RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES COURT OF APPEALS, THIRD CIRCUIT

🕮 *Osorio-Martinez v. AG U.S.*
893 F.3d 153 (3d Cir. 2018)
Report by Corrina Seeley VanDenBaard

In *Osorio-Martinez v. Attorney General of United States*, the Third Circuit considered whether the jurisdiction-stripping provision of the Immigration and Nationality Act (INA) is unconstitutional as applied to Special Immigrant Juveniles (SIJ).[1] In this case, four migrant children came before the Third Circuit to challenge their expedited orders of deportation.[2]

The children had previously challenged their removal orders in *Castro v. United States Department of Homeland Security*, but the *Castro* court held that it "lacked jurisdiction" under the Immigration and Nationality Act to hear their claims.[3] However, the court also stated that if the petitioners had sufficient ties to the United States, the children could have challenged their lack of jurisdiction under the Suspension Clause.[4] In this case, the children argued that they had gained SIJ status, which grants them "statutory and regulatory rights and safeguards."[5] The Third Circuit agreed with them, and determined that "the jurisdiction-stripping provision of the INA operate as an unconstitutional suspension of the writ of habeas corpus as applied to SIJ designees seeking judicial review of orders of expedited removal."[6]

To obtain SIJ status, petitioners must satisfy "rigorous, congressionally defined eligibility criteria."[7] Requirements include a "juvenile court find[ing] that it would not be in the child's best interest to

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[1] 893 F.3d 153, 158 (3d Cir. 2018).
[2] *Id.*
[3] *Id.* (citing Castro v. United States Department of Homeland Security, 835 F.3d 422 (3d Cir. 2016)).
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.* at 168.

return to her country of last habitual residence and that the child is dependent on the court or placed in the custody of the state."[8] After attaining such status, SIJ designees receive "statutory and procedural protections that establish a substantial legal relationship with the United States," including the ability to adjust their status to lawful permanent residents (LPR).[9] Indeed, Petitioners in this case had been assured permanent residence status and were awaiting visas.[10] Unlike the situation in *Castro* when the children were newly arrived to the country, the Petitioners in this case had lived in the United States for more than two years.[11] The Third Circuit found that because Petitioners have satisfied eligibility requirements for SIJ status and were on their way to becoming permanent residents, they have developed "substantial connections with this country."[12] The Court further held that because Petitioners had established such substantial ties to the US that go along with permanent resident status and thus, they "may not be denied the privilege of habeas corpus."[13]

Since these Petitioners are accorded the right to habeas review, the jurisdiction-stripping provision of the INA would be constitutional only if it provided an adequate substitute process for habeas review.[14] The INA, the Third Circuit held, provides no adequate substitute.[15] The relevant provision of the INA provides review of removal orders only on very narrow grounds; the reviewing entity is permitted to consider only whether the person to be removed is the same person named on the order.[16] Since the INA provision does not provide an adequate substitute, the Third Circuit held that the INA's jurisdiction-stripping provision is unconstitutional as applied to SIJ designees.[17]

🕮 *Doe v. Boyertown Area Sch. Dist.*
897 F.3d 518 (3d Cir. 2018)
Report by Jacqueline Reynders

In March 2017, six cisgendered high school students sued the Boyertown Area School District, the Principle and Assistant Principle of Boyertown Area Senior High School, the Acting Superintendent, and the

[8] *Id.*
[9] *Id*.
[10] *Id.*
[11] *Id.* at 159.
[12] *Id.* at 168.
[13] *Id.* at 177.
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Id.* at 178.

Pennsylvania Youth Congress Foundation.[18] Plaintiffs claimed the school's policy of letting students use bathrooms and locker rooms consistent with their gender identities (as opposed to their birth sex) violated their constitutional right of bodily privacy, Title IX, and Pennsylvania tort law.[19] The District Court held that protecting transgender students from discrimination is a compelling state interest, and therefore denied the injunction on the ground that the plaintiffs were not likely to succeed on the merits and on the ground that denying injunctive relief would not cause Plaintiffs irreparable harm.[20]

The plaintiffs appealed that decision to the Third Circuit Court of Appeals.[21] The Third Circuit had previously held that "a person has a constitutionally protected privacy interest in his or her partially clothed body."[22] Accordingly, state infringement of that interest must be tailored to serve a compelling state interest.[23] Appellants argued that the school district's policy violated their right to privacy because it "permitted them to be viewed by members of the opposite sex while partially clothed,"[24] and that it did not further a compelling state interest. The Third Circuit disagreed and affirmed the District Court's holding that the policy was narrowly tailored to serve the compelling governmental interest of protecting transgender students.[25] Appellants argued that the policy should "require that transgender students use individual stalls if they do not wish to use the communal facilities that align with their birth-determined sex."[26] The Third Circuit held that this alternative policy would undermine the compelling interest in protecting transgender students and would itself be discriminatory.[27]

The Third Circuit also affirmed the district court's holding with regard to the Title IX claim. Title IX permits an educational institution to provide separate privacy facilities on the basis of sex but does not mandate them.[28] A "hostile environment claim" under Title IX requires a plaintiff to "establish sexual harassment that is so severe, pervasive, or objectively

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[18] Doe v. Boyertown Area Sch. Dist., 897 F.3d 518, 521 (3d Cir. 2018).
[19] *Id.*
[20] *Id.* at 521, 525.
[21] *Id.* at 527.
[22] *Id.* at 527 (quoting Doe v. Luzerne County, 660 F.3d 169, 177 (3d Cir. 2011); Malleus v. George, 641 F.3d 560, 564 (3d Cir. 2011)).
[23] *Id.* at 528; Reno v. Flores, 507 U.S. 292, 301-02 (1993).
[24] *Id.*
[25] *Id.* at 529.
[26] *Id.* at 530.
[27] *Id.*
[28] *Id.* at 533; 34 C.F.R § 106.33.

offensive and that "so undermines and detracts from the victims' educational experience that [the students are] effectively denied equal access to an institution's resources and opportunities."[29] A plaintiff must show this harassment was because of sex.[30] The District Court held that school district's policy allows all students to use locker rooms and bathrooms consistent with their gender identity and therefore does not discriminate on the basis of sex.[31] The District Court also dismissed appellants' claim that the mere presence of transgender students in bathrooms and locker rooms constitutes the harassment necessary to make a "hostile environment claim" due to lack of legal authority.[32] The Third Circuit affirmed the denial of an injunction based on the appellant's Title IX claim.[33]

Finally, Appellants challenged the District Court's conclusion that the tort claim based on Pennsylvania law was unlikely to succeed on its merits. Appellants claimed that the school district's policy impermissibly intruded upon their seclusion.[34] The Third Circuit affirmed the District Court's rejection of the claim.[35] Appellants failed to demonstrate irreparable harm would result from denying injunctive relief because the school provides adequate privacy facilities.[36]

🕮 *United States v. Grant*
887 F. 3d 131 (3d Cir. 2018)
Report by Jordan McKee

The U.S. Court of Appeals for the Third Circuit ruled that imposing a sentence that meets or exceeds their life expectancy on a non-incorrigible juvenile violates the Eighth Amendment of the U.S. Constitution.[37] A non-incorrigible juvenile is a juvenile who is able to be rehabilitated.[38]

Corey Grant was sentenced to life in prison without the possibility of parole (LWOP) at 16 after being tried as an adult and convicted of conspiracy and racketing, drug trafficking, and gun possession. The jury also found that he had murdered one person and attempted to murder

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[29] DeJohn v. Temple Univ., 537 F.3d 391, 316 n.14 (3d Cir. 2008).
[30] *Boyertown Area Sch. Dist.*, 897 F.3d at 533-34; Oncale v. Sundowner Offshore Servs., Inc., 523 U.S. 75, 81 (1998).
[31] *Boyertown Area Sch. Dist.*, 897 F.3d at 535.
[32] *Id.* at 535-36.
[33] *Id.* at 536.
[34] *Id.* at 537.
[35] *Id.*
[36] *Id.*
[37] United States v. Grant, 887 F.3d 131, 142 (3d Cir. 2018).
[38] *See id.* at 143.

another.[39] After the Supreme Court established that only incorrigible youth offenders could be sentenced to LWOP in *Miller v. Alabama*,[40] Grant had a resentencing hearing.[41] He was found to have the potential to be rehabilitated and the LWOP sentence was decreased to sixty-five years without parole.[42] Grant would become eligible for parole at 72, his exact projected life expectancy.[43] Grant argued this was de facto LWOP.[44]

The Court in *United States v. Grant* considered whether a sentence that would not allow for release during the juvenile's projected life expectancy violated the Eighth Amendment, if the defendant's crimes were caused by "transient immaturity [and not]… irreparable corruption."[45] The Court held that a de facto LWOP sentence violates the Eighth Amendment for three reasons.[46]

First, *Miller v. Alabama* established that only juvenile homicide offenders "whose crimes reflected permanent incorrigibility" were eligible for LWOP.[47] Second, the rationale used to abolish LWOP for juveniles – lack of deterrence and opportunity for rehabilitation and reform – applies to de facto LWOP.[48] Third, de facto LWOP sentences for non-incorrigible juveniles contradict the Supreme Court case *Graham v. Florida*, which required "meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[49] In other words, if a de facto LWOP sentence was imposed, a juvenile could never contribute to society in a meaningful way.[50]

Based on these three points, the Court vacated and remanded Grant's de facto sentence to the District Court for resentencing, including an individualized evidentiary hearing to determine Graham's life expectancy and the retirement age of sixty-five.[51] The Court notes that retirement marks a transition "where an individual permanently leaves the work force after having contributed to society over the course of his or her

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[39] *Id.* at 134.
[40] Miller v. Alabama, 567 U.S. 460, 479 (2012).
[41] *Grant*, 887 F.3d at 136.
[42] *Id.*
[43] *Id.* at 137.
[44] *Id.* at 136, 142.
[45] *Id.* at 143-45.
[46] *Id.* at 148.
[47] Montgomery v. Louisiana, 136 S. Ct. 718, 734 (2016); *Miller*, 567 U.S. at 479.
[48] *Grant*, 887 F.3d at 148.
[49] *Id.*; Graham v. Florida, 560 U.S. 48, 75 (2010).
[50] *Grant*, 887 F.3d at 145.
[51] *Id.* at 149, 151, 153.

working life."[52] To ensure that juveniles are afforded a meaningful opportunity to contribute to society this transitional age needs to be considered.[53] Going forward, non-incorrigible juvenile sentences should allow for meaningful contributions to society by allowing the offender to be released before their projected life expectancies while also factoring in the average national retirement age.[54]

The Third Circuit has since vacated this decision and granted a petition for a rehearing n banc.[55]

[52] *Id*. at 150.
[53] *Id.*
[54] *Id.* at 151.
[55] United States v. Grant, 905 F.3d 285, 285 (3d Cir. 2018).

UNITED STATES COURT OF APPEALS, TENTH CIRCUIT

🕮 *Acosta v. Paragon Contrs. Corp.*
884 F.3d 1225 (10th Cir. 2018)
Report by Niharika Sachdeva

Acosta v. Paragon Construction Corporation clarified the difference between child labor and volunteering.[56] In 2007, an injunction prohibited Paragon Contractors and its president, Mr. Brian Jessop, from engaging in oppressive child labor.[57] In 2008, the Southern Utah Pecan Ranch agreed to have Paragon operate the farm's pecan grove.[58] The Ranch had an informal arrangement with the Fundamentalist Church of Jesus Christ of Latter-Day Saints in which its community members, mostly children, would gather fallen pecans.[59] In 2012, The Department of Labor cited Paragon and Jessup for violating the 2007 injunction.[60] The district court sanctioned both respondents,[61] and held that both were in violation of the prior injunction.[62]

Respondents appealed to the Tenth Circuit, unsuccessfully arguing that the children were not covered by the Fair Labor Standards Act because they were volunteers, not employees.[63] By statute, "employee" means "any individual employed by an employer."[64] "Employ" means "to suffer or permit to work."[65] An employee does not include "[a]n individual who . . . solely for his personal purpose or pleasure, worked in activities carried on by other persons[.]"[66] Based on the children's testimony, the court decided that they "were not gathering pecans solely for their own personal purpose or pleasure," but were ordered to attend the harvest.[67] The Church had even closed the schools for the harvest.[68] Some parents testified they sent their

[56] Acosta v. Paragon Contrs. Corp., 884 F.3d 1225, 1230 (10th Cir. 2018).
[57] *Id.* at 1229.
[58] *Id.* at 1230.
[59] *Id.*
[60] *Id.*
[61] *Id.* at 1229.
[62] *Id.*
[63] *Id.* at 1230.
[64] *Id.*
[65] *Id.* at 1231.
[66] *Id.*
[67] *Id.*
[68] *Id.*

children to the harvest "because of pressure from the Church."[69] One child testified she worked because of fear that she would lose her family and be kicked out of the community.[70]

Paragon tried to invoke the "food-bank exception," which precludes consideration as "employees" when workers "volunteer their services solely for humanitarian purposes to private non-profit food banks and . . . receive from the food banks groceries."[71] The court cited the dictionary definition of "volunteer": "an offer to work without solicitation, compulsion, constraint, or influence of another."[72] The court concluded that the children had not volunteered to gather pecans, therefore the food-bank exception did not apply.[73] As such, the respondents had violated the 2007 injunction by employing the children.[74]

 Poore v. Glanz,
724 Fed. App'x 635 (10th Cir. 2018)
Report by Casper Gorner

In *Poore v. Glanz*, a Tulsa sheriff, Stanley Glanz was found liable for sexual abuse of a juvenile inmate at the David L. Moss Criminal Justice Center.[75] Then seventeen year-old Ladona Poore was sexually abused by Seth Bowers, a correctional officer under the supervision of the Tulsa County Sheriff.[76] The abuse occurred in Ladona's cell, an area of the jail without security cameras.[77] Poore sued Glanz in his individual and official capacities alleging Glanz violated her 8th Amendment rights.[78] Poore claimed the jail provided inadequate housing, staffing, and supervision of female inmates.[79]

Glanz appealed the district court's holding that he was not entitled to qualified immunity. To deny a claim of qualified immunity, the district court must find that: (1) Defendant's actions violated a federal constitutional or statutory right which (2) was established at the time of

[69] *Id.*
[70] *Id.*
[71] *Id.* at 1232.
[72] *Id.*
[73] *Id.*
[74] *Id.* at 1241.
[75] 724 Fed. App'x 635, 638 (10th Cir. 2018).
[76] Poore v. Glanz, 724 Fed. App'x 635, 638 (10th Cir. 2018).
[77] *Id.*
[78] *Id.*
[79] *Id.*

Defendant's actions.[80] In affirming the district court's holding, the Tenth Circuit relied heavily on *Keith v. Koerne*r, in which a claim of qualified immunity was denied because prior instances of sexual abuse and lack of security cameras suggested a "disregard of a substantial risk."[81] To determine liability, the Tenth Circuit considered the official capacity claim using the *Monell* test and concluded Glanz, and the office he held, established a policy posing a significant risk of a constitutional violation.[82]

The Tenth Court then addressed the Eighth Amendment claim.[83] The Eighth Amendment requires prison officials to ensure for the safety of those in their custody.[84] To prove supervisory liability under the Eighth Amendment, there must be a significant injury and a link to the supervisor's actions.[85] To meet the causation requirement, Plaintiff must show (1) personal involvement, (2) sufficient causal connection, and (3) a culpable state of mind.[86] After concluding that sexual abuse constituted a serious injury,[87] the Tenth Circuit determined that the requirements were satisfied.[88] Glanz was aware of a prior incident where a nurse watched an inmate showering in the same area Poore's abuse occurred, but made no changes to how female inmates were housed or how the unit was staffed or supervised.[89] The Court ruled Glanz was aware of the risk of sexual abuse in the unit and disregarded it, noting that Bowers had also viewed Ladona in the shower before escalating to sexual abuse.[90] The Court affirmed that Glanz violated Ladona's constitutional rights and was of a culpable state of mind.[91] This case indicates that previous instances of misconduct not amounting to abuse can be used to hold a supervisor liable for subsequent abuse.

[80] *Id.* at 638 (citing Greene v. Barrett, 174 F.3d 1136, 1142 (10th Cir. 1999)).
[81] *Id.* (quoting Keith v. Koerner, 843 F.3d 833 (10th Cir. 2018)).
[82] *Id.* at 644 (citing Monell v. Dep't of Soc. Servs., 436 U.S. 658 (1978)).
[83] *Id.* at 642.
[84] *Id.* at 638 (citing Farmer v. Brennan, 511 U.S. 825, 832 (1994)).
[85] *Id.* at 639 (citing Keith v. Koerner, 843 F.3d 833 (10th Cir. 2016)).
[86] *Id.* (citing Dodds v. Richardson, 614 F.3d 1185, 1195 (10th Cir. 2010)).
[87] *Id.* (citing Hovater v. Robinson, 1 F.3d 1063, 1068 (10th Cir. 1993)).
[88] *Id.* at 638.
[89] *Id.*
[90] *Id.* at 641.
[91] *Id.* at 642.

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF CALIFORNIA

🕮 *L. v. United States Immigration & Customs Enf't ("ICE")*
310 F. Supp. 3d 1133 (S.D. Cal. 2018)
Report by Janelle Pritchard

L. v. United States Immigration & Customs Enf't ("ICE") concerns two women who came to the U.S with their children seeking asylum.[92] Immigration Officials separated both women from their children; they separated Ms. C from her child because she was in criminal custody, and they separated Ms. L from her child because officials were unsure whether Ms. L was S.S.'s mother.[93] This "[rendered both children] an 'unaccompanied minor' under the Trafficking Victim Protection and Reauthorization Act ('TVPRA')."[94] While their mothers faced immigration proceedings, the children were in the custody of the Office of Refugee Resettlement and taken to a facility Chicago.[95] Both mothers endured a long separation from their children; Ms. L for 5 months and Ms. C for 8 months.[96] Ms. L filed this suit and was later joined by Ms. C on behalf of all similarly situated individuals.[97]

Plaintiffs requested an injunction that "(1) enjoins Defendants from separating class members from their children [unless the parents is unfit or presents a danger to the child], and (2) orders the government to reunite class members with their children…after their criminal proceedings conclude, absent a determination that the parent is unfit[.]"[98] Defendants argued that in light of the recent Executive Order and DHS Fact Sheet this injunction was unnecessary.[99]

The court held that Plaintiffs demonstrated that they are entitled to their requested relief because "this practice of separating class members from their minor children, and failing to reunify class members with those children, without any showing the parent is unfit or presents a danger to the

[92] L. v. United States Immigration & Customs Enf't ("ICE"), 310 F. Supp. 3d 1133 (S.D. Cal. 2018).
[93] *Id.* at 1137-38.
[94] *Id.* at 1137.
[95] *Id.*at 1138.
[96] *Id.* at 1137-38.
[97] *Id.* at 1139.
[98] *Id.* at 1141.
[99] *Id.* at 1142.

child is sufficient to find Plaintiffs have a likelihood of success on their due process claim."[100] Because Plaintiffs claimed Defendants violated their constitutional rights, they met the criteria of both an irreparable injury and involving public interest.[101] Defendant argued that Plaintiffs were not entitled to an injunction because it would interfere with "their ability to enforce the criminal and immigration laws."[102] The court, however, held that Defendants "would not suffer any hardship […] because the Government 'cannot suffer harm from an injunction that merely ends an unlawful practice[.]'"[103]

The court enjoined Defendant from "detaining Class Members without or apart from their minor children,"[104] and required that if a class member is released the child must be released to their custody. The court also ordered Defendant to take immediate steps to establish communication between the class members and their children as well as communication between facilities that hold class members and the facilities holding their children and that no class member may be removed without their child.[105] The court characterized this preliminary injunction as a necessary "response to address [the] chaotic circumstances of the Government's own making"[106] and to rectify the wrongs inflicted upon these women, their children, and all who are similarly situated.[107]

[100] *Id.* at 1145.
[101] *Id.* at 1146-49.
[102] *Id.* at 1148.
[103] *Id.* at 1147 (citing Rodriguez v. Robbins, 715 F.3d 1127 (2013)).
[104] *Id.* at 1149.
[105] *Id.*
[106] *Id.*
[107] *Id.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF NEW YORK

A.T. by & through Tillman v. Harder
298 F. Supp. 3d 391 (N.D.N.Y. 2018)
Report by Shelly Richter

In *A.T. by & through Tillman v. Harder*,[108] the U.S. District Court for the Northern District of New York issued a preliminary injunction mandating that juveniles in the Broome County Correctional Facility be locked in their cells for disciplinary purposes no more than four hours per day and have at least three hours of educational instruction daily.[109] At the jail, a number of juveniles, including Mandy, a person with "mental health or intellectual disabilities," had been confined in cells for approximately 23 hours a day.[110] Named plaintiffs A.T. and B.C. sued the Broome County sheriff, jail administrator, and deputy jail administrator, resulting in this injunction.[111]

Plaintiffs asserted that the defendants "routinely place juveniles in solitary confinement and then deny them access to educational opportunities in violation of the Eighth and Fourteenth Amendments."[112] Plaintiffs also asserted claims regarding two subclasses: one group of youth who had been denied services under the Individuals with Disabilities in Education Act, and another group of youth who had been denied services under the Americans with Disabilities Act.[113]

Licensed clinical psychologist Andrea Weisman visited the jail and stated that "the policies and practices guiding the placement of youth in solitary confinement are extraordinarily harsh and are extremely damaging to youth so confined,"[114] placing juveniles at a "substantial risk of serious harm."[115] In its decision, the court acknowledged the "broad and growing consensus among the scientific and professional community" that juveniles are psychologically vulnerable.[116]

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[108] 298 F. Supp. 3d 391 (N.D.N.Y. 2018).
[109] *Id.* at 418–19.
[110] *Id.* at 401.
[111] *Id.* at 400.
[112] *Id.*
[113] *Id.*
[114] *Id.* at 402.
[115] *Id.*
[116] *Id.* at 414.

The court's analysis was guided by *V.W. v. Conway*, in which a proposed class of detained juveniles were "suffering virtually identical treatment" from officials of a different county.[117] Accordingly, here the court found a strong showing of irreparable harm, noting, "defendants' continued use of solitary confinement on juveniles puts them at serious risk of short- and long-term psychological damage, and . . . the related deprivation of education services by both defendants hinders important aspects of their adolescent development."[118]

The plaintiffs identified substantial, compelling evidence supporting a finding that defendants were aware of, but had chosen to consciously disregard, the serious risk of harm posed to juveniles.[119] Thus, the court granted plaintiffs' motion for class certification and request for a preliminary injunction.[120] The injunction caps the number of hours that a juvenile may be locked in a cell for disciplinary purposes to four hours and mandates that juveniles shall have at least three hours of educational instruction each day.[121]

[117] *Id.* at 404 (citing V.W. v. Conway, 236 F. Supp. 3d 554 (N.D.N.Y. 2017)).
[118] *Id.* at 417.
[119] *Id.* at 414.
[120] *Id.* at 418.
[121] *Id.* at 418–19.

UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF PENNSYLVANIA

S.R. v. Pa. Dep't of Human Servs.
309 F. Supp. 3d 250 (M.D. Pa. 2018)
Report by Zoya Chakourski

Twelve Pennsylvanian minors suffering from mental disabilities brought a class action suit against the Pennsylvania Department of Human Services ("DHS") and Teresa Miller, the Secretary of the DHS, alleging DHS's incompetence in providing them and those similarly situated with appropriate services.[122] The plaintiffs represented all Pennsylvania youth who were adjudicated dependents and had been diagnosed with mental disabilities.[123] The plaintiffs asserted that DHS failed to place them in appropriate mental health facilities, instead crowding the youth into large or inadequate facilities to wait months or years for appropriate placement.[124]

The class sued DHS on three counts.[125] The first two counts were asserted under 42 U.S.C. § 1983, alleging violations of Title XIX of the Social Security Act[126] which requires states to provide medical assistance, known as Early and Periodic Screening, Diagnosis and Treatment ("EPSDT"), to "eligible individuals."[127] Under Title XIX, the state must inform those under the age of 21 of the medical services available, and must ensure all such individuals can apply for medical assistance under the plan and receive assistance as soon as possible.[128] The third count alleged violations of the Americans with Disabilities Act ("ADA"),[129] and Section 504 of the Rehabilitation Act ("RA").[130] These statutes prohibit discrimination on the basis of disability.[131] DHS moved to dismiss the Plaintiffs' claims on the basis that the Plaintiffs lacked privately enforceable rights.[132]

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[122] S.R. v. Pa. Dep't of Human Servs., 309 F. Supp. 3d 250, 253 (M.D. Pa. 2018).
[123] *Id.*
[124] *Id.* at 254.
[125] *Id.*
[126] *Id.*
[127] *Id.*
[128] *Id.*
[129] 42 U.S.C. § 12131.
[130] 29 U.S.C. § 794.
[131] *S.R.*, 309 F. Supp. 3d at 254.
[132] *Id.* at 255.

To rule, the District Court reviewed the requirements of privately enforceable federal rights under 42 U.S.C. § 1983.[133] In *Blessing v. Freestone*,[134] the Supreme Court held that to determine whether such a right exists, the court must determine: first, whether Congress intended the statute to benefit a plaintiff; and second, whether the right is not so "vague and amorphous" that it causes judicial difficulty in enforcement, and third, that the statute impose a binding obligation on the states.[135] The court cited *Gonzaga University v. Doe*[136] and *Sabree v. Richman*[137] for the proposition that the statute must "unambiguously" confer the right by containing "rights-creating language which clearly imparts an individual entitlement with an unmistakable focus on the 'benefitted class'" in order to be used in pursuing a claim.[138]

The court then evaluated the Plaintiffs' assertion that Defendants violated Title XIX, which requires the state to make EPSDT services available, and to inform all eligible minors of these services.[139] The court found that the EPSDT mandate satisfies the *Blessing* test and contained language which unambiguously conferred private rights on individuals in Plaintiffs' situation.[140]

For the third count, Plaintiffs claimed that DHS discriminated against them on the basis of their disability by barring them from participating in the same Child Welfare services as other minors and by making no effort to avoid discrimination, thereby violating the ADA and RA.[141] The Court relied on *Olmstead v. L.C. ex rel. Zimring*[142] to find that "unjust[ly] isolat[ing] … individuals with disabilities can constitute actionable discrimination."[143]

The Court concluded that all of Plaintiffs' claims are privately enforceable under the provisions of Title XIX, the ADA, and the RA, and denied the motion to dismiss.[144]

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[133] *Id.*
[134] 520 U.S. 329 (1997).
[135] *S.R.*, 309 F. Supp. 3d at 256 (citing *Blessing,* 520 U.S. at 340-41).
[136] Gonzaga University v. Doe, 536 U.S. 273, 283 (2002).
[137] Sabree v. Richman, 367 F.3d 180, 187 (3d Cir. 2004).
[138] *S.R.*, 309 F. Supp. 3d at 256 (quoting Grammer v. John J. Kane Reg'l Ctrs.-Glen Hazel, 570 F.3d 520, 527 (3d Cir. 2009)).
[139] *S.R.*, 309 F. Supp. 3d at 260.
[140] *Id.* at 261-62.
[141] *Id.* at 262-63.
[142] Olmstead v. L.C. ex rel. Zimring, 527 U.S. 581 (1999).
[143] *S.R.*, 309 F. Supp. 3d at 266.
[144] *Id.*

SUPREME COURT OF CALIFORNIA

🕮 *In re C.B.*
6 Cal. 5th 118 (2018)
Report by Lidia Hernandez

In *In re C.B.*, the California Supreme Court ruled that reclassification of an offense from a felony to misdemeanor is not grounds for expungement of DNA profiles from the state's DNA databank.[145]

In 2011, appellant C.H. left a store after stealing. Upon seeing friends with a loss prevention officer, C.H. returned and hit the officer's head.[146] "C.H. was arrested and admitted both theft and assault," and "[h]e was ordered to submit fingerprints and DNA samples to the California Department of Justice."[147] In 2013, appellant C.B. was discovered taking items by the homeowner and displayed a knife.[148] C.B. was found to have committed felony grand theft person and required to submit fingerprints and DNA samples to the state databank.[149] Subsequently, Proposition 47 reduced various felonies to misdemeanors.[150] Appellants sought to have: their felonies relabeled misdemeanors, their fines reduced, and their DNA profiles expunged from the databank.[151]

While the lower courts did redesignate the appellants' felonies to misdemeanors and reduced their fines, they denied expungement of appellants' DNA profiles.[152] C.B. and C.H. appealed the denial of their expungement motions to the California Supreme Court.[153]

State law on the gathering of DNA profiles for people of specified convictions dates back decades.[154] Proposition 69 (2004) amended California law to include juveniles found responsible of felonious conduct as people whose DNA would be gathered.[155] Proposition 47 (2014) was later passed to reclassify certain felony offenses to misdemeanors "reducing punishment going forward and providing relief" to those already convicted

[145] *In re* C.B., 6 Cal. 5th 118 (2018).
[146] *Id.* at 122.
[147] *Id.*
[148] *Id.*
[149] *Id.* at 122-23.
[150] *Id.* at 124.
[151] *Id.* at 123.
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *Id.* at 124.

of felonies.[156] Prop 47 stated that a felony redesignated to misdemeanor was to be "considered a misdemeanor for all purposes…"[157]

C.B. and C.H. argued this language entitles them to "exclusion from the DNA databank."[158] In its analysis, the California Supreme Court first referred to the text of the initiative and then to "extrinsic sources…to resolve ambiguities."[159] Prop 69 modified existing law to include juveniles adjudicated for felony offenses as a required class to submit DNA samples.[160] Today, Prop 47 excludes C.B. and C.H. from that class.[161] While Prop 47 limits the juvenile class required to submit samples, it does not overrule or replace Prop 69 and does not apply retroactively, the court held.[162] When C.B. and C.H. committed felonies they were required to submit DNA samples.[163]

In denying the expungement, the California Supreme Court considered the historical and statutory basis for expungement.[164] Under the DNA and Forensic Identification Database and Data Bank Act ("DNA Act"), reclassification of an offense was never grounds for expungement; only a finding of innocence, acquittal, or lack or reversal of charge were proper grounds.[165] Consequently, despite the reclassification, the court held that C.B. and C.H. do not meet the expungement requirements under the DNA Act.[166] This interpretation does not contradict Prop 47 since the obligation to provide DNA samples is unperturbed.[167] Therefore, the California Supreme Court held that reclassification of an offense is not grounds for expungement of DNA profiles from the state's DNA databank.[168]

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[156] *Id*.
[157] *Id.* at 124-25.
[158] *Id.* at 125.
[159] *Id.*
[160] *Id.*
[161] *Id.*
[162] *Id.* at 126.
[163] *Id.*
[164] *Id.* at 126-28.
[165] *Id.* at 127.
[166] *Id.* at 128.
[167] *Id.* at 129.
[168] *Id.*

CALIFORNIA COURT OF APPEAL, FIFTH DISTRICT

🕮 *In re Juan R.*
22 Cal. App. 5th 1083 (2018)
Report by Mats Dagdigian

In March 2017, Juan R. and four other minors physically attacked and robbed a man.[169] Based upon the probation department's report that Juan used drugs and alcohol, received poor grades, had been previously disciplined by his school, and that several of his co-defendants were members of the Norteño gang, the juvenile court imposed a probation condition requiring Juan to:

> submit to search of electronic devices at any time of the day or night by any… officer with or without a warrant, probable cause or reasonable suspicion including cell phones over which the minor has control over [sic] or access to for electronic communication content information likely to reveal evidence that the minor is continuing his criminal activities and is continuing his association via text or social media with co-companions.[170]

Juan appealed this condition as "unreasonable and unconstitutionally overbroad."[171]

The California Court of Appeal affirmed the order, noting that a minor's liberty interests are not as expansive an adult's.[172] Indeed, parents often curtail their children's rights while exercising the right to bring up children as they see fit.[173] For a ward of the court, the court stands in place of a parent and therefore may restrict Juan's activities to a greater degree than it could with regard to an adult.[174]

In analyzing the reasonableness of the condition, the court referred to the *Lent* test, which states that a probation decision will be upheld unless it (1) bears no relationship to the crime at issue, (2) relates only to legal conduct, and (3) limits behavior "which is not reasonably related to future

[169] *In re* Juan R., 22 Cal. App. 5th 1083, 1086 (2018).
[170] *Id.* at 1086-87.
[171] *Id.* at 1087.
[172] *Id.* at 1085, 1088.
[173] *Id.* at 1088.
[174] *Id.*

criminality."[175] All three prongs of the test must be met before a probation term may be invalidated.[176] While the electronic search condition does not relate directly to the crime or robbery, nor does it involve illegal activity, the court held that it was reasonably related to preventing Juan's future criminality.[177] Through monitoring Juan's electronics and social media, officers could deter future criminal activity, contact with his co-conspirators or other gang members, and violations of other probation conditions.[178] Furthermore, Juan's mother was illiterate and unable to monitor his electronic communications; it therefore fell on the state to supervise.[179]

The court also found that the electronic search condition was constitutionally permissible.[180] The condition allowed Juan's probation officer to search his communications only to the extent "reasonably likely to yield evidence of continued contact with coparticipants or gang members, drug use, or other criminal activity and noncompliance with probation conditions."[181] The search would be further limited to areas of the devices where evidence of violations could be found, i.e., social media accounts or texting apps.[182] Irrelevant information, such as medical or financial records, were not subject to search.[183] The court therefore affirmed that the condition was narrowly tailored to Juan's individual circumstances and sufficient to pass the overbreadth doctrine.[184]

[175] *Id.* at 1088 (quoting People v. Lent, 15 Cal. 3d 481, 486 (1975)).
[176] *Id.*
[177] *Id.* at 1091.
[178] *Id.*
[179] *Id.*
[180] *Id.* at 1092.
[181] *Id.* at 1094.
[182] *Id.*
[183] *Id.*
[184] *Id.* at 1095.

SUPREME COURT OF INDIANA

🕮 *B.A. v. State*
100 N.E.3d 225 (Ind. 2018)
Report by Jenna Rogenski

A thirteen-year-old middle school student who had been adjudicated delinquent for committing false reporting and institutional criminal mischief sued the State of Indiana, arguing that the Marion Superior Court, Juvenile Division had erred in admitting evidence of an interview by a school administrator on the ground that he had been deprived of his *Miranda* rights when he was placed under custodial interrogation at school.[185] The Court of Appeals affirmed, stating that *Miranda* warnings were not required because the school administrator questioned Plaintiff for educational purposes.[186] Finding that B.A. had been "in police custody and under police interrogation," the Indiana Supreme Court reversed.[187]

In the case, School Resource Office Tustie investigated a message on the wall of the boys' bathroom at Decatur Middle School that said, "I will Got a bomb in the school Monday 8th 2016 not a Joke."[188] After his investigation, the School Resource Officer concluded that Plaintiff was one of two possible suspects.[189] On Monday, February 8, 2016, Vice President Remaly and School Resource Officer Lyday escorted Plaintiff to the vice principal's office where he was questioned with three school resource officers present.[190] Plaintiff made incriminating statements and was taken to a juvenile detention center.[191]

On appeal, Plaintiff argued that he was in custody and under interrogation at the time the statements were made because school resource officers participated.[192] The State argued the officers' presence was non-coercive because they did not directly question Plaintiff.[193] The Indiana

185 B.A. v. State, 100 N.E.3d 225, 228 (Ind. 2018).
186 *Id.*
187 *Id.* at 228, 334.
188 *Id.* at 228.
189 *Id.*
190 *Id.*
191 *Id.*
192 *Id.* at 229.
193 *Id.*

Supreme Court held that Plaintiff was in custodial interrogation, and since he had not been Mirandized, his statements should have been suppressed.[194]

The court referenced *J.D.B. v North Carolina*,[195] in which the Supreme Court ruled that *Miranda* warnings are especially important when police place a student under custodial interrogation at school because children are particularly vulnerable to coercion.[196] Further, Indiana has a juvenile waiver statute that states minors can only waive their *Miranda* rights through counsel, a custodial parent, guardian, custodian, or guardian *ad litem*.[197]

The first step in determining whether a student was placed under custodial interrogation is to analyze whether a reasonable person in the suspect's situation would feel free to leave.[198] Next, it must be determined if the suspect's situation presents the same inherently coercive pressures as in *Miranda v. Arizona*, 382 U.S. 925 (1966).[199] Under this test, the Indiana Supreme Court held that Plaintiff was in police custody.[200] Police officers stayed with him during his interview, the officers knew that a reasonable person in Plaintiff's position would be more vulnerable to outside pressures than adults or other teenagers, Plaintiff's mother was not called until after the interview, Plaintiff was not informed he could take a break or leave the room, and he was taken to a juvenile detention center after the interview.[201] Considering these circumstances, the Indiana Supreme Court held that Plaintiff was under custodial interrogation and therefore should have been Mirandized.

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194 *Id.*

195 564 U.S. 261, 269 (2011).

196 *B.A.*, 100 N.E.3d at 230.

197 *Id.* 231.

198 *Id.* at 232 (citing IND. CODE ANN. § 31-32-5-1).

199 *Id*.

200 *Id.* at 234.

201 *Id.*

DISTRICT OF COLUMBIA COURT OF APPEALS

🕮 *J.P. v. District of Columbia*
189 A.3d 212 (D.C. 2018)
Report by Jacqueline Reynders

J.P., a minor, was charged as an adult for traffic, weapons, and stolen property offenses.[202] He was found incompetent to stand trial and ordered to receive inpatient mental health treatment under D.C. Code § 24-531.07(a)(2).[203] J.P. filed an emergency motion for release under D.C. Code § 7-1231.14(a).[204] This provision of the D.C. Code prohibits inpatient mental health treatment without parental consent.[205] The trial court denied the motion, holding that § 24-531.07(a)(2) authorizes courts to require incompetent criminal defendants, including minors being tried as adults, to receive continuous inpatient mental health treatment pending a civil-commitment proceeding.[206]

The trial court found five reasons why § 24-531.07(a)(2) governs this case.[207] First, § 24-531.07(a)(2) was part of a general framework for criminal-competence procedures including minors prosecuted as adults.[208] Second, requiring parental consent for criminal-competency proceedings would be illogical because the court could not investigate and determine if a minor is competent for trial without parental consent.[209] Third, repercussions of requiring parental consent would be broad and disruptive.[210] Fourth, it would be illogical to require parental consent for minors prosecuted as adults when § 7-1231.14(a) does not require parental consent for juveniles ordered to receive inpatient mental health treatments.[211] Fifth, the intent of the parental consent requirement in § 7-1231.14(a) was not aimed at criminal proceedings.[212]

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202 J.P. v. District of Columbia, 189 A.3d 212, 214-15 (D.C. 2018).
203 *Id.* at 215.
204 *Id.*
205 *Id.* at 216.
206 *Id.* at 215.
207 *Id.* at 217-18.
208 *Id.* at 217.
209 *Id.*
210 *Id.*
211 *Id.*
212 *Id.* at 217-18.

On appeal, J.P. argued that § 7-1231.14(a) makes several explicit exemptions and § 24-531.07(a)(2) was not one of them.[213] The Court rejected this argument, finding this omission to be unintentional due to lack of focus on atypical circumstances, like minors being criminally prosecuted as adults.[214] Second, J.P. argued that § 7-1231.14(a) has mandatory authority while § 24-531.07(a)(2) has only permissive authority.[215] Thus, compliance with both is possible if the court does not order inpatient mental health treatment.[216] The Court rejected this argument and stated their job was to interpret the statutes in a way that best harmonizes them together.[217] Third, J.P. argued unsuccessfully that it was beyond the powers of the court to read an implicit exception into § 7-1231.14(a).[218] Fourth, J.P. argued § 7-1231.14(a) is more specific than § 24-531.07(a)(2) and therefore should have authority.[219] The Court found that each statute is more general in some regards and more specific in others and that § 7-1231.14(a) was no more specific than § 24-531.07(a)(2).[220]

Fifth, J.P. argued the illogical repercussions presented by the prosecution were ameliorated because prosecutors were permitted to order emergency hospitalizations in criminal cases under D.C. Code §§ 21-521 to -528 or civil commitment under D.C. Code § 21-545.[221] The Court found the considerations leading them to affirm the trial court's decision outweighed this argument.[222]

Sixth, J.P. argued it is not irrational to require parental consent for inpatient mental health treatment for minors prosecuted as adults but not for minors prosecuted as juveniles because the latter have greater statutory protections in regards to the suitability of treatment facilities.[223] The court did not find this argument compelling enough to outweigh other considerations.[224]

Seventh, J.P. argued the court should employ the doctrine of constitutional avoidance because § 24-531.07(a)(2) is likely

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213 *Id.* at 218.
214 *Id.* at 218-19.
215 *Id.* at 219.
216 *Id.* at 219.
217 *Id.*
218 *Id.*
219 *Id.* at 220.
220 *Id.*
221 *Id.*
222 *Id.*
223 *Id.* at 220-21.
224 *Id.* at 221.

unconstitutional.[225] The Court declined to express a view on the constitutional issue, finding the doctrine did not support J.P.'s argument.[226]

In conclusion, the Court affirmed the decision of the trial court and held that § 7-1231.14(a) does not impede on the authority of the court to order inpatient mental-health treatment of a criminal defendant declared incompetent pursuant to § 24-531.07(a)(2).[227]

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[225] *Id.*

[226] *Id.* at 222.

[227] *Id.*

SUPREME COURT OF VERMONT

🕮 *State v. Sawyer*
187 A.3d 377 (Vt. 2018)
Report by Casper Gorner

The Supreme Court of Vermont overruled a bail denial to a minor charged with four criminal counts relating to his plan to conduct a school shooting.[228] On February 14, 2018, Fair Haven Police Department received a call about a threat to Fair Haven Union High School.[229] The police located Jack Sawyer, a former student. In questioning, Sawyer admitted to going to the school intending to observe the School Resource Officer, converting money to bitcoin to buy a gun on the black market, and planning an assault on a specific date.[230] Officers found a shotgun with 17 rounds of ammunition and a journal entitled "The Journal of an Active Shooter" in Sawyer's car.[231] Sawyer was arraigned on four counts related to attempting to conduct a school shooting; three of the counts were punishable with life imprisonment.[232]

Sawyer was denied bail under Vermont Statute 7553, which states that a person can be denied bail when charged with an offense for which punishment is death or life imprisonment if "Evidence of guilt is great."[233] Under Rule 12D of the Vermont Rule of Criminal Procedure "a defendant may be held without bail under statute 7553 when (1) charged with a crime carrying a potential sentence of life imprisonment, and (2) evidence can fairly and reasonably show defendant's guilt beyond a reasonable doubt."[234]

Sawyer challenged the trial court's denial of bail. On appeal, the Vermont Supreme Court questioned whether the state had sufficient evidence of the attempt.[235] The court classified an "attempt" as requiring

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228 State v. Sawyer, 187 A.3d 377 (Vt. 2018).
229 *Id.* at 380.
230 *Id.* at 381.
231 *Id.*
232 *Id.* at 378.
233 VT. STAT. ANN. tit. 13, § 7553.
234 V.R.Cr.P. Rule 12.
235 *Sawyer*, *supra* note 1.

intent to commit a crime and preparatory acts in the proximity of where the crime would be committed.[236]

Consulting precedent, the court determined the evidence did not justify a denial of bail.[237] It held that defendant's preparatory actions were not the type of preparation constituting intent, and that the actions lacked proximity to where the crime would have occurred.[238] For the proximity requirement, the court noted that Sawyer had not purchased the gun, didn't survey the campus officer, and didn't gather all the items he had listed as necessary.[239] Using these facts, the court determined that Sawyer had only planned the attack, never making overt steps to complete the plan.[240] Thus, there was no attempt and the denial of bail was reversed.[241] This ruling implies that in school shooting related cases, the prosecution must show more proximate evidence to establish an "attempt" of a crime.

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[236] *Id.* at 380 (citing State v. Hurley, 64 A. 78, 78 (Vt. 1906)).
[237] *Id.* at 386.
[238] *Id.*
[239] *Id.* at 386.
[240] *Id.*
[241] *Id.* at 387.

SUPREME COURT OF NEW JERSEY

🕮 *State in Interest of C.K.*
233 N.J. 44 (2018)
Report by Zoya Chakourski

The New Jersey Supreme Court struck down subsection (g) of Megan's Law, N.J.S.A. 2C:7–1 to –11, –19; N.J.S.A. 2C:7–2(g), which mandates lifelong registration and monitoring of juvenile sex offenders without the possibility of relief.[242]

Under subsection (f) of Megan's Law, all sex offenders are subject to lifelong registration and notification requirements, keeping law enforcement and the community informed of the offender's whereabouts.[243] Unlike the other provisions cited above, however, under subsection (f), a juvenile sex offender may seek relief from registration and monitoring fifteen years after the sentencing, if he has committed no further offenses.[244] Subsection (g), in contrast, denies juveniles convicted of aggravated sexual assault or aggravated criminal sexual contact this same opportunity.[245] C.K. was convicted as juvenile sex offender, but had lived over 20 years as a productive member of society, committing no further offences. C.K. challenged the lifetime notification and registration requirements of Megan's Law on the grounds that subsection (g) violated the Due Process rights granted him by the New Jersey Constitution.[246]

In 2008, C.K. filed his first petition seeking post-conviction relief (PCR), which was denied by the PCR court and the New Jersey Appellate Division.[247] In 2012, C.K. filed a second petition. The PCR court held a hearing at which several psychologists testified to C.K.'s current harmlessness.[248] Although the court acknowledged the validity of the evidence, it concluded that revision of Megan's Law must come from the

[242] State in Interest of C.K., 233 N.J. 44, 47 (N.J. 2018).
[243] *Id.* at 47.
[244] *Id.*
[245] *Id.* at 47. See also N.J. STAT. ANN. § 2C:7-2.
[246] *C.K.*, 233 N.J. at 47-50.
[247] *Id.* at 50.
[248] *Id.* at 50-55.

State Supreme Court. This opinion was affirmed by the Appellate Court.[249] The New Jersey Supreme Court granted C.K.'s petition for certification.

The New Jersey Supreme Court considered N.J.S.A. 2A:4A–20 to –92.[250] The primary focus of the Juvenile Code, as well as the juvenile justice system, has historically been the rehabilitation of young offenders.[251] This is partially due to the underdeveloped decision-making capabilities of juveniles, whose identities and behavioral capabilities are not yet fully formed.[252] If a juvenile offender has spent fifteen years without re-offending and has integrated productively into society, then continuing to constrain him no longer serves the desired remedial purpose under the Juvenile Code, the New Jersey Supreme Court held.[253] In so holding, the court cited Ohio and Pennsylvania Supreme Court decisions. As the court explained, the Ohio Supreme Court determined that permanently condemning juvenile sex offenders was damaging to the offender's possible future rehabilitation. Similarly, the Pennsylvania Supreme Court concluded that many juveniles offend out of curiosity and do not pose risk later in life. Both courts condemned lifetime registration of all juvenile sex offenders as unconstitutional.[254]

Therefore, the New Jersey Supreme Court found that subsection (g) of Megan's Law serves a punitive, rather than remedial function in the lives of juvenile offenders, and "cannot be justified by [the state's] Constitution."[255] The court struck down subsection (g) and held that under subsection (f) of Megan's Law, C.K. is eligible to seek the lifting of his registration.[256]

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[249] *Id.* at 55.

[250] *Id.* at 67.

[251] *Id.*

[252] *Id.* at 68-69.

[253] *Id.* at 64.

[254] *Id.* at 71-72 (citing *In re* C.P., 967 N.E.2d 729, 732, 737 (Ohio 2012); *In re* J.B., 107 A.3d 1, 2, 10, 14-16 (Pa. 2016).

[255] *Id.*at 75-76.

[256] *Id.* at 76-77.

CALIFORNIA LEGISLATION

🕮 A.B. 1214
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Niharika Sachdeva

On September 30, 2018, California Governor Jerry Brown signed Assembly Bill 1214 into law.[257] This Act repeals and adds sections to the California Welfare and Institutions Code, revising and expanding provisions about minors whose competency is questioned in juvenile proceedings.[2]

The Act expands the duties of an expert who has expertise in child and adolescent development and can conduct forensic evaluation of juveniles to determine competency.[258] Evaluation allows the minor's attorney or the district attorney to "retain or seek the appointment of additional qualified experts with regard to determining competency[.]"[259] When evaluating the minor, the expert should be proficient in the language preferred by the minor or use an interpreter and have "assessment tools that are linguistically and culturally appropriate for the minor."[260] Further, statements made by the minor to the experts during the competency evaluations or during remediation cannot be used against the minor in any other hearing.[261]

A.B. 1214 also changes the procedures regulating what happens after a minor is found to be incompetent by a preponderance of the evidence during an evidentiary hearing.[262] If the petition contains only misdemeanor charges and the minor is found to be incompetent, "the petition shall be dismissed."[263] If, however, the charges rise above the level of misdemeanor and the minor is found to be incompetent, the court will refer the minor to services to help the minor attain competency, "unless . . . competency

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[257] *AB-1214 Juvenile proceedings: competency. (2017-2018)*, CAL. LEG. INFO. (Oct. 1, 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1214; *see also* A.B. 1214, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[2] *See AB-1214 Juvenile proceedings: competency. (2017-2018)*, *supra* note 1.
[258] *Id.*
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] *Id.*

cannot be achieved within the foreseeable future."[264] These services include "mental health services, treatment for trauma, medically supervised medication, behavioral counseling, curriculum-based legal education, or training in socialization skills, consistent with any laws requiring consent."[265]

If a minor in custody is receiving remediation services, the court must review these services every 30 days.[266] If a minor is not in custody, the services must be reviewed every 45 days.[267] Six months following when the minor was found to be incompetent, the court will hold an evidentiary hearing to evaluate whether the minor is remediated or is able to be remediated, unless the parties have already agreed to a remediation program.[268] If the minor is remediated, the initial court proceedings will be reinstated.[269] If the court finds that the minor is not currently remediated, but can be remediated within an additional six months, the minor will be returned to the remediation program.[270] However, the remediation process cannot exceed one year.[271] If the court finds that the minor cannot achieve competency within the additional six months, the court shall dismiss the petition against the minor.[272] The Act also states that "[s]ecure confinement shall not extend beyond six months from the finding of incompetence . . ." with a few exceptions.[273]

🕮 A.B. 1812
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Shelly Richter

The California Legislature established the Youth Reinvestment Grant Program (hereafter "the Program") for the broad purpose of implementing trauma-informed diversion programs for minors.[274] "Trauma-informed" denotes "an approach that involves an understanding of adverse childhood experiences and responding to symptoms of chronic

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[264] *Id.*
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Id.*
[269] *Id.*
[270] *Id.*
[271] *Id.*
[272] *Id.*
[273] *Id.*
[274] A.B. 1812, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1812; CAL. WELF. & INST. CODE §§ 1450–1455 (West 2018).

interpersonal trauma and traumatic stress across the lifespan of an individual."[275]

The Program awards funds for community and health-based interventions.[276] A local jurisdiction must distribute ten percent of the funds that it has been awarded to a lead public agency that will coordinate implementation.[277] The remaining ninety percent of the funds that are awarded to a jurisdiction are to "pass through the lead public agency to community-based organizations,"[278] to provide not only diversion programs, but also educational, mentoring, behavioral health, and mental health services.[279]

Three percent of the funds for the Program are to be allocated to Indian tribes, and ninety-four percent of the funds are to be allocated to local jurisdictions.[280] The Program is meant to address the needs of Native American youth who experience high rates of juvenile arrests, suicide, and alcohol and substance abuse, as well as low average high school graduation rates.[281] On the other hand, the highest needs of youth in local jurisdictions are determined by "high rates of juvenile arrests for misdemeanor and status offenses" and "racial or ethnic disparities on the basis of disproportionately high rates of juvenile arrests."[282] By aiming to address the needs of youth who have been arrested and faced other trauma early in life, the Program seeks to divert youth from the criminal justice system later on.[283]

Qualifying local jurisdictions will be awarded between fifty thousand and one million dollars.[284] The jurisdiction must provide at least a twenty-five-percent match to the grant.[285] A jurisdiction that "[has a] high need with low or no local infrastructure for diversion programming" may have an exception to the match requirement.[286] Further, the supervising

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[275] CAL. WELF. & INST. CODE § 1451(c).
[276] *Id.* § 1453(a).
[277] *Id.* § 1454(b)(3)(A).
[278] *Id.* § 1454(b)(3)(B).
[279] *Id.* § 1454(b)(5)(E)(i)–(v).
[280] *Id.* §§ 1453(a), 1454(a).
[281] *Id.* § 1453(b)(1)–(4).
[282] *Id.* § 1454(b)(4)(A)–(B).
[283] *Assemblymember Jones-Sawyer's $100 Million Youth Reinvestment Fund Proposal Passes Assembly Budget Subcommittee Public Safety*, ASSEMB. REGINALD BYRON JONES-SAWYER, SR. – DIST. 59 (2018), https://a59.asmdc.org/press-releases/assemblymember-jones-sawyers-100-million-youth-reinvestment-fund-proposal-passes (last visited Oct 31, 2018).
[284] CAL. WELF. & INST. CODE § 1454(b)(1).
[285] *Id.* § 1454(b)(2)(A).
[286] *Id.* § 1454(b)(2)(B).

board is to set aside funds to track the progress of the Program,[287] measured by, among other things, reduction in law enforcement responses to minors for low-level offenses and number of days that minors spend in detention.[288] Assemblymember Reginald Jones-Sawyer said of this legislation, "I have been fighting to create a fund to address the needs of our most vulnerable youth … . Today, Governor Brown made the decision to reinvest in our youth, and stop locking up our children by providing financial resources for youth diversion programs."[289]

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[287] *Id.* § 1455(b)(4)(A).
[288] *Id.* § 1455(b)(4)(C)(i).
[289] *Governor Brown Adopts Assemblymember Jones-Sawyer's $37.3 Million Youth Reinvestment Fund in the 2018-19*, ASSEMB. REGINALD BYRON JONES-SAWYER, SR. – DIST. 59 (2018), https://a59.asmdc.org/press-releases/governor-brown-adopts-assemblymember-jones-sawyers-373-million-youth-reinvestment (last visited Oct 31, 2018).
[290] *AB-1214 Juvenile proceedings: competency. (2017-2018)*, CAL. LEG. INFO. (Oct. 1, 2018), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1214; *see also* A.B. 1214, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[2] *See AB-1214 Juvenile proceedings: competency. (2017-2018)*, *supra* note 1.
[291] *Id.*
[292] *Id.*
[293] *Id.*

evaluations or during remediation cannot be used against the minor in any other hearing.[294]

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[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.*
[299] *Id.*
[300] *Id.*
[301] *Id.*
[302] *Id.*
[303] *Id.*
[304] *Id.*
[305] *Id.*
[306] *Id.*

🕮 A.B. 1812
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Shelly Richter

The California Legislature established the Youth Reinvestment Grant Program (hereafter "the Program") for the broad purpose of implementing trauma-informed diversion programs for minors.[307] "Trauma-informed" denotes "an approach that involves an understanding of adverse childhood experiences and responding to symptoms of chronic interpersonal trauma and traumatic stress across the lifespan of an individual."[308]

The Program awards funds for community and health-based interventions.[309] A local jurisdiction must distribute ten percent of the funds that it has been awarded to a lead public agency that will coordinate implementation.[310] The remaining ninety percent of the funds that are awarded to a jurisdiction are to "pass through the lead public agency to community-based organizations,"[311] to provide not only diversion programs, but also educational, mentoring, behavioral health, and mental health services.[312]

Three percent of the funds for the Program are to be allocated to Indian tribes, and ninety-four percent of the funds are to be allocated to local jurisdictions.[313] The Program is meant to address the needs of Native American youth who experience high rates of juvenile arrests, suicide, and alcohol and substance abuse, as well as low average high school graduation rates.[314] On the other hand, the highest needs of youth in local jurisdictions are determined by "high rates of juvenile arrests for misdemeanor and status offenses" and "racial or ethnic disparities on the basis of disproportionately high rates of juvenile arrests."[315] By aiming to address the needs of youth

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[307] A.B. 1812, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1812; CAL. WELF. & INST. CODE §§ 1450–1455 (West 2018).
[308] CAL. WELF. & INST. CODE § 1451(c).
[309] *Id.* § 1453(a).
[310] *Id.* § 1454(b)(3)(A).
[311] *Id.* § 1454(b)(3)(B).
[312] *Id.* § 1454(b)(5)(E)(i)–(v).
[313] *Id.* §§ 1453(a), 1454(a).
[314] *Id.* § 1453(b)(1)–(4).
[315] *Id.* § 1454(b)(4)(A)–(B).

who have been arrested and faced other trauma early in life, the Program seeks to divert youth from the criminal justice system later on.[316]

Qualifying local jurisdictions will be awarded between fifty thousand and one million dollars.[317] The jurisdiction must provide at least a twenty-five-percent match to the grant.[318] A jurisdiction that "[has a] high need with low or no local infrastructure for diversion programming" may have an exception to the match requirement.[319] Further, the supervising board is to set aside funds to track the progress of the Program,[320] measured by, among other things, reduction in law enforcement responses to minors for low-level offenses and number of days that minors spend in detention.[321] Assemblymember Reginald Jones-Sawyer said of this legislation, "I have been fighting to create a fund to address the needs of our most vulnerable youth … . Today, Governor Brown made the decision to reinvest in our youth, and stop locking up our children by providing financial resources for youth diversion programs."[322]

🕮 A.B. 2119
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Alejandra Gutierrez

California Assembly Bill 2119 ("A.B. 2119"), "Foster care: gender affirming health care and mental health care," was signed into law on September 14, 2018.[323] A.B. 2119 expands the rights of youth and young adults in foster care by guaranteeing their right to receive gender affirming health care and gender affirming mental health care.[324] The new law requires the State Department of Social Services, the State Department of

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[316] *Assemblymember Jones-Sawyer's $100 Million Youth Reinvestment Fund Proposal Passes Assembly Budget Subcommittee Public Safety*, ASSEMB. REGINALD BYRON JONES-SAWYER, SR. – DIST. 59 (2018), https://a59.asmdc.org/press-releases/assemblymember-jones-sawyers-100-million-youth-reinvestment-fund-proposal-passes (last visited Oct 31, 2018).
[317] CAL. WELF. & INST. CODE § 1454(b)(1).
[318] *Id.* § 1454(b)(2)(A).
[319] *Id.* § 1454(b)(2)(B).
[320] *Id.* § 1455(b)(4)(A).
[321] *Id.* § 1455(b)(4)(C)(i).
[322] *Governor Brown Adopts Assemblymember Jones-Sawyer's $37.3 Million Youth Reinvestment Fund in the 2018-19*, ASSEMB. REGINALD BYRON JONES-SAWYER, SR. – DIST. 59 (2018), https://a59.asmdc.org/press-releases/governor-brown-adopts-assemblymember-jones-sawyers-373-million-youth-reinvestment (last visited Oct 31, 2018).
[323] A.B. 2119, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[324] *Id.*

Health Care Services, and other stakeholders to identify best practices to support foster youth seeking access to these health services.[325]

Existing law guaranteed foster youth the right to health services including medical, dental, vision, and mental health.[326] A.B. 2119 amends Sections 16001.9 and 16010.2 of the California Welfare and Institutions Code to establish a right for foster youth to receive gender affirming health care services and gender affirming mental health support.[327] In doing so, the law defines "gender affirming health care," and "gender affirming mental health care."[328] It further describes what medical services must be made available.[329]

The bill relies on guidelines explained in the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition that justify access for "[i]nterventions to suppress the development of endogenous secondary sex characteristics[,] interventions to align the patient's appearance or physical body with the patient's gender identity[, and] interventions to alleviate symptoms of clinically significant distress resulting from gender dysphoria[.]"[330] Foster youth who receive these services will be entitled to case management services.[331] According to the Center of Excellence for Transgender Health at the University of California, San Francisco, these procedures and medical services are medically necessary for transgender youth's psychosocial improvements.[332]

In explaining the need for this legislation, the Committee on Human Services noted that many transgender youth end up in the foster system,[333] and that some of these youth enter the foster care system because of their sexual orientation and gender identity.[334] Children and youth who identify as lesbian, gay, bisexual, transgender or questioning (LGBTQ) experience higher levels of neglect, rejection, and abuse.[335] The purpose of A.B. 2119

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[325] *Id.*
[326] *Id.*
[327] *Id.*
[328] *Id.*
[329] *Id.*
[330] *Id.*
[331] *Id.*
[332] CTR. OF EXCELLENCE FOR TRANSGENDER HEALTH, U.C.S.F., GENDER AFFIRMING CARE OF TRANSGENDER AND GENDER NONBINARY PEOPLE, 2, 23 (Madeline B. Deutsch ed., 2d ed. 2016), *available at* http://transhealth.ucsf.edu/pdf/Transgender-PGACG-6-17-16.pdf.
[333] *Assembly Floor Analysis: Hearing Before the Subcomm. on A.B. 2119 Foster care: gender affirming health care and mental health care*, Assemb. Comm. on Human Serv., 2017-2018 Leg., Reg. Sess. (Cal. 2018).
[334] *Id.*
[335] *Id.*

is to decrease hardships and barriers experienced by transgender and gender non-conforming foster youth children and adolescents in healthy development, gender identify and expression, educational achievements, social and communal discrimination, risks of homelessness, and entering the juvenile justice system.[336]

A.B. 2119 builds upon the gender identity and expression rights established in the Foster Youth Bill of Rights[337] and expands these rights to include health care and mental health services.[338]

🕮 A.B. 2121
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Alejandra Gutierrez

California Assembly Bill 2121 ("A.B. 2121"), authored by Assemblymember Anna Caballero, was signed into law on September 20, 2018.[339] A.B. 2121 expands the protections provided by Education Code Section 51225.1.[340] Previously, the law provided that certain students in California schools, such as students in foster care, students who are homeless, former students of a juvenile court school, or a child of a military family who transfers to a school after the child's second year of high school, were except from local school district graduation requirements that exceed statewide requirements.[341] The Act adds migratory children and newly arrived immigrant students participating in an English language proficiency program to the list of children who are required to meet the additional, local requirements for graduation.[342]

California Education Code Section 54441 defines a migratory child as "a child who has moved with a parent, guardian, or other person having custody, from one school district to another, either within the State of California or from another state within the 12-month period immediately preceding his or her identification as such a child."[343] To meet this definition, the child must have moved so that the parent, guardian, or an immediate family member "might secure temporary or seasonal

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[336] *Id.*
[337] The Foster Youth Bill of Rights in California was enacted in 2001. A.B. 899, 2001-2002 Leg., Reg. Sess. (Cal. 2001) (enacted).
[338] A.B. 2119, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[339] A.B. 2121, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[340] *Id*.
[341] *Id*.
[342] *Id*.
[343] CAL. EDUC. CODE § 54441.

employment in an agricultural or fishing activity."[344] Parents or guardians must be informed of the child's eligibility for migrant education services.[345] In addition, current law requires school districts to count schoolwork that meets satisfactory standards completed by these students as full or partial credit for completed coursework.[346]

This Act introduces a new requirement for school districts; they must accept coursework students completed in schools outside of the United States.[347] The legal protections apply even if the age of old coursework exceeds the timeframes in the qualifying definitions.[348] If California school districts determine that the student can complete the additional local school district graduation requirements by the end of their fourth year, then they are not covered by the exemption.[349] If a student is found to have the capacity to complete school district requirements for graduation by the end of their fifth year in high school, local school districts must inform the student and the person holding the right to make educational decisions on behalf of the student.[350] Students must be given the opportunity to complete the additional local school district requirements by staying a fifth year in high school.[351]

Students and their educational rights holders must also be informed about available post-secondary education, higher education, and transfer opportunities through California Community Colleges, as well as post-secondary education opportunities that may be impacted due to the lack of completion of the local graduation requirements.[352] These students will be allowed to take or re-take courses required by California State University or University of California institutions.[353]

Comments on the Bill explain the need to add migratory and newly immigrant students to Education Code 51225.1.[354] The Assembly Committee on Education describes the educational obstacles migrant and newly immigrant students experience due to their families relocating, often in search of work and stability.[355] These include extreme poverty, health

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[344] *Id*.
[345] *Id*.
[346] *Id*.
[347] A.B. 2121, 2017-2018 Leg., Reg. Sess. (Cal. 2018).
[348] *Id*.
[349] *Id*.
[350] *Id*.
[351] *Id*.
[352] *Id*.
[353] *Id*.
[354] *Id*.
[355] *Id*.

disparities, lower academic outcomes and educational achievements.[356] With the new law, the exemptions available to other students who are affected similarly by their challenging circumstances extend to another vulnerable status of students: migratory and newly immigrant students.[357]

🕮 A.B. 2684
2017-2018 Leg., Reg. Sess. (Cal. 2018)
Report by Mats Dagdigian

On September 28, 2018, California Governor Jerry Brown approved AB 2684, which updates California's Uniform Parentage Act (UPA).[358] The LGBTQ Family Law Modernization Act of 2018, sponsored by Assemblymember Richard Bloom (D-Santa Monica), revises and reframes the parentage provisions of the California Family Code to ensure that same-sex parents are treated equally compared to traditional families.[359] According to Bloom, "Since state law – and not federal law – determines who is a parent and each state has its own set of laws, it is vital that California update the UPA to ensure protection for same-sex couples and their families."[360]

Bloom introduced A.B. 2684 on February 15, 2018.[361] The Assembly Judiciary Committee unanimously passed the bill on April 10, 2018, and referred it to the Assembly Appropriations Committee, which also unanimously approved on April 25.[362] A.B. 2684 passed the Assembly on May 10, 2018, with a unanimous vote of 69-0.[363] The bill passed the Senate Judiciary Committee and Senate Appropriations Committee, and was passed by the Senate on a vote of 35-2.[364]

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[356] *Id*.
[357] *Id*.
[358] *AB-2684 Parent and child relationship. (2017-2018)*, CAL. LEG. INFO. (Sept. 28, 2018), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2684; A.B. 2684, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[359] Matthew S. Bajko, *Political Notebook: Gov Brown signs a dozen LGBT bills into law*, THE BAY AREA REPORTER (Oct. 3, 2018), https://www.ebar.com/news/news//266271.
[360] *Measure to Provide Equal Treatment to Children Born to Same-Sex Couples Passes Assembly Committee*, CALIFORNIA STATE ASSEMBLY DEMOCRATIC CAUCUS (Apr. 11, 2018), https://a50.asmdc.org/press-releases/20180411-measure-provide-equal-treatment-children-born-same-sex-couples-passes.
[361] *AB-2684 Parent and child relationship. (2017-2018)*, *supra* note 1.
[362] *Id.*
[363] *Id.*
[364] *Id.*

This legislation aligns the procedures by which parents access parentage rights, regardless of marital status or gender identity.[365] Significantly, California Family Code §7540 was amended to clarify that the conclusive marital presumption of parentage applies to parents of all genders.[366] The prior language of § 7540 referred only to different-sex couples: "…the child of a wife cohabiting with her husband . . . is conclusively presumed to be a child of the marriage."[367] Under the amended provisions, married couples of whatever gender are presumptively parents to any child born into the marriage.[368] The Act also amended the voluntary declaration of parentage rules so that they apply equally to parents of children conceived through assisted reproduction.[369]

The Act also creates a process whereby children conceived through donated sperm or eggs can access nonidentifying medical information about the donor at any time and, when eighteen years of age and with the consent of the donor, may access personal identifying information about the donor.[370] Finally, the bill updates genetic testing provisions in determining parentage to clarify that the procedures apply to men and women equally.[371]

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[365] *Id.*
[366] *Id.*
[367] CAL. FAM. CODE § 7540.
[368] A.B. 2684, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[369] *Id.*
[370] *Id.*
[371] *Id.*

COLORADO LEGISLATION

🕮 H.B. 18-1094
2018 Leg. Sess. (Colo. 2018)
Report by John Byerly

The Children and Youth Mental Health Treatment Act of 2018 was introduced into the Colorado House of Representatives as Bill H.B. 18-1094 and it was signed into law on May 30, 2018 by Governor John W. Hickenlooper.[372] The legislation amended and permanently extended the Child Health Treatment Act and retitled it the Children and Youth Mental Health Treatment Act.[373] The Act aims to increase access to mental health treatment, and allows parents and guardians to request subsidized mental health care for children and youth who are not "categorically eligible for Medicaid" but are still at risk for out of home placement.[374]

This new law establishes a five-part definition for a child or youth "at risk for out-of-home placement."[375] Among other requirements, the child or youth must have a mental health disorder which places them at risk of unwarranted child welfare involvement if they do not receive treatment.[376] While the child or youth must be under the age of eighteen to satisfy the gateway criteria, they may remain eligible for these services until they reach twenty-one years of age.[377]

The Act stipulates that the mental health agency must use a "standardized risk stratification tool" to determine eligibility for services, and requires written notification to the parent or guardian of the outcome of the determination and information about available resources.[378]

To provide for the expanded access to services, the Act increases funding for these mental health treatment services from 1.3 million to 3 million dollars per fiscal year.[379] The increased funding for these services

[372] *HB18-1094 Children and Youth Mental Health Treatment Act*, COLO. GEN. ASSEMBLY, https://leg.colorado.gov/bills/hb18-1094 (last visited Mar. 3, 2018).
[373] *Id.*
[374] COLO. REV. STAT. § 27-67-102(2) (2018); *id.* § 27-67-103(2).
[375] *Id.* § 27-67-103(2).
[376] *Id.*
[377] *Id.* § 27-67-103(2)(e).
[378] *Id.* § 27-67-104(1)(a).
[379] Behavioral Health, *Child Mental Health Treatment Act Expanded*, COLO. DEP'T OF HUMAN SERV. (May 22, 2018, 4:54 PM),

comes with amended rules for using the funding, such as strictly requiring that the funding "must be used to assist the lowest income families to ensure the maximum use of appropriate least restrictive treatment services and to provide access to the greatest number of children and youth."[380]

https://www.colorado.gov/pacific/cdhs/article/child-mental-health-treatment-act-expanded.

[380] COLO. REV. STAT. § 27-67-106.

DELAWARE LEGISLATION

🕮 H.B. 335
2017-2018 Leg., Reg. Sess. (Del. 2018)
Report by Hoang Pham

Delaware H.B. 335 amended Title 14 of the Delaware Code to establish the Delaware School Safety and Security Fund ("the Fund").[381] The Fund provides "partial or full funding to school districts, vocational technical schools, or charter schools (Local Education Agency's [sic]) for projects to improve school safety or security."[382] The legislation was passed in the Delaware House and Senate with unanimous bipartisan support.[383]

Under the legislation, five million dollars of funding will initially be provided from the state's budget, with further funding dependent upon available resources.[384] The funding is specifically designated for elementary schools, middle schools, and high schools in Delaware.[385] The Delaware Department of Education will administer the Fund to local school districts for the improvement of school safety and security.[386] The funds will be allocated proportionately to local school districts based on Delaware's metric for determining state financial support in each school district[387] (calculated by the Department of Education each year pursuant to sections 1704 and 1710 of Title 14).[388]

Local school districts and governing school boards will work with the Department of Education and Department of Safety and Homeland Security to determine what projects will be funded.[389] Projects eligible for funding include:

> (1) camera and monitoring equipment; (2) vestibule improvements to include framing, glass, hardware, and doors; (3) panic button hardware or software to include electronic software applications and technology, cell phone

[381] H.B. 335, 2017-2018 Leg., Reg. Sess. (Del. 2018).
[382] *Id.*
[383] *House Substitute 1 for House Bill 335*, DEL. GEN. ASSY. (Sept. 10, 2018), http://legis.delaware.gov/BillDetail?legislationId=26848.
[384] H.B. 335.
[385] *Id.*
[386] *Id.*
[387] *Id.*
[388] DEL. CODE, tit. 14 §§ 1704, 1710 (2011).
[389] H.B. 335.

> technology and applications; (4) door locks, window locks, or similar items; (5) magnet security systems; (6) swipe card systems; (7) visitor pass cameras and security systems; (8) door jamb opening sensors; (9) active shooter training; (10) motion detectors; (11) security lighting; (12) bus camera security systems; (13) bus GPS location systems; and (14) restraint training.[390]

Furthermore, H.B. 335 grants the Department of Education and the Department of Safety and Homeland Security power to create a review process and establish a list of criteria for school safety funding requests.[391] A supporter of the bill, Sen. Stephanie Hansen, explained, "Giving schools the support to invest in safety infrastructure is a matter of common sense. . . . It's also important to give schools the flexibility to tailor [these] investments to their needs."[392] H.B. 335 will take effect upon the state legislature's next review of the Annual Appropriations Act.[393]

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[390] *Id.*
[391] *Id.*
[392] *Carney Signs School Safety Legislation into Law*, COASTAL POINT (Sept. 27, 2018, 2:57 PM), http://www.coastalpoint.com/43060/feature/carney-signs-school-safety-legislation-law.
[393] H.B. 335.

HAWAII LEGISLATION

🕮 S.B. 2791, 29th Leg. (Haw. 2018)
Report by John Byerly

On July 10, 2018, Hawaii enacted S.B. 2791,[394] creating the Kawailoa youth and family wellness centers under the authority and supervision of Hawaii youth correctional services.[395]

The services these centers offer are intended to reduce the occurrence of delinquency for at-risk youth and young adults under the age of twenty-four.[396] The Act defines "at risk" to include youth and young adults "who [have] had contact with the police, who [are] experiencing social, emotional, psychological, educational, or physical problems . . . ."[397] Services will be provided to youths who voluntarily choose to use them, serving as outreach programs instead of imprisonment programs.[398] Youth and young adults admitted to the centers will be "segregated" from the persons detained in the correctional facility.[399] These wellness centers provide an expanded form of outreach to these youth and young adults because they allow for the voluntary admission of those who have had no contact with the police yet deal with problems that are likely to drive them to delinquency.[400]

The centers will offer a variety of services to eligible youth who voluntarily admit themselves.[401] These centers will "provide a continuum of services" including "an integrated intake/assessment and case management system," "necessary educational, vocational, social counseling and mental health services," and "community-based shelter and residential facilities," "oversight of youth services," and "other programs which encourage the development of positive self-images and useful skills in

[394] 2018 Archives: SB2791 SD2 HD1 CD1, HAW. STATE LEG., https://www.capitol.hawaii.gov/Archives/measure_indiv_Archives.aspx?billtype=SB&billnumber=2791&year=2018 (last visited Mar. 3, 2018).
[395] S.B. 2791, 29th Leg. (Haw. 2018) (enacted), *available at* https://www.capitol.hawaii.gov/session2018/bills/SB2791_CD1_.htm.
[396] *Id.*
[397] *Id.*
[398] *Id.*
[399] *Id.*
[400] *Id.*
[401] *Id.*

youth."[402] Other services and programs may include "mental health services and programs, substance abuse treatment programs, crisis shelters for homeless youth, crisis shelters for victims of human and sex trafficking, vocational training, group homes, day treatment programs, aftercare, independent and family counseling services, educational services, and other services and programs that may be required to meet the needs of youth or young adults."[403]

[402] *Id.*
[403] *Id.*

MARYLAND LEGISLATION

🕮 S.B. 725
2018 Reg. Sess. (Md. 2018)
Report by Corrina Seeley VanDenBaard

Maryland S.B. 725 (C.H. 366) updates previous anti-cyberbullying legislation by updating the requirements regarding "school policies on and mandatory reporting of incidents of bullying, harassment, and intimidation."[404] Maryland Senator Bobby Zirkin sponsored the bill, which was signed by Governor Hogan on May 8, 2018.[405] This bill gained great bipartisan support, passing through both Houses with little opposition.[406]

This law empowers schools to report cyberabuse or bullying to legal authorities. Previously, school principals were required to report such harassment to the Board of Education before reporting outside the school system.[407] S.B. 725 authorizes a school principal to report directly to a law enforcement agency after a completed investigation has reasonably shown that a "student has engaged in conduct that constitutes an offense under the criminal statutes for first-degree assault, second-degree assault, misuse of electronic communication or interactive computer service, or revenge porn."[408]

S.B. 725 also updates the requirements of mandatory reporting to the parents of both the alleged victim and the alleged perpetrator.[409] The law mandates a protocol to notify the parent or guardian of the alleged victim of bullying, harassment, or intimidation "within three business days after the date the act is reported."[410] Additionally, schools are now required to notify the parent or guardian of the alleged perpetrator within five business days after the incident has been reported.[411]

The updates made by S.B. 725 make an effort to address and prevent

[404] DEP'T OF LEGIS. SERV., FISCAL AND POLICY NOTE ON S.B. 725 at 1, *available at* http://mgaleg.maryland.gov/2018RS/fnotes/bil_0005/sb0725.pdf (last updated May 11, 2018).
[405] S.B. 725, 2018 Leg., Reg. Sess. (Md. 2018) (enacted).
[406] *Id.*
[407] *Id.*
[408] *Id.*
[409] *Id.*
[410] *Id.*
[411] *Id.*

bullying throughout the entire Maryland school system.[412] A Maryland State Department of Education report found a large variance between local school systems regarding incidents of harassment and intimidation.[413] The report asserted that the differences between school districts' practices could be the result of different levels of bullying awareness in schools.[414]

This effort to prevent bullying met some resistance. The ACLU opposed this legislation, along with its counterpart, S.B. 726, on the ground that it restricted freedom of speech.[415] Despite opposition, the legislation was signed into law and went into effect on October 1, 2018.[416] Maryland principals may now report cyberbullying and abuse to the police, without reporting internally to the Board first.

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[412] *See, e.g.*, DEP'T OF LEGIS. SERV., *supra* note 1.
[413] *Id.*
[414] *Id.*
[415] *SB 725 - Bullying, Cyberbullying, Harassment, and Intimidation - Civil Relief and School Response*, ACLU OF MD. (2018), https://www.aclu-md.org/en/legislation/sb-725-bullying-cyberbullying-harassment-and-intimidation-civil-relief-and-school (last visited Oct. 13, 2018).
[416] S.B. 725.

TEXAS LEGISLATION

🕮 S.B. 30
2017-2018 Leg., Reg. Sess. (Tex. 2017)
Report by Hoang Pham

On June 9, 2017, S.B. 30 was signed into law, requiring Texas high school students to take a course on how to interact with police officers in order to graduate.[417] The law went into effect on September 1, 2018, for all students entering grade 9 during the 2018-2019 school year and thereafter.[418] The bill also requires police officers to go through training.[419] Current officers must complete the "civilian interaction training program" no later than January 1, 2020, except for officers who complete the program in their basic training.[420] Driver education programs must also include the curriculum in their instruction.[421] The bill does not stipulate whether new high school drivers in driver education must take the course twice.

The curriculum was developed by the State Board of Education and the Texas Commission on Law Enforcement based on recommendations made by a Stakeholder Task Force on Police and Citizen Interactions.[422] The instruction is required to include:

> [T]he role of law enforcement and the duties and responsibilities of peace officers; a person's rights concerning interactions with peace officers; proper behavior for civilians and peace officers during interactions; laws regarding questioning and detention by peace officers, including any law requiring a person to present proof of identity to a peace officer, and the consequences for a person's or officer's failure to comply with those laws; and

[417] S.B. 30, 2017-2018 Leg., Reg. Sess. (Tex. 2017).
[418] *Implementation of Senate Bill 30, Community Safety Education Act*, TEX. EDUC. AGENCY, https://tea.texas.gov/About_TEA/News_and_Multimedia/Correspondence/TAA_Letters/Implementation_of_Senate_Bill_(SB)_30,_Community_Safety_Education_Act/ (last visted Sept. 28, 2018).
[419] *Id.*
[420] *Id.*
[421] *Id.*
[422] S.B. 30.

> how and where to file a complaint against or a compliment on behalf of a peace officer.[423]

The course has been paired with a 16 minute video to teach students how to act with police officers during a traffic stop.[424] Following an introduction by bill author Sen. Royce West, the video shows a how teenagers who are speeding should interact with the police and how the police should act during these encounters.[425] Later in the video, there is a Q&A between students and officers.[426]

West says the Act is a response to fatal interactions between law enforcement and unarmed citizens during the summer of 2016.[427] He emphasizes the comprehensive approach S.B. 30 takes, bringing together community stakeholders in crafting the curriculum.[428] West also says that S.B. 30 addresses the need for police officers to receive training on how to properly and professionally communicate with the diverse communities they serve.[429] It also teaches high school students what their rights are and how to safely interact with police officers.[430]

The curriculum that the Stakeholder Task Force on Police and Citizen Interactions wrote includes the following guidance: do not to shuffle your feet as an officer approaches; searching for your paperwork might look like you are reaching for a weapon; if you are traveling alone on a dark road, it is okay to turn the inside lights on; you can also slow down, switch on your emergency lights, then find a well-lit populated area before stopping.[431] The curriculum also advises individuals that they may call 9-1-1 to confirm that the stop is being made by a real police officer, but that if they do so, they should not point their phone at an officer and they should keep their phone visible.[432]

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[423] *Id.*
[424] Andrea Diaz, *Texas High School Students Won't Graduate Unless They Watch Video On How to Interact With Police*, CNN, https://www.cnn.com/2018/10/17/us/texas-students-must-watch-this-police-video-trnd/index.html (last visited Nov. 9, 2018).
[425] *Id.*
[426] *Id.*
[427] Royce West, *Here's Hope That New Safety Law Can Be That 'Rising Tide'*, TEX. ST. SENATE, https://senate.texas.gov/press.php?id=23-20180910a (last visited Nov. 9, 2018).
[428] *Id.*
[429] *Id.*
[430] *Id.*
[431] *Id.*
[432] *Id.*

UTAH LEGISLATION

🕮 H.B. 65
2018 Gen. Sess. (Utah 2018)
Report by Janelle Pritchard

Utah unanimously passed a statute that amends the definition of negligence to allow both parents and children more autonomy.[433] The new law does not redefine childcare negligence entirely, but rather specifies behavior that is no longer criminalized as child neglect.[434] Among other activities, the new statute explicitly allows, "(iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or (iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities."[435] These activities include: traveling to and from school or "commercial or recreation facilities," "engaging in outdoor play" under specific conditions, staying in a vehicle unattended, staying home alone unsupervised, and "engaging in similar independent activities."[436]

Behind this legislation is a new parenting philosophy known as "Free Range Parenting."[437] This idea claims children ought to be given greater independence and that engaging in some unsupervised activities will help children grow into adults better prepared to navigate the world.[438] This philosophy posits that parents ought to also have more freedom in deciding how to raise their children by determining when their children can engage in certain unsupervised activities.[439]

While these amendments specify that neglect does not apply to a "child, whose basic needs are met and is of sufficient age and maturity to

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[433] Nicole Pelletiere, *Utah Passes 'Free-Range Parenting' Law Allowing Kids to Do Some Things Without Parental Supervision*, ABC News (Mar. 27, 2018), https://abcnews.go.com/GMA/Family/utah-passes-free-range-parenting-law-allowing-kids/story?id=54020213 (last visited Oct. 14, 2018).
[434] UTAH CODE ANN. § 65-91 (2018); *see also* S.B. 65 Child Neglect Amendments, UTAH ST. LEGIS., https://le.utah.gov/~2018/bills/static/SB0065.html.
[435] *Id.*
[436] *Id.*
[437] Pelletiere, *supra* note 1.
[438] *Id.*
[439] *Id.*

avoid harm or unreasonable risk," the amendment does not specify an age range that qualifies as of "sufficient age and maturity."[440] The list of activities that do not qualify as neglect is also vague, ending with the phrase: "engaging in similar independent activity."[441] These vague portions of the amendment give parents more freedom to determine at what age their children should engage in certain activities as well as the nature of the activities.[442] While parents may allow their children to engage in other unsupervised activities, they must be "similar" to the other listed "independent activities."[443] The goal is to allow parents to trust their children with responsibilities they were unable to before.[444]

[440] UTAH CODE ANN. § 65-91 (2018).
[441] *Id.*
[442] Pelletiere, *supra* note 1.
[443] *See id.*
[444] *See id.*

VIRGINIA LEGISLATION

🕮 S.B. 699
2018 Sess. (V.A.2018) (enacted)
Report by Jenna Rogenski

Virginia S.B. 669 subjects minors age 14 or older who are ordered to involuntary inpatient treatment, outpatient treatment, temporary detention, or agreed to voluntary admission, to the same restrictions against possessing, purchasing, or transporting a firearm as adults similarly ordered.[445] This bill was sponsored by Virginia Senator Creigh Deeds.[446] Deeds said the bill was inspired by one of his constituents whose son purchased a gun to commit suicide at 18 after previously holding a temporary detention order.[447] The bill was signed by Governor Ralph Northam on April 4, 2018.[448]

Virginia law previously prohibited minors and adults who had been committed or detained for mental health treatment from purchasing a firearm.[449] However, adults could not purchase a firearm until they were certified as mentally competent, whereas previously detained juveniles could purchase a firearm once they reached legal age.[450]

Additionally VA SB669 amended sections 16.1-337, 16.1-344, and 18.2-308.1:3 of the Virginia Code.[451] It added section 16.1-337.1, mandating the order from a commitment hearing be filed with the clerk where the hearing took place no later than the close of the following business day; that upon receipt, the clerk forward the order to the Central Criminal Records Exchange along with certification no later than the close of the next business day; and that the forms and orders shall be kept

[445] S.B. 699, 2018 Leg., Reg. Sess. (Va. 2018) (enacted).
[446] *SB 669 Involuntary Mental Health Treatment; Minors, Access to Firearms,* V.A. LEG. INFO SYST., https://lis.virginia.gov/cgi-bin/legp604.exe?181+sum+SB669 (last visited Dec. 1, 2018) [hereinafter *SB 229 Leg. Info*].
[447] Charlotte Rene Woods, *1 of 70 Gun Bills Was Approved In Virginia As Issue Deeply Divides Legislators*, *Delmarva Now* (Mar. 13, 2018, 6:00 AM), https://www.delmarvanow.com/story/news/2018/03/13/virginia-gun-bills-fail/418888002/.
[448] *VA SB669*, BILL TRACK 50, https://www.billtrack50.com/BillDetail/918387 (last visited Dec. 1, 2018).
[449] Woods, *supra* note 3.
[450] *Id.*
[451] SB 669 Leg. Info, *supra* note 2.

confidential, used only to determine a person's firearm eligibility.[452] Medical records shall not be forwarded to the Central Criminal Records Exchange.[453] Under the newly added section 16.1-344, the court shall advise the minor whose involuntary commitment is being sought that if the minor chooses to be voluntarily admitted, they will be prohibited from possessing, purchasing, or transporting a firearm.[454] Under the newly added Section 18.2-308.1:3, a minor 14 years or older who was involuntarily admitted, ordered to mandatory treatment, or subject to a temporary detention order is prohibited from purchasing, possessing, or transporting a firearm.[455] This legislation was the only one of over 70 gun-related bills to be approved by the Virginia General Assembly. It appears to be a positive step towards gun safety in schools.[456]

[452] VA. CODE ANN. § 16.1-377.1 (2018).
[453] *Id.*
[454] *Id.* § 16.1-344 (2018).
[455] *Id.* § 18.2-308.1:3 (2018).
[456] Woods, *supra* note 3.