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Children in Foster Care

Understanding Childhood Adversity and Brain Development

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Young children in foster care are at great risk for poor outcomes across many different areas of development, including mental health, drug and alcohol abuse, compromised health, relational, and school outcomes. However, although these problems are widespread, not all foster children fare poorly. There has been considerable progress in the past two decades in increasing the scientific understanding of the risk factors most likely to result in negative outcomes. Among the most promising work is research examining how early childhood adversity affects the architecture of the developing brain. This work has included studies that involve animal models, in which experimental manipulations of the early environment are conducted, with specific attention to varying the availability and/or quality of maternal care. In addition, much knowledge has been derived from human studies of children reared under highly stressful conditions, including abuse and neglect, extreme poverty, and parental substance abuse, as well

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From a Trilogy to a Quadrilogy: *Miller v. Alabama* Makes It Four in a Row For U.S. Supreme Court Cases That Support Differential Treatment of Youth

By Marsha Levick

Marsha Levick will be speaking at the OCDLA conference, June13-15, 2013 in Bend.

For the full article, go to: http://youthrightsjustice.com/Levick.pdf

For the fourth time in just seven years, the U.S. Supreme Court has ruled that juvenile status drives legal status under the Constitution, at least with respect to youth charged with or convicted of criminal activity. In its ruling in the companion cases of *Miller v. Alabama* and *Jackson v. Hobbs*,[1] the Supreme Court once more limited the authority of states to impose the most severe

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as children reared in institutional "orphanages" in developing countries. The confluence of knowledge from these various sources has led to a number of important conclusions, including:

• Neglectful care, which is a far more pervasive form of child maltreatment, has been underestimated in terms of its effects on subsequent development. There is considerable evidence that neglect not only has psychologically damaging effects, but also alters developing brain circuitry in ways that produce lasting effects on learning and memory. One area that appears to be especially affected by neglect is the neuroendocrine system that produces cortisol (sometimes referred to as the "stress hormone"). Alterations in cortisol regulation are associated with increased risk for anxiety and depression across the lifespan.

• Instability, unpredictability, and chaos also have measurable effects on developing brain architecture. These experiences are associated with poorer "executive functions" (skills such as impulse control and cognitive flexibility) that are necessary for social, academic, and psychological well-being.

• Early adverse experiences do not need to be at levels that constitute legal maltreatment for their effects to be measureable on children's behavioral and biological development. These effects have been observed in children living in poverty and children of depress parents who were not maltreated. They are not confined to one social class or to any racial or ethnic group, but rather occur across all levels of society.

• The effects of even mild forms of early adverse experience can be detected very early in development. For example, resent research has shown that infants as young as 6-12 months of age, who were living in families with high levels of spousal conflict, showed different brain activity than children in families without such conflict.

• The effects of exposure to high levels of stress are greatest during the earliest stages of development, when the greatest amount of brain development is occurring. The effects include not only alterations in the development of key regions of brain functioning, but also in the neural circuitry that involves connecting areas of the brain, with connections among some areas that are needed growing weaker, and others associated with things like anxiety and difficulty regulating emotions growing stronger.

• The impact of prenatal exposure to drugs, tobacco, and alcohol on children's well-being, especially among maltreated children, is vastly unacknowledged and underestimated, and represents a major public health concern. Prenatal exposure affects many of the same

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underlying brain regions as early childhood adversity, and there is evidence that the negative impact of the two experiences is cumulative on behavioral and biological development.

- In addition to psychological and mental health effects, early adverse experiences also affect physical health, increasing the risk for obesity, diabetes, and heart disease over the course of the lifespan, and decreasing life expectancy.

- Resilience in the face of significant early adversity has often been considered to be a magical quality that some children possess. However, it is increasingly clear that resilience is likely the result of a combination of genetic factors and qualities of the child's environment. High quality relationships with caregivers *and* community support systems for families have been consistently found to be the strongest resiliency promoting factors.

Recovery from early adverse experiences is possible, but should not be expected to be spontaneous. The scientific knowledge base in this area suggests that the earlier intervention occurs, the more likely the outcome is expected to be positive. For example, children who are adopted within the first year from overseas orphanages show faster and more pronounced catch-up in their physical and cognitive development than those adopted later.

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Because many of the alterations in development that occur with early childhood adversity are adaptive to the environments in which the children are being raised, these patterns of functioning tend to persist even when the environment improves. In order to increase the likelihood that children will respond to improved circumstances, specific programs have been developed that provide both child and caregiver with services and support that promote attachment, reduce problem behavior, and increase the probability that a child will achieve a permanent placement. These programs, which have been evaluated and shown to be evidence-based, are also quite cost effective and save money relative to providing care as usual. One such program, developed at the Oregon Social Learning Center, is the Multidimensional Treatment Foster Care (MTFC) program (for more information, contact www.mtfc.org).

Programs like MTFC show considerable promise not only in improving behavior; there is also a growing body of evidence that they mitigate some the biological effects of early adversity on brain development. Children enrolled in such programs show less stress hormone dysregulation and enhanced brain activity when provided with feedback about mistakes. In spite of their positive impact and cost effectiveness, however, there has only been limited implementation of evidence-based programs for children exposed to early adversity in this country. For progress to be made, it will be necessary for professionals from all areas with vested interests in these issues (researchers, mental health clinicians, physicians, policy makers, child advocates, and those in the legal system) to work together for change. ●

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penalties—in these cases, mandatory life without parole sentences—on juvenile offenders convicted of homicide in adult criminal court. Since 2005, the court has also struck down the juvenile death penalty, *Roper v. Simmons*,[2] and juvenile life-without-parole sentences in nonhomicide cases, *Graham v. Florida*,[3] as well as imposed a requirement that law enforcement consider the youthful age of a suspect in determining whether *Miranda* warnings should be issued, *J.D.B. v. North Carolina*.[4] Collectively, these cases substantially alter the constitutional landscape for children involved in the justice system.

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Miller and Jackson

Evan Miller and Kuntrell Jackson were both convicted of murder for crimes they committed when they were 14 years old. Miller was convicted of first-degree murder; Jackson was convicted of felony murder (because he did not shoot the victim in the underlying robbery himself). Under prevailing Alabama and Arkansas law, both Miller and Jackson were mandatorily sentenced to life without parole. The sentencing courts had no discretion whatsoever to alter or impose lesser sentences. Both sentences were affirmed on appeal and, in the case of Jackson, affirmed as well in post-conviction proceedings. The Supreme Court granted review in both cases in November 2011, heard argument in March and issued its opinion on June 25.

Justice Elena Kagan wrote the majority opinion; she was joined by Justices Anthony M. Kennedy, Ruth Bader Ginsburg, Stephen G. Breyer, and Sonya Sotomayor. Breyer wrote a concurring opinion, in which Sotomayor joined. Chief Justice John G. Roberts Jr., as well as Justices Clarence Thomas and Samuel A. Alito Jr., filed dissenting opinions in which Justice Antonin Scalia joined.

Collectively, these cases substantially alter the constitutional landscape for children involved in the justice system.

Although the petitioners had asked the court to categorically prohibit all life-without-parole sentences for juveniles convicted of either murder or felony murder, the court limited its holding to proscribing only *mandatory* sentences of life without parole for juveniles. However, a close reading of Kagan's opinion suggests that the whole may be greater than the sum of its parts. From the outset of her opinion, Kagan made clear that the social science and other scientific research that had informed the court's decisions in *Roper*, *Graham*, and *J.D.B.* dictated a similar outcome in *Miller*.[5] Consequently, while

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affording narrow specific relief, *Miller* still provides a broad framework for rethinking our treatment of juvenile offenders.

The *Miller* Holding

Kagan wasted no time in setting forth the rationale for striking mandatory life-without-parole sentences for all juveniles, observing in the opening paragraph of her opinion that "such a scheme prevents those meting out punishment from considering a juvenile's 'lessened culpability' and 'greater capacity for change,' and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties" (quoting *Graham*).

Significantly, the language quoted above links the court's death-penalty jurisprudence with its cases reviewing juvenile sentences under the Eighth Amendment. Kagan specifically noted that *Miller* implicates "two strands of precedent reflecting our concern with proportionate punishment." In the first "strand," the court has adopted categorical bans on sentences reflecting a mismatch between the culpability of the offender and the severity of the punishment. This proportionality analysis drove the court to strike the death penalty for nonhomicide crimes in *Kennedy v. Louisiana*[6] and to similarly prohibit its imposition on mentally retarded defendants in *Atkins v. Virginia*.[7] Of course, this express concern with proportionality also led to the court's holdings in *Roper* and *Graham*.

The second "strand" of the court's precedents involves cases prohibiting the mandatory imposition of the death penalty, requiring instead individualized sentencing hearings in which the sentencer considers the offender's individual characteristics and attributes as well as the specific circumstances of the offense before sentencing the individual to death. See *Woodson v. North Carolina*.[8] Here, Kagan specifically acknowledged the court's recent analogy of juvenile life without parole to the death penalty itself in *Graham*,[9] providing the foundation for the court's requirement of individualized, *nonmandatory* sentencing hearings in the juvenile life-without-parole cases as well.

Looking to the first strand—proportionality of the challenged punishment to the blameworthiness of the offender—Kagan set forth the now-established governing principle that has implications for juvenile offenders beyond the specific facts of *Miller* itself: "*Roper* and *Graham* establish that children are constitutionally different from adults for purposes of sentencing. Because juveniles have diminished culpability and greater prospects for reform . . . 'they are less deserving of the most severe punishments' " (quoting *Graham*).

The court reiterated its prior, core findings about adolescents: They are less mature and more prone to reckless, impulsive, and heedless risk-taking; they are particularly vulnerable to negative peer pressure; and, as adolescence is inherently a period of transition, they are less likely to be found "irretrievably depraved" (quoting *Roper*). The court acknowledged the uncontroverted body of research and social science confirming these findings, and it noted that the evidence of these unique attributes of youth had become even stronger since *Roper* and *Graham* were decided.

Importantly, in extending the rationale of *Graham* from nonhomicide cases to the homicide cases before it in *Miller* and *Jackson*, the court held that "none of what is said about children—about their distinctive (and transitory) mental traits and environmental vulnerabilities—is crime specific." In other words, the unique characteristics of youth are present and relevant whether the

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youth commits a robbery or a murder. And those characteristics matter in determining the constitutionality of a lifetime of incarceration, which will end only with the death of the juvenile in prison. Moreover, Kagan repeated a key corollary to the court's holding in *Graham*: "An offender's age is relevant to the Eighth Amendment," and "criminal procedure laws that fail to take defendants' youthfulness into account at all would be flawed."

The second relevant strand of the court's Eighth Amendment jurisprudence—the requirement of individualized sentencing in capital cases—was invoked by the majority specifically because of the *Graham* court's likening of life without parole to the death penalty. Looking back at its death penalty precedents, the court relied upon its reasoning in striking mandatory death penalty statutes to undergird its holding in *Miller*. As the court held in *Woodson*, mandatory death sentences violate the Eighth Amendment because they allow for no consideration of "the character and record of the individual offender or the circumstances" of the offense and "exclude from consideration . . . the possibility of compassionate or mitigating factors."[10]

The court also highlighted its repeated insistence in capital cases that the "mitigating qualities of youth" must be considered before a sentence of death may be imposed. Reviewing its prior holdings in *Johnson v. Texas*[11] and *Eddings v. Oklahoma*, Kagan stressed the striking similarity between the court's observations in those cases—e.g., "youth is more than a chronological fact"—to the question posed by the imposition of mandatory life without parole sentences on juvenile homicide offenders. She wrote:

> Such mandatory penalties, by their nature, preclude a sentencer from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it. Under these schemes, every juvenile will receive the same sentence as every other—the 17-year-old and the 14-year-old, the shooter and the accomplice, the child from a stable household and the child from a chaotic and abusive one. And still worse, each juvenile . . . will receive the same sentence as the vast majority of adults committing similar homicide offenses—but really, as *Graham* noted, a *greater sentence* than those adults will serve. In meting out the death penalty, the elision of all these differences would be strictly forbidden. And once again, *Graham* indicates that a similar rule should apply when a juvenile confronts a sentence of life (and death) in prison.

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In thus bringing together the two strands of the court's Eighth Amendment jurisprudence, Kagan concluded: "So *Graham* and *Roper* and our individualized sentencing cases alike teach us that in imposing a State's harshest penalties, a *sentencer misses too much if he treats every child as an adult*." (emphasis added). What the court meant by treating children like *children* was also spelled out by the court:

> Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them,

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> immaturity, impetuosity, and failure to appreciate risks and consequences. It prevents taking into account the family and home environment that surrounds him—and from which he cannot usually extricate himself—no matter how brutal or dysfunctional. It neglects the circumstances of the homicide offense, including the extent of his participation in the conduct and the way familial and peer pressures may have affected him. . . . [T]his mandatory punishment disregards the possibility of rehabilitation even when the circumstances most suggest it.

Finally, Kagan addressed the court's decision to forgo a categorical ban on life-without-parole sentences for juveniles convicted of homicide. While the court viewed its requirement for individualized sentencing determinations that would take account of "youth (and all that accompanies it)" sufficient to address the challenges by *Miller* and *Jackson*, the court was also clear that *Miller* must be read in the context of *Roper* and *Graham*. Thus, though a state is not required to guarantee eventual release, it "must provide some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation." Kagan further observed, "Given all we have said in *Roper* and *Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."

You can read the rest of the article here: http://youthrightsjustice.com/Levick.pdf ●

[1] 132 S. Ct. 2455, 91 CrL 413 (2012).
[2] 543 U.S. 551, 76 CrL 407 (2005).
[3] 130 S. Ct. 2011, 87 CrL 195 (2010).
[4] 131 S. Ct. 502, 89 CrL 463 (2011).
[5] For ease of reference, *Jackson* and *Miller* will be referred to collectively throughout as "*Miller*."
[6] 554 U.S. 407, 83 CrL 511 (2008).
[7] 536 U.S. 304, 71 CrL 374 (2003).
[8] 428 U.S. 289 (1976) (plurality opinion). See also *Lockett v. Ohio*, 438 U.S. 586 (1976).
[9] In *Graham*, Kennedy wrote that life without parole sentences "share some characteristics with death sentences that are shared by no other sentences." Kennedy further observed that sentencing a juvenile to die in prison alters the remainder of his life "by a forfeiture of his life that is irrevocable."
[10] *Woodson*, 428 U.S. at 304, quoted in *Miller*, slip op. at 13. See also *Sumner v. Shuman*, 483 U.S. 66, 74-76 (1987); *Eddings v. Oklahoma*, 455 U.S. 104, 110-112 (1982).
[11] 509 U.S. 350 (1993).

Case Summaries

Supreme Court

Dept. of Human Services v. G.D.W., 353 Or App 25, _P3d_ (2012)

The father in this case appealed two judgments incorporating the finding that father had sexually abused V, arguing that the juvenile court erred in admitting V's out-of-court statements under OEC 801(4)(b)(A) as admissible nonhearsay when V was not available to testify, as interpreted and applied in *Cowens*, 143 Or App 68, 922 P.2d 1258. Father argues that this theory for admitting the evidence violated his right to due process and a fundamentally fair proceeding and demonstrates a fundamental misunderstanding of the evidence rule pertaining to statements of party-opponents. In *Cowens*, the court found that in dependency cases, because "the state could be said to be offering the out-of-court statement of the subject 'against' the child," the statements is let in as a statement being offered "against" a party. The Oregon Supreme Court reversed, rejecting the suggestion in *Cowens* that the rule "applies when some presumed 'interest' of an undeclared party is in conflict with the proffered statement itself or the position of the party who offers it." The Court found that a child who is the subject of a juvenile dependency proceeding is considered a party and can have a position on the issue before the court as another party in a proceeding would. The Court then held that "if the state can show that the child has…declared a position on the issues before the court that is adverse to the allegations in the dependency petition, then the state, as the proponent of those allegations, may offer the child's out-of-court statements *against the child* under OEC 801(4)(b)(A)." Here, because there was nothing in the record that would support a conclusion that V took a position in the proceeding that was adverse to the state, the statements at issue were not admissible against V under OEC 801(4)(b)(A). The court agreed with father that the juvenile court erred in admitting the child's statements and that the error was not harmless. The court declined to rule on whether statements by a child that were admissible against a child are also admissible against a parent, stating "[h]aving concluded that the statements were not admissible against V under OEC 801(4)(b)(A), we need not consider father's and amicis' further arguments that their admission against father was contrary to the rule and violated father's constitutional rights." G.D.W. 353 Or at 39 n 15.

Court of Appeals

Dept. of Human Services v. M.Q., 253 Or App 776, 292 P3d 616 (2012)

The Court of Appeals reversed the juvenile court's assertion of jurisdiction as to father not based on allegations as pleaded in the jurisdictional petition but as amended by the juvenile court. The Court of Appeals found the evidence insufficient as a matter of to support jurisdiction under ORS 419B.100 and caselaw, requiring that the conditions or circumstances of a child "endanger the welfare of the person or of others." Relying on *Dept. of Human Services v. A.F.*, 243 Or App 379 (2011), the court found "the child must be exposed to 'danger,' that is, conditions or circumstances that involve 'being threatened with serious loss or injury…the threat 'must be current'… serious harm to the child also cannot be speculative."

The Court of Appeals noted that while this is a close case, the "juvenile court did not take jurisdiction based on the totality of those conditions and circumstances" under *State ex rel Juv. Dept. v. Vanbuskirk*, 202 Or App 401 (2005), but rather "the court dismissed as 'not proven' the allegation (as amended at the

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hearing) that father's homelessness and lack of a consistent relationship with the child endangered her welfare." The court instead took jurisdiction finding that "the child was previously a ward of the court, and the child's father failed to complete court ordered treatment, including chemical abuse treatment; coupled with a history of criminal activity, and incarceration, compromises his ability to safely and consistently and appropriately parent." The Court of Appeals agreed with father that as a matter of law, the record does not support the contention that the child is currently endangered as the record does not support an inference that father was using drugs at the time of the jurisdictional determination and that past problems with substance abuse do not lead to an inference that they persist. The Court further noted that the juvenile court's finding that father was not credible cannot support an inference that father was using drugs and overall, the evidence was insufficient to demonstrate a high probability of relapse or that he was using drugs at the time of the hearing. As to father's history of criminal activity and incarceration, there is no indication in the record that child suffered in the past or that this poses a current threat to the child.

Dept. of Human Services v. W.H.F., 254 Or App 298, _P3d _(2012)

Father appeals the juvenile court's judgment continuing the permanency plan of adoption, and the order to file a termination petition. Declining to review de novo, the Court of Appeals considered whether the juvenile court erred by failing to require DHS to show "active efforts" to provide services and rehabilitative programs designed to prevent the breakup of the Indian Family under the Indian Child Welfare Act (ICWA). The Court of Appeals held that "in the permanency phase of a dependency case, the requirement for active efforts under ICWA applies only when the case plan at the time of the hearing is to reunify the family." Thus, because the plan at the time of the hearing was not reunification but rather adoption, the state need not make active efforts. Active efforts is required only when a party is seeking to effect a "foster care placement" or termination of parental rights, and although the hearing at issue called for initiation of termination proceedings in the future, the permanency hearing was not a termination proceeding or a proceeding to "effect a foster care placement."

Dept. of Human Services v. C.L., 254 Or App 203, _P3d_ (December, 2012)

Mother appealed a judgment changing the permanency plan from "another planned permanent living arrangement" (APPLA) to adoption and rejecting her request to change the plan to reunification. Mother argued that the court erred in determining on the basis of extrajurisdictional findings, that the child could not be safely returned to mother within a reasonable amount of time and that the plan should be changed from APPLA to adoption. In determining that child could not

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be safely returned to mother within a reasonable time the court considered evidence of mother's physical abuse of child, presented for the first time at the permanency hearing. The court noted that in a permanency proceeding, where the permanency plan at the time of hearing was APPLA, the court had previously determined that reunification with mother was not in the best interest of child. The Court noted that when the goal of DHS is no longer reunification, the question becomes whether DHS had made reasonable efforts to find a permanent placement for the child and the extrajurisdictional finding that mother had abused child was irrelevant. The past physical abuse was relevant, however, in the context of whether child could return home within a reasonable amount of time. Mother cited several recent opinions of the court to support the contention that use of extrajurisdictional evidence was improper, including *Dept. of Human Services v. N.T.*, 247 Or App 706,271 P3d 143 (2012) and *Dept. of Human Services v. N.M.S.*, 246 Or App 284, 266 P3d 107 (2011). The court distinguished those cases as in the context of permanency plans for reunification. In that context, where the parent has obligation to do certain things to prevent that state from assuming or continuing jurisdiction, ORS 419B.857 requires that the parent have notice from the petition or jurisdictional judgment as to what he or she must do. When the plan is not reunification, however, the juvenile court's inquiry is whether DHS has made reasonable efforts is child-centered. In this context, "the consideration of evidence extrinsic to the jurisdictional judgment for purposes of the determinations under ORS 419B.498(2) does not affect a substantial right of the parent, as long as there are procedural safeguards that allow the parent a reasonable opportunity to respond to the evidence."

Dept. of Human Services v. T.H., 254 Or App 294, _P3d_ (December, 2012)

Father appeals from a judgment of the juvenile court continuing the permanency plan of APPLA for his two children, arguing that the judgment should be reversed and remanded because the juvenile court failed to make statutorily-mandated written findings when it entered a nine-page check-the-boxes and fill-in-the-blanks form which failed to meet the permanency judgment requirements specified in ORS 419B.476(5). The juvenile court left many lines and boxes blank, including what efforts had been made by DHS and did not check a box indicating the reason for APPLA. While the juvenile court indicated that a court report by the agency had been considered, no report was attached to the judgment. The Court of Appeals found the judgment in this cases similar to that of *State ex rel DHS v. M.A.*, 227 Or App 172, 205 P3d 36 (2009), and distinguished the case from *Dept. of Human Services v. H.R.*, 241 Or App 370, 250 P3d 427 (2011), where the adoption of a DHS report as the written finding was sufficient and found that "here, as in *M.A.*, the court did not incorporate the agency report and merely noted that it had taken judicial notice of it."

In response to DHS's argument that the father failed to preserve his claim of error at trial, the Court of Appeals noted that parties ordinarily do not have the opportunity to lodge objections at the hearing itself where the findings are to be made within 20 days of the hearing and "for that reason, we hold that where…the first opportunity to know that the juvenile court's failure to include the required written finding does not occur until after the permanency hearing, a party has no obligation at the hearing to preserve a claim of error by objecting to that failure." Furthermore, the Court of Appeals found the lack of findings was not

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harmless error, noting that even though the case involved a continuation of the permanency plan and not a change of plan, "the consequences of a decision to maintain a permanency plan implicated the same calculation of what may lead to a positive outcome for the child as a decision to impose a plan in the future."

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Dept. of Human Services v. G.J.R., 254 Or App 236, _P3d_ (January, 2013)

Father appealed a judgment in which the juvenile court concluded that DHS proved an allegation in an amended dependency petition that father's prior convictions for public indecency and his failure to complete court-ordered sex offender treatment created a risk of harm to his daughter, where the juvenile court had already taken jurisdiction over child on grounds of substance abuse and residential instability. The Court of Appeals found the record contained insufficient evidence from which a reasonable fact finder could conclude, by a preponderance of the evidence, that father's prior convictions for public indecency and failure to complete sex offender treatment posed a current risk of harm to his daughter, nor did the record support a determination that the sex offender allegations contribute to or enhance the risk of harm already presented by the original jurisdictional finding. The court noted that a person's status as a sex offender does not per se create a risk of harm to a child and that there must generally be a nexus between the nature of the prior offense and a current risk to the child. The Court of Appeals concluded that there was insufficient nexus presented in this case because there was no evidence that father reoffended in the 10 years since his last conviction and no evidence from which a reasonable fact finder could find that child fits within the class of father's victims or that failure to complete sex offender treatment presents a risk that he will offend.

Dept. of Human Services v. N.P., _Or App_, _P3d_ (February, 2013)

Father appealed from a juvenile court judgment that continued jurisdiction over his son, arguing the court erred in basing its decision on father's "anger and frustration" viewed in light of the risk that it represented by his use of controlled substances because there was insufficient evidence to support finding that the condition exposed child to serious loss or injury and undisputed evidence showed that at the time of the hearing, father had received treatment for his substance abuse problem. The Court of Appeals found that, while the evidence in support of the finding that father's anger issues created a current threat of serious harm to the child was extremely thin, the father had not offered any evidence to rebut DHS's contention. As neither party requested de novo review, the court could not determine that the department had failed to meet its burden as no evidence was offered to the contrary. In regard to the argument that the juvenile court erred when it "found a threat of serious loss or injury 'in light of the risk that is represented by his use of controlled substances,' when there is no evidence of such risk," the Court of Appeals agreed finding there was not a present risk of harm to the child because there was no evidence that father still had substance abuse problems, or that he was at risk for relapse. ●

Case Summaries

State v. A.J.C., 254 Or App 717, _P3d_ (January 30, 2013) (Brewer, J.)

Youth appeals from a conviction for possession of a gun in a public building, unlawful possession of a gun, unlawful use of a weapon and menacing. On appeal youth argues the Juvenile Court erred when it denied his motion to suppress a handgun and ammunition found in his backpack during a non-consensual, warrantless search made by the school principal.

The facts show that a report was made to the school counselor of threats youth made to another student by text message. The threat specified youth was going to bring a gun to school and shoot the student. Additionally, the other student related that youth may also direct the threat to other students. On receiving information of the threat, the principal searched youth's locker where no evidence was found. After a deputy and the youth's mother arrived at the school the principal went into the youth's classroom, removed youth's backpack from underneath his desk and escorted the youth to the principal's office. Youth denied making threats but admitted having a prior relationship with other student. The principal then searched the backpack without consent. The principal limited the search to pockets that would reasonably fit a handgun. The principal ultimately found ammunition and a handgun within the backpack.

In denying youth's motion to suppress, the district court found that the principal had reasonable suspicion that there were imminent health or safety threats or risk to the students of the school and had a constitutional right to conduct the search.

Youth argues that the principal lacked reasonable suspicion to conduct the search on the backpack due to a comment made by the principal that youth's bringing a gun to school was "something outside the realm of what he thought could happen." Additionally, youth argues that even if the principal reasonably suspected the gun was inside the backpack, the warrantless search exceeded the scope of the "school exception" to the warrant requirement under Article I, section 9, as articulated in *In re M.A.D.*, because the principal's seizure of youth's backpack removed any immediate threat to the safety of other students and staff at the school. 348 Or. 381, 392 -93, 233 P.3d 437 (2010).

The rule as defined in *M.A.D.* provides warrantless searches of students, without probable cause or some other exception to the warrant requirement, are permissible when a school official reasonably suspects, based on specific and articulable facts, the student is in possession of something that poses an immediate threat. *Id.* However, a school official may not rely on generalizations about a student's activity or on information that is not specific or current in developing reasonable suspicion. *Id.* at 393.

Applying the analysis in *M.A.D.*, the appellate found that information presented was sufficient for the principal to reasonably suspect youth had brought a gun to the school for purposes of harming V or others.

In regards to the question of scope,

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the court again looked at the analysis within *M.A.D.*, which analogized school setting circumstances to the "officer-safety exception" to the warrant requirement under Article 1, Section 9. *M.A.D.*, 348 Or. at 391-93. Under the officer-safety exception, a police officer may take reasonable steps, including a limited search, to protect the officer or others if the officer has reasonable suspicion, based on specific and articulable facts, that the individual may pose an immediate threat of serious physical injury. In assessing whether the actions of the officer are permitted the court looks at whether safety precautions chosen by the officer were reasonable under the perceived circumstances.

Applying this rule to the school setting, when a school officer develops a reasonable suspicion, based on specific and articulable facts that a particular individual on school property either personally poses, or is in the possession of some item that is an immediate threat to the safety of another student or official or others at the school, the school official must be allowed considerable latitude to take safety precautions. *Id.*

The court of appeals held that in light of the nature of the safety threat made, the principal's actions were reasonable, and the search was permissible as a school-safety search under the perceived circumstances.

State v. D.M.T., 254 Or App 631, _P3d_ (January 16, 2013) (Per Curiam)

Youth appeals a judgment from juvenile court on a plea agreement making admission to two counts of attempted sexual abuse in the first degree and dismissing the other counts in the petition. After plea but before disposition, youth filed a motion to amend the petition and the order accepting his admissions. In denying youth's motion, the juvenile court concluded it did not have authority to amend the petition and jurisdictional admissions.

On appeal, the youth argues that the juvenile court has discretion under the juvenile code to dismiss or amend a petition and to set aside or modify its orders even the court has accepted a youth's admissions to the petition. The state concedes the juvenile court error.

In reversing and remanding the decision of the juvenile court, the appellate court accepted the state's concession and agreed that the court had authority under ORS 419C.261(1) to amend a petition, and under ORS 419C.610(1) to modify or set aside its order.

State v. C.E.B., 254 Or App 353, _P3d_ (December 27, 2012) (Wollheim, J.)

Youth appealed a juvenile court order denying his motion to dismiss his delinquency petition and set aside a jurisdictional judgment. The juvenile court denied the motion on determination that it did not have authority or jurisdiction over youth once his probation ended.

Between the ages of 11 and 12 the youth committed acts that would have constituted first-degree sodomy and first degree rape. After failing to successfully complete a formal accountability agreement with the Washington County Juvenile Department, when the youth was between 16 and 17, the state filed a delinquency petition against youth. Youth made admission to the acts, was made a ward of the court and placed on probation. Within a few months the court, as the youth neared 18, the court terminated the formal probation and placed youth on bench probation, which terminated a few months later.

When the youth was 24 years of age he filed a motion to dismiss the delinquency petition under ORS 419C.261(2) and sought to set aside the order finding him to be within the juvenile court's jurisdiction. Hearings on the motions were held at a time when youth was already

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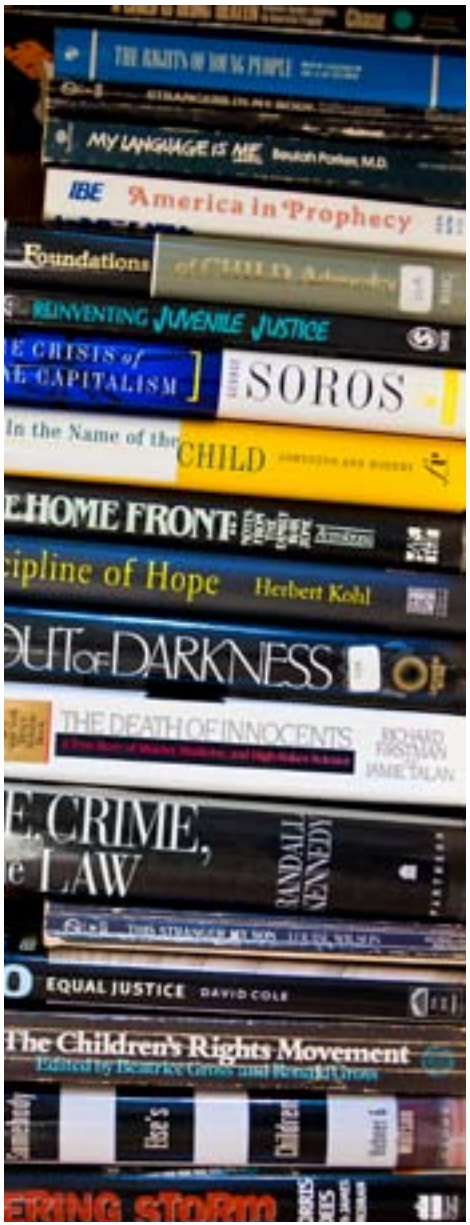
25. At the motion hearings, the state argued juvenile court jurisdiction over youth ended when the youth had reached the age of 25, or when the court terminated his probation. The juvenile court concluded that it did not have authority to grant relief sought by youth after probation was terminated.

On appeal, the state solely contends the juvenile court did not have authority to grant relief to youth once he reached the age of 25. In making its argument, the State asserts ORS 419C.005 limits jurisdiction of the juvenile court to youth under the age of 25. The youth argues the juvenile court erred in making its determination, as he was 24 when he filed the motion, so he was within the jurisdiction of the juvenile court for purposes of the motion.

Finding a dispute of statutory construction, the court reviewed for errors of law. The court did not resolve the question of exclusive jurisdiction under ORS 419C.005 because it found the juvenile court continues to have general jurisdiction on a juvenile matter that it previously entered a judgment of jurisdiction, under ORS 419B.090. As a court of general jurisdiction, the juvenile court retains authority to review a motion to dismiss even if the youth is no longer within its explicit jurisdiction under ORS 419C.005. The Court based its decision on ORS 419C.261(2), which places no time restriction on the court's authority to dismiss a petition.

The court relied on the Supreme Court's ruling in *State ex rel Juv. Dept. v. Dreyer* that ORS 419C.005(4) provides the court's wardship "over a person found to be within the court's jurisdiction" continues until the court dismisses the petition. 328 Or 332, 976 P2d 1123 (1999). The Court determined that provision showed the legislature contemplated dismissal of petitions under ORS 419C.261(2) could occur after a youth had been found to be within the court's jurisdiction. *Id.* at 338.

In this case, the Court concludes that the court's authority to dismiss a petition under ORS 419C.261(2) extends to a time after a youth has been adjudicated to be within the court's jurisdiction and after the youth has attained the age of 25. ●



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Resources

The Youth Law Center has launched a new web page that includes a "Resource Library" comprised of litigation materials, staff authored articles and reports, legislative and regulatory work, training materials and fact sheets, and legal analyses. The library includes information about child welfare as well as juvenile justice issues. Access the library at: http://www.ylc.org/resource-bank/ ●

Save the Date

OCDLA 2013 Annual Conference

June 13-15, 2013

Seventh Mountain Resort, Bend

http://www.ocdla.org/seminars/shop-seminar-2013-annualconference.shtml ●

Save the Date

5TH Annual Wine & Chocolate Extravaganza

November 16, 2013