

Centers for Disease Control Task Force Finds Teens in Adult System Victimized, Re-offend

WASHINGTON, D.C. – A study conducted by a Centers for Disease Control and Prevention task force has found that teens that are transferred to the adult justice system are 34 percent more likely to be arrested again. Outcomes from the task force, which was led by an administrator from the University of Medicine and Dentistry of New Jersey, are published in the April 2007 edition of the American Journal of Preventive Medicine.

In the article, "Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systemic Review," the CDC's 15-member Task Force on Community Preventive Services recommends against laws that allow states to try youth as adults rather than in the juvenile justice system.

The task force conducted a systematic review to determine whether laws or policies that govern the transfer of youth to the adult criminal justice system effectively deter youth from committing crimes. The task force reviewed the theory that transferring youth to the adult criminal justice system and that fear of perceived severity of sentencing will deter youth from committing subsequent crimes.

According to a national survey that was conducted in 2002, adults in the United States reported more than 1.87 million incidents of victimization by perpetrators who were between ages 12 and 20. This statistic represents 5.1 incidents of victimization per 100 juveniles in this age group.

"A cardinal rule in the medical profession is 'first, do no harm,' said Dr. Robert L. Johnson, interim dean of UMDNJ-New Jersey Medical School and leader of the task force. "Transferring youth to the adult criminal system is counterproductive. It tends to increase risks for the young offenders, yet it fails to significantly increase public safety. We recommend that researchers, public health and juvenile justice policy makers consider this information when establishing and revising laws."

The study found that strengthened transfer policies might be harmful for juveniles. The report notes that other violent outcomes may result from the transfer of youth to the adult system. These violent outcomes include an increase in pretrial violence, victimization of juveniles in adult facilities, and elevated suicide rates for juveniles incarcerated in adult facilities.

"The theory that trying youth as adults reduces violence is false. The Task Force found strong evidence that shows youth who have been previously tried as adults are, from available evidence, 34 percent more likely to commit violent crimes than youth retained in the juvenile justice system," said Dr. Robert A. Hahn, coordinating scientist, Violence Prevention Review and Excess Alcohol Consumption Review at the Centers for Disease Control and Prevention.

May is National Foster Care Month!
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Oregonian Covers Pending Foster Care Legislation By Mark McKechnie

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The headline on *The Oregonian's* May 7, 2007, editorial read: "Act to boost foster children's chances. When the state legally declares that it's taking responsibility for a child, it really should take responsibility." The paper endorsed a package of bills sponsored by self-described "Gang of Four" legislators, which includes a Democrat and a Republican from each chamber: Senators Brown and Kruse and Representatives Krieger and Schauler.

The editorial contrasts proposals for providing foster care support payments to relative foster parents:

"Currently, Oregon is one of only two states that will not pay a foster parent's allowance to a relative, even though placement with a grandparent or an aunt clearly provides a child with more stability, with access to the rest of his family, with care by someone who already is and will continue to be connected to him. Gov. Ted Kulongoski's budget changes this policy, but also imposes a family means test that could end up costing almost as much to enforce as it would save. The Gang of Four's bill [SB 282] would apply the change to all kids involved -- the right choice for a caring parent, or for a caring state."

The editorial also endorses other bills in the Gang of Four package, including SB 414, which increases the obligations on the Department of Human Services to ensure that children are placed with relatives and with their siblings more often; it also increases the court's oversight of DHS specifically to ensure that children's family connections are maintained.

The Oregonian also endorsed a bill, SB 411, which would reduce caseloads and improve compensation for attorneys who represent children in the foster care system.

The editorial noted: "Attorneys are vital for making the system work, for protecting the interests and legal rights of Oregonians who may be too young to know that they have any."

The bill also addresses the caseloads and compensation for attorneys who represent parents in dependency cases.

In discussing the need for these three pieces of legislation, the editorial concluded:

"When the state takes a child into the welfare system, into foster care, it declares that the parent is irresponsible and that the state itself takes on the responsibilities of a parent. It doesn't help a child just to replace one irresponsible parent with another."

Following the editorial, *The Oregonian* published a news story on the front page of its May 12, 2007, edition: "Foster kids belong to all of us." Reporter Michelle Cole profiled two young adults who grew up in foster care in Oregon.

Joshua Griggs, 19, spent 12 years in foster care before aging out of the system. Nicole Dobbins, now 24, entered foster care the first time at age two. She re-entered foster care again at age 14.

Griggs lived in 11 foster homes in 12 years, and attended nine schools. He recounted the ways in which this stability affected him. He felt isolated from peers and fell behind academically.

He noted that he was placed with relatives a couple of times, but ended up leaving
(Continued on p. 13)

Governor Kulongoski Launches Statewide Children's Wraparound Project

By Mark McKechnie, MSW

On March 27, 2007, Governor Kulongoski signed Executive Order No. 07-04, launching the "Statewide Children's Wraparound Project."

The project is aimed at better supporting children with mental, emotional and behavioral health disorders and their families when they receive services from multiple public systems, such as education, mental health, child welfare, juvenile justice and others.

The goals of the project stated in the Executive Order include, developing a "system of care," a coordinated 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 — reducing the number of children and youth with significant emotional, behavioral or substance abuse related needs who enter foster care or penetrate the juvenile justice system and improving school outcomes for children and youth with significant emotional, behavioral or substance abuse related needs;
- 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 sup-

ports."

The executive order appoints a steering committee, consisting of administrators from the state human services, juvenile justice and education agencies, as well as parents, youth, community mental health representative, private mental health provider directors and school district representatives. The committee is co-chaired by Erinn Kelley-Siel, the Governor's human services policy advisor, and Mary Lou Johnson, the special education director of the Centennial School District.

The Executive Order notes that: "Integration and coordination of... services can improve outcomes for youth and their families, reduce duplication and gaps in services, and avoid the most expensive, out-of-home placements in foster care or the juvenile justice system."

Planning to better integrate services is to be completed by the steering committee. The state awarded a contract to a group from Wraparound Oregon to provide staff support to the steering committee. Staff members of the team include Pam Curtis, former human services aide to Gov. Kitzhaber, and Janice Gratton, former behavioral

health manager for Multnomah County and current board chair of the Multnomah Education Service District. The team will subcontract with experts such as Wraparound Milwaukee director Bruce Kamradt to advise the steering committee.

Much of the detailed work will occur in four subcommittees, which will address: system financing, cultural competence, data and evaluation and local implementation. The

work of the subcommittees and the steering committee is to be completed and a list of initial recommendations will be presented to the Governor by September 30, 2007. Final recommendations are due by December 31, 2007, so that the recommendations can be considered in the process of state agency budget and legislative

development for the 2009-2011 biennium.

The Executive Order is available at:

<http://governor.oregon.gov/Gov/eo0704.pdf> .

The agenda and other materials for the first steering committee, which was held on April 27, 2007, is on-line at:

<http://www.oregon.gov/DHS/mentalhealth/wraparound/wraparound042707.pdf> .

"Integration and coordination of... services can improve outcomes for youth and their families, reduce duplication and gaps in services, and avoid the most expensive, out-of-home placements in foster care or the juvenile justice system."

Mid-Valley Program Offers Support for Early Psychosis

By Mark McKechnie, MSW

The Mid-Valley Behavioral Care Network (MVBCN) established the Early Assessment and Support Team (EAST) to serve youth and young adults who experience psychosis. The program is designed to serve young people with early onset psychotic symptoms and who have experienced those symptoms in the previous 12 months.

Mid-Valley Behavioral Care Network is a managed mental health care organization (MHO) serving Linn, Marion, Polk, Tillamook and Yamhill counties in Oregon. MVBCN enrolls members of the Oregon Health Plan in those counties.

The EAST program recently received a \$2 million grant, in collaboration with Oregon Health and Science University, from the Robert Wood Johnson Foundation. According to a press release announcing the grant, "The *Early Detection and Intervention for the Prevention of Psychosis Program* (EDIPPP) will provide MVBCN up to \$2 million over four years to be part of a na-

tional effectiveness study aimed at averting the onset of serious mental illness among young people showing early symptoms of psychosis."

EAST currently serves 100 young people in Linn, Marion, Polk, Tillamook and Yamhill counties, and accepts referrals from anyone in the community. The program will reach out to teachers, social workers, doctors, students, parents, clergy, and others who interact regularly with young people and educate them on how to identify possible early signs of psychotic illness so that they can get help quickly. The program works with young people ages 12 to 25 who show early symptoms of psychotic illness before those symptoms become severe and disabling.

"Young people often tell us that they've had symptoms a long time before getting help," said EAST Program Coordinator Tamara Sale. "By waiting, many of these bright young people suffer significant consequences, like school fail-

ure, drug use, and hospitalization. We hope to avoid trauma and help young people stay in control of their lives. By being part of a national effectiveness study, we can also help pave the way for other communities to do the same."

Approximately 2 to 3 percent of youth and young adults develop schizophrenia or a severe, psychotic mood disorder, with most cases developing after age 12. Psychotic illness is crippling: 75 percent of people who have schizophrenia go on to develop a disability and only a small percentage are gainfully employed. An estimated 12 to 15 percent of people who suffer from psychosis commit suicide.

More information on the EAST program can be found at: <http://www.eastcommunity.org/>.

Oregon Gets "D" on First Star's 50-State Report Card on Legal Representation for Abused and Neglected Children in Foster Care

In April 2007, First Star, a national child advocacy organization, released *A Child's Right to Counsel: First Star's National Report Card on Legal Representation for Children*, a 50 state report card rating each state's child welfare system.

A shocking 21 states received grades of D or F, and another 11 received C's. Meanwhile, only five states earned A's: Connecticut, Louisiana, Massachusetts, Mississippi, New York, and West Virginia. One of the key criteria for the grading system was whether the state provides a right to counsel to abused and neglected foster

children in court proceedings, which many advocates believe is vital for the well-being of children.

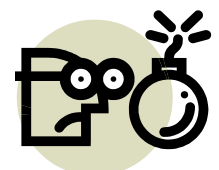
The report is part of a larger campaign by First Star to guarantee that children in dependency and foster care proceedings will receive attorneys and to develop mandatory standards to guide legal practice for attorneys handling their cases.

Deborah Sams, CEO of First Star, says, "Our objective is to improve the lives of abused and neglected children by strengthening the laws that guarantee them effective legal representation. Ex-

perts and practitioners across the country agree that children who are represented by well-trained, client directed attorneys in dependency hearings receive the best care and have a much stronger chance for success." To read the report, see:

<http://www.firststar.org/documents/FIRSTSTARReportCard07.pdf>.

News Release, *Most States Fail to Protect the Legal Rights of Children in Foster Care, New Study Finds*, First Star, April 2007.



Zealous Advocacy in Dependency Review

By Julie H. McFarlane, Supervising Attorney

(Continued from Last Issue)

In recent legislative sessions several requirements have been added to the case planning and review hearing statutes to improve transition planning and outcomes for teens aging out of foster care. ORS 419B.343.(3) requires the Department of Human Services, child welfare program (DHS-CW), any time after a child attains age 14, if the DHS-CW determines it is appropriate, and in all cases no later than when the child attains age 16, to ensure that the case plan includes a plan to transition the child to independent living.

Transition planning must occur in all cases regardless of the permanent plan in the case. DHS-CW is required to ensure that the case plan addresses the child's needs and goals for a successful transition to independent living, including goals related to housing, physical and mental health, education, employment, community connections and supportive relationships. *Id.*

The Court is required to review the comprehensive transition plan at each permanency hearing.¹ In reviewing the comprehensive transition plan, the court must determine: whether the plan is adequate to ensure the ward's successful transition to independent living; whether DHS-CW has offered appropriate services pursuant to the plan; and whether DHS-CW has involved the child in the development of the plan. ORS 419B.337 requires the juvenile court to again determine whether the child has been provided transition planning, involved the child in that planning and provided the child with appropriate services pursuant to ORS 419B.343 before granting a request for dismissal of commitment of the child to DHS. The juvenile court must also determine that the child

has safe and stable housing and is unlikely to become homeless as a result of dismissal. These determinations must be made for all children between the ages of 16 and 21 when dismissal is being requested and for children between 14 and 16 years of age if DHS-CW has provided transition planning pursuant to ORS 419B.343.²

The dismal outcomes for many young people who have the misfortune of growing up in foster care are well documented.³ Lawyers for older children and for their parents should advise their clients about the difficulties the child should be expected to experience transitioning to adulthood. Lawyers should assure that clients are involved in transition planning and involve relatives and other supportive adults.

Many issues that lead to poor outcomes for youth are issues that should be addressed in case planning monitored in review hearings. Such issues include:

1. Resolution of mental health problems;
2. Resolution of family of origin issues;
3. Improvement of the child's self-perception and self-esteem; and
4. Helping the child develop resilience.

Lawyers should be aware of techniques for developing a successful comprehensive transition plan and appropriate services. Children who are of an appropriate age to be receiving transition services should be engaged in the Independent Living Program (ILP).

ILP is a federally funded program that provides transition planning and services and is available to foster children 14 and older (up to

21 years). Although an ILP case manager may provide case planning and services, it is the DHS-CW caseworker that has responsibility for such planning and the provision of services. Children who do not attend ILP are still entitled to appropriate planning and services.

Thorough planning should include an assessment of skills the child needs to acquire. This can be done with the Ansell-Casey Life Skills Assessment, a web-based tool that assesses daily living tasks, housing, community resources, money management, self-care, social development and work and study habits.⁴ To engage teens in the planning process, a "Teen Decision Meeting" similar to a Family Decision Meeting can be used.

A majority of teens aging out of foster care return to live with parents or other relatives.⁵ This occurs despite the fact that most often these teens have had no real preparation for this reunification or resolution of issues that brought them into care in the first place. Parties and courts need to be realistic about this reality for many teens and provide services to assist them.

Statutory Requirements for Periodic Court Review

DHS-CW semi-annual reports trigger the authority for periodic review and the court may set a review upon receipt of a six month report. ORS 419B.449(1).

Review by the court is required in some circumstances following receipt of a six month report, including: in all cases in which parental rights have been

(Continued on p. 12)

Legislation

The following summary is a look at several of the bills relating to juvenile law which have been introduced in the legislature. The summary contains bills which are most relevant to juvenile law practice. Although several bills are discussed below, there are many more which are not included in this summary; to search the 2007 legislative measures, go to: http://www.leg.state.or.us/bills_laws/.

Bill No.	Topic	Summary	Status as of 5/1/07
HB 2127	Victims of juvenile crime	Revises Juvenile Code references to constitutional rights that may be exercised upon request by victims of juvenile crimes. Provides for prior notice to victims of hearings that constitute critical stages of proceedings. Defines 'critical stage of the proceeding.'	04/10 (H) Third reading. Carried by Read. Passed. Ayes, 59; Excused, 1--Burley. 04/11 (S) First reading. Referred to President's desk. 04/12 (S) Ref'd to Judiciary.
HB 2181	Juvenile jurisdiction	Requires Department of Human Services to file report with court regarding department's recommended timetable for dismissal of department's legal custody of ward of state and describing department services that should be continued after dismissal. Directs court, after hearing, to issue findings stating why it is in best interests of ward to continue in department custody and expected timetable for termination of custody.	03/26 (H) Third reading. Carried by Gelser. Passed. Ayes, 54; Nays, 2--Garrard, Krummel; Excused, 4--Boone, Boquist, Hanna, Minnis. 03/27 (S) First reading. Referred to President's desk. 03/29 (S) Referred to Judiciary.
HB 2182	Foster care	Changes definition of 'foster home' for purposes of foster care payments. Authorizes Department of Human Services to adopt standards for foster care payments. Authorizes department to consider income, resources and maintenance available to relative foster parents in determining need for or amount of foster care payment. Authorizes foster care payments to for-profit child caring agency.	01/11 (H) Referred to Human Services and Women's Wellness. 02/09 (H) Public Hearing held.
HB 2189	Child abuse	Modifies definition of 'abuse' for purposes of child abuse reporting to include existence of circumstances that create substantial threat to child. Extends immunity from liability to persons voluntarily reporting child abuse in good faith.	03/28 (H) Third reading. 03/28 (H) Motion to rerefer to Human Services and Women's Wellness carried. Rereferred. 04/20 (H) Work Session scheduled.
HB 2190	Custody of children	Implementation of safe & timely interstate placement of foster children act	01/12 (H) Referred to Judiciary. 04/12 (H) Public Hearing and Work Session held.
HB 2195	Protective custody of children	Permits DHS employee to take child into protective custody under certain circumstances. Requests that DHS and law enforcement agencies cooperate in investigations and assessments of child welfare. Requires DHS employees to seek court order or law enforcement agency assistance when employees meet with resistance.	01/12 (H) Referred to Human Services and Women's Wellness. 02/09 (H) Public Hearing held.

Legislation, cont'd from p. 6 and cont'd on page 8

Bill No.	Topic	Summary	Status as of 5/1/07
SB 265	Department of Human Services regarding psychiatric treatment methods	Requires Department of Human Services to adopt rules requiring specified facilities to report number of incidents of restraint or seclusion during course of psychiatric treatment. Requires that data be available to public.	04/04 (S) Third reading. Carried by Kruse. Passed. Ayes, 26; Excused, 4--Carter, Deckert, Johnson, Starr. 04/05 (H) First reading. Referred to Speaker's desk. 04/10 (H) Referred to Human Services and Women's Wellness.
SB 282	Maintenance of familial relationships of persons in the juvenile system	Modifies definition of 'foster home' to allow persons related to child by blood or marriage to be considered as foster parents to same extent as unrelated foster parents.	04/02 (S) Recommendation: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng) 04/02 (S) Referred to Ways and Means by order of the President.
SB 320	Fitness of youth to proceed on delinquency petition.	Establishes standards and procedures for determining whether youth against whom delinquency petition is filed is unfit to proceed.	04/05 (S) Recommendation: Do pass with amendments and be referred to Ways and Means. (Printed A-Eng) 04/05 (S) Referred to Ways and Means by order of the President.
SB 328	Juveniles with mental disease or defect; creating new provisions	Modifies definitions of 'mental disease or defect' and 'serious mental condition' for purposes of committing young persons alleged to be within jurisdiction of juvenile court to custody of Psychiatric Security Review Board when supervision and treatment is necessary for public safety.	01/17 (S) Referred to Judiciary. 02/21 (S) Public Hearing held. 04/02 (S) Work Session held.
SB 379	Children	Directs education providers to require school employees to complete training on child abuse prevention and identification and to make training available to parents, legal guardians and students. Requires DHS or law enforcement agency to notify person who reported child abuse about outcome of investigation.	04/12 (S) Recommendation: Do pass with amend. (Printed A-Eng.) 04/17 (S) Third reading. Carried by Walker. Passed. Ayes, 27; Nays, 1--George, L.; Excused, 2--Deckert, Gordly.
SB 408	Termination of parental rights	Prohibits DHS from filing petition to terminate parental rights court has determined, after permanency hearing, that permanency plan for child should be adoption.	04/04 (S) Third reading. Carried by Brown. Passed. Ayes, 29; Excused, 1--Johnson. 04/09 (H) Referred to Judiciary.
SB 409	Placement of children	Authorizes court, upon review of placement of child or ward committed to DHS, to direct department to place child or ward in care of parents, in foster care with foster care provider who is relative or in foster care with another foster care provider.	04/04 (S) Third reading. Carried by Kruse. Passed. Ayes, 29; Excused, 1--Johnson. 04/09 (H) Referred to Judiciary.

Legislation, continued from p. 7

Bill No.	Topic	Summary	Status as of 5/1/07
SB 410	Sensitive review committee convened by Director of Human Services	Authorizes Director of Human Services to convene sensitive review committee. Authorizes director to convene committee upon request by President of Senate or Speaker of House of Representatives. Requires written report of findings and conclusions of committee if convened at request of President or Speaker.	03/14 (S) Third reading. Carried by Kruse. Passed. Ayes, 27; Excused, 3--Avakian, Monroe, Schrader. 03/22 (H) Referred to Judiciary.
SB 411	Appointment of counsel in dependency cases	Appropriates money from General Fund to Public Defense Services Commission for improving legal representation of parents and children in dependency cases.	04/02 (S) Recommendation: Do pass with amendments and be referred to Ways and Means by prior reference. (Printed A-Eng.) 04/02 (S) Referred to Ways and Means by prior reference.
SB 412	Reports of child abuse	Requires Department of Human Services to notify specified persons when child abuse report involves child in substitute care. Establishes conditions of notification.	04/04 (S) Third reading. Carried by Kruse. Passed. Ayes, 29; Excused, 1--Johnson. 04/09 (H) Referred to Judiciary.
SB 413	Department of Human Services report on foster care placements.	Requires DHS to report to legislative interim committees regarding children placed in foster care.	04/04 (S) Third reading. Carried by Kruse. Passed. Ayes, 29; Excused, 1--Johnson. 04/09 (H) Referred to Judiciary.
SB 414	Placement of children	Requires DHS or another agency having guardianship or legal custody of child or ward to make diligent efforts to preserve familial relationships. Requires court placing child or ward in custody of department to make written findings on whether department actions constitute diligent efforts. Modifies provisions governing when permanency hearings must be held.	04/03 (S) Recommendation: Do Pass with amendments (Printed A-Eng.) and be referred to Ways and Means. 04/03 (S) Referred to Ways and Means by order of the President.
SB 415	Ombudsman for dependency matters.	Directs Governor to appoint ombudsman for families and caregivers of children subject to dependency matters. Requires ombudsman to review complaints involving conduct of DHS toward family members or caregivers. Authorizes ombudsman to recommend to Director of DHS that department employee or employees receive additional training or discipline, including suspension or termination.	03/13 (S) Recommendation: Do Pass with amendments (Printed A-Eng.) and be referred to Ways and Means. 03/13 (S) Referred to Ways and Means by order of the President.

Case Law Updates

State v. Matviyenko 212 Or App 125 (April 11, 2007)

The Court reversed and remanded this case for denial of the defendant's motion to suppress results of a breath test. Defendant had stated that he wanted to call an attorney. He was placed in a small room with a desk, phone and intoxilyzer equipment, which the officer could not leave defendant alone with and told him he could "make any calls at that time". The officer sat at the desk next to the defendant while he called his wife, after which the defendant made no further calls. The Court found that the officer did not give the defendant a reasonable opportunity to consult privately with an attorney, and rejected the State's argument that the defendant had waived the right to counsel by not making the call, stating that "[a]lthough a waiver need not be express, conduct constituting a waiver must be clear and unambiguous."

State v. Brown 212 Or App 164 (April 18, 2007)

In *Brown*, the defendant unsuccessfully challenged the taking of a buccal sample pursuant to ORS 137.076 on the grounds that the compelled taking of the sample violated his rights under Article I, section 9, of the Oregon Constitution and the Fourth Amendment to the

United States Constitution. ORS 419C.473 similarly authorizes taking of blood or buccal samples from juveniles adjudicated on a more restricted list of crimes than ORS 137.076. The Court continued to adhere to its reasoning in *State ex rel Juv. Dept v. Orozco*, 129 Or App 148, 878 P2d 432 (1994) *rev den*, 326 58 (1997), that the minimal intrusion involved in the taking of a blood sample for the purpose of compiling a database did not rise to the level of an unreasonable search under either constitutional provision.

State v. Ry/ Guinto, 211 Or. App. 298 (March 14, 2007)

In this case the court reaffirms that the test to determine whether or not consent is voluntarily given is, "whether, under the totality of the circumstances, the consent was the product of the defendant's free will or, conversely, was the result of express or implied coercion."

Although, in the space of less than one minute the officer requests nine times for consent to search the car, the court found persuasive that the defendant only expressly answered the question once, and that was to grant consent. The defendant repeatedly denied that there was anything in the car that the officer was asking about, and he never expressly de-

nied the officer permission to search. Additionally, the court noted in distinguishing this case from *State v. Freund*, 102 Or.App. 647 (1990), that the officer's requests for permission were couched in terms of requests, not demands or expressions of what he was going to do. The court specifically noted that in ordinary conversation there is a vast difference between the phrases, "I'd like to come in." and "I'm coming in." Because the defendant never expressly refused consent, the court also found that the defendant's will was not overborne by the repeated requests. The repeated questioning was necessitated by the defendant's refusal to directly answer the question.

State v. Graves 212 Or App 196 (April 18, 2007)

The Court continues to refine when statements are testimonial, triggering the defendants' rights under the Confrontation Clause of the Sixth Amendment of the U.S. Constitution, or non-testimonial. In *Graves* the Court reverses and remands, finding, in the context of a domestic disturbance, that the temporal nature of the statements were testimonial. In this case the statements of the

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News Brief: Fixing Measure 11

A Eugene Register-Guard editorial published on Saturday, April 14, 2007, supported current legislation to reform how juvenile offenders are sentenced. There are two bills, SB 1014 and HB 2904, that apply only to 15, 16 and 17-year-olds who commit Measure 11 crimes such as assault or robbery. SB 1014 changes the requirement that

adolescents charged with a Measure 11 crime be automatically tried as an adult. HB 2904 would give youths a chance to go before a judge for a "second look" after they have served half of the Measure 11 sentence.

Measure 11 did not consider the fundamental differences between juvenile and adult offenders. Research has shown the portion of the adoles-

cent brain that control judgment, impulse actions and moral and ethical reasoning is not fully developed until 19 or 20. Research also indicates that young offenders who remain in the juvenile justice system are less likely to commit future crimes than their peers who are handed over to the adult system.

Case Law—continued from page 9

complaining witness and her son were made to the police after the defendant had fled the scene, leading the Court to conclude that they were not part of a continuing situation for purposes of aiding the police, but were made for possible criminal charges, and were thus testimonial. Reviewing *Crawford v. Washington*, 541 US 36 (2004), *Davis v. Washington*, ___ US ___ (2006) and the *State v. Camarena*, 208 Or App 575 (2006) *rev allowed*, ___ Or ___ (Mar 27, 2007) (applying *Davis* in the context of a 9-1-1 call), the Court found statements made by the complaining witness's son to the police as they arrived on the scene were, under *Davis*, non-testimonial. However, other statements, made after the police had confirmed that the defendant had left the scene were for the primary purpose of establishing a past event and were thus testimonial. Because the officer had testified as to the statements of the complaining witness and her son, and neither the complaining witness nor her son had testified, the defendant had been unconstitutionally deprived of his opportunity to cross-examine these witnesses in violation of his Sixth Amendment confrontation rights.

State v. Mendoza-Lazaro, 211 Or. App. 349 (March 14, 2007)

This is another case in which the court attempts to clarify what statements are "testimonial" in light of *Crawford v. Washington*, 541 US 36 (2004) and *Davis v. Washington*, 547 US ___, (2006). The court quotes from *Davis*, that a statement is "testimonial" if the circumstances objectively indicate that the primary purpose of the questioning is to establish or prove past events that may be relevant to later criminal prosecution, as opposed to statements that are elicited primarily to enable the police

to assist in an ongoing emergency.

Factually, in this case the police were responding to a call about a potential domestic disturbance. When they arrived they initially spoke with Defendant's girlfriend who indicated that she had been assaulted, Defendant's identity, and his location. Police then escorted her to another location. Police located Defendant and arrested him, placing him in the back of a patrol car. The officers then returned to the girlfriend and got additional statements from her. She was later subpoenaed to trial and did not appear. The officers testified to both sets of statements by the girlfriend.

Although the Defendant did not object to the admission of the statements at trial, the court exercised its discretion to view statements from the second statement by the girlfriend as plain error and reversed. They did so because they found that the information from the second statement by the girlfriend established critical elements of the state's case that were not established through any other piece of evidence – thus Defendant's right of confrontation was violated.

Ser DHS v. J.L.N. ___ Or App ___ WL 1229501 (April 25, 2007)

In this case, the Court upheld a termination of parental rights to J.L.N.'s two children, finding that, at the time of trial father was an unfit parent because he was unable to provide safe living conditions for the children, adequately care for their special needs and refrain from using methamphetamine. The Court concluded that the father's conduct involving drugs, criminal activity, inappropriate associations and inattention to the physical needs of the children and their special needs had had a detrimental effect on them. The Court found father's use of methamphetamine

and his association with known drug users and sex offenders had persisted until the time of trial, and that a positive UA just two months before trial indicated that he could not control his addiction.

Ser DHS v. L.C.J. ___ Or App ___ WL 1346001 (May 9, 2007).

In this case, the Court of Appeals upheld a termination of parental rights from Polk County where the mother is living with an untreated sex offender and refuses to adjust her conduct or end her relationship with the sex offender. The child had been removed from the mother's care at about four and one-half months of age, based on a DHS investigation that indicated that the home was unsanitary and that an untreated sex offender was living in the home. The sex offender, J.L., who was 25 years old at the time of trial, had had a juvenile adjudication for sex offense when he was nearly 14 years of age consisting of an act of oral sex with a girl, who was four or five years old. J.L. had not completed sex-offender treatment and was required to register for life as a sex offender.

Mother asserted that J.L. was not a danger to her child because his offense occurred when J.L. was a juvenile. Mother's psychological evaluation revealed a dependent personality disorder, which would contribute to inappropriate relationship choices. Mother attended parenting classes as well as Family Sex Abuse Treatment (FSAT), the latter only erratically, and failed to successfully complete either program. Despite attending FSAT, mother continued in relationships with sex offenders, having ended her relationship with J.L., she became engaged to another sex

(continued on p. 15)

CLE Covers Working with Mexican Clients, by Christa Obold-Eshleman

The Oregon Criminal Defense Lawyers Association recently sponsored a week-long CLE program in La Paz, Baja California Sur, Mexico. The course included lectures and panels on the Mexican legal system presented by judges, members of the justice department, and attorneys. Some points of note relevant to working with Mexican clients in the United States:

- In Mexico, one has to go to the office of the Ministerio Publico (Justice Department), to file a complaint that starts a criminal investigation. Police officers do not take reports to follow up with investigation.
 - Complainants can withdraw their complaints in many cases, including domestic violence (unless it is against a child), and the state will desist from prosecution.
 - Most of the criminal legal cases are processed through written form only. It is rare to have an in-person hearing, other than the arraignment in which the defendant appears before the judge. A face to face confrontation between the complainant and defendant to attempt to clarify evidence can be requested by either of those parties.
 - There is no such thing as a plea bargain.
 - A defendant cannot be convicted solely on the testimony of one witness, except in sex crimes.
 - Mexico recently amended its Constitution regarding juvenile delinquency. Juveniles under 12 cannot be prosecuted. Juveniles under 18 can only be prosecuted in a juvenile court, and sent to juvenile treatment centers. Once they reach 18, they can be sent to an adult facility for the balance of their sentence.
 - Mothers have a right to keep their children up to four years of age with them in prison.
- The female prison inmates are semi-self-sufficient. They do their own cooking and laundry in a group setting. The men do this to a lesser extent. Conjugal visits are allowed.

- The Mexican equivalent of the Department of Human Services, DIF, provides free school breakfasts and clothing to some needy children. DIF social workers should follow up on any children the U.S. DHS sends back to families in Mexico, but the quality of follow-up depends on the worker.
- Terminations of parental rights usually take one to two years. No attorneys are provided for the parents. The children may go to relatives or to an orphanage. There is little adoption in Mexico, and the state does not like to allow foreigners to adopt Mexicans. If the parent gives consent to adoption by a particular person, international adoption is much easier.

Juvenile Defender Conference Scheduled for Portland in October 2007

Dear Readers,

This year, the National Juvenile Defender Center (NJDC) will be having their annual Leadership Conference in our Region. The Conference is scheduled for October 19-21, 2007 in Portland, Oregon. The Leadership Conferences are by invitation only, and because it will be in our region this year, we will be able to secure more invitations for attorneys in our region.

This training would include practical skills for using the new brain development expertise in your practice, such as, exercises

using expert testimony and motion work. It is important to our planning and development of the program to get a general idea of the number of people that would have an interest in participating in the Leadership Conference and the additional training component for the Western Region. If you are interested, please contact me by e-mail at: julie@jrplaw.org so that we can make appropriate plans for the program.

The Leadership Summit is always a high quality event, bringing together juvenile defenders from every state and the District of Co-

lumbia for three days of information sharing, training, networking, organizing, and strategic planning. Each year, a Juvenile Defender Resource Guide is distributed which includes new articles, studies, case briefs, court decisions and other information relevant to juvenile defense.

The NJDC administers a number of email listservs to distribute information and encourage dialogue among attorneys who represent youth. You can contact the NJDC at www.njdc.info to sign up for these listservs. Also, please visit **(continued on p. 14)**

Zealous Advocacy—Continued from page 5

terminated, or if requested by the child, parents or DHS-CW within 30 days of receipt of the six month report.

The court is also required to conduct a permanency hearing no later than twelve months after the child was found within the jurisdiction of the court under ORS 419B.100 or 14 months after the child was placed in foster care, whichever is earlier. ORS 419B.470(2). This permanency hearing requirement is shortened to 30 days from the date the court makes a finding under ORS 419B.340 relieving the agency from making reasonable efforts to reunite the child with the parents. ORS 419B.470(1). For a full discussion of permanency hearings see Chapter 19. Cases that are not re-

viewed by the court every six months must be reviewed by the CRB.

Reviews of Placement, Treatment, Services and Visitation

In addition to any required periodic review, the court has the general equitable power and statutory authority to review a case at any time. Unless good cause is shown, the court must conduct a review hearing at any time while a case is pending on the request of DHS-CW, an agency directly responsible for the care or placement of the child, parents whose rights have not been terminated, the child, a CASA, or the CRB. The court must schedule the hearing within 30 days after receiving the notice. ORS 419B.449(1)(b).

Placement and Treatment

Despite the restriction of ORS 419B.337 (4) prohibiting the court from making a direct commitment of a child to any residential facility, ORS 419B.349 authorizes the court upon review of a child's placement to determine that a placement is not in the best interest of the child. If the court determines that a placement is not in the best interest of the child, the court may direct the agency to place the child in foster care, residential care, group care or some other specific type of residential placement.

However, unless otherwise required by law, the court may not direct a specific placement of the child, and the actual planning and (continued on next page)

Dyslexia Begins When the Wires Don't Meet

Dyslexia Begins When the Wires Don't Meet

was the front-page story in the February 2007 issue of *The Dana Foundation's Brain in the News*. Brain imaging researchers at Carnegie Mellon, Georgetown and Yale Universities proved that seeing letters in reverse or out of order is not the cause of dyslexia.

Dyslexia is, in fact, a weakness in the part of the brain that decodes the sounds of written language.

These new findings provide experts with the information necessary to provide the right kind of instruction to improve reading and



retention. Brain scans done pre and post on children receiving a year of intensive reading instruction showed 40 percent more activity in the word decoding areas of the brain.

Through their studies brain imaging researchers have been convinced that using the "whole language" approach to reading – which stresses seeing the whole words and saying it aloud – does not work well for people with dyslexia. Instead, letter-to-sound decoding techniques

that are more detailed and concrete than regular phonics are the best intervention.

Researchers also used the article to point out that people with dyslexia have strengths that other people lack including the ability to think outside the box. Dr. Sally Shawitz's 2003 book "Overcoming Dyslexia" is filled with examples of exceptional people including: novelist John Irving, the late playwright Wendy Wasserstein and West Virginia Governor Gaston Caperton.

This article was reprinted from the *Pittsburg Post-Gazette*, February 11, 2007; Section A, Pg. 10. www.post-gazette.com

Zealous Advocacy, Continued from Page 12

placement of the child is the responsibility of DHS-CW. In reviewing the predecessor statute to ORS 419B.443 (ORS 419.507 – requiring case planning and the filing of reports with the court), in *State ex rel Juv. Dept. v. L.*, 24 OR App 257, 546 P2d 153 (1976) the court held that the juvenile court has the authority to direct a specific type of placement and that such authority is consistent with the statutory scheme of the juvenile code.

The right to receive services, and appropriate placement can be argued to create a “right to treatment.” *Dodson, Diane*, “Advocating at Periodic Review Proceedings” in *HARDIN, MARK, Ed. FOSTER CHILDREN IN THE COURTS* (1983) pp 103. The right to treatment is a substantive due process right that asserts that a non-trivial governmental abridgment of freedom must be justified in terms of a permissible governmental goal. A number of courts have found that since the state has undertaken to remove children from home to treat or rehabilitate them, the state is under a constitutional obligation to provide appropriate treatment in the least restrictive placement. *Id.*

Services for Parents

Statutory requirements for case-planning and service provision for parents of children in DHS-CW’s custody are virtually the same as for children. In addition, ORS 419B.385-.387, specifically provides that parents are parties to the proceedings, subject to the juvenile court’s jurisdiction, who can be ordered to assist the court in any reasonable manner in providing appropriate education or counseling for the child, and who

can also be ordered to participate in treatment or training to correct the circumstances that resulted in wardship or are necessary for the parent to resume care of the child.

If a parent is unable to comply with such orders for financial, health or other reasons, the parent is required to inform the court of the relevant circumstances as soon as reasonably possible and, if appropriate seek relief from the order. ORS 419B.389. The fact that a parent is incarcerated, without more, does not excuse DHS-CW from making reasonable efforts and providing services to the parent. *State ex rel Juv. Dept. v. Williams*, 204 Or App 496, 130 P3d 801 (2006)

Notes:

1. ORS 419B.476 (3).
2. ORS 419B.337 (6).
3. See, e.g. Allen, Molly, [Teens Aging Out of Foster Care in Oregon: A Guide to Transition Planning for Caseworkers, Judges and Advocates](#) (2004) www.jrplaw.org
4. www.caseylifeskills.org
5. See Allen, *infra*, at note 21.

Stay Tuned! Visitation, the visitation plan and goals for visitation will be covered in the next issue of the JRP Reader.

JRP is Moving in June 2007:

We will be relocating to 401 NE
19th Ave. in Portland.

Phone and fax numbers will remain the same.

Oregonian, Cont’d from page 2

when they could not afford to care for them. He told *The Oregonian* that he thinks the bill that would provide support to all relative foster parents would have made a big difference in his life. Griggs also said that the numerous moves in foster care left him separated from his siblings and other relatives.

Nicole Dobbins describes in the interview how she was kicked out of her foster home the day after her high school graduation. She describes the traumatic experiences she had in the foster care system, from child abuse investigation interviews, to foster parents who didn’t seem to care about her to the “big and confusing” bureaucracy. She said that she saw her caseworker only three times in a two year period.

Today, Dobbins has a college degree from OSU and a job with FosterClub. She relied upon the support she received at Jefferson High School, which allowed her to remain even after she changed foster homes. A friend of her foster mother’s also took her in for the summer before she started college.

Griggs is completing his freshman year at Portland State University and working part-time jobs. The article says that he has discovered a new family – other foster kids who have also aged out of the foster care system. His goal is to go on to earn a master’s degree in social work and make a difference by making the child welfare system better.



Conferences and Publications

SAVE THE DATE!!

The Attorney Academy, which is a collaboration of the Office of Public Defense Services, the Juvenile Court Improvement Project, the Oregon State Bar, Juvenile Law Section, the University of Oregon, the Juvenile Rights Project, Inc. and numerous juvenile law practitioners, will be holding it's annual training October 5 and 6, 2007 at the Valley River Inn in Eugene, OR. This year's Academy will focus on the basics of dependency practice. Trainers will take participants through the chronological phases of a case, provide different hypothetical facts for each phase to deal with multiple legal issues and comments by a judge and appellate attorney will be provided about each of the presentations.

The 30th National Juvenile and Family Law Conference of the National Association of Counsel for Children will host "Achieving Quality Legal Representation for children, Families and the State" from August 15-18, 2007, at the Keystone Mountain Resort and Conference Center, Keystone, Colorado. Early registration discount deadline is July 16, 2007. Brochure and registration available online at: <http://www.NACCchildlaw.org>.

JJDPA - CJJ Summit on Reauthorization of the Juvenile Justice and Delinquency Prevention Act: June 9-12, 2007 in Washington, DC. The Coalition for Juvenile Justice (CJJ) invites you to join fellow State Advisory Group members and allies for our Summit on Reauthorization of the Juvenile Justice and Delinquency Prevention Act (JJDPA), June 9 - June 12, 2007. The meeting will be held in the heart of the nation's capitol at the Washington Plaza Hotel.

Training Conference to Address Drug Court Issues on June 13-16, 2007, in Washington, DC, the National Association of Drug Court Professionals will hold its annual Drug Court Training Conference. The conference will provide training on current practices and trends in the treatment of addiction, with sessions designed to address issues relevant to adult, juvenile, family, and tribal courts. Workshops will be graduated according to the experience of drug court practitioners. The pre-registration deadline is 5-18-07. Visit <http://www.nadcp.org/annual.html>.

Shared Beliefs, Shared Values: Achieving Excellence in Adoption and Foster Care. New Orleans, Louisiana will be the host city for Shared Beliefs, Shared Values: Achieving Excellence in Adoption and Foster Care The CWLA National Adoption and Foster

Care Training Conference on Dec. 10-12, 2007, will present a collaborative national training conference celebrating the continued increase in adoptions of waiting children, primarily by their foster parents. The conference will feature workshops and information on all facets of adoption. Visit:

<http://www.cwla.org/conferences/2007adoptionrfp.htm>.

New Center for Juvenile Justice Reform - The Georgetown Public Policy Institute announced the creation of the new Center for Juvenile Justice Reform and Systems Integration to support scholarship and discourse on issues relating to juvenile justice reform. The center will sponsor academic programs and symposia for government leaders involved in juvenile justice policy and practice. Visit:

<http://explore.georgetown.edu/news/?ID=24081>

The Latest Juvenile Justice Publications

OJJDP National Report Reviews Data on Juvenile Offending. High profile incidents often shape public perceptions of juvenile offending. In seeking remedies, it is useful to have an accurate view of the crimes committed by juveniles. "Juvenile Offenders and Victims 2006 National Report" provides a review of data from diverse sources that sheds light on the proportion and characteristics of youth involved in law-violating behaviors and trends in those behaviors. To view the above described review, visit:

<http://ojjdp.ncjrs.gov/ojstatbb/nr2006/downloads/chapter3.pdf>.

To learn more about hot topics in juvenile justice visit <http://www.cwla.org/programs/juvenilejustice/jjdnewsletter.htm> and read the CWLA Juvenile Justice Division quarterly online newsletter THE LINK.

Juvenile Defender Conference, continued from p. 11

our website at www.wjdc.org. The website has links to regional and national publications and resources. We plan to expand our website to include an active brief bank and list of regional service providers for our members.

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Case Law Updates, Continued from Page 10

offender, ended that relationship and reconciled with J.L., who still had not completed sex offender treatment, and became engaged to him. Mother did not display insight into protecting the child. The Court rejected mother's arguments about the absence of risk posed by her relationship with J.L., based on the FSAT therapist's testimony that J.L. was likely to re-offend, thus placing the child at serious risk of abuse if she is returned to the mother's care.

State ex rel Department of Human Services v. L.S. and J.L.W. aka J.L.S. 211 Or. App. 221 (February 28, 2007)

This case affirms that in order to terminate parental rights, the state must prove unfitness at the time of the trial. In this case the trial was held in November of 2005. The allegations against the mother essentially stemmed from drug abuse. There was no proof presented at trial, though, that mother had used more recently than June of 2004. Although the mother had previously had a serious problem with drug use – including getting into a car accident with the children in the car that was caused by drug use that was too attenuated in time from the trial. The only evidence regarding her use, or lack thereof, by the time of the trial was that those around her believed that she was clean for almost a year and a half and that she completed a drug and alcohol program. The court found that although there was ample evidence that mother was at a risk of relapse, there was no evidence of use that would interfere with her ability to parent her children. The court also noted that had the case come to trial closer to the time when she had had documented use and the car accident, the result would likely have been

different.

The allegations regarding father surrounded his alleged anger control problems and his inability to affect lasting adjustment to allow the child to return home. The court noted that the father may have frustration problems, but there was no evidence that they impacted his interactions with his child. In fact they noted that the agency presented evidence that in his interactions with the child, even when the child was aggressive and oppositional he handled himself well. In the time DHS was involved with the father he also went through Anger Management and Drug and Alcohol services, and had remedied all criminal or anger-related contact with police and the courts. They specifically noted that **anger and frustration toward DHS is not a personality disorder**. Thus, at the time of trial the father was also fit. His termination was also reversed.

State ex rel Department of Human Services v. S.L., 211 Or. App. 362 (March 14, 2007)

In this case, mother appeals the court's change in the permanent plan from one of reunification to one of adoption and termination. The court found that although mother had participated in services, mere participation was not enough. Specifically they noted that an expert evaluation showed that she was not benefiting from the services and that she was not gaining the skills necessary to remedy the circumstances that lead to the removal of her children in the reasonable future. They pointed to numerous instances in the proceedings where the mother was not credible, while simultaneously giving deference to the lower court's finding that the mother is not credible. The actions (or lack of actions) by the

mother, as well as the prognosis from the relevant service providers all lead the court to affirm the trial court's findings that the mother had not progressed sufficiently toward making it possible for her child to return to her care in a reasonable time.

U.S. v. Williams, 444 F.3d 1286 (11th Cir. 2006), *Cert Granted 127 S. ct. 1874 (2007)*.

This case finds that the "pandering" provision of the "PROTECT Act of 2003" is constitutionally overbroad and vague. The Act was passed in response to the Supreme Court's decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002), which held that provisions of a prior act that disallowed possession of materials that appeared to be of a minor engaging in sexual conduct – even if no minor was actually involved, or of materials that were promoted or distributed in a way that "conveys the impression" that they are of a minor engaging in sexually explicit conduct. The Court found those provisions unconstitutionally overbroad in that they reached conduct that was protected speech.

Similarly, this court found that the provision of the PROTECT Act strayed into the area of protected speech and were similarly overbroad. The court noted that the three main problems with the prohibition are that it addressed both commercial and non-commercial speech. Additionally, the court noted that the reasoning for allowing a complete prohibition on child pornography was for the protection of children from actual victimization. Since this provision again covered depictions that were merely believed to be child pornography,

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"Change a Lifetime" During National Foster Care Month

Foster parent organizations, child welfare advocates, community groups and national organizations will mark National Foster Care Month in May by holding events that educate the public about foster care and celebrate those who devote their lives to helping vulnerable children. Adults and families are encouraged to make special connections with children in foster care whose own families are in crisis. Visit the National Foster Care Month website for information and materials:

www.fostercaremonth.org



Case Law, continued from p. 15

without the requirement that a child actually be depicted, it was attempting to make illegal constitutionally protected speech.

The court discussed that, although the belief that these images are of children engaged in sexual activity may be repugnant, so long as no children were victimized, those beliefs cannot be criminalized. They note that no amount of "belief" can convert a non-child into a child. While the court found that eliminating child pornography was a legitimate end, they found that there was no adequate explanation for why pandering otherwise legal material should be prohibited in pursuing this end. The government cannot prohibit lawful speech as a way to prohibit unlawful speech, the court reiterated. Additionally, the court noted that the statute was vague as written.

City of Portland v. King, 211 Or. App. 540 (March 28, 2007)

This case addresses the meaning of "public place" for the purpose of the Portland City Ordinance prohibiting possession of a loaded firearm in a public place. The statute defines a "public place" as one in which the general public has access to. The definition then goes on to list some non-

exclusive examples. The defendant argues that there is no indication that the general public is "invited" onto his porch. The court, however, does not find this persuasive. They note that the defendant does not dispute that the general public would be able to walk up on his porch to knock on his door, without the requirement of permission. The court finds that a porch is an area to which the general public has access.

State v. Leonard Contreras Sandoval, 342 Or. 506 (March 29, 2007) In this case the court finds that a trial court jury instruction that using deadly physical force in self defense is permissible only if there is no opportunity to escape and no means of avoiding the combat is an incorrect statement of Oregon law. The State Supreme Court, in analyzing the relevant statutes finds no indication of a requirement that anyone attempt to retreat or avoid the combat. In so finding the Court finds that the analysis in State v. Charles, 293 Or. 273 (1982), improperly ignored the legislature's intent to *not* require a duty to retreat from the face of the statutes. The Court stated clearly that the Charles decision was wrong.

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