

## APRIL 2009 LEGISLATIVE AND CASE LAW UPDATE

### FEDERAL LEGISLATION

On Thursday March 26, the Senate passed its version of national service legislation, the Serve America Act, S. 277, by a vote of 79-19. The legislation expands significantly national service programs. The previous week, the full House approved its bill, the GIVE Act, H.R. 1388, by a vote of 321-105. The next step in the process is for a House-Senate conference committee to work out the differences between the two bills. The Senate adopted an amendment to **add programs for mentoring foster youth to the list of national service programs eligible for assistance.** The legislation would cost approximately \$6 billion over the next five years. Both would expand the number of volunteers covered under the National and Community Service Act, from the current 75,000, to 250,000, and increase the education rewards for which volunteers become eligible. They also seek to focus more service work on pressing challenges, including addressing the drop-out crisis, safeguarding the environment, and others. Both bills enjoy broad bipartisan support.

The Serve America Act includes language to study ways the federal government can interact more efficiently with nonprofit organizations to achieve better outcomes. It also would create a Community Solutions Funds pilot program to increase private and public investment in nonprofit community organizations that are effectively addressing challenges and, in particular, to replicate and expand such initiatives. The GIVE Act includes a similar section, creating a Social Innovation Fund to provide seed money and scale up innovative and evidence-based efforts in the nonprofit sector to address social problems.

Source: Children's Monitor Online, April 6, 2009

### FEDERAL LEGISLATION

On March 24, several Senators introduced juvenile justice legislation similar to the bill passed by the Senate Judiciary Committee at the end of the last Congress. This bill is expected to pass the committee again in the next few weeks. From there, passage in the full Senate could soon follow. This legislation, **the Juvenile Justice and Delinquency Prevention Act of 2009, S. 678, would reauthorize and make significant improvements to federal law.** It builds on efforts begun with the last reauthorization in 2002 to bring child welfare and juvenile justice systems together to improve outcomes for children and youth through improved coordination, procedures, and protocols.

The legislation would extend the requirement to remove juveniles from adult jails by making it applicable for the first time to juveniles held pretrial, whether charged in juvenile or adult court. It would strengthen the provisions regarding disproportionate minority contact by expecting states to take data-driven steps to reduce racial and ethnic disparities in the juvenile justice system, and to evaluate and publicly report their progress.

The bill also would strengthen the deinstitutionalization-of-status-offenders requirement by asking all states to phase-out and fully eliminate use of the Valid Court Order Exception, which causes non-offending youth/status offenders to be locked up. In addition, the legislation would encourage states to eliminate dangerous practices that are harming youth in confinement and promote adoption of best practices and standards.

Source: Children's Monitor Online, April 6, 2009

### FEDERAL LEGISLATION

#### Funds for Housing Assistance in the Stimulus Package

The stimulus package signed into law in February includes significant new funding for housing assistance and to prevent homelessness, which could be used

by child welfare agencies to keep families together. One source of these funds is through the Emergency Shelter Grant program, which includes \$1.5 billion in funds for rental assistance, utility payments, and motel vouchers. The funds can also be used for case management services, outreach, and housing search and placement activities.

Source: Children's Monitor Online, April 13, 2009

## ADOPTION

### North Carolina

The North Carolina Court of Appeals recently heard arguments on an appeal from a dismissal of Allison Quets' suit to regain visitation rights to her two children who were adopted shortly after birth by the Needhams. In 2007, Quets plead guilty to kidnapping for taking the children from their adoptive home in North Carolina to Canada. She later filed suit, seeking visitation rights, claiming the adoption was contingent on her "retaining a continuing and familiar role" in the children's lives after the finalization of the adoption. The Wake County District Court Judge dismissed the lawsuit based on the fact that her parental rights had previously been terminated and thus she could not seek visitation rights.

Source: Renee Chou, Wral.com, March 26, 2009

### Genograms for Adopted Children

Lesson plans for most elementary children include some form of a family tree project. This project poses a dilemma for adopted children according to some adoption advocates. This type of project may prompt children to perceive their family as not normal and to begin asking questions at an age when they are too young to handle such identity issues. Some parents and experts feel that children are put on the spot in these projects and feel caught between the desire to fit in with their classmates and the desire to protect their privacy and not be

defined by the single fact that they are adopted. There are all sorts of blended families, stepfamilies, families with two fathers or two mothers, or just single-parent families. That's where the school systems are a little behind. These older curriculums and lesson plans don't always fit in with the realities of what families are today. On the other hand, some advocates and parents say these assignments are not a problem because adopted children can fill in their family tree with their adoptive family members. Overall, adoption advocates want teachers to be sensitive to the fact that not all families are the same when assigning projects like a family tree.

Source: Don Aucoin, The Boston Globe, March 31, 2009

### Adoption Statistics

According to the U.S. Health and Human Services Department, 10,000 children featured on the AdoptUsKids website have been placed in permanent homes since 2002. Statistically, nearly half of the children adopted were African American, more than 20% were sibling groups, and over 200 were sibling groups of four or more children. The website recruits and connects foster and adoptive families with children in the foster care system who are available for adoption by providing photos and biographies of the children. The AdoptUsKids project also provides resources and referral services to prospective adoptive families and provides training and technical assistance to States and Tribes.

Source: The Epoch Times, March 26, 2009

### Sexual Orientation

#### Ohio

Ohio Republican State Senator Gary Cates, and Representatives William Coley, Courtney Combs and Timothy Derickson have all sent letters to the county commissioners rendering their support of the Butler County Children Services policy that gives preference in adoption and foster care

placement to married couples. As reasoning for supporting the policy, Rep. Combs cited statistical data and social science research showing that children raised with a married mother and father fare better in every measured category. The letters also claim that the policy, although unique, is in line with federal and state statutes according to a legal review completed by Cincinnati attorney David Langdon.

Source: Josh Sweigart, The Middletown Journal, March 31, 2009

## ADOPTION

### Arizona

Caseworkers in Arizona have recently noticed that children in foster care over the age of 6 are increasingly being adopted by older parents. The workers believe that this trend is due to a number of factors including increased recruitment efforts by the department and the parents' desire to help children but lack of energy to raise a newborn.

Source: Staff Writer, KVOA.com, April 18, 2009

### New York

The Surrogate Court in New York City granted an adoption petition allowing a homosexual woman to adopt her biological child who was conceived after the petitioner's egg was implanted in her partner. The judge stated that, although the woman was already a legal parent due to her biological ties to the child, the adoption gave the woman and her son full parent-child rights.

Source: Associated Press, The Dallas Voice, April 14, 2009

## CHILD ABUSE

Child welfare agencies and hospitals across the country are reporting increasing numbers of child abuse cases. The trend is believed to be due, at least in part, to the struggling economy. The Illinois Department

of Child and Family Services reported a 5.8% increase in cases, while the city of Chicago alone had a 9% increase.

Source: Lily Fu, My Fox Memphis, April 17, 2009

## CHILDREN'S HEALTH

Children raised in poverty suffer many ill effects: They often have health problems and tend to struggle in school, which can create a cycle of poverty across generations. Now, research is providing what could be crucial clues to explain how childhood poverty translates into dimmer chances of success: Chronic stress from growing up poor appears to have a direct impact on the brain, leaving children with impairment in at least one key area---working memory. There has been a lot of evidence that low-income families are under tremendous amounts of stress. With the economic crisis threatening to plunge more children into poverty, this research from **Cornell University** offers insight into how poverty affects long-term achievement and underscores the potential ramifications of chronic stress in early life.

Low-socioeconomic-status families are under a lot of stress---all kinds of stress. When you are poor, when it rains it pours. You may have housing problems. You may have more conflict in the family. There's a lot more pressure in paying bills. You'll probably end up moving more often. There's a lot more demands on low-income families. The researchers rated the level of stress each child experienced. A score was based on the results of tests the children were given when they were ages 9 and 13 to measure their levels of the stress hormones cortisol, epinephrine, as well as their blood pressure and body mass index. The findings were published by the **Proceedings of the National Academy of Sciences**.

When the researchers analyzed the relationships among how long the children lived in poverty, their stress load and their later working memory, they found a clear relationship: The longer they lived in poverty, the higher the stress and the lower they tended to score on working-memory tests. Those who spent their entire childhood in poverty scored about 20%

lower on working memory than those who were never poor. The findings indicate that education standards and other government policies that aim to improve poor children's performance in school should consider the stress they are experiencing at home.

Source: Rob Stein, The Washington Post, April 12, 2009

## CHILDREN'S HEALTH

Television entertains and even educates the youngest of children, and often gives parents a much-needed break. But allowing preschool-age children to watch too much TV – even educational shows like Sesame Street or Disney DVDs – could be putting them at risk for being overweight. In a study exploring the relationship between excessive TV exposure and overweight risk for preschool-age children, researchers at the **University of Michigan Health System** found that 3-year-old children exposed to two or more hours of TV a day were nearly three times more likely to be overweight than children who either watched or were in a room with a TV on for fewer than two hours a day, regardless of the child's environment at home. These findings, published in the April issue of the **Archives of Pediatric and Adolescent Medicine**, also reveal that one in four 3-year-old children are exposed to five or more hours of TV a day, far surpassing the American Academy of Pediatrics' recommendation that TV and other media exposure for children ages 2 and older be limited to less than two hours a day.

In a typical American home, the TV is on more than seven hours a day, with most children spending more time watching TV than in school – and that balance could be to blame for children's expanding waistlines. Television viewing for preschool-age children appears to be a powerful predictor of overweight risk. Even if a child comes from a two-parent, upper-class home and the TV being watched is considered educational, that child is still at a higher risk for being overweight than a child who watches fewer than two hours of TV a day. In a previous study, it was found that

children with more behavior problems are more likely to become overweight. Likewise, research also has shown that children who watch excessive amounts of TV have more behavioral problems. Children from low-income backgrounds or those who have a lot of stress at home watch more TV and are more likely to be overweight.

Based on these findings, it was determined there could be a connection between excessive TV exposure and a preschool-age child's likelihood for being overweight. For the study, researchers looked at 1,016 children at ages 3 and 4 ½. These children, along with their parents, were enrolled in the National Institute of Child Health and Human Development Study of Early Child Care and Youth Development, a longitudinal child care study designed to determine how variations in child care are related to children's development. The NICHD Study of Early Child Care and Youth Development provided a sample for the U-M study that was representative of both urban and rural areas in the United States.

The children in the study were classed as overweight if their body mass index (BMI) was at or above the 95th percentile. TV exposure – defined as being awake in a room when the TV is on whether or not the child was actively watching, and included broadcast and cable TV as well as videos – was determined based on a questionnaire completed by the children's mothers. The researchers were able to see the clear links between the amount of hours a child was exposed to TV and their potential to be overweight. At 3 years old, children were three times more likely to be overweight if they were exposed to two or more hours of TV a day, and 25 percent watched more than five hours of TV daily. By age 4 ½, children with excessive exposure to TV were nearly three times more likely to be overweight than those with less TV exposure. While programming – whether it was an educational show or not – did not impact a child's overweight risk, Lumeng says excessive exposure to advertising on TV for unhealthy foods and the likelihood that a child may snack while

watching TV may be contributing factors to weight gain.

Additionally, children who watched two or more hours of TV a day had more behavior problems. They also were more likely to have mothers with more depressive symptoms and a less stimulating home environment. Regardless of the child's overall quality of their home environment, TV exposure should be considered an independent risk factor for overweight risk in preschool-age children. Parents should consider how much time the TV is simply on, not just the time the child actually spends watching it. Our findings suggest the exposing children to TV even as background noise may increase their overweight risk. Simply put, families should try to reduce the amount of time the TV is on in their homes. Reduced TV time is beneficial for everyone.

Source: University of Michigan Press, April 2009

#### CHILDREN'S HEALTH

The American Academy of Pediatrics wants doctors to stop using the term **"shaken baby syndrome"** in favor of something more scientific. The nation's largest pediatricians' group recommends **"abusive head trauma,"** calling it a more comprehensive diagnosis for brain, skull and spinal injuries associated with shaking and other head injuries inflicted on infants. The academy says the new diagnostic term should be used in medical records and that it may provide more clarity in the courtroom. Some defense attorneys and doctors believe shaken baby syndrome doesn't exist, arguing that it's impossible to shake babies hard enough to cause brain injuries without breaking their necks. But that argument is based on faulty evidence and is not shared by most physicians who specialize in treating child abuse, The National Institutes of Health says shaking can cause bruising, swelling, and bleeding, "which can lead to permanent, severe brain damage or death."

In no way does this change the position of the academy about the potentially fatal risks of shaking an infant. The pediatrics academy recommends the new

terminology in a policy statement being published in the May issue of its journal, **Pediatrics**. Evidence shows babies can be injured by severe shaking alone but sometimes they have head injuries caused by other abuse as well. The National Center on Shaken Baby Syndrome says an estimated 1,200 to 1,400 U.S. children are injured or killed by shaking each year, but that the number may be much higher. The advocacy group also uses the umbrella term "abusive head trauma," but says shaking is the leading cause of death in these cases. The pediatricians' new policy says doctors should be alert to signs of head trauma that could include abusive shaking. Doctors also should teach parents safe ways to calm fussy babies and how to avoid the dangers of shaking, the policy advises.

Source: Pittsburgh Post-Gazette, Lindsey Tanner, The Associated Press, April 29, 2009

#### CHILD WELFARE

According to the U.S. Department of Health and Human Services' Administration for Children and Families "Child Maltreatment 2006" annual report, an estimated 905,000 children were victims of abuse or neglect in fiscal year 2006 in the U.S., District of Columbia, and Puerto Rico, of which 64.1% involved neglect. According to data collected in the voluntary collection system the National Child Abuse and Neglect Data System, an estimated 3.3 million referrals of possible maltreatment were received by child serving agencies in 2006. In 2006 there were an estimated 1,530 deaths with three-quarters of those deaths being children under 4 years of age; 40% of the deaths were attributed to neglect. Although child abuse is typically divided into four categories – physical abuse, neglect, sexual abuse and emotional maltreatment - often times, a combination of these categories exists together, rather than a single factor.

Source: Edie McGoff, The Journal, April 13, 2009

## FOSTER CARE

### Florida

#### Immigration

Immigration officials arrested the grandmother and mother of two children in the Florida Department of Children and Families' care during routine scheduled visits. It is alleged that in both instances, authorities were tipped off by social workers regarding the time and place of the visits. Immigration advocates argue that such arrests will deter immigrants from cooperating with social workers and demonstrates a systemic problem. DCF spokeswoman, Erin Gillespie, stated that DCF is legally obligated to contact local authorities about criminal neglect cases and always cooperates with deputies by providing information, such as scheduled visits, when it is requested. Mike Williams, head of the Collier County Criminal Alien Task Force, stated the sheriff's office does not routinely check citizenship status unless the person has a criminal history.

Source: Kelli Kennedy, The Miami Herald, March 25, 2009

### California

A sibling group of foster children, including a 12-year-old girl, an 11-year-old boy and a 10-year-old boy, spent five days in juvenile hall in Santa Clara County before being taken to a shelter for abused and neglected children. The children were placed in juvenile hall for allegedly molesting a younger sibling. County supervisor Dave Cortese ordered the Social Services Agency, the Probation Department, and the Superior Court to send him a report detailing the events so that changes can be made. Cortese has also requested information concerning whether safeguards and protocols for dealing with very young children have been put in place since the incident. Public comment on the incident will take place in April.

Source: Karen de Sa', The Mercury News, March 27, 2009

### Federal

The United States Senate recently approved a budget amendment authored by Senator Mary Landrieu aimed at reforming foster care financing. The amendment establishes a deficit-neutral reserve fund for legislation "that would shift the federal foster care financing system from one that supports programs to one that supports children and permanency. Federal dollars should follow the needs of children at all stages of the process - whether their placement is reunification, adoption or guardianship. The amendment ensures that the foster care system is focused on children in care and the families that provide loving homes. This comes on the heels of another amendment that was adopted last month that adds programs for mentoring foster youth to the list of national service programs eligible for assistance.

Source: The Louisiana Weekly, April 13, 2009

### Sexual Orientation

#### Ohio

The Butler County Prosecutor issued an opinion stating that the Butler County Children Services policy giving preference in adoption placement to married couples violates Ohio law. The four page opinion signed by Assistant County Prosecutor Roger Gates states that state law promulgated by the director of the Ohio Department of Job and Family Services outlines the preferential order for potential adoptive parents as follows: adult relatives of the child or someone named by the birth mother, then the child's foster caregiver, then other suitable prospective families. Butler County changed this order by placing "a married mother and father as long as such are available unless the agency determines that the placement is not in the best interest of the child" second in the preferential placement order. The opinion released by the prosecutor's office states children services agencies do not have the

authority to amend the preferential placement order without a change in statute or a rule change directed by the director of ODJFS.

Source: Josh Sweigart, The Middletown Journal, April 11, 2009

## COURT CASES AFFECTING CHILDREN AND FAMILIES

### PENNSYLVANIA CASES

None Reported

### OTHER STATES' CASES

#### ADOPTION

##### California: Martinez-Madera v Holder

The United States Court of Appeals for the Ninth Circuit denied a petition for review of a deportation order of the Board of Immigration Appeals, holding that petitioner was not a United States citizen because he was born to two unwed non-citizen parents and he could not derive citizenship from his mother's subsequent marriage to a United States citizen. The court noted that although the stepfather had held the petitioner out as his son, the stepfather had never adopted the petitioner, nor had the petitioner taken advantage of the naturalization process during the forty-four years that he had resided in the country. Petitioner did not qualify for citizenship under 8 U.S.C. § 1401 because his mother was not married to his citizen stepfather at the time of his birth. In addition, the court held petitioner did not qualify for citizenship under § 1409 and California's legitimacy statute because he did not share a blood relationship with the citizen stepfather.

Cite: No.06-73157; 2009 U.S. App. LEXIS 5379 (9th Cir. March 16, 2009)

##### Arkansas: In re Adoption of M.K.C.

The Supreme Court of Arkansas affirmed the order of the Pope County Circuit Court denying the adoption petition of an unmarried mother to adopt her biological child. The court found that although adoption was permitted by statute, the mother did not show by clear and convincing evidence that adoption was in the best interests of the child where the adoption would effectively terminate the rights of any person who would claim to be the biological father. The

court affirmed the lower court's finding that any benefit derived from the adoption would be negated by the child's loss of her right to potential support and inheritance from her father.

Cite: No. 08-1367 (Ark. March 5, 2009)

##### Kinship Caregivers

##### Georgia: Owen v. Watts

The Court of Appeals of Georgia, First Division, reversed an order granting the adoption of M.F.L. by the maternal grandmother, holding there was insufficient evidence that the adoption was in the child's best interest. The day after appellants, the child's former foster parents for 21 months, filed an adoption petition, the child was removed by DFCS and placed with the grandmother who subsequently filed a petition to adopt M.F.L. The foster parents intervened in the adoption proceeding and subsequently appealed the adoption order. The court noted the legal dichotomy which allows a trial court to give consideration to a surrender of parental rights in favor of a relative, but also allows a foster parent with custody of a child for over 12 months to be considered the first choice for permanent placement of the child. The court also stated an adoption proceeding is ultimately governed by a best interest analysis and reversed the order granting the grandmother's adoption petition because there was no evidence to support a finding that the adoption was in M.F.L.'s best interest.

Cite: No. A08A2012; 2009 Ga. App. LEXIS 235(Ga. Ct. App. March 5, 2009)

#### ADOPTION

##### Indiana: In re Adoption of Infants H.

The Supreme Court of Indiana reversed an adoption decree entered in favor of a New Jersey resident concerning two children born in Indiana to a mother from California who had been artificially inseminated by an anonymous donor, holding the Interstate Compact for Placement of Children (ICPC) must be complied with in this case; Indiana retained

jurisdiction over the children whose prospective adoptive father resided in New Jersey. The trial court granted the adoption despite numerous and significant factual inconsistencies in the adoption petition, and also dismissed a pending CHINS case which had been filed by the Department of Child Services in response to concern from hospital staff about the petitioner's ability to properly care for the children. The Supreme Court held the trial court erred by disregarding the ICPC, as the court did not have the required approval from the New Jersey compact administrator.

Cite: No. 29S02-0904-CV-140; 2009 Ind. LEXIS 339 (Ind. April 8, 2009)

#### CHILD PROTECTION

##### **New Jersey: New Jersey Div. of Youth & Family Servs. v. G.M.**

The Supreme Court of New Jersey affirmed in part and reversed in part the appellate court's decision that a mother's due process rights had been infringed upon as a result of a transfer of custody to the non-custodial father, and remanded the case for a dispositional hearing. The children were removed from the mother's home after a physical altercation occurred between mother and daughter. The Division of Youth and Family Services was given temporary custody, and the children were placed with their father in Florida while the mother underwent substance abuse treatment. During a case management conference, the trial court granted the Division's recommendation to dismiss the case and return legal custody to both parents, with the father retaining physical custody. The appeals court reversed and remanded the case for a custody hearing to determine the children's best interests, holding that the mother did not have adequate notice of the Division's changed recommendation to continue placement with the father. The Supreme Court affirmed the decision, but disagreed with the standard used by the appeals court. The Supreme Court remanded the case for a dispositional hearing, as opposed to a custody hearing, because it was error for the trial court to dismiss the case without holding a

dispositional hearing to determine whether the children could be safely returned home.

Cite: No. A-6 September Term 2008; 2009 N.J. LEXIS 151 (N.J. April 7, 2009)

#### CHILD PROTECTION

##### **Ohio: State v. Silverman**

The Ohio Supreme Court reversed the judgment of the Court of Appeals for Montgomery County holding that an out-of-court statement made by a child under the age of twelve which describes a sexual act performed by, with, or on the child or any act of violence directed against the child, is not excluded as hearsay under Ohio Evidence Rule 807 and the court is not required to make determination regarding the child's competence to testify prior to admitting the statement. Here, the four-year old declarant was no longer available for trial and admission of his out-of-court statement led to a guilty verdict on a charge of gross-sexual imposition. The court noted that although the majority's previous decision in *State v. Said*, 644 N.E.2d 337 (1994) declared that in order for an out-of-court statement to be admissible, the child must be found to be competent at the time the statement was made, the present case was sufficiently distinct from that of *Said* as to overrule its expansive holding. In reaching the decision, the court found that the better approach was to return to the plain language of rule 807 which does not require the court to address a child declarant's competency. Cite: No. 2008-0582; 2009 Ohio 1576, 2009 Ohio LEXIS 900 (Ohio, April 9, 2009)

#### TERMINATION OF PARENTAL RIGHTS

##### **Colorado: In re Petition of J.A.V.**

The Court of Appeals of Colorado, Division One, reversed and remanded the order of the El Paso County District Court terminating the father's parental rights after finding that he had abandoned his daughter, and granting the stepfather's petition for adoption. The court held that clear and convincing evidence did not support a finding that the father intentionally

abandoned the child because he did not willfully and wantonly leave the child without the intent to return. Instead, the father had filed a motion to modify parenting time and a petition for allocation of parental responsibilities, which the court held had been erroneously stayed during the stepparent adoption proceedings. Therefore, the court reversed the order terminating the father's rights and ordered the lower court to lift the stay on the parental responsibilities case.

Cite: No. 07CA2169; 2009 Colo. App. LEXIS 331 (Colo. Ct. App. March 5, 2009)