RECENT COURT DECISIONS AND LEGISLATION AFFECTING JUVENILES

UNITED STATES COURT OF APPEALS, 9TH CIRCUIT

🕮 *J.E.F.M. v. Lynch*
837 F.3d 1026 (9th Cir. 2016)
Report by Alana Murphy

Several undocumented minor immigrants, ranging in age from three to seventeen, filed suit against United States Attorney General, Loretta Lynch, and other federal officials responsible for enforcing immigration laws.[1] Plaintiffs filed suit in the United States District Court for the Western District of Washington arguing that indigent minor immigrants should have a right to government-appointed counsel in removal proceedings.[2] The district court determined that it did have jurisdiction over the right to counsel due process claim, but that it did not have jurisdiction over the statutory right to counsel claim.[3] Both parties filed interlocutory appeals, contesting those determinations.[4] The Ninth Circuit Court of Appeals addressed two issues: (1) whether the Immigration and Nationality Act (INA) provides exclusive judicial review through the Petition for Review (PFR) process,[5] and (2) whether the minors have been denied

[1] J.E.F.M. v. Lynch, 837 F.3d 1026 (9th Cir. 2016).
[2] *Id*.
[3] *Id.* at 1030.
[4] *Id.* at 1030-31.
[5] *Id.* at 1031.

adequate due process.[6]

Judge McKeown, writing for the majority, first reviewed 8 U.S.C. Sections 1252(a)(5) and 1252(b)(9) of the INA and concluded that an individual in removal proceedings must appeal decisions through the PFR process, regardless of whether the issue is legal or factual.[7] In 1996, Congress amended the INA in order to streamline removal proceedings and to channel all appellate proceedings to federal courts of appeals in the event that an individual navigates all of the INA procedures and still seeks relief.[8] In this case, the Ninth Circuit found that the Plaintiffs' claims arose from removal proceedings and thus were precluded from seeking relief in the appellate court until the PFR appeals process was exhausted.[9]

The Ninth Circuit next addressed whether Plaintiffs have a meaningful opportunity for judicial review under Section 1295(b)(9) of the INA. Plaintiffs argued that under the current statutory framework they were denied adequate review of their claims because a child who has an attorney lacks standing to bring a right-to-counsel claim.[10] Plaintiffs further argued that under this framework, a minor without counsel will likely struggle to navigate the immigration system and would be unable to establish a sufficient record for appellate purposes.[11] While the Ninth Circuit acknowledged the difficulties facing minors in removal proceedings, it ultimately rejected Plaintiffs' argument determining the opportunity for review was adequate.[12]

With respect to the due process claim, the Ninth Circuit found that there are safeguards for children in removal proceedings by virtue of the expanded restrictions and

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[6] *Id.* at 1035.
[7] *Id.* at 1031.
[8] *Id.* at 1033-35.
[9] *Id.* at 1035.
[10] *Id.*
[11] *Id.*
[12] *Id.* at 1035-36.

obligations of judges in removal proceedings for minors.[13] For example, a child must have an adult present before a judge may accept a child's admission of removability.[14] The Ninth Circuit did recognize that a federal court may still hear a right to counsel claim, so long as the plaintiff first exhausts the appropriate administrative processes.[15] The concurrence urged legislative and executive intervention to address concerns of minors navigating the immigration removal process without assistance of counsel.[16]

[13] *Id.* at 1037.
[14] *Id.*
[15] *Id.*
[16] *Id.* at 1038-41.

FOURTH DISTRICT COURT OF APPEAL, FLORIDA

🕮 *O.I.C.L. v. Fla. Dep't of Children & Families*
205 So.3d 575 (Fla. Dist. Ct. App. 2016)
Report by Elissa Niccum

This case involves a teenage immigrant who appealed a decision from Florida's Fourth District Court of Appeal denying his petition for an adjudication of dependency under Florida statutes Sections 39.01(15)(a) and (e).[17]

O.I.C.L.'s father had abandoned his mother while she was pregnant, and his mother neglected him.[18] At age seventeen, O.I.C.L. was kicked out of his mother's home in Guatemala.[19] He entered the United States as an undocumented immigrant, where the federal Office of Refugee Resettlement (O.R.R.) detained him until he was eventually released to his uncle.[20]

Two and a half months before O.I.C.L. turned eighteen, he filed a private petition for an adjudication of dependency in order to obtain "Special Immigrant Juvenile" status (SIJS), which "allows unaccompanied minors to apply for lawful permanent residency in the United States."[21] The trial court denied his petition, finding that he did not qualify as dependent under Florida statute since he lived with his uncle, against whom there were no allegations of abuse or neglect.[22] The court of appeals affirmed this decision, ruling that the O.R.R., as "a government agency that is considered a caregiver" had released him to his uncle, qualifying him as a

[17] O.I.C.L. v. Fla. Dep't of Children & Families, 205 So.3d 575, 577 (Fla. Dist. Ct. App. 2016).
[18] *Id*.
[19] *Id.*
[20] *Id*.
[21] *Id*.
[22] *Id*.

caretaker.[23]

The Florida Supreme Court, in a four to three decision, dismissed the case for mootness since O.I.C.L. had turned eighteen and therefore could not be adjudicated a child by the Florida court system.[24] The majority stated, "the fact that obtaining a state court order of child dependency is a first step in potentially securing [SIJS] from the federal government… does not change our mootness analysis by transforming the immigration context into a collateral legal consequence."[25]

The dissent argued that while O.I.C.L. had already turned eighteen, the high number of unaccompanied minors who are apprehended at the border each year and the percentage of them who were released into the custody of caregivers in Florida meant that similar situations had and would continue to occur.[26] Thus, there was a need for guidance on such matters (the appellate decision in this case was at odds with rulings from other appellate district courts in Florida regarding dependency petitions for minors who were cared for by relatives).[27]

Citing a study on immigrant youth, the dissent noted that the median age for SIJS applicants was 17.4.[28] This was due to "the average age of unaccompanied minors entering the country [being] around 16 or 17."[29] The dissent further stated, "this is the age at which [they] may consider getting a driver's license or taking college entrance tests," which might "trigger a realization that [they are] unauthorized."[30]

The dissent concluded that the trial court had failed to make sufficient factual findings to determine whether

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[23] *Id.*
[24] *Id*. at 579.
[25] *Id*.
[26] *Id.*
[27] *Id*. at 580-82.
[28] *Id*. at 580.
[29] *Id.*
[30] *Id*.

O.I.C.L. was dependent and therefore eligible for SIJS before his eighteenth birthday, and that the case should have been remanded for further evidentiary hearings.[31]

[31] *Id*. at 581-84.

APPELLATE COURT OF ILLINOIS, FIRST DISTRICT

🕮 *People v. Harris*
2016 IL 1141744 (Ill. App. Ct. 2016)
Report by Sarah Konecny

In *People v. Harris*, the Illinois Appellate Court held the defendant's seventy-six-year sentence violated the Rehabilitation Clause of the Illinois Constitution.[32] The court reasoned that the language of Article I, Section II of the Illinois Constitution required that penalties should have "the objective of restoring the offender to useful citizenship."[33] As early as 1899, Illinois has recognized the inherent and fundamental differences between juveniles and adults when it passed the Illinois Juvenile Court Act.[34] The Act required trial court judges to consider a number of different factors when deciding the appropriate sentencing for those under the age of eighteen.[35]

The defendant in this case, Darien Harris, was nineteen years old at the time of the crime, and was charged and convicted of first degree murder of Rondell Moore and attempted first degree murder of Quincy Woulard.[36] The trial court judge sentenced Harris to an aggregate term of seventy-six-years of imprisonment.[37] On appeal, Harris argued two separate issues: (1) the evidence was insufficient to support his convictions, and (2) the trial court, in sentencing him to a seventy-six-year sentence, violated the Illinois Constitution.[38] The appellate court addressed the defendant's first argument, and affirmed the trial court's holding that the evidence was

[32] People v. Harris, 2016 IL 1141744, 58 (Ill. App. Ct. 2016).
[33] *Id*.
[34] *Id.*
[35] *Id.* at 59.
[36] *Id.* at 1.
[37] *Id*.
[38] People v. Harris, 2016 IL 1141744, 2 (Ill. App. Ct. 2016).

sufficient to support the convictions.[39] However, the appellate court agreed with defendant's second argument, and remanded the case for resentencing in light of that determination.[40]

When reviewing defendant's second argument regarding the state constitutional question, the appellate court stated, "[w]hile we do not minimize the seriousness of Harris's crimes, we believe that it shocks the moral sense of the community to send this young adult to prison for the remainder of his life, with no chance to rehabilitate himself into a useful member of society."[41] The appellate court analogized to another Illinois Appellate Court decision, *People v. House*.[42] There, the defendant also resembled a juvenile more so than a full-grown adult.[43] The court in *House* noted that research shows the brain does not fully develop until mid-twenties, and thus young adults are more similar to adolescents than fully mature adults.[44] Therefore, when applying the same rationale here, the appellate court held that our criminal justice system would be better served by looking at the facts of each individualized case and considering the offender and the specific offense committed when determining the appropriate sentencing.[45]

The dissent in this case argued that it is up to the legislature, and not the courts, to give discretion to trial judges in sentencing.[46] The dissent reasoned that *Harris* is more similar to *People v. Ybarra*[47] in which the court held that a defendant's family background and criminal record should not be considered, and instead the line should be drawn at

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[39] *Id*.
[40] *Id.* at 76.
[41] *Id.* at 69.
[42] People v. House, 2015 IL 110580 (Ill. App. Ct. 2015).
[43] *Id.* at 63.
[44] People v. Harris, 2016 IL 1141744, 63 (Ill. App. Ct. 2016).
[45] *Id.* at 73.
[46] *Id.* at 80 (Mason, J. concurring in part and dissenting in part).
[47] People v. Ybarra, 67 N.E.3d 404 (Ill. App. Ct. 2016).

eighteen years old.[48]

[48] *Id.* at 84-5.

MISSOURI COURT OF APPEALS, EASTERN DISTRICT

🕮 *McQueen v. Gadberry*
507 S.W.3d 127 (Mo. Ct. App 2016)
Report by Elissa Niccum

In a marriage dissolution case, Jalesia McQueen appealed the trial court's decision regarding whether two pre-embryos, which had been frozen after *in vitro* fertilization (IVF) should be classified as children under Missouri law, and whether Justin Gadberry had a right to object to their use.[49] The couple had undergone IVF due to geographical separation caused by Gadberry's deployment in the U.S. Army.[50] The couple had not discussed how many children they wanted, when they would have said children, or what would be done with "excess or unused pre-embryos."[51] Following the IVF treatment, McQueen gave birth to twin boys and the remaining two pre-embryos were cryogenically preserved.[52]

At trial, McQueen testified that she wished to have the two remaining embryos implanted in an attempt to have more children, and stated that the only outcome "she would deem acceptable was for the trial court to award the frozen pre-embryos to her."[53] She asserted that under Missouri state law, "the frozen pre-embryos should be classified as children."[54] While she acknowledged that she and Gadberry had problems co-parenting their twins thus far, she stated that it was "getting better" and she would be open to having more children with him.[55]

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[49] McQueen v. Gadberry, 507 S.W.3d 127, 132 (Mo. Ct. App 2016).
[50] *Id.*
[51] *Id.* at 134-35.
[52] *Id.* at 134.
[53] *Id.* at 136.
[54] *Id.*
[55] *Id.*

Gadberry, citing "extreme difficulties" that he had experienced in co-parenting with McQueen, requested that the court not award the pre-embryos to McQueen, but instead (1) donate the pre-embryos to an infertile couple, (2) donate the pre-embryos to science, (3) destroy the pre-embryos, or (4) keep the pre-embryos frozen until he and McQueen could reach an agreement on what to do with them.[56]

The trial court determined that the frozen pre-embryos were "marital property of a special character," and ordered that "no transfer, release, or use of the frozen pre-embryos shall occur without the signed authorization of both" parties.[57] The appellate court affirmed, agreeing with Gadberry's arguments that giving embryos to McQueen to be used "would violate his fundamental rights recognized in a line of United States Supreme Court cases.[58] Specifically, Gadberry pointed to his constitutional right to privacy, right to be free from government interference, and right not to procreate."[59]

The dissent stated that Missouri law makes it "abundantly clear" that "the two embryos at issue in this case are human beings with protectable interests in life, health, and well-being," and that for this reason the majority's opinion is unlawful.[60] While the majority cited Supreme Court cases such as *Roe v. Wade*,[61] *Eisenstadt v. Baird*,[62] and *Obergefell v. Hodges*,[63] the dissenting justice stated that these were "merely the broad *dicta* – not the more limited holdings – of these Supreme Court opinions," and that "clearly… mere *dicta* are not enough to override the Missouri General Assembly's judgment that the life – and right to life – of each human being begins at conception."[64]

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[56] *Id*.
[57] *Id.* at 137.
[58] *Id.*
[59] *Id.* at 143.
[60] *Id.* at 158.
[61] Roe v. Wade, 410 U.S. 113 (1973).
[62] Eisenstadt v. Baird, 405 U.S. 438 (1972).
[63] Obergefell v. Hodges, 135 S. Ct. 2584 (2015).
[64] *Id.* at 159-60.

CALIFORNIA LEGISLATION

🕮 S.B. 253
2015-2016 Leg., Reg. Sess.
Report by Fernando Reyes

Senate Bill No. 253, enrolled August 26, 2016, and vetoed by California Governor Jerry Brown on September 29, 2016, amends Section 4064.5 of the Business and Professions Code, affecting multiple sections of the Welfare and Institutions Code relating to juveniles.[65] The bill concerns the administration of psychiatric medications, mainly to dependent or delinquent children in foster care.

Under existing law, a juvenile court official determines the administration of psychotropic medication to a dependent or delinquent child that has been removed from the custody of his or her parents.[66] The requirement for a court to authorize the administration of psychotropic medication begins with a request from a physician describing the child's behavior and the expected results of the medication.[67]

This bill would have added a requirement that the administration of psychotropic medications to a dependent or delinquent child in foster care only occur after the determination of the court that the medication is in the best interest of the child.[68] In some instances, the bill would restrict the use of psychotropic medication without the completion of a "preauthorization review" from a child psychiatrist or behavioral pediatrician.[69]

This bill would also require social workers to create reports to be submitted prior to any hearings to determine the use of psychotropic medications.[70] These additional

[65] S.B. 253, 2015-2016 Leg. Reg. Sess. (Cal. 2016).
[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *Id.*
[70] *Id.*

requirements and workload for social workers qualify as part of a state-mandated local program. The added expenses in implementing these changes would be reimbursed by the state according to statutory provisions for reimbursements.[71]

In emergency situations, the bill would allow for the administration of psychotropic medications, but would require that authorization be granted no more than two days after the emergency administration.[72]

In accordance with the bill, the State Department of Health Services and the Judicial Council would assist counties with fewer than ten practicing child psychiatrists in developing plans for access to authorization of psychotropic medications to avoid unnecessary delay in providing authorization for psychotropic medications.[73]

🕮 S.B. 1291
2015-2016 Leg., Reg. Sess.
Report by Sarah Konecny

On September 29, 2016, California Governor Jerry Brown signed Senate Bill No. 1291 into law.[74] This bill will require an annual mental health plan review to be conducted by an external quality review organization (EGRO), pursuant to federal regulations 42 C.F.R. 438.350 *et seq*.[75] Part of these annual reviews would require data to be collected for Medi-Cal eligible minors and nonminor dependents in foster care.[76] Furthermore, this data will be shared with county board of supervisors, in order to better assist the development of mental health services within the foster care population.[77] Altogether, the implementation of the bill will help to better serve the foster care population, and to assist in the

[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] S.B. 1291, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[75] *Id.*
[76] *Id.*
[77] *Id.*

development of mental health plans for foster youth.[78]

The implementation of this bill will require the recording and tracking of the number of minor and nonminor dependents in foster care who are served by Medi-Cal each year.[79] In addition, details on the types of mental health services provided to this population will be recorded, including the types of prevention and treatment services used.[80] This bill will also require documentation regarding the access to and quality of mental health services available to the foster youth population.[81]

The compiled research and data will be shared annually with the county board of supervisors with the goal of improving mental health service plans.[82] Within this data, the racial and gender distribution of youth receiving mental health services, as well as the amount of specialty mental health service visits any one youth is receiving, will be recorded and evaluated.[83]

The overall implementation of the bill will address the widespread issue regarding the lack of mental health services within the population of minor and nonminor dependents in foster care.[84] By moving towards a system that tracks how mental health services are being used within this affected population, the state of California is taking positive steps towards controlling the issue of over-prescription of psychotropic drugs in order to better treat foster youth with behavioral problems.[85] Overall, this bill will help consolidate all of the data and increase accountability of county mental health plans to better serve the dependency and juvenile

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[78] CAL. SENATE RULES COMMITTEE, FLOOR ANALYSIS, S.B. 1291, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

[79] S.B. 1291, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

[80] Id.

[81] Id.

[82] Id.

[83] Id.

[84] Id.

[85] CAL. SENATE RULES COMMITTEE, FLOOR ANALYSIS, S.B. 1291, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

mental health system.[86]

🕮 A.B. 1945
2015-2016 Leg., Reg. Sess.
Report by Afnan Shukry

On September 30, 2016, California Governor Jerry Brown approved Assembly Bill No. 1945 (A.B. 1945).[87] The lead author of the bill was Assembly Member Mark Stone.[88] A.B. 1945 amends California Welfare and Institutions Code Sections 786, 827, 827.9, and 828 relating to juveniles, by authorizing child welfare agencies to access sealed juvenile court case files and law enforcement records for limited purposes.[89]

A.B. 1945 follows the passage of Assembly Bill No. 666 (A.B. 666) and Senate Bill No. 504 (S.B. 504) in September of 2015, which simplified the process of sealing juvenile records.[90] A.B. 666, which was also introduced by Assembly Member Stone, allowed for the automatic sealing of records and S.B. 504 instituted a waiver of all court, county, and city fees pertaining to the sealing of records for individuals under the age of twenty-six years old.[91] According to Stone, "A.B. 1945 is a cleanup proposal for my A.B. 666 from last year."[92]

California Welfare and Institutions Code Section 786(c)(1) provides that courts shall order the sealing of records pertaining to dismissed petitions within California juvenile courts for minors who satisfactorily complete one of the following: an informal program of supervision, probation

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[86] *Id*.
[87] A.B. 1945, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[88] *Id.*
[89] *Id.*
[90] Erica Webster, *California Improves Juvenile Record Sealing Process*, CTR. ON JUV. & CRIM. JUST. (Oct. 27, 2015), http://www.cjcj.org/news/9817.
[91] *Id.*
[92] A.B. 1945, 2015-2016 Leg., Reg. Sess. (Cal. 2016).

as specified, or a term of probation for any offense other than specified serious, sexual, or violent offenses.[93]

A.B. 1945 allows child welfare agencies to access the sealed records for the limited purpose of determining an appropriate placement or service for a minor or non-minor dependent under their supervision.[94] Additionally, A.B. 1945 expands the coverage of a court order in sealing a case file.[95] If a case file has been covered by, or included in, such a court order, it may only be inspected pursuant to provisions of law already established by within the California Welfare and Institutions Code Section.[96] This includes police records and other information gathered by law enforcement agencies relating to a minor's admission into custody.[97] Stone introduced the legislation because he felt clearer legislative guidance was needed "to pursue sealing in these limited circumstances to allow youth to further their education and employment goals."[98]

🕮 A.B. 2306
2015-2016 Leg., Reg. Sess.
Report by Afnan Shukry

Assembly Member Jim Frazier authored Assembly Bill No. 2306 (A.B. 2306), which was approved by California Governor Jerry Brown on September 22, 2016.[99] The new legislation amends California Education Code Sections 48645.3, 48645.5, 51225.1, and 51225.2 as they relate to juvenile court school pupils.[100] A.B. 2306 expresses the Legislature's intent that juvenile court schools have a rigorous curriculum that prepares students for high school graduation,

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[93] *Id.*
[94] *Id.*
[95] *Id.*
[96] *Id.*
[97] *Id.*
[98] *Id.*
[99] A.B. 2306, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[100] *Id.*

career entry, and satisfies California State University and the University of California admission requirements.[101] Pre-existing law prescribes statewide course requirements students must complete during ninth through twelfth grade in order to receive a diploma, and exempts foster and homeless pupils from being required to complete local graduation requirements.[102]

A.B. 2306 requires public school districts and county offices of education to accept coursework that is satisfactorily completed by students while being detained.[103] In addition, if all graduation requirements are completed while being detained, the new legislation requires a diploma to be issued either by the pupil's school district of residence from the school the pupil last attended before detention, or by the county superintendent of schools.[104] The amendments also prohibit public schools from denying enrollment or readmission to pupils solely on the basis of prior contact with the juvenile justice system.[105] Finally, the amendments grant court school pupils the same exemption from local graduation requirements that is granted to foster pupils and homeless pupils.[106]

Assembly Member Frazier stated, "By allowing these students to earn a diploma after meeting statewide graduation requirements, this bill increases their likelihood of continuing their education and getting ready for the workforce while simultaneously decreasing their chances of recidivism."[107] Many education and youth organizations endorsed the bill, such as the Los Angeles County Office of Education, the California School Boards Association, and the Youth Law

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[101] *Id.*

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *Id.*

[106] Richard Bammer, Brown Signs Frazier Bill Allowing Juvenile Court Students to Earn Diploma, REPORTER (Sept. 23, 2016), http://www.thereporter.com/article/NG/20160923/NEWS/160929898.

[107] *Id.*

Center (YLC).[108] Jennifer Rodriguez, executive director of YLC, expressed her support of the bill stating, "A.B. 2306 removes barriers to graduation and encourages systems to make reforms to begin building a bridge from probation to higher education."[109]

🕮 A.B. 2656
2015-2016 Leg., Reg. Sess.
Report by Alana Murphy

California State Assembly Member Patrick O'Donnell introduced Assembly Bill No. 2656 (A.B. 2656) on February 19, 2016, which was co-authored by Assembly Members Chang, Gallagher, C. Garcia, Gipson, Linder, and Mainschein.[110] On September 27, 2016 Governor Jerry Brown, Jr. signed A.B. 2656 into law, which becomes operative on July 1, 2019.[111] A.B 2656 amends California Education Code Sections 48412 and 51421.5.[112] The amendments expand on existing law that provides a statutory framework for the administration of high school equivalency tests and provides that homeless students should not be charged to take the exam.[113]

A.B. 2656 specifically prohibits the State Department of Education, scoring contractors, and test centers form charging fees to foster youth who are under twenty-five years of age.[114] The law also requires the California Superintendent to collect data on the number of foster youth who take high school equivalency exams from 2016 to 2018 in order to assess the impact of the waived test fee.[115]

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[108] *Id.*
[109] *Id.*
[110] A.B. 2656, 2015-2016 Leg., Reg. Sess. (Cal. 2016).
[111] *Id.*
[112] *Id.*
[113] *Id.*
[114] *Id.*
[115] *Id.*

A.B. 2656 grants foster youth the same fee waiver that homeless youth are afforded.[116] The Assembly Appropriations Committee predicts that the number of foster youth who will take the high school equivalency exam will be comparable to the number of homeless youth who take the test, which is approximately 0.15% of the homeless youth population.[117] The Appropriations Committee used this prediction to estimate that the government's continuing cost to pay for eligible foster youth's exams will be approximately $1,750 per year.[118] The Appropriations Committee estimates the initial implementation cost to the California Department of Education will be approximately $260,000, which is necessary to verify the eligibility of students, adjust contracts with private testing companies, and establish a system for tracking data pertaining to foster youth who take the exams.[119]

California recognizes several high school equivalency exams, each of which can cost anywhere from $100 to $160.[120] Research indicates that only 50% of foster youth in the United States graduate from high school,[121] so this law will have a significant impact on foster youth. A.B. 2656 removes a significant barrier to higher education and employability for foster youth while simultaneously collecting data on California's foster youth population.

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

🕮 Proposition 57
Report by Alana Murphy

In the November 8, 2016 election, California voters passed Proposition 57 (Prop. 57) with a 64.5% approval,[122] which enacted "The Public Safety and Rehabilitation Act of 2016."[123] Prop. 57 alters the California Welfare and Institutions Code as it pertains to juvenile criminal procedure.[124] Prior to Prop. 57, California Welfare and Institutions Code Sections 602 and 707 gave district attorneys the discretion to charge juveniles in a court of criminal jurisdiction rather than a juvenile court, as long as the juvenile was at least fourteen years of age and allegedly committed an enumerated serious crime.[125] Prop. 57 essentially returns to juvenile criminal procedure practices that were implemented prior to the enactment of Proposition 21 in March 2000, which enacted California Welfare and Institutions Code Sections 602 and 707.[126]

The procedural amendments enacted with Prop. 57 prohibit a district attorney from initiating charges in a court of criminal jurisdiction for juveniles charged with serious offenses.[127] Instead, if the district attorney desires a juvenile case to proceed in adult criminal court, a motion for transfer of the juvenile to a criminal court must be filed in juvenile court, and the juvenile court judge will make the determination.[128] The district attorney will only be permitted

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[122] Alex Padilla, *Statement of Vote*, CAL. SEC'Y. OF ST. 12 *(*Dec. 16, 2016), http://elections.cdn.sos.ca.gov/sov/2016-general/sov/2016-complete-sov.pdf.

[123] *Text of Proposed Laws: Proposition 57*, CAL. SEC'Y. OF ST. 141-44, http://vig.cdn.sos.ca.gov/2016/general/en/pdf/text-proposed- laws.pdf.

[124] *Id.*

[125] *Id.*

[126] CAL. LEGIS. ANLST. OFF., PROPOSITION 21 (2000), http://www.lao.ca.gov/ballot/2000/21_03_2000.html (last visited Mar. 31, 2017).

[127] *Text of Proposed Laws: Proposition 57*, *supra* note 2 at 42.

[128] *Id.*

to file a motion for transfer if the juvenile was sixteen when the felony was committed,[129] or fourteen or fifteen years for certain enumerated crimes.[130] The district attorney may not file a motion to transfer the juvenile once jeopardy has attached,[131] which for a court trial is when sworn testimony begins.[132]

If the district attorney files a motion for transfer, the juvenile court must order a probation report on the behavioral and social history of the minor.[133] A comprehensive list of circumstances the juvenile court should consider when hearing a motion for transfer is provided by The Public Safety and Rehabilitation Act of 2016.[134] These considerations include the degree of criminal sophistication of the minor, age, maturity, intellectual capacity, potential for rehabilitation while the juvenile court has jurisdiction, previous delinquencies, the circumstances and gravity of the offense, among others.[135] However, if the minor made a plea prior to the hearing for transfer, the judge may not consider it in making a determination.[136] If the judge finds that the minor should be transferred, the reasoning must be recorded in the minutes.[137]

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[129] *Id*.
[130] *Id.* at 143-44.
[131] *Id.* at 142.
[132] Richard M. v. Superior Court, 4 Cal. 3d 370, 376 (1971).
[133] *Text of Proposed Laws: Proposition 57*, *supra* note 2 at 142.
[134] *Id*.
[135] *Id*.
[136] *Id.*
[137] *Id*.

CONNECTICUT LEGISLATION

🕮 H.B. 5642
2016 Sess. (Conn. 2016)
Report by Fernando Reyes

Effective January 1, 2017, House Bill No. 5642 (H.B. 5642) addresses the interaction between the juvenile justice system and school discipline, and creates new requirements with regard to juvenile detention in Connecticut.

New requirements in H.B. 5642 include that the Court Support Services Division (CSSD) must adopt release policies and procedures, as well as develop and implement a detention risk assessment instrument.[138] The bill also limits the conditions by which a child may be detained, requires that graduated sanctions be available as an alternative to detention, and states that CSSD and the Department of Children and Families (DCF) must develop and implement a plan to provide community-based services for children leaving juvenile detention.[139]

The Juvenile Justice Oversight and Policy Committee (JJPOC) is required to add the position of victim advocate, to report on the plan for a community-based diversion system, and to establish a data integration working group.[140]

The bill will also affect various aspects of how schools manage juveniles. State-operated juvenile justice residential facilities are forbidden from imposing out-of-school suspensions.[141] Schools must expand an alternative education opportunity to a broader category of expelled students. Schools may not use truancy as a permissible ground for a family with service needs complaints, and are required to implement an approved intervention model if they have a

[138] H.B. 5642, 2016 Sess. (Conn. 2016).
[139] *Id.*
[140] *Id.*
[141] *Id.*

disproportionately high truancy rate.[142] The State Department of Education is now required to develop school-based diversion initiatives and address educational deficiencies among children in the juvenile system as part of development plan.[143]

The bill contains provisions on additions to police training including training in graduated sanctions, techniques for handling trauma, restorative justice practices, adolescent development, risk assessment and screening tools, and emergency mobile psychiatric services.[144]

An additional provision in the bill requires DCF and the judicial branch to work with service providers to adopt a recidivism reduction framework. This framework must include risk and needs assessment tools, the use of treatment matching protocols that assess a child's needs and the risks a child faces, the use of cross-agency measurements of program outcomes and training, and quality assurance processes.[145] As part of the framework, the program will practice monitoring and accountability, draw from the best and evidence-based practices from an inventory the DCF and the judicial branch annually update, and ensure sufficient contract and quality assurance capacity and shared training between agencies and private providers.[146]

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[142] *Id.*
[143] *Id.*
[144] *Id.*
[145] *Id.*
[146] *Id.*