

Practitioners Section on Representing Youth: Attorneys and the Communities They Serve

This portion of the Journal of Juvenile Law and Policy provides insight into the practice of law for children's advocates. The Journal selected two attorneys to describe their work and the communities they represent. These practitioners tell us about the youth they represent, the difficulty of accessing services for their clients, and the reason they were drawn to their work. Tabare Depaep, a dependency attorney with the Alliance for Children's Rights in Los Angeles, explains the complex web of agencies and individuals serving foster children in the process of adoption. Sarit Ariam, a special education attorney with her own law offices, recounts her experiences as the parent of an autistic child in accessing educational services and translating those skills to represent others.

The Practitioners Section is followed by summaries of recent cases, current statutory developments, and studies pertaining to the fields of delinquency, dependency, education, and health law.

HELPING THE WHOLE FAMILY: ADVOCATING FOR THE ADOPTORS

Tabare Depaep, Staff Attorney at The Alliance for Children's Rights

I work as a staff attorney on the Foster Children's Adoptions Project at The Alliance for Children's Rights. We are a non-profit organization dedicated to serving the legal needs of impoverished children and their caregivers living in Los Angeles County. Several years ago, we partnered with the Los Angeles County Department of Children and Family Services to provide representation to foster parents planning to adopt through the dependency court. In our county, foster parents are not automatically assigned an attorney by the court, and must pay up-front costs for a private attorney to prepare their required adoption petition paperwork. Our organization sought grants to support our efforts, and we now finalize about one-third of all foster children adoptions in Los Angeles County at no cost to the client.

Our work is unique in the juvenile justice field because our clients are the caregivers. The attorney-client relationship is with the caregiver, who may or may not have a biological relationship to the child. Usually, the child welfare system revolves around the child and the biological parents, leaving the caregivers out of the process altogether. The caregivers are not formal parties to the child's case, and although California law mandates they be given an opportunity to be heard, very often the caregivers are uninformed about their right to provide input and may even be discouraged from doing so by the county social workers insofar as their input "muddies the waters." Social workers, lawyers, and judges in child welfare also often fail to seek information from the people caring for the child on a day-to-day basis, and therefore lack important perspective on the adoption process.

As a result, the children in foster care often lack advocates who know what their daily needs are. Their natural advocates, the biological parents, are accused of neglect and/or abuse, and this undermines any claims they may make about the needs of the child. Their foster parents are usually

uninformed about their ability to advocate for the child, and may not attend the child's court hearings. Their social workers, at least initially, must divide their services between the birth parents, the child, and the foster parents, while regularly updating the court.

While the children themselves have appointed counsel, often their attorneys focus on proving or disproving the allegations against the parents. Only secondarily do the attorneys ensure the child's needs are met while in foster care. The minor's counsel also must worry about where the child will live, with whom the child will live, whether the child can stay in their school of origin, and whether they can maintain contact with siblings in foster care. Last on the lawyer's list of things to do for the child is to ensure their foster parent is getting the proper payment level, or rate, from the county to defray the costs of caring for the child. Many minors' attorneys feel the foster parent can and should advocate for themselves on this issue. If the foster parent wasn't receiving any benefits whatsoever, the minor's attorney would rightly see this as an attack on the safety of the child in that home. However, when the benefits level is at issue, the child's counsel often leaves the foster care providers to fend for themselves.

The foster parents usually do not have an attorney advocate looking at issues from their perspective until they are assigned an attorney from our organization. When we interview the foster parents about the needs of the child, we often find gaps in services and supports that can, and should have been, fixed long before the family's referral to our agency. We believe minors' attorneys have relaxed their vigilance precisely because of the foster parents' commitment to adopting the children in their care. Believing the foster parents are intent on making the child a part of their family, the lawyers may assume the caregivers can simply give the child the normal things a parent gives a child, and all will be well. Unfortunately, that often isn't the case. For example, special-needs children require services above and beyond what "normal" children require to function and thrive.

While minors' attorneys understand children who have been abused and neglected suffer higher rates of emotional and behavioral problems, they may assume that because the foster parent is making a commitment to adopt, the child's problems must have been ameliorated or are at least somewhat under control. Often, however, this is simply not the case. Far too frequently the social worker has changed, and the new social worker assumes that because the foster parent is in the process of adopting the child, everything must be going well, and therefore fails to inquire further. What both the children's attorneys and social workers fail to appreciate is the foster parents have often pledged to make a child a part of their home because of the suffering the child has gone through. To them, the resulting problems are just a fact of the child's life, and so the caregivers fail to bring it up, assuming if something could be done, it would have been done long before.

The foster parents may also have chosen to downplay the child's behavioral, emotional, physical, or academic problems to build up the child's confidence, or present a unified front to the social worker. The result is sometimes an artificial view of the child's qualifying characteristics for the supportive services that are intended to make the family as safe and secure for that child as possible. When we interview a family and discover a child was never referred for a developmental assessment, despite having a risk factor such as prenatal exposure, we wonder why the social worker didn't appropriately refer the child, and why the minor's attorney didn't ask if it had been done. The possibility exists that the foster parent did exactly what everyone hoped they would do: They fell in love with the child and saw in them not the problems but the possibilities, not the drawbacks but the opportunities. For this reason, they presented an overly positive picture of their prospective adoptive child. Only sometime later do the prospective adoptive parents begin to acknowledge the acting out behaviors, the attachment problems, the school discipline complaints, which are all too common. Perhaps this is why so many prospective adoptive parents come to us with problems that certainly should have

been addressed earlier, either by the child's counsel or the social worker.

Whatever the cause, our clients are dedicated, caring individuals whose prospective adoptive children have unrecognized and unmet needs, and whose rights have not been adequately protected. To the extent that we can identify and meet those needs from the caregiver's perspective, we have made the adoption more stable and the caregiver less likely to feel overwhelmed. The result is usually a happier, healthier, and safer child. It really does take a village.

SPECIALIZING IN SPECIAL EDUCATION

Sarit Ariam, Senior Attorney at the Law Offices of Sarit Ariam

When my son was diagnosed with autism at one and a half years of age, I embarked upon the complicated and exhausting process of applying for and arranging various therapies and treatments for him. As a starting point, numerous physicians and therapists ran test after test to determine his levels of need. The Regional Center, a nonprofit organization in California that serves as a resource for individuals with developmental disabilities, and the Los Angeles School District reviewed the results of these tests. The district scheduled meetings to recommend services for my son based on his test results. At each of these meetings, I struggled to have my concerns heard and addressed. In particular, my meetings with the School District were especially frustrating since report recommendations were often seemingly arbitrarily pared down – for every two hours per week of clinic-based occupational therapy that was recommended, one hour was approved and funded; for every 40 hours per month of respite requested, 10 hours were offered. Without knowing my legal rights, or even that I should doubt the adequacy of these service offers, I did the best that I could in working with the Regional Center and school district to create an acceptable program for my child.

After these initial stages, my son was finally approved for funding for a number of therapies. I thought the war had been won and the road would be a smooth one. I was mistaken. The next, equally difficult, phase involved picking the right service providers to work with, searching for reliable and talented therapists to whom my son would respond, and organizing between six and nine hours of therapy for my son a day.

Once I established a schedule for therapy sessions, I breathed a sigh of relief and waited anxiously to see the system start working. And work it did. I was fortunate to have found caring and committed therapists, thanks to whom my son began to show promising progress. But my excitement lasted only a year. For at the end of that first year and every

year since then, reassessments by the Regional Center and the school district inevitably recommended that at least some of my son's services be cut back or materially altered. Every year I relived the anxiety and distress of my initial struggle to have my son's physicians' and therapists' recommendations honored. I very quickly became aware that I was now trapped in a system of never-ending battles.

Through the years, I became well acquainted with a number of other parents of autistic children as well as the service providers working with my son. From both sets of people, I learned my experiences were not unusual. Most parents had experienced exactly the same difficulties I had and suffered from the overwhelming realization that each year would bring a fresh, new struggle. I was shocked to find many service providers felt equally restricted by the process, as their recommendations were capriciously cast aside. I began to recognize we all participated in a largely inefficient system that, sometimes for understandable economic reasons, short-changed our children. Realizing the grand scope of the problem, I knew I needed to become involved in bringing about change. These amazingly hard-working and devoted parents and their special needs children needed someone to advocate for them, to uphold their legal rights. That is when I decided to practice in the field of Special Education law.

As a result of my experiences and those around me, I have come to know the special education system from all angles and want other parents to benefit from my experience. I believe my success in this field of law stems from my ability to understand and relate to the difficulties and frustrations of trying to get timely help for your child without knowing where to start and how to proceed. Whether our client's child has just recently been diagnosed or has already been in the special education system, I help lead the parents through the system and understand the different aspects of special education. Through asking the right questions, getting the correct assessments, and directing parents to the appropriate agencies, my practice helps to ensure that our clients' children are able to grow and develop in the most protective and nurturing school setting.


Parents often lack the legal knowledge necessary to ensure the school system provides the most appropriate and effective educational program for their child. Furthermore, serious financial instability now plagues the school districts serving the Los Angeles area and, as a result, the school districts do not readily volunteer information about the services available to special needs children and their families. This grim situation has led to a lack of awareness among parents as to which services their children are legally entitled and how to access those services.

My objective in doing this work is to ensure special needs children get the services they need and access to those they are entitled to. In my practice, we work with families to tailor our services so that their individual and particular goals are achieved. Whether a child needs a one-on-one aide, speech therapy, occupational therapy, behavior intervention, non-public school placement, or any combination of the above-mentioned services, we design the most effective strategy for giving each special needs child the tools required for her to progress and embrace her full potential.


My practice offers a wide range of services to our clients in an on-going effort to address their individual needs and concerns. We make recommendations regarding school placement and service providers. Additionally, we attend Individualized Education Plan or Individualized Program Plan meetings, mediation, or hearings, where we advocate on behalf of the families. My work allows me to help those who need it most: children in special education.

RECENT COURT DECISIONS, STATUTORY DEVELOPMENTS, AND
STUDIES IMPACTING JUVENILES


DELINQUENCY

 *United States v. Leon H.*
365 F.3d 750 (Mont. 2004)


Leon was charged with having forceful sexual intercourse with a juvenile who had passed out. After the victim woke up, she tried to fight him off. Leon was 17 when the crime was committed. The lower court sentenced him to four years of official detention following a year of juvenile delinquent supervision. Leon appealed the sentence. He argued the lower court incorrectly sentenced him based on his age at the time of disposition rather than on his age at the time of the crime. Leon also argued the lower court had violated the Ex Post Facto Clause of the Constitution. The court of appeals found his sentence did not violate the Ex Post Facto Clause. The court of appeals affirmed the lower court's finding that Leon was properly sentenced because he was 18 years old at the time of sentencing.

 *People v. Garcia*
13 Cal. Rptr. 3d 478 (2004)

The superior court of Stanislaus County found Garcia, a 17-year-old, guilty of “attempted,” “willful,” “deliberate,” and “premeditated” murder and assault with a firearm. The court recalled its original sentencing, and at the request of the defendant, had a juvenile disposition hearing. After the hearing, the superior court imposed the same adult sentence as before. Garcia appealed, requesting his sentence be remanded so the lower court could “receive, read and consider” a social study by the probation officer before imposing the adult sentence or ordering juvenile disposition. The appeals court affirmed the superior court, finding that the lower court did not have to consider the probation officer's report.

 *Yarborough v. Alvarado*
124 S.Ct 2140 (2004)

Alvarado, age 17, was accused of murder and attempted robbery. The police interviewed Alvarado for two hours without giving him his *Miranda* warning. During this interview, Alvarado confessed he was involved in the theft and the hiding of the murder weapon. At trial, counsel for Alvarado moved to suppress his statement, claiming he was never given a *Miranda* warning. Upon conviction, Alvarado appealed to the Second Appellate District Court of Appeal. The state court determined that because Alvarado was not in custody for *Miranda* purposes and was free to leave at any time, the trial court had not erred. The California Supreme Court denied discretionary review. Alvarado then filed a habeas petition in the United States District Court for the Central District of California. That court upheld the state court's finding that Alvarado was not in custody for *Miranda* purposes. The Ninth Circuit Court of Appeals determined the state court had erred and Alvarado was afforded habeas relief under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). This decision was appealed to the U.S. Supreme Court, which ruled the Ninth Circuit Court of Appeals erred in its grant of habeas relief because clearly established law was reasonably applied under the AEDPA. The Supreme Court reversed the decision of the Ninth Circuit, finding a reasonable person would have felt free to leave the interrogation.


 *A.M. v. Luzerne County Juvenile Detention Center*
372 F.3d 572 (3d Cir. 2004)

A.M., a 13-year-old juvenile, was arrested and charged with indecent assault. While at a juvenile detention facility, A.M. was assaulted by other residents on numerous occasions, suffering physical and emotional injuries. Upon admission to the detention center, administrators were informed A.M. was taking psychotropic medication and had been in and out of psychiatric hospitals for behavior problems. A.M. never received his prescribed medication or any other mental health

treatment or counseling while at the juvenile detention center. A.M.'s mother, on behalf of A.M., filed a civil rights lawsuit against the detention center, its staff, and its administrators, alleging they failed to protect him from harm while in their custody. The federal district court granted the defendant's motion for summary judgment. On appeal, the Third Circuit Court of Appeals reversed and remanded, holding A.M.'s case raised important issues of fact and Luzerne County could be held liable for a lack of sufficient policies addressing the needs of juveniles with mental or physical health problems.

 *United States of America v. Patrick V.*
372 F.3d 12 (1st Cir. 2004)


Patrick V. pled guilty to arson and the district court sentenced him to a 30-month detention followed by a 27-month supervised release and full restitution of property valued at \$728,141.61. Patrick V. appealed under the Federal Juvenile Delinquency Act (FJDA). The court of appeals determined that a tension existed between the rehabilitative focus of the FJDA and the punitive focus of the Mandatory Victim Restitution Act (MVRA). After presenting evidence that he was emotionally and developmentally immature and a victim of the influences of an adult friend, the defendant argued he should be entitled to rehabilitation and treatment under the FJDA. The First Circuit determined that, while the state's Attorney General has the power to determine the placement of youth offenders, that power is not unbridled. The court stated that placement of any delinquent youth should be consistent with the rehabilitative goals of the FJDA. The appeals court remanded the case for sentencing, ordering the court to place the defendant in a facility that would provide the best possible chance of rehabilitation.

 *In re K.C.B.*
141 S.W.3d 303 (Tex. 2004)

At a Travis County, Texas, high school, a hall monitor received an anonymous tip that K.C.B. had narcotics hidden in

his underwear. The hall monitor escorted K.C.B. to the assistant principal's office and asked the juvenile to lift up his shirt. The assistant principal then pulled the elastic of the juvenile's shorts and observed a plastic bag at his waistline. The marijuana was removed, and K.C.B. was arrested for possession. The defendant moved to suppress the evidence, arguing it was obtained through an unreasonable search in violation of K.C.B.'s Fourth Amendment rights. The court denied the motion, and K.C.B. was convicted of possession of marijuana in a drug-free zone. The court of appeals reversed, holding the district court erred in denying the defendant's motion to suppress the evidence. The court of appeals stated that had the tip been about a concealed weapon, the intrusive search would have been justified, but because the tip pertained to narcotics, an anonymous tip alone did not justify this type of intrusive search.

DEPENDENCY

 *In re Henry V.*

110Cal. App. 4th 522 (2004)

Social Services removed four-year-old Henry from his mother's home after finding burn marks on his body. Relying on a report by a social worker, the district court stated Henry could not return home until a bonding study was completed. The issue before the appellate court was whether a child could be taken from his parent's custody during a juvenile dependency proceeding. The court first acknowledged the fundamental right to the care and custody of one's child is protected by the Constitution. The court then held the substantial evidence test should be used to determine whether the State has met the clear and convincing standard of proof required to remove a child from his home at the dispositional phase of dependency. The court found the physical abuse suffered by Henry, while substantial, appeared to be a single occurrence that did not warrant removal from his mother's home. The court reversed the lower court on the basis the court did not find clear and convincing evidence that the only

reasonable means of protecting the child was by removing him from his mother's home.

 *In re Josiah Z.*

118 Cal. App. 4th 944 (2004)


In August 2002, the Kern County superior court adjudged two-year-old Josiah and infant Gabriel dependent and removed them from parental custody. The court then granted a request by the children's attorney for a hearing on relative placement. Prior to this request, a placement in the paternal grandparents' home had been denied. The attorney demanded a hearing on this denial. The court again denied the grandparents' request for placement. As a result, counsel appealed on her clients' behalf. Pursuant to court procedures, the children were appointed new counsel through the Central California Appellate Program (CCAP). The issue before the court was whether the children's appellate counsel had the authority to seek dismissal of their appeal based on her analysis of their best interests. The court of appeal held the appellate counsel has no such authority. The court explained it was not its role, nor that of the appellate counsel, to evaluate the children's best interests. Instead, the dependency court judge is charged with the responsibility of analyzing and determining the best interests of dependent children.

 *In re M.W.*

842 A.2d 425 (Pa. Super. Ct. 2004)

The father of six children was accused of long-term sexual abuse of his 12-year-old daughter. All of the children were taken into custody by Children and Youth Services (CYS) and remained in placement after a shelter-care hearing. Dependency petitions were filed with respect to all of the children. The sexually abused child was declared dependent and placed in foster care. After a second hearing, the other five children were also declared dependent due to their mother's failure to supervise the father's interactions with the children. Despite declaring the children dependent, the court found that

separating the six children from their mother would cause them emotional devastation. As a result, the children were returned to their mother's care with intensive in-home services. The mother appealed the finding that the other five children were dependent. The superior court determined it was within the discretion of the Court of Common Pleas to find siblings of sexually-abused children dependent even in the absence of evidence that the siblings themselves will be sexually abused. The court noted the lower court's finding that the mother allowed the father access to the home and unsupervised contact with the children after she knew about the allegations of abuse established clear and convincing evidence on which to base its dependency adjudications. The superior court affirmed the dependency adjudications.

 *Miller v. State of California Dep't of Soc. Servs. Et al.*
355 F.3d 1172 (9th Cir. 2004)

Three young girls became dependents of the court after Child Protective Services (CPS) found they had been neglected by their parents. The lower court briefly placed the children in the custody of their paternal grandparents before placing them with their maternal grandmother to facilitate reunification efforts with their mother. During this time, the paternal grandparents were granted visitation rights. When a call to CPS raised an issue of sexual abuse concerning the grandfather, the court terminated all visitation rights. After an investigation, these allegations were dismissed and the paternal grandparents were eventually awarded guardianship of the children. The court considered whether the grandparents had a substantive due process right to family integrity under the Fourteen Amendment on the basis they had stepped into the shoes of the girls' parents. Furthermore, the court analyzed whether placing the grandfather's name on the California Child Abuse Central Index (CACI) violated his constitutional right to due process. The court found the grandparents had no substantive due process right to visit their grandchildren during the time the children were dependents of the court. While the grandparents were *de facto* parents during the court

proceedings, this status only gives them a right to be part of the dependency process. The court also said the harm the grandparents suffered as a result of being listed on the CACI index was defamatory but did not rise to the level of a constitutional claim. The court further noted the listing was not legally disabling because the grandparents were awarded custody after the grandfather's name was put on the index.

EDUCATION

 *Shore Reg'l High Sch. Bd. of Educ. V. P.S.*
381 F.3d 194 (3rd Cir. 2004)

P.S. was repeatedly harassed physically and emotionally by schoolmates throughout his early school years. When P.S. was preparing to go to high school, his parents requested he be placed at a high school in a neighboring school district to remove P.S. from the group of children that had been bullying him. The district team agreed with the parents' request, but Shore Regional High School, P.S.'s local school, performed their own evaluation and determined P.S. should attend their high school for the next school year because it would be the "least restrictive setting" for P.S. After an administrative law judge (ALJ) found in favor of P.S. – awarding him and his parents reimbursement for out-of-district tuition, related costs, and reasonable attorney's fees – Shore sued P.S. in district court. The district court reversed the ALJ's findings. The court of appeals reviewed the lower court's findings and determined it had not given the proper credence to the holding of the ALJ and had not shown evidence to discount the other testimony offered in contradiction to their findings. The court of appeals reversed the district court decision and remanded for the issues of liability and determination of the reimbursement of fees and other costs to be paid by the school district.

📖 *Nieves-Marquez v. Commonwealth of Puerto Rico*
353 F.3d 108 (1st Cir. 2003)

The parents of a hearing-impaired and developmentally delayed child brought suit against the Department of Education for the Commonwealth of Puerto Rico and others for failure to provide a sign language interpreter for their son. A Department of Education (DOE) administrative judge ordered interpreter services after the parents brought a complaint. The DOE did not appeal the decision and the child received the services of an interpreter for the remainder of the school year. Those services, however, were not provided during the next school year without giving notice to the child's parents. At the beginning of the next school year, a school team meeting was called to discuss the child's needs, and it was determined interpreter services were again required. When no interpreter was provided, the DOE was again notified. Despite having admitted the need for an interpreter, the DOE made no effort to provide one. The parents filed suit in district court and received immediate injunctive relief. The court of appeals ruled injunctive relief was not an abuse of discretion by the lower court and the child and his parents did have a cause of action against the agency because Congress, in enacting IDEA, did not intend for families to be without recourse when the school simply does not provide the required services.

📖 Upcoming Changes in the Individuals with Disabilities Education Act (IDEA)

As of the publication of this issue, Congress is assembling a conference committee to identify and assess the differences between H.R. 1350 and S. 1248 for the reauthorization of IDEA. Both bills propose significant changes in the special education available to children and parents and neither bill authorizes full funding for the mandate.

 H.R. 1350

H.R. 1350 would eliminate short-term objectives on Individual Education Plans (IEP), except for students evaluated under “alternate standards” as determined by the No Child Left Behind Act (NCLB). The bill also requires states to provide voluntary binding arbitration as an option for parents in pursuing complaints. Further, the bill would require parents to participate in a mandatory “resolution session” with the local education agency (LEA) to be held within 30 days from the date the complaint is filed, before proceeding with due process. Another important change is in the discipline procedures for children receiving special education services. This bill eliminates the stay-put provision during an appeal for children who commit offenses. It allows children to be removed from their educational placement for more than 10 days and eliminates the distinction between offenses that violate school conduct and offenses that involve weapons and/or drugs. In addition, the bill eliminates the manifestation determination, relieving the school from the burden of proving the child’s misbehavior was not a result of his/her disability.

 S. 1248

S. 1248 is milder than the House bill in limiting the rights of children with disabilities and includes additional provisions, including a requirement that homeless and foster children be better represented on state policy committees. This bill also provides more stringent qualifications for special education teachers according to the No Child Left Behind standards, as well as a compliance date for the changes. However, the Senate bill, like the House bill, would eliminate short-term objectives on IEPs and loosen requirements for attendance at IEP meetings by school staff. Like the House bill, S. 1248 allows for a certain number of states to launch pilot programs eliminating federal paperwork requirements surrounding special education. This is proposed without details as to how to ensure the civil rights and the right to free appropriate public education for children without the corresponding paperwork. The Senate bill also requires a resolution meeting

with the LEA before continuing on to due process, but it only allows 15 days for that meeting to occur. Finally, the Senate bill eliminates the stay-put provision for students with disabilities, but it maintains the manifestation determination review, while at the same time shifting the burden to parents to prove the child's offense was a manifestation of his/her disability.

HEALTH

California AB 384

Gov. Arnold Schwarzenegger signed into law Assembly Bill 384 on September 27, 2004. This new law bans inmates, staff, and visitors from smoking, using snuff, and chewing tobacco in California state adult detention centers as well as youth correctional facilities. The new law will take effect July 1, 2005. This prohibition is expected to significantly reduce the \$266 million in state expenses for the smoking-related conditions of inmates. At the same time, the state stands to lose approximately \$1.4 million in combined revenue generated from tobacco taxes and sales taxes from tobacco products sold in correctional facilities.

California AB 2190

Gov. Arnold Schwarzenegger signed into law an extension to the Filante Tanning Facility Act on September 24, 2004. This new law prohibits a child under the age of 14 from using a tanning device except for medical treatment prescribed by a physician. Under existing law, there were two categories of age-related requirements for using tanning salons: minors between the ages of 14 and 18 were required to have a parent's or guardian's consent while minors under the age of 14 were required to be accompanied by a parent or guardian. This expansion of existing law comes as a response to the estimates provided by the FDA and numerous leading health care organizations that approximately 1 million Americans a year will be diagnosed with skin cancer.

Maryland Civil Rights Investigation

In April 2004, the Civil Rights Division of the Department of Justice made public the results of its investigation into civil rights abuses at two juvenile detention centers in Maryland. The investigation revealed substantial physical abuse by both staff and inmates of the juvenile residences. In addition, the Department also discovered that medical and mental health care services, as well as suicide prevention procedures, do not comply with minimal constitutional requirements. The state of Maryland has been very cooperative with the Department of Justice in working toward finding solutions to these problems. This investigation was conducted in accordance with the Violent Crime Control and Law Enforcement Act of 1994 and the Civil Rights of Institutionalized Persons Act of 1980, which allow the federal government to focus on recognizing and resolving systemic abuses, such as those in the case of the Maryland juvenile detention centers.

U.S. House Report on Mentally Ill Minors

A U.S. House Report released this summer found that thousands of mentally ill minors across the nation are put in juvenile detention centers unnecessarily as they wait for community mental health services. The report found these detention centers are not able to treat mental illness, and, in some cases, the minors have not even been charged with a crime. The report considers this practice a misuse of detention centers and disrupts the function of these centers, undermines the youths' health, and is costly to the public at large. It is expected these findings will prompt Congress to find solutions to this problem, ensuring the juvenile population has access to the necessary mental health treatments. This report is the first national study of this kind and is based on a survey of 524, or 75 percent, of the national juvenile detention centers from all states, except New Hampshire. The survey was based on information covering a period of six months from January 1, 2003, to June 30, 2003.

 HIPAA

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) contains a Privacy Rule that protects individuals' privacy with respect to medical records and health information. This Rule became effective April 14, 2003, and has already presented various challenges to health care providers, including school-based health centers (SBHCs) that primarily handle health information related to adolescents. One such challenge is that, under HIPAA, parents of minors who are not emancipated have authorization over the use and disclosure of the minors' protected health information. However, minors themselves can authorize such disclosures in instances where minors have the right to consent to health services, or when these services can be received without parental consent, or in cases where parents have agreed the confidentiality agreement between the minor and the health care providers. In these circumstances, the parents' access to the minors' health information is regulated by state or other law. Thus, to be in compliance with the HIPAA Privacy Rule, SBHCs should consult state and other pertinent law in regard to minors' consent for use and disclosure of adolescents' protected health information.

 Compendium of Promising Practices

In September 2004, the National Mental Health Association (NMHA) released a Compendium of Promising Practices for the mental health treatment of the population in the juvenile justice system. The federal studies referred to in the Compendium indicate the prevalence of mental disorders among the incarcerated youth is between 60 percent and 75 percent while the prevalence of these disorders in the general youth population is about 22 percent. Because successful treatment of these disorders is a major factor in reducing recidivism, the NMHA has put forth this publication that outlines the characteristics of effective uniform practices and provides examples of "promising practices" around the country. This report concludes that mental treatments that are community-based, family-centered, and culturally appropriate

reduce recidivism more effectively than institutional programs (however, youth requiring more complex mental care may be better served through institutional programs). Programs that are not effective in reducing recidivism among the youth are punitive alternatives, such as placing juveniles in adult prisons, youth curfew laws (found usually in large U.S. cities), and juvenile boot camps.