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Oregon Way Off the M.A.R.C. for Foster Care Reimbursement

Summary by Mark McKechnie

Children's Rights, a national advocacy group for abused and neglected children based in New York, recently released the report, "Hitting the MARC: Establishing Foster Care Minimum Adequate Rates for Children." The report, a collaboration of Children's Rights, the National Foster Parent Association and the University of Maryland School of Social Work, compares the cost of meeting a child's basic needs to the amount foster parents receive for basic maintenance in all 50 states.

According to the report: "Low rates can negatively affect foster parent recruitment and retention, which can set off a chain reaction of long-term life consequences for children. When a child welfare system cannot maintain an adequate pool of foster homes, children may be more likely to be placed in institutional facilities, which are costly, or shuttled from placement to placement, an unstable situation which harms children and can decrease their chances of growing up in a permanent family."

The report uses U.S. Department of Agriculture figures to calculate the amount needed to meet a child's basic needs for food, clothing, shelter and school supplies, as well as personal incidentals and liability and property insurance.

The report calculates the minimum amount to care for a 2 year-old child in foster care is $642 per month. The board rate the Oregon Department of Human Services currently offers foster parents caring for 2 year-old children is $387 per month. Thus, the basic foster care reimbursement rate for young children would have to be increased by 66% in order to cover the costs foster parent incur to provide basic care.

The report notes that the minimum maintenance amount includes the transportation involved in providing basic care, but it does not cover the additional costs foster parents often incur when they transport

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Loan Forgiveness?

Analysis by Amy Miller

The College Cost Reduction and Access Act of 2007 was signed into law on September 27, 2007. The Act's two provisions are intended to increase access to higher education as well as encourage students to pursue long-term careers in public service. The key provisions of the Act are section 203, income based loan repayment, and section 401, loan forgiveness for public service employees. Unfortunately, the majority of the Act does not take effect until July 1, 2009.

Income Based Loan Repayment (IBR)

Section 203, which becomes effective on July 1, 2009, enables borrowers to limit educational debt repayments based on the borrower's income. It does not require the borrower to be engaged in a public service career. The purpose of the provision is to help all high-debt/low-income borrowers (continued, p. 8)

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Juvenile Law Reader
is published by Juvenile Rights Project, Inc.
and Edited by Julie H. McFarlane and Mark McKechnie

Case Law Updates

Summaries by Heather Clark and Julie Sutton, Staff Attorneys

State v. J.D. (Court of Appeals July 25, 2007)

The Court of Appeals reversed a finding that a youth was within the jurisdiction of the court on a delinquency matter. The court found that the trial court improperly denied the youth's motion to suppress on the basis of an illegal search and seizure. The State argued that the officer could take the youth into protective custody pursuant to a truancy statute, and that the search of the youth was therefore pursuant to the city inventory policy prior to taking someone into (protective) custody.

The city code in question cited to 419B.150 regarding times when officers could take youth into protective custody. That statute provides that a youth may be taken into protective custody when a youth's conditions or surroundings reasonably appear to jeopardize the child's welfare. The officer testified at the motion that the youth was not in school and was in an area of town with heavy drug traffic. The officer further testified that it is possible for youth in that area to run into each other and get into some sort of trouble. The officer did not testify to anything about the youth in particular that made him appear to be in jeopardy.

The Court of Appeals found that the testimony of the officer was too general, and did not indicate a risk of harm particular to this youth. The court went further to state that merely being in a particular neighborhood might be enough to warrant protective custody under extreme circumstances, but those cases would be very rare. It noted that the statute was not set up to allow officers to take youth into protective custody merely for living in a bad neighborhood. A general, indefinite showing of risk is not enough to allow for protective custody.

State v. Simons

The Court of Appeals reversed the convictions for several sexual crimes. The Court of Appeals found that, although Defendant had confessed, there was no other corroborating evidence to establish that a crime had occurred, as required by ORS 136.425 and the concept of corpus delicti.

Defendant confessed, under police interrogation, to committing sexual acts with several patients he cared for in the Alzheimer's Unit of an adult care facility. None of the alleged victims were able to testify about the acts. The only evidence the court had, beyond the defendant's confession, were the facts established at trial that he worked at the place where the alleged victims lived and had private, unsupervised access to them, that his duties included bathing and dressing the alleged victims, and that he occasionally stayed the night at the facility when not working.

While the court acknowledges that these facts could lead a factfinder to infer that the defendant had ample opportunity to commit a crime, the court cited ***State v. Manzella*** for the proposition that mere

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Immigration Issues for Juvenile Court-Involved Children

By Siovhan Sheridan-Ayala, Immigrant Law Group, LLP

As Congress currently debates monumental changes in immigration law, there are certain laws that already exist that affect immigrant children in Oregon. In assessing the situation of non-citizen children that come into contact with the dependency or delinquency process, one must consider the child's immigration status. Immigration status has far-reaching effects for the life plan of a child, including stability of housing, school, family support, work opportunities, and the likelihood that the child will be deported. Moreover, many immigration benefits are time-sensitive, and if eligibility is missed, there may be no future opportunities for the child to immigrate lawfully to the U.S.

This article briefly outlines a number of immigration benefits that might assist a child who comes into contact with the juvenile court process.

Immigration Schema

The Immigration and Nationality Act (INA) separates citizens from aliens. An "alien" is defined as any person who is not a citizen or national of the U.S.[1] It includes those here lawfully and those who are in unlawful status. Persons in unlawful status could include someone who overstayed a tourist visa, someone who violated the terms of their visa, or someone who entered the U.S. unlawfully.

Lawful aliens include those either in temporary non-immigrant status (here on a work or tourist visa), or those who are in semi-permanent status, i.e. lawful permanent residents (LPRs), also known as greencard holders. Lawful aliens may still be deported or lose their status for a variety of reasons, including for committing a crime, committing fraud on an immigration application, or abandoning their status.[2]

The definition of a child under immigration law is an unmarried person under 21.[3] Children can include stepchildren or adopted children with certain restrictions. A child's status often depends on his or her parents' status. Parents can petition for their children if they have status, or the child could be a "derivative beneficiarie" on their parent's application. In certain circumstances, parents can also be derivative beneficiaries on their child's application. In both cases, the derivative's status depends on the primary applicant's status. An example of derivative status would be a child whose parent was granted asylum status, and the child was granted that status through their parent's application. When this is the case, a child's status may also be jeopardized if the parent loses their status. A child's lawful or unlawful immigration status will most likely be affected by any contact with the juvenile court.

Citizenship

It is not always clear whether a child is a U.S. citizen or not. Citizenship is either established by birthplace, derived from a parent or later acquired. Children born in the U.S. or certain U.S. territories are automatically citizens. Children born abroad may derive citizenship through a parent or grandparent. Factors affecting derivation include the year the child was born, when and where their grandparents or parents were born, the length of residence of their grandparent or parent in the U.S., etc.[4] On the other hand, acquiring citizenship happens when someone applies to become a naturalized U.S. citizen. One must be 18 in order to apply for naturalization; however, children can also acquire citizenship through their parent. Lastly, children who immigrate as LPRs through citizen parents become citizens immediately upon their entry to the United States through the Child Citizenship Act.[5]

Special Immigrant Juvenile Status

Special Immigrant Juvenile Status (SIJS) is a pathway created under immigration law that allows abused, abandoned or neglected children to become lawful permanent residents. To qualify for this visa, a child must have an order by a state juvenile, delinquency or probate court declaring the child eligible for "long term foster care based on abuse, abandonment or neglect."[6] This means that family reunification is no longer an option. The juvenile court must make findings that the child suffered abuse, abandonment or neglect and that it in the child's best interest to remain in the U.S. A child in delinquency proceedings can apply for SIJS just like a child in dependency proceedings. Even if a juvenile court makes these findings, an independent evaluation must be made about whether the child is admissible to the U.S. based on the grounds of inadmissibility in INA §212. If the child appears to be eligible for admission and possesses the correct juvenile court order, then an application for residency can be made to the Immigration agency (Citizenship and Immigration Services/CIS).

A child does not need to physically be in long-term foster care for a court to make the required SIJ findings or to apply for residency. For example,
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Foster Care, continued from p. 1

children to family visits, attend court hearings or other activities particular to the care of foster children.

The minimum maintenance amount also does not cover the costs of daycare, which are substantial.

Oregon lags furthest behind in its reimbursement rates for elementary-school aged children. The minimum cost to care for a 9 year-old child in foster care, according to the report is $735 per month, while Oregon provides only $402 towards basic care. An 83% increase in this rate would be necessary for foster parents to recoup the costs of providing basic care.

Oregon is somewhat less delinquent when it comes to reimbursing the costs of caring for teens. According to the group, $806 a month is the minimum amount to provide basic care for a 16 year-old in foster care, and Oregon provides $497 per month. This rate would require only a 62% increase for the state to meet its minimum obligations.

According to the report, five states would have to raise their foster care rates by more than 100% to meet the M.A.R.C. Oregon is one of nine states listed that would need to increase minimum foster care board rates by 76% or more for at least one age group in order to meet the M.A.R.C.

Oregon DHS officials Ramona Foley and Kevin George served on a committee advising the authors of the report.

The 32-page executive summary is available on-line at: http://www.childrensrights.org/pdfs/MARC/MARCSummaryReport.pdf

New Legislation Regarding K-12 Education

Summary by Mark McKechnie, MSW

The 2007 Legislature enacted dozens of new statutes related to K-12 public education. Here is a selection of the statutes that could impact juvenile court-involved children and youth.

HB 2848 adds modified diplomas and alternative certificates to state statute. The new law requires public school districts and public charter schools to offer these to students who meet state standards starting in the 2007-08 school year. Modified diplomas are intended for students with disabilities or other students who are not able to meet the academic requirements necessary to earn a high school diploma. Students who meet the requirements to be set for modified diplomas and alternative certificates by the State Board of Education are entitled under the law to participate in high school graduation ceremonies.

School districts are required to enroll students up to age 21 who require special education services, even after the student has received a modified diploma. The law also requires schools to provide to students on Individualized Education Programs (IEPs) a summary of their performance when they complete high school. The bill passed unanimously in both the House and Senate and became law on July 1, 2007.

SB 379 creates new requirements for schools to provide training on child abuse reporting and child abuse prevention. The new law, which went into effect June 20, 2007, requires school districts to provide training to school employees each year on the "prevention and identification of child abuse" and on the obligations of school employees under 419B.005 to 419B.050. Further, school districts are required to make a similar, but separate, training available to parents. Finally, school districts are now required to provide training to children who attend schools in the district on the prevention of child abuse.

SB 215 amends statutes regarding the enrollment of children in public schools. The existing statute, ORS 339.133, refers to a child's residency with a parent, guardian or person in a parental relationship. The bill added a definition for "persons with a parental relationship" as an adult who has physical custody of a child or resides in the same household as the child, interacts with the child daily, provides the child with food, clothing, shelter and incidental necessaries and provides the child with necessary care, education and discipline." The bill did not modify changes enacted to promote the school stability of children in foster care (HB 3075) in 2005. The bill also clarifies that schools are permitted, but not required, to enroll students who are not eligible for special education and are between the ages of 19 and 21. Districts are required to enroll students who are between the ages of 5 and 19 and who have not yet received a high school diploma. Those who turn 19 during the school year are entitled to a free and appropriate public education through the remainder of the school year.

HB 2637 adds "cyberbullying" to the statute that requires school districts to enact policies prohibiting harassment, intimidation and bullying. Cyberbullying is defined as the use of any electronic communication device to harass, intimidate or bully.

SELF-INCRIMINATION IN GUN ASSESSMENT

By Michael Mangan, Law Clerk

It is currently the policy of the Multnomah County Juvenile Department and Deputy District Attorneys to request a "Gun Assessment" at the preliminary hearing when a youth is brought in on any kind of gun charge. Although it is debatable whether there must be probable cause to believe the youth is charged with having a deadly weapon on public property to order a mental health assessment, s*ee ORS 419C.100 -109*, the court typically grants the request regardless of this element, and the youth is held until a "Gun Assessment" is completed. In completing a "Gun Assessment", clinical staff from the Juvenile Department administer the Global Appraisal of Individual Need – Quick version (GAIN-Q) and an additional questionnaire, composed of two supplementary questionnaires of the GAIN: the Criminal Violence Index and the General Crime Tactic Index. The Multnomah County Juvenile Department has combined these two questionnaires into a "Gun Assessment."

It is recommended that defense attorneys obtain a copy of the GAIN-Q and Gun Assessment and review the questions with the youth before the clinical interview. The attorney and client can then determine the questions upon which the youth should exercise his or her right to remain silent. It is also strongly recommended that the youth's attorney or a proxy attend the gun assessment interview.

The "Gun Assessment" consists of administration of the GAIN-Q and a scale created by Michelle White, Ph.D., to predict violent behavior in adolescent cannabis addicts. The GAIN-Q, which was designed for use in confidential clinical settings for use in assessing a youth's need for mental health or substance abuse treatment, has a number of potentially incriminating questions, such as: General Factors question 3b; Sources of Stress question 2h; Emotional Health questions 2d-e and 4b; Behavioral Health questions 2a, c, 3a-c, 4a-c, Substance-Related questions 1, 2, 3, 4 and 5 and all but the first two questions on the "Gun Assessment" questionnaire.

Note that if the youth does not assert the privilege, the information gathered during the questioning can be used to continue to hold the youth until adjudication, may be used at disposition if adjudicated delinquent, or may be used to charge the youth with new crimes.

In *Minnesota v. Murphy,* 465 U.S. 420 (1984), as a condition of Defendant's release, Defendant was told to be truthful in all matters with his parole officer. Defendant's answers to incriminating questions where later used against him in additional charges because he did not assert his privilege against self incrimination at the time the questions were asked.

The youth's attorney should consider that, if privilege is invoked and the instrument is considered invalid, the court may want to hold the youth while additional information is gathered. Current United States Supreme Court and Ninth Circuit case law supports an argument that the youth may assert Fifth Amendment privileges when asked incriminating questions without risk of punishment. An argument could be made that holding the youth after the youth asserts a Fifth Amendment privilege is compelling the youth to incriminate herself and is therefore a violation of the Fifth Amendment.

To establish a claim that a youth's Fifth Amendment rights have been violated, two things must be shown: "(1) that the testimony desired by the government carried the risk of *incrimination*, *see Murphy*, 465 U.S. 420, 435 (1984) . . . and (2) that the penalty he suffered amounted to *compulsion* (emphasis added), *see Leftkowitz v. Cunningham,* 431 U.S. 801, 806 (1977)." *U.S. v. Antelope,* 395 F.3d 1128, 1134 (9th Cir. 2005).

Clearly, questions in the GAIN-Q and Gun Assessment are incriminating and the first prong is met. If the youth asserts Fifth Amendment rights instead of answering and then is held, it should be argued that this meets the compulsion end of the prong. *See U.S. v Antelope,* 395 F.3d 1128, 1136 (2005).

Here are a few sample questions from the Multnomah County Department of Community Justice "Gun Assessment:"

A1. During the past 12 months, have you had a disagreement in which you did the following things:

m. Threatened anyone with a knife or gun?

n. Actually used a knife or gun on another person?

A2. During the past 12 months, have you:

g. Taken a car that did not belong to you?

n. Made someone have sex with you by force when they did not want to have sex?

p. Been involved in the death or murder of another person (including accidents)?

Immigration, continued from page 3

a court could find a child eligible for long-term foster care, but place the child with a relative or guardian in a guardianship relationship.

There are important time restrictions for SIJ status. Generally juvenile courts can only exercise initial jurisdiction over a child when the child is under 18. Once the court has taken the child's case, it can still retain jurisdiction until the child is 21. Immigration must make a decision on a child's case before the child is 21 and while the child is still under the juvenile court's jurisdiction.

Finally, if there are delinquency findings or a criminal history, consulting with an immigration lawyer is prudent.

Other avenues for residency for survivors of abuse

Certain victims of crimes or domestic violence might also be eligible for residency through the U visa or the Violence Against Women Act (VAWA).[7] In 2000, Congress created a U visa for victims of certain crimes. To date, the Department of Homeland Security (DHS) has not issued regulations, so an immigrant is only able to apply for "U interim relief." This status entitles the holder to work authorization. In order for a child to be eligible, they must have been the victim or their parent must have been the victim of one of the enumerated crimes, such as rape, kidnapping, domestic violence, or assault.[8] Additionally, the child or their parent (depending on the child's age and who was the victim), must have been helpful, be helpful, or will be helpful in the future with the investigation or prosecution of the crime. Finally, the victim must have suffered substantial physical or mental abuse as a result of the crime. In order to qualify for U interim relief, the victim does not need to know the perpetrator or be in lawful status. However, currently there is no mechanism to adjust status to LPR status from a grant of U interim relief.

Children and spouses of abusive LPRs or citizens might also be eligible for residency through a VAWA self-petition if they meet certain requirements. Women, children, and men may apply. In order to qualify for a VAWA self petition, a spouse has to be married or have been married to his or her abuser who is/was a citizen or LPR. If a spouse qualifies, her unmarried children under 21 are considered derivative beneficiaries. Children can also make an application on their own behalf. For a child abused by his/her parent, the parent must be a citizen or LPR.[9] In applying for the status, the applicant must establish that they suffered battery or extreme mental cruelty, the abuser's status, that they are a person of good moral character, and that they lived with the abuser.[10] If applying as a spouse, the victim must also prove the good faith of the marriage. The victim themselves applies and does not depend on the abuser. The process is confidential and the abuser cannot get any information about the case. The abuser cannot interfere, change, or withdraw the application. Once an applicant establishes eligibility, they may apply for work authorization until they are able to apply for LPR status.

Immigrating through family members

Finally, many children immigrate through family members. Citizens are able to petition for their children who are married or unmarried. They are also able to petition for their spouse, their parents or siblings. LPRs are only able to petition for their spouses and unmarried children. In order to immigrate, the LPR or citizen must first file a visa petition, which establishes a priority date. Once that priority date becomes current, then the relative may apply for LPR status. Immediate family members (spouses and unmarried minor children) of citizens do not have to wait for a visa to become available. The family based immigration system is the most common way that immigrants gain legal status, although the waiting periods for residency can be lengthy. For example, an LPR must wait currently 5-6 years to immigrate his or her children and spouse. A number of different factors affect whether or not the child or their parents may immigrate from within the U.S. or whether they must apply for LPR status at a consulate abroad. These factors include when the relative started the process, how the immigrant entered the U.S., the relative's immigration status, etc.

Conclusion

Other limited avenues for immigrating exist for children, including through derivative status on a work visa, asylum status, trafficking visas, etc. However, the avenues described in this article are the most common, particularly for low-income immigrant children who come into contact with the juvenile court system. At the same time, many children do not qualify for legalizing their status. If you are working with children, consider discreetly screening for immigration status in order to avoid missing deadlines that would cause the child to lose eligibility. Working with an immigration attorney to determine the child's options can ensure the best long-term result for the child.

(End notes on p. 7)

Improving the Ways We Work with Maltreated Youth — "The Teen Project"

by Amy Miller, Staff Attorney

In 2006, the Juvenile Rights Project (JRP), in conjunction with PSU's Child Welfare Partnership (CWP), received a grant from the Oregon Children's Justice Act Task Force to improve the handling of adolescent maltreatment cases. The three goals of the year-long project were: 1. to assist organizations who work with maltreated adolescents by developing a training curriculum on effectively serving maltreated youth; 2. to distribute the training curriculum through a statewide training summit; and 3. to develop resources to assist Multidisciplinary Teams (MDTs) as they strive to better serve maltreated youth.

The catalyst for the Teens Project was a paper, drafted by the Juvenile Rights Project which identified several reasons that adolescent maltreatment has been overlooked in Oregon and across the country. The paper, entitled "*Promoting Community Protection of Adolescents*," recommended additional training and MDT resources to assist in effectively serving maltreated adolescents. To download the paper, go to the JRP website (http://www.jrplaw.org/ResourceLB.htm).

Developing a training curriculum focused on issues unique to adolescent maltreatment was a serious undertaking. Project members convened an advisory board, hosted a youth focus group, and reviewed numerous curricula and training aids from around the country.

The curriculum focuses on five significant areas of a youth's life: brain development, transitions, unique needs, relationship building, and cultural considerations. The curriculum is designed for trainers to use to share with their organization and contains a variety of training aids such as video clips, group exercises, and power point slides.

On July 31, 2007, the project team hosted a training summit for over 130 professionals who work with youth. The summit was a "train-the-trainer" event, meaning that each attendee received a copy of the curriculum and learned how to use it in training. Summit attendees listened to presentations from expert speakers and were treated to a presentation by four former foster youth, all of whom talked about different ways to support adolescent success.

Team members also developed tools to assist MDTs in effectively investigating adolescent abuse. These resources, modeled on best practice guidelines, include a sample protocol for use in adolescent abuse and neglect cases, surveys for evaluating MDT performance, and model policies.

The best part about the Teen Project is that all of the curriculum information, speaker video clips, training exercises and MDT resources are available to you, on the web, for free! The teen project web site, http://www.cwpsalem.pdx.edu/teen/, will be available after October 15, and provide this valuable information for working more effectively with youth.

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Notes:

1. INA §101(a)(3).

2. INA §237; INA §212 (a)(6)(A)(i).

3. INA §101(b)(1).

4. INA §§ 302 and 304-307.

5. Child Citizenship Act of 2000, PL 106-395 §101, 114 Stat. 1631 (2000), H. Rep. No. 852, 106th Cong. 2d Sess. 8, 146 Congre. Rec. H7774 (Sept. 19, 2000).

6. INA §101(a)(27)(J).

7. Violence Against Women Act of 1994, PL 103-322, 108 Stat. 1902-55, 8 U.S.C. §1151, 1154, 1186a, 1254, 2245 (1994); Victims of Trafficking and Violence Protection Act (VTVPA), Title V (Battered Immigrant Women Protection Act) PL 106-386, 114 Stat. 1464 (Oct. 28, 2000); 2000 H.R. 3244; Violence Against Women and Dept. of Justice Reauthorization Act of 2005, PL 109-162, 119, Stat. 2960 (Jan. 5, 2006).

8. INA §101(a)(15)(U).

9. If a divorce was related to abuse, a spouse or child is still able to file a self-petition within 2 years of a divorce. If a citizen abuser dies, the survivor has 2 years to file a self-petition. Also, if the spouse or parent loses their LPR status due to abuse, the spouse or child must apply within 2 years of when the LPR lost their status. INA §204(a)(1)(A)-(B).

10. INA §204(a)(1)(A).

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Student Loan Legislation, continued from p. 1

to afford repayment of their student loans. Under this section, annual educational debt repayment is limited to 15% of discretionary income. Discretionary income is defined as adjusted gross income minus 150% of the poverty level for the borrower's family size.

IBR requires borrowers to make payments on their loans for a period of 25 years. At the end of the 25 year period, any remaining debt is forgiven.

Over time, the borrower may receive raises or other income. When the amount that would be due under the standard repayment no longer exceeds the amount due under income-based repayment, borrowers will no longer be eligible for income-based repayment and will be required to repay at the standard rate. At this point, the interest which was unpaid because of the income-based payment cap is capitalized, avoiding geometric growth through compounding.

There is one important caveat to the IBR program: the income-based repayment applies only to government-guaranteed loans such as Stafford loans. The majority of recent law school graduates were required to secure commercial loans as well as government-guaranteed loans to finance their legal education. This is because, from 1992 to 2005, Congress did not adjust the ceiling on the amount that graduate and professional students could borrow under the Stafford Loan Program, the main program through which law students obtained government-guaranteed loans. The ceiling was frozen at $18,600/yr or $55,000 for three years of law school. As the cost of attendance rose, an increasing percentage of debt became commercial. By the late 1990s, students were financing about half of their law school education from non-government-guaranteed sources.

In 2006, Congress raised the Stafford loan limit to $20,500 and also established the GradPLUS loan program which replaced commercial loans for the gap between the Stafford loan limit and what students needed to borrow to attend law school. Loans through the GradPLUS program are government-guaranteed and thus subject to IBR.

Loan Forgiveness for Public Service Employees (s 401)

Section 401, which takes effect October 1, 2007, provides incentives for borrowers to work in public service jobs. If the borrower makes ten years of IBR payments after October 1, 2007 while engaged in full-time public service work, the remaining balance is forgiven after only ten years of monthly payments rather than 25 years.

Note that this section doesn't require the ten years to be continuous service. However, before the borrower qualifies for accelerated forgiveness, the borrower must make 120 payments while serving full-time in a public service job.

Senate Bill 1642: John R. Justice Prosecutors & Defenders Incentive Act of 2007

On July 24, 2007, the Senate passed S. 1642 which provides additional incentives for prosecutors and public defenders by providing partial loan forgiveness. The Act focuses on providing loan assistance in early years of employment rather than reducing payments in early years and forgiving repayment for career public servants. Under the Act, those who planned to pursue a career as a prosecutor or public defender would enter into agreements with the U.S. Department of Education, under which the government could repay the borrower's educational loans. Annual repayment would be limited to $6000/year and $40,000/total. Because S. 1642 is not an entitlement program, funds would be available only to the extent of government appropriations.

S. 1642, if passed and appropriated, would help prosecutors and public defenders retain staff as well as hire qualified staff members out of law school. At this time, the bill is being held at the House desk.

Regrettably, the College Cost Reduction and Access Act is of little help to public defense attorneys in Oregon. First, the Act's provision limiting debt repayment obligations to a percentage of income does not take effect until 2009. In addition, due to income guidelines, those attorneys who are married are not likely to qualify for the repayment limit even if they have spouses who are also obligated to large monthly educational loan obligations.

Second, the Act does not apply to commercial loans. Because these loans are typically at an interest rate much higher than government-guaranteed loans, monthly obligations can be quite large and will not be impacted by the Act's income-based payment limits.

Third, the balance of government-guaranteed loans is not forgiven until an attorney has worked in the public interest sector for 10 years. Given that public defense attorneys may face serious financial challenges by working in this sector for 10 years due to educational expenses and low salaries, this provision may prove to be unhelpful to attorneys currently in public defense practice. Regardless, these attorneys realize no benefit from this provision until 2017.

CASE LAW UPDATES, Continued from p. 2

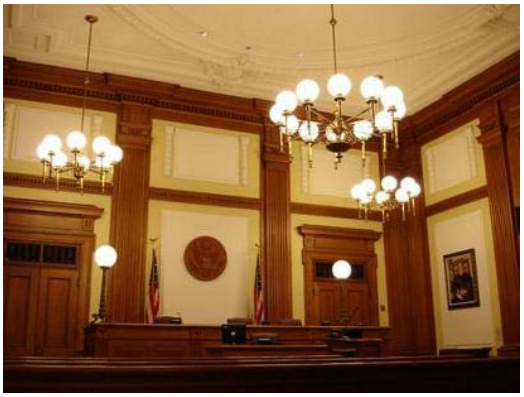
opportunity, even when coupled with a confession, does not amount to the evidence required to substantiate that a crime occurred. 306 OR 303 (1988). Without some physical evidence, a victim's statement, or a witness, there is not enough, according to the court, to substantiate a confession and result in a valid conviction.

Oregon v. Weaver

The Court of Appeals in *Weaver* held that the "emergency aid doctrine" applies to justify a police officer's warrantless entry into a home to assist DHS in preventing suspected child abuse when the owner denies entry. The Court further held, however, that Oregon statute does not allow a DHS caseworker warrantless entry in order to investigate child abuse.

The defendant, convicted at trial of interfering with a police officer and unlawful possession of a gun, appealed on the grounds that the police's warrantless entry into her home after she denied consent to enter was unlawful, therefore, the trial court should not have found her guilty of interfering with a police officer. The Court of Appeals found, based on the trial evidence and under the emergency aid doctrine, that the police officer's actions were lawful and fulfilled each of the test's four prongs: "1) police have reasonable grounds to believe there is an immediate need for their assistance for the protection of life; 2) there is a 'true emergency'; 3) the search is not primarily motivated by an intent to arrest a person or seize evidence; and 4) the police reasonably believe that, by making the warrantless entry, they will discover something to alleviate the emergency." The police's knowledge based on DHS's information of possible harm and dangerous circumstances was enough to meet the first prong of the test.

The defendant appealed the unlawful possession of a firearm on the same grounds. The trial court found that the child had consented to the officers returning into the home after the defendant had been arrested and placed in the patrol car. A Supreme Court case decided after trial in this case, held that a co-occupant of a home cannot give consent when the other occupant had already denied consent. On appeal, the State relies on an implied authority for DHS to enter a home to investigate child abuse under ORS 419B.020. The Court found that nowhere in Oregon's statutory construction is there an implied right of warrantless entry for DHS when investigating suspicions of child abuse. The Court goes through other statutes which expressly give authority to enter premises without a warrant. The court held that the entry unlawful under ORS 419B.020 and that the firearm should have been suppressed.



State ex rel Department of Human Services v. R.O.W. and N.S.-W.

In this termination of parental rights appeal, the court of Appeals held that Mother's mental deficiencies were of such a degree that she could not safely be left unsupervised around the child for any period of time without subjecting the child to serious danger. The court also held that father's refusal to recognize the deficits of the mother, along with his own personality disorder and addictions, created a situation that was seriously detrimental to the child. The court finally found that, even though at trial the father presented a plan for care and supervision of the child, there was serious reason to believe that the plan would not be followed, and thus, the parent had not made any adjustment in circumstances that would allow the child to return home in a reasonable period of time.

In this case a child was born to a mother that had serious mental health deficits. To avoid removal, DHS held two family decision meetings prior to the child's birth to notify the parents of the need for a plan to avoid removal. At those meetings, and throughout the case, the father refused to acknowledge that mother in any way would be unsafe around the new child. To appease DHS, the mother entered a maternity home after the birth of the baby. At the maternity home she would receive round the clock supervision and training on how to care for the infant. Despite the maternity home's efforts, they had to physically intervene several times to prevent the child from drowning during bathing and to intervene in a separate incident where the mother was screaming at the infant to "shut up" and was shaking the baby. Because of these incidents

(Continued on p. 10)

Case Law, continued from page 9

and father's refusal to acknowledge any shortcomings of the mother, the child was removed from the parents.

Psychological assessments of both parents were done. The mother's showed serious deficits in her ability to care for the child. The psychologist suggested, however, that the mother may be able to acquire skills to safely parent the child with individualized training. After two failed attempts at individualized parent training, the psychologist's revised assessment indicated that the mother could not be safely left with the child.

The father, based on his evaluation, was found to be able to be taught through services, but personality disorders caused concerns about his ability to follow through. The father was referred to several different services, several times, and always failed to follow through with services. The father claimed at trial that he now recognized that the mother needed supervision around the child. The Court, based on the father's history and credibility found that he was unlikely to follow through on protecting the child.

The court also found that the plan presented by the father lacked sufficient detail to convince the court that it would be viable, especially with the failure of a supervision plan where mother was supervised by trained professionals at all times. When coupled with the father's history, the court found that the father had failed to adequately adjust his circumstances to allow for a safe return within a reasonable period of time.

Based on these findings, the court upheld the termination of both parents parental rights.

2007 SHOULDER TO SHOULDER CONFERENCE

November 8, 2007
8:00 a.m. to 5 p.m.
The Oregon Convention Center

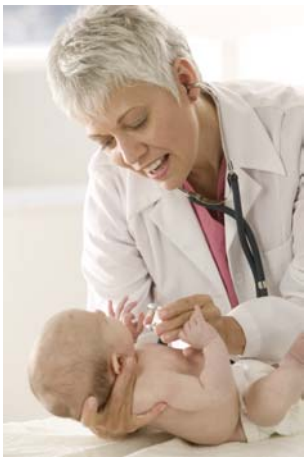
To register, visit the Web site https://dhslearn.hr.state.or.us

or call 503-872-5601

New Child Abuse Investigation Legislation: Summary of HB 3328 ("Karly's Law")

Summary by Amy Miller, Staff Attorney

HB 3328 modifies procedures in child abuse investigations when a child abuse investigator observes that a child has suffered "suspicions physical injury" and suspects the injuries arose due to child abuse. Section 3 of the bill broadly defines "suspicious physical injury" and requires a child abuse investigator who observes "suspicious physical injury," which the investigator reasonably believes may be the result of abuse to immediately cause the injury to be photographed and ensure a "designated medical professional" conducts a medical assessment of the child within 48 hours.



Section 6 describes a "designated medical professional" as a physician, physician's assistant or nurse practitioner trained to conduct child abuse medical assessments and designated as such by the county Multidisciplinary Team (MDT). The bill provides exceptions in the event that the 48 hour timeline cannot be met or an MDT is unable to designate a medical professional.

Section 3 also provides a process for the medical professional to refer the child who is the subject of the medical assessment to early intervention or early childhood special education services if the child is under the age of 5.

Section 4 specifies statutory requirements for the Department of Human Services (DHS) to convene a Critical Incident Response Team (CIRT). HB 3328 requires the CIRT process for all fatalities where DHS determines the death is possibly due to child abuse or neglect while still allowing the Director of DHS to convene a CIRT for any other critical incidents.

Section 5 establishes procedures to ensure photographs of "suspicious physical injury" are received by the "designated medical professional" performing the medical assessment as well as placed in the investigative file maintained by law enforcement or DHS.

HB 3328 became effective on June 27, 2007.

Find Out about New Legislation Relevant to Juvenile Court Practice at the Road Show

This annual presentation on action taken by the 2007 Legislature related to juvenile practice is now taking place in numerous venues across the state. This year's presentation is a collaboration of the Department of Human Services, the Citizen Review Board, the Local Model Court Teams and the Juvenile Court Improvement Project. Topics will include: changes made as a result of legislation; recent statewide changes in child welfare practice; and, updates on the Program Improvement Plan process of the Child and Family Service Reviews. For more information go to: http://www.ojd.state.or.us/osca/cpsd/court improvement/jcip/ Here's the schedule; video conference sites for each date are listed in parentheses:

Date	Time	Location	Address
10/24/07	**11 – 4**	**South Coast ESD**	**1350 Teakwood Ave. Coos Bay**
(Available by video-conference at Gold Beach DHS, Union County Court, La Grande DHS)			
1**0/25/07**	**11 – 4**	**Douglas ESD**	**1871 NE Stephens, Roseburg**
(Available by video-conference at Pendleton DHS, The Dalles DHS, and Hood River DHS)			
10/30/07	**8:30 – 1**	**Clackamas Pub. Saf. Bldg.**	**12700 SE Sunnyside Rd, Clackamas**
11/2/07	**8:30 – 1**	**Astoria DHS**	**450 Marine Dr. #210, Astoria**
(Available by video-conference at Tillamook ESD, St. Helens ESD, Coos Bay DHS, Grants Pass DHS)			
11/5/07	**8:30 -1**	**Jackson Co. Courthouse**	**100 S. Oakdale, Medford**
(Available by video –conference at Bend DHS,Klamath Falls DHS, Gold Beach DHS).			
11/9/07	**8:30 – 1**	**Polk Co. Courthouse**	**850 Main St, Dallas**
11/13/07	**8:30 – 1**	**Linn Benton Lincoln ESD**	**905 4th Ave, Albany**
(Available by video-conference at Newport DHS, SSP, Coos Bay DHS, Corvallis DHS, Roseburg DHS)			
11/14/07	**8:30 – 1**	**Salem Training Ctr.**	**3414 Cherry Ave., Salem**
(Available by video-conference at Baker City DHS, Medford DHS, Jackson Co. Courthouse, and from 11 – 4 at Ontario DHS).			
11/19/07	**11 – 4**	**Salem DHS-Dist 3**	**3420 Cherry Ave., Salem**
(Available by video-conference at Medford DHS, Klamath Falls DHS, Newport DHS, SSP).			
11/26/07	**11 – 4**	**Portland State Office Bldg.**	**800 NE Oregon St., Portland**
(Available by video-conference at Astoria DHS, Clackamas DHS, Grants Pass DHS, Gold Beach DHS).			
11/27/07	**11 – 4**	**Lane DHS**	**2885 Chad Drive, Eugene**
(Available by video-conference at Corvallis DHS, Willamette ESD [McMinnville], CPSD [Salem]).			
11/29/07	**11 – 4**	**CPSD**	**324 Capitol St., NE, Salem**
(Available by video-conference at Hillsboro Public Services Bldg).			

Coming in December:
The Juvenile Law Reader Year-End Double Issue

Topics to be covered in the next issue:

- Information from the National Juvenile Defender Center's 2007 Juvenile Defender Leadership Summit, which was held in Portland on Oct. 19—21

- Case Law Summaries

- An update on the Statewide Children's Wraparound Project

- Ask the Social Worker: If you want to pose a question to JRP social worker, Mark McKechnie, e-mail him (Mark@jrplaw.org) by November 28th, and you may see your question answered in our next issue.

- Reader submissions — The Juvenile Law Reader is pleased to publish articles on topics of interest from juvenile law practitioners and others who work with children and families in Oregon. Please e-mail Julie McFarlane at Julie@jrplaw.org, or Mark McKechnie at Mark@jrplaw.org, by November 16th to arrange a submission.

JRP Juvenile Rights PROJECT

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