

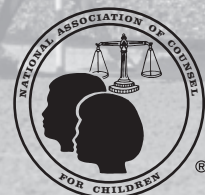
THE GUARDIAN

NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

Vol. 28, No. 3 ■ Summer 2006

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NACC 29th National Children's Law Conference

The Specialized Practice of Juvenile Law: Model Practice in Model Offices
Seelbach Hilton Hotel ■ Louisville, Kentucky ■ October 12-15, 2006

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Mission

THE MISSION OF THE NACC IS TO:

Strengthen the Delivery of
Legal Services for Children

Enhance the Quality of
Legal Services Affecting Children

Improve Courts and Agencies
Serving Children, and

Advance the Rights
and Interests of Children

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THE GUARDIAN
NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN

The Specialized Practice of Juvenile Law:

MODEL PRACTICE IN MODEL OFFICES

The 29th National Children's Law Conference of the National Association of Counsel for Children

LOUISVILLE, KENTUCKY
OCTOBER 12-15, 2006

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	National Juvenile Defender Center
	Youth Law Center

The Conference

The conference is designed for professionals from the fields of law, medicine, mental health, social work, and education. The program focus is the practice of children's law through interdisciplinary training.

The conference is comprised of General Sessions and Workshops. Workshops are organized along four tracks:

- 1 - Abuse & Neglect;
- 2 - Juvenile Justice;
- 3 - Family Law; and
- 4 - Policy Advocacy.

You are free to sign up for and attend sessions in different tracks. The multidisciplinary nature of the conference includes attorney, judicial, law enforcement, social work, physician, and mental health training. NACC conferences are rated highly by participants for content, administration, networking opportunity, and enjoyment. The conference is the product of 29 years of experience in the field of children's law.



Conference Lunch Banquet

SATURDAY, OCTOBER 14

The NACC has arranged a special conference luncheon banquet for all conference attendees on Saturday, October 14th. **There is no additional charge for registered conference attendees, but you must complete the banquet section on the registration form.** The 2006 Outstanding Legal Advocacy and Student Essay awards will be presented, the nation's first class of Certified Child Welfare Specialists will be introduced, and the banquet will conclude with guest speaker Hon. James Payne, Director of the Indiana Department of Child Services. Limited space is available for guests of conference attendees at \$40 per person.

Films

Two films: *Preserving Connections* by the New Mexico Department of Children, Youth, and Families; and *Aging Out* by Casey Family Programs will be shown early Friday evening. Cost is included in regular conference registration.

National Children's Law Conference Sponsorship Opportunities

Conference sponsorship is a great way to support the NACC and enhance your organization or company's visibility. Sponsors are named in the conference program, manual, *The Guardian* (for one year), and in conference signage. Please contact the NACC to receive complete sponsorship details at 888-828-NACC.

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For complete conference details and program, visit <http://www.NACCchildlaw.org>

Social Events

Bowling for Justice II (Friday)

www.bowlluckystrike.com

Walk over to Lucky Strike and join your NACC colleagues for bowling fun starting at 6:30 pm. No registration or cover required. Just pay Lucky Strike for bowling, food and drinks as you go. To order your personalized NACC Bowling Shirt, contact LA-NACC at jodyleibman@hotmail.com. Sponsored by the Los Angeles Affiliate of the NACC.

Louisville Slugger Museum and Factory Tour and Dinner (Saturday)

www.sluggermuseum.org

Louisville is home to the Louisville Slugger Museum and Factory. The Louisville Slugger bat is an American art form and tradition. Join the NACC Board, Staff, and your conference colleagues for a relaxing, casual evening of dinner and drinks. Participants will board coaches from the hotel following Saturday's conference sessions for the short ride to the museum. After the museum tour and dinner, participants will enter the factory for a private view of a Slugger craftsman making the same bat they have made for major league baseball players since 1884. Participants will receive their own NACC mini Louisville Slugger (limited to first 125 registrants) and be able to purchase their own full size, custom-made, personalized major league bat. Separate registration and fee required.

Muhammad Ali Center

www.alicenter.org/

Discounted tickets will be available for visits at your leisure. Show your conference badge at the Ali Center ticket counter to receive a discount.

Continuing Education Credits

NACC conferences are typically approved by the continuing education agencies in most jurisdictions and disciplines. Uniform certificates of attendance will be distributed at the conference. We anticipate that jurisdictions will approve the conference and pre-conference for approximately 25 general and 4 ethics CLE credits. The following jurisdictions have (at the time of printing) pre-approved the conference for CLE: California, Colorado, Indiana, Kentucky, Ohio, and Tennessee.



Thursday, Oct 12

9:00AM–4:00PM

Pre-Conference

Child Welfare Law and Practice Course

2:00–5:00PM

Conference Registration and Exhibits

5:00–6:00PM

Reception: Refreshments and Light Food

6:00–6:15PM

Welcome to the Conference

6:15–6:30PM

Welcome to Kentucky

6:30–7:00PM

Opening Comments
America's Youth at Risk

7:00–7:45PM

Keynote Address
Safety, Permanence, and Well Being for Our Children

7:45PM

Adjourn; Dinner on Your Own

Friday, Oct 13

7:30AM

Conference Registration Opens

8:00–9:00AM

New Member Session

8:30–9:00AM

Continental Breakfast

9:00–9:30AM

Opening Comments
Developing Model Practice for Children and Families: Attorney Certification and Model Office Operation

9:30–10:30AM

General Session 1
U.S. Child Welfare Policy and Practice: Preserving the American Family

10:30–11:00AM

Coffee Break

11:00AM–12:00NOON

General Session 2

The Importance of Research-Based Child Welfare Policy: What We Know and What We Only Think We Know

LUNCHEON

Ask the Doctor or Lunch on Your Own

1:30–3:00PM

Concurrent Session A

1: ABUSE & NEGLECT

Attorney Caseloads: Defining the Problem, Finding the Solution

2: JUVENILE JUSTICE

The NJDC: Strategies and Tactics to Ensure Juvenile Indigent Defense Reform

3: FAMILY LAW

Litigating a Child Centered Case in the Face of Domestic Abuse

4: POLICY ADVOCACY

Protecting the Interests of Minors Under the Law of Human Subject Research

3:00–3:30PM

Catered Break

3:30–5:00PM

Concurrent Session B

1: ABUSE & NEGLECT

The Evolving Role of the Attorney / GAL in the 21st Century

2: JUVENILE JUSTICE

Rethinking the Juvenile in Juvenile Justice

3: FAMILY LAW

Implementing Multi-Disciplinary Trainings for Children's Legal Representatives in Private Custody Cases

4: POLICY ADVOCACY

Integrated Strategies for Legislative Advocacy

5:30–7:00PM

Films

Preserving Connections, The New Mexico Children, Youth, and Families Department and

Ageing Out, Casey Family Programs

6:30PM–LATE

Bowling for Justice II – Lucky Strike Lanes

Saturday, Oct 14

7:15AM

Morning Exercise

Kick off the day with a self-defense workout with mild mannered law professor and martial arts expert John Myers

8:30–9:00AM

Continental Breakfast

9:00–11:00AM

Concurrent Session C

1: ABUSE & NEGLECT

Child Welfare System Reforms: New Policy and Practice Initiatives

2: ABUSE, NEGLECT & JUVENILE JUSTICE

LBGTQ Youth in the System: Advocating for Safety and Understanding

3: APPEALS

Appellate Law and Practice:
1. *Making the Record Below*
2. *Ethics for Appellate Counsel*

4: POLICY ADVOCACY

The Child Welfare Emancipation Cliff: Ensuring a Soft Landing

11:00–11:30AM

Exhibits and Coffee Break

11:30AM–1:30PM

Conference Lunch Banquet

Presentation of Awards:
NACC Outstanding Legal Advocate;
NACC Student Essay
Introduction of the Nation's First Certified Child Welfare Law Specialists

1:30–3:00PM

Concurrent Session D

1 : ABUSE & NEGLECT

Strengthening the Delivery of Legal Services to Parents

2: JUVENILE JUSTICE

Protecting the "Punks": Advocating for Youth in Prison

3: FAMILY LAW

Ethical Issues for the GAL in Private Custody and Visitation Cases

4: POLICY ADVOCACY

Using Multidisciplinary Initiatives to Resolve Child Welfare System Problems



3:00–3:30PM
Catered Break

3:30–5:00PM
Concurrent Session E

1: TRIAL SKILLS
Making and Meeting Objections in Juvenile and Family Law Cases

2: ABUSE & NEGLECT
Protection of the Child Victim / Witness: Child Advocates in the Criminal Courts

3: JUVENILE JUSTICE
In School and Out of Jail: Using Special Education Law in Your Delinquency Practice

4: OFFICE OPERATION
The NACC Children's Law Office Project: Building Multidisciplinary Best Practices

6:30–9:30PM
Evening Offsite Activity
Louisville Slugger Museum Tour and Dinner. Buses depart at 6:15PM.

Sunday, Oct 15

8:15–9:00AM
Special Morning Session:
NACC Affiliate Development: Creating and Running a Local NACC Affiliate

8:30–9:00AM
Continental Breakfast

9:00–10:30AM
Concurrent Session F
1: ABUSE & NEGLECT
Using an Expert Witness in TPR and Reunification Trials

2: ABUSE & NEGLECT
Kids in Court: A Report on Recent Developments and Programs Involving Youth Participation in Their Cases

3: YOUTH EMPOWERMENT
College Success for Students from Foster Care: From Dream to Reality

4: POLICY ADVOCACY
Providing Immigration Relief for Child Victims of Abuse, Abandonment or Neglect

10:30–11:00AM
Catered Break

11:00AM–1:00PM
Closing Session
2006 Juvenile Law Update
"The Law", "The Practice", Closing Remarks, Door Prizes, More

Registration

The NACC 29th National Children's Law Conference
Thursday, October 12 – Sunday, October 15, 2006

NAME (MR / MS) _____
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Registration includes tuition, manual, reception, breaks, and banquet (and a 1 year NACC membership for non-member registrants)

NACC members receive a registration discount of more than 20%. Space at the conference is limited, so please register early.

Early Registration — postmarked by Sep 12, 2006

NACC MEMBER \$ 350 NON-MEMBER \$ 450

Procrastinator Registration — postmarked after Sep 12, 2006

NACC MEMBER \$ 380 NON-MEMBER \$ 480

Registration Fee Enclosed \$ _____

Pre-Conference: Child Welfare Law and Practice Survey Course / Thurs Oct 12

Yes, I will attend. \$175 \$ _____

Luncheon: Ask the Doctor / Fri Oct 13

_____ person(s) @ \$29 per person \$ _____

Conference Lunch Banquet / Sat Oct 14

Yes, I will attend (included in registration fee) \$ **0.00**

I will bring _____ guest(s) @ \$40 per person \$ _____

Offsite Activity: Louisville Slugger Museum Tour and Dinner / Sat Evening Oct 14

_____ person(s) @ \$49 per person \$ _____

I CANNOT ATTEND BUT WISH TO JOIN THE NACC. \$80 \$ _____

TOTAL AMOUNT ENCLOSED OR TO BE CHARGED \$ _____

Please charge my VISA MASTERCARD _____
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NAME AS SHOWN ON CARD _____ EXPIRATION DATE _____ SIGNATURE _____

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Please indicate vegetarian meal requirement(s)

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Space at this conference is limited. Registrations will be filled based on date applications are received. If you will require handicap access to facilities or special assistance at the program, please contact the NACC as soon as possible.



Cases

Dependency / Termination of Parental Rights

Wisconsin Supreme Court Holds That Parental Rights Cannot Be Terminated Based Solely On Parent's Failure To Meet An Impossible Condition Due To Incarceration. Kenosha County Department of Human Services v. Jodie W., 716 N.W.2d 845 (Wisc. 2006).

The issue before the Wisconsin Supreme Court was whether a court can terminate parental rights based solely on the parent's failure to meet an impossible condition of return due to incarceration.

Jodie W. challenged the judgment of the Wisconsin Court of Appeals, which affirmed the circuit court's order terminating her parental rights to her son. The Wisconsin Supreme Court reversed the Court of Appeals and concluded that the Court violated Jodie's substantive due process rights and improperly deemed Jodie unfit solely on the fact that she was incarcerated without regard for her actual parenting activities or the condition of her child.

At the time of Jodie's arrest, she sent her two year old son, Max, to her mother's house. Subsequently, Jodie's mother contacted social services because she could no longer care for Max. There was no evidence of any prior involvement with social services.

The circuit court issued an order listing specific conditions Jodie was required to meet before Max could return home. One of the conditions required Jodie to obtain, maintain and manage a suitable residence. The Department of Human Services filed a petition to terminate Jodie's parental rights because Jodie failed to meet the condition for the safe return of Max to her home. DHS specifically noted that Jodie remained incarcerated and thus had not obtained a suitable residence. Additionally, because Jodie remained incarcerated, it was likely that Jodie could not meet

the conditions for a safe return within the next twelve months.

The primary issue was whether the court's finding that Jodie was an unfit parent, under the Wisconsin statute, violated her constitutional right to substantive due process because one of the court-ordered conditions of return were impossible for Jodie to meet at the time they were ordered.

The Court considered whether the circuit court's application of the statute was constitutionally permissible when the court found Jodie was an unfit parent because she failed to meet conditions of return that were impossible for her to meet because she was incarcerated. The Court held that a parent's incarceration does not, in itself, demonstrate that the individual is an unfit parent. Further, a parent's failure to fulfill a condition of return due to his or her incarceration, standing alone, is not a constitutional ground for finding a parent unfit.

The Court noted that its decision does not render the parent's incarceration irrelevant, simply that other factors must also be considered, such as the parent's relationship with the child both prior to and during the parent's incarceration, as well as the nature of the crime for which the parent is incarcerated.

The Court concluded that in cases where a parent is incarcerated and the only ground for termination of parental rights is that the child continues to be in need of protection or services solely because of the parent's incarceration, Wisconsin law mandates that the court-ordered conditions of return be tailored to the particular needs of the parent and the child. Any other interpretation of the statute would render the statute unconstitutional.

The Court held that the circuit court improperly deemed Jodie unfit solely by virtue of her status as an incarcerated person without regard for her

actual parenting activities or the condition of her child, in violation of the Wisconsin law and Jodie's substantive due process rights.

Termination of Parental Rights / Right to Counsel

Florida Court Of Appeals Holds That Mother Facing Involuntary Termination Of Parental Rights In Private Adoption Proceeding Has Right To Counsel. M.E.K. v. R.L.K., 921 So. 2d 787 (Fl. Ct. App. 2005)

The Florida Court of Appeals considered whether an indigent mother facing involuntary termination of parental rights in an adoption proceeding has a constitutional right to appointment of trial and appellate counsel.

The Department of Children and Families placed the child with his grandmother and initiated dependency proceedings based on allegations that the mother was unable to care for him. The grandmother moved to dismiss the dependency proceeding, filed a separate adoption proceeding and sought to have the mother's parental rights terminated as part of the adoption. The lower court terminated the mother's parental rights by default after the mother failed to file a responsive pleading. The mother then filed a motion to obtain appointed appellate counsel in the adoption proceeding. The lower court denied the motion.

The lower court concluded that there was no state action in a private termination of parental rights action; thus, the mother did not have a constitutional right to court appointed trial or appellate counsel. The court of appeals reversed the lower court and concluded that the mother had a constitutional right to trial and appellate counsel under the Florida Constitution.

The Florida Court of Appeals reviewed relevant case law to determine whether

an indigent mother has a right to appointed counsel. *In the Interest of D.B.* 385 So. 2d 83 (Fla. 1980), the Florida Supreme Court held that under both the Florida and the United States Constitutions, an indigent parent has a right to appointed counsel in proceedings involving the permanent termination of parental rights to a child. Additionally, in *O.A.H. v. R.L.A.*, 712 So. 2d 4 (Fla. 2d DCA 1998), a Florida District Court held that an indigent parent has a constitutional right to appointed counsel in an involuntary adoption proceeding. In *Lassiter v. Department of Social Services* 452 U.S. 18 (1981), the United States Supreme Court held that the federal due process clause does not require appointed counsel in every state-initiated termination of parental rights proceeding,

but courts should make the determination on a case-by-case basis.

The Court held that the lower court erred in determining that there was not a state action in a private termination of parental rights action. In *M.L.B. v. S.L.J.*, 519 U.S. 102 (1996), the United States Supreme Court noted that whether a parental termination proceeding is brought by a state agency or a private party in an adoption hearing, the challenged state action is essentially the same. It concluded that both state-initiated and private termination of parental rights actions trigger the same constitutional concerns; termination of parental rights in a privately-initiated involuntary adoption proceeding constitutes state action that is sufficient to trigger due process protection to an indigent parent.

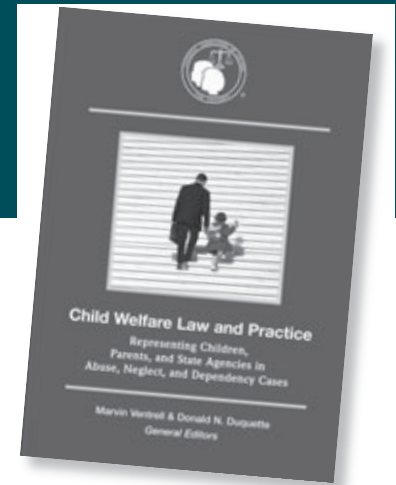
Additionally, the Court noted that in the area of termination of parental rights, the Florida due process clause provides a higher standard for due process than the federal due process clause. *Lassiter* does not require appointment of counsel in every case; it merely requires the court to look at appointment on a case-by-case determination. However, the Florida due process clause requires appointment of counsel in proceedings involving the permanent termination of parental rights of a child. *D.B.* 385 So. 2d at 90.

The grandmother argued that a broad interpretation of Florida's due process clause would create a slippery slope that would obligate the state to provide counsel in many other types of civil cases. The Court disagreed and held that finding a right to counsel in a civil

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determination of parental rights case would not create a dangerous precedent for finding such a right in other civil cases. Other civil cases do not involve the same unique and serious deprivation of a fundamental right by the State as termination of parental right cases.

The grandmother also argued that the balancing test of *Mathews v. Eldridge* should be applied to determine whether there is a right to counsel. The Court disagreed and stated that in determining whether a right to counsel exists in a parent-child case, Florida courts are required to weigh slightly different factors: (1) the potential length of parent-child separation; (2) the degree of parental restrictions on visitation; (3) the presence or absence of parental consent; (4) the presence or absence of disputed facts; and (5) the complexity of the proceeding in terms of witnesses and documents. The *D.B.* court stated that after applying these factors, counsel will always be required when the potential result is termination of parental rights. However, whether to appoint counsel should be determined on a case-by-case basis when there is no threat of permanent loss of parental rights.

The Court reversed the lower court and held that the mother has a constitutional right to appointment of trial and appellate counsel under Florida's due process clause.

Dependency / Contempt

Connecticut Court Of Appeals Holds Child Welfare Agency In Contempt Of Court For Failure To Provide Necessary Services To Child In Its Custody. In re Leah S., 898 A.2d 855 (Conn. Ct. App. 2006).

The Connecticut Court of Appeals affirmed the trial court's order holding the Commissioner of Children and Families (Department) in contempt of court for failing to comply with the court's orders. In April 2003 Leah, who suffered from several mental health problems, was removed from her parents' care due to their failure to follow through with recommended treatments for her. At that time Leah was placed in foster care. The parents reached an agreement with the Department and consented to the Department's temporary custody of their child. The court ordered the

Department to take specific steps to meet Leah's needs. A few days later the Department conducted a multidisciplinary screening of Leah and generated a report detailing recommendations. The report reflected Leah's significant mental health issues and history of violent behavior. It stated that the Department intended to place Leah in either a residential treatment facility or in a therapeutic foster home.

Despite the multidisciplinary screening report, the intent of the Department, and recommendations from Leah's mental health service providers to place Leah in an appropriate setting, she remained in nontherapeutic foster care for the next six months. During that time Leah was moved to four different homes because of the foster parents' inability to handle her behavior. In November 2003 Leah's mother filed a motion requesting that the Commissioner be held in contempt for failure to follow the court's orders regarding the care of Leah. The motion alleged that the Department failed to provide the services outlined in the court's orders and delayed the reunification of Leah's family. The court held an evidentiary hearing on the motion and found that despite Leah's urgent needs the Department failed to take the necessary steps to provide for her safety and well-being. It held the Commissioner in contempt and ordered her to pay \$500 to the mother to assist with attorney's fees.

On appeal the Commissioner alleged that she could not be held in contempt because the court's orders were ambiguous, and that the orders were aspirational. The Court rejected this argument. It found that the court orders were essentially the same orders the Department had urged Leah's parents to follow. The specific steps the Department was ordered to undertake were not ambiguous and not aspirational. The Court concluded that despite the court's clear orders and the Department's awareness of Leah's specific needs the Department failed to take action mandated by the court. It found that the trial court properly exercised its authority to hold the Commissioner responsible for the Department's failure to comply with its orders and affirmed the trial court's decision.

Juvenile Justice

Ninth Circuit Court of Appeals Holds Juveniles Have Same Right As Adults To Receive Credit for Pre-Sentence Custody. Jonah R. v. Carmona, 446 F.3d 1000 (9th Cir. 2006).

The petitioner, Jonah R. spent almost 35 months in detention before he was sentenced to a 30-month term of confinement under the Federal Juvenile Delinquency Act (FJDA) 18 U.S.C. § 5031. The issue before the Ninth Circuit was whether juveniles should receive credit for pre-sentence custody. This appeal concerns the Federal Bureau of Prisons' (BOP) refusal to subtract any of the 35 months of Jonah's pre-sentence confinement from his 30-month sentence.

The Federal Bureau of Prisons calculates sentences for persons, including juveniles, remanded to its custody. Pursuant to a recently adopted policy, the BOP refused to subtract from Jonah's sentence any of the 35 months he spent in pre-sentence custody. 18 U.S.C. § 3585(b) states that "a defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences." The FJDA does not expressly incorporate § 3585; however, before 1999 the BOP consistently applied § 3585 to juveniles when calculating their sentences under the FJDA.

In *United States v. D.H.*, 12 F. Supp. 2d 472 (D.V.I. 1998), a United States Virgin Islands district court held that the BOP lacked the statutory authority to apply § 3585 to juveniles. Thus, the BOP revised its policy to accord with *D.H.* and refused to credit juveniles with pre-sentence time served. Jonah filed a *habeas* petition to challenge the BOP's current policy.

The Court determined that Congress intended § 3585 to apply to juveniles by looking at the plain meaning of the statute, related statutes, legislative history, and statutory purpose.

The lower court and the Court in *D.H.* held that the plain meaning of § 3585 was inappropriate for juveniles because juveniles in custody were "delinquents" and not entitled to sentencing credit available to criminal "defendants." This Court disagreed and held that although FJDA distinguishes between the terms

“juvenile delinquent” and “criminal defendant,” the FJDA at times conflates the two sets of terms. Thus, the Court concluded that Congress intended § 3585 to have wider, rather than narrower, application and the terms of § 3585 do not unambiguously preclude its application to juveniles.

The transfer statute, which Congress enacted in 1977, regulates the transfer of prisoners in and out of the United States. The statute states that “the transferred offender shall be given credit toward service of the sentence for any days spent in custody...” The definition of offender in this context includes juveniles. Thus, an American juvenile arrested elsewhere receives credit for pre-sentence custody served abroad when he or she is transferred to an American detention facility. The Court concluded that the transfer statute leads to the conclusion that § 3585 should apply to the FJDA to ensure that juveniles arrested here receive the same treatment as juveniles arrested abroad.

After considering the legislative history, the Court concluded that when Congress drafted the transfer statute, it expected that juveniles would receive credit for pre-sentence custody as a matter of course. Additionally, the Court held that the purpose of the statute confirms that juveniles should be included in, and should benefit from, § 3585. The primary goal of the FJDA is rehabilitative, not punitive, and it appears highly unlikely that Congress meant to treat juveniles more harshly than adult criminal defendants. The Court also noted that when a person is detained prior to trial, fundamental fairness requires the government give him credit for that time served.

The Court concluded that when Congress revised § 3585 and the FJDA in 1984, it intended for the BOP to continue to credit juveniles with time spent in pre-sentence custody. The Court reversed the judgment and granted the petition for a writ of *habeas corpus*.

Custody / Grandparent Visitation

Colorado Supreme Court Determined Appropriate Standards For Issuance Of A Grandparent Visitation Order. In re C.A., 137 P.3d 318 (Colo. 2006)

The Colorado Supreme Court determined the appropriate standard for issuance of a grandparent visitation order taking into consideration the State General Assembly’s intent that an order be in the best interest of the child, and the “special weight” and “special factors” required by the U.S. Supreme Court decision *Troxel v. Granville* (530 U.S. 57).

After C.A.’s mother died, his maternal aunt and uncle adopted him in accordance with C.A.’s mother’s will. C.A.’s paternal grandparents objected to the adoption and sought visitation rights under Colorado’s grandparent visitation statute as a condition of the adoption. The Magistrate granted the adoption and ordered visitation with the grandparents over C.A.’s adoptive parents’ objections.

The court of appeals reversed, holding that the trial court erred by failing to give “special weight” to the parent’s wishes. The court of appeals concluded that a court may not order a grandparent visitation over the wishes of the parents, unless the grandparents prove the parents unfit to make the visitation determination or the parents’ visitation decision would substantially endanger the emotional health of the child.

In light of the Supreme Court’s *Troxel* decision, due process imposes a special weight burden on the grandparents to overcome parental wishes when the court has before it a grandparent visitation petition. In *Troxel*, the Supreme Court stated that fit parents are presumed to act in the best interest of their children and announced a “special weight” requirement. The Supreme Court stated, “if a fit parent’s decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent’s own determination.”

In *Troxel*, the United States Supreme Court left to each state the responsibility for enunciating how its statutes and court decisions give special weight to parental determinations in the context of grandparent visitation orders. The Colorado Grandparent Visitation Statute allows for a grandparent to seek reasonable grandchild visitation rights when there is a child custody case or a case concerning the allocation of parental responsibilities relating to the child. The statute prevents the court

from entering a grandparent visitation order unless the visitation is in the best interest of the child.

To accommodate both the General Assembly’s “best interests of the child” intent and the “special weight” and “special factors” requirements of *Troxel* 530 U.S. 57 (2000) the Colorado Supreme Court held that the appropriate standard for issuance of an order for grandparent visitation requires: (1) a presumption in favor of the parental visitation determination; (2) to rebut this presumption, a showing by grandparents through clear and convincing evidence that the parental visitation decision is not in the child’s best interests; and (3) placement of the ultimate burden on grandparents to establish by clear and convincing evidence that the visitation schedule they seek is in the best interests of the child.

The Court determined that Colorado’s grandparent visitation statute can be construed and implemented consistent with the due process requirement announced in *Troxel*. This standard, which is more stringent than a preponderance of the evidence, but less stringent than a substantial harm standard, is appropriate to reconcile the General Assembly’s intent and *Troxel*. This heightened standard will ensure that trial courts, in looking to the best interests of the child as directed by the grandparent visitation statute, will adequately give the “special weight” required by *Troxel* to parental determinations. In order to satisfy the second requirement of *Troxel*, that in issuing a grandparent visitation order a court must identify those special factors justifying the order, trial courts must make findings of fact and conclusions of law supported by evidence in the record.

Because the trial court did not make sufficient findings of fact or identify the “special factors” to which it gave weight in entering the visitation order, the Court reversed the judgment of the Court of Appeals and remanded with directions that it return this case to the district court for further proceedings consistent with this opinion.

Dependency / Hearsay

Kentucky Supreme Court Overturns Appellate Court’s Misapplication Of Crawford; Holds That Child’s Statements To Therapist And Pediatrician

Are Admissible. Cabinet for Health & Family Servs. v. A.G.G., 190 S.W.3d 338 (Ky. 2006).

Appellate Court opinion reported in the Fall 2005 issue of The Guardian.

The Kentucky Supreme Court overruled the Court of Appeals determination that the Circuit Court erroneously considered hearsay statements in making its decision to terminate parental rights.

N.G. and A.G. were placed in foster care based on a finding of neglect due to a dangerous and unsanitary home environment. During this time, the foster mother reported that she observed sexual behavior from the children. Based on this information, the social worker commenced a sexual abuse investigation during which time a therapist interviewed N.G. as part of a "sexual abuse assessment."

At the termination of parental rights hearing, the court admitted the therapist testimony from reports she had made following her interviews with N.G. and statements that N.G. made to a pediatrician during a sexual abuse examination. The pediatrician also testified that N.G. told him that he was abused by an uncle on multiple occasions and that although his parents were present when the abuse occurred, they did not see it happen. The trial court entered orders terminating the parental rights.

The parents filed an appeal arguing that trial court erroneously admitted the hearsay statements of N.G. in violation of the Confrontation Clause. On appeal, the parents relied on the Supreme Court's decision in *Crawford v. Washington* (541 U.S. 36) which held that the testimonial statements of a declarant may not be admitted unless the declarant is unavailable and the defendant had an opportunity for cross-examination. The Kentucky Court of Appeals held that the statements were admitted in violation of the Confrontation Clause because there was no showing that N.G. was unavailable and counsel for the parents did not have an opportunity for cross-examination. The court of appeals vacated the trial court's decision terminating parental rights and remanded the case.

The Kentucky Supreme Court concluded that the child's statements

to his therapist and pediatrician were both admissible under the state's hearsay exception for statements made for the purposes of medical treatment or diagnosis, even though the therapist was not a physician. The Court relied on the Sixth Circuit's decision in *United States v. Kappell*, 418 F.3d 550 which held that a licensed psychotherapist and state-certified clinical social worker specializing in child-sexual abuse could testify to verbal disclosures made by victims even though the witness was not the child's treating therapist, but had interviewed the children for purposes of determining what therapy would be most appropriate.

The Kentucky Supreme Court rejected the court of appeals application of *Crawford* in a civil termination of parental rights proceeding, and reinstated the trial court's decision. The Court noted that the appellate court's application of *Crawford* was misplaced because the Court's rationale in *Crawford* was based on the Sixth Amendment Confrontation Clause, which does not apply in civil proceedings.

Post Termination / Parental Standing

Parent Who Lost Permanent Custody Of Child Does Not Have Standing As A Non-Parent To Petition Court For Custody Of Child. In re McBride, 110 Ohio St. 3d 19 (2006).

Appellate Court decision reported in the Winter 2005 issue of The Guardian.

The Ohio Supreme Court concluded that a natural parent whose parental rights had been terminated did not have standing to file a petition for custody of the child as a non-parent. In this case, the mother lost custody of her children in 1997. At that time the court terminated the mother's parental rights and gave custody of the child to the department of human services with the goal of adoption. In 2003, upon finding out that her daughter had never been adopted, mother filed a petition as a non-parent for custody of the child. The Department argued that the mother lost standing to assert a claim for custody and that her petition was barred by *res judicata*. The juvenile court allowed the mother to proceed as a non-parent and the matter went to the court of appeals. The appellate court affirmed the juvenile court's order and

concluded that termination of parental rights should not place a parent in a worse position than a legal stranger seeking custody to the child.

The Department appealed the decision on the basis of Ohio statute R.C. 2151.414(F) which states "an individual whose parental rights have been terminated and whose child has achieved permanency by being committed to the permanent custody of a Public Children Services Agency does not have standing to file a petition for custody by [a] non-parent concerning that child with whom they have had no contact and/or relationship for a significant period of time." The Department and the guardian *ad litem* argued that the appellate court erred by concluding that the mother was not statutorily barred from filing a petition for custody. The Ohio Supreme Court agreed. It concluded that the statute on its face barred the mother's petition. Furthermore, Ohio law permits four parties to seek modification of a termination order: the department of family services; a private child placement agency, a public child services agency, and any party other than a parent whose parental rights with respect to the child have been terminated.

The Court concluded that the mother was essentially asking the court to modify a termination order and she did not have standing to do so. The Court overruled the court of appeals decision, and held that a parent who has lost permanent custody of his or her child does not have standing to petition for custody of the child as a non-parent.

AMICUS CURIAE UPDATE

Davis v. Washington, 547 U.S. ____ (2006), 2006 WL 1667285 (June 19, 2006)

In an 8-1 decision, the Court attempted to further clarify what out-of-court statements are "testimonial" and therefore subject to exclusion from evidence under the Confrontation Clause. The Court adopted an "objective test" that considers the "primary purpose" of the statement: "Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to

meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.”

Applying this test to the two cases before it, the Court held that out-of-court statements made by an abused woman to a 911 operator during an emergency call were not testimonial and therefore admissible, while out-of-court statements made by an abused woman to a police officer at her home after an emergency had passed were testimonial and not admissible. One of the Court’s central focuses was on whether the events at issue were ongoing or the statements were simply describing what had occurred in the past.

Though defining “testimonial” in the situations before the Court, Justice

Scalia declined to make an “exhaustive classification” of what constitutes a testimonial statement for all circumstances. Moreover, the Court did not adopt the more broad test advocated by the defendants, and often applied by lower courts, that looked to whether a “reasonable person” in the shoes of the declarant would anticipate the statements being used for prosecution. Rather, the Court looked principally to the purposes of the questioner and surrounding circumstances, something we advocated in our brief.

Justice Thomas filed a separate opinion concurring in the judgment on the 911 exclusion and dissenting on the admissibility of the statement made at the home, which was not joined by any other member of the Court. He argued that neither statement violated the Confrontation Clause because neither statement resembled the formalized statements the Confrontation Clause was intended to exclude.

The Court provided no express mention of out-of-court statements by children or additional guidance on how to determine whether a child’s statement is testimonial. The Court did, however, provide some fodder for future cases. First, the Court referred to *White v. Illinois*, a case admitting statements by a child, as the one exception in the Court’s opinions prohibiting testimonial hearsay but gave no indication whether *White* is suspect or is still good law. Second, the Court left open whether statements made to non-law enforcement, can ever be testimonial in nature and subject to the Confrontation Clause. That is important in child abuse cases where children often make reports to adults rather than directly to law enforcement. Third, the Court briefly discussed *Braiser*, a 1779 case that was addressed in our brief as well as in other briefs, which involved the admissibility of a young girl’s statements to her mother. The Court

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distinguished the case on its facts and did not address the more relevant question of whether the case should even be considered a ruling on the Confrontation Clause. Finally, the Court reiterated that “the rule of forfeiture by wrongdoing...extinguishes confrontation claims on essentially equitable grounds,” meaning that if a defendant procures the unavailability of a witness, out-of-court statements by that witness may be admissible. The Court did not define the parameters of the doctrine, but suggested that the forfeiture (and not a more narrow definition of testimonial) is the answer for domestic violence and other cases disproportionately impacted by the Court’s recent approach to the Confrontation Clause.

In short, no side can claim complete victory, though things probably could have gone worse for the prosecution. Counsel for petitioners already have expressed disappointment with the decision. As for the application to child abuse cases, courts will continue to struggle and more litigation likely will follow.

Thank you to Anthony Franze, J.D. and Jacob Smiles, J.D. at Arnold & Porter LLP for their work in the preparation of this summary and amicus curiae brief on behalf of the NACC.

In re Baby T.T.B., Minnesota Supreme Court.

The NACC filed an *amicus curiae* brief in the Minnesota Supreme Court asserting that the Minnesota Court of Appeals erred in holding that “good cause” did not exist to deny the motion of the Tribe to transfer the case to tribal court in the proceedings below. This case involved an infant T.T.B. who was born in November 2003. T.T.B. was taken into protective custody at birth, and the Tribe was notified of the proceeding, but did not intervene until six months later.

The NACC argued that the Court of Appeals erred in not considering the child’s best interests in addition to the good cause factors listed under the BIA Guidelines. The NACC urged the court to find that a limited best interests test would recognize a child’s need for timely permanency. While the Court of Appeals correctly set forth

the applicable “good cause” standards under the Bureau of Indian Affairs Guidelines, the NACC believes the Court incorrectly applied these standards by holding that a transfer motion made more than six months after the child had been placed was not made at an “advanced stage” of the proceedings. This holding is inconsistent with the body of “good cause” case law developed in other states that tie advanced stage analysis to permanency timelines.

The NACC argued that the Court should interpret the permanency timelines behind the Adoption and Safe Families Act of 1997 coextensively with the “good cause” transfer provision in Indian Child Welfare Act, and that the Court may give effect to both federal laws by finding the existence of good cause to deny transfer in situations where the proceedings at issue would violate the permanency timetables of the ASFA.

Thank you to attorney Mark Fiddler of Minneapolis, MN for drafting this amicus curiae brief on behalf of the NACC. ■

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Federal Policy Update

*by Miriam A. Rollin, Esq.
NACC Policy Representative, Washington, DC*

Federal Budget for FY 2007

On February 6, 2006, President Bush submitted his proposed FY 2007 Budget to Congress. It included another proposal for a foster care funding cap (similar to prior years’ budget proposals), and included stagnant or slightly declining funding for most programs relevant to court-involved children and families, with a deep cut in the Social Services

Block Grant (cutting \$500 million, to take the program from \$1.7 billion to \$1.2 billion). Once again, the largest percentage cuts are in the area of juvenile justice and delinquency prevention (a 43% cut from last year’s juvenile justice funding levels).

On March 10, the Senate Budget Committee adopted a budget that was very similar to the President’s proposal, but on March 16 Senators Specter and Harkin offered a floor amendment to

increase “advance appropriations” in order to increase funding by \$7 billion for health, education, and social services within the Labor/HHS/Education Appropriations Subcommittee that they lead. That amendment (which actually just restored funding to the FY05 levels) passed with an overwhelming bipartisan majority of 73-27. The Senate also approved, by unanimous consent, a more modest Kohl/Biden amendment to restore \$380 million in proposed cuts to juvenile justice funding. Then, later

on March 16, the Senate passed the budget resolution.

The House, after a few false starts (during which appropriators were rebelling against attempts in the budget to rein in their authority, and some moderate Republicans were trying to increase funding for areas affected by the Specter/Harkin Senate amendment), adopted a budget that includes some increases in discretionary spending above the President's budget, but falls far short of the Specter/Harkin funding levels. There will not be a final House/Senate negotiated agreement on the FY07 Budget Resolution, and the House and Senate have moved forward on FY07 appropriations bills (including the bills for Labor/HHS/Education and Justice).

Federal Appropriations for FY 2007

The Senate Labor, Health and Human Services, Education Appropriations Subcommittee was allocated \$5 billion more than under the President's proposal, but that is still \$2 billion short of the amount promised in the Specter/Harkin amendment. On July 20th, the Senate Appropriations Committee approved the L/HHS/Ed bill (S. 3708), which includes funding for Head Start and child abuse prevention. Most programs (including the Social Services Block Grant) received the same funding levels as last year — a cut in services for kids/families when inflation is considered. However, discretionary funding for the Promoting Safe and Stable Families child/family services program was cut by \$14 million (from \$89 million to \$75 million). Timing for Senate floor action on the L/HHS/Ed bill is uncertain.

The House Appropriations Committee marked up its L/HHS/Ed bill (H.R. 5647) on June 13th, based on a Subcommittee allocation that was \$4 billion more than the President proposed, but \$3 billion short of the Specter/Harkin amendment level that House moderates had been advocating. In the L/HHS/Ed bill, which includes funding for Head Start and child abuse prevention, most programs (including the Social Services Block Grant) received the same funding levels as FY06 — a cut in services for kids/

families when inflation is considered. L/HHS/Ed House floor action timing is uncertain, and funding levels will likely be finalized after the election.

The full House approved the appropriations bill (H.R. 5672) that funds the Department of Justice, including juvenile justice and delinquency prevention on June 29th. Most, but not all, of the proposed juvenile justice cuts were rejected. The Senate Appropriations Committee approved their bill (H.R. 5672) on July 13th, rejecting most, but not all, of the Administration's proposed delinquency prevention cuts. Senate floor action may occur in September.

Reauthorization of "Promoting Safe and Stable Families"

By October 1, 2006, Congress is supposed to renew ("reauthorize") the federal "Promoting Safe and Stable Families" program (PSSF). Through this federal funding stream, states must spend a "significant portion" (which has been interpreted as at least 20%) of their funds on each of four service categories:

- *Family preservation services.* Services designed to help families at risk or in crisis, including services to (1) help reunify children with their families when safe and appropriate; (2) place children in permanent homes through adoption, guardianship, or some other permanent living arrangement; (3) help children at risk of foster care placement remain safely with their families; (4) provide follow-up assistance to families when a child has been returned after a foster care placement; (5) provide temporary respite care; and (6) improve parenting skills.
- *Family support services.* Community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families, to increase parental competence, to provide children a safe and supportive family environment, to strengthen parental relationships, and to enhance child development. Examples of such services include parenting skills training and home

visiting programs for first time parents of newborns.

- *Time-limited family reunification services.* Services provided to a child placed in foster care and to the parents of the child in order to facilitate the safe reunification of the child within 15 months of placement. These services include counseling, substance abuse treatment services, mental health services, and assistance to address domestic violence.
- *Adoption promotion and support services.* Services designed to encourage more adoptions of children in foster care when adoption is in the best interest of the child, including services to expedite the adoption process and support adoptive families.

In July, the Senate and the House approved their respective versions of bipartisan five-year PSSF reauthorization legislation (S. 3525). The bills seem to mostly follow the recommendations of the Administration (when a representative of the U.S. Department of Health and Human Services testified before the Senate Finance Committee recently): there will be no major changes to the basic Promoting Safe & Stable Families program, and there will be a continuation of the \$40 million per year mandatory funding increase that was initiated as a small "silver lining" in the winter's spending cuts reconciliation bill.

However, the Senate (unlike the Administration) wants to designate the new \$40 million in mandatory funds for a child protection national-competition grants program targeted towards children affected by parent/guardian methamphetamine abuse. The bill also includes provisions for increased accountability for fund expenditures, increased tribal access, and a voucher approach to the Mentoring Children of Prisoners program (similar to an HHS proposal).

And the House members want to designate the new \$40 million in mandatory funds to states to ensure monthly caseworker visits with children in foster care, and to utilize the funds for caseworker training and other workforce strengthening efforts. The House members are also considering

some modifications to “Child Welfare Services” (IV-B, Subpart I), including limiting administrative uses of funds (but excluding caseworkers doing work on their cases from the definition of administrative uses of funds).

We hope that the House and Senate will be able to resolve their differences and send a final PSSF reauthorization bill — including the \$40 million per year in additional mandatory funding - to the President for enactment.

Sex Offender Registry and Child Abuse/Neglect Registry Legislation

After extensive behind-the-scenes House/Senate negotiations, the Senate passed H.R. 4472 on July 20, the House passed it on July 25, and the President signed it into law (P.L. 109-248) on July 27. The legislation, as enacted, establishes both a national sex offender registry (including for some juveniles

age 14 or over who are adjudicated for aggravated sexual abuse), and a national registry of substantiated cases of child abuse and neglect. Expected state-to-state variations and implementation challenges regarding the national child abuse and neglect registry were brought to the attention of Senators and Representatives, but the provisions were retained in the final package.

Gangs Legislation

On May 11, 2005, the House adopted H.R. 1279, the “gangs bill”. This bill includes mandatory minimums and other enhanced penalties, increased federalization of gang crime, and (in Section 115) an expanded provision regarding prosecuting juveniles as adults in federal court — despite the evidence indicating higher recidivism rates for juveniles tried as adults. Similar legislation in the Senate (S. 155, introduced by Senators Feinstein, Hatch, et al.) has not yet

been considered by the Senate Judiciary Committee in this session of Congress, and no markup is scheduled at this time.

Unaccompanied Alien Children Protection Legislation

On December 22, 2005, the Senate adopted S. 119, Senator Feinstein’s Unaccompanied Alien Child Protection Act. The bill specifies a number of procedural protections for unaccompanied alien children, including court-appointed guardians ad litem. The House bill (H.R. 1172) has not yet moved forward in the House Judiciary Committee.

Head Start Reauthorization

In May 2005, the House Education and Workforce Committee marked up H.R. 2123, and a week later, the Senate Committee on Health, Education, Labor

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and Pensions marked up S. 1107, both of which are bills to reauthorize the Head Start early education program for disadvantaged kids. The legislation includes some language to improve Head Start access for foster children. Thankfully, neither bill includes state block grants that had been in the House-passed bill in the last Congress (that bill never got enacted). On September 22, the House passed H.R. 2123; however, S. 1107 is still awaiting Senate floor action. Prospects for Senate action are dim, because of controversy over a likely amendment relating to funding for faith-based organizations.

Second Chance Act (Juvenile and Adult Offender Reentry) Bill

H.R. 1704, introduced by Rep. Portman et al. on April 19, 2005, would provide modest funding for efforts to successfully reintegrate adult and juvenile offenders into their communities, and to reduce their recidivism rates through reentry planning and services including educational, mental health, substance abuse, family reunification, etc. Rep. Portman has since left Congress (to be U.S. Trade Representative), so Rep. Cannon has taken over as the lead House sponsor. A Senate companion bill, S. 1934, was introduced on October 27 by Senators Brownback, Biden, Specter, DeWine, et al. The House Judiciary Subcommittee on Crime marked-up H.R. 1704 on February 15, and the full Judiciary Committee marked up a revised bill on July 26. Timing for House floor action and Senate Judiciary Committee action is unknown; there is some chance the legislation could be added as a rider to other legislation.

Safe and Timely Interstate Placement of Children

H.R. 5403, a bill to promote the safe and timely interstate placement of foster children, was introduced by Rep. Tom DeLay (R, TX) on 5/17/06, passed in the House under "suspension of the rules" on 5/24/06, passed by the Senate by unanimous consent on 6/23/06 and signed into law by the President on 7/3/06 (P.L. 109-239). Inter alia, the law requires states to conduct and report

on interstate home studies within 60 days, and directs the Secretary of Health and Human Services to make grants for timely interstate home study incentive payments to states.

Indian Child Protection and Family Violence Prevention

On May 18, 2006, the Senate Committee on Indian Affairs approved S. 1899, a bill to amend the Indian Child Protection and Family Violence Prevention Act. The bill was agreed to by the full Senate, by unanimous consent, on 8/3/06. Among other things, this legislation requires that reports on tribal-related child abuse allegations include information on any federal, state or tribal final conviction, and that these reports be transmitted to and kept by the FBI.

Other Relevant Bills Introduced, But No Further Action Yet

- On February 15, 2005, H.R. 823 (Rep. Ramstad) and S. 380 (Sen. Collins) were introduced as the Keeping Families Together Act - legislation to provide modest funding to support efforts to end the practice of parents giving legal custody of their seriously emotionally disturbed children to state agencies (child welfare or juvenile justice), for the purposes of obtaining mental health services for those children. No further action has been scheduled, although Rep. Ramstad introduced a slightly modified version of the Keeping Families Together Act on July 13 (H.R. 5803).
- On May 10, 2005, Sen. Clinton and Sen. Snowe introduced the Kinship Caregiver Support Act (S. 985), which provides funding for kinship navigator programs, provides a IV-E support option for kinship care, and provides notice to relatives of children entering foster care. No Finance Committee action has yet been scheduled.
- On July 20, 2005, Sen. DeWine introduced S. 1429 (with Sen. Murray), as well as S. 1430, S. 1431 and S. 1432; these bills provide for improved post-secondary education opportunities for homeless and foster youth, as well as post-secondary education

loan forgiveness for: child protection social workers; attorneys who represent low-income clients in family/domestic relations courts; and child care providers and preschool teachers. No action on this legislation has been scheduled in the Senate Health, Education, Labor and Pensions Committee.

- On July 29, 2005, Rep. Platts, Rep. Davis (IL) and Rep. Osborne introduced H.R. 3628, the Education Begins at Home Act, which would authorize \$500 million in new federal funding for early childhood home visiting (some models of such parent coaching have demonstrated significant impact on the prevention of child abuse and neglect, and later delinquency). This legislation is the House companion to Sen. Bond's S. 503, a bill of the same name introduced in early March 2005. No action on this legislation has yet been scheduled, although a hearing in the House Education and the Workforce Committee is expected in the fall.
- S. 1679, introduced on September 12, 2005 by Senators DeWine and Rockefeller, is the "Working to Enhance Courts for At-Risk and Endangered Kids Act". The bill would provide for, inter alia, collaboration between child welfare agencies and courts, practice standards for child welfare state agency attorneys, loan forgiveness for child welfare attorneys and social workers, permission for states to allow public access to child welfare court proceedings (as long as state policies ensure the safety and well-being of the child, parents, and family), and improvements in the safe and timely interstate placement of foster children. No action has yet been scheduled in the Senate Finance Committee, though provisions similar to some of those in this bill were included in budget reconciliation legislation (see Federal Policy Update in last Guardian issue).

For further information on any federal legislation (including copies of bills, copies of committee reports, floor votes, etc.), visit Thomas.loc.gov.



Children's Law News

News

Congratulations to Sheila L. Brogna, JD, CWLS, the winner of the NACC 2006 Outstanding Legal Advocacy Award. A career child advocate, Ms. Brogna is known as an attorney with an astute legal mind and enduring commitment to children. She has represented hundreds of child clients during her distinguished career. Ms. Brogna has advocated for children in trial and appellate, state and federal courts, and is one of the few children's attorneys who has argued and won a case in the United States Supreme Court (*Honig v. Doe*, 484 U.S. 305 (1988)). She represents the highest standards and ideals of children's advocacy. A ceremony honoring Ms. Brogna will be held October 14, 2006 at the NACC 29th National Children's Law Conference at the Seelbach Hilton Hotel in Louisville, KY.

NACC 2006 Law Student Essay Competition. The NACC is pleased to announce the winner of the 2006 Law Student Essay Competition: Christopher J. Walker from Stanford Law School for his essay, *Adequate Access or Equal Treatment: Looking Beyond the IDEA to Section 504 in a Post-Shaffer Public School*. Mr. Walker will be honored at the NACC Conference Banquet on Saturday, October 14th in Louisville, KY. The essay will be published in the NACC Children's Law Manual – 2006 Edition, which will be distributed to all conference attendees and available for sale from the NACC after the conference.

NACC Launches New Lifetime Membership. The NACC Board approved a new category of NACC membership at the 2005 Annual Meeting. NACC members may now become Lifetime Members for a one-time fee of \$2,500. Please contact the NACC if you are interested. A special

Lifetime Member listing will appear in *The Guardian*.

Join the NACC Children's Law Listserv Information Exchange. All NACC members are encouraged to become part of the NACC Listserv which provides a question, answer and discussion format for a variety of children's law issues. It is an excellent way to improve your advocacy skills and share your expertise with your NACC colleagues. To join, simply send an e-mail to advocate@NACCchildlaw.org and say "Please add me to the NACC Listserv."

Conferences & Training

October 12-15, 2006
NACC 29th National Children's Law Conference, *The Specialized Practice of Juvenile Law: Model Practice in Model Offices*, Louisville, KY. Brochures have been mailed and are available online and you may register online at NACCchildlaw.org/training/conference.html.

Publications

Uniform Representation of Children in Abuse, Neglect, and Custody Proceedings Act, was adopted by the National Conference of Commissioners on Uniform State Laws at their annual meeting in July. The text of the Act is available at: <http://www.law.upenn.edu/bl/ulc/RARCCDA/2006annualmeeting/approvedtext.htm>.

Interstate Compact for the Placement of Children, a redraft of the ICPC was adopted by American Public Human Services Association. Additional information about the ICPC Redraft and the proposed legislative language is available at: <http://www.aphsa.org/Policy/icpc2006rewrite.htm>.

Child Sexual Abuse and the State, by Law Professor Ruby Andrew. The paper reviews state laws governing intrafamilial child sexual abuse, and includes a blueprint for writing legislation to close these "incest loopholes" in any state. The can be downloaded at the Social Science Research Network (free registration required). To register with SSRN, go to: <http://hq.ssrn.com/Participant.cfm?rectype=add&funct=new> then download the full article at: <http://papers.ssrn.com/abstract=904100>.

College Access, Financial Aid, and College Success for Undergraduates from Foster Care, by Ryan J. Davis. National Association of Student Financial Aid Administrators. Available at: <http://www.nasfaa.org/publications/2006/rmfosterkids072506.html>.

Legal Ethics in Child Custody and Dependency Proceedings: A Guide for Judges and Lawyers, by William Wesley Patton, (Cambridge University Press 2006).

Child Welfare Law and Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect and Dependency Cases (The Red Book). This new NACC publication is a comprehensive practice guide for all attorneys working in abuse, neglect, and dependency cases. Please see the full page ad in this issue or contact Bradford Publishing at 800-446-2831; www.bradfordpublishing.com. NACC members receive a 20% discount.

State of the Art Advocacy for Children, Youth, and Families, the 2005 Edition of the NACC Children's Law Manual Series is now available for purchase. Copies may be ordered from the NACC by calling toll free 1-888-828-NACC, using the Publications Order Form in this issue, or online at www.naccchildlaw.org/trainings/manuals.html.

Jobs

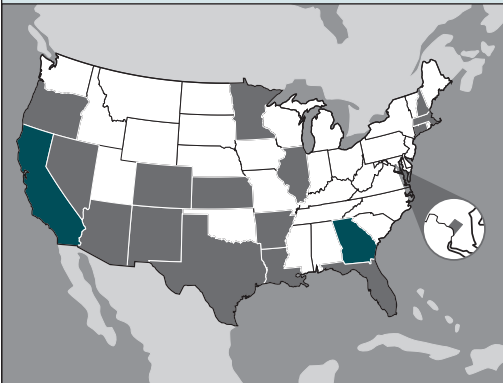
Associate Director, Fordham University – Interdisciplinary Center for Family & Child Advocacy, New York, NY. Reporting directly to the Center's Director, the Associate Director is responsible for managing the Center's community collaboration/public policy projects, overseeing the Center's education initiatives, and maintaining the Center's website. The Associate Director supervises the Administrative Assistant and Student Fellows and is responsible for managing the Center's three community collaboration projects (Mandated Reporting; Interdisciplinary Parent Advocacy; and Child Welfare System Accountability) and, with the Director, developing new ones.

The successful candidate will have an M.S.W. and at least three years of experience in policy analysis or its equivalent, and a demonstrated capacity to supervise students or other staff. Experience in the child welfare or juvenile justice systems, while not required, will be preferred.

To apply send cover letter, resume, graduate school transcript, list of three references, and a writing sample to: Erik Pitchal, Director, Fordham Interdisciplinary Center for Family and Child Advocacy, 33 W.60th St., 3rd Floor, New York, NY 10023; e-mail: pitchal@law.fordham.edu. The writing sample should be analytical in nature, as opposed to merely descriptive. Applications will be considered as received and the position will be filled quickly.

DLA Piper Staff Attorney, The Children's Law Center, Washington, D.C. The DLA Piper Staff Attorney will act as a guardian *ad litem* for teenagers and children in complex custody proceedings and will train and mentor pro bono attorneys. He or she will also represent caregivers in custody cases. Two years of related experience preferred. Applications should include a cover letter, current resume, legal writing sample and list of references. No phone calls. Applications should be submitted to: DLA Piper Staff Attorney Selection Committee, The Children's Law Center, 901 15th Street, NW Suite 500, Washington, DC 20005; e-mail: bstarfield@childrenslawcenter.org; fax (202) 467-4949. ■

Please send children's law news and advocacy job openings to: *The Guardian*, 1825 Marion Street, Suite 242, Denver, CO 80218
Fax: 303-864-5351 • E-mail: advocate@NACCchildlaw.org



Affiliate News

NACC affiliates help fulfill the mission of the national association while providing members the opportunity to be more directly and effectively involved on the local level. If you are interested in participating in NACC activities on the local level, or simply want contact with other child advocates, please contact the NACC and we will put you in touch with an affiliate in your area or work with you to form one. Affiliate development materials and a current list of affiliates with contact information are available on our website at www.NACCchildlaw.org/about/affiliates.html.

California - Los Angeles

LA-NACC is proud to sponsor Bowling for Justice II at the conference in Louis-

ville, KY this October. No registration or cover is required — just walk over to Lucky Strikes on Friday night starting at 6:30 and pay Lucky Strikes for bowling, food and drinks as you go. To order your personalized NACC Bowling Shirt, please contact the LA-NACC at jdyleibman@hotmail.com.

Georgia

The GACC Board of Directors is proud to announce the selection of Ms. Jane Okrasinski as our first Executive Director. Ms. Okrasinski brings twenty-five years of child advocacy experience to the GACC. She received her law degree from Emory University School of Law in 1980 and has a B.A. in English Literature from Rockford College in Illinois. Her experience

includes that of service as Legal Director of the Keenan's Kids Law Center in Atlanta that initiated the *Kenny A.* lawsuits against the State of Georgia and Fulton and DeKalb Counties concerning treatment of children in our foster care system. Ms. Okrasinski has experience in representing Native American clients in civil rights matters as well as service as a monitor in the settlement of a Texas class-action federal lawsuit concerning conditions in that state's prisons. She has also served as a reporter and producer of television and print media segments covering legal issues.

GACC will facilitate the NACC Affiliate Development session at the national conference in Louisville. ■

Thank You

The National Association of Counsel for Children thanks the following donors and members for their generosity.

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NACC – Membership Application

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INDIVIDUAL MEMBERSHIPS:

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- Supporting \$100*
- Patron \$250*
- Sustaining \$150*
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*Includes special thank you listing in *The Guardian*.

- I would like \$10 of my membership dues to support my local NACC affiliate.

GROUP MEMBERSHIPS:

Group memberships are available at a significant discount. Please contact the NACC for more information.

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