



2005

Juvenile Defender Resource Guide

Information & Instructions

Welcome to the 2005 Juvenile Defender Resource Guide. The Guide is now in CD form so that we can distribute a large amount of material and you can select documents of interest for a closer look. This booklet contains a Table of Contents and Summaries of each item in the Guide. To access the complete documents, simply insert the enclosed CD into the appropriate drive of any computer. The Table of Contents will open on your screen, as it appears here. Follow the directions below to find, read, and print documents.

The materials in this Guide are all Portable Document Format (PDF) files in order to preserve their original formatting and design. To access them, your computer must have the Adobe Acrobat Reader program installed. You can download this program for free at <http://www.adobe.com/products/acrobat/readstep2.html>.

How to use this digital format:

Access and read documents

To read summaries of the articles in the Guide, click on the topic of interest where it appears in the Table of Contents. To read any article in its entirety, go to the Summaries and then click on the title of the desired article. From any document, you can return to the Table of Contents by clicking on the "Back to Table of Contents" arrow at the top right corner of the page.

Search for documents

You can search by keyword to find relevant documents. Start with the Summaries open on your computer screen, then hit Ctrl + F on your keyboard (press F while holding down the Ctrl button). When the "find" window opens, type in your keyword of interest. Adobe Reader will take you to the first place that word appears in the Summaries, and highlight your search term. You can click the "Find Again" button to move to the next place your keyword appears, and so on.

Search within documents

You can search by keyword within each document in the Resource Guide. When you have a selected document open on your computer screen, use the Ctrl + F search tool as described above to jump to every place in the document that your keyword appears.

Print exactly what you need

This digital Guide contains much more material than in previous years when we distributed paper binders. We have included the complete text and references of articles and reports. As the Summaries section shows, many of the documents included are quite long. To print any document or selection of pages, just hit Ctrl + P on your keyboard.



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Summaries



1. Child and Adolescent Development

A. Brain Science

The Relevance of Brain Research to Juvenile Defense

Robert E. Shepherd, Jr., *Criminal Justice* (Winter 2005) (2 pages)

An article reviewing the history of adolescent brain research technology and methodology, noting the use of this research in briefs filed in *Roper v. Simmons*. The author emphasizes the importance of new brain research to defenders and other service providers in the juvenile justice system.

Adolescents, Maturity and the Law

Jeffrey Fagan, *American Prospect Online* (August 14, 2005) (4 pages)

An article arguing that the popularity of transfer to adult court is at odds with research findings on adolescent brain development. The author provides an accessible introduction to recent advances in developmental and neuropsychological studies, and explains how these advances undermine the assumptions that underlie punitive juvenile justice transfer policy.

Brain Maturation in Juveniles: Some Implications for Behavior and Control

Ruben C. Gur (2005) (16 pages)

A literature review on the process of maturation in human brains during adolescence and young adulthood. Evidence in the review suggests that brain maturation varies substantially among different individuals but generally is not complete until around age twenty-one. The research included indicates that the brain's physical maturation is associated with improvements in the abilities to control one's impulses and to conform one's behavior to long-term goals.

B. Competency

Due Process Rights for Juveniles: Ensuring Competence to Stand Trial in Maryland's Juvenile Courts

Penny C. Kahn (2005) (22 pages)

A paper highlighting the importance of competency hearings and the use of expert evaluations, and underscoring the need for states to recognize and draft legislation reflecting current research on juvenile competency. The author describes desirable components of competency legislation in a number of states and proposes a model statute for Maryland.

Updating Approaches to Client Competence: Understanding the Pertinent Law and Standards of Practice

John T. Philipsborn, *The Champion* (January/February 2005) (17 pages)

Noting the lack of authoritative guides to competency standards for both mental health experts and defense counsel, this article reviews the case law surrounding competency and provides practical advice for raising competency issues in defending a client.

Adolescents' Competence to Stand Trial: Justice for Disabled and Immature Youths

Thomas Grisso and Gina Vincent, *Center for Mental Health Services Research Issue Brief*, Vol. 2, Issue 5 (May 2005) (2 pages)

A brief summary of research efforts to assess and improve the practice of competency evaluations in the juvenile court system, including three major recommendations for policy reform. The references include several volumes that may be useful for further reading.

C. Violence

Early Violent Death among Delinquent Youth: A Prospective Longitudinal Study

Linda A. Teplin *et al.*, *Pediatrics*, Vol. 115, No. 6 (June 2005) (8 pages)

A study finding disproportionately higher rates of early violent death among delinquent youth than youth in the general population. Rates of early violent death are higher for delinquent youth who are also male, urban residents, and members of racial and ethnic minorities. The authors conclude that further study is necessary to determine which risk factors are modifiable and which prevention strategies will be the most effective.

Summary, Evidence Report/Technology Assessment No. 107: Preventing Violence and Related Health-Risking Social Behaviors in Adolescents

L.S. Chan *et al.*, Agency for Healthcare Research and Quality (2004) (8 pages)

A summary of a study that exhaustively reviewed existing evidence on risk factors and interventions for serious violence by perpetrators between the ages of twelve and seventeen. Only one risk factor, male gender, was consistently reported with violent conduct. All other things being equal, low family socio-economic status was not associated with higher rates of violence. The researchers conclude that research on youth violence is hampered by lack of consistent definitions for key terms and variables.

National Institutes of Health State-of-the-Science Conference: Preventing Violence and Related Health-Risking Social Behaviors in Adolescents

National Institutes of Health (2004)

Press Release: Panel Finds that Scare Tactics for Violence Prevention are Harmful. National Institutes of Health (October 15, 2004) (2 pages)

State-of-the-Science Conference Statement: Preventing Violence and Related Health-Risking Social Behaviors in Adolescents. National Institutes of Health (January 18, 2005) (37 pages)

An independent panel convened by the National Institutes of Health to assess available evidence on adolescent violence finds that "get tough" programs, including boot camps, detention centers, and transfer to the adult judicial system, exacerbate the problem of violence among incarcerated youth. Effective interventions include Functional Family Therapy and Multi-systemic Therapy. The panel recommends a national population-based adolescent violence registry and further quantitative research into the cost-effectiveness of youth violence prevention programs.

2. Mental Health

A. Assessment

Screening and Assessing Mental Health and Substance Use Disorders among Youth in the Juvenile Justice System: A Resource Guide for Practitioners

Thomas Grisso and Lee A. Underwood, National Center for Mental Health and Juvenile Justice (December 2004) (90 pages)

A guide to best practices that will help defenders and clinicians more easily identify youth with mental health and substance use disorders. The document includes profiles of over fifty screening and assessment instruments, guidelines for choosing an appropriate instrument, and recommendations for diverse settings and situations.

Note, Juvenile Psychopathy: The Hollow Promise of Prediction

Lisa Ells, 105 Colum. L.Rev. 158 (2005) (60 pages)

A review of empirical research on psychopathy and its increasing role in juvenile waiver decisions. The author critiques the use of psychopathy assessments in transfers to adult court, and notes grounds for challenging the admissibility of psychopathy assessments in waiver proceedings.

B. Treatment

Summary of the Permanent Final Injunction in Emily Q. v. Bontá

Melinda Bird and Marilyn Holle, Protection and Advocacy, Inc. (May 21, 2001) (5 pages)

A memorandum summarizing the provisions and timetable of a court order requiring California to provide intensive mental health services to qualifying individuals until age twenty-one.

Difficult to Place: Youth with Mental Health Needs in California Juvenile Justice

Sue Burrell and Alice Bussiere, Youth Law Center (August 2005) (46 pages)

A report documenting the long delays in placing many California youths with mental health needs and the adverse consequences of delay for youth. The authors conclude that juvenile justice agencies are hampered in providing adequate care by structural barriers and lack of funding, but some successes have occurred.

Summary of Evidence-based Practices with Children and Youth

Margaret Beyer (2005) (5 pages)

This summary table provides brief descriptions, documented results, and contact information for successful programs nationwide that serve at-risk youth and families.

C. Mitigation

Mental Health and Sentencing in Criminal Cases

Santha Sonenberg (March 8, 2005) (10 pages)

Advice for presenting mental health as a mitigating factor in the sentencing phase. The author briefly discusses the use of experts and the utility of communicating with pre-sentence investigators, then explores the relationship between mental health and culpability, including youth, schizophrenia, post-traumatic stress disorder, bipolar disorder, pharmaceutical effects, and the argument of imperfect self-defense.

Sample Letters to Writers of Pre-Sentence Investigations

Santha Sonenberg (2004)

Regarding Anthony P. (August 5, 2004) (7 pages) - Letter on behalf of a client with bipolar disorder, a history of childhood physical and sexual abuse, and severe dissociative disorder causing hallucinations.

Regarding Anthony Client (September 9, 2004) (6 pages) - Letter on behalf of a client with depression, auditory hallucinations, dissociative disorder, and a history of physical abuse and post-traumatic stress disorder.

Regarding D.E. (October 19, 2004) (8 pages) - Letter on behalf of a client diagnosed with bipolar disorder and paranoid schizophrenia.

Regarding Carlos Client (December 16, 2004) (8 pages) - Letter on behalf of a client who was sixteen at the time of the offense, citing research on adolescent brain development.

Sample Memoranda in Aid of Sentencing

Santha Sonenberg (2004-05)

United States v. L.R. (June 22, 2004) (14 pages) - On behalf of an immigrant client with severe depression, alcoholism and a childhood history of physical abuse and extreme poverty.

United States v. Carlos Client (April 14, 2005) (22 pages) - On behalf of an illiterate immigrant client who shows remorse and was sixteen years old at the time of the offense.

United States v. D.E. (June 17, 2005) (14 pages) - On behalf of a client diagnosed with bipolar disorder and paranoid schizophrenia, advocating a downward departure from sentencing guidelines and placement in a psychiatric treatment facility.

United States v. Anthony P. (October 8, 2004) (21 pages) - On behalf of a client with bipolar disorder and severe dissociative disorder causing hallucinations, but who shows intellectual promise after receiving psychiatric medication, advocating placement at a Boys Ranch.

United States v. K. Clients (September 15, 2005) (39 pages) - On behalf of a client who was nineteen years old at the time of the crime, is mentally retarded and neurologically impaired, and shows remorse.

D. Reform

Final Report and Recommendations: Children, Mental Health, and the Law Summit

Civil Rights of Children Committee, Indiana State Bar Association (September 2005) (13 pages)

A report from an interdisciplinary summit to address the contact of children with mental health needs with Indiana's juvenile justice system. Participants generated detailed recommendations in four focus areas: (1) screening, assessment and treatment; (2) special education needs and reentry for court-involved youth; (3) competency to stand trial; and (4) funding, building capacity, and removing barriers to service.

Juvenile Mental Health Courts and Therapeutic Jurisprudence: Facing the Challenges Posed by Youth with Mental Disabilities in the Juvenile Justice System

Patrick Geary, 5 Yale J. Health Pol'y, L. & Ethics 671 (Summer 2005) (22 pages)

Given the prevalence of youth with mental disabilities in the delinquency system, this article suggests that the therapeutic approach adopted in specialized mental health courts should be extended to the entire juvenile justice system. The author contends that this reform is in keeping with the rehabilitative ideals of juvenile courts and is already modeled in several successful programs.

E. Race and Ethnicity

The Role of Race and Ethnicity in Utilizing Atypical Antipsychotics

Academic Supplement, *International Journal of Neuropsychiatric Medicine*, Vol. 10, No. 3, Suppl. 2 (March 2005) (32 pages)

A compilation of articles on the effects of race and ethnicity in the pharmacologic treatment of psychiatric disorders. The articles suggest that the effects of antipsychotic medication may vary by race, because individuals with different racial and ethnic backgrounds often metabolize drugs differently. Authors conclude that mental health care providers should adopt clinical decision making and prescribing practices that are attentive to safety, tolerability, and dosing for an increasingly diverse population.

Washington Post Series on Racial Disparities and Mental Health Treatment

Shankar Vedantam (2005)

Patients' Diversity Is Often Discounted: Alternatives to Mainstream Medical Treatment Call for Recognizing Ethnic, Social Differences (June 26, 2005) (5 pages)

Scientists have largely ignored the role of cultural factors in the diagnosis, treatment, and outcome of mental disorders. As a result, drug trials on minority patients are infrequent.

Social Network's Healing Power Is Borne Out in Poorer Nations (June 27, 2005) (4 pages)

Examines the possibility that family and community support is a significant and effective form of treatment for mental illness, particularly schizophrenia.

Racial Disparities Found in Pinpointing Mental Illness (June 28, 2005) (4 pages)

Assesses disparities in the diagnosis of mental health disorders, and finds that racial and ethnic minorities are more likely to be misdiagnosed by psychiatrists.

3. Education

A. Zero Tolerance

Education on Lockdown: The Schoolhouse to Jailhouse Track

Advancement Project (March 2005) (64 pages)

A report on the effects of zero-tolerance policies, including the addition of criminal penalties to traditional school punishments, the increasing role of police in schools, and racial disparities in school discipline. The paper includes case studies of public schools in Denver, Colorado; Chicago, Illinois; and Palm Beach, Florida. Recommendations are provided for improving school discipline while minimizing the involvement of the juvenile justice system.

B. Assessment

Needles in a Haystack: Searching Educational Records for Disability Clues

Nancy Cowardin (Draft, July 2005) (14 pages)

Advice on how to gather information about an individual's possible mental disabilities from educational files and comments by teachers or service providers. The paper explains how to use any findings in legal representation, how to present a client's cognitive deficits in guilt and penalty phases of trials, and how to introduce evidence of victims' disabilities with sensitivity.

C. Advocacy

In School, The Right School, Finish School: A Guide to Improving Educational Opportunities for Court-Involved Youth

National Children's Law Network (2005) (60 pages)

An explanation of the educational rights of students in the juvenile justice system, with practical tips for advocating for these rights. The report provides overviews of the No Child Left Behind Act, the Individuals with Disabilities Education Improvement Act, the McKinney-Vento Homeless Assistance Act, the Carl D. Perkins Vocational Education Act, zero-tolerance policies, Section 504 of the Rehabilitation Act, and the John H. Chafee Foster Care Independence Act.

Re-Thinking Juvenile Justice: Using the IEP Concept to Create a New Juvenile Justice Paradigm

Claudia Wright, University of Florida Levin College of Law (2004) (9 pages)

An article arguing that the juvenile justice system should draw on special education concepts, such as the Individual Education Program (IEP), to address delinquent behavior. Unlike the existing delinquency system, an IEP model rests on a holistic understanding of each child's behavior and focuses on the responsibility of surrounding adults to help each child make progress.

School Yard or Prison Yard: Improving Outcomes for Marginalized Youth

Marsha Weissman, *et al.*, (April 2005) (18 pages)

An evaluation of Strategies for Success, a multifaceted program that provides individual support to students in alternative schools. The study finds that the school to prison pipeline can be disrupted by investing in interventions for very high risk students.

IDEA 2004 Summary Excerpts of Changes Affecting Discipline Process

Kathy Boundy, *News from the Suffolk University Law School Juvenile Justice Center*, Issue 9 (February 2005) (1 page)

A summary of changes to the federal Individuals with Disabilities in Education Act that affect the school discipline process for youth with disabilities. Most of these changes went into effect on July 1, 2005.

D. School Reentry

D.C., K.C., and K.J. v. Philadelphia School District

No. 444 C.D. 2004 (July 20, 2005) (31 pages)

The Pennsylvania Commonwealth Court (an intermediate appellate court) ruled that "Act 88" violated the due process clause of the federal Constitution by automatically barring certain Philadelphia students adjudicated delinquent from returning to regular public schools. Under the decision, adjudicated students returning from placement must be given an informal hearing as an opportunity to demonstrate that they are fit to return to mainstream schools.

Appeal of D.C., K.J., and K.C. in W.T., S.P., T.V. v. School District of Philadelphia

Education Law Center and Juvenile Law Center (January 30, 2004) (61 pages)

An appellate brief disputing a lower court decision upholding a Pennsylvania law barring youth returning from delinquency placements from enrolling in regular public schools in Philadelphia. The brief argues that excluding these children from normal school placements violates their right to due process in determining if they should be sent to alternative educational programs. Its authors also claim that the Code violates equal protection under the Pennsylvania Constitution because all other children in the state are afforded a hearing before suffering the same consequences.

A Summary of Best Practices in School Reentry for Incarcerated Youth Returning Home

JustChildren, Legal Aid Justice Center (November 2004) (17 pages)

A review of policies and practices for juveniles' successful reentry into educational programs following time in juvenile corrections facilities throughout the country, with special attention to Virginia. The report emphasizes four best practices for school re-enrollment: inter-agency and community cooperation, youth and family involvement, speedy placement, and appropriate placement.

E. Race and Ethnicity

Changing NCLB District Accountability Standards: Implications for Racial Equality

Christopher A. Tracey, Gail L. Sunderman, and Gary Orfield (June 2005) (29 pages)

A study examining the district accountability system under the No Child Left Behind (NCLB) Act in six states and finding a disparate impact on districts with large low-income and minority populations as well as larger districts. The study finds that the Act's provisions on adequate yearly progress rules, reliance on mean proficiency, and participation rate requirements make these districts vulnerable to sanctions under the NCLB regime. The authors describe how the federal Department of Education has allowed some states to negotiate changes in the evaluation system, but these changes have exacerbated the initial problems.

Closing the Gap: Moving from Rhetoric to Reality in Opening Doors to Higher Education for African-American Students

NAACP Legal Defense Fund (June 23, 2005) (20 pages)

A report describing the black-white achievement gap in education and documenting the negative impact of this gap on American society. The paper analyzes the well-organized anti-affirmative action campaign that has gained strength in the wake of United States Supreme Court rulings clarifying the permissible scope of school admissions policies to boost enrollment for people of color. NAACP LDF reiterates the necessity for affirmative action in order to close the black-white educational gap.

4. Systemic Issues

A. Standards

Ten Core Principles for Providing Quality Delinquency Representation Through Indigent Defense Delivery Systems

American Council of Chief Defenders and National Juvenile Defender Center (January 2005) (3 pages)

Ten principles to guide indigent defense delivery systems in providing constitutionally effective representation to youth in delinquency proceedings. Recognizing juvenile defense as a specialized legal practice, the principles include recommendations on topics such as training, monitoring, resources, and pay parity with juvenile prosecutors.

Performance Standards for Juvenile Defense Representation

Mary Ann Scali, testimony on behalf of the American Bar Association before the Georgia Public Defender Standards Council (December 10, 2004) (10 pages)

Testimony elaborating on the juvenile justice standards established by the Institute for Judicial Administration and the American Bar Association. The remarks focus on the role of counsel in representing the legitimate interests expressed by child clients, appropriate training for juvenile defenders, disallowing youth to waive the right to counsel, and the need to adopt a presumption of indigency for juveniles.

B. Right to Counsel

Right to Counsel Resource Kit: Facts and Figures

National Legal Aid and Defender Association (2003) (5 pages)

A collection of facts and figures related to the right to counsel, public defense funding across the states, methods of delivering public defense services, and public opinion supporting the right to counsel.

Gideon's Broken Promise: America's Continuing Quest for Equal Justice

ABA Standing Committee on Legal Aid and Indigent Defendants (2004) (76 pages)

A report finding that forty years after the right to counsel was established in *Gideon v. Wainwright*, indigent defense systems throughout the country lack fairness and put defendants at risk for wrongful convictions. Primary problems with indigent defense are lack of funding, oversight, and accountability. Possible solutions include reduced caseloads, increased involvement of state and local agencies, increased involvement of judges, and greater funding and oversight.

Effectively Ineffective: The Failure of Courts to Address Underfunded Indigent Defense Systems

Note, 118 Harv. L. Rev. 1731 (2005) (16 pages)

Examines cases in which inadequate indigent defense played a significant role. Finds that lack of state attention and funding had led to the deterioration of indigent defense systems throughout the country. Advises judges and courts to take a more active role in guaranteeing adequate counsel for indigent defendants.

C. Confidentiality

Kentucky Press Association, Inc. v. Kentucky

355 F. Supp. 2d 853 (E.D. Ky. 2005), *appeal docketed*, No. 05-5224 (6th Cir. 2005) (7 pages)

A ruling that dismisses, for failure to state a First Amendment claim, a challenge mounted by the Kentucky Press Association (KPA) to the constitutionality of state laws closing juvenile proceedings and records to the public. Under the "experience and logic" test applied to requests to open judicial trials, KPA's claim failed because juvenile court proceedings have traditionally been confidential and because public access would frustrate the juvenile court's goals of securing due process and rehabilitating youth.

Amicus Brief filed in the Appeal of Kentucky Press Association, Inc. v. Kentucky

Kentucky Department of Public Advocacy, *et al.* (May 18, 2005) (28 pages)

An *amicus* brief filed in the Sixth Circuit, joined by NJDC and numerous other organizations, arguing that confidentiality in the juvenile justice system is essential to its rehabilitative purpose. The Kentucky Press Association appealed from the district court's dismissal of its challenge to state laws closing juvenile proceedings and records. *Amici curiae* contend that past media coverage of juvenile justice issues has often been inaccurate and sensationalistic, indicating that further media access to delinquency proceedings is likely to lead to increased stigmatization of system-involved youth.

Amended Complaint Seeking Declaratory Relief filed in the Case of Kentucky Press Association, Inc. v. Kentucky

Kentucky Press Association (Sept. 13, 2004) (12 pages)

A suit by a press association against Kentucky judges and officials to challenge the confidentiality provisions of the Kentucky Juvenile Code, based on the First Amendment to the United States Constitution. Plaintiffs sought an injunction to prevent state officials from closing juvenile proceedings and records to the public.

D. Extended Juvenile Jurisdiction

Respondent-Appellee's Brief and Argument filed in the case of In Re Christopher K.

Cathryn S. Crawford (2004) (78 pages)

A brief urging the Illinois Supreme Court to find that once a motion to transfer to adult court is denied, a juvenile should not remain subject to an adult sentence through an Extended Juvenile Jurisdiction (EJJ) prosecution. In this case, after the trial court denied the state's motion to transfer to adult court in a first-degree murder case, a youth defendant was adjudicated delinquent under the Illinois EJJ statute and sentenced to a juvenile corrections facility until age twenty-one and then to forty years in an adult facility. The appellate court affirmed the conviction but vacated the EJJ prosecution and forty year sentence, and the Illinois Supreme Court granted *certiorari*.

E. Advocacy Tools

Sample Public Records Request

Pennsylvania Association of Criminal Defense Lawyers (5 pages)

An example of a request for systemic information under the Pennsylvania "Right to Know" Law, seeking records of standards, guidelines, budgets, and caseload information from the District Attorney's Office, Office of the Public Defender, and Juvenile Delinquency Defense Services.

Policy Summaries and Model Bills

Center for Policy Alternatives (2005) (12 pages)

In 2004, NJDC collaborated with the Center for Policy Alternatives, a non-profit organization that advocates for progressive legislation in state legislatures, to develop policy summaries and model legislation related to three important issues: juvenile detention reform, juvenile transfer reform, and juvenile waiver of counsel.

Toward Justice in Virginia

Editorial, *Washington Post* (January 11, 2005) (1 page)

An editorial criticizing Virginia's unwillingness to provide a functional indigent defense system. The author urges the Virginia General Assembly to follow the recommendations of the state Indigent Defense Commission by addressing the problem of botched appeals and eliminating the state's caps on fees for private lawyers representing the poor.

Reforming Juvenile Justice

Barry Krisberg, *American Prospect Online* (August 14, 2005) (5 pages)

Traces the century-long history of juvenile justice's rehabilitative ideal, describes the rise of the "super-predator" image of youth crime, and assesses today's prospects for reform in an era of highly politicized crime policy.

Unraveling the Labyrinth: A Proposed Revision of the Nebraska Juvenile

Code

Mark Ells, *et al.*, 82 Neb. L.Rev. 1126 (2004) (136 pages)

An article describing a proposed overhaul of the Nebraska Juvenile Code developed after lengthy consultation and legal and social scientific research, ranging from recommended changes in terminology to substantive policy reform. The revision project responds to delays in juvenile court processing and a need to incorporate emerging research on adolescent development. The full text of the proposed code is included.

State and Local Affiliates of the National Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers (5 pages)

Contact information for the state and local affiliate organizations of NACDL. Through the NACDL State Legislative Network, NACDL and other advocacy groups call upon these organizations for support in various lobbying and reform efforts.

Year of Juvenile Court Establishment, by State

Kendra Berner, National Juvenile Defender Center (2005) (2 pages)

NJDC has compiled, in map and table form, the years in which each state's legislature created a juvenile court. This information can be used to organize celebrations for major anniversaries of this milestone. States with 2005 centennials appear in bold text on the table.

5. Ethics

Defining the Lawyer-Self: Using Therapeutic Jurisprudence to Define the Lawyer's Role and Build Alliances that Aid the Child Client

Kristin Henning (Draft, 2005) (25 pages)

Therapeutic jurisprudence recognizes attorneys' ability to aid clients by establishing relationships that educate and affirm their clients. This article examines how therapeutic jurisprudence can influence lawyers in the juvenile justice system as they interact with child clients and reach out to form alliances with their clients' other caretakers and service providers.

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

Kristin Henning (Draft, 2005) (48 pages)

An article considering ethical issues related to the parent's role in client-directed advocacy for children. The author explores both the common interests and the conflicts between parents and adolescents involved in delinquency cases. Six strategies are identified to honor core principles of the three-way relationship between parents, attorneys, and child clients.

6. Evidence and Factfinding

A. Forensics

The Defense Challenge to Fingerprints

Lisa J. Steele, *Criminal Law Bulletin*, Vol. 40, No. 3 (May 2004) (30 pages)

A guide to six ways of challenging fingerprint evidence that links a defendant to a crime scene, along with strategies for using the absence of fingerprint evidence in presenting a defense. The author reviews information on fingerprint technology that defense attorneys ought to know, then describes the "Daubert/Plaza" test for admissibility of fingerprint evidence. A Daubert/Plaza challenge focuses on the reliability of scientific evidence and could probe the witness's credentials, the examining lab's procedures, or the underlying science of fingerprint identification.

Forensics

Richard S. Schmechel, William C. Thompson and Edward J. Ungvarsky, *The Champion* (August 2005) (2 pages)

A brief article introducing the free online forensic evidence resource library sponsored by the National Association of Criminal Defense Lawyers and the National Legal Aid and Defender Association. This online library is accessible at <http://www.nlada.org/Defender/forensics>. Membership is not required for access. The library covers nearly twenty topics and includes model pleadings, research articles, sample expert transcripts and affidavits, relevant court opinions, best practices, and more. The authors request that readers submit further documents and include instructions for doing so.

B. Expert Witnesses

Reasonable Doubt in the Age of CSI: Experts and Science in the Courtroom

Edward J. Ungvarsky, forthcoming, *San Antonio Defender* (8 pages)

Practical advice for evaluating and challenging scientific evidence, including how to argue that reasonable doubt includes a lack of such evidence. The article explains how to challenge the prosecution's expert witnesses using standards of admissibility, discovery, laboratory protocols, and other strategies.

Ake v. Oklahoma: The Right to Expert Assistance in a Post-Daubert, Post-DNA World

Paul C. Giannelli, 89 Cornell L. Rev. 1305 (September 2004) (140 pages)

An article assessing the confused and incomplete implementation of the constitutional right, announced in 1985, to expert assistance in preparing one's criminal defense. The author explores the scope of the right to an expert and the threshold showing required of the defense. Unsettled questions related to this constitutional guarantee include the issues of whether the expert must be neutral or effective and whether an *ex parte* request is permitted.

C. *Miranda*

In re K.Q.M.

2005 Pa. Super. 148 (April 22, 2005) (9 pages)

The Pennsylvania Superior Court ruled that a youth's confession was inadmissible where police failed to give a *Miranda* warning and the totality of the circumstances showed that the youth was not in his own home, his parents were not present, he had reason to believe his freedom of action was restricted and he had no choice but to cooperate with the investigation. K.Q.M. was adjudicated delinquent on counts of criminal mischief and criminal conspiracy after the trial court denied his motion to suppress inculpatory statements to police. The Court found that K.Q.M.'s incriminating statement should have been suppressed, vacated the order of delinquency and remanded.

State v. Jerrell C.J.

2005 Wis. 105 (July 7, 2005) (96 pages)

The Wisconsin Supreme Court reversed Jerrell J.'s delinquency adjudication upon finding that his written confession was involuntary. The court ruled that all future custodial interrogations of juveniles must be electronically recorded where feasible, and without exception when questioning occurs at a place of detention.

Brief of Respondent-Appellant in the Case of Wisconsin v. Jerrell C.J.

Eileen Hirsch, Office of the State Public Defender (February 25, 2003) (46 pages)

A brief on behalf of a juvenile, fourteen years old at the time of the alleged offense, seeking reversal of his delinquency adjudication because his confession was coerced and not sufficiently corroborated. Police detectives interrogated Jerrell J. at length without counsel present and denied his repeated requests to call his parents. The brief cites research on the psychology of false confessions in arguing that, given the totality of the circumstances, Jerrell J.'s waiver of his *Miranda* rights was involuntary and his admissions were unreliable.

Rethinking Miranda: Custodial Interrogation as a Fourth Amendment Search and Seizure

Timothy P. O'Neill, 37 U.C. Davis L. Rev. 1109 (2004) (21 pages)

An argument that the *Miranda* decision, which rests on the Fifth Amendment's Self-Incrimination Clause, should have been based on the Fourth Amendment's prohibition against unreasonable searches and seizures. On this view, any custodial interrogation conducted without proper consent is a constitutionally invalid search. This approach to *Miranda* would simplify current doctrine and support broader exclusion of testimonial evidence obtained pursuant to *Miranda* violations.

D. Confessions

Report and Resolution

American Bar Association Criminal Justice Section and New York County Lawyers' Association (February 2004) (17 pages)

The American Bar Association endorses the practice of videotaping custodial interrogations of suspects in their entirety, and urges legislatures or courts to adopt rules mandating recording. The ABA resolution is accompanied by a report that discusses the problem of false confessions and the practice of electronic recording.

Police Experiences with Recording Custodial Interrogations

Thomas P. Sullivan (Summer 2004) (49 pages)

A survey of over 200 law enforcement agencies across the United States that videotape custodial interrogations, finding that their experiences with the practice have been uniformly positive. Initial opposition to recording dissolves with training and positive experiences. The author concludes that recording interviews is an effective law enforcement tool whose time has come.

E. Judicial Impartiality

Respondent's Request for Disclosure of Information Relevant to Bias, Appearance of Fairness and Impartiality filed in the Case of Washington v. D.B.

Simmie Baer, Defender Association of Washington (January 2004) (5 pages)

A motion requesting that defense counsel be permitted to *voir dire* the judicial trier of fact in a delinquency proceeding or, in the alternative, that the court disclose the existence of any bias or prejudice relevant to the key issue of police credibility.

7. Markers of Inequality

A. Gender

What Does It Mean to Design Services to Fit Girls?

Margaret Beyer (2005) (4 pages)

An article arguing that, rather than using a one-size-fits-all form of rehabilitation for girls in the juvenile justice system, girls require both a gender-specific approach and an individual-specific program for successful rehabilitation. Elements of gender-specific needs are described and include a focus on healthy relationships, non-sexist academic and vocational services, and medical care that addresses girls' health issues. Services tailored to the specific individual should consider each girl's individual talents, needs or desires for behavior change, and other characteristics.

All Ellas: Girls Locked Up

Bernardine Dohrn, *Feminist Studies: The Prison Issue*, Vol. 30, No. 2 (2004) (24 pages)

An article discussing the dramatic increase over the past decade in arrest rates for girls, as well as the rising use of pretrial detention and incarceration. The author reviews broad characteristics of girls in the juvenile justice system, such as the prevalence of histories of traumatic physical or sexual abuse, and notes that girls are more likely than boys to be confined for lesser offenses. There is some coverage of the types of programming needed to assist girls in correctional and residential facilities.

Introduction to the National Girls' Health Screen Project

Leslie Acoca and the Juvenile Law Center (2005) (2 pages)

An overview of a major current project to design, validate and disseminate the first developmentally-appropriate and gender-specific health screening instrument for use with incarcerated girls. This introduction provides a helpful background for the following presentation and chart.

Girls' Health Screen Project: Phase 1 Pilot Study Results

In Our Daughters' Hands and the Juvenile Law Center (2005) (15 pages)

A presentation showing the results of a preliminary study on girls' health that reviewed the medical charts of 300 girls at three sites, including both intake screenings and full evaluations. The study focuses on the areas of mental health, substance abuse, sexual behavior and infections, and victimization. For background on the National Girls' Health Screen Project, see the *Introduction* above.

Preliminary Girls' Health Analysis: Chart of Variables and Results

Donald Schwartz and Leslie Acoca (2005) (2 pages)

A chart of variables and results from studies of the health of incarcerated girls conducted over the past ten years. Girls' health remains understudied, but this evidence indicates that girls involved in the court system tend to suffer from poor health and inadequate care. Some spaces are empty because the studies did not measure all the same variables. For background on the National Girls' Health Screen Project, see the *Introduction* above.

B. Race and Ethnicity

See also: Education, Mental Health

Priming Unconscious Racial Stereotypes about Adolescent Offenders

Sandra Graham and Brian S. Lowery, *Law & Human Behavior*, Vol. 28, No. 5 (2004) (22 pages)

Two studies - one of police officers and one of juvenile probation officers - indicate that unconscious racial bias can affect the way in which officers perceive and treat youth in the juvenile justice system. In the studies, officers read short stories about hypothetical juveniles accused of crimes. While the race of the offenders in the stories was left unstated, one set of stories used race-neutral vocabulary while the other set of stories "primed" racial associations by using words intended to invoke racial stereotypes. Officers who were primed by racial vocabulary rated juvenile offenders in those stories as being more culpable, more likely to recidivate, and more deserving of tough punishment, demonstrating that unconscious prejudice may be influencing discretionary decisions regarding the disposition of juveniles in the justice system.

Race, Legal Representation, and Juvenile Justice: Issues and Concerns

Lori Guevara, Cassia Spohn, and Denise Herz, *Crime and Delinquency*, Vol. 50, No. 3 (July 2004) (28 pages)

An empirical study on the effects of a client's race and type of counsel, in combination, on disposition outcome. The results showed that youth without an attorney were more likely to have their charges dismissed, especially if they were also non-white. Of children represented by private attorneys, non-white youth were more likely than white youth to be placed in secure confinement.

The Unique Circumstances of Native American Juveniles Under Federal Supervision

Brenda Donelan, *Federal Probation*, Vol. 63, No. 2 (December 1999) (4 pages)

A brief discussion of characteristics of Native American youth who may become involved in the federal court system, including the issue of alcohol abuse, traditional conceptions of family and crime, and the restricted life chances of most Native Americans. The author argues that better cultural understanding on the part of probation officers will lessen conflict and help the goal of reducing recidivism.

From Martin Luther King to Bill Cosby: Race and Class in the Twenty-First Century

James Forman, Jr., 50 Vill. L. Rev. 213 (2005) (11 pages)

A critique of the tendency, exemplified by Bill Cosby's public remarks, to place primary responsibility on poor communities for their own problems and recovery. This view harmonizes with prevailing policy trends toward accountability, such as in urban school reform, but is incomplete and simplistic. The author praises the more nuanced approach of Martin Luther King, Jr., who called for collective responsibility for the disadvantaged.

Race and Redemption

Ellis Cose, *American Prospect Online* (August 14, 2005) (5 pages)

An article on the need to address minority youths' disproportionate involvement in the juvenile justice system, highlighting the work of the W. Haywood Burns Institute and the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative.

C. Sexual Orientation and Identity

The Model Standards Project: Creating Inclusive Systems for LGBTQ Youth in Out-of-Home Care

Shannan Wilber, *Legal Services for Children* (2005) (18 pages)

The Model Standards Project aims to improve the treatment of lesbian, gay, bisexual, transgender and questioning (LGBTQ) youth placed outside their homes in the foster care or juvenile justice systems. With the input of a national Advisory Committee, the Project has drafted standards and policy recommendations to ensure that LGBTQ youth receive appropriate services and are housed in environments that are safe and free of discrimination. This article summarizes the project goals and forthcoming standards.

Defending LGBTQ Youth

Model Standards Project (2005) (5 pages)

Advice for juvenile defenders on building rapport with and representing youth who are lesbian, gay, bisexual, transgender or questioning. Juvenile defenders should be aware of how sexual orientation can affect delinquency proceedings, including the tendency to charge youth as sex offenders based on consensual same-sex conduct, the fact that many LGBTQ youth suffer discrimination and abuse, and the need to ensure that LGBTQ youth receive an appropriate and safe disposition.

Safety First! A Survival Guide for Lesbian, Gay, Bisexual, Transgender and Questioning Youth Under 18

Legal Services for Children (February 2004) (12 pages)

A pamphlet that explains the legal rights of LGBTQ youth and gives practical tips for safety at home, at school, and in public spaces. The document includes advice regarding police contact and legal emancipation. Referral information and laws are specific to San Francisco or California but other contents are widely applicable.

D. Poverty

2005 Kids Count Data Book: State Profiles of Child Well-Being (Excerpts)

Annie E. Casey Foundation (2005) (57 pages)

The introductory essay, summary and findings, and nationwide profile from the Annie E. Casey Foundation's annual report tracking indicators of the well-being of children in the United States. The essay highlights four key challenges facing America's persistently jobless and most vulnerable families: substance abuse, domestic violence, a history of incarceration, and depression. The full report can be downloaded at <http://www.aecf.org/kidscount/>.

8. Children in Adult Court

A. Transfer

Respondent's Brief on Legal Issues Relating to Decline in the Case of Washington v. W.B.

Jenny E. Carroll (January 7, 2002) (15 pages)

A brief arguing that Washington's decline statute for transferring children to adult courts (upon a decline of jurisdiction by the juvenile court) violates a juvenile's due process rights as defined in *Apprendi v. New Jersey*, 530 U.S. 466 (2000). Prevailing Washington law provided for transfer upon on a judicial finding of facts shown by a preponderance of the evidence. In the alternative, the brief argues that the factors for decline applied by the delinquency court abridge the juvenile's equal protection rights or violate the separation of powers doctrine.

Amicus Brief filed in the Case of Washington v. J.E. and E.D.S.

Washington Defender Association and Seattle University School of Law (2004) (24 pages)

A brief criticizing a juvenile court's application of criteria for waiver into adult court; specifically, contending that the nature of the offense should not weigh heavily in favor of transfer unless the charged youth are shown (not presumed) to be principal perpetrators. In addition, the brief argues that the *Kent* criteria for transfer to adult court should be replaced with the six-pronged analysis applied in federal courts.

What Do Juvenile Offenders Know About Being Tried as Adults? Implications for Deterrence

Richard E. Redding and Elizabeth Fuller, *Juvenile and Family Court Journal*, Vol. 55, No. 3 (January 2005) (11 pages)

An investigation of what juveniles know about transfer laws, whether this knowledge deters criminal behavior, and whether juveniles believe the laws will be enforced against them. The study finds that juveniles are generally unaware of transfer laws. Respondents felt that awareness might have deterred them from committing crimes, that it was unfair to sentence them as adults, and that the consequences of committing their crimes were harsher than they could have foreseen.

Testimony in Support of Raising Age of Juvenile Court to 18

Elizabeth Clarke, Illinois Juvenile Justice Initiative and Midwest Juvenile Defender Center (2005) (4 pages)

Testimony before the Criminal Justice Committee of the Wisconsin legislature urging that the age of juvenile court jurisdiction be raised from seventeen to eighteen. The speaker cites research into adolescent development, the ruling invalidating the juvenile death penalty, and trends in international and state law.

Childhood on Trial: The Failure of Trying & Sentencing Youth in Adult Criminal Court

Coalition for Juvenile Justice (2005) (109 pages)

A report comprehensively outlining state transfer laws and the consequences of transferring a quarter of a million youth to adult criminal court each year, including recidivism and cost-effectiveness. It summarizes reforms that several states have taken in order to be smart on crime, rather than just tough on crime, and provides ways in which other states can do the same. In conjunction with the release of the report, the Coalition for Juvenile Justice (CJJ) has drafted a resolution regarding trying and sentencing youth offenders in adult criminal court. CJJ has recruited over 100 national organizations as signatories to this resolution.

Accompanying materials from the Coalition for Juvenile Justice:

Childhood on Trial Report Overview (4 pages)

National Resolution Regarding Trying and Sentencing Youth Offenders in Adult Criminal Court (3 pages)

Youth in the Adult System: The Numbers (maps displaying transfer provisions effective in each state) (2 pages)

Federal Criminal Case Processing, 2002: With Trends 1982-2002

Bureau of Justice Statistics (January 2005) (36 pages)

A summary of data related to the case processing of defendants in the federal criminal justice system. The report includes the number and disposition of suspects investigated by U.S. attorneys, the number of arrests for federal offenses, the number of defendants in district courts, sanctions imposed on criminal defendants, the number of people under federal correctional supervision, and trends in criminal case processing.

B. Sentencing

United States v. Booker

125 S.Ct. 738, No. 04-104 (January 12, 2005) (124 pages)

The United States Supreme Court ruled, by a vote of five to four, that the Federal Sentencing Guidelines violated the Sixth Amendment right to a trial by jury because they compelled judges to impose longer sentences based on facts neither found by the jury nor admitted by the defendant. A different group of five justices concluded that the provision making the Guidelines mandatory was severable from the rest of the Sentencing Reform Act of 1984, so the Court's decision had the effect of rendering the Guidelines advisory.

Sentencing Debates: Are the Federal Guidelines Unconstitutional?

CQ Researcher, Vol. 14, No. 39 (November 5, 2004) (24 pages)

An overview of arguments for and against declaring the federal sentencing guidelines unconstitutional. The article examines the harsh mandatory minimum sentences that many states impose even on first-time nonviolent offenders and provides background on the *Roper v. Simmons* case that invalidated the juvenile death penalty.

Relief from the Collateral Consequences of a Criminal Conviction: A State-by-State Resource Guide

Margaret Colgate Love (July 2005) (215 pages)

The collateral consequences of criminal conviction are multiple and severe, while relief mechanisms differ across states but are generally difficult to access. This executive summary of a forthcoming report analyzes the three principal avenues to restore civil rights lost through criminal conviction: (1) the executive pardon power, (2) judicial expungement and sealing of adult felony convictions, and (3) laws protecting ex-offenders from discrimination in employment and licensing. A fourth section addresses the restoration of voting rights, and a lengthy appendix contains profiles of all U.S. jurisdictions showing which restoration methods are available in each.

Thrown Away: Children Sentenced to Life Without Parole in Colorado

Human Rights Watch (February 2005) (42 pages)

A report condemning the Colorado law that requires judges to impose life without parole (LWOP) sentences on children as young as twelve if they commit first-degree murder, finding that the practice is cruel, unfair, and unnecessary. Emphasizing the inherent differences between children and adults, the study states that 133 countries prohibit LWOP sentences for juveniles. It argues that all children should have a chance to demonstrate their rehabilitation and thereby gain their freedom, and asserts that the purposes of punishment are better served by sentences that take into account juveniles' potential to mature and develop.

9. Discrete Client Populations

A. Immigrants

Juvenile Defender Training on Immigration Law

Dan Kesselbrenner, National Immigration Project of the National Lawyers' Guild (May 21, 2004)
(10 pages)

A presentation on immigration-related issues and strategies for juvenile defenders, including the basics of immigration status. Defenders must be aware of the significant consequences of transfer to adult court, including the possibility of deportation, and of the potential impact of delinquency adjudications on clients' future requests to adjust their immigration status.

The Unaccompanied Refugee Minor Program

Lutheran Immigration and Refugee Service and United States Conference of Catholic Bishops/
Migration and Refugee Services (2005) (2 pages)

The U.S. Refugee Program offers specialized resettlement services for unaccompanied refugee minors through two voluntary agencies which are authorized by the U.S. Department of State to resettle unaccompanied youth. These agencies work through licensed child welfare affiliates. Minors are placed in foster care or independent living arrangements, appropriate to their developmental needs.

B. Sex Offenders

An American Tragedy: Legal Responses to Adolescent Sexual Offending - Executive Summary

Franklin E. Zimring (2004) (4 pages)

A summary of a recent book that reviews research on adolescent sexual offending and criticizes the application to youth of sex offender registration laws and other legal responses designed for adults. Current policies are often based on untested assumptions that youth are similar to adult offenders, or that all young sex offenders are dangerous predators. Further research is needed to distinguish the few sexually dangerous youths from other young sex offenders and to design responses that are suitable for adolescents.

For Juvenile Sex Offenders, Intensive Program Offers Chance for Change

Linda Baker, *Connect for Kids* (August 8, 2005) (5 pages)

An article describing a successful intensive day treatment program for youth sex offenders in Portland, Oregon. Juvenile sex offenders are frequently victims of prior physical and sexual abuse, and are more likely to respond to treatment than adult sex offenders.

C. Gang Members

Caught in the Crossfire: Arresting Gang Violence by Investing in Kids

Fight Crime: Invest in Kids (2004) (32 pages)

A coalition of law enforcement leaders and crime victims urges that communities fight gangs by replicating effective violence prevention projects; supporting family efforts to keep kids away from gangs; and intervening early to support at-risk children. The report highlights the proven successes of therapies to reduce recidivism and collaborative projects like Boston's Operation Ceasefire.

D. Trafficked Children

Fact Sheets on Trafficked Children

United States Conference of Catholic Bishops and Lutheran Immigration and Refugee Service (2004) (8 pages)

Materials answering basic questions regarding trafficked children, including guidance for identification, what to do when a victim has been identified, and the forms of help available to child trafficking victims.

Notes and Commentary: Second Conference on Identifying and Serving Child Victims of Trafficking

Micah Bump *et al.*, *International Migration*, Vol. 43 (1/2) (2005) (21 pages)

A summary of the discussion topics and recommendations of a 2004 national Conference on Identifying and Serving Child Victims in Trafficking. The article reviews the scope of the child trafficking problem in the United States, the barriers to serving child trafficking victims, and recommendations for improving identification of and services to trafficked children. A pressing concern is the need to provide care and placement for trafficking victims immediately upon identification.

E. Fetal Alcohol Spectrum Disorder

Fact Sheets on Fetal Alcohol Spectrum Disorders (FASD)

Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration (2004) (4 pages)

One fact sheet, *The Language of Fetal Alcohol Spectrum Disorders*, covers the prevalence and impact of these disorders and defines disorders including fetal alcohol syndrome, fetal alcohol effects, alcohol-related neurodevelopmental disorder, and alcohol-related birth defects. The other fact sheet, *Understanding Fetal Alcohol Spectrum Disorders: Getting a Diagnosis*, explains the behaviors associated with FASD and how to determine whether a youth has such a disorder.

FAS: Hidden Epidemic in our Courts

Kathryn Page, *Juvenile & Family Court Journal* (Fall 2001) (12 pages)

An article reviewing the causes and symptoms of Fetal Alcohol Syndrome and Fetal Alcohol Effects (FAS/E), including a list of common disabilities and a discussion of why FAS/E commonly goes undiagnosed. Youth with FAS/E display behavioral tendencies that place them at high risk for involvement in the juvenile justice system, although parents and social agencies can take protective steps. A few successful programs are described.

Capacity Concerns & Fetal Alcohol Syndrome

Robin LaDue and Tom Dunne, *The FEN Pen*, Vol. 4, Issue 1 (Winter 1996) (2 pages)

Fetal alcohol syndrome (FAS) can severely affect functioning, leading to legal consequences such as lack of competency or an inability to form a required state of criminal intent. Because people with FAS commonly appear more capable than they actually are, the identification of clients with FAS is difficult and must include several assessments.

Identifying Fetal Alcohol Syndrome among Youth in the Criminal Justice System

Diane K. Fast *et al.*, *Developmental and Behavioral Pediatrics*, Vol. 20, No. 5 (October 1999) (3 pages)

A study of the prevalence of Fetal Alcohol Syndrome (FAS) in a juvenile justice institution. A disproportionately large number of youth with FAS become involved in the justice system, as FAS may make youth more likely to engage in illegal behavior. This study demonstrates the need for education and awareness of FAS among juvenile defenders and other actors in the justice system.

10. Detention and Corrections

A. Detention Advocacy

Model Detention Interview Form

Midwest Juvenile Defender Center and Elizabeth Kooy (2004) (8 pages)

A script and blank form for use when interviewing child clients in preparation for detention hearings.

Reducing Inappropriate Detention: A Focus on the Role of Defense Attorneys

Bart Lubow, *Juvenile Justice Update* (August/September 2005) (5 pages)

A speech discussing the reasons why youth detention should be reduced and calling upon juvenile defense attorneys to advocate more strongly for their clients in detention hearings. Due in part to structural factors such as high caseloads or lack of expertise and training, defenders too often contribute to the inappropriate use of detention.

B. Overuse

Press Release: Prison Numbers Increase to Nearly 1.5 Million Despite Decade-Long Drop in Crime

Justice Policy Institute (November 9, 2004) (2 pages)

U.S. Prison Population Soars in 2003, 2004

Associated Press/AP Online (April 24, 2005) (2 pages)

Press reports that the number of incarcerated women in the U.S. has exceeded 100,000 for the first time in U.S. history, and that the U.S. prison population numbers nearly 1.5 million. Rising statistics may be due to mandatory minimums and the growing number of punitive laws in some states.

Detention Redemption

Peggy Townsend, *American Prospect Online* (August 14, 2005) (3 pages)

Summarizes the successful detention reforms undertaken in Santa Cruz County, California, which have reduced pre-adjudication incarceration, saved money, and coincided with falling crime rates.

Proposals for Reform 2005

Juvenile Justice Coalition of New York (2005) (4 pages)

A call to state legislators to undertake four tasks: (1) create alternatives to detention for youth; (2) end the prosecution of sexually exploited youth; (3) protect the rights of lesbian, gay, bisexual and transgender youth in the juvenile justice system; and (4) establish an independent office to stop abuse of incarcerated youth.

C. Conditions

Restraining Disorder

Doron Taussig, *Philadelphia City Paper* (May 19, 2005) (13 pages)

A cover story on the use of excessive force and the problem of violence in correctional facilities, highlighting the story of one Philadelphia youth held in a private secure correctional center who died after being forcibly restrained by a corrections officer. The author analyzes the use and conditions of juvenile incarceration throughout Pennsylvania.

U.S. Justice Department Cuffs Juvenile Corrections

Ted Gest, *Youth Today* (November 2004) (7 pages)

An article reviewing United States Justice Department actions to improve conditions of confinement in juvenile correctional facilities nationwide, and discussing youth advocates' critiques of the Department's approach. The author analyzes developments in a number of states and discusses the debate over the Justice Department's effectiveness in reforming juvenile corrections.

Sexual Violence Reported by Correctional Authorities, 2004

Allen J. Beck and Timothy J. Hughes, Bureau of Justice Statistics (July 2005) (38 pages)

A statistical report on sexual violence incidents reported to correctional authorities in 2004, including rates of violence, characteristics of victims and perpetrators, and sanctions imposed. Youth facilities reported higher rates than adult facilities of sexual aggression by staff and fellow offenders, but the report includes no information on the safety of youth held in adult facilities. This survey is the first of its kind completed by the Bureau of Justice Statistics, and the authors caution that the results should be interpreted with care.

Guards at Girls' Prison Indicted

Sharon Coolidge, *Cincinnati Enquirer* (December 9, 2004) (2 pages)

A news article describing the physical and sexual assault of girls held in the Scioto Correctional Facility in Ohio, and reporting on the criminal charges filed against the guards accused of abuse.

Planning Community-based Facilities for Violent Juvenile Offenders as Part of a System of Graduated Sanctions

Shelley Zavlek, *OJJDP Bulletin* (August 2005) (39 pages)

Small, community-based secure facilities are a promising and cost-effective disposition option for violent or chronic youth offenders. This bulletin identifies three model programs and explains how to plan and establish this type of facility as part of a continuum of placement options for court-involved youth.

Letter to State Medicaid Directors from the Center for Medicaid and State Services

Glenn Stanton, Center for Medicaid and State Services (May 25, 2004) (2 pages)

A letter from federal authorities encouraging states to "suspend" rather than "terminate" the Medicaid eligibility of people held in state custody. Although states cannot receive federal reimbursement for health services to incarcerated people, retaining eligible individuals on state rolls during their custody will help states to provide health care via Medicaid promptly on offenders' release to their communities.

The "Inmate Exception" and Its Impact on Health Care Services for Children in Out-of-Home Care in California

Sue Burrell and Alice Bussiere, Youth Law Center (November 2002) (97 pages)

A report documenting the effects of the federal ban on Medicare reimbursement for services to individuals in government custody and recommending strategies to maximize Medicare coverage given current laws. The authors advise that further research and data collection is necessary before advocating for more drastic changes to the "inmate exception" policy. Appendices contain relevant law and manuals.

D. Community Reentry

Stop the Revolving Door: Giving Communities and Youth the Tools to Overcome Recidivism

Youth Justice Board (2005) (68 pages)

A report presenting the recommendations of the Youth Justice Board, composed of youth aged fourteen to eighteen, on juvenile reentry policies in New York City. Recommendations include planning for reentry beginning at disposition; ensuring that families can visit youth in placement institutions, facilitating the juvenile's return to school, and providing access to programs and support groups.

Fact Sheet: Their One Best Second Chance and Proposed Bill: Mental Health Transition Plan

Virginia Coalition for Juvenile Justice (2004) (3 pages)

Materials outlining reasons and recommendations for improving the Virginia reentry system. Includes a proposed bill with a transition plan component that would require the provision of mental health, substance abuse, and other therapeutic treatment for youth returning to the community from correctional centers.

11. Death Penalty

A. *Roper v. Simmons*

Roper v. Simmons

125 S.Ct. 1183 (2005) (87 pages)

The United States Supreme Court held that the Eighth Amendment's proscription against cruel and unusual punishment prohibits the imposition of the death penalty for crimes committed when offenders were younger than eighteen. The Court examined objective indicia, such as state legislative developments, and exercised its independent judicial judgment in finding that the nation's evolving standards of decency now regard execution to be a disproportionate punishment for juveniles. The ruling is also notable for its reliance on scientific evidence of adolescent development and recognition of categorical differences between youth and adults.

Respondent's Brief filed in the case of Roper v. Simmons

Jennifer Herndon, *et al.* (July 19, 2004) (82 pages)

This brief on behalf of Christopher Simmons argues that in the fifteen years since the Supreme Court first considered the constitutionality of the death penalty for sixteen and seventeen-year-old offenders in *Stanford v. Kentucky*, advances in the scientific understanding of adolescent development and a movement by legislatures and juries away from executing juvenile offenders have demonstrated that capital punishment of those under eighteen is inconsistent with our society's evolving standards of decency. The execution of juvenile offenders - like that of mentally retarded offenders - is both disproportionate to their personal moral culpability and contrary to a national and worldwide consensus.

Amicus Brief filed in the case of Roper v. Simmons

Juvenile Law Center, *et al.* (July 19, 2004) (147 pages)

Over fifty child-advocacy and other organizations signed onto this brief arguing that the juvenile death penalty should not be imposed against Christopher Simmons. The authors focus on why the differences between children and adults mean capital punishment serves neither retributive nor deterrent purposes for youth. They also cite legislative trends and the greater likelihood that youth will falsely confess to crimes as arguments against the juvenile death penalty.

Amicus Brief filed in the case of Roper v. Simmons

American Medical Association, *et al.* (July 19, 2004) (36 pages)

Medical and psychiatric associations argue that scientific understanding of adolescent behavior and brain development leads to the conclusion that sixteen and seventeen-year-old offenders exhibit deficiencies the Supreme Court has identified as warranting exclusion from the death penalty. *Amici* further note that the psychological disturbances common to juvenile capital offenders exacerbate those youths' vulnerabilities and so can be expected to cause them to function at substandard levels.

Amicus Brief filed in the case of Roper v. Simmons

American Psychological Association, *et al.* (July 19, 2004) (43 pages)

Psychological associations argue that behavioral studies and recent neuropsychological research demonstrate that execution of those who were under eighteen years old when they committed capital offenses violates the Eighth Amendment prohibition against cruel and unusual punishment. The authors write that individualized capital sentencing proceedings do not reliably account for the mitigating effect of adolescence.

B. Using *Simmons*

Sample Memorandum of Law in Support of Motion to Remand to Juvenile Court

Simmie Baer, Corey Marika Endo, and Susan F. Wilk (2005) (19 pages)

An example of how to challenge state statutes using the United States Supreme Court's decision in *Roper v. Simmons*, in which the Court acknowledged the legal significance of developmental differences between youth and adults. The memorandum attacks, on the constitutional grounds of due process and equal protection, the Washington state law providing for automatic waiver of certain children into the adult criminal justice system.

Motion to Hold Potential Sentence of 16 Year Old to Life Imprisonment Without Parole Unconstitutional and in Violation of State, Federal and International Law filed in the Case of Louisiana v. L.J.

R. Neal Walker (2005) (17 pages)

A motion citing *Simmons* and international law to attack a statute permitting a sentence of life without parole (LWOP) for a defendant who was a juvenile at the time of the offense. The motion also discusses other states' youth sentencing jurisprudence in arguing that an LWOP penalty is (1) invalid because the sentencing scheme strips decision-makers of discretion and (2) barred by the Louisiana Constitution, which prohibits excessive punishment.

Practice Pointer: Roper v. Simmons - What Does It Mean for Wisconsin?

Eileen Hirsch, *The Wisconsin Defender* (Summer 2005) (3 pages)

A discussion, relevant to all states, of the utility of *Simmons* for defense attorneys. Among other implications, the decision provides support for arguments that juveniles are less culpable and more amenable to rehabilitation. The author points out the applicability of the *Simmons* reasoning for juvenile sex offenders, youth transferred to adult court, and youth challenging the admissibility of interrogations.

Brain Development and Adolescent Immaturity

Margaret Beyer (2005) (2 pages)

A reference source for attorneys interested in applying *Simmons*, with excerpts from the American Medical Association's *amicus* brief and a list of the scientific references cited.

C. Youth Sentenced to Death

The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973 - December 31, 2004

Victor L. Streib (January 2005) (32 pages)

A comprehensive summary of youth offenders and crimes in capital cases during the tenure of the juvenile death penalty in the United States. In the era after *Roper v. Simmons*, this report serves as a resource for historical information and data on the death penalty for juvenile offenders.

Ethics Questions Raised by the Neuropsychiatric, Neuropsychological, Educational, Developmental, and Family Characteristics of Eighteen Juveniles Awaiting Execution in Texas

Dorothy Otnow Lewis, et al., *Journal of the American Academy of Psychiatry and the Law* (2004) (22 pages)

A study considering issues of culpability and mitigation related to individuals sentenced to death for crimes committed as juveniles. Eighteen offenders on death row in Texas received systematic psychiatric, neurological, neuropsychological, and educational assessments, and their medical, educational, social, and family histories were reviewed. The study finds that all but one experienced severe head trauma in childhood or adolescence, all subjects had signs of prefrontal cortical dysfunction, and all but one came from extremely violent and/or abusive families in which mental illness was prevalent in multiple generations.

D. Human Rights Law

The Death Penalty and Life Imprisonment Without the Possibility of Release for Youth Offenders who Were Under the Age of 18 at the Time of the Offense

Human Rights Advocates, Agenda Item 13, Commission on Human Rights, 61st Session (2005)
(17 pages)

A submission to the United Nations that places the juvenile death penalty and life without parole sentences for juveniles within the context of international law. It argues that both a ban on the juvenile death penalty and a ban on juvenile life without parole have reached the level of customary international law. The paper concludes by setting forth recommendations to abolish both the death penalty and life without parole for juvenile offenders in those countries that have not already done so.

12. Media

The Care and Feeding of the Media by Defenders

J. Vincent Aprile and Edward C. Monahan, Kentucky Department of Public Advocacy (June 1995) (15 pages)

Advice for communicating with members of the media about clients' cases in a way that is ethical and beneficial to clients.

Making Juvenile Justice Newsworthy

Lisa Thureau-Gray (2005) (15 pages)

A presentation about why and how juvenile defenders should communicate with the media, including about juvenile justice issues in general. Media coverage of juvenile delinquency tends to be slanted and simplistic; adding defenders' stories can create more balance.

13. Legal Developments

A. Caselaw Reviews

Annual Review of the Supreme Court's Term

Rory K. Little (August 2005) (59 pages)

A survey of the holdings and reasoning of decisions affecting criminal law and procedure from the 2004-2005 term of the United States Supreme Court.

Review of the Latest Opinions in the Juvenile Justice Field

Michael J. Dale, *Juvenile Justice Update* (October/November 2004) (3 pages)

A review of federal and state court decisions impacting juvenile justice, including the Third Circuit decision in *A.M. v. Lucerne County Juvenile Detention Center*. The Third Circuit reversed in part a summary judgment against a juvenile in his suit alleging civil rights violations after he had not received appropriate mental health treatment and had been injured and harassed at a detention facility. The Court held that the standard against which the actions of the public officials should be tested is deliberate indifference to the welfare of a child, and determined there to be an issue of fact as to whether hiring and staffing policies and practices were deficient, training programs were adequate, and proper protocols were in place to ensure safety.

B. Legislation

Memorandum: 2005 State Juvenile Justice Legislation

Mary Schmid, National Juvenile Defender Center (August 5, 2005) (6 pages)

To accompany NJDC's 2005 legislative summary, a memorandum outlining key trends and contrasting state developments in juvenile justice legislation considered in 2005.

2005 State Juvenile Justice Legislation

Mary Schmid, National Juvenile Defender Center (August 2005) (182 pages)

A summary of all legislation related to juvenile justice introduced in state legislatures during the 2005 legislative session. Shows bills arranged by issue area, as well as bills compiled by state.

14. Promising Approaches

A. Louisiana

Louisiana v. Citizen

898 So.2d 325 (La. 2005) (10 pages)

The Louisiana Supreme Court found that a judge may halt the prosecution of cases against indigent defendants, unless and until adequate funds are identified and made available to pay for counsel and other case expenses. The ruling emphasizes that legislatures are obligated to fund indigent defense.

Louisiana's Wise Word

Editorial, *Washington Post* (April 12, 2005) (1 page)

An editorial endorsing the Louisiana Supreme Court decision to halt the prosecution of indigent defendants whose legal needs were not met by the state. The writer argues that Virginia's indigent defense payments are likewise too low to support a constitutionally adequate defense. Virginia courts cannot lift these caps directly, but should follow Louisiana's lead by barring prosecutions until the state agrees to pay an adequate amount for indigent defense.

B. Massachusetts

Indigent Defense in Massachusetts: A Case History of Reform

The Spangenberg Group (August 2005) (8 pages)

Documents the pressures that led the Massachusetts legislature, in July 2005, to overhaul the state's indigent defense system and appropriate significantly more money to public defense services. Reform in Massachusetts was spurred by a combination of major systemic lawsuits, a severe shortage of court-appointed counsel, and the the recommendations of a legislative commission.

C. Montana

Press Release: ACLU Hails Montana's Public Defense Bill as Leading National Trend

American Civil Liberties Union (June 8, 2005) (2 pages)

The American Civil Liberties Union filed a class action lawsuit that helped goad the Montana legislature into establishing a statewide indigent defense delivery system. The ACLU sees Montana as being at the forefront of a national trend toward improving public defense, but cautions that Montana's promising reforms will not be effective unless they are adequately funded.

S.B. 146, 59th. Leg. (Mont. 2005)

Senators Dan McGee and Mike Wheat (98 pages)

The Montana legislature approved a bill establishing a new statewide public defender office. The bill is the first law in the nation designed to implement the *Ten Core Principles of a Public Defense Delivery System* adopted by the American Bar Association in 2002. The act creates an eleven-member public defender commission to hire the state's first Chief Public Defender, establish standards for indigent defense counsel, oversee training, and distribute funds for investigators and experts. Montana's governor signed the bill into law on April 28, 2005.

D. North Dakota

Press Release: North Dakota Passes Indigent Defense Reform

National Association of Criminal Defense Lawyers (May 20, 2005) (1 page)

A brief summary of the provisions of North Dakota's indigent defense reform legislation.

S.B. 2027, 59th Legis. Assemb., Reg. Sess. (N.D. 2005)

(7 pages)

The North Dakota legislature passed a bill creating a commission to oversee public defense throughout the state. The new law more than doubles the amount of state money allocated to public defense, and provides for the appointment of a director of indigent defense services to coordinate delivery across the state. Prior to the reform, individual judges awarded contracts to defense lawyers to handle cases in their courtrooms for a flat fee.