



NJDC

*Juvenile Defender
Resource Guide*



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*Juvenile Defender
Resource Guide*

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Print exactly what you need

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Summaries



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Juvenile Indigent Defense

A. General

A Career in the “Kangaroo Court”: Reflections of a Juvenile Defender on the Fortieth Anniversary of *In Re Gault*

Jacqueline Deane, 60 Rutgers L. Rev. 225 (2007) (14 pages)

This essay provides insights and reflections of a juvenile defender whose experience with juvenile justice issues spans the entire post-*Gault* era. Deane recounts some of her experiences as an attorney with the Legal Aid Society and the Neighborhood Defender Service of Harlem, as a teacher at the NYU School of Law’s Juvenile Defender Clinic, and finally as a parent, with an eye toward the ways *Gault* has and has not been realized.

Juvenile Delinquency Court Assessment 2008

Center for Families, Children & the Courts, California Administrative Office of the Courts (April 25, 2008) (375 pages)

The Juvenile Delinquency Court Assessment (JDCA) is the judiciary’s first comprehensive research study of how California superior courts handle delinquency matters. The report looks at hearings and other court processes; court collaboration with justice system partners; placement, treatment, and supervision options for youth; perspectives of parties and interested groups; education and training; and court accountability.

Foreword, Special Issue: Juvenile Law

Mary J. Mullarkey, *Colorado Lawyer* (Oct., 2007) (4 pages)

In her introduction to an edition of *The Colorado Lawyer* devoted exclusively to juvenile law, Colorado Supreme Court Chief Justice Mullarkey notes that, despite being overlooked by many law stu-

dents and practicing attorneys, juvenile law is a vital and significant area of current law. She also applauds the remarkable success of many juvenile courts and clinics across Colorado.

B. Right to Counsel

Rothgery v. Gillespie County, TX

128 S. Ct. 2578 (2008)

Supreme Court Opinion

(49 pages)

The United States Supreme Court held 8 to 1 that a criminal defendant's initial appearance before a magistrate or judge, where he learns the charges against him and faces pretrial detention, is an "adversarial" proceeding triggering the Sixth Amendment's right to counsel. When a person is faced with a loss of liberty in a judicial proceeding, the right to counsel attaches regardless of whether a prosecutor participates in the proceeding.

National Association of Criminal Defense Lawyers

Amicus Brief

(Jan. 23, 2008) (12 pages)

In this *amicus curiae* brief, NACDL argued in support of the petitioner, who was arrested and brought before a magistrate judge who informed him of the accusation against him, found probable cause that he committed the offense based on a police officer's sworn affidavit, and committed him to jail pending trial or the posting of bail. The question presented was whether the Fifth Circuit correctly held—in a decision that conflicts with those of other federal courts of appeals and state courts of last resort—that adversary judicial proceedings nevertheless had not commenced, and the petitioner's Sixth Amendment rights had not attached, because no prosecutor was involved in the petitioner's arrest or appearance before the magistrate.

L.H. v. Schwarzenegger

Civil Class Action Complaint

(Sept. 13, 2006) (37 pages)

In this federal class action brought by the Youth Law Center, plaintiffs alleged that the California Division of Juvenile Justice (DJJ) systematically violated the constitutional rights of juvenile parolees in revocation proceedings. The suit charged that lengthy parole holds are routinely imposed without proper or timely notice to the juveniles of the reasons for the detention. Juvenile parolees were not informed of the precise charges against them until they had been in custody for weeks or months, and the charges would often change late in the process. The suit charged that in the vast majority of revocations, DJJ denied juveniles the right to have witnesses testify on their behalf, to present evidence to defend or mitigate the charges, or to have an attorney. The suit also charged that DJJ failed to provide accommodations mandated under federal law for those youths suffering from mental or physical disabilities.

District Court Order for Preliminary Injunction

(Jan. 29, 2008) (16 pages)

Judge Karlton in the Eastern District of California granted the plaintiffs' request for a preliminary injunction, finding that the failure to appoint counsel to juvenile parolees in revocation procedures violates their due process rights and creates a significant threat of irreparable injury. The court ordered the state to provide lawyers to represent all juvenile parolees in parole revocation proceedings. Not only did the class of juvenile parolees lack the maturity, education and skills of adults, but there was also evidence that a large number had learning disabilities, substance abuse issues, and difficulties speaking and understanding English. Based on these substantial factors, the juveniles were entitled to automatic legal representation.

Stipulated Order for Permanent Injunctive Relief in

L.H. v. Schwarzenegger

(June 14, 2008) (21 pages)

Pursuant to this settlement, juveniles in California are now afforded the basic constitutional rights long guaranteed to adult parolees, including a right to legal counsel, opportunity to present evidence and witnesses, and safeguards

to minimize lengthy pre-hearing detentions. Youth will no longer be automatically shackled during revocation proceedings, and policies will be developed to govern when and how a youth may be restrained.

In re J.V.R. and H.T.

Pennsylvania Supreme Court (2008)

The Juvenile Law Center filed an application for extraordinary relief in the Pennsylvania Supreme Court on behalf of all Luzerne County youth adjudicated delinquent and sanctioned without lawyers. Hundreds of youth in Luzerne County have had summary hearings, for minor offenses, without counsel. Since 2005, more than 50% of juveniles appeared in Luzerne County Juvenile Court without the benefit of counsel. In many of these cases, parents signed a paper that purported to “waive” counsel; their children then pled guilty.

JLC argues in its application to the Pennsylvania Supreme Court that all of these waivers and pleas were invalid because they were made without the constitutionally required colloquies that show the waivers were voluntarily and knowingly given. JLC is asking the Supreme Court to order that all youth adjudicated delinquent since October 1, 2005 without counsel be identified to JLC, and that all such adjudications be vacated.

Application Part I

(8 pages)

Application Part II

(59 pages)

Application Exhibits

(20 pages)

Department of Public Welfare Brief

(14 pages)

Attorney General Brief

(9 pages)

District Attorney Brief

(16 pages)

J.V.R.'s Application for Leave to File a Response
(13 pages)

Effective Assistance of Counsel: Quality Representation for Juveniles Is Still Illusory

Jerry R. Foxhoven, 9 Barry L. Rev. 99 (2007) (26 pages)

This article examines whether the right to counsel as mandated by *In re Gault* has resulted in meaningful protections for juveniles charged with delinquent acts. The National Juvenile Defender Center, in conjunction with partner organizations, has conducted extensive research regarding access to counsel, waiver of right to counsel, and quality of representation in juvenile proceedings in at least fourteen states. The piece concludes that while part of the *Gault* requirement of counsel for youth has been met, much of the real impact of the holding remains illusory.

Still Waiting: The Elusive Quest to Ensure Juveniles a Constitutional Right to Counsel at All Stages of the Juvenile Court Process

Marsha Levick and Neha Desai, 60 Rutgers L. Rev. 175 (2007) (25 pages)

This article advocates for comprehensive legal representation for all juveniles charged as delinquents. This encompasses the adjudicatory hearings as well as all proceedings that precede or follow them. The authors argue that the failure of many states to adequately fund juvenile indigent defender systems or to provide counsel at critical stages of court proceedings leaves youth vulnerable to such consequences as false confessions, unnecessary detention, prolonged confinement, and uncounseled guilty pleas.

Out of Sight, Out of Mind: How the Lack of Postdispositional Advocacy in Juvenile Court Increases the Risks of Recidivism and Institutional Abuse

Sandra Simkins, 60 Rutgers L. Rev. 207 (2007) (14 pages)

This article argues that the lack of mandatory review hearings and post-dispositional representation increases the likelihood of recidivism and institutional abuse. The author notes the critical importance of review hearings to the rehabilitative goals of the juvenile justice system and analyzes the connection between post-dispositional representation and institutional abuse and, in turn, between institutional abuse and recidivism. The article concludes

with a suggestion for a collaborative, cost-effective solution to the lack of post-dispositional representation.

Public Defenders: Do Indigent Defendants Get Adequate Legal Representation?

Barbara Mantel, *CQ Researcher*, Vol. 18, No. 15, pp.337-360 (April 18, 2008) (24 pages)

This report by the *CQ Researcher* provides a comprehensive overview of the problems with indigent defense, as well as examples of states that have worked to improve their delivery of indigent defense services. Particular problems include poor funding, excessive caseloads, poor training, and high turnover of public defenders. The article also provides a history of indigent defense and overview of relevant Supreme Court jurisprudence.

C. State Assessments

Illinois: An Assessment of Access to Counsel & Quality of Representation in Delinquency Proceedings

Children and Family Justice Center and NJDC (Fall, 2007) (160 pages)

A study of Illinois's juvenile justice system found it to be woefully unfair, with many juvenile defenders inadequately trained and lacking the requisite skills of effective representation coupled with a heavy system-wide reliance on plea bargaining. As a solution, the report called for, among other things, state funding for a resource center for juvenile defenders, earlier appointment of counsel, better communication between attorneys and clients, and a limit on the use of shackles on children in court. In addition, the authors suggest that juvenile defenders receive periodic training to improve their ability to zealously advocate for their client at all stages of the process.

Mississippi: An Assessment of Access to Counsel & Quality of Representation in Youth Court Proceedings

NJDC and Mississippi Youth Justice Center (Fall, 2007) (90 pages)

An assessment of Mississippi's juvenile indigent defense system found that zealous advocacy and effective representation in the state were the exceptions rather than the rules in the system. In particular, defenders often meet their clients for the first time in the courtroom, rarely visit detained clients or take advantage of

opportunities to present evidence, and rely heavily on admissions as resolutions to adjudicatory hearings. As means to a solution, the report suggests creating juvenile defender standards, increasing available resources to defenders, appointing counsel as early as possible to ensure effective representation and improve the potential for zealous and effective advocacy, and increasing training opportunities for defenders.

D. *Gault's* Legacy

***In Re Gault* and the Promise of Systemic Reform**

Katherine R. Kruse, 75 Tenn. L. Rev. 287 (2008) (15 pages)

Gault was a purposeful attempt to alter the structure, procedure, and resources of the juvenile justice system to align with the founding principles. Unfortunately, *Gault's* attempt at systemic reform was problematic because it was not self-executing—juvenile defenders were tasked with providing zealous advocacy in individual cases while simultaneously engaging in systemic reform. This article argues that the predominant systemic reform model of collaboration among juvenile justice stakeholders is a good model to follow because it provides opportunities for defense advocacy at the systemic level while encouraging zealous advocacy in individual cases. Additionally, strategies for use in clinical teaching are suggested to help students draw connections between advocacy in individual cases and advocacy for systemic reform.

***Gault's* Promise**

Judge Jay D. Blitzman, 9 Barry L. Rev. 67 (2007) (34 pages)

The juvenile court system was created “in recognition of the fact that children are developmentally different from adults and that those differences should be taken into account when addressing legal matters involving children.” The system was driven by the belief that juveniles could be rehabilitated and deterred from participating in anti-social activities. The modern juvenile court system aims to serve the original goals of the juvenile court system by ensuring that juveniles are afforded their due process rights while at the same time protecting public safety. This paper explores the assumptions that led to the creation of the juvenile court system, the compatibility of due process and rehabilitation, and the evolution of the modern juvenile court system.

In Re Gault: Do Its Promises Still Protect Juveniles?

Kellie M. Krake, 80-NOV Wis. Law. 26 (2007) (4 pages)

This article looks at the historical context of *Gault* in Wisconsin, examines the current state of the law, and asks if *Gault* continues to achieve its goal of protecting juveniles. The article suggests that both recent scientific research on adolescent brain development and the disproportionate number of minority juveniles in the Wisconsin juvenile justice system challenge the uniform application of standardized due process procedures.

In Re Gault: A Retrospective in 2007: Is it Working? Can it Work?

Joanna S. Markman, 9 Barry L. Rev. 123 (2007) (21 pages)

This article examines the degree to which the promise of *Gault* has and has not been realized in juvenile justice systems across the United States. After surveying the state of the juvenile justice system that preceded -- and precipitated -- the Court's holding in *Gault*, the author reviews the facts and holding of that seminal case. From there, she analyzes *Gault's* application in the intervening four decades and suggests how it should be applied in the modern context.

The Promise of In re Gault: Promoting and Protecting the Right to Counsel in Juvenile Court: I Got the Post-McKeiver Blues

Gary Solomon, 60 Rutgers L. Rev. 105 (2007) (16 pages)

This article discusses the practice of judges presiding over juvenile trials even after suppressing evidence of guilt. The author argues that this practice rests on a false assumption that judges can compartmentalize knowledge of the juvenile's full confession and preside over the trial with the necessary impartiality. Solomon advocates for reform of this practice and offers several options for achieving reform.

E. Waiver of Counsel

In Re: Amendment to Florida Rule of Juvenile Procedure 8.165(a)

No. 06-7611 (Fla. 2008) (18 pages)

In a *per curiam* opinion, the Florida Supreme Court approved an amendment to the Florida Rules of Juvenile Procedure that would require a juvenile to consult with an attorney before waiving her right to counsel. The majority justified this amendment as a procedural safeguard protecting the fundamental right to counsel that did not unduly burden caseloads and would significantly decrease the number of juvenile cases that were appealed. The dissenting opinion, however, characterized the amendment as a substantive change to the law best left to the legislature and not the courts.

Washington State Juvenile Court Rule 7.15: Waiver of Right to Counsel

(2008) (4 pages)

This legislation provides a standard by which courts can determine whether a juvenile is knowingly, voluntarily, and intelligently waiving his right to counsel. The rule states that a juvenile may waive his right to counsel only after (1) he has been advised regarding the right to counsel by a lawyer who has been appointed by the court or retained, (2) a written waiver signed by both the juvenile and his lawyer is filed in court, and (3) a hearing is held on the record where the advising lawyer appears and the court, after engaging the juvenile in a colloquy, finds the waiver was knowingly, intelligently, and voluntarily made and not unduly influenced by the interests of others.

In re C.S.

874 N.E.2d 1177 (Ohio 2007) (34 pages)

The Ohio Supreme Court found that in a delinquency proceeding, a juvenile may waive his constitutional right to counsel if advised by a parent or guardian, but not if he has consulted with an attorney. In determining whether there has been a valid waiver of counsel, the proper test is a totality of the circumstances analysis. The court must consider the age, intelligence, and education of the juvenile; the juvenile's background and experience, especially in the court system; the presence or absence of the juvenile's parent, guardian, or custodian; the language used by the court in describing the juvenile's rights; the juvenile's conduct and emotional sta-

bility; and the complexity of the proceedings. The court also found that a judge has the inherent authority to appoint counsel for the juvenile to determine whether he should waive his rights.

F. Standards and Guidelines

In the Matter of Review of the Issues Concerning Representation of Indigent Defendants in Criminal Juvenile Delinquency Cases

Nevada State Supreme Court (2006) (72 pages)

This Order adopts the performance standard recommendations and caseload recommendations as outlined in the Indigent Defense Commission's report on the state of indigent defense in Nevada, described below.

Report and Recommendations of the Nevada Supreme Court Indigent Defense Commission

(2007) (96 pages)

This piece includes notes from the Indigent Defense Commission's meetings as well as their final report and recommendations. The report examines the state of indigent defense in Nevada and establishes recommendations relating to caseloads and performance standards. It details performance standards for juvenile delinquency cases in the following areas: the education, training, and experience of defense counsel; workload and resources; the initial client interview; the detention hearing; informal supervision/diversion; case preparation and investigation; pre-trial motions; plea negotiations; adjudicatory hearings; presentation of the client's case; objections to Hearing Master's recommendations; preparation for the disposition hearing; the disposition process; the disposition report; post-disposition responsibilities and advocacy; and transfer proceedings to adult court.

Ten Core Principles for Providing Quality Delinquency Representation Through Public Defense Delivery Systems, 2nd Edition

National Juvenile Defender Center and National Legal Aid & Defender Association (July, 2008) (3 pages)

These newly updated Ten Principles serve as general criteria to assist public defender systems in implementing the *Gault* decision.

The Principles emphasize that, because children and adolescents are so different from adults, the representation of juveniles must be recognized as a specialty of the law. Furthermore, public defenders are encouraged to assist the most vulnerable and over-represented juveniles in the delinquency system. In particular, the Principles advocate for training, monitoring of caseloads, a focus on clients' educational needs, and the promotion of fairness for all children.

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Advocacy in Juvenile Court

A. Detention Advocacy

NJDC Detention Tools

(July, 2008)

Prepared by NJDC for the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative, the NJDC Detention Tools listed below are diagnostic evaluation tools and guidelines for juvenile defenders, juvenile defender supervisors, juvenile policy advocates, and juvenile section chiefs.

Ten Principles for Providing Effective Defense Advocacy at Juvenile Detention Hearings

(8 pages)

A Checklist to Evaluate Defense Representation at Detention Hearings

(16 pages)

Guidelines for Juvenile Defenders to Provide Zealous Advocacy at Initial Detention Hearings

(16 pages)

B. Competency Determinations

Considerations in the Assessment of Competent to Proceed in Juvenile Court

Randy K. Otto, 34 N. Ky. L. Rev. 323 (2007) (17 pages)

After providing a brief history of the evolution of the juvenile court system and noting the increased attention paid to juvenile incapacity because of the harsher punishments delinquents receive, the author discusses how states vary in their application of the *Dusky* standard in determining juvenile competence. Some states have extended the standard for incompetence beyond mental illness and retardation to include developmental limitations and immaturity. Although the traditional factors considered when determining maturity are age, intelligence, and physical development, the author notes other factors, including responsibility, time and social perspectives, and temperance, that could more reliably make this determination. Along with a discussion of the current method of evaluating juvenile competence, the author advises attorneys and judges how to ensure that the evaluations are accurate.

Juvenile Court Determination of Incompetency

Fabio Amador, 28 J. Juv. L. 174 (2007) (4 pages)

This article summarizes *In re Hyrum H.*, in which the Arizona Court of Appeals held that a determination of juvenile incompetency need not be based on a finding of an underlying mental disease, defect, or disability. Rather, to be incompetent, the juvenile must be unable to have a rational and factual understanding of the proceedings or adequately consult with and assist his lawyer.

Issues in Juvenile Justice: Rights Waivers and Trial Competency

Warren Swymeler and Lynn S. Ruban, 2007 Inst. Just. Int'l St. 323 (2007) (8 pages)

The authors fear a potential lack of protection of constitutional rights in the juvenile justice system. Many juveniles have only a rudimentary understanding of the *Miranda* warning and do not understand the nuances and legal ramifications of waiving these rights, most notably the rights to remain silent and consult an attorney. Moreover, many do not understand the legal process and may not be competent to stand trial. The authors urge the adop-

tion of a set of consistent legal rules for juvenile courts to preserve reliability and trust in the system.

Is Immaturity a Legitimate Source of Incompetence to Avoid Standing Trial in Juvenile Court?

Twila A. Wingrove, 86 Neb. L. Rev. 488 (2007) (23 pages)

Although the United States Supreme Court has yet to deem it fundamental, many state courts require juveniles to be competent to stand trial. A major source of contention is whether developmental immaturity can be grounds for declaring a juvenile incompetent; although there are no restrictions on the sources of incompetence, only four states have explicitly recognized developmental immaturity as a cause. The author argues that the juvenile system must develop uniform standards to approach immaturity as a factor or cause of incompetence as well as a system to reform or otherwise care for incompetent defendants.

C. Right to Jury Trial

Revisiting Juvenile Justice: The Requirement for Jury Trials in Juvenile Proceedings under the Sixth Amendment

Gerald P. Hill, II, 9 Fla. Coastal L. Rev. 143 (2007) (25 pages)

The author argues that the United States Supreme Court mistakenly failed to extend all protections under the Sixth Amendment to juvenile proceedings, particularly the right to a jury trial. The author notes that the juvenile justice system has increasingly become more punitive rather than rehabilitative in focus thereby making any differences between that system and the criminal justice system illusory at best. Moreover, the author argues that denying juveniles the right to a jury trial is a violation of both the Due Process Clause and the Equal Protection Clause of the 14th Amendment. As a practical matter, the jury need not be composed of a juvenile's peers, but rather a cross-section of the community at large.

The Sixth Amendment Right to a Jury Trial: Why Is It a Fundamental Right for Adults and Not Juveniles?

Tina Chen, 28 J. Juv. L. 1 (2007) (13 pages)

This article explores why the federal government and a majority of states do not consider the right to a jury trial a fundamental

right for juveniles in the juvenile justice system. The United States Supreme Court's justification is that a jury trial is inapplicable to juvenile proceedings, since a jury is not a necessary component of accurate fact-finding under the fundamental fairness standard. After noting that juries could benefit the juvenile justice system by encouraging more favorable plea bargains and resulting in more acquittals, the author argues for a statutory right to a jury trial.

In the Matter of L.M.

Kansas Supreme Court Opinion

186 P.3d 164 (June 20, 2008) (58 pages)

The Kansas Supreme Court granted juveniles the right to a jury trial in this case involving L.M., a 16-year-old charged with aggravated sexual battery. At a bench trial, L.M. was convicted of aggravated sexual battery and sentenced as a Serious Offender. On appeal, he argued that he should have been entitled to a jury trial under a Kansas statute allowing judges to use discretion in granting jury trials. The Supreme Court held that changes to the Kansas Juvenile Justice Code eroded the differences between the juvenile and adult criminal systems to the point that juveniles also have a constitutional right to a jury trial under the 6th and 14th Amendments as well as the Kansas Constitution.

State-Appellee's Motion for Rehearing and Clarification

(July 7, 2008) (5 pages)

The State of Kansas filed this motion for rehearing and clarification regarding the Kansas Supreme Court decision in *In the Matter of L.M.* The state argues that because no other state supreme court or federal court has recognized a federal or state constitutional right to a jury trial in juvenile cases, there are many unanswered questions regarding the scope of a newly created right to a jury trial in juvenile cases.

Child-Appellant's Response to Motion for Rehearing and Clarification

(July 14, 2008) (4 pages)

In this response to the motion for rehearing and clarification, L.M. urges that the State's motion be denied by ar-

guing that the State neither contends that the Supreme Court's decision was erroneous, nor seeks clarification of the Court's opinion. Rather, L.M. argues that the motion seeks clarification on issues that were not before the Court in an effort to use this case as a vehicle to get the Court to render an advisory opinion for future cases.

Child-Appellant's Letter Brief

(Oct. 29, 2007) (6 pages)

This letter brief filed on L.M.'s behalf comments on *Smith v. Doe*, which was brought to the attention of the Court in the Letter of Additional Authority from the Office of the Attorney General for the State of Kansas. This letter brief argues that the issue of whether mandatory registration as a sex offender coupled with unlimited public access to that information, constitutes punishment for juveniles is not addressed by *Smith*, making it not determinative of the issue at hand in *In the Matter of L.M.*

Letter of Additional Authority in Support of State-Appellee

(Oct. 25, 2007) (2 pages)

The Office of the Attorney General for the State of Kansas filed a letter of additional authority pursuant to Rule 6.09 with the clerk of the State Supreme Court. The letter formally brings to the attention of the Court and opposing counsel a case mentioned by the Solicitor General in the course of arguments that was not mentioned in the briefs of either party.

Child-Appellant's Response to Kansas County District Attorney Association's *Amicus Curiae* in Support of State-Appellee

(Oct. 5, 2007) (12 pages)

This brief was offered in response to the *Amicus Curiae* filed by the KCDAA. It counters the KCDAA's argument that *stare decisis* prevents the court from considering the issue of whether a juvenile has the right to a jury trial by stating the importance and necessity of judicial review. The brief argues that because of the important life and liberty interests at stake, the Respondent deserves judicial review

under the state and federal constitutions. Additionally, the brief details changes in the Kansas juvenile justice system that have made the system similar to the adult system. In light of these changes, the Respondent argues that juveniles should be afforded the right to a jury trial.

**Kansas County and District Attorneys Association's
Amicus Curiae in Support of State-Appellee**

(Sept. 18, 2007) (21 pages)

Amici argue that, in light of prior legislative and judicial decisions, the Supreme Court of Kansas should find that jury trials are not required for juveniles. The State contends that neither the federal nor Kansas constitutions create a constitutional right to a jury trial for juveniles. Additionally, the brief argues that the State legislature's failure to statutorily extend the right of a jury trial to juveniles should not be ignored.

Juvenile Law Center's *Amicus* Brief in Support of Child-Appellant

(July, 2007) (29 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 a trial by jury, and the changed purpose and nature of Kansas' juvenile justice system no longer supports denial of the right to a jury trial.

**Child-Appellant's Reply to State-Appellee's
Supplemental Brief**

(May 23, 2007) (11 pages)

In response to the State of Kansas' supplemental brief regarding the issue of a juvenile's right to a jury trial, the attorney for the Respondent filed this reply. This brief argues that the differences outlined by the State in the supplemental brief are largely insignificant. Even if certain differences between the adult and juvenile system are acknowledged, these differences have narrowed so substantially that it is no longer permissible to base the denial of the right to a

jury trial to a juvenile upon the unique character of the juvenile justice system. The brief presents further support for allowing jury trials for juveniles by arguing that a number of other states accord juveniles the right to a jury trial.

Child-Appellant's Supplemental Brief

(April 26, 2007) (12 pages)

This brief for L.M. provides additional arguments urging the Supreme Court to find that the trial court erred in denying his request for a jury trial, particularly that the statutory amendments made by Kansas' legislature should have no impact on his right to a jury trial and that Supreme Court precedent does not resolve the specific issue in this case.

State-Appellee's Supplemental Brief

(April 23, 2007) (12 pages)

The Supreme Court of Kansas granted a petition for review for *In the Matter of L.M.* to address the issue of a juvenile's right to a jury trial. This brief, filed by the State of Kansas, argues that despite the enactment of the Kansas Juvenile Justice Code (KJJC), differences between the adult and juvenile systems are vast, most notably in the lack of stated goals in the adult system to strengthen families and fewer sentencing options for adults. Because of these differences and pursuant to precedent, the State argues that juveniles in Kansas are not constitutionally entitled to a trial by jury.

Petition for Review in the Kansas Supreme Court

(Jan., 2007) (10 pages)

This petition for review asks the Supreme Court of Kansas to review and reverse the decisions of the Court of Appeals and the district court. In particular, the petition asks the court to consider whether the district court erred in denying L.M.'s request for a jury trial.

Court of Appeals Opinion

(Dec. 22, 2006) (7 pages)

This opinion from the Court of Appeals of the State of Kansas affirmed the district court's opinion in *In the Matter of L.M.* The court held that L.M. was not entitled to a jury trial because precedent states that the decision to grant or deny a

jury trial in a juvenile offender proceeding is entirely within the district court's discretion, does not involve the rights of the State or the respondent, and is not subject to appellate review. The court also held that there was sufficient evidence upon which a court could find that L.M. made his statement freely, voluntarily, and knowingly. Lastly, the Court of Appeals affirmed the decision of the district court that there was sufficient evidence to convict L.M. of aggravated sexual battery.

Child-Appellant's Brief in the Court of Appeals

(2006) (46 pages)

This brief for the juvenile, L.M., addresses three issues on appeal: (1) whether L.M. was entitled to a jury trial, (2) whether L.M.'s motion to suppress should have been granted, and (3) whether there was sufficient evidence to convict L.M. of aggravated sexual battery. The brief argues that L.M. was entitled to a jury trial under the federal and state constitutions and that failure to grant the request for a jury trial violated L.M.'s constitutional rights. Additionally, the brief states that L.M.'s motion to suppress should have been granted and that there was insufficient evidence to convict L.M. of aggravated sexual battery.

State-Appellee's Amended Brief in the Court of Appeals

(May 19, 2006) (29 pages)

This brief for the State urges the appellate court to affirm the district court's decision. The three issues discussed in the brief include (1) whether the trial court erred in denying the Respondent's request for a trial by jury, (2) whether the trial court erred in denying the Respondent's motion to suppress, and (3) whether there was sufficient evidence to convict the Respondent of aggravated sexual battery. The State argues that the trial court did not err in denying the Respondent's request for a trial by jury because such a request in a juvenile case is entirely at the discretion of the district court and not subject to appellate review. The State also believes the court properly denied the Respondent's motion to suppress because his admissions were voluntary. Finally, the State argues that the evidence presented is such that a rational fact-finder could find the Respondent guilty

of aggravated sexual battery beyond a reasonable doubt and thus, the district court's finding should be upheld.

D. Defenses

Revitalizing the Infancy Defense in the Contemporary Juvenile Court

Barbara Kaban, 60 Rutgers L. Rev. 33 (2007) (33 pages)

This article argues that without the availability of the infancy defense, delinquency proceedings may punish children who are not culpable. The piece looks at the evolution of the juvenile court, examines how an understanding of child development is reflected in more recent cases, and compares decisions across different states regarding the infancy defense. The author argues for a revitalization of the infancy defense to reinforce the integrity of criminal laws and ensure fundamental fairness in juvenile delinquency proceedings.

E. Disposition

Effect of Psychopathy, Abuse, and Ethnicity on Juvenile Probation Officers' Decision-Making and Supervision Strategies

Sarah Vidal and Jennifer L. Skeem, 31 Law & Hum. Behav. 479 (2007) (22 pages)

This article examines the effect of psychopathic features, child abuse, and ethnicity on probation officers' expectancies of, recommendations for, and approach to supervising juvenile offenders. Findings indicate that officers were affected by youth's psychopathic traits and history of child abuse but that ethnicity did not change their approaches. Moreover, probation officers were more likely to exhibit greater sympathy and efforts towards abused youth. This study of differing approaches is a significant step towards making changes in the field, but it is still limited in scope since the focus was on male offenders and there are an infinite

number of variables that can be manipulated to understand the data.

Legal, Individual, and Environmental Predictors of Court Disposition in a Sample of Serious Adolescent Offenders

Elizabeth Cauffman, Alex R. Piquero, Eva Kimonis, Laurence Steinberg, Laurie Chassin, Jeffrey Fagan, 31 *Law & Hum. Behav.* 519 (2007) (23 pages)

In this study of adjudicated juvenile offenders in Phoenix and Philadelphia, a statistical analysis of twenty demographic, legal, individual, and environmental factors found that the juvenile justice system is not accomplishing its stated goal of individualized treatment of juvenile offenders. Rather, juvenile courts are converging with the adult criminal system's formalistic sentencing logic and standards. The authors advocate for consideration of mental health and maturity, rather than prior records and past sentences, when making disposition decisions.

F. Polygraphs

The Polygraph and Juveniles: Rehabilitation or Overreaction? A Case Against the Current Use of Polygraph Examinations on Juvenile Offenders

Nicholas R. Barnes, 39 *U. Tol. L. Rev.* 669 (2008) (24 pages)

Some rehabilitative programs require individuals to undergo polygraph examinations as part of their treatment; if the polygraph detects a lie, a punitive measure follows. This practice is problematic because many variables may distort the outcome of polygraph examinations. Thus, punishment results from inaccurate polygraph readings. This comment argues that the use of polygraphs on youths is inconsistent with the rehabilitative purpose of the juvenile justice system. Barnes assesses current polygraph practices and urges policy makers and judicial authorities to perform an extensive study on the accuracy of polygraph examinations before subjecting youth to polygraphs.

G. Contempt

In re Sherri Jefferson

283 Ga. 216 (2008)

Georgia Supreme Court Opinion

(12 pages)

In this case involving a juvenile defender, the Supreme Court of Georgia clarified the proper standard for determining whether a lawyer's comments during trial constitute contempt of court. The court abandoned the previous test of "clear and present danger" and adopted a standard that an attorney may be held in contempt for statements made during proceedings only after the court has found (1) that the attorney's statements and conduct either actually interfered with or posed an imminent threat of interfering with the administration of justice and (2) that the attorney knew or should have known that the statements and attendant conduct exceeded the outermost bounds of permissible advocacy. Using this new standard, the Court vacated the judgment that affirmed criminal contempt adjudication against attorney Sherri Jefferson arising from comments she made while representing a minor in a delinquency proceeding and remanded the case for further proceedings.

Brief of *Amici Curiae* Supporting Appellant

Southern Juvenile Defender Center & National Juvenile Defender Center
(Oct. 3, 2007) (26 pages)

Amici contend that Sherri Jefferson's contempt conviction must be overturned because Supreme Court precedent has established that children facing delinquency proceedings have the right to protection of their due process rights by defense counsel. Only through zealous advocacy can juvenile defenders ensure that the critical due process rights of their young clients are protected. Accordingly, the *amici* argue that Jefferson's conviction must be overturned to allow juvenile defense attorneys the freedom to zealously advocate for their clients without fear of criminal sanctions.

H. Forensic Evaluations

Specialty Guidelines for Forensic Psychologists

Committee on Ethical Guidelines for Forensic Psychologists (Mar. 9, 1991) (12 pages)

This piece aims to provide specific guidelines to assist forensic psychologists in monitoring their professional conduct with the goal of improving the quality of their services to individual clients and the legal system. It includes guidelines regarding the responsibility, competence, relationships, confidentiality and privilege, methods and procedures, and public and professional communications expected of forensic psychologists.

I. Expungement

Juvenile Record Expungement: A Guide for Defense Attorneys in Pennsylvania

Juvenile Law Center (2007) (75 pages)

This guide outlines the role of a juvenile defender beyond the disposition stage of a delinquency hearing. With an overview of the consequences of having a juvenile court record, the piece details the steps of the expungement process. Suggestions for optimal advocacy are also included. The appendices contain model county policies, sample notification letters, sample expungement petitions and orders, and a sample expungement affidavit prepared by the Pennsylvania State Police.

J. Shackling

“Unchain the Children”: *Gault*, Therapeutic Jurisprudence, and Shackling

Bernard P. Perlmutter, 9 Barry L. Rev. 1 (2007) (85 pages)

This piece examines the practice of shackling detained juveniles in light of the goals of the juvenile justice system and the *Gault* decision. The act of shackling youth who appear in court has been the subject of numerous recent legal challenges and legislative advocacy. Various jurisdictions have filed motions for children to “appear free from degrading and unlawful restraints.” The mo-

tions describe shackling as contrary to principles of constitutional, state and international law, as well as the purpose of juvenile delinquency statutes. This article argues that public policy regarding shackling should maintain the appropriate balance between the juvenile's due process rights and therapeutic interests and the public's legitimate safety concerns.

K. Wrongful Convictions

Are Juvenile Courts a Breeding Ground for Wrongful Convictions?

Steven A. Drizin and Greg Luloff, 34 N. Ky. L. Rev. 257 (2007) (60 pages)

This article documents the evolution of juvenile courts from a paternalistic system to a quasi-criminal court. Major deficiencies in the procedural safeguards provided to juveniles are highlighted, including the lack of comprehension of *Miranda*, interrogation tactics that often result in false confessions by juveniles, lack of reliability of children eye-witnesses, and false guilty pleas resulting from less than zealous advocacy. Deprivation of due process rights can lead to wrongful convictions. For instance, relaxing the probable cause requirement provides more incentive to falsely plead guilty, while a lack of a jury trial makes acquittals less likely and provides fewer safeguards against prosecutorial over-charging. Furthermore, the diminished role of the media, in stark contrast to adult courts, also contributes to the lack of success in identifying wrongful convictions. The article provides recommendations for preventing wrongful convictions of juveniles, including a non-waivable right to counsel, a stronger probable cause requirement, mandatory jury trials, appellate counsel for juveniles, and media access to juvenile courts.

3



Evidence & Fact Finding

A. Interrogations & *Miranda*

Cases on School Interrogations, by State

Barton Juvenile Defender Clinic, Emory University School of Law (Sept., 2008)
(#####pages)

Based on discussions of the School-to-Prison Pipeline working group at the 2007 Juvenile Defender Leadership Summit, this chart was created to provide defenders with a summary of the case law in each state on school interrogations.

Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation

Christine S. Scott-Hayward, 31 Law & Psychol. Rev. 53 (2007) (23 pages)

This article analyzes the intersection between adolescent psychological development, police interrogation, and false confessions and asserts that juvenile false confessions are a serious problem that result in the miscarriage of justice. The article analyzes research on adolescent psychological development to discern the impact on an adolescent's decision to waive his *Miranda* rights and on his ability to withstand the coercive techniques police use to obtain confessions. Finally, this article proposes reform measures within the rules governing juvenile interrogation to minimize juvenile false confessions.

Farewell *Michael C.*, Hello *Gault*: Considering the *Miranda* Rights of Learning Disabled Children

Pamela M. Henry-Mays, 34 N. Ky. L. Rev. 343 (2007) (23 pages)

The author discusses the problems arising from *Miranda* waivers by mentally disabled juveniles. The article begins with a discussion of *In Re Gault* and *Fare v. Michael C.*, and laments the damage done to *Gault*'s fairness standard by *Michael C.*'s totality of the circumstances test for a child's waiver of *Miranda*. The article proceeds to discuss the conflicting views across states about whether a child with intellectual limitations can voluntarily, knowingly, and intelligently waive his *Miranda* rights; of particular concern is Ohio's "interested adult" standard that requires a special education teacher or similar specialist to be present. The authors suggest that a federal statute can strike the best balance between protecting juveniles and society by requiring that the juvenile and his parent or guardian be informed of his rights in clear and comprehensible language. Such an approach, they argue, is more favorable than the totality of the circumstances test.

B. Search and Seizure

1. General

Virginia v. Moore

128 S. Ct. 1598 (2008) (18 pages)

The Supreme Court reversed and remanded the Virginia Supreme Court's previous decision, addressing the issue of whether a police officer violates the Fourth Amendment by making an arrest based on probable cause but prohibited by state law. The Court held that warrantless arrests for crimes committed in the presence of an arresting officer are reasonable under the Constitution, and that while states are free to regulate such arrests however they desire, such restrictions do not alter the Fourth Amendment's protections. Though a state is free to prefer one search-and-seizure policy among the range of constitutionally permissible options, its choice of a more restrictive option does not render the less restrictive ones unreasonable or unconstitutional. Thus, when officers have probable cause to believe that a person has committed a crime in their presence, the Fourth Amendment permits them to make an arrest and search the suspect.

2. Strip Searches

Protecting Personhood: Legal Strategies to Combat the Use of Strip Searches on Youth in Detention

Jessica R. Feierman and Riya S. Shah, 60 Rutgers L. Rev. 67 (2007) (32 pages)

This article examined blanket strip-search policies that require all children to be searched at intake to detention facilities. Though these policies are unconstitutional for adults, some circuits have upheld them for children. The article looks at a variety of legal responses to juvenile strip searches and considers psychological research that highlights youth vulnerability. One of the main goals of the article is to provide litigation strategies for defenders and other juvenile justice advocates who litigate these issues.

3. Internet

The Fourth Amendment and Privacy Issues on the “New” Internet: Facebook.com and MySpace.com

Matthew J. Hodge, 31 S. Ill. U. L.J. 95 (2006) (21 pages)

The author looks at the availability of personal information on networking websites and its potential as a law enforcement tool. The author discusses the traditional Fourth Amendment requirement of both subjective and objective privacy expectations, as stated in *Katz v. United States*, and the lower guarantee of privacy afforded in cases like *Smith v. Maryland* and *United States v. Miller*. While observing that there is room for debate about how to classify the websites, Hodge finds the *Katz* comparison more appropriate. He concludes that steps users take to increase privacy should offer more protection against searches but recognizes that consent issues may diminish this protection.

4. Searches on School Campuses

Cases, by State, on School Search and Seizure

Barton Juvenile Defender Clinic, Emory University School of Law (Sept., 2008)
(#####pages)

Based on discussions of the School-to-Prison Pipeline working group at the 2007 Juvenile Defender Leadership Summit, this chart

was created to provide defenders with a summary of the case law in each state on school searches and seizures.

York v. Wahkiakum Schools District No. 200

178 P.3d 995 (Wash., 2008) (26 pages)

The court concluded that the school district's policy of conducting random and suspicionless drug tests on student athletes was a violation of Washington's Constitution. The U.S. Supreme Court held that such activity does not violate the Fourth Amendment using a reasonable standard test, but in Washington the analysis hinges upon whether a search has "authority of law." Though the school district urged adoption of a "special needs" exception to this warrant requirement, the court held that the practice violated the students' constitutional rights. The case also discusses the potentially far-reaching impact of an opposite ruling.

Redding v. Safford Unified School District

531 F.3d 1071 (9th Cir. 2008) (37 pages)

In this case, public middle school officials strip-searched a 13-year-old student on the basis of an uncorroborated tip from another eighth grader. The 9th Circuit held that school officials violated the student's Fourth Amendment right to be free from unreasonable search and seizure. The strip search was neither "justified at its inception," nor, "as a grossly intrusive search of a middle school girl to locate pills with the potency of two over-the-counter Advil capsules", was it "reasonably related in scope to the circumstances" giving rise to its initiation. Because these constitutional principles were clearly established at the time that middle school officials directed and conducted the search, the school official in charge is not entitled to qualified immunity from suit for the unconstitutional strip search.

Student Informants, School Strip Searches, and Reasonableness: Sorting Out Problems of Inception and Scope

Ralph D. Mawdsley and Jacqueline Joy Cumming, 230 Ed. Law. Rep. 1 (May, 2008) (18 pages)

In attempting to strike a balance between students' rights to privacy and school officials' authority to conduct strip searches, the Ninth Circuit Court of Appeal's decision in *Redding v. Safford Unified School District #1* left many questions unanswered. The majority and dissent's disagreement as to whether inception and scope

of strip searches face the same reasonableness test left a number of issues unresolved, most notably how to determine the reliability of informants, the relationship between reasonable suspicion and individualized suspicion, and the relationship between reasonable suspicion and the intrusiveness of the search. Since circuit courts are divided on all of these issues, there will likely be no resolution until the United States Supreme Court reaches a decision.

C. DNA Collection

Law Enforcement DNA Database: Jeopardizing the Juvenile Justice System under California's Criminal DNA Collection Law

Steven Messner, 28 J. Juv. L. 159 (2007) (13 pages)

Compulsory DNA collection statutes that require all individuals to register in the national DNA database create major problems for juvenile defendants. Because juveniles have fewer constitutional protections than adults, there is a greater risk of deprivation of liberty. In particular, sealing a juvenile's records is not an express ground for expungement of DNA from databases. Messner argues that by treating adults and juveniles the same, DNA collection statutes place juveniles at a distinct disadvantage and advocates for additional protections to be granted juveniles.



Child & Adolescent Development

A. Brain Science & Developmental Psychology

The Reality of the Teenage Brain

The Cincinnati Enquirer (Dec. 31, 2007) (2 pages)

With more adolescents coming into conflict with police and facing more serious charges in adult courts, it seems that there has never been more pressure on teens to act and think like adults. The margin for mistakes is narrow and yet research shows that teenage brains are not as fully developed as adults'; mistakes are a necessary part of normal development. The article argues that the only way to solve this problem is to let research on adolescent development catch up with public policy.

Addressing Gaps in the Maturity of Judgment Literature: Age Differences and Delinquency

Kathryn Lynn Modecki, 32 *Law & Hum. Behav.* 78 (2008) (26 pages)

As a growing number of states legislate to try adolescents as adults, researchers have investigated factors that may affect adolescent judgment and culpability. Utilizing hypothetical vignettes and standardized measures, this study examines the maturity of judgment of adolescents. The findings suggest adolescents display less responsibility and perspective relative to college students, young adults, and adults. Additionally, the results show that maturity of judgment predicts delinquency beyond the contributions of age, gender, race, education level, SES, and antisocial decision making.

B. Policy & Practice Implications

Joining the Legal Significance of Adolescent Development Capacities with the Legal Rights Provided in *In Re Gault*

Donna M. Bishop and Hillary B. Farber, 60 Rutgers L. Rev. 125 (2007) (38 pages)

This article discusses the implications of the *Roper* decision for the Fifth and Sixth Amendment rights of juveniles. The author surveys the scientific findings that children under 18 are more malleable and less culpable than adults and examines what implications these have for the due process rights guaranteed in *Gault*. The authors argue that empirical studies on adolescents' developmental capacities support a non-waivable right to counsel during police interrogations and in juvenile delinquency proceedings.

Postadolescent Brain Development: A Disconnect Between Neuroscience, Emerging Adults, and the Corrections System

Melissa S. Caulum, 2007 Wis. L. Rev. 729 (2007) (27 pages)

Although the legal age of adulthood in America is 18, research suggests that the human brain continues to develop until at least the age of 25. These "emerging adults" continue to develop both behaviorally and cognitively. As their brain continues to mature, the question arises as to whether "emerging adult" offenders should be treated as fully capable adults. This piece examines recent Supreme Court death-penalty decisions and their emphasis on moral culpability and behavioral and cognitive development. The comment concludes that while no single model can provide a solution for all "emerging adult" inmates, state legislatures should address the issue of their corrections and the availability of appropriate sentencing structures geared towards emerging adults.

Say "Pleas": Juveniles' Competence to Enter Plea Agreements

Lacey Cole Singleton, 9 J.L. & Fam. Stud. 439 (2007) (15 pages)

This note questions why a society, which in many legal arenas is skeptical of adolescents' judgment, believes that juveniles can make mature, rational decisions in their criminal proceedings. Using a case example which examines the issue of whether one adolescent knowingly and voluntarily entered her plea, the note reviews the distinctions between minors and adults in certain areas of the law, summarizes the psychological research concerning adolescents' judgment and cognitive capabilities, and addresses the application of adult legal standards to juvenile defendants.

The author argues that standards used in adult court do not adequately assess whether juvenile defendants understand the nature and consequences of plea agreements and makes recommendations for conducting admission colloquies in juvenile court.

C. Research on Competence

Teaching Adolescents and Adults about Adjudicative Proceedings: A Comparison of Pre- and Post- Teaching Scores on the MACCAT-CA

Jodi L. Viljoen et al., 31 *Law & Hum. Behav.* 419 (2007) (16 pages)

This study looked at whether teaching adolescents and adults improved their levels of legal understanding. They found that adolescents aged 13 and younger were less likely than older individuals to improve their understanding with teaching, and individuals from ethnic minority groups showed greater improvements following teaching than non-Hispanic Caucasians. The paper discusses the implications of the findings.

Prospects for Remediating Juveniles' Incompetence

Jodi L. Viljoen and Thomas Grisso, 13 *Psych. Pub. Pol. and L.* 87 (2007) (28 pages)

This article discusses the possibility of, and potential methods for enhancing, youths' capacities to stand trial. The authors first discuss the legal standards for reviewing both adult and juvenile competency, noting particularly that the standards for juveniles vary across jurisdictions. Potential causes for youth adjudicative incompetence are identified, including psychopathology, mental retardation and cognitive defects, and immaturity. Remediating tools such as psychoeducational interventions may be effective, but there are concerns as to whether it is possible to accelerate cognitive and behavioral development. Additional research is required to determine the utility of these interventions. Changes to the demands of facing adjudication are discussed as another potential tool for remediation. Such changes could include increased attorney support and caretaker involvement.



Markers of Inequality

A. Race & Ethnicity

Children in Conflict with the Law: Juvenile Justice and the U.S. Failure to Comply with Obligations Under the Convention for the Elimination of All Forms of Racial Discrimination

Working group of juvenile justice advocates (2008) (29 pages)

Written by a working group of over 30 juvenile justice advocates, academics, and law students, this shadow report takes issue with the United States' assertion in its report to the United Nations that it is largely in compliance with the International Convention on the Elimination of all Forms of Racial Discrimination (CERD). In response, this report documents the racial discrimination that pervades this country's juvenile justice system, which the United States did not even address in its report to the UN.

Race & Ethnicity in America: Turning a Blind Eye to Injustice

ACLU (2007) (215 pages)

This report details the continuing racial and ethnic discrimination in the United States in violation of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). The authors lay out specific recommendations for compliance including the following: addressing the definition of racial discrimination; eliminating discrimination and promoting racial understanding; condemning and eradicating all racial segregation; ensuring equal treatment before the law; ensuring effective protection and remedies for race discrimination; and creating measures in teaching, education, and culture to combat discrimination and promote tolerance.

The Vortex: The Concentrated Racial Impact of Drug Imprisonment and the Characteristics of Punitive Counties

Justice Policy Institute (2007) (36 pages)

Although white drug users outnumber African American users, African Americans are far more likely to be admitted for drug offenses at the county level. This study suggests that resource-driven discretion at the local police level drives the wide variation in drug imprisonment rates; moreover, counties with high levels of poverty and unemployment have higher rates of drug admissions. The report calls for use of evidence-based drug enforcement and a de-escalation of the drug war.

Native American Youth and the Juvenile Justice System

Christopher Hartney, National Council on Crime and Delinquency (March, 2008) (8 pages)

This fact sheet by National Council on Crime and Delinquency provides a review of national data on the disparate treatment of Native American youth in the juvenile justice system. Although Native Americans and whites are equally likely to be arrested and, once referred, to be petitioned, Native Americans are 50% more likely than whites to receive out-of-home placements and to be waived to the adult system. In addition, the overrepresentation of Native American youth in out-of-home placements and in waivers to adult court is larger than that experienced by African American youth, who have the most overall overrepresentation of any group.

A Tangled Web of Justice: American Indian and Alaska Native Youth in Federal, State, and Tribal Justice Systems

Neelum Arya and Addie C. Rolnick, Campaign for Youth Justice (2008) (48 pages)

This policy brief notes the problems and inadequacies in the treatment of American Indian and Alaska Native youth in the juvenile justice system. Depending on location, charged crime, and victim, the juveniles can fall under concurrent jurisdiction of state, federal, and tribal justice systems, a fact that complicates how the youth are sentenced. Moreover, these juveniles disproportionately suffer from the risk factors commonly seen as precursors to delinquency – notably mental health and substance abuse issues, poor education, and poverty. After noting some positive steps in improvements, the authors call for strengthening of the juvenile justice systems, reducing reliance on secure detention of juveniles,

and supporting native youth who are sentenced in the state or federal systems.

Litigating Racism: Exposing Injustice in Juvenile Prosecutions

Tamara A. Steckler, 60 Rutgers L. Rev. 245 (2007) (10 pages)

This article addresses the fact that minority youth are subjected to harsher treatment in the juvenile justice system than their white counterparts. Pointing out the correlation between affluence and a strong support system, the article warns that the current system perpetuates the myth that minority youth commit more crimes. Steckler suggests that one way to equalize treatment is to give minority children and their families better access to what affluent children already receive: counseling, better schools, and job opportunities. Since this approach would be costly and lengthy, the author advocates for change *now* by calling for more attention to be brought to the disparities that exist in the system today.

Antoine, et al v. Winner School District

Consent Decree, United States District Court for the District of South Dakota, Central Division (2007) (18 pages)

In this case brought by the ACLU, plaintiffs filed on behalf of themselves and others similarly situated against the school district and its employees, alleging multiple counts of discrimination, including: disparate treatment in school discipline; forwarding students' statements regarding disciplinary matters to law enforcement; and allowing a racially hostile educational environment to exist. The agreement determined in mediation includes staff training about students' procedural due process rights; the hiring of a Native American Ombudsperson; the establishment of a principals' advisory committee including at least three Native American members; teacher training on Indian education and educational equity; Native American classes, programs and activities; and an increase in the number of Native American employees.

Overcoming Language and Cultural Barriers Using Evidence-Based Practices

National Council of La Raza (2008) (56 pages)

This transcript from a 2007 conference sponsored by the National Council of La Raza details how evidence-based practices (EBPs), practices proven effective by rigorous clinical trials, can be used to help Latino youth in the juvenile justice system. Latino youth are

disproportionately represented in the juvenile justice system, and panelists suggest that demolishing the language and cultural competence barriers between Latino youth and employees in the system may alleviate this disparity and prevent discrimination. The panelists emphasize that cultural competency requires presenting the information in a comprehensible and meaningful way to the juveniles and their families.

A Century of Juvenile Justice: A Work in Progress or a Revolution that Failed?

Barry C. Feld, 34 N. Ky. L. Rev. 189 (2007) (61 pages)

The author provides a history of juvenile courts, focusing particularly on the racially discriminatory nature of the system's "crack down" on youth crime. As juvenile courts shifted from a rehabilitative model to a retribution model, juveniles faced harsher sentences and an increased likelihood of waiver to adult court, both of which required adequate procedural safeguards. However, the author argues that procedural formalities are not fairly extended to juveniles, who may not be able to properly exercise their legal rights concerning waiver or counsel. Feld suggests that courts should adopt a categorical "youth discount" to sentencing which punishes juveniles on a sliding scale of responsibility. Feld also argues that the increase of youth in facilities is attributable to an increase in minority representation in juvenile facilities, despite a decline in the white juvenile population.

B. Gender

Girls Study Group: Understanding and Responding to Girls' Delinquency

Margaret Zahn et. al., U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention (May, 2008) (24 pages)

This Study Group was convened to investigate whether the trend in the 1990s of an increase in girls' arrests reflected an actual increase in their delinquency or rather changes in societal responses to girls' behavior. This bulletin presents the Group's findings on the issues of patterns of offenses for girls and boys, risk and protective factors associated with delinquency, and the causes and correlations of girls' delinquency.

Problems for Females in the Juvenile Justice System: What Is Happening and What Can Be Done?

Chantelle Jackson and Mark A. Perlaky, *DCBA Brief* (July, 2008) (9 pages)

This article describes the unique needs of girls in the juvenile justice system and offers ideas about how to improve the system to meet those needs.

C. Lesbian, Gay, Bisexual & Transgender Youth

California SB 518 Fact Sheet

National Center for Lesbian Rights (2008) (3 pages)

This fact sheet describes SB 518, a comprehensive bill of rights to protect youth in California juvenile justice facilities from discrimination and harassment based on sexual orientation and gender identity. SB 518 was signed into law by the Governor in October, 2007.

Practitioner's Section: Juvenile Delinquent's Options and Rights

Jody Marksamer, Melanie Rowen, and Judge Linda McFadden, 12 U.C. Davis J. Juv. L. & Pol'y 263 (2008) (12 pages)

This article addresses methods of dealing with issues related to juveniles already in the system. Two practicing lawyers give insights into how juvenile defenders can protect the due process rights of youth in California's juvenile justice system, and a judge discusses options available under California law that address delinquent behavior by minors.

Queer Kids: A Comprehensive Annotated Legal Bibliography on Lesbian, Gay, Bisexual, Transgender, and Questioning Youth

Sarah E. Valentine, 19 Yale J.L. & Feminism 449 (2008) (34 pages)

This bibliography is a comprehensive collection of law review articles, reports, studies, personal narratives, and other materials relevant to LGBTQ youth. It is intended to be a resource for scholars, policymakers, and practitioners who work with this endangered and underserved adolescent population. The sources listed illuminate the problems faced by queer youth and potential legal solutions to those problems.

**And by the Way, Do You Know He Thinks He’s a Girl?
The Failures of Law, Policy, and Legal Representation for
Transgender Youth in Delinquency Courts**

Jody Marksamer, *Sexuality Research & Social Policy*, Vol. 5, No. 1 (March, 2008) (21 pages)

Transgender youth are at high risk for involvement in the juvenile justice system. This article discusses how law, policy, and legal representation are regularly failing transgender youth in juvenile delinquency systems nationwide. The author provides policy and system recommendations for addressing these failures.

**Lesbian, Gay, Bisexual, Transgender, and Questioning Youth
Policy**

New York Office of Children and Family Services (2007) (14 pages)

The New York State Office of Children and Family Services adopted this policy prohibiting discrimination or harassment on the basis of sexual orientation, gender identity, and/or gender expression. The policy extends to both service providers and other youth in the welfare system to ensure a safe environment for LGBTQ youth. New York has also developed LGBTQ Youth Guidelines to train employees on how to serve LGBTQ juveniles respectfully.

D. Immigration Status

Living in the United States: A Guide for Immigrant Youth

Immigrant Legal Resource Center (2007) (31 pages)

This guide provides information every immigrant youth should know, such as how to apply for a green card or citizenship, a description of immigrants’ rights under the Constitution, deportation procedures, and other common issues immigrants face.

**Laws, Resolutions and Policies Instituted Across the U.S.
Limiting Enforcement of Immigration Laws by State and
Local Authorities**

National Immigration Law Center (Oct., 2007) (18 pages)

This chart lists city and municipal resolutions, ordinances, and policies that discourage or prohibit local law enforcement officials from enforcing federal immigration laws unless absolutely required for public safety or mandated by law. Among the policy rationales behind these policies is the preservation of goodwill

between local law enforcement and governments and illegal immigrants.

M.C.C. Nine (9) Point Position Statement: Enforcement of Local Immigration Laws by Local Police Agencies

Major Cities Chiefs (June, 2006) (11 pages)

The Major Cities Chiefs, a group of chiefs of police departments in major urban cities, created this position statement to address consequences of local enforcement of federal immigration laws and to suggest ways in which local agencies can become involved in the policy process. Local enforcement of federal immigration laws puts the local law enforcement agencies in a tough spot, as they have scant resources, no clear authority to act in this area, and, perhaps most importantly, any enforcement can undermine the trust and cooperation of immigrant communities.

Family Court and the Unique Needs of Children and Families Who Lack Immigration Status

Theo Liebmann, 40 Colum. J.L. & Soc. Probs 583 (2007) (14 pages)

This article examines the conflicts that arise between immigration issues raised by non-documented families and the family court's obligation to serve all families and children who come before it. Despite the rising number of families without legal status, laws affecting them are becoming increasingly strict. Several proposals are provided for what judges, practitioners, and agencies can do to meet their obligations and duties to children and families of all backgrounds.

State Court Interpreter Grant Program Act

United States Senate, S. 702 110th Congress, 1st Session (Feb. 28, 2007) (7 pages)

The State Court Interpreter Grant Program Act would authorize the Attorney General to award grants to state courts to develop and implement court interpreter programs. The bill sets forth certain Congressional findings, including: that justice requires that individuals in court understand the proceedings; that 19% of the U.S. population over age five speaks a language other than English at home; and that all recipients of federal funding are required by law to take reasonable steps to provide meaningful access to proceedings to people with limited English proficiency. The bill describes the manner in which state allotments will be determined,

and authorizes \$15,000,000 in appropriations for each of the fiscal years 2008-2012.

E. Dependent Youth

Understanding Child Maltreatment & Juvenile Delinquency

Janet Wiig and Cathy Spatz, with John A. Tuell (2003) (68 pages)

This booklet discusses the link between the maltreatment of children and the increased risk that they will eventually be arrested. This report claims that child abuse and neglect dramatically increase the likelihood of the juvenile's involvement in the juvenile justice system. As a solution, the authors call for an increased effort in recognition and prevention of child maltreatment.

ABA Policy and Report on Crossover and Dual Jurisdiction Youth

American Bar Association (Feb., 2008) (7 pages)

The ABA calls for a revision of policies regarding dual jurisdiction youth, or juveniles involved in dependency and delinquency cases. Because closing the dependency cases can shut off vital sources of protection and support for juveniles, the ABA advocates for allowing dual jurisdiction policies and promotes responsible information sharing between the agencies. Furthermore, dependent juveniles charged with minor acts of misbehavior stemming from a history of abuse or neglect should be diverted from the delinquency system. Lastly, the ABA urges for the funding provisions in the JJDPa that urged this kind of reform be utilized rather than ignored.

6



Specific Offense Categories

A. Juvenile Sex Offenses

1. SORNA Guidelines

The National Guidelines for Sex Offender Registration and Notification

(2007) (99 pages)

This document outlines the guidelines of Title I of the Adam Walsh Child Protection and Safety Act of 2006, known as the Sex Offender Registration and Notification Act (SORNA). The SORNA guidelines include a comprehensive set of minimum standards for sex offender registration and notification and provide guidance to jurisdictions for implementing the SORNA standards into their registration and notification programs.

2. Policy Considerations

No Easy Answers: Sex Offender Laws in the US

Human Rights Watch (2007) (146 pages)

In this study by Human Rights Watch, the current registration laws for sex offenders are criticized for being overbroad and unfairly punishing those who pose no safety risk. There is no evidence that these laws are effective; rather, the laws lead to ostracism and unduly punish individuals convicted of sex offenses.

Be They Fish or Not Fish: The Fishy Registration of Nonsexual Offenders

Ofer Raban, 16 *Wm. & Mary Bill Rights J.* 497 (2007) (33 pages)

Raban argues that registering nonsexual criminals as sex offenders violates the Fifth and Fourteenth Amendments' Due Process Clauses. Nonsexual criminals' fundamental rights to freedom are intruded and they are arguably a suspect class; forced registration as sex offenders fails both the strict scrutiny and the rational basis test since there is practically no connection between nonsexual offender registration and deterring sexual offenders from committing future crimes. Raban argues that this constitutional conundrum can be remedied by requiring registration to be predicated on a sexual nexus in the nonsexual crime.

"Sex Offenders" But No Sex Crime?

Marion Buckley and J. Michael True, 95 *Ill. B.J.* 482 (2007) (10 pages)

This article discusses the relationship between two Illinois laws, the Sex Offender Registry Act (SORA) and the Child Murder and Violent Offender Against Youth Registration Act (VOYRA), and their individual requirements. It also reviews SORA case law. The author notes the problems with SORA, namely that it was overbroad, included juveniles, and limited sources of relief. Moreover, courts in other states have found laws like this unconstitutional. VOYRA, on the other hand, excludes non-sex offenders from the registry. This article concludes with pointers for representing clients who are facing charges or are already convicted under both Acts.

Note, No Child Left Behind Bars: The Need to Combat Cruel and Unusual Punishment of State Statutory Rape Laws

Meredith Cohen, 16 *J.L. & Pol'y* 717 (2008) (28 pages)

This note addresses the flaws in current state statutory rape laws and proposes legislative remedies to prevent youth from being subjected to cruel and unusual punishment. The article provides a brief history of statutory rape laws and the rationales behind the laws and looks specifically at consensual teenage sex, examining the lack of uniform enforcement of sex offense laws and the consequences of conviction for teens. The author argues sanctioning all acts of consensual teenage sex violates the Eighth Amendment's prohibition on cruel and unusual punishment. Various legislative reforms are proposed.

B. Gang-Related Offenses

Gang Injunctions under Heat from Equal Protection: Selective Enforcement as a Way to Defeat Discrimination

Cathy Wang, 35 Hastings Const. L.Q. 287 (2008) (19 pages)

This article notes problems with issuing gang injunctions in the hope of remedying and deterring gang-related activities. Gang injunctions can subject individuals to risk of criminal punishment on the basis of alleged gang association rather than illegal acts. They also target members of a single ethnic minority, presenting equal protection challenges. Since juveniles are placed in a precarious position of choosing between fear of gangs and fear of the judicial system, there is a potential for an increase in youth crime. An alternative method is to focus on rehabilitation of juveniles and improving the environment of disadvantaged youths.

Much Ado about Something: Reconciling *Roper v. Simmons* with the Gang Deterrence and Community Protection Act of 2007 and the Possibility of Inconsistent Jurisprudence

Tiffany Sykes, 34 New Eng. J. on Crim. & Civ. Confinement 163 (2008) (26 pages)

This note discusses the proposed Gang Deterrence and Community Protection Act of 2007 (Act), which seeks to impose harsher penalties on juveniles involved in gang-related activities. Among the specific provisions is the possibility of the death penalty for juveniles convicted of gang-related activities that result in the death of another person. The note argues that the Act directly conflicts with *Roper v. Simmons* and raises concerns about the possibility of disparate sentencing imposed by the Act, the constitutional limitations of capital punishment, and the resulting jurisprudential inconsistencies.

Central American Gang-Related Asylum: A Resource Guide

Washington Office on Latin America (May, 2008) (24 pages)

This guide profiles gangs in each country in Central America and highlights elements of successful legal arguments for gang-related asylum. It demonstrates that gangs differ across communities and so responses must vary accordingly. The guide outlines how “zero tolerance” policies have taken an almost exclusively enforcement-focused approach, making them ineffective and counterproductive. Policies have made gang members and police officers enemies, forcing gangs to become more organized and covert in or-

der to protect themselves. Police, feeling they have lost control, have become more fearful and aggressive in their responses to the gangs. The authors advocate for rights-respecting policing, due process, and the need for a more comprehensive and prevention-oriented approach to gangs.

Best Practices to Address Community Gang Problems: OJJDP's Comprehensive Gang Model

Office of Juvenile Justice and Delinquency Prevention (June 2008) (74 pages)

This report lays out OJJDP's comprehensive program for addressing the youth gang problem. The report describes research that undergirds the proposed approach. Key findings from evaluations of several programs demonstrating OJJDP's model in a variety of environments are then analyzed. The report also outlines best practices for implementing the program.

No More Children Left Behind Bars: A Briefing on Youth Gang Violence and Juvenile Crime Prevention

Charles Hamilton Houston Institute for Race and Justice (March 6, 2008) (24 pages)

This policy brief reports that spending money on education and prevention is far more effective in stemming gang-related crimes than broadening prosecutorial powers or increasing criminal penalties. Polling data also indicates that most of the American public supports spending money on prevention and education rather than prosecution and incarceration. The report provides a review of research on juvenile justice, child development and educational interventions to assess the most promising approaches to curbing youth violence and gang affiliation.

C. Status Offenses

Liberty for All? Juvenile Curfews: Always an Unconstitutional and Ineffective Solution

Orly Jashinsky, 4 Rutgers J. L. & Pub. Pol'y 546 (2007) (19 pages)

The non-emergency use of juvenile curfews is a recent phenomenon, justified by the need to deter delinquency and assist parental supervision. These curfews, however, are arguably ineffective and circuits are split on the constitutionality of such laws. Those courts that have upheld the curfew have done so by finding that

the government interest was sufficiently tailored to satisfy either strict or intermediate scrutiny. Those that have invalidated the curfews have held that they are not narrowly tailored and deprive juveniles of due process. The article argues that juvenile curfew laws are unconstitutional because they violate due process and are void for vagueness.

Children Who Break the Rules: Juvenile Delinquency and Status Offenses

Working Group Report, 40 Colum. J.L. & Soc. Probs. 467 (2007) (6 pages)

This working group was charged with assessing and analyzing the New York City Family Court system from the perspective of professionals working in the juvenile justice field. The group reports on issues such as the principal deficiencies within and outside the Family Court system, the resources that should be developed or expanded to limit the number of delinquency and status offense cases, and the ways in which law enforcement and the judiciary can adequately respond to the needs of youth and their communities.



Detention & Corrections

A. Generally

American Exception: Inmate Count in U.S. Dwarfs Other Nations'

Adam Liptak, *The New York Times* (April 23, 2008) (5 pages)

In this article, Liptak explores why the United States has such a comparatively high incarceration rate. Possible explanations for the extraordinary incarceration rate include the war on drugs, the American temperament, and harsher sentencing laws.

Jailing Communities: The Impact of Jail Expansion and Effective Public Safety Strategies

Amanda Petteruti and Nastassia Walsh, Justice Policy Institute Report (April, 2008) (38 pages)

This comprehensive evaluation considers the impact of overcrowded jails. Over the past decade, most notably due to changes in policing practices, an increase in the number of individuals being held in jails pretrial, and a shift towards using jails as institutions for those suffering from mental disease, jails have become overcrowded at a faster rate than prisons. This has created major problems for those held in jails as well as the surrounding community and environment. Because alternatives to incarceration could prove more effective at both rehabilitating the offender and improving community safety, the public benefit of jails may not be worth the astronomical price of incarceration. The author makes a number of recommendations to reduce jail populations and increase public safety.

B. Pre-Trial Detention

Locking Up Our Children: The Secure Detention of Massachusetts Youth After Arraignment and Before Adjudication

Robin L. Dahlberg, American Civil Liberties Union (May, 2008) (71 pages)

This article discusses the secure detention of juveniles in Massachusetts, including the disproportionate representation of minority youth. Through the study of documents on the demographics of detained youth and interviews with state officials, judges, prosecutors, defense attorneys, and advocates, the ACLU identified problems with the Commonwealth's approach to secure detention of youth. In light of these findings, the article recommends that the state take steps to reduce the number of securely detained youth.

C. Conditions

The Right to Education in Juvenile Detention under State Constitutions

Katherine Twomey, 94 Va. L. Rev. 765 (May, 2008) (33 pages)

Despite evidence that education helps rehabilitate juveniles and eases the strains of community reintegration, the educational services available in most juvenile detention facilities fall far below the standards for public schools. Although federal constitutional challenges are unlikely to succeed, Twomey argues that juveniles in detention facilities have not forfeited the right to education provided to them by every state constitution. Whether the juvenile justice system is considered rehabilitative or punitive, the right to education cannot be denied.

Harsh Treatment for Youthful Offenders

The New York Times (Dec. 8, 2007) (1 Page)

This editorial depicts the Texas Youth Commission's unjust treatment of children in the juvenile justice system. The author likens this situation to cases in Los Angeles County, California, which reformed its system because of fear of a federal lawsuit. The editorial calls for U.S. Justice Department involvement if Texas does not follow in L.A. County's footsteps.

Sexual Violence Reported by Juvenile Correctional Authorities, 2005-06

Allen J. Beck, Devon B. Adams, and Paul Guerino, Bureau of Justice Statistics
Special Report, United States Department of Justice, Office of Justice Programs
(July, 2008) (37 pages)

This report provides data from the 2005-2006 Survey on Sexual Violence, an administrative records collection of incidents required under the Prison Rape Elimination Act of 2003 of youth-on-youth and staff-on-youth sexual violence reported to juvenile correctional authorities. The report provides counts of sexual violence, by type, for juvenile correctional facilities, as well as an analysis of substantiated incidents, including location of incidents, time of day, number and characteristics of victims and perpetrators, nature of the injuries, impact on the victims and sanctions imposed on the perpetrators.

D. Litigation Challenges

J.D. v. Mayor of New Orleans

Complaint filed in Eastern District of Louisiana (Dec., 2007) (24 pages)

Youth detained at the Youth Study Center brought this civil rights class action on behalf of all children who are now or will be confined at YSC in New Orleans. Plaintiffs challenged the conditions of confinement, including grossly unsanitary facilities, substandard medical care, cruel psychological and verbal harassment and abuse, improper and excessive use of lockdown, inadequate education, and deprivation of their right to communicate with families and attorneys. Though conditions were poor before Hurricane Katrina, they worsened after the storm. Plaintiffs argue that the totality of conditions and treatment amount to a constitutionally deficient environment that deprives them of basic human rights.

S.H. v. Stickrath

United States District Court for the Southern District of Ohio, Eastern Division
(2008)

Stipulation for Injunctive Relief

(April 9, 2008) (89 pages)

This stipulated judgment was agreed to by parties in *S.H. v. Stickrath*, a class action lawsuit challenging the conditions of confinement of youth committed to the legal custody of the Ohio Department of Youth Services. The settlement includes: improved individual care, treatment and rehabilitative services; the development of a comprehensive continuum of care in a regionalized services delivery system; increased engagement of families; improved access to advocates and attorneys; and fair and effective release processes. Additionally, it provides for improvements in the areas of housing, mental health, medical care, dental care, and education.

Order Preliminarily Approving Class Action Settlement

(Apr. 9 2008) (2 pages)

Notice of Proposed Class Settlement

(5 pages)

Final Fact-Finding Report

Fred Cohen (Jan., 2008) (214 pages)

This fact-finding report in *S.H. v. Stickrath* addresses: application by staff of unnecessary force; arbitrary and excessive use of isolation and seclusion; arbitrary and excessive discipline; substandard mental health, medical, and dental care; inadequate education services and structured programming; insufficient training of staff; unsafe living environment; and a dysfunctional grievance system.

Fact Sheet on Settlement Agreement for *S.H. v. Stickrath*

(1 page)

This one-page fact sheet provides highlights of the settlement agreement.

Ohio Settles Lawsuit Over Youth Prisoners

Associated Press (Apr. 4, 2008) (1 page)

This news article discusses the *S.H.* settlement.

E. Children in Adult Facilities

Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America

Campaign for Youth Justice (2007) (56 pages)

The Campaign for Youth Justice examined the risks of holding youth in adult jails, specifically the dangers of impairment to adolescent development, suicide, rape and sexual assault, and isolation. The report describes how youth enter the adult criminal justice system and examines pre-trial detention laws in each of the states. It also analyzes various strategies used to remove youth from adult jails. In addition, the report contains brief profiles of several youth held in adult facilities including a letter written by a young person who later committed suicide.

Juvenile Offenders Not Beyond Redemption

Tony Throop, *Ventura County Star* (Mar. 9, 2008) (4 pages)

Written by a juvenile offender tried and convicted in adult court and sentenced to life in prison without parole, this piece offers insight into the problems of adjudicating juveniles in adult court. Throop argues that juveniles who have committed crimes are not beyond redemption and that services provided by the juvenile justice system can successfully rehabilitate juvenile offenders, like his co-defendant, who never committed another crime and continues to live among society as a hard-working family man. Unfortunately, however, Throop notes that juveniles continue to be tried in the adult system and sentenced to adult prisons, which lack educational and vocational programs and rarely have mentors for the younger inmates.

***State v. Mohi* – State Sanctioned Abuse?**

Deborah Katz Levi, 10 J.L. & Fam. Stud. 173 (2007) (25 pages)

In *State v. Mohi*, the Utah Supreme Court held that once a juvenile has been charged with a crime and is subsequently transferred or “bound over” for trial in the criminal court, the child is required to

be held in jail, rather than a juvenile detention facility, while awaiting trial. These jails are ill-equipped to house juveniles and integrate the youth with adult criminals with few if any protections in place. Children also receive little educational opportunities in the jails and are not eligible for youth-orientated rehabilitative services. The article argues that *Mohi* should be overturned as it conflicts with provisions of the Utah Human Services Code, state and federal education laws, and the U.S. Constitution.

Right Model for Juvenile Justice

The New York Times (Oct. 28, 2007) (1 page)

This editorial describes the state approaches to youth incarceration. The author argues against several of the methods states use to punish these youth, such as placing them in adult or “kiddie” prisons. The editorial concludes that states should follow the Missouri model of small community-based centers that focus on therapy.

Letter to the Editor

Stephen Bates Billick, *The New York Times* (Dec. 7, 2007) (1 page)

Billick, chairman of the American Psychiatric Association Corresponding Committee on Juvenile Justice Issues, wrote this letter agreeing with a *New York Times* editorial that called on Congress to prohibit the detention of juveniles in adult jails. As additional support, he cited relevant studies done by the American Psychiatric Association.

8



Ethics

“I Ain’t Takin’ No Plea”: The Challenges in Counseling Young People Facing Serious Time

Abbe Smith, 60 Rutgers L. Rev. 11 (2007) (17 pages)

This essay by Professor Abbe Smith surveys the challenges involved in counseling juveniles facing long sentences. Specifically, Smith focuses on the frequently recurring problem of convincing a young client to plea to a deal rather than go to trial and potentially face a much longer sentence. She discusses factors that contribute to this reluctance and proposes strategies for overcoming it.

Function of the Attorney for the Child

Jack E. Carter, Jr., 80-Jan N.Y. St. B.J. 42 (Jan., 2008) (2 pages)

In October 2007, the State of New York passed a series of initiatives to clarify the role and responsibilities of the attorney for a child. Among the initiatives included the enactment of a court rule that sets out the function of the attorney for the child, the adoption by the Statewide Law Guardian Advisory Committee of a policy statement entitled “Summary of Responsibilities of the Attorney for the Child,” and the recommendation to seek legislation changing the term “law guardian” to “attorney for the child.”

A Paradigm of Youth Client Satisfaction: Heightening Professional Responsibility for Children’s Advocates

Theresa Hughes, 40 Colum. J.L. & Soc. Probs. 551 (2007) (20 pages)

This article examines how the needs and wishes of juvenile clients affect the performance of their attorneys. Results from the survey indicate that most youth do not believe that they are being com-

petently represented. Many did not think that their lawyers maintained sufficient contacts or communicated with them frequently enough. The article advocates for a codified and enforceable set of ethical rules to govern representation for youth and allow them to enforce their rights to the greatest degree possible.

9



Youth in Adult Court

A. Transfer Generally

The Case for Juvenile Courts

The New York Times Editorial (Aug. 13, 2008) (1 page)

The editorial states: “This country made a terrible mistake when it began routinely trying youthful offenders as adults. This get-tough approach was supposed to deter crime. But a growing number of government-financed studies have shown that minors prosecuted as adults commit more crimes – and are more likely to become career criminals – than ones processed through juvenile courts.” The editorial continues on to say that youth do not receive necessary counseling and family support while incarcerated in adult facilities. The editorial recommends eliminating these “counter-productive policies.”

Advancing Juvenile Justice Reform in New York

Michael A. Corriero & Alison M. Hamanjian, 80-Jan N.Y. St. B.J. 20 (Jan., 2008) (5 pages)

This piece discusses what the authors believe to be a shift in the wrong direction for the New York juvenile justice system. The enactment of the Juvenile Offender Law in 1978, which authorized the transfer of an entire group of children to adult court because they were of a certain age, presaged a growing trend to criminalize juvenile delinquency. The piece argues that the Juvenile Offender Law ignores critical differences between children and adults, neither prevents juvenile crime nor secures protection of the public, and unnecessarily criminalizes children.

Book Review: *Judging Children as Children: A Proposal for a Juvenile Justice System*, by Michael A. Corriero

Erik S. Pitchal, 9 Barry L. Rev. 171 (2007) (10 pages)

This article reviews *Judging Children as Children: A Proposal for a Juvenile Justice System*, a book by Judge Michael Corriero. Corriero presides over a Manhattan court that regularly tries children as young as 13 as adults and argues that juveniles are not fully developed and socialized and need a second chance after they commit transgressions. Therefore, he argues, trying children as adults is "not just." Corriero excoriates the current juvenile system, and particularly New York's, for being out of step with research about child development. This review presents and scrutinizes Corriero's thesis.

Judicial Waiver as the Only Equitable Method to Transfer Juvenile Offenders to Criminal Court

William Hannan, 22 Notre Dame J.L. Ethics & Pub. Pol'y 193 (2008) (22 pages)

This note argues that the over-application of waiver of juvenile court jurisdiction inadequately addresses the juvenile crime problem and serves the interests of neither public safety nor juveniles. After surveying the historical development of the juvenile justice system through the U.S. Supreme Court cases that shaped its operation and aims, the author argues that the traditional waiver grounded in judicial discretion is the only method that can serve both the child's and society's interests. The author notes children are fundamentally different from adults, and thus require a more rehabilitative justice system.

Fulfilling the Promise of *Kent*: Fixing the Texas Juvenile Waiver Statute

Sarah Steward-Lindsey, 34 Am. J. Crim. L. 109 (2006) (17 pages)

Waiver of juveniles to adult court has become an increasingly common practice. The United States Supreme Court established constitutional standards for valid waiver orders in *Kent v. U.S.*. These standards were designed to accord juveniles due process protection in waiver proceedings by providing meaningful appellate review. This article addresses the Texas statutory scheme governing waiver of juveniles to the adult system. The piece analyzes the Texas juvenile waiver scheme and its application in case law and highlights inherent practical problems. The author suggests courses of action to ensure that the intent of the *Kent* decision is honored.

B. Litigation Challenges

In the Matter of William M. & In the Matter of Marques B.

Supreme Court of Nevada (2008)

Brief of Amici Curiae Supporting Respondents

ACLU of Nevada and Juvenile Law Center (45 pages)

Amici address the constitutionality of a provision of Nevada's presumptive waiver statute which requires a juvenile defendant at a waiver hearing to show by "clear and convincing evidence" that emotional, behavioral, or substance abuse problems substantially contributed to the commission of the alleged crime. The brief argues that the statute is unconstitutional because it violates defendants' rights against self-incrimination because it fails to prohibit the admission of inculpatory statements at subsequent proceedings. In addition, Nevada's presumptive certification statute violates procedural due process because the "clear and convincing" standard cannot be met absent an admission of guilt and thus it does not comport with fundamental procedural fairness.

Brief of Amicus Curiae Supporting Appellants

National Juvenile Defender Center (32 pages)

The NJDC argues that Nevada's certification statute violates a child's constitutional right to effective assistance of counsel. Certification erodes public safety and its provisions may have harmful, long-lasting effects on children, making effective assistance of counsel all the more critical.

Affidavit of Dr. Marty Beyer

(Feb., 2008) (14 pages)

This affidavit, submitted by Dr. Marty Beyer, outlines various aspects of adolescent brain development and juvenile justice. Dr. Beyer provides information on both teen brain research and the development of girls. Dr. Beyer states that courts must also consider the development and experiences of each particular juvenile, including her maturity level, disabilities, and trauma. She reiterates the effectiveness of juvenile rehabilitative services and the increased chances of recidivism or harm caused by incarcerating juveniles in adult prison.

Respondent's Reply Brief to Briefs of *Amici Curiae*

(April 23, 2008) (33 pages)

The State of Nevada responds to the arguments made by *amici* in support of the petitioner.

State v. Dixon

(2008 VT 112) (18 pages)

A unanimous Vermont Supreme Court reversed and remanded on interlocutory appeal the district court's order denying a youth's request to be transferred to juvenile court in a case involving second degree murder. This is the first case where the Supreme Court of Vermont has found that the trial court abused its discretion in refusing to transfer a criminal case to juvenile court. The Court found error in the lower court's failure to give any weight to the "factual backdrop to defendant's actions," which included his inability to control any of the escalating events at home or the fact that there was a DCF "system breakdown" against the defendant. The Court held that failure to consider these factors goes against the special status accorded juvenile cases by the legislature. The Court also rejected concerns that transfer would hamper the ability of the public to follow the case through the judicial system. "The Legislature has determined that a primary purpose of the juvenile court system is to project juveniles from the 'taint of criminality' that inevitably results from the publicity and permanence of convictions in the district court." The Court, rejecting the district court's consideration of all non-Kent factors, also rejected the court's analysis of some of the Kent factors, including whether there was prospective merit to the complaint. Additionally, "requiring an evaluation of defenses at such an early state of prosecution seems to us rather unwieldy; it would seem to require a mini-trial at a stage of the proceedings when the defense might be well-served not to reveal its hand."

C. Research on Effectiveness

Juvenile Transfer Laws: An Effective Deterrent to Delinquency?

Richard E. Redding, Office of Juvenile Justice and Delinquency Prevention
(Aug., 2008) (12 pages)

This OJJDP report finds that transfer laws have little or no general deterrent effect. In fact, youth transferred to the adult system are more likely to be rearrested and to reoffend than youth who committed similar crimes, but were retained in the juvenile justice system.

D. Sentencing Generally

Report on Juvenile Sentencing

American Bar Association Criminal Justice Section (Feb., 2008) (15 pages)

In this report, the ABA reaffirms its commitment to espousing standards that keep youth in the juvenile justice system except under very limited circumstances. The report recommends that youth in the criminal justice system be treated differently from adults during all stages of the process, but especially during sentencing. This report proposes that sentences for youthful offenders recognize that these offenders are not adults and therefore adult sanctions do not fit the needs of juveniles. The authors analyze several state statutes that take these differences into consideration, particularly eligibility for parole and mitigation factors that should be taken into account.

Recommendation to the ABA House of Delegates

American Bar Association Criminal Justice Section (2008) (1 page)

This ABA resolution urges federal, state, tribal, local and territorial governments to authorize and implement sentencing laws and procedures that both protect public safety and appropriately recognize the mitigating considerations of age and maturity of youthful offenders (i.e., those under age 18 at the time of their offense who are subject to adult penalties upon conviction).

The State of Sentencing 2007: Developments in Policy and Practice

Ryan S. King, *The Sentencing Project* (Jan., 2008) (30 pages)

This report focuses on the progress of sentencing policies in the criminal justice system. It discusses new policies that tend to reflect a more balanced consideration of how states can effectively use resources to maximize public safety. These policy changes include creating oversight committees, improving the prisons, developing reentry programs. Juvenile-specific reforms include changing the age of majority for the purposes of criminal sentencing and addressing clemency practices for persons sentenced as an adult for a crime committed as a juvenile. Three states modified “Romeo and Juliet” provisions of sexual offense laws.

E. Blended Sentences

Extended Jurisdiction Juvenile Prosecutions: To Revoke or Not to Revoke

Megan M. Sulok, 39 *Loy. U. Chi. L.J.* 215 (2007) (64 pages)

This comment details the history of and problems with extended jurisdiction juvenile (EJJ) prosecutions that impose both juvenile and adult sentences, the latter of which is enforced if a new offense is committed or the juvenile sentence violated. The author notes that the purpose of this blended sentence is to balance the rehabilitative and punitive models of justice but argues that the system as currently executed is fundamentally flawed: juveniles are not deterred by the threat of adult sentences, revocation of juvenile sentences is statutorily mandated, and many of the EJJ statutes are vague as to what constitutes an offense or a violation. As a solution, Sulok suggests that adult sentences should only be imposed as a last resort, the statutes be clarified so juveniles know how to avoid serving adult sentences, and judges maintain discretion over all revocations.

Juvenile Justice: The Nathaniel Abraham Murder Case

Eugene Arthur Moore, 41 *U. Mich. J.L. Reform* 215 (2007) (19 pages)

In analyzing the sentencing of Nathaniel Abraham, an 11-year-old convicted of second degree murder in Michigan, Moore notes flaws in the justice system. He laments that prevention is overlooked

in the juvenile justice system and that rehabilitation is all but impossible in the adult system. The harshest criticism is reserved for blended sentences, in which a prison sentence is delayed until the juvenile system no longer has jurisdiction over the youth, as these allow juvenile courts to pass the buck to adult courts and prevent either system from self-correcting.

F. Juvenile Adjudications & Sentencing Enhancements

Sasouvong v. Washington

Cert. Petition, filed by Elaine L. Winters, Thomas C. Goldstein, Jeffrey L. Fisher, Pamela S. Karlan, Amy Howe, and Kevin K. Russell, 128 S. Ct. 93 (May 17, 2007) (77 pages)

This petition for a *writ of certiorari* was filed in the United States Supreme Court for a case from Washington regarding the constitutionality of the use of juvenile adjudications to elevate a criminal penalty as an adult. The brief contemplates whether a criminal defendant's right to a jury trial under the Sixth and Fourteenth Amendments is violated when a prior juvenile conviction is used by a judge to impose a longer sentence than would otherwise be permissible. A divided Washington Supreme Court held that a court may do so. The brief argues that the writ should be granted because of the split among federal courts of appeals and state supreme courts on this issue and, ultimately, encourages a finding that the use of nonjury juvenile adjudications for penalty enhancement is unconstitutional. (Cert. was subsequently denied.)

Never Efficient, But Always Free: How the Juvenile Adjudication Question Is the Latest Sign That *Almendarez-Torres v. United States* Should be Overturned

Molly Gulland Gaston, 45 Am. Crim. L. Rev. 1167 (2008) (20 pages)

This note considers how the *Almendarez-Torres* case has left uncertainty as to how prior juvenile non-jury adjudications of now-adult defendants should be treated. The note argues that the Supreme Court should overturn *Almendarez-Torres*, which held that a sentencing enhancement based on a prior conviction was not subject to the Sixth Amendment requirement that a jury determine the fact beyond a reasonable doubt. The note examines this issue

by describing the origins of the juvenile justice system and considering whether juvenile non-jury adjudications can be defined as “prior convictions.”

G. JLWOP

Life for a Life Is on the Rocks: Youth on Trial

Adam Geller, Associated Press (Dec. 9, 2007) (8 Pages)

This article questions the validity of a life sentence for juveniles by using real-life examples to explore both sides of the issue. It also addresses why the 1980s saw an advent of harsher treatment for juveniles.

No Chance to Make It Right: Life Without Parole for Juvenile Offenders in Mississippi

Holly A. Thomas, NAACP Legal Defense and Educational Fund (May, 2008) (28 pages)

The Legal Defense Fund (LDF) studied the history and effect of sentences of life without parole on juveniles in Mississippi. Not only do judges exercise little if any discretion for juveniles tried as adults, but juveniles with certain racial, socioeconomic, and educational characteristics are also disproportionately sentenced to life without parole. LDF argues that life without parole for juveniles should be eliminated and, in the interim, juveniles facing this sentence should receive mental health counseling and should be removed from adult prisons, where they face violence and intimidation.

Unmitigated Punishment: Adolescent Criminal Responsibility and LWOP Sentences

Barry C. Feld, 10 J. L. & Fam. Stud 11 (2007) (69 pages)

Feld argues that African-American males have been disproportionately affected by the juvenile justice system since its inception, but most notably since the onslaught of “get-tough” policies in the early 1990s. He laments that the psychologically immature development of youth is too often overlooked when assessing culpability. Feld argues that age should be a mitigating factor in sentencing delinquents. He calls for a bright-line rule for mitigation purposes rather than individual assessments to prevent further discrimination of young African-Americans.

Lifers as Teenagers, Now Seeking Second Chance

Adam Liptak, *The New York Times* (Oct. 17, 2007) (5 pages)

This article discusses the sentencing of life imprisonment without the possibility of parole for juveniles in the United States, the only country that sends juveniles to prison for life. The article outlines various arguments used by advocates in favor of abolishing LWOP. It discusses findings by corrections officers and criminologists that violent crime is usually a young person's activity, the international community's abolition of life imprisonment for juveniles, and the Supreme Court's reliance on international law regarding issues of juvenile justice in *Roper*.

Lost Potential: International Treaty Obligations and Juvenile Life Without Parole in *Edmonds v. State of Mississippi*

Andrea Templeton, 26 Law & Ineq. 233 (2008) (24 pages)

This article addresses the problems inherent in United States law regarding sentencing juveniles to life without parole in light of international consensus against this practice. Focusing specifically on *Edmonds v. State of Mississippi*, the article provides an overview of international standards in the realm of juvenile justice and outlines and analyzes the appellate and Supreme Court's decisions in *Edmonds*, noting areas where the courts could benefit from considering international standards

A Slower Form of Death: Implications of *Roper v. Simmons* for Juveniles Sentenced to Life Without Parole

Barry C. Feld, 22 Notre Dame J.L. Ethics & Pub. Pol'y 9 (2008) (43 pages)

This article warns that the exclusion of juveniles' diminished responsibility from proportionality analysis leads to harsh sentences for immature offenders. After reviewing developmental psychological research and analyzing the United States Supreme Court's juvenile death penalty cases and non-death penalty proportionality framework, Feld argues for a "youth discount" to formally mitigate juvenile sentences.

"When I Die, They'll Send Me Home": Youth Sentenced to Life without Parole in California

Human Rights Watch (Jan., 2008) (104 pages)

This report discusses California's practice of sentencing juveniles to life in prison without parole (LWOP). Relying on data collected from the California Department of Corrections and Rehabilitation,

media and court sources, and surveys and interviews of youthful offenders serving LWOP sentences in California prisons, this report puts forth several findings concerning those individuals and the circumstances surrounding their sentences. Among these is that, while the vast majority of youthful offenders sentenced to LWOP are convicted of murder, their collective actions represent a wide range of culpability. Nearly half of those individuals aided or abetted rather than committed the murders for which they were convicted or participated in a felony that unexpectedly resulted in murder. Moreover, the paper estimates that nearly 70% of those individuals were acting under the influence of an adult at the time of the crime. The report argues that California's practice of sentencing juveniles to LWOP ignores the fact that children are less culpable for their conduct and more amenable to change than adults, that the practice disproportionately harms minorities, and that it imposes a significant financial cost on California. This report concludes by calling for California to change its unnecessarily harsh law.

Is Life Unfair? What's Next for Juveniles after *Roper v. Simmons*

Brianne Ogilvie, 60 *Baylor L. Rev.* 293 (2008) (18 pages)

This article examines the practice of sentencing juveniles to life without parole. The author surveys the history of juvenile sentencing and the treatment of juveniles as a separate class, before moving on to discuss relevant Eighth Amendment jurisprudence and *Roper v. Simmons*. By applying the reasoning in *Roper*, Ogilvie looks at juvenile LWOP sentences and suggests reforms for youth sentencing.

Categorically Less Culpable: Children Sentenced to Life without Possibility of Parole in Illinois

Illinois Coalition for the Fair Sentencing of Children (2007) (44 pages)

This report is aimed at encouraging lawmakers to end the practice of sentencing youth to life without the possibility of parole (LWOP). It examines the law in Illinois and discusses the most current research available on culpability as well as profiles of several juveniles currently serving LWOP sentences. The report also looks at national and international trends and makes recommendations to legislators, the Illinois Supreme Court, and practitioners.

No Second Chance: Nebraska Children Sentenced to Die in Prison

Amy Miller, ACLU of Nebraska (2008) (8 pages)

Nebraska is one of a minority of states that sentence children as young as 13 to life without parole (LWOP). This report profiles two young people who received LWOP sentences and considers the disproportionate impact of LWOP sentences on youth of color.

Life Without Parole for Juvenile Offenders: A Violation of Customary International Law

Molly C. Quinn, 52 St. Louis U. L.J. 283 (2007) (28 pages)

In the United States there are more than 2,000 youth sentenced to LWOP, compared to about 12 offenders with the same sentence in the rest of the world. This note argues that the international norm prohibiting LWOP for juveniles and the express prohibition of such sentences by the United Nations Convention on the Rights of the Child are binding on the United States.

Sentencing Our Children to Die in Prison: Global Law and Practice

Center for Law and Global Justice, University of San Francisco School of Law (Nov., 2007) (51 pages)

This report focuses on the United States' practice of sentencing juveniles to life in prison without parole (LWOP). The report argues that this practice runs counter to our understanding of the neurological and psychological development of children. Because children are less culpable for their actions than adults, sentencing them to LWOP is unduly harsh and unsound. The report argues that prison is an especially cruel place for children, who are particularly vulnerable to physical and sexual abuse by older inmates. Juxtaposing the United States' practice against the broad international condemnation of LWOP sentences for juveniles, as well as against international human rights standards, the report argues for reform in this area, and makes specific recommendations for how to do so to better comport with international standards and promote juvenile rehabilitation.

10



Mental Health

A. Screening & Assessment

Mental Health Screening Within Juvenile Justice: The Next Frontier

Models for Change Initiative (38 pages)

This document provides clarification and guidance around questions of mental health screening in the juvenile justice system.

Screening, Assessment, Treatment: Indiana Addresses Mental Health in Juvenile Detention Centers

JauNae M. Hanger, 51-MAY Res Gestae 36 (2008) (4 pages)

A pilot program in Indiana intends to establish routine and systemic mental health screenings, assessments, and treatment in juvenile detention facilities. One of the project's main goals is to help counties forge partnerships so juveniles can be linked with appropriate community-based services when they first enter the system. This article provides an overview of this collaborative model and discusses plans for the future of the project.

B. Treatment

An Interpersonal-Developmental Perspective on Juvenile Justice Systems

Paul Florsheim and Tim Fowles, 10 *J. L. & Fam. Stud.* 147 (2007) (12 pages)

Providing effective treatment and rehabilitative programs to juvenile delinquents is important, especially for the increasingly high percentage of juveniles with psychiatric disorders. The authors advocate for interpersonal-developmental models that place relationships at the center of intervention programs for these delinquents. By incorporating these models, case managers can become better treatment providers and ensure a more stable justice system. Furthermore, the youth may receive the highest quality treatment to facilitate reintegration into society.

C. Suicide Prevention

Utah Youth Suicide Study: Evidence-Based Suicide Prevention for Juvenile Offenders

Michelle A. Moskos, Sarah R. Halbern, Steve Alder, Han Kim, Doug Gray, 10 *J. L. & Fam. Stud.* 127 (2007) (15 pages)

Suicide is especially prevalent among juveniles who have had contact with the juvenile justice system. In this comprehensive statistical survey, the authors found that this is due to both mental illness and family dysfunction. They discovered that individual treatment plans can help improve the mental health status of juvenile delinquents, and they urge justice systems to ensure that proper mental health care is provided to juveniles.

D. Autism

What happened to “Paul’s Law”? Insights on Advocating for Better Training and Better Outcomes in Encounters Between Law Enforcement and Persons with Autism Spectrum Disorders

Elizabeth Hervey Osborn, 79 U. Colo. L. Rev. 333 (2008) (39 pages)

This note explores the risks of certain law enforcement techniques on individuals with Autism Spectrum Disorder (ASD). Escalation, which is stress-induced, can be dangerous in law enforcement situations. The presence of unfamiliar police with loud sirens and flashing lights can often make tough situations worse by contributing to the individual’s sensory overload. This note argues that traditional law enforcement techniques for controlling these situations are ineffective and may provoke the individual more; still, few courts that have confronted the issue have held that law enforcement officers are not required to make accommodations for any disability during exigent circumstances. This note evaluates three ways in which better training would lead to better outcomes.

E. Access to Health Coverage

Improving Access to Health Coverage for Transitional Youth

Sonya Schwartz and Melanie Glascock, National Academy for State Health Policy (July, 2008) (45 pages)

This paper describes how states can improve access to Medicaid and SCHIP for youth in the juvenile justice and foster care systems. In particular, the authors focus three important aspects of ensuring youth coverage under Medicaid and SCHIP: simplifying enrollment, enhancing retention through the transitions these youth undergo, and better integrating and coordinating services with partners. Eligibility at key transition points is discussed.

SCHIP and Adolescents: An Overview and Opportunities for States

Maureen Hensley-Quinn and Elizabeth Osius, National Academy for State Health Policy (May, 2008) (8 pages)

This briefing paper provides an overview of adolescents' characteristics and health care needs and offers guidance on how to tailor State Children's Health Insurance Programs (SCHIP) to better target the health care needs of low-income adolescents.



11

Systemic Issues

A. Risk Assessments

Risk Assessment for Juvenile Justice: A Meta-Analysis

Craig S. Schwalbe, 31 *Law & Hum. Behav.* 449 (2007) (21 pages)

This study aims to assess the average predictive validity of juvenile justice risk assessment instruments. Risk assessment instruments identify high-risk offenders so juvenile courts can prevent future offending. This study was conducted to analyze the overall ability of risk assessment instruments to predict juvenile recidivism and identify the characteristics of those risk assessment instruments that have greater rates of predictive validity.

Using Grouping Statistics to Sentence Individual Criminals: An Ethical and Statistical Critique of the Virginia Risk Assessment Program

Brian Netter, 97 *J. Crim. L. & Criminology* 699 (2007) (24 pages)

This article critiques Virginia's attempt to limit the number of incarcerated persons by using demographic characteristics to determine whether a person convicted of a nonviolent crime is incarcerated or given an alternative means of punishment based on their likelihood of recidivism. Netter laments the inequality and lack of judicial discretion in such punishments. He argues that determining sentencing based on characteristics like age, gender, marital status and prior incarceration as a juvenile, is unethical because the individual is punished for future crimes and group membership. Moreover, incarceration can lead to the social stigmatization

of those groups most prone to recidivism. The author concludes that sentencing should remain in the hands of judges.

B. Crime Trends

Indicators of School Crime and Safety: 2007

Rachel Dinkes, Emily Forrest Cataldi, Wendy Lin-Kelly, Thomas D. Snyder, National Center for Education Statistics & Bureau of Justice Statistics (2007) (227 pages)

This report presents the most recent data available on school crime and student safety. The key findings show that in the 2005-06 school year, there were an estimated 54.8 million students enrolled in pre-kindergarten through grade 12. Among ages 5-18, there were 17 school-associated violent deaths, and among students ages 12-18, there were about 1.5 million victims of nonfatal crimes at school. Evidence indicates that the victimization rate of students ages 12-18 declined between 1992 and 2005, but that violence, theft, drugs, and weapons continue to pose problems.

Juvenile Court Statistics 2003-2004

Office of Juvenile Justice and Delinquency Prevention (2007) (172 pages)

In order to affect change in juvenile justice, it is necessary to understand evolving demographics and social trends. This report, prepared by the National Center for Juvenile Justice, analyzes delinquency cases handled between 1985 and 2004 and petitioned status offense cases handled between 1995 and 2004 by U.S. courts with juvenile jurisdiction. The report analyzes the volume and rate of delinquency cases, the flow of delinquency cases through the courts, and national estimates of status offense cases. It includes information on demographic characteristics such as age at referral, gender, and race for each category.

Getting the Facts Straight: NCCD Questions the “Impending Crime Wave” Report by Third Way

Carolina Guzman and Chris Tsukida, National Council on Crime and Delinquency (June, 2008) (7 pages)

This fact sheet reviews a paper called *The Impending Crime Wave*, which described the convergence of four supposed new and menacing sociological trends that threaten to create a new crime wave.

The fact sheet highlights inaccuracies in the report's reasoning, calling it a "collection of false contentions that attempt to raise public fears about crime, immigration, the internet, and youth." One of the assertions is that young adults drive up crime; NCCD tries to dispel this idea by analyzing U.S. population trends in relation to national crime rates.

C. Crime Prevention

New Evidence on the Monetary Value of Saving a High Risk Youth

Mark A. Cohen and Alex R. Piquero, Vanderbilt University Law School Law and Economics, Working Paper Number 08-07 (Dec., 2007) (59 pages)

This working paper employs an economic analysis to argue that crime prevention policies should be geared less toward punishment and incapacitation and more toward early youth intervention and rehabilitation. The paper calculates the costs imposed by career criminals and heavy drug abusers, as well as the present value of saving a high-risk youth at birth, age 10, age 14, and age 18. The authors argue that targeting high-risk individuals and intervening early to prevent deviant behavior can produce enormous societal savings.

Justice Policy Institute Research Briefs

Education and Public Safety

(Aug. 30, 2007) (15 pages)

This brief asserts that education and crime rates have an inverse relationship. Using statistics from across the country, the report concludes that increasing spending on education will reduce crime over the long term. In addition to lowering the crime rate, more money spent on education will reduce government spending on the correctional system.

Employment, Wages and Public Safety

(Oct. 1, 2007) (12 pages)

In researching the connection between employment, wages, and the crime rate in this report, the Justice Policy Institute found that increased employment and wages reduce crime.

States with higher employment levels had a lower crime rate than the national average. Furthermore, the impact of policies related to employment and wages is concentrated among people of color, who are more likely to experience unemployment, hold lower-paying jobs and be incarcerated.

Housing and Public Safety

(Nov. 1, 2007) (13 pages)

After exploring the link between affordable housing and public safety, this brief concludes that investments in housing can save the government money and lower crime.

Substance Abuse Treatment and Public Safety

(Jan., 2008) (17 pages)

This report explores the association between substance abuse treatment and the crime rate. The statistics provided demonstrate that increasing the number of substance abuse programs available will reduce crime.

D. Public Opinion

Potential for Change: Public Attitudes and Policy Preferences for Juvenile Justice Systems Reform

Center for Children's Law and Policy, Models for Change Initiative (2007) (11 pages)

This document summarizes polling data collected in Illinois, Pennsylvania, Louisiana, and Washington regarding public perceptions of the potential for rehabilitation of juvenile offenders. Results indicate that the public (1) recognizes the potential of young people to change, (2) supports redirecting government funds from incarceration to counseling, education, and job training programs for youth offenders, (3) views the provision of treatment and services as more effective ways of rehabilitating youth than incarceration, (4) favors housing nonviolent juveniles in small, residential facilities in their own communities, and (5) believes that the juvenile justice system treats low-income youth, African American youth, and Hispanic youth unfairly.

**Rehabilitation Versus Incarceration of Juvenile Offenders:
Public Preferences in Four Models for Change States:
Executive Summary**

Alex Piquero and Laurence Steinberg (2007) (7 pages)

This executive summary reports on the public's views on treatment of juvenile offenders. The data gathered demonstrates that the public is more willing to pay for rehabilitation than incarceration, especially when informed that rehabilitation is as effective as incarceration.

E. Diversion and Alternative Dispute Resolution

The Road Less Traveled: Using ADR to Help Reform First-Time Juvenile Offenders

Maggie Gertz, 8 *Cardozo J. Conflict Resol.* 339 (2006) (25 pages)

This article explores the idea that rather than resort to formal prosecution and punishment for first-time offenders, society must treat children in such a way so as to enable them to return as productive members. While punitive models may offer a quick fix for immediate problems, the authors suggest Alternative Dispute Resolution (ADR) as a more holistic and permanent answer to rehabilitating youth. The article explains that ADR is the ideal tool for achieving accountability, helping to see others as individuals, keeping society safe, and reducing recidivism.

**Cycles of Juvenile Justice: An Introduction to the Utah
Criminal Justice Center Distinguished Lecture**

Erik Luna, 10 *J. L. & Fam. Stud.* 1 (2007) (9 pages)

The overarching theme of Barry Feld's lecture at the Utah Criminal Justice Center was that juveniles are individuals with special needs who require a thoughtful approach to achieving justice rather than just a scaled-down version of the adult system. Along with a panel of experts, Feld noted that the immaturity gap between juveniles and adults demands special treatment for delinquent youth, such as restorative justice programs and initiatives that foster interpersonal relationships, as well as new approaches to keeping juveniles out of the system.

Community Lawyering in the Juvenile Cellblock: Creative Uses of Legal Problem Solving to Reconcile Competing Narratives on Prosecutorial Abuse, Juvenile Criminality, and Public Safety

David Dominguez, 2007 J. Disp. Resol. 387 (2007) (26 pages)

This article describes a law school clinic's effort to address the issue of pre-adjudicated juveniles, especially those in their first contact with the juvenile justice system. Community Lawyering, a collaborative approach to the law, creates alternatives to placing pre-adjudicated youth in secure confinement. The article considers a system that attempts to create new partnerships for problem solving and use more family, school, and community decision-making resources to resolve juvenile misconduct without resorting to formal charges of delinquency and referral to secure confinement.

F. Juvenile Justice Reform

Juvenile Justice Reform: Realigning Responsibilities

Little Hoover Commission (July, 2008) (99 pages)

This study analyzes juvenile justice in California and makes recommendations to improve public safety and provide statewide leadership on juvenile justice policy. It proposes that the state's three major juvenile offender grant programs be consolidated and that the State Commission on Juvenile Justice be extended until January 2010. The commission's study focused on implementation of the realignment of responsibilities, effective management of youth offenders who will remain at the state level under the realignment legislation, and what it will take to be successful in these areas.

Turning Troubled Teens Into Career Criminals: Can California Reform the System to Rehabilitate Its Youth Offenders?

Anna L. Benvenue, 38 Golden Gate U.L. Rev. 33 (2007) (33 pages)

In an effort to push the California Youth Authority (CYA) to meet its statutory mission to replace all retributive punishment with training and treatment as well as its judicial mandate to provide a range of rehabilitative services, this comment proposes a statute mandating institutional reform of California's juvenile system. In

doing so, the author reviews the CYA's function, process, and procedure; outlines the CYA's statutory requirements; addresses the CYA's failure to implement its mission to rehabilitate; summarizes the result of the most recent judicial challenge to CYA's failure to rehabilitate; analyzes other states that have been more successful than California in rehabilitating juveniles; and suggests a legislative solution to the CYA's failure to effectuate its statutory mission and judicial mandate.

Advances in Juvenile Justice Reform 2006–2007

National Juvenile Justice Network (Nov., 2007) (19 pages)

This document provides an overview of juvenile justice reform in twenty six states across the country during 2006-2007. These reforms address a myriad of issues, such as organizational and large scale changes, adjudication, conditions of confinement, alternatives and community based services, disproportionate minority contact, indigent defense, community integration, system-based services, girls and LGBTQ youth in the system, youth who are both dependent and delinquent, and gangs.

The Accelerating Pace of Juvenile Justice Reform

Justice Policy Institute, Models for Change Initiative (Nov., 2007) (3 pages)

This Justice Policy Institute report analyzes the major reforms occurring in juvenile justice systems. These reforms have happened in about half the states and include the improvement of both juvenile defense and conditions of confinement.

Building Momentum for Juvenile Justice Reform

Justice Policy Institute, Models for Change Initiative (Dec., 2006) (31 pages)

This document details the juvenile justice reform progress made through the MacArthur Foundation's Models for Change initiative in Pennsylvania, Illinois, Louisiana, and Washington. The hope is that changes made in these states may be replicated in other systems across in the country.

Models for Change: A Post-Modern Initiative to Promote a Fair, Rational, and Effective Juvenile Justice System

Diane Geraghty, Children's Legal Rights Journal, Vol. 27, No. 4 (Winter, 2007) (4 pages)

This article sets forth Models for Change's overarching mission, key principles, and strategies of the reform initiative. The central purpose of the program is to foster "successful and replicable

models of juvenile justice reform through targeted investments in key states." To achieve this, the program follows eight guiding principles that are essential to a fair and effective juvenile justice system. In order to effect reform, Models for Change focuses efforts on four states deemed well-positioned to make systemic changes to their juvenile justice systems in the hope that reform there will catalyze change nationwide. Models for Change identifies each state's targeted areas of intervention -- the three aspects of that state's juvenile justice system exhibiting the greatest potential for systemic change -- and assigns a "lead entity" to manage that state's work. The results of each state's reform efforts are recorded to identify what works, so effective strategies can be replicated elsewhere. Early successes of Models for Change's reform efforts are described.

2008 Kids Count Data Book

The Annie E. Casey Foundation (2008) (200 pages)

This publication includes a summary and findings section on data collected across the states. The data uses 10 key indicators of the juvenile justice system, including percentage of teens who are high school dropouts, percentage of children living in poverty, and percentage of children in single-parent families. States are ranked for each indicator and national trends dating back to 2000 are presented. The book also provides a terrific breakdown of demographic data, including economic and juvenile justice statistics.

A Road Map for Juvenile Justice Reform

The Annie E. Casey Foundation (2007) (27 pages)

This article critiques the current state of the juvenile justice system, and provides a roadmap for reform to address the most pressing needs. The author traces the development of the juvenile justice system from its inception to its current state, explaining how the modern "get tough" philosophy and practices came to pervade juvenile justice. Six commonplace deficiencies that exemplify what is wrong with the modern juvenile justice system are then analyzed. The author closes by arguing for specific reforms.

Envisioning a Juvenile Justice System that Supports Positive Youth Development

James Frabutt, Kristen Di Luca, and Kelly Graves, 22 *Notre Dame J.L. Ethics & Pub. Pol'y* 107 (2008) (15 pages)

This article argues for the importance of a juvenile justice system that supports and fosters positive youth development. The authors use North Carolina as a frame of reference to demonstrate the creation of this system. They also make specific proposals around four “leverage points” at which positive youth development can most effectively be fostered.

G. Victims’ Rights

What’s Wrong With Victims’ Rights In Juvenile Court?: Retributive v. Rehabilitative Systems Of Justice

Kristin Henning, 97 *California Law Review* (forthcoming) (69 pages)

This article examines the role of victim impact statements in juvenile courts. Professor Henning argues that use of statements at disposition undermines the rehabilitative purpose of the courts, threatens the child’s due process rights, ignores the diminished culpability of youth, and is not likely to provide victims with the satisfaction they seek. Instead, victim impact statements are more appropriately incorporated into a child’s treatment plan after disposition.



School-to-Prison Pipeline

A. General

Locating the School-to-Prison Pipeline

American Civil Liberties Union (2007) (2 pages)

This fact sheet provides a brief overview of the school-to-prison pipeline, outlining the policies and practices that force children out of classrooms and into the juvenile justice system. The author traces the pipeline's path from the inadequacy of resources that leads schools to adopt zero tolerance policies, which leads to higher rates of expulsion or suspension, to the absence of educational opportunities available to juveniles in detention centers that diminishes opportunities for rehabilitation and increases the likelihood that these juveniles will end up in prison.

Talking Points: The School-to-Prison Pipeline

American Civil Liberties Union (2007) (2 pages)

This fact sheet outlines key arguments against the policies and practices of the school-to-prison pipeline. These talking points highlight the detrimental effects of such practices like zero-tolerance disciplinary policies and reliance on law enforcement to handle minor school offenses. The points also address the disproportionate representation of minorities and special-needs students in the school-to-prison pipeline.

Texas' School-to-Prison Pipeline

Texas Appleseed (Oct., 2007) (166 pages)

Based on school disciplinary data that was self-reported to the Texas Education Agency for five years, this report focuses on the initial segment of the school-to-prison pipeline: school discipline resulting in suspension or referral to a Disciplinary Alternative Education Program. The researchers recommend policy changes including amending the Texas Education Code and using more research-based discipline strategies and positive behavior support in schools. The report also includes interviews from a school district and parent focus group, as well as a best practice model for successful school discipline.

Zeroing Out Zero Tolerance: Eliminating Zero Tolerance Policies in Texas Schools

Sheena Molsbee, 40 Tex. Tech L. Rev. 325 (2008) (40 pages)

This comment discusses the effectiveness of zero-tolerance (ZT) policies in schools, particularly in Texas. The author surveys the historical development of ZT policies and examines the problems created by them, including suspension and expulsion of students for minor infractions and increasing dropout rates. Furthermore, she notes the growing opposition to ZT policies. The author also analyzes Texas' H.B. 603, which added flexibility to the state's ZT policies by allowing school officials to consider self-defense, intent, disciplinary history, and the student's disabilities when deciding whether to expel a student under its ZT policy. In conclusion, she urges the Texas legislature to overturn ZT policies and replace them with policies that require the exercise of discretion by school officials.

B. Dropouts

Reducing Student and Teacher Dropout Rates in Mississippi

Mississippi Youth Justice Project (2008) (16 pages)

This guide promotes a research-based method for improving student behavior and keeping youth out of the criminal justice system. Positive Behavioral Interventions and Supports (PBIS) reduce suspension, expulsion, and dropout rates, improve school attendance, and reduce later delinquency and drug use. In comparison,

relying on the juvenile court system to handle school problems puts youth at risk for entering the criminal system. The guide cites successes of PBIS, noting that it is currently practiced in more than 4,000 schools across the country and is recommended or required by statute in three states. It has brought about positive effects in elementary, middle and high schools, and is even effective in schools with higher percentages of at-risk students. The guide lists recommendations for educators in implementing PBIS and provides suggestions for alternative strategies and programs.

The High Cost of High School Dropouts: What the Nation Pays for Inadequate High Schools

Alliance for Excellent Education, Issue Brief, (Oct., 2007) (6 pages)

This article surveys the economic and social costs of high school dropouts. The author compares the average annual income of a high school dropout to that of a high school graduate and discusses the total economic loss caused by high school dropouts in 2007. The article concludes by detailing the social benefits that accrue from a decreased high school dropout rate, noting in particular that American high schools must be improved if the dropout rate is to decline. A table conveying the total economic loss caused by dropouts for each state is included.

C. Impact of Court Involvement on Education

Who Will Graduate? Disruption of High School Education by Arrest and Court Involvement

Gary Sweeten, *Justice Quarterly*, Vol. 23, No. 4 (2006) (20 pages)

This study uses the 1997 National Longitudinal Survey of Youth to assess the effect of first-time arrest and court involvement during high school on high school completion. The author argues that a first-time court appearance during high school is more detrimental on education outcomes than a first-time arrest without a court appearance. The study found that the effect of court appearance is contingent on prior delinquency, but that court appearance is less relevant for youth who are highly involved in delinquency.

D. Alternative Schools

Alternative Schools and Pushout: Research and Advocacy Guide

Dignity in Schools Campaign (2007) (25 pages)

This collection of documents summarizes reports, articles, and books regarding the pushout to alternative schools, concerns with alternative schools, issues pertaining to students with disabilities and foster youth, and recommendations for alternative education practices.

13



Case Law Reviews

Recent Court Decisions and Legislation Impacting Juveniles

12 U.C. Davis J. Juv. L. & Pol'y 283 (2008) (12 pages)

This article summarizes recent case law and legislation concerning juveniles. The summaries are divided into three categories: Delinquency, Dependency, and Education.

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

Rory K. Little, Hastings College of Law (Aug., 2008) (48 pages)

A summary of the holdings and reasoning of decisions affecting criminal law and procedure from the 2007-08 term of the United States Supreme Court.



Legislative Developments

Juvenile Justice: Legislative History and Current Legislative Issues

Blas Nunez-Neto, CRS Report for Congress (Dec., 2007) (42 pages)

This report to Congress analyzes current federal legislation, including the Juvenile Justice and Delinquency Prevention Act, which impacts state juvenile justice systems.

2007 State Juvenile Justice Legislation

NJDC (June, 2008) (170 pages)

The 2007 State Juvenile Justice Legislation document is a 170-page detailed report that examines juvenile justice legislation by issue and by state. This document allows users to analyze changes in the law and trends in legislative activity, both nationally and state by state.



International Law

Note, Punishing Children as Adults: On Meeting International Standards and U.S. Ratification of the U.N. Convention on the Rights of the Child

Cynthia L. Schirmer, 16 Mich. St. J. Int'l L. 715 (2008) (21 pages)

This student note argues that the United States should ratify the United Nations Convention on the Rights of the Child, focusing in particular on the U.S. treatment of youth in juvenile delinquency proceedings.

"I'll Try Anything Once": Using the Conceptual Framework of Children's Human Rights Norms in the United States

Bernadine Dohrn, 41 U. Mich. J.L. Reform 29 (Fall, 2007) (27 pages)

Dohrn advocates for incorporation of the broader frameworks of international children's human rights laws into the juvenile justice system. Noting that the *Roper* decision was grounded in part in international law, she argues that every child in trouble with the legal system must be treated with humanity, respect and dignity. Furthermore, confined juveniles must be separated from confined adults, children should only be detained as a last resort and for the shortest possible amount of time, families should not be forcibly separated, and all juveniles should receive equal treatment under the law and an opportunity to express their views.

What Have We Done to *Gault*? Youth Criminal Justice and the Charter of Rights and Freedoms: A Canadian Perspective

Erica Tanny, 9 Barry L. Rev. 143 (2007) (27 pages)

This article discusses Canada's Youth Criminal Justice Act in light of *Gault* and focuses on its lack of procedural due process and the

executive discretion not subject to judicial review. In comparing the constitutional protections in the youth justice systems of Canada and the United States, the article theorizes about the rehabilitative ideal and takes a critical perspective on criminal accountability, treatment failure, and the elevation of experts.

Case of D.H. and Others v. Czech Republic

European Court of Human Rights (Nov. 13, 2007) (106 pages)

The Grand Chamber of the European Court of Human Rights held that segregating Roma students into special schools constitutes unlawful discrimination in breach of the European Convention provisions that prohibit discrimination and guarantee the right to education. The case was brought by 18 Roma students who challenged the practice, prevalent in Central and Eastern Europe, of relegating Roma students to special schools for students with learning disabilities. Evidence put forward by the students showed that tests used to determine students' placement in special schools was culturally biased against Czech Roma, and that the procedure for assigning students to special schools allowed for racial prejudice by educational authorities. Roma children made up over half of the total student population in special schools, and over half of Roma children attended special schools. The Grand Chamber held that this form of segregation harms Roma children and therefore constitutes racial discrimination in violation of Article 14 of the European Convention.

Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: Georgia

Committee on the Rights of the Child, Forty-eight Session (June 6, 2008) (21 pages)

This piece is in response to a report by the Republic of Georgia outlining the situation of children within the Republic. In this report, the Committee on the Rights of the Child proposes suggestions or changes to plans proposed by the Republic. In particular, with regard to Georgia's decision to lower the minimum age for criminal responsibility from 14 to 12, the Committee urges that the minimum age of criminal responsibility be 14 years to comply with the Committee's recommendations regarding children's rights in juvenile justice settings.

