

Juvenile Justice Quarterly



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State Policy and Legislative News

Two New Juvenile Justice Laws Took Effect Jan. 1, 2012

Jan. 1, 2012 ushered in a new requirement for judges in Illinois. When committing offenders to state juvenile prison, they must now select the least restrictive confinement available and consider the youth's age, criminal background, mental health, and reasons why community-based services have not succeeded previously.

The [law](#), sponsored by Reps. Karen Yarbrough, Robyn Gabel, Elizabeth Hernandez, Cynthia Soto and Derrick Smith, and Sens. Annazette R. Collins and Heather A. Steans, was designed to provide judges with all relevant background information and history of the young offender

For more information on pending and enacted juvenile justice bills, visit NCSL's [Juvenile Justice Bill Tracking Database](#). For the report, 2011 Juvenile Justice State Legislation, click [here](#)

during sentencing. It ensures that costly juvenile prisons are used as a last resort, and all available alternatives to incarceration are considered.

The Delaware Legislature enacted [HB 177](#) on Aug. 22, 2011. The law allows juvenile criminal cases that are dismissed, acquitted or not prosecuted to be expunged from a young person's record. The sponsor of the bill, Representative Michael A. Barbieri said, "Children

who are charged with minor crimes that are dismissed or dropped should not have these charges following them around for the rest of their lives... The courts have determined that the cases don't have merit, but despite their innocence, juveniles' ability to go to school, get a job and live a normal adolescent life are impacted by these charges."

For more information on important juvenile justice policy issues, see NCSL's/MacArthur Foundation [Juvenile Justice Guidebook for Legislators](#)



A primary consideration in both Roper and Graham was "the nature of juveniles," how they differ biologically and neurologically from adults

From the Courts

Does it violate the 8th and 14th Amendments' prohibitions against cruel and unusual punishment to sentence a juvenile convicted of homicide or felony murder to life without parole if they were 14 years old or younger when they committed their crime. This spring, the U.S. Supreme Court will address this issue when it hears the joint cases of [Kuntrell Jackson](#) and [Evan Miller](#). Both Jackson and Miller were 14 years old when they committed their crimes and the Court will decide if and how their developmental immaturity should affect their current sentences.

This is the third case since 2005 the Supreme Court will hear concerning the constitutionality of the current most severe criminal punishment for juveniles. In [Roper v.](#)

[Simmons \(opinion\)](#) the Court declared the death penalty unconstitutional for juveniles and in [Graham v. Florida, \(opinion\)](#) it did the same for life without parole for juveniles who committed crimes other than homicide.

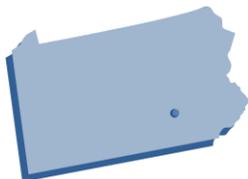
A primary consideration in both *Roper* and *Graham* was "the nature of juveniles," how they differ biologically and neurologically from adults. The Court noted that youths have a "lack of maturity and an underdeveloped sense of responsibility" and that they are "more vulnerable or susceptible to negative influences and outside pressures." These characteristics make it "difficult even for expert psychologists to differentiate between the juvenile offender whose

crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." This analysis led the Court to conclude that juvenile crime is less "morally reprehensible" than that of an adult offender, and therefore, juveniles are less deserving of the most severe punishments.

In the *Jackson* and *Miller* cases, the Court will decide if this reasoning extends to certain juveniles convicted of homicide or felony murder. The ruling will affect 73 juveniles in the United States who are currently serving life sentences without the possibility of parole.

State in Focus – Pennsylvania

Legislature



As the 2012 legislative sessions begin, the Pennsylvania House of Representatives will consider four senate bills that would significantly change the administration of state delinquency

proceedings. Senator Lisa Baker introduced these bills with the intent of protecting the fundamental rights of youths entering the juvenile justice system. Senate Bills 815, 816, 817

and 818 all passed the Senate at the end of 2011.

Senator Baker's bills would:

- Eliminate waiving counsel in juvenile delinquency hearings. [Senate Bill 815](#) [Watch](#) [Listen](#)

- Create a victim advocate devoted to juvenile justice. [Senate Bill 816](#) [Watch](#) [Listen](#)
- Prohibit shackling of juveniles in the courtroom. [Senate Bill 817](#) [Watch](#) [Listen](#)
- Require judges to state on the record the reasons behind disposition orders. [Senate Bill 818](#) [Watch](#) [Listen](#)

The need for these reforms, according to Baker, were highlighted by the actions of two judges in Luzerne County, Penn., who were sending juveniles to detention facilities for minor infractions and preventing youths from appearing with an attorney. A detailed account of these violations and recommendations to correct them can be found in the [Luzerne County Juvenile Justice Task Force Report](#). The task force was formed specifically to study, evaluate and

remedy these concerns.

Courts

Before the 2012 session began the [Supreme Court of Pennsylvania adopted changes to Rule 152, dealing with waiver of counsel](#) that will take effect March 1, 2012. The changes ban waiving counsel for juveniles under the age of 14 at all hearings and for those older than 14 in almost all proceedings and hearings in juvenile court. The court stated that proceedings that have "consequences of a detention, transfer, adjudication, disposition, or probation revocation" are too serious for a juvenile to take on by themselves.

This is the second rule change in the past year by the Pennsylvania Supreme Court that makes it more likely legal counsel will represent youths at their proceedings. In May 2011, the State Supreme Court

adopted a rule presuming all juveniles to be indigent. This change ensured all juveniles are eligible for appointed counsel unless they retain a private attorney; it went into effect July 1, 2011.

According to statistics from the Juvenile Court Judges' Commission, 185 juveniles waived their right to an attorney in 2009. That means that more than 99 percent of juveniles had an attorney for court proceedings that year. The court acknowledged that even though waiver of counsel is rare in Pennsylvania, the issues in Luzerne County show that significant problems can still arise and should be remedied.

To see how a juvenile is affected over the short and long term as a result of a delinquency adjudication, see [the Pennsylvania Juvenile Justice Collateral Consequences Checklist](#).



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On the Fiscal Front

Illinois Juvenile Justice Commission Youth ReEntry Improvement Report

More than 50 percent of young people who leave the Illinois Department of Juvenile Justice detention facilities will be re-

incarcerated in the future. This is one of the findings in a [report](#) released on December 13, 2011, from the Illinois Juvenile Justice

Commission's study of reentry in the state's juvenile justice system. According to the commission, reentry rates





George W. Timberlake, Retired Chief Judge of the Second Judicial Circuit, Illinois; Chair of Illinois Juvenile Justice Commission; and member of the Illinois Models for Change Coordinating Counsel

are important because they measure whether youths released from incarceration remain safely and successfully in their communities. The report notes that the lengthy juvenile parole terms (until youth age out at 21) combined with the lack of aftercare services and monitoring by adult parole officers all contribute to the high re-incarceration rate. The study and report were authorized by the 2009 Youth Reentry and Improvement Law, [Ill. Rev. Stat. Ch. 23, §5017a-5 \(2009\)](#). Representative Robyn Gabel has filed legislation to set a standard length of time for juvenile parole of up to one year (HB 5492).

“Some of those youth may

need to be incarcerated for public safety reasons,” says George W. Timberlake, chair of the commission. “However, many more of them could be rehabilitated for far less money in their home communities, and we’re recommending steps the state should take to make sure those leaving prison don’t return to prison.” High reentry rates can be expensive; in 2010 the Illinois auditor general estimated that incarceration in an Illinois youth center cost the state \$86,861 a year, per youth.

Timberlake believes “the system is not doing enough to rehabilitate juveniles inside and outside prison walls, and it often is too quick to

return youth to expensive prisons where failure again is likely.” If the changes indicated in the report are made, Timberlake contends that they “... could save money, save lives, and reduce the expensive cycle of re-incarceration, which feeds our now overcrowded adult prisons as these youth go deeper and deeper into crime.”

Resources:

- [IJJC's Fact Sheet – Youth ReEntry Improvement Report](#)
- [Summary of Findings and Recommendations](#)
- [Illinois Juvenile Justice Commission – Letter to the governor and General Assembly, April 2010](#)



Meeting Wrap Up

Lawmakers Attend Juvenile Justice Model Site Visit in Florida

Lawmakers from across the country had the opportunity to learn about individualized, comprehensive, gender-responsive prevention services as they toured the [Pace Center for Girls](#) in Florida’s Orange County.

A group of 13 state legislators and legislative staff members from nine states participated in the

“Kids Are Different: Juvenile Justice Model Site Visit” with the Juvenile Indigent Defense Action Network. Held in Orlando, Fla., November 1–4, 2011, the visit was a partnership project of NCSL’s Criminal Justice Program and the John D. and Catherine T. MacArthur Foundation.

After returning from Pace, the lawmakers attended

two days of informative sessions on the important role of defense counsel in juvenile proceedings, shackling of juveniles, and the differences between the juvenile and adult court systems.

For more information on the visit, click [here](#).



Mark Your Calendar

NCSL Webinar and Technical Assistance

- NCSL Top 12 Issues of 2012 Webinar: *Corrections, Juvenile Justice and Drugged Driving*. This webinar looked at “justice reinvestment” reforms that save money while improving probation and parole supervision and expanding drug treatment. Other issues addressed were prescription drug abuse and juvenile justice reform issues. To listen to the recording of this webinar, click [here](#).
- NCSL Juvenile Justice staff are available to visit your legislature in 2012 to provide testimony or other technical assistance on a variety of juvenile justice issues. Please contact: Sarah Brown, (303) 364-7700 ext. 1361 or at sarah.brown@ncsl.org

Other Resources

- [NCSL Partners](#)



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This newsletter is prepared under a partnership project of NCSL’s Criminal Justice Program in Denver, Colorado and the John D. and Catherine T. MacArthur Foundation in Chicago, IL. The NCSL project is designed to help states tap the best research and information available to put a lens to juvenile justice policy options and reforms.