
Recent Court Decisions and Legislation

Ninth Circuit – Federal Court of Appeals

 *M.M. v. Lafayette School District*

767 F.3d 842 (9th Cir. 2014)

In *M.M. v. Lafayette School District*, the Ninth Circuit explored Response to Intervention's (RTI) role under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.S. §§ 1400-1487.¹

C.M. started kindergarten at Lafayette Elementary in 2005.² That year, the school implemented an RTI program.³ RTI refers to three tiers of research-based interventions decided upon by collaborative teams: intensive, individual interventions for 1 to 5% of the students; targeted group interventions for 5 to 10% of the students; and universal interventions for the remaining students.⁴ C.M.'s tier is unclear, but the interventions continued throughout kindergarten, summer school, and first grade.⁵ In first grade, C.M.'s parents requested that the District perform an evaluation for learning disabilities.⁶ The resulting IEP had findings inconsistent with C.M.'s RTI.⁷

Congress modified IDEA to include RTI in 2004. Those changes were promulgated to 34 C.F.R. § 300.311(a)(2), which stated districts

¹ *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842 (9th Cir. 2014) as amended Feb. 13, 2015, 2014 U.S. App. LEXIS 18979.

² *Id.* at 5-6.

³ *Id.* at 5.

⁴ W. David Tilly III, *Response to Intervention: An Overview. What Is It? Why Do It? Is It Worth It?*, THE SPECIAL EDGE, Winter/Spring 2006, at 4.

⁵ *M.M. v. Lafayette Sch. Dist.*, 767 F.3d 842 (9th Cir. 2014) as amended Feb. 13, 2015, 2014 U.S. App. LEXIS 18979 at 6-7.

⁶ *Id.* at 7.

⁷ *Id.* at 30-31.

must, among other things, state what strategies were used and what data was collected when creating an IEP.⁸ IDEA further requires (1) informed parental consent prior to initial evaluation and providing services and that (2) the District establish “procedural safeguards that provide ‘[a]n opportunity for the parents of the child with a disability to examine *all* records relating to such child.’”⁹ Without the second, the first is impossible.¹⁰ Thus, the District denied C.M.’s right to a free and appropriate public education.¹¹

The Ninth Circuit held that the District violated IDEA when it made three determinative procedural errors.¹² The Court held that the District failed to ensure it documented RTI data;¹³ the District failed to ensure the entire IEP team considered the relevant documented data;¹⁴ and the District failed to provide the parents with the data necessary to give informed consent to the proceedings.¹⁵

⁸ *Id.* at 24-25.

⁹ *Id.* at 28 (emphasis added).

¹⁰ *Id.* at 29.

¹¹ *Id.* at 31.

¹² *Id.* at 22.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

CALIFORNIA**California Supreme Court** *In re Alonzo J.*

58 Cal. 4th 924 (2014)

In the case of *In re Alonzo J.*, the California Supreme Court held that juvenile clients must obtain the consent of their attorney to plead no contest.¹⁶ The ruling thereby affected the rights of juvenile defendants in determining their defense delinquency proceedings.

Alonzo J. was a 13-year-old defendant charged with two counts of assault with a deadly weapon likely to produce great bodily injury, and one count of misdemeanor vandalism.¹⁷ The prosecution offered a plea deal, wherein Alonzo could return home on probation if he admitted to one of the felony assault charges.¹⁸ Wanting to be released home, Alonzo wished to plead to a felony charge.¹⁹ Alonzo's attorney, however, refused to accept the deal.²⁰ She believed her client was not guilty of the felony charges and that the matter should have been resolved "under some other terms."²¹ The juvenile court refused to accept Alonzo's plea.²² During the subsequent contested jurisdictional hearing, the juvenile court sustained the petition.²³

The Third District Court of Appeal reversed.²⁴ The Court of Appeal reasoned that Rule 5.778(e) of the California Rules of Court (CRC) did not expressly require counsel's consent.²⁵

The California Supreme Court unanimously reversed.²⁶ Examining CRC 5.778 as a whole, the Court found no procedural differences in the provisions governing admitting a charge, from those governing accepting

¹⁶ *In re Alonzo J.*, 58 Cal. 4th 924 (2014).

¹⁷ *Id.* at 927-28.

¹⁸ *Id.* at 928-29.

¹⁹ *Id.*

²⁰ *Id.* at 930.

²¹ *Id.*

²² *Id.* at 927.

²³ *Id.* at 930.

²⁴ *Id.*

²⁵ *Id.* at 931.

²⁶ *Id.* at 940.

a no contest plea.²⁷ Because CRC 5.778 required counsel's consent for admitting a plea, it also likely required the same for accepting a no contest pleas.²⁸

The Court then examined the legislative history of the governing statute, Welfare and Institutions Code section 657.²⁹ The Court reasoned that allowing a child to accept a no contest plea without their attorney's consent would undercut the Legislature's intent to "protect the child's rights."³⁰

Finally, the Court noted that while a child has a constitutional right to participate in making decisions fundamental to their defense, they do not have an absolute constitutional right to accept a plea deal over their attorney's objection.³¹ The Court ultimately concluded that CRC 5.778 was properly construed to require counsel's consent in accepting a no contest plea.³²

Court of Appeal, First District

 *Christina L. v. Chauncey B.*

229 Cal. App. 4th 731 (2014)

In *Christina L. v. Chauncey B.*, the First District of the California Court of Appeal reversed a decision modifying a child custody order and remanded for further proceedings.³³ The Court of Appeal held that a restraining order issued pursuant to the Domestic Violence Prevention Act (Family Code section 6200 et seq.) created a rebuttable presumption found in California Family Code section 3044 that an award of sole or joint physical or legal custody to a person who has perpetrated domestic violence is detrimental to the best interests of the child.³⁴ The court also held that on remand the trial court must consider whether the Father met

²⁷ *Id.* at 935.

²⁸ *Id.*

²⁹ *Id.* at 938.

³⁰ *Id.*

³¹ *Id.* at 939.

³² *Id.* at 938.

³³ *Christina L. v. Chauncey B.*, 229 Cal. App. 4th 731 (2014).

³⁴ *Id.* at 736.

his burden to show a change in circumstances sufficient to alter the prior custody order.³⁵

The mother, Christina L., first obtained a temporary restraining order (TRO) against the father, Chauncey B., in 2004.³⁶ Her assertions of abuse against the father included that he grabbed the steering wheel of the car in which she was driving with the children inside, threw her, punched her, kicked her, and squeezed her hand so tightly as she held car keys that it bled.³⁷ In 2005, the mother obtained another TRO after the father pushed her, grabbed her, and refused to let her see the children after he picked them up from daycare.³⁸ In 2011, the court awarded the mother sole physical and legal custody of the two children.³⁹ The court also granted a domestic violence protective order based on the mother's statements that the father had been showing up at her place of work and confronting her in front of her manager and customers.⁴⁰

In January 2013, the father requested that the court terminate the restraining order and modify the custody order.⁴¹ While the court denied the father's request to terminate the restraining order, the court ordered the parents to share joint legal and physical custody, finding that the children would benefit from spending time with their half-sister.⁴²

The Court of Appeal found that the trial court erred when it failed to apply the standard of Family Code section 3044,⁴³ and relied solely on Family Code section 3011. By failing to correctly apply section 3044, the court once again placed the burden on the mother to prove the father had committed domestic violence. By shifting the burden, the court ignored the legal effect of judicial findings of abuse necessary to grant the restraining order.⁴⁴ The rebuttal presumption requires a showing by a preponderance of the evidence standard that joint or sole custody by the offending parent is in the child's best interest.⁴⁵ Accordingly, the father

³⁵ *Id.* at 739.

³⁶ *Id.* at 734.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Christina L. v. Chauncey B.*, 229 Cal. App. 4th 731, 734 (2014).

⁴¹ *Id.* at 735.

⁴² *Id.*

⁴³ *Id.* at 737.

⁴⁴ *Id.*

⁴⁵ *Id.*

had the burden to show changed circumstances to justify a change to the order.⁴⁶

Court of Appeal, Third District

 *People v. Hernandez*

232 Cal. App. 4th 278 (2014)

Jose Hernandez participated in three gang-related shootings at age 16.⁴⁷ He was convicted of attempted murder, but not homicide.⁴⁸ Hernandez was given an effective sentence of 68 years to life with a possibility of parole after 65 years and 10 months.⁴⁹ Hernandez appealed, claiming the sentence was cruel and unusual under the Eighth Amendment. The Court of Appeal reversed and remanded for resentencing in light of recent US Supreme Court and California Supreme Court decisions.⁵⁰

In *People v. Caballero*, the California Supreme Court held that sentences that function as life terms without parole were unconstitutional when given for crimes other than homicide committed by a minor.⁵¹ Furthermore, the *Caballero* court noted that a court must consider mitigating factors such as a child's upbringing and environment when determining the sentence.⁵²

In response, the California Legislature enacted Senate Bill No. 260.⁵³ This law mandated parole hearings for all juvenile offenders in their 25th year in prison at the latest.⁵⁴ However, the Court of Appeal found that Hernandez's sentence was still unconstitutional.⁵⁵ Senate Bill No. 260

⁴⁶ *Id.* at 739.

⁴⁷ *People v. Hernandez*, 232 Cal. App. 4th 278, 282 (2014).

⁴⁸ *Id.*

⁴⁹ *Id.* at 281, 283 n. 11.

⁵⁰ *Id.* at 283, 288; *see People v. Caballero*, 55 Cal. 4th 262 (2012), *People v. Gutierrez*, 58 Cal. 4th 1354 (2014).

⁵¹ The California Supreme Court reached its decision by applying recent Supreme Court opinions. *People v. Hernandez* 232 Cal. App. 4th at 284; *see Graham v. Florida*, 560 U.S. 48, (2010), *Miller v. Alabama*, 132 S. Ct. 2455 (2012).

⁵² *Hernandez*, 232 Cal. App. 4th at 285.

⁵³ *People v. Hernandez*, 232 Cal. App. 4th 278, 285 (2014).

⁵⁴ *Id.* at 285-286.

⁵⁵ *Id.* at 286.

failed its purpose of curing improper sentencing for juvenile offenders if mitigating factors are never considered at the original sentencing⁵⁶

In *People v. Gutierrez*,⁵⁷ the California Supreme Court held the trial court erred in sentencing a juvenile offender to life without parole. Yet the defendant in *Gutierrez* had the possibility of petitioning the court to recall the sentence after 15 years.⁵⁸ This did not cure the error, as it was not a substitute for a proper judgment.⁵⁹ A juvenile offender's failure to rehabilitate does not justify their life sentence.⁶⁰ Using the same logic in *Gutierrez*, the court here found that Senate Bill No. 260 still did not remedy Hernandez's improper sentence.⁶¹ Thus, he must be resentenced.⁶²

PENNSYLVANIA

Pennsylvania Supreme Court

 *In the Interest of J.B.*

2014 Pa. LEXIS 3468

In the case of *In the Interest of J.B.*, the Pennsylvania Supreme Court struck down lifetime registration requirements for juvenile defendants as unconstitutional.⁶³

In 2011, the Pennsylvania General Assembly passed the Sex Offender Registration and Notification Act (SORNA), which required juvenile sex offenders to register in a statewide registry.⁶⁴ The York County Court of Common Pleas held that SORNA violates juveniles' due process rights under both the US and Pennsylvania Constitutions.⁶⁵ The trial court explained that SORNA "imposed irrebuttable presumptions . . .

⁵⁶ *Id.* at 288.

⁵⁷ *Id.* at 287.

⁵⁸ *Id.* at 288.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *In the Interest of J.B.*, 2014 Pa. LEXIS 3468.

⁶⁴ *Id.* at 4,6.

⁶⁵ *Id.* at 24.

without considering the differences between juveniles and adults or the individual characteristics of each juvenile offender.”⁶⁶

The Pennsylvania Supreme Court affirmed.⁶⁷ The Court found that the lifetime registration encroached upon the juveniles’ protected interest in their reputation.⁶⁸ “[R]egistration negatively affect[ed] juvenile offenders ability to obtain housing, schooling, and employment.”⁶⁹ Yet, SORNA failed to provide juveniles a meaningful opportunity to rebut the presumption that they are at risk of re-offense.⁷⁰

Furthermore, the Court noted various studies had shown that the presumption that juvenile offenders “pose a high risk of recidivating [was] not universally true.”⁷¹ Yet, SORNA registration requirements removed the ability for courts to assess an individual juvenile rehabilitation.⁷² Lastly, the Court found there was a reasonable alternative to determine whether a juvenile was at risk of re-offense—namely, individual assessments.⁷³

In his lone dissent, Justice Stevens argued the Court should not substitute its own policy judgment over the Legislature’s.⁷⁴ Moreover, the registration requirement applied only to a narrow class of juvenile offenders.⁷⁵ Lastly, SORNA did not violate offenders’ rights to reputation because they could have a hearing after 25 years to terminate registration requirements.⁷⁶

The Court ultimately concluded that SORNA provisions as applied to juveniles were unconstitutional.⁷⁷

⁶⁶ *Id.*

⁶⁷ *Id.* at 52.

⁶⁸ *Id.* at 45.

⁶⁹ *Id.* at 43.

⁷⁰ *Id.*

⁷¹ *Id.* at 46-47.

⁷² *Id.* at 48.

⁷³ *Id.* at 51.

⁷⁴ *Id.* at 53.

⁷⁵ *Id.*

⁷⁶ *Id.* at 54.

⁷⁷ *Id.* at 53.

Legislation

ALABAMA

H.B. 494

2013-2014 Leg., Reg. Sess.

On February 13, 2014, House Bill No. 494, sponsored by Representative Mike Jones, was introduced in the Alabama House.⁷⁸ The bill will amend H.B. 494 passed in the Assembly on March 4, 2014, and the Senate on April 3, 2014.⁷⁹ The bill was delivered to Alabama Governor Robert Bentley on the same day and became effective July 1, 2014.⁸⁰

The bill requires the minor female to overcome stringent requirements to obtain an abortion. According to the Alabama Legislature, the purpose of H.B. 494 is to protect minors from “their own immaturity,” to foster the family unit, and to protect parental rights.⁸¹

The bill sets procedural requirements for female minors to obtain an abortion, with and without parental consent. The bill insists that, at any time it is possible, a minor should obtain parental consent. H.B. 494 has amended the Code of Alabama 1975 to require the parent or legal guardian to sign a consent form and provide evidence of his or her legal guardianship to the physician who will perform the abortion.⁸²

However, the minor may seek to waive the required parental consent through a judicial-bypass procedure.⁸³ To waive parental consent, the court requires evidence that the minor has been instructed on, and has understood, the medical procedure and its repercussions.⁸⁴ In addition, she must also provide evidence demonstrating that she has “sufficient experience with understanding of life” to make life-altering decisions.⁸⁵ In seeking the judicial-bypass, the minor may hire an attorney, or, if she

⁷⁸ H. B. 494, 2013-2014 Reg. Sess. (Ala.2014), *available at*, <https://legiscan.com/AL/text/HB494/id/1004391/Alabama-2014-HB494-Enrolled.pdf>

⁷⁹ *Bill History*, H. B. 494, 2013-2014 Reg. Sess. (Ala. 2014), *available at*, <http://openstates.org/al/bills/2014rs/HB494/>

⁸⁰ *Id.*

⁸¹ H. Bill 494, *supra* note 1.

⁸² *Id.* at 1.

⁸³ *Id.* at 9-10.

⁸⁴ *Id.* at 14.

⁸⁵ *Id.*

cannot afford it, the court will appoint her one.⁸⁶

The allowance for a court appointed guardian ad litem for the fetus is one of the most controversial aspects of H.B. 494.⁸⁷ The major concern is that this would allow the court to call witnesses to testify against the minor, and ultimately help persuade the court to decline granting her the parental consent waiver.⁸⁸ Facing adversarial litigation, a minor may be forced to enlist the assistance of a lawyer to protect her rights against her own unborn child.

CALIFORNIA

A.B. 74

2015-2016 Leg., Reg. Sess.

Assembly Bill 74⁸⁹ amends Sections 1534, 1569.33, 1597.09, and 1597.55a of the Health and Safety Code relating to care facilities.⁹⁰ The Department of Social Services regulates the licensure and operation of community care facilities, senior residential care facilities, and child and family day care centers and homes.⁹¹ Before Assembly Bill 74, these facilities were subject to unannounced visits by Social Services at least once every five years.⁹² Additionally, the department conducted an annual unannounced visit to no less than twenty percent of the facilities during normal business hours.⁹³ This bill makes every facility described above subject to an annual unannounced visit by the department on or after July 1, 2018, instead of a visit once every five years.⁹⁴ The bill also increases the number of unannounced visits from no less than twenty percent to no less than thirty percent of facilities on or before July 1, 2016.⁹⁵

⁸⁶ *Id.* at 11.

⁸⁷ *Id.* at 15-16.

⁸⁸ Alabama “Lawyers for Fetuses” Law (HB 494), RH REALITY CHECK (Feb. 17, 2015), <http://data.rhrealitycheck.org/law/alabama-lawyers-for-fetuses-law-hb-494/>

⁸⁹ A.B. 74, 2015-2016 Reg. Sess. (Cal. 2015) available at, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB74.

⁹⁰ CAL. HEALTH & SAFETY CODE § 1534.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

⁹⁴ A.B., *supra*.

⁹⁵ *Id.*

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 A.B. 217

2014-2015 Leg., Reg. Sess.

California Assemblyman Brian Mainschein (a Republican from California Assembly District 77) recently introduced Assembly Bill No. 217 on February 2, 2015.⁹⁶ This bill focuses on juvenile hearings and amends Section 349 of the Welfare and Institutions Code.⁹⁷ Under existing law, minors subject to a juvenile court hearing have the right to be present at that hearing, the right to address the court, and the right to participate in the hearing.⁹⁸ Courts are required to recognize these rights.⁹⁹ This bill makes a small yet important change to existing law.¹⁰⁰ A.B. 217 would require the court to inform the minor of these rights if the juvenile is present at the hearing.¹⁰¹ A.B. 217 changes existing law to now place the responsibility of notice on the courts and provide an opportunity for juveniles to have notice of their rights.¹⁰² The bill was passed in the Assembly on March 23, 2015.¹⁰³

 A.B. 992

2013-2014 Leg., Reg. Sess.

Assembly Bill 992 amends Section 290.008 of the Penal Code, also known as the Sex Offender Registration Act.¹⁰⁴ The Act requires individuals convicted of specified sexual offenses to register with law enforcement for the duration of their life while residing in California.¹⁰⁵ The Act also applies includes any person discharged or paroled from the Department of Corrections and Rehabilitation, the juvenile court, or from a facility in another state to California.¹⁰⁶ Previously, all records relating to sex offender registration that were in the custody of the Department of

⁹⁶ A. B. 217, 2014-2015, Reg. Sess. (Cal. 2015), *available at*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB217.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ CAL. PEN. CODE § 290.008.

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Justice, law enforcement agencies, or other agencies were destroyed when records were sealed.¹⁰⁷ This bill requires a juvenile sex offender who is placed on probation or parole for committing or attempting to commit specified sex offenses to register in accordance with the Act.¹⁰⁸ In addition, the bill mandates all juvenile sex offenders who are transferred into the state to register as well, expanding the classes of people who are required to register.¹⁰⁹

 A.B. 1585

2013-2014 Leg., Reg. Sess.

Signed into law on September 28, 2014,¹¹⁰ A.B. 1585 provides relief to persons convicted of solicitation or prostitution while a victim of human trafficking.¹¹¹ A.B. 1585 was one of many bills enacted in 2014 to combat human trafficking within California.¹¹² The bill enables courts to dismiss accusations of solicitation and prostitution if it finds that the defendant is a victim of human trafficking.¹¹³ A human trafficking victim found guilty of solicitation and prostitution will be able to apply for relief after meeting various conditions of probation.¹¹⁴ Since an estimated 20 percent of all trafficking victims are minors,¹¹⁵ A.B. 1585 attempts to

¹⁰⁷ *Id.*

¹⁰⁸ A.B. 992, 2013-2014 Reg. Sess. (Cal. 2013) *available at*, http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_992_bill_20130222_introduced.html.

¹⁰⁹ *Id.*

¹¹⁰ A.B. 1585, 2013-2014 Reg. Sess. (Cal. 2014), *available at*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1585.

¹¹¹ *Id.*

¹¹² See Patrick McGreevy & Melanie Mason, *Gov. Brown Signs Laws to Crack Down on Human Trafficking*, L.A. TIMES (Sept. 28, 2014, 2:33 PM), <http://www.latimes.com/local/political/la-me-pc-gov-browns-signs-laws-to-crack-down-on-human-trafficking-20140928-story.html>. Other bills include SB 995, SB 1165, and SB 1388. See also Kamala D. Harris, *Human Trafficking*, OFFICE OF THE ATTORNEY GENERAL, <http://oag.ca.gov/human-trafficking> (“California – a populous border state with a significant immigrant population and the world’s ninth largest economy – is one of the nation’s top four destination states for trafficking human beings.”).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ See *id.*

recognize the reality of being a victim of human trafficking with the hope of aiding societal reintegration.¹¹⁶

 A.B. 2016

2013-2014 Leg., Reg. Sess.

California Governor Jerry Brown signed A.B. 2016 into law on September 29, 2014.¹¹⁷ A.B. 2016 aims to educate students from kindergarten to twelfth grade about sexual abuse and sexual assault.¹¹⁸ The bill requires the State Board of Education to consider including age-appropriate sexual abuse and sexual assault awareness and prevention training in California schools.¹¹⁹ Schools will be authorized to provide relevant instruction in the areas, should the training be approved.¹²⁰ A pupil may be excused from the instruction upon request by the pupil's parent or legal guardian.¹²¹

A.B. 2016 is California's incarnation of Erin's Law, a law mandating sexual abuse education for grade-school children.¹²² An estimated one in five girls and one in twenty boys is a victim of child sexual abuse.¹²³ Erin's Law hopes to equip children with the tools to recognize sexual abuse.¹²⁴ Erin's Law is named after Erin Merryn, an activist and childhood sexual abuse survivor.¹²⁵ Erin's Law was first

¹¹⁶ See *Protect Trafficked Victims*, ROMAN CATHOLIC DIOCESE SAN DIEGO (Sept. 16, 2014), <http://www.socialministrysandiego.com/protect-trafficked-victims/>.

¹¹⁷ A. B. 2016, 2013-2014 Reg. Sess. (Cal. 2014), available at http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB2016.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.* Allowing a child to opt-out of sexual health education with parental or legal guardian consent is consistent with current law. See CA. S. COMM., HEARING ON A.B. 2016, 2013-2014 Reg. Sess. (2014).

¹²² Nina Williams-Mbengue & Kyle Ramirez Fry, *Child Sexual Abuse Prevention: Erin's Law*, NAT'L CONF. STATE LEGISLATURES (Dec. 2, 2014), <http://www.ncsl.org/research/human-services/erins-law-and-child-sexual-abuse-prevention-laws.aspx>.

¹²³ *Child Sexual Abuse Statistics*, NAT'L CENTER FOR VICTIMS OF CRIME, <http://www.victimsofcrime.org/media/reporting-on-child-sexual-abuse/child-sexual-abuse-statistics> (last visited March. 24, 2015).

¹²⁴ *Our Work*, ERIN'S LAW, <http://erinslaw.org/our-work/> (last visited March. 24, 2015).

¹²⁵ *Id.*

passed in Illinois,¹²⁶ and at least 18 other states have followed with similar legislation.¹²⁷

 A.B. 2382

2013-2014 Leg., Reg. Sess.

On September 30, 2014, Governor Jerry Brown signed into law Assembly Bill 2382, which eliminates a penalty for families on food stamps whose child is unable to attend school regularly.¹²⁸ Assemblyman Steven Bradford introduced the bill, with support from the Children's Defense Fund and the Western Center on Law & Poverty.¹²⁹ A.B. 2382 was introduced to the assembly on February 21, 2014.¹³⁰

The current law provides for the allocation of federal funds through a program called Temporary Assistance for Needy Families (TANF), which in California is known as the California Work Opportunity and Responsibility to Kids (CalWORKs) program.¹³¹ The existing law subjects those who receive aid under CalWORKs, and have children under the age of 16, to compulsory school attendance for those children.¹³² Under the former law, adults would lose their assistance if the children in the household were not attending school unless the county determined there was "good cause."¹³³

Advocacy groups contended that the former law punished those poor families whose indigent circumstances led to "homelessness, eviction, job loss, limited transportation, and poor health" resulting in the inability to ensure their children attended school.¹³⁴ A.B. 2382 eliminates the increased penalties for truancy by prohibiting the stripping of

¹²⁶ *Id.*

¹²⁷ Williams-Mbengue & Ramirez Fry, *supra* note 6.

¹²⁸ *Children's Defense Fund – California Sponsored Bill Signed by Governor Brown Will End Double Truancy Penalty on Poor Children and Families*, [Children's Defense Fund], CHILD. DEF. FUND-CAL., (Oct. 1, 2014), <http://www.cdfca.org/newsroom/press-releases/2014/ab2382signed.html>.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Children's Defense Fund*, *supra* note 2.

CalWORKS benefits.¹³⁵ Under the current provision, if an eligible family is struggling with truancy, the county will provide services for family stabilization.¹³⁶ This bill also attempts to provide the necessary services to help the child return to school.¹³⁷

 S.B. 124

2014-2015 Leg., Reg. Sess.

On January 16, 2015, California Senator Mark Leno introduced S.B. 124, which addresses juvenile solitary confinement.¹³⁸ This bill amends sections 225, 226, 229, 230, and 240 of the Welfare and Institutions Code, and also adds language to section 208.3.¹³⁹ The bill prohibits juveniles considered dangerous because of mental disorders or disabilities, from being subject to solitary confinement.¹⁴⁰ Instead, these individuals would have to be evaluated at a medical facility.¹⁴¹ The bill does allow for solitary confinement when absolutely necessary.¹⁴² For example, if the individual poses an immediate and substantial threat of harm to the facility, others, or himself (as long as it is not caused by a mental disorder), solitary confinement can be considered appropriate.¹⁴³ However, the confinement cannot exceed four hours and cannot compromise the mental and physical health of the individual.¹⁴⁴ The bill also imposes greater duties on local commissions and county boards of supervisors in regards to inspections of confinement facilities.¹⁴⁵ Commissions would have to report inspection results and recommendations to the juvenile court, the Board of State and Community Corrections, and the county board of supervisors.¹⁴⁶ Additionally, S.B.

¹³⁵ A. B. 2382, *supra*.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ S. B. 124, 2014-2015, Reg. Sess. (Cal. 2015), *available at*

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB124

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

124 looks to increase the transparency of juvenile facilities so juvenile solitary confinement can be properly reviewed and regulated.¹⁴⁷

 S.B. 1177

2013-2014 Leg., Reg. Sess.

On February 20, 2014, Senator Darrell Steinberg introduced Senate Bill No. 1177 (“SB 1177”), alternatively known as the Student Online Personal Information Act (SOPIPA).¹⁴⁸ The bill passed in the Assembly on August 25, 2014 and the Senate on August 26, 2014.¹⁴⁹ Governor Jerry Brown signed the bill on September 29, 2014.¹⁵⁰ The law will go into effect on January 1, 2016.¹⁵¹

SOPIPA prohibits operators of Internet websites, services, and applications from engaging in targeted advertising to K-12 students and their parents or guardians.¹⁵² It also prohibits operators from compiling, selling, sharing, or disclosing students’ covered information, unless it is for specific educational purposes.¹⁵³ Covered information is defined as personally identifiable information or materials created by the student, student’s guardian, or school agent.¹⁵⁴

Additionally, SOPIPA requires operators to maintain security procedures that are sufficient to protect covered information, and, if requested by the school or district, to delete student information.¹⁵⁵ In

¹⁴⁷ *Id.*

¹⁴⁸ S. B. 1177, 2013-2014 Reg. Sess. (Cal. 2014), *available at*, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1177.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

certain circumstances, disclosure of student covered information to state or local education agencies would be authorized.¹⁵⁶

SOPIPA adds to Chapter 22.2 of section 22584 of the Business and Professions Code, and is intended to fill a void in existing privacy laws by “closing [the] loopholes that may be exploited by Internet companies for profit.”¹⁵⁷ For example, the Family Educational Right and Privacy Act (FERPA) is the federal law that protects the privacy of student education records and applies to all schools that receive funds through the U.S. Department of Education.¹⁵⁸ But, FERPA does not adequately protect students from the growing use of Internet based technology in education, because it places the duty to protect student information on schools rather than online companies.¹⁵⁹ Senator Steinberg commented that this legislation demonstrates that “privacy and online innovation can be complementary partners.”¹⁶⁰ SOPIPA will permit innovation by allowing operators to use de-identified student information for the development of educational sites and services, while also preventing operators from encroaching on student privacy.¹⁶¹

 S.B. 1252

2013-2014 Leg., Reg. Sess.

On February 20, 2014, Senator Norma Torres introduced Senate Bill 1252 (“SB 1252”).¹⁶² The bill passed in the Assembly on August 27, 2014 and the Senate on August 28, 2014.¹⁶³ Governor Jerry Brown signed the bill on September 29, 2014.¹⁶⁴

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ Cheryl Miller, *Governor Signs Trio of Student Data Privacy Measures*, THE RECORDER (Sept. 30, 2014), <http://www.therecorder.com/id=1202671920590/Governor-Signs-Trio-of-Student-Data-Privacy-Measures?sreturn=20150211192841>(last visited March 11, 2015).

¹⁶¹ S. B. 1177, *supra*.

¹⁶² S. B. 1252, 2013-2014 Reg. Sess. (Cal. 2014), *available at*, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1252

¹⁶³ *Id.*

¹⁶⁴ *Id.*

S.B. 1252 amends Section 11403.2 of the Welfare and Institutions Code, relating to public social services.¹⁶⁵ Section 11403.2 makes transitional housing and services available to former foster youth through the Transitional Housing Program-Plus.¹⁶⁶

Transitional Housing Program-Plus is an optional county-based program funded by the State of California, which provides supervised transitional living housing and supportive services to former foster youth.¹⁶⁷ The goal of the program is to provide a safe living environment for young adults who have exited from foster care, while helping them develop life skills for independent living.¹⁶⁸ The former eligibility cut-off age for foster youth to participate in the program was age twenty-four, and the maximum time for participation was twenty-four months.¹⁶⁹ S.B. 1252 has amended section 11403.2 and now authorizes counties to extend transitional housing to former foster youth up to age twenty-five for a maximum of three additional years, if they are enrolled in an institution that provides postsecondary education.¹⁷⁰

The proposal for S.B. 1252 provided findings that former foster youth encounter many challenges to completing a college education.¹⁷¹ The bill analysis states that seventy percent of foster youth express interest in attending college, while only ten percent enroll.¹⁷² It was projected that only three percent will graduate with a degree.¹⁷³ In addition, the analysis states that foster youth confront many risk factors for low educational achievement and are among the most vulnerable group of young Californians.¹⁷⁴ Senator Torres noted that the state of California is helping to eliminate these barriers to succeeding in higher education by helping foster youth transition into stable, independent living situations.¹⁷⁵

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ TRANSITIONAL HOUSING PROGRAM-PLUS (THP-PLUS) FACT SHEET (California Department of Social Services, Independent Living Program Policy Unit 215), available at, <http://www.childsworld.ca.gov/res/pdf/THPPlusFactSheet.pdf>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ S. B. 1252, *supra*.

¹⁷² *Id.*, citing KRISTINE FRERER ET AL., FIRST LOOK: YOUTH EDUCATIONAL OUTCOMES IN FOUR CALIFORNIA COUNTIES (2011) [FIRST LOOK], available at, http://www.stuartfoundation.org/Files/FirstLook_FullReport_Nov2011.pdf.

¹⁷³ S. B. 1252, *supra*.

¹⁷⁴ *Id.*, citing FIRST LOOK, *supra* note 12.

¹⁷⁵ S. B. 1252, *supra*.

 S.B. 1296

2013-2014 Leg., Reg. Sess.

On June 27, 2014, Governor Jerry Brown signed into law Senate Bill 1296¹⁷⁶, which bans the incarceration of truant juveniles.¹⁷⁷ This bill adds an exception to the existing provision, which allows for the incarceration of youths in contempt of court.¹⁷⁸ The addition prohibits incarceration of juveniles for contempt of court when the contempt is a result of a minor's failure to comply with a court order to attend school.¹⁷⁹ Senator Mark Leno drafted the bill, which was co-sponsored by the East Bay Children's Law Office and the Youth Law Center to address the uncommon, but substantial effect this type of incarceration has in propagating the school-to-prison pipeline.¹⁸⁰

S.B. 1296 was originally introduced to the Senate on February 21, 2014.¹⁸¹ It was passed in the Senate on April 10, 2014 and in the Assembly on June 19, 2014 with bipartisan support.¹⁸² Prior to this amendment, the bill provided for authorization to incarcerate juveniles in contempt of court.¹⁸³ There is already one exception in the bill, which is for those whose contempt of court arises out of a refusal to testify regarding being a victim of sexual assault or a domestic violence dispute.¹⁸⁴ This new provision provides for a second exception to the authorization for incarceration.¹⁸⁵

Although many counties did not choose incarceration for this specific type of contempt of court, some counties continued to incarcerate minors for not complying with court orders to attend school.¹⁸⁶ Research from the Youth Law Center shows that those most affected by this practice

¹⁷⁶ S.B. 1296, [SB 1296], 2013-2014 Reg. Sess. (Cal. 2014), *available at*, http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1296.

¹⁷⁷ *Governor Signs Bill Banning Incarceration of Truant Youths*, [Governor Signs Bill], YOUTH LAW CENTER (June 30, 2014), <http://www.ylc.org/2014/06/governor-brown-signs-sb-260>.

¹⁷⁸ S. B. 1296, *supra*.

¹⁷⁹ *Id.*

¹⁸⁰ *Governor Signs Bill, supra*.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ S.B. 1296.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Governor Signs Bill, supra*.

were youth of color, with “serious mental health issues, or difficult family situations.”¹⁸⁷ Many advocacy groups who supported this bill see it as a crucial step in closing a loophole in the school-to-prison pipeline by helping to eliminate the incarceration of youth who have committed no crime.¹⁸⁸

¹⁸⁷ *Id.*

¹⁸⁸ *Governor Brown Signs SB 1296 Into Law Forbidding Incarceration For Truant Youth In California*, PACIFIC JUVENILE DEFENDER CENTER (June 29, 2014), <http://www.pjdc.org/2014/06/governor-brown-signs-sb1296-into-law-forbidding-incarceration-as-a-truancy-contempt-sanction-in-california>.