child coming into state care. Children are to be referred within seven days of coming into care and the assessment completed within 24 days of referral. Services are to be provided within thirty days of the identification of the need. See F.A.C. 65C-28.014(5).

Medicaid presumes that all children need CBHAs and does not require prior authorization.

CBHAs must be performed by a licensed mental health professional or under the supervision of a licensed mental health professional.

Infants have mental health needs and they can be assessed. Likewise, children who are non-verbal or pre-verbal can be assessed.

The latest figures from DCF show that almost half of the children coming into care did not receive a CBHA in the required time. A large number of the children who have not been assessed are under the age of 5.

The quality of CBHAs is reported to be very inconsistent, sometimes even "boilerplate."

Case Managers do not uniformly use CBHAs in creating case plans.

FCF recommends that:

- ***DCF implement a quality assurance process to ensure the timely completion of CBHAs for all children in dependency.***
- ***DCF implement a quality improvement processes to improve quality of CBHAs.***
- ***CBCs educate case managers about how to use CBHAs in case planning.***
- ***DCF implement a quality assurance process to ensure that CBHAs are incorporated into case plans.***
- ***OSCA and DCF educate dependency judges about the importance of the required CBHAs and how***

they should be used in case planning and case review.

- ***DCF require that CBCs conduct an annual training for all child welfare staff, from program managers down on the utilization of CBHAs and other behavioral health services.***

D. Treatment:

All mental health and substance abuse needs identified in the CBHA should be addressed by appropriate treatment and services. For children in the care and custody of the state, treatment should begin within thirty days of the identification of the need. See F.A.C. 65C-28.014(5).

The Early Periodic Screening, Diagnosis and Treatment (EPSDT) provisions of Medicaid require that children receive all treatment and services that are medically necessary to “correct or ameliorate” a diagnosed physical or mental condition. 42 U.S.C. §1396(d)(r)(5)

Placement in a therapeutic foster home is a Medicaid covered service. However, it is considered a treatment placement and not a home. Caseworkers and courts often seek that level of care due to lack of decent foster homes and outpatient mental health and substance abuse services. The problem for children in care is that as soon as the child shows improvement, he or she is moved to a new placement (the system’s name for a home) and changes therapists as well. Careful thought needs to be given to how to address these systemic problems that exacerbate or may even create mental health problems for the children.

Judges may order mental health and substance abuse treatment and services for children that are not covered by Medicaid or use terms in an Order that are not congruent with Medicaid covered services.

In all but 3 DCF districts, mental health and substance abuse services are provided by “the Community Based Care Partnership” a managed care partnership between the Community Based Care providers and Magellan.

Children denied Medicaid services (or who have levels of service reduced) have the right to seek a fair hearing from the Department of Children and Families. Currently there is no mechanism to provide

legal counsel to children who need to challenge the denial or reduction of services.

FCF recommends that:

- ***Case Managers and CBC staff receive training on services covered by Medicaid and how to advocate for children to receive those services.***
- ***Children be provided counsel to challenge the denial or reduction of mental health and substance abuse services.***
- ***DCF, CBCs and the Managed Care providers work together to ensure available, accessible services across the entire continuum of mental health and substance abuse care.***
- ***DCF and CBCs implement training to increase understanding of the mental and physical health needs of children experiencing trauma, and focus be placed on the needs of the 3 and under children and children who have been sexually abused.***
- ***DCF and CBCs establish/adopt qualifications for professionals providing treatment for sexually abused children to insure adequate training/expertise in this specialized and critically important area.***
- ***CBCs develop programs that enable children to remain in therapeutic foster homes after the need for therapeutic services has ended.***
- ***CBCs develop adequate capacity in their inventory of foster homes to avoid placement in a therapeutic home when placement in a foster home with out-patient services would be more appropriate.***
- ***Encourage the Community Based Care Partnership to increase utilization of Behavioral Health Overlay Services to maintain children in foster care placements.***

E. Residential Treatment Centers

Youth may be placed in locked residential treatment facilities as a mental health “treatment.” If their parents do not consent to the residential commitment, the court must approve such placements. Youth who object to placement at RTCs are entitled to appointment of

an attorney. However, youth who do not understand their right to object are not provided to counsel with whom to confer. While it is easy to determine when placement options are not appropriate for individual youth, it is much more difficult to locate placement options that are appropriate. CBC staff may not be adequately trained in locating appropriate placements.

Some programs claim to be residential treatment centers but are licensed as "child-caring facilities." Licensing should reflect actual programming and services of the facility so that monitoring by proper authorities can occur.

FCF recommends that:

- ***All children facing commitment to locked residential facilities be appointed counsel.***
- ***All facilities using residential treatment nomenclature should be reviewed to make sure they are appropriately licensed.***
- ***DCF conduct an annual evaluation of existing residential programs for quality and begin to examine outcomes (success data), and***
- ***DCF assess what types of programs are needed and plan accordingly.***

F. Psychotropic Medications:

Alarming numbers of children in state custody are prescribed psychotropic medications, many as a first line treatment. In 2006, DCF reported 34.6% of the Medicaid eligible children in licensed out of home care were prescribed one or more psychotropic medications. Doctors frequently prescribe these medications to manage children with difficult behaviors without the therapies to address causes.

Children in the dependency system seldom have complete medical records and as a result, doctors often prescribe medications without a complete or accurate medical history, potentially placing the child at risk.

The current presumption in the child welfare system appears to be that all children can benefit from medication without efforts to attempt other less invasive treatment prior to medicating the child; further, there is rarely an inquiry into the safety, efficacy and appropriateness of a prescribed medication for the individual child and finally, there is

rarely a timely review to ascertain if the medication is having the desired effect and if advisable to continue.

Psychotropic medications can have serious side effects, including side effects that mimic psychosis. Caregivers, however, are not trained to watch out for the side effects of medications.

Parents who retain the right to consent to treatment for their children are not given complete information needed to make informed consent. Moreover, they are pressured to consent to medication with threats that a refusal will be viewed adversely in the dependency proceeding.

AHCA/DCF has initiated some work in this area through contracts for "peer review" of unusual prescribing practices, but the efficacy of that work is not discernable, as contractors have not adopted the Governor's Open Government policies.

FCF recommends that:

- ***All youth should be properly evaluated prior to the administration of psychotropic medications and carefully monitored for side effects or contraindications while receiving those medications.***
- ***All children being prescribed psychotropic drugs are appointed counsel.***
- ***Judges, case managers and GALs be trained on the evidence required to ensure appropriate use of psychotropic medications, and what side effects to watch out for.***
- ***Standards for reviewing and approving administration of psychotropic medications be developed for the courts.***
- ***Judges and representatives of child should review the child's records provided for each Judicial review for completeness and accuracy. If the records were not provided or are incomplete, appropriate actions and follow up should be included in court order.***
- ***Prescribing doctors provide information directly to parents in order to obtain informed consent.***
- ***AHCA/DCF/CBC be required to provide specific and comprehensive report of the provision of psychotropic drugs to children and youth by age, gender, race, and location, each quarter.***

- ***AHCA/DCF/CBCP be required to provide specific reports on children who have been on medications for extended periods or are taking multiple drugs.***
- ***AHCA conduct an annual evaluation of the utilization of approved psychotropic medication for children under the managed care services.***
- ***ACHA/DCF and its subcontractors should report physicians with unusual prescribing practices to appropriate authorities.***
- ***AHCA/DCF should ensure physicians report adverse incidents to ACHA and the FDA and not only to the pharmaceutical companies.***

Youth Who “Cross-Over” to DJJ:

Children come in to state care as victims of abuse, abandonment and neglect. But if they are not provided adequate care and treatment they behave in societally unacceptable ways. Those children often “cross over” from the Department of Children and Families into the Juvenile Justice system. Children who are sexually abused act out sexually on other children. Youth deprived access to food in foster homes may resort to stealing. Youth with unmet mental health needs often turn to drugs and alcohol to self-medicate.

The dependency system does not adequately protect the rights and interests of youth who are charged with delinquent acts. Case workers provide information to law enforcement without giving a thought to the youth’s rights. It is critical for these youth to be represented at the earliest moment. To do otherwise enhances the chance that a child will go from being a victim to being viewed as a criminal. We have read reports where youth have been referred to the JJ system when the CBC system had no placement/home for the youth, or where a youth had a violation of probation report filed for talking back to the caseworker and was detained on that basis. We have heard of at least one youth left in a DJJ commitment facility three years beyond his time allegedly because there was no foster care placement. With the use of unified family courts, it becomes more important that youth are represented by attorneys whenever a case in which the youth is a party is heard by the Judge.

The consequences of being arrested and adjudicated, even in the delinquency system, are far-reaching and yet not well-known by child welfare workers. Youth may be banned from public housing, refused financial aid, denied entry to the military and barred from holding many jobs if convicted. The consequences for sexual abuse victims

who act out sexually on others is even more draconian as those youth are now stigmatized for life as sexual offenders in the State registry.

When the State steps into the parents' shoes, it needs to look out for all of the interests of the children in its care – including their legal rights when they get into trouble.

FCF recommends that:

- ***DCF/CBC should develop research-based strategies to intervene with children who are acting out before it reaches the point of a delinquency charge.***
- ***Case workers should be trained on the rights of children suspected or charged with criminal or delinquent acts as well as their obligation to act to protect those rights.***
- ***All youth in state care should be provided with criminal defense counsel prior to entry of a plea or other negotiated settlement.***
- ***The Legislature expand the Pilot Program in Pinellas and Pasco Counties where the Public Defender represents youth in both venues, delinquency and dependency, or work with the Florida Bar Foundation funded children's legal services programs to assure attorneys ad litem for these youth.***
- ***The State amend its sexual offender registry to eliminate registration of youthful offenses.***

Children / Youth With Developmental Disabilities:

Children with developmental disabilities – autism, cerebral palsy, spina bifida, Prader-Willi syndrome and mental retardation may have co-occurring mental illness and may frequently exhibit behaviors associated with mental health problems in youth.

Presently, such youth are to be served by the Agency for Persons With Disabilities (APD), which administers the Medicaid waiver program that permits them to receive services in the community so they do not need to be institutionalized.

APD employs third party reviewers to conduct and review eligibility and utilization decisions. APD and its 3rd party reviewers have a pattern and practice of unwillingness to work with family members and

care providers after it has refused or reduced services. Challenges to the denial or reduction of services must be taken to DOAH hearings.

Moreover, given mismanagement in APD thousands of children are presently waiting for Waiver services. Without proper community supports, these youth are increasingly likely to act in ways that can result in their involvement with the criminal justice system. Additionally, when families cannot manage having their children at home those children end up in the dependency system. Too often if the child is already in out of home care, the lack of services results in a "breakdown" of the foster home placement requiring a change in home placement.

FCF recommends that:

- ***Children with developmental disabilities are provided counsel to challenge the denial or reduction of services by APD or AHCA.***
- ***Immediate attention is given to improving the management of APD.***
- ***APD implement Ch. 393.065(5)'s priority for enrolling children in the child welfare system in the Medicaid Waiver program for developmental services.***
- ***DCF/CBCs should apply for APD services as soon as it becomes apparent a child may be eligible, rather than waiting until the child approaches age 18.***
- ***Implement or amend the "crisis tool" to expedite services for families when services would prevent the need for removing the child from the parental home.***
- ***Training be instituted for DCF and CBC staff on the services available through Medicaid and EPSDT while the child is on the wait list, and in some cases to by-pass the wait list.***

Court Proceedings & Full Representation:

The Dependency division of Juvenile court is the safety net for children and their families. Its place in the child protection and child welfare system is pivotal and must be both understood and respected by stakeholders. Too frequently, the Dependency division serves as a training ground for new judges and attorneys. Children and Youth need competent experienced legal professionals to handle and hear

their cases. They should have attorneys who understand the unique needs of children and youth, and particularly those with mental health concerns and other disabilities. Judges and attorneys representing the State, the Guardian Ad Litem program and the parents should likewise have knowledge and understanding of children and youth and the laws and systems established to serve them.

Children and Youth who are themselves the subject of Dependency proceedings are the only party to the proceeding who are not routinely provided counsel. Most children have the assistance of a guardian ad litem for some portion of their time in care. But few children have a guardian ad litem assigned to them for the entirety of their time in state care. Moreover, the caseloads for the attorneys in the guardian ad litem program are often triple or more what an appropriate case load is for direct representation of children in state care. Despite its best efforts, the Guardian Ad Litem program is far from achieving its goal of representation of 100% of all children in foster care.

Florida is in the minority of states in its failure to provide an attorney for all children in state care. Even our own experience with local programs, such as Palm Beach County's Foster Children project shows that when children in care have lawyers they achieve permanency much more rapidly than children without lawyers. For older children and youth, and for any child with a complex case, representation by an attorney ad litem is essential for the child and the system.

FCF recommends that:

- ***All children should be provided attorneys and or guardians ad litem as their circumstances warrant. Representation should continue until the child achieves permanency.***
- ***The courts and DCF (the Attorney General and State Attorney where appropriate) cease using Juvenile court as training grounds and work together to enhance the quality of practice in dependency court.***
- ***Courts, DCF Attorneys and GALs train their staff on disabilities, mental health and substance abuse issues for children and implement procedures to enhance the quality of advocacy at all phases of the dependency process.***
- ***Bar associations provide educational programs with CLEs for attorneys on mental health,***

developmental disabilities and substance abuse issues for children and implement procedures to enhance the quality of the administration of justice for children.

Transition to Adulthood:

Despite much publicity about the needs and many improvements in the law, former foster youth are less likely to achieve self-sufficiency as adults. After youth turn 18 and leave the foster care system, they have poor chances of achieving economic and personal stability. The OPPAGA report found that compared to others in their age group, former foster youth:

- were employed at the same rate, but earned only one-fourth the median wage for their age group
- were four times more likely to receive food stamps and nine times more likely to receive Temporary Assistance to Needy Families (TANF)
- were 17 times more likely to be homeless; and three times more likely to be in prison or on probation.

This Florida data is consistent with national studies² showing poor life outcomes for former foster youth. In addition to similar results on the measures above, nationwide studies show that 20% to 40% of our nation's homeless population consists of people who were in foster care.

Every analysis done over the past 3 years, including the National Governors Association Public Policy Academy (NGA), has opined that current independent living programs have not been delivering statutorily required services to the 13-17 year olds, arguably dooming them to troubled times ahead. This is the population that can be the most difficult as they are normal teenagers caught in an abnormal situation. Because they can be challenging, they should bring out the best in the system and not be effectively thrown away.

² National Working Group on Foster Care and Education (October 2006). *Educational Outcomes for Children & Youth in Out-of-Home Care*; Mark E. Courtney et al. (2004). *Issue Brief #102: The Educational Status of Foster Children*. University of Chicago, Chapin Hall Center for Children; Yu, E. et al. (2002). *Improving Educational Outcomes for Youth in Foster Care: A National Collaboration*, at vii. Washington, DC: Child Welfare League of America. Cook, R. (1994). *Are we helping foster care youth prepare for the future?*, Children and Services Review Vol. 16. No. 3/4: 213-229. Courtney, M.E., Terao, S. & Bost, N. (2004). *Midwest evaluation of the adult functioning of former foster youth: Conditions of youth preparing to leave state care*. Chicago, IL: Chapin Hall Center for Children at the University of Chicago.

Some youth in DCF custody, unfortunately, seem to be pushed into the juvenile justice system. Anecdotal evidence exists that when there are not adequate foster care placements, DJJ “placements” occur, or when providers are frustrated reports of behavior manifesting the disability are turned into reports of delinquent behavior to facilitate removal of the child. We have read reports where youth have been referred to the JJ system when the CBC system had no placement/home for the youth. It happens so often that the system has coined a name, “cross-over kids”. These youth are too often the youth with mental health or developmental disabilities and have an urgent need for services tailored to supporting a successful transition to productive, law-abiding adulthood.

The laws relating to Independent Living programs have been sufficiently worked on to be called “very good” by the NGA, however the implementation of the statutory scheme has been slow, at best. Many of the CBCs have not only failed to implement the skills programs and transition plans required for children under 17, they have also been lax at implementing the programming for the over 18 year olds. Funding is not sufficient to meet the stipend needs of the over 18 youth, but funding is not the only problem. This may not be the year for an increase in funding for stipends, but it certainly is not time for a decrease. It is time for creativity, pulling current state and private programs serving this population together to do a better job. For example, without spending more money, Workforce services could be better utilized to help the young adults learn employability skills.

FCF recommends:

- ***DCF and CBCs develop a sense of urgency about serving these youth.***
- ***Lead Agencies and providers implement existing laws re transition planning and pre-independent and independent living skills development.***
- ***DCF monitor progress and provide better technical assistance to ensure implementation of best practices.***
- ***DCF and CBCs implement the performance outcome measures developed by the Independent Living Advisory Council.***
- ***DCF and the CBCs work harder at building partnerships with local businesses which can provide more natural supports and opportunities for the youth.***

- ***CBCs ensure older youth attend their court hearings and take an active and informed part in their cases and decisions affecting their lives.***
- ***CBCs ensure older youth attend court proceedings.***
- ***All parties work together to find adequate funding for transitioning youth stipends and services.***

Child Victims of Sexual Abuse:

While late in our presentation, the problem of child victims of sexual abuse is not least in issues you should address.

A significant percentage of the children come into care as a victim of sexual abuse, which by its nature can “spread” in an exponential manner. Sexualized children without appropriate assessment, treatment and safety plans have the potential to be the next perpetrator. The current system does not provide for mandatory reporting and investigation of child-on child sexual abuse, tracking of children who are victims or perpetrators by DCF, training for workers to recognize and address it, a sufficient number of safe placements, a sufficient number of qualified therapists to provide treatment. The settlement agreement in Ward v. Kearney, the Broward County foster care class action, and DCF statewide operating procedure 175-88 addressed this issue. However, these critical child welfare practices are rarely implemented statewide. Most importantly, sexual abuse and related trauma, if left untreated, can result in serious, persistent and permanent mental illness that affects the lives of children in state custody, many of whom will be permanently labeled as sex offenders and some of whom will be incarcerated for their behaviors.

FCF recommends:

- ***Training be provided to all staff on recognition of the signs and symptoms of childhood sexual abuse.***
- ***Protective investigators receive additional an in-dept training on interviewing, assessing, and documenting signs and symptoms of sexual abuse.***
- ***DCF re-institute mandatory reporting and investigation of child on child sexual incidents for the purpose of treatment and not criminalization of child victims.***
- ***DCF/CBCs examine and improve policy and procedure for placements, safety plans, and***

treatment of victims of child sexual abuse and especially address children who have become reactive, i.e. acting out in a sexual manner.

- ***DCF/CBCs ensure qualified professionals provide treatment to these victims at the first opportune moment.***
- ***DCF/CBCs and Courts fully implement the Keeping Children Safe Act to support child victims.***

Accountability, Community Oversight/Engagement:

Accountability: To achieve true community care, every member of every community should be able to see every day how many children in their community are receiving or not receiving adequate care. The State should develop a short list of critical measurements, posted real time on DCF's website. Those measures should show how many kids in care are not in school, haven't received medical care, are living in shelters or group homes, have not had contact with their parents or siblings in the past month, haven't been visited by a case worker in more than a month, and are "missing" from the custody of the local CBC. The postings should also include how many children are placed outside their home county because the CBC failed to recruit enough homes locally and as use the numbers an encouragement for families to become foster parents. The data should be on the DCF website in a clear, user friendly report and have the measures posted on the CBCs own website for all to read. At the very least, CBCs must post income statements and performance data monthly.

Transparency: Related to accountability is "transparency". Only by shining the light of open government onto the child welfare system will we restore confidence in its operation. Transparency should apply to the good being done, as well as the problems. It should be grounded on protecting privacy, but must stop past practices of using privacy and confidentiality to shield the agencies from public scrutiny.

Contract Monitoring: DCF must quickly finish work it has begun to develop a system to check that the tax dollars in private contracts are being spent properly. This cannot be a system that measures whether the right paperwork is filled out, but rather must check on amounts spent for intended purposes, stem overly exuberant administrative costs and disallowable expenses. The contracts must contain measurable performance standards, and clear remedies for any substantial lapse in performance. No one wants DCF to micro-manage

the community based care system, but there has to be monitoring to protect the investment made by the taxpayers.

Quality “Assurance” - Much like the yet unfulfilled promise of community based care, the potential of a good quality assurance program has not been achieved by DCF. Quality Assurance was conceived as a mechanism to assist contract providers with meeting their responsibilities to the children and families, discover glitches, and fix them before there is a crisis. DCF must improve its system of insuring the programs are following the laws governing child protection and child welfare that are designed to keep families together where possible, strengthen them and reunite where appropriate, and provide permanent homes for the children when the family cannot safely do so. The new system must at least address the child well-being standards required by the Federal Government. Ongoing fiscal monitoring must evaluate the health and stability of the entity serving as the lead agency in the community based care system.

Community Involvement and Governance – In recent reports on the CBCs, it is clear that many have challenges in the area of corporate governance. Well meaning citizens are donating time in an effort to help, but they appear too often not to have the information and training needed to do their “jobs.” DCF, and if necessary the Legislature should mandate and supply content for board training to advise board members of their fiduciary obligation to the state and to the children they serve. The training must teach board members how to critically evaluate the performance of their CBC and provide tools for corrective measures. Without additional training and support, these good citizens cannot help community based care fulfill its promise that community involvement will improve the child welfare system. Similar training should be provided to members of the community alliances and they should be supported in their local oversight and coordination of child protection and services.

Funding: Everyone needs to acknowledge that children’s services of all types have been chronically under-funded in Florida, in both the public and private sectors. However, it does not help to instill confidence in the system or convince policy makers to increase funding when leadership in the community based care organizations blame inadequate funding for every mis-step or inadequacy. One of the methods for establishing actual need is a child welfare estimating conference that can project the workload and establish the required state and federal funding needed to fully meet that workload. With real data and numbers, public policy makers and private funders can make

better choices on what to fund and at what levels. Without this estimating conference, Floridians will never know the true needs and shortfalls.

SUMMARY

Florida's Children First strongly supports a common sense approach to improving the child protection system in Florida. The above comments are a compilation from our collective experience and expertise. Our difficulty in selecting matters to recommend to you is indicative of the many areas needing reform. We offer no priorities, only a sense of urgency because these littlest victims need your immediate leadership in these and other matters. When families can be kept together, the hard work of assisting them must be a priority. When the children cannot safely be kept with family, the citizens of this state demand the child protection system keep them safe in substitute care.

We hope our work will assist the Task Force. We offer our continuing consultation and technical expertise because together we are making a difference.

Respectfully submitted,

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Florida's Children First, Inc.