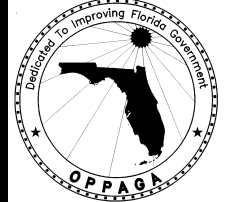




Office of Program Policy Analysis And Government Accountability



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January 29, 1997

Evaluation of Child Welfare Legal Services Pilot Projects

Report Abstract

- Initial results of the three Child Welfare Legal Services (CWLS) pilot projects are varied. However, it is too early to distinguish the impact of the pilot projects themselves from what may be short-lived effects associated with the transition process.
- Pilot budgets may not have sufficiently provided for start-up costs and may not be adequate for proper litigation and staff retention.
- A number of unresolved policy issues may impede the implementation of the pilot project models on a wider scale. These include the clear identification of the CWLS attorneys' client, jurisdictional boundary complications, and questions of potential conflicts.
- To more fully determine the effect of the pilot projects, we recommend that the pilots be extended and that an evaluation be conducted after the pilot projects have been in operation for two years.

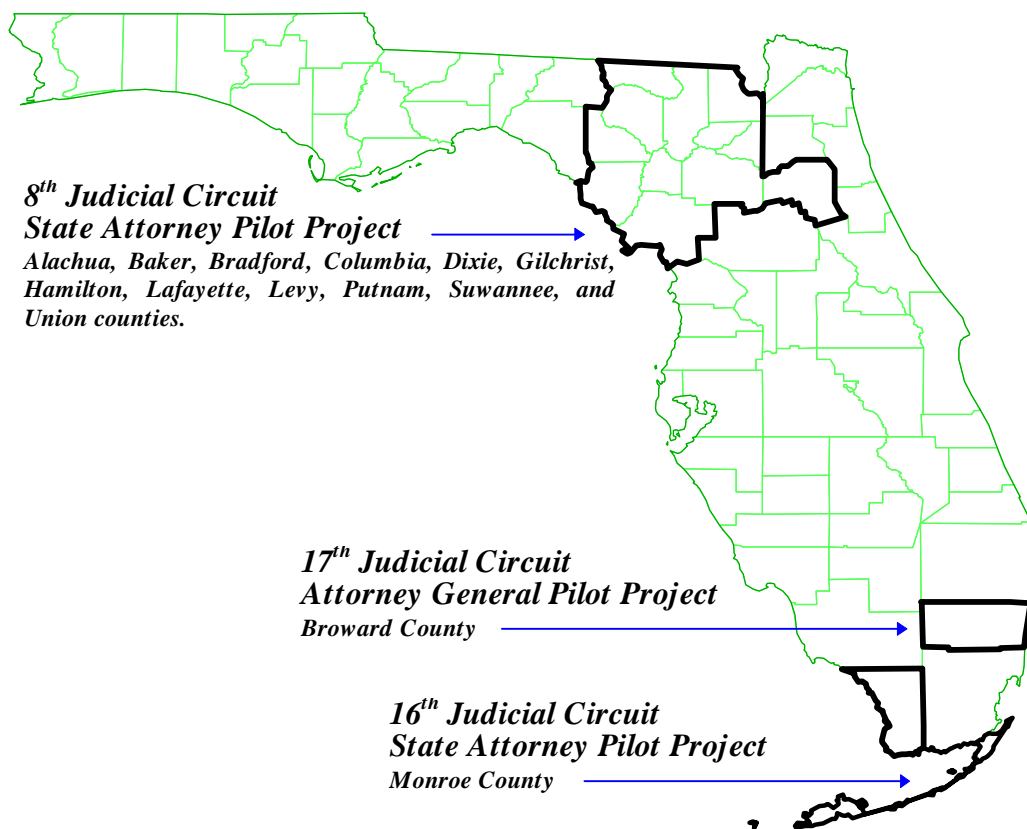
Purpose

The 1996-97 Appropriations Act established three pilot projects changing the organizational placement of Child Welfare Legal Services personnel from the Department of Health and Rehabilitative Services to the Attorney General in the 17th Judicial Circuit and the State Attorney in the 8th and the 16th Judicial Circuits.¹ (See Exhibit 1.) The Legislature directed OPPAGA to develop criteria to evaluate the three pilot projects and to submit a preliminary report by February 1, 1997. The purpose of this preliminary report is to:

- Describe the pilot projects;
- Describe the criteria and evaluation design OPPAGA has developed to evaluate the pilot projects;
- Provide preliminary results; and
- Describe key policy issues that the Legislature may wish to take into consideration when determining the organizational placement of Child Welfare Legal Services attorneys.

¹ On January 1, 1997, the Department of Health and Rehabilitative Services was reorganized. Dependency cases are now the responsibility of the Department of Children and Families.

Exhibit 1
Pilot Project Areas



Background

Florida law provides that children of this state deserve a stable home, adequate nutrition, shelter, and clothing, and protection from abuse and neglect. When a child's caretaker does not ensure these protections, the state is authorized to step in and provide them. Florida's dependency process includes all of the social work and legal procedures outlined in Ch. 39, F.S., to protect children from mistreatment. This process includes family assessments, provision of non-judicial services, and when appropriate, judicial intervention. The legal components of the dependency process are extensive and are designed to protect at-risk children as well as ensure the due process rights of the parents. Legal representation in dependency actions must be thorough because the removal of a child from the home has such a profound impact on the child-parent relationship and the child's future. (A flowchart of dependency proceedings is provided in Appendix A.)

Prior to 1990, legal representation of the Department of Health and Rehabilitative Services (DHRS) in contested

dependency cases was provided by a DHRS attorney in some circuits and by the State Attorney in other circuits. However, in uncontested dependency cases, non-attorney DHRS caseworkers drafted legal documents and represented the Department in court proceedings. In 1989 the Florida Supreme Court established an ad hoc committee to study the impact of the use of non-lawyer caseworkers in dependency proceedings. The Committee found that the lack of adequate legal representation contributed to extensive delays and the failure of the system to adequately meet the needs of abused and neglected children. The Committee recommended that legal representation of DHRS be mandatory at all stages of dependency proceedings and the Supreme Court ruled that the Department must stop using non-lawyer caseworkers to present cases in dependency proceedings. In 1990, the Legislature established Child Welfare Legal Services (CWLS) attorney positions and assigned them to DHRS.

The Legislature also gave the Attorney General responsibility for oversight of Child Welfare Legal

Services to ensure compliance with the Supreme Court ruling. In a 1990-91 oversight report, the Attorney General identified a number of concerns, including high attorney caseloads, poor case documentation, insufficient attorney training, and friction between caseworkers and attorneys. In a 1992 follow-up report, the Attorney General found improvement in these areas but identified unresolved problems, such as unmet statutory time frames, caseload management deficiencies, low attorney salaries, and high attorney turnover.

In March 1996, the Chairman of the Senate Committee on Ways and Means appointed the Select Subcommittee on Child Welfare Legal Services. The Select Subcommittee identified concern about the quality and supervision of CWLS attorneys. To address this concern, the Select Subcommittee considered changing the organizational placement for the direct supervision of CWLS personnel to the Attorney General or State Attorneys and recommended that pilot projects be established to determine the effects of changing the organizational placement of CWLS attorneys.

Description of Pilot Projects

Since differences in site conditions and project components will have an impact on project performance, these factors need to be considered when describing and assessing project results. Prior to the implementation of the pilot projects, we collected baseline information at each pilot site to identify and delineate site conditions. We collected information on each project's implementation through follow-up site visits, interviews, and questionnaires. Exhibit 2 provides an overview of this information.

The 17th Judicial Circuit Attorney General pilot project is in Broward County, the second most populous county in Florida. The number of dependency and child abuse cases in the Department of Children and Families district served by this pilot project far exceeds the number of cases in the other pilot sites; in fact, few districts are comparable in terms of the volume of dependency cases or CWLS attorneys' caseloads. The Attorney General's Office is preparing a very complex and high-profile contested dependency case which may go to trial in March 1997. One of the pilot attorneys

has been assigned to assist on this case and has not been given a dependency caseload, increasing the caseload of the other pilot attorneys.

Prior to the pilot, judicial satisfaction with CWLS attorneys' performance in the 17th Judicial Circuit was low and the working relationship of attorneys and caseworkers was poor. Judges expressed particular concern about the CWLS attorneys' lack of proficiency in trial skills and characterized the pilot project as an opportunity for the attorneys to develop professionally to become more competent litigators. Attorneys and caseworkers also reported dissatisfaction with their working relationship.

The 8th Judicial Circuit State Attorney pilot project is unusual in that it serves an area composed of 12 counties that cut across two Department of Children and Families administrative districts and three judicial circuits. Six pilot site counties are in the 8th Judicial Circuit. Five pilot counties are in the 3rd Judicial Circuit and one county is in the 7th Judicial Circuit. Judicial satisfaction with the performance of CWLS attorneys before the pilot project started was mixed. Some judges expressed concern about the quality of CWLS attorneys' trial skills, while other judges reported that, on the whole, CWLS attorneys performed in a competent manner. Attorneys and caseworkers reported that their working relationship prior to the pilot was very good.

The 16th Judicial Circuit State Attorney pilot project is in Monroe County, which comprises the Department of Children and Families Subdistrict 11b. The pilot site is geographically unique in that it includes the 100 mile long archipelago of the Florida Keys. Another characteristic of this pilot site is the high level of satisfaction with CWLS prior to the project. Judges in the 16th Judicial Circuit reported that they were very satisfied with the performance and proficiency of the CWLS attorneys. In the 16th Judicial Circuit, caseworkers reported that they had an excellent working relationship with the two CWLS attorneys before the pilot project started.

Exhibit 2
Pilot Project Conditions Differ

Pilot Conditions	Office of the Attorney General 17th Judicial Circuit Broward County	Office of the State Attorney 8th Judicial Circuit Alachua, Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Lafayette, Levy, Putnam, Suwannee, and Union Counties	Office of the State Attorney 16th Judicial Circuit Monroe County
Demographics	<ul style="list-style-type: none"> • Urban area • Population 1,364,168 • 1,211 square miles 	<ul style="list-style-type: none"> • Mostly rural area • Population 479,106 • 7,463 square miles 	<ul style="list-style-type: none"> • Mostly rural area • Population 83,401 • 1,034 square miles
Jurisdictions	<ul style="list-style-type: none"> • Single county • Single judicial circuit • Single C&F district 	<ul style="list-style-type: none"> • 12 counties • 3 judicial circuits • 2 C&F districts 	<ul style="list-style-type: none"> • Single county • Single judicial circuit • Single C&F district
Case Volume Fiscal Year 1994-95	<ul style="list-style-type: none"> • 8, 832 child abuse/neglect Florida Hotline reports received • 591 dependency petitions filed 	<ul style="list-style-type: none"> • 5, 062 child abuse/neglect Florida Hotline reports received ¹ • 260 dependency petitions filed ² 	<ul style="list-style-type: none"> • 652 child abuse/neglect Florida Hotline reports received • 36 dependency petitions filed
Pre-Pilot Judicial Satisfaction With CWLS Attorney Performance	<ul style="list-style-type: none"> • Low 	<ul style="list-style-type: none"> • Mixed reports, ranging from low to high 	<ul style="list-style-type: none"> • High
Pilot Budget	<ul style="list-style-type: none"> • \$842,139 	<ul style="list-style-type: none"> • \$436,876 ³ 	<ul style="list-style-type: none"> • \$164,067
Pilot Positions	<ul style="list-style-type: none"> • 10 pilot attorneys • 7 paralegal specialists • 2 administrative secretaries • 1 secretary specialist 	<ul style="list-style-type: none"> • 9 pilot attorneys • 6 paralegal specialists • 2 administrative secretaries 	<ul style="list-style-type: none"> • 2 pilot attorneys • 2 administrative secretaries
Pilot Attorneys	<ul style="list-style-type: none"> • 9 CWLS attorneys from District 10, Children and Families • 1 assistant attorney general from Attorney General Appeals Unit 	<ul style="list-style-type: none"> • 6 CWLS attorneys from District 3, Children and Families • 1 former guardian ad litem family law coordinator • 1 former assistant attorney general • 1 assistant state attorney from 8th Judicial Circuit 	<ul style="list-style-type: none"> • 1 CWLS attorney from District 11b, Children and Families • 1 assistant state attorney from 16th Judicial Circuit • 3 assistant state attorneys serving as “back-up” dependency attorneys
Location of Pilot Attorneys	<ul style="list-style-type: none"> • All pilot personnel at single location • Separate building adjacent to other Attorney General personnel • No collocation with C&F caseworkers before or during pilot 	<ul style="list-style-type: none"> • Pilot personnel at 4 different locations • Some collocation with other State Attorney personnel • Some collocation with C&F caseworkers before and during pilot 	<ul style="list-style-type: none"> • Pilot personnel at 2 different locations • Collocation with other State Attorney personnel • Collocation with C&F caseworkers before pilot • No collocation with C&F caseworkers during pilot

¹ Does not include reports for Baker County.

² Does not include petitions for Putnam County.

³ Does not include salaries for non-attorney positions.

Source: The Florida Legislature, Office of Program Policy Analysis and Government Accountability analysis of Pilot Project data; Florida Estimates of Population, April 1, 1995; and Florida Department of Commerce data.

There are similarities and differences in the way the three pilots are being implemented. All three pilots include a mix of experienced CWLS attorneys and attorneys with no prior experience in dependency. In the 17th Circuit, nine of the ten pilot attorneys have prior dependency experience; in the 8th Circuit, six of the nine pilot attorneys have prior dependency experience.² In the 16th Circuit, one of the two pilot attorneys has prior CWLS experience and the three assistant state attorneys who are assigned part-time to the pilot have no prior CWLS experience.

One of the biggest differences in implementation of the pilots is whether the CWLS attorneys are located separately, with other attorneys, or with caseworkers.³ In the 17th Circuit, attorneys were located separately before and during the pilot. In the 8th Circuit, some CWLS attorneys were colocated with caseworkers prior to the pilot, but are not now; others remain colocated. In the 16th Circuit, CWLS attorneys were colocated with caseworkers prior to the pilot, but are not now. Collocation may facilitate cooperation; we noted that prior to the pilots, the sites with the best working relationships between attorneys and caseworkers were those where they were colocated.

Another difference in implementation is the way in which the pilot projects have defined the pilot attorneys' scope of work. The 17th Circuit pilot project has narrowed the scope of CWLS attorneys' work to exclude the provision of legal services before a dependency petition has been filed. As a result, pilot attorneys in the 17th Circuit may be less involved in the earliest stages of a dependency case than they were before the pilot project. In the 16th Circuit, the work of CWLS attorneys has been expanded to include non-dependency cases. Both of the primary pilot attorneys in the 16th Circuit have delinquency caseloads in addition to their dependency caseloads. And, in the 8th Circuit, attorney specialization in termination of parental rights (TPR) cases has been eliminated, changing the range of dependency cases handled by each pilot attorney.

² Two of the six attorneys in the 8th Judicial Circuit with CWLS experience have resigned since the pilot project began.

³ We use the term caseworker to include Department of Children and Families protective investigators, protective services counselors, and foster care counselors.

Evaluation Criteria

We developed criteria to evaluate the pilot projects based on three main sources: criteria provided by the American Bar Association for evaluating the legal representation of child welfare agencies; the findings of previous reports on the legal representation of DHRS in dependency proceedings; and the concerns expressed by stakeholders who are involved at different levels of the dependency process. The stakeholders we interviewed include state attorneys, Attorney General and Department of Children and Families senior staff, judges, guardians ad litem, CWLS attorneys, and Department of Children and Families caseworkers.

The criteria we developed for the evaluation of the Child Welfare Legal Services pilot projects are:

- What is the impact of organizational placement on the cost of providing Child Welfare Legal Services?
- Does the organizational placement improve attorney performance and the timeliness of the dependency process?
- Does the organizational placement support effective and efficient communication between attorneys and caseworkers?
- Does the organizational placement attract and retain more experienced dependency attorneys?
- Does the organizational placement provide more opportunities and resources for the professional development of dependency attorneys?

We explain these five criteria and provide a design for conducting a final pilot project evaluation in Appendix B. For this preliminary report, we have applied each evaluation criterion to provide information on the start-up phase of the pilot projects.

Preliminary Results

Implementation of the pilot projects began on August 1, 1996, but has taken a number of months to complete. Each project has experienced some implementation delays for different reasons, such as difficulty in filling pilot attorney positions or completing the renovation of office space for project personnel. Given the sheer logistics of moving a complex legal function out of one organizational context and setting it up in another, it is

reasonable to expect that the implementation of the pilot projects would be a gradual process.

At this initial stage, it is difficult to distinguish actual pilot project results from what may be short-lived effects associated with the transition process. While it is too early to assess whether organizational change improves the performance of CWLS attorneys and the overall efficiency of the dependency process, it is possible to provide preliminary information based on observations about the implementation process and initial project results.

What is the impact of organizational placement on the cost of providing Child Welfare Legal Services?

Start-up costs of pilot project implementation were not included in the pilot project budgets. (These budgets are shown in Exhibit 2.) The budgets are based on an estimate of the 1996-97 Department of Children and Families CWLS budget for the pilot site districts and do not provide for a number of expenditures associated with setting up the pilot projects. These include the cost of conducting inventories and moving equipment, furniture and files; renovating office space; and buying computers. In some cases, these additional costs were assumed by the Department of Children and Families, in other cases, by the pilot projects. Consideration of the fiscal impact of the pilot projects should include these start-up costs.

Pilot staff believe that the pilot budgets may not be adequate for proper litigation and staff retention. For example, the 17th Judicial Circuit Attorney General pilot project has already incurred expert witness fees and other litigation costs that exceed the amount provided in the budget. Also, the 16th Judicial Circuit State Attorney's Office suggests that the existing pilot budget does not adequately provide for increases in salary for pilot attorneys commensurate with raises typically given to assistant state attorneys as they advance in terms of their longevity and experience.

Does the organizational placement improve attorney performance and the timeliness of the dependency process?

We asked dependency judges at each pilot site to assess the impact of the pilot project on the performance of pilot attorneys. We interviewed the two judges who hear dependency cases in the 17th Circuit pilot area, the two judges who hear dependency cases in the 16th Circuit pilot area, and five of the ten judges who hear dependency cases in the 8th Judicial Circuit pilot area.

We found that the judges' perceptions of attorney performance since the pilot projects began is mixed. Judges' comments suggested that there had been an improvement in the performance of attorneys in the 17th Circuit pilot project, some mixed results in the 8th Circuit and no improvement in the 16th Judicial Circuit. Of the judges we interviewed in each of the pilot areas, one reported that he had observed no difference since the pilot began. Four judges reported that they had already seen an improvement in the pilot attorneys' performance and indicated that they were very pleased with the pilot projects. Four judges referred to varied concerns, including delays, less effective representation, and pilot attorney inexperience with dependency law.

Because the pilot projects have only been in operation for a few months, information is not yet available on whether the pilots will improve timeliness.⁴

Does the organizational placement support effective and efficient communication between the attorneys and caseworkers?

The American Bar Association identifies the working relationship between attorneys and caseworkers as a critical component in the provision of quality legal representation. Factors that may affect communication between attorneys and caseworkers include attorney accessibility and the timeliness of feedback provided by the attorneys.

Each pilot project has procedures in place for caseworkers to contact attorneys for consultation during and outside regular office hours. And pilot attorneys reported no significant changes in their availability to caseworkers. Caseworkers, however, reported that their communication with attorneys has either not improved or has declined since the pilot projects began.

We conducted a survey of 225 Department of Children and Families caseworkers to obtain their perspective on the initial impact of the pilot projects on dependency case management. We asked them to assess the effectiveness and efficiency of their communication with attorneys, including their access to attorneys and the degree to which attorneys provided timely feedback.

⁴ Following statutory time limits, the completion of the dependency process from the filing of a dependency petition to the permanency hearing can take up to 22 months.

Caseworkers in the 8th and 16th Circuit pilot projects reported that they have less access to attorneys since the pilot began (see Exhibit 3). For example, survey results show that in the 8th Circuit pilot project only 44% of caseworkers reported that attorneys were available most of the time when needed to discuss a case, compared to 94% before the pilot. In the 16th Circuit pilot project there was a similar decline. In the 17th Circuit pilot project, access to attorneys was poor prior to the pilot and has not substantially improved; only half of the caseworkers responded that attorneys were available to consult on their cases most of the time.

Reduced access may have resulted from attorneys no longer being collocated with caseworkers. Implementation of the pilot projects resulted in a loss of collocation in both the 8th and the 16th Judicial Circuits. Department staff at both pilot projects reported that the loss of collocation was the primary factor contributing to reduced caseworker access to attorneys. In addition, reduced access in the 16th Circuit may reflect the fact that for the first two months of the pilot, only one of the two pilot attorney positions had been filled.

Another aspect of attorney-caseworker communication involves attorney feedback to caseworkers on their reports and case plans. Survey results indicate that in the 17th Circuit, the timeliness of feedback has marginally improved since the pilot began. In the 8th and 16th Circuit pilot projects, caseworkers reported that attorneys provide timely feedback on reports or case plans less frequently since the pilot began (see Exhibit 4). Adjusting to new communication procedures during the initial stage of implementation may account for some of the perceived delays.

Exhibit 3
Caseworkers in Two of the Three Pilot Sites Reported That Their Access to Attorneys
Has Substantially Declined Since the Implementation of the Pilot

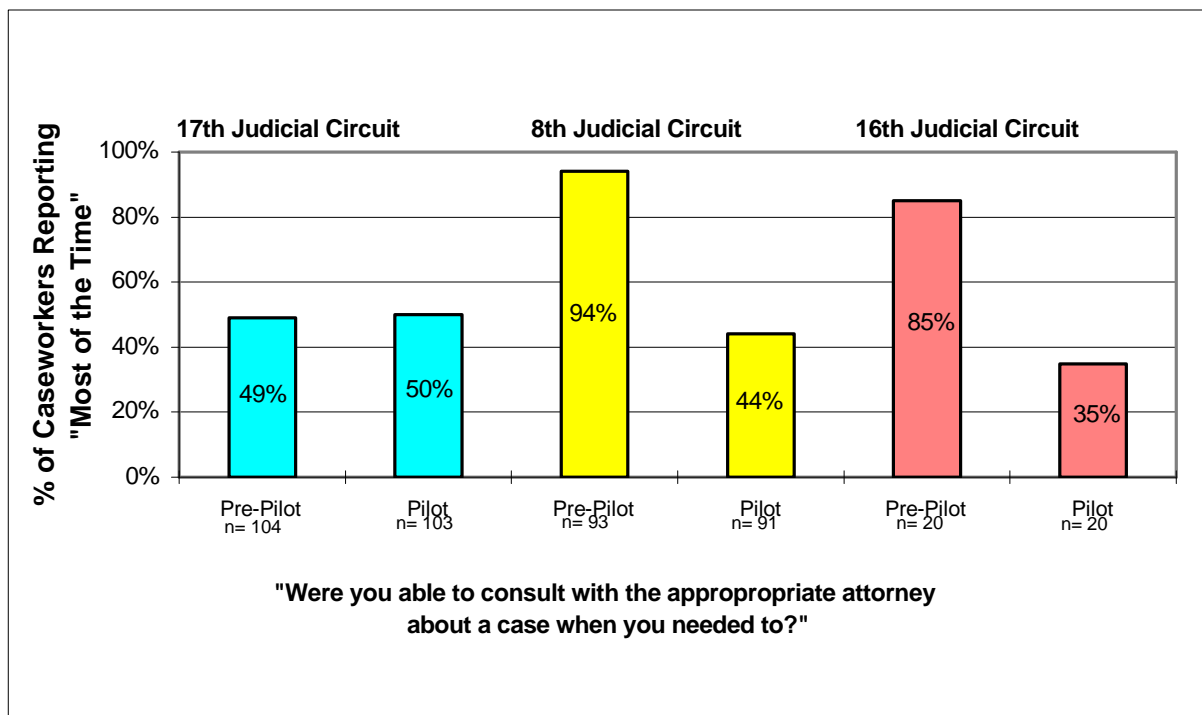
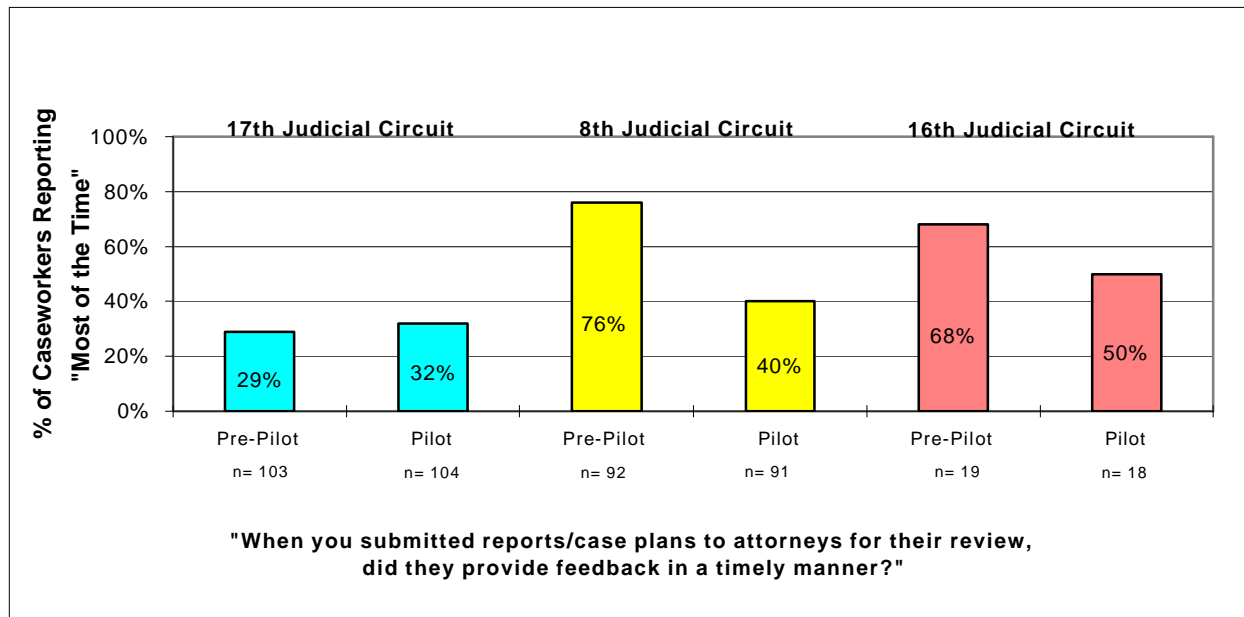


Exhibit 4
Caseworkers Reported that the Timeliness of Feedback Has Either
Not Substantially Improved or Has Declined Since the Implementation of the Pilot Projects



Does the organizational placement attract and retain more experienced dependency attorneys?

It has been suggested that changing the organizational placement of CWLS attorneys to the Office of the Attorney General or the State Attorney will afford dependency attorneys more status and attract highly-qualified attorneys to the practice of dependency law. The extent to which the status associated with the organizational placement of each pilot project will attract highly qualified attorneys cannot be determined at this time. However, pilot attorneys at each pilot project identified an increase in their professional status as one advantage of the change in organizational placement.

A high turnover rate has been cited as a factor affecting the quality of CWLS attorneys' performance. It is too early to determine the impact of each pilot project on the turnover rate of dependency attorneys. Data is available for comparing the statewide turnover rate for Department CWLS attorneys with the rate for attorneys in the Office of the Attorney General and the State Attorneys Offices. As Exhibit 5 shows, for the

last two years, the turnover rate for CWLS attorneys has been considerably higher than the rate for assistant state attorneys and assistant attorneys general statewide. However, dependency judges have pointed out that assistant state attorneys tend to move out of the area of juvenile delinquency at a high rate and suggested that the same problem may occur with dependency law.

Exhibit 5
Statewide Attorney Turnover Rates Differ

	1994-95	1995-96
Department of Children and Families CWLS:		
Senior Attorneys	19.48	25.17
Attorneys	28.57	28.95
Office of the Attorney General:		
Senior Attorneys	12.90	10.16
Attorneys	19.44	13.49
Office of the State Attorney:		
Assistant State Attorneys	13.91	14.90
All State Agency Attorneys:		
Senior Attorneys	21.05	18.39
Attorneys	28.99	32.09

Source: Data provided by the Department of Management Services and the Department of Children and Families.

Does the organizational placement provide more opportunities for the professional development of dependency attorneys?

Factors that may enhance attorneys' professional development include training, access to legal research resources, and supervision. At all three pilot sites, attorneys have promptly received introductory training in child welfare law and legal practice, as recommended by the American Bar Association. All CWLS attorneys are required to receive this training. In addition, in the 8th Circuit, the State Attorney provides training for all assistant state attorneys on a monthly basis, and special training in evidence and trial practice techniques has also been provided. Attorneys at the pilot sites also report that their access to legal research resources has improved.

Adequate supervision of dependency cases, particularly for the attorney inexperienced in this area, is critical; dependency law is complex and requires specialized knowledge and expertise. The American Bar Association recommends that the CWLS supervising attorney be "readily available as an on-going resource for legal staff." However, the availability of supervising attorneys to provide supervision and support to pilot attorneys has been limited by the demands of additional pilot responsibilities, including: learning new areas of the law, learning the new organization, learning a new caseload, as well as managing the implementation of the project. As a result, pilot attorneys' assessment of the supervision and support they have received varies. Some attorneys have reported that they are satisfied; however, other attorneys have said that they are not getting the supervision and support that they need.

During the start-up phase less experienced attorneys require closer supervision, and more experienced attorneys require support as they learn a different legal environment or new areas of the law. To a large extent these conditions can be expected to change over time as attorneys gain more experience and demands of start-up decrease. While supervision limitations at each pilot may be short-lived, they should be planned for if the Legislature directs wider implementation of the pilot projects, as they are also likely to occur at other sites.

In addition to providing criteria for evaluating the specific performance of each of the pilot projects, we have identified a number of issues related to the wider implementation of the pilot project models. The Legislature may wish to consider these issues in its assessment of whether to expand the pilot projects.

What are the implications of implementing the pilots on a wider scale?

If the Legislature expands the pilot projects statewide, supervision of CWLS attorneys may be assigned to the Attorney General, the State Attorneys, or a combination of Attorney General and State Attorneys. Issues the Legislature should consider in making this determination include the cost of opening new offices, the willingness of State Attorneys to participate in this function, the complexity of dividing responsibilities among entities with dissimilar boundaries, and the legal problems that may arise when State Attorneys practice outside their circuits.

The statewide direct supervision of CWLS attorneys by the Attorney General may require additional funds. Attorney General staff have indicated that in order to assume the direct supervision of CWLS attorneys statewide, they would have to establish additional offices or expand existing ones. Currently the Attorney General has no office in 7 of the 15 Department of Children and Families districts. (See Exhibit 6.)

The willingness of State Attorneys to participate is limited. Attorney General personnel suggested that interested State Attorneys could also supervise CWLS attorneys. We contacted all 20 State Attorneys to determine whether they would be interested in providing this function. Eight indicated they would be willing to participate, although several predicated their willingness on the provision of sufficient state funds to adequately pay required staff and procure additional office space. One felt not enough information is available yet to decide whether to participate. The remaining 11 State Attorneys would not want to supervise CWLS attorneys; they cited three primary reasons. Several State Attorneys felt that it could present conflicts to litigate both delinquency and dependency cases. Some said that if there is a problem with the supervision of CWLS attorneys, it would be more appropriate for the agency responsible for dependency to resolve the

Policy Issues

problem. And other state attorneys said that they have difficulty meeting their own workloads, and do not have resources to dedicate to additional areas of the law. As a result of these interviews we note that the interest of the State Attorney in each circuit to participate in supervision of CWLS attorneys could change with each election.

If State Attorneys were to supervise CWLS attorneys, some jurisdictional issues will need to be resolved. As illustrated in Exhibit 6, eight Department

of Children and Families districts are either identical to or fall within a single judicial circuit; seven districts are a mix of two or more circuits. In these locations, either Department caseworkers would have to work with more than one State Attorney, or the State Attorney would need to address the issue of practice outside his or her circuit.

Crossing judicial circuit boundaries has presented a legal problem for the State Attorney pilot project in the

Exhibit 6
Several Department Districts and Judicial Circuits Do Not Correspond

Department of Children and Families District	Attorney General Office	District = Circuit	Circuits: Counties
1	None	✓	Circuit 1: Escambia, Santa Rosa, Okaloosa, Walton
2	Tallahassee		Circuit 2: Franklin, Gadsden, Jefferson, Leon, Liberty, Wakulla Circuit 14: Bay, Calhoun, Gulf, Holmes, Jackson, Washington Part of Circuit 3: Madison, Taylor
3	None		Part of Circuit 3: Columbia, Dixie, Hamilton, Lafayette, Suwannee Part of Circuit 7: Putnam Part of Circuit 8: Levy, Gilchrist, Alachua, Bradford, Union
4	Jacksonville		Circuit 4: Duval, Clay, Nassau Part of Circuit 7: St. Johns Part of Circuit 8: Baker
5	None	✓	Circuit 6: Pasco, Pinellas
6	Tampa		Circuit 13: Hillsborough Part of Circuit 12: Manatee
7	Orlando		Circuit 9: Orange, Osceola Circuit 18, Brevard, Seminole
8	None		Circuit 20: Charlotte, Collier, Glades, Hendry, Lee Part of Circuit 12: DeSoto, Sarasota
9	W. Palm Beach	✓	Circuit 15: Palm Beach
10	Broward	✓	Circuit 17: Broward
11	Miami		Circuit 11: Dade Circuit 16: Monroe
12	Daytona Beach		Part of Circuit 7: Flagler, Volusia
13	None	✓	Circuit 5: Citrus, Hernando, Lake, Marion, Sumter
14	None	✓	Circuit 10: Hardee, Highlands, Polk
15	None	✓	Circuit 19: Indian River, Martin, Okeechobee, St. Lucie

8th Judicial Circuit, where part of the Department district served by the CWLS pilot attorneys is in the 3rd Judicial Circuit. Parents in the 3rd Circuit have tried to block dependency proceedings against them by challenging the authority of 8th Judicial Circuit State Attorney outside his circuit. The circuit court has ruled against the parents, but this decision is being appealed. If the pilots are extended statewide, this type of cross-circuit difficulty could be mitigated by an Executive Order assigning one State Attorney to fulfill State Attorney duties in another circuit. However, under current law, that assignment would expire after 12 months unless extended by the Florida Supreme Court.

Who is the CWLS attorney's client?

It is a lawyer's duty to represent their client's interests. The clear identification of the client to be served by a lawyer is therefore critical to the delivery of proficient legal service. Section 39.014, F.S., states that "an attorney for the Department [of Health and Rehabilitative Services] shall represent the state in dependency proceedings (parts III, V and VI)." In each pilot project contract the Department of Children and Families or the District is identified as the client of the CWLS attorneys. This appears to be consistent with the opinion of the Florida Supreme Court directing that the Department have legal representation in juvenile dependency proceedings.

However, both before and during the pilot projects, we found confusion about who the CWLS attorneys are supposed to represent. In our interviews with judges, guardians ad litem, attorneys, Department personnel, and pilot project administrators, no consensus of opinion emerged on this question. Responses ranged from identification of the client as: the child, or the victim; the state of Florida, or the people of the state of Florida; the Department of Children and Families; or, the counselor of the Department; or some combination of identities.

The American Bar Association has distinguished representation of "the public interest" (i.e., the state) from a clear assignment to represent "the agency" as the client. Experts have suggested that without "zealous advocacy" of the agency position in the judicial process, the position of the agency may not be adequately represented, and children could remain in the system longer.

As the Legislature pursues the best organizational placement for CWLS, it may wish to consider how to resolve this divergence of opinion. While statutory language in s. 39.014, F.S., addresses the issue, the degree of confusion surrounding its interpretation suggests that further clarification may be useful.

Do conflicts arise when State Attorneys supervise dependency cases?

A number of dependency judges, state attorneys, CWLS attorneys, guardians ad litem, and Department personnel expressed the opinion that the organizational placement of CWLS attorneys with the Office of the State Attorney may present a question of conflict, or an appearance of conflict. The conflict question was raised in the 1989 American Bar Association report to the Committee appointed by the Florida Supreme Court, and has also been considered in the evaluation of the legal representation of child welfare agencies in other states.

Stakeholders have presented the question of conflict in two ways:

- The duty of the State Attorney to "prosecute or defend on behalf of the state all suits. . . civil or criminal, in which the state is a party" may at times be at tension with the purpose of the dependency petition, which is the protection of the child and, if possible, the rehabilitation of the family. For example, the State Attorney may recognize the interest of the state in prosecuting an adult for actions related to a dependency case, and thereby disagree with a Department recommendation designed to unify the family. In these situations, the State Attorney representing the Department should not be placed in a position to have to choose which client's interest to pursue.
- The question of conflict may arise if the assistant state attorney representing the Department in a dependency case is the same attorney who represents the state in a separate case involving the same family. This could happen where the assistant state attorney, or another assistant state attorney in that office, represents the state in a criminal case against a parent of the child who may be adjudicated dependent. Or, the assistant state attorney could represent the state in prosecuting a juvenile delinquency case involving the same child as in the dependency case. The latter situation could arise

with some frequency given the State Attorney's responsibility to prosecute juvenile delinquency matters and the number of instances in which juveniles in delinquency cases are found to be victims in dependency cases.

We asked the pilot project administrators to provide further perspective on this issue. Their responses indicated that the State Attorney has historically successfully represented the Department in dependency matters while at the same time fulfilling statutory responsibilities for criminal and delinquency matters. They noted that the Rules of Professional Conduct of the Florida Bar address the question of conflict on a case-by-case basis, and that procedures exist in each office that would be used if a conflict were determined to exist in a particular case. These procedures include reassignment of a case to a different attorney, use of an outside attorney who could be a Department attorney, or a special appointment by the Governor to another State Attorney.

Some State Attorneys point out that placement of the CWLS function within the Office of the State Attorney may present an opportunity to better coordinate all of the legal matters arising from a particular set of family problems; the dependency issues, including any related criminal behavior by the adults, as well as the delinquency problems which may be related. This potential advantage was also identified by some dependency judges we interviewed.

While the Florida Bar provides rules and guidelines to deal with individual case conflicts, the resolution of what may be a systemic issue on a case-by-case basis could be inefficient and delay the dependency process. Since the question of a potential for conflict was so widely raised, the Legislature may wish to be further advised on this issue before making its final decision to implement a particular CWLS model.

Conclusions and Recommendations

The Legislature established three pilot projects to determine whether assigning CWLS attorneys to the Attorney General and State Attorneys is a more effective and efficient way to provide Child Welfare Legal Services. This report provides evaluation criteria for assessing the performance of the pilots and provides a preliminary report on the first five months of project implementation. An assessment of the effectiveness of the projects would be premature at this stage of

implementation since the pilot projects have been in place only a few months and the dependency process can take up to 22 months to complete.

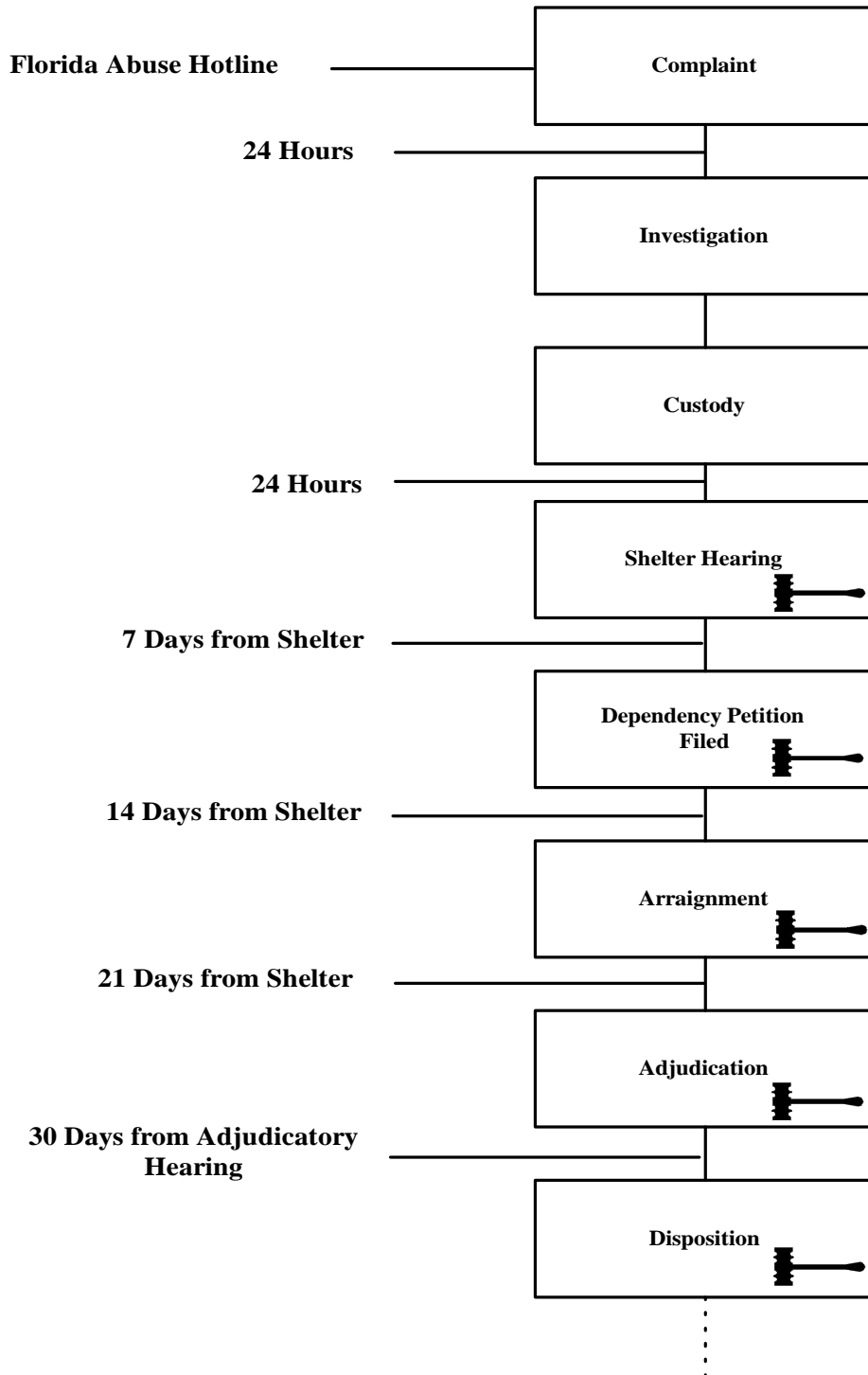
Also, at this initial stage it is difficult to distinguish actual pilot project results from what may be short-lived transition effects. To date, the results of the pilots are varied. The pilot projects have shown positive improvements for pilot attorneys by increasing their access to research resources and elevating their feeling of status. Also, initial training requirements have been promptly met at each pilot project. Judges' perceptions of pilot attorney performance have been mixed. Some judges have seen a marked improvement, and some are concerned about insufficient supervision of attorneys inexperienced in CWLS. And, caseworkers reported that their communication with attorneys has either not improved or has deteriorated to some extent.

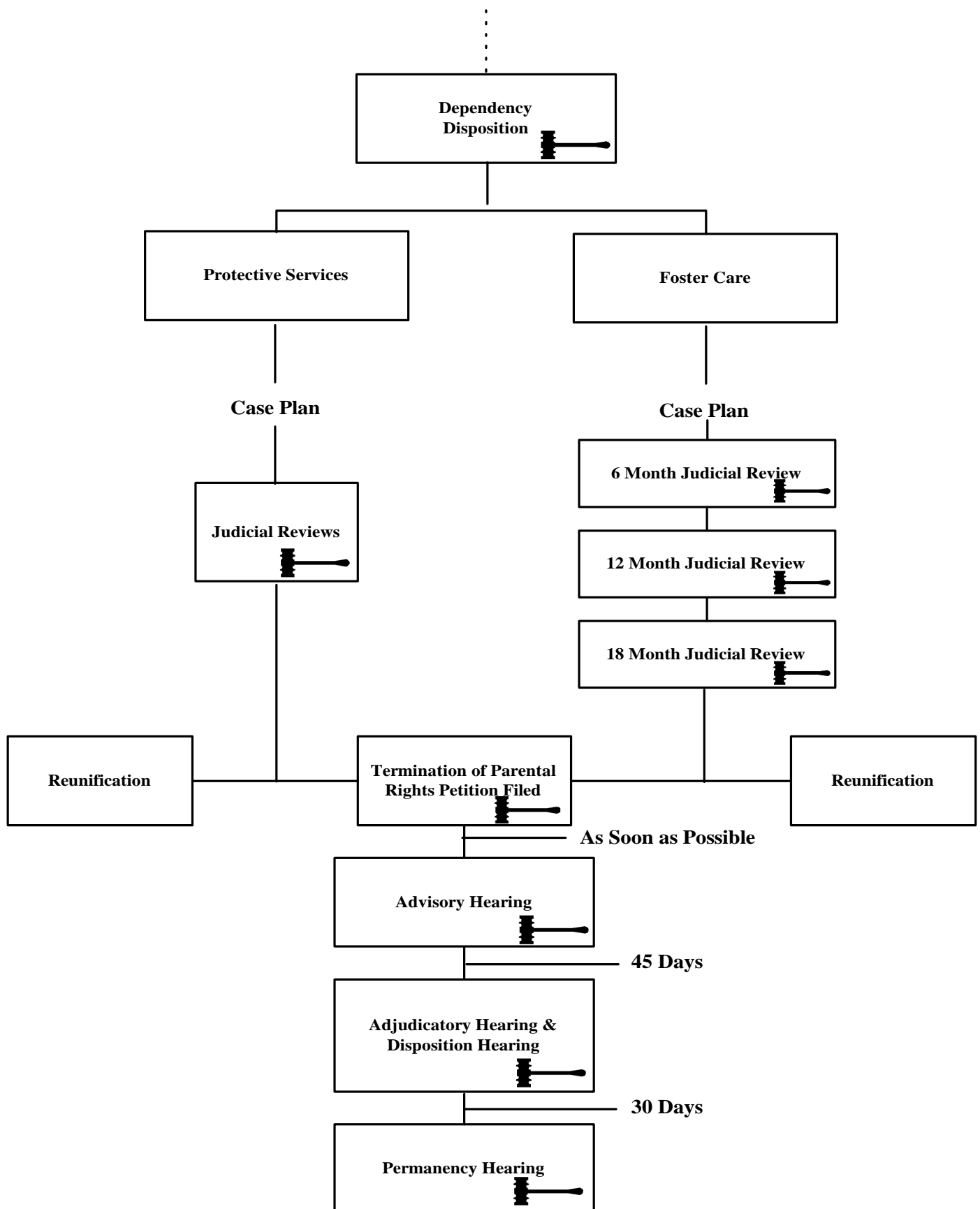
We also noted policy issues that the Legislature should consider when determining the desirability of expanding the pilot projects statewide. These include the complexity of dividing responsibilities among entities with dissimilar boundaries, confusion over who is the CWLS attorney's client, and whether there is a conflict or an appearance of conflict when State Attorneys supervise dependency cases.

The pilot projects are authorized through June 1997. At the end of that period, after only 11 months, the conclusions that can be drawn about pilot implementation will be limited. Within that period, very few cases will have been handled from initiation to completion of the dependency process. As a result, it will not be possible to adequately evaluate improvements in timeliness. In addition, important data, such as attorney turnover rates, are not very meaningful if they are based on a single year.

We recommend that the pilots be extended and that an evaluation be conducted after the pilot projects have been in operation for two years. An evaluation design is provided in Appendix B.

Appendix A
Flow Chart of Dependency Proceedings





Appendix B

Description of Evaluation Design

The purpose of the pilot projects is to determine whether changing the organizational placement of the CWLS attorneys makes a difference, in terms of the legal proficiency of the attorneys and the efficiency of the dependency process. It is, therefore, important to be able to distinguish differences in outcomes that may be attributed to the pilot project from differences that may be due to factors outside the pilot projects.

We have identified a number of outside factors at each pilot project that may effect differences in project outcomes. These include changes in judicial practices and the availability of court resources that may speed up or slow down legal proceedings, or fluctuations in the number of abuse or neglect reports received by the

Department that may change attorneys' caseloads. To address these factors and enhance the validity of the evaluation results, we have developed an evaluation design with the following components:

- Use of multiple indicators for each criterion
- Use of qualitative and quantitative data
- Comparisons of data in pilot sites before and after implementation of the pilot projects
- Comparisons of pilot project data with a state profile of seven non-pilot districts (Department of Children and Families Districts 2, 4, 8, 7, 9, 11a, and 15).
- Delineation of outside factors at each pilot project that may explain differences in project results.

Table B-1: Evaluation Criteria

Criteria	Indicators	Evaluation Products
What is the impact of the organizational placement on the cost of providing child welfare legal services?	<ul style="list-style-type: none"> • Pilot project budgets • Costs associated with pilot project start-up and implementation • Cost savings associated with pilot project implementation 	<ul style="list-style-type: none"> • Comparison of pilot project data with C&F District data before pilot project.
Does the organizational placement improve the attorney performance and the timeliness of the dependency process?	<ul style="list-style-type: none"> • Statutory deadlines met from Shelter Hearing to Dependency Disposition • Judges' perceptions of attorneys' legal skills and performance • Caseworkers' perceptions of attorneys' knowledge of legal aspects of case • Correspondence of judicial disposition order with Department recommendations 	<ul style="list-style-type: none"> • Comparison of judges' perceptions before and after pilot project • Comparison of caseworkers' perceptions before and after pilot project • Comparison of pilot project outcomes with pilot site outcomes before the pilot • Comparison of pilot project outcomes with non-pilot district outcomes
Does the organizational placement support effective and efficient communication between attorneys and caseworkers?	<ul style="list-style-type: none"> • Caseworkers' access to attorneys in routine and emergency situations • Procedures in place for the resolution of conflicts between caseworkers and attorneys • Procedures in place for routine exchange of paperwork and other communication • Caseworkers' satisfaction with legal services provided 	<ul style="list-style-type: none"> • Comparison of caseworkers' perceptions before and after implementation of pilot projects • Comparison of pilot project data with pilot site data before pilot project
Does the organizational placement attract and retain more experienced dependency attorneys?	<ul style="list-style-type: none"> • Attorney turnover rate • Salary opportunity • Attorneys' years of legal and in-field experience • In-field career path • Status of organization • Status of dependency law within organization 	<ul style="list-style-type: none"> • Comparison of pilot project data with pilot site data before the pilot project • Comparison of pilot project data with non-pilot district data
Does the organizational placement provide more opportunities and resources for the professional development of dependency attorneys?	<ul style="list-style-type: none"> • Formal training required and completed • Level of supervision provided • Level of interaction with experienced non-pilot attorneys 	<ul style="list-style-type: none"> • Comparison of pilot project data with C&F district data before pilot project • Comparison of pilot project data with non-pilot district data

Agency Responses

In a combined written response to our preliminary and tentative report, the Attorney General and the State Attorneys from the 8th and 16th Judicial Circuits responded as follows:

“We are heartened by your preliminary findings indicating various systemic and functional improvements flowing from the Child Welfare Legal Services Pilot Project. Even where certain limited initial concerns were expressed such concerns have been and are being addressed. In addition, we are in absolute and total agreement that the concerned pilot projects should be continued and that an evaluation should be conducted only after the pilot projects have been in operation for a longer period of time, in order to provide a more substantive database upon which the overall effect of the pilot projects may be evaluated.

Based on your preliminary results and also to enhance the information gathering process, we are recommending a limited expansion of the present pilot program. It is our belief that such expansion will provide your staff with additional data upon which to base any final conclusions concerning the most productive and effective placement for Child Welfare Legal Services.

As always, we look forward to working with you and your staff concerning this important issue. If we can be of any assistance in the future, please do not hesitate to call upon us or our staff.”

The Secretary of the Department of Children and Families, in his written response, generally concurred with our recommendation that the pilots be extended and that an evaluation be conducted after the pilot projects have been in operation for two years. However, he expressed concern with both the comparability of the attorneys’ scope of work and the resources available for child welfare legal services, before and after implementation of the pilots.

This project was conducted in accordance with applicable evaluation standards. Copies of this report may be obtained by telephone (904/488-1023 or 800/531-2477), by FAX (904/487-3804), in person (Claude Pepper Building, Room 312, 111 W. Madison St.), or by mail (OPPAGA Report Production, P.O. Box 1735, Tallahassee, FL 32302).

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