

ATTORNEYS FOR CHILDREN-OH MY! FLORIDA LAW, DATA, & A VIEW FROM THE BENCH

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1

Topics



I Can Call You Betty



Which Kids Get
Attorneys?

Eligibility
Process & Procedure
Appointment Data



What Youth Say About Attorney
Representation



View from the Bench

2

You Can Call Me AAL. . .

- Attorney Ad Litem = Attorney for the Child = Child’s Attorney = Independent Legal Representation Attorney.
- No matter what you call it – they are all the same!
 - Attorney-Client Relationship
 - Governed by The Florida Bar Rules of Professional Conduct
- Chapter 39 uses both AAL and Attorney for Child without distinction
- Other statutes also use the term AAL
 - §49.31 – AAL appointed to represent the interest of party constructively served and who does not appear in the case
- How did we get the term AAL in Dependency?
 - Pre 1980s all GALs were attorneys. When NCJW created local volunteer programs, they chose the term GAL rather than CASA. The term AAL was used to distinguish between lay volunteers and attorneys who represented children.

3

Parties, Counsel & Role

Party	Counsel	Role
Dept. of Children & Families	DCF-CLS, (6 th Judicial Circuit – State Attorney).	Advocates for safety, well-being and permanency of abused, abandoned and neglected children
Parent	Indigent parents: Office of Criminal Conflict and Civil Regional Counsel; Registry/Wheel. Others hire own counsel	Advocate for the client’s goals and empower the client to direct the representation and make informed decisions based on thorough counsel.
Guardian ad Litem	Guardian ad Litem Attorney	The GAL represents the best interest of the child. The GAL attorney also gives legal counsel to the GAL.
Child	Special Needs Registry Legal Aid / Law School Clinic Pro Bono	Provides legal services for a child and owes the same duties of undivided loyalty, confidentiality, and zealous representation to the child as is due an adult client.

4

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Ask the Judge. . .

- Do you have a preference for what attorneys are called in your court?
- In your view is there a functional difference between an attorney ad litem and an attorney for the child?
- Do judges discuss what the differences are?

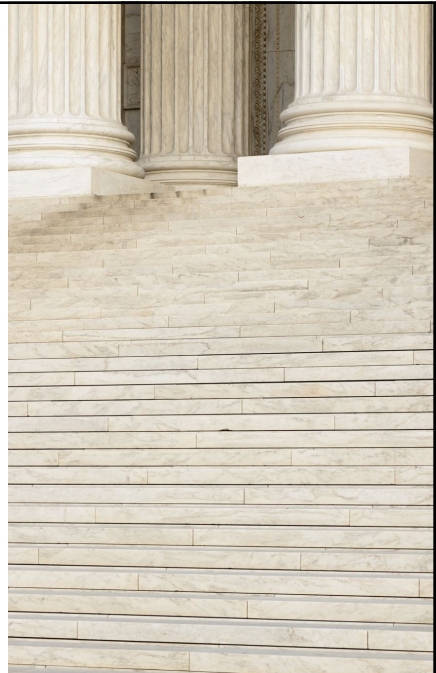
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Which Kids Get Attorneys?

6

Any Child the Court Thinks Need Counsel

- **All courts have the inherent authority to appoint counsel for unrepresented parties.**
 - English law in 1495 permitted courts to appoint counsel, 11 Hen. 7, ch. 12 (1495) and Florida Statute §2.01 adopts common law & statutes of England prior to 7/4/1776.
 - Florida Supreme Court confirmed in creating pro bono requirement in In re Amendments to Rules Regulating the Florida Bar-1-3.1(a) and Rules of Judicial Administration-2.065, 573 So.2d 800, 804 (1990).
- **Florida Constitution**
 - SECTION 21. **Access to courts.**—The courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.
- **Florida Statutes**
 - §39.4015(1)(t) Goals for dependent children, To have a guardian ad litem. . . and, if appropriate, an attorney ad litem appointed to represent their legal interests.
 - §39.01305(8) “This section does not limit the authority of the court to appoint an attorney for a dependent child in a proceeding under this chapter.”
- **Florida Rules of Juvenile Procedure 8.217(b)**
 - [A]ny party may request or the court may consider whether an attorney ad litem is necessary to represent any child.



7

BUT



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8

Funding for Attorneys for Children apart from §39.0135

- Florida Bar Foundation Funded Children’s Legal Services Grantees
- County-Funded Legal Aid
- Pro Bono Programs
- Law School Clinics
- County Funded Attorneys (e.g. special public defender) – prior to Article V, §14 Funding Shift
 - Constitutional amendment passed in 1998,
 - Implemented in 2004 - Counties could no longer use local funds to pay for attorneys

9

Ask the Judge. . .

- What do you do if you think the child needs a lawyer but doesn’t qualify for state-funded counsel?
- What do other judges do in places that don’t have the same resources that are available in Circuit 13?
- Do you have different expectations for lawyers you’ve asked to take a case pro bono compared to those who are paid?

10

History

- 1974 Child Abuse Prevention & Treatment Act (CAPTA) required states to provide a guardian ad litem to represent the child in court.
 - Later amended to specify could either be a lawyer or trained lay person.
- 1979 Florida piloted programs based on the national Court Appointed Special Advocate (CASA) model, but choose the name Guardian ad Litem rather than CASA.
- Prior to the creation of Florida's GAL Program, guardians ad litem were attorneys.



11

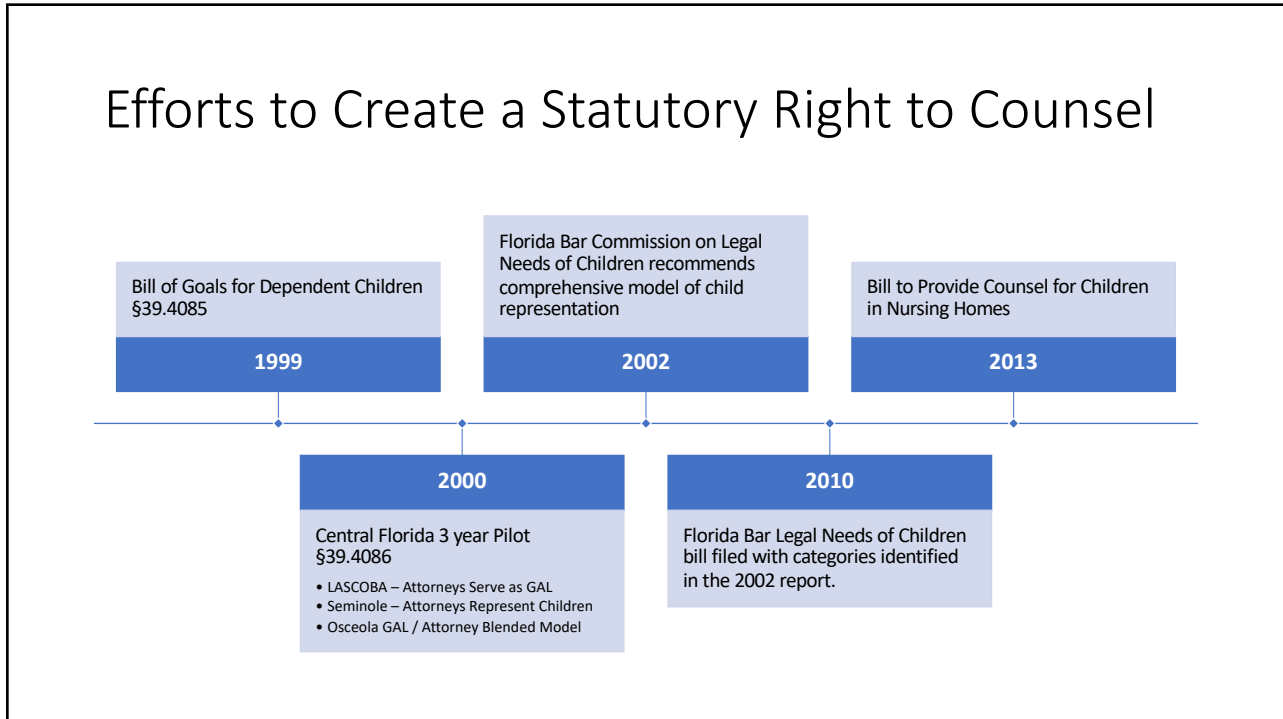
In 1980 Abused & Neglected Children were Represented by attorneys serving as GAL.

"By statute, counsel as guardian ad litem must be appointed in any child abuse judicial proceeding under section 827.07(16), Florida Statutes (1979). In all other instances, the appointment of counsel as guardian ad litem for the child is left to the traditional discretion of the trial court, and should be made only where warranted under Florida Rule of Juvenile Procedure 8.300."

In the Interest of D.B. & D.S. 385 So. 2d 83, 91 (Fla. 1980)



12



13

Appointment of Counsel for Dependent Children with Special Needs. Fla. Stat. §39.01305, HB 561 (2014)

- 5 Categories of Children Entitled to Appointment of Compensated Counsel
 - In or Facing Placement in Nursing Homes
 - Prescribed Psychotropic Medication & Decline to Assent
 - Residential Treatment Centers (RTC) including:
 - Diagnosed with Developmental Disability per §393.063
 - Victims of Human Trafficking

14

In Nursing Homes or Being Considered for Placement

Federal Judge recently found that all children in Florida nursing homes can live in the community with appropriate care.

- *U.S.A. v. State of Florida*, Case no.2-cv-60460, Southern District, 7/14/23
- Currently 140 children in Florida nursing homes – 7 in state care
- Over 1,800 children at-risk of being placed in nursing homes - # in state care is unknown.

Counsel should be appointed when CMAT (Children's Multidisciplinary Assessment Team) is initiated or cannot remain in home without needed care.

15

Prescribed Psychotropic Medication & Declines to Assent

Appointment of counsel was required by DCF Rule in the after the death of Gabriel Myers in 2010.

Assent is Not the Same as Agreement. The child may agree to take the medication but not be willing to accept the proposed care.

- Definition of Assent Fl. Admin. Code 65C-35.001

DCF-CLS Practice is to seek counsel when:

- The child declines to assent
- The prescriber determines the child is developmentally unable to assent;
- The child has a diagnosis of developmental disability per §393.063; or
- The child requests to discontinue medication and the prescriber declines

16

Ask the Judge. . .

- What benefits do you see when kids who don't assent to psych meds get counsel?
- Is there an age cut off under which you presume a child cannot assent?

17

Residential Treatment Centers (RTC) Fla. Stat. §39.01305

Residential Treatment Centers (RTC) including:

- Statewide Inpatient Psychiatric Programs (SIPP)
- Qualified Residential Treatment Programs (Q RTP)
- Specialized Therapeutic Group Homes (SFTG)

Florida Supreme Court Ordered Representation in 2000

- in *M.W. v. Davis* (2000)
- Rule of Juvenile Procedure 8.350

Counsel should be appointed as soon as a decision is made to seek a "suitability assessment."

18

Diagnosed with
Developmental
Disability per
§393.063 – served
by APD

- Categories
 - Intellectual Disability
 - Cerebral Palsy
 - Autism
 - Spina Bifida
 - Down Syndrome
 - Phelan-McDermid Syndrome
 - Prader-Willi syndrome
- Appointment of counsel requires a diagnosis of a DD, but not APD approval for services.

19

Victims of Human
Trafficking as
defined in
§787.06(2)(d)

- Trafficking means “transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.”
- Not just sex- can be labor exploitation
 - domestic servitude, restaurant work, janitorial work, sweatshop factory work, and migrant agricultural work. See Fla. Stat. §787.06(b).
- “Verification” is not required for the appointment of counsel.

20

Ask the Judge. . .

- Are you concerned that youth who are trafficked will be further at risk if they can have confidential communications with their lawyers?
 - Some folks think that lawyers encourage kids to to “keep secrets.”
- How have you seen counsel for trafficked youth assist their clients?
- Thinking about all the categories, are some more likely than others to have kids slip through the cracks and not get appointed counsel?

21

Who is Covered?

All Dependent Children §39.01305(2).

”[D]ependent child” means a child who is subject to any proceeding under this chapter. The term does not require that a child be adjudicated dependent for purposes of this section.”
Fla. Stat. §39.01305(2).

- Children in Shelter status
- Children who have been adjudicated dependent.
- Children whose parental rights have been terminated
- Young Adults who remain in foster care after age 18.
 - §39.6251 Continuing Care for Young Adults defines child to include young adults between 18 & 21.

22

Process & Procedures

23

- Develop Procedures to Identify Eligible Children.
 - DCF does not have an Operating Procedure.
 - DCF- CLS offers its attorneys guidance on identification of children when cases are opened.
 - No guidance on on-going identification.
- Move for Appointment of Counsel
- May create rules to implement
 - Hasn't created rules

DCF's Role, 39.01305(6) & (7)

24

- Recommend an attorney willing to accept appointment without compensation and within 15 days of the court's request, or
- Advise the court if it cannot recommend an attorney within the 15 day time period.

GAL's Role

25

Scope of Representation

- Representation begins at shelter or as soon thereafter as the child is identified as being eligible. Fla. Stat. §39.01305(4)(b)
 - Representation lasts for the duration of the case.
 - Representation does not conclude if the triggering event is resolved.
- Representation Extends Beyond the Chapter 39 Proceedings. §39.01305(1)(a) 2.
 - Includes fair hearings and appeals so that the attorney may address child's medical and related needs and the services and supports necessary for the child to live successfully in the community
 - These are examples, not limits – on the type of representation the attorney can provide.
- Traditional Attorney-Client Relationship under the Florida Bar Rules of Professional Conduct.
 - Rule 4-1.14. Client Under Diminished Capacity

26

Ask the Judge. . .

- Does the fact that children’s attorneys operate in a traditional attorney-client relationship and must advocate as directed by clients give you cause for concern?
- We’ve heard some folks say that if lawyers have to do as their child clients direct, they will have to file frivolous motions – like seeking candy bars for every meal.
 - Can you tell us about what kind of frivolous motions have been filed in your court?
 - What about motions for tattoos?

27

Appointment Data 2022

- 2022 Number of Children Appointed Paid Counsel
 - Nursing Homes 7
 - Psychotropic Medication 251
 - Residential Treatment 201
 - Developmental Disability 388
 - Human Trafficking 58
 - OPPAGA’s [Report on Trafficking](#) notes that in 2022 there were 128 verified victims of sexual trafficking in dependency – there’s no data on labor trafficked.

28

2022 Appointment Data by Judicial Circuit

Circuit	# Appointed
1	95
2	40
3	20
4	49
5	115
6	268
7	43
8	14
9	61
10	28

Circuit	# Appointed
11	57
12	25
13	110
14	12
15	31
16	5
17	49
18	69
19	39
20	49

29



What Youth Say

30

What do youth in care think about legal representation?

- Designed a survey based on experiences that youth had with their Attorney (ad Litem)
 - Original design by attorney with Ph.D. and research experience
- Asked youth for input on specific questions
- Worked with Florida Youth Shine (current and former foster youth) to field-test entire survey
- Resulted in extensive edits and cross-checks by participating youth

31

Survey Response

Distributed via Independent Living Coordinators

Not scientific sample; sample of convenience

171 youth responded in 8 days

Reward for completion: \$15 Amazon gift certificate

- Thanks to NACC for coordinating

32

Who Responded?

Currently in care – 114 (64.4%)

Formerly in care – 65 (36.72%)

We hypothesized that there might be a difference between current and former foster youth so separated these for analysis.

We separated results from Broward, Palm Beach, Orange counties (different program structure)

33

Youth Demographics

Current age –

- 15-23 currently in care
- 18-27 formerly in care

Entered care more than once –

- 53% currently in care
- 34% formerly in care

Number of times in care

- 1-3 times – majority of both groups

34

	Current	Former
White	27(27%)	12(25.53%)
Black	36(36%)	19(40.43%)
Hispanic	24(24%)	9(19.15%)
Asian	0	1(2.13%)
Am In/Alaska Native	0	0
Native Hawaiian/Pac.	0	0
Multi	11	2(4.26%)
Middle Eastern	0	0
Other	2(2%) -mixed -unknown	4 (8.51%) -mixed (2) -Haitian -unknown

Race/Ethnicity

35

	Current	Former
Straight	64(64)	36(76.6)
Gay/lesbian	4(4)	2(4.26)
Bisexual	18(18)	6(12.77)
Trans	2(2)	0
Non-binary	5(5)	0
Prefer not to answer	4(4)	2(4.26)
Other	3(3)	1(2.13)

Sexuality/Gender Identity

36

What did they say?

Lots of confusion over whether they had an attorney or not!

- Youth who said “no attorney” answered attorney questions
- Youth who said “yes attorney” answered attorney questions with unexpected responses

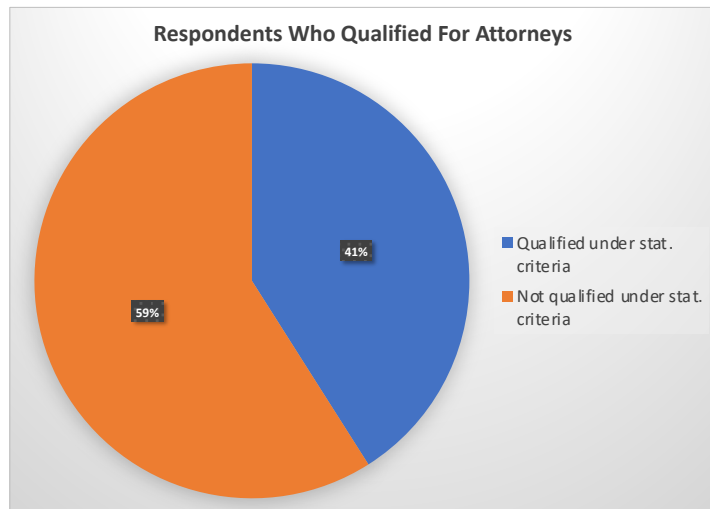
Concern: youth may have confused their GAL with attorney

Concern: youth who have an attorney should KNOW!

Solution for data: omit ambiguous answers

37

Which Youth had Attorneys? (excl. 3 counties)



38

Many Youth
who
Qualified for
an Attorney
Were Not
Appointed
an Attorney

- Of the respondents,
 - 23 (19 unique) had developmental disabilities;
 - 74 (62 unique) were on psychotropic medications
 - 15 (14 unique) were trafficked
 - 34 (30 unique) were in a SIPP
 - 1 (0 unique) was in a nursing home

- Total – 125/155 = 80% QUALIFIED
- After removing psychotropic meds (some may have assented), 63/155 = 40.6% QUALIFIED

39

Conservative Estimate of Qualified Youth

Respondents Who Qualified For Attorneys

Category	Percentage
Qualified under stat. criteria	41%
Not qualified under stat. criteria	59%

40

Where Did Attorneys Add Value?

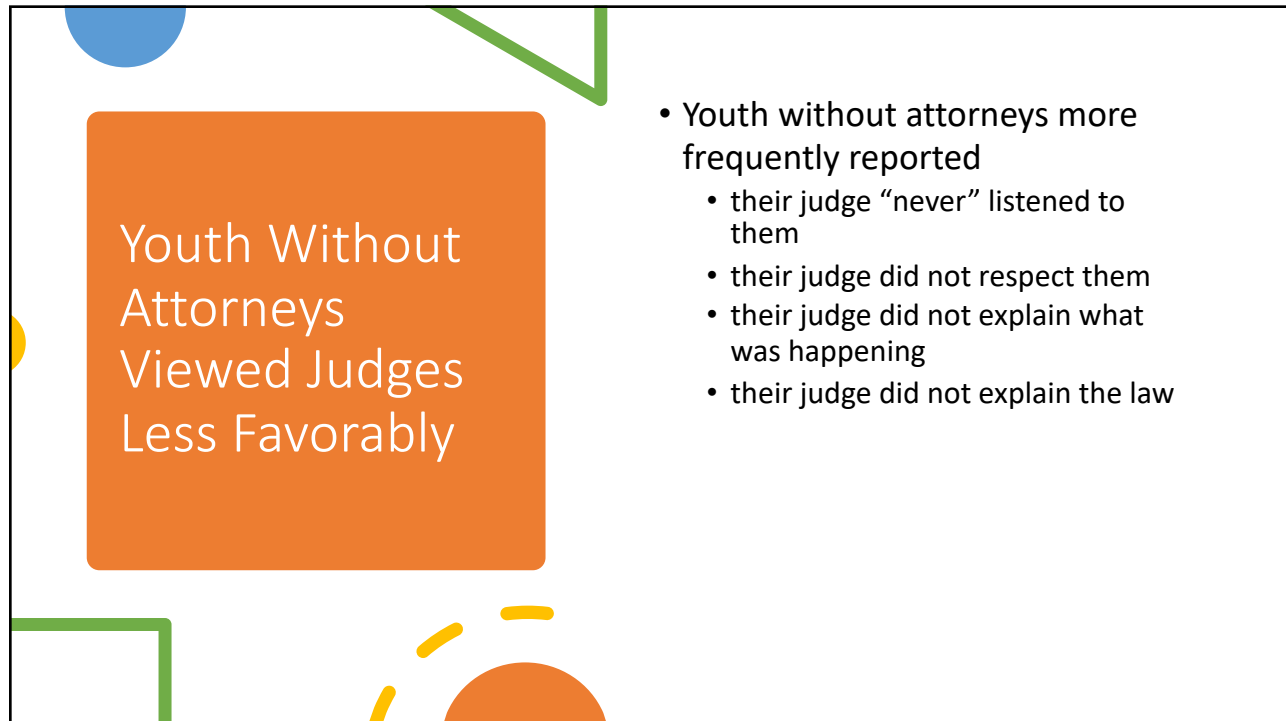
- **Placements**
 - More youth with attorneys lived in family foster homes (71% vs. 64%)
 - Fewer youth with attorneys lived in group homes (67% vs. 72%)
- **Exit Reasons**
 - Fewer youth exited to criminal justice when they had an attorney (3% vs. 6%)
 - More youth were adopted when they had an attorney (14% vs. 11%)

41

Where did Attorneys add Value?
(cont'd)

- **In Court**
 - More youth with attorneys attended court as often as they wanted (49% vs. 20%)
 - Fewer youth with attorneys reported they never understand court (5% vs. 14%)
 - Judges were less likely to ask for youth input when there was no lawyer (14% vs. 5%)

42



Youth Without Attorneys Viewed Judges Less Favorably

- Youth without attorneys more frequently reported
 - their judge “never” listened to them
 - their judge did not respect them
 - their judge did not explain what was happening
 - their judge did not explain the law

43

Conclusions

Significant gap between youth who *qualified* for an attorney and those who *actually were appointed* an attorney;

Where children’s attorneys are present, youth benefit in multiple ways;

Where children’s attorneys are present, youth have more positive attitudes towards the judicial system.

44