
Juvenile Law Reader

Youth, Rights & Justice
ATTORNEYS AT LAW

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This issue of the Law Reader is the last to be published under the extraordinary guidance of YRJ Supervising Attorney, **Julie H. McFarlane**, who retires in May. Over 40 years she has represented thousands of children, parents and youth in delinquency, abuse and neglect, termination of parental rights, adoption and miscellaneous juvenile cases. She has been a leader in juvenile law reform through numerous pieces of legislation, class action litigation, public advocacy and training. She has helped develop child welfare reform, legislative advocacy, and educational advocacy programs, and has been an inspiration to generations of young lawyers. Please join us in thanking Julie for her brilliance, her compassion and her remarkable leadership. For more about Julie and her upcoming recognition at the OCDLA conference, see page 21.

U.S. Supreme Court Retroactively Applies A Previous Decision Barring Mandatory Juvenile Life Without Parole Sentences

by Afton Coppedge, YRJ Law Clerk

On January 25, 2016, the United States Supreme Court ruled 6-3 in *Montgomery v. Louisiana*¹ that their 2012 decision in *Miller v. Alabama*², barring mandatory life without parole (LWOP) sentences for youth, applies retroactively. This is a key win for individuals nationwide

who are serving life without parole sentences for crimes committed as children. This decision guarantees as many as 2,000 inmates serving mandatory LWOP sentences will receive new sentencing hearings or be considered for parole.

In the past decade, the Supreme Court has dramatically transformed the constitutional landscape for juvenile sentencing. The Court has held that imposing harsh criminal sentences on juvenile offenders violates the Eighth Amendment prohibition against cruel and unusual punishment. Some legal changes brought about by the Court's constitutional rulings have included abolishment of provisions that had allowed the death penalty or juvenile LWOP for non-homicide offenses, and that juvenile LWOP

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can no longer be mandatory even for homicides. The Court has emphasized that juveniles are more likely to be amenable to reform than adult offenders, and that juveniles should be given a meaningful opportunity to demonstrate that they have done so.

*Montgomery v. Louisiana*¹ is the Court's fifth ruling that recognizes that children are different than adults for purposes of criminal punishment and that they should be treated accordingly by the law. In articulating these powerful constitutional principles, the Supreme Court has provided general guidelines to courts sentencing juveniles and lawmakers charged with implementing

these rulings. Unfortunately, the Court did not directly address the specifics of implementation and it left many questions unanswered about the implications of the opinions for juvenile sentencing regulation. However, the Models for Change initiative's recent report, "The Supreme Court and the Transformation of Juvenile Sentencing,"³ provides a comprehensive analysis of the constitutional sentencing framework. The report is a critical resource that translates *Miller*'s directive that specific factors be considered in making individualized sentencing decisions. It aims to guide courts and clinicians in structuring sentencing hearings that incorporate sound developmental research and other

evidence supporting or negating mitigation.

Turning to *Miller*, Justice Kagan wrote: "Mandatory life without parole for a juvenile precludes consideration of his chronological age and its hallmark features—among them, 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."⁴

Miller did not require states to abolish the sentence of LWOP for juveniles convicted of homicide, but the Court makes clear that this sentence is seldom acceptable—and only after full consideration of the juvenile's age, immaturity and other mitigating factors, together with an assessment of their impact on his offending. To conform to the Court's ruling, jurisdictions that retain the

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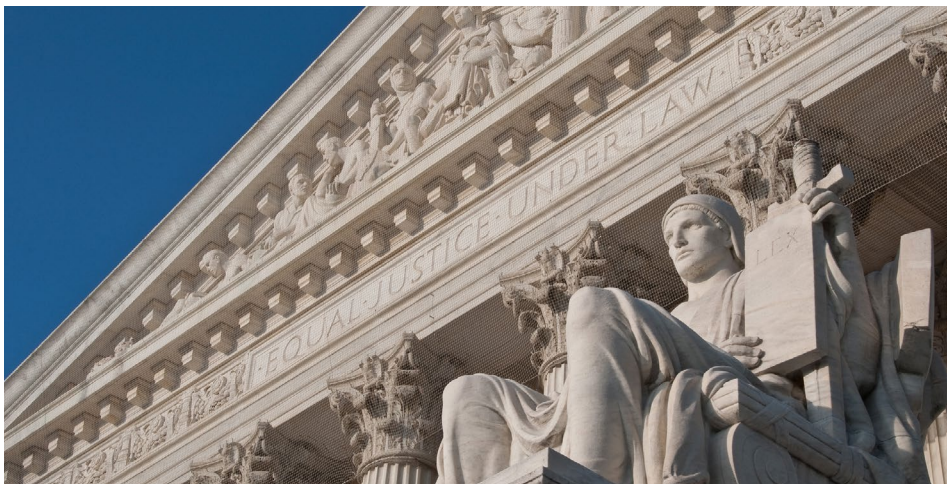


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Queries regarding contributed articles can be addressed to the editorial board.

« U.S. Supreme continued from previous

sentence of LWOP for juveniles convicted of homicide will need to adopt reforms that go beyond converting LWOP to a discretionary sentence. Guidelines are essential to assure that the mitigating factors that reduce the culpability of juveniles and makes them more likely to reform are considered in the sentencing decision. *Miller* specified several factors, but it goes beyond simply directing that mitigating evidence be considered. There are two key elements in implementing the Court's direction to sentencing courts; (1) its conclusion that the sentence of LWOP will be "uncommon" because most juveniles, due to their developmental immaturity, are less culpable; and (2) its emphasis on the risk of erroneous LWOP sentences. The *Miller* opinion supports a conclusion that the state bears the substantial burden of demonstrating that the convicted juvenile is one of the rare youths that deserves this kind of sentence.

The Court based its holding in *Montgomery*, that the *Miller* decision applies retroactively, on a test adopted in a 1989 opinion, *Teague v. Lane*,⁵ to determine



PHOTO BY CHRIS WIELAND CC BY 2.0

whether a constitutional ruling by the Supreme Court applies retroactively. Under the *Teague* test, a decision that establishes a new rule of substantive constitutional law is applied retroactively. A new substantive rule either prohibits criminal punishment for a particular conduct or prohibits a particular sentence from being imposed on a category of offenders—here juveniles. *Montgomery* held that *Miller* also created a new substantive rule of constitutional law and not a procedural rule, which would not apply retroactively, unless it constituted a watershed rule of

criminal procedure implication fundamental fairness or the accuracy of the proceeding. The Court underscored that *Miller* was grounded in the substantive principle that "children are different."⁶ The Court conceded that a "rare juvenile offender whose crime reflects irreparable corruption"⁷ might deserve a LWOP sentence, but that it should only be applied in the rare case of "permanent incorrigibility."⁸

Montgomery acknowledges that the *Miller* holding included a procedural component, but the "process"

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« U.S. Supreme continued from previous required under *Miller* was intended as a means to give full effect to the court's substantive rule—a mechanism for determining if the defendant was one the “rare juvenile[s]” who should be excluded from the category of immature juveniles to which the substantive protection applies.⁹

The Court's ruling may produce a challenge; the resentencing hearing should result in the same sentence the offender would have received if sentenced appropriately at the time of the crime. But a retrospective judgment about a prisoner's immaturity at the time of an offense that may have occurred decades earlier may be fraught with difficulty. The Supreme Court recognized these challenges, but suggested another remedy for states reluctant to resentence prisoners serving mandatory LWOP sentences; these prisoners can simply be subject to ordinary rules of parole eligibility. Effectively, this response converts LWOP to life with parole, avoiding the need for retrospective evaluation of an older prisoner to determine if LWOP was an appropriate sanction at the time of sentencing.

Justice Kennedy, who delivered the opinion of the Court, wrote: “The hearing does not replace but rather gives effect to *Miller*'s substantive holding that life without parole is an excessive sentence for children whose crimes reflect transient immaturity.”¹⁰ The Supreme Court has recognized the fundamental fairness of applying *Miller* retroactively, Louisiana and several other states will no longer be allowed to violate the constitutional rights of these men and women. “Now, Mr. Montgomery, along with hundreds of others who committed crimes as youth and were sentenced prior to 2012, will have an opportunity to have their sentences reviewed,”¹¹ says Marsha Levick, Deputy Director at Juvenile Law Center and co-counsel on the case.

Mark Plaisance, who argued Mr. Montgomery's case, stated: “This is just the first step in a long process for Mr. Montgomery. Today's decision simply provides an opportunity for review. It is our hope the state courts will now follow the lead of our highest court and the majority of others states around the country and give those convicted of crimes as youth a chance to become productive citizens.”¹²

1 *Montgomery v. Louisiana*, 136 S.Ct. 718 (2016).

2 *Miller v. Alabama*, 132 S.Ct. 2455 (2012).

3 http://modelsforchange.net/publications/778?utm_source=%2fttransformation&utm_medium=web&utm_campaign=redirect

4 *Id.* at 2468.

5 *Teague v. Lane*, 489 U.S. 288 (1989).

6 *Miller*, 132 S.Ct. at 2464 (2012) (citing *Roper v. Simmons*, 543 U.S. 551 (2005) and *Graham v. Florida*, 560 U.S. 48 (2010)).

7 *Montgomery*, 136 S.Ct. at 734.

8 *Id.* at 743.

9 *Id.* at 733.

10 *Id.* at 735.

11 U.S. Supreme Court: Prior Finding That Mandatory Life without Parole Sentences for Youth Are Unconstitutional Now Found Retroactive, JUVENILE LAW CENTER (January 25, 2016), <http://jlc.org/blog/us-supreme-court-prior-finding-mandatory-life-without-parole-sentences-youth-are-unconstitution>.

12 *Id.* •



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Important Juvenile Bill Passes in Short Session

HB 4074 Fixes Juvenile Registry and Records Issues

By Julie McFarlane, YRJ Supervising Attorney & Mark McKechnie, YRJ Executive Director

As reported in the last issue, the 2015 Oregon Legislature passed HB 2320, which made many changes to the state's adult and juvenile sex offender registry laws. The intent of HB 2320 was to prospectively remove the automatic requirement of sex offender registration for juveniles upon adjudication and instead allow the juvenile court to determine whether sex offender registration would be imposed within six months of dismissal of supervision and jurisdiction. The language mistakenly removed the reporting requirement for



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all juveniles who had not had a hearing to determine the issue of registration.

The fixes to HB 2320 (2015 Session) were contained in HB 4074, Sections 1-6, which passed the House and Senate during the 2016 regular session. HB 4074 also contained the latest updates to the juvenile records statute, ORS 419A.255, which have been developed by the Oregon Law Commission. As of this writing, the bill is awaiting the Governor's signature. The bill contains an emergency clause, which means that it will go into effect upon the Governor's signature.

Sections 10 and 11 relate to the operative dates of specific sections of the bill, namely sections 3, 7, 8 and 9.

I. Juvenile Sex Offender Registry Law Changes under HB 4074

Regarding the clean-up of the juvenile registry changes, a work group discussed the changes starting in the fall and continued to discuss changes until the early part of the February 2016 session. The group was comprised of participants from the Oregon District Attorney's Association, Office of Public Defense Services, defense providers, Oregon Youth Authority, the

Oregon Judicial Department, the Judiciary Committee and Legislative Counsel's office.

Youth adjudicated of a felony sex offense by the juvenile court and for whom jurisdiction ended prior to the effective date of HB 2320, August 12, 2015, are once again required to report when HB 4074 becomes effective. Their status returns to what it was prior to the passage of HB 2320 in 2015, and they can only obtain relief under the existing relief statutes.

Under HB 4074, any youth adjudicated of a felony sex offense on or after August 12, 2015, or who was under the jurisdiction of the juvenile court on or after that date, will have the opportunity to have a hearing in which the court can determine whether to impose registration or not. The requirement to register is contained in Section 1 (ORS 163A.025), and Section 2 contains the procedures related to the hearings and the criteria that the court will use to determine whether the youth offender will be ordered to register or not (ORS 163A.030). Section 2 applies to youth

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« *HB 4074 continued from previous* adjudicated on or after August 12, 2015, and to youth adjudicated prior to that date and who remained under the jurisdiction of the juvenile court when HB 4074 goes into effect. Section 3 of the bill addresses the small population of youth offenders who were under the jurisdiction of the court on August 12, 2015, but saw the court's jurisdiction dismissed prior to the effective date of HB 4074. The provisions for this group described in Section 3 will sunset on July 1, 2018 (per Section 10).

In the cases of youth who fall under Section 2 of the bill, some key points to understand regarding the new law are:

- The agency supervising a youth (i.e., the county juvenile department, Oregon Youth Authority or Psychiatric Security Review Board) is required to notify the person (youth) and the juvenile court when the agency determines that jurisdiction is likely to terminate within six months.
- Upon receipt of the notice, the court shall appoint an attorney

for the person (under subsection 4); shall set an initial hearing date and shall notify the parties.

- Subsection 4 gives the court flexibility to appoint an attorney for eligible youth, including continuing the appointment at the time of disposition, setting a date to re-appoint the attorney, or appointing the attorney in response to a request by the person.
- Section 2, subsection 6, permits the person to waive the right to the hearing and it allows the court to enter an order requiring the person to register if the person fails to appear at the hearing under this section.
- Subsection 10 requires the agency supervising the person to file specific records in the possession of the agency or board 45 days prior to the hearing, including evaluation and treatment records, polygraph preparation and examination records, and/or the PSRB exhibit file.
- Materials submitted for the hearing shall be made available to the parties to the hearing in accordance with ORS 419A.255.

In the hearings under Sections 2 and 3, "The person who is the subject of the hearing has the burden of proving by clear and convincing evidence that the person is rehabilitated and does not pose a threat to the safety of the public. If the court finds that the person has not met the burden of proof, the court shall enter an order requiring the person to report as a sex offender under ORS 163A.025."

Section 3 sets out the following procedure for the group of youth offenders for whom juvenile court jurisdiction will have ended in between the effective dates of HB 2320 (8/12/15) and HB 4074 (TBD, 2016):

(2)(a) A county or state agency that was responsible for supervising or that had jurisdiction over a person described in subsection (1) of this section while the person was under juvenile court or Psychiatric Security Review Board jurisdiction shall, within 90 days of the effective date of this 2016 Act:

(A) Send written notice of the

right to a hearing to the last-known address of the person and to the person's most recent attorney of record, if available. The notice shall inform the person that, in order to have a hearing, the person must file a written request for the hearing with the juvenile court. The notice must also inform the person that the person shall report as required under ORS 163A.025 beginning 120 days after the effective date of this 2016 Act.

(B) Send written notice to the juvenile court identifying the person.

(b) Upon receiving the notice described in paragraph (a) of this subsection, the court shall appoint an attorney for the person for the limited purpose of assisting the person to decide whether to file, and to file, a request for a hearing under this section.

(3) Upon receiving a written request from a person for a hearing under this section, and

Continued on next page »

« HB 4074 continued from previous
after confirming the person's
eligibility for the hearing, the
court shall:

(a) Appoint an attorney for
the person in accordance with
ORS 163A.030 (4);

(b) Set an initial hearing
date within six months after
receiving the request; and

(c) Notify the parties and the
juvenile department or the
Psychiatric Security Review
Board, if the department
or board supervised or had
jurisdiction over the person, of
the hearing date.

...

**(13) If the court has not received
a written request for a hearing
prior to July 1, 2018, the person
may not request a hearing under
this section.**

Any attorney in Oregon who
has represented a person in the
juvenile court who was adjudicated
delinquent of an offense that would
constitute a felony sex crime should
take the time to review HB 4074,
if any client represented was or
will be under the jurisdiction of

the court on or after August 12,
2015. The Engrossed version of HB
4074 can be found here: <https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureDocument/HB4074/Enrolled>

Updates on the effective date and
the final, enrolled version will be
posted here: <https://olis.leg.state.or.us/liz/2016R1/Measures/Overview/HB4074>

II. Juvenile Records Changes under HB 4074

The Oregon Law Commission
(OLC) undertook review of juvenile
records statutes (ORAS 419A.255
to ORS 419A.257) prior to the
2013 session at the request of the
Oregon Judicial Department to
make changes that would facilitate
the implementation of the eCourt
Program. When release of juvenile
court records to the press became
an issue of litigation, the provisions
for release of records to “any other
person” in SB 622 (2013), were held
in abeyance by the legislature pending
the outcome of the litigation. Prior to
the 2016 legislative session, the OLC
developed the records portion of HB
4074 to address this issue as well as
other needed changes brought to the
Juvenile Court Records Workgroup's
attention by various stakeholders.

The records amendments in HB
4074 strike a balance between the
best interests of juveniles with the
open courts requirement, while
giving judges and practitioners
sufficient guidance concerning
requests for access to juvenile
records. For a person or entity not
normally allowed access to a juvenile
record to be allowed to inspect or
copy the record, a motion must be
filed and served on the parties to the
case that includes: 1) a statement
detailing the reason for the request
to inspect or copy; 2) any relevancy
to the juvenile proceeding; and 3)
how the inspection or copying will
serve the balancing of the interests
at stake.

The court must weight four factors
in determining whether to allow
inspection or copying of the record:
1) the privacy interest of the child
or family; 2) the interests of other
parties or victims; 3) the interests
of the person or entity filing the
motion; and 4) the interests of the
public. If the motion is granted, the
moving party may only be granted
inspection or copying as necessary
and protective orders should be
made to protect the use of the



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materials inspected or copied.

Overall the records sections of
HB 4074 become operative on
September 20, 2016.

For a detailed analysis, see
Amendments to the Juvenile Court
Records Statutes – Report of the
Juvenile Court Records Work
Group on House Bill 4074A (2016)
prepared by Caitlynn (Dahlquist)
Knopp, Law Clerk, OLC. <https://olis.leg.state.or.us/liz/2016R1/Downloads/CommitteeMeetingDocument/88494> ●

Juvenile Law Resource Center

Reminder: The Juvenile Law Resource Center (JLRC) is more than just case summaries!

Services of the JLRC, which is operated by Youth Rights and Justice, include:

1. Publishing and updating materials for use by lawyers, judges and by clients, themselves, including the Juvenile Law Reader, A Family's Guide to the Child Welfare System Adapted for Cases in Oregon Juvenile Courts; A Teen's Legal Guide to Foster Care in Oregon; A Teen's Survival Guide to Leaving Foster Care in Oregon; What Your Attorney Wants You to Know About Your Juvenile Delinquency Case; What Your Attorney Wants You to Know When You are on Probation.

At present, the JLRC is working on updating all of these publications and has completed the revisions for two of them—"What Your Attorney Wants You to Know About Your Juvenile Delinquency Case" and "What Your Attorney Wants You to Know When You are on Probation." We expect to complete the revisions on the other publications by the end of May, 2016.

2. Providing technical assistance and consultation to trial and appellate attorneys including having experienced attorneys available to provide legal and strategic advice to attorneys representing clients in juvenile dependency and delinquency proceedings and in school advocacy; providing sample motions, memoranda, and briefs as needed to support attorneys and pro se litigants; providing issue briefs on topics of importance to practitioners; and, assisting juvenile appellate attorneys by reviewing briefs and participating in moot court practice sessions.

The JLRC has developed and will release shortly an issue brief dealing



PHOTO BY ROGER CC BY 2.0

with motions to suppress after the Supreme Court's decision in *JDB v North Carolina*, 564 US 261 (2011). In the near future, the JLRC also plans to publish sample pleadings and an issue brief relating to the changes in juvenile sex offender registration post-HB 4074. An issue brief on the relationship between disability law and dependency law is also in the works.

Over the past two months, technical assistance, which includes individual consultation, case law research and the provision of sample documents has

been provided to trial and appellate counsel from ten counties covering the areas of delinquency, dependency, immigration, adult prosecution, and education law.

3. Providing training and education for attorneys, law students and other advocates in various areas of juvenile law, including dependency, delinquency, relief from sex offender registration, adult prosecution of young people, education, and immigration.

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Juvenile Law Resource Center

« *JLRC Is More* continued from previous

In the last several months JLRC has conducted two presentations about representing incarcerated parents, one on “Unaccompanied Kids in the Immigration System” and one on delinquency case law. Trainings are planned for April and May for practitioners in Linn, Yamhill and Columbia Counties and will cover one or more of the following: special immigrant juvenile status, Oregon Safety Model, working with teen clients, and collateral consequences of delinquency adjudications.

JLRC contact information
Natalie O’Neil at Natalie.o@youthrightsjustice.org is the contact person for trainings and other JLRC services.

To receive a call-back within two business days from a JLRC attorney for advice, email JLRCWorkgroup@youthrightsjustice.org and please include your name, telephone number, county and brief description of your legal question. ●

OPDS Parent Child Representation Program Off To a Promising Start

Amy Miller, Program Manager,
Parent Child Representation
Program, Office of Public Defense
Services

The Parent Child Representation Program (PCRP) was developed by the Office of Public Defense Services, and initially funded by the Oregon State Legislature in 2013, to enhance the quality of legal representation for parents and children in juvenile dependency and termination of parental rights cases. The program aims to ensure competent and effective legal representation throughout the life of the case by ensuring reduced attorney caseloads, the provision of specialized support services,

and adherence to best practices for attorney performance. The goal of the program is to achieve positive outcomes for children and families through the reduction of the use of foster care and reduced time to permanency for children. Repeated studies show that when parents are represented by attorneys with reasonable caseloads, the attorneys spend more time with parents and, as a result, both parents and children have better experiences with the child welfare system.¹

The PCRP is a pilot program modeled on the highly successful Washington State Parent Representation Program (PRP) which, over the past 15 years, has increased the speed at which children achieve permanency and reduced the use of foster care. According to a 2011 study, the children served by the Washington PRP reach reunification one month sooner and other permanency outcomes one year sooner than those not served by the program.²

The focus of the Oregon PCRP is on providing high quality representation, including a caseload limit of 80 cases, additional oversight and training requirements, and multidisciplinary collaboration including the use of case managers to provide a team-based approach to representation in 10-15% of cases. The PCRP began in Linn and Yamhill counties in August 2014 and expanded to Columbia County in 2016.

OPDS recently released the first annual PCRP report which provides detailed data across fifteen performance measures. The data is intended to reflect the quality of legal representation provided, and to assess whether the PCRP’s system changes are associated with positive effects.

Initial PCRP results are promising, and significant improvements have been achieved in the first year of the program. Three promising themes

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Juvenile Law Resource Center

«*JLRC Is More* continued from previous arise from the initial PCRCP data: improved quality of representation through practice changes, preservation of families through reunification and guardianship, and a reduction in the use of foster care.³

Improved quality of legal representation has been achieved through the use of case managers, the appropriate use of investigators and experts, caseload limits, a focus on time spent with clients, and increased attorney participation in

case-related meetings.

Within the PCRCP counties, the use of reunification and guardianship has increased. From 2014 to June 2015, the statewide rate of change in children exiting foster care to reunification was 1.7% while in the PCRCP counties over the same time period the average rate of change was 6.5%. From 2014 to June 2015, the statewide rate of change in children exiting foster care to guardianship was 12.5% while in the PCRCP counties over the same time period the average rate of

change was 111%. And, while the percentage of children discharged to adoption is decreasing within the PCRCP counties and across the state, the rate of decrease in the PCRCP counties is greater than it is across the state.

The use of foster care has declined within the PCRCP counties. On December 31, 2014, there were 7539 children in foster care in Oregon, including 118 in Yamhill County and 255 in Linn County. By June 30, 2015, there were slightly more children in foster care within the state (7571) but substantially fewer in Yamhill (105) and Linn (214) counties. The decline in the foster care population in Linn and Yamhill counties began in 2013, but the rate of decline has increased since the start of the PCRCP.

In summary, initial indicators from the PCRCP are encouraging. Although the indicators do not establish a causal relationship between improved representation

for parents and children and the metrics within this report, it is evident that the manner of legal representation of parents and children in Linn and Yamhill counties has changed for the better. For more information on the Parent Child Representation Program, check out the 2014-2015 Annual Report which is posted on the OPDS website at: http://www.oregon.gov/OPDS/docs/Reports/PCRCP_report_PDSC_Jan_2016.pdf

- 1 Laver, *Improving Representation for Parents in the Child-Welfare System*, American Bar Association Children's Rights Litigation (2013).
- 2 Courtney, Hook & Orme, *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes*, 34(7) Children and Youth Services Review 1337 (2012).
- 3 Caution should be used when interpreting the data described within the report; the PCRCP is in its infancy and there are a number of factors, in addition to the quality of legal representation, which could impact the measures contained within the report.●



PHOTO BY KARLONG CHAN CC BY 2.0

Juvenile Law Resource Center

CASE SUMMARIES

By Amy S. Miller, Deputy General Counsel, Office of Public Defense Services

Dept. of Human Services v. J.M., 275 Or App 429 (2015)

On December 9, 2015, the Court of Appeals issued an opinion in [*Dept. of Human Services v. J.M.*, 275 Or App 429](#), in which the Court affirmed the trial court's denial of parents' motion to dismiss and change of the permanency plan to adoption. The jurisdictional bases were that the child, C, sustained an unexplained physical injury in her parents' care and that parents' lack of parenting skills make them unable to provide minimally adequate care for C. The issue on appeal is whether the evidence is legally sufficient to deny the motion to dismiss and to support a change in the permanency plan. Parents requested de novo review and the Court declined de novo review because "this is

not an exceptional case" and applied the more deferential standard of review.

The Court begins with a lengthy summary of the facts of the case. Jurisdiction was established in August 2012 when C was a few months old. Parents regularly visited with C, twice per week, throughout the case. Mother and father underwent psychological evaluations in September 2012. Mother's evaluator testified that mother had a dependent personality, a poor prognosis for treatment and would choose protecting her relationship with father over her child. Father's evaluator testified that father had problems with controlling and managing anger and a high degree of defensiveness and denial. In 2013, Mother's other son, age 5 at the time, began living with mother and father and remains in their care. After the first permanency hearing, held in August 2013, the trial court's judgment changing the permanency plan to adoption was reversed and remanded by the court of appeals. And after the first permanency hearing, DHS became concerned about C's cognitive and speech delays and referred C to early intervention. C was found eligible for intensive services in several categories

and later diagnosed with autism spectrum disorder. DHS informed foster parents (who were adoptive resources) regarding the EI referral and qualification for services but failed to inform parents for 6 months. Parents worked with two different parenting skills trainers. The first skills trainer noted C was much happier with FPs, but the Court noted that the FPs were given intensive instruction on how to meet C's special needs while the parents were unaware of C's diagnoses. The second skills trainer observed improved interactions with C, but noted that father was not receptive to learning to meet C's special needs and that mother had made a small amount of progress. In May-June 2014, a parent-child relationship assessment was completed. The evaluator concluded that C's primary bond was with FPs and any disruption to that bond will create an intense amount of stress and possibly long term damage.

At the hearing on the motion to dismiss, the trial court found parents had been receiving services for 27 months with little progress made and there was still no explanation for C's injuries. Regarding the change in plan,

the trial court concluded that DHS made reasonable efforts and the parents continued to lack parenting skills and could not meet C's special needs.

The Court of Appeals first analyzed the denial of the motion to dismiss. The Court explained that **when there is a concern that the parent has not "internalized better parenting techniques," the dispositive question is not what a parent believes but what that parent is likely to do. Legally sufficient evidence links lack of insight to risk of harm.** Mother argued that the lack of explanation regarding C's injury does not present a risk of harm and that she is safely parenting her other son without DHS intervention. DHS responded that a return plan could not be developed without knowing the cause of the injuries. The Court rejected DHS' argument, holding that **caselaw does not support the proposition that there is a risk of harm any time there is an unexplained physical injury, and that the analysis requires evaluation of the totality of the circumstances.** In this case, the evidence is legally sufficient

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PHOTO BY KIRILL IGNATYEV CC BY 2.0

« *Case Summaries continued from previous* to support the court's conclusion that both jurisdictional conditions posed a present, reasonably likely risk of serious loss or injury. **And, the Court rejects mother's argument that parenting her son without DHS intervention for the past 6 months is evidence which negates risk, particularly when her son does not have special needs.**

Regarding the change in plan, parents argue DHS' 6 month delay in informing parents of C's special needs does not constitute reasonable efforts. **In determining whether DHS has made**

reasonable efforts, the court was required to consider "what benefit might reasonably be expected to flow from the services that DHS failed to provide." In this case, it was permissible for the juvenile court to infer that parents would have gained little from six months of services targeting C's special needs and therefore DHS' efforts were reasonable. And, there was sufficient evidence to support the finding that parents' progress was insufficient to make a safe reunification possible.

Therefore, the juvenile court did not err in denying the motion to dismiss

and in changing the permanency plan to adoption. The evidence was legally sufficient to support the juvenile court's findings.

Dept. of Human Services v. M.L.S./K.M., 275 Or App 569 (2015)

On December 16, 2015, the Court of Appeals issued an opinion in [*Dept. of Human Services v. M.L.S./K.M., 275 Or App 569*](#), in which the Court affirmed the trial court's judgment terminating mother and father's parental rights. The juvenile court found that termination was in the best interest of the children under ORS 419B.504 ("by reason of conduct or condition seriously detrimental to the child") and ORS 419B.506 ("parents have failed or neglected without reasonable and lawful cause to provide for the basic physical and psychological needs of the child"). The Court of Appeals declined to discuss the facts of the case, but concluded the juvenile court properly terminated the parents' rights under ORS 419B.504 and therefore did not need to reach the merits of the case under ORS 419B.506.

Dept. of Human Services v. A.A., 276 Or App 223 (2016)

On January 27, 2016, the Court of Appeals issued an opinion in [*Dept. of Human Services v. A.A., 276 Or App 223*](#), in which the Court reversed a permanency judgment changing the permanency plan from reunification to guardianship. Father asserts that, after the permanency hearing and with no notice to parties, the court took judicial notice of court reports and CASA reports, and statements made by the parties' attorneys at the permanency hearing. Parties did not have an opportunity to object. DHS and the child conceded that the juvenile court failed to comply with ORS 419A.253 because it failed to take judicial notice of the documents and statements on the record and did not give the parties an opportunity to object. The Court agreed, finding that the trial court could not permissibly rely on the information contained in the reports and statements and therefore the court erred in changing the permanency plan.

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Juvenile Law Resource Center

« Case Summaries continued from previous

Dept. of Human Services v. A.W., 276 Or App 276 (2016)

On February 3, 2016, the Court of Appeals issued an opinion in *Dept. of Human Services v. A.W., 276 Or App 276*, in which the Court reversed the juvenile court's judgment asserting jurisdiction over three-year-old A based on allegations that mother "has a substance abuse problem", mother "has been subjected to domestic violence by father" and does not believe father poses a risk of harm to the child, mother has "expos[ed] the child to a chaotic living environment and violent situations", father "has engaged in a pattern of domestic violence against mother", and father "lacks emotional and behavioral regulation resulting in the child witnessing his erratic behaviors." DHS conceded that the evidence presented was insufficient to support its allegations, that the juvenile court erred, and that the

judgment should be reversed.

The Court summarized the evidence supporting the jurisdictional allegations and, for each allegation, determined the evidence insufficient. Regarding mother's substance abuse, DHS presented evidence that mother had tested positive once for marijuana and methamphetamine and mother admitted she had used methamphetamine on two occasions in the months prior to the hearing. DHS failed to present evidence that mother's drug use had any effect on her parenting. Regarding the domestic violence allegations, DHS concedes that there was no evidence A had been exposed to verbal abuse between mother and father and no evidence that mother and father's behavior put A at risk of suffering harm that would justify jurisdiction. "To establish that a child is at risk of a harm that justifies jurisdiction, DHS must present evidence regarding the type, degree, and duration of the potential harm." There was no evidence that A had witnessed violence and even if A had seen or heard disagreements between his parents and grandfather, DHS did not present evidence of such exposure that put A at serious risk of harm or injury.

Dept. of Human Services v. Z.E.W., 276 Or App 463 (2016)

On February 18, 2016, the Court of Appeals issued an opinion in *Dept. of Human Services v. Z.E.W., 276 Or App 463*, in which the Court reversed the juvenile court's March 2015 permanency judgment which continued the court's jurisdiction over father's two children based on dependency petitions filed on December 20, 2013. Father had filed a motion to dismiss jurisdiction and, on the second day of the permanency hearing, DHS filed amended jurisdictional petitions. Father also filed a motion to dismiss the amended petition. The juvenile court denied father's motions, combined the permanency hearing with a shelter hearing on the amended petitions, and indicated that it would schedule a jurisdictional hearing on the amended petitions.

DHS conceded that the juvenile court erred in denying father's motion to dismiss the original petition because the adjudicated bases for jurisdiction as to father--that father, who resides outside of Oregon, did not have legal custody

and had not taken steps to obtain such custody—did not provide grounds for continuing jurisdiction.

The Court then considered Father's motion to dismiss the amended petition, which contained an allegation that the children are dependent for care and support on a public child-caring agency that needs the services of the court in planning for the best interest of the children that father cannot presently satisfy. At the permanency-hearing-turned-shelter-hearing, DHS presented evidence that father and his new wife have a child welfare history in California and father has an outstanding misdemeanor warrant. The court entered a shelter order based on the amended petitions. On appeal, DHS asserts that father's challenge to the juvenile court's ruling denying the motion to dismiss the amended petition is premature because jurisdictional judgments had not been entered on the amended petitions. The Court agreed, declined to review father's challenge to the order denying the motion to dismiss the amended petition, and reversed and remanded the permanency judgments based on the December 20, 2013 petition.●



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Using Developmentally Appropriate Language to Communicate with Court-Involved Youth

Issue Brief by National Juvenile Defender Center

ISSUE

For any young person, navigating the juvenile delinquency process can be daunting. Youth are required to understand, make decisions, and act on their rights and responsibilities in court. Yet court involved youth are likely to face challenges that impact their ability to understand and participate in juvenile court. The legal jargon, abstract language, and complex terminology frequently used in the courtroom

can be incomprehensible, especially for young people. Also, traditional courtroom dynamics make it difficult for youth to speak up when they do not understand a question or terminology. Not only does the use of complex language have an impact on a young person's ability to meaningfully participate and understand the juvenile court process, but it also affects a young person's perception of fairness.¹ Given these realities, it is imperative that juvenile defenders, juvenile court judges, and other delinquency stakeholders improve communication with youth by using developmentally appropriate language throughout the delinquency process to ensure youth are meaningfully engaged, understand the process, and can access the constitutional protections to which they are entitled.

NATIONAL SNAPSHOT

The medical community has long recognized that age, experience, and numerous aspects of child

development impact how youth understand, process, and retain information. However, it was not until recently that youth language and communication skills were acknowledged as an issue in juvenile court.² The majority of juvenile courts across the country employ an approach that does not adequately account for developmental considerations with regard to a young person's understanding and participation in the court process and may even punish youth for their lack of understanding.³ The prevalence of language and linguistic delays,⁴ special education needs, mental health issues, trauma, and other adverse childhood experiences among court-involved youth signals an urgent need to reform delinquency practice to embrace an evolving body of adolescent development research documenting the importance of effective language and communication skills in facilitating due process.

WORKING INNOVATIONS

Juvenile defense stakeholders have created innovative strategies to improve communication in

juvenile court using developmentally appropriate language by simplifying judicial colloquies, developing dedicated juvenile specific training for court personnel and defenders, and creating youth-friendly resources. The following sample of working innovations describes initiatives that seek to increase youths' understanding of the unfamiliar and complex language used in the delinquency context.

Developmentally Appropriate Judicial Colloquies

Washington State Judicial Colloquies Project

The Washington State Judicial Colloquies Project (Project)⁵ sought to help youth and their families better understand court proceedings and outcomes, as well as court ordered restrictions and obligations placed on the youth, with hopes that improved understanding would lead to greater compliance and more positive youth outcomes. The Project team, comprised of a diverse set of juvenile court stakeholders, rewrote and implemented judicial colloquies

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« *Language continued from previous* using developmentally appropriate language at pre-adjudication release and post-adjudication probation hearings. The colloquies developed by the Project's team were written at a 6.5 reading level on the Flesch-Kincaid Grade Level Index and have a high readability score on the Flesch Reading Ease Test.⁶ In comparison, the standardized orders used by Washington's juvenile courts are written at 12.9 grade reading level and have a very low readability score. The use of the Project's colloquies improved youths' comprehension of the conditions of pre-adjudication release and post-adjudication probation commonly ordered in Washington's delinquency proceedings. Before their use, youth understood only 30% of the conditions ordered. With the use of the Project's colloquies, youth comprehension increased to 90%. In addition to improving youth comprehension, the Project also increased stakeholder awareness of the importance of using developmentally appropriate language in juvenile court.

Training Programs and Other Educational Resources

Improving Courtroom Communication: Procedural Justice Demonstration Project in Milwaukee

The Center for Court Innovation (Center) and the National Judicial College (NJC) launched a pilot demonstration project at the Milwaukee County Criminal Court⁷ with the goal of enhancing defendant perceptions of procedural justice⁸ by improving the oral, written, and nonverbal communications used by judges in the courtroom. This project involved

facilitating a one-day judicial training on courtroom communication and developing concrete action plans for individual judges to improve communication on a daily basis. The judicial training, was developed by the Center and NJC with the assistance of a multidisciplinary working group of national experts and court practitioners⁹ who helped identify promising practices for effective courtroom communication.¹⁰ Concrete steps to implement procedural justice concepts in the courtroom are identified throughout the training and each participating judge is

required to create and submit an individualized action plan detailing the improved practices he or she would implement.¹¹

Toward Developmentally Appropriate Practice: A Juvenile Court Training Curriculum, Module 5 – Communicating with Youth: Interviews and Colloquies Module 5 of the MacArthur Foundation's *Juvenile Court Training Curriculum*¹² describes techniques for effective communication with youth involved in the juvenile court system, including respondents, witnesses, and complaining witnesses. In particular, the module covers how professionals can incorporate developmental considerations into their communications with youth, whether they are trying to get information from or impart information to youth. By teaching participants to achieve self-awareness as interviewers, this module provides participants with skills needed to interview youth in developmentally sound and culturally competent ways, including displaying an understanding of girls, youth of color, and lesbian, gay, bi-sexual, and transgender youth. In

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PHOTO BY FRED MANCOSU CC BY 2.0

« *Language continued from previous* addition, the module highlights the importance of sensitive interviewing of youth with disabilities, trauma, and mental health needs.

Juvenile Training Immersion Program, Lesson 5 – Interviewing and Counseling the Youth Client

Lesson 5 of NJDC's Juvenile Training Immersion Program (JTIP)¹³ discusses how to effectively interview and counsel youth clients. This lesson involves a combination of interactive discussions, lectures, and exercises touching on the different contexts in which client interviews may take place; the different challenges defenders face while interviewing youth clients and solutions to overcome those challenges that incorporate adolescent development research; the skills needed for effective youth client interviews in a variety of contexts; and the importance of working with parents/guardians to help them understand the need for attorney/client privacy and confidentiality with youth. During training programs based on this lesson, juvenile defenders

identify challenges associated with interviewing youth; become familiar with developmental features of adolescence that may impact the interview of a youth in a delinquency case; learn strategies to accommodate, enhance, or overcome developmental barriers to a successful interview; and practice the skills needed to establish a trusting relationship with a youth client.

Helping Educate to Advance the Rights of the Deaf (HEARD)

HEARD¹⁴ is an all-volunteer non-profit organization that promotes equal access to the legal system for individuals who are deaf and for people with disabilities. HEARD primarily focuses on correcting and preventing deaf wrongful convictions, ending deaf prisoner abuse, decreasing recidivism rates for deaf returned citizens, and increasing representation of the deaf in the justice, legal, and corrections professions. HEARD created and maintains the only national database of deaf, hard-of-hearing, and deaf-blind detainees and prisoners. HEARD's mission is to identify and remove barriers that

prevent the deaf from participating in and having equal access to the justice system. HEARD's vision is to create a universally accessible American justice system that equitably serves individuals who are deaf and hard of hearing. HEARD uses education to increase the competence, capacity, and capability of justice professionals to manage language access and ability rights concerns and to empower the Deaf Community through education and advocacy.

Youth Friendly Resources

I Got Arrested! Now What: A Guide to the Juvenile Justice System

The Youth Justice Board of the Center for Court Innovation developed and published a comic book-style guide¹⁵ to increase young people's understanding of the juvenile delinquency process in New York City. This four-page instructional guide helps its young audience navigate each step of the process from arrest through disposition and uses developmentally appropriate language to break down complex legal concepts. The guide

is now distributed to anyone under the age of 16 who is arrested on delinquency charges in the city.

The Gault Case and Young People's Right: Debating Supreme Court Decisions

In this book,¹⁶ author Laura Cohen explains how *In re Gault*¹⁷ made its way through the courts, what the Supreme Court decided, and how it has impacted children's rights. The book also includes a moot court exercise that will help readers understand the case and the workings of the court system. This book is a part of a series of books about pivotal Supreme Court cases intended for young audiences.

Why It's Important to Know Your Rights: A Guide to Young People's Rights in Juvenile Delinquency Court

To commemorate the 40th anniversary of *In re Gault*,¹⁸ the seminal Supreme Court decision that guaranteed due process rights for youth in juvenile court, NJDC published a comprehensive guide to young people's rights in juvenile court¹⁹ featuring substantive input and artwork from youth. This

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« *Language continued from previous* guide sheds light on the common pitfalls of youth who come into contact with the delinquency system, addresses frequently asked questions to common scenarios youth may face in various settings, outlines a youth's basic due process rights, and provides a glossary of commonly used legal terms.

RECOMMENDATIONS FOR REFORM

To ensure that youth are meaningfully engaged in the juvenile delinquency process, NJDC recommends that juvenile court professionals:

- Organize a working group to evaluate and assess the use of language and the accessibility of interpretation services in existing juvenile court practices;
- Train juvenile court professionals on how to use developmentally appropriate language, how to work with youth that are deaf or hard of hearing, and how to work with youth who learned English as a second language in the juvenile court setting; and
- Create developmentally appropriate judicial colloquies

and other youth friendly resources to increase youths' understanding of the juvenile court process.

CONCLUSION

Using developmentally appropriate language and ensuring language access is vital to facilitate due process. Implementing these recommendations will demonstrate an important step towards developing a juvenile delinquency system that adequately accounts for the unique individual characteristics of youth before the court. ●

Reprinted by permission of the National Juvenile Defender Center in Washington D.C., www.njdc.info. The full issue brief with complete footnotes can be found at: <http://njdc.info/wp-content/uploads/2014/10/Language-HR-10.8.14.pdf>

President Obama's Executive Action Banning Solitary Confinement for Juveniles in Federal Prison

by Afton Coppedge, YRJ Law Clerk

In January 2016, President Barack Obama announced a series of executive actions, including a ban on the use of solitary confinement for juveniles in the federal prison system, citing “devastating, lasting psychological consequences.”

In the op-ed that appeared in *The Washington Post*, the President indicated that as many as 100,000 people are held in solitary confinement in U.S. prisons and some 25,000 inmates serve months, even years of their sentences with almost no human contact.

The reform comes six months after the president, as part of a broader criminal-justice reform push, ordered the Justice Department to review how solitary confinement was being used by the Federal Bureau of Prisons. Obama's adoption of the recommendations by the Justice Department will also include banning solitary confinement for low-level infractions and the mentally ill, expanding treatment for the mentally ill, and increasing the amount of time inmates in

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PHOTO BY THE WHITE HOUSE CC BY 2.0

« *President Obama continued from previous* solitary can spend outside of their cells. These steps will affect approximately 10,000 federal inmates. The president hopes these policy implementations will serve as a model for state corrections systems to rethink their rules on the issue.

“It’s absolutely huge,” said Amy Fetting, senior staff counsel at the America Civil Liberties Union and director of the group’s Stop Solitary Campaign, of the president’s decision. “We rarely have presidents take notice of prison conditions.” In his op-ed Obama acknowledge that solitary confinement has been linked to depression, alienation, the worsening of mental illnesses and triggering of new ones. The president acknowledged the increased likelihood of prisoners in solitary to commit suicide through the story of a 16-year-old juvenile, who was held in solitary confinement for nearly two years at Rikers Island in 2010. The young man was released in 2013 without ever having stood trial or being convicted, he committed suicide at 22.

“The United States is a nation of second chances, but the experience in solitary confinement too often undercuts that second chance,” Obama wrote. “In America, we believe in redemption.” ●

California Looks to Reduce Adult Prosecution of Juveniles

A Growing Recognition These Are Children

(Posted January 28, 2016, and reprinted here with the permission of the National Center for Youth Law, www.youthlaw.org.)

Yesterday’s announcement of a California Ballot initiative to reform the state’s juvenile transfer laws and recognize the differences between youth and adults who commit

serious crimes caps off a week of significant progress for juvenile justice advocates. On Monday the Supreme Court, in [Montgomery v. Louisiana](#), reaffirmed that children are less culpable than adults because of their unique immaturity, impulsiveness, vulnerability, and capacity for redemption and rehabilitation. On Tuesday [President Obama banned solitary confinement for juveniles in federal prisons](#).

Now, in what may prove the most consequential development, California Governor Jerry Brown has introduced a [ballot initiative](#) that could mean the difference between youthful offenders being held accountable in a developmentally appropriate way that allows them to learn from their mistakes, or sending them to adult prisons where there is no rehabilitation and too often exposes the child to harm and high levels of violence.

Over the past 4 years, NCYL has worked ambitiously to end California’s practice of prosecuting children in the adult criminal justice system – by abolishing “direct file” and limiting judicial transfers



PHOTO BY VICTOR BEZRUKOVCC BY 2.0

of youth. Our work has focused on improving data collection and analysis to better understand the impact that transfer laws have on youth, working with local courts and prosecutors to reduce transfers, educating the public to raise awareness about the harms of transfer, and most importantly, coalition building to create a movement for change that includes the communities most affected by adult prosecutions of children.

Late last year, a number of juvenile justice attorneys, including NCYL’s Frankie Guzman, as well as policy advocates, and community

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« *California continued from previous* organizations, began drafting a California ballot initiative to abolish direct file and reform the judicial transfer process. After Christmas, they met with Governor Jerry Brown's staff and received indications that the governor was interested in joining the initiative effort and wanted to include additional provisions aimed at reducing the overall prison population.

Yesterday Governor Brown announced our joint initiative, *The Public Safety and Rehabilitation Act of 2016*. If qualified and passed in the November 2016 election, this measure will:

- Eliminate the power of the prosecutor to directly file charges against a child in the adult criminal justice system;
- Require a judge to hold transfer hearing in order to decide whether a youth aged 14 to 17 can be transferred to the adult criminal system; and
- Establishes a new transfer process where the District Attorney, not the youth, has the

burden to prove that the youth should be transferred to adult court.

In addition to eliminating prosecutor authority to directly file charges against children in the adult criminal justice system, the initiative also contains provisions to reduce prison overcrowding by allowing early parole for prisoners convicted of non-violent offenses and eliminates restrictions on the Department of Corrections and Rehabilitation ability to award "good time" credits to prisoners who demonstrate good behavior and engage in rehabilitative programs.

We are particularly heartened that Governor Brown will be speaking out in favor of this initiative, which has the potential to move public opinion forward on issues related to incarceration, especially, of young people. We look forward to remaining engaged with government, youth advocates, and community leaders to raise awareness about the harmful impacts our current laws have on children and poor families as well as to support efforts to pass this initiative.

If you'd like more information on this development, please contact staff attorney Frankie Guzman at Fguzman@youthlaw.org. ●

CASE SUMMARY

State v. B.B.S., 276 Or App 602 (2016)

In this per curiam opinion, the Court of Appeals found insufficient evidence to support the crimes of Unauthorized Use of a Motor Vehicle and Possession of a Stolen Vehicle, where evidence did not support a reasonable inference that the youth knew the vehicle was stolen. Nothing in this stipulated facts trial explained how the youth and his co-defendants obtained the car, whether he was present, whether he was told by the co-defendants that the vehicle was stolen, or whether he would have seen or noticed anything unusual about the vehicle. ●

RESOURCES

WEBINAR: REPRESENTING CHILDREN IN JUVENILE COURT

This 90-minute audio webinar, developed by OPDS in partnership with JCIP, is intended to provide foundational knowledge of the role of an attorney for a child in a juvenile dependency case and is designed to provide guidance to attorneys and other dependency system stakeholders. After a brief introduction, the attorney panelists analyze hypothetical situations and the applicability of the Oregon Rules of Professional Conduct and Oregon State Bar Performance Standards for Lawyers Representing Children. It is a Free 1.5 hour ethics credit and, thanks to the panelists, is thorough and well-presented.

Webinar: <http://courts.oregon.gov//OJD/OSCA/cpsd/courtimprovement/jcip/Pages/Representing-Children-in-Juvenile-Court.aspx>

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CJJR & VERA PUBLISH PAPER ON FAMILY ENGAGEMENT IN JUVENILE JUSTICE

Research shows that family involvement is essential to achieve positive youth outcomes, particularly for youth involved in the juvenile justice system. To help support this part of good case practice, the Center for Juvenile Justice Reform at the Georgetown University

McCourt School of Public Policy and the Vera Institute of Justice have published [Identifying, Engaging, and Empowering Families: A Charge for Juvenile Justice Agencies](#), a paper that lays out a model for family engagement across the continuum of a youth's involvement in the juvenile justice system.

This white paper, authored by Ryan Shanahan and Margaret diZerega of Vera, reviews the literature exploring the relationship between family

contact and short- and long-term outcomes for youth in the juvenile justice system, and identifies ways that agencies—from police through reentry staff—can better engage families in ways that promote both personal contact and active involvement in case assessment, planning, and management. The paper's three-part framework on full family partnership—rooted in a broader definition of family—focuses on identification, engagement, and empowerment.

BABY DOE

A Political History of Tragedy

By Jill Lepore

The New Yorker

February 1, 2016

<http://www.newyorker.com/magazine/2016/02/01/baby-doe>

Jill Lepore is a staff writer for The New Yorker, and a professor of history at Harvard. Her books have won many awards. This article is a stunning overview of child welfare in America.

NEW HOMELESS YOUTH LAW CLINIC (HYLC)

Partners with New Avenues for Youth

HYLC's mission is to provide advocacy, education and resources to Portland area youth through a weekly legal clinic and monthly workshops/outreach with the Portland Parent Union. The HTLC attorney meets with clients at New Avenues for Youth's drop-in center. Case managers refer youth to HYLC, or youth find the clinic through word-of-mouth. Some of the civil legal issues HYLC addresses include expungement hearings, access to biological children, locating biological parents, debt relief, housing, access to education, aging out of foster care, knowing your rights, police harassment, immigration, and more. For additional information, call 971-361-9945, or [visit and like their Facebook page](#). HYLC is a separate 501(c)(3) nonprofit that partners with New Avenues for Youth. ●



PHOTO BY LEWIS ADAMS CC BY 2.0

2016 Juvenile Justice and Child Welfare Award for Excellence: Julie McFarlane

By Angela Sherbo

The Juvenile Justice and Child Welfare Award for Excellence is a new award created to recognize the challenging nature of practicing dependency and delinquency law, the complexity of these multiparty cases, the physical and emotional toll of representing parents and children when the state has intervened, and the extraordinary effort required to effectively and compassionately do this work. Julie McFarlane has been selected to be the first recipient, and for those of us in the juvenile defense community, it came as no surprise.

Julie is richly deserving of this award. It is not an exaggeration to

say that she is the face of juvenile law in Oregon. Her interest and practice began as a law student where, along with Michael Marcus, Alan Baily and Susan Svetkey, among others, she represented youth in juvenile court and participated in a comprehensive class action regarding the conditions at what was then called the MacLaren School for Boys. That litigation resulted in a comprehensive settlement agreement dramatically improving the lives of the boys and young men incarcerated there.

Julie has been involved in, and usually had a hand in initiating, every major juvenile law reform in Oregon over the past 30 years. She served on all three work groups developing the Oregon State Bar's performance standards for juvenile practitioners, helped initiate the annual juvenile law academy, and has been a long-time member of the Oregon Youth Authority's Advisory Board.

The combination of zealous, client-focused representation and big-picture advocacy, informed by the injustices suffered by her individual clients, became a hallmark of Julie's

practice and that of the hundreds of lawyers and law students she mentored during her 35-plus years at Youth, Rights and Justice (formerly known as Juvenile Rights Project). Amy Miller, one of those attorneys and now the Deputy General Counsel at Office of Public Defense Services, said,

What I admire most about Julie is her commitment to children and youth who historically have been marginalized. Julie is a huge proponent of special services and transition planning for teens and has been instrumental in ensuring teens received needed support and education as they transitioned out of foster care. She was instrumental in creating the juvenile psychiatric secure review board which provides for care and supervision of youth offenders with serious mental conditions or defects. And, she has been a constant voice for procedural fairness, arguing that children need to be heard in court, that they need to be listened to in case planning, and their rights need to be honored.

"The face of juvenile law in Oregon."

Julie was appointed to the Oregon Law Commission in 2008 and reappointed in 2012. She participated on or chaired many complex reform project topics for the Commission, including Juvenile Aid and Assist, Juvenile PSRB, Juvenile Records, Child Abuse, Rules of Juvenile Court Procedure, Notice of Appeal in Juvenile Court, Post Adjudication Relief in Juvenile Court and Collateral Consequences of Conviction. Wendy Johnson, former Deputy Director and General Counsel of the Oregon Law Commission, said,

Ever the thoughtful and diplomatic advocate, Julie has effectively led the state in juvenile law reform for some 18

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JULIE MCFARLANE WITH ONE OF HER FOSTER SONS - PHOTO BY MARK McKECHNIE

« *Award continued from previous*

years. Many, many bills were passed by the legislature upon the recommendation of the commission under Julie's leadership. She particularly excelled at humbly and objectively bringing the bench,

prosecution and defense together to improve the law and process for the public, courts, advocates, and most importantly, the juveniles of this state.

Julie took her commitment to the youth of Oregon beyond litigation, law reform and mentorship by

personally accepting the challenge of fostering teenagers. She became a foster parent in 1995 and eventually helped raise 11 children and youth, who remain today members of her large extended family. Julie's answer to one of the questions on the foster parent application demonstrates how well she integrated her personal and professional commitment to Oregon's children. When asked, What do you do when you become angry? she replied, "I sue people."

In addition to her professional obligations and the 24/7 task of parenting teenagers, Julie devotes her time to the Green Bay Packers, to the many dogs she has had over the years and to a particular guilty pleasure—marathon shopping. She also spends a lot of time in the kitchen. She is a fantastic cook who never met a recipe she couldn't improve and never saw a three-course meal she couldn't turn into a ten-course one. Asked to say a few words about Julie at a YRJ event last summer, staff attorney Mary Kane said,

I've always been struck by her nurturing spirit—she is always

available to help her colleagues both with coverage and advice, to her clients she is beyond zealous and then there are her meals. Oh those meals!

Julie was one of the first lawyers in Oregon to recognize the importance of brain research and particularly the science of adolescent brain development in both delinquency and criminal cases. In a stunning combination of her love of food and her selfless devotion to training other lawyers, Julie obtained a jello mold in the shape of a brain and travelled around the state with a quivering mass of edible gray matter (for the foodies in the crowd, the brain had more of the characteristics of a blancmange than of jello). Julie is retiring this year. No one can take her place, but we can all be inspired by her example. ●

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Save The Date

OCDLA Annual Juvenile Law Conference, April 15–16
Juvenile Training Immersion Program, April 14–15
PLUS — Juvenile Justice and Child Welfare Award for Excellence Presentation to Julie McFarlane, April 15
The Hallmark Resort, Newport, OR

Mark your calendars for OCDLA's enhanced "Annual Juvenile Law Conference" on April 15–16 and the Juvenile Law Training Program, developed by the National Juvenile Defender Center, on April 14 and 15. Programs are under development.

Check ocdla.org for updates.

NEW AWARD — The OCDLA Juvenile Law Committee and Board of Directors is very pleased to announce the creation of a new "Juvenile Justice and Child Welfare Award for Excellence" which will be presented to Julie

H. McFarlane, founder and supervising attorney of Youth, Rights & Justice, Attorneys, at the Annual Juvenile Law Conference on the afternoon of **Friday, April 15**. Ms. McFarlane is extremely deserving of this honor. Over the past 34 years, she has represented thousands of children, parents and youth in delinquency, abuse and neglect, termination of parental rights, adoption and miscellaneous juvenile cases. Ms. McFarlane has been a leader in juvenile law reform through numerous pieces of legislation, class action litigation, public advocacy and training. She has helped develop child welfare reform, legislative advocacy, and educational advocacy programs, as well as a legal helpline for children and adults calling on their behalf at YRJ.

YRJ's 8th Annual Wine & Chocolate Gala, October 15, 2016 at The Loft on 8th in Portland, OR.

Register and learn more at:
bit.do/yrjgala. ●

the 8th Annual **Wine & Chocolate Gala**



justice is sweet

October 15, 2016

a nonprofit benefit for Youth, Rights & Justice