

# U.S. Voters Strongly Favor Juvenile Court Intervention to Address Juvenile Crime

by Mark McKechnie

In February 2007 the National Council on Crime and Delinquency released the results of a poll, "Attitudes of US Voters toward Youth Crime and the Justice System." While 91% of respondents agreed that youth crime is a major problem in our communities, an equal percentage favored rehabilitative and treatment services as effective interventions for youth.

In addition, respondents believed, by a 15 to 1 margin (92% to 6%), that decisions about transferring juvenile defendants to adult court should be made on a case-by-case basis. 72% believed that the decision to try a person under age 18 in the adult criminal system should be made by a juvenile court judge.

Oregon's Ballot Measure 11, by contrast, automatically waives 15 to 17 year-old defendants to adult court solely on the basis of the allegations against them, without any individual consideration of their circumstances.

The NCCD poll, conducted by Zogby International, was a telephone survey of likely voters. The sample size was 1,043, and the margin of error is +/- 3.1%.

A large majority of likely voters (81%) believe that spending on rehabilitative and treatment services for youth offenders will save tax dollars in the long run.

72% of those surveyed responded that they believed incarcerating juveniles in adult correctional facilities makes those youth more likely to commit crimes in the future. 69% did not believe that incarcerating youth with adults either teaches them a lesson or deters them from committing future crimes.

67% of likely voters surveyed said that young people under age 18 should not be incarcerated in jails and prisons with adults.

When comparing approaches to reduce juvenile crime, 75% responded that increasing education and job skills training would be a "highly effective" approach to reduce crime by juveniles. 71% thought that prevention services for youth would be highly effective,

and 54% thought that increasing counseling and substance abuse treatment would be highly effective.

Only 46% thought that prosecuting more youth in the adult criminal justice system would be "highly effective" and only 31% believed that harsher penalties for youth offenders would be a highly effective way to reduce crime by juveniles.

Regarding youth who have been convicted or adjudicated, 66% of respondents said that it is "unacceptable" for their juvenile records to negatively impact their opportunities for future job and educational opportunities.

The reports authors conclude: "... the public is clearly concerned about youth crime, feels that young people should be held accountable for misconduct, and has limited confidence in the effectiveness of the juvenile system. However, by large majorities, US voters do not think that trying youth in adult court and incarcerating them in adult prison are appropriate responses. Nor do they think an adult conviction should hamper a youth for the rest of her life."

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## Youth Participation in Dependency Hearings

By Julie H. McFarlane

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The cover article for the December 2006 ABA CHILD LAW PRACTICE (Vol. 25, No. 10) p. 145 et seq., focused on the importance of children and youth being allowed to participate in hearings on their child welfare case. The author cites the policies of numerous national judicial and bar associations, which emphasize the importance of child and youth participation, including the policies of the National Council of Juvenile and Family Court Judges, the American Bar Association, the National Association of Counsel for Children, the Pew Commission on Children in Foster Care, and the Recommendations of the UNLV Conference on Representing Children in Families.

The benefits of participation by children and youth accrue to both the child or youth and the court. The child or youth benefits because he or she gains a sense of control over what is going on in his or her life and an understanding of the court process. The court and the parties gain information and a perspective they are unlikely to get from reports based on second-hand information. The article encourages courts to develop a clear policy about when and how children and youth should attend court hearings.

The decision about whether a child or youth should attend a court hearing should be made on a case-by-case basis and informed by an interview with the child or youth.

Factors to be addressed include: the child or youth's wishes concerning attendance at the hearing; the age and developmental level of the child or youth; whether the child or youth could experience further trauma by attending the hearing; whether the hearing can be scheduled so as not to disrupt important routines or activities for the child or youth; and whether the hearing would be confusing or boring for the child or youth.

Children or youth may be included for only part of a hearing or may testify in chambers. Telephone participation may minimize disruptions to the child or youth's schedule. The author encourages judges to inquire as to why the child or youth is not at the hearing and to send a strong message that the child or youth has an important role in the process, and is encouraged to attend and participate in the hearing.

NOTE: Under Oregon law, children are parties to child welfare cases and

as parties have a right to appear in the proceeding. ORS 419B.875 (2)(b). There is no exception or case law that would permit a court to deny a child or youth their right to appear. ORS 419B.449 (2) and ORS 419B.310(1) allow a child to be interviewed in chambers.

*"I try to never miss a court hearing. I love my judge because I know she is interested in what I have to say about what is going on in my case. Before, when I wasn't allowed to go to court, I felt angry that people who didn't even know me were making decisions about my life and my future, and I had no say. Now, I understand what happens in court and I know that my opinions are important." - Amanda, 16*



## Food and Drug Administration Release: Drug Manufacturers Must Notify Parents about Potential Adverse Effects of ADHD Medications

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The following notice was released by the U.S. Food and Drug Administration on February 21, 2007:

The U.S. Food and Drug Administration (FDA) today directed the manufacturers of all drug products approved for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) to develop Patient Medication Guides to alert patients to possible cardiovascular risks and risks of adverse psychiatric symptoms associated with the medicines, and to advise them of precautions that can be taken.

"Medicines approved for the treatment of ADHD have real benefits for many patients but they may have serious risks as well," said Steven Galson, M.D., Director, Center for Drug Evaluation and Research (CDER). "In our ongoing commitment to strengthen drug safety, FDA is working closely with manufacturers of all ADHD medicines to include important information in the product labeling and in developing new Patient Medication Guides to better inform doctors and patients about these concerns."

Patient Medication Guides are handouts given to patients, families and caregivers when a medicine is dispensed. The guides contain FDA-approved patient information that could help prevent serious adverse events. Patients being treated with ADHD products should read the information before taking the medication and talk to their doctors if they have any questions or concerns.

ADHD is a condition that affects approximately 3 percent to 7 percent of school-aged children and approximately 4 percent of adults. The three main symptoms are inattention, hyperactivity, and

impulsivity. People with ADHD may have difficulty in school, troubled relationships with family and peers, and low self-esteem.

An FDA review of reports of serious cardiovascular adverse events in patients taking usual doses of ADHD products revealed reports of sudden death in patients with underlying serious heart problems or defects, and reports of stroke and heart attack in adults with certain risk factors.

Another FDA review of ADHD medicines revealed a slight increased risk (about 1 per 1,000) for drug-related psychiatric adverse events, such as hearing voices, becoming suspicious for no reason, or becoming manic, even in patients who did not have previous psychiatric problems.

FDA recommends that children, adolescents, or adults who are being considered for treatment with ADHD drug products work with their physician or other health care professional to develop a treatment plan that includes a careful health history and evaluation of current status, particularly for cardiovascular and psychiatric problems (including assessment for a family history of such problems).

As part of the Agency's ongoing regulatory activity, in May 2006 the FDA directed manufacturers of these products to revise product labeling for doctors to reflect concerns about adverse cardiovascular and psychiatric events. These changes were based on recommendations from the FDA Pediatric Advisory Committee and the Drug Safety and Risk Management Advisory Committee. To help patients understand these risks, an additional part of this revised label-

ing process is the creation of a Patient Medication Guide for each individual product.

The medicines that are the focus of the revised labeling and new Patient Medication Guides include the following 15 products:

- Adderall (mixed salts of a single entity amphetamine product) Tablets
- Adderall XR (mixed salts of a single entity amphetamine product) Extended-Release Capsules
- Concerta (methylphenidate hydrochloride) Extended-Release Tablets
- Daytrana (methylphenidate) Transdermal System
- Desoxyn (methamphetamine HCl) Tablets
- Dexedrine (dextroamphetamine sulfate) Spansule Capsules and Tablets
- Focalin (dexmethylphenidate hydrochloride) Tablets
- Focalin XR (dexmethylphenidate hydrochloride) Extended-Release Capsules
- Metadate CD (methylphenidate hydrochloride) Extended-Release Capsules
- Methylin (methylphenidate hydrochloride) Oral Solution
- Methylin (methylphenidate hydrochloride) Chewable Tablets
- Ritalin (methylphenidate hydrochloride) Tablets
- Ritalin SR (methylphenidate hydrochloride) Sustained- (continued on p. 10)

# Multnomah County Risk Assessment Instrument (RAI) Undergoes Review and Revision, by Mark McKechnie

Multnomah County has been a model site for the Juvenile Detention Alternatives Initiative, a program of the Annie E. Casey Foundation. Under these reforms, the county has dramatically reduced the disproportionate confinement of racial minority youth during the period between arrest and adjudication.

Key to this reform has been the application of objective criteria in assessing a youth's risk to the community and likelihood to comply with the conditions of pre-adjudication release. The juvenile department uses a standardized "Risk Assessment Instrument" (RAI) to help make these determinations.

In spite of the success in reducing disproportionate minority confinement, a validation study of the RAI has found that several measures included in the RAI do not accurately predict the youths' risk to re-offend in the community.

For example, researchers found that one item on the RAI,

"Most Serious Instant Offense," was actually correlated in the wrong direction to a youth's risk to re-offend or to fail to appear (FTA) at subsequent court hearings. In other words, the seriousness of the current offense did not predict the youth's risk to re-offend or FTA.

Another section of the RAI, "Aggravating Factors," also failed to predict the likelihood of recidivism or FTA. In fact, two specific items in this section — "no community ties" and "possession of a firearm" — falsely indicated an increased risk, according to the evaluation of the RAI.

The RAI validation study, published by Kelly Dedel, Ph.D., indicates that only six items that are currently part of Multnomah County's Risk Assessment Instrument had a strong relationship to youth's risk of recidivism. The risk and mitigating factors that had the highest predictive value included:

- Currently under supervision;

- Most serious pending offense;
- In school or employed;
- First referral at age 16 or older;
- Instant offense is first offense;
- History of runaway from home or placement.

Currently, the juvenile department has the option to request and the court the authority to order an override, meaning a departure from the level of supervision indicated by the RAI. Historically, a large number of overrides have been granted, which impact the use of the RAI.

Researchers predict that the new version of the RAI, based upon the validation study, will result in an increase in youth who are released from detention and increase the number who are placed on conditional release (vs. unconditional release). But this will be impacted largely by the number of overrides to the new RAI sought and granted.

## THREATENED SPRING BREAK CURFEW CRACKDOWN IN PDX IN CONFLICT WITH CURRENT RESEARCH, by Julie H. McFarlane, Supervising Attorney

In the January 2007 National Council of Juvenile and Family Court Judges (NCJFCJ) online newsletter, [Brevity on the Net](#), there are links to two articles concerning juvenile curfews. The first is a link to an article from *The Oregonian* covering the Portland Police Bureau's plan to enforce ORS 163.577 - "Failing to Supervise a Child" starting spring break 2007 in order to control groups of teens congregating during spring break. ORS 163.577 (1)(b) makes a parent, lawful guardian or other person lawfully charged with the care or custody of a child under 15 years of age liable for the offense if

the child violates a curfew law of a county or city in the jurisdiction.

When a youth under the age of 15 gets picked up for a curfew violation, their parent will also receive a written citation. For the first citation the judge will urge parents and their children to attend a six-session, family strengthening course taught by Portland police officers. The second time a child is caught breaking curfew, the parents will be sent to adult court and the family strengthening course will be mandatory. Fines up to \$720 can be imposed upon parents who fail to appear or refuse to take

court ordered classes. This law does not apply to parents of children over 15.

The second article, written by Patrick Boyle of [Youth Today](#), focuses on research that shows that juvenile curfews do not reduce youth crime. As the article points out, when data is presented to policymakers to support this finding it is often ignored. Some claim that curfew laws are adopted because they make the community feel safer, even though there may be no change in crime statistics. These articles can be found at:

<http://www.ncjfcj.org/content/view/full/946/351/>.

# Case Law Updates,

## Summaries by Heather Clark, Staff Attorney

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### **State v. Gatt, 210 Or App 117 (2006).**

Mr. Gatt was convicted at the trial level of Assault in the Fourth Degree. ORS 163.160(3)(c) provides that the offense is elevated from a class A Misdemeanor to a Class C Felony if the offense was "committed in the immediate presence of, or is witnessed by" the person or victim's minor child. In Mr. Gatt's case he was convicted of assaulting his minor child. The state contended that the child could be both the victim and witness to the assault. Mr. Gatt demurred, and argued again at trial, that under the wording of the specific statute and *State v. Glaspey*, 337 Or. 558, 100 P.3d 730 (2004), that a minor victim is not a "witness" to the assault. The trial court ruled that a person could be simultaneously the victim and witness to the same event. The court of appeals disagreed and reversed.

The Court held that under the plain meanings of "victim" and "witness" one could generally be a victim of, and witness to, the same event. They found however that since ORS 163.160(3)(c) defines the minor witness only in terms of their relation to the victim or perpetrator, it could not be consistently read to allow the "minor witness" and "victim" to be the same person.

In reaching its conclusion the court relied heavily on the State Supreme Court's analysis in *Glaspey*. In *Glaspey* the court held that being a "witness" to an assault did not necessarily make the minor a "victim." While the *Glaspey* court did not necessarily find the converse - that a "victim" is not also a "witness" - their reasoning was based on the statutory context. That court specifically held that because this statute defined the

"minor witness" only in relation to others, they could not be one and the same. Other statutes may define "victim" and "witness" differently, so it would be permissible under those statutes for a victim and witness to be the same person.

### **State ex rel Department of Human Services v. Cain and Byrd, 210 Or App 237 (2006).**

In this case the mother appealed her termination of parental rights. All parties agreed that the Indian Child Welfare Act applied to this child through the father's heritage. The trial court found that mother's mental illness mixed with her drug addiction resulted in a condition that was seriously detrimental to the child and that integration into the mother's home was improbable within a reasonable period of time due to conditions unlikely to change. The Court of appeals affirmed.

The court noted that DHS had worked with this mother over a period of nearly a decade. During that time she had not made significant or lasting changes in her mental health or drug addiction. The Court also found it significant that the child had special needs. In affirming the trial court, the court reaffirmed that the parental condition must be detrimental to this child, that is, it is a child-specific analysis. The skills required to parent a special needs child may be significantly different than for another child.

Here, the mother's mental illness and drug use had been demonstrated to lead to chaos and volatility. The child's needs involved a special need for stability and structure. The evidence provided by the child's treatment providers was that instability in this child's life would be devastating to the child's devel-

opment in nearly all areas. The minimally adequate parenting for this child would require acknowledgment of the problems that the child faced, and an especially sophisticated parenting strategy. Consistency and stability were key for this child, the court found. Because the mother's deficits were pertinent to the specific areas where this child would need a parent with particular skills and strengths, it was found to be a condition seriously detrimental to the child.

The court allowed that the mother had made some progress, in that she completed an in-patient drug and alcohol program and maintained stable housing; however, that progress was offset by the lack of progress in maintaining sobriety, completing mental health services, following through with aftercare programs, and establishing stable employment. Given the extended period of time DHS had worked with the mother and the lack of change in circumstances, the court found that integration was improbable within a reasonable period.

Finally, the court found that it was in the child's best interest to terminate, pointing to the special need that this child had for stability. That need led the court to conclude that permanency was particularly pressing in this case. The court also noted that the current foster placement wished to adopt the child and had been stable and particularly attentive to and skilled at dealing with the child's specialized needs.

### **Doherty v. Wizner, 210 Or App 315 (2006).**

In this case a mother appealed a trial court order, as part of a filiation proceeding, that changed the child's last name. All other (continued on p. 8)

## Pending Legislation Related to Juvenile Law

### Summary by Amy Miller, Staff Attorney

The following summary is a look at several of the bills relating to juvenile law which have been introduced in the legislature. The summary contains bills which are most relevant to juvenile law practice. Although several bills are discussed below, there are many more which are not included in this summary; to search the 2007 legislative measures, go to: [http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/).

Bill Number	Description	Summary	Source/Sponsor	Status as of 2.14.07
SB 558	Relating to juvenile restraining orders	This bill will enable a minor petitioner to seek a restraining order against a minor respondent if the petitioner was or is in a dating or sexually intimate relationship with the respondent.	Sen. Devlin, Oregon Law Center	
SB 126	Relating to expungement	Prohibits expunging juvenile record if unsatisfied compensatory fine or restitution judgment exists.	Attorney General's Restitution Reform Task Force	1.18-Judiciary committee public hearing
SB 282	Relating to foster care	Provides foster care support payment for all relative foster parents; requires DHS to make diligent efforts to maintain familial relationships & to include additional information in court reports; requires court to make findings regarding DHS action; requires semi-annual permanency hearings for children freed for adoption where the adoption process has not begun; when placement not in child's best interests allows court to direct agency to place child in relative foster care, with parents, or another foster provider.	Juvenile Rights Project	2.19-Judiciary committee public hearing
SB 290	Relating to juvenile court jurisdiction	Provides that persons who commit crimes prior to becoming 18 years of age may not be charged with crimes in adult court even if over 18 at time of charging unless waived or charged before age 21 and the prosecution has not intentionally delayed the filing of the charge until post-18.	Oregon Criminal Defense Lawyers Association	1.17-Referred to judiciary committee.
SB 300	Relating to alleged youth offenders who are unfit to proceed	Establishes standards and procedures for determining whether youth against whom delinquency petition is filed is unfit to proceed.	Oregon Law Commission	2.19-Judiciary committee public hearing
SB 325	Relating to personal appearance in juvenile proceedings	Requires personal appearance by parties in juvenile proceedings; attorney may withdraw if fail to appear. Exempts child from requirement of personal appearance.	Oregon Law Commission	2.19-Judiciary committee public hearing
		(Update continued on next page.)		

## Legislative Update, continued from p. 6

Bill Number	Description	Summary	Source/Sponsor	Current status
SB 328	Relating to Psychiatric Security review Board; juveniles with mental disease or defect	Add to PSRB's jurisdiction coverage of juveniles whose mental defect is manifested as mental retardation that exists concurrently with qualitative deficits in activities of daily living when juvenile is successful with mental disease or defect defense.	Oregon Law Commission	2.19-Judiciary committee public hearing
SB 410	Relating to sensitive review committee convened by DHS	Authorizes DHS to convene a sensitive review committee upon request of the President of the Senate of Speaker of the House; committee must include one house and one senate member.	Sen. Brown, Sen. Kruse, Rep. Krieger, Rep. Schaufler	2.20-Judiciary committee public hearing
SB 411	Relating to appointment of counsel in dependency cases	Appropriates money from General Fund to Public Defense Services Commission for improving legal representation of parents and children in dependency cases.	Sen. Brown, Sen. Kruse, Rep. Krieger, Rep. Schaufler	2.20-Judiciary committee public hearing
SB 412	Relating to child abuse reports	Requires notification of child's attorney & CASA when report of child abuse involves a child in foster care.	Sen. Brown, Sen. Kruse, Rep. Krieger, Rep. Schaufler	2.20-Judiciary committee public hearing
SB 414	Relating to DHS report on foster care placements	Requires DHS to make report to legislature regarding children placed in foster care.	Sen. Brown, Sen. Kruse, Rep. Krieger, Rep. Schaufler	2.20-Judiciary committee public hearing
SB 415	Relating to siblings	Requires DHS to make reasonable efforts to place siblings together unless not in the best interest of the child or ward.	Sen. Brown, Sen. Kruse, Rep. Krieger, Rep. Schaufler	2.20-Judiciary committee public hearing
SB 473	Creates crime of sexual solicitation of a minor	A person commits the crime of sexual solicitation of a minor if the person knowingly solicits a minor to engage in sexual contact; there is an affirmative defense if the defendant was not more than 3 years older than defendant reasonably believed the minor to be.	Sen. Schrader, Sen. Walker	2.2-Referred to Judiciary committee.
HB 2127	Relating to victims of juvenile crime	This bill incorporates the Constitutional rights of victims into the juvenile code, establishes a definition of victim, and adds most of ORS 135.970 to the juvenile code. It allows for pre-adjudication detention of a youth for the reasonable protection of the victim.  (Continued on next page)	Attorney General's Crime Victims' Juvenile Code Workgroup	1.24- Judiciary committee public hearing.

## Legislative Update, continued from p. 7

HB 2141	Relating to juvenile appeals	Permits Court of Appeals to summarily affirm judgments pertaining to juvenile matters.	Department of Justice	2.8- Second reading.
HB 2181	Relating to DHS role after ward reunified	When ward reunified with parent, DHS's legal custody of the child and post-placement supervision terminate after 90 days unless court extends period; at termination of legal custody, legal custody reverts to parent with physical custody	Department of Human Services	2.14- Human Services & Women's Wellness committee public hearing.
HB 2190	Relating to custody of child prior to jurisdiction	Requires child be placed in shelter care in order for DHS to have legal custody of child; clarifies definition of protective supervision; makes DHS a party when the department has filed a petition	Department of Human Services	2.12- Human Services & Women's Wellness committee public hearing.
HB 2333	Relating to sex offender reporting	Relieves persons convicted/adjudicated of certain sex offenses from reporting when: no prior sex offense conviction/adjudication, victim's lack of consent solely based on age, and offender less than 10 years older than victim.	Sen. Burdick, Rep. Krieger	

## Case Law, Continued from p. 5

issues relating to the filiation were resolved. The Court of Appeals held that the "best interest of the child" standard should be used in determining the name. The party seeking the name change bears the burden of showing that the change is in the child's best interest.

The court listed twelve, non-exclusive, factors to take into consideration in making the "best interest" determination. The factors are: the identity and preference of the custodial parent; avoidance of embarrassment, inconvenience, or confusion; identification of the child as part of a family unit; the child's age and length of time the child has used the name; the child's preference; parental misconduct; the effect the name change may have on the relationships between the child and each parent; the level of support and contact with the

child; the motivations of the parents surrounding the support of, and opposition to, the change; community reputation associated with the names at issue; assurances that the parent will not change their own surname; and ties to heritage ethnic identity and values. The court specifically rejected as a factor any paternal presumption that the a child should bear his/her father's surname.

The court found that the custodial parent, the mother, had the same name as the child - as did her other three children living in the home - and that there were no plans to change any of their surnames. The child was given that surname at birth. The court feared that giving the child his father's surname would lead to possible confusion and embarrassment for the

child later in life. As the child was only seven months old at the time of the trial, the child did not identify with any surname or have a preference. Although the father wanted to give the child a name to which the child was related, "by blood," there was no evidence that it was connected to a particular heritage or ethnic identity. According to this analysis, the court held that the best interest of the child would be served by keeping the surname the mother gave it at birth and not in changing it to the father's name.





# ZEALOUS ADVOCACY: IMPORTANCE OF DEPENDENCY REVIEW

By Julie H. McFarlane, Supervising Attorney

Review hearings and CRB reviews are an essential part of the juvenile dependency case. With proper advocacy counsel for parents, children or other parties can use these hearings as an effective tool to advance their interests in the case.

When the juvenile court exercises jurisdiction over a child under ORS 419B.100(1), it undertakes a drastic intervention into society's most basic unit, the family. Carried to the extreme, this intervention can ultimately lead to termination of parental rights. Some have argued that termination is one of the most drastic actions the state can take against its citizens, with only the death penalty being a more severe intrusion into personal liberty.<sup>1</sup>

Unlike most court proceedings, the result of establishing jurisdiction in a dependency matter is to set in motion a case that will continue over a span of several months, or, in some cases, years. In addition to the challenges that bring families to the attention of the juvenile courts, extended periods of state intervention increase the potential for serious and irreparable harm to the fragile interpersonal relationships between family members.

Much has been learned in recent years about a child's need not only for a dependable, safe, loving home, but also for a permanent home, and the destructive effects of substitute care on a child who drifts from foster home to foster home.<sup>2</sup> Our increasing awareness of the vulnerability of children in the care and custody of the state should bring an increased sense of urgency in advocating for a timely and just conclusion for each child in a dependency case.

In ORS 419B.090 (2)(a)(A-C) the legislature has set out the state's policy in dependency cases and has

recognized that children are individuals with rights, including the right to have permanency with a safe family and to be free from physical, sexual or emotional abuse, exploitation and substantial neglect of basic needs.

The duty of parents and guardians to afford their children these rights and to remove any impediment to their ability to perform parental duties related to these rights is recognized. It is not only the policy of the State of Oregon to protect the rights and interests of children, but also to guard the liberty interest of parents protected by the Constitution and to respect constitutional rights to be free from interference in their rights to direct the upbringing of their children.<sup>3</sup>

It is also the State's policy that appropriate reunification services must be offered to give parents the opportunity to have the child returned. Recognizing the preference for children to live with their families, the policy acknowledges that it is not always possible or in the best interests of the child or the public for children to be reunited with their parents.<sup>4</sup>

The statutory timeline for periodic and permanent reviews of the case is designed to move children toward permanency – whether through reunification with their parent(s) or development of an alternative permanent placement – within one year of coming into care. See, ORS 419B.470.

## Periodic Review

State and federal law requires periodic review of the cases of children who are in foster care. The court also has continuing jurisdiction and equitable authority to review the case of any child who is within the jurisdiction of the juvenile

court under ORS 419B.100. The basic purpose of these reviews is to assure a permanent home for the child without unnecessary delay by facilitating and authorizing reunification of the child with the family when possible, and when that is not possible to assure that the child is provided an alternative stable and permanent placement.<sup>5</sup>

These reviews should focus on the long-term plan for the child, whether the agency and parents are taking the necessary steps to achieve the permanent plan (and the concurrent plan, if there is one) and the safety and other needs of the child. Another purpose of review is to protect the rights of the child and the parents or guardians.<sup>6</sup> This authority is often used to resolve disputes over issues such as visitation, placement and services.

## Purposes of Review

A review, whether it is conducted by the court or the CRB should result in:

- Clarified or revised case plans;
- Timetables to achieve the plan;
- Parties understanding the consequences of complying or failing to comply with the plan.

Both types of review should result in parties receiving a clear and authoritative list of expectations, timelines and consequences, including the possibilities for return of the child if progress is made or termination of parental rights or implementation of another permanent plan if progress is not made.

## Periodic Reports

If the child remains in substitute care, the Department of Human Services (DHS) child welfare

(continued on p. 13)

## On-Line Resources

New on the JRP Website! The Juvenile Rights Project, Inc. invites you to check out our website at [www.jrplaw.org](http://www.jrplaw.org). Recent additions to the website include "**A Teens Survival Guide to Leaving Foster Care in Oregon**," a guide that can be copied and provided to teens who are leaving foster care. The guide can be found by following the Resources, Links and Publications link or clicking on: [http://www.jrplaw.org/Documents/surival%20guide%20final%2010\\_20\\_06.pdf](http://www.jrplaw.org/Documents/surival%20guide%20final%2010_20_06.pdf).

**The Special Needs of Youth in the Juvenile Justice System: Implications for Effective Practice** is an online resource from the Children's Law Center, Inc. of Covington, Ky. This guide is designed to enhance effective advocacy and assist judges and attorneys in working with youth in the juvenile justice system who have mental health or other disabling conditions. The guide includes chapters on:

- Recognizing Youth with Special Needs: Challenges for Practitioners;
- Ethical Considerations for Counsel Representing Juveniles with Special Needs;

- Understanding the Needs of Youth: Identification of Disabilities and other Significant Issues;
- Affirmative Education Rights of Youth with Disabilities Under IDEA and Section 504;
- Competency, Waiver of Rights and Other Defenses;
- Essentials of an Evaluation;
- Special Education Services in Short and Long-Term Juvenile Correctional Facilities;
- Ensuring the Successful Transition of Juvenile Offenders to School, Work and the Community; and
- Recommendations for Effective Practice.

To access this guide go to: [http://www/cjcj.org/jjcc/special\\_needs.php](http://www/cjcj.org/jjcc/special_needs.php)

### Youth Participation in Dependency Hearings

Information on involving and accommodating children with disabilities in court, can be found under the Weblink menu at [www.childlawpractice.org](http://www.childlawpractice.org).

## Multnomah Visitation Program

By Julie McCarter

The Multnomah Visitation Program (MVP) is a pilot project sponsored by the Multnomah County Family Court and the Department of Human Services. The aim of the project is to increase the number and quality of visits between parents and their children. Forty cases will be selected for the MVP between now and April 2007.

MVP cases will receive added support from the MVP Worker, MSW Student Brian Whitmer. Mr. Whitmer will spend 6 to 10 hours on each case identifying and contacting family resources, assessing family resource capacity to supervise visits, and consulting with the DHS caseworker about the ultimate visitation plan. His work will be presented in a document called the Visitation Resource Form, which will capture important information regarding resources for parties' ongoing use.

MVP cases are selected from the preliminary hearing docket. The court will ask about the details of the first visit on all MVP cases at the preliminary hearing. The final MVP documentation will be presented at the PTC/SLC, at which point MVP involvement will end.

The MVP is overseen by an advisory board consisting of lawyers, judges, and DHS managers and workers. The MVP Advisory Board is in the process of designing an evaluation for this project. The findings from this pilot project will

## FDA, continued from p. 3

Release Tablets

- Ritalin LA (methylphenidate hydrochloride) Extended-Release Capsules
- Strattera (atomoxetine HCl) Capsules



The draft Patient Medication Guides for each product can be found at <http://www.fda.gov/cder/drug/infopage/ADHD/default.htm>. For more information please visit [www.fda.gov](http://www.fda.gov).

Concerned consumers can contact the FDA at: 888-INFO-FDA.



# Detention of Youth Frustrates Goals of Public Safety, Education, Employment and Health

Excerpted release from the Justice Policy Institute, 11/28/06:

NEW ORLEANS — Inappropriately incarcerating youth in secure detention centers across the country can contribute to their future delinquent behavior and harm their education, employment and health, according to a new policy brief to be released on Nov. 28 at a major national conference promoting alternatives to detention.

"The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities" shows that rather than promoting public safety, detention — the pretrial "jailing" of youth not yet found delinquent — may contribute to future offenses.

Studies from around the country show that **incarcerated youth have higher recidivism rates than youth supervised in other kinds of settings.**

A study conducted by the Wisconsin legislature found that "placement in secure detention...does not deter most juveniles," and that in the four counties studied, 70 percent of the youth held in secure detention were arrested or returned to detention within one year of release.

Another study on youth sent to a detention diversion program in San Francisco found that youth diverted from detention had *half* the recidivism rate of young people who remained in detention or in the juvenile justice system. Studies in Florida that controlled for the severity of young people's offenses showed that detained youth are more likely to receive formal judicial intervention and be committed to state care than their peers who committed similar offenses but were not detained.

Detention is widely misap-

plied, according to the report by the Justice Policy Institute, a Washington, D.C.-based group that studies adult and juvenile justice policies. Although detention facilities are meant to temporarily house those youth who are likely to re-offend before their trial or who are unlikely to appear for their court date, many of the youth in this country's 769 detention centers do not meet these criteria.

**Seventy percent of youth in detention are held for nonviolent charges.** More than two-thirds are charged with property offenses, public order offenses, technical probation violations, or status offenses (like running away or breaking curfew). Youth of color are impacted disproportionately by the overuse of detention.

In 2003, **African-American youth were detained at a rate 4.5 times higher than whites; and Latino youth were detained at twice the rate of whites.** In the same year, black youth were four times more likely to be incarcerated in Louisiana than whites and received longer dispositions than white youth even though there was little difference in the severity of offenses committed or in prior offense histories.

"Not only does inappropriately detaining youth cost taxpayers millions of dollars a year, but the overuse of detention generally does not make our communities any safer," said Bart Lubow, head of JDAI (Juvenile Detention Alternatives Initiative), a project of the Annie E. Casey Foundation that works to build better futures for disadvantaged children and their families. "Across the country, jurisdictions are looking for more effective policies and practices to promote community safety and better outcomes for youth. JDAI sites have

reduced adolescent detention, strengthened juvenile justice systems and saved money -- all without compromising public safety. Detention reform is a catalyst for system-wide change that is working to build better futures for communities and youth."

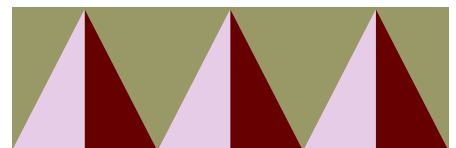
JDAI reforms are transforming juvenile justice systems across the country. The average daily populations in Multnomah (Portland, Ore.) and Santa Cruz (Calif.) counties have been reduced by 65 percent, and New Jersey's rates have fallen by 41 percent since the introduction of JDAI.

By multiple measures, JDAI improved public safety in its model sites. As juvenile detention populations fell in Cook (Chicago, Ill.), Multnomah, Santa Cruz, and Bernalillo (N.M.) counties, juvenile arrests fell between 37 percent and 54 percent—similar to or larger than those decreases experienced in the rest of the country.

JDAI sites have made progress reducing the disproportionate use of secure detention for youth of color. Santa Cruz, for example, opened a neighborhood evening center for high-risk Latino youth and reduced its average minority population in juvenile hall from 64 percent to 47 percent.

Reducing the use of costly detention beds is saving tax dollars. Cook County, Ill. will save approximately \$240 million over 20 years by avoiding construction of a detention center, and Multnomah County will redeploy more than \$12 million over a six-year period.

To learn more about JDAI, visit:



# WHAT'S HOT IN CONGRESS!

There are a number of issues of importance to foster children being considered in Congress this session. The No Child Left Behind Act (NCLB) is up for reauthorization. The NCLB has expanded the federal role in education. While many acknowledge the laudable goals of the NCLB — high standards and accountability for the learning of all children, regardless of their background or ability — there are calls to improve the NCLB and provide adequate funding to achieve those goals. For more information about the changes to the NCLB proposed by the administration go to <http://www.ed.gov/nclb>.

For the perspective of the National Education Association go to: [www.nea.org/lac/esea/index.html](http://www.nea.org/lac/esea/index.html).

With the reauthorization of the No Child Left Behind Act, Congress will be considering the reauthorization of subtitle VII of the McKinney-Vento Act (the Education for Homeless Children and Youth program). Congress will also be taking up the reauthorization of Head Start, the Higher Education Act, and HUD McKinney-Vento Homeless Assistance Act programs.

Issues that will be considered in reauthorization include academic achievement, school selection, transportation, enrollment, liaisons, dispute resolution, funding, preschool children, unaccompanied youth, and children and youth in foster care. The McKinney-Vento Act definitions currently include in the definition of "homeless children" all children who are "awaiting

foster care placement". This does not include all of the children in the child welfare system.

Advocates are considering requesting an amendment of the McKinney-Vento definitions to include in the definition of homeless children all children in the custody of the child welfare system in out-of-home care, including kinship care arrangements, institutions and group homes in the definition of "homeless children."

Advocates are also looking at the issue of funding for transportation for children who remain in their school of origin under McKinney-Vento. For more information go the website for the National Association for the Education of Homeless Children and Youth at: [www.naehcy.org](http://www.naehcy.org).

## Bush Budget Bad News for Children,

by Mark McKechnie

The Child Welfare League of America has provided a summary and analysis of President Bush's proposed Federal Fiscal Year 2008 budget on their web site at: <http://www.cwla.org/advocacy/budgetchildren08.htm>.

The proposals include reductions in a number of federal programs that benefit poor, vulnerable and at-risk children and youth. Here are a few of the lowlights:

**S-CHIP:** The State Children's Insurance Program provides federal funds to states to provide health coverage to children who are ineligible for Medicaid but whose families do not have and cannot afford health insurance coverage for them. The President's proposal would decrease funding for S-CHIP in 2008 by \$223 million. His budget projects increasing funding over the next five years by only \$5 billion,

while it will likely take an additional \$12 to \$15 billion to maintain current coverage levels during that time.

**Foster Care and Adoption:** The President's budget proposes a block grant program for states. States would be given more flexibility to spend federal money but would have to agree to accept a fixed amount of federal assistance for a five year period. States would be locked into their choice for a five year period, whether they opt in or opt out of the block grant option.

According to CWLA, the budget includes the Administration's estimate that 211,000 children will qualify for Title IV-E funding in FY 2008, down from 231,000 in FY 2007. Adoption assistance is projected to increase \$136 million over 2007 to \$2.156 billion. The budget estimates that 426,000 children will

receive Title IV-E Adoption Assistance in FY 2008.

**Juvenile Justice and Juvenile Crime Prevention:** The President's proposed budget would eliminate the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and replace it with a block grant program, called the "Child Safety and Juvenile Justice Program."

The CWLA reports that federal juvenile justice funding has already declined 40% over the last five years, and argues that this proposal would eliminate the remaining federal commitment to juvenile justice.

The block grant proposal would place remaining funding in competitive block grant funds to states. The CWLA said these funds are more susceptible to cuts and

## Zealous Advocacy in Dependency Review, cont'd from p. 9

division (CAF) must file regular reports about the child with the appropriate reviewing body, which could be the court or a Citizen's Review Board. These reports must contain precise information about the number and duration of all substitute care placements, as well as an analysis of DHS efforts to achieve a permanent plan. The reports must also describe a proposed case plan and timetable for the child's safe return home or other permanent placement. In addition to the statutory requirements for review, DHS is also subject to federal rules promulgated to aid in the enforcement of the ASFA.

The provision of this information and various reporting requirements allow the parties and court to monitor each case of a dependent child. The reports set the stage for judicial or CRB review of DHS action and provide a basis for requests for court-ordered modifications of plans and services.

ORS 419B.440-.443 requires DHS to provide a report to the court six months after a child's initial placement in foster care and every six months thereafter. The content of these reports must conform to the requirements of ORS 419B.443, and must include:

- A description of the problems or offenses that necessitate the placement of the child;<sup>9</sup>
- A description of the type and analysis of the effectiveness of the care, treatment and supervision being provided for the child and a list of all placements made since the child has been in care and the length of time in each placement;<sup>10</sup>
- A description of agency efforts to return the child to the pa-

rental home or find permanent placement for the child, including when applicable, efforts to assist the parents in remedying factors which contributed to removal of the child;<sup>11</sup>

- A proposed treatment plan or proposed continuation or modification of an existing plan, including when applicable, terms of visitation to be provided to and expected of parents, a description of efforts expected of the child and parents to remedy factors that have prevented the child from safely returning home within a reasonable time;<sup>12</sup>
- If continued substitute care is recommended, a proposed timetable for the child's return home or other permanent placement or a justification of why extended placement is necessary.<sup>13</sup>

### Case Planning Requirements

In preparing case plans, DHS is required to take into consideration the recommendations and information provided by the committing court before placement of any child in any facility.<sup>14</sup> Plans for reunification must include appropriate services that allow the parent the opportunity to adjust their circumstances, conduct or conditions to make it possible for the child to safely return home within a reasonable time.<sup>15</sup> DHS must also ensure that planning in any case:

- Bears a rational relationship to the jurisdictional findings that brought the child within the jurisdiction of the court pursuant to ORS 419B.100, for reunification of the family;<sup>16</sup>
- Incorporates the perspective of the child and the family and whenever possible allows the

family to assist in designing its own service programs, based on an assessment of the family's solutions and resources for change;<sup>17</sup> and

- Is integrated and in cooperation with the plans and services of other agencies.<sup>18</sup>

DHS must include in the case plan a concurrent permanent plan to be implemented if the parent is unable or unwilling to adjust the parent's circumstances, conduct or conditions in such a way as to make it possible for the child to safely return home within a reasonable time. •

### ***See Next Issue for Further Discussion of Placement and Transition Planning***

#### **Notes:**

1. Hewitt, Carol, "Defending a Termination of Parental Rights Case" in HARDIN, MARK, ED. FOSTER CHILDREN IN THE COURTS (1983) p. 229.

2. See: Allen, MaryLee, Golubock, Carol & Olson, Lynn, "A Guide to the Adoption Assistance and Child Welfare Act of 1980", in HARDIN, MARK, ED. FOSTER CHILDREN IN THE COURTS (1983) p. 575 et seq.

3. ORS 419B.090 (2) -(3).

4. ORS 419B.090 (4)

5. E.g., ORS 419B.449 (2).

6. ORS 419B.349.

7. ORS 419B.440-419B.449.

8. The rules are set forth in 45 CFR parts 1355-1357.

9. ORS 419B.443(1)(a).

10. ORS 419B.343(1)(b).

11. ORS 419B.343(1)(c).

12. ORS 419B.343(1)(d).

13. ORS 419B.443(1)(e).

14. ORS 419B.343 (1).

15. ORS 419B.343 (2)(a).

16. ORS 419B.343 (1)(a).

17. ORS 419B.343 (1)(b).

18. ORS 419B.343 (1)(c).

# Conferences and Continuing Legal Education

## **INDEPENDENCE DAY: Research, Resources, and Law Reform for Teens Transitioning out of State Programs**

**Friday, April 6, 2007, from 8:30 A.M. to 4:30 P.M.**

**Knight Law Center, 1515 Agate Street, University of Oregon, Eugene**

**REGISTER BY MARCH 30**

This conference presents research, legal reforms, and financial resources available to build a safety net for young adults aging out of the state's foster care, youth corrections, and special education systems.

### **Speakers:**

Amy Dworsky, Senior Researcher, Chapin Hall Center for Children, University of Chicago

Audrey Trainor, Department of Rehabilitation Psychology and Special Education (RPSE), University of Wisconsin at Madison, expert in adolescent transition to adulthood

Leslie Leve, Oregon Social Learning Center, Eugene, expert on girls in the juvenile justice system

Brian Baker, Juvenile Rights Project, Portland, education law specialist

Michelle Benedetto, Golden Gate University School of Law, San Francisco. Founder, Legal Aid Society of San Diego Youth Outreach Project

<http://www.law.uoregon.edu/org/child/2007conference.php> . \$30 includes lunch and materials. CLE credit available at additional cost. For additional information, contact: Professor Leslie Harris, Oregon Child Advocacy Project director, [lharris@uoregon.edu](mailto:lharris@uoregon.edu) .

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## **Everything You Always Wanted to Know About Your Teen Client But Were Afraid to Ask. . .**

A half day program sponsored by Yamhill County CASA will take place at the DHS Conference Room, **386 NE Norton Lane, McMinnville, OR on March 13, 2007 8:30 a.m. to noon**. The presenters from Juvenile Rights Project and DHS will discuss: Permanency Planning for Teens; Independent Living Services; and Transition Planning. Please RSVP to Amy at 503-434-6668. **No Charge!**

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**Child Centered Solutions**, which gives a voice for children in domestic relations cases, is planning its first seminar. Renowned author, Joan Kelly, will speak on: Children of High Conflict Custody Cases, on May 4, 2007, 1 to 5 p.m. at the **World Forestry Center in Portland**. Registration information will be available on the CCS website in March. Go to [www.childcenteredsolutions.org](http://www.childcenteredsolutions.org).

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## **12th National Conference on Children and the Law**

The ABA Center on Children and the Law and the Harvard Law School Child Advocacy Program are partnering for the first time this year to present a joint conference for juvenile practitioners.

**"Promoting Children's Interests: Preparation, Practice & Policy Reform"** will be held at **Harvard Law School** April 13 - 15, 2007. For further information go to <http://www.abanet.org/child/>.

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## **NACC 2007 Conference: SAVE THE DATE!**

The National Association of Counsel for Children will hold the 30th National Children's Law Conference on August 15 - 18 in **Keystone, Colorado**. For more information go to: [www.naccchildlaw.org](http://www.naccchildlaw.org).

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## **OCDLA Spring Juvenile Law Seminar, April 20–21, 2007**

### **Agate Beach Inn, Newport**

The seminar will feature nationally known speakers, **Marty Beyer** and **Jody Marksamer**. Dr. Beyer will be featured in two presentations at the seminar. The first is: "Why Science and Development Matter in Juvenile Court: Using Developmental Assessments to Help Courts Understand Immaturity and Competency." Dr. Beyer will also be co-presenting with Jody Marksamer of the National Center for Lesbian Rights, on "Representing Lesbian, Gay, Bisexual and Transgendered Youth."

The seminar includes presentations on the psychological and emotional issues of methamphetamines, a case law update, 2007 legislative developments, and a panel on post-dispositional proceedings. For seminar registration and further information go to [www.ocdla.org](http://www.ocdla.org) or call 541-686-8716.

# MacArthur Invests \$100 Million for Juvenile Justice Reform

By Julie McCarter

In December 2006 the John D. and Catherine T. MacArthur Foundation announced an additional commitment of \$60 million to support and accelerate promising models of juvenile justice reform, bringing its total investment in the field to \$100 million. MacArthur will provide \$10 million to each of four core states in its "Model for Change" initiative – Pennsylvania, Illinois, Louisiana, and Washington. It will also support two new "action networks" to focus specifically on the over-representation of racial and ethnic minorities and the mental health needs of young people in the juvenile justice system.

A new report by the Justice Policy Institute, released at the conference, finds momentum building for a possible wave of juvenile justice reform across the country. Many of the innovative reforms are based on the premise that the harsh laws and punitive practices of the 1990's were not cost-effective and failed to protect public safety.

Each of the four core states has a work plan that describes the specific steps it will take to bring about reform in racial and ethnic disparities, mental health, alternatives to incarceration, support after release from secure confinement, indigent defense, integration of the

juvenile justice, mental health and child welfare systems, and automatic transfer to adult court.

MacArthur's Models for Change initiative supports a juvenile justice system that is rational, effective, and developmentally sound by creating reform models to hold young offenders accountable for their actions, provide for their rehabilitation, protect them from harm, increase their life chances, and manage the risk they pose to themselves and to public safety. The initiative seeks to develop and support replicable, system-wide change that can serve as models for reform elsewhere.

## Fordham Study: Children's Lawyers Have Crushing Caseloads

Fordham University conducted a national survey of 210 lawyers nationwide who represent children in child protection and dependency cases. Among lawyers who represent only children, the survey found that two-thirds handled more than 100 cases at a time and 20% handled more than 300 cases.

The authors noted that cases are defined differently and that many cases include more than one child. Nearly two-thirds of respondents noted that one case can include multiple children in a family group.

The news release from Fordham's Interdisciplinary Center for Family and Child Advocacy highlights the importance of competent legal representation for children in foster care:

"There are over half a million children in foster care in the United States. Among our country's most vulnerable citizens, they have experienced the trauma of abuse or neglect plus the trauma of being

removed from their families. They typically have significant mental health, developmental, and medical needs that must be addressed while they are in state custody. Unfortunately, too often foster children do not get necessary services or attention and are often placed in dangerous or unhealthy settings. They also often stay in foster care for far too long, when they could be safely reunified with their families or adopted."

The Fordham study was intended as a follow up to a class action lawsuit, *Kenny A. v. Perdue*, brought on behalf of foster children who argued that they had suffered from ineffective assistance of counsel. While the National Association of Counsel for Children's caseload standards recommend that attorneys represent no more than 100 children at any one time, the court in the *Kenny A.* case noted that attorneys in the two Georgia counties involved in the case represented between 250 and 400 children on average.

Additional results from the

Fordham study included:

- Only one-third of children's lawyers are supported by trained social workers to help them advocate for their clients.
- Less than 50% of children's lawyers have access to investigators to assist them on their cases.
- Only one-third of children's lawyers have paralegals on their staff.

Survey respondents who reported low caseloads described tasks that they were able to do in order to provide quality representation, including: attend treatment team and family meetings; visit children more frequently, build trust and rapport with them and represent their wishes in court; monitor clients' progress; assess cases more thoroughly and fight for important issues; advocate for client's needs in and outside of court; and reduce the amount of time children spend in foster care.

See press release and report at: <http://law.fordham.edu/ihtml/int->

**JUDGE STEPHEN B. HERRELL AWARD for**  
***Outstanding Collaborative Efforts to End Family Violence***

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The Family Violence Coordinating Council of Multnomah County has established the Judge Stephen B. Herrell Award for Outstanding Collaborative Efforts to End Family Violence. This annual award will recognize an individual who has carried on Judge Herrell's pioneering work to improve the safety of women and children in Multnomah County. The first award will be presented at a community reception on March 22, 2007.

The Council is a 39-member voluntary organization of public and private agencies from the victim service, law enforcement, corrections, court, government, and health systems in the community. It develops, coordinates, and supports effective responses to domestic violence in Multnomah County.

Judge Herrell first convened the Council (then known as the Family Violence Intervention Steering Committee) in 1987 and obtained grant funding for its staffing. His commitment to the safety of those endangered by domestic violence was both deep-felt and long-lasting. During his 19 year service as a Family Law judge in Multnomah County, his guidance and influence was instrumental in the development of many community initiatives and policies addressing domestic violence that remain in operation today. These include specialized domestic violence units in the District Attorney's Office, the Portland Police Bureau, and Department of Community Justice. Judge Herrell also guided the establishment of a "no release" policy for domestic violence offenders prior to charging or trial and stringent "no contact orders" upon release. His tireless work also had a national scope: he served as first chair of the Family Violence Committee of the National Council of Juvenile and Family Court Judges and provided informed leadership to that group in its production of ground-breaking publications for judicial officers.

After his death in February 2006, the Council resolved to honor his memory with an annual award acknowledging an outstanding collaborative effort to promote domestic violence victim safety and to provide accountability and deterrence for offenders.

The first Judge Herrell Award will be presented at the Multnomah County Family Violence Coordinating Council 20<sup>th</sup> Anniversary Celebration, March 22, 5:00-7:00, place TBD.

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