Recent Court Decisions and Legislation

Ninth Circuit – Federal Court of Appealst

🕮 *Los Angeles Unified School District v. Garcia*

741 F.3d 922 (9th Cir. 2014)

In *Los Angeles Unified School District v. Garcia* the Ninth Circuit affirmed that under California Education Code § 56041, the school district where a pupil's parents reside is responsible for providing special education to a qualifying individual between the ages of eighteen and twenty-two who is incarcerated in a county jail.[1]

Michael Garcia was born in June 1990 in Los Angeles County and is eligible for special education services.[2] When Garcia was fifteen years old, he was arrested on felony charges and held at juvenile hall in Los Angeles County.[3] There, he received a special education program from the Los Angeles County Office of Education under Ed. Code § 56041, which expressly designates the entity responsible for providing special education in an institutional setting such as a juvenile court.[4] When Garcia turned eighteen, he was transferred from the juvenile facility to the Los Angeles county jail to await trial.[5]

Garcia filed an action in federal district court alleging he was being denied a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) because there was no system for delivering special education services in county jail.[6] The district court found that Los Angeles Unified School District (LAUSD)

[1] L.A. Unified Sch. Dist. v. Garcia, 741 F.3d 922 (9th Cir. 2014).
[2] L.A. Unified Sch. Dist. v. Garcia, 58 Cal. 4th 175, 179 (2013).
[3] *Id*.
[4] *Id*. at 180.
[5] *Id*.
[6] *Id*. at 180.

was responsible for providing special education under Ed. Code § 56041.[7] LAUSD appealed the district court's order.[8]

In response to a certified question from the Ninth Circuit Court of Appeals,[9] the California Supreme Court determined that in the absence of legislative action, the assignment of responsibility for providing special education to eligible county jail inmates between the ages of eighteen and twenty-two was governed by the terms of Ed. Code § 56041.[10] Pursuant to the California Supreme Court's answer, the Ninth Circuit Court of Appeals affirmed the district court's decision.[11]

🕮 *Pickup v. Brown*

740 F.3d 1208 (9th Cir. 2013)

In *Pickup v. Brown*, the Ninth Circuit Court of Appeals held that California Senate Bill 1172 ("SB 1172") does not violate the plaintiffs' free speech rights, is neither vague nor overbroad, and does not violate parents' fundamental rights.[12] SB 1172, deemed a regulation of professional conduct, prohibits the provision of Sexual Orientation Change Efforts ("SOCE") therapy to minors.[13] SOCE employs both aversive treatments, including induced vomiting and shock therapy, along with non-aversive treatments, such as hypnosis and reframing desire, with the shared goal of changing the sexual orientation of an individual from homosexual to heterosexual.[14]

The plaintiffs in *Pickup v. Brown*, mental health practitioners, children in therapy, and their parents, collectively sought a declaratory judgment that SB 1172 is unconstitutional and asked for injunctive relief

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[7] *Id.* at 181.
[8] *Id.*
[9] The Ninth Circuit Court of Appeals requested that the California Supreme Court answer the following question: "Does California Education Code § 56041—which provides generally that for qualifying children ages eighteen to twenty-two, the school district where the child's parent resides is responsible for providing special education services—apply to children who are incarcerated in county jails?" Los Angeles Unified Sch. Dist. v. Garcia, 669 F.3d 956, 958 (9th Cir. 2012) *certified question answered*, 58 Cal. 4th 175 (2013).
[10] L.A. Unified Sch. Dist. v. Garcia, 58 Cal. 4th at 185.
[11] L.A. Unified Sch. Dist. v. Garcia, 741 F.3d 922 (9th Cir. 2014).
[12] Pickup v. Brown, 740 F.3d 1208, 1222 (9th Cir. 2013).
[13] *Id.* at 1222-23.
[14] *Id.*

to prohibit enforcement of the law.[15] One of the plaintiffs' key arguments maintained that the bill infringes upon a parent's fundamental right to make important medical decisions for their children.[16] The Ninth Circuit Court of Appeals found that the bill, which regulates state-licensed professional conduct, does not violate any recognized fundamental right; therefore so long as there is a rational basis for the bill's enactment, it is a valid application of the state's police power.[17]

The court acknowledges that parents do have a fundamental right to make decisions regarding the care, custody, and control of their children.[18] Nevertheless, this right is not without limits.[19] Moreover, a state, not a parent, has constitutional control over the discretional decisions regarding a child's medical and physical health.[20] The court reasons that an individual, whether a minor or an adult, does not possess a right to obtain treatment that the government has prohibited.[21] While SB 1172 specifically targets those under the age of eighteen, the court concludes that since no individual has the right to obtain any treatment, the right of a parent to procure a specific treatment for his or her child is similarly limited.[22] The court's holding is narrowly tailored to the facts, leaving open the possibility for further restriction on sexual orientation therapy. [23] The government's greater control over the lives of children, allows the court to limit its holding and leave the murky waters of adults' right to arguably harmful medical treatment unexplored.[24]

[15] *Id*. at 1224-25.
[16] *Id*. at 1235.
[17] *Id*. at 1231.
[18] *Id*. at 1235.
[19] *Id*. (quoting Fields v. Palmdale Sch. Dist., 427 F.3d 1197, 1204 (9th Cir. 2005)).
[20] *Id*. (quoting Parham v. J.R., 442 U.S. 584, 603 (1979)).
[21] *Pickup*, 740 F.3d at 1236.
[22] *Id*.
[23] *Id*.
[24] *Id*.

CALIFORNIA

Court of Appeal, Second District

🕮 *Los Angeles Unified School District v. Garcia*

741 F.3d 922 (9th Cir. 2014)

In *Los Angeles Unified School District v. Garcia* the Ninth Circuit affirmed that under California Education Code § 56041, the school district where a pupil's parents reside is responsible for providing special education to a qualifying individual between the ages of eighteen and twenty-two who is incarcerated in a county jail.[25]

Michael Garcia was born in June 1990 in Los Angeles County and is eligible for special education services.[26] When Garcia was fifteen years old, he was arrested on felony charges and held at juvenile hall in Los Angeles County.[27] There, he received a special education program from the Los Angeles County Office of Education under Ed. Code § 56041, which expressly designates the entity responsible for providing special education in an institutional setting such as a juvenile court.[28] When Garcia turned eighteen, he was transferred from the juvenile facility to the Los Angeles county jail to await trial.[29]

Garcia filed an action in federal district court alleging he was being denied a free appropriate public education (FAPE) as required by the Individuals with Disabilities Education Act (IDEA) because there was no system for delivering special education services in county jail.[30] The district court found that Los Angeles Unified School District (LAUSD) was responsible for providing special education under Ed. Code § 56041.[31] LAUSD appealed the district court's order.[32]

In response to a certified question from the Ninth Circuit Court of Appeals,[33] the California Supreme Court determined that in the absence of

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[25] L.A. Unified Sch. Dist. v. Garcia, 741 F.3d 922 (9th Cir. 2014).
[26] L.A. Unified Sch. Dist. v. Garcia, 58 Cal. 4th 175, 179 (2013).
[27] *Id.*
[28] *Id.* at 180.
[29] *Id.*
[30] *Id.* at 180.
[31] *Id.* at 181.
[32] *Id.*
[33] The Ninth Circuit Court of Appeals requested that the California Supreme Court answer the following question: "Does California Education Code § 56041—which

legislative action, the assignment of responsibility for providing special education to eligible county jail inmates between the ages of eighteen and twenty-two was governed by the terms of Ed. Code § 56041.[34] Pursuant to the California Supreme Court's answer, the Ninth Circuit Court of Appeals affirmed the district court's decision.[35]

Court of Appeal, Fourth District

🕮 *In re I.J.*

56 Cal. 4th 766 (2013)

In re I.J. is a California Supreme Court decision affirming a finding that a father had sexually abused his daughter and that the abuse supported the determination that all of his children were dependents of the juvenile court under Welfare and Institutions Code Section 300.[36] Section 300 applies if a child's sibling has been abused or neglected and there is a substantial risk that the child will be abused or neglected.[37] The California Supreme Court affirmed the judgment of the Court of Appeal, noting that the serious and prolonged nature of the father's sexual abuse of his daughter supported the juvenile court's finding that the risk of abuse was substantial as to all the children.[38]

J.J. is the father of two daughters and three sons.[39] On August 8, 2011, the Los Angeles County Department of Children and Family Services filed a petition alleging that J.J. forcefully raped his oldest daughter and forced her to watch pornographic videos with him.[40] There is no evidence that J.J. sexually abused or mistreated his sons.[41] However, the juvenile court declared all children dependents of the court due to the

provides generally that for qualifying children ages eighteen to twenty-two, the school district where the child's parent resides is responsible for providing special education services—apply to children who are incarcerated in county jails?" Los Angeles Unified Sch. Dist. v. Garcia, 669 F.3d 956, 958 (9th Cir. 2012) *certified question answered*, 58 Cal. 4th 175 (2013).

[34] L.A. Unified Sch. Dist. v. Garcia, 58 Cal. 4th at 185.

[35] L.A. Unified Sch. Dist. v. Garcia, 741 F.3d 922 (9th Cir. 2014).

[36] *In re* I.J., 56 Cal. 4th 766, 771 (2013).

[37] *Id*. at 774.

[38] *Id*. at 778.

[39] *Id*. at 771.

[40] *Id*.

[41] *Id*.

substantial danger to the children's emotional and physical well-being.[42] The court removed the children from the J.J.'s custody.[43] J.J. appealed and the court of appeals affirmed the decision of the juvenile court.[44]

The California Supreme Court granted J.J.'s petition for review to decide whether the sons could be declared dependents of the court based on the abuse of the oldest daughter.[45] The Supreme Court found that the Court of Appeal correctly applied Section 300, which does not require that a child actually be abused or neglected before the juvenile court can assume jurisdiction.[46] The provision requires only a "substantial risk" that the child will be abused or neglected.[47]

🕮 *In re Jesus G.*

218 Cal. App. 4th 157 (2013)

Jesus G. was the subject of a wardship petition pursuant to Welf. & Inst. Code, § 602.[48] Jesus had been found incompetent to stand trial and was detained in juvenile hall.[49] He filed a petition for a writ of habeas corpus, requesting his release.[50] The petition was later denied, whereupon Jesus filed for review with the California Supreme Court.[51] The California Supreme Court granted the petition for review and ordered the Court of Appeal to show cause as to why Jesus' continued detention did not deny him due process.[52] The Court of Appeal held that a minor detained in juvenile hall who has not attained competency must be provided with adequate services to aid him in reaching competency.[53]

Jesus was initially admitted to a psychiatric hospital for attempted suicide.[54] During interviews there, Jesus and his mother revealed that he had been touching his brothers' genital areas.[55] An original wardship

[42] *Id*.
[43] *Id*.
[44] *Id*. at 772.
[45] *Id*.
[46] *Id*. at 773.
[47] *Id*.
[48] *In re* Jesus G., 218 Cal. App. 4th 157 (2013).
[49] *Id*.at 159.
[50] *Id*.
[51] *Id*.
[52] *Id*.
[53] *Id*.
[54] *Id*. at 160.
[55] *Id*.

petition was then filed, alleging two counts of committing a forcible lewd act on a child and two counts of an attempted forcible lewd act upon a child.[56] Following the filing of the petition, Jesus was detained in juvenile hall.[57]

Jesus' counsel questioned Jesus' competency to stand trial and the court appointed Dr. Timothy Collister to perform a competency evaluation on May 30, 2012.[58] Dr. Collister found that Jesus was generally depressed and unhappy, had problems with attention and memory, and acted inappropriately.[59] Moreover, Dr. Collister found Jesus incompetent pursuant to Welf. & Inst. Code, § 709.[60] Dr. Collister felt that Jesus' mental disorder prevented him from understanding the nature of the criminal proceedings against him, as well as courtroom procedures.[61]

At the competency hearing on September 18, 2012, Dr. Collister testified that Jesus' problem was developmental immaturity rather than a mental disorder.[62] This meant that Jesus' condition could improve over time, but training Jesus would not necessarily remedy the situation.[63] Even after Dr. Collister attempted to explain the criminal proceedings to Jesus, Jesus still could not understand any of the legal concepts.[64] Accordingly, the court determined that Jesus was incompetent to stand trial.[65]

The Court of Appeal issued an order to show cause that Jesus' prolonged detention did not deny Jesus due process of law.[66] The order to show cause explained that Jesus had been provided services to assist him in attaining competency, that nothing indicated that the services were ineffective, and that he had not been detained for an unreasonable time on an unreasonable basis.[67]

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[56] *Id*.
[57] *Id*.
[58] *Id*. at 162.
[59] *Id*. at 163.
[60] *Id*.
[61] *Id*.
[62] *Id*.
[63] *Id*. at 164.
[64] *Id*.
[65] *Id*.
[66] *Id*. at 166.
[67] *Id*. at 167.

🕮 *People v. Murray*

203 Cal. App. 4th 277 (2012)

Christopher Murray was resentenced to life without parole after pleading no contest to two counts of first-degree murder and one count of attempted murder.[68] On appeal, Murray claimed that the sentence violated constitutional prohibitions against cruel and unusual punishment, as he was only 17 years old when the crimes were committed.[69] The California Court of Appeal determined that the sentence was constitutional.[70] It held that minors who are 16 or 17 years old and convicted of a special circumstance murder are not subject to the rule prohibiting life-without-parole sentences for non-homicide offenses.[71] In this case, the court held multiple murders constituted a special circumstance.[72]

Murray entered an open plea of no contest to the first-degree murders and the attempted murder, subject to trial on the question of whether he had been sane when the crimes occurred.[73] The jury concluded that Murray had been sane and imposed life without parole for the murders, twenty-five years to life for a firearm-use enhancement, the upper term of nine years for the attempted murder, and twenty years for the other firearm-use enhancement.[74] On remand for resentencing, the trial court modified the sentence for the second murder count by reducing it from life without parole to a sentence of twenty-five years to life.[75]

The court explained that minors who are 16 or 17 years old and convicted of a special circumstance murder could be sentenced to life-without-parole ("LWOP") or twenty-five years to life.[76] Murray was eligible for LWOP because multiple murders constituted a special circumstance.[77] In 2010, the Supreme Court declared a rule that prohibited imposing LWOP sentences on minors who were convicted of non-homicide offenses.[78] Murray argued that the rule should be extended to

[68] People v. Murray, 203 Cal. App. 4th 277 (2012).
[69] *Id*. at 280.
[70] *Id*.
[71] *Id*. at 284.
[72] *Id*. at 282.
[73] *Id*. at 284.
[74] *Id*. at 281.
[75] *Id*.
[76] CAL. WELF. & INST. CODE § 190.5 (West).
[77] *Murray*, 203 Cal. App. 4th at 282.
[78] Graham v. Florida, 560 U.S. 48 (2010).

juveniles convicted of murder because an LWOP sentence violated the Eighth Amendment. The Court of Appeal declined to do so.[79]

The Court of Appeal reasoned that defendants who are charged with non-homicide offenses are more deserving of a lesser punishment than those charged with murder.[80] The Court noted that Murray "followed his victims into a secluded area where, backed by two armed accomplices, he gunned down his helpless victims."[81] Accordingly, they established that Murray's no-parole life sentence was not disproportionate to the gravity of his crimes, and thus, not a form of cruel and unusual punishment.[82]

Legislation

CALIFORNIA

🕮 A.B. 166

2013-2014 Leg., Reg. Sess.

On August 26, 2013, California Governor Jerry Brown signed Assembly Bill 166 ("AB 166") into law, which provides support to advance students' understanding of finances.[83] AB 166 amends Section 51284 of the Education Code, altering "financial preparedness" to "financial literacy" in the curricular framework for social sciences, health and mathematics.[84] Financial literacy incorporates budgeting and managing credit, student loans, consumer debt, and identity theft security.[85]

AB 166 is a response to a growing concern for the financial future of current youth.[86] According to AB 166's author, California Assembly Member Roger Hernández, most high school students graduate without receiving any education on personal finance, and thus are unprepared for waves of financial crisis that Californians may face.[87] According to the

[79] *Murray*, 203 Cal. App. 4th at 283.
[80] *Id.*
[81] *Id.* at 285.
[82] *Id.*
[83] A.B. 166, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[84] ASSEMBLY COMMITTEE ON EDUCATION, BILL ANALYSIS, A.B. 166, 2013-2014 Leg. (Cal. 2013).
[85] *Id.*
[86] *Id.*
[87] *Id.*

findings in the bill, two in five adults grade their knowledge of personal finance as below satisfactory and ninety-three percent of Americans support financial literacy education as part of the high school course of study.[88] The estimated administrative cost to implement AB 166 is less than $75,000 according to the Assembly Appropriations Committee, and will be incorporated in the State Department of Education's expenditures.[89]

AB 166 received registered support from thirteen organizations, including California Bankers Association, California Jump$tart Coalition for Personal Financial Literacy, and California Council on Economic Education.[90] One reason for the overwhelming support for AB 166 is that thirteen other states have personal finance as a graduation requirement.[91] As stated in the law itself, "it is imperative that California encourage the provision of financial literacy instruction for all students."[92] By encouraging youth to take part in analyzing their current and future finances, they will be prepared to face the reality of incurring student debt and make educated financial decisions.

🕮 A.B. 256

2013-2014 Leg., Reg. Sess.

On October 10, 2013, California Governor Jerry Brown signed into law Assembly Bill 256 ("AB 256"),[93] authored by Cristina Garcia (D-Bell Gardens).[94] The new law updates existing legislation on cyber-bullying by extending liability to acts that occur off the school site.[95] Under existing law, a principal or a superintendent may only suspend a student for an electronic act that is related to a school activity or occurs on school grounds.[96]

"Bullying" was previously defined as any severe or pervasive physical or verbal act or conduct, including communications made in

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[88] A.B. 166, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[89] ASSEMBLY COMMITTEE ON APPROPRIATIONS, BILL ANALYSIS, A.B. 166, 2013-2014 Leg. (Cal. 2013).
[90] ASSEMBLY COMMITTEE ON EDUCATION, *supra* note 84.
[91] *Id*.
[92] A.B. 166, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[93] A.B. 256, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[94] *Id*.
[95] *Id*.
[96] *Id*.

writing or by means of an electronic act.[97] The new law revises the definition of "electronic act" to include creation and transmission originated on or off the school site, by means of an electronic device.[98] By expanding the law to include actions off school grounds, the scope of acts that school administrations can punish is greatly expanded.

According to the author, the intent of this bill is not to increase punishment or add new responsibilities by requiring schools to increase the monitoring of students' off-campus activities.[99] Rather, it is designed to clarify that when an administrator suspends or recommends expulsion of a student for cyber-bullying, the cyber-bullying need not have taken place at school.[100]

AB 256 amends Section 48900 of the California Education Code and became effective on January 1, 2014.[101]

🕮 A.B. 631

2013-2014 Leg., Reg. Sess.

On August 26, 2013, California Governor Jerry Brown signed Assembly Bill 631 ("AB 631") into law, which improves the education curriculum for pupils in juvenile court.[102] The bill, authored and introduced by Assembly Member Steven Fox, amends Section 48645.3 of the Education Code, relating to pupils in juvenile court schools.[103] It authorizes county boards of education to enforce enhanced instruction for pupils attending juvenile court schools by modifying the course of instruction for each pupil rather than restricting it to the requirements of a regular school.[104]

AB 631 is a response to the poor academic performance of pupils in juvenile court schools, where some students are three grades behind in performance.[105] Prior to AB 631, juvenile court schools were not

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[97] CAL. EDUC. CODE § 48900.
[98] *Id.*
[99] ASSEMBLY COMMITTEE ON EDUCATION, BILL ANALYSIS, A.B. 256, 2013-2014 Leg. (Cal. 2013).
[100] *Id.*
[101] A.B. 256
[102] A.B. 631, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[103] *Id.*
[104] SENATE COMMITTEE ON EDUCATION, BILL ANALYSIS, A.B. 631, 2013-2014 Leg. (Cal. 2013).
[105] *Id.*

categorized as alternative schools. Without the categorization as an alternative school, juvenile court schools were obliged to meet the broad federal curriculum standards of a regular school, despite the needs of the students.[106] Under AB 631, county boards of education are allowed flexibility to adopt a course of study that enhances instruction in mathematics and English for pupils attending juvenile court schools in their jurisdiction.[107] The bill further requires that the newly adopted enhanced course of study be tailored to meet the needs of individual pupils and to increase the pupil's academic literacy and reading fluency, in addition to common core standard expected of their grade level.[108]

The bill had registered support from five organizations including California Federation of Teachers and the Los Angeles County Office of Education, and received no registered opposition.[109] By focusing on improving their performance in math and reading, AB 631 is designed to encourage these students "to continue their education when they see progress in their math and reading abilities."[110]

🕮 A.B. 1108

2013-2014 Leg., Reg. Sess.

Passed on October 12, 2013, California Assembly Bill 1108 ("AB 1108") prohibits certain registered sex offenders from working, residing, or volunteering in foster homes and facilities.[111] The bill was sponsored by Democrats Henry Perea and Jim Frazier and co-sponsored by Democrats Bob Blumenfield, Isadore Hall, Rudy Salas, and Republican Brian Malenschein.[112] The California District Attorney's Association, the California Probation, Parole, Correctional Association, and the Child Abuse Prevention Center, and others supported the bill.[113]

AB 1108 adds Section 3003.6 to the Penal Code.[114] The new

[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] A.B. 1108, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[112] OPEN STATES, http://openstates.org/ca/bills/20132014/AB1108/#billtext (last visited March 13, 2014).
[113] ASSEMBLY COMMITTEE ON PUBLIC SAFETY, BILL ANALYSIS, A.B. 1108, 2013-2014. (Cal. 2013), *available at* http://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml.
[114] A.B. 1108, 2013-2014 Leg., Reg. Sess. (Cal. 2013).

section specifically applies to anyone required to register based upon the commission of an offense against a minor pursuant to Section 290.[115] Those individuals are prohibited from residing, except as a client, and from working or volunteering in any: daycare or children's residential facility licensed by the State Department of Social Services, agency-certified foster home, county child welfare services-approved foster home, and any home or facility where a child dependent of the juvenile court has been placed.[116] Violators of the new legislation will be guilty of a misdemeanor.[117]

🕮 S.B. 145

2013-14 Reg. Sess.

California Senate Bill 145 ("SB 145"), approved by Governor Jerry Brown on October 12, 2013, amends California's child pornography laws.[118] SB 145 was authored by Senator Fran Pavley, and the bill received unanimous support from the California Assembly and Senate.[119] The bill was presented as a necessary amendment to California's child pornography sentencing laws, which were among the weakest in the United States.[120]

SB 145 alters the prosecution of child pornography cases in two ways.[121] First, the bill expands the intent element and sentencing for child pornography convictions.[122] SB 145 makes it a misdemeanor or felony to send harmful material to one they know or have reason to know to be a minor.[123] For purposes of this bill, "harmful matter" is material with a primary sexual nature.[124] Offenses involving harmful material depicting a minor will carry a higher sentence than material that does not.[125]

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[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] S.B. 145, 2013-14 Reg. Sess. (Cal. 2013).
[119] Perry Smith, *Pavley's Child Porn Law Receives Brown's Signature*, KHTM (Oct. 15, 2013, 9:26 AM), http://hometownstation.com/santa-clarita-news/pavleys-child-porn-law-receives-browns-signature-38368.
[120] *Id.*
[121] S.B. 145, 2013-14 Reg. Sess. (Cal. 2013); Smith, *supra* note 119.
[122] S.B. 145, 2013-14 Reg. Sess. (Cal. 2013).
[123] *Id.* Past law made it a crime for a person to electronically send harmful matter to one they know to be a minor with the intent of satisfying a sexual desire. *Id.*
[124] CAL. PENAL CODE § 313.
[125] S.B. 145, 2013-14 Reg. Sess. (Cal. 2013).

Secondly, SB 145 identifies more egregious child pornography offenses and increases the penalty thereof.[126] These offenses include to knowingly possess or control child pornography depicting sexual sadism or masochism[127] and to knowingly possess or control a child pornography collection of over six hundred images with at least ten images of young children.[128] The two new classification of "aggravated possession" of child pornography[129] are punishable by imprisonment of up to five years.[130]

🕮 S.B. 177

2013-2014 Leg., Reg. Sess.

On February 2, 2013, California Senator Carol Liu introduced Senate Bill 177 ("SB 177"), the Homeless Youth Education Success Act.[131] After unanimously passing through both the House and the Senate, Governor Jerry Brown signed it into law on October 2, 2013.[132] Pursuant to the federal McKinney-Vento Homeless Assistance Act, this bill seeks to dismantle any legal barriers that keep homeless and foster youth from receiving the same educational opportunities available to other children.[133]

The bill stems from a concern that standard school policies, such as the requirement of parent signatures and other documentation, presents educational barriers to homeless and foster youth.[134] It aims to engage the collaborative efforts of the Department of Education and the Department of Social Services to protect the educational rights of homeless and foster children.[135] Specifically, the bill provides that a homeless or foster child immediately meets all residency requirements to ensure that each student can easily access academic resources, services, extracurricular and

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[126] *Id.*
[127] *Id.* Under current law, to knowingly possess or control child pornography is a felony punishable by imprisonment for up to three years. *Id.*
[128] *Id.*
[129] *Senator Pavley Announces Bill To Increase Penalties For Possessing Child Pornography*, SENATOR FRAN PAVLEY (Jan. 31, 2013), http://sd27.senate.ca.gov/news/2013-01-31-senator-pavley-announces-bill-increase-penalties-possessing-child-pornography.
[130] S.B. 145, 2013-14 Reg. Sess. (Cal. 2013).
[131] SENATE COMMITTEE ON EDUCATION, BILL ANALYSIS, S.B. 177, 2013-2014 Leg. (Cal. 2013).
[132] S.B. 177, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[133] *Id.*
[134] SENATE FLOOR, BILL ANALYSIS, S.B. 177, 2013-2014 Leg. (Cal. 2013).
[135] SENATE COMMITTEE ON EDUCATION, *supra* note 131.

enrichment activities, and is not limited by their homeless or foster status.[136] SB 117 undoes many bureaucratic impediments so homeless and foster youth can easily access the same educational and extracurricular opportunities available to their home-secure counterpart.

🕮 S.B. 260

2013-2014 Leg., Reg. Sess.

California Senate Bill 260 provides juvenile offenders who were tried as adults and sentenced to adult prison with a "Youth Offender Parole Hearing" to review their suitability for parole and provide a meaningful opportunity for release. [137] The bill recognizes that juveniles are less cognitively developed than adults, and are therefore less culpable for their actions and have a greater possibility for rehabilitation.[138] The law, which amended California Penal Code sections 3041, 3046, 3051, and 4801,[139] was approved by Governor Jerry Brown on September 13, 2013 and went into effect on January 1, 2014.[140]

Prisoners are eligible for Youth Offender Parole Hearings after 15, 20, or 25 years of imprisonment, depending on their initial sentence.[141] If the prisoner is eligible for parole sooner than the 15, 20, or 25 years, existing parole procedures apply.[142] Six years before their earliest parole

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[136] *Id.*

[137] CAL. PENAL CODE § 3051(e) (West 2014) ("The youth offender parole hearing to consider release shall provide for a meaningful opportunity to obtain release. The board shall review and, as necessary, revise existing regulations and adopt new regulations regarding determinations of suitability made pursuant to this section, subdivision (c) of Section 4801, and other related topics, consistent with relevant case law, in order to provide that meaningful opportunity for release"); CALIFORNIA YOUTH OFFENDER PAROLE HEARINGS, SB 260: A SUMMARY OF WHAT THE NEW LAW IS INTENDED TO DO, http://fairsentencingforyouth.org/wp/wp-content/uploads/2013/03/YOPH-SB-260-Info-Packet-v1.1.pdf (last visited Feb. 19, 2014) [hereinafter CALIFORNIA YOUTH OFFENDER PAROLE HEARINGS].

[138] SENATE BILL 260 – JUSTICE FOR JUVENILES WITH ADULT PRISON SENTENCES, http://fairsentencingforyouth.org/legislation/senate-bill-260-justice-for-juveniles-sentenced-to-adult-prison-terms/ (last visited Feb. 19, 2014).

[139] CALIFORNIA YOUTH OFFENDER PAROLE HEARINGS, *supra* note 137.

[140] S.B. 260, 2013-14 Reg. Sess. (Cal. 2013).

[141] *Id.* The bill makes a prisoner eligible for release on parole during the fifteenth year of incarceration of the person received a determinate sentence, during the twentieth year of incarceration if the sentence was less than 25 years to life, and during the twenty-fifth year of incarceration if the sentence was 25 years to life.

[142] CALIFORNIA YOUTH OFFENDER PAROLE HEARINGS, *supra* note 137.

eligibility date, the Board of Parole Hearings must meet with prisoners who committed juvenile offenses.[143] At that meeting, the Board must provide individualized recommendations regarding work assignments, rehabilitative programs, and institutional behavior,[144] and provide those recommendations in writing.[145]

At a Youth Offender Parole Hearing, the Board must "give great weight to" the "hallmark features of youth,"[146] the fact that juveniles are not as responsible for their actions as adults, and any growth the prisoner has displayed since being incarcerated.[147] Family members, school personnel, faith leaders, and other third parties may submit statements to the Board.[148]

🕮 S.B. 274

2013-2014 Leg., Reg. Sess.

On October 4, 2013, California Governor Jerry Brown signed into law Senate Bill 274 ("SB 274"), authored by Senator Mark Leno (D-San Francisco).[149] The new law affects many aspects of family law including parentage, child custody, visitation, child support, and adoption. SB clarifies how many legal parents a child in California can have.[150] In 2011, the California Court of Appeal held that when two or more people meet the legal definition of a parent, a court may recognize only two of them as legal parents.[151] SB 274 changes the previous case law by allowing more than two persons to be found legal parents of a child.[152]

Existing law provides a number of ways a person may be legally considered a parent of a child.[153] These include giving birth, a biological connection to the child, marital status, or status as a domestic partner.[154]

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[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] S.B. 260, 2013-14 Reg. Sess. (Cal. 2013).For example, youths take more risks and are subject to peer pressure.
[147] *Id.*
[148] *Id.*
[149] S.B. 274, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[150] *Id.*
[151] SENATE COMMITTEE ON JUDICIARY, BILL ANALYSIS, S.B. 274, 2013-2014 Leg. (Cal. 2013).
[152] S.B. 274, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[153] SENATE COMMITTEE ON JUDICIARY, *supra* note 151.
[154] *Id.*

California law also presumes that a person is a parent if he has received a child into his home and has openly held that child out as his own.[155] SB 274 recognizes that it is possible for more than two people to have claims to parentage.[156]

SB 274 permits a court to find that more than two persons with a legal claim to parentage are parents if the court finds that recognizing only two parents would be detrimental to the child.[157] This bill requires any reference in existing law to two parents to be interpreted to apply to all of a child's parents.[158] It further requires the court to allocate custody and visitation among the parents based on the best interests of the child, and provides that the statewide uniform child support guideline applies in any case in which a child has more than two parents.[159]

SB 274 amends Sections 3040, 4057, 7601, 7612, and 8617 of and to add Section 4052.5 to, the California Family Code, relating to family law.[160] The bill went into effect on January 1, 2014.[161]

🕮 S.B. 458

2013-2014 Leg., Reg. Sess.

In 1997, ten years after the Los Angeles County Sheriff's Department began collecting and storing personal information about alleged gang members,[162] the California Department of Justice created CalGang, a statewide gang reporting system.[163] CalGang is accessible to officers in 58 counties,[164] and is used by law enforcement to track gang members as they move across city and state lines.[165] The database is

[155] CAL. FAM. CODE § 7611(d).
[156] S.B. 274, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[157] SENATE COMMITTEE ON JUDICIARY, *supra* note 151.
[158] *Id.*
[159] *Id.*
[160] S.B. 274, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[161] *Id.*
[162] A system called the Gang Reporting, Evaluation, and Tracking System (GREAT).
[163] SENATE COMMITTEE ON PUBLIC SAFETY, BILL ANALYSIS, S.B. 458, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[164] *Id.*
[165] *Challenging a gang database*, LOS ANGELES TIMES (June 25, 2013), http://articles.latimes.com/2013/jun/25/opinion/la-ed-gangs-database-california-sb458-20130625.

imperfect, however, and erroneously lists some juveniles as being gang affiliates or members.[166]

Inclusion in CalGang is used to add people to gang injunctions, argue for gang enhancements in court, deny families victims' assistance when an alleged gang member is killed or injured, and to deny access to public housing for entire families.[167] Until the enactment of Senate Bill 458 ("SB 458"), law enforcement could add a juvenile to CalGang without notifying the juvenile, or his or her parent or guardian.[168] SB 458, which was signed into law by Governor Jerry Brown on October 13, 2013, [169] requires local law enforcement agencies to provide written notice to a juvenile and his or her parent or guardian before the agency designates the juvenile as a gang member, associate, or affiliate in CalGang.[170] Law enforcement must also provide the reason for the designation, allow for the juvenile or the parent or guardian to submit written documentation contesting the designation, and provide the juvenile with written verification of its decision within sixty days.[171]

According to the bill's primary sponsor, Senator Roderick Wright, "under this bill, law enforcement can partner with parents to lead children down the right path, instead of simply putting them under surveillance until they run afoul of the law and end up in jail."[172]

🕮 S.B. 568

2013-2014 Leg., Reg. Sess.

On September 23, 2013, California Governor Jerry Brown signed California Senate Bill 568 into law.[173] SB 568 will go into effect January 1, 2015.[174] The first part of the bill prohibits certain online advertising to

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[166] *Id.*
[167] SENATE COMMITTEE ON PUBLIC SAFETY, *supra* note 163.
[168] *Id.*
[169] S.B. 458, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[170] CAL. PENAL CODE 186.34(d) (West).
[171] S.B. 458, 2013-2014 Leg., Reg. Sess. (Cal. 2013).
[172] *Brown Oks Parental Notification If Child Added To Gang Database*, CBS LOS ANGELES (Oct. 14, 2013, 11:26 AM), http://losangeles.cbslocal.com/2013/10/14/brown-signs-law-requiring-notification-if-child-added-to-gang-database/.
[173] S.B. 568, 2013-14 Reg. Sess. (Cal. 2013); Erika Aguilar, *Update: Gov. Jerry Brown Signs Bill Increasing Online Privacy for Minors in California*, KPCC (Sept. 23, 2013, 3:07 PM), http://www.scpr.org/news/2013/09/23/39426/california-teenagers-could-get-an-online-eraser-bu/.
[174] S.B. 568, 2013-14 Reg. Sess. (Cal. 2013)

minors.[175] The second part is often referred to as the "eraser button" law.[176] The "eraser button" law will require online or mobile operators to allow its registered, underage users to remove, or request to remove, content that the minor has posted on the site.[177] The law would only apply to operators with "actual knowledge" that their products and services are being used by minors.[178] Operators must notify their underage users of their right to remove content and provide instruction on how to do so.[179]

The eraser portion of SB 568 has garnered significant media attention.[180] Supporters believe the bill will protect minors from the long-lasting effects of impulsive, ill-conceived posts.[181] Many critics, however, consider the bill to be well-meaning, but ill-advised.[182] Critics have argued that the broad reach of the bill raises constitutional Commerce Clause concerns.[183]

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[175] *Id.*; *see* Jacob Gershman, *California Gives Teens A Do-Over*, WALL ST. J. (Sept. 25, 2013, 3:25 PM), http://blogs.wsj.com/law/2013/09/25/calif-gov-brown-signs-bill-giving-teens-online-eraser/ ("The new law also prohibits web sites from targeting minors with ads for goods or services that they cannot legally purchase themselves, such as alcoholic beverages, firearms, ammunition, tobacco products, fireworks, lottery tickets, tattoos and drug paraphernalia.").

[176] Aguilar, *supra* note 1873*;* Penelope Glover, Gilbert Castro & Chesley Quaide, *Could California's "Eraser Law" Undermine School Investigations of Alleged Online Misconduct?*, AALRR (Nov. 8 2013), http://www.aalrreducationlaw.com/could-californias-eraser-law-undermine-school-investigations-of-alleged-online-misconduct/.

[177] S.B. 568, 2013-14 Reg. Sess. (Cal. 2013)

[178] *Id.*

[179] Lisa B. Kim, Joshua B. Marker & Paul Cho, *United States: Does SB 568, California's New 'Eraser Button' law, Apply To You?*, MONDAQ (Nov. 3, 2013), http://www.mondaq.com/unitedstates/x/272758/Data+Protection+Privacy/Does+SB+568+Californias+New+Eraser+Button+law+Apply+To+You.

[180] *See, e.g.*, Eric Goldman, *California's New 'Online Eraser' Law Should be Erased*, FORBES (Sept. 24, 2013, 1:35 PM), http://www.forbes.com/sites/ericgoldman/2013/09/24/californias-new-online-eraser-law-should-be-erased/ (raising possible challenges against S.B. 568).

[181] Aguilar, *supra* note 173.

[182] Somini Sengupta, *Sharing, With a Safety Net*, N.Y. TIMES (Sept. 19, 2013), http://www.nytimes.com/2013/09/20/technology/bill-provides-reset-button-for-youngsters-online-posts.html.

[183] Aguilar, *supra* note 173; Kim, Marker & Cho, *supra* note 179 (writing how SB 568 would apply to operators everywhere "as long as their website, product, or service is visited or used by a California resident").

Opponents also call the bill unrealistic and unnecessary.[184] The nature of the internet makes it difficult to truly delete posts, and the vague language of the bill allows operators to circumvent the bill's requirements by adopting intricate policies.[185] Furthermore, SB 568 could affect schools' abilities to investigate and discipline alleged online misconduct by minor students.[186]

🕮 S.B. 569

2013-2014 Leg., Reg. Sess.

On October 13, 2013, California Senate Bill 569 ("SB 569") was signed into law.[187] The bill requires interrogations of minors suspected of murder be electronically recorded.[188] Democratic Senator Ted Lieu introduced the bill on February 22, 2013.[189]

Previously, California law provided that under certain conditions, the statements of perpetrators, witnesses, and victims of particular crimes could be electronically recorded.[190] The bill added Section 859.5 to the California Penal Code and Section 626.8 to the California Welfare and Institutions Code.[191] Section 859.5(a) reads: "Except as otherwise provided in this section, a custodial interrogation of a minor, who is in a fixed place of detention, and suspected of committing murder, . . . shall be electronically recorded in its entirety."[192] An electronically recorded statement guarantees that the statement was accurately given "provided that the electronic recording was made of the custodial interrogation in its entirety and the statement is otherwise admissible."[193] The legislature believes that recording interrogations would decrease wrongful convictions and enhance the public perception of law enforcement officers.[194]

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[184] Gregory Ferenstein, *On California's Bizarre Internet Eraser Law For Teenagers*, TECHCRUNCH (Sept. 24, 2013), http://techcrunch.com/2013/09/24/on-californias-bizarre-internet-eraser-law-for-teenagers/.
[185] *Id.*, *see* Aguilar, *supra* note 173.
[186] Glover, Castro & Guaide, *supra* note 176.
[187] S.B. 569, 2013-2014 Reg. Sess. (Cal. 2013).
[188] *Id.*
[189] *Id.*
[190] *Id.*
[191] *Id.*
[192] Cal. Pen. Code, § 859.5.
[193] S.B. 569, 2013-2014 Reg. Sess. (Cal. 2013).
[194] *Id.*

There are several exceptions to the recording requirement.[195] These exceptions include if the electronic recording is not possible because of exigent circumstances, if the interrogation occurred in a jurisdiction where there is not the electronic recordation requirement, and if the statements were made during a routine questioning during an arrest.[196] Most of the exceptions require the reasons and circumstances for the lack of recording to be included in a police report.[197]

[195] *Id.*
[196] *Id.*
[197] *Id.*