Recent Court Decisions and Legislation Impacting Juveniles

UNITED STATES SUPREME COURT

🕮 *J.D.B. v. North Carolina*
131 S. Ct. 2394 (2011)

In *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), the Supreme Court examined the issue of whether a child's age properly informs the "*Miranda*" custody test. *Miranda v. Arizona* was a critical case for criminal justice advocates, as it articulated a two-pronged analysis for determining whether officers have a duty to inform suspects in custody of certain rights, such as the right to remain silent. *Miranda v. Arizona*, 384 U.S. 436 (1966). The first prong looks to the circumstances surrounding a police interrogation. The second prong asks whether a reasonable person would have felt free to terminate the encounter with law enforcement agents and walk away from the questioning. Until *J.D.B. v. North Carolina,* the law was unclear about how to factor a child's age into this analysis. In this 5-4 decision, written by Justice Sotomayor, the *J.D.B* court held that a child's age informs the *Miranda* analysis, as long as the child's age was known to the interrogating officer or would have been objectively apparent.

J.D.B. was a 13-year-old who brought a digital camera to school. Not only did the camera match the description of a stolen camera seized during a home break-in, but J.D.B. was seen near the site around the time of the burglary. Officer DiConstanzo, a juvenile detective with the local police, visited J.D.B.'s middle school to investigate. With the help of school administrators and a school resource officer, J.D.B. was removed from his social studies class and escorted to a closed-door conference room. J.D.B. was then subjected to questioning for 30 to 45 minutes. During this time, J.D.B. was not told that he could contact his legal guardian. Officer

DiConstanzo pressured J.D.B. He urged the youth to "do the right thing," because "the truth always comes out in the end." The officer also told J.D.B. that he might face juvenile detention. After the prospect of juvenile detention arose in the interrogation, J.D.B. confessed to the break-ins. Only then did Officer DiConstanzo perform the duty required by *Miranda:* to tell J.D.B. that he did not have to respond to the officer's questions and that he was free to go. J.D.B. nodded his understanding and continued to self- incriminate until the final bell rang and he was allowed to catch the bus home.

Shortly after the questioning, two juvenile petitions were filed against J.D.B. and a trial court adjudicated him delinquent. His public defender moved to suppress the evidence gleaned from the closed-door conference, but this motion was denied. The North Carolina Court of Appeals affirmed the delinquent adjudication. On appeal, the Supreme Court of North Carolina found that J.D.B.'s age was irrelevant to whether or not he was "in custody" for *Miranda* purposes while being questioned, and affirmed the delinquent ruling.

In deciding this case, the United States Supreme Court recognized that any police interrogation has "coercive aspects to it." The court further observed that juveniles are more susceptible to police coercion. Reaching as far back as William Blackstone's Commentaries for support, the Court reiterated the idea that children are not simply "miniature adults." Children do not have the same intellectual capacity as adults for understanding their rights, and therefore they can more easily be coerced into self-incrimination. The Supreme Court also considered the school setting. At school, attendance for minors is compulsory, and disobedience is punishable. The Court stated, "the school-house setting cannot be disentangled from the identity of the person being questioned."

J.D.B. v. North Carolina was remanded to the state courts to determine whether J.D.B. was in custody during his interrogation under state law, which uses a different calculus than federal criminal law. The Supreme Court instructed the lower courts that if children are in custody for questioning *and* the officers are on notice of the suspect's age, the age

must guide law enforcement's *Miranda* duty, given that children are more likely to self-incriminate.

FEDERAL

🕮 *United States v. Aumais*
656 F.3d 147 (2nd Cir. 2011)

In *United States v. Aumais*, the Second Circuit Court of Appeals addressed for the first time how a defendant convicted of possessing child pornography may be liable for restitution to a child victim under 18 U.S.C. § 2259. The United States District Court for the Northern District of New York sentenced George Aumais to 121 months of imprisonment for child pornography possession. The court also ordered him to pay $48,483 restitution to "Amy," one of the victims displayed in his pornographic photos and videos. Aumais appealed the restitution order on the grounds that his possession was not a proximate cause of "Amy's" loss. The Second Circuit held for Aumais and found "Amy" not eligible for restitution.

During the trial, the district court referred the matter of restitution to a magistrate judge who held an evidentiary hearing in December 2009. The only witness for "Amy's" case was Dr. Joyanna Silberg, whose expert medical testimony was based on an examination of "Amy" in 2008. Dr. Silberg testified that "Amy" had been functioning 'pretty well' until she learned that her photo was still being circulated on the internet. Then, "Amy" began to experience acute fear that friends or strangers would recognize her from the photo.

The magistrate judge found that Aumais' possession of "Amy's" photo exacerbated the original harm caused by her uncle. The exacerbation included creating a market for distribution and "Amy's" humiliation from knowing that her picture is still being exploited. Based on this harm, Dr. Silberg assessed that "Amy" would need regular therapy and inpatient treatment for her alcoholism. The cost of both treatments together determined the $48,483 restitution. Upon

appeal, the Second Circuit found that "Amy" was indeed a victim under § 2259. However, they did not find that Aumais proximately caused her harm by possessing her photo. A circuit split has arisen in cases regarding restitution to victims of child pornography. In the minority, the Fifth Circuit found, based on Congressional intent, that only a more general causation is necessary. *In re Amy Unknown*, 636 F.3d 190, 198 (5th Cir. 2011). However, most courts find that there must be proof that those possessing child pornography are a proximate cause of harm. *US v. McDaniel*, 631 F.3d 1204, 1209; *United States v. Laney*, 189 F.3d 954, 965 (9th Cir. 1999); *United States v. Crandon*, 173 F.3d 122, 125 (3d Cir. 1999). Courts held that there must be proof of proximate cause. The Second Circuit agreed with the Ninth, Third and D.C. Circuits and found that a victim must prove proximate cause. The court agreed with the facts found in the magistrate judge's evidentiary hearing, but disagree that those facts indicate proximal cause of "Amy's" loss. The court cited the following facts: (1) "Amy's" Victim Impact Statement makes no mention of Aumais; (2) "Amy" had no direct contact with Aumais or even knew of his existence before she was notified of his arrest for possessing her image; (3) Dr. Silberg's testimony was based on an examination of "Amy" before Aumais was ever arrested. The court found no evidence of harm to "Amy" specifically caused by Aumais.

The court specified that its holding is narrow and only applies to cases where the Victim Impact Statement and psychological evaluation were drafted before a defendant was even arrested. Despite the narrow holding regarding proximate cause, the court also commented on other issues that might likely arise in similar cases that would prevent such victims from collecting restitution. "Amy" has brought restitution charges in other district courts, and as of January 2010 received just over $170,000 in restitution. However, the court cited precedent stating that there is no legal basis for awarding a victim more than his due. The court then implied that even if they had found proximate cause the court would still not grant restitution because she had already been awarded more than the $48,483.

In addition, the court cited § 2259 (b)(4)(B): a court may decline to issue an order under this section because a victim may receive compensation from insurance or another source. Since "Amy" had collected restitution from other defendants in other jurisdictions, the court implied that she would not be eligible for restitution under that statute.

🕮 *Troy D. v. Mickens*,
No. 806 F.Supp.2d 758 (2011)

In *Troy D. v. Mickens*, the District of New Jersey held that a juvenile plaintiff had properly exhausted available administrative remedies before filing a civil action for deprivation of rights under 42 U.S.C. § 1983. The Plaintiff's claim arose from the approximately fifty days he spent in isolation at a juvenile detention facility. In their motion for summary judgment, the Defendants emphasized three different administrative remedies that Plaintiff had failed to exhaust, as required by the Prisoner Litigation Reform Act ("PLRA"). As to two of the proposed administrative remedies, the court found that the Defendants did not meet their burden of proving Plaintiff's failure to exhaust. With respect to the third administrative remedy, the court found that the Plaintiff, by way of a single letter, properly exhausted the remedy.

O'Neill was one of two plaintiffs adjudicated delinquent and committed to the custody of the New Jersey Juvenile Justice Commission ("JJC"). Between June 2009 and October 2010, O'Neill was held in isolation for approximately fifty days. The isolation took place in a seven-foot-by-seven-foot room, which contained only a concrete bed slab, a toilet, a sink, and a mattress pad. O'Neill was permitted to leave the room for hygiene purposes only, and was denied educational materials and programming. Additionally, O'Neill was deprived of therapeutic mental health treatment while in isolation. Although mental health clinicians visited O'Neill on daily rounds, they did so only to assess whether he was "experiencing stress." When O'Neill asked to speak to a counselor, he was told that counselors did not visit that part of the building. Furthermore, O'Neill claimed that he was denied medi-

cal treatment. On one occasion, four days passed before O'Neill received medical attention for a broken jaw.

In his complaint, O'Neill alleged failure to protect and lack of medical care pursuant to 42 U.S.C. § 1983. In their motion for summary judgment, the Mental Health Providers and the JJC ("Defendants") argued that O'Neill's failure to exhaust administrative remedies, as required by the PLRA, barred his § 1983 claims. After establishing that O'Neill was subject to the requirements of the PLRA, the district court held that O'Neill was not required to exhaust the three administrative remedies emphasized in Defendant's Motion.

The court found that Defendants had not met their burden of proving that O'Neill failed to exhaust the first of the three administrative procedures (submission of a "completed Special Classification Request Form J081 to a social worker") because the Defendants failed "to point to any evidence demonstrating that they made reasonable efforts to make O'Neill aware of this process in any way."

Additionally, Defendants argued that O'Neill was required to appeal each disciplinary sanction that resulted in his placement in isolation within forty-eight hours of being provided written notice of each. The court found that because Defendants did not provide O'Neill with the requisite written notification, Defendants had failed to satisfy their burden of demonstrating that O'Neill failed to exhaust the administrative procedure.

As to the third administrative remedy, the court found that a complaint letter filed on behalf of Plaintiff demonstrated proper exhaustion of the Omsbudman grievance process. An attorney with the Children's Justice Clinic at Rutgers School of Law-Camden sent a letter to the Superintendent of the Juvenile Medium Security Facility complaining on behalf of O'Neill that isolation was being used excessively and inappropriately.

Thus, the court denied Defendants' Motion "with re-

spect to their affirmative defense of failure to exhaust" after finding that O'Neill had properly exhausted available administrative remedies. The case demonstrates that although juvenile plaintiffs pursuing § 1983 claims are subject to the requirements of the PLRA, the requisite exhaustion of administrative remedies is not an insurmountable barrier. The court found that either O'Neill was not subject to or had properly exhausted the administrative remedies, despite the fact that O'Neill had taken very little action. It is unclear whether the court was swayed by the particularly disturbing description of confinement or the mere fact that the plaintiff was a juvenile. Nonetheless, *Troy D. v. Mickens* is encouraging and favorable precedent for juveniles pursuing claims under 42 U.S.C. § 1983.

🕮 *United States v. McGhee*
651 F.3d 153 (1st Cir. 2011)

United States v. McGhee highlights an important federalism question within the field of juvenile justice: what happens when state and federal penological classifications intersect for sentencing purposes? Winston McGhee, an adult at the time of his appeal to the First Circuit Court of Appeals, was classified pursuant to federal guidelines as a career offender. Career offenders have "at least two prior felony convictions of either a crime of violence or a controlled substance offense." Career offender status carries a heavy penalty: a sentencing range of 210 to 262 months imprisonment. McGhee challenges his career offender status on the basis that while he has two prior convictions, one of them is not a felony. McGhee argues that his first conviction (for armed robbery at age 15) falls under a special Massachusetts sentencing scheme barring its usage for determining career offender status.

In Massachusetts, defendants between 7 and 17 years of age were previously adjudicated within juvenile court unless the court transferred jurisdiction to the adult criminal justice system. In 1996, an amendment repealed this transfer system and created a new category called "youthful offenders." Youthful offenders are juveniles between the ages of 14

and 17 who commit crimes for which adults can be imprisoned. Mass. Gen. Laws ch. 119, §54 (1994) (amended 1996). When a juvenile is deemed a "youthful offender", that juvenile may receive harsher sentences, can be indicted, and his or her criminal history is likely to become a matter of public record. Yet, youthful offender proceedings are considered to *not* be criminal proceedings. Wanting to avoid the heavy sentencing consequences of career offender status, McGhee pointed to the fact that one of his prior convictions occurred after the passage of the Massachusetts amendment.

Several major obstacles confronted McGhee in his appeal. First, because a uniform sentencing scheme is desirable, "the state's labels are not determinative" when compared to federal guidelines. Second, in a critical case, the First Circuit held that career offender status was to be determined without regard for state-defined classifications. *People v. Torres*, 541 F.3d 454 (1st Cir. 2008). In what it deemed both a "judgment call" and "close call", the First Circuit Court ruled on what weight to give the Massachusetts amendment in light of the preference for uniform federal sentencing guidelines.

The First Circuit Court of Appeals panel performed a judicial rarity in deciding *McGhee*. Though McGhee initially lost at the appellate level, he filed a petition for panel rehearing and rehearing *en banc* challenging *Torres*. After consulting with the First Circuit's *en banc* judges, the First Circuit panel sat for rehearing due to special circumstances. The prosecution in *McGhee* conceded—post-appeal—that the holding in *Torres* was incorrect. The Court ruled in favor of McGhee, and supported its ruling by turning to the United States Sentencing Guidelines, which expressly state that career offender status is determined by adult convictions *under the laws of the jurisdiction. Id.*, *see also* U.S.S.G. § 4B1.2 cmt. n. 1. Thus the First Circuit resolved the federalist question at issue by holding that state classifications, in the unique circumstances of this case, must inform the federal career offender sentencing guidelines. *McGhee* overturned *Torres* and held that youthful offender status, under Massachusetts law, cannot stack up against a defendant in determining career of-

fender status. McGhee's career offender label was vacated and his case was remanded to the District Court for resentencing.

ALABAMA

🕮 Alabama HB 56
H.B. 56, 2011 Leg., Reg. Sess. (Ala. 2011)

On June 2, 2011, the Alabama State Legislature passed a new immigration bill, Act No. 2011-535 (H.B. 56) and was signed by Governor Robert Bentley that same month. The bill is similar to the recent immigration passed in Arizona that also expands state power regarding immigration enforcement.[1]

H.B. 56 includes regulations that allow public and private entities to determine the immigration status of a person who is suspected of unauthorized entry into the United States. The bill impacts children, as well as adults, by preventing undocumented students from enrolling in any public university after high school. It also prevents requires public schools to determine the immigration status of all students in elementary and secondary schools. H.B. 56 also requires parents to report the immigration status of their children to school officials. Section 2 of the bill requires public schools to determine the immigration status of enrolled students.

Under Section 13(a), public agencies that administer any state benefit must require each person who applies for benefits to submit documentation proving lawful presence in the United States. For example, parents will be required to submit their child's birth certificate to school officials in order to establish United States citizenship or the lawful immigration status of the student. In addition, any person who applies

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[1] Julia Preston, *Justices' Arizona Ruling on Illegal Immigration May Embolden States*, NYTimes.com, http://www.nytimes.com/2011/05/28/us/politics/28immigration.html?scp=1&sq=supreme%20court%20immigration%202007&st=cse (last visited Nov. 7, 2011). *See also* S.B. 1070, 49th Leg., 2nd Reg. Sess. (Az. 2011).

for state or public benefits must also submit a sworn affidavit to the respective agency stating that the documents are true under penalty of perjury.

The United States brought suit against the State and Governor of Alabama on August 1, 2011.[2] The United States is seeking a declaration that H.B. 56 is preempted by federal law and violates the Supremacy Clause of the Constitution.[3] The federal government argues that Alabama does not have the authority to enforce and administer state immigration laws.[4] Additionally, the government argues that the law will discourage parents from sending their children to school in order to prevent school authorities from reporting their immigration status, as is required by H.B. 56.[5]

In response to suits filed by the federal government and other civil rights organizations, the United States District Court for the Northern District of Alabama placed an injunction on the law that expired on September 29, 2011.[6] The injunction does not make a decision on the merits of the case, but allows for a review of the legal arguments raised in relation to the bill. Injunctions have also been implemented in other states that have enacted immigration laws similar to H.B. 56.[7]

CALIFORNIA

🕮 California A.B. 131

A.B. 131, 2011 Leg., Reg. Sess. (Cal. 2011).

On October 8, 2011, California Governor Jerry Brown signed into law Assembly Bill 131. The bill allows all students who qualify for in-state tuition under Assembly Bill 540

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[2] U.S. v. Alabama, 2011 WL 4469941 (N.D.Ala. Sept. 28, 2011).

[3] Complaint, U.S. v. Alabama, 2011 WL 4479941 (N.D.Ala. Sept. 28, 2011.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

(Public post-secondary education: exemption from nonresident tuition), including undocumented students, to be eligible for state-administered financial aid.

California Assembly member Gilbert Cedillo introduced A.B. 131 on January 11, 2011, as the second part of the California Dream Act of 2011. The Governor approved the first part of the Act, A.B. 130, into law on July 25, 2011. A.B. 130 allows undocumented college students who are exempted from paying nonresident tuition to access privately funded grants and scholarships. The proposal for A.B. 131 arose from the inability of undocumented students accepted into California's public universities to matriculate due to the lack of available financial aid.[8]

A.B. 131 adds new requirements to the California Education Code regarding student financial aid. Under this bill, students that meet the in-state tuition requirements enumerated in A.B. 540 may be entitled to receive financial aid at California public colleges and universities. Specifically, the bill requires the California State Universities, the Board of Governors of the California Community Colleges, and the California Student Aid Commission to implement the procedures necessary to enable A.B. 540 students to be eligible and apply for state administered financial aid.

Students that are eligible to receive Cal Grants must satisfy the following requirements: (1) attend a high school in California for three or more years; (2) graduate from a California high school or obtained the equivalent thereof; (3) and if he/she is undocumented, the student must file an affidavit with the college or university stating that they have applied for lawful immigration status or will do so as soon as they become eligible. Students who are exempt from paying nonresident tuition would only be eligible for Competitive Cal Grant A and B Awards until all California students who are not exempt have received Competitive Cal Grant grants. A.B. 131 will take effect on January 1, 2013. According to the Senate

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[8] CALIFORNIA DREAM ACT, http://www.californiadreamact.org/about/the-bill.html (last visited Nov. 7, 2011).

Appropriations Committee, the Act will cost approximately twenty-three million to forty million dollars annually, which includes implementation costs and the increased amount of financial aid.[9]

Opponents of this proposal argue that allowing access to financial aid imposes a greater strain on resident students, who are already negatively impacted by rising tuition costs.[10] Proponents have countered that part of the funding to implement the Act has already been set aside. The cost of higher education in California is increasing every year. People become increasingly aware of these rising costs as they prepare for college. For undocumented students, the rise in costs are important because if they cannot afford higher education then they may lack the incentive to do well in high school, ultimately creating a subgroup of underachieving students. Thus, many proponents of A.B. 131 view the bill as a necessary milestone in education law.

🕮 California A.B. 1111

A.B. 1111, 2011 Leg., Reg. Sess. (Cal. 2011)

On October 4, 2011, California Governor Jerry Brown signed Assembly Bill 1111 into law. A.B. 1111, or the Freezing Fines for Homeless Youth Act, authorizes the court to freeze outstanding fines, fees, forfeitures, or penalties imposed on homeless youth for certain state and local violations.

Specifically, A.B. 1111 restricts the court from garnishing homeless youths' wages or levying on their bank accounts to pay fines for truancy, loitering, curfew violations, and illegal lodging. All other citations issued to homeless youth are subject to lawful debt collection activities. Prior to A.B. 1111, homeless youth were subject to the same state and local debt collection procedures as adults.

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[9] S. Appropriations Comm. B. Fiscal Analysis, 2011-12 Cal. State Leg.-Apr. 13, 2011 (Cal. 2011).

[10] Leslie Berestein Rojas, *California Dream Act 101: What it does, who qualifies, and what happens next*, MULTI-AMERICAN, http://multiamerican.scpr.org/2011/10/california-dream-act-101-what-it-does-who-qualifies-and-what-happens-next/ (last visited Nov. 7, 2011).

For an individual to qualify for this bill, the court must obtain information that the youth is under 25 years of age and is currently homeless or has no permanent address. For the purposes of this Act, age is determined by the person's credit report or other document already in the possession of, or previously provided to, the court. Homeless youth are defined as persons who have no fixed, regular, adequate nighttime residence, or have a primary nighttime residence in: 1) a supervised public or private temporary living accommodation, including, but not limited to, welfare hotels, congregate shelters, and transitional housing, 2) an institution that provides a temporary residence for individuals intended to be institutionalized, or 3) a public or private place not designed as a regular sleeping accommodation.

The Legislature has deemed truancy, loitering, curfew violations, and illegal lodging to be inevitable symptoms of youth homelessness. Garnishing wages or levying bank accounts of homeless youth based on such violations make it extremely difficult for youth to break the cycle of homelessness. By removing fines, A.B. 1111 offers homeless youth an opportunity to save their money for food, housing, and other necessities. Overall, A.B. 1111 seeks to empower California's homeless youth to achieve long term safety and security by removing financial obstacles to their success.

It is important to note that A.B. 1111 does not exculpate homeless youth from paying fines, fees, forfeitures, or penalties related to truancy, loitering, curfew violations, and illegal lodging violations. Rather, payments are suspended until the court receives information that the youth has reached the age of 25 or is no longer homeless. At this point, lawful debt collection activities may resume.

A.B. 1111 adds Section 1463.011 to the California Penal Code and will become effective on January 1, 2012.

🕮 California A.B. 735

A.B. 735, 2011 Leg., Reg. Sess. (Cal. 2011)

Assembly Bill 735, authored by Assembly Member Holly Mitchell, will go into effect on January 1, 2012. A.B. 735 requires state agencies to give preference to current or

former foster youth when hiring interns or student assistants. In addition, county welfare departments are required to notify each child of their preferential status. Foster youth will be eligible for this status until they turn twenty-six.

State agencies already have internship and student assistant programs.[11] This bill would not require any new programs, but does require state agencies to give foster youth greater access to existing positions. Preferential treatment encompasses a preference over similarly qualified candidates. The hiring process for these positions is not subject to civil service requirements and is merit-based.

Assembly member Mitchell hopes to address some of the inequities foster youth face compared to their peers not in foster care.[12] Foster youth are at a greater risk of unemployment and dropping out of school than their peers not in foster care.[13] Only 50% of foster youth graduate from high school (as compared to 75% of the non-foster youth population).[14] Also, 60% of former foster youth are unemployed at age nineteen (compared to 42%).[15] Foster youth also tend to earn less than their peers.[16] At age 24, the average monthly earning for working foster youth in California is less than half than that of their peers.[17] Foster youth are also required to be independent much sooner than their peers. The average American young adult (most likely without a history of abuse or neglect) will not be fully self-sufficient until age 26.[18] In contrast, the law requires foster youth to be independent on their eighteenth birthday with far less financial support.

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[11] "STUDENT ASSISTANT PROGRAM Welcome to Caltrans' Student Assistant Program" CALTRANS/JOBS/CURRENT JOBS, http://www.dot.ca.gov/hq/jobs/SA/sa_index.htm (last visited Nov. 7, 2011).

[12] Staff of Asm. Comm. On Gov'tal Org., 2011-2012 Regular Session, Bill Analysis: A.B. 735 (leginfo.ca.gov).

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

California state internships and student assistant positions are intended to give youth employment skills and experience while they are still in school.[19] By making these programs more accessible to foster youth, this bill provides an important way for the state to provide pathways to financial stability for the youth under their guardianship. Mitchell hopes that, by giving more foster youth access to on-the-job training while they are students, fewer foster youth will need expensive government programs.[20]

🕮 California A.B. 12
A.B. 12, 2011 Leg., Reg. Sess. (Cal. 2011)

On July 11, 2011, California Governor Jerry Brown signed into law Assembly Bill 12, or the Abolition of Child Commerce, Exploitation, and Sexual Slavery Act (ACCESS Act of 2011). The ACCESS Act of 2011 relates to human trafficking and child prostitution, and is directed at fighting the recruitment, transportation, and sale of minors for commercial sexual acts.[21]

Under prior law, any person convicted of pimping or procuring a minor, under the age of 16, for prostitution could be ordered to pay an additional fine not to exceed $5,000.[22] The fine was deposited in the Victim-Witness Assistance Fund to be distributed in California for programs and services such as child sexual exploitation and abuse counseling.[23]

The ACCESS Act of 2011 makes three material changes to the preexisting law. First, it changes the upper limit of court-imposed fines from $5,000 to $25,000.[24] The additional money resulting from the increase in fines will still be used to fund programs and services for sexually exploited and abused minors, but will be disbursed directly to counties

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[19] *Id.*
[20] *Id.*
[21] Legislative Counsel's Digest, Assem. B. No. 12, 2011-12 Cal. State Leg. (Cal. 2011).
[22] *Id.*
[23] *Id.*
[24] *Id.*

where the offenses have been committed.[25]

Second, the ACCESS Act of 2011 changes the age of the sexually exploited minor from 16 to 18.[26] Now, any person convicted of commercially sexually exploiting or abusing a minor under the age of 18 will be subject to this law.

Lastly, the ACCESS Act of 2011 aims to penalize individuals that provide resources for child exploitation, even if they do not necessarily engage in the acts themselves.[27] This change seeks to punish adults who fund commercial sexual acts with minors equally to those adults who actually engage in the sexual acts.

The Legislature acknowledges that sexual slavery is one of the most sophisticated forms of organized crime in the country.[28] It is also recognizes that sex trafficking of children is a business where services are in demand.[29] Therefore, the ACCESS Act of 2011 aims to decrease such demand by increasing the breadth and severity of penalties imposed on persons convicted of commercial sexual exploitation of minors. Furthermore, the increased fines will ensure that victimized minors are given access to local programs and services that will aid their recovery.[30]

The ACCESS Act of 2011 adds Section 261.9 to the California Penal Code and will become effective on January 1, 2012.

🕮 California A.B. 90

A.B. 90, 2011 Leg., Reg. Sess. (Cal. 2011)

In August of 2011, both the California Assembly and Senate unanimously passed Assembly Bill 90 (Human Trafficking: Minors) (A.B. 90), which amends California Penal Code Sections 186.2 and 186.8.[31] The amended sections ad-

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[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Assemblymember Sandré Swanson Press Release, *Bill to Seize Profits*

dress criminal profiteering asset forfeiture, which is a criminal proceeding that allows the state to collect the profits acquired through criminal activity.[32] A.B. 90 expands the definition of criminal profiteering activity to include additional forms of commercial sex acts committed against an individual under the age of eighteen years. According to Assemblymember Swanson, the legislation "takes the profit out of child sex trafficking."[33]

Certain forms of commercial sexual exploitation, such as that accomplished through psychological coercion, were outside of the scope of criminal forfeiture law before A.B. 90. Previously, Section 186.2 included "[h]uman trafficking" in the list of crimes subject to criminal profiteering asset forfeiture. A.B. 90, however, adds to the list "[a]ny crime in which the perpetrator induces, encourages, or persuades a person under 18 years of age to engage in a commercial sex act." Furthermore, A.B. 90 also includes "[a]ny crime in which the perpetrator, through force, fear, coercion, deceit, violence, duress, menace, or threat of unlawful injury to the victim or to another person, causes a person under 18 years of age to engage in a commercial sex act." A commercial sex act is defined as "any sexual conduct on account of which anything of value is given or received by any person." Thus, A.B. 90 expands criminal forfeiture law beyond "[h]uman trafficking" to include, among other things, exploitation accomplished through psychological coercion.

Furthermore, A.B. 90 amends Section 186.8 of the California Penal Code. The amendment specifies that the proceeds of the newly added crimes in Section 186.2 "shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention

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From Child Sex Traffickers Awaits Governors Approval, Gov Buddy (Sept. 15, 2011), https://www.govbuddy.com/ directory/press/CA/bill-to-seize-profits-from-child-sex-traffickers-awaits-governors-approval/20623/ [hereinafter Swanson Press Release].

[32] *Id*.

[33] *Id*.

programs." Additionally, "Fifty percent of the funds deposited in the Victim-Witness Assistance Fund pursuant to this subdivision shall be granted to community-based organizations that serve minor victims of human trafficking."

Domestic trafficking has been on the rise since 2006, according to Assemblymember Swanson.[34] The objective of A.B. 90 is to "take[] the profit out of child sex trafficking by authorizing the state to seize the profits and use them to support commercially sexually exploited minors."[35] After unanimously passing both the Assembly and Senate, Governor Brown signed A.B. 90 on October 4, 2011.

🕮 California AB 746
A.B. 746, 2011 Leg., Reg. Sess. (Cal. 2011)

In order to reduce cyber bullying via social networking, the California legislature recently passed A.B. 746, which amended the definition of an "electronic act" under Section 32261 of the California Education Code. This section previously stated that bullying committed by means of an electronic act included a message, text, sound, or image transmitted via an electronic device.[36] A.B. 746 modified the definition of an electronic act to explicitly include a post on a social networking web site. The term 'social networking' typically refers to a "web-based service that allows individuals to (1) construct a public or semi-public profile within a bounded system, (2) articulate a list of other uses with whom they share a connection, and (3) view and traverse their list of connections and those made by others within the system."[37]

A.B. 746 seeks to address the increasing popularity of

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[34] Assemblymember Sandré Swanson Press Release, *Bill to Seize Profits From Child Sex Traffickers Awaits Governors Approval*, Gov Buddy (Sept. 15, 2011), https://www.govbuddy.com/ directory/press/CA/bill-to-seize-profits-from-child-sex-traffickers-awaits-governors-approval/20623/ [hereinafter Swanson Press Release].

[35] *Id.*

[36] CAL. EDUC. CODE § 32261.

[37] Danah M. Boyd & Nicole V. Ellison, *Social Network Sites: Definition, History, and Scholarship*, 13 Journal of Computer-Mediated Communication, no.1, October 2007 at art. 11.

social networking among students. The bill was passed after many students experienced harassment on social networking sites. In some instances, students committed suicide as a result of cyber bullying. A.B. 746 makes cyber bullying through social networking sites a violation of the Education Code. Social networking posts that harass, threaten, or intimidate students or school personnel can be cause for suspension, expulsion, or other disciplinary action by the school.

WISCONSIN

🕮 *Madison Metropolitan School Dist. v. Circuit Court for Dane County*, 800 N.W. 2d 442 (Wis. 2011)

A recent Wisconsin Supreme Court decision addressed the question of when a decision by the juvenile court can supersede the school district's decision regarding the terms of a student's expulsion. The Court affirmed the decision of the lower court finding that the Madison Metropolitan School District in Wisconsin has final authority over expulsions and educational services.

The issue arose when the Madison Metropolitan School District expelled a student for three semesters after he was arrested for marijuana possession. The Dane County Juvenile Court ordered the student to "attend school regularly without unexcused absences" and ordered that the school district work with the court to provide those educational services. The school district refused to comply with the court's order to implement an education plan. The juvenile court found the school had contributed to the delinquency of a minor, and in response, the school district petitioned the Court of Appeals, contesting what it viewed as a usurpation of its authority by the court.

The 1995 revision of the Wisconsin Juvenile Justice Code gave courts authority to mandate education programs for juvenile offenders under their jurisdiction.[38] The code provides that the program be created "under a contractual

[38] Wis. Stat. § 938.34 (2011).

agreement with the school district in which the juvenile resides."[39] Wisconsin law also enumerates responsibilities of the school district providing the education services, but it does not explicitly address the school district's discretionary authority to refuse service.[40]

The Wisconsin Court of Appeals reversed the juvenile court's judgment. On appeal, the Wisconsin Supreme Court reaffirmed that the school district "had the explicit statutory authority to refuse to provide educational services to a juvenile who has been expelled pursuant to a valid expulsion order." In light of this decision, Wisconsin courts retain the power to use mandated education programs as a tool for juvenile rehabilitation, yet the school district holds jurisdiction over the child and retains discretion over providing the mandated program.

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[39] *Id.*

[40] Wis. Stat. § 120.12 (2011).