JUVENILE RIGHTS PROJECT

JUVENILE LAW READER

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L.A. County Child Welfare System Settles Katie A. v. Bonta Lawsuit

On March 14, 2006, Los Angeles County, the nation's largest child welfare system, agreed to settle a class action lawsuit by agreeing to transform its foster care system from one that exemplifies the failures of child welfare in the United States into a network of services designed to address the needs of and promote stability for the many children with emotional or psychiatric disorder in or at risk of foster care. The lawsuit challenged the longstanding practice of confining abused and neglected children in costly hospitals and large group homes instead of providing mental health services that would enable them to stay in their own homes and communities. "This is a big win for children in foster care with mental or emotional disorders" said Ira Burnim, legal director at the Bazelon Center for Mental Health Law, one of the advocacy groups that filed the suit. "It is our hope that other troubled child welfare systems in the country may also recognize the problems in their systems and get serious about fixing them."

The settlement includes the immediate closure of the MacLaren Children's Center and institution of "wraparound" care to children with mental, behavioral or emotional disorders, using flexible funding to pay for a wide range of services that are individually designed to meet the needs of each child and family. For more information about the *Katie A.* settlement go to: http://www.bazelon.org/newsroom/2006/3-15-06-KatieAPI.html .

April is Child Abuse Prevention Month

"Safe Children and Healthy Families Are a Shared Responsibility" is the designated theme for April 2006's Child Abuse Prevention Month. The theme draws attention to the roles that communities have assisting parents to reduce child abuse and neglect by offering broad family support services.

In accordance with this theme, the U.S. Department of Health and Human Services, in partnership with 28 national organizations, updated its resource packet of prevention materials.

The packet contains publicity and community awareness materials, as well as bilingual fact sheets on various topics such as:

- Building on organizational strengths and sharing the message of family support;
- How to build healthy families, including tips for being nurturing parents;
- The scope and impact of child abuse and neglect.

The packet is available at: http://nccanch.acf.hhs.gov/topics/prevention/index.cfm

Source: *Children's Bureau Express*

Inside this issue:

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Sharpest Decline in Teenage Crime in Modern History Runs Counter to 1990's Predictions

By Robb Wolfson

(Source: Widely Predicted Teen Crime Wave Never Happened, by Frank Grave, Knight Ridder Newspapers, March 7, 2006. http://www.realcities.com/mld/krwashington/14040257.htm)

Juvenile crime experts and public officials commonly predicted in the mid-1990's that the United States was about to be ravaged by sharp increases in violent crime by juvenile offenders. However, overall juvenile crime statistics over the last decade mostly show otherwise:

- Despite the high-profile of school shootings over the last seven years, U.S. Justice Department statistics show schools are currently as safe as they were in the 1960's;
- Juvenile homicide arrests have decreased from 3,800 annually to less than 1,000—with only a small number of the homicides taking place at schools; and
- The Justice Department's 2006 National Report on Juvenile Offenders and Victims cites arrest rates for robbery, rape, and aggravated assault have decreased by 1/3 since 1980 for children between 10-18 years of age.

Carnegie Mellon University criminologist Alfred Blumstein attributes the decline in teen crime to the downside of the increase that started in the mid-1980s when kids took over drug gangs from adult dealers. The adults had been imprisoned under tougher state and federal laws. He and many others cite the drop in the crack cocaine trade as an important factor.

Beyond the drop in crack cocaine use, juvenile crime experts largely disagree on the exact combination of factors responsible for shrinking teenage crime in the U.S. over the last decade or so. Explanations by different experts include a broad range of trends and factors:

- new strategies for dealing with delinquents (Research on effective practices has led to shifts away from ineffective practices, such as the use of boot camps and waiving juveniles to adult courts, toward other approaches, such as mentoring programs and the use of trained foster care, rather than incarceration.);
- smarter policing approaches;
- increased adult incarceration that reduced access to adult accomplices (e.g., incarceration rose from 1 per 1,000 adults in the mid-1980's to 4 per 1,000 in 2006);
- improved school-parent relationships;
- an influx of Latino families into central urban areas, bringing "more intact families, stronger values, higher religious participation";

(Continued on p. 3)

Decline in Teen Crime, Continued

- a strong economy since the mid-1990's;
- an overall increase in community morality; and/or
- legalized abortion, which reduced unwanted pregnancies.

The article also notes that Canada's juvenile crime rate dropped at about the same time as it did in the United States, in spite of the fact that Canada had made no specific attempt to reduce juvenile crime.

Skepticism about Media's Portrayal of "Meth Babies" and Meth Epidemic

By Mark McKechnie

In November 2005, *The Salt Lake Tribune* published a story on the parallels between concerns about so-called "crack babies" in the 1980s and "meth babies" in this decade. The story said that twenty years of medical research has shown that the prenatal effects of cocaine are much less severe than they were feared to be in the 80s.

Brown University medical researcher Barry Lester, who signed an open letter with 90 doctors and psychologists, urged the media not to make "the same mistakes with meth as we made with cocaine."

The *Tribune* story said that there is no conclusive research yet regarding exposure to methamphetamine *in utero*. However, Dr. Lester, the director of Brown University Medical School's Infant Development Center, is part of a group of researchers who has received a $6 million grant from the National Institute of Drug Abuse to study the effects of methamphetamine exposure on child development.

Dr. Lester said that initial outcomes show similar problems between infants exposed to cocaine or crack cocaine and those exposed to methamphetamine. They tend to have lower birth weights and their IQ scores are three to four points lower on average. Both groups of infants have shown a slight increase in attention and behavioral problems, similar to cigarette-exposed infants, according to the study's initial findings. (A reprint of this story can be found at: http://www.sltrib.com/portlet/article/html/fragments/print_article.jsp?article=3238017).

The Columbia Journalism Review (http://www.cjr.org/issues/2004/5/voices-blake.asp) published an analysis by assistant editor Mariah Blake on the media's portrayal of "crack babies" in the 1980s, "The Damage Done: Crack Babies Talk Back." Thousands of stories were aired and published by media outlets with dire predictions, including one social worker who proclaimed that a child she was working with would end up with an IQ of 50 and grow up 'barely able to dress herself.'

Research found, however that crack cocaine exposure actually led to a 4.5 IQ-point drop on average. Youth and young adults who had been labeled as "crack babies" have said that the stigma of the "crack baby" label has caused more problems in their lives than the physical effects of the drug exposure, according to the CJR article.

Ms. Blake added that the media had barely begun to learn its lesson about its coverage of "crack babies," when media outlets began covering the issue of "meth babies." Ms. Blake quotes a local Fox News outlet's story, which proclaimed that meth babies "could make the crack baby look like a walk in the nursery."

More recently, the Portland, OR, news weekly, *Willamette Week*, took the state's major daily paper, *The Oregonian,* to task regarding its coverage of a supposed meth epidemic in Oregon in a March 22nd cover story, "Meth Madness" (http://www.wweek.com/editorial/3220/7368/).

Willamette Week reported that *The Oregonian* published 261 stories in an 18 month period, starting in 2004, on an alleged epidemic of methamphetamine abuse in Oregon.

The article specifically criticized *The Oregonian* for citing statistics on the extent of methamphetamine abuse and addiction, its impact upon property crime rates and the role meth has played in driving up the number of children in foster care. *Willamette Week* found that many key statistics cited by *The Oregonian* or by state officials were not based upon any scientifically

(Continued, page 12.)

Dyslexia Gene Identified

Children who do not learn to read fluently by age 10 or 11 should be screened for dyslexia according to an article in the March-April 2006 issue of Brain Work, a neuroscience newsletter from The DANA Foundation (http://www.dana.org/books/press/brainwork/). Many such children are thought to be lacking in intelligence or motivation, but in most cases this is not the cause of their lack of reading fluency.

"Recent studies suggest that the reading difficulties people with dyslexia experience are caused by 'faulty wiring' in certain areas of the brain, and there are indications that this faulty wiring is due, as least in part, to identifiable genetic defects or variations." When dyslexia is detected early, remedial training can allow children with dyslexia to overcome the disability.

Scientists estimate that 40 to 70% of cases of dyslexia are inherited. A recent Yale Medical School study has revealed that reading ability is influenced by a gene called DCDC2. People with dyslexia are found to be missing a stretch of DNA in this gene. It is very likely, however, that other genes are also involved in causing dyslexia.

There are differences that can be observed through neuroimaging in the structure and function of brains of individuals with dyslexia. By comparing the differences in parts of the brain used by dyslexic children to the brains of non-dyslexic children, scientists were able to develop intensive training to improve phonological awareness and recognition of words, comprehension and fluency.

The pattern of brain activation during the intensive training of dyslexic children found increased activity in regions of the brain normally used by non-dyslexic people. The intensive training essentially had rewired the brains of the dyslexic children. The normalized brain activity was accompanied by significant improvements over the course of the study in word recognition and decoding, as well as fluency and comprehension.

Oregon Law Commission Prepares to Set Juvenile Code Revision Agenda

The Oregon Law Commission has approved two projects for the Interim Juvenile Code Revision Workgroup. The already approved projects were begun during the last biennium and include:

- The Juvenile Psychiatric Security Review Board Sub-workgroup; and
- The Juvenile Aid and Assist Sub-workgroup.

New juvenile law projects recommended for approval by the OLC Program Committee are awaiting final approval by the Oregon Law Commission, including:

- The Duration of Disposition Sub-workgroup. This Sub-workgroup will address the disparities in interpretation of the statutory definition of "commitment" in ORS 419C.501. Questions such as "does time spent in detention count toward commitment time?", and "How is probation counted toward commitment time?", will be addressed.

The Protection of Mental Health and Substance Abuse Information Sub-workgroup. The OYA and Juvenile Departments are collaborating on a single uniform mental health screening for all youth coming into the juvenile system. Once that screening is in place, protections will be needed for the information obtained through mental health screenings and subsequent evaluations. The Sub-workgroup will set guidelines for how the confidential mental health and substance abuse information can be used. They will also address how youth can be assured that what they divulge at a screening is protected.

Also pending final approval is a small project to clean some minor problems with the summons provisions caused by OLC bills (HB 2611 - 2001 Session, and HB 2272 – 2003 Session).

The Uniform Parentage Act Workgroup, which is not a sub-workgroup of the Juvenile Code Revision Workgroup, will handle any follow-up issues from last session's Putative Father Sub-workgroup.

Contact Us

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Taking a Harder Look at Conduct Disorder

By Mark McKechnie, MSW

This may be a familiar scenario to attorneys who represent children in juvenile court. A child is maltreated. He is physically abused or witnesses violence in his home. Or he is neglected or maltreated in another way. Eventually, he is diagnosed with a mental or emotional disorder, such as Post Traumatic Stress Disorder, clinical depression, or perhaps Attention Deficit Hyperactivity Disorder (ADHD).

Then this child gets older, moving into adolescence. His symptoms change. His behavior becomes more defiant or aggressive or violent. All of the sudden, the other diagnoses disappear. He no longer has a mood disorder, or PTSD or impulse problems. Now he has Conduct Disorder.

What really happened? Did those other conditions really go away? And where did this Conduct Disorder come from all of the sudden?

Dr. Charles Huffine wrote in the journal, *Adolescent Psychiatry*, in 2002: "The diagnosis of conduct disorder (CD) should be eliminated from the Diagnostic and Statistical Manual of Mental Disorders (DSM). The CD diagnosis fails to meet criteria for being a valid medical diagnosis, does not inform treatment, and in fact has resulted in a kind of therapeutic nihilism that denies many youngsters a chance at getting effective help." (See: http://www.findarticles.com/p/articles/mi_qa3882/is_200201)

Dr. Huffine went on to write: "The prime criticism of CD is that it is nonsubstantive. It has no fundamental nature. CD is acknowledged to be a heterogeneous condition. It has no central defining criteria, no etiological presumptions, no common course or prognosis. No gene, no experience, no flaw in the person can be presumed to underlie CD."

In the same journal, Dr. Sidney Weissman argues that Conduct Disorder has both validity and utility as a psychiatric diagnosis, but notes that it is the assessment and the treatment provided in response to the diagnosis that is important. He notes that the rate of co-morbidity between Conduct Disorder and other diagnoses, such as ADHD or bi-polar disorder is quite high, and these other conditions must be identified and treated appropriately.

Dr. Weissman writes: "In some circles, the CD diagnosis has been used to paint a child as a bad kid. Further, the inference is that, once called bad, the child cannot be helped but should be punished. The intention of this thinking is to avoid wasting resources on hopeless, unlovable children." The problem, he asserts, is not with the diagnosis itself, but in the attitudes toward children and adolescents with this diagnosis. These attitudes produce responses that may not help to ameliorate the disorder or its symptoms.

While there has been a fierce debate about the diagnosis itself, there is broader agreement that children and adolescents with the diagnosis are a heterogeneous group. There are a number of other psychiatric disorders that may be present ("co-morbid") with conduct disorder, such as ADHD, Learning Difficulties, Mood Disorders, Depressive symptoms, Communication Disorders, Anxiety Disorders, and Tourettes Disorder. That means that these other disorders have not just disappeared when a conduct disorder diagnosis is made

Several other potential contributing factors have been found in some children diagnosed with conduct disorder. Some display frontal and or temporal lobe dysfunction. Some youth later diagnosed with CD were identified as "difficult" even as infants, presenting with higher emotional reactivity and lower emotional adaptability.

Abnormalities in serotonin, a chemical involved in neurotransmitter functioning, have also been observed in some children and youth with CD.

Some children also appear to have distortions of cognition, where they misperceive social cues. Such children may misperceive neutral social interactions as hostile. They also have more limited social skills and be less able to generate fewer solutions to social problems.

There is also a clear link between academic and behavioral problems. Children with conduct problems tend to lag significantly behind their peers academically and/or cognitively. There is a particularly strong link between reading disabilities and conduct problems.

More information can be found at: http://www.mentalhealth.samhsa.gov/publications/allpubs/CA-0010/ and http://www.adhd.com.au/conduct.html. The complete diagnostic criteria for a conduct disorder diagnosis can be found in the American Psychiatric Association's *Diagnostic and Statistical Manual, 4th Edition, Text Revision (DSM-IV-TR)*.

See page seven regarding current issues in the responding to youth with behavioral problems and aggression and information on effective practices.

Continuing Legal Education and Conferences

Pathways to Adulthood 2006 Conference

Don't miss the opportunity to network with your colleagues and find out what is new in the field of Independent and Transitional Living. The *Pathways to Adulthood* conference, sponsored by the United States Department of Health and Human Services, Administration on Children, Youth and Families, Administration for Children and Families, Children's Bureau, and Family and Youth Services Bureau, is scheduled for May 17-19, 2006 in **Portland, OR.** TLP Grantee and ILP Coordinator meetings will occur prior to the conference.

Participants at the conference will hear stimulating keynote speakers, select from 55 workshops, hear the latest information from federal officials on IL/TL initiatives, and participate in local site visits of exemplary programs. This conference is coordinated by the University of Oklahoma National Child Welfare Resource Center for Youth Development, a service of USDHHS Children's Bureau. Stay tuned to http://www.nrcys.ou.edu/conferences.shtml for updates.

NACC ANNUAL CHILDREN'S LAW CONFERENCE – SAVE THE DATE!

The National Association of Counsel for Children's Annual National Conference will be held October 12 – 15, 2006, at the Seelbach Hilton in Louisville, Kentucky. For more information visit: www.NACCchildlaw.org .

BACK TO BASICS: RESEARCH, TREATMENT AND RISK MANAGEMENT

The 9th Annual Training Conference of the California Coalition on Sexual Offending will be held May 10 – 12, 2006, at the Marriott San Mateo at the San Francisco Airport. The featured speaker is Dr. Doug Epperson, who developed the Juvenile Sexual Recidivism Risk Assessment Tool (JSORRAT-II). Other workshops will include: Working with Sexually Aggressive Children; Five Simple Ways to Enhance Relapse Prevention; Juvenile Research Outcome & Conclusions; Paradigm Shift in Assessing Sexually Abusive Children & Adolescents and much more. For conference registration go to: www.ccoso.org .

Building Successful Alliances to Improve Outcomes

The Child Welfare League of America Juvenile Justice Division's 2006 Juvenile Justice National Symposium will be held May 31 – June 2, 2006, at the Hyatt Regency, San Francisco Airport. Workshops will include: Dependency and Delinquency: A Discussion of the Longitudinal Research and Its Role in the Development of Public Policy; Emerging Issues in Adolescent Brain Development: Implications for Youth in the Justice System; Diversion and Probation: How One Community is Making a Conscious Decision to be Different; Promoting a More Coordinated and Integrated Juvenile Justice and Child Welfare System; Breaking the Intergenerational Cycle of Maltreatment; Trauma Among Children and Adolescents in Juvenile Justice and Residential Settings, and much more. Register online at www.cwla.org/conferences.

Juvenile Sexual Assault Victims and Offenders

The Juvenile Sex Offender Management Steering Committee (JSOMSC) is sponsoring seven regional trainings facilitated by the Attorney General's Sexual Assault Task Force to address a victim-centered response for juvenile justice professionals: **A Victim-Centered Collaborative Response: Juvenile Victims and Offenders of Sexual Assault**. The trainings will include a two-hour interactive lecture by Heather J. Huhtanen, Director of the Sexual Assault Training Institute, that discusses sexual assault, victims, offenders and the definition of "victim-centered." The interactive lecture will be followed by a two-hour workshop hosted by local victim services providers to assist in the development of community and regional action plans for a collaborative victim-centered response to juvenile victims and offenders of sexual assault. The schedule is:

May 1, 2006: Lane County Department of Youth Services, Eugene

May 2, 2006: Jackson County Community Justice, Medford

May 22, 2006: Multnomah County Juvenile Services, Portland

May 23, 2006: Stafford Hansell Justice Center, Hermiston

Week of June 19, 2006: TBA; Salem & location in Lincoln County

June 26, 2006: Department of Human Services, Lewis & Clark Room, Bend

All sessions will run 8:30 a.m. to 12:30 p.m. Registrations are limited to 30 persons for each site. The Trainings are free. You can register by sending or leaving a message for Winifred Skinner – Winifred.skinner@oya.state.or.us (503) 373-7570.

"Behavior Summit" Examines What Works, Doesn't by Mark McKechnie

Multnomah County, like many other counties and regions around the state, has developed a cross-system committee, called the Community Care Coordination Committee, to better identify, develop and coordinate services across systems for children and youth with significant mental health needs.

Representatives from child welfare, education, mental health, juvenile justice and other systems routinely participate. They have found that youth who display more severe aggressive or violent behaviors pose one of the greatest challenges across service systems. Thus, Multnomah County, local DHS staff, Wraparound Oregon and other groups organized a "behavior summit" on April 20, 2006, in Portland. About 100 participants attended.

There was a great deal of debate regarding the role of the juvenile court and justice system in addressing acts of aggression or violence by youth with serious mental health issues.

Dr. Janet Walker, from Portland State University's Regional Research Institute, provided an overview of both the suspected causes of aggressive or anti-social behavior in youth and treatment approaches that have shown effectiveness in intervening with such youth.

Dr. Walker described a vicious cycle of internal and external factors that seem to be present for many youth with severe behavioral problems. External factors include: harsh or inconsistent parenting; disrupted relationships; and problematic peer relationships. Internal factors include: problems with cognition (executive function or cognitive flexibility); problems with emotional regulation; poor social skills; and additional physical, developmental or mental health challenges.

The research reviewed by Dr. Walker found internal and external factors that can ameliorate aggressive behavior and other conduct problems. The external factors include: lasting attachments to positive adult figures; training for parents on communication, problem solving and limit setting; and engagement with pro-social, rather than anti-social peers.

Approaches that can successfully address internal factors include: cognitive/behavioral programs that teach problem solving, negotiation and coping skills; and treatment for other co-occurring conditions (see article on Conduct Disorder on p. 5, regarding co-morbidity).

Dr. David White, Medical Director for the County's child and adolescent mental health programs, presented on the diagnosis of Conduct Disorder, specifically, and addressed potential treatments. Despite the fact that family and parenting problems haven't been identified as a primary cause of conduct problems, interventions that focus on the family system have been found to be effective nonetheless.

Multi-Systemic Therapy (MST) is an intensive family therapy model shown to have positive outcomes for youth with conduct disorder and delinquent behaviors. This has also been identified by the State of Oregon as an "Evidence Based Practice" under SB 267.

Dr. White also noted that the research does not support the use of "congregate care" (group or residential care settings) for behaviorally disordered youth.

For additional information on the Conduct Disorder Diagnosis, see page five.

Dr. Walker also discussed the positive outcomes produced for delinquent youth through the Wraparound Milwaukee program in Wisconsin.

Youth involved in the delinquency system who also have mental health needs and are often involved in other systems, such as child welfare, special education and substance abuse treatment, have been referred to Wraparound Milwaukee for several years. Outcome research thus far has shown a significant decline in additional referrals for law violations, including property, person and sex offenses, for youth served by the program. There was also a decline in recidivism in the year after the services ended.

There was a smaller decline in subsequent drug offense referrals for the youth enrolled in Wraparound Milwaukee.

Wraparound service approaches have also been identified as an evidence-based practice by the State of Oregon's Office of Mental Health and Addictions Services.

Both MST and Wraparound involve intensive family support and intensive case management. They are significant departures from the types of services historically used in Oregon to treat children and youth with serious mental health issues and behavioral symptoms.

While each approach is distinct from the other, both are community-based and individualized approaches to address the needs of the child/youth and family. Both seek to utilize strengths in order to bolster a family's ability to care effectively for a child/youth with serious mental health, behavioral and other needs.

Case Briefs

Youth's Right to Allocute at a Dispositional Hearing: State ex rel. Juvenile Dept. of Umatilla County v. Leach, 202 Or.App. 632, 123 P.3d 34 (2005).

After finding that a youth violated a term of his probation, the Circuit Court in Umatilla County, committed him to the custody of the Oregon Youth Authority for placement at a youth correctional facility. The youth appealed, arguing that the trial court violated his right to be present at the dispositional hearing and to allocute. The Court of Appeals affirmed the trial court. In juvenile proceedings, the youth has no right to be present and to allocute at the dispositional phase.

Termination of Parental Rights: State ex rel. Dept. of Human Services v. Rardin**,** 202 Or.App. 603, 123 P.3d 362 (2005).

A trial court terminated a father's parental rights to his seven-year-old daughter due to unfitness. The father appealed. The Court of Appeals held that clear and convincing evidence supported termination of father's parental rights. A two-part test is used in determining whether to terminate parental rights based on unfitness: first, the court must identify the parent's conduct or condition, and then measure the degree to which that conduct or condition has had a seriously detrimental effect on the child; second, the court must evaluate the relative probability that, given particular parental conduct or conditions, the child will become integrated into the parental home within a reasonable time. In this case, the father was voluntarily absent from his daughter's life for six years, and, due to daughter's psychological needs, integration of the daughter into her father's home within a reasonable time was not feasible.

Presenting Self-Defense Argument: U.S. v. Biggs, ___ 9th Cir. ___ (3/31/06). The Ninth Circuit reversed a determination by the Federal District Court that defendant was precluded from proving a prima-facie case of self-defense because he was unable to show that there was no reasonable alternative to the force he used. Clarifying the standard for the defense of self-defense, the Ninth Circuit held that the only two elements of a prima-facie case of self defense are that the defendant had a reasonable belief that the force used was necessary, and that the amount of force used was reasonable.

Use of facts not admitted or found by a jury: State v. Muniz, ___ OrApp ___ (March 8, 2006). Muniz argued under Blakely and Apprendi that the trial court erred in imposing a departure sentence on his second-degree escape from a youth correctional facility based on facts not admitted by him or found by a jury – "his persistent involvement in similar offenses – runaways and escapes". The Court held that "in the absence of any waiver by defendant of his jury trial right, imposition of the sentence was plain error".

Reasonable Efforts as to Incarcerated Parent: State ex rel Juv. Dept. v. Williams, ___ Or App ___ (March 8, 2006). In this appeal by a father from a permanency hearing finding that DHS had made reasonable efforts, the Court of Appeals, on de novo review, disagreed with the trial court, concluding that DHS had failed to make reasonable efforts. Father in this case had been incarcerated for all but two weeks of the time that the child had been in state care. Father's attorney had requested that DHS contact father in jail and relayed father's willingness to participate in services. No contact was made by DHS until a letter of expectation was sent approximately nine months after the child was first placed in care. Father participated in all the programs offered by the jail. At the time of the permanency hearing father was set to be released from jail in about three and half months. On appeal the state, relying on State ex rel Juv. Dept. v. Dee, 19 Or App 193, 526 P2d 1036 (1974), argued that the fact that father had been incarcerated during the case, placed him beyond the reach of reasonable efforts and excused the state from providing any services to father or making any meaningful contact with him. The Court of Appeals found that the current statutory scheme in ORS 419B.340(5) abrogates the proposition in *Dee* relied on by the state and that DHS cannot be excused based solely on a parent's incarceration, without more from making reasonable efforts. It is, the Court found, ORS 419B.340 (5) that sets the circumstances under which DHS may be excused from making reasonable efforts and parental incarceration is not expressly addressed in that statute, nor would it qualify as one of the "includes, but is not limited to" bases for aggravated circumstances. While declining to delineate services that would make DHS's efforts with an incarcerated parent reasonable, the Court did note that DHS could have contacted the father, investigated the history and extent of his relationship with the child, assessed his parental strengths and deficiencies, explored services available to him in jail,

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Very often issues in juvenile delinquency and dependency cases are resolved by the court with the direction, professional advice and judgment of mental health professionals. The most prevalent type of mental health professional in Juvenile Court is the psychologist, but courts also look for guidance to psychiatrists, neuropsychologists, neurologists, pediatricians, therapists and social workers. Being able effectively to collaborate with experts pre-trial can make or break your case.

Lawyers often find it easy to be cynical about the testimony of such experts, viewing it as so much conclusory speculation and authoritarian mumbo-jumbo, lacking in the theoretical and practical rigor that justifies serious consideration in a court of law. At times, it can be difficult to avoid the conclusion that some expert opinions are for sale, and at other times, these professionals can seem so malleable as to cast doubt on their objective credibility. This cynical skeptism serves lawyers well, of course, when we are in the role of the cross-examiner seeking to impeach or reduce the credibility of the opponent's expert witness.[1] However, it is important for practitioners not to let such attitudes impede their ability effectively to use expert witnesses to advance their case and counter unfavorable evidence.

Through testing, examination and interview of clients, mental health experts can discover, observe, articulate and interpret data about the youth, child or parent that can be extremely important to the case. It is this concrete and relevant information, and the experts' ability to make a logical presentation of the importance of these factors to the issues of the case, that can be invaluable in advancing the goals of your case.

One of the steps in investigating any case is, "when appropriate, to obtain the assistance of experts and other professionals to provide consultation and testimony regarding issues in the case, evaluations of clients and others, and testing of physical evidence." OSB Specific Standards for Representation in Criminal and Juvenile Delinquency Cases, Standard 2.7, Implementation 9. See also, OSB Specific Standards for Representation in Juvenile Dependency Cases, Standard 3.8, Implementation 1(b).

It is also important to keep in mind that even if consultation, testimony or evaluation is not needed at the adjudicatory phase, it may be essential in achieving the disposition desired by the client. Both dependency and delinquency cases are on short timelines, and counsel should begin to prepare for disposition from the beginning of the case. See OSB Specific Standards for Representation in Juvenile Delinquency Cases, Standard 2.10, Implementation 2(e), 3(e) and (f) and OSB Specific Standards for Representation in Juvenile Dependency Cases, Standard 3.11, Implementation 8.

Lawyers need to cultivate some basic understanding of both mental health issues and the differences between mental health professionals and lawyers. Lawyers should especially be familiar with mental health issues common to juvenile cases including: different types of psychotic disorders, drug and alcohol addiction, mood disorders, personality disorders, attention-deficit-hyperactivity disorder, post-traumatic stress disorder, mental retardation and learning disabilities. Juvenile lawyers need a good grasp of the basics of child development, including when juveniles have the capacity to develop adult executive functions and the developmental importance of attachment and the effects of separation. There are numerous sources of useful information on these topics. There is much information on the internet on these subjects, although not all of it is reliable.

Juvenile lawyers should have and use the *Diagnostic and Statistical Manual of Mental Disorders*, American Psychiatric Association (Fourth Edition, Text Revision 2004). The DSM is used internationally as the standard reference for psychiatric diagnosis. Attorneys can use this reference to find information on the diagnostic criteria for each disorder, variations in the types of presentation of different disorders, prevalence rates and other diagnostic information.

The DSM does not seek to explain the cause of the listed disorders, nor does it include information about appropriate treatments for the various disorders. Treatment recommendations and prognoses for an individual client will be subject to the opinions of various mental health professionals.

Attorneys also need to understand that mental health professionals have a different perspective and orientation from those of attorneys. Mental health professionals tend to be diagnostic and treatment-oriented rather than decision oriented. Professional relationships in the mental health arena are generally based on trust, mutual respect, openness and cooperation. In the more competitive adversarial system, we are bound by our ethics, if not our inclinations, to be

(Cont'd p. 14)

Cases, Continued from page 8.

incorporated those services into a service agreement, documented his participation, monitored his progress, looked into the availability of visitation, been aware of his release dates, inquired into his post-release situation and plan and generally attempted to engage and work with him.

Denial of DUII Diversion Program: In State v. Wright, ___ Or App ___ (March 22, 2006), a DUII defendant was denied DUII diversion due to having previously participated in a drug rehabilitation program judicially compelled to avoid the loss of custody of the defendant's child. Holding that the denial of diversion was appropriate, the Court found that ORS 813.215 requires that a defendant prove that she did not participate in a DUII diversion program or any "similar alcohol or drug rehabilitation program" in the preceding 10 years, and the defendant in the case had participated in such a program in 2001 by juvenile court order to regain custody of her child.

Juveniles Spared from New Mandatory Minimum Sex Crimes Law Passed During Special Session

Mandatory minimum sentences for specific felony sex crimes were increased dramatically by the Oregon Legislature on April 20, 2006, during a one-day Special Session.

The new law, House Bill 3511, which triples the mandatory minimum sentences for first degree rape, sodomy and unlawful sexual penetration when the victim is younger than 12 years old, will go into effect upon the signature of the Governor.

The bill also increases the mandatory minimum to 300 months for kidnapping when it is committed in the furtherance of the above listed crimes.

In addition, the bill requires lifetime post-prison supervision for those convicted under this statute.

While the justification for the bill is to protect younger children from habitual and predatory sex offenders, the mandatory minimums will apply to first-time, as well as repeat offenders.

Convicted offenders who are 15, 16 and 17 years of age at the time these crimes are committed will still be sentenced under the original Measure 11 mandatory minimums. They are also exempted from the lifetime supervision requirement.

Multnomah County Reinstitutes Best Interests Hearings

The Multnomah County Juvenile Court is reinstituting Best Interest Hearings in Termination of Parental Rights Cases, according to a memo from Presiding Family Court Judge, the Hon. Elizabeth Welch, on March 20, 2006. A Pre-Trial Conference/Best Interests Hearing will be set at the initial appearance on TPR petitions if the case is set for trial. This hearing will be set for one month prior to the trial with the judicial officer who has been reviewing the case. Pre-trial conferences will no longer be set with the TPR trial judge. PTC/BI Hearings will be for one hour and assigned caseworkers, DDAs and counsel for all parties will be expected to be present. At the hearing:

- The DDA, or counsel for the child if the child is petitioner, will present a thorough summary of the intended witnesses and evidence supporting the petition.
- The attorneys for the other parties will do likewise.
- The DHS caseworker will report on recruitment or the progress for certification of current caretakers.
- The status of any mediation will be addressed.
- The Court will advise the parties of its view of the probable outcome of the case.
- All parties will present witness lists.
- Any evidentiary issues that can be addressed pretrial will be dealt with.

Multnomah County Issues Incarcerated Parent Protocol

The Dependency Committee of Multnomah County has adopted the Protocol for Parents Incarcerated in Local, State or Federal Custody Named on Dependency Petitions. The Protocol is designed to improve DHS and Court services to incarcerated parents.

It requires DHS and the Court Clerk's Office to obtain needed information about incarcerated parents, provide notice of Shelter Hearings to incarcerated parents, and provide other information to the parent, including the application for court-appointed counsel.

The Protocol encourages that all cases involving an incarcerated parent whose location is known have a Second Shelter Hearing.

Expectations for parents' attorneys include having contact with the parent and completing an order to transport or request for telephonic participation. Attorneys are also encouraged to send the parent A Resource Guideline for Parents Incarcerated in Oregon (Project Link-up 2003).

A copy of the Protocol is available at: www.jrplaw.org/resourcelb.htm .

Children of Incarcerated Parents: A Bill Rights

1) I have the right **to be kept safe and informed at the time of my parent's arrest**.

2) I have the right **to be heard when decisions are made about me**.

3) I have the right **to be considered when decisions are made about my parent**.

4) I have the right **to be well cared for in my parent's absence**.

5) I have the right **to speak with, see, and touch my parent**.

6) I have the right **to support as I struggle with my parent's incarceration**.

7) I have the right **not to be judged, blamed, or labeled because of my parent's incarceration**.

8) I have the right **to a lifelong relationship with my parent**.

From the CRB Network News – reprinted with permission by Friends Outside, Stockton, California.

New CRB Guide

The Citizen Review Boards have developed a new statewide CRB Case Notes Sheet to guide board members regarding areas of inquiry during reviews. The Case Notes Sheet provides questions that Boards should ask in reviewing the case. A suggested question for parents is: "Tell us about your participation in services and how you have benefited from them." Parent(s) attorney questions include: "What are the parent(s) successes?"; "Do you have other recommendations to help the parent be successful?"; "How much contact have you had with your client?", and "When did you last see your client?". Child(ren)'s attorneys questions include: "How much contact have you had with your client?"; "What is your position regarding DHS' case plan?"; "Does anyone have any concerns about the child's safety?"; "Could the child currently be safe in his/her own home?", and "Have minimally adequate standards been met?". For a copy of the complete CRB Case Notes Sheet go to: www.jrplaw.org/resourcelb.htm.

Study Finds that Speedier Trial and Quality of Justice Not Mutually Exclusive

Portland, Oregon was one of nine states studied by the National Center for State Courts (NCSC) and the American Prosecutors Research Institute (APRI) to identify sources of delay in felony case processing and find ways to alleviate it. Researchers reviewed approximately 400 adult felony cases from 1994 in each of the jurisdictions and interviewed and surveyed judges, attorneys and other court officials. The major findings of the study include:

- Timeliness and quality of justice are not mutually exclusive, and courts can exercise considerable control over how quickly cases move from indictment to resolution without sacrificing advocacy or due process.

- Meaningful and effective advocacy was more likely to occur in criminal justice systems where case resolution was the most timely.

The relative pace of litigation depended largely on the local legal culture - expectations and attitudes of judges, prosecutors, and defense attorneys, with personnel in more expeditious courts having more efficient work orientations and clear case processing time goals. Attorneys in these courts were more positive about resources, management policies, and the skill and tactics of their opponents.

Along related lines, the National Council of Juvenile and Family Court Judges (NCJFCJ) has called for establishment of Model Juvenile Delinquency Courts similar to the Model Juvenile Dependency Courts already established in many jurisdictions nationally, including several in Oregon. Such model delinquency courts would have considerably shorter timelines for the processing of juvenile delinquency cases.

Juvenile Homicides and the Effectiveness of Adult Court Intervention

A growing number of juveniles who commit violent crimes are being transferred to the adult criminal system. Between 1989 and 1993, the number of juvenile offenders transferred increased by 41%. Despite this increase, the number of juvenile homicide arrests in major cities continued to increase.

The National Center on Institutions and Alternatives compared the per capita transfer rates with the per capita youth homicide rates in each of the fifty states. They found no correlation with an increase in transfer rates with a decrease in homicides by juvenile offenders. If the goal was to reduce juvenile crime, it does not appear as though transferring youth to adult court is meeting that goal. Recent research has found that transfer to adult court is associated with higher rates of recidivism.

Far from discouraging youth to commit further crimes, the adult system has become a training ground for future offenders.

For further reading and suggestions for other means of intervention go to: http://66.165.94.98/stories/analysjuv0796.html

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valid research or epidemiological data. *Willamette Week* said that valid statistics had also been misrepresented by the paper or used without the proper context.

Willamette Week also criticized *The Oregonian's* assertions that parents' use or manufacture of methamphetamine was the cause of over half of foster care entries during the previous year. *Willamette Week* reported that the DHS "study" on the foster care-meth link cited by *The Oregonian* didn't actually exist.

DHS officials, according to the *WW* article, have had to subsequently explain that foster care entries wouldn't likely drop by 50% if the problem of methamphetamine abuse somehow went away.

The proportion of cases in which any drug or alcohol abuse was a factor in the removal of children from their homes rose from 62.4% in 1998 to 71.2% in 2004.

There were 10,147 victims of child abuse and neglect identified by DHS in 1998 and 10,622 victims identified in 2004 according to annual reports published by the Oregon Department of Human Services.

In Brief

Relative Search Best Practice Guide

Children who are removed from their homes and placed with relatives often have a greater sense of stability. Relative foster placements can also prove vital in reunification efforts. For these, and many other reasons, Oregon and other states consider family members as the first placement option when children are not able to live safely with their parents. When child welfare agencies conduct extensive relative searches, they increase the chance of finding family members who can be foster placement resources or provide other types of support to children in need. To assist caseworkers in their search for relatives, the Minnesota Department of Human Services created the "Relative Search Best Practice Guide." However, this guide is for anyone wanting to know more about how to go about conducting a comprehensive search for relatives. The guide also addresses cultural considerations and provides tools to assist with placement decisions. To access the guide go to: http://www.dhs.state.mn.us/main/groups/publications/documents/pub/DHS_id_052669.pdf.

Education and Juvenile Justice Prevention

One of the best ways to help youth involved in the juvenile justice system to be more successful is to advance their educational skills, according to the National Center on Education, Disability and Juvenile Justice. Most youth in the system perform below grade level and are affected by educational disabilities at a much higher rate than youth not in the justice system. In the article, "Education: the Key to the Future Juvenile Justice Kids?" Caitlin Johnson from *Connect for Kids*, examines the need for quality education for youth in the juvenile justice system. The article discusses how different programs are meeting those needs. One such place is the

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Online Resources

A Family's Guide to the Child Welfare System, available on the web at www.tapartnership.org , is an excellent, reader friendly resource for parents involved in the child welfare system. The Guide is designed to help parents have a better understanding of the child welfare system and reach a positive solution for their families. The 128 page guide includes Sections such as: What is the Child Welfare System?; Learning about Child Protective Services; The Nuts and Bolts of Service Planning; Learning About Services for Your Family in Your Own Home; Learning About Out-of-Home Placement Services; Placements to Obtain Treatment and Services for Children; What are the Possibilities After Out-of-Home Placement?; How Child Welfare Works with American Indian Families; Rights and Responsibilities as a Parent in the Child Welfare System; and Some Approaches Used by Child Welfare Agencies to Help Families Reach Their Goals. The Guide also contains practical tips, a glossary of terms, federal laws and policies and other resources for parents.

Although based on federal law and not specific to Oregon law and practice, the Guide is, nonetheless, a good resource for parent clients who want to better understand the system.

Practice Tip: The "Summary of Your Rights and Responsibilities as a Parent Involved with the Child Welfare System," Section 9, pages 85 to 89, would be a useful attachment to a general intake letter for parent clients.

The **American Bar Association** has made an online resource available to lawyers to help answer questions about confidentiality and education decisions. **Mythbusting: Breaking Down Confidentiality and Decision-Making Barriers to Meet the Education Needs of Children in Foster Care** by ABA attorney Kathleen McNaught is available at: http://www.abanet.org/child/relji/education/home.html1#11 .

The **Child Trauma Academy** offers courses that are free to all participants. Course offerings at www.ChildTraumaAcademy.com include:

- The Amazing Human Brain and Human Development
- Surviving Childhood: An Introduction to the Impact of Trauma
- The Cost of Caring: Secondary Traumatic Stress and the Impact of Working with High-Risk Children and Families
- Bonding and Attachment in Maltreated Children
- Ethical Issues in Working with Children

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suspicious rather than trusting of our colleagues and to put strategy and tactics ahead of openness and cooperation.

Many mental health professionals drawn to work with juvenile court clients, continue to wonder at the lawyer's drive to zealously represent even obviously guilty clients. Attorneys and mental health professionals may also differ about the attorney's advocacy for the client's position when that differs from the clinician's assessment of what is in the child's "best interests".

Starting Off on the Right Foot

It is important for the practitioner to work collaboratively with the mental health expert. Evaluators not only must be provided access to the client and relevant records, but also must be made familiar with the workings and expectations of the law and the court. Counsel should be mindful that: "The value of an expert opinion can rise no higher than the facts and premises on which it is based. But it is only a rare medical witness who is so skilled in the forensic art that he can present testimony adequately even where there is inept interrogation by counsel."[2]

A detailed engagement letter should be provided to summarize information about the facts of the case and the client, set out the specific questions the attorney hopes to have addressed by the evaluation, explain how the evaluator's testimony would be used to advance the client's case, and inform the mental health professional of the applicable law and court procedure.

It is particularly important that counsel has thoughtfully developed a theory of the case from which she can carefully frame the questions for the evaluator. It is never sufficient to ask for an evaluation without providing this guidance to the evaluator.

The engagement letter should be factual and should inform the evaluator of the views of the parties to the proceeding. Counsel should keep in mind that the engagement letter may be discoverable and that opponents could use it impute bias to the witness. In many cases counsel will want to get an oral report from the evaluator before having it reduced to writing. Attorneys also frequently ask to see a draft of the report before the final report is written. Experts should be aware that counsel may make a strategy decision to not proceed with the report or testimony.

Further, unless counsel already has a working relationship with the

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Maya Angelou public charter school in Washington, DC, where youth who were once labeled "problems" are now succeeding. For more information on this and other programs serving the educational needs of youth, go to http://www.connectforkids.org/node/3843?&tn=hp/lf/3 .

Serving DOC Youthful Offenders in OYA Facilities

The April 12, 2006, Oregon Youth Authority (OYA) Bulletin includes a response to staff and stakeholders who ask why OYA houses youth convicted in adult court, and whether housing those offenders at the Department of Corrections (DOC) instead of OYA would provide additional beds for juvenile offenders. Deputy Director Phil Lemman explains in the article that SB 1, passed by the legislature in 1995 in response to voter approval of Measure 11, required that most youth convicted under Measure 11 could serve most – if not all – of their sentence at OYA. As Mr. Lemman indicates, the legislature wanted to give these youthful offenders equal reformation opportunities with other juvenile offenders, and avoid them becoming more deeply entrenched in criminal behavior through incarceration with older criminals in the adult corrections system. Mr. Lemman reports that OYA currently houses about 300 adult offenders in close custody facilities, out of a total close custody population of 850. Further the funding for these beds go with the offender, so if they were moved to an adult correctional facility there would not be additional funding or beds available for youth adjudicated as juveniles. The OYA website is: www.oya.state.or.us .

Adolescent Brain Research and Juvenile Justice

Rethinking the Juvenile in Juvenile Justice, published by the Wisconsin Council on Children and Families, addresses the intersection between brain research and juvenile justice, and is available online at http://www.wccf.org/pdf/rethinkingjuv_jjsrpt.pdf . This Report contains a useful summary of adolescent brain development. Examining recent adolescent brain research findings and juvenile crime trends, the Report makes findings, including that:

- Adolescence is a distinct period of brain development – decision making is one of the last brain functions to mature in the early 20s.
- The ability to control behaviors in emotionally charged situations does not develop until late adolescence.

The Report goes on the recommend that our knowledge about adolescent development to their treatment must be applied to the justice system in order to provide more effective and cost-effective solutions to juvenile crime, including: juveniles should not be tried as adults, developmentally appropriate treatment should be provided for youth, and youth under 18 should not be placed in adult prisons or jails.

"In adolescence, physical health is approaching its peak. Adolescents are not only bigger and stronger than children, but also show developmental increases in a wide range of mental and physical abilities, including reaction time, reasoning skills, problem solving, immune function, and capacity to cope with many kinds of stresses and challenges. Yet, during this period of resilient health, burgeoning energy, and new-found capabilities, we witness a dramatic increase in death and disability: soaring rates of serious accidents, suicide, homicide, aggression and violence, use of alcohol and illegal drugs, emotional disorders, and health consequences of risky sexual behavior. Behind this paradox lies the complex story of adolescent development. To understand it, we must consider the maturing adolescent brain, as well as the impact of social context and experience on the development of biological systems."

- Ronald Dahl, M.D., "Beyond Raging Hormones: The Tinderbox in the Teenage Brain," Cerebrum, vol 5, No 3, Summer 2003.

Experts, continued from p. 14

evaluator, a meeting should be arranged at the beginning of the case. For mental health professionals who are not experienced expert witnesses, counsel will want to explain that to be effective the expert should avoid excessive use of professional jargon, avoid presenting conclusions without a clear underlying rationale, be sure to individualize problems to the client and answer the questions actually needed for the evaluation.

Counsel will want to take care and a conservative approach to developing and presenting expert testimony. At the end of the day the standing and credibility of the expert, and the client's ultimate success in the case, will depend on how solid the base is for this particularly persuasive type of evidence.

Both the attorney and the mental health professional should assure that the client is made aware that the relationship may not be privileged and that information revealed to the evaluator may be shared with other parties and used in court.

The initial meeting with the mental health professional should also begin to prepare for likely themes of examination and cross-examination. Given recent case law, evaluators should be informed that it may be necessary to up date the evaluation if there is any significant lapse of time between the evaluation and the trial or other hearing.

Using the engagement letter and the meeting with the mental health professional, the lawyer should assure that:

- The attorney/expert relationship has been clearly defined;
- The attorney has communicated fully, clearly and accurately the information the expert needs to perform their role; and
- The basis for the collaboration between the attorney and expert is obtaining the optimum result for the client.

In the next issue, more on the use of mental health experts in delinquency cases, including: **Finding the Right Expert** and **Compelling Evaluations.**

Notes:

1. One of many useful tools to assist lawyers in preparing to cross-examine expert witnesses is Jay Ziskin's treatise: Coping with Psychiatric and Psychological Testimony (2004).
2. Campbell v. U.S., 307 F2d 597, 615 (D.C.Cir. 1962)

Children enrolled in the Oregon Health Plan are entitled to medically appropriate mental health services.

OREGON ADVOCACY CENTER AND JUVENILE RIGHTS PROJECT, INC.

Children's Mental Health Access Project

The Oregon Advocacy Center and Juvenile Rights Project, Inc. are pleased to announce the Children's Mental Health Access Project. JRP and OAC advocates are available to assist enrolled children and their parents or guardians access Oregon Health Plan-covered services, such as:

- **Intensive Community-Based Treatment Services (e.g., home/community supports)**
- **Respite Care**
- **Intensive Treatment Services (residential or day treatment services)**
- **Outpatient Care**
- **Care Coordination**

OAC and JRP advocates can provide assistance when OHP-enrolled children are denied medically appropriate mental health services, when covered services are not delivered with reasonable promptness, or when the agreed-upon services are not properly delivered.

JRP and OAC can advocate with Mental Health Organizations and/or providers to ensure that OHP members receive the services to which they are entitled, and, if necessary, help children and families file grievances and requests for Medicaid fair hearings (appeals), including representation in cases that go to a hearing.

Children's Mental Health Access Project services are provided free of charge.

OREGON ADVOCACY CENTER AND JUVENILE RIGHTS PROJECT, INC.

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