2013

Juvenile Defender Resource Guide

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1. The Juvenile Court

A. Generally

**OJJDP Fact Sheet: Delinquency Cases in Juvenile Court, 2009**
Crystal Knoll & Melissa Sickmund, U.S. Dep’t of Justice (Oct. 2012) (4 pages)

This fact sheet discusses the changes in juvenile delinquency court cases from 1960 to 2009, noting a slight decline in delinquency cases since 2000. It outlines variances in race, age, and gender. The fact sheet also illustrates shifts in caseloads at different stages of delinquency court, including detention, intake, waiver, and adjudication.

**Juvenile Court Statistics 2009**
Charles Puzzanchera et al., Nat’l Ctr. for Juvenile Justice (May 2012) (152 pages)

This report presents data on over 1.5 million delinquency cases, profiling trends from 1985 to 2009. The study also looks at patterns in status offense cases from 1995 to 2009. The report offers data on age, gender, race, and type of offense for both delinquency and status offense cases. The report concludes by listing the number of juvenile cases per state and county.

B. Police, Probation & Intake

**If Not Now, When?: A Survey of Juvenile Justice Training in America’s Police Academies**
Strategies for Youth (2013) (40 pages)

This report presents the findings of a national survey on the state of juvenile justice training in police academies. The findings suggest that state police academies’ juvenile training curricula should be expanded both in their scope of subject matter (to cover, e.g., adolescent brain development, mental health, trauma-related and special education-related disorders, and disproportionate minority contact) and time spent reviewing material. The report outlines elements of a model curriculum using examples of effective training from various police academies. The report has state-specific information on where officers receive the best and worst training on a number of topics. It recommends police recruits cross-train with other juvenile justice professionals, including defenders, and youth-serving community-based organizations.

**Closing the Widening Net: The Rights of Juveniles at Intake**

This article examines how the intake process is the primary entry point for youth in the juvenile justice system. Most jurisdictions allow juvenile probation officers to conduct intake screenings and make initial assessments regarding whether a juvenile merits diversion, informal supervision, or referral to a prosecutor for formal petition filing. The article’s critique of current intake procedures focuses on the lack of procedural rights of juveniles. The combination of the wide discretion given to juvenile probation officers and the unclear right of a juvenile
to have counsel present during the intake process can create a situation where more youth are referred to the court system instead of to less formal programs for rehabilitation. The article argues that the youth most vulnerable to this risk are those from minority and low-income families. Reforms to address this risk include mandating access to counsel before intake, explaining the voluntary nature of intake participation by the youth and his or her parents, and legislation providing a clear rubric for decision-making that must be followed during intake.

C. Screening & Assessment

**Risk Assessment in Juvenile Justice: A Guidebook for Implementation**
Gina M. Vincent et al. (2012) (104 pages)
Risk assessment tools help juvenile court stakeholders make decisions about youth placement and supervision. This Guidebook provides a structure for jurisdictions to implement risk assessment instruments and to improve their current risk assessment practices. The Guidebook’s recommendations are the culmination of years of research. The Guidebook explains why implementing risk assessments could be sound policy and presents detail about how to implement them, in addition to research on best practices.

**Risk Assessment & Risk Management in Juvenile Justice**
Christopher Slobogin, 27 Crim. Just. 10 (2013) (10 pages)
This article analyzes the methodology, practicality, and critical application of risk assessments in juvenile justice. It discusses the various types of risk assessment instruments, their accuracy, and constitutional issues implicated by their use. Acknowledging the difficulty of accurate risk assessment, the article argues that when properly applied, validated actuarial instruments can be effective tools in disposition planning.

D. Competency Determinations

**SWM v. State**
299 P.3d 673 (Wyo. 2013) (12 pages)
In a unanimous decision, the Wyoming Supreme Court held that a juvenile with ADHD and language deficits has a due process right not to proceed with a delinquency adjudication if he or she is incompetent, and that statutory standards for determining adult competence to stand trial are appropriate for determining juvenile competence to be adjudicated in juvenile court.

**In re Matthew N.**
A minor appeals the juvenile court’s finding that he was competent to accept the court’s jurisdiction. The appellate court relied in part on the findings of two psychologists and determined that developmental immaturity rendered him incompetent to accept juvenile court jurisdiction. Furthermore, the court held that a determination that a minor is incompetent due to developmental immaturity, as
opposed to mental disorder, implies that the juvenile had been incompetent at an earlier proceeding, thereby precluding the possibility that any earlier admissions could have been made knowingly and intelligently. The appellate court remanded the case, holding that any admissions made prior to a finding of competency could be withdrawn upon motion by the defense.

E. Disposition

**OJJDP Fact Sheet: Juvenile Delinquency Probation Caseload, 2009**
Sarah Livsey, U.S. Dep’t of Justice (Oct. 2012) (2 pages)
This fact sheet analyzes the frequency of a sentence of probation following a delinquency adjudication. The fact sheet provides a gender and racial demographic breakdown of offenders receiving probation. It also provides statistics on offense type and concludes that although property offenses make up a plurality of the probation caseload, their total proportion has diminished over time.

**Rethinking the Shame: the Intersection of Shaming Punishments and American Juvenile Justice**
Alicia N. Harden, 16 U.C. Davis J. Juv. L. & Pol’y 93 (2012) (61 pages)
This article argues that shaming punishments conflict with effective juvenile justice systems. Scholars are still unconvinced of shaming’s efficacy as a deterrent, as the punishment creates too much of a stigma, places young people in psychologically and physically dangerous positions, and is generally inconsistent with most states’ ideas of the juvenile justice system’s purpose. The article suggests that rather than abolishing shaming punishments altogether, these punishments ought to be highly limited and controlled through plea bargaining.

**State of Sentencing 2012: Developments in Policy and Practice**
Nicole D. Porter, Sentencing Project (2013) (25 pages)
This report gives an overview of key criminal justice policy reforms in 2012. State lawmakers in at least 24 states adopted 41 criminal justice policies that might decrease prison populations and diminish barriers to reentry while promoting public safety. Reasons for reform varied, from managing prison capacity to recognizing that the scale of incarnation has diminished public safety. The report covers sentencing, probation and parole, collateral consequences, and juvenile justice. It concludes by recommending ways to change policy for states concerned about their use of incarceration. The report suggests reforming sentencing statutes, eliminating juvenile life without parole statutes, limiting the use of incarceration as a sentencing option, and restricting collateral sanctions for persons with prior convictions.
In re J.V.
979 N.E.2d 1203 (Ohio 2012) (19 pages)
The Supreme Court of Ohio held that the imposition of an adult sentence upon a juvenile and the imposition of such a stayed sentence based on clear and convincing evidence, rather than a beyond a reasonable doubt standard, is constitutional. The Court also found that a juvenile court lacks the authority to impose criminal punishment and post-release control after the child turns 21.

F. Post-Disposition & Aftercare

Keeping Promises to Preserve Promise: The Necessity of Committing to a Rehabilitation Model in the Juvenile Justice System
This note provides an overview of the juvenile justice system’s abandonment of the rehabilitative approach and its switch to more punitive measures, leading to a high recidivism rate that disproportionately affects people of color. The note attributes the problem to a mismanagement of funds that benefits the punitive approach rather than wrap-around services and re-entry assistance. The note offers several recommendations for reform in all phases of the juvenile justice process including immediate services upon system entry, a change in the treatment of youth during detention, and continuity of care and community involvement to prevent recidivism.

In re Pers. Restraint of Diaz
In this case, a juvenile defendant challenged his sentence on ineffective assistance of counsel grounds and because his 92 year sentence violated Graham. The appellate court found counsel’s representation to be constitutionally deficient. Counsel failed to research controlling authority concerning “exceptional downward sentences,” including research from Roper, and misrepresented to the sentencing court that the defendant was declined by the juvenile court when, in fact, no Kent transfer hearing ever occurred (because the juvenile’s transfer was statutorily mandated). The appellate court remanded for resentencing on the ineffective assistance grounds, and thus did not have to reach the issue as to whether Graham required resentencing, commenting that it was the legislature’s job to define crimes and fix punishments.

G. Right to Jury Trial

Punitive Juvenile Justice and Public Trials by Jury: Sixth Amendment Applications in a Post-McKeiver World
This article argues that punitive juvenile courts should be subject to the public jury trial protections of the Sixth Amendment, and that McKeiver ought to be disregarded, at least in part. The article discusses the theory of punishment as compared to rehabilitation and evaluates the history of Kent, Gault, Winship, and
public trials in criminal court. The article highlights the policy considerations as to why options to obtain a jury trial and choose an open or closed trial are beneficial. It provides a framework to evaluate whether a given disposition is punitive or rehabilitative. Finally, the article evaluates several cases and critiques their handling of the concepts of punishment and the need for a jury trial.

H. Shackling

**Unchain the Children**
Mary Berkheiser, Nev. Law. (June 2012) (2 pages)
This short article argues for an end to Nevada’s practice of indiscriminately shackling defendants in juvenile court. It cites recent laws and cases in other states that have prohibited the practice, but reminds readers that two-thirds of states shackle all juveniles without any showing of need.

**Sample Motion to Remove Shackles**
PDS Attorney Alec Karakatsanis (2012) (29 pages)
This redacted motion to remove shackles of a juvenile defendant, actually used in D.C. Superior Court, contains citations to social science research, federal and state cases, and international law. It discusses how shackling affects both the child and the judge’s perceptions of that child, to the detriment of justice.

I. Parents

**Engaging Parents as a Legitimacy-Building Approach in Juvenile Delinquency Court**
Liana J. Pennington, 16 U.C. Davis J. Juv. L. & Pol’y 481 (2012) (53 pages)
This article argues that parents should play an increased role in juvenile delinquency court settings, and posits that an increased parental role will build trust and confidence in legal authorities, potentially diminishing delinquent behavior. The article suggests that granting a parent time in court to discuss the child’s history, home life, and needs helps increase legitimacy in the justice system. Finally, the article highlights state statutes and procedures that grant parental participation rights in hearings and other proceedings, and argues that more legislation is needed to implement laws that promote the active participation of parents in delinquency proceedings.

J. Collateral Consequences

**Significant Entanglements: A Framework for the Civil Consequences of Criminal Convictions**
This article argues that instead of determining whether civil consequences of criminal convictions are direct or collateral, courts should consider whether these consequences are “significant entanglements” of civil and criminal law and enforce Sixth Amendment protections where such entanglements exist. The article
analyzes *Padilla v. Kentucky* and *Turner v. Rogers* as first steps in constructing a legal doctrine on civil consequences of criminal convictions. The article examines both the “significant” and “entanglement” characteristics of civil consequences and shows how that framework protects against some civil consequences, but not others. The article then applies that framework to Sixth Amendment and due process protections that come at critical stages other than the plea stage. The article concludes that the significant entanglements framework provides a useful tool for considering the protections that should be provided to civil consequences of criminal convictions, for considering broader procedural safeguards, and for understanding the blurred line between civil and criminal law.

### The Florida Juvenile Collateral Consequences Checklist: A Guide for Understanding the Consequences of Juvenile Court Involvement

Juvenile Justice Center (2013) (16 pages)

This checklist provides attorneys, judges, and other juvenile justice professionals with current information on the immediate and long-term consequences of juvenile adjudications of delinquency under Florida law. The checklist addresses employment opportunities; openness of court procedures and records; public housing; the military; firearm rights; driver’s licenses; access to schools and higher education; fines, court costs and restitution; sex offender registration; DNA samples; expungement; voting; jury service; immigration status; and adult sentencing.

2. Children

   A. Generally

   **America’s Children in Brief: Key National Indicators of Well-Being, 2012**


   This report collects and analyzes data regarding children’s issues from 22 federal agencies spanning the topics of family and social environment, economic circumstances, health care, physical environment and safety, behavior, education, and health. It organizes the information by age, gender, ethnicity, and other factors.

   **2013 Kids Count Databook**

   Annie E. Casey Foundation (56 pages)

   Since 1990, KIDS COUNT has ranked states annually on overall child well-being using an index of key indicators. This report presents recent trends in the key areas of economic well-being, education, health, and family and community.
3. Child & Adolescent Development

A. Generally

Reforming Juvenile Justice: A Developmental Approach
Richard J. Bonnie et al. (2012) (463 pages)
At the request of OJJDP, various committees of the National Academy of Sciences were charged with accounting for and evaluating various juvenile justice reforms undertaken over the past 15 years in light of current knowledge about adolescent development. This resulting report looks into all aspects of the juvenile justice system, and holds that the goals, design, and operation of the juvenile justice system should be informed by the growing body of knowledge about adolescent development. The report contains sections on current practices, reducing racial and ethnic disparities, the role of the federal government in encouraging and implementing reform, adolescent development, and achieving lasting reform.

Does Recent Research on Adolescent Brain Development Inform the Mature Minor Doctrine?
Laurence Steinberg, 38 J. Med. & Phil. 256 (2013) (12 pages)
This essay explains that the mature minor doctrine (e.g., that adolescents have the same decision-making skills as adults when considering medical decisions, such as abortion) can co-exist with recent adolescent brain development science revealing that a lack of decision-making skills is a sufficient mitigating reason to bar the imposition of severe punishments on adolescents. Cognitive development research demonstrates that where adolescents make decisions with the aid of an objective professional, their decision-making skills are comparable to that of adults. The essay recommends that legal professionals distinguish between older and younger adolescents. Adolescent decision-making skills can be enhanced by involving youth in the decision-making process.

The Relevance of Immaturities in the Juvenile Brain to Culpability and Rehabilitation
Beatriz Luna, 63 Hastings L.J. 1469 (2012) (17 pages)
This article reviews the basic insights that brain imaging research has revealed about juvenile brain development. It argues that adolescence’s role as a transitional stage of limited executive control ought to inform sentencing, culpability, and rehabilitation calculations.

Constitutional Line Drawing at the Intersection of Childhood and Crime
This article argues that the Roberts Court has contradicted itself in Graham, J.D.B., and Miller when determining constitutional rights for children and drawing a line between childhood and adulthood. The article describes two perspectives on childhood within the Court. The Exceptionalists embrace youth brain development and account for age when determining constitutional rights.
The Uniformists contend that the Constitution should apply uniformly, regardless of age. The two perspectives have caused much confusion since both sides contradict themselves, particularly in terms of the homicide/non-homicide line of *Graham* and *Miller*. The article suggests that based on the “unique characteristics of childhood,” the Court should vigorously apply its own precedent and the knowledge gleaned from recent scientific advances in adolescent brain development to all children. Recognizing the “unique transitory characteristics” of youth strengthens constitutional protections that are limited to juveniles under 18, without ignoring relevant scientific evidence that could apply to defendants slightly above that age.

**Born to Be an Offender? Antisocial Personality Disorder and Its Implications on Juvenile Transfer to Adult Court in Federal Proceedings**  
This note argues that although antisocial personality disorder (ASPD) diagnoses can be used to understand an individual’s overall personality structure, their use in juvenile adjudications may lead courts to incorrectly determine that a juvenile will continue to offend as an adult or that no available treatment program would help the juvenile. Judges may confuse an ASPD diagnosis with the related diagnosis of psychopathy and thereby dispose of the case with an inappropriate and inaccurate bias against the juvenile. The note describes ASPD, its causes, and its diagnosis. It discusses ASPD in the context of labeling theory, which states that societal stigma and negative self-image will lead to further delinquency. Antisocial behavior has two developmental pathways—life-course-persistent antisocial behavior and adolescence-limited antisocial behavior—and the difference between these pathways undermines ASPD’s predictive validity. Additionally, ASPD diagnoses tend to bias courts toward transferring juveniles to adult courts.

**Tennessee v. Barnes**  
Brief for Center on Wrongful Convictions of Youth et al. as Amici Curiae, No. 279390 (Crim. Ct. Hamilton Cty., Tenn., Jan. 31, 2013) (31 pages)  
This brief supports 16-year-old Brendan Barnes, who prosecutors charged with robbery and homicide following statements he made to police during an interrogation. The brief supports a motion to suppress Barnes’ statements. Barnes made his statements in response to false suggestions by police that he might face the death penalty if convicted. The amicus parties are practitioners, professors, and researchers who study the impact of interrogations on juveniles. The brief argues that youth are susceptible to the pressures of police interrogation and lack the ability and maturity to weigh risks and long-term consequences. Juveniles’ vulnerability to external pressure makes them uniquely susceptible to the environment of police custody and that threatening a juvenile with the death penalty should result in exclusion of all statements made in response to the threat. Finally, juveniles should be treated differently than adults in interrogations and police should alter their strategy when questioning youth.
B. Language Issues & Colloquies

**Washington Judicial Colloquies Project: A Guide for Improving Communication and Understanding in Juvenile Court**
TeamChild & Models for Change (2012) (40 pages)

Drawing from experiences of various stakeholders, including both experts and juveniles themselves, this report provides drafts of colloquies that seek to bridge the gap “between what lawyers and judges need to make a satisfactory record and what kids need to better understand what is happening” in juvenile court. The colloquies included relate to disposition and probation, and first appearance and conditions of release. The report also provides an overview as to why colloquies are needed and advice for juvenile court stakeholders seeking to start similar projects in other states.

**Say What? Translating Courtroom Colloquies for Youth**
Rosa Peralta, Children’s Rights Litigation, Am. Bar Ass’n (Apr. 2013) (5 pages)

This article discusses the impetus behind and explains the Washington Judicial Colloquies Project, citing to research that shows why courtroom colloquies must be more understandable to young people.

**Language Barriers: How to Communicate with Kids Who Have a Language Impairment**
Gwyneth C. Rost & Paige Buckley, J. Sch. Safety (2013) (3 pages)

This article teaches professionals working with youth how to detect and communicate with youth who have language impairments (LI), which are found in an estimated 67% of male juvenile offenders. Youth with LI are at a higher risk for behavioral disorders and displaying aggressive behaviors, have difficulty comprehending rules and laws, typically mask their lack of comprehension, and describe events in confusing and illogical ways, which law enforcement often mistake as noncooperation and evasiveness.

4. Mental Health

A. Generally

**OJJDP Bulletin: The Northwestern Juvenile Project: Overview**
Linda A. Teplin et al., U.S. Dep’t of Justice (Feb. 2013) (16 pages)

This bulletin discusses the findings of a long-term study regarding mental health issues, substance abuse, and sexual activity of youth detained in Cook County, Illinois. Findings revealed that psychiatric disorders, post-traumatic stress, suicidal thoughts and behaviors, and sexually risky behaviors were common among incarcerated youth. Most of those affected by psychiatric disorders did not seek treatment because they thought the problem would go away, they could solve it alone, or they did not know where to seek treatment. The authors hope this study will lead to the implementation of programs and services to assist detained youth and provide transition services for youth re-entering the community.
Juvenile Justice and Mental Health: Innovation in the Laboratory of Human Behavior
Sean C. McGarvey, Comment, 53 Jurimetrics J. 97 (2012) (24 pages)
This comment analyzes how recent developments in neuroscience, identifying the root of mental health disorders in juveniles, can be employed to rehabilitate youth within the juvenile justice system. Approximately two-thirds of youth in the juvenile justice system have at least one diagnosable mental health disorder and have suffered significantly higher levels of trauma than youth in the general population. The comment points to the multiple opportunities for pre-adjudicatory mental health screening of alleged juvenile offenders. The comment argues that mandatory mental health screening should be implemented throughout the juvenile justice process because in many cases treatment, rather than detention, is more effective in rehabilitating youth.

B. Implications of Trauma

Defending Childhood: Protect, Heal, Thrive
Attorney General’s National Task Force on Children Exposed to Violence (2012) (183 pages)
This extensive report recommends ways the United States can prevent, reduce, and treat children’s exposure to violence. It offers plans for identifying such youth, treating them, and maintaining safe communities to ensure that the juvenile justice system addresses and helps, rather than punishes, youth exposed to violence.

OJJDP Bulletin: PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth
Karen M. Abram et al., U.S. Dep’t of Justice (June 2013) (16 pages)
This report discusses the results of the Northwestern Juvenile Project. The study showed that youth in the juvenile justice system have higher rates of PTSD than the general population, with trauma rates in the year prior to the study outpacing lifetime trauma rates in the general population. Those who suffer from PTSD typically have one or more comorbid disorders (i.e., another psychological disorder with overlapping symptoms). The report recommends improving PTSD detection in juvenile residential facilities, fully exploring treatment ramifications of comorbid disorders and individually tailored treatment, avoiding re-traumatizing youth, and improving continuity of care for trauma victims.

C. Treatment

There’s No Place Like Home: Realizing the Vision of Community-Based Mental Health Treatment for Children
This article describes the failings of the mental health system in America as it relates to children. It explores the intersections of the child welfare, educational,
juvenile justice, and mental health fields. It evaluates the various federal laws that protect and provide services to children with mental health needs. The article notes the major problems facing indigent children without community-based mental health facilities. It pushes for effective implementation of already-existing federal law and an increased use of best practices through the systems-of-care model.

5. Markers of Inequality

A. Dependent Youth

**Foster Care as a Mitigating Circumstance in Criminal Proceedings**

This article evaluates whether foster care experience should be considered a mitigating factor in criminal court. It analyzes the pros and cons of four different types of foster care placements and discusses the effects foster care can have on youths’ physical health, cognitive and academic functioning, and socio-emotional health. The article concludes that foster care has immediate and lasting negative impacts on youth, and that it should be considered a serious mitigating factor, at least at sentencing.

**Dual Jurisdiction in California: How the Juvenile Courts are Failing Crossover Youth**

This note explores the California juvenile justice system’s approach to youth involved in both dependency and delinquency matters. A dependent minor might switch between systems. After a hearing, crossover youth may be placed on informal probation, be ordered to stay in the dependency system, or be transferred to the delinquency system. The note proposes the mandatory exercise of dual jurisdiction and implementation of uniform procedures in both arenas, and discusses the difficulties inherent in providing legal representation to crossover youth.

**In re D.M.**
370 S.W.3d 917 (Mo. Ct. App. 2012) (Motion for Rehearing and/or Transfer to Supreme Court Denied July 3, 2012; Application for Transfer Denied Aug. 14, 2012) (8 pages)

In this case, amicus had argued that the juvenile court judge violated D.M.’s right to due process in her delinquency case by using his extensive knowledge of D.M.’s history in the child welfare system, including her history of behavior problems and disciplinary infractions in school, as evidence to adjudicate her delinquent for the charge of assault on school property. (Under Missouri’s one judge/one family practice, the juvenile court judge in a delinquency case is also the judge in that child's welfare case.) The Court of Appeals disagreed, finding that the judge used his knowledge of D.M.’s other court involvement not to find her delinquent, but to chastise the school for creating an insufficient IEP.
B. Girls

**Improving the Juvenile Justice System for Girls: Lessons from the States**
Liz Watson & Peter Edelman, Georgetown Center on Poverty, Inequality and Public Policy (2012) (57 pages)

This report argues that the juvenile justice system requires gender-responsive reforms to address the challenges faced by girls entering the system, who are typically “high need” (requiring specialized services) and “low risk” (detained for non-serious offenses). These challenges include trauma, violence, neglect, mental and physical problems, family conflict, pregnancy, residential and academic instability, and school failure. Girls sometimes are re-traumatized by their experiences within the juvenile justice system. Without action, these problems will only worsen, as girls compose an increasing percentage of children entering the juvenile justice system. The report discusses gender-responsiveness reform efforts in Connecticut, Florida, and Stanislaus County, California. The report recommends several federal legal and policy reforms to support state and local reform efforts, particularly regarding research and implementation of gender-responsive programs for girls, standardized assessments for girls entering the system, training and technical assistance on unique needs of marginalized girls, and ending legal loopholes that disparately affect girls.

**Justice for Girls: Are We Making Progress?**

This article argues that girls are marginalized and discriminated against in the juvenile justice system, but that an increasing emphasis on developmental science and data-driven policies promises increased equality for girls. The article highlights the history of juvenile justice as it relates to girls; how domestic violence and commercial sexual exploitation have brought girls disproportionately and unjustly within the juvenile justice system; and how data, standardized risk assessments, and evidence-based practices can help reduce current gender disparities in the system.

**Strategic Training and Technical Assistance: A Framework for Reforming the Juvenile Justice System’s Treatment of Girls and Young Women**

This article decries the current piecemeal progression of gender-responsive reform efforts and calls upon systems—schools, the medical community, law enforcement, the child welfare system, community providers, the juvenile justice system, and the courts—to work together to improve the system’s treatment of girls. The article presents a five-step gender-responsive training and technical assistance (TTA) framework to reform the juvenile justice system for girls and to respond to their unique needs and experiences.
C. Sexual Orientation, Gender Identity & Gender Expression

**Selective Enforcement and the Impact on LGBT Juveniles**  
This article reviews the various forms of discrimination faced by LGBT youth in both the educational and juvenile justice systems, which includes pressure on students to conform to hetero-normative gender roles, harassment, intimidation, and bullying, prosecution for consensual sexual activity, profiling by law enforcement, harsher dispositions, and mistreatment in detention facilities. The article examines how New Jersey law treats these issues. The article recommends LGBT youth training for teachers, school administrators, juvenile justice professionals, and juvenile detention facility staff; continued implementation of the Anti-Bullying Bill of Rights, improved services for LGBT youth at homeless shelters, better exercise of discretion by law enforcement regarding LGBT youth, meaningful protection of LGBT juveniles’ due process rights, juvenile detention facility policies that protect LGBT confidentiality and accommodate needs of transgender youth, and greater acceptance of LGBT youth by juvenile justice professionals and the broader community.

**Recommendations for Promoting the Health and Well-Being of Lesbian, Gay, Bisexual, and Transgender Adolescents: A Position Paper of the Society for Adolescent Health and Medicine**  
David S. Reitman et al., 52 J. Adolescent Health 506 (2013) (5 pages)  
This paper discusses problems that LGBT teens face by virtue of their LGBT status (e.g., coming out, non-acceptance and victimization, societal discrimination, and discrimination within the juvenile justice system), and the impact that these challenges have on their development. The paper calls on healthcare providers to promote positive LGBT adolescent policy in schools, the foster care and juvenile justice systems, and within the family structure. The paper also recommends that local juvenile justice systems adopt policies to ensure the physical and mental well-being of incarcerated youth both during confinement and upon re-entry to society.

Holly Franson, Comment, 84 U. Colo. L. Rev. 497 (2013) (32 pages)  
This comment addresses the apparent increase in the number of children identifying as transgender, the problems these children face because of their transgender status, and the non-accommodation of transgender children in school dress codes. The comment reviews the recent history of legal claims brought by transgender youth over school dress codes, focusing on *Youngblood v. Sch. Bd. of Hillsborough Cnty.*, *Doe ex rel. Doe v. Yunits*, and *Doe v. Bell*. The comment proposes that the rise of children identifying as transgender calls for schools to adopt gender nondiscriminatory dress code policies and practices to avoid litigation.
Memorandum from Office of the County Counsel to Probation Office
County of Santa Clara, California (June 29, 2011) (6 pages)

This recently-obtained 2011 memorandum reports that the Santa Clara County Probation Department can place transgender youths in a facility based on their gender identity, rather than biological sex, as long as it considers the California Code of Regulations factors in assigning youth to a particular facility. These factors include age, maturity, sophistication, emotional stability, program needs, legal status, public safety considerations, medical/mental health considerations, and sex of the youth. The memorandum discusses specific obstacles to placing male-to-female and female-to-male transgender youths in facilities and concludes that both groups should be housed according to gender identity. The memorandum reviews several protocols for working with transgender youth in the juvenile justice system, including best practices for preventing discrimination and preserving due process.

D. Race & Ethnicity

1. Race

Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform
Kristin Henning, 98 Cornell L. Rev. 383 (2013) (80 pages)

This article argues that current aggressive institutional approaches to the arrest and prosecution of juvenile offenders ignores normal adolescent development and is motivated by contemporary narratives depicting youth of color as threatening and irredeemable. The article discusses the erosion of politicians’ responsiveness to adolescent behavior and the scientific community’s recent research in adolescent development. Youth of color are disproportionately represented in the juvenile justice system, and negative racial stereotypes increase the severity of sentences handed down to African-American and Hispanic adult and juvenile defendants alike. The role of the prosecutor will be central to any reform efforts. The article proposes a number of reforms aimed at reducing explicit and implicit racial bias, accounting for normal adolescent development, and increasing transparency and accountability. Specifically, it calls for creating standards that: 1) require prosecutors to work with developmental experts and community representatives to draft intake and charging standards, based on research in adolescent development, that challenge distorted views of race and maturity; 2) require prosecutors to track charging decisions by race and neighborhood and encourage community representatives to review those decisions for disparate impact; and 3) require prosecutors to work with community representatives to develop a continuum of community-based, adolescent-appropriate alternatives to prosecution.
Fundamental Unfairness: *In re Gault* and the Road Not Taken
Robin Walker Sterling, 72 Md. L. Rev. 607 (2013) (75 pages)

This article argues that *In re Gault* divided juvenile justice reform from the civil rights movement, because despite the disparate treatment of African-Americans in the juvenile justice system, the case was based on Fourteenth Amendment fundamental fairness principles instead of the Bill of Rights’ procedural protections. *Gault* essentially provided a legal basis for courts to ignore race-based disparities in juvenile delinquency proceedings. The article reviews the origins of the juvenile justice system and tracks the experience of African-American children through the system’s history. The article analyzes *Gault* within the context of “fundamental fairness” versus “fundamental rights” and contrasts the Supreme Court cases of *Duncan v. Louisiana* and *McKeiver v. Pennsylvania* to demonstrate the legacy of the *Gault* Court’s miscalculation in relying on Fourteenth Amendment due process. The article describes the current state of disproportionate minority contact in the juvenile justice system and proposes that courts adopt a new prototype for juvenile justice that considers systemic discrimination against racial minorities and incorporates cultural-based solutions.

Father’s Incarceration and Youth Delinquency and Depression: Examining Differences by Race and Ethnicity

This article examines associations between juvenile race and rate of incarceration of fathers among white, black, and Hispanic subsamples of youth in the National Longitudinal Study of Adolescent Health. Study results indicate that associations between father’s incarceration and delinquency do not vary by race and ethnicity or gender. One exception is among Hispanic respondents, for whom having a biological father incarcerated is associated with an even higher propensity of delinquency than among white and black respondents with incarcerated fathers.

2. Native American Youth

The Kids Aren’t Alright: An Argument to Use the Nation Building Model in the Development of Native Juvenile Justice Systems to Combat the Effects of Failed Assimilative Policies

This article advocates for the expanded participation of Indian tribes in creating their own, effective juvenile justice systems. It outlines how juvenile justice works at the tribal level, and suggests improvements.

Reclaiming the Promise of the Indian Child Welfare Act: A Study of State Incorporation and Adoption of Legal Protections for Indian Status Offenders
Thalia González, 42 N.M. L. Rev. 131 (2012) (28 pages)

This article discusses the historical context and legislative intent of the Indian Child Welfare Act. The Act is meant to apply to status offenders, but many states inconsistently apply it, leading to Indian youth being removed from their homes.
for status offenses in contravention of federal law. The article lists the states and their various relevant laws pertaining to status offenders.

E. Intersection of Race & Gender

**Blind Discretion: Girls of Color & Delinquency in the Juvenile Justice System**
Jyoti Nanda, 59 UCLA L. Rev. 1502 (2012) (38 pages)
This article discusses how stereotypes of white girls and girls of color affect the decisionmaking of juvenile justice system actors. The article calls for more research on the intersection of race and gender in the juvenile justice system.

6. Detention & Corrections

A. Generally

**OJJDP Bulletin: Juveniles in Residential Placement, 2010**
Sarah Hockenberry, U.S. Dep’t of Justice (2013) (16 pages)
This bulletin provides the latest national and state-level data from the Census of Juveniles in Residential Placement. The bulletin categorizes individual states’ juvenile offender data by race, offense, age and length of placement in public and private facilities from 1997 to 2010. It compares and contrasts that data against nationwide averages from 1997 to 2010 to show trends in the juvenile justice system. The bulletin also explains the differences between public and private facilities in providing placement for offenders. The OJJDP encourages juvenile justice advocates to explore alternatives to confinement, improve conditions of confinement for offenders, reduce the percentage of status offenders held in custody, and provide more programs to assist youth in developing into successful adults.

**Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly-Assigned Judges**
This paper analyzes data collected from a ten-year study of 35,000 youth in the Chicago juvenile justice system (where judges are randomly assigned cases, allowing for data with reduced bias) to determine the consequences of sending juveniles to temporary detention centers versus putting them on probation. The paper tested the two potential effects of juvenile incarceration: whether it serves as a deterrent to future crime or stifles the growth and progress of juveniles, leading to recidivism. The paper also discussed previous similar work, which has generally been concentrated on adult offenders. The appendix breaks down the study’s results by offense type, age, and education level. The paper found that compared to similarly situated juveniles given only probation, detained juveniles were far less likely to eventually graduate high school and far more likely to be incarcerated as adults.
B. Conditions

**Investigation of the Pendleton Juvenile Correctional Facility**
Civil Rights Division, U.S. Dep’t of Justice (Aug. 22, 2012) (39 pages)

In this letter to the Governor of Indiana, the DOJ presents its findings and recommendations from an investigation of the Pendleton Juvenile Correctional Facility, a state-run prison for male juveniles. The DOJ found that the youth at Pendleton are exposed to significant harm and their rights are often violated. The investigation revealed that Pendleton failed to take reasonable steps to prevent youth suicide, provide safe conditions, provide adequate mental health care, and protect educational rights.

**Impact of Family Visitation on Incarcerated Youth’s Behavior and School Performance**
Sandra Villalobos Agudelo, Vera Institute of Justice (Apr. 2013) (6 pages)

This study examines whether frequent visitation from family members has a positive outcome on the behavior and grades of incarcerated youth. Previous research on incarcerated adults found that inmates in contact with family and society outside prison walls fare better in prison and upon release. Like their adult counterparts, this study found that youth with no visitation had significantly more behavioral incidents than those with regular visits. Grades were significantly lower for youth with no visitors. The study argues that youth would benefit from placements closer to home and in facilities which encourage frequent contact with families.

**OJJDP Bulletin: Nature and Risk of Victimization: Findings from the Survey of Youth in Residential Placement**
Andrea J. Sedlak et al., U.S. Dep’t of Justice (May 2013) (16 pages)

This bulletin provides findings on the risk of victimization among youth in residential treatment facilities, based on interviews with over 7,000 youth in custody throughout spring 2003. These youth endured theft, robbery, assault, and sexual victimization during their time in residential placement. The bulletin lists predictors of risk and identifies characteristics that correlate to victimization. The bulletin explores several solutions to curb victimization, such as structural changes and extra monitoring within facilities to protect not only vulnerable youth, but those likely to cause harm.

**The Captive Mind: Antipsychotics as Chemical Restraint in Juvenile Detention**

This note argues for an end to the practice of chemical restraint of juveniles through antipsychotics and other psychotropic medications in juvenile facilities. The U.S. Supreme Court’s decision in *Washington v. Harper* (upholding an adult inmate’s Fourteenth Amendment right to refuse medication) suggests a potential legal standard for determining when juvenile detainees can refuse medication. The note focuses on the use of chemical restraint in Florida’s foster-care system and juvenile detention facilities, as the state has a rigorous consent procedure to
ensure that psychotropic medications are administered with the consent of responsible adults when biological parents are unavailable. The note proposes a number of legal arguments against chemical restraint, highlighting public policy, the purpose of the juvenile justice system, chemical restraint as battery, medical malpractice, detainees’ rights to treatment and rehabilitation, Fourteenth Amendment due process, and Eighth Amendment arguments.

C. Sexual Abuse

Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12
Allen J. Beck et al., U.S. Dep’t of Justice (2013) (108 pages)
This report presents and summarizes data on inmates’ reported instances of sexual victimization by other inmates and staff in U.S. jails and prisons in 2011-12, including data for juvenile inmates.

Sexual Victimization in Juvenile Facilities Reported by Youth, 2012
Allen J. Beck et al., U.S. Dep’t of Justice (June 2013) (65 pages)
This report presents data from the 2012 National Survey of Youth in Custody. Research was conducted in hundreds of juvenile confinement facilities between February and September 2012. The report ranks facilities according to the prevalence of sexual victimization. This report provides state- and national-level estimates of juvenile sexual victimization by type of activity, including estimates of youth-on-youth nonconsensual sexual contact, staff sexual misconduct, and level of coercion. It includes some demographic data. It also analyzes sexual victimization using the characteristics of both the perpetrator and youth at high risk of victimization, location and time of incidents, and nature of the relationship between youth and facility staff prior to sexual contact.

D. Solitary Confinement

The Solitary Confinement of Juveniles in Adult Jails and Prisons: A Cruel and Unusual Punishment?
This article addresses an emerging issue surrounding the increasing prevalence of “Shock Incarceration” programs by states as an alternative to traditional incarceration and the use by these boot-camp like programs of juvenile solitary confinement as punishment for violations of the rules. The article argues that the solitary confinement of juveniles in adult prisons violates the Eighth Amendment. It also suggests that the international law consensus against juvenile solitary confinement should instruct federal constitutional rights. The article concludes that public opinion must lead the charge against solitary confinement.
E. Reform

**Common Ground: Lessons Learned from Five States that Reduced Juvenile Confinement by More than Half**
Justice Policy Institute (2013) (44 pages)

This report discusses the variety of methods five states (Connecticut, Tennessee, Louisiana, Minnesota, and Arizona) used to reduce juvenile incarceration rates between 2001 and 2010 by at least half. Although general juvenile incarceration rates nationwide decreased for less serious crimes (property offenses, drug offenses), other offense categories for which confinement should never be used (non-violent public order offenses, technical violations of probation/supervision terms, status offenses) had proportional increases or no change nationally. The disproportionate confinement of youth of color increased. The report identifies a number of common elements among the states, including class action litigation concerning conditions of confinement within the state or other legal or administrative scrutiny; distinctions between juvenile corrections and the adult system and/or partnerships between juvenile corrections and child welfare; improved inter-agency collaboration and communication (e.g., through high-level task forces or commissions); and a recommitment to holistic juvenile justice ideals that acknowledge juveniles’ differences from adults and the need for different interventions and services. The report argues that litigation is a protracted but effective means of achieving reform.

**Judicial Intervention and Juvenile Corrections Reform: A Case Study of Jerry M. v. District of Columbia**

This comment analyzes the juvenile corrections class action suit *Jerry M. v. District of Columbia* and its resulting consent decree with the aim of assisting reformist litigants in defining a constructive role for the court. The comment argues that conditions of confinement inquiries must delve into the real problems of agency operations that make conditions what they are, but that does not justify judicial micromanagement. The comment reviews the theoretical framework of conditions of confinement suits and other “institutional reform litigation,” arguing that litigation as an indirect means of solving conditions problems is flawed, as the provocation of political will is perhaps a necessary though not sufficient condition to a solution. The comment examines how shifts in political considerations among agency management, line staff, judges, the media, the legislature, the chief executive, and other institutional actors affect progress. The comment concludes with implications on how courts and parties should view their roles and the purposes of institutional reform litigation.
7. Ethics

A. Generally

**National Juvenile Defense Standards**
National Juvenile Defender Center (2013) (166 pages)

The *National Juvenile Defense Standards* are a comprehensive set of best practice standards that seek to inform and guide the ethical and professional performance of juvenile defense attorneys. The *Standards* present a national approach to systematizing competent and diligent juvenile defense practice, and reflect a core commitment to the unique role of the juvenile defender. The *Standards* fully embrace juvenile defense as a highly specialized area of practice, consistent with a young person’s fundamental right to counsel. The *Standards* set forth a framework for representation that is client-centered and anchored in the law, science, and professional codes of responsibility. They provide a roadmap for counsel to navigate every stage of juvenile delinquency practice from detention through post-disposition. In addition, the *Standards* provide support for supervisors and discuss the role of the juvenile defender in addressing systemic deficiencies.

**The Impact of National Standards on Juvenile Defense Practice**
Sarah Bergen & David Shapiro, 32 A.B.A. Child L. Prac. 6 (June 2013) (5 pages)

This article describes how juvenile defenders can use the *Standards* both as a framework for their practice and as guidance to deliver superior services to their clients.

**Taking a More Standard Approach**
Rey Banks & Sarah Bergen, Models for Change (June 2013) (2 pages)

An additional introduction to the *Standards*.

**Policy Update—Six Policy Priorities for Juvenile Defense: Why Juvenile Defense Doesn't End in the Court Room**
National Juvenile Justice Network (May 2013) (6 pages)

This article highlights the six policy priorities of juvenile defense as defined by the *Standards*. The article encourages policy advocates to collaborate with defenders and defense service providers to ensure early access to counsel, establish a presumption of indigence for all youth, prevent invalid waiver of counsel by juveniles, challenge disparate treatment and discrimination in the system, ensure resources and manageable caseloads for defenders, and identify and eliminate harmful conditions of confinement. Additionally, the article promotes implementation of these standards through legislation, local court rules, and training that raises awareness and knowledge of the standards.
B. Prosecutorial Ethics

The Use of Unethical and Unconstitutional Practices and Policies by Prosecutors’ Offices
   Unethical or unconstitutional prosecutorial practices can take many forms, but courts rarely take action to discourage or punish prosecutorial misconduct. This article provides examples of cases and categories of prosecutorial misconduct to illustrate when and how prosecutors make misrepresentations to the court or engage in questionable behavior during discovery and at trial. Some common transgressions include: intentional withholding/strategic delay of evidence or misrepresentations in affidavits, use of cooperating witnesses willing to withhold the truth or commit perjury, turning on a victim to maintain conviction, and use of pretrial publicity or information leaks to create public condemnation of the accused. The article suggests that the misconduct of prosecutors is often supported by or overlooked by their superiors, thus encouraging continued misconduct and violations of the Model Rules of Professional Conduct.

8. Interrogations & Miranda

A. Generally

Reducing Risks: An Executive Guide to Effective Juvenile Interview and Interrogation
Int’l Ass’n of Chiefs of Police & OJJDP (Sept. 2012) (44 pages)
   This guide instructs police on how to conduct effective interrogations of juveniles and avoid obtaining false confessions. It provides an overview of legal research and the latest developments related to questioning juveniles. It offers best practice tips, a summary of relevant case law, and then several forms for officers to use while conducting interrogations. For defenders, this guide may provide insight into cross-examination on police best practices.

The United States Supreme Court Adopts a Reasonable Juvenile Standard in J.D.B. v. North Carolina for Purposes of the Miranda Custody Analysis: Can a More Reasoned Justice System for Juveniles be Far Behind?
   This article contends that adoption of a “reasonable juvenile” standard in J.D.B. to determine custody for Miranda purposes may apply beyond the Fifth Amendment context, particularly in areas such as the duress defense, justified use of force, the provocation defense, negligent homicide, and felony murder. The article discusses how the United States Supreme Court’s analysis in Roper, Graham, and J.D.B. has helped to create a new “reasonable juvenile” standard separate from that of the “reasonable person.”
Real Interrogation: What Actually Happens When Cops Question Kids
Barry C. Feld, 47 Law & Soc’y Rev. 1 (2013) (35 pages)
This article examines police interrogations of 16- and 17-year old youth charged with felony offenses, using data on how police secure *Miranda* waivers, the tactics they use to gain information, and the evidence that youth provide. The data reveals that while older youth appear to understand the language of *Miranda* similarly to adults, they lack the mature judgment required to make informed waiver decisions and are susceptible to the influence of adult authority figures. In order to ensure the factual reliability of inquisitional justice, policies and procedures should be adopted that recognize how youthfulness can adversely affect a juvenile’s ability to exercise *Miranda* rights or make voluntary statements. Examples of such policies and procedures include time limits on interrogations, mandatory recording of interrogations, and creation of new interrogation techniques that differ from those used with adults.

Interviewing and Interrogating Juvenile Suspects
Am. Acad. of Child & Adolescent Psychiatry (2013) (1 page)
This policy statement on interviewing and interrogating juvenile’s subjects begins by explaining recent advancements in adolescent brain development science and the Supreme Court’s recognition of that science. The statement then recommends four policy changes when interviewing and interrogating juveniles, including mandating the presence of an attorney during juvenile interrogation, law enforcement’s use of concepts and terms appropriate to a juvenile’s developmental level, *Miranda* warnings written with language more appropriate for juveniles, and the videotaping of interviews. The policy statement also includes a sample of an age-appropriate *Miranda* warning.

*Dye v. Commonwealth*
No. 2012-SC-000003-MR (Ky. filed June 20, 2013) (19 pages)
The Kentucky Supreme Court reversed the lower court’s finding that a juvenile’s confession to police was voluntary. During interrogation, the police made statements to the juvenile implying that he was death penalty-eligible, that he would be assaulted in prison, and continually dissuaded the juvenile from invoking his right to counsel. The Court held that review of the facts under a totality of circumstances test indicated that the confession was not voluntary.

B. *Miranda* Waiver

*Juvenile Miranda* Waiver and Parental Rights
Note, 126 Harv. L. Rev. 2359 (2013) (22 pages)
This note argues that criticism of the mishandling of juveniles’ *Miranda* rights generally focuses on how police questioning of juveniles encroaches on children’s individual rights, but ignores how it harms parents’ custodial rights and the integrity of the parent-child relationship. The note reviews the developments of juvenile *Miranda* waiver doctrine and parental rights. In *Troxel v. Granville*, the Supreme Court acknowledged parents’ interests but failed to agree on appropriate
balancing. The note explains how courts typically use exacting scrutiny in cases involving parental rights and hybrid constitutional claims, but courts tend not to enforce those rights in juvenile *Miranda* cases, where pressures exist to elicit false confessions that would remove innocent children from their parents’ care. The note argues that either parents should be allowed truly informed consent in juvenile interrogations, or the system’s risk-reducing protections for children against false confessions—such as requiring an attorney’s presence at interrogations, limiting the duration of uncounseled questioning, prohibiting manipulative techniques, and videotaping interrogations—should be bolstered.

**The Dialogue Approach to *Miranda* Warnings and Waiver**  
This article addresses the issues surrounding *Miranda* waivers, specifically the tension between constitutional protections of those under interrogation and interference with legitimate interrogation. The article stresses the importance of knowing, intelligent, and voluntary waiver of *Miranda* rights, especially for those in vulnerable populations, such as juveniles or persons with intellectual or mental disabilities. The article provides a new strategy for interrogation, which encourages a dialogue-friendly approach based upon the research of Thomas Grisso and others. Officers must communicate rights to suspects in a developmentally-appropriate manner. In turn, suspects must acknowledge their understanding. The article concludes by outlining the pros and cons of this approach for each of the various actors in the justice system.

**Kentucky Should Mandate Attorney Consultation Before Juveniles Can Effectively Waive *Miranda* Rights**  
Sandra Eismann-Harpen, Note, 40 N. Ky. L. Rev. 201 (2013) (32 pages)  
This note explores *Miranda* rights afforded to juveniles in interrogations in Kentucky and suggests that the law does not sufficiently protect children from waiving their rights before they have a meaningful understanding of the right to remain silent. In Kentucky, courts have held that certain technical violations of juvenile interrogation laws are not fatal to in-court use of admissions. The note urges the court or legislature to go beyond the decision in *J.D.B.*, where the reasonable child standard was devised, and create a rule requiring that youth under the age of 18 be counseled by an attorney regarding their rights and waiver before interrogation. The note also argues that guidance by a parent or legal guardian is not an advisable solution because a conflict of interest may exist between the child’s rights and parent’s wishes, parents might not provide the best advice, or parents might coerce a child to confess without understanding the consequences. Requiring an attorney consultation or presence of a neutral third party is the best way to protect a juvenile’s rights against self-incrimination.
**Kids Waive the Darndest Constitutional Rights: The Impact of J.D.B. v. North Carolina on Juvenile Interrogation**

This note argues that while *J.D.B.* notably mandates that police officers must factor in age when determining custody for *Miranda* purposes, the case did not solve the problem of the high volume of *Miranda* waivers by juveniles. Juveniles often waive *Miranda* due to developmental issues that limit comprehension. The note analyzes the wide range of tests used to determine the validity of a juvenile’s *Miranda* waiver. The note proposes the adoption of a two-tiered waiver test wherein juveniles under age sixteen cannot waive *Miranda* without first speaking with an attorney and that for older juveniles, courts must use a totality test taking into account more factors, specifically focusing on the juvenile and his or her comprehension, with a presumption against waiver.

**State of South Dakota v. Diaz**
Brief of Center on Wrongful Convictions of Youth et al. as Amici Curiae Supporting Appellee, No. 26544 (S.D. Apr. 2013) (18 pages)

This amicus brief, supporting the trial court’s suppression of fifteen year-old appellee’s confession, argues that law enforcement interrogation tactics must be given special scrutiny when the subject of the interrogation is a juvenile. Amici commend the trial court’s analysis of whether appellee knowingly and intentionally waived her *Miranda* rights, which considered each of the tactics used by police officers to secure a confession in light of appellee’s youth and language limitations. The brief urges the court to also expand the protections afforded to youth in the interrogation room since youth are particularly susceptible to the application of external pressure, are often impulsive and eager to please authority figures, and lack mature decision-making skills. The brief urges the court to require police to have juveniles repeat *Miranda* warnings in their own words, mandate that juveniles receive the opportunity to consult with an interested adult before interrogation begins, insist that police obtain express waivers of *Miranda*, and record all juvenile interrogations.

**C. In School**

**A Presumptive In-Custody Analysis to Police-Conducted School Interrogations**
Sally Terry Green, 40 Am. J. Crim. L. 145 (2013) (28 pages)

This article argues that in-school police interrogations are tantamount to “custodial interrogations” and that the reasonable child test supports the adoption of a presumptive in-custody approach whereby children’s statements made to the police in school would be admissible only if they are made in the presence of a parent, guardian, or attorney. The article summarizes *J.D.B.* and explains how Supreme Court jurisprudence has long recognized the existence of a heightened risk of coercion and false confessions during custodial interrogations of juveniles.
Recess is Over: Granting Miranda Rights to Students Interrogated Inside School Walls
This note argues that the presence of a law enforcement officer at a student’s interrogation on school grounds in the absence of legal counsel or a parent qualifies as custodial interrogation, and requires Miranda warnings. Most jurisdictions find that custody exists only when law enforcement actively participates in the student’s interrogation. However, the note argues that the bar should be lowered to encompass scenarios in which law enforcement is merely present during questioning or is minimally involved, making the threshold about the presence of officers.

N.C. v. Commonwealth
396 S.W.3d 852 (Ky. 2013) (25 pages)
The Supreme Court of Kentucky held that a juvenile is entitled to Miranda warnings before questioning by a school official in the presence of a law enforcement officer if the juvenile’s statement is to be used in criminal proceedings. The opinion analyzes Gault, J.D.B., and the balance between the safety function of law enforcement in schools and the rights of juveniles.

9. Search & Seizure

A. Generally

Maryland v. King
No. 12-207, slip op. (U.S. June 3, 2013) (28 pages)
In 2009, King was arrested on first- and second-degree assault charges. Pursuant to the Maryland DNA Collection Act (Act), booking personnel swabbed his cheek to take a DNA sample. King’s swab sample matched DNA from an unsolved 2003 rape case, and he was subsequently charged with that crime. King moved to suppress the DNA match, arguing that the Act authorized unconstitutional searches when the state used it to obtain his DNA without probable cause. The Maryland Court of Appeals found portions of the Act to be unconstitutional, and that taking DNA was an unlawful seizure. The United States Supreme Court reversed. In a 5-4 decision, the Court ruled that when a suspect is held for a serious offense and is brought to a station to be detained, swabbing an arrestee’s cheek and analyzing the DNA is like fingerprinting, and is a valid police booking procedure that is reasonable under the Fourth Amendment. The Court found the search valid for several reasons: it significantly improves the criminal justice system and police investigation, it poses no threat to arrestee’s health or safety, swab searches are negligible, it helps authorities properly identify an arrestee, know the type of person being detained, and assess the danger an arrestee poses to society when making bail determinations, it is similar to fingerprinting, an individual’s privacy expectation diminishes when in police custody, and identifying arrestees’ through their DNA does not intrude on their privacy. Justice Scalia issued a scathing dissent that is worth reading.
Florida v. Harris
133 S. Ct. 1050 (2013) (14 pages)
In this appeal from a drug conviction, the defendant challenged the probable cause finding of an officer who used a canine to detect narcotics in his car. A Florida trial court denied a motion to suppress the narcotics, and the Florida Supreme Court reversed, noting that records of the dog’s reliability in the field were lacking. The dog falsely alerted police on two separate occasions to narcotics in defendant’s car, but during the first search, ingredients for making methamphetamine were found. The United States Supreme Court reversed, holding that evidence of satisfactory performance in a certification or training program can, standing alone, provide sufficient reason to trust a dog’s alert, creating a presumption of probable cause to search. Furthermore, the Court stressed that a defendant has the opportunity to rebut this presumption at trial by presenting evidence of negative performance or false positive alerts by a dog. The Supreme Court prescribed a new rule that courts make probable cause determinations based on the totality of the circumstances after weighing competing evidence rather than setting rigid evidentiary requirements.

State v. Butler
Brief for Juvenile Law Center et al. in Support of Real Party in Interest Tyler B., Arizona S. Ct. No. CV-12-0402-PR (Mar. 15, 2013) (44 pages)
This amicus brief argues that age and other circumstances are relevant to a juvenile’s ability to voluntarily consent to a search. The trial court suppressed evidence derived from a blood draw taken from a 16-year old, finding it to be search for which no voluntary consent was given. When assessing voluntariness under the Fifth Amendment, courts must be especially cognizant of a juvenile’s immaturity and susceptibility to coercion. The brief argues that the unique characteristics of youth require that voluntariness be assessed by examining the order of events, the mental and chronological age of the juvenile, his or her education, and whether he or she has been allowed to consult with a parent or trusted adult. Amici support creating a reasonable juvenile standard to determine if consent to search was the product of free will. This standard would examine the totality of circumstances through the lens of youth, accounting for their psychological, physiological and social differences with adults.

State v. Butler
Agreeing with the brief filed by amici, the Supreme Court of Arizona held that a youth’s age and the presence or absence of parents must be considered in determining whether a youth consented to a search. The Court held that Tyler B. did not consent to the blood draw at issue. The opinion has language that advocates can use to advance the reasonable juvenile standard from J.D.B. in other contexts.
**U.S. v. Wurie**

2013 U.S. App. LEXIS 9937 (1st Cir. May 17, 2013) (53 pages)

In this case, the First Circuit considered whether a police search of cell phone data subsequent to a lawful arrest exceeded the bounds of the Fourth Amendment. Law enforcement arrested the appellant on charges of possession and intent to distribute a controlled substance and possession of a firearm by a felon. Appellant’s cellphone was taken upon arrest and then police obtained data and phone numbers from the phone. The Circuit’s opinion analyzed current Fourth Amendment precedent regarding the warrant exception to search incident to arrest. Finding that opening the cell phone and retrieving data could not be justified by either the possibility of destruction of evidence or a threat to law enforcement safety, as required under the exception, the First Circuit held that the search was unreasonable. In its decision, the First Circuit emphasized that its decision creates a bright-line rule against retrieval of data from cellphones during a warrantless search. Its decision was partly based on the changing meaning of privacy and how cellphones now contain the type and scope of private information that was once kept in diaries or private journals.

**B. School Searches**

**Random, Suspicionless Searches of Students’ Belongings: A Legal, Empirical, and Normative Analysis**

Jason P. Nance, 84 U. Colo. L. Rev. 367 (2013) (65 pages)

This article argues that the courts should adopt a standard for school searches requiring school officials to obtain specific evidence of substance abuse or weapons problems before conducting intrusive searches into students’ personal belongings, unless school officials have a reasonable belief that students are in immediate danger. The article highlights how high-security schools with zero-tolerance policies experience increased arrests and student involvement in the juvenile justice system. Therefore, the article suggests alternative methods of preventing student drug abuse or weapons use, including counseling, mentoring and other community programs.

**Constitutional Issues Surrounding Student Possession and Use of Cell Phones in Schools**

Charles J. Russo & Ralph D. Mawdsley, West Ed. L. Rptr. (July 2012) (17 pages)

This article provides an overview of recent case law involving cell phones in schools, and discusses policy implications for school officials.

**Indecent Exposure: Do Warrantless Searches of a Student’s Cell Phone Violate the Fourth Amendment?**


This article argues that school administrator searches of student cell phones necessitate warrants, absent urgent safety needs. It discusses Fourth Amendment rights in public school context, covering recent cases at the state and federal levels.
applying the Fourth Amendment to cell phone use. It also proposes relevant guidelines for public schools.

**Schools, Cyberbullies, and the Surveillance State**  
Deborah Ahrens, 49 Am. Crim. L. Rev. 1669 (2012) (54 pages)

School officials and teachers are starting to conduct searches of students’ personal phones and electronic devices to detect and prevent cyberbullying and sexting. These searches can lead to students being charged with violations of criminal laws against child pornography or harassment. This article suggests that school search policies should not be the same for bullying/sexting and drugs/weapons because the terms “bullying” and “sexting” are too vague. The article suggests that while preventative or reactive searches are widely accepted by the public as a sign that schools take these issues seriously, allowing searches of personal electronics for bullying and sexting could lead to a slippery slope of intrusions on student freedoms. Moreover, these policies push the boundaries of the role of school officials by allowing them to use criminal law or law enforcement methods in public schools. The article highlights different school policies that allow for such searches and some that even allow teachers and school officials to discipline students for actions and behaviors occurring outside of school, which violate students’ First and Fourth Amendment rights.

**J.P. v. Millard Public Schools**  
830 N.W.2d 453 (Neb. 2013)

High school student J.P. was suspended for possession of drug paraphernalia. School officials found the paraphernalia by conducting an unconsented-to search of J.P.’s car, parked off-campus. J.P. successfully appealed his suspension to district court. The school district appealed the decision. On appeal, the Nebraska Supreme Court evaluated *T.L.O.*, *Morse*, and other significant, relevant cases. The Court held that school officials possessed no statutory authorization or implied authority to conduct such searches, and that no cases have ever recognized a right of school officials to conduct off-campus searches of students or their property, unrelated to school-sponsored activities. Driving to and from school was not a sufficient nexus to the school. The Court held that the search of J.P.’s car violated his Fourth Amendment right to be free from unreasonable searches.

10. Indigent Defense

A. Generally

**Heeding Gideon’s Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm**  
Robin Steinberg, 70 Wash. & Lee L. Rev. 961 (2013) (58 pages)

This article by the Executive Director of the Bronx Defenders discusses holistic defense practice—when a defendant’s life outcomes are a priority over the immediate case outcome, accounting for the client’s legal and non-legal needs—and how defenders nationwide are implementing the “four pillars” model. The
four pillars are: 1) seamless access to legal and non-legal services that address client needs, 2) dynamic and interdisciplinary communication, 3) advocates with an interdisciplinary skill set, and 4) a robust understanding of and connection to the community served. The article reviews the legal landscape and the “get tough on crime” era that precipitated the creation and implementation of holistic defense, as well as holistic defense’s fifteen-year practice history. Using case examples, the article distinguishes holistic defense from client-centered or community-oriented defense. The article also compares fact with myth about holistic defense. Included case studies demonstrate that defenders nationwide can replicate successes from the Bronx.

Defending Those People
This essay examines why Professor Smith has devoted her life and career to defending people most of society would just as soon banish and forget. After thirty years of criminal law practice, she explains why she prefers defending the guilty to the innocent, why the work has been a calling, and what it means to be an underdog.

Unstoppable v. Unwaivable
Steven Benjamin, 70 Wash. & Lee L. Rev. 1269 (2013) (17 pages)
This is the transcribed speech given by the President of NACDL during a symposium recognizing the fiftieth anniversary of Gideon. The speech stresses the importance of criminal defense lawyers in protecting their clients from any fundamental unfairness in the criminal justice system. The gift of Gideon is that clients do not stand in a courtroom alone but must have an attorney present. Even though resources are still inadequate and criminal defense attorneys face many economic and social obstacles, the service defenders provide is essential.

B. Right to Counsel

Embracing a New Era of Ineffective Assistance of Counsel
This article explains how Missouri v. Frye and Lafler v. Cooper “represent a seismic shift” in Supreme Court jurisprudence. It explains the cases’ potential impact on procedural rights, including speedy trial, pretrial detention, double jeopardy, and jury selection rights.

Validating the Right to Counsel
Brandon L. Garret, 70 Wash. & Lee L. Rev. 927 (2013) (33 pages)
This article asserts that lawyers and judges should utilize social science data to change the way ineffective counsel is assessed in the criminal justice system. The article begins by explaining that evaluating counsel’s effectiveness post-conviction is ineffective for various reasons, and that training lawyers properly is a better method to provide effective counsel. The article provides an example of improving lawyering through evaluations of jury research. The article states that
the way in which juries make verdicts may be based upon simple attorney
decisions in explaining evidence. Therefore, it is crucial how an attorney acts and
presents information in the courtroom. The article concludes that using social
science data to better train attorneys and inform judges will improve the judicial
system as a whole.

**Gideon Was a Prisoner: On Criminal Defense in a Time of Mass Incarceration**
Abbe Smith, 70 Wash. & Lee L. Rev. 1363 (2013) (29 pages)
This article celebrates the 50-year anniversary of *Gideon v. Wainwright* by
detailing the story of Clarence Earl Gideon, the inmate who wrote to the Supreme
Court from his prison cell after a wrongful conviction, and his defense attorney,
W. Fred Turner, to highlight the importance of representing the accused and
convicted, particularly during an era of mass incarceration. The article discusses
Turner’s strategy of including *Gideon* in trial strategies, his thoughtful jury
selection, and his presentation of a clear and concise case theory. Professor Smith
combines Turner’s strategy with her own experience as a defense attorney and
prisoner-advocacy clinic director to provide a holistic view of defense practice,
advocating both for trial defense work and post-conviction representation.

**Lafler and Frye: Good News for Public Defense Litigation**
This essay praises the *Frye* and *Lafler* decisions, not only because the United
States Supreme Court recognized the pivotal role of representation during plea
negotiation, but also because the cases challenged the conventional method of
defense reform. The essay provides several cases which used *Frye* and *Lafler* to
show how practical realities—such as caseload levels—affect defenders and their
clients. The essay concludes by encouraging defenders to head to court, rather
than the legislature, to enact defense reform.

**Too Poor to Hire a Lawyer, but Not Indigent: How States Use the Federal
Poverty Guidelines to Deprive Defendants of Their Sixth Amendment Right to
Counsel**
John P. Gross, 70 Wash. & Lee L. Rev. 1173 (2013) (47 pages)
This article discusses state use of Federal Poverty Guidelines to determine
eligibility for appointed counsel. The article argues that this measurement tool
creates a system that is under-inclusive. Thus, the article suggests basing
eligibility for appointed counsel on the Self-Sufficiency Standard created by the
Center for Women’s Welfare, which considers the financial means necessary to
provide housing, child care, food, health care, transportation, taxes, and other
expenses without government aid or services.
C. Caseloads

**Qualitative Assessments of Effective Assistance of Counsel**  

This article argues that to obtain reduced caseloads, defenders should emphasize ethical (or “qualitative”) problems in court, rather than quantitative problems. By revealing high caseloads as conflicts-of-interest, rather than only as excessive numbers, the article finds that public defenders have been more successful in obtaining relief from excessive caseloads when they address ethical issues that arose from their overburdened dockets.

**Too Many Clients, Too Little Time: How States Are Forcing Public Defenders to Violate Their Ethical Obligations**  

This article discusses how budget cuts cause excessive caseloads that prevent public defenders from devoting adequate time to each case. The article reviews the current state of budgets for indigent defense. A discussion of *California v. Edward S.*, an ineffective assistance of counsel case, illustrates relevant ethical rules from the Model Rules of Professional Conduct. The article discusses conflicts of interest that disincentivize zealous advocacy by both flat fee contract attorneys and public defender’s offices. The author argues that ABA Formal Opinion 06-441, a 2006 opinion dealing with the ethical obligations of public defenders, did nothing to solve defenders’ ethical problems. The author claims that differing approaches exemplified in *State ex rel. Mo. Pub. Defender Comm’n v. Waters* and *Public Defender, Eleventh Judicial Circuit of Florida v. State* still leave indigent defendants helpless. Proposed solutions, such as shifting budget allocations to public defenders, charging indigent clients a mandatory fee for using a public defender, and increasing fellowships for recent graduates in public defenders’ offices, are not promising. The author argues that the only way to ameliorate public defenders’ ethical problems is to find more money for indigent defense.

**State ex rel. Mo. Pub. Defender Comm’n v. Waters**  
370 S.W.3d 592 (Mo. 2012) (*en banc*) (41 pages)

In this case, the Missouri Public Defender Commission sought a writ of prohibition to rescind a trial court order requiring the public defender’s office to represent an adult defendant, citing Missouri’s “caseload protocol” law allowing a district public defender office to decline new cases after exceeding its caseload capacity for at least three consecutive months. The Supreme Court of Missouri held that the State exceeded its authority in appointing the public defender’s office to represent a defendant in violation of the caseload protocol. The Court reaffirmed its 2009 holding from *State ex rel. Mo. Pub. Defender Comm’n v. Pratte* that the Sixth Amendment to the U.S. Constitution guarantees a right to effective and competent counsel, not just counsel in name only. The Court held that the Sixth Amendment and attorney ethics rules require that courts consider an attorney’s competency and that the attorney consider whether accepting an
appointment will violate the Sixth Amendment or ethical rules before accepting or challenging an appointment of counsel or an indigent defendant. The Court recommended that trial judges manage their dockets to avoid having to certify a public defender office as having limited availability.

*Public Defender, Eleventh Judicial Circuit of Florida v. State*

2013 WL 2248965 (Fla. May 23, 2013) (25 pages)

In this case, the Florida Supreme Court reaffirmed that aggregate/systemic motions to withdraw are appropriate in circumstances where there is an office-wide or widespread problem as to effective representation, and that such motions need not be made in piecemeal form, as the appellate court would have required. The Court discussed relevant statutes addressing conflicts and representation by the public defender (PD). It held that while a statute stating that defenders could not withdraw from representation solely because of conflicts arising from inadequate funding or excess workload was constitutional, where such issues negatively impacted the ability to provide quality representation (again, in the aggregate), the PD could file prospective motions to withdraw. The Court did not grant or deny the PD’s motion, because the case had been pending in the Supreme Court so long. It remanded to the trial court for a determination of whether the conditions underlying the PD’s motions to decline future appointments still existed.

D. Reform

*Gideon Skepticism*

Alexandra Natapoff, 70 Wash. & Lee L. Rev. 1049 (2013) (39 pages)

This article asserts that the presence of competent counsel is not sufficient in itself to guarantee fair trials and voluntary pleas for defendants. The article begins by stating that since *Gideon*, the mere presence of counsel has created an inaccurate presumption of fairness in trials. Such presumptions have sidelined other fairness inquiries. The article explains that fairness is affected by institutional racism and biases, more procedural power in the hands of the prosecution than the defenders, forensic inaccuracies, and a failure to regularly provide a right to counsel in misdemeanor cases. The article provides several solutions to help guarantee fairness, involving public defender offices, prosecutors, and judges.

*Criminal Defense Lawyers Moneyball: A Demonstration Project*

Ronald Wright & Ralph Peeples, 70 Wash. & Lee L. Rev. 1221 (2013) (47 pages)

This article explains that defense attorney skills are measurable and asserts that supervisors should create performance data to improve defense work. The article uses North Carolina’s state data regarding criminal court and sentencing guidelines to evaluate lawyers. The article also analyzes what factors made attorneys more or less successful by examining race, gender, school attended, and experience. The article argues that measuring attorney success could help provide better defense work and effectively utilize funds. The article cautions against using data without context.
11. Juvenile Indigent Defense

A. Generally

**Florida New Juvenile Defender Attorney Manual**
Juvenile Justice Center, Barry University (2013) (24 pages)
This manual seeks to assist new juvenile defense attorneys in Florida by providing an overview of topics that may impact them in their work, including ethical issues, adolescent development information, and discussions on interviews, dispositions, and other juvenile-specific issues. It contains an appendix of other useful references on specific issues.

**The Case for Practicing Juvenile Delinquency Defense**
This chapter in Juvenile Criminal Defense Strategies encourages attorneys not involved in juvenile defense to learn more about the field. It discusses the purpose of the juvenile justice system, recent trends, such as the school-to-prison-pipeline, and the role of defense counsel as expressed interest advocate.

**The Wisdom of Juvenile Court: The Case for Treating Children Differently than Adults**
This chapter in Juvenile Criminal Defense Strategies discusses how juvenile defense is a field requiring in-depth knowledge of various issues. It discusses how brain science differentiates children from adults. Using Minnesota’s juvenile court system as a case study, the chapter examines different waiver laws in theory and practice, relationships with clients and their families, and recent trends in juvenile court, specifically focusing on expungements of records and the use of experts through the eyes of a Minnesota practitioner.

**Summary of Statutes and Rules Regarding Appointment of Counsel, Indigence Determinations, and Waiver of Counsel in Juvenile Delinquency Proceedings**
Colorado Juvenile Defender Coalition (2013) (11 pages)
This document provides a 50-state summary of appointment, indigence, and waiver of counsel statutes. It details the states that have requirements to prove indigence for the purpose of appointment of counsel, whether and when counsel is automatically appointed, and whether and how a juvenile may waive counsel. This should be a useful tool for anyone exploring legislative reform in these areas.

B. Assessments

**Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings**
This assessment focused on the role of juvenile defense counsel in the Colorado system, identifying systemic and structural barriers to effective representation and
identifying the state’s best practices in order to create a picture of the strengths and weakness of the juvenile system and make recommendations that are tailored to Colorado’s distinctive characteristics. The study concluded that Colorado’s juvenile defense system suffers from severe neglect. The lack of professional standards and a dedicated focus on juvenile defendants creates an environment where juvenile court is still viewed as “kiddie court” and less deserving of support and resources. The study made ten key recommendations for improving Colorado’s juvenile justice system centered on the idea that protecting the due process rights of juveniles must be a system-wide priority.

**Missouri: Justice Rationed, An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings**
National Juvenile Defender Center & Central Juv. Defender Center (2013) (60 pages)
NJDC’s assessment of Missouri’s juvenile indigent defense system explored the state’s due process rights in delinquency proceedings, barriers to those rights, highlighted best practice methods to implement such rights, and provided recommendations and implementation strategies for improving the juvenile indigent system. The assessment identified three main concerns: juveniles are discouraged from obtaining and are systematically denied counsel; there is a failure to protect constitutional rights for youth in juvenile proceedings; and the juvenile court creates conflicting roles that challenge ethical and constitutional obligations. The assessment provided several Core Recommendations and Implementations Strategies. The Recommendations and Strategies work together to provide multi-systemic reforms and require involvement from numerous entities. For example, the legislature should require the representation of children to extend after disposition and provide funding for that representation, the judicial branch should ensure colloquies in all juvenile cases are legally adequate and developmentally appropriate, and the state public defender office should allow for the electronic sharing of defense practice information across the state. This assessment provides policymakers and juvenile defense leaders with the impetus and information to create reform.

**C. Right to Counsel**

**Support Letter for Indiana Access to and Waiver of Counsel Rule Amendment**
National Juvenile Defender Center (May 2013) (8 pages)
This letter supports Indiana’s proposed Rule Amendment guaranteeing early appointment of counsel and a mandate that youth consult with an attorney prior to waiver of counsel, thereby serving to ensure that children are provided with meaningful access to counsel and are able to make informed decisions about their legal representation as guaranteed by the United States Constitution and Indiana State law. The letter discusses why the Amendment is necessary based on NJDC’s past Assessment of access to and quality of representation in the state, and compares Indiana’s proposed Rule to similar rules across the country.
Indiana Proposed Rule Amendment - Right to Counsel in Juvenile Court Delinquency Proceedings
(2013) (1 Page)
This proposed Rule Amendment provides that children charged with delinquency are entitled to counsel at all stages of proceedings, that counsel must be appointed prior to the detention or initial hearing, whichever occurs first, that any waiver of counsel must be made in open court, in the written record, and in the presence of the child’s attorney, and that the waiver may be withdrawn at any stage of a proceeding.

The Legal Significance of Adolescent Development on the Right to Counsel: Establishing the Constitutional Right to Counsel for Teens in Child Welfare Matters and Assuring a Meaningful Right to Counsel in Delinquency Matters
Jennifer K. Pokempner et al., 47 Harv. C.R.-C.L. L. Rev. 529 (2012) (43 pages)
This article makes the case for the right to counsel for minors in child welfare proceedings and for the prohibition of waiver of counsel for minors in juvenile delinquency proceedings. The article uses current adolescent development research and case law to demonstrate why such a waiver is not appropriate in the juvenile context. The article analyzes the proposed right to counsel in welfare proceedings within the framework established by Mathews v. Eldridge. In its discussion of prohibiting a waiver in the juvenile delinquency context, the article highlights the susceptibility of juveniles to coercion and how the U.S. Supreme Court’s decision in Faretta, granting adults the right to waive counsel, does not apply. The article also discusses the effect of allowing juveniles to waive their right to counsel, focusing on Luzerne County. The article cites national criminal defense standards, which state that juveniles should not be able to waive their right to counsel.

D. Role of Counsel

Defining the Role of Counsel in the Sentencing Phase of a Juvenile Delinquency Case
This article advocates for better representation during the sentencing phase of juvenile delinquency cases. The article provides suggestions on how to best articulate and argue on behalf of a client’s wishes at sentencing, and details the consequences of each possible outcome. Juvenile defenders must undergo proper training to learn their role and courts should directly address youth to ensure they consented to the sentence for which counsel is advocating. The article offers statutes, standards, and rulings that call for expressed interest lawyering at the sentencing phase and addresses why lawyers often stray from expressed interest advocacy at this phase.
Resolution by the Colorado Juvenile Justice and Delinquency Prevention Advisory Council, Endorsing Specialization in Juvenile Defense Practice
Colo. Juv. Justice & Delinquency Prevention Advisory Council (June 2013) (1 page)
This resolution adopted in June 2013 by the Colorado SAG recommends the training and specialization of attorneys and stakeholders in juvenile court.

The Challenges and Opportunities Presented by Juvenile Criminal Defense
Rhonda M. Copley, Juvenile Criminal Defense Strategies (2012) (8 pages)
This chapter in Juvenile Criminal Defense Strategies discusses the basic challenges of juvenile defense, e.g., meeting with clients, dealing with a client’s family, and becoming familiar with services.

The Role of Public Interest Lawyers in Social Justice Movements: Seeking Justice Where Educational Inequality, School Discipline, and Juvenile Justice Converge
This article explains the importance of providing holistic representation for children in all the systems they may find themselves in. It uses two TeamChild clients as case studies.

Profiles in Specialization – New Specialists in Juvenile Delinquency – Criminal Law
Denise Mullen, N.C. St. B. J. (Spring 2013) (2 pages)
This short profile contains published comments by legal professionals on North Carolina’s new specialization program in juvenile defense, including its impacts on the practice and their clients.

Managing Juvenile Clients and Protecting their Rights
Courtney T. Henderson, Juvenile Criminal Defense Strategies (2012) (9 pages)
This chapter in Juvenile Criminal Defense Strategies provides an overview on how juvenile defense attorneys must approach their clients and involve them in decision-making. The chapter discusses Kansas law.

In re Austin M.
975 N.E.2d 22 (Ill. 2012) (68 pages)
In this Illinois Supreme Court case, the juvenile defendant was charged with criminal sexual abuse. On appeal, the defendant contend that his attorney acted as GAL, rather than a true defense attorney, thereby advocating only for his “best” interests, and not his expressed interests. At trial, the defense attorney claimed that he owed a duty to court and to society. The Court held a defense attorney’s only duty is to the client. The Court held that the defendant’s attorney was not acting as defense counsel when he waived his client’s right to confrontation and failed to file a motion to suppress statements to police. Ultimately, the Court found that defense counsel did not meet the standards guaranteed under the Due Process Clause and Illinois’ Juvenile Court Act. The ruling affirms the idea that hybrid representation is always a conflict.
E. Funding

**Kids, Counsel, and Costs: an Empirical Study of Indigent Defense Services in the Los Angeles Juvenile Delinquency Courts**  
Cyn Yamashiro et al., Crim. L. Bull. (forthcoming 2013) (32 pages)  
This study reveals that contract panel attorneys in Los Angeles are less active, and the youth they represent are convicted of more serious offenses and subject to more severe dispositions, than those represented by public defenders. Additionally, court-appointed attorneys in Los Angeles are paid a flat fee—a compensation scheme the study denounces as fundamentally flawed.

F. Reform

**Report: Allegheny County Commission on Juvenile Justice**  
Hon. Dwayne D. Woodruff et al. (Oct. 2012) (57 pages)  
This report applies the standards and recommendations of the Pennsylvania Interbranch Commission on Juvenile Justice (ICJJ) to the juvenile justice system in Allegheny County, suggesting best practice methods and recommendations for reform. Allegheny County commissioned this report in response to the findings of the ICJJ from 2010. Topics covered include shackling, probation officer ethics, and standards for defenders and prosecutors. Each section addresses implementation and funding issues.

Office of the Juvenile Defender (Apr. 2013) (6 pages)  
This publication summarizes OJD’s 2012 assessment of its progress and impact on juvenile defense representation in North Carolina. OJD has established itself as a central resource and consultation center for juvenile defenders, performed evaluations of juvenile defense systems in over 80 counties, produced various materials, and created juvenile defense guidelines, policies, and a training program. Based upon the assessment, OJD created a new set of goals and objectives to pursue which focus on the continued development of a strong infrastructure and training and expanded monitoring of the systemic issues affecting juvenile defense to effectively support juvenile delinquency representation.

**Memorandum of Agreement Regarding the Juvenile Court of Memphis and Shelby County**  
Civil Rights Division, U.S. Dep’t of Justice (Dec. 2012) (43 pages)  
The DOJ and the Juvenile Court of Memphis and Shelby County (JCMSC) entered into an agreement to address the administration of juvenile justice for children facing delinquency charges before the court and the conditions of confinement of children held in facilities administered by the JCMSC. Based on a previous investigation of JCMSC, the DOJ found that there was reasonable cause
to believe that JCMSC did not provide constitutionally required due process, administer justice in a non-discriminatory manner, or provide reasonably safe conditions of confinement to children appearing before the court in delinquency matters. The agreement outlines substantive remedial measures, such as developing and implementing new policies in the three areas where deficiencies were noted: due process, DMC and equal protection, and protection from harm in detention facilities. The agreement is scheduled to terminate when JCMSC has achieved substantial compliance with the substantive provisions and maintained compliance for a minimum of 12 months.

12. School-to-Prison Pipeline

A. Generally

Indicators of School Crime and Safety: 2012
This report, covering the 2011-12 school year, identifies and explains the indicators and statistics for school crimes and safety, and outlines differences by gender, ethnicity, and year in school to convey the number of students involved in crime at school who feel threatened. It focuses on a variety of indicators present in schools, including violent deaths, fights, weapons, illegal substances, discipline policies, and fear and avoidance of attack or harm at school. The report discusses the increase or decrease of each indicator and uses charts, tables, and graphs to increase comprehensibility.

A Model Code on Education and Dignity: Presenting a Human Rights Framework for Schools
Dignity in Schools Campaign (Aug. 2012) (88 pages)
Through a framework emphasizing human rights, this document not only contains a model disciplinary code, but offers model ideas to increase student and parental involvement in schools, protect the rights of students, and utilize more evidenced-based practices to ensure a positive school climate.

Policing School Discipline
Catherine Y. Kim, 77 Brook. L. Rev. 861 (2012) (43 pages)
This article evaluates empirical evidence on school discipline policies and finds that overall, such policies no longer further pedagogical goals. The article wants judges to offer increased procedural protections to children found in trouble with school disciplinary authorities where relevant discipline policies enhance law enforcement, as opposed to educational goals. The article also briefly reviews ineffective zero-tolerance policies in various jurisdictions and examines data of school-based law enforcement referrals.
Addressing the Unmet Educational Needs of Children and Youth in the Juvenile Justice and Child Welfare Systems
Peter Leone & Lois Weinberg (2012) (78 pages)
This report explores school-related problems facing juveniles in the child welfare system, those in the juvenile justice system, and “crossover youth” (those involved in both systems). The report discusses the characteristics of these juveniles and barriers to providing effective services and education, and proposes legislation and evidence-based strategies to improve educational outcomes. Juveniles in each system and crossover youth have similar backgrounds, face similar challenges, and require similar services and supports. Children and youth of color are disproportionately represented in these systems, and they typically experience a number of risk factors associated with poor academic achievement, delinquency, recidivism, substance abuse, and mental health problems. The report reviews barriers to improving educational performance, as well as recent federal and state legal and policy reforms achieved through legislation and litigation. The report advocates for evidence-based interventions that target the individual educational needs of children, and calls for the use of cross-systems work groups and education liaisons to facilitate coordination among child welfare, juvenile justice, and education agencies, as some jurisdictions have already done.

Our Children, Ourselves: Ensuring the Education of America’s At-Risk Youth
This article advocates for a combination of policy reforms and litigation to promote access and equality in education for adjudicated youth returning to the community from out-of-home placements. Through criticism of zero tolerance policies and state laws that create obstacles to public school reentry, the article emphasizes the effects of suspension and expulsion on youth involved in the juvenile and criminal justice system and discusses the downsides and inadequacies of alternative education opportunities. Thus, the article supports reforms, such as Connecticut’s Public Act 11-115, Concerning Juvenile Reentry and Education, which provide smoother transitions back to public school for previously incarcerated youth. Furthermore, the article advocates for the creation of federal policy encouraging educational opportunities for incarcerated youth and promoting community reintegration through reentry to public schools. Additionally, the article supports constitutional challenges to laws and policies that hinder reentry to public school. However, the article suggests that success will be more likely if advocates can convince courts to adopt a different balancing test that weighs a school’s interest in excluding a student against the student’s rights and interest in education.
B. State Issues

**Delinquency in Florida’s Schools: An Eight-Year Study**  
Florida Dep’t of Juvenile Justice (Jan. 2013) (22 pages)  
This report analyzes data on delinquency in Florida schools, including the trend over the past eight years of a significant decrease in delinquency arrests in schools.

**Handcuffs on Success: The Extreme School Discipline Crisis in Mississippi Public Schools**  
Advancement Project & ACLU of Mississippi et al. (2013) (28 pages)  
This report discusses how severe discipline practices and policies in Mississippi public schools have created a school-to-prison pipeline that has directly harmed students and families. The report gives a background on the current state of school discipline in Mississippi and discusses how harsh disciplinary practices undermine the state’s education system, harm law enforcement personnel and public safety, weakens the state’s economy, and burdens taxpayers. The report proposes a number of legislative reforms for Mississippi, focusing on guided discretion for school districts, meaningful accountability and transparency, resources and incentives for developing safer and more effective schools, multi-stakeholder collaboration, and improved training for teachers and school staff.

**Keeping Kids in School and Out of Court**  
New York City School-Justice Partnership Task Force (May 2013) (74 pages)  
This report explores and recommends solutions to the problem of the dramatic number of school suspensions in New York City, particularly of minorities. The Task Force includes lawyers, advocates, social workers, professors, secondary school educators, judges, and other stakeholders. The report analyzes suspension statistics and various diversionary programs across the country. The report recommends the development of a mayoral-led initiative to keep more students in school while reducing the use of suspensions and school-based summonses and arrests; building capacity among schools to use positive behavior supports; better direction for school safety agents; and improved educational planning for at-risk, placed, and sentenced youth.

**School Safety in North Carolina: Realities, Recommendations & Resources: Commentary for the N.C. Center for Safer Schools**  
Barbara Fedders et al. (May 2013) (23 pages)  
This issue brief discusses myths and facts regarding zero-tolerance policies, SROs, and police involvement in school discipline, and it provides an overview and evaluation of school safety policies in North Carolina. The brief advocates for North Carolina’s safety policies to be more in line with the goal of public schools, which is to provide a safe, developmentally appropriate, fair and just public school system. It stresses the importance of considering both physical safety and emotional well-being when crafting effective school policies and recommend that North Carolina schools work to reduce criminalization of students, decrease out-
of-school suspensions, promote violence prevention, and improve data collection. The brief references successful examples of safety and well-being policies implemented across the country by school districts attempting to decriminalize school safety issues and promote fair and educational school discipline policies. Finally, the brief points to helpful national and state resources that could serve as references for school safety and policy reform efforts.

13. Juvenile Sex Offenses

A. Generally

**Trick or Treat: Why Minors Engaged in Prostitution Should Be Treated as Victims, Not Criminals**
This note provides general information on domestic minor sex trafficking, discusses the criminalization of minors for prostitution offenses, and describes and advocates for the development of state Safe Harbor laws. Despite statutory rape laws, which say that minors cannot consent to sex, and the federal Trafficking Victims Protection Act, which categorizes minor prostitutes as victims of sex offenses, judges and prosecutors continue to treat minors performing commercial sex acts as adults or juvenile delinquents. Because the federal government has not addressed the domestic sex trafficking of American minors, responsibility for addressing this problem lies with the states. The note calls for states to pass Safe Harbor laws modeled on New York’s law, which presumes minors charged with prostitution are victims in need of social services and allows judges discretion to determine that a minor charged with prostitution cannot be rehabilitated by services alone.

**In re B.A.H.**
829 N.W.2d 431 (Minn. Ct. App. 2013) (9 pages)
The Minnesota Court of Appeals held a criminal sexual conduct statute to be unconstitutionally vague as applied to a juvenile who, although he violated the law, was the sole person charged after engaging in a criminal sex act with another juvenile who violated the same law. The law prohibited sex between a person younger than 16 with another, related by blood, younger than 16. However, the court explained that other first degree criminal sexual conduct provisions establish clear criteria for determining the actor based on the ages or the actions of the parties. Because this law failed to provide this distinction, it encouraged “arbitrary and discriminatory” prosecutions. Therefore, prosecutors could decide to charge one person arbitrarily when both parties could be charged with violating the law, as was the case in the lower court.
B. Sex Offender Registration

1. Generally

   **Sex Offender Registration and Notification in the United States: Current Case Law and Issues**
   U.S. Dep’t of Justice, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (July 2012) (17 pages)

   This overview of sex offender registration laws discusses the basics of federal standards and national practice relating to sex offender registration. It contains a short section on juvenile sex offender registration.

   **Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the U.S.**
   Human Rights Watch (2013) (116 pages)

   This report argues that sex offender registration laws, community notification laws, and residency restriction laws are not the appropriate response to sex offenses committed by minors. These obligations constitute continued punishment of the offender for decades or a lifetime in some cases. Sex offender laws are based on the misconception that those found guilty of sex offenses are more likely to commit new sex offenses. Empirical data show that these measures do not advance public safety, and overburden law enforcement. The report reviews the history of sex offender laws that trigger registration requirements for children. It details the harms that typically come to youth sex offenders, including mental problems, violence, stigmatization, denial of access to education and employment, and homelessness. The report recommends that defense attorneys: 1) advise minor clients about implications of sex offense adjudications, 2) ensure that courts hold all required periodic review hearings, and 3) work to ensure that all youths charged with sex offenses have representation. Further, it recommends Congress, state legislatures, agencies, judges, prosecutors, and police to treat youth sex offenders in a way that reflects their age and capacity for rehabilitation and respects their rights to family unity, education, and protection from violence.

   **Sex Offender Registration and the Convention on the Rights of the Child: Legal and Policy Implications of Registering Juvenile Sex Offenders**
   Carole Petersen & Susan Chandler, 3 Wm. & Mary Pol’y Rev. 1 (2012) (35 pages)

   This article explores the history and application of current sex offender laws, with a particular emphasis on SORNA. It compares the goals and application of SORNA to the goals of the Convention on the Rights of the Child and to the American juvenile justice system. The article categorizes states based on SORNA compliance. Because SORNA requires juveniles to register based on offenses, its application in many states violates the privacy rights of juveniles and prevents them from obtaining an opportunity to be rehabilitated.
“Second-Level” Protected-Class Defenses: Contesting SORNA’s Applicability to Protected Class Members
Jill Beeler et al. (2012) (2 pages)
This brief discussion tackles how courts across the country have applied SORNA requirements to protected-class defendants—specifically juveniles.

United States v. Kebodeaux
No. 12–418 (U.S. June 24, 2013) (38 pages)
In this case, the 21-year-old defendant had consensual sex with a 15-year-old while enlisted in the military, and served three months in prison before being released from both prison and the armed forces without any other probation or registration conditions. After SORNA was enacted, the defendant failed to register within the required time limit and was sentenced to a year and a day in prison for the violation. He appealed, arguing that the SORNA provision he violated was unconstitutional. The Fifth Circuit agreed, but the United States Supreme Court reversed, holding that SORNA’s registration requirements as applied to the defendant fall within the scope of Congress’ authority under the Necessary and Proper Clause.

Memorandum of Law in Support of Motions for Nunc Pro Tunc Relief for Juvenile Law Center in the Interest of [Redacted Juveniles]
Court of Common Pleas of York County, Pennsylvania, Juvenile Division (May 22, 2013) (140 pages)
This redacted memorandum of law by the Juvenile Law Center is part of the current challenge to Pennsylvania’s SORNA registration regime, which is being litigated in four Pennsylvania counties along with one case that is currently on appeal. This memo, typical of the briefs filed in each case, argues against juvenile SORNA registration. It first provides an overview of adolescent development and compares juveniles convicted of sex offenses to juveniles convicted of other crimes and to adults convicted of sex offenses. It analyzes the harms of requiring juveniles to register as sex offenders and the low rates of recidivism generally found among juvenile sex offenders. The memo exposes the legal and practical day-to-day implications of requiring juveniles to register under SORNA, including the challenges youth required to register in Pennsylvania face when traveling outside of the state. Finally, the memo argues and explains why juvenile sex offender registration contravenes Pennsylvania’s Juvenile Act and is unconstitutional under both the Pennsylvania and Federal Constitution.

2. State Issues

Delinquency and Punishment: The Impact of State v. Williams on Juvenile Sex Offender Registration in Ohio
Amy Grover, Comment, 81 U. Cin. L. Rev. 291 (2013) (22 pages)
This comment argues that State v. Williams, a 2011 case in the Supreme Court of Ohio, could significantly impact youth sex offender trials in Ohio. In Williams, an adult who pleaded guilty to unlawful sexual conduct with a minor moved to be
sentenced under the sex offender statute in force at the time of the offense, rather than the amended statute in force at the time of his sentencing. The Court held that the amendments were unconstitutional because they made sex offender registration requirements primarily punitive measures, which cannot be imposed retroactively under Ohio’s constitution. This comment reviews the trend in U.S. Supreme Court decisions recognizing the differences between juveniles and adults, and the rehabilitative goal of the juvenile justice system and Ohio’s sex offender registration laws, while discussing the harms of juvenile sex offender registration laws generally. The comment proposes that, although Williams involved an adult, juvenile defenders in Ohio should use the case to argue against the imposition of punitive registration requirements on juvenile sex offenders, which violate the rehabilitative goal of dispositions of juvenile delinquents. The comment argues that juvenile sex offender registration requirements are ineffective, harmful, and punitive, and violate the Due Process Clause and recent decisions by the U.S. and Ohio Supreme Courts.

In re M.H.P.
830 N.W.2d 216 (N.D. 2013) (6 pages)
In this case, the state appealed the juvenile court’s dismissal of their delinquency petition alleging defendant engaged in illegal sexual contact with another youth, and should be required to register as a sex offender. In order to be adjudicated delinquent in North Dakota, the state must prove both that the juvenile committed the delinquent act and is in need of rehabilitation or treatment. The defendant was found to have committed the delinquent act but not to be need of rehabilitation or treatment. The State’s Supreme Court held that because proof of rehabilitation or treatment is a requirement to obtain a delinquency finding, double jeopardy barred the state from appealing the juvenile court’s order that the defendant was not a delinquent. The Court also held that double jeopardy does not bar review of whether the defendant should register as a sex offender. The Court noted that registry is meant to protect the public and is not an added punishment. It held that the defendant did not need to register as a sex offender.

N.L. v. State
No. 47S01-1302-JV-126 (Ind. Jul. 1, 2013) (9 pages)
The Indiana Supreme Court ruled that a juvenile may only be ordered to register as a sex offender if, after an evidentiary hearing (at which the juvenile, represented by counsel has the opportunity to offer evidence and challenge the state’s evidence), the trial court expressly finds by clear and convincing evidence that the juvenile is likely to commit another sex offense.
C. Sexting

**Teenage Sexting in Arkansas: How Special Legislation Addressing Sexting Behavior in Minors Can Salvage Arkansas Teens’ Futures**

This note compares state statutes regarding the criminalization of sexting among minors. The note argues that the consequences of the crime of sexting should match the level of culpability of the minor involved. Focusing on Arkansas law, where sexting is a felony regardless of whether a minor or adult is involved, the note suggests that the law should be amended to reflect the standards of other states that carve out special exceptions for minor-to-minor sexting, creating levels of culpability to be charged as a felony, misdemeanor or non-criminal offense depending on the facts. Additionally, the note supports harsher punishments for repeat offenses, exploitation of self or others, and use of sexting to harass or bully. The note also points out vast differences in laws across states.

14. Status Offenses

A. Generally

**In re Shelby R.**

This is an appeal of a trial court’s order formalizing a plea bargain whereby a juvenile defendant pled guilty to the status offense of underage alcohol consumption. The juvenile was sentenced to 18 months’ probation, but after she was found to have violated the terms of her probation by using illegal drugs, the trial court re-sentenced her to 364 days’ confinement. The Fourth District Illinois Appellate Court reversed the trial court’s judgment, holding that Illinois law prohibits a minor’s incarceration for unlawful consumption of alcohol. While the issue was moot at the time of decision, the court ruled according to the public interest exception to the mootness doctrine. The court rejected the state’s argument that the “valid court order” (VCO) exception allows the incarceration of juvenile status offenders who violate probation orders, responding: 1) the VCO exception is expressly limited to the arrest and custody stage; 2) juveniles cannot be imprisoned for contempt; and 3) the Illinois statute regarding the imposition of other sentences after probation revocation does not contain a VCO exception, and even if it did, incarceration is not permitted as an initial sentence for underage alcohol consumption.

**In re Shelby R.**

This brief argues that the trial court in *In re Shelby R.* erred in committing the minor to the custody of the Illinois Department of Juvenile Justice for the status offense of underage drinking, and that the appellate court properly applied the public policy exception to the mootness doctrine and ruled
correctly on the merits. It asks that the Illinois Supreme Court affirm the appellate decision. This brief explains some of the arguments that Illinois defenders (and defenders in states with laws similar to Illinois’ Juvenile Justice Act) can use to prevent incarceration for status offenses.

15. Juvenile Justice Reform

A. Generally

**Families Unlocking Futures: Solutions to the Crisis in Juvenile Justice**
Justice for Families & DataCenter (2012) (56 pages)

This report highlights families’ perspectives on juvenile justice and argues that the juvenile justice system and the “save the child” approach have disempowered youth and cut families out of the rehabilitation process, causing problems for youth, families, and communities. Family-centered youth programs work, but the juvenile justice system has exclusionary policies that create and deepen economic instability, discriminate against non-nuclear families, and reinforce the assumption that families are apathetic and/or part of the problem. The report argues that juvenile justice systems lock down youth and lock out families throughout the process, ignoring youths’ best interests and families’ perspectives on school, arrest, detention, court proceedings, and re-entry, and driving disproportionate numbers of youth of color into the system. The report calls for all juvenile justice professionals to 1) endorse and promote the Justice for Families Bill of Rights, 2) promote family-driven and trauma-informed approaches to juvenile justice, 3) partner with families and support their leadership in juvenile justice forums, 4) work with families and community-based organizations to establish peer-support programs, and 5) include youth and families in decision-making.

**Graham v. Florida and a Juvenile’s Right to Age-Appropriate Sentencing**
Martin Guggenheim, 47 Harv. C.R.-C.L. L. Rev. 457 (2012) (44 pages)

This article argues that Graham stands for the new proposition that juveniles have a substantive constitutional right to be given sentences that take into account their youth. Although the article does not mention Miller, the central thesis remains one for scholars and advocates to strongly consider. It provides an overview of the history of juvenile justice in the United States and the various Supreme Court decisions that have shaped the rights of children over the last century. The article concludes by using Illinois’ mandatory sentencing laws and their applicability to juveniles as a case study.

**Reducing Youth Incarceration in the United States**
Annie E. Casey Foundation (2013) (4 pages)

This report argues that despite across-the-board reductions in youth incarceration rates in the U.S. between 1997 and 2010, the juvenile justice system still relies too heavily on incarceration as a response to juvenile delinquency and instead must implement more cost-effective and humane responses. The report presents
statistical data demonstrating recent trends in youth incarceration rates, focusing on race. It then proposes a few governmental reforms.

The Paradox of *Graham v. Florida* and the Juvenile Justice System
Aaron Sussman, 37 Vt. L. Rev. 381 (2012) (30 pages)
This article argues that compliance with *Graham’s* mandate of providing “a meaningful opportunity for release” requires implementation of policies and conditions which promote a juvenile’s ability to demonstrate maturity and the ability to reconcile with society. The article argues that overcoming the lack of sufficient infrastructure in providing mental health, education and social interaction services to meet this goal is too politically and economically burdensome. The article proposes another avenue to achieve the rehabilitative goal of *Graham*: the use of the Prison Litigation Reform Act (PLRA). PLRA allows prisoners to be released if overcrowding of facilities is the primary cause of a violation of federal rights. Litigators should define overcrowding as the provision of a sufficient level of services to meet the rehabilitative goal, and not physical capacity. The article argues that a strong argument can be made for releasing juveniles not receiving rehabilitative services which would result in a “meaningful opportunity for release.”

B. State-Specific

The Bridge to Somewhere: How Research Made its Way into Legislative Juvenile Justice Reform in Ohio
Gabriella Celeste, Schubert Center for Child Studies (2012) (50 pages)
This report explains recent juvenile justice reform efforts in Ohio, and explores how the role of research in the policy-making process led to the passage of several juvenile justice bills. Policy makers introduced a model called the bridge-building function, where research on child development and data collection informed all reform efforts. The report explains how to identify key issues in the juvenile justice system, obtain relevant data on those issues, and how that data informs social problems and subsequent policy. Through years of significant groundwork, data collection and analysis, raising awareness, and education reform efforts, Ohio is better equipped to effectively address the needs of youth in the juvenile justice system. These cost saving reforms ultimately aid youth in development-appropriate ways so that they can become successful members of society upon reentry.

Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth
Justice Policy Institute (2013) (55 pages)
This report focuses on the transformation of the Connecticut juvenile justice system. It begins by examining the state of Connecticut’s juvenile system in 1992, when the system was punitive, contained unsafe facilities, and had little to no rehabilitative treatment for juveniles. The report then explains Connecticut’s vision for reforming its juvenile justice system, the specific methods the state
implemented, and ways reform was economically beneficial for the state. The report recommends that other states reform their juvenile justice systems by following Connecticut’s example, and lists juvenile justice system changes states can implement. The report argues that reform advocates must have a focused effort and collaboration with various agencies if they want to see change, since reform takes time and patience.

**Findings Regarding Investigation of Lauderdale County Youth Court, Meridian Policy Department, and Mississippi Division of Youth Services**

Civil Rights Division, U.S. Dep’t of Justice (Aug. 10, 2012) (12 pages)

A DOJ investigation revealed that the City of Meridian, Mississippi violates the Fourth Amendment by arresting children without assessing probable cause, and Lauderdale County and its juvenile court violate the procedural and substantive due process rights of juveniles throughout the juvenile court process, both of which contribute to the county’s school to prison pipeline. For example, the letter states that “MPD officers routinely handcuff and arrest students without obtaining prior youth court custody orders or making necessary assessments of probable cause.” Among other significant issues the investigation found, the County fails to comply with Gault’s requirements of appointment of counsel for juveniles where incarceration is possible. The letter decries a basic lack of compliance by local officials with the DOJ investigation, and suggests that a lawsuit will ensue if the identified issues cannot be remediated.

**United States v. City of Meridian**


Following up its investigation, the DOJ, finding the issues found in Mississippi unremedied, filed this complaint in federal district court, pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, which authorizes the U.S. Attorney General to initiate a civil action for appropriate relief where those responsible for the administration of juvenile justice or the incarceration of juveniles that deprives persons of their civil rights.

**The Continued Viability of New York’s Juvenile Offender Act in Light of Recent National Developments**

Katherine Lazarow, Note, 57 N.Y.L. Sch. L. Rev. 595 (2012/2013) (41 pages)

This note argues that New York transfer laws are inconsistent with national trends in juvenile justice post-Graham, Roper, and Miller. Giving an overview and history of the juvenile justice system, the note suggests that automatic transfer laws are outdated. It examines different transfer laws and argues that judicial waiver laws provide the most appropriate rules and procedures for juveniles prior to prosecution proceedings, and that juveniles should be afforded an amenability hearing in juvenile court to determine whether transfer to adult court is appropriate. Recently enacted state laws and Supreme Court decisions like Graham and Miller establish a trend of reforms that supports rehabilitative sentencing rather than severe punitive sentencing for juveniles. The note suggests
that the New York Juvenile Offender Act be amended to adopt this philosophy by getting rid of automatic transfer, placing original jurisdiction of juveniles in family court, and raising the age of juvenile jurisdiction in New York from 16 to 17.

**New Juvenile Justice Laws Increase Options for Youth [in Colorado]**
Kim Dvorchak, 42 Colo. Law. 37 (Apr. 2013) (8 pages)
This article provides an overview of legislative reforms in Colorado pertaining to the sentencing of more serious juvenile cases. New legislation in 2012 changed judicial transfer and direct file laws to allow for more individualized consideration of the juveniles that fell within their purview. The article discusses the recent impetus and history of the legislation, and covers the impact of this and other similar reforms on the inclusion of children in adult jails in the State. Finally, the article includes two tables depicting the downward trend of direct file cases and the pre-trial detention of youth in adult jails over the last several years.

16. Youth in Adult Court

A. Generally

**Factors Affecting Juvenile Waiver to Adult Court in a Large Midwestern Jurisdiction**
This paper reports the results of a research study that sought to assess which factors might predict the transfer of juveniles to the adult criminal justice system. The paper first outlines the three types of waivers, followed by a brief summary of current trends in transfer procedure based upon the following factors: type of offense, age, race, sex, and income level. The jurisdiction in the study utilizes the judicial waiver method of transfer and includes both a discretionary and presumptive component. The study examines both legal and extra-legal factors. The legal factors included the offender’s record of prior offenses, the types of crimes committed, and the current charge. The extra-legal factors were the offender’s race, sex, age, and income. The research does not uncover any key factors affecting waiver decisions but its results correspond with overall national trends in juvenile justice. It finds that the average juvenile offender is a young, black male and that a strong link exists between poverty and delinquency. The study recommends placing more emphasis on research of the legal rather than extra-legal factors that influence the juvenile waiver process.

**OJJDP Fact Sheet: Delinquency Cases Waived to Criminal Court, 2009**
Benjamin Adams and Sean Addie, U.S. Dep’t of Justice (Oct. 2012) (4 pages)
This fact sheet discusses the three basic types of transfer laws, explains the different types of circumstances under which each type of transfer occurs, provides statistics on the types of cases in criminal court, and outlines the process the transferred cases follow. The fact sheet concludes with charts on gender, racial, and ethnic differences of youth in adult court.
B. Challenges to Transfer Statutes

_Gingerich v. State_

The Indiana Court of Appeals held that the juvenile court abused its discretion when it denied the defendant's request for a continuance of the waiver hearing to adult court, thereby denying defendant’s right to due process. The relevant statute read that only “after full investigation and hearing” could the juvenile court waive jurisdiction. The defendant had only a week between a finding of probable cause and the waiver hearing. The defendant showed that a continuance would have aided his defense.

_In re Luis R._

The Second District Illinois Court of Appeals held that the State is prohibited from instituting juvenile delinquency proceedings against a defendant who is over the age of 21 when the petition is filed. Without a valid juvenile petition, Illinois law likewise prohibits discretionary transfer to criminal court.

_State In re V.A._
50 A.3d 610 (N.J. 2012) (51 pages)

This appeal focuses on New Jersey’s transfer statute, which permits the transfer of 16- and 17-year-olds to adult criminal court upon prosecutorial motion. Defendants asked the state supreme court to reverse the judgment of the lower court, which adopted a “patent and gross abuse of discretion” standard for judicial review of prosecutorial waiver motions. The Supreme Court of New Jersey relied on its previous decision in _State v. Lagares_, 127 N.J. 20 (1992), to determine that in light of the potential for enhanced punishment, a prosecutor’s waiver decision should be reviewed under an abuse of discretion standard rather than the standard of patent and gross abuse of discretion. Under this lower standard of abuse of discretion, the court has more room to review considerations and justifications provided in the transfer motion. Here, the New Jersey Supreme Court held that the prosecutors’ motion for waiver must demonstrate individualized assessments for each juvenile charged and account for all factors considered and deemed
applicable in order to be granted. Furthermore, the Court held that prosecutors must provide an individualized deterrence assessment for each juvenile charged. This newly adopted standard of review provides an additional level of protection against arbitrariness in prosecutorial decisions affecting punishment for a juvenile while still maintaining deference to prosecutorial discretion. It also provides courts the opportunity to ensure due process rights are adequately granted to juveniles by requiring individualized consideration for both waiver and deterrence justifications in motions to transfer.

C. JLWOP

From a Trilogy to a Quadrilogy: Miller v. Alabama Makes it Four in a Row for U.S. Supreme Court Cases that Support Differential Treatment of Youth
Marsha Levick, 91 Crim. L. Rptr. 748 (2012) (8 pages)
This article discusses Miller and its potential ramifications. The article discusses how the holding continues the Court’s pattern of placing emphasis as to how minors are different from adults. It outlines potential developments in case law related to sentencing juveniles and felony murder. It concludes with a discussion about the retroactivity of Miller and how courts should consider re-sentencing youth on direct appeal or through collateral challenges.

Practical Implications of Miller and Jackson: Obtaining Relief in Court and Before the Parole Board
This article discusses various potential legislative, judicial, and practical responses to Miller. It frames the discussion by posing several questions: 1) Is Miller retroactive?; 2) What principles should guide courts in re-sentencing juveniles after their mandatory life sentences are vacated?; 3) What is Miller’s impact on state parole schemes?; and 4) How do juveniles demonstrate rehabilitation to resentencing courts or parole boards when they have been denied access to prison programs? The article first analyzes the rationale of Miller and Jackson, then explores how courts are currently answering the retroactivity question. The article argues that Miller is retroactive under a Teague framework. The article analyzes various parole programs and programs afforded to juveniles in adult prisons in the state and federal systems, finding them lacking. The article argues that in the wake of Miller, parole and prison systems will need to do more to offer juveniles and those convicted of juveniles a meaningful opportunity for release.

Developmental Detour: How the Minimalism of Miller v. Alabama Led the Court’s “Kids Are Different” Eighth Amendment Jurisprudence Down a Blind Alley
Mary Berkheiser, 46 Akron L. Rev. 48 (2013) (29 pages)
This article discusses the significance of Miller. It posits that juveniles may not really benefit from this decision because courts can still subject juvenile defendants to LWOP even after hearing all mitigating circumstances for each
individual and considering the distinguishing features of adolescents. It finds that case-by-case sentencing is unsound because the system as a whole is “fraught with opportunities for fraud and error.” Thus, by refusing to impose a categorical ban on JLWOP sentencing, the article argues, the Supreme Court squandered an opportunity to provide uniform and predictable sentencing.

**The Supreme Court’s Emerging Jurisprudence on the Punishment of Juveniles: Legal and Policy Implications**
This article explores the legislative history of treating juveniles as adults, the United States Supreme Court’s juvenile sentencing jurisprudence, and its aftermath. One issue newly created by *Graham* and *Miller* is “virtual LWOP,” term-of-year sentences that are the functional equivalent to JLWOP. The article examines the Pennsylvania Supreme Court’s implementation of *Miller* in *Commonwealth v. Batts* and *Commonwealth v. Cunningham*, which may influence other states’ approaches. It briefly analyzes North Carolina’s, California’s, and Iowa’s reactions to *Miller*, and argues that *Miller* should apply retroactively to cases on collateral review. Advocates and lawmakers need to remain true to the letter and spirit of *Miller* by reforming statutory sentencing schemes to abolish mandatory sentencing and non-parole-eligible prison terms long enough to be tantamount to JLWOP. Legislatures and courts should re-visit the issue of transferring juveniles to adult courts and consider the juvenile justice system’s rehabilitative goals, public safety, and the appropriate use of financial and other resources.

**The Growing Pains of *Graham v. Florida*: Deciphering Whether Lengthy Term-of-Years Sentences for Juvenile Defendants Can Equate to the Unconstitutional Sentence of Life Without the Possibility of Parole**
Therese A. Savona, 25 St. Thomas L. Rev. 182 (2013) (36 pages)
This article reviews Eighth Amendment jurisprudence and the effect of *Graham* and *Miller* on juvenile resentencing. It examines the varying approaches taken by state courts to determine whether lengthy term-of-years sentences provide juvenile defendants “a meaningful opportunity to obtain release” as *Graham* requires. Current life expectancy measures do not adequately account for health, environment, genetic disposition, or geographical or socioeconomic influences. The article concludes by arguing that inconsistency in term-of-years challenges under *Graham* warrants resolution by the United States Supreme Court.

**People v. Caballero**
282 P.3d 291 (Cal. 2012) (17 pages)
In this case, the California Supreme Court held that a juvenile’s 110-year-to-life sentence contravened *Graham*’s mandate against cruel and unusual punishment.
**Bunch v. Smith**
685 F.3d 546 (6th Cir. July 6, 2012) (6 pages)

In this case, a juvenile offender petitioned for a federal writ of habeas relief of his conviction on multiple felony counts, arguing that the imposition of multiple consecutive fixed-term sentences resulting in an 89 year-long imprisonment was the functional equivalent of LWOP and violated *Graham*. The Sixth Circuit held that under AEDPA no “clearly established Federal Law” existed at the time the case was adjudicated on its merits, prior to *Graham*, and the juvenile was not entitled to habeas relief. Despite its holding, the court distinguished the *Graham* decision by finding that it only implicated a specific type of sentence, LWOP for non-homicide offenses, which was factually distinguishable from this case. The Sixth Circuit reasoned that if the Court meant to include sentences that are the functional equivalent of life without parole, it would have done so.

**Bunch v. Bobby**

This amicus brief, in support of Bunch’s petition for certiorari to the United States Supreme Court from the Sixth Circuit, argues that a sentence imposed on a juvenile for a non-homicide offense that is the practical equivalent of LWOP is inconsistent with *Graham* and violates the Eighth Amendment. In direct contrast to the Sixth Circuit’s holding that *Graham* was only a categorical challenge to a specific type of sentence, the brief argues that *Graham* applies universally to all juvenile sentences that provide for “no meaningful opportunity for release” before the natural end of a child’s life, not only those labeled as LWOP. While the Sixth Circuit focuses on the plain language of *Graham*, amici focus on the opinion’s explanation of why it is the outcome of the sentence that violates the Eighth Amendment. The brief discusses *Graham*’s recognition of juveniles as a distinct category of individuals for sentencing purposes under the Eighth Amendment. *Graham* stated that the Eighth Amendment forbids making a judgment at the outset that juvenile offenders will never be fit to re-enter society. A state court cannot bypass the holding of *Graham*’s prohibition against JLWOP for a non-homicide offense by imposing a number of sentences which deny juvenile offenders any opportunity for release. The brief urges the court to clarify that sentences which are the functional equivalent of parole are unconstitutionally disproportionate when imposed on juveniles and violate the Eighth Amendment.

**Nebraska v. Castaneda**

This Amicus brief argues that Nebraska’s mandatory statutory scheme, requiring that any juvenile convicted of first degree murder be sentenced to LWOP, is unconstitutional after *Miller*. Appellant, who was 15 at the time of the offense,
was convicted of first degree felony murder and sentenced to LWOP. Nebraska’s felony murder statute does not require a finding that the defendant actually killed or intended to kill to receive such a sentence. The brief argues that the lack of a finding of intent to kill makes LWOP unconstitutional under *Graham* and *Miller* because juveniles convicted of felony murder cannot be classified as those deserving the most severe penalty. The brief also argues that the possibility of commutation does not constitute a “meaningful opportunity for release” as required by *Graham*.

D. Post-*Miller* Retroactivity

1. Federal

**Hill v. Snyder**

In this federal district court case, the plaintiffs challenged the constitutionality of a Michigan parole statute under 42 U.S.C. § 1983. The state statute prohibited parole consideration for juveniles sentenced to life in prison for first degree murder. The State argued that *Miller* did not apply retroactively. The district court clarified that the plaintiffs were not requesting resentencing based on *Miller*, but a holding that the statute itself was unconstitutional. In dicta, however, the court noted that it would find *Miller* retroactive due to its substantive, rather than procedural nature, as it altered the range of conduct and class of persons punished by the law. The court held that the parole statute was unconstitutional and that plaintiffs were entitled to relief. It clarified that the process for determining resentencing lies with the state court.

**In re Baines**
Reply Brief for Petitioner, No. 12-3996, 2013 WL 2364629 (3rd Cir. 2013) (5 pages)

In this brief seeking a writ of habeas corpus, the petitioner, sentenced to JLWOP in Pennsylvania in 1978, responds to the state’s arguments that *Miller* does not apply to cases on collateral review. The brief first reminds the court that the burden of proof only requires a *prima facie* showing and that Baines’ life sentence in 1978 is no less cruel and unusual than contemporary juvenile sentencing. The petitioner uses *Teague* to support *Miller*’s retroactivity, refuting the state’s argument that *Miller* only applies to federal habeas corpus rather than state habeas law. Under *Teague*, the state must treat all similarly situated defendants alike.

**Baines v. Commonwealth**
Brief for Juvenile Law Center et al. as Amici Curiae, No. 12-cv-3996 on Behalf of Petitioner In Support of Petitioner’s Motion to File a Second or Successive Petition Pursuant to 28 U.S.C. 2244(b), 2013 WL 2364629 (3rd Cir. 2013) (11 pages)

In this brief, amici support petitioner’s motion seeking relief through habeas corpus after receiving JLWOP in 1978. Amici argue that *Miller* applies retroactively to cases on collateral review. *Miller*’s companion case, *Jackson*
v. Hobbs, was decided on collateral review and therefore all pending cases on collateral review must receive the same deference. The brief also points out that precedent relied upon in Miller was applied to cases retroactively. Amici note other jurisdictions that found Miller applies retroactively. The brief concludes by emphasizing that youth sentenced prior to Miller are no different than youth sentenced after Miller and upholding life sentences without parole is a violation of the Eighth Amendment.

Craig v. Cain
No. 12-30035, 2013 U.S. App. LEXIS 431 (5th Cir. 2013) (per curiam) (3 pages)
In this Fifth Circuit case, the court denied petitioner’s motion for a collateral attack on his sentence, finding that Miller is not retroactive under the principles of Teague.

Johnson v. United States
In this brief, the U.S. Attorney for Minnesota supports petitioner’s second habeas motion, explains why Miller should be understood as having retroactive impact, and therefore why petitioner is entitled to resentencing.

In re Morgan
713 F.3d 1365 (11th Cir. Apr. 2013) (5 pages)
The Eleventh Circuit held that Miller was not retroactive as it was procedural, rather than substantive in nature, banning a method, rather than whole class of punishments. The concurrence thought the case posed a closer question, citing a government brief in a separate case that argued that “Miller’s holding that juvenile defendants cannot be subjected to a mandatory [LWOP] sentence is properly regarded as a substantive rule,” but agreed with his colleagues for the time being.

In re Morgan
717 F.3d 1186 (11th Cir. June 2013) (order for rehearing en banc) (15 pages)
In this case, the Eleventh Circuit denied en banc review of the Circuit’s previous holding. The opinions respecting the denial of en banc review contain a lengthy discussion of the analysis as to why various judges think the case should and should not be reviewed.

2. State

Whiteside v. State
2013 Ark. 176 (Ark. 2013) (5 pages)
One of a series of grant, vacate, remand cases that the United States Supreme Court has remanded for resentencing based on Miller, this could be an early indication that the Court considers Miller retroactive despite its failure to discuss
how *Teague* would be applied in the decision itself. Following remand by the United States Supreme Court, the Arkansas Supreme Court remanded the juvenile’s capital murder sentence to the circuit court for resentencing within the discretionary statutory scheme for a Class Y felony, with instructions for a sentencing hearing to be held where the juvenile could present *Miller* evidence.

**Geter v. State**

In this case, a juvenile convicted of first degree murder and sentenced to LWOP appealed the denial of his motion for post-conviction relief based upon *Miller*. The question before the court was whether *Miller* could be applied retroactively to post-conviction proceedings involving a juvenile homicide offender whose conviction and sentence were final prior to *Miller*. The court distinguished *Miller* from *Roper* and *Graham* by categorizing those rules as substantive. The court found that *Miller* simply marked a procedural change in the law and that the tradition of a life sentence for first degree murder outweighed retroactive application. Stressing the importance of finality in criminal justice, the court concluded that retroactive application of the *Miller* rule would affect the stability of the system, create uncertainty in punishments imposed, and burden the system with unnecessary litigation. The court denied the juvenile’s motion.

**Gonzalez v. State**
101 So.3d 886 (Fla. Dist. Ct. App. 2012) (2 pages)

Based solely on the Third District Court of Appeal’s decision and analysis in *Geter*, the First District Court similarly held *Miller* not to apply retroactively.

**Falcon v. State**
111 So.3d 973 (Fla. Dist. Ct. App. 2013) (5 pages)

In this *per curiam* decision, the First District Court of Appeal of Florida affirmed the trial court’s denial of relief for appellant seeking collateral review of her JLWOP sentence for first degree murder. The court cited *Gonzalez* and *Geter*. The court also urged the Florida Supreme Court to decide the issue of *Miller* retroactivity due to its importance. A concurrence discussed several opinions of other courts holding *Miller* to be retroactive, disagreeing with the court’s precedent on the issue.

**Falcon v. State**
Brief of Juvenile Law Center et al. as Amici Curiae on Behalf of Petitioners, No. SC13-865 (Fla. July 29, 2013) (32 pages)

In this brief, amici argue and explain that *Miller* applies retroactively to respondent, and to those who have exhausted their direct appeals, and that the sentence given must at least afford petitioners with a meaningful opportunity for release.
**Smith v. State**

113 So.3d 1058 (Fla. Dist. Ct. App. 2013) (5 pages)

This *per curiam* opinion is almost identical to *Falcon*—it abides by *Gonzalez* and *Geter* and certifies the question of retroactivity to the state supreme court. A concurrence believes that *Miller* is retroactive, and that *Geter, Gonzalez*, and their progeny were wrongly decided.

**People v. Morfin**


In this First District Illinois Court of Appeals case, the court held that *Miller* applied retroactively, in spite of cases in other jurisdictions, such as *Geter* in Florida and *Carp* in Michigan, holding the opposite. The court provided a thorough analysis of the *Miller* retroactivity debate, held that *Miller* constitutes a new substantive rule, vacated the defendant’s sentence, and remanded for a sentencing hearing. The defendant may now be sentenced to 20 to 60 years or to life imprisonment.

**People v. Carp**


The Michigan Court of Appeals found that in accordance with *Teague* and Michigan law that *Miller* was not retroactive to cases on collateral review. It also advised lower courts in dicta that until Michigan makes the current sentencing scheme for juveniles constitutional, courts considering cases currently in process or on remand following direct appellate review must evaluate the factors delineated in *Miller* prior to instituting a life sentence, either with or without parole.

**Chambers v. State**

831 N.W.2d 311 (Minn. 2013) (25 pages)

In this Minnesota Supreme Court opinion, appellant, convicted of homicide and other crimes as a juvenile, argued that his sentence of LWOP was unconstitutional under *Miller*. The Court analyzed his claim under *Teague* retroactivity principles and found that it was invalid, arguing that *Miller* was procedural, rather than a new substantive rule. One dissenting justice found that *Miller* was in fact substantive, and another agreed and would have also found for the appellant “in the interest of justice.”

**Hye v. State**


Among other things, defendant petitioner contended that his mandatory JLWOP sentence was unconstitutional. The state conceded the point, and the court agreed, remanding for resentencing in line with *Miller*. The dissent noted that *Miller* should not apply retroactively.
**Parker v. State**  
No. 2011-KA-01158-SCT, 2013 WL 2436630 (Miss. 2013) (17 pages)  
The Mississippi Supreme Court likened the state’s statutes regarding JLWOP to those in Wyoming, and agreed on the case at hand, an appeal pending *Miller*, to resentence the juvenile defendant to life imprisonment or life imprisonment with eligibility for parole notwithstanding current statutory provisions, after consideration of *Miller* factors. The dissent would have mandated parole eligibility for the petitioner after serving ten years.

**Commonwealth v. Batts**  
66 A.3d 286 (Pa. 2013) (11 pages)  
Defendant petitioner asked the Pennsylvania Supreme Court to find the statutory scheme providing for a mandatory sentence of LWOP for first degree murder as unconstitutional under *Miller*. He argued that the court should instead impose the penalty for the most severe lesser included offense. The court analyzed the *Miller* opinion, dissent, and concurrence, and discussed potential appropriate resentencing remedies. The court sided with the Commonwealth, agreeing that resentencing was required, but that only life with the possibility of parole or life without parole would be the viable options, following a consideration of mitigating factors as per *Miller*. The court rejected petitioner’s additional argument that the state constitution prohibited JLWOP as cruel and unusual punishment, finding that *Miller* provided the appropriate standard.

**Bear Cloud v. State**  
294 P.3d 36 (Wyo. 2013) (10 pages)  
In light of *Miller*, the United States Supreme Court vacated and summarily remanded a 2012 Wyoming Supreme Court decision upholding juvenile defendant’s LWOP conviction. On remand, the Wyoming Supreme Court held that the current statutes that applied to juveniles convicted of first degree murder mandating life sentences were unconstitutional, except one, “life imprisonment according to law,” which the Court reinterpreted according to the dictates of *Miller*. The Court ordered a resentencing and stated that *Miller* required an individualized sentencing hearing for every juvenile convicted of first degree murder at which the sentencing court must consider the individual, the factors of youth, and the nature of the homicide in determining whether to order a sentence that includes the possibility of parole—all factors discussed in *Miller* itself.

**Sen v. State**  
301 P.3d 106 (Wyo. 2013) (20 pages)  
In this case, the Wyoming Supreme Court cited to *Bear Cloud* for the proposition that the juvenile defendant was sentenced to LWOP in violation of *Miller*, and was entitled to resentencing. This case also discussed *Miranda* waiver by a juvenile, the issue of whether a juvenile can present a defense of lack of capacity to form criminal intent, and ineffective assistance of counsel issues. The Court ruled for the state on those issues. The Court noted that in resentencing, the lower court must set forth specific findings supporting a
distinction between the juvenile offender whose crime reflects immaturity and the rare juvenile whose crime reflects irreparable corruption.

17. Case Law Review

A. Generally

**Recent Court Decisions and Legislation Impacting Juveniles**

This article summarizes case law and legislation around the country concerning juveniles from 2011 to early 2012. Some relevant cases for juvenile defenders include *People v. Nelson*, which set forth a rule that juveniles in California are now held to the same standard as adults when invoking their Miranda rights after an initial waiver, and *United States v. Coleman*, a 2011 Tenth Circuit case with implications for minors convicted of drug trafficking as juveniles and later convicted of similar crimes as adults. This summary also discusses other cases involving juveniles and statutes, including 2011-12 California laws on school bullying and other topics.

**Recent Court Decisions and Legislation Impacting Juveniles**
17 U.C. Davis J. Juv. L. & Pol’y 121 (2013) (17 pages)

This article summarizes recent case law and legislation around the country concerning juveniles. Relevant cases include *Miller* and a Ninth Circuit case, *United States v. Nielsen*, in which the Court considered whether the government could apply a repeat and dangerous sex offender sentencing enhancement, after the defendant pled guilty to coercion and enticement of a minor. The government argued that the defendant’s prior juvenile adjudication for sexual assault allowed an increased sentence, but the court disagreed and held that defendant’s prior juvenile adjudication was not a prior conviction. The Florida Safe Harbor Act is now law in the state, and is designed to strengthen protections for commercially exploited children and penalties for criminals. Of particular importance to defenders is the provision requiring that law enforcement must deliver these children to the DCFS and not detain them in police custody. In January 2012, the Washington House of Representatives introduced H.B. 2535, aiming to create a “juvenile gang court” to address the issue of juvenile gangs through intervention programs and strategies. The bill has since been signed into law and is effective as of June 7, 2012.

**Recent Court Decisions and Legislation Impacting Juveniles**
17 U.C. Davis J. Juv. L. & Pol’y 105 (2013) (17 pages)

This article summarizes recent case law and legislation around the country concerning juveniles, including two school discipline laws, a law making it easier for incarcerated youth to reenter school, and S.B. 9 (addressing JLWOP) in California, *In re D.L.* in California (addressing the failure to conduct a juvenile hearing), *In re C.P.* in Ohio (a case about juvenile sex offender registration), and *In re M.W.* in Ohio (a case about representation by counsel at interrogations).
B. State-Specific

Florida Juvenile Case Law Update, January 16, 2013
Juvenile Justice Center (11 pages)
This bulletin summarizes recent court decisions involving juveniles in the state of Florida, and includes topics such as disposition, search and seizure, and substantive offenses. It also provides citations to other relevant resources.

18. Legislative Developments

A. Generally

Advances in Juvenile Justice Reform 2009-2011
National Juvenile Justice Network (July 2012) (66 pages)
This report summarizes advances made across the country between 2009 and 2011 in juvenile justice reform. It covers significant laws, administrative rule and practice changes, positive court decisions, and various commissions and studies. It provides summaries in advances by subject and year, and by state. The various topics covered include, among others, DMC, girls in the JJ system, and the school to prison pipeline.

National Conference of State Legislatures (2012) (16 pages)
This overview of legislation passed across the country identifies trends, categorizes legislation, and highlights certain pieces of legislation. It reports that trends over the last decade have raised the age of juvenile court jurisdiction, reformed transfer and direct file laws, and improved upon access to counsel issues. The report also addresses mental health, DMC, detention reform, aftercare, and juvenile records and expungement. The report concludes with a list of all relevant legislation.

2012 Juvenile Justice State Legislation
National Conference of State Legislatures (2012) (2 pages)
This is a brief overview of recently passed legislation from various states, highlighting certain statutes. Juvenile justice legislation passed in 2012 focused on conditions of a juvenile’s confinement, detention reform, treating juveniles different than adults, and expungement of juvenile records.

Juvenile Life Without Parole (JLWOP) Legislative Fact Sheet
National Conference of State Legislatures (Feb. 2013) (2 pages)
This short fact sheet summarizes some of the state laws and pending legislation in the wake of Miller, including laws in North Carolina, Pennsylvania, and California, and bills in Delaware, Massachusetts, Virginia, Washington, Iowa, and other states.
B. California

**SB 9, An Act to Amend Sec. 1170 of the Penal Code, Relating to Sentencing**
2012 Cal. Stat. 828 (4 pages)
This bill, effective January 2013, allows offenders who were under 18 at the time of their crime and sentenced to LWOP to petition the court for resentencing after serving a minimum 15-year sentence. Petitions are not available to certain offenders.

*Getting a Break from Forever: Chapter 828 Provides an Opportunity for Juveniles Sentenced to Life Without Parole to Get Their Lives Back*
Roman Edwards, Comment, 44 McGeorge L. Rev. 753 (2013) (10 pages)
This comment summarizes SB 9.

C. Colorado

**HJR13-1019, Concerning Creation of an Interim Committee to Study Legal Defense in Juvenile Justice Proceedings**
(May 3, 2013) (5 pages)
In response to NJDC’s Colorado Assessment justice system, a committee was created to study and address the current state of services that juvenile defense counsel provides, and its impact on all represented children. The committee will also assess access to juvenile records and procedures for expunging records and removing juveniles from the sex offender registry. The committee will recommend improvements in the field and the funding of indigent juvenile defense. The year-long study, started in July 2013, will culminate in proposed legislative changes to the structure of the state’s juvenile defense system.

D. Delaware

**HB 182, An Act to Amend Titles 10 and 11 Relating to Certain Offenses**
(2013) (9 pages)
This bill, awaiting the governor’s signature as of early July 2013, provides family court with discretion to determine whether or not a juvenile under the age of 14 who is convicted of a sex offense, or a juvenile between the ages of 14-17 who is convicted of a non-violent sex offense where the victim is not age 5 or younger, shall be placed on the sex offender registry after a hearing in which the court shall review a comprehensive evaluation, treatment recommendations and risk assessment along with other factors enumerated. It also allows any juvenile who meets the qualifications listed above to apply for relief from registration after completion of treatment or two years from the date of adjudication, whichever comes first. The bill is retroactive.
SB 9, An Act to Amend Title 11 of the Del. Code Relating to Criminal Sentences
2013 Del. Laws 37 (7 pages)
This Act, effective June 4, 2013, amends the Delaware code to comply with Miller and Graham. The Act abolishes mandatory JLWOP sentencing for persons who were under the age of 18 when charged with first degree murder. Instead, juvenile sentencing for first degree murder would range from 25 years to life without parole. Additionally, the amendment allows the original sentencing court to sentence juveniles to life imprisonment with the ability to seek sentencing modification after 35 years. The Act also provides for sentencing modification for offenders who were sentenced to life without parole before the age of 18 for a crime other than first degree murder. According to the Act, sentencing modification would be available to qualifying offenders after 25 years. Finally, the Act provides that sentencing courts can order that multiple terms of incarceration for juveniles be served concurrently, instead of cumulatively, to avoid subjecting such persons to life without parole.

E. Illinois

Expedited Appeals in Delinquent Minor Cases
Effective May 1, 2013, this rule provides new requirements for appeals on final judgments in delinquent minor proceedings. Among other things, the rule requires that appeals be served to the trial judge, who must help expedite preparations for records on appeal, and that the appeal itself must be filed no more than 35 days after filing notice. The rule requires that oral argument determinations be made within seven days of request, and that the appellate court file a decision within 150 days after filing of notice. Extensions of time are disfavored and any requests for extensions are granted only for compelling circumstances.

Support Letter for Ill. Ct Rule for Expedited Appeals in Delinquency Cases
National Juvenile Defender Center (Nov. 2012) (3 pages)

HB 2404 Enrolled, An Act Amending the Juvenile Court Act of 1987
2013 Ill. Laws 98-61 (113 pages)
This law amends the Illinois Juvenile Court Act of 1987 to raise the age of juvenile court jurisdiction from 17 to 18. Juveniles who at the time of the offense were 15 years old and charged with first degree murder, aggravated sexual assault, aggravated battery with a firearm, aggravated robbery, and hijacking, are automatically prosecuted in adult criminal court. The law becomes effective January 1, 2014.
**Raising the Age of Juvenile Court Jurisdiction: The Future of 17-Year-Olds in Illinois’ Justice System**

In this report, the Illinois Juvenile Justice Commission recommends that the Illinois legislature end the state’s bifurcated jurisdiction system for 17-year-olds. Under the current law, a 17-year old charged with a misdemeanor is under the juvenile court’s jurisdiction, but a 17-year-old charged with a felony is under the jurisdiction of the adult criminal court. The Commission found that splitting 17-year-olds between the two systems causes confusion and creates complicated jurisdiction questions. The Commission found that the juvenile system was equipped to handle all 17-year-olds.

**Raising the Age News Release**

**HB 3172 Enrolled, An Act Amending the Juvenile Court Act of 1987**
2013 Ill. Laws 98-62 (113 pages)

This Act amends the Juvenile Court Act of 1987 and deletes the provision allowing a State’s Attorney to object in open court to an order of continuance under supervision. The effect of this Act is to encourage the implementation of more diversion strategies in juvenile court. The Act is effective Jan. 1, 2014.

**F. Indiana**

**House Enrolled Act No. 1108, An Act to Amend Ind. Code Concerning Family Law and Juvenile Law**
2013 Ind. Acts 104 (6 pages)

This Act, which became law on July 1, 2013 (Ind. Code § 31-30-4-1 et seq.), provides sentencing alternatives for offenders who are under 18, charged as an adult offender, and not under the jurisdiction of juvenile court. The Act mandates that a judge re-evaluate an offender’s remaining sentence when he or she turns 18. The judge then has the option to send the offender to an adult prison; reduce the punishment to a home detention, a community correction or detention facility; or discharge the remaining sentence.

**G. Louisiana**

**HB 152, Act Amending La. Rev. Stat. 15:574.4 on Juvenile Parole Eligibility**
2013 La. Acts 239 (4 pages)

This law eliminates mandatory JLWOP sentences. It provides that while juvenile offenders are eligible for parole, eligibility is pursuant to certain conditions. The bill provides parole consideration for juveniles and offenders who committed first- or second-degree murder when they were under the age of 18. The bill also mandates a hearing to determine parole eligibility prior to sentencing for juveniles and offenders who committed first- or second-degree murder when they were under the age of 18.
H. Massachusetts

HB 1432, An Act to Expand Juvenile Jurisdiction, Increase Public Safety and Protect Children From Harm
(Passed by House, May 22, 2013 & Senate, July 30, 2013) (7 pages)
This bill would extend the original jurisdiction of the juvenile court from age 17 to 18 years old. Currently, everyone 17 and older falls within the jurisdiction of the District Court. The bill was passed unanimously by both the Massachusetts House of Representatives and (in slightly modified form) the Senate.

I. Michigan

SB 246, Act to Amend Mich. Comp. L. 712A.1 Relating to Juvenile Competency
This law grants juveniles a due process right to competency in court proceedings under a reasonable juvenile standard. The law also sets out qualification requirements for examiners used to determine juvenile competency, guidelines for investigating and evaluating whether a child is competent to proceed in court, and outlines what knowledge the juvenile must have in order to be considered competent. The most significant changes include that any child under 10 is presumed incompetent, examiners are required to have expertise in child and adolescent forensic evaluation, children must be examined in the least restrictive environment, all parties (defense, prosecution and even the judge) can request a competency evaluation, and restoration of competence must occur before further delinquency proceedings.

Summarizes the new Michigan juvenile competency law.

This law makes it easier for juveniles to request that certain crimes be expunged from their record. Under the amended provisions, up to three misdemeanor offenses or one felony may be erased from a juvenile record annually, so long as the case for each offense has been closed for one year. To expunge a felony, the crime has to be one that, if tried in adult court, would not be eligible for a life sentence. Previously, Michigan law allowed for only one misdemeanor offense to be expunged annually, and it required that each case be closed for 5 years, meaning that a 16-year-old could not clear his or her record until age 21. Critically, records of court orders setting aside adjudication are kept by the state police department, but the law specifically exempts such records from being disclosed under FOIA and requires these records remain closed to the public.
J. Nevada

**Assembly Bill 202, An Act Relating to Juvenile Justice**
2013 Nev. Laws 483 (8 pages)
This law bolsters the safety and rehabilitation of juvenile offenders by raising the transfer age from 14 to 16 for murder, attempted murder, sexual assault, and several other felonies. The law allows youth placed in the adult system to petition the court for transfer to a juvenile detention facility for temporary placement during proceedings. A task force comprised of professionals from various youth advocacy arenas will investigate juvenile transfer issues, such as blended sentencing and the capacity of juvenile facilities to house youth charged as adults. The task force will compile its findings to make recommendations to the legislature during the next session. The majority of the law’s provisions go into effect on October 1, 2014, and the task force provision goes into effect July 1, 2013.

K. North Carolina

**HB 725, Young Offenders Rehabilitation Act**
2013-14 Sess. (N.C. 2013) (10 pages)
This bill calls for the establishment of a committee to plan for the gradual implementation of changes to the juvenile court’s jurisdiction as well as monitoring of those changes. The bill would increase the age of original juvenile jurisdiction from 16 to 18 for misdemeanors and lesser infractions. The process of expanding juvenile court jurisdiction would extend over three years. The committee would begin its planning in 2014 with the goal of increasing the age of juvenile jurisdiction to 17 by July 2016. The final phase would increase the age to 18 by July 2017. The bill also contains provisions for longer retention of jurisdiction by the juvenile court over an adjudicated juvenile. The House passed the bill on its second reading on July 26, 2013.

**HB 217, An Act to Provide for the Transfer of Juvenile Defendants to Superior Court When Charged with a Major Criminal Offense**
2013-14 Sess. (N.C. 2013) (3 pages)
This bill would expand the category of offenses for which a juvenile can be transferred to adult criminal court without a formal transfer hearing. Currently, juveniles over the age of 13 when a felony was committed are granted a transfer hearing before being transferred to superior court. If the juvenile is accused of committing first degree murder or sexual assault he or she can be transferred without a hearing by judicial waiver. This bill would allow for the transfer of a juvenile, who was 15 or older when the alleged lesser felony was committed, to superior court based upon a finding of probable cause by the court and motion by the prosecutor. The bill passed in the House of Representatives and was referred to the Senate Judiciary Committee on May 8, 2013.
L. Pennsylvania

**Order Amending Rules 901, 1501, 1512, 1516, 1517 and 1541 and Adopting New Rule 1770 of the Pennsylvania Rules of Appellate Procedure**

No. 221 (Pa. Dec. 10, 2012) (9 pages)

The Supreme Court of Pennsylvania amended several Appellate Court Procedural Rules and adopted a new rule regarding the appellate review process of orders for out-of-home placements in juvenile delinquency matters. Rule 1770 does not revise challenges to delinquency adjudications. Rather, it creates an expedited process for review of these orders in which the juvenile defender can argue that the juvenile court abused its discretion in ordering a certain placement, as well as offer proposed terms and conditions for alternative dispositions.

**Supreme Court Changes Juvenile Justice Rules**

Art Heinz, 15 No. 1 Lawyers J. 2 (Jan. 11, 2013) (1 page)

This document provides a brief overview of recently adopted changes to Pennsylvania’s Appellate Court Procedural Rules creating an expedited review process for adjudications of delinquency that result in out-of-home placement.

**Right to Counsel**


This statute entitles all children to legal counsel in dependency and delinquency proceedings, within the guidelines of §6337.1. Formerly, the statute allowed parents or guardians to waive the right to counsel of their children. If parties’ interests conflict, separate counsel shall be provided for each of them.

**Right to Counsel**


Part (b) of this statute provides a framework for and guarantees the provision of counsel for children in delinquency proceedings, borrowing heavily from the recently enacted Pennsylvania Supreme Court Rule 152 on waiver of counsel. The statute provides that all children in delinquency cases are presumed indigent, and prohibits consideration of the financial resources of the child’s parent, guardian, or custodian when rebutting the presumption. The statute allows for children over the age of 13 to waive (and revoke the waiver of) the right to counsel after a recorded colloquy with the court. The statute provides that no child can waive his or her right to counsel at detention, transfer, adjudicatory, disposition, and probation modification and revocation hearings. The statute allows the court to assign stand-by counsel regardless of waiver and specifies that waiver shall apply to each hearing, and not to the proceedings in their entirety.
M. Tennessee

New Funding for Court Interpreters Helps Clients, Judges…and Justice
Anne Louise Wirthlin, 49 Tenn. Bar J. 15 (Jan. 2013) (2 pages)
This short article discusses the approval of a new budget in Tennessee that “allows for payment of interpreter costs for all court hearings in all cases in juvenile, general sessions, trial and appellate courts, regardless of the indigence of the parties.”

N. Texas

SB 23, Relating to the Punishment for a Capital Felony Committed by Juveniles
83rd Leg., 1st Called Sess. (Tex. 2013) (2 pages)
This law amends Texas’s Penal Code and Code of Criminal Procedure to exclude defendants from mandatory LWOP sentencing for capital felonies committed before they turned 18 years old. The law mandates a sentence of life imprisonment for persons who are convicted of a capital felony and who were under 18 years old at the time of the offense, and LWOP for convicts who were 18 years or older at the time of the offense. Previously, the reprieve from LWOP applied only to those whose cases were transferred to the court after waiver of jurisdiction by the juvenile court.

O. Utah

SB 228, Concerning Penalties for Specified Juvenile Offenses
2013 Utah Laws 81 (19 pages)
This law amends the Utah Criminal Code regarding potential sentencing options for certain first degree felonies committed by juveniles. The most significant changes include that defendants younger than 18 convicted of aggravated murder will no longer be charged with a capital felony and juveniles cannot be sentenced to LWOP for certain felonies committed before the age of 18.

P. Washington

SB 5064, Concerning Persons Sentenced for Offenses Committed Prior to Reaching Eighteen Years of Age
(2013) (16 pages)
This bill would revise Washington State’s JLWOP sentencing laws to bring it in line with Miller. It would apply retroactively to all juveniles sentenced to JLWOP. The bill has not been enacted by the Senate as of July 2013.

5064 Senate Bill Report
(2013) (4 pages)
The Bill Report discusses the debate and impetus surrounding the bill.
Q. Wyoming

Enrolled Act No. 16, Modifying Provisions Relating to Life Sentences for Juvenile Offenders Generally; Eliminating LWOP for Juvenile Offenders
2013 Wyo. Sess. Laws 18 (4 pages)

This Act, now law, mandates a sentence of life imprisonment with parole eligibility for persons who are convicted of first degree murder and who were under 18 years old at the time of the offense, whereas previously the section only stated that such persons would not be subject to the death penalty. It also amends several JLWOP provisions.