

# The Juvenile Law Reader

## STRATEGIES FOR IMPROVING OREGON'S CHILD WELFARE SYSTEM



Children First for Oregon (CFFO) issued a policy brief, "Strategies for Improving Oregon's Child Welfare System," in August 2005. The policy brief is available on-line at: <http://www.cffo.org/>. The following includes selected information from the document.

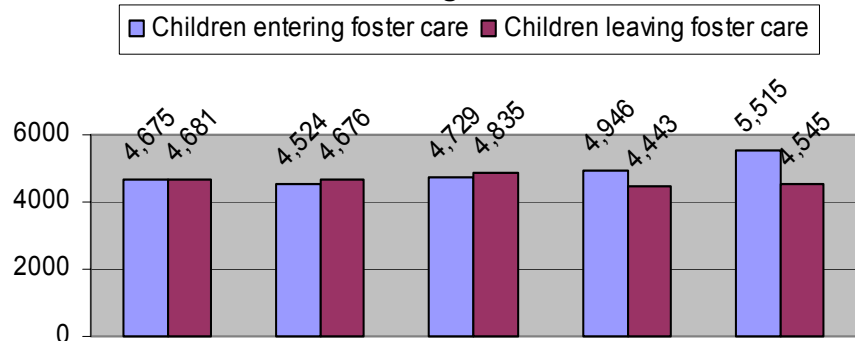
The CFFO brief reports that, in 2004, at least one child in a hundred in Oregon was a victim of child abuse or neglect (12 per 1,000 children). Oregon has a responsibility to provide adequate care the thousands of children who enter the system each year. The state is responsible for keeping children's safety, permanency and well-being.

Recent trends show that the system is under immense stress, according to CFFO, and the policy brief cautions against the dangers of ignoring the warning signs.

### A system under stress

Reports and confirmed cases of child maltreatment in Oregon have been on the rise since 2001. The increase can be partly attributed to better reporting systems; other contributing factors include substance abuse, family financial

### Children entering and leaving foster care in Oregon



stress related to higher unemployment, and decreased funding for prevention services. The Department of Human Services received 46,524 reports of suspected child abuse or neglect in 2004 (which equals over 125 calls per day). Just over half of these reports were investigated, and 10,622 children were found to be victims of child abuse and neglect. Sadly, many of these child victims suffered multiple incidents of abuse in the same year. For the second year in a row, more children are entering foster care than leaving (see chart on this page).

Despite the multiple and increasingly complex needs of families involved with child welfare, DHS staffing has declined. Caseworkers

must meet with children and families to monitor safety and progress. When caseloads are too large, the workers do not have time to adequately assess or monitor the (see p. 6)

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Upcoming Conferences, CLE's and

### Juvenile Suicide in Confinement by Mark McKechnie, M.S.W.

Lindsay Hayes and the National Center on Institutions and Alternatives (NCIA) published in 2004 the study, "Juvenile Suicide in Confinement: a National Survey." The report includes findings based upon a review of 79 of the 110 juvenile suicides that occurred in the United States in confinement between 1995 and 1999. The full report is available at:

<http://www.ncjrs.org/pdffiles1/ojjdp/grants/206354.pdf>

The report includes demographics of juvenile suicide victims. The study found that, of juvenile suicide victims in confinement: 68% were white; 80% were male; 70% were between 15 and 17 years old; and 70% were confined on non-violent offenses.

Sixty-seven percent of juvenile suicide victims were on commitment status at the time of death, however, 89% of victims in detention centers were on detained status. Unlike adult inmates, 71% of juvenile suicides occurred during typical waking hours, between 7:00 a.m. and 9:00 p.m. Deaths were evenly distributed during the year with roughly the same number of deaths occurring within the first three days of confinement as those which occurred in more than twelve months of confinement.

Most victims had histories of abuse, including: 58% who had been emotionally abused, 44% who had been physically abused and 39% who had sexual abuse histories. Histories of mental illness were identified for 74% of victims, and 54% were taking psychotropic medication at the time of death. Seventy percent had been assessed by a qualified mental health professional prior to their death, yet 44% had either never seen a qualified clinician or had not seen one within 30 days of their deaths. Despite the fact that 88% had substance abuse histories, none were under the influence of drugs or alcohol at the time of death.

In terms of management within the facilities, 75% of victims resided in single-occupancy rooms and 50% of victims were on room confinement at the time of death. Sixty-two percent had a history of room confinement. For the purposes of the study, room confinement was a behavioral intervention involving some kind of isolation or segregation and did not include those assigned single rooms for daily living. Of those on room confinement status at the time of death, 85% of those victims died during waking hours.

The NCIA identified seven critical components of effective suicide prevention policies for juvenile detention, correction and residential treatment centers, including: written policies, training, intake screening, CPR certification for staff, observation, safe housing and follow-up/mortality reviews following incidents. The researchers found in surveying different types of facilities that all seven components were in place in only: 10% of detention centers; 24% of training schools or secure facilities; 40% of reception/diagnostic centers; and 25% of residential treatment centers.

A review of facilities' mortality reviews found that only 38% had identified possible precipitating factors or triggers. (see p. 3)

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## NEWS BRIEFS

### Children's Mental Health Changes Imminent

by Mark McKechnie, M.S.W.

Oregon's public children's mental health system is poised to undergo some of the most profound changes in a decade. The Office of Mental Health and Addictions Services (OMHAS) issued an update on September 12, 2005, stating that Medicaid rates and contract amendments with Oregon's nine managed Mental Health Organizations (MHOs) have been finalized. With these changes, starting October 1<sup>st</sup>, MHOs will receive funding to pay for both existing Intensive Treatment Services (psychiatric day and residential treatment) and new Intensive Community-Based Treatment Services (ICTS).

The total amount of funding for children's mental health has not increased, but existing funds can be spent more flexibly by the MHOs than they have been when the State contracted for ITS services directly. Over 40% of OHP Children's Mental Health funds have historically been tied directly to day and residential treatment services.

OMHAS has begun certifying mental health providers to offer ICTS services to Oregon Health Plan-enrolled children and their families based upon a new Oregon Administrative Rule filed in June of this year. ICTS services include such supports as care coordination, family support, crisis response and respite care, in addition to more traditional services. ICTS may also include evidence-based models, such as Wraparound or Multi-Systemic Therapy. ICTS services will most often be delivered to children and families in the home and in community settings. MHOs will determine a managed care-enrolled child's eligibility for both ICTS and ITS

services using a standard, statewide assessment tool, the Child and Adolescent Service Intensity Instrument (CASII). OMHAS issued a document reiterating the timelines for access to these services on August 4, 2005. Timelines for initial access to services, normally commencing with a mental health assessment, range from a *maximum* wait of 24 hours in emergent situations to 14 calendar days for non-urgent appointments. These timelines have been included in the MHO contracts for a number of years.

MHOs will now be expected to make a determination of eligibility for ICTS services within three working days of a "completed referral," which includes a mental health assessment and the level of service intensity indicated by the CASII.

Once the determination is made and a child is referred to a provider of intensive community based services, the provider will have a maximum of 14 days to assign a care coordinator, convene a child and family team and complete an initial services coordination plan. Full treatment and service coordination plans are to be developed by the child and family team and completed within 30 days.

Questions about access to both ICTS and ITS can be directed to the local children's system coordinators listed for each MHO and/or county on pages 4 and 5 of this issue of the Reader. Policy documents and other information about the children's system change can be found on the DHS web site at:

<http://www.oregon.gov/DHS/mentalhealth/child-mh-soc-in-plan-grp/main.shtml>.

## RESEARCH IN BRIEF - Continued from p.2

Identified factors included: waiver to adult system or transfer to more secure facility; transfer to undesirable placement (including home); recent death of family member; failure in the program; contagion (other suicide in facility); parents threatening or failing to visit; or other factors, such as suicide pacts, loss of relationships, proximity to birthday or ridicule from peers.

Additional findings and recommendations can be found in the report, which is due to be re-published as a report from the Office of Juvenile Justice and Delinquency Prevention later this year.

# CHILDREN'S MENTAL HEALTH STATE & COUNTY CONTACTS

As reported in several previous issues of the Reader, the children's mental health system is scheduled to undergo significant changes beginning October 1, 2005. Changes in funding are intended to allow more children with significant mental and emotional disorders to be served in their homes and communities. Below are contacts at the state, county and managed mental health care organization level, should you have any questions about these changes or problems related to access or adequate care for individual children.

## Office of Mental Health and Addiction Services (OMHAS)

500 Summer St NE, E 86, Salem, OR 97301-1118  
Fax: 503-947-5547

Bill Bouska, Children's Team Leader 503-945-9717  
Bill.Bouska@state.or.us

Matthew Pearl 503-947-5524  
Matthew.Pearl@state.or.us

Ellen Pimental 503-947-5523  
Ellen.Pimental@state.or.us

Judy Rinkin, Family Partnership Spec. 503-947-5525  
Judy.Rinkin@state.or.us

Derek Wehr 503-947-5527  
Derek.Wehr@state.or.us

Kathleen Burns 503-947-5529  
Kathleen.Burns@state.or.us

Jeannine Beatrice, Children's QI Coord. 503 945-7818  
Jeannine.Beatrice@state.or.us

Kellie Skenandore 503 947-5530  
kellie.skenandore@state.or.us

## Accountable Behavioral Health Alliance (ABHA)

Karen Weiner, 310 NW 5<sup>th</sup> St, Ste 206, Corvallis, OR 97330 541-753-8291 or [Karen@abhabho.org](mailto:Karen@abhabho.org)

Kathie Stocks Benton 541 766-6844

Karen Weiner Jefferson 541-753-8291

Linda White Lincoln 541- 265-4179

Karen Weiner Deschutes 541-753-8291

Karen Weiner Crook 541-753-8291

## Clackamas County Mental Health

Mary Rumbaugh, 988 Library Ct. Oregon City, OR 97045 503-723-4946 or [maryrum@co.clackamas.or.us](mailto:maryrum@co.clackamas.or.us)

Mary Rumbaugh Clackamas 503-723-4946

## Clackamas Mental Health, continued

Todd Jacobson Hood River, Gilliam, Sherman, Wasco  
541-296-5452

## Family Care in Multnomah, Clackamas and Washington County

Jay Yedziniak, Behavioral Health Coordinator  
503-471-2116 or [jayy@familycareinc.org](mailto:jayy@familycareinc.org)

## Greater Oregon Behavioral Health Institute (GOBHI)

Yao-Hui Huang, 348 W. Adams, Burns, OR 977720  
541-573-8376 x. 155

Lynn Villus Baker 541-523-3646 x127

Robert Janz/Melissa Klepp Clatsop 503-325-5722

Cindy Beeks/Laura Martin Columbia 503-397-5211

Maxine Day Grant 541-573-8376

Bruce Bailey Harney 541-573-8376

Benjamin Motley Lake 541-947-6021

Jennifer Yturriondobeitia Malheur/Umatilla/Union  
541-889-9167, x.238

Mary Elsethagen Wheeler/Morrow 541-481-2911

Courtney Helsa Umatilla/Union 541-481-2911

Cynthia Russell Union 541-962-8853

Paul Spriggs-Flanders Wallowa 541-426-4525 x17

## Jefferson Behavioral Health (JBH)

Tom Drummond, 714 NW "A" Street, Grants Pass, OR 97526 541-955-9565 x103 or [tdrummond@jbh.org](mailto:tdrummond@jbh.org)

Linda Anders Coos 541-756-2020 x 504  
[Linda.anders@co.coos.or.us](mailto:Linda.anders@co.coos.or.us)

Maureen Graham Jackson 541-774-7923  
[grahamm@jacksoncounty.org](mailto:grahamm@jacksoncounty.org)

Donna Lipparelli Josephine 541-474-5346  
[DLIPPARELLI@co.jos.or.us](mailto:DLIPPARELLI@co.jos.or.us)

Stan Gilbert Klamath 541-883-1030  
[sgilbert@klamathyouth.org](mailto:sgilbert@klamathyouth.org)

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## CHILDREN'S MENTAL HEALTH CONTACTS - Continued

Ann Lynn, Klamath County Mental Health  
541-882-7291

Terry Sickler Douglas 541-440-3626  
[tasickle@co.douglas.or.us](mailto:tasickle@co.douglas.or.us)

Anne Rysdal Curry 541-247-4082 x 6112  
[rysdala@co.curry.or.us](mailto:rysdala@co.curry.or.us)

### Lane Care

Ted Robinson, 2411 Centennial Blvd, Eugene, OR 97401  
(541) 682-7263 or [Ted.robinson@co.lane.or.us](mailto:Ted.robinson@co.lane.or.us)

Mary Gent, Supervisor, 541-682-7585

### Mid-Valley Behavioral Care Network (MVBCN)

Kathleen Horgan

1660 Oak Street SE, Suite 203, Salem, OR 97301-6454  
503-472-4020 or [khorgan@lcsnw.org](mailto:khorgan@lcsnw.org)

Mia Clark Yamhill 503-434-7462

[Linda.anders@co.coos.or.us](mailto:Linda.anders@co.coos.or.us)

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Mike Chapman Tillamook 503-842-8201  
[mikec@tfcc.org](mailto:mikec@tfcc.org)

### Verity Integrated Behavioral Healthcare Systems (VIBHS)

Amy Baker, Multnomah County

503-988-3999 x28196 or

[Amy.baker@co.Multnomah.or.us](mailto:Amy.baker@co.Multnomah.or.us)

### Washington County Health and Human Services

Karen Eggers, 155 N 1<sup>st</sup> Ave Mail stop #70, Hillsboro, OR 97124

503-846-4541 or [Karen\\_Eggers@co.washington.or.us](mailto:Karen_Eggers@co.washington.or.us)

**For questions or concerns related to the Children's Mental Health system change, you can also contact Juvenile Rights Project social worker, Mark McKechnie. He is a member of the state children's mental health advisory committee and has worked on the system change since 2001. His e-mail is: [Mark@jrplaw.org](mailto:Mark@jrplaw.org)**

## MINORITY OVER-REPRESENTATION IN JUVENILE JUSTICE SYSTEM

A September 20, 2005, story in the Salem Statesman Journal detailed Oregon's continuing problems with minority over-representation in the juvenile justice system. Entitled "**AND JUSTICE FOR THEM?**," the article shows how, contrary to its purpose of intervening with youth early to turn them around, the juvenile justice system "has become a destination for children who live in poverty, lack family support, struggle in school and are marginalized by society. . ." Minority youth are twice as likely as non-minority youths to end up in Oregon Youth Authority (OYA) correctional facilities. According to the article, minorities are arrested more often, detained more often, formally charged in court more often, sentenced to prison more often, tried in adult court more often, and end up in the criminal justice system more often than their white peers. 30% of the 850 youth incarcerated in OYA facilities are minorities, but only 22% of Oregon's youth population are minorities.

Citing a recent report by the Juvenile Rights Project, Inc., the article also raises concerns that zero tolerance policies in schools appear to translate into zero tolerance for minority students, with African-Americans and Latinos being expelled or suspended in numbers two times greater than their percentage of the high school population. As the article concludes: "So as society struggles with the growing minority population in state prisons, the problem likely is budding in the principal's office."

## ALTERNATIVES TO DETENTION

The September 2005 JUVENILE JUSTICE BULLETIN, of the Office of Juvenile Justice and Delinquency Prevention promotes reducing juvenile courts' reliance on detention and confinement through administrative reforms and special program initiatives informed by an objective assessment of a youth's risk level. The Bulletin discusses alternatives to secure detention for juveniles including: outright release; supervised release; home detention, electronic monitoring; intensive supervision; day and evening reporting centers; skills training programs, and residential programs. The Bulletin is available at: [www.ojp.usdoj.gov](http://www.ojp.usdoj.gov).

## 9th Circuit Rules on ICWA Exclusive Jurisdiction

Tribe Lacked Exclusive Jurisdiction Over Child Custody Proceedings Involving Indian Child - *Doe v. Mann*, 45 F.3d 1038 (9<sup>th</sup> Cir. 2005).

A Native American mother challenged the state's authority to terminate her parental rights. The U.S. District Court for the Northern District of California, held for the state, and the mother appealed. The U.S. Court of Appeals for the Ninth Circuit, affirmed, holding the tribe's jurisdiction over the child dependency proceedings was not exclusive in California because of Public Law 280 (P.L. 280). Public Law 280 gives a handful of states, including Oregon, broad jurisdiction over crimes committed in Indian country and limited jurisdiction over civil actions arising in Indian country.

In Oregon, P.L. 280 covers all Indian country except the Warm Springs Reservation. To obtain jurisdiction the tribe may either be the first to file in tribal court or petition to reassume (or transfer) jurisdiction. But if the tribe does neither of these, under *Doe v. Mann* and P.L. 280, the state has dependency and termination jurisdiction even if the child and parent reside on a reservation.

Here, a child was removed from her home based on allegations of sexual abuse. At the time of the removal, the child lived on the Elem Indian Colony reservation, a federally recognized Indian tribe. Dependency proceedings were brought by the child welfare agency in local superior court and the

court terminated the mother's parental rights. Over a year later the mother filed a complaint for declaratory and injunctive relief in federal court. She challenged the superior court's jurisdiction to terminate her parental rights in Indian County. Under Section 1911 (a) of ICWA, typically tribes do have exclusive jurisdiction over child custody proceedings. However, Section 1911 (a) also contains a proviso that says, exclusive jurisdiction does not exist when jurisdiction is vested in the state by an existing federal law. This exception includes P.L. 280.

The court found Congress intended P.L. 280 to give states the authority to exercise jurisdiction over child dependency proceedings.

### CFFO: IMPROVING CHILD WELFARE SYSTEM (from p.1)

safety and well-being of children in the state's care.<sup>1</sup>

#### Caseloads aren't manageable

There has been a 28 percent increase in reports of suspected child abuse since 2001, yet the state cut positions over the last two biennia. Caseload sizes and supervisory spans in Oregon both fail to meet national standards.<sup>2</sup>

Research shows that face-to-face contact is key for keeping children safe. Oregon caseworkers are expected to handle two to three times what can reasonably be expected. The Child Welfare League of America (CWLA) recommends that a caseworker should have no more than ten active ongoing families and no more than four active initial assessments.<sup>3</sup>

#### After protection, then what?

While foster care meets the immediate safety needs of a child, the experience of foster care increases children's risk for future problems. Research has found that foster children experience greater difficulties than abused or neglected children not placed in foster care.<sup>4</sup>

#### Placement instability

Children need stability and predictability. Children who have already been removed from their homes are particularly in need of consistent care-giving. Increasing placement stability has been shown to be the most significant factor in improving mental health outcomes for foster children.<sup>5</sup> Unfortunately, 14.2 percent of children in Oregon's foster care

system experience "placement instability." This is a conservative indicator of the problem because although a single placement change can be difficult for a child, the federal government defines placement instability as moving a child two or more times (i.e., at least three foster placements) per "episode" or removal from home; only episodes lasting less than 12 months are used to determine stability rates. Currently, six Oregon counties have placement instability rates of 25 percent or higher (Baker, Coos, Curry, Harney, Jefferson and Polk). Studies have attributed the primary reason for placement changes to system or policy related issues.<sup>6</sup>

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## CFFO: IMPROVING CHILD WELFARE SYSTEM (from p.6)

In Oregon, only one-fifth of foster homes remain in service for more than 2 years.<sup>7</sup> Two primary reasons families give for leaving the foster care system are lack of support and a feeling of being undervalued and unappreciated.<sup>8</sup> A study in Oregon indicated that improved training, resources, support and communication with the child welfare system would improve foster parent retention rates.<sup>9</sup>

### ***Children First's Recommendations to Improve Oregon's Child Protection System***

#### **DECREASE CASELOAD SIZE**

Child protective services must have the resources needed to keep up with the growing number of reports of suspected abuse and reduce caseloads so child welfare workers can do the best job possible for Oregon's most vulnerable children.

#### **EXPAND AVAILABILITY OF SUBSTANCE ABUSE PREVENTION AND TREATMENT**

Abused and neglected children from substance abusing families are nearly twice as likely to be placed in foster care and are more likely to remain there longer than maltreated children from non-substance abusing families. Parents must have access to comprehensive, long-term treatment with follow-up supports for relapse prevention to be able to safely parent their children.

#### **INCREASE SUPPORTS TO FOSTER FAMILIES**

With an increasing number of

children entering foster care, recruiting and retaining an ample supply of quality foster families is more important than ever. To achieve this, it is necessary to increase supports for foster families, including improved training and peer support, accessible case management services and adequate reimbursement rates, especially for specialized care.

#### **INCREASE SUPPORTS TO FOSTER YOUTH**

Youth in foster care face many challenges, particularly in their transition to adulthood. The risks these children face can be mitigated by doing a better job of monitoring and supporting the educational needs of foster youth. The state must also improve services and supports for youth aging out of the foster care system, such as providing Oregon Health Plan coverage until former foster youth turn 21 and offering college scholarships.

<sup>1</sup> Child Welfare League of America, *CWLA Standards of Excellence for Services for Abused or Neglected Children and Their Families*, revised edition, 1999.

<sup>2</sup> *Oregon Children, Adults, and Families: Expert Review of the Safety Intervention System*, National Resource Center for Child Protective Services and Action for Child Protection (Holder Report), May 2005.

<sup>3</sup> Child Welfare League of America, *CWLA Standards of Excellence for Services for Abused or Neglected Children and Their Families*, revised edition, 1999.

<sup>4</sup> Kortenkamp, Katherine and Jennifer Ehrle Macomber, "The Well-Being of Children Involved with the Child Welfare System," Urban Institute, January 15, 2002.

<sup>5</sup> *Improving Family Foster Care: Findings from the Northwest Foster Care Alumni Study*, Casey Family Programs, March 2005.

<sup>6</sup> James, Sigrid, "Why do foster care placements disrupt? An investigation of reasons for placement change in foster care," *Social Service Review*, 78 (4), 2004.

<sup>7</sup> U.S. Department of Health and Human Services, *National Survey of Current and Former Foster Parents*, 1993.

<sup>8</sup> Gibbs, D. *Understanding Foster Parenting: Using Administrative Data to Explore Retention* (Washington, DC: U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, 2005).

<sup>9</sup> Hornby, Helaine and Dennis Zellar, *Process Redesign: A Report for the Oregon State Office of Services to Children and Families*, Hornby Zellar Associates, Sept. 1999.

## **New DHS Director**

Dr. Bruce Goldberg was appointed by Governor Ted Kulongoski to assume the post of Director of the Department of Human Services. The appointment must be confirmed by the Legislature.

Dr. Goldberg was most recently the director of the Oregon Health Policy and Research Office. He has also served as the medical director of Care Oregon, the largest managed care organization for Oregon Health Plan (OHP) clients.

Dr. Goldberg's previous experience includes running a hospital that serves the Zuni tribe in New Mexico, serving as the Columbia County, OR, public health officer and serving on the faculty in family medicine at Oregon Health and Sciences University.

Dr. Goldberg will replace Interim DHS Director, Bryan Johnston.

## RESOURCES

### Sexual Minority Youth Resources in Oregon

The Sexual Minority Youth Resource Center (SMYRC) is a resource center for gay, lesbian, bisexual, transgender, queer or questioning youth (GLBTQQ). These youth face multiple challenges in everyday life. Some statistics show that GLBTQQ youth are three times more likely to attempt suicide and two times more likely than their straight counterparts to use drugs. These youth are also 2-3 times more likely to drop out of school, and they often deal with harassment in their own homes. Nationwide approximately 30-40% of homeless youth identify as GLBTQQ. As a result, it is important that they receive counseling from those who are trained in working with at-risk youth. SMYRC offers such counseling free of charge to youth 23 and under. Other services provided by SMYRC are: individual, family, group or couples counseling by a qualified mental health professional; case management to help with housing or job placement; transportation assistance; advocacy for school and/or home. These services are offered in Multnomah County only.

SMYRC is located at 210 SE Belmont Street in Portland; 503-872-9664. Their website contains useful information about these at-risk youth, including a link to a referral form: [www.smyrc.org](http://www.smyrc.org).

Additionally, SMYRC sponsors a program for GLBTQQ youth in Washington County called The Pride Project. They can be reached at 503-260-5792 or [Austin@prideproject.org](mailto:Austin@prideproject.org).

### Teens Aging Out of Foster Care in Oregon: Updated Guide and Survival Guide

Juvenile Rights Project, Inc. has recently sought to increase awareness about the issue of teenagers who are aging out of foster care and need transition planning.

Last summer, JRP published, "Teens Aging Out of Foster Care in Oregon: A Guide to Transition Planning for Caseworkers, Judges and Advocates". Over the last year however, several legislative and research developments occurred which altered transition planning. Senate Bill 1034, passed in 2005, requires transition planning before dismissal of a ward's commitment to DHS. House Bill 3075 makes it easier for foster youth to continue attending their current school when moved across district lines. Additionally, a new study depicting the plight of former foster children was released by the Chapin Hall Center for Children at the University of Chicago. JRP recently updated the guide to reflect these changes and new information. The updated version is available at [www.jrplaw.org](http://www.jrplaw.org) under the Resources and Publications link.

JRP is also in the process of publishing a guide for teens aging out of foster care. It is entitled, "A Survival Guide for Teens Aging Out of Foster Care" and includes helpful information for youth concerning their rights in foster care, housing, tenant rights, job searching, education, health care, and much more! Look for the guide to be published and posted on our website in October.

## **New Initiative to Support Children and Families in Multnomah County: Wraparound Oregon**

A Robert Wood Johnson Foundation matching grant was awarded to Wraparound Oregon to benefit the children with the highest level of mental health need in Multnomah County. It will build an integrated system of community-based services to help children who need the most intensive and costly care from multiple agencies.

The new project is chaired by Multnomah County Circuit Court Judge Nan Waller who stated, "...I have often seen firsthand the costs of the fragmentation of our current system. Children too often fail to get the services they need, families are frustrated and the child-caring systems respond to crises, not thoughtful planning. (Continued on page 10)



## CASE LAW UPDATE

### **State of Oregon v. Donald Richard Reed**, OR, September 1, 2005

The Oregon Supreme Court reversed a Court of Appeals decision concerning a defendant's sex crime convictions because the state failed to prove the victim was incapable of consent by reason of mental defect. The defendant was charged with multiple crimes after engaging in three incidents of sexual activity with his mildly retarded daughter, including "forcible compulsion" and sex with "a person incapable of consent by reason of mental defect." The trial court rejected the defendant's motion for judgment of acquittal in its entirety when he argued that the state had essentially assumed that the victim was incapable of consent without presenting sufficient evidence. The Court of Appeals affirmed the circuit court's decision. On appeal however, the Supreme Court found the statutory definition of mentally defective did not necessarily mean a person with a mental disability is incapable of consenting to sexual activity under any circumstance. The Court said the state was required to produce affirmative evidence the victim had a mental defect that rendered her incapable of consent. Instead, the state's evidence failed to address either "directly or inferentially" the element of lack of capability to consent due to mental defect.

### **State of Oregon v. Zachary James Harris**, OR, August 18, 2005

The Oregon Supreme Court reversed a Court of Appeals decision permitting a defendant's past

juvenile adjudication to be used to enhance his criminal sentence on the basis it unconstitutionally violated the Sixth Amendment. The defendant plead guilty to six charges of burglary as part of a plea agreement which required he report an adjudication for rape when he was 12 years old. The Court noted the defendant's mandatory reporting of past juvenile adjudications on his plea petition did not constitute an admission or a knowing waiver of his jury trial right for sentencing purposes as demanded under federal case law. While the Court found this did not directly violate the jury trial right, it also determined the Sixth Amendment required existence of such adjudications be proven to a trier of fact or be admitted by a defendant for sentencing following an informed and knowing waiver.

### **State of Oregon v. Michael Spring et al**, OrApp, August 31, 2005.

The Oregon Court of Appeals upheld a Benton County Circuit Court decision that rejected the defendant's motion he not be subject to a DNA test by DHS to determine paternity. The defendant argued the requirement violated his rights under the Oregon Constitution and the Fourth and Fourteenth Amendments. The Appeals Court found the DNA test constituted a "reasonable administrative search" under the state and federal constitutions for reasons including it minimally intruded on the defendant's personal privacy, involved a significant state interest to ensure that children receive child support, had a purpose

strictly limited to establishing paternity which did not involve criminal sanctions, and had been applied identically to all who submitted a sample.

### **State of Oregon v. Broc William Roller**, OrApp, August 10, 2005.

The Oregon Court of Appeals ordered a new trial with regard to a 16-year-old boy's convictions in an Umatilla County Circuit Court for unlawful sexual penetration and first-degree sexual abuse due to evidence being erroneously admitted. The boy allegedly inserted his finger in a 14 year-old girl's vagina when she was asleep. The prosecutor rebutted the defendant's claim of belief the victim was awake by introducing evidence of an incident occurring seven years prior when the defendant had exposed himself in order to establish a pattern of thought process. However, the Court of Appeals found the evidence was improperly admitted since it was unrelated to the charged misconduct, had occurred seven years earlier, and was prejudicial to the court's verdict.

### **State of Oregon et al v. Denise Marie Sumpter**, OrApp, August 3, 2005.

The Oregon Court of Appeals reversed a Clackamas County Circuit Court decision concerning a mother's loss of her parental rights on the basis she had a right to a trial. The mother lost her parental rights after violating a stipulated judgment which terminated her rights "without further (Continued on page 10)

## U.S. Supreme Court Cases to Watch in the Coming Year

An article entitled, "[A Changing Supreme Court: Why it Matters for Kids](#)" on [connectforkids.org](#), discusses three cases which have been accepted for review this year by the United States Supreme Court. In *Schaffer v. Weast*, the parties question who bears the burden of proof when either the parents or local school districts bring a dispute about a child's IEP to an administrative officer. Previously in this case, the federal appeals court ruled that when parents are dissatisfied and raise a dispute, they hold the burden of proving the inadequacy

of the IEP.

The Court will also hear, *Ayotte v. Planned Parenthood*. It concerns a law in New Hampshire requiring parental notification at least 48 hours before an abortion may be performed on an "unemancipated minor." While the law allows exceptions for medical emergencies, it only applies if the pregnant teen's life would be endangered by the delay. The outcome of the case will undoubtedly be impacted by the retirement of Justice O'Connor and the judicial philosophies of the new members of the Court.

Finally, *Rumsfeld v. Forum of Academic and Institutional Rights (FAIR)*, concerns a challenge to the 1996 Solomon Amendment. This federal law requires colleges and other institutions of higher education to give military recruiters the same access to students and campuses that they give to other potential employers--or else lose federal funding. The 31 law schools challenging the Solomon Amendment argue that hosting military recruiters violates their anti-discrimination policies since the military excludes openly gay individuals from serving. The full article is available at: [www.connectforkids.org](#)

### CASE LAW UPDATE (Continued from pg. 9)

hearing". The Appeals Court first determined the judicial order was able to be appealed since it had effectively been made prior to rather than after the judgment. Secondly, the Appeals Court found the mother's consent was substantively illegitimate due to her and her guardian *ad litem* not knowingly, voluntarily, and intelligently waiving her right to the trial. The Court was particularly concerned during the stipulated judgment hearing by the guardian's silence and apparent lack of understanding that the mother had a right to trial at which the state would have to prove by clear and convincing evidence her parental rights should be terminated.

### WRAPAROUND OREGON (Continued from pg. 8)

No single agency or system is responsible or accountable for children and youth with complex mental health needs."

Starting in January 2006, a Wraparound Oregon team of case managers from education, DHS child welfare, Oregon Youth Authority, mental health and juvenile justice will begin to work hand-in-hand with 25 delinquent and dependent youth—all court involved—and their families. The grant will fund Parent Partners to work as mentors. Over time, the program will add more children and families. For more information about Wraparound Oregon, contact Alice Galloway at 503-692-6112.

### JRP Social Worker Recognized for Mental Health Advocacy

Mark McKechnie, M.S.W., has worked at Juvenile Rights Project since 1999. A main focus of his work has been accessing appropriate mental health care for children in the dependency and delinquency systems. The Oregon Department of Human Services' Office of Mental Health and Addictions Services will award him a 2005 Mental Health Award for Excellence on Oct. 5th. OMHAS Director Bob Nikkel's notice of the award noted, "Your dedication and outstanding contributions for youth involved in the Oregon mental health system are exemplary."

**New  
AmeriCorps  
Volunteers**

JRP welcomes new AmeriCorps members, Heidi Altmaier and Robb Wolfson. Heidi was recently admitted to the Oregon Bar. Robb will take the bar exam in February. They will be responding to some of the requests for assistance JRP receives through its HelpLine program, and both assisted with this issue of the Juvenile Law Reader.

# Essentials of Juvenile Court Practice

October 17–18, 2005 • Eugene Hilton Hotel

### Who can attend?

Juvenile law practitioners, defense lawyers and related professionals.

### What's included in the fee?

- seminar admission
- written materials (hardcopy and CD)
- continental breakfast each day
- CLE credit
- refreshments during breaks

Lunch is optional.

### Reception

The Public Defense Services of Lane County will host an open house for CLE participants on Monday evening, October 17th, at 5:30. The office is located at 1143 Oak Street in Eugene.

### Financial Assistance

Tuition has been kept very low, thanks to the contributions of the sponsors.

Public defense attorneys traveling over 100 miles roundtrip to the seminar can request mileage reimbursement from OPDS.

### Cancellations

Seminar cancellations made by October 7 will receive a refund less a \$25 cancellation fee. No-shows receive the written material and audiotapes.

### Location

The conference will be held at the Eugene Hilton Hotel, located at 66 East 6th Street in Eugene.

### Please Print

Name \_\_\_\_\_ Bar #/OBI# \_\_\_\_\_

Name for Badge \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

### Tuition and Materials

	Early Bird (By October 1)	Standard (After October 1)	=	\$	_____
Registration Fee	<input type="checkbox"/> \$50	<input type="checkbox"/> \$75	=	\$	_____

### Lunch

Monday	<input type="checkbox"/> \$10	=	\$	_____
Tuesday	<input type="checkbox"/> \$10	=	\$	_____

### OCDLA New Membership

I would like information about joining the Oregon Criminal Defenses Lawyers Assn.

### Can't Attend?—

#### Audio and Written Materials

Written materials & audio:  \$75 = \$ \_\_\_\_\_

Put my audio on:  CDs  Audiotapes

Written Material Only:  \$40 = \$ \_\_\_\_\_

### Payment

Payment must accompany registration, payable to OCDLA.

Check enclosed  Charge my VISA/MC/AMEX/Discover **TOTAL** \$ \_\_\_\_\_

Name on card

Card Number

Exp. date

Billing Zip

### How to register:

Online: [www.ocdla.org](http://www.ocdla.org)

Phone: (541) 686-8716

Fax: (541) 686-2319

Mail: 96 East Broadway, Suite 5  
Eugene, OR 97401

### Lodging at the Eugene Hilton

Call the Eugene Hilton at **1-800-937-6660** to make your room reservations at the special room rate of \$79 per night plus tax. You must mention the **Juvenile Law Training Academy** to get this rate. Be sure and reserve your room early. The Hilton cannot guarantee rooms available at this rate if occupancy unexpectedly increases.

## UPCOMING CONFERENCES, CLE's and TRAININGS

### **ESSENTIALS OF JUVENILE COURT PRACTICE FOR OREGON ATTORNEYS – OCT. 17-18, 2005**

The date for this important training is fast approaching! **Due to the high numbers of registrations the location for this CLE is being moved to the Eugene Hilton.**

Sponsors include the Juvenile Court Improvement Project, Juvenile Rights Project, Inc., the Oregon Criminal Defense Lawyers Association, Oregon State Bar Association (Juvenile Law Section), the Public Defense Services Commission and the University of Oregon Law School.

• **Focus:** The essential things lawyers need to know to practice in juvenile court representing parents and children. This two-day training is intended to be a brief, but thorough overview of the information lawyers need to provide quality representation to clients in juvenile court proceedings. Sessions will:

- ♦ *provide critical insight into the rights of minors and pertinent confidentiality issues;*
- ♦ *dissect typical dependency and delinquency cases; and*
- ♦ *cover relevant federal and state statutes and procedures.*
- ♦ Comprehensive materials will be provided, including references to

statutes, case law and administrative rules; materials on child and adolescent development, mental health, drug and alcohol issues; education law; child abuse reporting requirements; the Indian Child Welfare Act; criminal law and procedure for delinquency practitioners; the law of evidence; and much, much more!

**Dates:** October 17-18, 2005

**Location:** The Eugene Hilton.

**Registration:** Only \$50 before October 1st; \$75 after October 1<sup>st</sup>. Lunch is provided for \$10 each day, or bring your own. To register, complete the form on page 11 or contact OCDLA (ph. 541-686-8716 or online at: [www.ocdla.org](http://www.ocdla.org)).

**Two Full Days of CLE Credit for \$50! - What a Deal!**

### **EVIDENCE IN JUVENILE AND FAMILY COURT - Oct. 23 - 28, 2005**

The National Council of Juvenile and Family Court Judges is presenting this Conference designed for juvenile court judges in Reno, Nevada at the NCJFCJ Headquarters. The program will address thorny questions like: What are the evidentiary and constitutional issues in termination of parental rights cases? Which rules apply to expert witness testimony that may not be scientific? How can the judge know if

child hearsay should be admitted into evidence? What are the new rules pertaining to the admissibility of prior sexual behavior of victims and alleged perpetrators? How can the judge distinguish between character evidence as substantive proof and proof of character of a witness? What are the most recent applications of the 4th and 5th amendments to delinquency proceedings?

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

The 7th annual **Shoulder to Shoulder Conference** will be held Wednesday, November 9, 2005 at the Oregon Convention Center in Portland. Sponsored by DHS, CASA organizations, Foster Parent organizations and other groups, including JRP, this day long conference promotes multi-disciplinary training of juvenile system participants. Workshops will include: "They're all the Same Kids: Dependency to Delinquency"; Judges Panel; "Drug Endangered Children"; "Psychotropic Medications: What You Need to Know"; "Wraparound Oregon"; Legislative Panel; Meth Addicts Recovery Panel; and a closing address by Victor Vieth, JD - "Unto the Third Generation: A Call to End Child Abuse Within 120 Years". \$50 before 10/28. CLE credit. To register go to: <http://dhstraining.hr.state.or.us>



*We're on the web at:*

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

**Suite 310**  
**123 NE Third Avenue**  
Portland, Oregon 97230  
(503)232-2540

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.