RECENT COURT DECISIONS AND LEGISLATION IMPACTING JUVENILES

FEDERAL LEGISLATION

🕮 *Capato v. Commissioner of Social Security*
631 F.3d 626 (2011)

In *Capato v. Commissioner of Social Security*, the Third Circuit Court of Appeals determined whether a posthumously conceived child of a deceased wage earner and his widow could qualify to receive child survivor benefits under the Social Security Act. The case forced the court to look at current issues arising in reproductive technology and the related social security laws designed without these technologies in mind. The court held that under the specific circumstances of this case, the undisputed biological children of the deceased wage earner are "children" within the meaning of the Social Security Act. The court limited the holding of the case to the factual circumstances, and remanded for a determination of whether, as of the date of the deceased wage earner's death, the twins were "dependent or deemed dependent," under the final requirement of the Social Security Act.

The "deceased wage earner" in this case, Robert Capato, with his wife, Karen Capato, deposited his sperm in a sperm bank before undergoing chemotherapy, which rendered him sterile. Prior to Mr. Capato's death, Mrs. Capato conceived naturally and gave birth to a son. Mr. and Mrs. Capato wanted their son to have a sibling, but Mr. Capato died shortly after his son's birth. Mrs. Capato later began in vitro fertilization using the frozen sperm of her husband and gave birth to twins in September 2003, eighteen months after the death of her husband.

Three months prior to his death, Mr. Capato executed a will naming as his beneficiaries his son with Mrs. Capato and

two children from a prior marriage. There was no provision in the will for Mr. Capato's unborn children, although Mrs. Capato claimed that this language should have been included in the will.

In October 2003, Mrs. Capato applied for surviving child's insurance benefits on behalf of the twins born after Mr. Capato's death based on her husband's earnings record. The Social Security Administration denied her claim and at a hearing on the issue, the administrative law judge upheld the denial. The administrative law judge found that under Florida state law, the twins were not "for Social Security purposes," "children" of Mr. Capato, the deceased wage earner. They therefore were not entitled to insurance benefits under the Social Security Act. Mrs. Capato appealed to the Third Circuit Court of Appeals.

The Third Circuit Court of Appeals held that the twins, born after the death of the wage earner, qualified as "children" under the Social Security Act and therefore, there was no need to go to different provisions of the Act to determine whether the applicant is a child. The commissioner of the Social Security administration argued that these alternative provisions, which required the courts to look at the intestate law of the State of the insured individual at the time of death, should be applicable in this case since the twins were not considered "children" under the Act. In the instant case, under the intestate law of the State, the twins would not be considered "children" and therefore would not qualify to receive child survivor benefits under the Social Security Act. The court disagreed with the commissioner, stating that that the plain language of the statute dictates this case and that the term "child" in the Act "requires no further definition when all parties agree that the applicants here are the biological offspring of Capatos." As a result, the provision of the Act that required use of the State's intestate law was not necessary under the circumstances of this case. However, the court specifically limited the holding to the particular facts of this case.

🕮 *United States v. Juvenile Male No.2*, ---F.Supp.2d---, No. 10-CR-470, 2011 WL 223599 (E.D.N.Y Jan. 26, 2011)[1]

The United States filed a juvenile information against Juvenile Male No. 2, alleging one count of conspiracy to commit murder in aid of racketeering, two counts of murder in aid of racketeering, two counts of discharging a firearm during a crime of violence, and two counts of causing the death of another through the use of a firearm. The United States made a motion to try Juvenile Male No. 2 as an adult and the court was to decide whether to grant the motion.

The charges against the juvenile stem from the government's investigation into the activities of a violent street gang, MS-13, operating in New York. The juvenile was charged in connection with the murder of a nineteen-year-old woman, alleged to have ties to a rival gang, and her two-year old son. The government alleged that the juvenile and two co-conspirators lured the victims into a wooded area of Central Islip, New York and killed them both by shooting each victim twice. The murders were allegedly gang related. After fleeing to El Salvador and being extradited back to the United States, Juvenile Male No. 2 was charged with the above stated offenses.

The United States District Court for the Eastern District of New York began by explaining that the Juvenile Justice and Delinquency Prevention Act allows a judge to transfer a juvenile to adult status when the rehabilitative focus of the criminal justice system is outweighed by the threat to society of the alleged criminal activity. Specifically, a judge may transfer a juvenile, alleged to have committed a violent felony after his fifteenth birthday, to adult status if it is in the interest of justice. In deciding whether the transfer is in the interest of justice, the district court is required to consider the six-factor balancing test established in *United States v. Nelson*, 68 F.3d 583 (2nd Cir. 1995). The six factors include: 1) the juvenile's age and social background; 2) the nature of the offense alleged; 3) the nature and extent of prior delinquent history; 4) the juvenile's present psychological maturity and

[1] Westlaw citation; opinion not yet published.

intellectual development; 5) the response to past treatment efforts; and 6) available programs designed to treat the juvenile's behavior problems. Utilizing these factors, the court must determine whether the juvenile is likely to be rehabilitated, and whether this is outweighed by the severity of the alleged delinquent conduct.

In this case, the court found that the six-factor test weighed in favor of transfer to adult status. Particularly, the juvenile's age and social background as well as the nature of the offense weighed heavily in the court's analysis. Regarding the juvenile's age and social background, the court found that the juvenile's current age of nearly eighteen weighed against him because it allowed only three years for the juvenile court to attempt to rehabilitate him before it no longer had jurisdiction over him. Additionally, the court found that the lack of social support, a history of physical violence within the family, behavior problems and an admitted, strong association with the MS-13 gang weighed in favor of transferring him to adult status. In regards to the nature of the offense, the court emphasized that the murder of a young woman and her child in the woods "execution-style" in retaliation against a rival gang was a particularly heinous act.

The court determined that the majority of the other factors weighed in favor of transfer. The juvenile's record contained an adjudication for robbery and assault and an adjudication for misdemeanor possession of a weapon, both of which the juvenile admitted were gang-related. Additionally, past treatment efforts aimed at rehabilitating the juvenile had been unsuccessful considering the juvenile's continued delinquent conduct. Regarding the juvenile's psychological maturity and intellectual development, the court stated that these factors were neutral because an expert psychologist testified that they cut both in favor of and against transfer. The court also found that based on the psychologist's testimony Juvenile Male No. 2 was unlikely to be rehabilitated before age twenty-one. Lastly, the court acknowledged that the state did not meet its burden in demonstrating the absence of available rehabilitative programs, but did not weigh this factor heavily in its decision. Thus, the court granted the

government's motion to transfer Juvenile Male No. 2 to adult status.

CALIFORNIA

📖 California Senate Bill 543

On September 29, 2010, Governor Schwarzenegger signed Senate Bill 543 (SB 543), the Mental Health Services for At-Risk Youth Act, into law. On January 1, 2011 SB 543 went into effect. The new law increases access to mental health care by allowing children 12 years of age or older to consent to their own mental health treatment, provided that a mental health professional finds they have the maturity to intelligently participate in their treatment plan. Previously, the law in California held that a child 12 years of age or older could only consent to mental health counseling if they were in danger of seriously harming themselves or others, or were victims of child abuse. SB 543 defines mental health treatment as "outpatient mental health treatment or counseling by a professional person," and expands the definition of a professional person to include licensed clinical social workers and board-certified or board-eligible psychiatrists.

SB 543 gives all California youth access to mental health counseling before their conditions worsen or become life-threatening. The ability to consent to an early intervention program is critical, and will drastically change the lives of many children who were unable to obtain treatment under previous law. This legislation will especially impact populations that either do not have contact with their parents, or prefer not to disclose information to their parents. Homeless youth, LGBTQ youth, those coming from abusive or neglectful homes, children from immigrant families, youth who feel ashamed or do not want to disappoint their parents, youth with parents who do not believe in mental health services or do not otherwise support them, will all be able to obtain services.

It is important to note that while youth do not need consent for outpatient therapy, SB 543 does not authorize a minor to receive convulsive therapy, psychosurgery, or

psychotropic medication without the consent of a guardian or parent. Furthermore, Section C of SB 543 states that unless the professional determines that parental involvement would be inappropriate, the guardian or parent is to be involved in the minor's treatment or counseling. If parental involvement is deemed to be inappropriate, the professional must note the reasoning in the client's record, and the parent is not liable for payment. SB 543 also requires that the professional record all attempts to contact the parents or guardians and note the results of each attempt. Additionally, if the parents or guardians are participating in the treatment, they are liable for payment, but only for the services for which they were involved. The mental health services covered under SB 543 do not apply to the receipt of benefits under the Medi-Cal program.

🕮 California Senate Bill 1353

California Senate Bill 1353 was ratified by Governor Schwarzenegger on September 30, 2010 and became effective January 1, 2011. The Bill amends sections of the Education Code and Welfare and Institution Code related to education.[2]

SB 1353 includes school placement and educational decisions as factors relevant to the "best interests of the child" when making placement decisions. The previous law allowed children to continue with their educational or school placement for the remainder of the school year following a new residential placement. However, if the child's liaison and guardian or foster parent agreed that the child's best interest would be served by transfer to another school, the foster child was immediately transferred. The old law did not encourage consideration of long-term impacts of transfers within the same academic year.[3]

The amended statutes seek to further educational and academic stability for foster children. The legislature acted on

[2] Senate Bill 1353 amended Section 48850 of the Education Code and Sections 16001.9, 16010, and 16501.1 of the Welfare and Institutions Code, relating to education.
[3] 2010 Cal ALS 557 at 1.

research that showed the detrimental effects of multiple school transfers, uniquely impacting children in foster care. Disruption to academic placement is harmful to academic performance and development. To counteract this disruption, SB 1353 codified educational stability and opportunity as an additional factor when analyzing the best interests of the child.[4]

SB 1353 also modified California Education Code § 48850. Previously, the regulation required that foster care agencies ensure placement in the least restrictive educational programs which provide access to academic and extracurricular resources and activities. SB 1353 adds to the analysis "…[consideration,] among other factors, of educational stability and the opportunity to be educated in the least restrictive educational setting necessary to achieve academic progress."[5]

Lastly, SB 1353 amended California Welfare and Institutions Code § 16010 to augment the requirements for developing case plans for foster children. Going forward, the health and education summary must include the number of school transfers the child has undergone, and their educational progress.[6]

🕮 California AB 12

The California Fostering Connections to Success Act, Assembly Bill 12, was signed into law by Governor Schwarzenegger on September 30, 2010.[7] The Assembly Bill amends sections of the law relating to foster children.[8] The reach of the California Fostering Connections to Success Act is vast, as it extends state foster care services for eligible foster children from the age of 18 to the age of 21. Extended

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[4] *Id.*
[5] Cal. Educ Code § 48850.
[6] Cal Wel. & Inst. Code § 16010.
[7] *California Fostering Connections to Success Act Assembly Bill 12 Primer*, California Fostering Connections, available at http://cafosteringconnections.org/pdfs/QA-FINAL.pdf.
[8] *See* 2010 Cal. Legis. Serv. Ch. 559 (A.B. 12) (WEST) (noting all sections to be amended by this legislation).

assistance will be available to youth with mental or physical handicaps (through the Kinship Guardian Program), to those who entered guardianship or adoption at 16 (through the Adoption Assistance Program), and to youth placed with a nonrelated legal guardian or an approved CalWORKs relative.[9] AB 12 takes advantage of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), which expanded federal programs and funding for certain foster children by allocating more money to state foster care programs.[10]

AB 12 augments the current Transitional Housing Program-Plus ("THP-Plus") program by allowing extended foster care placement for qualifying youth. The four requirements for children to extend foster care support after age 18 are that they must: 1) sign an agreement with country welfare or probation agency, 2) continue under supervision of the juvenile court, 3) meet one the five participation conditions, and 4) live in a supervised placement under the new standards for 18-21 year olds. The five participation conditions include: 1) completing high school (or an equivalent program); 2) enrollment in college, community college or a vocational education program; 3) participation in a program designed to remove barriers; 4) employment of at least 80 hours a month; or 5) inability to complete one of the previous requirements because of a medical condition.[11]

This act is expansive and comprehensive, amending a number of laws and regulations. There is a three-tier implementation structure with separate and targeted duties relating to implementation. The first tier is the Steering Committee, charged with articulating the broad vision of AB 12 and ensuring that the goals of the Bill are attained in the most efficient method. The second tier is the Coordinating Leadership Team, which provides the accountability component of implementation. Last, the Focus Area Teams deal with placement and program eligibility, rates and

[9] *Id. Assembly Bill 12 Primer*.
[10] *Id.*
[11] *Id.*

placements, training and education, administration, budgeting, and rules of court.[12]

🕮 California AB 1050

Children involved in family law proceedings are significantly impacted by decisions regarding visitation and custody rights. Some advocates have frowned upon involving children in such hearings because of the emotional and psychological consequences that such an ordeal may have on vulnerable children. However, by precluding a child's testimony, the court may not be able to make a fully informed decision. The majority of the relevant stakeholders agree that a child who is of sufficient age and mental capacity should be heard by the court. This belief is reflected in Assembly Bill 1050 (AB 1050), enacted in California on January 1, 2011.

AB 1050 amended Section 3042 of the Family Code regarding a child's custody preferences. Under this bill, the family court is required to allow a child 14 years of age or older to address the court regarding their custody preferences. As amended, Section 3042(a) reads: "If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight to, the wishes of the child in making an order granting or modifying custody or visitation."[13] The court is required to protect the best interests of the child and is to control the examination of a child witness accordingly. Factors such as the probative value of the child's input, the wishes of the parents, and the needs of the child should be considered when deciding on the scope and nature of the child's participation. If the court does not call the child as a witness, then it must state its reasoning on the record, as well as provide an alternative means of obtaining the child's input and preferences. By requiring the court to state its findings on the

[12] *CDSS and the AOC Implementation Memo*, California Fostering Connections, available at http://www.cafosteringconnections.org/pdfs/Memo%20RE%20Implementation%20Framework.pdf.

[13] Assemb. Ma. 1050, (Cal. 2011)

record, the hope is that judges will be less likely to ignore a child's wishes.

AB 1050 provides that a minor's counsel, an evaluator, an investigator, or a mediator who makes recommendations to the judge shall communicate to the judge whether or not the child wishes to address the court. A party or a party's attorney can also notify the judge of the child's wishes to address the court. If the request is not made by one of the former persons, then the judge may step in and inquire.

Section 3042(b) notes that the statute should not be interpreted "to prevent a child who is less than 14 years of age from addressing the court regarding custody or visitation, if the court determines that is appropriate pursuant to the child's best interests." However, AB 1050 does not require the court to state findings on the record if younger children are barred from testifying. AB 1050 also does not require any child to address the court, express their preferences, or provide any input regarding visitation or custody.

Bearing in mind that the bill allows for examination on a case-by-case basis, The Elkins Family Law Task Force recommends that the court aim to "strike a balance between protecting the child, the statutory duty to consider the wishes of the child, the probative value of the child's input, and the child's desire to address the court." The Task Force, who was appointed to ensure due process, fairness, and access to justice for all family law litigants, aims to provide comprehensive proposals to the Judicial Council of California. The force is comprised of a group of judges, attorneys, court administrators and others involved in family law proceedings. In their final report they suggested that the court consider a number of critical questions such as whether or not it would benefit the court to question the child. They also recommended considering if it would be best to have the child testify in chambers or in open court.[14]

The amendments to Section 3042 will become operative on January 1, 2012.

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[14] Elkins Family Law Task Force, *Final Report and Recommendations* (April 2010), available at http://www.courtinfo.ca.gov/jc/tflists/documents/elkins-finalreport.pdf.

🕮 California AB 2212

On September 30, 2010 the California Legislature passed AB 2212 codifying juvenile "1368–type" proceedings in Cal. Welf. & Inst. Code § 709. The new provision, dealing with mental competency of juvenile offenders, became law on January 1, 2011. Before the addition of Cal. Welf. & Inst. Code § 709, there was no law governing how courts are to determine mental incompetency of minors. The new law provides uniform guidance to lawyers and juvenile courts that are dealing with mentally incompetent juvenile clients in order to ensure the protection of the client.

Under Cal. Welf. & Inst. Code § 709, if an attorney has any doubt as to the mental competency of the juvenile client during a juvenile proceeding, and there is substantial evidence of incompetency, the proceeding will be suspended and the court will order a hearing to determine the minor's competency. An expert will evaluate the minor to determine if he or she suffers from a "mental disorder, developmental disability, or developmental immaturity, or other condition" that might affect the minor's ability to understand the facts of the case, their ability to assist in the defense, or understand the charges brought against them.

The minor's competency is to be determined by the preponderance of evidence. If the minor's competency is not impaired, then the proceedings can continue. If the minor's competency is in fact impaired, the proceedings will be suspended until the court can determine when the minor will be competent. The court can then implement services to help the minor reach competency. While the proceedings are suspended, some matters may be heard by the court if the participation of the minor is not required, including, "motions to dismiss, motions by the defense regarding a change in the placement of the minor, detention hearings, and demurrers."

The legislative history for AB 2212 suggests that this amendment is designed to give more guidance to the court, making uniform laws that will help ensure due process of law. Previously some courts held that a mental disorder or

developmental disability was required to find incompetency[15]. The definition has now been broadened to include other conditions. Cal. Welf. & Inst. Code § 709 will likely be helpful for defense attorneys who are working to get the best result for their juvenile clients. They can accomplish this by ensuring that their clients are completely informed of the process and help prevent juveniles from being punished who do not understand the process or the implications of their actions.

🕮 *People v. Caballero*
119 Cal.Rptr.3d 920 (2011)

Caballero appeals from a jury conviction finding him guilty on three counts of attempted murder. The initial proceeding was filed in adult court. The jury found Caballero guilty of inflicting great personal injury for the benefit of a criminal street gang. Caballero was sentenced to 110 years to life in state prison. Caballero appealed the length of the sentence, arguing that the sentence constituted cruel and unusual punishment based on the United States Supreme Court case *Graham v. Florida*, 130 S.Ct. 2011 (2010). In affirming the sentence, the Court of Appeal rejected Caballero's argument and declined to follow the holding of the Court of Appeal, First District, California in *People v. Mendez*, 188 Cal.App.4th 47 (2010).

In *Graham v. Florida*, the United States Supreme Court held that a sentence of life without possibility of parole for a juvenile who did not commit a homicide was in violation of the Eighth Amendment prohibition of cruel of unusual punishment. Caballero had argued that due to the Supreme Court's decision in *Graham*, his sentence of three consecutive life terms was unconstitutional because the sentence was effectively life without possibility of parole.

In addressing Caballero's argument, the Court of Appeal discussed *People v. Mendez*, a case decided earlier the same year by the California First District Court of Appeal. In

[15] Public Safety Committee, Bill Analysis of AB 2212, 2010 Sess. (Ca. 2010)

Mendez, the defendant was convicted of various crimes committed as a juvenile and was sentenced to 84 years to life. The *Mendez* court held that the sentence was unconstitutional under *Graham* for being *de facto* life without the possibility of parole because the sentence was longer than the lifetime of the defendant. The *Mendez* court noted that the United States Supreme Court left open the possibility that some juveniles who committed crimes would be deserving of lifelong incarceration, but that such a determination could not be made so early. The Second District Court of Appeal declined to follow the *Mendez* court's reasoning.

The court instead held that the Supreme Court's holding in *Graham* was narrowly tailored to sentences of life without the possibility of parole in non-homicide cases. It also held that Caballero's sentence was not life without the possibility of parole. Rather, it was a term-of-years sentence and *Graham* did not prohibit a court from imposing a term-of-years sentence that exceeded a juvenile defendant's life expectancy. The court further found that such a sentence is justified under the state's sentencing guidelines. Had the court followed *Mendez*, a juvenile offender who shot multiple victims and inflicted great bodily harm could not be sentenced for those crimes on the basis that the sentence would exceed his life expectancy. The Court held that *Graham* did not compel such an outcome.

The court affirmed Caballero's sentence, holding that *Graham* only barred the imposition of a life without possibility of parole in cases where crimes other than homicide were committed. Other sentences were still justified, even if the sentence exceeded the defendant's life expectancy. The holding in *Graham* was not applicable to this case because the sentence did not bar parole and only imposed a term-of-years sentence that exceeded his lifetime.

🕮 *In re Alexander A.*
192 Cal.App.4th 847 (2011)

In a juvenile delinquency proceeding involving property damage, Alexander A. was ordered to pay the repair costs of a car and a school mural that he vandalized. The main

issue raised in his appeal was whether the juvenile court had the discretion to force him to pay repair costs on the car that are significantly higher than replacement costs. This seemingly straightforward case of juvenile vandalism opens up an important discussion regarding the central goals of the juvenile justice system. As the appeals court noted, the juvenile justice system takes on the challenging tasks of providing young offenders with guidance, issuing just punishments in order to deter future illegal behavior, recompensing victims of juvenile offenses and protecting the community at large. The Court of Appeal employed a balancing test, measuring the car owner's restitution interests against Alexander A.'s interest in receiving a just sentence for his crimes.

David Borja owned the 1992 Honda Accord that Alexander A. pled guilty to vandalizing. The appellate court considered various factors before ruling on whether the juvenile court erred in awarding damages, as Alexander A. claimed. In looking at the evidence, the appellate court considered Borja's claim that he wanted to keep the vehicle in question though it was clearly deteriorating. Borja presented a damage report to the court estimating $8,219.19 in repair costs. According to the Kelley Blue Book, a price listing of new and used cars, a dealer's price for a 1992 Accord was $5,300 in excellent condition. The court allowed Alexander A. to present evidence obtained from an Internet bulletin board resource that a 1992 Accord in good condition was valued at $2,000. Though not explicitly acknowledged in the text of the opinion, the court's acceptance of this posting as official evidence may be a sign of the court's increasing sensitivity to the internet savvy of the millennial generation.

However, the evidence presented by Alexander A. was not determinative. Although one possible alternative was to require Alexander A. to pay to replace the car, the court opted for another alternative. The appellate court reasoned that ordering the lesser replacement costs would not serve the goals of the juvenile justice system referred to above. In particular, the appeals court believed that the goals of deterrence of future illegal behavior and recourse for victims of juvenile offenses would not be served. In the court's

judgment, requiring Alexander A. to pay only the lower cost of replacement would unfairly dissolve some liability at the victim's expense.

Ultimately, the Court of Appeal held that in balancing the goals of the juvenile justice system, chiefly between victim and offender, the trial court was correct to hold Alexander A. responsible for the full amount of repairing the damage to Borja's car. Under the appeals court's reasoning, a trial court in a juvenile proceeding has wide discretion to balance the competing interests and determine what course of action would best provide recourse and deter future vandalism on Alexander A.'s part. The decision of the trial court was affirmed.

A final puzzle piece remains in this decision. Somewhat absent from the text of the opinion is a discussion of how the appeals court's decision would impact the goal of protecting the community at large. It is presumable that the court wanted to make an example of Alexander A., given the disparities amongst the evidence regarding just recourse for Borja. Yet, the appellate court notes that it is Alexander A.'s parents who are held responsible for payment of the $8,219.19 in repairs, given his inability to pay. The question that inevitably arises is whether this decision is a warning, and whether this is a warning to family of juvenile offenders, or solely the offenders themselves. In this way, the Court of Appeal seems to leave in its wake as many questions as answers regarding the central aims of the juvenile justice system.

🕮 *In re J.L.*
190 Cal. App. 4th 1394 (2010)

A minor, J.L., appeals from the juvenile court's adjudication sustaining allegations that J.L. committed four lewd and lascivious acts with a child under fourteen in violation of Penal Code § 288(a). The issue on appeal is whether, as a matter of due process and equal protection, J.L. is entitled to a jury trial because he now faces onerous lifetime

consequences as a sex offender, atypical of juvenile court dispositions.

In 2007, at the age of seventeen, J.L. was alleged to have committed four acts of lewd and lascivious conduct with three of his younger cousins, all of whom were under fourteen. Finding the allegations to be true beyond a reasonable doubt, the juvenile court committed J.L. to the Division of Juvenile Justice and ordered J.L. to register as a sex offender. In addition to lifetime registration, J.L. faces potential civil commitment as a sexually violent predator and must comply with lifetime residency restrictions under Proposition 83 (Jessica's Law), which prohibit him from living near any school or park where children regularly gather.

J.L. argues that procedural due process requires the state to provide him with a jury trial before it can impose on him (1) lifetime registration as a sex offender, (2) potential civil commitment as a sexually violent predator, and (3) lifetime residency restrictions. J.L. also argues that equal protection requires all juveniles facing such punishment be provided with a jury trial because their similarly-situated adult counterparts are entitled to a jury trial.

The court first reviewed *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971), which held a jury trial is not required in the juvenile context due to the rehabilitative goals of the juvenile system. The court reasoned that the right to a jury trial in a juvenile delinquency proceeding depends on whether the consequences of the proceeding are punitive in nature, as opposed to regulatory or rehabilitative. Therefore, J.L.'s due process and equal protection arguments hinge on whether registration as a sex offender, potential commitment as a sexually violent predator and the residency restrictions are punitive.

The court stated that controlling precedent established that neither sex offender registration nor civil commitment as a sexual violent predator is punitive. Rather, the California Supreme Court has held that sex offender registration by itself is regulatory in nature while the Sexually Violent Predator Act aims to rehabilitate and treat the offender. As such, J.L. is not entitled to a jury trial as a result of facing either of these consequences.

However, the court sided with J.L. regarding the residency restrictions imposed by Jessica's Law. In reaching this decision, the court reviewed *People v. Mosely*, 188 Cal.App.4th 1090, 1112 (2010), which held residency restrictions to be punitive in the adult context. In *Mosely*, the court found that while there was no punitive intent behind the restrictions, there was a punitive effect, primarily because it went well beyond the intended purpose of protecting children. Based on the reasoning in *Mosely*, the court held residency restrictions are also punitive in the juvenile context, perhaps even more so because juveniles are dependent upon their parents to provide them with residence. The court went on to say that the promise of the juvenile court system to rehabilitate its wards would prove illusory if the residency restriction were applied because the restriction cannot be removed even if the juvenile is rehabilitated.

Thus, the court held that because the lifetime residency restrictions are so patently punitive, *McKeiver* and similar precedent are not controlling on the issue of whether a juvenile offender facing such a restriction is entitled to a jury trial. As such, the due process and equal protection clauses of the Fourteenth Amendment require that all juveniles facing lifetime residency restrictions receive a jury trial. The court directed that on remand, the residency restrictions as applied to J.L. were to be enjoined unless and until he is afforded a new trial with a jury on the sexual offenses alleged in the petition.

ILLINOIS

📖 Illinois Public Act 96-1087

"Sexting" is a growing trend among teenagers with cell phones, mobile devices, and other electronic equipment. Sexting is the sending or receiving of indecent pictures of oneself or others with the use of a cellular device or computer. Twenty states have enacted legislation to deal with this new trend among minors, including Illinois.

On April 27, 2010 the Illinois legislature passed an amendment to the criminal code of 1961 with House Bill

4583, with a nearly unanimous vote. The governor later signed Public Act 96-1087 into law. The law, effective January 1, 2011, makes transmitting lewd, indecent pictures of minors to other minors a punishable offense. In the statute "indecent visual depictions" are defined as "a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person." Minors who are found to be in possession of or transmitting "indecent visual depiction[s]" will be adjudicated to be in need of supervision and will face consequences.

Upon violating this law, a minor may be ordered to attend counseling or perform community service. From the light penalties, it appears that the goal of this law is to help the minor who is participating in this activity and prevent them from engaging in the activity in the future. From the text of the law, it does not appear that a violation of this law will be placed on their record or implicate them as a sex offender. This amendment also allows an officer to take a minor into custody without a warrant if the officer has reasonable cause to believe that the minor needs supervision.[16]

The text of the law makes it very clear that this punishment for minors is not to diminish the penalties for adult offenders and will not interfere with any laws that deal with sex offenders. The law specifically states "(e) Nothing in this Section shall be construed to prohibit a prosecution for disorderly conduct, public indecency, child pornography, a violation of the Harassing and Obscene Communications Act, or any other applicable provision of law."[17]

[16] Electronic Harmful Material, Pub. L. No 96-1087, Sec. 340. (Ill. 2010).
[17] *Id.*

INDIANA

🕮*State of Indiana v. J.S*
937 N.E.2d 831 (2010)

State of Indiana v. J.S. is a complex case that addresses two of the fundamental goals of the juvenile justice system: protecting the community at large and rehabilitating young offenders. A critical portion of this case addresses the sensitive process of determining mental competency for juveniles facing criminal charges. A fundamental assumption is that if a young defendant is mentally incapable of participating in his or her own trial, undergoing questioning, cross-examination, and other court proceedings, a fair trial and just result would be unlikely to occur.

The subject of this case is J.S., a 16-year-old developmentally disabled male. Throughout his upbringing he experienced severe mental, emotional, and social difficulties. He was diagnosed with various disorders, including autism spectrum disorder, anxiety disorder, intermittent explosive disorder, Attention Deficit Hyperactivity Disorder and acute depression, and received treatment in various forms since he was in elementary school. In September 2009, J.S. was charged with crimes relating to a sexual incident with an 11-year-old girl. These charges included criminal deviate conduct, child molestation, confinement, and intimidation, which would all constitute felonies had J.S. been an adult. Almost immediately, J.S. filed a request for a determination of his competence to stand trial. The juvenile court granted his request and an investigation of his competency began.

In March 2010, an Indiana juvenile court deemed J.S. incompetent to stand trial on multiple counts of sex crimes. The court dismissed the charges against him, finding him incompetent to stand trial based on the nature of his struggle with autism, his inability to demonstrate a coherent understanding of court proceedings and the imposition of a strenuous rehabilitation plan as proposed to the court by his mother. The State of Indiana appealed the juvenile court's dismissal of the charges, raising the issues of whether J.S. was in fact competent to stand trial, whether the charges should be held pending in the case that competency was later proven,

and whether the juvenile court abused its discretion in dismissing delinquency proceedings against him.

The Court of Appeals of Indiana addressed the State's arguments while taking into account the precarious nature of mental competency in the court system. The judges relied on three separate mental evaluations of J.S. performed by trial court appointed doctors and psychologists. Two out of the three evaluations recommended a finding of incompetence. Based on J.S.'s inability to grasp the differences between consensual sexual activity and rape or child molestation, and his lack of understanding as to the gravity of his situation and his role in the court proceedings, the two mental health professionals in agreement submitted that he was incompetent to stand trial. The Court of Appeals held that the trial court did not err in ruling that J.S. was incompetent to stand trial.

The Court of Appeals also rejected the argument that charges should remain pending until J.S. turned 18, when he could be tried as an adult. The State suggested that he may one day regain competency and again become a threat to the community. However, the court held that criminal charges cannot remain pending for a juvenile defendant who was not likely to ever regain the level of competency required to participate in his own trial. Finally, the court held that given that a return to competency was unlikely and that J.S. was currently receiving proper rehabilitation treatment, the trial court did not abuse its discretion in dismissing the delinquency charges against him.

MICHIGAN

📖 *In re Beck*
793 N.W.2d 562 (2010)

In re Beck, decided by the Michigan Supreme Court, presents the issue of whether a trial court can issue an order requiring a parent to continue to pay child support after the termination of his parental rights. Respondent, a father whose parental rights had been terminated, argued that requiring him to pay child support after termination was a violation of his constitutional right to due process of law and that his

obligation to pay child support ended, as a matter of law, when his parental rights were terminated. The Court of Appeals affirmed the judgment of the trial court, holding the father was required to pay child support. On appeal to the Supreme Court of Michigan, the court affirmed the judgment of the Court of Appeals, but based upon a different analysis. The Supreme Court held that the statutory structure demonstrated the legislature's determination that parental rights are distinct from parent obligation, and "nothing in the statutory scheme indicates that the loss of parental rights results in the loss of parental obligations."

Respondent's children were made temporary wards of the court because of chronic drug abuse by both parents. After respondent and his wife divorced, both parents were forced to pay child support while the children were in their grandmother's care. The children were eventually returned to the care of their mother, and respondent's parental rights were terminated by the trial court after the Department of Human Services filed a petition seeking termination. Although his parental rights were terminated, the trial court ordered that respondent's child support obligation continue pursuant to the divorce settlement.[18] The Court of Appeals affirmed the trial court, rejecting Respondent's constitutional argument because he did not adequately explain how his due process rights had been violated. Instead, the Court of Appeals held that: 1) the Legislature did not anywhere indicate that termination of parental rights terminated parental obligations and it was therefore not their intention to do so; 2) child support and parental rights are not interdependent; and 3) the child possesses "the inherent and fundamental right to receive support," independent of whether a parent retains parental rights.[19]

The Supreme Court of Michigan first addressed the constitutional issue. The court held that there is no authority that states "a parent has either a state or federal constitutional entitlement to have his child support obligation suspended when his parental rights have been terminated," finding no merit in the father's constitutional claim.

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[18] *In re Beck*, 488 Mich. 6, 9 (2010).
[19] *Id.*

Next, the court addressed the statutory issue. First, the court explained that under the statutory language of Mich. Comp. Laws § 722.2, which defines the scope of "parental rights" as encompassing the "custody, control, services and earnings of the minor," parental rights do not include or contemplate parental obligations. Further, in Mich. Comp. Laws § 722.3 the Legislature identified the sole "parental obligations" as the duty to provide a child with support, which exists unless a court of competent jurisdiction terminates or modifies the obligation. Additionally, Mich. Comp. Laws § 722.3 notes that the parental obligation to support a minor child may be "enforced whether *neither* parent has custody of the child, and may be enforced even if the *state* has custody of the child" (emphasis supplied).

The court concluded that "parental rights" identified in Mich. Comp. Laws § 722.2 are "distinct and detached" from the "parental duty" identified in Mich. Comp. Laws § 722.3, and therefore, parental rights are independent from parental duties. Since neither statutory provision is "connected or conditioned on the other," even after a parent's rights are terminated, the obligation to support continued "unless a court of competent jurisdiction modifies or terminates the obligation. Here, because the trial court did not modify or terminate Respondent's obligation, he is still required to make child support payments after the termination of his parental rights.

MISSOURI

📖 *State v. Andrews*
329 S.W.3d 369 (2011)

In *State v. Andrews*, the Supreme Court of Missouri, sitting *en banc*, decided a case on appeal from a conviction of first-degree murder. The defendant had shot and killed a police officer when he was fifteen. The juvenile court certified Andrews to be tried as an adult in the courts of general jurisdiction in Missouri. Following a jury trial, the defendant was convicted of first degree murder and sentenced to life without the possibility of parole as mandated by the

Missouri's sentencing guidelines. The defendant brought an appeal alleging that certification to be tried as an adult deprived him of his constitutional right to a jury under the Sixth Amendment, the mandatory sentence of life without the possibility of parole constituted cruel and unusual punishment under the Eighth Amendment, the charge of first degree murder was not proved beyond a reasonable doubt, and that the trial court did not maintain an environment of impartiality by allowing police officers to be present in the court room. The Court affirmed the conviction and sentence, briefly stating that the evidentiary requirements were satisfied and the environment during the trial was impartial since the defendant did not bring up the matter during the trial, and discussed in detail the defendant's constitutional arguments.

In regards to the defendant's right to a jury trial, the Court held that certification for trial as an adult is not a factual determination within the traditional duties of a jury as drafted by the framers of the Constitution. The defendant argued that under the United States Supreme Court case *Aprendi v. New Jersey*, 530 U.S. 466 (2000), the certification must be determined by a jury. In *Aprendi*, the Supreme Court limited a court's ability to impose a judgment that exceeded the statutory maximum. The *Andrews* Court held that the *Aprendi* holding was limited to such situations, citing the U.S. Supreme Court's holding from *Oregon v. Ice*, 555 U.S. 160 (2009). In *Ice*, the Supreme Court held that the penal system was part of the core powers of a state and that the Supreme Court would not infringe upon that core state function. While the defendant argued that certification acted as a sentence enhancement without jury consideration, the Court held that certification did not impose any kind of sentence. Instead, certification to be tried as an adult guaranteed him the right to a jury trial. A dissenting opinion argued that the defendant's age was a mitigating factor that a jury is entitled to consider in sentencing. Thus, the dissent argued, there should be a right to a jury hearing on the certification matter.

The Court next discussed the mandatory sentence of life without the possibility of parole. Under Missouri law, life without the possibility of parole was the only available sentence for a conviction of first degree murder. Another

dissenting opinion argued that life without the possibility of parole constituted cruel and unusual punishment for juveniles and should be held unconstitutional due to developing trends across other jurisdictions. The Court discussed U.S. Supreme Court decisions that held that while death is cruel and unusual punishment for a minor, life without the possibility of parole is not, for crimes of homicide. In response to the defendant's argument that age is a factor in sentencing, the Court held that under state statute, age is a factor to be considered in the juvenile division in the certification process, and thus age is considered before the defendant was ever exposed to the possibility of a life sentence without parole.

The Court affirmed the conviction of first-degree murder and the sentence of life without the possibility of parole. Under U.S. Supreme Court precedent, mandatory sentence of life without the possibility of parole for a homicide does not constitute cruel and unusual punishment and juveniles are not entitled to a trial by jury in juvenile proceedings pursuant to state laws and the purposes of juvenile court systems.

NEW JERSEY

📖 New Jersey State AB A3466

In October 2010, a bi-partisan team of legislators in the New Jersey Assembly proposed Assembly Bill A3466, or the "Anti-Bullying Bill of Rights." The proposed bill responds to studies done by the United States Departments of Justice and Education that indicate that 32% of students ages 12-18 are bullied, while only 25% of schools report bullying as a problem. This chronic persistence of bullying has led to several student suicides in the past year. A3466 is designed to combat bullying, intimidation and harassment among school-age children by implementing a system to help school administrators and teachers recognize, prevent, and report acts of intimidation. The bill serves as a supplement to an existing state law on bullying, intimidation and harassment in public schools.

Assembly Bill A3466 will require all teachers, school

administrators, and school board members to undergo extensive training on bullying, harassment and intimidation as part of their suicide prevention education. Schools will no longer be "encouraged" to establish bullying prevention programs, they will be "required" to do so by law. In addition, Assembly Bill A3466 provides that acts of bullying, harassment and intimidation will be added to the list of conduct constituting "good cause" for suspension or expulsion under the current state statute. The bill will also compel institutions of higher education to adopt an anti-bullying policy into their code of conduct for students.

The New Jersey Department of Education will be responsible for providing much of the materials and funding needed to implement the proposed programs and regulations in Assembly Bill A3466. It will be charged with developing a guide for resolution of student and parent complaints, and creating a formal protocol for county superintendents to use when investigating complaints of district non-compliance with bullying laws. The Department of Education also provides grants to participating schools to fund training on harassment, intimidation, and bullying prevention. The overall cost of implementation will depend on decisions made by individual school districts.