JUVENILE RIGHTS PROJECT

JUVENILE LAW READER

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Turning the Corner: New Developments in the Case against the Adult Prosecution of Youth

By Mary Skjelset, Law Clerk

Introduction

In a landmark 2005 decision, the Supreme Court, apparently moved by domestic and international disdain, flatly banned the execution of offenders convicted as juveniles. [*Roper*, 2005]. *Roper v. Simmons* marked a victory for those who believe that youth should be treated as fundamentally different from adults in the justice system.

The majority opinion cited "evolving standards of decency" that mark the progress of a maturing society in confirming that the death penalty is cruel and unusual punishment for offenders under the age of eighteen. *Id.* The Court noted that the United States remained the only nation to officially endorse the sanction. *Id.* at 561.

The *Roper* decision may portend an ebb in the retributive wave that characterized American jurisprudence in the 1990's. Recognition of international moral standards and the immaturity and amenability to rehabilitation of youth, as well as concern about abuse and racism, apparently influenced the Supreme Court decision to retract the most extreme punishment against juveniles—the sanction of death.

The United States' administration of juvenile justice, however, remains a far cry from an optimal approach to juvenile delinquency for either the child or society.

The negative consequences of trying juveniles as adults become more apparent as these youth grow up in a dangerous system with long sentences and virtually no rehabilitative resources. Increased rates of recidivism and abuse within the system highlight major flaws in a system that disproportionately incarcerates minority youth. Beyond longer prison sentences, youth tried in adult courts experience secondary effects which impede many basic life activities when they return to their communities, including: ineligibility to vote, lack of child rearing skills, ineligibility for financial aid,

(Continued on page 5.)

Flex Funds: Re-investing in the individual needs of children and families in the child welfare system, by Amy Miller, Staff Attorney

In 1995, as a result of the System of Care (SOC) Settlement Agreement with Juvenile Rights Project, the National Center for Youth Law, and Legal Aid Services of Oregon, flex funds were added to the child welfare budget. SOC sought a comprehensive reform to the practice of child welfare, borrowing principles of strength/needs-based mental health practices.

Flexible funding was a key component of the agreement because it encouraged innovative, creative, and individualized services which in turn enabled family reunification.

Unfortunately, almost from its inception, SOC was underfunded. In biennium after biennium, DHS offered up flex funds as part of the required percentage cuts prior to session and again during re-balance. In addition, other programs, including many of the family-based (see p. 3)

Inside this issue:

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Blueprint for Change Regarding Youth with Mental Needs in the Juvenile Justice System

The National Center for Mental Health and Juvenile Justice has published the "Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System," by Kathleen Skowyra and Joseph Cocozza, Ph.D. (http://www.ncmhjj.com/Blueprint/pdfs/ProgramBrief_06_06.pdf).

The authors cite data on mental and substance abuse disorders among juvenile justice populations, including:

- A NCMHJJ study found over 70% of youth across three types of juvenile justice settings met the criteria for one or more mental disorders.
- An Annie E. Casey study in Louisiana (2003) which found that 75% of incarcerated youth were in custody for non-violent drug offenses.
- A 1999 survey by the National Alliance for the Mentally Ill (NAMI) which found that 36% reported having to place their children in the juvenile justice system in order to obtain mental health services for them.

The Blueprint also includes nine principles:

"1. Youth should not have to enter the juvenile justice system solely in order to access mental health services because of their mental illness.

2. Whenever possible and when matters of public policy allow, youth with mental health needs should be diverted into evidence-based mental health treatment in a community setting.

3. If diversion out of the juvenile justice system is not possible, youth should be placed in the least restrictive setting possible, with access to evidence-based treatment.

4. Information collected as part of the pre-adjudicatory mental health screen should not be used in any way that might jeopardize the legal interests of youth as defendants.

5. All mental health services provided to youth in contact with the juvenile justice system should respond to issues of gender, ethnicity, race, age, sexual orientation, socioeconomic status and faith.

6. Mental health services should meet the developmental realities of youth. Children and adolescents are not simply little adults.

7. Whenever possible, familes and/or caregivers should be partners in the development of treatment decisions and plans made for their children.

8. Multiple systems bear responsibility for these youth. While at different times, a single agency may have primary responsibility, these youth are the community's responsibility and all responses developed for those youth should be collaborative in nature, reflecting the input and involvement of the mental health, juvenile justice and other systems.

9. Services and strategies aimed at improving the identification and treatment of youth with mental health needs in the juvenile justice system should be routinely evaluated to determine their effectiveness in meeting desired goals and outcomes."

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services, were significantly reduced or eliminated during this time period even though the foster care population dramatically increased. Flex funds, which were originally intended for individualized services began to be used to backfill these lost programs. Thus, smaller amounts of money were being allocated to fill a larger need.

In August 2006, DHS declared a moratorium on flex fund expenditures because it was unable to determine how much money had been spent. Caseworkers in several counties voiced concerns that without flex funds, essential services such as transportation to visits, mental health therapy for uninsured clients, and family-based services would cease. Although the moratorium was lifted in mid-October, its adverse effects are still being felt, and it is unlikely that the remaining flex funds will be able to sustain demand for the remainder of the biennium.

Flex funds play a critical role in child well-being and family reunification. DHS and the legislature must work together to finance flex funds in an amount that meets the needs of the families in the child welfare system. Flex funds ought to be used for their intended purpose: individualized, non-slot-based, creative services which promote reunification. Adequate flexible funding is a smart investment in restoring families and enabling permanency.

For more on the System of Care, check out JRP's website, www.jrplaw.org .

JRP Legislative Priorities Being Developed for 2007, By Amy Miller

The ***Foster Children's Placement Stability and Accountability Act*** (LC 1076) will focus the attention of Oregon's Juvenile Courts and the Department of Human Services on the things that really make a difference in the lives of foster children. By paying particular attention to the most critical needs of foster children, courts can exercise more meaningful oversight of Oregon's child welfare system.

We know this much is true:

- Frequent visitation between parents and children in foster care significantly improves the chances for reunification of the family.
- Placement with relatives has been shown to improve permanence for foster children.

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DHS Announces New Names (Again)

On September 1, 2006, Oregon Department of Human Services Director, Dr. Bruce Goldberg, announced changes in the labels, if not the organization of the various divisions within DHS. His announcement:

"The top six organizational components of DHS, known variously as clusters, programs and offices, will be called divisions. This is in keeping with the standard naming conventions within state government, and will make it easier for the public and legislators to understand our organizational structure.

Service delivery areas will become districts, a term that also aligns with the rest of state government.

Cabinet members made a specific effort to select division names that maintained as much continuity as possible with existing names in order to avoid confusing staff, clients and partners. The updated names (and acronyms) will be:

- Addictions and Mental Health Division (AMH),
- Administrative Services Division (ASD),
- Children, Adults and Families Division (CAF),
- Division of Medical Assistance Programs (DMAP),
- Public Health Division (PHD),
- and Seniors and People with Disabilities Division (SPD).

Two additional changes of note are that the Office of Public Affairs has been renamed the Office of Communications, and an Office of Public Policy and Government Relations has been created with existing staff within the Director's Office.

I expect the transition to these names to occur gradually as we update Web pages, run out of old stationery and business cards, and update forms, rules, policies and training materials. During the next few months you will see both old and new names in use, and that's fine. We don't need to make these changes overnight and they should not cause us additional expense. More importantly, they are the direction we are headed, and they are in keeping with my goals of making DHS programs and activities consistent, transparent and understandable."

Case Law Updates

CRAWFORD ANALYSIS NOT APPLICABLE IN DEPENDENCY CASE

The New Mexico Supreme Court clarified the application of *Crawford v. Washington*, 541 US 36 (2004) in juvenile dependency cases in *In the matter of Pamela A.G.*, 2006 NMSC 19 (New Mexico 2006). In that case, Pamela, age 4, was removed from home and placed in foster care amid neglect allegations. While in care, she disclosed sexual abuse to her foster parent, therapist, social worker, and a Safe House investigator. The trial court admitted these hearsay statements under the catch-all exception to the hearsay rule, finding the statements spontaneous, consistent and in the language of a 4-year old. The issue in this case was whether the parents' procedural due process rights were violated when the statements were admitted.

The Court determined *Crawford* did not apply because the case was civil, there was no constitutional right to confrontation, and, as a result, due process requires only that parents be given a reasonable opportunity to confront and cross examine witnesses. Applying the *Mathews v. Eldridge,* 424 US 319 (1976), balancing test, the Court found the reasonableness requirement met because the parents received other due process safeguards such as: ability to cross examine the hearsay witnesses, proper notice, and appointed counsel. Therefore, the hearsay statements were admissible.

Ninth Circuit Dissent Argues Application of Measure 11 to Juveniles Unconstitutional

On October 2, 2006, the Ninth Circuit filed a decision in an Oregon case, in which the petitioner, Tomas Alejandro Mendez-Alcaraz, challenged the validity of the government's decision to deport (continued, p. 14)

Ten Years After Fordham: Children's Advocacy and Justice

The proceedings of the Conference on "Representing Children in Families: Children's Advocacy and Justice Ten Years after Fordham" were published in September 2006 as a special issue of the Nevada Law Journal, a publication of the William S. Boyd School of Law at UNLV.

The conference, building upon the work of a similar conference held a decade ago at Fordham Law School, brought together nearly 100 lawyers, youth advocates, professors, judges and mental health professionals.

The two-and-one-half-day conference cast a critical eye on the legal representation of children and produced recommendations, written working group reports and 30 original papers regarding the role of family and community in the representation of children; the relationships between children's advocacy and justice; interdisciplinary competencies and models for representation; and the roles of race, ethnicity, class, gender, culture, sexuality, sexual orientation and sexual identity in advocacy.

The UNLV conference recommendations create a comprehensive guide for lawyers representing children concerning what to fight for, and how to fight for it. The recommendations and other conference work also serve as a guide to child advocates, legislators and other policymakers. Nevada Law Journal's "Special Issue on Legal Representation of Children contains the proceedings of the conference, including articles on: Children's Voice and Justice: Representing Children in Families; Something's Happening Here: Children and Human Rights Jurisprudence in Two International Courts; Coming Out for Kids: Recognizing, Respecting, and Representing LGBTQ Youth; How Children's Lawyers Serve State Interests; Obtaining and Utilizing Comprehensive Forensic Evaluations: The Applicability of One Clinic's Model; Minor Discrepancies: Forging a Common Understanding of Adolescent Competence in Healthcare Decision-Making and Criminal Responsibility; How Children Are Heard in Child Protective Proceedings, in the United States and Around the World in 2005; The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications; Defending and Despairing: The Agony of Juvenile Defense; Girl Talk – Examining Racial and Gender Lines in Juvenile Justice; and Choiceless Choices: Deportation and the Parent-Child Relationship.

The Recommendations, Conference Foreword, Working Group Reports, participant and sponsor lists and other information about the conference are available at: www.rcif.law.unlv.edu.

Prosecuting Youths as Adults, continued from p. 1

unemployment and barriers to obtaining housing and public assistance.

Recognizing these effects, researchers and advocates have launched new campaigns to end automatic adult prosecution of juveniles. One such organization, the Campaign for Youth Justice (CYJ), seeks to end adult prosecution of youth by increasing awareness of negative impacts, reducing the numbers of youth prosecuted, decreasing the harmful impacts of their involvement in the system and promoting researched-based, rehabilitative programs. CYJ has gathered powerful allies: the American Correctional Association, the Children's Law Center, Human Rights Watch, the National Juvenile Justice & Delinquency Prevention Coalition, the American Civil Liberties Union and Physicians for Human Rights.

How We Got Youth into This Mess

Origins of Juvenile Court

The establishment of a separate court system for juvenile offenders dates back to 1899, emerging from a progressive movement of the late-19th Century known as the "Child Savers." [Klein, 1998]. These dedicated child advocates worked under the presumption that the status of being a youth reduced culpability and increased amenability to reform. *Id.* They sought to protect youth from the stigma of adult court though physical separation, as well as legal and semantic distinction, and to prevent future delinquency by providing youth with the rehabilitative tools to become productive members of society. *Id.* In this period, judges retained the ability to waive juveniles to adult court when boys sixteen years or older were arrested for "deeds of violence, daring holdups, carrying guns, thefts of considerable amounts, and rape." *Id.* at 377. These "judicial waivers" occurred relatively rarely.

Rise of Adult Prosecution of Juveniles

Nearly one century later, popular fervor against youth violence resulted in a shift of waiver power from that of discretionary judicial authority to mandatory statutory waiver throughout the United States. Much of the United States population perceived the treatment of juvenile offenders as soft. A 1993 poll found that seventy-three percent of American citizens supported trying juveniles in adult courts for violent offenses rather than what they perceived as "lenient juvenile courts." [Meddis, 1993].

Despite the actual decline in offenses committed by juveniles at the time, the politics of retribution—which characterized the 1990's—marched forth. Between 1992 and 1995 all but ten states enacted laws that increased and promoted the prosecution of juveniles in adult court. [Klein, 1998]. Most of these enactments called for "statutory exclusion" or "mandatory waiver," a process by which the youth would automatically be tried in adult criminal court based on the youth's age, the alleged crime, or both.

Currently, all but six states have enacted some form of statutory exclusion or mandatory waiver scheme to get youth into the adult system. Three of the six remaining states found another way to try youth as adults: Connecticut, New York and North Carolina define the age of majority as 16 or 17, which means that youth of this age are considered adults for the purposes of prosecution. [Hartney, 2006]

Oregon voters endorsed adult prosecution of youth by way of statutory exclusion when they approved Ballot Measure 11 in 1994. Measure 11 not only called for mandatory minimum sentences for certain crimes, it also expanded the jurisdiction of adult court to include 15, 16 and 17-year olds charged with these crimes. The initiative requires a judge to sentence youth convicted of these crimes to extremely long sentences—roughly six to twenty-five years—without the possibility of early release, regardless of the youth's prior history.

As could be expected, waiver schemes like Measure 11 resulted in a sharp increase in the criminal prosecution of juveniles. In Illinois—the birthplace of juvenile court—the rate of adult prosecution of juveniles skyrocketed from twenty to 170 youth per year with no preliminary consideration of their background, mitigating circumstances, and their needs. [Klein, 1998]. Currently, an estimated 250,000 youth are tried and sentenced in the adult criminal justice system each year. [Campaign for Youth Justice, 2006].

The effects of these practices go well beyond the fact that these youth languish in correctional institutions during crucial formative years. The greater community is harmed when youth do not receive the rehabilitative services that help them become functional members of society. In fact, the impact of prosecuting juveniles as adults runs counter to the purported goals of the practice.

Trying Youth as Adults Has Backfired

The political movement that resulted in so many transfers of

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youth to adult court cited many noble reasons for its cause: increased sentences for youth would deter them from subsequent criminal acts; isolation of violent youth would keep the community safe; and individual youth would benefit from learning accountability. The prosecution of youth in adult court, however, has exacerbated the very same problems it sought to correct and caused harm to the youth in the process.

Trying youths as adults has produced results contrary to the stated goal of community safety. Failure to provide juvenile offenders with reformative services increases the likelihood of recidivism. Juveniles have lower recidivism rates than adult offenders, which drop even further when they receive specialized services. [Bishop, 1996].

Youth transferred to adult court display a significantly higher rate of recidivism in a shorter time following incarceration than similarly situated non-transferred youth—even if incarcerated for longer periods of time. *Id.* Youth transferred to adult court also prove more likely to commit a subsequent felony. *Id.*

On the other hand, non-transferred youth showed a higher rate of substantially improved behavior over time. *Id.* If the end goal of the justice system is community safety, rehabilitative services should be employed to lower the likelihood of future crime.

Trying juveniles as adults has also harmed the individual youth. If the end goal of trying youth as adults involves any consideration of the youth, the system has failed. Over forty-five percent of juveniles in adult facilities reported that they had been the victim of violent attack. [Forst, 1989].

Youth in adult facilities also fall prey to sexual assaults at a rate five times that of youth in juvenile facilities. *Id.* They are twice as likely to experience beatings from staff and fifty percent more likely to be attacked with a weapon than their counterparts in youth correctional facilities. *Id.*

Perhaps due to this victimization, juveniles in adult facilities commit suicide at eight times the rate of youth who remain under juvenile court jurisdiction. *Id.*

"Trying youths as adults has produced results contrary to the stated goal of community safety."

The ill effects of an adult criminal conviction extend well beyond the physical threat in institutions, and often disadvantaging the youth offender for life:

- *Employment.* Federal and state laws allow an employer to discriminate in the hiring based on a criminal conviction without taking into account the circumstances of the crime, its relation to the job or evidence of rehabilitation.

- *Education.* Certain drug convictions render a youth ineligible for federal student financial aid, and consequently unable to access higher education.

- *Parenting.* Fifteen states have enacted laws that bar people with criminal records from becoming foster or adoptive parents.

- *Travel.* Federal law creates vast incentives for states to revoke drivers licenses based on drug offenses, limiting the ability of youth convicted in adult court to travel after release.

- *Stigma.* Thirty-three states do not permit those convicted in criminal court to expunge their records. In turn, youth are exposed to the type of public stigma that juvenile court confidentiality was designed to prevent, particularly when 28 states offer unfettered internet access to criminal records.

- *Public Housing.* Determinations of eligibility for public housing assistance grant liberal discretion to local agencies to deny assistance based on criminal convictions.

- *Public Assistance and Food Stamps.* Federal welfare law bars people convicted of felony drug crimes from accessing federal food stamps or public assistance programs for life.

Voting. In all but two states, disenfranchisement laws threaten a

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youth convict with loss of voting rights—and access to the democratic process. [Campaign for Youth Justice, *Trying Youth as Adults: Collateral Consequences*, 2006].

No individual is harmed more than the minority youth, whose representation in jails and prisons becomes more disproportionate as the punishment increases. The impediments to normal life activities listed above disproportionately affect minority youth, because they are over-represented among those youth subject to mandatory minimum laws like Measure 11.

Minority youth are more likely than whites to be arrested and

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detained for the same charges, twice as likely to be held in secure pretrial confinement, and are confined for longer periods of time than white youth. [Conward, 2001]. In 1991, African American youth constituted only fifteen percent of the general juvenile population of the United States, yet they amount to fifty-two percent of all cases waived to adult court. *Id.* More young black men languish in prison than attend college. *Id.*

New Movements/Alternatives

Long sentences in the adult system should be replaced with programs that actually succeed at preventing future crime, saving tax payer dollars and protecting youth. But how do we solve the problem of youth offenses if harsh sentences have failed? New research and movements have uncovered promising approaches to youth delinquency.

In 1996, the RAND Corporation sponsored a study of early intervention programs, which concluded that the most successful intervention created simple incentives for high-risk youth to graduate from high school. [Greenwood, 1996]. It estimated that these incentives would cost $4,000 per serious crime prevented—a cost several times lower than the current incarceration scheme. Other promising schemes included parent-training, early home visits and day care for at-risk families.

Hopefully, the country is poised to recognize failures in the current administration of juvenile justice and work toward implementing a system that benefits youth of all races and ethnicities, as well as the community at large. In *Roper v. Simmons*, the Supreme Court acknowledged that the death penalty was not a just or appropriate punishment for youth. We now must acknowledge that adult sentences of juveniles, in general, have harmed our society and our youth, and try new approaches to juvenile delinquency.

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CLEs and Conferences

Shoulder to Shoulder

When: Nov. 16

Where: Oregon Convention Center, Portland

Information on annual child welfare conference can be found at: http://dhsresources.hr.state.or.us/trainingmaterials/conferences/sts/brochure2006.pdf

Up to 5.0 Continuing Legal Education credits can be earned by attending the conference.

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SAVE THE DATE! OSB Juvenile Law Section Seminar

The Juvenile Law Section's annual seminar, "Juvenile Law 2007" will be held on February 16, 2007 at the World Forestry Center in Portland. Presentations being planned will include: "National Developments in Obtaining and Using Evidence in Dependency/Termination Cases; Pretrial Panel; Adjudication Panel; and Disposition/Review/Permanency Hearings.

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The Evolving Best Interests of the Child Standard in Third Party Custody Cases, summary by Rakeem Washington, Law Clerk

A recent article written by Portland Attorney, Mark Kramer, discusses the evolution of grandparent and psychological parent rights in conjunction with the best interests standard in Oregon after the 2000 U.S. Supreme Court case *Troxel v. Granville*.[1]

The Constitutional rights of children have been eroded somewhat by post-*Troxel* holdings. The Court held in *Troxel* that parents have a fundamental liberty interest "in the care, custody and control of their children."[2] Justice Stevens in a Troxel dissent notes that the parental liberty interest may often be at odds with a child's interest in preserving family-like bonds.[3] Furthermore, *Troxel* and ORS 109.119 state that there is a presumption that a legal parent acts in the best interest of the child, giving the parent's liberty interest leverage over a child's interest. As a result, many post-*Troxel* Oregon cases help clarify the tension between these liberty interests and provide clarification as to when this statutory presumption is overcome.

Troxel and later cases help define a biological parent's "supervening right" which limits the best interests test. In *Harrington v. Daum*, visitation given to deceased mother's boyfriend was rescinded and awarded to biological father. The court held that the best interest of the child standard cannot be solely relied upon when in contention with a fit custodial parent's decisions. [4] The legal presumption must be rebutted before the best interests standard is applied. There are five non-exclusive factors in ORS 109.119 a court may examine to determine if the legal presumption has been overcome.

1. The legal parent is unwilling or unable to care adequately for the child;
2. The petitioner or intervenor is or recently has been the child's primary caretaker;
3. Circumstances detrimental to the child exist if relief is denied;
4. The legal parent has fostered, encouraged or consented to the relationship between the child and the petitioner or intervenor; or
5. The legal parent has unreasonably denied or limited contact between the child and the petitioner or intervenor.[5]

The Court of Appeals, in two separate cases, determined when fitness is examined and when a parent may assert parental rights. In *State v. Wooden*, the grandparents failed to establish that the father would provide adequate love and care or that moving child to father's custody would cause undue harm. The court determined that a biological parent can assert parental rights if he grasps the opportunity and accepts some measure of responsibility for the child's future.[6] Additionally, in *Strome v. Strome*, grandmother failed to prove, in spite of father's past unfitness, that father would not provide adequate love and care or that custody with father would place child at undue risk of harm. Past unfitness is not determinative that a legal parent is unwilling or unable to care adequately for the child when a biological parent is not proven to be presently unfit.[7]

Through a relationship encouraged by mother, grandparents were child's primary caretakers for the past three years at the time of trial. However, the court did not award custody to the grandparents and reiterated that it is a birth parent's *present* ability to parent which is the predominate issue.[8]

In *Wurtele v. Blevins*, a custody evaluation recommending maternal grandparents as well as compelling evidence that the biological father would deny contact between the child and grandparents causing the child psychological harm convinced the court to award custody to the grandparents.[9]

While it appeared that confusion was arising in third party custody cases, the 2004 Oregon Supreme Court case *O'Donnell-Lamont and Lamont*, added clarity to the application of *Troxel* and ORS 109.119.[10] The Supreme Court determined that custody should be awarded to the maternal grandparents (mother deceased) over the biological father's objections. The Court stated, "[t]he statutory touchstone is whether the evidence at trial overcomes the presumption that a legal parent acts in the best interests of the child, not whether the evidence supports one, two, or all five of the nonexclusive factors identified in ORS 109.119(4)(b)."[11]

In the Supreme Court's *Lamont* decision, the Court specifically interpreted the "harm to child" rebuttal factor, ORS 109.119(4)(b)(C). Although the statutory language appeared to include a "may cause harm" standard, the Supreme Court adopted a limiting construction finding that "circumstances detrimental to the child" (ORS 109.119(4)(b)(c) ". . . refers to circumstances that pose a **serious present risk** of psychological, emotional, or physical harm to the child." The use of the reference to "serious present risk" is significant. The court specifically rejected an interpretation that the birth parent presumption could be overcome merely by showing that

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Congressional Update from NACC

The National Association of Counsel for Children (www.NACCchildlaw.org) provides updates on federal legislation in its quarterly publication, *The Guardian*. The following updates were included in the Summer 2006 issue.

Reauthorization of "Promoting Safe and Stable Families"

Congress is expected to reauthorize the federal "Promoting Safe and Stable Families" program (PSSF) in October 2006. This program requires states to spend a "significant portion" (which has been interpreted as at least 20%) of their funds on each of four service categories: (1) Family preservation services, (2) Family support services, (3) Time-limited family reunification services, and (4) Adoption promotion and support services.

Observers expect no major changes to the basic Promoting Safe & Stable Families program and expect a continuation of the $40 million per year mandatory funding increase. This was a small consolation included in last winter's budget reconciliation bill, which included major cuts to programs intended to benefit children.

The Senate wants the new $40 million in mandatory funds designated for a competitive grants program targeted towards children affected by parents methamphetamine abuse. House members want to designate the new $40 million in mandatory funds to ensure monthly caseworker visits with children in foster care and for states' caseworker training and other workforce strengthening efforts.

Gangs Legislation

In May 2005, the House adopted H.R. 1279, the "gangs bill". This bill includes mandatory minimums and other increased penalties, increased federalization of gang crime, and an expansion regarding prosecuting juveniles as adults in federal court. S. 155, a similar measure introduced by Senators Feinstein, Hatch, et al., has not yet been considered by the Senate Judiciary Committee in this session of Congress.

Unaccompanied Alien Children Protection Legislation

In December 2005, the Senate adopted S. 119, Sen. Feinstein's Unaccompanied Alien Child Protection Act. The bill includes a number of protections for unaccompanied alien children, including court appointment of guardians as litem. The House version (H.R. 1172) has not yet progressed through the Judiciary Committee.

Head Start Reauthorization

In May 2005, House and Senate committees on marked up bills to reauthorize the Head Start early education program for disadvantaged kids. They include some language to improve Head Start access for foster children. Prospects for Senate action on S. 1107 are dim due to a potentially controversial amendment related to faith-based organizations.

Second Chance Act (Juvenile and Adult Offender Reentry) Bill

H.R. 1704, introduced by Rep. Portman et al. on April 19, 2005, includes modest funding for efforts to successfully reintegrate adult and juvenile offenders into their communities and to reduce their recidivism rates. Such reentry planning and services would include: educational, mental health, substance abuse and family reunification.

Indian Child Protection and Family Violence Prevention

The Senate Committee on Indian Affairs approved S. 1899, a bill to amend the Indian Child Protection and Family Violence Prevention Act, in May 2006. The bill was agreed to by the full Senate, by unanimous consent, on 8/03/03. This legislation includes requirements that reports on tribal-related child abuse allegations include information on any federal, state or tribal conviction. It also requires that these reports be forwarded to and maintained by the FBI.

Information on federal legislation can be accessed through http://thomas.loc.gov/.

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OCDLA 2006 Winter Conference

The Oregon Criminal Defense Lawyer's Association will put on its 2006 Winter Conference, **Experts, Evidence and Ethics**, December 1st and 2nd at the Benson Hotel in Portland.

The conference program features several national speakers including: Dr. Steven Guertin from Lansing, Michigan, talking about "Straddle, Falls and Other Mimics of Sexual Abuse in Adult and Juvenile Cases", Dr. John Plunkett, from Hastings, Minnesota, speaking on "Infant Injury Evaluation" and "*State v. Plunkett*", and Simmie Baer, Clinical Assistant Professor from Northwestern University (continued, p. 13)

On-Line Resources and News Briefs

ABA APPROVES PARENT ATTORNEY STANDARDS

At its annual meeting in August 2006, the American Bar Association approved the Standards of Practice for Attorneys Representing Parents in Child Abuse and Neglect Cases.

The Standards promote quality representation for parents' attorneys. "Representing a parent in an abuse and neglect case is a difficult and emotional job. There are many responsibilities. These Standards are intended to help the attorney prioritize duties and manage the practice in a way that will benefit each parent on the attorney's caseload." ABA Child Law Practice, Vol 25 No 7, September 2006. To access the Standards go to www.childlawpractice.org . Select "Weblink" from the menu.

Complex Trauma

"Complex Trauma in Children and Adolescents," a white paper from the National Child Traumatic Stress Network is available at: http://www.nctsnet.org/nctsn_assets/pdfs/edu_materials/ComplexTrauma_All.pdf

The report explains:

"Complex traumatic exposure refers to children's experiences of multiple traumatic events that occur within the caregiving system – the social environment that is supposed to be the source of safety and stability in a child's life. Typically, complex trauma exposure refers to the simultaneous or sequential occurrences of child maltreatment—including emotional abuse and neglect, sexual abuse, physical abuse, and witnessing domestic violence—that are chronic and begin in early childhood. Moreover, the initial traumatic experiences (e.g., parental neglect and emotional abuse) and the resulting emotional dysregulation, loss of a safe base, loss of direction, and inability to detect or respond to danger cues, often lead to subsequent trauma exposure (e.g., physical and sexual abuse, or community violence). Complex trauma outcomes refer to the range of clinical symptomatology that appears after such exposures. Exposure to traumatic stress in early life is associated with enduring sequelae that not only incorporate, but also extend beyond, Posttraumatic Stress Disorder (PTSD). These sequelae span multiple domains of impairment and include: (a) self-regulatory, attachment, anxiety, and affective disorders in infancy and childhood; (b) addictions, aggression, social helplessness and eating disorders; (c) dissociative, somataform, cardiovascular, metabolic, and immunological disorders; (d) sexual disorders in adolescence and adulthood; and (e) revictimization."

Adoption

The National Child Welfare Resource Center for Adoption (NCWRCA) provides links to resources on the following topics: Kinship Adoption, Open Adoption, Foster Parents, Adoption Assistance, Compassion Fatigue, Concurrent Planning, Decision Making and Matching, Family Group Decision Making, Family Preparation and Assessment, Older Child Adoption, Sibling Adoption, Mediation and Post Adoption Assistance. The NCWRCA can be accessed at: http://www.nrcadoption.org/resources/publications.htm

Transition

"Moving ON" is an analysis of 57 federal programs offering resources to assist youth with serious mental health conditions in making the transition from childhood – and often, foster care – to independence. The analysis includes an overview of applicable federal programs, and fact sheets on programs on Mental Health, Substance Abuse, Health Services, Basic Supports, School-Based Programs Addressing Transition Issues, Higher Education, Independent Living for People with Disabilities, Independent Living Skills, Housing, Family Planning and Parenting Assistance, Social Services and Youth Involved with or at Risk of Involvement in Juvenile Justice. "Moving On" can be accessed on the Judge David L. Bazelon Center for Mental Health Law website: www.bazelon.org.

ABA Focuses on At Risk Youth in 2006-07

The American Bar Association will focus its resources on at-risk teens and a number of the legal issues that affect them. The recommended focuses of this initiative are: (1) Better Hearing the Voices of Youth in Court, (2) Reforming the Juvenile "Status Offender" Process, (3) Enhancing Teen Access to Safe and Appropriate Prevention and Treatment Services, (4) Assisting Youth Who Are "Aging Out" of Foster Care, (5) Better Supporting Teens Who Experience High Family Conflict, Domestic Violence in the Home, and Divorce, and (6) Improving How the Law Addresses System "Cross-Over" Youth. The complete article is available at the following web link: www.abanet.org/initiatives/youthatrisk/

Treating Juveniles Justly - Research Points the Way

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Monday, September 25, 2006

MacArthur Juvenile Justice Research Network Hosts National Leaders and Releases Issue Briefs on Latest Research

Washington, D.C. – New scientific understanding of the development of the juvenile mind and behavior is having a major impact across the country on how young people are treated by the nation's juvenile justice systems. The latest findings and their significance for the legal system were the topic of a conference organized by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice in Washington last week.

More than 200 conference attendees, representing all aspects of the juvenile justice field-- judges, prosecutors, defense attorneys, youth advocates, state system administrators, researchers-- learned details of the latest research on adolescent development and its implications for the treatment of juveniles in the justice system.

They discussed how to develop evidence-based policies and practices based on that knowledge. These conversations suggest that the field of juvenile justice today is much different than one imagined ten years ago.

The Supreme Court's 2005 decision outlawing the juvenile death penalty ran counter to a nationwide trend toward ever-harsher punishments for juveniles, and marked the end of a decade of intense scrutiny of the juvenile justice system. That period is generally seen as beginning in 1995 with the sensationally reported contention by John Dilulio and William Bennett that the United States faced a coming wave of juvenile "superpredators."

The superpredator myth became the organizing principle for a host of federal, state, and local laws designed to offer zero leniency to violent offenders, regardless of their age. While the wave of superpredators never materialized, and the theory was thoroughly debunked, laws passed in response remained and sparked serious scientific inquiry into the appropriateness and effectiveness of such harsh penalties.

"The Network set out to find scientific evidence of whether juveniles were different enough from adults to merit different treatment by the courts," said Laurence Steinberg, Director of the MacArthur Research Network. "What we found was that young offenders are significantly unlike adults in ways that matter a great deal for effective treatment, appropriate punishment, and delinquency prevention. Society needs a system that understands kids' capacities and limits, and that punishes them in developmentally appropriate ways."

Perhaps the best-known finding of the Research Network concerns the competence of juveniles to stand trial. Network research showed that a significant portion of youth under age 15 are likely unable to participate competently in their own trials owing to developmental immaturity. In response, the Network developed adjudicative competence assessment tools that are now in use in many local jurisdictions across the country.

The Network's work on criminal blameworthiness, a second topic of inquiry, was cited by Justice Kennedy in the juvenile death penalty decision. Network research shows that developmental characteristics of adolescents—including short-sightedness, impulsivity, and susceptibility to peer influence—undermine their decision-making ability. A lack of foresight, along with a tendency to pay more attention to immediate gratification than to long-term consequences, are among the factors that may lead young offenders to make bad decisions. The research was presented in a paper written by Steinberg and Network colleague Elizabeth Scott titled "Less Guilty by Reason of Adolescence", published in the *American Psychologist*.

Network researchers have also studied the factors that contribute to recidivism and desistance from crime. Preliminary findings from an ongoing study, Pathways to Desistance, indicate that many of even the most serious offenders do not become chronic criminals. The study, which is following 1,355 serious offenders aged 14 to 17 in two cities, finds that a majority of the adolescents report little or no involvement in antisocial activities three years after their involvement with the court. Moreover, a sizable group—about 15%—goes from a very high level of involvement to almost none.

"The scientific evidence stands in direct opposition to political arguments of the past," says Steinberg, "We do juveniles great harm when we adopt "lock them all up" approaches that don't account for developmental differences or anticipate juveniles' capacity for change. Fortunately,

(continued, page 13)

OYA REPORTS TO LEGISLATURE ON EVIDENCE BASED PRACTICES

On September 20, 2006, the Oregon Youth Authority (OYA) reported to the Senate and House Judiciary Committee on its compliance with SB267, codified at ORS 182.515-525. SB 267 requires improved utilization of treatment interventions that are supported by research as evidence-based practices.

The OYA implementation of SB 267 applies to treatment in close custody, to contracted community residential facilities and to county programs funded through OYA. These programs were assessed for the degree to which they adhere to the "principles of effective intervention" when providing one or more of the thirteen treatments identified as being susceptible to a best practices approach.

Only 38% of the close custody facility units, as compared to 74% of community based programs, qualify as "evidence-based".

The list of subject treatments include: cognitive behavior treatment; behavior modification; sex offender treatment; fire setter treatment; drug and alcohol treatment; violent offender treatment; mental health treatment; family counseling; skill building; parent training; culturally specific treatment; gang intervention treatment and gender specific treatment.

OYA reported on their activities and progress in increasing the effectiveness of the services provided through implementation of evidence-based interventions. Among other activities, OYA has implemented a standardized Risk/Needs Assessment and case planning system, evidence-based treatment curricula in close custody facilities that have been shown to correlate to reducing the risk to recidivate, and OYA probation and parole has implemented evidence-based treatment programs such as Functional Family Therapy (FFT), Multi-Systemic Treatment (MST), and Motivational Interviewing (MI).

Data from these assessments show progress in implementing evidence-based services. Of interest to practitioners is the data showing that only 38% of the close custody facility units, as compared to 74% of community based programs, qualify as "evidence-based", thus providing data to support probation with community services rather than a close custody commitment.

OYA also assessed the cost-effectiveness of these programs, which the agency defined as determining whether the costs of "evidence-based" practices will reduce recidivism (future offenses) and thereby avoid future costs to crime victims and the criminal justice system. To do this part of the analysis, OYA utilized results from extensive cost-effectiveness studies by the Washington State Institute for Public Policy (WSIPP), and, as a result, has taken several actions to implement the principles identified by WSIPP as leading to the greatest return on investment in juvenile corrections.

In addition to adopting several research based and cost effective treatment strategies, and establishing a curriculum review committee, OYA has begun to shift away from ineffective treatment practices. One example of this is the re-tooling of the Tillamook Youth Accountability Camp, a military-style boot camp, which has been re-named the Tillamook Youth Correctional Facility and now provides cognitive behavioral treatment to low and moderate-risk sex offenders.

For a full copy of the progress report or questions about OYA implementation of SB 267 contact Karen Andall, at Karen.Andall@state.or.us.

On-Line Resources, continued from p. 10.

Adoption

The National Child Welfare Resource Center for Adoptions has an abundant amount of information on the following topics: Kinship Adoption, Open Adoption, Foster Parents, Adoption Assistance, Compassion Fatigue, Concurrent Planning, Decision Making and Matching, Family Group Decision Making, Family Preparation and Assessments, Older Child Adoption, Sibling Adoption, Mediation, and Post Adoption Assistance. See: http://www.nrcadoption.org/resources/publications.htm

Therapeutic Foster Care

The Judge David L. Bazelon Center for Mental Health Law published a report on the components of therapeutic foster care. This report explains therapeutic foster care and reviews its goals, as well as, provides a chart that describes components of therapeutic foster care, providers of the identified services, and federal statutory authorization. The full report can be viewed online at: http://www.bazelon.org/issues/children/incourt/

Best Interests, continued from p. 8

custody to the legal parent "may" cause harm. *Id.* at 112-113. While helpful, this does not end the analysis. Although the harm may occur in the future, arguably an expert can testify that a transfer of custody to a birth parent presents a serious present risk of harm even though the actual harm may occur in the future. Regardless of how one articulates the standard, it is clear from *Lamont* and *Van Driesche* that expert testimony will be required to demonstrate harm to the child and likely be necessary in order to demonstrate deficits or incapacity of a parent.

The trend in recent cases is to focus on the current, not past, parenting strengths and weaknesses of the birth parent, particularly where the birth parent has made a substantial effort at rehabilitation or recovery. Recent cases also suggest that stability with a third-party and the risk of trauma due to a change of custody may not be sufficient to meet the "serious present risk of harm" standard. This is particularly so where the third-party and birth parent are cooperating and a reasonable transition plan can be developed.

Courts across the country are only beginning to recognize that children have independent constitutional rights. The constitutional rights of children are largely ignored except as they are considered on a secondary level,[12] and it still appears that the best interests of the child analysis is subordinate to a parent's custodial rights. ● **Source**: Mark Kramer, *Grandparent and Psychological Parent Rights in Oregon After Troxel* (July 2006).

Notes:

[1]M. Kramer, *Grandparent and Psychological Parent Rights in Oregon after Troxel* (July 2006).

[2]*Troxel v. Granville*, 530 U.S. 57 at 66 (2000).

[3]Kramer (2006).

[4] *Harrington v. Daum*, 172 Or App 188 (2001).

[5] Or. Rev. Stat. § 109.119(4)(b) (2005).

[6] *State v. Wooden*, 184 Or App 537 (2002).

[7] *Strome v. Strome*, 185 Or App 525 (2003).

[8] *Sears v. Sears and Boswell*, 190 Or App 483 (2003).

[9] *Wurtele v. Blevins*, 192 Or App 131 (2004).

[10] Kramer (2006).

[11] *O'Donnell-Lamont and Lamont*, 337 Or 86 (2004).

[12] Kramer (2006).

Research Points the Way, continued from p. 11

decision-makers at the state level are following the research and creating juvenile justice systems that both protect the public, and care for the wellbeing of youthful offenders."

To further the development of evidence-based policies and practices, the ADJJ has released a series of issue briefs covering the latest scientific research on competence to stand trial, criminal blameworthiness, juvenile psychopathy, transfer of juveniles into criminal court, and findings from the Pathways to Desistance study.

These briefs are available for download at **www.adjj.org**.

The Research Network on Adolescent Development and Juvenile Justice is an interdisciplinary, multiinstitutional program focused on building a foundation of sound science and legal scholarship to support reform of the juvenile justice system. The network conducts research, disseminates the resulting knowledge to professionals and the public, and works to improve decision-making and to prepare the way for the next generation of juvenile justice reform.

For more information, contact:

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CLEs/Conferences, Continued from p. 9

School of Law, Chicago, speaking on "*Roper v. Simmons*: Implications for Adult and Juvenile Cases".

Other topics include: Preparing a Client for a Professional Evaluation; Picking the Expert, Directing and Preparing Him, Attacking Him"; "*Sistrunk*: When the Expert Lies – Challenging the State's Expert", and "*Holmes v. South Carolina*: Error Without an Expert – Getting Funding and Fighting Its Denial". To register online go to:

http://www.ocdla.org/seminars/seminarregister.cfm?ID=80

Visitation: Myths and Realities

"The truth about best practice for kids in foster care"

When: Nov. 3, 2006 in Portland

What: Speaker Norma Ginther on best practices in the area of visitation and attachment. (see p. 15)

Appellate Mediation Pilot Project — TPR Cases

As a result of a workgroup established by the Oregon Supreme Court and the Court of Appeals to improve appeals disposition times in juvenile dependency cases, a pilot project will commence later this month. The pilot project, the Appellate Mediation Program, is designed to promote early resolution of appeals involving children in foster care waiting for permanent placements. The Appellate Mediation Program will be screening all notices of appeal for termination of parental rights cases for referral to mediation.

Even though Oregon has expedited termination of parental rights appeals for over 15 years, it can take a year or more for parents or the Department of Human Services to exhaust their appeal rights. In the meantime, children wait to be adopted or returned to their parents. The goals of the mediation pilot are to resolve termination appeals as early as possible, facilitate early communication between trial and appellate counsel, provide parents with a thorough and accurate description of the appellate process and potential remedies at the appellate level, respectfully engage parents in discussion about alternate resolutions to their appeals, and use developments that have occurred post trial to resolve existing appeals.

Termination cases will be mediated by trial and appellate judges experienced in juvenile law and by mediators experienced in cooperative open adoption mediation. Participating in the mediation will be parties (including the children if appropriate), CASA where appointed, trial and appellate counsel, and the DHS caseworker. Proposed adoptive families may participate at the request and consent of the parties. Trial counsel's assessment of the case will be critical to successful resolution of the appeal.

The Office of Public Defense Services will provide trial attorneys additional compensation for participation in appellate mediation.

GRANDMA FIGHTS DHS AND WINS!

The September 3, 2006, *The Oregonian* carried a page one story about Rose Lucas, the grandmother of a child removed from her parent in May of 2004 and placed in stranger foster care rather than with her grandmother, who had requested custody of her.

Ms. Lucas went to the highest levels of state government to seek recourse, including testifying about her granddaughter's case before the House State and Federal Affairs Committee.

Ms. Lucas' advocacy led legislators to conduct an unusual sensitive case review of child welfare files. DHS Director, DR. Bruce Goldberg and Ramona Foley, Assistant Director for Children, Adults and Families Division of DHS were critical of the decisions made by the Lincoln County caseworker.

Ms. Lucas' granddaughter has now been returned to her mother and reunited with the rest of her family. As a result of the sensitive case review, DHS has "launched an internal review of caseworker assignment and grievance procedures."

Legislators are drafting several bipartisan bills, including a requirement that grandparents and other relatives be considered when children are removed from their parents. For the full story see: *The Oregonian*, September 3, 2006 "Tenacious grandma beats DHS."

Case Law, Continued from p. 4

him based on an offense he committed when he was just sixteen. *Mendez-Alcaraz v. Gonzales*, 2006 WL 2796499 (9th Cir.). Although on first blush the case seems strictly a matter of immigration law, a powerful dissent written by Judge Warren Ferguson exposes an underlying due process issue: the application of Oregon's Measure 11 procedures and sanctions to youth without any individualized determination of the suitability of the adult criminal forum.

In 1995, Tomas Mendez, then a sixteen-year-old boy, engaged in unlawful sexual behavior with an eleven-year-old girl whom he believed to be older. A month after the encounter, the girl reported the incident to the police. Charged with three Measure 11 offenses, Mendez was automatically transferred to adult court for prosecution. He pleaded guilty to one count of sex abuse, and received the mandatory minimum sentence of 75 month in prison and 120 months of post-prison supervision. (see next pg.)

Case Law, continued from p. 14

A pre-sentence investigation report performed at the time indicated that, had Mendez been tried in juvenile court, they would have recommended a probationary sentence with out-patient treatment in the community. Instead, Mendez spent six years in correctional institutions. Seven months after his release from prison, the Immigration and Naturalization Service (INS) moved to deport Mendez based solely on his one conviction.

The decision of the panel, which included Circuit Judges Andrew J. Kleinfeld and Susan P. Graber, in addition to Judge Ferguson, affirmed the decision of the immigration court (the BIA) on procedural grounds: Mendez had not filed his appeal of the removal order in a timely fashion. The dissent, however, criticized not only the INS deportation order but also the original transfer of Mendez to adult criminal court via the Measure 11 statute. Judge Ferguson argued that automatic waiver of a juvenile to adult court violated Fourteenth Amendment Due Process protections guaranteed by the United States Constitution, because it is a departure from the traditional aims of juvenile court, imposing harsher penalties on youth who lack the competency to understand the criminal system, have reduced culpability for their offenses and show amenability to treatment.

Longstanding precedent, statutory analysis and policy considerations were mustered by the dissent to support the contention that Measure 11 automatic waiver to adult court violates the due process rights of youth. The U.S. Supreme court held in 1966 that waiver to adult court proved "of such tremendous consequence" as to warrant a hearing. *Kent v. United States*, 383 U.S. 541, 554 (1966). The Oregon Supreme Court followed suit three years later in holding that Constitutional due process requires "states to accord a hearing before a juvenile can be remanded to the adult criminal process." *Bouge v. Reed*, 459 P.2d 869, 913 (Or. 1969). The Oregon Legislature codified this case law by requiring that a neutral fact-finder must make a determination as to whether the youth was mature enough to appreciate the seriousness of his conduct, and whether transfer to adult court would best serve the interests of the youth and society. Failure to perform an individualized assessment has resulted in unconscionable outcomes for youth, like Mendez, who could have benefited greatly from treatment, and for Oregon taxpayers, who have spent large amounts of money to incarcerate youth with little likelihood of recidivism.

Judge Ferguson believes that in order for Oregon law to comport with due process requirements, an individualized assessment of youth and community needs by a juvenile court judge must precede a decision to transfer youth to adult court.

The decision is available on line at: http://www.ca9.uscourts.gov/ca9/newopinions.nsf/A5CB14182027A465882571FB00555995/$file/0474268.pdf?openelement

SUPREME COURT ADDRESSES TESTIMONIAL NATURE OF STATEMENTS

In *Davis v. Washington*, 125 S Ct 2266 (2006), the Court considered when statements made to law enforcement during a 911 call or at a crime scene are testimonial and therefore subject to the Sixth Amendment's Confrontation Clause. The Court heard two cases, *Davis v. Washington*, 154 Wash 2d 291(2005) and *Hammon v. Indiana*, 829 NE 2d (Ind 2005).

In *Davis*, the relevant statements were made during a 911 call while the caller was involved in an ongoing domestic disturbance with her former boyfriend. The Court distinguished *Davis* from *Crawford* and found Davis' statements to be non-testimonial and therefore not subject to the Confrontation Clause. The statements were non-testimonial because the speaker's primary purpose was to enable police assistance to meet an ongoing emergency.

In *Hammon*, the relevant statements were made after the police arrived to investigate a domestic disturbance between husband and wife. At the time the wife was questioned by the police, there was no emergency in progress and the interrogation was part of an investigation into possible past criminal conduct by the husband. The wife's statements were testimonial and subject to the Confrontation Clause. ●

CLEs, continued from p. 13

The registration is closed, but requests for materials should be directed to: Elizabeth Whitney Barnes, J.D., Model Court Liaison, National Council of Juvenile and Family Court Judges, via email at ebarnes@ncjfcj.org .

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Save the Date: U of O Conference on Teens Aging out of State Programs

2007 Child Advocacy Project Conference: Nurturing Teens Aging Out of State Programs, April 6 - 7, 2007, at the Univ. of Oregon Law School.

JRP Legislative Priorities, continued from p. 3

- School stability improves academic performance and increases the rates of high school graduation.
- Frequent caseworker contact with children results in better outcomes overall.

The proposed legislative package would:

- **increase the chances foster children will safely reunite with family** by focusing attention on parent/child visitation, which has been shown to have a direct and positive impact on family reunification.
- **improve the likelihood that children who must be removed from their parents are placed with relatives**, rather than in stranger foster care by requiring greater DHS efforts to make these placements and by providing the same support to relative foster parents that other foster parents currently receive. Placement with relatives has been found to significantly improve permanency outcomes.
- **increase the chances that sibling groups will be placed together** by focusing DHS efforts and court attention to this issue.
- **better ensure that children with special needs are in the most appropriate placements** and receiving other services to meet their needs by expanding the court's authority to determine the most appropriate placements for children in DHS custody and add the county developmental disabilities program as a party to the juvenile case.
- **improve stability for children in foster care** by requiring DHS to report regularly to the juvenile court the number of placements, schools, visits with family, and visits with caseworker the child has had.

Educational Stability & Success

The educational outcomes for foster children are grim. A 2005 Casey Family Foundation Study of youth in Oregon and Washington found that:

- 65% of former foster youth changed schools seven or more times.
- 30.2% experienced 10 or more school changes.
- 28.5% of youth in the Casey study who completed high school did so with a GED (compared to 5% of all youth).
- Only 2.7% of former foster youth aged 25 or older had completed a bachelor's or higher degree (compared to 27.5% of the general population).

Ensuring school stability and providing an opportunity for higher education are two ways to improve outcomes. JRP focuses on these two outcomes in its 2007 legislative priorities.

The legislature acted to promote school stability for children in foster care in the last biennium with House Bill 3075. The bill enables children to remain in the same school when they enter substitute care or change foster homes. The funding for the transportation necessary to maintain school stability comes from SOC flex funds.

The problem is that flex funds are designed to address creative and individualized needs of children and families, not to pay for routine, predictable services. A separate appropriation to cover transportation costs for school stability is needed so that flex funds may be used for their intended purpose. (For more on flex funds, see Flex Funds: Re-investing in the individual needs of children and families in the child welfare system, p. 1.)

Many foster youth lack the financial support, as well as the emotional support and encouragement it takes to apply to college, persevere and graduate. Youth may not have a family home to return to on weekends, visit during school breaks or merely a place to get a free meal or do a load of laundry. The legislature recognized the need to support foster youth in college when it established the Former Foster Child Scholarship in 2001. In the first year of the program, 30 youth received scholarships averaging $5000. The funding for the scholarship was discontinued in the last biennium, and foster youth were forced to either find other ways to pay for college or, in many cases, just not attend. Restoring the Former Foster Child Scholarship gives foster youth an opportunity for higher education by providing greatly needed financial support.

JRP Juvenile Rights PROJECT

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