RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES SUPREME COURT

🕮 *Apodaca v. Raemisch*
139 S. Ct. 5 (2018)
Report by John Byerly

Apodaca v. Raemisch considers the legality of long-term solitary confinement with little outdoor exercise time.[1] Although the Court denied the petitioners' writs of certiorari, Justice Sotomayor wrote a concurrence in which she reflected upon the issue of solitary confinement more generally.[2] The three petitioners were former inmates of the Colorado State Penitentiary (CSP).[3] The inmates filed a writ of certiorari, arguing they were deprived of outdoor exercise without sufficient security justification.[4] All three were held in solitary confinement during their incarceration.[5] The inmates were held in 90 square foot cells twenty-three hours a day and had "little human contact except with prison staff."[6] Life in solitary confinement was described as "one of extreme isolation."[7] The inmates were only allowed out of their cell one hour per day, five days a week.[8] During this "exercise time," the inmates were in a 90 square foot room, empty except for a chin-up bar and two barred windows.[9] The windows provided the only source of fresh air and sunlight.[10]

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1 Apodaca v. Raemisch, 139 S. Ct. 5, 6 (2018).
2 *Id.*
3 *Id.*
4 *Id*. at 7.
5 *Id.* at 6.
6 *Id.* at 6-7.
7 *Id. See also* Anderson v. Colorado, 887 F. Supp. 2d 1133, 1137 (D. Colo. 2012).
8 *Apodaca*, 139 S. Ct. at 6.
9 *Id.*
10 *Id.*

The Supreme Court considered the writ of certiorari flawed due to "arguments unmade and facts underdeveloped."[11] In her concurrence, Justice Sotomayor wrote that while the presence or absence of a valid security justification was a vital part of the analysis of the Court of Appeals, the litigation did not focus on that issue.[12] As a result of the incomplete arguments submitted, Justice Sotomayor concurred with the other justices in denying the writ of certiorari, in spite of her "deep misgivings about the conditions described."[13]

The second part of Justice Sotomayor's concurrence reflected a trend towards banning extremely isolated solitary confinement.[14] Sotomayor targeted the lack of access to outdoor exercise, lack of visitors allowed, and lack of human contact with anyone other than a guard.[15] Sotomayor quoted Charles Dickens' description of the effects of solitary confinement as "the immense amount of torture and agony which this dreadful punishment, prolonged for years, inflicts upon the sufferers."[16] Justice Sotomayor concluded her concurrence by urging courts and correction officers to be "alert to the clear constitutional problems" of solitary confinement that "comes perilously close to a penal tomb" for prisoners.[17]

[11] *Id.*
[12] *Id.* at 7.
[13] *Id.* at 7-8.
[14] *Id.* at 8-10.
[15] *Id.*
[16] *Id.* at 9-10.
[17] *Id.* at 10.

UNITED STATES COURT OF APPEALS, NINTH DISTRICT

🕮 *Mann v. Cty. of San Diego*
907 F.3d 1154 (9th Cir. 2018)
Report by Mats Dagdigian

In *Mann v. Cty. of San Diego*, the Ninth Circuit held that San Diego County violated Mark and Melissa Mann's' substantive due process rights when it performed medical examinations on their children without their notice or consent.[18] In April 2010, San Diego County social workers removed the children of Mark and Melissa Mann from their home under suspicion of child abuse and took them to Polinsky Children's Center.[19] The day after their admission to Polinsky, doctors subjected the children to invasive medical examinations, including gynecological and rectal exams.[20] The County routinely conducted these procedures on children in Polinsky, in addition to an initial medical screening regarding urgent medical needs and contagious diseases.[21] The Mann parents were not asked for consent before the examinations.[22] Indeed, the parents did not find out about the examinations until months later, after one of the Mann children "told Melissa that 'two ladies at [Polinsky] said they needed to touch me down there,'" and demonstrated what occurred.[23]

The Manns sued the County of San Diego, San Diego County Health and Human Services Agency, and the Polinsky Children's Center, alleging violations of the parents' Fourteenth Amendment rights and children's Fourth Amendment rights.[24] The district court concluded the County should have notified the parents of the examinations, but the County was not required to obtain consent or a court order before performing them.[25] Both parties appealed.

The Ninth Circuit reversed, ruling the County violated the Mann parents' substantive due process rights not just by failing to notify them, but

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[18] Mann v. Cty. of San Diego, 907 F.3d 1154, 1156-57 (9th Cir. 2018).
[19] *Id.* at 1156.
[20] *Id.* at 1158.
[21] *Id.*
[22] *Id.*
[23] *Id.* at 1159.
[24] *Id.*
[25] *Id.* at 1160.

also by obtaining neither parental consent nor judicial authorization.[26] Judge Wardlaw emphasized the importance of parental consent, noting a parent's right to notice and consent protects children from traumatic medical experiences.[27] While notice and consent is not required in medical emergencies or if there is a risk that material physical evidence might dissipate, these examinations were routine intake occurrences.[28] The Court thus determined the examinations violated the Manns' Fourteenth Amendment rights, as well as the rights of similarly situated parents.[29]

The Court also ruled that the County violated the Mann children's Fourth Amendment right to be free from unreasonable searches and seizures.[30] The Polinsky examinations were investigatory, are considered searches, and are per se unreasonable without a warrant.[31] Furthermore, the examinations were extremely intrusive on the Mann children's legitimate expectation of privacy in "not being subjected to medical examinations without their parents' notice and consent," which outweighs any government interest in conducting the exams without authorization.[32] To protect the rights of both parents and children, San Diego County must provide notice to parents and obtain consent or a court order before performing non-emergency medical examinations on children in their care.[33]

🕮 *Saravia for A.H. v. Sessions*
905 F.3d 1137 (9th Cir. 2018)
Report by Shelly Richter

The United States Court of Appeals for the Ninth Circuit required the Department of Homeland Security ("DHS") to provide prompt hearings to noncitizen unaccompanied minors who were detained, released to a sponsor, and rearrested on allegations of gang affiliation.[34]

In 2017, Immigration and Customs Enforcement ("ICE") agents and state law enforcement officials executed Operation Matador, which

[26] *Id.* at 1160-61.
[27] *Id.* at 1162.
[28] *Id.* at 1163.
[29] *Id.* at 1164.
[30] *Id.* at 1167.
[31] *Id.* at 1164.
[32] *Id.* at 1165.
[33] *Id.* at 1167.
[34] Saravia for A.H. v. Sessions, 905 F.3d 1137, 1141, 1145 (9th Cir. 2018).

"targeted undocumented immigrants with alleged connections to criminal gangs."[35] A.H. was one of the minors arrested.[36] A.H. was born in Honduras in 2000, entered the United States in 2015, and requested assistance of immigration officials at the border.[37] He was detained by the United States Office of Refugee Resettlement ("ORR"), which determined that he did not pose a danger and released to his mother in New York.[38] In June 2017, ICE officers arrested A.H. on a warrant that alleged removability and flew him to a juvenile detention facility in California.[39]

A.H. filed a putative class action in the United States District Court for the Northern District of California, alleging violations of procedural due process rights protected by the Fifth Amendment for a putative class of noncitizen minors.[40] A.H. moved for a preliminary injunction and class certification, both of which wes granted.[41] The District Court ordered that the minor and his or her sponsor must receive notice of the basis of rearrest, and that the government justify detention of the minor at a hearing before a neutral decisionmaker within seven days of the arrest.[42]

On review, the Court of Appeals considered Plaintiffs' likelihood of success on their Fifth Amendment claims.[43] It focused on the revocation of the minors' previous placements with sponsors, which had been determined the least restrictive appropriate settings for the minors.[44] The Court noted, "If DHS could, the day after a minor was released to a parent or other sponsor, arrest the minor … and restart the process, the … instruction to place the minor in the least restrictive appropriate setting would mean little."[45]

The Court of Appeals held that any existing procedural protections afforded to noncitizen minors were inadequate: for example, while ORR must review a minor's placement in a secure facility on a monthly basis, "the process is entirely unilateral" and the minor does not have an

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[35] *Id.* at 1140.
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.* at 1140–41.
[40] *Id.* at 1141.
[41] *Id.*
[42] *Id.* (quoting Saravia v. Sessions, 280 F. Supp. 3d 1168, 1197, 1205–06 (N.D. Cal. 2017)).
[43] *Id.* at 1142.
[44] *Id.*
[45] *Id.* at 1143 (quoting *Saravia*, 280 F. Supp. 3d at 1196).

opportunity to answer the charges.[46] Further, while minors in ORR custody have the right to a bond hearing, the process can take months.[47] Thus, the District Court did not abuse its discretion finding that the class members would remain in ORR custody "indefinitely" without a preliminary injunction.[48]

🕮 *Scott v. Cty. of San Bernardino*
903 F.3d 943 (9th Cir. 2018)
Report by Mats Dagdigian

Scott v. Cty. of San Bernardino addressed extreme student discipline by law enforcement officers. In October 2013, Etiwanda Intermediate Middle School administrators asked school resource officer Sheriff's Deputy Luis Ortiz to help mediate a dispute between a group of twelve- and thirteen-year-old girls.[49] The plaintiffs, minors S.S., L.R., and R.H., had gone to the principal's office for help after being consistently bullied and threatened by a classmate.[50] The plaintiffs were summoned to a meeting with the alleged bully, three other girls, and Deputy Ortiz.[51] After a few minutes, Ortiz decided the girls were unacceptably indifferent to his efforts and not taking the discussion seriously.[52] Ortiz informed the girls that he decided to arrest them, stating: "Here is a good opportunity for me to prove a point and make you guys mature a lot faster."[53] Deputy Ortiz stated he did not care who the instigators of the conflict were: "To me, it is the same, same ticket, same pair of handcuffs."[54] Ortiz called for backup, handcuffed all seven students, and transported six of them, including the plaintiffs, to the San Bernardino County Sheriff's Department.[55]

S.S., L.R., and R.H.'s parents sued Deputy Ortiz, his partner Deputy Thomas, and the County of San Bernardino.[56] The district court granted

[46] *Id.* at 1144.
[47] *Id.*
[48] *Id.* at 1145.
[49] Scott v. Cty. of San Bernardino, 903 F.3d 943, 945-46 (9th Cir. 2018).
[50] *Id.* at 947.
[51] *Id.*
[52] *Id.*
[53] *Id.*
[54] *Id.*
[55] *Id.*
[56] *Id.* at 948.

summary judgment to the plaintiffs, and the defendants appealed to the Ninth Circuit.[57]

In analyzing Ortiz's actions, Judge Nguyen of the Ninth Circuit applied the *T.L.O.* two-part reasonableness test[58] for analyzing school searches and seizures.[59] First, "one must consider whether the action was justified at its inception; second, one must determine whether the search [or seizure] as actually conducted was reasonably related in scope to the circumstances which justified the interference in the first place."[60] The Court ruled Ortiz's actions were not justified at inception; Ortiz stated he arrested the girls to teach them a lesson, not to punish them for committing a crime.[61]

The arrests also failed to satisfy the second prong of the *T.L.O.* test.[62] Ortiz was called to the school to mediate an "ongoing feud," and the arrest of seven middle school girls was a greatly disproportionate reaction to that assignment.[63] Indeed, the Court found "[n]o reasonable officer could have reasonably believed that the law authorizes the arrest of a group of middle schoolers in order to prove a point."[64] The Court affirmed the district court's summary judgment in favor of the plaintiffs.[65] The Ninth Circuit firmly stated that "proving a point" is not a valid basis for arresting a disruptive student, let alone a group of students.

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[57] *Id.*

[58] New Jersey v. T.L.O., 469 U.S. 325, 341 (1985).

[59] *Scott*, 903 F.3d at 948-49.

[60] *Id.* (internal quotation marks omitted).

[61] *Id.* at 949.

[62] *Id.* at 950.

[63] *Id.*

[64] *Id.* at 951.

[65] *Id.* at 953.

UNITED STATES DISTRICT COURT, DISTRICT OF ARIZONA

🕮 *Zhou v. Villa de Paz Apt., LLC*
339 F. Supp. 3d 910 (D. Ariz. 2018)
Report by Corrina Seeley VanDenBaard

In *Zhou v. Villa de Paz Apt., LLC*, the United States District Court for the District of Arizona held that an apartment complex's rules requiring the supervision of children violates the Federal Housing Act ("FHA").[66] Plaintiffs were two couples and their minor children residing in Villa de Paz in 2016.[67] During Plaintiffs' residency, Villa de Paz sent them a notice which read:

> Minor occupants [need] to be supervised at all times! Parents are responsible of [sic] their children when playing outside; please keep your children in front of your units. . . . Not following the rules of the property will result in a 10 day notice.

Other notices to Plaintiffs called for children to be under parental supervision at all times.[68]

Plaintiffs also alleged Defendant's property manager yelled at Plaintiffs' children when the children were playing in the apartment complex's common areas.[69] After one Plaintiff confronted the property manager for yelling at her children, the property manager allegedly gave the Plaintiff another notice saying, "no standing, walking, sitting, dancing on picnic tables is allowed," and "[minor] occupants need to be supervised at all times."[70] The property manager allegedly told another minor occupant that he must stop playing with balls outside or else, "you'll be getting kicked out."[71]

In this case, Plaintiffs were seeking a grant of summary judgment for their claim that the Defendant violated FHA provision 42 U.S.C.

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66 Zhou v. Villa de Paz Apt., LLC, 339 F. Supp. 3d 910, 914 (D. Ariz. 2018).
67 *Id.* at 911.
68 *Id.*
69 *Id.* at 912.
70 *Id.*
71 *Id.*

§ 3604(c).[72] This FHA provision makes it illegal to "make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on . . . familial status."[73] Plaintiffs argued that the notices that Villa de Paz sent out showed discriminatory treatment of families with minor children.[74]

Plaintiffs' cited several California District Court cases in support of their claim that the Defendant's rules were discriminatory.[75] Collectively, these prior decisions held that policies which require children to be supervised at all times or which ban children from playing in and around the building are facially discriminatory.[76] In this case, the district court followed the reasoning behind the earlier decisions and thus held that the Defendant's policy requiring supervision of minor children violated the FHA as a matter of law.[77] From this Court's ruling, it is clear that moving forward, Arizona families residing in rental properties will be protected under the FHA from landlords' discriminatory policies that place restrictions on minor children.

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[72] *Id.* at 913.
[73] *Id.*
[74] *Id.* at 914.
[75] *Id.*
[76] *Id.*
[77] *Id.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

🕮 *J.L. v. Cissna*
341 F. Supp. 3d 1048 (N.D. Cal. 2018)
Report by John Byerly

In *J.L. v. Cissna*, the Northern District of California upheld the authority of the California Probate Courts to appoint guardians to juvenile immigrants, an important step in granting juveniles Special Immigrant Juvenile Status ("SIJ").[78] Juveniles without a guardian are not eligible for SIJ, so juveniles abandoned by their family cannot obtain SIJ without these guardianship appointments.[79] This case, filed by four immigrant juveniles who had been denied SIJ, was against the United States Department of Homeland Security ("DHS"), the United States Citizenship and Immigration Services ("USCIS"), and individual officers in charge of those departments.[80] Every year, some immigrant visas are granted to juveniles with the SIJ status.[81] Plaintiffs filed for injunction against these two agencies to prevent those agencies from enforcing a new policy under which they would not be entitled to SIJ status. Plaintiffs argued that the new policy was unlawful.[82]

In 2015, the California Legislature granted the California Probate Courts authority to appoint guardians to these juveniles in relation to the juveniles' petition for SIJ Status.[83]In the summer of 2017, the USCIS began holding applications for SIJ status, waiting on instructions from the USCIS Office of Chief Counsel (OCC).[84] In February of 2018, the OCC issued guidance to the USCIS instructing that "[t]he evidence submitted must establish that the court had the power and authority to make the required determinations about the care and custody of the petitioner, which includes parental reunification, as a juvenile."[85]

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[78] J.L. v. Cissna, 341 F. Supp.3d 1048, 1058-1060 (N.D. Cal. 2018).
[79] *Id*. at 1056-57.
[80] *Id*. at 1054.
[81] *Id.*
[82] *Id*.
[83] *Id*. *See also* CAL. PROB. CODE § 1510.1 (West 2019).
[84] *J.L.*, 341 F. Supp.3d at 1056-57.
[85] *Id.* at 1057.

USCIS argued that the California Probate Courts lack the authority to make SIJ findings such as the determinations that reunification with the juvenile's parents is not viable.[86] The Court in this case held that California Probate Courts do have the "jurisdiction under California law to make judicial determinations regarding the custody and care of children within the meaning of the federal Immigration and Nationality Act . . . ."[87] The Court quoted USCIS guidance codes stating that USCIS should, generally, not deny a petition based on state law, but instead defer to the State Juvenile Court's interpretation of its state law.[88] The Court also ruled that the USCIS denial of SIJ was a change of policy requiring an adequate explanation to enact, and that the USCIS gave none.[89] The Court held that the denial of SIJ status would do irreparable harm and was against the public interest. Thus, all the factors for a preliminary injunction were satisfied by the Plaintiffs.[90]

The Court granted the Plaintiffs' preliminary injunction, thus restricting the USCIS and Homeland Security from denying them SIJ on the basis of the purported lack of authority of the California Probate Courts.[91] Furthermore, these agencies were restricted from removing juveniles formerly denied SIJ for this reason and were required to provide fourteen day notice before taking enforcement actions against members of the Plaintiffs' proposed class.[92] Plaintiffs were ordered to move for class certification to protect their class of "18-20 year old juveniles who had been appointed guardians by California Probate Courts."[93]

🕮 *Ramos v. Nielsen*
336 F. Supp. 3d 1075 (N.D. Cal. 2018)
Report by Zoya Chakourski

The United States District Court for the Northern District of California granted a preliminary injunction barring the Department of Homeland Security ("DHS") from enforcing the federal government's termination of the Temporary Protected Status ("TPS") for citizens of Haiti,

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[86] *Id.* at 1059.
[87] *Id*. at 1058. *See also* CAL. CODE CIV. PROC. § 155(a)(1) (West 2016).
[88] *J.L.*, 341 F. Supp.3d at 1061.
[89] *Id*. at 1062-65.
[90] *Id*. at 1068-70.
[91] *Id*. at 1070-71.
[92] *Id.*
[93] *Id*.

Sudan, Nicaragua, and El Salvador until their case is decided on the merits.[94]

Pursuant to 8 U.S.C. § 1254a, the Attorney General may give TPS to countries impacted by natural disaster, ongoing conflict, or other conditions making the return of aliens to this country perilous.[95] This status allows alien citizens of the selected country to remain in the United States until it is safe for them to return, unless their presence jeopardizes U.S. security.[96] Under 8 U.S.C. § 1254a(b), the Attorney General may terminate the TPS of a country if he or she determines that the country's situation has improved.[97] Haiti, Sudan, Nicaragua, and El Salvador were given TPS due to natural disaster and conflict.[98] In late 2017 and early 2018, the federal government ordered termination of TPS for the four countries, alleging that they no longer meet TPS requirements.[99]

Plaintiffs are TPS beneficiaries from the four countries.[100] In issuing the preliminary injunction, the Court considered the probability of irreparable injury, balance or hardships, and the public interest, as well as the claim's likelihood of succeeding on the merits.[101]

The Court determined Plaintiffs would likely suffer significant injury and hardship if the injunction were not granted.[102] Most Plaintiffs have lived in the U.S. for many years.[103] Many hold jobs, own property, or attend education in the U.S.[104] Many have children in the U.S. – some children are citizens and many children have never known a life outside of the country.[105] The Court held that forcing Plaintiffs to return to their home countries would uproot their life, damaging their property interests, careers, and family.[106] The Court also held that many Plaintiffs perform valuable functions in society, therefore removing them would harm public interest.[107]

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94 Ramos v. Nielsen, 336 F. Supp. 3d 1075, 1080 (N.D. Cal. 2018).
95 *Id.* at 1081.
96 *Id.*
97 *Id.* at 1081-82.
98 *Id.* at 1082-84.
99 *Id.*
100 *Id.* at 1080.
101 *Id.* at 1084, 1089.
102 *Id.* at 1084-89.
103 *Id.*
104 *Id.*
105 *Id.*
106 *Id.*
107 *Id.* at 1086-89.

The Court then analyzed Plaintiffs' likelihood of success on their two claims – that the federal government violated the Administrative Procedure Act ("APA") and Constitutional Equal Protection.[108] The APA prohibits an agency from changing its policies without providing a reasonable explanation for the change.[109] DHS's rationale for terminating the four countries' TPS was that only the initial cause for TPS can be taken into account when assessing a country's eligibility for the status, not the country's current hardships.[110] The Court held that this explanation likely violated APA requirements.[111] The Court also found that the Trump administration has shown substantial aggression and racism towards minority immigrants, which may have influenced the decision to terminate TPS for the four countries, likely violating the Equal Protection Clause.[112]

Based on this analysis, the Court concluded that Plaintiffs would likely incur injury, hardship and public loss if the injunction was not granted, and that Plaintiffs were likely to prevail on the merits of their claims.[113] Thus, the Court granted the motion for a preliminary injunction.[114]

[108] *Id.* at 1084, 1089.
[109] *Id.* at 1089.
[110] *Id.* at 1090-99.
[111] *Id.*
[112] *Id.* at 1098-1108.
[113] *Id.* at 1097-1108.
[114] *Id.* at 1108.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF PENNSYLVANIA

🕮 *Fulton v. City of Philadelphia*
320 F. Supp. 3d 661 (E.D. Pa. 2018)
Report by Janelle Pritchard

The United States District Court for the Eastern District of Pennsylvania found that Catholic Social Services ("CSS") could not claim a religious exception to the anti-discrimination provision of their contract with the City of Philadelphia.[115] Ms. Sharonell Fulton and her employer, CSS, alleged 16 causes of action[116] against the City of Philadelphia based on the city's decision to cease referring children to the Plaintiffs' care.[117] CSS claimed the city's actions violated their religious and free speech rights[118] and asked the Court to require the city to once again refer children to CSS.[119] The city stopped referring children because of a breach of contract.[120]

CSS entered a services contract with the City of Philadelphia to provide services such as caring for foster children, certifying perspective foster parents, and supplying resources for the same.[121] The contract incorporated a provision from the Philadelphia Fair Practices Ordinance ("PFPO") which prohibited discrimination on the basis of "sex, sexual orientation, gender identity, [or] marital status."[122] The city's Department of Human Services discovered that CSS and another religion-based foster care service, Bethany Christian Services, were refusing services to same-sex couples.[123] In response, the city halted referrals to both agencies.[124] Bethany Christian Services changed its policy to allow the provision of

[115] Fulton v. City of Philadelphia, 320 F. Supp. 3d 661, 677 (E.D. Pa. 2018), *aff'd*, 922 F.3d 140 (3d Cir. 2019), *cert. granted sub nom.*, Fulton v. City of Philadelphia, Penn., No. 19-123, 2020 WL 871694 (2020).
[116] *Id. at* 668.
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.* at 673.
[121] *Id.* at 670.
[122] *Id.* at 671.
[123] *Id.*
[124] *Id.* 679

services to same-sex couples in accordance with the PFPO,[125] but CSS alleged that forcing service to same-sex couples would violate their rights under the Free Exercise Clause, the Establishment Clause, and the Pennsylvania Religious Freedom Act ("RFPA").[126]

The Court considered each of these claims and determined that the nondiscrimination provision in their contract was applicable.[127] Regarding the plaintiffs' Free Exercise claim, the court found that the policy in question is neutral and generally applicable[128] and that religious organizations like CSS were not unfairly targeted.[129] Accordingly, application of the law to them did not violate their Free Exercise rights. With respect to the Establishment Clause, CSS argued the Mayor of Philadelphia's comments about the Archdiocese and the Archbishop of Philadelphia showed a "denominational preference."[130] The Court rejected this argument, concluding that CSS was not singled out, since Bethany Christian Service, which was not associated with the Catholic church, was also penalized.[131] The Court further stated that the comments by the Mayor were insufficient to support their claim and CSS failed to demonstrate entitlement to relief under the Establishment Clause.[132]

As for the RFPA, even assuming that providing services to participants in the foster care system qualified as a fundamental religious exercise, the Court held that compliance with the PFPO would not substantially burden CSS's religious exercise.[133] Finally, with regard to CSS's Free Speech claims, the Court found that in contracting with CSS, Philadelphia was not "seek[ing] to create a forum for private speech nor did they seek to promote speech at all."[134] Therefore, CSS's compelled speech claim failed, since the message that CSS would need to convey as a government organization would not be distorted by the PFPO.[135] Likewise, the Court dismissed CSS's retaliation claim since DHS did not stop the

[125] *Id.* at 691.
[126] *Id.* at 679.
[127] *Id.* at 680.
[128] *Id.* at 682-83.
[129] *Id.* at 684-85.
[130] *Id.* at 690-91.
[131] *Id.*
[132] *Id.* at 691.
[133] *Id.* at 694.
[134] *Id.* at 695.
[135] *Id.* at 697.

referrals of children to CSS on account of their viewpoint but rather on their failure to abide by both the PFPO and the terms of their contract.[136]

The court denied CSS's motion for an injunction.[137] The Third Circuit[138] and the Supreme Court[139] then denied CSS's requestfor emergency injunctions Although the Supreme Court denied the motion, three Supreme Court justices, Justices Thomas, Alito, and Gorsuch, stated they would have granted the injunction.[140]

In April 2019, the Third Circuit upheld the district court's ruling.[141] In late February 2020, the United States Supreme court announced that it will hear the case in the next term.[142] A ruling in favor of CSS could open the door for government contracted organizations to claim religious exceptions to the anti-discrimination clauses in their contracts.[143]

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[136] *Id.* at 698.

[137] *Id.* at 704.

[138] *Fulton v. City of Philadelphia*, ACLU of Pennsylvania, https://www.aclupa.org/our-work/legal/legaldocket/fulton-v-city-philadelphia (last updated Feb. 24, 2020) [hereinafter ACLU, Fulton docket entry].

[139] *Id.*

[140] Robert Barnes, *Supreme Court Won't Get Involved in Foster-Care Dispute over Gay Couples*, WASH. POST (Aug. 20, 2018, 5:32 PM), https://www.washingtonpost.com/politics/courts_law/supreme-court-wont-get-involved-in-foster-care-dispute-over-gay-couples/2018/08/30/5a99f80a-ac95-11e8-b1da-ff7faa680710_story.html?utm_term=.0fb22630b2ff.

[141] ACLU, Fulton docket entry, *supra* note 138.

[142] *Id.*

[143] Adam Liptak, *Supreme Court Stays Out of Case on Gay Rights and Foster Care, N.Y. TIMES* (Aug. 30, 2018), https://www.nytimes.com/2018/08/30/us/politics/supreme-court-gay-rights-philadelphia-foster-care.html.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF TEXAS

🕮 *Brackeen v. Zinke*
338 F. Supp. 3d 514 (N.D. Tex. 2018)
Report by Janelle Pritchard

In Brackeen v. Zinke, the Northern District of Texas held that the federal Indian Child Welfare Act ("ICWA") violated the Constitution.[144] Plaintiffs in this case included the states of Texas, Indiana, and Louisiana, and foster parents of Indian children who were either unable to adopt or else had a successful adoption that was open to be challenged for two years pursuant to ICWA.[145] This case challenged the constitutionality of ICWA as well as ICWA's codified regulatory provisions, known as the Final Rule, and certain provisions of the Social Securities Act that "predicate federal funding for portions of state child state welfare payments on compliance with ICWA."[146] IWCA and the Final Rule creates a "framework [that] establishes: (1) placement preferences in adoptions of Indian children; (2) good cause to depart from those placement preferences; (3) standards and responsibilities for state courts and their agents; and (4) consequences flowing from noncompliance with these requirements."[147]

Plaintiffs challenged the constitutionality of §§ 1901-23 and 1951-52 under Article One and the Tenth Amendment of the United States Constitution;[148] § 1915(a)-(b) under the Equal Protection principles established under the Fifth Amendment;[149] the Final Rule under the Administrative Procedure Act;[150] § 1915(a)-(b) under Due Process principles protected by the Fifth Amendment;[151] and § 1915(c) and the Final Rule section 23.130(b) under the nondelegation doctrine.[152]

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[144] Brackeen v. Zinke, 338 F. Supp. 3d, 514, 546 (N.D. Tex. 2018), *rev'd sub nom.* Brackeen v. Bernhardt, 937 F.3d 406 (5th Cir. 2019), *reh'g en banc granted*, 942 F. 3d 287 (5th Cir. 2019).
[145] *Brackeen v. Zinke*, 338 F. Supp.3d at 525-28.
[146] *Id. at* 520.
[147] *Id.* at 521.
[148] *Id.* at 520.
[149] *Id.*
[150] *Id.* at 530.
[151] *Id.*at 520.
[152] *Id.*

In analyzing Plaintiffs' claims, the district court applied strict scrutiny because ICWA relies on "racial classifications."[153] The court held that ICWA is not narrowly tailored since it treats all Indian children, regardless of tribe, as a single "undifferentiated mass."[154] On this basis, the court ruled in favor of the plaintiffs' on their Equal Protection claim.[155] Regarding the state plaintiffs' nondelegation challenge to §§ 1901-23 and 1951-52, the court ruled that the Separation of Powers in Article I does not allow Congress to delegate its power to Tribes.[156] The district court additionally found that ICWA impermissibly commandeered the state courts and agencies by giving direct commands to the states, violating the nondelegation requirement of the Tenth Amendment.[157] The court also held that Congress cannot commandeer the state courts and agencies, even if it relies on the Indian Commerce Clause.[158] As for the constitutionality of the Final Rule under the Administrative Procedure Act, the court ruled that the construction of the statute was "impermissibly ambiguous" in its terms,[159] and declared the sections that exceeded statutory authority of Congress invalid.[160]

However, as to Due Process claim, the court denied summary judgment.[161] The court held that the families' fundamental right to stay together and to "make decisions about the care, custody, and control of their children"[162] was not disrupted by ICWA's "racial" preferences. Although the Supreme Court has acknowledged rights of families, the Court has never applied these rights to foster families, adoptive parents, or situations in where "adoptive parents…adoption is open to collateral attack."[163] In the end, the court granted all the motions the plaintiffs jointly requested as well as the motion the states made separately, but denied the motion the individual plaintiffs made.[164]

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[153] *Id.* at 530-31.
[154] *Id.* at 534-35.
[155] *Id.* at 535.
[156] *Id.* at 537-38.
[157] *Id.* at 539-41.
[158] *Id.* at 546.
[159] *Id.* at 541-43.
[160] *Id.* at 544.
[161] *Id.* at 546.
[162] *Id.*
[163] *Id.*
[164] *Id.*

Many Native American tribes worry about the impact this case could have on state's compliance with ICWA, and the potential consequences that it may have on Indian children currently in the foster care system.[165]

Subsequently, in August 2019 the Fifth Circuit Court of Appeals granted review and reversed in part the district court's decision, affirming that the plaintiffs had standing to bring the case but reversing the summary judgment ruling and instead holding in favor of the defendants on all claims.[166]

In November 2019, the Fifth Circuit granted a rehearing *en banc*.[167] No decision has been published in the rehearing.[168]

[165] Amory Zschach, *Joint Statement on the Fifth Circuit Granting the Motion to Stay the District Court's Decision on the Indian Child Welfare Act –The Gold Standard Remain Applicable in All 50 States*, NAT'L INDIAN CHILD WELFARE ASS'N (Dec. 4, 2018), https://www.nicwa.org/icwa-gold-standard-remains-applicable-all-50-states/.

[166] Brackeen v. Bernhardt, 937 F.3d 406, 441 (5th Cir. 2019), *reh'g en banc granted*, 942 F.3d 287 (5th Cir. 2019).

[167] Brackeen v. Bernhardt, 942 F.3d 287, 289 (5th Cir. 2019).

[168] *Id.*

ARKANSAS SUPREME COURT

🕮 *Proctor v. Kelley*
56 S.W.3d 837 (Ark. 2018)
Report by Jacqueline Reynders

Proctor v. Kelly settles how the state of Arkansas interprets the constitutionality of *de facto* life without parole sentences for juveniles convicted of non-homicide offenses, an issue that has caused a jurisdictional split amongst the states.[169] Appellant Terrence Proctor appealed the Pulaski County Circuit Court's denial of his *habeas corpus* petition.[170] Proctor was serving a cumulative 240-year sentence for robberies he committed in 1982 when he was 17 years old.[171] Proctor argued that the denial of his petition was in error because it "fail[ed] to address whether he [had] a 'meaningful opportunity for release' pursuant to *Graham v. Florida*," and failed to address the disproportionality of his sentence under the Eighth Amendment.[172]

On January 23, 1983, Proctor pleaded guilty to ten counts of robbery and one count of aggravated robbery.[173] He received a life sentence plus 200 years to be served consecutively.[174] In the 2010 landmark case *Graham v. Florida*, the Supreme Court held it was unconstitutional to sentence juvenile offenders to life without parole for non-homicide offenses.[175] Following *Graham*, Proctor petitioned the circuit court for *habeas corpus* claiming his sentences were unconstitutional.[176] The circuit court granted the writ and reduced the life sentence to the maximum term of sentence available at the time the crime was committed, and therefore reduced Proctor's life sentence to forty years.[177] This forty-year sentence was ordered to be served consecutively to the 200-year sentence Proctor was already serving, thereby leaving him with a 240-year consecutive

[169] Proctor v. Kelley, 563 S.W.3d 837, 838 (Ark. 2018), *cert. denied*, 140 S.Ct. 481 (2019).
[170] *Id.*
[171] *Id*. at 838-39.
[172] *Id.* at 838.
[173] *Id.* at 839.
[174] *Id.*
[175] Graham v. Florida, 560 U.S. 48, 82 (2010).
[176] *Proctor*, 563 S.W.3d at 839.
[177] *Id.*

sentence.[178] This sentence was affirmed on appeal in 2015.[179] In 2017, Proctor filed another petition for *habeas corpus* with the Pulaski County Circuit Court, claiming his 240-year sentence constituted a *de facto* life without parole sentence in violation of *Graham* and violated the Eighth Amendment because it was grossly disproportionate to his crimes.[180] His petition was denied by the circuit court but the Supreme Court of Arkansas considered his appeal.[181]

When overturning a lower court's decision regarding a writ of *habeas corpus*, the prior decision must be clearly erroneous, leaving the appellate court with a "firm and definite conviction" that the lower court erred.[182] With this standard in mind, the Court then analyzed Proctor's claim under a *de facto* life sentence analysis and a gross disproportionality analysis.[183]

Proctor claimed the imposition of a 240-year sentence created a *de facto* life sentence in violation of *Graham* because it did not grant him a meaningful opportunity for release.[184] The sentence would make him ineligible for parole until he was 87 years old, which constituted a *de facto* life without parole sentence because his life expectancy, according to various statistical reports, was less than 87 years.[185] Under *Graham*, a "State is not required to guarantee eventual freedom to a juvenile offender convicted of a nonhomicide crime," but must give the offender "some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."[186] Proctor argued the sentence denies him this opportunity.[187] In opposition, the state argued *Graham* should only be applied to actual life without parole sentences.[188]

States throughout the country have interpreted the holding in *Graham* differently. Proctor argued that the court should follow those States that had held that aggregating sentences for nonhomicidal offenses committed by juveniles resulting in *de facto* life sentences violated the

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[178] *Id.*
[179] *Id.*
[180] *Id.*
[181] *Id.*
[182] *Id.* (citing Johnson v. State, 538 S.W.3d 819, 820 (Ark. 2018)).
[183] *Id.* at 840.
[184] *Id.*
[185] *Id.*
[186] *Id.* at 841 (quoting *Graham*, 560 U.S. at 74).
[187] *Id.*
[188] *Id.*

Eighth Amendment.[189] The Court, however, followed the opposing precedent that *Graham* does not apply to sentences that in the aggregate impose *de facto* life without parole.[190] The Court reasoned that because *Graham* only applied to life sentences, and because none of Proctor's individual sentences amounted to a life sentence, *Graham* did not apply and the 240-year sentence was lawful.[191]

Next, the Court next considered the proportionality of the 240-year sentence under the Eight Amendment. [192] The State argued this claim was unreviewable because Proctor failed to obtain a ruling on the issue from the circuit court, the claim failed to state a cognizable issue for a habeas petition, and even if there was a cognizable claim, it failed to demonstrate gross disproportionality.[193] The Court held that Proctor's inability to obtain a ruling from the circuit court on the issue precluded review.[194] Therefore, it affirmed the denial of Proctor's *habeas petition*.[195] In conclusion, it is legal in the state of Arkansas to impose a *de facto* life sentence on juveniles convicted of non-homicidal offenses.

[189] *Id.*
[190] *Id.*
[191] *Id.* at 842.
[192] *Id.*
[193] *Id.*
[194] *Id.*
[195] *Id.*

CALIFORNIA SUPREME COURT

🕮 *Lopez v. Sony Elecs., Inc.*
420 P.3d 767 (Cal. 2018)
Report by Alejandra Gutierrez

In *Lopez v. Sony Electronics, Inc.*, the California Supreme Court held that a child's claim of toxic chemical exposure during her mother's pregnancy was not time barred. At the age of 12, Dominique Lopez sued Sony Electronics, Inc. (hereinafter "Sony").[196] On April 1999, Lopez was born with chromosomal deletion, cervical vertebrae fusion, facial asymmetry, dysplastic nails, diverticulum of the bladder, and a misshapen kidney, along with developmental delays.[197] Dominique's mother was an employee at Sony manufacturing plant for 20 years and worked at the manufacturing plant during her pregnancy.[198] Plaintiff alleged the birth defects resulted from toxic chemical exposure to her and her mother during the pregnancy.[199]

Plaintiff asserted that her action fell under California Civil Procedure Code section 340.8 which covers injuries caused by toxic exposure.[200] The statute of limitations under this section is two years from the date of injury or two years after the plaintiff becomes aware of the injury.[201] Moreover, section 352, which modifies the statute of limitation for persons with disabilities, applies to section 340.8.[202] Section 352 states that the statute of limitations brought by a person under a disability, which includes minors, does not include the time in which the person is disabled.[203] Sony sought summary judgment, arguing that the relevant statute of limitations was the six-year statute of limitations under California Civil Procedure Code section 340.4.[204] Section 340.4 applies statute of limitations for actions by minors for personal injuries sustained before or

[196] Lopez v. Sony Elecs., Inc., 420 P.3d 767, 769-770 (Cal. 2018).
[197] *Id.*
[198] *Id.*
[199] *Id.*
[200] *Id.*
[201] CAL. CIV. PROC. CODE § 340.8.
[202] CAL. CIV. PROC. CODE § 352.
[203] *Id.*
[204] *Id.*

during birth.[205] Unlike section 340.8, section 340.4 is not modified by section 352.[206] Therefore, according to Sony, Plaintiff's claim would be barred by the six-year statute of limitations regardless of a period of disability.[207]

The trial court granted Sony's summary judgment motion.[208] Plaintiff appealed and the Court of Appeal, Second Appellate District affirmed the trial court's ruling.[209] Plaintiff then sought review in the California Supreme Court.

The California Supreme Court determined that to reconcile conflicting statutes, "later enactments supersede earlier ones."[210] Section 340.8 was written more than 60 years after section 340.4.[211] In addition, the court examined legislative intent of both sections.[212] Section 340.8 includes two exceptions to claims that fall under toxic exposure injuries.[213] The court determined that since prenatal injuries were not an exception, the Legislature intended for prenatal injury claims to fall under this section.[214] The court referenced a common law principle that "children are to be protected during their minority from the destruction of their rights by the running of the statute of limitations."[215] Based on these considerations, the Supreme Court of California held that section 340.8 governs Ms. Lopez's claim.[216] Accordingly, the court reversed and ordered the trial court to vacate the order granting summary judgment in favor of the defendant.[217] This decision will establish a longer statute of limitations for minors bringing claims for injuries sustained before or during birth, including toxic prenatal exposure.[218]

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[205] *Id.*
[206] *Lopez*, 420 P.3d at 769-770.
[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] *Id.*
[211] *Id.*
[212] *Id.*
[213] *Id.*
[214] *Id.*
[215] *Id.* at 775.
[216] *Id.* at 775-76.
[217] *Id.*
[218] *Id.*

ILLINOIS SUPREME COURT

🕮 *People v. Harris*
120 N.E.3d 900 (Ill. 2018)
Report by Casper Gorner

In *People v. Harris*, the Supreme Court of Illinois reversed an appellate court decision vacating the 76-year sentence of an 18-year-old defendant, citing an under-developed case record and the need for an evidentiary hearing.[219] The appellate court had reasoned that the sentence violated the Illinois Constitution.[220] The Supreme Court of Illinois ruled that such a determination was premature.[221]

Darien Harris was convicted of first degree murder, attempted first degree murder, and aggravated battery with a firearm.[222] The trial court sentenced him to a minimum of 76 years in prison.[223] Harris claimed the sentence violated the Proportionate Penalties Clause of the Illinois Constitution.[224] The clause provides that penalties should be determined based on the seriousness of the offense and with the objective of restoration to useful citizenship.[225] It further states that a sentence that is, "cruel, degrading, or so completely disproportionate to the offense for which it is imposed as to shock the moral sense of the community," violates the provision.[226] The appellate court ruled that Harris's sentence violated the provision because it was a de-facto life sentence that gave him no chance for rehabilitation.[227]

On appeal to the State Supreme Court, the Court described Harris's claim as an "as-applied challenge," meaning a challenge that the sentence was unconstitutional as applied to a particular case.[228] The court ruled that to support such a challenge the case record must, "be sufficiently

[219] People v. Harris, 120 N.E.3d 900, 901, 911 (Ill. 2018).
[220] *Id.* at 901.
[221] *Id.*
[222] *Id.*
[223] *Id.*
[224] *Id.* at 904.
[225] ILL. CONST. art. I, § 11.
[226] *Id.*
[227] *Harris*, 120 N.E.3d. at 904.
[228] *Id.* at 909.

developed."[229] It further noted that a finding without an evidentiary hearing or a finding of facts specifically related to the finding was premature.[230] The court considered whether the current record was sufficient for an as-applied constitutional challenge.[231] The controlling case of *People v. Thompson* held that the court could not make a determination on an as-applied constitutional claim without an evidentiary hearing.[232] However, counsel for Harris noted that in *People v. Holman,* the Court ruled that the record was sufficient to review the claim.[233] The Court noted the defendant in *Holman* was 17—a legal minor—when he committed his crimes, making the question of unconstitutionality a purely legal one.[234] The Court reasoned that as Harris was 18 at the time he committed his crimes, he was excluded him from the "very narrow" exception recognized in *Holman*.[235] The Court then ruled that the current evidentiary record was not sufficient for an as-applied constitutional challenge.[236] It noted that Harris could plead his claim in a post-conviction hearing.[237] Ultimately, the Court reversed the appellate court's decision to vacate the sentence.[238]

[229] *Id.*
[230] *Id.* (*quoting* People v. Rizzo, 61 N.E.3d 92, 99 (Ill. 2016)).
[231] *Id.* at 910.
[232] *Id.*
[233] *Id.*
[234] *Id.*
[235] *Id.*
[236] *Id.*
[237] *Id.* at 911.
[238] *Id.* at 914.

KENTUCKY SUPREME COURT

🕮 *Ritchie v. Turner*
559 S.W.3d 822 (Ky. 2018)
Report by Hoang Pham

In *Ritchie v. Turner*, the Kentucky Supreme Court held school officials had qualified immunity in a negligence action involving a teacher's relationship with a student.[239] In Kentucky, a school employee may have immunity from a lawsuit if they apply the defense to the negligent performance of "(1) discretionary acts or functions . . . (2) in good faith; and (3) within the scope of the employee's authority."[240] The immunity does not apply to the negligent performance of a ministerial act, such as following directions from a superior official.[241] *Ritchie v. Turner* turned on whether the school officials' conduct was discretionary or ministerial.[242]

Starting in late summer or early fall of 2009, "Jane Doe," a middle school student in Kentucky began getting inappropriate and sexually suggestive texts from her former teacher, Charles "Andy" Mitchell.[243] The two exchanged messages for twenty-one months, including nude photographs.[244] They also engaged in a sexual relationship that was discovered because of a police investigation in August 2011, prompted by Mitchell's communications with another student.[245]

In September 2011, Doe's mother filed a civil suit on behalf of her daughter against four school officials, claiming they were negligent in hiring, training, and supervising their employees.[246] The trial court denied the school officials' motion for summary judgment based on qualified immunity, but this holding was reversed by the Court of Appeals which concluded that the school officials' "acts, or inactions, in this case were discretionary because they involved a more general duty to supervise the

[239] Ritchie v. Turner, 559 S.W.3d 822, 844 (Ky. 2018).
[240] *Id.* at 831.
[241] *Id.*
[242] *Id.*
[243] *Id.* at 826.
[244] *Id.* at 827.
[245] *Id.*
[246] *Id.* at 829-30.

students rather than a specific duty."[247] The Kentucky Supreme Court then granted review.[248]

The Kentucky Supreme Court affirmed, holding that Doe did not allege that any school officials were assigned as supervisors of Mitchell's classroom area where Doe met him, or that any school officials passed her on her way there in the hall.[249] The school officials were not involved in the active supervision of the students at the times relevant to Doe's complaint.[250] Therefore, the school officials only had a supervisory duty over Doe and thus were "entitled to qualified immunity as to Doe's supervision . . . when she left the morning meeting area and met Mitchell in his classroom."[251]

Doe also argued she was harmed when the school officials did not report the abuse of another student, and therefore allowing Mitchell to continue to abuse her.[252] Here, because the school officials investigated and reached a good faith judgment regarding the other student's contact with Mitchell, they were entitled to qualified immunity.[253]

Furthermore, Doe argued that because the officials did not "obtain all of the requested transcripts of text messages between Mitchell and [the other student]," they breached their ministerial duty.[254] The Court reasoned that there was no ministerial duty created by the superintendent's request for the transcripts of text messages between Mitchell and the other student.[255] The Court concluded that while a duty to investigate potential abuse could be generally owed to students, it was primarily a discretionary action, not a ministerial act.[256]

Finally, Doe argued that the school officials were not immune from suit because they acted in bad faith.[257] However, the Court held that Doe did not provide sufficient proof that the school officials "willfully or maliciously intended to harm her or acted with a corrupt motive."[258]

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[247] *Id.* at 830.
[248] *Id.*
[249] *Id.* at 832.
[250] *Id.*
[251] *Id.*
[252] *Id.* at 835.
[253] *Id.* at 839.
[254] *Id.*
[255] *Id.* at 842.
[256] *Id.*
[257] *Id.*
[258] *Id.* at 843.

Therefore, it concluded that the school officials did not act in bad faith such that it would deprive them of qualified official immunity.[259]

Ultimately, the Kentucky Supreme Court upheld the Kentucky Court of Appeals' decision reversing the District Court's denial of summary judgment.[260] Thus, school officials in Kentucky are entitled to qualified immunity from a negligence action if they were not involved in the active supervision of the student.[261]

[259] *Id.* at 844.
[260] *Id.*
[261] *Id.* at 832, 844.

MASSACHUSETTS SUPREME JUDICIAL COURT

🕮 *Commonwealth v. Baez*
480 Mass. 328 (2018)
Report by Niharika Sachdeva

In *Commonwealth v. Baez*, the Supreme Judicial Court of Massachusetts held that past juvenile adjudications may be used as a basis for enhanceing penalties regarding people convicted of violent crimes or serious drug offenses.[262] In the case, Brandon Baez was indicted at 18 years old for unlawful possession of a firearm.[263] Defendant had twice previously been found guilty for "crimes of violence" for juvenile delinquency.[264] Baez was charged with violating the Armed Career Criminal Act ("ACCA").[265] The ACCA mandates enhanced sentencing for adults who violate certain provisions, including unlawful possession of a firearm, and who were previously convicted of a serious drug offense or violent crime.[266] The trial court raised the question of whether the ACCA should apply when the prior offense was a juvenile offense. In the past, the Supreme Judicial Court of Massachusetts had held that when the "legislature used [conviction] rather than adjudication, it meant to exclude juvenile delinquency adjudications."[267] In this case, however, the Legislature defined 'violent crime' to include "any act of juvenile delinquency involving the use of or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult."[268]

In the trial court, the Defendant filed a motion seeking to dismiss the enhancements on the basis that they violated of Due Process and the Eighth Amendment of the United States Constitution, and *Miller v. Alabama*.[269] In *Miller*, the Supreme Court held that the Eighth Amendment prohibits mandatory sentences of life without the possibility of parole for juvenile offenders convicted of murder.[270]

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[262] Commonwealth v. Baez, 480 Mass. 328, 332 (2018).
[263] *Id.* at 328-29.
[264] *Id.* at 329.
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Id.*
[269] *Id.* at 330.
[270] Miller v. Alabama, 567 U.S. 460, 471 (2012).

After accepting direct appellate review, the Supreme Judicial Court of Massachusetts distinguished *Miller* on the ground that in that case, the punishment for the crime was proportionate to the offender and the offense, and that the characteristics of a juvenile offender were considered.[271] However, here juvenile characteristics were not relevant because the defendant was an adult.[272] The Court acknowledged the purpose of the ACCA's enhanced sentencing scheme is to achieve the "goals of deterrence and incapacitation" which are "justifiable objective[s] of incarceration under the Eighth Amendment. . . ."[273] Based on these goals, the Court found, "The potential punishment is therefore constitutionally proportionate to the offender and the offense."[274] The Court also held that to stop recidivism, qualifying judicial adjudications may be used as a predicate offense for enhanced penalties.[275]

[271] *Baez*, 480 Mass. at 330-31.
[272] *Id.* at 331.
[273] *Id.* at 332.
[274] *Id.*
[275] *Id.*

VERMONT SUPREME COURT

🕮 *Stopford v. Milton Town Sch. Dist.*
202 A.3d 973 (Vt. 2018)
Report by Jordan McKee

In *Stopford v. Milton Town School District*, the Vermont Supreme Court held that Milton High School was not liable for a student's suicide because the suicide was not foreseeable based on knowledge the school had at the time.[276] Jordan Preavy committed suicide after an assault in which members of his football team jabbed a broomstick in his buttocks through his clothes.[277] Preavy did not disclose the assault to his parent or report it to the school or authorities.[278]

In addition to the assault, the football team also engaged in homophobic hazing game entitled "no homo."[279] It involved complimenting a student of the same sex and then stating "no homo," apparently to indicate that they were not homosexual. [280] The football team had been reprimanded for the game.[281] The school had not received reports of the game having been played in the three years leading up to the assault.[282]

The school learned of the assault only after Preavy's death.[283] After they were informed of the incident, school officials conducted an investigation. Through this investigation, the school discovered members of the football team had harassed other team members.[284] This harassment included exposing their genitals, shoving their genitals into other players, and pretending to hump teammates.[285]

Preavy's parents sued the school, claiming causation between the assault against their son and his suicide, and that his suicide was foreseeable.[286] Preavy's parents attempted to demonstrate that the school

[276] Stopford v. Milton Town Sch. Dist., 202 A.3d 973, 980 (Vt. 2018).
[277] *Id.* at 976.
[278] *Id.*
[279] *Id.*
[280] *Id.*
[281] *Id.*
[282] *Id.*
[283] *Id.*
[284] *Id.*
[285] *Id.*
[286] *Id.*

had inadequate anti-hazing policies.[287] This inadequacy, they claimed, made the assault foreseeable because proper policies would have prevented the assault, which in turn would have prevented the suicide.[288]

The trial court entered summary judgment in favor of the school after finding that the school's knowledge of the "no homo" game did not make the assault foreseeable.[289] On appeal, the Supreme Court upheld the decision, finding no genuine issue of material facts.[290] However, the dissent noted that two expert witnesses testified that the school's anti-hazing policies were not adequate and thus established a genuine issue of material fact.[291] The Court majority, however, held that when a school has generalized knowledge of harassment and hazing, but no other evidence, foreseeability is not established.[292]

[287] *Id.*
[288] *Id.* at 981-82.
[289] *Id.* at 977-78.
[290] *Id.* at 982.
[291] *Id.* at 987.
[292] *Id.* at 981-82.

WASHINGTON SUPREME COURT

🕮 *H.B.H. v. State*
429 P.3d 484 (Wash. 2018)
Report by Jenna Rogenski

The Supreme Court of Washington determined the Department of Social and Health Services ("DSHS") owed a duty to protect dependent foster children from foreseeable harm.[293] In this case, former foster children sued DSHS alleging negligence in failing to protect them from tortious and criminal acts of their foster parents.[294] The trial court dismissed the children's negligence claims.[295] The Court of Appeals reversed, stating DSHS owed a common law legal duty to protect foster children from foreseeable harm based on its special relationship with the children.[296] The Washington Supreme Court sustained the Court of Appeals' holding.[297]

In February 1998, October 1999, and January 2000, DSHS placed foster children in the care of Scott and Drew Ann Hamrick.[298] Evidence at trial showed the Hamricks abused all five girls physically, sexually, and psychologically during the preadoption period lasting from 1998 to 2003.[299] The evidence also determined a DSHS social worker, Mary Woolridge, failed to conduct regular health and safety visits as required and DSHS records have no reports of visits between October 1999 and October 2000.[300] The children sued DSHS, alleging its negligence in failing to investigate or take other protective action during the preadoption period.[301] DSHS moved under Washington Superior Court Rule 50 "for judgment as a matter of law, arguing that it was not negligent during the preadoption period," and the trial court granted the motion.[302]

The Court of Appeals reversed. The Washington Supreme Court then affirmed the Court of Appeals' holding, stating that "[i]t is well

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[293] H.B.H. v. State, 429 P.3d 484, 487 (Wash. 2018)
[294] *Id.*
[295] *Id.*
[296] *Id.*
[297] *Id.*
[298] *Id.* at 487-88.
[299] *Id.* at 488.
[300] *Id.* at 487.
[301] *Id.* at 488.
[302] *Id.*

established that while parents have a fundamental liberty interest in care and custody of their children, the State has an equally compelling *parens patriae* interest in protecting the physical, mental, and emotional health of children in this state."[303] The Court stated that when DSHS places a dependent child in the physical care of foster parents, DSHS remains the legal custodian during the child's dependency.[304] In reaching its decision, the Court quoted Section 315(b) of the Restatement (Second) of Torts which states "a special relation exists between the actor and the other which gives to the other right of protection,"[305] as well as *Braam v. State* which states that the State is "custodian and caretaker of foster children" and must "provide conditions free of unreasonable risk, danger, harm, or pain."[306] Ultimately, the court ruled that DSHS had a special relationship with the foster children, establishing a legal duty.[307]

[303] *Id.* at 489 (citing *In re* Dependency of Schermer, 169 P.3d 452, 459 (Wash. 2007)).
[304] *Id.*
[305] *Id.* at 490 (quoting Restatement (Second) of Torts § 315 (1965)).
[306] *Id.* at 489 (quoting Braam v. State, 81 P.3d 851, 857 (Wash. 2003)).
[307] *Id.* at 499.

ILLINOIS APPELLATE COURT

🕮 *Maday v. Twp. High Sch. Dist. 211*
127 N.E.3d 795 (Ill. App. Ct. 2018)
Report by Jacqueline Reynders

Maday v. Township High School District 211 involves transgender students' rights to the unrestricted use of locker rooms in public schools in Cook County, Illinois.

Township High School District 211 ("District 211") has been involved in litigation regarding transgender students' right to locker room use since 2013.[308] First, the Office of Civil Rights for the U.S. Department of Education ("OCR") alleged the school was discriminating against a transgender student by denying her access to the girl's locker room.[309] In 2015, OCR entered a Resolution Agreement with District 211 which resulted in the student being allowed to access the girl's locker room if she changed clothes in a private station.[310]

However, on May 4, 2016, a group called Students and Parents for Privacy ("SPP") filed a claim in federal court alleging the Resolution Agreement violated cisgender students' right to privacy and created a hostile environment.[311] SPP sought an injunction to bar transgender students from locker rooms.[312] The request was denied in December 2017 and the case remains pending.[313]

On September 8, 2016, Plaintiff's mother filed a claim with the Illinois Department of Human Resources ("IDHR") on Plaintiff's behalf alleging that District 211 discriminated against Plaintiff by denying her access to the locker room because she is transgender.[314] The IDHR dismissed her claim due to "lack of substantial evidence to counsel the parties."[315]

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[308] Maday v. Twp. High Sch. Dist. 211, 127 N.E.3d 795, 798 (Ill. App. Ct. 2018), *case dismissed*, 124 N.E.3d 499 (Ill. 2019).
[309] *Id.*
[310] *Id.*
[311] *Id.*
[312] *Id.*
[313] *Id.*
[314] *Id.*
[315] *Id.*

On July 24, 2017, Plaintiff told her school she would enroll in a physical education ("P.E.") course which required students to change into swimsuits.[316] District 211 offered to let Plaintiff use the girls' locker room if she changed in a private stall.[317] Plaintiff's mother declined and District 211 agreed to let Plaintiff be excused from P.E.[318]

Upon turning 18, Plaintiff sued for injunctive and other relief against the district, alleging that they violated the Illinois Human Rights Act ("the Act).[319] Plaintiff claimed District 211 discriminated against her for being transgender by requiring her to use private changing stalls while allowing cisgender girls to use the locker room without restriction.[320] She alleged this constituted unlawful gender identity discrimination within a public accommodation under section 5-102 of the Act.[321] She sought injunctive relief to allow her and other transgender students to use the locker room on the same terms as cisgender students as well as unspecified damages, fees, and interest.[322] Plaintiff filed her motion and complaint in Cook County on November 30, 2017 and it was granted on December 8, 2017.[323] On December 13, 2017, she filed a motion for preliminary injunction to allow her to use the locker room and participate in P.E. for her last semester of high school.[324]

District 211 responded that "as part of its role in providing an environment conducive to learning for all of its 12,000 students, it balances appropriate facility access for transgender students with privacy safeguards of all students."[325] The District argued Plaintiff had been offered the same Resolution Agreement which had been authorized as fully compliant with civil rights protections by OCR.[326] District 211 also claimed they did not violate the Illinois Human Rights Act because, while the Act requires "full and equal enjoyment" for public accommodations, it only it only requires "access" for places of education.[327] They highlighted IDHR failed to find

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[316] *Id.* at 798-99.
[317] *Id.* at 799.
[318] *Id.*
[319] *Id.*
[320] *Id.*
[321] *Id.*
[322] *Id.*
[323] *Id.*
[324] *Id.*
[325] *Id.* at 800.
[326] *Id.*
[327] *Id.* (*citing* 775 ILL. COMP. STAT. ANN. 5/5-102 (West 2007)).

substantial evidence of discrimination in Plaintiff's claims.[328] Finally, District 211 asserted that granting the preliminary injunction would cause more harm than denying it.[329] On January 10, 2018, SPP filed an emergency motion to intervene.[330]

The Circuit Court denied the preliminary injunction because Plaintiff's claim was likely to fail on its merits under the plain language of the Act, but ordered the district and SPP to answer the complaint.[331]

On February 7, 2018, Plaintiff appealed, contending the Act does not permit the district's policy and that she was entitled to a preliminary injunction.[332] After Plaintiff graduated high school on May 20, 2018, District 211 and SPP asserted her appeal for a preliminary injunction was moot and thus should be dismissed.[333] While her original complaint sought to change the locker room policy for all transgender students, her request for preliminary injunction sought only to allow her individually unrestricted access to the locker room.[334] Because Plaintiff graduated, the claim was dismissed as moot.[335] The dismissal left the issue to be determined in future litigation.[336]

In 2019, the Illinois Supreme Court dismissed the case on the ground that Plaintiff "failed to file a Petition for Leave to Appeal within the time allowed."[337]

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[328] *Id.* at 801.
[329] *Id.*
[330] *Id.*
[331] *Id.* at 804.
[332] *Id.*
[333] *Id.* at 805.
[334] *Id.*
[335] *Id.* at 805-06.
[336] *Id.* at 808.
[337] Maday v. Twp. High Sch. Dist. 211, 124 N.E.3d 499 (Ill. 2019).

FEDERAL LEGISLATION

🕮 First Step Act, H.R. 5682
115th Cong. (2018) (enacted)
Report by Jenna Rogenski

The First Step Act was introduced in the Senate on November 15, 2018 and a revised bill text was released on December 12, 2018.[338] The bill passed by an 87-12 margin in the U.S. Senate on December 18, 2018.[339] After approval by the House, the Act was signed into law on December 21, 2018.

Title V of the First Step Act restricts the use of juvenile solitary confinement for any reason other than a temporary response to behavior which poses a serious and immediate risk of physical harm.[340] It also establishes a three hour maximum period of solitary confinement for juveniles if they pose a serious and immediate risk of physical harm to others and a maximum of 30 minutes if the juvenile only poses a risk to themselves.[341] These measures reflect Senator Booker's efforts to include his Mercy Act, which sought to end youth solitary confinement in federal facilities.[342]

According to Sue Mangold, CEO of Juvenile Law Center and Professor at University of Buffalo School of Law, "The developing adolescent brain is especially harmed by solitary confinement. Every state should follow this federal lead to ban the use of solitary confinement of youth."[343] However, some critics claim that the First Step Act does not do enough to protect juveniles. According to the NAACP, the Act fails to

[338] *S.756, Legislative Vehicle for First Step Act of 2018,* S. RPC (Dec. 17, 2018), https://www.rpc.senate.gov/legislative-notices/s756-legislative-vehicle-for-first-step-act-of-2018 [hereinafter S. RPC].
[339] *With Senate Passage of First Step Act, Youth Solitary Confinement in Federal Detention One Step Closer to Being Abolished*, JUVENILE L. CTR. (Dec. 18, 2018), https://jlc.org/news/senate-passage-first-step-act-youth-solitary-confinement-federal-detention-one-step-closer [hereinafter JUVENILE L. CTR.].
[340] S. RPC, *supra* note 338.
[341] *Id.*
[342] JUVENILE L. CTR., *supra* note 339.
[343] *Booker Statement on Senate Passage of Landmark Criminal Justice Reform Bill,* SEN. CORY BOOKER (Dec. 18, 2018), https://www.booker.senate.gov/?p=press_release&id=875.

address parole for juveniles serving life sentences in federal prison, a crucial correction necessary for the criminal justice system.[344]

While this Act only applies to juveniles in federal facilities, it serves as a model for states interested in adopting similar policies.[345]

📖 Missing Children's Assistance Act of 2018, S. 3354
115th Cong. (2018) (enacted)
Report by Niharika Sachdeva

Each year, thousands of children run away or are abducted.[346] In response, Congress enacted the bipartisan Missing Children's Assistance Act ("the Act") in October of 2018.[347] This Act reauthorizes the Justice Department's grants related to missing children.[348]

Through grants, the Act reauthorizes the National Center for Missing and Exploited Children (NCMEC).[349] NCMEC is a congressionally-established nonprofit, national resource center which helps victims, families, child-serving professionals, and the public.[350] The nonprofit works with nongovernmental organizations and government agencies, including the Department of Justice, U.S. Immigration and Customs Enforcement, the Department of the Treasury, and the United States Postal Inspection Service. NCMEC also works with each of the missing children clearinghouses operated in all 50 states, the District of Columbia, Puerto Rico, and international organizations to share images and information regarding missing and exploited children.[351] The Act requires reporting from NCMEC.[352] It must provide reports to the administrator and make available to the public, when appropriate, the number of children nationwide reported to NCMEC as missing, victims of non-family abductions, victims of family abductions, and/or children whose recovery

[344] Malik Russel, *NAACP Supports Enactment of Senate Passed First Step Act,* NAACP, (Dec. 19, 2018), https://www.naacp.org/latest/naacp-supports-enactment-senate-passed-first-step-act/.
[345] Melissa Coretz Goemann, *Five Things to Know About the New Juvenile Justice Act*, ANNIE E. CASEY FOUND. (Feb. 8, 2019), https://www.aecf.org/blog/five-things-to-know-about-the-new-juvenile-justice-act/.
[346] Missing Children's Assistance Act of 2018, S. 3354, 115th Cong. (2018) (enacted).
[347] *Id.*
[348] *Id.*
[349] *Id.*
[350] *Id.*
[351] *Id.*
[352] *Id.*

was reported to the grantee.[353] NCMEC must track attempted child abductions to identify patterns and provide that information to law enforcement agencies.[354]

Additionally, the Act clarifies the previous Act. It defines "missing child" to mean "any individual less than 18 years of age whose whereabouts are unknown to such individual's parent."[355] The Act defines "parent" to include "a legal guardian or individual who may lawfully exercise parental rights with respect to the child."[356]

The Missing Children's Assistance Act of 2018 also amended the duties of the administrator in charge of the grants.[357] Among other duties, the administrator must provide training, technical assistance, and information to non-governmental organizations relating to non-compliant sex offenders.[358] The Act reauthorizes the grants through 2023 to facilitate support for NCMEC.[359]

📖 Protecting Girls' Access to Education in Vulnerable Settings Act, S. 1580 115th Cong. (2017-2018) (enacted)
Report by Jordan McKee

On January 14, 2019, President Trump signed into law the Protecting Girls' Access to Education in Vulnerable Setting Act ("Act").[360] The Act aims to increase education received by all children, especially girls.[361] Congress found that more than four million school-aged refugee children lack access to primary and secondary education world-wide.[362] Displaced children spend an average of twenty-six years displaced. As a result, many of the children have never had access to education.[363] The Act notes that education can be used as a tool to offer socioeconomic opportunities, psychological stability, and physical protection for

[353] *Id.*
[354] *Id.*
[355] *Id.*
[356] *Id.*
[357] *Id.*
[358] *Id.*
[359] *Id.*
[360] Protecting Girls' Access to Education in Vulnerable Settings Act, S. 1580, 115th Cong. (2017-2018) (enacted).
[361] *Id.*
[362] *Id.* §2.
[363] *Id.*

children.[364] These benefits will likely decrease human trafficking, child marriage, sexual exploitation, and economic disenfranchisement.[365] Despite these benefits, less than two percent of humanitarian aid is directed towards educational services.[366]

The Act aims to implement policies to combat lack of education by partnering and encouraging entities to support guarantees that displaced children can safely attend school.[367] These entities include: other countries, public and private institutions, nongovernmental and civil society organizations.[368] The Act seeks to help countries with significant numbers of displaced individuals design, implement, and monitor programs that help address educational barriers.[369] This goal includes helping integrate displaced children into educational systems and, if integration is not possible, working to develop innovative approaches to provide safe education.[370] Such approaches could include extending schooling hours and hiring more teachers.[371]

The Act states that the Secretary of State and the Administrator of the United State Agency for International Development should prioritize and advance programs that provide safe education for displaced children.[372] These parties should aim to build institutions in countries with high numbers of displaced people and help increase access of displaced children to the opportunities listed above.[373] The Administrator may also coordinate with the World Bank, agencies of the United Nation and other multilateral organization to collect relevant data, on the ability of displaced children to access education.[374] Additionally, the Secretary and Administrator are to coordinate with the private sector and civil organizations to promote safe educational opportunities for displaced children.[375] The goal is that these changes will increase opportunities and decrease exploitation of children.[376]

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[364] *Id.*
[365] *Id.*
[366] *Id.*
[367] *Id.* §4.
[368] *Id.*
[369] *Id.*
[370] *Id.*
[371] *Id.*
[372] *Id.* §5.
[373] *Id.*
[374] *Id.*
[375] *Id.*
[376] *Id.* §1.

CALIFORNIA LEGISLATION

🕮 CAL. WELF. & INST. CODE § 625.4 (West 2019)
Report by Shelly Richter

Under this new act, the minor must consent in writing and the minor's guardian must approve before a California law enforcement officer can to obtain a minor's voluntary DNA sample.[377] The Act also prohibits officers from comparing a minor's voluntarily given DNA sample to samples collected from other crimes.[378]

To avoid civil liability, an officer may not ask a minor for a DNA sample unless: (1) the minor consents in writing after being informed of his right to refuse, and the purpose and manner of collection; (2) the minor's parent, legal guardian, or attorney is provided information about the collection, privately speaks with the minor, and agrees with the decision; and (3) the officer gives the minor a form to request an expungement.[379] After "reasonable attempts" to reach the minor's parent or guardian, officers must not continue to detain the minor to obtain a sample.[380]

Law enforcement is restricted in how to use the voluntary sample.[381] A voluntary DNA sample is only to be used in the investigation(s) for which it was taken, unless a court permits additional use.[382] Law enforcement is also restricted in how long it may keep the minor's sample.[383] The agency that obtained the sample "shall" determine within two years if the minor is still a suspect—if, within that time, the minor has not been implicated, the agency must expunge the sample.[384] Similarly, if the sample has not implicated the minor and the minor requests an expungement, the agency "shall make reasonable efforts to promptly expunge the sample."[385]

The statute creates a civil cause of action for violation of its provisions.[386] A law enforcement agency found to have "a pattern and

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[377] CAL. WELF. & INST. CODE § 625.4(a) (2019).
[378] *Id.* § 625.4(g).
[379] *Id.* §§ 625.4(a) & 625.4(h).
[380] *Id.* § 625.4(c).
[381] *Id.* § 625.4(g).
[382] *Id.*
[383] *Id.* § 625.4(e).
[384] *Id.*
[385] *Id.* § 625.4(f).
[386] *Id.* § 625.4(h).

practice" of collecting voluntary samples from minors in violation of this law "shall be liable to each minor whose sample was inappropriately collected" for $5,000, plus attorney's fees and costs.[387] However, agencies may still collect DNA samples under other circumstances, such as pursuant to a search warrant or a court order.[388]

California Assemblywoman Lorena Gonzalez introduced A.B. 1584, which was praised by the American Civil Liberties Union as addressing "[the**]** practice of collecting DNA from minors without a warrant or parental consent[, which] unjustly criminalizes San Diego's youth, particularly children of color."[389] As a result, law enforcement officers must obtain consent from the minor and the minor's parent or guardian before collecting a minor's voluntarily given DNA sample.[390]

🕮 A.B. 1871
2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted)
and
🕮 S.B. 1192
2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted)
Report by Hoang Pham

In 2018, California Governor Jerry Brown signed into law two bills that address health and nutrition for children. California A.B. 1871 requires charter schools to provide each student a nutritionally-adequate free or reduced-price meal during each school day.[391] California S.B. 1192 requires restaurants that sell children's meals which include a beverage to make the default beverage water, sparkling water, or flavored water, or unflavored milk or nondairy milk alternative.[392]

Specifically, A.B. 1871 requires charter schools operational on or after July 1, 2019, to implement meal requirements no later than July 1 of

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[387] *Id.*
[388] *Id.* § 625.4(i)(2).
[389] *ACLU Statement on Passage of Bill Prohibiting Police From Taking Minors' DNA Without Parental Consent or Warrant*, ACLU OF SAN DIEGO AND IMPERIAL COUNTIES (2018), https://www.aclusandiego.org/aclu-statement-on-passage-of-bill-prohibiting-police-from-taking-minors-dna-without-parental-consent-or-warrant/ (last visited Feb 18, 2019).
[390] CAL. WELF. & INST. CODE § 625.4(a).
[391] A.B. 1871, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1871.
[392] S.B. 1192, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted), *available at* https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1192.

the school year after becoming operational.[393] Such schools are also required to provide written notice of the period of time that the charter school will not provide those meals.[394] The bill additionally requires the chartering authority to provide technical assistance to the charter school in implementing the bills' provisions.[395]

A.B. 1871 seeks to address the inadequate access to healthy food for children living in poverty because substantial research links poverty to poor academic achievement.[396] Given the over 340,000 low-income students in California's charter schools, it is important that charter schools are held to the same level of accountability as district schools for ensuring a nutritious meal for students.[397] Stakeholders are encouraged to consider a range of options when deciding how to provide students with free or reduced-price meals.[398] Ultimately, the bill states that "[b]ecause hungry children struggle to learn, grow, and achieve, it is the intent of the Legislature that all California public schools, including charter schools, provide each needy pupil one nutritionally adequate free or reduced-price meal during each schoolday."[399]

S.B. 1192 addresses children's beverages in restaurants.[400] This bill would not prohibit a restaurant's ability to sell or a customer's ability to buy an alternative beverage to water if the purchaser requests one.[401] However, if a restaurant does not follow the default water requirements, they would be given a citation.[402] The first violation would be subject to a notice of violation.[403] However, the second and third violations would be punishable by fines of not more than $250 for the second violation, and $500 for the third.[404]

S.B. 1192's primary goal is to reduce obesity in Californian children, which from 1990 to 2016, increased by 250 percent.[405] The bill

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393 *Id.*
394 Cal. A.B. 1871.
395 *Id.*
396 *Id.*
397 *Id.*
398 *Id.*
399 *Id.*
400 Cal. S.B. 1192.
401 *Id.*
402 *Id.*
403 *Id.*
404 *Id.*
405 *Id.*

states that children who are obese are twice as likely as non-obese children to become obese adults, and therefore are at greater risk for numerous health consequences such as heart disease and asthma.[406] Obesity-related health conditions also have economic costs.[407] In California, obesity-related medical expenditures estimated at $9.1 billion annually.[408]

The bill also recognizes that many families do not have the time to adequately prepare healthy food, which makes dining out an easy and often necessary option.[409] Because of this, many children consume almost twice as many calories when they eat out than when they do at home.[410] The Legislature's intent is thus to help parents provide their children with nutritious meals by ensuring children's meals in restaurants include a healthy beverage as the default option.[411]

🕮 A.B. 1974
2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted)
Report by Casper Gorner

On September 20th, 2018, the Public School Fair Debt Collection Act was signed into law.[412] The bill takes steps to prevent schools from passing debt obligations (such as a fee for a bus pass) to students or forwarding debts to collection agencies.[413] Students cannot legally owe a debt to a public school or school district and the school or school district cannot degrade the students educational experience as a result of the debt.[414] Additionally, public schools cannot send past-due bills to collection agencies.[415] The bill's protections do not apply to emancipated students or to debts incurred as a result of vandalism.[416]

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406 *Id.*
407 *Id.*
408 *Id.*
409 *Id.*
410 *Id.*
411 *Id.*
412 CAL. EDUC. CODE § 49014 (Deering 2018); A.B. 1974, 2017-2018 Leg., Reg. Sess. (Cal. 2018).
413 CAL. EDUC. CODE § 49014(a), (b), (e). *See also* LEGIS. COUNSEL'S DIGEST, *Assembly Bill No. 1974*, CAL. LEGIS. INFO. (Sept. 20, 2018, 9:00 PM), https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1974.
414 CAL. EDUC. CODE § 49014(a)-(b).
415 *Id.* § 49014(d).
416 *Id.* § 49014(a), (g)(1).

The law is a response to school practices.[417] In 2014 and 2015, the San Diego Unified School District referred 380 parents to collection agencies for past-due bus fees.[418] According to Assembly Member Lorena Gonzalez, the bill's sponsor, financial struggles are the primary reasons why parents fall behind on payments for meal programs and bus passes.[419] "It only makes matters worse when a school sends a past-due bill to a debt collector. It impacts the parents' credit rating, which creates all sorts of other hardships. It's totally counterproductive."[420]

The statute states that, "a public school or school district shall not, because of a debt owed to the public school or school district, take negative action against a pupil."[421] The law specifies specific prohibited actions, noting that the bill is not limited to those actions.[422] Prohibited actions include denying or withholding a diploma, limiting or barring participation in a school activity and denying full credit for any assignments in class.[423]

The bill shows a legislative intent to prohibit debt collection practices that involve students in the debt collection process. The bill easily passed both houses of the state legislature passing by a vote of 43 to 18 in the assembly and 33 to 6 in the senate.[424] The law took effect on January 1, 2019.[425]

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[417] *Gov. Brown Signs Gonzalez Fletcher Bill Preventing Schools From Penalizing Students For Overdue Bus Fares,* OFFICE OF LORENA GONZALEZ (Sept. 20, 2018), https://a80.asmdc.org/press-releases/gov-brown-signs-gonzalez-fletcher-bill-preventing-schools-penalizing-students-overdue.

[418] *Id.*

[419] *Lorena Gonzalez Fletcher Bill Would Prevent Schools From Using Debt Collectors to Go After Overdue Bus and Library Fees,* OFFICE OF LORENA GONZALEZ (Jan. 31, 2018), https://a80.asmdc.org/press-releases/lorena-gonzalez-fletcher-bill-would-prevent-schools-using-debt-collectors-go-after.

[420] *Id.*

[421] CAL. EDUC. CODE § 49014(b) (Deering 2018).

[422] *Id.*

[423] *Id.* §§ 49014(b)(1), (5), (6)-(7).

[424] *Gov. Brown Signs Gonzalez Fletcher Bill Preventing Schools From Penalizing Students For Overdue Bus Fares*, *supra* note 417.

[425] *California law bans schools from penalizing students over fees*, ABC NEWS 10 SAN DIEGO (Sept. 20, 2019, 5:46 PM), https://www.10news.com/news/california-law-bans-schools-from-penalizing-students-over-fees.

🕮 A.B. 2884
2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted)
Report by Alejandra Gutierrez

California Assembly Bill 2448, signed into law on September 30, 2018, gives youth detained in Division of Juvenile Justice facilities the right to computer technology and the Internet for two purposes: to receive a quality education and to maintain relationships with family members.[426] The right to maintain contact with family members and receive a quality education while detained are enumerated in the pre-existing Youth Bill of Rights.[427] A.B. 2448 advances these rights by requiring detention facilities (including juvenile halls, ranches, camps, or forest camps) to provide youth access to computer technology and internet.[428] Under this bill, Chief probation officers and their designees may still limit or deny access to computer technology or the Internet for safety, security or staffing reasons.[429]

In addition to maintaining relationships with family members and access to a quality education, the bill provides this right to computers for extracurricular involvement.[430] Currently, youth detained in facilities have the right to participate in extracurricular and social activities.[431] The right to these activities will now include access to technology and the Internet.[432]

The costs of certain state-mandated local programs are reimbursed to local agencies.[433] However, this bill will not mandate reimbursements.[434] If cost increases associated with this bill are calculated and determined by the Commission on State Mandates, statutory provisions will govern reimbursement to local agencies.[435]

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[426] A.B. 2448, 2017-2018 Leg., Reg. Sess. (Cal. 2018); CAL. WELF. & INST. CODE §§ 851.1(a)(1)-(2) (2018).
[427] LEGIS. COUNSEL'S DIGEST, *Assembly Bill No. 2448*, CAL. LEGIS. INFO. (Oct. 1, 2018, 9:00 PM), https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB2448.
[428] CAL. WELF. & INST. CODE §§ 889.1(a)(1)-(2).
[429] *Id.* § 851.1(b); § 889.1(b).
[430] *Id.* § 362.05(a)(1); § 727(a)(4)(F)(i). *See also* LEGIS. COUNSEL'S DIGEST, *supra* note 427.
[431] LEGIS. COUNSEL'S DIGEST, *supra* note 427.
[432] *Id.*
[433] *Id.*
[434] *Id.*
[435] *Id.*

A.B. 2448 added Sections 851.1 and 889.1 to the Welfare & Institutions Code, and amended Sections 362.05 and 727.[436] Both of the amended sections now dictate that state or local policies cannot create barriers to youths' participation in enrichment activities that include computer technology and the Internet.[437]

The bill also applies to foster youth.[438] Providers of foster care services must ensure that children and youth in foster care also have access to computer technology and the Internet for the same purposes.[439] The bill places on state and local entities the responsibility to ensure private foster care agencies implement policies affording this right to foster youth.[440] Residential therapeutic programs and group home administrators, managers and designees must use "reasonable and prudent parent standard[s]" to determine if foster youth should have access to such enrichment activities, which include technology and the Internet.[441] In order to determine the "reasonable and prudent parent standard," foster care service providers are encouraged to consult with social workers and treatment providers.[442]

🕮 S.B. 1391
2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted)
Report by Lidia Hernandez

With the passing of Senate Bill No 1391, fourteen- and fifteen-year-old minors will not be tried as adults in criminal prosecutions.[443] Prior to S.B. 1391, at age fourteen, a minor in California could be transferred out of juvenile court to be tried as an adult under Proposition 57.[444] Proposition 57 was passed in 2016 with a strong majority and was aimed at promoting public safety.[445] Prop 57 ended direct filing of juvenile cases in adult courts

[436] *Id.*
[437] *Id.*
[438] CAL. WELF. & INST. CODE §§ 362.05(a)(1) (2018) & 727(a)(4)(F)(i).
[439] *Id.* § 362.05(a)(1); § 727(a)(4)(F)(i).
[440] *Id.* § 362.05(a)(1); § 727(a)(4)(F)(i).
[441] *Id.* § 362.05(a)(1)-(2); § 727(a)(4)(F)(i).
[442] *Id.* § 362.05(b); § 727(a)(4)(F)(ii).
[443] S.B. 1391, 2017-2018 Leg., Reg. Sess. (Cal. 2018) (enacted).
[444] *Id.*
[445] *Proposition 57 The Public Safety and Rehabilitation Act of 2016*, CAL. DEPT. CORR. AND REHAB., https://www.cdcr.ca.gov/proposition57/ (last visited Mar. 15, 2018).

by providing that minors under eighteen years of age be given a transfer hearing in order to be prosecuted as adults.[446]

In September 2018, then-Governor Jerry Brown signed S.B. 1391 into law.[447] S.B. 1391 amends section 707 of the Welfare and Institutions Code with respect to juveniles and declares that it is consistent with the intent behind Proposition 57.[448] S.B. 1391 prohibits a minor under the age of sixteen from being prosecuted as an adult.[449]

The bill was authored by Democratic senators Holly Mitchell and Richard Lara.[450] Mitchell and Lara wrote several bills, jointly named the Equity and Justice Package, all aimed at addressing issues related to the California criminal juvenile justice system.[451] Upon presentation of S.B. 1391, Lara stated that "age-appropriate services and treatment can produce effective rehabilitation and prepare youth for a second chance in their communities."[452]

Previously, prosecutors had the discretion to file a motion which would transfer a minor age fourteen or fifteen to be tried as an adult rather than in juvenile court.[453] S.B. 1391 eliminates this prosecutorial discretion and outlines reimbursement procedures for a state-mandated local program as a result of the increase of minors held under the juvenile court's jurisdiction.[454]

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[446] Maureen Washburn, *New Report: Youth Prosecution after Prop 57*, CTR. ON JUVENILE AND CRIMINAL JUSTICE (Nov. 29, 2017), http://www.cjcj.org/news/11844.

[447] Cal. S.B. 1391.

[448] *Id.*

[449] *Id.*

[450] *Id.*

[451] Maureen Washburn, *CA Lawmakers Consider Ending the Treatment of 14- and 15-Year-Olds as Adults*, CTR. ON JUVENILE AND CRIMINAL JUSTICE (Apr. 10, 2018), http://www.cjcj.org/news/12042.

[452] *Id.*

[453] Cal. S.B. 1391.

[454] *Id.*

DELAWARE & NEW JERSEY LEGISLATION

🕮 H.B. 337
149th Gen. Assemb., Reg. Sess. (Del. 2018)
and
🕮 A.B. 865
218th Leg., Reg. Sess. (N.J. 2017-2018)
Report by Lidia Hernandez

In 2016, 23% of the national population was children under the age of eighteen, totaling 73.6 million children.[455] In 2017, no state in the U.S. had passed a law prohibiting children from getting married and the marriage of minors was legal through some exception. Recently, state legislatures have taken actions to change the minimum age required to marry, partially because lenient marriage laws play a part in sex trafficking and involuntary children marriages.[456]

On May 9, 2018, Governor John Carney of Delaware signed into law the landmark House Bill No. 337, making Delaware the first state in the U.S. to absolutely ban marriage of minors.[457] H.B. 337 received bipartisan sponsorship and was passed unanimously.[458] Prior to H.B. 337, any minor in Delaware could legally be married with parental and judicial consent.[459] H.B. 337 eliminates exceptions concerning the marriage of minors so that the law states no person under the age of eighteen will be granted a marriage license.[460]

Following closely behind Delaware, is New Jersey. In June 2018, New Jersey became the second state to ban the marriage of minors with the signing of A865 by governor Phil Murphy.[461] Prior to A.865, minors under

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[455] *Kids Represent a Shrinking Share of U.S. Population*, KIDS COUNT DATA CTR. (July 7, 2018), https://datacenter.kidscount.org/updates/show/207-kids-represent-a-shrinking-share-of-us-population?.

[456] Amy Harmon & Alan Blinder, *Delaware Has Banned Marriage Under Age 18. Other States Also Consider Limits*, N.Y. TIMES (May 17, 2018), https://www.nytimes.com/2018/05/17/us/child-marriage-minimum-age-minors.html.

[457] *House Bill 337*, DEL. GEN. ASSEMB. (last visited Mar. 15, 2019), https://legis.delaware.gov/BillDetail/26363.

[458] *Id.*

[459] H.B. 337, 149th Gen. Assemb., Reg. Sess. (Del. 2018).

[460] *Id.*

[461] *New Jersey Assembly Bill 865*, LEGISCAN (last visited Mar. 15, 2019), https://legiscan.com/NJ/bill/A865/2018.

the age of sixteen needed the consent from a superior court judge in addition to that of a parent or guardian, while minors sixteen through seventeen needed only consent from a parent or legal guardian to obtain a marriage license.[462] A.865 effectively eliminated these exceptions so that no person under the age of eighteen in New Jersey may be married.[463] A similar bill had previously been vetoed by Republican governor Chris Christie.[464]

As of 2019, New Jersey and Delaware are the only states to ban the marriage of minors under the age 18 with no exceptions. With over 200,000 marriages involving minors between the years 2000 and 2015, it remains to be seen if any more states will follow.[465]

[462] A.B. 865, 218th Leg., Reg. Sess. (N.J. 2018).
[463] *Id.*
[464] Harmon & Blinder, *supra* note 470.
[465] *Id.*

MICHIGAN LEGISLATION

🕮 H.B. 5806
2018 Leg., Reg. Sess. (Mi. 2018)
Report by Corrina Seeley VanDenBaard

Michigan House Bill 5806 creates a separate chapter within the Revised Judicature Act for provisions pertaining to juvenile mental health courts.[466] Representative Julie Calley of Michigan sponsored H.B. 5806, which was signed into law by Governor Rick Snyder on December 28, 2018.[467] This bill gained great bipartisan support, unanimously passing in both houses.[468]

Prior to the passage of this law, Michigan had one chapter in the Revised Judicature Act which established mental health courts for both adults and juveniles.[469] Because provisions for adult and juvenile mental health courts were intermingled within the same chapter, the statute was difficult to read and implement.[470] This law tries to fix that problem by creating a separate chapter for juvenile metal health courts.[471] While the law does keep previous provisions that applied to mental health courts in general, it also adds new language so as to tailor the provisions to the juvenile justice system and juvenile offenders.[472]

This law provides many new requirements for juvenile mental health courts.[473] Now, juvenile mental health courts must comply with "seven common characteristics of a juvenile mental health court," which includes the following: (1) regularly scheduled special docket; (2) less formal styles of interaction among court officials and participants; (3) age-appropriate screening and assessment for trauma, substance abuse, and

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[466] H.B. 5806, 2018 Leg., Reg. Sess. (Mich. 2018); MICH. HOUSE FISCAL AGENCY, LEGIS. ANALYSIS H.B. 5806 SUMMARY AS ENACTED 1 (2019), *available at* http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5806-1C15FEC8.pdf.

[467] *House Bill 5806 (2018)*, MICH. LEGIS. (Mar. 28, 2019), http://www.legislature.mi.gov/(S(hxxrlyq5epga14x2wpcuuxsv))/mileg.aspx?page=GetObject&objectname=2018-HB-5806.

[468] *Id.*

[469] *Id.*

[470] MICH. HOUSE FISCAL AGENCY, *supra* note 480, at 1.

[471] *Id.*

[472] *Id.*

[473] *Id.* at 2; H.B. 5806 §§ 1099b(e)(ii) & 1099c(3), 2018 Leg., Reg. Sess. (Mich. 2018).

mental disorder; (4) team management of a participant's treatment and supervision; (5) system-wide accountability enforced by the juvenile mental health court; (6) use of graduated incentives and sanctions; and (7) defined criteria for program success.[474]

This law also adds additional criteria to the preadmission screening and assessment for admission to a juvenile mental health court.[475] The preadmission screening now also includes: (1) a review of the juvenile's delinquency history; (2) a mental health assessment performed by a mental health professional for an evaluation of a serious mental illness, serious emotional disturbance, or developmental disability; and (3) a review of the juvenile's family situation, special needs, or circumstances with a potential to affect the juvenile's ability to receive mental health or substance abuse treatment and follow the court's orders.[476]

The purpose behind this law is to ameliorate some of the problems that arose from having a single chapter for both adult and juvenile mental health courts.[477] First, the statute is much clearer than before because it is focused on one court.[478] Second, because it is focused only on juvenile mental health courts, the statute is better able to be tailored to the needs of the juvenile justice system.[479]

[474] H.B. 5806 § 1099c(3)(a)-(g), 2018 Leg., Reg. Sess. (Mich. 2018).
[475] *Id.* § 1099e(3)-(4).
[476] *Id.* § 1099e(4).
[477] MICH. HOUSE FISCAL AGENCY, *supra* note 480, at 5-6.
[478] *Id.*
[479] *Id.*

NEW YORK LEGISLATION

🕮 N.Y. EDUC § 1132 (Consol. 2019)
Report by Zoya Chakourski

Effective June 5, 2019, the New York Education Law Title 1 Article 23-B § 1132 outlines the duties of the New York State Commissioner of Education to minimize child abuse in the educational setting.[480] The commissioner supervises 3.2 million students in the State of New York.[481] The law requires the commissioner to prepare a form for documenting allegations of child abuse in the school setting, which would utilize the definitions for abuse and academic terms outlined in § 1125 of the Education Law Title 1 Article 23-B, and any context or information the reporter believes to be helpful in explaining the allegation.[482]

Additionally, the commissioner is responsible for organizing trainings for all employees listed in § 1126 of the aforementioned article.[483] The trainings must, address the physical and mental symptoms and indicators of child abuse, requirements for reporting child abuse, consequences of not reporting, and legal protections offered to the reporter.[484]

All teachers, administrators, bus drivers or other such employees, employed on or after July 1, 2019 at a school other than a district or public school, must attend training or complete coursework on identifying the signs of child abuse.[485] The coursework shall include indicators of child abuse, requirements for reporting, consequences of not reporting, and the legal protection afforded to reporters.[486] Training materials should be distributed by an institution which has been approved to provide the training, and all employees should provide proof of completing the training to their school administrator.[487] The New York State Education Department may request documents proving the completion of training at will, and is

[480] N.Y. EDUC. CODE § 1132 (Consol. 2019).
[481] *MaryEllen Elia, Comm'r of Educ. & Pres. of the U. of the St. of N.Y.*, NYS EDUC. DEPT., http://www.nysed.gov/commissioner-elia-bio(last visited Apr. 3, 2019).
[482] N.Y. EDUC. CODE §§ 1125 & § 1132.
[483] *Id.* at § 1132.
[484] *Id.*
[485] *Id.*
[486] *Id.*
[487] *Id.*

authorized to publish a list of employees who have not completed the described training.[488]

The only employees exempt from this training are those who have already completed training on child abuse and maltreatment pursuant to the New York Consolidated Laws Service Education Law Title 1 Article 23-B § 3003 and § 3004.[489]

This law is an update to New York's Safe Schools Against Violence in Education ("SAVE") Act, which aims to recognize and protect abused children in the New York education system.[490] The SAVE Act, which became effective in July 2000, was meant to combat the largely unaddressed problem of child abuse in the school setting by requiring that all prospective schoolteachers in certain districts and charter schools, as well as teachers seeking administrative positions and licenses, undergo a criminal background check and fingerprinting.[491]

[488] *Id;* NYS EDUC. DEPT., http://www.nysed.gov (last visited Apr. 3, 2019).
[489] N.Y. EDUC. CODE § 1132.
[490] *See* OFFICE OF N.Y. STATE COMPTROLLER, CRIMINAL HISTORY BACKGROUND CHECKS FOR SCHOOL EMPLOYEES REPORT 2007-S-119 at 3.
[491] *Id.*