
Juvenile Law Reader

Youth, Rights & Justice

ATTORNEYS AT LAW

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"Under our
Constitution, the
condition of being a
boy does not justify
a kangaroo court."

-- US Supreme Court Justice Abe Fortas, writing for the majority
In Re Gault, May 15, 1967

Oregon Legislature 2012

New Legislation Related to Juvenile Law

By Mark McKechnie, YRJ Executive
Director

The Oregon Legislature met for its first official February session in 2012 after voters approved an initiative to schedule regular sessions in even-numbered years. These "short sessions" are limited to 45 days. While the intent was ostensibly to focus on budget, several substantive policy bills were introduced and passed.

HB 4146 was introduced by Rep. Jefferson Smith and passed unanimously by the House and Senate. Gov. Kitzhaber signed the bill into law on March 5, 2012, at which time the law became effective.

The new law amends ORS 419A.262 and eliminates the usual waiting period for

expunction of a juvenile record, specifically for youths who were charged, arrested or adjudicated for a charge of prostitution under ORS 167.007, when the person was under 18 at the time the conduct occurred. The text of the enrolled bill can be found here: <http://www.leg.state.or.us/12reg/measpdf/hb4100.dir/hb4146.en.pdf>

HB 4016 was introduced and amended extensively by the House Committee on Education. The final version passed both chambers unanimously and was signed by the Governor on April 11, 2012. The effective date is January 1, 2012.

HB 4016 adds employees of a higher education institution to the list of mandatory child abuse reporters in ORS 419B.005 and includes employees of community colleges, public universities, the Oregon Health and Science University and private higher education institutions located in Oregon. The new law further adds to the list of mandatory child abuse reporters employees of public or private organizations

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«Legislature 2012 continued from previous page providing “child-related services or activities.” This includes organizations such as scout groups and various types of camps that are operated by religious, public or private educational systems or community service organizations. Non-profit organizations with a primary purpose to provide services to victims of domestic violence, sexual assault, stalking or sex trafficking are exempted from the mandatory reporting requirement.

The new law also amends ORS 339.370, which outlines requirements of school districts to develop policies regarding reports of abuse of children and sexual conduct by school employees. Language was added to indicate that district policies must address reports of abuse by students against other children that may also be subject to the mandatory reporting statute. The enrolled version of HB 4016 can be found here: <http://www.leg.state.or.us/12reg/measpdf/hb4000.dir/hb4016.en.pdf>

HB 4023 creates a new provision for community guardianship in which a youth in foster care can be placed in a guardianship with a licensed child-caring agency. It passed the House by a vote of 58-2 and was passed unanimously in the Senate. The law was effective upon signing by the Governor on March 27, 2012. The enrolled version of HB 4023 can be accessed here: <http://www.leg.state.or.us/12reg/measpdf/hb4000.dir/hb4023.en.pdf>



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The new law creates community guardianship as a permanency option for wards in substitute care. The new law makes this option available to wards age 16 and older who have been in foster care three years or longer and who have not achieved permanency through reunification, adoption or permanent guardianship.

Provisions were included in the original bill and through amendments to help ensure that the ward understands the consequences of a plan of community guardianship, and it requires the ward's written acknowledgment and consent. Youth placed in community guardianship will no longer be eligible for Title IV-E foster care payments. Youth who are in foster care upon their 18th birthday or who spend more than 12 months in foster care after the age of 16 can access such benefits as the federally-funded Chaffee housing subsidies, as well as Oregon Health Plan coverage to age 21 and the new tuition waiver (the latter two are benefits that were just added by the Legislature in recent sessions).

The new law requires that the ward be notified that he or she may not be placed in substitute care after reaching 18 years of age. Amendments were added which clarify the youth's access to court-appointed counsel prior and subsequent to the guardianship being established. The amendments also require that the court schedule a hearing prior to the youth's 18th birthday to assess whether the guardianship should continue or whether the youth's interests are served by re-entering foster care.

HB 4084 This bill originally contained a provision that would make an assault of a

person age 65 or older a Class C felony offense, but this provision was removed from the bill through the amendments adopted by the House Human Services Committee. The final version of the bill extends to six years the statute of limitations for the following crimes when the alleged victim was age 65 or older at the time of the alleged offense:

- (a) Theft in the first degree under ORS 164.055.
- (b) Aggravated theft in the first degree under ORS 164.057.
- (c) Theft by extortion under ORS 164.075.
- (d) Robbery in the third degree under ORS 164.395.
- (e) Robbery in the second degree under ORS 164.405.
- (f) Robbery in the first degree under ORS 164.415.
- (g) Forgery in the first degree under ORS 165.013.
- (h) Fraudulent use of a credit card under ORS 165.055 (4)(b).
- (i) Identity theft under ORS 165.800.

The enrolled version of HB 4084 can be found at: <http://www.leg.state.or.us/12reg/measpdf/hb4000.dir/hb4084.en.pdf> ●



"It is idle to talk of civil liberties to adults who were systematically taught in adolescence that they had none."

— Edgar Friedenberg

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Case Summaries

By Eleanor Garretson, YRJ Volunteer Attorney

Dept. of Human Services v. J.B., ___ Or App ___, ___ P3d ___ (Feb. 8, 2012) (Hasleton, P.J.) (Lane Co.) <http://www.publications.ojd.state.or.us/Publications/A148989.pdf>

At J.B.'s birth in September 2009, no father was listed on the birth certificate and mother was unable to identify the biological father. After J.B. was placed in foster care in March 2010, mother identified C as J.B.'s father. C and mother signed a voluntary acknowledgment of paternity but it was an out of date version of the form so was never successfully filed with the state. A second attempt to file a voluntary acknowledgment failed because DHS could not locate mother for the necessary signature. Unaware that these filings were not successful, the court amended DHS's jurisdictional petition to delete any reference to C's alleged "putative status."

In January 2011, the court entered a permanency judgment changing the case plan

from reunification to adoption because mother and C had failed to engage in court-ordered services or maintain contact with DHS. In March 2011, J.B. filed a motion for nonpaternity as to C so that DHS would not be required to give C's relatives preference in placement. The juvenile court denied the motion as untimely because it concluded that it had ratified C as J.B.'s "legal father" when it entered the jurisdictional judgment while mistakenly believing that the voluntary acknowledgment of paternity had been successfully filed.

The Court of Appeals noted that the juvenile court had treated J.B.'s motion as a request to set aside a previous paternity determination which would indeed have been untimely. The Court commented that under ORS 109.070 and ORS 419A.004 paternity can only be established in one of three ways: filing a voluntary acknowledgment of paternity with the state, having paternity "established or declared by other provision of law," or by the juvenile court independently establishing paternity. It held none of these circumstances had occurred so there had been no previous paternity determination. The voluntary acknowledgments failed to establish paternity because they were never correctly filed. When the juvenile court entered its jurisdictional judgment this was insufficient to establish C as the "legal father" because the court did not seek to establish C's paternity independently

or under any other provision of law.

The Court of Appeals reversed and remanded to juvenile court to decide the merits of J.B.'s motion under ORS 419B.395, which authorizes the court to determine paternity during the pendency of a juvenile proceeding when the child had no "legal father."

Dept. of Human Services v. T.M.M., ___ Or App ___, ___ P3d ___ (Feb. 29, 2012) (Wollheim, J.) (Clatsop Co.) <http://www.publications.ojd.state.or.us/Publications/A147854.pdf>

Mother had a long standing opiate addiction and routinely engaged in drug-seeking behaviors at emergency rooms and clinics after moving to Oregon in January 2009. As a result, DHS removed her five children from mother's home in March 2009 and placed them in foster care. The children exhibited a range of behavioral problems, including parentified behavior and adjustment disorders.

After removal of her children, mother completed an inpatient drug recovery program but missed a substantial number of appointments in the following outpatient care program and returned to seeking out opiates. However, in the five months prior to the December 2010 termination hearing, mother had resided at a faith-based

substance abuse shelter, taken prescribed Subutex to help with opiate withdrawal, and abstained from drug-seeking behaviors. During these months, mother missed opportunities to visit with her children and failed to display effective or safe parenting skills. In April 2010, DHS filed a petition to terminate mother's parental rights on the grounds that she was unfit to parent "by reason of conduct or condition seriously detrimental to the child." The juvenile court granted this petition.

Unfitness is determined by a two-part inquiry focusing on: (1) whether the parent engaged in some conduct or is characterized by some condition that is "seriously detrimental" to the child; and (2) whether integration of the child into the home is improbable within a reasonable time. The Court of Appeals found this test was satisfied through clear and convincing evidence that mother's opiate abuse and dependence rendered her unfit to parent her children. The Court noted her past failures to comply with treatment programs outside of highly structured environment and expressed skepticism that she could maintain recovery under the stress of raising multiple children. Evidence indicated that at least seven more months were necessary to determine whether mother had successfully recovered from her opiate addiction. However, the Court found that the children's emotional

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and developmental needs required an immediate permanency solution and seven months was not a reasonable time for reintegration into mother's home. Finally, the Court determined that termination of parental rights was in the best interest of each child because mother had consistently shown an inability to successfully parent and the children were currently placed in a foster home that was willing to adopt the children together.

Dept. of Human Services v. W.S.C., III, ___ Or App ___, ___ P3d ___ (Feb. 29, 2012) (Wollheim, J.) (Clatsop Co.) <http://www.publications.ojd.state.or.us/Publications/A149189.pdf>

Father's parental rights were terminated in December 2010. Father's attorney then misfiled the notice of appeal in the incorrect court and failed to detect the error until June 2011, outside the time allowed for late appeal by statute. In a July 2011 emergency motion to file a late appeal, father argued that the Court should consider his untimely appeal because: (1) the court could fashion a judicial remedy to vindicate his right to adequate assistance of counsel; and (2) as a matter of due process under the federal constitution, he should be able to raise the issue

of his fitness to parent on direct appeal.

While the Court had previously fashioned judicial remedies for inadequate assistance of counsel in filing appeals, the Court of Appeals rejected the first argument because the legislature extended the right to a late appeal to represented parties in 2001 and thus, relying on *State ex rel. Juv. Dept. v. M.U.*, 229 Or App 35 (2009), held that the Court no longer had the authority to create a judicial remedy. The legislative remedy in ORS 419A.200(5) allows a late appeal to be filed up to 90 days after the entry of a termination judgment. Father did not file within the proscribed time and the Court had no authority to fashion a remedy extending the statutory deadline.

The Court of Appeals rejected father's due process argument after applying the *Mathews v. Eldridge*, three part balancing test. 424 U.S. 319 (1976). It noted that the first *Mathews* factor, the private interest in parental rights, was a fundamental liberty interest demanding significant procedural safeguards. It also found that the third factor, the state's countervailing interest in speedy resolution of termination cases, was not particularly strong in this instance because mother had already filed an appeal so father's additional appeal would not significantly delay a resolution.

The Court rejected the father's late appeal based on the second *Mathews* factor, the

risk of erroneous deprivation and value of additional safeguards. It found that ORS 419A.200 provides sufficient process to pursue a late appeal. Furthermore, it noted that the Court was in a unique position to determine whether, *in this case*, there was a heightened risk of erroneous deprivation because, since it had resolved mother's appeal on the merits, (*Dept. of Human Services v. T.M.M.*), there was an adequate factual record to judge the likelihood of whether father's appeal would have been successful. The Court determined that it would have affirmed the termination judgment in father's case due to his history of substance abuse and violence so there was no risk of erroneous deprivation of the father's parental rights from not allowing the late appeal. In the totality of the circumstances, the termination proceedings had been fundamentally fair.

Dept. of Human Services v. B.B., ___ Or App ___, ___ P3d ___ (March 14, 2012) (Nakamoto, J.) (Marion Co.) <http://www.publications.ojd.state.or.us/Publications/A147227.pdf>

Father began sex offender treatment program in 1996 following incarceration for sexually assaulting two young children. He discontinued treatment in 1999 when parole supervision ceased. Mother and fa-

ther's first child was born in 1999 and they moved to Ohio where they had three more children. Ohio child welfare authorities knew of father's history of sexual offending but permitted father to live at home with mother and the children. Soon after the family moved back to Oregon in July 2010, DHS filed jurisdictional petitions alleging that: (1) father had a history of inappropriate sexual contact with minors, a behavior that endangers the children's welfare and safety if unremediated; and (2) father had disclosed inappropriate sexual contact with minors and failed to complete sex offender treatment as recommended by child welfare authorities. The juvenile court found that DHS had proven each allegation and that it had jurisdiction over the children.

Citing *Dept. of Human Services v. C.Z.*, 236 Or App 436, 440 (2010), the court identified the key inquiry for juvenile court jurisdiction as "whether, under the totality of the circumstances, there is a reasonable likelihood of harm to the welfare of the child." In finding jurisdiction the juvenile court relied on a statement from father's parole officer from eleven years earlier that he was concerned father might reoffend, and on the opinion of a treatment provider that the therapeutic community believes therapy increases the likelihood of successful remission.

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The court found no evidence of abuse since 1994, sixteen years prior to the jurisdiction hearings, despite father living with his children for the past seven years. The Court of Appeals held that there was insufficient evidence that father's condition was unremediated or that his sex offender condition was not in remission. Failure to complete treatment in 1999 did not establish a current likelihood of abuse.

The Court of Appeals then dismissed the juvenile court's findings that mother had exposed children to an unsafe person because father had a history of sexual offenses against minor children. It commented that this was a derivative conclusion based on the court's finding that father was dangerous, a conclusion that was not supported by evidence. Mother did not admit that father was dangerous by going beyond the requirements of the Ohio juvenile court and chaperoning children with father until 2008.

Dissent:

The dissent concluded that the juvenile court was correct in finding that father posed a current risk to children because he never remedied his sex offender condition. It gave credit to the juvenile court's first hand assessment that the father had not remedied this condition and found convincing the evidence that father admitted he did not seek treatment during the ten years

after his release from parole supervision and that it was unlikely for father to go into remission on his own without a specialized program.

Dept. of Human Services v. D.M., ___ Or App ___, ___ P3d ___ (March 14, 2012) (Schuman, P.J.) (Multnomah Co.) <http://www.publications.ojd.state.or.us/Publications/A149499.pdf>

At a review hearing, mother cited *Dept. of Human Services v. A.F.*, 243 Or App 376, 386 (2011) to support her argument that juvenile court jurisdiction over her two children must be dismissed unless DHS proved that "alleged jurisdictional bases continue to pose a current threat of serious loss or injury." In response, DHS argued that the correct standard, set by the Oregon Supreme Court in *State ex rel. Juv. Dept. v. Smith*, 316 Or 646, 653 (1993), was that jurisdiction must continue if "there is a reasonable likelihood of harm to the welfare of the child."

The Court of Appeals held that even if it applied the less demanding *Smith* standard, DHS failed to provide sufficient evidence to support continuing court jurisdiction over the children. DHS argued that mother's failure to provide adequate supervision persisted because she discussed being an escort

and exotic dancer in front of her daughter, failed to adequately monitor internet use, and permitted inappropriate boundaries with men by allowing her daughter to receive expensive gifts from an adult male and indicated by the daughter hugging her male therapist at their first meeting. The Court commented that DHS presented no evidence that mother's substance abuse continued, mother had completed substance abuse treatment and parenting classes, and her younger daughter appeared healthy and well cared for. Thus, the Court of Appeals concluded no evidence existed underlying the decision to maintain wardship over the younger daughter and mother did not expose the older daughter to a reasonable likelihood of harm much less a current threat of serious loss of injury. Overall, the evidence did not justify state intervention into mother's fundamental right to care for her children.

Dept. of Human Services v. S.P., ___ Or App ___, ___ P3d ___ (March 28, 2012) (Armstrong, J.) (Umatilla Co.) <http://www.publications.ojd.state.or.us/Publications/A149250.pdf>

The juvenile court asserted jurisdiction over parent's new born child, K.P., after determining that conditions prevented them

from safely parenting K.P. Mother was developmentally disabled and received adult developmental disability services. Father had a "seizure disorder" for which he took medication but was denied developmental disability services. DHS caseworkers observing the parents with K.P. noted that they needed constant coaching in basic parenting skills such as how to properly hold and feed the child. Mother appealed arguing that the court erred in relying on two allegations as to father and that there was insufficient evidence to support a conclusion that K.P. was endangered.

The Court of Appeals first found that the mother can challenge the jurisdictional findings as to father on appeal because mother's ability to parent must be evaluated by looking at the totality of the circumstances, including the participation of father in caring for the child. It found the evidence insufficient to show that father was unable to provide care for K.P.

The Court of Appeals said the standard for jurisdiction based on endangering a child's welfare was whether the condition or circumstances created a current "threat of serious loss or injury to the child" and whether there was a "reasonable likelihood that the threat will be realized." Thus, it concluded that the standards in *Dept. of Human Services v. A.F.*, 243 Or App 376, 386 (2011) and *Continued on next page »*

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« *Case Summaries continued from previous page*
State ex rel Juv. Dept. v. Smith, 316 Or 646 (1993) were complementary and compatible. The Court found there was insufficient evidence, despite mother's disability, that K.P.'s conditions and circumstances endangered her welfare.

Dept. of Human Services v. B.W., ___ Or App ___, ___ P3d ___ (March 28, 2012) (Schuman, P.J.) (Union Co.)
<http://www.publications.ojd.state.or.us/Publications/A149347.pdf>

Father was incarcerated since before his child's birth in January 2010 and had no contact with her. He stipulated to juvenile court jurisdiction in February 2011 based on allegations that he: (1) lacked a relationship with the child; and (2) was unavailable to parent due to incarceration. At a permanency hearing in July 2011, the state requested that the court order father to participate in a psychological evaluation to determine what services father would need upon his release in order to safely be around the child for visitation or placement. The juvenile court ordered the evaluation because father's offenses, riot and assault, both involved violence.

Father appealed contending that the juvenile court was authorized only to order

services that bear a rational relationship to its jurisdictional findings and that the evaluation was not rationally related because the findings included no allegations of mental health issues. The Court of Appeals agreed with the juvenile court that a psychological evaluation was rationally related to the jurisdictional findings because father's unavailability was due to his incarceration for violent crimes. Furthermore, an evaluation would help DHS determine which services were necessary to help father develop a relationship with the child. ●

Youth, Rights & Justice Web site

A reminder and update on some of the resources available on our web site

Visit our web page for resources for attorneys practicing juvenile law:
<http://www.youthrightsjustice.org/lawyer>

Find the Juvenile Law Resource Center's resources for parents' attorneys at:
<http://www.youthrightsjustice.org/juvenile-law-resource-center>

"A Family's Guide to the Child Welfare System" can be a good resource for your parent clients in dependency cases. Find a copy here:

<http://www.youthrightsjustice.org/media/570/familyguideyrj.pdf>

We also have other resources for parents in dependency cases:

<http://www.youthrightsjustice.org/parent>

Find previous issues of the Juvenile Law Reader at:

<http://www.youthrightsjustice.org/juvenile-reader>

Find information on legislation supported by Youth, Rights & Justice, including the former foster youth tuition waiver, changes to the juvenile sex offender registration and relief statutes and others on our policy page:
<http://www.youthrightsjustice.org/policy>

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"[Appellants] urge that we hold the Juvenile Code of Arizona invalid on its face or as applied in this case because, contrary to the Due Process Clause of the Fourteenth Amendment, the juvenile is taken from the custody of his parents and committed to a state institution pursuant to proceedings in which the Juvenile Court has virtually unlimited discretion, and in which the following basic rights are denied:

1. Notice of the charges;
2. Right to counsel;
3. Right to confrontation and cross-examination;
4. Privilege against self-incrimination;
5. Right to a transcript of the proceedings; and
6. Right to appellate review."

-- U.S. Supreme Court
In re Gault, 387 U.S. 1 (1967)
Argued December 6, 1966
Decided May 15, 1967



"We have a powerful potential in our youth, and we must have the courage to change old ideas and practices so that we may direct their power toward good ends."

— Mary McLeod Bethune

Clients with Bipolar Disorder

A Guide to Symptoms and Treatment

By Del Webb, M.A., YRJ Social Work
Intern

It is estimated that 6.5 million American adults have Bipolar Disorder¹. But this condition, also known as manic depression, is frequently misunderstood by the general public. This article will provide a basic understanding of the symptoms of Bipolar Disorder, common treatments, and advice to individuals in the legal profession who may represent clients with this diagnosis.

Bipolar Disorder is classified by the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) as a mood disorder, meaning that it is a condition that primarily affects a person's emotional state. Bipolar Disorder usually begins to manifest in a person's late teens to early adulthood, though in rare cases it can have an early onset in younger children. When first manifesting, there can be a period of several years between episodes, which often delays a proper diagnosis. If left untreated, the cycles of the disorder become more frequent and more severe.

A person diagnosed with Bipolar Disorder cycles between periods of depression and mania. These cycles are typically long-lasting (at least 7 days), and there are extended periods of relative stability between cycles.

Several months can pass between mood cycles, though a small number of people with Bipolar Disorder are considered 'rapid cyclers' (defined as having four or more complete cycles within the space of a year; extremely rapid cycles which occur over the course of a few days are possible, but very rare – this type of emotional turbulence is typically a sign of a different diagnosis entirely).

Bipolar Disorder usually begins to manifest in a person's late teens to early adulthood, though in rare cases it can have an early onset in younger children.

Symptoms of depression include:

- Constant feelings of sadness, or in extreme cases feelings of 'emptiness'
- Loss of appetite
- Disturbance in sleep (either sleeping too much, or insomnia)
- Loss of enjoyment of life
- Lack of motivation
- Feelings of worthlessness and guilt
- Thoughts of death or suicide, or suicide attempts
- Hallucinations (hearing voices) in extreme cases

The symptoms of mania, on the other hand, can include:

- Exaggerated sense of self-esteem, up to unrealistic levels in extreme cases (believ-

ing oneself to be an important political/religious/financial figure, for example)

- Irritability and outbursts of anger
- Lack of sleep or need for sleep
- Racing thoughts and/or inability to focus
- Agitation or restlessness
- Impulsive and risky behaviors (spending sprees, reckless driving, sexual promiscuity)
- Grandiose or delusional thoughts (believing one can influence events by thought alone, for example)
- Hallucinations (in extreme cases)

Every person with Bipolar Disorder will vary in the frequency of their cycles and the symptoms they display. Men tend to have more manic episodes, and women more depressive episodes. All individuals with Bipolar Disorder are at an increased risk for suicide, especially when in a depressive cycle; roughly one third of people with this diagnosis will attempt suicide at some point in their lives², and anywhere from 4 to 12% of those who attempt will succeed³. There are two major subtypes of Bipolar Disorder defined by the DSM; Bipolar I Disorder is diagnosed when a patient has had at least one episode of full mania as well as depression, whereas Bipolar II Disorder is diagnosed when the patient has had depression, but only experiences a less severe form of mania (called hypomania). Psychotic symptoms (such as delusions or hallucinations) are more likely to occur with Bipolar I Disorder.

Treatment

The most common method of treatment for Bipolar Disorder is a combination of medication and psychotherapy. Patients are typically prescribed a mood stabilizer (such as lithium or Depakote), possibly in combination with an antidepressant. These medications are most effective when they are taken consistently, even during periods where a person is between cycles. One of the most common problems that can occur in the treatment of Bipolar Disorder is that patients will stop taking their medications between cycles, or just prior to a manic cycle, because they think they no longer need them. This decision is usually reinforced in the short term because they will get immediate relief from the side effects of the medication, as well as experiencing the euphoria of hypomania. But in the long term the decision to stop medications will trigger a slide into either depression or full mania.

Therapy for persons with Bipolar Disorder typically revolves around developing support, awareness of the disorder and its symptoms, stress management and problem solving skills, and in general learning how to live with this life-long disorder.

Advice for Legal Professionals

As is probably evident, a client who experiencing severe symptoms of either mania or depression is at significant risk. A parent in a dependency case who is severely depressed is at risk for suicide, may neglect their child, and in extreme cases may even be a danger to the child. A parent who is experiencing

Continued on next page »

« *Bipolar Disorder continued from previous page*

mania, on the other hand, may be placing their child into unsafe situations or exposing them to unsafe individuals, or may even abandon their child altogether if they lose touch with reality. All of this, however, is a worst-case scenario. It is important to remember that for the majority of people who have Bipolar Disorder, the condition can be controlled through proper treatment.

When working with a client with Bipolar Disorder, be aware if you begin to notice any of the symptoms of depression or mania listed above. Mention your concerns to your client, and if the symptoms appear to be growing worse, you may consider consulting with the client's mental health provider if you are able to do so. If a client tells you they have stopped taking their medications, encourage them to restart, even if you don't see any symptoms yet (it's best to advise clients to consult with their medical provider about restarting lapsed medications; mood stabilizers typically require careful monitoring). If you are severely concerned about a client's mental state, you may wish to contact whatever mental health crisis services are available in your area. In any situation where you may be contacting an outside party about a client, it is best to seek consultation regarding attorney-client privilege. ●

¹ National Institute of Mental Health: Prevalence is estimated at 2.6% of the adult population

² Novick, D.M., Swartz, H.A., & Frank, E. (2010). Suicide attempts in bipolar I and bipolar II disorder: a review and meta-analysis of the evidence. *Bipolar Disorders*, 12, 1-9.

³ Centers for Disease Control and Prevention (2010). Suicide: Facts at a Glance

State and Children's Advocacy Organizations Reach Interim Agreement in WA Lawsuit Over Children's Mental Health

March 8, 2012 from the National Center for Youth Law -- Two state agencies and several advocacy groups have reached an interim agreement to develop a framework for reforms in the Washington state mental health system for children and youth enrolled in Medicaid. The agreement temporarily suspends litigation in a class action lawsuit filed against the Department of Social and Health Services and the Health Care Authority.

The interim agreement was reached after 13 months of mediation and provides for planning and infrastructure development to improve services for children and youth with significant mental health needs and their families.

T.R. et al v. Dreyfus was filed in November 2009 alleging deficiencies in access to intensive community-based mental health services. The parties began mediation in January 2011 to address the claims in the suit. Although the agreement does not settle the case, U.S. District Court Judge Thomas Zilly has suspended litigation activities in light of the agreement, so that the state and plaintiffs can collaborate on system reforms. The ultimate goal is to reduce psychiatric hospitalizations, keep kids out of foster care and reduce juvenile justice interventions for those children and youth most affected by mental illness.

"Families, youth, legislators, providers and the state have tremendous interest in and support for improving the system of care for children, youth, and their families," said DSHS Secretary Robin Arnold-Williams. "This interim agreement allows the state to move that agenda forward while addressing the specific needs of class members. The interim agreement focuses existing resources on planning improvements to the system and requires no new funding."

Arnold-Williams called the agreement, "a model for how states and advocacy organizations can work together to promote improved services in a challenging fiscal environment."

"We have a tremendous opportunity with kids with mental health needs because, by getting in early and providing intensive community-based services, we can really help them to turn their lives around. Many kids who experience significant problems, with the right services, overcome them and live full and productive lives. This Interim Agreement takes us closer to making those services a reality in the future," said Regan Bailey, Legal Director for Disability Rights Washington.

According to Susan Foster and Frederic Rivera, attorneys with Perkins Coie, the interim agreement is an important step

toward resolving the claims asserted in the lawsuit. "We commend the state for taking the claims seriously and working hard to develop solutions that include meaningful changes to the mental health service delivery system offered to kids in Washington."

"The commitments in this agreement will help move Washington's mental health system forward by employing practices that promote partnership with families and serve children and youth in their homes and communities," added Kim Lewis, an attorney with the National Health Law Program.

"This agreement reflects a tremendous amount of commitment and hard work on both sides," said Patrick Gardner, Deputy Director of the National Center for Youth Law. "It is a very critical first step in getting our clients the care and support they need. The framework to be developed will greatly improve how Washington provides intensive community-based mental health services to children."

Plaintiffs are represented by Disability Rights Washington, the National Center for Youth Law, Perkins Coie, LLP and the National Health Law Program.

The agreement ends June 30, 2013. Prior to that date, the parties will mediate additional steps necessary to ultimately resolve the lawsuit. ●

Missouri House Supports Changes in SORNA Laws

In late March, the Missouri House approved a bill which would make many changes to the state's SORNA laws. Representative Rodney Schad who sponsored the bill explained that the state's sex offender registry should be an effective notification tool to the public and not merely be a means to create additional punishment for offenders. Among the proposed changes to the current law, juveniles who have to register as sex offenders would no longer be required to have their information publicly posted online. The summary of the perfected version of the bill states in relevant part: "A juvenile who is required to register will be excluded from the public website."

The full version of the perfected version of the bill can be found at the Missouri House of Representatives website here: <http://www.house.mo.gov/content.aspx?info=/bills121/bilsum/perf/sHB1700P.htm>. ●



"Injustice anywhere is a threat to justice everywhere."

— Martin Luther King, Jr.

Learn more about who we are
and what we do at:
www.youthrightsjustice.org

Case Summary

In re C.P. ___ N.E.2d
___, 2012 WL 1138035
(Ohio)

A Youth adjudicated delinquent on charges of rape and kidnapping with sexual motivation appealed the juvenile court's sentence designating him a Tier III juvenile offender which required him to register as a sex offender on a public registry for the rest of his life. The ruling was affirmed on appeal and then reviewed by the Ohio Supreme Court. The court examined the constitutionality of R.C. 2152.86 which provides that juveniles adjudicated of sex offenses meeting certain criteria are automatically classified as Tier III sex-offenders, requiring them to follow adult enhanced reporting and notification requirements, which include being placed on a public Internet database. These reporting requirements are effective immediately and for the rest of the juvenile's life. The court determined the law violated the Eighth Amendment to the United States Constitution which prohibits cruel and unusual punishment, the Ohio Constitution's equivalent, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In finding for the Youth, the Ohio Supreme

Court held that R.C. 2152.86 violated the federal constitution's prohibition against cruel and unusual punishment because the penalty imposed on juveniles failed the proportionality test. The court also provided a thorough analysis of the culpability of juveniles, the unique severity of the punishment, and how the law fails to serve penological goals. The statute was found to violate the state constitution as it ran counter to the focus of the juvenile court system's goals of providing "individual, corrective treatment" where judicial discretion of imposing penalties is removed.

Finally, the Ohio Supreme court found R.C. 2152.86 in violation of the federal constitution's due process provisions. Where the due process standard for juveniles is 'fundamental fairness' the statute abrogates the rehabilitative purpose behind the juvenile justice system. ●

Resources Juvenile Brain Development

The brief for the petitioner, Kuntrell Jackson, in *Jackson v. Hobbs*, which is currently pending before the U.S. Supreme Court, contains a particularly useful discussion of why children are different in the context of criminal responsibility. The brief is available at: http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/briefs/10-9647_pet_authcheckdam.pdf

IUSF's Center for Law and Global Justice Launches New Report

The report, "**Cruel and Unusual: U.S. Sentencing Practices in a Global Context,**" compiles comparative research on sentencing laws around the globe and documents how sentencing laws distinguish the United States from other countries. Researchers found that the United States is in the minority of countries using several sentencing practices, such as life without parole, consecutive sentences, and successive prosecution of the same defendant by the state and federal government. Conversely, sentencing practices promulgated under international law and used around the world, such as the retroactive application of sentencing laws that benefit offenders, are not systematically applied in the United States. The report additionally focuses on juvenile justice, covering such issues as the minimum age of criminal liability, juveniles transferred to adult courts, and the maximum sentence a juvenile can receive. On these three sentencing issues, the United States remains an outlier. Download a copy of the report at: <http://www.usfca.edu/law/docs/criminalsentencing>. For more information, please contact Dana Isaac: dmisaac@usfca.edu. ●



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Save the Date

OCDLA 2012 Annual Conference

June 14-16, 2012

Seventh Mountain Resort

Bend, OR

<http://www.ocdla.org/seminars/shop-seminar-2012-annualconference.shtml>

The **Western Juvenile Defender Center** is co-hosting the Washington Juvenile Defender Leadership Summit, which will be open to Oregon Juvenile Defenders. The Summit will be July 20 -21, 2012 at the Seattle University School of Law. Agenda and registration information to follow.

This promises to be an excellent program! There will be no registration fee and funds will be available to defray cost of housing for 6 participants from Oregon.

35th National Child Welfare, Juvenile, and Family Law Conference

August 14-16, 2012

Historic Palmer House Hilton

Chicago, Illinois

Conference brochure available May 2012. www.NACCchildlaw.org ●

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Youth, Rights & Justice

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4TH Annual Wine & Chocolate Extravaganza

October 13, 2012

Oregon Convention Center

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Just a few of the wineries & chocolatiers who have joined us in the past:

Abacela	Pheasant Valley Vineyard and Winery	Troon Vineyard
Bernard Callebaut	Piece of Cake	Van Dуйn
Coastal Mist Chocolate Boutique	REX HILL	Wallowa Lake Fudge Company
Cocoa Velvet	Sineann	Watermill Winery
Euphoria Chocolate Company	Sipping Dreams	Willamette Valley Vineyards
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Missionary Chocolates	Stirs the SOUL	