
NJDC

2007



JUVENILE
DEFENDER
RESOURCE
GUIDE



NATIONAL JUVENILE DEFENDER CENTER

2007

JUVENILE DEFENDER
RESOURCE GUIDE



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INFORMATION & INSTRUCTIONS



Welcome to the 2007 *Juvenile Defender Resource Guide*. This booklet contains a Table of Contents and Summaries of each item in the *Guide*. To access the complete documents, simply insert the enclosed CD into the appropriate drive of any computer. The Table of Contents will open on your screen, as it appears here. Follow the directions below to find, read, and print documents.

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SUMMARIES



1



CHILD & ADOLESCENT DEVELOPMENT

A. Brain Science & Developmental Psychology

Neural Substrates of Choice Selection in Adults and Adolescents: Development of the Ventrolateral Prefrontal and Anterior Cingulate Cortices

Neir Eshel *et al.*, *Neuropsychologia*, Vol. 45, No. 6, pp. 1270-1279 (March, 2007) (10 pages)

This study compared adolescent and adult brains in order to determine whether brain functioning differs between the two groups when performing a risk-taking task. The authors found that adults used the parts of the brain involved in cognitive control more than adolescents. Furthermore, reduced activity in the parts of the brain involved in cognitive control correlated with greater risk-taking performance.

Legal Socialization of Children and Adolescents

Jeffrey Fagan and Tom R. Tyler, *Social Justice Research*, Vol. 18, No. 3 (Sept., 2005) (26 pages)

The authors address legal socialization, the process by which youths learn to comply with the law and cooperate with legal actors. Although a youth's perception of the law tends to change over time, youths generally view the law as less legitimate when treatment is unfair and harsh. Furthermore, a youth's perception of the law is of particular importance because believing that the laws are legitimate increases the likelihood that the youth will comply with the laws.

Creating Turning Points for Serious Adolescent Offenders: Research on Pathways to Desistance

Issue Brief 2, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice (4 pages)

This issue brief summarizes findings from an on-going Pathways to Desistance Study done by members of the MacArthur Research Network on Adolescent Development and Juvenile Justice. The study follows a large group of serious juvenile offenders in two cities over eight years and is finding that even many of the most serious offenders transition to adulthood with fewer problems than anticipated. A majority of the adolescents report little or no antisocial activity three years after court involvement.

B. Policy & Practice Implications

Developmentally-Sound Practice in Family and Juvenile Court

Marty Beyer, 6 Nev. L. J. 1215 (2006) (14 pages)

Describing the importance of developmentally sound practice in juvenile court, the author explains that any professional working with youth in delinquency cases must consider how disabilities, trauma and immaturity are affecting the child's behavior and relationships.

Hearing on Adolescent Brain Development and Juvenile Justice

United States Capitol (June 11, 2007)

On June 11, 2007, U.S. Senator Edward Kennedy's office organized a hearing for House and Senate staff on adolescent brain and behavioral development and the implications of research on adolescent development for the juvenile justice system. Sponsored by the MacArthur Foundation, the hearing featured the following four speakers:

Dr. Laurence Steinberg provided testimony about recent research developments regarding brain maturation during adolescence and the policy implications. (3 pages)

Dr. Elizabeth Cauffman testified about the mental health needs of juvenile offenders. (3 pages)

Dr. Alex Piquero discussed the topics of transfers to adult court and gangs. (3 pages)

Judge Michael Corriero talked about trying youth as adults and made recommendations for creating a model system that accommodates the developmental differences of youth and reduces the racial disparities in the current criminal justice system. (18 pages)

The Brain on the Stand

Jeffery Rosen, *New York Times* (March 11, 2007) (14 pages)

This article describes recent advances in neuroscience technology and research and poses difficult ethical questions that are presented by the development of forensic neuroscience, including what the technology can legitimately be used for, what rights are implicated, and ultimately, what the purpose of our criminal justice system should be.

Bridging the Gap: An Interdisciplinary Approach to Juvenile Justice Policy

C. Antoinette Clarke, 56 DePaul L. Rev. 927 (Spring, 2007) (15 pages)

The author reviews the latest research on psychology, neuroscience, and child development, discusses the negative consequences of punitive juvenile justice policies, and recommends that every phase of the process--from adjudication to disposition to corrections--can be informed by developmental research.

Cognitive Dissonance Revisited: *Roper v. Simmons* and the Issue of Adolescent Decision-Making Competence

Donald Beschle, 52 Wayne L. Rev. 1 (Spring, 2006) (29 pages)

This article analyzes the legal system's conflicting treatment of adolescent decision-making capacity with respect to personal autonomy rights and criminal culpability. The article looks to the Justices' various opinions in *Roper v. Simmons* and compares those Justices' positions on adolescent choice in non-criminal contexts, particularly adolescent choices involving reproduction and abortion. The author includes recent biological and social science research on adolescent decision-making and finally suggests some

resolutions for the legal system's dissonance on the question of adolescent decision-making in future legal issues.

Why Do Most 16-Year-Olds Drive Like They're Missing a Part of Their Brain? Because They Are

Advertisement for Allstate Insurance Company (2007) (1 page)

An advertisement for Allstate Insurance, promoting Graduated Driver Licensing. The ad links the high teenage death rate caused by dangerous driving to the underdeveloped dorsal lateral prefrontal cortex of the adolescent brain.

Report of the Working Group on the Role of Age and Stage of Development at the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham

6 Nev. L.J. 623 (2006) (10 pages)

Building upon the Recommendations of the Fordham Children's Conference eleven years ago, the UNLV Conference on Representing Children in Families brought together nearly one hundred experts to establish principles and guidelines to enhance children's participation and voice in proceedings and policies affecting them. These recommendations were developed by the Working Group on the Role of Age and Stage of Development, which considered the issues that arise in representing youth, as well as broader juvenile justice policy issues.

C. Culpability & Competence

Introduction to Symposium of Juvenile Competency and Culpability

Lisa K. Halushka, 8 T.M. Cooley J. Prac. & Clinical L. 1 (2006) (55 pages)

This article provides the transcript of the Symposium of Juvenile Competency and Culpability, where various experts spoke about juvenile justice-related issues, including juvenile brain development and juvenile adjudicative competence. Experts

included Dr. Linda Spear, Dr. Tom Grisso, Deborah LaBelle and Jeffrey Shook, Judge Virgil Smith, Bob Schwartz, and prosecutor Sue LeDuc.

Less Guilty by Reason of Adolescence

Issue Brief 3, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice (4 pages)

This issue brief summarizes the findings of the MacArthur Foundation Research Network about the relation of adolescent development to culpability.

Adolescent Legal Competence in Court

Issue Brief 1, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice (4 pages)

This issue brief summarizes the findings of the MacArthur Foundation Research Network about juveniles' capacity to participate in criminal proceedings. Findings show that a significant portion of youth, particularly those younger than 15, are likely unable to participate competently in their own trials in both juvenile and adult court because of developmental immaturity.

Prospects for Remediating Juveniles' Adjudicative Incompetence

Jodi L. Viljoen and Thomas Grisso, 13 *Psychol. Pub. Pol'y & L.* 87 (May, 2007) (24 pages)

This article reviews the developmental, clinical, and educational research to discuss whether it is possible to enhance youths' legal capacities when they are found to be incompetent to stand trial. The authors conclude that evidence exists that it may be challenging to enhance youths' legal capacities, particularly when youth have limited rational understanding and/or legal reasoning capacities, and when these deficits stem from developmental immaturity and/or mental retardation.

2



ADVOCACY IN JUVENILE COURT

A. Right to Jury Trial

Sample Motion Requesting Jury Trial or, If Denied, An Advisory Jury

Jonathan Laba, Deputy Public Defender, Contra Costa County, California (18 pages)

This sample motion urges the Juvenile Court to find that a sixteen-year-old respondent, facing charges of attempted murder and shooting at an occupied vehicle, has a constitutional right to a jury trial. If this is denied, then the defense requests the Court order an advisory jury be impaneled. The defense argues that a juvenile's right to a jury trial is based on the erosion of the distinction between juvenile and criminal proceedings. Further, the defense asserts that even if this erosion goes unrecognized, the circumstances of the present case warrant an advisory jury because of the lack of forensic evidence, the extraordinarily serious charges, and the lack of any salutary effects of an informal proceeding.

J.B. v. Ohio

Petition for Writ of Certiorari, filed by David Bodiker, Jill E. Beeler, and Molly J. Bruns, Office of the Ohio Public Defender, 127 S.Ct. 1259 (2007) (49 pages)

The Ohio Office of the Public Defender filed this cert petition in the United States Supreme Court in a case involving a physically abused thirteen year old who was found guilty of murder and child endangering. The brief argues that the trial court erred in imposing an adult sentence on a juvenile, failing to follow precedent establishing juvenile custody pursuant to the

procedural safeguards in *Miranda*, applying the felony murder rule to a juvenile, and failing to provide a juvenile with a jury trial. In particular, the brief highlights the standards for establishing culpability for juveniles, the psychological and physiological differences between juveniles and adults, and juvenile due process guarantees.

J.B. v. Ohio

Brief of *Amici Curiae* Supporting Plaintiff-Appellee in *J.B. v. Ohio* (writ of certiorari), Juvenile Law Center, No. 06-7611, 2006 WL 3610988, in the United States Supreme Court (21 pages)

Amici argue that, in light of adolescent development research, the age of a juvenile should be taken into account when determining whether a juvenile was in “custody” for purposes of *Miranda*. Furthermore, the amici argue that when juveniles are subjected to blended sentencing schemes that increase a child’s sentence beyond the statutory maximum, jury trials are constitutionally required. Cert was subsequently denied.

B. Competency Challenges

Timothy J. v. Superior Court

58 Cal.Rptr.3d 746 (Cal. Ct. App. 2007) (23 pages)

In this case, a California Court of Appeal held that a minor can be found incompetent to stand trial solely due to developmental immaturity, even without a specific mental disorder or disability. The Court relied heavily on the testimony of two psychologists, as well as research concerning adolescent development.

A Prosecutor’s Guide to Psychological Evaluations and Competency Challenges in Juvenile Court

American Prosecutors Research Institute, Special Topics Series (Sept., 2006) (60 pages)

This guide aims to prepare juvenile prosecutors to address and overcome competency and sanity challenges that are brought forth by juvenile defenders. In particular, the guide provides tips on how to contest a juvenile’s arguments regarding competency to stand trial and waive *Miranda* rights, including how to cross-examine expert defense witnesses to test their credibility and knowledge of juvenile mental health issues.

C. Defenses

Exploding the Superpredator Myth: Why Infancy is the Preadolescent's Best Defense in Juvenile Court

Lara A. Bazelon, 75 N.Y.U.L. Rev. 159 (2000) (36 pages)

The author of this article advocates for the implementation of the infancy defense in juvenile court. She refutes arguments based on the rehabilitation theory, procedural policing theory, and demarcation theory and also provides the language of a model infancy statute.

A.B. v. State of Indiana

863 N.E.2d 1212 (Ind. Ct. App. 2007) (10 pages)

The Indiana Court of Appeals upheld a juvenile's right to free speech after a trial judge had placed her on probation for posting a vulgar entry on the MySpace website. On appeal, the court found that the juvenile's message, which criticized a school principal and school policies, constituted political speech protected under the constitutions of Indiana and the United States.

D. School Referral Cases

Changing the Narrative: Convincing Courts to Distinguish Between Misbehavior and Criminal Conduct in School Referral Cases

Marsha Levick and Robert Schwartz, 9 U.D.C. L. Rev. 53 (2007)(30 pages)

This law review article offers juvenile defenders a number of ways in which to challenge school referral cases in delinquency court. Levick and Schwartz argue that defense attorneys should draw on their understanding of the role and powers of judges, take advantage of traditional defenses related to criminal intent and capacity, and demonstrate in appropriate cases that students' behavior is better addressed by the education system than the juvenile justice system.

E. Shackling

Why Are Children in Florida Treated as Enemy Combatants?

Carlos Martinez, *Cornerstone*, National Legal Aid and Defender Association, Vol. 29, No. 1, p. 10 (May-Aug., 2007) (4 pages)

Comparing the shackling of detained children in south Florida to the treatment of enemy combatants, this article describes the numerous negative impacts on youth that result from shackling. The author refutes the typical excuses for routine shackling of youth and describes advocacy attempts to bar the routine shackling of youth in juvenile courts. Defenders are encouraged to take an active role in ending this inhumane practice.

Tiffany A. v. The Superior Court of Los Angeles County

150 Cal.App.4th 1344 (2007) (21 pages)

In this case, the California Court of Appeals, Second District, directed the juvenile delinquency court to set aside its prior general policy concerning the use of physical restraint upon all minors who appear in juvenile court proceedings in Lancaster, California, unless the shackling was ordered by the court based on an evidentiary showing of "manifest need." The People and the Sheriff's Department argued that the general shackling policy ensured order in the courthouse by preventing escape attempts. The Court of Appeals rejected such reasoning, since the use of shackles in a courtroom absent an individual showing of need created an air of criminality that juvenile proceedings were intended to avoid.

In re R.W.S.

728 N.W.2d 326 (N.D. 2007) (15 pages)

The North Dakota Supreme Court found that the juvenile court abused its discretion and violated a youth's due process rights by failing to independently and properly analyze whether to remove the youth's handcuffs during the court proceedings. Rather than deferring to law enforcement, the court should have considered the accused's record, temperament, and the desperateness of his situation; the security situation at the courtroom and courthouse; the accused's physical condition; and whether there was an adequate means of providing security that was less prejudicial. Although the youth's right to a fair trial was violated, the Court found the error to be harmless because of the amount of evidence against the youth.

North Carolina House Bill 1243

(2007) (1 page)

This North Carolina legislation requires judges to make a determination about whether a child poses a safety risk before arm and leg shackles can be used in court. The legislation was prompted by a challenge to the longstanding practices of the Guilford County Juvenile Courts, which have permitted the shackling of children for the past decade. Proponents of the legislation contended that the practice of shackling results in severe psychological damage to children and that it increases the likelihood of reoffending. Signed into law by Governor Mike Easley on June 20, 2007, the bill states that a child may be physically restrained in the courtroom “only when the judge finds the restraint to be reasonably necessary to maintain order, prevent the juvenile’s escape, or provide for the safety of the courtroom.”

F. Forensic Evaluations

Obtaining and Utilizing Comprehensive Forensic Evaluations: The Applicability of One Clinic’s Model

Antoinette Kavanaugh, Jennifer Clark, Tiffany Masson, and Barbara Kahn, 6 Nev. L.J. 890 (2006) (18 pages)

This article provides an overview of forensic evaluations, including a review of the best practice methods for conducting forensic evaluations used in juvenile justice matters. Using the Cook County Juvenile Court Clinic as a model, the authors describe how best practices can be incorporated into conducting comprehensive forensic evaluations and how lawyers may utilize CCJCC’s model to obtain competent forensic evaluations.

G. Expungement

Cumberland County Pennsylvania Expungement Policy and Procedures

(May, 2006) (9 pages)

Amended in May 1, 2006, these policies and procedures of the Cumberland County Juvenile Probation Department provide that the department shall assist any juvenile interested in obtaining an expungement of his or her juvenile record.

3



EVIDENCE & FACT-FINDING

A. Interrogations & *Miranda*

1. Electronic Recording

Electronic Recording of Custodial Interrogations: A Policy Review

The Justice Project (2007) (28 pages)

This policy brief recommends recording custodial interrogations in felony cases. The brief discusses the advantages for both defenders and prosecutors of electronically recording custodial interrogations, and explains that recordings are especially important among vulnerable juvenile suspects who tend to confess at higher rates than their adult counterparts. By serving as a protection against false confessions, recordings will help bring back faith and integrity to the justice system.

2. Developmental Arguments & *Miranda*

Can I Talk Now?: Why *Miranda* Does Not Offer Adolescents Adequate Protections

Ellen Marrus, 79 Temp. L. Rev. 515 (2006) (15 pages)

Examining caselaw that has dealt with children's confessions in court, as well as research on child development, this article argues that *Miranda* does not adequately protect juveniles from self-

incrimination. The author recommends that juveniles should be given greater protections against self-incrimination than adults, including presence of counsel at all interrogations, given their relative “vulnerability, immaturity, and lack of decision-making ability.”

An Analysis of *Miranda* Warnings and Waivers: Comprehension and Coverage

Richard Rogers, Kimberly S. Harrison, Daniel W. Shuman, Kenneth W. Sewell, and Lisa L. Hazelwood, 31 Law Hum. Behav. 177 (April, 2007) (15 pages)

In an analysis of 560 versions of *Miranda* warnings used across the country, this study found great variation in the reading comprehension level required for understanding the warnings (ranging from very basic to post-graduate education level). The study also broke down the *Miranda* warning into five separate components and reported that the comprehensibility of each of these components can vary significantly. The authors suggest general parameters under which *Miranda* warnings should be drafted so that criminal defendants will understand their rights.

Brief of *Amici Curiae* Supporting Appellant in *Commonwealth v. Guthrie, G., A Juvenile*

Juvenile Law Center et al., No. SJC-09805 in the Supreme Judicial Court of Massachusetts (Oct., 2006) (77 pages)

In light of research demonstrating the developmental differences between adolescents and adults, *amici* in this case argue that the prosecution did not prove that the juvenile voluntarily consented to a search of his bedroom, nor did they prove that he voluntarily, knowingly, and intelligently waived his right against self-incrimination.

J.B. v. Ohio

Petition for Writ of Certiorari, filed by David Bodiker, Jill E. Beeler, and Molly J. Bruns, Office of the Ohio Public Defender, 127 S.Ct. 1259 (2007) (49 pages)

The Ohio Office of the Public Defender filed this cert petition in the United States Supreme Court in a case involving a physically abused thirteen year old who was found guilty of murder and child endangering. The brief argues that the trial court erred in imposing an adult sentence on a juvenile, failing to follow precedent establishing juvenile custody pursuant to the procedural safeguards in *Miranda*, applying the felony murder

rule to a juvenile, and failing to provide a juvenile with a jury trial. In particular, the brief highlights the standards for establishing culpability for juveniles, the psychological and physiological differences between juveniles and adults, and juvenile due process guarantees.

J.B. v. Ohio

Brief of *Amici Curiae* Supporting Plaintiff-Appellee in *J.B. v. Ohio* (writ of certiorari), Juvenile Law Center, No. 06-7611, 2006 WL 3610988, in the United States Supreme Court (21 pages)

Amici argue that, in light of adolescent development research, the age of a juvenile should be taken into account when determining whether a juvenile was in “custody” for purposes of *Miranda*. Furthermore, the *amici* argue that when juveniles are subjected to blended sentencing schemes that increase a child’s sentence beyond the statutory maximum, jury trials are constitutionally required. Cert was subsequently denied.

In re I.J.

906 A.2d 249 (D.C. 2005) (15 pages)

In this case, the D.C. Court of Appeals held that a juvenile was in custody for *Miranda* purposes when a police officer questioned him in a private office at a youth center. The officer’s question of “what happened” to the juvenile amounted to an interrogation for *Miranda* purposes.

People v. Westmoreland

866 N.E.2d 608 (Ill. Ct. App. 2007) (14 pages)

In this case, the Illinois appellate court found that evidence supported a finding that the 17-year-old defendant’s statement to police officers was not voluntary. The trial court found defendant to be “somewhat immature,” defendant was handcuffed when he was arrested, the officers made no attempts to locate defendant’s parents when he was arrested or before he was interviewed, officers denied both of defendant’s requests to speak with his mother, and officer raised his voice during defendant’s interview and stated he did not care whether the youth went to jail.

3. Challenges to School Interrogations

In the Matter of W.R.

No. 04 J 723 (N.C. Ct. App. 2006) (8 pages)

The North Carolina Court of Appeals found that the trial court had erroneously admitted evidence of a defendant's admission that he possessed a weapon on school property. In doing so, the court upheld the defendant's protection against self-incrimination under the Fifth Amendment. Since the defendant had not been read his *Miranda* rights prior to being questioned by school officials and the police, the court reversed the defendant's conviction on grounds that the error "was so fundamental as to result in a miscarriage of justice or denial of a fair hearing."

Student Interrogations by School Officials: Out with Agency Law and in with Constitutional Warnings

Eleftheria Keans, 27 B.C. Third World L.J. 375 (Spring, 2007) (34 pages)

This student note argues that students should receive constitutional warnings before they are interrogated by principals at school about violations of criminal law. The article argues that the Supreme Court's decision in the Fourth Amendment case *Ferguson v. City of Charleston*, which requires constitutional warnings when state actors seek out incriminating evidence, should also be applied in Fifth Amendment school cases.

B. Searches

1. Strip Searches

Smook v. Minnehaha County, South Dakota

Amicus Brief of the Juvenile Law Center et al. in Support of Petition for a Writ of Certiorari in the United States Supreme Court No. 06-1034 (Feb. 27, 2007) (47 pages)

This *amicus* brief was filed by Juvenile Law Center, The Justice for Children Project, Fredrikson & Byron, PA, and the Children's Law Center of Minnesota in a case involving the Minnehaha County Juvenile Detention Center's policy to strip-search juveniles arrested on minor violations. *Amici* argue that the intrusion into personal privacy caused by a strip search is even more severe for children

than for adults, that the governmental interest does not outweigh the severe intrusion on youth's privacy, and that the doctrine of *parens patriae* cannot justify these suspicionless searches. The Supreme Court denied cert.

2. Searches on School Campuses

Mere Platitudes: The "Domino Effect" of School-Search Cases on the Fourth Amendment Rights of Every American

Matthew Lynch, 91 Iowa L. Rev. 781 (2006) (29 pages)

An article that looks critically at school search jurisprudence in order to illustrate the domino effect of cases restricting students' Fourth Amendment rights on the rights of all citizens. The author explains how this domino effect results in a younger generation of Americans that are becoming more accustomed to invasions of privacy within the schoolhouse.

Reappraising T.L.O.'s "Special Needs" Doctrine in an Era of School-Law Enforcement Entanglement

Josh Kagan, 33 J.L. & Educ. 291 (2004) (22 pages)

The author argues that because of the increased entanglement between schools and law enforcement, the lower "reasonable suspicion" standard of *New Jersey v. T.L.O.* should not be used to determine the constitutionality of school searches. Instead, students should be guaranteed the same rights as they would have on the street. Alternatively, if a lower standard continues to be used, materials found during such searches should not be used for law enforcement action.

C. Eyewitness Identification

Eyewitness Identification: A Policy Review

The Justice Project (2007) (28 pages)

Eyewitness misidentification is the leading cause of wrongful convictions. This policy review outlines recommendations for policy improvements, discusses the latest scientific research, examines pertinent case studies and proposes model state policies for eyewitness identification procedures.

D. Drug Tests

Organizational Interpretations of Drug Test Results

Leslie Paik, 40 *Law & Soc'y Rev.* 931 (2006) (19 pages)

The author of this article attempted to determine how much impact organizational factors, such as information about the youths' past drug use, would have on the juvenile drug court staffs' interpretations of drug test results. Organizational information did, in fact, affect the staffs' decision-making process. For example, even if a juvenile's drug test was negative, if the juvenile had a history of persistent drug use, the staff member may have been hesitant to accept the validity of the test and may have subsequently retested the juvenile.

4



MARKERS OF INEQUALITY

A. Lesbian, Gay, Bisexual & Transgender Youth

1. General

Lesbian, Gay, Bisexual, and Transgender Youth: An Epidemic of Homelessness

Nicholas Ray, National Gay and Lesbian Task Force Policy Institute and the National Coalition for the Homeless (2006) (192 pages)

A report discussing the prevalence of, reasons for, and consequences of homelessness among LGBT youth. Critical issues affecting homeless LGBT youth are explored, including mental health, substance abuse, risky sexual behavior, crime and victimization, and resiliency.

2. Representing LGBT Youth

Report of the Working Group on the Role of Sex and Sexuality at the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham

6 Nev. L.J. 642 (2006) (11 pages)

Building upon the Recommendations of the Fordham Children's Conference ten years ago, the UNLV Conference on Representing Children in Families brought together nearly one hundred experts to establish principles and guidelines to enhance children's

participation and voice in proceedings and policies affecting them. These recommendations were developed by the Working Group on Sex and Sexuality, which considered the role of clients' gender, sexual orientation, gender identity, and sexual conduct.

Guidelines for Working with LGBTQ Clients

The Legal Aid Society Juvenile Rights Practice (4 pages)

Provides advice for juvenile defenders to ensure an effective and caring relationship with LGBTQ clients.

Keeping LGBTQ Youth Safe in Juvenile Justice & Delinquency Placements

CWLA and Lambda Legal (2 pages)

This fact sheet contains tips to help LGBT youth find safe placements and receive appropriate services in juvenile justice settings.

3. Legal Challenges

Mariah L. v. ACS

State Court of New York (2007)

This case deals with access to health care for a transgender girl in the foster care system of New York.

Locked in the Closet: The Impact of *Lawrence v. Texas* on the Lives of Gay Youth in the Juvenile Justice System

Valerie Gwinn, 6 Whittier J. Child & Fam. Advoc. 437 (Spring, 2007) (18 pages)

This student note examines why gay children are over-represented in the juvenile justice system, focusing specifically on parental rejection and homelessness; explores the reasons that gay youth face discrimination based on sexual orientation during disposition and within facilities; and offers suggestions regarding how the Supreme Court's decision in *Lawrence v. Texas* might be used to protect the rights of LGBT youth in the juvenile justice system.

4. Legislation & Policies

Anti-Discrimination of LGBT Youth

Policy of the New York Department of Juvenile Justice (3 pages)

The NY Department of Juvenile Justice adopted this policy forbidding discrimination and harassment of LGBT youth.

New York Safety Act

(5 pages)

This New York Safety Act was introduced to ensure OCFS facilities are free from all types of harmful discrimination.

Fact Sheet on California's Juvenile Justice Safety and Protection Act (SB 518)

Equality California (2007)(3 pages)

This fact sheet describes the Juvenile Justice Safety and Protection Act. The bill was introduced to address the crisis of abuse and discrimination against LGBT youth by instituting some basic safeguards that would benefit all young people residing in state and county juvenile justice facilities, including a Youth Bill of Rights, statutory anti-bias rules, and mandatory training regarding youth rights for correctional officers and other facility staff.

B. Gender

1. Factors Leading to Delinquency

The Causes of Girls' Delinquency and Their Program Implications

Margaret A. Zahn, *Family Court Review*, Vol. 45, No.3, pp. 456-465 (July, 2007) (8 pages)

Summarizing literature reviewed by the federally funded Girls Study Group, this article discusses some factors leading to delinquency that are "gender-sensitive." In particular, girls have higher rates of exposure to sexual assault, and findings indicate they are more affected by the impacts of early puberty, when it is coupled with harsh parenting and disadvantaged neighborhoods. The implications for girls programming are discussed.

2. Representing Girls

Girl Talk – Examining Racial and Gender Lines in Juvenile Justice

Kim Taylor-Thompson, 6 Nev. L.J. 1137 (Spring, 2006) (24 pages)

This article examines the rapid increase of girls of color amongst the juvenile justice population through an historical analysis of the design, goals, and growth of the juvenile justice system. The author reveals the historical tendency to convert early female sexuality into juvenile delinquency by tracing the progression of efforts to reform juvenile behavior from the nineteenth century to present day. Finally, the author points to how defenders' interactions with girls and advocacy on behalf of girls could benefit from examining these historical trends

Report of the Working Group on the Role of Sex and Sexuality at the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham

6 Nev. L.J. 642 (2006) (11 pages)

Building upon the Recommendations of the Fordham Children's Conference ten years ago, the UNLV Conference on Representing Children in Families brought together nearly one hundred experts to establish principles and guidelines to enhance children's participation and voice in proceedings and policies affecting them. These recommendations were developed by the Working Group on Sex and Sexuality, which considered the role of clients' gender, sexual orientation, gender identity, and sexual conduct.

3. Prostitution & Sexual Exploitation

God Bless the Child: The United States' Response to Domestic Juvenile Prostitution

Nesheba Kittling, 6 Nev. L. J. 913 (2006) (13 pages)

The author demonstrates the failure of the recent U.S. campaign against child sex trafficking to recognize that domestic female juvenile prostitutes also require protection and services. The article analyzes both domestic and international legislation aimed

at protecting victims of child sex trafficking and examines the role that racial stereotypes about black women and their sexuality have played in the government's response to domestic prostitution. Recommendations for advocates of domestic juvenile prostitutes are provided.

Who Is There to Help Us? How the System Fails Sexually Exploited Girls in the United States: Examples from Four American Cities

Sarah Ann Friedman, ECPAT–USA (2005) (59 pages)

A comprehensive discussion of the sexual exploitation of teens, particularly girls. The article argues that girls who engage in prostitution are victims, not criminals, and the system should treat them as such. Describing the failures of the juvenile and criminal justice systems to protect the rights of these girls, the report makes recommendations for how to protect girls who are prostituted, including providing them with a range of strengths-based services to address their mental and physical health issues.

4. Confinement

Fact Sheet: The Nation's Most Punitive States for Women

Christopher Hartney, National Council on Crime and Delinquency (July, 2007)
(8 pages)

An up-to-date fact sheet on the imprisonment of women in the United States. The United States incarcerates more women than any other country, and in proportion to boys, juvenile girls' custody rates have been rising. According to the fact sheet, more than three times as many girls are incarcerated for status offenses as boys.

Custody and Control: Conditions of Confinement in New York's Juvenile Prisons for Girls

Mie Lewis, Human Rights Watch and ACLU (2006) (138 pages)

This report chronicles the abuse and neglect suffered by girls confined in the only two higher-security juvenile facilities in New York State that hold girls.

5. Health Issues

A National Overview of Reproductive Health Care Services for Girls in Juvenile Justice Residential Facilities

Catherine A. Gallagher, et al., *Women's Health Issues*, Vol. 17, Issue 4, pp. 217-226 (2007) (10 pages)

The authors of the study attempted to determine the types of gynecologic services residential facilities are offering girls in the juvenile justice system. Although 70% of residential facilities have access to reproductive health services, a majority of those facilities are providing only ad hoc testing, as opposed to full population testing as suggested. Furthermore, facilities are not uniformly adopting standards recommended by national medical organizations and the Center for Disease Control.

Health Interventions with Girls in the Juvenile Justice System

Patricia J. Kelly, et al., *Women's Health Issues*, Vol. 17, Issue 4, pp. 227-236 (2007) (10 pages)

Girls comprise 25% of the youth in the juvenile justice system, and they present interrelated sexual and dating violence risk behaviors. This study compared Girl Talk-2, a peer-led group intervention program aimed at decreasing sexual and dating violence behaviors, with a comparison program in which the same information was presented in lecture and video format. Although both groups improved in knowledge and attitudes, the Girl Talk-2 group improved more in terms of usage of condoms and communication skills to defuse potentially violent situations.

C. Race & Ethnicity

1. Representation Issues

Report of the Working Group on the Role of Race, Ethnicity, and Class at the UNLV Conference on Representing Children in Families: Children's Advocacy and Justice Ten Years After Fordham

6 Nev. L.J. 634 (2006) (6 pages)

Building upon the Recommendations of the Fordham Children's Conference ten years ago, the UNLV Conference on Representing

Children in Families brought together nearly one hundred experts to establish principles and guidelines to enhance children's participation and voice in proceedings and policies affecting them. These recommendations were developed by a working group considering the role of race, ethnicity, and class in the attorney-client relationship.

2. Differential Treatment by the Justice System

And Justice for Some: Differential Treatment of Youth of Color in the Justice System

National Council on Crime and Delinquency (Jan., 2007) (41 pages)

This report demonstrates that youth of color are disproportionately represented at every stage of the juvenile justice system. Data is analyzed regarding arrests, referrals to juvenile court, detention, formal processing, waiver to adult court, disposition, detention and incarceration in juvenile facilities, and incarceration in adult prisons. The report documents the "cumulative disadvantage" suffered by youth of color, such that the race disparities are compounded at each progressive stage of the system.

Pain and Race: A New Understanding of Race-Based Sentencing Disparities

Margareth Etienne, 3 U. St. Thomas L.J. 496 (2006) (17 pages)

Medical studies have shown that minorities are regularly under-treated for pain. Based on these medical findings, the author of this article theorizes that race-based sentencing disparities may be caused, in part, by judges' deficiencies in perceiving pain accurately; because judges perceive that minorities experience less pain, they might sentence minorities more harshly.

Youth Transferred to Adult Court: Racial Disparities

Amanda Burgess-Proctor, Kendal Holtrop, and Francisco A. Villarruel,

Campaign 4 Youth Justice Policy Brief, *Adultification* Vol. 2 (19 pages)

This policy brief examines the issue of transfers to adult court generally and summarizes the academic findings regarding negative outcomes of transfer for all youth. The report then looks in particular at the disproportionate application of transfer laws to children of color.

D. Immigration Status

1. Undocumented Youth

Undocumented Immigrant Youth: Guide for Advocates and Service Providers

National Collaboration for Youth and National Juvenile Justice Network, Policy Brief No. 2 (Nov., 2006) (23 pages)

This policy brief, designed for youth services providers and juvenile justice advocates, provides an overview of the issues that undocumented immigrant youth face and an explanation as to how these issues relate to juvenile justice. The risks and obstacles that undocumented immigrant youth face in both the immigration and juvenile justice contexts are explored. Policy recommendations to protect the safety and well-being of immigrant youth are offered.

2. Immigration Consequences of Adjudications & Convictions

Immigration Consequences of Criminal Pleas and Convictions

Jeff Joseph, 35-OCT Colo. Law. 55 (2006) (9 pages)

This article describes the consequences of criminal convictions and juvenile adjudications for immigrants, and lays out defense attorneys' ethical obligation to inform clients of those consequences.

Committing a Crime While a Refugee: Rethinking the Issue of Deportation in Light of the Principle Against Double Jeopardy

Won Kidane, 34 Hastings Const. L.Q. 383 (2007) (49 pages)

Although deportation is considered a civil sanction, this article argues that the deportation of a refugee, as a result of a criminal conviction, to a place where he might face persecution constitutes a second punishment, and thus violates the Double Jeopardy Clause of the Fifth Amendment. The article provides a historical perspective on U.S. immigration and on the federal laws governing non-citizens who commit crimes in the U.S.

5



SPECIFIC OFFENSE CATEGORIES

A. Juvenile Sex Offenses

1. Policy & Practice Considerations

Challenging the Prosecution of Young “Sex Offenders”: How Developmental Psychology and the Lessons of Roper Should Inform Daily Practice

Suzanne Meiners-Levy, 79 *Temp. L. Rev.* 499 (2006) (14 pages)

The article scrutinizes state legislation that classifies juveniles as sex offenders. It suggests that these laws disregard developmental psychology of adolescents and impose harsh penalties for oftentimes nonpredatory and exploratory acts. The author recommends that laws addressing juvenile sex offenders “reflect the social reality of this behavior,” and that juvenile defenders aggressively advocate for these changes.

How Can You Distinguish a Budding Pedophile from a Kid With Real Boundary Problems?

Maggie Jones, *New York Times Magazine* (July 22, 2007) (14 pages)

In light of the Adam Walsh Act and Megan’s Law, the author of this article explores the issue of whether juveniles who commit sex crimes should be forced to register as sex offenders. The author discusses which juveniles should have to register and for how long, and highlights the negative consequences for youth who have been forced to register. The author also explores the various types of rehabilitative programs that currently exist for juvenile sex offenders.

2. Federal Adam Walsh Act

Comments to the interim regulations of the Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 117

Letter from Defender Association of Philadelphia, *et al.* to David J. Karp, Senior Counsel at Office of Legal Policy (April 25, 2007) (14 pages)

A number of advocacy organizations signed on to this letter commenting on, and making recommendations pertaining to, the interim regulations regarding the Sex Offender Registration and Notification Act (SORNA) as it pertains to juveniles. Research on juvenile sex offenders is included.

Comments to the Proposed National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA); OAG Docket No. 121

Letter from Defender Association of Philadelphia *et al.* to Laura Rogers, Director of SMART Office at DOJ (Aug. 1, 2007)(15 pages)

This second letter from a number of advocacy organizations further comments on, and makes recommendations pertaining to, the proposed *National Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act (SORNA)* as it pertains to juveniles. Recommendations are supported by research evidence.

3. State Legislation

Fifty State Survey of Sex Offender Registry Laws and Registrable Offenses

NIC/WCL Project on Addressing Prison Rape (Current as of Dec., 2006) (130 pages)

Created by the NIC/WCL Project on Addressing Prison Rape at the American University Washington College of Law, this comprehensive chart provides information from each of the 50 states on which sex offenses are registrable, which state agency has responsibility for maintaining sex offender registries, and whether the law expressly requires registration for staff sexual misconduct.

Quick Reference Guide: Fifty State Survey of Sex Offender Registration and Community Notification Requirements for Juveniles

NIC/WCL Project on Addressing Prison Rape (Current as of Nov., 2006) (32 pages)

Created by the NIC/WCL Project on Addressing Prison Rape at the American University Washington College of Law, this chart outlines (1) whether juvenile offenders are required to register as sex offenders, (2) whether they are subject to public disclosure/community notification, and (3) whether the juvenile sex offender registry is separate from the adult registry.

Summary Chart of Fifty State Survey of Sex Offender Registration Laws for Juveniles

NIC/WCL Project on Addressing Prison Rape (Current as of Jan., 2007) (123 pages)

Created by the NIC/WCL Project on Addressing Prison Rape at the American University Washington College of Law, this chart summarizes for each state (1) the information maintained on the sex offender registry, (2) the statutory basis for juvenile community notification and sex offender websites, (3) the statutory basis for limitations on residency or employment, and (4) the statutory basis for duration of juvenile sex offender registration.

4. Litigation Challenges

Briefs Relating to Litigation Concerning the Illinois Sex Offender Registration Act

Briefs In Support of Complaint for Declaratory Action and Permanent and Temporary Injunction Declaring P.A. 94-166 Unconstitutional as Codified (44 pages)

These pleadings were filed by Donald M. Tegeler in Illinois on behalf of *D.H.*, a minor who was found guilty of charges of home invasion and criminal sexual abuse in 2002. Following his trial, the Illinois legislature passed the Illinois Sex Offender Registration Act (P.A. 94-166), which requires minors to register as sex offenders within ten days after turning the age of seventeen. The brief contends

that this law should not be applicable to *D.H.* because he was adjudicated three years prior to its enactment. Furthermore, it argues that P.A. 94-166 violates *D.H.*'s right to privacy, the Eighth Amendment's protections against cruel and unusual punishment, and the *ex post facto* provisions of the Fifth Amendment.

Brief arguing for Right to Jury Trial in Juvenile Sex Offense Cases (24 pages)

This brief from Jackie Bullard at the Illinois Office of the State Appellate Defender argues that, as applied to juvenile sex offenders, the Juvenile Court Act provision denying the right to a jury trial is unconstitutional. Requiring juveniles adjudicated for sex offenses to register runs contrary to the rehabilitative goals of the juvenile court system. The brief argues that juveniles who must comply with sex offender registration should receive a jury trial "because the purpose of the Act has now shifted to the protection of society instead of the rehabilitation of the juvenile." The brief makes both due process and equal protection arguments to support the assertion that juveniles charged with sex offenses who are "subject to criminal prosecution, resulting in criminal convictions," are entitled to the right to a jury trial.

In the Matter of L.M.

Amicus Brief of the Juvenile Law Center in Support of Respondent-Appellant, in the Supreme Court of Kansas (No. 06-96197-A) (21 pages)

Amici argue that the U.S. Constitution and Kansas state law require juries in criminal trials in which defendants face serious punishment. Furthermore, they argue the disclosure provisions of the Kansas offender registration act constitute serious punishment entitling the defendant to trial by jury, and the changed purpose and nature of Kansas's juvenile justice system no longer supports denial of the right to a jury trial.

Brief of Amici Curiae Supporting Petitioner in *K.W. v. Commonwealth*

Juvenile Law Center, No. 21-05-624 in the Commonwealth Court of Pennsylvania (June 28, 2006) (29 pages)

In this case, the juvenile, a 12-year-old, challenged a statute that forced him to register indefinitely as a perpetrator of child abuse. *Amici* argue that, as related to juveniles, the registry statute violates state and federal due process clauses. The amici emphasized the differences between juveniles and adults, as well as the possible effect of registration on future employment.

Brief Supporting Appellant *In the Matter of the Welfare of B.B.H.*

Jodie Carlson, Office of the Minnesota Public Defender, Case No. A05-2535 (Minn. Ct. App. 2006) (33 pages)

The appellant was found guilty of two counts of first-degree criminal sexual conduct for violating a Minnesota statute that prohibits consensual oral sex with a minor who is more than thirty-six months younger. The brief argues, *inter alia*, that the Minnesota statute requiring the appellant to register as a predatory offender violates due process because it imposes punitive measures on the juvenile without providing a trial by jury

Z.H. v. State

850 N.E. 2d 933 (Ind. Ct. App. 2006) (6 pages)

The Indiana Court of Appeals held in this case that a juvenile cannot be forced to register as a sex offender where the state failed to prove that juvenile was likely to repeat an act that would constitute a sex offense if committed by an adult.

5. Polygraphs

In re D.S.

856 N.E.2d 921 (Ohio 2006) (8 pages)

In this case, the Ohio Supreme Court held that before a juvenile court can require a child found delinquent of sex offenses to submit to “full disclosure” polygraph tests as a condition of probation, evidence must support the use of the polygraph for the particular juvenile. Distinguishing this case from cases involving adult sex

offenders, the Court cited *Roper v. Simmons* for the proposition that juveniles are different from adults. The Court also addressed the Fifth Amendment concerns with compelled polygraph tests, stating that the polygraph order did not eliminate the juvenile's right against self-incrimination.

Memorandum: Juvenile Sex Offender – Treatment Modalities and Polygraph Test

Nicole Pittman, Juvenile Justice Policy Analyst Attorney, Defender Association of Philadelphia (July 11, 2005) (5 pages)

This memorandum regarding the use of polygraphs with sexually offending juveniles provides an explanation of the apparatus itself, its accuracy, the corresponding examination procedure, and the scientific process. The author examines the potential dangers of over-reliance on the polygraph test in case management and legal decisions and offers a list of methods examiners may use to prevent common errors.

6. Treatment

Understanding Treatment for Adults and Juveniles Who Have Committed Sex Offenses

Center for Sex Offender Management, U.S. Department of Justice, Office of Justice Programs (Nov., 2006) (16 pages)

This report provides a broad overview of current research, professional literature, and practice trends related to sex offenders. In particular, the report describes the need for specialized treatment of juvenile sex offenders, with an emphasis on a holistic approach. Citing to studies that have shown reduced recidivism in sexual offenses, as well as in violent and non-violent offenses, for juveniles receiving treatment, the report concludes that treatment interventions should not be abandoned in favor of reliance on more punitive approaches that have already been shown to have very limited impact on public safety.

B. Gang-Related Offenses

Gang Wars: The Failure of Enforcement Tactics and the Need for Effective Public Safety Strategies

Judith Greene and Kevin Pranis, Justice Policy Institute (July, 2007) (108 pages)

Providing an extensive review of the research on gangs, this report reveals that traditional gang suppression strategies, which have cost billions of dollars, have failed to promote public safety and are often counterproductive. In cities like Los Angeles where gang activity is most prevalent, more police, more prisons and more punitive measures haven't stopped the cycle of gang violence. Some key findings include: the fact that gangs commit a relatively small portion of crime; gang activity is not increasing; whites constitute a large proportion of gang members; most youth involved in gangs quit before reaching adulthood; and heavy-handed suppression tactics fail to reduce violence while actually increasing gang cohesion.

Gang Deterrence and the Community Protection Act of 2005: Why the Federal Response to MS-13 is Flawed and How it Will Have an Adverse Impact on Your State

Jeffrey A. Kidder, 33 New. Eng. J. on Crim. & Civ. Confinement 639 (Summer, 2007) (21 pages)

Looking at the Gang Deterrence and Community Prevention Act of 2005, which was geared towards decreasing gang activity by increasing sentences and making it easier to try juvenile offenders as adults, this article argues against passing punitive federal legislation to address the gang issue. The author describes the negative impact that such legislation will have on juveniles and argues that the bill will deepen the rift between federal and local law enforcement officials while failing to reduce violent gang activity. The author provides examples of how some states are effectively reducing gang activity.

Letter from the National Juvenile Justice and Delinquency Prevention Coalition to the U.S. Congress re: Gang Abatement and Prevention Act of 2007 (S.456)

(July 2, 2007) (7 pages)

This letter outlines the National Juvenile Justice and Delinquency Prevention Coalition's three main concerns with the federal Gang Abatement and Prevention Act of 2007. In particular, the Coalition believes that the definitions of "gang" and "gang crime" are overbroad and vague and will dramatically increase the unwarranted federal prosecution of youth; that the bill emphasizes reactive rather than proactive approaches to gang prevention; and that juveniles should not be subjected to enhanced penalties under this bill.

C. Status Offenses

Rethinking Juvenile Status Offense Laws: Considerations for Congressional Review of the Juvenile Justice and Delinquency Prevention Act

Claire Shubik and Jessica Kendall, *Family Court Review*, Vol. 45, No. 3, pp. 384-398 (July, 2007) (15 pages)

Status offenders are youth who are charged with behavior, such as running away, truancy, or disobedience, which would not be crimes if committed by adults. As Congress considers reauthorization of the JJDPDA, the authors propose recommendations for strengthening the JJDPDA based on the issues facing the states in this area. In particular, the article looks at the role of pre-court diversion, the use of detention for status offenders, and jurisdictional age, and provides a review of legislation and case law in this area.

Creating an Adolescent Criminal Class: Juvenile Court Jurisdiction Over Status Offenders

Soma R. Kedia, 5 *Cardozo Pub. L. Pol'y & Ethics J.* 543 (Spring, 2007) (14 pages)

A review of current trends in status offense laws. The author examines how the court system has addressed status offenders since the 1960s, and what impact status offense laws have on juveniles. In conclusion, the author suggests alternatives to court action, including the intervention of social services agencies, for youth who are labeled as status offenders.

Tool Kit for Creating Your Own Truancy Reduction Program

OJJDP (Feb., 2007) (229 pages)

This tool kit provides an overview of truancy issues, including causes and solutions to the problem. In addition, it outlines the elements of successful truancy programs such as family involvement, use of incentives and sanctions, development of support networks, and program evaluation. Examining the legal and economic implications of truancy, the toolkit also provides recommendations to stakeholders hoping to address this problem.

6



YOUTH IN ADULT COURT

A. Transfer Legislation

Connecticut Senate Bill 1500

Public Act 07-4 (2007)(37 pages)

In 2007, legislation was passed that raised the age of jurisdiction for juvenile court in Connecticut from 16 to 18. Beginning January 1, 2010, most offenses involving 16- and 17-year olds will be adjudicated in juvenile court (See Sections 73-78, 81-82, 84, 87-88, 123 of Public Act 07-4). In addition, 16- and 17-year olds will be eligible for Families With Service Needs (FWSN) programs. The law requires the Judicial Department's Court Support Services Division (CSSD) to provide a continuum of services for 16- and 17-year old juvenile offenders living in the community, and creates the Juvenile Jurisdiction Policy and Operations Coordinating Council to monitor the implementation of the new and modified programs, procedures, and court operations associated with raising the delinquency age.

Virginia HB 3007

2007 Session (1 page)

This Virginia bill, which was passed by both houses and signed by the Governor, amended the state's "once an adult, always an adult" law. Whereas previously, once a juvenile was tried or treated as an adult for an offense, regardless of outcome, she would be tried in adult court for subsequent offenses. The amended law provides that youth must be convicted of an offense when they are transferred to adult court in order to be tried in adult court for all future offenses.

B. Research & Policy Reports on Transfer

Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult Justice System: A Systematic Review

Angela McGowan *et al.*, Task Force on Community Preventive Services, *American Journal of Preventative Medicine*, Vol. 32, No. 4S, pp. S7-S28 (April, 2007) (12 pages)

This study attempted to determine whether transferring juveniles to adult court has a specific or general deterrence effect. Transferring juveniles does not lead to specific deterrence; in fact, transfer actually increased rates of violence among the transferred youth. There was insufficient evidence to determine whether transferring juveniles has a general deterrence effect.

Recommendation Against Policies Facilitating the Transfer of Juveniles from Juvenile to Adult Justice Systems for the Purpose of Reducing Violence

Task Force on Community Preventive Services, *American Journal of Preventative Medicine*, Vol. 32, No. 4S, pp. S5-S6 (April, 2007) (2 pages)

Based on research findings that juveniles who experience the adult justice system on average commit more subsequent violent crime following release than juveniles retained in the juvenile justice system, the Task Force on Community Preventive Services, an independent, nonfederal group, recommends against policies facilitating transfer of juveniles to the adult system for the purpose of reducing violence.

The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Adult Criminal Court

Issue Brief 5, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice

This issue brief from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice summarizes research findings that suggest that harsher sentences and adult punishment are ineffective deterrents to crime among juveniles. The study compared adolescents processed in New York adult courts with those processed in New Jersey juvenile courts. Teens in adult court were at greater risk of repeat offenses, faced harsher settings, and experienced more developmental problems.

The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform

Campaign for Youth Justice (March, 2007) (104 pages)

The report provides an in-depth examination of the negative impact of policies that treat young people as adults in the justice system. Case studies are included, and particular emphasis is placed on the laws and data in California, Connecticut, Florida, Illinois, North Carolina, Virginia, and Wisconsin. Urging policy makers to take advantage of the shift in public opinion and new adolescent brain development research, the report calls for a ban on the incarceration of youth in adult jails or prisons. The report also argues that, for the rare cases where prosecution in the adult system is warranted, the discretion to try youth as adults should reside with the juvenile court judge rather than the prosecutor.

Return Them to Juvenile Court

Ted Rubin, Campaign For Youth Justice Policy Brief, Adulthood Series, Vol. 1 (18 pages)

This policy brief encourages policymakers, juvenile justice professionals, and others to discard or change the policies that allow youth to be handled in criminal courts and serve sentences in adult facilities. The brief provides an overview of existing statutory schemes allowing for youth to be tried as adults and the negative impacts that result from such policies.

A Capital Offense: Youth in DC's Adult Criminal Justice System and Strategies for Reform

Campaign for Youth Justice (2007) (28 pages)

This report looks at the transfer policies in the District of Columbia and provides information on the negative impact that transfer has on youth. Specific policy recommendations are made for changing the way D.C. treats youth.

Children as Adults: The Transfer of Juveniles to Adult Courts and the Potential Impact of *Roper v. Simmons*

Enrico Pagnanelli, 44 Am. Crim. L. Rev. 175 (Winter, 2007) (16 pages)

This student note discusses how the reasoning in *Roper v. Simmons* should preclude the transfer of juveniles to the adult court for certain crimes. Focusing on *Roper's* recognition that juveniles have diminished culpability due to social, physiological, and psychological immaturity, the author argues that transfer policies

overlook the differences between juveniles and adults. The author suggests that juvenile courts should reevaluate their policies and focus instead on the original rehabilitative and restorative aims of the juvenile justice system.

Fundamental Unfairness of the Discretionary Direct File Process in Florida: The Need for a Return to Juvenile Court Waiver Hearings

Rostyslav Shiller, 6 Whittier J. Child & Fam. Advoc. 13 (2006) (30 pages)

A critique of the Florida Statute which provides for discretionary direct file of juveniles in adult criminal court without the opportunity for a waiver proceeding in juvenile court. The author provides an overview of children's rights to due process and equal protection under the Federal and Florida State Constitutions, a description of how the Florida discretionary transfer scheme evolved, and a comparison of Florida's policy with other jurisdictions. The author contends that there should be uniform public guidelines in juvenile transfer proceedings, and argues that juveniles are entitled to juvenile court waiver hearings prior to being transferred to adult court.

Assessing the Relative Effects of State Direct File Waiver Laws on Violent Juvenile Crime: Deterrence or Irrelevance?

Benjamin Steiner and Emily Wright, 96 J. Crim. L. & Criminology 1451 (2006) (19 pages)

This article concerns a study which attempted to determine whether transfer laws have a general deterrent effect. According to the authors, harsher transfer laws have had very little deterrent effect on violent juvenile crime.

C. Waiver Hearings

Assessing Juvenile Psychopathy: Developmental and Legal Implications

Issue Brief 4, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice (4 pages)

This issue brief from the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice takes a critical look at the label of "psychopathy" for juveniles. Research

suggests that until better tools for assessing psychopathic traits in adolescents are developed, or until it is determined that traits used to gauge psychopathy among adults also apply to adolescents, courts should not rely solely on current assessment tools in deciding whether to waive youth to adult court.

A Cloudy Crystal Ball: Concerns Regarding the Use of Juvenile Psychopathy Scores in Judicial Waiver Hearings

Vanessa Kolbe, 26 Dev. in Mental Health L. 1 (2007) (26 pages)

The author argues that the Psychopathy Checklist: Youth Version (PSC: YV) is an imperfect predictor of which juveniles will become psychopaths in adulthood. Therefore, because of the high potential for error and the tremendous consequences of transfer, the author suggests that juvenile psychopathy scores not be used in waiver hearings.

Transfer to Adult Court: A National Study of How Juvenile Court Judges Weigh Pertinent Kent Criteria

Dia N. Brannen, Randall T. Salekin, Patricia A. Zapf, Karen L. Salekin, Franz A. Kubak, and Jamie DeCoster, 12 Psychol. Pub. Pol'y & L. 332 (2006) (19 pages)

This study examined three *Kent* factors in determining whether juvenile cases are moved to adult court: potential risk of dangerousness; level of sophistication/maturity; and amenability to treatment. Judges from the National Council of Juvenile and Family Court Judges were asked to examine hypothetical cases for transfer decisions. Results revealed that dangerousness and sophistication-maturity had a significant impact on transfer, whereas amenability to treatment did not. Policy implications of the research findings are discussed, including the need for guidelines and a national standard to outline how to weigh the *Kent* criteria and reduce disparity across states.

D. Defenses

State of Connecticut v. Heinmann

Brief of the Juvenile Law Center and National Juvenile Defender Center in Support of Defendant-Appellant, Connecticut Supreme Court (S.C. 17789)(Feb. 1, 2007) (19 pages)

This case involved the role of age in the duress defense. The defendant was 16 years old at the time of the incidents in question. *Amici* argue that state law, the U.S. constitution, and adolescent development research all dictate that the jury should have been instructed to consider the defendant's young age--regardless of the age of his coercers--in determining whether he was under duress.

State of Connecticut v. Heinmann

920 A.2d 278 (Conn. 2007) (25 pages)

In this case involving a 16 year old automatically tried in adult court, the Connecticut Supreme Court held that the trial court was not required to give instruction that would have allowed the jury to factor defendant's age into the duress defense, independent and regardless of how it related to the age of his coercers, with an eye toward accounting for the differences in how adolescents evaluate risks.

E. Sentencing Generally

People v. Clark

No. 1-06-0768, 2007 Ill.App.LEXIS 584 (Ill. App. Ct. June 4, 2007)

In this case, the Appellate Court of Illinois reduced the defendant's sentence for first-degree murder committed at age 18 from 44 years to 36 years. The Court based its decision, in part, on the testimony of Dr. Ruben Gur, a neuropsychologist who highlighted the differences between the brains of adults and adolescents.

Sample Memorandum in Aid of Sentencing

Jonathan Anderson and Santha Sonenberg, Public Defender Service of the District of Columbia, in *U.S. v. J.G.* (31 pages)

This sample memorandum filed on behalf of a juvenile tried in adult court argues the harm of sentencing a sixteen-year-old mentally retarded male and the benefits of continuing his therapeutic

treatment at a secure psychological facility. Counsel presents various mitigating factors, such as J.G.'s impaired decision-making process and the abuse and neglect he has suffered for half of his life as reasons to reduce the severity of J.G.'s sentence.

Jonah R. v. Carmona

446 F.3d 1000 (9th Cir. 2006) (9 pages)

The Federal Bureau of Prisons refused to credit a juvenile for time served pre-sentence, despite the fact that he spent 35 months in detention prior to being sentenced. On appeal, the U.S. Circuit Court of Appeals for the Ninth Circuit held that time served pre-sentence must be credited against a juvenile's sentence.

F. Juvenile Adjudications & Sentencing Enhancements

People v. Nguyen

152 Cal. App. 4th 1205 (2007) (25 pages)

The California Appellate Court reversed the lower court's decision that counted the defendant's previous adjudication in juvenile court toward California's Three Strikes law. On appeal, the defendant argued that since his juvenile adjudication was based on his admission of guilt rather than a contested hearing, it did not count as a prior conviction. Because the defendant did not have a jury trial pursuant to the Sixth Amendment, the appellate court found that his juvenile adjudication was not grounds for sentence enhancement. The court stated that "the core principles driving our rejection of the cases that treat juvenile adjudications as the same as prior adult convictions also compel us to apply those principles across the board to all juvenile adjudications."

United States v. Matthews

___ F.3d ___ (Mass. 2007) (13 pages)

The First Circuit ruled in this recent case that defendant's prior juvenile adjudications could be used for sentencing enhancement.

Supplemental Brief regarding right to jury trial in *Washington v. Weber*

Susan F. Wilk, Washington Appellate Project, Brief filed in Washington State Supreme Court (34 pages)

This brief in the Supreme Court of Washington argues that because juveniles are denied jury trials, the use of juvenile adjudications to elevate a criminal penalty violates the Sixth Amendment, under the United States Supreme Court decisions in *Apprendi*, *Jones*, and *Blakeley*. In addition the brief argues that where two offenses violate double jeopardy, the crime that forms part of the proof of the other must be vacated unless there is a clear statement of legislative intent to the contrary.

Recidivist Statutes and the Use of Prior Juvenile Adjudications

Heather Hruby, 27 J. Juv. L. 166 (2006) (3 pages)

A review of *Conkling v. Commonwealth*, 612 S.E.2d 235 (Va. Ct. App. 2005), wherein a juvenile challenged the practice of using prior juvenile adjudications in enhancing punishments. The Virginia Court of Appeals held that because the Virginia Recidivist Statute did not expressly include juveniles, prior juvenile adjudications could not be used to enhance a juvenile's sentence.

But I Was Just a Kid! Does Using Juvenile Adjudications to Enhance Adult Sentences Run Afoul of *Apprendi v. New Jersey*?

Douglas M. Schneider, 26 Cardozo L. Rev. 837 (2005) (26 pages)

This article analyzes the argument that the decision in *Apprendi v. New Jersey* bars the use of juvenile adjudications to enhance adult sentences.

G. Direct File Challenges

Flakes v. People

153 P.3d 427 (Colo. 2007) (29 pages)

In this decision, the Colorado Supreme Court remanded the case of a sixteen-year-old petitioner for resentencing. The Court rejected petitioner's constitutional challenge to Colorado's direct file statute which subjects certain juveniles to adult criminal

prosecution and sentencing, based on age and the nature of the charges, but reversed the judgment of the court of appeals upholding petitioner's sentences because it was unclear whether the district court fully exercised its sentencing discretion, and because the district court failed to make adequate findings before imposing an adult sentence.

New Mexico v. D.G.

Kenneth Henrie, New Mexico Public Defender, Third Judicial District Court of New Mexico

In this case, defendant filed a motion to dismiss arguing that the mandatory imposition of adult sentences upon juveniles convicted of first degree murder violates substantive and procedural due process, constitutes cruel and unusual punishment, and violates international law. The briefs discuss the *Roper* decision, as well as adolescent developmental research, which indicate that adolescents and adults are different physiologically and psychosocially. The court ultimately denied the defendant's motion, although not on the basis of the adolescent brain research arguments. Documents include:

Child-Defendant's Brief Supporting a Motion to Dismiss in *State v. D.G.* (18 pages)

Child-Defendant's Reply to State's Response to Motion to Dismiss in *State v. D.G.* (26 pages)

Closing Remarks on behalf of Child-Defendant in *State v. D.G.* (5 pages)

Sample Pleadings Challenging Direct File of Juvenile Clients in Criminal Court

Santha Sonenberg of the Public Defender Service of D.C. provided these sample pleadings she has been filing to challenge the direct file (with no reverse transfer hearing) provision in D.C. The pleadings included:

Motion to Dismiss Complaint and Transfer the Case to the Family Division or, in the Alternative, for Transfer Hearing (33 pages)

Reply to Government’s Opposition to Motion to Dismiss Complaint (14 pages)

Response to Government’s Response to Court’s Order for Statistical Information and Information Regarding Criteria Used by the Office of the United States Attorney in Deciding which 16- and 17 Year Olds to Prosecute as Adults (12 pages)

H. JLWOP

Connell v. State of Alabama

Amicus Brief of the Juvenile Law Center, The National Juvenile Defender Center, and the Southern Juvenile Defender Center, In the Court of Criminal Appeals of Alabama (NO. CR-06-0668) (2007) (59 pages)

Amici argue that a mandatory sentence of life imprisonment without the possibility of parole for a seventeen-year-old boy is unconstitutional under both the United States and Alabama Constitutions. Referencing *Roper v. Simmons*, they argue that because juveniles lack the same judgment, understanding, maturity and abilities as adults, imposing mandatory LWOP sentences on youth violates the bar against cruel and unusual punishment, as well as due process guarantees.

I. Other

Mendez-Alcaraz v. Gonzalez

464 F.3d 842 (9th Cir. 2006) (21 pages)

The defendant, an immigrant with permanent resident status, pled guilty to sexual abuse of a minor and was deported to Mexico following his conviction. On petition for review, the Ninth Circuit denied Mendez-Alcaraz’s motion for reconsideration of removal. In dissent, Justice Ferguson criticizes Arizona’s Measure 11, which provides for juveniles to be tried in the adult criminal justice system under allegations of more severe offenses. In doing so, he cites the holdings *Kent* and *In re Gault* and developmental research in arguing that transferring juveniles to adult courts transgresses “fundamental fairness and the tenets of juvenile justice.”

7



MENTAL HEALTH NEEDS

A. Legal & Practice Implications

Making the Connection: Legal Advocacy and Mental Health Services

Barbara Kahn *et al.*, *Family Court Review*, Vol. 45 No. 3 pp. 486-500 (July, 2007) (13 pages)

The authors examine research supporting the movement toward community mental health treatment of juveniles and argue that effective legal advocacy requires interdisciplinary coordination to identify and address mental health needs. Cook County is identified as a model for increasing access to community-based mental health services, and the article discusses how attorneys can apply that model in other jurisdictions.

A Proposed Bar to Transferring Juveniles with Mental Disorders to Criminal Court: Let the Punishment Fit the Culpability

Vanessa L. Kolbe, 14 Va. J. Soc. Pol'y & L. 418 (Spring, 2007) (19 pages)

This student note argues that the juvenile court system does not properly identify, screen, and protect youth with mental disorders. The disproportionate number of juveniles with mental illnesses who face serious charges and are transferred to the adult court system indicates that the adjudicatory process overlooks relevant issues such as their mental health and culpability. In conclusion, the author proposes that the courts should be prohibited from transferring a youth to criminal court upon finding that a juvenile has a serious mental disorder that diminishes culpability.

B. Programs

Juvenile Diversion: Programs for Justice-Involved Youth with Mental Health Disorders

Kathleen Skowryra and Susan Davidson Powell, National Center for Mental Health (June, 2006) (6 pages)

This article argues that many youth with mental health disorders are inappropriately incarcerated. It promotes, instead, funding for diversion programs, various screening and assessment processes, and better services for these youth.

Program Fidelity and Adaptation: Meeting Local Needs Without Compromising Program Effectiveness

Cailin O'Connor, Stephen A. Small, and Siobhan M. Cooney, *What Works, Wisconsin - Research to Practice Series*, Issue #4 (April, 2007) (6 pages)

This brief addresses the question of whether and how local jurisdictions can adapt evidence-based programs to meet their needs.

C. Reform Efforts

Improving and Coordinating Access to Mental Health Services for Youth in Pennsylvania's Juvenile Justice System

Laura Jones and Jason Ziedenberg, Justice Policy Institute (April, 2007)

A brief overview of Pennsylvania's reform efforts to address the mental health needs of youth in the juvenile justice system.

Progress and Perils in the Juvenile Justice and Mental Health Movement

Thomas Grisso, 35 J. Am. Acad. Psychiatry Law 158 (2006) (10 pages)

Dr. Grisso puts in historical context the current movement to respond to the mental and emotional problems of delinquent youths. While progress has been made, Grisso cautions against the possibility of several unintended consequences that might result if reform efforts are not undertaken with care.

Mental Health Courts

Tammy Seltzer, 11 *Psychol. Pub. Pol'y & L.* 570 (Dec., 2005) (15 pages)

This article raises concerns about practices common to mental health courts. The author argues that such courts are neither a proper nor an effective response to the unnecessary and inappropriate arrest and incarceration of people who have serious mental illnesses. Alternatives to mental health courts that do not raise civil rights concerns and that have been proven effective are discussed.

8



ETHICS

Recommendations of the UNLV Conference on Representing Children in Families: Child Advocacy and Justice Ten Years after Fordham

6 Nev. L. J. 592 (2006) (29 pages)

These Recommendations of the UNLV Conference on Representing Children in Families address the complexities and contradictions of seeking justice for children in legal and policy settings while accounting for children's deep connections to their families and communities. Building upon the Recommendations of the Fordham Children's Conference ten years ago, the UNLV conference brought together nearly one hundred experts to explore these issues and establish principles and guidelines to enhance children's participation and voice in proceedings and policies affecting them. These recommendations were based on the reports of various working groups looking at specific subtopics at the conference.

It Takes a Lawyer to Raise a Child?: Allocating Responsibilities among Parents, Children, and Lawyers in Delinquency Cases

Kristin Henning, 6 Nev. L.J. 836 (2006) (45 pages)

This Article considers whether, and to what extent, children do or should look to parents for guidance in matters of juvenile delinquency, looking at theories of adolescent development, rules of professional ethics, and principles of constitutional law and justice. The author proposes six strategies for effective lawyering on behalf of children and parents in juvenile court and identifies

core principles that will guide lawyers in counseling children, interacting with parents, and protecting the legal rights of children charged with crime. Systemic reforms that might alleviate conflict and thereby facilitate effective attorney-child-parent relationships are proposed.

The Logistical and Ethical Difficulties of Informing Juveniles about the Collateral Consequences of Adjudications

Michael Pinard, *Nev. L. J.* 1111 (2006) (14 pages)

This article argues that defenders should inform juveniles of the collateral consequences of their adjudications as part of the guilty plea or sentencing process. The unique ethical and logistical issues raised in conveying such information to juveniles are explored, including juvenile's understanding of the long-term effects of collateral consequences and the extent to which the juveniles' families should be involved in assessing plea bargains.

9



DETENTION & CORRECTIONS

A. Harms

The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities

Barry Holman and Jason Zeidenberg, Justice Policy Institute (Nov., 2006) (24 pages)

This policy brief looks at the consequences of detention on youth, their families and their communities. The brief argues that a number of youth are needlessly detained and argues that, instead, policymakers should focus on juvenile interventions that reduce recidivism and crime and build safe and healthy communities.

Do You Know Where the Children Are? A Report on Massachusetts Youth Unlawfully Held Without Bail

Barbara Fedders and Barbara Kaban (Sept., 2006) (14 pages)

The report criticizes the common practice in Massachusetts of youth being detained based solely on probation officer recommendations that are made pursuant to only a cursory look at the facts and youth being detained when they are accused of minor offenses. The negative impacts on youth, particularly youth of color, are described. Recommendations are offered to protect the due process rights of youth.

Are Boot Camps Obsolete?

Erin Hanusa, Connect for Kids (Nov. 30, 2006) (4 pages)

An article explaining the failed logic behind boot camps and suggesting possible detention alternatives, such as home-based multi-systemic therapy.

B. Conditions

Can Juvenile Justice Detention Facilities Meet the Call of the American Academy of Pediatrics and National Commission on Correctional Health Care? A National Analysis of Current Practices

Catherine A. Gallagher & Adam Dobrin, *Pediatrics*, Vol. 119, No. 4 (April, 2007) (13 pages)

The authors attempt to determine whether juvenile detention centers are complying with the standards set out in the National Commission for Correctional Health Care's "Standards for Health Services in Juvenile Detention and Confinement Facilities." Although nearly all detention centers are providing a minimum amount of care, there are still many weaknesses in services provided, including a lack of training of intake health care screeners; low levels of vision, dental and gynecologic services; and a low level of full population testing for infectious and communicable diseases. Very few detention facilities meet a minimum standard of care.

C. Children in Adult Facilities

Children Being Tried as Adults: Pre-Trial Detention Laws in the U.S.

Melissa Goemann, Tracey Evans, Eileen Geller, and Ross Harington, Campaign For Youth Justice Policy Brief, *Adultification Series*, Vol. 3 (14 pages)

A policy brief that describes the statutory pre-trial detention laws for children being tried as adults in each of the 50 states and the District of Columbia and the protections, if any, provided for those detained in adult jails.

D. Prison Litigation Reform Act

One Brick Too Many: The Prison Litigation Reform Act as a Barrier to Legitimate Juvenile Lawsuits

Anna Rapa, 23 T.M. Cooley L. Rev. 263 (2006) (25 pages)

This article deals with the Prison Litigation Reform Act (PLRA), which provides the procedures prisoners need to follow in order to sue the prisons in which they are incarcerated. The author argues that because the two main reasons for the PLRA (prevention of frivolous prisoner litigation and protection of prison autonomy) do not apply to juveniles, juveniles should be excluded from the reach of the PLRA.

10



SYSTEMIC ISSUES

A. Inter-Agency Information Sharing

Guidelines for Juvenile Information Sharing

Office of Juvenile Justice and Delinquency Prevention (Oct., 2006) (37 pages)

This report gives guidance to state and local jurisdictions that are trying to improve information-sharing among key agencies that work with at-risk youth and juvenile offenders. The guidelines describe how to incorporate the three components of juvenile information sharing – collaboration, confidentiality, and technology – into a developmental framework.

B. Self-Incrimination during Screening, Assessment, & Treatment

Protecting Youth from Self-Incrimination when Undergoing Screening, Assessment, and Treatment within the Juvenile Justice System

Lourdes Rosado and Riya Shah, Juvenile Law Center (Jan., 2007)

This monograph provides a state-by-state look at existing protections against self-incrimination for youth who undergo screening, assessment and treatment within the juvenile justice system. The monograph recommends that states lacking protections enact statutes or court rules. Model statutory language is provided, as is a template for developing an interagency memorandum of understanding (MOU) as a stop-gap measure.

C. Crime Trends

Too Soon to Tell: Deciphering Recent Trends in Youth Violence

Jeffrey A. Butts and Howard N. Snyder, Issue Brief #110, Chapin Hall Center for Children (Nov., 2006) (8 pages)

In response to concerns expressed by law enforcement agencies that juvenile violent crime is increasing, this issue brief cautions that it is premature to predict a coming wave of serious violent crime after a one-year increase. Analyzing data on violent crime, the authors demonstrate that some of these concerns about increasing crime are exaggerated. The authors note that blaming “juveniles” for any increase that does occur is inappropriate because violent crime committed by young people is not limited to those under juvenile court jurisdiction. The authors argue that crime-prevention strategies should focus on at-risk youth between the ages of 15 and 24.

What Wave?

Marc Mauer, *The American Prospect*, <http://www.prospect.org/cs/articles?articleId=12601> (March 27, 2007) (4 pages)

Arguing that the evidence reported by the Police Executive Research Forum that we are experiencing a national crime wave is, in fact, inconclusive, the author contends that calls for increasingly punitive remedies are misguided.

D. Public Opinion

Attitudes of US Voters Toward Youth Crime and the Justice System

Barry Krisberg and Susan Marchionna, Focus: View from the National Council on Crime and Delinquency (Feb., 2007)

Findings from a poll of US voters toward youth crime and the justice system. The poll, conducted by Zogby International and commissioned by the National Council on Crime and Delinquency, shows that the public strongly favors rehabilitation for youth and rejects placing youth in adult jails and prisons.

Public Attitudes About the Culpability and Punishment of Young Offenders

Elizabeth Scott, N. Dickon Reppucci, Jill Antonishak, and Jennifer T. DeGennaro, *Behav. Sci. Law* 24: 815-832 (2006)(37 pages)

In this study of public attitudes, three major findings emerged: 1) community adults endorse the view that criminal choices of young offenders are influenced by their developmental immaturity and attribute more responsibility for the criminal act as the actor gets older; 2) the public has a relatively strong preference for differential treatment of juvenile and adult offenders; and 3) attitudes about culpability and punishment are not influenced by the culprit's race, physical maturity or appearance of toughness. According to the researchers, the findings suggest public opinion towards youth crime is changing, or the public is less supportive of punitive policies that treat young offenders as adults than politicians assume.

Public Opinion and the Foundation of the Juvenile Court

Daniel P. Mears, Carter Hay, Marc Gertz, Christina Mancini, College of Criminology and Criminal Justice, Florida State University (Feb., 2007) (36 pages)

This study examines public views about (1) abolishing juvenile justice and (2) the proper upper age of original juvenile court jurisdiction. The analyses suggest public support for maintaining a juvenile justice system and for the idea that youth can be "saved."

Public Preferences for Rehabilitation Versus Incarceration of Juvenile Offenders: Evidence From a Contingent Valuation Survey

Daniel S. Nagin, *et al.*, *Criminology & Public Policy*, Vol. 5, No. 4 (Nov., 2006) (25 pages)

In this study, the authors asked Pennsylvanians if they would be willing to pay higher taxes for either rehabilitation programs or for longer periods of incarceration for juveniles. The authors found that Pennsylvanians are at least as willing to pay higher taxes for rehabilitation as punishment for juvenile offenders. In fact, citizens on average were somewhat more willing to pay for rehabilitation programs rather than longer periods of incarceration for youths charged with serious crimes. And participants

expressed even greater willingness to pay for early childhood prevention programs.

The News Media's Influence on Criminal Justice Policy: How Market-Driven News Promotes Punitiveness

Sara Sun Beale, 48 Wm. & Mary L. Rev. 397 (2006) (59 pages)

The author of this article argues that the media's portrayal of the criminal justice system increases the public's desire for retributive measures. Specifically for juveniles, the media's influence has led to a shift from rehabilitation to retribution, as well as a modification of laws that makes it easier for juveniles to be prosecuted as adults.

E. Crime Prevention

Changing Lives: Delinquency Prevention as Crime-Control Policy

Peter Greenwood, MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, Adolescent Development and Legal Policy Monograph Series (4 pages)

This Executive Summary of Peter Greenwood's book summarizes research on the effectiveness of delinquency prevention programs. Greenwood describes a few prevention models that reduce crime much more cost-effectively than popular approaches (e.g., tougher sentences, D.A.R.E., boot camps, and "scared straight" programs) which are not supported by evidence.

The Government Is Establishing Your Child's Curfew

Danielle Diviaio, 21 St. John's J. Legal Comment. 797 (2007) (31 pages)

A critique of the effectiveness of curfew laws at reducing juvenile crime, this article analyzes the constitutional problems raised by such laws and describes the split among circuits which have reviewed curfew laws.

Juvenile Curfews: Political Pandering at the Expense of a Fundamental Right

Toni L. Connor, 109 W. Va. L. Rev. 459 (Winter, 2007) (23 pages)

This student note addresses of the constitutionality of juvenile curfews, focusing particularly on the division among United

States Courts of Appeals as to whether a minor possesses the fundamental right of freedom of movement. The author provides a background of juvenile curfew laws, a view of the constitutional challenges that these laws face, and an analysis of how the United States Courts of Appeals address this issue. In conclusion, the author argues that juvenile curfew laws are unconstitutional and proposes that there are “better and less intrusive ways to reduce juvenile crime, prevent harm to minors, and increase parental responsibility.”

F. Collateral Consequences of Adjudication & Convictions

1. Consequences of Juvenile & Criminal Court Involvement

Consequences to a Child Who Is Arrested or Convicted

Carlos J. Martinez and Ruck Deminico, Law Offices of Public Defender Bennett H. Brummer (May 9, 2006) (3 pages)

This fact sheet created by the Miami public defender’s office lists the collateral consequences of arrests, juvenile adjudications, and criminal convictions for youth in Florida.

Perpetual Punishment: The Consequences of Adult Convictions for Youth

Alexa Eggleston, Campaign For Youth Justice Policy Brief, Adulthood Series Vol. 4 (18 pages)

A policy brief that examines the collateral consequences for youth of charges and/or convictions in adult court, including the lack of employment and public assistance opportunities.

2. Improving Treatment of Ex-Offenders

The Case for Treating Ex-Offenders as a Suspect Class

Ben Geiger, 94 Cal. L. Rev. 1191 (2006) (42 pages)

This student note discusses the collateral consequences ex-offenders face and argues ex-offenders bear the traditional indicia

of suspectness and qualify as a suspect class for purposes of Equal Protection doctrine. The note concludes with a brief consideration of which statutory restrictions on ex-offenders are most vulnerable to an equal protection challenge.

Making America the “Land of Second Chances:” Restoring Socio-Economic Rights for Ex-Offenders

Deborah Archer and Kele S. Williams, 30 N.Y.U. Rev. L. & Soc. Change 527 (2006) (54 pages)

The authors argue that advocates must engage in a comprehensive litigation strategy, with coordinated legislative and public education efforts, to attack reentry barriers and dismantle the crippling web of collateral consequences faced by ex-offenders.

3. DNA Collection

In the Interest of Lakisha M.

Amicus Brief in Supreme Court of Illinois in support of Appellant filed by Children and Family Justice Center of Northwestern University School of Law, the Public Defender Service for the District of Columbia, and a Coalition of Juvenile Justice, Civil Liberties and Public Defender Organizations (Feb. 2007) (62 pages)

This *amicus* brief involves a challenge to the constitutionality of a statute that requires mandatory submission of blood, saliva, or tissue to Illinois state police by all persons convicted of or adjudicated delinquent for a felony and allows the state to store the DNA record in state and national DNA databases. The brief focuses, among other things, on the unique developmental characteristics of juveniles and the transitory nature of their delinquent behavior to argue that juvenile offenders should be treated differently under the statute from adult offenders.



SCHOOL-TO-PRISON PIPELINE

A. General

Deprived of Dignity: Degrading Treatment and Abusive Discipline in New York City and Los Angeles Public Schools

Elizabeth Sullivan, National Economic & Social Rights Initiative (NESRI)
(March, 2007) (76 pages)

Based on over 80 interviews with parents, students, and teachers in New York and Los Angeles and analysis of school discipline data, this report documents the trend towards criminalizing student behavior in schools. Drawing on international law and examples of effective policy alternatives, the report lays out a human rights framework for transforming school climate to ensure the successful development of children. The report calls on schools to view discipline and the teaching of behavioral skills as an essential part of education, and urges school districts to take a holistic approach by reducing overcrowding, increasing resources for teachers, and guaranteeing the participation of students and parents.

Criminalizing the Classroom: The Over-Policing of New York City Schools

New York Civil Liberties Union and American Civil Liberties Union (March, 2007) (37 pages)

This report documents the excesses of policing in New York City public schools and describes the negative impacts such policies have had on students. The report lays responsibility for the over-policing on Mayor Michael Bloomberg and offers realistic reform recommendations.

The Criminalization of Student Discipline Programs and Adolescent Behavior

Augustina Reyes, 21 St. John's J. Legal Comment. 73 (Fall, 2006) (25 pages)

An evaluation of Texas' student discipline policies in public schools, focusing specifically on the placement of children in alternative education programs for statutorily prohibited conduct. The article provides an overview of Zero Tolerance policies and Disciplinary Alternative Education Programs across the country, and posits that the practice of removing adolescents from regular classrooms is not effective in reducing misbehavior. The author concludes by proposing that "the entire approach of creating criminals in schoolyards needs a fresh approach."

B. Impact on Youth of Color

Series of Op-Eds

Bob Herbert, *New York Times* (2007) (10 pages)

In this series of Op-Eds in the *New York Times*, Bob Herbert writes about the criminalization of young children of color. The op-eds include are:

"6 Year Olds Under Arrest", April 9, 2007

"Small Incidents Are Creating a Big Problem with the N.Y.P.D.", May 29, 2007

"School to Prison Pipeline", June 9, 2007

"Harassed in the Classroom", July 3, 2007

"A Girl's Fear and Loathing", July 8, 2007

Dismantling the School-to-Prison Pipeline

NAACP Legal Defense and Educational Fund (2006) (16 pages)

An article describing the range of factors, such as segregated education, concentrated poverty, and racial disparities in law enforcement, that lead to the "school-to-prison pipeline." The impact of these policies on African American youth, in particular, is described, and the report describes LDF's efforts to work in partnership with other groups around the country to dismantle the pipeline.

Outlawed and Exiled: Zero Tolerance and Second Generation Race Discrimination in Public Schools

Frances P. Solari and Julienne E.M. Balshaw, 29 N.C. Cent. L.J. 147 (2007) (40 pages)

Describing the racism underlying zero tolerance policies, this article analyzes possible constitutional claims, including due process and equal protection, that students of color can assert to challenge these policies. The article discusses the increasing link between school disciplinary proceedings and referrals to the juvenile or adult justice system.

C. Special Education

Settlement Agreement in *John Doe 2, et al. v. County of San Bernardino, et al.*

Case No. EDCV 02-962 SGL (2006) (52 pages)

The Disability Rights Legal Center in Los Angeles filed this class action lawsuit in 2003 on behalf of youth with disabilities detained by the County of San Bernardino Probation Department. This settlement agreement addresses the education rights of youth detained in San Bernardino County juvenile halls.

Settlement Agreement in Jefferson Parish, Louisiana regarding Special Education

(Aug., 2005)(14 pages)

In 2005, lawyers from the Southern Disability Law Center, Southern Poverty Law Center, and the Juvenile Justice Project of Louisiana obtained this settlement agreement on behalf of all special education students with emotional disturbances in Jefferson Parish, Louisiana. The agreement requires the school system improve the education provided to those students with emotional disturbances; reform the parish's overly harsh discipline practices; provide counseling for emotionally disturbed children; and provide job training and other services to help high school students obtain employment post-graduation.

12



JUVENILE INDIGENT DEFENSE

A. General

State Indigent Defense Commissions

The Spangenberg Group (Dec., 2006) (74 pages)

This report is designed to assist policymakers and advocates who want to improve the indigent defense systems in their states. It provides an analysis of the varying structures of indigent defense delivery systems in the 50 states and the District of Columbia. Just over half of the states (28) currently use the fully-funded state commission approach. According to the report, most indigent defense experts agree that independence and meaningful statewide oversight of indigent defense services improve the quality of services rendered, and the report provides guidance on how to create a statewide agency or commission that will ensure independence, adequate funding, and meaningful oversight.

Ensuring Authentic Youth Participation in Delinquency Cases: Creating a Paradigm for Specialized Juvenile Defense

Patricia Puritz and Katayoon Majd, *Family Court Review*, Vol. 45 No. 3, pp. 466-484 (July, 2007) (20 pages)

This article highlights the importance of developing indigent defense systems that support the highly specialized practice area of juvenile defense. To protect their clients' rights and meet their ethical obligations, juvenile defense attorneys must zealously advocate for their clients' expressed interests and must strategically address the biases and misunderstandings prevalent in delinquency courts. Such holistic representation not only

protects client rights, but also promotes rehabilitation and reduces recidivism.

Three Years In and 300 Years Out: Fighting For the Legal Rights of Louisiana’s Incarcerated Youth

Derwyn D. Bunton, Juvenile Justice Project of Louisiana (Aug., 2005) (17 pages)

This article explains how in just three years—from 2001-2004—the Juvenile Justice Project of Louisiana was able to save incarcerated youth from the sum of three hundred unnecessary years of imprisonment. The success of the Post Disposition Project reaffirmed JJPL’s recommendation for quality programming; in order to protect the constitutional rights of youth, post-disposition advocacy must be provided in Louisiana.

Inventing the Public Defender

Barbara Allen Babcock, 47 Am. Crim. L. Rev. 1267 (2006) (42 pages)

An overview of the movement toward providing state-appointed public defense leading up to the *Gideon v. Wainwright* decision in 1963. The article focuses specifically on the career of Clara Folz, one of the first women lawyers in the United States, and her work in advocating for an adequate indigent defense system.

Doing Katrina Time

Pamela Metzger, 81 Tul. L. Rev. 1175 (March, 2007) (31 pages)

An article focusing on the injustices of Louisiana’s criminal justice system before, during and after Hurricane Katrina. Primarily focusing on the holding practices of the uncharged and unrepresented in the Louisiana prison system, the article persuasively argues for the early provision of counsel.

Fact Sheets on Assessments of Right to Counsel and Quality of Representation in Delinquency Proceedings in Various States

NJDC (2007) (8 pages)

One-page fact sheets on state assessments of quality of, and access to counsel, for indigent youth in 8 states: Florida, Maryland, Maine, North Carolina, Pennsylvania, Indiana, Montana, and Washington.

B. 40th Anniversary of *In re Gault*

U.S. Senate Resolution 194

Commemorating the 40th anniversary of the landmark case *In re Gault* (May, 2007) (11 pages)

In May, 2007, the U.S. Senate passed a resolution to commemorate the 40th anniversary of *In re Gault*, which extended due process protections, including the right to counsel, to youth in delinquency cases. The resolution, which acknowledges the unique nature of childhood and adolescence, supports strategies to improve the juvenile justice system and to address contemporary disparities that remain in the system.

Key Facts Regarding Juvenile Indigent Defense

NJDC (2007) (1 page)

A fact sheet summarizing the systemic barriers to quality representation, the importance of counsel in delinquency cases, and the reforms needed to address the problem.

General Juvenile Justice Facts and Figures

NJDC (2007) (4 pages)

A fact sheet that provides statistics on indigent defense, juvenile arrests, disproportionate minority contact, juvenile court cases, transfer to adult court, and overuse of detention.

***In re Gault* Juvenile Indigent Archives**

Rashida Edmondson, National Juvenile Defender Center (2007) (27 pages)

As part of its *Gault* at 40 Campaign, NJDC compiled this list of cases and materials cited in the Supreme Court petition and filings in the landmark *Gault* case. Summaries of all listed materials are provided.

***Gault* Forty Years Later: Importance and Impact**

NJDC (2007) (1 page)

As part of its *Gault* at 40 Campaign, NJDC created this statement about the impact of the *Gault* decision, the importance of the right to counsel for youth in delinquency cases, and the continuing challenge of ensuring quality representation to youth in delinquency cases.

In Defense of Children

Patricia Puritz, 42 Harv. C.R.-C.L. L. Rev. 577 (Summer, 2007) (2 pages)

This article discusses the need for a new paradigm for juvenile indigent defense representation to bring the promise of *Gault* to fruition.

C. Legislation

South Carolina Indigent Defense Act

South Carolina General Assembly, S 446, 117th Session, 2007-2008 (25 pages)

The South Carolina Indigent Defense Act creates a statewide, unified public defender system. The legislation requires that each of the state's sixteen judicial circuits establish a "juvenile offender division...to specialize in the criminal defense of juveniles."

Illinois SB 521 - Juvenile Defender Resource Center

(2007)

Passed by the Illinois legislature and signed by the Governor, this bill provides that the State Appellate Defender may develop a Juvenile Defender Resource Center to study, design, develop, and implement model systems; to provide trial counsel with legal advice and the assistance of expert witnesses; to develop and provide training to public defenders; and to make an annual report to the General Assembly.

D. Standards & Guidelines

Virginia Standards for Practice for Indigent Defense Counsel

(effective April 1, 2007) (25 pages)

These legislatively-mandated standards, created by the Virginia Indigent Defense Commission, include over 20 pages of performance standards specific to attorneys representing juvenile indigent defendants. Among other things, the performance standards clarify the role of defenders as advocating for the expressed interests of their clients; mandate training for defenders; outline the areas of substantive knowledge required; and detail with specificity the obligations of the defender at each stage of the case.

State of Ohio Standards of Representation of Clients in Juvenile Delinquency Cases

(10 pages)

These new practice standards recognize that attorneys practicing in juvenile delinquency and status offender cases require specialized skills and knowledge. The standards provide juvenile defenders with a general guide to appropriate and diligent advocacy on behalf of their clients.

Model Qualification Standards for Practice in Juvenile Delinquency Court in North Carolina

(4 pages)

These qualification standards for attorneys practicing in North Carolina delinquency courts apply to attorneys in the state who are in good standing but have not recently practiced in juvenile or adult court prior to adoption of the standards, and include continuing training requirements after an attorney has been approved.

DRAFT Performance Guidelines for Appointed Counsel in Juvenile Delinquency Proceedings at the Trial Level

North Carolina Commission on Indigent Defense Services (June, 2007) (32 pages)

These performance guidelines cover all juvenile delinquency cases in North Carolina and are intended to identify issues that may arise at each stage of the proceedings. Effective approaches to resolving issues are recommended. The Guidelines are meant to serve as a training tool and resource for all juvenile defenders, as well as a tool for potential systemic reform. They are not meant to serve as a benchmark for ineffective assistance of counsel claims or attorney disciplinary proceedings.

Role of Defense Counsel in Juvenile Delinquency Proceedings

North Carolina Office of the Juvenile Defender (2 pages)

This statement on the role of defense counsel was adopted by the North Carolina Office of the Juvenile Defender. It clearly lays out the role of the attorney to represent the expressed interests of the juvenile in delinquency cases and clearly delineates the numerous duties that defense attorneys owe their young clients.

E. Waiver of Counsel

Young and Unrepresented: Are Ohio's Youth Navigating the Justice System Without Counsel?

Jessica Luther, *Toledo City Paper* (July 18, 2007) (6 pages)

This article examines the proposed amendment to Rule 3 of the Ohio Rules of Juvenile Procedure, which addresses a juvenile's waiver of counsel. The proposal has yet to be approved by the Ohio Supreme Court, but would require the presence of an attorney at the time of waiver and prior consultation of youth with the attorney. In addition, the rule would require proof the waiver was knowing, intelligent and voluntary, and would disallow a parent or guardian from waiving the child's right to counsel.

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CASELAW REVIEWS

Annual Review of the Supreme Court's Term, Criminal Cases

Rory K. Little and Sharif Jacob, Hastings College of Law (Aug., 2007) (40 pages)

A summary of the holdings and reasoning of decisions affecting criminal law and procedure from the 2006-07 term of the United States Supreme Court.

Children's Rights Cases in the United States Supreme Court (1850-2005)

Sarah Bergen, Intern, NJDC (16 pages)

A compilation of some of the most important Supreme Court cases involving children's rights issues, including the cases addressing delinquency.

Recent Court Decisions Impacting Juveniles

11 U.C. Davis J. Juv. L. & Pol'y 215 (Winter, 2007) (8 pages)

A review of recent cases from across the country that affect juveniles. The summary includes decisions relating to sex offender registration, the transfer of juveniles to adult court, and a juvenile's right to exercise First Amendment freedoms in public schools. Included in the review is a synopsis of the California Supreme Court's 2006 dismissal of sex offender registration requirements for juveniles in *In re Derek B.*, the Ninth Circuit's 2006 evaluation of standards for transferring a juvenile to adult court in *United States v. Juvenile*, and the Eleventh Circuit's decision to deny injunctive relief and reverse a grant of summary judgment to a school board being charged for violating a student's right of expression in *Heinkel ex rel. Heinkel v. School Bd. of Lee County*.

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FEDERAL POLICY

The Juvenile Justice and Delinquency Prevention Act: Overview and Perspectives

Hearing before the United States House of Representatives Education and Labor Committee (July 12, 2007)

On July 12, 2007, a hearing on the reauthorization of the Juvenile Justice and Delinquency Prevention Act was held before the United States House of Representatives Subcommittee on Education and Labor. Testimony included:

Derrick Johnson, Vice-Chair of the Arizona Juvenile Justice Commission, giving an overview of the Act and its importance and the need to strengthen the Act during Reauthorization (12 pages);

Honorable Paul Lawrence, Presiding Justice of the Goffstown District Court in New Hampshire, discussing developmental differences, alternatives to detention, restorative justice, and graduated sanctions, as well as funding for JJDP (7 pages);

Shannon Jones, Graduate of the Community Intensive Supervision Program, discussing the positive impact of the program on his life (4 pages);

David J. Freed, Cumberland County, Pennsylvania District Attorney, speaking on behalf of Fight Crime: Invest in Kids about crime prevention (8 pages);

Jennifer Woolard, Assistant Professor of Psychology at Georgetown University, discussing relevant behavioral science research (6 pages); and

Robert E. Shepherd, Professor at University of Richmond School of Law, discussing the incidence of juvenile crime, transfers to adult court, disproportionate minority contact, sex offenders, gangs, effective prevention and treatment strategies, and the importance of research. (8 pages)

JJDPA Fact Book

Act 4 Juvenile Justice, A Campaign of the Juvenile Justice & Delinquency Prevention Coalition (2007) (86 pages)

This briefing book on the reauthorization of the Juvenile Justice and Delinquency Prevention Act was prepared by the Act 4 Juvenile Justice Working Group. It includes a Statement of Principles signed by more than 150 organizations nationwide highlighting the reauthorization goals of the coalition; fact sheets on a number of related issues; a list of sources for additional information; and a complete list of working group members with contact information.

Federal Juvenile Justice Act Due for Reauthorization

Robert Shepherd Jr., *Criminal Justice*, pp. 45-46 (Summer, 2007) (2 pages)

An article providing an overview of the federal Juvenile Justice and Delinquency Prevention Act, which is currently up for reauthorization, and calling for Congress to tighten provisions of the Act and provide adequate funding. The article describes the efforts of a national coalition advocating for reauthorization, including its four principal positions which are keeping juveniles out of the justice system entirely, ensuring adequate and equal representation for all juvenile defenders, ensuring that treatment of juveniles is appropriate depending on their age and competency, and strengthening the federal role through adequate appropriations.

Federal Advisory Committee on Juvenile Justice Annual Report

(2006) (45 pages)

The Federal Advisory Committee on Juvenile Justice, which is comprised of representatives from each State Advisory Group, advises the President and Congress on matters related to juvenile justice and delinquency prevention, advises the OJJDP on its work, and evaluates the progress and accomplishments of juvenile justice activities and projects. This annual report to Congress and the President outlines the critical concerns and issues identified in the states and proposes recommendations. More than half of the states responding to a questionnaire for the report identified disproportionate minority contact as their top concern. A significant number of states also indicated that addressing the mental health needs of youth is a major problem. Nearly all the states responding stressed the need for adequate federal funding.



INTERNATIONAL LAW

Enforcing International Norms in the United States After *Roper v. Simmons*: The Case of Juvenile Offenders Sentenced to Life Without Parole

Vincent G. Levy, 45 Colum. J. Transnat'l L. 262 (2007) (37 pages)

This Note argues that the United States' imposition of sentences of life imprisonment without the possibility of parole upon juveniles violates international law. The author asserts that the *Roper v. Simmons* decision offers further support for enforcing the relevant international norms in the U.S. courts.

Canada and the United States: A Comparison of the Approach to Juvenile Crime

Frances P. Reddington, Lynn S. Urban, and Melissa Conn, 2006 J. Inst. Just. Int'l Stud. 241 (2006) (8 pages)

An overview of how the juvenile justice systems in the United States and Canada evolved and how they operate today. The author focuses on the similarities between these countries' systems since their inception around the turn of the 19th century. Furthermore, the article provides an examination of juvenile crime trends and patterns in both countries, and contrasts the approach to juvenile crime by Canada and the U.S. states that border it. While the article concludes by finding United States and Canada have adopted similar approaches to responding to youth crime, it notes that juvenile involvement in violent crime is much higher in the United States than it is in Canada.

Something's Happening Here: Children and Human Rights Jurisprudence in Two International Courts

Bernardine Dohrn, 6 Nev. L.J. 749 (2006) (21 pages)

This article looks at the developing body of case law regarding children's rights within two regional human rights courts: the European Court of Human Rights and the Inter-American Court of Human Rights.

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RESOURCES FOR YOUTH

Know Your Rights Curriculum

Rashida Edmondson, National Juvenile Defender Center (2006)

As part of the *Gault* at 40 Campaign, NJDC developed this curriculum to teach youth about their rights within the justice system. Those using the curriculum should feel free to modify the materials to suit their individual teaching needs.

Why It's Important to Know Your Rights: A Guide to Young People's Rights in Juvenile Delinquency Court

Rashida Edmondson, National Juvenile Defender Center (2006)

As part of the *Gault* at 40 Campaign, NJDC published this know-your-rights booklet for young people. It covers such topics as police searches of youth, as well as the right to counsel and other due process rights in delinquency courts. A glossary of key legal terms is provided as well.

ensuring excellence in juvenile defense

&

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