JUVENILE DEFENDER

Leadership Summit

October 24-26, 2014
Louisville, KY
2014

Juvenile Defender
Resource Guide

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- Record Expungement Designed to Enhance Employment (REDEEM) Act of 2014

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THE JUVENILE COURT

A. GENERALLY

OJJDP Fact Sheet: Delinquency Cases in Juvenile Court, 2010
Charles Puzzanchera & Crystal Robson, U.S. Department of Justice (Feb. 2014) (4 pages)

This fact sheet, published annually, discusses the changes in juvenile delinquency court cases from 1960 to 2010, noting a 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 the delinquency process, including detention, intake, waiver, and adjudication.

NIJ Bulletin: Delays in Youth Justice
Phil Bulman, National Institute of Justice (Feb. 2014) (5 pages)

This bulletin summarizes the 2009 report, *Delays in Youth Justice*. The report analyzes the negative effect delays within the justice system have on juvenile offenders and the community. The report includes research conducted on various counties across the nation, focusing on three Midwestern courts. The summary notes that delays in case processing are often found in juvenile court, especially because of shrinking budgets. Effective, creative leadership and communication have helped stakeholders minimize delays in some jurisdictions. The full report discusses these efforts.

B. IMMIGRATION

Banished for Life: Deportation of Juvenile Offenders as Cruel and Unusual Punishment
Beth Caldwell, 34 Cardozo L. Rev. 2261 (2013) (52 pages)

This article discusses why juveniles convicted of aggravated felonies in adult court should not be subject to mandatory deportation. The article first approaches this topic from an immigration perspective, arguing against the precedent of *Fong Yue Ting*, a foundational immigration case defining deportation as separate and distinct from punishment. The article posits that the increasingly enmeshed relationship between criminal law and immigration law should lead the U.S. Supreme Court to recognize deportation as punishment. The article also draws from *Roper, Graham*, and *Miller* to argue that deportation and a lifetime bar from reentry to the United States is categorically cruel and unusual punishment when imposed on juveniles, particularly those who have spent the majority of their lives in the United States.

A Guide to Juvenile Detention Reform: Noncitizen Youth in the Juvenile Justice System
Juvenile Detention Alternatives Initiative, Annie E. Casey Foundation (June 2014) (43 pages)

This report provides an overview of noncitizen youth in the United States and reviews the ways in which immigration status impacts juvenile cases. This practice guide aims to both increase awareness of the impact of immigration status on juvenile justice-involved youth and to highlight the importance of providing appropriate services to address this population’s special needs.
What’s My Age Again? The Immigrant Age Problem in the Criminal Justice System
Ross Pearson, Note, 98 Minn. L. Rev. 745 (2013) (26 pages)

The note identifies how the immigrant age problem, whereby immigrant youth may be born in countries that do not formally maintain birth records or may limit access to birth records, conflicts with the criminal justice system at three stages: 1) deciding court jurisdiction; 2) where the defendant’s age is an element of the crime; and 3) where the defendant’s age may limit the maximum sentence a court may render. The note concludes with possible solutions to each issue.

Perpetually Turning Our Backs to the Most Vulnerable: A Call for the Appointment of Counsel for Unaccompanied Minors in Deportation Proceedings
Samantha Casey Wong, Note, 46 Conn. L. Rev. 853 (Dec. 2013) (26 pages)

This note addresses unaccompanied minor aliens and advocates for their right to appointed counsel to protect their due process rights. Currently, immigration courts deny illegal immigrants the right to appointed legal counsel. Therefore, unaccompanied minor aliens are forced to appear pro se in deportation hearings. The note argues that unaccompanied minors lack the ability to navigate the United States’ complex immigration system on their own. Furthermore, the note argues that existing pro bono organizations cannot adequately meet the needs and sheer numbers of this group.

C. SCREENING & ASSESSMENT

A Comparison of Risk Assessment Instruments in Juvenile Justice

This report argues that the appropriate use of risk assessments can help improve administrative decisionmaking regarding at-risk youth. The report lists the risk assessment tools used by Oregon, Solano County, Arizona, and Virginia as good examples of tools that fairly and accurately classify youth. The study also discussed 1) the ability of jurisdictions to independently assess and verify that risk assessment tools would accurately predict risk in their jurisdiction; 2) the need for national standards that assess risk; and 3) and the importance of limiting the list of risk factors to only those that contribute to future re-offending.

Statewide Risk Assessment in Juvenile Probation
Andrew Wachter, National Center for Juvenile Justice (May 2014) (4 pages)

This report outlines the risk assessment practices in various states. Thirty-three states administer risk assessments on a statewide basis, eight states employ a layered or regional assessment, and nine states process risk assessments locally. The report also outlines some of the features of the risk assessment tools states use and discusses how states have customized the tools to fit their needs.
D. POLICE, PROBATION & INTAKE

Law Enforcement’s Leadership Role in Juvenile Justice Reform: Actionable Recommendations for Practice & Policy
Anna Bahney et al., International Association of Chiefs of Police (July 2014) (74 pages)

Stemming from a national law enforcement and juvenile justice summit on the untapped potential of law enforcement heads to improve their agencies’ response to young people in conflict with the law, this report sets forth 33 recommendations for specific actions that law enforcement leaders can take to improve the well-being of young people and the safety of communities. The summit brought together law enforcement executives and officers at various levels, judges, prosecutors, public defenders, young people, parents, policymakers, researchers, mental health service providers, and others. The recommendations are divided into eight thematic areas: 1) making juvenile justice a priority within law enforcement agencies; 2) building partnerships among law enforcement, youth, and their families; 3) collaboration and information sharing; 4) promoting alternatives to arrest, court referral, and detention; 5) data collection and expanding evidence-based and promising initiatives; 6) pathways to school completion; 7) responding to youth with behavioral health conditions and trauma histories; and 8) amplifying law enforcement’s advocacy on juvenile justice reform. The report includes case studies demonstrating how effective law enforcement involvement in the lives of young people can change them for the better.

In re Gabriela A.
23 N.Y.3d 155 (N.Y. 2014) (7 pages)

This New York Court of Appeals case concerned a fifteen-year-old girl adjudicated as a person in need of supervision (PINS) and sent to a nonsecure detention facility. She ran away soon after arrival, and probation officers later found her at her home. She resisted being taken back to the nonsecure detention facility by the probation officers. She was adjudicated delinquent for resisting arrest and obstructing governmental administration. The court held that the conduct in this case was of the kind consistent with PINS behavior (incorrigible and beyond the lawful control of a parent) and therefore, it was not appropriate for the family court to have punished PINS behavior with a delinquency charge. The crime of resisting arrest occurs when an individual prevents an authorized criminal arrest. The court held that because the probation officers attempted to act in a PINS proceeding, which is civil in nature, charges were unfounded.

E. COMPETENCY DETERMINATIONS

Juvenile Competency Procedures
Linda A. Szymanski, National Center for Juvenile Justice (Oct. 2013) (4 pages)

This report provides an overview of juvenile competency and describes some of the techniques used to evaluate it. The report identifies ways the Dusky competency standard has been implemented across the country. Using a state-by-state analysis, the report examines the
impact of various factors in determining competency, including age and demeanor in court. The report concludes with a brief review of a 2010 Louisiana case and a 2013 Colorado case that addressed competency determination procedures.

**Utah and Juvenile Incompetency**


This note discusses a newly enacted Utah law outlining how and when a party may challenge a juvenile’s competency, the procedure that will determine competency, and the detention of children accused of crime. While the note argues that the updates in this law are a step in the right direction, it opposes the portion of the law that allows for removal of an accused child to a detention facility prior to conviction. The note explains how competency is determined in Arizona, Colorado, Kansas, Florida, New Mexico, Wisconsin, and Wyoming to show alternative ways that Utah could manage the disposition of youth deemed incompetent.

**F. DISPOSITION**

**Juvenile Remorselessness: An Unconstitutional Sentencing Consideration**


This article provides an in-depth overview of remorse as an aggravating factor in juvenile sentencing procedures. The article discusses the significance of remorse and how a judge’s perception of remorse, or lack thereof, can negatively impact juvenile offenders. The article provides an overview of *Roper, Graham,* and *Miller,* and describes how this line of cases indicates that the U.S. Supreme Court views youth status as unique and requiring of special consideration. The article argues that remorselessness is not a predictive factor for future dangerousness in juvenile offenders because it fails to account for youth status, susceptibility to peer pressure, cultural norms, and basic immaturity. Using remorse as an aggravating factor can also result in sentencing discrepancies among juvenile offenders convicted of the same crime. The article includes examples of unsympathetic judges who sentence seemingly less remorseful youth to harsher sentences than their more criminally responsible peers. While acknowledging that many judges subconsciously consider remorse as a factor in sentencing, the author suggests that legislatures should intervene and revise statutes to reduce the influence of remorse on sentencing.

**G. POST-DISPOSITION & AFTERCARE / APPEALS**

**Report & Resolution 103A [on Juvenile Appellate Practice]**

Criminal Justice Section, ABA (Feb. 2014) (13 pages)

This ABA Resolution, passed at the mid-year 2014 ABA meeting, calls for training for juvenile defense attorneys, resources for juvenile appeals, the provision of timely juvenile appeals, and the collection of data on appeals to remedy institutional barriers to juvenile appellate practice. The report cites statutes, case law, law review articles, and the *National*
Juvenile Defense Standards in explaining the barriers that have prevented effective juvenile appellate advocacy.

H. SHACKLING

Sample Motion to Remove Restraints
Jay Elliott, South Carolina Public Defender (2014) (3 pages)

This redacted motion to remove the restraints of a juvenile defendant is tailored for South Carolina, but includes arguments that are applicable across the country. The motion contains citations to social science research, federal and state cases, and international law. The motion also discusses how shackling affects both the child and the judge’s perceptions of that child, impeding due process and the rehabilitative purpose of the juvenile court. It can be adapted for other jurisdictions.

Sample Motion for Leave to Appear in Civilian Clothing, Without Restraints
Jay Elliott, South Carolina Public Defender (2014) (3 pages)

This redacted motion to appear in juvenile court unencumbered by shackles and prison attire is tailored for South Carolina, but includes arguments that are applicable across the country. The motion contains citations to social science research, federal and state cases, and international law. The motion also discusses how prison attire and shackling affects both the child and the judge’s perceptions of that child, to the detriment of due process and the rehabilitative purpose of the juvenile court. It can be adapted for other jurisdictions.

Sample Motion to Appear Without Physical Restraints
Cumberland Legal Aid Clinic, University of Maine School of Law (2013) (9 pages)

This is a sample motion arguing against the indiscriminate shackling of youth in juvenile court. The motion argues, citing evidence, that the presumption against automatic shackling dates back to common law, shackling impedes the function of juvenile courts, and “[t]he inherent differences between juveniles and adults should be considered when determining whether shackling is appropriate.”

Juvenile Court Rule 1.6, Physical Restraints in the Courtroom
(Wash. 2014) (1 page)

The Washington Supreme Court passed this court rule dictating that Washington State’s juvenile courts must now make an individualized determination that restraint is necessary for safety or to prevent a likelihood of flight before a child may be shackled. The court must also find that no less restrictive alternatives are available. Prior to the enactment of this rule, the majority of youth came to court in shackles regardless of whether restraint was necessary.

Re: Comments on Proposed Juvenile Court Rule 1.6, Physical Restraints in the Courtroom
National Juvenile Defender Center (2014) (5 pages)

This letter, submitted as part of the notice-and-comment process for the Washington State rule on juvenile shackling discussed above, urges the state’s supreme court to
pass the rule. The letter addresses the psychological harms of shackling children. It emphasizes that indiscriminate shackling violates due process by interfering with the presumption of innocence, the attorney-client relationship, and the dignity of the court. The letter concludes with a discussion of the growing trend nationwide to end indiscriminate juvenile shackling.

I. COLLATERAL CONSEQUENCES

The South Carolina Juvenile Collateral Consequences Checklist
South Carolina Commission on Indigent Defense (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 South Carolina 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.

To Seal or Not to Seal: WA’s Battle Over Juvenile Records
Eric Scigliano, Crosscut News of the Great Nearby (Jan. 27, 2014) (6 pages)

To Seal or Not to Seal and its follow-up article, Keeping Juvenile Records Confidential, argue that Washington’s policies of releasing juvenile records to the public and selling them in bulk unfairly damage young offenders’ lives. The articles advocate for changes in the law that limit juvenile record dissemination. The sealing process is expensive and racial minorities tend to have their records sealed less often than whites. Many data reporting agencies still report the offense after it has been sealed, causing employment and housing problems for offenders with sealed records. The articles follow the cases of several youthful offenders who have experienced this problem. Politicians and advocates have attempted to change the law to limit the public’s ability to access juvenile records, but each attempt has been rejected in the Washington legislature. Advocates are again arguing for a change in the law.

Keeping Juvenile Records Confidential: Olympia Debates
Eric Scigliano, Crosscut News of the Great Nearby (Jan. 29, 2014) (7 pages)

See summary for To Seal or Not to Seal: WA’s Battle Over Juvenile Records, above.

No Clean Slates: Unpacking the Complications of Juvenile Expungements in the Wake of In re Welfare of J.J.P.
Nic Puechner, Note, 40 Wm. Mitchell L. Rev. 1158 (2014) (36 pages)

This note discusses juvenile expungements in Minnesota and examines In re Welfare of J.J.P. to discuss gaps in the Minnesota statutes and areas for improvement. After being deemed ineligible to become a licensed paramedic based on a copy of his juvenile record, J.J.P. argued that a court was authorized to expunge both his judicial and executive branch
adjudication record. The Minnesota Supreme Court held that while courts may expunge all records that adjudicate a juvenile delinquent, they are not required to expunge documents outside the scope of a disposition. Thus, the note argues, the statute leaves juveniles otherwise qualified for an expungement at a disadvantage. The note suggests that Minnesota should implement legislative reform to help successfully reintegrate juvenile offenders into society during and after expungement.

**In re M.A.**

An Illinois appellate court declared the state’s criminal offender registration statute unconstitutional as applied to minors on procedural due process and equal protection grounds. The law required both delinquent minors and adults convicted of certain enumerated crimes against minors to register on a public list. In this case, appellant, 13-year-old M.A., committed an aggravated domestic battery against her older brother during a family fight. The appellate court’s opinion is rooted in *Miller* and cited the Illinois Juvenile Justice Commission’s recent report regarding the inefficacy of registration lists for juveniles.
CHILDREN & FAMILIES

A. GENERALLY

The State of America’s Children
Children’s Defense Fund (2014) (92 pages)

This report provides detailed findings on the Children’s Defense Fund’s most recent study on the status of American children in need. The report presents recent trends in key areas including the child poverty rate, health care, education, family, and income and wealth inequality.

B. OTHER

Kidnapping Incorporated: The Unregulated Youth-Transportation Industry and the Potential for Abuse

This article examines transportation services and analyzes the legality of the delegation of parental authority to these services. Transportation services are used to transport youth deemed unruly by their parents to reform schools or programs specializing in behavior modification. Parents typically sign documents delegating parental rights to the transportation services. The article argues that appropriate regulations must be implemented to protect youth’s safety and well-being throughout the process. The article also identifies inconsistencies between the transportation services and laws protecting youth’s rights. The article concludes with an example of a proposed federal regulation to protect children that use transportation services.

Engaging Juvenile Justice System-Involved Families
Antoinette Davis et al., National Council on Crime & Delinquency (June 2014) (13 pages)

This publication is one of an eight-part series resulting from a national study on deincarceration conducted by NCCD. This piece focuses on improving juvenile systems by limiting punitive and restrictive practices and replacing them with restorative practices that include community-based programming and increased family involvement. Strategies proposed suggest that juvenile justice stakeholders: 1) redefine public safety; 2) engage families and communities in a restorative manner; 3) build the capacity of community-based organizations; and 4) include impacted communities on advisory boards and commissions. The article offers examples of systems throughout the country that have begun to implement practices related to these four strategies.
CHILD & ADOLESCENT DEVELOPMENT

A. GENERALLY

Justice Research: Explanations for Offending
Carrie Mulford, OJJDP (May 2014) (2 pages)

This bulletin summarizes a July 2013 report funded by the DOJ on the transitions between juvenile delinquency and adult crime. The bulletin briefly summarizes five theoretical perspectives illustrating why an individual may engage in criminal conduct: 1) static theories; 2) dynamic or life-course developmental models; 3) social psychological theories; 4) the developmental psychopathological perspective; and 5) the biopsychosocial perspective. The bulletin explains that the unifying feature in each theory is that disorderly transitions between developmental stages are a major factor in future offending. The bulletin also argues that the malleability and changes in criminal behavior observed in young people make it difficult to justify permanent or long-term sanctions.

Peers Increase Adolescent Risk Taking Even When the Probabilities of Negative Outcomes are Known
Ashley R. Smith et al., 50 Developmental Psychol. 1564 (2014) (5 pages)

This report details a study which found that adolescents who believed a peer was observing them were more likely to engage in riskier practices than their unobserved counterparts. The study revealed via gambling exercises that providing adolescents with information designed to reduce risk taking will be less effective if their peers are present.

Effects of Anonymous Peer Observation on Adolescents’ Preference for Immediate Rewards
Alexander Weigard et al., 17 Developmental Sci. 71 (2014) (8 pages)

This report details a study of peer influences on adolescent risk-taking and its implications for the safety of adolescents who communicate online. Peer influence on reward sensitivity during late adolescence is not dependent on familiarity with the observer. Participants demonstrated a significantly increased preference for smaller, immediate rewards when they believed that an anonymous peer was observing them from a neighboring room. Further, the peer effect on reward sensitivity does not depend on the presence of multiple “age-mates,” and the effect can occur when peers are not physically present, but are simply observing behavior from afar. According to the report, these results suggest that while interacting with friends or even anonymous strangers over the internet, adolescents’ risk-taking may be increased to the same degree and through the same mechanism as when adolescents are actually with their friends.
Psychosocial (Im)maturity from Adolescence to Early Adulthood: Distinguishing Between Adolescence-Limited and Persisting Antisocial Behavior
Kathryn C. Monahan et al., 25 Development & Psychopathology 1093 (2013) (13 pages)

This article examines the relationship between psychosocial maturity and immaturity and antisocial behavior. The authors measure psychosocial maturity by examining a youth’s impulse control and suppression of aggression, consideration of others and forward thinking attitude, and their ability to take personal responsibility for their behaviors and resist peer influence. By conducting intermittent surveys with incarcerated youth every six months for a three-year period of time, the researchers found that youth who begin antisocial behavior at a younger age experience an earlier onset of maturity. The study found that most youths’ antisocial behaviors are transient and limited to adolescence. Thus, because juvenile offenders generally gain psychosocial maturity and decrease antisocial behaviors as they age, those offenders whose antisocial behavior persists into adulthood are the exception. Most significantly, the authors report that in their sample of juvenile offenders, psychosocial maturity was still developing at age 25, an observation consistent with studies of other, non-offending youth.

Impact of Socio-Emotional Context, Brain Development, and Pubertal Maturation on Adolescent Risk-Taking
Ashley R. Smith et al., 64 Hormones & Behav. 323 (2013) (10 pages)

This article challenges the popular belief that risky and reckless behavior common in adolescents is due to hormonal changes during puberty. Instead, the article argues that even though sufficient research is lacking in this area, enough can be inferred to begin sorting out developmental processes that are either “puberty-dependent” or “puberty-independent.” The article concludes with a discussion on several challenges future research is likely to meet, i.e., how studies are conducted, considering social experience as a major influence on the timing of puberty, and for researchers to explore the ways puberty interacts with other factors that influence decisionmaking.

B. LANGUAGE ISSUES & COLLOQUIES

Innovation Brief: Judicial Colloquies: Communicating with Kids in Court
Rosa Peralta & George Yeannakis, Models for Change (Dec. 2013) (4 pages)

This innovation brief provides an overview of the Washington State Judicial Colloquies Project, summarized in the 2013 Resource Guide. Drawing from experiences of various stakeholders, including both experts and juveniles themselves, the report provides draft colloquies that sought 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, first appearance, and conditions of release. This brief explains the successes of the Project, as well as why the development of the Project itself was beneficial to juvenile court stakeholders.
C. IN COURT

The Role of Science in the Supreme Court’s Limitations on Juvenile Punishment

This article discusses how the U.S. Supreme Court has allowed science to become a factor in deciding juvenile punishments. The article uses a series of cases to show how the Court has changed position twice since its first dismissal of a challenge to the juvenile death penalty in 1988. The article argues that by imparting an understanding of the immaturity of the adolescent and teenage brain, neuroscience has been instrumental in helping the court form its current position that children may not be sentenced to death and that age must be considered a factor when determining if a juvenile was in police custody. The article explores how each justice factored science into his or her individual position on the issues.

Youth Matters: The Meaning of Miller for Theory, Research, and Policy Regarding Developmental/Life-Course Criminology

This essay considers Miller’s implications for theory, research, and policy within the context of developmental, life-course criminology, which assumes that crime changes with age in an orderly way. The essay includes a review of current evidence showing that juveniles are still developing mentally, that juveniles do not become life-long, chronic offenders, that most homicide offenders do not recidivate, and that the public supports rehabilitation of juvenile offenders. Neuroscience research indicates that juveniles’ less-formed brains make them less morally culpable and more capable of change. The essay argues that laws and policies should be grounded in these developmental sciences.

Brain Overclaim Redux
Stephen J. Morse, 31 Law & Ineq. 509 (2013) (26 pages)

This article encourages professional participants in the juvenile justice system to reevaluate their perceptions of the impact of neuroscience on the law. Using witty prose, the author reminds the reader that the link between the brain and behavior is complex and in the period of adolescence, there is a likely overlap in the biological maturity of the youth and adult brain. As such, science has not yet evolved enough that neuroscience would significantly impact juvenile criminal proceedings. Characterizing the significance of neuroscience as “rhetorically relevant,” the article takes a critical look at how neurological evidence is used at trial and the impact it has on defendants.

Children’s Eyewitness Memory: The Influence of Cognitive and Socio-Emotional Factors
Gail S. Goodman et al., 19 Roger Williams U. L. Rev. 476 (2014) (37 pages)

This article explores the various factors, especially cognitive and socio-emotional factors, which affect children’s accurate disclosure, memory, and testimony of events relevant to a legal proceeding. The article considers factors that inhibit children from disclosing sexual abuse or that lead to false details in their eyewitness testimony. Legal professionals working with children must be aware of children’s abilities, vulnerabilities, and needs. Feeling safe
and supported both at home and in any interrogative setting contributes to a child’s willingness to share information. Younger children tend to be more affected by cognitive limitations relating to memories, while older children tend to be more affected by socio-emotional factors such as fear of how the information shared may negatively affect a family member or friend. The article also considers the experiences of children who testify in court and are subject to cross-examination. These experiences have the potential to negatively affect both the accuracy of the testimony and the well-being of the child. Consequently, lawyers preparing children for a trial must be aware of the risks inherent to putting a child on the stand. Thorough and patient preparation of child witnesses can help ensure the integrity of testimony and protect the child’s mental health.
MENTAL HEALTH

A. GENERALLY

Hall v. Florida
134 S. Ct. 1986 (2014) (45 pages)

In Hall v. Florida, the U.S. Supreme Court considered whether a state could establish minimum threshold requirements, like a certain IQ score, to determine whether a person could present evidence that they possessed an intellectual disability that renders them ineligible for the death penalty. The Court held that such a minimum requirement is unconstitutional in accordance with the Eighth and Fourteenth Amendments and Atkins v. Virginia. In a 5-4 decision, the Court found that there are multiple factors that should be considered in determining whether a person has an intellectual disability and that preventing a defendant from presenting such evidence serves no legitimate purpose. The Court noted that IQ tests are never solely relied upon to establish intellectual disability, and a person should thus not be disqualified based only on an IQ test.

B. JUVENILES

Evaluating the Psycholegal Abilities of Young Offenders with Fetal Alcohol Spectrum Disorder
Kaitlyn McLachlan et al., 38 Law & Hum. Behav. 10 (2014) (21 pages)

This is a report from a Canadian study, modified to be applicable to the U.S., that examined how cognitive and psychological factors affect the ability of young offenders with Fetal Alcohol Spectrum Disorder (FASD) to understand police interactions and legal proceedings. Recent resolutions of the ABA and the Canadian Bar Association address the need for a better understanding in the legal and enforcement communities of offenders with FASD. Little research or data currently exists to demonstrate the effects of FASD on the legal competency of offenders or the likely overrepresentation of individuals with FASD in the justice system. The study found that children with FASD showed substantial deficits in understanding arrest warnings, such that they might waive their rights without understanding them. The study also showed that youth with FASD are more likely to have significant cognitive impairments and behavioral and emotional challenges that could lead to an incompetence determination at adjudication. This study serves as a first step in understanding the effect of FASD on system-involved youth. With more extensive studies, police, lawyers, and judges can be better prepared to adequately protect court-involved children with FASD.

Functional Impairment in Delinquent Youth
Karen M. Abram et al., OJJDP (Dec. 2013) (12 pages)

This bulletin presents survey results regarding formerly detained youths’ functional impairments three years following the youths’ release. The study found that at that point, “approximately one of every five youth had markedly impaired functioning, indicating a
need for improved interventions and care after release.” Without these services, there are increased costs both to youth and to society. The study encourages the targeted connection of youth to services upon release. The study suggests that future research should focus on both changes in functional impairment as youth age and on determining factors that may lead to positive outcomes.

**Behavioral Health Problems, Treatment, and Outcomes in Serious Youthful Offenders**
Carol A. Schubert & Edward P. Mulvey, OJJDP (June 2014) (16 pages)

This bulletin examines a study of 1,300 juvenile offenders for seven years following their court involvement. It assesses the overlap between behavioral health problems and the risk of offending behavior in juveniles, as well as “the delivery of mental health and substance abuse treatment in juvenile justice settings, and continuation of care in the community after release.” The authors also discuss the implications for juvenile justice policy and practice and recommend ways to direct mental health and treatment services to reduce future offending.

**Judicial Leadership to Address Adolescent Mental Health Needs**

This article addresses the impact that the juvenile justice system has on youth, specifically those suffering from mental illness. Current statistics show that juveniles with mental illnesses detained in detention centers do not receive proper treatment. The article explains how judges can improve the care juveniles receive in facilities. Judges have the capacity to change many of the current standards and procedures within the juvenile justice system by leading and supporting stakeholders, policies, and community-based mental health treatment centers. The article also includes an analysis on the leadership efforts of one Ohio judge, which have dramatically influenced the success of specific programs for mentally ill defendants.

**Juveniles in Jeopardy: Reclaiming the Justice System’s Rehabilitative Ideals**

This note analyzes the current mental health courts and argues for the implementation of more of them across the country. Juvenile mental health courts are largely derived from the launch of drug treatment courts and adult specialized mental health courts. Mental illness encompasses a larger pool of offenders as studies have proven that most drug-related offenders suffer from substance abuse, which now may be diagnosable as a mental illness by medical professionals. Since the emergence of juvenile mental health courts, the rate of detained juveniles has lowered, attention to a more rehabilitative model has increased, and recidivism has declined. The note discusses the history of mental health courts, the prevalence of co-occurring disorders in juveniles, and youth’s decisionmaking capacity. The note concludes with a list of recommendations that courts should consider when implementing procedures for offenders with a history of mental health issues.
Bernalillo County Mental Health Clinic Case Study
Richard A. Mendel, Annie E. Casey Foundation (2013) (30 pages)

This report discusses the mental health services available at the JDAI Model Site, Bernalillo County, Arizona. By implementing the JDAI program, the Bernalillo County administration and juvenile court judges were able to use detention alternatives to incarcerate fewer youth, to create savings for taxpayers, and to reduce the rate of youth crime. The report notes that due to these changes, detention center staff was able to more easily identify the challenges facing youth offenders. With 85% of detained youth suffering from mental health issues, installing a mental health clinic was a top priority. The report discusses the process used by the county to build the clinic, including ensuring the youths’ Medicaid eligibility, becoming a licensed Medicaid provider, and creating the clinic. The report also details how the county staffed the clinic, how youth were selected for treatment, and what types of treatments the clinic provided. This program was successful because it reduced recidivism and length of stay for offenders, and improved outcomes for adolescents on probation.

C. IMPLICATIONS OF TRAUMA

Report & Revised Resolution 109B [on Trauma-Informed Care for Youth]
ABA, Commission on Youth at Risk (2014) (20 pages)

This ABA Resolution and accompanying report tackle the provision of trauma-informed care for youth. It looks to fill the gaps of the DOJ’s Defending Childhood report and urges “the development and adoption of trauma-informed, evidence-based approaches and practices on behalf of justice system-involved children and youth who have been exposed to violence, including victims of child abuse and neglect or other crimes and those subject to delinquency or status offense proceedings.” The report recognizes that many children in the justice system have experienced trauma and emphasizes PTSD as a major mental health issue. The report also identifies that LGBT youth have experienced trauma at an even higher rate than other children in the system. The report discusses the need for evidence-based practices and argues that law school clinics and technical assistance for current practitioners need to fill gaps to teach lawyers about the impact of trauma on young people. It provides examples of successful programs. Finally, the report addresses the issue of secondary trauma, also known as “compassion fatigue,” whereby attorneys and judges who work with young people may themselves experience the symptoms of trauma. Secondary trauma highlights the need for increased awareness of this phenomenon and the development of self-care routines and networks to support professionals working with juvenile justice populations.

Trauma-Informed Juvenile Justice Roundtable: Current Issues and New Directions in Creating Trauma-Informed Juvenile Justice Systems
Carly B. Dierkhising et al., National Child Traumatic Stress Network (Aug. 2013) (3 pages)

Accepting that many youth in the juvenile justice system experience or have experienced trauma, this report proposes strategies for creating trauma-informed juvenile justice systems. It identifies five key elements as starting points for the creation of trauma-informed systems:
1) using trauma-informed screenings, assessments, and interventions designed for justice settings; 2) partnering with families; 3) collaborating across systems to enhance continuity of care; 4) creating a trauma-responsive environment of care; and 5) reducing disproportionate minority contact and disparate treatment of minority youth.

**Trauma-Informed Assessment and Intervention**
Patricia K. Kerig, National Child Traumatic Stress Network (Feb. 2013) (6 pages)

This brief explains how a youth’s past experience of trauma is often inextricably linked to current behaviors and how addressing the effects of trauma can decrease recidivism. Asserting that trauma assessment is crucial to disposition planning and that trauma-focused treatment is essential to allow youth to engage in healthy, pro-social development, the brief explains specific changes that should happen within the system to foster these two approaches. First, all professionals involved with the juvenile justice system should be educated about trauma, its effects, how to conduct an initial screening for trauma, and how to refer an individual to a qualified mental health professional. Additionally, more mental health professionals involved in juvenile justice should be properly qualified and equipped to address trauma, so that every court-ordered mental health evaluation would include trauma assessment. Though it explains the challenges of developing a comprehensive trauma-informed approach for the whole system, the brief demonstrates the importance of improving the system to better serve youth who have experienced trauma.

**The Role of Family Engagement in Creating Trauma-Informed Juvenile Justice Systems**
Liane Rozzell, National Child Traumatic Stress Network (Feb. 2013) (6 pages)

This brief details how family involvement in a youth’s experience in the juvenile justice system promotes trauma-informed interventions. Because families will be involved in a youth’s life long after he or she leaves the juvenile justice system, it is imperative that systems partner with families. Strengths-based engagement with families allows for families to share expertise about a youth’s skills, needs, and past traumas, and for system staff to share expertise about the effects of trauma on a youth’s behavior. Action steps to increase family engagement include training staff in family engagement, involving families in peer support systems, working towards transparency of decision making processes, incorporating restorative justice principles and practices, and recognizing families in a culturally competent manner.

**Cross-System Collaboration**
Macon Stewart, National Child Traumatic Stress Network (Feb. 2013) (3 pages)

This brief argues that, given how many youth involved in juvenile justice systems are also involved in other bureaucratic systems, such as systems of child welfare, education and behavioral health, there must be cross system collaboration. Identifying at the point of juvenile justice intake the other systems with which a youth is involved saves resources and time and allows for the most well-informed and deliberate decision making process moving forward.
Juvenile detention facilities that closely resemble adult jails and prisons are not designed for treatment and are inherently traumatic. Youth who have already experienced trauma prior to involvement with the juvenile justice system are re-traumatized in detention centers. The best way to deliver trauma-informed care to juveniles is to prevent unnecessary detention. When detention is necessary, institutions should create an environment in which youth can process past trauma and learn to manage behaviors that often result from past trauma. Institutions can establish such an environment of care by creating a safe environment, training staff on what trauma is, setting clear expectations for youth and staff, making procedures youth centered, employing the least restrictive methods when using force, and eliminating solitary confinement. Finally, trauma-informed care must appreciate that punitive specific deterrence does not work for young people. The article offers a list of resources with further information about developing a trauma-informed environment of care.

Rates of trauma are particularly high for youth in the juvenile justice and child welfare systems. This report details key risks of and opportunities for using research on trauma in juvenile advocacy. It highlights legal strategies advocates can use in court, and identifies state and local policies needed to support these strategies. It also lays out basic background, case law analysis, and policy recommendations for the juvenile and criminal justice systems and for the child welfare system. This report stems from research and discussion with psychologists, psychiatrists, public policy experts, and lawyers who represent children in both the juvenile justice and child welfare systems.

This bulletin presents survey results regarding the overlap of victimization and delinquency among children exposed to violence. The survey categorized adolescents into four groups: primarily victims; primarily delinquents; delinquent-victims; and those who were neither. Delinquent-victims “had higher levels of both delinquency and victimization than either the primarily victim or primarily delinquent youth. These youth also suffered more adversities, and had lower levels of social support and higher rates of mental health symptoms.” The study points to the importance of intervention prior to fifth grade with these children.

This article details a study of previously adjudicated delinquent youth and the relationship between comorbid offending/substance misuse and antisocial cognition/personality. The
findings indicate that youth who have problems with crime and substances are at an increased risk for concurrent antisocial cognition/personality problems and subsequent crime/substance-misuse problems compared to youth who have no problems or youth with problems with crime only or substances only. The article stresses the important implications this study will have on risk assessment. Youth who have both substance and crime problems should be the primary target of intervention measures like stress and emotion-management training as well as impulsivity management. The article argues that early identification of these high-risk youth will be helpful in prevention and intervention.
MARKERS OF INEQUALITY

A. DEPENDENT YOUTH

Closing the Crossover Gap: Amending Fostering Connections to Provide Independent Living Services for Foster Youth Who Crossover to the Justice System

This note discusses the Fostering Connections to Success and Increasing Adoption Act of 2008 (“Fostering Connections”), an amendment to Title IV-E of the Social Security Act. The note advocates that it be further amended to require states to extend services to crossover youth—youth that were in the dependency system when they entered the delinquency system. The note identifies that a large number of crossover youth get lost between the dependency system and delinquency system because most states fund and operate the systems separately. The note argues that existing gaps between the dependency system and delinquency system, e.g., the inability of delinquency professionals, such as probation officers, to effectively navigate opportunities available to crossover youth, render both the delinquency and dependency systems incapable of addressing the needs of crossover youth. Crossover youth experience a higher incidence of risk factors and are more likely to experience difficulty transitioning to adulthood compared to youth who age out of the dependency system alone. The note provides a list of provisions that should be included in the amendment creating affirmative rights for crossover youth such as the right to access independent living programs and services available for foster youth and the right to assistance with a comprehensive and personalized transition plan under Fostering Connections. Through these provisions, crossover youth will have “access to opportunities that are specifically designed to assist them with the transition to adulthood.”

B. GIRLS

From Turkey Trot to Twitter: Policing Puberty, Purity, and Sex-Positivity

This article addresses states’ attempts to regulate and punish the female adolescent process, specifically girls’ sexuality. The article argues that instead of policing girls’ sexuality and criminalizing their behavior, contemporary law should rely on behavioral science findings that support the normalcy of teen sexual and identity exploration. The article concludes with a proposal for legislatures and law enforcement to engage with youth to understand their views on the issue and to help mold policies that impact them.

Contempt, Status, and the Criminalization of Non-Conforming Girls
Cynthia Godsoe, 35 Cardozo L. Rev. 3 (Feb. 2014) (26 pages)

This article argues that the juvenile justice system is used as an instrument to regulate the moral behavior of girls, resulting in a greater proportion of girls being charged with and severely punished for status offenses than boys. To support this, the article considers the
language of status offense statutes from several states, and finds that many statutes still specify moral offenses, e.g., children deemed to be leading an “immoral or vicious life” or children who engage in “sexualized behaviors that pose a danger to the child or others.” Furthermore, the justice system fails to identify the incidents unique to girls: higher rates of sexual abuse by family members and parents or parents’ stricter regulation of girls resulting in greater family discord. Instead, the system continues to blame the female child rather than address the source of the problem: her family. The disproportionate charging of girls with status offenses is further compounded by the inherent paternalistic rationale of the juvenile justice system. The article concludes with the proposal of two alternatives to the existing framework: either a child protection approach or a public health framework that would provide better services to exploited children void of the “slippery slope” into punishment of the status offense system.

**Girls, Status Offenses and the Need for a Less Punitive and More Empowering Approach**  
Coalition for Juvenile Justice (Fall 2013) (9 pages)

Released on Girls Justice Day, this first brief in the Safety, Opportunity & Success Project’s Emerging Issues Policy Series discusses the overrepresentation of girls in status offense cases. The brief identifies and explains the intersection of sex, race, and socioeconomic status and how it has affected girls in status offense cases. Specifically, the brief points out that the rate at which girls of color are detained for status offenses is disproportionate to that of their white counterparts. The brief also discusses implicit bias against girls both systematically and socially which has developed into a “paradoxical stance” towards girls whereby the juvenile justice system seeks both to “protect [girls] from themselves and others while at the same time punishing them for behaviors deemed deviant or defiant, without making the connection between the behaviors and the underlying causes.”

**Girls Study Group: Understanding and Responding to Girls’ Delinquency**  
David Huizinga & Shari Miller, U.S. Department of Justice (Dec. 2013) (16 pages)

This study details the major findings from the Girls Study Group’s (GSG) study on delinquent behavior of girls. GSG collaborated with the Denver Youth Survey and the Fast Track Project to “establish common delinquency measures, conduct analysis, and integrate findings on development patterns of girls’ offending from childhood through adolescence.” Based on data collected, the study provides tables detailing the developmental pathways in girls’ delinquency over several years.

**Introduction: For Better or Worse: Intimate Relationships as Sources of Risk or Resilience for Girls’ Delinquency**  
Patricia K. Kerig, 24 J. Research on Adolescence 1 (2014) (11 pages)

This article discusses the link between intimate relationships and antisocial behavior as a gender-relevant factor that influences girls’ delinquency. It details the methodology as well as summarizes the findings of several studies regarding the impact both negative and positive relationships have on the adolescent development of girls. The studies highlighted in this
article will provide a better understanding of why violent offenses committed by girls are on the rise, and how juvenile justice professionals could better work with delinquent girls and identify and respond to the issues facing them. The article concludes with a recommendation for future studies to examine the characteristics and quality of relationships between aggressive girls, their friends, and romantic partners.

**C. SEXUAL ORIENTATION, GENDER IDENTITY & GENDER EXPRESSION**

**Standing with LGBT Prisoners: An Advocate’s Guide to Ending Abuse and Combating Imprisonment**  

The toolkit provides basic information, guidelines, and resources for LGBT advocates who would like to or are currently working with local state corrections or detention agencies. The toolkit addresses a broad spectrum of issues including basic LGBT terminology, current legislation and standards regarding incarcerated LGBT persons, rights of incarcerated LGBT persons, and how to effectively advocate for several issues practitioners may experience working with detention agencies, *e.g.*, youth placed in isolation, and youth access to mental healthcare. The toolkit concludes with several appendixes that provide examples of transgender prisoner preference form, summaries of the Prison Rape Elimination Act (PREA) standards, and other resources to further aid advocates.

National Institute of Corrections, U.S. Department of Justice (Aug. 2013) (79 pages)

This policy guide was developed to assist all professionals and agencies involved with the justice system in identifying the needs of LGBTI individuals as they work to implement PREA standards. Chapter 2 of the guide addresses the rights and needs of LGBTI youth in custody. Each subsection within Chapter 2 provides a checklist for professionals to use when assessing whether current agency policy and practice is sufficient to meet LGBTI youth’s rights and needs.

**Juvenile Lesbian Gay Bisexual and Transgender Policy: Administrative Services Manual**  
Santa Clara County Probation Department (Oct. 2013) (8 pages)

This manual details Santa Clara County Probation Department’s policy guidelines which ensure LGBT youth receive fair and equal treatment. It also provides information on the Department’s operations regarding LGBT youth, including confidentiality, housing placement and treatment, and reporting to and responding to harassment and discrimination.
D. RACE & ETHNICITY

My Brother’s Keeper Task Force Report to the President
(May 2014) (60 pages)

This is the first 90-day progress report submitted by the My Brother’s Keeper Task Force. The Task Force is responsible for identifying social, economic, and educational gaps boys and young men of color face, developing strategies to address these gaps, and providing recommendations to resolve them. Recommendations include establishing national indicators to better identify problems, tracking progress, reforming the juvenile justice system to promote alternatives to incarceration, and encouraging communities to work collaboratively with law enforcement.

Reducing Racial and Ethnic Disparities in the Juvenile Justice System
Mark Soler, Trends in State Courts (2014) (7 pages)

This article discusses racial and ethnic disparities in the juvenile justice system and presents strategies to combat them. The article defines the disparities and acknowledges some specific issues faced by Latino and Hispanic system-involved youth, including a lack of bilingual services, consideration of immigration status at arrest and detention, and assumptions about gang involvement. Key decisionmakers’ implicit biases within the system perpetuate these racial and ethnic disparities and have proven difficult to remedy. This article presents research demonstrating that judges carry implicit bias and that such bias affects their decisionmaking. The research also shows that when judges are aware that they need to monitor their bias, they are able to better control the effects of that bias. This ability to monitor bias indicates that reform should focus on educating key decisionmakers, especially judges, about implicit bias.

A Broken Shield: A Plea for Formality in the Juvenile Justice System
Robin Walker Sterling, 13 Md. L.J. Race, Religion, Gender & Class 237 (2013) (14 pages)

Children of color are arrested and detained in the juvenile justice system at alarmingly disproportionate rates. This article contends that racial disparity results from the lack of formality in the juvenile justice system and too much individualized discretion. This translates to conscious and unconscious biases that punish children of color more harshly and more often than white children. The article argues that the U.S. Supreme Court’s acceptance in Gault and McKeiver of the juvenile justice system as founded on rehabilitation discounts the historical experience of children of color who were systematically shut out from rehabilitative programs and subjected to punishment instead. The article calls on the U.S. Supreme Court to expand Gault to afford juveniles the full protection of the Bill of Rights, particularly the right to a public trial by jury. The author also encourages defense attorneys to confront racial discrimination by collecting data on their clients’ race and conviction rate as well as to raise issues of racial injustice in the courtrooms.

This article is a general summary of racial bias in overincarceration. It argues that race and ethnicity are relevant factors in the juvenile justice system that have disproportionate effects on sentencing. It provides brief synopses of a number of studies and draws conclusions about two overincarceration theories: differential selection and differential offending. These theories attempt to explain why minorities and blacks are incarcerated at higher rates than whites. The article advocates that using a combination of direct services, education, training, technical assistance, and system change will give juvenile offenders the best chance for improved outcomes.

Racial Disparities and the Juvenile Justice System: A Legacy of Trauma
Clinton Lacey, National Child Traumatic Stress Network (Feb. 2013) (5 pages)

This article discusses racial disparities in juvenile sentencing and detainment in the context of the history of juvenile justice in the United States. The article discusses how the modern system drives racial disparities due to a cultural assumption that people of color are dangerous. The article asserts that the problem can be solved by eliminating a culture of politeness in the justice system regarding race, by relying on data to make policing and sentencing decisions, and by involving community stakeholders in decisionmaking. It ends with a discussion of how racial disparity in juvenile courts causes trauma in juveniles of color.

Exclusion, Punishment, Racism and Our Schools: A Critical Race Theory Perspective on School Discipline
David Simson, 61 UCLA L. Rev. 506 (2014) (58 pages)

This article critiques racially disproportionate exclusionary discipline in schools through the lens of critical race theory. It first discusses the current state of affairs in school discipline: racial minorities are punished disproportionately and have few legal remedies under current law. This disproportionate and excessive exclusionary punishment affects students for their entire lives, hobbling communities and the country financially and socially. The article then explains critical race theory and its assertion that racial history has instilled baseline cultural assumptions about different races in Americans which are reinforced through discrimination and are self-perpetuated subconsciously in individuals and invisibly throughout society. These assumptions can cause disproportionate discipline in schools. The article provides tools to facilitate communication, accountability, inclusion, and reintegration, allowing teachers and students to become aware of unconscious racial assumptions that may cause harsher discipline of minorities. Still, some criticize these techniques for shaming offenders while not taking into account mitigating circumstances.
DETENTION & CORRECTIONS

A. GENERALLY

OJJDP Bulletin: Juvenile Residential Facility Census, 2010: Selected Findings
Sarah Hockenberry et al., U.S. Department of Justice (Sept. 2013) (20 pages)

This bulletin highlights findings from the biennial 2010 Juvenile Residential Facility Census. It provides an overview on the types of facilities (e.g., whether they are public or private), facility size, confinement features, education and mental health screenings, deaths, suicides, and other information relevant to the operations of juvenile residential facilities. The census included information from more than 2,000 facilities.

Why Detention Is Not Always the Answer: A Closer Look at Youth Lock-Up in Arkansas
Paul Kelly, Arkansas Advocates for Children & Families (Apr. 2014) (12 pages)

This report examined roughly 41,000 juvenile detention placements in Arkansas. It found a large number of non-violent, low-level offenders occupied the detention centers. These youth should have been in school, but instead now risk becoming deeper involved in the juvenile justice system because of their detention. In fact, from 2010 to 2012, 264 children under age 11 were detained. The report encourages officials to use a valid risk assessment method for determining which, if any, young people should be detained, emphasizing the importance of alternatives to detention. It argues against the detention of children who have violated valid court orders. The report lays out statistics on detention decisions, race, and costs of detention.

Tried as an Adult, Housed as a Juvenile: A Tale of Youth from Two Courts Incarcerated Together
Jordan Bechtold & Elizabeth Cauffman, 38 Law & Hum. Behav. 126 (2014) (20 pages)

Detailing the findings of a study of youth incarcerated in a secure juvenile facility, this article argues that the concern about the presumed need to keep youth prosecuted in adult court separate from juveniles adjudicated in juvenile court is unfounded. While the harmful effects of housing minors in adult facilities have been thoroughly investigated, no research has been conducted on the effects of housing adult court youth in facilities designed for the average juvenile offender. This study sought to produce empirical data on the effects of housing adult court and juvenile court youth together. It found that adult court youth did not engage in more institutional offending than juvenile court youth. Overall, it found that juvenile facilities are far more appropriate than adult facilities for children, regardless of where they were prosecuted or adjudicated.
B. CONDITIONS

Victims Behind Bars: A Preliminary Study on Abuse During Juvenile Incarceration and Post-Release Social and Emotional Functioning

This study evaluated the prevalence of abuse during incarceration in secure juvenile facilities. Researchers recruited participants from a voluntary reentry program in Southern California and assessed 62 young adults, ages 18-20, all previously incarcerated in juvenile facilities. The questionnaire asked about the following types of abuse: violence; solitary confinement; verbal harassment by staff; food deprivation; unwanted sexual contact; and sexual harassment. The study found that nearly all youth directly experienced, witnessed, or were vicariously exposed to at least one type of abuse during incarceration. Excessive use of solitary confinement, peer physical assault, and psychological abuse by staff were the most prevalent types of abuse. The study found that abuse during incarceration was associated with post-release maladjustment and likelihood of recidivism. It recommended a more efficient processing system for youth reports of abuse, increasing staff training about trauma, providing adequate staff presence, and allowing outside parties regular access to juvenile facilities to promote transparency.

Suicidal Thoughts and Behaviors Among Detained Youth
Karen M. Abram et al., OJJDP (July 2014) (12 pages)

This bulletin summarizes the Northwestern Juvenile Project’s methods, findings, and implications of suicidal thoughts and behaviors among detained Chicago youth. The survey found that 11% of detained youth had attempted suicide. The average age for their first suicide attempt was just under 13. Furthermore, detained girls were more likely to consider and attempt suicide, Hispanic girls being at the highest risk. Thoughts and behaviors often leading to suicide were very common in detained youth. More than a third felt that life was hopeless, more than a third had thought extensively about death in the past six months, and 10% had considered suicide. Fewer than half had told someone about their suicidal thoughts. The study recommends that detention facilities screen for suicidal ideation among juveniles and that they provide youth with more comprehensive psychological services.

Parsons v. Ryan, Amicus Brief
Amicus Brief of National Juvenile Defender Center et al. in Support of Appellees, No. 13-16396 (9th Cir., Oct. 8, 2013) (38 pages)

NJDCC, along with several other juvenile justice and child welfare organizations, signed onto this amicus brief filed by Lowenstein Sandler LLP, in support of class certification in a prisoner’s rights case against the Arizona Department of Corrections (AZ DOC). Although the case did not directly involve juveniles, the Ninth Circuit decision on whether to sustain class certification of the inmates will affect the rights of future classes including children in the juvenile justice system generally and those committed to juvenile justice facilities more specifically. In this case, plaintiffs, inmates in various prisons administered by AZ DOC,
alleged Arizona violated the Eighth Amendment by systemically denying minimally adequate medical, dental, and mental health care, and imposing unconstitutional conditions of confinement in long-term solitary units. Earlier in 2013, a Federal District Court certified the inmates as a class. In the brief, *amici* argued first that Rule 23 of the Federal Rules of Civil Procedure authorized a class action by plaintiffs who faced a common, unreasonable risk of harm by virtue of the policy and practice they sought to enjoin. Additionally, *amici* asserted that the plaintiffs did not need to show actual injury, but only that they were exposed to a risk of harm caused by the same unconstitutional policy or practice. Finally, *amici* argued that the AZ DOC promulgated and enforced the challenged policy and practice, and they are unified decisionmakers with control over the class as a whole, distinguished from the situation in *Walmart*, where the decisions were individualized and not proven to be a company-wide policy. *Amici* noted that this case is of critical importance as it relates to the rights of all vulnerable institutionalized populations, including children, seeking class-wide relief for civil rights violations.

*Parsons v. Ryan*

No. 13-16396 (9th Cir. June 5, 2014) (63 pages)

In this case, the Ninth Circuit agreed with *amici* above, and affirmed that the district court acted well within its broad discretion in concluding that the inmates challenging AZ DOC policies and practices satisfied the Rule 23 requirements for class certification. The opinion analyzes and explains why the Rule 23 requirements are met.

C. PLACEMENT PROCEDURE

*In re Y.C.*


This case addresses whether New Jersey’s Juvenile Justice Commission (JJC), which runs facilities for adjudicated juveniles, can administratively transfer youth to adult prison facilities once a juvenile turns 18. This issue was litigated in 2012, but the JJC continued to transfer juveniles to adult prison under an unpublished interim policy, whereby a “transfer hearing” could be held without the defendant having access to a lawyer, without an impartial fact finder, without a record, and without the right to appeal. In this case, the New Jersey appeals court held that the JJC had to adopt regulations on transfer procedures, and that until they were adopted the JJC could not transfer any juvenile from custody to adult prison without a hearing at which the juvenile has the right to counsel.
D. HEALTH CARE

Facilitating Access to Health Care Coverage for Juvenile Justice-Involved Youth
Sarabeth Zemel et al., National Academy for State Health Policy, Models for Change (Dec. 2013) (30 pages)

This report addresses the value and inherent challenges of ensuring continuous health care coverage for youth in the juvenile justice system. Many system-involved youth have complex family situations and fluid eligibility for public health programs. Federal law prohibits Medicaid funding from going to services for individuals detained in public institutions. Thus, youth involved in the juvenile justice system are particularly vulnerable to gaps in coverage. This report presents strategies some state systems employ to avoid gaps in coverage for detained youth. Examples of strategies include suspension rather than termination of Medicaid coverage as well as special enrollment or application procedures for youth preparing to leave detention facilities. Additionally, the report proposes ways that Medicaid systems and juvenile justice stakeholders can collaborate to conduct effective outreach to youth and families involved in the system, even those not involved in detention. Finally, the report offers examples of therapeutic and evidence-based practices that Medicaid could cover that might help treat the mental health concerns that permeate the juvenile justice system.

Innovation Brief: Facilitating Health Care Coverage for Juvenile Justice-Involved Youth
Sarabeth Zemel & Neva Kaye, National Academy for State Health Policy, Models for Change (Dec. 2013) (4 pages)

This brief offers a concise summary of the information and recommendations found in Facilitating Access to Health Care Coverage for Juvenile Justice-Involved Youth, above.

E. SEXUAL ABUSE

End the Abuse: Protecting LGBTI Prisoners from Sexual Assault
ACLU (Jan. 2014) (19 pages)

This toolkit provides an overview of PREA regulations and their application to LGBTQI individuals. The toolkit also provides guidance for how advocates can document violations, initiate policy and legislative change, and how litigators may address noncompliance with PREA standards. There is a section dedicated to educating LGBTQI individuals of their rights under PREA. The toolkit concludes with an organized list of PREA provisions that directly address LGBTQI individuals.

John Doe 1 v. Michigan Department of Corrections, DOJ Statement of Interest

In this DOJ Statement of Interest, the U.S. government seeks “to clarify…that the PREA regulations unequivocally apply to state-operated correctional facilities as a predicate for eligibility for certain federal grants, and that state-operated correctional facilities retain a
separate and additional obligation to comply with constitutional standards regarding protection from sexual assault and other harm.” Plaintiffs in this case are incarcerated juveniles who allege that they were sexually assaulted and/or harassed by adult prisoners and guards in state-run adult correctional facilities in Michigan. Defendant facilities responded that PREA did not apply to state-run correctional facilities, and that because they recently self-reported compliance with PREA, plaintiffs’ claims were moot. The DOJ filed this SOI, without taking a position on the merits, to clarify the interpretation of the law.

F. EDUCATION

Just Learning: The Imperative to Transform Juvenile Justice Systems into Effective Educational Systems – A Study of Juvenile Justice Schools in the South and the Nation
Southern Education Foundation (Apr. 2014) (48 pages)

This report provides evidence that young people placed in the juvenile justice system—predominantly minorities—receive a substandard education. The report laments that the quality of learning programs for incarcerated youth has had “little positive, enduring impact on the educational achievement of most children and youth in state custody.” It provides aggregate data on students in facilities and their education levels, revealing substandard teaching and resources. It also highlights the limited number of innovative programs in existence. The report engages in cost-benefit analysis to demonstrate the importance of providing quality education in juvenile facilities, recommends data collection and the establishment of effective methods to ensure transition from facilities to community schools, and reinforces the importance of the development of individualized education plans.

G.F. v. Contra Costa County, DOJ Statement of Interest

In this DOJ Statement of Interest (SOI), the U.S. government seeks “to affirm and clarify the comprehensive protections afforded to youth with disabilities by the [IDEA] and [the ADA].” Plaintiffs in this case are incarcerated juveniles with various mental health and special education needs. They allege they are not being afforded their educational rights under the IDEA and ADA. The juvenile facility and educational provider assert that they do not have to provide mandated educational protections because the youth present a danger or threat. The SOI argues that “public entities are not relieved from providing special education and related services to eligible youth with disabilities based on disciplinary reasons, and ‘direct threat’ or dangerousness is not a defense to the IDEA obligation to provide educational services to all eligible youth.”
G. SOLITARY CONFINEMENT

Alone & Afraid: Children Held in Solitary Confinement and Isolation in Juvenile Detention and Correctional Facilities
ACLU (June 2014) (27 pages)

This report advances the major arguments for a complete ban on solitary confinement for children under the age of 18. The report notes that isolation practices are mentally, physically, and developmentally harmful to juveniles, and the practices may also be counterproductive and increase recidivism rates. According to the report, the JJDPA provides financial incentives for states to treat children in the criminal justice system differently from their adult counterparts, but no provision of the Act prohibits the use of solitary confinement or isolation in juvenile detention facilities. A number of federal courts have recently found solitary confinement of mentally ill or disabled adults violative of the Eighth Amendment. The report argues that similar reasoning should be applied to children facing isolation practices. The report includes an extensive list of negative mental and physical reactions to solitary confinement experienced by adults, including hallucinations, severe and chronic depression, weight loss, and insomnia, also felt by children, but with greater severity. The report specifically notes a strong correlation between isolation and child suicide. In addition to the mental and physical effects of isolation, and unlike their adult counterparts, the report states that child inmates experience developmental problems when isolated, as they are denied all peer-to-peer interaction as well as access to reading material.

Growing Up In Solitary – Panel 1
20 Cardozo J.L. & Gender 662 (2014) (20 pages)

This transcript of the Cardozo Journal of Law and Gender Symposium introduces Cardozo Law School’s Youth Justice Clinic, which was formed in 2014 to address the increased need for skilled lawyers in juvenile justice, litigation, and research positions. Law students worked with the NYC Board of Correction to explore and report on the issue of solitary confinement of juveniles. A number of the student authors were present at the symposium and spoke about their Riker’s Report, which includes current research on the treatment of confined juveniles as well as alternative models adopted by other states that have successfully moved away from punitive methods. Brian Fisher, former Commissioner of the state corrections system and the defendant named in People v. Fisher, Dilcio Acosta, who was formerly incarcerated and subjugated to solitary confinement, and Alisha Williams, who works with transgender and gender nonconforming people as part of the Sylvia Rivera Law Project (SRLP), weigh in on the segregation of juvenile offenders and effects of solitary confinement. The transcript provides a thorough discussion of the Humane Alternatives to Long-Term Solitary Confinement, as well as some of the New York State Department of Corrections and Community Supervision’s current initiatives planned for 2014. It concludes with a discussion of how people can get involved with the Campaign for Alternatives to Isolated Confinement, SRLP, and the New York City Jails Action Coalition.
Juveniles In Solitary Confinement: Rehabilitation or Torture? – Panel 2
20 Cardozo J.L. & Gender 689 (2014) (20 pages)

This transcript of the Cardozo Journal of Law and Gender Symposium focuses on the human rights implications of holding juveniles in solitary confinement. Ian Kysel at Georgetown Law shared his research on the solitary confinement of children and the ways in which it violates international human rights law. Amy Fettig, senior staff counsel for the ACLU’s National Prison Project and director of its Stop Solitary Campaign, urged attendees to sign the ACLU’s petition against solitary confinement, stressing the federal government’s potential impact if it were to speak out for the rights of children. Cynthia Soohoo, Director of the International Women’s Human Rights Clinic at CUNY Law School, focused on the “adultification” of children in the United States, and how trying youth under 18 in adult criminal courts and subjecting them to adult criminal punishments is a clear violation of international human rights law. Dr. Homer Venters, Assistant Commissioner for the Bureau of Correctional Health Services for the New York City Department of Health and Mental Hygiene, concluded with a discussion of the Bureau’s approach to healthcare in the jail system and how it has changed to try and implement a human rights and “dual loyalty” framework.

Unwanted Punishment: Why the Practice of Isolating Transgender Youth in Juvenile Detention Facilities Violates the Eighth Amendment
James Alec Gelin, 18 U.C. Davis J. Juv. L. & Pol’y 1 (2014) (39 pages)

This article argues that the practice of isolating transgender youth in detention facilities violates the Eighth Amendment. Courts typically apply a substantive due process analysis when addressing isolation at juvenile detention facilities. However, the article argues that the U.S. Supreme Court should apply the Eighth Amendment to cases involving juveniles, and transgender youth, specifically. By analyzing R.G. v. Keller and Farmer v. Brennan, the article proposes a new two-prong test to determine whether “isolation of trans youth in juvenile detention facilities violates the Eighth’s proscription against cruel and unusual punishment.” The Court of Appeals in Keller relied on using the Fourteenth Amendment’s substantive due process analysis to prevent future practice of isolating of LGBT juveniles “for their own protection.” However, the Keller Court declined to apply an Eighth Amendment analysis. The U.S. Supreme Court in Farmer v. Brennan created a two-prong test in order to determine if a condition of adult confinement constituted cruel and unusual punishment: 1) whether the alleged violation was “objectively sufficiently serious,” and there was 2) “subjective deliberate indifference.” Accordingly, the article adopts the test articulated in Farmer, but alters the second prong from a subjective test to an objective test. The objectively deliberate indifference test “requires that facility staff knew or should have known of the condition in question, yet failed to rectify it.”
Do No Harm: The Enhanced Application of Legal and Professional Standards in Protecting Youth from the Harm of Isolation in Youth Correctional Facilities

This article examines the widespread use of unnecessary and unregulated physical and social isolation of juveniles in detention and its harmful effects. Noting that facilities that lack training, staff, and services often rely on isolation more heavily, the article explores the damaging effect of isolation on juveniles’ mental health. The use of isolation aggravates existing mental illness and mood disorders, creates symptoms of mental illness in individuals without previous history, and further victimizes trauma survivors. Isolation of juveniles may also increase the risk of self-harm and suicide. Additionally, juveniles in isolation are frequently excluded from mental health services as well as rehabilitative and educational programs. The article presents case law supporting various Fourteenth Amendment and Eighth Amendment challenges to the use of juvenile isolation and offers DOJ findings and professional standards supporting the limitation of solitary confinement. The article recommends that facilities develop more effective behavior management practices and that standards of care incorporate the growing body of research about best practices, which forbid reliance on isolation.

Fighting the Good Fight Without Facts or Favor: The Need to Reform Juvenile Disciplinary Seclusions in Texas's Juvenile Facilities

This note advocates for legislative reform in Texas regarding the practice of disciplinary seclusion of youth at juvenile detention centers. The note addresses the psychological harm disciplinary seclusion imposes on youth, the financial burden it creates on the state, and the national trend in favor of treating juveniles as children instead of adults. The note further discusses several bills addressing the issue that were introduced in the Texas legislature.

United States v. Ohio, Agreed Order
(May 20, 2014) (6 pages)

In the wake of the Attorney General’s strong stance against the use of solitary confinement for youth, and the Department of Justice’s ongoing efforts to protect the rights of youth in the justice system, the DOJ reached an agreement with the state of Ohio, under which the State Department of Youth Services (DYS) would dramatically reduce, and eventually eliminate, its use of seclusion on young people in its custody. The agreement also stated that DYS will ensure that young people in its juvenile facilities receive individualized mental health treatment to prevent and address the behaviors that led to seclusion. The order resolves allegations that the state subjects young people with mental health needs in its custody to harmful seclusion and withholds treatment and programming, in violation of their constitutional rights.
United States v. Ohio, Agreed Grid
(May 20, 2014) (9 pages)

This Agreed Grid, according to the Agreed Order, “details the actions Defendants will undertake to improve mental health services and reduce seclusion of youth who are on the mental health caseload.” The actions and deadlines included in the grid are incorporated into the Order.

United States v. Ohio, Supplemental Complaint
Civil Action No.: 2:08-cv-475 (Mar. 12, 2014) (23 pages)

The DOJ, following up on its continued investigation and court actions pertaining to the conditions at Ohio juvenile correctional facilities which began in 2007 “found constitutional deficiencies in Ohio’s use of physical force, mental health care, grievance investigation and processing and use of seclusion.” Also, data from monitoring consent decrees between November 2013 and January 2014 revealed that Ohio continued to use unlawful seclusion on youth at Scioto and in other facilities. The DOJ supplemented its original complaint to increase focus on the state’s use of unlawful seclusion at its juvenile correctional facilities.

United States v. Ohio, Motion for Temporary Restraining Order
Civil Action No.: 2:08-cv-475 (Mar. 12, 2014) (26 pages)

This temporary restraining order (TRO) asked the court to mandate immediate measures to curb the state’s excessive seclusion of youth with mental health disorders. The DOJ notes that the state had made little to no progress on this front, and in fact, did not see the use of seclusion as a problem. The motion for a TRO and accompanying memorandum include data on current practices, analysis of the harms of the seclusion and isolation of youth, commentary from medical professionals who had evaluated the youth, and conditions in Ohio’s juvenile facilities.

H. REFORM

The Irrelevance of Reform: Maturation in the Department of Corrections

This article was written from the perspective of a 36-year-old prisoner who has been serving a sentence of JLWOP since he was 14. The prisoner highlights and critiques the themes of retribution, incapacitation, deterrence, and rehabilitation, which are used to justify the incarceration of juveniles. The prisoner states that, although he deserved to be punished for the crime he committed, there is no reasonable basis for him to be incarcerated for such an extended period. The public policy that lengthy sentences rehabilitate juveniles is without merit. Proper marketable education for prisoners, which would help reduce recidivism, is lacking within the prison system. Many correctional facilities refuse to educate prisoners based on the theory that the prisoners will not benefit from it or it will lessen correctional control. Other than GED programs, there are very few educational resources and even fewer
vocational training programs available for prisoners. Remarkably, one year reduced from a prisoner’s sentence could pay for an entire state college education.

**Safely Home**
Shaena M. Fazal, Youth Advocate Programs (June 2014) (60 pages)

This report, based on findings from surveys of youth, shows how court-involved youth can be held accountable, but need not be incarcerated, when redirected to community-based alternatives to incarceration. The report highlights successful and innovative community-based programs across the country that have reduced youth incarceration. It discusses the benefits and features of community-based programs, including cost savings. It describes how the various programs use best practices, such as no rejection/ejection policies, civic engagement, individualized services, and the incorporation of youth and family voices.

**A Guide to Juvenile Detention Reform: Juvenile Detention Facility Assessment 2014 Update**
Juvenile Detention Alternatives Initiative (JDAI), Annie E. Casey Foundation (2014) (214 pages)

In 2004 the Center for Children’s Law and Policy and the Youth Law Center created standards for conditions in juvenile detention facilities on behalf of JDAI. JDAI officials use these standards to evaluate detention centers so that detention center administrators can be aware of necessary changes to their institutions. This report revises the standards for clarity and additional guidance. The revisions seek to reflect changes in law such as PREA. They also address newly recognized needs such as increased attention to language barriers, further HIV/AIDS prevention, enhanced encouragement for family engagement, and accommodation of youth with special needs. The document teaches investigators evaluating detention centers what to look for, with whom to speak, questions to ask, documents to review, and how to compile their reports.

**A Guide to Juvenile Detention Reform: Embedding Detention Reform in State Statutes and Regulations**
Juvenile Law Center, JDAI, Annie E. Casey Foundation (2014) (132 pages)

This publication discusses policy recommendations for JDAI sites to consider based on JDAI’s eight core strategies: collaboration, collecting and using data, controlling the front end, detention alternatives, reducing unnecessary delay, handling special detention cases, reducing racial and ethnic disparities, and improving conditions of confinement in secure juvenile detention centers. The publication includes current policies, statutes, regulations, and recommendations from around the country. Some of the recommendations address mandated guidelines to improve the eight strategies and require specific data collection on detention facilities. The goal of the publication is to assist JDAI state and local collaborators and legislators in making necessary and effective policy changes within their states.
A Guide to Juvenile Detention Reform: Making Detention Reform Work for Girls
JDAI, Annie E. Casey Foundation (Dec. 2013) (88 pages)

This practice guide identifies several prevalent causes for the overreliance on detention for girls. It also summarizes key findings from available research about recent efforts to improve the treatment of girls in the detention process. To address these issues, it provides practice tools, resources, and general guidelines for detention centers to better serve detained girls. Moreover, the practice guide advocates for local leaders to continuously design, test, and implement new strategies that address the needs of detained girls, such as gender responsive alternatives to detention programs and data-based examination of the causes of girls’ detention.

A Guide to Juvenile Detention Reform: JDAI in New Jersey: A Statewide Replication Success Story – And Lessons for Taking JDAI Statewide
Richard A. Mendel, JDAI (June 2014) (48 pages)

This report recognizes the successes that JDAI has achieved in the jurisdictions in which they have sites. Unfortunately, JDAI has still not achieved statewide adoption of their successful deincarceration reforms, so neighboring counties approach detention in very different ways. This report focuses on New Jersey as the first state to embrace JDAI statewide. It examines how New Jersey dealt with obstacles to statewide implementation and what strategies it employed. The purpose of this report is to extract lessons from New Jersey to help other states replicate this large-scale JDAI implementation.

Examining the Role of States in Monitoring Conditions and Outcomes for Youth
Antoinette Davis et al., National Council on Crime & Delinquency (NCCD) (2014) (3 pages)

Youth advocates have worked hard in the last ten years to shed light on the ineffectiveness of a juvenile justice system focused on retribution, and additional oversight has been added to juvenile justice departments. However, this oversight is not uniform, systematic, or sustainable. This piece advocates for the use of authoritative, external oversight at the state level to monitor how juvenile justice is administered. Based on the recommendations from study subjects, NCCD recommends funding for state and local systems to monitor the progress of reforms, the empowerment of independent oversight offices, the expansion of outcome measures tied to state expenditures, and inclusion of youth and families in oversight efforts.

Supervision Strategies for Justice-Involved Youth
Antoinette Davis et al., NCCD (May 2014) (11 pages)

This piece focuses on supervision strategies of juvenile justice systems, including probation and the use of detention as a means of supervision. It encourages systems to reduce both probation revocations and the supervision of those who do not need it, and to build strong supervision partnerships with families, communities, and other service providers. The piece shares insights and practices from state and local probation offices. It encourages a more caring, strength-based approach to addressing the root causes of delinquent behaviors rather
than punishment. Thorough staff training and strategic caseload assignments can help shift approaches in probation and juvenile supervision.

**Close to Home: Strategies to Place Young People in Their Communities**
Antoinette Davis et al., NCCD (May 2014) (10 pages)

This piece considers the disastrous effects of removing system-involved youth from their families and communities and placing them in inaccessible facilities far away from their families. Many stakeholders agree that out-of-home placements, especially in secure facilities, should be rare, and that in case of such a placement, the youth should be placed close to home and in the least restrictive setting. This piece proposes three strategies and provides examples of implementation for achieving these goals. First, juvenile justice systems should determine critical decision points at which alternative placements will be reviewed and considered. Second, in concert with local nonprofits, states should develop more alternative placements tailored to the varying needs of youth. Finally, systems should strive to reduce the lengths of stay in out-of-home placements.

**Using Bills and Budgets to Further Reduce Youth Incarceration**
Antoinette Davis et al., NCCD (Mar. 2014) (13 pages)

This piece recognizes that states throughout the country have reduced the number of incarcerated youth in the last decade, but it also identifies serious flaws that still exist in the system, particularly the overrepresentation of youth of color. It recommends legislation encouraging systems to continue to reduce out-of-home placements and to focus on employing the most effective supervision strategies by guaranteeing funding to fiscally responsible and culturally competent organizations that rely on research-based approaches. The piece also offers examples from states that are using effective strategies to continue to reform their juvenile justice systems.
JUVENILE JUSTICE AROUND THE WORLD

A. COMPARATIVE LAW

“Yonder Stands Your Orphan With His Gun”: The International Human Rights and Therapeutic Jurisprudence Implications of Juvenile Punishment Schemes

This article asserts that juvenile justice policy in the United States violates the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and the United Nations Convention on the Rights of the Child (CRC). It claims that many incarcerated juveniles suffer from severe mental health issues and that these issues are worse for females and racial minorities. This issue has worsened over the past thirty years due to an increase in Miranda waivers, and a decrease in the effectiveness of insanity defenses and pleadings of incompetency to stand trial. When these juveniles are incarcerated, they are subject to deplorable conditions, neglect of mental health needs, and unspeakable cruelty. The article describes the CRPD and the CRC and how they can be used to advocate for reforms in U.S. law.

B. INTERNATIONAL LAW

A Decade of Progress: Promising Models for Children in the Turkish Juvenile Justice System

This article addresses improvements made in Turkey’s juvenile justice system over the past decade. It argues that Turkey’s open model incarceration and its emphasis on diversion models serve as models for other nations. Turkey’s open model prisons lack the typical wire and fences associated with traditional prisons, but instead operate more as boarding schools, e.g., juveniles are able to enter and exit the prison for school, attend training sessions, and work within the community. Turkey’s open model system has led to better educated and more socialized juveniles and the facilitation of familial or community relationships. Turkey’s diversion model utilizes several methods, but the most noteworthy is Turkey’s Children’s Police Unit that “exclusively handles law enforcement duties related to children.” The article identifies it as the most successful preventative diversion approach. It concludes with an assessment of Turkey’s open model and diversionary approach and makes several recommendations for improvement for the Turkish system generally, such as improving coordination among government institutions and revising its anti-terror laws.
ETHICS

A. PROSECUTORIAL ETHICS

Prosecutorial Discretion and the Duty to Seek Justice in an Overburdened Criminal Justice System

This article discusses how prosecutors can help to reduce discrimination in the prosecution and incarceration of minority youth for minor drug crimes. It argues that as the party with the most discretion in criminal proceedings, the prosecutor is overlooked as a potential ally and should be included in the fight to reduce discrimination. Because a prosecutor’s real duty is to seek justice, and not merely convictions, prosecutors should work to mitigate unequal enforcement of the laws. Last, the article reviews the prosecutor’s duties as defined in several codes of professional conduct, and concludes with a brief analysis of the potential pros and cons of the proposed approach.
INTERROGATIONS & MIRANDA

A. STATEMENTS

Kansas v. Cheever
134 S. Ct. 596 (2013) (12 pages)

In this U.S. Supreme Court case, the defendant argued that he lacked the requisite \textit{mens rea} to commit murder because of his voluntary, temporary methamphetamine intoxication at the time of the shooting. In a lower court, the defendant presented an expert witness who testified to that same conclusion. The prosecution used the psychiatrist from an evaluation ordered by the court in the defendant’s previous trial to rebut his defense, however. He was found guilty at the trial court level. He appealed the case to the Kansas Supreme Court, which vacated his conviction on Fifth Amendment grounds. The U.S. Supreme Court reinstated his conviction. In accordance with its prior decision in Buchanan, the Court held that when a mental status affirmative defense is presented, the prosecution may rebut it using psychiatric evidence. Further, the Court clarified that the salient phrase from Buchanan is “mental status” and not “mental disease or defect,” as alleged by the defense. Thus, even though Kansas law does not define voluntary intoxication as a mental disease or defect, the defense’s \textit{mens rea} argument was by nature a mental status argument and subject to the Buchanan rule.

The Use of Juvenile Statements Made in Uncounseled Interviews, Assessments and Evaluations: A Survey of National Practices
National Juvenile Defender Center (May 2014) (12 pages)

This is an NJDC-compiled survey of statutes and cases from around the country addressing the issue of uncounseled statements outside of police interrogations. This reference tool for juvenile defenders covers the use of pre-trial statements, statements made at transfer hearings, statements made at disposition, and statements made in mental health evaluations, among many others.

In re C.O.

In this superior court case, the court held that Pennsylvania could not use a youth’s statements to therapists in court-ordered placement to prosecute him on new charges. The court determined that these un-Mirandized statements were a result of custodial interrogation, in that in order to successfully complete the facility’s treatment program and be released, C.O. was required to discuss previously undisclosed and uncharged sexual misconduct with staff. The court held that because there was no reading of \textit{Miranda} or rights waiver, the trial court properly suppressed the statements C.O. made pertaining to an unknown victim.
**Indiana v. I.T.**
4 N.E.3d 1139 (Ind. 2014) (6 pages)

A juvenile admitted, under a polygraph examination required as a condition of probation, to felonious conduct. Following the statement, he was charged with a new delinquency petition. He moved to dismiss it, relying on Indiana law, which bars a youth’s statement to a mental health evaluator from being admitted into evidence to prove delinquency. The State argued the statute provides use, but not derivative use immunity. The Indiana Supreme Court affirmed the trial court’s finding that the statute confers both forms of immunity. The court reasoned that to hold otherwise would raise serious constitutional issues regarding the privilege against self-incrimination.

**B. POLICE PRACTICE**

**Police Interviewing and Interrogation of Juvenile Suspects: A Descriptive Examination of Actual Cases**
Hayley M. D. Cleary, 38 Law & Hum. Behav. 271 (2014) (18 pages)

This study used electronic recordings of police interrogations of juveniles in various jurisdictions to analyze how juvenile interrogations are conducted. The authors found that the typical interrogation lasts around one hour, and although some interrogations could last much longer, none of the interrogations were conducted with an attorney present. Almost a third of the adolescents interrogated were not under arrest, and over half of those children either confessed or made incriminating admissions during the interrogation. This is one of the few interrogation studies focusing on adolescents, and the only one that reviewed real-life juvenile interrogations. While the information provided is observational and the authors declined to analyze or discuss the implications of the interrogation conditions studied, the research provides important statistics about interrogated juveniles.

**People v. Patterson, Amicus Brief**
Amicus Brief of Center on Wrongful Convictions of Youth, the Exoneration Project at the University of Chicago Law School, et al., No. 115102 (Ill. Oct. 11, 2013) (25 pages)

This brief urged the Illinois Supreme Court to uphold the appellate court decision overturning the trial court’s conviction of a juvenile with low intellectual functioning and to suppress his confession as involuntary. Although Illinois law requires that a law enforcement officer who arrests a minor immediately make a reasonable attempt to notify the parent or other person legally responsible for the minor’s care, the police made only perfunctory efforts to contact a concerned adult. The brief provided an extensive review of the special care required when police interrogate a youth, due to the unique susceptibility of juveniles to involuntary and false confessions, particularly when a youth also deals with mental illness, cognitive impairments, or other developmental challenges. The brief discusses the problems with various police interrogation tactics that are known to induce false confessions, the U.S. Supreme Court and Illinois case law surrounding these issues, and the Illinois legislature’s requirement that certain custodial interrogations be electronically recorded. Under current
law, the juvenile’s interrogation would have been required to be recorded. The brief also highlighted persuasive international rules and judgments that provide broad protections to ensure a minor has access to counsel during—or at least prior to—police interrogation.

**Behind Closed Doors: What Really Happens When Cops Question Kids**

This article provides a comprehensive analysis of the methods police officers use to question juveniles. The article discusses the general legal requirements and standards applicable to juveniles being interrogated and reviews practical interrogation practices. It also analyzes studies and research on how police conduct interrogations. The article then discusses juvenile waivers and the impact of various techniques on a juvenile’s willingness to talk with the police, including the length of an interrogation, and either maximizing or minimizing the severity of a crime. Noting that information on juvenile interrogations is sparse, the article advocates for legislation to protect juveniles’ interests by regulating interrogation procedures and police conduct.

**C. POST-J.D.B.**


This case note reviews *J.D.B.* and discusses background case law relating to self-incrimination and search and seizure. It argues that while age is a significant factor in determining whether a youth was in police custody during an interrogation on school grounds, the U.S. Supreme Court should have created a special rule that identified the school setting as the primary mitigating factor. As minors have a reduced cognitive capacity, pressures to conform and please adults at school increase the risk that they will self-incriminate and thus unnecessarily waive their rights.

**Defending Juvenile Confessions after J.D.B. v. North Carolina**
Joshua A. Tepfer, 38 Champion 20 (2014) (10 pages)

The U.S. Supreme Court held in *J.D.B.* that police officers must consider a suspect’s age when weighing whether he or she is in custody and entitled to *Miranda* warnings. Post-*J.D.B.*, defenders are now tasked with giving life to this case law when representing a young person who made admissions to the police during a custodial interrogation. Defenders must be wary of false confessions and be more vigorous in scrutinizing police waivers from juvenile suspects. The article offers tips for keeping triers-of-fact from hearing a young client’s confession or casting doubt on the statement’s reliability. For example, the article suggests calling an expert on police interrogations to highlight an investigator’s violations of *Reducing Risks: An Executive’s Guide to Effective Juvenile Interview and Interrogation*, which was published in 2012 by the International Association of Chiefs of Police and OJJDP.
The article argues that when officers stray from these guidelines, the judge must know about it.

D. FALSE CONFESSIONS

Interrogations, Confessions, and Guilty Pleas Among Serious Adolescent Offenders
Lindsay C. Malloy et al., 38 Law & Hum. Behav. 181 (2014) (20 pages)

This report presents the results of a study of 14- to 17-year-old males incarcerated for serious crimes to examine their interrogation experiences with police and lawyers and how those experiences impacted their confessions. The study explored the reasons for false confessions and guilty pleas. It revealed that almost 40% of youth in this study reported that they were under the influence of drugs or alcohol at the time of questioning. The study recommends increased training for police and lawyers about adolescent development in the context of interrogations, as well as legal protections for juveniles being interviewed; and video recording of juvenile interrogations.

Children Under Pressure: The Problem of Juvenile False Confessions and Potential Solutions
Laurel LaMontagne, 41 W. St. U. L. Rev. 29 (2013) (30 pages)

This article examines juvenile false confessions and advocates for legislative and procedural reforms to reduce them. The article analyzes coerced compliant and coerced internalized false confessions and discusses police officers’ influence on youth and their role in eliciting these confessions. The article suggests ways defenders can show that a confession was coerced, noting the challenges defenders face in trying to prove coercion to the prosecution and jury. It argues that, aside from the social motivations for false confessions, there are very real immaturities in a juvenile’s brain that inhibit effective decisionmaking and cognition. As such, juveniles frequently misunderstand the consequences of crime and are more vulnerable than adults to undue influence. The article advocates that allowing juveniles to waive their Miranda rights and be interrogated without a guardian present puts them at a heightened risk for false confession. The article suggests reintroducing ethical safeguards, such as mandating the presence of a guardian at interrogation, to protect juveniles against false confessions.

E. MIRANDA WAIVER

Protecting Juveniles’ Right to Remain Silent: Dangers of the Thompkins Rule and Recommendations for Reform
Lauren Gottesman, Note, 34 Cardozo L. Rev. 2031 (2013) (42 pages)

This note argues that juveniles should not be permitted to waive their rights through implied waiver, and that they should not be able to waive their rights through explicit waiver without prior consultation with an attorney and with their parents. Juveniles can waive their Fifth Amendment right against self-incrimination implicitly, by speaking to officers instead of remaining silent after being read Miranda rights. They can also waive their rights explicitly by signing a form. The validity of a juvenile’s implied waiver is decided based on a “totality
of the circumstances” test that considers their age among a variety of factors including their ability to understand their *Miranda* rights and the clarity of their waiver. The note argues that while the decision to waive should still rest with the juvenile, that decision should be fully informed and counseled. Furthermore, a juvenile should not have to explicitly invoke his or her Fifth Amendment rights to benefit from their protection. The note chronicles the evolution of Fifth Amendment law and contrasts its treatment of adults and juveniles to show that juveniles are disadvantaged under the current system.
SEARCH & SEIZURE

A. GENERALLY

Riley v. California
134 S. Ct. 2473 (2014) (38 pages)

This U.S. Supreme Court case held that police must obtain a warrant to search a cell phone’s data, absent exigent circumstances. In previous cases, the Court has held that an officer may conduct a search incident to arrest of any personal property in a suspect’s immediate control inside which there may be a weapon or object that can pose a threat to the officer or if there is any potential that a suspect will destroy evidence. In the instant case, officers conducting two different arrests searched individuals’ cell phones claiming justification under this Fourth Amendment exception. The Court held that this exception does not extend to cell phones. The Court supports their ruling citing the minimal danger data contained in cell phones can pose, the large amount of private information that is available on modern cell phones, and the minimal risk of destruction of evidence. The case further explains the historical justifications for the search incident to arrest doctrine, and how those justifications cannot apply to modern cell phones. The Court notes that any serious public safety concerns can be addressed through the exigent circumstances exception to the warrant requirement.

Fernandez v. California
134 S. Ct. 1126 (2014) (33 pages)

In this case, the U.S. Supreme Court held that permissible warrantless consent searches of jointly occupied premises are allowed when one of the possessors has previously objected to the search but is no longer physically present and another possessor consents to the search. This holding narrows the application of the exception carved out in Georgia v. Randolph which held that refusal to consent by a physically present inhabitant precludes a permissible warrantless consent search even if another inhabitant consents to the search. For an objection of one inhabitant to overcome the consent of another inhabitant, the objecting inhabitant must be physically present. Absence of the objecting inhabitant because of arrest or removal by police should be considered equivalent to absence for any other reason unless the arrest of removal of the objector was not objectively reasonable.

New Jersey v. Earls
70 A.3d 630 (N.J. 2013) (43 pages)

In this New Jersey Supreme Court case, the defendant challenged the police’s use of his cell phone’s location data, when that information was obtained from his wireless carrier without a warrant. Citing the New Jersey Constitution, the court held that the police must obtain a warrant prior to gathering and using a cell phone’s location data to track a person. The court held that the defendant had a reasonable expectation of privacy in his cell phone’s location data per the state constitution, and in the absence of an exigent circumstances exception, a warrant was required to obtain that data.
B. JUVENILE-SPECIFIC

Consent Searches of Minors

This article suggests that courts must consider age in consent search cases and demonstrates that, despite the importance of age, courts typically ignore it. Indeed, appellate courts provide varying rules for its consideration some require trial courts to consider age, others merely suggest its consideration, and others ignore it. The article argues that courts should think more critically about age in consent search cases, and provides helpful case law demonstrative of this approach. The article highlights that the U.S. Supreme Court has included age as a relevant factor in seminal cases, such as J.D.B., and that age therefore matters when analyzing a youth’s ability to consent to a search. Finally, the article stresses that the Court’s decisions have created an opportunity for a “second coming” of age in the consent context—a context where age has always been relevant but where courts have struggled to find a meaningful and consistent way to consider it. It finally proposes structural reforms and a new standard for consent searches of minors – a “requirement of reasonable suspicion of criminal activity by law enforcement prior to a request to search a minor.”

C. SCHOOL SEARCHES

School Surveillance and the Fourth Amendment
Jason P. Nance, 2014 Wis. L. Rev. 79 (2014) (59 pages)

This article includes an empirical study of school discipline policies showing that inner city, minority schools have harsher discipline policies for reasons other than higher crime and misbehavior. It also offers a detailed explanation of in-school Fourth Amendment jurisprudence. The article advocates for a more protective in-school Fourth Amendment framework. While the current test balances the state’s educational interest against the student’s privacy interest, courts often defer to the state because they consider a safe educational environment to be in the “best interests” of students. The article argues that students should be able to advance evidence of how increased school security is not in their best interests, thereby creating a more balanced test.
INDIGENT DEFENSE

A. GENERALLY

Retuning Gideon’s Trumpet: Telling the Story in the Context of Today’s Criminal-Justice Crisis
Jonathan A. Rapping, 92 Tex. L. Rev. 1225 (2014) (16 pages)

This article discusses the important roles public defenders play both in and out of the courtroom. It argues that Gideon not only required public defenders be made available to the poor, but that there be a movement among these public defenders to push back against oppressive criminal justice policies on a structural level. The article references a hearing in which the head of a Tennessee public defender office stated that he had more than enough resources to do his job effectively, despite a caseload of 800 cases per defender. On the other hand, New Orleans public defenders were able to create a strong presence after Katrina, demand changes to laws to reduce caseloads, and ensure the early appointment of counsel for their clients, thereby rendering themselves able to meet the call of Gideon. A leader in public defense, therefore, must fight for his or her clients’ rights as well as for his or her office. The article ends with a discussion of Gideon’s Promise, formerly the Southern Public Defender Training Center.

Indigent Defense Counsel, Attorney Quality, and Defendant Outcomes
Michael A. Roach, 43 Am. L. & Econ. Rev. 1 (2014) (43 pages)

This article presents findings of a study measuring differences in defendant outcomes between public defenders and assigned counsel. As the public defender’s full-time job is the defense of the indigent, they are less susceptible to selection decisions based on changing labor market conditions. Attorneys assigned as counsel generate less favorable outcomes for their clients than do public defenders in three ways: 1) assigned counsel are significantly more likely to generate a conviction on the most serious offense category; 2) they generate longer expected sentences; and 3) their cases take a longer time from arrest to adjudication. The article notes that committees involved in approving candidates for indigent defense work should be aware of the connection between outside labor market fluctuations and assigned counsel panel quality and outcomes, as certain circumstances may lead to lower quality applicant pools.

B. EFFECTIVE ASSISTANCE OF COUNSEL

Gideon and the Effective Assistance of Counsel: The Rhetoric and the Reality
David Rudovsky, 32 Law & Ineq. 371 (2014) (27 pages)

This article analyzes the current challenges to effective assistance of counsel post-Gideon. Due to the lack of proper funding for public defender offices and the lack of effective implementation of Gideon, public defenders cannot adequately represent their clients. The
The article presents several Pennsylvania cases which highlight the upside and drawbacks of using litigation to bolster indigent defense.

**The U.S. Supreme Court’s Failure to Fix Plea Bargaining: The Impact of *Lafler* and *Frye***
Cynthia Alkon, 41 Hastings Const. L.Q. 561 (2014) (62 pages)

This article discusses the limitations of the recent U.S. Supreme Court cases pertaining to plea bargaining. The article begins by tracing the historical progression of these cases. The Court in the two most recent cases, *Lafler* and *Frye*, held that a criminal defendant has a right to competent assistance of counsel in the plea bargaining process. Nonetheless, the Court has been reluctant to find ineffective assistance of counsel at the trial level, and the article claims these cases will remain difficult for defendants to bring and win. The article first notes that *Lafler* and *Frye* are unlikely to have much impact without an increase in resources available to indigent defense lawyers. Second, the Court has consistently permitted prosecutors’ hard-bargaining tactics (e.g., adding charges, enhancements, or prior convictions to substantially increase the severity of a sentence), so defendants will continue to accept unfavorable plea deals. And third, the changes to legal framework structures following *Lafler* and *Frye* will not make the process substantially different and, instead, will likely entrench the existing unfair practices. The article goes on to discuss six factors in the negotiation process that should be considered in evaluating a plea bargaining atmosphere: 1) whether the negotiation is cooperative or adversarial; 2) how the serious power imbalances affect the negotiation; 3) whether innocent defendants plead guilty; 4) the penalty imposed for going to trial; 5) whether there is a “best alternative to a negotiated agreement;” and 6) how the interests of the prosecution and defense impact the negotiation.

**A Plea for Funds: Using *Padilla*, *Lafler*, and *Frye* to Increase Public Defender Resources**

This article discusses effective assistance of counsel for indigent defendants at the plea-bargaining stage. The article begins by outlining the constitutional requirements for effective assistance of counsel as defined in *Padilla*, *Lafler*, and *Frye* and uses *Frye* to discuss the significance of plea-bargaining. The article then reviews the challenges faced by indigent defendants and their attorneys, including the significant time required to adequately research and consider the implications and potential consequences of plea bargains offered by prosecutors. The article discusses how heavy caseloads and insufficient funding can impact a defender’s ability to meet the U.S. Supreme Court’s standards, and it uses examples of ineffectiveness claims to illustrate these points. The article concludes with a brief review of how public defender offices can use *Padilla*, *Lafler*, and *Frye* to seek additional funding.

**Hinton v. Alabama**
134 S. Ct. 1081 (2014) (14 pages)

This U.S. Supreme Court case found defense counsel was ineffective where he failed to furnish an adequate rebuttal witness. At trial, Alabama prosecutors retained firearm and toolmark identification experts to show that certain gun shell casings came from the
The defendant was convicted. He appealed, arguing that his Sixth Amendment right to counsel had been violated. While the defendant’s attorney recognized the need to produce an effective rebuttal to testimony by the state’s expert witnesses, he was mistaken as to Alabama’s funding limit and failed to apply for additional funding despite the trial judge’s “express invitation” to seek more funds if they were necessary to hire an expert. While the defendant’s attorney later testified that the expert witness ultimately retained was the only expert who was willing to work for $1,000 (the amount awarded by the trial judge), the attorney himself recognized that the expert was inadequate. Applying Strickland, the Court found that counsel fell below an objective standard of reasonableness, and that but for his ineffective assistance, it is not clear that the trial court would have reached the same verdict. The Court held that “[a]n attorney’s ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under Strickland.”

C. REFORM

The Promise of Gideon: Providing High-Quality Public Defense in America
Anthony C. Thompson, 31 Quinnipiac L. Rev. 713 (2013) (69 pages)

In celebration of Gideon’s fiftieth anniversary, this article describes the current state of indigent defense as “providing the bare minimum and complying with the letter of the rule in Gideon, but not its spirit.” State legislators are not being held accountable for underfunding indigent defense systems because of the population affected by this political choice. Echoing Attorney General Holder’s remarks at the Symposium on Indigent Defense in 2010, the article argues that the federal government should provide leadership to the states in developing more coherent indigent defense systems. Noting the success of the federally implemented reentry policy, the article claims there is a role for the federal government in the administration and delivery of indigent defense services as well. Specifically, the federal government can play a role in training, pilot project development, and practice innovation. According to the article, the Department of Justice should develop a comprehensive plan to address the inequities in public defense, focusing its resources on research and innovation in the delivery of indigent defense as well as lawsuits against the states that most routinely violate defendants’ Sixth Amendment rights.

A Different Kind of Justice: Lessons Learned from a Mental Health Public Defender

This article presents a working model for providing holistic representation to the mentally ill with the understanding that well-rounded care for the individual will reduce recidivism and keep individuals with mental illness out of prison. The article focuses on the operations and successes of the Travis County Mental Health Public Defender Office (MHPD), the first stand-alone mental health public defender office in the country. While this model is for adults, the basic tenets of MHPD can be applied in a juvenile model. The article also
provides a concrete cost-benefit analysis to demonstrate the net financial benefits of government investment in projects like MHPD.

The Problem of Low Crime: Constitutionally Inadequate Criminal Defense in Rural America

This note advances a theory that geographic locations with the highest crime are more likely to provide quality public defense due to a funding triage effect. It presents and examines data illustrating that rural areas face lower crime rates than their urban counterparts and have fewer criminal defendants requiring court-appointed counsel. Therefore, according to the note, large, urban areas require and receive more attention while rural areas are largely ignored. For example, Arizona allocates funding to counties for public defense based upon a metric utilizing felony case rates in the county. As a result, the more metropolitan counties in Arizona receive more funding due to their higher number of felony cases. The note proposes a number of solutions: 1) a more uniform distribution of public defense across urban and rural areas, which can be achieved by creating subject-matter public defender offices; 2) expanding case venues to areas where quality public defense is available; and 3) making use of cooperative federalism to expand the pool of available attorneys and allow federal defenders to take state cases that are complex or resource-intensive.

D. RACE ISSUES

Implicitly Unjust: How Defenders Can Affect Systemic Racist Assumptions

This article provides an overview of the statistics on race and the criminal justice system, and discusses the defense attorney’s role in addressing and helping to remediate those stark statistics. The article discusses implicit racial bias in the context of police, prosecutors, jurors, and judges. It posits that a lawyer can simultaneously represent a client and fight systemic racism after acknowledging his or her own biases. The article explains how racism can be addressed through motions practice, educating judges and jurors, expert testimony, and storytelling. It concludes that while the problem may never be fully resolved, no criminal defense lawyer should accept the status quo.

Implicit Racial Bias in Public Defender Triage
L. Song Richardson & Phillip Atiba Goff, 122 Yale L.J. 226 (2013) (24 pages)

This article discusses the impact implicit racial bias has on the way public defenders engage in triage, i.e., the process by which public defenders prioritize cases. The article argues that due to limited resources and taxing workloads, public defenders engage in highly discretionary decisionmaking. Implicit racial bias may unconsciously inform a public defender’s decisionmaking resulting in biased evaluations of evidence, interactions with the client, and acceptance of punishment. The article makes several suggestions as to how public
defenders may eliminate or reduce implicit racial bias, such as establishing objective triage standards and altering office culture to be more receptive to client-centered values.

E. PRACTICE TIPS

Cultural Competency: A Necessary Skill for the 21st Century Attorney
Travis Adams, 4 Wm. Mitchell L. Raza J. Law & Diversity (2012-2013) (22 pages)

This article stresses the need for culturally competent attorneys who can argue the law from different perspectives. Cultural competency is important because increasing social and economic disparities have rendered the legal world more diverse than ever, people naturally prefer the familiar, and the legal field has fallen behind other disciplines (such as social work) when it comes to cultural competency. Relying on Milton Bennet’s *Intercultural Development Continuum and the Development Model of Intercultural Sensitivity*, the article identifies the monocultural (ethnocentric) and intercultural (ethnorelative) mindsets as occupying opposite ends of the spectrum. The article notes that prosecutors seek to alienate the defendant from the jury and emphasize his or her “otherness.” By appealing to ethnocentric worldviews, the prosecutor characterizes cultural differences as a negative rather than value-neutral trait. Alternatively, defense attorneys seek to humanize the defendant and describe the defendant’s upbringing and challenges that shaped his or her life so that jurors are better able to relate or understand the defendant’s situation.

F. LITIGATION STRATEGY

Kids, Cops, and Sex Offenders: Pushing the Limits of the Interest-Convergence Thesis
David A. Singleton, 57 How. L.J. 1 (2013) (39 pages)

This article discusses the interest-convergence theory and its utility in trial and appellate advocacy. In the racial justice context, the interest-convergence theory proposes that “[t]he interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites.” Since its inception, the theory has been used to understand why courts decide cases the way they do. It has also been used in individual cases as a tool “to persuade those in power that a reform that benefits the client also serves the interests of society as a whole.” The article begins with an analysis of the legal strategy utilizing the interest-convergence theory in several cases involving sex offenders, and how it was met with mixed reactions from the court and the media. Due to the reactions, the article questions whether the strategy truly involved the interest-convergence theory or was something else and whether the strategy worked. It also assesses the costs of utilizing the theory in advocacy strategies. The article concludes with a recommendation for implementing the interest-convergence theory in law classes as a tool for social change.
Tailoring Entrapment to the Adolescent Mind
Lily N. Katz, 18 U.C. Davis J. Juv. L. & Pol’y 94 (2014) (43 pages)

This article argues that entrapment doctrine should be applied differently to juveniles than to adults. Its argument is grounded in entrapment jurisprudence and the development of the subjective and objective tests for entrapment defenses, as well as in the recent U.S. Supreme Court Eighth and Fifth Amendment case law legally differentiating juveniles and adults. There are currently many varieties and hybrids of entrapment standards and tests, but no variation accounts for age. Youth cannot be fairly held to the subjective test for entrapment, which asks whether the offender was predisposed to commit the criminal act in question, because youthful criminal intent is too malleable. Children should also not be expected to act as typical, mature adults, as the objective test would require. The test must ask whether the coercion of law enforcement was so strong as to induce illegal activity by a normal, law-abiding youth. The extremely coercive tactics used in school sting operations strategically take advantage of youth vulnerabilities, and children need protection from such targeted entrapment. By adopting a modified objective test, courts can better evaluate whether law enforcement tactics violate professional ethics.

G. CASELOADS

The Undersigned Attorney Hereby Certifies: Ensuring Reasonable Caseloads for Washington Defenders and Clients
Andrea Woods, 89 Wash. L. Rev. 217 (2014) (40 pages)

This article explains the ramifications of the Washington Supreme Court’s new caseload and professional regulations for Washington attorneys representing indigent defendants. These regulations intend to address problems of inadequate indigent representation caused by excessive caseloads. The new regulations limit caseloads based on cases’ seriousness and complexity, affecting contract attorneys most drastically. In the past, contract attorneys have taken on large caseloads to benefit from flat-fee payment structures. The article claims that contract attorneys’ financial concerns are outweighed by indigent defendants’ need for quality representation. While it admits that the regulations will drive some attorneys from the representation of indigent clients, the article supports the regulations for their ability to improve representation quality. The article warns that jurisdictions may attempt to circumvent the regulations by under-representing the complexity of cases, thereby allowing attorneys to take on excessive caseloads. It advocates for oversight and sufficient funding to meet the requirements.

The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards
RubinBrown LLP (Jan. 2014) (28 pages)

This study attempts to determine appropriate caseload standards for Missouri defense attorneys so that Missouri public defense offices and private firms can determine staffing requirements while providing quality representation. The study used the Delphi Method to
create the standards, which entailed gathering data through surveys and expert panel
collaboration to reach a consensus about how the data should be interpreted. First, surveyors
collected information from defenders about how much time they spend on different tasks.
Next, they asked what percentage of time defenders felt they had provided adequate
representation. From this data the surveyors created appropriate time intervals for each task.
Using these ranges, a panel of expert attorneys convened and determined how much time it
should take to adequately complete each task. They then used these standards for small tasks
to create the standards for time spent on different types of cases. In juvenile cases, attorneys
reported having insufficient time to communicate in person with clients, to communicate
with families, to engage in any meaningful investigation or discovery, and to effectively
prepare.

*Wilbur v. City of Mt. Vernon*

A Washington State federal district judge held that two local public defense systems deprived
indigent defendants of their fundamental right to assistance of counsel. Public defenders were
taking thousands of cases and spending less than an hour on each. The court found that the
system was broken to such an extent that “the individual defendant is not represented in any
meaningful way, and actual innocence could conceivably go unnoticed and unchampioned.”
The court required the cities to hire a supervisor to ensure their defense system’s compliance
with constitutional standards. The court will further supervise the case for three years to
ensure the enactment of reforms.

*Wilbur v. City of Mt. Vernon, DOJ Statement of Interest*

The Department of Justice filed a Statement of Interest in *Wilbur v. City of Mt. Vernon*, a case in Washington State federal court. As noted in its SOI, “[t]he United States has an interest in ensuring that all jurisdictions—federal, state, and local—are fulfilling their obligation under the Constitution to provide effective assistance of counsel to individuals facing criminal charges who cannot afford an attorney, as required by *Gideon v. Wainwright*.” In addition, the SOI explicitly noted that “[t]he United States can enforce the right to counsel in juvenile delinquency proceedings.” The SOI provided a compelling discussion about why hard caseload limits, without an assessment of workload, can prevent defenders from meeting ethical standards, despite having caseload limits in place. The SOI also discussed the need for a remedy to go along with any caseload limit—*i.e.*, the ability to decline cases when effective assistance is compromised.
Wilbur v. City of Mt. Vernon, Statement of Interest, Exhibit 1

The DOJ included this exhibit to review information about public defender offices in the United States. This document lists caseload maximums, whether public defenders may refuse cases, and the statutory authority that grants such discretion.

Wilbur v. City of Mt. Vernon, Statement of Interest, Exhibit 2

This exhibit provides an extensive report of the Grant County, Washington public defender monitor. In it, the monitor describes the progress made between 2007 and June 2012, in terms of the increase in trials, jail visits, and motions practice through an introductory letter and two site visit reports.
A. HISTORY

Pursuing Justice for the Child: The Forgotten Women of *In re Gault*

This article describes the role several women played at all stages of *In re Gault*. The article discusses Marjorie, Gerald Gault’s mother, Amelia Lewis, Gerald’s lawyer, Lorna Lockwood, a high-profile judge who provided sage advice, and Gertrude Mainzer, a holocaust survivor who helped litigate the case before the U.S. Supreme Court. The article is interesting for its historical perspective and use of transcripts to tell the story that underlies the most famous case in juvenile jurisprudence.

Blackness as Delinquency

This article details the historical background to how “blackness” and black women’s clubs influenced changes within the juvenile court. Throughout the article, the work of internationally known advocate Ida B. Wells is highlighted. Wells was an instrumental advocate within the juvenile court movement. Despite most historical contexts which state that the juvenile court system was framed by primarily white women, this article discusses the roles black women played which are often forgotten or ignored. The article also discusses how racial and class discrimination negatively affect juveniles within the court system.

B. ASSESSMENTS

Ten Years of Moving Forward on Juvenile Indigent Defense
Eric J. Zogry, North Carolina Office of the Juvenile Defender (Jan. 2014) (2 pages)

In 2003, NJDC completed an assessment of the juvenile indigent defense system in North Carolina. That report, *North Carolina: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, led to a number of reforms in the state, including the creation of the Office of the Juvenile Defender. This brief describes the progress made since the *Assessment*, including pursuing victory in *J.D.B.*, producing a statement on the role of juvenile defense counsel, creating performance guidelines outlining best practices, and turning juvenile defense into an official sub-specialty in North Carolina.

C. REFORM

Generally

The Importance of Early Appointment of Counsel in Juvenile Court
Hon. Kenneth J. King, Patricia Puritz, & David A. Shapiro, Trends in State Courts (2014) (7 pages)

This article argues that to maintain due process in juvenile court, delinquency court judges must ensure that children before them are presumed indigent for purposes of
counsel, that they are appointed counsel as early as possible, and that the right to waive counsel remains theirs and can only occur following consultation with an attorney. The article provides specific examples of the problems with indigence determinations, and it describes what judges can do in each area to improve juvenile court and protect the rights of young people.

Two Systems of Justice, and What One Lawyer Can Do

This article examines how economic inequality manifests in the juvenile justice system in the disparate treatment of minority and indigent youth compared to the treatment of youth from families of means. Using individual stories to demonstrate the vastly different experiences of children living in poverty and those living in wealth, this article argues for better court-appointed representation for juveniles, for additional funding and training for juvenile defense counsel, and for policy changes at the state level to decrease youth contact and involvement with the juvenile justice system.

Giving Kids Their Due: Theorizing a Modern Fourteenth Amendment Framework for Juvenile Defense Representation
Mae C. Quinn, 99 Iowa L. Rev. 2185 (2014) (26 pages)

This article explains why scholars, practitioners, and juvenile court stakeholders ought to return to the Fourteenth Amendment right to counsel for juveniles, originally established under Gault, rather than repeatedly looking to the Sixth Amendment, as many have advocated for in recent years. The article argues that the Sixth Amendment right to counsel is flawed in its limited application. Whereas the Sixth Amendment is formalistic and bright-line in its authorization of the provision of counsel at critical stages, the Fourteenth Amendment right is more holistic, and therefore more suited to the fluid and amorphous components of delinquency proceedings. Indeed, because of the vulnerability of juveniles, due process principles necessitate more expansive juvenile representation than the Sixth Amendment would likely afford. Additionally, the article explains why the Fourteenth Amendment right to counsel also mandates systemic litigation, which the Sixth Amendment does not proscribe. The article revisits Gault and notes that the Fourteenth Amendment right is based not in a balancing test, but in best practices standards—something to be mindful of when advocating for reform.

A Collaboration of a Juvenile Justice Law School Clinic and Legal Services Agency to Fully Serve the Legal Needs of Children
Sara DePasquale & Victoria Silver, 41 N. Ky. L. Rev. 225 (2014) (22 pages)

This article discusses the numerous benefits to implementing a partnership program between non-profit legal advocacy programs and law school clinics, particularly in the field of juvenile law. Using the partnership between the Juvenile Justice Clinic at University of Maine School of Law’s Cumberland Legal Aid Clinic and KIDS LEGAL at Pine Tree Legal Assistance as a case study, the article elaborates on the benefits to
clients, attorneys, law students, and the community through these sorts of collaborations. Through this joint venture, client intake is made easier, multiple complex issues are handled by specialists, and law students learn both trial skills and the value of collaboration. Conflicts between parties, such as parents’ rights under IDEA and children’s rights in related delinquency cases, become better managed. Funding can also be pursued more effectively (though there are also potential problems where two agencies compete for the same funding stream). Overall, the article argues, the law school clinic-legal services agency collaborative model is highly effective and ought to be expanded across the country.

Postadjudicatory Juvenile Defense Attorneys: More Thoughts on Reimagining Juvenile Justice

This article, a follow up to an article published by the author in 2012, fleshes out a practical proposal for the creation of mandatory postadjudicatory juvenile defense attorneys (PADs) in juvenile justice systems throughout the country. Beginning with the premise that the juvenile system aims primarily to rehabilitate children, this article argues that the current system fails to achieve its rehabilitative goals, and that creating a mandatory role for lawyers postadjudication can bring the system closer to its rehabilitative purpose. The PADs would be responsible for investigating postadjudicatory programming and for advocating in court to make programs more effectively rehabilitative. This would involve both client-specific representation as well as general oversight of the postadjudication systems. The article argues that current systems rely too heavily on instincts of stakeholders to determine appropriate rehabilitative programs, and that probation departments cannot impartially evaluate postadjudicatory programs run and mandated by the government. Involvement of PADs will challenge the punitive practices that juvenile systems have adopted and protect the interests of all adjudicated youth.

Shelby County

Success in Shelby County: A Roadmap to Systemic Juvenile Reform
Sandra Simkins, 44 U. Mem. L. Rev. 727 (2014) (24 pages)

After a 2012 Department of Justice investigation of Shelby County, Tennessee’s juvenile justice system found racial discrimination in the courts, constitutionally insufficient due process, and violations of the substantive due process rights of detained youth, Shelby County and the DOJ signed an extensive agreement to enact reform. This article describes Shelby County’s violations and the course of its reforms. It uses the account as a model for future reform strategy. Shelby County and the DOJ’s reform strategies included mandating that court systems focus on due process rights, ongoing detention data monitoring, and data-driven decisionmaking. The agreement also recognized the importance of juvenile defense. The article notes NJDC’s National Juvenile Defense
Standards and the importance of providing early access to counsel, qualified and well supported juvenile defense attorneys, and a defender culture that pushes for systemic reform of the juvenile justice system. The article discusses points in the reform process when juvenile defenders were paramount and asserts that juvenile defenders are more important in the reform of other jurisdictions that are not under DOJ investigation.

**Shelby County DOJ Compliance Report #2**
Sandra Simkins, Due Process Monitor (Dec. 12, 2013) (33 pages)

Following up on the December 2012 settlement between the DOJ and the Juvenile Court of Memphis and Shelby County (JCMSC) 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, this report discusses JCMSC’s compliance with the settlement terms.

**Shelby County DOJ Compliance Report #3**
Sandra Simkins, Due Process Monitor (June 16, 2014) (32 pages)

This third scheduled compliance review (which took place in April 2014) for the DOJ and Shelby County settlement discusses the compliance of JCMSC with the settlement’s terms. The first Report written after the formal creation of the specialized Juvenile Unit of the Shelby County Public Defender, it finds that of 55 total due process provisions in the agreement, the County has partially complied with 44, begun compliance with 10, substantially complied with none, and refused to comply with none. The Monitor noted significant improvements by the probation department to ensure that children coming into contact with it understood their *Miranda* rights, that clinical services leadership had improved, and that there was expanded data collection. Concerns, however, included a lack of vigorous transfer advocacy, a reduction in evaluations of clients by clinicians, the lack of independence of juvenile defenders from the court structure, and the court’s unwillingness to accommodate needed training for juvenile defenders.

**The Essence of Justice: Independent, Ethical, and Zealous Advocacy by Juvenile Defenders**

The Department of Justice launched an investigation in Shelby County, Tennessee in August 2009, to assure that its juvenile justice system was meeting constitutional obligations, focusing primarily on due-process and equal-protection concerns. This article discusses the Shelby County Public Defender’s response to the DOJ investigation and its role in juvenile justice reform since 2009. Since the agreement following the investigation, juvenile court magistrates have made several decisions that affirm independent, ethical, and zealous advocacy. As OJJDP Administrator Bob Listenbee has said, highlighting the importance of Shelby County and the need to develop county-level, self-assessment tools to help counties address structural problems: “we cannot litigate our
way out of bad delivery systems for juvenile justice. We need to learn the lessons from Shelby…and other places where the Justice Department has been involved.” The Shelby County Public Defender’s Office is in the process of adapting NJDC’s *National Juvenile Defense Standards* to reflect Tennessee law and local practice for approval by the DOJ this year.

**State-Based**

**Indigent Defense in the Texas Juvenile Justice System**

Texas Indigent Defense Commission & Texas Juvenile Justice Department (June 2014)

(26 pages)

This report summarizes the state of the Texas juvenile indigent defense system and the Fair Defense Act. The Act and other statutes require that counties and juvenile boards create juvenile indigent defense plans establishing standards for appointment of counsel, determinations of indigence, minimum qualifications for attorneys, nondiscriminatory attorney hiring procedures, and attorney fee schedules. Local judiciaries are required to report their plans to the Texas Indigent Defense Commission in exchange for state funding. The Commission publishes these plans online as an aid to other counties that are creating their plans. It also develops standards, policies, and guidelines for indigent defense services. After summarizing the law and the role of the Commission, the report explains juveniles’ rights in the justice system. It also provides information for attorneys regarding who can be appointed as counsel, how attorneys should be selected from the appointment list, and how appointed attorneys are paid. The appendices provide relevant statutes and resources for further research, such as NJDC’s *National Juvenile Defense Standards*.

**Reimagining the Role of Defense Counsel for Adolescents in the Adult Criminal Court System: Bringing the Community and Policymakers into the Process to Achieve the Goals of Gideon**

Nancy Ginsburg, 35 Cardozo L. Rev. 1117 (2014) (25 pages)

Under New York’s Juvenile Offender Act, youth ages 13 to 15 charged with committing serious felonies are prosecuted in adult criminal court and face mandatory state sentences of incarceration unless the court permits Youthful Offender adjudication. This article discusses the successes of the Adolescent Intervention and Diversion Team (AID) of the Legal Aid Society of New York, which was one of the first public defender offices to provide specialized representation for teenagers prosecuted in the adult court system. The program, which has served nearly 5,000 clients, employs lawyers who work closely with specially trained social workers to provide legal representation and education, foster care, mental health, and policy advocacy. The program was expanded in 2005 to include select youth aged 16 to 18 in addition to youth aged 13 to 15. A 2010 study showed that the AID project had a 53% conviction rate for Juvenile Offender cases, compared to an 83% conviction rate of Juvenile Offender clients represented by lawyers outside of Legal Aid.
Kids Without Counsel: Colorado’s Failure to Safeguard Due Process for Children in Juvenile Delinquency Court
Colorado Juvenile Defender Coalition (2013) (12 pages)

In this report, CJDC examined the data leading to the jointly published NJDC-CJDC assessment, 2012 Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings, and found that 45% of all juvenile cases had no defense attorney in 2012. CJDC engaged in state-wide court observation to determine why lack of counsel was so widespread. The report discusses the various stages of the delinquency process and the structural problems CJDC observed at each stage in the counties visited. The report reveals the problems posed by indigence determinations in Colorado, the role of parents, and the confusion between the role of the guardian ad litem and defense attorney. It ends with recommendations, several of which were incorporated into Colorado’s new juvenile defense reform statute.

Causing Conflict: Indiana’s Mandatory Reporting Laws in the Context of Juvenile Defense
Megan M. Smith, Note, 11 Ind. Health L. Rev. 439 (2014) (23 pages)

This note argues that Indiana’s mandatory reporting statute conflicts with the attorney-client privilege and attorneys’ duty of confidentiality. Indiana law dictates that if any person has a reason to believe that a child is being abused, he or she must report it to the authorities or face a misdemeanor charge. It argues that mandating attorney reporting does not protect children because it sacrifices a very important part of the attorney-client relationship for a very small chance of protecting a child from abuse. Further, mandatory reporting may result in juveniles being less candid, losing trust, or feeling betrayed. The note also argues that mandatory reporting may violate the Sixth Amendment by impermissibly derogating a client’s right to counsel. The note closes with recommendations that Indiana eliminate these problems by making attorney reporting permissive, making exceptions for certain circumstances, excluding defense attorneys, or excluding all attorneys.

D. PRACTICE TIPS

Juvenile Court

Juvenile Defense Attorneys and Family Engagement: Same Team, Different Roles
National Juvenile Defender Center (2014) (8 pages)

This tip sheet, geared towards both juvenile defenders and the families of their young clients, provides an explanation of the roles family members and defenders play in a child’s case, emphasizes the importance of both sides understanding the other’s role, maps out the benefits of collaboration between defense attorneys and young clients’ families, and outlines the opportunities for family and attorney collaboration throughout the duration of a child’s delinquency case. Acknowledging the challenges that families
Juvenile Defender Self-Assessment Tool for Best Practices in Detention Advocacy
National Juvenile Defender Center (2014) (4 pages)
This checklist provides defenders with the best practices from initial client contact to post-hearing obligations, allowing defenders to self-evaluate and identify the steps needed to improve their practice. Overall, this tool will assist juvenile defenders in assessing the quality of their detention advocacy. Defenders should check the box next to each step that they complete regularly on behalf of a typical client. Upon completion of the checklist, defenders should review their answers to self-identify any gaps in their detention advocacy.

Juvenile Defense Manager-Supervisor Tool for Best Practices in Detention Advocacy
National Juvenile Defender Center (2014) (4 pages)
This brief provides targeted guidance for managers and supervisors within juvenile defender organizations on how to identify, develop, and promote strategies or interventions that will improve their defenders’ detention advocacy. By integrating an understanding of the intersection between the indigent juvenile defense system and the other related components of the juvenile court system, this tool will help supervisors and managers support effective practices and policies, identify problem areas, and spot opportunities and appropriate strategies for reform.

Teaching the Power of Empathy in Domestic and Transnational Experiential Public Defender Courses
This article summarizes an observational experiment on the impact of empathy on the attorney-client relationship. The experiment predicted and observed that the more empathetic a defender, the better his or her relationship with the client. Specifically, the authors noted that defenders who are more empathetic learn more information from their clients and are better advocates during trial and at disposition. The article also states that empathetic attorneys could experience greater job satisfaction and professional fulfillment. The study explored ways to teach empathy, including role-playing, storytelling, promoting listening, and building skill-based advocacy. The article also discusses some of the challenges to teaching empathy, including tackling the participants’ resistance to change and the ways to provide effective critiques.

Interviewing a Child Client
Randee J. Waldman, 38 Champion 40 (2014) (6 pages)
This article provides practice tips and recommendations to help attorneys learn to effectively interview child clients. For example, the article recommends lawyers engage in rapport building by spending time getting to know the client, engaging in active
listening, and using the “T-Funnel” method to interview clients. In this method, the lawyer begins with broad open-ended questions designed to draw out additional facts on discrete topics within the narrative. For attorneys who have issues overcoming language development barriers with their child clients, the article recommends assessing their client’s understanding in an interactive manner, such as having the client repeat back concepts in their own words. This article is divided into five sections: 1) language proficiency; 2) experience; 3) developmental level; 4) suggestibility and relation to authority; and 5) family and social context.

**The Top Ten Questions to Ask Your Juvenile Client About School**
Bryna G. Williams, 57-Sum B. J. 24 (2013) (3 pages)

This article advises attorneys for children to ask their clients questions regarding their school experiences. These questions are important because they can lead to evidence and provide context that can help attorneys develop their cases. The suggested questions pertain to school performance, discipline, special education services, mental health services, and possible other legal or disciplinary proceedings.

**How Juvenile Defenders Can Help Dismantle the School-to-Prison Pipeline: A Primer on Educational Advocacy and Incorporating Clients’ Education Histories and Records into Delinquency Representation.**

This article focuses on how juvenile defenders can use clients’ educational histories to improve their representation and dismantle the school-to-prison pipeline. Defenders should include educational records and histories in their case investigations in order to obtain a wider range of services and defenses. Defenders can use educational histories to contest a client’s competency to stand trial, to encourage diversion programs instead of detention, to show mitigating circumstances at detention hearings, to suppress evidence obtained in searches or interrogations, to contest transfer to adult court, to advocate in post-petition negotiations, to find evidence for adjudicatory proceedings, and to argue for a positive disposition. The article provides guidance on how to use educational histories for these purposes.

**An IEP for the Juvenile Justice System: Incorporating Special Education Law Throughout the Delinquency Process**
Lisa M. Geis, 44 U. Mem. L. Rev. 869 (2014) (23 pages)

This article attacks the overrepresentation of children with special education needs in the juvenile justice system. It recognizes that these children are particularly vulnerable to the school-to-prison pipeline, especially when their special education needs are not being met appropriately. This article proposes a number of solutions for which defenders can advocate, all grounded in state responsibilities as defined by the ADA, Section 504 of the Rehabilitation Act, and the IDEA. The solutions include: proper provision of special education; challenging discriminatory punishment of youth with special education needs,
especially when the offending behavior is a manifestation of a disability; challenging interrogations and confessions not tailored to children with special education needs; asking for an assessment when there is suspicion of a learning disability; raising a child’s emotional, educational, and developmental needs when detention is considered; ensuring that all court procedures, processes, and language is understandable for a particular child; fighting for appropriate disposition and placement given a particular child’s needs; ensuring appropriate education if a child is in a secure facility; and challenging any use of solitary confinement.

Time for a Check-Up: How Advocates Can Help Youth in the Juvenile Justice System Get the Mental Health Services They Need
National Juvenile Justice Network (Jan. 2014) (6 pages)

This report addresses the expansion of Medicaid and the shift in delivery of mental health services to primary care settings. It includes recommendations to advocates in the juvenile justice system about how to prepare for and respond to these changes. The report lays out five action steps to obtain mental health services for system-involved youth: encourage enrollment; ensure continuous Medicaid coverage; encourage system collaboration; inform state Medicaid policy; and look for ways to expand CHIP coverage.

The report suggests educating primary care providers about the unique challenges that system-involved youth face and exploring creative and flexible treatment models, such as “medical homes” and their viability for youth.

Have No LGBTQ Youth Clients? Think Again: What Every Attorney Representing Youth Needs to Know

This article provides a basic introduction to LGBTQ terms, statistics on LGBTQ youth in the juvenile justice system, and effective practice tips for attorneys in Massachusetts that may have LGBTQ youth clients. It recommends attorneys gain cultural competence regarding LGBTQ persons. To better serve their clients, it lists practical dos and don’ts. The article also provides personal tips for attorneys on how to display their support for LGBTQ clients.

Youth in Adult Court
Youth Matters: Roper, Graham, J.D.B., Miller, and the New Juvenile Jurisprudence
Shobha L. Mahadev, 38 Champion 14 (2014) (9 pages)

This article considers the jurisprudence emerging from the recent U.S. Supreme Court decisions requiring specialized treatment of children in matters of criminal procedure and sentencing. The article also encourages juvenile defense attorneys to use this new jurisprudence to advocate for their clients. Reading Roper, Graham, J.D.B., and Miller as a group rather than as individual cases leads to strong arguments against mandatory stacking of sentences, liability for youth under the felony-murder doctrine, transfer to adult court, validity of confessions by juveniles, lengthy prison sentences, and mandatory
lifetime registration for juvenile sex offenders. The article includes strategies to leverage the new jurisprudence in favor of youthful defendants.

**A “Second Look” at Lifetime Incarceration: Narratives of Rehabilitation and Juvenile Offenders**  
Sarah French Russell, 31 Quinnipiac L. Rev. 489 (2013) (34 pages)

This article addresses the impact second-look hearings will have on present decisionmakers, the public, and a future audience. Following the U.S. Supreme Court’s decisions in *Graham* and *Miller*, juvenile offenders sentenced to LWOP may be eligible for a second look hearing for resentencing. The article advocates for the use of narratives to advance juvenile justice reform efforts as discussed by Austin Sarat in *When the State Kills* and *Memorializing Miscarriages of Justice*. It further supports Sarat’s emphasis on the importance of narratives in second look hearings because the hearings provide an opportunity for both lawyer and client to retell the client’s story. Moreover, the hearings serve as an effort to humanize the client to the present audience, jury, the judge, or the public. Accordingly, the article argues that narratives have an impact beyond individual cases and aid in juvenile justice reform efforts by illustrating structural inequities and working to help end capital punishment.

**The Place of Families in Juvenile Defense Work after Miller v. Alabama**  
Peggy Cooper Davis et al., 39 New Eng. J. on Crim. & Civ. Confinement 293 (2013) (10 pages)

This article addresses the impact a child accused of a serious crime has on the relationship between the child, family, and state. A defense attorney, a clinical psychologist and juvenile defense attorney, and a forensic psychiatrist collectively authored the article, providing insight and expertise on the issue. The article argues that since courts now place a greater emphasis on the role of families, attorneys should use information on family circumstances for mitigation purposes. The article recommends several practice tips for juvenile defenders, such as retaining experts to assess family dynamics and maintaining a respectful and sympathetic rapport with all family members. The article concludes with two case studies illustrating the necessity of respectfully engagement with family members during the sentencing process. This enables attorneys to assemble and interpret their clients’ family history, resulting in better representation, as well as potential positive resolutions both judicially and personally for the client.

**New Partners and New Opportunities in the Defense of Children Facing Life Without Parole**  
John Hardenbergh, 38 Champion 46 (2014) (5 pages)

This article advances a number of arguments in support of defense attorneys employing mitigation specialists and forensic social workers in the post-*Miller* era. It argues that effective collaboration between defense teams and family members is necessary, as family members have access to potential witnesses, relevant files and documents, and are
often the most reliable contacts. Mitigation experts and forensic social workers are essential to view families as objects of investigation and to avoid isolating family members. The article predicts that courts may eventually impose an ethical mandate that defense teams engaged in mitigation hire forensic social workers.

**Resentencing Juveniles Convicted of Homicide Post-Miller**

This article addresses how litigators should handle dispositions for their juvenile clients with homicide convictions facing resentencing to decrease their chances of receiving LWOP. The article provides analysis on some of the important U.S. Supreme Court cases involving juvenile justice. In particular, *Miller* has left many ambiguities that pose problems for trial lawyers and their juvenile clients. The article presents a step-by-step breakdown on how defense counsel should proceed when dealing with a juvenile client facing LWOP resentencing. The breakdown includes the types of strategies and procedures necessary for the best outcome, such as the specific language used and types of expert testimony needed. Ultimately, defense counsel should present all of the relevant evidence collected and convince the court that the juvenile has made significant positive changes.

**What Hath Miller Wrought: Effective Representation of Juveniles in Capital-Equivalent Proceedings**

This article examines the implications for effective assistance of counsel standards in proceedings in which the juvenile offender is eligible for a LWOP sentence. The article argues that in order to carry out *Miller’s* standard that judges must individualize a juvenile’s sentence and consider any mitigating factors in determining that sentence, all juvenile offenders must be afforded access to effective assistance of competent counsel at the earliest stage possible, and indigent offenders must be allowed to retain resources and experts at or prior to transfer proceedings. The article uses examples to show why transfer is the critical stage in juvenile proceedings and how the availability of an expert can affect the outcome of a case. The article notes that ensuring appropriate transfer is particularly significant given the wide scope of offenses that could lead to a LWOP sentence.
SCHOOL-TO-PRISON PIPELINE

A. GENERALLY

Indicators of School Crime and Safety: 2013
Simone Robers et al., Bureau of Justice Statistics (June 2014) (208 pages)

This report, using data from federal sources and covering the 2012-13 school year, identifies and explains the indicators for and statistics regarding school crimes and safety. It outlines differences by gender, ethnicity, and year in school to convey the number of students involved in crime at school who feel threatened. The report 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.

Civil Rights Data Collection – Data Snapshot: School Discipline, Issue Brief No. 1
Office for Civil Rights, U.S. Department of Education (Mar. 2014) (24 pages)

This issue brief highlights data collected from the Civil Rights Data Collection (CRDC). The CRDC is a significant tool, as for the first time since 2000, it includes data from every public school and district in the nation. Through succinct analysis, as well as numerous charts and graphs, the brief reveals that beginning in preschool, minority students and students with disabilities are disciplined at far higher rates than their peers. These same students are subject to physical and mechanical restraint and seclusion in schools at rates that far exceed those of other students. These troubling trends mean that students are increasingly losing important instructional time and are more at risk of entering the school-to-prison pipeline. The brief includes data separated by student type and by state. It also discusses how the data was collected and analyzed.

Guiding Principles: A Resource Guide for Improving School Climate and Discipline
U.S. Department of Education (Jan. 2014) (37 pages)

Drawing on the recently synthesized information in the Civil Rights Data Collection, this report sets out a new framework for school discipline to ensure safe schools and effective learning. It lays out three broad principles and describes the specific ways in which schools can meet them. The principles direct that schools must 1) work to create a positive school climate “that can help prevent and change inappropriate behaviors;” 2) “ensure that clear, appropriate, and consistent expectations and consequences are in place to prevent and address misbehavior;” and 3) continuously evaluate their discipline policies and practices through data to ensure fairness.
Notice of Language Assistance: Dear Colleague Letter on the Nondiscriminatory Administration of School Discipline

This letter addressed to school administrators explains how schools can be found to have discriminatory discipline practices under the Civil Rights Act of 1964. According to the letter, the Civil Rights Data Collection has shown that minority children are punished disproportionately to white children. The letter goes on to explain the legal frameworks of Title VI and Title IV of the Act. It provides flow charts showing how the government can find that a school has engaged in “different treatment” or has caused “disparate impact.” After explaining the standards the letter provides exhaustive examples. The letter explains the different remedies the government might impose if it finds a violation and how schools can avoid these interventions.

Beyond Bullying: How Hostile School Climate Perpetuates the School-to-Prison Pipeline for LGBT Youth
Preston Mitchum & Aisha C. Moodie-Mills, Center for American Progress (Feb. 2014) (39 pages)

This report examines the disparate impact of harsh school discipline and school policing practices on minority and LGBT students, as well as the role that adults in schools play in perpetuating hostile school climates for these youth. Acknowledging that LGBT youth are pushed out of the classroom as a result of this climate, the report explains the importance of discipline policies that are fair and supportive, rather than punitive and criminalizing. It discusses factors such as peer-on-peer bullying, dress codes and the monitoring of student behavior, informal and unenumerated policies, and a lack of access to LGBT resources as contributing factors to a hostile school environment. The report recommends increased data collection, enumerated anti-bullying policies, the promotion of positive behavioral interventions and supports, increased access to LGBT information and resources, decreased police in schools, and the inclusion of LGBT youth in school discipline reform as solutions to the hostile climate problem.

#Zerotolerance #Keepingupwiththetimes: How Federal Zero Tolerance Policies Failed to Promote Educational Success, Deter Juvenile Legal Consequences, and Confront New Social Media Concerns in Public Schools
Kaitlyn Jones, Note, 42 J.L. & Educ. 739 (2013) (10 pages)

This note argues that zero tolerance policies are ineffective and inappropriate for modern schools. Zero tolerance policies were pushed on states by the federal government as part of the War on Drugs, the Gun Free Schools Act of 1994, and No Child Left Behind. Data shows that zero tolerance programs are correlated with high dropout rates, low school-wide academic achievement and less satisfactory school climate. Zero tolerance policies are applied disproportionately against racial minorities. Also, these policies break down student-authority trust. Federal zero tolerance policies have encouraged schools to shift their discipline responsibilities to criminal justice systems. They have also forced schools to spend
large amounts of money on security-related programs. The note also provides examples of how social media has created a new class of infractions often punished harshly under existing policies.

**Discipline Policies, Successful Schools, Racial Justice, and the Law**

This article reveals prevalent racial disparities in the application of exclusionary discipline practices in U.S. schools. While the Secretary of Education recognized the problem in 2010, and is working with the U.S. Attorney General and others to remedy the disparity, it is still widespread. Racial disparities have widened since 1970. There is little evidence that suspension is effective in controlling classroom behavior. Additionally, black students are more often suspended for minor infractions, while white children are only suspended for major ones. Some justify suspension as a tool to get parental attention, to deter disruptive behavior, and to improve the teaching and learning environment. The article advances arguments against these justifications. It closes with possible alternatives to exclusionary discipline, such as positive behavioral interventions, additional support for teachers, improvements in policy, assessment, enforcement, and reporting, and civil rights litigation.

**B. REFORM**

**The School Discipline Consensus Report: Strategies from the Field to Keep Students Engaged in School and Out of the Juvenile Justice System**
Justice Center, Council of State Government (2014) (462 pages)

The product of contributions from more than 700 people over three years, this enormous report includes “a comprehensive set of policy statements and recommendations that public schools and others can use to move beyond discipline and law enforcement responses that inappropriately remove students from the classroom.” It is unique in its massive scope and its incorporation and synthesis of recommendations of key stakeholders in law enforcement, teaching, juvenile justice, education policy, and other related fields. The report is a comprehensive national roadmap for school discipline reform. It includes numerous recommendations, illustrates sound policy with specific examples, discusses how families, schools, and law enforcement can be brought together to reduce harsh school discipline policies, and provides key takeaways for all sections of the report.

**Stemming the Tide: Promising Legislation to Reduce School Referrals to the Courts**
Jessica Feierman et al., 51 Fam. Ct. Rev. 409 (2013) (13 pages)

This article encourages states to pursue legislative solutions to the school-to-prison pipeline. It offers examples of how state legislatures have created laws intended to address the problem. Some of these laws, including Illinois’s and Maryland’s, require schools to incorporate social and emotional development into learning standards. Other legislatures such as Massachusetts’s and Colorado’s have created task forces charged with creating safe and supportive school environments and limiting exclusionary discipline policies. States that
still value zero tolerance policies, such as North Carolina and Georgia, have enacted laws to retain the policies, but with limits concerning when students can be referred to law enforcement and providing graduated punishments proportionate to misbehavior. The courts have also stemmed the school-to-prison pipeline by involving community stakeholders, probation officers, and schools to create sensible policies and alternative treatments. Legislators must also work to facilitate juveniles’ re-entry into school and society after detainment. States such as West Virginia and Maine have addressed this issue by requiring individualized education plans in detention and creating transition teams to help juveniles.

**Returning “Decision” to School Discipline Decisions: An Analysis of Recent, Anti-Zero Tolerance Legislation**


This note asserts that restoring teacher and administrator discretion in expulsion and suspension considerations can reduce the potential for harm to youth as opposed to that caused by zero tolerance discipline policies. The note starts by summarizing the problems zero tolerance policies cause, such as increased school suspensions leading to higher dropout rates and academic disengagement, and by recounting some especially egregious zero tolerance results. It then details how certain state legislatures have changed laws regulating school discipline from mandatory zero tolerance without educator discretion in deciding the penalty, to permissive approaches that allow teachers and administrators more discretion. The article then discusses the possible consequences that could result from these changes.

**Collaborative Role of Courts in Promoting Outcomes for Students: The Relationship Between Arrests, Graduation Rates, and School Safety**

Steven C. Teske et al., 51 Fam. Ct. Rev. 418 (2013) (11 pages)

This article encourages communities to use collaborative models to address recidivism and drop-out rates in districts with zero tolerance policies. The article introduces a collaborative, “multi-integrated” systems model. In this organizational model, there must be a “convener,” a neutral and authoritative party, to bring together community stakeholders, law enforcement, and school administration. The convener aids the parties in making memoranda of understanding, which lay out general common goals. The article explains that this model has been successful in Clayton County, Georgia, where juvenile court judges acted as conveners and brought together stakeholders to create memoranda of understanding, culminating in decreased suspensions, expulsions, and juvenile court involvement.

**School-Based Legal Services as a Tool in Dismantling the School-to-Prison Pipeline and Achieving Educational Equity**

Barbara Fedders & Jason Langberg, 13 Md. L.J. Race, Religion, Gender & Class 212 (2013) (16 pages)

This article argues that poverty is the main culprit behind the school-to-prison pipeline, and to truly remedy the pipeline, school-based legal services (similar to the burgeoning medical-legal model) must be implemented. The article provides an overview of child poverty across the country. It discusses why poverty and school dropout, suspension, and other related
issues are so interwoven. It provides examples of school-based legal services, and it argues that by helping to remediate the effects of poverty and being easily accessible to those most in need of them, these services will reduce the school-to-prison pipeline. The article cautions that to gain support, legal staff might need to limit the educational advocacy and school-related litigation they provide, so as not to upset the schools that are hosts of their legal services.

A Tale of Two Systems: How Schools and Juvenile Courts are Failing Students
Samantha Buckingham, 13 Md. L.J. Race, Religion, Gender & Class 179 (2013) (20 pages)

Children are often subjected to double punishments for misbehavior—one from school and another from the juvenile justice system. This article argues that these double punishments are harmful to children and to educational and justice systems. It contends that schools, not the courts, should be responsible for discipline. The article makes this argument through the story of a child involved in the justice system and defended by Loyola Law School’s juvenile justice clinic. Using the child’s story as an example, the article shows how practices, such as long delays between the infraction and punishment, double punishment in school and the justice system, and the stigmatization of students, are developmentally inappropriate and cause further problems. The article explains how these practices cause children to develop negative self-images, a distrust of authority, and a fatalistic view of society’s lack of fairness. The article ends by recommending that schools address mental health issues that often cause misbehavior, and that students and advocates use existing mental health protections to fight exclusionary punishments and juvenile justice referrals. It also recommends that prosecutors, schools, and the courts use their discretion to avoid severe punishments and to encourage increased school involvement in discipline.

A Generation Later: What We’ve Learned About Zero Tolerance in Schools
Jacob Kang-Brown et al., Vera Institute of Justice (Dec. 2013) (10 pages)

Zero tolerance discipline policies mandating suspension or expulsion of students for misconduct have gained tremendous momentum over the past 25 years and have only recently become controversial. This issue brief summarizes existing research to examine whether zero tolerance discipline policies make schools safer, if suspension/expulsion leads to greater juvenile and criminal justice involvement, and their future impacts on individual students. The brief concludes that neither schools nor young people have benefited from these short-sighted policies. The brief offers alternatives to zero tolerance that can safely keep young people in school.

Reaching a Critical Juncture for Our Kids: The Need to Reassess School-Justice Practices

This article asserts that the exclusionary and punitive school discipline practices that arose in the 1980s and 1990s have not resulted in improvements to safety and school behavior, but have put students at risk of academic disengagement, dropout, and contact with the juvenile justice system. Even though data assuaged fears of rising school violence in the 1980s and
1990s, strict policies persist. The article provides examples of zero tolerance punishments that are disproportionate to their violations. Furthermore, suspension and expulsion are used inconsistently across schools and cause lasting negative outcomes for punished students and their schools. Schools often disproportionately suspend and expel minorities. The article advances alternatives to exclusionary discipline, such as behavioral planning, social-emotional learning, mental health screening, data analysis regarding disparate punishment by race, and collaboration between education and juvenile justice institutions with a focus on restorative justice.

C. SPECIAL EDUCATION

A Solution Hiding in Plain Sight: Special Education and Better Outcomes for Students with Social, Emotional, and Behavioral Challenges
Yael Cannon et al., 41 Fordham Urb. L.J. 403 (2013) (62 pages)

This article argues that schools should reimagine the implementation of IDEA to better serve students with social, emotional, and behavioral disabilities. The current modes of implementation often fail to adequately support these students—especially students of color living in poverty with disabilities—and poor implementation leads to negative outcomes in the long-term, including higher dropout rates and involvement in the juvenile and criminal justice systems. The article goes through the key provisions of IDEA: Child Find and Evaluations, the IEP Process, Related Services, and Behavior-Related Provisions. In each of those areas, the article explains the legal standards and practices specified by IDEA, demonstrate inadequate implementation of those provisions in practice and the negative implications of failed implementation, and makes recommendations for improving implementation of these provisions. Many of the failures in implementation lead students directly into the school-to-prison pipeline instead of appropriately serving and supporting students with social, emotional, and behavioral needs.

D. STATE ISSUES

Connecticut’s Comprehensive Approach to Reducing In-School Arrests: Changes in Statewide Policy, Systems Coordination and School Practices
Jeana R. Bracey et al., 51 Fam. Ct. Rev. 427 (2013) (9 pages)

This article catalogues policies in Connecticut that have successfully reduced in-school arrests. Gone is the practice of relying on courts to resolve matters of school discipline. In its place, Connecticut has ushered in a coordinated school and justice system that seeks to resolve behavioral issues within the school and family before involving the court. The juvenile courts revised their intake policy to require juvenile probation supervisors to determine whether or not the court should take action in a list of common, relatively minor school discipline situations. Additionally, juvenile probation created diversionary programs meant to resolve at-risk behaviors outside of court. The Connecticut Juvenile Justice Alliance created memoranda of agreement for three pilot communities emphasizing graduated
responses to varying levels of misbehavior, discouraging police intervention for all but the most severe. Connecticut has created the School Based Diversion Initiative, which works directly with school administrators and school resource officers to better resolve mental health and behavioral issues that might otherwise result in arrest. The Initiative has also been successful in stemming in-school arrests, suspensions, and referrals of youth to court.

**Booking Students: An Analysis of School Arrests and Court Outcomes**


This article provides data on Delaware children arrested for minor misbehavior, reveals the disproportionate amount of black students arrested, and discusses how most in-school arrests can be handled by in-school diversionary treatment. The article advocates for school officials to reserve suspension, expulsions, and arrests for only the most serious infractions, and for schools to implement programs, such as Positive Behavioral Interventions and Supports, to create more positive environments.

**The School-to-Prison Pipeline Tragedy on Montana’s American Indian Reservations**


This article examines school-to-prison pipelines in Montana’s Fort Peck and Rocky Boy Indian reservations through the lens of critical race theory. The article reveals how Montana Native Americans’ history and treatment by federal and state governments have stymied educational systems and youth development. Disparate Native American and white achievement, disproportionate discipline, a school-to-prison pipeline for Native Americans, and a high suicide rate among Native American youth characterize Fort Peck and Rocky Boy’s systems. The article provides data and personal accounts to demonstrate these problems. The article introduces charter schools as a possible solution. Charter schools can allow Native Americans more autonomy, though critics of charter schools assert they will reinforce Native American segregation. The article also proposes that lawyers can advocate for a favorable construction of Montana’s constitution, or can challenge the system’s inequities under the U.S. Constitution’s Due Process Clause, in order to mandate equal school opportunities and more culturally-aware instruction for Native Americans.

**Supporting the Needs of Students Involved with the Child Welfare and Juvenile Justice System in the School District of Philadelphia**

Sophia Hwang et al., Children’s Hospital of Pennsylvania PolicyLab (June 2014) (23 pages)

This report discusses the involvement of Philadelphia schoolchildren with the child welfare and juvenile justice systems. Children involved in both systems have greater education needs than their peers without system-involvement, as well as lower attainment and higher drop-out rates. The report provides a baseline to aid in better integrating between systems and enabling the identification of students and schools that might be exceeding expectations, to replicate best practices.
The State of Texas Youth: Legislative Changes in Juvenile Justice and the Houston Juvenile Case Manager Program Model
Catherine Klier, Note, 51 Hous. L. Rev. 20 (2014) (6 pages)

This note argues that program models similar to the Houston Juvenile Case Manager Program, which provides comprehensive truancy prevention, intervention, and case management services to middle and high school students and their families at 21 school campuses in Houston, should be implemented in cities across the state. In Texas, failure to attend school is a criminal offense. According to a study cited in the note, youth delinquency and truancy are correlated, and truancy is one predictor of future involvement in the criminal justice system. Therefore, it is imperative that truancy cases are targeted and the problem is stopped at its source outside of the justice system. From 2009 to 2013, the Program received over 4,750 referrals and eliminated nearly $930,000 in court fines and fees for juveniles and their parents.
JUVENILE CRIME

A. GENERALLY

Juvenile Arrests 2011
Charles Puzzanchera, OJJDP (Dec. 2013) (12 pages)

This bulletin uses FBI data to characterize the extent and nature of reported juvenile crime. Arrests in 2011 were down 11% from 2010 and down 31% since 2002. Arrest rates for every single offense category except arson and “suspicion” were down from 2010 to 2011. Juvenile arrests for violent crime have declined for five straight years and in 2011 were at their lowest level in three decades. The report also discusses and provides insightful data on the intersection of race, gender, and arrest rates.

Did Changes in Juvenile Sanctions Reduce Juvenile Crime Rates? A Natural Experiment

This article examines how harsher state laws regarding juveniles could have affected juvenile crime rates from 1993 to 2010. It explains the super predator scare and how it caused increased transfers to adult court and harsher juvenile court jurisdiction waiver statutes. The article compares the homicide data for juveniles over this time period against the data for 18- to 24-year-olds over the same period, using the older group as a control to show that harsher juvenile jurisdiction waiver statutes had no effect on juvenile homicide rates. It summarizes the literature claiming these harsher laws were effective and then explains its “natural experiment” that refutes these claims. It closes by emphasizing that juveniles suffer more severely than adults in adult facilities and that their placement in these facilities does not serve their rehabilitation.

B. PUBLIC OPINION

The Widening Maturity Gap: Trying and Punishing Juveniles as Adults in an Era of Extended Adolescence
David Pimentel, 46 Tex. Tech L. Rev. 71 (2013) (31 pages)

This article compares a purported trend of delayed adulthood for affluent Americans with the rise in charging juveniles as adults. It asserts that both trends originate in parents’ beliefs that the world has become a more dangerous place, and that therefore, “dangerous” children must be severely punished and their own children protected. The article presents statistics showing the rise in juveniles being charged as adults and relies on anecdotal evidence to support claims of delayed adulthood. It describes changing procedure in juvenile court that tends to facilitate waiver of jurisdiction. The article contrasts its theory about the treatment of American youth with that of child soldiers in Africa.
American Youth Violence: A Cautionary Tale
Franklin E. Zimring, 42 Crime & Just. 265 (2013) (18 pages)

This article provides a statistical argument that points out the many flaws that informed the superpredator scare in the late-80s to early-90s. The article includes predictions on where the trend of youth violence will be in 2025.

C. GANGES

Highlights of the 2011 National Youth Gang Survey
Arlen Egley, Jr. & James C. Howell, OJJDP (Sept. 2013) (4 pages)

This article begins by discussing a survey administered by the National Gang Center gathering data about law enforcement and the scope of the nation’s youth gang problems. The report provides statistics of gang activity and migration over the past 15 years and discusses the prevalence of gang activity, types of gang related offenses, gang member migration, and external gang influences.

Just Grow Up Already: The Diminished Culpability of Juvenile Gang Members After Miller v. Alabama

The U.S. Supreme Court in Miller reasoned that due to developmental differences between adults and children, children are categorically less culpable than adults for similar crimes and deserve protection from excessive sentences. This note argues that laws like California’s Street Terrorism Enforcement and Prevention (STEP) Act, which imposes augmented sentences on juveniles for gang-related crimes, should be struck down, because gang environments take advantage of juveniles’ lack of development and susceptibility to social pressure. Juveniles are less culpable than adults when they commit crimes at the behest of other gang members, as they are less able to resist their peers. The note discusses Miller in depth, provides an overview of the gang problem in America, and an overview of the STEP Act before arguing that the Act violates the Eighth Amendment and serves no penological purpose.

Predictors and Consequences of Gang Membership: Comparing Gang Members, Gang Leaders, and Non-Gang-Affiliated Adjudicated Youth
Julia Dmitrieva et al., 24 J. Res. on Adolescence 220 (2014) (15 pages)

This article reports the findings of a seven-year study on how self-esteem, psychopathy (characterized by an exaggerated sense of self-worth and grandiosity), and psychosocial maturity relate to gang status among male adjudicated youth. Gang initiation is particularly prominent during adolescence, and gang youth account for 70 percent of all self-reported violent offenses committed by adolescents. According to the study, low self-esteem and low psychosocial maturity (low temperance, responsibility, and perspective) predict being a low-level gang member. By coding for status within the gang, and not merely membership, this study helps to explain the heterogeneity of youth in gangs. Higher levels of self-esteem and
grandiose-manipulative traits, which are more prevalent among older youth, predict gang leader and top-level member status.
JUVENILE SEX OFFENSES

A. GENERALLY

The Neurobiology of Decision Making in High-Risk Youth and the Law of Consent to Sex

This article examines age-based sexual consent laws in the context of advancements in pediatric brain imaging. It also contrasts brain images of juveniles at high risk of harmful or criminal conduct and normally developing children. The article first summarizes juvenile brain imaging research and explains how it indicates that juveniles in general, and specifically juveniles with substance abuse disorders, make decisions impulsively and based on sensation seeking. It then compares age of consent laws in different states and summarizes their history, noting that they historically protected girls more often than boys. It argues that because of these imaging studies, and the “juveniles are different” reasoning in Miller, Graham, and Roper, the law should increase protections for juveniles involved in sexual activity with older people. Age of consent laws should be reformed to reflect juveniles “developing capacity” to consent to sex, and should not be based on the false dichotomy of either being able to fully consent, or not being able to consent at all. The article includes a survey of age of consent laws across the United States with a focus on whether they are gender-based or gender-neutral.

Multidisciplinary Response to Youth with Sexual Behavior Problems
Amy Russell, 40 Wm. Mitchell L. Rev. 3 (2014) (25 pages)

This article argues that professionals in child welfare, mental health, and juvenile justice lack sufficient understanding of the multitude of factors that determine how and when youth engage in sexual behavior. This results in professionals’ inability to distinguish between abnormal and normal adolescent sexual behavior. Beyond punishing normal sexual behavior, the article argues that legislators’ implementation of strict laws like mandatory juvenile sex offender registration “[sweep in] adolescents whose behavior may be demonstrative of their own victimization.” The article recommends that cases involving the sexual behavior of children be investigated by a multidisciplinary team composed of law enforcement, mental and health professionals, attorneys, and youth advocates. Through a multidisciplinary assessment, members will be better able to identify, understand, and address youth sexual behavior.

Juveniles, Sex Offenses, and the Scope of Substantive Law

This article argues that in cases involving a juvenile in the same peer group as the victim, substantive criminal law should recognize that an age-determinative sex offense is not as serious as instances in which an adult commits the same offense. The article advocates for limiting the scope of intervention by the juvenile justice system in cases involving sexual activity between juveniles in the same peer group in the absence of evidence of coercion or
pressure. Accordingly, the article proposes that states “revise their criminal codes to ensure that juveniles are not automatically charted the same as adults under age-determinate sex offender status.” The article identifies two caveats. It recognizes that jurisdictions may want to maintain the ability to charge juveniles with age-determinative sex offenses when their behavior targets other minors who are significantly younger than their peer group, e.g., a 15-year-old targeting a 5-year-old. It also recognizes that juvenile justice intervention may not be entirely inappropriate when juveniles engage in certain behavior due to the potential negative emotional, psychological, or reputational ramifications of youth engaged in sexting. However, the article maintains that it is more appropriate for state legislatures to establish parameters of age difference and to enact legislation separate from generally applicable criminal statutes.

B. STATE ISSUES

Improving Illinois’ Response to Sexual Offenses Committed by Youth: Recommendations for Law, Policy, and Practice

This report aims to provide legislators with a better understanding of the circumstances and characteristics of youth who sexually offend, and, ultimately, data on the impact current Illinois law has on youth. The report details several findings regarding youth charged with sexual offenses in Illinois based on current law, empirical research, and practitioner data. Accordingly, the report concludes with three recommendations: 1) develop and implement best practice standards and training for those who work with offenders and victims; 2) equip courts and communities to provide appropriate services and supervision for youth; and 3) stop the counterproductive practice of requiring youth to register as sex offenders.

In re B.A.H.
845 N.W.2d 158 (Minn. 2014) (6 pages)

In this Minnesota Supreme Court case, a juvenile defendant challenged the constitutionality of a Minnesota statute criminalizing sexual penetration with another person under 16 when the two parties are in a “significant relationship,” which encompasses first cousins. Here, the defendant was 14 and his cousin was 13. Only the defendant was prosecuted for violation of the statute. The court found the statute was not unconstitutionally vague because the conduct itself was well-defined and law enforcement was not left to its own discretion in deciding who had committed the criminal conduct. In so doing, the court overturned the decision of the appeals court which had held that the statute was unconstitutionally vague as it encouraged “arbitrary and discriminatory” prosecutions. The Minnesota Supreme Court found the prosecutorial discretion here did not amount to an equal violation protection because the older boy supplied alcohol, initiated the contact, had previously engaged in similar conduct with another cousin, and threatened to kill his younger cousin if he told anyone; whereas the younger cousin resisted, refused to do certain things, and told him to stop.
C. SEX OFFENDER REGISTRATION

Juvenile Pariahs
Amy E. Halbrook, 65 Hastings L.J. 1 (2013) (52 pages)

This article argues that mandatory lifetime sex offender registration, community notification, and other sex offender restrictions as applied to juveniles constitute cruel and unusual punishment under the Eighth Amendment. Applying the reasoning from Miller, the article argues that mandatory lifetime sex offender registration is punitive and permanent. The U.S. Supreme Court has not specifically addressed the constitutionality of juvenile sex offender registration, and the article claims that the rationale behind the Court’s stance on adult registration should not be applied because an adult’s public registry information is already a matter of public record, but juvenile court files are traditionally confidential. According to the research cited in the article, most juveniles who commit sex offenses will outgrow their behavior and will not reoffend. Assuming the Court finds mandatory lifetime sex offender registration and community notification to constitute punishment when applied to juveniles, the Court must still rule on whether that punishment is cruel and unusual. The article concludes by urging juvenile justice advocates to build a national consensus that mandatory lifetime sex offender registration for juveniles violates the Eighth Amendment. Through policy development, litigation strategy, and social science research, advocates can work toward ultimately abolishing the practice.

Against Juvenile Sex Offender Registration
Catherine L. Carpenter, 82 U. Cin. L. Rev. 747 (2014) (38 pages)

This article argues that child sex offender registration violates the Eighth Amendment’s prohibition on cruel and unusual punishment. Policies of rehabilitation and privacy cannot coexist with the requirements of registration and notification to the community. The article further argues that because child sex offender registration is a criminal penalty masked as a civil regulation, it is subject to an Eighth Amendment analysis. Relying on recent U.S. Supreme Court cases, it asserts that mandatory life registration for child offenders constitutes cruel and unusual punishment because it violates fundamental principles of different sentencing practices for child and adult offenders.

Sealing the Record: An Analysis of Jurisdictional Variations of Juvenile Sex Offender Record Sealing Laws
Nori Wieder, 24 Health Matrix 377 (2014) (24 pages)

This article compares various jurisdictions’ policies on sealing juvenile sex offenders’ records and argues that all jurisdictions should balance public safety concerns regarding sex offenders with the rehabilitative values underlying the juvenile justice system. Its analysis focuses on four models of juvenile sex offender record sealing laws: 1) the Automatically Sealed Model; 2) the No Sex Offenses Sealed Model, where no juvenile adjudicated delinquent for a sex offense is permitted to have his or her record sealed; 3) the Discretionary Model, whereby no statute exists specifying whether sex offenses are sealable, but that if a
record is to be sealed, the court must examine each request on a case-by-case basis; and 4) the Some Sex Offenses Sealable Model, where only specific sex offenses are sealable. The article focuses its discussion on Ohio’s statute. Falling under the “Some Sex Offenses Sealable Model,” Ohio’s law allows for some sex offenders’ records to be sealed if the court finds the offenders have been rehabilitated. The article recommends that states adopt Ohio’s approach.

**The Young Sex Offender Debacle: The Continued Need for Changes to Juvenile Sex Offender Registry Requirements**


(25 pages)

This note discusses two Georgia cases involving youth charged under Georgia’s statutory rape law. The note argues that Georgia’s current law is overinclusive because it fails to draw a distinction between a “sexual predator molesting a child and two teenagers engaging in consensual sexual activity.” The note finds current statutory rape laws to be “imperfect” for several reasons. First, the policy rationale for sex offender registration has little effect on recidivism rates. Second, the laws enforce harsh punishment against youth for normative behavior. Third, they result in a higher number of plea bargains because of the harsh penalties. The note concludes with several recommendations, most notably of which is to replace mandatory registration with a case-by-case analysis. The increase in judicial costs that individualized assessments would require is worth the money saved over the long-term that would have been spent on policing onetime offenders who are unlikely to offend again.

**N.L. v. State**

989 N.E.2d 773 (Ind. 2013) (9 pages)

In this case, the Indiana Supreme Court examined sex offender registration procedures for juveniles, and ruled that although juveniles can be compelled to register as sex offenders, their registration must not be compelled automatically upon conviction, as is the case with adults. The court dictated specific standards trial courts must now meet in order to subject a juvenile to sex offender registration. These standards provide enhanced protection to juveniles who have committed sexual offenses to shield them from unnecessary stigma that can hamper development and rehabilitation. In order to be eligible for registration, the juvenile must be over 14, on probation or parole, discharged from a secure private facility, or discharged from juvenile detention. Additionally, if a child’s obligation to register has not been determined in a hearing subject to the rules of evidence, or if he or she has not been found on the record by clear and convincing evidence to be likely to re-offend, the appellate court must reverse the order. It may then remand the case to the trial court for an evidentiary hearing.
In re J.B.

In this case, petitioners challenged the constitutionality of Pennsylvania’s Sexual Offender Registration and Notification Act (SORNA) as it applies to juveniles, both retroactively and prospectively. Petitioners were all adjudicated prior to the implementation of SORNA, and, therefore, were not required at the time of adjudication to register as sex offenders in Pennsylvania. However, petitioners were required to register because they were under juvenile court supervision when SORNA was implemented. The court held Pennsylvania’s SORNA unconstitutional because its requirements for “retroactive registration, periodic in-person appearances, verification, and penalties for non-compliance impose a substantial burden on juvenile sex offenders.” The opinion detailed the history and purpose of Pennsylvania’s juvenile court, and the negative ramifications SORNA would have on juveniles.

In re B.B.
No. 248 JV 2012 (C.P. Monroe County, Pa. 2014) (39 pages)

In this case, petitioners challenged the registration requirements of the most current version of Megan’s Law. Petitioners raised five claims: 1) that Megan’s Law is an ex post facto law; 2) that Megan’s Law created an irrebuttable presumption in violation of the Pennsylvania Constitution’s guarantee of due process; 3) that lifetime registration constituted cruel and unusual punishment; 4) that the status as “sex offender” infringed on petitioners’ right to reputation; and 5) that Megan’s Law conflicts with certain provisions of the Juvenile Act. The court rejected the fifth claim, finding Megan’s Law did not conflict with the purpose and overall policy behind the Juvenile Act. However, the court held the registration provisions of Megan’s Law unconstitutional under petitioner’s second and fourth claim. The court did not address petitioners’ first and third claims. The court drew upon recent U.S. Supreme Court jurisprudence to find that the label of “sex offender” creates harm to a youth’s reputation because it connotes a degree of dangerousness not typically present among youthful offenders. The court also considered the rate of recidivism among youth who commit sexual offenses to determine that the statute was not narrowly tailored to the compelling state interest of community safety.

D. SEXTING

The Need for Sexting Law Reform: Appropriate Punishments for Teenage Behaviors

This article argues that existing sexting laws impose punishment on youth that is disproportionate to the actions committed, e.g., charging sexters under child pornography laws. While sexting laws are aimed at curbing bullying and protecting youth involved, the article argues that these laws overly criminalize young people. The article compares several states’ use of existing law to punish sexters, utilizes research on adolescent development in regards to mental health and sexuality, and provides examples of the negative ramifications
disproportionate punishment has had on youth. The article concludes that educational programs would be the most effective way to curb youth bullying incidents via sexting.

E. SEX TRAFFICKING

Confronting Commercial Sexual Exploitation and Sex Trafficking of Minors in the United States
Institute of Med. & National Research Council of the National Academies (2013) (479 pages)

This report focuses primarily on trafficking for purposes of prostitution, exploitation of minors through prostitution, and survival sex. Victims of commercial sexual exploitation are typically youth who live on the margins of society, including youth in foster care or juvenile detention. Youth that are victims of commercial sexual exploitation are often treated as criminals by law enforcement. This results in the further victimization of youth, the victim’s growing distrust in law enforcement, and ultimately perpetuates law enforcements’ inability to identify and properly respond to victims. The report concludes with several recommendations, including raising general awareness and understanding of commercial exploitation, strengthening the law’s response to victims, and fostering coordinated action between advocates and agencies to develop effective, multisector efforts to eradicate commercial sexual exploitation and sex trafficking of minors in the United States.

Uniform Act on Prevention of and Remedies for Human Trafficking
National Conference of Commissioners on Uniform State Laws (2013) (17 pages)

The Uniform Act on Prevention of Remedies for Human Trafficking (Act) is intended to provide a uniform code for states to follow in order to prevent and remedy human trafficking. The Act is composed of five articles: 1) General Provisions; 2) Penalties; 3) Victim Protections; 4) State Coordination; and 5) Miscellaneous Provisions. The Act provides for blanket immunity from prosecution for trafficking related crimes to any minor who is a victim of human trafficking.

Violating Due Process: The Case for Changing Texas State Trafficking Laws for Minors

This note argues that Texas human trafficking laws are ineffective due to inconsistencies between Texas policy and practice. Under current Texas law, minor victims are stripped of their due process rights. Furthermore, Texas continues to identify minor prostitutes initially as criminals rather than victims resulting in a legal “grey area” requiring the state to criminalize and protect the victim simultaneously. The note advocates for Texas to establish a clearer policy regarding minor victims of sex trafficking and to amend its laws to mimic existing federal law or to reflect international authority.
Precedent or Problem?: Alameda County’s Diversion Policy for Youth Charged with Prostitution and the Case for a Policy of Immunity
Janet C. Sully, Note, 55 Wm. & Mary L. Rev. 687 (2013) (23 pages)

This note advocates for Alameda County, California to replace its diversion program with an immunity policy for commercially sexually exploited children (CSEC). Alameda County’s diversion program was developed as a “pilot program” to combat CSEC exploitation because California has one of the largest populations of CSEC youth. Many other state legislatures may look to Alameda County’s diversion program when implementing similar policy. Alameda County’s diversion program allows minors arrested for prostitution charges to “receive [mandatory] rehabilitative services and counseling, rather than accepting a conviction for prostitution.” Under an immunity policy, however, CSEC survivors would not face criminal charges, and would be able to seek voluntary rehabilitative services. The note outlines several legal arguments in favor of a policy for immunity. The policy would resolve the tension between California’s statutory rape laws, prostitution laws, and the Federal Trafficking Victims Protection Act. Additionally, a policy of immunity would treat CSEC survivors as victims, and would be most effective at addressing CSEC exploitation.

Victims or Criminals? The Intricacies of Dealing with Juvenile Victims of Sex Trafficking and Why the Distinction Matters

This article argues that the decriminalization of juvenile prostitution in Arizona and the use of judicial discretion when delinquent charges are absolutely necessary will enable Arizona to address domestic minor sex trafficking (DMST) victims as victims rather than offenders. This article examines the New York Safe Harbor Act and the Illinois Safe Children Act and proposes the Arizona legislature look to both as model statutes when drafting its own because both decriminalize DMST victims. The article advocates for mandatory special training and education for all professionals who work with victims. The article calls for the creation of a Juvenile Trafficking Court like the one currently used in Houston, Texas, which would allow judges and prosecutors to better understand the victims they purport to serve.
STATUS OFFENSES

A. GENERALLY

National Standards for the Care of Youth Charged with Status Offenses
Coalition for Juvenile Justice (2013) (119 pages)

The National Standards for the Care of Youth Charged with Status Offenses, developed over two years by experts, including judges, attorneys, corrections officials, practitioners, and community-based service providers, offer policy and practice recommendations for limiting or avoiding court involvement for youth who commit status offenses and call for an end to all secure detention for these youth. The Standards promote system reform and the adoption of research-supported policies, programs, and practices that address the needs of youth, their families, and their communities without unwarranted juvenile justice system involvement. They emphasize awareness and knowledge of LGBT issues and youth development, among others. The Standards have already been endorsed by the National Parent Teacher Association, The Trevor Project, Youth Law Center, and several Juvenile Justice State Advisory Groups.

“Ungovernable” and Runaway Youth: Guidance for Youth-Serving, Legal, and Judicial Professionals
Coalition for Juvenile Justice (CJJ) (2014) (2 pages)

The piece provides a list of several considerations addressed in CJJ’s National Standards for the Care of Youth Charged with Status Offenses for professionals and law enforcement to follow when working with “ungovernable” and runaway youth. For example, the National Standards calls on “first responders to runaway, ungovernable youth, or other ‘status offense’ cases [to] aim to resolve all such cases through the provision of voluntary diversion services and by determining the reason behind system contact.”

Disproportionate Minority Contact and Status Offenses
Coalition for Juvenile Justice (CJJ) (2014) (5 pages)

This issue brief provides an overview of the problem of the overrepresentation of minority youth within the juvenile justice system due to status offenses. The brief provides data and analyzes how these youth enter the juvenile justice system. It provides recommendations for juvenile justice reform, highlighting CJJ’s National Standards, to further the cause of ending DMC in the juvenile justice system.

LGBTQ Youth and Status Offenses: Improving System Responses and Reducing Disproportionality
Coalition for Juvenile Justice (CJJ) et al. (Apr. 2014) (2 pages)

This piece discusses CJJ’s National Standards and their applicability to LGBTQ youth. The National Standards call for all LGBTQ youth to “receive fair treatment,
equal access to services, and respect and sensitivity from all professionals and other youth in court, agency, service, school, and placement.”

**Making the Case for Status Offense Systems Change: A Toolkit**  
Coalition for Juvenile Justice (CJJ) (2014) (24 pages)

This toolkit provides judges and other court professionals with talking points, facts, statistics, and other information they can use to advocate for changes in the justice system’s treatment of status offenders. The materials support deincarceration, diversion programs, and enhanced use of community based programs. The toolkit includes a handout debunking myths about status offenders, a PowerPoint presentation about improving the treatment of status offenders, a brief on the CJJ’s *National Standards*, and additional resources.

**From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses**  
Annie Salsich & Jennifer Trone, Vera Institute of Justice (2013) (11 pages)

This issue brief provides an overview on status offenses and related statistics including status offense cases handled in court over the past two decades and the most common status offenses that occur. It discusses why courts are not the proper place to handle kids with status offenses, identifies the five hallmarks of an effective community-based program for working with status offenders, and highlights community programs across the country that have been effective in working with them.

**No Child Left Behind? Representing Youth and Families in Truancy Matters**  

This article outlines problems caused by tough truancy laws in many states and offers solutions. It explains how truancy is often caused by larger systemic problems including lack of special education, lack of mental health screening, overly strict school discipline, bullying, lack of access to health care, and lack of basic living necessities. The proposed solutions include increasing the availability of special education and alternative education as well as encouraging student transfers from low performing schools to other schools under No Child Left Behind.

**B. STATE-BASED**

**Overview of State Law and Recent Legislation Concerning Truancy Proceedings**  
Hillary Smith, Colorado Legislative Council Staff (2013) (19 pages)

This memorandum produced for the Colorado Juvenile Indigent Defense Attorney Interim Committee provides an overview of state law and recent legislation concerning court proceedings filed against truant children. It includes data on the truancy filings from 2007-08 and 2011-12. The memo also provides information concerning the percentage of truancy cases in which children were represented by an attorney and the number of times a child involved in a truancy case was detained.
We Are Young: Status Offenders & the Criminalization of Youth in Kentucky
N. Jeffrey Blankenship & Erica Blankenship, 41 N. Ky. L. Rev. 273 (2014) (19 pages)

This article discusses Kentucky’s high rate of incarceration of status offenders. It opens with a brief history of juvenile justice in the state. It provides an overview of Gault and the JJDPA, discussing how status offenders can be incarcerated for violating valid court orders, something Kentucky judges take advantage of. The article argues that incarcerating status offenders does not fix the root problems facing them, providing several case studies to illustrate this point. The article also offers an extensive overview of the recent recommendations of Kentucky’s Juvenile Justice Task Force, but notes that their recommendations do not go far enough to end the incarceration of status offenders. Overall, the article argues that status offenders should be dealt with in a non-adversarial process to end their incarceration and discover and solve their underlying issues.

Louisiana Center for Children’s Rights: Issues in FINS Contempt Litigation
Louisiana Center for Children’s Rights (2013) (7 pages)

This checklist is intended for use by Louisiana Public Defenders to aid them with Families in Need of Services contempt litigation. The document includes five checklists. One ensures that there was a constitutional adjudication and a valid court order in place. Others focus on whether the process was fair, whether proof of contempt was sufficient, and whether the sanction was permissible. A final checklist is dedicated to direct and constructive contempt. Each checklist includes criteria and legal authority.

Keeping Kids Out of Court: Rapides Parish’s Response to Status Offenses

This article details how Rapides Parish, Louisiana shifted its approach to status offenders and how the reform has dramatically lowered youth contact with the juvenile justice system. Jurisdictions are increasingly searching for safe and cost-efficient methods to divert youth away from formal involvement with the juvenile justice system. Status offenders are a high priority for diversion programs because these youth are not demonstrating criminal behavior, and status offenses are often symptomatic of underlying personal or family needs and challenges. Because community-based services are better equipped to assist children who are status offenders than the court, diverting status offenders from entering court can lead to more sustainable healthy outcomes for youth and families. The reformed approach of Rapides includes court diversion, heightened referral requirements, crisis-intervention services, assessments of children and families to match them to service providers, the provision of services that are accessible and effective, and internal system assessment.

Juvenile Injustice: Truants Face Courts, Jailing Without Legal Counsel to Aid Them
Center for Public Integrity (2014) (8 pages)

This article highlights a judge in Tennessee who has refused to permit local lawyers to set up a system to ensure that the kids have counsel, and the lawyers that are pushing back. It
discusses the extreme consequences kids in truancy proceedings face and how juvenile
defenders have been able to help them.

In re Shelby R.
995 N.E.2d 990 (Ill. 2013) (8 pages)

In this case, the Illinois Supreme Court affirmed the appeals court’s opinion finding that a
minor cannot be committed to a facility for the unlawful consumption of alcohol. The court
interprets various statutes providing for possible punishments for juveniles. The court
discusses the state’s desired statutory interpretation of the word “accused,” and rejects the
interpretation favored by prosecutors as contrary to the statute’s language and intent.
A. GENERALLY

OJJDP 2012 Annual Report
(2013) (60 pages)

This report provides an overview of OJJDP grantmaking, issues, and collaborations in Fiscal Year 2012. The report highlights the Supportive School Discipline Initiative, work with girls and the juvenile justice system, and Tribal Youth Initiatives, among many others. It provides an overview on the myriad ways OJJDP is working to ensure youth justice. It also lists all the publications released by OJJDP in 2012.

Annotated Bibliography: Juvenile Justice
National Institute of Corrections, U.S. Department of Justice (2014) (71 pages)

This document offers a list of juvenile justice-related resources and summarizes each one. The topics covered are: juvenile courts; assessments and assessment tools; juvenile justice programs; juvenile facilities; juvenile training; juvenile justice-related websites; and juvenile sex offenders.

The State of Juvenile Justice 2013

This article provides a broad overview of a wide range of juvenile justice issues, including school violence and policing, JLWOP, and juvenile defense. The article notes the dramatic increase in police officers in public schools over the past decade. As an alternative to increased law enforcement in schools, the article recommends abolishing “zero tolerance” and developing disciplinary procedures that do not rely on arrest as a first response. Unfortunately, severe budget cuts continue to burden federal programs, such as the JJDPA, which promote these alternatives. The article argues that the increased presence of police officers in public schools is leading, not only to more juvenile arrests in general, but to disproportionate arrest rates among black and Hispanic children. In its discussion of the recent JLWOP cases, the article notes two important questions that remain unanswered: 1) what procedural steps will states incorporate into their sentencing guidelines to permit life sentences for juveniles, and 2) whether the U.S. Supreme Court’s decisions on juvenile issues are retroactive. These questions should alert juvenile defenders to the pending procedural changes likely to occur in their jurisdictions, and prompt defenders to anticipate how these changes will impact their roles.

Statement of Robert L. Listenbee, Administrator, OJJDP
JJDPA: Field Hearing in Rhode Island before S. Judiciary Comm. (June 9, 2014) (12 pages)

In this statement before the Subcommittee on Crime and Terrorism of the U.S. Senate Judiciary Committee, Bob Listenbee emphasized DOJ’s support for reauthorization of the JJDPA and outlined OJJDP priorities and recent activities in juvenile justice reform,
specifically the work of dedicated OJJDP task forces and initiatives keeping status offenders out of the juvenile system, adopting evidence-based practices, increasing diversion programs, and providing trauma-informed care to youth.

**Juvenile Justice Quarterly - 2013**
National Conference of State Legislatures (2013) (4 pages)

This newsletter reviews recent legislative reforms related to juvenile justice. This issue includes Nebraska reform focused on detention alternatives, California juvenile sentencing reform, a Massachusetts law raising the age of juvenile court jurisdiction, and a new reform project launched in Hawaii. It also includes other news about reform efforts in the juvenile justice community.

**Juvenile Justice Quarterly - 2014**
National Conference of State Legislatures (2014) (5 pages)

This newsletter contains a broad overview of juvenile justice legislation passed in 2013. It identifies states that are studying juvenile justice issues in 2014, and discusses relevant cases, publications, and federal spending on those issues.

**Journal of Juvenile Justice - 2013**
OJJDP (2013) (128 pages)

This journal published by OJJDP includes many articles about programs and policies affecting juvenile justice-involved youth. This issue contains articles on mental health courts, early assessment of juveniles, and recidivism, among other subjects.

**Journal of Juvenile Justice - 2014**
OJJDP (2014) (107 pages)

This issue contains scholarly articles on many topics, including the effectiveness of multisystem therapy, youth mentoring programs, the idea of hope as it relates to probation, and the prevalence of childhood trauma in juvenile justice-involved youth.

**Law Enforcement’s Leadership Role in the Advancement of Promising Practices in Juvenile Justice: Executive Officer Survey Findings**
International Association of Chiefs of Police (2013) (48 pages)

This report summarizes and analyzes a survey of 1,000 law enforcement executives nationwide, assessing the current state of law enforcement’s role in the juvenile justice system. The report details leadership practices, community collaboration, data collection, diversion practices, and agency executives’ perceptions of the juvenile justice system and their ideas for strengthening the role of law enforcement. Interestingly, while 88% of police department executives believe there should be a separate juvenile justice system, only 23% believe their local juvenile justice system improves public safety.
Criminological Highlights: Children and Youth
2 Crim. Highlights: Children & Youth 1 (2014) (9 pages)
Criminological Highlights compiles and summarizes current criminological research. This issue concerns children and youth. It cites scholarship showing that juvenile sex offender registration does not reduce sex crimes, that courts create juvenile crime by enforcing draconian probation conditions, that children can give reliable evidence under cross examination, that detention does not reduce juvenile crime rates, that ordinary people can be induced to falsely plead guilty to crimes if they are offered less severe punishment, and that racial profiling can be counterproductive.

Precedent as a Policy Map: What Miller v. Alabama Tells Us About Emerging Adults and the Direction of Contemporary Youth Services
Clark Peters, 78 Mo. L. Rev. 1183 (2013) (8 pages)
This article utilizes John Kingdon’s agenda-setting framework, an analytical approach to understanding how ideas become policy, to examine Miller. Kingdon’s framework is composed of three “streams”: 1) the Problem Stream, which describes how problems arise and how stakeholders articulate problems; 2) the Political Stream, which discusses changing governmental and electoral circumstances; and 3) the Policy Stream, or the development of policy proposals addressing the problem. When all three “streams” meet, Kingdon states that a “policy window” appears allowing for policy reform. Viewing Miller under Kingdon’s approach reveals an open policy window allowing reform efforts to accommodate “emerging adults,” or a post-adolescent period of identity exploration, instability, and self-focus. By doing so, however, Miller may have closed the policy window for reform efforts focused on rehabilitation of adult offenders as well as policies that focus on how socio-economic issues contribute to criminal activity.

Juries for Juveniles
This note proposes a legislatively created jury trial “right of last resort” for all juvenile transfer cases. The jury would not be responsible for sentencing decisions, but it would have the final word as to which sentencing “regime”—adult or juvenile—is most appropriate. Juveniles who have already been transferred to adult court would be able to challenge this transfer decision one final time. While this right would impose an additional burden on prosecutors, the note claims this burden would effectively constrain prosecutorial power. The note also anticipates that such a right would influence judges in both positive (e.g., keeping cases in juvenile court to save time and money) and negative (e.g., “can-kicking” to avoid politically difficult decisions) ways. The note argues that an appropriate balance must be struck between idealism and realism before any meaningful juvenile justice reform can take place.
Stakeholders’ Views on the Movement to Reduce Youth Incarceration
Antoinette Davis et al., National Council on Crime & Delinquency (NCCD) (Apr. 2014) (13 pages)

This piece explains the data trends that have shifted between 2002 and 2012, including the increasing percentage of boys and youth of color sentenced in the juvenile justice system. This data helps to indicate where reform efforts should be focused. In the conversations with stakeholders during the NCCD study, stakeholders recognized legislative changes and funding allocations as factors that helped decrease the rate of confinement of youth in the United States between 2001 and 2011 by 41%. Recommendations for continued reform to better serve system-involved youth include: legislation re-appropriating funds from closed facilities to community-based organizations; increased funding to neighborhoods where more system-involved youth live; use of performance measures that are appropriate for community-based organizations; reducing out-of-home placements; reducing length of stay in the system; reducing probation revocations that lead to incarceration; engaging families and communities in a restorative manner; and including affected communities on advisory boards and commissions.

Study Methods for the NCCD Deincarceration Project
Antoinette Davis et al., National Council on Crime & Delinquency (NCCD) (Mar. 2014) (2 pages)

This two page brief explains how NCCD conducted its national study on deincarceration using a literature review, interviews with key stakeholders, listening sessions in five states, a national convention of juvenile justice leaders, and the collection and analysis of data from five counties.

Closing Massachusetts’ Training Schools: Reflections Forty Years Later
Richard A. Mendel, Annie E. Casey Foundation (June 2013) (44 pages)

Aiming to provide insight and inspiration for juvenile deincarceration advocates, this publication begins by describing the Massachusetts juvenile deincarceration movement during the early 1970s and Jerry Miller’s reform efforts to change the political question from “What do we do with these bad kids?” to “What do we do with these bad institutions?” The publication discusses the impact of the Massachusetts reform movement on subsequent developments in the juvenile justice field and its relevance for today’s juvenile justice policy debate. The publication focuses attention on two underlying and interrelated themes for the juvenile deincarceration movement: 1) values and the “my child test,” in which reformers ask themselves whether the system provides the kind of care and supervision any parent would want if their own child became involved in the delinquency court system; and 2) the new knowledge that has emerged about effective practices in juvenile justice based on data, expertise, and planning.
B. ACHIEVING REFORM

Addressing Structural Racism in Juvenile Justice through Experimentalism
David Kusnetz, 47 Colum. J.L. & Soc. Probs. 246 (2014) (40 pages)

This article analyzes how experimentalist programs can address disproportionate minority contact (DMC) in juvenile justice. Experimentalism is a way of structuring laws and programs to provide goals for individual jurisdictions without dictating means of reaching those goals while simultaneously collecting data; thus, each jurisdiction is its own experiment. Command and control methods dictate jurisdictions’ policies but do not hold them accountable for results. The article claims that experimentalist programs are superior to command and control programs because in command and control programs, jurisdictions may only make superficial and ineffective changes to their policies. Under an experimentalist structure they must find ways to address the root problems. JDAI is an experimentalist program because it puts forth “core elements” for participating jurisdictions but does not dictate exactly how jurisdictions should reduce detention. JDAI has been successful in using data culled from jurisdictions to ameliorate causes of DMC in juvenile justice systems. The article admits that experimentalism is more effective in pinpointing the source of problems than in fixing them, but it remains a useful tool in fighting DMC.

Getting Queer Priorities Straight: How Direct Legal Services Can Democratize Issue Prioritization in the LGBT Rights Movement

This article addresses the conflict between members of the LGBT community and major LGBT-rights organizations over how these organizations prioritize issues. It discusses three models of issue prioritization utilized by impact litigation organizations: 1) the Expertise Model, where impact litigators guide issue prioritization; 2) the Individualist Model, where individual clients guide issue prioritization; and 3) the Democratic Model, where marginalized groups collectively guide issue prioritization. The article recommends impact litigators strengthen their connection to the LGBT community by working with LGBT-focused direct legal services organizations. By connecting impact litigators with direct legal services, the article argues a democratized model of prioritization will emerge and will ultimately strengthen the contemporary LGBT movement. Even though the article does not focus on juvenile defense or juvenile justice, it may help advocates to better strategize and utilize their supporters and resources.

Levels of Government, Branches of Government, and the Reform of Juvenile Justice

This article argues that successful juvenile justice reform must begin at the state and local levels of government and that reform efforts must shift from the judicial branch to the legislative and executive branches. Both state and local legislative standards for addressing youth delinquency stems from the high discretion afforded local institutions and actors,
including judges, prosecutors, and probation staff, while a majority of policy and agency
decisions, such as conditions and duration of confinement, stem from the executive branch.

C. STATE-BASED

Summary of Major Legislative Changes Enacted and Pending 2013 – Juvenile Justice:
Counsel, Sentencing and Court Procedure, Interrogations, and Cost Sharing
Colorado Legislative Council Staff (2013) (2 pages)

This short chart categorizes and outlines statutes that reformed sentencing, court procedure, juvenile interrogation, juvenile appointment of counsel, and other relevant provisions in various states over the past two years. The chart was put together to aid Colorado legislators in crafting their new law reforming the State's juvenile justice code.

Florida Juvenile Rules Amendments (Since 2006 National Juvenile Defender Center Assessment)
Rob Mason (July 2014) (2 pages)

This document summarizes the amendments that have been made to the Florida Rules of Juvenile Procedure since NJDC’s 2006 Florida: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings. Changes cover timely access to counsel, shackling, and the right to counsel at disposition, among many others.

Illinois Supreme Court Allows Interlocutory Appeals of Suppression Orders in Juvenile Cases

This brief alerts Illinois attorneys to the Illinois Supreme Court’s decision to allow interlocutory appeals of suppression orders in juvenile cases under Rule 660(a). The brief applauds the change for its ability to free children who have been placed in jail awaiting appeal. The brief also wonders whether the change makes juvenile court too similar to adult court.

Innovation Brief: Professional Development for Key Decision Makers in Juvenile Court:
Strengthening the Juvenile-Specific Knowledge and Capabilities of Prosecutors, Defenders, and Judges
Barry Mahoney & Stephen Phillippi, Models for Change (2013) (7 pages)

This brief describes the juvenile justice reform efforts recently undertaken in Louisiana. The legal community there recognized that legal practice in juvenile courts demanded specialty knowledge of juvenile issues, adolescent development, and effective treatment options, yet most prosecutors, judges, and defenders lacked this knowledge. This snapshot explains why professional development specifically for juvenile justice actors is essential to an effective system and offers concrete examples of how to implement these reforms.
Youth Behind Bars
Michelle Weemhoff & Kristen Staley, Michigan Council on Crime & Delinquency (May 2014) (36 pages)

This report argues that Michigan’s decision to treat all 17-year-olds as adults and to dramatically increase a prosecutor’s ability to charge young people as adults has had terrible consequences. It provides both national and state statistics on youth that have been charged as adults, noting that most are in the adult system for non-violent offenses. It discusses the lack of resources, programs, and protections for young people in the adult system and the harms caused by the lack of services on re-entry. It provides data on JLWOP, isolation, and the services that have failed young people leaving the adult prison system. The report concludes with several concrete policy recommendations.

Where the Judiciary Prosecutes in Front of Itself: Missouri’s Unconstitutional Juvenile Court Structure

Missouri’s juvenile justice system allows juvenile officers to bring and prosecute child welfare and delinquency cases. Juvenile officers are employees of the judicial branch, as opposed to the executive branch, which is the norm in other states. The article analyzes Missouri case law and the text and history of the Missouri Constitution and concludes that this is a violation of Missouri’s separation of powers doctrine. Furthermore, it argues that the role of the juvenile officer is anachronistic as it was created before Missouri’s Children’s Division. The Children’s Division, as an executive office, should have the power to bring child welfare cases. The article notes that this violation of separation of powers causes unique harms in the juvenile court because it robs children of a voice in court, encourages a culture of groupthink that further minimizes the adversarial nature of the proceeding, encroaches on the Children’s Division’s role, and makes it seem as though the juvenile officer and judge are colluding against the juvenile respondent. The article advocates for a complete reform of the system.

The Other “Missouri Model”: Systematic Juvenile Injustice in the Show-Me State
Mae C. Quinn, 78 Mo. L. Rev. 1193 (2013) (39 pages)

This article argues that despite Missouri’s reputation as a model system for juvenile justice reform, it is in desperate need of improvement. The article explains that the Division of Youth Services, which has received much acclaim, is only a small portion of the overall juvenile system. The overlap of authority over juvenile offenders between the school system and juvenile courts exacerbate poor conditions. The article considers the negative impact that the lack of specialized juvenile defender officers has on indigent and minority defendants. With the help of NJDC’s 2013 report, Missouri: Justice Rationed: An Assessment of Access to Counsel and Quality of Juvenile Defense Representation in Delinquency Proceedings, the juvenile court system is slowly seeing improvement on issues facing indigent defense and overall juvenile representation.
Bringing the Best of Both Worlds: Recommendations for Criminal Justice Reform for Older Adolescents
Lisa Schreibersdorf, 34 Cardozo L. Rev. 1143 (2014) (24 pages)

This article analyzes New York’s adult and juvenile criminal justice laws and addresses the push for removing older adolescents (16- and 17-year-old youth) from the adult court system through the Family Court Act (FCA). It argues that FCA procedures present due process, governmental intrusion, and proportionality concerns when applied to older adolescents. For example, the article argues that because society has granted certain privileges and expectations exclusively to 16- or 17-year-olds, e.g., driver’s license and right to employment, intrusion into older adolescents’ personal and family life by courts may be inappropriate. Thus, by keeping older adolescents in the adult system, unnecessary governmental intrusion is less likely to occur. The article concludes with a recommendation for the creation of a “hybrid court” housed in the adult court system specializing in 16- and 17-year-old defendants and highlights additional areas of improvement for legislators to explore 16- and 17-year-old defendants.

Issue Brief: Juvenile Justice in Rhode Island
Rhode Island KIDS COUNT (June 2014) (12 pages)

This report evaluates the state of the juvenile justice system in Rhode Island. It identifies trends of significant deincarceration and diminishing juvenile arrests. However, Rhode Island has a persistent policy of charging some juveniles as adults and continues to struggle with disparate racial and socioeconomic juvenile justice contact. The report offers alternatives to secure confinement such as probation and community-based programs. It also reveals that youth punished in the adult system are more likely to reoffend. It offers statistics from the Rhode Island Training School showing that more than half of the juveniles housed there are released in less than two weeks. It also asserts that detention centers do not have adequate programming or resources for girls. The report recommends that the government limit youth incarceration and support youth development and employment, offering tools the government can use to achieve this goal.

Blended Sentencing in Tennessee Courts

This article critiques current transfer laws and practices in Tennessee and argues for reform that would institute blended sentencing as an alternative to the transfer of juveniles to adult court. The article proposes that Tennessee adopt inclusive juvenile blended sentencing, allowing a juvenile court judge to impose a juvenile disposition with a suspended adult sentence, as well as criminal blended sentencing, allowing a criminal court judge to modify a juvenile’s sentence to include rehabilitative programs available in the juvenile system. Juvenile blended sentences would be the only available sentencing scheme for children under 16 who would be otherwise eligible for transfer, and it would be an alternative to transfer for
children 16 and older. Criminal blended sentencing would operate as a safety valve for children who are transferred to adult court but still require treatment in the juvenile system.

**Feed Me Seymour: The Never-Ending Hunger of the Criminal Process for Procedural Rights and Removing Children from Its Shop of Horrors**


This article compares the procedural rights accorded to adults with those accorded to juveniles, focusing on Texas. The article claims that the primary procedural difference between juvenile and adult criminal law is the civil nature of juvenile justice law. As opposed to adult criminal cases in Texas, the petition in a juvenile case must be served as in civil proceedings. Though there is no constitutional right or requirement for juries in juvenile cases, there is a right to a jury guaranteed by Texas statute. This right is only available in adjudication hearings, not disposition hearings in ordinary delinquency cases. *Miranda* applies to adults and children alike, but Texas law sets out specific, additional requirements for the use of a child’s statement. The article argues that juvenile procedural rights should be more extensive than and different from adult procedural rights because children’s wrongdoing should not be criminally punished.
YOUTH IN ADULT COURT

A. GENERALLY

OJJDP Fact Sheet: Delinquency Cases Waived to Criminal Court, 2010
Charles Puzzanchera & Sean Addie, U.S. Department of Justice (Feb. 2014) (4 pages)

This fact sheet, published annually, 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.

State Trends – Legislative Victories from 2011-2013: Removing Youth from the Adult Criminal Justice System
Campaign for Youth Justice (2014) (16 pages)

This report documents how almost half of states have enacted laws and policies to reduce the prosecution of youth in adult criminal courts and end the placement of youth in adult jails and prisons. In eight years, 23 states enacted 40 laws removing youth from the adult system. The report addresses four trends: states passing laws limiting states’ authority to house youth in adult jails and prisons; states expanding their juvenile court jurisdiction so that older youth who previously would be automatically tried as adults are not prosecuted in adult criminal court; states reforming their transfer laws making it harder to prosecute children as adults; and states reforming sentencing laws, including mandatory minimums and allowing for post-sentence review of JLWOP sentences.

Waiving Goodbye to Due Process: The Juvenile Waiver System
Rachel Jacobs, Note, 19 Cardozo J.L. & Gender 989 (2013) (31 pages)

Juvenile waiver or transfer to adult court is often an uneven and arbitrary process that places similarly situated juveniles into adult or juvenile court unpredictably. This note introduces the law and history of juvenile courts’ waiver of jurisdiction and critiques common waiver law and practices. It discusses how recent U.S. Supreme Court cases indicate that juveniles should be treated categorically differently from adults and should not be transferred. It then applies the due process balancing test of Mathews v. Eldridge to argue that the government cannot have an interest strong enough to overcome juveniles’ interests not to be tried in adult court. The note admits that the states will not all eliminate waiver on their own and that the U.S. Supreme Court will likely not rule it unconstitutional in the near future. Therefore it argues for more individualized and rigorous standards to be applied before allowing juvenile waiver.

Youth in the Adult Criminal Justice System
Liz Ryan, 35 Cardozo L. Rev. 1167 (2014) (18 pages)

This article provides information on the risks juveniles face when tried and placed within the adult criminal justice system. It discusses the results from recent research indicating that the
adult system negatively affects juveniles’ safety, health, and overall well-being. Still, rather than using the discretion of the court, many states allow the transfer of youth into the adult system based on age or the type of offense committed. The article concludes that although some states have made changes to decrease the amount of juveniles transferred into the adult system, it is important that every state follows suit.

**Stemming the Flow of Youth into Adult Systems**
Antoinette Davis et al., National Council on Crime & Delinquency (NCCD) (Mar. 2014) (3 pages)

This piece focuses on how juvenile justice systems can reduce incarceration by avoiding transfers to adult courts. The article demonstrates inconsistency in the rates of youth transferred to adult court depending on the jurisdiction, even between two neighboring counties. This inconsistency points to an overreliance on judicial discretion in determining whether transfer is appropriate. The article makes three recommendations to keep juveniles out of the adult system: 1) narrow transfer statutes to apply only to youth engaged in the most serious offenses; 2) develop fiscal incentives to discourage transfers of juveniles into adult court; and 3) track and review local juvenile outcomes with local stakeholders to increase education about options for juveniles.

**NIJ Bulletin: Young Offenders: What Happens and What Should Happen**
Phil Bulman, National Institute of Justice (Feb. 2014) (3 pages)

This bulletin summarizes one of a series of bulletins prepared for a study group on the effects of transition from juvenile to adult court. The study indicates that when a jurisdiction transfers a juvenile to the criminal justice system, he or she is more likely to reoffend with a more serious offense. The bulletin addresses the adjustment challenges transferred juveniles face when reentering the community post-adjudication, such as improper school relocation, peer and familial settings, and unemployment. The article also includes recommendations for policymakers, such as raising the minimum age for criminal court to 21 or 24, enforcing risk and needs assessments for young offenders, and implementing a “youth discount.”

**Juvenile Offenders Tried as Adults: What They Know and Implications for Practitioners**
Karen Miner-Romanoff, 41 N. Ky. L. Rev. 205 (2014) (15 pages)

This article summarizes a small study conducted with Ohio prisoners who had been bound-over from juvenile to adult court and convicted as adults. It first provides a brief overview of transfer/bind-over practices across the country. It reveals that bind-over practices are not an effective deterrent because juveniles do not understand the consequences, applicability, or even the existence, of bind-over. The article also summarizes research on legal socialization among adolescents—that is, their attitudes and behaviors about the law. The article recommends educating young people at risk of court involvement about potential dispositional options.
Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction
Christopher Slobogin, 46 Tex. Tech L. Rev. 103 (2013) (29 pages)

This article discusses why juvenile transfer to adult court is bad policy, and why the rationales used to explain transfer are unpersuasive. It discusses diminished culpability and individual prevention models in the juvenile justice and adult criminal justice systems. Proponents of diminished culpability argue that because juveniles are less developed and mature than adults, they should receive more lenient sentences. Although diminished culpability has been used to successfully argue against juvenile death sentences, the article argues that it will be unsuccessful at preventing transfer because adult courts can also impose lenient sentences. Individual prevention is a tactic used to deter offenders from recidivism that the article contends is inappropriate for juveniles. Unlike adults, juveniles are less susceptible to deterrence and are thus poor candidates for the adult criminal justice system. The article reviews the common justifications for transfer: general and specific deterrence, rehabilitation, incapacitation, and retribution. It argues that if any, retribution is the only valid reason for transfer. The article concludes by suggesting alternatives for a system without juvenile transfer.

The Jurisprudence of Death and Youth: Now the Twain Should Meet

This article argues that the Supreme Court’s rationale for narrowing the eligibility criteria for the death penalty for adults and eliminating juveniles from its reach can and should be applied to juvenile transfer. It provides background information on the history and development of juvenile transfer, addresses the importance of narrowing the eligibility for who is subject to juvenile transfer, and applies the lessons of death penalty jurisprudence to mandatory juvenile transfer provisions. The article notes that 34 states have “once adult/always adult” laws (any subsequent charges against a transferred youth will be filed in adult criminal court), which foster arbitrary and capricious transfer decisions.

B. CHALLENGES TO TRANSFER STATUTES

State v. Quarterman, Amicus Brief
Amicus Brief of Juvenile Law Center, National Juvenile Defender Center, and the Ohio Chapter of the American Academy of Pediatrics, in Support of Appellant, No. 013-1591 (Ohio, Mar. 10, 2014) (32 pages)

Juvenile Law Center, joined by NJDC and the Ohio Chapter of the American Academy of Pediatrics, filed an amicus brief arguing that Ohio’s mandatory bindover statutes are unconstitutional under the due process clause of the Fourteenth Amendment because they do not allow for individualized determinations regarding the appropriateness of prosecuting certain minors in adult criminal court rather than juvenile court. The underlying case was brought on behalf of Alexander Quarterman, who was 16 at the time of his offense where he allegedly used a firearm to commit a robbery. Because of his age he was subjected to
mandatory transfer to adult court pursuant to Ohio statute. If Alexander had been 15 at the
time of his offense, he would have been subject only to discretionary transfer after an
amenability hearing. *Amici* assert that because the statute deprives youth of individualized
determination of amenability, it violates general due process principles, the U.S. Supreme
Court’s holding in *Kent* that youth are entitled to strong due process protections when their
case is transferred from juvenile to adult court, and the Court’s precedents recognizing
juveniles’ unique mitigating characteristics that make adult sentences often inappropriate.

**In re D.M.**
Amicus Brief of Children’s Law Center, Inc., et al., in Support of Appellant, No. 2013-0579
(Ohio, Sept. 3, 2013) (42 pages)
NJDC, the Children’s Law Center, and the Office of the Ohio Public Defender filed a brief in
the Supreme Court of Ohio in support of a juvenile facing transfer to adult court, arguing that
a youth is entitled to full discovery, including police reports and law enforcement materials,
which may allow a youth charged with a mandatory transfer offense to challenge probable
cause and prevent transfer to adult court. This case originated in October 2012 when Ohio
filed a complaint against 16 year-old D.M. for aggravated robbery and filed a motion to
transfer D.M. to adult court. The trial court dismissed the case without prejudice holding that
“the State errantly, and in violation of a direct Court order, refused to provide discoverable
information in violation of Defendant’s rights to due process.” After a reversal by the First
District Court of Appeals, the petitioner appealed, and *amici* filed this brief, contending that
both the U.S. Supreme Court and Supreme Court of Ohio have held transfer proceedings
(“bindover”) to be critically important. As such, the brief argued that the Court of Appeals
decision violated D.M.’s right to due process and fundamental fairness, and contravenes
national standards, model rules, and guidelines. It asked the Supreme Court of Ohio to
overturn the decision and uphold the trial court’s finding. On August 28, 2014, too late for
inclusion in this *Guide*, the Supreme Court of Ohio handed down a favorable decision. The
citation as of press time was 2014-Ohio-3628.

**People v. Pacheco, Amicus Brief**
Amicus Brief of Juvenile Law Center, Loyola Civitas ChildLaw Center, et al., in Support of
Appellant, No. 116402 (Ill. Jan. 8, 2014) (64 pages)
NJDC joined Juvenile Law Center, the Loyola Civitas ChildLaw Center, and several other
organizations in this *amicus* brief at the Illinois Supreme Court challenging Illinois’
automatic transfer statute and the consequent imposition of mandatory sentences on minors.
The brief argued that the automatic exclusion from juvenile court of 15- and 16-year-olds
charged with felony murder, and the subsequent imposition of mandatory sentences on these
minors, violates due process, the Eighth Amendment, and the Illinois Constitution’s
proportionate penalties clause. The brief asserts that the Illinois statutory scheme at issue is
constitutionally infirm because it fails to take defendant’s youthfulness into account and
denies the juvenile offender a chance to demonstrate growth and maturity. The brief argues
that the U.S. Supreme Court’s reasoning about youth is not limited to a type of crime,
sentence, or constitutional protection, but rather makes clear that the distinction between adolescents and adults is constitutionally relevant in a variety of contexts.

C. STATE-BASED

**Branded for Life: Florida’s Prosecution of Children as Adults under its “Direct File” Statute**  
Human Rights Watch (Apr. 2014) (116 pages)

This report details a study conducted between 2008 and 2013 on Florida’s “direct file” statute. Under this statute, prosecutors are given complete discretion in transfer decisions; they may charge 16- and 17-year-olds accused of any felony in adult court and may charge 14- and 15-year-olds as adults for certain felonies. According to the study, 98% of the juveniles in adult court in Florida were prosecuted under the “direct file” statute, as opposed to via judicial waiver or indictment. The study provides evidence of racial disparities and variations between circuits, which, according to the report, are “disturbing evidence of the unchecked discretion of Florida’s prosecutors.” Black males account for more than half of all transfers, yet they make up less than one-third of children received by the juvenile justice system. Transfer to adult court is not limited to the most heinous crimes, according to the study, as property felonies and violent felonies each accounted for 39% of charges for which youth were sent to adult court between 2008 and 2013. The report concludes by calling on Florida’s legislators to eliminate “direct file” and instead require all transfer decisions to be made by judicial hearings.

**Automatic Adult Prosecution of Children in Cook County, Illinois, 2010-2012**  
Juvenile Justice Initiative (Apr. 2014) (21 pages)

This report details the findings of a JJI study on automatic transfer in Cook County, Illinois, between 2010 and 2012. Based on its findings, the report recommends restoring juvenile court review of all juvenile transfers. The report begins by providing a history of the transfer laws in Illinois and the U.S. generally. Illinois is one of only 14 states with no individualized judicial transfer decisions, and it has one of the nation’s broadest transfer law schemes. According to the study, more than half of juveniles automatically transferred to adult court were ultimately convicted of lesser offenses that should not have triggered automatic transfer in the first place.

**Baltimore City Juvenile Court Review: Transferred Juveniles from Adult System and Their Outcomes**  
Jason Tashea & Al Passarella, Advocates for Children & Youth (Aug. 2013) (6 pages)

This report provides background information and findings of a study on reverse youth transfer in Baltimore. In Maryland, youth are automatically excluded from juvenile proceedings and processed through the adult criminal justice system for 33 specific crimes. However, reverse transfer is allowed if the youth can show that juvenile court jurisdiction is in the best interest of both the youth and society. Advocates for Children & Youth studied a
sample of 100 reverse transfer cases between 2009 and 2011. According to the study, 71% of reverse-transferred youth—those originally processed in the adult system because they were charged with the most serious or most violent crimes—had their cases dismissed or received a community-based sanction. To combat the failures of Baltimore’s automatic transfer system, the report recommends ending the automatic transfer of youth to adult court and increasing access to community-based and trauma-informed programs.

**Falling Through the Cracks: Update**  
Children’s Law Center (Dec. 2013) (22 pages)

CLC’s updated report on bindover (transfer) follows up on its original 2012 report, and includes updated information at the national level and in Ohio, including county specific information on bindovers. The report notes that Ohio bindover numbers have dropped 43% over the past four years. The report discusses the attorneys that are appointed for bindover hearings, the types of plea deals that are offered, and the use of serious youthful offender laws in various Ohio counties. Overall, the report recommends that Ohio stakeholders engage in a collaborative, comprehensive effort to address issues facing youth in the adult criminal justice system. Of note, the report highlights the need for qualified attorneys to represent youth in bindover and adult hearings. It discusses NJDC’s *National Juvenile Defense Standards* and the Ohio Public Defender’s own standards, as well as the value of increased coordination between adult and juvenile courts in bindover cases, delineating the role defense attorneys and others can play to improve coordination.

**Capital City Correction: Reforming DC’s Use of Adult Incarceration Against Youth**  
DC Lawyers for Youth & Campaign for Youth Justice (2014) (32 pages)

This report decries the trial and incarceration of young people as adults in Washington D.C., highlighting that 541 youth under the age of 18 were detained or incarcerated in adult facilities in D.C. between 2007 and 2012. The report explains how D.C.’s youth enter the adult system, provides demographic data, and reviews the scientific literature on adolescent brain development and the effects of incarcerating youth in adult facilities. It concludes with three key reforms for D.C. to end the incarceration of young people as adults: 1) allow judges to review a youth’s case to consider whether it should be moved to juvenile court; 2) end “once-an-adult-always-an-adult;” and 3) prohibit holding youth in adult facilities while they are awaiting trial.

**Layman v. State, Amicus Brief**  

Juvenile Law Center filed an *amicus* brief in the Indiana Court of Appeals on behalf of Blake Layman and Levi Sparks. 16-year-old Layman and 17-year-old Sparks joined a third accomplice, 21-year-old Danzele Johnson in attempting to break into a house they thought was vacant. Tragically, not only was the home occupied, but the homeowner shot and killed Johnson. Appellants were convicted of murder under Indiana’s felony murder statute. The
brief pointed to established research on adolescent brain science. The brief argued that the Indiana Court of Appeals should bar the application of Indiana’s felony murder statute to juveniles in light of the prevailing and uncontroverted scientific research about adolescent offending. In the alternative, the brief argued that the court should adopt a presumption against imposing Indiana’s felony murder statute on juvenile offenders who do not kill the victim, intend to kill the victim, or actually foresee that the victim might be killed in the course of the felony, requesting the court at a minimum to adopt an “agency” approach for juvenile offenders, prohibiting the application of the felony murder doctrine where the person who causes the death is not the juvenile or an accomplice.

D. REFORM

In Search of Meaningful Systemic Justice for Adolescents in New York
Jonathan Lippman, 35 Cardozo L. Rev. 1021 (2014) (9 pages)

In this speech, the chief judge of the New York Court of Appeals discussed the bill he submitted to the New York State legislature. While the bill was not passed in the 2013 legislative session, the Office of Court Administration seeks to reintroduce the bill in the 2014 session. The judge’s proposal calls on New York legislators to raise the age of criminal responsibility for non-violent crimes from 16 to 18 and remove these young offenders from the adult criminal justice system. As the judge notes, New York is one of only two states that continue to prosecute 16-year-olds as adult criminals. The judge describes his proposal as combining the best features of the family court and criminal court systems into a single scheme. By establishing a new “Youth Division” to adjudicate cases in which 16- and 17-year-olds are charged with non-violent crimes, the bill calls for a plan that avoids over-burdening family court. Noting the plasticity of teenage brains, the judge advocates for a court system that meaningfully intervenes before the problems of troubled youth can escalate. Court sealing provisions, alternative-to-incarceration community programs, and improved judicial training are all hallmarks of the bill.
POST-MILLER

A. GENERALLY

Apprendi after Miller and Graham: How the Supreme Court’s Recent Jurisprudence Prohibits the Use of Juvenile Adjudications as Mandatory “Sentencing Enhancements”

This note argues that based on the dichotomization between adults and juveniles in Miller and Graham, juvenile adjudications cannot be considered adult “convictions” for purposes of sentencing enhancements under Apprendi. The note provides an overview of Apprendi, discusses how the majority of federal courts have held a juvenile adjudication to be a conviction for Apprendi purposes, and then sets forth why that reasoning is now incorrect.

B. PAROLE HEARINGS

Freedom’s Road: Youth, Parole, and the Promise of Miller v. Alabama and Graham v. Florida
Laura Cohen, 35 Cardozo L. Rev. 1031 (2014) (59 pages)

In Miller and Graham, the U.S. Supreme Court held that young offenders should have a meaningful and individualized opportunity to be released from incarceration. This article argues that the promise of Miller and Graham can only come to fruition if parole decisionmakers thoughtfully consider youths’ unique capacity for change. Many parole boards do not consider the mitigating factors of age and developmental maturity—constitutionally significant factors in the eyes of the Court—when determining the availability of parole. Instead, parole boards often focus on the severity of the offense, the offender’s remorse, and any disciplinary infractions while in prison. Such factors weigh heavily against individuals whose developmental immaturity contributed largely to the offense for which they were convicted. The article offers thirteen specific recommendations for reform that would bring about meaningful opportunities for release that the Supreme Court envisioned. Recommendations include creating sentencing schemes specifically for juvenile offenders, establishing a presumption of release upon completion of minimum terms, and increasing prison rehabilitative programs. Additionally, the article suggests formalizing the parole board process and expanding judicial review of parole decisions.

Review for Release: Juvenile Offenders, State Parole Practices, and the Eighth Amendment
Sarah French Russell, 89 Ind. L.J. 373 (2014) (68 pages)

This article examines the current parole board release standards and procedures in place across the United States and whether they comply with the Eighth Amendment. The article presents the results from a survey from each state’s parole board. The article also includes legislative and executive branch responses to Graham and Miller. The survey compiled state parole boards’ review methods, which include direct interaction with inmates, the role of defense counsel and prosecutor, victim input, and other information. The article then
The challenges in presenting a case for release and the various factors which significantly impact the decisions of parole revocation and psychiatric review board hearings are described. A table of the compiled research is included at the end of the article.

C. SENTENCING

There is No Meaningful Opportunity in Meaningless Data: Why It is Unconstitutional to Use Life Expectancy Tables in Post-Graham Sentences

States have sought to comply with Graham’s ambiguous rulings in different ways. Some states have increased procedural protections, while other states have interpreted “a meaningful opportunity for release” to require juveniles to be eligible for parole at some point during their expected lifetimes. Colorado courts, for example, use life expectancy tables to compare estimated life expectancies with estimated parole eligibility dates provided by the Department of Corrections. If the estimated parole eligibility date is earlier than the life expectancy, then Colorado courts have held that the sentence is constitutional. This article puts forth a number of reasons why such sentencing practices are unsound and result in unconstitutional sentences. For example, Colorado’s table fails to take into account the lower life expectancies, relative to the general population, of men and racial minorities. However, the article argues, resulting disparities in sentencing cannot have been intended by the U.S. Supreme Court in Graham.

Adolescent Criminal Responsibility, Proportionality, and Sentencing Policy: Roper, Graham, Miller/Jackson, and the Youth Discount
Barry C. Feld, 31 Law & Ineq. 263 (2013) (68 pages)

This article advocates for legislative adoption of a “Youth Discount” in sentencing schemes. The Youth Discount would reflect a sliding scale of diminished responsibility for juveniles, discounting adult sentences according to the age of the offender. Under this scheme, the youngest offenders would receive the most proportionally reduced sentences. The article’s argument relies on the U.S. Supreme Court’s reasoning in Roper, Graham, and Miller, identifying youthfulness as a mitigating factor and age as a useful proxy for the culpability of young offenders. Legislative adoption of a Youth Discount would guarantee that youthful offenders receive a meaningful opportunity for release and rehabilitation.

Kelly Scavone, Note, 82 Fordham L. Rev. 3439 (2014) (41 pages)

This note provides an overview of the U.S. Supreme Court’s JLWOP cases and state decisions interpreting whether Graham and Miller apply to lengthy term-of-years sentences. It argues that more states should eliminate parole restrictions entirely for juveniles or enact statutory schemes that ensure multiple opportunities for release, modeled after reforms in California and Montana.
D. CASES

*People v. Gutierrez*

324 P.3d 245 (Cal. 2014)) (56 pages)

These consolidated cases present the question of whether California’s statutory presumption in favor of a sentence of LWOP for 16- and 17-year-olds convicted of certain egregious crimes violated the Eighth Amendment under *Miller*. The California Supreme Court overturned the two-decade old presumption and redefined the state statute to confer “discretion on a trial court to sentence a 16- or 17-year-old juvenile convicted of special circumstance murder to life without parole or to 25 years to life, with no presumption in favor of life without parole.” The court further held that *Miller* required a trial court, in exercising its sentencing discretion, to consider the “distinctive attributes of youth” and how those attributes “diminish the penological justifications for imposing the harshest sentences on juvenile offenders.” Even though a new California law allows review and possible resentencing in JLWOP cases, the court noted this significantly later review was not enough to overcome the unconstitutionality of the presumption in favor of LWOP sentences. The court did not address retroactivity of *Miller* in these cases.

*People v. Gutierrez, Amicus Brief*

Amicus Brief of Juvenile Law Center et al. in Support of Appellant, No. S206365 (Cal. Sept. 18, 2013) (35 pages)

NJDC joined Juvenile Law Center and several other organizations in this *amicus* brief filed in the California Supreme Court in support of the position that the presumptive penalty of LWOP for 16- and 17-year-old juveniles convicted of homicide with special circumstances violates the Eighth Amendment and runs counter to *Miller*. *Amici* argued that deviation from the presumption requires exceptional circumstances far beyond those deemed satisfactory under *Miller’s* individualized sentencing requirement, and that the presumptive sentence contradicts *Miller’s* determination that sentencing juveniles to the harshest possible penalty, such as LWOP, should be “uncommon.” In this case, the sentencing judge did not analyze how the defendant’s age and development may have influenced his actions and involvement, nor did the court review other related characteristics such as potential for rehabilitation as required by *Miller*. Finally, *amici* also argued that the meaningful opportunity for release articulated in *Graham* should be afforded to all juveniles.

*Banks v. State, Amicus Brief*

Amicus Brief of Juvenile Law Center et al. in Support of Appellant, No. 12SC1022 (Colo. Sept. 3, 2013) (30 pages)

Juvenile Law Center filed this *amicus* brief joined by NJDC and others in support of the petition for rehearing on behalf of Banks, convicted of first degree murder for a crime he committed at 15. The Colorado Court of Appeals determined that, under Colorado law, any juvenile convicted of first degree murder must be sentenced to life with the possibility of
parole after 40 calendar years. The brief argued that this mandatory statutory sentencing scheme is unconstitutional under *Miller*. The brief also argued that the possibility of parole after 40 years does not alter the unconstitutionality of the punishment as it neither allows the court to impose an individualized sentence (as required by *Miller*), nor to provide a meaningful opportunity for release (as required by *Graham*). Pursuant to both *Miller* and *Graham*, life with the opportunity for parole only after 40 years is not a constitutional sentencing option for juveniles because children are fundamentally different from adults and categorically less deserving of the harshest forms of punishment. In light of these facts, the brief argued that Banks’ sentence must be vacated and his case remanded to the district court for a sentencing hearing, at which a new constitutional sentence could be imposed.

*Iowa v. Null*
836 N.W.2d 41 (Iowa, Aug. 16, 2013) (83 pages)

This case covers a juvenile’s 52.5-year mandatory minimum sentence for crimes committed when he was sixteen years old, as well as the petitioner’s ineffective assistance of counsel claim. The Iowa Supreme Court provides an extensive overview of the current research in juvenile jurisprudence on culpability, including social and neuroscience. It discusses cruel and unusual punishment and how various courts and states across the county have changed their laws or reshaped case law around the *Roper-Miller* line of cases. In the end, the court does not consider “whether the sentence in this case would be cruel and unusual under a gross proportionality or any other type of proportionality analysis.” It remanded the case to the lower court for consideration of *Miller* principles, emphasizing “that the sole issue on remand is whether [the defendant] may be required to serve 52.5 years in prison before he is eligible for parole consideration.”

*Iowa v. Pearson*
836 N.W.2d 88 (Iowa, Aug. 16, 2013) (40 pages)

In this case, the Iowa Supreme Court used *Miller* and its decision of the same day in *Null* to remand to district court a case in which a juvenile was sentenced to a minimum of 35 years imprisonment without the possibility of parole for non-homicide crimes. The court held that Iowa’s Constitution required a resentencing as the juvenile’s sentence “effectively deprived of any chance of an earlier release and the possibility of leading a more normal adult life.” The District Court had erred, the high court held, by emphasizing “the nature of the crimes to the exclusion of the mitigating features of youth, which are required to be considered under *Miller* and *Null*."

*Massachusetts v. Brown, Amicus Brief*
Amicus Brief of Juvenile Law Center et al. in Support of Appellee, No. SJC-11454 (Mass. Aug. 16, 2013) (54 pages)

This brief argued that JLWOP is unconstitutional, that the Massachusetts Constitution would prevent all JLWOP sentences, and that under *Miller* and *Graham*, no juvenile life sentence is constitutional, regardless of the opportunity for parole. The brief argued that the defendant in
this case should have been charged with the lesser-included offense of manslaughter. The brief provided an overview of relevant U.S. Supreme Court cases and adolescent development research.

**Massachusetts v. Brown**
1 N.E.3d 259 (Mass. 2013) (8 pages)

The Massachusetts Supreme Court held that the juvenile defendant could be sentenced to life with the possibility of parole. In so doing, it rejected the State’s argument that a judge should have the discretion to sentence a juvenile to life with parole at any point based on his or her discretion. It also rejected the argument of amici, above, that Brown should have been sentenced only as someone convicted of manslaughter. The court explained how its decision abided by the principles of severability—that it maintained all but the unconstitutional portion of the sentencing statute at issue. It concluded by recommending the legislature solve the issue of sentences for juveniles who commit murder. Brown will now be sentenced to life with the possibility of parole, and will be eligible for parole in fifteen years.

**Diatchenko v. District Attorney for Suffolk District**
1 N.E.3d 270 (Mass. 2013) (11 pages)

In this case, the Massachusetts Supreme Court held that Miller applied retroactively to individuals sentenced to JLWOP for homicide offenses. The case provides an overview of the *Roper-Graham-Miller* line of cases, placing heavy emphasis on the developmental science contained therein. The court also holds that “because the brain of a juvenile is not fully developed, either structurally or functionally, by the age of eighteen, a judge cannot find with confidence that a particular offender, at that point in time, is irretrievably depraved,” that LWOP can never be given to juveniles, even as a discretionary sentence. Such a sentence is unconstitutional under the State’s Constitution. The court found that the defendant was eligible for an immediate parole hearing that affords him “a meaningful opportunity for release” as he had already served 31 years of his life sentence and the parole statute at the time of his sentencing made all prisoners sentenced to life eligible for parole after 15 years.

**Missouri v. Nathan**
No. SC92979, 2013 WL 3984730 (July 30, 2013) (en banc) (15 pages)

In this Missouri Supreme Court case, the court addressed the issue of Miller’s application to a JLWOP sentence on direct appeal. The court held that the sentence of LWOP for the juvenile defendant here was unconstitutional because it did not comply with Miller’s requirement of individualized consideration of the facts and circumstances of the defendant. The court did not address whether Miller should apply retroactively. The court remanded the case for re-sentencing. The defendant could potentially receive LWOP again, but only after careful reconsideration of the individual facts.
**Nebraska v. Castaneda**
842 N.W.2d 740 (Neb. 2014) (32 pages)

In this case, the Nebraska Supreme Court held that a juvenile defendant could not be sentenced to life imprisonment under Nebraska law. Under Nebraska law, the only way an individual sentenced to life imprisonment would be eligible for release is if first the Board of Pardons commuted the sentence to a term of years. Given the rarity of this occurrence, the court held that this did not afford defendants the “meaningful opportunity to obtain release” dictated by *Miller* and *Graham*. The court compared Nebraska law to that of other states in arriving at this determination. Because the case was on direct review, the court held that *Miller* was applicable, and that as such, the new sentencing statute which mandated a sentence of forty years to life after consideration of mitigating factors was applicable for the defendant’s resentencing.

**Ohio v. Long**
8 N.E.3d 890 (Ohio, Mar. 12, 2014) (24 pages)

In this case, relying on *Miller*, the Supreme Court of Ohio ruled that in any case where a youth is given a LWOP sentence, the sentencing court record must separately and explicitly reflect exactly how the court considered the person’s youth as a mitigating factor in justifying the sentence. The holding ensures that children’s unique characteristics are given significant weight in sentencing decisions. This applies even to discretionary LWOP sentences. The court specifically did not address whether the Ohio Constitution requires all children to have the meaningful opportunity for release, regardless of the crimes they committed.

**E. REFORM**

**Eighth Amendment Differentness**
William W. Berry III, 78 Mo. L. Rev. 1053 (2013) (27 pages)

This article explores *Miller’s* potential implications for Eighth Amendment jurisprudence. Possible Eighth Amendment expansions discussed include the areas of juvenile felony murder cases and intellectually disabled juvenile offenders facing LWOP.

**Meaningless Opportunities: *Graham v. Florida* and the Reality of de Facto LWOP Sentences**
Mark T. Freeman, Note, 44 McGeorge L. Rev. 961 (2013) (28 pages)

This note argues that the sentence the juvenile offender received (84 years) in *California v. Mendez* was a *de facto* LWOP sentence—functionally equivalent to the kind of sentences condemned by the U.S. Supreme Court in *Graham*. It argues that *de facto* LWOP sentences for juveniles who commit non-homicide offenses categorically violate the Eighth Amendment. While Mendez and a handful of other juvenile offenders have successfully challenged their *de facto* LWOP sentences, the majority have failed. The note provides an overview of the U.S. Supreme Court’s Eighth Amendment jurisprudence as well as lower courts’ responses to *Graham*, explains why *de facto* LWOP sentences for juveniles fail the
Court’s traditional Eighth Amendment tests, and argues for a categorical ban against these sentences. Despite the obvious benefits of a categorical ban, the note concludes by describing how such a ban could potentially backfire. For example, some prosecutors and judges might pursue sentences that are just short of an unconstitutional *de facto* LWOP sentence.

*Miller v. Alabama: Implications for Forensic Mental Health Assessment at the Intersection of Social Science and the Law*

This article is targeted at forensic mental health professionals and considers the difficulties facing clinicians who will be asked to testify in post-*Miller* individual sentencing hearings. *Miller’s* prohibition of mandatory LWOP sentences for juveniles convicted of homicide means that states must design sentencing schemes that include individualized sentencing hearings and a meaningful opportunity to obtain release in the future. This article predicts that during and after the construction of such schemes, mental health professionals will be called upon to testify in those hearings about the mitigation factors affecting a youth and the potential for rehabilitation of individual youth. Warning of the lack of scientific foundation for long term predictions of the likelihood of rehabilitation or desistance of criminal behavior by an individual, the article cautions forensic mental health experts and social scientists to limit their testimony according to ethical and professional standards. The article encourages clinicians to consider the state of the law at the time of testimony, to explain the limitations of their expert opinions, and generally to refrain from making specific predictions about an individual juvenile’s likelihood for rehabilitation.

*Certainty in a World of Uncertainty: Proposing Statutory Guidelines in Sentencing Juveniles to Life Without Parole*
Sonia Mardarewich, 16 Scholar 123 (2013) (27 pages)

This article argues for sentencing guidelines for juveniles as well as a complete prohibition of LWOP for juveniles convicted of homicide based on theories of transferred intent such as felony murder. It bases its argument on the U.S. Supreme Court dicta in *Miller* and *Graham* expressing that juveniles have different capacities for culpability than adults and that those who kill with intent are categorically more culpable than those who do not. It argues for a categorical ban because it claims that courts are not equipped to reliably and fairly make individual assessments of culpability, due to difficulties with uncooperative youths, unqualified judges, and prejudiced juries. The article also introduces a model sentencing statute that requires judges to take several factors into account in sentencing such as histories of abuse, circumstances that show less involvement with the crime, circumstances that show good qualities, and circumstances that show flawed legal proceedings.
Mitigating after *Miller*: Legislative Considerations and Remedies for the Future of Juvenile Sentencing

This note references *Miller* and various capital-mitigation strategies in order to theorize future sentencing statutes for juvenile offenders. Despite *Miller*’s holding, there are many questions which still remain. What are the appropriate remedies for those currently serving JLWOP? How should these sentences be reformed? What factors should be considered in making a sentencing decision? This note argues that JLWOP should be eliminated, as it shares some of the same characteristics as the death penalty and negates the very essence of the founding purpose of the juvenile justice system, and that legislators should reform statutes that address the appropriate factors to consider in juvenile sentencing.

Misconstruing *Graham & Miller*

This article highlights the failure of states to properly comply with *Graham* and *Miller*. Since the decisions, reform has progressed slowly as few states have enacted appropriate laws to follow the rulings. Recent legislation in certain states gives juveniles resentencing hearings that had previously been sentenced to LWOP. Instead of a lesser sentence, juveniles are often given mandatory lengthy sentences. The article concludes that lawmakers need to abandon shortsighted attempts to comport with the U.S. Supreme Court’s decisions and instead embrace the Court’s vision of juvenile rehabilitation.

Bringing Our Children Back from the Land of Nod: Why the Eighth Amendment Forbids Condemning Juveniles to Die in Prison for Accessorial Felony Murder

This note argues that *Graham*’s discussion of juveniles’ limited capacity and culpability suggests that the Eighth Amendment prohibits LWOP for juveniles convicted of accessorial felony murder. Therefore, lower courts should resentence those already convicted of accessorial felony murder. The note also discusses the history of increasingly harsh treatment of juveniles in adult court and the origins and purpose of the doctrine of accessorial felony murder.
POST-MILLER RETROACTIVITY

A. FEDERAL

Hill v. Snyder

In this order, a United States District Court Judge in Michigan required the state to immediately comply with Miller by making all prisoners serving JLWOP immediately eligible for parole if they have served at least ten years in prison. This decision applies retroactively to the more than 350 people currently sentenced to life in Michigan prisons for crimes committed as children. The order emphasized the need for parole opportunities to be “fair, meaningful, and realistic,” and included numerous requirements involving notice to prisoners and explanations of reasoning behind parole decisions. The order also established that no one sentenced to JLWOP could be “deprived of any educational or training program which is otherwise available to the general prison population,” and that sentencing judges could not veto parole decisions. The order went into effect on December 31, 2013.

Martin v. Symmes, Amicus Brief
Amicus Brief of Juvenile Law Center et al. in Support of Appellant, No. 13-3676 (8th Cir. Jan. 28, 2014) (43 pages)

Juvenile Law Center, joined by NJDC and other organizations, filed an amicus brief in support of a motion by the defendant, which argued that Miller applies retroactively to inmates serving mandatory JLWOP who have exhausted both direct and collateral appeal rights and seek to file a successive habeas petition.

Case Comment, 127 Harv. L. Rev. 1252 (2014) (8 pages)

This comment discusses the Eleventh Circuit Court of Appeals decision of In re Morgan holding that the Miller decision is not retroactive. The opinion found that Miller only changed the procedure for juveniles sentenced to JLWOP, and thus Morgan was not entitled to relief. The comment discusses some of the dissenting opinions to highlight why the Miller rule is substantive and not procedural. Due to In re Morgan, juveniles sentenced to JLWOP pre-Miller are at a significant disadvantage as they are just as deserving as juveniles post-Miller to receive this constitutional protection. Overall, the comment argues, the U.S. Supreme Court needs to be clear on whether courts should apply the Miller decision procedurally or substantively or more cases like In re Morgan will continue to develop.
B. ALABAMA

Williams v. State

In this case regarding Miller retroactivity, the Alabama Court of Criminal Appeals reviewed various decisions and determined that Miller presented neither a new substantive rule nor a watershed rule of criminal procedure under Teague. Therefore, it did not apply retroactively to defendant’s LWOP sentence.

C. ARKANSAS

Hobbs v. Gordon, Amicus Brief
Amicus Brief of Juvenile Law Center et al. in Support of Respondent, No. CV-13-942 (Ark. March 14, 2014) (49 pages)

Juvenile Law Center filed an amicus brief in the Arkansas Supreme Court on behalf of Ulonzo Gordon, who was convicted of first degree murder for a crime committed as a teenager and for which he received LWOP. NJDC and other organizations joined the brief. The brief argues that Gordon’s sentence is unconstitutional under Miller. It asserts that Miller applies retroactively to cases like Gordon’s, which was final before the decision came down from the U.S. Supreme Court and thus is being considered on collateral review. It provides several substantive arguments in support of this position.

D. FLORIDA

Falcon v. State, Petitioner Brief
Reply Brief of Petitioner, No. SC13-865 (Fl. Dec. 4, 2013) (23 pages)

This brief was submitted to the Supreme Court of Florida in an appeal requesting that petitioner’s mandatory LWOP sentence be retroactively overturned. The brief discusses the U.S. Supreme Court case law supporting the claim that Miller is retroactive, including Teague. The petitioner argued that Miller is retroactive for two reasons. First, the U.S. Supreme Court purposefully chose to join the Jackson and Miller cases in its grant of certiorari, with full knowledge that Jackson would be applied retroactively. Second, since the Court announced a new rule in Miller, Teague’s mandate that new rules be applied retroactively to “all others similarly situated” is binding per stare decisis. The petitioner further argued that Florida case law, promoting sweeping review and reevaluation of prior decisions when a drastic change of law is decided, supported her claim to retroactive resentencing.
E. ILLINOIS

People v. Davis
6 N.E.3d 709 (Ill. Mar. 20, 2014) (16 pages)

Relying on the analysis of U.S. Supreme Court case Schriro v. Summerlin, the Illinois Supreme Court held that Miller applies retroactively in Illinois as a new substantive rule. The Illinois Supreme Court agreed that while Miller did not prohibit JLWOP, it did require a sentencing hearing “for every minor convicted of first degree murder at which a sentence other than natural life imprisonment must be available for consideration.”

F. IOWA

State v. Ragland
836 N.W.2d 107 (Iowa, Aug. 16, 2013) (36 pages)

In this Iowa Supreme Court case, decided the same day as Pearson and Null (also found in this Guide), the Court determined that Miller applied retroactively. Defendant Ragland had been serving JLWOP but his sentence was commuted by Iowa’s governor to sixty years without the possibility of parole—a move the governor thought would bring the state in compliance with Miller’s dictates. Ragland argued that Miller required a resentencing that would take into consideration mitigating factors set forth in Miller. The court evaluated how different jurisdictions tackled the retroactivity issue, and agreed with Ragland. The court ultimately held that “Miller applies to sentences that are the functional equivalent of life without parole.” Because the district court had already resentenced Ragland to life in prison with the possibility of parole after twenty-five years, and he was now eligible for parole, the court did not remand the case for resentencing.

G. LOUISIANA

Tate v. State, Petition for Certiorari

In this petition, the Equal Justice Initiative asked the U.S. Supreme Court to address whether Miller v. Alabama applied to people condemned to die in prison for juvenile offenses whose mandatory LWOP sentence already had been reviewed on direct appeal. The petition argued that most states had correctly decided that this is a substantive rule, but that there is conflict amongst courts. For example, Louisiana’s highest court declared that Miller instituted only a new procedural rule that was not retroactive. The petition discussed how numerous state and federal courts have decided the issue of Miller retroactivity. The U.S. Supreme Court denied the petition on May 27, 2014.
**Tate v. State, Reply Brief**

This brief argued that the State of Louisiana did not present sufficient reasons for the U.S. Supreme Court to deny certiorari on the underlying case, and that resentencing hearings pursuant to Miller do not bar its retroactive application.

**H. MICHIGAN**

**People v. Carp**

In this Michigan Supreme Court case, the court held in a 4-3 decision that Miller is not retroactive under Teague or the state’s own case law, and that JLWOP was not unconstitutional under the Federal or State Constitutions. The court discussed the applicable Michigan pre- and post-Miller statutes. The Court did not decide whether Miller was retroactive as a watershed rule of criminal procedure, as the issue was not addressed in the lower courts, but it hinted in dicta that it would find Miller not to have announced such a rule.

**High School Students Amicus Brief**

450 Michigan Catholic school students submitted this amicus brief in support of juveniles who were sentenced to mandatory LWOP. The Michigan Court of Appeals had previously held that Miller did not apply retroactively to juveniles already sentenced to LWOP. In the brief, the lead writer, a high school junior, wrote that “students have a unique perspective on issues of juvenile justice being of an age and maturity similar to that of young men and women who find themselves involved in juvenile crime.”

**Motion for Leave to File Amicus Brief**
The Students of Father Gabriel Richard High School, Ann Arbor, Michigan’s Motion for Leave to File Amicus Curiae Brief in Support of Appellants, No. 146478 (Mich. July 8, 2014) (3 pages)

This motion provides the impetus behind the decision to file an amicus brief in this case, and states why these students are qualified to do so.

**Juvenile Law Center Amicus Brief**
Amicus Brief of Juvenile Law Center et al. in Support of Appellants, No. 146478 (Mich. July 8, 2014) (46 pages)

The Juvenile Law Center filed this amicus brief in three similar cases arguing that Miller should be retroactively applied. The brief’s three main arguments were that the U.S. Supreme Court had already answered the question of retroactivity by applying
Miller to Kuntrell Jackson’s case, which was before the court on collateral review; that Miller announced a substantive rule, which pursuant to U.S. Supreme Court precedent applies retroactively; and finally, that even assuming the rule was procedural, it is a “watershed rule of criminal procedure that applies retroactively.” The brief also argued that Miller applies retroactively because if a sentence is cruel and unusual, the continued imposition of such a sentence is itself a violation of the Eighth Amendment. The date the sentence was handed down cannot by itself render its application constitutional. As to Carp and Davis, convicted of felony murder, the brief argues that the Eighth Amendment categorically bars the imposition of JLWOP for those convicted solely on the basis of their having aided and abetted the commission of a felony murder.

NAACP Amicus Brief

As with the other two briefs, the NAACP-LDF here argues that Miller applies retroactively. This brief also focuses on the enactment of statutes authorizing severe punishments, including JLWOP, as an unsound reaction to the juvenile superpredator myth that had taken hold in the state of Michigan at the time the statute was enacted.

I. MINNESOTA

Roman Nose v. State
845 N.W.2d 193 (Minn. 2014) (8 pages)

In this Minnesota Supreme Court case, the Court re-affirmed its 2013 ruling in Chambers v. State that Miller does not apply retroactively.

J. MISSISSIPPI

Jones v. State
122 So. 3d 698 (Miss. 2013) (17 pages)

In this case, the Supreme Court of Mississippi held in a 6-3 decision that Miller created a new, substantive rule which should be applied retroactively to cases on collateral review. The court was unanimous that Miller applied retroactively, but dissenters disagreed as to the proper way to remand the case for resentencing.

K. NEBRASKA

State v. Mantich
842 N.W.2d 716 (Neb. 2014) (37 pages)

In this Nebraska Supreme Court case, the court held that Miller is a substantive rule that applies retroactively to cases of JLWOP on collateral review. It examined the numerous other
state and federal cases across the country that had dealt with the issue, and provided thorough analysis as to how it came to this conclusion.

State v. Ramirez
842 N.W.2d 694 (Neb. 2014) (31 pages)

The Nebraska Supreme Court held that because the U.S. Supreme Court decided *Miller* during direct review of this case, it applies retroactively, and thus Nebraska’s new sentencing statute applies. The court reversed the defendant’s JLWOP sentence and remanded the case for re-sentencing.

L. NEW HAMPSHIRE

State v. Soto, Amicus Brief
Amicus Brief of Juvenile Law Center in Support of Respondents, No. 2013-0566 (N.H. May 9, 2014) (32 pages)

Juvenile Law Center filed an *amicus* brief in the New Hampshire Supreme Court on behalf of Michael Soto and others who were separately convicted of first degree murder as teenagers, and who each received LWOP. The brief argued that their sentences were unconstitutional under *Miller*. At the time they were sentenced for a crime they committed as minors, New Hampshire law mandated LWOP sentences for murder-based offenses. The brief argues that the sentences here are unconstitutional under *Miller*. It asserts that *Miller* applies retroactively to cases like these, which were final before the decision came down from the U.S. Supreme Court and thus are being considered on collateral review. The brief provides several substantive arguments in support of this position.

M. PENNSYLVANIA

Cunningham v. Commonwealth, Petition for Certiorari
Petition for Writ of Certiorari, No. 13-1038 (Feb. 26, 2014) (78 pages)

The Juvenile Law Center filed this petition for a writ of *certiorari* to the U.S. Supreme Court, asking the Court to find *Miller* retroactive. The petition stems from the 2012 Pennsylvania Supreme Court 4-3 decision which held that *Miller* was not retroactive. The petition cites to the conflict amongst state courts, research in adolescent development, and the U.S. Supreme Court’s own opinion in *Teague* for support. In the appendix, it includes the Pennsylvania Supreme Court’s full decision (which held that under *Teague*, *Miller* was not retroactive because it was not a watershed rule of criminal procedure or a new substantive rule). On June 9, 2014, the U.S. Supreme Court denied the petition.

Witman v. Commonwealth, Petition for Certiorari
Petition for Writ of Certiorari, No. 13-1264 (Apr. 15, 2014) (131 pages)

Similar to Cunningham petition above, this petition also asks the U.S. Supreme Court to decide the issue of *Miller* retroactivity stemming from a Pennsylvania case. Included in the
appendix are an Order of the Supreme Court of Pennsylvania denying petition for the allowance of an appeal, dated January 23, 2014, as well as two lower court decisions.

N. TEXAS

Ex parte Maxwell

In this split decision, the Texas Court of Criminal Appeals held that Miller announced a new substantive rule under Teague. Therefore, the juvenile defendant could not have been sentenced to mandatory LWOP. The court provided an overview of how other states and federal circuits addressed the retroactivity issue, acknowledged it was a close call, and remanded for resentencing.

O. VIRGINIA

Jones v. Commonwealth, Amicus Brief
Amicus Brief of Juvenile Law Center et al. as in Support of Appellant, No. 131385 (Va. May 27, 2014) (67 pages)

Juvenile Law Center filed an amicus brief in the Virginia Supreme Court on behalf of Donte Lamar Jones, who pled guilty to a capital murder he committed as a teenager, and for which he received LWOP. NJDC and other organizations joined the brief. The brief argues that Jones’ sentence is unconstitutional under Miller. It asserts that Miller applies retroactively to cases like Jones’, which was final before the decision came down from the U.S. Supreme Court and thus is being considered on collateral review. It provides several substantive arguments in support of this position.

P. WYOMING

State v. Mares, Amicus Brief
Amicus Brief of Juvenile Law Center et al. in Support of Appellee, No. 13-0223 (Wyo. Apr. 29, 2014) (52 pages)

Juvenile Law Center filed an amicus brief in the Wyoming Supreme Court on behalf of Edwin Mares, who was convicted of first degree murder as a teenager, and who received life without parole. NJDC and other organizations joined the brief. At the time he was sentenced for a crime he committed as a minor, Wyoming law prohibited the possibility of parole for all prisoners serving a life sentence. However, following Miller, the Wyoming legislature attempted to cure this constitutional defect by providing parole review after twenty-five years of imprisonment. Before the Wyoming Supreme Court is first, whether Miller is moot as applied to Mares given the legislature’s revision, and second, whether Miller should be given retroactive effect and thus, whether Mares should be resentenced following an individualized sentencing hearing. The brief argues that Mares’ sentence is unconstitutional under Miller. It asserts that Miller applies retroactively to cases like Mares’, which was final before the
decision came down from the U.S. Supreme Court and thus is being considered on collateral review. It provides several substantive arguments in support of this position.
CASE LAW REVIEW

A. GENERALLY

Recent Court Decisions and Legislation
18 U.C. Davis J. Juv. L. & Pol’y 172 (2014) (17 pages)

This article summarizes case law and legislation around the country concerning juveniles from 2011 to early 2012, including State v. Henderson, a September 2013 Alabama Supreme Court case that established factors a court must consider before sentencing a juvenile to LWOP. This summary also discusses other cases involving juveniles and statutes, including 2013-14 California laws on human trafficking and facilities in schools for transgender students.

B. CALIFORNIA

Recent Court Decisions and Legislation
18 U.C. Davis J. Juv. L. & Pol’y 294 (2014) (20 pages)

This document summarizes recent California federal and state court opinions and laws relating to juveniles. The cases include holdings relating to a school district’s obligation for a detained pupil’s special education needs in county jail, and an opinion setting forth the allowable punishment for 16- and 17-year-olds convicted of “special circumstance murder.” The summary includes new laws that update existing legislation to protect students from cyber-bullying and prohibit registered sex offenders from involvement with foster care facilities. The document summarizes other new laws that seek to provide juveniles tried and sentenced as adults with parole hearings that are meant to provide opportunities for release. Another new law requires law enforcement to give juveniles written notice and an opportunity to contest the decision before they are included in CalGang, California’s gang member database. The document includes many more cases and laws that change California’s treatment of juveniles.

C. FLORIDA

2013 Survey of Juvenile Law
Michael J. Dale, 38 Nova L. Rev. 81 (Fall 2013) (17 pages)

This article summarizes recent legal developments related to juveniles in Florida, with sections on juvenile delinquency, dependency, and termination of parental rights. Florida’s Supreme Court decided three cases involving juvenile delinquency, including one case holding that it was necessary to prove that a school police officer was the designee of the school principal in order for a juvenile to be adjudicated for committing trespass on school grounds. Other cases address proper penalties for juveniles in violation of court orders and whether a juvenile detention facility qualifies as a detention facility under Florida criminal law.
LEGISLATIVE DEVELOPMENTS

A. FEDERAL

Prohibiting Detention of Youth Status Offenders Act of 2014
H.R. 4123, 113th Cong. (2014) (5 pages)

This resolution would amend the JJDPA to force state courts to exercise a set of precautions before detaining status offenders and to limit the length of detention state courts are allowed to impose for violation of a valid court order. In determining whether a juvenile who has violated a valid court order following adjudication for a status offense will be detained, this bill would require that the court: 1) issue a written order that identifies the court order that has been violated; 2) specify the factual basis for determining reasonable cause to believe the juvenile has violated the order; and 3) show there is no less restrictive alternative. The bill would prohibit courts from detaining juvenile status offenders for more than three days or more than once in a six-month period. States would have to comply with these provisions within one year, or within two years if they apply for an extension. The resolution was referred to committee on February 28, 2014, and as of September 2014, no additional action had been taken.

Protecting Youth from Solitary Confinement Act of 2014
H.R. 4124, 113th Cong. (2014) (3 pages)

This bill would prohibit juvenile facilities from subjecting juveniles in federal custody to solitary confinement. This bill would also require the Director of the Board of Prisons to submit an annual report summarizing and analyzing the most recent data on juveniles subjected to solitary confinement, broken down by race, gender, age, offense for which incarcerated, and purpose and duration of solitary confinement. As of July 2014, this bill had been referred to the Subcommittee on Crime, Terrorism, Homeland Security, and Investigations.

Better Options for Kids Act of 2014
S. 2531, 113th Cong. (2014) (6 pages)

This Act, first introduced in the Senate in June 2014, aims to reward and incentivize evidence-based State policies that would improve educational continuity and limit youth contact with the juvenile justice system. To that end, this Act would award competitive grants from the Substance Abuse and Mental Health Services Administration. States can demonstrate their commitment to these goals and compete for the designated grants by establishing interagency partnerships, collaborating with local government and organizations, using evidence-based approaches to address school discipline, prohibiting court referrals from schools, shifting funds from secure detention to community-based alternatives, and adopting reentry plans focused on continuous education. As of July 2014, this Act was referred to the Committee on Health, Education, Labor, and Pensions.
Record Expungement Designed to Enhance Employment (REDEEM) Act of 2014
S.B. 2567, 113th Cong. (2014) (69 pages)

This bill, first introduced in the Senate in July 2014, provides comprehensive reform aimed at benefitting juvenile and criminal offenders. Among other provisions, it provides incentives for states to increase the age of criminal responsibility to 18, introduces mandates for sealing and expungement of designated juvenile records, prohibits the use of room confinement in juvenile detention facilities for any reason other than as a temporary response to the behavior of a juvenile who poses an immediate risk of physical harm to himself/herself or others, and imposes strict time limits if room confinement must be used. As of July 2014, this bill had been referred to the Committee on the Judiciary.

B. CALIFORNIA

An Act Relating to Juveniles

This bill would allow a juvenile to have his or her petition dismissed and court records sealed upon completion of a supervisory program or probation for any offenses not considered serious, sexual, or violent. This bill removes the provision that a juvenile’s petition must be dismissed before the offender turns 21, but it also allows court and police agencies to access the sealed records for a few specifically enumerated purposes.

C. COLORADO

An Act to Provide Defense Counsel for Juvenile Offenders

This law, passed in the wake of NJDC’s publication of Colorado: An Assessment of Access to Counsel and Quality of Representation in Juvenile Delinquency Proceedings, guarantees the appointment of juvenile defense counsel at detention hearings (something that had been sorely lacking in many parts of the state), ensures that guardians ad litem cannot serve as defense counsel, clarifies a juvenile’s right to counsel throughout the case, and provides for changes related to service of summonses, pre-trial detention timing, and the data juvenile defenders must collect on their offices, practices, salaries, and caseloads.

An Act to Provide Social Workers for Juveniles

This Act requires the state public defender to hire social workers to assist in defending juveniles, and allocates money to accomplish this.

A Resolution Requesting Chief Justice of the Colorado Supreme Court to Take Certain Actions Concerning Adjudication of Juvenile Delinquency Petitions

This resolution continues the work of the legislature’s Juvenile Defense Interim Committee, which drafted the preceding laws. The resolution requests the Chief Justice of the Colorado
Supreme Court to establish a committee to review the Colorado Rules of Juvenile Procedure, juvenile court forms, and relevant directives for changes that may be necessary to improve the juvenile justice system.

D. DISTRICT OF COLUMBIA

Youth Offender Accountability and Rehabilitation Act of 2014
L.B. 825, Council Per. 20 (D.C. 2014) (5 pages)

This bill proposes changes in the District of Columbia’s laws that would grant juvenile offenders additional rights prior to trial. If the bill is passed in its current form, only juveniles convicted of felonies could be housed in adult correctional facilities. The bill also affords judicial review to youth being transferred to adult court and ends the practice of automatically transferring to adult court those juveniles previously convicted of an offense as an adult.

E. FLORIDA

An Act Relating to Juvenile Justice
H.B. 7055, 116th Leg., Reg. Sess. (Fla. 2014) (124 pages)

This bill, which was approved by the governor on June 17, 2014 and became effective on July 1, 2014, amends a general provision of Florida law relating to juvenile justice. It changes the professed purpose of the juvenile justice system to focus on prevention, intervention, education, reform, and treatment. It also mandates children be placed in the least restrictive environment possible, the inclusion of community support systems in the juvenile detention continuum, and that children should only be placed in detention for public safety purposes, rather than punishment. Furthermore, the bill dictates that facilities should be close to communities, and provides for additional levels of non-secure detention. It makes changes to support offenders who have experienced trauma, limits penalties for truancy, extends the period in which the juvenile court may retain probation jurisdiction to age 21, and adds protections for children accused of contempt of court and violating valid court orders. The bill adds a section that expresses support for preventative services, mandates that funds be dispersed for preventative programs, and contains a new provision to protect juveniles in government custody from staff abuse and neglect.

F. GEORGIA

An Act Relating to Juvenile Proceedings and Juvenile Justice Reforms

This bill, which became law on January 1, 2014, is the result of juvenile justice reform efforts by the Governor’s Special Council on Juvenile Reform in Georgia. It substantially revises, supersedes, and modernizes provisions relating to juvenile proceedings to correspond with Georgia’s stated child welfare policy of securing the best interests of its children. This is evident not only procedurally, but linguistically, e.g., striking “delinquent and unruly” before
the word “child” and adding the female pronoun “her” where the male pronoun “him” was only listed before. One section of interest requires the Council of Juvenile Court Judges and the Institute of Continuing Judicial Education in Georgia, to establish seminars that cover a wide array of topics, including child development and psychology. Judges and associate judges are required to complete twelve hours of annual training through the seminars. In many other ways, the bill substantially revises child welfare and juvenile delinquency law. For example, it limits the situations in which the statements of alleged delinquent juveniles can be used in court.

G. GUAM

An Act Relative to Enacting Principles of Balanced Approach and Restorative Justice in the Juvenile Criminal Justice System Between the Victim and Offender
L.B. 216, 32d Leg., Reg. Sess. (Guam 2014) (2 pages)

The Act related to balanced and restorative justice proposes Guam adopt a policy that favors addressing juvenile misconduct through responsive community efforts and tailoring the type and intensity of sanction to the level of culpability. To achieve these goals, the Act maintains that restorative justice programs encourage negotiation between the community, the victim, and judicial and law enforcement officials to determine what punishment is appropriate for a particular juvenile offender. It allows for the juvenile and victim to negotiate a sentence together, provided that the sentence embodies restorative justice practices. The Act specifies that this policy will apply to juveniles who commit crimes other than criminal homicide, sexual offenses, or family violence. It is composed of four sections detailing legislative findings and intent, objectives, implementation, and sentencing. As of May 2014, the measure was moved to the third reading file.

H. HAWAII

An Act Relating to Sentencing for Juvenile Offenders
H.B. 2116, 27th Leg., Reg. Sess. (Haw. 2014) (6 pages)

This bill, effective July 2, 2014, revises Hawaii’s state sentencing laws, bringing it in line with Miller by abolishing LWOP as a sentencing option for juveniles. However, juveniles under the age of 18 at the time of the offense who are convicted of first degree murder or first degree attempted murder can be sentenced to LWOP. The bill also revises Hawaii’s second degree murder statute, stating that juveniles who are 18 at the time of the offense and are convicted of second degree murder can also be sentenced to LWOP.

I. IDAHO

Juvenile Corrections Act

This bill, effective July 1, 2014, amends Idaho Code § 20-511, adding a section listing when the court may dismiss a case upon application by the juvenile defendant. A case may be
dismissed under this bill if 1) an informal adjustment has been granted and the juvenile offender has satisfied the terms or conditions of the informal adjustment; 2) the court is satisfied that there is no longer cause for continuing the period of informal adjustment; and 3) dismissal is compatible with public interest. This bill also adds § 20-520A which allows the court to terminate a sentence, set aside an adjudication, dismiss a case, and discharge a juvenile from the jurisdiction of the court if a juvenile has completed an authorized problem-solving court program and has satisfied conditions of probation.

J. INDIANA

Order Amending Indiana Rules of Criminal Procedure, Criminal Rule 25
No. 94S00-1301-MS-30 (Ind. 2013) (3 pages)

The Supreme Court of Indiana amended the Indiana Rules of Criminal Procedure by adding Criminal Rule 25. Rule 25(b) establishing mandatory appointment of counsel in certain juvenile delinquency proceedings, such as when there is a request to waive the child to criminal court. The Rule goes into effect January 1, 2015.

K. KENTUCKY

An Act Relating to Public Advocacy

This law, effective April 10, 2014, updates several Kentucky statutes on the administration of indigent defense. The legislation requires the Department of Public Advocacy to submit reports to the Legislative Research Committee regarding defenders’ caseloads, funding, and any efforts to improve representation of indigent defendants. To improve juvenile indigent defense, the statute allows defenders to access a juvenile’s records without a court order or parental consent. Additionally, it presumes that a person deemed indigent at trial is still indigent on appeal, so no proof of continued indigence is required.

An Act Relating to the Juvenile Justice System

This bill, effective April 25, 2014, revises Kentucky law in order to reduce the number of juveniles placed in detention centers, increase the use of community based programs, decrease costs, and improve public safety by modifying the current list of offenses with which juveniles may be charged. The bill proposes changes to the Juvenile Justice Oversight Council, Department of Juvenile Justice, and school districts. Most importantly, the bill addresses the proper procedures the Department of Juvenile Justice must adhere to when juvenile offenders are within its custody.
L. MARYLAND

An Act Concerning Juvenile Law – Transfer of Cases to Juvenile Court

This bill, which takes effect on October 1, 2014, makes it easier for criminal courts to reverse transfer juvenile cases back to juvenile courts.

M. MASSACHUSETTS

An Act to Expand Juvenile Jurisdiction, Increase Public Safety, and Protect Children from Harm

This bill, signed into law on September 18, 2013, raises the age of juvenile court jurisdiction from 17 to 18 for delinquency cases.

N. MICHIGAN

An Act Relating to Mandatory Life Imprisonment to Reflect Miller v. Alabama

This bill, effective March 4, 2014, amends the Michigan Penal Code based on the recent Miller decision. The bill states that the mandatory penalty of LWOP will not be applied to those under 18, according to Chapter IX of the Code of Criminal Procedure. The bill also changes the youngest age to convict with mandatory LWOP from 17 to 18 for individuals previously convicted of criminal sexual conduct.

An Act Relating to Procedures for Determining Whether Juveniles Convicted of Murder Should Be Sentenced to Imprisonment without Parole Eligibility

This bill, effective March 4, 2014, adds two sections to the Code of Criminal Procedure which applies the Miller decision to finalized cases on or after June 24, 2012. The bill states that each hearing at the trial court level should consider the Miller factors in addition to any other relevant circumstances. If after careful consideration the court does not sentence the defendant to LWOP, the defendant must be sentenced to a minimum term of 25 years. The bill also addresses the specific procedures which the courts must follow if and when the U.S. Supreme Court rules Miller retroactively applicable to all juvenile defendants sentenced to LWOP.

O. NEVADA

An Act Restricting the Use of Solitary Confinement and Corrective Room Restriction on Children in Confinement
S.B. 107, 77th Leg., Reg. Sess. (2013) (6 pages)

This bill, effective on October 1, 2013, limits juvenile confinement in detention facilities. It provides that juveniles may be placed on corrective room restriction only if all other less-
restrictive options have been exhausted and only to modify the child’s negative behavior, hold the child accountable for a rule violation, or ensure safety. The bill mandates a well-being check by staff of confined juveniles every ten minutes and a status review with written justifications for continued confinement every 24 hours. It prohibits more than 72 consecutive hours of confinement. It also provides for a study on juvenile confinement.

P. NORTH CAROLINA

Young Offenders Rehabilitation Act

This bill, if passed, would establish the Juvenile Jurisdiction Advisory Committee, create a pilot civil citation process for juveniles, and raise the age of juvenile jurisdiction to include 16- and 17-year-olds who have committed misdemeanor offenses. Designed to provide an efficient and innovative alternative to custody for juveniles who commit nonserious delinquent acts, the pilot program would be implemented in at least three counties for two years. Pending a final report on the two-year pilot program, a subcommittee would submit a plan to the Advisory Committee for implementing the program statewide. Upon approval, the Subcommittee would establish a juvenile civil citation program within every county. The bill also proposes limits on the length of time a child may spend in a detention facility based on the offense and the age at which it was committed. Passed by the House in May 2014, the bill is currently pending Senate approval as of September 2014.

Q. OKLAHOMA

An Act Relating to Sexting
H.B. 2541, 54th Leg., 2d Reg. Sess. (Okla. 2014) (14 pages)

This bill reduces penalties for minors transmitting obscene material or child pornography and introduces provisions to combat cyberbullying in schools. It gives the district attorney the discretion to charge minors with new misdemeanor juvenile offenses or with the older felony child pornography offenses. If charged as juveniles, the law imposes variable punishments depending on the age of the person pictured in the photograph. If the subject is over 13, the penalties depend on whether he or she consented to the photograph and transmission. If the subject is under 13, the penalties are more severe and do not vary based on consent. Each penalty includes an educational program that the court may order the offender to attend at its discretion. The bill also puts forth an affirmative defense for those found with child pornography or obscene material: the child may argue that he or she did not solicit the depictions and that he or she did not subsequently distribute them. The governor approved the bill on March 28, 2014.
R. SOUTH CAROLINA

**An Act Relating to the Use of Restraints on Juvenile Defendants**

This South Carolina bill, signed into law by the governor in June 2014, prohibits the indiscriminate shackling of juveniles in the family court system. To be codified as South Carolina statute § 63-19-1435, it permits juvenile restraint only if the juvenile is a danger or flight risk and there are no less restrictive means available. The juvenile must be offered a hearing before he or she can be shackled. The court must make a shackling order on the record, with written findings supporting the decision. A rider regarding unauthorized removal of electronic monitoring was attached at the last minute but did not alter the underlying anti-shackling piece.

**Bar Resolution with Commentary**
South Carolina Bar Association (2014) (12 pages)

This resolution and accompanying commentary supported the ultimately successful legislation ending the indiscriminate shackling of juveniles. The commentary cites NJDC’s 2010 *South Carolina – Juvenile Indigent Defense: A Report on Access to Counsel and Quality of Representation in Delinquency Proceedings* notes the other states that have banned the practice, and analyzes why the practice is violative of South Carolina law and contrary to the purpose of its juvenile court system. It includes an early draft of South Carolina’s anti-shackling legislation and Florida’s Rule of Juvenile Procedure, which similarly bans indiscriminate shackling.