RECENT COURT DECISIONS AND LEGISLATION IMPACTING JUVENILES

UNITED STATES SUPREME COURT

🕮 *Miller v. Alabama*

132 S. Ct. 2455 (2012)

On June 25, 2012, the United States Supreme Court issued an important decision regarding juvenile sentencing in the case of *Miller v. Alabama*.[1] In a 5-4 decision authored by Justice Kagan, the Court held that sentencing schemes that mandate life without the possibility of parole for juvenile homicide offenders are unconstitutional because they violate the Eighth Amendment's prohibition of cruel and unusual punishment.[2] The decision aligns with the Court's previous rulings regarding juvenile sentencing which dictate that, "a State's most severe penalties on juvenile offenders cannot proceed as though they were not children."[3]

This decision was a consolidation of two cases in which 14-year olds were convicted of murder and sentenced to a mandatory term of life in prison without the possibility of parole.[4] In the case of *Miller v. Alabama*, Petitioner Evan Miller's crime occurred after an evening of drinking and drugs in his neighbor's trailer.[5] Miller, along with a friend, beat the neighbor with a baseball bat and then retreated from the scene.[6] They later returned and set fire to the trailer in an attempt to cover up the evidence of their crime.[7] The neighbor died from the injuries.[8] Miller was tried as an adult and convicted of murder in the course of arson.[9]

[1] Miller v. Alabama, 132 S.Ct. 2455, 2460 (2012); *Id.* at 2455.
[2] *Id.* at 2460.
[3] *Id.* at 2466.
[4] *Id.* at 2460.
[5] *Id.* at 2462.
[6] *Id.*
[7] *Id.*

In the case of *Jackson v. Hobbs*, Petitioner Kuntrell Jackson and two other boys attempted to rob a video store.[10] Jackson was not carrying a weapon and initially stayed outside while the other two boys entered the store.[11] Jackson subsequently entered the store to find one of his co-conspirators, Shields, pointing a gun at the store owner and demanding money.[12] When the store owner refused to hand over any money, Shields shot and killed her.[13] All three boys then fled the scene empty handed.[14] Jackson was tried as an adult and convicted of capital felony murder and aggravated robbery.[15]

In both cases, the sentencing structures of the respective states mandated that the juveniles be sentenced to life in prison without the possibility of parole.[16] The problem with this sentencing requirement is that it precludes consideration of the "hallmark features" of youth, such as "immaturity, impetuosity, and failure to appreciate risks and consequences."[17] It does not allow for consideration of the juvenile's family background, which may have influenced behavior.[18] It also prevents a sentencer from being able to consider the circumstances surrounding the crime, including the extent of participation and impact of peer and other pressures.[19]

The *Miller* decision builds on two previous decisions of the Court concerning proportionate punishment of juveniles.[20] *Roper v. Simmons* held that the Eighth Amendment prohibits capital punishment for children.[21] *Graham v. Florida* held that the Eighth Amendment prohibits a sentence of life without the possibility of parole for a juvenile convicted of a non-homicide offense.[22] These decisions established that "children are constitutionally different from adults for purposes of sentencing."[23] Now in the case of *Miller*, the court effectively extends that same

[8] *Id.*
[9] *Id.* at 2462-63.
[10] *Id.* at 2461.
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.* at 2460.
[17] *Id.* at 2468.
[18] *Id.*
[19] *Id.*
[20] *Id.* at 2461.
[21] Roper v. Simmons, 543 U.S. 551, 568 (2005).
[22] Graham v. Florida, 130 S.Ct. 2011, 2034 (2011).
[23] *Miller*, 132 S.Ct. at 2464.

reasoning to juveniles convicted of a homicide offense.[24] In so deciding, the Court makes clear that "youth matters for purposes of meting out the law's most serious punishments."[25]

The decision strikes down statutes in twenty-nine states that provide for mandatory life-without-parole sentences for children.[26] While the ruling does not categorically ban the penalty of life without the possibility of parole for juvenile offenders convicted of homicide, it does mandate that "a sentencer follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty."[27] However, as Justice Kagan concludes, "given all we have said in *Roper, Graham*, and this decision about children's diminished culpability and heightened capacity for change, we think appropriate occasions for sentencing juveniles to this harshest possible penalty will be uncommon."[28]

NINTH CIRCUIT—FEDERAL COURT OF APPEALS

🕮 *Henry A. v. Willden*

678 F.3d 991 (9th Cir. 2012)

The holding in *Henry A. v Willden*[29] marks an important improvement in protecting children and youth in foster care. On appeal, the Ninth Circuit Court of Appeals heard arguments based on violations of the children's substantive due process rights, along with statutory protections under the Adoption Assistance and Child Welfare Act (CWA), the Child Abuse Prevention and Treatment Act (CAPTA), and the Individuals with Disabilities Act (IDEA). The Ninth Circuit overturned the United States District Court of Nevada's dismissal of the case, holding that foster children have a constitutional right to safety and adequate medical care.[30]

The plaintiffs alleged that the Clark County's foster care program failed on a pervasive and systematic level, thereby violating rights guaranteed by the Due Process Clause of the 14th Amendment.[31] The

[24] *Id.*
[25] *Id.* at 2471.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 2469.
[29] *Henry A. v. Willden*, 678 F.3d 991 (9th Cir. 2012).
[30] *Id.* at 1000.
[31] *Id.* at 996.

specific allegations posed by the plaintiffs included: the failure to provide caseworkers with basic training, case plans, necessary medical care, and guardians ad litem.[32] There were additional claims of failures by the county to investigate reports of abuse and neglect in foster homes.[33]

The Ninth Circuit held that the plaintiffs' claims were based on the special relationship between the state and the children in foster care,[34] and that a reasonable official would have understood that the behavior of county welfare workers constituted deliberated indifference.[35] The Court additionally acknowledged that qualified immunity could be asserted as a defense; however, the qualified immunity asserted during the complaint does not mandate a grant of dismissal.[36] Additionally, the Ninth Circuit held that the state could be held liable for exposing foster children to the danger of abuse and neglect in foster homes if the state has knowledge of the potential for harm.[37] Finally, the Ninth Circuit noted that the District Court abused its discretion by failing to allow the plaintiffs to amend their complaint to tie factual allegations to particular defendants.[38]

In order to determine whether the federal statutes in question constitute individual rights, the court used a three-part test to examine whether the statutes created an individual right enforceable under § 1983 of the Civil Rights Act of 1871.[39] The court evaluated the intended benefits of the statute, the specificity of the right, and the language of the statute.[40]

The Ninth Circuit found case plan and records provisions of CWA enforceable through § 1983,[41] but dismissed the guardian ad litem claim under CAPTA, as it did not create an unambiguously enforceable right.[42] The Court dismissed the early education claim, as IDEA claims involve a unique enforcement scheme that precludes enforcement under § 1983.[43]

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[32] *Id.* at 997.
[33] *Id.*
[34] *Id.* at 1000.
[35] *Id.* at 1001.
[36] *Id.*
[37] *Id.* at 1003.
[38] *Id.* at 1005.
[39] *Id.*
[40] *Id.* The three-part Blessing/Gonzaga test asks: 1) did Congress intend for the statute to benefit the Plaintiff; 2) is the asserted right too "vague and amorphous" as to strain judicial competence; and 3) is the asserted right is in mandatory, not precatory terms. *Blessing v. Freestone*, 117 S.Ct. 1353, (1997).
[41] *Id.* at 1009.
[42] *Id.* at 1011.
[43] *Id.*

However, the Court notes the plaintiffs are able to pursue a claim under IDEA's express cause of action on remand.[44]

Henry A. v Willden has been remanded to the trial court in Las Vegas for the plaintiffs to amend their substantive due process claims and add a claim under the IDEA's express cause of action.[45] The appellate court's ruling clearly indicates that state and county officials are not exempt from liability under qualified immunity. The case indicates more importantly that children in foster care have a constitutionally guaranteed right to safety and adequate medical care.

🕮 *United States v. Nielsen*

694 F.3d 1032 (9th Cir. 2012)

The defendant, William Nielsen, began chatting with a 12-year-old girl by the name of A.J. on an adult-only sex line.[46] The pair subsequently engaged in phone sex and "sexting"[47] after exchanging numbers.[48] Nielsen invited A.J to visit him in Montana and offered to provide her with drugs.[49] Although Nielsen was initially unaware of A.J's actual age when he extended the invitation, A.J. immediately revealed her real age.[50] The defendant claimed that he was already a registered sex offender. [51] Nevertheless, A.J. bought a bus ticket and spent the next four days with the defendant in Montana.[52] The pair had sexual intercourse numerous times, at times including sadomasochistic behaviors.[53] The defendant also provided the minor with marijuana.[54] However, A.J was not kept in isolation; she had access to her cellphone throughout her stay and called friends numerous times. [55] After days of searching, her divorced parents found her and took her back to Wyoming. [56]

[44] *Id*. at 1011-12.
[45] *Id*. at 1012-1013.
[46] *United States v. Nielsen*, 694 F.3d 1032, 1033 (9th Cir. 2012).
[47] "Sexting": The sending of sexually explicit photographs or messages via mobile phone. The Merriam Webster Dictionary (Available at http://www.merriam-webster.com/dictionary/sexting).
[48] *Id*.
[49] *Id*.
[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] *Id*.
[55] *Id*.
[56] *Id*.

In January 2011, Nielsen pled guilty to coercion and enticement of a minor, a violation of 18 U.S.C. § 2422(b).[57] The United States District Court for the District of Montana determined Nielsen should have known that A.J. was vulnerable compared to other minors her age.[58] The district court applied a repeat and dangerous sex offender enhancement under the U.S.S.G. § 4B1.5(a), since the defendant had a prior conviction for sexual assault.[59] [60] The district court also applied a two-level enhancement to Nielsen's offense under U.S.S.G. § 3A1.1, considering AJ "a vulnerable victim."[61] [62] Nielsen was sentenced to 480 months in jail.[63]

Nielsen appealed the lower court's sentence, objecting to the application of both §§ 4B1.5(a) and 3A1.1.[64] The Ninth Circuit Court of Appeals agreed that the adjudication for sexual assault as a juvenile was not a conviction under § 4B1.5(a).[65] The government claimed that, under § 4B1.5(a), the phrase "any offense" was intended to include offenses committed as a juvenile.[66] Regardless, the Ninth Circuit held that when prior juvenile adjudications are considered convictions under federal statutes, Congress explicitly states such in the text of the statute.[67] Because there is no mention of a juvenile adjudication applying as a prior conviction in this statute, the Ninth Circuit held the district court erred in using the defendant's prior juvenile adjudication as a prior conviction under § 4B1.5(a).[68]

The Ninth Circuit also reversed the district court's holding on AJ's apparent vulnerability under § 3A1.1, finding that a victim's unstable home environment insufficient to demonstrate elevated vulnerability.[69] The district court focused on her sexual activity and drug use as corroborating evidence of vulnerability; however, the Ninth Circuit dismissed of such evidence, reasoning that a typical victim usually

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[57] *United States v. Nielsen*, 694 F.3d 1032, 1034 (9th Cir. 2012).
[58] *Id.*
[59] *Id.*
[60] Defendant had been convicted of a sex offense as a juvenile.
[61] "If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels." USSG, § 3A1.1, 18 U.S.C.A.
[62] *Nielsen*, 694 F.3d at 1034.
[63] *Id.*
[64] *Id.*
[65] *Id.* at 1038.
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.* at 1037.

partakes in such behavior.[70] Finding nothing out of the ordinary, the court found insufficient grounds for applying § 3A1.1.[71]

Reversing the district court's application of both §§ 4B1.5(a) and 3A1.1, the Ninth Circuit ultimately remanded the case for resentencing.[72]

CALIFORNIA

🕮 California AB 2060

A.B. 2060, 2012 Cal. Legis. Serv. Ch. 176 (A.B. 2060)

On August 17, 2012, Governor Jerry Brown signed Assembly Bill 2060, which strengthens California law on the appointment of educational representatives for foster children.[73] The bill, authored and introduced by Assemblymember Susan Bonilla, supported by the National Center for Youth Law, and sponsored by the Public Counsel's Children's Rights Project, will go into effect January 1, 2013.[74] Currently, California law authorizes courts to limit a parent's rights to make educational decisions for a dependent child or ward of the court under certain circumstances.[75] Courts can also temporarily appoint a responsible adult other than the child's parent to serve as the child's educational representative.[76] AB 2060 amends Section 319 of the Welfare and Institutions Code to require the court, if it limits a parent's educational rights, to determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve before appointing an educational representative or surrogate who is not known to the child.[77]

AB 2060 also requires that the appointed educational representative or surrogate meet with the child; investigate the child's educational needs and determine whether those needs are being met; and, before each review hearing, provide information and recommendations to the child's social worker, make written recommendations to the court, or

[70] *Id*.
[71] *Id.*
[72] *Id.* at 1039.
[73] Jesse Hahnel, *CA Governor Signs Law Aimed at Improving Educational Prospects for Foster Youth*, YOUTH LAW NEWS, July-Sept 2012, at 3.
[74] *Id*.
[75] A.B. 2060, 2012 Leg., Reg. Sess. (Cal. 2012).
[76] *Id.*
[77] *Id.*

attend the court hearing to participate in those sessions "that concern the child's education."[78] After a child has been deemed a dependent child or a ward of the juvenile court, if the court cannot identify a responsible adult to make educational decisions for the child, the court is required to refer the child to the local educational agency for appointment of a surrogate parent if the child has special education needs.[79] If appointment of a surrogate parent is not appropriate because the child does not have special education needs, and the child does not have a foster parent, the court may make educational decisions for the child.[80]

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.[81] Statutory provisions establish procedures for making that reimbursement. AB 2060 would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.[82]

AB 2060 seeks to remedy the lack of consistent educational support for foster children by ensuring that these children have a relationship with an adult who is involved in their education. Many foster youth suffer from delayed enrollment, placement into lower-quality schools and remedial classes, and have limited access to resources such as tutors or summer school programs.[83] Research has found that parental involvement strongly correlates with children's academic performance.[84] Students with actively engaged parents have higher test scores, better attendance, improved behavior at home and at school, better social skills, and greater ability to adapt to the classroom environment.[85]

🕮 *In re Y.M.*

207 Cal. App. 4th 892 (2012)

Y.M. is a child who was abducted and brought illegally from Guatemala to the United States, by her father. He physically and sexually

[78] *Id.*
[79] *Id.*
[80] *Id.*
[81] Scott Lay, *AB 2060 (Bonilla) Juveniles: educational decisions*, AROUND THE CAPITOL (Aug. 17, 2009), http://www.aroundthecapitol.com/Bills/AB_2060/20112012.
[82] *Id.*
[83] Hahnel, *supra*, note 73.
[84] *Id.*
[85] *Id.*

abused her until the local social services agency had her declared as a dependent of the juvenile court.

A federal agency, the United States Immigration and Customs Enforcement (ICE), the United States Department of Health and Human Service's Office of Refugee Resettlement and the Bilateral Safety Corridor determined that Y.M. was a victim of human trafficking and entitled to federal protection.[86]

Later, the trial court determined that Guatemala's internal "Inter-Institutional Protocol for the Repatriation of Victims of Human Trafficking of the Republic of Guatemala" was equivalent to an international treaty that deprived it of jurisdiction.[87] The protocol is a mechanism for determining which Guatemalan government agency is responsible at every stage of a human trafficking case and the standards of conduct that govern each individual agency's decision-making.[88] Although it made no mention of U.S. laws, the trial court viewed it as an "an agreement at the level of at least a treaty between the United States and Guatemala."[89]

The Court of Appeal reversed the trial court's denial of Y.M.'s petition seeking termination of reunification services to her father.[90] The court affirmed the orders denying the mother's petition to return the child to her custody and the child's petition to be removed from a federal program and returned to San Diego.[91] The court held that the Guatemalan Protocol pertaining to victims of human sexual trafficking was not a treaty because there was no evidence of U.S. laws or involvement in the making of the treaty.[92] Also, federal laws pertaining to children who are the victims of human sexual trafficking do not preempt state dependency law.[93] Instead, children are protected by both federal and state statutory provisions that govern the juvenile court's consideration of whether to terminate state dependency court jurisdiction.[94]

The court held that the child's best interests control at all times.[95] Therefore, it was error to deny Y.M.'s petition to terminate reunification

[86] *In re Y.M.*, 207 Cal. App. 4th 892, 902 (2012).
[87] *Id.* at 899.
[88] *Id.* at 907.
[89] *Id.* at 904.
[90] *Id.* at 922.
[91] *Id.* at 923.
[92] *Id.* at 907.
[93] *Id.* at 899.
[94] *Id.*
[95] *Id.* at 907.

services to her father.[96] It was not error to deny the mother's petition to return the child to her custody due to the uncertain rehabilitation prospects in Guatemala, and it was not error to deny the child's petition to remove her from federal custody and place her in a foster home.[97]

Finally, the court ruled that the federal-consent rule set out in *Perez-Olano v. Gonzalez*[98] did not reflect congressional intent to eliminate the state court's jurisdiction to make other types of orders that are in the minor's best interests.[99] The court explained that "by limiting the specific consent requirement to custody and placement decisions, Congress appropriately reserved for state courts the power to make child welfare decisions, an area of traditional state concern and expertise. The Special Immigrant Juvenile statute affirms the institutional competence of state courts as the appropriate forum for child welfare determinations regarding abuse, neglect, or abandonment, and a child's best interests."[100] When the dependent child is in federal custody, the state court cannot make custody or placement decisions without the consent of the federal government, but it is still required to follow the dependency statutes and make efforts to protect the child to the fullest extent its jurisdiction allows.[101] Here, under relevant case law, the court was required to make a Special Immigrant Juvenile determination, which could have led to permanent residency for Y.M.[102]

The Court of Appeal reversed the juvenile court's termination of dependency jurisdiction and the denial of Y.M.'s petition to terminate reunification services with her father.[103] The court affirmed the denial of her mother's petition for custody.[104] Y.M.'s case was remanded with instructions to hold a new six-month custody review hearing and to promptly consider Y.M.'s request for Special Immigrant Juvenile status.[105]

[96] *Id*. at 919.
[97] *Id.* at 920.
[98] 248 F.R.D. 248 (C.D. Cal. 2008).
[99] *Id*. at 911.
[100] *Id*. (citing *Perez-Olano*, 248 F.R.D. at 265).
[101] *Id*. at 912.
[102] *Id.* at 916.
[103] *Id.* at 922.
[104] *Id*. at 923.
[105] *Id*. at 922.

FLORIDA

🕮 Sexual Exploitation/Florida Safe Harbor Act

CS/CS/HB 99, 2012 Leg., Reg. Sess. (Fla. 2012)

On March 8, 2012, the Florida Legislature passed the "Florida Safe Harbor Act"[106] that Florida Governor Richard Lynn Scott then signed into law on June 12, 2012.[107] The bill was passed to strengthen protections for commercially sexually exploited children and penalties for criminals. The bill establishes state goals related to sexually exploited children in the dependency process, tasks Florida's Office of Adoption and Child Protection with various duties, and amends key definitions related to sexually exploited children.[108] The bill also requires the provision of safe house placements for sexually exploited children and increases the fine for people who solicit, induce, entice or procure another to engage in a commercial sex act.[109]

The bill creates goals for the state of Florida related to the status and treatment of sexually exploited children in the dependency process.[110] The goals include: ensuring the safety of children; providing for the treatment of such children as dependent children, not delinquents; severing the bond between exploited children and traffickers and reuniting these children with their families or providing them appropriate guardians; and enabling such children to be willing and reliable witnesses in the prosecution of traffickers.[111] In addition, the bill finds that sexually exploited children require special services, such as counseling, health care, substance-abuse treatment, educational opportunities, and a safe and secure environment.[112] The bill states Florida's intent to provide such services to all sexually exploited children who are not receiving comparable services, such as those under the federal Trafficking Victims Protection Act[113], independent of their citizenship, residency, alien or immigrant status.[114]

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[106] The Florida Senate, http://www.flsenate.gov (last visited Nov. 8, 2012).
[107] Florida Governor Rick Scott, http://www.flgov.com (last visited Nov. 8, 2012).
[108] CS/CS/HB 99, 2012 Leg., Reg. Sess. (Fla. 2012).
[109] *Id*.
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] 22 U.S.C. § 7101 (2000).
[114] CS/CS/HB 99, *supra* note 108.

In addition, the bill tasks the Office of Adoption and Child Protection with various duties. The bill directs the Office of Adoption and Child Protection in overseeing the preparation and implementation of a state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse.[115] The bill also authorizes the Office of Adoption and Child Protection to secure funding to promote such efforts and publish an annual report on the status of such efforts.[116] Furthermore, the Office of Adoption and Child Protection is responsible for making recommendations to develop training programs and services in support of adoptive families and professionals working with affected children, young adults, and families.[117]

Moreover, the bill amends key definitions pertaining to sexually exploited children. The definition of a "child who is found to be dependent" is amended to include a child who has been sexually exploited and lacks a parent, legal guardian, or responsible adult relative known and capable of providing the necessary and appropriate supervision and care.[118] The bill also amends "sexual abuse of a child" for the purposes of finding a child to be dependent.[119] The definition now includes the sexual exploitation of a child, which includes some acts of a child offering to engage in or engaging in prostitution, or the act of another in allowing, encouraging or forcing a child to engage in prostitution, in a sexual performance, or in the sex trafficking trade.[120]

Of particular importance, the bill introduces new procedures for law enforcement officers when dealing with sexually exploited children. The officers must deliver an allegedly dependent child whom they believe was sexually exploited to the Department of Children and Family Services for placement into a short-term safe house.[121] The bill also mandates that a dependent child six years of age or older who is a victim of sexual exploitation must be assessed for placement in a safe house.[122] The assessment will consist of the child's history; psychological evaluations; information from the guardian ad litem, if one has been assigned; and information from professionals who have knowledge of the child and have

[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] *Id.*
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*

worked with the child.[123] If a placement is deemed appropriate through the assessment, the child may be placed in a safe house if available.[124]

Finally, the bill increases civil penalties for people who solicit, induce, entice or procure another to engage in a commercial sex act.[125] The bill increases the penalty for a violation that results in a judicial disposition other than acquittal or dismissal from $500 to $5,000.[126]

IDAHO

🕮 *In Re Doe*

281 P.3d 95 (2012)

In the Matter of the Termination of the Parental Rights of John Doe is an appeal from a Canyon County magistrate court judgment terminating the parental rights of a Mexican citizen whose child was born in the United States.[127] The magistrate judge found that the father (John Doe) willfully abandoned his child .[128] The Idaho Supreme Court reversed the judgment of the magistrate court and remanded the case with an order for the Idaho Department of Health and Welfare to "promptly deliver the child to her father in Mexico."[129]

John Doe, the father of the child at issue, is a Mexican citizen.[130] In 2003, he entered the United States illegally.[131] In 2007, he married Jane Doe in Idaho.[132] After their marriage, John Doe was arrested while attempting to open a bank account with a false social security number.[133] He agreed to leave the country voluntarily and returned to his parents' home in Mexico.[134] Jane Doe also went to Mexico, but returned to the United States after becoming pregnant with John Doe's child.[135]

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[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.*
[127] In the Matter of the Termination of the Parental Rights of John Doe, 281 P.3d 95 (2012).
[128] *Id.* at 101.
[129] *Id.* at 97.
[130] *Id.* at 98.
[131] *Id.*
[132] *Id.*
[133] *Id.*
[134] *Id.*
[135] *Id.*

In March 2009, Jane Doe lived in Idaho with her new boyfriend, her child, and her boyfriend's seven-year-old son.[136] After Jane Doe and her boyfriend took the seven-year-old to the hospital for severe bruising of his head, a child protection case was initiated against Jane Doe and her boyfriend.[137] The department placed the daughter of Jane and John Doe in foster care with a department employee.[138] In June, John Doe expressed a desire to reunite with his daughter to the caseworker assigned to the case.[139] On June 16, Jane Doe signed her case plan, which defined the requirements the state would like her to meet before the daughter could be return to Jane Doe's home.[140] Jane Doe was also assigned a caseworker to help her meet these requirements.[141]

Contrary to Idaho Code §16-1621(3), John Doe was not named in the plan and no role was specified for him.[142] Still, John Doe maintained monthly contact with the caseworker and explicitly told the caseworker that he would like to reunite with the daughter if Jane Doe was unable to complete the case plan.[143] In February 2010, the caseworker informed John Doe that Jane Doe was failing to complete her case plan.[144] In order for John Doe's daughter to be placed with him, the state required that John Doe undergo a home study to ensure that his living arrangements could accommodate a child.[145] Home studies are "comprehensive, written reports, conducted in the state of the prospective adoptive or foster family that assess the safety and suitability of the prospective family."[146] John Doe was able to obtain a home study through the Mexican consulate.[147] The Mexican government began their home study in July 2010.[148] After the Canyon County prosecuting attorney sought to terminate the parent's rights, a termination hearing was held on September 29.[149] The caseworker failed to present the home study to the court at that hearing.[150] Although John Doe had not been properly notified, a default was entered

[136] *Id.*
[137] *Id.*
[138] *Id.* at 100.
[139] *Id.* at 98.
[140] *Id.* at 99.
[141] *See id.*
[142] *Id.*
[143] *Id.* at 99-100.
[144] *Id.* at 99.
[145] *See id.*
[146] Ursula Gilmore et. al., *Delays in the Interstate Foster and Adoption Home Study Process*, 8 U.C. DAVIS J. JUV. L. & POL'Y 55, 56 (2004).
[147] *Id.*
[148] *Id.*
[149] *Id.*
[150] *Id.*

against him and his rights were terminated.[151] In February 2011, John Doe obtained counsel.[152] As there was not proper service, the magistrate court heard the case again on July 6 and 7, 2011.[153] On December 7, 2011, the magistrate court held that John Doe had abandoned his daughter and that it would be in the daughter's best interests to stay in Idaho.[154]

Several problems arose through the magistrate court and the Idaho Department of Health and Welfare's handling of the case.[155] First, the Idaho Supreme Court held that the lower court erred by not presuming that the natural parent was the first choice.[156] Reasoning that "[t]here is no contention that [John Doe] abused or neglected Daughter, nor is there any contention that he is unfit to have her custody," the court held that a natural parent should be the presumptive choice for placement.[157]

The magistrate court ruled that John Doe had abandoned his daughter.[158] Citing Idaho Code § 16–2002(5), the Idaho Supreme Court also ruled that abandonment of a child requires willfully failing to maintain a normal parental relationship.[159] John Doe was unable to enter the United States legally.[160] Therefore, it was impossible for him to maintain that relationship while she was in this country.[161] John Doe did all that was possible to cooperate with the department throughout the proceedings and maintained contact with his daughter as best he could.[162]

The court also questioned the assumption that it was in the daughter's best interests to remain in the United States instead of Mexico.[163] The county prosecutor offered testimony of the *guardian ad litem* implying that the standard of living difference between the two countries justified keeping the child in the United States.[164] Lastly, the Supreme Court questioned the motives of the department because the daughter's foster parent was an employee of the department.[165]

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[151] *Id.*
[152] *Id.*
[153] *Id.*
[154] *Id.*
[155] *See id.* at 100-03.
[156] *Id.* at 102.
[157] *Id.*
[158] *Id.* at 101.
[159] *Id.*
[160] *Id.*
[161] *See id.*
[162] *Id.*
[163] *Id.* at 102.
[164] *Id.*
[165] *Id.*

On appeal, the Idaho Supreme Court reversed, holding that there was no evidence that John Doe was unfit and that he had made every effort to be reunited with his daughter.[166] The court ruled that the father had not "willfully failed to maintain a normal relationship" with his daughter.[167] Further, the Idaho Supreme Court ruled that the lower court's finding that he had done so was "absurd."[168]

WASHINGTON

🕮 Washington HB 2535

H.B. 2535, 2012 Wash. Legis. Serv. Ch. 146 (2012)

In January 2012, multiple members of the Washington House of Representatives introduced a bill into the House to create a juvenile gang court. The stated goal of H.B. 2535 is to establish a strategic and collaborative approach to combat juvenile gang crime in the state of Washington.[169] Specifically, H.B. 2535 creates a court in the juvenile system to address the issue of juveniles involved in gang activity through evidence-based and research-based gang intervention programs and strategies.[170]

H.B. 2535 authorizes the counties in the state of Washington to create a juvenile gang court. A juvenile gang court is defined as special calendars or dockets used to achieve a reduction in gang-related offenses through the use of evidence-based programs proven to reduce juvenile gang involvement and recidivism rates.[171]

H.B. 2535 also creates minimum qualifications for juveniles to come under the jurisdiction of the juvenile gang courts. The first requirement is that the juvenile offender either participates in gang activity, is repeatedly in the company of known gang members, or openly admits to being a member of a gang.[172] The second requirement is that the juvenile does not have a prior serious violent or sex offense conviction.[173] The third requirement states that the juvenile cannot be currently charged with an offense that is a Class A felony, sex offense, use of a firearm

[166] *Id.* at 101-03.
[167] *Id.* at 101.
[168] *Id.*
[169] H.B. 2535, 62nd Leg., Reg. Sess. (Wash 2012).
[170] *Id*. at 1.
[171] *Id.*
[172] *Id*. at 2.
[173] *Id*.

during an offense, or an assault of a child in the second degree.[174] Additionally, the juvenile cannot currently be charged with an offense that would subject him to adult court under Washington law.[175] Finally, the prosecution, court, and the juvenile must all agree to the juvenile being placed under the jurisdiction of the juvenile court.[176]

The bill also details the requirements of the juvenile gang court. H.B. 2535 requires the juvenile who is admitted into the program to admit to the facts written in the police report, which will be admitted to show guilt if the juvenile should fail the program.[177] The juvenile must also waive their right to a speedy disposition and right to call and confront witnesses.[178] The court shall create an individualized plan for the juvenile. The plan can include mental health treatment and chemical dependency treatment. The length of the program shall be at least 12 months.[179]

H.B. 2535 requires the courts to dismiss the conviction and vacate the charge with prejudice following the successful completion of the program.[180] The bill also limits the program to only a one-time deal, thus the juvenile can never repeat the program after completion.[181] The bill also requires that the court enter disposition pursuant to Washington law if the juvenile fails to complete the diversion program.[182]

Finally, H.B. 2535 authorizes a study of the juvenile gang court to be conducted and presented to the legislators pursuant to the availability of funds. The first report is due on December 1, 2013 and a final report due on December 1, 2015.[183]

[174] *Id*.
[175] *Id*.
[176] *Id*.
[177] *Id*. at 3.
[178] *Id*.
[179] *Id*.
[180] *Id*.
[181] *Id*.
[182] *Id*.
[183] *Id*. at 4.