RECENT COURT DECISIONS AND LEGISLATION IMPACTING JUVENILES

TENTH CIRCUIT—FEDERAL COURT OF APPEALS

🕮 *Jefferson County School District v. Elizabeth E. Henry A. v. Willden*

702 F.3d 1227 (10th Cir. 2012)

In *Jefferson County School District v. Elizabeth E.*, the United States Court of Appeals, 10th Circuit, adopted a new framework to determine whether a unilateral private school placement, without consent or referral by a school district, is reimbursable under the Individuals with Disabilities in Education Act ("IDEA").[1] *Jefferson* was significant because it marked a departure from two other standards used in varying degrees by many Circuits.[2] The Third Circuit had established a so-called "inextricably intertwined approach" that focused "on whether full-time placement may be considered necessary for educational purposes."[3] The Seventh and Fifth Circuits had established a "primarily oriented"[4] standard where "in order for a residential placement to be appropriate under IDEA, the placement must be: 1) essential in order for the disabled child to receive a meaningful educational benefit and 2) primarily oriented toward enabling the child to obtain an education."[5] In *Jefferson*, the court chose to forgo both the "inextricably intertwined approach" of the Third Circuit and the "primarily oriented" standard of the Fifth and Seventh Circuits by resolving the issue on appeal through a straightforward application of the statutory text.[6]

[1] *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1237-38 (10th Cir. 2012).
[2] *Id.*
[3] *Id.* at 1237.
[4] *Id.*
[5] *Id.* at 1234.
[6] *Id.* at 1237-38.

Elizabeth E. was a student in the Jefferson County, Colorado School system with substantial behavioral and emotional issues for which she required special education under IDEA.[7] In November 2008, Elizabeth's parents, Roxanne B. and David E., enrolled Elizabeth at Innercept, LLC ("Innercept"), a residential treatment center in Idaho, and sought reimbursement from Jefferson County School District R1 (the "School District").[8] An Impartial Hearing Officer concluded Elizabeth's parents were entitled to reimbursement for their daughter's placement under IDEA.[9] After being affirmed by an Administrative Law Judge and the United States District Court for the District of Colorado, the School District appealed.[10] The School District argued that Innercept was not a reimbursable placement under IDEA and that her parents' conduct precluded reimbursement.[11] The Tenth Circuit Court of Appeals upheld the judgment of the District Court based on a plain language interpretation of IDEA.[12]

The 10th Circuit held that the plain language of IDEA supplies an appropriate framework for determining whether a unilateral private school placement without consent or referral by the school district is reimbursable.[13] A unilateral parental placement is reimbursable if: (1) The school district provided or made a free appropriate public education ("FAPE") available to the disabled child in a timely manner;[14] (2) the private placement is a state-accredited elementary or secondary school;[15] (3) the private placement provides special education, *i.e.*, "specially designed instruction…to meet the unique needs of a child with a disability";[16] and (4) if the private placement provides additional services beyond specially designed instruction to meet the child's unique needs, such additional services must be characterized as "related services" under IDEA, *i.e.,* "transportation, and such developmental, corrective, and other supportive services…as may be required to assist a child with a disability

[7] *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1229 (10th Cir. 2012).
[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] *Id.* at 1237-38.
[13] *Id.* at 1236.
[14] 20 U.S.C. § 1412 (2004).
[15] 20 U.S.C. § 1401 (2004); 20 U.S.C. § 1412 (2004).
[16] *Id.*

to benefit from special education," excepting medical services which are not for diagnostic and evaluation purposes.[17]

Applying the above principles, the court concluded that Elizabeth's placement at Innercept is reimbursable under IDEA.[18] As to the first step, the court held that by unilaterally withdrawing Elizabeth from Humanex upon learning of her hospitalization at Aspen, the District did not provide a FAPE to Elizabeth.[19] Regarding the second step, the court concluded that Innercept meets IDEA's definition of a "secondary school" as determined by state law because it is an Idaho accredited educational facility staffed by state-accredited teachers.[20] For the third step, the court supported the finding that Innercept provided specially designed instruction to meet Elizabeth's unique needs, including several hours per day of traditional classroom instruction, one to one-and-a-half hours of directed homework, and one-on-one instruction outside the classroom for times when Elizabeth was unable to participate in the classroom.[21] As to the final step, the court held that the additional services of mental health services were "related services" under IDEA because they were required for addressing Elizabeth's educational needs.[22] In conclusion, affirming the District Court's judgment, the 10th Circuit held that reimbursement for enrollment at Innercept under IDEA was proper.[23]

CALIFORNIA

🕮 California A.B. 1729

2011 Leg., Reg. Sess. (Cal 2011)

On September 30, 2012, Governor Jerry Brown signed the "Pupil Rights: suspension or expulsion" bill into law.[24] Assembly Member Tom Ammiano introduced A.B. 1729.[25] Current law permits that a pupil will be recommended for expulsion if the principal determines that the pupil has

[17] 20 U.S.C. § 1401 (2004).
[18] *Jefferson Cty. Sch. Dist. R-1 v. Elizabeth E. ex rel. Roxanne B.*, 702 F.3d 1227, 1238 (10th Cir. 2012).
[19] *Id.*
[20] 20 U.S.C. § 1401 (2004); *Jefferson.*, at 1238.
[21] *Jefferson*, 702 F.3d at 1238-39.
[22] *Id.* at 1239.
[23] *Id.*
[24] Thomas Manniello, *Legislative Changes Impacting Student Discipline*, LOZANO SMITH: ATTORNEY AT LAW (October 1, 2012), http://www.lozanosmith.com/news_info.php?id=950.
[25] A.B. 1729, 2011 Leg. Reg. Sess. (Cal. 2011).

committed a specified act.[26] A.B. 1729 revises current law to strengthen alternatives to suspension or expulsion and clarifies that school removals should only occur after other means of correction fail.[27]

Prior to A.B. 1729, children with disabilities were suspended or expelled at a higher rate than their peers.[28] In particular, one study demonstrated that more than 20% of students expelled have disabilities.[29] This statistic is high in light of the fact that special education programs comprise only 10% of students.[30] Frequently, the punishable offenses of disabled students are manifestations of their disability. A.B. 1729 creates strategies that the school can utilize to correct the pupils' behavior without suspension or expulsion. Particularly, A.B. 1729 requires that after a child with a disability commits an infraction, he or she should meet with an individualized education program team within 3 days.[31] This meeting will allow the team to determine the best behavioral intervention plan needed in order to address the behavioral problem.[32]

Additionally, A.B. 1729 works to decrease dropout rates by providing alternative strategies that are geared toward keeping the pupil in school.[33] High dropout rates in turn have the obvious detrimental effect of decreasing ones lifelong economic opportunities and productivity.[34] Suspension causes increased dropout rates because it removes the pupil from their work environment causing them to fall behind their peers.[35] Additionally, many students develop the attitude that they are not wanted or belong at their school.[36] In order to combat dropout rates, A.B. 1729 requires that documentation of other means of correction were used prior

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[26] *Id.*
[27] *Id.*
[28] Shaun Heasley, *Students with Disabilities Expelled at Disproportionate Rates, Report Finds*, DISABILITY SCOOP (April 14, 2010), http://www.disabilityscoop.com/2010/04/14/sped-expulsions-texas/7690/.
[29] *Id.*
[30] *Id.*
[31] A.B. 1729, *supra* note 25.
[32] *Id.*
[33] *The California Endowment Commends Governor Brown for Signing AB 1729, School Discipline Bill*, THE CALIFORNIA ENDOWMENT (Sept. 21, 2012), http://tcenews.calendow.org/releases/the-california-endowment-commends-governor-brown-for-signing-ab-1729-school-discipline-bill.
[34] *Schools that have high suspension rates also have high dropout rates, study finds.* NO DROPOUTS.ORG, (Available at http://www.nodropouts.org/blog/schools-have-high-suspension-rates-also-have-high-dropout-rates-study-finds).
[35] *Id.*
[36] *Id.*

to suspension or expulsion.[37] In order for the prior correction to be acceptable, it must be a positive behavior support approach.[38] A.B. 1729 includes examples of acceptable forms of behavioral correction. These include, but are not limited to, "conferences between school personnel, parents, and pupils, and participation in a restorative justice program."[39]

Broadly, the "Pupil Rights: suspension or expulsion" bill looks to ensure that pupils receive the proper disciplinary treatment so that future behavioral problems do not occur. Also, A.B. 1729 looks to ameliorate the negative effects associated with academic punishment.

🕮 California A.B. 2537

2011-2012 Leg., Reg. Sess. (Cal 2012)

In September of 2012, California Governor Jerry Brown signed into law Assembly Bill 2537. Assemblymember V. Manuel Perez of the 56th California Assembly District introduced the bill, which amends sections 48902 and 48915 of the Education Code to provide school administrators with more discretion in matters of school discipline.[40]

Previous law required school administrators to report certain unlawful student conduct to law enforcement agencies; failure to do so could result in a $500 fine.[41] Additionally, administrators were required to recommend expulsion for certain student conduct, unless they felt that the specific situation did not warrant expulsion.[42] A.B. 2537 allows administrators to avoid excluding students for certain specified conduct if they believe the discipline to be unnecessary or if another form of discipline would more appropriately address the student's behavior.[43]

Assemblymember Perez introduced the bill with the intent to modify zero tolerance policies implemented to confront school violence.[44] While school violence remains a serious issue, zero tolerance policies often do not effectively address inappropriate student conduct and can

[37] A.B. 1729, *supra* note 25.
[38] *Id.*
[39] *Id.*
[40] A.B. 2537, 2011-2012 Leg. Reg. Sess. (Cal. 2012).
[41] *Id.*
[42] *Id.*
[43] *Id.*
[44] Sophia Kwong Kim, Assembly Floor Analysis of A.B. 2537 (Aug. 22, 2012), *available at* http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml.

exclude students who have committed minor offenses.[45] Public Counsel, a sponsor of the bill, reported that exclusionary discipline alienates students and does not always result in changed behaviors.[46] Additionally, students who are suspended or expelled are more likely to have contact with the juvenile justice system.[47] A.B. 2537 addresses these concerns by allowing administrators to consider alternative disciplinary action in certain situations, and making changes to zero tolerance drug and weapon policies.[48] Under A.B. 2537, over-the-counter medications are no longer considered a controlled substance for expulsion recommendation purposes.[49] Zero tolerance weapon policies are also altered; possession of an imitation firearm will no longer result in automatic expulsion.[50]

With 750,000 suspensions in the 2009-2010 school year, school discipline remains a pressing issue.[51] With the changes made by A.B. 2537, California's students have the opportunity to stay in school and receive the education they deserve.

🕮 California S.B. 9

2011-2012 Leg., Reg. Sess. (Cal 2011)

Status: Signed into law by Governor Brown on September 30, 2012; Effective on signature and retroactively.

On December 06, 2010, Senator Yee of the California Senate introduced Senate Bill 9 in the Senate, which addressed the sentencing of juveniles to life terms without the possibility of parole.[52] The stated goal of S.B. 9 would authorize a prisoner who was under 18 years of age at the time of committing an offense, for which the prisoner was sentenced to life without parole, to submit a petition for recall and resentencing to the sentencing court, and to the prosecuting agency, as specified.[53] Specifically, S.B. 9 permits the recall of certain juvenile offenders who

[45] *Id*.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *Two More Bills by Asm. Manuel Perez Signed by Governor*, ASSEMB. MEMBER V. MANUEL PEREZ PRESS RELEASE (September 21, 2012), http://asmdc.org/members/a56/press-releases/two-more-bills-by-asm-manuel-perez-signed-by-governor.
[52] CA S.B. HIST., 2011-2012 S.B. 9.
[53] S.B. 9, Leg. Reg. Sess. (Cal. 2011).

were sentenced to life without the probability of parole sentences if they fall under certain guidelines enumerated in the statute.[54]

Juveniles who were convicted as adults of first degree murder were eligible for sentencing of life in prison without the possibility of parole prior to the passing of S.B. 9.[55] A juvenile had to be over the age of 14 to be tried as an adult.[56]

S.B. 9 allows juveniles who were sentenced to life in prison without the possibility of parole to petition the court to recall their sentence.[57] A juvenile is ineligible to have their sentence recalled if they were convicted of the murder of a public official or tortured the victim.[58] The juvenile cannot petition the court until they have served 15 years in custody.[59]

The bill further requires that the juvenile has shown remorse and is working on their rehabilitation.[60] Additionally, S.B. 9 requires that one of the following must be true: the juvenile was convicted of felony murder; the juvenile did not have a felony adjudication for assault or other felony crimes with significant harm prior to sentence; the juvenile committed the offense with one adult co-defendant; or the juvenile has performed acts that tend to indicate rehabilitation or the potential of rehabilitation.[61]

S.B. 9 requires the original petition to be filed with the sentencing court and prosecuting agency.[62] The prosecuting agency has 60 days to respond to the petition from date of receipt of the original petition.[63]

The bill states that if a court finds by a preponderance of the evidence that the statements in the petition are true, the court shall hold a hearing to consider a recall of the sentence.[64] The court can then sentence the juvenile to a sentence as an original sentence, as long as the new sentence is not greater than the original sentence.[65] S.B. 9 explicitly

[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*
[59] *Id.*
[60] *Id.*
[61] *Id.*
[62] *Id.*
[63] *Id.*
[64] S.B. 9, Leg. Reg. Sess. (Cal. 2011).
[65] *Id.*

authorizes victims or their families to be able to participate in the hearing.[66]

Courts are advised of potential factors they should consider when resentencing a juvenile under S.B. 9.[67] These factors include, but are not limited to, the factors mentioned in determining eligibility for resentencing, any physical or psychological trauma, or any cognitive limitations that influenced the juvenile's commitment of the offense.[68]

If the court rejects the petition for resentencing by the juvenile, the juvenile can petition the court at 20 years and 24 years, with a final determination required by the juvenile's 25th year in custody.[69]

🕮 California S.B. 49

2013-2014 Leg., Reg. Sess. (Cal 2013)

California State Senators Ted Lieu and Darrell Steinberg introduced California Senate Bill 49 on December 19, 2012.[70] The proposed law would revise statewide standards for comprehensive school safety plans. Specifically, the proposed revised standards seek to ensure that school safety plans remain continually updated, and to hold local administrators accountable for failing to adopt and update school safety plans.[71]

Under current law, school districts and county offices of education are responsible for developing a comprehensive school safety plan, ideally to reflect the particular needs of the schools.[72] The plan is then approved by the school district or county office of education.[73] Senate Bill 49 would amend the existing process for approving the local drafts of plans.[74]

The bill requires assigned administrators of school districts and county offices of education to inform the State Superintendent of Public Instruction, in writing, of any schools in their district that have failed to adopt, revise, or review a comprehensive school safety plan.[75]

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[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] S.B. 49, 2013 Leg. Reg. Sess. (Cal. 2013).
[71] *Id.*
[72] *Id.* at 5.
[73] *Id.*
[74] *Id.*
[75] S.B. 49, 2013 Leg. Reg. Sess. 6 (Cal. 2013).

The proposed new law also amends requirements for compliance with annual audits.[76] The bill requires auditors to review corrections presented by the local educational agency, in order to encourage compliance with the audits.[77] If the corrections are not in compliance with the audit, the auditor must file a report with the appropriate county office of education.[78] The office of education will resolve the discrepancy by consulting with the local educational agency or the county superintendent of schools.[79]

The proposed law would also impose a requirement on groups seeking to establish a charter school by mandating that they have school safety plan.[80] Furthermore, charters could be revoked for failing to subsequently update the safety plan on a regular basis.[81]

This proposed bill was introduced in December, in the wake of the school shooting tragedy at Sandy Hook Elementary in Newtown, Connecticut.[82] The bill is currently moving through the normal legislative process.[83]

🕮 California S.B. 1088

2012 Leg., Reg. Sess. (Cal 2012)

On September 19, 2012, California Governor Jerry Brown signed into law Senate Bill 1088. S.B. 1088 amends Sections 48645.5 and 48916 of the California Education Code.[84] The legislation was authored by Senator Curren D. Price, Jr. (D-Los Angeles), with the express goal of improving the graduation rate and avoiding unnecessary placement in non-academic school settings in order to minimize the "school-to-prison pipeline."[85] To achieve this, S.B. 1088 requires that students who have

[76] *Id*. at 9.
[77] *Id*.
[78] *Id*.
[79] *Id*.
[80] *Id*. at 2
[81] S.B. 49, 2013 Leg. Reg. Sess. (Cal. 2013).
[82] *Id.* at 1.
[83] *Id*. at 1.
[84] S.B. 1088, 2012 Leg. Reg. Sess. (Cal. 2012).
[85] The "school-to-prison pipeline" refers to the policies and practices that result in many schoolchildren, especially our most at-risk children, being moved out of classrooms and into the juvenile and criminal justice systems. *See What is the School to Prison Pipeline?*, AMERICAN CIVIL LIBERTIES UNION (Mar. 14, 2013), http://www.aclu.org/racial-justice/what-school-prison-pipeline.

been expelled, or who have had contact with the juvenile justice system be immediately reenrolled in school.[86]

Previous law required public schools and county offices of education to accept satisfactorily completed coursework from students in juvenile court schools, nonpublic, and nonsectarian schools and agencies.[87] However, the requirement to accept coursework from students did not require the school to grant readmission.[88] Similarly, students who completed graduation requirements while in detention were entitled to receive a diploma from the last school attended, but were not guaranteed reenrollment in their previous school.[89]

SB 1088 ensures that a student shall not be denied reenrollment simply on the basis that he or she has had contact with the juvenile justice system.[90] Contact with the juvenile justice system can include arrest, adjudication by a juvenile court, supervision by a probation officer, or detention in a juvenile court or facility for any length of time.[91] The amended law additionally requires that any pupil denied readmission can be reevaluated at the end of the term they were denied admission.[92] By limiting the use of alternative school settings, the bill works to decrease the dropout rate by encouraging California's youth to reenroll in public schools.

🕮 *In Re D.L.*

206 Cal. App. 4th 1240 (2012)

D.L. is a child who appealed from juvenile adjudications that found that he had committed two residential burglaries in May of 2010.[93] In his appeal, D.L. claimed that the juvenile court erred by denying him a deferred entry of judgment ("DEJ") hearing.[94] A DEJ entry would have placed D.L. on probation without adjudging him to be a ward of the

[86] S.B. 1088, *supra* note 84.
[87] *Id.*
[88] *Id.*
[89] CAL. EDUC. CODE § 48645.5. (West 2006).
[90] S.B. 1088, *supra* note 84.
[91] *Id.*
[92] *Id.*
[93] *In re D.L.*, 206 Cal. App. 4th 1240 (2012).
[94] *Id.*

court.[95] The court of appeal agreed and reversed the judgment of the juvenile court.[96]

On August 30, 2010, a juvenile wardship petition charged 15-year-old D.L. with two counts of residential burglary.[97] D.L. was subsequently determined to be eligible for DEJ under section 790 of the California Welfare & Institutions Code.[98] The notice informed D.L. that the hearing would determine whether or not to grant DEJ.[99] However, it failed to provide notice of a date when the hearing would be conducted.[100] On September 7, 2010, the probation department filed a report noting that although D.L. was eligible, he was not suitable for DEJ, due to his frequent court appearances within a short period of time and his issues with alcohol, school attendance, and behavior.[101]

Later, at D.L.'s trial readiness conference, without holding a DEJ suitability hearing, the court found that D.L. was eligible but not suitable for DEJ, and his trial date was confirmed.[102]

The next day, D.L. entered denials to each of the allegations against him.[103] Following a contested jurisdictional hearing, the court sustained the allegations that D.L. had committed two burglaries, and ordered D.L. to serve 102 days in a youth detention facility.[104]

The court of appeal reversed the juvenile court's decision and remanded for a DEJ determination.[105] The court explained that a juvenile court must either grant DEJ summarily, or examine the record, conduct a hearing, and determine whether the minor is suitable for DEJ based upon whether he will benefit from education, treatment, and rehabilitation.[106] The court is required to follow specified procedures and exercise discretion to reach a final determination once the eligibility determination is made.[107]

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[95] *Id*. at 1243.
[96] *Id.*
[97] *Id*. at 1242.
[98] *Id.*
[99] *Id*.
[100] *Id*.
[101] *Id*.
[102] *Id*. at 1243.
[103] *Id.*
[104] *Id*.
[105] *Id*. at 1245.
[106] CAL. WELF. & INST. CODE § 791 (West 2000).
[107] *In re Luis B.*, 142 Cal. App. 4th 1117 (2006).

Once the minor has received notice of his eligibility for DEJ, he must admit the petition's allegations in lieu of a jurisdictional hearing before DEJ is granted.[108] The juvenile court does not have to hold a hearing if, after receiving notice of eligibility for DEJ, the minor rejects the DEJ consideration by contesting the charges.[109]

The court of appeal held that the juvenile court failed in its mandatory duty to conduct a hearing and consider, in addition to the information provided by the prosecuting attorney and probation department, any other relevant material provided by the child.[110] By failing to schedule and provide notice of a hearing on D.L.'s DEJ suitability, the court did not meet its obligations, and the juvenile court's finding of forfeiture of DEJ was improper.[111]

The court held that due process required D.L. to receive reasonable notice of a DEJ suitability hearing to allow him to prepare to present evidence and objections.[112] As D.L. never received notice of the DEJ suitability hearing, he did not have a fair opportunity to request DEJ in lieu of jurisdictional dispositional hearings, or to present evidence or to object to findings of his probation officer.[113] The court also rejected the People's assertion that the trial readiness conference, where the juvenile court ruled on D.L.'s suitability for DEJ, was equivalent to a DEJ suitability hearing.[114] Finally, the court held that when a minor is deprived of a hearing and deprived of fundamental procedural rights, reversal is compelled.[115]

The court of appeal vacated D.L.'s adjudication and disposition orders, and remanded his case to the juvenile court for a determination of D.L.'s suitability for DEJ.[116]

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[108] *In re Spencer S.*, 176 Cal. App. 4th 1315, 1322–23 (2009).
[109] *In re Kenneth J.*, 158 Cal. App. 4th 973, 976-87 (2008).
[110] *In re D.L.*, 206 Cal. App. 4th 1240, 1245 (2012).
[111] *Id.* at 1244.
[112] *People v. Ramirez*, 25 Cal. 3d 260, 263-64 (1979).
[113] *In re D.L.*, 206 Cal. App. 4th 1240, 1244 (2012).
[114] *Id.*
[115] *Adoption of Baby Girl B.*, 74 Cal. App. 4th 43, 87 (1999).
[116] *In re D.L.*, 206 Cal. App. at 1244.

OHIO

🕮 *In Re C.P.*

131 Ohio St. 3d 513 (2012)

On April 3, 2012, the Supreme Court of Ohio made a significant ruling on juvenile law and justice in the case of *In re C.P.*[117] Justice Paul E. Pfeifer authored the 5-2 majority decision.[118] The court held that applying automatic lifetime sex offender registration and community notification requirements on certain juvenile sex offenders violates the prohibition against cruel and unusual punishment in the United States and Ohio constitutions.[119] The court further held that these requirements also violate a defendant's constitutional right to due process of law.[120]

The court reviewed the constitutionality of section 2152.86 of the Ohio Revised Code, a provision of Ohio's Adam Walsh Act which creates a new class of juvenile sex-offender registrants: public-registry-qualified juvenile-offender registrants ("PRQJORs").[121] PRQJORs must comply with all the reporting and notification requirements for adult Tier III sexual offenders under Ohio law.[122] These offenders are automatically subject to mandatory lifetime sex-offender registration and notification requirements, including notification on the internet.[123] PRQJOR status is imposed upon juveniles who meet three requirements: The offender must have been between 14 and 17 years old when the offense was committed, have been adjudicated delinquent for committing certain sexually oriented offenses against a victim under the age of 12, and have been deemed a serious youthful offender ("SYO").[124] PRQJORs receive no reclassification hearing upon completion of their juvenile disposition.[125] They become eligible for reclassification 25 years after their statutory registration obligations start.[126]

Fifteen year-old C.P. was charged in Athens County Juvenile Court with two counts of rape and one count of kidnapping with sexual

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[117] *In re C.P.*, 131 Ohio St. 3d 513 (2012).
[118] *Id.* at 513, 536.
[119] *Id.* at 513.
[120] *Id*.
[121] OHIO REV. CODE ANN. § 2152.86 (West 2013); *In re C.P.*, 131 Ohio St. at 513.
[122] *In re C.P.*, 131 Ohio St. at 517.
[123] *Id.* at 517-19.
[124] *Id.* at 516-17.
[125] *Id.* at 519.
[126] *Id.*

motivation, each count a first-degree felony if committed by an adult.[127] The victim was a 6 year-old boy and a relative of C.P.[128] The juvenile court judge declined the State's request to transfer the case to an adult court, ruling that C.P. was not emotionally, physically, or psychologically mature enough for the transfer.[129] It was also found that C.P. had a mental illness.[130] C.P. was adjudicated delinquent, found to be a SYO, and was given a 3 year minimum commitment to the Ohio Department of Youth Services on each count, to run concurrently.[131]

The juvenile court judge also classified C.P. as a PRQJOR, subjecting him to lifetime registration and community notification requirements and placement on a public internet registry.[132] C.P. appealed his automatic classification as a Tier III juvenile-offender registrant and as a PRQJOR.[133] C.P. argued that these automatic classification, registration, and notification requirements violate due process, equal protection, and the prohibition against cruel and unusual punishment.[134]

The Ohio Supreme Court majority found that to the extent that it imposes such requirements on juvenile offenders tried within the juvenile system, R.C. 2152.86 violates the constitutional prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 9.[135] The court used a two-step process to reach its decision to strike down R.C. 2152.86. The court first noted a lack of national consensus on the publication of personal information of juvenile offenders.[136] Ohio was the first state to adopt an Adam Walsh statute after Congress threatened crime-control funding cut-offs for states that did not comply with implementation.[137] The rest of the country later rejected this provision, thereby making Ohio out of sync with current views on publishing personal information of juvenile offenders. [138]

The court then conducted an independent review of the sentencing practice to determine constitutionality. The court reiterated its assumption

[127] *Id.* at 514.
[128] *In re C.P.*, 131 Ohio St. 3d 513, 514 (2012).
[129] *Id.*
[130] *Id.*
[131] *Id.* at 515.
[132] *Id.*
[133] *Id.*
[134] *In re C.P.*, 131 Ohio St. 3d 513, 515 (2012).
[135] *Id.* at 513.
[136] *Id.* at 520-21.
[137] *Id.*
[138] *Id.*

that juvenile offenders are less culpable and more likely to change than adult offenders.[139] The court reviewed the severity of the punishment imposed by the statute and found there to be special harshness in lifetime registration and notification requirements for a juvenile.[140] Justice Pfeifer described lifetime registration as "forcing a juvenile to wear a statutorily imposed scarlet letter as he embarks on his adult life."[141] The decision also provides a thoughtful analysis of the various penological justifications of punishment and ultimately finds the fundamental purpose of a juvenile disposition to be rehabilitation.[142] Justice Pfeifer concluded that the lifetime registration and notification provisions of R.C. 2152.86 directly conflict with this fundamental purpose of juvenile disposition.[143] Finally, the court cited lack of proportionality as the key reason the statute violated the Ohio Constitution's ban on cruel and unusual punishment.[144] The very public nature of the punishment is contrary to the confidentiality of the juvenile justice system and its rehabilitative goals.[145]

The court also ruled that R.C. 2152.86 violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Ohio Constitution, Article I, Section 16.[146] The court applied a fundamental fairness standard, holding that a balanced approach is required to preserve the special nature of the juvenile process.[147] The court found that the lack of discretion in the juvenile judge, over the portion of the penalty that could last a lifetime, lacked the necessary fundamental fairness of juvenile disposition.[148]

🕮 *In Re M.W.*

133 Ohio St. 3d. 309 (2012)

In re M.W. is an appeal to the Supreme Court of Ohio from the Ohio Court of Appeals' ruling that a police interrogation is not a court proceeding.[149] Based on that reason, the court of appeals found that the

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[139] *Id.* at 523.
[140] *In re C.P.*, 131 Ohio St. 3d 513, 523-24 (2012).
[141] *Id.* at 527.
[142] *Id.* at 526-28.
[143] *Id.*
[144] *Id.* at 529-30.
[145] *Id.*
[146] *In re C.P.*, 131 Ohio St. 3d 513, 531 (2012).
[147] *Id.* at 532.
[148] *Id.* at 533-34.
[149] *In re M.W.*, 133 Ohio St. 3d 309, 310 (2012).

juvenile defendant was not entitled to representation by counsel.[150] The court held that the Ohio Revised Code only requires representation in court proceedings and that "a juvenile does not have a statutory right to counsel at an interrogation conducted prior to filing of a complaint or prior to appearing in juvenile court."[151] The Supreme Court of Ohio affirmed the lower court's ruling.[152]

In August 2009, Cleveland Police Sergeant Thomas Shoulders stopped M.W., a juvenile, while M.W. was driving.[153] M.W. gave a false name and had no license.[154] During the stop, M.W. admitted to acting as a lookout while another juvenile, A.C., committed an armed robbery the night before.[155] Cleveland Police had taken A.C. into custody immediately after the robbery.[156]

Shoulders arrested M.W. and transported him to the police station.[157] In front of Detective Borden, Shoulders advised M.W. of his constitutional rights.[158] After a 35-minute interrogation, M.W. signed a written waiver of his rights and made a written statement.[159] M.W. was not given the opportunity to consult with his parents before the interrogation.[160] Detective Borden then filed a complaint in the Cuyahoga County Juvenile Court, alleging that M.W. was delinquent for committing aggravated robbery with firearm specifications.[161]

The state moved to prosecute M.W as an adult.[162] The juvenile court denied that motion.[163] M.W. was later adjudicated delinquent and placed in the custody of the Ohio Department of Youth services for a minimum of one year on the aggravated robbery charge and for a minimum of one year on the firearm specification, to be served consecutively.[164]

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[150] *Id.*
[151] *Id*.; *see also* OHIO REV. CODE ANN. § 2151.352 (West).
[152] *In re M.W.*, at 310.
[153] *Id*.
[154] *Id*.
[155] *Id*.
[156] *Id*.
[157] *Id*.
[158] *Id*.
[159] *Id*.; *see also* Merit Brief of Appellant M.W. at 1; *In re M.W.*, 2011 WL 3651656 (Ohio), at 1 (No. 2011-0215).
[160] Merit Brief of Appellant, *supra* note 159 at 1.
[161] *M.W.*, at 310.
[162] *Id*. at 311.
[163] *Id*.
[164] *Id*.

M.W. appealed, claiming that the trial court erred in admitting his written statement.[165] M.W. argued that the Ohio statute giving juveniles the right to counsel, R.C. 2151.352, "provides a juvenile with a right to representation by legal counsel at all stages of the proceedings."[166] M.W. contended that the interrogation was a proceeding.[167] Therefore, the right to counsel would apply.[168] Further, M.W. claimed that Ohio law did not allow him to "waive his Fifth Amendment right to counsel during interrogation… unless he had consulted with a parent, guardian, custodian, or attorney regarding the waiver."[169]

The appellate court rejected these arguments, holding that "a juvenile proceeding does not commence until the filing of a complaint."[170] Because no complaint had been filed before the interrogation, the court held that R.C. 2151.352 did not apply.[171] Furthermore, M.W. never exercised his *Miranda* right to counsel.[172] Based on these reasons, the appellate court affirmed M.W.'s adjudication.[173]

M.W. then appealed to the Supreme Court of Ohio.[174] The court held that because R.C. 2151.352 did not define "proceeding" and allowed detainment for "processing purposes," the interrogation did not fall under the statutory right to counsel.[175] The statute's definition of "processing purposes" includes "[i]nterrogating the child, contacting the child's parent or guardian… while holding the child in a nonsecure area of the facility."[176] The Supreme Court of Ohio held that "proceeding" implied a "formal process involving a court."[177] As the formal delinquency proceeding was not begun until Detective Borden filed the complaint against M.W., the court ruled that M.W.'s statutory right to counsel had not yet attached.[178] Using the same reasoning, the court held that M.W.'s Sixth Amendment right to counsel at critical stages of the proceedings had also not yet attached.[179] Further, the court ruled that M.W. did have a Fifth

[165] *Id*.
[166] *M.W.*, at 311.
[167] *Id*.
[168] *Id*.
[169] *Id*.
[170] *Id*.
[171] *M.W.*, at 312.
[172] *Id*.
[173] *Id*.
[174] *Id*.
[175] *M.W.*, at 313.
[176] *Id*.
[177] *Id*. at 314.
[178] *Id*. at 315.
[179] *Id*.

Amendment right to counsel under *Miranda*, but that he did not exercise that right.[180] Consequently, the court affirmed the decision of the Court of Appeals.[181]

Shortly after the court decided this case, Ohio State Representatives Heard and McGregor introduced House Bill 597.[182] The bill, if enacted, will grant juveniles a statutory right to counsel and the right to remain silent during custodial interrogations.[183] The bill would also require juveniles to be made aware of those rights.[184] Additionally, the proposed legislation would bar the introduction into evidence of any admission or confession made during a custodial interrogation unless the confession or admission was made in the presence of the child's parent, guardian, custodian, or attorney.[185] If passed into law, H.B. 597 would effectively overturn *In re M.W.* As of this writing, the bill was in the Ohio House Judiciary and Ethics Committee and had not yet been voted on.[186]

[180] *M.W.*, at 315.
[181] *Id*. at 316.
[182] H.B. 597, 129th Gen. Assemb., Reg. Sess. (Ohio 2012).
[183] *Id*.
[184] *Id*.
[185] *Id*.
[186] STATUS REPORT OF LEGISLATION, 129TH GENERAL ASSEMBLY – HOUSE BILLS, H.B. 597, http://lsc.state.oh.us/coderev/hou129.nsf/House+Bill+Number/0597?OpenDocument.