

THE JUVENILE LAW READER

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FEDERAL COURT RULES ABUSED AND NEGLECTED CHILDREN HAVE CONSTITUTIONAL RIGHT TO COUNSEL

February 8, 2005, Atlanta, Georgia

For the first time ever in the nation, a federal judge in Atlanta, Georgia ruled today that abused and neglected children in the state's child welfare system have a right to an attorney at every major stage of their experience in state custody.

The decision comes in the ongoing civil rights class action lawsuit, *Kenny A. v. Perdue*, which is now likely to go to trial in April of 2005. In addition to the issue of abused children's right to adequate assistance of counsel, the *Kenny A.* case seeks to overhaul many longstanding failures in the Division of Family and Children Services (DFCS) system, including the frequent abuse of foster children by their foster parents, overcrowded foster homes, the overuse of institutions for children, dangerously high caseloads for social workers who monitor children's safety, the denial of basic health care, and children languishing in state custody

for many years without efforts to get them adopted or safely returned home.

"This is a landmark decision nationally and a huge victory for the rights of abused and neglected children," said Ira Lustbader, Associate Director of Children's Rights, the national advocacy organization that filed the *Kenny A.* lawsuit in 2002. "The lack of effective counsel for abused children caught up in the State's dangerously troubled child welfare system has been a longstanding problem in Georgia and throughout the country."

In the ruling, Judge Marvin H. Shoob of the United States District Court, Northern District of Georgia, denied efforts to prevent children from having their day in court, and ruled that enough evidence exists to proceed to trial on the claim of 3,000 abused and neglected children in the Atlanta metro area that they were denied effective assistance of counsel while in the

state's custody. The Court noted evidence that each "Child Advocate Attorney" assigned to represent abused children in Fulton County, Georgia had an average caseload of 439 children, and that such attorneys in DeKalb County had an average caseload of over 182 children, while the national standard for such caseloads is no more than 100 cases per attorney. The *Kenny A.* lawsuit argues that these high caseloads prevent these children from getting effective legal assistance in a system already plagued with dangerous deficiencies.

Judge Shoob denied motions by Fulton and DeKalb Counties in Georgia seeking to throw the lawsuit out of court before its scheduled trial, which is now likely to occur in April 2005. In a landmark legal ruling of national significance, Judge Shoob concluded that "plaintiff foster children have both a statutory and a constitutional right to Con't on p. 2.

KENNY A. HIGHLIGHTS:

- First Federal Court Ruling on Right to Counsel for Children in Abuse and Neglect Cases.
- Right to Counsel Attaches at Every Major Stage of Proceedings.
- Right is Statutory and Constitutional under the Due Process Clause, that may be violated by excessive caseloads.

CONSTITUTIONAL RIGHT TO COUNSEL - Con't.

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counsel in all [major child welfare] proceedings. . .”

These proceedings include an initial 72-hour detention hearing, where the Juvenile Court determines if the child should be placed in out-of-home foster care or returned to his or her parents; the “adjudicatory hearing,” where the Juvenile Court determines whether in fact the abuse occurred; the “dispositional hearing,” where the Juvenile Court determines where and with whom the child will be placed; periodic reviews of a child’s status while in foster care; and proceedings in which the Juvenile Court determines whether to terminate the parental rights of a particular child’s parents.

The Court rejected the counties’ argument that individual lawsuits against individual attorneys representing children was an

adequate remedy for the children, ruling that “such actions cannot remedy the systemic deficiencies” cited by Children’s Rights in their lawsuit. The Judge also rejected the counties’ argument that the appearance of lawyers from Georgia’s Attorney General’s office during a child’s time in foster care were sufficient, finding that children are “entitled to representation by separate counsel” at all times.

The Court found that these assistant attorney general attorneys could be conflicted because they also represent the whole system and its dangerous problems, such as children placed in overcrowded and inappropriate homes, children shuffled from one home to another, and the overuse of institutional facilities for children.

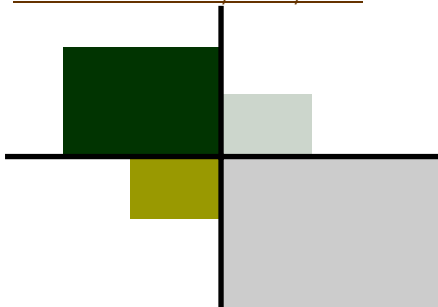
NEWS BRIEFS

The Terminator Lightens Up

In a historic move, California’s Governor agreed to revamp California’s youth prison system, replacing the current system, universally agreed to be a failure, with a system that implements therapy and positive reinforcements at the core of the program. While the reforms are estimated to cost a sizeable amount of money up front, leaders of the youth prison system are claiming that it will save money in the future by helping more young lawbreakers go straight. While the details are not settled, the program will have certain features including an “open programming” model where inmates are released for education, meals, treatment, and daily recreation; housing youths in facilities closer to their homes; involving families in youths therapy; and positive reinforcements instead of

punitive discipline to encourage good behavior. Not all are fans of the new plan. One critic, a prison officer, who was recently forced to retire due to an inmate stabbing him, stated “Who wrote this plan, Walt Disney? These are murderers, carjackers, and hard core criminals. Therapy and coloring crayons aren’t going to help.” Whether the critics like it or not, new therapeutic and small living models are becoming the new national standard and are popping up in different states all over the country.

www.latimes.com/news/local



OHP Mental Health Services and Timeliness

by Mark McKechnie, MSW

Children in the foster care and juvenile justice systems are more likely to have mental health diagnoses and experience more urgent needs related to their mental health conditions. It is important, therefore, for case workers, probation officers and foster parents to access services for children quickly.

The timeliness of mental health services is addressed, in part, in the contracts between the State Office of Mental Health and Addictions Services (OMHAS) and the Mental Health Organizations (MHOs) who enroll Oregon Health Plan members and cover their mental health care.

This contract is standard for the nine MHOs which cover every Oregon county. The contract states that each MHO “shall, on an ongoing basis, adjust its delivery system configuration and capacity to make available timely and appropriate access to an adequate range and intensity of Covered Services options.”

Specifically, the contract includes timeliness for initial services or

continuity of care when an OHP-covered client transfers to a new provider.

The MHO contract includes the following timelines from the date of request for OHP-covered services:

- A telephone screening within 15 minutes for urgent or emergency situations to assess the urgency of the situation.
- For an emergency situation, covered services are to be provided in no longer than 24 hours of contact.
- For an urgent situation, covered services are to be provided within a time period not to exceed 48 hours.
- For non-urgent and non-emergency requests for services, an intake appointment should be provided within two calendar weeks (or less) from the date of request.
- Clients discharged from an acute care psychiatric hospital program should be provided covered services within one calendar week or within a “Medically Appropriate” period of

time.

Most MHOs sub-contract for out-patient and other community mental health services with county mental health departments or private, non-profit providers. The MHOs bear the responsibility for ensuring that their subcontractors comply with the MHO contract terms, such as the timeliness requirements above. A list of the nine MHOs and their contact information can be found at: <http://www.oregon.gov/DHS/mentalhealth/mho/mho-agreements/03-04/stmtwrkpart2-1.pdf>. OMHAS has posted a copy of the 2003-04 Mental Health Organization agreement on their web site at: <http://www.oregon.gov/DHS/mentalhealth/mho/mho-agreements/03-04/stmtwrkpart2-1.pdf>. Information on problem solving related to access to OHP mental health services, including information on grievances and appeals, can be found in the Juvenile Law Reader, Volume I, Issue 3 (<http://www.jrplaw.org/documents/JRPReaderV1Is3.pdf>), on page 6.

46% OF YOUTH SCREENED BY HOMELESS SYSTEM COME FROM FOSTER CARE

The 12/8/04 data report of the Multnomah County Homeless Youth Oversight Committee continues to show high levels of current and former foster youth being served by homeless youth services.

Homeless Youth System Data for the 4-month period from July - October 2004

Age	Number	Percent		#	%
13 - 14	4	2 %	Total Number of youth screened: 187		
15 - 16	14	7 %			
17 - 18	72	39 %	Youth Screened with current DHS involvement	20	11%
21 +	88	47 %			
No Birthdate	7	1 %	Youth Screened with past DHS involvement	65	35%

MEETING THE EDUCATIONAL NEEDS OF YOUNG FOSTER CHILDREN

By Julie Goss, Americorps Volunteer Attorney

Foster children struggle with unique health and educational needs. Young children, under the age of five, who enter foster care have additional struggles as their formative years for health and development have often been impacted by a chaotic living environment.

The early years have been shown to be critical for developing social and emotional, language and cognitive skills that are essential for future success. Young children in foster care often lack the supports and stability necessary to acquire these skills. They have often also suffered or continue to suffer from maltreatment, neglect, caregiver separation or fetal alcohol spectrum disorders, which has been shown to have a serious negative impact on their abilities to develop.

Important to all children, but especially important for children in foster care, educational settings, inside and out of the home, need to be appropriate. Care providers should be educated on the needs of their children and early care and education programs should include safe facilities, well trained staff, small class sizes, and involved caretakers.

Advocates for young children in foster care should be aware of several key programs for which many foster children are eligible.

•**OHP** – All foster children are eligible for Oregon's Medicaid program, the Oregon Health Plan (OHP). This is a comprehensive health program. Under Oregon's Medicaid waiver, children who have a covered diagnosis are eligible for "medically appropriate" treatment services for the diagnosed condition.

• **Head Start** – Low income families with children ages 3-5 and 0-3 may be eligible for Head Start and Early Head Start programs, respectively. These federal programs are designed to help children develop social, emotional, and cognitive skills. Children can receive a variety of health services and parents can receive housing and job training assistance through the programs.

•**IDEA** – Many young foster children will be eligible for educational protections afforded by the Individuals with Disabilities Education Act. Part C applies to children under age 3. For further information please see the Early Intervention article in The Juvenile Law Reader Volume 1, Issue 3.

More information can also be found in the article, "Meeting the Education Needs of Young Children in Foster Care," by Kathleen McNaught, Child Law Practice, vol. 23, No. 12. <http://www.childlawpractice.org>

SEMINARS AND CONFERENCES

OSB's Seminar, **CURRENT ISSUES IN JUVENILE LAW: SEX AND SCIENCE**, Cosponsored by the Juvenile Law Section will be Friday, **March 11, 2005**, 9 a.m. - 4:30 p.m. at the World Forestry Center in Portland. The presentations in this seminar will explore cutting edge developments in juvenile law practice, ranging from treatment options and alternatives for sex offenders to medical and scientific evidence. Stay ahead of changes impacting sex offender cases and the forensic science used in child abuse cases. Examine the Child Abuse Reporting statute and its unique applications for juvenile law. Learn the latest information and become a more effective practi-

tioner. 5.25 general CLE credits and 1 Child Abuse Reporting credit. For more information go to: www.osbar.org

OCDLA's **Juvenile Law Seminar, Drugs & Alcohol: Impact and Treatment** will be **April 15 - 16, 2005** at the Hallmark Resort in Newport. The presentations in this seminar address the impact of drugs and alcohol in our clients, their ability to negotiate the legal situation they find themselves in, treatment options, and the dynamics of the attorney-client relationship. Featured faculty will include: Dr. Robert Julien, author of *A Primer of Drug Action*; Lucy Zammarelli, M.A., NCACII, Director of

Adolescent and Research Programs at Willamette Family Treatment Services in Eugene; and Ken Meneely of the OSP Crime Lab in Springfield. 8.25 general, 1 ethics and 1 professional responsibility/child abuse reporting credits. For more information go to: www.ocdla.org.

The National Association of Counsel for Children will hold its **28th Annual Children's Law Conference** August 25 - 28, 2005 at the Renaissance Hollywood Hotel, Los Angeles, CA. You are invited to join hundreds of California and national attorneys, judges, and other child advocates to network and learn

Continued on page 7

Questions and Answers about Sex Offender Registration

1. Who must register?

Any person, including a juvenile, placed on probation, discharged, paroled, or on any form of supervised or conditional release from a jail, prison or juvenile correctional facility or detention facility in Oregon at which the person was confined, as a result of:

- Conviction of a sex crime.
- Having been found within the jurisdiction of the juvenile court for having committed an act that if committed by an adult would be a sex crime.
- Any person paroled or otherwise placed in Oregon from another state who was convicted of a crime that would constitute a sex crime in Oregon, or found by a court in another jurisdiction to have committed an act while the person was under 18 which would constitute an adult sex crime if committed in Oregon.

2. When must the registration occur?

Initially, registration must be completed within 10 days of discharge, release on parole, post-prison supervision or other release. In addition, the offender must register:

- Within 10 days of changing residences.
- Every year, within 10 days of the offender's birthday.

3. How do I register?

Registration must be in person.

For a youth offender:

- Make the report to your supervising probation officer, if under supervision.
- If not under supervision, report to Department of State Police, chief of police, county sheriff or other supervising agency.

For an adult offender:

- Report to Department of State Police, chief of police, county sheriff or

other supervising agency.

4. How do I obtain relief from registering?

The duty to register terminates if the conviction or adjudication is reversed or vacated or the offender is pardoned. ORS 181.607 & 181.608 also provide relief from the sex offender registry for some *juvenile offenders*. The process for relief is as follows:

Timing: Is it greater than 2 years but less than 5 years after the termination of juvenile court jurisdiction over the registrant? If yes, the registrant may file a petition for relief.

Where to file: The juvenile court in which the registrant was adjudicated for the act that required reporting.

Procedure: The District Attorney, the Registrant and the Juvenile Department are parties to the proceeding. It must be proved that the registrant is rehabilitated and does not pose a threat to the safety of the public. The burden of proof is on the state if the registrant files no later than 3 years after termination of juvenile court jurisdiction. The burden of proof is on the registrant if registrant files more than 3 years after termination of juvenile court jurisdiction.

Factors considered by the juvenile court in making the decision include the extent and impact of the act, the victim's age and statements, whether the registrant has participated in treatment, and any other relevant factors. The state has the right to have a psychosexual evaluation of the person conducted. The right to petition for removal from registry as a juvenile offender can be waived.

If a juvenile offender misses the 5 year window for relief, he/she may be able to petition for relief as an adult under ORS 181.600 (1)(

5. What happens when I register?

You will be photographed, fingerprinted, required to fill out and sign a form. If you are not under supervision, the Department of State Police may verify your residence every 90 days by mailing a verification form to the reported address. If you are not under supervision, you will be assessed a fee of \$70 per year. The Department of State Police, police or sheriff may make this information available to the public, and may release this information in any manner it chooses

6. What happens when I fail to register?

- Failing to make an initial report/registration is a Class C felony.
- Failing to report a change of residence, or provide complete & accurate information on a registration form is a Class A misdemeanor.
- Failing to reply to an address verification form is a violation.

If you have failed to register, you should consult a lawyer.

It is advised that the registrant seek the advice of legal counsel before seeking relief from registration.

Sustained Focus on Foster Children: A Call to Action

On Monday, January 31, 2005, The Oregonian carried the following op-ed column written by Angela Sherbo, Tina Kotek and Don Darland.

“ In the wake of the tragic story of a 5-year-old girl allegedly malnourished and abused in foster care, The Oregonian's public editor, Michael Arrieta-Walden, wrote about the lack of sustained media focus on the circumstances of the approximately 6,300 children who are in foster care in Oregon on any given day. He asked: "Where is the accountability on an on-going basis?" We echo this question and welcome increased coverage. More importantly, we urge every Oregonian to take action on behalf of our state's most vulnerable children.

Sensational tragedies generate a great deal of intense, short-term attention from the media and general public. Indeed, after Walden's piece, The Oregonian reported on another tragedy, this time a fatality. Fifteen-month-old Ashton Parris died shortly after being returned to his parents from foster care.

But the public is under-informed about the serious life-and-death issues in the foster-care system. There is a lack of consistent coverage of the long-term but equally devastating systemic problems that turn the lives of many other foster children into tragedies in slow motion. The causes are more mundane -- overburdened foster homes, high turnover and inexperienced caseworkers with too little time and too many cases -- but the results can be just as severe. A physical blow can cause brain damage, but multiple foster placements (some children experience more than five in a year) can be an equally irreparable blow to normal development.

While many children who enter and exit the foster-care system are able to thrive, many others face significant challenges. We encourage reporters to examine other

facets of foster children's lives, including: Many children in foster care are behind or failing in school. Foster children with emotional and behavioral problems often fail to find permanent homes. Children aging out of the foster care system are much less likely to complete high school and more likely to end up without jobs, in jail or on the streets (more than a third of homeless people have been in foster care). These are important issues for our communities and should be explored in depth.

Here are some actions that can be taken at the highest levels of state government, at the local level and by individual Oregonians, to improve foster children's lives:

The governor can re-work his budget, which includes substantial reductions in foster care payments and in "flex funds" used to purchase individualized services that keep kids safe and healthy and hasten their return

“There is a lack of consistent coverage of the long-term but equally devastating systemic problems that turn the lives of many... foster children into tragedies in slow motion.”

home or adoption.

The Department of Human Services can ensure that children in foster care are visited regularly by caseworkers and that reports of abuse and neglect are investigated promptly. DHS can also make sure that foster children are not moved from home to home and school to school and provide services to remediate the harm that repeated moves cause. The agency should regularly report its progress to the public.

Lawmakers can pass legislation removing barriers to educational

stability for foster children and extending access for older youth to services such as housing, health insurance and education. For younger children, the state can amend the Early Intervention Program so that all abused and neglected infants and toddlers in foster care are eligible for services due to their high risk of experiencing developmental delays. Lawmakers can restore foster care payments and flex funds and can fund Former Foster Child Scholarships.

Local school districts can adopt policies that permit foster children to remain in their districts when they are moved to a new foster home in a different district. They can cooperate with DHS and others in gathering data and conducting research on how foster children are faring in their districts. Individual schools can ensure that foster children are given priority for tutors, Smart volunteers and other services.

Interested adults can become foster parents, respite providers, tutors or mentors. They can also volunteer as court-appointed special advocates or citizen review board members.

The media can hold the government and the public accountable for the well-being of children whose own parents no longer provide for them. The Oregonian can assign a reporter to expand its focus beyond sensational tragedies and write a series of in-depth articles about the foster-care system in order to keep the public's attention on the plight of these children.

Working together -- elected leaders, public agencies, nonprofit partners, concerned adults and the media -- we can provide the services and supports necessary to make sure foster children are safe, healthy and successful.

Angela Sherbo is a supervising attorney at the Juvenile Rights Project in Portland. Tina Kotek is the

CASE LAW UPDATES

Termination of Parental Rights

In *State v. Smith*, OR Sup Ct filed 2/17/05, the trial court terminated mother's rights as to two of her children, sequentially, on the state's claims that mother had a mental deficiency and that her choices presented an unsafe environment for the children, fulfilling the burden under ORS 419B.504. The Court held on appeal that the state failed to meet its burden in establishing extreme circumstances which endanger the safety of the child. There was no expert testimony that mother had a mental deficiency and the two psychologists admitted that mother's functioning level, while low, was not a seriously detrimental condition. Finally, while there was great evidence that DHS and the family did not get along or agree, none of the evidence presented established, under the statute's

intended standards, an unsafe environment for the children.

Custodial Interference in the 2nd Degree

In *State v. Adicho*, OR Ct Apls filed 02/03/05, the Court of Appeals affirmed a trial court ruling finding the word "keeps" in ORS 163.245(1) does not require an element of control over the minor person. The defendant, the minor child's boyfriend had been allowing the minor to stay at his apartment while knowing that the minor's mother wanted her returned to her. The Court found through legislative intent the statute was intended to protect the rights of a person having legal custody of another against invasion by those having no right to custody. From that intent, the Court affirmed the State's contention that "keeps" as per the statute, does not require an element of control over the person being kept, merely "maintaining something

or somebody in a particular place or situation" is sufficient.

5th Amendment and Sex Offender Treatment Requirement of Full Disclosure

In *US v. Antelope*, 9th Cir Ct Apls filed 01/27/05, reversed a district court ruling a defendant's 5th Amendment right against self-incrimination was not implicated when required to give a full disclosure of past sexual history in order to complete treatment and remain on supervised release. Defendant was repeatedly returned to prison when he would not fully disclose his history and would claim 5th Amendment protections. The Court found the state's purpose to be the controlling issue and here found it to be a government attempt to compel



CONFERENCES - Continued from page 4

about the latest developments in Child Welfare, Juvenile Justice, Family Law, and Policy Advocacy. For more information go to: <http://www.NACCchildlaw.org>

The National Institute for Trial Advocacy and Hofstra University School of Law presents the Third Annual **TRAINING THE LAWYER TO REPRESENT THE WHOLE CHILD, June 13 - 18, 2005** at Hofstra University School of Law in Hempstead, New York. This intensive skills training program combines traditional advocacy skills with interdisciplinary knowledge in the areas of child welfare and juvenile justice. Designed for attorneys with a minimum of two years of experience, this training used hands-on learning by doing to develop advocacy skills. At \$295

for 35 CLE credit hours this is a bargain, but space is limited. For more information go to: <http://www.nita.1@nd.edu>.

SEXUALITY MEETS SOCIAL TECHNOLOGY: HOW DO WE KEEP UP, the 8th Annual Training Conference of the California Coalition on Sexual Offending will be

May 4 - 6 at the University of California, Davis. More than you ever wanted to know about sex offending and treatment. For more information go to: www.ccoso.org



OREGON 32nd in HIGH SCHOOL GRADUATION

In a new study of high school graduation rates, Oregon ranked 32nd out of 50 states, with 71% of Oregon youth making it to graduation. Overall, the national high school graduation rate in 2002 remained flat compared with previous years, according to a new study by the Manhattan Institute. At 89 percent, New Jersey had the highest

graduation rate. Iowa, Wisconsin and North Dakota each graduated 85 percent of students in 2002. Bringing up the rear were South Carolina (53 percent), Georgia (56 percent), Tennessee (57 percent) and Alabama (58 percent). For more information go to: http://www.manhattan-institute.org/html/ewp_o8.htm.

CHAMPION FOR CHILDREN

Juvenile Rights Project, Inc.

Please join us in honoring David W. Willis, M.D., JRP's Champion for Children. Dr. Willis, founder of the NW Early Childhood Institute, will present exciting new research about the connection between brain development in children and youth and successful programs and interventions that capitalize on this research. He will describe his provocative theories and how they can be incorporated into public education, community-based programs, child welfare and the juvenile justice systems. One CLE available for members of the OSB. Support the Juvenile Rights Project by honoring one of our community's most passionate child advocates and hearing his inspiring presentation.

Save the Date!

JRP's

Champion for Children

April 6, 2005

11:30 – 1:30

The Governor Hotel

Portland, Oregon



**David W. Willis, M.D., Director and Co-Founder
of the Northwest Early Childhood Institute.**

123 NE Third Avenue, Suite 310

Portland, Oregon 97230

(503) 232-2540

We are on the WEB at:

[Http://www.jrplaw.org](http://www.jrplaw.org)

David W. Willis, M.D., is the Juvenile Rights Project's 2005 Champion for Children. He is committed to finding creative solutions to solve the problems faced by vulnerable children. Dr. Willis has lectured around Oregon on behalf of the Juvenile Rights Project to educate caregivers, policy makers, teachers and social service providers about the neuroscience of brain development. His optimism and exuberance stimulates the hope that mistreated children can heal.

Dr. Willis will discuss how the "Decade of the Brain" research findings can be applied to support the healthy growth and development of all of our children. Through his research, Dr. Willis has helped to improve pre-school and educational settings in order to promote healthy relationships, discourage bullying behavior and improve school performance.

Dr. Willis is a Developmental-Behavioral Pediatrician in private practice at Legacy Emanuel's Children's Hospital. He has over 20 years experience in assessment and management of young children's emotional, behavioral and developmental difficulties. He has served as a medical consultant to Legacy Emanuel's Child Development Program, Medical Director for Project Network and Clinical Professor of Pediatrics/Psychiatry at OHSU. Currently, Dr. Willis is the Director and Co-Founder of the Northwest Early Childhood Institute. The Institute is a cross-disciplinary and collaborative non-profit organization dedicated to bringing science-to-practice within our community in order to promote healthy brain development for our children.