Chapter 18

Juvenile Justice

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> The situation is truly ironic. The argument for retaining "beyond control" and truancy jurisdiction is that juvenile courts have to act in such cases because "if we don't act, no one else will." I submit that precisely the opposite is the case: because you act, no one else does. Schools and public agencies refer their problem cases to you because you have jurisdiction, because you exercise it and because you hold out promises that you can provide solutions.
>
> Judge David Bazelon[1]

I. INTRODUCTION

In the wake of the U.S. Supreme Court's landmark decision in *Roper v. Simmons*,[2] and for several years now, there has been a resurgence in the recognition that childhood is quite a thing apart from adulthood, and this is especially true of the criminal justice system. This recognition has seemingly reignited a discussion of a problem which has bedeviled the juvenile justice system for over 40 years, and that is the role of the courts and its ancillary agencies in addressing misconduct which would not be a crime but for the fact that a child committed it. Traditionally, these offenses have been called "status" offenses, because they exist only due to the status of the actor as a minor. The offenses include, primarily, truancy from school, defiant conduct, running away from home or underage drinking.

The National Center for Juvenile Justice estimates that truancy cases are by far the most often subject of petitions in the juvenile court, comprising 36% of status offenses. Liquor law violations comprise 22% of such petitions, followed by ungovernability, running away, and violation of local curfew laws, each comprising around 10% of petitions in the juvenile courts in the United States.[3] The Center's estimates show that these ratios are about the same as those for 1995, although petitions for these offenses peaked around 2007, and declined thereafter. The number of petitions for ungovernability filed in 2010 declined by about 12% from their counterparts in 1995. The overall number of petitions for status offenses increased by about 6% in 2010, compared to 1995.[4]

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[1] Address to the National Conference of Juvenile Court Judges, Annual Meeting, 1970, *reported at* 21 JUV. CT. JUDGES J. 44 (1970).

[2] 543 U.S. 551 (2005).

[2] CHARLES PUZZANCHERA AND SARAH HOCKENBURY, JUVENILE COURT STATISTICS 2010, at 66 (Nat'l Ctr. for Juvenile Justice, Pittsburgh, 2011).

[4] *Id.*

II. NEW REFORM INITIATIVES

National organizations have recently launched initiatives to divert these youngsters from formal juvenile court processing, or develop guidelines for juvenile courts exercising jurisdiction over these offenders.

In December 2013, the Coalition for Juvenile Justice released *National Standards for the Care of Youth Charged with Status Offenses*. Designed over a two-year period together with the National Council of Juvenile and Family Court Judges by a multi-disciplinary group of judges, attorneys, administrators, service providers and others, the standards call for an end to the secure confinement of these children, a practice that has been criticized for over 40 years.[5] Indeed, as will be seen, federal legislation has attempted to curtail the practice since that time.

The Coalition's standards urge limits on the involvement of juvenile courts, calling on police, child welfare and education agencies to divert these youngsters to meaningful programming which would be created by these agencies and other providers in the community to address the discrete needs of these children.[6] The Coalition has also created a project entitled "Safety, Opportunity and Success," or SOS, to circulate the standards, provide training for their implementation and influence policy reform around the country to meet their goals.

Also in December, the Vera Institute of Justice created a Status Offense Reform Center to encourage diversion of these children from the juvenile courts, relying on resources in the community.[7] The Institute published *From Courts to Communities: The Right Response to Truancy, Running Away, and Other Status Offenses*, as a roadmap for the reforms the Institute seeks to implement through its center.[8] The report identifies five key elements of an effective community response to these youngsters: (1) diversion from court; (2) an immediate response with professional help; (3) a system of triage to separate minor, temporal misconduct from more intense behavioral problems; (4) services readily accessible in the community which are effective; and (5) ongoing review of that effectiveness.

The Institute has also developed a tool kit to guide states and localities in implementing the community programming the report contemplates.

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[5] *See, e.g.,* R. Hale Andrews and Andrew H. Cohn, *Ungovernability: the Unjustifiable Jurisdiction*, 83 YALE L.J. 1383 (1974); O. Ketchum, *Why Jurisdiction Over Status Offenders Should Be Eliminated From Juvenile Courts*, 57 B.U. L. REV. 645 (1977); Meda Chesney-Lind, *Judicial Paternalism and the Female Status Offender: Training Women to Know Their Place*, 23 CRIME AND DELINQUENCY 121 (1977); Stephen Wizner, *Punishing the Innocent: Juvenile Court Jurisdiction Over Status Offenders*, 19 J. AM. ACAD. CHILD PSYCHIATRY 328 (1980).

[6] The Standards may be found at www.juvenilejustice.org under "Our Work."

[7] The Vera Institute of Justice has played a significant role in the reform of the criminal justice system for 50 years, first achieving prominence in revising bail and release practices, resulting in the passage of the Bail Reform Act of 1966. Among its programs is the Center for Youth Justice. *See* www.vera.org under "programs," and link to Center on Youth Justice for its juvenile justice initiatives.

[8] The Center and the report may be found at http://www.statusoffensereform.org.

III. ABA INITIATIVES

The American Bar Association for several years has called for the effective assistance of counsel for youth charged with these offenses. In August 2010, the ABA House of Delegates passed Resolution 109a, calling upon state and local governments to provide counsel for children and youth at all stages of status offense proceedings, as a matter of right and at public expense.[9] The same year, the ABA Center on Children and the Law published a handbook, *Representing Juvenile Status Offenders*, a handbook for lawyers who represent these children. In addition to practical advice on defending youth at adjudication and disposition, the handbook also provides guidance on diverting children from formal court processing and special education advocacy that is most assuredly implicated by many such offenses.[10]

The American Bar Association long ago called for the abolition of formal juvenile court jurisdiction over these offenses, and the controversy proved costly.

The ABA, in partnership with the Institute on Judicial Administration at New York University School of Law, developed an array of standards for the reform and improvement of juvenile justice. The project consumed several years of research, study, effort, and discussion by the foremost leaders of juvenile and criminal justice in the country. The result was 23 volumes addressing the juvenile justice system from stem to stern: police handling of juveniles; pretrial detention, known as "interim status," adjudication; disposition; and transfer of young defendants to the criminal court Because the project defined the juvenile justice system broadly, the standards also addressed other subjects such as planning and monitoring of juvenile justice programs and services, juvenile records and the legal status of children, under "rights of minors." The ABA House of Delegates approved those standards in 1979 and 1980.[11]

Ultimately, the ABA House of Delegates did not approve only three volumes of the 23: standards relating to abuse and neglect, education, and notably, non-criminal misbehavior – status offenses.

Noting that the jurisdiction over the juvenile court over status offenses "has long been a cornerstone of its mission, the volume's introduction relied on Judge David Bazelon and others to observe:

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[9] In August 2007 the ABA House of Delegates passed Resolution 104C, calling for the diversion of status offenders from the courts and the creation of intervention services to these children and their families to support diversion.

[10] The handbook is available from the Center, and can be downloaded at the Center's website under "Publications."

[11] The complete set of approved IJA/ABA Juvenile Justice Standards, as they are known, may be found at www.americanbar.org at the Criminal Justice Section website under "criminal justice standards."

> The juvenile court's jurisdiction over unruly children is bottomed on assumptions – most often implicit – that parents are reasonable persons seeking proper ends, that youthful independence is malign, that the social good requires judicial power to backstop parental command, that the juvenile justice system can identify non-criminal misbehavior that is predictive of future criminality, and that coercive intervention will effectively remedy family-based problems and deter further offense.
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> On the available evidence, these assumptions and pretensions do not prove out . . . .[12]

The standards were not approved in no small part due to the resistance and outright opposition by groups of judges, court officials such as probation officers and agencies ancillary to the juvenile court.

IV. RESISTANCE TO REFORM

The same opposition to abolition of juvenile court jurisdiction also influenced the federal initiative to remove status offenders from secure detention or confinement in juvenile facilities, otherwise known as deinstitutionalization, embodied in the Juvenile Justice and Delinquency Prevention Act.[13]

First adopted by Congress in 1974, the Act created a federal funding stream to the states conditioned on participating states accomplishing two goals: juvenile offenders were to be held separately from adult offenders out of sight from adults and not within hearing range – "sight and sound separation" – and the removal of status offenders from secure facilities, or their deinstitutionalization from traditional juvenile incarceration.[14]

The Act was up for reauthorization by Congress in 1980, after having been reauthorized in 1977. That version of the act merely strengthened the two former requirements. In 1980, Congress was poised to require that all youth charged with offenses be removed from adult jails and lock-ups completely, in favor of facilities strictly designed for juvenile offenders.[15]

The issue of deinstitutionalization of status offenders prompted some juvenile court judges and others to insist that the Act contain a provision that would nonetheless allow for jailing these offenders for contempt of court if they disobeyed the terms of an order governing their conduct. For example, if a truant child was ordered to attend school, and violated the order by not attending school, or if a runaway was told to stay home, and ran away again, the youngster could be held in contempt of court and confined. Speaking on behalf of the National Council of Juvenile and Family Court Judges, Ohio Judge John R. Milligan challenged the House Human Resources Subcommittee rhetorically: "Does

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[12] *Introduction*, IJA/ABA JUVENILE JUSTICE STANDARDS RELATING TO NON-CRIMINAL MISBEHAVIOR (DRAFT), at 3 (Ballinger Publishing Co. Cambridge, Mass. 1982)/

[13] 42 U.S.C. §§ 5601 et seq.

[14] *See* 42 U.S.C. § 5633(a)(11)(A).

[15] On the rare occasion when juveniles were lodged in adult facilities, the requirement of separation by sight and sound remained.

Congress intend that every child have the ultimate right, at any age, to decide for himself whether he will (1) continue to run away from home, (2) go to school; (3) consume alcohol; or (4) violate legitimate court orders?"[16]

Representative John Ashbrook, himself from Ohio, called the then-current law prohibiting incarceration of status offenders a cure "worse than the disease," and insisted that a provision allowing confinement of status offenders who had violated a valid court order be incorporated in reauthorization of the act.[17] That measure passed, in addition to the new requirement that juvenile delinquents not be placed in adult facilities.

The "valid court order" exception to incarcerating status offenders has been roundly criticized.[18] There have been calls to amend the Juvenile Justice and Delinquency Prevention Act to repeal the provision.

In March 2010, the board of the National Council of Juvenile and Family Court Judges voted to support elimination of the valid court order exception. The board explained its change in policy by saying the deinstitutionalization mandate of the Act resulted in "unintended consequences" because children who were at risk of harm could not be protected without being "securely detained."[19] The board noted that the reauthorization of the Act would reallocate resources to develop alternative programming for these children.

The Council's reversal of its past policy is refreshing and a welcome change. The Council now supports a "phase out" of the valid court order exception as part of the reauthorization of the Juvenile Justice and Delinquency Prevention Act.[20]

V. THE ABA PROPOSED STANDARDS ON DUAL JURISDICTION AND CROSSOVER YOUTH

Non-criminal misbehavior necessarily implicates children who may be the subject of the juvenile court's jurisdiction over delinquent and dependent children, and in addition, those agencies or institutions that rely upon the juvenile court to discipline children said to be "unruly."

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[16] Robert W. Sweet, Jr., *Deinstitutionalization of Status Offenders: In Perspective*, 18 PEPP. L. REV. 389, 408 n.101 (1991).

[17] *Id.* Apparently juvenile court judges in Ohio enthusiastically embraced the new provision. In 1988, the U.S. General Accounting Office found that Ohio alone accounted for 51% of all juvenile detentions for violation of a "valid court order" nationwide. See, *Noncriminal juveniles: Detentions have been reduced but better monitoring is needed.* GAO/GGD-91-65 Washington, DC: GAO, 1991

[18] *See* Patricia J. Arthur and Regina Waugh, *Status Offenses and the Juvenile Justice and Delinquency Prevention Act: The Exception that Swallowed the Rule*, 7 SEATTLE J. SOC. JUST. 555 (2008) (noting that in 2004, over 400,000 youth were arrested or held in custody for a status offense). *See also* Jan C. Costello and Nancy L. Worthington, *Incarcerating Status Offenders: Attempts to Circumvent the Juvenile Justice and Delinquency Prevention Act*, 16 HARV. C.R.-C.L. L. REV. 41 (1981).

[19] *Juvenile and Family Justice Today*, NAT'L COUNCIL OF JUVENILE & FAMILY COURT JUDGES, at 7 (Spring 2010).

[20] Statement of the Hon. David E. Stucki, President, National Council of Juvenile and Family Court Judges (Dec. 13, 2013), available at www.ncjfcj.org under "news."

It is by now well-known that many children and young people run away from their homes to escape physical or sexual abuse, or other forms of maltreatment.[21] It is also well known that schools and other institutions rely on the juvenile court to an ever more increasing extent.[22]

Those phenomena and others led to the formation by the ABA Criminal Justice Section of a task force to develop standards on youth involved in the juvenile justice system who may also be the subject of other court proceedings or involvement with agencies related to juvenile court processing. After several years of work, the task force formulated proposed Standards on Crossover, Dual Jurisdiction, and Multi-System Youth, and submitted a draft for discussion with the Criminal Justice Section standards committee in late January 2014.

In a memorandum submitted to the standards committee, principal authors of the proposed new standards outlined five themes underlying them:

(1) Children and youth have multiple needs, requiring responses by multiple agencies;
(2) Those agencies generally have more authority and more resources to meet those needs than the fewer systems serving adults;
(3) Those making decisions for and on behalf of children have more services, funding and resources available for them as a result;
(4) Many children are served by more than one system at a time; and
(5) Youth in out-of-home placements as a result of delinquency eventually must return to their communities.[23]

The proposed standards amplify upon a detailed resolution adopted by the American Bar Association House of Delegates in 2008, which supports federal, state and local governments to reform law, policies and practices regarding "dual jurisdiction" youth involved in delinquency and child welfare to include among other elements, diversion and intervention services for minor misconduct committed by a child in foster care; elimination of statutory and legal restrictions inhibiting dual jurisdiction; where feasible, the

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[21] *See, e.g.,* Arlene McCormack, et al, *Runaway Youths and Sexual Victimization; Gender Differences in an Adolescent Runaway Population*, 10 CHILD ABUSE AND NEGLECT 387 (1986) (finding in a study of 149 youth between 12 and 20 that 73% of those reported being physically beaten and 43% of them reported that as the reason for running away; 73% of the girls and 38% of the boys reported sexual abuse); Arlene Rubin Stiffman, *Physical and Sexual Abuse in Runaway Youths*, 13 CHILD ABUSE AND NEGLECT 417 (1989) (finding nearly half of a group of 291 youth reported a history of physical or sexual abuse); Richard Famularo, et al., *Child Maltreatment Histories Among Runaway and Delinquent Children*, 33 CLINICAL PEDIATRICS 333 (1994) (studying the records of 378 youth involved in a juvenile court finding 55% of the status offenders and 45% of delinquents had substantiated histories of child maltreatment).

[22] A thorough longitudinal study of Texas' school system found that 23% of disciplined students had contact with the juvenile justice system, compare to 2% of their non-disciplined counterparts. *See Breaking Schools' Rules: A Statewide Study on How School Discipline Relates to Students' Success and Juvenile Justice Involvement*, available at www.justicecenter.csc.org, under "resources;" link to "juveniles." An examination of arrests in the three largest school districts in Massachusetts that arrests for disruptive but otherwise relatively minor misbehavior made up the majority or a substantial percentage of all school-based arrests. *See, e.g., Arrested Futures; The Criminalization of School Discipline in Massachusetts' Three Largest School Districts*, available at www.cfjj.org, under "publications and resources" under "reports."

[23] Gray, Henning, and Schwartz, *Memorandum to CJS Standards Committee* (Jan. 14, 2014).

designation of a single judge to preside over dispositions of youth involved in both systems; encourage information-sharing among dependency and delinquency courts and agencies while maintaining confidentiality and evidentiary restrictions on the use of information in court; and ensure fair treatment of foster youth in detention, incarceration or on probation.

The proposed standards draw upon a number of policies adopted by the American Bar Association since the adoption of the original 20 volumes of juvenile justice standards approved by the ABA in the late '70's.[24]

The proposed standards provide definition for "dual jurisdiction," "crossover youth" and "multi-system youth" among other operational terms employed by the standards and actors in the field. Recognizing that the agencies and systems serving these youngsters have vast discretion in their decision-making about these children, the standards are designed to guide discretion and decision-making in four principal systems: education, juvenile justice, child welfare, and behavioral health.[25]

The proposed standards do so by stressing collaboration and coordination of services through legislative and structural reform, court organization and jurisdiction, including innovative docketing such as designated crossover docketing, and information sharing. The standards also provide guidance for education and child welfare in making referrals to the juvenile justice system, and considerations for police in making decisions to arrest. Importantly, the standards recommend non-intervention or diversion by police regarding minor delinquent behavior and define that term, relying on the IJA/ABA *Juvenile Justice Standards Relating to Police Handling of Juvenile Problems.* This theme is continued in provisions for intake and prosecution.

The standards also address detention, adjudication, and disposition of youth involved in multiple agencies, and reentry of these youth if they are placed in out-of-home care or secure confinement. As well, the standards stress multidisciplinary training for attorneys representing these children.

The standards are far from approval. The task force will revise the draft after discussion with the Criminal Justice Standards Committee, after which the proposed standards will work their way through the Criminal Justice Section and the ABA House of

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[24] A resolution calling on jurisdictions to support school violence prevention education (2004); a resolution supporting coordinated services for at-risk youth, calling on jurisdictions to assure that adequate and appropriate services are more available to such youngsters and their caretakers (2006); a resolution calling on jurisdictions to divert alleged status offenders from the court system (2007); a resolution calling on jurisdictions to limit exclusion of students from regular education programs and support these youth to return to school (2009); a resolution calling on jurisdictions to implement the older youth provisions of the Fostering Connections to Success and Increasing Adoptions Act, which provides funding for states to enable children, including some delinquent children, to remain in foster care past age 18 (2010); a resolution supporting services for youth in the juvenile justice system with co-occurring mental health and substance abuse disorders and collaboration among agencies serving those children (2013); and a resolution urging services such as housing, transition planning and support services to avoid youth in foster care from becoming homeless.

[25] Gray, Henning and Schwartz, *supra* note 22, at n. 15.

Delegates. Upon approval, the standards will address a significant void that now exists in the wake of the approval of the other volumes of juvenile justice standards in the late '70s. They do build upon policies endorsed by the American Bar Association over the last decade, and make those policies concrete for lawyers, legislators, policy makers and others to address the needs of these youth.

VI. U.S. JUSTICE AND EDUCATION POLICY DISCOURAGING ZERO TOLERANCE

The U.S. Justice Department has recently endorsed policies and practices that also affect many of these children – those who face school disciplinary policies and police practices which all too often result in ejection from school and referral to the formal justice system. On January 8, 2014, Attorney General Eric Holder, observing that "a routine school . . . infraction should land a student in the principal's office, not in a police precinct," announced guidelines for the nation's schools that would rely less on law enforcement and more on school-based punishment to deal with misbehaving students.

Titled *Guiding Principles: A Resource Guide for Improving School Climate and Discipline*, and developed with the U.S. Department of Education, the report urges school administrators and officials to rely more on school-based programming than punitive disciplinary policies to improve student behavior and a productive school atmosphere.[26] Although the guide does not directly call for the abolition of "zero tolerance" policies to enforce school discipline, it does allude to such policies preventing "flexibility" in identifying proportional responses to student misconduct.[27] The report also recommends that school officials use school-based police to concentrate on improving school safety, and not to enforce disciplinary codes.[28]

Accompanying the report was a letter to school administrators and others authored by the assistant secretary in the Office of Civil Rights in the U.S. Department of Education, and the acting assistant attorney general in the Civil Rights Division of the U.S. Department of Justice. The very detailed letter outlined the problem of racial disparity in school discipline, noting that data assembled by the Office of Civil Rights revealed that while African-American students comprised a mere 15% of the population studied, they constituted 44% of those suspended more than once, and 36% of students expelled. Moreover, according to the data, over 50% of those students who were involved in school related arrests or referred to police were African-American or Hispanic.[29]

The letter outlines the requirements of Title IV and Title VI of the Civil Rights Act of 1964 prohibiting discrimination in education on the basis of race and the potential impact of disparate disciplinary treatment of minority students. It also provides protocols for assessing whether school discipline imposed on students is race-neutral, or instead whether disciplinary decisions are discriminatory or have a disparate effect on minorities. The letter cautions that the very same analyses will be employed by the two agencies to determine whether discriminatory practices exist to take legal action. Finally, the letter

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[26] The report may be found at www.ed.gov/schooldiscipline.
[27] *Id.* at 13.
[28] *Id.* at 9-11.
[29] The letter may likewise be found at the website.

provides a series of remedies that education institutions might employ to comply with the anti-discrimination provisions of Title IV and Title VI, or engage in self-assessment.

Taken together with the remarks of the Attorney General in his announcement of January 8, 2014, while the letter does not recommend the abolition of "zero tolerance" discipline policies outright, it is apparent the Justice Department and the Department of Education are recommending the nation's schools abandon them as a measure of school discipline – a recommendation long overdue.[30]

The new policies enunciated by the Justice Department and the Department of Education nevertheless are in dissonance with the rush to create safer schools following the slaughter of innocents at Sandy Hook Elementary School. In 2013, the U.S. Department of Justice Office of Community Oriented Policing Services (or COPS) announced grant awards amounting to over $46,000.000.00 to hire 370 additional school resource officers around the country.[31]

VII. JUVENILE LIFE WITHOUT PAROLE

In *Graham v. Florida*,[32] the U.S. Supreme Court prohibited the imposition of life without parole on juvenile offenders who had committed serious crimes short of homicide. Two years later, the Supreme Court extended the prohibition to children who had committed homicides, under the age of eighteen, in *Miller v. Alabama*.[33] In the wake of those decisions, however, a variety of questions remain unanswered, such as whether the decision in *Miller* is retroactive, and whether the lengthy duration of a sentence is unconstitutional, even with the prospect of parole.

In December 2013, the Supreme Judicial Court of Massachusetts struck down life sentences without parole for juveniles, extending *Miller v. Alabama* to those sentences which were discretionary with the sentencer, and applying its decision retroactively.[34] The ruling is significant, because that state, together with four others, leads the nation in the number of young offenders sentenced to life under the age of 18.[35] Similarly, the Nebraska Supreme declared the decision to have retroactive effect in three cases, decided February 7, 2014.[36] In contrast, however, the Pennsylvania Supreme Court held in *Commonwealth v. Cunningham* held that the prohibition against mandatory life-without-parole sentencing for juvenile offenders did not apply retroactively.[37]

The law remains unsettled, and there is a clash between court decisions implementing *Miller* and *Graham*, and legislatures resisting them. For example, in

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[30] In February 2001, the ABA urged the abolition of zero tolerance policies in schools.
[31] *See* www.cops.usdoj.gov, at "grants and funding."
[32] 560 U.S. 48 (2010).
[33] 132 S. Ct. 2455 (2012).
[34] Diatchenko v. District Attorney for Suffolk Dist., 1 N.E.3d 270 (Mass. 2013).
[35] The other states are California, Louisiana, Michigan, and Pennsylvania, according to the Campaign for the Fair Sentencing of Youth. *See* http://fairsentencingofyouth.org/, at "resources," under "facts."
[36] State v. Castaneda, 287 Neb. 289, 2014 WL 541243 (2014); State v. Mantich, 287 Neb. 320, 2014 WL 503134 (2014); State v. Ramirez, 287 Neb. 356, 2014 WL 502315 (2014).
[37] Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013).

Michigan, a U.S. District Court judge declared in *Hill v. Snyder*[38] that those decisions should be applied retroactively, and that over 350 prisoners sentenced as juveniles to mandatory terms of life without parole should be given an opportunity for release.[39] The U.S. Sixth Circuit Court of Appeals stayed the order in *Hill* on December 23, 2013, declaring that the District Court's order was overbroad and there was a likelihood of reversal.[40] On February 4, 2014, the Michigan House of Representatives passed a bill which would grant parole eligibility to juvenile offenders sentenced to life after 2012 and henceforth, but not retroactively.[41]

There is also a reactionary trend in the states to revise sentencing statutes to allow for parole but only after the lapse of an extended period of years. In Iowa, for example, the governor commuted life-without-parole sentences of 38 juvenile offenders and instead ordered them to serve 60-year terms before they could be considered for parole. The Iowa Supreme Court struck down the governor's decision, saying the 60-year sentences were the "practical equivalent" of a mandatory life sentence.[42] As the Iowa Supreme Court observed, "Oftentimes, it is important that the spirit of the law not be lost in the application of the law. This is one such time."[43]

VIII. DEFENSE OF CHILDREN IN THE COURTS

In March 2013, the National Juvenile Defender Center disseminated national standards for the defense of children and youth in the nation's juvenile courts. The standards address the role of counsel and standards for performance at every stage of juvenile proceedings, from pretrial proceedings and detention, through adjudication, disposition and even after. The standards also provide guidance for attorneys in challenging transfer or waiver to the criminal courts, the duties of supervisory attorneys and the role of lawyers in supporting systemic change.[44]

Shortly after their release, the National Juvenile Justice Network, headquartered in Washington, D.C., promoted six policy priorities for juvenile defense in the United States, urging early access to counsel; a presumption that the juvenile accused is indigent; avoidance of waiver of counsel; challenges to discriminatory or disparate treatment of youth; manageable caseloads for defense counsel and access to adequate resources; and the elimination of harmful conditions of confinement. The Network publishes a policy statement detailing its recommendations.[45]

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[38] Hill v. Snyder, No. 10-14568, 2013 WL 365198 (E.D. Mich. Jan. 30, 2013).

[39] The litigation has a history chronicled at www.aclu.org, which brought suit to challenge juvenile life sentences without parole in Michigan, a state with the second largest prison population of such offenders. The litigation and orders resulting from it may be found at the website under "criminal law reform," linking to the juvenile justice page.

[40] *Maxey v. Snyder*, No. 13-2661 (6th Cir. Dec. 23, 2013), *available at* http://www.michigan.gov/documents/ag/Hill_v._Snyder_6th_Cir._Order_443146_7.pdf

[41] Michigan Senate Bill 0319 (2013) was enacted as Michigan Public Act No. 22 (2014) on March 4, 2014 and was given immediate effect.

[42] State v. Ragland, 836 N.W.2d 107 (Iowa 2013).

[43] *Id.* at 121.

[44] The standards may be found at www.njdc.info, under "publications."

[45] The paper may be found at www.njjn.org, at "our work," under "publications."

In February, the ABA House of Delegates approved two measures to improve the state of juvenile defense. First, prompted by the relative paucity of decisional law regarding juvenile justice and law, the ABA recommended training for lawyers to improve appellate defense, adequate resources for appellate representation, and collection of data identifying institutional obstacles to appeal from the nation's juvenile courts.[46] Second, the ABA House of Delegates also urged lawyers, judges and others in the justice system to recognize and respond to children and young people who have been exposed to violence or suffered traumatic events as an incident of their circumstances before the courts.[47] The resolution extends not only to abused and neglected children but those who are under the delinquency jurisdiction of the courts, including status offenders.

IX. SEXUAL OFFENDING BY JUVENILES

Increasingly, as the United States and other countries have focused on human exploitation involved in sex trafficking, child prostitutes are recognized more as victims than criminals. In 2008, New York enacted legislation to allow for diversion of these young offenders from prosecution, favoring instead therapeutic and other services for them.[48] Other states followed suit with various measures.[49] At least one appellate court has found that, under its statutory code regarding the age of consent, as well as legislation prohibiting the sexual exploitation of minors, a child prostitute under the age of 14 could not lawfully consent to sex and was therefore immune from prosecution.[50]

In August, 2013 at the annual meeting, the ABA endorsed the Uniform Prevention of and Remedies for Human Trafficking Act.[51] Developed by the National Conference of Commissioners on Uniform State Laws, the act would exempt from criminal prosecution minor childrenwho were subjected to prostitution as a direct result of trafficking and allow them to assert their minority as an affirmative defense. This resolution followed one passed by the House of Delegates at its midwinter meeting in February 2013 encouraging the enactment of legislation that would allow both adults and children to raise victimization from trafficking as a defense to charges of prostitution.[52]

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[46] A.B.A. Res. 102A (Feb. 2013).
[47] A.B.A. Res. 109B (Feb. 2013).
[48] N.Y. Soc. Serv. Law § 447-b(2) (McKinney 2011). Under the act, a child may still be prosecuted, although diversion may occur in the discretion of the court.
[49] For a survey of states' responses to child prostitution which are more beneficent than punitive, *see*, Geist, *Finding Safe Harbor: Protection, Prosecution and State Strategies to Address Prostituted Minors*, 4 LEGIS. & POLICY BRIEF 67 (2012).
[50] In re B.W., 313 S.W.3d 818 (Tex. 2010). The majority opinion cites *Roper v. Simmons* to rebut the argument of the dissent that the youngster's prior history of delinquency makes her a mature minor justifying her prosecution. The majority declared "children are the victims, not the perpetrators, of child prostitution. *Id.* at 826.
[51] A.B.A. Res. 102 (Aug. 2013).
[52] A.B.A. Res. 104G (Feb. 2013) (sponsored by the ABA Criminal Justice Section).

Prompted, if not prodded, by the federal Sex Offender Registration and Notification Act, or SORNA, many states now require youth who are convicted of sex offenses to register as offenders along with their adult counterparts.[53]

Human Rights Watch has prepared a thorough analysis and critique of applying sex offender registration laws to youth, in *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*. Released in May, 2013, the report surveys the practices among the states, revealing their onerous effects on young registrants, the continuing burdens and obstacles imposed upon them into adulthood, and the often unintended consequences of registration and notification requirements. The report contains a number of considerations for counsel representing these youngsters, and recommendations for legislative change at the national and local levels.[54]

X. FEDERAL ACTIVITY

In the midst of austerity and sequestration, federal funding for juvenile justice is anemic. Congress appropriated $55.5 million for state formula grants under the Juvenile Justice and Delinquency Prevention Act, and all but eliminated funding for the Juvenile Accountability Block Grant program. Congress did appropriate $75 million, however, for a new "Comprehensive School Safety Initiative," promoting research to increase school safety and allocating $50 million for pilot grants employing a model which addresses issues of "the school-to-prison pipeline."[55]

XI. CONCLUSION

Reforming the response of the juvenile justice system to children and young people who have engaged in non-criminal misbehavior, often because they are victims and not criminals, is long overdue. Indeed, in rediscovering that youth is a different status than adulthood, that status is now beginning to shape the response of the justice system to these children in ways that address their needs and ameliorate the conditions in which they find themselves, short of jail. Leaders ins the American Bar Association long ago insisted upon this response to these youngsters, much to the consternation of some. As the justice system begins to re-examine its role in meeting the needs of these youth, the ABA will continue its calls for reform, with solutions which actually help them.

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[53] A "fact sheet" prepared by the federal government explaining the requirements of SORNA as applied to juveniles may be found at http://ojp.gov/smart/pdfs/factsheet_sorna_juvenile.pdf

[54] The report may be found at www.hrw.org under "publications," dated April 30, 2013.

[55] Information about federal funding levels to support juvenile justice may be found at the website for the Coalition for Juvenile Justice, at www.juvjustice.org under "news."