

## Jasper Mountain Treatment Facility Focus of State Inquiry According to *Register-Guard* Article by Mark McKechnie

The Dec. 28, 2006, on-line edition of the *Eugene Register-Guard* features an article by Diane Dietz on injuries sustained by children at Jasper Mountain, a residential treatment facility for children ages 4-12 years, southeast of Springfield, OR.

According to the article, "Broken bones, broken rules?" three children have suffered broken bones during physical restraints and other interventions, such as escorts and physical redirections, performed by staff at Jasper Mountain since December 2005.

In a March 2006 incident, the upper arm of a 12 year-old girl living at the facility was broken in two places, according to the *Register-Guard* report. The story notes that the staff did not seek medical attention for the girl, despite her complaints of being in pain, until the next day.

Regarding the agency's response to the girl's injuries, residential program manager, Dan Silver, is quoted in the news article, explaining that the girl had "the most somatic complaints of anyone in our program."

Jasper Mountain Executive Director Dave Ziegler told the paper that the injuries were all accidental and that the three cases of children with broken bones since December 2005 were unique in the program's 24-year history.

The first incident occurred in December 2005 when an 11 year-old boy suffered a broken ankle. The incident was described by Dr. Ziegler in the article as "a fluke thing." He said the boy was getting violent with other children when they were in the kitchen. He told the paper that one of the staff was directing the boy to move away from the other children when he dropped his weight on the corner of a stair step.

The third incident was in August 2006. Silver told the paper that a 12 year-old boy became suicidal after being told that his mother had died. The staff reported that he ran outside a door, and the staff were concerned that he would run off to some woods adjacent to the Jasper Mountain campus. At

the time of the injury, the boy was holding the door closed from the outside and was standing with his arms and legs braced. The staff pushed on the door from the inside, apparently fracturing the boys wrist in the process.

The article says that one of the staff involved in that incident resigned afterward, and records show that the agency's management had already been scrutinizing that staff member's performance.

Nonetheless, the injuries have prompted scrutiny from five state and federal agencies, according to the *Register-Guard*, including the Oregon Department of Human Services' Child Protective Services unit and the Addictions and Mental Health Division, as well as the federal Centers for Medicare and Medicaid Services.

The *Register-Guard* reports that state agencies have accused Jasper Mountain of neglect and federal investigators uncovered deficiencies in the Jasper Mountain program regarding "protection of the residents, the use of restraints, follow-up and documentation. (continued on p. 11)

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## Reviewing the First Year of the Children's Mental Health System Change By Mark McKechnie

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On October 1, 2005, the State of Oregon's Addictions and Mental Health Division (now AMHD, formerly the Office of Mental Health and Addictions Services) implemented a substantial change in the way that Oregon Health Plan-covered mental health services for children are funded. It has been dubbed the Children's System Change Initiative (CSCI).

The old system bifurcated funding into a community-based outpatient system and a centralized state-funded system for "Intensive Treatment Services," including psychiatric day and residential treatment services. The new system, begun just over one year ago, integrated the funding for children's mental health services so that county and regional Mental Health Organizations (MHOs) receive the funding to cover a full array of children's mental health services, from outpatient services, through intensive community based services, day and residential treatment and acute hospital care. Funds for state hospital-level care and funds for children not enrolled in managed care (MHOs) are still administered by the state.

Data reporting on the CSCI remains very slow. Outcomes for the OHP mental health system are often reported a year or more later, which means that data on this first year may still be six to twelve months away. In the meantime, some initial information has been collected.

The Addictions and Mental Health Division (AMHD) contracted with Portland State University's Regional Research Institute for Human Services (RRI) to conduct an evaluation of the system change implementation. The RRI used the goals outlined in the 2003 Legislative Budget Note, as well as the policies drafted by AMHD to imple-

ment the Budget Note, as an outline to evaluate the progress to date.

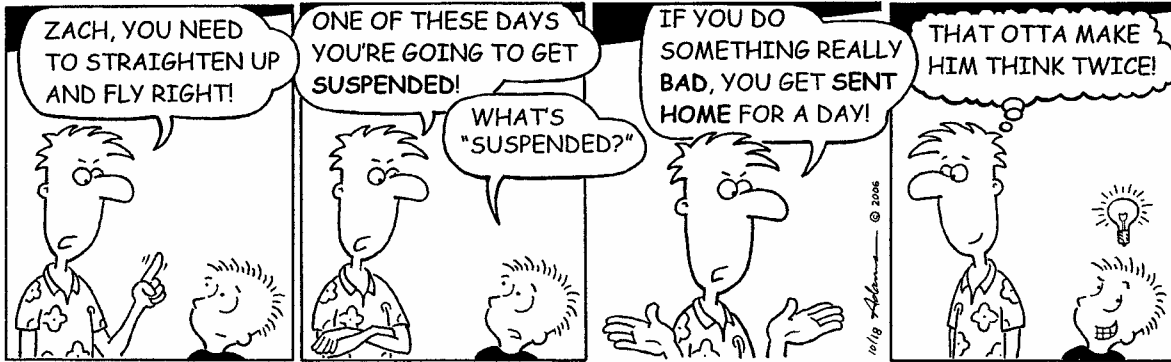
The RRI evaluation found that the State and most MHOs have increased the participation of families in policy discussions and quality management activities and have developed or enhanced structures to promote communication and coordination between local mental health systems and other public systems, such as child welfare, juvenile justice and education.

The report also found a significant change in the types and amounts of mental health services available for children with significant mental, emotional and behavioral symptoms, around the state. This was a primary goal of the system change.

In addition to new types of intensive services, the system change included the development of care coordination at the local level. Care coordinators, who are employed by MHOs, counties and/or private provider organizations, work with the family and other systems to identify a child's needs and put together a plan of care. Care coordinators can refer children and families to different types and levels of mental health services (and some can authorize payment directly) as the children's needs change. One goal is to achieve more smooth transitions between inpatient care and the community, for example.

The report from the RRI to AMHD states: "The development or expansion of care (continued, page 12)

**Adams' Apples,**  
by Jim Adams



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## Oregon Researchers Focus on Early Adolescence, By Mark McKechnie, MSW

The Center on Early Adolescence is a collaboration of the Oregon Research Institute, the University of Oregon, Oregon State University and other partners, and is funded by the National Institute on Drug Abuse. The mission of the Center is to improve our collective understanding of early adolescence as a critical transition period, to enhance the science on early adolescence and to promote evidence-based practices and programs in order to improve early adolescents' well-being.

Center director, Anthony Biglan, Ph.D., and his fellow researchers are working to disseminate research on the development of children in early adolescence and on interventions that work with early adolescents who have or are at risk of developing behavioral, emotional, or substance abuse disorders. The Center has established an advisory group in 2006 consisting of representatives from state government as well as representatives from counties, school districts, and non-profit organizations concerned with child and youth well-being.

Dr. Biglan did a presentation for the advisory group in June that included important information about adolescent brain development. Adolescence, starting around age twelve, is characterized by a marked decline in serotonin levels in the brain. Serotonin is a neuro-

transmitter that is involved in the control of appetite, sleep, memory, learning, mood and behavior, as well as other functions. Clinical depression is related to low levels of serotonin.

As serotonin levels decrease, young teens are more likely to display irritability and negativity. As the levels of this neurotransmitter reach their lowest levels in mid-adolescence, teens are much more prone to evidence depression and/or aggression.

According to research compiled by the Center, "Early adolescents show fewer reward signals in the brain to stimuli, meaning that the intensity of rewards must be higher for early adolescents to feel rewarded."

Early adolescents also think and respond to external stimuli differently. They are more likely to *react* to fear-producing situations, whereas adults are much more able to *think* about these situations before reacting. Sensation seeking and impulsivity peak during adolescence.

Recognizing the importance of providing adolescents the guidance they need to fully develop their potential during this important time of major physical, social, cognitive, and emotional changes, the Center has identified "Principles for Raising Successful Youth." These principles encourage parents, teachers

and other significant adults in the lives of teens to:

- Provide structure and guidance, including: consistent rules and expectations, providing opportunities for successful, healthy, and desirable behaviors and minimizing opportunities for undesirable behaviors, and discipline that is consistent and "non harsh."
- Model and teach by offering youth effective instruction, role models, and opportunities to learn and practice new behaviors and skills.
- Support and encourage positive behavior through reinforcement, rewards, and praise.
- Be connected and involved with youth, including: opening up discussion about important matters in their lives, listening to them and accepting them, participating in their activities, and having warm, nurturing interactions, but also providing structure and monitoring their activities.

Research shows that families, in particular, promote healthy development in early adolescents when they are actively involved in their youth's lives, monitor and set limits, provide ample praise and rewards, engage in supportive communication and problem solving, and minimize conflict and the use of harsh and inconsistent discipline. (see p. 16)

## Debate on Deviant Peer Contagion by Julie H. McFarlane

A seven year-old research article that raised a much-debated theory regarding peer to peer adolescent behavior in group therapy settings is once again fanning the flames of controversy. In 1999, researchers Thomas Dishion, Joan McCord, and Frances Poulin published the study which found that grouping at-risk early adolescents together, "under some circumstances, inadvertently reinforces problem-behavior," and termed the phenomenon "deviancy training." ("When Interventions Harm: Peer Groups and Problem Behavior," *American Psychologist*, Sept. 1999).

Last year, researchers at Vanderbilt and Harvard universities published a similar study with a much larger basis of analysis, and found instead that there was little support in the literature for the "deviancy training" theory. ("Iatrogenic Effects of Group Treatment for Antisocial Youth," *Journal of Consulting and Clinical Psychology*, December 2005.)

However, the Harvard-Vanderbilt study did not find there was no negative effects demonstrated when grouping at-risk youth, just that such negative effects were less pronounced than previously thought.

The general consensus among practitioners seems to be, whenever possible, don't aggregate kids who have problem behaviors together. But agencies are unlikely to give up the group setting any time soon, which is the most common, and costly public policy response to deviant behavior in education, mental health, and juvenile justice settings (Dodge & Dishion, 2006).

There are many alternatives to be explored. A recent series of sessions on this topic at Duke University recommended some of the following alternatives to aggregating deviant peers: individual and family functional therapy, multidimensional treatment foster care, intensive protective supervision, teaching family home model, community rather than custodial settings,

therapeutic jurisprudence, and victim-offender mediation, to name just a few. (Dodge et al, 2006). Many of these options, like multidimensional treatment foster care and family functional therapy, are also much less costly than congregate care.

Even critics of group treatment for early adolescents concede, however, that there are undoubtedly therapeutically appropriate settings for group therapy among this population of youth.

[Sources: "Group Youth Work: Does it Hurt? New research fuels debate about "deviancy training" in programs for troubled youth." *Youth Today*, Vol. 15, No. 7 (July/August 2006) <http://www.youthtoday.org/youthtoday/JulyAug06/front2.html>; Joel Rosch, "Deviant Peer Contagion: Findings from the Duke Executive Sessions on Deviant Peer Contagion," *The Link*, Fall 2006. *The Link* is available online at: <http://www.cwla.org/programs/juvenilejustice/thelink2006fall.pdf>]

## CBS's 60 Minutes Reports on 'Loneliest Children'

*60 Minutes* Correspondent Leslie Stahl began her report on three children in the California foster care system: "Thirteen-year-old Samara has been in foster care her whole life and now lives at "Five Acres," a treatment center for troubled kids. Officials tell *60 Minutes* she does well in school, but that she struggles with severe depression, despite years of therapy and medication."

Samara's therapist attributes her severe depression in large part to the loss of her family and the lack of support system around her.

The story goes on to describe a new effort in California to reconnect children who have spent much of their lives in the foster care system, often in group homes and residential care facilities, back with their biological parents, grandparents, aunts, uncles and cousins.

The story focuses on Kevin Campbell, a consultant and trainer with Family Finding. Mr. Campbell previously worked for Catholic Community Services of Western Washington doing family searches for children who had spent years in foster care and in residential treat-

ment facilities.

Family finding involves a thorough search of case records and public databases to locate relatives for children in foster care, often those with serious emotional and behavioral issues.

Campbell's group seeks to identify 40 family members for each child. He says that they are frequently successful finding that many or more for some children.

While they hope to find  
(continued on next page)



# Chapin Hall on Juvenile Crime Statistics: Dire Predictions Premature at Best,

By Mark McKechnie, MSW

The Chapin Hall Center for Children at the University of Chicago recently published an issue brief, "Too Soon to Tell: Deciphering Recent Trends in Youth Violence," in response to an alarm being raised by public officials and the media about a "gathering storm" of violent crime. They focus particular attention on predictions of an impending "crime wave" by juvenile offenders.

The authors, Chapin Hall researcher Dr. Jeffrey Butts and Dr. Howard Snyder, director of systems research at the National Center for Juvenile Justice, state: "Predictions of a coming crime wave are premature at best. Crime remains at or near a 30-year low."

There has been a significant decline in crimes committed by juveniles and adults for over a decade. Juvenile arrests overall fell 3% from 2004 to 2005. The overall violent crime rate increased 1.3% from 2004 to 2005, after seeing a decline in violent crime of 38.9% from 1991 to 2004. Property crime rates increased 2.4% between 2004 and 2005 after a 31.6% decline over the prior 13 years.

Juvenile arrest rates for violent offenses remain lower, however, than the rates seen in the previous three decades. According to the Chapin Hall report, juvenile arrests for violent offenses averaged 300 per 100,000 between 1975 and 1987. The rate increased to an average of 500 per 100,000 from 1987 through 1994. The violent arrest rate for juveniles had fallen dramatically to 271 per 100,000 by 2004.

There were increases in the arrests of juveniles for specific violent offenses, however. Juvenile arrests

for robbery nationwide increased 11%. This followed a 44% decline in juvenile robbery arrests over the previous decade.

Juvenile homicide arrests also increased 20% from 2004 to 2005 after a 63% decline. The authors point out that this increase amounts to 200 additional juvenile arrests nationwide. If these additional arrests were distributed evenly throughout the country, Oregon, which represents 1.2% of the U.S. population, would see 2.5 additional juvenile homicide arrests in the state in a year.

*Juvenile arrest rates for violent offenses remain lower, however, than the rates seen in the previous three decades.*

These recent increases mean that the juvenile arrest rate for violent offenses has ticked upward to 281 per 100,000, which is still below levels seen through much of the 1970s, 80s and 90s.

The authors also caution the public and policy makers to be careful to distinguish juvenile crime from youth crime overall.

Some statistics include juveniles, those under 18, with young adults as old as 24 years. Of all violent crime in 2005, 29% of arrests were of young adults ages 18-24 years, while juveniles under 18 accounted for only 16% of arrests for violent offenses.

Finally, the authors also emphasize differences between racial and socioeconomic groups as an important public policy consideration. The recent increase in violent crime disproportionately affects poor neighborhoods.

In addition, arrest rates between Caucasian and African-American youth continue to diverge further. While arrest rates for violent offenses overall declined 3% for

white youth, they increased 14% for black youth. In the specific categories where arrests for violent offenses increased for both groups, the rate of increase in arrests of African-American juveniles was four times the rate of increase for Caucasians.

In order to address this disparity and juvenile crime overall, the authors recommend targeting prevention programs toward communities with the highest concentrations of at-risk youth. They conclude:

*"Crime-prevention strategies should focus on at-risk youth between the ages of 15 and 24, and most of these young people are not under the jurisdiction of the juvenile justice system. To prevent violent crime, policymakers must support community-based strategies that can reach all young people, especially those who are disconnected from school, work, and family and those who are from distressed and impoverished neighborhoods."*

The eight-page issue brief can be accessed from Chapin Hall at: [http://www.chapinhall.org/article\\_abstract.aspx?ar=1437&L2=61&L3=132](http://www.chapinhall.org/article_abstract.aspx?ar=1437&L2=61&L3=132).

## 60 Minutes, cont'd from p. 4

placement options for children, they are primarily looking to repair lost connections and establish relationships with family members who can stay in contact with the child while they are in foster care and after they age out of the system.

The story can be found on-line at: <http://www.cbsnews.com/stories/2006/12/14/60minutes/main2269159.shtml#ccmm>

# Impact of Foster Care and Disability on Educational Outcomes

## Summary by Mark McKechnie, MSW

Sarah Geenen, Ph.D. and Laurie E. Powers, Ph.D., from the Portland State University Regional Research Institute, published "Are We Ignoring Youths with Disabilities in Foster Care? An Examination of their School Performance," in the July 2006 issue of the journal, *Social Work*.

Drs. Geenen and Powers' study examined four groups of 13 – 21 year-old students, including: students with disabilities in foster care, students with disabilities not in foster care, students living in foster care who do not have an identified disability for the purpose of special education eligibility, and a comparison group of general education students.

Oregon Department of Human Services and the Oregon Youth Authority identified foster youth residing in the Portland Public School District. Out of 278 youth identified, 222 were found to be enrolled in the district. Sixty-four of those attended alternative schools and were not included in the study.

Approximately 44% of the foster youth included in the study were enrolled in special education at the

time. Their eligibility included: emotional disturbance (29%), learning disability (44%), physical disability (19%), cognitive disability (4%), and communication disorder (4%). The study utilized a stratified-sample comparison group of students with disabilities who are not in foster care. This comparison group had similar types and rates of disability as the group of foster youth with disabilities. The comparison group in general education was randomly selected.

School staff collected data on the sample population of 378 students, including: cumulative grade point average, number of days absent; cumulative credits earned; number of schools attended; number of grades retained; performance on standardized state reading and math tests; and rates of exemption from state testing.

The researchers also looked at the type and level of restrictiveness of placement for the students enrolled in special education services.

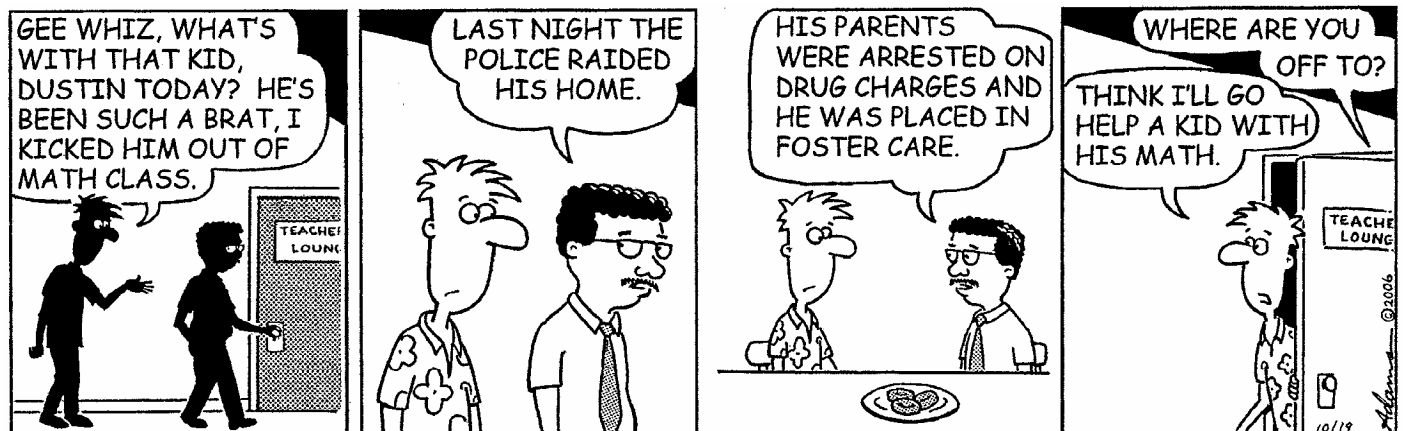
The authors noted that both foster care groups (those with and without special education enrollment) had disproportionately high numbers of male and African American students. In addition, they

found that the median length of time in foster care was 133 weeks, and 72% of youth had experienced between one and four placements. Most (79%) were placed with non-relative foster parents.

The results of the study "revealed that youths who were in the foster care and special education group had lower grade point averages (GPAs) than youths in general education only... Additionally, youths in the foster care and special education group changed schools more frequently than did youths in the special-education-only group or the general-education only group" (2006, p. 236). Both groups of youth in special education scored significantly lower in standardized reading and mathematics tests. This was the area in which the special-education-only group performed as poorly as the group of special-education-enrolled foster youth.

Interestingly, when looking at the type of foster care placement, the researchers also found that youth in non-relative foster homes had higher grades (GPAs) and more credits toward high school graduation than those in relative or "kinship" foster homes. (continued on page 11)

### Adams' Apples



Thank you to Jim Adams, author of "Adams' Apples," for granting us permission to reprint his comic strip.

# Report Updates Research on Racial Disparities in Foster Care Systems,

by Mark McKechnie

"African American children and youth are not only over-represented in the nation's child welfare systems, but are also subjected to poorer treatment within those systems than are their Caucasian counterparts, a new study released today has confirmed," according to an October 24, 2006, press release from Casey Family Programs.

The press release highlights findings from the Casey-sponsored *Center for the Study of Social Policy Alliance for Racial Equity's* report, "Synthesis of Research on Disproportionality in Child Welfare: An Update," which can be accessed at: <http://www.casey.org/Resources/Publications/DisproportionalityResearch.htm>

There are 2.43 times as many African-American children in foster care, compared to their representation in the U.S. population. American Indian Children, according to the 2000 Adoption and Foster Care Analysis and Reporting System (AFCARS) data, were also overrepresented by a factor of 2.16. The study focuses largely on the disproportionate rates of foster care placement of African-American children.

According to the Casey – CSSP report, authored by senior Westat researcher Robert B. Hill, Ph.D., the disparity extends well beyond the higher numbers of African American children entering U.S. foster care systems to "racial disparities regarding the following: fewer and lower quality services, fewer foster parent support services, fewer contacts by caseworkers, less access to mental health services, less access to drug treatment services, and higher placement in detention or correctional facilities."

The Casey report cites a 1985 study by Jenkins and Diamond

which showed that African American children are twice as likely to be placed in foster care when they live in counties where African American children make up only 5 to 10% of the population than in counties where they comprise 30 to 50% of the child population.

The researchers called this the "Visibility Hypothesis. Their hypothesis was supported by a subsequent study in 2001 by Barth, Miller, Green, and Baumgartner. The Casey report cites another study that utilized NCANDS<sup>1</sup> data from 16 states in 1997. Their findings noted that "black children who lived in counties where they comprised less than 5 percent of the population were more likely to be placed in foster care than black children who lived in counties where they comprised more than 15 percent of the population."

This phenomenon should be of particular concern in Oregon where African Americans comprised only 1.8% of state's population in 2004. Among Oregon's foster care population in 2005, 7.5% of the children in care were African-American according to data from the Department of Human Services. Hispanic and Native American children comprised 13.4% and 13.2% of the population, respectively, in 2005.

In terms of kinship care (foster care provided by families related to the child), a 1997 study found that both African American and Latino children were twice as likely as Caucasian children to be placed with kin. However, "Research has revealed that, despite their disadvantaged economic status, kin caregivers receive fewer services and benefits and lower financial assistance than non-related caregivers," according to Dr. Hill's review of the research.

In addition, "Research studies have also found that kin caregivers are less likely than non-kin foster parents to receive foster parent training, respite care, educational or mental health assessments, individual or group counseling, or tutoring for their children." This lack of support for kinship care occurs despite research which shows many benefits to children placed with relatives rather than non-relatives, including family continuity, greater placement stability, more successful reunifications with parents and protection from further abuse and neglect.

In Oregon, families caring for related children in foster care who are not eligible for Title IV-E do not receive foster care support payments. The Casey report notes that fewer and fewer children will be IV-E eligible as time passes because the program "benefits only to those foster children who would have been income-eligible for AFDC as of July 16, 1996," due to the changes enacted under 1996 "Welfare Reform" legislation.

A number of other disparities have been uncovered in the research cited in the Casey report, including African-American children and families' access to services addressing such needs as housing, health care, poverty, unsafe living conditions, and quality mental health care.

By contrast, African-American children have been found to be more likely to be medicated and be placed in segregated special education programs. Research cited in the report also shows: "A small but disproportionate percentage of youth who age out of the foster care system often end up in correctional institutions."

<sup>1</sup>Natl. Child Abuse and Neglect Data System

# Governor Releases Proposed 2007-2009 Budget

## summary by Mark McKechnie

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Gov. Ted Kulongoski released his recommended budget for the 2007-09 biennium on December 4th.

The budget was constructed under a much more favorable budget picture than Oregon has seen for the last few years. The proposed budget would start to rebuild some of the programs that were sharply cut in previous biennia.

Oregon experienced much higher rates of unemployment than neighboring states between late 2000 and 2003. Employment returned to pre-recession levels in 2005.

Healthcare and education are two areas the Governor has targeted for "investments." The Governor proposes increasing funding for the state's various education programs by 13.2% over the 2005-07 Legislatively Approved Budget (LAB). General fund spending on education would comprise 63.6% of all general fund spending under the Governor's Recommended Budget (GRB).

Healthcare increases include the Governor's proposed Healthy Kids Program, which seeks increased tobacco taxes to help ensure that all children in Oregon have basic health coverage. The proposal includes expanding coverage for children under the Oregon Health Plan to 200% of the Federal Poverty Level (FPL), up from 185%.

Families at higher income levels could purchase insurance on a sliding scale with the assistance of the subsidized Family Health Insurance Assistance Program (FHIAP). The state would use a single insurance ID card for all children insured through the Healthy Kids plan.

### Legal Representation

The Governor's budget includes increases in the budgets for district attorneys' offices, the Department of Justice and the Public Defense Services Commission.

The Governor does not set the budget for the Public Defense Services Commission, which is part of the Judicial Branch of state government. The PDSC requested a total fund budget for 2007-09 of \$232,426,324, as compared to \$176,246,017 for the current biennium. The requested 31.9% increase is intended to increase compensation for PDSC attorneys, public defender attorneys, private contractor attorneys and investigators.

While the Governor does not recommend an amount for the PDSC, the GRB included a figure of \$212,703,923, which is part of his balanced budget proposal. This is \$19,722,401 less than the amount requested by the PDSC.

The amount included for the PDSC in the GRB represents a 20.7% increase over the 2005-07 LAB.

The Governor's budget includes a 20.3% increase for District Attorneys and their deputies. The GRB includes increasing three counties' DAs to full time, adding an executive director for the district attorneys' association and a one-time salary increase for all district attorneys.

The Governor's Recommended Budget for the Department of Justice (Attorney General's office) includes a 30% increase over the 2005-07 LAB. An increase of \$6.2M for an additional 16 positions to provide legal representation for Department of Human Services case workers is included in the DHS

budget.

The GRB includes increases in the hourly rate billed to state agencies for legal services provided by the Attorney General's office. These include:

- Attorneys increase from \$111 to \$128 per hour
- Investigators increase from \$76 to \$81 per hour
- Paralegals increase from \$69 to \$74 per hour
- Law clerks stay at \$46/hr.
- Clerical support remains at \$44/hr.

### Human Services

The Essential Budget Level (EBL) — the increase required to maintain existing staffing and programs — for the Department of Human Services includes an increase of \$674.1M in general funds and \$1.11B in total funds (an 11% increase) for the 2007-09 biennium. The increase in health services costs alone is about \$130M, according to DHS.

The GRB includes a proposed total funds increase for 2007-09 of 20.9%. Beyond the EBL, the following increases and additions were included in the Governor's Recommended Budget for the Department of Human Services:

- \$2.5M for additional child welfare case work staff. DHS also plans to reclassify current staff positions in order to increase the number of case workers by 101 and supervisor positions by 21 statewide.
- \$6.2M for additional legal representation of case workers (as mentioned in previous section).

(continued on page 10)



# Case Law

## ***US v Mendez*, 467 F.3d 1162 (9<sup>th</sup> Cir. 2006).**

Lionel Mendez was pulled over by two police officers for the sole purpose of failure to display a license plate. Mendez complied with the officer's request for identification and to step out of the vehicle. During the course of a pat down, an officer noticed a gang tattoo on his hand and the officer proceeded to ask Mendez about his history. Mendez reported he had been in a gang, been convicted of a weapons violation, and spent time in prison. The officer asked Mendez if he had any weapons in the car. Mendez responded he had a gun and was then arrested and indicted on charges of firearm possession. He moved to suppress the gun on the grounds that the officers' unrelated questioning violated his 4<sup>th</sup> Amendment rights. He argued the officers did not have reasonable suspicion to justify interrogation about matters beyond the stop and the officers unreasonably prolonged the stop. The district court denied the motion to suppress.

The court of appeals began with the premise that the scope of a traffic stop must be carefully tailored to the reason for the stop unless particularized objective factors exist which arouse reasonable suspicion. (*See Florida v Royer*, 460 US 491 (1983), *US v Murillo*, 255 F3d 1169 (9<sup>th</sup> Cir 2001)). In this case, the court found neither gang membership nor a prior conviction (considered individually or together) gives rise to reasonable suspicion unless there are other factors present. The court also emphasized that since gang membership doesn't give rise to reasonable suspicion, the continuing police interrogation (including questions about prior convictions and time in prison) exceeded the permissible scope of a traffic stop investigation.

Consequently, the court reversed the prior holding and vacated the conviction.

The court did not consider whether officer safety could have justified the police interrogation because the government failed to make this argument. However, the court suggested that officer safety would not justify the questioning in this case but preserved the issue for another day. —*Amy Miller*

## ***State ex rel Juvenile Department of Multnomah County v. Jenkins* 209 Or App\_\_**

The Court of Appeals dismissed Jenkins' appeal of the judgment terminating his parental rights holding that he did not have the right to appeal the judgment under ORS 19.245. The Court analyzed ORS 19.245 which "by its terms applies to all judgments without limitation or restriction," and concluded that it includes judgments terminating parental rights.

ORS 19.245(2) prohibits appeals from a party to a judgment that resulted from a failure to respond. The Court says the "waiver of appeal" rule applies to parties who do not contest the allegations against them. This waiver applies to a party who fails to appear at the hearing or fails to file a written response.

While incarcerated, Jenkins was served with a petition to terminate his parental rights. Although he had been represented by an attorney during the juvenile dependency proceedings involving his children that preceded the filing of the TPR petition, he did not apply to have an attorney appointed to represent him in the TPR proceeding. The Court noted that the summons he was served while incarcerated specifically advised him how to request court-appointed counsel.

At the hearing, over the objection of the attorney who represented Jenkins in the dependency case, the Judge allowed the state to present a *prima facie* case that resulted in the termination of Jenkins's parental rights. Jenkins neither appeared nor filed a written answer.

The Court of Appeals determined that, by not responding to the petition or appearing at the hearing, Jenkins did not contest the petition and waived his right to appeal. The Court did note that father's "post-judgment remedy appears to have been to move to set aside the judgment under ORS 419B.923. ..." —*Kevin Ellis*

## ***State ex rel Department of Human Services v. Shugars* (2) 208 Or App\_\_**

In Shugars (2) the Court of Appeals reversed the trial court's decision to change the permanency plan from reunification to adoption. In order to change the permanency plan from reunification to adoption, ORS 419B.476 dictates that a court must: (1) determine if DHS has made *reasonable efforts* to return the ward home and (2) whether the parent has made *sufficient progress* to make it possible for the ward to safely return home. The court must always keep the ward's health and safety as the priority.

The case started in September 2003, when K., along with siblings T. and J., were placed in foster care with a permanency plan of "return to parent." (In Shugars (1) the Court of Appeals reversed the trial court's establishment of dependency jurisdiction over T and J.) Following a September 2004 "no reasonable efforts" finding against DHS, the parents were provided parenting and counseling programs in which they actively engaged. (continued on p. 14)

## Governor's Budget, Continued from p. 8

- \$2.7M Total Funds to provide foster care payments to relative foster parents caring for children ineligible for Title IV-E funding. The DHS proposal would provide this support only to relatives with household incomes below 150% of the federal poverty level.
- \$14.2M TF increase in alcohol and drug treatment services to non-OHP eligible parents. The package would provide treatment to 4,046 adults, including residential treatment for 90 parents with children.
- \$2.2M TF to implement the requirements of the juvenile Psychiatric Security Review Board bill from last session (SB 232) to include developmentally disabled youth.
- \$130.9M TF to expand OHP Standard coverage to an additional 10,000 adults who lack health insurance (funded by proposed tobacco tax increase).
- \$4.4M TF increase to provide early treatment to youth with psychosis. Would serve 540 persons, ages 16-24 (funded by proposed tobacco tax increase).
- \$1M to increase the portion of children in foster care who have a Court Appointed Special Advocate from 30% to 38%.

### Other Child Welfare Proposals

Additional documents provided by DHS show a proposed 10% cut to special rate foster care payments (\$1.86M in general funds and \$4.97M in total funds).

The GRB also includes a decrease in System of Care flexible funds from the 2005-07 Legislatively Approved Budget amount from \$8.6M to \$8.2M. However, the GRB does include an additional \$721,000 for DHS to provide "court-ordered transportation" to and from school for children covered by HB 3075. The bill, signed by the Governor in 2005, amended ORS 339.133 (5) to allow a child who enters foster care or moves between substitute care placements to remain in the same school when a judge makes a finding that it is in the child's best interests.

### Oregon Youth Authority

The GRB includes an overall increase to the Oregon Youth Authority budget of 28.8%. The budget includes funding for 995 close-custody beds, an increase of 145 beds.

In addition, the Oak Creek facility in Albany will become a single-sex facility, and the budget includes funding for gender specific programs for young women in close-custody facilities.

Funding for all close custody-facilities in the GRB amounts to \$145.6M, while proposed funding for community supervision — parole, probation, foster care, residential treatment — and other services amounts to \$124.4 million.

### Department of Corrections

The DOC budget includes a proposed 25% increase. The DOC budget increased 13.1% from the 2003-05 to the 2005-07 biennia.

The Governor's budget includes the following statistics on the Oregon prison population:

- There were 13,243 inmates on July 1, 2006.
- The population is expected to grow by another 359 by July 1, 2007.
- Projected growth for 2007-09 is 4.2% or 577 beds, bringing the DOC population up to 14,180 by July 2009.
- The prison population experienced double digit growth in the 1999-2001 and 2001-03 biennia.

The Governor's Recommended 2007-09 Budget can be accessed on-line at:

<http://www.oregon.gov/DAS/BAM/GRB0709.shtml>

## On-Line Resource: Helping Children with Incarcerated Parents

Meeting the needs of children who are placed in foster care when a parent is incarcerated is the focus of a new report published by the Brennan Center for Justice at the New York University School of Law.

"Rebuilding Families, Reclaiming Lives: State Obligations to Children in Foster Care and their Incarcerated Parents" looks at the

unique challenges faced by families separated by incarceration and offers guidance to states in meeting the obligation to provide "reasonable efforts" to reunify families.

The report emphasizes that preserving family relationships is not only important for the children of incarcerated parents, but it also

has positive effects on parents' rehabilitation that can result in stronger families.

Specific recommendations are provided for addressing these issues. The report is available on the Brennan Center's web site:

<Http://www.brennancenter.org/programs/cj/Family%20Rights%20Report.pdf>.

## Foster Care, Disability and Education, continued from p. 6

They also found, when comparing the two groups of youth in foster care, that those enrolled in special education had a higher number of placements than those foster youth not in special education: those in special education had an average of 4.45 placements versus 3.35 placements for non-special education foster youth.

When the researchers examined the impact of demographics, they found that race-ethnicity was a significant covariate for the number of schools attended. Yet, even when race-ethnicity was held constant, youths in foster care and special education changed schools significantly more often than the special ed. and general-education-only groups.

The authors of the study also looked at the restrictiveness of school placements. For the purposes of analysis, the researchers divided the districts' placement options into "least restrictive," "moderately restrictive," and "most restrictive."

Among the sample group, they found that 30% of the students in the special education and foster care group were in the most restrictive settings, versus only 15% of the special-education-only students. Sixty-five percent (65%) of the special education students who are not in foster care had a placement in the least restrictive range, compared with 44% of youth who are in foster care and enrolled in special education.

"The findings suggest serious cause for concern regarding the academic performance of foster care youths in general, and foster youths with disabilities, in particular. Although foster care or special education status alone appears to place a student at greater risk for

academic difficulties, the negative impact of interfacing with both systems is multiplicative. These youths appear to be experiencing a whipsaw effect as they simultaneously face challenges related to special education and foster care separately, as well as the interaction between the two" (Geenen and Powers, 2006, p. 239).

The authors list a number of recommendations for improving the educational outcomes of youths in foster care and particularly of those who have identified disabilities. They note that foster care agencies had difficulty identifying the school status and placement of youth in their care, and that schools often could not identify which of their students were in foster care. They cite the Family Educational Rights Privacy Act as one barrier to information sharing between systems. They also noted that child welfare professionals needed more training on the disability-related needs of youth, and foster parents need training in order to effectively advocate for children with disabilities in their care.

Both special education and child welfare systems offer services related to transition to adulthood, but these services aren't necessarily coordinated when youth are receiving services from or entitled to services from both systems. Geenen and Powers note that this is one of the areas where much greater collaboration between systems could occur.

**Source:** Geenen, S. and Powers, L.E. (2006). Are we ignoring youths with disabilities in foster care? An examination of their school performance, *Social Work*, v. 51 (3), pp. 233 – 241.

## Jasper Mountain, continued from p. 1

In the case of the girl with the broken arm, the facility was found to be using a hold that was not approved by the State. During the incident, a staff member held the girls' arm behind her back.

The investigation found that the program had been training its staff to use this hold to control children's aggressive or out-of-control behavior, believing that it was a hold approved by Wisconsin's Crisis Prevention Institute (CPI).

The article cites the director of the CPI as saying that the hold used isn't approved because it relies on pain to control children's behavior. The CPI does not teach holds that inflict pain or manipulate joints.

Dr. Ziegler told the paper that they were unaware that the hold did not meet CPI standards. He said the hold has been used by the program for as long as 10 years, when a staff trainer for his agency began teaching the hold.

The CPI director, Robert Watters, told the paper, "It's very clear when the certified instructors leave our program what our course curriculum is. There would be no misinterpretations."

(Continued, p. 15)

### Let us know what you think about the Juvenile Law Reader!

Tell us what you liked or did not like in 2006. Let us know what you'd like to see in 2007.

E-mail comments and suggestions to the editors at:

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## Children's Mental Health, continued from p. 2

coordination teams at the local level is viewed as one of the greatest successes with the implementation of the CSCI. Some direct service providers voiced excitement and noted a cultural shift in caring for children and their families. Some care coordinators stated that the system is better able to look at the child's needs and not just the problem they are experiencing. Contributing to this shift is a greater use of a wraparound approach to service planning and provision. At least two thirds of the MHOs are using wrap-around and at least four MHOs have contracted with external con-

sultants to train staff on various wraparound models" (p. 27).

The report recommends, however, that both the state AMHD and the MHOs need to commit additional resources to training and workforce development for care coordinators statewide. The researchers recommend that the MHOs collaborate to pool training resources and encourage networking and information sharing among care coordinators statewide.

One of the primary goals of the system change was to reduce the utilization of the highest levels of

care, such as residential treatment, acute hospital and state hospital-level care. The RRI report notes that some MHOs have already reduced the number of children referred to residential treatment programs on a monthly basis by as much as 40%. This change is due to increased community-based alternatives, such as Multi-Systemic Therapy, treatment foster care and wraparound support services.

Multnomah County's MHO, Verity, has reported a substantial decline in lengths of stay for its (continued on next page)

## ODE Reports on Homeless Students

The Oregon Department of Education reported on November 15, 2006, that Oregon's homeless student population for the 2005-06 school year was 13,159. This is an increase of 1,867 homeless students enrolled in Oregon public schools compared to the 2004-05 school year.

ODE released these figures describing the number of homeless students by grade level and circumstances:

- 13,159 of Oregon's 559,244 K-12 students (2.4%) were homeless for some period of time during 2005-06
- 1,939 students were unaccompanied homeless minors who had been abandoned by parents, or had runaway from home or foster care placement.
- At the time of their enrollment, 61% of homeless students in Oregon reported sharing housing with relatives or friends due to economic hardship or simi-

lar reason; 17% reported living in a homeless shelter; 15% were reported as unsheltered or living in substandard housing; and 7% were living in motels.

The news release included comments from State Superintendent of Public Education Susan Castillo: "There are thousands of children and youth attending Oregon schools despite lack of safe and stable housing. Most of these students are 'invisible' to the general public, sleeping in spare rooms and garages in the homes of friends or relatives, living in homeless shelters and transitional housing, or sleeping in trailers or tents in campgrounds. The increase in homeless students this year alone would fill 60 school buses."

Under the federal McKinney-Vento Act, the Homeless Education Program requires each public school district to have a Homeless Liaison to coordinate outreach efforts and services for homeless students in their area, as well as conduct the annual counts.

The Oregon Department of Education attributed the rise in homeless students served by the 90% of Oregon school districts that reported data to a number of factors: "an increase in the overall population of people in extreme poverty in the state, a marked increase in the cost of affordable housing and other primary costs (e.g., fuel for transportation and heat) and an increase in the number of districts reporting, although the newly reporting districts tended to have smaller enrollments..."

Information on Oregon's Homeless Education Program can be found at:

[http://www.ode.state.or.us/opportunities/grants/nclb/title\\_x/homlessedmanual.rtf](http://www.ode.state.or.us/opportunities/grants/nclb/title_x/homlessedmanual.rtf)

More information on the McKinney-Vento Homeless Assistance Act is also available on the National Association for the Education of Homeless children and Youth web site:

<http://www.naehcy.org/mckinney.html>.





## Children's Mental Health, continued from p. 12

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children who are placed in residential treatment programs. Prior to October 2005, the statewide average length of stay was 275 days. From October 2005 through July 2006, Multnomah County children discharged from residential treatment had stayed an average of only 113 days, according to data reported to Multnomah County's advisory committee.

Utilization of residential treatment services by children from Multnomah County had been disproportionately high prior to the system change. In 2004, Multnomah County was home to 21.26% of children in foster care and roughly a quarter of children enrolled in the Oregon Health Plan. At the same time, children from Multnomah County accounted for 38.29% of children served in residential treatment programs statewide.

While larger counties have developed more comprehensive arrays of intensive services, the RRI report notes that there is a great deal of inconsistency around the state in the development of community-based services.

More rural areas of the state, which are isolated by distance and geography, have not experienced as great an increase in the availability of intensive, community-based services. The RRI report notes that the local capacity for services such as "home and community based individual and group skills training, crisis, respite, family support and therapeutic foster care" are still very limited in more rural areas. The report also notes the need to develop alternatives to "intensive treatment services," such as psychiatric day treatment, for communities that cannot physically access such facility-based programs.

Another development included in the system change is the adoption statewide of the Child and Adolescent Service Intensity Instrument (CASII). The State requires MHOs and counties to utilize the CASII as part of a mental health assessment to determine when children need intensive community- or facility-based services. While the use of the CASII helps make decisions about types and levels of mental health treatment for children with high needs more consistent, the report from the RRI noted that there is still significant variability around the state in the way MHOs use the CASII to determine when a child is eligible for more intensive (and, often, more costly) services.

The report notes that approximately one-half of MHOs use the child's CASII score as the sole determinant for eligibility (a score of 19 and above). Other MHOs consider additional factors, such as caregiver

stress, risk of out-of-home placement, the threat a child's condition may pose to themselves or others, and other factors. Some stakeholders interviewed by the RRI also expressed concern that some MHOs have a bias against day and residential treatment and will not authorize services even when they are indicated.

Regarding the development of intensive service options in local communities, the report concludes: "Variation in implementation and practice can be positive when it promotes flexibility and individualization of services, and when it results in the addition of new services. However, in some instances, undesirable variation may exist in the availability, accessibility, and quality of services. In some rural communities, the implementation focus to date has been on simply trying to develop the required ISA [Intensive Services Array]. In these communities, services, such as crisis and case management, are now being offered where none were before."

Another area highlighted by the report is the need to develop the capacity to serve an ethnically and linguistically diverse population effectively. The report found: "There is general consensus among all respondents that the specific needs of people from diverse cultures are not being adequately addressed. The diversity reflected in the composition of advisory committees and among service providers does not parallel the backgrounds of children and families being served... Most efforts to improve cultural competence have occurred at the service delivery level; changes to increase cultural competence at the system level have been minimal" (p. 46) Their findings conclude that: "Cultural competence is the least developed of all of the CSCI policy requirements" (p. 47)

Overall, the report concludes: "At the conclusion of the first year's implementation of the Children's Mental Health System Change Initiative (CSCI), there is evidence to support considerable system-wide infrastructure development. This is a major accomplishment in a short period of time..." (p. 60) The researchers note that, in spite of the confusion that occurs when such large-scale changes are undertaken, there has been a philosophical shift in favor of more coordinated and community-based care for high needs children and their families and that this shift has been accompanied by the development of services that will meet the needs of children in new and significantly different ways.

The report by the PSU Regional Research Institute can be found on-line at:  
<http://www.rri.pdx.edu/OR%20CSCI%20Implementation%20Evaluation%2012.06.06.pdf>

## Case Law, Continued from p. 9

In April, 2005 K. was returned home. Shortly thereafter K. was again removed from her parent's home based on a report that (1) father had used physical discipline, (2) mother had K's medication changed, and (3) their home was generally chaotic. The trial court held a permanency hearing and found, based on these allegations, that DHS had made reasonable efforts to return K home, but neither parent had made sufficient progress towards making it possible for K to return home.

On *de novo* review, the Court of Appeals found that the parents had made substantial steps to make changes. The Court found that none of the three complaints endangered the child; the father's use of physical discipline was a singular event which only occurred after the father had used appropriate discipline tools he learned; K's medication was changed by a DHS approved physician at the mother's request and likely prevented harm from coming to K., and the chaotic home environment did not pose potential harm to K.

The Court of Appeals concluded that the legal standard does not require "model parents." The Court explained that the question is whether the parents conduct put K's health and safety at risk and decided that K's parents' conduct did not. They should be allowed to demonstrate that they can "become minimally adequate parents to K." The Court explained that failure to abide by every DHS directive is not sufficient cause to change the permanent plan and reiterated the requirements of ORS 419B.476 (listed above). —Kevin Ellis

### ***In re Christina M* 2006 WL 3069305 (Conn)**

The Connecticut Supreme Court held that parents appealing a judgment terminating their parental rights *do* have standing to raise the issue of the effectiveness of their children's counsel, but declined to reach the merits of that claim on the record before the court.

The trial court had appointed separate counsel for the mother and father and an attorney for the children. After a three-day hearing, the court terminated the parents' rights. That ruling was upheld by the intermediate appellate court. The questions certified to the Supreme Court concerned the issue of counsel for children.

Under Connecticut's statutes, the court appoints an attorney for children who is expected to serve in the dual role of advocate and guardian *ad litem* and who is expected to advocate for the child in accordance with the Rules of Professional Conduct. Should the attorney determine that there is a conflict between the child's express wishes and his or her best interests, the court will appoint another person (not necessarily a lawyer) to serve as guardian *ad litem*. The parents contended that the testi-

mony of a psychologist that the child said she wanted to go home and the children's attorney's position in support of the petition to terminate was sufficient evidence of a conflict that should have triggered a *sua sponte* inquiry by the court and that they had standing to raise the issue.

Reciting many cases confirming the fundamental importance of family integrity and the mutual interests of both the parents and children in accurate decision-making in cases of this magnitude, the Supreme Court concluded first that the parents had standing to raise the issue of the adequacy of the children's counsel.

Next the Court analyzed, by analogy to criminal cases, whether the trial court had an independent obligation to inquire into whether the children's counsel had an ethical conflict necessitating the appointment of a guardian *ad litem*. The court specifically noted that the analysis was useful because the parties *contended* that the children's right to counsel was constitutional as well as statutory. However, since the record was insufficient to trigger an independent inquiry even under the criminal standard, the Court left for another day resolution of the question of a child's constitutional right to counsel. — Angela Sherbo

### ***State of Oregon v. Douglas Leroy Pitt***

In *State of Oregon v. Douglas Leroy Pitt* the court addressed whether a videotaped forensic interview of two young children was testimonial such that it would be inadmissible under *Crawford v. Washington* 541 US 36 (2004) if the defendant did not have the opportunity to cross-examine.

The facts of the case were not disputed. Child A stated to her parent that defendant had touched her inappropriately. A was assessed and referred for therapy where she again stated that Defendant touched her and a cousin, R. Later both A and R participated in a videotaped interview at the Child Advocacy Center. The interview was conducted by the center's director, Broderick, who claims to be a forensic child interviewer. The interview was taped by a police officer. Both the children and the families were aware of the videotaping. The families also knew that the information would be turned over to all agencies involved including law enforcement. Both children again stated that defendant had touched them inappropriately.

There were several issues raised on appeal which the court did not address. Defendant's *Crawford* argument was dispositive of the issue. (next pg.)

## Jasper Mountain, continued from p. 11

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Ziegler explained to the paper that physical holds are preferable to medication that is used to tranquilize children in other programs. The article describes Ziegler as a national proponent for physical holds, using them to control children's dangerous behavior until they learn to regulate their own behavior.

The article explains, however, that state and federal agencies have adopted rules to regulate and reduce the use of physical restraint since investigations in the late 1990s identified about 150 child deaths associated with the use of physical restraint over a 10 year period.

State regulators cited by the

article say that Jasper Mountain has been slow to retrain its staff to use approved holds and comply with reporting requirements when restraint is used. Ziegler told the paper that his agency now requires at least two staff members to be present during a restraint so that one person can monitor the child's safety.

In response to inquiries by state and federal agencies, as well as the Oregon Advocacy Center and the media, Jasper Mountain staff, administrators and board members defended the agency, pointing out that they take children who are the most difficult to treat.

Ziegler described for the article

the types of histories and behaviors the children they serve present, such as, multiple foster placements, smearing excrement and assaulting teachers. Ziegler also mentioned that a 6 year-old client of the agency had killed a family member. A former staff person told the paper that it is dangerous for staff to work at Jasper Mountain.

Jasper Mountain board member Frank Papagni responded to the criticism by asking, "If we're such a bad agency, why do the case workers keep sending the kids to us?"

You can read the article at: <http://www.registerguard.com/news/2006/12/28/home.php>

## Case Law, continued from p. 14

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Defendant argued that the trial court improperly admitted hearsay testimony of child victims whom defendant did not have the opportunity to cross examine.

In making its determination, the court discussed two recent cases which have shed some light on whether a statement should be considered testimonial. In *State v. Mack*, 337 OR 586 (2004) the court examined whether statements made to a DHS worker who had been instructed by the police to conduct a videotaped interview of a child were testimonial nature. The court concluded that the case-worker was serving as a proxy for the police gathering information for the investigation and, as such, the statements were testimonial.

*Davis v. Washington*, 126 S Ct 226 (2006) was also used as guidance. In this case the court determined that whether statements were testimonial depended on the "primary purpose of the interrogation" 126 S Ct at 2273. If state-

ments are made for the purpose of enabling the police to meet an "ongoing emergency" they are considered non-testimonial. *Id.* If the statements are made for the purpose of establishing past events relevant to future criminal prosecution, they are considered testimonial in nature.

The court in this case examined the circumstances of the interview and determined that, under *Mack* and *Davis*, Broderick's interview was for the purpose of furthering the police investigation and as such the statements were considered testimonial evidence that should have been excluded under *Crawford*. —Senia P. Newman

### ***State ex. rel. Department of Human Services v. Simmons*, 2006 WL 3628336 (Or.).**

In an opinion by Justice Gillette, the Oregon Supreme Court reversed the trial court's judgment terminating mother's parental rights, which had been affirmed by the Court of Appeals twice (once

before, and once after, *Smith*). The opinion concludes that neither the trial court nor the Court of Appeals correctly weighed the evidence of the present effect on her child of mother's long struggle with mental illness and addiction. *Simmons* reiterates the test articulated in *Stillman* (and further refined in *Smith*), which states that a parent's fitness must be measured at the time of the parental rights' termination trial.

The Court of Appeals had affirmed the trial court, in part, because of mother's long history of drug use and denial, finding that there was a real and present risk of relapse. The Supreme Court instead focused on the 20 months preceding the trial in which mother remained clean.

The Supreme Court then looked at and quickly dismissed mother's physical illness as the basis for a finding of unfitness. At the time of trial there was undisputed evidence

(continued, next page)

## Case Law, continued from p. 15

that mother was healthier than she had been and was able live on her own without help from other people. Lastly, mother's mental illness was not shown, by clear and convincing evidence, to be a condition seriously detrimental to the child at the time of trial.

The opinion concludes with the following statement: "Again, as in *Smith*, the state is attempting to impose a standard of parenting on mother that the statute does not contemplate." —Maite Uranga

### ***Velazquez-Herrera v. Gonzales*, No. 04-72417, slip op. 17643 (9<sup>th</sup> Cir. Oct. 19, 2006).**

The Ninth Circuit Court of Appeals remanded to the Board of Immigration Appeals (BIA) the issue of what constitutes "child abuse" under immigration law, in *Velazquez-Herrera v. Gonzales*, filed October 19, 2006.

Mr. Velazquez-Herrera's conviction of fourth degree assault had been found by the BIA to be a conviction of child abuse under 8 U.S.C. § 1227(a)(2)(E)(i), thus making Mr. Velazquez-Herrera deportable. The BIA rested its decision on the notion that even assault comprised of minor touching is child abuse "because of the unfair advantage that an adult has over a child." (*Velazquez-Herrera* at 17645.) In prior dicta, the BIA had used the Black's Law Dictionary definition of child abuse for § 1227. The Ninth Circuit declined to address either definition as a permissible construction of § 1227(a)(2)(E)(i) until the BIA readdresses the issue in a precedential opinion. — Christa Obold-Eshleman



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## Early Adolescence, Continued from p. 3

In terms of education, students entering middle school are more likely to experience increased academic competition, increased teasing and harassment and/or declines in academic motivation and achievement. However, the way a middle school is structured, including the clarity of rules, the supports in place for positive behavior, and the types of discipline and positive reinforcers used, can impact the degree to which young adolescents have these negative experiences.

Several researchers affiliated with the Center do research and training on school-based Positive Behavior Support (PBS) systems. PBS is characterized by a school culture that teaches desired behaviors, rewards students for displaying those behaviors and offers opportunities for misbehaving students to correct their behavior. PBS requires a substantial commitment to the model by the school administration and staff. PBS is also a data driven model, where the school uses discipline data to monitor fidelity to the interventions and uses the information to make improve their implementation of PBS. Evaluations have shown that schools using PBS have decreased discipline referrals to the office by 25% (which would lead to fewer suspensions, as well) and that students in schools using PBS are significantly more likely to meet benchmarks in reading.

More information on the developmental needs of young adolescents and research-based prevention and intervention models can be found at the Center for Early Adolescence web site:

<https://www.earlyadolescence.org/>.



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