

NEW JUVENILE LAW RESOURCE CENTER AND JUVENILE APPELLATE OFFICE INTENDED TO SUPPORT IMPROVED REPRESENTATION OF PARENTS IN DEPENDENCY CASES

**An Interview with Ingrid Swenson, Executive Director and Kathryn
Aylward, Contract and Business Services Director
Office of Public Defense Services**

Q: Can you tell our readers about the particular concerns about representation of parents in juvenile dependency cases that led to the legislative changes that have been proposed to improve representation?

A: The concerns about the adequacy of juvenile representation have been of fairly long standing. The Oregon State Bar’s Indigent Defense Task Force III report in 2000 had concluded that juvenile representation was deficient and in need of significant improvement. In 2004 the Audits Division of the Oregon Secretary of State’s office also reported above average management risks for OPDS related to not ensuring adequate representation in juvenile cases. OPDS has also evaluated and sought to improve the work of its juvenile contractors. The structural reviews conducted by PDSC showed that juvenile representation was consistently rated as inferior to the representation that is being provided in criminal work. The complexity of these cases, specialized skills required and high caseloads are challenges to quality representation in this area. The site visits showed a lack of adequate client contact to be the most frequent complaint about juvenile representation.

Q: Were there other groups looking at this issue?

A: Yes, during the interim before the 2007 legislative session the Judiciary Committee convened a “Juvenile Dependency Work Group”. The Quality Assurance Subcommittee of that Work Group also identified weaknesses in the system and made recommendations for change. The weaknesses identified were: “uneven

quality of representation due, in part, to lack of specialized training, education, technical assistance and litigation support; increasingly difficult time getting qualified attorneys to work in juvenile court, and an unacceptable level of performance from some attorneys who currently do the work, due to non-competitive compensation and excessive caseloads; and, the “graying” of the juvenile court (and public defense, generally) bar and the difficulty of attracting new lawyers to the field.”

Q: What were the recommendations of that group?

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Alarming New Data about Restraint, Seclusion of Kids

The December 11, 2008 issue of the Portland Tribune, in a story by Peter Korn, "Restraint, seclusion of kids—State requires youth treatment facilities to tally use of force and isolation; data now made public", detailed recently released information from the Department of Human Services (DHS). As reported, physical restraint that restricts a child's movement, often appears necessary to staff of treatment facilities, such as the Grants Pass-based Southern Oregon Adolescent Study and Treatment Center, which reported restraining children 185 times and secluding children 181 times during the first three months of 2008, and Jasper Mountain Safe Center School in Springfield and Trillium Family Services Parry Center for Children in Portland, both of which also reported high numbers.

In November, DHS took steps to close down Pendleton Academies, a similar facility, for failing to report use of restraint, among other reasons. Criticizing DHS's lack of adequate staff to oversee facilities properly to monitor for overuse of restraint and seclusion, JRP Executive Director, Mark McKechnie commented: "A lot of restraint, in my experience, resulted from power struggles, especially when working with adolescents." McKechnie and Bill Bouska, Child and Adolescent Mental Health Services Manager for DHS agreed that there are alternatives to restraining even emotionally explosive children. Legacy Emanuel Hospital's Child and Adolescent Treatment Program, for example uses a collaborative problem-solving program that reduced the use of restraint by 76% in one year.

To read the full story go to:
http://www.portlandtribune.com/news/print_story.php?story_id=122894661547436600

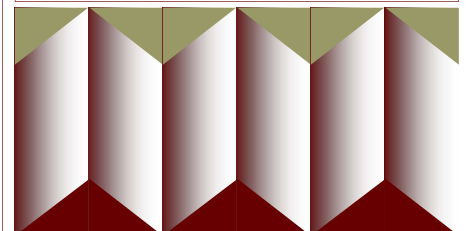
To read the data go to:
<http://www.oregon.gov/DHS/mentalhealth/publications/other/youth08seclusion1qrtr.pdf>

Juvenile Court Improvement Program Examines Age-Appropriate Consultation

The Juvenile Court Improvement Program (JCIP) of the Oregon Judicial Department has established a workgroup which proposes to examine Oregon Juvenile Courts' compliance with the federal mandate in 42 U.S.C. section 675 (5)(c)(iii) 2, which provides:

(iii) procedural safeguards shall be applied to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults, in an age-appropriate manner, with the child regarding the proposed permanency or transition plan for the child.

JCIP plans to produce a protocol for age appropriate consultation that will be of use to judges, attorneys, DHS and other partners.



MULTNOMAH COUNTY STOPS PRACTICE OF HOLDING MINORS IN ADULT JAILS

On December 18th, the Multnomah County Board of Commissioners approved Resolution R-7 Directing That Juveniles in Custody in Multnomah County Be Held At the Donald E. Long Juvenile Detention Home and ending the practice of holding minors charged with Measure 11 offenses in Multnomah County jails.

The Juvenile Rights Project, Inc. submitted the following letter addressed to Commissioner Lisa Naito in support of the resolution:

December 16, 2008

On behalf of the Juvenile Rights Project, Inc., I am writing to thank you for introducing the resolution directing that minors who are being held in custody be housed in the Juvenile Detention Home by default and kept there whenever possible. As you are no doubt aware, youth who are housed with adult prisoners are at greater risk of physical and sexual assault. In addition, the exposure of youth to more experienced criminal offenders is more likely to increase, rather than decrease, the chances that youth will engage in future delinquent or criminal behaviors.

It is important for Multnomah County to officially endorse and base its public policies upon current scientific knowledge regarding adolescent development. Young brains develop more gradually than had previously been thought. This means that youth have not yet developed the capacities to control their impulses, consider different choices and predict the consequences of their actions to the same degree that adults can. The Center on Early Adolescence at the Oregon Research Institute explains:

"Adolescents are not smallish adults. Brain research shows that, although their bodies look adult, teens are not ready to negotiate an adult world. For example, during adolescence, serotonin levels in the brain decline. With that decline, irritability, aggression and depression increase. Sensation seeking and impulsivity peak during adolescence."

(Improving the Well-Being of Adolescents in Oregon, https://www.earlyadolescence.org/system/files/Adolescent_Wellbeing_in_Oregon_Sept22_smallFinal_0.pdf, 2007)

While adolescence can be a difficult and tumultuous time, most juvenile offenders do not grow up to become hardened or career criminals. Most grow and mature and cease acting out of impulse. But it is most important that we respond effectively to those youth who are at greatest risk of long-term problem behaviors. Less than 20% of youth have multiple problem behaviors, but they account for 75% of arrests, violent crime and substance

abuse. The failure to address these problems effectively leads to tremendous costs to the county, the state and to our communities.

Treating juveniles as "smallish adults" is a costly and ineffective strategy that poses great risks to youth. According to the ORI, "Failing to ensure that troubled youth receive appropriate treatment in a timely manner for family, mental health or substance abuse problems increases chances that they will struggle academically, drop out of school, get into trouble with the law, and enter the corrections or child welfare system, incurring huge financial and human costs in the process." They estimate these costs to Oregon to be \$4.3 billion per year. (Improving the Well-Being of Adolescents in Oregon, 2007)

The resolution you have put before the Commission is an important step to improve the way that the county addresses a group of troubled youth – those in custody. Detaining youth who are held in custody in the county's juvenile facility, rather than in adult jails, whenever possible will increase the chances that these youth continue to have access to educational services and treatment for mental health and substance abuse disorders, while simultaneously addressing their safety and the safety of the public.

This strategy will produce greater long-term benefits and help the county to avoid making the temporary problems of adolescence more permanent.

*Sincerely,
Mark McKechnie
Executive Director*



TERMINATION OF PARENTAL RIGHTS IN EXTREME CONDUCT CASES

Part II—Continued from Volume 5, Issue 5

The Oregon Child Advocacy Project

Professor Leslie J. Harris and Child Advocacy Fellows Farron Lennon and David Sherbo-Huggins

Linda Guss, Assistant Attorney General, Oregon Department of Justice, submitted written testimony that explained that the purpose of the [extreme conduct] legislation was to bring Oregon into compliance with the federal Adoption and Safe Families Act (ASFA) "in Oregon as minimally disruptive as possible while staying true to the principles of current Oregon public policy as well as federal policy regarding the state's responsibility to victims of abuse and neglect What is offered in SB 408 proposes the minimum that is necessary to [incorporate ASFA into Oregon's Juvenile Code]."

The significance of the repeal of the language explicitly requiring the court to find that "continuing the parent child relationship is likely to result in serious abuse or neglect" is unclear. On its face, the repeal supports an argument that the legislature intended to relieve the state of the burden of proving anything other than the conduct of the parent in its case in chief. On the other hand, Ms. Guss explains that the amendment is intended only to bring Oregon legislation into compliance with ASFA, not to make other changes. This, then, raises the question of whether ASFA and another provision of federal law, enacted by the 1996 amendments to the Child Abuse Treatment and Prevention Act (CAPTA), require states to allow termination of parental rights upon proof of a parent's extreme conduct, regardless of when it occurred and how the parent may have changed over the years.

III. The requirements of CAPTA and AFSA

The ASFA, which was enacted in 1997, and the 1996 amendments to CAPTA both address termination of parental rights. The purpose of the termination provisions in both statutes is similar to the purpose of the 1989 amendments to Oregon law discussed above -- to insure that state law permits but does not require state child welfare agencies to proceed to termination of parental rights cases in egregious circumstances, without first having to make efforts to reunite the parent and child.

A. CAPTA

The 1996 amendment to CAPTA, P.L. 104-235, § 106, codified as 42 U.S.C. § 5106a(b)(2)(A)(xvi), provides that state law may not require reunification of a child with a parent who has been found guilty of murder or voluntary manslaughter of another child of the parent; or of aiding, abetting, attempting, conspiring, or soliciting such a murder or manslaughter; or of a felony assault that results in the serious bodily injury to the child or another child of the parent. However, the section continues, "case-by-case determinations of whether or not to seek termination of parental rights shall be within the sole discretion of the State."

B. ASFA

P.L.105-89, commonly known as ASFA, requires states to enact laws that complement the CAPTA termination rules. First, ASFA requires that states allow courts to relieve state child welfare agencies from making reasonable efforts to

prevent removal and to effect reunification upon a finding that

i) the parent has subjected the child to aggravated circumstances (as defined in State law, which definition may include but need not be limited to abandonment, torture, chronic abuse, and sexual abuse);

ii) the parent has

I) committed murder of another child of the parent;

II) committed voluntary manslaughter of another child of the parent;

III) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter; or

IV) committed a felony assault that results in serious bodily injury to the child or another child of the parent; or

(iii) the parental rights of the parent to a sibling have been terminated involuntarily.

- 42 U.S.C. § 671(a)(15)(D).

ASFA also requires states to initiate or join proceedings to terminate parental rights for children in the case of a child who has been in foster care under the responsibility of the State for 15 of the most recent 22 months, or, if a court of competent jurisdiction has determined a child to be an abandoned infant (as defined under State law) or has made a determination that the parent has committed murder of another

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child of the parent, committed voluntary manslaughter of another child of the parent, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter, or committed a felony assault that has resulted in serious bodily injury to the child or to another child of the parent ...unless--

i) at the option of the State, the child is being cared for by a relative;

ii) a State agency has documented in the case plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

iii) the State has not provided to the family of the child, consistent with the time period in the State case plan, such services as the State deems necessary for the safe return of the child to the child's home, if reasonable efforts of the type described in section 471(a)(15)(B)(ii) are required to be made with respect to the child.

-42 U.S.C. § 675(4)(B)(5)(E).

The legislative history of the CAPTA amendments and ASFA does not clarify the issue discussed here.

IV. Constitutional limitations

Decisions from both the Oregon and the U.S. Supreme Court hold that the constitution requires significant procedural and substantive safeguards for parents in termination of parental rights cases. These opinions suggest that if ORS 419B.502 were interpreted as allowing termination of parental rights only upon proof of one of the acts listed, without regard to the parent's present fitness to care for the child, the statute would be unconstitutional. Decisions from other states' courts support this conclusion.

A. U.S. Supreme Court on TPR

The Supreme Court has decided three cases concerning

termination of parental rights: *Lassiter v. Dept. of Social Services*, 452 U.S. 18 (1981), *Santosky v. Kramer*, 455 U.S. 745 (1982), and *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996). All of these cases concerned procedural safeguards at trial and on appeal, rather than the substantive standard for termination. However, all three emphasize the importance of the parental interests at stake in termination proceedings and consequent limitations that due process and equal protection place on the states. They strongly indicate that a challenge to the substantive grounds for termination would be subject to heightened scrutiny and would at least have to be closely related to the important state interest of protecting children.

In *Lassiter* the Court held that parents have a constitutional right to the assistance of counsel in complex cases such as termination cases, leaving to trial courts to determine on a case-by-case basis whether any particular case is sufficiently complex. In reaching this conclusion, the Court said,

This Court's decisions have by now made plain beyond the need for multiple citation that a parent's desire for and right to "the companionship, care, custody, and management of his or her children" is an important interest that [is] "undeniably [due] deference and, absent a powerful countervailing interest, protection." *Stanley v. Illinois*, 405 U.S. 645, 651. Here the State has sought not simply to infringe upon that interest, but to end it. If the State prevails, it will have worked a unique kind of deprivation. Cf. *May v. Anderson*, 345 U.S. 528, 533; *Armstrong v. Manzo*, 380 U.S. 545. A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.

The fundamental liberty interest of natural parents in the care, custody, and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. 455 U.S. at 753-54.

Lassiter declared it 'plain beyond the need for multiple citation' that a natural parent's "desire for and right to 'the companionship, care, custody, and management of his or her children'" is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. 'If the State prevails, it will have worked a unique kind of deprivation. . . . A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.' -*Id.* at 758-59 (citations omitted).

Therefore, the court held, due process requires that the grounds for termination be proven by clear and convincing evidence.

Finally, in *M.L.B.* the Court held that a termination of parental rights proceeding is a rare exception to the general rule that challenges to

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CONFERENCES, CLEs AND TRAININGS

WRAPAROUND OREGON TRAININGS

Wraparound Oregon is a community-owned initiative to build a system of services and supports for multi-system children with complex mental health needs and their families. Upcoming trainings for stakeholders, including attorneys for parents and children, provide tools to improve child and family outcomes and use existing resources more effectively. Trainings are free, are held at the Portland Police Bureau, East Precinct and include:

- Feb 12 Creating Strengths-Based Crisis and Safety Plans
- Feb 17 Intro to Family Driven Care
- Feb 18 Working Through DV Issues
- Feb 26 Identifying Strengths & Needs
- Mar 3 Conflict Management
- Mar 5 Understanding Diversity
- Mar 10 Wrap 101
- Mar 31 Perspectives on Family Driven Care

For more information contact:

bark@pdx.edu

Save the Date!

NATIONAL JUVENILE AND FAMILY LAW CONFERENCE—August 19-22

The National Association of Counsel for Children's 32 Annual conference will be held at the New York Marriott at the Brooklyn Bridge, August 19-22, 2009. NACC is calling for abstracts from potential presenters. For information go to:

www.NACCchildlaw.org

Child Abuse & Family Violence Summit

The 10th Annual Summit, hosted by the Clackamas County Sheriff's Office, the Child Abuse Team, and the Domestic Violence Enhanced Response Team, Oregon City, will be held May 5—8, 2009 in Portland, OR at the Red Lion Hotel on the River. Registration deadline is April 10, 2009. For additional information go to:

www.childabusesummit.com

OSB Juvenile Law 2009—

Meeting the Needs of Children and Youth with Mental Health and Developmental Concerns

The Juvenile Law 2009 Seminar, co-sponsored by the Juvenile Law Section will be held at the World Forestry Center in Portland, OR, on Friday, February 13th. The seminar, which is approved for 5.5 general CLE credits and 2 CLE credits for Access to Justice, features a special presentation by the Honorable Leonard Edwards, Judge-in-residence, Center for Families, Children and the Courts, San Francisco. Judge Edwards will focus on court improvement in child protection cases. Other seminar topics include exploring developmental disability services in Oregon; an in-depth look at the juvenile panel of the PSRB; and an overview of Oregon Youth Authority services for youths with mental health issues. An appellate case law update will be presented during the lunch hour, and assessing youth for capacity, culpability and treatment will be examined by Dr. Eric Johnson. For more information go to: www.osbarcle.org To register call 1-800-452-8260.

Save the Date!

2009 CENTER ON CHILDREN AND THE LAW BIENNIAL NATIONAL CONFERENCE

The ABA's Biannual Children's Law Conference is scheduled for May 14-16, 2009 in Washington, DC. Plan to start this Conference on May 13th to attend a special program on representing parents in child welfare cases. Send an e-mail to: child-law2009@abanet.org if you would like to receive a program brochure. Advance registration is open at:

www.abanet.org/child

Save the Date!

OCDLA Juvenile Law Seminar

The OCDLA annual spring juvenile law seminar will be held April 17—18, 2009 at the Agate Beach Inn in Newport.

ALI-ABA/NJDC Webinar

Challenging Confessions in Juvenile Delinquency Cases

For a mere \$25 you can participate in this live webcast which will discuss upcoming US Supreme Court cases dealing with confessions made by juveniles, including discussion of statements taken at school, the parent's role, "custody" and "interrogation" from a child's perspective, arguments for more protective rules for juvenile confessions and strategies for dealing with the confession at trial. To register go to:

[Http://www.ali-aba.org/index.cfm?fuseaction=courses.course&course_code=TSPZC02](http://www.ali-aba.org/index.cfm?fuseaction=courses.course&course_code=TSPZC02)

RECENT CASE LAW

State ex rel DHS v. G.R., ___ Or App ___ (November 26, 2008), <http://www.publications.ojd.state.or.us/A138868.htm>

In this case the Court of Appeals reversed the trial court's judgment terminating the father's parental rights and remanded with instructions to set aside the judgment.

The child, a newborn infant had been placed in care in early July of 2006 and father had initially appeared in the dependency case on July 28, 2006. Father next appeared in the case on February 8, 2008 in response to published TPR summons. A trial readiness date was set at which the father appeared and was served with the trial date and time and a notice in accordance with ORS 419B.819 (4), informing father that, if he failed to appear, "the court without further notice and in the parent's absence, may terminate the parent's parental rights".

Father was not present at the time for trial, although father's counsel informed the trial court that for some reason, both parents thought the start time was at 11:00 a.m., and mother's counsel told the court the parents had apparently confused the starting time for trial with the previously set time for trial readiness, which had been eleven a.m., and that the parents were on their way. The trial court directed DHS to proceed with a prima facie and terminated father's rights 18 minutes after the scheduled time for the trial.

Father moved to set aside the termination judgment asserting that he had been mistaken about the start time of the trial, and on the day of trial had arrived at the courthouse 31 minutes past the scheduled start time for the trial. It further appeared that the father was actively engaged in preparing for the termi-

nation trial, failed to appear because of a mistake as to the time of trial, acted immediately upon learning of that mistake, and offered a reasonable, uncontroverted explanation for his mistake. DHS opposed the motion and it was denied by the trial court.

On appeal, the father argued that the trial court had abused its discretion in denying the motion. The Court found the determination of whether the circumstances establish "excusable neglect" is a legal question, viewing "excusable neglect" as functionally analogous to the statutory term "good cause". The court also noted the similarities between ORS 419B.923 (1)(b) and ORCP 71, under which relief should be liberally granted to effectuate "the underlying policy that defaulted parties are entitled to have their day in court, when it can be done without doing violence to the regular disposition of litigation" *National Mortgage Co. v. Robert C. Wyatt, Inc.*, 173 Or App 16, 23-24, *rev den*, 332 Or 430 (2001).

The Court found that the totality of the circumstances established, as a matter of law, "excusable neglect" for purposes of ORS 419B.923 (1)(b), and the trial court abused its discretion in denying the father's motion.

State ex rel DHS v. J.N., ___ Or App ___ (January 7, 2009). <http://www.publications.ojd.state.or.us/A139027.htm>

In this case, the Court reviewed the father's contention that the trial court had neglected to make all of the findings of fact required by ORS 419B. 449 (3), and specifically did make findings concerning the number of schools the child had attended. DHS argued that a trial court's failure to make required findings can never be reviewed as plain error. The Court concluded however

that the Court can review a trial court's failure to make findings of fact as plain error, and that plain error was committed by the trial court by its failure to make the required findings. Examining the question of whether it was appropriate in this case for the Court to exercise its discretion to review the trial court's error, the Court concluded that such review was not appropriate. The Court cited the state's assertion that the trial court had made the findings in all but this one respect, the father did not explain why the particular finding that was required matters in this case, and the father could have requested all of the findings required by ORS 419B.449 (3), which he apparently did not.

State ex rel DHS v. J.S., ___ Or App ___ (January 7, 2009) <http://www.publications.ojd.state.or.us/A136298.htm>

In this case, the Court affirms a judgment terminating parental rights based on conduct and condition detrimental to the children, mental illness, unstable living conditions, failure to acquire adequate parenting skills, habitual alcohol use, domestic violence and criminal conduct, finding the evidence sufficient to support TPR.

State ex rel DHS v. D.F.W., ___ Or App ___ (January 14, 2009) <http://www.publications.ojd.state.or.us/A138703.htm>

In this case, the Court reverses as to both parents the termination of parental rights based on its *de novo* review. The Court emphasized the requirements of the statute and *Stillman* [*State ex rel SOSCF v. Stillman*, 167 Or App 446, 1 P3d 500 (2000)], in reviewing the petition allegations related to ORS 419B.504,

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EXTREME CONDUCT—CONTINUED FROM PAGE 5

state-imposed fee requirements are examined only for rationality. It said,

[O]ur cases solidly establish two exceptions to that general rule. The basic right to participate in political processes as voters and candidates cannot be limited to those who can pay for a license. Nor may access to judicial processes in cases criminal or "quasi criminal in nature" turn on ability to pay. In accord with the substance and sense of our decisions in *Lassiter* and *Santosky*, we place decrees forever terminating parental rights in the category of cases in which the State may not "bolt the door to equal justice." - 519 U.S. at 123-24.

[The parent] is endeavoring to defend against the State's destruction of her family bonds, and to resist the brand associated with a parental unfitness adjudication. Like a defendant resisting criminal conviction, she seeks to be spared from the State's devastatingly adverse action. *Id.* at 125.

The court concluded that due process prevents a state from conditioning a parent's appeal from a termination of parental rights order on the ability to pay the cost of transcribing the record.

B. Oregon Supreme Court on TPR

The leading case in Oregon

of parental rights statutes is *State v. McMaster*, 259 Or. 291, 486 P.2d 567 (1971), which held that the statutory provision allowing termination of parental rights upon proof that the parent is "unfit by reason of conduct or condition seriously detrimental to the child" was not unconstitutionally vague in violation of the Fifth and Fourteen Amendments to the U.S. Constitution and Art. I, § 10 of the Oregon Constitution. In reaching this conclusion, the Court said, "The procedure here is not the state against the parents. Three parties are involved: the state, the parents and the child. The welfare of the child is the primary consideration of the Juvenile Code of 1959. That the welfare of the child is the primary purpose does not lead to the conclusion that the rights of the parents are without constitutional protections." 259 Or. at 296. The Court emphasized the importance of the nexus between the parent's conduct and harm to the child:

In our opinion, to accomplish its primary purpose of caring for the welfare of the child, the legislature would have extreme difficulty being more specific. The legislature could specify certain conduct upon the part of the parents which would cause them to be deprived of their parental rights; however, that is not the intent of the legislature or of this court in

legislature and this court do not desire to sever parental rights for any conduct by the parents unless such conduct seriously affects the child's welfare. For example, imprisonment was not held conduct "seriously detrimental to the child," in *State v. Grady*, 231 Or 65, 371 P2d 68 (1962); willful fraud upon the court likewise was held not sufficient to sever parental rights. *Cutts v. Cutts*, 229 Or 33, 43, 366 P2d 179 (1961), *Id.* at p. 298-99.

McMaster relied in part on *State v. Jamison*, 251 Or. 114, 444 P.2d 15 (1968), which held that every parent in a termination of parental rights case is entitled to a court-appointed attorney under the U.S. Constitution. While this specific holding was negated by *Lassiter*, the Oregon Supreme Court has continued to cite it for the proposition that parents have constitutionally protected rights at stake in termination proceedings. *See, e.g., In re Marriage of Hruby*, 304 Or. 500, 505 n. 3, 748 P.2d 57 (1987).

Continued in the next Juvenile Law Reader: ***Termination of Parental Rights in Extreme Conduct Cases—Part III***

For the complete article and other research projects go to The Oregon Child Advocacy Project:

<http://familylaw.uoregon.edu/docs/extremeconduct.pdf>

IMPORTANT ANNOUNCEMENT

Coming in the next issue of the Juvenile Law Reader:

The opening of

The Juvenile Law Resource Center

Planning is in progress now, if you have comments, questions or suggestions

Please e-mail them to jlrc@jrplaw.org

Juvenile Resource Center & Appellate Office Continued from page 1

establishment of a juvenile law resource center whose activities could include “training coordination and infrastructure; publication of a regular newsletter on juvenile law issues; responding to difficult cases by offering advice, briefs, technical assistance, or even co-counsel; operating a toll free advice and assistance line for attorneys; creating and maintaining a web site and list serve; coordinating and developing volunteer, law student and *pro bono* efforts.” The subcommittee also recommended the establishment and enforcement of performance standards and caseload limits and an increase in compensation.

Q: During this interim period there was a group of four legislators, who were particularly concerned about the uneven quality of representation for parents in juvenile dependency and termination of parental rights cases. What got these legislators involved in this issue and what action did they take?

A: This group of legislators, called the “Gang of Four”, proposed legislation to address problems with child welfare identified as a result of a “sensitive case review” of a DHS child welfare case conducted during after the 2005 legislative session. All of the bills proposed by the “Group of Four”, which included SB 408 to 414 passed except for SB 411, which would have allocated \$23 million to PDSC to improve legal representation of parents and children in dependency cases, including improving training, support and other resources to support court-appointed counsel.

Q: How far did SB 411 get?

A: The bill had gone through the Senate Judiciary Committee and upon adjournment was in the Ways and Means Committee.

Q: Did the Senate Judiciary Committee consider any models for improved representation from other states?

A: Yes, there was testimony concerning the successful implementation of a pilot project in the State of Washington that provided state funds to enhance representation of parents in dependency and termination of parental rights. To enhance representation, the Washington legislature set goals for the pilot program, including that the number of continuances requested by attorneys would be reduced, setting a maximum caseload requirement per full time attorney, enhancing defense attorney’s

practice standards, and supporting the use of investigative and expert services. The evaluations of the Washington pilot project indicate that the project has met its goals and has resulted in better outcomes for children, including increased family reunification, continuance reductions, improved case participation by parents, and better access to services.

Q: As part of its budget request in 2007, PDSC got approval for a policy option package that funded the creation of the Juvenile Appellate Section within OPDS. Tell us about PDSC’s goals for the Juvenile Appellate Section.

A: The new Juvenile Appellate Section is now staffed and has been accepting cases since May of 2008. The appellate attorneys are Shannon Flowers, Margie McWilliams and Holly Telerant. Angela Sherbo, an experienced juvenile law attorney at Juvenile Rights Project has been assisting OPDS in establishing the unit and providing mentoring and substantive juvenile law expertise to the appellate attorneys. The Juvenile Appellate Section is accepting parent dependency and termination of parental rights appeals. It is hoped that by creating this dedicated unit, they will in the long term help to shape not only the law but also the practice of law in both the trial and appellate courts and establish an expertise on juvenile dependency and termination of parental rights law that would be a resource to practitioners statewide. It is hoped that these lawyers will provide a major component of training sessions for practitioners and assist in articulating applicable legal standards.

Q: Was there a request from the appellate bench for the establishment of a Juvenile Appellate Section?

A: Yes, there was a workgroup, the Juvenile Appellate Workgroup, headed by Chief Judge David Brewer. The workgroup felt that appellate representation in these cases was inconsistent statewide and that a juvenile appellate unit would improve the speed and quality of these appeals.

Q: OPDS has also proceeded with establishing a Resource Center. Can you tell us about that?

A: Yes, OPDS has asked the Juvenile Rights Project to put together this resource center because of their acknowledged expertise in juvenile law. It is hoped that JRP can not only continue publication of the Juvenile Law Reader, but also provide training coordination, responding to difficult cases by offering advice, briefs,

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and noted that the focus of the two-part inquiry required by *Stillman* is the detrimental effect of the conduct or condition on the child, and that it is the parent's situation at the time of the hearing not at some earlier time, that must be considered.

Although the Court found there was more evidence to support the allegation that mother had failed to present a viable plan for return, the Court also rejected that basis because DHS had not assisted mother in working on such a plan and it appeared that mother would be able to create such a plan within a reasonably short period. As to the mother's use of drugs and alcohol, the Court found that there had been occasions when the mother had relapsed, but evidence of mother's commitment and success in overcoming them indicated that at the time of trial, mother's alcohol and drug problems were neither addictive or habitual, and did not substantially impair her parental ability.

Several of the allegations as to the father were rejected by the Court, which noted that they arose from events that occurred some time before the hearing, not from father's situation as it existed at the time of the hearing. As to father's bi-polar disorder and marijuana use, the Court rejected the state's contention that there was clear convincing evidence that he was incapable of providing care for the child for extended time, because father had made substantial improvement and was willing to continue to make progress.

State ex rel Juv. Dept v. G.A.K., ___ Or App ___ (January 28, 2009) <http://www.publications.ojd.state.or.us/A139303.htm>

In this case, the state appealed dismissal of dependency.

petitions, which occurred after the trial court imposed sanctions excluding evidence due to DHS committing one or more discovery violations. The evidence, which supported allegations of sexual abuse by the father included the child's therapist's notes, an audio-video recording of a forensic interview of the child, that interviewer's written assessment, and a report of that interview by a detective.

Due to failure to disclose this evidence pursuant to ORS 419B.881, the trial court excluded the evidence and the testimony of the related witnesses, citing a pattern of willful delay by DHS in this type of case. Rejecting the suggestion by the child's attorney that a continuance was an appropriate remedy for the discovery violation, the trial court stated: ". . . [t]o do so would be to encourage DHS to wait until the last minute, then provide information, and force the parents into a continuance, which DHS wants all along." (Emphasis in Original).

Noting the failure of parents' counsel to allege the discovery violations prior to the morning of the hearing, the Court was not persuaded that there was evidence of DHS's willfulness in delaying disclosure or otherwise circumventing the strictures of ORS 418B.881. Further, the Court found the trial court had failed to consider the interests of the children in light of the serious allegations of the petition, citing to their recent observation in *State ex rel Juv. Dept v. D. J.*, 215 Or App 146, 154 (2007) ". . . That, in cases arising under the Juvenile Code, 'the interests of the children will always be a relevant, even primary, consideration'".

State ex rel DHS v. W.P., ___ Or ___ (February 5, 2009) <http://www.publications.ojd.state.or.us/S055687.htm>

The Oregon Supreme Court allowed review in this case to consider whether the exclusionary rule, should be applied to evidence seized pursuant to an allegedly illegal search, when offered against the father in a juvenile

dependency case involving his child, under Article I, section 9, of the Oregon Constitution or the Fourth Amendment to the United States Constitution.

Analyzing the nature of the father's liberty interest, the Court found that under *State ex rel Juv. Dept. v. Rogers*, 314 Or 114 (1992), because father's liberty interest in remaining free from state custody was not implicated, the trial court was not required to exclude evidence, even assuming it was unlawfully seized.

The Court distinguished the liberty interest of a parent in controlling a child's upbringing from the liberty interest at stake in a criminal proceeding, indicating that a juvenile jurisdictional judgment is both temporary and conditional, not a final determination, and thus qualitatively different from a criminal conviction. The Court also contrasted dependency proceedings with criminal cases, identifying the competing rights and interests of the child as the "critical interest" in a dependency case.

The Court also found the exclusionary rule under the Fourth Amendment to be inapplicable to juvenile dependency proceedings. The Court determined that for the Fourth Amendment to require exclusion of evidence, the exclusion must meet the goal of a having a deterrent effect and the social benefits of excluding the evidence must outweigh the likely costs. The Court reasoned that excluding evidence in the juvenile dependency case would have little, if any, additional deterrent effect in addition to the deterrent effect from excluding the evidence in the criminal case. The Court further found that the likely costs in limiting ability to respond to safety threats to children outweighed the social benefit of excluding illegally seized evidence.

RESOURCES

FOCUS NEWSLETTER PROVIDES USEFUL RESOURCES FOR ATTORNEYS

The following are brief summaries of articles from: "Focus: Newsletter of the Foster Family-based Treatment Association" fall issue, 2008, vol. 14, no. 3. These summaries were prepared by **Theresa Happ, JRP Social Work Intern**. For the full articles please go to:

http://www.fftta.org/publications/focus_archives/2008_fall.pdf

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Ice Breaker Meetings

This article, written by Marianne Werth, LCSW, discusses Ice Breaker Meetings. These meetings were designed to bring foster families and birth families of children in care, together to facilitate respectful, nonjudgmental, and supportive relationships so that the needs of the child can be better met.

Early in a child's placement, a structured first meeting of both families creates an atmosphere of "working together"; this approach is now a formal part of many services. Information about the child's needs is shared at this starting point for building relationships between families. There are exceptions; when there are safety concerns or legal constraints, the meeting may be deferred.

Before getting together at the professionally-facilitated meeting, everyone involved is educated regarding the purpose and structure of the meeting. Foster parents share information about themselves that is intended to alleviate any anxiety the birth family may have.

Birth families can explain their child to the foster family so that the placement has a better chance of success. Children sometimes participate as well, giving them an opportunity to ask questions and express their concerns and desires. The meetings are held in a neutral location and last 30 to 40 minutes, after which the participants are asked to evaluate the meeting. The emphasis on ensuring that birth families remain involved with children while they are in foster care is encouraged by such agencies as the Children's Bureau of the U.S. Department of Health Human Services. Ice Breaker Meetings are a simple way to begin the process.

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Visit Coaching

This article, by Marty Beyer, Ph.D., addresses the importance of visit coaching for families with children in foster care. Traditional visits between children in foster care and their parents have typically been supervised to provide safety for the child, with as little interference as possible. Coaching the visits provides an invaluable service to the family and their child. Parents who have had their children removed are under tremendous pressure to make changes in a short time; intensive visit support, beginning soon after placement, can help facilitate these changes.

The manual, "Visit Coaching", describes how the visit coach tailors interventions unique to each family and child. Visit coaching builds on the family's strengths, supports families in meeting the needs of their children, helps families manage the conflict between adult and child needs, and helps families learn how their child's behavior is shaped by the adult's words, actions, and attitudes.

Family Therapy – An Integral Part of Treatment

This article, by Jermaine H. Johnson, MS, MFT, discusses research which shows that involvement of the biological family in the therapy for children in foster care makes treatment more effective. Family therapy provides an opportunity for children in care to rebuild relationships with family members that were perceived as unhealthy. Parental support is a powerful predictor of reduced delinquency in minority children; as the majority of children in foster care are minorities, family therapy can greatly reduce negative outcomes, as it serves to reunite the family.

Treatment providers, who actively work to involve birth families in the child's treatment and keep the family apprised of the child's progress, can help to alleviate the parent's fear and their possible dissatisfaction with their child's placement.

Family involvement will be limited by their schedules; families who have their children placed into foster care are required to participate in several programs designed to help them to get their children back, in addition to maintaining their jobs and other responsibilities. It is important that the treatment providers can be flexible enough to accommodate the families schedule constraints so that they aren't labeled as "unmotivated" or "resistant". These families are facing complex issues and in order to heal the fractured lives of the children we serve, therapy needs to be done in a context that can improve their lives.

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Contact with Birth Families after Emancipation: Results from Two Alumni Studies and Implications for Practice

This article by Catherine Roller White, MA, Mary Wolf, MSW, Kirk O'Brien, Ph.D., and Peter J. Pecora, Ph.D., discusses two recent alumni studies of youth who have aged out foster care.

Studies show that most alumni of foster care have contact with their biological families after emancipation, and have better life outcomes as a result. The study findings highlight the importance of facilitating healthy, appropriate birth family contact and connections early, while youth are still in care. Youngsters preparing to leave care may need help preparing for these relationships in the following ways: 1) Learning appropriate relationship boundaries and what do when they are compromised. 2) Help them access therapy, if needed, to work through issues related to their birth family. 3) Facilitate development of a positive relationship with a mentor who they can talk to about birth family issues. 4) Emphasize cultural identity. This is particularly important when a child is fostered in a family that has a different cultural background than their own.

Agencies should continue to support youth by providing therapy and creating opportunities for them to work through birth family relationship issues.

Juvenile Resource Center & Appellate Office

technical assistance, consultation for attorneys, maintaining a web site and list serve, and coordinating and developing volunteer law student and pro bono efforts.

Q: Can we expect that there may be similar efforts to improve outcomes for children and parents from this group of legislators?

A: Yes, there is continued interest in pursuing additional funding to improve the quality of representation. They are working with leadership and court administration to examine ways in which we can fund improved representation



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FREE RESOURCES TO ADDRESS THE NEEDS OF LGBTQ YOUTH

Lambda Legal and the Child Welfare League of America is offering free resources they jointly produced to address the needs of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth in the child welfare, juvenile justice, and homeless service systems. Their publications include: Getting Down to Basics: Tools to Support LGBTQ Youth in Care, offering best practices and policy recommendations for competently serving LGBTQ youth. Publications may be ordered by going to: <http://www.lambdalegal.org/our-work/issues/youth/out-of-home-care/yohc-publications-order.form.html>.

DEFENDING IMMIGRANTS RIGHTS— ONLINE RESOURCE

The Defending Immigrants Partnership, a collaboration of immigrant advocacy and defense organizations devoted to ensuring effective legal representation of non-citizen defendants in criminal proceedings has launched a free online resource for criminal defenders at www.defendingimmigrants.org. The website provides de3fenders with various strategies to mitigate the immigration consequences of a criminal plea or disposition and to defend against immigration enforcement in the criminal and juvenile justice systems. A comprehensive online resource library containing: Quick reference charts of immigration consequences; quick reference guides; national practice manual on immigration consequences, and materials to assist juvenile defenders representing non-citizen youth.

