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Advocating for Nonoffending Parents of Sexually Abused Children

By Sean Worley, Law Clerk

I. Introduction

"Throughout the world, child sexual abuse is considered the ultimate crime. Not even murder generates the kind of raw emotional reaction that results from the sexual abuse of a child. Society acknowledges the innocence of children and responds to child abusers with extreme prejudice."[1] Because of society's attitude toward child sex abuse, the dynamics of child dependency cases that

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"Early experiences affect the quality of the architecture of the brain establishing either a sturdy or fragile foundation."

View from the Bench

Babies' Brains - What Do They Tell Us

By The Hon. Diana I. Stuart, Multnomah County Circuit Court Judge

Legal principles rarely keep step with science. However, lawyers, DHS case workers and judges are becoming more and more aware of neuro-psychological research into human brain development that informs us and warns us that our actions in juvenile and family court may not only have long ranging impact on a child's emotional, social and behavioral outcomes, but also may affect how a child's brain develops and thus affect even the child's intellectual and educational future.

The science is now clear enough to be the impetus behind the Governor's plan[1]

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for improving educational outcomes for children across the state by making cost-effective investments in early childhood . It was also the cornerstone presentation of the Early Learning Symposium presented on August 17, 2011, jointly by the Oregon Commission on Children and Families, the Oregon Department of Human Services, and the Oregon Judicial Department in collaboration with Casey Family Programs.[2] The conference, titled "Applying the Science of Early Childhood Development to Child Welfare Policy and Practice in Oregon: *A case for Action and a Call for Innovation*", was a reminder of how critical the first five years of life are and how urgent our task is to safeguard the right of all children (and especially the babies who come before the court) to develop to their full potential.

Simply put, the human brain is built from the ground up beginning prenatally with the creation of sensory pathways (vision and hearing) onto which language capacity builds supporting the development of higher cognitive functions. In the first few years of life, seven hundred new neural connections are formed every second. That's right, every **second**. After this period of rapid proliferation, connections are reduced through a process called pruning so that the remaining brain circuits can become more efficient.

Early experiences affect the quality of the architecture of the brain establishing either a sturdy or fragile foundation for all of the cognitive, emotional and social capacities that are later formed. Genes and experiences interact in an exquisite dance to shape the developing brain. The most changeable factor is the "serve and return" relation which exists between babies and their care-givers. Babies need a responsive adult to interact through babbling, facial expressions and gestures back and forth between baby and adult. Without that interaction, the brain's architecture does not develop the expected sensory pathways to permit the necessary foundation for language and executive functioning.

Additionally, ongoing chronic stress damages developing brain architecture, the cardiovascular system, the immune system, and metabolic regulatory controls, cause childhood developmental delays, and future adult health disorders including alcoholism, depression, heart disease and diabetes. Studies show that toddlers who have secure, trusting, non-disrupted relationships with their care givers experience minimal stress hormone activation when frightened by a strange event. On the other hand, children who have experienced repeated stressful and insecure relationships experience significant activations of the stress response system when presented by new and different and stressful experiences. In effect, early experiences are built into our bodies, creating biological "memories" that shape development, for better or worse.

Research into bonding between babies and care-givers, suggests that infants are capable of multiple secure bonds when frequent and meaningful opportunities to attach are provided to an infant. Although there is some controversy in the research, it is pretty clear that children need secure attachments to their care givers and that disruption of those bonds adversely affects a child's sense of safety and thus increase the stress response.

In early childhood, the brain is flexible but after the first few years, the "windows" that were previously wide open to embrace a universe of experiences and allow the brain circuitry to hard wire with a solid foundation for future learning and development begin closing precipitously as unused circuitry is pared down. For example, the parts of the brain that differentiate sound are beginning to become specialized to the sounds and language (or lack thereof) to which the baby is exposed. As the maturing brain begins to specialize to assume more complex functions, it is less capable of regaining "lost" ground and it is harder and harder to shore up a weakly developed brain.

Providing supportive and positive conditions for early childhood development is more effective and less costly than attempting to correct problems as they later emerge in children. Later intervention is likely to be less successful and sometime ineffective. The foundations for a healthy adult are:

- a stable and responsive environment of relationships with consistent, nurturing, and protective adults,
- safe and supportive environments, and
- sound and appropriate nutrition.

So, should this information concern those of us who work with children and families in Juvenile Dependency Court? Yes. The statistics are startling. Although we are

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doing better, in 2010 in Oregon, out of every 1,000 children, 5 older children, 8 children between 1 and 3 years old, and 16 babies under 1 year of age, entered into foster care. Children between 0 to 3 makeup about 40% of all children entering care, and 58% of all babies are newborns entering within the first 3 months of life. A significantly greater proportion of these babies are African-American or multi-racial, and for children under the age of one, nationwide only 35% of children who enter care before the age of one are returned home.

So, what can each of us do to ensure healthy development for these babies? First, we all need to renew our resolve that babies (as is true of all children) need to be at home with their parents when that can safely occur. At shelter hearings, judges in Multnomah County are all now using the "Preliminary Protective Hearing Bench Card" developed by Courts Catalyzing Change, a Casey Family Program.[3] Every attorney and caseworker appearing before a Multnomah County Judicial Officer in Juvenile Court should have and know this bench card.

The inquiry at shelter hearing will now focus on what services have been offered to support the natural strengths of the family (extended as well as nuclear) to help create a safe environment for the child to remain with a parent. Exploration of family resources (both kith and kin) must occur both as a potential safety net for the family but also as a potential placement should removal be unavoidable.

Jackson County has reduced the number of children coming into care, in part, because of the creation in that county of housing resources devoted to struggling families where community can be established and supportive supervision is available as part of the housing resource. This has been a critical part of that county's ability to safely keep children from coming into care.

Additionally, DHS is attempting to increasingly front load services in an effort to prevent placement. The agency persuaded the 2011 legislature to provide some funding to begin the process of implementation of a state wide differential response plan. The exact way that plan will roll out is not clearly known yet, but it will provide an alternative track to the current "investigatory" model, one in which parents will hopefully feel less stigmatized and more able to cooperatively work with providers and the agency to meet the identified safety needs.

If a child is brought into care, frequent and meaningful contact between child and the parents must occur in order to permit attachment with infants and prevent attachment disorder with children where a bond is already formed. It is ludicrous to pretend that an infant who was removed from the parents at the hospital can return home in a healthy fashion where only several hours a week parent/child contact is occurring. Clearly, multiple meaningful weekly contacts are needed. We all agree. We all also know that there is not enough money to fund enough DHS personnel to do the parenting time needed.

The Child Welfare Council has an established subcommittee addressing the issue of visitation. Their draft report[4] is a call to action in this area and will hopefully encourage much more discussion at every stage of a dependency case analyzing the actual risk present and looking for ways to surmount challenges to increased and more meaningful contact. Creative parenting time ideas from attorneys representing the children and parents is encouraged. Certainly community programs that work with children and families, as well as family resources should be actively mined, and community group activities explored when appropriate.

A model program in Washington State works closely with parents and small children for large blocks of time three days per week to teach on the ground parenting skills and encourage attachment between parents and small children. Here in Multnomah County, the Volunteers of America program has just completed a successful pilot project, and received ongoing funding for intensive parent coaching in a group visitation model allowing multiple parents an increased opportunity to have natural opportunities to spend time with their children while supervised and receiving parenting coaching.

We all need to commit to vigorously searching for family connections for children taken into care, and to keep looking throughout the life of a case. Family may not only provide the support to a struggling family to keep children out of care, but also be a family resource for short term care and be a safety net to allow expanded parenting time. And, of course, when return is not possible, family is often the best permanent

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placement resource.

The science of how a baby's brain develops should also encourage us to reexamine many of our dependency court procedures. The critical need to provide an infant with stability and family with whom the child can bond should have us re-examine assumptions of how long some cases take to permanency. If no action is being taken by a parent to engage in services, especially in infant cases, the science should encourage us to change the plan more quickly and then proceed to the permanent plan without the delays we frequently encounter.

Clackamas County determined that one bottle neck to reaching permanency was the delays caused by late psychological evaluation reports. That court has begun ordering DHS caseworkers to inform psychologists of a court requirement that all evaluations are to be received within 30 days of a parent or child being seen by the provider. If the psychologist cannot or will not comply, DHS is directed to not use that expert for future cases. After some initial resistance, reports are now being received within that time frame.

Clackamas County also determined that a barrier to timely permanency wasthe length of time that it took a matter to get to a termination hearing when the permanent plan was changed to adoption. The Court worked with the Attorney General's Office and now TPR petitions are filed within 30 days of the change in plan with service required within 30 days thereafter or the court and parties being informed of the barriers to timely service if they exist.

In other counties, including Multnomah County, should take a close look at whether these and other barriers are creating delays. Efforts to overcome barriers, if delays exist, should be a priority.

There are undoubtedly other issues an examination of which is prompted once we see these cases from the perspective of a baby's developing brain. There are many concerned groups discussing these issues right now. I encourage all of us to work together without delay to address creative ways to support a healthy future for all of the babies and children whose lives are at issue in our courtrooms. ●

1 http://www.oregon.gov/OCCF/Documents/EarlyChildhood/EarlyChildhoodMatters.pdf

2 The materials which were presented by Dr. Jack P. Shonkoff, M.D. Director of the Center on the Developing Child, at Harvard University, can be found at both www.developingchild.harvard.edu. Also presenting was Dr. Phillip Fisher, Professor of Psychology, University of Oregon, and Senior Scientist at the Oregon Social learning Center who is a principle investigator in an ongoing study of the effects of stressful early environments on the developing brain and interventions that can remedy these consequences. www.oslc.org

3 The Benchcards can be accessed at: http://www.ncjfcj.org/images/stories/dept/ppcd/CCC/ccc%20bench%20card%20inserts_web.pdf

4 The Visitation Committee Report will be available on the Multnomah County Child Welfare Council website when it has been approved by the Council. Here is the Council's website: http://web.multco.us/ccfc/child-welfare-council

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Study of Experiences

Parents in Juvenile Dependency Cases

A two-year study of parents in Colorado dependency cases points up the importance for attorneys and judges of considering the complexities and risk factors of each case individually in order to promote the best outcomes for children and families.

The study, "*Parent Voices: The Other Side of the Bench*," was conducted over a two-year period, using 70 English and Spanish surveys and seven interviews of parents who were involved in dependency cases. The purpose of the study was to gain a better understanding of the challenges and circumstances of court clients, seen as critical factors in achieving outcomes that are in the best interest of children and families.

The study found that it is critical to consider the barriers to permanency and stability that are inherent within the current system, such as requiring employment for parents while also requiring sporadic court dates and other expectations that endanger or prohibit successful and consistent employment and thus hinder the client's ability to comply with court expectations. The study also found that issues around inadequate attorney representation of parents deserved further review and consideration.

Understanding the challenges and circumstances of the clients is a critical factor in their potential recovery and/or successful reunification. The parents involved in this study repeatedly reported that they are more than just a case file, and were able to quickly identify the services that were most and least helpful to them. By learning more about the court experience of parents, court stakeholders have a greater perspective on ways to create and improve the child protection system in the best interest of children and families.

Access the study at: http://www.naccchildlaw.org/news/72680/Parents-in-court-study-are-more-than-just-a-case-file.htm ●

Case Summaries

By Kimberly Elkin, Law Clerk

In the Matter of H.C., aka H.S.F.C.-M., a Child. 254 Or.App. 81 (August 17, 2011) (Schuman, P.J.)

The requirements necessary to terminate of parental rights.

http://www.publications.ojd.state.or.us/A147480.pdf

A mother appeals the termination of her parental rights over her daughter H. The mother had a long history of drug abuse, and criminal activity to support her drug addictions. Although the mother had failed to stay sober in the past, she had been sober for seven weeks at the onset of the juvenile court trial. For the last two years, H had been out of the mother's custody and had been living with the maternal grandmother. According to the grandmother, H was a happy and healthy baby, and if the court terminated the mother's parental rights she would want to adopt H.

Although the mother had been sober, actively participating in N.A. and A.A. activities, trying to get back into school and parenting classes, and was currently seeking employment and permanent housing, the mother said it would be about a year until she felt comfortable having physical custody of H. From the evidence provided by DHS, the Juvenile Court decided to terminate parental rights. The Appeals Court reversed the Juvenile Court's decision because DHS did not meet its burden of clear and convincing evidence necessary to terminate mother's parental rights.

In order to terminate parental rights, DHS must prove 1) that the parent is unfit by reason of conduct or condition seriously detrimental to the child, and 2) that the integration of the child into the home of the parent is improbable within a reasonable time due to conduct or condition not likely to change. The Appeals Court concluded that DHS did not put forward evidence showing that the mother's action would cause a serious detriment to H, nor did they put forward evidence showing that the 12-18 month timeframe, for reunification, would be unreasonable for H. Because DHS was unsuccessful in meeting its burden of proof, termination of parental rights was unfounded and the Juvenile Court's decision was reversed. ●

Resources

Rise Magazine – By and For Parents in the Child Welfare System has devoted its summer issue to helping parents make the most of visits with their children in foster care. Recognizing that visits are a chance for families to maintain and strengthen the bonds they share, articles by parents show how to make visits a special time despite the stress of supervision and the pain of saying good-bye. Articles include: Eat, Play, Love – Visits helped me become a good mother; "Your Actions are Setting You Back" – Losing my temper in visits hurts my case; Standing in Your Child's Shoes – Hot to

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meet your child's needs during visits. Available on the Rise website at: http://www.risemagazine.org/PDF/Rise_issue_19.pdf ●

"The strictest law sometimes becomes the severest injustice"

– *Benjamin Franklin*

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involve sex abuse are unique, particularly from the perspective of the non-offending parent. Despite the fact that the non-offending parent may have taken no part in the abuse of their child, they are still at high risk of losing custody of their child and having their parental rights terminated.

For the purposes of this article, a "non-offending parent" is a parent who had no role in the sexual abuse of the child, and objectively had no reason to believe the child was being sexually abused prior to child welfare intervention. Thus, a "non-offending parent" could include a parent living in the home with the child but unaware of the sexual abuse, or a non-custodial parent.

Non-offending parents will likely feel blindsided by the whirlwind of emotions that flow from their child's disclosure of sex abuse. They tend to be torn between their loyalties to their partner or former partner (the alleged offender) and their child. They will find the state's power to exercise control over their family confusing. Child welfare agencies often misunderstand a nonoffending parent's reaction to the disclosure experience as insufficient support and an inability to protect their child.

It is important for advocates to understand that what child welfare agencies perceive as insufficient support may actually be a normative response to the circumstances of disclosure, and that the parent both desires to, and is capable of supporting and keeping their child safe.[2] Advocates for non-offending parents must be mindful of the realities of the nonoffending parent's disclosure experience in order to assist the parent to understand the expectations of the juvenile court and child welfare, assure that the parent receives assistance to cope with the trauma and dramatic change of life circumstances brought about by the disclosure, and assure that the parent's due process right to a fitness determination is fair and accurate

II. Attorneys Must Be Well Grounded in the Constitutional Rights of Parents

Child dependency cases that involve sex abuse are highly emotional, with significant focus on protecting the child from future abuses, and prosecution of the alleged offender. In the mix, nonoffending parents' constitutional rights to the care, custody, and control of their children can easily fall through the cracks. To zealously make the best case for their clients, it is important for attorneys to remain cognizant of the constitutional issues associated with removing a child from a parent's custody.

A. <u>The state must have a compelling interest to infringe upon a parent's fundamental liberty interest.</u>

A parent's interest in the care, custody, and control of their child is a fundamental liberty interest protected by the 14th Amendment and "perhaps the oldest of the fundamental liberty interests recognized by [the U.S. Supreme] Court."[3] Substantive due process requires any infringement on a fundamental liberty interest to be "narrowly tailored" and "serve a compelling state interest."[4] A state normally will not have a compelling interest to "inject itself into the private realm of the family" as long as "a parent adequately cares for his or her children (*i.e.*, is fit)."[5] Since the law presumes that parents are fit and act in the best interest of their children,[6] a hearing to prove a parent's unfitness is a condition precedent to establishing the state's compelling interest.[7] Under constitutional analysis, the existence of one fit parent negates the state's compelling interest.[8] However, Oregon's statutory framework, which focuses on the conditions and circumstances of the child, rather than parental fault makes application of constitutional protections difficult5.

B. <u>Attorneys should focus their arguments on parental fitness, and against *parens patriae* attitudes.</u>

Prior to the twentieth century, the state's ability to interfere with family autonomy was very limited. The juvenile court system was a result of a movement at the turn of the century to "identify the conditions of childhood which lead to crime" and take custody of children found in those conditions.[9] The movement was justified by the state's *parens patriae* power ("translated as 'ultimate parent or parent of the country'") and focused on protecting the child, rather than the fitness of the parent.[10] These attitudes linger in dependency statutes despite U.S. Supreme Court case law which requires a focus on parental fitness in order to interfere with custody.[11]

Oregon's legislature has permitted a focus on the child's condition as the basis for jurisdiction and making a child a ward of the court.[12] The juvenile court has exclusive jurisdiction over a person under 18 years of

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age "[w]hose condition or circumstances are such as to endanger the welfare of the person or of others."[13] Jurisdiction may be exercised "even though the child is receiving adequate care from the person having physical custody of the child.[14] This focus on the child's condition allows the court to interfere with the family unit without a showing of parental unfitness. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands,"[15] but because constitutional case law requires a showing of parental unfitness, attorneys should be alert to potential due process challenges anytime a court interferes with their client's parental rights.[16]

III. Non-Offending Parents' Normative Responses to Disclosure are Often Misconstrued

The state's child protective services places the responsibility of protecting victims of abuse on the non-offending parent, and assesses whether that parent is sufficiently supportive for the child to safely remain in the home.[17] Parental support is often measured by: actions taken against the offender, belief of the child's disclosure, emotional support of the child, and compliance with the mandates of child protective services.[18]

Studies indicate that 75% of non-offending parents are at least partially supportive, yet about two thirds of all sexually abused children are removed for some period of time after disclosure.[19] This is because any vacillation in regards to the indicators of support is often categorized as insufficient support.[20] While the indicators represent norms and expectations of child protective services, they are not founded in psychological literature[21] and advocates should argue that they do not accurately represent parental support.

Professor Rebecca Bolen contends that to avoid the traumatic experience of removal, the child's best interest is served by keeping the child with the parent whenever possible and providing assistance to non-offending parents who are not sufficiently supportive.[22]

If a parent is found to be insufficiently supportive due to vacillation in support:

- Attorneys should explain that the nonoffending parent's ambivalence is a normative response under the circumstance, and that the best interest of the child would be served by providing the parent with assistance/treatment so that the child may remain in their home;
- Attorneys should also explain that the parent would not be ambivalent if they did not desire to support their child; and
- Finally, it should be emphasized that nonoffending parents can be ambivalent and supportive simultaneously, and child protective services' indicators of support alone do not accurately represent parental support.

A. Ambivalence is a normative response under certain circumstances.

Studies and psychological literature support the contention that vacillating in regards to the indicators of support may be a normative response to disclosure under certain circumstances.[23] Professor Bolen conceptualized vacillation of support by nonoffending parents as "ambivalence," which is defined as "the experience of tension . . . in the guardian's positive and negative valences between the perpetrator and child."[24] The valences (or degrees of attraction) toward the perpetrator and child are not on one continuum with the offender on one end and the victim on the other; the competing valences should be viewed on two independent scales.[25] The ambivalence, or "tension" between the valences, is greatest when both valences are highly valued and lowest when both valences are valued less or one valence is valued significantly higher than the other.[26]

Ambivalence can be experienced intra- or inter-personally, and can occur "cognitively (e.g., when the guardian is unsure of whom to believe) and affectively (e.g., when the guardian has conflicted emotions about the perpetrator and child)," which are antecedents to, but separate from, behavior.[27] In a study of nonoffending mothers of sexually abused children, Professor Bolen found that 73% of the mothers experienced some type of ambivalence, and ambivalence may be a normative response when: the nonoffending parent has a preoccupied attachment style (likely due to a greater emotional reliance on the offending partner), stressors increase but resources decrease, and when disclosure is a traumatic experience for the nonoffending parent.[28] Assistance with these circumstances may decrease ambivalence, and alleviate a court's concerns about support.

1. *Assistance with stressors may decrease ambivalence.*

Professor Bolen measured the relationship between post-disclosure stressors and ambivalence, finding that increased stressors led to greater ambivalence.[29] Among the common post-disclosure stressors for nonoffending parents are: the need to change residences, marital dissolution, the fear of losing one's child, the increased need for physical protection of the child, and financial struggles (on average families experience a 40% decrease in income and 25% of families lose or must locate employment after disclosure).[30]

The stressors associated with disclosure of

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sexual abuse might be categorized as "extreme stressors" because they come without warning, attack the individual's basic values, make excessive demands, are outside the realm in which resource utilization strategies have been developed, and leave a powerful mental image that is evoked by cues associated with the event.[31] Individuals confronted with extreme stressors tend to use less effective coping mechanisms, which could explain a parent's ambivalence.[32] The less effective coping mechanisms can also cause a loss spiral in which the inability to cope increases stressors and jeopardizes the means to obtain resources, making it more difficult for a non-offending parent to be supportive.[33] Providing assistance with the non-offending parent's stressors may decrease ambivalence and enable them to be more supportive (negating the need to remove the child from the home).

2. *Assistance should be provided to help parents cope with the trauma associated with disclosure.*

It is common for non-offending parents to experience post-traumatic stress disorder (PTSD) after disclosure of their child's sexual abuse; the approach and avoidance associated with PTSD may explain a parent's ambivalence in addressing and denying the reality of the abuse.[34] Professor Bolen's study suggested that heightened levels of ambivalence correlated with heightened levels of distress, which is not surprising because both ambivalence and distress involve conflicting emotions, desires, and needs.[35] Attorneys should be mindful of the relation between distress and ambivalence, and should push the court to work in the best interest of the child by assisting the non-offending parent to cope with the trauma and financial realities of disclosure, which in turn will assist the parent to provide support to the abused child.

B. Ambivalent parents desire to support their children.

In distinguishing ambivalence in support from lack of support, it is helpful to emphasize that ambivalence is not as simple as deciding whether to support the offender or the victim. The competing valences are not on one continuum; they are on independent scales, and ambivalence is greatest when both valences are highly valued and lowest when both valences are valued less or one valence is valued significantly higher than the other.[36] Conceptualizing ambivalence in this fashion clarifies the non-offending parent's situation, and distinguishes ambivalence in support from nonsupport. A parent with greater ambivalence is not necessarily less supportive; they feel drawn to support their child but feel a strong allegiance to the offender. If the parent did not desire to support their child, the parent would not struggle with ambivalence. Since an ambivalent parent does desire to support their child, the state should focus on guidance with the interaction of parent and child, and assistance with resources to help a non-offending parent reach sufficient levels of support, rather than removing a child from the home.

C. Parents can be ambivalent and supportive simultaneously.

Ultimately, attorneys for non-offending parent's should argue that their client is sufficiently supportive for the child to remain in the home. If the parent exhibits signs of ambivalence, the attorney should assert that ambivalent and supportive behaviors can co-exist. According to another study conducted by Professor Bolen, support and ambivalence are unrelated.[37] The study measured ambivalence and support separately, controlling for factors associated with ambivalence by using an assessment which focused on Maslow's hierarchy of needs to measure parental support.[38] One finding of significance was that post-disclosure stressors correlated with greater distress, ambivalence, *and* parental support.[39] The correlation between post-disclosure stressors, distress, and ambivalence follows from the argument that ambivalence is a normative response, but the correlation between post-disclosure stressors and increased parental support indicates that ambivalence is independent from support, and needs to be conceptualized as such. Attorneys for ambivalent parents should stress that parents can be ambivalent and supportive simultaneously, and parental support should be measured to control for ambivalence.

D. Other Approaches

Attorneys should also consider the following:

- Rule out or identify issues such as guilt, parent's own history of sexual abuse, PTSD, etc. that may be causing or aggravating ambivalence or non-support by obtaining a private evaluation of the non-offending parent client;
- Obtain recommendations from psychologist for best treatment for non-offending parent;
- Obtain education and group therapy such as FSAT (Family Sex Abuse Treatment) that focuses on the effects of sex abuse on the child and tools to address PTSD for both the parent and the child;
- Seek therapeutic reunification services for non-offending parent and child.

IV. Conclusion

The U.S. Supreme Court has recognized a parent's right to the care, custody, and control of their child as a fundamental liberty interest protected by the 14th Amendment, and before the state may interfere with the autonomy of the family unit, a parent is

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entitled to a fitness hearing. To ensure that their client's fitness determination is fair and accurate, attorneys must be cognizant of potential due process challenges anytime the state interferes with their client's parental rights. Attorneys for non-offending parents in child dependency cases involving sex abuse must also recognize that a state's child welfare agency might misconstrue their client's ambivalence as a lack of support and an inability to protect. To avoid an inaccurate fitness determination, attorneys should be prepared to distinguish a lack of support from ambivalence. This can be accomplished by explaining that ambivalence is a normative response under certain circumstances, and that ambivalent parents desire to, and are capable of supporting their children. By explaining the realities of a nonoffending parent's disclosure experience, an attorney may be able to persuade the court that the best interest of the child would not be served by removal, but by assisting the non-offending parent to cope with the circumstances of disclosure.

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[1] *The Nuclear Option: False Child Sexual Abuse Allegations in Custody Disputes*, http://www.nolanchart.com/article2788-The-Nuclear-Option-False-Child-Sexual-Abuse-Allegations-in-Custody-Disputes.html

[2] It is also true, however, that some non-offending parents are more than ambivalent, becoming actively non-supportive of the child.

[3] *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

[4] *Reno v. Flores*, 507 U.S. 292, 301-302 (1993).

[5] *Troxel*, 530 U.S. at 68.

[6] *Id.* at 69; see also *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

[7] *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972).

[8] *Id.* at 652.

[9] Vivek S. Sankaran, *Parens Patriae Run Amuck: The Child Welfare System's Disregard for the Constitutional Rights of Nonoffending Parents*, 82 Temp. L. Rev. 55, 59 (2009).

[10] *Id.* at 60-61.

[11] *Stanley*, 405 U.S. at 658. *Troxel*, 530 U.S. at 68.

[12] O.R.S. §§ 419B.100, 419B.328(1).

[13] O.R.S. § 419B.100(1)(c).

[14] O.R.S. § 419B.100(2).

[15] *Parham*, 442 U.S. at 608 n. 16 (quoting *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

[16] See generally Angela Greene, *The Crab Fisherman and His Children: A Constitutional Compass for the Non-Offending parent in Child Protection Cases*, 24 Alaska L. Rev. 173 (2007); Vivek Sankaran, *But I Didn't Do Anything Wrong: Revisiting the Rights of Non-Offending Parents in Child Protection Proceedings*, 85 MI Bar Jnl. 22 (2006).

[17] Rebecca M. Bolen, *Nonoffending Mothers of Sexually Abused Children: A Case of Institutionalized Sexism?*, 9(11) Violence Against Women 1336, 1151 (Nov. 2003) [hereinafter Bolen, *Nonoffending Mothers*].

[18] *Id.*

[19] *Id.* at 1351-1352.

[20] Rebecca M. Bolen & J. Leah Lamb, *Ambivalence of Nonoffending Guardians after Child Sexual Abuse Disclosure*, 19(2) Journal of Interpersonal Violence 185, 186-187 (Feb. 2004) [hereinafter Bolen, *Ambivalence of Nonoffending Guardians*].

[21] Rebecca M. Bolen & J. Leah Lamb, *Can Nonoffending Mothers of Sexually Abused Children be Both Ambivalent and Supportive?*, 12(2) Child Maltreatment 191, 195-196 (May 2007) [hereinafter Bolen, *Ambivalent and Supportive?*]. Several sources of psychological literature cited by Bolen and Lamb include: Rebecca M. Bolen, *Guardian Support of Sexually Abused Children: A Definition in Search of a Construct*, 3(1) Trauma, Violence, & Abuse 40 (2002); Margaret Elbow & Judy Mayfield, *Mothers of Incest Victims: Villains, Victims, or Protectors?*, 72 Families in Society 78 (1991); Carol-Ann Hooper, *Mothers Surviving Child Sexual Abuse* (Tavistock 1992); Carol-Ann Hooper & Catherine Humphreys, *Women Whose Children Have Been Sexually Abused: Reflections of a Debate*, 28 British Journal of Social Work 565 (1998); C.A. Plummer, *Nonabusive Mothers of Sexually Abused Children: The Role of Rumination in Maternal Outcomes*, 65(02) Dissertation Abstracts International 699A (2004); Megan M. Thompson, Mark P. Zanna & Dale W. Griffin, *Let's Not Be Indifferent About (Attitudinal) Ambivalence*, in *Attitude Strength: Antecedents and Consequences* vol. 4, 361 (Richard E. Petty & Jon A. Krosnick eds., Lawrence Erlbaum 1995).

[22] Bolen, *Nonoffending Mothers*, *supra* n. 15, at 1357.

[23] Bolen, *Ambivalence of Nonoffending Guardians*, *supra* n. 18, at 203.

[24] *Id.* at 194.

[25] *Id.* at 186.

[26] *Id.* at 189.

[27] *Id.* at 194, 205.

[28] *Id.* at 201-204.

[29] *Id.* at 203.

[30] *Id.* at 195.

[31] *Id.* (quoting Steven E. Hobfoll, John R. Freedy, Bonnie L. Green & Susan D. Solomon, *Coping in Reaction to Extreme Stress: The Roles of Resource Loss and Resource Availability*, in *Handbook of Coping: Theory Research, Applications*, 322 (Moshe Zeidner & Norman S. Endler eds., John Wiley 2006)).

[32] *Id.* at 196.

[33] *Id.* at 195-196.

[34] *Id.* at 197.

[35] *Id.* at 197, 204.

[36] *Id.* at 186, 189.

[37] Bolen, *Ambivalent and Supportive?*, *supra* n. 19, *at* 194.

[38] *Id.* at 193-194.

[39] *Id.* at 194.

The Interstate Compact on Juveniles

A Primer For Attorneys

By Paul Grotzinger, Law Clerk

I. Introduction

The Interstate Compact on Juveniles ("The ICJ") governs the return of runaways, juvenile absconders, and escapees who are found in other states, and provides a system under which juvenile offenders can be supervised in other states. It is important for juvenile advocates to be familiar with ICJ procedures to better serve their clients.

In Oregon, between July 1st, 2009 and June 30, 2010, 19 Oregon youth who had runaway/absconded or escaped were returned to Oregon, and 77 youth were returned to their home states from Oregon who had runaway/absconded or escaped. Oregon also provided parole supervision for 19 out-of-state offenders, sent out 39 parolees for supervision in other states, and provided probation supervision for 172 out of state probation offenders. During that time, Oregon sent out 106 youth for supervision in other states. In addition, Oregon's ICJ unit monitors approximately 200-300 files whose adjudication has expired or been terminated.

II. Chelsea

Chelsea is a non-delinquent youth from Washington who ran away to Oregon because she was suffering from emotional abuse by her parent/guardian. After being taken into custody in Oregon, Chelsea did not wish to go back to her parent/guardian's home in Washington. The non-voluntary return of an out-of-state runaway, like Chelsea, is governed by ICJ Rule 6-103.[1] At her hearing, Chelsea requested to remain in the custody of the Oregon court, and to be moved to an appropriate shelter settlement.

Under the ICJ, the child may consent to be returned as a runaway or exercise her right to have a requisition and a hearing on the requisition. Both delinquents and non-delinquent children have rights under the ICJ. Pursuant to ICJ Rule 6-102(3), children must be advised of their rights by the juvenile court in the holding state. An optional rights form is provided by the ICJC. (Click here to view model form). While Chelsea was in custody of the Oregon court, her guardian in Washington initiated the requisition process. However, the Oregon court found the requisition insufficient, so a non-voluntary return was not required. It was Chelsea's wish that if she was to return to Washington, that it would be to an appropriate shelter placement, and not back home. Fortunately, an appropriate Washington shelter was found for Chelsea, which she agreed to go to. This was a favorable result, because Chelsea was able to use ICJ procedures to assure that she would be protected when she returned to Washington.

III. The ICJ and the Oregon Statute

The ICJ has existed since 1955 and is the only legal process for returning out-of-state runaways. The main purpose of the ICJ is to provide for the welfare and protection of juveniles and the public. To do this, the intent of the 1955 compact was to bring order to the interstate movement of juvenile delinquents and status offenders, and ensure that proper supervision and services were provide to juveniles covered by the compact. The Revised ICJ continues to carry on these objectives.

Over time, certain aspects of the 1955 Compact have become outdated, or failed to operate well under adverse circumstances. In 2001, an updated version of the ICJ was written, and Oregon adopted the revised compact into statutory law in 2009. Today, Oregon is bound by the ICJ pursuant to ORS 417.010 et seq.[2] Each member state has its own ICJ office that is crucial to the return process. These offices coordinate with other member states' offices, with their own state's appropriate court, and with other member states' appropriate courts.

A major problem with the former version of the ICJ was non-compliance among member states. However, the new version of the Compact establishes an Interstate Commission to oversee implementation of the compact, which has statutory authority to enforce compliance. The Commission consists of one commissioner from each member state, who has the power to act on behalf of the state. The Commission not only promulgates the Compact rules that are binding and have the force and effect of law within each member state, but also has the authority to oversee, supervise and coordinate the interstate movement of juveniles, and enforce compliance with all rules and terms of the Compact. Specifically, when member states are deemed in default of their obligations under the Revised ICJ, the Commission may require remedial training, provide technical assistance, impose alternative dispute resolution, suspend or terminate a non-compliant state from the compact, initiate litigation, and even impose financial penalties.

The definition of "juvenile" varies from state to state, so under the ICJ, "juvenile" is defined by any member state or the rules of the Interstate Commission. This flexible approach allows "juvenile" to also define the universe of individuals subject to the Revised ICJ, and leaves the determination of coverage largely to the discretion of each state. Under ORS 417.010, a "juvenile" is any person who is within the jurisdiction of the juvenile court.[3]

IV. Return (runaways)

"Home/Demanding state" vs. "Holding state"

According to ICJ Rule 1-101, a runaway is a "child under the juvenile jurisdictional age limit established by the state, who has run away from his/her place of residence, without the consent of the parent, guardian, person, or agency entitled to his/her legal custody." The revised ICJ applies to runaways exclusively in the context of returning them to the state where the parent or legal guardian reside. If an out-of-state juvenile is picked up by the police, and the

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« *Interstate Compact continued from previous page*

parent/legal guardian plans to pick up the juvenile within 24 hours, if abuse or neglect is not suspected by the authorities, then the parent/legal guardian may pick up the juvenile in custody within 24 hours.[4] However, if the authorities do suspect abuse or neglect, then the officer (usually a juvenile department employee) notifies the holding state's ICJ office. The proper procedure thereafter depends on whether the child will return to the home/demanding state voluntarily or not.

A. Voluntary Return

ICJ Rule 6-102 governs the voluntary return of juveniles to their home/demanding state. Under Rule 6-102, if the juvenile is not voluntarily returned within 24 hours, the holding state must contact the home state's ICJ office and follow specific procedures outlined in the Rules. When a home/demanding state makes a request to a holding state for a youth be returned under the ICJ, the youth has the right to a hearing. If the youth is being detained pending an official request for return, the hearing is to determine whether sufficient cause exists to hold him. If the youth agrees to return home voluntarily, the judge in the holding state must hold a court hearing and must inform the youth of his rights under the ICJ before he agrees to the return.[5] Under ICJ Rule 6-102(4), if the child is in agreement to return, he or she will sign the approved ICJ Form III, consenting to voluntary return. (Click here to see Form III). Once consent has been executed, it will be forwarded to the holding state's Compact administrator/ ICJ office. The holding state's ICJ Office then forwards the signed Form III to the home state's ICJ office, and the home state's ICJ Office effects the return of the Juvenile within 5 days.[6]

B. Non-voluntary Return

As in Chelsea's case, ICJ Rule 6-103 governs the non-voluntary return of juveniles. If the youth does not agree to return to the home/demanding state, that state must follow specific procedures for preparing and submitting a requisition. Under ICJ Rule 6-103(1), the appropriate person/authority in the home/demanding state has 60 days to prepare the petition upon notification of refusal of the juvenile to return voluntarily, or to request the court to take the juvenile into custody. If the juvenile is a non-delinquent, the parent/legal guardian/custodial agency petitions the home/demanding state's court for requisition using Form I. (Click here to see Form I). If the judge decides the juvenile should return, the judge signs the completed Form I in duplicate, and sends requisition packets to the home/demanding state's ICJ office. Once the holding/state's ICJ Office receives the requisition packets, it is forwarded to the appropriate home/demanding state's court.

Under Rule 6-103(10), the holding state must hold a hearing within 30 days of its receipt of the requisition, to ensure that the requisition is in order before it will honor the request. In Chelsea's case, the referee found the requisition from the home/ demanding not to be in order, so she was not involuntarily returned to her home in Washington.

V. Delinquent Absconders

"Sending state" vs. "Receiving state"

**Steps 1-3 are the same as for Non-delinquents:*

For delinquent absconders, the compact process begins much the same as it does for non-delinquents. If the juvenile does not agree to return voluntarily, or the juvenile's whereabouts are known but he/she is not in custody, the requisition process begins. Next, the home/demanding state prepares Form II within 60 days of refusal to return, or request to take the juvenile into custody.[7] (Click here to see Form II).

For delinquent absconders, the home/demanding state's ICJ Office is required under ICJ Rule 6-103(7) to forward two copies of the requisition packet to the Holding State's ICJ Office. The holding/demanding state's ICJ Office then forwards a copy of the requisition packet to the holding state's appropriate court. If the juvenile is already detained, and the holding state's court finds that the requisition is in order, the holding state's court forwards the order concerning the requisition to the holding state's ICJ office. The holding state's ICJ Office then forwards the order to the home state's ICJ office, and the home state's ICJ Office effects the return of the Juvenile within 5 days.[8]

If the juvenile is not already detained, the court orders that the juvenile be held pending a hearing (30 days). If the juvenile is detained, but the holding state's court finds the requisition is not in order, ICJ Rule 6-103(10) requires the holding state's judge to advise the home/demanding state why the requisition was not honored.

VI. Parole/Probation

In this situation, there is a failed placement of a juvenile under Oregon supervision originating from a delinquency case in another state. An advocate for a child whose ICJ placement has failed will want to know whether the child will have to be returned to the sending state. This may be difficult, because the ICJ does not give juveniles an option after a requisition is made. Under ICJ Rule 6-104(4), the decision of the sending state to retake a juvenile on probation or parole shall be conclusive, and unfortunately, is not reviewable within the receiving state. There is little a juvenile advocate can do in this situation; however, an argument that it is in the interests of justice not to send the child back may appropriate.

VII. Conclusion

Attorneys representing children who are subject to the rules regarding the return of runaways, juvenile absconders, and escapees who are found in other states, and juvenile offenders being supervised in other states, should become familiar with the provisions of the Revised ICJ. Included below are several resources to help attorneys learn more about the Compact.

VIII. Links

A. Links:

1. The Statute (ORS 417.010 – 417.080): http://www.leg.state.or.us/ors/417.html

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« *Interstate Compact continued from previous page*

2. The ICJ Rules: http://www.juvenilecompact.org/LinkClick.aspx?fileticket=QDbarg6_meQ%3d&tabid=800

3. Benchbook: http://www.juvenilecompact.org/LinkClick.aspx?fileticket=hP5ytZN5GWU%3d&tabid=647

4. The ICJ Official Website: http://www.juvenilecompact.org

5. Forms:

Form I: Requisition for Runaway Juvenile

Form II: Requisition for Escapee or Absconder/Juvenile Charged with Being Delinquent

Form III: Consent for Voluntary Return by Runaway, Escapee or Absconder

Form IV: Parole or Probation Investigation Request

Form V: Report of Sending State Upon Parolee or Probationer Being Sent to the Receiving State

For IA/VI: Application for Compact Services/Memorandum of Understanding and Waiver

Form VII: Travel Permit

Form VIII: Home Evaluation

Form IX: Quarterly Progress or Violation Reports

B. Case Law:

State ex. rel. Juvenile Dept. of Washington v. Casteel

18 Or.App. 70, 523 P.2d 1039 (1974)

State ex. rel. Juvenile Dept. of Multnomah County v. Edwards

15 Or.App. 677, 516 P.2d 1303 (1973)

Tips for Attorneys[9]

Lawyers should make sure that states follow ICJ requirements when their client is being detained out of state. The youth's lawyer should:

- Maintain regular contact with the authorities preparing the requisition to ensure an accurate and timely completion to minimize detention time.10
- Seek court relief if the holding state has kept the youth for more than 90 days pending receipt of the requesting state's requisition.11
- Request a hearing if the youth has not been returned home within 10 days of the home state's completion of the requisition. At the hearing the court will determine whether continued detention is justified. If the holding state fails to hold this hearing, the youth must be discharged from detention.

For case law and explanations, see the ICJ Bench Book: http://www.juvenilecompact.org/LinkClick.aspx?fileticket=hP5ytZN5GWU%3d&tabid=647 ●

1 ICJ Rule 6-103 applies to "all juveniles in custody who refuse to voluntarily return to their home/demanding state; or juveniles whose whereabouts are known, but are not in custody . . ." See ICJ Rule 6-103.

2 This statute makes Oregon part of the compact, but does not lay out procedures under the ICJ. For the procedures, see the ICJ Rules.

3 In some cases this may be anyone under 21 years of age, but the juvenile court's jurisdiction over runaways only extends until the child is 18 years of age. See ORS 419B.100(1)(f).

4 The ICJ allows the holding state to "release a youth to his or her parent or guardian within the first 24 hours (excluding weekends and holidays) without applying Rule 6-102. See ICJ Rule 6-101.

5 See ICJ Rule 6-102(3).

6 Under ICJ Rule 6-102(7), "Juveniles are to be returned by the home/demanding state in a safe manner and within five (5) business days of receiving a completed Form III."

7 See ICJ Rule 6-103(7).

8 Under ICJ Rule 6-103(12), "Juveniles are to be returned to the home/demanding state within five (5) business days of the receipt of the order granting the requisition."

9 ICJ Website Resources, Quick Reference Guide, http://www.juvenilecompact.org/LinkClick.aspx?fileticket=alGukgIs-1k%3d&tabid=684&mid=2046

Responsibilities of Lawyers for Children in Dependency Proceedings:

ABA's Adoption of The Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings

By Kimberly Elkins, Law Clerk

The role of a child's lawyer in dependency proceedings can, on occasion, be very perplexing. While striving to act within the traditional client-lawyer relationship, at times, the child's lawyer is required to act as a counselor, a translator, or even an interpreter. To provide much-needed guidance, in August of this year, the American Bar Association House of Delegates passed a comprehensive Act concerning the role of lawyers in dependency cases, entitled, *ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings* (Model Act). The Model Act outlines, and pays tribute to the complexities that arise when representing children in dependency proceedings.

The role of lawyers, in dependency proceedings, varies greatly between jurisdictions. In some jurisdictions lawyers take on the role of a traditional client-directed lawyer, in other jurisdictions the client-directed lawyer is assisted by a guardian ad litem or a Best Interest Advocate, and in other jurisdictions lawyers are suppose take on both roles. The Model Act clarifies that the role of the lawyer needs to be centered on zealous advocacy; and where the best interest of the child differs, another individual needs to be brought in to advocate for the best interest of the child. The following summary highlights some of the Model Act's key provisions.

Requisites of a Child's Lawyer

The lawyer-client relationship for the lawyer of a child is fundamentally indistinguishable from the lawyer-client relationship of any other client and includes duties of client

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« *Responsibilities continued from previous page*

direction, communication, competence, confidentiality, diligence, loyalty, and the duty to provide independent advice. Some other requirements include:

- Participation in all proceedings concerning the child,
- Consulting with the Best Interest Advocate,
- Maintaining only a reasonable caseload,
- Attending annual child welfare trainings,
- Visiting all current or potential homes of the child and,
- Investigating and taking legal action regarding the child's medical, mental heath, social, educational, and overall well-being.

Furthermore, lawyers for children in dependency proceedings are appointed by the juvenile court, and such appointments must be made as soon as practicable to ensure effective representation. Subsequently, the lawyer's appointment is in effect until the lawyer is discharged by court order or the case is dismissed.

Participation

Participation of a child in dependency proceedings is fundamental. Every child who is the subject of a dependency proceeding has the right to attend, participate, and be transported to the hearings. Only if the child waives his or her right to attend is the child's presence excused. Furthermore, because children may not get the most meaningful experience from attending the entirety of all proceedings, lawyers are encouraged to take steps to modify the child's trial attendance and participation. Some of the modifications that lawyers can make are:

- Presenting the child's testimony in chambers,
- Taking a tour of the courtroom before trial,
- Video or teleconferencing the child into the hearing,
- Having the child be present only for certain matters, or
- Excluding the child during harmful testimony.

Diminished Capacity

One of the most important areas that the Model Act addresses is the role of the lawyer when working with a child with diminished capacity. According to the Model Act it is the lawyer's responsibility to determine whether or not the child has diminished capacity, pursuant to the Model Rules of Professional Conduct. Moreover, determinations as to diminished capacity require ongoing assessments, as a child's capacity is constantly evolving. Additionally, a lawyer can find that a child lacks capacity when it comes to certain subjects, but does not lack capacity with regard to others. If the lawyer deems the child not to be of diminished capacity, then they are to represent the child in a traditional lawyer-client fashion. If, however, the lawyer finds that the child has diminished capacity, the child's lawyer shall make a good faith effort to determine the child's needs and wishes.

Substituted Judgment

If a lawyer finds that his or her client has diminished capacity, he or she may need to make a substituted judgment determination. Substituted judgment determination means determining what the child would decide if he or she were capable of making an adequately considered decision, then representing the child in accordance with that determination. What is important to note here is that a substituted judgment is not the same as determining the child's best interest. A best interest determination should be left solely to the court, and the Best Interest Advocate that it appoints. Rather, a substituted judgment is a determination as to what the child would choose, if they had capacity to do so, and it should be based upon objective facts and information, not personal beliefs. Moreover, substituted judgments should be child-centered, research-informed, permanency-driven, and holistic.

This Model Act sheds light on a perplexing, but extremely important, area of the law. However, as solely a model act, it is now the state's responsibility to implement these and other potential rules in order to assure children in dependency cases receive consistent and zealous advocacy. For the entire Model Act go to: http://apps.americanbar.org/litigation/committees/childrights/docs/aba_model_act_2011.pdf ●

Case Summaries

By Rochelle Martinson and Kimberly Elkins, Law Clerks

State ex rel Juv. Dept. of Washington County v. C.M.C., ___ Or App ___ (June 1, 2011)

http://www.publications.ojd.state.or.us/A137947.htm

The meaning of the phrase "[p]ersons cohabitating with each other," which is a category of individuals constituting a "[f]amily or household member" to which the domestic violence hearsay exception applies, refers to persons living in the same residence and in a relationship akin to that of husband and wife, rather than to persons simply living in the same residence.

In this case, youth appealed a judgment finding him within the jurisdiction of the juvenile court for an act that, if committed by an adult, would constitute harassment. ORS 166.065. Youth argued that the juvenile court had erred by admitting evidence under the domestic violence hearsay exception, OEC 803(26), because he did not constitute a "[f]amily or household member" to which the exception would apply. ORS 135.230(3), (4).The Court of Appeals agreed and reversed the jurisdictional judgment.

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At issue was the meaning of the phrase "[p]ersons cohabitating with each other," which is one of the categories of "[f]amily or household member" listed in ORS 135.230(4), and the category over which the parties disagreed, as to its application to youth. The state argued that the phrase refers to persons living in the same residence, while youth argued that the phrase refers to persons living in the same residence and in a relationship akin to that of husband and wife. The Court found youth's argument persuasive, commenting that "[if] the legislature intended the domestic violence hearsay exception to apply to all persons living in a residence, [it] could have used a different definition of "[f]amily or household members," e.g., one that includes the phrase "persons residing in the same residence." The Court declined to consider the state's asserted alternative basis for affirmance – that the victim's statements were admissible as excited utterances under OEC 803(2) – because the state had not raised this in front of the juvenile court, and youth had not had reason to develop an evidentiary record regarding factual issues pertaining to that issue.

State v. Singer __ Or.App.__ (September 21, 2011) (Multnomah Co.) (Armstrong, J.)

Definition of seized under Article 1, § 9.

http://www.publications.ojd.state.or.us/A138767.pdf

Singer (the defendant) was a passenger in a car when it was pulled over for a traffic violation. After hesitating to give her name, the police officer ran a warrant check, which revealed that the defendant was on probation after being convicted of a drug offense. Upon returning to the car, the police officer asked the defendant to step out of the car, and informed the defendant that he knew she was on probation. After stepping out of the car, the police officer noticed that she was under the influence of intoxicants and asked for the defendant's consent to search her person and her purse. After hesitation the defendant agreed, and the police officer located illegal drugs. The sole issue on appeal was whether or not the defendant was seized under Article 1, § 9 of the Oregon Constitution, and therefore whether or not the evidence found on the defendant's person and in her belongings should be suppressed. The Appeals Court held that the police officer's "conduct toward [the] defendant would lead a reasonable person in [the] defendant's position to believe that she was the subject of a criminal investigation and," thus the defendant was seized for purposes of Article 1, § 9. Therefore because the defendant's freedom of movement was restricted, the evidence was suppressed.

State v. Zaccone __ Or.App.__ (September 21, 2011) (Multnomah Co.) (Armstrong, J.)

Definition of seized under Article 1, § 9.

http://www.publications.ojd.state.or.us/A136329.pdf

Zaccone (the defendant) was a passenger in a car when it was pulled over for a traffic violation. After hesitating to give his name, the officer ran warrant checks on all of the car's occupants. The warrant check yielded that the driver had a suspended license, and the name the defendant gave her was not in the system, leading the officer to believe it was a fake name. A second officer then approached the car and asked the defendant to step out. At that point the officer noticed the defendant trying to hide a wallet. After questioning the defendant as to his actions, the defendant agreed to allow the officer to grab and search his wallet. Upon a warrant check, of the defendant's actual identity, no outstanding warrants were found; however because the driver's license was suspended, the officers decided to tow the car. After all occupants of the car had been instructed to exit the vehicle and stand by the police car, the officer conducted an inventory search of the car; upon which, she found two bags that belonged to the defendant. After asking for the defendant's consent twice, the defendant gave his consent for the bags to be searched. In the bags the officer found narcotics, burglary tools and personal information belonging to numerous individuals. The sole issue on appeal was whether or not the defendant was seized under Article 1, § 9 of the Oregon Constitution and therefore whether or not the evidence found in the defendant's bags should be suppressed. The appeals court concluded that "[a] reasonable inference from the sequence of events is that [the] defendant was the subject of a continuing investigation, and, hence, a reasonable person in the circumstances presented in this case would believe that his or her freedom of movement had been significantly restricted" by the officer's show of authority, and therefore for purposes of Article 1, § 9, the defendant was seized and the evidence suppressed.

State v. Vidal __ Or.App.__ (September 21, 2011) (Multnomah Co.) (Brewer, C.J.)

Admissibility of expert diagnosis of sexual abuse.

http://www.publications.ojd.state.or.us/A142579.pdf

Vidal (the defendant) was appealing multiple convictions of sex crimes. During trial the state rested heavily upon evidence from an expert witness who testified that the symptoms the victim presented with were significant and indicative of child sexual abuse. The defendant appeals and asserts that the introduction of the expert's diagnosis constitutes plain error. The defendant relies heavily on the case of *State v. Southern* where the court held that testimony from an expert witness, as to the existence of child abuse, is not admissible in the absence of any physical evidence of abuse. 347 Or 128, 142 (2009). Furthermore the *Southern* court asserted that when an expert's diagnosis fails to tell the jury anything that it

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« *Case Summaries continued from previous page*

cannot determine for itself, there is a great risk of prejudice because an expert's diagnosis asserts scientific reliability. *Id* at 140. Unlike *Southern*, in the defendant's case, the expert witness testified that the evidence on thevictim was significant, and therefore the appeals court held that the rule announced in *Southern* is narrow, and not applicable here. In conclusion, the appeals court rejected the defendant's assertion that there was a plain error, and affirmed the trial court's decision. ●

Save the Date

Shoulder to Shoulder Conference

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Oregon Convention Center

Portland, Oregon

http://www.stsconference.com/

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OSB Office

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NCJFCJ

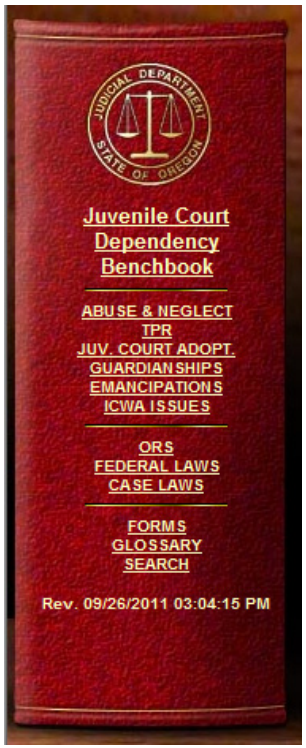
National Conference on Juvenile and Family Law

March 21-24, 2012

Las Vegas, Nevada

http://www.ncjfcj.org/content/view/1471/315/1/3/ ●

Resources



Revised Juvenile Court Dependency Benchbook Available

The Juvenile Court Improvement Project has revised the Juvenile Court Dependency Benchbook. The Benchbook is intended as a guide for juvenile court judges and referees. It provides general information on juvenile law, court procedures, and recommended practices. It is written with simple summaries of the relevant considerations along with legal citations linked to primary sources. It is organized by hearing type and is cross referenced to the model juvenile dependency court forms. For juvenile practitioners it is very helpful to be able to refer to the resource the judicial officers are likely accessing as they hear your case. The model juvenile court forms can also assist practitioners in anticipating areas that will or should be addressed in each type of hearing. Access the Benchbook at: http://www.ojd.state.or.us/JuvenileBenchBook.nsf?OpenDatabase

'Think Before You Plea' Website

The **American Bar Association's Juvenile Division** has developed a website "Think Before You Plea: Juvenile Collateral Consequences in the United States". This is an extensive resource tool that includes each state's consequences pertaining to youth interaction in the juvenile justice system by explaining various aspects such as, attorney requirements, public records, treatment of youth, expungement of records, education and employment. See also, *BEYOND JUVENILE COURT: What Defense Attorneys Need to Know About Collateral and Other Non-confinement Consequences of Juvenile Adjudications.* This booklet is the product of the Washington Defender Association, which has been adapted for use in Oregon - http://www.jrp.org/Documents/BEYONDJUVENILECOURT.pdf ●

We Would Love to Hear From You

If you have any questions about who we are and what we do, please email Janeen Olsen at: JaneenO@jrplaw.org.

"At his best, man is the noblest of all animals; separated from law and justice he is the worst."

– *Aristotle*

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5:30 pm
Doors Open
Wine & Chocolate Tasting, Silent Auction, Raffle

7:00 pm
Oregon Bounty Dinner and Dessert Dash
Program and Live Auction

Cocktail Attire

Individual Tickets: $150
($175 after October 30)
Tax deductible amount: $70

All tickets include valet parking
Order tickets online at www.youthrightsjustice.org
For more information: 503.232.2540 x231

Sponsors

Consolidated Federal Credit Union • Coordinated Resources Group • Emerald Pearl LLC • Gevurtz Menashe Larson & Howe P.C. • Knowledge Universe • Miles Consulting • OnPoint Community Credit Union • Outlier Solutions • Perkins Coie • Ann & Bob Phillips • Raaf Investment Advisors LLC • Schwabe Williamson & Wyatt • Sigma Investment Management Company • The Standard • Tonkon Torp LLP • Vangelisti Kocher LLP • Wildcat Creek Trust • Williams Kastner *and more!*

Auction Items

Getaways to Bandon, Bend, Cannon Beach, Gearhart, Lincoln City, Newport, Pendleton, and Southern Oregon • Golf at Bandon Dunes, Pumpkin Ridge, and Skamania • A Labradoodle Puppy • Personalized Nike Jersey • San Francisco 49ers Tickets • Sous Chef or Chocolatier for a Day • Trip to LA on United Airlines for the Jay Leno/Tonight Show and Disneyland • US or Canada Trip with Delta Airlines and Trafalgar Tours • Costa Rica Vacation • Wine tastings *and more!*

Wineries, Chocolatiers & Desserts

Bliss Bake Shop • Baker & Spice • Coastal Mist Chocolate Boutique of Bandon • Dave's Killer Bread • Euphoria Chocolates of Eugene • Pheasant Valley Vineyard & Winery of Hood River • REX HILL Winery of Newberg • Sineann Winery of Newberg • Sipping Dreams Drinking Chocolate of Eugene • Sokol Blosser Winery of Dundee • Stires the Soul of Portland • Troon Vineyards of Southern Oregon • Voodoo Doughnut • Wallowa Lake Fudge Company • Winter's Hill Vineyard of Dayton *and more!*