For The Sake Of Our Children: Selected Legislative Needs Of Florida’s Children

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Abstract

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KEYWORDS: children, sake, florida
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I. Introduction

The realization that children are a group of special people—individual constituents deserving special recognition, protection and attention—is a new concept for American jurisprudence and for state legislators. This article reviews Florida child welfare law, focusing on selected issues identified by numerous professionals and groups during recent years. It specifically addresses concerns which require resolution through the passage of substantive legislation.¹ This article examines first the need for uniformity and clarity in laws pertaining to children. It then discusses specific reforms for child abuse and neglect proceedings. Special protections needed for child victims and witnesses in sexual and other abuse-related prosecutions are highlighted. The author recommends several specific methods of improving professional and volunteer services for children and concludes with comments on the current state of the needs of Florida’s children and prospects for the future.

II. The Need for Uniformity and Clarity in Legislation for Children

Laws seeking to protect the maltreated child must be especially clear and uniform because the persons principally responsible for enforcing and responding to them are non-lawyers. For example, social workers investigate and, if necessary, initiate prosecution of cases, develop written contracts, and prepare evidence; all usually without the assistance of legal counsel. The parties to a juvenile court proceeding

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¹. Issues requiring appropriations actions are not included in the scope of this article.
are generally not represented by counsel; parents are afforded the right to counsel only in limited situations; and the child welfare agency often appears unrepresented. Additionally, Florida has chosen a lay citizen model for its guardian ad litem representation of children.

Most states have provided three separate focuses in child protective statutes since the passage of the federal Child Abuse Prevention and Treatment Act in 1974. The first is the criminal focus, defining and prohibiting those child abuse and neglect acts which are criminally punishable. The acts of the parent or other person are the focal point of the proceedings and are measured by the degree of harm. The second area of focus of child welfare legislation is the juvenile court. Certain child abuse and neglect acts authorize the juvenile court to intervene in the parent-child relationship by ordering specific services or by separating the child from the family. In this area the concern is for the particular harm to the child and the need to protect him. The third area of emphasis is reporting. Child abuse or neglect is defined for the purpose of requiring the reporting of such incidents to child protective agencies. These statutory definitions of abuse and neglect also allow investigation of the home and its danger to the child and authorize intervention on minimal grounds for belief that the child has been abused.

Florida’s child protective laws follow this tripartite model to some extent. Criminal statutes are contained in Chapter 827, Abuse of Children or Disabled or Aged Persons, and in numerous other statutes not necessarily directed toward the protection of children, but containing elements relevant to crimes of child abuse and neglect. Chapter 415

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4. See Fla. Stat. §§ 827.01-.05; 827.071 (1983) for definitions and descriptions of the following: aggravated child abuse; child abuse; negligent treatment of children; persistent nonsupport; sexual performance by a child; respectively.
5. Assault, Battery, Culpable Negligence; ch. 784; Kidnapping, False Imprisonment, Custody Offenses, ch. 787; Sexual Battery, ch. 794; Prostitution, ch. 796; Crime Against Nature, Indecent Exposure, ch. 800; Bigamy, Incest, ch. 826, Obscene Literature, Profanity, ch. 847.
6. Fla. Stat. §§ 415.503(1),(3) (1983;formerly 827.07(2)(b-d) (1983). "Child abuse or neglect" is defined as "harm or threatened harm to a child's physical or mental health or welfare by the acts or omissions of the parent or other person responsible for the child's welfare. See id. § 415.503(3). "Harm" includes physical or mental injury, id. § 415.503(5); abuse, id. § 415.503(5)(a),(b); pornography and prostitution, id. § 415.503(5)(c); acts of abandonment and neglect, id. § 415.503(5)(d)-(f).
provides for child abuse reporting,\textsuperscript{7} investigations of reports,\textsuperscript{8} coordination of agencies,\textsuperscript{9} evidentiary considerations at trial,\textsuperscript{10} protective custody,\textsuperscript{11} the use of expert diagnoses and evaluation,\textsuperscript{12} education and training,\textsuperscript{13} and representation of children.\textsuperscript{14} The jurisdiction and responsibilities of the juvenile court regarding dependent children are contained primarily in Chapter 39, Proceedings Relating to Juveniles.\textsuperscript{15} However, court jurisdiction to protect dependent children is also granted in the “reporting” statutes,\textsuperscript{16} the chapter devoted to agency mandates for protection of children,\textsuperscript{17} and in proceedings for dissolution of marriage.\textsuperscript{18} Additionally, although guardianship is an important tool

\textsuperscript{7} Id. 415.504, .505, .51, .513 (1983); formerly § 827.07(3),(4),(9),(15) (1981).
\textsuperscript{8} Id. 415.505 (1983); formerly 827.07 (4),(10)(1981).
\textsuperscript{9} Id. 415.504 (1983); formerly 827.07(4) (1981). Medical examiner must report findings of child abuse to local law enforcement agency. The law enforcement agency or Department of Health and Rehabilitative Services (HRS) is authorized to take the child into protective custody, \textit{Id.} § 415.506. HRS may create multi-disciplinary teams. \textit{Id.} § 415.505(2). HRS can notify the state attorney or law enforcement agency to conduct a criminal investigation. \textit{Id.} § 415.505(1)(g). Responsibilities of public agencies, including the court, are given regarding education and training. \textit{Id.} § 415.509.
\textsuperscript{10} Id. § 415.512 (Abrogation of privileged communications).
\textsuperscript{11} Id. § 415.506.
\textsuperscript{12} Id. § 415.505(2). “The department may develop and coordinate one or more multidisciplinary child protection teams in each of the department’s service districts. The department may convene such teams when necessary to assist in its diagnostic assessment, service, and coordination responsibilities. Members of the team may include representatives of appropriate health, mental health, social service,, legal service, and law enforcement agencies.” \textit{Id.}
\textsuperscript{13} Id. § 415.509(2).
\textsuperscript{14} Id. § 415.508; formerly 827.07(16). “A guardian ad litem shall be appointed by the court to represent the child in any child abuse or neglect judicial proceeding.” \textit{Id.}
\textsuperscript{15} FLA. STAT. §§ 39.001-39.516 (1981). Ch. 39 contains four separate sections: Part I includes legislative intent and definitions; Part II includes proceedings for delinquency cases; Part III includes dependency cases and Part IV includes proceedings for interstate placement of juveniles. It should be noted that interstate placement of dependent children is contained in FLA. STAT. § 409.401 (1981). \textit{See also} FLA. STAT. § 409.168 (1981) regarding children in foster care; department report and court review status.
\textsuperscript{16} FLA. STAT. §§ 415.503(5)(f)(3); 415.506(2) (1983).
\textsuperscript{17} FLA. STAT. §§ 409.168, 409.401 (1981).
\textsuperscript{18} FLA. STAT. § 61.13(3) (1981) contains the only full definition of the best interests of the child in the Florida Statutes, a concept which is the central theme of agency and court intervention on behalf of dependent children. This section is cross-referenced in FLA. STAT. § 39.408(2) (1981) requiring HRS to conduct a pre-disposition study, prior to disposition of dependency cases, which covers all factors defined in
to assure permanency planning for children, guardianship proceedings are the subject of a separate division of the circuit court.

Laypersons and practitioners alike become confused when attempting to reconcile these various laws. For instance, a "child" is defined by Chapter 415 as "any person under the age of 18 years." Therefore, a report of abuse or neglect concerning a married child under the age of 18 will trigger an investigation by the Department of Health and Rehabilitative Services (HRS). However, HRS can not seek juvenile court protection for the same child because the court's authority extends only to unmarried persons under eighteen. Therefore, if the investigation leads to a determination that the child is in danger and should be removed from the home, the court is powerless to order the removal.

Chapters 39 and 415 are irreconcilable as well on the issue of defined acts of child abuse and neglect. The protection afforded to the child under the "reporting" statute is broader because investigation is less intrusive to family life than formal court intervention. However, the definitions of harm and injury which constitute abuse and neglect do not correlate well with the court's protective powers. HRS may investigate a report of child neglect where the parents do not have sufficient financial resources to care for the child and the court may order medical services for such a child. However, if the parent resists inter-

§ 61.13(3).

19. See, Hardin, Legal Placement Options to Achieve Permanence for Children in Foster Care in Foster Children in the Courts 150 (M. Hardin ed. 1983). The court is allowed to place the child with relatives and others on a temporary basis. However, only temporary legal custody is provided. FLA. STAT. § 39.41(1)(b) (1981).

20. See FLA. STAT. §§ 744.101-744.531 (1981) regarding guardianship. Hardin distinguishes between those states which grant guardianship within juvenile proceedings and those which require petitioning a different division of the court. The latter is a more difficult and multi-staged process. Hardin, supra note 19, at 150.

21. FLA. STAT. § 415.503(2)(1983); See also FLA. STAT. 827.01(1) (1981).


25. FLA. STAT. §§ 39.01(1),(2),(26)(1983). Rather than limiting court jurisdiction by strict definitions of child abuse or neglect, it is recommended that court review of prevention and reunification services prior to authorizing removal of the child be used as the mechanism of assuring that agency and court intervention is limited to the most serious of cases. See infra notes 52-71 and accompanying text. Florida's law presently places an arbitrary distinction between children protected by reporting laws, and those able to seek court protection.

26. FLA. STAT. § 415.503(5)(f) (1983). Financial inability does not eliminate the
vention, the court does not have authority to declare the child dependent, since according to the definitions in Chapter 39 a child cannot be considered neglected if the sole basis for neglect is his parents' financial inability to care for him. A similar disparity between statutes occurs in the definition of abandonment. The "reporting" statute defines abandonment in simple terms as the time when a parent "abandons" the child. This definition permits agency intervention when it determines from the circumstances that a child's caretakers exhibit an intent to withdraw protection or support. However, the juvenile court is not immediately able to take the child into its care because abandonment for its jurisdiction carries a requirement that the lack of support or communication with the child continues for a period of six months or longer. Similarly, although the court may not find the child legally abandoned if the abandonment arises from a parent's lack of ability or capacity to care for him, Chapter 415 makes no distinction between voluntary or involuntary acts of abandonment. Further, the respective laws do not share a consistent definition of the caretaker, be it parent, guardian, or custodian, whose alleged acts of abuse or neglect warrant scrutiny. The acts also fail to provide clear direction on those circumstances when caretakers should be offered an opportunity to voluntarily accept services, rather than be forced by the court to do so.

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27. Fla. Stat. § 39.01(26) (1983) states in part that "Neglect' occurs when the parent or other legal custodian, though financially able, deprives a child of...food, clothing, shelter, or medical treatment..." Id. (emphasis added).


29. Fla. Stat. § 39.01(1) (1983). Abandoned means a situation in which a parent, who, while being able, makes no provision for the child's support and makes no effort to communicate with the child for a period of 6 months or longer. Id. See infra notes 75-100 and accompanying text.


31. Fla. Stat. § 415.503(3), (5) (1983) provides for the protection of children who are abused or neglected by a parent "or other person responsible for the child's welfare." Id. This includes the child's legal guardian, custodian, foster parent, and employee of a day care center, residential home or institution; or other person legally responsible for the child's welfare in a residential setting. Id. § 415.503(9).

32. Fla. Stat. § 415.505(1)(e) (1983) provides that if the Department determines that a child requires immediate or long-term protection through (1) medical or
Child abuse and neglect laws must function within a scheme that allows both intervention and the eventual withdrawal of agencies and the court so that the child can be restored to a family which is able to care for him without state interference. Laws contained in separate chapters must, therefore, clearly relate to one another, and facilitate protective intervention in a consistent manner. Inconsistencies must be resolved in favor of the maximum protection of the child, not the adult. The child's well-being must be deferred to in any balancing test.

III. Specific Reforms For Child Abuse and Neglect Proceedings

A. Voluntary Agreements for Services

Once it is determined that a child has been abused or neglected, and that services or placement outside the home will be necessary to protect the child, Florida law encourages offering such services on a voluntary, rather than court-ordered, basis. Typically in such a case the parents will agree in writing to pursue a course of services in exchange for HRS not filing formal dependency proceedings. This course is consistent with legislative intent to preserve family life with minimal state intervention. The offer of voluntary services is, however, tempered by HRS responsibility to protect the child, if it later proves necessary, by initiating court proceedings. The specific circumstances under which other health care, (2) homemaker care, day care, protective supervision, or other services to stabilize the home environment, or (3) foster care, shelter care, or other substitute care to remove the child from his parents' custody, such services shall first be offered for the voluntary acceptance of the parents or other person responsible for the child's welfare, who shall be informed of the right to refuse services as well as the Department's responsibility to protect the child regardless of the acceptance or refusal of services. If the services are refused or the Department deems that the child's need for protection so requires, the Department shall take the child into protective custody or petition the court as provided in chapter 39. The statute does not define which cases are serious enough to warrant court intervention. Chapter 415 fails to require consent of the child prior to entry into voluntary agreements. FLA. STAT. § 39.403(2)(b) requires consent of the child. Neither statute sets forth criteria for reviewing consent of the child or parent.

33. See supra note 32.
35. FLA. STAT. § 415.505(1)(e) (1983) states in part: "If the services are refused or the department deems that the child's need for protection so requires, the depart-
a child is considered to be in danger are not clear, and practitioners are
left unguided as to whether the consent of the child is necessary to an
effective voluntary service agreement.36

Agreements, in general, between agencies and parents have been
the subject of considerable criticism on the grounds that a child cannot
be made the subject of a contract with the same force and effect as if
he were a mere chattel.37 Voluntary agreements are useful to circum-
vent the formal legal process or to avoid the bitterly contested hearings
which may hinder later treatment and increase parents’ antagonism to
agency services.38 However, such agreements may be perceived by par-
ents as unwarranted pressure to admit the need for help or wrongdoing,
and are often based on the interest of the parents and agency without
full consideration of the child’s interests.39 Similar concerns are raised
when the court is requested to amend a petition alleging abuse or neg-
lect in order to make the allegations more acceptable to the parties, or
to use pre-adjudicatory hearing plans which defer actions on filed peti-
tions.40 In these cases, the child is not represented, and is therefore not
afforded an effective voice in the decisionmaking.41

Voluntary agreements may be the best choice where the parents
are amenable to help and the child is believed to be free from danger.
However, they should not be used where there is prior evidence of
abuse, neglect, or resistance by the parents to offered services. The ad-

that the report or complaint [of child abuse] is complete, but that in his judgment the
interest of the child and the public will be best served by providing the child care or
other treatment voluntarily accepted by the child and his parents or legal custodians,
the intake officer may refer the child for such care or other treatment.” Id. (emphasis
added). FLA. STAT. § 415.505(1)(e) (1983) refers only to acceptance by the parent.
38. Id. at 3.
39. Id at 1.
40. See e.g., Fla. R. Juv. P. 8.130 (West 1983). The new rule proposed by the
Juvenile Rules Committee requires the consent of the child and the guardian ad litem
where appointed. Such plans rarely contain stipulations to facts of abuse or neglect. If
violated, there is no provision for recording the child’s statement, or preservation of
other important evidence.
41. The practice of appointing an advocate to represent the child in agency pro-
ceedings to pursue voluntary agreements prior to court intervention should be
encouraged.
The advantages of informal disposition are outweighed by the need to establish a court record.\textsuperscript{42}

Court proceedings create a record of the facts surrounding the placement. Complete transcripts, detailed petitions, orders, and findings of fact can create complete information for later court proceedings if efforts to work with the natural parent prove unsuccessful. The attorney should be aware that the facts surrounding the original placement will be an important part of a termination proceeding, should that later become necessary.\textsuperscript{43}

The problems involved with voluntary agreements made outside of court proceedings cannot be cured by court review, since the judge will probably do little more than ask the parent whether the consent to the agreement is voluntary, and whether the allegations of abuse or neglect are true.\textsuperscript{44}

In recent years, there have been efforts to categorically define the types of cases serious enough to receive judicial review on a non-discretionary basis. Alternative legislative drafts have proposed that independent multidisciplinary child protection teams review agency recommendations to divert cases from judicial review where the child has been sexually abused, there is evidence of failure to thrive, or there is visible injury to a child under the age of five. These types of cases have been identified as the least likely to be resolved by voluntary rehabilitation, and include children at the highest risk for additional injury or death. It is believed that this type of legislation has been repeatedly rejected because of antipathy to greater court intervention in family life and the expense involved. Ensuing child protection team review of all cases in the most serious category would require significant funding increases. Court review of such cases would also involve greater financial costs since at present less than five percent of the reported cases of child abuse and neglect in Florida receive judicial attention.\textsuperscript{45}

Florida Statutes section 409.168, popularly known as the Skinner Bill, attempts to provide timely court review of voluntary placements in foster care if the child remains in placement longer than thirty days or

\textsuperscript{42} Hardin, Setting Limits on Voluntary Foster Care, in Foster Children in the Courts 72 (M. Hardin ed. 1983).

\textsuperscript{43} Id. at 73.

\textsuperscript{44} Id. at 78.

\textsuperscript{45} FLA. HRS, 1982 Report.
is placed in foster care twice within one year.46 HRS is required to
draft a written performance agreement, with the participation of the
parents, outlining the actions that the parents will take to resume cus-
tody of the child.47 The performance agreement must then be submit-
ted to the court to assure court review within six months of the date
that the court is notified of the placement in foster care. However,
courts have consistently not reviewed such voluntary placements be-
cause they lack dependency jurisdiction. The court has not conducted a
hearing on allegations of abuse and neglect properly brought upon a
petition or found the child to be dependent and in need of out-of-home
placement, and, therefore, the court has no jurisdictional basis for exer-
cising its power over the child.48 Proposed legislation49 would amelio-
rate this problem by: 1) amending the definition of dependency to in-
clude a child who has been voluntarily placed in care as set forth in
section 409.168, Florida Statutes, where the parents have failed to sub-
stantially comply with the terms of a written performance agreement,50
and 2) amending section 409.168, Florida Statutes, to clearly state that
upon submission to the court of a performance agreement, the court
shall review the agreement to determine if it complies with law. This
provision is necessary since submission to the court for approval of the
agreement under section 409.168 does not assure timely review by the
court, nor specify that the court has the power to accept or reject the

review of children placed voluntarily in foster care after six months from court notifica-
tion of voluntary placement. Although the agency is required to draft and submit a
performance agreement for these children, the agreement would not constitute a peti-
tion for initiation under chapter 39. Section 39.404(1) requires the filing of a petition
alleging the child to be dependent pursuant to § 39.01(9). Therefore, the court must
first find the child to be dependent and thereafter review placement of the child.
49. HEALTH & REHABILITATIVE SERVICES COMMITTEE, FLA. HOUSE BILL 399
(1984). See also Senate Bill 273. The proposed legislation has been the subject of
committee review since 1981, and represents important and major changes to chapter
39 and chapter 409. The proposed changes will hereinafter be referenced to present
law.
50. Proposed amendments to § 39.01(9)(8) (through an additional category of
dependency: “Child found to be dependent includes a child who has been voluntarily
placed with a licensed child caring agency or the Department, whereupon, pursuant to
409.108 a performance agreement has expired and the parent has failed to substan-
tially comply with the requirements. . . .”).
B. Tightening Guidelines for Removing Abused or Neglected Children from Their Homes

When a report of abuse or neglect is investigated and it appears that the child is in imminent danger, he may be taken into protective custody. If the child is held in protective custody for longer than twenty-four hours, a petition must be filed requesting the court to authorize his continued detention. Chapter 39, Florida Statutes, provides broad guidelines for taking a child into custody. There must be:

reasonable grounds to believe that the child has been abandoned, abused, or neglected, is suffering from illness or injury, or is in immediate danger from his surroundings and that his removal is necessary to protect the child or if the custodian of a child under protective supervision has violated in a material way a condition of the placement imposed by the court.

The lack of more specific guidelines has been the subject of continuing debate. It is argued that the broad terms used in most statutes
allow unnecessary removal of children from their parents by not carefully defining the specific types of harm which warrant removal.57 The Institute for Judicial Administration-American Bar Association (IJA-ABA) Joint Standards Relating to Abuse and Neglect58 propose that state legislatures limit court intervention to those cases where the child is endangered and likely to suffer additional harm.59 This would require a showing of serious physical injury such as disfigurement or impairment of a bodily function, broken bones or severe bruising.60 Those opposing stricter guidelines argue that in attempting to accommodate the conflict between parental autonomy and state intervention, the proponents of such standards fail to appreciate and distinguish the ranges of intervention. They assume, often erroneously, that court-ordered services have a negative impact on the child and family. Moreover, a child who does not display specific physical injury can still suffer the physical pain and emotional trauma occasioned by parental abuse. Under the IJA-ABA guidelines that child is denied access to court-imposed services.61 Initial agency intervention on a minimal basis must be justified by the same showing of serious danger that is required to remove a child from his home. It is likely under these proposed standards that the child without visible injuries will "fall through the cracks," only to come to the court's attention later with much more serious or fatal injuries.

In addition to stricter definitions of the types of trauma that warrant intervention, attempts have been made to ensure that an agency provides sufficient services to the family to avoid long-term removal. The court is required to review the agency's documented efforts before it can authorize the continued detention of the child.62 Overreaction to

58. These standards are committee proposals and have not been approved by the IJA-ABA as an organization. See generally M. HARDIN & P. TAZZARA, TERMINATION OF PARENTAL RIGHTS: A SUMMARY AND COMPARISON OF GROUNDS FROM NINE MODEL ACTS 34 (1981) (for a discussion of ABA standards for court intervention).
59. Id., Standard 8.2 at 34. See also id., Standard 6.4 at 35.
62. A.B.A. NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY & PROTECTION, TIGHTENING POLICIES GOVERNING THE INITIAL REMOVAL OF CHILDREN
alleged abuse or neglect and the immediate removal of the child from the parents’ custody has often resulted in unnecessary placement of minors outside of the home and sometimes into extended foster care. Federal law requires that prior to the placement of a child, efforts must be made to prevent or eliminate the need for removal by the social service agency. The court must find that continuation in the home would be contrary to the child’s best interests and that the agency’s efforts to re-unite the family have been reasonable. Since states vary in terminology, it is often difficult to determine at what point the court is required to make this determination. It is important that judicial review occur as closely in time as possible to the actual removal. However, review should not occur prior to the parties having had an opportunity to fully explore efforts to prevent removal.

Proposed Florida legislation clarifies existing uncertainties by requiring court review throughout the various stages—at detention or shelter hearings, arraignment hearings, subsequent detention review hearings, adjudicatory hearings, and disposition hearings. Thus, at the initial hearing the court would be required to determine that there is probable cause to believe that the child is dependent and that the “department has made reasonable efforts to prevent or eliminate the need or removal of the child from his home.” In order to allow HRS, guardians ad litem, prosecutors, and child protection teams sufficient time to make and document reasonable preventive efforts, the proposed legislation extends the time for which shelter care can be authorized from fourteen to twenty-one days. Additionally, the proposed legislation encourages the use of an arraignment hearing to assure that parents are represented by counsel and to help determine whether a con-

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(monograph no. 12) (1980).

63. Wienerman, Improving Practice to Avoid Unnecessary Placements, in Foster Children in the Courts 12 (M. Hardin ed. 1983).


65. Id.

66. Hardin, Memorandum to State Administrators Responsible for Compliance with Title IV-E of the Social Security Act, at 6, (May 20, 1983).

67. See supra note 49. A proposed amendment to Fla. Stat. § 39.402 (1981) states that “[n]o child shall be removed from home or continued out of home pending disposition where, with the provision of appropriate and available services, including services provided in the family home, the child could safely remain at home.” Id.


69. See supra note 49.

70. Id.
tested hearing is necessary.\(^71\)

C. Definitions of Abuse, Abandonment and Neglect for Dependency and Termination of Parental Rights

The present definitions of an abused, abandoned or neglected child have given rise to considerable debate in Florida. The incident giving rise to initial removal or adjudication of a child as dependent, may later become the basis for proceedings to terminate the parents’ rights.\(^72\) Definitions of abuse, abandonment and neglect for short-term court intervention should be distinct from definitions applying to the drastic step of terminating parental rights. The criteria used in termination proceedings should place more emphasis on the particular aspects of parental conduct, for example, their willingness to seek counseling and follow through with offered services, or their failure to accept treatment for mental or emotional illness, or drug or alcohol addiction. The parent-child relationship should be closely examined, with emphasis on the nature of the bond between parent and child, the child’s wishes, and the ability or willingness of foster caretakers to adopt the child. The initial abusive or neglectful conduct of the parent which precipitated agency intervention should be considered only as one of several factors in terminating parental rights and should receive particular emphasis only when the conduct is so serious as to have caused significant injury to the child or a sibling, or is followed by recurrent incidents of abuse despite intervention efforts.

Grounds for termination of parental rights differ dramatically throughout the United States, and many states have chosen to separate the definitions for termination from those involving initial intervention.\(^73\) Termination statutes should focus on the condition of the parent which causes him or her to be unable to consistently care for the child for extended periods of time. Some model acts\(^74\) provide for termination if “emotional illness, mental illness or mental deficiency render the

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\(^71\) Id. The proposed amendment to § 39.402 adds the provision for an arraignment hearing to be conducted after the filing of a petition and prior to the adjudicatory hearing.

\(^72\) Fla. Stat. § 39.01(9) (1981). See § 39.01, the definitional section of the statute, for definitions of the following: abandonment § 39.01(1); abuse § 39.01(2); neglect § 39.01(26). The aforementioned are used for proof of grounds for permanent commitment under Fla. Stat. § 39.41(1)(f)(1)(a).

\(^73\) See M. Hardin & P. Tazzara, supra note 58, at 34.

\(^74\) Id.
parent consistently unable to care for the . . . child for extended periods.\textsuperscript{75} In Colorado, for example, the parent-child relationship can be terminated upon a showing that the conduct or condition of the parent is unlikely to change within a reasonable period of time.\textsuperscript{76} Emotional or mental illness or deficiency, excessive use of drugs or alcohol, long-term confinement and unsuccessful efforts by child caring agencies are factors to be taken into consideration in determining parental unfitness.\textsuperscript{77}

Recommended model acts also discuss termination of parental rights when the child has been previously removed from the home because of abuse or neglect.\textsuperscript{78} However, they also urge that termination of parental rights should occur only after examination of the ties that the child has retained with the parent and the relationships that the child has developed with foster parents or other caretakers.\textsuperscript{79} Several experts\textsuperscript{80} encourage the use of the term "psychological parent" to assist the court in determining whether the child has established a significant relationship with the person who fulfills the child's psychological and

\textsuperscript{75} Id. at 33 (discussing Katz Model Act for Permanent Commitment). See also Health and Human Services Model State Adoption Act cited therein at 9, 33.

\textsuperscript{76} Colo. Rev. Stat. § 19-11-105 (1981). See also Or. Rev. Stat. § 419.523 (1981) where termination can occur if the parent is found unfit by reason of conduct or condition seriously detrimental to the child and integration of the child into the home is improbable in the foreseeable future due to the unlikelihood of the conduct or condition changing. Regional Research Institute Guidelines developed by Hardin, as cited in his work, supra note 58, at 33, require that the parent's condition be diagnosable and cause the parent to be unlikely to assume minimally acceptable care of the child.


\textsuperscript{78} See M. Hardin & P. Tazzara, supra note 58, at 34 (discussing Standards Relating to Abuse and Neglect); at 33 (discussing Katz Model Act for Permanent Commitment requiring showing of a previous adjudication and continuing or serious acts and the Regional Research Institute Guidelines which require a showing that the parental conduct caused serious harm or danger to the child or siblings which makes return of the child an unacceptable risk when considering the frequency and duration of the conduct, severity of harm, and continuation of conduct despite diligent agency efforts to assist parents).

\textsuperscript{79} See M. Hardin & P. Tazzara, supra note 58, at 29 (citing the National Council of Juvenile and Family Court Judges Termination of Parental Rights Statute, which urges that where the child is in foster care, the court shall consider whether the child has become integrated into the foster family, and whether the family is willing to permanently integrate the child. The factors to be taken into consideration are identical in all important respects to Florida's present definition of the best interest of the child. Fla. Stat. § 61.13(3) (1981). Florida's permanent commitment statute presently requires a showing of manifest best interest of the child to permit termination. Fla. Stat. § 39.41(1)(f)(1) (1981)).

\textsuperscript{80} See generally A. Freud, supra note 56.
physical needs on a day-to-day basis. Termination is not encouraged where it would be detrimental to the child’s bond with the parent or where the present placement of the child makes adoption impractical.

Passage by the Florida legislature of proposed legislation to revise the definition of abandonment by removing the requirement that a child be abandoned six months or longer would distinguish initial intervention from the definition of dependency used as the statutory criteria for authorizing permanent commitment. However, this legislation does little to reconcile the need to protect children whose parents have abandoned them or lack capacity to care for the child through mental illness, severe physical incapacity or drug addiction. Proposed amendments to the neglect definitions, removing the need to show financial ability, are appropriate but fail to protect the child whose parents cannot be provided services because of lack of funding. This is so because amendments to section 39.01(26) would not allow a finding of neglect to be entered if the neglect was “caused primarily by financial inability unless services for relief have been offered and rejected.” A proposal to allow a finding of neglect where services were unavailable was rejected during subcommittee hearings. Therefore, before a child could be considered neglected, the agency must show 1) that grounds for neglect are not primarily because of financial inability; 2) if primarily caused by financial inability, that services are available; and 3) that services have been rejected by the parent. This would prevent the court from adjudicating a child dependent upon the consent of a parent or relative in order to gain funding for social service programs that would not be

81. See M. HARDIN & P. TAZZARA, supra note 58, at 29.
82. Id. at 28.
83. Id. (Where child is placed with relatives that do not wish to adopt, or child is placed in a residential treatment facility or other placement which could not be considered a “family” environment, or where the foster family is unwilling or unable to adopt the child). See also Hardin, Legal Placement Options Achieve Permanence for Children in Foster Care, supra note 19, at 128.
84. The six-month abandonment requirement presently contained in Chapter 39.001(1) would be removed by H.B. 399 and S.B. 273 to Fla. Stat. § 39.41(1)(a) and replaced with “...sufficient to evince a wilful rejection of parental obligations.” See supra note 49 and 72. Regarding parental incapacity, compare M.T.S. v. State, 408 So. 2d 662 (Fla. Dist. Ct. App. 1980) with In the Interest of J.L.P., 416 So. 2d 1250 (Fla. Dist. Ct. App. 1982). This amendment would do little to reconcile what has been termed in M.T.S. as a tragic oversight in failing to protect the child whose parent is suffering from mental illness. This statutory problem has been the subject of numerous resolutions of the conference of Circuit Judges of the State of Florida, Juvenile Section.
available without court order.

D. Permanency Planning for Children

With the passage of the Skinner Bill in 1980, Florida introduced a requirement that the juvenile court consider parental efforts to secure return of their child by improving the home conditions which caused his removal. However, Florida must presently comply with the intent of federal legislation which requires 1) examination of the removal of a child to determine whether preventive and reunification efforts have been made to keep the child in the home, 2) the drafting of a case plan for each child placed voluntarily or involuntarily, designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parent’s home, 3) judicial or court approved administrative hearings within eighteen months of placement of the child to determine the future permanent placement of the child. Failure to comply with federal legislation can technically result in the loss of millions of dollars to Florida’s foster care program.

Proposed legislation seeks to bring Florida law into further compliance with federal law by closely examining initial removal as a mechanism to force an agency to use preventive services. Proposed legislation would accomplish the following: 1) assure court review of voluntary placements in foster care by specifically providing court jurisdiction for dependent children placed in such care; 2) clarify that permanent placement plans can be substituted for performance agreements when the parent is unwilling or unable to enter into a written agreement with the agency; 3) define the court’s role in assuring that the performance agreement complies with law and previous court orders; and 4) define substantial compliance so that a child cannot be returned home unless

85. Fla. Stat. § 409.168 (1981). See also Fla. Stat. § 39.41(1)(f)(d) (1981) which provides that the child may be permanently committed if the parent has failed to substantially comply with the performance agreement. Fla. Stat. § 409.168(1) (1981), the Skinner Bill, was enacted because of the legislative finding that 7 out of 10 children placed in foster care did not return to their biological parents after the first year, and that the children placed in foster care should either be returned to their natural parents or placed in adoptive homes after one year. To assure permanency planning, the legislature required the drafting of performance agreements for each child placed in care, and mandated a series of court reviews. Id.

the child's well being and safety are assured.89

The Florida statute known as the Skinner Bill presently recognizes either return of the child to the parent or adoption as Florida's permanency planning goals. Proposed legislation would sanction other options. In many cases, for example, it may be more appropriate for the sixteen or seventeen year old adolescent in agency care to prepare for independent living90 rather than be adopted or left in foster care indefinitely. For other children, long-term foster care would be recognized as a permanency planning option. A substantial number of children remain in foster care after it is apparent that return to the natural parents is impossible. This may be the result of poor planning for the child or the result of a conscious choice by the agency or the biological or foster parents.91 If long-term foster care is selected, it should be accompanied by clarification of whether the agency or the foster parent will make important decisions regarding the child92 and whether the foster parent has standing to protest a subsequent agency decision to remove the child.93 Although adoption may be desired by some foster parents, they may be unable to do so because they would lose the financial assistance provided to them as foster parents.94 Federal law includes a legal guardian within the definition of a parent95 and the foster parent who pursues guardianship may be prevented from receiving financial assistance. Florida's guardianship proceedings96 are not presently viewed as a mechanism for establishing permanency. Florida foster parents would lose state payments by becoming guardians and guardianship proceedings themselves are costly and difficult for foster parents, relatives or others to pursue since they take place in a separate court division.97

Legislation proposed for the 1984 Florida legislative session fur-

91. See Hardin, supra note 19, at 139.
92. Id. at 160.
93. Id. at 151. Fla. Stat. § 409.168 (1981) encourages the involvement of the foster parent in review proceedings. It is hoped that standing would be granted to the foster parent seeking to contest removal.
94. Id. at 153.
97. See Hardin, supra note 19, at 150.
thers permanency planning in two other ways. First, it formally recognizes the important role of the child’s representative by mandating the appointment of a guardian ad litem.98 Second, it specifies the role of the court at judicial review hearings.99 An area which remains undressed by Florida law is permanency planning for children placed with relatives. Presently, the court may place a child with a relative following an adjudication of dependency.100 The child does not receive the benefits of legally mandated written agreements and judicial reviews as is the case with children placed with HRS or other licensed child-caring agencies. Agency supervision may be terminated after the child is no longer in danger. Placement with relatives can be as disruptive to the relationship between parent and child as placement with strangers since the relative’s authority and control over the child is just as likely to conflict with that of the parent. Permanency planning proceedings should apply to these children as well.

IV. Special Protections for Child Victims and Witnesses in Child Abuse Cases

A. Florida Law and Proposed Recommendations

Florida law presently allows for the prosecution of abuse-related offenses under numerous criminal statutes.101 The punishment for these offenses ranges from capital punishment, for the sexual battery of a child eleven years old or younger, to various degrees of felony and misdemeanor offenses. Age, consent requirements and penalties bear little

98. See supra note 49. Amendments to FLA. STAT. § 409.168 (1981) would include recognition of the role of the guardian ad litem by reviewing the guardian ad litem report at judicial reviews, and by assuring that the child is represented by a guardian ad litem throughout § 409.168 proceedings.

99. See supra note 49. The proposed legislation would amend § 409.168 to require the court to inquire whether the child is represented by counsel; whether the parties have complied with the services, visitation, financial obligations of the agreement; review whether the reasons for entry into a plan are still relevant; whether the child’s placement is appropriate; and the projected date for the child’s return to the home.

100. FLA. STAT. § 39.41(1)(a)(b) (1981) permits the court to place the child with a relative or other adult person, with or without agency supervision, recognizing that family or community placement is preferred to more institutionalized shelter placements.

101. See supra note 5.
relation to the behavioral and psychological information available about child and sexual abuse victims. The American Bar Association National Legal Resource Center for Child Advocacy and Protection has recommended a scheme of sexual abuse definitions and acts which encompasses any form of intentional and explicit sexual behavior with a child or committed in a child's presence.\textsuperscript{102} The recommendations encourage defining "sexual abuse" in criminal statutes by the same terms used in reporting laws.\textsuperscript{103} The recommendations further encourage criminal statutes to include a provision specifically prohibiting intrafamily sexual abuse\textsuperscript{104} in order to give legislative recognition to the serious problem of sexual abuse of children by parents or parental

\textsuperscript{102} J. Buckley, Recommendations for Improving Legal Intervention in Intrafamily Child Sexual Abuse Cases (Oct. 1982) (pamphlet issued by National Legal Resource Center for Child Advocacy and Protection).

\textsuperscript{103} Id. at 14. The recommendations are: Specific Statutory Definitions. Criminal statutes should specifically define sexual abuse of a child. Juvenile court statutes and child abuse and neglect reporting statutes should include and specifically define sexual abuse of a child, or define such abuse by reference to the definition in the criminal statute. The following acts should constitute sexual abuse of a child: (1) any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is an emission of semen; (2) any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person; (3) any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose (except acts intended for valid medical purposes); (4) the intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of either the child or the perpetrator (except acts reasonably construed as normal caretaker responsibilities or affection and those for valid medical purposes); (5) the intentional masturbation of the perpetrator's genitals in the presence of the child; (6) the intentional exposure of the perpetrator's genitals in the presence of the child, or any other sexual act, intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose; (7) sexual exploitation, which includes allowing, encouraging or forcing a child to solicit for or engage in prostitution or engage in the filming, photographing, videotaping, posing, modeling, or performing before a live audience, where such acts involve exhibition of the child's genitals or any sexual act with the child as defined in (1)-(6) of these recommendations. Id. at 13. See also proposed House of Representatives Bill 873 (1984), where sexual abuse is defined, similar to the aforementioned requirement, as an amendment to § 415.503 (1983). This bill, introduced by the Speaker of the House, received impetus from finding of the House of Representatives Ad Hoc Committee on Children and Youth.

\textsuperscript{104} Id. at 22, Recommendation 3.1 defines intrafamily sexual abuse as that committed by a parent, caretaker, or adult household member in a position of authority or control over the child.
figures. 105 Criminal statutes should establish degrees in the sexual abuse of a child, and attendant punishment, based upon whether the acts constitute intrafamily sexual abuse. 106 Factors such as the nature and duration of the abuse, the age of the child and perpetrator, the use of force, threats or other forms of coercion, and the existence of prior sexual offense convictions or juvenile court adjudications for sexual abuse should be considered. 107 Higher penalties should be reserved for those cases considered more aggravated. 108 Colorado has amended several of its criminal law provisions to include sexual assault by a person in a position of trust to the child 109 and has adopted penalties that reflect more closely the relationship of the child to the perpetrator. 110

The model recommendations also encourage legislative guidelines for prosecution and sentencing in intrafamily child sexual abuse cases. 111 Innovations like these in other states have proven successful in protecting the child, punishing the offender, protecting the rights of the child and offender, and encouraging a greater number of prosecutions of sexual abuse cases with minimal disruption to the child and the family's life. 112 Where the court has guidelines which permit it to order treatment as a condition of probation or a suspended sentence, an offender may be helped while avoiding a criminal trial. 113 Colorado, for example, has recently passed legislation allowing suspension of sentences for perpetrators who are not habitual offenders, and permitting the imposition of a treatment program as part of a probationary

105. Id.
106. Id. at 23, Recommendation 3.2, Statutory Degrees of Offenses Based Upon Certain Factors (the relationship of the perpetrator to the child should be a factor).
107. Id.
108. Id.
109. A person in a position of trust is defined in COLO. REV. STAT. § 18-3-401 (1983) as a person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, or a person who is charged with any duty or responsibility for the health, education, welfare or supervision of a child, including foster care, child care or family care, either independently or through another, no matter how brief, at the time of an unlawful act.
110. COLO. REV. STAT. § 18-3-405 (1983).
111. See supra note 102, at 24, Recommendation 3.3.
112. Id. at 25. See also INNOVATIONS IN THE PROSECUTION OF CHILD SEXUAL ABUSE CASES (J. Buckley ed. 1981).
113. J. Buckley, supra note 102, at 26. Pre-trial diversion programs in criminal prosecutions suffer from the same dangers as described in part III of this article if there is no judicial finding that the abuse has occurred.
The recommendations encourage states to mandate use of protective orders in sexual abuse cases. Orders of this nature may require the perpetrator to do or refrain from doing certain specified acts such as vacate the home where the child resides, limit contact with the victim, other children in the home or any child; refrain from further abuse; participate in counseling or treatment; stay away from the neighborhood or school of the child; cooperate with limited or supervised visitation; and pay support for the child or family. The nonparticipating parent may even be included in such orders. Protective orders entered in both criminal and civil proceedings will ensure maximum protection and sensitivity to the child’s needs, while expediting the prosecution process. Typically the responsibility for seeking and enforcing such protective orders is legislatively placed with law enforcement agencies.

B. Videotaping and Other Protective Measures for Child Victims and Witnesses

Prosecution of child abuse cases is difficult because often the child’s testimony is supported by little physical corroboration to overcome the factfinders’ natural skepticism that the crime occurred. Those experienced in dealing with the child sexual abuse victim know that bolstering the credibility of the child and educating the criminal justice system to exercise sensitivity during proceedings are almost insurmountable problems. An abused child is often threatened by parents regarding the child’s intent to testify. The child finds it difficult, in an open courtroom, to accuse the parent whom he still loves.

115. In Florida, as well as other states, the child is normally removed from the home rather than the abuser being ordered to reside elsewhere. The child is thus further traumatized by being isolated from family members who may be supportive of the child. Prolonged resolution of the case often results in the child not receiving needed treatment and the child’s recanting of sexual abuse accusations.
116. Buckley, supra note 102, at 20, Recommendation 2.2. See also House Bill 873, supra note 103, which adds § 39.4055, entitled Injunction Pending Disposition of Petition for Detention or Dependency, but is not confined to sexual abuse.
117. Id. at 21.
A courtroom physically accommodates adults, but is quite threatening to the younger child. Child advocates have attempted to reduce the trauma of courtroom testifying in a variety of ways. Prosecutors, guardians ad litem and victim advocates may explain court proceedings to the child prior to the actual trial, and provide emotional support throughout the case. In some Florida courts, a guardian ad litem will be appointed to represent the child in the criminal prosecutions of his abuser.\textsuperscript{120} However, the legislatively mandated appointment of a victim—witness advocate to assist the child would best ensure that the child is protected.\textsuperscript{121} Experts encourage such appointments, acknowledging that criminal cases differ from juvenile cases because the child is a witness, rather than a party, to the proceedings and the purpose of criminal prosecutions is primarily to punish the offender rather than protect the best interests of the child. A victim-witness advocate in criminal court, however, can help to minimize the trauma of the legal process by “for example, accompanying the child during interviews and court proceedings, arranging transportation, explaining the process, preventing, where possible, harassment or other intimidating investigative or court room procedures, and in essence, being a “friend of the court” or support person who shepherds the child through the process.”\textsuperscript{122} The commentary to the recommendation urges the guardian ad litem appointed in the juvenile court proceeding as the person most appropriate to provide assistance during the criminal trial phase. This practice, when used in Florida, has helped to achieve better communication between the juvenile, the criminal court, and professionals, while providing the child with a continuous support figure throughout the various proceedings.

Florida law currently recognizes the need to reduce trauma to the child victim by allowing a parent to be present during any questioning, and requiring interviews to be conducted in the least harmful environment.\textsuperscript{123} In 1982, a bill was proposed to further protect children during

\textsuperscript{120} Pursuant to FLA. STAT. § 415.508 (1983) representation of the child is by a guardian ad litem in all child abuse and neglect proceedings. The definition of child abuse and neglect contained in § 415.503(5) would include not only those acts contained in §§ 827.03-.06 but other criminal offenses. H.B. 873 clarifies that a guardian ad Litem must be appointed in civil and criminal cases. \textit{See supra} note 5. Special thanks to P. Miles, Circuit Coordinator of the Sixth Judicial Circuit Guardian Ad Litem Program for her research contributions to this section of the article.

\textsuperscript{121} J. Buckley, \textit{supra} note 102, at 9, Recommendation 1.4.1.

\textsuperscript{122} \textit{Id.} at 10.

\textsuperscript{123} \textit{See} State v. Sievert, 312 So. 2d 788 (Fla. 2d Dist. Ct. App. 1977).
depositions, discovery and other actions involved in child abuse prosecutions. In its amended form the bill, which was not passed by the Florida legislature, required the appointment of a guardian ad litem to represent victims under the age of eighteen who are compelled to testify in a criminal child abuse case.\textsuperscript{124} A separate problem was addressed in \textit{State v. Dolen} where a Florida court acknowledged the need to exclude the defendant from a deposition because of emotional trauma to his child victim.\textsuperscript{125} In several foreign countries, questioning of children is conducted outside the presence of the defendant by specially trained professionals.\textsuperscript{126} Although requests to exclude an abuser from dependency proceedings in juvenile court are usually granted, questioning a child outside the presence of the defendant during a criminal trial conflicts with the defendant's constitutional right to confront his accuser.\textsuperscript{127} As a result, special videotap-

\begin{quotation}
\textsuperscript{124} The guardian ad litem would have been authorized to request protective orders on behalf of the child, attend depositions and request court protection. One form of the bill would have required the presence of a judicial officer. H.R. 5 Fla. Leg. Sess. (1983), creating FLA. STAT. § 914.16 (1983) (depositions of juvenile victims in criminal proceedings). The bill would have created FLA. STAT. § 914.10 (1983) and repealed FLA. STAT. § 827.07(16) (1981) in favor of broader appointment authorities including any victim of child abuse or neglect. The bills did not pass during the session. Arguably, there was insufficient information about the Guardian Ad Litem Program, then in a pilot stage, to assure sufficient resources for representing the victims that needed protection under the bill. Additionally, confusion existed regarding the role of the guardian ad litem in criminal prosecutions since the state attorney is charged with protection of the child. See J. Buckley, \textit{supra} note 102, at 9 (the idea that the state's function to assure punishment of the offender may cause treatment of the child in a manner inconsistent with the child's best interests.)

\textsuperscript{125} 390 So. 2d 407 (Fla. 5th Dist. Ct. App. 1980). \textit{Dolen} recites that the court has discretion to exclude the defendant from depositions pursuant to FLA. R. CRIM. P. 3.220 without interfering with the defendant's right to confrontation, and where the witness will be available for trial.

\textsuperscript{126} See Lloyd, \textit{supra} note 119, at 185, which recited the practice in Israel and Scandinavian countries of using professional workers with extensive backgrounds in human behavior to interview children.

\textsuperscript{127} See U.S. v. Benfield, 593 F.2d 815 (8th Cir. 1978). This would include blocking the defendant's view of the child, Herbert v. Superior Court, 712 Cal. Rptr. 850 (1981); See also In the Matter of S. Children, 424 N.Y.S.2d 1004 (Kings County Fam. Ct. 1980). A creative approach is recommended by Libai, as outlined in Lloyd, \textit{supra} note 134. The use of an informal child-proof courtroom is recommended, which has one-way mirror behind which the defendant and the public would sit. Counsel for the defendant would be in the courtroom and communicate electronically with the defendant. However, the practice is noted as not only raising constitutional issues, but containing prohibitive construction costs.
\end{quotation}
ing statutes have been introduced in Florida and other states to provide protection to the child while safeguarding the rights of the defendant. In order to be effective several additional provisions should be incorporated into Florida’s present videotaping law.\footnote{128}

First, Florida presently allows videotaping if the child victim is eleven years of age or younger.\footnote{129} Other states extend protection to young adolescents who face many of the same traumas as children under eleven. In addition, many victims who qualify under Florida’s statute at the time of the abuse are older than eleven when they are required to testify. Arizona law presently allows videotaping of a minor under the age of fifteen,\footnote{130} while New Mexico’s statute includes children who are sixteen years or younger.\footnote{131} The Florida proposed amendments would raise the protection to children under age sixteen. Second, Florida presently permits only the state to apply for videotaping. This procedure fails to recognize that a parent or the child’s representative may also wish to invoke this protection based on facts and circumstances of which the state is unaware, or is unwilling to support based upon the relative need for conviction in the case. Florida law does not permit the child, parent, child representative or defendant to have standing to request that the court allow the child to be videotaped. Other states, however, allow such requests.\footnote{132} It may be argued that the state has the right to conduct the case as it sees fit. But recognition that counsel or the representative of the child, as well as the defendant, may apply for an order to videotape would simply permit the victim or witness to be heard regarding the “severe mental or emotional trauma” that might occur if the child were required to give live testimony. The present Florida statute provides for a hearing where the court may consider the state’s arguments in opposition to videotaping, as well as those of other parties, and the relative merits on behalf of the child.\footnote{133} This practice is continued in proposed amendments. Third, Florida presently

\footnote{128. FLA. STAT. § 918.17 (1983). Bills passing both House and Senate committees during 1984 have been refiled this year and are identical in all substantive aspects. See Committee Substitute for House Bill 56 and Senate Bills 140 and 237.}

\footnote{129. FLA. STAT. § 918.17 (1981).}

\footnote{130. ARIZ. REV. STAT. §§ 12-2311, 2312 (Supp. 1979-80). See also COLO. REV. STAT. § 18-3-412(1) (1983).}

\footnote{131. N.M. STAT. ANN. § 30-9-17 (1978).}

\footnote{132. ARIZ. REV. STAT. ANN. §§ 12-2311, 2312 (1978) recognizes that “either” party may make the request. N.M. STAT. ANN. § 30-9-17 (1978) recognizes the victim’s right to be heard on this issue.}

\footnote{133. FLA. STAT. § 918.17 (1983).}
allows the videotaping of a victim’s testimony only in prosecutions for sexual battery and child abuse, even though the victim of another offense might suffer equal or more serious trauma.\textsuperscript{134} New Mexico provides for taping in prosecutions involving sexual penetration or sexual contact.\textsuperscript{135} Arizona permits it in all civil or criminal offenses involving an alleged sexual offense.\textsuperscript{136} Fourth, Florida presently requires that the court find “a substantial likelihood that the child will suffer severe emotional strain if required to testify in open court” as a prerequisite to granting a request for taping.\textsuperscript{137} This requirement must be met by evidence from parents, caretakers, psychologists or other mental health professionals. Colorado law requires a preliminary finding which can be based upon “recommendations from the child’s therapist, or any other person having direct contact with the child, whose recommendations are based on specific behavioral indicators exhibited by the child.”\textsuperscript{138} Fifth, Florida presently allows for taping only after the trial has actually commenced.\textsuperscript{139} One of the major obstacles toward successful prosecution of child sexual abuse cases is assuring that the trial occurs as soon as possible after the incident has been reported or has occurred. Child victims are vulnerable to the pressures of prolonged prosecutions because they do not have the coping mechanisms of adults to deal with such stress. The child is likely to recant prior statements in order to end prolonged proceedings and the harsh effects of being removed from family and friends. In addition, a child is especially susceptible to forgetting important facts.

It is essential for children to receive treatment for the trauma of sexual abuse, and begin the healing process, as soon as possible. Prolonged prosecution detrimentally affects this process. Colorado has formally recognized that cases involving the commission of unlawful sex-

\begin{enumerate}
\item \textit{Id. See} COLO. REV. STAT. § 18-3-412(1) (183) which allows for taping in various sexual offense cases.
\item \textit{See supra} note 131.
\item \textit{See supra} note 130. The proposed Florida legislation would relate to sexual or child abuse cases, whether civil or criminal. Both victims and witnesses would be permitted to invoke the protection of the law.
\item FLA. STAT. § 918.17 (1983). The proposed legislation retains this requirement, substituting the word “trauma” for strain.
\item COLO. REV. STAT. § 18-3-412(3) (1983).
\item FLA. STAT. § 918.17 (1983). The proposed amendment would permit taping at any time. At the hearing on the videotaping motion the court could ascertain if the defendant has completed discovery. The prosecutor must assure expeditious handling of these cases to assure maximum benefits of early videotaping.
\end{enumerate}
ual acts against minors must take precedence before the court. Neither Colorado, Arizona, Montana, or New Mexico require that the trial be commenced before the videotaping can take place. Proposed legislation would eliminate this requirement by allowing an application for videotaping to be made at any time prior to the trial of the case. Finally, Florida presently requires that the court preside at the videotaping. Either the court or a person who is specifically interested in the well-being of the child should be present during taping to assure that questioning is conducted in a sensitive manner, and to counter the effect of confrontation with the defendant.

C. Innovations in Evidentiary Principles

The prosecution of child and sexual abuse cases can be greatly aided by expert testimony on the dynamics of intrafamily child sexual abuse and principles of child development. Using an expert to present evidence of the sexually abused child syndrome, which includes dynamics of sexual abuse, similar to expert evidence on the battered child syndrome is recommended when pertinent. The sexual abuse syndrome involves such elements as progressive sexual behavior over a prolonged period of time, the lack of force or physical injury, the late disclosure of the incident, the passive role of the nonparticipating parent, retraction or inconsistency in statements by the victim, and certain special behavioral characteristics of the victim and the offender.

141. See supra note 39.
143. The proposed legislation would delete the requirement that the court be present if the court finds that the child will be protected and that a guardian ad litem represents the child. Montana provides for the court and “such persons as deemed necessary by the court” to be present, Mont. Code Ann. § 46.15-401 (1981). See supra notes 130-32 and accompanying text. The proposed legislation would also permit the appointment of a special master. The parties, including the child’s representative must stipulate that the presence of the court is not necessary.
144. See Buckley, supra note 102, at 37.
145. Id. at 40.
146. Id. See also, Berliner, Canfield, Blick & Buckley, Expert Testimony on the Dynamics of Intra-Family Child Sexual Abuse and Principles of Child Development, in Child Sexual Abuse and the Law 166, 171-173 (J. Buckley ed. 1983), (the behavior includes physical symptoms with no physiological basis, clinical depression, isolation from peers, runaway, truancy, involvement with drugs or alcohol, drop in academic performance, pseudo-mature seductive behavior, fear of men, heavy family re-
Such testimony is crucial where a jury might find it difficult to believe that the child is the victim of a violent crime. Additionally, evidence in a sexual abuse prosecution may include statements which are inadmissible hearsay according to evidence law. Where there is corroborating evidence of the abuse, however, Florida courts should be willing to accept the testimony under the general exception to the hearsay rule. The court should be permitted to consider "the age and maturity of the child, the nature and duration of the abuse, the relationship of the child to the offender, the reliability of the assertion, and the reliability of the child witness, in deciding whether to admit the statement." Such an exception would comport with the belief that children are not adept at the reasoned reflection necessary to support false allegations. A special hearsay rule exception added to Florida's code of evidence would eliminate the need for courts to allow the statements of a child through "tortured interpretation" of the existing hearsay exceptions. Colorado has legislated exactly such an exception, with the requirement that the adverse party be given ample notice.

V. Proposals For the Improvement of Professional and Volunteer Services For Children

A. Establishment of Minimum Standards

In any given community, there are certain persons who are most likely to come into contact with abused children, such as teachers, doctors and social workers. By law these professionals are mandated to report abuse or neglect; they may also be responsible for diagnosing

147. See Buckley, supra note 102, at 34. Proposed H.B. 873 recommends that Florida adopt this position by adding § (23) to § 90.803.
148. Id. at 34, Recommendation 4.3.
149. Id. at 35. See also Buckley, Evidentiary Theories for Admitting a Child's Out-of Court Statement of Sexual Abuse at Trial, supra note 119, at 153.
151. Fla. Stat. § 827.07(3) (1981) requires reports by day care center workers, teachers, public health practitioners, social service and mental health workers, and doctors. Those likely to contribute to diagnosis are nurses, social workers, teachers police officers. Florida law also mandates responsibilities for law enforcement, state attorney, judges, H.R.S. guardians ad litem and child protection teams in the handling of abuse.
or providing intervention or treatment services to the abused child. The state's child abuse prevention plan mandated under Florida Statutes section 415.501, popularly known as the Mills Bill, recommends that the legislature statutorily require the development of minimum standards for education and training of professionals charged with responsibilities in child abuse cases. The Mills Bill provided the major impetus in the training of school and law enforcement personnel. Legislation can provide direction and impetus to persons and agencies by requiring minimum training and formulation of standards for professionals and volunteers who are responsible for the detection, diagnosis, treatment, and representation of abused children. These standards can be implemented by: requiring certification of those professionals licensed or regulated by the state in the relevant responsibilities of dealing with children; providing funding incentives for training activities; and requiring that any contract entered into by HRS with private agencies for services targeted for abused and neglected children specify that agency staffs have minimal qualifications and training in the relevant area of practice.

152. FLA. STAT. § 415.501 (1983); formerly 827.075 (1982), (also known as the Child Abuse Prevention Act. The Law called for the appointment of state and district task forces to identify the child abuse prevention needs of the state.

153. Fla. Dept. of HRS, State Plan: A Comprehensive Approach for the Prevention of Child Abuse and Neglect 23 (Dec. 1982) which recommended funding for and statutory mandates requiring minimum education and training standard for professions in child abuse cases, e.g. law enforcement, state attorneys, public defenders and judges. District II and VII identified these items specifically. See id. at 76. Each institution of higher learning should mandate courses if future professional practice involves working with children. Id.

154. Id. at 30 (target dates for training elementary, middle and high school personnel). Id. at 28. (law enforcement agencies have included mastery of information on child abuse as part of basic recruit curriculum in forty-one certified training centers. Id. at 30. FLA. STAT. § 402.305(1) (1981) requires minimal standards of training for day child care personnel.

155. See J. Buckley, supra note 102, at 13, which recommends special training for professionals who deal with intrafamily child sexual abuse in psychological, social and legal issues, basic principles of child protection and development and interviewing techniques. Id. at 13.
B. The Coordination of Agencies

The Mills Bill\textsuperscript{156} provided an opportunity for Florida communities to identify problems in coordinating child abuse efforts. Although further legislation may not be needed to enhance communication and cooperation between agencies, certain refinements are necessary. One commentator recommends that agencies establish an interdisciplinary approach for handling sexual abuse cases\textsuperscript{157} in order to provide greater efficiency, expertise and information sharing.\textsuperscript{158} Presently in Florida, for example, a law enforcement agency may not be notified about a reported child abuse because HRS is only mandated to report serious cases to the state attorney.\textsuperscript{159} The prosecution of cases in separate criminal and juvenile court forums may also contribute to poor communication and inefficiency. This perception has led to recommendations that a single prosecutor be assigned to handle all stages of a case,\textsuperscript{160} and that procedures to coordinate child protective, criminal and other judicial proceedings involving intrafamily sexual abuse be devised.\textsuperscript{161}

C. Independent Representation of Children

The need for providing independent representation for children is well recognized in Florida.\textsuperscript{162} Legislative funding of the State of Florida Guardian Ad Litem Program has provided legitimacy and stability

\begin{footnotes}
\footnote{156. \textit{FLA. STAT.} § 415.501 (1983). \textit{See supra} note 152.}
\footnote{157. \textit{See Buckley, supra} note 102, at 7. Buckley recommends including procedures to prevent duplicated interviews through the use of joint interviews by various individuals needing information, or the use of one well trained investigator who can address the nature and goals of interviews required by different agencies. \textit{Id.} at 10. \textit{See also recovery H.B. 873 language amending FLA. STAT. 415.505 (1983).}}
\footnote{158. \textit{Id.} at 8.}
\footnote{159. \textit{FLA. STAT.} § 415.505(1)(8) (1983); formerly 827.07(10)(g) (1982), provides that HRS may notify law enforcement agencies. It is recognized that law enforcement must immediately secure evidence in order to assure the possibility of criminal prosecution to protect the long-term interests of the child. Sensitivity to the needs of the child can be accomplished through training of law enforcement, as with other agencies. \textit{See H.B. 873, supra} note 116, which would require coordination between the state attorney, HRS, and law enforcement and create liaisons with schools and hospitals.}
\footnote{160. \textit{See Buckley, supra} note 102, at 11.}
\footnote{161. \textit{Id.} at 8.}
\footnote{162. \textit{FLA. STAT.} § 415.508 (1983); formerly 827.07(16) (1981) has required the appointment of a guardian ad litem in child abuse and neglect judicial proceedings since 1978. \textit{See also} proposed amendments in H.B. 873, \textit{supra} note 116.}
\end{footnotes}
to the concept of representing abused and neglected children. The statewide use of volunteer lay citizens has placed Florida in the vanguard of guaranteeing abused children an effective voice. Expanding since 1980 to fifteen of Florida's twenty judicial circuits, the Guardian Ad Litem Program has recruited and trained over fifteen hundred volunteer lay citizens and attorneys who have provided invaluable service to over eight thousand victims of child abuse. Independent evaluations have consistently recommended statewide implementation of the program and the legislature is urged to fund expansion in 1984 to the remaining areas of the state. Some of the many important roles that guardians ad litem perform on behalf of children are: 1) Investigator—the guardian ad litem independently conducts an investigation on behalf of the child, including interviews with the child, child's counselor, medical and mental health specialists, the parents, teachers, and persons in the community. He also collects relevant records and consults with experts; 2) Monitor—the guardian ad litem serves as a monitor of the agencies and persons who provide services to the child, he assures that orders of the court are followed and that families and children receive needed services; 3) Protector—the guardian ad litem protects the child during questioning and helps support the child emotionally to minimize the often harmful effects of being embroiled in the adversary process; 4) Spokesperson—the guardian ad litem assures that the child's wishes are heard, and that the best interest of the child is presented to the court and to agencies dealing with the child; and 5) Reporter—the guardian ad litem presents information to the court, recommending to the court what is in the child's best interest, and prepares a written report which becomes a permanent part of the child's record.

163. The program is part of the administrative structure of the circuit courts of the state. It is funded through the Office of the State Courts Administrator of the Supreme Court of Florida.
165. These recommendations are based upon quality representation as compared with other models, and cost effectiveness. An Evaluation of Florida's Guardian Ad Litem Program by M.G.T., Inc. (1982, 1983) An independent private contractor hired by the State of Florida).
166. FLA. R. JUV. P. 8.300 (West 1983). See E. Hoffenberg, Role of Guardian
VI. Conclusion

The increased support and protection of child abuse victims in Florida in recent years has provided the state with thousands of community and state advocates who are becoming more aware of the legislative needs of Florida’s children. As professionalism increases, practitioners will continue to question irreconciliable conflicts in child welfare laws. The growing respect for children’s legal representatives will assure continued input to state legislators. Florida’s child victims of abuse are beginning to command the attention of lawmakers. Comprehensive reforms in the areas of permanency planning, effective prosecution of cases and sensitivity to the special needs of children in the criminal justice system are needed. Highly specialized training and maximum efforts for coordination and communication among agencies are the least that our most precious resource—our children—deserve. For the sake of these children, the legislative challenges that await our lawmakers and citizenry at this time must be met with the same enthusiasm and creativity that has accompanied previous efforts. Innumerable generations of children who are yet to be born will reap the rewards of these efforts.