KidsCounsel®

a newsletter for attorneys representing children in Connecticut

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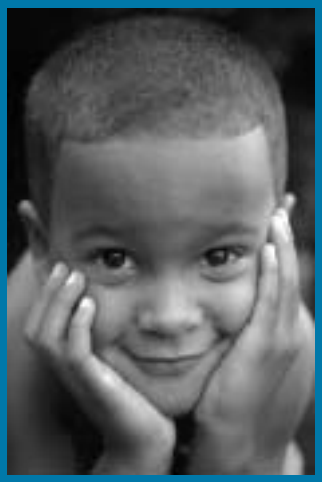

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Public Access to Juvenile Court Child Protection Proceedings: Should the Doors be Open?

Should Child Protection Proceedings be Open to the Public and/or the Media?

As we go to press with this issue of KidsCounsel, the Center for Children's Advocacy and the Connecticut Public Interest Law Journal are looking forward to "Public Access to Juvenile Court Child Protection Proceedings: Should the Doors be Open or Closed?," a cosponsored symposium that will discuss whether child protection proceedings should be open in Connecticut.

Child protection proceedings are now open in 11 states: Florida, Iowa, New York, Maryland, Michigan, Minnesota, Oregon and Washington, to name a few. In addition, in New Mexico and Illinois the general public is excluded but the courts are open to the media. Four other states currently have pilot projects in which some courts are presumed open to the public, following the lead of Minnesota.

When Minnesota initiated its pilot project in 1998, opening child protection proceedings in 12 counties, it contracted with the National Center for State Courts (NCSC) to evaluate the project over a three-year period. The NCSC concluded that open courts had benefits including enhanced professional accountability, increased media and public attention to child protection issues, increased participation by the extended family, foster parents and service providers in child protection proceedings.[1] The report found that open hearings and records did not result in documented direct or indirect harm to any parties involved in child protection proceedings. As a result of the positive report, Minnesota opened all child-in need-of-protection proceedings in 2001 and they remain open today.

The thought-provoking symposium will examine the experience of other states that have open proceedings, hearing from those opposing this trend, and discussing the benefits and disadvantages of opening such proceedings in Connecticut. We are proud to have as our keynote speaker Chief Justice of the Minnesota Supreme Court, Kathleen Blatz. Chief Justice Blatz spearheaded efforts to open child protection proceedings in Minnesota, the only state that has studied the effects of opening such proceedings, and is widely respected throughout the country for her thoughtfulness and insight into this cutting edge legal issue. Speaking out against opening such proceedings will be William Wesley Patton, Professor of Law at Whittier Law School in California, author of *Pandora's Box: Opening Child Protection Cases To The Press and Public*, 27 W.S. L. REV. 181 (2000).

Other speakers and panel members include Barbara White Stack, reporter for the Pittsburgh Post-Gazette, who has been given rare access to court hearings in child abuse and neglect cases that normally are closed to press and public; Michael Mack, Chief Judge, Superior Court for Juvenile Matters; Ray Sirry, Court Monitor in the *Juan F.* case and member of the Department of Children and Families' Transitional Task Force; and Senator Toni Harp.

The symposium will be held at the University of Connecticut on November 17, 2004. For additional information on the issue of Open Courts, call CCA at (860)570-5327 or email cghio@law.uconn.edu.

– Christina D. Ghio, Senior Staff Attorney, Center for Children's Advocacy

[1] Key Findings from the Evaluation of Open Hearings and Court Records in Juvenile Protection Matters. Volume I (Aug. 2001) (on file with the Minn. Sup. Ct. State Ct. Admin. Office).

CCA to Introduce New Legislation on Disproportionate Minority Contact

Reduce Disproportionate Minority Contact in the Juvenile Justice System

During the 2005 legislative session, the Center for Children's Advocacy will introduce legislation that focuses on reducing disproportionate minority contact (DMC) within Connecticut's juvenile justice system.[1]

DMC in Connecticut's juvenile justice system has been confirmed by studies conducted by the state. The disproportionate contact begins with the different responses educators and police have to similar incidents, based upon the race or ethnicity of the youth involved. It continues as a child or youth progresses through the court process and after, when the court decides whether the youth should be sent away from his or her community. If a child is sent away, the race or ethnicity of a child of color will have a negative impact on where the child is sent.

This legislation is important. There has never been a concerted effort by the State of Connecticut to address the problem of DMC within the juvenile justice system. Eliminating DMC within the juvenile justice system will have the additional benefit of reducing its impact in the criminal justice system.

The legislation will direct that the Department of Children and Families and the Judicial Department, through the Court Support Services Division, jointly implement a pilot project, in one of the state's large cities, that includes a continuum of proven strategies and services to reduce DMC. The legislation also contains a provision for an evaluation of the pilot by an independent entity, e.g. a university or other organization with demonstrated experience in evaluating the efficacy of programs targeted to address specific problems.

CCA believes that piloting strategies, services and evaluation that have proven effective in other jurisdictions are a cost-effective way for the state to begin addressing this problem.

– Ann Marie DeGraffenreidt, Director, TeamChild Project, Center for Children's Advocacy

Footnotes

[1] DMC is exists when more African American, Latino and/or Asian American youth are involved with the juvenile justice system than white individuals.This is determined by comparing the percentage of a particular race or ethnicity in the general population of children and youth with the percentage of that race or ethnicity in the juvenile justice population.

Please see pages 4 and 5 for additional proposed legislation:

- ***Decriminalization of Status Offenders***
- ***Open Courts***

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Crossing the Line: Second Circuit Finds Juvenile Strip Search Policy Unconstitutional

N.G. ex rel. S.G. v. Connecticut
382 F.2d 3rd 225 (2d CIR. 2004)

The Second Circuit Court of Appeals recently held that the Connecticut Judicial Branch's repetitive strip search policy at the state's juvenile detention centers (JDC) violates the fourth amendment's guarantee against unreasonable searches. In *N.G. ex rel. S.G. v. Conn.*, the three judge panel found that although strip searches conducted upon a juvenile's initial entry into a JDC is lawful, repetitive strip searches performed upon JDC residents, conducted in the absence of reasonable suspicion, are unconstitutional.

Background

The case arose out of questions pertaining to the legality of strip searches [1] performed on two teenage girls, S.C. and T.W., at JDCs in Connecticut. The girls claimed that the state violated their civil rights pursuant to *42 U.S.C. § 1983*, alleging that the strip searches violated their Fourth Amendment rights prohibiting unreasonable searches and seizures.

At trial, the court held that while the strip search policy employed by all JDCs violated the Fourth Amendment, the strip searches performed on S.C. and T.W. were reasonable because the two girls "suggested prospective behavior which would predispose them to bringing various contraband into a JDC."

In determining whether the strip searches violated the girls' Fourth Amendment rights, the Second Circuit considered the nature of the searches conducted upon each girl. S.C., a habitual runaway with a history of mental illness, suicide attempts, self-mutilation, sexual activity with older men, and drug abuse, was originally confined to a JDC for violating a court order pursuant to a Family With Service Needs petition (FWSN), and was committed twice more for violating that order. JDC personnel strip searched her eight times: three times upon admission; once after being transferred from one JDC to another; twice upon returning to a JDC after being transported to court; and, twice when institutional searches were conducted due to a concern over a missing pencil. T.W., a persistent truant, was originally confined for violating a FWSN court order to attend school She was strip searched twice: once upon admission, and another upon transfer to another JDC.No contraband was found in any of the searches.

The Court's Analysis

The Fourth Amendment prohibits "unreasonable" searches. The test of reasonableness requires balancing the state's interests in the search against the intrusion of privacy. The Second Circuit raised a number of possible interests both for and against strip searches of children. It cited the Supreme Court's acknowledgement that a state's interest in acting in loco parentis and promoting the welfare of a child may outweigh the child's interest. On the other hand, it noted that a strip search could have adverse psychological effects on children, particularly if they have been victims of sexual abuse. The court also discussed persuasive case law from other circuits that ruled strip searches of juveniles in state custody unreasonable without a showing of reasonable suspicion.

Because the strip searches arose under different circumstances, the Second Circuit considered them separately. The court concluded that with regard to the searches that occurred after the girls' transfer to another facility, the strip searches were unreasonable because there was no indication that the girls had been unsupervised or had the opportunity to obtain contraband; therefore, the state interest was insufficient to justify the repeated searches. These searches were unlawful and violated the Fourth Amendment.

Regarding the searches prompted by the missing pencil, the Second Circuit deferred to its holding in *Shain v. Ellison, 273 F.3d 56 (2d Cir. 2001)*, where it ruled that strip searches of those arrested for misdemeanors require reasonable suspicion of contraband, and held that the State required reasonable suspicion that the girl had taken the pencil. The court remanded the case so the district court could make findings as to the existence of reasonable suspicion.

The court, however, found the constitutionality of the searches performed upon the girls' admission to state custody to be a closer question. The state argued that its strip search policy comports with the "special needs" test the Supreme Court articulated in *Bd. of Educ. v. Earls, 536 U.S. 822 (2002)*, which held that "in certain limited circumstances, the Government's need to discover…latent or hidden conditions, or to prevent their development, is sufficiently compelling to justify the intrusion on privacy entailed by conducting such searches without any measure of individualized suspicion."[2] Alternatively, the State argued that the Supreme Court's test in *Turner v. Safley* was satisfied because the strip search policy was reasonably related to "legitimate penological interests."[3]

In this case, the girls had not been convicted of a crime, and were not confined awaiting criminal charges. Therefore, the State did not have a valid penalogical interest. Consequently, the court was reluctant to apply the *Turner* standard to this case. However, the court was persuaded by the State's argument based on *Earls*. It determined that the State's non-law-enforcement reasons for conducting strip searches of juveniles – to protect children from themselves and fellow inmates – and the additional purpose of disclosing evidence of abuse, together comprise the "special needs" that confront a State when a juvenile is admitted to a detention facility. As a result, the court held that the strip searches upon initial admission did not violate the Fourth Amendment.

– Michelle Freidberg, Legal Intern, Center for Children's Advocacy

(please see footnotes and case access information on page 10)

CCA Proposes New Legislation Regarding Decriminalization of Status Offenders and Open Courts

Proposed Legislation Decriminalizes Status Offenders

Status offenders comprise a rising percentage of juvenile justice children in Connecticut. As of June 30, 2000, nearly 4500 children had been identified as Families with Service Needs (FWSN) cases. *See Judicial Branch Statistics, July 1, 1999 to June 30, 2000.* While the federal Office of Juvenile Justice Delinquency and Prevention Act decriminalized status offense behavior and prohibited states from incarcerating status offenders, many jurisdictions, including Connecticut, found a way around this prohibition. When youth violate court orders imposed upon them as status offenders, such as school attendance or curfew, they are subsequently charged with a criminal offense of "violating a court order." This non-criminal behavior is then bootstrapped into a criminal offense and many status offenders find themselves in juvenile detention centers as a result.

It is important to note that status offenders generally comprise two distinct populations: those with truancy problems and those who are beyond control of their parents. Unfortunately, many violate court orders due to their unaddressed educational and behavioral health needs. *See Mental Health Policy Council, Children's Issues Subcommittee Annual Report, Feb. 2002.* At the present, there are no specific programs that target these populations.

New legislation would address the deficiencies by advancing six components:

1. The legislation would not allow for a violation of a status offense to become a "criminal violation."

Status offense behavior such as running away or being truant masks unerlying issues such as traumatized experiences or academic failures. Since it has been recognized that such behavior is not "criminal" in nature, any violations of court orders imposed upon the youth should be similarly treated in a non-criminal fashion and incarceration in a facility housing delinquents should not be a "treatment" option for these youth.

2. The legislation would expand the treatment options available for FWSN youth referred to the juvenile justice system.

Importantly, of the total number of children involved in the juvenile justice system, nearly 60 % screen positive for some mental health problem. In a recent report, nearly two-thirds of males and three-quarters of females in detention met the criteria for one or more diagnosable behavioral health disorders. Also, nearly half the children studied had a substance abuse disorder. *See Close to Home: A Report on Behavioral Health Services for Children in Connecticut's Juvenile Justice System, Child Health and Development Institute of Connecticut, February 2003.* Furthermore, once children are screened and behavioral health services recommended, it has been documented that community-based treatment provides the best possible outcome for children in the juvenile justice system.

Multi systemic therapy (MST), for example, targets chronic, violent, and substance abusing children in an effort to prevent out-of-home placement. *See Connecticut Center for Effective Practice, Development of an Evidence-Based Service System in Connecticut, 2002.* Functional Family Therapy (FFT) similarly targets teenagers with conduct disorders and involves their families. Moreover, not only do these evidence-based therapeutic methods provide a high level of success, but also their average cost of $3,000-$4,000 is less than half the expense of incarcerating children in juvenile detention centers. They must be provided in sufficient quantity to meet the need.

In addition, there are many other treatment options necessary for this population that are presently not available. These include:

a.Trauma-sensitive, gender specific and culturally competent community-based behavioral health services. These are necessary to address the needs and prevent re-traumatization of girls in the juvenile justice system

b.Multi-dimensional treatment foster care. This treatment model has been documented to have a positive effect in Oregon, New York, and Virginia, particularly for girls who are labeled as "beyond control."

c.Truancy support programs. In many instances, truancy is masking academic failure. Many truant youth are in desperate need of appropriate educational assessments, intensive case management, mentors and tutors.

d.Mediation, community service and job skills programs. These would fulfill the Connecticut's commitment to the principles of "balanced and restorative justice," it espouses in its statutes.

e.Staff secure group homes. For the population that truly can't go home with community-based supports, an alternative living option, other than detention or the Connecticut Juvenile Training School, is missing from the continuum.

CCA Proposes New Legislation Regarding Decriminalization of Status Offenders and Open Courts

3. The legislation would provide that probation officers and the court must utilize this broader range of options including graduated sanctions, assessments, services and programs prior to placing a FWSN child who has violated court orders out of her community.

In order to achieve the important goals of reducing recidivism, incarceration, and disproportionate minority confinement, it is critical that the graduated sanctions as well as the assessments and services exist in sufficient capacity to adequately meet the needs of children for whom a family with service needs petition has been filed and that probation officers and the court be required to implement these sanctions, services, and assessments before a child is removed from the community.

4. The legislation would provide for establishment of a tracking system to enhance the effectiveness and quality of the assessment and continuum of services by accurately and continually reporting the number, status (as offender or offender violator), and specific placements for the children who comprise the family with service needs petition population.

Accurate and regular reporting of the number of children for whom a family with service needs petition is filed, the number of children who violate valid court orders as a result of a status offense petition, the number or children in detention centers, in addition to information regarding the racial, cultural, and gender composition of this population, will allow for effective monitoring of the population as a whole and will also provide valuable feedback as to the success of the specific assessments and services implemented.

5. The legislation would provide for independent quality-assurance evaluations of the services and programs with the goal of ensuring the quality of both program areas and that funding flows to the programs that demonstrate success for the target population.

Requiring independent evaluations leads to greater accountability among program staff and encourages providers to work intensively with needy kids for better results. Early assessment of program outcomes ensures the immediate identification and amelioration of any barriers to achieving the goals of reducing recidivism, incarceration and disproportionate minority confinement.

6. The legislation would provide for the development and implementation of mechanisms to maximize federal reimbursement of community services and programs.

This requirement will foster the development of creative strategies designed to solicit federal funding. These funds will afford the State the ability to ensure that necessary programs are fully funded so that all children who are desperate for services can receive them.

Open Courts Legislation Allows Public to Observe Proceedings

In the 2004 legislative session, the Center for Children's Advocacy sponsored a bill to open child protection proceedings in Connecticut. The bill, Raised Bill No. 5555, would have provided guidance to the Court for allowing members of the public to observe proceedings, while ensuring that the interests of justice are served and that the interests of children are protected.

The bill set out the following criteria to be considered by the Court before opening child protection proceedings:

- the likelihood that the person will cause disruption;
- any objections of the parties, the privacy interests of the individuals before the court and the need to protect the child and other parties from harm;
- whether the presence of the person will inhibit testimony; and
- whether less restrictive alternatives are available.

In addition, all documents would remain confidential in accordance with current law and persons in attendance would be prohibited from disseminating the child's name, photograph, or other personally identifiable information.

The Center plans to re-introduce this bill during the next legislative session because we believe it strikes a balance between open courts and individual privacy and would give our most vulnerable children a way of being heard and give the public a way of holding the system created to protect these children accountable.

Transitioning the Mentally Retarded Teenager to Adulthood

There is a multitude of questions that surround cognitively impaired children who are about to transition from childhood to adulthood.

When a cognitively impaired or mentally retarded teenager approaches his/her eighteenth birthday, parents often ask about options that are available regarding independent living, guardianship, education and employment.

Guardianship

As a mentally retarded (MR) individual's eighteenth birthday approaches, parents may be concerned about how their child's needs will be met. The law presumes that an eighteen year old has the capacity to make his own decisions; this is not always true for MR adults and a guardian may be necessary.

Who can be a guardian?
Any adult can petition for guardianship. The person requesting guardianship (the petitioner) must apply in the respondent's town.

What must the petition for guardianship include?
First and foremost, the application must allege that the respondent (MR child or adult) is *"unable to meet essential requirements for his physical health or safety"* and/or is *"unable to make informed decisions about matters related to one's care."* The following information must also be included: (1) whether there is already a guardian; (2) the extent to which the person is unable to meet the above requirements; (3) other relevant facts to guardianship; and (4) the area of aide needed.

What happens once the petition is filed?
The respondent must be notified in writing and a hearing must be scheduled within 45 days. Notice must include the (1) type of guardianship being requested, (2) legal consequences of guardianship, (3) facts of the application, and (4) right to have a lawyer (one will be appointed by the court when necessary). Other family members are notified when appropriate.

The state Department of Mental Retardation (DMR) must appoint two people to assess the severity of the respondent's retardation, the specific areas in which protection is needed, and the basis for such opinion. In addition, all parties are allowed to present other pertinent information to guardianship.

What are the duties of the appointed guardian?
The guardian can be given power to perform any or all of the following duties: find and consent to housing; consent to educational, work and behavioral programs; consent to medical records release; and other powers to facilitate the ward in regaining ability to care for himself.

Residential Options for the MR Adult

What are the residential options?
Most MR adults live with their families. However, there are several other options: "independent living" (the person lives alone in the community); "supported living arrangements" (the person lives alone but receives some aide); "community residential facility" (24 hour care and assistance in a group home setting of 2-6 residents; "community training homes" (living arrangements within a trained family which is not his own); and "residential centers" (over 16 people live together and are provided with 24-hour care).

How does placement in one of these facilities occur?
Placement is either voluntarily or involuntarily. For voluntary admission, the person must apply to DMR. There must be a psychological evaluation which includes (1) a statement that the psychologist has met with the applicant within 90 days of the application, (2) results of psychometric assessment made within the previous year, and (3) an evaluation of the applicant's functioning.

A guardian can also apply for voluntary admission; however, if the ward's wishes are different, admission can only be made involuntarily. For involuntary admission, the probate judge must find that the person is MR and (1) cannot provide for himself in education, habilitation, care for personal health and mental health needs, meals, clothing, safe shelter and/or protection of harm; (2) does not have any family or a guardian to care for him; (3) cannot find adequate, appropriate services without help; and (4) cannot be voluntarily placed in a facility.

A hearing must be held within 30 days. As described above, all parties must be given notice and have the right to attend with an attorney. The procedural safeguards outlined in the petition for guardianship are then followed. Clear and convincing evidence is needed for involuntary commitment to DMR. Placement must be made by DMR in the least restrictive facility that is able to adequately meet all of the respondent's needs.

Is continuing education provided after the eighteenth birthday?
The person's town of residence is obligated to provide special educational services until the 21st birthday. Such services must be coordinated through the town's department of education.

Does DMR provide daycare?
DMR provides group programs that encourage socialization within the community.

Transitioning the Mentally Retarded Teenager

Education, Daycare and Employment Transitional Services

What kind of employment opportunities are available?
There are many opportunities for gainful employment either independently or with assistance from others. Those who do not need any assistance are encouraged to seek out "competitive employment" opportunities. These allow independent work within the community and alongside non-disabled colleagues.

When support is needed, there are two options: "supported employment" and "sheltered employment." Supported employment is distinguished from competitive employment by the fact that the worker has a personal "job coach." The coach starts out aiding in every aspect of the job and gradually does less and less as the person can perform the job on his own. "Sheltered employment," on the other hand, is normally in a factor-like setting working on projects contracted by the agency to perform.

What transitional services are available?
In order to encourage independence, DSS coordinates a vocational rehabilitation program through public education. The program requires that the schools help train the MR person for specifically suited jobs. Employment plans must be included in an Individual Education Plan. Counselors are provided by the state to help the schools formulate these plans.

What other issues should I be familiar with?
Parents and legal guardians often inquire about sterilization procedures for MR adult children. Be advised that the law in Connecticut does not permit sterilization of children, but adults may be sterilized pursuant to court order if a probate court determines it is in the best interest of the ward as determined by a hearing. For more information on this topic, please see the August 2003 MLPP newsletter, which is available online at *www.ccmckids.org/mlpp/highlights/0803highlights.pdf* or by calling the Center for Children's Advocacy at (860) 570-5327.

–Johanna Gordon, Legal Intern, Medical-Legal Partnership Project, Center for Children's Advocacy

Where can I find more information about transitional services for MR adult/children?

State Department of Mental Retardation
www.dmr.state.ct.us

Hartford Association for Retarded Citizens, Inc.
www.harc-ct.org

Connecticut Probate Court
www.jud.state.ct.us/probate

New DCF Policy Prohibits Discrimination Based on Sexual Orientation, Gender ID or Marital/Partner Status

Non-Discrimination in Provision of Services
The Department of Children and Families (DCF) recently adopted a policy to prohibit discrimination against people who identify as Lesbian, Gay, Bisexual, Transgender, Questioning and Intersex (LGBTQI). DCF Policy 30-9, effective May 14, 2004, addresses non-discrimination in four ways:

1. Specifically, no child shall be removed from a biological, foster or adoptive family based solely on the parent(s)'s gender identity/expression, marital/partner or cohabitation status, or actual or perceived sexual orientation;

2. DCF must facilitate recruitment and retention of affirming foster or adoptive parent(s) or mentors, and ensure that all persons, including LGBTQI individuals, are given consideration equal to all other individuals;

Support Groups
1. LGBTQI children, youth and adolescents under the guardianship of DCF must receive non-discriminatory, safe, affirming and non-detrimental services, including mental health, substance abuse, foster care and adoption, and mentoring services;

2. DCF may not delay or deny mentoring services, or the placement of a child for adoption or into foster care, or discriminate against any person, including on the basis of gender identity/expression; marital/partner or cohabitation status; or actual or perceived sexual orientation.

Non-discrimination against biological, foster, or adoptive parents
Each DCF area office must make appropriate referrals to, or facilitate services which support children, youth and adolescents who are experiencing difficulty with issues of sexual orientation and/or sexual identity; foster children who are placed with LGBTQI foster or adoptive families or mentor(s), and foster or adoptive parent(s) or mentor(s).

Training
The policy further requires that all DCF staff shall have access to, and awareness of, LGBTQI training resources for anyone requesting such services, including sensitivity training, which must be made available through the DCF Training Academy for all DCF employees, foster or adoptive parent(s), and mentor(s).

If your child client identifies as lesbian, gay, bisexual, transgender, questioning, or intersex, you should advocate for placements and services by providers who are safe and affirming. If your client is treated in a discriminatory way by any DCF staff, foster parent, or service provider, you should immediately contact supervisory staff to request remedial action, including sensitivity training where appropriate. In addition, attorneys should consider filing a complaint with the Commission on Human Rights and Opportunities (CHRO), in accordance with procedures outlined in CONN.GEN.STAT. § 46a-82. For more information on how to file a complaint with the CHRO, go to http://www.state.ct.us/chro.

– Christina D. Ghio, Senior Staff Attorney, Center for Children's Advocacy

Update: Truancy Court Prevention Project

TCPP Enrolls 22 Incoming 9th Grade Students to Combat Truancy at HPHS

The Truancy Court Prevention Project (TCPP) is off to a strong start. This joint project between Center for Children's Advocacy, Hartford Public Schools, the Judicial Department and state and local community service providers to combat truancy among incoming 9th grade students at Hartford Public High School (HPHS) has made significant progress over the summer and early fall months. An invitation letter (in both Spanish and English) signed by HPHS Principal Mark Zito, inviting the identified students and families to participate in the project, as well as an information sheet for parents (in both Spanish and English), were mailed out in early July. Thereafter, the case management aspect of the project began. Case managers from Catholic Family Services, Youth Opportunities Hartford, and the Hartford Public Schools' Student and Family Assistance Centers then conducted home visits to each of the families to discuss the TCPP and secure voluntary participation. Through these efforts, the project enrolled 22 youth and families before school even started.

Additionally, a critical component to this project is an educational assessment of each youth. We know that many truant youth avoid school due to academic deficiencies. Because we believe these academic concerns are an integral part of solving students' truancy, the Center partnered with Capitol Region Education Council (CREC) to secure a $20,000 grant from the Tow Foundation which funds a part-time educational consultant for the TCPP. After securing educational releases from each of the parents of TCPP youth, the educational consultant was able to review the entire cumulative file of each TCPP youth and make appropriate recommendations prior to the start of school.

The last dimension of this project is the court sessions, which are held at HPHS to help the youth and families comply with their Attendance Improvement Plan. These plans were jointly developed with the families and appropriate service providers prior to the start of school. Presently, Senior Trial Referee Herbert Burrall is presiding over these sessions.

The project is still in need of incentives for youth and parents, and would appreciate any donations of gift certificates for this purpose (ie: gift certificates to Crown Theatre, McDonalds, Wal-Mart, etc.).

To find out how your business or agency can get involved, contact the Center for Children's Advocacy at (860)570-5327, or e-mail *mstone@law.uconn.edu.*

– Stacey Violante Cote, Director, Teen Legal Advocacy Clinic, Center for Children's Advocacy

Truancy is a symptom.
Truancy often masks long-standing academic difficulties, emotional crises, safety concerns or low self-esteem.

Students tell us . . .
The most important factor in overcoming truancy is making a personal connection with someone at school.

Get involved.
Find out how you can help. Call CCA at 860-570-5327 or email: mstone@law.uconn.edu

Guardianship vs. Relative Foster Care for At-Risk Children: What Works?

Difficult Decisions for Relative Caregivers

Across Connecticut, the numbers of grandparents and relative caretakers are growing. According to the 2000 U.S. Census, approximately 52,000 children live in Connecticut households maintained by grandparents or other relative caretakers. Many of these relatives have been forced to choose between taking on custodial responsibility through informal arrangement, which often represents a significant additional financial responsibility for the family; or, maneuvering through the child welfare system, a process which requires that the child's custody be relinquished to the Commissioner of the Department of Children and Families (DCF). Informal custody arrangements do not allow the family access to the maximum financial assistance available through the federal foster care system and state guardianship subsidization program.

52,000 children live in Connecticut households maintained by grandparents or other relative caretakers.

Informal custody arrangements do not allow the family access to state financial assistance or guardianship subsidization.

Probate vs. DCF Appointed Guardian: The Determining Factor in Benefit Eligibility

In Connecticut, a relative can become a child's legal guardian in one of two ways:

The first is to petition the probate court to 1) remove the parent as guardian because the parent has abused or neglected the child or can no longer care for him or her; and 2) name the relative as temporary or permanent guardian. If the relative is made a legal guardian, s/he assumes all financial responsibility for the child. The child of the probate-appointed relative may then be eligible for Temporary Family Assistance (TFA), a "child only" payment of about $350 a month administered through the Department of Social Services. (The Children's Trust Fund provides an additional $300,000 annually to the Bridgeport, Hartford, New Haven, Waterbury, New London, and Norwich probate courts for grants to help relative guardians pay for programs such as summer camps. The caregiver must make a written request to the court to receive this support.)

The second way for a relative caregiver to become a child's legal guardian is through a report of abuse or neglect received by DCF. If the report is substantiated, DCF will request that the Superior Court remove the child from home and commit him or her to the custody of DCF. DCF will pursue a placement that serves the best interest of the child, and may eventually place the child in relative foster care. Before placement with the relative can occur, the relative must become licensed by DCF, which requires that the relative satisfy formalities imposed on all foster parents, including thorough investigation by DCF of financial circumstances, criminal history, home life, and home condition. The relative is required to attend foster parent training, and all household members must pass a drug test.

Satisfying the licensing requirements entitles the relative to receive the same payments as a non-relative foster parent: between $688 to $773 per month, depending on the child's age. After at least twelve months, the relative caretaker can request that guardianship be transferred to him or her from DCF, making the caretaker eligible for a guardianship subsidy equal to the foster care rate minus the child's income.

Guardianship Subsidization Program

Connecticut is one of 34 states to recognize and assist the growing numbers of relative caretakers through a guardianship subsidization program. The program was established in 1998 with the enactment of Conn. Gen. Stat. § 17a-126, whereby the legislature sought to reduce the numbers of children in DCF custody by encouraging the placement of children with relative caretakers as an alternative to foster care.[1]

Program Limits on Eligibility

Connecticut is one of 18 states that supports this program with state funds, but the statute imposes certain eligibility requirements:

–Eligibility is restricted to children who are, or at one time were, in the care or custody of the state;[2]

–The custodial relative caregiver must be licensed by DCF;

–DCF imposes an asset test for eligibility: the child's assets and income are considered, and the amount of the subsidy payment reduced by any income including but not limited to social security benefits, TFA, child support, life insurance or other death benefit, interest income, and all other federal and state assistance and benefit programs.

Noteworthy Aspects of Program

Positive features of Connecticut's program include:

–Guardianship subsidy available to eligible relative caretakers equals the prevailing foster care payment;[3]

–Guardianship subsidy is not counted as income for eligibility determinations of other benefits for the relative caretaker or members of his/her household.[4] This allows the relative to qualify for and continue receiving essential benefits such as Medicaid, housing subsidies, and Supplemental Security Income.

–Program provides maximize federal reimbursement for the costs of subsidized guardianship, and includes a provision that the program not be restricted by federal reimbursements that

Guardianship vs. Relative Foster Care

impose work requirements and time limitations, such as the TANF state block grant.

The Need to Do More

Connecticut's guardianship subsidization program is a source of financial support for relative caretakers. However, children raised by indigent court-appointed guardians continue to receive far less than those in the care of relatives and non-relatives in the foster care system.

– Erin Duques,Legal Intern,Center for Children's Advocacy

Footnotes

[1] Conn. Gen. Stat. § 17a-126(g)

[2] Conn. Gen. Stat. § 17a-126(b). The statute also requires that the child live with relative caretakers and be in foster care or certified relative care for not less than eighteen months. In Connecticut, the DCF commissioner is the custodian.

[3] Conn. Gen. Stat. §17a-126(c). The program also provides for *1) a special- need subsidy, which shall be a lump sum payment for one-time expenses resulting from the assumption of care of the child when no other resource is available to pay for such expense; and (2) a medical subsidy comparable to the medical subsidy to children in the subsidized adoption program if the child lacks private health insurance*.

[4] Id. at (f).

N.G. ex rel. S.G. v. Connecticut 382 F.2d 3rd 225 (2004)

(continued from page 3)

This case may be accessed on-line via Lexis at 2004 US App Lexis 18834, on Westlaw at 2004 WL 1968301, or by going to the Second Circuit's website at http://www.ca2.uscourts.gov/.

Footnotes

[1] "Strip search" is the term applied to searches of naked individuals.

[2] *Earls*, 536 U.S. at 829. The Supreme Court stated that "a search unsupported by probable cause may be reasonable when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable." *Id.*

[3] In *Turner,* the Supreme Court determined that "when a prison regulation impinges on inmates' constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89 (1987).

CDHI Report "Keeping Children on the Path to School Success"

CDHI Report "Keeping Children on the Path to School Success: How is Connecticut Doing?"

Some findings from the recently released (September 21, 2004) Child Health and Development Institute of Connecticut report titled "Keeping Children on the Path to School Success: How Is Connecticut Doing?":

Good news

Connecticut's immunization rate is the best in the nation.

The percentage of babies born to teens is declining.

The supply of accredited early child-care and education programs is greater in Connecticut than in most states.

Bad news

Nearly 30,000 children (one in 10) under 6 live in poverty.

66 percent of children under 6 live in Connecticut's poorest communities - Bridgeport, Hartford, New Britain, New Haven, New London, Waterbury and Windham.

Black children are more than twice as likely as white children to die before they reach age 1.

Only 8 percent of the child-care programs in the state have met accreditation or Head Start standards.

4,500 children each year are born to mothers who did not finish high school.

1,600 children under 6 are in foster homes.

Source: The Child Health and Development Institute of Connecticut. To read the complete report, go to *http://chdi.org/resources_download.htm*

Recent Developments in Child Law: Important Case Summaries

Termination of Parental Rights
Adverse Impact

In re Samantha C.
268 Conn. 614 (2004)
Released: April 27, 2004

In a watershed decision, the Connecticut Supreme Court tackled the issue of whether a trial court may allow an adverse inference to be drawn against respondents, without prior notice, for their failure to testify in a proceeding where the state sought to terminate their parental rights. In a lengthy and thoughtful decision, the Court found that a trial court is NOT precluded from drawing an inference from respondents failure to testify, but the court must give respondents prior notice that if they elect not to testify at the termination proceeding, an adverse inference would be drawn against them.

Samantha was born on April 24, 1996. The Department of Children and Families ("Department") began assisting Samantha's parents in early 1997 due to frequent reports of domestic disputes. In December 1997, the Department removed Samantha from her home, and forged ahead by filing a neglect petition, which was adjudicated in April 1999. The Department filed its first termination petition in February 2000, but withdrew the petition due to parental effort and compliance in April 2000. After an especially troubling incident in January 2001, the Department filed its second termination petition in February 2001.

At the TPR trial, the court found that Samantha's parents had failed to rehabilitate, and inferred from their election not to testify that they continued to have a volatile relationship and were unable to care for Samantha's needs. The court then found that it was in Samantha's best interest that the parental rights be terminated.

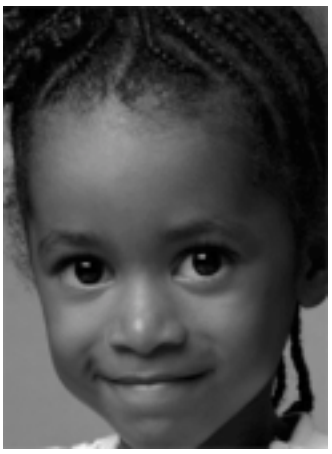
The Supreme Court agreed with the trial court's findings that the Department proved by clear and convincing that Samantha's parents had failed to achieve sufficient personal rehabilitation as they could not prove that the finding was "clearly erroneous" pursuant to Conn. Gen. Stat. § 17a-112(j)(3)(B). In addition, the Court summarily affirmed the trial court's finding that the Department had made reasonable efforts to reunify the family pursuant to § 17a-112(j)(1) mostly based on the fact that Samantha had spent an exorbitant amount of time in foster care.

The critical issues analyzed in the decision revolved around the adverse inference drawn by the trial court after Samantha's parents refused to testify at the termination trial. The key statutory provision under the microscope is Practice Book § 34-1(f), which provides that "[n]o parent … shall be compelled to testify if the testimony might tend … to establish the validity of the facts alleged in the petition." The respondents analogized this provision to the Fifth Amendment to the U.S. Constitution's privilege against self-incrimination, which also forbids the drawing of such an adverse inference against the criminal defendant who refuses to testify at trial. The Department argued conversely – that the statute merely prohibits the state from calling a parent to testify in a termination proceeding in an effort to prove the facts alleged in the petition.

The court tackled this complex issue by reiterating the general rule that after a prima facie case is established, an adverse inference may be drawn against a party for her failure to testify, unless the party is entitled to rely upon one of the few exceptional privileges that carry with it a protection from adverse inferences. Here, the § 34-1(f) protection does not preclude the trial court from drawing an adverse inference from the respondent parents' failure to testify based on the statutory language, the commentary to the practice rule that succeeded § 34-1(f), and the policies of the statutes that § 34-1(f) was adopted to implement.

The respondents' claim that the trial court was required to have given prior notice of its intent to draw an adverse inference resonated with the court, as it agreed that the language of Practice Book § 34-1(a) strongly suggests that it is incumbent upon the trial court not only to state expressly that parents have a right to remain silent, but also to explain, to some extent the parameters of that right. Here, Samantha's parents were not advised of the right pursuant to § 34-1(a), and the failure to do so tainted the court's decision, which was clearly based, at least in part, on the adverse inference. Because the court could not determine whether the trial court would have ruled the way it did in the absence of such an inference, the court reversed the judgment and remanded it to the trial court for a new termination proceeding.

The case, which contains a lengthy analysis of the relationship of the Practice Book sections to the overlaying statutes and cases (both state and federal) is available on-line at the Judicial Branch web page by going to *www.jud.state.ct.us.*



Recent Developments in Child Law: Important Case Summaries

Termination of Parental Rights
Failure to Rehabilitate

In re Kristy A.
83 Conn. App. 298 (2004)
Released: June 8, 2004

The Appellate Court weighed in on a termination of parental rights case by affirming a termination where issues of personal rehabilitation and vagueness in statutory application were reviewed.

This case was to resolve the custody issue of two of the respondent's children, a daughter born in April 1996 and a son born in April 1999. The neglect petitions were filed by the Department of Children and Families Commissioner in November 2001 after the respondent, the mother of the two children, had been sentenced to jail for a period of five years on a count of burglary in the first degree[1]. This conviction was the last in a long line of illegal acts leading to incarceration, including thirteen arrests and six incarcerations in Massachusetts for various alcohol and drug related offenses.The children were in foster care and had begun to build a loving relationship with their foster parents, who they even called "mom" and "dad." The foster parents wanted to adopt the children.

In addition, when the respondent mother was ordered by the court to participate in a rehabilitation program, she did participate. However, the court found that she had failed to adhere to many of the rehabilitation requirements, including independent substance abuse counseling and individual mental health counseling. In terminating the mother's rights for reasons of neglect, the court found by clear and convincing evidence that:

"the respondent had failed to achieve such degree of personal rehabilitation as would encourage a belief that within a reasonable time, given the ages, and needs for stability and permanency of both children, she could assume a responsible position in their lives";

"the petitioner had proven by clear and convincing evidence that no ongoing parent-child relationship…existed…";

"to allow additional time for the establishment or reestablishment of a positive parent-child relationship would not be in the best interest of either child"; and

"it was in the best interest of the children to terminate the respondent's parental rights" according to the statutory factors of §17a-112(k).

In applying the traditional "clearly erroneous" standard of review, the court rejected the respondent's two challenges to the trial court's rulings that respondent had not achieved sufficient personal rehabilitation and that there was no ongoing parent-child relationship[2].

The respondent's main argument against the ruling that she had not achieved personal rehabilitation was that the court, in ruling on the criminal matters, had outlined specific steps that she needed to comply with in order to remain out of jail and regain custody of her children. These included finding a job, attending drug rehabilitation counseling, addressing her mental health issues, etc. The court found that she only complied because they were court ordered; as soon as the court order ran out, the respondent did nothing to ensure that she remained off of drugs and alcohol and remained employed and out of jail.

The court stated that she complied with the court orders for her needs only, and not because she wished to regain custody of her children. The court found that the respondent had no motivation to remain clean and sober and out of legal trouble and therefore had not reached sufficient personal rehabilitation that would allow her to care for these two children. In support of this position, the appellate court stated:

"Personal rehabilitation refers to the reasonable foreseeability of the restoration of a parent to his or her former constructive and useful role as a parent, not merely the ability to manage his or her own life…In determining whether a parent has achieved sufficient personal rehabilitation, a court may consider whether the parent has corrected the factors that led to the initial commitment …"

Furthermore, §17a-112(j) specifically states that court ordered steps for rehabilitation are only to "facilitate" reunion of parent and child, not to guarantee it. The court outlines what it thinks the parent needs to do in order regain the child's custody, and the parent can go through the steps of that plan as they are mandated; however, there is nothing that can force the parent to adopt the behaviors that are taught. Attending the programs simply is not enough; the parent must also show that he or she has adopted the behaviors and beliefs taught in those programs.

Displaying an unusually vituperative tone, the court dismissed the respondent's argument that her due process claim was not preserved at trial because the claim was not briefed adequately. The court lashed out at the quality of the brief, finding that the respondent had cited vagueness challenges to § 117a-12(j)(3)(B) by taking "a rather cut-and-paste approach to the facts, language and holding of [other states' and Connecticut cases]." The rather ad hominem attack seemingly contradicts the lauding tone of the same court's praise of identical counsel who authored and argued Alexander T., 81 Conn. App. 668 (2004), where the court indicated that commendations were due to the "counsel for the . . . respondent . . . for their excellent briefs and oral arguments." Id. at 669.

This case may be accessed by going to the Judicial Branch website at *http://www.jud.state.ct.us.*

– Johanna Gordon, Legal Intern, Center for Children's Advocacy

Footnotes

[1] Mom, while high on cocaine, had robbed a store and held up the store clerk, a 70 year old elderly man, at knife point before cutting him with it.

[2] The latter of the two challenges is not addressed since the first is dispositive of the case.

In re Vanna A.

83 Conn. App. 17 (2004)
Released: May 18, 2004

In another termination of parental rights case that focused on the issue of personal rehabilitation, the Connecticut Appellate Court affirmed a trial court's termination of rights on the strong facts indicating failure to rehabilitate and a mother's failure to admit that abuse and maltreatment was part of her history with her child.

Vanna A., was first adjudicated neglected at 15 months of age and was placed under protective supervision; her mother retained custody of Vanna but was required to undergo counseling for personal rehabilitation. While still in protective supervision, DCF filed a second neglect petition, this time based on Vanna's inadequately explained injuries, malnutrition, and improper medical care. With the mother's agreement, the child was placed in DCF's custody.

Two days later, the mother filed a motion to revoke Vanna's commitment to DCF. The motion was denied based on the mother's continued failure to take responsibility for Vanna's injuries. The court ordered that she address this responsibility in counseling and initiated a permanency plan calling for eventual reunification. However, when the permanency plan's goals were not met, a third neglect petition, this time also alleging abuse, was filed. The court again adjudicated Vanna neglected. DCF moved to terminate the mother's parental rights based on two grounds: (1) failure to rehabilitate and (2) the lack of a parent-child relationship.

After a contested hearing, the court terminated the mother's parental rights based on four conclusions: (1) DCF had made reasonable efforts to reunite the family; (2) the mother did not achieve sufficient personal rehabilitation to satisfy Conn. Gen. Stat. §17a-112(j)(3)(B); (3) there was no parent-child relationship for purposes of Conn. Gen. Stat. §17a-112(j)(3)(D); and (4) it was in the best interest of Vanna to have the mother's parental rights terminated. On appeal, the four conclusions made by the trial court were affirmed along with the decision to terminate parental rights.

Medical-Legal Partnership Project News
Important Case Summaries

CCA's Medical-Legal Partnership Project helps resolve the legal aspects of children's medical problems to ensure better health outcomes.

Karen P.

Karen P. is a twelve year old girl who suffers from Wilm's tumor (a malignant kidney tumor), a condition that was diagnosed in 1998. Despite consistent treatment, the cancer has spread to her lungs and she is now set to undergo a stem cell transplant, which is her only hope for survival. On top of all of this, Karen and her family were on the verge of homelessness.

Karen's mother, Cathy, is a single mom who is currently unemployed, due to Karen's medical demands. Due to her unemployment, she simply could not afford to stay in her current apartment with her three children. Moreover, Karen's biological father was defaulting on his child support payments. Thus, other than sporadic contributions from Karen's father, the household income for this family is about $394/month in Supplemental Security Income (SSI).

The Medical-Legal Partnership Project was successful in obtaining a Rental Assistance Program (RAP) subsidy voucher for this family. The RAP voucher assists qualified families with the payment of rent in apartments throughout the state. Although there is a very long waiting list for RAP vouchers, the MLPP was able to expedite the process for this family and obtain RAP approval within a couple of weeks. The MLPP was also able to identify and refer the family out to the Child Support Enforcement Agent in their district who will assist the family is garnishing Karen's father's child support payments.

Clarissa G..

Clarissa G. is a seven year old girl who is diagnosed with cerebral palsy, hydrocephalus status-post vp shunt, seizure disorder, cortical blindness, hearing impairment, profound developmental delay, strabismus, sleep disorder, and feeding difficulties. Her mother, Nancy G., worked as a job coach and route prep with a mid-size employer in New Britain. Nancy worked for this employer for over two years and the employer was aware from her first day of employment of Clarissa's many medical needs.

In April 2004, Nancy G. had to leave work early because her daughter needed to get a leg brace. At that point, her supervisor proclaimed that she was leaving early too often and asked her to go home and not come back. Nancy G. was appalled at the thought of being discharged and immediately submitted a letter of resignation. When Nancy G. later attempted to collect unemployment benefits, she was told she was not eligible because she had voluntarily quit without notice.

Nancy G. appealed the initial determination to the State of Connecticut, Employment Security Appeals Division. In August 2004, with the help of the Medical-Legal Partnership Project (MLPP), unemployment benefits were approved retroactive to April 2004. The hearing officer determined that the employer not only had the burden of proving the nature of the separation, but also showing willful misconduct, if any. Lacking any direct evidence from the employer, combined with Nancy G's testimony and legal documentation provided by the MLPP, the termination was ruled a discharge and the initial determination was reversed on appeal.

Nancy G. is now receiving unemployment benefits as she searches for a new position that will be able to accommodate her daughter's special needs.

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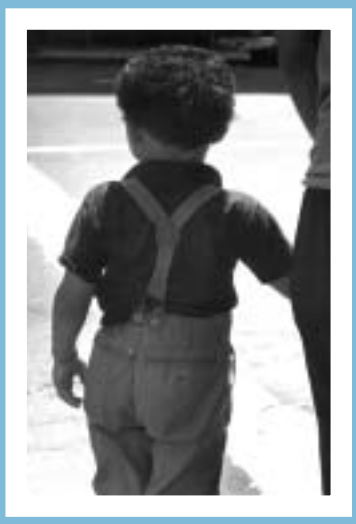

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