REPRESENTING CHILD VICTIMS AND WITNESSES IN CRIMINAL PROCEEDINGS  by Marguerite C. Gualtieri

In 1987, Mark Hardin, ABA Center on Children and the Law child welfare expert examined the use of guardians ad litem (“GALs”) for child victims in criminal proceedings, and noted that eight states had statutes or court rules that sanctioned the practice (See M. Hardin, Guardians ad Litem for Child Victims in Criminal Proceedings, 25 J. of Fam. L. 687 (1986/1987)). He concluded that the use of GALs in such a context was “an important experiment” that should be continued, expanded and carefully studied (supra at 728).

Nearly twenty years later, this writing confirms that the “experiment” is alive and well, at least in Philadelphia. Moreover, the potential exists for such programs in at least nineteen other states, where the law allows either a child advocate, court appointed special advocate, special advocate, GAL, or counsel to be appointed in criminal proceedings.

The Support Center for Child Advocates (Child Advocates) has been representing substantial numbers of child victims and witnesses in criminal proceedings since the early- to mid-eighties. Child Advocates will celebrate its 30th anniversary in 2007, having been founded in 1977. Utilizing a pro bono model that teams a volunteer attorney with a staff social worker and a consulting staff attorney to provide technical assistance, Child Advocates represents children in civil dependency proceedings, criminal proceedings, domestic relations hearings and adoptions.

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Addressing the Needs of Juvenile Status Offenders and Their Families  by Cindy C. Albracht-Crogan

A status offense is conduct declared by statute to be a crime for children, but which would not be a crime if committed by an adult in that same jurisdiction. Examples include truancy, running away from home, drinking alcohol and smoking. In 2004, over 400,000 juveniles were arrested for status offenses, a remarkable increase over the 160,000 status offender arrests in 1996. [See Charles Puzzanchera, “Trends in the Justice System’s Response to Status Offending: Office of Juvenile Justice and Delinquency Prevention (“OJJDP”) Briefing Paper, p. 1 (January 16, 2007).] In 1974, Congress changed how status offenders were treated through its adoption of the Federal Juvenile Justice and Delinquency Prevention Act, 42 U.S.C. 5601 (“JJDPA”). The JJDPA and its amendments prohibit the use of adult jails and lockups for the incarceration of juveniles and status offenders. The

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FROM THE COMMITTEE DIRECTOR

The most common question that I receive as committee director is “how do I get involved in the Children’s Rights Litigation Committee?” Below are some of the answers to that question.

We have some active subcommittees: Child Welfare, Education, Immigration, Juvenile Justice and Law Students. We have also begun a new subcommittee this year under the leadership of Claudia Tobler from Paul Weiss in Washington, DC. The Rule of Law in a Time of Crisis subcommittee is a part of a larger project of the Section of Litigation. This subcommittee is writing a paper focused on appropriate responses to time of crises that will maintain the rule of law in the area of children’s law. The paper is focused broadly on areas of child custody, education and safety. We are working with the Family Law and Immigration Committees of the Section of Litigation in addition to a small but active group of CRLC members. We would welcome you to join us in this work.

Of course, we publish a quarterly newsletter (which you are currently holding) and would welcome your involvement through the writing of an article or becoming a member of our editorial board.

We also have a very active website under the direction of our fantastic ‘webmaster’ Tom Young from Orlando, FL. We maintain an up-to-date listing of national and some local trainings for children’s lawyers in every substantive area. We have current case notes and well as historical case notes (e.g. In re: Gault). We need contributors to the website, called ‘web reporters’ who can send us interesting cases and trainings which should be on the site. We are also open to other innovative content for the website.

One of the ways that our committee is different from other Section of Litigation committees is that we have a Working Group of 10 children’s law and litigation experts, who, through the generosity of the Section of Litigation, are able to travel nationwide both to increase the number of pro bono children’s lawyers and the number of children’s law programs nationwide to respond to children’s legal needs. The Working Group responds to requests for technical assistance in the start up and expansion of child advocacy programs, assists with the training of pro bono lawyers, and focuses outreach to geographic areas where children’s legal needs are the greatest. To access this expertise for your community, please contact me.

Catherine Krebs is the committee director of the Children’s Rights Litigation Committee. Prior to holding this position she was a staff attorney at the Children’s Law Center of Massachusetts where her practice focused on abuse and neglect cases. She can be reached at (202) 547-3060 or catherinekrebs@prodigy.net.
Representing Child Victims and Witnesses in Criminal Proceedings (continued from page 1)

Over the span of more than twenty years, *Child Advocates* has represented approximately 1200 children in criminal proceedings. While any criminal matter involving violence against a child is horrific, child victims of intra-familial violence often suffer additional consequences due to their relationship to the perpetrators. An attorney or other advocate can play a crucial role in assisting the child through this difficult process.

Overview of Representation

Consider the following two scenarios:

Nine-year-old Rashonna lives in West Philadelphia. One morning she discloses to her fourth-grade teacher that her mother’s boyfriend who lives in her home has been coming into her bedroom at night and touching her. Sobbing, she states that sometimes he makes her touch him. Rashonna’s teacher calls the Child Abuse Hotline and also Rashonna’s mother. Rashonna’s mother comes to the school to pick up Rashonna; she herself is hysterical, but she gathers Rashonna in her arms and immediately takes her to the emergency room. She then takes her to the police station and together Rashonna and her mother talk to a detective. Over the next few days, Rashonna’s mother tells her boyfriend who has been arrested that she does not want to have anything to do with him. She enrolls Rashonna in counseling, and takes Rashonna to the court hearing when requested by the Assistant District Attorney. She is loving and supportive of Rashonna, telling Rashonna that she did the right thing by telling her teacher, and telling Rashonna that she is sorry that she did not realize something was going on so she could have stopped it.

Across town, Katie also discloses to her fourth-grade teacher that her step-father has been raping her several times a month for “a long time.” Katie’s teacher calls Child Protective Services (“CPS”) and the police. Katie’s mother is hysterical. She takes Katie to the doctor, but refuses to allow the police to interview Katie. CPS indicates the report based on its finding that Katie is credible. The police charge Katie’s step-father based on medical evidence. Katie’s mother visits Katie’s step-father in prison and posts his bail. She allows him back in the house. She does not bring Katie to the first listing of the criminal matter. When the Assistant District Attorney calls to follow up, Katie’s mother says that Katie changed her mind; that she made up the whole story because she was angry at her step-father for not allowing her to go to a birthday party.

Generally, GALs are appointed in cases where there is a concern, either by the court or the prosecutor, that the child is not being protected by the non-offending caretaker. Therefore, although the trauma and difficulties inherent in a criminal prosecution, e.g., having to talk with the prosecutor, the need to testify before a judge or jury, or the emotional toll of continuances, will be the same for both Rashonna and Katie, it is unlikely in Philadelphia that a GAL will be appointed for Rashonna. Under the facts presented above, Rashonna’s mother is concerned about her well-being and safety, is doing her best to protect her daughter from future harm, and is assisting with the prosecution. As a result, a GAL is not necessary in this scenario. In addition, GALs are also appointed in cases where there is a discrete legal issue that arises pertaining to the child regardless of child protection issues, for example when a subpoena is issued for the counseling of the child, counseling that may have been sought to deal with the aftermath of the sexual assault that is at issue in the criminal matter.

It is critical to understand the distinctions between the criminal, civil dependency and child protection systems in order to effectively represent a child victim in a criminal case. The criminal system is a defendant-based system. The goal of a defendant-based system is to punish the defendant, deter future crime and protect society. Victims and witnesses are not parties to these proceedings. As a result, they lack the procedural safeguards afforded to the defendant. *Child Advocates* teaches our volunteer attorneys that although we are usually aligned with the prosecution in that we want to find out whether there is a guilty party and, if so, we want the guilty party to be held accountable for his or her abuse of our child-client, there are times when our young child’s interests may be independent of, or even conflict with the interests of the prosecution. This distinction is evident in cases where the prosecutor’s need for the child to testify may conflict with the child’s willingness or ability to testify in front of his or her abuser. It is the role of the GAL in this situation to advocate for the needs and welfare of the child victim.

It is also essential to recognize that, at the end of the trial when the prosecutor and child’s attorney close their case files and say good bye, this child remains a part of

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his or her family regardless of the outcome of the case (unless there is a parallel civil dependency action that is progressing towards termination of parental rights). As a result, a child’s attorney must recognize the child’s relationship with his or her family from the first day of the representation and identify relevant issues that will impact the child’s long-term interests. Questions that need to be answered within this framework, include:

- Should the child testify at a trial, or would a plea bargain be better?
- Should the child’s mother or father go to prison?
- Should the recommended sentence include family counseling, effective anger management, drug and alcohol rehabilitation, or mental health counseling depending upon the circumstances?

Children’s attorneys in criminal proceedings need to look to the day when they will be out of the child’s life – are they leaving the child in a better situation than on the day when they first met?

Role and Activities

Agreeing to undertake the representation of a child victim or witness in a criminal proceeding can be a daunting experience. These cases may be difficult emotionally. In addition, the attorney may be uncertain of his or her role. Foremost, the child is not a party, and thus, the usual activities familiar to a lawyer, such as subpoenaing witnesses, making evidentiary objections, and direct and cross-examination of witnesses, are not available to the attorney. Another activity familiar to lawyers, interviewing their client about the subject of the legal matter or litigation, may occur on a more limited basis than usual. There are, however, plenty of activities for the child’s attorney.

The activities of the child victim’s attorney are many and varied. The following discussion, while not meant to be exhaustive, highlights the basic tenets of representation in this unique arena.

A. Develop a relationship with the child.

The lawyer’s supportive role cannot be fulfilled unless the child knows his or her attorney and has frequent contact with him or her over time. It is also important to gain an understanding of the child’s use of language and names for the important people in his or her life, to ensure effective communication. What family members does the child trust, and to whom can the child go when in need? A solid relationship and knowledge of one’s child-client can have a positive impact on the outcome of the case.

B. Secure needed services.

The most important of these services is usually therapy; it is important, however, to remain cognizant of other areas of need that warrant connection with outside agencies or individuals, such as education needs stemming from the trauma. Additionally, crime victim compensation, where appropriate, should be pursued.

C. Explain the criminal process to the child and prepare them regarding what to expect, using age-appropriate language.

The courthouse, judges in their black robes, hostile lawyers, and throngs of people can be intimidating to adults, let alone to a young and vulnerable child. The child’s attorney should attempt to help the child understand what is happening and why it is happening. In Philadelphia, the District Attorney’s Office holds a monthly program called “court school” that allows children who need to be present in court, to visit an actual courtroom, sit in the witness chair, and take turns in the various roles, i.e., judge, prosecutor, etc. No details of the individual cases are discussed. Use of similar local initiatives designed to help allay a child’s anxiety should be explored.

It is important to explain to the child that no one can predict what a judge or jury might do, and that sometimes a judge or jury make their decision based on reasons other than what they hear from victims and witnesses. In this way, the lawyer begins to prepare the child for the possibility of a not-guilty verdict.

D. Monitor the progression of the case.

The importance of staying in close contact with the prosecutor cannot be over-emphasized. Frequent contact by the child’s attorney may help keep the matter involving the child-client high on the prosecutor’s priority

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E. Protect the child’s legal interests.

The two main areas where the child’s individual legal interests may be implicated in these cases are the child’s right to privacy in therapy and counseling records, and the child’s Fifth Amendment right against self-incrimination when recantation occurs. In the area of privacy rights in counseling records, appropriate motions should be filed and argued including Motion to Quash Subpoena, Motion to Return Privileged Records, or a Motion to Remove Defense Counsel, in the event that the he or she has already viewed the private material.

The area of recantation is less clear. It is not uncommon for a child victim to recant his or her allegations even when the facts he or she has shared are true. As a society, we teach children to come forward when they are being hurt or abused, we encourage them to go to a trusted adult, we state implicitly, if not explicitly, that life will be better and we will help them if they only tell the truth. Often times, however, nothing is further from reality.

Recall the scenario concerning Katie in the opening pages of this article. Katie told the truth, yet her mother is angry with her, and calling her a liar. She is siding with Katie’s step-father, and is allowing him back into the house. Often coupled with this is the added outside pressure and negative responses from brothers and sisters, who are not the step-father’s victims, as well as extended family members, all who begin to treat Katie angrily or negatively. As bad as life was prior to disclosing, life becomes far worse for Katie after disclosure. Therefore, she just wants life to go back to the way it was, and it seems only logical to Katie that the way to do this is to say she made up the whole story.

As the child’s lawyer, one must be familiar with the laws in the jurisdiction pertaining to false statements to authorities, perjury, and other relevant provisions, to advise the child and/or the court, how the child will proceed.

F. Focus on the child’s safety and well-being.

The child’s safety should be paramount. A child’s attorney may obtain much of the information related to the child’s safety through interviews with the child and others in the child’s life. It is imperative to visit the child in his or her own home when possible and to meet the child’s caregivers. This will allow the attorney to observe personally the child’s home, as well as the child’s interactions with caregivers. The child’s attorney should request stay-away or protection orders, when appropriate, and bring violations of these orders to the attention of the prosecutor and the court. When necessary, the attorney should file a dependent or other necessary petition to bring the issue of the child’s safety within the jurisdiction of the appropriate court.

G. Bring the child’s voice to plea-bargaining.

It is important to discuss the possibility of a plea with the prosecutor before she offers it. Make sure the prosecutor understands the child’s needs, both short-term, e.g., effect of testifying, and long-term, e.g., the effect on the child of his or her mother going to prison. Help the prosecutor consider inclusion of services for the offending family member in the terms of the plea. These services may help effectuate long-term, positive change for the family.

A plea bargain can be critical in those cases where the child’s testimony, either due to age, family pressure, or other reason, seems inconsistent or changing. As the child’s attorney, we must be concerned with the possibility that the child will incur more trauma, reliving the assault through her testimony, only to have the judge or jury find the defendant not guilty.

H. Participate in the prosecution’s witness preparation of the child-client.

At some point, either before the preliminary hearing, or the trial, or both, the prosecutor handling the hearing or the trial will want to speak to the child to prepare the child to testify. The child’s lawyer should be present to support the child, to look out for the child’s interests, and to assist the prosecutor in understanding the child’s statements and use of language when needed.

I. Support the child in the courtroom and through her testimony.

It is important to ensure the safety and comfort of (continued on page 6)
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cild throughout the proceedings. The child should not be waiting for the hearing to be called in the same room as the defendant and his family, which is possible if the defendant is out on bail. If there is not a special victim-witness room, designed as a safe place for victims only, look for some other child-friendly space in the courthouse. Remind the child’s caretaker who accompanies the child to court to bring needed food, toys and games, to keep the child engaged and occupied. It is essential to remind the prosecutor that a child who is ready to testify at 9:00 a.m. may be an emotional wreck incapable of testifying at 2:00 p.m. if forced to wait for this length of time.

The taking of the witness stand by the child to testify is a critical juncture in the proceedings, a time when the relationship that the child’s attorney has worked on developing with the child will pay off. Just seeing a friendly face in the courtroom can be immensely reassuring to a child. Other family members who might be supportive may need to be sequestered as witnesses. The attorney can also provide other assistance, such as remaining vigilant to the emotional demeanor of the child and asking for breaks when needed. A child’s attorney should be aware of his or her local jurisdiction’s law regarding the circumstances under which a child’s may testify outside of the presence of the defendant, and petition the court for use of any alternative means available.

J. Assist the child in preparing either an oral or written victim impact statement or prepare one on his or her behalf if appropriate.

At the sentencing phase for the defendant, it is important to communicate to the court what impact the crime and its aftermath has had on the child-victim. Sometimes older children and youth find it cathartic to speak to the judge in person or write a letter on their own. Often times, however, the child is young, or just so glad that the process is over that he or she will want his or her lawyer to handle the letter. Often a therapist can help inform the lawyer in this regard as well.

K. Build a watchful network of adults on behalf of the child.

Sometimes, after a long and difficult trial, the defendant is found not guilty. The child has to deal with the fact that he or she was not believed, and perhaps has to face family members who did not believe him or her previously, who now can say “I told you so.” The defendant, perhaps the mother’s boyfriend, is free to return to live again with the child, placing the child at risk. The child welfare system may not be involved. In those situations where we do not have evidence to invoke the jurisdiction of the child protection court, we may still have a gnawing concern that our child (soon to be ex)-client may be at risk.

One response to address this lingering concern is to try to reach out to trusted persons in the child’s life, advising them that you are closing the case, and asking them to call you if concerns arise in the future. These would be persons with whom you had contact previously during the term of the representation, e.g., the child’s teacher, school counselor, therapist, grandmother, and any others in whom the child demonstrates a level of trust and faith. Make sure the child has your contact information, and encourage the child to call you at any time in the future if they need to, even though the case is closing.

Future Directions

There appears to be a dearth of programs that focus on representation of child victims in criminal proceedings. Yet, as evidenced above, there is a need for supportive and legal intervention on behalf of those child victims whose families have chosen to support the alleged perpetrator over the child.
Significantly, an argument can be made that every court has the inherent equitable power to appoint an attorney for a child victim or witness in a criminal proceeding. In *Stewart v. Superior Court of Arizona*, 163 Ariz. 227 787 P.2d 126 (Ct. of App. 1989), the court held that a criminal division of the superior court possesses inherent equitable power to appoint a guardian *ad litem* for a child witness, upon a showing sufficient to trigger the court’s parens patriae concern, despite the absence of a specific criminal rule or statute that codifies such power.

Although the court ultimately held that the appointment of a GAL for two minor children of the parents in a criminal prosecution of the parents for child abuse of a third child was premature, the court’s opinion is informative. The court explains that statutes and rules that express the court’s authority to appoint guardians *ad litem* are not the exclusive sources of that power. The court points to the parens patriae doctrine as longstanding authority for the duty and power to act to protect the child’s best interests. *Id.* at 163, 787 P.2d at 230. Further, the court states that the court’s protective interest is implicated when a child is called as a witness in a criminal proceeding even when that child is not a victim, if there is a conflict of interest between the parent and the child or if the parent is “unavailable, unable or unwilling to perceive or advance the child’s best interests in the court.” *Id.* at 130, 787 P.2d at 231 (citations omitted).

In the states that allow for the appointment of a GAL, attorneys who represent children in civil dependency matters should consider seeking appointment in the parallel criminal child abuse prosecution. In those states without a specific statute or rule, appointment can be sought by invoking the inherent equitable authority of the court for such an appointment.

**Conclusion**

While significant progress has been made over the years to advance the legal and social service interests of children, there are still areas of unmet need. One such area is criminal proceedings involving intra-familial violence where children are victims and/or witnesses. An attorney or other advocate can play a crucial role in assisting a vulnerable child through this difficult process.

Individual children’s lawyers and executive directors of children’s law programs across the country should be aware that there is authority for the appointment of a GAL to represent a child victim or witness in all fifty states. Consequently, action should be taken to expand children’s law programs to address the unmet needs of child victims and witnesses in criminal proceedings.

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**Endnotes**

1Although many of the statutes that allow for appointment of a GAL permit the appointment of a non-lawyer, this section will speak only about an attorney’s representation of the child because that is the model (*i.e.*, attorney and social worker team) in the author’s office. Additionally, there will be no discussion of the differences, ethical or otherwise, between the appointment of an attorney as counsel for the child or as GAL for the child, about which there are numerous written scholarly works. See generally 64 Fordham Law Review, No. 4, *Special Issue: Ethical Issues in the Legal Representation of Children*, March 1996.

2Given the problems inherent generally in children’s testimony, e.g., non-mastery of language due to age and development, difficulty with concepts of time, one must be cautious about jeopardizing the veracity of the child’s statements and testimony by subjecting the child to numerous interviews and conversations about the alleged incident. *See, e.g.*, Commonwealth v. Delbridge, 578 Pa. 641, 855 A.2d 27 (Pa. Sup. 2003) (child’s testimony concerning sexual abuse called into question as being “tainted” due to multiple interviews and multiple influences on her testimony).

3The Federal Crimes Code, 18 U.S.C.A. § 3509 (h) (1), allows for the appointment of guardians *ad litem* for victims and witnesses in federal criminal prosecutions. Additionally, the Child Abuse Prevention and Treatment and Adoption Reform Act, 42 U. S.C.A. § 5106a (b) (2) (A) (xiii) (eff. June 25, 2003), requires that a trained GAL be appointed in every case involving an abused or neglected child which results in a judicial proceeding.
In the 1990s, the number of homeless and at-risk youth ("street youth") in the greater Seattle area increased significantly. Today, on any given night, there are as many as 2,000 street youth, ranging from about 12 to 24 years of age, in the greater Seattle area. Keeping pace with this increase, service providers fought to expand and strengthen the services available to these youth. While they made phenomenal gains in providing youth with a wide variety of necessities, one aspect of the youth’s needs remained unmet in Seattle.

The missing component was that of legal assistance. While most street youth have other basic needs met, there is often a legal issue which, if remedied, can expedite the transition to a positive and healthy adulthood. Legal needs for these youth vary, but generally fall into the following categories: abuse, neglect and other family law issues; health, housing and employment issues; educational barriers; and difficulty accessing state and federal entitlements. If these particular needs are not met, youth are often prevented from achieving other goals necessary for making progress toward stable housing, employment and educational opportunities. These youth are then left with less constructive options for resolving their issues.

A group of law students, staff, and professors at the University of Washington took it upon themselves to fill this gap in services. Their efforts led to the creation of the Street Youth Legal Advocates of Washington (SYLAW). SYLAW has helped hundreds of youth overcome the legal obstacles they face.

History

SYLAW fills the gap. In the spring of 1995, law students at the University of Washington School of Law began work on a street youth advocacy project. The project was intended to mirror an adult homeless advocacy project in which attorneys volunteered at a homeless shelter and provided information, referrals, and representation.

The program began with law students volunteering at a local youth drop-in center to supply legal information and referrals. Unfortunately, the program had difficulty getting off the ground and faded away. In the fall of 1996, several faculty, staff and students from the UW School of Law began to revive the dormant program. They hoped to include as one of the program’s components a way to actually resolve the legal problems of the youth. The new program intended to use law students working under the guidance of a supervising attorney from the law school. In addition, each student was to have a community pro bono attorney at his or her disposal for advice on specific issues. This way, clients would not only receive education about their problems, but a resolution of them as well. Representation was to be limited to civil law, as youth are entitled to a free criminal defense by public defender agencies.

In the summer of 1997, the program successfully sought 501(c)(3) status and was incorporated as SYLAW, Street Youth Legal Advocates of Washington. Several students began intensive work on preparing SYLAW for its official launch, including researching issues on which the program was to educate and/or provide representation. To help better grasp what issues SYLAW might encounter, the program conducted a city-wide survey of service providers and visited programs in the District of Columbia and New York. The students solicited community leaders for an Advisory Board, contacted care providers, and applied for preliminary grants to get the project off the ground and worked with care providers to better define how its educational and referral processes would work. In the fall of 1997, SYLAW began to provide comprehensive services.

SYLAW makes an impact through education. SYLAW partnered with innovative existing resources to provide outreach and legal education. Twice a month, students would ride along with Streetlinks, an outreach van that provided basic services to street youth in Seattle. The partnership produced multiple positive effects.

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SYLAW: Law Students Dedicated to Justice for Street Youth (continued from page 8)

Even when not offering legal information, the students were able to learn more about the youth and understand how and why they came to be on the streets. Students routinely described it as a life-changing experience. In addition, riding along in the van established SYLAW as a legitimate service in the eyes of the street youth community, a critical goal for any successful program as the distrust of lawyers among this community runs high. Street youth rarely see lawyers as distinct from a system they feel helped put them on the streets. They often refer to public defenders as “public pretenders” and harbor even more disdain for prosecutors. The idea of a civil attorney, beyond someone who “sued people,” was foreign to both youth and service providers. In fact, an early meeting with the director of a local health clinic ended with the frustrated director exclaiming, “I still don’t get exactly what you’re going to do, if not help these kids with their criminal cases.” His frustration was understandable given that the creators of this program weren’t exactly sure either. The early SYLAW volunteers knew only that there was a need, and the partnership further opened their eyes to the lack of legal information and the overabundance of legal barriers that existed for street youth.

To address this frustration and confusion, SYLAW began to offer community-based presentations on legal issues relevant to youth. SYLAW sent checklists with dozens of legal issues to service providers who could check the issues they wished to have covered in the presentations. Generally, two students, under the supervision of an attorney, would prepare the presentation using the outreach materials located in the growing SYLAW library. The students would attend the presentation, speak briefly about SYLAW and the referral process, and after presenting, would ask each participant to fill out an evaluation of the presentation. After awhile, it became apparent that presenting to the providers was equally as important as presenting to the youth. While the low pay for service providers kept turnover high, it rarely approached the turnover in the youth population. Thus, training providers was critical to ensure that information was actually reaching new populations of street youth.

SYLAW’s public education was not solely limited to teaching about specific legal tools. For a long period of time, SYLAW students taught a weekly class at an alternative school in a local drop-in center and modeled the curriculum on Street Law courses. Classes on topics as broad as the first amendment and legislative process were included, and the students were generally very engaged. SYLAW conducted classes for several different groups, including offender youth, Campfire Girls, and public school students.

Another method of reaching out was closer to traditional legal services. SYLAW began to offer weekly "hang out the shingle" information centers at local service provider sites, including alternative schools for street youth. Youth asked SYLAW volunteers questions and were provided with information and referral services.

SYLAW assisted David, a teen who had made it to his sophomore year of high school without earning any credits. David had severe learning difficulties and had begun to fail to show up for classes and was facing possible time in youth detention as a result of a truancy contempt motion filed by the school district. SYLAW worked to get the truancy contempt motion dismissed, obtain special education services for the student, and work with the school and school psychologist to obtain full educational testing. David received additional help as a result and was on a path towards graduation.

SYLAW provides a voice for youth. Connecting with the youth and providing information soon became routine. But students expressed a recurring frustration with providing referrals: few legal providers were actually equipped to handle the issues of street youth. One problem was logistical: being able to meet youth where they were and when they were available. Another was being able to provide services in a holistic manner. While one attorney might be able to help a youth get federal benefits, they might not be equipped to handle

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the issues related to helping that youth escape an abusive parent. For most youth, having two attorneys is often overwhelming, and SYLAW quickly realized it was going to need to establish better services to represent these youth. At the same time, a statewide legal services provider, Columbia Legal Services, was again attempting to reach out to this population, but still was stymied by the fact that these youth didn’t connect with the traditional style of providing legal services.

In 1999, Columbia Legal Services and SYLAW joined together and began to provide the full range of civil legal services and education for at-risk and homeless youth. Two to four students at a time interned at Columbia, each handling a number of cases. The student interns also helped with the outreach portion of the program, which was still largely performed by volunteer students.

Referrals to SYLAW were often made by caseworkers who had received written consent from their clients to contact a legal agency and to disclose any relevant information. In choosing whom to represent, SYLAW gave preference to youth who had been referred by a service agency. Walk-in clients were accepted on an availability basis.

SYLAW and Columbia invested significant resources in the law student interns. One goal of SYLAW was to create young attorneys who, wherever they practiced, would understand the legal needs of street youth. In order to make sure that law students got as much out of the program as possible, law student interns were required to commit at least 20 weeks to the program, but most stayed on for a year or longer. Interns were given substantial responsibilities: representing clients in court, working on briefs in state and federal court, and counseling clients on critical matters. It was not unusual for students to come in on weekends or work nights to accommodate clients – they did this not out of a sense of duty to SYLAW, but out of passion for the clients’ cases. Former interns have gone on to work for State Supreme Court Justices, big and small law firms, the prosecution and the defense bar, and the state Attorney General’s office, among other positions. They have often commented that their experience with SYLAW has helped positively shape how they approach issues involving youth. Former interns have taken on pro bono cases, and worked with their firms to secure donations to keep SYLAW afloat.

In order to make legal information more accessible to youth and service providers, SYLAW launched a website (www.sylaw.org) and produced materials that informed at-risk youth and their service providers about relevant legal issues. Throughout the course of providing services, SYLAW interns discovered their clients often have better access to the Internet than to the mail or phone. Therefore, communication and information dissemination through the web became a useful tool.

SYLAW worked to involve private law firms as well, coordinating the law firm representation of 30 youth service agencies who were seeking to clarify the laws regarding services to at-risk and homeless youth. The result of the process was legal memoranda which were circulated among all service providers to help them better serve young clients in need.

_Braam v. State of Washington_. Successes have come on systemic levels as well. The expertise gained through the SYLAW partnership greatly helped Columbia Legal Services in its role as co-counsel in _Braam v. Washington_, a statewide class action lawsuit challenging the constitutionality of foster child treatment as it related to mental health assessments and care, placements, foster parent and caseworker training, and educational support (see www.braamkids.org). A major issue in the case became the number of youth who were poorly served and who, as a result, ended up on the streets both before they turned 18 and after legally becoming adults. In that case, the Washington Supreme Court held that foster children in Washington have a substantive due process right to be free from unreasonable risks of harm and a reasonable right to safety. The case was settled with the state, among other things, promising to reform the way it treated adolescents in its care, including improving its response to the problem of runaway foster youth.

**SYLAW in Transition**

SYLAW’s major support came from AT&T Wireless through the Equal Justice Fellowship Program of NAPIL (formerly the National Association for Public Interest Law). AT&T Wireless provided funding for an
SYLAW: Law Students Dedicated to Justice for Street Youth (continued from page 10)

attorney for two years. Additional funding was secured through local foundations, individual gifts, and general funding from Columbia Legal Services. For interns, SYLAW relied on fellowships, such as the ABA John J. Curtin, Jr. Justice Fund and the law schools’ public interest fellowships. SYLAW interns also received work study and course credit.

In late 2004, Columbia Legal Services lost half of its staff as funding was shifted to another organization. With its reduced staff, Columbia began to take cases largely focused on systemic changes. As part of this change, the direct partnership with SYLAW was reduced to an advisory role, and SYLAW was no longer equipped to provide direct representation for youth. SYLAW is now focused on expanding its membership and applying for grant funding to allow SYLAW to again provide full-time staff attorneys to represent homeless youth. In the meantime, SYLAW’s mission is being carried out through the efforts of its student chapter at the University of Washington School of Law (SYLAW-UW). SYLAW-UW continues to directly serve Seattle’s homeless youth population by partnering with service providers in the University District to support existing programs and provide new legal services.

SYLAW’s work within existing programs. SYLAW continues to provide significant services to the community, even without a direct legal services partnership.

Interactions between homeless youth and Seattle police officers are frequently characterized by feelings of hostility and mistrust. In hopes of easing this tension and cultivating greater understanding between police and youth, service providers have teamed up with the Seattle Police Department to create Donut Dialogues. Every year, SYLAW-UW provides much needed financial support for this event. The Donut Dialogues, created by and run in conjunction with Peace for the Streets by Kids from the Streets, bring police officers and youth together in one room, and begin with an educational talk about basic laws regarding loitering, trespassing and other areas where youth and police generally collide (see see www.psks.org). This piece is then followed up by a question and answer period where police and youth break into small groups and try to reach a better understanding of each other. SYLAW-UW supports this program by providing financial support to pay for incentives for youth who participate as well as food. Incentives play a major part in many of the programs that SYLAW-UW facilitates. Youth have the opportunity to earn incentives (for example, bus tokens or small amounts of cash) for their participation. Incentives communicate to youth that we value their time, as well as allow them to get some of their needs met while attending one of our programs.

Amanda, a 17-year-old youth, ran away from her physically and emotionally abusive parents. She sought emancipation in order to remain in the safe alternative living arrangement she had obtained. Prior to filing for emancipation Amanda had attempted to resolve issues through family counseling, but her parents refused to participate. Child Protective Services declined to intervene due to the client’s age. The parents filed runaway reports and harassed Amanda at her place of work and her school, causing the A-student to miss school and to seek counseling. SYLAW prevailed in a contested emancipation proceeding which enabled Amanda to live away from home legally. As a result, she has resumed her excellent academic standing and refocused on planning for college. She also resumed efforts to engage her parents in family counseling.

SYLAW breaks another barrier for youth. In 2004, SYLAW-UW partnered with the Washington Defender Association and other sponsors to start the Juvenile Records Sealing Clinic. A successful legislative reform effort headed by SYLAW, Columbia Legal Services, and a collaboration of youth services providers opened the door for thousands of young adults to seal their juvenile records. Young adults with juvenile criminal histories encounter many challenges when they apply for jobs, housing, financial aid, or take other steps necessary for adult independence. Many people incorrectly believe that juvenile conviction information is automatically destroyed upon a person’s eighteenth birthday. In Washington, however, individuals must take proactive steps to ensure that their juvenile criminal history is sealed, and

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some offenses, such as sex offenses, may never be sealed.

The Sealing Clinic is held each month to help individuals who are eligible to seal their juvenile records navigate the court process. SYLAW-UW student volunteers meet with clients and assist them in determining their eligibility and completing the necessary paperwork. Since its inception, the Sealing Clinic has served over a hundred clients and increased awareness of Washington’s sealing laws. It is our hope that the clinic will improve awareness of the consequences of juvenile criminal history.

In order to increase our presence and build rapport with the homeless youth community, SYLAW-UW volunteers attend TeenFeed once a week. TeenFeed is a program run in Seattle’s University District that provides an evening meal to homeless youth in the community. During TeenFeed, SYLAW-UW volunteers interact with homeless youth and engage them in conversation about their legal concerns and questions. Youth with specific legal needs are encouraged to visit the Street Youth Legal Drop-in Center (SYLD).

SYLD was launched in 2006. SYLAW hopes that SYLD will be a critical part of the mission to empower homeless and at-risk youth to address and eliminate the legal obstacles that may prevent them from reaching their goals. Staffed entirely by law students, SYLD is not able to provide legal representation to homeless youth. Instead, volunteers assist youth with identifying their specific legal needs and accessing pre-existing resources. SYLD volunteers help youth track down their public defender, ascertain the status of any pending criminal charges, and encourage them to quash outstanding warrants. SYLD volunteers also help youth access civil legal representation for matters related to housing, employment, and public entitlements.

**Conclusion**

SYLAW is a critical and innovative resource for the thousands of street youth in Washington State. While adapting to changing circumstances and funding issues, the program has consistently sought to provide legal services to youth in a meaningful way. The program has been popular among law students, restoring their faith in the connection between law and justice. It has also been popular among the youth themselves, creating new respect between the legal profession and young people who rarely see lawyers in a positive light. SYLAW has created bridges between private firms, providers and youth, opening lawyers’ eyes to the possibilities that exist for positive partnerships. Throughout the decade that SYLAW has existed, while many things have changed, two constants have remained: the overwhelming need for legal services among street youth and the enduring commitment of an often untapped resource for serving this population – law students.

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Casey Trupin is an attorney at Columbia Legal Services in Seattle, where he advocates for at-risk, homeless and foster youth as well as homeless adults. In 1997, Trupin co-founded Street Youth Legal Advocates of Washington (SYLAW), and went on to direct the program until 2005.

This article is a chapter in the book Lawyers Working to End Homelessness. For more information about the book or to order a copy visit the ABA web store at http://www.abanet.org/abastore/index.cfm?section=main&fm=Product.AddToCart&pid=4180012

For more information about the ABA Commission on Homelessness and Poverty visit their website at www.abanet.org/homeless/

For more information about children’s law projects around the country, visit our website at http://www.abanet.org/litigation/committees/childrights/pubs.html
Addressing the Needs of Juvenile Status Offenders and Their Families (con’t from page 1)

JJDPA does, however, allow status offenders to be securely detained in juvenile facilities in two circumstances: (1) twenty-four hours before a court appearance; and (2) if a juvenile violates a valid court order. Other than these two exceptions, non-secure alternatives must be found for juveniles charged with status offenses.

But what alternatives to secure detention should be employed for status offenders? Over the years, state leaders, legislatures, courts, attorneys, law enforcement and private entities have worked to identify and implement alternative solutions that take a total family approach such that the core problem leading to the status offense is addressed. Those efforts and other insightful suggestions were shared during the two-hour national satellite videoconference held on January 18, 2007 entitled, “Addressing the Needs of Juvenile Status Offenders and Their Families.” The videoconference was co-sponsored by the American Bar Association’s (“ABA”’s) Commission on Youth at Risk Committee, OJJDP, the U.S. Department of Justice, and the Family and Youth Services Bureau, U.S. Department of Health and Human Services. The videoconference featured several panels comprised of youth services professionals and researchers knowledgeable about innovative ways to help status offenders exit the juvenile justice system and become productive members of society. Other speakers, such as First Lady Laura Bush and Dwight L. Smith, the ABA Chair of the President’s Youth at Risk Initiative, also provided input on the importance of assisting status offenders and their families.

Below is a synopsis of the primary topics discussed during the videoconference: (1) the nature of status offenses and how they can lead to further integration in the juvenile justice system; (2) programs that have provided valuable assistance to status offenders and their families; and (3) five salient goals of any program attempting to provide helpful alternatives to status offenders and their families.

Status Offenses: A Portal to More Serious Offenses

The connection between status offending and entry into the juvenile justice system has always been known. Now, however, there is research to back up that connection. Specifically, videoconference panelists spoke of a project where researches followed the lives of 1,500 students for 20 years. The study found that a class-skipper is 4 times more likely to commit an assault and use marijuana than a child who regularly attends school. A chronic truant is 12 times more likely to commit an assault, 16 times more likely to use marijuana and 22 times as likely to commit a property crime. Thus, the importance of remedying the underlying problems that cause juveniles to commit status offenses is critical. [See generally, Myriam L. Baker, Jane Nady Sigmon, and Elaine M. Nugent, “Truancy Reduction: Keeping Students in School,” OJJDP Bulletin (Sept. 2001).]

The panelists discussed three main status offenses - truancy, running away and alcohol use - as well as the increasing number of girls being arrested for status offenses.

- **Truancy.** In some cities, the daily school absentee rate is as high as 35%. Truancy is one of the strongest signs that a young person is heading toward juvenile delinquency or educational failure. Persistent truancy is a predictor of future, more serious, delinquent behavior. [See Baker, supra.] One of the primary causes of truancy is lack of academic achievement. Children become embarrassed and detach themselves from school to avoid being called on in class or teased. Teachers that allow truant children to pass and continue on to the next grade contribute to the problem. Dr. Dianne Stone, a psychiatrist and consultant for the Cook County Detention Center, believes that children who are frequently truant should be held back a grade and tested for additional educational opportunities so that potential learning disabilities may be identified and dealt with at an early stage. Other causes of truancy include peer pressure, bullying, gang activity at school, family problems and schools being too big and starting too early. Dr. Ken Seeley, President of National Center for School Engagement and President of the Colorado Foundation for Families and Children believes that schools should think about using the AAA approach: Attendance, Attachment and Achievement. Encouraging children to attend school, attach themselves to the educational process and achieve success will result in fewer truants.

- **Runaways.** In most jurisdictions, running away from home is considered to be a status offense. In one year, 1.7 million youth ages 7 – 17 either ran

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away from home without their parents’ permission or were thrown out of their homes by their parents for at least one night. Running away from home poses a multitude of problems for juveniles including further victimization, maltreatment, alcohol or drug use, entry into the mental health system and poor health. [See generally, Heather Hammer, David Finkelhor, Andrea Sedlak and Lorraine E. Porcellini, “National Estimates of Missing Children: Selected Trends, 1988-1999, Office of Justice Programs (December 2004).]

- **Alcohol Use.** Alcohol is the drug of choice for today’s youth. The videoconference panelists confirmed that 5,400 juveniles die each year from alcohol use, an average of 12 juveniles per day. 7,000 juveniles in this country will try alcohol for the first time this year. The panelists in the videoconference often mentioned that other status offenses are more likely to be committed when a juvenile has consumed alcohol.

- **Increase in Girls as Status Offenders.** The population of girls who are arrested for status offenses is on the rise. Currently, 40% of status offenders are girls. Margaret Zahn, the principal investigator and project director of the OJJDP Girl Study Group, attributes some of this increase to the reality that girls are more often sexually and physically abused at home. This leads to girls becoming runaways. Ms. Zahn believes that troubled girls should receive specialized support to deal with their different mental health needs, including higher incidences of Post Traumatic Stress Disorder and depression. [See also “Justice by Gender: the Lack of Appropriate Prevention, Diversion and Treatment Alternatives for Girls in the Justice System,” ABA Report (May 1, 2001).]

**Winning Programs Successfully Providing Assistance to Status Offenders and Their Families**

Providing status offenders and their families with counseling and other resources helps alleviate the root cause of the problem and creates stability in the home. However, many states lack programs to assist status offenders and their families. As a result, judges feel like they have little choice but to take a child out of the home even when that child poses no threat to public safety. Taking a child out of his or her home has serious consequences, including continued victimization, increased family tension, reduced involvement in school and more involvement in the juvenile justice and criminal systems. The videoconference highlighted several organizations and programs working to find alternatives to secured detention for status offenders which also work to provide status offenders and their families with the support needed to succeed.

- **Helping America’s Youth (“HAY””) Initiative:** The HAY initiative is a nationwide effort led by the First Lady Laura Bush which raises awareness about the challenges facing youth today and urges adults to connect with youth in three key areas: family, school and community. Mrs. Bush travels throughout the country to highlight programs that are effectively helping young people. More information about the HAY Initiative can be found at: http://www.helpingamericasyouth.gov/.

- **ABA’s National Youth at Risk Roundtable Series:** Sponsored by the ABA Commission on Youth at Risk, the purpose of the ABA Roundtable is to raise awareness for ABA members regarding program and policy issues surrounding at-risk youth and to facilitate a partnership among youth advocates, youth-serving organizations, youth themselves and lawyers. The ABA Roundtable invites leaders of national organizations and local programs that target at-risk youth populations, and those in the legal, education and faith-based communities, to participate in a roundtable discussion regarding the problems facing youth today and how lawyers can assist in developing policy and providing their legal services. More information regarding this program can be found at http://www.abanet.org/initiatives/youthatrisk/roundtables.shtml.

- **Girls & Boys Town:** For the past 90 years, Girls and Boys Town has provided abused, abandoned and neglected boys and girls with a safe and caring environment to gain confidence and learn skills to become productive citizens. Under the direction of Father Steven Boes, a videoconference panelist, Girls and Boys Town cares for thousands of children and families each year from their 19 sites located in 15 states and the District

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of Columbia. Girls and Boys Town provides family preservation services, an intensive in-home counseling service for families in crisis, as well as common sense parenting courses to help families grow stronger in constructive ways. More information about Girls & Boys Town can be located at http://www.girlsandboystown.org/home.asp.

- Juvenile Detention Alternatives Initiative (“JDAI”): JDAI has been the flagship program of the Annie E. Casey Foundation’s efforts to increase the chances that juvenile offenders make successful transitions to adulthood. JDAI recognizes that juveniles are unnecessarily detained at great expense, with long-lasting negative consequences for youth development and public safety. JDAI’s program of detaining youth only in the circumstances authorized by the JJDP accomplishes two goals: helping juveniles appear in court when they are scheduled and ensuring that no further violations occur. More about JDAI can be found at: http://www.aecf.org/initiatives/jdai/.

- Florida Network of Youth and Family Services, Inc.: The Florida Network is a nonprofit statewide association representing agencies that serve the homeless, runaway and troubled youth and their families. The Florida network serves 22,000 at risk children and their families. It has an 85%-90% success rate for keeping children out of the juvenile justice and child welfare systems. Dee Richter, Executive Director of the Florida Network, confirmed that the Florida Network is saving the state of Florida money as it is cheaper to provide juveniles and their families with preventative counseling than to pay for status offenders’ “graduation” into the juvenile justice system. More information about The Florida Network can be found at: http://www.floridanetwork.org/.

- Vera Center on Youth Justice: One of Vera’s functions is to evaluate whether the intake processes and assessment of status offenders in various New York cities is helping the kids and families they serve. Vera seeks to avoid delayed response to status offense referrals, large numbers of referrals going to court and dealing with status offenders, called Persons In Need of Supervisions (“PINS”) in New York, as a law enforcement issue instead of a social services issue. Further information regarding Vera can be located at: http://www.vera.org/section5/section5_1.asp. During the videoconference, Annie Salsich, Senior Program Associate at Vera, offered examples of how Vera’s program is working for two New York cities:

  - Orange County, NY: Orange County revamped its PINS system so that non-profit social services organizations accept referrals instead of routing the referrals through the probation department. Since Orange County made this change, only 7% of PINS referrals have ended up on probation.
  - New York, NY: New York City put a government social services organization, the Administration of Children’s Services, in charge of PINS intake. The Administration of Children’s Services employs master-level social service workers that work through a family-focus model and respond to PINS referrals within 48 hours. Since involving the Administration of Children’s Services, PINS intake decreased by 80%, court referrals have decreased by 50% and use of out of home placement pending adjudication decreased by 34%.

- Five Salient Goals for Status Offender Programs

  Placing status offenders in detention simply does not work. It puts children at an increased risk of becoming more deeply entrenched in the juvenile justice system by exposing them to bad influences. Many youth advocates and organizations want to help find alternatives to help status offenders and their families. Panel members participating in the videoconference identified five critical themes to assist youth advocates when developing successful alternatives and meaningful resources for status offenders and their families.
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- **Early Intervention.** It is up to the parents, school system and community to watch for the early signs of trouble and intervene before a juvenile becomes a status offender and/or enters the juvenile justice system. Some of the warning signs begin as early as kindergarten. For example, a child falling asleep in class or being consistently hungry are signs that there may be a problem at home which could lead to poor concentration at school and later truancy. Heeding early warning signs and providing juveniles and their families with the counseling and other support they need is critical to keep juveniles out of the juvenile justice and child welfare systems.

- **Commitment to family preservation.** The focus when dealing with family members of status offenders must be on preserving the family, not punishment. If separating the family is necessary, the separation should be as brief as possible.

- **Community Participation and Education.** The involvement of all stakeholders, including courts, law enforcement, state officials, schools and parents must work together to plan a community response. Education of all stakeholders is essential when developing alternative means to treat status offenders. For example, judges cannot order status offenders to participate in a diversion program unless they know that those programs exist. The panel members participating in the videoconference urged youth advocates to invite judges to local alternative facilities so that they can see what those facilities have to offer status offenders. Law enforcement must also be educated to appreciate that responding to a status offense presents law enforcement with an opportunity to mend a family problem without becoming involved in the criminal justice system.

- **Provide a Sense of Belonging:** Because there has been an increase of broken homes, children often feel rejected by one or both parents, which may lead to depression and anger. If children do not feel a sense of belonging in their home, they are more likely to leave the home to find somewhere else where they feel like they do belong. Panelists participating in the video conference believed that children will be less likely to commit status offenses if we empower them and give them a say in what is happening in their families.

- **Listen to Children.** Law enforcement, attorneys and judges need to listen to children about what problems they are having at home and in school that contributed to the commission of a status offense so that the child can be referred to a program that suits his or her specific needs and laws can be created to address these problems. Having children be part of the solution also allows them to develop leadership skills.

During the videoconference, Mrs. Bush stressed that every child deserves the opportunity to grow up to be a healthy and successful adult and that boys and girls in every community need help to avoid the dangers of truancy, alcohol, drugs and gangs. Dwight Smith, Chair of the ABA Commission on the ABA President’s Youth at Risk Initiative, echoed Mrs. Bush’s sentiments and provided poignant concluding comments to videoconference:

“**We leave today with one crucial order of business:** We must not wait another 30-plus years before revisiting the topic of juvenile status offenders. We must together commit to devise new solutions. And we must commit to do so quickly … Our children and our future demand no less than our absolute best.”

Written materials of the January 18, 2007 videoconference entitled, “Addressing the Needs of Juvenile Status Offenders and Their Families” are available at: http://www.trc.eku.edu/jj/resources.asp?confid=33. DVD’s of this program are available for order from http://www.abanet.org/initiatives/youthatrisk/ (cost is $5).

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Juvenile Expunction Legislation and its Relationship to the Core Mission of the Juvenile Justice System  by Hillary B. Farber

Devon was 12 years old, arrested along with his friend and co-defendant 9 year old Alex. The State charged both with armed robbery. The charges arose from an incident where the two boys had been playing a style of "cops and robbers" with several other similar aged kids using cap guns. About a half hour after the game ended, Alex pointed a cap gun at one of the kids who had also been playing and said, "Give me your money." The police report described Devon as standing nearby and running away after the "victim" gave 9 year old Alex $1.00.

The matter was reported to police by the parent of a fourth child who had also been playing with these kids. It took nearly two years, but the matter was dismissed against Alex and Devon. Despite the dismissal, Devon still endures consequences due to his arrest and charge for armed robbery. The armed robbery remains on his juvenile record and, when revealed to a potential employer upon request, Devon was denied a summer job with a City Youth Program.

Devon’s story is not unique to juveniles nationwide who have been arrested and eventually had their cases dismissed after multiple court appearances and multiple entries on their juvenile record. In many states there is no remedy to have the record of a delinquency charge destroyed, thereby eradicating any record of arrest and disposition. States such as Alabama, Arkansas, Connecticut, Delaware, Florida, Hawaii, Indiana, Illinois, Kentucky, Michigan, Mississippi, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Washington, Wisconsin, Wyoming, Utah, and Virginia provide a mechanism to expunge delinquency records but there is vast difference regarding the offenses that are eligible for expunction and when one may petition for expunction. For example, Virginia does not permit delinquency offenses that would constitute felonies if committed by an adult to be expunged, whereas South Carolina demarks the prohibition for expunction with ‘violent felonies’. Wyoming allows one to petition for expunction upon the age of majority whereas Virginia requires the petitioner be at least nineteen years old and five years must have elapsed since the date of the last juvenile hearing. Ohio requires that before a record can be expunged it must be sealed for a period of five years or until the petitioner’s twenty third birthday, whichever is earlier.

Some states only permit records to be sealed, which is not without its risks to the juvenile. When a record is sealed it essentially notifies the viewer that there has been an entry but no information is available. A person charged with an offense needs to weigh the costs of a potential employer, academic institution or the like inferring something far worse from a sealed record than if the entry was made known. On the other hand, expunction allows the petitioner upon inquiry to reply that no record exists.

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all record of a delinquent act(s) committed by a minor. [See L.H. v. State, 333 Ark. 613 (1998) (demonstrating expunction available for certain circumstances depending on type of delinquency); In Re J., 353 NYS2d 695 (1974) (holding proper to order expunction where retention offers no benefit to society); State v. TK, 94 Wash. App. 286 (Div. 1 1999)(holding where all condition of expunction met, there exists statutory right to expunction of records)].

Since 2003, legislation was introduced in Massachusetts to provide for the purging of juvenile delinquency records in Massachusetts (Senate Bill 1076). The proposed bill sought to create a mechanism by which, upon final disposition of a delinquency proceeding and completion of any court ordered disposition, a juvenile may petition to have those particular law enforcement, court activity and probation records destroyed, thus leaving no trace of the proceedings. There is widespread support for this legislation among juvenile court judges, youth advocates, and those working to place youth in employment. (At the time of publication of this article SB 1076 had been referred to a sub-committee of the Judicial Committee and no further action has been taken).

As is the case with most of the existing legislation, Senate Bill 1076 would create a rebuttable presumption in favor of purging records of juveniles in instances in which the cases have been nolle prossed, dismissed with prejudice, terminated for lack of evidence, or where an arrest was made w/o probable cause or for constitutionally protected conduct, and on behalf of exonerated persons.

One of the effects of the law would be that a person whose records were expunged can answer “no record” when asked by a potential employer, academic institution, recruiter or anyone else if she has a juvenile record. The legislation provides that records pertaining to the case in the possession or control of any agency which keeps records relating to juvenile delinquency offenses, such as the Office of the Commissioner of Probation, Criminal History Systems Board, state, local and federal law enforcement, are to be destroyed, unless kept for statistical purposes only.

SB 1076 sets out five factors for the court to consider before expunging a record: the severity of the offense, probable adverse consequence to juvenile, public safety needs, juvenile’s personal history and subsequent behavior that provides indicia of rehabilitation. If the request is granted, all personal identifying information from the juvenile’s record, which may include police reports, booking information, fingerprints, photographs, probation records, court activity records, shall be destroyed.

Critics have suggested such a law may serve to increase instances of juvenile delinquency by removing an essential deterrent to criminal activity. In none of the states with expunction as a remedy has it been shown that there has been a rise in juvenile crime.

The number of agencies and institutions that have statutorily authorized access to juvenile records (formally or informally) is astonishing. The mechanism for judges to order destruction of juvenile records in appropriate circumstances serves to reinforce a commitment to our youth population. The stigma that derives from one single arrest (not to mention conviction) can be debilitating for a young person seeking admission to college, trying to attain a job requiring certification or security clearance, seeking entry into the armed services (As the Appeals Court has noted, “criminal records even if sealed can form a cloud of prosecution.” Commonwealth v. S.M.F., 660 N.E.2d 701, 703 (Mass. App. Ct. 1996)).

The number of agencies and institutions that have statutorily authorized access to juvenile records (formally or informally) is astonishing. Military recruiters review juveniles’ records and elite military academies obtain applicants’ records. In many states, agencies providing certifications and licensing procedures for allied health professions, nursing, social workers, stock brokers, and health officers permit the State Board of Registration to pull the record of all applicants. Today, youths’ juvenile records may be sent to summer camps, nursing homes, DYS/DSS, and Office of Child Care. Unfortunately, illegal leakage of youths’ records is a frequent occurrence in Massachusetts. For instance, housing authorities gain access to the juvenile records of some of their tenants.

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Expunction of juvenile delinquency records is consistent with the core principles of the Juvenile Justice System. Since its inception in 1899, the core tenet of the Juvenile Justice System is to treat children differently from their adult counterparts. The juvenile justice system is predicated upon the belief that youths can be rehabilitated and are entitled to a second chance. There are countless stories of adults who have become very productive and influential members of society who prior to their eighteenth birthday had committed crimes, served sentences in juvenile detention facilities and been on probation. For some compelling examples, see Second Chances: Giving Kids a Chance to Make a Better Choice, Juv. Just. Bull. (U.S. Dept. Just./Office of Juvenile Justice and Delinquency Prevention, May 2000, at 27, available at: http://www.ncjrs.org/pdffiles1/ojjdp/181680.pdf (last visited June 13, 2005). This book profiles adults with elite professional careers who as juveniles were charged and convicted of multiple crimes. The profiles are testament to the need for a justice system premised on the recognition that today’s delinquent child can be tomorrow’s promised leader. Some of the 25 profiles include: Former US Sen. Alan Simpson, San Francisco District Attorney Terrence Hallinan, Ronald Laney, Dir. Of Child Protection Division of the DOJ, Hon. Reggie Walton, DC Superior Court judge & former Senior White House Advisor on Crime to Pres. George Bush. But for the second chances given to these individuals, they would likely not have realized their potential.

The American Bar Association’s (ABA) standard regarding juvenile records recommends “automatic and mandatory” destruction of all juvenile records when a case is dismissed, the application for a juvenile complaint is denied, or the juvenile is adjudicated not delinquent (ABA Standards with Commentary, Part XVII: Destruction of Juvenile Records, 17.2, at 128).

The recent decision of the United States Supreme Court concerning administration of the death penalty to juvenile offenders provides some insight into the rationale for expunction (Roper v. Simmons, 125 S. Ct. 1183 (2005)). Roper v. Simmons, relies in large part on the belief that crimes committed by juveniles are less morally reprehensible than crimes committed by their adult counterparts. Writing for the majority, Justice Anthony Kennedy opined, “[F]rom a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.” (Id. at 1195-96).

The Court identified three general differences between juveniles and adults that bear direct relevance to offering expunction as a remedy. First, the Court noted the compelling data that juveniles’ lack of maturity and lessened sense of responsibility bear strong correlation to ill-conceived and impulsive decision-making. Second, categorically juveniles are more susceptible to negative influences and pressure from their peers. Third, society recognizes that the personality of a juvenile is an organic and evolving process.

The roots of juvenile justice system originate from a vision of a flexible and tolerant system designed to give kids second chances. Expunction laws account for the mistakes kids make today, while being forward thinking enough to allow for the possibility that any one of our kids could be one of tomorrow’s leaders.

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