

# Juvenile Law Reader

Youth, Rights & Justice

ATTORNEYS AT LAW

An independent, not-for-profit law firm, Est. 1975

Volume 16, Issue 3 • Autumn 2019

## Providing Educational Stability Advocating for Oregon's Youth in Foster Care

*By Natalie Hollabaugh, YRJ Law Clerk, Lewis & Clark Law 2L, Former Educator*

Eleven thousand, four hundred and forty-five Oregon youth spent at least one day in foster care last year—a number equivalent to nearly a quarter of the students in Portland Public Schools.<sup>1,2</sup> Being in foster care can cause a disruption in not only the living environment, but also with the social and academic arenas familiar to a child. High rates of mobility during school-aged years has been shown to have a negative impact on overall school performance, and specifically results in lower graduation rates, higher special education services rates, less post-secondary participation, and less schooling time in general.<sup>3</sup>

The American Bar Association Center on Children and the Law, Education Law Center, and Juvenile Law Center have developed a Blueprint for Change: Education Success for Children in Foster Care.<sup>4</sup> The report consists of eight goals advocates can focus on to help youth in foster care achieve educational stability for the long term outcome of improving education access, and, in doing so, improving outcomes overall. They are designed to help guide legal advocates and provide tips for practice. The goals for youth in foster care are outlined below and include relevant data specific to Oregon that further highlights the importance of advocacy for youth in foster care as it pertains to their education.

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**“As the youth’s attorney,  
remaining invested in  
a client’s education is  
critical”**



Image courtesy of Pexels

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## Goal 1

***Youth are entitled to remain in the same school when feasible.***

Over half of the youth in foster care in Oregon are school aged; however, 40% of all foster youth in Oregon last year had more than two foster placements, something known to cause potential disruption in the school environment.<sup>5</sup> Oregon is above the national standard in placement stability rate, indicating youth in foster care here have more placements than they should.<sup>6</sup> When children enter foster care, they are required to remain in the school and school district they attended prior to placement in foster care.<sup>7</sup> These educational placements are defined as the “school of origin” and “school district of origin.”<sup>8</sup> To change the school or school district of origin, the court must find that it is not in a child’s best interests to remain in the school of origin.<sup>9</sup> Once this finding is made, the new school and school district of residence become the school of origin, where the child should remain throughout placement in foster care.

Legally, the DHS caseworker needs to accept recommendations and input from several members of the

youth’s team about school placement including: the child or young adult, parents or legal guardians, attorney, CASA, school staff, caregiver, and surrogate parents.<sup>10</sup> This provides an advocacy opportunity for the lawyer to make a recommendation to DHS, and helps ensure the best interest finding is truly in the best interest of the youth in foster care. Perhaps the greatest barrier for attorney advocates at this point is related to the quantity of foster care placements. With limited foster care placements in certain areas in the state, it can become exceedingly difficult to keep youth in their school of origin.

It also continues to be important for youth to be enrolled in schools that know them well. Schools are responsible for calling in 22% of abuse reports in Oregon.<sup>11</sup> Often, schools are in a special position to protect youth, and youth in foster care can be especially vulnerable to continued neglect or abuse.<sup>12</sup> In Oregon, youth face maltreatment in foster care at nearly twice the national standard.<sup>13</sup> Remaining in the same school provides not only stability, but also potentially increases a child’s safety.

Oregon Administrative Rule 413-105-0030 outlines DHS’s obligations

to ensure a youth’s enrollment in the most appropriate educational setting and can be a great resource for ensuring proper procedures are being followed. In addition, the Every Student Succeeds Act promotes school stability and an implementation toolkit can be found in the Resources section below.<sup>14</sup>

## Goal 2

***Youth are guaranteed seamless transitions between schools and school districts when school moves occur.***

As mentioned above, Oregon’s youth in foster care usually experience more placements than the national standard, and often have two or more placements during school aged years.<sup>15,16</sup> The delay in enrolling youth as they change schools can cause not only a decrease in overall schooling time, but could result in the youth being placed in the wrong grade, credited with the incorrect number of credits, or without necessary supports. In general, students in foster care are more likely to fare worse academically than their peers.<sup>17</sup> Children in foster care in Oregon scored only 18% proficient in math (compared to 41% for their peers) and 31% proficient in reading

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# Youth, Rights & Justice

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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.

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(compared to 55% of their peers) during the 2017-2018 school year.<sup>18</sup> When changes in school enrollment must occur to meet a child's best interests, transitioning between and within districts needs to be as smooth as possible in an effort to enhance stability for these children, and improve long term outcomes.

During the summer months, a best interest finding will need to occur usually by mid-August to ensure prompt enrollment should the youth in foster care need to move from the school of origin. However, there is statutory protection in place to ensure a youth can be enrolled immediately, even without complete records.<sup>19</sup> Legal advocates should address prompt enrollment in court hearings as appropriate, and could help identify possible barriers to prompt enrollment, like several prior school moves. One way to ease the school transition is to ensure the proper documentation is occurring in the case plan. The youth's caseworker must have information including: report cards, transcripts, IEP's, 504 plans, and transition plans.<sup>20</sup> This type of documentation can help ensure youth in foster care are receiving the right school services, placed at the appropriate level, and

are enrolled without delay.

### **Goal 3**

#### ***Young children enter school ready to learn.***

Nearly 40% of children who were in foster care in Oregon last year were between the ages of 0-5.<sup>21</sup> This group is especially vulnerable to founded claims of abuse, totaling almost half of all founded abuse claims in the state last year.<sup>22</sup> In addition, "children in foster care have disproportionately high rates of physical, developmental, and mental health problems," according to the American Academy of Pediatrics.<sup>23</sup> If these needs are not addressed at a young age, often it will make it harder for older children to benefit from and be ready for school.

Programs like Head Start and Early Head Start, both of which all foster children are categorically eligible for, focus on promoting school readiness and balancing social, emotional and cognitive development.<sup>24</sup> These programs have strong focuses on relationship building as well; helping a child build a strong network at a young age can support them as they progress academically (See Goal 7).

Beyond early education programs, it is imperative that very young children are receiving all recommended medical and behavioral screenings so intervention can begin as soon as possible. Early intervention is another contributor to future academic success as it builds a child's readiness for school. The State of Oregon offers a variety of early intervention services across the state.<sup>25</sup> In addition, eligible families, including youth in foster care, have a right to early identification, timely referral, assessment, and early intervention services under federal law.<sup>26</sup>

As an advocate, consider not only recommending a child in foster care be placed in early head start or head start if they have not been already, but also consider monitoring DHS progress in requesting appropriate screenings. Medical Assistance Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Programs are administered through Medicaid and children under age 21 are eligible.<sup>27</sup> This screening should be a minimum starting point for a young child in foster care and is a benchmark to achieving Goal 3. Beyond hearing, vision, and pediatric exams, children should

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have opportunities for additional early intervention screenings. The Blueprint advocates for young children to also receive screening for developmental milestones and to be referred to additional screening if they were involved in a substantiated case of abuse or neglect. This is also important for young children who have experienced trauma, and it is important to remember that removal alone is an act of trauma.<sup>28</sup> Attorneys can not only monitor the progress of getting these screenings and referrals to head start, but also ask the judge for them as part of a court order.

Find a video discussing the advantages of exposure to Head Start [here](#).

**Goal 4**  
***Youth have the opportunity and support to fully participate in all aspects of the school experience.***

Youth in foster care should not be barred from participating in any school related activities, even if time for sign up has already ceased. Attorneys can discuss these issues as they arise with their clients, and be prepared to discuss them in hearings. Another option for attorneys to consider is attempting

to schedule court hearings when they will not conflict with the youth's school or extracurricular schedule, or reminding providers that appointments after school hours might be in the youth's best interests. Students with disabilities should receive not only evaluations, but the proper placement in the education environment that is least restrictive.

**Goal 5**  
***Youth have supports to prevent school dropout, truancy, and disciplinary actions.***

Youth in foster care in Oregon had the lowest graduation rate nationwide in 2017, were less than half as likely to graduate as their peers, and dropped out at a rate of three times as often.<sup>29, 30</sup> In fact, 37% of youth in foster care dropped out of high school in 2017.<sup>31</sup> Dropping out does not include earning a GED or modified diploma either; instead, these are students leaving school without any credentials. The Every Student Succeeds Act of 2015 requires states to report on the graduation rates of youth in foster care.<sup>32</sup> However, Oregon does not presently have verifiable education outcomes data for children in foster care.<sup>33</sup>

Legal advocates should continue to ask their clients about school or school related issues and be prepared to discuss concerns with DHS, foster parents, wrap teams, and other relevant adults. If a student is considering dropping out or is facing educational difficulties, DHS is required to promote the youth's academic achievement and participate in academic planning and goal setting under Oregon law.<sup>34</sup> During every permanency hearing, attorneys should ask DHS to report about the credits high school students have earned. Stating that a youth is "on track to graduate" without providing detailed information about the number of credits acquired is insufficient under Oregon Law. The caseworker must know how many credits are required by the district and have a copy of the youth's transcript.<sup>35</sup> There is also a relatively new law in Oregon (ORS 329.451 (2)(c)(A)) that allows foster students to graduate by completing the minimum state credit requirements, when the current school has credits required above the state standard.<sup>36</sup> This bill has the chance to assist youth in foster care who have had difficulty with transferring credit so they may still obtain a traditional high school diploma.

Although having some data itself is a step in the right direction, there is still a long way to go. Students in foster care are often disciplined at two to three times the rate of their peers and suspension or expulsions can cause an additional disruption in school stability.<sup>37</sup> Beyond just school discipline, one quarter of all youth in foster care nationally will become involved with the criminal legal system within two years after leaving foster care.<sup>38</sup>

For students facing disciplinary action, legal representation can be beneficial. Seeking alternative disciplinary measures and protecting the student's rights in a proceeding often allow for better overall outcomes. Relieving some of the barriers that prevent youth from being successful in school can increase graduation rates and decrease dropout rates long term.

**Goal 6**  
***Youth are involved and engaged in all aspects of their education and educational planning and are empowered to be advocates for their education needs and pursuits.***

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Imagine being a youth in foster care in Oregon, where nearly every decision about your life is being made by someone besides yourself. It is important for attorneys, judges, caseworkers, and other advocates to remember this and choose to include youth in meetings and court proceedings, especially ones where decisions are being made regarding education.

### Goal 7

***Youth have an adult who is invested in his or her education during and after his or her time in out-of-home care.***

As the youth's attorney, remaining invested in a client's education is critical. The Specific Standards for Representation in Juvenile Dependency Cases permits attorneys to expand the scope of representation to include ancillary matters such as educational advocacy.<sup>39</sup>

In addition to the attorney, the youth should have other concerned adults who are willing to remain involved and speak up when it comes to their education. Mentors, CASAs, guardians, foster parents, and teachers should be informed of the youth's current educational status

and any areas where they may need additional support. Having more adults to advocate for their needs, and having mentors who support them, can provide one more element of stability. Youth in mentoring programs experience fewer depressive symptoms, greater acceptance by their peers, more positive beliefs about their ability to succeed in school, and better grades in school, all of which can help increase their likelihood for continued academic success long term.<sup>40</sup>

### Goal 8

***Youth have supports to enter and complete post-secondary education.***

Nationally, youth in foster care received a four-year degree after aging out of foster care only 4% of the time, while their general population peers did so at a rate of 36% by the age of 26.<sup>41</sup> 54% of teens in Oregon are not reunited with their families, which can make life after foster care much more unclear.<sup>42</sup> Often obstacles in obtaining postsecondary education or training include lack of knowledge about options, financial limitations and housing concerns. As a legal advocate for your client, attorneys can help make sure youth are aware of the opportunities available to them,

including discussing those options prior to aging out of the system. At times, this might even include helping with applications or referring the youth to someone who can help.

In Oregon, youth in foster care have a variety of resources to help cover the costs of college tuition. A link to these can be found under Resources below.<sup>43</sup> There are a variety of funding options with different qualifications for each. DHS should be able to provide more guidance and resources to help as a part of a court order or agreement.

Finally, independent living programs (ILP) and food benefits can also help youth with stability making it easier to pursue post-secondary education and training. As an attorney representing a young adult, it is important to have conversations about ILP and food benefits early, so when the time comes to pursue college or career training, the youth has the services they need to ensure education stability moving forward. Recently, the Oregon legislature failed to approve an increase in funding that would have allowed ILP services for youth aged 21-22.<sup>44</sup> Although disappointing, advocating for this funding in the future could help youth in, and aging

out of, foster care to be able to more successfully pursue post-secondary pathways.

### Resources:

Find the Blueprint for Youth in the Juvenile Justice System [Here](#)  
Find the ESSA Implementation Toolkit [Here](#)  
Financial Aid for Youth in Foster Care [Here](#)  
Independent Living [Here](#)

### Footnotes

<sup>1</sup> 2018 Child Welfare Data Book, May, 1, 2019 at 2.

<sup>2</sup> Annual Budget, June 12, 2018.

<sup>3</sup> Dylan Conger & Marni J. Finkelstein, "Student Mobility: How Some Children Get Left Behind", The Journal of Negro Education, Winter 2003, at 97.

<sup>4</sup> Blueprint for Change Education Success for Children in Foster Care, (last visited June 30, 2019).

<sup>5</sup> Child Welfare Data, supra at 16.

<sup>6</sup> Oregon Welfare Child Data Set, "Placement Stability-Moves per 1,000 Days in Care", (last visited June 30, 2019).

<sup>7</sup> ORS 339.133 (4)(c)(A).

<sup>8</sup> ORS 339.133 (1)(c) and (d).

<sup>9</sup> ORS 339.133 (4)(b).

<sup>10</sup> OAR 413-105-0030 (3)(a).

<sup>11</sup> Child Welfare Data, supra at 3.

<sup>12</sup> U.S. Department of Health & Human Services, "Child Maltreatment 2017," Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau. (2019).

<sup>13</sup> Oregon Welfare Child Data Set, "Maltreatment in Foster Care", (last visited June 30, 2019).

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<sup>14</sup> Every Student Succeeds Act, 20 U.S.C.A. § 6301 (2015).

<sup>15</sup> *Child Welfare Data*, *supra* at 16.

<sup>16</sup> “Placement Stability-Moves per 1,000 Days in Care”, *supra*.

<sup>17</sup> Wiegmann, W. et. al., “The Invisible Achievement Gap Part 2: How the Foster Care Experiences of California Public School Students are Associated with Their Education Outcomes,” Stuart Foundation, 2014.

<sup>18</sup> Oregon Department of Education, Accountability Matters, “New ESSA Student Groups,” December 31, 2018.

<sup>19</sup> ORS 33.133 (4)(b); OAR 413-105-0030.

<sup>20</sup> OAR 413-105-0030 (9)(g).

<sup>21</sup> *Child Welfare Data*, *supra* at 15.

<sup>22</sup> *Id.* at 1.

<sup>23</sup> Committee on Early Childhood, Adoption and Dependent Care, “Developmental Issues for Young Children in Foster Care,” 5, Pediatrics, 1145 (2000).

<sup>24</sup> Head Start and Early Head Start, <https://www.benefits.gov/benefit/616>, (last visited July 9, 2019).

<sup>25</sup> *EI/ECSE Contact Information Map*, September 7, 2017.

<sup>26</sup> Infants and Toddlers with Disabilities, 20 U.S.C.A. §1435 (2010).

<sup>27</sup> Early and Periodic Screening, Diagnostic and Treatment, <https://www.medicaid.gov/medicaid/benefits/epsdt/index.html>, (last visited July 3, 2019).

<sup>28</sup> Christopher Church, et al., “Timely Permanency or Unnecessary Removal? Tips for Advocates for Children Who Spend Less Than 30 Days in Foster Care,” *Child Law Practice Today*, May 1, 2017.

<sup>29</sup> Hillary Borud, “Oregon Graduation Rate for Foster Children Just 35 Percent”, *The Oregonian*,

March 26, 2019.

<sup>30</sup> “New ESSA Student Groups,” *supra*.

<sup>31</sup> *Id.*

<sup>32</sup> HB 3267, 79th Leg., Reg. Sess. (2017).

<sup>33</sup> Lange, McComb, “Foster Care Students and Education, Oregon Department of Education Senate Education Committee,” March 13, 2019.

<sup>34</sup> OAR 413-105-0020 (1).

<sup>35</sup> ORS 419B.443(1)(d).

36 ORS 329.451 (2)(c)(A).

<sup>37</sup> “Education is the Lifeline for Youth in Foster Care”, National Working Group on Foster Care and Education, July 2011, at 2.

<sup>38</sup> Juvenile Law Center, “What is the Foster Care to Prison Pipeline?” May 26, 2018.

<sup>39</sup> Specific Standards for Representation in Juvenile Dependency Cases [https://www.osbar.org/\\_docs/resources/juveniletaskforce/JTFR3.pdf](https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf).

<sup>40</sup> Mentoring, <https://www.portlandoic.org/mentoring/>, (last visited July 3, 2019).

<sup>41</sup> Aging Out, <https://www.childrensrights.org/newsroom/fact-sheets/aging-out/>, (last visited July 3, 2019).

<sup>42</sup> *Child Welfare Data*, *supra* at 18.

<sup>43</sup> Financial Aid for Youth with Foster Care Experience, <https://www.oregon.gov/DHS/CHILDREN/FOSTERCARE/ILP/Documents/Financial-Aid-Foster-Youth.pdf>, (last visited July 3, 2019).

<sup>44</sup> HB 3122, 80th Leg., Reg. Sess.

## "I've Got To Admit It's Getting Better, A Little Better All The Time" Oregon is Working to Overcome the Juvenile Justice System's Historical Failing of LGBTQ Youth

By Lisa M. Kahlman, Esq.; YRJ Volunteer



Image by Allie Smith

As of April 2017, only five states (California, Louisiana, New York, Rhode Island and Texas) and the District of Columbia explicitly included sexual orientation and gender identity as protected classes in statute or regulation specific to their juvenile justice systems.<sup>1</sup> Oregon was not one of those states in 2017 and is still not one of those states today.<sup>2</sup>

Oregon is, however, making strides toward better treatment of LGBTQ

youth in the juvenile justice system with the Oregon Youth Authority's ("OYA") adoption of a policy in July 2018 to meet the needs of LGBTQ and gender nonconforming youth (the "Policy").<sup>3</sup> The Policy incorporates many of the best practices recommended by experts and is an excellent start in ensuring equal treatment for LGBTQ youth in the juvenile justice system. There is still room for improvement, however, both in terms of the content of the Policy as well as the fact that the Policy only covers OYA staff and not the many other people that LGBTQ youth encounter while in the system (e.g., judges, court officers, lawyers, etc.).

It is important that Oregon's juvenile justice system specifically include both sexual orientation and gender identity and expression as protected classes given the overrepresentation of lesbian, gay, bisexual, transgender or queer ("LGBTQ") youth in the

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juvenile justice system as well as the unique challenges that LGBTQ youth face while navigating the system.

### **Overrepresentation of LGBTQ Youth in the Juvenile Justice System**

Of the approximately 74 million youth in the United States under age 18, estimates suggest that anywhere from 5-9% of these youth identify as LGBTQ.<sup>4</sup> However, one survey by the federal Bureau of Justice Statistics found that 12% of youth in juvenile facilities self-identified as non-heterosexual and another survey of seven juvenile justice facilities across the United States indicates that 20% of youth identified as LGBT or gender nonconforming.<sup>5</sup> Interestingly, although OYA must be “cognizant of and sensitive to the issue of overrepresentation of minority youth offenders in youth correction facilities,”<sup>6</sup> no similar mention is made of the issue of overrepresentation of LGBTQ youth offenders. This suggests additional room for Oregon to improve in addressing the particular needs of LGBTQ youth.

A number of factors contribute to

the overrepresentation of LGBTQ youth in the juvenile justice system: family rejection, family instability and poverty, homelessness, unsafe schools, failures in the child welfare system, the “school-to-prison” pipeline, discriminatory enforcement of laws and enforcement of anti-prostitution statutes. Although understanding and addressing these factors is of prime importance in keeping LGBTQ youth out of the juvenile justice system in the first instance, this article instead focuses on what lawyers, judges, agencies and others in Oregon can do to better advocate for LGBTQ youth once they are involved in the juvenile justice system.

### **Unique Challenges that LGBTQ Youth Experience While in the Juvenile Justice System**

#### ***Bias in Pre-Trial Release***

Generally speaking, after a youth is arrested but before they are adjudicated, they are either released back home, placed in the community, or held in detention. Throughout the U.S., LGBTQ youth are generally more likely to be placed in a facility than they are to be sent home and are also more

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## **Model Policy: Transgender, Gender Nonconforming, And Intersex Youth In Confinement Facilities**

*From The National Center for Lesbian Rights (NCLR) and the Center for Children's Law and Policy (CCLP), with support from the National PREA Resource Center.*

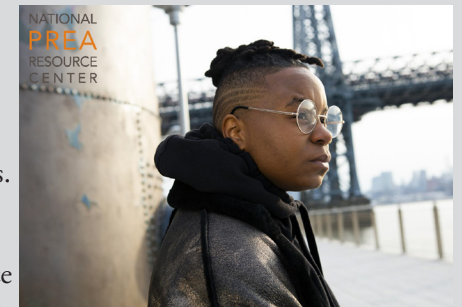
This recently-published model policy addresses the crisis affecting transgender, gender nonconforming, and intersex (TGNCI) youth in youth justice facilities. The model policy provides a blueprint of practices that promote the safety, dignity, and well-being of TGNCI youth who face systemic mistreatment and abuse in these facilities.

According to the model policy, “pervasive rejection and discrimination in their homes, schools, and communities contribute to the overrepresentation of TGNCI youth in youth confinement facilities. According to recent national data, 12% of youth in juvenile facilities identify as transgender or gender nonconforming, and 85% of those are of color.”

According to NCLR, “TGNCI youth are extremely vulnerable in confinement settings. They experience higher levels of sexual abuse, harassment, and mistreatment, particularly when facilities lack clear, enforceable guidance on how to protect their safety and promote their well-being. The model policy addresses a range of practices that create a safe and healthy environment for TGNCI youth. Adopting a policy consistent with these model provisions will significantly decrease the harms experienced in custody by this vulnerable population and create a safer environment for all youth.”

The model policy was written by Shannan Wilber, Youth Policy Director at the National Center for Lesbian Rights (NCLR) and Jason Szanyi, Deputy Director at the Center for Children's Law and Policy (CCLP).

It is available [here](#).



### **Model Policy: Transgender, Gender Nonconforming, and Intersex Youth in Confinement Facilities**

Shannan Wilber and Jason Szanyi



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likely to be placed in a facility while awaiting adjudication for nonviolent offenses compared to non-LGBTQ youth.<sup>7</sup> This is because factors like degree of family support, housing stability, attendance at school, etc. are considered when making this decision, and all of these factors negatively affect LGBTQ youth more than they do non-LGBTQ youth.<sup>8</sup>

One way that judges, lawyers, agencies and others can advocate for LGBTQ youth so that more of them are released to their home instead of placed in a juvenile justice facility is to push for adoption of a program similar to one implemented by the Ruth Ellis Center (the “Center”)

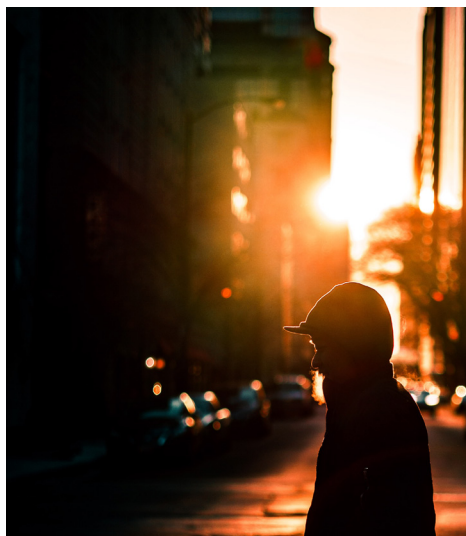


Image by Leo Cardelli

in Detroit. The Center collaborates with the Family Acceptance Project at San Francisco State University to: (i) provide specific research-based strategies that help families understand their child’s sexual orientation and gender identity and expression, (ii) teach families how to identify and modify specific rejecting behaviors that increase their child’s risk for suicide, substance abuse, running away, etc. and (iii) help families increase accepting behaviors and create an LGBT-affirming environment.<sup>9</sup> It is certainly preferable for youth to be returned to their home with the support of an agency to work with the youth and their family around LGBTQ-related issues than it is for the youth to be placed in a juvenile justice facility given that there are a host of risks to the well-being of LGBTQ youth in such facilities.

### **Risks to LGBTQ Youth in Correctional Facilities**

#### ***Placement and Sleeping Arrangements in Correctional Facilities***

Although the Prison Rape Elimination Act (“PREA”) requires that all placement decisions be individualized—which would mean

that a youth’s LGBTQ status or perceived LGBTQ status should be considered when placement decisions are made—in many cases placement decisions are made without taking into account a youth’s gender identity or expression.<sup>10</sup> Placing a transgender or gender nonconforming youth into a facility that does not match their gender identity can expose them to increased risk of harassment, violence and sexual assault by staff and other youth.<sup>11</sup>

Further, when transgender and gender nonconforming youth are placed in facilities that do not match their gender identity, they can be put into segregated housing within the facilities they are placed in, purportedly out of concern for their own safety.<sup>12</sup> Yet, this type of isolation can limit their access to services and programs, compromise treatment gains, increase risk of abuse and mistreatment by staff and other youth due to reduced visibility and can lead to an increased risk of suicide.<sup>13</sup> The U.S. Department of Justice has released guidance prohibiting the use of solitary confinement for juveniles in federal prisons, but this guidance has no bearing on state or local facilities.<sup>14</sup>

If LGBTQ youth are placed in facilities based upon their sex assigned at birth as opposed to their gender identity, it can also be more difficult for transgender or gender nonconforming youth to receive appropriate services, such as gender-specific clothing, personal care products, etc.<sup>15</sup>

OYA’s Policy provides that housing decisions are made on an individualized basis based on a youth’s health and safety. OYA has a Gender Identity Committee that may recommend placing transgender or intersex youth in a location consistent with the youth’s stated gender identity, after considering the youth’s need and safety. Further, OYA’s PREA coordinator must reassess the placements of

**Advocacy tip for those advocating for transgender and intersex youth:** ensure that the youth received an individual assessment for placement and that such placement is reassessed at least twice per year.

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transgender and intersex youth at least twice a year and document such reassessment.

With respect to sleeping arrangements within OYA facilities, OYA's Policy expressly forbids staff from requiring youth to sleep in solitary rooms based solely on their sexual orientation, gender identity or intersex status.

**Advocacy tip for those advocating for transgender and intersex youth:** ensure that if the youth is sleeping in individual quarters that it is because they requested an individual room or because there is an actual threat to their safety.

OYA's Policy also addresses clothing, grooming and personal items in OYA facilities and permits OYA staff to respond to requests from transgender or intersex youth for clothing, grooming items and other personal items consistent with their gender identity or to forward such requests to OYA's Gender Identity Committee.

**Advocacy tip for those advocating for transgender and intersex youth:**

undergarments of the youth's identified gender (e.g., sports bra, boxers) and binders may be approved by OYA staff without consulting with the Gender Identity Committee.

In community placements, OYA staff will collaborate with community placement staff in responding to requests, or may forward the requests to the Gender Identity Committee for consideration.

**Health Care**

In some instances across the county, LGBTQ youth in juvenile detention facilities have been forced to undergo counseling or treatment that punishes them for expressing their sexual orientation or gender identity or seeks to change a youth's sexual orientation or gender identity.<sup>16</sup> Happily, Oregon became the third state to ban conversion therapy on people under the age of 18 in May 2015.<sup>17</sup>

OYA's Policy requires that staff provide appropriate medical information and health services for all youth, including LGBTQ youth; this medical information and available service includes providing medical treatment to ameliorate symptoms of gender dysphoria.<sup>18</sup> OYA's Policy also requires that qualified mental health professionals offer appropriate counseling and information to LGBTQ youth related to the youth's identity, gender expression, sexual orientation or intersex condition, if needed. Finally, probation officers must ensure that transgender youth who receive Oregon Health Plan benefits are aware of the plan's guidelines for gender identity treatment.

**Advocacy tip for those advocating for LGBTQ youth:** ensure that the youth is able to receive specialized counseling related to their LGBTQ status if desired and ensure that transgender youth on the Oregon Health Plan have received guidelines about gender identity treatment from their probation officer.

**Family Visitation**

Many LGBTQ youth have either been rejected by their families prior to arriving in a correctional facility or may not want their family to visit for fear of being "outed" to family during a visitation. Notwithstanding this, visitation policies of many juvenile department facilities only permit biological families to visit youth or will only permit people other than biological family to visit subject to specific requirements. For example, Yamhill County only permits visits from parents or guardians, Multnomah County primarily permits visits from only parents/legal guardians<sup>19</sup> and a "rare exception" of an adult approved by the youth's probation officer in lieu of a parent/legal guardian<sup>20</sup> and Deschutes County permits in-person visits only with a parent/legal guardian and immediate family with whom the youth live unless the facility manager or shift supervisor approves another visitor after the youth submits a request and so long as the youth is a Level 2.<sup>21</sup>

OYA's Policy does not mention visitation at all, but it does require staff to provide the opportunity for youth to identify as LGBTQQI at

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intake and also ask the youth the extent to which the youth would like to disclose this status and to whom. Staff must also inform youth that their status as LGBTQQI may be shared with other staff or providers as needed, but that such sharing must be limited to sharing only that information necessary to achieve a particular purpose.

**Advocacy tip for those advocating for LGBTQ youth:** ensure that the youth was provided the opportunity to identify as such during intake and that they received proper disclosures required by the Policy from OYA staff. For youth in juvenile department custody, determine whether the youth wants visits from a safe and supportive non-family member and if so, advocate for visitation.

### **OYA's Policy Largely Adheres to Recommended Best Practices, but There is Still Room for Improvement**

Many provisions of OYA's Policy have been discussed above. Generally speaking, the Policy covers non-discrimination, training requirements, reporting of discriminatory/harassing behavior, intake procedures, confidentiality and disclosure, placement, sleeping arrangements, medical and mental health services, preferred name and pronouns, clothing/grooming/personal item guidelines, bathrooms, showering and searches/supervision.

An important element of OYA's Policy that has not yet been discussed is its requirement that its Office of Inclusion and Intercultural Relations staff deliver or coordinate LGBTQQI awareness training to staff in all OYA locations during each new hire orientation cohort and when otherwise determined necessary by OYA. This is a great start, but an even better training program would provide both initial and regular ongoing trainings as standard practice instead of conducting ongoing trainings solely on an as-determined basis.

Additionally, OYA's Policy requires OYA staff to use a transgender or intersex youth's preferred name and pronouns (including gender-neutral pronouns), except in narrow circumstances related primarily to written documents such as court and medical records. This is an excellent addition as it has been demonstrated that LGBTQ youth experience bias from people involved in the system who refuse to refer to them by their preferred name and pronouns.<sup>22</sup>

**Advocacy tip for those advocating for LGBTQ youth:** As consistent with the youth's wishes and identity, consider filing a motion with the court to request the court use the appropriate name and pronouns during court proceedings.

Notwithstanding the comprehensiveness of the Policy, certain improvements could be made. For example, although the Policy requires that OYA staff must report alleged discriminatory or harassing behavior by another staff member or another youth, there is no language providing for a

mechanism by which the LGTBQ youth can report violations of the Policy. Further, with respect to searches and supervision of showering, the Policy permits a youth who did not initially identify as transgender or intersex at intake, but who subsequently identifies as transgender or intersex, to state their preference for a male or female staff member to conduct these activities. If the preferred staff is not the same sex as the youth, the request must be approved by the Gender Identity Committee. The Policy does not provide, however, any time period by which these requests must be approved or denied, although it does state that an expedited review may be requested. The Policy also does not contain any enforcement provisions or set forth any consequences for OYA staff's failure to follow the Policy.

Finally, a large gap that remains to be closed is that the Policy only applies to OYA staff; it does not apply to everyone in the juvenile justice system that LGBTQ youth will encounter. It is therefore critical to replicate the concepts from the Policy within courts and county juvenile departments throughout

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Oregon. And, in light of the fact that the Policy was only adopted about a year ago, those who interact with LGBTQ youth within the juvenile justice system can advocate on behalf of LGBTQ youth by holding OYA accountable in following the terms of the Policy.

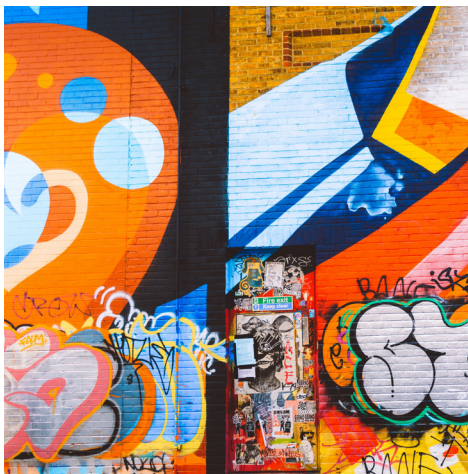


Image by Humphrey Muleba

## Footnotes

<sup>1</sup> Children's Rights, Lambda Legal and Center for the Study of Social Policy, "Safe Havens: Closing the Gap Between Recommended Practice and Reality for Transgender and Gender-Expansive Youth in Out-of-Home Care," April 2017, p. 5 ([https://www.childrensrights.org/wp-content/uploads/2017/04/TGNC-Policy-Report\\_2017\\_final-web.pdf](https://www.childrensrights.org/wp-content/uploads/2017/04/TGNC-Policy-Report_2017_final-web.pdf)).

<sup>2</sup> Effective as of January 1, 2008, however,

Oregon statutory law has prohibited discrimination on the basis of sexual orientation in juvenile justice institutions. "Discrimination may not be made in the provision of or access to educational facilities and services and recreational facilities and services to any person in the state institutions enumerated in ORS 420.005 or Department of Corrections institutions as defined in ORS 421.005 on the basis of race, religion, sex, sexual orientation, national origin or marital status of the person. This subsection does not require combined domiciliary facilities at the state institutions to which it applies." Oregon Revised Statutes §179.750.

<sup>3</sup> Oregon Youth Authority Policy Statement I-A-10.1, "Meeting LGBTQQI and Gender Nonconforming Youth Needs," effective as of July 16, 2018 (<https://www.oregon.gov/oya/policies/I-A-10.1.pdf>).

<sup>4</sup> "Safe Havens" at p. 3. See also Center for American Progress, "Unjust: How the Broken Juvenile and Criminal Justice Systems Fail LGBTQ Youth," August 2016, p.4 (<http://www.lgbtmap.org/file/lgbt-criminal-justice-youth.pdf>).

<sup>5</sup> "Unjust" at p. 4.

<sup>6</sup> Oregon Revised Statutes § 420A.010(10) (a).

<sup>7</sup> "Unjust" at p. 16.

<sup>8</sup> For example, in a study of white and Latino LGBT youth in California, over 40% of those living in out-of-home placements reported family rejection as the cause of their leaving home. *Id.* at p. 5. Further, LGBTQ youth often report experiencing bullying and harassment at school, as well as harsher discipline from school officials, leading LGBTQ youth to have higher rates of truancy than their non-LGBTQ peers.

Oregon Youth Development Council, "Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) Youth: Addressing the Need for Statewide Policies and Supports," 2016, p.2 (<https://olis.leg.state.or.us/liz/2017R1DownloadsCommitteeMeetingDocument/101714>).

<sup>9</sup> "Unjust" at p. 6.

<sup>10</sup> *Id.* at p. 19.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at p. 22.

<sup>17</sup> Oregon Revised Statutes §657.850.

<sup>18</sup> Oregon Youth Authority Policy Statement II-D-1.1, "Therapeutic Levels of Physical Health Care in OYA Facilities," effective as of December 22, 2017 (<https://www.oregon.gov/oya/policies/II-D-1.1.pdf>).

<sup>19</sup> <https://www.co.yamhill.or.us/content/juvenile-detention-visitation>

<sup>20</sup> <https://multco.us/dcj-juvenile/detention-programs/visiting-youth-detention>

<sup>21</sup> <https://www.deschutes.org/justice/page/detention-facility>

<sup>22</sup> One survey of LGBTQ youth in New York City reported that those in the juvenile justice system (e.g., judges, prosecutors, court officers, etc.) refused to use the youth's correct pronouns or names during proceedings or made negative comments about the youth's gender identity, gender expression or sexual orientation. "Unjust" at p. 18.

# View From the Legislature

By Janelle Bynum, Oregon State Representative

House District 51, Serving E. Portland, Damascus, Gresham, Boring, N. Clackamas & Happy Valley;  
FB @janelle.bynum



Oregon State Representative Janelle Bynum

## What are you most proud of during the 2019 session?

I'm most proud of the passage of SB 1008, the bill that reforms the juvenile justice system. SB 1008 is a signature piece of legislation championed by Sen. Winters that allows judges to determine whether

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youth should be tried as an adult, ends the sentencing of young offenders to life without parole, and ensures that youth convicted in adult court who have been rehabilitated have an opportunity to serve the second half of their sentence under community supervision instead of in prison.

I couldn't be prouder to have supported and pushed for this monumental change. We will finally begin to treat children as children instead of throwing them to the justice system to languish, harden, and face a lifetime of marginalization. This is a big deal. It is justice for our children. It means we believe in the capacity for redemption and reformation. This bill is personal to me. One of my main reasons for serving in the Legislature is to promote the betterment of the lives of our children in this state and our country. My son is 15 years old and I believe in his promise and potential. SB 1008 is an epic step toward recognizing the promise and potential of every child in Oregon.

**You serve on the Ways & Means Public Safety Subcommittee**

**and, during the 2019 session, heard about the urgent need for improving the public defense system. What does Oregon need to do to ensure those entitled to public defense receive adequate representation?**

I am committed to protecting constitutional rights and promoting fundamental fairness for all defendants. Poor people have the right to adequate legal representation. This right is a cornerstone of our public safety system. We need to look at the public safety system as a whole. I am baffled by some of the choices we make—to invest in portions of the public safety system while neglecting public defense. The issue is one of priorities. Until we can take a look at the system as a whole, we will continue to spend on corrections and law enforcement while poor and addicted people suffer the consequences of an underfunded public defense system.

**Do you have advice for advocates seeking to improve the juvenile justice and child welfare systems?**

I think we need to thoroughly examine how decisions impact entire systems. For example, when funding

for parks and recreation services is cut, children are deprived of a safe space to hang out and of activities that keep them engaged and out of trouble. Parents have to work and children must have a place to go during the day. When we fail to provide that space, children are more likely to have police contact and end up in bad situations. This problem impacts poor and middle-class children the most. We need to think about long-term consequences and impacts to our children.



Image by M.O. Stevens

## 2019 Legislative Session

**“The Top 9” New Juvenile Laws in Effect NOW\*  
(\*or as of September 28, 2019)**

*Adapted with permission from Mary Sofia, New Criminal Laws—2019 Legislative Session, Oregon Criminal Defense Lawyers Association (August 7, 2019)*

The following is a list of enrolled bills, passed in 2019, that are effective NOW or by September 28, 2019 that involve juvenile dependency or delinquency practice. Each bill is listed separately and linked to the Oregon Legislature's website for easy review of the enrolled bill. When reading the enrolled bill, note that [bracketed and italicized language] is removed

text and bold language is newly included text. Click the highlighted bill to read the enrolled bill and click the other link to review the bill overview page where you can click on the materials submitted at the hearings, watch the hearings, and find other important legislative history.

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## JUVENILE CODE

**SB 181** - [Read Bill Here](#)—Modifies Definition of “Child-caring Agency” to Include County Programs Providing Care/Services to Child in Custody of DHS or OYA (effective June 27, 2019). [Click here](#) for materials submitted, to review hearings, etc.

**SB 924** - [Read Bill Here](#)—Updates Language in Juvenile Code to Prohibit Placement of Children, Wards, and some Runaways taken



Image courtesy of Dids

into Protective Custody in Detention Facilities (effective June 13, 2019). [Click here](#) for materials submitted, to review hearings, etc.

**SB 832** - [Read Bill Here](#)—Creates “Critical Incident Teams” to Address Deaths of Children in Care of DHS (effective July 15, 2019). [Click here](#) for materials submitted, to review hearings, etc.

## EDUCATION

**HB 2191** - [Read Bill Here](#)—Expands Excused Absences to Include Mental/Behavioral Health (effective July 1, 2019). [Click here](#) for materials submitted, to review hearings, etc

**HB 2571** - [Read Bill Here](#)—Current/Former Foster Child Under 25 Eligible for Tuition Waiver if Enrolled in At Least One Credit to Pursue Undergraduate Degree (effective June 4, 2019). [Click here](#) for materials submitted, to review hearings, etc.

## CRIMES

**HB 2428** - [Read Bill Here](#)—Expands Public Indecency to include “Masturbation” while in, or in view of, a public place (effective



Image courtesy of Negative Space

September 28, 2019). [Click here](#) for materials submitted, to review hearings, etc.

**SB 577** - [Read Bill Here](#)—Significant Modification to Crimes of “Intimidation” & Renamed as “Bias” Crimes (effective July 15, 2019). [Click here](#) for materials submitted, to review hearings, etc.

## EVIDENCE CODE

**HB 2480** - [Read Bill Here](#)—Expands Non-Hearsay to Include Translated Statements if Declarant Testifies (effective June 11, 2019). [Click here](#) for materials submitted, to review hearings, etc.

## RESTRAINING ORDERS

**HB 3117** - [Read Bill Here](#)—Modifies FAPA Standard in Response to [MAB v Buell](#) authorizing court to continue restraining order if abuse occurred within specified period, petitioner reasonably fears for petitioner's physical safety and respondent represents credible threat to physical safety of petitioner or petitioner's child (effective May 22, 2019). [Click here](#) for materials submitted, to review hearing, etc.



# Juvenile Law Resource Center

## JLRC Contact Information

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

By Matt Steven, YRJ Attorney and Christa Obold Eshleman, YRJ Supervising Attorney

### Dependency

#### *Oregon Supreme Court*

*Dept. of Human Services v. J. C., 65 Or 223 (Jul 18, 2019)*

The Supreme Court affirmed the Court of Appeals decision in *Dept. of Human Services v. J.C.*, 289 Or App 19 (2019), holding that if there was no continuing ground for dependency jurisdiction over child, guardianship under ORS 419B.366 would necessarily terminate also. Noting the distinction between a “general guardianship” under ORS 419B.366 and “permanent guardianship” under ORS 419B.365, the Supreme Court adopted mother’s argument that a general guardianship, at least, can continue only “as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328.” Guardian, child, and as amicus curiae, DHS, argued

instead that the requirements of ORS 419B.368(3) must first be met, including a finding that vacating the guardianship is not in the best interests of the child.

The Court observed,

“The plain text of ORS 419B.366 indicates that, ‘unless’ a general guardianship is ‘vacated pursuant to ORS 419B.368,’ it continues ‘as long as the ward is subject to the court’s jurisdiction as provided in ORS 419B.328.’ As such, the plain text indicates that there are two ways a general guardianship can end.”

The first way is termination of jurisdiction under ORS 419B.328, which necessarily terminates guardianship; and the second way is vacating the guardianship under ORS 419B.368(3) which does not necessarily terminate jurisdiction. The Court relied primarily on the plain text of the statute, and declined to “rewrite” ORS 419B.366(6) to include the requirements of 419B.368(3) in the separate clause based on ORS 419B.328.

#### *Oregon Court of Appeals*

*Dept. of Human Services v. J. C. H., 299 Or App 212 (Aug. 28, 2019)*

*Per curiam.* The Court of Appeals affirmed a judgment of dependency jurisdiction without a detailed recitation of the facts, holding that mother’s substance abuse and mental health condition allowed the court to infer that mother could not attend to the safety needs of a very young child. The court further found a risk because mother was parenting alone and the child was “too young to ensure her own safety.” The court remanded for entry of a judgment without the allegation of residential instability, as there was no evidence it had harmed the child.

*Dept. of Human Services v. R. A. H., 299 Or App 215 (Aug. 28, 2019)*

*Per curiam.* The Court of Appeals reversed and remanded a permanency judgment, accepting DHS’s concession that the judgment did not satisfy the requirements of ORS 419B.476(5), including by failing to include a description of the agency’s efforts.



# Juvenile Law Resource Center

*Dept. of Human Services v. J. C. S., Sr. (Aug. 21, 2019)*

*Per curiam.* The Court of Appeals affirmed a termination of parental rights judgment, holding that, in the particular circumstances of the case, father was not denied due process for lack of notice as to the grounds for termination in the petition. The court further held that clear and convincing evidence supported termination under ORS 419B.502 based on the failure to ameliorate the grounds for termination of father's parental rights to other children, as well as grounds under ORS 419B.504.



*Dept. of Human Services v. D. R. D., 298 Or App 788 (Aug. 7, 2019)*

Father appealed a judgment ordering him to complete a psychological evaluation for "treatment or training" under ORS 419B.387. His child was under the jurisdiction of the juvenile court due to father's substance abuse issues. Father argued that such an order, which was "invasive" and could reveal "potentially incriminatory" information, was not permissible under that statute. DHS took the position that the statute "authorizes the juvenile court to order a parent's compliance with a psychological evaluation to determine if treatment or training is needed in the first instance."

The court reviewed the language of ORS 419B.387:

"If the court finds in an evidentiary hearing that treatment or training is needed by a parent to correct the circumstances that resulted in wardship or to prepare the parent to resume the care of the ward, the court may order the parent to participate in the treatment or

training if the participation is in the ward's best interests."

The court found that, so long as there was an evidentiary hearing in which the evidence established a need for the sought treatment or training, it could be ordered. The court rejected DHS' position, stating that its proposed—

"... construction of the statute ignores the requirement for an evidentiary hearing establishing need. ORS 419B.387 does not imbue the juvenile court with authority to order a parent to comply with a discovery mechanism to determine if there is a need for treatment or training. Rather, as the statute sets forth, it is the establishment of a need for treatment or training at the evidentiary hearing that then creates the court's authority to order a parent to comply with that treatment or training."

The court further concluded that the juvenile court's evidentiary hearing in this case was sufficient to determine

that a psychological evaluation was needed. The court affirmed.

*Dept. of Human Services v. A. C. L. R., 298 Or App 690 (Jul. 31, 2019)*

*Per curiam.* The Court dismissed mother's appeal of a termination of parental rights judgment because mother's failure to appear had resulted in an unappealable default judgment.

*Dept. of Human Services v. T. M., 298 Or App 545 (Jul. 17, 2019)*

*Per curiam.* The court ruled that parents failed to establish prejudice resulting from a delay in entry of the judgment beyond the 20-day limit of ORS 419B.476(5). The court also held that DHS had made reasonable efforts.

*Dept. of Human Services v. J. G. K., 298 Or App 398 (Jul. 3, 2019)*

Father appealed the juvenile court's finding of jurisdiction over his children, arguing that the juvenile court incorrectly excluded evidence about his family's plans to assist

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# Juvenile Law Resource Center

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father. The juvenile court ruled that such evidence was only relevant to disposition; not jurisdiction. Father cited to *Dept. of Human Services v. T. L.*, 279 Or App 673, 684-86, 379 P3d 741 (2016), arguing that such evidence was in fact relevant to jurisdiction.

The Court of Appeals agreed with father, observing that “[i]f the involvement of friends and family members sufficiently counters the risk to a child otherwise presented by a parent’s deficits so that the child is safe, dependency jurisdiction is not warranted.” Father had made an offer of proof at the hearing, however, and because the family’s plan was “ill-defined,” the Court of Appeals ruled that its exclusion was harmless error and affirmed.

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*Dept. of Human Services v. K. L.*, 298 Or App 371 (Jun. 26, 2019)

*Per curiam.* In this dependency case, the Court of Appeals reversed the jurisdictional judgment because Oregon was not the home state under the UCCJEA. No record

was developed in the trial court on the question of temporary emergency jurisdiction, and the case had subsequently been dismissed. The Court of Appeals declined to remand this case for a hearing about whether there were sufficient facts for temporary emergency jurisdiction at the time the petition was filed, as the state had not persuasively distinguished this case from *Dept. of Human Services v. T. F.*, 292 Or App 356, 360-61, 360 n 4, 425 P3d 480 (2018).



## Delinquency

*State v. D. C. F.*, 299 Or App 210 (Aug. 28, 2019)

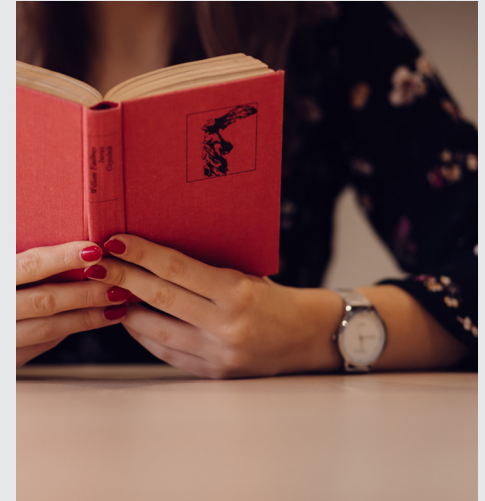
*Per curiam.* The Court of Appeals reversed an adjudication for assault in the fourth degree, accepting the state’s concession that there was no physical injury from youth biting his sister.

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*State v. K. R. S.*, 298 Or App 318 (Jun. 26, 2019)

Youth appealed the juvenile court’s dispositional judgment, arguing that the three counts of Sexual Abuse in the First Degree should merge because they were all part of the same criminal episode. The Court of Appeals agreed, finding that the “anti-merger” statute ORS 161.067 “applies to delinquency adjudications in the same way that it does to determinations of guilt in criminal cases.”

In reaching that decision, the court found persuasive youth’s argument that without merger, the collateral consequences of a juvenile



adjudication would be more severe than those of a criminal conviction for the same acts committed by an adult. In the case before it, the difference would be three juvenile adjudications for conduct that would merge into one in a criminal case. This result would subject a youth offender to a higher criminal history score on the adult sentencing grid than an adult would have for the same conduct.

The case was remanded for a new disposition reflecting a single merged count of Sexual Abuse in the First Degree.

## Save the Date

### Juvenile Law Training Academy

OCDLA

October 21-22, 2019

Valley River Inn, Eugene

### Public Defense Management 2019

OCDLA

October 24-25, 2019

Hallmark Resort, Newport

### National Juvenile Defender Center

2019 Juvenile Defender

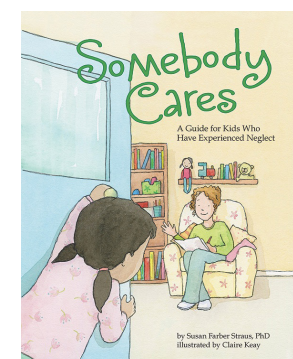
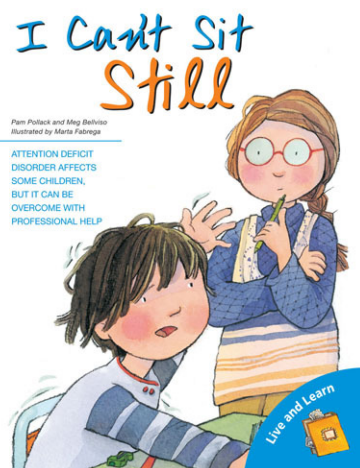
Leadership Summit

October 25-27, 2019

## Resources

### Best Books For Helping Kids Understand Emotional And Learning Challenges

The experts at the Child Mind Institute have published a list of forty-four books for school-aged children, through age 12, that will help them get back into the groove at school. The books help kids deal with abuse, ADHD, bullying, depression, dyslexia, neglect, self-esteem, trauma, and other mental health challenges.



## Early-Bird Discount: Two Tickets for \$300

Offer ends October 18th • Individual Tickets: \$175



2019 Gala  
*Justice is Sweet*  
November 7, 2019  
Hilton Portland Downtown  
5:30 pm

