Juvenile Law Reader

Youth, Rights & Justice
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" Oregon has been the only western state without procedures allowing a juvenile to challenge fitness to proceed."

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Legislature Passes Juvenile Aid and Assist Bill

By Julie H. McFarlane, Supervising Attorney and Sarah De la Cruz, Law Clerk, Oregon Law Commission

In its waning days, the Oregon Legislature passed HB 2836, which establishes standards and procedures for determining whether youth charged with delinquent acts are competent to stand trial. As this Juvenile Law Reader goes to press, the bill awaits Governor Kitzhaber's signature. The substantive provisions of the bill will become effective January 1, 2014.

HB 2836 was the product of the Oregon Law Commission's Juvenile Code Revision Work Group (OLC). The prior versions of HB 2836—SB 320 in the 2007 session, HB 3220 in the 2009 session and SB 411 in the 2011 session—all passed out of the Judiciary Committees, but were unable to make it out of the Ways and Means Committees. Fortunately, the OLC, which recognized the many problems and inequities created by the absence of standards and procedures to determine juvenile competence, persisted.

Despite the lack of a procedure in the juvenile code for juveniles to raise the issue of fitness to proceed (competency) in Oregon, juveniles have a Constitutional right to raise the issue,

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and fitness motions have been filed in many Oregon juvenile cases. The Supreme Court held in *Dusky v. U.S.*[1] that a person has a due process right not to go through a trial unless competent. This means that a person must have the ability to consult with a lawyer with a reasonable degree of rational understanding and also have a rational as well as factual understanding of the proceedings before them. This principle has been recognized as essential to our justice system for over 100 years. In addition, the Supreme Court held in *In re Gault*[2] that due process rights apply in juvenile delinquency proceedings, including the right to fair treatment and the right to counsel.

In a Washington County juvenile case last fall, the attorney for the youth filed a motion requesting a hearing to determine whether the youth was fit to proceed. The attorney for the youth based her argument on a psychologist's report which found that the youth was unable to aid and assist and not likely to become able to aid and assist. In that case, the youth was in a special education class and not able to read or retain information. The youth did not understand his Miranda rights or basic legal terminology. In addition, he was not able to recall the acts he was alleged to have committed, and not able to have a meaningful conversation with his attorney. The state did not provide any evidence to the contrary, and acknowledged that the court could apply the adult competency procedures. The trial court issued a conclusory ruling denying the motion. The trial court did not allow any witnesses to testify as to the youth's competency, believing it to be "irrelevant."

The youth sought a writ of mandamus and the Oregon Supreme Court granted a writ of mandamus ordering the trial court to hold a hearing to determine whether the youth is able to aid and assist.[3] Although the Supreme Court did not issue a written opinion, the briefs on behalf of the youth and the state shed light on the decision. The youth argued that an adult defendant has a due process right to consult with his or her lawyer and have a rational and factual understanding of the proceeding, which includes more than just passive observance. The youth argued that this right should be extended to juveniles given the due process rights to which juveniles are entitled in other situations. The state did not contest that competency is a relevant issue in a juvenile delinquency proceeding. Instead of arguing against a hearing to determine competency, the state argued that mandamus was not proper in this case. The granting of the mandamus petition indicates the Supreme Court's concern with the inconsistent ability for juveniles to raise the issue of fitness to proceed. Providing a statewide procedure for juveniles to exercise their right to be

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competent to stand trial alleviates the need to litigate this issue on a case by case basis and provides consistency among counties.

In the absence of a juvenile procedure, some attorneys and judges have turned to Oregon's adult fitness procedures. However, the OLC felt that the statute permitting adult defendants to challenge competency is inadequate for juveniles because it has the potential for long delays. The adult procedure (ORS 161.360-161.370) contains relatively few deadlines for the filing of reports and evaluations, and no time frame in which to start or complete restorative services. HB 2836 provides strict deadlines for the initial filing of reports and evaluations as well as time limits on objections. It also requires a court order to remove the juvenile from his or her placement for an evaluation, as opposed to the adult statute which allows for hospitalization at the Oregon State Hospital for lengthy periods of time. HB 2836 is designed to avoid the unnecessary use of expensive facilities and to require timely adjudications of juveniles.

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Adult Aid and Assist Timeline (ORS 161.360 to 161.370) Compared with Juvenile Aid and Assist Timeline HB 2836

	Adult	**Juvenile**
Removal from placement for evaluation to determine if fit to proceed	Court may order removal for up to 30 days. ORS 161.365(1)(b).	No removal solely for evaluation; need court order for removal. If court approves removal, up to 10 days to conduct evaluation. (Section 4.)
Evaluation report due to court	No deadline.	Report must be filed within 30 days after order for evaluation unless extension for good cause. Maximum extension of 30 days. (Section 5.)
Objection to evaluation report by parties due	No deadline.	Within 14 days after report is received by the party. (Section 6.)
Court hearing when there is an objection to the evaluation report	No deadline.	Within 21 days after the objection is filed with the court. (Section 6.)
Court order setting forth the findings on the fitness to proceed (when there has been a hearing)	No deadline.	Within 10 days after the hearing. (Section 7.)
State to start providing restorative services	No deadline.	Within 30 days after receiving a court order finding that youth is unfit to proceed and there is a substantial probability that the youth will gain or regain fitness to proceed in the foreseeable future. (Section 10.)
Initial report to court after restorative services ordered	60 days to conduct the evaluation, 90 days to notify the court after delivery of defendant to custody of superintendent of state hospital or director of a facility. ORS 161.370(5).	90 days after receipt of order to provide services (Section 10.)
Court to review report and make determination re fitness to proceed	No deadline.	14 days after receiving report. (Section 10.)
Review hearing	No deadline.	Up recommendation of OHA, request of party, or court's own motion, court may hold a review hearing at any time. (Section 10.)
If remain unfit to proceed, regular reports to court	Every 180 days. ORS 161.370 (6)(a). (May be increased to once every 2 years. SB 426)	Every 90 days. (Section 10.)

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Oregon has been the only western state without procedures allowing a juvenile to challenge fitness to proceed. California, Idaho, and Utah have statutory procedures providing juveniles with a mechanism to exercise their constitutional right to be competent to stand trial. California enacted its statute in 2010, Idaho in 2011, and Utah in 2012. Washington, Montana, and Nevada have court cases providing juveniles the right to raise competency issues.

HB 2836's procedures and standards expressly allowing a juvenile to raise the issue of competency will help juvenile defense lawyers better represent their clients. The standard for finding unfitness to proceed is: "if, as a result of mental disease or defect or another condition, the youth is unable: to understand the nature of the proceedings against the youth; to assist and cooperate with the counsel for the youth; or to participate in the defense of the youth". Unfitness cannot be based solely on age, inability to recall the alleged crime or where evidence exists that the youth committed the alleged crime under the influence of intoxicants or medication. Under HB 2836, any party or the court can raise the issue of fitness to proceed. Once raised, the court is required to order an evaluation to determine whether the youth is able to aid and assist. After the evaluation is provided to the court and the parties, the court makes a fitness determination, and if appropriate, orders restorative services. The non-moving party may object to any part of the evaluation and have another evaluation administered. If the youth is incapable of restoration, the delinquency case is dismissed. Dependency proceedings may be initiated. For the full text of HB 2836 go to: http://www.leg.state.or.us/13reg/measpdf/hb2800.dir/hb2836.en.pdf ●

[1] *Dusky v. U.S.*, 362 U.S. 402, 402, 80 S. Ct. 788, 789, 4 L.Ed. 2d 8241 (1960).

[2] *In re Gault*, 387 U.S. 1, 30-31, 87 S. Ct. 1428, 1445, 18 L.Ed. 2d 527 (1967).

[3] State of Oregon v. M.R. (S060771, November 27, 2012).

"History, despite its wrenching pain, cannot be unlived, but if faced with courage, need not be lived again. "

– *Maya Angelou*

The 2013 Legislative Session – Preliminary Results

By Mark McKechnie

The 2013 Legislature adjourned on July 8, 2013. With a few exceptions, bills enacting new policies had to pass out of the assigned policy committee by the end of May. Hearings in June focused largely on state agency budgets and the fiscal impacts of new policies. The summary below addresses several bills relevant to juvenile practice. The list is not intended to be an exhaustive list of all new legislation that may impact juvenile or criminal law practice. In addition, the summaries may not list every statutory change included in a particular bill, but they are provided to provide an overview of actions taken by the Oregon Legislature this session.

You can find the text and history of

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any bill by going to the Legislature's web site (http://www.leg.state.or.us/bills_laws/) and clicking on the link for the 2013 Regular Session.

Child Welfare

HB 2095 expands Oregon's definition of "former foster child" to align it with federal definitions. The impact of the change is that a greater number of students will qualify as a "former foster child" for the purposes of the state's tuition waiver program. The state definition was changed so that the minimum length of time in foster care needed to qualify was reduced from 12 months to six months. The tuition waiver statute previously required that youth must have been in foster care for 12 months between the ages of 16 and 21 to qualify. The lower end of the age range was lowered to age 14 for youth who were wards of the court or under the jurisdiction of a tribal court for out-of-home placement and "not dismissed from care before reaching 16 years of age." ORS 351.293(5) The bill was signed by the Governor on May 16, 2013 and went into effect upon signing.

HB 3249 was introduced to create new rights and provisions related to grandparents of children in child dependency cases. The bill amends ORS 419.875 to require DHS to make diligent efforts to identify and obtain contact information for the grandparents of a child or ward in the department's custody. It further requires DHS to notify the grandparents of court hearings, unless the grandparent was present at a previous hearing when the future hearing was scheduled. The bill requires the court to make findings as to whether the grandparent had notice of the hearing, attended the hearing and had an opportunity to be heard. The new law allows grandparents to request that the court order visitation or other contact. The request must provide notice of the intent to make such a request at least 30 days before the date of the hearing. The amendments set out a list of criteria for the court to consider when deciding to grant the grandparent's request in whole or in part. A controversial provision allowing a grandparent to seek court-ordered visitation in all adoption proceedings was removed by amendment prior to the bill's passage. The bill was signed by the Governor on June 18, 2013.

HB 3363 was introduced at the request of the Oregon CASA Network. The original bill would have created a number of provisions to expedite cases related to children ages 0-3 years and increase or clarify the access by Court Appointed Special Advocates to juvenile court records and DHS discovery. These included holding the first permanency hearing at six months and allowing the court to amend petitions to reflect new allegations at previously scheduled review or permanency hearings. These provisions were removed based upon Due Process concerns. The final bill amends 419B.881 and requires DHS to disclose to all parties the case plan developed under ORS 419B.343, modifications to the case plan and information about services provided to the ward or ward's parents. The bill also amends 419A.255 to include a CASA volunteer program as an entity that can access the legal record and confidential case file "when reasonably necessary for the appointment or supervision of court appointed special advocates." The bill also allows CASA programs to access legal and confidential court records through the new Odyssey E-Court information system. Finally, the bill establishes a work group on juvenile dependency proceedings under the direction of the Judicial Department for the purpose of identifying and addressing impediments to timely resolution of jurisdictional petitions and timely implementation of permanent plans in child dependency matters. The bill was signed by the Governor on June 18, 2013.

You can find the text and history of any bill by going to the Legislature's web site (http://www.leg.state.or.us/bills_laws/) and clicking on the link for the 2013 Regular Session.

SB 123 was introduced at the request of Children First for Oregon. The bill requires that DHS provide a written notice to youth in foster care regarding their rights under the federal and state constitutions, relevant laws, case law, rules and regulations. In addition, it requires notice to foster youth age 14 or older regarding the availability of the state tuition

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waiver, how to obtain medical treatment and other aspects of state law affecting foster youth. The notices are to be provided within 60 days of placement and upon any change in placement. The bill also requires DHS to provide contact information for adults who are involved in the child's case, including the case worker, placement certifier, case work supervisor, attorney, CASA local CRB, and others. The legislature approved funding to establish a position in the Governor's Advocacy office to staff a hotline specifically for complaints and grievances made by foster children and youth. The bill was signed by the Governor on June 26, 2013.

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SB 622 was developed by the Oregon Law Commission to update the statutes regarding juvenile court files in preparation for the statewide transition to the "Odyssey" E-Court information system. The bill defines the two parts of a juvenile court file, including the "Record of the Case," which includes summons, petitions, motions, affidavits, CRB findings and recommendations, guardianship reports, orders, judgments, transcripts and exhibits. The second part is defined as the "Supplemental confidential file," which includes reports related to the child, ward, youth or youth offender's history and prognosis. The bill further addresses the ability to inspect or copy the record of the case and/or the supplemental file by the parties and other entities, as well as provisions for re-disclosure. An amendment was adopted in the House that will delay until July 1, 2014, provisions allowing "any other person allowed by the court" to inspect or copy the record of the case and/or supplemental confidential file. This issue will continue to be discussed in the Law Commission work group. Further action may be taken in the 2014 legislative session. The amended bill was signed by the Governor. The effective date of the bill's other provisions is January 1, 2014, and the provisions will apply to juvenile court proceedings commenced on or after the effective date.

Commercial Sexual Exploitation of Children

HB 2334 amends the statute regarding the crime of Compelling Prostitution. The bill adds language to ORS 167.017 to permit a conviction under the compelling statute in cases in which the act of prostitution was attempted but not completed, including cases in which the person "aids or facilitates the commission of prostitution or attempted prostitution by a person under the age of 18." Prosecutors argued that they were unable to successfully convict individuals for compelling prostitution in cases in which the person compelled did not complete an act of prostitution. The bill was signed by the Governor on June 4, 2013, and was effective upon his signature.

SB 673 amends ORS 163.266 and the crime of trafficking in persons, adding an element that "The person knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act." (1)(c) The bill classifies violation of this subsection as a Class A felony. In section 4, made part of ORS 163.355 to 427, the bill creates a crime of purchasing sex with a minor. The first offense is a Class C felony. Subsequent offenses are classified as Class B felonies. The bill also stipulates that the state does not have to prove that the person knew the minor was under 18 years of age if the person has one or more prior convictions under this statute. The court is granted the authority to impose sex offender registration upon the first conviction of this crime if the court determines that it is necessary for the safety of the community. The court is directed to classify the offense as a sex crime for the purposes of mandatory

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registration upon a second or subsequent conviction. The bill passed the House 56-1 and the Senate 30-0. As of this writing, the bill awaits the Governor's signature, at which time the statutory changes in the bill will go into effect.

Juvenile Court Procedure

HB 3278 amends ORS 419A and allows the court to vacate a judgment or order upon joint motion of the parties to appeal a judgment or order by the juvenile court. The court may vacate the judgment or order and remand the matter to the juvenile court for reconsideration. Upon entry of the modified judgment, any party may appeal in the same time and manner as an appeal of the original order. The effective date is January 1, 2014, and the act applies to appeals from judgments and orders entered on or after the effective date.

HB 3281 amends ORS 135.970 to clarify that "any agent of the defense," in addition to the defense attorney, must inform the victim that he or she does not have to talk to the defense attorney or agent of the defense attorney or provide other discovery unless the victim wishes. The amended statute also adds "assistant attorney general or other attorney or advocate" to the district attorney among the list of individuals that the victim may request to have present when communicating with the defense.

SB 463 creates a provision to allow a member of the Legislative Assembly to request an analysis of potential racial impact of a proposed change to criminal, juvenile or dependency statutes.

SB 492 codifies prosecutors' existing obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). The bill amends ORS 135.815 regarding information that the district attorney is required to disclose to a represented defendant to include "(g) Any material or information that tends to: (A) Exculpate the defendant; (B) Negate or mitigate the defendant's guilt or punishment; or (C) Impeach a person the district attorney intends to call as a witness at the trial." The bill also requires that the district attorney may not condition a plea offer on the requirement that the defendant waive the disclosure obligation of ORS 135.815(1)(g).

Juvenile Delinquency

HB 2836 was submitted by the Oregon Law Commission to establish standardized procedures to determine whether a youth is able to aid and assist in his or her defense in a juvenile delinquency proceeding. The bill establishes guidelines for obtaining, administering and filing evaluations to determine a youth's fitness to proceed, develops standards for experts who conduct aid and assist evaluations, and establishes guidelines for the Oregon Health Authority to provide restorative services. The OHA was appropriated funds for establishing guidelines for forensic evaluations and for the provision of restorative services. The cost of implementing this measure had prevented its passage in the 2007, 2009 and 2011 sessions. Recovery of revenues to the state budget allowed for unanimous passage of the bill in the House and Senate. As of this writing, the bill awaits the Governor's signature. It will go into effect on January 1, 2014. See the article in this issue of the Juvenile Law Reader for more information about the long-awaited changes included in this legislation.

HB 3183 was introduced at the request of the Partnership for Safety and Justice to allow youth sentenced to the custody of the Department of Corrections, but who will ultimately be placed in the physical custody of the Oregon Youth Authority, to be transported by the sheriff directly to the OYA facility without being sent first for intake at a DOC facility. The Governor signed the new law on June 11, 2013, and it became effective upon signing.

HB 3327 permits expunction of a sex offense under very limited circumstances if the person has previously been relieved of the obligation to report. For Class C felony sex crimes, expunction can be sought if the victim was 12 or older and the offender was under 16 at the time. Similar provisions were added for Rape II, Sodomy III and Sex Abuse III adjudications in juvenile court.

SB 188 was filed at the request of the Department of Corrections and it allows the Oregon Youth Authority to establish work release programs for youth in the legal custody of DOC but in the physical custody of OYA. The bill exempts youth

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subject to determinate or mandatory minimum sentences under "ORS 137.635, 137.700 or 137.707 or any other provision of law that prohibits eligibility for any form of temporary leave from custody." The Governor signed the bill on May 23, 2013, and it was effective upon signing.

Public Education

HB 2192 was introduced at the request of Youth, Rights & Justice. The bill will go into effect July 1, 2014, and will substantially rewrite the statute governing school discipline, ORS 339.250. The following article outlines these changes.

HB 2753 removes a sunset provision that was added to a bill passed in 2011 to limit and regulate the use of restraint and seclusion on students by school staff members.

HB 2756 prohibits public education programs from purchasing, building or taking possession of seclusion cells that are used to isolate students.

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Learn more about who we are and what we do at: www.youthrightsjustice.org

2013 Legislature Reverses "Zero Tolerance" Trend

By Mark McKechnie

HB 2192 was enacted unanimously by the 2013 Oregon Legislature and signed by the Governor on June 6, 2013. The effective date on the new statute is July 1, 2014, in order to give school districts time to develop and disseminate new student conduct policies consistent with the statutory changes.

The bill was introduced by the House Education Committee at the request of Youth, Rights & Justice. The Enrolled version of the bill can be found at http://www.leg.state.or.us/13reg/measpdf/hb2100.dir/hb2192.en.pdf. Substantive changes to ORS 339.250 can be found in Section 5 of the Enrolled bill.

Oregon expanded upon the 1994 federal Gun Free Schools Act (GFSA) by requiring mandatory one year expulsions for students who possessed a "Dangerous weapon" or "Deadly weapon" as described in ORS 163.015. The law has been problematic because it affected students who were unaware of the types of items prohibited in school and students who possessed such items without any intent to do harm. Because the definitions used relied up on criminal statutes and criminal case law, the policy was also misinterpreted and, consequently, applied too broadly by school officials in some cases.

The education committees in both chambers received testimony regarding one such case in which an elementary school student was expelled for mere possession of a pocket knife with a blade that was less than 1.5 inches long and less than a quarter inch wide.

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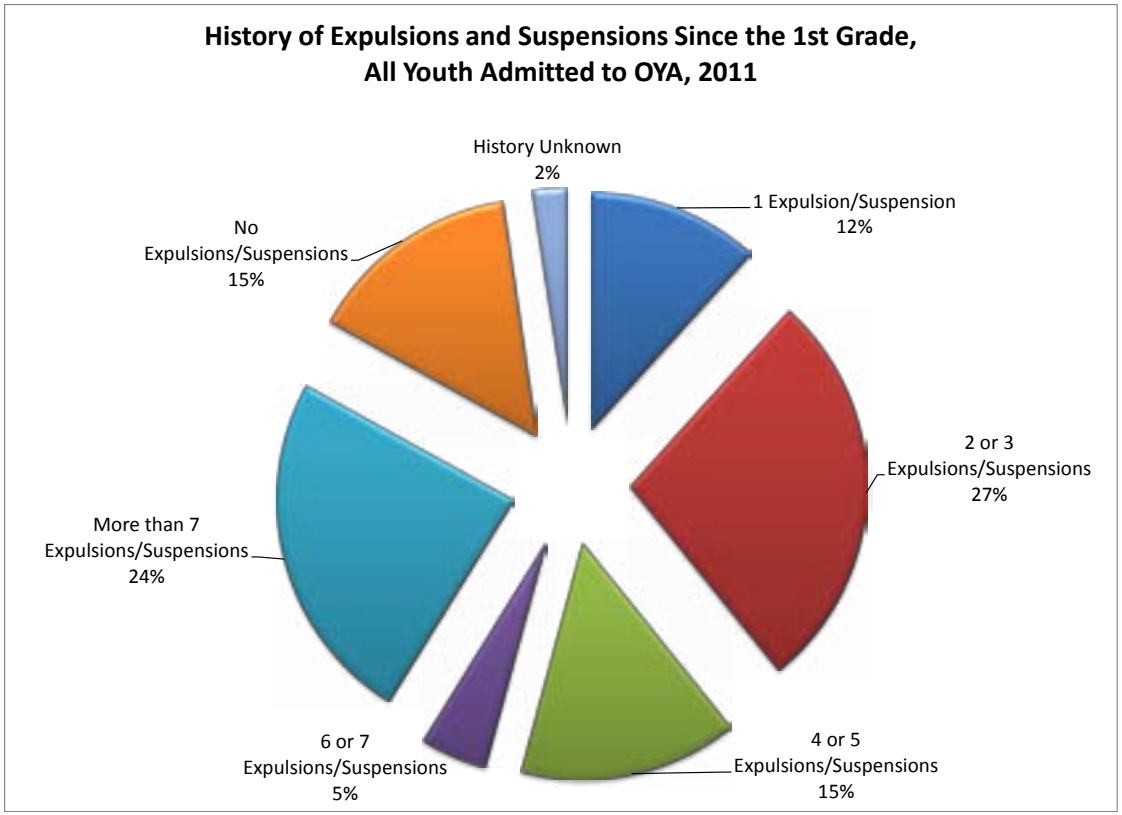
When it goes into effect, HB 2192 will remove the dangerous and deadly weapon language from the mandatory expulsion requirement. Oregon law will no longer require school districts to use mandatory expulsion policies beyond the requirements of the GFSA. The GFSA requires local education authorities (school districts) to have policies which mandate one calendar year expulsions for students who possess a firearm or explosive or incendiary device.

Further, the law amends ORS 339.250 to limit schools' use of expulsion to the most serious or chronic behavior problems, including "conduct that poses a threat to the health or safety of students or school employees" or "when other strategies to change student conduct have been ineffective."

The new law will also require school districts to implement policies that include strategies, consequences or discipline for students who violate school rules that:

- Promote positive behavior and allow students to learn from their mistakes;
- Keep students in school and attending class;
- Utilize a graduated set of age-appropriate responses to misconduct that are fair, nondiscriminatory and proportionate;
- Employ a range of strategies for prevention, intervention and discipline that take into account a student's developmental capacities;
- Impose disciplinary sanctions without bias against students from protected classes, as defined in ORS 339.351, which includes race, ethnicity and disability status.



Vast research and an emerging national consensus recognize that school exclusion policies often do more harm than good. Not only do these practices fail to make schools safer, but they also lead to academic failure, disengagement, dropout and criminal justice involvement. This has been referred to by researchers and policy analysts as the "School-to-Prison Pipeline," a reflection of the fact many youth involved with the juvenile justice system have experienced high rates of school exclusion.

HB 2192 was supported by the Oregon Juvenile Department Directors Association; Fight Crime: Invest in Kids, Oregon Chapter; and the ACLU of Oregon, each of which have become increasingly concerned and committed to address the school-to-prison-pipeline problem. Its impact has been clear in Oregon. Only 15% of youth admitted to the Oregon Youth Authority in 2011 had never been suspended or expelled from school. Instead, multiple exclusions are common among delinquent youth: 44% of youth admitted to OYA in 2011 had been suspended or expelled four or more times.[1]

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Oregon, like most other states, embraced zero tolerance approaches in the 1990s, which result in automatic suspensions or expulsions, believing they were necessary to keep schools safe. Problems with this approach are many. One study[2] found that students at schools using zero tolerance discipline practices had:

a. higher dropout rates;

b. elevated stress levels that negatively affected their mental and physical health;

c. more referrals to special education; and

d. lower student participation in extracurricular activities.

Conversely, schools using Positive Behavioral Interventions and Supports (PBIS) or Restorative Justice (RJ) approaches to student behavior had students with:

a. higher grades;
b. higher test scores;
c. and better student attendance rates.

These findings held, even when controlling for differences in socioeconomic status. Over 60% of Oregon schools have implemented or begun implementation of the Positive Behavioral Interventions and Supports (PBIS) approach, according to the Northwest PBIS Network (http://www.pbisnetwork.org/). Additional districts have implemented or are exploring implementation of Restorative Justice approaches.

Multiple studies have found that suspension and expulsion dramatically increase the chances that disciplined students will eventually drop out. Two recent studies – one conducted

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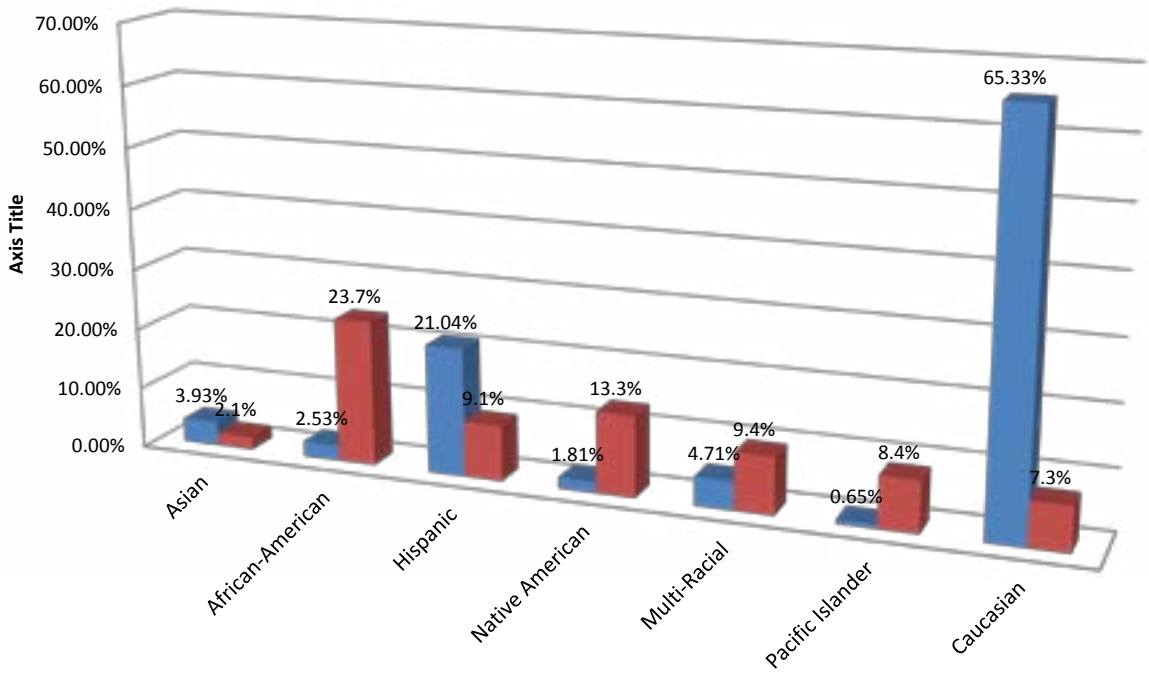
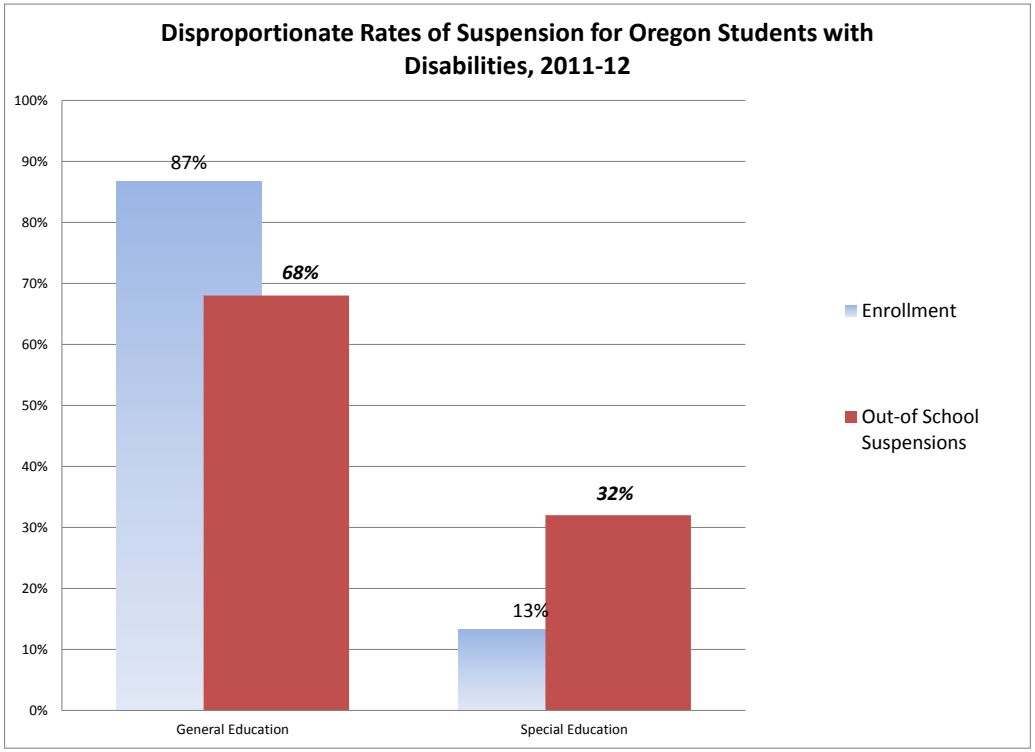
Percentage of Student Enrollment vs. Pct. of Out-of-School Suspensions by Race, 2011-12



	Asian	African-American	Hispanic	Native American	Multi-Racial	Pacific Islander	Caucasian
Percentage of Enrollment	3.93%	2.53%	21.04%	1.81%	4.71%	0.65%	65.33%
Percentage of Suspensions	2.1%	23.7%	9.1%	13.3%	9.4%	8.4%	7.3%



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by Johns Hopkins researchers in Florida and the other conducted by UCLA in California – looked at the impact of suspension on 9th grade students. Both studies found that students who had been suspended just one time that year were twice as likely to drop out of school, when compared to students who had not been suspended during their first year of high school. The Florida study followed 182,000 students and found that the dropout rate of students suspended one time in the 9th grade was 32%, compared to a dropout rate of 16% for students with no suspensions in the 9th grade.

Data from the Oregon Department of Education reveal alarming disparities in discipline rates based upon race, ethnicity and disability status For example, African-American students comprise only 2.53% of Oregon's K-12 student population, but they experienced 23.7% of out-of-school suspensions during the 2011-12 school year – a nearly tenfold disparity.

Students with disabilities should enjoy additional protections from out-of-school suspensions under the requirements of the Individuals with Disabilities Education Act, however, students in special education received 32% of suspensions in 2011-12, while they comprise only 13% of the student population.

A work group formed to discuss amendments to HB 2192 will reconvene in the fall to discuss additional changes to the school discipline statutes related to school suspensions. Oregon has seen the overall rates of school suspension climb from a rate of 119.6 suspensions per 1,000 students in 2005 to 157.4 per 1,000 in 2012, an increase of 32%. ●

[1] Oregon Youth Authority (2012): History of Expulsions and Suspensions, OYA Risk Needs Assessment, January 1 – December 31, 2011, All Youth

[2] Health Impact Assessment of School Discipline Policies (2012): http://www.humanimpact.org/component/jdownloads/finish/7/167/0

Applying *Miller v. Alabama* in Oregon

By Marc D. Brown, Deputy Public Defender, Office of Public Defense Services-Appellate Division

"A long habit of not thinking a thing wrong, gives it a superficial appearance of being right and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason."

-Thomas Paine from "Common Sense"

As Marsha Levick explained in great detail in her excellent article "From a Trilogy to Quadrilogy: *Miller v. Alabama* Makes it Four in a Row for U.S. Supreme Court Cases That Support Differential Treatment of Youth," (Juvenile Law Reader, Vol. 10, Issue 1), the United States Supreme Court recently issued its latest opinions in the "juveniles are different" line of cases. As explained below, strong argument can be made that the decision in *Miller v. Alabama*, __ US __, 132 S Ct 2455, 183 L Ed 2d

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407 (2012) and its companion case, *Jackson v. Hobbs*, __ US __, 132 S Ct 2455, 183 L Ed 2d 407 (2012), have significantly changed certain aspects of sentencing juveniles as adults in Oregon. This article will begin with a brief summary of the "juveniles are different" line of cases, followed by a discussion of *Miller*. The next section will explore the application of *Miller* to Oregon. Finally, the article will explore the larger implications of this new terrain in Oregon.

"Juveniles are Different"

In 2005, the United States Supreme Court held that the imposition of the death penalty on offenders who were under the age of 18 when they committed their crimes constitutes cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution. *Roper v. Simmons*, 543 US 551, 578-79, 125 S Ct 1183, 161 L Ed 2d 1 (2005). Five years later, the Court held that the imposition of a sentence of life without the possibility of parole imposed on a juvenile who did not commit a homicide likewise violates the Eighth Amendment. *Graham v. Florida*, 560 US __, 130 S Ct 2011, 2034, 176 L Ed 2d 825 (2010). The *Miller* Court summarized the reasoning behind those decisions:

> "Those cases relied on three significant gaps between juveniles and adults. First, children have a 'lack of maturity and an undeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking.' Second, children 'are more vulnerable * * * to negative influences and outside pressures.' Including from their family and peers; they have limited 'contro[l] over their own environment' and lack the ability to extricate themselves from horrific crime producing settings. And third, a child's character is not as 'well-formed' as an adult's; his traits are 'less fixed' and his actions less likely to be 'evidence of irretreivabl[e] deprav[ity]."

Miller, 132 S Ct at 2464 (quoting *Roper*, 543 US at 569).

In another recent Supreme Court opinion, focusing on *Miranda* warnings and juveniles, the Court noted that:

> "In short, officers and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science or expertise in social and cultural anthropology to account for a child's age. They simply need common sense to know that a 7 year old is not a 13 year old and neither is an adult."

JDB v. North Carolina, 564 US __, 131 S Ct 2394, 2407, 180 L Ed 2d 310 (2011).

"A long habit of not thinking a thing wrong, gives it a superficial appearance of being right and raises at first a formidable outcry in defense of custom. But the tumult soon subsides. Time makes more converts than reason."

-Thomas Paine from "Common Sense"

In *Miller* and *Jackson*, the question for the Court was whether a mandatory sentence of life without the possibility of parole imposed on a juvenile convicted of aggravated murder is cruel and unusual punishment. In *Miller* and *Jackson*, the 14-year-old offenders "were convicted of murder and sentenced to life imprisonment without the possibility of parole. In neither case did the sentencing authority have any discretion to impose a different punishment." 132 S Ct at 2460. Although the Court stopped short of declaring that life without the possibility of parole for a juvenile convicted of murder was facially unconstitutional, it did hold that such a sentence is cruel and unusual when that sentence is mandatory.

> "By requiring that all children convicted of homicide receive lifetime incarceration without possibility of parole, regardless of their age and age-related characteristics, and the nature of their crimes, the mandatory sentencing schemes before us violate this principle of proportionality and so the Eighth Amendment's ban on cruel and unusual punishment."

Id. at 2475.

The Court explained that:

> "Such mandatory penalties, by their nature, preclude a sentencer from taking account of

Continued on next page »

« *Miller continued from previous*

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 (including these two 14-year-olds) will receive the same sentence as a vast majority of adults committing the similar offenses - but really, as *Graham* noted, a greater sentence than those adults will serve."

Id. at 2467-68.

Applications of *Miller* in Oregon

The most obvious application of *Miller* is on juveniles convicted of murder and sentenced to a mandatory term of life without the possibility of parole. Pursuant to ORS 161.620, a juvenile under the age of 15 and tried as an adult shall not receive a life without the possibility of parole sentence. However, ORS 137.707

provides that a juvenile 15 years old or older tried as an adult and convicted of aggravated murder must be sentenced to either life without the possibility of parole or life with a mandatory minimum of 30 years in prison. Therefore, a life without the possibility of parole sentence is not mandatory for a juvenile offender over 15 convicted of aggravated murder. Thus, on its face, it might appear that *Miller* has no application in Oregon. However, as explained below, *Miller* does have important implications for juvenile sentencing Oregon.

Miller can be read in two ways. The more common reading of *Miller* is that the Court held that when a sentencing scheme mandates life without the possibility of parole for a juvenile offender convicted of murder, that sentence is cruel and unusual. In other words, *Miller* applies only to mandatory life without the possibility of parole sentences. This reading is supported by the fact that the Court did not hold that a life without the possibility of parole sentence is facially unconstitutional when imposed on a juvenile convicted of murder.

A second, and admittedly, less common reading of *Miller* is that it applies to *any* mandatory sentence imposed on a juvenile offender. Support for this reading also derives from the fact that the Court did not hold a life without the possibility of parole sentence facially unconstitutional when imposed on a juvenile convicted of murder. Because the Court did not hold such a sentence unconstitutional based on its length, the basis for the Court's holding must have been the mandatory nature of the sentence. As noted above, the court held that "mandatory penalties, by their nature, preclude a sentence from taking account of an offender's age and the wealth of characteristics and circumstances attendant to it." 132 S Ct at 2467.

If, in fact, the linchpin to the *Miller* holding is the mandatory nature of the sentence rather than the length of the sentence, that decision could have a significant impact on sentences imposed on juveniles convicted in adult court in Oregon. For example, a juvenile convicted of aggravated murder when he was at least 12 years old at the time of the offense must be sentenced to life with a mandatory minimum of 30 years. ORS 161.620. That is the identical sentence imposed on many adults

Continued on next page »

« Miller continued from previous

convicted of aggravated murder and it is mandatory. Because the sentencing court may not take into account any of the characteristics of youth discussed in *Miller*, *Roper*, and *Graham*, that mandatory sentence is cruel and unusual. Likewise, a juvenile waived to adult court pursuant to ORS 137.707, shall receive the same mandatory minimum sentence as an adult would receive for the same crime. Again, because the statutory scheme does not allow a sentencing court to consider the characteristics of the juvenile when imposing a sentence, that sentencing scheme violates the Eighth Amendment. In other words, *any* sentencing scheme that mandates a sentence for a juvenile offender is cruel and unusual. The result is that the sentencing court must have the authority to consider the juvenile's characteristics when imposing a sentence for that sentence to be constitutional.

Article I, section 16, of the Oregon Constitution, provides that "[c]ruel and unusual punishment shall not be inflicted but all penalties shall be proportioned to the offense." In *State v. Rodriguez/Buck*, 347 Or 46, 217 P3d 659 (2009), the Oregon Supreme Court held that a mandatory minimum sentence can be disproportionate as applied to a specific defendant. The court provided a three-part test for a trial court to employ when determining disproportionality. Under that test, a trial court is to: (1) compare the severity of the penalty and the gravity of the crime; (2) compare the penalties imposed for other related crimes; and (3) examine the criminal history of the defendant. *Id.* at 58.

In *State v. Wilson*, 243 Or App 464, 259 P3d 1004 (2011), the court held that under *Rodriguez/Buck*, "the trial court can take into account a defendant's mental capacity when determining whether a Measure 11 sentences violates Article I, section 16." *Id.* at 468. Although *Wilson* did not involve a juvenile defendant, by applying the text of *Miller* regarding juvenile cognitive development to *Wilson*, a strong argument can be made that any mandatory sentence imposed on a juvenile offender is disproportionate when the sentencing court is unable to consider the characteristics of the juvenile and therefore violates Article I, section 16. Additionally, the Oregon Legislature has recognized the diminished mental capacity of juveniles. *See e.g.* ORS 471.430 (requiring a person to be 21 to purchase or possess alcohol); ORS 807.065 and 807.280 (requiring a person to be 15 to drive a vehicle); ORS 167.401 (requiring a person to be 18 to purchase cigarettes); ORS 653.320 (requiring a person to be 14 to obtain employment during the school year); ORS 109.640 (requiring a person to be 15 to make personal medical decisions). Those statutes, and many others, are based on the recognized fact that juveniles lack certain cognitive functions of adults. Thus, under *Rodriguez/Buck*, a sentencing court must take into account a juvenile's diminished mental capacity and cognitive development when determining whether a mandatory minimum sentence violates Article I, section 16.

In sum, under both the Eighth Amendment and Article I, section 16, any mandatory sentence for a juvenile offender is disproportionate and thus cruel and unusual unless the trial court has the authority to consider the characteristics of that juvenile offender.

Implications of *Miller*

If the above reading of the *Miller* opinion is correct, the Oregon prisons and youth facilities have many individuals serving unconstitutional sentences. Therefore, the next question is whether *Miller* is retroactive. As noted above, *Jackson v. Hobbs* is the companion case to *Miller*. *Jackson* presented the same question as *Miller* but in the context of a petition for *habeas corpus*. Ultimately, the Court reversed the state court's denial of Jackson's *habeas corpus* petition. As a result, it appears that the holding in *Miller* is retroactive.

Ultimately, the holding in *Miller* may have done away with *all* mandatory sentencing schemes for juveniles. Although *Miller* does not hold that a specific length of incarceration is unconstitutional, it does hold that when a trial court is required to impose that sentence on a juvenile offender, that sentence is unconstitutional as applied to that juvenile. Therefore, any case involving a juvenile tried as an adult for a crime that carries a mandatory sentence, that sentence is cruel and unusual unless the trial court considered the characteristics of that juvenile when imposing the sentence. ●

Juvenile Law Resource Center

Case Summaries

By Jenna Royce and Arianna DeStefano, YRJ Law Clerks

Dept. of Human Services v. F .L. B., 255 Or App 709, 298 P3d 626 (2013)

The mother and father in this case appeal the juvenile court's judgments terminating their parental rights to two children, M and J. The juvenile court terminated both parents' rights, finding that father had sexually abused B, the half-sister of M and J, for almost a year and that mother had failed to do anything to protect B, even though she was aware that the relationship between father and B was not appropriate. Both mother and father were convicted of crimes related to the abuse and were incarcerated during the time of trial. The Court of Appeals concurred with the juvenile court's finding that father had sexually abused B over an extended period, and therefore affirmed the juvenile court's termination of the father's parental rights to M and J without further discussion. As to the mother, the court determined that she failed, for months, to protect B from sexual abuse that she either suspected or knew was happening, and failed to take steps aimed at helping B deal with the long-term effects of that abuse.

The Court of Appeals reasoned that the children could not be safe with mother, who ignored her husband's sexual abuse of her 13-year-old child for several months, who still only timidly acknowledged that the abuse occurred, and who lacked any insight into how her own psychological temperament and behavior might have contributed to that abuse repeatedly occurring. Noting that the historical and psychological evidence demonstrated clearly and convincingly that mother did not recognize risks that other people posed to her children, the court held that her inability to protect her children was seriously detrimental to J and M, even though they had not been abused. The Court of Appeals concluded that integration of the children into mother's home after release from prison was improbable within a reasonable time because mother's mental condition was unlikely to change and the children needed permanency as soon as possible due to their adjustment disorders and attachment issues.

Dept. of Human Services v. J. F. D., 255 Or App 742, 298 P3d 653 (2013)

In this appeal of a dispositional order, father argued that "reasonable efforts" to reunify child with father had not been made because he was not contacted in the seven months between filing of the jurisdictional petition and the dispositional hearing, and no services were provided to him during that time. The Court of Appeals agreed and reversed the juvenile's court determination that the Department of Human Services had made reasonable efforts to eliminate the need for removal of the child, D, from the home. The only effort made on behalf of DHS regarding reunification with father was an ICPC home study request from the state Kentucky, father's state of residence. Because there was no evidence that DHS even followed up on the home study request, the Court of Appeals found that DHS made almost no efforts to make it possible for the child to safely return to father's home.

DHS argued that its efforts do not

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have to be reasonable specifically as to father, but efforts should be viewed under the totality of circumstances, considering all of DHS's efforts regarding mother and D. DHS argued that "reasonable efforts" does not carry the same meaning in the dispositional stage, as it does when changing the permanency plan. The Court of Appeals disagreed and found that the term "reasonable efforts" was intended by the legislature to convey the same general meaning throughout the Juvenile Code. The Court of Appeals further reasoned that it makes no sense to view "reasonable efforts" under a totality of circumstances analysis when mother and father do not have the same home, nor does it make sense to measure only one parent's progress. Therefore, the Court of Appeals concluded that, in determining the reasonableness of DHS's efforts at the dispositional stage under ORS 419B.340(1), the juvenile court must assess DHS's efforts as to each parent.

Dept. of Human Services v. L. F., 256 Or App 114, 299 P3d 599 (2013)

Mother appeals from a jurisdictional judgment, arguing that evidence did not support the state's amended petition alleging that she was unable or unwilling to meet or understand the medical and developmental needs of her autistic child, H. The juvenile court had obtained jurisdiction over H previously based on mother's admissions about her own mental health. Subsequent to that, H was diagnosed with autism and DHS filed an amended petition.

The evidence at the jurisdictional trial was largely from the report of the child's therapist and stipulation. The juvenile court had previously ordered mother to attend all therapy sessions and classes; however, she only attended a little over half, and often left early. It was also stipulated that H's grandmother did not think mother would be able to make a lasting commitment to meet H's extraordinary needs. Based on the evidence, the juvenile court found that H had developmental problems requiring focused treatment, and mother had been consistently unable to meet those needs and asserted jurisdiction.

The Court of Appeals affirmed reasoning that established that caregivers of H need training to understand and meet his needs and that mother had failed, and would continue to fail, to attend these training sessions. There was sufficient evidence that mother was unable or unwilling to understand and meet H's medical and development needs, which subjected H to a threat of harm or neglect.

Dept. of Human Services v. S. M., 256 Or App 15, 300 P3d 1254 (2013)

Mother and father appealed a review judgment for each of their eight children, which provided that the children may be immunized, over the parents' objections. Parents first argued that DHS and the court did not have statutory authority to order immunization of their children. Their position was that, notwithstanding DHS custody and guardianship, they retained the right under Oregon statutes to decide whether to immunize their children. Second, relying on the Court of Appeals decision in *State ex rel Juv. Dept. v. Smith*, 205 Or App 152, 133 P3d 924 (2006), they asserted that before DHS may immunize a child over a parent's objection, it must show that the parent is unfit to make immunization decisions on behalf of the child and that immunization is necessary for the child's short-term health and safety. The Court of Appeals rejected both parents' arguments and affirmed the juvenile court's judgment.

With regard to the statutory argument, parents argue that the power given to DHS and the court, by ORS 419B.373(4) and ORS 419B.376(1), (5), to make health-care decisions for their children

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when DHS is given legal custody and guardianship must give way to parents' statutory right to exempt their children from immunization because of a religious objection. However, the Court of Appeals pointed out two problems with parents' argument. First, the statutes they rely on only allow parents to exempt their children from immunization in certain contexts, they do not create a "stand-alone statutory right". Second, there is nothing in the juvenile code provisions limiting those authorized to make health-care decision from making decisions about immunizations. Thus, the Court of Appeals held that the Oregon statutes that parents relied on did not grant them any right to exempt their children from immunizations under the circumstances here.

The Court of Appeals relied on the opinion of the United States Supreme Court in *Troxel v. Granville*, 530 US 57, 120 S Ct 2054, 147 L Ed 49 (2000), and the application of *Troxel* in *O'Donnell-Lamont and Lamont*, 337 Or 86, 91 P3d 721 (2004), *cert den*, 543 US 1050 (2005) to distinguish the parents argument based on *Smith*. The Court of Appeals affirmed the juvenile court's order directing that parents' children may be immunized pursuant to medical advice as a lawful exercise of that court's authority under ORS 419B.352; the order did not infringe on parents' constitutional rights to direct the upbringing of their children.

Dep't of Human Services v. M. H., 256 Or App 306, 300 P3d 1262 (2013)

Mother and father appealed juvenile court jurisdiction judgments regarding their daughter, V. On appeal, mother argued that the juvenile court lacked personal jurisdiction over V and also lacked subject matter jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). However, the Court of Appeals found that under the UCCJEA's jurisdiction requirements established in ORS 109.741(1), subsection (1)(a) provided that a court has jurisdiction if Oregon is "the home state of the child" when the proceeding begins. When the child is less than six months old, as is V, the "home state" is defined as where the child has lived from birth. ORS 109.704(7). Therefore, the jurisdictional question was whether V lived in Oregon "from birth," when V was taken to California by mother and father the day after she was born. Because the trial court concluded that parents did not intend to move away from Oregon and had only temporarily left, the Court of Appeals found Oregon to be V's home state.

Photo © Helene Souza

Further, the Court of Appeals found personal jurisdiction over V was not required for the juvenile court to make a custody determination, relying on ORS 109.741(3), which does not require physical presence or personal jurisdiction to make a child custody determination. However, the Court of

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Appeals noted that even if personal jurisdiction were required, ORS 419B.803(1)(b) gave personal jurisdiction because V was a child under 12 years of age who is subject of a petition under ORS 419B.100.

Both parents also argued that the court erred in deciding that the child's condition and circumstances endangered her welfare under ORS 419B.100. Parents argued that there was insufficient evidence in the record to establish a connection between the parents' conduct and conditions and a threat of serious loss or injury to V. The parents relied on *Dep't of Human Services v. B. B.*, 248 Or App 715, 727 (2012), where the Court of Appeals held that the father's failure to complete sex-offender treatment did not establish a current risk of harm.

In this case, the Court of Appeals concluded that the parents placed too much weight on *B. B.*, a decision that was made entirely on a *de novo* review of the facts. Because the Court of Appeals declined the review this case *de novo*, they were bound by the juvenile court's implied finding that the psychological evidence that the father has an increased chance of re-offending was persuasive. The Court of Appeals found that the testimony from the three psychologists that father was an untreated sex offender and had a 19 percent chance of reoffending demonstrated there was sufficient evidence that father's history of sexual offenses placed V at risk of serious harm. Furthermore, the Court of Appeals found that mother had not adequately addressed the circumstances and conditions that resulted in her being offered services.

The Court of Appeals agreed with parents that evidence in the record did not support the allegation about residential instability, employment instability and chaotic lifestyle. However, under the totality of circumstances, even without the allegation regarding residential and employment instability and chaotic lifestyle, the Court of Appeals found the petition supported jurisdiction over V and thus affirmed the trial court's jurisdictional judgment.

Dep't of Human Services v. K. H., 256 Or App 242, 301 P3d 427 (2013)

Mother appealed from a judgment establishing a durable guardianship over her child, E, due to mother's mental health endangering child's welfare. Mother argued that the trial court erred in denying her request for a full evidentiary hearing and in deciding to establish a guardianship under ORS 419B.366. The Court of Appeals held that the hearing held to address DHS's motion for guardianship was legally sufficient. Mother argued that the court did not have discretion to deny her a full evidentiary trial. However, the Court of Appeals noted that ORS 419B.366 does not explicitly require any specific type of hearing. Given the overall context of ORS 419B.366, a party contesting the guardianship motion must be given an opportunity to confront the allegations in the motion. However, there is no statutory language dictating exactly how the hearing should be held.

The Court of Appeals did recognize that the due process rights of mother provided some context to the hearing requirement in ORS 419B.366, finding that due process in this setting required a "fundamentally fair" proceeding, which includes "the opportunity to be heard at a meaningful time and in a meaningful manner." *State ex rel Juv. Dept. v. Geist*, 310 Or 176, 189-190, 796 P2d 1193, (1990). However, the Court of Appeals still rejected mother's argument that the hearing was insufficient. The Court of Appeals reasoned that the court proceedings in this case were fundamentally fair because mother was given the opportunity to be heard, the opportunity to cross-examine DHS's only witness, and she was allowed to submit evidence regarding whether E could be returned to her within a reasonable time.

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Thus, the Court of Appeals held that where the permanency hearing and guardianship hearing were held within a four-month time span and the court made a finding regarding "reasonable time" in the permanency judgment, the court did not violate due process by limiting mother's submission of evidence to an offer of proof and then deciding based on that evidence that further evidentiary hearings were unnecessary.

Dep't of Human Services v. J. R. L., 256 Or App 437, 300 P3d 291 (2013)

Mother argued that the juvenile court's reliance on her mental health issues at a permanency hearing was erroneous, as she was never put on adequate notice that those concerns needed to be addressed. Mother, who also moved to dismiss jurisdiction and wardship over her daughter, A, in addition to contesting the change in permanent plan argued that she had adequately ameliorated the grounds for jurisdiction and the juvenile court improperly relied on facts extrinsic to the jurisdictional judgment, namely, her mental health.

Attached to the jurisdictional judgment was a "Services Requested" form, which contained the services and activities that mother was required to engage in, including: a psychological evaluation, ensure that A have no contact with her father, participate in individual counseling, seek and maintain steady employment or reliable income, safe and stable housing, and continue counseling at Options Counseling Services (Options). Upon completing her psychological evaluation, mother was diagnosed with "Major Depressive Disorder, Recurrent, Moderate" and it was recommended that mother engage in individual therapy to decrease the side effects of her depression. At that time, the psychologist determined that mother's depressive symptoms were "interfering with her ability to meet daily responsibilities."

One year after mother's diagnosis with depression, DHS sought to change the parenting plan from reunification to adoption. At no time before the permanency hearing had DHS recommended to the juvenile court that mother be ordered to engage in mental health counseling to achieve any expected outcome with respect to the bases for jurisdiction, nor did they amend the petition for jurisdiction over A to include mother's mental health issues. Relying on *Dept. of Human Services v. G. E.*, 243 Or. App. 471, 260 P3d 516, the Court of Appeals concluded that "a juvenile court may not continue a wardship based on facts that have never been alleged in a jurisdictional petition." *Id.* at 479. The court determined that mother was not given adequate notice that her progress toward obtaining safe and stable housing could be measured by her progress in addressing her mental health issues. Accordingly, the Court

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of Appeals reversed and remanded the permanency judgment.

Dept. of Human Services v. A. R. S., 256 Or App 653, -- P3d -- (2013)

In this case, mother and child separately appealed the juvenile court's permanency judgment that denied their motions to dismiss jurisdiction over the child and continue the plan of "return to parent." The juvenile court originally obtained jurisdiction as to mother based on six insufficiencies in her parenting, including: residential instability, substance abuse, history of leaving child with foster mother, failing to return child to the doctor to have staples removed from his head, choosing unsafe partners, and the relinquishment of her parental rights with respect to her other two children. Mother's mental health issues were never alleged or established as the basis for jurisdiction in the original case. The Court of Appeals relied on recent decision in similar cases to determine that DHS had not provided mother with appropriate notice in regards to the requirement for her to make progress with her mental health. Accordingly, the case was reversed and remanded. See *Dept. of Human Services v. J. R. L.*, 256 Or App 437, ___ P3d ___ (2013), *Dept. of Human Services v. G. E.*, 243 Or App 471, 260 P3d 516, *Dept. of Human Services v. N. M. S.*, 246 Or App 284, 266 P3d 107 (2011).

Dept of Human Services v. A. J. M., 256 Or App 547, 301 P3d 962 (2013)

In this case, mother appealed the juvenile court's permanency judgment changing the permanency plan from reunification to adoption and assigned as error the judgment's failure to include "a brief description of the efforts that the department had made with regard to the case plan in effect at the time of the permanency hearing," as required by ORS 419B.476(5)(a). However, the juvenile court amended the judgment and made the finding while appeal was pending. Although the failure to include (or adopt) findings briefly describing DHS's efforts is reversible error under *State ex rel DHS v. M.A.*, 227 Or App 172, 182-83, 205 P3d 36 (2009), the Court of Appeals reasoned that ORS 419B.923(1) allows the juvenile court to modify any judgment made by it for "clerical mistakes in judgments, orders, or other parts of the record and errors in the order or judgment arising from oversight or omissions." Further, the court noted that these errors may be corrected by the court at any time, including during pendency of an appeal. ORS 419B.923(7). Despite mother's objection that failure to make the required finding was neither an oversight, nor an omission, the court concluded otherwise.

Dep't of Human Services v. A. B., 256 Or App 854, -- P3d – (2013)

Mother appealed the juvenile court's judgment continuing wardship over her child, arguing that the juvenile court erred in denying her motion to dismiss wardship because it was undisputed at the time of the review hearing that the grounds for jurisdiction had all been ameliorated. Relying on its previous holding in *State v. A. L. M.*, 232 Or App 13, 220 P3d 449 (2009), the Court of Appeals found no evidence that any of the circumstances alleged in the petition continued at the time of the review hearing, besides father's lack of custody order. Because there was no evidence that mother was a present danger to the child's welfare, which previously had been alleged in the petition, the absence of father's custody order was an insufficient basis for the court to continue wardship over the child. In a per curiam decision, the Court of Appeals found the juvenile court erred in continuing wardship over the child and reversed and remanded the case with instructions to terminate the wardship. ●

Prison Pipeline Features Pro Bono Sex Offender Relief

By Catherine DiSarno, YRJ Law Clerk

On June 24th Peter Princetl of KBOO Radio's *Prison Pipeline* interviewed Tonkon Torp LLP partner, Vicki A. Ballou, about the CLiF Project. CLiF stands for Changing Lives Forever, and is a pro bono legal services project which provides legal assistance to former juvenile delinquents seeking relief from sex offender registration. The CLiF Project was created in 2011 by Ballou and another Tonkon partner, Gwen Griffith. Over twenty lawyers at Tonkon and a number of other lawyers around the state provide pro bono representation through the CLiF Project.

Oregon is one of seven states in the nation that places juveniles adjudicated for a felony sex crime on the sex offender registry for life. Being a registered sex offender presents barriers to young people becoming contributing members of society, including often making it impossible to obtaining housing and employment. As Ballou discussed, if there is one point to remember in all of this, it is this: "Kids are different." Whether it is a case of young lovers, curious children exploring each others' bodies, or very young victims, it is important to remember that not all sex offenders are the same. Those adjudicated as youth and no longer posing a threat to society deserve to be relieved of this burden. This is what Ballou believes, and she accomplishes this goal with the help of partner Gwen Griffith and Youth, Rights & Justice. So far, twenty-one people have benefitted from the services of the CLiF project. Ms. Ballou credits the success of the program to the clients. As a result of limited resources, cases are screened to ensure that the attorneys are presented with clients that they really think can be helped. The stories can be heart wrenching but the end result is worth it. Not all sex offenders are the same, and most importantly, "kids are different."

Listen to the interview here. http://kboo.fm/sites/default/files/episode_audio/kboo_episode.2.130624.1830.2689.mp3 ●

Youth, Rights & Justice

"If someone is going down the wrong road, he doesn't need motivation to speed him up. What he needs is education to turn him around."

– *Jim Rohn*

NATIONAL JUVENILE JUSTICE NETWORK

FOR IMMEDIATE RELEASE
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A Comeback for Kids

Nine States Lead Nation in Reducing Incarceration of Teens and Children

After more than a decade of policies that relied heavily on the incarceration and imprisonment of youth, the number of youth confined in state and county facilities nationwide reached an alarming high in 2000, totaling more than 100,000 kids. Since then, the number of detained or incarcerated youth has decreased by nearly 40 percent nationwide according to a new report, *The Comeback States*, by the National Juvenile Justice Network (NJJN) and the Texas Public Policy Foundation (TPPF), which examined national and state incarceration trends.

The report highlights nine states leading the way—California, Connecticut, Illinois, Mississippi, New York, Ohio, Texas, Washington, and Wisconsin—that successfully reversed this troubling trend, beating the national average for reducing youth incarceration. A greater understanding of the development of the teenage brain and adolescent development, decline in youth arrests, effectiveness of evidence-based alternatives, enhanced public safety, the growing cost of operating secure facilities, and the unflagging efforts of juvenile justice advocates paved the way for this new approach to ensuring the best outcomes for kids and communities.

But not every state has seen the same drops. "Many youth are still placed in facilities that expose them to violence, disconnect them from their families and communities, and offer few pathways for rehabilitation that will strengthen the skills they need to become contributing members of society," said Sarah Bryer, NJJN's director. "In fact, research has shown that incarcerating youth is ineffective at reducing delinquency, and can even increase it."

One key to the "comeback" states' success is that they replaced ineffective policies that relied on the detention and incarceration of youth with proven policies that hold youth accountable in their communities. For example, they:

- increased the availability of evidence-based alternatives to incarceration;
- required intake procedures that reduce the use of secure detention facilities;
- closed or downsized youth confinement facilities;

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Table 1. Statewide Policies That Can Reduce Youth Confinement in Nine Comeback States

State	Change in No. of Youth Confined, Public Facilities 1985-2000 [45]	Change in Youth Confined, Public Facilities Only 2001-2010	Change in No. of Youth Confined, Public and Private Facilities 2001-2010	Community Alternatives	Restrictions on Use of Detention	Facility Closings and Downsizing	Shrinking School-to-Prison Pipeline	Not Confined for Minor **Offenses**	Realign, Reinvest Statewide
CA	40%	-41%	-36%	■		■		■	■
CT	37%	-26%	-50%	■	■	■	■	■	
IL	100%	-35%	-38%	■	■	■		■	■
MS	94%	-69%	-48%	■	■	■		■	
NY	91%	-60%	-43%	■	■	■			■
OH	47%	-38%	-37%	■	■	■			■
TX	200%	-35%	-37%	■		■	■	■	■
WA	45%	-40%	-36%	■	■	■			■
WI	91%	-54%	-43%	■	■	■		■	
Total 9 States				9	7	9	2	6	6

« Comeback continued from previous

- reduced schools' overreliance on the justice system to address discipline issues;
- disallowed incarceration for minor offenses; and/or
- restructured juvenile justice responsibilities and finances among the state and counties.

"It's time for *all* states to make a comeback for our kids," said Bryer. "We urge everyone to express support for fiscally sound, evidence-based policies that ensure accountability for youth who commit crimes while also creating opportunities for rehabilitation."

The Comeback States can be downloaded here: http://bit.ly/14aUUBq.

The National Juvenile Justice Network is made up of 43 juvenile justice coalitions and organizations in 33 states that advocate for state and federal laws, policies and practices that are fair, equitable and developmentally appropriate for all children, youth and families involved in—or at risk of becoming involved in—the justice system. For more information, visit www.njjn.org. ●

Resource

The National Juvenile Defender Center has released the *National Juvenile Defense Standards*. The *Standards* represent a comprehensive understanding of the role and duties of the juvenile defender in the 21st century juvenile court system. You can request a hard copy of the Standards by clicking here.●

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