

# The Juvenile Law Reader

## HUNDREDS OF JUVENILE BILLS LIKELY IN 2005 OREGON LEGISLATIVE SESSION!

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As in recent legislative sessions, it is expected that there will be hundreds of bills that relate to children, adolescents and families submitted to the 2005 Legislature. Fortunately the majority of these will never see the light of day, so to speak, because they will not get past the committees they are assigned to.

The challenge to advocates and attorneys wishing to monitor bills that may affect their clients is to figure out which bills may actually be seriously considered. There is really no easy way to do this.

One approach is to monitor bills that get assigned committee hearings. Access to committee schedules and bills is

available on the Oregon Legislature website: <http://www.leg.state.or.us>, then click on "Committees and Committee Agendas Online." To view bills, click on "Bills/Laws."

Bills that are pre-session filed by groups like the Oregon Law Commission also likely to get hearings and be seriously considered by the legislatures, as are bills coming from government agencies. The following are descriptions of some of these bills.

### OREGON LAW COMMISSION

The Juvenile Code Revision Workgroup of the Oregon Law Commission is submitting several law

improvement bills to the 2005 legislature. More information about OLC bills is available their website at: <http://www.wilamette.edu/wucl/oregonlawcommission/>

- Juvenile Fitness to Proceed - LC 1141

Like an adult criminal defendant, a youth in a delinquency proceeding has a constitutional right to raise the issue of fitness to proceed and to stand trial before he or she can be adjudicated in juvenile court. The Oregon Juvenile Code, however, is silent on the subject of fitness. No procedure is set forth in the Code for the determination of fitness, and no options for the court are specified for when a youth is found

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**"OREGON TREATS MORE PEOPLE FOR METH ADDICTION PER CAPITA THAN ANY OTHER STATE IN THE COUNTRY, BUT EXPERTS DIDN'T FORESEE HEAVY USE EMERGING AMONG YOUNG TEENS."**  
- THE OREGONIAN, 12/5/04

## METH ADDICTION IN OREGON IS GETTING YOUNGER

On December 5, 2004, the Oregonian reported on the startling increase in methamphetamine use among children. According to the article, last year, more than 1700 children were treated for meth abuse in Oregon. Treatment admissions

have increased by 57% for girls. For many juvenile meth users, the habit begins in middle school. Meth now has surpassed alcohol as the second most-treated drug addiction (after marijuana) in programs for children under 17.

Treatment providers are struggling to implement treatment and prevention strategies that will work with juveniles.

See the story at:

<http://oregonlive.com/search/index.ssf?base/news/1102165581269170.xml?oregonian?lcp>

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### OJJDP RELEASES REPORT EXAMINING ORIGINS OF JUVENILE CRIME

OJJDP announces the availability of the latest edition of its journal, "Juvenile Justice." This 35-page journal focuses on research that assesses how and why children become delinquent. The issue's lead article examines the findings and policy implications of OJJDP's Program of Research on the Causes and Correlates of Delinquency, the largest, most comprehensive investigation of the causes and correlates of delinquency undertaken to date. A second feature article demonstrates how such longitudinal research contributes to crafting a strategic response to youth gang involvement.

"Juvenile Justice," September 2004, (NCJ 203555) is available online

<http://ojjdp.ncjrs.org/publications/PubAbstract.asp?pubi=11800> .

### NEW STUDY SHOWS THERE IS HOPE FOR NORMAL LIVES FOR CHILDREN WITH FETAL ALCOHOL SYNDROME AND EFFECTS

Research done at the University of Washington, shows that people diagnosed with either fetal alcohol syndrome (FAS) or fetal alcohol effect (FAE) are more likely to escape negative social and relationship outcomes if they are diagnosed early in life and raised in a stable and nurturing environment.

FAS is characterized by structural or



functional brain damage, growth deficiency and unique facial features. Children with FAS and FAE often have problems with learning, memory, attention and problem solving, as well as physical disabilities. "These two positive factors, living in a stable, nurturing environment and having an FAS or FAE diagnosis at an early age, are now documented for the first time as having a strong influence on what was previously assumed by many people to be an unchangeable situation." [From: CHILD LAW PRACTICE, Vol. 23 No. 10, December 2004 at p. 167]

**Editor's Note:** While FAS is currently recognized as a medical diagnosis in standard medical and psychiatric diagnostic manuals, FAE is not yet recognized in these manuals, making early diagnosis more unlikely.

### ADULT PRISONS HARDEN TEENS

A study conducted by the Arizona Republic examined the outcomes of their decade old law that made it easier to send juveniles to adult prison. Today the state is churning out a tougher class of teenage criminals who are hitting the streets young and angry. The study showed that:

- Non-violent juveniles are more likely than violent ones to come back to prison for committing a new violent crime within 3 years of release.
- The average non-violent juvenile imprisoned as an adult serves 32 months in prison, twice as long as the national average for non-violent offenders.
- The state spends nearly \$150/day per juvenile inmate - three times the cost for an adult. For about a dollar a day more, Missouri's Division of Youth Services has taken many juveniles convicted as adults out of the state prison and placed them in a secure, home-like setting.

From BREVITY at:

<http://training.ncjfcj.org/transfer.htm>

# The Effect of Delinquency Adjudications on Military Eligibility

By Meyer Goldstein, Americorps Attorney

Records of juvenile adjudications are generally shielded as confidential. Military authorities may have access to those records, however, and juvenile adjudications may impair a person's ability to join the military. The military considers anyone with a significant criminal record to be "morally disqualified."

Anyone with a juvenile adjudication should be aware that it may impair their ability to join the military. However, an adjudication that a child is a ward of the court because of abuse, neglect or dependency will not impair a person's eligibility for military service.

The military branches each have standards establishing under what conditions they will admit a person with some sort of criminal record. The services are concerned that applicants with criminal backgrounds may be anti-social, have discipline issues or may constitute a bad influence on other service

members. They have each set up thresholds based on grading or scaling the number and seriousness of offenses. Anyone with a record of delinquency adjudication seeking entry to any of the services would have to examine the rules specific to the branch in which they were interested.

It is important to understand that juvenile adjudications have the same effect on eligibility as adult convictions in this context. The military services have access to juvenile records and will consider them in evaluating a person's eligibility. Juvenile adjudications are considered regardless of whether the person was sentenced to confinement, probation or suspended sentence. It is also irrelevant whether the adjudication was based on a judge's finding or a plea.

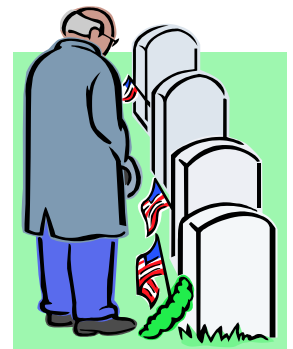
A record of this type will also be considered even if there was subsequent action by the court to expunge, seal or set aside the original juvenile adjudication. These subsequent proceedings are not considered to change the fact that the juvenile was found to have committed a criminal act. Completing

probation or alternative community service will also not change the military's view of the underlying criminal activity. The military takes the view that acts which demonstrate or acknowledge rehabilitation do not change the fact there was an initial adjudication of a criminal act.

Placement in pre-trial intervention or diversion programs is also viewed as equivalent to a conviction. Essentially, any court ordered penalty, confinement, restriction or placement is equivalent to a conviction.

It is possible for a person with a criminal or juvenile adjudication record to obtain a waiver of "morals disqualification" which will allow the person to

(Continued on p. 4)



## LOCAL WORKSHOPS, TRAINING & SUMMITS

The PACE Institute, which focuses on improving organizations and systems for girls at risk of entering or involved in the juvenile justice system, will present one of four regional trainings in Portland, OR., February 1 & 2, 2005. The intensive workshop, **Gender & Trauma Responsive Programming for Girls: A Holistic Approach**, is limited to 30 participants. The workshop will be presented at the Portland Hilton. For registration and information visit: [www.pacecenter.org/institute](http://www.pacecenter.org/institute).

McGovern and Associates and

Alternatives to Sexual Abuse will be presenting **"New Perspectives on Adolescent Offenders and Innovations in the Treatment of Adult Offenders"** by Gene Abel, M.D. The program will be presented on Friday, February 18, 2005 from 8:00 a.m. - 4:45 p.m. at the Holiday Inn — Portland Airport. For more information contact Keith I. Linn at: [keithilinn@netzero.com](mailto:keithilinn@netzero.com).

**CHILD ABUSE SUMMIT & FAMILY VIOLENCE CONFERENCE** - April 27 - 29, 2005 at the Double Tree Hotel - Jantzen Beach, Portland. This is the Seventh Annual Summit hosted by the

Clackamas County Sheriff's Office, the Child Abuse Team, and the Domestic Violence Enhanced Response Team of Oregon City. The Summit features many well known national and local speakers. For more information contact:

[www.co.clackamas.or.us/sheriff/](http://www.co.clackamas.or.us/sheriff/)

### **SAVE THE DATE:**

**\*\*OCDLA**— Spring Juvenile Law Conference, April 15 -16, 2005, at the Hallmark Inn.

**\*\*Juvenile Law Section** Spring Seminar, March 11, 2005, at the Western Forestry Center.

## CASELAW UPDATES

### **State ex rel Juv. Dept. v. Strothers**

The Court of Appeals has held that the 2001 amendments to ORS 419A.004(33)(1999) were not intended to apply retroactively.

In this case, Strothers appealed a judgment by the juvenile court declaring him to be within its jurisdiction for committing acts that, if committed by an adult, would constitute first-degree rape, ORS 163.375, and first-degree sexual abuse, ORS 163.427. Youth argued that the juvenile court should have applied ORS 419A.004(33) (1999) because he committed the acts before the 2001 statutory amendments went into effect. The Court found that in the absence of legislative intent and because the amendments were substantive in nature, the 2001 amendments to ORS

419A.004(33) were to be applied prospectively only. Applying this reasoning, the Court found that under ORS 419A.004(33) (1999), youth did not qualify as a youth offender because he was only 11 years of age when he committed the acts, and the statute required that he be 12 years of age. The Court resolved this case without reaching the constitutional question. Order of commitment reversed; remanded for re-disposition; otherwise affirmed. Case No.: A117443 <http://www.publications.ojd.state.or.us/A117443.htm>

### **In re Ariel G.**

The Court of Appeals of Maryland reversed a trial court ruling holding a mother in criminal contempt for refusing to answer questions about her alleged kidnapping of her son from his foster home. The Court distinguished the U.S. Supreme Court's decision in

*Baltimore City Dep't of Soc. Servs. V. Boukknight*, 493 U.S. 549 (1990), which involved a mother held in contempt for refusing to produce her child for placement in foster care. In *Boukknight*, the mother's contempt order was based on the refusal to produce the child and thus the Fifth Amendment did not protect the mother from the contempt. By contrast the mother in *Ariel G.* was based on the mother's failure to testify about her knowledge of the child's location. This purely testimonial communication fell within the Fifth Amendment's protections.

The Court also rejected the state's argument that the child's interests transcends the Fifth Amendment privilege against self-incrimination, holding that protecting children in state custody is important, but does not warrant abandoning the constitution. The Fifth Amendment privilege against self-incrimination does not depend on what is at stake for the courts or society, but what is at stake for the defendant. *In re Ariel G.*, 2004 WL 2214059(Md.)

## MILITARY (Continued from p. 3)

enter the military. The person is considered unqualified for military service until they obtain the waiver and they bear the burden of proving entitlement to a waiver.

Whether a person can receive such a waiver depends on factors such as the seriousness of the crime, the number of convictions or adjudications, the age at the time the crime was committed, the sentence imposed and the person's background as a whole. There are crimes for which no waiver can be obtained. Also, a waiver normally will not be issued to someone currently on probation or parole.

There are also special requirements for drug-related offenses. A waiver will not be granted for a per-

son with a history of drug or alcohol dependency or addiction, for trafficking in drugs or for convictions of any drug offense (except possession of small amounts of marijuana). A person who tests positive at their intake is also ineligible for waiver.

A military applicant with a juvenile record should also understand their duty to report that record. While the record may not be found initially, it could be uncovered during a later security check. A person who fails to reveal their record or who misrepresents it in applying to the military can be charged with a number of crimes and dismissed from the military. It is therefore essential that a person applying for admission to the military know the details of their records.



criminal record, even if it was incurred as a juvenile. Applicants must also fully disclose this information in their submissions.

***"A potential military applicant with a juvenile record should also understand their duty to report that record. "***

## NATIONAL CONFERENCES

**Child Welfare League of America**—2005 Juvenile Justice National Symposium, *Joining Forces for Better Outcomes*, will focus on integration and coordination of Juvenile Justice and Child Welfare as an important aspect of working to better serve our nation's children. The symposium will be held June 1—3, 2005, at the Renaissance Eden Roc Hotel in Miami, Florida. For more information or to submit a presentation proposal, contact CWLA at: <http://www.cwla.org/conferences/2005jjsymposiumrfp.htm>

**The 10th Annual Rocky Mountain Child Advocacy Training Institute** will be held May 16 - 20, 2005 at the National Institute for Trial Advocacy (NITA) National Education Center in Denver. This is the National Association of Counsel for

Children's (NACC) and NITA's annual trial skills training. *"Presenting Evidence in Cases Involving Children"* will provide hands-on, experiential trial skills including: Case Analysis and Organization; Direct & Cross Examination Techniques; Expert Witness Examination; Evidentiary Foundations; Introduction and Use of Exhibits, and Handling Difficult Witnesses. For further information contact NACC at [www.NACCchildlaw.org](http://www.NACCchildlaw.org).

**National Association of Counsel for Children, 28th National Children's Law Conference**, will be held August 25 - 28, 2005, at the Renaissance Hollywood Hotel in Los Angeles, California. For more information go to: <http://naccchildlaw.org/training/conference.html>.

**The National Conference on Juvenile Justice**, co-sponsored by the National Council of Juvenile and Fam-

ily Court Judges and the National District Attorneys' Association will be held March 20 - 23, 2005, in Orlando, Florida, at the Omni Orlando Resort at Champions Gate. Topics will include: Mental Health and Juvenile Justice; Effective Juvenile Drug Courts; Meth Labs; Open Hearings in Child Protection Cases; Ethics in Problem-Solving Courts; Supervised Visitation in Domestic Violence Cases; Juvenile Detention Reform in Rural Areas; Human Trafficking; They're All the Same Kids: Dependency to Delinquency; Gangs: A Call to Action; Where Have All the Juveniles Gone? Waiver to Adult Court; Case Law and Its Effect on Crime Investigation; Disproportionate Minority Confinement; and other Significant Delinquency, Family Violence, Child Welfare and Family Law Topics. For more information: <http://www.ncjfcj.org/dept/conference/>.

## POPULAR ABA GUIDE FOR PARENTS' ATTORNEYS AVAILABLE ONLINE

The National Child Welfare Resource Center on Legal and Judicial Issues has announced the availability online of their popular publication: *"Representing Parents in Child Welfare Cases, A Basic Introduction for Attorneys,"* by Diane Boyd Rauber, J.D., with Lisa A. Granik. This publication helps attorneys new to child protection cases understand their role as parents' representative and advocate, and highlights other key resources on child welfare system generally. Go to: <http://www.abanet.org/child/rcji/online/html> and scroll down; the link is at the top of the "OTHER" section.

## CONGRESS CONSIDERS IMMIGRATION LAW CHANGES FOR CHILDREN

Unaccompanied immigrant children frequently face harsh treatment, extended detention in unsuitable facilities and are often deprived of benefits to which they are entitled under immigration law. This is because legal provisions specifically focusing on assisting these children have not been established and they are not entitled to govern-

ment-appointed counsel.

Congress is attempting to address some of these issues through the Unaccompanied Alien Child Protection Act of 2003. This bill would require that age determinations be based on scientific, reliable methods and grant the Office of Refugee Resettlement the authority to place qualified children into proceedings to obtain special immigrant juvenile status.

Children would be appointed pro-bono counsel within a short period. Those with disabilities or special needs would be appointed a guardian *ad litem*. Training in juvenile immigration issues for members of the legal and judicial systems would be increased.



## PETITION FOR RELIEF FROM JUVENILE SEX OFFENDER REGISTRATION DEADLINE APPROACHES — January 1, 2006

A juvenile who has been adjudicated to be within the jurisdiction of the juvenile court on the basis of a finding of having committed an act that, if committed by an adult, would constitute a "sex crime" under ORS 181.594, is required to report to authorities and register as a sex offender upon being released from confinement. ORS 181.592, 181.594, 181.595, 181.596. Failure to report can be a misdemeanor or a felony. ORS 181.599. In general, the registration requirement is permanent. ORS 181.595(3)(d). Life-time registration is an onerous burden for juvenile sex offenders and one from which many wish to seek relief.

ORS 181.607 authorizes a person adjudicated as a sex offender while a juvenile to petition the juvenile court for relief from the registration requirement. The petition for relief from the registration requirement must generally be filed no less than two years and no more than five years after termination of juvenile court jurisdiction. The issues to be proved at the hearing are whether or not the petitioner is rehabilitated

and whether the person continues to pose a threat to the safety of the public. ORS 181.607(2). The standard of proof is clear and convincing evidence. ORS 181.607(2).

The timing of the filing of the petition determines whether the petitioner or the State bears the burden of proof. The State bears the burden if the petition is filed no more than three years after the juvenile court terminates its jurisdiction over the petitioner. ORS 181.607(2)(a). If the petition is filed more than three, but not later than five years after the juvenile court terminates jurisdiction, the petitioner bears the burden of proof. ORS 181.607(2)(b). Individuals who were terminated from juvenile court jurisdiction more than five years before January 1, 2004, the effective date of section 3, chapter 530, of the Oregon Laws of 2003 have until **January 1, 2006** to file a petition for relief from registration. [2003 c.530 section 3]. There is an additional filing fee in these cases of \$300.

The statute contains a long list of evidence which the court may consider in rendering its decision. ORS 181.607(3). These include such fac-

tors as whether the crime involved force, the victim's age and vulnerability, and very importantly, the petitioner's post-adjudication conduct. ORS 181.607(3). The court may also consider evidence not listed in the statute. ORS 181.607(3). The State is entitled to have a psycho-sexual evaluation of the petitioner. ORS 181.607 (5)

The obvious approach to such a petition is to seek out evidence in the record minimizing the seriousness of the crime and the harm to the victim. Similarly, it will be important to present evidence the petitioner has acknowledged responsibility for the acts, complied with therapy and treatment, and not committed additional violations.

Finally, it is important to remember that if the court grants the petition, it is the petitioner's responsibility to send a certified copy of the court's order to the Department of State Police. ORS 181.607 (9).



## THE COST OF RAISING A CHILD VS. FOSTER CARE PAYMENTS

The National Resource Center for Family Centered Practice has done a comparative analysis of foster care payments and the cost of raising a child in each of the states. Overall, foster care payments are less than the USDA cost of living figures for raising children.

- On a national level, the average cost of raising a nine-year old child, excluding medical care was \$9,233 per year in 2002, according to the U.S. Department of Agriculture.

- The average amount provided to foster parents to meet the needs of a nine-year -old child is \$5,042 per year.

But costs of caring for a child vary widely in different parts of the country. The following chart shows USDA estimated monthly expenditures by age group for the Urban West as compared to Oregon monthly foster care payments. For more go to: <http://www.cnpp.usda.gov/using2.html> & <http://NDAS.cwla.org>

### THE COST OF RAISING A CHILD vs. FOSTER CARE MAINTENANCE PAYMENTS

	age 0 - 2	age 9 - 11	age 15 - 17
<b>Urban West - USDA est.</b>			
<b>monthly expenditure</b>	<b>\$795</b>	<b>\$812</b>	<b>\$969</b>
<b>Oregon monthly foster care payments</b>	<b>\$350</b>	<b>\$364</b>	<b>\$449</b>

# BOOK REVIEW

## Child Protection in America: Past, Present, and Future

Oxford University Press

John E.B. Myer, Distinguished Professor and Scholar

University of the Pacific, McGeorge School of Law

Professor Myer has compiled the first comprehensive history of American efforts to protect children from abuse and neglect. The book begins in colonial times and progresses through the birth of the juvenile court to the creation of the child protection system we know today. The following is a condensed excerpt from the book:

### **Hitting Children Must Be Outlawed**

If a husband's "right" to physically chastise a wife seems barbaric, and was outlawed in the mid-nineteenth century, why is a parent's "right" to physically chastise a child less so? One might answer: Because women are adults with equal rights. True. The law does not allow adults to assault each other. Then why is it acceptable to assault children? A child is smaller, more vulnerable to injury, and less capable of flight or

fight than a woman. The traditional explanation for this remarkably unequal treatment, of course, is that parents need to assault their kids in the name of discipline. In light of what we know today about children and about discipline, I argue that there is no greater justification for hitting children than there was for hitting women.

There is mounting evidence that hitting children has deleterious consequences for some children. Recent studies have suggested that many harmful consequences flow from so-called 'ordinary' physical punishment including: alcohol abuse, depression, suicidal thoughts, behavioral problems, low achievement, and future economic insecurity.<sup>1</sup> In addition, corporal punishment in adolescence is associated with a significant increased probability of depressive symptoms as adults.<sup>2</sup> In 1998, the American Academy of Pediatrics concluded that the negative consequences of spanking outweigh any benefits, and urged pediatricians to help parents find "methods other than spanking in response to undesirable behavior."

Physical punishment is correlated with child abuse. There is ample evidence that a great deal of physical

child abuse results from "corporal punishment" that goes too far, inflicted by parents who believe they have a right to hit their kids. In the name of discipline, but in the heat of irrational anger, children suffer bruises, lacerations, black eyes, fractures, burns, head injuries, and death.

We have to change the mindset of adults that it is okay to hit kids. It is no more "okay" to hit your child than it is to hit your spouse, your employee, or the guy standing next to you at the bus stop. Outlawing "corporal punishment" will begin the long process of helping adults understand that hitting those we love is not acceptable. Banning "corporal punishment" will reduce child abuse.

1. Clifton P. Flynn, Regional Differences in Spanking Experiences and Attitudes: A Comparison of Northeastern and Southern College Students, 11 *Journal of Family Violence* 59-80, at 59-60 (1996).

2. Murray A. Straus & Glenda Kaufman Kantor, Corporal Punishment of Adolescents by Parents: A Risk Factor in the Epidemiology of Depression, Suicide, Alcohol Abuse, Child Abuse, and Wife Beating, 29 *Adolescence* 543-561, at 550-551 (1994).

The full excerpt is available at:

[http://www.mcgeorge.edu/newsandevents/news/myers\\_corporal\\_punishment.htm](http://www.mcgeorge.edu/newsandevents/news/myers_corporal_punishment.htm) .

## EARLY INTERVENTION NEWS

Citing Dayton Leroy Rogers, Keith Hunter Jespersen and Ward Weaver III, as examples of high-profile killers, who had been abused or neglected as children, Oregon law enforcement officials and prosecutors called for federal funding for earlier intervention to curtail the cycle of family violence. The law enforcement officials and prosecutors spoke in support of a study released by the anti-crime organization "Fight Crime: Invest in Kids", which predicts that as many as 370 of the 9,228 children in Oregon, who were victims of abuse or neglect in 2002 will become violent criminals

because of the abuse they endured.

Greater support was requested for Oregon's Healthy Start Program,

which began 10 years ago with the goal of providing in-home parent coaching services to all new moms. Because of budget cuts, the program is reaching about half of all first-time mothers in the state.

"When government invests now, it puts a down payment on ensuring that our most vulnerable children won't be-

**"When government invests now, it puts a down payment on ensuring that our most vulnerable children won't become our most wanted adults"** - Multnomah County District Attorney Michael Schrunk

come our most wanted adults," said Multnomah County District Attorney Michael Schrunk. "We have to be hard-nosed and prosecute these cases when they occur. But we see this over decades. We see what the result of neglect and lack of resources do."

- The Oregonian, December 16, 2004

# Ten Core Principles for Quality Juvenile Delinquency Representation

By Julie Goss, Americorps Attorney

The American Council of Chief Defenders (ACCD) and the National Juvenile Defender Center (NJDC) recently worked together to produce ten core principles for quality juvenile delinquency representation to serve as a national standard for state run indigent defense delivery systems (Indigent Defense). Staff of Oregon's Public Defense Services Commission is currently reviewing the principles.

ACCD and NJDC initially developed these principles to assist Indigent Defense systems in adhering to the U.S. Supreme Court decision of *In Re: Gault*. This decision clarified the requirements of a lawyer's principal duty to his or her juvenile delinquency clients as representing their legitimate interests in a "full and conscientious" manner as opposed to representing the best interest of the child. These Principles also offer increased guidance for the leaders of Indigent Defense as to the roles of attorneys in providing full, complete, and quality representation of children and adolescents.

ACCD and NJDC determined that Indigent Defense providers should reaffirm the fundamental role of the juvenile court as being "a fair and reliable forum of adjudication" and to ensure that it continues to provide support, resources and treatment to ensure the rehabilitation of the children determined to be delinquent.

The representation of youth as a specialty practice should be a main concern for Indigent Defense. Youth representation should not be considered an entry level or training position. Rather, it should be viewed as requiring experienced, highly trained and educated attorneys who understand that clients' differing maturity levels, cognitive abilities, and stages of child development contribute to their ability to

effectively represent delinquent youth.

ACCD and NJDC also determined that Indigent Defense should pay special attention to representation of youth with special concerns, such as race, mental health issues, gender and sexual orientation. These additional factors will present unique concerns and issues relating the attorney's ability to effectively represent and adequately advocate for the special needs of the youth.

## TEN PRINCIPLES

### **1. Indigent Defense Upholds Juveniles' Rights to Counsel Throughout the Delinquency Process and Recognizes the Need for Zealous Representation to Protect Children.**

Representation for youth is important, and the Indigent Defense should work to ensure that the youth does not waive his or her right to counsel. Additionally, Indigent Defense should attempt to have an attorney appointed to represent the child at the earliest stage of the proceedings and continue throughout the life of the delinquency process.

### **2. Indigent Defense Recognizes that Legal Representation of Children is a Specialized Area of the Law.**

Representing youth in delinquency proceedings is a highly specialized area of representation that requires dedicated, experienced attorneys who provide quality, comprehensive services.

### **3. Indigent Defense Supports Quality Juvenile Delinquency Representation Through Personnel and Resource Parity.**

Specialized representation is encouraged and a professional work environment is provided including adequate operational resources and equality in budgeting and allocation of equipment and resources.

### **4. Indigent Defense Utilizes Expert and Ancillary Services to Provide Quality Juvenile Defense Services.**

Indigent Defense supports requests for essential expert services and litigation support to ensure high quality representation. These services include evaluation and testimony by mental health professionals, education specialists, forensic evidence examiners, DNA experts, accident reconstruction experts, interpreters, court reporters, social workers, etc.

### **5. Indigent Defense Supervises Attorneys and Staff and Monitors Work and Caseloads.**

Caseloads will be monitored and reviewed to ensure quality, efficient representation. Caseloads can be adjusted due to case complexity or available resources.

### **6. Indigent Defense Supervises and Systematically Reviews Juvenile Defense Team staff for Quality According to National, State, and/or Local Performance Guidelines or Standards.**

Indigent Defense adopts guidelines to ensure its vision is consistent with national, state, and local standards. It also provides coaching and review for attorneys and staff.

### **7. Indigent Defense Provides and Supports Comprehensive, Ongoing Training and Education for All Attorneys and Support Staff Involved in the Representation of Children.**

Comprehensive training and education is provided pertaining to all levels of the delinquency process including detention advocacy, litigation, and appellate advocacy, as well as other unique areas of the law.

### **8. Indigent Defense Has an Obligation to Present Independent Treatment and Disposition Alternatives to the Court.**

Counsel has an obligation to seek out and present to the court alternative (Continued on page 9.)



# Child Welfare Practice and Mental Health System Changes

By Mark S. McKechnie

There is a substantial overlap between the children and families served by the child welfare system and the Oregon Health Plan mental health system. This should come as no surprise since many of the same factors and events which precipitate child protective services involvement also contribute to the development of mental and emotional disorders in children.

Children in foster care due to abuse and neglect suffer rates of mental and emotional disorders at rates three to ten times higher than their peers.<sup>1</sup> The child welfare system has also served families, through voluntary custody and voluntary placement agreements, who have children with severe mental and emotional disorders for which they have no other avenue to obtain needed services.

Given this overlap, the changes in the children's mental health system to be phased in this year will substantially impact child welfare practice. These changes can greatly benefit the children and families served by both systems if child welfare practice adapts to these

changes.

Child welfare uses the majority of day and residential treatment slots for children who are wards of the court and for voluntary cases. Roughly two-thirds of residential beds are typically occupied by children served by DHS. Case workers have had direct access to these slots by sending referrals to day and residential treatment providers. Unfortunately, some children have been referred to these more restrictive school and residential placements without first receiving outpatient services locally or because those services were unavailable or inadequate.

Starting July 1, 2005, county and regional Mental Health Organizations (MHOs) will be given the majority of the funding for day and residential treatment services. They will still pay for these traditional intensive and traditional outpatient services. But now they will also have the opportunity, and indeed the mandate, to develop new services to fill the gaps in between.

While case workers will lose the direct access they have had to day and residential treatment slots (when there are openings, of course), they should be gaining access to a greater array of

services that can serve children in their homes, foster homes, schools and other, more natural community settings. Once local mental health systems develop these more intensive, but less restrictive, mental health services, case workers will have access to resources that can help prevent the all-too-frequent foster care disruptions experienced by children with emotional and behavioral problems.

The state Office of Mental Health and Addictions Services (OMHAS) will require all MHOs to use a standardized assessment tool to more accurately and consistently match the right level of services to the individual needs of a child and their family. The instrument, the Child and Adolescent Service Intensity Instrument (CASII), will help identify the children around the state who require more intensive and more coordinated services.

Local mental health providers or MHOs will be expected to apply the instrument when a child is suspected of having symptoms that necessitate more intensive services.

(Continued on p. 10)

## TEN PRINCIPLES (Continued from p. 8)

treatments and placements that can best serve the client's unique interests.

### **9. Indigent Defense Advocates for the Educational Needs of Clients.**

Education is extremely important to youth clients. Counsel should advocate, personally, or otherwise for the clients' individual educational needs. Counsel should also be aware of the behavioral manifestations and special needs of clients with special education requirements.

### **10. Indigent Defense Must Promote Fairness and Equity for Children.**

Counsel should ensure they work to preserve the client's constitutional rights and the fair, non-partial, and rehabilitative aspect of the juvenile court system. They should also work through the community and legislative process to advocate for improvements and reform on behalf of their clients.

ENDNOTES:

1. 387 U.S. 1 (1967)
2. Ten Core Principles, footnote 2.

ASK THE SOCIAL  
WORKER

**Tired of reading about mental health? Or want to know more? Pose questions or suggest topics. Contact Mark McKechnie, M.S.W., at [Mark@jrplaw.org](mailto:Mark@jrplaw.org) and "Ask the Social Worker."**

## CHILD WELFARE (Continued from p. 9)

If they don't apply the CASII on their own, case workers, parents and foster parents have the right to request it.

Children who reach a certain score on the CASII will be eligible for a mental health care coordinator who will work with the parent or guardian, as well as other systems working with the child. The care coordinator will be responsible for developing a plan that integrates not only the traditional mental health treatment plan, but also other case plans, including the child welfare permanency plan, the Individualized Education Program (IEP) and others.

MHOs will also be required to convene local or regional case planning committees that include local interdisciplinary and family involvement to provide consultation and direction to care coordinators and the family teams planning for each eli-

gible child. Presumably, children referred for day or residential treatment would be screened by such committees in most instances.

The goal of these efforts will be to provide more intensive services in the community for children so that disruptions to their school or living placements will be minimized. The child welfare, education and mental health systems all have legal and policy mandates to deliver services in the least restrictive setting. Funding schemes have historically tied restrictiveness to intensity, and professionals who work in these systems have become accustomed to the status quo. Under the children's mental health system change, funding and policy changes will make it more possible to deliver intensive services in less restrictive settings.

While most professionals agree with the goals of the system change, we should not underestimate the

substantial cultural change involved with it. Advocates for children impacted by these systems can play an important role in encouraging this cultural shift by helping to ensure that local systems receive complete and accurate information about new services and the right of children to receive them, by encouraging child welfare case workers, foster parents and others to take advantage of new service options and by raising the expectations that children will be able to receive services without having their lives uprooted.

### ENDNOTES

1. Harman, J.S., Childs, G.E. and Kelleher, K.J. (2000). Mental health care utilization and expenditures by children in foster care. *Archives of Pediatric and Adolescent Medicine*, v. 154, pp. 1114-1117.



## JUVENILE LEGISLATION (Continued from page 1)

unfit. As a result, courts are left to fashion an outcome for the youth with no guidance in the law. This bill gives clear options to help ensure that both the best interests of the youth and the best interests of victims and the community are protected.

- Putative Father - SB 234

Biological fathers who have demonstrated a commitment to the responsibilities of parenthood have certain constitutional rights regarding notice in juvenile court proceedings involving their children. Presently, the ORS does not reflect the constitutional standard, and there are inconsistencies throughout the statutes. There are particular inconsistencies regarding notice requirements in domestic relations and juvenile court proceedings. A Law Commission sub-work group has studied and defined the rights that

putative fathers are entitled to in proceedings, developing legislation that both accurately reflects constitutional requirements and is consistent with other provisions of the ORS, administrative rules, and current practices relating to parents, fathers, and paternity.

- Guardian Ad Litem for Mentally Ill Parents SB 230

The ORS is unclear on the role of guardians *ad litem* in juvenile dependency and termination of parental rights proceedings, including, when a guardian *ad litem* should be appointed, whether guardians *ad litem* can demand a trial, whether they can direct parents counsel and whether they can relinquish parental rights on behalf of the parent. This Sub-work Group has prepared legislation that addresses these and other issues in these difficult cases.

- Placement Preference - LC 190

This bill makes minor changes to ORS 419B.192 changing those who have a placement preference for persons with a "child-parent" relationship to a "caregiver" relationship. The bill also clarifies the time line for the existence of the caregiver relationship in ORS 419B.116.

- Court Records - SB 231

This bill provides that when materials are relied upon or considered by the juvenile court in a case that can result in an appeal, the court must make a list of the reports of materials and in the event of an appeal, these materials must be made part of the record on appeal. The bill also provides that the transcript of the juvenile court proceeding is part of the record of the case, and establishes access and disclosure requirements for transcripts and other records.

# JUVENILE LEGISLATION

(Continued from page 10)

- Mental Disease or Defect Defense - SB 232

This bill will codify the defense of mental disease and defect in juvenile delinquency proceedings. The bill also establishes dispositional options for juveniles who successfully use this affirmative defense and have serious mental conditions or present a substantial danger to others. The bill establishes a juvenile panel of the Psychiatric Security Review Board.

- OYA Planning - SB 233

This bill amends ORS 419C.486 and removes the requirement that OYA planning for youth focus on reunification of the family and bear a rational relationship to the jurisdictional findings. This provision was inappropriately carried over when the dependency and delinquency codes were split. The proposed standard will require that case planning "serve the purposed of and is consistent with the principles of ORS 419C.001". SB 233 makes other similar "housekeeping" changes to ORS 419A.

## DEPARTMENT OF JUSTICE

The Department of Justice has pre-session filed a number of bills.

- Crime Victim Liens - HB 2222

This bill allows the Crime Victims' Assistance Section to take a lien against a crime victim's civil recovery from an assailant or liable third party.

- Restitution - HB 2230

This bill clarifies current restitution law: 1) Defines the scope of damages for restitution as "economic loss"; 2)

Clarifies the definition of damage to a victim's property as the market value at the time and place of the crime; 3) Clarifies the definition of "direct victims" and "third party victims"; 4) Allows restitution to insurance companies who have paid part of the victim's loss. Amends ORS 137.103(2)(4) and 419C.450.

- Expunction Deferred until Restitution Paid - HB 2231

Defers the expunction of adult convictions and juvenile adjudications until a restitution judgment is satisfied in the action that resulted in the restitution.

- Restitution Civil Judgments - HB 2233

Provides for crime victims to obtain civil judgments so they can collect criminal restitution money judgments on their own and extends the expiration date of criminal and civil money judgments to 50 years.

- Parental Liability - HB 2229

Provides for parental financial responsibility for economic loss caused by acts of children under 16 that would be crimes if committed by adults.

- Sexual Assault - SB 198

Provides for a friend or advocate of sexual assault victim to be a sexual assault victim personal representative and to accompany victims to medical facilities and legal proceedings.

- Copying Sexually Explicit Materials - SB 199

Allows for protective orders prohibiting a party or attorney to a proceed-

ing involving a sexual offense from copying or disseminating any evidence of a sexually explicit nature. Prevents release of information about the sexual conduct of the victim.

## JUVENILE RIGHTS PROJECT

JRP submitted a proposed bill that will be titled "Educational Success for All Foster Children Act." This bill is intended to address the educational deficits which foster children suffer when they change schools as a result of a change in foster placement. The bill provides measures such as enabling children to stay in their original schools after a placement change, appointing educational surrogates earlier and providing transportation for children to their original schools after they move.

Another bill submitted by Oregon Advocacy Center and JRP would form a Child and Family System of Care Task Force to establish an integrated children's mental health fund. This fund would pool private and public, local, state and federal resources. Integrated funds would then follow clients, facilitate procuring greater federal financial support, increase the efficiency of resource use, minimize incentives for cost and risk shifting and increase incentives for earlier identification and intervention for children with significant emotional disorders. Both bills are currently being drafted by Legislative Counsel.



The Juvenile Rights Project is pleased to partner with the Commission on Women's Americorps Program to provide expanded services through the JRP Helpline. This year JRP is fortunate to have two Americorps Attorney volunteers, who are proving to be a ma-



**Meyer Goldstein** graduated from the Law School of the University of California at Davis. In his legal career he has clerked for the Court of Appeals of Alaska in Anchorage as well as the Third District Court of Appeals in Sacramento, California. He practiced with a small private firm in the areas of Labor, Employment and Indian law and also worked as a staff attorney on regulatory matters for the California Energy Commission. As a break from his legal career, Meyer worked for a number of years as a commercial airline pilot in Cleveland, Monterey, Denver, and ultimately Portland. Having settled in Portland and desiring to turn his legal skills to a career of community service, he returned to legal work as an AmeriCorps member serving at the Juvenile Rights Project. He loves Portland for all that it offers and takes advantage of many of the activities that make Portland such a rich and rewarding place to live, including windsurfing, cross-country skiing, hiking, visits to the beach, bicycling, and the uniquely diverse array of restaurants and live music and theater venues.

**Julie Goss** began working at the Juvenile Rights Project in October, 2004 as an Americorps Member. She has always had an interest and passion for children and families and found that the "giving back to the community" spirit of Americorps meshed nicely with the Juvenile Rights Project's mission and focus. Julie recently graduated from Willamette University College of Law in May of 2004 and passed the Oregon State Bar in September, 2004. She also attended Willamette University as an undergraduate. She has worked at the District Attorney's Office in the Support Enforcement Division and as a legal assistant in a private family law firm in San Jose, California for two years before attending law school. Julie finds the work, which is generated through the Juvenile Rights Project's Helpline, to be interesting, inspiring, and very educational. She has enjoyed getting to know the Juvenile court system and being able to interact with teenage clients.



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