JRP JUVENILE RIGHTS PROJECT

JUVENILE LAW READER

December 2007 / January 2008

Volume 4, Issues 5 & 6

Editorial: An Important Lesson from Another Sensational Child Welfare Case

There have been a number of child welfare cases which have made front page news in the last few years. The case of Gabriel Allred, a two-year old boy to be adopted by his foster parents in Toledo, OR, made national headlines.

Gabriel Allred was placed with Angela and Steve Brandt after entering foster care. His father was convicted on drug and sexual assault charges and his mother pled guilty to felony drug charges. His father, a Mexican citizen, faced deportation after his release from prison.

Gabriel had spent about 20 months in the care of the Brandts before a state adoption committee apparently rejected recommendations from local DHS staff in Lincoln County and decided that Gabriel's grandmother, not the foster parents, should adopt him.

The first committee reportedly voted 2-1 in favor of Gabriel's grandmother in Mexico, over his foster parents in Oregon. According to an article in *The Oregonian*, a second committee which reviewed the decision at the foster parents' request, also opted for the grandmother as the better adoptive resource for Gabriel.

Much of the media attention in *The Oregonian*, which broke the story, other newspapers, television, radio and on Internet blogs, focused on the decision by the state committees. Many editorial writers, politicians and members of the public criticized the DHS decision, which was eventually overturned. Much of the debate focused on two issues: the decision to remove a child from the parents who have raised him since infancy and the decision to send a child with dual U.S.-Mexican citizenship to live in Mexico and be raised by his Mexican kin.

Very little attention was given to the roughly 20 months that Gabriel was in the State's custody, prior to the adoption decision. The agency was correct in asserting that it is required to look for viable relative resources for children in foster care, but what took so long?

(Continued, next page)

Results from CFSR, Part 1

Oregon's child welfare system had its second federal Child and Family Services Review in 2007. The first CFSR was in 2001.

More information will be forthcoming over the next few months when Oregon receives the federal report with the results of the September 2007 site reviews and as DHS develops a Performance Improvement Plan, or PIP, to address the areas which federal reviewers found in need of improvement.

In this issue, we will review some of the data that the state provided as part of the required self-assessment. This was the first stage in the 2007 CFSR. DHS assembled the self assessment in the winter and spring and it was submitted to the federal Administration for Children and Families. Turn to **page 8** for selected highlights from the self-assessment.

Inside this issue:

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

BOARD OF DIRECTORS:
Mike Chewning, Pediatric Nurse Practitioner, NW Early Childhood Institute
Cameron "Cam" J. Dardis
Susan Fischer, Simon, Toney & Fischer
Emily Kropf, J.D., Classroom Law Project
Sara Lowinger, J.D.
Todd D. Massinger, CPA, Hoffman, Stewart and Schmidt, P.C.
Sharon Reese, Knowledge Learning Corp.
Karen Sheean, Knowledge Learning Corp.

STAFF:

Janet L. Merrell - Executive Director

Staff Attorneys:
Brian V. Baker
Heather Clark
Julie Sutton
Lynn Haxton
Mary Kane
Lisa Ann Kay
Julie H. McFarlane
Jennifer McGowan
Christa Obold-Eschleman
Elizabeth J. Sher
Angela Sherbo
Mary Skjelset
Tim Sosinski
Pat Sheridan-Walker
Stuart S. Spring
Tawnya Stiles-Johnson
Kathryn Underhill

Social Workers:
Kristin Hajny
Mark S. McKechnie

Legal Assistants:
DeWayne Charley
Claire Harman
Anne Funk
Elizabeth Howlan
Lisa Jacob
Nick Demagalski
Gretchen Taylor-Jenks
JaVonne Williams

Jeffrey M. Jenks — Operations Manager
Jesse Jordan – Office Manager
Carma Watson – Case Manager
Clarissa Youse – File Clerk
Daniel Buck — Investigator
Meghan Neumann — Asst. Investigator

Law Clerks:
Michael Mangan
Rakeem Washington

Another Sensational Case, Continued from p. 1

DHS administrative rules require case workers to conduct a *diligent* search for a child's relatives shortly after taking a child into DHS custody:

"At the shelter hearing when a child is placed in the custody of SOSCF [*sic*], if a diligent search for maternal and paternal relatives has not occurred within the prior 6 months, the SOSCF branch with responsibility for the child shall request the court to order the child's parents to identify relatives for the SOSCF branch. Subsequently, but no later than 30 days after a child is placed in the custody of SOSCF, the SOSCF branch with responsibility for the child shall begin a diligent search for relatives in order to identify a potential placement resource and assist the agency and the family in the formulation of an alternate permanency plan for the child within 60 days after the shelter hearing (ORS 419B.343(b))…." [OAR 413-070-0069(1)]

While many critics decried the agency's decision to place a child with the grandmother he had never met, few seemed to question why DHS had not facilitated contact between the child and his grandmother in the 20 months the state had borne responsibility for his care and well-being.

News stories indicated that Gabriel's father, Roberto Valiente Martinez, may have withheld information about his family in Mexico, but there was no indication about the extent to which DHS worked with the Mexican Consulate before Gabriel's father provided the information about his mother, reportedly in September 2006.

Whether DHS chose not to search for Gabriel's relatives in Mexico or not to contact them sooner, or whether the agency merely failed to conduct a "diligent search," the result was a mess.

State law and child welfare policies give preferences to both relatives and to "current caretakers" when choosing adoptive parents for a child. Both preferences presume that children will have a better chance to be successful as adopted children if they are adopted by relatives, who have lifelong ties to the child, or foster parents who have developed close bonds to the children in their care. Which to choose depends upon a careful assessment of the child's needs and a number of individual factors presented in each case.

Whether one agreed with DHS's original decision to select Gabriel's grandmother to adopt him or instead thinks DHS finally came to its senses by overturning the adoption committees' decisions, it should be clear that diligent case work and adherence to policy could have saved two families a lot of heartache.

Now that the dust has settled on this single sensational case, we can only hope that the voices crying for justice will take up the cause of the hundreds of other children who are separated from their relatives, as well as the hundreds more who will remain in foster care for years without being adopted.

Ninja Babies Escape Capture; FBI Reports on Crime in Schools

Editor's Note: The following story did not *appear in The Onion.*

The Federal Bureau of Investigation released the study "Crime in Schools and Colleges: A Study of Offenders and Arrestees Reported via National Incident-Based Reporting System Data," in December 2007. The report discusses criminal offenses reported in school and college settings from 2000 to 2004. The report uses the term "offender" throughout, yet the data reflects offenses reported, whether the offenses were adjudicated or not.

2.1% of "offenders were under the age of 9 years, including the 287 school crime suspects who were between the ages of 0 and 4 years at the time of the offense.

While the numbers were small, one of the most striking items in the report was the 2.1% of "offenders" who were 9 years-old or younger. This data included 287 "offenders" who were *between the ages of 0 and 4 years*. Children in this age group appear to be adept at escaping capture; out of 287, only 12 (or 4.8% of suspects) were arrested. There were 20,433 alleged offenders between the ages of 5 and 12 years arrested during the five years.

The FBI's National Incident-Based Reporting System (NIBRS) crime database reflects data reported by law enforcement agencies covering 22% of the U.S. population in 2004, an increase from 16% in 2000. According to the report, the number of persons arrested for offenses reported in school settings increased from 24,662 to in 2000 to 48,109 in 2004 – a 95% increase — in spite of the fact that the number of incidents reported increased only 56% during the same period. The percentage of criminal incidents occurring in schools, compared to crimes reported in all settings, remained steady, varying only between 3.2% and 3.3% of reported crimes during the five-year period.

Many of the report's demographics of reported suspects is unsurprising – youth ages 13 to 15 years comprised 38% of suspects, followed by 16 to 18 year-olds who made up 30.7% of suspects. Those ages 19 years and older comprised 18.2% of alleged offenders.

In cases where the gender was known, males comprised 76.7% of alleged offenders. Where the subject's race was reported, 71.1% of suspects were white, 27.4% were black, and all other races combined comprised the remaining 1.5%.

Changes in the incidents of violent crimes in school settings are somewhat unclear, the FBI cites other reports which show divergent trends in school crime. The School Violence Resource Center reported an increase in incidents in which high school students were threatened or injured with a weapon between 1993 and 2001. Data on student victimization generally, including violent and non-violent offenses, showed a decline from 1992 to 2002.

The report includes an analysis of the 148,924 violent offenses reported in school and college settings over a five-year period. These offenses accounted for 26.7% of the offenses reported in school settings to the FBI database for 2000-2004. Of the violent offenses, "personal weapons" (e.g., hands and feet) were used in the vast majority, at 66.1%. The second most common type of weapon or force reported was "None" in 10.9% of cases. "Other" came in third at 7.9%.

Knives or other cutting instruments were reported in 7.3% of violent offenses; handguns, firearms and other firearms, collectively, were the weapons identified in reported violent offenses 2.13% of the time.

Use of drugs and alcohol was not found to be a significant factor in school offenses reported. Suspected use was reported in less than 6.5% of reported school crimes. However, 23.9% of arrests reported were for "drug/narcotics offenses." Arrests for simple assault accounted for the most arrests, at 28.4%.

The FBI report can be accessed on-line at: http://www.fbi.gov/ucr/schoolviolence/2007/schoolviolence.pdf

America's Most Wanted?

Examining the Evidence on Crime Reduction Strategies

Steve Aos, director of the Washington State Institute for Public Policy, testified in front of the Oregon Legislature's Joint Public Safety Strategies Task Force on December 17th. Mr. Aos presented findings from the WSIPP's October 2006 report, "Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates," which is available online at: http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf

The report provides an analysis of traditional and innovative strategies intended to reduce the incidences of crime and recidivism, their effectiveness in reducing crime, and the projected economic return on investment to a state which implements each strategy. The net benefit of a crime reduction strategy is calculated by adding the economic savings to the public and to crime victims and subtracting the marginal cost of implementing the approach.

In his testimony, Mr. Aos said their research found no "magic bullet" that will cause a dramatic reduction in crime. Rather, a number of strategies, including incarceration and increased policing, will lead to reductions in crime rates. The differences, however, are the long-term reductions realized through reductions in juvenile and adult offenses and the "compound interest" on benefits to the public when the most cost effective strategies are employed. Mr. Aos also described the "diminishing marginal returns" when any strategy is overused.

The study focused on programs which had been evaluated using a control group research design and had published findings. Most of the programs considered had been evaluated in multiple published studies.

Effective approaches to reducing juvenile offenses and reducing the recidivism of juvenile offenders are particularly important. According to Mr. Aos, their research found that 75% of adult offenders in Washington had previously been involved in the juvenile justice system. The findings on juvenile offender intervention strategies indicate that many treatment strategies developed in recent decades produce greater reductions in juvenile offending and often have a lower cost than traditional juvenile justice approaches.

> 75% of adult offenders in Washington had previously been involved in the juvenile justice system.

Approaches that had greater effectiveness in reducing juvenile offending and produced greater economic benefits to the public included approaches such as Multidimensional Treatment Foster Care, which produced a 22% reduction in juvenile offending and a net economic benefit to the public of $77,798 per youth served. The marginal cost per youth, above the cost of regular foster care, was $6,945 per youth.

The "Adolescent Diversion Project," designed for and implemented with low-risk offenders, led to a 19% reduction in offending and produced a net benefit of $40,623 per youth served. Functional Family Therapy for youth on probation and Multi-Systemic Therapy also produced significant reductions in offenses, 15.9% and 10.5% respectively, and producing net benefits of $31,821 and $18,213, respectively.

> Multidimensional Treatment Foster Care… produced a 22% reduction in juvenile offending and a net economic benefit to the public of $77,798 per youth served.

Juvenile sex offender treatment was effective in reducing offending by 10.2% and produced a net savings of $7,829 compared to alternative approaches.

Mr. Aos stressed multiple times in his testimony to the Task Force that the implementation of these and other strategies deemed effective must be faithful to the design of each research-based intervention. He said that they have found that interventions which lack fidelity to the original design may not produce the projected benefit. He also said that many states which are implementing evidence-based practices lack necessary fidelity measures and quality controls to ensure that the programs are implemented as designed.

The results for more traditional approaches to juvenile offending showed, in many cases, to be less effective in reducing juvenile offending. Juvenile Boot Camps produced no reductions in juvenile offending, but these programs saved $8,077 per youth because they were less expensive than housing youth in correctional institutions.

The research reviewed by the WSIPP study showed that no reductions in juvenile offending were realized through regular surveillance-oriented parole, (Continued, next page)

Crime Reduction, Continued

juvenile intensive probation supervision programs, juvenile wilderness challenge, juvenile intensive parole supervision or "Scared Straight." The marginal economic losses of these approaches ranged from $1,201 to $14,667 lost per youth served. Scared Straight programs produced the greatest loss on investment because research has found that this approach contributed to a 6.8% *increase* in juvenile offending.

... no reductions in juvenile offending were realized through regular surveillance-oriented parole, juvenile intensive probation supervision programs, juvenile wilderness challenge, juvenile intensive parole supervision or "Scared Straight." The marginal economic losses of these approaches ranged from $1,201 to $14,667 lost per youth served.

While the study was not able to calculate the net economic benefit, the report indicated that high school graduation reduces the likelihood of offending by 10.8%.

The purpose of the report was to provide information to the Washington Legislature to inform their choices regarding public investments aimed at reducing crime. The WSIPP designed three different "investment portfolios" for the Washington Legislature to choose from. Each portfolio had a different mix of investments in the amount of public funds spent on building and running prisons and implementing prevention and other intervention strategies for both juveniles and adults.

The impact on crime rates of different approaches produced similar reductions in crime, however, there was a greater difference in the relative economic costs and benefits of each approach and in the cumulative return on investment over time. The approaches with greater emphases on evidence-based approaches achieved similar crime reduction outcomes (in crimes per 1,000 residents) while at the same time reducing the state's rate of incarceration.

According to the analysis, greater investment in evidence-based prevention and intervention strategies, and reduced spending on prisons, would produce a net benefit to taxpayers ranging from $1.9 billion to $2.6 billion between 2008 and 2030. This cumulative return on investment represents a $2.59 return per dollar spent for a moderate increase in the use of evidence-based strategies and a $2.75 return per dollar spent for an aggressive investment in evidence-based programs.

Incarceration is one way to attempt to reduce crime, but any state that relies upon expanding prison capacity to combat crime will likely see diminishing returns on the very large required investments. Mr. Aos' analysis found that the reductions in crime can be realized through a shift in investment to evidence-based prevention and intervention strategies, and these investments produce greater returns for the public through "compound interest" over time.

Case Law

***C.R.H. v. B.F.*, 215 Or.App. 479, 169 P.3d 1286 (2007).**

In this contested adoption case, father appeals from an order allowing stepfather to adopt his wife's children — the father's two daughters. After the birth of mother and father's second daughter the mother's 15-year-old sister moved in to help take care of the children. In November 2003 the father was arrested and pleaded guilty to sexual abuse in the second degree against the 15-year-old sister, delivery of alcohol and marijuana to a minor, and possession and sale of marijuana. Father was released from prison in March 2006. As a condition of his release he was not allowed contact with his children until 2010. While father was in prison mother and stepfather were married, and in February 2006 mother and stepfather petitioned the court for permission for the stepfather to adopt the children.

Father objected to the petition and the case went to trial. Under ORS 109.312, a petition for adoption requires both biological parents to consent to the adoption except as provided in ORS 109.314 to 109.329. The applicable statutory exception in this case, 109.324, provides that the court may dispense with a parents consent to an adoption "if the court finds that the parent has willfully deserted the child or neglected without just and sufficient cause to provide proper care and maintenance for the child for one year next preceding the filing of the petition for adoption[.]" The court held that that "willful desertion occurs when a parent's action or inaction evince an intentional choice directed toward the specific result of deserting the child." A father's criminal conduct demonstrates at most (Continued, p. 12)

Suits Filed Over Broken Bones at Jasper Mountain; DHS Reforms Investigation Procedures

By Mark McKechnie

Approximately one year after reporting on a series of injuries to children at the Jasper Mountain treatment facility in Lane County, Eugene's daily newspaper, *The Register-Guard,* reported on December 22, 2007, that guardians for three children who suffered broken bones have filed civil lawsuits. The amount sought on behalf of each child is $200,000, for suffering and medical expenses, according to the paper.

The children include an 11 year-old boy who suffered a broken ankle in December 2005, a 12 year-old girl whose upper arm was broken in two places when Jasper Mountain staff used an unapproved restraint technique in March 2006, and a 12 year-old boy whose wrist was broken when facility staff pushed against a door he was holding in August 2006. In the third case, the boy had been told of his mother's death and responded by running outside and holding the door closed.

According to the *Register-Guard*, the boy's wrist snapped when staff attempted to push the door open. An article by *Register-Guard* reporter Diane Dietz in December 2006 said that one of the staff members involved in the third incident had resigned. The article said that there had been concerns about the staff member's performance prior to the incident.

Bob Joondeph, director of the state's protection and advocacy organization, the Oregon Advocacy Center, told the paper that the staff at Jasper Mountain have been cooperative and participated in retraining and other changes. The Advocacy Center brought to light the child injuries in 2006 and called upon state regulators to investigate and require corrective actions.

According to the paper, Dave Ziegler, Jasper Mountain's Executive Director, has complained that government agencies have overstepped their authority and are treating his program unfairly. According to the story, five different state and federal agencies, including the state's mental health division and child protective services agency have been involved in reviews and investigations. The article quoted Dr. Ziegler's response to the civil suit, saying that the children's attorney, David Paul of Portland, "stepped forward and talked the families of the kids into getting some money out of this."

Previous reviews found that the facility had been training its staff to use restraint techniques that were unapproved by federal or state agencies and not part of the curriculum developed by Wisconsin's Crisis Prevention Institute (CPI). The fractures caused to the 12-year old girl's arm occurred when a staff member bent her arm behind her back. The director of CPI told the paper last year that this hold was not part of their curriculum because it relies upon the infliction of pain to control children's behavior. Jasper Mountain staff maintained at the time that they believed the hold to be part of CPI's curriculum.

The girl's fractured arm was treated originally with ice and ibuprofen, according to the 2006 story. She was taken for medical attention the following day. Her injuries ultimately required surgery. All three children who suffered fractured bones at Jasper Mountain have since left the facility.

Both *Register-Guard* articles have noted that Dr. Ziegler is nationally known as a proponent of physical restraint, even as many other professionals and state agencies nationwide are advocating that restraint be limited to instances where children's behavior poses an imminent risk.

Oregon Addictions and Mental Health Division Administrator, Bob Nikkel, is quoted in the article, saying, "There's a place, I guess, for some kind of physical restraint. If there's imminent danger, people need to do something. (But) there's so much work that can be done with kids in programs to help them stave off getting to that point. That's where we're trying to get."

Jasper Mountain's Ziegler, on the other hand, told the Register-Guard, "What (the state) would love to see is for us to negotiate and wheel and deal with kids and never have another restraint ever… That's a naive stance. There are therapeutic benefits to drawing a line for kids and not letting violent kids get violent to themselves and get violent to others and, at times, that requires physical direction."

Largely as a result of the incidents at Jasper Mountain, the Oregon Department of Human services has transferred the responsibility for investigating reports of abuse in facilities like Jasper Mountain from Child Protective Services, which is responsible for investigating suspected abuse in families, to DHS's Office of Investigations and Training (OTI), which was originally formed to investigate abuse allegations at the now-closed Fairview Training Center.

The July 2006 issue of the DHS manager's newsletter, "Getting Results," provided a story on OTI and its director, Eva Kutas. OTI staff report directly to the Human Services' Deputy Director. (Continued p. 24)

Dispelling Myths about Juvenile Sex Offenders, Risk Assessment and Treatment

By Mark McKechnie, M.S.W.

Keith Linn, Psy.D. performs psychosexual evaluations with adults and youth and provides treatment to sexual offenders in the Portland metro area. Dr. Linn has also provided trainings on the current technology and understanding about the causes of sexually deviant behaviors and the extent to which the risk of future offenses can be predicted.

At a recent training on the assessment of juvenile sex offenders, Dr. Linn posed the following questions:

1. True or False?: Aspects of a youth's Instant Offense (also known as "Index Offense") offers the best predictors of future sexual offenses.

2. True or False?: Denial of the instant offense is a strong predictor of future sexual acting out.

3. True or False?: Juvenile sex offenders are less likely than other types of juvenile offenders to engage in other forms of criminal activity post conviction.

4. True or False?: Sex offender treatment has a greater impact on adult offenders than juvenile offenders.

5. True or False?: There are no empirically validated methods for determining the likelihood of juvenile sexual recidivism.

Many of us in the room answered wrongly to at least one of these questions. Several thought statement number three was true because it would be true regarding adults; adults convicted of sexual offenses are less likely to commit other types of crimes, particularly after being convicted. However, recent research has not shown the same to be true for juveniles.

Actually, the first four statements are false, according to current research discussed by Dr. Linn. While prosecutors, juvenile departments and courts tend to focus on the instant offense as the most relevant factor for assessing a youth's risk, it is not the most reliable predictor for youth charged with sex offenses. The second statement is also false. There are other factors which are more important than denial which impact a youth's risk to offend. And denial that is caused by the youth's embarrassment about his or her behavior may even be a healthy sign.

...most juvenile offenders would be classified as low or medium risk according to the assessment tools currently available, however, most treatment is designed for high risk offenders.

The fourth statement – that treatment with adult offenders has more impact — is false. Hopefully, everyone who works with juveniles who are accused of acting out sexually knows this. Numerous studies have shown that treatment is significantly more effective with juveniles than with adult offenders. With or without treatment, the recidivism rates for juvenile offenders tend to be lower than for other offenders, ranging from 2% to 13% across a number of research studies.

The only true statement above is number 5. There are no empirically validated methods or assessments which can reliably predict a youth's risk to re-offend at this time, however, the science is still developing. Risk assessment still relies heavily upon professional judgments and opinions of the evaluators, therefore, different experts can and will disagree on the level of risk a youth may pose.

Dr. Linn discussed various problems with risk assessment. There is still a lack of actuarial basis for determining a youth's risk to re-offend, and reliable assessment tools are based upon actuarial data that distinguishes the characteristics of different types of individuals, such as the characteristics which distinguish low, medium and high risk offenders. The lack of an actuarial basis for juvenile risk assessment is due to the fact that the sizes of populations studied, and the amount of available information about them, are thus far too small to provide valid and reliable data. In addition, the phenomenon of youthful offending is likely very different for juveniles than for adults.

Dr. Linn pointed out that most juvenile offenders would be classified as low or medium risk according to the assessment tools currently available, however, most treatment is designed for high risk offenders.

Another critical aspect for assessing risk in youth offenders is that they are in a stage of change and development. Youth are more experimental than adults as their sexual identity is developing. Labeling youth offenders as posing a certain level of risk is highly problematic, because their level of risk is likely to change. (Continued p. 13)

Selected Data from Oregon's Child Welfare Self-Assessment

The Child and Family Services Review includes an examination of the population served by the state's child welfare system and looks at the outcomes for children and families in the areas of safety, permanency and well-being. The most recent year for which complete data was available for the self-assessment was federal fiscal year 2005, which is the 12-month period ending September 30, 2005.

This is selected demographic information provided by Oregon about the children and families served by DHS in FFY 2005:

Children in foster care on the first day of the year (FFY 2005):	**9,845**
Children in care on the last day of the year:	**11,023**
Net change:	**+1,178**
Admissions to foster care during the year:	**6,197**
Discharges during the year:	**5,109**
Children discharging from foster care in *7 days or less:*	**277**

These were the placement types for children in substitute care in FFY 2005:

Pre-Adoptive Homes:	**3.9%**
Foster Family Homes (Relative):	**21.5%**
Foster Family Homes (Non-Relative):	**50.8%**
Group Homes:	**1.1%**
Institutions:	**6.3%**
Supervised Independent Living:	**0.3%**
Runaway:	**2.6%**
Trial Home Visit:	**12.5%**
N/A (Placement in subsequent year):	**0.9%**

See next page for permanency goals.

Child Welfare Data — Permanency, continued from p. 8

The identified permanency goals for children in substitute care in FFY 2005 were:

Reunification (most preferred option):	**46.8%**
Live with Other Relatives:	**0.1%**
Adoption (2nd most preferred option):	**27.9%**
Long Term Foster Care (one of the least preferred options):	**20.7%**
Emancipation:	**1.5%**
Guardianship (preferred over long-term foster care):	**3.0%**

The median length of time to achieve the permanency goal (for the 5,019 children who discharged from foster care) in FFY 2005:

Plan	No. of Children	Median Months to Discharge
Reunification:	**3,186**	**8.7 mos.**
Adoption:	**1,036**	**33.3 mos.**
Guardianship:	**244**	**22.4 mos.**
Other:	**456**	**38.4 mos.**
Discharge reason missing from data:	**97**	**10.7 mos.**

The median length of foster care for children who exited foster care in FFY 2005 was 14.4 months.

Specific outcomes related to reunification and adoption, as well as foster placement stability, are provided on pages 10 and 11.

Oregon Child Welfare Outcomes — Reunification and Adoption, continued from p. 9

The CFSR measurement of the timeliness to reunification has two components: timeliness of reunification and permanency of reunification. The timeliness measure is comprised of three individual measures: exits to reunification in less than 12 months; median length of stay in care prior to reunification; and the percentage of children entering care who are reunified in less than 12 months. The data below shows that Oregon performed somewhat better than the national median on three of these permanency measures and worse in the area of foster care re-entries.

Timeliness of Reunification, FFY 2005	
Of children discharged to reunification during the year (who had been in foster care 8 days or longer), the percentage reunified within 12 months from the date of removal: **[National median was 69.9%; higher is better]**	**76.1%**
Of all children discharged from foster care to reunification (who were in foster care 8 days or longer), the median length of stay from the most recent removal to reunification: **[National median was 6.5 months; lower is better]**	**6.3 months**
Of all children who entered foster care for the first time in the 6 months prior, the percentage discharged from foster care to reunification (including trial home visits) was: **[National median was 39.4%; higher is better]**	**40.6%**
Of all children who discharged from foster care to reunification in the 12 months prior, the percentage who re-entered within 12 months of discharge was: **[National median was 15.0%; lower is better]**	**15.9%**

Oregon fared significantly worse than the national median in exits to adoption in less than 24 months, but the state came closer to the national median in the length of stay prior to adoption:

The percentage of children discharged to adoption in FFY 2005 who were in foster care less than 24 months from the date of the last removal [National median was 26.8%; higher is better]:	**18.0%**
Median length of stay for children who were discharged to finalized adoption, from the date of latest removal to adoption: **[National median was 32.4 months; lower is better]**	**33.3 months**

Data on the time to achieve adoption for legally free children and foster care stability are provided on p. 11.

CFSR Data: Achieving Adoption; Placement Stability, continued from p. 10

The State also reports the time to achieve adoption after a child becomes legally free for adoption (usually after the parental rights of both parents have been terminated). Oregon performed above the national median for children who achieve adoption in 12 months or less after becoming legally free for adoption.

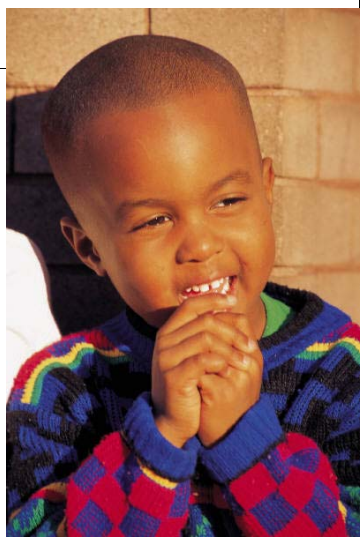
Percentage of legally free children adopted in less than 12 months in the 12 months prior to FFY 2005: **[National median was 45.8%; higher is better]**	**48.3%**

States also assess placement stability for children during the time they are in any kind of foster care placement. States aggregate data to show the percentage of children in foster care who have had one or two placements and the percentage who have had three or more placements. The state reports data for children in care for less than 12 months; more than 12, but fewer than 24 months; and children in care more than 24 months. The data below compares the two most recent years for which the data was available. From FFY 2004 to FFY 2005, placement instability was slightly worse for children in care less than 12 months, but improved slightly for children who were in foster care longer than 12 months. The national median (50th percentile) is provided for reference in the chart below:

	FY 2004	FY 2005
Percentage of children in foster care between 8 days and 12 months who had two or fewer placements: **[National median was 83.3%; higher is better]**	**84.4%**	**83.4%**
Percentage of children in foster care between 12 and 24 months who had two or fewer foster placements: **[National median was 59.9; higher is better]**	**64.5%**	**65.9%**
Percentage of children in foster care for 24 months or longer who had two or fewer foster placements: **[National median was 33.9%; higher is better]**	**33.5%**	**34.4%**

Among children in foster care (at least 8 days) in FY 2005:

- **49.9% had one placement**
- **29.9% had two placements**
- **11.2% had three placements**
- **5.7% had four placements**
- **1.9% had five placements**
- **1.5% had six placements or more (6 - 70) placements**



Case Law, continued from p. 5

intent to commit those crimes, not to permanently remove himself from his children's lives.

Mother and stepfather also argued that father neglected his children without just and sufficient cause by disregarding the risk that his criminal conduct could affect his ability to maintain his parent-child relationship. The court found that conduct which may provide grounds for termination of a person's parental rights under ORS chapter 419B cannot, in itself, confer jurisdiction on a court to act on an adoption petition. A court has jurisdiction to act on an adoption petition only when one of the criteria in ORS 109.312 to 109.329 is present. Father's criminal conduct constitutes neither willful desertion of his children nor neglect without just and sufficient cause to provide for their care and maintenance. Furthermore, father's post-prison supervision conditions provided just and sufficient cause for any neglect that resulted. Consequently, the trial court erred in granting the adoption petition without father's consent.

***State v. McCrorey*, 216 Or.App. 301 (2007).**

The material facts were undisputed. Defendant's daughter was driving without a license when she was struck by a hit and run driver. Defendant, McCrorey lied to the investigating officer telling him that she had been driving when her daughter was struck. Eventually the daughter admitted to the officer that she had been driving and not her mother. Defendant was charged and convicted of violating ORS 162.375 by "knowingly initiating a false alarm or report which is transmitted to a fire department, law enforcement agency, or other organization that deals with emergencies involving danger to life or property." Defendant argued that she had not violated the statute because, although she gave the officer false information about the identity of the driver, she initially reported a hit-and-run that had, in fact, occurred. The court of appeals found evidence in the legislative history that suggested that the statute was intended to exclude unsworn, oral falsification made in response to police questioning. The court held that conviction under ORS 162.375 must be supported by evidence that the defendant "initiated" a false report, rather than mere evidence that the defendant initiated a report that later resulted in that person giving false information about a true incident. Defendant's conviction was reversed.

***State v. Washburn*, 216 Or.App. 261 (2007).**

As part of their routine foot patrol in a high crime area, police deputies noticed a slightly open door to a motel unit. The deputies knocked on the door which caused it to open wider. The officers entered the room after several minutes of knocking and found a three-year-old child asleep. The officers stepped outside to discuss what to do about the unsupervised child. As they were talking a man approached the room. The man told the deputies that it was his room and his child asleep inside. The deputies asked if they could reenter the room to further discuss the situation. He agreed, and while the deputies were in the room they saw drugs and drug paraphernalia near the child.

The child's mother was convicted of endangering the welfare of a minor by allowing him to be in a place where drug activity occurred. Defendant assigned error to the trial court for denying a motion to suppress the evidence of drugs found in the second search. The defendant argued that the first entry was unlawful and that the deputies exploited information obtained in that search, knowledge that a child was inside, to obtain consent to the second search. The court found that, but for the first search, the deputies would not have sought consent for reentry. The state failed to establish that the second entry would have occurred based on independently obtained information, or that the connection between the unlawful search and the subsequent consent was sufficiently attenuated. Defendant's motion to suppress should have been granted.

***State ex rel. Dept. of Human Services v. J.A.C.*, 216 Or.App. 268 (2007).**

Mother appealed trial court's termination of her parental rights. Under ORS 419B.504 the court must find (1) that the parent is "unfit by reason of conduct or condition seriously detrimental to the child" and (2) "that the integration of the child into the home of the parent is improbable within a reasonable time due to conduct or conditions not likely to change." (Continued, p. 16)

Dispelling Myths about Juvenile Sex Offenders, Continued from p. 7

Once the level of risk is assessed at a point in time, that label unfortunately tends to stick long beyond the timeframe an assessment should be considered current.

Dr. Linn again reinforced the idea that the factors which we often intuitively believe to impact risk for re-offense have been found in more rigorous research to have limited empirical value. These include factors such as the amount of empathy a youth expresses or demonstrates, the youth's own sexual victimization and denial about the offense.

The factors that should be taken into account in an attempt to estimate a risk for re-offense include both static and dynamic factors that can be changed by the youth, his or her family or through various kinds of treatment and education. Static factors which have a valid basis for risk assessment include the youth's prior adjudications for sexual offenses and a history of having two or more victims.

Dynamic (changeable) factors are just as relevant, however. Relevant risk factors, such as substance abuse, the presence of Attention Deficit Hyperactivity Disorder, and a youth's deviant sexual beliefs can be impacted through counseling, education or appropriate medication. According to Dr. Linn, part of the job of the evaluator is to identify a youth's needs and target areas for treatment and intervention that will reduce the likelihood that a youth will act out in the future.

> ***Protective factors are important in preventing future sexual or other delinquent offending…***

Dr. Linn discussed tools that can be useful to guide clinical judgment, in spite of the lack of a valid risk assessment tool for youth offenders. Tools such as the Juvenile Sexual Offender Assessment Protocol, version II (the J-SOAP-II manual is available at http://www.ncsby.org/pages/publications/J-SOAPManual.pdf) and the ERASOR assist evaluators in systematically identifying risk factors, such as a sexual preference for young children or an attitude of sexual entitlement.

Ironically, some treatment approaches may exacerbate, rather than ameliorate, risk factors, particularly for low to medium risk offenders. Juvenile sex offenders often experience a sense of low self-worth and a lack of emotionally intimate relations. Treatment programs that require abstinence from normal adolescent peer relationships and developmentally normative activities can aggravate these risks.

Ironically, some treatment approaches may exacerbate … risk factors, particularly for low to medium risk offenders.

Another problem for low and medium risk offenders who are referred to treatment programs serving higher risk offenders is the contact youth will have with more anti-social or sexually deviant peers. This, again, can increase, rather than lessen, the level of risk for an individual youth.

Another significant problem Dr. Linn identified with sex offender evaluations and risk assessment is that they often fail to measure youths' resilience and relative strengths. Protective factors are important in preventing future sexual or other delinquent offending, therefore, these assets should be considered in assessment and utilized in any treatment and intervention used.◇

More information can be found on the web site of the National Center on Sexual Behavior of Youth: http://www.ncsby.org/ .

Keith Linn, Psy.D. can be contacted at 503-222-5212, or keithillinn@netzero.com.

GOVERNOR'S WRAPAROUND PROJECT COMPLETES INITIAL PLANNING

Erinn Kelley-Siel, Governor Kulongoski's Human Services Advisor, presented information on the recommendations of the Wraparound Steering Committee, appointed by the Governor in the late spring, to the Interim Joint Legislative Committee on Ways and Means on November 17, 2007.

The Steering Committee and four work groups (including: financing, local implementation, cultural competence, and data and outcomes) met throughout the summer to develop recommendations and concluded their work in September. The Steering Committee included parents and foster parents of youth with behavioral health needs, youth consumers, county mental health departments, school districts and private mental health providers. The committee also included Sen. Margaret Carter, the directors of the Department of Human Services, the Oregon Youth Authority and the Commission on Children and Families, as well as the Assistant Superintendent of Public Education for special education.

The Governor received the Steering Committee's final report in a ceremony on December 6, 2007.

Information provided to legislators and other stakeholders by the Governor's office included the following:

"**...** A **system of care** is a coordinated, comprehensive, culturally competent network of community-based behavioral health services and supports that is organized to:

- Provide services and supports as early as possible so that children can be successful in their homes, schools and communities;
- To the greatest extent possible, make services available based on the individual needs of the child and family, rather than on system requirements;
- Increase the self-determination of children and families in designing individualized, community-based services and supports; and
- Maximize the resources available to serve children and families across systems in order to increase the number of children and youth who have access to appropriate behavioral health services and other needed supports.

Wraparound is an approach to implementing individualized, comprehensive services within a system of care for children and youth with emotional and behavioral challenges.

How will it work:

- Children, youth and their families will have a single case plan coordinating services and supports;
- Local agencies will coordinate service delivery, provide child/youth/family driven, culturally competent services and supports, and share accountability for child/family outcomes; and
- State agencies will support local service delivery by blending funds, coordinating data collection and sharing accountability for policy/system outcomes.

Wraparound Gets Results:

Children and youth with behavioral health issues are safe, at home and in school in their local communities.

Families of children/youth can support their children at home and are directly involved in case planning and care delivery.

Education – from Child Care through the K-12 system: Children and youth perform better academically and act out less; families are more engaged; and educators benefit from additional resources, fewer disciplinary problems, improved academic performance, and improved coordination/ collaboration with families, MH professionals, and other partners.

Child Welfare: Children, youth and families who would otherwise be in the child welfare system/ foster care stay together and/or the length of time for out-of-home placement is reduced.

Juvenile Justice: Children and youth with behavioral health issues commit fewer crimes; and children and youth with behavioral health issues who would otherwise be in juvenile detention facilities are diverted and/or served in the least restrictive setting possible.

Health/Mental Health Care: Children and youth with behavioral health needs have their needs met earlier, improving their functioning and reducing

(Continued, p. 22)

Multnomah Co. Risk Assessment Revised,

by David Sherbo-Huggins, Law Clerk

Juvenile detention centers are intended to confine pre-adjudicated youth who have been arrested and pose a high risk of failing to appear at trial (FTA) or committing a new offense (CNO) before their trial. The decision to detain youth awaiting adjudication should not be taken lightly.

Several recent studies have shown that youth who have been detained have higher rates of recidivism, and lower levels of educational attainment, and a more difficult time finding employment than youth who are released to alternative placements.[1] A San Francisco study found that youth who were detained were nearly twice as likely to re-offend than youth who participated in the detention diversion program. [2] And an Arkansas study found that prior incarceration was a greater predictor of recidivism than carrying a weapon, gang membership, and poor parental relationship combined.[3]

Between 1985-1995 the nation as a whole increased juvenile detention by 72% and of that increase 80% were minority youth.[4]

In 1994, Multnomah County was selected to participate in the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). JDAI was initiated in Multnomah county to address both overcrowding in the county's only secure detention facility and reduce the disproportionate number of racial minorities being held in secure detention. In 1994 the average daily population in detention was 96 youth per day.[5] Youth of color represented over 73 percent of that total, and African American's were almost twice as likely to be detained after an arrest as white youth.[6] JDAI reform efforts targeted the size of the detention population and minority overrepresentation by setting objective risk-based thresholds to ensure that only those youth who pose a legitimate threat to public safety or of FTA are held in detention. A second goal was developing an array of possible alternatives to detention that offer a range of supervision options to youth who do not pose a serious threat to the community or of failing to appear.

In 1995 the JDAI team introduced the Risk Assessment Instrument (RAI). The RAI was designed to objectively assess the risks that a particular individual would fail to appear or commit a new offense before trial. The RAI awarded points based on a variety of criteria including the most serious instant offense, whether the youth was currently under supervision, the most serious pending offense, warrant history and a variety of aggravating and mitigating factors. A score of 12 points or higher indicated that detention was appropriate, while a score between 7-11 indicated conditional release. Youth who scored 6 or lower were good candidates for unconditional release, according to the assessment.

> Use of the RAI in combination with the development of detention alternatives led to a drastic decrease in the number of youth held in secure detention and brought the percentage of African American youth held in detention after an arrest to near parity with white youth from 2000-2002.

One of the main objectives of the RAI was to reduce racial bias in determining whether to detain a youth pretrial or release him or her to either a parent or another alternative placement option. Prior to the RAI the decision to hold a child in detention was made by an intake counselor at the detention facility based on a personal determination about the risk the child posed. Instead of relying on criteria like "good family structure," which is highly subjective and more likely to impact youth who do not come from traditional nuclear families, the RAI asks whether there is an adult willing to be responsible for assuring the youth's appearance at court.

The RAI also eliminated reference to "gang affiliation" which was thought to negatively impact minority youth based merely on where they live. Lastly, the instrument included employment as a mitigating factor, in addition to school attendance.

Concurrent with the development of the RAI the JDAI team looked to develop detention alternatives based on resources already present in the community. The County was able to contract to provide temporary foster care in culturally competent community placements. Another program serves as a "staff secure shelter" that provides 24-hour supervision for pre-adjudicated youth who require the most secure community shelter placement. Community detention and electronic monitoring (CD/EM) were also developed to fit

(continued, next page)

Case Law,

continued from p. 12

(State ex rel. Dept. of Human Services v. J.A.C., continued)

While the Court of Appeals agreed with mother that borderline intellectual functioning does not foreclose the possibility of fit parenting, it reasoned that, if the deficiency prevents the parent from absorbing and remembering the skills required for proper parenting, then the parent may be deemed unfit. The state must also prove that the parent's condition is seriously detrimental to the child. "This does not require proof that the child has suffered a serious detriment prior to termination. A condition or conduct can be called detrimental based on potential harm even if that harm has not yet come to pass."

The court found that the mother's mental condition, her inability or unwillingness to change her circumstance by agreeing to keep the child away from the father, an unfit parent, and her failure to effect lasting adjustments after reasonable efforts by DHS have had a seriously detrimental effect on the child. The court also found that the condition and conduct are unlikely to change within a reasonable time as to allow the child to safely integrate into the mother's home. Thus, it is in the child's best interest to be freed for adoption. Affirmed.◇

Case Law summaries by David Sherbo-Huggins, Law Clerk

RAI, continued from p. 15

youths' supervision needs, ranging from house arrest to a call-in reporting program.

Use of the RAI in combination with the development of detention alternatives led to a drastic decrease in the number of youth held in secure detention and brought the percentage of African American youth held in detention after an arrest to near parity with white youth from 2000-2002.[7] According to the Multnomah County's Juvenile Minority Over Representation Report in 2002 37.7% of African Americans brought to detention were detained and 36.1% of Anglos were detained. Between pre-JDAI 1994 and 2004 the average daily population in detention dropped from 96 to 21 and the average daily number of minority youth in detention dropped from 70 to 11.[8]

The validation showed that, of the 21 criteria used to compile a RAI score, *only six criteria were actually indicative of FTA and CNO*.

Multnomah county saved over $12 million during this ten year period as it costs the county $308/youth/day to hold a youth in detention, while staff secure shelter costs $75/youth/day, electronic monitoring costs an average of $26/youth/day and community detention costs an average of $23/youth/day.[9] In 2003, Casey found that the percentage of youth re-arrested while waiting for trial dropped from 33% in 1994 to 9% in 2003 and the failure to appear rate was 7% in both 1994 and 2003.[10] JDAI appeared to be an unequivocal success. Multnomah County drastically decreased its detention population and reduced the disproportionate confinement of minorities, without sacrificing public safety or increasing the percentage of youth who failed to return for court.

In 2006, however, Multnomah County again saw a drastic increase in the percentage of African American's (44.0%) detained after an arrest while the percentage of whites detained was (25.6%).[11] At the same time that Multnomah was experiencing this unanticipated increase in minority detention rates, the RAI was scientifically validated for the first time. The validation tested the strength of the relationship between each of the criterion used to calculate the RAI score and the likelihood that the youth would fail to appear (FTA) or commit a new offense (CNO) prior to the trial. The validation tested combinations of assessment questions to identify the most powerful set of items for predicting FTA and CNO and returned some very surprising results. The validation showed that, of the 21 criteria used to compile a RAI score, *only six criteria were actually indicative of FTA and CNO*.

The first and most controversial finding of the validation was that using the seriousness of the instant offense in the RAI score was actually counter-indicative of whether the youth would FTA or CNO. In other words the more serious the charge the less likely it was for the youth to re-offend or FTA. They also found that the seriousness of the instant offense was not correlated with more violent subsequent offenses. Also, a youth's previous warrant history was not found to be strongly correlated with CNO or FTA; nor was a youth's most serious prior sustained offense. The report recommended eliminating these criteria from the assessment in order to create a more powerful risk assessment tool.[12]

In accordance with the validation recommendations the Depart-

ment of Community Justice abandoned the old RAI and began using the new RAI as of October, 19th 2007. Under the new scoring system a RAI score of -9 to -1 results in an unconditional release. 0 to 5 results in a conditional release. And a score of 6 or higher results in detention.

After an arrested youth is brought to detention an Intake staff determines if the youth has been charged with a legally holdable offense under ORS 419C.145. If the youth can be lawfully held, an Intake staff administers the RAI. First, a computer program automatically enters information into the RAI such as whether the youth is currently under supervision and whether there is a filed pending offense. In order to determine if mitigating or aggravating factors apply, the intake staff gathers information from the police report, interviews the child, and uses anecdotal information from a parent, foster parent, or the police.

If the youth is already in the system the intake staff will look to the Juvenile Justice Information System, a computer database that tracks all information written about the youth in the past. For mitigating factors, in order to be classified as "in school" the policy is to allow reasonable truancy which it refers to as 2-3 unexcused absences in the past month. In order to be classified as employed the youth must currently be working at least 15 hours per week. Lastly, offenses committed prior to age 12 should not be counted against the youth. If there are two or more reported runaways from home in the last six months or one run from home and one run from placement three points are added to the RAI score. Runaways should not include a child storming off in anger or staying out past curfew. There must be evidence of two actual attempts to runaway.

While the most serious instant offense is no longer scored it is presented on the RAI printout because it may be the basis for an automatic override to detention. This decision is based on policy rather than on the likelihood the youth will FTA or CNO. There are 11 bases for an automatic detain regardless of RAI score, among them are any Measure 11 charge or warrant, alleged possession of an operable gun or firearm, and any out-of-state runaway or warrant. There are also four automatic policy overrides indicate conditional, rather than unconditional, release. These are domestic violence charges, fire charges, sex offense charges or a pending warrant. If the youth falls within an automatic conditional release category and a safety plan has been established, the youth is released with a summons to a preliminary hearing, and if necessary, placed in a shelter or on community detention, when the hearing is more than 24 hours in the future.

Upon completion of the RAI, Custody Services Intake staff also consider all extenuating circumstances that affect whether a youth should be detained or released. If the intake staff believes an override of the RAI score in necessary they must contact one of three RAI Override Reviewers. There are ten discretionary overrides to detain which should only be used if there is no means less restrictive to protect to community or reasonably assure the youth's appearance at court. If a youth has a score of less than six and is charged with a holdable offense, he or she may be held in detention if any of the following apply: Domestic violence charge with no safety plan, fire charge with no safety plan, sex offender charge with no safety plan, or if there is no appropriate release option due to strong indications of FTA or of imminent violence against another, or if the youth will be in imminent danger if released.

All possible placement options must be exhausted before recommending a hold based on "no safety plan." If the RAI Override Reviewer grants the override, the intake staff must thoroughly document the reason for the override and the name of the override reviewer.

Because the County's override policy permits staff to detain even when the RAI score recommends release, it is crucial to study how

(continued, p. 22)

Table 13. Scoring Convention for New RAI

Item	Proposed Weight
Currently Under Supervision (score most serious)	
Parole/Committed to YCF/Probation	2
Def Dispo/Acctab Agrmt/Sole Sanction	1
No Formal Supervision	0
Most Serious Pending Offense (score most serious)	
Intentional homicide	17
Att Murder/ A Felony with violence or weapon	12
B Felony with violence or weapon	8
Rape I/Sod I/Sex Pen I w/out forcible compulsion	7
C Felony with violence or weapon	6
All other A and B felonies	5
All other C felonies/ Misdemeanor with viol/weapon	3
All other misdemeanors/PV	1
No pending offense, or status offense only	0
Mitigating Factors (score all that apply)	
School/Employed	-3
First offense at age 16+	-3
Instant offense is 1st offense	-3
Aggravating Factor	
Runaway from home or placement	3

OPDS: ROLE OF COUNSEL FOR CHILDREN AND YOUTH

The following letter was distributed to all Public Defense Contractors by the Office of Public Defense Services on October 30, 2007:

During the course of numerous site reviews over the last four years, OPDS has noticed significantly inconsistent practices regarding the role of appointed counsel for children in both dependency and delinquency cases.

For example, some attorneys believe that it is not necessary to meet and confer with child clients.

It is hoped that this statement will clarify what OPDS believes to be the role of counsel for children in dependency cases and youth in delinquency cases. The statement is being sent to all public defense providers. If you have questions about the role of counsel as outlined in this statement, please contact OPDS's General Counsel, Paul Levy at (503) 378-2478.

ROLE OF COUNSEL IN DEPENDENCY CASES

In juvenile dependency cases, the role of the attorney appointed to represent a child will depend on the age of the child and the child's capacity for considered judgment.

An attorney for a child capable of considered judgment must advocate for the child's expressed wishes. The role of an attorney for a child not capable of considered judgment must advocate for the child's best interest as determined by the attorney's independent investigation and exercise of sound judgment. Some children are capable of considered judgment with respect to some decisions that need to be made in the case but not with respect to others. Standard 3.4 of the Specific Standards for Representation in Juvenile Dependency Cases of the Oregon State Bar's Principles and Performance Standards[1] outlines the analysis to be used in deciding the appropriate advocacy in a given case.

Regardless of that ultimate determination, the child is a "client" and OPDS contracts require the contractor to speak to and conduct initial interviews, in person, with clients who are in custody within 24 hours of appointment whenever possible; and to arrange for contact, including notification of a scheduled interview time, within 72 hours of appointment for all clients who are not in custody. Children are not excepted from this rule.

In addition, Rule 1.14 of the Oregon Rules of Professional Conduct (ORCP) requires counsel for persons with diminished capacity (which includes children not capable of considered judgment) to maintain, as far as reasonably possible, a normal client-lawyer relationship with the client. The ORCP require attorneys **to maintain contact** with their clients, **to keep them reasonably informed** about the status of their cases (ORPC Rule 1.4**), to promptly comply** with reasonable requests for information (*Id*), **to explain** matters to the extent reasonably necessary to permit the client to make informed decisions about matters regarding which the client is capable of exercising considered judgment (*Id*), **to abide by** the decisions of a client who is capable of considered judgment concerning the objectives of representation (ORPC Rule 1.2), and **to consult** with the client regarding the means by which the objectives of representation are to be pursued (*Id*). These rules apply regardless of the client's age or capacity.[2]

ROLE OF COUNSEL IN DELINQUENCY CASES

Attorneys for youth in juvenile delinquency proceedings are bound to advocate for the expressed wishes of the youth. While the attorney has a responsibility to advise the youth of legal options that the attorney believes to be in the youth's best interest and to identify potential outcomes of various options, the attorney must represent the express interests of the juvenile at every stage of the proceedings. The attorney owes the same duties to a juvenile under the Rules of Professional Conduct as an attorney owes to an adult criminal defendant.

If an attorney determines that a youth is not capable of aiding and assisting in the youth's defense, the attorney shall move the court to dismiss or amend the petition, as discussed in Standard 2.8(2) of the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases.

---

1. The full text of the 2005 version of the Principles and Standards for Counsel in Criminal, Delinquency and Dependency Cases can be found on the bar's website at http://www.osbar.org/surveys_research/performancestandard/index.html.

2. For those attorneys who lack the information or skills to have an age appropriate discussion with a young or disabled client, an online training will be available beginning in November, 2007at the following link: http://www.cwpsalem.pdx.edu/teen/.

ZEALOUS ADVOCACY: THE SHELTER HEARING

By Julie H. McFarlane

Avoiding and Limiting Unnecessary Placement

Attorneys representing parents and children at shelter hearings can do a great deal to prevent or limit unnecessary placement in foster care and promote relative placements rather than stranger foster care. Advocacy at this stage of the case can position the client to achieve their goals in the case and allow the family to be quickly reunited or the child to be placed with a relative, which is more likely to lead to reunification of the family or avoid a permanent loss of parental rights.

To be a zealous advocate at the shelter hearing stage of a dependency case, an attorney must be well versed in the underlying child welfare issues of the case, the law and procedure in dependency cases. This article focuses on practice for parents' attorneys. For quick guidance, checklists are also provided.

Studies are increasingly revealing the harms to children and families caused by unnecessary removal of children from families – a child placed in foster care not only loses his mother and father, but also siblings, aunts, uncles, grandparents, teachers, friends and classmates. The emotional trauma of losing everyone the child loves and knows can last a lifetime. A recent study of Oregon and Washington state foster care alumni found that one-third said they were abused in foster care, and only 20% described themselves as "doing well"! See, *THE EVIDENCE IS IN – Foster Care vs. Keeping Families Together: the Definitive Study*, http://www.nccpr.org/reports/evidence.doc

Further, removal may cause deterioration in the family's situation that may lead to the child staying in foster care longer. Removal of the child may lead to loss of housing and public benefits or cause the parent to give up on positive actions they were taking before they had the child removed, such as participation in counseling or drug treatment.

Initial Procedure

Children are most often removed from their parents' home as a result of an investigation of a report of child abuse or neglect. The Department of Human Services - Child Protective Services (DHS-CPS) or the local Law Enforcement Agency (LEA) that receives the report is required to immediately "cause an investigation to be made to determine the nature and cause of the abuse of the child". ORS 419B.020(1). As a result of the investigation, DHS-CPS may provide protective social services if necessary to prevent further abuse or to safeguard the child's welfare. ORS 419B.020 (2).

All too often, however, children are immediately removed and placed into protective custody. ORS 419B.150 allows protective custody, *inter alia*, "[w]hen the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare." Although the statute obviously gives the agency extremely broad discretion on whether a child should be initially removed, DHS's own administrative rules are more restrictive and require an analysis of the risks to the child's safety. See, e.g., OAR 413-015-1000 The CPS Assessment Dispositions. http://www.dhs.state.or.us/policy/childwelfare/manual_1/i-ab5.pdf.

Although it has become more common for DHS-CPS to have worked with a family on a voluntary basis, utilizing a safety plan, prior to initiating removal and formal court proceedings, such "voluntaries" may fail to address safety concerns or a family's needs in general.

TIP: *Prior to the Shelter Hearing, particularly in cases where voluntary services have not been previously offered, attorneys may be able to convince DHS to withdraw the petition and work with the family voluntarily.*

When a child has been removed, a petition must be filed [ORS 419B.809] and there must be a shelter hearing within 24 hours. ORS 419B.183. At the shelter hearing, attorneys can argue for return of the child to the parent(s) when removal is not essential for the immediate protection of the child, providing an important counterpoint to DHS's discretion in the initial decision to remove.

Prior to the shelter hearing DHS must provide reports and investigatory materials that support the jurisdictional allegations, the reasons for the initial removal, the reasons that continued shelter care is needed, efforts to notify the parents and any custodian of the child of the hearing, efforts to determine whether the child or parents have any Indian heritage, the services already provided to the family, any services available to prevent the need for further shelter care, whether there is a non-custodial parent or other relative willing and able to care for the child, and diligent efforts that have been made and continue to be made to (continued, p. 20)

place the child with siblings. See, e.g., ORS 419B.171, ORS 419B.090(3) and ORS 419B.192 (2) [SB 414 – 2007].

Evidentiary Hearing

Although it may not be common practice to present evidence at a shelter hearing, attorneys should carefully consider doing so. ORS 419B.185 provides that the parent or the child "shall be given the opportunity to present evidence to the court" at the shelter hearing and at any subsequent review hearing that the child can be returned home without further danger of physical injury or emotional harm, endangering or harming others or not remaining within the reach of the court process prior to adjudication. The services or solutions that have already been tried should be considered along with strategies not yet tried.

The court should consider why the child cannot remain in the home, why removal is necessary to eliminate the safety risk to the child, and whether the "provision of reasonable services can prevent or eliminate the need to separate the family." ORS 419B.185 (1)(b).

In making its determination to place or continue the child in shelter care, the court will consider unrebutted evidence, including the DHS report, to be factual. Thus, making presentations of rebuttal evidence can be critical. Further, parties, including children and parents have the "right to call witnesses, cross-examine witnesses and participate in hearings". ORS 419B.875.

Cross-examination of the DHS caseworker concerning information in reports provided to the court is appropriate. If information in reports is from parties not available for cross-examination, attorneys should argue that the court should not rely on that information in making the shelter decision.

TIP: *Attorneys should remember that the truth of the allegations is not really at issue in the shelter hearing. Rather the focus should be on whether there is a sufficient showing of immediate risk of harm to the child to justify the need for shelter care. Evidence of services the family is engaging in, proposed safety plans or other protective measures that would allow the child to remain in the home should also be presented. Attorneys should remind the court of the risks involved in removal for the child, including separation from family, friends and school, the possibility of multiple placements and emotional harm, and that removal should only be utilized to protect the child from a fairly certain risk of harm in the parents' care. If applicable, it should be argued that the "provision of reasonable services can prevent or eliminate the need to separate the family." ORS 419B.185(1)(b).*

Privilege Against Self-Incrimination

If there is a potential for criminal charges, the attorney should assert the client's privilege against self-incrimination and, if needed, direct that communication with the client be through his or her attorney.

Burden of Proof

The State has the burden at a shelter hearing of proving that removal of the child is in the best interests of the child. In determining whether to remove the child or not, the court must consider the child's "health and safety" the most important concern. ORS 419B.185(1)(c). Ultimately, the court must make a written finding that explains why the harm in leaving the child in the home endangers the child's health and welfare more than removing the child from the home. ORS 419B.185(1)(d).

Roles of Attorney

Attorney for the Parent

The *Oregon Rules of Professional Conduct* (ORPC) 1.2 and the *OSB Principles and Standards for Counsel In Criminal, Delinquency and Dependency Cases* (OSB Standards) give clear guidance on the role of the attorney for the parent. ORPC 1.2 (a) Scope of Representation and Allocation of Authority Between Client and Lawyer provides that an attorney must abide by a client's decisions concerning the objectives of representation, including consulting with the client as to the means of pursuing the client's objectives in the case, and abiding by the client's decision whether to settle the case.

Decisions that are ultimately for the parent client to make include: whether to admit the allegations of the petition; whether to agree to jurisdiction, wardship and temporary commitment of his or her child to DHS, whether to accept a conditional postponement, or whether to agree to specific services. Implementation 1, OSB Standard 3.4.

Thus, in the context of the shelter hearing, the attorney for the parent "should advocate for the placement order and other temporary orders the client desires". OSB Standard 3.5. Implementations 1 and 2 of OSB Standard 3.5 contains extensive guidance on the familiarity attorneys should have with the law, placements and other issues relevant to shelter placement. Implementation 3 specifies the actions attorneys should take at the shelter hearing, including: obtaining relevant discovery, (Continued, next page)

talking with the client, seeking a continuance or recess if needed to obtain information, cautioning the client and asserting the client's Fifth Amendment and other Constitutional rights, presenting evidence that the child can safely return home, and addressing other legal issues, including venue, jurisdiction, paternity, consolidation, ICWA, UCCJEA, ICPC, restraining orders and reasonable or active efforts. [Future issues will address the legal issues which often arise at the shelter hearing.]

If the court is unwilling to consider return of the child to the parent, the attorney and client should consider whether the client's objectives would be served by advocating for a placement with a non-custodial parent, a relative or a friend. Whether the child is placed in shelter care or with a relative or friend, the attorney should seek a reasonable and flexible visitation schedule that takes into consideration the client's other activities. If the client is willing to engage in evaluations or treatment prior to adjudication, the attorney should obtain orders for such services to be provided. Parents should be consulted on treatment that is needed for the child and parents' attorneys should advocate for that treatment as well. OSB Standard 3.5, Implementation 5.

Below is a Shelter Hearing checklist for parents' attorneys.

Checklist for the Parent's Attorney

BEFORE THE SHELTER HEARING

__ Obtain and review the petition and supporting paperwork for:

- __ Jurisdictional sufficiency of the allegations
- __ Reasonable Efforts
- __ Efforts to place with relatives/siblings

__ Determine whether there is any conflict of interest

__ Make contact and gather information from caseworker and opposing counsel

__ Introduce self to client, explain role and what will be focus of hearing

__ Obtain contact information and other basic information

__ Encourage cooperation with DHS, if appropriate

__ Obtain information on reasonable efforts & review for sufficiency

__ Help client formulate position on whether child should be returned

__ Determine whether to seek continuance/second shelter hearing to obtain testimony, etc.

DURING THE SHELTER HEARING

__ Be aware of the law

__ Present evidence & argument to support client's desired outcome for placement

__ Make reasonable efforts arguments

__ Request orders for

- __ Placement with relative or family friends
- __ Visitation with client, siblings and other relatives
- __ Maintenance of child in current school
- __ Paternity order or testing

AFTER THE SHELTER HEARING

__ Consult with client to explain court rulings

__ Help client see their role in fixing the problem

__ Help client establish an action plan

__ Provide contact information and set intake appointment

__ Explain the role of the caseworker

__ Discuss possibility of re-hearing (if referee) or another shelter hearing to request return of child

__ Request referrals for services from caseworker or make referrals

Continued in future issues: The Role of the Attorney for the Child and Child's Attorney Checklist; Other Issues at the Shelter Hearing, including: Venue, the Indian Child Welfare Act (ICWA) the Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), the Interstate Compact on the Placement of Children (ICPC), Consolidation, Paternity and the Guardian *ad Litem* for a parent.

Risk Assessment, continued from p. 17

override practices are affecting implementation of the new RAI, especially as they relate to the current minority overrepresentation. Although the validation did not assess the impact of the override policy on the new RAI, it did re-score 1400 cases with the new RAI to understand the impact that the new RAI will have on the number of youth held in detention. The validation found that the new RAI would decrease the number of youth scoring in the detain range from 25% of cases to 15% of cases. Many of these cases would instead score in the conditional release category which is projected to account for 58% of cases as compared to 27% under the original RAI.

Only time and diligent data collection will determine whether the new RAI lives up to its expectations, but if it does, Multnomah County should look forward to a decreased need for costly detention beds as well as a decrease in the proportion of minorities who are detained after an arrest. Detention alternatives, implemented correctly, saves the county money, ensures public safety and improves youth's opportunities to succeed later in life.◇

Notes:

1)Holman, Barry and Ziedenberg, Jason. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, A Justice Policy Institute Report. Justice Policy Institute. Washington DC, 2006. http://www.cfjj.org/Pdf/116-JPI008-DOD_Report.pdf

2 (Id.)

3 (Id.)

4) National Association of Counties, *Why Counties Consider Juvenile Detention Reform A guide for County Officials on Juvenile Detention Reform.* February 2007. http://njjn.org/media/resources/public/resource_596.ppt

5) Center for Juvenile and Criminal Justice, *Reducing Disproportionate Minority Confinement: The Multnomah County Oregon Success Story and its Implications,* 2002. http://www.cjcj.org/pubs/portland/portland.html

6) (Id.)

7) Multnomah County Department of Community Justice Juvenile Services Division, *Juvenile Minority Overrepresentation Report 2000, 2001, and 2002.* http://www.co.multnomah.or.us/dcj/evaluation_archive.shtml#juv_minority_issues

8) National Association of Counties, *Why Counties Consider Juvenile Detention Reform A guide for County Officials on Juvenile Detention Reform.* February 2007. http://njjn.org/media/resources/public/resource_596.ppt

9) Multnomah County Department of Community Justice Juvenile Services Division*, Program # 50023A – Juvenile Detention Alternatives*. 6/15/2007. http://www2.co.multnomah.or.us/aspnet/budgetwebFY08All/PDF/50023A.pdf

10) Lotke, Eric and Schiraldi, Vincent. *The Juvenile Detention Aleternative Initative: The Santa Cruz and Portland Models.* October, 2005. http://www.buildingblocksforyouth.org/noturningback/ntb_fullreport.pdf

11) Multnomah County Department of Community Justice Juvenile Services Division, *Juvenile Minority Overrepresentation Report. 2007.* *http://www.co.multnomah.or.us/dcj/jsd_minorityoverrep2007.pdf*

12) Davies, Garth Ph.D. and Dedel, Kelly Ph.D., *Validating Multnomah County's Juvenile Detention Risk Assessment Instrument.* June 11, 2007.

Wraparound, continued from p. 14

their overall impact on both the physical and behavioral health systems; families are more engaged in treatment therefore more likely to follow-through with treatment recommendations; prevention/early intervention with children and youth with behavioral health issues has long-term impact on adult health/mental health care systems.

Resources: Better coordination results in more effective and more efficient use of state and local resources, both public and private."

The next step in the process will involve the development of a multi-system implementation team. The tasks for the team, which should include experts in state and federal financing, as well as system of care development, include: completing an assessment of the population of children with behavioral health needs and the resources currently serving the population and an estimate of additional resources needed; making recommendations for an integrated information management system which would ideally centralize records and payment functions; designing a mechanism to create a blended pool of state, federal and other funds; and determining the need to make changes to state statutes and administrative rules;

The implementation will be expected to develop policy and budget recommendations to be advanced for the 2009 Legislative Session.

The full steering committee report is available on-line at:

www.oregon.gov/dhs/mentalhealth/wraparound/main.shtml/

Juvenile Law CLE

Juvenile Law 2008: Eyes on the Child *Co-sponsored by the Juvenile Law Section, Oregon State Bar*

"Juvenile Law 2008: Eyes on the Child" focuses on the needs of children and adolescents in the juvenile dependency system. Special guest speakers are Dr. Orin Bolstad, one of Oregon's most highly respected experts on adolescent thought and behavior; Kathryn Harrison, former chair of the Confederated Tribes of the Grand Ronde Tribal Council; and Jody Marksamer, a staff attorney for the National Center for Lesbian Rights, who will explore what can be done to better address issues facing lesbian, gay, bisexual, and transgender children in delinquency and dependency systems. This seminar will also look at the needs of children as they age out of care and the obligations of attorneys for children who become aware of potential tort claims against DHS or its agents. Get updates on new legislation affecting dependency cases and case law developments, and conclude the day by learning about the life experiences of a group of foster children.

4.75 General CLE credits (including .5 General CLE credit for optional lunch presentation), 2 Elimination of Bias credits, and .5 Ethics credit

Brochure and registration materials available at:
http://www.osbarcle.org/JUV08.pdf

Video Replays (Confirmation Pending):

March 27, 2008

Josephine County Courthouse,
Room 222
N.W. 6th and "C" Streets
Grants Pass, Oregon

Douglas County Counsel's Office
Law Library, Room 319
1036 S.E. Douglas Avenue
Roseburg, Oregon

March 28, 2008

Miller Nash LLP
1567 S.W. Chandler Avenue,
Suite 204
Bend, Oregon

Daniel M. Hinrichs PC
590 Commercial Avenue
Coos Bay, Oregon

Wyers Haskell Davies PC
216 Columbia
Hood River, Oregon

Boivin Uerlings & DiIaconi PC
803 Main Street, Suite 201
Klamath Falls, Oregon

Mautz Baum & O'Hanlon LLP
1902 Fourth Street
La Grande, Oregon

The Vandermay Law Firm
Capitol Center Building
388 State Street, Suite 340
Salem, Oregon

Butler & Looney PC
292 Main Street S.
Vale, Oregon

April 2, 2008

Oregon State Bar Center
16037 S.W. Upper Boones Ferry Road
Tigard, Oregon

April 4, 2008

Lavis DiBartolomeo PC
1139 Exchange Street
Astoria, Oregon

Gaydos Churnside & Balthrop PC
440 E. Broadway, Suite 300
Eugene, Oregon

Frohnmayer Deatherage
2592 E. Barnett Road
Medford, Oregon

Macpherson Gintner & Diaz
423 North Coast Highway
Newport, Oregon

Mautz Baum & O'Hanlon LLP
101 S.E. Byers Avenue
Pendleton, Oregon

Bryant Emerson & Fitch
888 S.W. Evergreen Avenue
Redmond, Oregon

Jasper Mountain, continued from p. 6

Ms. Kutas, who would not comment to *The Register*-Guard on current Jasper Mountain investigations, said in the DHS newsletter article that the OTI staff are "… very fortunate to have the ability to be autonomous and separate from service delivery. It gives us the independence to reach conclusions and make recommendations for change, for system improvement, in an objective manner."

Child protective services is part of the Children Adults and Families (CAF) Division, which is the guardian and custodian of many of the children who reside in facilities like Jasper Mountain. Case workers from CAF are often responsible for placing children in psychiatric residential and other types of facilities. The shift in responsibility for investigations from CPS to OTI means that CAF will no longer be responsible for both placing children and investigating abuse allegations in the same state-contracted facilities.

On the web:

The Register-Guard's 12/22/07 article, "Jasper Mountain hit with suit over injuries," by Diane Dietz:
http://www.registerguard.com/csp/cms/sites/dt.cms.support.viewStory.cls?cid=38808&sid=1&fid=1

The Register-Guard's 12/28/06 article, "Broken bones, broken rules? A home devoted to healing abused kids falls under investigation," by Diane Dietz:
http://rgweb.registerguard.com/news/2006/12/28/a1.scarjasper.1228.p1.php?section=cityregion

J R P Juvenile Rights PROJECT

401 NE 19th Avenue

Suite 200

Portland, Oregon 97232