IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULE OF JUVENILE PROCEDURE 8.255 **CASE NO.: SC10-2010**

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COMMENTS OF THE LEGAL AID SOCIETY OF PALM BEACH COUNTY

The Legal Aid Society of Palm Beach County (hereinafter "LAS") respectfully submits the following comment on the proposed amendment to Rule 8.255, Florida Rules of Juvenile Procedure. Through its Juvenile Advocacy Project, the LAS provides multi-forum free legal representation and advocacy for children in Palm Beach County, ages 0-18, before the Juvenile, Family, and Probate Courts, the School Board of Palm Beach County and the Florida Department of Children and Families (hereinafter "DCF"). The Project places a special emphasis on children who are mentally handicapped either by developmental disability or mental illness and who lack the critical testing and treatment they need to deal with emotional, psychological or educational problems as well as children who are truant, runaways and ungovernable and at risk of becoming delinquent or have chronic delinquency issues. Another area of focus is providing representation to older dependent youth during Independent Living Reviews to assist them in obtaining independent transition services. Through its Foster Care Project, the LAS provides each child in the foster care system between

birth and age twelve, and their siblings, an attorney to represent them in all court matters and to advocate on their behalf to achieve permanence within 12 months.

I. THIS COURT SHOULD ADOPT THE JUVENILE COURT RULES COMMITTEE'S PROPOSED AMENDMENT TO RULE 8.255, FLORIDA RULES OF JUVENILE PROCEDURE, BECAUSE IT IS A NECESSARY PROCEDURAL SOLUTION THAT IS CONSISTENT WITH CHAPTER 39, FLORIDA STATUTES, AND FURTHERS THE RIGHT OF THE CHILD TO BE PRESENT IN COURT.

> *"[If an alien ever visited Earth and] were to transmit a report back to the mother ship about the way American courts supervise the child welfare process and make critical decisions about children's lives, surely he would have many positive things to say about exhaustive nature of our process in dependency court. Look at the many adults concerned about the child gathered together!*
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> *But the alien, being all-knowing and wise as proverbial aliens are, would notice one glaring problem with the scene. There is someone critical to the court process who is notably absent. Someone with information no one else has. Someone who has to live with the decisions that are made in court far more than anyone else with an interest in the outcome. Where is the child?"*

Erik S. Pitchal, "Where Are All the Children? Increasing Youth Participation in Dependency Proceedings," 12 U.C. Davis J. Juv. L. & Pol'Y 233, 235-36 (2008).

The child is a party to dependency proceedings. See § 39.01(51), Fla. Stat. (2010). As a party, the child is afforded certain rights throughout Chapter 39, Florida Statutes, including the right to be present in court proceedings. Id. Unfortunately, because the dependency court is a "strange universe . . . the only American judicial forum in which the one person at the center of the case is rarely present," the child's rights, particularly the right to be present, are often

disregarded. Erik S. Pitchal, supra at 236. The lack of children in court is a severe and pervasive dilemma that not only diminishes the quality of dependency proceedings, but also illustrates the fundamental unfairness of a system in which the party at the center of the case is consistently denied an opportunity to be heard, as well as speak for herself. See id. at 254.; see also Annette R. Appell, "Children's Voice and Justice: Lawyering for Children in the Twenty-First Century," 6 Nev. L.J. 692, 711 (2006) (noting that without the child's presence in court, there is an increased chance his or her voice will be distorted, even by the child's own lawyer). Hence, we strongly urge this Court to adopt the JCRC's proposed amendment to strengthen Rule 8.255.

Currently, Rule 8.255(b) provides:

> ***"The child has a right to be present at the hearing unless the Court finds that the child's mental or physical condition or age is such that a Court appearance is not in the best interest of the child. Any party may file a motion to require or excuse the presence of the child."***

In 2009, this Court rejected the recommendation of the Steering Committee on Families and Children to amend above Rule 8.255(b). The Steering Committee had proposed the following changes:

> ***(b) Presence of Child.***
> ***(1) The child has a right to be present at the hearing unless the Court finds that the child's mental or physical condition or age is such that a Court appearance is not in the best interest of the child. Any party may file a motion to require or excuse the presence of the child. A motion to excuse the presence of a child filed under this subsection shall be subject to the provisions in subdivision (2), if applicable.***

> ***(2) any child who is placed in licensed foster care or who is in foster care with "another planned permanent living arrangement" goal and who is at least 16 years of age must attend all Court hearings unless the child's presence is excused by the Court upon a showing of good cause why the child should not attend. Prior to the hearing, any party with good cause may file a motion to excuse the presence of a child.***

See In re Amendments to Florida Rule of Juvenile Procedure 8.255, 3 So.3d 1239, 1240 (Fla. 2009). The Court held that Rule 8.255(b) already recognizes a child's right to be present at all dependency hearings, irrespective of the child's age and declined to adopt the Steering Committee's proposed amendment. Id. at 1241. However, the Court did admit that "in many instances, a child's presence and meaningful participation in dependency proceedings is critical . . . ." Id. at 1241.

In a strongly worded dissent, Justice Pariente expressed her concern that "foster children are frequently absent from hearings on issues that directly affect them" under the substantive and procedural requirements currently in place. Id. at 1245. She urged the Juvenile Court Rules Committee (hereinafter "JCRC") and other child advocacy groups to propose appropriate changes to existing procedural rules to ensure that children always have a "meaningful opportunity to be heard." See id.

As Justice Pariente correctly noted, the failure of dependent children to attend hearings continues to persist and tarnish the quality of dependency proceedings throughout the State of Florida and nationwide; thus, the JCRC accepted her mandate to strengthen Rule 8.255 of the Florida Rules of Juvenile

Procedure. See generally Home At Last, My Voice, My Life, My Future Foster Youth Participation In Court: A National Survey, 10 (2006) (in a nationwide survey of foster youth, child welfare professionals including judges, lawyers, and social workers reported that the participation of children in court is infrequent, despite its significant value to dependency proceedings).

The JCRC proposes an amendment to Rule 8.255(b) to ensure that the attendance of children at court hearings is the rule and not the exception. The proposed amendment seeks to bolster the attendance of children in court by requiring judges to play a pro-active role to determine, at every court appearance, why the child is absent from the proceedings. If a child is absent from a hearing, the proposed amendment requires the court to make an inquiry of the person or persons responsible for the child to determine why he or she is not present. The court may proceed without the child's presence only after it determines it is "in the best interest of the child to conduct the hearing without the presence of the child." If it is not in the best interest of the child, the court may "continue the hearing to provide the child an opportunity to be present at the hearing."

JCRC's Proposed Amendment:

(b) Presence of Child.

(1) The child has a right to be present at ~~the~~all hearings unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child.

(2) If a child is not present at a hearing, the court shall inquire and determine the reason for the absence of the child. The court

shall determine whether it is in the best interest of the child to conduct the hearing without the presence of the child or to continue the hearing to provide the child an opportunity to be present at the hearing.

(3) Any party may file a motion to require or excuse the presence of the child.

The LAS supports the JCRC's proposed amendment to Rule 8.255 and efforts to increase attendance of dependent children at hearings. The LAS firmly believes that the proposed amendment is imperative and within this Court's power to adopt. It is also an effective procedural mechanism that will allow more children an opportunity to exercise the right to attend hearings, is in accordance with Chapter 39, Florida Statutes, and furthers the due process rights of children to be involved in Court.

The LAS wishes to address each of the majority's concerns in In re: Amendments to the Florida Rule of Juvenile Procedure 8.255 and assess how the new version--the JCRC's proposed amendment to Rule 8.255--should alleviate the Court's apprehensions. 3 So.3d at 1241. Although this Court's previous concerns lead the majority to reject the Steering Committee's proposed amendment in 2009, the LAS encourages this Court to adopt the JCRC's proposed amendment to Rule 8.255 in light of the below.

A. THIS COURT IS CONSTITUTIONALLY AND STATUTORILY PERMITTED TO ADOPT THE JCRC'S PROPOSED AMENDMENT.

It is entirely within the purview of this Court, pursuant to Rule 2.140 of the Florida Rules of Judicial Administration, to adopt amendments to rules that will

help to increase the presence of children at hearings. The majority, in refusing to adopt the Steering Committee's recommendation in 2009, requested those involved to "seek Legislative action" to further the goal of "increasing appropriate attendance and meaningful participation of youth in dependency proceedings." In re: Amendments to the Florida Rule of Juvenile Procedure 8.255, 3 So.3d at 1241. This, however, is not necessary. Under the Florida Constitution and related statutory provisions, this Court is permitted to further such a goal without any parties seeking Legislative action. Article V, Section 2(a) of the Florida Constitution grants the Supreme Court exclusive power to "adopt rules for the practice and procedure in all courts." The JCRC, as a Standing Committee of the Florida Bar, is charged with proposing, amending, and implementing new rules of procedure in juvenile courts pursuant to Rule 2.140 of the Florida Rules of Judicial Administration.

The scope of the Court and the JCRC's mandate is limited to procedural rules. Procedural law is the legal machinery by which substantive law is made effective, i.e. the means and methods to enforce duties and rights. See Malinski v. People of State of New York, 324 U.S. 401, 414 (1945) ("Procedure is to law what 'scientific method' is to science"); State v. Garcia, 229 So.2d 236, 238 (Fla. 1969). Procedural law can include the "course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains

redress for their invasion." In re Florida Rules of Criminal Procedure, 272 So. 2d 65, 66 (Fla. 1972) (Adkins, K., concurring). In adopting procedural rules, the Constitution does not "[p]reclude the judiciary from adopting Legislative statements or expressions of policy as part of the rules governing matters within the jurisdiction of the judiciary." Florida Publ'g Co. v. State, 706 So.2d 54, 56 (Fla. 1st DCA 1998).

The JCRC has remained within its procedural guidelines and proposed an amendment to Rule 8.255 that seeks to amend court process, not substantive law. It seeks to introduce an additional procedural step to dependency hearings. The proposed amendment will require judges in all dependency hearings to inquire into a child's absence at a hearing and determine whether it is in the child's best interests to continue the hearing without him or her. This procedural catch-all will provide the necessary mechanism to implement the substantive right of a child to attend hearings, pursuant to Chapter 39, Florida Statutes, and further Legislative intent that children be present. See §§ 39.01(51), 39.4085(19), Fla. Stat. (2010). Because it is a procedural tool, the Court is free, under Rule 2.140 of the Florida Rules of Judicial Administration, to adopt the proposed amendment of the JCRC to further the goal of increasing the attendance of children at hearings.

B. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE IT PROVIDES A STRONGER PROCEDURAL MECHANISM TO IMPLEMENT THE RIGHT OF THE CHILD TO ATTEND HEARINGS THAN THE CURRENT RULE.

This Court refused to adopt the Steering Committee's proposed amendment to Rule 8.255 in 2009 because it held that the rule already provided children with the right to attend hearings. In re: Amendments to the Florida Rule of Juvenile Procedure 8.255, 3 So.3d at 1241. The LAS agrees with the Court. Rule 8.255(b), after all, does currently provide that *"the child has a right to be present at the hearing unless the Court finds that the child's mental or physical condition or age is such that a Court appearance is not in the best interest of the child."* Unfortunately, merely stating that a child has a right to attend a hearing has not been enough to transform it into a reality; under contemporary methods of practice, there is significant evidence that children are unable to exercise this right. See, e.g., LAS' Client Accounts, 24 (J.R., a dependent child, noted that he did not attend court or was made aware that he had a right to be present by his caseworkers until he read Chapter 39, Florida Statutes, and obtained a legal advocate, A.C., a dependent child, noting that her requests to go to court were often denied by her caseworker, sometimes due to lack of transportation); see also Jaclyn Jean Jenkins, "Listen To Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings," 46 Fam. Ct. Rev. 163, 166 (2008); Erik S.

Pitchal, "Where Are All the Children? Increasing Youth Participation in Dependency Proceedings," supra at 236; Home At Last, My Voice, My Life, My Future Foster Youth Participation In Court: A National Survey, 10 (2006); The Pew Commission, "Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care," (2004), available at http://www.pewfostercare.org/research/docs/FinalReport.pdf (last visited November 30, 2010); Gloria Hochman et al., The Pew Commission on Children in Foster Care, "Voices From the Inside," 12. In the LAS' experience, we have repeatedly encountered social workers that have balked at the notion of transporting children placed out-of-county to hearings because the lengthy distances make it "inconvenient." As a consequence, dependent children, whom are often placed out-of-county, are unable to attend.

The JCRC's proposed amendment to Rule 8.255 tackles this problem twofold: First, it extracts the provision regarding the child's right to be present at all hearings from the remainder of the clause in Rule 8.255(b)(1). The child's right to be present stands alone and is distinguishable from any subsequent provisions that permit the waiver of this right. In this subtle but important regard, the proposed amendment will serve to highlight the significance of the child's right to attend; second, it requires the Court to become involved and inquire at all hearings as to why the child, a central party to the proceeding, is absent. Currently, Rule

8.255(b) only requires the Court to become involved regarding the child's presence if a party files a motion to require or excuse the presence of the child. Through these procedural changes, the JCRC's proposed amendment will ensure that the right of children to attend hearings is actually realized.

C. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE IT DOES NOT CONFLICT WITH SUBSTANTIVE LAW, BUT COMPLEMENTS IT TO ENSURE THAT THE RIGHT OF THE CHILD TO ATTEND HEARINGS IS RECOGNIZED.

This Court also expressed concern in its opinion that the Steering Committee's proposed amendment conflicted with substantive provisions of § 39.701(7)(a), Florida Statutes. In re Amendments to Florida Rule of Juvenile Procedure 8.255, 3 So.3d at 1241. The Steering Committee petitioned the Court to adopt an amendment to Rule 8.255 that mandated the court attendance of any child at least 16 years of age, in licensed foster care or in foster care with another planned permanent living arrangement permanency goal. See id. at 1240. The Court noted that § 39.701(7)(a) already mandates a judicial review for a child at 17 years of age, not 16, and further requires DCF to provide the Court with verification that the child "has been encouraged to attend all judicial review hearings occurring after his or her 17th birthday." Id. at 1241. The Court explained that the Steering Committee's proposed amendment was in variance with § 39.701(7)(a), Florida Statutes, and furthermore, the Legislature had already

addressed the critical and sensitive nature of dependent children about to age-out of the system---a concern that had motivated the Steering Committee's proposed amendment--through these provisions. See id.

Although we cannot comment on whether the Steering Committee's proposed amendment actually did conflict with substantive law, we can ensure this Court that the JCRC's version does not because it does not change any age requirements imposed by § 39.701(7)(a), Florida Statutes, or alter any substantive provision of law in Chapter 39. Moreover, it is not limited to older dependent children that will transition out of foster care and does not attempt to encroach upon a space already claimed by the Legislature with respect to children eligible for independent transition services.

Instead, the JCRC's proposed amendment is a valuable procedural component that applies equally to all children throughout dependency proceedings and should neatly complement § 39.701(7)(a), Florida Statutes. Without an effective procedural counterpart, § 39.701(7)(a), Florida Statutes, and related provisions lack any real bite. Section 39.701(7)(a) only requires DCF, through a case manager, to provide written verification that a 17 year-old child has been encouraged to attend judicial review hearings. No other party is required to "encourage" the child to attend hearings. Unfortunately, by placing the right of the child to attend at the mercy of one party—the Department—the child is not usually

able to exercise this right. See, e.g., Gloria Hochman et al., supra at 12 (in a nationwide survey, 14% of youth reported they did not attend hearings because "[m]y social worker told me not to"). As noted above, DCF places children throughout the state, sometimes in rural locations, far from court hearings. Due to inconvenience and/or cost, in practice, many case managers are not sympathetic to transporting children to hearings, especially rural children. See id. We at LAS have faced this sentiment on a number of occasions while assisting our clients. In an audit of the Florida child welfare system, the Children's Bureau concluded that there were "inconsistencies in the manner in which caregivers are notified of reviews or hearings or afforded an opportunity to be heard," and cited this as an area that needed improvement. See U.S. Department of Health and Human Services, "Final Report: Florida Child and Family Services Review," 94 (2009), available at http://centerforchildwelfare.fmhi.usf.edu/kb/dataper/CFSR_FinalReport1-09.pdf (last visited December 8, 2010). In determining why these barriers existed, the Children's Bureau discovered that related issues often cited by stakeholders "were adequate transportation of youth to attend hearings." Id. As a result, even though the child may have a right to attend hearings, this often right hinges on the convenience of the Department case manager responsible for the child, even at the crucial period of transitioning into adulthood.

To further compound the problem, many of these children, as well as urban or suburban children, do not have an advocate to represent his or her interests and assert the right to attend hearings. See § 39.807(2)(a), Fla. Stat. (2010) (recognizing only a conditional right to counsel for a child in dependency proceedings through the guardian ad litem program). Although federal and Florida law require a guardian ad litem for dependent children, it is important to remember that he or she is only responsible for representing the child's "best interests," but not necessarily expressing the child's wishes. See § 39.807(2)(a)(b)(3), Fla. Stat. (2010); see also America Bar Association Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, 4 (1996) (noting that a children's attorney, however, should follow the wishes of the client, a requirement not imposed on a guardian ad litem). If the child is not present in Court and/or disagrees with the guardian ad litem on what actions are in his or her "best interests," the child may be unable to communicate to the Court that perspective. Such a perspective, however, is indispensible in dependency proceedings in order for the Court to make meaningful decisions about the child's future. See, e.g., Jennifer Walter, "Averting Revictimization of Children," 1 J. Center Children & Cts. 45 (1999) (noting that a child's opinions are relevant to determining what is in that child's best interests).

It is therefore vital to have more parties, especially the Court, involved in questioning why a child is absent from a hearing, particularly when the child does not have an attorney to advocate on his or her behalf. But see Howard Davidson & Erik Pritchal, "Caseloads Must Be Controlled So All Child Clients Can Receive Competent Lawyering" (2006) (noting that children's attorneys may miss things also because they are overburdened with large caseloads); See Erik S. Pitchal, "Where Are All the Children? Increasing Youth Participation in Dependency Proceedings," supra at 257-58 (noting that although zealous legal representation for children is critical, it is "not an appropriate replacement for actual youth participation").

In light of the situation on the ground that many children do not attend hearings and often lack legal representation, a stronger rule is required to ensure that children participate meaningfully in proceedings that significantly alter their futures. The JCRC's proposed amendment provides such a rule since it requires the Court to inquire into an absent child's whereabouts and does not conflict with any substantive provision of law.

D. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE THE LEGISLATURE ACKNOWLEDGES, REQUIRES, AND VALUES THE PRESENCE OF THE CHILD THROUGHOUT DEPENDENCY PROCEEDINGS.

This Court also referenced § 39.701(7)(a), Florida Statutes, in its 2009 opinion as evidence that the Legislature had essentially limited the presence of

children to review hearings conducted after the child's 17th birthday. See In re Amendments to Florida Rules of Juvenile Procedure 8.255, 3 So.3d at 1241. Section 39.701(7)(a) explicitly provides that a child be given an opportunity to address the court at each judicial review hearing following the child's 17th birthday, particularly in regard to independent living transition services. See id.

However, as the JCRC notes, the Legislature's intent that children be heard is not limited to mandatory judicial review hearings following the child's 17th birthday. See In re Amendment to Fla. Rule of Juv. Proc. 8.255, Out of Cycle Amendment to Rule 8.255 Petition, 4 (2010). The presence of the child is recognized throughout dependency proceedings including in court, in case plan development, predisposition studies, disposition reports, placement in a residential treatment center, termination of parental rights, permanency, reunification, and judicial reviews and more importantly, cited as a Legislative goal. See §§ 39.01(51), 39.407(6)(e), 39.4085(12), (19), 39.521(2)(e), 39.523(1), 39.6011(1)(a), 39.621(10), 39.701(2)(a), (5)(f), (7)(a), 39.807(2)(b)(1), 39.810, Fla. Stat. (2010); Fla. Rules of Juv. P. 8.355(a(3).

Under the rules of statutory interpretation, the Court must read these provisions together in order to fully ascertain Legislative intent. See M.W., 756 So.2d at 90 citing Forsythe v. Longboat Key Beach Erosion Control Dist., 604 So.2d 452, 455 (Fla. 1992) (noting that "all parts of a statute must be read together

in order to achieve a consistent whole" and that "where possible, courts must give effect to all statutory provisions and construe related statutory provisions in harmony with one another"); see, e.g., Golf Channel v Jenkins, 752 So.2d 561 (Fla. 2000) (reading related statutory provisions in conjunction for the purposes of determining Legislative intent). Hence, it is important to examine the various provisions of Chapter 39 in order to determine whether the Legislature truly intends for children to attend hearings.

First and foremost, the child is a party to dependency proceedings and has rights therewith. See § 39.01(51), Fla. Stat. (2010). The child's right to be present in court is recognized by § 39.01(51), Florida Statutes, which states that "the presence of the child may be excused by order of the court when presence would not be in the child's best interest." This provision demonstrates the Legislature's clear intent that children, as parties to the proceedings, attend hearings generally and be excused only if it is not in the child's best interest. See, e.g., R.R. v. Portesy, 629 So.28 1059, 1061 (Fla. 1st DCA 1994) (construing rule 8.100 of the Florida Rules of Juvenile Procedure, which includes general provisions for delinquency hearings, as requiring an accused child to be physically present at all hearings and to excuse the child only when a court makes specific findings that it is not in the child's best interest to attend).

Since § 39.01(51) requires that children generally attend hearings, its complementary procedural Rule 8.255 should provide the means to carry out this intent. However, currently it does not. Rule 8.255(b), as it stands, allows the Court to waive the child's right to be present at a hearing under the "best interests" standard based on the child's mental or physical condition or age. *("The child has a right to be present at hearing unless the Court finds that the child's mental or physical condition or age is such that a Court appearance is not in the best interest of the child*"). Although this complies with Legislative intent, since under § 39.01(51), the child's presence can be waived if it is not in his or her best interests to attend, other provisions of Rule 8.255 do not further the Legislature's goal. For instance, if a child is not present in Court, no one asks why, unless a party has filed a motion to require or excuse the presence of the child. See Rule 8.255(b), Fla. Rules of Juv. P. ("*Any party may file a motion to require or excuse the presence of the child*"). This does not provide an adequate procedural mechanism to implement the Legislative goal that all children generally attend hearings. § 39.01(51), Fla. Stat. (2010). What happens if no party files a motion to require the child's presence? We have seen it in practice—the child does not show up. Hence, it is vital to also include the Court as part of the procedural mechanism that will enable the child to come to hearings, if he or she so desires.

Unlike the current version of Rule 8.255, the JCRC's proposed amendment should provide the proper procedural means to further the Legislative goal that children attend hearings. It will require the Court, in every instance, to ask the parties responsible for the child why he or she is absent from the dependency proceeding and determine whether it is in the best interests of the child to continue the hearing without him or her. The Court could very well determine that the child should be excused. However, the proposed amendment at the very least will require the Court to question why a child is or is not present, unlike now, where a Court is not even required to ask.

In addition to recognizing that the child is a party to the proceedings, the Legislature has also expressly stated the importance of providing the child with notice of a hearing. Section 39.701(5)(f) requires that notice of a judicial review hearing be served on a child, thirteen years of age and older. Section 39.01(51) further states that "[n]otice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child." These provisions signify the Legislature's acknowledgment of the importance of a child being aware of the time and location of hearings, presumably so that he or she may exercise the right to attend. See generally Jaclyn Jean Jenkins, "Listen To Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings," supra at

165 (observing that a "notice functions much like an invitation to the proceedings" and that an examination of state notice statutes is the best way to gauge its willingness to encourage youth participation in dependency proceedings). This right, similar to the right to attend hearings, is excused only in limited circumstances including the child's age or capacity. See § 39.01(51), Fla. Stat. (2010).

Other provisions of Chapter 39 go on to recognize the importance of the child's involvement in dependency proceedings. For instance, the DCF caseworker is required to be in regular communication with the child, at least once a month. § 39.4085(1), Fla. Stat. (2010). The Legislature has also mandated that the child be permitted to participate in developing his or her case plan and have an opportunity to object to any of the case plan provisions. §§ 39.4085(12), 39.6011(1)(a), Fla. Stat.(2010); see also Independent Living Services Advisory Council, 2009 Report of Independent Living Services for Florida's Foster Youth, 9 (noting that in 2007, only 29% of youth ages 13 to 18 and in 2008 only 51% reported being involved in their case plan development). The case plan must also contain the child's signature unless the child is not of an age or capacity to participate in the case-planning process. § 39.6011(3), Fla. Stat. (2010); see also Independent Living Services Advisory Council, supra, at 9 (noting that in 2007 and 2008, only 64% of the youth ages 17 and older had signed their Independent

Living transition plan). These provisions highlight the Legislature's recognition of the importance of the child's participation in dependency proceedings, even though such engagement is not always realized in practice.

Chapter 39, Florida Statutes, and the Florida Rules of Professional Conduct also recognize the general capacity and competency of the child to be heard and express his or her opinions. See §§ 39.521(2)(e), 39.621(10)(d), 39.810, Fla. Stat.; R. Regulating Fla. Bar 4-1.14, cmt. 1 (2010) ("[C]hildren as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody."); Randy Frances Kandel, "Just ask the Kid! Towards a Rule of Children's Choice in Custody Determinations," 49 U. Miami L. Rev. 299, 366 (1994) (citing studies that reveal that children as young as six have the capability to reason and understand).

Another area in which the competency and capacity of a child is acknowledged is the predisposition study, which must indicate the reasonable preferences of the child, if the Court determines that the child is of sufficient intelligence, understanding, and experience to express a preference. § 39.521(2)(e), Fla. Stat. (2010). The Court must also consider the reasonable preferences of the child in determining the child's permanency goal, for purposes of reunification, and in proceedings to terminate parental rights. §§ 39.621(5)(a), (10)(d), 39.810, Fla. Stat. (2010); see also In Re Brock, 25 So.2d 659 (Fla. 1946) (child has the

right to participate in proceedings relating to his or her own adoption and has the right to consent to the adoption of her own child).

Furthermore, under a recent amendment to federal law, Florida is required to provide procedural safeguards in dependency proceedings to ensure the participation of children in permanency hearings. Adoption and Safe Families Act, 42 U.S.C. § 675(5)(C)(iii)(2008) (requiring states that accept federal funds for foster care to implement procedural safeguards to ensure that dependency courts conduct age-appropriate consultations with the child during a permanency hearing). Thus, the need for the JCRC's proposed amendment to help increase the presence of children in Court cannot be understated, as it will provide the necessary procedural safeguards that comply with both federal and state law.

The child's participation is not just limited to the above, however. Florida law requires that the guardian ad litem include a statement of the child's wishes in the disposition report to the court and provide a copy of the report listing its recommendations to the child prior to the disposition hearing. § 39.807(2)(b)(1), Fla. Stat. (2010); but see § 39.807(2)(b)(3) (2010) (guardian ad litem is required to only represent the best interests of the child). The child's wishes must also be incorporated into the assessment to place the child in a licensed residential group facility. § 39.523(1), Fla. Stat. (2010). In addition, a child must be involved in the preparation of his or her treatment plan, if admitted to a residential mental health

program. § 39.407(6)(e), Fla. Stat. (2010). Rules 8.350(a)(3), (4), Florida Rules of Juvenile Procedure, respectively, require the Court to consider the child's wishes when attempting to a place the child in a residential treatment center and indicate in the motion whether the child is in agreement. The child's presence is further required at all hearings regarding the child's placement in a residential treatment center, unless it is not in the child's best interests to attend. Fla. Rules of Juv. P. 8.350(c) (even if the child does not attend, the rule still requires that the child receive an opportunity to express his or her views). The child also has the right to file a motion in objection to the proposed administration of psychotropic medications to the child and is granted an opportunity to be heard on the matter. § 39.407(3)(d)(1), Fla. Stat. (2010); Fla. Rules of Juv. P. 8.355(a(3).

The Legislature has also deemed minors mature enough to participate in decision-making in a variety of other situations. See, e.g., § 394.4784, Fla. Stat. (2010) (disability of infancy removed for minors ages thirteen or over to access outpatient crisis intervention, diagnostic and evaluation services); § 397.601(4)(a), Fla. Stat. (disability of infancy removed for minors to obtain voluntary substance abuse impairment services); § 743.065, Fla. Stat. (2001) (disability of infancy removed for unwed pregnant minors or minor mothers to consent to medical services for themselves and their children).

In all of the above instances, when read separately and together, the Legislature has included and recognized the value of a child's meaningful participation in dependency proceedings. The child is considered competent to take part in court proceedings and his or her wishes are deemed relevant throughout a case.

For judicial review hearings, the Legislature has also explicitly stated its intent that children in shelter or foster care "be heard by the court, if appropriate, at all review hearings." See § 39.4085(19). This Court has recognized the importance of ascertaining and applying Legislative intent, including an assessment of Legislative history, if helpful. See American Bakeries Co. v. City of Haines City, 180 So. 524 (Fla. 1938); see also McLaughlin v. State, 721 So. 2d 1170, 1172 (Fla. 1998) (holding that "Legislative intent is the polestar that guides our inquiry" in statutory construction). Here, a historical analysis is unnecessary; the Legislature has spelled it out for us. The Legislature wants children to be heard by the Court unless it is in the child's best interests not to attend. See §§ 39.4085(19), 39.01(51), Fla. Stat.

A reading of all the relevant provisions in Chapter 39 leads to the conclusion that the Legislature has not limited the presence of the child to the age of 17. See In re Amendments to Florida Rules of Juvenile Procedure 8.255, 3 So.3d at 1241.

On the contrary, the child's participation and presence is recognized throughout dependency proceedings.

E. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE CHILDREN HAVE DUE PROCESS RIGHTS TO PARTICIPATE IN COURT PROCEEDINGS.

The Florida Legislature and courts have recognized the due process rights of children. Under Chapter 39, the Legislature has cited as its goal that all parties, including children, are ensured due process in judicial and other procedures. § 39.001(1)(l), Fla. Stat. This Court has also held that "[w]e recognize that in all instances the trial court must ensure that proper notice and an opportunity to be heard be provided to the participants." In Interest of D.B., 385 So.2d 83, 87 (Fla. 1980); see generally Dusenbery v. U.S., 534 U.S. 161, 167-68 (2002) ("At minimum, the due process clause requires that deprivation of life, liberty, or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case"); Mathews v. Eldridge, 424 U.S. 319 (1976) (establishing the standards for procedural due process).

Court participation is a fundamental right belonging to all dependent children, including the right to attend hearings, receive notice of the proceedings and have an opportunity to be heard. See § 39.01(51), Fla. Stat. (2010) (presence of child recognized in proceedings); §§ 39.701(5)(f), (7)(a), Fla. Stat. (2010) (provisions for notice and opportunity to address court for a child in dependency

proceedings); L.T. v. Department of Children and Families, 967 So.2d 456 (Fla. 4th DCA 2007). In L.T., the Court validated a dependent child's argument that her presence in court and ability to participate meaningfully in a proceeding to involuntarily commit her to a residential treatment facility is a due process right but denying that her rights were violated when she was permitted to appear only by telephone because it was not in her best interest to physically attend. See id. This Court has also recognized that the presence and meaningful participation of children in dependency proceedings is often critical. See In re Amendments to Fla. Rule of Juv. Proc. 8.255, 3 So.3d at 1241.

We also urge the Court to draw upon the standards in the delinquency system. A youth that commits a delinquency is immediately brought to court, but the same consideration is not given to children in dependency proceedings. As Justice Pariente noted in her dissent in 2009:

> *"As Judge Herbert Baumann, speaking on behalf of the committee, so eloquently stated during oral argument, every year in this State there are approximately 1500 youth who are eligible for independent living services As he observed, if any one of those 1500 youth was caught committing a delinquent act, that child would be immediately transported to court. No less should be required when the planning of a child's future is involved."*

Id. at 1244.

Since the dependency and delinquency provisions, Chapter 39 and Chapter 985, Florida Statutes, respectively, have similar goals regarding children, they should be construed together. Am. Bakeries Co. v Haines City, 180 So. 524, 528

(1938) (holding that "[l]aws should be construed with reference to the constitution and the purpose designed to be accomplished, and in connection with other laws in *pari materia*, though they contain no reference to each other"). For instance, in determining whether § 827.04(1)(a), Florida Statutes, was constitutionally vague, the Court not only examined the language of chapter 827, which prohibits contributing to the delinquency of a minor, but also chapters 39, 984, and 985 because they "have identical underlying purposes" of protecting the interests of minors. See State v. Fuchs, 769 So.2d 1006, 1010 (Fla. 2000).

Similarly, we encourage the Court to look toward Chapter 985, Florida Statutes, for additional support of the notion that dependent children do have a due process right to attend hearings. The Supreme Court has recognized that a child that has a liberty issue at stake, including possible incarceration, be afforded due process of law including "procedural regularity and the exercise of care." In re Gault, 387 U.S. 1, 27-28 (1976). Gault established a laundry list of due process rights for children, including the right to counsel, adequate notice to parent and child, right against self-incrimination, and the right to cross-examine witnesses. Id. While many of these rights may not extend to dependency proceedings, the well-accepted view that children must attend hearings in delinquency proceedings is a sound legal principle applicable to both systems. See, e.g., R.R. v. Portesy, 629 So.2d at 1059 (holding that "juvenile's physical presence is required at all hearings

under the juvenile rules, in the absence of waiver or specific finding that juvenile's mental or physical condition precluded his presence" and that to find otherwise violated the delinquent child's due process rights); J.R. v. State, 953 So.2d 690 (Fla. 1st DCA 2007) citing Muhammad v. State, 782 So.2d 343 (Fla. 2001) (holding that like criminals, juveniles in the delinquency system have a constitutional right to be present at all critical stages of the proceedings)).

While delinquency courts recognize that state involvement necessarily involves a deprivation of the child's liberty thereby necessitating the child's presence in court, a similar such awareness is required in dependency courts. See, e.g., Jaclyn Jean Jenkins, "Listen To Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings," supra at 166 (noting that dependency hearings involve an "equally daunting potential loss" of fundamental liberties because the youth may be forced to sever ties to his or her family, be forced to relocate or remain in a home that may endanger his or her safety). Certainly, there is growing nationwide judicial awareness that there are liberty interests at stake for children in dependency proceedings. See, e.g., Kenny A. ex rel. Winn v. Perdue, 356 F. Supp. 2d 1353, 1360 (N.D. Ga. 2005) (holding that "children have fundamental liberty interests at stake in deprivation and [termination of parental rights] proceedings" and "these include a child's interest in his or her own safety, health, and well-being, as well as an interest in maintaining

the integrity of the family unit and in having a relationship with his or her biological parents"); In re Adoption/Guardianship No. T97036005, 746 A.2d 379, 387 (Md. 2000) (holding that dependent children, as parties to the case, have independent standing to request a hearing before the rights of their parents are terminated and have a liberty interest in the outcome of this hearing).

A child that becomes a ward of the state does lose his liberty, to an extent, and it must be emphasized that his or her relationship with the state does differ from that of a parent. See, e.g., Parham v. J.R., 442 U.S. 584, 637-38 (Brennan, J., concurring in part and dissenting in part) (noting that the social worker-child relationship does not deserve the defense accorded the parent-child relationship); Erik Pitchal, "Where are all the Children? Increasing Youth Participation in Dependency Proceedings", supra at 247 ("nothing short of a child's freedom is at stake in foster care proceedings"). Recognizing the interests at stake, there are several states and counties nationwide, including those with the largest foster care populations, that recognize the importance of the child's presence in dependency hearings. See, e.g., Los Angeles Co. Super. Ct. R. 17.10 ("Every child four years or older must be advised of his or her right to attend court hearings. . . A child must attend court hearings unless his or her appearance is waived by his or her attorney of record."); Cal. Welf & Inst. Code § 349 (West 2007) ("A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing

under the provisions of Section 290.1 and 290.2, is entitled to be present at the hearing. The minor and any person who is entitled to that notice has the right to be represented at the hearing by counsel of his or her own choice. If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether minor was properly notified of his or her right to attend the hearing."); Kathleen Lucadomo, "Push is On For Foster Kids to Talk to Judges," N.Y. Daily News (Feb. 11, 2007) (documenting a pilot project in New York City entitled "Teen Day", a program where a judge sets aside her calendar to hear permanency hearings and takes steps to ensure that young people attend court); In the Matter of Pedro M., 864 N.Y.S.2d 869, 870 (N.Y. Fam. Ct. 2008) (sixteen year-old foster youth wished to be present at his permanency hearing and the court permitted him to do so even though the child welfare agency believed it would be "emotionally upsetting;" the court held that "[n]ow, it is the law's expectation that, at a permanency review hearing, the child will be present and the *proceedings are meant to be a two-way conversation between the judge and the child*. The judge and the child are to 'consult' with each other.") (emphasis added).

Florida should not only join the trend established by these courts, but lead the movement by taking meaningful steps that will ensure more children have an opportunity to be heard during dependency proceedings. Because at the very least,

the dependent child should be able to engage meaningfully in court proceedings of which he or she is a party, as is the case in the delinquency system.

II. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE CURRENT PROCEDURAL MECHANISMS SILENT THE VOICES OF DEPENDENT CHILDREN AND THERE IS AMPLE EVIDENCE THAT YOUTH BENEFIT GREATLY FROM BEING IN THE COURTROOM.

A. THERE IS A STRONG NEED FOR THE JCRC'S PROPOSED AMENDMENT BECAUSE DEPENDENT CHILDREN ARE FREQUENTLY EXCLUDED FROM COURT PROCEEDINGS.

The LAS believes that the need for the JCRC's proposed amendment to reinforce Rule 8.255(b) is critical because, in our experience and that of the Steering Committee, the Guardian Ad Litem Program, JCRC, Florida's Children First, and other organizations involved in pushing for this amendment, an overwhelming majority of dependent children do not attend hearings and are unable to offer their voice in the proceedings. See Guardian Ad Litem Program, "Comments on the Petition of the Steering Committee on Families and Children in the Court to Amend Rule 8.255 of the Florida Rules of Juvenile Procedure," 3 (2009) ("The GAL strongly supports the participation of children of all ages [in court], because their input significantly improves the outcomes for children."), available at http://www.law.fsu.edu/library/flsupct/sc08-1236/08-1236CommentsGAL.pdf (last visited December 7, 2010); Home At Last, My Voice, My Life, My Future Foster Youth Participation In Court: A National

Survey, 10 (2006); Gloria Hochman et al., supra at 4 ("More than 1 in 4 foster youth respondents report that they never attended their court hearings"); Bernard P. Perlmutter, Carolyn S. Salisbury, "Please Let Me Be Heard:" The Right of a Florida Foster Child to Due Process Prior To Being Committed To a Long-Term, Locked Psychiatric Institution, 25 Nova L. Rev. 725, 752 (2001) (noting that Florida foster care children are frequently absent from proceedings and citing cases of inaccuracies and prejudicial information found in the files of dependent children that are not provided an opportunity to be heard).

This problem is less severe in the Fifteenth Judicial Circuit due to the implementation of a specialized Independent Living Review docket, also available in the Second and Thirteenth Judicial Circuits. See generally Admin Order No. S-2006-155 (Fla. 13th Cir. Ct. Sept. 28, 2006). The Fifteenth Judicial Circuit, along with the Second and Thirteenth, compels the attendance of foster children at an earlier age than the statutorily mandated age of 17 to better prepare youth transitioning into adulthood. Id.; § 39.701(7)(a), Fla. Stat. (2010). In our circuit and in our experience, the creation of this specialized docket has significantly increased the number of older youth that attend hearings. However, we firmly believe that it is only because our circuit mandates youth attendance that the presence of children has increased in hearings. Unfortunately, an Independent

Living Review Hearing is not typically conducted throughout the State of Florida for children that will age-out of the system.

After the release of a seminal report in 2004, the Pew Commission ignited a national discussion on the pervasiveness of the lack of dependent youth participation in court throughout the country. See The Pew Commission, "Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care," (2004), available at http://www.pewfostercare.org/research/docs/FinalReport.pdf (last visited November 30, 2010). It recommended changes to the child welfare system, including increased youth participation in court processes. See id. In 2006, Home at Last, funded by the Pew Charitable Trusts, conducted a nationwide survey on the participation of dependent children in court proceedings that yielded the following results: 73% of youth respondents reported that they attended court only some of the time, 29% stated that they never attended, 20% reported they attended most of the time, and only 18% stated they always attended. See Home At Last, My Voice, My Life, My Future Foster Youth Participation In Court: A National Survey, supra at 10; see also Gloria Hochman et al, supra, at 4-5 (Of youth surveyed, 41% reported they did not attend their hearings because "No one told me the dates of the hearings" and 39% did not attend because "No one told me I was allowed to go").

The LAS' experiences with clients also reveal that dependent children do wish to attend hearings and play a meaningful role in court proceedings that affect the child's future, but have not always been granted this opportunity.

> *"When given the choice between attending by webcam or in person, even children in rural areas want to attend in-person and be driven down, even if it requires traveling long distances."* – Jeff DeMario, Vita Nova Independent Living Services, Palm Beach County.\

LAS' Client Accounts

> ***J.R. is a 16 year-old dependent male in foster care.*** *J.R. has attended every court hearing that he is "eligible for" since he was 13. He explains that before he obtained a legal advocate two years ago, no one had ever advised him that [he] could go to court and he was mostly "fending for myself." He stated that he began reading Chapter 39, Florida Statutes, on his own at the age of 13, and discovered--much to his surprise—that he was actually allowed to go to court. He memorized the entirety of Chapter 39, including respective page numbers, and soon after began to advise his old caseworker, the only party managing his case at the time, about what motions to file in his case. He explains that his caseworker did not know how to proceed otherwise. In court, he is able to identify which particular sections of Chapter 39 apply to his case.*
>
> *He stresses that attending court is extremely important and asserts: "Everyone has the audacity to say what I feel [in court].* ***If I am not there, sometimes they will miss some things.*** *When I first began to attend court at 13, I noticed that a lot of decisions had been made that I had no clue about. Especially when I was 12—there were some big changes made to my life at hearings and I had no involvement in any of them.* ***Now when I attend court, I can at least ensure that the judge will hear what I have to say and that Chapter 39 procedures are being followed."***
>
> ***A.C. is a 15 year-old dependent female in foster care.*** *A.C. is desperate for a family, to be loved like every other girl her age. She has been deprived of one nearly her entire life, moving from foster home to foster home. A.C. is insistent upon attending every hearing. She explains that before she obtained a legal advocate, she frequently asked her case manager to take*

her to Court, but her requests were often denied. Sometimes her case manager provided a reason, including that there were no means to transport her to Court, and other times just ignored her requests altogether. A.C. says, "I think it's important to go to Court because a person understands you more when you see them. It helps me to have a relationship with the judge, I can show her my feelings, provide input. I also need to know what decisions are being made."

***T.G, a 13 year-old dependent female, says**: "I try to attend as much as I can with my attorney. When I do attend, I feel better at the end of the day because I know what's going on. This is very important to me."*

B. BOTH THE CHILD AND THE COURT WILL BENEFIT FROM THE CHILD'S PRESENCE DURING DEPENDENCY PROCEEDINGS.

The presence of a child at a hearing will humanize the case, ensure fairness in the proceedings, and remind all parties that the proceedings are not merely bureaucratic or technical, but have real-world ramifications for an actual child. See, e.g., M.W. v. Davis, 756 So.2d 90, 108 (Fla. 2000) (noting the importance of a child believing that his opinions are heard, respected, and considered in dependency proceedings and further stating that the "judicial system must recognize the individuality and dignity of the children who find themselves inside the courtroom solely as a result of their parents' abuse or neglect"); see also S.C. v Guardian Ad Litem, 845 So.2d 953, 960 (Fla. 4th DCA 2003) (noting that dependent children "have been abused by parents or relatives, or transferred from one foster care placement to another, or treated like commodities on an assembly line by harried or overworked agency staff.") (emphasis added).

Of the children that attended hearings, the majority found that being present in court was helpful and informative, even if they were unable to speak directly to the judge during the proceeding. Id.; see also Office of the Family & Children's Ombudsman, Foster Care, "What Young People Say is Working," 10 (January 2001), available at http://www.governor.wa.goc/ofco/00rpt/fostercare.pdf (according to a Washington study of youths in foster care, what matters most to dependent children is "feeling like [their] opinions matter"). Ours and the experience of many other child advocacy organizations support the findings of Home at Last, as evidenced by the widespread support of different child organizations to push for an amendment to increase the presence of children in court.

The JCRC's proposed amendment will especially benefit older dependent children whom will have greater access to court hearings at an earlier age. This is vital in helping these children understand the court process, have a voice in the proceedings, and take advantage of opportunities and programs that will facilitate the child's successful transition into adulthood. See, e.g., U.S. Department of Health and Human Services, "Final Report: Florida Child and Family Services Review," supra at 40 (noting that "in Miami-Dade, although youth will have access to IL skills training, stakeholder report that youth do not understand what will happen when they turn 18). The proposed amendment will also permit the child to

have greater involvement in attaining indispensable information and services including financial benefits for vocational and educational training. § 409.1451(5)(b)1, Fla. Stat. (2009). By ensuring the presence of a child at a hearing, the proposed amendment will guarantee a forum for the child to gain familiarity with available programs and services. See also Foster Care Independence Act, 42 U.S.C. § 677 (2000 & Supps. 2001-2005), Improved Independent Living Program, Pub.L. 106-169, Title I, § 101(a), 113 Stat. 1823, (a)(5) (1999) (binding state recipients, including Florida, to "offer an extensive program of education, training, employment, and financial support for young adults leaving foster care, with participation in such program *beginning several years before high school graduation* and continuing, as needed, until the young adults emancipated from foster care. . . .") (emphasis added). Otherwise, a child may miss out on vital information due to an overworked caseworker whom may forget to relay this information to the child; alternatively, the adults managing the child's life may convey conflicting information to the youth. Erik S. Pitchal, "Where Are All the Children? Increasing Youth Participation in Dependency Proceedings," supra at 249 (noting that youths often report that they receive contradictory information from their law guardian or case worker, if told anything at all). While the caseworker has many clients to worry about, the child only has a few people concerned about matters pertaining to his or her life.

If the child is present at more hearings, however, judges and all parties can ensure that the child has early and accurate exposure to necessary information. There is no need for a middle-man; the child may be addressed directly at court. The child will also have a more meaningful opportunity to articulate his or her desires including but not limited to remaining in foster care, opting for subsidized independent living programs, undergoing adoption and permanent guardianship, reunification, or seeking road to independence benefits. See, e.g., National Council of Juvenile and Family Court Judges, Resource Guidelines: Improving Court Practice in Child Abuse & Neglect Cases, 69 (1995) ("Children should be present at some point during the hearing to give the judge the opportunity to observe them. . . [a]ge-appropriate children can provide the court with information as to their perception of their needs, interests and concerns"). This is essential because despite the mandatory judicial review provisions of § 39.701(7)(a) of the Florida statutes, the majority of children that are eligible for road to independence programs, benefits, or transition services are not enrolled in them by the time he or she reaches the age of majority. See Florida Supreme Court Families and Children in the Court Steering Committee, 2006-2008 Report, 62, available at http://www.flcourts.org/gen_public/family/bin/FCC06-08FINALReport.pdf ("While there are limited programs and funds to help youth who "age out," most of those eligible are not enrolled for services.").

Furthermore, when a child is present at hearings and is heard, he or she receives a form of therapeutic justice and healing. See Jaclyn Jean Jenkins, "Listen To Me! Empowering Youth and Courts Through Increased Youth Participation in Dependency Hearings," supra at 165. For a child that is likely abandoned, abused or neglected and incredibly vulnerable, the ability to express her views and beliefs is immensely valuable. Id. It also ensures that timely solutions are provided for the child's problems, allows the child to develop a relationship with the judge, and the judge to make more informed decisions about the youth. See, e.g., M.W. v. Davis, 722 So.2d 966, 969 (Fla. 4th DCA 1999) (recognizing that in dependency proceedings, there is an ongoing relationship between the judge and the child). An enduring relationship between the judge and a child will be particularly useful during the child's mandatory judicial review hearing pursuant to § 39.701(7)(a) to facilitate the child's transition into adulthood.

Judges in dependency court consistently make difficult life-changing decisions on behalf of a child. What better source of information is there to hear from than the child? There are times in a courtroom when the parties present are unable to answer the Court's questions because they lack requisite information. See, e.g., LAS' Client Accounts, J.R., (noting that when he was not in court, he realized later that sometimes the adults had "missed things"); U.S. Department of Health and Human Services, "Final Report: Florida Child and Family Services

Review," supra at 67 (examining caseworker-child visitation and noting that "stakeholders and survey responses stated that, although children are being seen, administrative service workers are usually unaware of specific case information, thus are unable to provide caregivers and children specific information regarding the case during the visits."). Instead of chronic delays and continuances to discover the answers to these queries, a majority of the problems can be resolved simply by having the child present.

> As the Pew Commission noted in a 2004 nationwide study of children in foster care:
>
> "The decisions made in dependency court every day have powerful and life long implications for children and families. No child or parent should face the partial or permanent severance of familial ties without a fully informed voice in the legal process. Even when less shattering decisions are made, *judges need to hear from the people who will be most affected by their decisions ---- children, parents, siblings, and other relatives, fosterand adoptive parents.*"

The Pew Commission for Children in Foster Care, "Fostering the Future: Safety, Permanence, and Well-Being for Children in Foster Care", 35 (May 2004) (emphasis added).

While there are concerns that a child's attendance in court may expose the child to discussions of a sensitive nature regarding the child's abuse, abandonment or neglect, or unnecessarily keep the child from school, in our experience, a child's presence in court has never been harmful. On the contrary, the presence of children has increased the quality of court proceedings because the judge is able to

see and hear from all parties. Otherwise, if a child, a party to the proceedings, is continuously denied a voice, his or her rights are severely harnessed by the adults managing the child's life. Furthermore, as Chief Judge Judith S. Kaye of the New York Court of Appeals notes:

> "It's incredible to me that we so long believed that the greater good was keeping children-even teenagers-out of court, *so that they wouldn't miss school or be exposed to trauma.* What greater trauma could there be than cataclysmic change in their lives without their knowledge?"

See Hon. Judith S. Kaye, "Seizing the Opportunity to Make Good on Our Promises to At-Risk Youth, 45 Fam. Ct. Rev. 361, 663 (2007) (emphasis added).

As noted time and again, the importance of the presence of a child in court cannot be overemphasized, particularly for a youth that will transition out of the system. In comparison to their peers, the U.S. Congress has found that children that age-out of foster care are less prepared for the future, more likely to suffer from homelessness, incarceration, become targets of crime and physical assault, experience poverty, and lack access to health care, education, independent living skills. See Foster Care Independence Act, § 677, Improved Independent Living Program, Pub.L. 106-169, 113 Stat. 1823, (a)(4); Melinda Atkinson, Aging out of Foster Care: Towards a Universal Safety Net for Former Foster Care Youth, 43 Harv. C.R.-C.L. L. Rev. 183 (2008). Across the board, such youth are at greater risk of suffering from nearly every institutional ailment. Id. While the Juvenile

System certainly cannot guarantee the life success of such children, we can ensure that dependent children—at a minimum—take advantage of their rights.

While the LAS supports the JCRC's proposed amendment, it is concerned, however, that we consider and respect the wishes of children that do not attend hearings out of personal choice. We want to ensure that the JCRC's proposed amendment to Rule 8.255 does not prevent or reflect negatively on a child that chooses not to attend. However, this is a marginal concern and we firmly believe that the proposed amendment will yield positive consequences for dependent children generally.

III. THIS COURT SHOULD ADOPT THE JCRC'S PROPOSED AMENDMENT BECAUSE THE RIGHT OF THE CHILD TO ATTEND COURT SUPERCEDES ANY POLICY CONCERNS ABOUT THE COST OF TRANSPORTATION.

In considering whether to adopt the proposed amendment, this Court ought not to be dissuaded by policy concerns regarding potential increased costs in transporting the child to court. Florida faces an even greater risk of losing federal funding if it does not comply with federal law, including the Adoption and Safe Families Act, that requires the state to implement procedural safeguards to ensure that judges have age-appropriate consultations with children during permanency proceedings. § 675(5)(C)(iii)(2008). The most direct way to achieve compliance with the Adoption and Safe Families Act is through the JCRC's Proposed Amendment.

Furthermore, the procedural due process rights of children should not be contingent on transportation costs. It is important to highlight that the JCRC's proposed amendment does not entail in additional costs, not already provided by the current version of Rule 8.255. Rule 8.255, as it stands, already provides a child the right to attend hearings; the proposed amendment merely molds it into a more effective tool to permit the child to actually exercise the right, consistent with Legislative intent. These changes are crucial---the consequences of children not attending are simply too severe to be ignored.

IV. CONCLUSION

The Court should adopt the JCRC's proposed amendment to Rule 8.255. It is consistent with Legislative intent, does not conflict with any substantive provision of law, merely reconstructs the rule to strengthen procedural mechanisms to carry out an already existing right, and is necessary to address the overwhelming problem of lack of attendance by dependent youth in court proceedings. It is a procedural solution—within the scope of the Rules Committee's mandate—that will likely benefit the lives of many abused, abandoned, and neglected children in the State of Florida, particularly those whom will transition out of the foster care system. As the Supreme Court has pointed out, although the state serves an important role as the *parens patriae*, in juvenile court, "unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and

procedure." In Re Gault, 387 U.S. at 1439. As such, we implore the Court to reign in the unbridled discretion that parties may have in deciding whether to transport the child to Court and adopt the JCRC's procedural safeguards. We need to start ensuring that children are involved and present in Court. After all, "we're making decisions about their lives—how can they not be a part of that?" Anonymous Attorney, Home at Last, "My Voice, My Life, My Future Foster Youth Participation In Court: A National Survey" 9 (2006). Although the actual text of the proposed amendment to Rule 8.255 is minute, the LAS is certain its effect on the lives of dependent children will be tremendous.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was hand delivered this ____ day of December 2010 to: William W. Booth, Esq., JCRC Chair, 423 Fern Street, Suite 200, West Palm Beach, Florida 33401.

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By_____
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IN THE SUPREME COURT OF FLORIDA

IN RE: AMENDMENTS TO THE FLORIDA RULE OF JUVENILE PROCEDURE 8.255 **CASE NO.: SC10-2010**

_____/

REQUEST FOR ORAL ARGUMENT

The Legal Aid Society of Palm Beach County respectfully requests oral argument on the issues raised in its Comment regarding the Juvenile Court Rules Committee's Proposed Amendment to Rule 8.255, Florida Rules of Juvenile Procedure. The Legal Aid Society believes that oral argument is crucial to further explain to the Court how and why the Proposed Amendment is necessary and to assist the Court in reaching the most appropriate instruction regarding Florida's dependent youth.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this Request for Oral Argument was hand delivered this ___ day of December, 2010 to William W. Booth, Esq., JCRC Chair, 423 Fern Street, Suite 200, West Palm Beach, Florida 33401.

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