

More Abuse in Foster Care Leads to Investigation by Experts

By Rochelle Martinsson, Law Clerk

In the wake of recent evidence that child welfare workers have been complacent in response to reports of abuse in foster homes, DHS has announced that it will convene a team of outside experts to investigate the state's level of scrutiny with regard to foster parents and complaints against them.

The Oregonian recently reported that child welfare workers "discounted or ignored reports of abuse in a Washington County home for more than a decade and continued sending children there . . . until January, when the [foster] father was arrested for sexually molesting a girl in his care."¹ A DHS internal investigation has also raised "disturbing questions" about reported cases of child abuse in other state-certified family foster homes.²

Thousands of children spend at least one day in state foster care each year, and most of these children have already been the victims of abuse or neglect by the time they arrive there. Given the state's heightened responsibility to ensure that these children are protected, the results of DHS's investigation are sure to have important implications for the child welfare system.

The information available thus far suggests that substantial reform is needed to correct deficiencies in DHS child welfare policy. In the past year, authorities have received approximately 1,000 reports of suspected abuse or neglect in foster care, only about 350 of which

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Supreme Court Affirms Juvenile Rights under *Crawford*

By Rochelle Martinsson, Law Clerk

In *State ex rel Juvenile Department of Multnomah County v. S.P.*, the Oregon Supreme Court recently affirmed juveniles' Sixth Amendment rights under the United States Constitution, as interpreted in *Crawford v. Washington*, 541 U.S. 36 (2004). At issue in *S.P.* was whether hearsay statements, made by a three-year-old victim of sexual abuse to staff members at the CARES Northwest program, were "testimonial," and therefore inadmissible as evidence against defendant-youth.

In *Crawford*, the United States Supreme Court held that the Sixth Amendment forbids admission of testimonial hearsay in criminal trials, unless the declarant is unavailable and the defendant has had prior opportunity to

cross-examine the declarant. The *Crawford* Court did not provide a definition for "testimonial" statements, but it did offer suggestions as to what they might include and exclude. One example given by the Court regarding what would qualify as testimonial is a statement taken by police officers in the course of interrogations. (52)

In *S.P.*, both parties stipulated that the victim lacked competency as a witness and would therefore be unavailable to testify at trial. Defendant-youth subsequently objected to the state's attempt to offer into evidence statements made by the victim during his evalua-

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News Briefs

By Rochelle Martinsson and
Katharine Edwards, Law Clerks

ASW, et al v. State of Oregon Class Action Settlement

A \$1,733,225 settlement was recently reached between the State of Oregon Department of Human Services and nearly 7,000 Oregon adoptive families, following resolution of a dispute concerning the Oregon Adoption Assistance Program. The AAP was instituted in Oregon in 1980 "to remove financial barriers to adoption and to ensure that families who adopt waiting children have the necessary services and financial resources to meet their children's ongoing needs."¹ The AAP is a federally funded program, but the state of Oregon determines on a case-by-case basis which children qualify for subsidies, and the amounts of those subsidies, taking into account the individual needs of each child.²

In February of 2003, the State began unilaterally cutting payments to families of adopted children under the AAP. Attorneys from Johnson, Clifton, Larson & Schaller, P.C. and the Youth Law Center of San Francisco subsequently filed a class action lawsuit challenging DHS to "meet its contractual and federally mandated obligation to adopted children and adoptive families."³ The attorneys argued that the state violated the families' due process rights by suddenly reducing support, and asked that the state pay the families the money to which they were entitled.

An Oregon Federal District Court granted the State's motion to dismiss on the pleadings, but a Ninth Circuit Court of Appeals ruled that the families were entitled to a fair hearing. After the U.S. Supreme Court denied the State's petition for en banc review, mediations commenced under the supervision of U.S. Magistrate Thomas Coffin. Several months later, the State agreed to pay the families the money owed to them under the AAP. Attorneys fees were awarded to the plaintiffs' attorneys.

¹ Oregon Department of Human Services, Adoption Services. Available at: http://www.oregon.gov/DHS/children/adoption/adopt_child.shtml#assist_prog

² *Id.*

³ Johnson, Clifton, Larson & Schaller, P.C. Summer 2009 Newsletter. Available at: <http://www.jclsllaw.com/CM/newletters/Summer2009newsletter.asp>

Reduction in OYA Beds

Effective September 21, 2009, the Discretionary Bed Allocation (DBA) for the Oregon Youth Authority is 425 beds, a 40-bed reduction from the previous DBA of 465 beds. For Multnomah County, the new DBA is 76 beds, a 9-bed reduction from the previous DBA of 85 beds. Multnomah County has the largest demand for OYA close custody beds in the state, currently maintaining a requirement that equals the aggregate DBA of both Washington and Marion Counties.

In an August 18, 2009 memorandum to juvenile departments and OYA staff, OYA Director Colette S. Peters cites funding reductions and changes over time in the number of DOC inmates and juvenile offenders in the public safety reserve category as grounds for the reduction in overall DBA. The Oregon Youth Authority will review the DBA after the October 2009 Office of Economic Analysis forecast.

Feel free to sit or lie? Next Steps for City Council's Sit-Lie Ordinance

In June, a Multnomah County Circuit Judge ruled that the City Council's sidewalk obstruction ordinance (a.k.a. the sit-lie ordinance) was unconstitutional because it conflicted with the state's disorderly conduct law. Since the ruling, the council has been exploring how to respond, but has taken no official action. In the meantime, police are not enforcing the ordinance, nor replacing it with arrests for disorderly conduct.

The Oregonian's James Mayer took to the sidewalks of downtown Portland in August to see how the homeless, store owners, and pedestrians were faring in the wake of the judge's ruling. After a week of observations, the author noted that homeless people, panhandlers, and road warriors were sitting, standing, or asking for money on nearly every street he walked down. This overwhelming presence of the homeless was matched by an equally overwhelming share of opinions among Portlanders who frequent the downtown city streets. For these opinions, please visit: www.oregonlive.com and search for "Sit-lie controversy casts eye on the homeless."

Juveniles Among 1 in 11 Prisoners Serving a Life Sentence

A recent study conducted by The Sentencing Project examines trends in the proportion of the U.S. population serving a life sentence, as well as the dramatic increase in the imposition of life sentences in the context of incapacitation and public safety. The study also addresses fiscal costs and goals of punishment with regard to life sentences, and the appropriateness of life sentences for juveniles.

One key finding of the study is that 140,610 individuals (one out of every 11 people, or 9.5% of the prison population) are serving a life sentence in prison. Another key finding of the study is that 6,807 of the individuals serving a life sentence were juveniles at the time of offense, 1,755 (25.8%) of whom have no possibility of parole.

In Oregon, 1.9% of the individuals serving a life sentence are juveniles, which is considerably less than the proportion of juvenile individuals serving a life sentence in some other states. The Sentencing Project cites the number of juveniles serving a life sentence in Oregon as 14, and the number of juveniles serving a life sentence without the possibility of parole in Oregon as zero.

To view the complete study, titled *No Exit: The Expanding Use of Life Sentences in America*, go to: <http://www.sentencingproject.org/doc/publications/inc>

Foster Care Rate Redesign

As of September 1, 2009, new base rates and the rates for levels of care have taken effect for all foster parents and relative care givers under the Foster Care Rate Redesign. The redesign has changed the way DHS reimburses Oregon foster parents for the care they provide to children. The change affects reimbursement rates for all foster families and increases the rates for some children in care while decreasing rates for other children.

The new foster care reimbursement system has three parts: 1) Base level of Care, which is the care for all foster children in certified DHS foster homes; 2) Enhanced Supervision, which is for those foster children who need additional (non-medical supervision); and 3) Personal Care Services, which is only for those foster children with medical needs requiring intervention (about 15% of the total foster care population).

New Monthly Payment Rates (as of 09/01/2009)

Base Rate	Enhanced Supervision	Personal Care Services
* rate based on	* rate based on	* rate based on
Ages 0-5: \$639	Level One: \$212	Level One: \$207
Ages 6-12: \$728	Level Two: \$414	Level Two: \$413
Ages 13-20: \$823	Level Three: \$850	Level Three: \$620
		Level Four: \$620

The redesign also implemented changes regarding respite care, day care, and shelter care. There is currently no federal funding for respite care, no programs that fund employment related daycare for working foster parents, and the Relative and Foster Family Shelter Care now extends to twenty days at the initial placement rate. The level of care is now determined at the Central Office, and not by the caseworker, supervisor, or Special Rate Committee in the local branch.

Foster parents are receiving notices of the child's new rates as they are being determined. Foster parents can request a hearing to contest the rate determination on behalf of the child (the claimant). Attorneys for children may file a separate request on a child's behalf or may support the foster parent's request.

For more information, see: <http://www.oregon.gov/DHS/children/fostercare/rates/> - click on Project Updates

Trauma of Removal: Part II

By Noah Barish, Law Clerk

Introduction to Part II

Part I of this article included a survey of the literature concerning long-term consequences of removal and foster care placement. Part II of the article will continue with a detailed discussion of a series of groundbreaking studies by MIT professor Joseph Doyle, Jr., revealing that children who are removed from their homes and placed in foster care experience significantly worse long-term outcomes than similarly maltreated children who remain in the home. Part II of the article will also review the legal framework governing removal in Oregon.

Results from the Research

Doyle's research, which involved the random assignment of child welfare investigators to family dependency cases, was focused on the effects of foster care placement.¹ Doyle found that each investigator had a certain general propensity to recommend removal, compared to other investigators.² Not surprisingly, the investigator's general propensity to remove was an accurate predictor of the likelihood that the investigator would place any individual child in foster care.³ Because children's cases were randomly assigned to investigators, Doyle could determine the effects on children placed into foster care solely on the basis of their investigator assignment.⁴ That unique research model made it possible to compare children placed in foster care with similar children who were investigated for abuse or neglect but were not placed within the foster care system.⁵

Additionally, Doyle identified situations in which investigators disagreed with each other about whether to recommend foster care placement for a child.⁶ The child in such situations was considered "on the margin of placement," ostensibly because he or she had not experienced abuse or neglect so severe that any investigator would recommend removal and placement.⁷ Interestingly, Doyle also discovered that young adolescents, victims of abuse (as opposed to neglect), girls, and African American children were those most often on the margin of placement. Doyle's analysis focused primarily on these children on the margin of placement, in part because he found that the most drastic effects of foster care placement were demonstrated by this group.

In his first analysis of 15,000 children in Illinois, Doyle discovered several significant results concerning the effects of removal and foster care placement for children on the margin of placement. First, the analysis showed that children who were removed and placed in foster care had a delinquency rate three times that of similarly endangered children who were

not placed in foster care.⁸ Second, children placed outside the home experienced teen pregnancy rates twice as high as those who are not placed. Finally, children placed in foster care had approximately 40% lower levels of employment when they were between the ages of 18 and 26, compared to those who remained at home.⁹

Doyle also found differences in the strength of the negative effects of foster care placement for different types of children. For example, increases in delinquency rates among those placed in foster care were most noticeable in neglect, as opposed to abuse, cases.¹⁰ The results were the opposite for teen motherhood; the more drastic increase in pregnancies was found where children were removed from their homes because of abuse.¹¹ The results also revealed that the negative effects of foster care placement were strongest for children removed from their parents when they were over ten years old.¹² Finally, children least likely to be removed and placed in care experienced the most dramatic increases in delinquency and teen pregnancy when they were removed.¹³

Doyle's second study, featuring over 23,000 children using a similar method, showed that the damaging effects of foster care placement extended into adulthood.¹⁴ The key finding of the second study was that children on the margin of placement who were actually removed and placed in foster care were two-to-three times more likely to be arrested as adults, compared to children who remained with their parents.¹⁵

Doyle's findings have several important methodological limitations. Both of Doyle's studies focused exclusively on school-aged children (ages 5 to 15 in the first study, and 4 to 16 in the second study).¹⁶ The first study examined only poorer children — those who received Medicaid prior to the investigated report of abuse or neglect. Neither study included baseline measurements of children's behavioral problems or psychopathology before the abuse or neglect report, a factor which might independently influence life outcomes. Finally, one child welfare researcher criticized Doyle's assumption of random investigator assignment, thereby questioning all his empirical results. Despite these limitations, Doyle's results bear on whether courts and child welfare agencies should remove children from their homes in marginal cases.

The theoretical and empirical results described in

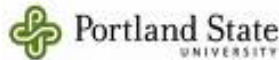
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Trauma of Removal: Part II

this article show that the damage wrought by removal and placement is severe and permanent, including significant increases in behavioral problems, delinquency, adult arrest, teen pregnancy, and underemployment for children placed in foster care.

Resource now available from Portland State University School of Social Work: **Center for Improvement of Child and Family Services.** The Center "integrates research, education and training to advance the delivery of services to children and families." Information about removal can be found at:

<http://www.ccf.pdx.edu>



Harm of Removal and Oregon Statutory Framework

Oregon statutes governing removal encourage consideration of the harms caused by removing a child from the home. In fact, the juvenile code provides for several opportunities to consider the harm of removal and placement: the initial DHS removal decision, DHS reasonable efforts documentation, the court's review of DHS reasonable efforts, the court's removal decision, and the court's written findings for a removal order.

The juvenile code even seems to contemplate the harm of removal with regard to the initial decision to remove a child. ORS 419B.150(1)(a) provides that a child may initially be removed from home by law enforcement or DHS "[w]hen the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare" While this section focuses mainly on the risks within the home as opposed to the risks of removal, it also acknowledges that the child's "condition or surroundings" are critical to the child's welfare. Placing a child in foster care certainly introduces a new set of "conditions or surroundings" for that child, some of which could negatively impact the child's welfare even more than the danger within the home. Thus, the initial removal statute hints at a statutory scheme where potential impacts of removal should be considered alongside other determinants of a child's welfare.

DHS plays an important role in encouraging discussion of the risks of removal. According to ORS 419B.185(2)(c), DHS must present written documentation to assist the court, outlining "[w]hy protective custody is in the best interests of the child or ward." Thus, by explicitly requiring DHS to justify why protective custody will benefit the child, the juvenile code invites DHS to balance the specific harms of removal against the risk of keeping the child in the

home. Note that this section requires thorough analysis of the removal decision even before the shelter hearing, and also mirrors the court's own duty at the shelter hearing to determine whether removal is in the best interest of the child. See ORS 419B.185(1)(d).

At the shelter hearing itself, the court's review of DHS' reasonable efforts provides another chance to analyze the harm of removal. ORS 419B.185(1)(c) provides that in determining whether the department has made reasonable efforts, "the court shall consider the child or ward's health and safety the paramount concerns." (Emphasis added). When focusing on the child's health and safety, the court could certainly consider evidence about the likely psychological trauma of removal and long-term behavioral consequences of foster care placement.

The statutory instructions guiding the court's removal decision also contemplate analysis of the harm of removal. In determining whether the child should be removed, "the court shall consider whether the provision of reasonable services can prevent or eliminate the need to separate the family." ORS 419B.185(1)(b) (emphasis added). This section implies that, at a minimum, the court should articulate the need for removing the child (i.e. "separat[ing] the family"). Articulating the need for removal, in turn, provides the opportunity to balance the harm of keeping the child in the home against the harm of removing the child.

Finally, the court's written findings for an order of removal should explore both the advantages and dangers of removal. ORS 419B.185(1)(d) states that "[t]he court shall make a written finding in every order of removal that describes why it is in the best interests of the child or ward that the child or ward be removed from the home or continued in care." (Emphasis added). This best-interests analysis requires the court to explain why the harm in leaving the child in the home endangers the child's health and welfare more than the harm in removing the child from the home. Juvenile Law (Oregon CLE 2007), §15.35.

Overall, the juvenile code never flatly demands that courts address the harm of removal on the record. Yet, several sections require analysis of the child's "condition," "surroundings," "health," "safety," and "best interests" before ordering removal. The use of these broad terms suggests that the courts should conduct a comprehensive analysis of the impact of removal on a child, including both the positive and negative repercussions of removal.

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Recent Case Law

Summaries by Rochelle Martinsson, Law Clerk

State ex rel DHS v. RJT, ___ Or App ___
(July 15, 2009).

<http://www.Publications.ojd.state.or.us/A139670.htm>

Mother appealed the trial court's termination of her parental rights as to her five-year-old child. The trial court found that mother was unfit because she continued to engage in self-harming behaviors that created an unstable environment for the child. Taking into account mother's mental illness, which the trial court found rendered mother incapable of providing long-term care for the child, the court determined that the child could not be placed into mother's home within a reasonable period of time.

The Court of Appeals found that mother had engaged in conduct seriously detrimental to the child caused by a condition or conduct. Based on expert testimony, the Court also found that movement of the child would disrupt her current placement and cause a depression which mother would be unlikely to address in a safe way. The Court also referred to mother's suicide attempts, fearing the child might be at risk of emotional harm or mimicking acts. An expert testified that mother would need six months to create a stable environment for the child. Citing a pressing need for permanency and mother's two years of instability prior to trial, the Court found it to be unlikely that the child could be safely returned within a reasonable period of time and affirmed the trial court's judgment.

Judge Schuman wrote a vigorous dissent, arguing that the state failed to prove that mother's conduct and condition were seriously detrimental to the child. Explaining his decision to dissent, Judge Schuman wrote that "DHS presented *no* evidence that mother's conduct or conditions have already had a serious detrimental effect on L, and the evidence of future detriment is speculation that does not even approach the clear and convincing standard." The dissent explains that because of this conclusion he does not reach the "reintegration" or "best interests" elements. As Judge Schuman wrote: ". . . [I]n a contest between a neurotic, dysfunctional, criminal, or otherwise marginal parent who, despite these qualities, can provide minimally adequate care for a child, on the one hand, and the state, which may have identified an adoptive placement where the child will probably thrive and flourish, on the other, the bad parent wins. Some would say we have chosen to sacrifice children on the altar of parental rights. Others would point out that a regime in which bad parents can lose their children when the state finds what it regards as better parents can easily degenerate into a dystopia where every parent must live in fear that some bureaucrat will de-

cide that another parent is more deserving."

State ex rel DHS v. E.K., 230 Or App 63 (July 29, 2009).

<http://publications.ojd.state.or.us/A140745.htm>

Mother appealed four judgments of the juvenile court: as to three children, changes in permanency plans to adoption; and as to one child, a change in permanency plan to another planned permanent living arrangement.

Mother has six minor children, all of whom had been removed from the home on three separate occasions prior to the permanency hearing—once following allegations of sexual abuse in the home, and twice as a result of the home being in an unsafe and unsanitary condition. Mother has a history of mental health difficulties and cognitive challenges. All children have psychological or developmental issues.

At the permanency hearing, it was found that despite the availability of extensive services over time, mother had at times shown an unwillingness, and at other times an inability, to apply her parenting skills training to her circumstances at home. Relying on expert testimony from a psychologist and a neuropsychologist, each of whom had evaluated mother, as well as the family's DHS caseworker, the juvenile court concluded that Mother was not capable of parenting all of her children.

On appeal, mother argued (1) that DHS failed to make reasonable efforts to reunify the family, and (2) that she had made sufficient progress to allow the safe return of her children in a reasonable time. The Court found that DHS's efforts to prevent removal of the children, and then to reunify the family, were reasonable." The Court also found that it was unlikely that mother would make sufficient progress to allow the four children at issue to be returned within a reasonable time. In affirming the juvenile court judgment, the Court of Appeals agreed with DHS that despite reasonable efforts to reunify the family, mother's deficiencies continued to prevent her from being able to adequately supervise her children or meet their psychological and emotional needs.

State ex rel DHS v. A.C., 120 Or App 119
(August 5, 2009).

<http://publications.ojd.state.or.us/A139628.htm>

The Court of Appeals affirmed the trial court's dismissal of DHS's petition to terminate mother's parental rights to her two-year-old son, and DHS petitioned the court for reconsideration. On reconsideration the Court adhered to its original decision affirm-

Recent Case Law— Continued from previous page

ing the trial court's judgment.

In its petition for reconsideration, DHS argued that the Court had failed in the first instance to specifically consider and address DHS's claim that mother's parental rights should be terminated under ORS 419B.502.

Upon reconsideration, the Court focused on subsection 6 of ORS 419B.502, finding that "conditions giving rise to the previous termination action [had] been ameliorated to the extent that termination of mother's parental rights based on her prior extreme conduct [was] not appropriate."

State ex rel Juv. Dept. v. J.F.B., 230 Or App 106 (August 5, 2009).

<http://publications.ojd.state.or.us/A139560.htm>

Mother appealed four juvenile court judgments as to her two children: a June 2008 approval of a concurrent plan of adoption over Mother's objection, and an August 2008 change in permanency plan from adoption to permanent legal guardianship.

On appeal, mother argued that in both the June and August decisions, the juvenile court erred by changing the permanency plan to a plan other than reunification. Mother asserted various supporting arguments for this assignment of error, including that she had made significant progress to enable the children to safely return home under ORS 419B.476(2)(a), and that the court failed to make determinations required by ORS 419B.476 to support its July 2008 decision.

The Court of Appeals found that the juvenile court failed to determine whether any of the circumstances in ORS 419B.498(2) were applicable, as required by ORS 419B.576(5)(d), a failure which was fatal to the July 2008 decision. The Court then considered whether the August 2008 judgments could exist independently of the July 2008 judgments.

The Court found that in its August 2008 decision, the juvenile court had relied on its earlier findings and had not reconsidered mother's circumstances for purposes of reunification, even though mother sought reunification at the August hearing and the opportunity for reconsideration of mother's circumstances presented itself. Emphasizing the requirement under ORS 419B.476(2)(a) that the juvenile court make new findings or a finding that circumstances regarding reunification had not changed, the Court concluded that the August 2008 judgments were also defective. The Court reversed and remanded so that the juvenile court could make the active efforts determination mandated by ICWA.

State v. Worthington By Rochelle Martinsson, Law Clerk

On July 23, 2009, a Clackamas County jury found Carl Worthington guilty of criminal mistreatment for the death of his 15-month-old daughter, Ava, who died of pneumonia and a blood infection. While both conditions could have been cured with antibiotics¹, the Worthingtons administered only faith-based healing methods to treat Ava. Carl and Raylene (Ava's mother) Worthington are members of the Followers of Christ Church in Oregon City, which "traces its origins to the faith-healing Pentecostal movement of the late 19th century."² Members of the church adhere to a Bible passage that recommends prayer, laying on of hands, and anointing with oil in cases of illness.³ The Worthingtons were both charged with manslaughter and criminal mistreatment, but neither was convicted of the manslaughter charge, and Raylene was acquitted on all charges.

In response to lobbying by the Christian Science Church, the Oregon legislature created religious shields to criminal liability for faith healing in the 1990s. In 1995, a religious defense to Oregon's homicide statutes was introduced for parents who could prove that faith governed a decision to heal their child solely through prayer and faith-healing rituals. In 1997, the legislature added similar immunity provisions to the state's first- and second-degree manslaughter statutes. Citing legal immunity for faith-healers, a Clackamas County District Attorney later declined to prosecute Followers of Christ Church members whose son had died from untreated diabetes, triggering statewide controversy and a demand for changes in Oregon law.⁴ The legislature then eliminated parents' faith healing legal defenses in cases of second-degree manslaughter, criminally negligent homicide, and first-degree criminal mistreatment in 1999. *Worthington* was the first test of the law that removed such legal protections for parents who withhold medical treatment on religious grounds.

Worthington involved a dispute about several important issues, including religious freedom under state and federal constitutions, parental rights, child safety and medical neglect. While it is uncertain how issues like these will be resolved by the justice system in the future, Judge Maurer of Clackamas County provided his own perspective at the sentencing hearing for Brent Worthington, stating, "I will stand by my assessment that this was wrong, wrong, wrong . . . This was an unnecessary tragedy."⁵

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CLE: Parent Training and JCIP Roadshow

This Fall, the Juvenile Law Resource Center, which is devoted to improving representation of parents in dependency and termination of parental rights cases, will offer training in 12 locations throughout the state. The trainings will take place in the afternoons, following the cross-disciplinary trainings (the JCIP Road Show) co-sponsored by DHS and the Judicial Department.

Morning presentations will review recent state and federal legislation and DHS policies, including discussion of relative placements and structured decision making. In the afternoon, JLRC senior attorneys Julie McFarlane and Angela Sherbo, along with a panel of parents who are former clients of DHS, will discuss: case law updates; harm and trauma of removal; the Oregon Safety Model; voices of parents; and the science of parenting capacity evaluations.

For dates and locations, go to the JRP website (www.jrplaw.org) or the JCIP calendar at <http://courts.oregon.gov/sites/OJD/OSCA/cpsd/courtimpovement/jcip/EventCalendar.page>.

Registration is currently available at: <http://www.ojd.state.or.us/osca/cpsd/courtimpovement/jcip/index.htm>.

Parent Training and JCIP Roadshow Schedule

October 5— La Grande, OR

October 6— The Dalles, OR

November 2— Eugene, OR

November 18— Portland, OR

November 19— Hillsboro, OR

November 20— Salem, OR

Parent Training only

October 23— Bend, OR (1:30 at the law offices of Crabtree and Rahmsdorff, 215 NW Greenwood, Suite 200 in Bend. Please RSVP to Tom Crabtree.)



CONFERENCES

Shoulder to Shoulder Conference

The 11th annual Shoulder to Shoulder Conference, titled "Building a Community," will be held November 10, 2009 at the Oregon Convention Center in Portland, Oregon. The Keynote presentation will focus on the Ten Step Rites of Passage model and the importance of self-esteem, self-respect, self-motivation, and self-determination for youth. The lunch presentation, "Through the Eyes of a Former Foster Child," will feature April Curtis' account of her own journey through the foster care system. Workshops will take place throughout the day covering various topics, and will include a judges' panel consisting of judges from Clackamas, Marion, Multnomah, and Washington counties. The judges' panel will be moderated by JRP attorney Julie MacFarlane.

To register, call (503) 872-5601 or visit: www.oregon.gov/DHS/children/fostercare/conference

2009 Governor's Summit on Eliminating Disproportionate Minority Contact in Juvenile Justice & Child Welfare Systems

The summit will take place Monday, November 16, 2009 from 8:00 a.m. to 4:30 p.m. at the Jantzen Beach Red Lion on the River in Portland, OR.

For more information, contact Dianna Brainard in the OYA Office of Minority Services at (503) 378-4667 or dianna.brainard@oya.state.or.us

Juvenile Law Training Academy October Seminar

The fifth annual Juvenile Law Training Academy seminar is scheduled for October 19-20, 2009, during the Oregon Judicial Conference. It will be held at the Hilton Hotel in Eugene, Oregon. The seminar will focus on: changes in law and practice for juvenile lawyers; recent developments in the legislature, at DHS, and in case law; and essential information about special areas of law (e.g., immigration, ICWA, and paternity). Additionally, there will be an extended session on professionalism in the context of permanency hearings and child abuse reports. The seminar is for attorneys - including state's attorneys and attorneys for children and parents - as well as for CASAs and CRB members involved in the juvenile court community. The conference will be moderated by Lois Day, of the Department of Human Services.

To receive more information or to register, call (541) 686-8716 or visit www.ocdla.org.

have received a full-scale investigation.³ Further, since at least 2003, Oregon has had a higher rate of confirmed abuse in foster care than the national average.⁴

In the case of the Washington County home mentioned above, child welfare workers received at least 16 reports of suspected child abuse or neglect since the foster parents were certified in 1995. Seven of those reports were never investigated, and the foster parents often received positive reports by state certifiers. However, in addition to allegations of sexual abuse, records now indicate incidences of physical and verbal abuse, inappropriate disciplinary tactics, starvation, and children being forced to wear dog collars. In the case of abuse in another foster home, the state recently paid \$2 million in a lawsuit settlement for two children who were confined in a crib covered with chicken wire in a darkened room while caseworkers performed insufficient inspections. A new lawsuit has just been filed against DHS, alleging child welfare officials placed a girl in the home of her grandfather, a convicted rapist, who then molested her for several years.⁵

Don Darland, president of the Oregon Foster Parent Association, cautions that accusations of abuse or neglect against foster parents are not always founded, and that the potential for such accusations and the resulting fallout can dissuade suitable would-be foster parents from providing foster care.⁶ Nonetheless, the state has a duty to safeguard children from abuse or neglect in foster care. That duty may necessitate immediate and substantial reform to the current child welfare system, including more rigorous inspections and more in-depth investigation following reports of abuse or neglect.

¹ Michelle Cole, "Abuse in children's foster care: State officials call for outside review." *The Oregonian*. Wednesday, September 2, 2009, 8:33 p.m. Available at: http://www.oregonlive.com/politics/index.ssf/2009/09/abuse_in_foster_care_state_off.html

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Worthington—Continued from page 7

¹ Steve Mayes. "Worthington: Autopsy photos will be allowed at the trial." *The Oregonian*, Sunrise Edition, June 22, 2009. Local News.

² *The Oregonian*. "The history of the Followers of Christ church." Thursday, July 23, 2009, 5:00 p.m. Available at: http://www.oregonlive.com/clackamascounty/index.ssf/2009/07/the_history_of_the_followers_o.html.

³ Steven Mayes. "Grandmother saw no reason for alarm." *The Oregonian*, Sunrise Edition, July 7, 2009. Local News.

⁴ *The Oregonian*. "Worthingtons faced charges that included a religious exemption." Thursday, July 23, 2009, 5:21 p.m. Available at: http://www.oregonlive.com/clackamascounty/index.ssf/2009/07/worthingtons_faced_charges_tha.html.

⁵ Rick Bella. "Worthington gets jail time in faith-healing death." *The Oregonian*. Friday, July 31, 2009, 9:25 p.m. Available at: http://www.oregonlive.com/clackamascounty/index.ssf/2009/07/worthington_gets_jail_time_in.html.

The National Association of Counsel for Children's 32nd annual Family and Juvenile Law Conference was held in Brooklyn, NY, August 19-22. There were approximately 600 attendees, including attorneys for children and parent advocates.

Among the most interesting presentations were: "Do No Harm," by Hon. Frederica Brenneman and attorney Ann Haralambie; a presentation given by the Commissioner of New York's Administration for Children's Services; and a presentation by Monica Behnken, JD, Ph.D. which focused on the nation's first juvenile mental health court.

An interesting panel presentation, "Treating Parents as Experts: How Family-Centered Child Welfare Practice Improves Outcomes for Children," focused on abuse and neglect cases, as well as the importance of getting parents involved early and often in planning for their children's care once the children are removed. A paper by one of the presenters, entitled "Procedural Justice: How the Practices and Procedures of the Child Welfare System Disempower Parents and Why it Matters," can be found at:

http://chanceatchildhood.msu.edu/pdf/MCWJ_v1.pdf.

Another interesting discussion panel was "Family Matters: The Science, Statutes, and Substantive Due Process Behind Kinship Foster Care."

Links to materials from the conference can be found at:

<http://www.naccchildlaw.org/?page=2009ConfHandouts>

For more information or links to presentation materials, feel free to contact Andrea Freimuth at: andreafreimuth@hotmail.com.

Trauma of Removal: Part II—Cont'd from p. 5

¹ Doyle, *Child Protection and Child Outcomes* at 1588.

² *Id.* at 1593.

³ *Id.* at 1596.

⁴ *Id.* at 1585.

⁵ *Id.* at 1584.

⁶ *Id.* at 1588.

⁷ Doyle, *Child Protection and Adult Crime* at 761.

⁸ Doyle, *Child Protection and Child Outcomes* at 1599.

⁹ *Id.* at 1601-1602; Joseph J. Doyle, Jr., *Child Welfare and Child Outcomes: Measuring the Effects of Foster Care*, Presentation to Florida Task Force for Child Protection, May 8, 2008, at 36 (available at http://www.mit.edu/~jjdoyle/pres_FLA_may08.pdf).

¹⁰ *Id.* at 1604.

¹¹ *Id.*

¹² *Id.* at 1605.

¹³ *Id.* at 1606.

¹⁴ Doyle, *Child Protection and Adult Crime* at 753.

¹⁵ *Id.* at 761.

¹⁶ *Id.* at 753. Doyle, *Child Protection and Child Outcomes* at 1590.

Recent Case Law

Summaries by Rochelle Martinsson and Jason Gershenson, Law Clerks

***State v. Regnier*, 229 Or App 525 (July 15, 2009).**

<http://www.publications.ojd.state.or.us/A136690.htm>

The state appealed from a pre-trial order granting defendants' motion to suppress evidence obtained during an illegal stop.

An officer responded to a report that minors were drinking on the beach and approached a group consisting of adults, children and young adults. Some members of the group were consuming alcohol, and when the officer approached the group, several individuals walked away. Suspecting these individuals had been drinking and were underage, the officer directed them to come back and provide identifying information. The individuals first provided false information, but later provided accurate information, and were subsequently charged with giving false information to a police officer in violation of ORS 162.385, and possession of liquor by a minor, in violation of ORS 471.430.

On appeal, the state argued that the trial court erred by concluding that the officer: (1) did not have reasonable grounds to stop defendants, and (2) was not justified in stopping defendants to investigate her suspicion that they had violated the minor-in-possession statute.

In its analysis, the Court considered first whether the officer had an objectively reasonable suspicion that defendants possessed alcoholic beverages as their personal belongings or property at the time of the incident, and second, whether the officer had an objectively reasonable suspicion that defendants were in constructive possession of alcoholic beverages physically possessed by other members of the group. Relying on the trial court's findings that the officer had never observed defen-

dants to be in actual possession of containers of alcoholic beverages, and that defendants were specifically not among those of the group in possession of alcohol, the Court of Appeals concluded that the officer did not have an objectively reasonable suspicion required to make a stop on either ground. The Court commented that "individualized possession of alcoholic beverages is required before defendants could be lawfully detained."

***State v. Guy*, 229 Or App 611 (July 15, 2009).**

<http://www.publications.ojd.state.or.us/A136764.htm>

Defendant, convicted on multiple counts for the sexual abuse of his stepdaughter, asserted on appeal that the trial court erred in denying his motion for acquittal, because the state's evidence was insufficient to support a finding of guilt. The stepfather also claimed that the trial court's denial of his motion for acquittal violated the Due Process clause of the Fourteenth Amendment.

The motion for acquittal arose as a result of the victim's inconsistent testimony. At the juvenile court hearing, the victim noted that "nothing sexual" had happened and suggested that she was not raped. She also communicated apprehension about foster care placement as a consequence of revealing her stepfather's conduct. During trial, however, the victim testified that her stepfather had, indeed, touched her in a sexual way.

The Court of Appeals noted that "the determination of a witness's credibility is the sole province of the trier of fact." The Court explained that the trier of fact was given an explanation regarding the inconsistencies, and that it heard testimony that the stepfather touched the victim's "sexual or intimate parts." As a result, the Court rejected the stepfather's argument and found that a rational trier of fact could deduce the elements of the crime beyond a reasonable doubt. The Court also

found that under the Fourteenth Amendment, any rational trier of fact could have convicted the stepfather, because the evidence was viewed in the light most favorable to the prosecution.

***WEF v. CLM*, 229 Or App 591 (July 15, 2009).**

<http://www.publications.ojd.state.or.us/A140773.htm>

The trial court dismissed a petition for adoption of a child on jurisdictional grounds. The issues on appeal were: (1) whether the allegations in the adoption petition established that the trial court had jurisdiction, and (2) if the court had jurisdiction, whether it had erred in concluding that, when a nonconsenting parent is incarcerated, the petitioner must establish that the requirements of ORS 109.322 have been satisfied and allege a separate statutory ground for terminating the rights of the nonconsenting parent.

Petitioners, one of whom was the child's maternal aunt, filed to adopt the child in August of 2008. The adoption petition alleged that the father had murdered the child's mother in August of 2006, that the father was currently incarcerated for murdering the child's mother, and that petitioners had had physical custody of the child since September of 2006.

Father denied consent to the adoption and moved to dismiss the petition on the ground that the statutory minimum in ORS 109.322 – a three-year period of incarceration – had not been proven. Finding that the father, the only surviving parent of the child, had only served approximately 18 months when the petition was filed, the trial court held that the petition was not ripe for adjudication and dismissed the petition. Petitioners appealed, arguing that they did not

Continued on next page

need the father's consent if they could satisfy one of the statutory exceptions to the consent requirement, and that the trial court had jurisdiction to hear evidence as to why the adoption would be in the best interests of the child.

Finding that petitioners had not actually alleged any of the elements of any statutory exception that would allow the adoption to proceed without the father's consent, the Court of Appeals affirmed the trial court judgment. The Court reasoned that because petitioners had not pled the facts necessary to establish any statutory exception in their original petition or in their response to the motion to dismiss, petitioners had not made a plain and concise statement of the claim, as required by ORCP 16 B.

***People ex rel. Birkett v. Konetski*
233 Ill.2d 185 (May 21, 2009).**

<http://www.state.il.us/court/Opinions/SupremeCourt/2009/May/102667.pdf>

In relation to a minor's adjudication for a sex offense, the Juvenile Court Judge (respondent) entered an order placing the minor on probation until he reached 21 years of age. The judge informed the minor that he would not be required to register under the Sex Offender Registration Act under the terms of his probation. In its mandamus complaint, the state sought to compel the judge to vacate the order exempting the minor from the registration requirement, and to advise the minor of the requirement. While the mandamus action was pending, the legislature amended the Act.

The minor first contended that because the state failed to file a direct appeal, he did not have an opportunity to challenge his delinquency adjudication before an appellate court. The minor also argued that if he had been successful on appeal, he would not be subject to the registration requirement. The Supreme Court rejected these arguments because the respondent was required to advise the minor of his duty to register prior to release on probation.

Second, the minor made several

constitutional arguments claiming the Act violated his equal protection and substantive due process rights, prohibitions on cruel and unusual punishment, and ex post facto laws. The Supreme Court found that "the due process clause does not require the right to a jury trial in juvenile delinquency proceedings." The Court further noted that the impact on the minor's liberty was not comparable to the punishment an adult would receive—4 to 15 years of imprisonment.

Third, the minor argued that registration imposes a disproportionately harsh sanction upon juveniles. The Supreme Court disagreed, holding that "the Act's registration requirement as applied to juveniles does not amount to punishment."

Finally, the minor asserted that the amendment to the Act which increased his 10-year registration term to a lifetime requirement should not be given retroactive application. The Supreme Court held that the constitutional provisions against ex post facto laws were not violated because the registration requirement is not a punishment. The Court held that the Act is a regulatory statute for the promotion of public safety and awarded the writ of mandamus.

***State ex rel Juv. Dept. v. S.A., _____*
Or App _____ (August 12, 2009).**

<http://www.publications.ojd.state.or.us/A141669.htm>

In a *per curiam* opinion, the Court of Appeals reversed an entry of judgment establishing dependency jurisdiction, with respect to an allegation by DHS that the "father ha[d] a history of substance abuse, which, if active, would endanger the welfare of the child."

Finding the DHS allegation an insufficient basis for establishing dependency jurisdiction because it did not allege that the child was *currently* endangered, the Court reversed and remanded for entry of judgment establishing dependency jurisdiction based only on allegations admitted by the father.

tion at CARES, arguing admission of the statements would violate the Confrontation Clause of the Sixth Amendment, as interpreted in *Crawford*.

The juvenile court found that the statements were not "testimonial" and admitted them. The Court of Appeals reversed, holding that the statements were "testimonial" under *Crawford*.

On appeal, the Oregon Supreme Court inferred the primary purpose of the victim's interrogation from the contents and circumstances of the victim's statements, rather than from the questions asked or the subjective intent behind them. The Court found that the involvement of law enforcement in CARES is pervasive, and that CARES was apparently "acting, at least in material part, in concert with, and for the benefit of, law enforcement agencies in an investigation of conduct that could lead to a loss of [defendant-youth's] liberty." The Court also found that when a pediatrician and social worker asked the victim questions about the incident during the CARES evaluation, they were "inquiring about past conduct that potentially could lead to a loss of [defendant-youth's] liberty, as police officers do when they interview the victims of crime." Finally, the Court found that the police officer who observed the CARES evaluation did so for the purposes of an "ongoing investigation."

In affirming the Court of Appeals, the Court held that the victim's statements to CARES, "in which he identified [defendant youth] as his abuser and described the occurrence and extent of the abuse," were testimonial. The Court also held that because defendant-youth had no prior opportunity to cross-examine the victim as to these statements, the Confrontation Clause of the Sixth Amendment barred their admission in the case against defendant-youth.

Resources

Summaries by Rochelle Martinsson, Katherine Edwards and Jason Gershenson, Law Clerks

Youth Violence Myths and Realities: A Tale of Three Cities

A recent study seeks to identify causal factors associated with an increasingly punitive juvenile justice system. The National Council on Crime and Delinquency analyzed youth crime through the scope of media coverage, public perception, public policy, and actual trends and issues.

The study suggests that the public is very impressionable to the media's unbalanced coverage of juvenile crime, and it is argued that far too many stories focus on violent crimes without context. The authors suggest that although the public is shown to generally disfavor harsh treatment of most youth, unbalanced coverage leads them to support such treatment. Professionals in the juvenile justice system agree that information must be evidence-based and accurate; not the byproduct of oversimplified theories.

The authors of this study propose that an enhanced community response system, combined with the participation of system-involved or at-risk youth, can effectively improve current policies and practices.

Source: Hartney, C., Krisberg, B., Silva, F., Wolf, A., National Council on Crime and Delinquency (February 12, 2009).

Relief for Children Victims of ID Theft

Practitioners representing children often find that their clients' identities have been stolen, sometimes by their own family members. In addition to leading to ruined credit, this can subject children to collection efforts.

On July 8, 2009, the Office for Victims of Crime (OVC) and the Office of Juvenile Justice and Delinquency Prevention presented an OVC Web Forum discussion on best practices for providing services for child identity theft victims. Led by Linda Foley and Paula Pierce, the forum addressed steps judges and attorneys in juvenile court dependency proceedings can take to assist a minor whose identity has been stolen. For example, courts have the ability to obtain credit reports and issue orders declaring the child is a victim of identity theft. The child can also file a declaratory judgment petition in civil court requesting an order declaring the child to be a victim. Although the order is only binding on entities that are made a party to the suit, presenting a difficult creditor with such an order can be effective.

To read the entire transcript from the forum, visit:

<http://ovc.ncjrs.gov/ovcproviderforum/asp/Transcript.asp?TopicID=120>



401 NE 19th Ave.,
Suite 200
Portland, Oregon 97232

Bullying in Schools

Bullying in Schools, which is the twelfth guide in the Problem-Specific Guide Series of the Problem-Oriented Guides for Police, "provides police with information about the causes and extent of bullying in schools and recommendations for developing effective approaches and practices that contribute to student safety."

Bullying in Schools begins by chronicling of the problem of bullying in schools. Author Rana Sampson provides a definition for bullying, discusses problems related to bullying and the extent of the bullying problem nationwide, and addresses the threshold issue of reluctance on the part of bullying victims and witnesses to report bullying. Additionally, Sampson discusses bullying behavior and bullying incidents, characteristics of perpetrators and victims of bullying, and the consequences of bullying.

Bullying in Schools also includes a discussion of how to understand local bullying problems - including how to ask the right questions of schools, offenders, and victims - and how to effectively measure local bullying problems.

Finally, Sampson offers guidance on appropriate responses to the problem of bullying in schools, including general requirements for an effective strategy and specific responses to reduce bullying in schools. Sampson concludes by discussing several responses that have been shown to have limited effectiveness in countering the problem of bullying in schools.

Free ABA Book on Advocating for Non-Custodial Fathers in CW Cases

In late September, the American Bar Association and the National Quality Improvement Center on Non-Resident Fathers and the Child Welfare System (QIC NRF) will release a book on advocating for non-custodial fathers in child welfare cases. The book will be available free of charge online as a PDF, or in hard copy while supplies last. For more information, visit <http://www.fatherhoodqic.org/> or contact Lisa Pilnik at pilnikl@staff.abanet.org.