INSIDE: Juvenile Sex Offender Registration • Child Maltreatment • Aging Out of Foster Care • and More

# Delaware Lawyer

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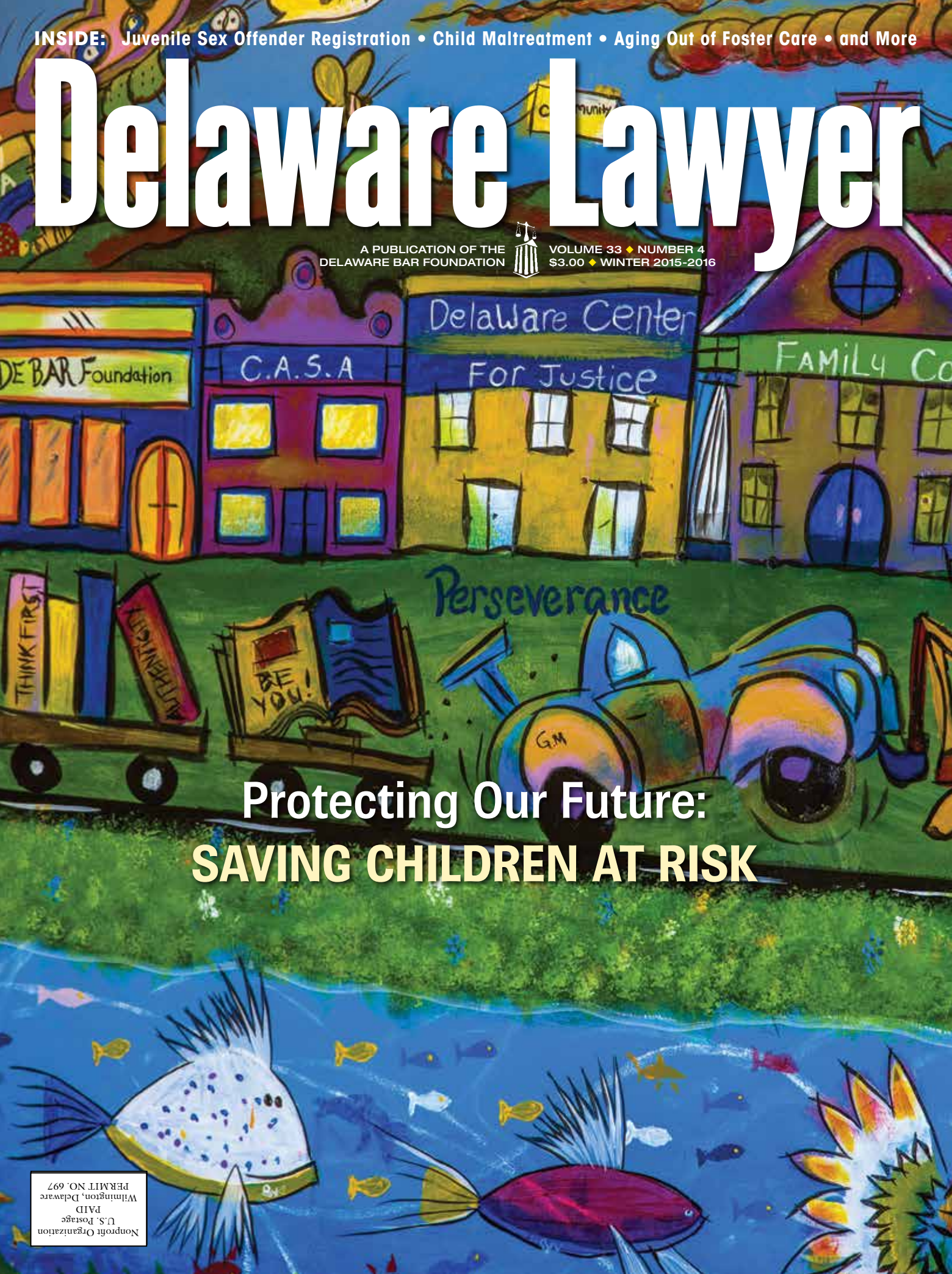


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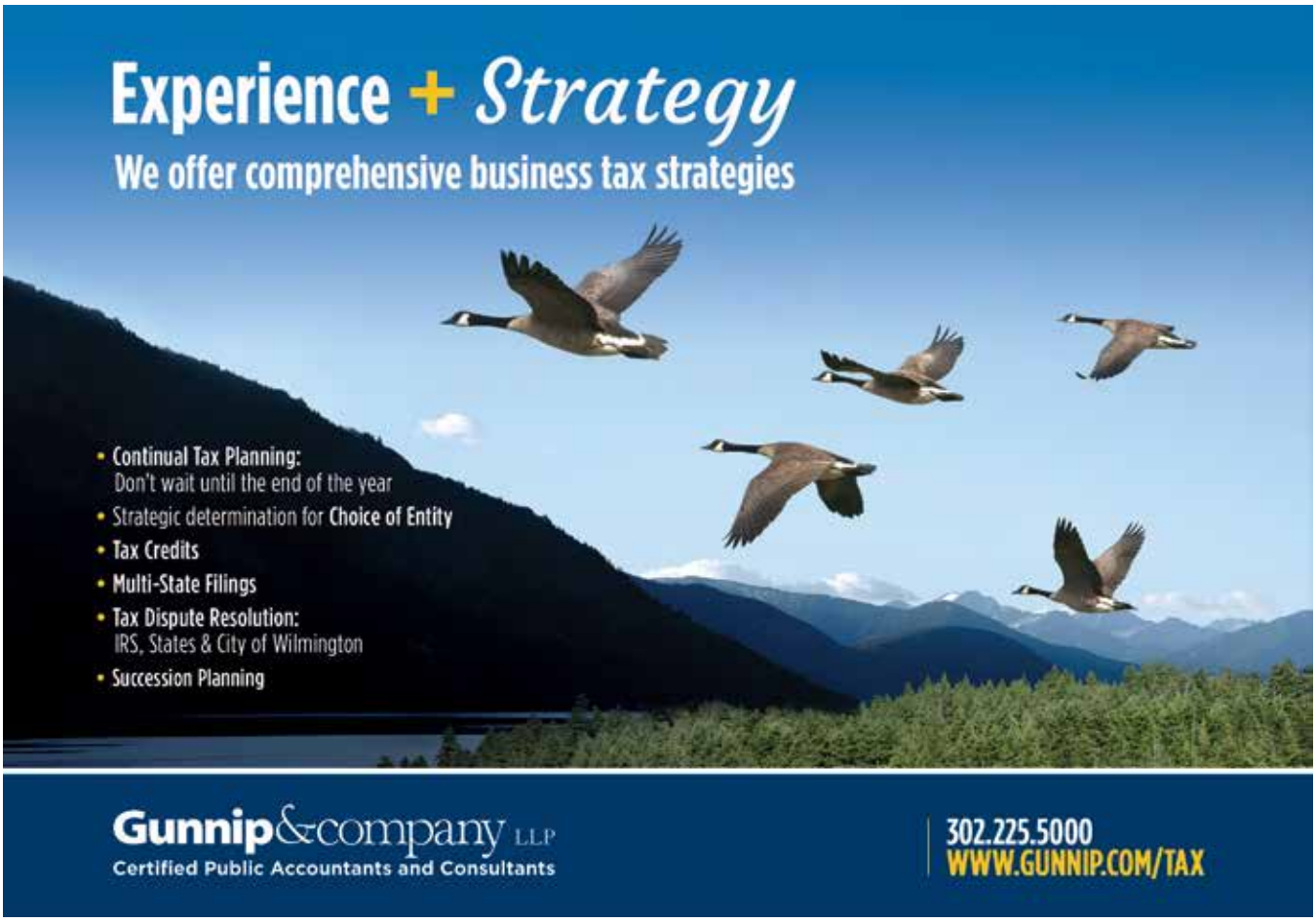

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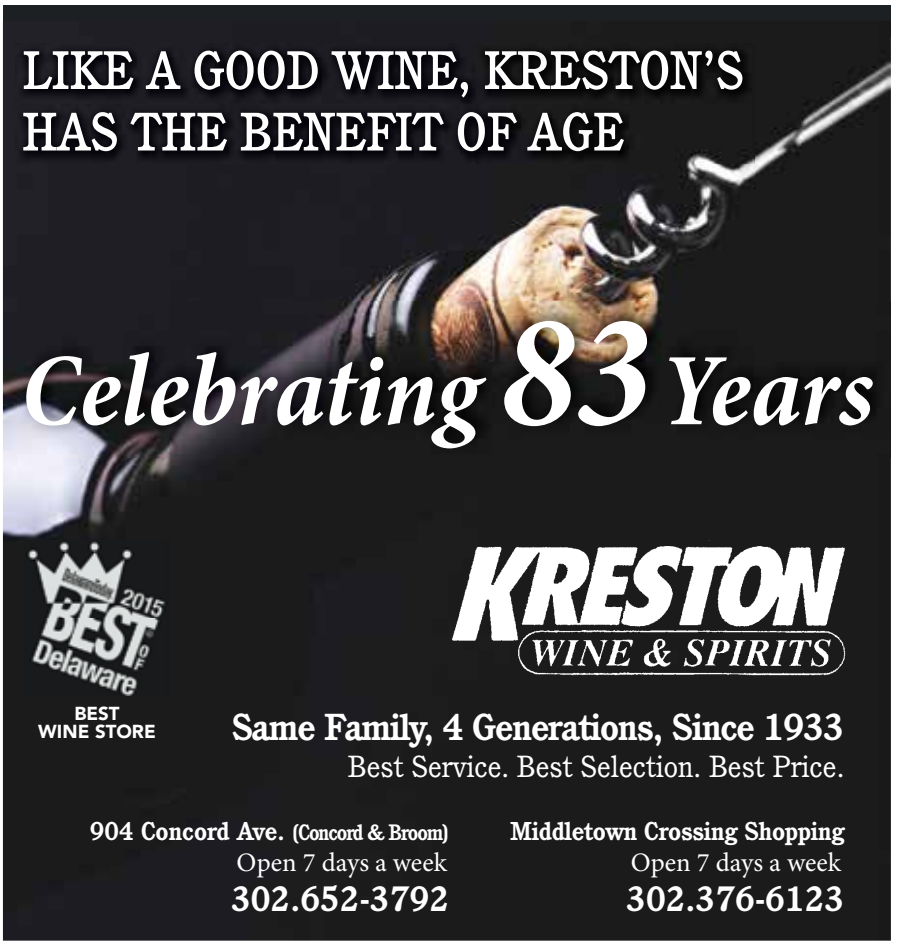

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# EDITORS' NOTE

Kate S. Keller & Susan F. Paikin

What is done to children, they will do to society. — *Karl A. Menninger*

This issue of *Delaware Lawyer* explores risks children face — from abuse, from aging out of foster care, from decades on a sex-offender registry, from losing support from a parent living abroad. Tough issues are addressed by a group of authors whose passion for helping children is unmistakable. While defining challenges and consequences, each article offers something positive that the law, lawyers or society can do to improve children's lives.

Dr. Menninger's quote is a truism reflected in the problems discussed here. This issue is a call to action. Lisa Ann Minutola and Riya Saha Shah reveal the "lifetime label" a juvenile faces once classified as a sex offender, a maze of ever-lengthening registration imposed on children free of further violations. This excellent article suggests changes to ameliorate law, policy and practice, and save young offenders from a life of isolation and failure.

Judge Barbara Crowell and Julie Miller explore the challenges faced by foster care youth who are thrust out on their own when they reach 18. The authors contrast this "off the cliff" policy with Delaware programs that support those facing this transition — and they ask all lawyers to volunteer a legal hand to such youth. The mural captured on the cover by a wonderful Bob Craig photograph and in a sidebar article, is both hopeful and life-affirming.

Josette Manning uses "Jane's Story" to describe the causes and impact of child abuse and the challenges of prosecuting the heartbreaking cases where a child is shaken to death. She makes a passionate plea to break the cycle of abuse through parental education and support rather than waiting for the prosecutor to arrive — always too late for the abused child.

Battle Robinson brings readers a concise but scholarly view of the new Hague Maintenance Convention and updated uniform state law that enhance litigators' chances to enforce child support obligations when a parent moves abroad. International support litigation is not for the fainthearted, but this article offers a fabulous grounding for those seeking to ensure Delaware's children receive the financial support needed and due.

*Of Counsel* extends our focus on children by highlighting one of Delaware's best advocates for them — Patty Dailey Lewis.

We thank all the authors who were so generous with their interest, time and expertise. We expect readers will find these articles thoughtful and trust they will engender lively debate.

Kate S. Keller

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**Please visit *www.delawarebarfoundation.org/stargatt-writing-competition/* for additional details including eligibility requirements and submission date.**

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### Hon. Barbara D. Crowell

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has been a Family Court judge since 1996, following 16 years as an associate and partner at Morris James LLP. She is a graduate of Mt. Holyoke College and the University of Pennsylvania School of Law.

### Kate S. Keller

is the Director of the Medicaid Fraud Control Unit at the Delaware Department of Justice. In that role, she manages attorneys and special investigators tasked with prosecuting Medicaid fraud and patient abuse and neglect cases statewide. Prior to joining the Medicaid Fraud Control Unit, she was a prosecutor in the Criminal Division for seven years, including serving as the Assistant Unit Head of the Felony Trial Unit. Ms. Keller is a graduate of the University of Delaware and the Delaware Law School at Widener University. She is a former law clerk of the Honorable Calvin L. Scott, Jr., of the Delaware Superior Court.

### Josette DelleDonne Manning

is the Unit Head of the statewide Child Victims Unit for the Delaware Department of Justice. The unit handles child abuse cases resulting in serious injury or death. She earned her B.S. in Business Administration from the Boston University School of Management and graduated from the Delaware Law School at Widener University. During 15 years as a prosecutor, she has handled a variety of cases, from misdemeanors to capital homicides. She served as Assistant Unit Head of the Felony Trial Unit and spent three years as the Chief County Prosecutor, overseeing all criminal prosecutions in New Castle County. Ms. Manning developed a passion for working with child victims during her first assignment in the Domestic Violence Unit. Since that time, she has conducted more than 75 trials and has prosecuted every type of child victim crime, including neglect, physical abuse, sexual abuse and homicides.

### Julie P. Miller

is the former Program Coordinator of the Delaware Youth Opportunities Initiative (DYOI) at the Delaware Center for Justice and is currently a Planner with DHSS. She has experience working on capital punishment issues, having spent her law school internships at the American Bar Association and the Innocence Project of Florida. In 2010, she was honored to receive the Delaware Governor's Award in National Service for her work with the Project for Older Prisoners (POPs). Since then, she continues to volunteer for the program as an attorney mentor. Ms. Miller is a graduate of Penn State University and the Delaware Law School at Widener University.

### Lisa Ann Minutola

is the Chief of Legal Services for the Office of Defense Services. Since 1996, she has litigated cases in all state courts for the office and has served as a supervising attorney in various units. She was appointed to her current position in 2009. Ms. Minutola represents the office on multiple committees related to criminal and juvenile justice on both a local and national level. She is also the legislative point person for the office. She has drafted numerous bills and routinely testifies before the legislature. Ms. Minutola graduated *cum laude* from the University of Delaware. She received her J.D. from George Mason University School of Law.

### Battle Rankin Robinson

is a former judge of the Delaware Family Court in Sussex County, retiring in 2000. She is a long-serving Delaware Commissioner to the Uniform Law Commission (ULC), participating on all UIFSA drafting committees. She twice attended sessions at The Hague as part of the development of the 2007 Maintenance Convention and chaired the ULC committee which drafted state legislation to implement the Convention through amendments to UIFSA. She was appointed to the U.S. Commission on Interstate Child Support and in 2007 accepted the Community Service Award from the National Child Support Enforcement Association for her efforts improving intergovernmental child support enforcement.

### Riya Saha Shah

is a supervising attorney at the Juvenile Law Center in Philadelphia. She has represented youth in dependency court, written *amicus* briefs, and conducted trainings for child-serving professionals and youth. She leads the Center's Second Chances initiative, focusing her efforts on juvenile record confidentiality and expungement. She has written extensively on collateral consequences, expungement and the right to counsel. She was instrumental in Pennsylvania's successful challenge to the imposition of harsh registration laws for youth charged with sexual offenses. Ms. Shah works with others in the office to implement juvenile justice systems reform and is involved in policy advocacy to ensure the child welfare system is more responsive to the needs of older youth as they prepare for adulthood. A Lecturer in Law at the University of Pennsylvania Law School, she earned her B.A. at the University of Michigan and graduated *cum laude* from Loyola University Chicago School of Law.

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Lisa Ann Minutola
Riya Saha Shah

# A Lifetime Label: Juvenile Sex Offender Registration

Inflexible registration imposes lifetime stigma widely disproportionate to each child's conduct.

In Delaware and elsewhere around the country, individuals are routinely labeled sex offenders for conduct they engaged in as children — conduct that may have been consensual, characterized as normal childhood sexual exploration, or a consequence of their own victimization.

The U.S. Supreme Court, through a series of decisions, has held that legal status and rights are informed by age. These principles are underscored by common sense notions of the differences between children and adults.

Juvenile sex offender registration fails to account for these differences, ignores settled research, disregards the individual facts and circumstances of each child, and imposes lifetime stigma wildly disproportionate to each child's conduct.

Title I of the Adam Walsh Child Protection and Safety Act of 2006, the Sex Offender Registration and Notification Act (SORNA), requires states to establish uniform sex offender registration mechanisms and definitions in order to facilitate a national registry and enforcement, and subjects juveniles adjudicated delinquent to the same registration requirements as convicted adult sex offenders.[1]

Seventeen states and three U.S. territories have substantially implemented SORNA by including youth in their registration schemes.[2] An additional 22 jurisdictions register youth to some extent, though they are not deemed to have substantially implemented SORNA.[3] Eleven states specifically exclude children from their state sex offender registries for such reasons as the cost-benefit, the impact on children, or the stigma the registry imposes.[4]

While Delaware was the second state to be in "substantial compliance" with SORNA,[5] its registration of children long preceded SORNA's draconian measures. In 1994, Delaware passed a law requiring all youth adjudicated delinquent of certain sex offenses to register as sex offenders. Youth had to register with the Delaware State Police within 30 days of release from juvenile commitment or

probation. If the registrant was not subsequently arrested for any like offense, the records were to be destroyed and the child was to be removed from the registry at age 25.

The child was required to provide: 1) a signed statement by the registrant giving information required by the Department of Justice and 2) fingerprints and a photograph. Changes of address were to be reported within three days. Failure to follow these requirements resulted in misdemeanor charges for first offenses and felony charges for subsequent offenses — both potentially resulting in incarceration.

The records were deemed confidential and not open to the public; however, "an employer or potential employer, upon showing satisfactory proof that he or she plans to employ a particular person in a sensitive area dealing with children," were allowed to inquire if an individual was a registered sex offender.[6]

In 1999, Delaware passed a Community Notification Law,[7] which specifically included juvenile offenders under its mandatory notification scheme. This statute required that the Delaware Judicial Information System ("DELJIS") maintain a searchable database of all registered Tier II and III sex offenders.[8] Sex offenders were required to report for verification every 90 days if assigned to Tier III and every year if assigned to Tier I or II. Failure to comply resulted in felony level offenses.

The statute was retroactive, so some children who had been previously adjudicated and informed that their registration would end at age 25 were now subject to the new requirements including lifetime registration.[9] While the law afforded a limited opportunity to petition the Superior Court after a number of years for re-designation to lower tier levels, few individuals could meet the strict requirements.

Despite legal challenges to the law's constitutionality, in 2001 the Delaware Supreme Court found that "the community notification scheme of Delaware's sex offender registration law offends neither the State or Federal Constitution generally or as applied to juveniles."[10] In 2002, youth were yet again adversely affected by an amendment to the law, which required offenders attending school to inform the principal of their registration status. In addition, the law required notification of schools for all Tier II and III offenders.

Unintended and punitive consequences result when children are swept up into a law enforcement program designed for adults convicted of sexual offenses.

By 2006, when federal SORNA went into effect, Delaware's registration requirements were already more stringent by requiring all youth, regardless of age or severity of the offense, to mandatorily register as sex offenders at pre-determined Tier Levels based on the adjudicated offense. Even in the face of these stricter requirements, Delaware further amended its sex offender registration and notification statutes to add 10 years to the length of time a Tier II sex offender remained registered.[11]

By 2010, when Delaware was deemed SORNA compliant, all offenders, including youth, were subject to private or public registration and notification for 15 or 25 years or their lifetime based upon their adjudicated offenses. Even very young children were required to report and verify in person to one of only a few sites throughout the state. As a result, all youth in Delaware adjudicated delinquent of sex offenses were subjected to the same mandatory registration and notification scheme as adult offenders.

By 2013, over 600 youth were included in Delaware's sex offender registry; 55 were under the age of 12 at the time of registration.[12] The youngest registrant in Delaware was arrested at age 8 and was registered at age 9 for 15 years.[13] Youth in Delaware were now subjected to harsher and ever-increasing requirements.

A.H.'s case illustrates the brutal reality faced by Delaware youth caught in the sex offender registration frenzy.[14] A.H. initially registered in 1995 at age 15 and was advised that his registration would end at age 25, as long as he did not re-offend criminally. The 1999 changes to the registration statute added five years, extending his registration to age 30. His registration was again modified to 25 years when the 2007 amendment where enacted, requiring him to remain registered until age 40.

This extension of his registration was not based on any new crimes he had committed, risk assessments, or negative behaviors by A.H; rather, it was solely a consequence of the retrospective changes in state law.[15]

### The Effect of Registration

SORNA has the effect of treating children more harshly than adults. Numerous critics, including law enforcement officials, have witnessed the unintended and punitive consequences that result when children are swept up into a law enforcement program designed for adults convicted of sexual offenses. Data overwhelmingly shows that subjecting children to long-term registration and notification policies does not improve community safety. Youth registration has no impact on the already low rates of juvenile recidivism and could divert resources away from high-risk offenders.

Empirical evidence fails to find a relationship between juvenile sex offenses and adult sex crimes.[16] Juvenile sex offending is not predictive of adult sex offending, as children tend to mature out of sexual offending behavior. More than 92% of all individuals who committed a sex offense as a juvenile did not com-

mit another sex offense.[17] Consequently, registration and notification of juveniles adjudicated delinquent of sexual offenses does not have a significant effect on recidivism rates.

Yet, children who must register as sex offenders "will face innumerable barriers to successful pro-social development,"[18] including the likelihood that registered youth will come to view themselves as "delinquent" even when they are law-abiding,[19] and find it more difficult to develop a positive self-identity.[20] The label of "sex offender" — and the common view that sex offenders are dangerous — will follow the youth for life.

In addition to psychological harm, children required to register encounter numerous obstacles to participating in the most routine aspects of daily life. Children adjudicated of sex offenses can be expelled from public school.[21] Most states have laws that expressly prohibit individuals on a registry from obtaining licenses for certain jobs, including jobs in the health care industry, education and child development.[22] Registration also may prohibit youth from participating in healthy pro-social activities such as sports and youth clubs.

> The Center on Youth Registration Reform is a national resource center dedicated to helping jurisdictions implement more humane policies on dealing with youth accused of sex offenses.

### Limiting the Harmful Effects of Registration

Through research, litigation, legislation and policy advocacy, advocates have made headway in the years since SORNA's passage in limiting the harmful effects of registration on youth and families.

Nicole Pittman, a policy advocate and Stoneleigh Fellow with Impact Justice, recently founded the Center on Youth Registration Reform as a national resource center dedicated to helping jurisdictions implement more humane policies on dealing with youth accused of sex offenses through technical, legal and programmatic assistance.[23]

Ms. Pittman is also the principal author of a comprehensive examination of youth and families affected by the registry.[24] This report has been instrumen-

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tal in providing examples of the harm imposed by sex offender registration in litigation and legislative advocacy.

Researchers also have provided invaluable perspective to the reform effort. Drs. Elizabeth Letourneau and Michael Caldwell are the leading experts on juvenile sex offending. Dr. Caldwell's research has shown that the recidivism rates of youth who sexually offend are exceptionally low.[25] A meta-analysis of more than 63 studies and over 11,200 children "found an average sexual recidivism rate of 7.09 percent over an average five-year follow-up."[26]

Dr. Letourneau's research has provided important context in demonstrating how youth who sexually offend are markedly different from their adult counterparts. Moreover, she has found that the recidivism rate is not measurably different for registered and unregistered children who committed sexual offenses.[27] To the extent that individuals do reoffend, delinquent youth are far more likely to re-offend with *nonsexual crimes* than with sexual crimes.[28]

Delinquent youth are far more likely to re-offend with *nonsexual crimes* than with sexual crimes. Therefore, requiring children to register as sex offenders does not deter sexual offending.

Therefore, requiring children to register as sex offenders does not deter sexual offending or promote public safety.[29]

Despite the limited effectiveness of registration, nearly 40 states, including Delaware, still require at least some youth to register. Yet, increasingly, courts are reviewing the imposition of this consequence on children. The New Jersey Superior Court is reviewing a youth's challenge seeking to decrease his term of registration.[30] The Missouri Supreme Court is currently reviewing the juvenile court's ability to place a child on the adult sex offender registry in a case involving a developmentally delayed 14-year-old boy accused of sexually assaulting his adult sister.[31]

Recently, some state courts have held that registration is in violation of their state constitutions. In 2012, the Ohio Supreme Court held that its juvenile SORNA statute violated both the Ohio

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and federal constitutional bans on cruel and unusual punishment.[32] The court considered the vast registration and reporting requirements for publicly registered qualified juvenile offenders in light of U.S. Supreme Court precedent establishing children as less culpable than adults,[33] and held that the registration requirement constituted cruel and unusual punishment and that the automatic imposition of the penalty is fundamentally unfair in that it eliminates the judge's discretion in disposition.[34]

In 2014, the Pennsylvania Supreme Court ruled SORNA unconstitutional as applied to all juveniles. The Court relied upon the Due Process clause's irrebuttable presumption doctrine[35] to hold that SORNA violated juveniles' due process rights. Specifically, the court found that the statute created a faulty, irrebuttable presumption that all juvenile offenders "pose a high risk of committing additional sexual offenses,"[36] which is inconsistent with the uncontroverted research on the low risk of recidivism among juvenile offenders. The court ruled that the juveniles' constitutionally-protected right to reputation is infringed by an irrebuttable presumption of future offending that is not universally true and where a reasonable alternative means exists for determining the presumed fact.[37]

### Youth Registration Reform in Delaware

Although Delaware was among the first to implement SORNA, advocates have worked tirelessly to limit its harmful effects and ensure a more just process for placing youth on the registry. In 2009, the Delaware Office of Defenses Services ("ODS")[38] began a four-year campaign for legislative reform by proposing various bills to allow discretionary registration for youth not covered by SORNA's mandatory registration scheme. Those efforts culminated with the passage of House Bill ("HB") 182.

The climate was ripe for reform in 2009. The Delaware Supreme Court had recently held that juvenile expungements and adult pardons of sex offenses required removal from the sex offender registry.[39] In 2010, the initiative grew. The Delaware Center for Justice (DCJ), joined with ODS to form a coalition with diverse state and local agencies to lobby for changes to the juvenile sex offender registry. The coalition drafted an alternate bill,[40] which still allowed for discretion for youth who did not fall under the mandates of SORNA, but provided specific factors and elements for the Court to consider in determining registration requirements, including risk assessments.

Although once known nationally for imposing harsh, mandatory registration on even very young children, recent legislative changes place Delaware among the few states providing for an individualized approach to registration.

The coalition was informed by local and national experts — Nicole Pittman and Dr. Tim Foley presented to a joint session of the House and Senate Judiciary Committees on the differences between child and adult offenders and Ms. Pittman presented to the Delaware Sex Offender Management Board.

Furthermore, a 2011 study conducted by the Department of Youth Rehabilitative Services unit that monitors sexual offenses found, consistent with the empirical research on recidivism, the recidivism rate for Delaware youth sexual offenses was 3.3%.[41] This and subsequent efforts led to a meeting with the Governor's Office, and the support of the Department of Services for Children, Youth and Families. Ultimately, through these advocacy efforts, HB 182 was passed and signed.

The statute went into effect on October 16, 2013.[42] It gives the Family Court discretion to determine whether or not youth under the age of 14 and those between the ages of 14-17 who commit offenses not covered under federal SORNA have to register at all and, if so, at what Tier Level.[43] The Court requires an evaluation, risk assessment and treatment recommendations[44] and can relieve or reduce the registration requirements if it "determines by preponderance of the evidence that such juvenile is not likely to pose a threat to public safety."[45]

The statute was retroactive and applies to all individuals previously registered as juveniles who fit the criteria designated in the statute. The law provides an opportunity for these individuals to petition Family Court for removal from the registry or a lesser tier designation. To provide representation to these individuals, the ODS was awarded a federal Byrne grant to hire an attorney to advocate on behalf of the applicants.

The ODS has identified more than 300 individuals eligible for relief under the statute and is actively working on 150 cases. To date, approximately 20 individuals have been released from their registration obligation, affording them the opportunity to become productive members of society and achieve the rehabilitative goals mandated for Family Court.[46]

### Conclusion

Although once known nationally for imposing harsh, mandatory registration on even very young children, recent legislative changes place Delaware among the few states providing for an individualized approach to registration for at least some youth. This approach is consistent with the empirical research on sexual offending and certainly a step in the right direction. However, the federal mandates of SORNA still apply to some Delaware youth and many youth across

the country. More work needs to be done to ensure all children are protected from ill-conceived, harsh registration laws. ◆

## NOTES

1. 42 U.S.C. § 16913.

2. To ensure states' cooperation in creating the national registry, the Adam Walsh Act mandated a 10 percent deduction of grants allocated pursuant to the Edward Byrne Memorial Justice Assistance Grant Programs ("Byrne Grant") for states that did not substantially implement its provisions. 42 U.S.C. §§ 3750, *et seq.*; 42 U.S.C. § 16925(a) (2006). *See* http://www.smart.gov/sorna.htm.

3. Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, South Dakota, Texas, Tennessee, Utah, Virginia, Washington, Wisconsin, and Wyoming.

4. Alaska, Connecticut, District of Columbia, Georgia, Hawaii, Maine, Nebraska, New York, Vermont, Pennsylvania, and West Virginia.

5. Delaware was deemed to be in substantial compliance on May 3, 2010.

6. 1994 Del. ALS 282 | 69 Del. Laws 282 | 1993 Del. HB 295.

7. 71 Del. Laws, c. 429.

8. Tier III offenders are required to register for life while Tier I and II offenders were required to register for 15 years. Tier designations are based on the adjudicated offense and not a risk assessment.

9. 1998 Del. ALS 429 | 71 Del. Laws 429 | 1997 Del. HB 706.

10. *Helman v. State*, 784 A.2d 1058, 1079 (Del. 2001).

11. 2007 Del. ALS 25 | 76 Del. Laws 25 | 2007 Del. SB 60.

12. Letter from the Delaware Center for Justice and Stand Up for What is Right and Just signed by 15 child welfare and juvenile justice agencies.

13. This child's guilty plea was overturned in 2013 and the charges were ultimately dropped. He was removed from the registry in 2014.

14. A.H. was represented by ODS in his petition for registry removal. To protect his identity, only his initials have been used.

15. A.H. was recently removed from the sex offender registry pursuant to the legislative changes discussed in this article.

16. Michael Caldwell, *et al.*, *Study Characteristics & Recidivism Base Rates in Juvenile Sex Offender Recidivism*, 54 Int'l J. Offender Therapy & Comp. Criminology 197, 205 (2010).

17. *Id.* at 197-98.

18. Nicole Pittman and Quyen Ngyuen, *A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A Survey of the United States* (2011); *see also In re J.B.*, 107 A.3d 1, 14 (Pa. 2014) ("registration also negatively affects juvenile offenders ability to obtain housing, schooling, and employment, which in turn hinders their ability to rehabilitate.").

19. Elizabeth Letourneau & Michael Miner, *Juvenile Sex Offenders: A Case Against the Legal and Clinical Status Quo*, 17 Sexual Abuse: J. Res. & Treatment 293, 313, 331 (2005).

20. *Id.* at 303-07.

21. Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* at 71 (May 2013).

22. *Id* at 73.

23. *See* https://impactjustice.wordpress.com/about/who-we-are/.

24. *Raised on the Registry, supra* note 21, at 16.

25. Caldwell, *Recidivism Study, supra* note 16, at 197-98 (citing to recidivism studies dating back to 1994). *See also,* Michael Caldwell, *Sexual Offense Adjudication and Recidivism Among Juvenile Offenders*, 19 Sexual Abuse: J. Res. and Treatment, 107-113 (2007); Michael Caldwell *et. al., An Examination of the Sex Offender Registration and Notification Act as Applied to Juveniles: Evaluating the Ability to Predict Sexual Recidivism*, 14 J. Psychol., Pub. Pol'y, & L., 89-114 (2008); E.M. Driessen, *Characteristics of Youth Referred for Sexual Offenses*, unpublished doctoral dissertation, University of Wisconsin-Milwaukee (2002); Michael Hagan, *et al.*, *Eight-year Comparative Analyses of Adolescent Rapists, Adolescent Child Molesters, Other Adolescent Delinquents, and the General Population*, 43 Int'l J. Offender Therapy & Comp. Criminology 3, 314-324 (2011); Franklin Zimring, *et al.*, *Investigating the Continuity of Sex Offending: Evidence from the Second Philadelphia Birth Cohort,* 26 Justice Q.,

see **A Lifetime Label**
*continued on page 27*

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Hon. Barbara D. Crowell
Julie P. Miller

Maggie Boone (l.) and Nicole Byers (r,) were involved in creating the mural pictured on the issue's cover. Formerly in foster care, Maggie works with the Criminal Justice Council and Nicole is employed with the Attorney General's Office. Both remain vocal activists advocating for improving services for foster care youth.

BobCraigPhoto

# Crashing Into Adulthood: Foster Care is Not Just for Babies

**Teen foster children face unique challenges, requiring special programs and support as they transition to independent living.**

Nationwide concern about children languishing in foster care led to the 1997 Adoption and Safe Families Act, significantly increasing state courts' role in monitoring children in foster care. Since implementing the act statewide, the Delaware Family Court regularly oversees efforts to reunify with their families children who have been taken from the care of their parents or guardians.

From time to time, stories hit the news about a young baby with life-threatening injuries found beaten by a parent or about a toddler found walking unsupervised along a busy highway. Other news stories recount young children greatly malnourished, found in roach-infested homes with feces on kitchen counters, and with non-functioning toilets.

Rarely mentioned are the older children and teenagers who are removed from their families, or who remove themselves for reasons such as severe parent/child conflict due to a parent's heroin addiction, the death of the youth's only caretaker, the incarceration of parents, sexual molestation of the youth by mother's boyfriend, or the family's rejection of a youth's sexual orientation or identity.

### Issues Faced By Older Youth

It may surprise many to learn that, as of June 2015, 267 children or 40.6% of those in foster care in Delaware are 13 or older. For many teenagers entering foster care, their childhood has involved years of abuse, chaos and trauma. Their lives lacked structure and involved frequent changes of residences. Many have had to deal with drug-addicted and/or frequently incarcerated parents, requiring them to take on, at an early age, the responsibility of caring for younger siblings. Some youth have been physically and/or sexually abused, leading to untreated mental health issues. And, acting out in school can result in sus-

pension or even expulsion and/or delinquency charges.

While greater attempts are being made by the Delaware Division of Family Services (DFS) to place these youth with family members or other caring adults, foster homes are still needed for youth for whom there are no other good choices. Such homes are difficult to find for teens, especially teens with babies of their own.

Transitioning from an unsupervised lifestyle where the youth is free to come and go to a structured foster home with new traditions, expectations and experiences, can be a difficult adjustment for the youth — and a challenge for the foster family. Feeling abandoned by their family, teenage youth may question their self-worth and ask: "Am I lovable?"

In contrast to babies, teens entering foster care often bring a sense of loyalty to their biological families plus complex emotional bonds with their parents, extended family members, their neighborhoods and their communities. Youth also can feel embarrassed when schoolmates find out they are in foster care, facing teasing or isolation from their peers — and, sadly, once in a great while, even from a staff member.

With this background and little or no responsible family support, youth turning 18 are more likely to age out of the child welfare system unprepared for an independent life. This transition to adulthood is marred by high rates of homelessness, incarceration and pregnancy. In addition, these youth are less likely to hold employment or graduate high school.

In Delaware, only 47% of youth who have experienced foster care are graduating or receiving GED's with their peers. The state's independent living programs for youth and young adults in foster care report that 38% have experienced homelessness, 31% experienced incarceration, and 22% are parents.[1]

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### Initial Support Efforts

Delaware began the statewide CASA (Court Appointed Special Advocate) program in 1983, training caring adults, usually non-lawyers, to represent children in foster care in court proceedings. Formed in 2000, the Office of the Child Advocate (OCA) has recruited and trained 820 volunteer attorneys called Attorneys Guardian *Ad Litem* (GALs or AGALs), providing children and youth in foster care with their own legal advocate.

Through OCA, 304 attorneys currently represent about half of the 750 foster children in Delaware. Most of these attorneys have no prior family law experience; a majority comes from the corporate sector. CASAs represent the remaining foster children.

With the passage of additional federal legislation, Chafee Act funds are provided to encourage states to develop programs to help older youth obtain and maintain independent living skills. DFS contracts with several agencies to provide independent living coaches to youth who are or have experienced foster care from ages 16 to 21. These coaches help the youth find employment, continue their education, obtain college scholarships, locate housing, access public benefits, and receive medical and mental health services.

When a youth in foster care turns 17, a meeting — called a STEPS meeting — is convened by the youth to discuss concrete plans to meet the youth's needs once he or she turns 18. Participants generally include those who will remain involved in the youth's life once he/she has "aged out" of foster care.[2]

With the goal of teaching youth to advocate for themselves and avoid seeing themselves as victims, the Youth Advisory Council (YAC), a youth-run organization of teenagers and young adults who have experienced foster care, was organized in 2001. YAC conducts monthly meetings, usually with a social and an educational component, and holds an annual daylong conference on a university campus with workshops and motivational speakers. Other social and community events and educational trips are held during the year. Their motto, "Nothing About Us Without Us," exemplifies the organization's goal — ensuring youth input when foster care initiatives are being developed.

### More Recent Initiatives

Recognizing the challenges of taking on the responsibilities of adulthood immediately upon turning 18, a challenge not typically faced by youth with supportive families, Delaware has instituted a number of services and policies to support older youth as they age out of foster care. Throughout the last decade, these services and policies have increasingly focused on the well-being of the youth.

Governor Jack Markell has advocated for the needs of adolescent foster youth since 2010, highlighting their stories in his 2012 and 2013 State of State addresses. He has personally met with foster youth several times and prioritized foster care programs in his recommended budgets. Another result of the Governor's commitment: five cabinet secretaries agreed to work together to enhance services for youth who have experienced foster care. These efforts have paved the way for important statewide legislation and support for policy changes nationally.

In recent years, members of YAC have become more involved in making their concerns and issues known to Delaware legislators and to the wider public.

In the summer of 2012, YAC members, along with representatives from OCA, the CASA program, Family Court judges, the now-defunct Delaware Youth Opportunities Initiative (DYOI) at the Delaware Center for Justice, and private foster care and independent living providers, developed a program to support youth who have experienced foster care.

After lobbying the Governor's office and testifying before the Joint Finance Committee, YAC members observed passage of legislation in the spring of 2013 named "Ready By 21." That law provides resources for independent living services which help former foster care youth access employment, medical care, education, connection to resources, and housing until age 21. Since 2013, needs-based stipends, or ASSIST funds, supplementing the young adult's employment income, have been included in Governor Markell's budget and adopted by the General Assembly.

These funds make a difference, allowing the young adult to continue with education or avoid homelessness. The Lifelines housing program, managed by West End Neighborhood House, and vouchers offered by the Delaware State Housing Authority, provide housing options for some young adults.

Other legislation developed and supported by YAC, including a Bill of Rights for youth in foster care, passed in 2015. Governor Markell signed the law at the YAC Annual Conference in August 2015.

### Family Court's Efforts

Family Court continuously coordinates with stakeholders from public and private agencies in the child welfare system. Delaware is fortunate that, due to the state's smaller size and the willingness of organizations to work outside their normal silos, these stakeholders can meet regularly. Proactively identifying and resolving issues make for a smoother functioning system.

One result of this coordination is the 2010 legislation extending the Family Court's jurisdiction over a youth who has experienced foster care until the age of 21. Jurisdiction can be extended at the request of the young adult at any time before the age of 21, affording the young adult and his CASA or GAL a forum to monitor the young adult's independent living services and transition to adulthood. The jurisdiction terminates when the youth no longer wishes to participate.

### Youth Participation in Hearings

Upon entering foster care, children are assigned to a designated judge. Older youth are expected to attend their court hearings, held every three to six months, although the youth can be excused for important school events or extracurricular activities. The 2014 federal Preventing Sex Trafficking and Strengthening Families Act (Pub. L. 113-183) now requires youth 16 and older to attend hearings if it is expected they will remain in foster care until age 18.

Historically, professionals were reluctant to bring youth to hearings. A 2013 survey was developed by DYOI and given to professionals attending dependency and neglect hearings (judges, attorneys, CASAs, GALs, foster parents and social workers). Twenty five percent responded that they did not urge youth to attend their court hearings. Of the 75% who did encourage youth to participate in hearings, 77% limited their encouragement to youth 12 and older.

One reason cited for not encouraging participation was that judicial hearings were usually scheduled during school hours; the professionals indicated they did not want the youth to miss important classes or schoolwork. Additionally, these adults assumed that youth did not need or want to hear negative information about their biological parents. The respondents believed hearing such testimony would be too painful, and possibly further traumatize the youth.

Contrary to the perspective of the professionals, youth participating in the DYOI survey said they were more intuitive than adults gave them credit for — they usually already knew the problems their parents were experiencing. And the worst thing in their life, being placed in foster care, had already happened. In addition, older youth generally are able to express verbally that a hearing is becoming too intense and state that they need to leave the courtroom.

For those youth approaching adulthood, the main focus of these hearings becomes how he or she will survive and prosper without a foster home. As they approach their 18th birthday, it is only fair to the youth to be honest about what is happening in their parents' lives and realistic about what support they will or will not be able to count on.

Most importantly, youth often need to be pushed to take responsibility for themselves and their lives, not an easy undertaking when you are only 16, 17, or 18 and had few responsible role models in your life. While most youth are excited about the freedom adults have, they have little appreciation for what an adult requires to be housed, fed, clothed and educated.

Family Court judges have become aware of the role they need to play in encouraging youth in foster care to participate in their hearings. GALs and CASAs are urged to prepare their youth for the hearings. They and other professionals have received considerable training in child and teen development and the effect of trauma on children and their families.

Judges have listened to panels of youth describe their experiences in the foster care system. YAC youth wrote and performed a skit about how they viewed court hearings for a judicial training session in May 2014. As a result, Family Court judges are working hard to make the hearings more youth friendly, including acknowledging and highlighting the youth's presence in the courtroom.

### Family Court Youth Survey

Family Court staff spent three months between July and October 2015, observing over 70 dependency and neglect hearings statewide, all for youth 12 and older. The purpose was to see how engaged youth were in their hearings and what efforts were made by the professionals in the courtroom to include the youth during hearings.

Once each hearing was over, the

youth was asked to complete a voluntary survey that explored ways in which Family Court could improve youth engagement. The study found that 63% of youth 12 and older were attending their hearings. However, while most of the youth were given an opportunity to speak in court, most opted not to. When asked why they chose not to speak, many expressed that they felt unprepared and/or nervous. Some youth preferred to speak with their judge and CASA or GAL outside the presence of the other participants.

Youth who came to their hearings stated that they were involved and had a say in their foster care plans. They felt that the legal proceedings were an opportunity to ask questions of their workers, see family, and hear how their cases were going. Older youth, especially, said it was important to attend because they would be aging out of the system and needed to hear what was going to happen and what their options were when that occurred.

### Changed Atmosphere

Judicial training appears to be producing positive results. CASAs and GALs report that generally there is a more welcoming, youth-friendly atmosphere in the courtrooms. Judges are now sending out an introductory letter as a youth enters foster care and a packet is presented to the youth with informative materials about the foster care court proceedings.

Family Court is becoming a friendlier forum for youth when they enter care and a supportive forum as they are getting ready to exit foster care and as they journey down the first few years of adulthood.

### Future Efforts

The survey results indicate that, while Family Court is doing better, more needs to be done. The court has committed to steps to encourage youth to participate at the youth's comfort level and to do a better job at letting the youth know different ways in which they can engage.

If a youth chooses not to speak during the hearing, they can meet with the judge after the hearing, together with their legal representative. The court is preparing a questionnaire for the youth to complete which will let the judge know what is going on in the youth's life. Youth that choose not to or cannot come to their hearing can write a letter to the judge or participate in the hearings by telephone.

With the help of YAC, Family Court is continually offering new and innovative ways to get children and youth engaged in their case plans and legal proceedings.

### Need for More Advocates

The work to help youth aging out of foster care is far from over, though Delaware is at the forefront of providing services and support. Youth need to be engaged in their foster care plans and legal hearings to ensure they are invested in their future. Delaware also needs more volunteers willing to help adolescents and their unique needs. This includes more foster parents and attorneys. Families need to be open to adopting older youth or at least becoming their guardians.

Right now there are only 30 volunteer attorneys for all of Kent and Sussex counties. The CASA program is taking all cases in Sussex currently, but more needs to done to guarantee that the needs of older youth are being met. The OAC is always recruiting volunteers to support vulnerable youth. By representing a young person, you could save a life and improve that young person's future.

To find out more and to volunteer, please visit http://courts.delaware.gov/childadvocate/. Together, we can support this vulnerable population as they age out of foster care and become successful citizens of our state, our nation and our world. ◆

NOTES

1. Statistics provided by Felicia Kellum, Independent Living Program Manager, DFS.

2. Recommended attendees include parents and relatives, close friends, their GAL/CASA, their DSF worker and their independent living coach, but *only* individuals approved by the youth are invited. Youth may decide their parents or DFS worker should not be included. Others have elected to invite "their" judge.

## A "Visual Dialogue"

This issue's cover is a Bob Craig photo of hand-painted murals in the Family Court Courthouse in New Castle County. One of three murals created by current and former Delaware youth in foster care, each offers in brilliant color a metaphor for the hopes, challenges and choices foster youth face as they turn 18 and have to quickly adjust to the responsibilities of life as an adult.

John Donato, a mural artist, worked with members of the Youth Advisory Council (YAC), a youth-run organization sponsored by the Delaware Division of Family Services for current and former youth in foster care. According to Donato, "[t]he style of the mural lends itself well to allowing the youth to express themselves and share their ideas, concerns and hopes. My painting methodology was to serve as a facilitator of their artistic expression rather than director. Our goal is to help youth create their own work of art in a form of visual dialogue that will not only build public awareness of their challenges, but help other foster care youth gain guidance from their experience."

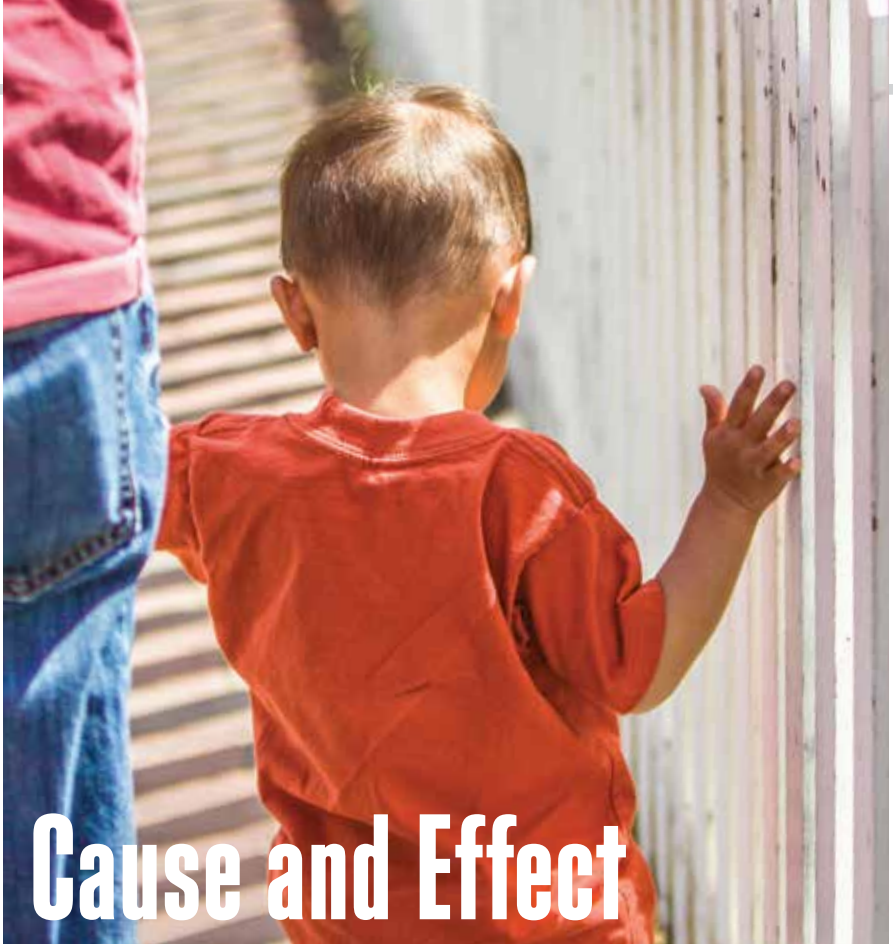
The Rehoboth Art League funded the mural, unveiled on April 30, 2012, in a courtroom in the Family Court in Sussex County. The Delaware Bar Foundation paid for the mural placed in a courtroom in Family Court in Kent County on May 5, 2014.

The New Castle County murals were funded by grants from the Arsht Cannon Fund, the Delaware Bar Foundation, and Richards, Layton & Finger. They were unveiled on September 23, 2014, and are dedicated to the late Honorable Roxanna Cannon Arsht, first woman Delaware judge, and Carl Schnee, Esquire, a tireless advocate for juvenile justice and foster care youth.

Plans are underway to seek financing for a similar mural for the third floor waiting area in the New Castle County Courthouse.

Josette DelleDonne Manning

# Child Maltreatment: Cause and Effect



BobCraigPhoto

**A prosecutor shares a front-line view of abuse, its investigation, prosecution, long-term impacts and how it might be prevented.**

There can be no keener revelation of a society's soul than the way in which it treats its children. —*Nelson Mandela*

Jane[1] spent her short life living in hotels and motels, usually enveloped in a cloud of marijuana smoke. She never had her own crib. She never had a yard to play in, only the parking lots and sidewalks of seedy motels. She had no books and few toys, but it did not matter because no one played with her anyway. Her mother smoked marijuana and drank throughout her pregnancy. Jane was fed unhealthy food and was never seen by a doctor.

If she cried, she was yelled at or hit. Sometimes, as a punishment, she had to stand in the corner, blocked in by chairs, facing the wall, holding her arms straight out, even though she was only 16 months old.

She saw her mother and her mother's boyfriend fighting constantly. The fights became so normal she did not even turn away from the television, which was on 24 hours a day. Her mother was a prostitute and frequently left her in the care of men she hardly knew. She could have been sexually abused, but no one will ever know, because she was beaten to death before she could speak a full sentence.

I would like to say Jane's story is rare and unheard of in Delaware, but I have walked into too many crime scenes just like Jane's. Every time, I am struck by the snapshot of the victim's life, frozen in time. Though I have been at countless crime scenes for offenses ranging from arson to murder, scenes involving a child victim are especially poignant.

A child's half-eaten dinner on the kitchen table, a well-hugged stuffed bear on the sofa, or a movie still playing on the television are all reminders that a child, once full of life, is dead or critically injured. I am left aching to find the "rewind" button. But there is no "rewind" button in life. And as a prosecutor, I will always arrive too late.

### Child Maltreatment Investigations

In Delaware, allegations of maltreatment most commonly arrive through

an anonymous hotline call. Once a case is opened, a multidisciplinary team investigates. The team consists of law enforcement, Deputy Attorneys General, forensic interviewers, doctors, investigators, social workers, and case workers from the Department of Services for Children Youth and their Families ("DSCYF"). Victims are generally evaluated by a medical child abuse expert and referred to the Child Advocacy Center for forensic interviews.

The team works quickly to uncover facts and implement appropriate protective actions, including safe placement for the victim and, where evidence is clear, arrest of the perpetrator. But these investigations can take days or months, depending on the case's complexity, the cooperation of those involved, and the resources available to team members. A complex case with a nonverbal victim — frequently the case — can require forensic testing, digital data analysis, expert medical consults, and dozens of interviews.

Child abuse investigations are labor intensive and, unfortunately, the amount of work is not necessarily proportionate to the strength of the case. Many cases cannot be charged because it is impossible to determine what happened: Was it an accident or abuse? If abuse, who caused it? When abuse cannot be prosecuted, there is potential for continued abuse. In my experience, it is not uncommon for someone charged with child abuse or neglect to have been investigated previously for an allegation that could not be substantiated.

### Effects of Maltreatment: Abusive Head Trauma Cases

Known factors that increase the risk of child maltreatment include: extreme poverty;[2] homelessness;[3] exposure to violence; teen parents; unemployment; lack of education; and substance abuse in the home.[4] It is not a revelation that children are inherently less safe in homes where substance abuse is occurring. Despite available drug treatment services, many child abuse cases in Delaware continue to involve a child who was born addicted or a caregiver (often not a parent) who was abusing drugs at the time of the abuse.

> Despite judicial acceptance, a new wave of defense experts testify "frequently and convincingly for the defense in abusive head trauma cases."

Alone or in combination, these risk factors can lead to a stressful and unstable home. The incessant crying of an infant is the most common trigger for abusive head trauma.[5] And abusive head trauma is the most common form of child abuse resulting in death, with 40% of cases involving children younger than 12-months.[6] It is clear that the risk of child abuse is increased both by stress in the home and, perhaps more critically, how well the child's parents or caregiver deal with such stress.

When a child suffers a brain injury from child abuse, the prosecution is complex and requires expert testimony. In the late 1990s and early 2000s, a child suffering a brain hemorrhage, brain swelling, and retinal hemorrhages (the "triad of symptoms") resulting from an unknown or unlikely mechanism, or where there was no other corroborating evidence of trauma, was held by experts to be a victim of "shaken baby syndrome."

These same injuries are now referred to as "shaken impact syndrome" or "abusive head trauma." Each term describes inflicted trauma from an incident of shaking, impact, or a combination of both that results in brain injury. The science behind the expert opinions in these types of head trauma cases has been accepted in every court across the nation, including the United States Supreme Court.[7]

Although the triad of symptoms is important, they should never be the sole basis for a diagnosis. Forensic experts must consider the totality of available evidence, including the child's medical history, family members' medical history and reports of the incident.

Despite judicial acceptance, a new wave of defense experts testify "frequently and convincingly for the defense in abusive head trauma cases, even though many of their opinions are outside the consensus of the medical community."[8] Increasingly, defense experts claim shaken baby syndrome does not exist.[9]

While reversals of abusive head trauma convictions are all over the news,[10] casting them as "innocence" cases is incorrect. Most reversals hinge on either overbroad or inaccurate statements by experts or, more commonly, the defense's failure to proffer expert testimony. While legal errors in a case clearly necessitate reversal, legal errors do not unravel the science in the way some defense experts assert.

Their primary attack is to focus exclusively on the triad of symptoms while ignoring other trauma (like broken bones, bruising, or additional brain injury) and other circumstantial evidence that support an abuse finding. A majority of Delaware's serious child abuse cases involve head trauma; these trials frequently include a battle of experts. While testimony from competing qualified experts can be productive, it presents a unique problem for prosecutors and expert witnesses in child abusive head trauma cases — no clinical study exists (or can be done) to support or refute the effects of shaking a child.

Despite increasing hurdles, I, like many prosecutors, have successfully prosecuted abusive head trauma cases using credible confessions or eyewitness testimony that clearly demonstrate

a child can be profoundly injured due to shaking. One such case involved a foster mother who repeatedly and violently shook an infant in her care.[11] Her victim, now deceased, lived for more than 10 years as a blind, deaf, quadriplegic, who endured countless surgeries and medical procedures during his short life.

Multiple experts testified that the victim suffered serious brain injury as the result of a violent shaking; in other words, he suffered from shaken baby syndrome. Most importantly, the defendant gave a chilling confession which included a demonstration of the violent shaking the baby endured in her moments of frustration.

### Effects of Maltreatment: Future Offenders in the Criminal Justice System

Jane escaped the horror of her short life through death, but what happens to children who endure similar horrors and survive? In my 15 years as a prosecutor, I am hard pressed to think of a single violent offender who did not have a history of some type of maltreatment or abuse as a child.

The link between child welfare and future outcomes is undeniable. Studies have shown that children who are subjected to maltreatment are more likely to have behavioral and social adjustment issues.[12] Children who are raised in environments like Jane's also are more likely to become violent themselves. And a significant portion of abused and neglected children will enter the criminal justice system as offenders.[13]

Studies estimate that children subjected to maltreatment are 25% more likely to experience delinquency, teen pregnancy, and low academic achievement, and are 30% more likely to engage in violent crime as adults.[14] Of course, victimization does not inevitably lead to a life of dysfunction and crime, but it is evident that any child who is abused or neglected faces undeniable roadblocks to success.

It has been estimated that 85 violent offenders are created every year in Delaware due to abuse or neglect.[15] Research done by the U.S. Department of Justice estimated the cost of abuse and neglect in Delaware at about $49 million each year, not including indirect costs like welfare and criminal justice costs.[16]

In my 15 years as a prosecutor, I am hard pressed to think of a single violent offender who did not have a history of some type of maltreatment or abuse as a child.

While spending money is never popular, financial resources must be allocated by our state and federal legislators to programs aimed at mitigating poverty, drug abuse, unemployment and mental illness that negatively impact Delaware's families — most particularly our children. Investment in such programs is good policy and fiscally conservative, as they should keep abused children from becoming future offenders.

### Delaware's Parenting Programs to Prevent Maltreatment

The first line of defense for any child is his parents, or primary caregivers, whom I will refer to as parents for simplicity's sake. It is no surprise, and studies have confirmed, that parents are the primary influence in a child's social, intellectual and emotional development.[17]

Therefore, to give every child their best chance, we need them to have the best possible parents. Parenting is one of the most demanding, complex and challenging jobs a person can undertake. The only training is typically that parent's own life experiences.

Most parents of maltreated children want but do not know how to be effective parents. They did not grow up with parents who offered a positive role model; thus, cycles of abuse and neglect are perpetuated. Parent education can greatly reduce maltreatment and has broad, long-lasting social impacts.[18]

Delaware has made strides in breaking the child-abuse cycles by creating programs that provide assistance and resources to families in need. Specifically, Delaware has focused on prenatal care for expectant mothers as well as hands on support and parenting education for new mothers. Programs like *Smart Start* and *Nurse-Family Partnership* offer regular, in-home visits to expectant and new mothers. They assist with the medical needs of parent and child and provide education on prenatal care, nutrition and general parenting skills.[19]

Nationwide, parents who participated in similar programs had almost half the number of substantiated cases of child abuse. Their children had nearly 60% fewer arrests by age 15 as compared to families who did not participate in such programs.[20] Clearly, educating and supporting care givers needs to be a vital part of our long-term strategy to prevent abuse and future offenders in the system.

### Conclusion

If Jane had survived, would anyone be surprised if she grew up to be a drug user or prostitute like her mother? Would anyone be surprised if she did not finish high school or became a teen parent? Would anyone be surprised if she beat — or allowed someone else to beat — her own child?

Prior to her death, there was no state involvement with Jane. There were no reports of abuse or neglect. There was nothing requiring her mother to take advantage of the great state programs that were available to help her. The criminal justice system was not the answer for Jane.

Improving the lives of our children is no simple task and a coordinated ef-

fort is needed if we are to be successful. The criminal justice system is mostly reactive. Though absolutely necessary, it cannot be the primary solution to help at risk children. We must allocate resources for early identification and elimination of risk factors for both parents and children to end the cycle of violence, prevent new offenders and, most critically, save children's lives. ◆

## NOTES

1. "Jane" is a pseudonym.

2. Approximately 18,000 Delaware children live in extreme poverty, defined as a household whose income is 50% or more below the federal poverty level, essentially $12,000/year for a family of four. *Kid Count Data Center* (2014), http://datacenter.kidscount.org/data/tables/43-children-in-poverty#detailed/2/2-52/false/869,36,868,867,133/any/321,322.

3. As of 2013, there were almost 8,000 homeless children in Delaware, which ranked 34th in a 2014 study of nationwide homelessness. Ellen Bassuk, Carmela DeCandia, Corey Anne Beach & Fred Berman, *America's Youngest Outcasts: A Report Card on Child Homelessness.* The National Center on Family Homelessness at American Institutes for Research (2014), http://www.homelesschildrenamerica.org/mediadocs/282.pdf.

4. In the U.S., approximately 440,000 infants are born affected by substance exposure each year. N. K. Young, S. Gardner, C. Otero, K. Dennis, R. Chang, K. Earle & S. Amatetti, *Substance-Exposed Infants: State Responses to the Problem.* HHS Pub. No. (SMA) 09-4369. Rockville, MD: Substance Abuse and Mental Health Services Administration (2009).

5. http://www.cdc.gov/violenceprevention/childmaltreatment/abusive-head-trauma.html.

6. Cindy Christian & Erin Endom, *Child abuse: Evaluation and diagnosis of abusive head trauma in infants and children* (2015).

7. *Cavazos v. Smith*, 132 S.Ct. 2 (2011).

8. Dermot Garrett, *Overcoming Defense Expert Testimony in Abusive Head Trauma Cases*, http://www.ndaa.org/pdf/Abusive%20HeadTrauma_NDAA.pdf; *see also*, http://dontshake.org/pdf/2015-03-23-WashPostResponse.pdf.

9. Allen Breed, *Studies Split on Shaken Baby Syndrome*, USA Today, April 28, 2007, http://usatoday30.usatoday.com/news/health/2007-04-28-shakenbaby_N.htm.

10. Debbie Cenziper, *Shaken Science: A Disputed Diagnosis Imprisons Parents*, Washington Post, March 20, 2015, https://www.washingtonpost.com/graphics/investigations/shaken-baby-syndrome/.

11. *State v. Stephanie Walls*, 834 A.2d 827 (Del. 2003).

12. *Child Maltreatment: Consequences,* Center for Disease Control and Prevention, http://www.cdc.gov/violenceprevention/childmaltreatment/consequences.html. *See also, Emerging Practices In the Prevention of Child Abuse and Neglect*, a report prepared by Caliber Associates at the request of the Children's Bureau, U.S. Department of Health and Human Services.

13. Jennifer Lansford, Shari Miller-Johnson, Lisa Berlin, Kenneth Dodge, John Bates and Gregory Pettit, *Early Physical Abuse and Later Violent Delinquency: A Prospective Longitudinal Study*; http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2771618.

14. *Id.* at n. 12.

15. William Christeson, Jeff Kirsch & Soren Messner-Zidell, *Breaking the Cycle of Child Abuse and Reducing Crime in Delaware: Coaching at-risk parents through home visiting.* (2009).

16. *Id.*

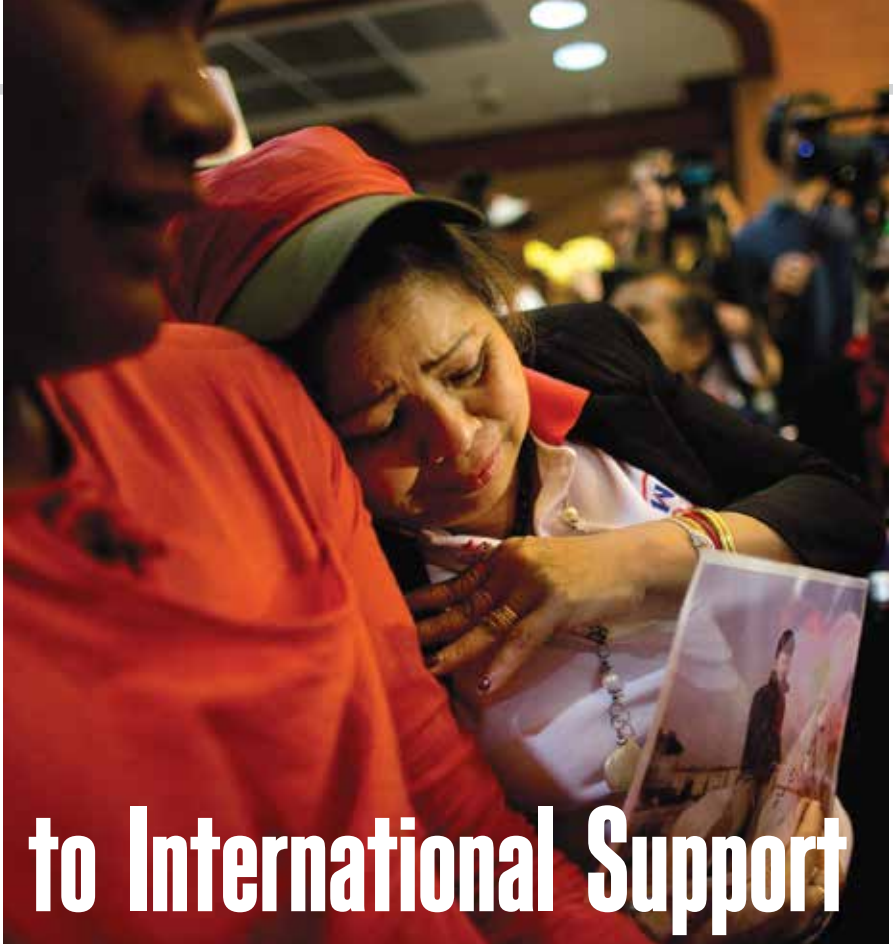
17. Richard Barth & Ron Haskins, *Will Parent Training Reduce Abuse, Enhance Development, and Save Money? Let's Find Out* (2009).

18. *Id.*

19. For links to services and their descriptions see, http://www.cffde.org/services/healthy babies/nursefamilypartnership.aspx and http://dhss.delaware.gov/dhss/dph/files/smartstartsvs.pdf.

20. Christeson, *et al*, *supra* note 15.

Battle Rankin Robinson



# The Beginner's Guide to International Support

The Uniform Interstate Family Support Act and a new Hague Maintenance Convention hold out the promise of a better life for a significant number of children.

Pursuing family support across international borders is not for the faint hearted. Language, jurisdictional conflicts, incompatible legal systems, different currencies and distance are all barriers. Two recent developments — an international treaty and uniform state legislation — will help smooth some of the bumps along this often rocky road. This article is a brief introduction to these innovations.

### Support Law: A Primer

In the United States, most support matters that implicate two states or the United States and another country are processed pursuant to the Uniform Interstate Family Support Act (UIFSA).[1] Under the act, requests for the establishment, enforcement or modification of a support order are sent to a "tribunal" (a term encompassing both courts and administrative hearing agencies) in another state that can obtain jurisdiction over the respondent. That responding tribunal handles the proceeding and, for the most part, applies its own state laws and procedures, including its child support guidelines and enforcement techniques.[2]

UIFSA is the product of the Uniform Law Commission (ULC), a venerable national organization of lawyers, judges and legal scholars that drafts model state legislation. Historically, a foreign country was covered by UIFSA only if it had a "substantially similar reciprocal [support] law" in effect.

In its 2001 amendments, the term "state" was redefined, and UIFSA was broadened to include foreign countries with which the United States government had negotiated a bilateral agreement for child support enforcement (a foreign reciprocating country or FRC) or with which a state government had a reciprocal arrangement to enforce support.[3]

As a result of these efforts to encompass international cases within UIFSA,

American courts and child support agencies[4] have for some time routinely handled child support matters from other countries. However, with the exception of FRCs, all too often Americans seeking to obtain support abroad have faced the delay, expense and aggravation of litigating or re-litigating support matters in a foreign jurisdiction. This was a primary motivation for the United States to join in the development of an international support treaty.

### A Treaty is Born

The Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, [hereinafter referred to as "Convention," "convention," or "treaty"], was developed under the auspices of The Hague Conference on Private International Law. The United States, along with more than 70 other countries, participated in the four years of negotiations.

The United States Senate gave the treaty its advice and consent in 2010 and federal legislation pertaining to implementing the treaty was enacted on September 29, 2014.[5] It is anticipated that the United States will file its instrument of ratification at The Hague by the fall of 2016.[6]

The treaty is a complex document of 65 articles. It is posted on The Hague Conference website at www.hcch.net. Significant portions of the treaty deal with the relationships among the signatory countries and their support agencies. Other provisions deal with the establishment, recognition and enforcement of support orders across national boundaries.

The style and language of the treaty are frequently unfamiliar to American senses. Since the treaty necessarily reflects the practices of many nations, some of its provisions contain concepts that are largely unknown in American law.

Interestingly, the Convention adopts many of the techniques first introduced by UIFSA and applicable to U.S. interstate cases. This symbiotic relationship between the treaty and UIFSA should make it far easier to integrate the treaty into American law and practice.

Normally, federal treaties are implemented through federal law. Because family law is traditionally a state matter, the decision was made to implement the treaty through state law.

### And the Treaty is Implemented

Once the United States ratifies the Convention, it is the "law of the land" and binding on the states.[7] However, it is not a "self-executing" treaty;[8] legislation is necessary to implement its provisions. Normally, federal treaties are implemented through federal law. Because family law is traditionally a state matter, the decision was made to implement the treaty through state law.[9] And because UIFSA is the law in every state and serves as the basis for thousands of support cases handled daily, it was logical to use UIFSA as the implementing state legislation.

Accordingly, following the signing of the treaty in 2007, the ULC, with the cooperation and assistance of federal representatives, drafted amendments to existing UIFSA that implement certain provisions of the Convention and will apply in cases involving the United States and other signatories to the Convention. These treaty-mandated provisions are contained in Article 7 of UIFSA 2008. In addition, the 2008 amendments make other changes to UIFSA which apply to cases involving foreign countries that are not parties to the Convention.

Federal law passed in 2014 directs that all states of the United States must, by a date certain, enact UIFSA 2008 or risk losing the substantial federal funding for its child support and Temporary Assistance for Needy Families (TANF) programs.[10] The Commissioner of the federal Office of Child Support Enforcement has directed that each state must adopt the uniform act in "verbatim" form.[11]

### How to Research the Treaty and UIFSA 2008

There are many resources on both the treaty and UIFSA 2008.[12] The Hague Conference has published two handbooks on the treaty accessible on the Conference's website. There are also extensive comments to UIFSA 2008, prepared by the ULC Reporter for UIFSA, Professor John Sampson of the University of Texas School of Law.

These comments, along with the complete text of UIFSA 2008, appear on the ULC's website, www.uniformlaws.org. In addition there are two editions of the *Family Law Quarterly* devoted to UIFSA 2008.[13] The purpose of this article, then, is simply to point out a few of the more important aspects of the treaty and UIFSA 2008.

### Private Attorneys, Welcome!

Because all states have child support agencies, there is sometimes confusion about whether private attorneys should even become involved in support matters, foreign and domestic. Undoubtedly, most child support litigation is and will continue to be handled by attorneys for governmental agencies. And a significant portion of the Convention is devoted to the responsibilities of and cooperation between agencies that handle support matters.

However, there is still a role for private attorneys that is recognized in UIFSA 2008, §309. The Convention, in article 37, while not providing explicitly for retaining private counsel, implies that the right to employ an attorney is available.

The treaty and the act also specifically protect the right of individual liti-

gants in convention countries to institute "direct requests" to tribunals without going through a support agency. These direct proceedings may be instituted *pro se* or with the aid of counsel.[14]

### Not Just Child Support

While the Convention and UIFSA 2008 were both motivated largely by a desire to improve the collection of child support, they also deal with spousal support.[15] Both the Convention and UIFSA 2008 provide for the enforcement of a spousal support order by a responding tribunal.[16]

The Convention and UIFSA 2008 also encompass determinations of parentage.[17] Although typically a request for such a determination is joined with a petition for support, §402 of UIFSA 2008 authorizes a "pure" parentage action, in which no support is sought.

### Foreign Means Foreign, State Means State, and Other Lexical Matters

UIFSA 2008 no longer includes foreign countries in the definition of "state." The definition of "state" has been modified to drop the reference to other countries.[18] The added term "foreign country" now covers many but not all foreign nations.

The 2008 amendments also replace unfamiliar language of the Convention with words used in the United States. Thus, "competent authorities" becomes "tribunals," "debtor" and "creditor" are translated as "obligee" and "obligor," "maintenance arrangement" is now "foreign support agreement," and, of course, "maintenance" is converted to "support" — although it is quite acceptable, if not *de rigueur*, to refer to the Convention as the "Maintenance Convention."

### Some "Foreign" Countries are Not "Foreign Countries"

Keep in mind that only certain countries are defined as "foreign countries" for purposes of the act. There are four distinct types of such countries in §102(5). The first three previously fell within the definition of "state": an FRC;[19] a country that has a similar reciprocal arrangement with an individual state; and a country that has support laws or procedures substantially similar to UIFSA 2008. The final "foreign country" is a country in which the Convention is in force with respect to the United States.

> The premise underlying the Convention and UIFSA 2008 is that once a tribunal has issued a support order which conforms to certain standards, it should be promptly accepted and enforced in all other states and countries.

However, even if another country is not a "foreign country" within this definition, its orders may nevertheless be entitled to recognition and enforcement pursuant to the doctrine of "comity," as §105 of UIFSA 2008 specifically indicates.

### Applying UIFSA'S Provisions to Foreign Countries

Applying UIFSA 2008's provisions to foreign countries is a relatively simple matter: A tribunal *must apply* Articles 1-6 to all proceedings involving a foreign country. A tribunal *may apply* Articles 1-6 to proceedings to recognize and enforce a support order on the basis of comity.

The special provisions in Article 7 apply only when a convention country is involved. If, in a convention case, there is a conflict between a provision in Articles 1-6 and in Article 7, the Article 7 provision prevails.[20] Cases from non-convention countries are not affected by Article 7.

The Hague website lists all the countries that are parties to the Convention. Recognition of an order pursuant to the common law doctrine of comity is a matter of individual state law and there is no guidance in UIFSA 2008.

### Using UIFSA

UIFSA 2008 sets out the procedures that govern how support (and parentage) may be established in the interstate and inter-country context. In addition, it provides for the recognition and enforcement of existing support orders across state and national boundaries, and also specifies the rules for modifying existing orders. There are some differences in these procedures, depending on the relief requested and whether a case is a convention case.

UIFSA 2008 contains a number of innovative provisions, found in Articles 2 and 3, which apply to international as well as domestic cases. This includes §201, which specifies how jurisdiction over a non-resident may be obtained when establishing a support order. This far-reaching long-arm statute also is important when recognition and enforcement of a foreign order is sought and is discussed at greater length below.

The "relaxed" evidentiary rules, which are an innovative feature of UIFSA and authorize such practices as taking testimony of non-resident witnesses by telephone or other electronic means and allowing the admission of certain documents, should prove helpful in the international context.[21]

So should provisions authorizing tribunals to assist with discovery and to confer with one another about the laws of another country, the legal effect of a judgment or order in that country, and the status of proceedings.[22]

### The Heart of the Matter: Recognition of Support Orders

While the Convention and UIFSA 2008 both deal with the establishment and modification of support, the legal recognition and enforcement of support orders across national boundaries is, perhaps, most important. The premise

underlying the Convention and UIFSA 2008 is that once a tribunal has issued a support order which conforms to certain standards, it should be promptly accepted and enforced in all other states and countries.

Earlier versions of UIFSA constructed a procedure for the expeditious registration or filing of a support order in the tribunal of another state and the prompt enforcement of a valid order. This process is encapsulated into Article 6 of UIFSA 2008. That Article applies not only to interstate matters but also to non-convention foreign support orders.

The procedure provides for registering the support order with the tribunal where enforcement is sought, giving notice of the filing to the non-registering party, and giving that party a limited time to challenge the registration. If there is no timely challenge, there can be no further challenge.[23] If the registration is contested, the challenger must establish one of the eight narrow grounds set out in UIFSA 2008 §607 for denying registration. An unsuccessful challenge similarly precludes further challenge with respect to a matter that could have been asserted in the contest.[24]

The Convention contains a similar registration provision in Article 23, which is reflected in §§706 - 709 of UIFSA 2008 and applies to convention orders. The requirements for registration in the case of a convention country differ slightly from those applicable to orders of other states and non-convention foreign countries. For instance, under Article 7, §707 a non-registering party in a convention case is given a slightly longer time to contest the registration.

The documents that must accompany a request to register a convention order also are somewhat different from the requirements for orders from states and non-convention foreign countries.[25]

Section 708 of UIFSA 2008 sets forth what it warns are "the only grounds" on which a tribunal may refuse recognition and enforcement of a support order from a convention country. For the most part, these are similar to the grounds for refusal contained in the earlier Article 6 sections that apply to interstate and non-convention foreign country cases.[26]

> A substantial obstacle to the cross-boundary recognition and enforcement of international support orders has been the different jurisdictional rules in the United States as compared to the rest of the world.

These include: the issuing tribunal's lack of personal jurisdiction over the challenger; payment of the obligation; and the existence of a more recent order entitled to recognition. Other grounds are concerned with fraud or improper or incomplete documentation.

One of the grounds for rejecting registration of a convention order is the requirement that a respondent must have received "notice and opportunity to be heard" in the proceeding. The Convention also expressly guarantees notice and opportunity to be heard. However, that guarantee may appear in a slightly different form. Under the Convention, if the underlying support hearing was held in a country that requires prior notice of the proceeding and the respondent did not receive such notice, the registration may be rejected.

The subsection also contains a further provision that takes into account a procedure peculiar to Australia and New Zealand; it provides that notice and opportunity to be heard is sufficient if a respondent who is not present at the hearing received notice of the support order after the order is issued, and is given opportunity to be heard at a subsequent hearing on a "challenge or appeal on fact or law before a tribunal." This procedure satisfied the American constitutional requirement and the procedure appears in UIFSA 2008 in §708(9).

### The Jurisdictional Muddle and How it is Solved

A substantial obstacle to the cross-boundary recognition and enforcement of international support orders through the years has been the different jurisdictional rules in the United States as compared to the rest of the world. In the United States there must be a nexus between the forum and the respondent, generally stated as a need for "personal jurisdiction" over an obligor.[27] UIFSA adheres to this fundamental requirement and provides that an American tribunal can recognize a foreign order only if the order is based on personal jurisdiction.[28]

Elsewhere in the world, jurisdiction is based on the location or residence of the obligee and the child whose support is at issue, known as "child-based jurisdiction." Thus, a respondent of a foreign support order may have had absolutely no contact with the country where the order was issued, making it unenforceable in the United States.

The Convention reconciles these two very different approaches by allowing a country to make a reservation to child-based jurisdiction. When the United States deposits its instruments of ratification at The Hague, it is expected to make a reservation declining to recognize or enforce a support order of a convention country that was not based on our concept of personal jurisdiction.[29]

However, that is not the end of the story — or the litigation. Another interesting resolution of the jurisdictional conflict, worked out in the treaty negotiations, is reflected in §708(b)(2) of UIFSA. It provides that a tribunal may refuse to recognize an order of a convention country if "the issuing tribunal lacked personal

jurisdiction consistent with Section 201" of UIFSA.

This means that even if the underlying order is founded on child-based jurisdiction, an American court may nevertheless recognize the order if, upon review, it appears that there would have been any sufficient basis under the long-arm jurisdictional provision of UIFSA for the court to exercise jurisdiction. Only if none of the eight bases for jurisdiction under §201 of UIFSA 2008 are present may the court deny recognition.

Even then, if a court cannot recognize a convention support order under this subsection, it may not dismiss the proceedings without allowing a reasonable time for party to request the establishment of a new convention support order.[30]

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### Enforcement of a Registered Order

Once an order from another state or country is successfully registered, the tribunal may proceed to enforce it, using enforcement techniques available in the tribunal's state. While the general rule in UIFSA is that the law of the forum applies, there are "conflict of law" provisions where the act directs the law of the issuing state or country be applied.

These include the duration of support and, in the event there is a conflict between the statutes of limitations in the two states, UIFSA 2008 directs that the longer one prevails.[31]

### The Public Policy Exception

UIFSA 2008 is notable for its precise directions and rules for handling various support matters. But one area, inherited from the Convention, appears to have been left to the courts and practitioners to thrash out. That is the "public policy" exception to the registration and enforcement of convention orders.

The Convention provides in articles 22 and 23 that a tribunal may decline to register an order, either on its own motion or if established by the challenger to the registration, if recognition and enforcement of the decision "is manifestly incompatible with the public policy (*'ordre public'*)" of the jurisdiction where enforcement is sought. This language is incorporated into UIFSA 2008 in §§706(d) and 708, which list the limited grounds for non-recognition. There are no parallel provisions in Article 6, which applies to orders from other states and non-convention foreign countries.

Neither the Convention nor UIFSA 2008 provides much instruction about what would cause an order to be "manifestly incompatible with public policy" and it is not clear what the treaty negotiators had in mind. The UIFSA Reporter, in notes to §706, observes that an example in the Explanatory Report to the Convention would be helpful, but there is not one, "just the negative reference that a country could not use this language to enforce

a policy against ordering support for a child born out of wedlock." *See* http://www.hcch.lnet/upload/expl38.pdf.

Some guidance may be gleaned from language added to §708(a) by the ULC. Following the phrase "manifestly incompatible with public policy" is inserted the phrase "including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard." The reference to "minimum standards of due process" suggests the ULC's understanding that a tribunal's public policy review should focus on the procedural due process rights afforded the challenging party in the issuing country.

### The Future

Yes, it is a complex world. However, the cooperation among nations that is reflected in the treaty, and the simplified and fair procedures for handling support matters devised by the treaty and its implementing legislation, hold out the promise of a better life for a significant number of children. ◆

NOTES

1. The most recent version, known as UIFSA 2008, took effect in Delaware on July 1, 2015. *See*, Title 13, Del. C. Ch. 6.

2. UIFSA 2008, §303; UIFSA also contains important provisions allowing a tribunal in the petitioner's state to obtain or retain jurisdiction over a non-resident party.

3. 42 U.S.C. §659a; Delaware has a state-level arrangement with Germany.

4. State child support enforcement agencies established and operating in accord with Title IV, Part D of the Social Security Act, known as "IV-D agencies." The Division of Child Support Enforcement (DCSE) is Delaware's IV-D agency.

5. The Preventing Sex Trafficking and Strengthening Families Act, (Pub.L.113-183).

6. As of publication, the treaty is in effect in the 27 countries of the European Union, Norway, Albania, Bosnia and Herzegovina, and Ukraine.

7. U.S. Constitution art.VI, cl.2.

8. *Medellin v. Texas*, 552 U.S. 491 (2008).

9. The Department of Health and Human Services, through the Office of Child Support Enforcement, serves as this country's "Central Authority." It will designate state child support agencies to carry out the day-to-day processing of cases under the Convention.

10. P.L. 113-183, §301(f)(3)(A); all states are expected to have enacted UIFSA 2008 before April 1, 2016.

11. OCSE, Action Transmittal 14-11, October 9, 2014.

12. Note, however, that these are not the exclusive techniques for handling international cases. §104(b) of UIFSA 2008 specifically states that the act does not "provide the exclusive method of establishing or enforcing a support order under the law of this state."

13. *Family Law Quarterly*, Vol. 43, No. 1, Spring 2009, and Vol. 49, No. 2, Summer 2015.

14. Convention, art. 37; UIFSA 2008, §705. As the comment observes, this provision reflects long-standing practice in the United States, which may not have been prevalent in other legal systems, and is therefore an important guarantee provided by the treaty.

15. Convention, art.2; UIFSA 2008, §§101(25),. 201, 211.

16. UIFSA 2008, §211; state child support agencies have a very limited role in spousal support enforcement.

17. Convention, arts. 2, 6, 10; UIFSA, art. 4.

18. Thus, Delaware employers are no longer required to recognize under §502 income withholding orders sent directly from a foreign country.

19. The United States has declared 14 countries (Australia, Czech Republic, El Salvador, Finland, Hungary, Ireland, Israel, Netherlands, Norway, Poland, Portugal, Slovak Republic, Switzerland, The United Kingdom of Great Britain and Northern Ireland) and all Canadian provinces except Quebec to be FRCs.

20. UIFSA 2008, §105 (c).

21. UIFSA 2008, §316.

22. UIFSA 2008, §§317, 318.

23. UIFSA 2008, §§606(b), 608.

24. UIFSA 2008, §608.

25. *See* UIFSA 2008, §706(b) governing convention orders compared to §§602(a) and 616 governing non-Convention orders.

26. UIFSA 2008, §607.

27. *Kulko v. Superior Court*, 436 U.S. 84 (l978) [child support]; *Vanderbilt v. Vanderbilt*, 354 U.S 416 (1957) [spousal support].

28. UIFSA 2008, §§607 (a(1), 708 (b)(2).

29. Article 62 of the Convention provides for a limited number of reservations which a country may make. The United States will likely make a reservation with respect to the child-based jurisdiction provisions of art. 20 and to the use of French in communications between authorities under art. 44.

30. UIFSA 2008, §708(c)(1).

31. UIFSA 2008, §604.

**A Lifetime Label** *continued from page 13*

59-76 (2009); Franklin Zimring, *et al.*, *Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?*, 6 Criminology & Pub. Pol'y 3, 507-534 (2007). As a group, juvenile sex offenders pose a relatively low risk of re-offending sexually, particularly as they age into young adulthood. *A Multi-State Recidivism Study Using Static-99R & Static-2002 Risk Scores & Tier Guidelines from the Adam Walsh Act*, National Institute of Just., 24, 32 (2008).

26. Caldwell, *Recidivism Study, supra* note 16, at 197-98.

27. Elizabeth Letourneau & Kevin Armstrong, *Recidivism Rates for Registered and Nonregistered Juvenile Sexual Offenders*, 20 Sexual Abuse: J. of Res. and Treatment, 393-408 (2008).

28. *See* Letourneau & Miner, *supra* note 19, at 297 (citing to Michael Caldwell, *What We Do Not know About Juvenile Sexual Re-offense Risk*, 7 Child Maltreatment 291 (2002) at 313 and 331; and Franklin Zimring, *An American Travesty: Legal Responses to Adolescent Sexual Offending*, The University of Chicago Press (2004)).

29. *See* Elizabeth Letourneau, *et al.*, *Do Sex Offender Registration & Notification Requirements Deter Juvenile Sex Crimes*, 37 Crim. Just. & Behav., 553, 556 (2010).

30. *In re* C.K., No. A-5469-13T4 (N.J. Super. Ct. App. Div. filed July 28, 2014).

31. *See* http://www.kansascity.com/news/local/crime/article37084293.html.

32. *In re C.P.*, 967 N.E.2d 729 (Ohio 2012).

33. *See, Miller v. Jackson*, 132 S. Ct. 2455; *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011); *Graham v. Florida*, 560 U.S. 48 (2010); *Roper v. Simons*, 543 U.S. 551 (2005). *See also, In re Gault*, 387 U.S. 1 (1967).

34. *In re C.P.*, *supra* note 32.

35. The Court noted that this doctrine has been used several times in Pennsylvania, (*see, Commonwealth, Dept. of Transportation, Bureau of Driver Licensing v. Clayton*, 684 A.2d 1060 (Pa. 1996); *D.C. v. School Dist. of Philadelphia*, 879 A.2d 408 (Pa. Cmwlth. 2005)), and derived from a series of U.S. Supreme Court cases in the 1970s. *Id.* at 14, citing *Vlandis v. Kline*, 412 U.S. 441 (1973); *Stanley v. Illinois*, 405 I.S. 645 (1972); *Bell v. Burson*, 402 U.S. 535 (1971).

36. 42 Pa.C.S. 9799.11(a)(4).

37. *In re J.B., supra* note 18 at 16-17.

38. Formerly known as the Delaware Public Defender's Office.

39. *See, State v. Fletcher*, 974 A.2d 188 (Del. 2009) and *Heath v. State*, 983 A.2d 77 (Del. 2009).

40. House Substitute 1 for House Bill 182.

41 *DE ISB 18 Month Recidivism Study*, January 1, 2011, Sean Keblan, M.S.

42. 11 *Del. C.* § 4123.

43. 11 *Del. C.* § 4123 (c)(2).

44. 11 *Del. C.* §4123(b).

45. 11 *Del. C.* §4123(c)(2). The Court must consider six factors when making this determination: the risk the juvenile poses to the victim, the community and to other potential victims; the nature and circumstances of the offense; the impact on the victim, including the effects of registration and community notification; the comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section; the likelihood of successful rehabilitation, if known; and, the adverse impact of public registration on the juvenile and the rehabilitative process.

46. In this Court the nature of the hearing and all other proceedings shall be in the interest of rather than against the child. 11 *Del. C.* § 1002.

Kate S. Keller

# OF COUNSEL: Patty Dailey Lewis

November 30, 2015, marked the end of an era when one of Delaware's most passionate children's advocates, Patricia Dailey Lewis, retired from the Delaware Department of Justice (DOJ) after 30 years of practicing law.

A graduate of Cabrini College and the Delaware Law School at Widener University, Patty began her career with the Department of Justice in 1985. From the outset, she had the opportunity to try criminal cases and experience her first taste of advocacy in the criminal justice system.

In 1991, Patty became the Director of Legal Services for Delaware's Family Court, representing the interests of children statewide. After leaving the Court-appointed position, she entered the world of private practice working in the fields of family law and private defense work with Lou Ferrara, Dan Lyons and Mike Modica.

Patty fondly remembers her defense work as "an unbelievably great experience." While private practice gave her a deep appreciation of the challenges and rewards of criminal defense work, she became increasingly aware that many of her adult clients had been involved with the juvenile justice and/or child welfare systems as children. Eventually, Patty concluded she could make a more valuable contribution to society by working to change those systems from within.

Patty's return to the DOJ allowed her to refocus on public advocacy. After serving in the consumer protection unit for several years, she moved to the Child Protection Unit, an assignment that matched her passion to advocate for children. Patty and her colleagues considered the whole family structure and how it affected both individual family members and the wider community. The opportunity to identify children's needs at an early age in the juvenile justice system was, she says, a "dream job."

In 2007, Patty realized her aspiration to create a better system for children and families when she was appointed by Attorney General Beau Biden to become the first Director of the DOJ's Family Division. In this role, Patty was able to "connect the dots in the system." The goal was to collaborate both within the DOJ and externally, with state agencies, to ensure that children's legal issues were not viewed in a vacuum. Foster care children were linked to juvenile delinquency, and dependency and neglect cases crossed over to juvenile justice. Leading the newly created Family Division was a challenge, but it was a role Patty embraced from day one.

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One of the defining moments in Patty's legal career came during the highly publicized Bradley case. In 2010, Dr. Earl Bradley was being prosecuted for molesting and raping hundreds of his juvenile patients. After personally meeting with victims' families, Attorney General Biden and Patty agreed programs were needed to educate parents and the general public on the danger signs of child sexual abuse. Simultaneously, under Patty's tutelage, all stakeholders in child advocacy and welfare were trained to identify and prevent child sexual abuse.

A critical piece of her work was to advocate on behalf of Delaware's children in the state legislature. In 2015, Patty was appointed a member of an emergency task force to streamline background check requirements for programs like summer camps and private schools. The task force, headed by the Secretary of DSCYS, spent countless hours re-drafting a law that would be a first line of defense in protecting Delaware's children. The Joseph R. Biden III Child Protection Act was signed into law by Governor Markell in August 2015.

Since the late 1980's, Patty also has taught family law as an adjunct professor at the Delaware Law School. Patty's class was particularly compelling for students aspiring to represent children. She offered a real-world perspective on issues facing children and how best to solve them. Her students were empowered and moved by her stories of the highs and, inevitably, the lows of child advocacy.

The DOJ is not the final chapter in Patty's storied career of child advocacy. She now leads the Beau Biden Foundation for the Protection of Children. Set up after the untimely death of Beau Biden, the foundation will continue Beau's pursuit of educating, leading, and advocating for the protection of children at both the state and federal levels. At the foundation, Patty will continue her life-long passion of advocating for children. ◆

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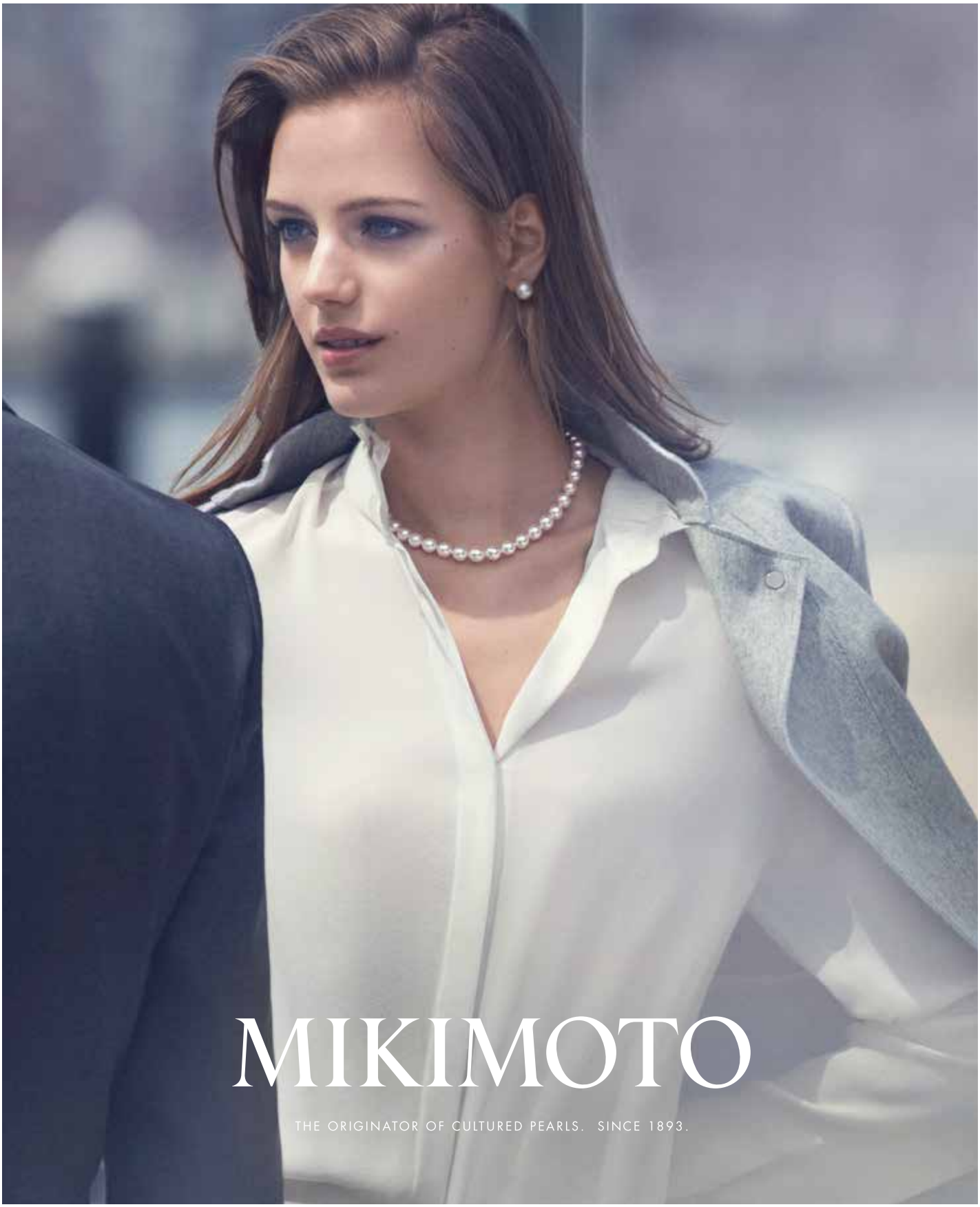


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