

# The Juvenile Law Reader



## SUPREME COURT RULES JUVENILE DEATH PENALTY UNCONSTITUTIONAL!!!

By Julie Goss, Americorps Attorney

On March 1, 2005, the Supreme Court of the United States handed down a split decision outlawing juvenile death penalty laws.<sup>1</sup> Overruling its 1989 decision that the Constitution does not bar capital punishment for juvenile offenders, the Court, in a 5-4 decision held that the Eighth and Fourteenth Amendments forbid imposition of the death penalty on juvenile offenders who were under the age of 18 at the time the crime was committed.

Christopher Simmons, at the age of 17, plotted and planned to burglarize a home and commit murder. He bragged to friends before the incident that he planned to break into a house, enter it, tie up a victim and then throw the victim off of a bridge. On the night of the incident, Simmons and his friend,

entered the home of the victim by reaching through an open window and unlocking the door. When the victim called out "Who is there?", Simmons and his friend entered the bedroom. They covered the woman's eyes and mouth and then bound her hands together with duct tape. The two men placed her in their car and drove her to a nearby state park and dragged her out to a train trestle, where they placed a pillowcase over her head and wrapped her whole face in duct tape. They also bound her hands and feet with electrical wire and then threw her over the side where she drowned in the water below.

Simmons was tried as an adult in Missouri state court and was found guilty. At the sentencing stage, the jury was given an instruction that age could be considered a mitigating factor. The prosecutor, in his

closing submitted to the jury that Simmons youthful age should be an aggravating factor, asking the jury if they were afraid that someone so young could commit such an act. Simmons appealed the decision and it ended at the Supreme Court of the United States.

Justice Kennedy, writing for the majority, laid out three main reasons for finding that imposing the death penalty on persons under the age of 18 violated the Eighth Amendment's provision that states cannot inflict "cruel and unusual punishment" on its citizens. First, Justice Kennedy  
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discusses the evidence to support a "national consensus" against the imposition of the juvenile death penalty. Second, the opinion highlights the differences between juveniles and adults to show that the element of extreme culpability required by the Eighth Amendment cannot exist in children under the age of 18. Finally, he presents, not as controlling evidence, but as an important consideration, the world's views on the juvenile death penalty.

The issue of whether there is a national consensus is important because the Eighth Amendment is not a static document and the nations understanding of cruel and unusual punishment must be viewed within the context of "the evolving standards of decency that mark the progress of a maturing society."<sup>2</sup> The Majority Opinion looked at several different factors in determining the national consensus. The number of states in which the death penalty for juveniles is supported or outlawed was one such factor. While the number of states to abolish juvenile death penalties was not as high at the time of *Roper* as it was at the time of *Atkins, v. Virginia*,<sup>3</sup> which abolished the death penalty for mentally retarded persons, the Court determined that the direction of the change" was enough to substantiate the national consensus. No state had adopted the juvenile death penalty in the interim, and while there continues to be a slew of new anti-crime legislation and tougher punishments, no state legislature has adopted the use of the juvenile death penalty. Additionally, 30 states, including the states that have completely abolished the use of capital punishment, outlaw the juvenile death penalty. The Court determined this majority of states, with the consistency of the trend to outlaw the

punishment, and the infrequency of use of the punishment in states which do allow it, to show a national consensus against the use of the juvenile death penalty.

Next, the Majority turned to the Eighth Amendment's requirement for a showing of extreme culpability to fit the extreme punishment of the death penalty. The Court here determines that juveniles, categorically, do not have the capacity to have this most serious culpability. The Court finds that juveniles differences are too marked and well understood to risk allowing a youthful person to receive the death penalty.

The Court finds three significant differences between juveniles and adults in this regard. First, the Court finds sufficient evidence to show juveniles have a substantial lack of maturity and an underdeveloped sense of responsibility which lead to "impetuous and ill-considered actions and decisions."<sup>4</sup> Second, the Court finds that juveniles are "more vulnerable or susceptible to negative influences and outside pressures, including peer pressures."<sup>5</sup> Third, the Court finds that juvenile's characters are not well formed and because of this, they are not past the point of rehabilitation. The death penalty is often reserved for persons and culpabilities which are without the possibility of reform. Juveniles, by this definition, still have the possibility of reforming their character and being able to appreciate the wrongfulness of their actions.

The Court also looked at the death penalty's dual roles of retribution and deterrence. The Court determined that juveniles are inherently without the moral culpability to be deserving of such serious retribution. As for

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## DEATH PENALTY - Continued from page 2

deterrence, the Court questioned whether juveniles have the ability to weigh such a punishment when contemplating their actions, because of their impetuous and ill-considered tendencies. Since juveniles do not have the ability to weigh the potential consequence of a death penalty, allowing the death penalty for juveniles will not have the desired deterrent effect. The Court also notes, that a sentence of life without possibility of parole is a very serious and severe punishment for a young person.

Finally, the Majority turns to its final argument that, while the rest of the world's opinions and practices are not controlling, it is informative in determining whether the juvenile death penalty is a cruel and unusual practice. The Court finds that the overwhelming world opinion is against the practice of executing juveniles. The United States is the only country left in the world to sanction this practice. Only seven countries, besides

the United States, have executed a juvenile since 1990, and all of these seven have either openly abolished or publicly made a statement disapproving of the practice since the last execution. Only the United States stands by the practice and continues to use it. The Court acknowledges too that the reason behind the world's disapproval for the practice lies in the "instability and emotional imbalance of young people (which) may often be a factor in the crime."<sup>6</sup>

The ruling abolishing the death penalty for juveniles will result in 70 juveniles across the nation, currently being held for execution, to have their sentences changed to imprisonment for life without possibility of parole. Additionally, while 30 states had outlawed the execution of juveniles all together, there remains 20 states who will be required to amend their state laws to fit this Court's decision.

Justice O'Connor dissented, disagreeing with the Majority on whether it is appropriate to establish a rigid, age-based rule for determining when the death penalty can be imposed, within the constraints of the Eighth Amendment. Justice O'Connor believes there is no national consensus on the use of the death penalty in juvenile cases, based on the number of states which allow this penalty or have carried it out. She also focused on the concept of proportionate morality, which requires that the death penalty only be imposed where the crime and the offender warrant that punishment. She acknowledged that juveniles can lack the full moral capacity to warrant the most severe penalty for their crimes. However Justice O'Connor believed the better approach is to allow juries to

Continued on page 12.

## CASELAW UPDATES

### State ex rel Dept. of Human Services v. Smith, Case No. S51293 (February 17, 2005)

In this case the Oregon Supreme Court reversed a termination of parental rights by the trial court holding that to establish parental unfitness under ORS 419B.504, the state must show that some conduct or condition of the parent is seriously detrimental to the child. The trial court had terminated mother's parental rights to her first and second sons, both of whom had been removed from mother's care at birth, based on a finding that mother was unfit by reason of mental deficiency. The trial

allows termination of parental rights if the court finds that the parent is unfit by reason of conduct or condition seriously detrimental to the child. The Supreme Court held that the evidence considered by the trial court was insufficient to support termination of mother's parental rights to her two sons, and that mother's inadequacy as a parent did not amount to a condition that was seriously detrimental to the child under the statute. Justice Riggs dissented based on his finding that the mother lacked the ability to parent and that the mother's extended family appeared to be hostile to almost any level of

outside supervision.

Washington v. Christensen, No 74839-0 (Wash. 2005). The Supreme Court of Washington held in this case that a mother secretly listening to a conversation between her daughter and the daughter's boyfriend, focusing on the boyfriend's involvement in a robbery violated Washington's privacy act. Concluding the phone conversation was a private communication, and there being no exception for cases involving children, the Court held mother's testimony was prejudicial. Reversed and remanded for a new trial.

More case law updates on page 5.

## Evidence-based Programs in the Oregon Youth Authority

Over the last year, OYA has increased its focus on improving services to youth, as well as on outcomes for public safety, by implementing juvenile justice interventions which have been proven by research to work. OYA staff have received orientation to the "what works" research literature based on meta-analysis. Meta-analyses of juvenile justice programs suggest that when evidence-based programs are used, the probability of positive outcomes is significantly increased.

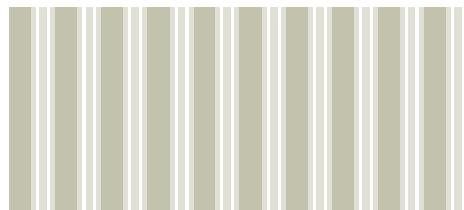
The literature also suggests that there are two important aspects involved in the use of evidence-based programs that make a significant difference in obtaining positive outcomes. The first is program selection. When programs are selected based on how and what they target in relation to

risk, need and how offenders respond to programming, positive outcomes are more evident. The second is implementation practices. Programs implemented in a consistent manner, with appropriate training, supervision, and assignment based on risk, produce better outcomes.

To assist with the task of selecting programs that are the best at targeting risk, need, and "responsivity," OYA has developed a Curriculum Review Committee. The committee will evaluate all treatment and practices used by OYA and will make appropriate recommendations. The committee had its first two meetings in February, which focused on designing the review instruments and processes and on reviewing possible cognitive curriculum(s).

OYA staff also report making excellent progress implementing Risk/Needs Assessments (OYA-RNA) by completing assessments on all youth entering and currently in OYA custody. The OYA-RNA assists in implementing evidence-based programs by 1) identifying individual youth risk, needs and protective factors with which to develop individual case plans for youth reformation; and 2) providing OYA with the ability to aggregate the data to identify the types and amounts of specific programming needs.

- From articles in the Oregon Youth Authority Bulletin 3/3/2005.



## FETAL ALCOHOL SYNDROME IN THE JUVENILE COURT

By Meyer Goldstein, Americorps Attorney

A large number of children and adults present in the juvenile court system are affected by Fetal Alcohol Spectrum Disorder (FASD; also including Fetal Alcohol Syndrome-FAS; Alcohol Related Neurodevelopmental Disorder-ARND; and Fetal Alcohol Effects-FAE). Treatment and support can have significant effects in reducing the condition's impact which in turn can improve juvenile court outcomes. An understanding of the indications and

consequences of this condition is therefore important to anyone who works within that system. FASD describes a variety of conditions from which a person can suffer as a result of having been exposed to alcohol while in the womb. The observable deficits result from actual physical damage that alcohol causes the developing brain. It is actually not known what fetal alcohol levels cause damage but it is known that alcohol a mother consumes passes directly to the fetus. Effects can include distorted physical

features, such as a small head or eyes, a smooth space between the nose and upper lip or a thin upper lip. A very important aspect of this condition is that the physical damage to the brain is permanent and cannot be corrected

The impact of FASD on intellectual functions is broad and can include mental retardation, attention deficit disorders, poor impulse control and judgment and memory problems. People affected by FASD suffer significant consequences in a wide range of life activities. A very large percentage will have mental health Continued on page 6.

# HIGH SCHOOLS THAT MAKE PRODUCTIVE CITIZENS

Bill Gates recently addressed the nations governors about the problems within our high schools. His concern is that the basic plan around which the schools were designed is itself so outdated that schools cannot teach effectively even when they operate as designed. Mr. Gates' view is that the present school system is intended to prepare only a small percentage of students for college but that the modern economy and workplace demand a far higher level of academic and intellectual skills training than non-college bound students receive. An additional problem is that the students who do not receive college-oriented education are disproportionately from low income or ethnic minority backgrounds.

This failure to attempt to train all students to their full potential has a huge impact on both the American economy and the lives of students who do not get steered into the college-bound group. The American work force is falling behind that of the rest of the world in the sophistication level of its intellectual skills. And students who do not attend college have a poor chance of obtaining employment that pays enough to reasonably support a family or a good quality of life.

This differentiation in the education provided to high school students also plays a part in creating high dropout rates. Students who drop out of high school suffer high unemployment rates, are more likely than graduates to be arrested, and also have higher

mortality rates. School systems that have moved away from the traditional view and that have adopted practices requiring more of their students to take academically challenging courses have reduced dropout rates. These schools provide a challenging curriculum to all students, ensure class materials relate to the students' real lives and create an environment in which teachers encourage all students to achieve their full potential.

Mr. Gates proposes several steps that should be taken to modify high school programs. First, curriculums should be changed to guarantee that all graduating students are prepared for college, work and full citizenship. Next, the data that actually reflects the performance of our schools, such as dropout rates, should be made more available. Numbers should be published, broken down by race and income levels, showing dropout rates and other indicators of school performance. The extent of the problem must be specifically identified in order to be addressed. Finally, states must develop plans and approaches to address problems at failing schools. States must actively and aggressively take steps to fix those schools that are not working.

If these steps are not taken, individual students and the country as a whole will continue to suffer. Children who are diverted from more challenging

study paths will not reach their potential and will not be available to help this country deal with the economic challenges of the future. Although the initial problem may be focused disproportionately on certain student groups, the country as a whole suffers when any student is not encouraged to reach his or her full potential. - From *The Oregonian* (March 3, 2005). See also, [www.gatesfoundation.org](http://www.gatesfoundation.org).

## MORE CASE LAW UPDATES

The 2nd Circuit has affirmed a ruling in ***Nicholson v. Scoppetta***, 2004 WL 2381177 (N.Y.), in a federal court class action, where the District Court has placed limits on when the child welfare agency can remove children from parents due to the child having witnessed domestic violence. The Court's injunction prohibited the child welfare agency from penalizing mothers by removing their children solely because the mother is a victim of domestic violence. The District Court found that the child welfare agencies practices violated the rights of both the children and their mothers. Upon certification of questions from the District Court, the N.Y. Court of Appeals found that it is unacceptable to presume that a child who witnesses domestic violence has been neglected, and that specific findings of fact showing that: 1) the child's physical, emotional or mental condition has been impaired or is in imminent danger of becoming impaired; and 2) that the actual or threatened harm is a consequence of

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The Department of Human Resources has announced that its discretionary fund allocation has been adjusted. Each Service Delivery Area and Tribe was increased by 40 percent. This is a one-time increase to this fund. Please note that **the new date the funds must be expended is June 30, 2005**. In order to access these funds, a worker must complete a CF78 form. Following is a list of the revised allocation that your SDA or Tribe has left to spend by June 30, 2005:

1) Baker/Union/Wallowa	\$1,902.00
2) Benton/Lincoln/Linn	\$ 467.20
3) Clackamas	\$2,994.93
4) Clatsop/Columbia/Tillamook	\$1,969.50
5) Coos/Curry	\$2,271.00
6) Crook/Deschutes/Jefferson	\$2,389.00
7) Douglas	\$1,431.50
8) Gilliam/Hood River/Sherman Wasco/Wheeler	\$1,932.50
9) Grant/Harney/Malheur	\$2,192.00
10) Jackson/Josephine	\$432.56
11) Klamath/Lake	\$2,399.62
12) Lane	\$1,515.00
13) Marion/Polk/Yamhill	\$1,294.35
14) Morrow/Umatilla	\$2,052.00
15) Multnomah	\$9,279.45
16) Washington	\$2,652.00
Burns Paiute Tribe	\$1,400.00
Confederate Tribes of Coos/Lower Umpqua and Siuslaw	\$1,400.00
Confederate Tribes of Grand Ronde	\$1,400.00
Confederate Tribes of Siletz	\$1,400.00
Coquille Indian Tribe	\$1,400.00
Confederate Tribes of Umatilla	\$1,400.00
Confederate Tribes of Warm Springs	\$1,400.00
Cow Creek band of Upper Umpqua	\$1,400.00
Klamath Tribe	\$1,400.00

The funds may be used to assist an ILP youth with items or services used to achieve their goals as outlined in their Comprehensive Transition Plan (T2). If you need any further information or technical assistance, please contact Rosemary Iavenditti at 503-945-5688 or Rosemary.lavenditti@state.or.us

problems, difficulties with school, legal conflicts, drug or alcohol problems and difficulty maintaining a job. Many will never be able to live or work independently.

Although the initial damage is permanent, treatment can have a significant impact, if initiated early enough. Until the age of about 10 or 12, the brain is still developing in ways that can help overcome the effects of FASD. This period therefore presents the greatest possibility of assisting the brain to develop alternative coping pathways or strategies. Support and treatment prior to this age can therefore greatly improve a child's functioning.

It remains important to identify this condition in older children also. Even if some of the approaches utilized in younger children may not be helpful, older children can benefit from other services, such as educational strategies adapted to their condition. Such children may also be improperly diagnosed with ADD or ADHD and the treatments and medications normally used for those conditions may be ineffective for FASD children.

Early detection is also beneficial because services can be provided to family members other than the affected child. The family environment can be improved by teaching child-rearing and parenting skills. It also helps families to understand the effects of FASD and what to expect from an af-

It is also important to screen for this condition because children may not necessarily display obvious indications of FASD. The most reliable approach is to include in court intake procedures information gathering mechanisms that focus on detecting alcohol use during pregnancy. The birth mother is the best source of this information and should therefore routinely be asked about alcohol use. Since many women do not know about FASD, and many also believe some alcohol consumption during pregnancy is safe, the only way to be sure this issue is investigated is to make questions related to this area a routine part of intake procedures. Participants in the Juvenile Court process therefore can play a very important role in helping to ensure that FASD children and families receive appropriate services. Making an inquiry into alcohol use during pregnancy a normal part of entry into the juvenile system would be an important step towards initiating the provision of services to people affected by this condition.

Providing these services would, in turn, both improve the quality of life for these children and their families, and help to ensure better outcomes from the juvenile system.

Fetal Alcohol Spectrum Disorder (FASD) and the Role of Family Court Judges in Improving Outcomes for Children and Families is available at:

[http://www.ncjfcj.org/publications/Spr\\_04\\_5%20Malbin.pdf](http://www.ncjfcj.org/publications/Spr_04_5%20Malbin.pdf) . The

Importance of Early  
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# WHAT IS TITLE IV-E?

The Adoption Assistance and Child Welfare Act of 1980 (42 U.S.C.A. § 670, et. seq.) established Title IV-E of the Social Security Act. It was enacted in response to concerns that children in foster care were spending too much time in that system. The Act was intended to protect children while in foster care, to shorten the time they stayed in foster care and to speed up permanency planning by enhancing family reunification efforts and expediting adoption when necessary.

The Act provides federal funding to assist states with the costs of maintaining children in foster care and to offset certain costs to the states arising from adoption proceedings. These programs do not apply to every child in foster care or being adopted, but they do offer a great financial benefit to the states and the affected children in those cases where children qualify for the benefits.

An important point about these programs is that they are permanently authorized, mandated and use uncapped funds. This means that the authorization to spend these funds need not be renewed every year. In addition, there is no limit on the amount of reimbursement that may be paid each year.

For qualifying children in foster care, the federal program reimburses states for the costs of food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance concerning the child and reasonable travel to the child's home for visitation. In the adoption program,

federal assistance money can be used for on-going assistance payments to adoptive parents, to pay for administrative costs associated with placing children for adoption and for training adoptive parents and professional adoption staff.

There are several specific and technical requirements which a child must satisfy in order for the state to receive reimbursement for expenses associated with that child. These requirements are the same for both the foster and adoption programs.

To qualify for either of these programs, the child must have received or been eligible to receive payment under the Temporary Aid to Needy Families program, as those requirements existed in 1996. The requirements are determined by the child's state of residence.

Next, the child must be in foster care under a voluntary agreement or because of a judicial determination either that remaining in the home would be contrary to the child's welfare or that removal is in the child's best interests. There must also be a judicial determination that reasonable efforts were made to prevent the child's removal from the home or that emergency circumstances existed.

Another requirement is that the child's placement and care must be the State's responsibility. This requirement is met if another public agency fulfills these responsibilities under an agreement with the state.

Lastly, the child must be a United States citizen or a qualified

alien. The main categories of people considered qualified aliens are those granted long term permanent resident status, or recognized as asylees or refugees.

There is another requirement that must be met in order for funding to continue. Within twelve months of the child coming into care, a court must make a judicial determination that reasonable efforts have been made to return the child home or to establish another permanent placement for the child. This finding must be repeated at least once every twelve months as long as the child is in care.

There are additional circumstances under which a child may be eligible under the Adoption Assistance Program, even if they do not qualify for foster care reimbursement. Adoption assistance may be available for children who have "special needs." A child with special needs is one who cannot or should not be returned to their parents' home, has a special condition making it reasonable to believe the child cannot be placed with adoptive parents without providing adoption assistance and who has not been able to be placed without assistance. A child may be considered to have special needs if he or she is older, a member of a minority group, or has a mental, physical or emotional disability.

Children eligible for adoption assistance also qualify for Medicaid. Medicaid eligibility and

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# NEWS BRIEFS

SAVE THE DATE!

## YOUTH AUTHORITY REFORM

As reported in the last issue of The Reader, California's Governor is taking action to reform the California Youth Authority (CYA). CYA Director, Walter Allen has said he wants to remake the agency into a model for rehabilitating young offenders. Here are 10 changes that juvenile justice experts and reform advocates have proposed:

- Make education a priority;
- Hire more teachers and substitutes;
- Give correctional counselors more training
- Increase support for parolees
- Reduce the size of living units;
- Eliminate "Time Adds" as punishment;
- Provide more specialized and intensive treatment;
- Let county officials take responsibility for some parolees;
- Lower the maximum age for jurisdiction; and
- **Abolish the Youth Authority!!!!**

For more detailed information, go to <http://www.cjcj.org/press/1>

**THE BUSH BUDGET** - The proposed federal budget substantially reduces funding for a variety of services that benefit children. As a result, the state will bear the burden either of paying to make up for the proposed cuts or of dealing with the consequences of the serious harm that will be inflicted on Oregon's children. Oregon already has over one hundred and twenty-seven thousand children living in poverty. Many are also without health insurance, not enrolled in pre-school programs or performing below grade level in school. If the President's proposed budget is enacted, it will remove almost three hundred million dollars in funding from programs affecting Oregon's children.

The cuts include support for general and special education, school improvement programs, children and family services and children's HIV/AIDS programs. Affected programs include Head Start, and assistance for child care, rent payments and home energy improvements.

The People of Oregon as a whole will carry the burden of these budget cuts. Either the state will have to finance these programs by raising taxes or cutting other programs, or everyone in the State will ultimately have to address the problems which will result from failing to address the needs of their children. As an advocate for children, JRP is very concerned about the effects that decisions made in Washington will have on Oregon's children.

Every Child Matters Education Fund

<http://www.everychildmatters.org/site/PageServer>

**ANNOUNCING  
A SPECIAL CLE EVENT  
FOR JUVENILE COURT  
PRACTITIONERS!**

## Essentials of Juvenile Court Practice

**October 17 - 18, 2005**

(during the judicial conference)

**Eugene, Oregon**

**At the Serbu Youth Campus -  
Lane County Juvenile Justice  
Center**

This two day training will focus on the essential things that lawyers need to know to practice in juvenile court representing parents and children. It is planned to be a brief but thorough overview of information lawyers need to provide quality representation to clients in juvenile court. Comprehensive materials will be provided including references to statutes, case law, administrative rules, material on child and adolescent development, mental and developmental issues, education law, child abuse reporting, drugs and alcohol, the Indian Child Welfare Act and much, much more. Lists of on-line resources will also be provided to give juvenile court attorneys access to up-to-the-minute developments in law and practice.

**Cost:** Will be kept as low as possible and is expected to be less than \$100 per participant.

**Sponsors:** This training is being organized by the Juvenile Law Training Academy and sponsored by: The Juvenile Court Improvement Project; the Oregon State Bar, Juvenile Law Section; The University of Oregon Law School, The Public Defense Services Commission and the Juvenile Rights Project, Inc.





## Upcoming Conferences, CLE's and Trainings

OCDLA's **Juvenile Law Seminar, Drugs & Alcohol: Impact and Treatment** will be **April 15 - 16, 2005** at the Hallmark Resort in Newport. The presentations in this seminar address the impact of drugs and alcohol in our clients, their ability to negotiate the legal situation they find themselves in, treatment options, and the dynamics of the attorney-client relationship. Featured faculty will include: Dr. Robert Julien, author of *A Primer of Drug Action*; Lucy Zammarelli, M.A., NCACII, Director of

Adolescent and Research Programs at Willamette Family Treatment Services in Eugene; and Ken Meneely of the OSP Crime Lab in Springfield. 8.25 general, 1 ethics and 1 professional responsibility/child abuse reporting credits. For more information go to: [www.ocdla.org](http://www.ocdla.org).

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The National Association of Counsel for Children will hold its **28th Annual Children's Law Conference** August 25 - 28, 2005 at the Renaissance

Hollywood Hotel, Los Angeles, CA. You are invited to join hundreds of California and national attorneys, judges, and other child advocates to network and learn about the latest developments in Child Welfare, Juvenile Justice, Family Law, and Policy Advocacy. For more information go to: <http://www.NACCchildlaw.org>

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The National Institute for Trial Advocacy and Hofstra University School of Law presents the Third Annual **TRAINING THE LAWYER TO REPRESENT THE WHOLE CHILD, June 13 - 18, 2005** at Hofstra University School of Law in Hempstead, New York. This intensive skills training program combines traditional advocacy skills with interdisciplinary knowledge in the areas of child welfare and juvenile justice. Designed for attorneys with a minimum of two years of experience, this training used hands-on learning by doing to develop advocacy skills. At \$295 for 35 CLE credit hours this is a bargain, but space is limited. For more information go to:

<http://www.nita.1@nd.edu>.

## SPRING TRAINING IS COMING!

The Oregon Judicial Department Juvenile Court Improvement Project, Department of Human Services and the Public Defense Services Commission invite you to attend the 2005 Spring Training on:

- Concurrent Planning in the Courtroom
- Permanency Hearings and Permanency Planning
- Attorney Representation in Dependency Cases

### Find a location near you!

- **April 28 - Portland** - Portland Community College (1:30 - 4:30 p.m.)
- **May 4 - Bend** - Central Oregon Community College (9:00 a.m. - noon)
- **May 10 - La Grande** - Eastern Oregon University (9:00 a.m. - noon)
- **May 17 - Medford** - Medford City Hall (9:00 a.m. - noon)
- **May 24 - Eugene** - Land County Juvenile Justice Ctr. (9:00 a.m. - noon)

**FREE! - 3 HOURS CLE CREDIT PENDING**

For more information, go to [www.ojd.state.or.us/osca/cpsd/courtimprovement/jcip/eductrain.htm](http://www.ojd.state.or.us/osca/cpsd/courtimprovement/jcip/eductrain.htm)



### TITLE IV-E Continued from page 7

adoption assistance payments continue until the child is 18. Thus, in any case of a foster or adoptive child who would have been eligible for TANF payments, or where the child may meet the definition of a special needs child, people working with the child should evaluate whether the child qualifies for either of these payment programs.

The statutes creating this programs are found at 42 USCA 670, et. seq.; foster payment program is at 42 usca 671 and the adoption program is at sec. 673. The regulations are 45 CFR 1356.10 to 1356.71.

### CASE LAW - Continued from page 5

the parent's failure to exercise a minimum degree of care in providing the child with proper supervision. As the Court of Appeals stated: "Not every child exposed to domestic violence is at risk of impairment". Thus, exposure to violence is not presumptively ground for removal, and in many instances removal may do more harm to the child than good."

## Effective Representation for Juveniles Prosecuted as Adults

By Julie Goss, Americorps Attorney

Youths prosecuted as adults present a unique representation experience for attorney defenders representing them. Attorneys who undertake the important task of representing these youths should be aware of the multitudes of their unique needs and be ready to jump into the complex and involved task of representing them.

Juveniles have different developmental stages and abilities which greatly affect an attorney's ability to communicate and effectively represent them. Special training and attention should be implemented for any attorney representing a youth being tried as an adult.

In light of these unique circumstances, a group of highly experienced advocates and defenders met in 1999 to form the Model Program Advisory Team. The team looked at several different defenders' program models from all around the country and compiled a list of necessary elements for a defender program to have to effectively represent youths being tried as adults.

1. Defining the Scope of Defender Representation: The advisory team agreed that representing these children requires a blend of services from both juvenile and adult court, taking into account the special circumstances presented by these children.

- A multidisciplinary team

approach to representation - Access to social workers, child psychologists, investigators and other professionals is important to best inform and aid the attorney in better understanding and representing their juvenile clients.

- Vertical Representation - Assigning one attorney or attorney team who represents the child from the beginning through the conclusion of the case.

- Early Representation - Begin representation at the earliest possible moment, if possible, be present before arrest or at arraignment.

- Early and Sustained efforts to obtain pretrial release - Bond hearings have different required information for children and attorneys should be familiar with alternative programs and probation services available to children to aid them in pretrial release.

2. Forming and Maintaining a Stable Team of Juvenile Defenders: the goal is to create a defense team of attorneys, social workers, and investigators to adequately represent these children's interests.

- Assignment Status - To be an expert defender of juveniles tried in adult court, the team advises that attorneys be exclusively assigned to represent children in delinquency and criminal cases.

Salary Parity - Staff should have salary parity with defenders of similar experience who litigate major adult felony cases.

3. Ensuring Child-focused Advocacy:

- Assessment and Communication with Child - Staff must have resources to adequately assess

the child's mental health and delinquent behaviors and have the time and motivation to build a relationship with the child client.

- Knowledge of Children's Issues and Other Substantive Defenses - Attorneys should be familiar with case law pertaining to children's issues such as credibility and ability to consent, while keeping in mind the different substantive defenses open to children including infancy, incompetence, lack of criminal intent, etc.

- Communication with a Child's Family - It is important to communicate and build a relationship with client's family.

- Means to Protect Children's Frail Egos - Staff should prepare children for the sometimes harsh, condescending, and/or critical tone of judges and court staff.

4. Supplying Public and Policymakers with Information: Advocacy for defender clients does not rest solely in their court case but additionally in informing and educating the public and policymakers about the nature of children in juvenile and adult court.

Information on Racial Disparity and Other Issues - the defender program should collect data on the children in juvenile and adult courts pertaining to race, learning disabilities, and mental health problems and make those findings known to the public.

- For further information on the Model Program Advisory Team's recommendations, please see the following, Young, Malcom  
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# ONLINE RESOURCES

**The Resource Guide for Professionals Working with Immigrant Families** is a valuable online resource (<http://www.yale.edu/21c/imresources.html>) designed to translate the current research on young immigrant families into useful information for the professionals who work with the immigrant population on a daily basis. The project has also been extended to include professional resources to share with the immigrant family, including topics such as: development, child care and other issues pertinent to immigrants.

## **Visitation/Family Access Guidelines**

The Olmsted County, Minnesota Child and Family Services Division has written and published a set of guidelines intended to enhance social workers' practice with children and families, which can be found online at:

[http://www.co.olmsted.mn.us/upload\\_dir/cs/200501guidelinesvisitation.pdf](http://www.co.olmsted.mn.us/upload_dir/cs/200501guidelinesvisitation.pdf). Among the topics covered by the guidelines are: The Importance of Family Visiting; Written Visitation and Contact Plans; Who May Participate in Visits; Frequency of Visits; Responsibilities Regarding

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C., "Providing Effective Representation for Youth Prosecuted as Adults," Bureau of Justice Assistance Bulletin (Aug. 2000).



Visits; Quality of Visits; Right to Contact; Where and When Visits Should Occur; Whether Visits Are Supervised and By Whom; Visiting Activities and Duration; and Visiting in Specific Situations.

**YOUTH LAW NEWS** - The fifth article in a series analyzing the federal Child and Family Services Reviews (CFSR), **Most States Fail to Meet the Mental Health Needs of Foster Children**, is now

available on-line in the Oct.-Dec. 2004 edition (Vol. XXV, No. 4, [www.youthlaw.org](http://www.youthlaw.org)) of the *Youth Law News*. The article details the abysmal performance of child welfare agencies in the mental health arena, as well as how we as a society have failed to meet the mental health needs of many of the children in out-of-home care. It also discusses how failure to adequately diagnose and treat children upon their entry into the out-of-home care system may mean community neglect is allowed to replace parental abuse or neglect.

Also available in this issue of the *Youth Law News* is an article entitled ***New York Raises the Bar for Interdisciplinary Practice In Family Violence Cases***. In October of 2004, New York's highest court, the Court of Appeals, issued a ground-breaking decision requiring an interdisciplinary collaboration between well-trained, thoughtful social workers and their legal counterparts. This was done in order to best resolve the competing interests and seemingly irreconcilable tensions present

during a child-protective proceeding, including the rights of a domestically victimized parent. The article further elucidates how to best balance these competing interests in order to ensure that the child's best interest is protected, while also considering the rights of the victimized parent. For more information see *Case Law Updates*, page , *Nicholson v. Scopetta*.

**MOTION TO SUPPRESS - A Motion to Suppress a Youth's Statements and Memorandum prepared by Jonah H. Paisner is now available on the JRP website. The motion challenges the waiver of Miranda Rights by a twelve year old. Go to: [www.jrplaw.org](http://www.jrplaw.org) and click on Resources, Links and Publications in the left bar.**

**FAS** - Continued from page 6. Identification of Fetal Alcohol Spectrum Disorder is available at:

[http://www.nationalcasa.org/JudgesPage/Article\\_Importance\\_early-id\\_2-05.htm](http://www.nationalcasa.org/JudgesPage/Article_Importance_early-id_2-05.htm). FASD Tip Sheets-Alberta (Canada) Children's Services - <http://www.child.gov.ab.ca/whatwedo/fas/pdf/publictips.pdf>. Fetal Alcohol Spectrum Disorders Information, Support and Communications Link: <http://www.acbr.com/fas/fasmaint.htm>

## DEATH PENALTY - Continued from page 3

consider age as a mitigating factor and that a fixed age limit might allow juveniles who are fully culpable to escape a justified punishment because of an arbitrary age rule. The Justice also advanced the view that analogies to cases concerning mentally retarded defendants are improper because those people by definition are categorically incapable of possessing the degree of culpability which justifies the death penalty. In the Justice's view, juveniles are not as uniform a group and should therefore be viewed as individuals by juries exercising their discretion.

Justice Scalia also dissented, joined by the Chief Justice and Justice Thomas. Justice Scalia argues the majority erred in finding a national consensus supporting its position because in the past Su-

numerically far stronger showing. Justice Scalia also finds weakness in the majority conclusion most juveniles lack the maturity to deserve the death penalty. He points to numerous social studies with contrary conclusions and contends the majority selected a non-representative sample of studies and information to support its position. The dissent believes it is more appropriate to determine the capacities of individual defendants than to establish a fixed age limit, that assumes that juveniles are a homogenous group lacking sufficient moral capacity to be subjected to the death penalty. Justice Scalia also asserts the majority offers no factual or legal support for its conclusion that the death penalty serves

neither to allow juries to consider the as a deterrent or retribution when imposed in juvenile cases. Finally, Justice Scalia discounts the majority's reference to the position of other countries on this issue as irrelevant to interpreting and explaining the Constitution of this Country.

### Endnotes

1. *Roper v. Simmons*, 543 U.S. \_\_\_\_ (2005)
2. ID, at p. 6, citing *Trop v. Dulles*.
3. *Atkins v. Virginia*, 536 U.S. 304.
4. *Roper*, supra at 19.
5. ID at 15.
6. ID.
7. ID at 24



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*We're on the web at:*

[www.jrplaw.org](http://www.jrplaw.org)

Juvenile Rights Project, Inc. (JRP) is a public interest law firm and advocacy organization promoting the rights and interests of our community's most vulnerable children – those involved in the child welfare and juvenile justice systems. JRP has a 29 year history of representing children individually in the Multnomah County Juvenile Court and through class action litigation. JRP also advocates for Oregon's children in the legislature and with public agencies, and offers training and technical assistance to families and to social service and legal professionals around the state who care for and work on behalf of some of Oregon's most disadvantaged children.