Juvenile Law Reader

Youth, Rights & Justice
ATTORNEYS AT LAW
An independent, not-for-profit law firm, Est. 1975

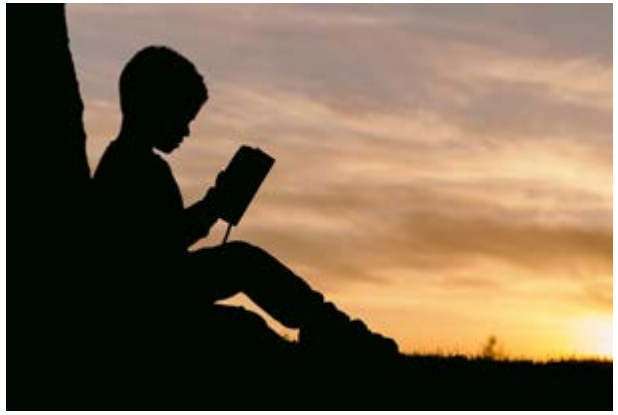
Volume 15, Issue 3 • Autumn 2018

"... a juvenile court may not adjudicate both a probation violation and a petition for a new law violation, based on the same conduct."

Court of Appeals Determines Double Jeopardy Applies to Probation Violations in Juvenile Cases

By Christa Obold Eshleman, YRJ Supervising Attorney

The Oregon Court of Appeals recently issued ground-breaking opinions that limit how many times a youth may be given legal consequences for a single bad act. First, in *State v. S.-Q.K.*, 292 Or App 836, __P3d __ (2018), *adh'd to as modified by State v. S.-Q.K.*, 294 Or App 184, __P3d __(2018), the Court of Appeals determined that "adjudicatory hearing[s]" in the juvenile double jeopardy statute, ORS 419A.190, include probation violation proceedings. Therefore, youth may not be adjudicated delinquent for new charges if they have already been sanctioned for the same conduct through a probation violation.



In *S.-Q.K.*, youth had been on probation for interfering with a peace officer and resisting arrest. One of his conditions of probation was to "[a] ttend school regularly and obey all school rules, no

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skipping." When youth was expelled, due to fighting at the school, the state filed a probation violation petition to that effect. The juvenile court adjudicated it, and continued youth's probation with additional conditions. Thereafter, the state filed a new petition for the crime of riot, based on the same acts that had led to youth's expulsion from school. Youth argued that ORS 419A.190 barred this proceeding because the probation violation proceedings involved an "adjudicatory hearing" for "allegations arising out of the same conduct." ORS 419A.190. The juvenile court held that ORS 419A.190 did not apply, and ultimately adjudicated youth on the new petition for disorderly conduct in the second degree (conforming the original charge to the evidence).

The Court of Appeals reversed, holding that the additional petition was barred under ORS 419A.190 after the conduct had already been adjudicated in a probation violation petition. The court held that the legislature intended "adjudicatory" to have its ordinary meaning—involving a judicial ruling—which would encompass probation violation proceedings.

The court's holding was based, in part, on legislative history, because the text of the statute in its context did not resolve the issue. The legislative history included testimony "that the juvenile court had 'one shot' and could not first give one disposition and later give another for the same act, stating a range of possible dispositions are available to the court upon first try and the court just has to choose the right one." 292 Or App at 836. The court also relied on the overarching rehabilitative purpose of the juvenile court, and reasoned, "If the court has in one proceeding the tools needed to address the rehabilitation of the juvenile for the conduct at issue, then a separate proceeding to address the same conduct would not serve any further rehabilitative purpose." *Id.*

The court reversed and remanded, with instructions to dismiss the petition for riot.

Subsequently, in *State v. M.B.*, 293 Or App 122, __P3d__ (2018), the Court of Appeals applied *S.-Q.K.* to the opposite factual scenario. In this case, the juvenile court first adjudicated the youth to be within the court's jurisdiction for resisting arrest, then, based on the same acts, adjudicated probation violation petitions in preexisting cases. The Court of Appeals reversed with instructions to dismiss the probation violation petitions, reasoning, "our holding in [*S.-Q.K.*] that a juvenile court probation violation proceeding is an "adjudicatory hearing" under ORS 419A.190 means that when a youth has been adjudicated within the court's jurisdiction based on certain conduct, the statute bars later probation violation proceedings based on the same conduct." *Id.* at 125-26, n. 2.

Given these two cases, a juvenile court may not adjudicate both a probation violation and a petition for a new law violation, based on the same conduct.[1]

Footnote

[1] At the time of this publication, the final appellate judgment has not issued in *S.-Q.K.*

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The Juvenile Law Reader is published four times a year by:

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Youth, Rights & Justice is dedicated to improving the lives of vulnerable children and families through legal representation and advocacy in the courts, legislature, schools and community. Initially a 1975 program of Multnomah County Legal Aid, YRJ became an independent 501(c)(3) nonprofit children's law firm in 1985. YRJ was formerly known as the Juvenile Rights Project.

The Juvenile Law Reader is distributed electronically free of charge.

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

The Interdisciplinary Legal Representation Movement Grows: ABA Conference Review

By Dana Brandon, MSW, Parent Child Representatation Program

Parents involved in child welfare and the juvenile court system are often affected by trauma and face many complex challenges. The lawyers appointed to represent them have high caseloads and sometimes lack the time and/or skills to address the complicated social needs that are present. Interdisciplinary Legal Representation is a national movement in public defense. This practice is based on integrating knowledge and skills from different disciplines to collaboratively address the needs of the clients served. It's a holistic perspective. Research has shown that quality parent's attorneys, working as a team with social workers and parent mentors, can reduce the number of children removed from their parents and for those children removed, shorten the time they spend in foster care.[1]

This Spring I had the privilege of attending the first annual American Bar Association's National Interdisciplinary Parent Representation Conference. It was held in Chicago at Loyola University Chicago School of Law. Mimi Laver, the director of the ABA's Center on Children and the Law, was the driving force in organizing this conference. Her work and commitment to high-quality legal representation has led to the creation of national parent attorney representation standards, a Center-based parent representation project, and a professional network for parent attorneys.[2] Mimi created a steering committee which included social workers, attorneys, parent mentors and others from across the nation who worked together over a series of months to develop the agenda and workshops for this inaugural conference. The conference theme was "Valuing Dignity and Respect for All Families". Legal teams representing at least 24 states from across the county, in various stages of implementing interdisciplinary models, came together for this 2-day conference to share strategies, research, and best practices. The energy was incredible! Many of us had been doing interdisciplinary work in our own states and to finally come together on a national level was inspiring! We had colleagues from the Center for Family Representation and The Bronx Defenders in New York who have been working under this holistic and collaborative model for years with great success. This conference marked the beginning of a national network of colleagues convening and sharing best practices on how interdisciplinary legal representation can foster improved outcomes for families affected by child welfare involvement.

Workshops focused on strategies to speed reunification of families, the promotion of appropriate and meaningful service plans and beneficial visitation arrangements between parents and children. We explored the impact of trauma on brain functioning and decision making and shared tools on how to effectively communicate and support clients who are in crisis. We shared practices across state lines on how to build relationships with child welfare players to achieve positive outcomes and how to utilize federal and state

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child welfare policies to support clients' needs. Since attending this conference I have consulted with attorneys across the country who are implementing interdisciplinary parent representation programs and seeking guidance from states like Oregon and Washington who have successfully rolled out this innovative model of legal representation.

Client voice

One of the most powerful sessions during the conference was a panel of parents who have navigated the child welfare system to be successfully reunited with their children. Hearing their stories and what worked for them (and didn't) inspired me to continuously seek out this feedback from the clients I work with. The importance of client voice is critical to this work. Parents are the experts on their children and their experience as they navigate these systems should encourage us to implement practices that best serve them. Parents should be empowered to make decisions and have choices and be the driver of their case. Parent perspective is critical for practitioners to understand so that we can initiate and sustain hope and reunite families safely.

Communication Strategies for Effective Teamwork

The Center for Family Representation conducted a workshop session focused on communication strategies and routines when working under an interdisciplinary model. I found this workshop to be extremely beneficial to me as an independent contractor working with attorney consortiums. While some states have programs with social workers staffed in-house, Oregon's Parent Child Representation Program model is different. When you don't work in the same building as the attorneys who are referring your cases, having established communication routines is critical to working effectively as a legal team. CFR shared practice routines that enhance interdisciplinary teamwork: sharing electronic case files and calendar invites, establishing regular communication plans and regular team strategy meetings to discuss client interventions. We learned that holistic teams work harder and smarter when all members can provide insight into these complex legal cases. This shared workload model is effective in helping clients identify and meet their goals in child welfare cases.

Self-Care for Secondary Trauma Effects

The workshop I attended on self-care and secondary trauma was by far the most impactful session of the conference for me. I have attended numerous classes and trainings on this topic and every time I walk away with a deeper understanding of how this work affects practitioners and useful strategies for self-care. We all need to remember and understand that work within the child welfare and juvenile court systems exposes us to emotionally challenging situations. In this workshop we explored how trauma impacts our work, what that can look like and how we can identify these signs of secondary trauma in ourselves and our colleagues. We discussed personal and institutional strategies to promote resilience, so we can continue to do good work. Mark R. Evces Ph.D co-facilitated this session. He currently provides evidence-based psychotherapy for first responders, workers, and volunteers who participated in the rescue and recovery response to the World Trade Center attacks of September 11, 2001. His practice tips and routines can help develop and maintain resilience.

- Make sure basic needs are met. Proper nutrition and adequate sleep are critical in maintaining our health.
- Acknowledge the small successes

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clients experience rather than feeling hopeless about bigger issues. We need to redefine our notions of success.

- Schedule more frequent debriefing sessions with colleagues to vent and strategize.
- Practice mindfulness to help focus and reduce stress with free apps like Calm or Headspace.
- Engage in self-care. This work takes energy and we need to find ways to restore that energy, so we can continue to do good work. Model this practice for others.
- Take time to disengage from the work and impose boundaries. Take vacations and spend time doing things you enjoy.
- Stay in contact with the meaning of the work. Think about the personal reasons you choose to do this work.
- Normalize by talking about the effects of this work with colleagues. Validate individual experiences and don't dismiss or minimize how secondary trauma can impact each of us individually.

Juvenile practitioners should remind themselves of these critical self-care strategies offered by Dr. Evces so that we can maintain our health, sustain our practice, promote resilience and minimize burnout.

Expand Your Practice: Attend the Next ABA Conference

I am so honored to have had the opportunity to attend this conference. I came back with innovative ideas to integrate into my work and share with my colleagues. I have a deeper understanding of how to do this work effectively and protect myself from the secondary trauma that inevitably affects those of us in this field. I can't wait to attend the ABA's next Interdisciplinary Legal Representation conference. I would encourage any practitioner to attend who is interested in learning more about how this model can enhance your legal practice. I came away with a deeper understanding that all systems must recognize the foundational belief that children need their parents, that parents are the experts on their children and that providing high-quality, holistic representation can improve outcomes for families involved in child welfare. This model provides us with the tools we need to help our clients find their paths to healing. In a system with high child welfare staff turnover, complex parent needs, lack of appropriate placements and accessible housing, having social workers assist attorneys in problem solving can make a significant difference and improve family outcomes. Interdisciplinary collaboration is the key.

Please visit the ABA website for more information about future conferences, join the list serv and find parent attorney resources including Oregon-specific parents' rights sheet and other best practice tips.

Footnotes

[1] ABA National Project to Improve Representation for Parents: Investment that Makes Sense https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf

[2] https://www.americanbar.org/groups/child_law/staff1/team/mimi-laver.html

Why Do Some Children in Foster Care Move More than Others?

A Summary of Research in Illinois

By Mark McKechnie, MSW, YRJ Executive Director

Researchers from the University of Illinois published findings on a review of foster care placement changes among children in the custody of the Illinois Department of Children and Family Services (DCFS) during 2006-07. The sample included 3,484 children in either traditional or kinship foster care. Within the sample were 261 children classified as "Movers," meaning those who had experienced three or more placements in an 18-month period. The remaining children were considered "Stable." The study found that the commitment to permanency made by caregivers and the child's psychiatric diagnosis, or lack of one, to be the most significant

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characteristics differentiating the two groups.

The "Multiple Move Study: Understanding Reasons for Foster Care Instability" utilized propensity score matching (PSM). In this instance, researchers selected the 11 children with the greatest number of moves, plus 50 children selected at random from the "mover" group. Then they selected 61 children from the stable placement group whose characteristics most closely matched those of the mover group, attempting to control for factors such as race, age, length of stay in foster care, and previous moves.

Using this methodology, the researchers found that "caregivers are key to stability." The willingness of caregivers to commit to permanency was a major distinguishing factor. "93% of caregivers in placements in the stable population were willing to commit, compared to 42% of caregivers in placements in the mover population." (p. 5)

In addition, children in the stable population were much more likely to be placed with relative (kin) providers than children in the mover group (67% vs. 26%).

Psychiatric diagnosis was another distinguishing factor between the groups. Twelve children from the mover group had a psychiatric diagnosis at the start of the study period, versus seven from the stable group. However, the small numbers were not sufficient to establish statistical significance. The greater difference was in the children who received a psychiatric diagnosis during the study period: "19 of the mover group versus 3 of the stable group." The combined totals of those diagnosed prior to the study with those diagnosed during the study period led to statistically significant differences between the mover group and the stable group: 51% versus 16% had a psychiatric diagnosis.

Researchers found evidence that instability leads to mental health problems for some children and that psychiatric issues lead to instability for others.

Considering other factors, the researchers did not find significant differences between the two groups based upon the number of children in the foster home or placement with siblings. There was a significant difference in the likelihood of children from the stable group to achieve legal permanence (33%), compared to the children in the mover group (8%).

Comparing the two groups, there were only four placement moves among the 61 children in the stable group during the 18-month study period. Conversely, the 61 children in the mover group experienced 197 moves during the study period.

After identifying characteristics of the child and the placement that related to stability or instability, the researchers looked at the precipitating factors for the actual moves. They divided the placement moves into three categories: System- or Policy-Related; Foster Family-Related or Child Behavior-Related. System- or Policy-Related moves included reasons such as moving a child to be with a relative or sibling or to achieve permanency, moving children between levels of care, or moving a child into or out of a temporary placement (e.g., shelter placement).

Examining the reasons for placement changes among the mover group, the researchers found:
Foster family-related moves accounted for the largest percentage of moves during the review period (36%), followed by child behavior-related moves (34%). Of the foster family-related moves during the review period, 52% were the result of inappropriate behaviors on the part of the foster parent, and 48% were at the request of the foster parent due to changes in their life situation. (p. 8)

In the discussion of the findings, the researchers found that the motivations of the caregiver are a

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key contributor to stability. When caregivers provide unconditional care, advocacy and love for the child, and have a commitment to permanency, placement stability is substantially increased.

The authors of the study concluded: *This study suggests that caregivers are central to stability for children in foster care. More attention should be given to how foster parents are recruited, trained and supported in their important work of caring for foster youth and children.* (p. 15)

Source

Rolock, N. et al. (2009). Multiple move study: Understanding reasons for foster care instability. Urbana, IL: Children and Family Research Center. Retrieved online May 14, 2018: https://cfrc.illinois.edu/pubs/rp_20091101_MultipleMoveStudyUnderstandingReasonsForFosterCareInstability.pdf

ABA Center on Children and the Law: Reunification Heroes

Chiho Sakamato Gunton

By Krista Ellis, Washington College of Law, J.D. Candidate 2019

Chiho Sakamato Gunton was nominated as a Reunification Hero by a colleague who has witnessed Chiho's persistence and solution-oriented approach when working with families toward reunification goals.

Chiho uses her experience as a permanency social worker with the Department of Health and Human Services to better serve families in her current role as a case manager with family defenders at the Oregon Parent Child Representation Program. Chiho's colleagues credit her with being a catalyst for family reunification.

Tell me something interesting about yourself.

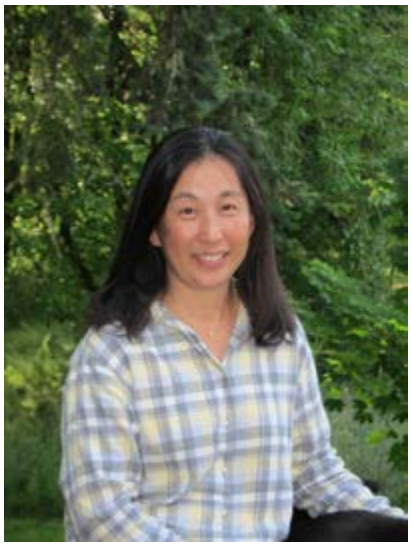
I have a background in outdoor education. I grew up in Japan. I moved to Australia and eventually to America where I worked as a wilderness therapy field instructor in Utah. I liked working with people and helping them, that's what got me interested in social work.

How long have you worked in child welfare? In what capacities?

I began working in child welfare right out of graduate school in 2009. I started working for the Department of Health and Human Services (DHS) in California as a permanency social worker. Later, I did some work with independent living with transitional youth. Then I worked as a permanency social worker in Oregon before transitioning to my current job. Now I work for Oregon's Parent Child Representation Program as a case manager for family defenders.

Can you briefly describe the Parent Child Representation Program?

It started as a pilot program around 2014. They added case management in 2015 with two counties. The county that I work within, Linn County, started with seven attorneys



and three case managers. The program grew and more counties were added. Typically, attorneys refer clients to us case managers. We find services in the community and work with parents to reach their goals.

You were previously a DHS social worker. How does your work with the Office of the Public Defender compare to that?

Both are social work but the jobs are different in many ways. The goal is the same, the goal is to help reunify families. Many see DHS as more of an authority figure. Some parents have difficulty connecting to you when you have removed their children. Now, working at with

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family defenders, I can more easily build a relationship with the parents.

What do you believe are the benefits to having a case manager in addition to a DHS worker?

It is a benefit to the parent. They feel that they have a social worker that they can trust without a doubt. The clients know that I hold their confidentiality. They know that they can speak freely with me about their case. This is helpful for unseen problems that the family may need assistance in addressing.

It benefits DHS as well. Sometimes a DHS worker does not have the trust of a client. As a case manager for the parent, I can represent the client's story on their behalf. Due to my experience working with DHS, I can communicate with the client to ensure that they understand what DHS wants or explain the policies behind the requirements. Sometimes my clients may not explain things the best way so I can be in the middle to assist them when talking to their attorney or to DHS.

Can you describe one case that impacted your view of reunification?

I worked with a father in a case that was brought in because of an incident of domestic violence between the parents. Apparently, the parents got into a fight in front of the children. A fight in which the father was the aggressor. There were underlying issues including poverty, neglect, and substance abuse. The father was very angry; he was mad at DHS. He didn't understand the DHS intervention or why they requested him to take anger management classes.

Despite any problems, this family was very close. The parents had two teenagers, a son and daughter. This dad never missed a visit while his children were in foster care. I worked with the family on several problems, including housing. The family was homeless so I helped them apply for housing. After two years, we finally got the family housing. The children were finally going to reunify with the parents. The son moved back in with the family but the daughter enjoyed her foster home and wanted to stay. The father knew that he was never going to change the mind of a teenage girl so they agreed on guardianship with the foster family. Then the case was closed.

After the case had been closed for a while, I received a call from that father. He told me that the daughter had come home and wanted to stay. He didn't know what to do because she had run away from her guardian. I was able to talk to the attorneys and they altered the guardianship to allow the daughter to return home. The family is all back together again and now they are doing fantastic.

What advice would you give to other professionals who work in child welfare?

I strongly believe that it's a relationship. You have to know that you are working with a human being. Respect is highly important. We never know everything, we never know the full story. We all have different experiences. Fear is not their fault. Some of these people have experienced trauma. Having a child removed is a traumatic experience. We are there to help. Trust is important. We have to build the relationship to work effectively.

What is one thing you do in working with parents to increase the likelihood of reunification?

Each family is different. I usually remind them about their strengths. These families are not in an easy situation. Sometimes they have a hard time following what DHS says. I usually ask families– "What is most important to you? What makes you stronger?" Usually they know what they need to do– whether it's to stop using drugs, find housing, etc. Asking them makes them think about it and talking through it makes it seem more manageable.

What program do you find most beneficial to helping parents reunify?

This program [Parent Child Representation Program] and good family defenders. Attorneys here listen to clients, fight for clients, and work with DHS to assist their clients. The attorneys and case managers here are dedicated to helping Linn County.

What programs would you like to see added to make reunification more likely or successful?

We need more housing programs. There is not enough housing. It is basic need. We say this all the time, but we do not have enough shelter.

We could use improvements for transitional housing for those with substance abuse problems. There

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are some programs out there but typically they require a clean urine analysis before clients can get in. The problem is that a lot of people are not at that point but they need the housing. The stability could be a big help to get them clean.

Is there anything else that we should highlight?

This model is working. Amy Miller, the Deputy Director for the Office of Public Defense Services, has put forth a lot of hard work. We have such a great support system. I hope that this program continues to grow and other states see the work too.

Family First Prevention Services Act (FFPSA)

This article is reprinted here with the permission of the National Conference of State Legislatures.

On Feb. 9, President Donald Trump signed the Bipartisan Budget Act of 2018 (H.R. 1892) to keep the government funded for six more weeks and pave the way for a long-term budget deal that will extend to the end of the fiscal year. Included in the act is the Family First Prevention Services Act, which has the potential to dramatically change child welfare systems across the country.

One of the major areas this legislation seeks to change is the way Title IV-E funds can be spent by states. Title IV-E funds previously could be used only to help with the costs of foster care maintenance for eligible children; administrative expenses to manage the program; and training for staff, foster parents, and certain private agency staff; adoption assistance; and kinship guardianship assistance.

Now states, territories, and tribes with an approved Title IV-E plan have the option to use these funds for prevention services that would allow "candidates for foster care" to stay with their parents or relatives. States will be reimbursed for prevention services for up to 12 months. A written, trauma-informed prevention plan must be created, and services will need to be evidence-based. The U.S. Department of Health and Human Services (HHS) expects to release guidance on service eligibility before Oct. 1, 2018.

The Family First Prevention Services Act also seeks to curtail the use of congregate or group care for children and instead places a new emphasis on family foster homes. With limited exceptions, the federal government will not reimburse states for children placed in group care settings for more than two weeks. Approved settings, known as qualified residential treatment programs, must use a trauma-informed treatment model and employ registered or licensed nursing staff and other licensed clinical staff. The child must be formally assessed within 30 days of placement to determine if his or her needs can be met by family members, in a family foster home or another approved setting.

Certain institutions are exempt from the two-week limitation, but even they are generally limited to 12-month placements. Additionally, to be eligible for federal reimbursement, the act generally limits the number of children allowed in a foster home to six. Although the new programs are optional state officials will need to review their policies and develop state plans that are in line with the latest federal guidelines.

For a refresher on child welfare financing, check out NCSL's Child Welfare Financing 101 page. Below is a more in-depth look at the Family First Prevention Services Act.

TITLE VII—Family First Prevention Services Act | Subtitle A—Investing in Prevention and Supporting Families

SEC. 50702. PURPOSE: "The purpose of this subtitle is to enable States to use Federal funds available under parts B and E of title IV of

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the Social Security Act to provide enhanced support to children and families and prevent foster care placements through the provision of mental health and substance abuse prevention and treatment services, in-home parent skill-based programs, and kinship navigator services."

PART I—Prevention Activities Under Title IV–E

States Have the Option to Use Title IV-E to Prevent Children's Entry into Foster Care

Allows the use of Title IV-E funds for the following services to prevent the placement of children and youth into the foster care system.

- In-home parent skill-based programs.
- Mental health services and substance abuse prevention and treatment services.

Title IV-E funds can only be used in this capacity for 12 months for children who are "candidates for foster care" and for pregnant or parenting foster youth. The act further clarifies that children and youth under the guardianship of a kin caregiver are also eligible for these funds.

Eligible services must meet certain requirements:

- The service must be described as part of a state's plan.
- There must be a manual outlining the components of the service.
- The service must show a clear benefit.
- The service must meet one of the following three thresholds:
  - Promising Practice: Created from an independently reviewed study that uses a control group and shows statistically significant results.
  - Supported Practice: Uses a random-controlled trial or rigorous quasi-experimental design. Must have sustained success for at least six months after the end of treatment.
  - Well-supported treatment: Shows success beyond a year after treatment.

The secretary of the Department of Health and Human Services will be responsible for creating a clearinghouse of approved services by October 2018. These services will most likely be similar to those identified through the California Evidence-Based Clearinghouse on Child Welfare

The secretary may waive the evaluation requirement for a practice if they find the practice to be effective.

States that choose to use Title IV-E funds must demonstrate maintenance of effort of state foster care prevention spending at the same level as their 2014 spending.

States with fewer than 200,000 children for the year 2014 may opt to base their maintenance of effort on their expenditures for 2014, 2015 or 2016.

This section also extends the matching rate from the federal government for prevention services to 2026. The Federal Medical Assistance Percentage will be applied beginning in 2027.

PART II—Enhanced Support Under Title IV–B

Improving the Interstate Placement of Children and Extending Substance Abuse Partnership Grants

Funding authority is provided to support states in establishing an electronic interstate processing system for the placement of children into foster care, guardianship or adoption. It also creates a $5 million grant fund to improve interstate placement of children.

FFPSA extends regional partnership grants for five years and allows the grants to be used on a statewide basis and for organizations that are not state agencies.

PART III—Miscellaneous

Model Licensing Standards for Kinship Care Homes and Preventing Child Maltreatment Deaths

States must demonstrate that they

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are in line with newly established national model licensing standards for relative foster family homes.

Tracking and Preventing Child Maltreatment Deaths

States must create a plan and fully document the steps taken to track and prevent child maltreatment deaths in their state.

PART IV—Ensuring the Necessity Of A Placement That Is Not In A Foster Family Home

Focus on Family Foster Care: Major Reforms to Congregate, Residential and Group Care

Federal law defines a reimbursement-eligible family foster home as having six or fewer children, and a reimbursement-eligible child care institution as having 25 or fewer youth.

This section places a limit of two weeks on federal payments for placements that are not foster homes or qualified residential treatment programs. This rule takes effect Oct. 1, 2019.

An exception to this rule is made under the following circumstances:

- Juvenile justice system (states may not incarcerate more juveniles under this provision).
- Prenatal, postpartum or parenting support for teen moms.
- A supervised setting for children 18 or older.
- High-quality residential activities for youth that have been victims of trafficking or are at risk of it.

States may delay the implementation of this part of the legislation for two years, but if they choose to do so they will delay funding for prevention services for the same length of time.

For a setting to be designated as a qualified residential treatment program, it must meet the following qualifications:

- Licensed by at least one of the following:
  - The Commission on Accreditation of Rehabilitation Facilities.
  - Joint Commission on Accreditation of Healthcare Organizations.
  - Council on Accreditation.
- Utilizes a trauma-informed treatment model that includes service of clinical needs.
- Must be staffed by a registered or licensed nursing staff.
  - Provide care within the scope of their practice as defined by state law.
  - Are on-site according to the treatment model.
  - Are available 24 hours a day and seven days a week.
- Be inclusive of family members in the treatment process if possible, and documents the extent of their involvement.
- Offer at least six months of support after discharge.

Within 30 days of a youth being placed in a qualified residential treatment program, an age-appropriate and evidence-based review must be performed to determine if a qualified residential treatment program is the best fit for them.

The court must approve or disapprove the placement within 60 days and continue to demonstrate at each status review that the placement is beneficial to the youth. The state must also show that progress is being made in preparing a child to be placed with a family, in a foster family home or with an adoptive parent.

After 12 consecutive months or 18 nonconsecutive months, the state must submit to the secretary of health and human services approval for continued placement from the head of the state child welfare agency

States must develop a plan to prevent the enactment or advancement of policies or practices that would result in an increase in the population of youth in a state's juvenile justice system. States are also required to train judges and court staff on child welfare policies, including limitations on use of funding for children placed outside of a foster care family.

By 2020 the Department of Health and Human Services will perform an assessment of best practices

Starting Oct. 1, 2018, states are required to conduct criminal history and child abuse and neglect registry checks on any adults working in a childcare institution.

PART V—Continuing Support For Child And Family Services

Recruiting and Keeping Foster Families: Increased Financial Support through 2022

A one-time, $8 million competitive grant will be made available through 2022 to support the recruitment

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and retention of high-quality foster families.

Extending John H. Chaffee Foster Care Independence Programs to Age 23

States may use John H. Chafee Foster Care Independence Program funds for youth up to 23 years of age who have aged out of foster care if that state has extended federal Title IV-E funds to children up to age 23 They may also extend education and training vouchers up to age 26, but for no more than five years total.

PART VIII—Ensuring States Reinvest Savings Resulting From Increase In Adoption Assistance

The Fostering Connections to Success and Increasing Adoptions Act, signed in 2008, set the income test for federal adoption assistance payments to gradually expire by 2019. Teens were to be the first group to be exempt from the income test and this exemption would gradually extend to newborns.

With the FFPSA this process is halted at 2-year-olds until 2024. The federal Government Accountability Office is tasked with conducting a study to determine how states are using the money they saved from the exemptions. The income test for federal adoption assistance payments will end in October 2024.

This legislation was championed by Oregon's own Senator Ron Wyden. Under the leadership of the Oregon Senate Human Services Committee, a workgroup has been established to address the implementation of the Family First Prevention and Services Act here in Oregon.

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JLRC Contact Information

Alison Roblin 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 the workgroup and please include your name, telephone number, county, and brief description of your legal question.

CASE SUMMARIES

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Dependency

Department of Human Services v. T.L.H.S., 292 Or App 708, ___ P3d ___ (2018).

Judge Aoyagi wrote the majority opinion, which Judge DeHoog joined.

In this appeal of a jurisdictional judgment by mother, the Court of Appeals found that the record was legally insufficient to support jurisdiction because by the time of the jurisdictional hearing child was no longer at current risk of serious loss or injury. There were two jurisdictional bases at issue at the hearing: 1) mother failed to protect the child after she made allegations of sexual abuse; and 2) that mother's mental health, if untreated, interfered with her ability to safely parent.

The majority and dissent both noted DHS's failure to create a record that "expressly identif[ied]" the harm the child was reasonably likely to suffer due to parents' conditions and circumstances. In order to decide the case, the majority identified the potential harm to the child as "ongoing risk of abuse from which mother would fail to protect her, in part due to mother's mental health issues."

The Court of Appeals found the two jurisdictional bases to be "intertwined" and discussed them collectively. It noted that, due in part to mother's mental health and own experience with abuse, after the child disclosed sexual abuse by her father, mother rather than reporting the abuse herself, asked her daughter to report the abuse at school. Mother then continued to allow the child to stay with father pursuant to the parenting agreement for two to three weeks before the children reported the abuse to school officials exposing the child to unnecessary risk of harm. (At the time of the hearing, the court noted DHS expressed "very recent" concerns about domestic violence in mother's home.) Nonetheless, six months later,

> "[a]t the time of the jurisdictional hearing, * * * [child's] circumstances had changed. Mother had stopped drinking, which resulted in DHS dropping [a] jurisdictional allegation regarding substance abuse. Mother also had taken substantial steps to improve her mental health, including fully engaging in therapy and taking medication, which is especially significant because the jurisdictional basis was that "mother's mental health problems, *if left untreated*, interfere with her ability to safely parent." Finally, mother expressed remorse about how she had handled the situation in February and testified that she would call the police or DHS immediately if a similar situation arose in the future. Meanwhile, father was out of the picture for the foreseeable

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> future (and possibly the rest of [child's] childhood), and DHS did not identify anyone else in [child's] life as posing a risk of abuse."

Based on those facts, the court found that "the evidence was not "legally sufficient to permit the trial court to determine that ORS 419B.100(1)(c) was satisfied," explaining:

> "It is always possible that someone who makes a mistake once will repeat it in the future. On this record, however, there was insufficient evidence to establish the alleged bases for jurisdiction. * * * [T]he evidence was insufficient to establish that, at the time of the hearing, mother's "failing to protect [child] when mother became aware of the allegations against father" six months earlier exposed [child] to a "current threat of serious loss or injury that [was] likely to be realized." * * * [The other] basis for jurisdiction was that "mother's mental health problems, if left untreated, interfere with her ability to safely parent." It is undisputed, however, that mother's mental health issues were being treated at the time of the hearing—and successfully so. The juvenile court may have been correct that five or six months of successful treatment is not enough to fully resolve mental health issues, but that was not the issue before the court. Complete resolution of mental health issues is not a prerequisite to parenting a child without DHS supervision. The court's conclusory statement that mother's failure to protect J from sexual abuse by father in February was "capable of being repeated, I believe, in relatively short order" is nothing more than speculation on this record."

Judge Hadlock dissented.

Emphasizing the standard for review in dependency jurisdiction cases, the dissent stated: "our task is to determine whether the *record* supports the juvenile court's disposition not whether we find the court's explanation for that disposition persuasive." Noting that no law requires a juvenile court to make detailed on-the-record factual findings to support a finding of jurisdiction, the dissent "set out the facts in the light most favorable to the juvenile court's exercise of jurisdiction, not limiting [itself] to those facts that the juvenile court discussed when it announced its ruling and not focusing on the court's expressed rationale for its decision." The dissent then concluded:

> "Given the totality of those circumstances, I would hold that DHS met its burden to prove that the child's condition and circumstances at the time of trial presented a serious risk of harm that was reasonably likely to be realized. * * * At some point, when a parent's mental health problems result in the parent's profound inability to appreciate risks or to act protectively toward a young child in the face of extreme danger, that inability—in itself—presents a sufficient threat to justify an exercise of dependency jurisdiction."

Department of Human Services v. J.H., 292 Or App 733, ___ P3d ___ (2018).

In this appeal of a jurisdictional judgment by mother, the Court of Appeals found that the record was legally insufficient to support jurisdiction because the evidence failed to show that any risk of injury or loss child faced was serious. There were two jurisdictional bases: 1) that substance abuse interfered with mother's ability to safely parent; and 2) that mother exposed the child to domestic violence.

With regard to the allegation of substance abuse, the Court of Appeals found the evidence insufficient because it has "repeatedly recognized that a parent's substance abuse alone is not sufficient to assert jurisdiction, even when a child is aware of it," explaining:

> "[T]he state may not insert itself into a family and remove a child anytime that a parent uses drugs. Under ORS 419B.100(1)(c), the juvenile court may assert

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> jurisdiction only where the evidence is sufficient to establish 'a current threat of serious loss or injury that is likely to be realized.' Here, DHS acknowledges that there is no evidence that mother failed to provide adequate care to [child] due to drug use. The only harm that DHS has identified as resulting from mother's recent drug use is that [child] was "aware" of it (due to a comment by a third party) and, as a result, wondered at times whether that was why mother looked "tired" or did not laugh as much as she used to."

With regard to the allegation of domestic violence, the Court of Appeals found that the evidence did not show a "risk of *serious* loss or injury" to the child. The court articulated:

> "Given the frequency and intensity of mother and [her partner's] arguments, the relatively prolonged time period over which they had been occurring, and the evidence that the arguments did have some emotional impact on [child], this is a close case. * * * There is no evidence that [child] was at risk of physical injury in mother's home, either directly or indirectly, as a result of mother and [her partner's] arguments. * * *
>
> "Here, the alleged risk of harm to [child] was emotional or psychological. We do not discount the possibility that, even in the absence of physical violence, exposure to frequent and severe verbal altercations between parents or other adults in a child's home may, in some circumstances, give rise to a threat of 'serious loss or injury' in the form of serious emotional or psychological harm to a child. In order to establish such a circumstance, however, DHS must offer evidence, not only argument or conclusory statements."

The Court of Appeals concluded by considering "whether the allegations in the petition are *collectively* sufficient, if proven, to establish jurisdiction." The court concluded that "this is not a case where one jurisdictional basis feeds another," because the only evidence linking the two bases was the 10-year-old child's speculation (only after learning of mother's relapse) that mother and her partner's fights occurred because of mother's drug use.

Department of Human Services v. M.S.W., 293 Or App 177, ___ P3d ___ (2018).

In this appeal of a permanency judgment by mother, the Court of Appeals, relying on its recent decision, *Dept. of Human Services v. J.M.T.M.*, 290 Or App 365, 415 P3d 1154 (2018), explained that at a permanency hearing:

> "[']the record must contain sufficient evidence to permit a rational inference that none of the other permanency plans contemplated by the permanency statutes would better meet the child's needs under the circumstances.' In this case, DHS presented no evidence suggesting that, under the circumstances, guardianship was not a better plan for [the child] than adoption."

For that reason, the Court of Appeals held that the juvenile court erred when it found that there was no compelling reason not to terminate mother's parental rights under ORS 419B.498(2)(b) and changed the permanency plan from reunification to adoption.

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Department of Human Services v. J.E.R., 293 Or App 387 (2018).

In this appeal of a permanency judgment by mother, the Court of Appeals found that the juvenile court erred when it found that DHS had made reasonable efforts to safely return the children to her and changed the permanency plan from reunification to adoption.

The procedural facts were undisputed. DHS filed the petition in July 2016, but the court did not enter the judgment of jurisdiction and disposition until April 2017, nearly nine months later. Mother refused to participate in the services DHS offered until the entry of the jurisdictional judgment, but after its entry mother began to engage. She completed a psychological evaluation, began the recommended treatment modality (dialectical behavioral therapy (DBT)) and began sexual abuse treatment for a non-offender. Five months later, in September 2017, the court held a permanency hearing.

At the permanency hearing, the juvenile court noted that it was unusual for a parent to contest disposition, as mother had done in this case, but found that the nine-month delay between petition and jurisdictional judgment was attributable in some way to all parties. The juvenile court then considered all of the services DHS offered mother, including those offered pre-jurisdiction that mother refused, and found that DHS had made reasonable efforts to reunify the family.

The Court of Appeals reiterated that: 1) "issues of parental unfitness established in the jurisdictional judgment provide the framework for the juvenile court's analysis of DHS's efforts—as well as its analysis of the parent's progress to make it possible to return the child home safely"—the key determinations made at the permanency proceeding. And that, "'DHS's efforts are evaluated over the entire duration of the case, with an emphasis on a period before the [permanency] hearing sufficient in length to afford a good opportunity to assess parental progress.'" (citing recent case *Dept. of Human Services v. S.M.H.*, 283 Or App 295, 388 P3d 1204 (2017)).

Based on the "particular circumstances" of this case, the Court of Appeals then concluded:

> "Because mother contested the need for services and the jurisdictional judgments were delayed for nine months, the juvenile court erred in concluding that it could consider the time period before the entry of the jurisdictional and dispositional judgments as part of a "period before the [permanency] hearing sufficient in length to afford a good opportunity to assess parental progress." Although that time period was long, it provided no opportunity for the court to assess mother's progress because mother disputed that she needed services and the court had not yet resolved the dispute. Under those circumstances, DHS's efforts during that period were not appropriately part of the "reasonable efforts" analysis[.]"

The Court of Appeals also found that "DHS's efforts made only *after* the entry of the jurisdiction and disposition judgments were insufficient for the trial court to conclude that DHS made "reasonable efforts" * * * given the short time frame that the court had to assess mother's progress and mother's limited opportunity to engage in the services offered." (Emphasis added).

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Dept. of Human Services v. R.A.B., 293 Or App 582, __ P3d __ (2018)

In this termination of parental rights appeal, the Court of Appeals addressed only mother's argument that the juvenile court erred by excluding testimony of an expert witness, Poppleton, as a discovery violation sanction for not providing a report from the witness. Poppleton had never actually prepared a report, and mother argued that she was not obligated to ask her expert to prepare a report. DHS argued that mother did have an obligation to require her expert to prepare a report.

The Court of Appeals held that ORS 419B.881(1)(c) does not include an obligation to create a report; it only requires disclosure of any reports that were created.

The court found, however, that the error was harmless because Poppleton's testimony would have been inadmissible for another reason—as impermissible vouching. Poppleton would have testified that interview responses of the children should be viewed with skepticism because of problems with the interview techniques. The court applied its decision in *State v. Black*, 289 Or App 256, 407 P3d 992 (2017), rev allowed, 363 Or 104 (2018), holding that such testimony about "*how* particular interviews failed to apply the appropriate standards that 'protect against untruths,' as opposed to general testimony about what those standards are, is an inappropriate commentary on the evidence." 293 Or App at 590-1.

Delinquency

State v. D.R.M., 292 Or App 887, ___ P3d ___ (2018).

In this appeal by youth of the juvenile court's dispositional order, the Court of Appeals, relying on its recent decision, *State v. B.H.C.*, 288 Or App 120, 404 P3d 1110 (2017), found plain error when the juvenile court authorized the juvenile department to detain the youth for up to eight days at the its discretion. The court explained:

> "'The text, context, and legislative history of ORS 419C.453 all indicate that the legislature intended to authorize the use of detention to punish a youth for a probation violation only in the manner provided for by that statute,' which contemplates a juvenile court hearing and a decision by the juvenile court whether detention is appropriate. [It is an] error to impose a probation condition that 'authorizes someone other than the juvenile court to decide whether detention should be used to punish a probation violation, and * * * authorizes that decision to be made without a hearing before the court.'"

State v. M.B., 293 Or App 122, ___ P3d ___ (2018).

See cover story.

State v. S.-Q. K., 292 Or App 836, ___ P3d ___ (2018).

See cover story.

Save the Date

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