RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES SUPREME COURT

🕮 *Ohio v. Clark*
135 S. Ct. 2173 (2015)

In *Ohio v. Clark*, the United States Supreme Court ruled that where a child is not available to testify, the Sixth Amendment's Confrontation Clause does not prohibit admission in court of the child's statements to his teachers that implicate the defendant as his or her abuser.[1]

The case originated after a teacher noticed red marks on three-year-old L.P.'s body.[2] The child later identified Clark, his mother's boyfriend, as his abuser to the teacher.[3] The trial court determined the child as incompetent to testify at trial, but permitted prosecution to introduce his statements to the teacher as evidence of Defendant's guilt.[4] Defendant was subsequently convicted.[5] The state appellate court reversed the conviction on the grounds that admitting the out-of-court statements violated Defendant's right to confront witnesses.[6] The Supreme Court of Ohio affirmed, deeming the statements testimonial in nature because they were made in the absence of an ongoing emergency and were obtained by the teachers for the primary purpose of gathering evidence for Defendant's prosecution.[7] The United States Supreme Court reversed and remanded the case, distinguishing the child's statements as admissible.[8]

In a 9-0 decision, the Court held that admission of the statements did

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1 *Ohio v. Clark*, 135 S. Ct. 2173, 2177 (2015).
2 *Id.*
3 *Id.*
4 *Id.* at 2178.
5 *Id.*
6 *State v. Clark*, 999 N.E.2d 534, 595 (2013).
7 *Id.* at 594.
8 *Ohio*, 135 S. Ct. at 2177.

not implicate the Confrontation Clause because they were not testimonial.[9] According to the Court, the child's statements occurred in the context of an ongoing emergency of suspected child abuse, in which teachers sought to identify and end the danger to the child.[10] A teacher is also not principally charged with uncovering and prosecuting criminals.[11] Moreover, even though a teacher is obligated to report cases of suspected child abuse, this obligation does not convert a teacher into an agent of law enforcement.[12] Lastly, the Court commented that statements by very young children in the context of child abuse cases very rarely, if ever, implicate the Confrontation Clause.[13]

Ohio v. Clark relaxes evidentiary standards in child abuse cases when young children are unable to testify in court and evidence is limited. Thus, the Court's decision to limit the scope of the confrontation right in these circumstances ensures that these young victims are provided an opportunity to be heard.

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[9] *Id.* at 2183.
[10] *Id.* at 2181.
[11] *Id.* at 2182.
[12] *Id.* at 2183.
[13] *Id.* at 2182.

UNITED STATES COURT OF APPEALS, THIRD CIRCUIT

🕮 *J.B. ex rel. Benjamin v. Fassnacht*
801 F.3d 336 (3d Cir. 2015)

In a matter of first impression, the Court of Appeals for the Third Circuit held that conducting visual strip searches of all minors admitted to the general population of juvenile detention centers is not unconstitutional.[14] In reaching this conclusion, the court found that the United States Supreme Court's decision in *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S. Ct. 1510 (2012), which allows jail officials to perform visual strip searches of all arrestees before admission to the jail, applies to juvenile offenders.[15]

J.B.'s parents' alleged that J.B.'s civil rights were violated when he was strip-searched upon being admitted to a juvenile detention facility. J.B. was 12 years old when he was involved in a physical altercation with at least two girls in his neighborhood.[16] One of the girls alleged J.B. threatened to kill her, and J.B. later admitted to holding a homemade knife over a girl's head.[17] At the Lancaster County Youth Intervention Center ("LYIC"), J.B. was subjected to a strip search pursuant to LYIC policy, during which officers look for signs of injuries, abuse, or contraband.[18] An officer conducted the search behind a curtain so that only the officer could observe J.B. unclothed.[19] During the search, J.B. removed his clothing, including his pants and underwear, for approximately 90 seconds, and was asked to turn around, bend over, spread his buttocks, and cough.[20]

J.B.'s parents subsequently brought suit on his behalf, asserting various civil rights violations under 42 U.S.C. § 1983, including unreasonable search and seizure.[21] Defendants filed a motion for summary judgment, arguing that the unreasonable search claims failed pursuant to *Florence v. Board of Chosen Freeholders of County of Burlington*.[22] In

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[14] *J.B. ex rel. Benjamin v. Fassnacht*, 801 F.3d 336, 347 (3d Cir. 2015).
[15] *Id.* at 337.
[16] *Id.* at 338.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 339.

Florence, the Supreme Court held that a jail's blanket policy of subjecting all arrestees committed to the general population to a visual strip search does not violate the Fourth or Fourteenth Amendment.[23]

The District Court in this case denied the motion for summary judgment, finding that *Florence* does not apply to juveniles because the Supreme Court made no reference to juvenile detainees.[24] The Court of Appeals subsequently confronted the question of whether *Florence* applied to juveniles.[25]

The Third Circuit began its analysis with a synopsis of the ruling in *Florence*. The plaintiff in *Florence* was arrested for a minor offense and was subsequently taken to jail where, pursuant to a blanket policy, he was required to lift his genitals, turn around, and cough while squatting.[26] The plaintiff argued that such a blanket strip search policy violated his civil rights.[27] The Supreme Court disagreed, emphasizing the deference owed to correctional officers and listing certain penological interests that may justify policies that impinge on inmates' constitutional rights.[28] These interests include preventing the spread of contagious infections and diseases, identifying the increasing number of gang members who go through the intake process, and detecting contraband.[29] The Court also characterized jail "in a broad sense to include prisons and other detention facilities."[30] The majority opinion noted, however, that visual strip searches may not be reasonable if a jail does not intend to assign a detainee to the general jail population and the detainee would not have substantial contact with other detainees.[31]

Here, although the court recognized that juveniles have an enhanced right to privacy, it found that the ruling in *Florence* applies to juvenile facilities.[32] Despite the "trauma inflicted upon a youth subjected to a strip search," officers in juvenile facilities must contend with the same penological interests as officers in adult facilities.[33] For example, the court

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[23] *Florence v. Bd. of Chosen Freeholders of Cnty. of Burlington*, 132 S. Ct. 1510, 1511 (2012).

[24] *J.B. ex rel. Benjamin*, 801 F.3d at 339.

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 340.

[29] *Id.*

[30] *Id.* at 339.

[31] *Id.* at 341.

[32] *Id.*

[33] *Id.* at 342.

noted that juveniles "may carry lice or communicable diseases, possess signs of gang membership, and attempt to smuggle in contraband."[34] The court reasoned that gangs are recruiting younger and younger members, and used the fact the J.B. had constructed a homemade flame thrower as evidence that "he was clever enough . . . to smuggle contraband into the detention facility."[35] Furthermore, because the state acts as a minor's de facto guardian while they are detained, there is a greater responsibility to "screen for signs of disease, self-mutilation, or abuse in the home."[36]

The court rejected the plaintiff's argument that juveniles fall into an exception contemplated by the Court in *Florence*, noting that the term "jail" was meant broadly, and that the exception contemplated in the majority opinion involved situations where an arrestee would not be placed in the facility's general population.[37] The court also rejected the plaintiff's argument that the "reasonable suspicion" standard regarding strip searches conducted in schools should apply to juveniles in detention facilities.[38] The court noted that since "the prisoner and the schoolchild stand in wholly different circumstances," J.B. did not possess the same expectation of privacy when he arrived at LYIC as he would at school.[39]

Because no other courts have directly answered whether *Florence* applies to juvenile detention centers, this decision by the Third Circuit provides precedent that, under federal law, juveniles may not have a greater right of privacy or greater Fourth Amendment protections than adult detainees, at least regarding visual strip searches during processing. Although the court stated that juveniles have an enhanced right to privacy, and recognized that children are "especially susceptible" to the humiliation and dehumanization inherent in strip searches, this decision shows that the "realities of detention, irrespective of age" may override these privacy concerns.[40]

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[34] *Id.*

[35] *Id.* at 343.

[36] *Id.* at 344.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.* at 342.

CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

🕮 *In re Kevin F.*
239 Cal. App. 4th 351 (2015)

The issues presented in *In re Kevin F*. were whether probation conditions must be so specific as to constitute a sufficient notice, and whether the lack of notice violates the constitutional protections of the Due Process Clause of the Fourteenth Amendment.[41]

After being charged with second-degree robbery, Kevin F., a minor, was placed on probation conditions including, but not limited to, a ban from possessing weapons.[42] Thereafter, Kevin was found to be in violation of his probation conditions.[43] Kevin appealed on the grounds that the probation conditions were unconstitutionally vague and overbroad.[44] He demanded relief for modifications of probation conditions to include the intent to use "deadly or dangerous weapons."[45]

The court reasoned that having sufficient notice of what is prohibited conduct must not be overbroad in order to comply with the Due Process Clause of the Fourteenth Amendment.[46] Moreover, the court stated that a general probation condition is overbroad because it can include "an ordinary household object, regardless of [a] [m]inor's intent in possessing it."[47]

The court determined that that probation conditions must be specific and precise in order for the individual to know what conduct is prohibited and for the court to determine whether the probationer violated the conditions.[48] It held that an omission of "dangerous or deadly" from the weapons possession probation condition was not unconstitutionally vague.[49] However, the probation condition prohibiting the minor from possessing "anything that you could use as a weapon" was

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41 *In re Kevin F.*, 239 Cal. App. 4th 351 (2015).
42 *Id.* at 354.
43 *Id.*
44 *Id.*
45 *Id.* at 358.
46 *Id.* at 360.
47 *Id.*
48 *Id.*
49 *Id*. at 365.

unconstitutionally vague because it did not provide adequate notice of what was prohibited. [50] The California Fourth District Court of Appeal overturned the decision of the lower court and granted the appellant relief by modifying the probation conditions for weapons possession to include "knowingly possessing weapons."[51] Since there is a conditional liberty interest at stake, the court contended that adding an express knowledge element to probation conditions best comports with the Due Process Clause of the Fourteenth Amendment.[52]

🕮 *Alejandro N. v. Superior Court of San Diego County*

238 Cal. App. 4th 1209 (2015)

Alejandro N., a minor, committed a commercial burglary, a felony in California, and was sentenced to up to three years in juvenile custody.[53] He petitioned the Superior Court of California for a reduction of his maximum term of confinement and a reduction of his felony to a misdemeanor.[54] Furthermore, he asked that his DNA be removed from the Department of Justice database, and that his fine be reduced, pursuant to The Safe Neighborhoods and Schools Act (Proposition 47).[55]

The Safe Neighborhoods and Schools Act amended the California Health Code and Penal Code to allow for multiple drug and theft-related offenses to be reduced from felonies to misdemeanors.[56] Individuals sentenced to felony convictions under California Penal Code 1170.18 before this Act came into place in 2014 can benefit from it by petitioning for a resentence, unless they pose a risk to public safety.[57] Individuals must apply within three years of Proposition 47's effective date.[58]

The lower court in *Alejandro N.* acknowledged that the word "conviction" technically did not apply to juveniles under Proposition 47.[59]

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50 *Id.*

51 *Id.*

52 *Id.*

53 *Alejandro N. v. Superior Court of San Diego Cnty.*, 238 Cal. App. 4th 1209 (2015).

54 *Id.*

55 *Id.*

56 *Id.* at 1222.

57 *Id.*

58 *Id.* at 1223.

59 *Id.* at 1216.

Still, it reduced Alejandro's term of confinement under section 726 of the Welfare and Institution Code, which prevents a juvenile from being confined for more time than an adult for the same offense.[60] However, requests to reclassify Alejandro's offenses were denied under Proposition 47. The minor appealed the judgment, and the Court of Appeal found that the offense reclassification provisions of Proposition 47 do apply to juveniles, and reversed the decision.[61]

Ultimately, Alejandro's petition was denied in part and granted in part. His maximum period of confinement was reduced to the misdemeanor level, DNA collection was not allowed under California Penal Codes 296 and 296.1 for the reclassified misdemeanor, and the fine was not adjusted as it was within the misdemeanor level prescribed by section 730.6, subdivision (b)(2) of the Welfare and Institution Code.[62]

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[60] *Id.* at 1218.

[61] *Id.* at 1225.

[62] *Id.* at 1230.

CALIFORNIA LEGISLATION

🕮 A.B. 1049

2015 – 2016 Leg., Reg. Sess.

Assemblyman Jim Patterson introduced Assembly Bill 1049 ("AB 1049") in February 2015 and Governor Jerry Brown signed it into law on July 14, 2015.[63] AB 1049 clarifies the process for terminating parental rights in adoption proceedings.[64] It was drafted in response to a 2014 case, which granted custody of an already adopted son to his biological father.[65] The court granted custody based upon the father's offer to sign a voluntary declaration of paternity and his demonstrated intention to assume parental responsibilities.[66] Specifically, the bill overrules the part of *Adoption of Baby Boy W.* that automatically entitles a man who offers to sign a voluntary declaration of paternity to presumed father status.[67] Under the new legislation, a father's offer can be one of the factors considered, but it is no longer conclusive when determining a presumed father's parental status.[68]

This bill is a positive step for adoptive parents and the adoption community. *Adoption of Baby Boy W.* made it unclear whether the act of a mother giving up a child for adoption was sufficient to commence adoptive proceedings.[69] *Adoption of Baby Boy W.* indicated that a father could declare parental rights even after a mother had terminated them.[70] AB 1049 eliminates this uncertainty, stating that one's offer to voluntarily declare paternity is not the sole condition for achieving presumed father status.[71] The legislation, however, undermines the rights of fathers. If, as in *Adoption of Baby Boy W.*, a father is prevented from exercising his parental rights by the conduct of the biological mother, he may have little recourse under the

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[63] Assemb. Bill 1049, 2015-2016 Reg. Sess. (Cal. 2015), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1049.

[64] *Id.*

[65] *Adoption of Baby Boy W.*, 232 Cal. App. 4th 461, (2014).

[66] *Id.* at 461.

[67] Holden Slattery, *California Law Limits Paternity's Influence on Adoption Proceedings*, THE CHRONICLE OF SOCIAL CHANGE, (July 16, 2015), https://chronicleofsocialchange.org/analysis/california-law-limits-paternitys-influence-on-adoption-proceedings/11423.

[68] Assemb. Bill 1049, *supra* note 13.

[69] Slattery, *supra* note 16.

[70] *Adoption of Baby Boy W.*, 232 Cal. App. 4th 461, 461 (2014).

[71] Assemb. Bill 1049, *supra* note 13.

new law.

AB 1049 also extends financial protections to egg donors.[72] Existing law requires funds for health care expenses of surrogate mothers to be deposited in bonded escrow or trust accounts.[73] The new law requires parents working with egg donors to do the same.[74] The intent of this provision is to protect egg donors from being exploited and from incurring financial expenses.[75] More broadly, this provision aims to make egg donations a safer process and potentially incentivize more women to become egg donors.

AB 1049 amends sections 7612, 7960, and 7961 of the California Family Code, and amends the heading of Part 7 of Division 12 of the California Family Code.[76]

🕮 A.B. 899

2015 – 2016 Leg., Reg. Sess.

On September 4, 2015, Governor Jerry Brown signed into law Assembly Bill 899 ("AB 899"), or Section 831 of the Welfare and Institutions Code, which states that confidential juvenile files cannot be disclosed to federal officials absent a court order.[77] AB 899 primarily seeks to redefine the code's definition of "juvenile information."[78]

Current law mandates confidentiality of a case file or information pertaining to a dependent child or ward of the juvenile court.[79] Such information can only be accessed by those individuals and entities who are authorized by law to inspect them, including, among others, the attorneys for the parties, judges, referees, other hearing officers, and law enforcement officers who are participating in proceedings involving the dependent child

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[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] Alisha Gallon, *Assemblyman Makes Changes in Adoption Laws with Third Bill Signed by Governor to Streamline Adoptions in California,* ASSEMBLYMAN JIM PATTERSON 23RD DISTRICT, (July 15, 2015), https://ad23.asmrc.org/press-release/8493.

[76] Assemb. Bill 1049, *supra* note 13.

[77] Assemb. Bill 899, 2015-2016 Reg. Sess. (Cal. 2015), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB899.

[78] *Id.*

[79] *Id.*

or ward.[80] Only after a juvenile court, after weighing the interests in favor of disclosure and nondisclosure and upon proper application orders, discloses the case file, may another individual or entity access the case file.[81]

Despite the code's clear prohibitions against disclosure of juvenile records, several probation departments within the state were routinely providing juvenile information to federal immigration authorities without first obtaining authorization from the juvenile court.[82] AB 899 explains that information about the immigration status of a minor or non-minor contained in juvenile court records should not be shared with or by federal immigration officials.[83] The text of the statute makes clear, "'juvenile information' includes the 'juvenile case file,' and information related to the juvenile, including, but not limited to, name, date or place of birth, and the immigration status of the juvenile that is obtained independently or in connection with juvenile court proceedings or a government agency, including but not limited to, a court, probation office, a child welfare agency, or a law enforcement agency."[84]

🕮 A.B. 260

2015 – 2016 Leg., Reg. Sess.

On October 6, 2015, California Governor Jerry Brown signed Assembly Bill 260 ("AB 260") into law, which will assist minor parents in foster care with retaining their own children.[85] AB 260 amends Section 16002.5 of the Welfare and Institutions Code, declaring the Legislature's intent to support the preservation of the family unit when both the parent and child are in foster care.[86] Further, AB 260 adds Section 361.8 to the Welfare and Institutions Code, which prevents deeming the child of a dependent child of the court as "at risk" of abuse or neglect squarely based upon the parent's placement history, past history, or previous health

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80 *Id.*
81 *Id.*
82 *Id.*
83 *Id.*
84 *Id.*
85 A.B. 260, 2015-2016 Leg., Reg. Sess. (Cal. 2015).
86 *Id.*

diagnoses.[87] Lastly, AB 260 adds Section 825.5 to the Welfare and Institutions Code, now requiring California courts to separate dependency court records of the dependent parent from the records of the dependent's child.[88]

AB 260 aims to prevent the children of minors in out-of-home care from entering the foster care system, thus preserving the family unit.[89] According to AB 260's author, California Assembly Member Patty Lopez, this breaks the foster care cycle and ensures California foster youth can succeed and sustain their family unit, rather than processing children through additional, unnecessary entrances into the foster care system.[90] According to Committee findings, there is evidence of higher pregnancy and parenting rates for foster youth.[91] Researchers found that more than one-quarter of females in foster care gave birth at least once during their teens by the age of 17.[92]

The estimated administrative cost to implement AB 260 is about $100,000.[93] AB 260 received support from six organizations, including the California Youth Connection, the American Civil Liberties Union of California, and the Family Law Section of the State Bar.[94]

🕮 A.B. 703

2015 – 2016 Leg., Reg. Sess.

Under current California law, minors accused of committing a crime are entitled to counsel during court proceedings.[95] Assembly Bill 703 ("AB 703") adds Section 634.3 to the Welfare and Institutions Code, which requires that counsel appearing on behalf of juveniles in delinquency proceedings have specific training and establish and maintain a meaningful

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87 *Id.*

88 *Id.*

89 ASSEMBLY COMMITTEE ON JUDICIARY, BILL ANALYSIS, A.B. 260, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

90 *Id.*

91 *Id.*

92 *Id.*

93 ASSEMBLY FLOOR, BILL ANALYSIS, A.B. 260, 2015 2015-2016 Leg., Reg. Sess. (Cal. 2015).

94 *Id.*

95 Cal. Welf. & Inst. Code § 634..

and professional relationship with their clients.[96]

Youth advocacy groups and Assemblyman Richard Bloom created the bill to address the varying quality of representation afforded to juveniles.[97] Due to "high caseloads, limited experience, and inconsistent training, the quality of representation" in juvenile matters is not always constitutionally adequate.[98] Assemblyman Bloom asserted that "close to half of California delinquency defense counsel begin their practice with zero training in juvenile specific law and practice."[99] Inadequate representation also has a disproportionally negative impact on economically disadvantaged families and communities of color.[100]

AB 703 signed by Governor Jerry Brown on September 30, 2015, declares three central legislative findings. First, because the juvenile justice system has become more complex and the potential consequences of a minor's involvement in the juvenile justice system have become more severe, delinquency attorneys require "specialized skills, education, and training to ensure competent representation of minors."[101] Second, competent defense attorneys "preserve the integrity of the juvenile justice system, prevent wrongful judgments, reduce unnecessary incarceration, and help ensure that minors receive the care, treatment, and guidance upon which the juvenile justice system is premised."[102] Third, juvenile defense attorneys should be knowledgeable and skilled in this area of practice because recent research demonstrates that minors and adults possess different emotional, decision-making, and behavioral capacities.[103] Accordingly, attorneys must take these differences into account in developing the attorney-client relationship and their representation in the case.[104]

To address these findings and concerns, AB 703 requires attorneys

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[96] A.B. 703, 2015-2016 Reg. Sess. (Cal. 2015). Bill History *available at* http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AB703.

[97] Hearing on A.B. 703: Juveniles: Attorney Qualifications, Assembly Committee on Judiciary, April 7, 2015 at 1, *available at* http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0701-0750/ab_703_cfa_20150403_173932_asm_comm.html. The East Bay Children's Law Offices, Pacific Juvenile Defender Center, and Youth Law Center co-sponsored the bill.

[98] *Id.*

[99] *Id.* at 7.

[100] *Id.* at 9.

[101] A.B. 703, 2015-2016 Reg. Sess. (Cal. 2015).

[102] *Id.*

[103] *Id.*

[104] *Id.*

representing juveniles in delinquency proceedings to "provide effective, competent, diligent, and conscientious advocacy" on behalf of their juvenile clients.[105] Attorneys must represent their client's expressed interests, maintain a confidential relationship with their client, and confer with their client prior to each hearing.[106] If necessary, attorneys should consult with social workers, mental health professionals, educators, or other experts in order to effectively represent their client.[107] Attorneys must "establish and maintain a meaningful and professional . . . relationship" with the minor they represent.[108] AB 703 also requires the Judicial Council, by July 1, 2016, to adopt various rules regarding minimum hours of training and education, or sufficient recent relevant experience, in order for attorneys to be appointed as counsel in delinquency proceedings; training on specific topics and areas relevant to juvenile justice; and encouraging delinquency training by public defender offices and agencies that represent minors in delinquency cases.[109]

AB 703 ensures that attorneys appointed to represent minors in delinquency proceedings will have the proper training and education in order to more effectively represent their clients. More training and juvenile-specific knowledge will improve legal outcomes for minors, and will also improve the integrity of the juvenile justice system overall. Additionally, as the quality of representation improves, so should the outcomes for economically disadvantaged families and communities of color.

🕮 A.B. 592

2015 – 2016 Leg., Reg. Sess.

On February 24, 2015, Assemblyman Mark Stone introduced Assembly Bill No. 592 ("AB 592").[110] The bill passed in the Assembly on May 22, 2015, and in the Senate on July 9, 2015.[111] Governor Jerry Brown signed the bill on August 17, 2015, and the Secretary of State chaptered the

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105 *Id.*

106 *Id.*

107 A.B. 703, 2015-2016 Reg. Sess. (Cal. 2015).

108 *Id.*

109 *Id.*

110 A.B. 592, 2015-2016 Reg. Sess. (Cal. 2015)., Bill History *available at* http://www.leginfo.ca.gov/pub/15-16/bill/asm/ab_0551-0600/ab_592_cfa_20150426_143748_asm_comm.html.

111 *Id.*

bill on the same day.[112]

AB 592 is composed of two parts. First, it authorizes the California Department of Social Services to provide a former ward of juvenile court who has aged out of foster care with any necessary documentation to prove their former dependency wardship.[113] Second, it goes into immediate effect in order to urgently assist former foster youth in becoming eligible for governmental services.[114]

AB 592 makes a slight alteration to the procedure for requesting proof of dependency documents needed to access benefits such as Medi-Cal, FAFSA, and transitional housing programs.[115] Previously, youth who aged out of foster care at age 18 were "provided with a letter verifying their status as a foster youth, including the dates that they were in care."[116] Those leaving the system before turning 18, or those who had lost the letter, were required to request proof of their wardship from their county.[117] This process proved challenging for dependents because of uncertainties about whom to contact for the documents, especially if they had since moved counties or lost contact with their former social worker.[118] Consequently, these particular former foster youth were discouraged from applying for the services for which they would otherwise qualify.[119]

AB 592 simplifies the process by eliminating the ambiguity surrounding whom to contact for documents. It authorizes the California State Department of Social Services, instead of individual counties alone, to provide former foster youth with all requisite documents proving their status upon request.[120] Now that the process has been made uniform across the state, former foster youth will be more successful in accessing the essential services that are meant to assist them.

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112 *Id.*

113 *Id.*

114 *Id.*

115 *Id.*

116 *Assemblymember Mark Stone AB 592 - Foster Youth Verification Fact Sheet*, CAFOSTERINGCONNECTIONS.ORG, http://www.cafosteringconnections.org/wp2/wp-content/uploads/2015/03/AB-592-Fact-Sheet-4-30-15.pdf (last visited November 5, 2013).

117 A.B. 592, 2015-2016 Reg. Sess. (Cal. 2015).

118 *Id.*

119 *Id.*

120 *Id.*

🕮 S.B. 504

2015 – 2016 Leg., Reg. Sess.

Senate Bill 504 ("SB 504"), which was introduced on February 26, 2015 by Senator Ricardo Lara and signed into law by Governor Jerry Brown on September 30, 2015, reduces costs associated with sealing juvenile records.[121] Existing law requires payment of a $150 fee in order for youth offenders to have their juvenile criminal records sealed.[122] This bill eliminates that fee for adults up to the age of 26.[123]

SB 504 further provides that only former youth offenders, ages 26 or older, are liable for the reimbursement of costs associated with juvenile record sealing, such as investigative or court-related costs.[124] The law previously held former youth offenders 18 and older, or their parents, guardians, or spouses, liable for these costs.[125]

Finally, SB 504 prohibits unpaid restitution costs, converted to a civil judgment, from being used to bar juvenile record sealing.[126] Consideration of these unpaid bills, or any other court-ordered fees relating to adjudication of juvenile cases, is now prohibited when courts are determining a former youth offender's rehabilitation for the purposes of deciding a record sealing petition.[127] SB 504 does not relieve a former juvenile offender of their obligation to pay fines or fees, and does not prohibit a court from enforcing a civil judgment on unpaid restitution.[128]

SB 504 increases access to record clearing procedures and is thus impactful for many youth offenders who are now young adults.[129] Many applications for employment, housing, university enrollment, and financial aid inquire about criminal history, and a positive response to these inquiries often bars eligibility. If rehabilitation is the goal of California's juvenile justice system, facilitating the record expungement process is key to ensuring that former offenders are able to move forward with their lives. Once former youth offenders' records are sealed, they will be able to more

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121 CAL. PENAL CODE § 1203.45.

122 *Id.*

123 Sen. Bill 504, 2015-2016 Reg. Sess. (Cal. 2015), *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB504.

124 *Id.*

125 CAL. WELF. & INST. CODE § 903.3.

126 Sen. Bill 504, *supra* note 3.

127 *Id.*

128 *Id.*

129 *Id.*

easily access employment, housing, and education. Greater opportunities for social advancement for this population, in turn, will likely reduce recidivism.

SB 504 is also a victory for racial justice. Similar to the adult criminal justice system, the California juvenile justice system is disproportionately composed of minority youth.[130] The removal of barriers preventing Latinos, African Americans, and other minorities from accessing jobs, education, and housing will increase their chances of rehabilitation and reduce their likelihood of ending up in the adult criminal justice system.[131]

🕮 S.B. 725

2015 – 2016 Leg., Reg. Sess.

On August 26, 2015, Governor Jerry Brown signed into law Senate Bill 725 ("SB 725"), introduced by Senator Loni Hancock.[132] SB 725 provides an exemption from the current requirement of passing a high school exit examination as a condition for receiving a diploma of graduation for high school students completing the 12th grade in the year 2015.[133]

Under prior law, the Superintendent of Public Instruction, with the approval of the State Board of Education, was required to develop a high school exit examination in English, Language, Arts, and Mathematics in accordance with state academic content standards.[134]

Since the 2003–2004 academic school year and each school year thereafter, each pupil completing the 12th grade was required to successfully pass the high school exit examination in order to receive a high school diploma.[135] SB 725, however, eliminates the high school exit examination as a requirement for students completing the 12th grade in the year 2015, so long as the pupil meets all other high school graduation

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130 *Population Overview*, DEPARTMENT OF CORRECTIONS AND REHABILITATION: DIVISION OF JUVENILE JUSTICE (2014), http://www.cdcr.ca.gov/Reports_Research/docs/research/PopulationOverview/POPOVER2014.pdf.

131 *Id.*

132 Sen. Bill 725, 2015-2016 Reg. Sess. (Cal. 2015), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160SB725.

133 *Id.*

134 *Id.*

135 *Id.*

requirements.[136] SB 725 took effect immediately as an urgency statute.[137]

🕮 S.B. 277
2015 – 2016 Leg., Reg. Sess.

On June 30, 2015, California Governor Jerry Brown signed into law Senate Bill 277 ("SB 277"), which eliminates personal beliefs as an exemption from California's full-immunization requirement for all schoolchildren.[138] However, SB 277 maintains the existing medical exemption.[139] To make conforming changes, SB 277 alters the Health and Safety Code, relating to public health, by amending Sections 120325, 120335, 120370, and 120375; adding Section 120338; and repealing Section 120365. [140]

SB 277 is a response to the massive measles outbreak in California in early 2015.[141] According to the bill's authors, Senators Richard Pan and Ben Allen, protecting the community from future measles outbreaks requires vaccination rates of up to 95 percent.[142] Prior to the passing of SB 277, a student's parent or guardian could file a personal letter stating the immunization is contrary to his or her beliefs to waive the school immunization requirement.[143]

SB 277 applies to any student newly admitted into any public or private elementary or secondary school, child day care center, day nursery, nursery school, family day care home, development center, or any student entering the seventh grade level.[144] SB 277 prohibits any school-governing authorities from admitting any student into the school system or advancing a student into the seventh grade if the student is not fully vaccinated, unless medically exempted.[145] However, an institution will allow enrollment of a

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136 *Id.*

137 *Id.*

138 S.B. 277, 2015-2016 Leg., Reg. Sess. (Cal.2015).

139 *Id.*

140 *Id.*

141 SENATE COMMITTEE ON HEALTH, BILL ANALYSIS, S.B. 277, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

142 *Id.*

143 S.B. 277, 2015-2016 Leg., Reg. Sess. (Cal.2015).

144 *Id.*

145 *Id.*

student who files a personal belief exemption letter before January 1, 2016 until he or she reaches the next grade span.[146] SB 277 exempts students in home-based private schools or independent study programs from the immunization requirement.[147]

As a result of SB 277, California now has one of the strictest vaccination laws in the country; it is one of three states that only allow medical reasons as an exemption. Parents who personally oppose vaccines must now vaccinate their children against their personal beliefs or place them in alternative schooling.

🕮 S.B. 731

2015 – 2016 Leg., Reg. Sess.

On October 11, 2015, California Governor Jerry Brown signed Senate Bill 731 ("SB 731") into law to help protect transgender foster children from discrimination.[148] SB 731 adds Section 1502.8 to the Health and Safety Code, which requires the Department of Social Services to adopt regulations consistent with the rights of minors and non-minors in foster care.[149] SB 731 also amends Section 16001.9 of the Welfare and Institutions Code, and adds Section 16006 to the Welfare and Institutions Code.[150] These changes require the California Department of Social Services to place children and non-minor dependents in foster care "according to their gender identity, regardless of the gender or sex listed in their court or child welfare records."[151]

Transgender youth are at high risk of poor physical and mental health, and are at a much higher risk than other youth at falling victim to homelessness, abuse, depression, and suicide.[152] Although there is not a general estimate of transgender individuals in the foster care system,

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146 "Grade span" is defined as birth to preschool, kindergarten to 6th grade, or 7th to 12th grade. *Id.*

147 *Id.*

148 S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

149 SENATE RULES COMMITTEE, BILL ANALYSIS, S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal 2015).

150 S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

151 SENATE RULES COMMITTEE, BILL ANALYSIS, S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal 2015).

152 *Id.*

approximately 5.6 percent of youth ages 12 through 21 in out-of-home cares identified as transgender in Los Angeles County in 2014.[153] According to The Child Welfare League of America, several reports suggest that a large proportion of lesbian, gay, bisexual and transgender youth enter child welfare services for reasons related to their sexual orientation or gender identity, including neglect or abuse by their birth families and bullying at school, which discourages them from attending class.[154]

SB 731 is in response to the lack of specific guidance for caregivers in charge of placing transgender foster children in homes, which impacts these minors' lives.[155] According to SB 731's author, California Senator Mark Leno, placing transgender foster youth according to their gender identity will decrease the rejection, bullying, and physical abuse they face at home, school and in the community.[156] SB 731 received registered support from seventeen organizations, including Equality California, American Civil Liberties Union of California, County Welfare Directors Association of California, Gender Health Center, Juvenile Court Judges of California, National Association of Social Workers, and Youth Law Center.[157] The Assembly Appropriations Committee estimates that the statewide cost to implement and adhere to SB 731 is likely less than $100,000.[158]

🕮 S.B. 382

2015 – 2016 Leg., Reg. Sess.

On February 24, 2015, Senator Ricardo Lara introduced Senate Bill 382 ("SB 382").[159] SB 382 passed in the Assembly on July 16, 2015, and in the Senate on August 17, 2015.[160] Governor Jerry Brown signed SB 382 into law on September 1, 2015, and the Secretary of State chaptered the bill

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153 ASSEMBLY COMMITTEE ON APPROPRIATIONS, BILL ANALYSIS, S.B. 731, 2015-2016 Leg., Reg. Sess. (Cal 2015).

154 *Id.*

155 SENATE RULES COMMITTEE, *supra* note 2.

156 *Id.*

157 *Id.*

158 *Id.*

159 Sen. Bill 382, 2015-2016 Reg. Sess. 2015 Cal Stat., Bill History *available at* http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB382.

160 *Id.*

on the same day.[161]

Current statutory law stipulates that minors who committed a criminal offense before age 18 may be remanded to criminal court in one of three ways: by judicial waiver, prosecutorial waiver, or statutory waiver.[162] A judicial waiver gives the court discretion to determine whether a juvenile is unfit for juvenile court based on five specified criteria: "the degree of criminal sophistication exhibited by the minor; whether the minor can be rehabilitated prior to the expiration of the juvenile court's jurisdiction; the minor's previous delinquent history; success of previous attempts by the juvenile court to rehabilitate the minor; and, the circumstances and gravity of the offense alleged in the petition to have been committed by the minor."[163] A prosecutorial waiver gives prosecutors discretion to file in juvenile or criminal court upon considering whether the juvenile is at least 16 years old, the type of offense committed, and juvenile offense history.[164] A statutory waiver stipulates an automatic remanding process to criminal court for any juvenile who is at least 14 years old and commits a violent felony such as first-degree murder or a sex offense.[165]

There has been longstanding ambiguity regarding the statutory intent behind the judicial waiver.[166] Moreover, the five existing criteria did not allow judges to consider important information in reaching their decision. A growing number of juvenile developmental studies, alongside United States Supreme Court cases such as *Miller v. Alabama*, 567 U.S. 132 S. Ct. 2455 (2012), have highlighted the transitory period of juvenile delinquency to promote rehabilitating youth who commit crimes.[167] SB 382 addresses these concerns by expressively clarifying the factors that a judge can consider when determining whether a juvenile should be tried as an adult. It also adds other discretionary elements to the established criteria that judges may use to determine whether a juvenile is fit for criminal court to be tried as an adult.[168] SB 382 adds the following new factors a judge can consider: the degree of sophistication that the juvenile demonstrated at the

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161 *Id.*

162 Cal. Welf. & Inst. Code § 707 (West, 2015).

163 CHILDREN AND MINORS—CRIMES AND OFFENSES—JUVENILE COURTS, 2015 Cal. Legis. Serv. Ch. 234 (S.B. 382) (WEST)

164 *Id.* at 2.

165 *Id.* at 2.

166 *Fitness Hearings for Juvenile Offenders Senate Bill 382*, YOUTHLAW.ORG, http://youthlaw.org/wp-content/uploads/2015/05/SB-382-Factsheet-emc-2.pdf (last visited November 2, 2015).

167 Sen. Bill 382, 2015-2016 Reg. Sess. 2015 Cal Stat.

168 *Id.*

time of the offense; the minor's ability for rehabilitation before juvenile jurisdiction; the minor's delinquent history – particularly any issues with childhood trauma and environment; previous sources of services made available to the minor; and the level of harm directly caused by the minor for the alleged offense.[169] These factors will yield opportunities for judges to acquire a holistic view of a juvenile's personal life relevant to the court proceedings for the charged offense.[170]

The potential implications of this bill are substantial, as it provides additional safeguards before sending youth to the adult system.[171] Unlike the adult system, the juvenile system is more focused on rehabilitation, which research has shown allows for offending youth to reintegrate into society more successfully.[172]

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[169] *Id.* at 4.

[170] Sen. Bill 382, 2015-2016 Reg. Sess. 2015 Cal Stat., Assembly Committee on Public Safety, Author's Statement *available at* http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201520160SB382

[171] *Fitness Hearings for Juvenile Offenders Senate Bill 382*, YOUTHLAW.ORG, http://youthlaw.org/wp-content/uploads/2015/05/SB-382-Factsheet-emc-2.pdf (last visited November 2, 2015).

[172] *Id.*