RECENT COURT DECISIONS AND LEGISLATION

UNITED STATES SUPREME COURT

🕮 *Montgomery v. Louisiana*
136 S. Ct. 718 (2016)

In 1963, Henry Montgomery ("Defendant") was found guilty and received the death penalty for the murder of deputy sheriff Charles Hurt, a crime that Defendant committed less than two weeks after he turned 17.[1] Defendant appealed to the Louisiana Supreme Court, and his conviction was overturned because of community prejudice.[2] At his new trial, Defendant was convicted and sentenced to life in prison without parole.[3]

In 2012, the U.S. Supreme Court ("USSC") decided *Miller v. Alabama*[4] in which the Court held that sentencing children convicted of homicide to life imprisonment without the possibility of parole violates the Eighth Amendment as cruel and unusual punishment.[5] As a result of this decision, Defendant filed a motion in state court to correct what he argued was now an illegal sentence.[6] The trial court denied Defendant's motion, and the Louisiana Supreme Court denied his application, holding that the decision in *Miller* did not apply retroactively.[7] The USSC granted certiorari and considered whether the Court's decision in *Miller* applied retroactively and if the Court had jurisdiction to review the Louisiana Supreme Court's determination.[8]

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1 *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016).
2 *Id.*
3 *Id.*
4 *Miller v. Alabama*, 132 S. Ct. 2455 (2012).
5 *Montgomery*, 136 S. Ct. at 726.
6 *Id.*
7 *Id.*
8 *Id.* at 727.

Justice Anthony M. Kennedy delivered the opinion for the 6-3 majority.[9] The Court held that, when the USSC establishes a substantive constitutional rule, that rule must apply retroactively because such a rule provides for constitutional rights that go beyond procedural guarantees.[10] Furthermore, if and when a state court fails to give effect to a substantive rule, that decision is reviewable because failure to apply a substantive rule always results in the violation of a constitutional right.[11] The Court recognized that *Miller* established a substantive rule since it prohibited the imposition of a sentence of life without parole for juvenile offenders.[12] In essence, the *Miller* rule made life without parole an unconstitutional punishment for a class of defendants based upon their status as juveniles, and such a rule is substantive rather than procedural.[13] In sum, the Court concluded that the decision in *Miller* applied retroactively and that it had jurisdiction to review Louisiana Supreme Court's decision.[14]

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[9] *Id.* at 725.

[10] *Id.* at 729.

[11] *Id.* at 732.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 725.

CALIFORNIA SUPREME COURT

🕮 *People v. Arroyo*
62 Cal. 4th 589 (2016)

Defendant Arroyo, a minor, was indicted for conspiracy to commit murder and active participation in a criminal street gang in Orange County Superior Court.[15] The grand jury additionally found that Defendant came within the provisions of Welfare & Institutions Code section 707(d)(4), meaning he could be tried as an adult.[16] Defendant initially pled not guilty, but later demurred, challenging the grand jury's authority to charge him as an adult.[17] Defendant argued that section 707(d)(4) required a preliminary hearing and information to charge a minor defendant in adult court.[18] The trial court sustained Arroyo's demurrer and allowed him to withdraw his plea.[19] The state appealed, and the Court of Appeal reversed.[20] Defendant appealed to the California Supreme Court, which held prosecutors may charge juveniles accused of certain specified offenses in adult criminal court by way of a grand jury indictment.[21]

At issue in this case was the interpretation of a provision of the Gang Violence and Juvenile Crime Prevention Act of 1998 ("Act"), passed by California voters in March 2000.[22] The Act increased punishments for certain gang-related felonies.[23] The provision in question amended section 707(d)(4) to allow prosecutors to directly file criminal charges against minor defendants accused of specified crimes in adult court rather than petitioning the court to transfer the case to adult court.[24] The law was

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15 *People v. Arroyo*, 62 Cal. 4th 589, 592 (2016).
16 *Id.*
17 *Id.*
18 *Id.*
19 *Id.*
20 *Id.*
21 *Id.*
22 Sara Raymond, *From Playpens to Prisons: What the Gang Violence and Juvenile Crime Prevention Act of 1998 Does to California's Juvenile Justice System and Reasons to Repeal It*, 30 GOLDEN GATE U. L. REV. 233 (2000).
23 *Proposition 21: Juvenile Crime Initiative Statute*, LEGISLATIVE ANALYST'S OFFICE (2000), http://www.lao.ca.gov/ballot/2000/21_03_2000.html.
24 CAL. WELF. & INST. CODE § 707.

understood to give prosecutors the power to direct-file.[25] This case addressed whether the Act allowed prosecutors to charge minors via a grand jury indictment. The Court held that the language of section 707(d)(4) authorized prosecutors to file accusatory pleadings against minors and grand jury indictments charging minors as adults, since the Penal Code includes indictments in its definition of initial pleadings.[26] The *Arroyo* decision, thus, expands prosecutorial power to charge minor defendants as adults.

[25] *Arroyo*, 62 Cal. 4th at 593.

[26] *Id*. at 594.

COURT OF APPEAL, FIRST DISTRICT

🕮 *In re Mark C.*
244 Cal. App. 4th 520 (2016)

The California Court of Appeal for the First Appellate District found that a probation condition requiring a minor to submit to warrantless searches of his "electronics including passwords" was an abuse of discretion by the trial court.[27] While the Court of Appeals upheld the other probation conditions, it invalidated the electronics search condition because it was not reasonably related to the underlying crime of possession of a knife and it could not be justified by a need to monitor compliance with the other terms of his probation.[28]

Mark C. was adjudged a ward of the court and placed on probation after he admitted to possessing a knife and pepper spray on school grounds.[29] Under probation, Mark was required to submit to searches of his "electronics including passwords," with or without a warrant.[30] The trial court found the electronic search condition was necessary to supervise another probation condition prohibiting Mark from using or possessing drugs.[31] Mark objected to this electronic search term, arguing it was invalid under *People v. Lent*,[32] unconstitutionally overbroad, and posed a risk of illegal eavesdropping.[33]

The court first noted that while trial courts have broad discretion in imposing probation conditions, that discretion is not unlimited.[34] Probation conditions must be tailored to meet the needs of the juvenile, and search conditions in particular must be tailored because minors "cannot be made subject to an automatic search condition."[35] Under *Lent*, a probation condition is invalid if it "has no relationship to the crime of which the offender was convicted, relates to conduct which is not in itself

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[27] *In re Mark C.*, 244 Cal. App. 4th 520, 525 (2016).
[28] *Id.* at 532.
[29] *Id.* at 525-26.
[30] *Id.* at 529, n.4.
[31] *Id.* at 529.
[32] *People v. Lent*, 15 Cal. 3d 481 (1975).
[33] *In re Mark C.*, 244 Cal. App. 4th at 529.
[34] *Id.* at 530.
[35] *Id.* (internal citations omitted).

criminal, *and* requires or forbids conduct which is not reasonably related to future criminality[.]"[36] The *Lent* test requires that all three prongs be satisfied before a court will invalidate a probation term.[37]

Here, the court found each prong satisfied and invalidated the electronics search condition.[38] Regarding the first prong, the government claimed that the search condition related to the underlying crime of possession of weapons because Mark claimed he needed weapons for self-defense.[39] By searching his phone, the government argued, probation officers could "monitor his associations and his possession of deadly or dangerous weapons."[40] The court disagreed, finding that there was "no evidence that Mark used electronic devices or social media to facilitate his offense, and no evidence of any connection between Mark's use of electronic devices and any illegal activity."[41] The court quickly found the second prong satisfied, noting that the use of a cell phone and using password-protected social media is not itself criminal activity.[42]

The court then found the third prong of the *Lent* test satisfied, reasoning that even if a search condition might deter future offenses and aid in monitoring compliance with the other terms of probation, it is not necessarily "reasonably related to future criminality" under *Lent*.[43] The government argued that the search condition would prevent future criminality by "mak[ing] it easier for the probation officer to determine whether Mark [was] complying with other terms of his probation."[44] The court, however, observed that ensuring compliance would also be easier if Mark had "to copy his probation officer on all his emails," or "forward all his postings on social media to his probation officer," or even wear a body camera.[45] These hypothetical requirements would be no more justified "than the actual electronics search condition in this case."[46]

The court cited *In re Erica R.*,[47] wherein an electronic search

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[36] *Id.* (internal citations omitted).

[37] *Id.* at 531.

[38] Because the court found the condition invalid under *Lent*, it did not address Mark's constitutional and statutory challenges.

[39] *In re Mark C.*, 244 Cal. App. 4th at 531.

[40] *Id.*

[41] *Id.*

[42] *Id.* at 532.

[43] *Id.* at 533.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] *In re Erica R.*, 240 Cal. App. 4th 907 (2015).

condition was held invalid because it was not related to the underlying offense of misdemeanor possession of ecstasy. In *Erica R.*, "nothing in the record connected the minor's use of electronic devices or social media to illegal drugs."[48] While Mark was disciplined occasionally at school for using a cell phone in class, and he admitted to using marijuana twice a month, the court found Mark's situation comparable to the facts in *Erica R.*[49] Because nothing in his "offense or personal history show[ed] a connection between his use of electronic devices or social media and any criminal activity," there was no reason to find that the search condition would prevent Mark from committing future criminal acts.[50] With all three prongs of *Lent* satisfied, the court found the electronic search condition invalid and struck it from Mark's probation terms.[51]

🕮 *People v. Thurston*

244 Cal. App. 4th 644 (2016)

The issue presented in this case was whether the trial court erred in holding the defendant's rape offense committed as a juvenile as a "prior conviction" for purposes of eligibility under the California three strikes law.[52] Under California Penal Code Section 1170.126, an inmate is not eligible for resentencing if he or she has a prior conviction as outlined in Section 667,[53] which includes sexually violent offenses as defined in subdivision (b) of Section 6600 of the Welfare and Institutions Code.[54]

Appellant argued that the rape offense committed as a juvenile did not constitute a "prior conviction" in the context of the statute.[55] Appellant argued that "prior convictions" do not constitute crimes committed as a juvenile.[56] The court disagreed and held that Appellant's statutory construction of the phrase "prior conviction" was contrary to legislative intent.[57] The court affirmed the prior court's holding that Appellant was not

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48 *In re Mark C.*, 244 Cal. App. 4th at 535.

49 *Id.*

50 *Id.*

51 *Id.*

52 *People v. Thurston*, 244 Cal. App. 4th 644, 652, *as modified on denial of reh'g* (Feb. 11, 2016), *review filed* (Feb. 24, 2016).

53 CAL. PENAL CODE § 667.

54 *Thurston*, 244 Cal. App. 4th at 655.

55 *Id.* at 656.

56 *Id.* at 662.

57 *Id.* at 665.

eligible for resentencing pursuant to the three strikes law.[58]

[58] *Id*. at 680.

CALIFORNIA COURT OF APPEAL, FIFTH DISTRICT

🕮 *People v. Arias*
240 Cal. App. 4th 161 (2015)

California Penal Code Section 1170.126 enumerates the criteria for post-conviction release of third-strike offenders serving indeterminate life sentences for crimes that are not serious or violent felonies.[59] Excluded from resentencing are those inmates with prior convictions for "any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12."[60] Homicide, defined in sections 187 to 191.5, is one such offense.[61]

Barney Arias ("Defendant"), an inmate serving a term of 26 years to life following conviction for felonies that were not violent, filed a petition for resentencing under California Penal Code Section 1170.126, subdivision (b).[62] Defendant had a prior juvenile adjudication for murder.[63] The trial court found him ineligible for resentencing and denied the petition.[64]

The California Court of Appeals affirmed the judgment.[65] The court held that the Three Strikes Reform Act of 2012 did not alter the circumstances under which a juvenile adjudication constitutes a "conviction" for purposes of the three strikes law.[66] The court found it clear that the electorate intended "convictions," to mean "convictions" as defined in Section 667, subdivision (d), and section 1170.12, subdivision (b).[67] Consequently, where a prior juvenile adjudication constitutes a prior serious and/or violent felony conviction for purposes of sentencing under the three strikes law,[68] it also constitutes a prior conviction for purposes of determining eligibility for resentencing under Section 1170.126,

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59 CAL. PENAL CODE § 1170.126.
60 *Id.*
61 CAL. PENAL CODE § 1170.12(C)(2)(C).
62 *People v. Arias*, 240 Cal. App. 4th 161 (2015).
63 *Id.* at 165.
64 *Id.*
65 *Id.* at 166.
66 *Id.* at 167.
67 *Id.*
68 *Id.* at 168.

subdivision (e).[69] Accordingly, Defendant was found ineligible for resentencing pursuant to section 1170.126, subdivision (e)(3) and the petition for resentencing was denied.[70]

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[69] *Id.*

[70] *Id.*

FEDERAL LEGISLATION AND EXECUTIVE ACTION

🕮 *S.B. 1177*

2015 – 2016 Leg., Reg. Sess.

On December 10, 2015, President Barack Obama signed into law the Every Student Succeeds Act ("ESSA"), a conference bill reauthorizing the Elementary and Secondary Education Act ("ESEA").[71] This bill requires that states set appropriate standards to work towards ensuring that graduation rates remain high, and that children are prepared to enter the fields of higher education and full time work.[72] It maintains accountability by providing that if students fall behind, states will target their resources towards that which will boost academic success; specifically, the lowest-performing five percent of schools, high schools with high dropout rates, and schools where specific subgroups are struggling academically.[73] The bill leaves states with the power to develop their own programs catering to their specific needs rather than offering general federal solutions.[74] It preserves annual assessments with attention to balance of standardized testing and clear annual reporting.[75] It provides more children access to preschool, allowing them to get a head start on early learning.[76] Finally, it establishes new resources to test educational practices and strategies that will continue to strengthen the nation's education system.[77]

Noting current improvements, ESSA states that the nation's graduation rate is the highest it has ever been, at 81 percent, and will rise again this year.[78] Gaps in graduation rates for minorities and disabled students are also closing.[79] In addition, the dropout rate is decreasing; for racial minorities, specifically Hispanics, blacks, and low-income youth, it

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[71] Executive Office of the President. *Every Student Succeeds Act: A Progress Report on Elementary and Secondary Education* (S. Rept. 114-231; H. Rept. 114-354), https://www.whitehouse.gov/sites/whitehouse.gov/files/documents/ESSA_Progress_Report.pdf.

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

[76] *Id.* at 3.

[77] *Id.*

[78] *Id.* at 2.

[79] *Id.*

has been nearly cut in half since 2008.[80] College enrollment for black and Hispanic students has increased by more than one million since 2008 as well.[81]

The act also discusses ongoing progress under the Obama Administration, including more children enrolled in pre-school due to increased funding; fewer standardized test assessments and altered testing methods which focus on critical thinking and problem solving; initiatives to promote better teaching and faculty support in low-income schools; a launch of the Investing in Innovation program, which based grant awards on interventions with proven success based on each school; expansion of students' access to high speed internet; and making college more affordable for low-income students receiving federal aid.[82]

Expanding and loosening some restrictions initially implemented under the No Child Left Behind Act ("NCLB"), the ESSA encourages states and local communities to raise standards for learning that align with college preparation, closing achievement gaps by rewarding innovation and targeting struggling subgroups, and promoting systems that individually cater to each educator from the beginning to the end of their careers, making the learning process stronger overall.[83]

ESSA is multifaceted, and provides many ways for states and local stakeholders to improve the conditions in their schools and education systems.[84] One of the first steps was providing states a waiver from NCLB in exchange for detailed accountability systems and state-designed educational plans.[85] ESSA also allows states to define their own goals, set their own indicators to measure success, and design their own evidence-based interventions for struggling subgroups.[86] ESSA grants the Department of Education the right to ensure that states follow through on these responsibilities.[87] Finally, ESSA allows flexibility in state funding, permitting greater spending of federal funds if states can demonstrate that they are equitably distributing the funds they currently have.[88] Provisions in ESSA also call for reporting on state and federal expenditures that are

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80 *Id.*
81 *Id.*
82 *Id.* at 5.
83 *Id.*
84 *Id.*
85 *Id.* at 6.
86 *Id.* at 8.
87 *Id.*
88 *Id.* at 9.

accessible to the public.[89]

🕮 *Executive Action*

On January 25, 2016, President Barack Obama issued executive actions adopting the Department of Justice's ("DOJ") recommendations regarding prison reform, which includes banning the placement of juveniles in solitary confinement.[90] These recommendations were based on a review of "the overuse of solitary confinement across American prisons" that the President had instructed the DOJ to conduct in July 2015.[91] The DOJ provided a report to the President that set out guiding principles, recommendations, and further suggestions for the Bureau of Prisons and correctional facilities to reform the use of "restrictive housing," or solitary confinement, in prisons.[92] Pursuant to the President's executive action, the relevant federal agencies must review the report and report back to the President on their updated prison policies regarding the use of solitary confinement.[93]

The DOJ's report sets out over fifty guiding principles to serve as a roadmap for correctional facilities across the nation towards prison reform.[94] Among a range of topics, the guiding principles provide direction on the use of disciplinary segregation, protective custody, and long-term protective segregation.[95] Emphasizing the potentially grave and long-lasting harms of restrictive housing, the report concludes that "it is the responsibility of all governments to ensure that this practice is used only as necessary—and never as a default solution."[96] Accordingly, the report recommends ending the placement of juveniles into restrictive housing, and using any restrictive housing on juveniles only as a temporary response to a serious behavioral issue that poses an immediate danger to any

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89 *Id.*

90 Press Release, Office of the Press Sec'y of the White House, *Fact Sheet: Dep't of Justice Review of Solitary Confinement* (Jan. 25, 2016), https://www.whitehouse.gov/the-press-office/2016/01/25/fact-sheet-department-justice-review-solitary-confinement.

91 *Id.*

92 U.S. DEP'T OF JUSTICE, EXEC. OFFICE OF THE PRESIDENT, REPORT AND RECOMMENDATIONS CONCERNING THE USE OF RESTRICTIVE HOUSING (2016), https://www.justice.gov/restrictivehousing.

93 *Id.*

94 *Id.* at 94-103.

95 *Id.*

96 *Id.* at 2.

individual.[97] The guiding principles establish strict recommendation guidelines for its use.[98]

According to the report, between September 2014 and September 2015, the Bureau of Prisons was notified of only thirteen juveniles put into solitary confinement in its contracted prisons.[99] However, as a use of the President's executive powers, the ban is a powerful act of public policy, recognizing the urgency of addressing the extreme psychological impacts that long-term segregation can have on juveniles.

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97 *Id.* at 101.

98 *Id.* at 94-103.

99 *Id.* at 61.

CALIFORNIA LEGISLATION

🕮 *S.B. 261*

2015 – 2016 Leg., Reg. Sess.

On October 3, 2015, California Governor Jerry Brown signed Senate Bill 261 ("SB 261") into law, which expands the age qualification for the youth offender parole process.[100] SB 261 amends California Penal Code Sections 3051 and 4801, changing the application of youth offender parole hearing from prisoners who committed his or her controlling offense when under 18 years of age to 23 years of age. The youth offender parole hearing requires the California Department of Corrections' Board of Parole Hearings ("Board") to give great weight towards the diminished culpability of juveniles as compared to adults in its parole suitability evaluation of the prisoner.[101]

SB 261 is a response to prison overcrowding.[102] According to the State's most recent status report regarding youth offender parole hearings under the previous law, "the Board held 534 youth offender hearings [within a three month period], resulting in 158 grants [of release]."[103] However, the bill does not mandate a reduced sentence or release on parole, and the Board still has to examine each inmate's suitability for parole.[104]

According to the bill's author, Senator Loni Hancock (D-09), "[r]ecent neurological research shows that cognitive brain development continues well beyond age 18."[105] Sen. Hancock further argued that this research indicates that certain areas of the brain, particularly those affecting judgment and decision making, do not fully develop until early to mid-20s years of age.[106]

The Senate Appropriations Committee estimates that the

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100 S.B. 261, 2015-2016, Leg., Reg. Sess. (Cal. 2016).

101 *Id.*

102 SENATE COMMITTEE ON PUBLIC SAFETY, BILL ANALYSIS, S.B. 261, 2015-2016 Reg. Sess. (Cal. 2016).

103 *Id.*

104 ASSEMBLY COMMITTEE ON PUBLIC SAFETY, FLOOR ANALYSIS, S.B. 261, 2015-2016 Reg. Sess. (Cal. 2016).

105 SENATE RULES COMMITTEE, FLOOR ANALYSIS, S.B. 261, 2015-2016 Reg. Sess. (Cal. 2016).

106 *Id*.

administrative cost of SB 261 includes a significant one-time cost of $1.3 million to implement changes for an estimated 800 eligible inmates and potential future annual costs of hundreds of thousands of dollars, depending on the rate at which the Board conducts hearings.[107] These costs are to be paid out of the General Fund.[108] AB 261 received registered support from twenty-six organizations, including the three co-sources of the bill: Anti-Recidivism Coalition, Human Rights Watch, and the National Center for Youth Law.[109]

By expanding the age applicable for youth parole hearings, the California prison system will be in sync with developing research regarding cognitive development explained by Sen. Hancock.

🕮 *S.B. 319*

2015 – 2016 Leg., Reg. Sess.

On October 6, 2015, California Governor Jerry Brown signed Senate Bill 319 (SB 319) into law, which expands the duties of the foster care public health nurse ("foster care nurse") to include monitoring the administration of psychotropic medication to foster children.[110] This bill requires foster care nurses to assist non-minor dependents[111] with making informed decisions about his or her health care at the request of the non-minor dependent.[112] Moreover, SB 319 amends Section 56.103 of the Civil Code and Section 5328.04 of the Welfare and Institutions Code to authorize health care providers to disclose medical information to a foster care nurse.[113] The bill also amends Section 16501.3 of the Welfare and Institutions Code to state that medical care planning shall include the monitoring of psychotropic medications.[114]

The purpose of SB 319 is to utilize foster care nurses in medical monitoring of psychotropic drugs and reduce the number of children

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[107] *Id.*

[108] *Id.*

[109] *Id.*

[110] S.B. 319, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

[111] A "non-minor dependent" for purposes of this legislation is a person in foster care who is deemed either 1) a dependent child or ward of the juvenile court, or 2) a non-minor under the transition jurisdiction of the juvenile court. Non-minor dependents can remain in the foster care system up to the age of 21. *See* CAL. WELF. & INST. CODE § 11400(v).

[112] *See* S.B. 319, *supra* note 110.

[113] *Id.*

[114] *Id.*

prescribed these drugs.[115] According to the bill's author, Senator Jim Beall (D-15), research findings show that nearly one in four foster children receive psychotropic drugs.[116] Further, the findings show that inadequate administration of these drugs to youth causes them to experience long-term side effects such as diabetes, heart disease, and irreversible tremors.[117] The findings reference growing concerns that California's child welfare and children's mental health systems rely on prescribing psychotropic medications as a means of controlling—instead of treating—youth who suffer from trauma-related behavioral health changes.[118]

SB 319 received registered support from 22 organizations, including the bill's sponsors: National Center for Youth Law, Youth Law Center, and California Nurses Association.[119] Supporters claim that SB 319 strengthens California's Health Care Program for Children in Foster Care by giving foster care nurses direct access and authority in treating thousands of foster youth.[120] The bill may result in significant ongoing costs for foster care nurses to oversee the medications, in addition to an estimated six million dollars and for social workers to work with foster care nurses in coordinating health care services.[121]

🕮 *S.B. 484*

2015 – 2016 Leg., Reg. Sess.

Senate Bill 484 ("SB 484") was signed into law by Governor Jerry Brown on October 6, 2015 to regulate psychotropic medication given to foster youth.[122] Senator Jim Beall authored the bill and Assemblyman David Chiu and Senators Holly Mitchell and Bill Monning co-sponsored SB 484.[123] Community organizations such as the National Center for Youth

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115 SENATE COMMITTEE ON HUMAN SERVICES, BILL ANALYSIS, S.B. 319, 2015-2016 Reg. Sess. (Cal. 2015).

116 *Id*.

117 *Id.*

118 *Id.*

119 *Id.*

120 SENATE COMMITTEE ON HEALTH, BILL ANALYSIS, S.B. 319, 2015-2016 Reg. Sess. (Cal. 2015).

121 SENATE RULES COMMITTEE, FLOOR ANALYSIS, S.B. 319, 2015-2016 Reg. Sess. (Cal. 2015).

122 S.B. 484, 2015-2016 Reg. Sess. (Cal. 2015), https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201520160SB484.

123 *Id*.

Law in Oakland also co-sponsored the legislation.[124]

Under preexisting law, a foster child received mental health services as the placing agency deemed necessary, and a judicial officer could order changes to psychotropic medications based on requests from a physician.[125] SB 484 provides that medication may be used at a group home only in accordance with written physician instructions.[126] Group homes are also required to maintain specified records regarding medication under the new law.[127] The Department of Social Services, along with other stakeholders, is required to compile information and establish a methodology for determining group homes where medication use is higher than normal.[128] Facilities with problematic medication practices will be notified and given thirty days to submit a plan to address the problems identified.[129]

Increased reporting requirements are intended to provide greater oversight and thus reduce the overuse of psychotropic medications to control foster youth behavior.[130] Approximately 25 percent of California's foster youth, and over half of foster youth in group homes, are on psychotropic medication.[131] Of those on medication, close to 60 percent are prescribed antipsychotic medications, which are associated with the highest risks.[132] The FDA authorizes antipsychotic medication for severe mental illnesses, but evidence suggests that this medication has been prescribed to foster children to control behavior.[133] Psychotropic medication can have long-lasting side effects, including depression and obesity.[134] This piece of legislation was prompted by a San Jose Mercury News investigative report that found widespread reliance on medication in the foster system, and

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124 Elaine Korry, *California Approves Law to Cut Use of Antipsychotics in Foster Care*, NPR (October 8, 2015), http://www.npr.org/sections/health-shots/2015/10/08/446619645/calfornia-approves-laws-to-cut-use-of-antipsychotics-in-foster-care.

125 S.B. 484, *supra* note 122.

126 *Id*.

127 *Id*.

128 *Id*.

129 *Id*.

130 *Governor Signs Beall's Foster Care Bills to Restrict Over Prescribing of Drugs*, JIM BEALL | CALIFORNIA STATE SENATOR (October 6, 2015), http://sd15.senate.ca.gov/news/2015-10-06-governor-signs-beall-s-foster-care-bills-restrict-over-prescribing-drugs.

131 *Id*.

132 Karen de Sá, *Drugging Our Kids*, SAN JOSE MERCURY NEWS (August 24, 2014), http://webspecial.mercurynews.com/druggedkids/?page=pt1#.

133 *Id*.

134 BEALL, *supra* note 130.

questioned that reliance over the use of non-drug therapies.[135]

SB 484 amends Sections 1507.6 and 1536 of the Health and Safety Code, and Section 11469 of the Welfare and Institutions Code.[136] It adds Sections 1538.8 and 1538.9 to the Health and Safety Code.[137]

🕮 *A.B. 403*

2015 – 2016 Leg., Reg. Sess.

Assembly Bill 403 ("AB 403") was authored by Assemblyman Mark Stone and chaptered by the Secretary of State on October 11, 2015.[138] This bill expresses legislative intent to improve the statewide foster care system by focusing on initial child assessments and creating foster paths to permanent homes.[139] The funding for these goals will come from decreasing the number of foster youth who end up in the juvenile justice system.[140]

AB 403 goes into effect on January 1, 2017 and will establish a more thorough initial child assessment to ensure a long-term path towards permanent placement setting.[141] This bill makes rampant reforms in three areas: group homes and children's residential facilities, foster family agencies, and foster care system reforms to better meet the needs of children.[142] This bill initiates an ambitious foster care reform by increasing the standards of the assessment for placement, dismantling the existing rate classification structure, increasing the standard of care, providing intensive health treatment options for children with specific needs, addressing the issues of the *Katie A. v. Bonta*[143] lawsuit by ensuring that social workers do not make unilateral decisions about the child's needs, integrating mental health services with child welfare services, and modernizing foster training programs tailored to the needs of the individual child.[144] The legislative intent is to increase stability for the children who are part of the foster care

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135 *Id*.

136 S.B. 484, *supra* note 122.

137 *Id*.

138 Assem. B. 403, 2015-2016, Leg., Reg. Sess. (Cal. 2015), *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB403.

139 *Id*

140 *Id.*

141 *Id.*

142 *Id.*

143 *Katie A. v. Bonta*, 433 F. Supp. 2d 1065, 1068 (C.D. Cal. 2006), *rev'd and remanded sub nom. Katie A., ex rel. Ludin v. Los Angeles Cty.*, 481 F.3d 1150 (9th Cir. 2007).

144 Assem. B. 403, *supra* note 138.

system.[145]

🕮 *A.B. 666*

2015 – 2016 Leg., Reg. Sess.

On September 30, 2015, Governor Jerry Brown signed into law California Assembly Bill 666 ("AB 666"), which makes statewide improvements on the sealing of juvenile records.[146] A.B. 666 amends Section 786 of, and adds Section 787 to, the Welfare and Institutions Code, relating to juveniles.[147]

AB 666 builds on Senate Bill 1038 ("SB 1038").[148] SB 1038, authored by Senator Mark Leno in 2014, created a court process whereby juvenile records could be automatically sealed.[149] Under this "auto-sealing" process, a minor's juvenile case was automatically dismissed and his or her records were sealed upon the satisfactory completion of probation or supervision.[150] However, major issues with the bill's implementation arose soon after its passage.[151] For instance, under SB 1038, arrests, probations, and other law enforcement records remained on minors' records.[152] Such records hinder job and higher education opportunities for those individuals.[153] In addition, some California courts applied stricter requirements to initiate the sealing process or created further steps to the process.[154]

According to AB 666's author Assemblyman Mark Stone, the Assembly Bill demands the uniform application of SB 1038, reduces recidivism, and ensures that youths have access to jobs and higher education.[155] In response to the courts' inconsistent application of the dismissal and "auto-sealing" process, this bill requires the Judicial Council

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145 *Id.*

146 Assem. B. 666, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

147 *Id.*

148 ASSEMBLY COMMITTEE ON PUBLIC SAFETY, BILL ANALYSIS, A.B. 666, 2015-2016 Leg., Reg. Sess. (Cal. 2015).

149 *Id.*

150 *Id.*

151 *Id.*

152 *Id.*

153 *Id.*

154 *Id.*

155 *Id.*

to adopt standardized rules and forms for California courts to use.[156] Moreover, AB 666 includes arrests, probations, and other law enforcement records as records required to be sealed upon dismissal of a juvenile case.[157] This bill is sponsored by Commonweal, The Juvenile Justice Program, and supported by many other organizations, including the ACLU of California, California Attorneys for Criminal Justice, Center on Juvenile and Criminal Justice, and Juvenile Court Judges of California, among others.[158] This bill offers greater and more reliable protections for juveniles, offering them a better chance at higher education and careers.

🕮 *A.B. 303*

2015 – 2016 Leg., Reg. Sess.

On October 3, 2015, California Governor Jerry Brown signed Assembly Bill 303 ("AB 303") into law, which, in part, extends protections regarding the manner in which a strip search is conducted to all minors held in a juvenile detention facility.[159] AB 303 was introduced by Assembly Member Lorena Gonzales (D-San Diego) after the Youth Law Center filed a civil rights complaint with the U.S. Department of Justice detailing how minors in juvenile facilities were pepper sprayed in order to "submit to strip searches in front of staff of the opposite sex."[160]

Current California law requires that people conducting or otherwise present during a strip or body cavity search be of the same sex as the person being searched, with the exception of physicians or licensed medical personnel.[161] This policy applies to adult and juvenile pre-arraignment detainees arrested for infraction or misdemeanor offenses.[162] A person who knowingly and willfully authorizes or conducts a visual or physical strip search in violation of this law is guilty of a misdemeanor.[163]

AB 303 added Section 4031 to the California Penal Code to additionally require all people within sight of the search to be of the same

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156 *Id.*

157 *Id.*

158 *Id.*

159 Assem. B. 303, 2015-2016, Leg., Reg. Sess. (Cal. 2015).

160 Kelly Davis & Dave Maass, *California Curbs Strip Searches of Juveniles*, THE CRIME REPORT (Sept. 21, 2015), http://www.thecrimereport.org/news/inside-criminal-justice/2015-09-youth-behind-bars.

161 CAL. PENAL CODE § 4030.

162 CAL. PENAL CODE § 4030(b).

163 CAL. PENAL CODE § 4030(m).

sex as the person being searched, except for physicians or medical personnel.[164] This bill also extends these protections to all minors held in a juvenile detention facility, regardless of whether they are detained prior to a detention hearing or after.[165] ABA 303 provides that any person who suffers harm as a result of a violation of section 4031 may sue for damages, and that courts may also award punitive damages or equitable relief.[166]

🕮 *A.C.R. 85*

2015 – 2016 Leg., Reg. Sess.

On September 3, 2015, Assemblyman Gordon introduced Concurrent Resolution No. 85 ("ACR 85").[167] The bill passed in the Assembly on July 2, 2015 and in the Senate on August 24, 2015.[168] Governor Jerry Brown signed the bill on September 3, 2015 and the Secretary of State chaptered the bill on the same day.[169]

ACR 85 designated November 2015 as the month to raise awareness about medically fragile foster care children and adoptive placement children.[170] This designation is aimed towards spreading awareness about what every Californian can do to make a positive impact on these children's lives.[171] The declaration draws attention to the fact that 60,000 California children are currently in the foster care system and of those, a subset are medically fragile with physical or intellectual disabilities that require an increased level of care and support.[172] The number of children in need of foster care or adoptive placement far exceeds the amount of homes or placements available, and this shortage presents a major crisis in some parts of California.[173] The text of the resolution underscores that every child deserves a safe and stable living environment in order to reach his or her full potential.

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164 CAL. PENAL CODE § 4031(d).
165 CAL. PENAL CODE § 4031(a).
166 CAL. PENAL CODE § 4031(h).
167 H.R. Con. Res. 85, 156th Gen. Assemb. (Cal. 2015).
168 *Id*.
169 *Id*.
170 *Id.*
171 *Id.*
172 *Id.*
173 *Id.*