RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

🕮 *Rodriguez v. McDonald*
872 F.3d 908 (9th Cir. 2017)
Report by Mats Dagdigian

In this case, the Ninth Circuit Court of Appeals reversed the District Court's denial of Jessie Rodriguez's habeas corpus petition challenging his conviction for second-degree murder and attempted murder.[1] The Ninth Circuit found that after Rodriguez invoked his right to counsel, the interrogating detectives did not cease their interrogation.[2] Further, Rodriguez's later waiver of his right to counsel was not valid because his youth and intellectual limitations made him susceptible to coercion.[3] Finally, the court found that Rodriguez's confession was not voluntary, because the officers effectively told Rodriguez that he would be penalized if he exercised his constitutional rights.[4]

In February 2005, Manuel Penaloza and Cynthia Portillo were shot, leading to Portillo's death.[5] A Los Angeles police officer subsequently stopped a van matching the description of the shooter's vehicle, and the men in the vehicle implicated Jessie Rodriguez in the shooting.[6] At the time, Rodriguez was fourteen years old and had only completed ninth grade.[7] Over a month later, officers arrested Rodriguez "at the juvenile probation camp where he was then living and brought him to the local police station

[1] Rodriguez v. McDonald, 872 F.3d 908, 911 (9th Cir. 2017).
[2] *Id.* at 920.
[3] *Id.*
[4] *Id.* at 924.
[5] *Id.* at 912.
[6] *Id.*
[7] *Id.*

for an interview."[8] After delivering *Miranda* warnings, the detectives repeatedly suggested that Rodriguez had shot the victims to prove his loyalty to the Highland Park gang.[9] Rodriguez denied being in the van during the shooting, but the detectives told him he was lying and that others had already implicated him.[10] Rodriguez then asked for an attorney.[11]

Instead of ceasing the interrogation, the detectives told Rodriguez that he was going to be charged with murder that day, and to "remember that [they] tried to give [Rodriguez] the opportunity to straighten things out."[12] Rodriguez asked for Rivera's business card, explaining that he might want to talk to him later.[13] Rivera explained that because Rodriguez had invoked his right to counsel, they could not speak, unless Rodriguez "changed his mind" about exercising his right to counsel.[14] Rivera and Rodriguez then went into an interview room, and Rodriguez "narrated what happened during the shooting."[15] There was no tape recording of the interview.[16] At Rivera's request, Rodriguez "wrote [a] statement, which was admitted in evidence."[17] In the statement, Rodriguez confessed to shooting Penaloza and Portillo at Gomez's urging.[18]

In January 2006, the juvenile court heard from a psychologist who determined that Rodriguez had an IQ of seventy-seven, meaning he had "border-line intelligence functioning" that made him especially "susceptible to the influence of others."[19] Nevertheless, the court referred the matter out of juvenile court into the adult division.[20] At trial, Rodriguez moved to suppress his confession on the grounds that it was obtained in violation of *Miranda* and the due process clause.[21] The court denied Rodriguez's motion on both grounds.[22] The jury later convicted Rodriguez of second-degree murder and attempted murder, with firearm and gang

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[8] *Id.*
[9] *Id.* at 914.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 914-15.
[13] *Id.* at 915.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *Id.* at 916.
[20] *Id.*
[21] *Id.*
[22] *Id.*

enhancements.[23] Rodriguez "was sentenced to eighty-four years to life."[24]

On review, the Ninth Circuit found that the officers' questioning of Rodriguez after he had invoked his right to counsel "was clearly custodial interrogation."[25] The Court noted that "the voluntariness of a child's . . . waiver [of *Miranda* rights] cannot be properly assessed without attention to his age,"[26] and that Rodriguez's "age and intellectual limitations made him susceptible to suggestion and coercion."[27] Given his susceptibility and the officers' badgering, the Court ruled that Rodriguez did not validly waive his previously invoked right to counsel when he made the written confession.[28]

Furthermore, the Court was not convinced that Rodriguez fully grasped the meaning of his *Miranda* rights by the time he allegedly waived them. The officers made it seem as if a confession was Rodriguez's last chance to help himself, and did not contact an attorney after his first request.[29] The Court was "gravely concerned" that the confession substantially influenced the jury, particularly given the government's focus on the confession "in both opening and closing argument" and the fact that "there was no physical evidence linking []Rodriguez to the crime."[30]

The court reversed and remanded, with the instruction that "[u]nless the State of California elect[ed] to retry Mr. Rodriguez within a reasonable time," the district court must grant his habeas petition.[31]

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[23] *Id.* at 918.
[24] *Id.*
[25] *Id.* at 920.
[26] *Id.* at 923.
[27] *Id.*
[28] *Id.* at 920.
[29] *Id.* at 925.
[30] *Id.* at 926.
[31] *Id.* at 927.

CALIFORNIA SUPREME COURT

🕮 *People v. Superior Court (Lara)*
Cal. 5th 299 (Cal. 2018)
Report by Gregory Lang

This case addresses whether Proposition 57's requirement of a transfer hearing in juvenile court prior to transferring a case to an adult court applies retroactively.[32] Proposition 57, the Public Safety and Rehabilitation Act of 2016, requires prosecutors to begin actions against juvenile defendants in juvenile court and requires the court to conduct a transfer hearing when prosecutors wish to remove the case to adult court.[33]

The real party in interest in this case, Pablo Lara, had been charged with kidnapping for rape and other sex crimes in an adult court a few months prior to the passage of Proposition 57.[34] Lara had been fourteen and fifteen years old at the time of his alleged crimes.[35] Lara moved to have the case transferred to juvenile court for a fitness hearing, which the trial court granted on the grounds that Proposition 57 should apply retroactively.[36] The trial court then issued a stay, allowing for the People to file a writ petition in the Court of Appeal.[37]

The Court of Appeal denied the People's petition "challenging the trial court's order and seeking an additional stay."[38] The Court of Appeal determined that *In re Estrada*, which held that legislative acts mitigating punishment are generally intended to apply retroactively even to cases where judgement was not yet final,[39] was inapplicable in the present case, and while "Proposition 57 entitles defendant[s] to a fitness hearing," it did not apply retroactively.[40] During the appeals process, the trial court's stay expired and Lara was to be released.[41] At the request the People, the juvenile court held a transfer hearing, but ultimately denied to remove the case to

[32] People v. Superior Court (Lara), 4 Cal. 5th 299, 299-301 (Cal. 2018).
[33] *Id.* at 303.
[34] *Id.*
[35] *Id.*
[36] *Id.* at 302.
[37] *Id.* at 311.
[38] *Id.* at 304.
[39] *Id.* at
[40] *Id.* at 311.
[41] *Id.* at 302-03.

adult court.[42] The California Supreme Court subsequently reviewed the case and affirmed the Court of Appeal, but through a different analysis.[43]

Originally, juvenile offenders were either tried in juvenile court or transferred to criminal court after a judicial determination "that he or she was unfit to be dealt with under juvenile court law," but prior to jeopardy attaching.[44] In 1999 and 2000, amendments to California Welfare and Institution Code § 602 and § 707 allowed for charges to filed directly in adult criminal court.[45] Proposition 57 restored, in large part, the historical method of preventing juveniles from being charged in criminal court without some sort of judicial determination.[46]

Just as in *Estrada*, the Court reasoned that the benefits of a statute reducing penalties applied to the defendant who had yet to receive a sentence.[47] If a penalty is being reduced by statute, the implication is that the prior punitive measures were too severe.[48] Likewise, if juveniles previously could be tried as adults, without consideration of their minority, then a statute revoking the ability to try them as adults should be applied retroactively wherever it could with constitutional validity.[49]

Accordingly, the Court found that Proposition 57 applied retroactively, and that while "[t]he Court of Appeal had erred in rejecting the application of *Estrada*, . . . it reached the correct result" in denying the Peoples' petition.[50] Lara correctly received the benefits of Proposition 57.[51] At the close of the opinion the Court disapproved of seven other recent opinions to the extent that they were inconsistent with the present opinion.[52] For juvenile offenders in similar situations to Lara, this case will allow Proposition 57 to apply retroactively, provided they have not yet been sentenced or convicted in adult criminal court.[53]

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[42] *Id.*
[43] *Id*. at 303, 322.
[44] *Id*. at 303.
[45] *Id*. at 304.
[46] *Id.*
[47] *Id.* at 307.
[48] *Id.* at 307-08.
[49] *Id.* at 310-11.
[50] *Id.* at 309, 314.
[51] *Id.* at 314.
[52] *Id.*.
[53] *Id.* at 313-14.

CALIFORNIA COURT OF APPEAL, FIRST DISTRICT

🕮 *In re T.F.*
223 Cal. Rptr. 3d 830 (Cal. Ct. App. 2017)
Report by Elizabeth Scott

After being declared a ward of the court, T.F. appealed to the California Court of Appeal claiming that his Fifth Amendment rights had been violated when arresting officers failed to read him a *Miranda* warning during an interrogation.[54] In May 2014, the Contra Costa County District Attorney amended a previously filed wardship petition to include allegations that T.F. had committed lewd and lascivious acts on a child ten years his junior.[55] The alleged incidents took place between December 2010 and April 2013, when T.F. was between the ages of twelve and fifteen.[56]

That same month, two ununiformed Antioch police detectives went to T.F.'s high school.[57] What began as "basic information gathering" quickly shifted to an interrogation without the officers ever giving T.F. a *Miranda* warning.[58] The officers repeatedly accused T.F. of committing lewd acts on E.C.[59] T.F. began crying and asked multiple times to go back to class or home, but the officers ultimately arrested him and took him to the police station.[60] There, they gave "a rapid recitation of the *Miranda* warning," at which point T.F. admitted to having inappropriately touched a little girl.[61]

While statements from the school interrogation were suppressed, the juvenile court admitted T.F.'s statements from the police station, holding that he had waived his *Miranda* rights.[62] T.F. appealed, arguing the court had erred in denying his motion to suppress his statements because he had not knowingly, voluntarily, and intelligently waived his *Miranda* rights.[63]

Judge Reardon, writing for the California Court of Appeal, noted the

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[54] *In re* T.F., 223 Cal. Rptr. 3d 830, 832 (Cal. Ct. App. 2017).
[55] *Id.*
[56] *Id.* at 833.
[57] *Id.* at 834.
[58] *Id.*
[59] *Id.* at 834-35.
[60] *Id.* at 835.
[61] *Id.*
[62] *Id.*
[63] *Id.* at 836.

elements that must be considered when determining if a juvenile has voluntarily waived their *Miranda* rights include age, education, and "whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights."[64] Here, the police officers had quickly read T.F. his *Miranda* rights without taking the time to ensure he adequately understood them.[65] Recordings of the interrogations and the fact that he had already been interrogated for an hour before being given his *Miranda* warning also led the Court to doubt "the juvenile court's finding that T.F. was not cajoled or tricked."[66] Finally, the Court considered the fact that T.F. was only 15-years-old, had an intellectual disability, and no "experience with the criminal justice system.[67] Due to these factors, the Court of Appeal found that T.F. could not have "voluntarily, knowingly, and intelligently waive[d] his right to counsel."[68]

The Court of Appeal also held that T.F.'s confession was involuntary under the due process clause of the Fourteenth Amendment based on the totality of the circumstances.[69] T.F. argued, and the Court of Appeal agreed, that the "accusatory interrogation was dominating, unyielding, and intimidating,"[70] and "designed to create a sense of hopelessness."[71] The officers' tactics, coupled with T.F.'s age, learning disability, and other characteristics led the Court to conclude the interrogation was coercive and the confession involuntary.[72]

The court concluded that "the error in admitting [T.F.'s] confession" was not harmless, and the judgment of the lower court was ultimately reversed.[73]

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[64] *Id.*
[65] *Id.*
[66] *Id.* at 837.
[67] *Id.* at 837-38.
[68] *Id.*
[69] *Id.* at 839.
[70] *Id.* at 840-41.
[71] *Id.* at 842.
[72] *Id.* at 842-44.
[73] *Id.* at 844-46.

CALIFORNIA COURT OF APPEAL, SECOND DISTRICT

🕮 *In re A.L.*
227 Cal. Rptr. 3d 3 (Cal. Ct. App. 2017)
Report by Annie Youchah

In *In re A.L.*, the California Court of Appeal held that the juvenile court erred in sustaining allegations that a mother's mental illness put her children at risk of harm or neglect.[74] M.V., the mother of A.L. and J.L., suffered from schizophrenia which led to occasional manic episodes.[75] During one of these episodes, M.V. threw a shoe which hit J.L. but left her physically uninjured.[76] A.L. then restrained his mother while his father called police and explained that M.L. "needed help."[77] M.V. was subsequently put on an involuntary psychiatric hold and taken to a hospital, where she remained for just under two weeks.[78]

Following this event, the Department of Children and Family Services (DCFS) "received a referral alleging that [M.V.] had physically abused" J.L.[79] During DCFS's investigation, both A.L. and J.L. stated they felt safe at home, and A.L. demonstrated a very good understanding of his mother's mental health struggles.[80] However, DCFS held that the children were in danger and filed a petition to have them declared dependents of the court.[81] DCFS's petition alleged that M.V.'s mental illness, and the father's inability to protect his children from their mother's mental and emotional problems, created a detrimental home environment and placed the children at risk of serious physical harm.[82] At a detention hearing in juvenile court, M.V. was ordered to leave the family home.[83] Later at a jurisdictional hearing, the court sustained DCFS's allegations, and the children were declared dependents under California Welfare & Institutions Code § 300(b)(1).[84]

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[74] *In re* A.L., 227 Cal. Rptr. 3d 3, 7-8 (Cal. Ct. App. 2017).
[75] *Id.* at 4.
[76] *Id.*
[77] *Id.*
[78] *Id.*
[79] *Id.*
[80] *Id.* at 5.
[81] *Id.*
[82] *Id.* at 5-6.
[83] *Id.* at 5.
[84] *Id.* at 6.

The issue on appeal was whether or not there was substantial evidence to support the juvenile court's order sustaining DCFS's allegations.[85] In considering this matter, the Court of Appeal noted that under § 300(b)(1) of the California Welfare & Institutions Code, "harm may not be presumed from the mere fact of a parent's illness."[86] Furthermore, while "substantial evidence may consist of inferences, inferences which are the result of speculation cannot support a finding."[87] Although the juvenile court properly considered the mother's past episodes, the Court found that those incidents alone could not be considered as indicative of future danger.[88] The fact that the father quickly sought help and that A.L. was able to deescalate the situation was suggestive of the family's ability to handle future problems stemming from M.V.'s mental illness.[89]

Thus, the Court of Appeal determined that the singular incident of J.L. being accidentally struck with a shoe was insufficient to suggest that J.L. and A.L. were at risk due to their mother's mental illness.[90] Instead, the record actually reflected a good likelihood that the family would be able to handle future issues well.[91] Accordingly, the Court of Appeal reversed the juvenile court's order finding jurisdiction over the children.[92]

🕮 *In re J.P.*
223 Cal. Rptr. 3d 426 (Cal. Ct. App. 2017)
Report by Elizabeth Scott

In *In re J.P.*, "[t]he mother of a dependent child in a group home placement" appealed to the California Court of Appeal after the juvenile court failed "to timely appoint [her] counsel."[93] The dependent child, J.P., was removed from his mother's ("C.P.") home in May 2011 following a

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[85] *Id.*
[86] *Id.* at 7 (citing *In re* David M., 134 Cal. Rptr. 3d 412, 416 (Cal. Ct. App. 2005); *In re* James R., 176 Cal. Rptr. 3d 310, 314 (Cal. Ct. App. 2009); *In re* Matthew S., 41 Cal. Rptr. 2d 139, 143 (Cal. Ct. App. 1996)).
[87] *Id.* at 6 (citing *In re* A.G., 220 Cal. Rptr. 3d, 383, 388 (Cal. Ct. App. 2013)).
[88] *Id.* at 7.
[89] *Id.* at 8.
[90] *Id.*
[91] *Id.*
[92] *Id.*
[93] *In re* J.P., 223 Cal. Rptr. 3d 426, 428 (Cal. Ct. App. 2017).

domestic dispute between C.P. and her boyfriend.[94] Between May 2011 and November 2016, child services was unable to find a stable home for J.P. due to his severe mental and emotional health issues.[95] During this period of time, C.P. was allowed supervised visitation with J.P. and attended his juvenile court hearings.[96]

In November 2016, C.P. filed a petition under California Welfare and Institutions Code section 388 – which allows individuals to petition for changes in child custody and visitation orders – requesting family reunification services and extended unmonitored visitations.[97] At a review hearing shortly after the petition was filed, the court declined a request from J.P.'s counsel to appoint C.P. representation.[98] The section 388 hearing took place in December 2016, during which the juvenile court addressed all aspects of the mother's section 388 petition, but again denied requests to appoint C.P. counsel.[99] C.P. filed a timely request for appeal, contesting the lower court's failure to appoint her counsel.[100]

On appeal, Judge Dunning, writing for the majority, cited section 317(b) of the California Welfare and Institutions Code, which requires juvenile courts to appoint the parent of a child in out-of-home placements with counsel when it is found that the parent cannot afford legal counsel on their own.[101] Despite this requirement, the juvenile court left C.P. without counsel for more than two years while her son was in a group home.[102] The Court held that the juvenile court's failure to appoint C.P. counsel infringed upon her due process right to counsel.[103] Additionally, the court found that C.P.'s lack of counsel "prejudicially affected" the lower court's decision as opposing counsel was able to make more nuanced arguments than C.P. could without counsel.[104]

Thus, the judgment of the juvenile court was reversed and remanded.[105] The Court of Appeal directed the juvenile court to appoint C.P. immediate counsel and to allow her to file a new section 388 petition,

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[94] *Id.*
[95] *Id.* at 429.
[96] *Id.*
[97] *Id.*
[98] *Id.* at 430.
[99] *Id.*
[100] *Id.* at 431.
[101] *Id.* (citing CAL. WELF. & INST. CODE § 317(b) (Deering 2018)).
[102] *Id.* at 432.
[103] *Id.* at 435.
[104] *Id.*
[105] *Id.* at 436.

vacating the old one.[106]

🕮 *In re Alexzander C.*

226 Cal. Rptr. 3d 515 (Cal. Ct. App. 2017)
Report by Gregory Lang

In *In re Alexzander C.*, a father contested the jurisdictional findings of the juvenile court that his children were endangered by his drug use and the dispositional order removing the children from his care.[107] In 2009, the Los Angeles Department of Children and Family Services (DCFS) filed a dependency petition for Alexander and his siblings after the department received allegations of child neglect and their mother tested positive for methamphetamines.[108] The mother continued to fail drug tests and defied a court order for counseling and parenting classes.[109] She then moved out of the county, reporting to the court that she believed the father "took good care of the children and they would not miss her."[110] The father subsequently gained sole custody, but around 2014 the mother returned home.[111]

In late 2016, DCFS received a second report of parental drug abuse and general child neglect.[112] When visited by the case social worker, the children showed no signs of neglect or poor attendance or performance in school.[113] However, after both parents tested positive for methamphetamines and amphetamines, the social worker took the children into protective custody and filed a petition under California Welfare and Institutions Code § 300(b).[114] During interviews with DCFS, family members reported no concerns of drug use and were surprised to find out that both parents used methamphetamines.[115] Both Alexander and his sister denied any knowledge of their parents' drug use and wanted to be reunited

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[106] *Id.*
[107] *In re* Alexzander C., 226 Cal. Rptr. 3d 515, 518 (Cal. Ct. App. 2017).
[108] *Id.* at 518.
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.* at 518-19.
[114] *Id.* at 519.
[115] *Id.*

with their parents.[116]

In the juvenile court, the father and mother asserted that they were "drug users, not abusers, and their use had no adverse impact on the children."[117] The juvenile court rejected this argument, finding "clear and convincing evidence" of substantial risk to the health of the children.[118] The Court of Appeal affirmed, relying on *Rocco M.* which held that presenting "opportunity and access" to drugs was sufficient to establish risk of harm.[119] While use alone is not enough to establish risk, the Court found that additional evidence of substantial risk to the health of children had been established in juvenile court.[120] This included the fact that the parents were setting a poor example for their children that might encourage drug abuse, were relying on relatives to ensure their children had proper care, and resisted treatment.[121] Despite the father's multi-point argument that he and the mother were fit parents, his appeal ultimately failed due to the findings of risk and the parents' failure to adhere to the reunification and treatment orders.[122]

This case presents a detailed exploration of the boundaries of drug use in the realm of dependency matters. In theory, a parent could use a potentially dangerous drug, like methamphetamines, provided they never transported the children in a vehicle while intoxicated, nor possessed drugs where the children could have access.[123] However, allegedly "functional" drug users such as the father and mother in the present case can still be subject to removal of their children.

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[116] *Id.* at 520.
[117] *Id.* at 521.
[118] *Id.* at 521, 525.
[119] *Id.* at 525.
[120] *Id.* at 525-26.
[121] *Id.* at 524-26.
[122] *Id.* at 526.
[123] *Id.* at 525.

CALIFORNIA COURT OF APPEAL, FOURTH DISTRICT

🕮 *In re H.C.*
226 Cal. Rptr. 3d 424 (Cal. Ct. App. 2017)
Report by Mats Dagdigian

In this case, the California Court of Appeal reversed the trial court's decision to terminate dependency jurisdiction as to H.C., a "nonminor dependent of the juvenile court."[124] The Superior Court of San Diego County ruled that H.C.'s marriage rendered her ineligible for nonminor dependency jurisdiction.[125] The Court of Appeal reversed, finding that the applicable state[126] and federal statutes[127] do not mention marriage as affecting the eligibility criteria.[128]

H.C. had been a dependent of the juvenile court since 2013, and after she turned eighteen, the court continued her case as a nonminor dependent in extended foster care.[129] H.C. was periodically romantically involved with Alonzo S., who was reportedly abusive towards H.C.[130] H.C. became pregnant, and six months later, the San Diego County Health and Human Services Agency ("the Agency") discovered that H.C. had married Alonzo and was living with him.[131]

The Agency requested that the juvenile court terminate H.C.'s case.[132] In support of its position, the Agency cited an All-County Letter published by the State Department of Social Services (the "Letter").[133] The Letter describes the policies that govern the extended foster care system, and states that married nonminors are not eligible for extended foster care.[134] H.C. opposed termination of her case, and argued that nothing in the applicable statutes prohibits a married nonminor from continuing as a nonminor dependent.[135] The juvenile court held that "[m]arriage has

[124] *In re* H.C., 226 Cal. Rptr. 3d 424, 424 (Cal. Ct. App. 2017).
[125] *Id.* at 424-25.
[126] CAL. WELF. & INST. CODE § 11403 (West 2017).
[127] 42 U.S.C. § 675 (2018).
[128] *In re H.C.*, 226 Cal. Rptr. 3d at 427.
[129] *Id.* at 424.
[130] *Id.*
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*

historically and culturally been the benchmark for full independence," and terminated her dependency case due to her marriage.[136] H.C. timely appealed.[137]

The Court of Appeal agreed with H.C., noting that "neither of the applicable statutes . . . mentions marriage" as a factor in terminating dependency jurisdiction.[138] The statutes only refer to the "dependent's age, [their] relationship to the Agency, and [their] transitional living plan."[139] Further, the Court of Appeal noted that the responsibilities of marriage may in fact "facilitate the . . . transition to independence," and it would impede the purpose of the program to exclude married former foster children.[140] While recognizing the Agency's expertise, the court ruled that the letter was an informal document that had not undergone the administrative rulemaking process, and should have been superseded by formal regulations years ago.[141] Accordingly, the order of the trial court was reversed to give H.C. the opportunity to "demonstrate her compliance" with the actual requirements of the extended foster care program.[142]

[136] *Id.*
[137] *Id.*
[138] *Id.* at 427.
[139] *Id.*
[140] *Id.* at 427-28.
[141] *Id.* at 428.
[142] *Id.* at 430-31.

CONNECTICUT SUPREME COURT

🕮 *In re Henrry P. B.-P.*
173 A.3d 928 (Conn. 2017)
Report by Annie Youchah

In *In re Henrry P. B.-P.*, the Connecticut Supreme Court considered whether a Probate Court's authority "to make findings . . . in connection with a petition for special juvenile status . . . under 8 U.S.C. § 1101(a)(27)(J)" ends when the minor turns eighteen.[143] Special Immigrant Juvenile Status allows immigrant children who have been abused to apply for permanent residence and avoid potential deportation.[144]

Henrry is a young man from Honduras whose mother, Reyna, fled after the murder of her husband and father-in-law.[145] Initially Henrry and his sister remained in Honduras, but as they got older, they were threatened by the same people who had murdered their father and grandfather.[146] When he was seventeen, Henrry and his sister arrived in the United States, were "detained by Immigration Customs and Border Patrol," and then released to their mother's care.[147] Shortly before Henrry turned eighteen, his mother filed to "remove [his deceased] father as guardian[,] . . . affirm herself as guardian," and appoint a co-guardian.[148] These changes in guardianship, as well as a determination that Henrry was a juvenile, were necessary in order for Henrry to receive Special Immigrant Juvenile Status and become a lawful permanent resident.[149]

However, before his petition to determine juvenile status could be heard, Henrry turned eighteen.[150] As a result, the probate court declined to make findings relating to Henrry's guardianship or juvenile status.[151] On appeal, the appellate court relied on Connecticut statutes and case law to find that the probate court lacked jurisdiction to decide these issues once a

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[143] *In re* Henrry P. B.-P., 173 A.3d 928, 930 (Conn. 2017).
[144] *Special Immigrant Juvenile Status*, SAFE PASSAGE PROJECT, https://www.safepassageproject.org/what-is-sij-status/ (last visited Mar. 30, 2018).
[145] *In re Henrry P. B.-P.*, 173 A.3d at 931.
[146] *Id.*
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.* at 932-33.
[151] *Id.* at 933.

child reached the age of majority.[152] Henrry made a timely appeal to the Connecticut Supreme Court.[153]

The Connecticut Supreme Court held that while the probate court is intentionally a court of limited jurisdiction, it "did not lose its statutory authority to make juvenile status findings . . . after Henrry reached the age of majority."[154] The Court considered the text of 8 U.S.C. §1101(J), which explicitly allows for anyone under the age of twenty-one to apply for Special Immigrant Juvenile Status.[155] Based on the statute's clear language, the Court reasoned that the federal immigration law was meant to help people under the age of 21, and access to state juvenile courts was required for that help to be accessible.[156] Therefore, the probate court retained jurisdiction over Henrry's case even after he turned eighteen, and could make findings of juvenile status and guardianship necessary for him to apply for Special Immigrant Juvenile Status.[157]

[152] *Id.*
[153] *Id.*
[154] *Id.* at 935.
[155] 8 U.S.C. §1101(a)(27)(J) (2012).
[156] *In re Henrry P. B.-P.*, 173 A.3d at 940.
[157] *Id.*

CALIFORNIA LEGISLATION

🕮 A.B. 766
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Taylor Foland

Assembly Member Laura Friedman authored the amendment to A.B. 766, Aid to Families with Dependent Children-Foster Care (AFDC-FC), approved by California Governor Jerry Brown on October 12, 2017.[158] The new law expands eligibility for AFDC-FC and restricts public and private postsecondary education institutions from considering the payments as part of a student's general financial income.[159]

In general, AFDC-FC provides money to foster care providers on behalf of children in foster care.[160] To be eligible for the funds, a foster youth must reside in one of the enumerated placements in section 2.5—including locations such as the approved home of relative, licensed transitional housing, or designated housing for postsecondary education.[161] If they are a nonminor dependent—meaning they are 18 years of age or older and continue to rely on the foster care system, but do not live with a caregiver—they must live in a supervised, independent living setting.[162] Examples of eligible locations include approved homes of relatives or nonrelatives, a licensed foster family agency, a group home, or a community or therapeutic treatment facility, among other places.[163] Payments go to the caregiver, but nonminor dependents can receive the money directly if they reside in a supervised independent living setting or by complying with certain requirements.[164]

The new law creates an additional eligibility option and further defines the parameters of the funds received by foster youth and their providers. Under the amended law, minors who are enrolled in a post-secondary education institution and live independent of their provider in either a dorm or other designated education housing are now eligible for

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[158] A.B. 766, 2017-2018 Leg., Reg. Sess. (Cal. 2018).
[159] *Id*.
[160] *Id*.
[161] *Id*.
[162] *Id*.
[163] *Id*.
[164] *Id*.

AFDC-FC.[165] Previously, this option was only available to nonminor dependents. In addition, the minor herself can receive the money in such a scenario, another privilege previously reserved for nonminors.[166] Furthermore, the amendment specifies that AFDC-FC funding may not be factored in to a student's financial aid determination for any postsecondary education, allowing students to receive the full benefits of financial aid, while also having housing costs covered.[167]

The newly revised AFDC-FC recognizes the growing importance of post-secondary education and the increased number of minors in attendance at such institutions. Furthermore, it protects the financial security of dependents who receive AFDC-FC funding by preserving their right to a fair determination of financial status outside of the awarded money.

🕮 A.B. 1124
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Lacia Japp

On October 13th, 2017, California Governor Jerry Brown signed into law AB 1124,[168] which concerns juvenile court school pupils' rights to a diploma.[169] The bill creates a procedure for juvenile detainees to decline or defer acceptance of a diploma which they earned in a detention facility education program.[170] Juvenile become eligible for a diploma through the completion of the regular statewide course requirements.[171] Deferring the diploma allows the juvenile to pursue additional coursework despite having already earned the equivalent of a high school diploma.[172]

The bill mandates that when deciding whether to decline or defer the diploma, the juvenile, their guardian, and their social worker be provided information about the consequences of the decision.[173] These parties must

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[165] *Id*.
[166] *Id*.
[167] *Id*.
[168] Bill History, CALIFORNIA LEGISLATIVE INFORMATION (2018), https://leginfo.legislature.ca.gov/faces/billCompareClient.xhtml?bill_id=201720180AB1124 (last visited Feb 15, 2018).
[169] A.B. 1124, 2017-2018 Leg., Reg. Sess. (Cal. 2018).
[170] *Id.*
[171] *Id.*
[172] *Id.*
[173] *Id.*

be notified of the juvenile's right to the diploma, how to transfer to a California community college, and how continuing the pupil's education through deferral of the diploma would affect the pupil's ability to pursue postsecondary education.[174] The decision to accept or decline the diploma is made by the individual if he is eighteen years old, or by the person holding the pupil's educational rights if he is underage.[175]

Democratic Assembly member Sabrina Cervantes authored AB 1124.[176] It passed the Senate with 40 ayes and 0 nays, after being vetted by both the Appropriations Committee and the Education Committee.[177] It passed the Assembly on September 14th, 2017, 79-0. The bill became law in October with the governor's signature.[178]

🕮 S.B. 190
2017-2018 Leg., Reg. Sess. (Cal. 2017)
Report by Riley Doyle

California Governor Jerry Brown signed Senate Bill No. 190 ("S.B. 190") on October 11, 2017.[179] The bill amended Section 27757 of the California Government Code as well as a range of sections of the California Penal and Welfare and Institutions Codes.[180] The primary purpose of the bill was to limit the ability of counties to charge juveniles and their families for services provided by the juvenile justice system.[181] California State Senators Lara and Mitchell co-authored the bill, which passed the senate with 37 votes.[182]

The new law significantly limits the fees counties may charge families of juveniles in the criminal justice system.[183] The law eliminates registration fee for legal counsel for minors, "eliminates [the] liability of a

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[174] *Id.*
[175] *Id.*
[176] *Id.*
[177] Bill Votes, CALIFORNIA LEGISLATIVE INFORMATION (2018), http://leginfo.legislature.ca.gov/faces/billVotesClient.xhtml?bill_id=201720180AB1124 (last visited Feb 15, 2018).
[178] *Id.*
[179] S.B. 190, 2016-2017 Leg., Reg. Sess. (Cal. 2017).
[180] *Id.*
[181] *Id.*
[182] *Id.*
[183] *Id.*

minor or his or her parents . . . for . . . costs associated with the filing of a juvenile delinquency petition in juvenile court," and requires counties to pay the for all "support and maintenance of a juvenile delinquency ward."[184] Fees for home-detention participants over twenty-one, drug testing fees for persons over twenty-one, and fees for legal representation and other services provided to the minor's parents are all limited by the statute.[185]

Before the bill was passed, families of minors could be involuntarily charged for home detention fees, drug testing fees, representation fees, and electronic monitoring fees.[186] A study by students of the University of California Berkeley School of Law demonstrated the harm of the previous law.[187] While the fees were originally designed to recuperate high costs, the costs collected barely covered the costs of administering such fees.[188] Further, families of color were disparately disadvantaged by the fees.[189] The new policies set forth in S.B. 190 aim to eliminate a source of financial harm to vulnerable families, support the reentry of youth leaving the juvenile justice system, and reduce the likelihood that youth will recidivate.[190]

🕮 S.B. 394
2016-2017 Leg., Reg. Sess. (Cal. 2017)
Report by Riley Doyle

California Governor Jerry Brown approved Senate Bill No. 394 on October 11, 2017.[191] Authored by Democratic Senators Lara and Mitchell, the bill passed the Senate by a vote of 28-9.[192] S.B. 394 prohibits sentencing juveniles to life without parole, mandating all who were convicted of a crime committed before the age of 18 to be given a parole hearing during

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[184] S. RULES COMM., *Senate Floor Analysis of S.B. 190*, CAL. LEGIS. INFO., *available at* https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180SB190 (see 09/05/17 - Senate Floor Analysis).
[185] *Id.* at 2-4.
[186] *Id.* at 4-5.
[187] Alex Kaplan, et al., *High Pain, No Gain: How Juvenile Administrative Fees Harm Low-Income Families in Alameda County, California*, UC BERKELEY LAW (March 26, 2016), https://ssrn.com/abstract=2738710.
[188] *Id.*
[189] *Id.*
[190] S.B. 190, 2016-2017 Leg., Reg. Sess. (Cal. 2017).
[191] S.B. 394, 2016-2017 Leg., Reg. Sess. (Cal. 2017).
[192] *Id.*

their 25th year of incarceration.[193]

Passage of the S.B. 394 brings California into compliance with the United States Supreme Court decision in *Montgomery v. Louisiana*—which held that sentencing a minor to life without parole is cruel and unusual under the 8th amendment of the Constitution.[194] S.B. 394's ban is retroactive, meaning all minors previously sentenced to life without parole now will be eligible for a parole hearing during their 25th year of incarceration.[195] Motivations for passing the bill beyond compliance with *Montgomery* included conforming with international norms for youth punishment as well as addressing the racial disparities in the imposition of life without parole to minors.[196]

S.B. 394 makes moot 8th amendment cruel and unusual punishment claims by those who were minors sentenced to life without parole.[197] In *People v. Lozano*, the plaintiff claimed that *Montgomery* made his sentence of life without parole, following a conviction for first-degree murder committed when he was 16-years-old, unconstitutional under the 8th amendment of the Constitution.[198] The judge in *Lozano* ruled that the passage of S.B. 394 now requiring a parole hearing during the 25th year of incarceration made the claim moot and dismissed the claim.[199]

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[193] *Id.*

[194] Montgomery v. Louisiana, 136 S. Ct. 718, 736 (2016).

[195] S.B. 394, 2016-2017 Leg., Reg. Sess. (Cal. 2017).

[196] *Id.*

[197] People v. Lozano, 225 Cal. Rptr. 3d 104, 106 (Cal. Ct. App. 2017).

[198] *Id.*

[199] *Id.*

NEW YORK LEGISLATION

🕮 S.B. 5500
2016-2018 Leg., Reg. Sess. (NY 2017)
Report by Lacia Japp

The state legislature of NY has amended the mental hygiene law to add a section creating an Adolescent Suicide Prevention Advisory Council to be established within the Office of Mental Health.[200] The new section 41.56 declares that the council will consist of 9 members, splitting the duty to appoint these members evenly between by the commissioner of mental health, the speaker of the assembly, and the temporary president of the senate.[201] One of these nine will be designated chair of the commission by the commissioner of mental health.[202]

The council's duties will include helping to facilitate and coordinate services provided by other agencies for preventing suicides in the adolescent population.[203] The council is also required to monitor the plans of other mental health agencies to make sure the adolescent risk of suicide is addressed, and the council must specifically determine what services and resources will assist minority groups including Latino adolescents.[204] This is a specific requirement in addition to determining what further resources and services will help prevent adolescent suicide generally.[205]

This bill was introduced to the Senate on April 3rd, 2017, sponsored by the Democratic Senators Marisol Alcantara and David Carlucci.[206] It was approved by the Mental Health and Developmental Disabilities Committee with a unanimous vote on May 26, 2017.[207] The Senate quickly approved the bill, passing it on June 7th, with a vote of 62 – 0. The Assembly the passed the bill on June 20th.[208] This bill became a law on November 29th,

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[200] S.B. 5500, 2016-2018 Leg., Reg. Sess. (N.Y. 2018), *available at* https://www.nysenate.gov/legislation/bills/2017/s5500/.
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] *Id.*
[205] *Id.*
[206] *Id.*
[207] *Id.*
[208] *Id.*

2017 when the governor of New York, Andrew Cuomo, signed it.[209]

[209] *Id.*