RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES SUPREME COURT

📖 *Adams v. Alabama*
136 S. Ct. 1796 (2016)
Report by Fernando Reyes

Adams v. Alabama addressed the sentencing questions created by the Supreme Court decisions in Montgomery v. Louisiana[1] and Miller v. Alabama.[2] Prior to their decision in Adams, the Supreme Court held in Roper v. Simmons that the Eighth Amendment prohibited a death sentence for a minor.[3] Consequently, death sentences for minor prisoners convicted of murder were retroactively reduced to lesser sentences.[4]

Adams was originally convicted prior to the Roper decision.[5] The trial court found Adams guilty of murder and sentenced him to death.[6] Adams was 17-years-old at the time of the crime, and his age was a mitigating circumstance that the jury was required to take into consideration.[7] Regardless, the jury decided that a sentence of death was appropriate.[8]

The Supreme Court decided Adams in light of the

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1 135 S. Ct. 1546 (2015).
2 565 U.S. 1013 (2011).
3 543 U.S. 551 (2005).
4 *Id*.
5 Adams v. Alabama, 136 S. Ct. 1796, 1797 (2016).
6 *Id*. at 1796.
7 *Id*. at 1798.
8 *Id*.

recent decisions of Montgomery and Miller.[9] These decisions concluded that, "states must now ensure that prisoners serving sentences of life without parole for offenses committed before the age of 18 have the benefit of an individualized sentencing procedure that considers their youth and immaturity at the time of the offense."[10] The Court unanimously decided that the case must be remanded to the lower courts to reconsider sentencing using the established standards set forth in Montgomery and Miller.[11]

A split among the concurring justices centered on the sentencing rules imposed by Miller.[12] Justice Alito's concurring opinion states, "it can be argued that the original sentencing jury fulfilled the individualized sentencing requirement that Miller subsequently imposed."[13] He further states on remand, courts are "free to evaluate whether any further individualized consideration is required."[14] Justice Sotomayor argues that Miller imposes youth as the decisive consideration for "all but the rarest of children."[15]

The lower courts, on remand, must decide if petitioners are among the "rarest of juvenile offenders those whose crimes reflect permanent incorrigibility."[16] Only after first answering that essential question should the lower court be able to proceed in determining whether to sentence a juvenile to life imprisonment.[17]

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[9] *Id*. at 1797.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*. at 1799.
[14] *Id*.
[15] *Id*. at 1800.
[16] *Id*. at 1801.
[17] *Id*.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO

📖 *Bd. of Educ. v. U.S. Dep't of Educ.*
2016 U.S. Dist. LEXIS 131471 (S.D. Ohio Sept. 26, 2016)
Report by Elissa Niccum

In *Bd. of Educ. v. U.S. Dep't of Educ.*, an 11-year-old transgender girl, Jane Doe, was granted a preliminary injunction against her school district requiring them to treat her as female, use her preferred name and pronouns, and allow her to use the girls' restroom at her school.[18]

Jane Doe first communicated to her family that she was female at the age of four, and was diagnosed with gender dysphoria.[19] Jane began kindergarten at Highland Elementary School ("Highland") in 2011 under her male name, but began to socially transition to her core gender, a girl, at the recommendation of medical professionals.[20] Her parents treated Jane as their daughter, obtained female clothing and a legal name change for Jane, and asked others to treat her as a girl.[21] As a result, Jane became "more joyful, at ease with herself, and less angry."[22]

Jane's parents repeatedly requested her records be changed to reflect her name and gender, and that she be able to use the girls' restroom. However, Jane was forced to use the office unisex restroom, requiring her to pass through the teacher's lounge.[23] Both students and teachers bullied Jane, referring to her by her male name, telling her she was a boy, and pressuring her to act like a boy.[24] Jane subsequently felt

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18 Bd. of Educ. v. U.S. Dep't of Educ., 2016 U.S. Dist. LEXIS 131474 (S.D. Ohio Sep. 26, 2016).
19 *Id.* at 6.
20 *Id.* at 7.
21 *Id.*
22 *Id.* at 8.
23 *Id.* at 8-9.
24 *Id.* at 10.

"extreme anxiety and depression," attempting suicide in August 2015.[25]

From 2010 to 2016, the U.S. Department of Justice ("DOJ") and Department of Education ("DOE"), Office of Civil Rights ("OCR") released several publications informing schools that transgender students should be treated in accordance with their gender identity, given access to gender-appropriate facilities, and that discrimination on the basis of gender identity violates Title IX of the Education Amendments of 1972.[26]

In December 2013, Jane's mother filed a complaint with the OCR alleging that Highland discriminated against Jane by denying her access to the girls' restroom, and in August 2014 the complaint was amended to include allegations of harassment by Highland staff.[27] In March 2016, the OCR concluded that Highland violated Title IX by discriminating against Jane.

The school district refused the proposed resolution agreement from OCR and instead sought a preliminary injunction against the DOJ and DOE to prevent enforcement of the antidiscrimination provisions of Title IX.[28] Jane joined the suit as a third party and filed a motion for a preliminary injunction to force the school district to "treat her as a girl and treat her the same as other girls."[29] The court denied Highland's motion because it lacked jurisdiction over its claims, but granted Jane's preliminary injunction, finding she was "likely to succeed on the merits of her Title IX and Equal Protection claims," that she would be "irreparably harmed absent an injunction," and that "the balance of equities and the public interest favor injunction."[30] Thus, Highland School District will not only be subject to the antidiscrimination provisions of Title IX, but as directed by the court will also

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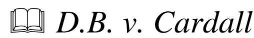
[25] *Id.*
[26] *Id.* at 5.
[27] *Id.* at 9-10.
[28] *Id.* at 15.
[29] *Id.* at 18, 20.
[30] *Id.* at 33-34, 69-70.

have to treat Jane as female and allow her to use the girls' restroom, as required by the original proposed OCR resolution agreement.[31]

[31] *Id.* at 12, 15.

UNITED STATES COURT OF APPEALS, FOURTH DISTRICT



D.B. v. Cardall
826 F.3d 721 (4th Cir. 2016)
Report by Alana Murphy

Dora Beltrán's fourteen-year-old son R.M.B. was arrested in December 2013 near the Mexican border.[32] R.M.B. had deferred action status and Beltrán was classified as the spouse of an abusive legal resident or citizen of the U.S.[33] At the time of the arrest, Beltrán told Border Patrol agents that she had legal residency through the Violence Against Women Act and she was working toward gaining permanent residency for herself and R.M.B.[34] During this incident, the agents decided to detain R.M.B. and told Beltrán that they would arrest her if she came to collect her son.[35] The Border Patrol agents determined that R.M.B. was an Unaccompanied Alien Child ("UAC") shortly after the arrest.[36] In January 2014, Beltrán submitted a family reunification request with the Office of Refugee Resettlement ("Office"), the agency responsible for detaining R.M.B.[37] The request was denied after the Office conducted a home visit and determined that Beltrán could not provide the high-level supervision that R.M.B. required.[38]

In March 2015, Beltrán appealed the Office's decision by sending a request for reconsideration.[39] The following month R.M.B. went to immigration court for the first time.[40] His removal proceedings were terminated because he already

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32 D.B. v. Cardall, 826 F.3d 721, 725 (4th Cir. 2016).
33 *Id*. at 726.
34 *Id.*
35 *Id*.
36 *Id*. at 726-27.
37 *Id*. at 727.
38 *Id*.
39 *Id*.
40 *Id*. at 728.

had deferred action status.[41] When R.M.B. was not released Beltrán filed a petition for habeas corpus.[42] The district court dismissed Beltrán's habeas corpus petition, finding her statutory and due process claims invalid.[43]

On appeal, Beltrán contended that R.M.B. was not a UAC as a matter of law, and even if he was, the Office could not maintain custody of an alien after the immigration proceedings were terminated.[44] The court rejected both of these arguments. Under 6 U.S.C. Section 279, a UAC is an individual who lacks legal immigration status, is under the age of eighteen, and either has no parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. who is available to provide care and physical custody.[45] The court found that (1) the word "care" implies the ability to provide what is necessary for the health and welfare of the child, and (2) that Beltrán was not a suitable custodian under this definition.[46] The court also rejected the argument that Congress had only intended to confer custody authority of UAC's to the Office during immigration proceedings.[47] The court found that Beltrán's reading of the statute would undermine the purpose of ensuring that minors are not released to the custody of dangerous adults.[48]

Beltrán also claimed that the government had violated her substantive and procedural due process rights by detaining R.M.B.[49] The court rejected Beltrán's substantive due process claim that the Office and related agencies had interfered with her fundamental right to family integrity.[50] While the court agreed that there is a high interest in maintaining family integrity, Beltrán's status as unfit to care for her child

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41 *Id*.
42 *Id*.
43 *Id*. at 729.
44 *Id*. at 734-35.
45 *Id*. at 732-33.
46 *Id*. at 734.
47 *Id*. at 737.
48 *Id*.
49 *Id*. at 739-43.
50 *Id*. at 740.

precluded her from making a substantive due process claim on these grounds.[51]

The court did find, however, that the district court had erred in ruling that Beltrán's substantive and procedural due process claims were one in the same.[52] Beltrán's procedural due process claim was against the Office for their insufficient procedures surrounding the detention of her son.[53] The district court was incorrect to find that R.M.B.'s due process rights were upheld when he went before the immigration judge. Beltrán's claim was based on insufficient procedures in place at the Office.[54] The district court erred in ruling that R.M.B. had definitively been given due process of the law with respect to his detention with the Office.[55] The court remanded the case for further proceedings consistent with the *Mathews v. Eldridge* test in order to determine whether the reunification request procedure offered by the Office was constitutionally sufficient.[56]

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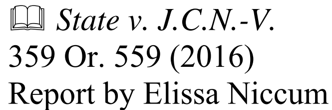
[51] *Id*. at 741.
[52] *Id*. at 743.
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *Id*.

OREGON SUPREME COURT



State v. J.C.N.-V.
359 Or. 559 (2016)
Report by Elissa Niccum

In *State v. J.C.N.-V.*, the Supreme Court of Oregon held that the juvenile court improperly waived its jurisdiction over a thirteen-year-old boy accused of robbery and aggravated murder, finding that the requirements to try a juvenile as an adult are more stringent than the requirements to find a juvenile has criminal capacity.[57]

J.C.N.-V. was 13 years and 8 months old when he allegedly participated in a violent robbery and murder planned by his brother's girlfriend.[58] Although he was originally under the exclusive jurisdiction of the juvenile court, the state petitioned the juvenile court to waive its jurisdiction so that he could be tried as an adult.[59] Under ORS 419C.352 and ORS 419C.349, juveniles under the age of 15 who are accused of murder may be tried as an adult only if at the time of the alleged crime he or she "was of sufficient sophistication and maturity to appreciate the nature and quality of the conduct involved."[60]

The state argued this requirement was met because the youth admitted to understanding the plan of his girlfriend's brother, had a "high degree of participation" in the crime, and was of "average sophistication and maturity for his age and that he understood that his conduct was wrong."[61] The juvenile court granted the state's petition, and the Court of Appeals upheld the decision *en banc*, holding that the legislature intended the statute to exclude only children "less sophisticated and mature than their same-age peers, such as

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57 State v. J.C.N.-V. *(In re* J.C.N.-V.*)*, 359 Or. 559 (2016).
58 *Id.* at 562-63.
59 *Id.* at 562.
60 *Id.*
61 *Id.* at 563.

children who are 'mentally retarded,' 'extremely emotionally disturbed,' or too immature to understand the nature of the act."[62]

The United States Supreme Court case, *Kent v. United States* held that "a juvenile court's somewhat perfunctory decision to waive" a juvenile into adult court violated the juvenile's due process rights and that the juvenile court had to "conduct a full investigation" before making such decisions.[63] The Court appended to its decision a set of criteria that courts in the District of Columbia had used in determining waiver cases.[64]

The youth argued that because the Oregon statute used the same wording as the criteria in *Kent*, that it should be read in the manner intended by the *Kent* criteria, where the juvenile's sophistication and maturity were to be compared to adult capabilities and traits.[65] While the court in this case found that under the Oregon statute the sophistication and maturity of a juvenile are to be considered in relation to the "nature and quality of the conduct involved," rather than in isolation as they are in the *Kent* criteria, they agreed the legislature intended that the juvenile be compared to adults.[66]

The court found that the juvenile court in this case did not consider whether the youth possessed adult-like sophistication and maturity, and thus improperly waived its jurisdiction over the youth in this case.[67] The judgments of the juvenile court and Court of Appeals were reversed and the case was remanded to juvenile court.[68] Given the court's ruling and its reinforcement of the criteria established by *Kent*, it is likely that fewer juveniles will ultimately be charged as adults in Oregon.

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[62] *Id.* at 562, 569.
[63] Kent v. United States, 383 U.S. 541 (1966).
[64] *Id.*
[65] State v. J.C.N.-V. *(In re* J.C.N.-V.*)*, 359 Or. 559, 583-84 (2016).
[66] *Id.* at 584-85.
[67] *Id.*
[68] *Id.* at 599-600.

CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

📖 *In re Elijah C.*
248 Cal. App. 4th 958 (2016)
Report by Maureen Dahl

In the case of *In re Elijah C.*, the court considered the validity of a juvenile's waiver of statute of limitations for an offense when the waiver was made without the consultation of counsel and before a petition against the minor is filed.[69] 14-year-old Elijah played with a friend's iPod Touch while visiting a friend's home, and the friend's mother noticed it was missing after Elijah left.[70] When the police confronted Elijah, he admitted he had it and gave it back.[71] The district attorney's office did not file charges against Elijah, but instead offered him participation in the Juvenile Offender Intervention Network (JOIN), a diversion program for nonviolent first-time juvenile offenders.[72] Elijah and his parents signed a contract containing certain requirements, which if satisfactorily completed, would result in the case closing a year later without charges being filed.[73] The contract included a waiver of his right to object on the basis of a lapse of the statute of limitations.[74] The hearing officer from the district attorney's office had explained the terms of the contract to Elijah and his parents, but had not informed them that they could consult with counsel before signing.[75]

More than a year after signing, the district attorney's office found Elijah had not complied with all the program requirements, terminated his involvement, and filed a petition

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[69] *In re* Elijah C., 248 Cal. App. 4th 958, 960 (2016).
[70] *Id.*
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] *Id.*
[75] *Id.* at 961.

alleging he committed petty theft.[76] Elijah demurred and moved to dismiss the charges without leave to amend on the basis that the juvenile court lacked jurisdiction since the petition was filed outside the one-year statute of limitations for petty theft, stipulating that the facts regarding the petition were true.[77] The juvenile court found that Elijah had waived the statute of limitations and overruled the demurrer, sustaining the petition.[78] Elijah appealed asserting the waiver of the statute of limitations was invalid since he was not represented by counsel at the time of the waiver.[79]

Typically, representation under the Sixth Amendment is not guaranteed until charges are filed at which point counsel is required at any critical stage of the prosecution, such as those in which available defenses may be irretrievably lost if not then asserted.[80] Surrendering the right to assert the statute of limitations as a defense would be unquestionably critical if the district attorney had already filed a petition.[81] The court was particularly concerned about expanding waivers in this situation since children are more vulnerable than adults.[82] This results in the law being hesitant to allow juveniles to take actions affecting legal rights without presence and approval of their attorneys.[83] This is demonstrated by the requirement that juveniles must obtain the consent of counsel before admitting to any filed allegations.[84]

A waiver of the statute of limitations is valid only if made "knowing[ly], intelligent[ly], and voluntary[il]y," must be "for the defendant's benefit, and after consultation with counsel."[85] The voluntariness of Elijah's waiver is unclear

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[76] *Id.* at 960.
[77] *Id.* at 961.
[78] *Id.*
[79] *Id.*
[80] *Id.* at 964.
[81] *Id.*
[82] *Id.*
[83] *Id*
[84] *Id.*
[85] *Id. at* 963-64.

given the circumstances.[86] Here, the waiver occurred before a hearing officer, acting more as a prosecutor than a judge.[87] Elijah's mother testified they signed the agreement because they were told if they did not, Elijah would have to go before the judge and could receive the maximum sentence.[88] The court reasoned that without a trusted source to explain the likely consequences of juvenile court and help in determining if participation in the JOIN program was in his best interest, there was no confidence the waiver was free from coercion, or for Elijah's benefit.[89] The court noted that while the JOIN program reflects a laudable intent, the effect in this case infringed on constitutional protections to which Elijah was entitled.[90] This court reversed and ordered the trial court to sustain the demurrer to the petition without leave to amend, and to dismiss the petition without prejudice.[91]

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[86] *Id.* at 963.
[87] *Id.*
[88] *Id.* at 963.
[89] *Id.* at 964.
[90] *Id.*
[91] *Id.* at 964-65.

CALIFORNIA COURT OF APPEAL, FIFTH DISTRICT

In re Alexander P.
4 Cal. App. 5th 475 (Cal. Ct. App. 2016)
Report by Catherine Reagan

California law allows courts the discretion to determine whether a child can have more than two legal parents, if a finding otherwise would cause detriment to the child.[92] This law does not change the requirements to establishing parentage and only allows a court to find a child has more than two parents, in rare cases.[93]

In re Alexander P. resulted from a dependency matter initiated by Child Protective Services in the juvenile court.[94] Donald, Michael, and Joel, three men who all had relationships with the mother and with Alexander, the minor child, each filed for presumed parent status.[95] Donald is the present stepfather, Michael was in a relationship with the mother when Alexander was born, and Joel is the biological father.[96] Shortly after juvenile court proceedings initiated, the family court issued orders finding Michael a presumed parent.[97] Donald then filed for presumed parent status in juvenile court.[98] Joel had a prior paternity order.[99] The juvenile court accepted the family court's parentage orders regarding Michael and made findings that Donald had established presumed parent status.[100] Several parties

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92 CAL. FAM. CODE § 7612(c) (LexisAdvance 2016).
93 *See In re* Donovan L., 244 Cal. App. 4th 1075 (Cal. Ct. App. 2016); Martinez v. Vaziri, 246 Cal. App. 4th 373 (Cal. Ct. App. 2016); *In re* Alexander P., 4 Cal. App. 5th 475 (Cal. Ct. App. 2016).
94 *In re* Alexander P., 4 Cal. App. 5th 475 (Cal. Ct. App. 2016).
95 *Id.* at 479.
96 *Id.*
97 *Id.*
98 *Id.* at 483-34.
99 *Id.* at 482.
100 *Id.* at 481.

appealed the findings of parentage for Michael and Donald.[101]

The appellate court determined the family court lost jurisdiction once the juvenile court initiated proceedings, and therefore the family court did not have the power to determine Michael was a presumed parent.[102] Rather than relying on the family court's determination, the juvenile court should have weighed the evidence itself to determine if Michael had established parentage under California Family Code Sections 7611(d) and 7612(c).[103] The appellate court reversed the juvenile court's order that Michael was a presumed parent and remanded the matter back to the juvenile court for further proceedings.[104]

The appellate court also reviewed the juvenile court's decision to grant Donald, the stepfather, presumed parent status.[105] To establish paternity, courts have held that a familial bond with the child is more important than biology or a relationship with the mother.[106] The juvenile court found the child was most comfortable with Donald, and Donald was committed to being a parent.[107] Once the juvenile court determined more than one man met presumed parental status, it then had to decide if finding the child had only two parents would cause him detriment.[108] In the unique context of the juvenile court, presumed parent status is critical to maintaining a relationship with the child because only presumed parents have access to reunification services and rights to representation.[109] The appellate court determined that it would be detrimental to the child if Donald was not a parent because they had a parent-child relationship.[110] The purpose of California Family Code section 7612(c) is to preserve those

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[101] *Id.* at 480.
[102] *Id.* at 476.
[103] *Id.*
[104] *Id.* at 480.
[105] *Id.*
[106] *Id.* at 485.
[107] *Id.* at 492-93.
[108] *Id.* at 496-98.
[109] *Id.* at 485.
[110] *Id*. at 496-98.

relationships.[111]

This is California's first published case affirming an order of more than two parents; the mother, Donald, and Joel. The juvenile court will evaluate Michael's claim to presumed parent status on remand.[112]

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[111] *Id.* at 486.
[112] *Id.* at 499.

FEDERAL LEGISLATION

📖 Native American Children's Safety Act
Pub. L. No. 114-165 (2016)
Report by Afnan Shukry

On June 6, 2016, Congress enacted the Native American Children's Safety Act ("Act").[113] The Act was sponsored by Senator John Hoeven.[114] The Act amends Section 408 of the Indian Child Protection and Family Violence Prevention Act of 1990, by requiring more tribal social services agency involvement in the foster care process.[115] The Act serves important public policy by combatting abuse and neglect of Native American youth, who are more than twice as likely to experience abuse or neglect than other children.[116]

Prior to the Act, the 1990 legislation addressed the need to treat and prevent occurrences of family violence and protect children on Indian reservations, but did not set forth certain guidelines for foster care placement under tribal jurisdiction.[117] Though the Act required background checks on covered individuals who resided in or were employed by a foster care institution that served Native American children, it limited checks to tribal agencies receiving federal funding.[118]

The Act furthers the goals of the 1990 Act by promoting consistency within, and establishing minimum standards for, tribal foster care placements.[119] The amendment expands checks to all covered individuals whether or not federal funding is received.[120] The Act prohibits final approval of any foster care placement or a foster care license

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[113] Native American Children's Safety Act, Pub. L. No. 114-65 (2016).
[114] *Id.*
[115] *Id.*
[116] S. Rep. No. 114-37, at 1 (2015).
[117] *Id.* at 3.
[118] *Id.* at 5.
[119] *Id.* at 3.
[120] *Id.*

from being issued until after the tribal social services agency (1) completes a comprehensive criminal records check of all covered individuals and (2) concludes that those individuals meet the tribe's standards established pursuant to the Act.[121] The Act prohibits placement if the investigation reveals that a covered individual has been found guilty of a felony involving child abuse or neglect, spousal abuse, a crime against a child, violence, or drugs.[122] The exception to this Act is emergency foster care placement.[123]

The Department of the Interior is directed to issue guidance regarding procedures for a criminal records check of any covered individual, self-reporting requirements for foster homes or institutions that have knowledge of a covered individual residing on their premises who would fail a criminal records check, promising practices used by Indian tribes to address emergency foster care placements, and procedures for certifying compliance with the Act.[124] The amendment also requires Indian tribes to establish procedures to recertify homes or institutions in which foster care placements are made.[125]

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[121] Native American Children's Safety Act, Pub. L. No. 114-65 (2016).
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*

CALIFORNIA LEGISLATION

📖 S.B. 1143
2015-2016 Leg., Reg. Sess.
Report by Fernando Reyes

Senate Bill 1143 ("S.B. 1143"), approved by Governor Brown on September 27, 2016, will place restrictions on the use of room confinement of juveniles held in juvenile facilities.[126] The bill adds Section 208.3 to the California Welfare and Institutions Code.[127] The bill will take effect on January 1, 2018.[128]

Current California law allows for the use of room confinement of minors in juvenile facilities.[129] The Lanterman-Petris-Short Act allows for involuntary detention of minors for evaluation up to 72 hours.[130] S.B. 1143 alters both the length of time permitted and the stated purposes of room confinement in juvenile facilities.[131] The bill establishes the use of room confinement only after other less restrictive options have been attempted and exhausted.[132] Confinement is not to be used for purposes of punishment, coercion, convenience, or retaliation by staff, and confinement should not be used if it will negatively impact the juvenile's mental or physical health.[133]

S.B. 1143 allows for the use of room confinement for up to four hours, and establishes how staff is to proceed after those four hours.[134] The staff shall do one of three options: (1) return the minor or ward to general population, (2) consult with mental health or medical staff, or (3) develop an

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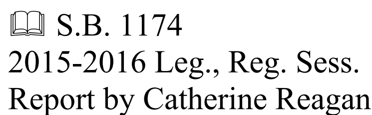
126 S.B. 1143, 2015-2016, Leg., Reg. Sess. (Cal. 2016).
127 *Id.*
128 *Id.*
129 *Id.*
130 CAL. WELF. & INST. CODE §§ 5000, et seq. (West 2016).
131 S.B. 1143, 2015-2016, Leg., Reg. Sess. (Cal. 2016).
132 *Id.*
133 *Id.*
134 *Id.*

individualized plan that includes goals and objectives to be met in order to reintegrate the minor or ward to general population.[135] Room confinement beyond four hours requires staff to document the reason for confinement, develop an individualized plan to reintegrate the minor into the general population, and to obtain documented authorization from the facility superintendent every four hours after the initial confinement.[136]

Section 208.3 is not intended to limit the use of single person rooms or cells for housing of minors in juvenile facilities for normal sleeping hours.[137] It is not meant to conflict with any law providing greater or additional protections to minors or wards.[138] It is also not meant to be applied during an emergency, provided the confinement lasts only as long as necessary to address the emergency.[139] The section does not apply when a juvenile is placed in a locked sleep room to stop the spread of disease, or when necessary for extended medical care.[140]

The bill requires local agencies to implement the new regulations in the juvenile facilities, and establishes procedures for reimbursement of costs associated with the statutory provisions.[141]



S.B. 1174
2015-2016 Leg., Reg. Sess.
Report by Catherine Reagan

In response to a recent study that showed one out of every four foster children receives psychotropic medication, and sixty percent of those children receive anti-psychotic medication, Senator Mike McGuire drafted a bill designed to

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135 *Id*.
136 *Id*.
137 *Id*.
138 *Id*.
139 *Id*.
140 *Id*.
141 *Id*.

regulate physicians' ability to prescribe these medications to at-risk children.[142] Of the anti-psychotic medications prescribed, seventy-five percent were "off label," which refers to medications not used for the FDA-approved purpose.[143] There are significant risks involved with the inappropriate prescribing of anti-psychotic medications, which include cardio metabolic effects, endocrine side effects, and weight gain.[144] These risks can be life-threatening if not properly monitored.[145]

Under California law, foster children are prescribed psychotropic medications by court order.[146] A physician must complete a report for the court that includes a list of all medications the child is currently prescribed, what medications will stop when this new medication starts, and other therapeutic services provided in conjunction with the medication.[147] In the past, courts have not properly regulated prescriptions.

On September 29, 2016, Governor Jerry Brown signed Senate Bill 1174 ("S.B. 1174") that adds sections to the California Business and Professions Code requiring the Medical Board of California to investigate physicians who repeatedly overprescribe psychotropic medications to minors without a prior good faith examination or appropriate follow-up.[148] This new law requires the Medical Board of California, the State Department of Health Care Services, and the State Department of Social Services to work together to review the data each quarter for excessive prescribing.[149] Additionally, the organizations must make annual reports to the legislature based on their findings.[150] These requirements are in conjunction with the newly added Section 14028 in the

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142 S.B. 1174, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
143 *Id.*
144 *Id.*
145 *Id*.
146 CAL. WELF. & INST. CODE § 369.5(a) (West 2016).
147 *Id*.
148 CAL. BUS. & PROF. CODE § 2220.05(a)(7) (West 2016).
149 CAL. BUS. & PROF. CODE § 2245(a) (West 2016).
150 *Id*. at (e)(1).

California Welfare and Institutions Code that authorizes the release of all pertinent medical information.[151] These agencies will contract with a specialist psychiatrist to review the data and determine which providers are overprescribing.[152] The Medical Board of California will be able to take action against physicians who overprescribe by imposing penalties such as loss of license, suspension, probation, or public reprimand.[153]

This bill, supported by twenty child advocate groups, unanimously passed both California Senate and Assembly in August 2016.[154] The California Academy of Child and Adolescent Psychiatry opposed this bill, raising concerns that the bill would target physicians specializing in mental health issues.[155] Additionally, this law may impose a burden on mental health providers serving Medi-Cal patients, resulting in a loss of highly qualified providers willing to perform services to foster children.[156] Only time will show the impact this bill will have on therapeutic services for foster children.

S.B. 1322
2015-2016 Leg., Reg. Sess.
Report by Sarah Konecny, Alana Murphy

On September 26, 2016, California Governor Jerry Brown signed Senate Bill 1322 ("S.B. 1322") into law, which decriminalizes prostitution for minors in California.[157] This bill had support from many organizations including the Children's Law Center of California and National Center for Youth Law.[158] This bill will amend language in Sections 647 and 653.22 of the California Penal Code covering the prosecution of minors for prostitution.[159] The bill intends to

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[151] CAL. WELF. & INST. CODE § 14028 (West 2016).
[152] CAL. WELF. & INST. CODE § 14028(b) (West 2016).
[153] CAL. BUS. & PROF. CODE § 2227(a) (West 2016).
[154] S.B. 1174, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[155] *Id.*
[156] *Id.*
[157] S.B. 1322, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[158] *Id.*
[159] *Id.*

decriminalize prostitution of minors and direct law enforcement officers to report future conduct to social services.[160] It will allow commercially sexually exploited children ("CSEC") to be adjudicated as dependents of the juvenile court, rather than being processed in the criminal system.[161]

Under previous law, there was no minimum age requirement for an individual to be taken into custody for prostitution.[162] CSEC victims were criminalized under California law, detained in juvenile hall, and charged with crimes committed while being victimized.[163] Under California Penal Code Section 261.5, any sexual conduct with an individual under the age of 18 years old, knowingly or not, is unlawful.[164] Thus, because in the state of California a person under the age of 18 years old is a minor, and cannot legally consent to sexual intercourse, they should not be charged with prostitution.[165]

S.B. 1322 shifts from prosecuting minors for prostitution to focusing on creating an effective and ethical response to CSEC victims.[166] Under the amended bill, when a law enforcement officer suspects that a person soliciting in prostitution is under the age of 18 they shall no longer arrest them, and instead shall report the allegation to the county child welfare department.[167] In addition, the bill allows for commercially exploited children to be adjudged as dependent children of the juvenile court, providing them increased support and care.[168] Furthermore, CSEC victims may also be taken into temporary custody, if the minor is in any situation that would provide an immediate threat to the child's health or

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[160] *Id.*
[161] *Id.*
[162] *Id.*
[163] *Id.*
[164] CAL. PENAL CODE § 265.1 (West 2016).
[165] S.B. 1322, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[166] *Id*.
[167] *Id*.
[168] *Id*.

safety.[169]

S.B. 1322 addresses the growing, widespread issue regarding the sex trafficking of children in California.[170] At heart, the bill moves away from criminalizing minors for prostitution and instead provides exploited children with profoundly needed assistance and support.

📖 A.B. 1843
2015-2016 Leg., Reg. Sess.
Report by Maureen Dahl

Assembly Bill 1843 ("A.B. 1843") was signed into law by Governor Jerry Brown on September 27, 2016 after being introduced to the Assembly on February 9, 2016 by Assemblymember Mark Stone.[171] This act amends Section 432.7 of the Labor Code, relating to employment.[172] Existing law prevents employers from utilizing information of arrest and detention records or pretrial and post-trial diversion program participation if it does not result in a conviction.[173] Such information cannot be used as a factor in hiring, promotion, termination, or acceptance into an apprenticeship program.[174] Current law also prohibits an employer from asking for disclosure on a conviction that has been dismissed or ordered sealed, but allows for inquiries about an arrest if the applicant is out on bail or own recognizance pending trial.[175] However, an exception exists for health facility employers who are permitted, to inquire about certain arrests.[176] Existing law also allows for recovery of damages and attorney fees if these provisions are violated.[177] Intentionally violating the law is a misdemeanor and allows

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[169] *Id*.
[170] *Id*.
[171] A.B. 1843, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[172] *Id.*
[173] *Id.*
[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] *Id.*

for treble damages.[178]

A.B. 1843 amends current law by adding a new section preventing employers from asking for disclosure of information concerning arrest, detention, processing, diversion, supervision, adjudication, or court disposition that occurred under the jurisdiction of a juvenile court.[179] Nor can the employer seek to utilize such information from other sources.[180] This bill also amends the definition of conviction for purposes of this section to exclude any adjudication by a juvenile court,[181] essentially preventing employers from considering any aspect of a juvenile criminal record during the employment process. However, the limited health care facility exception still applies when the circumstances of employment require regular access to patients or drugs.

The bill was authored with the intent of giving youth the same protections adults have in hopes of reducing juvenile recidivism, since studies show that criminal history can prevent candidates from receiving call backs or being hired.[182] Some senators were concerned with forcing employers to blindly hire candidates without excusing them from liability should something go wrong.[183] Yet others supported the act as a way to give young people with criminal records, most often from communities of color, a fighting chance for success.[184]

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178 *Id.*

179 *Id.*

180 *Id.*

181 *Id.*

182 Jazmine Ulloa, *Bill barring employers from asking about juvenile crimes moves out of the Senate*, L.A. TIMES (Aug. 22, 2016), http://www.latimes.com/politics/essential/la-pol-sac-essential-politics-updates-bill-barring-employers-from-asking-1471915686-htmlstory.html.

183 A.B. 1843, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

184 *Id.*

DELAWARE LEGISLATION

🕮 H.B. 405
2015-2016 Leg., Reg. Sess.
Report by Sarah Konecny

On September 6, 2016, Delaware Governor Jack Markell signed House Bill 405 ("H.B. 405"), which creates an alternative procedure for first-time juvenile offenders charged with certain minor misdemeanors in Delaware.[185] Many sponsors in both the House of Representatives and Senate heavily supported this bill.[186] The implementation of this House bill will amend Subchapter III, Chapter 9, Title 10 of the Delaware Code, and will establish the Juvenile Offender Civil Citation Program.[187] The Civil Citation Program implemented under this bill will serve as an alternative to juvenile arrests and will instead consist of assessment and intervention services for first-time juvenile offenders.[188]

Under this bill the Civil Citation Program may be issued at a peace officer's discretion, so long as they have reasonable grounds to believe that a juvenile has committed or attempted to commit a specific act of delinquency.[189] The acts of delinquency that are eligible for the Civil Citation Program include underage possession or consumption of alcohol, criminal trespass in the third degree, shoplifting, disorderly conduct, loitering, and possession of marijuana.[190] The juvenile must voluntarily agree to his or her participation in the Civil Citation Program and must have parental consent.[191] As an alternative, the juvenile has the ability to refuse the civil citation and instead be taken into custody and

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185 H.B. 405, 148th Gen. Assemb., Reg. Sess. (Del. 2016).
186 *Id*.
187 *Id*.
188 *Id*.
189 *Id*.
190 *Id*.
191 H.B. 405, 148th Gen. Assembl., Reg. Sess. (Del. 2016).

subjected to arrest and prosecution.[192]

If a juvenile agrees to a civil citation, the peace officer shall provide him or her with certain information, including a civil citation community provider.[193] The juvenile must contact the civil citation community provider within seven days to schedule his or her intake and initial assessment.[194] Based on this initial assessment, the provider will recommend the juvenile to participate in appropriate interventions, such as community service, counseling treatment, or other suitable forms of rehabilitation.[195] Once a juvenile has completed all of the terms and conditions of the specific civil citation, they will be discharged without arrest.[196] However, if they fail to comply with any of the requirements, they will be terminated from the program and the referring peace officer may arrest the juvenile.[197]

This bill acknowledges the negative impact that criminal charges can have on a juvenile's future and seeks to prevent first-time offenders from entering into the system by providing them a chance of rehabilitation through the Juvenile Offender Civil Citation Program.[198]

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192 *Id.*
193 *Id.*
194 *Id.*
195 *Id.*
196 *Id.*
197 *Id.*
198 *Id.*