

CHAMPIONING CHILDREN'S RIGHTS IN NEVADA, 2000–2015: THE THOMAS & MACK JUVENILE JUSTICE CLINIC AS CHANGE AGENT

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It all started with a phone call from our founding Dean, Dick Morgan, in the spring of 2000. He had someone in his office whom he wanted me to meet, he said. I was curious, so I dropped everything and sped over to his office. As soon as I arrived, he introduced me to Assemblywoman Sandra Tiffany. I knew nothing about her, but soon learned from her that she had a longstanding interest in improving the lives of Nevada's children and was on her way to serving her fifth term in the Nevada Assembly. I needed no further opening than that.

At the Dean's invitation, I launched into my all too familiar tirade about the state of legal representation of juveniles in Clark County. In the course of planning for the opening of my Juvenile Justice Clinic in Fall 2000, I had discovered, through meetings with juvenile court hearing masters¹ and lawyers representing both the State of Nevada and the children those lawyers sought to prosecute, that a mere handful of children were being represented by counsel in their delinquency proceedings. In fact, only those few who denied the charges outright were provided with counsel; the multitude of others would proceed to

* Joyce Mack Professor of Law and Director, Thomas & Mack Juvenile Justice Clinic, William S. Boyd School of Law, University of Nevada, Las Vegas. I want to thank the Thomas and Mack families for their support of the Juvenile Justice Clinic and all of Boyd's clinics. Through their generosity, we have been able to make a difference in the lives of countless people in our community. I also want to acknowledge and thank all of my Juvenile Justice Clinic students who inspired and helped realize the advances in juvenile justice our clinic has seen in its fifteen years, and to thank, in particular, Stephanie Getler, Haley Lewis, Dawn Nielsen, Jenn Odell, and Matt Tsai for their contributions to this essay. Thank you, as well, to Emma Babler, Research Librarian, and David McClure, Associate Director of the Wiener-Rogers Law Library, for their painstaking attention to the details of everything, and especially, the legislative citations necessary to complete this work. Finally, thank you to my colleague and friend, David Tanenhaus, James E. Rogers Professor of History and Law at the Boyd School of Law, for asking me to write this essay. Had he not asked, this record of our juvenile justice work would not exist, so thank you, David.

¹ See NEV. REV. STAT. § 62B.030 (2015) (providing that juvenile delinquency hearing masters appointed by the court may “[c]onduct all proceedings . . . in the same manner as a district judge conducts proceedings in a district court.”). In practice, hearing masters conduct all hearings for individuals charged with acts of delinquency, except for those the juvenile delinquency judge hears, such as those for sexually exploited youth and juvenile sex offenders.

enter admissions, including admitting to felonies, with no advice concerning the ramifications of their pleas and no explanation of their right to a trial. I was astonished when a hearing master who heard nearly half of the delinquency cases in the juvenile court told me that there simply were far too many children coming before the juvenile court to provide every one of them with counsel. The upshot was that almost no one received counsel. Had these people not heard of *In re Gault*,² the seminal 1967 United States Supreme Court decision that established, among other constitutional rights, a Fourteenth Amendment Due Process right to counsel for children facing delinquency charges? Wondering if the entire State of Nevada had somehow figured out a way to sidestep that ruling, I called up the Washoe County Public Defender and asked what that office did about representing children in delinquency proceedings. “Represent them,” I was told, “all of them, you know, there’s *Gault*.”

So how was Clark County getting away with not giving kids lawyers? It turns out that the then-current Nevada statute providing for counsel in delinquency proceedings, Nevada Revised Statutes section 62.085, contained two significant words, appearing twice in the statute: “unless waived.”³ The practice in juvenile court, I learned, was to ask each child at his/her first appearance whether s/he wanted a lawyer, and to accept without inquiry or explanation of the role of a lawyer, the child’s “No.” Of course an uncounseled child would say, “No, I don’t want a lawyer,” because kids (and likely, many adults) have no idea why they might want or need a lawyer, and no one was telling them anything to dispel their natural ignorance. This, I decided, had to change.

In 1997, when plans were underway for the creation of the William S. Boyd School of Law at the University of Nevada, Las Vegas, Dean Morgan envisioned a law school that would provide students the opportunity to learn to be lawyers by doing what lawyers do in a variety of settings. Central to that mission were plans for a legal clinic where third-year law students would represent clients on a pro bono basis under a Nevada Supreme Court student practice rule that permitted student representation when supervised by a licensed lawyer (like myself). Even though the law school’s legal clinic would not begin offering clinical courses until we had third-year law students, Dean Morgan saw the clinical program’s role as so significant that two of our seven founding faculty members arrived with substantial clinical teaching experience—Annette Appell⁴ and myself. Through the clinics, among other programs to be developed, the law school would engage with the local community and provide needed

² *In re Gault*, 387 U.S. 1, 41 (1967).

³ NEV. REV. STAT. § 62.085 (2001) (amended 2001).

⁴ Professor Appell left Boyd in 2008 to assume the position of Associate Dean of Clinical Affairs at Washington University Law School in St. Louis, Missouri, where she remains today as Professor of Law. *Annette R. Appell*, WASH. UNIV. LAW, https://law.wustl.edu/faculty_profiles/profiles.aspx?id=6627 [<https://perma.cc/PRF3-GCE8>] (last visited Feb. 19, 2017).

services while educating our students to be reflective professionals with a commitment to improving the quality of legal services in Nevada.

As we began to plan for the launching of our clinics, we decided that our clinical program would focus on representing children and their families. Professor Appell had already amassed an impressive record of work, both clinical and scholarly, with children in the foster care system, representing those who were abused or neglected by their parents or other caregivers.⁵ Although I had no experience representing children in any legal proceedings, it had long been my goal to create a juvenile justice clinic in which students would represent children arrested for crimes in delinquency court. My pre-law school experience as an English teacher in a Tucson alternative high school whose students often had probation officers and extensive juvenile delinquency records had piqued my interest in working with these often troubled kids. Thus the new clinic was born. In 2001, it would receive a new name in honor of a generous gift from the Thomas and Mack families of Las Vegas.⁶

With the Clinic set to begin accepting students in Fall 2000, another of Dean Morgan's visions for the law school began to take shape in my own vision for the Juvenile Justice Clinic I was developing. He saw a law school in which litigation would not be the only approach to problem solving, but would be among a range of alternatives. For issues that were systemic and called out for law reform, he encouraged us to consider legislative solutions wherever possible. As I prepared for the first Juvenile Justice Clinic, I was haunted by what I had learned about the paucity of legal representation for children in delinquency proceedings. Although I considered that we might need to sue the Clark County Public Defender for depriving children of the right to counsel made so clear in *Gault*,⁷ that was not an option I relished, and litigation was never a serious or realistic solution. Instead, I decided that my Juvenile Justice Clinic would do more than represent children in delinquency court in our inaugural year; my students and I would engage in law reform from day one by pursuing a legislative amendment to the juvenile right to counsel statute. In that pursuit we were not alone.

From the beginning, even before the law school's doors opened, we had been working with then-Assemblywoman and Executive Director of Clark County Legal Services⁸ Barbara Buckley⁹ to find ways in which the law school

⁵ *See id.*

⁶ UNLV Media Relations, *UNLV Law School Receives \$3 Million Pledge from Joyce Mack and Thomas Family*, UNLV NEWS CTR. (Oct. 6, 2005), <https://www.unlv.edu/news/release/unlv-law-school-receives-3-million-pledge-joyce-mack-and-thomas-family> [<https://perma.cc/KA2V-QJKF>].

⁷ *See generally Gault*, 387 U.S. at 41.

⁸ Clark County Legal Services changed its name to Legal Aid Center of Southern Nevada in 2008 to better communicate the organization's mission. LEGAL AID CTR. OF S. NEV., ANNUAL REPORT 3 (2008), http://www.lacsn.org/images/annual-reports/lacsn_annual_report_2008.pdf [<https://perma.cc/P93X-NSYU>].

and her legal services organization could partner to expand access to legal services in southern Nevada.¹⁰ The connection with Barbara Buckley would also prove to be invaluable in our efforts to achieve full representation for children in juvenile delinquency court. In 1999, her organization had formed the Children's Attorneys Project ("CAP"), whose mission was to counsel and represent children who had suffered abuse or neglect in their homes and, as a result, were in foster care.¹¹ At times, the representation included appearing in juvenile delinquency court. The CAP attorneys were as astounded as I had been at the absence of counsel for most kids in delinquency proceedings and the rote waivers of that most important constitutional right. They too concluded that amending the juvenile right to counsel statute was a top priority.

And so it was that my very first clinic students and I drafted an amendment to that statute. The amendment sought to accomplish two things: first, to eliminate the "unless waived" language that juvenile delinquency hearing masters and judges had been employing to deny counsel to those whom *Gault* said had a constitutional right to counsel; and second, to require appointment of counsel for any child facing delinquency charges before that child could admit to any of those charges. Having conducted the extensive research that led to my law review article on waiver of juvenile right to counsel,¹² I had concluded that juveniles, because of their developmental immaturity, inability to comprehend consequences, and other features of youth, simply should never face delinquency

⁹ Buckley served in the Nevada Assembly from 1994 to 2010. She served as Assembly Speaker from 2007 to 2010, the first woman in Nevada history to serve as Speaker. She also served as Majority Leader of the Assembly from 2001 to 2005. Term limits enacted after 1996 prevented Buckley from seeking re-election in the 2010 elections. RESEARCH DIV., LEGISLATIVE COUNSEL BUREAU, TERM LIMITS-IMPACTS ON THE NEVADA STATE LEGISLATURE 1 (2015), <http://www.leg.state.nv.us/division/research/publications/factsheets/termlimits.pdf> [<https://perma.cc/K5ZJ-NEKL>]; Laura Myers, *Political Eye: Despite Gains, Women Lag in Congress, Legislature*, L.V. REV.-J., (Dec. 3, 2012, 2:00 AM), <http://www.reviewjournal.com/news/nevada-legislature/political-eye-despite-gains-women-lag-congress-legislature> [<https://perma.cc/9FF8-CEXH>]; *Legislative Biography -- 73rd (2005) Session*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/73rd/Legislators/Assembly/Buckley.cfm> [<https://perma.cc/FR93-PVGS>] (last visited Feb. 19, 2017).

¹⁰ The partnership would lead to the law school's Community Service Program, in which all law students teach classes that provide legal information to the community and help self-represented litigants understand how to present their cases and represent themselves in court. Christine Smith & Mary E. Berkheiser, *Pro Bono Service at the William S. Boyd School of Law*, NEV. LAW., Apr. 1999, at 16.

¹¹ *Children's Attorneys Project*, LEGAL AID CTR. OF S. NEV., <http://www.lacsn.org/practice-areas/childrens-attorneys-project> [<https://perma.cc/5ABW-MKTT>] (last visited Feb. 19, 2017).

¹² Mary Berkheiser, *The Fiction of Juvenile Right to Counsel: Waiver in the Juvenile Courts*, 54 FLA. L. REV. 577, 582 (2002). After examining over one-hundred cases of juvenile waiver of right to counsel and the work of developmental psychologists and others concerning the characteristics of adolescents, I determined that permitting juveniles to waive their right to counsel constituted a denial of that right and, accordingly, that due process prohibited juvenile courts from accepting waivers of counsel by juveniles against whom delinquency petitions had been filed.

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charges without counsel.¹³ We drafted a bill reflecting these features, and Assemblywoman Tiffany submitted a bill draft request that would amend Nevada Revised Statute section 62.085 by eliminating the “unless waived” language, and amend Nevada Revised Statute section 62.193 by adding a provision requiring appointment of counsel before entry of any plea to a delinquency charge.¹⁴

Assemblywoman Tiffany was the lead, but not the only, sponsor of Assembly Bill 308 (“A.B. 308”), the Juvenile Justice Clinic’s first bill. In fact, more than twenty members of the Nevada Assembly, both Republicans and Democrats, signed on to the bill.¹⁵ Providing counsel to children charged with crimes was not a tough sell, at least not to our elected representatives. But at the hearing before the Assembly Judiciary Committee on March 22, 2001, representatives of both the Clark County District Attorney’s Office and the Clark County Public Defender voiced opposition, arguing that counsel was unnecessary in most cases and would interfere with the “expeditious and efficient” operation of the juvenile courts.¹⁶ Those naysayers could not overcome the compelling testimony of Assemblywoman Tiffany in support of the bill. My own testimony aimed to quell some legislators’ concerns about those who commit status and other offenses for which they may be diverted from the delinquency court to appropriate classes and other rehabilitative programs. A.B. 308 did not require appointment of counsel for those juveniles—only cases in which the district attorneys filed petitions for an adjudication of delinquency would require counsel as provided in *Gault*.¹⁷ After a full hearing, Assemblywoman Barbara Buckley moved to pass A.B. 308 out of the Assembly Judiciary Committee, and it passed unanimously on April 16, 2001.¹⁸ One week later, the full Assembly passed A.B. 308 unanimously.¹⁹ Next step: Senate Judiciary.

The Senate Judiciary Committee conducted a thorough-going hearing on A.B. 308, with Assemblywoman Tiffany again presenting the bill, Assemblywoman Buckley and I speaking in support of it, and a number of other proponents, including those concerned about the fiscal impact of the bill and the question whether waiver would ever be allowed and if so, how that would take

¹³ *Id.* at 637–38.

¹⁴ Assemb. B. 308, 2001 Leg., 71st Sess. (Nev. 2001).

¹⁵ *See id.*

¹⁶ *See Revises Provisions Concerning Waiver by Juveniles of Right to Counsel: Hearing on Assemb. B. 308 Before the Assemb. Comm. on Judiciary*, 2001 Leg., 71st Sess. (Nev. 2001), <http://www.leg.state.nv.us/Session/71st2001/Minutes/Assembly/JUD/Final/650.html> [<https://perma.cc/WKQ8-XUVM>].

¹⁷ *Id.*

¹⁸ *See Revises Provisions Concerning Waiver by Juveniles of Right to Counsel: Hearing on Assemb. B. 308 Before the Assemb. Comm. on Judiciary*, 2001 Leg., 71st Sess. (Nev. 2001), <https://www.leg.state.nv.us/Session/71st2001/Minutes/Assembly/JUD/Final/972.html> [<https://perma.cc/RB46-TA6B>].

¹⁹ ASSEMB. DAILY JOURNAL, 71st Sess. (Nev. 2001).

place.²⁰ Of course the bill would have a fiscal impact on Nevada's counties, which would need to hire additional lawyers to represent every child facing delinquency charges.²¹ But everyone agreed that fiscal concerns could not trump constitutional rights, so fiscal matters could not be a real impediment to passage of the bill. It was the waiver question, however, that occupied most of the Senate hearing, and so, at the conclusion of a lengthy hearing, Senator Mark James, Judiciary Committee Chairman, asked all the parties to get together and work out language that would address the possibility of permitting waiver.²²

"All the parties" turned out, in the end, to be Ben Graham, lobbyist for the Clark County District Attorney and Nevada District Attorneys' Association, and me. We were able to hammer out language that met everyone's concerns and, in particular, my concern that, if waiver was to be permitted, the statute contain language that made explicit the requirements for a legally effective waiver of right to counsel: that any waiver of that right be made on the record and establish that it was knowing, intelligent, and voluntary.²³ Neither *Gault* nor any case since it has considered whether juveniles could competently waive their right to counsel, much less established a standard for that waiver.²⁴ However, the requirement of a knowing, intelligent, and voluntary waiver was neither novel nor untested in the realm of constitutional rights; it had been the constitutional standard for adult waiver of right to counsel since the United States Supreme Court decided *Johnson v. Zerbst* in 1938.²⁵ Although I doubted that any more than a handful of kids appearing in juvenile court could meet the standard, relying on the *Zerbst* standard was far better than having no standard at all. Thus, on May 14, 2001, Senator Valerie Wiener, who has a long history of advancing juvenile justice in Nevada, moved to pass A.B. 308, as amended to include the waiver language, and the Senate Judiciary Committee passed it unanimously.²⁶ The full Senate passed the bill unanimously on May 24, 2001; the Assembly concurred in the amendment days later, and Governor Kenny Guinn signed the bill into law.²⁷

²⁰ See *Revises Provisions Concerning Waiver by Juveniles of Right to Counsel: Hearing on Assemb. B. 308 Before the S. Comm. on Judiciary*, 2001 Leg., 71st Sess. (Nev. 2001), <https://www.leg.state.nv.us/Session/71st2001/Minutes/Senate/JUD/Final/1223.html> [<https://perma.cc/AHA7-QVC4>].

²¹ See *id.*

²² *Id.*

²³ See NEV. REV. STAT. § 62.085(5)(b) (2003).

²⁴ Berkheiser, *supra* note 12, at 607.

²⁵ See *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938).

²⁶ See *Revises Provisions Concerning Waiver by Juveniles of Right to Counsel: Hearing on Assemb. B. 308 Before the S. Comm. on Judiciary*, 2001 Leg., 71st Sess. (Nev. 2001), <https://www.leg.state.nv.us/Session/71st2001/Minutes/Senate/JUD/Final/1371.html> [<https://perma.cc/ERU4-8TB6>].

²⁷ See *AB308*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Session/71st2001/Reports/history.cfm?ID=4040> [<https://perma.cc/T5E9-T6XU>]. The juvenile right to counsel statute, NEV. REV. STAT. § 62.085 (2003), was renumbered in 2003 as part of a reorganization of the Nevada Revised Statutes concerning juvenile justice, juvenile corrections, and the interstate

Almost immediately, the Clark County Juvenile Court Judge who oversaw delinquency cases, C. Dianne Steele, instructed the two delinquency hearing masters to start referring juveniles facing delinquency charges to the lawyers in the Juvenile Division of the Clark County Public Defender. This, of course, meant that the two lawyers in that office were overwhelmed with cases, and Clark County soon increased their number to thirteen. This marked a long-overdue success for the children of Clark County and an auspicious beginning for our Juvenile Justice Clinic.

While we were working on the juvenile right to counsel reform, I was beginning to tackle a problem that did not affect any of our juvenile delinquency clients, but that had troubled me for many years: the juvenile death penalty. I decided, with the help of my students,²⁸ to do a survey of all juvenile offenders nation-wide who were on death row and to examine, in particular, the influence of peers on the crimes for which those on death row had been given the ultimate sentence. My experience in juvenile court had taught me what Berkeley law professor and criminologist Frank Zimring had written so convincingly about twenty years earlier: that adolescents commit crimes in groups.²⁹ The fact that “adolescents commit crimes, as they live their lives, in groups” was, for Zimring, a “well-known secret” of youth crime.³⁰ Indeed, Zimring opined that “[n]o fact of adolescent criminality is more important than what sociologists call its group context.”³¹

Yet nothing in juvenile or criminal law recognized that fact; to the contrary, adolescent group criminality was “an obvious fact [that] we ignore.”³² Many studies had documented the prevalence of group offending in adolescents as a feature setting teens apart from adults, who generally offend alone,³³ but none had studied the crimes of juvenile offenders who had been sentenced to death. I decided to fill that void.³⁴ The research my students and I did made it possible for me to offer a somewhat different perspective on the juvenile death penalty than other advocates for its abolition as Nevada began in 2001 to consider raising the age for death eligibility from sixteen to eighteen.³⁵ The role of peer in-

compact on juveniles, all spearheaded by Senator Valerie Wiener, and now can be found at NEV. REV. STAT. § 62D.030 (2015).

²⁸ I owe a particular debt to Peggy King, Boyd alumna 2004, who worked tirelessly to compile the records of all of the juvenile offenders on death row, even traveling to Austin, Texas, to review files held at the Texas Court of Criminal Appeals and not available on-line or anywhere else.

²⁹ Franklin E. Zimring, *Kids, Groups, and Crime: Some Implications of a Well-Known Secret*, 72 J. CRIM. L. & CRIMINOLOGY 867, 867 (1981).

³⁰ *Id.*

³¹ FRANKLIN E. ZIMRING, AMERICAN YOUTH VIOLENCE 80 (2000).

³² Zimring, *supra* note 29, at 867.

³³ See, e.g., Mary Berkheiser, *Capitalizing Adolescence: Juvenile Offenders on Death Row*, 59 U. MIAMI L. REV. 135, 138–44 (2005).

³⁴ *Id.* at 162–79.

³⁵ See NEV. REV. STAT. § 176.025 (2003), which before 2005 provided:

fluence in the worst of crimes occupied a prominent role in my evolving understanding of adolescent criminality.³⁶ It also brought into sharp relief the stark irony that, in juvenile court, committing crimes with peers was routinely viewed as an aggravating factor, when our research told us that it should play a mitigating role.³⁷

It took three sessions of the Nevada legislature and a ruling by the United States Supreme Court to eradicate the juvenile death penalty from Nevada law. In 2001, a portion of a bill, which would have raised the age for death eligibility to eighteen, died a quick death in the Assembly Judiciary Committee.³⁸ In 2003, the next legislative session, the Nevada legislature considered and passed a number of death penalty reforms,³⁹ but did not eliminate the juvenile death penalty. That same year, the Assembly passed a separate bill, A.B. 118, which raised the age of death eligibility to eighteen,⁴⁰ after the Assembly Judiciary Committee conducted an extensive hearing that included testimony from nationally recognized experts in child and adolescent psychiatry and clinical psychology, as well as from the principal sponsor of the bill, Assemblywoman Chris Giunchigliani, myself, and others.⁴¹ The bill died in the Senate.⁴² In the

A death sentence shall not be imposed or inflicted upon any person convicted of a crime now punishable by death who at the time of the commission of such crime was under the age of 16 years. As to such person, the maximum punishment that may be imposed shall be life imprisonment.

Id. The United States Supreme Court had held in 1988 that the Eighth and Fourteenth Amendments prohibited the execution of one who was fifteen years old at the time of his crime, *Thompson v. Oklahoma*, 487 U.S. 815, 838 (1988), but the next year ruled that a sixteen-year old could face execution without any constitutional impediment. *Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

³⁶ See Berkheiser, *supra* note 33, at 165.

³⁷ *Id.* at 194–95.

³⁸ *Revises Provisions Governing Capital Punishment: Hearing on Assemb. B. 327 Before the Assemb. Comm. on Judiciary*, 2001 Leg., 71st Sess. (Nev. 2001), <http://www.leg.state.nv.us/Session/71st2001/Minutes/Assembly/JUD/Final/972.html> [https://perma.cc/8B9Z-45D5]. The principal sponsor was Assemblywoman Chris Giunchigliani.

³⁹ These death penalty reforms included: Assemb. B. 17, 2003 Leg., 72nd Sess. (Nev. 2003), signed May 12, 2003, which increased pay for lawyers who defend death penalty cases; Assemb. B. 15, 2003 Leg., 72nd Sess. (Nev. 2003), signed May 21, 2003, which outlawed the death penalty for the mentally retarded; Assemb. B. 13, 2003 Leg., 72nd Sess. (Nev. 2003), signed June 9, 2003, which eliminated the three-judge panel formerly used for sentencing in capital cases when there were hung juries, guilty pleas, or bench trials; and Assemb. B. 16, 2003 Leg., 72nd Sess. (Nev. 2003), signed June 9, 2003, which allowed for DNA testing to be used as evidence on appeal in cases tried prior to the development of DNA testing.

⁴⁰ The Assembly voted 36-6. ASSEMB. DAILY JOURNAL, 72nd Sess. (Nev. 2003).

⁴¹ See *Revises Provisions Regarding When Sentence of Death May Be Imposed: Hearing on Assemb. B. 118 Before the Assemb. Comm. on Judiciary*, 2003 Leg., 72nd Sess. (Nev. 2003), <https://www.leg.state.nv.us/Session/72nd2003/Minutes/Assembly/JUD/Final/2345.html> [https://perma.cc/Q66V-8PDL].

⁴² See *Revises Provisions Regarding When Sentence of Death May Be Imposed: Hearing on Assemb. B. 118 Before the S. Comm. on Judiciary*, 2003 Leg., 72nd Sess. (Nev. 2003), <https://www.leg.state.nv.us/Session/72nd2003/Minutes/Senate/JUD/Final/3005.html> [https://perma.cc/7QSL-AE2R].

interim, I was compelled to write an essay for publication in the *Las Vegas Review-Journal*⁴³ to correct the record after a story in that paper reported that Nevada “has banned the execution of minors.”⁴⁴ As I said in that essay, “[t]he truth, however, is that Nevada remains among a minority of states that permit death sentences for 16- and 17- years-old, despite efforts in our two most recent legislative sessions to ban the juvenile death penalty.”⁴⁵

So it was that once again, in 2005, Assemblywoman Giunchigliani introduced a bill, A.B. 6, that raised the age for death eligibility to eighteen, remarking at the Assembly Judiciary Committee hearing that she hoped the Senate had been enlightened.⁴⁶ After another extensive hearing with testimony from many proponents and a few opponents of the bill, on March 3, 2005 the Assembly Judiciary Committee passed the bill without opposition.⁴⁷ This time, the Senate had no choice: the United States Supreme Court had ruled on March 1, 2005 that executing offenders below the age of eighteen at the time of their crimes violated the Cruel and Unusual Punishments Clause of the Eighth Amendment.⁴⁸ On April 28, 2005, the Senate passed A.B. 6, and Governor Guinn signed it into law on May 3, 2005.⁴⁹ Thus, the death of the juvenile death penalty had finally come to pass in Nevada.

Over the next few years, Juvenile Justice Clinic students continued to represent their young clients with passion and compassion, challenging law enforcement and juvenile court practices that stood in the way of justice in individual cases and occasionally winning trials or appeals after an adverse ruling at trial. One notable instance involved a sixteen-year old who was stopped and searched by Clark County School District police, even though he was not on school grounds. The police asserted that their jurisdiction extended to students the moment they walked out of their homes and began making their way to school. This just did not seem right to us, so we moved to suppress the marijuana that had been seized from our client. After the hearing master denied our motion, we took the case to trial, where the hearing master admitted the illegal-

⁴³ Mary Berkheiser, Opinion, *Sitting on Death Row: Despite Report, Nevada Has Yet to Ban Imposition of Capital Punishment on Minors*, L.V. REV.-J., Jan. 18, 2004, at 3E.

⁴⁴ Carri Geer Thevenot, *1988 Murder Case: Court Faults Counsel, Overturns Conviction*, L.V. REV.-J., Jan. 9, 2004, at 3B.

⁴⁵ Berkheiser, *supra* note 43.

⁴⁶ See *Prohibits Imposition of Sentence of Death upon Person for Crime Committed While Person Was Under Age of 18 Years: Hearing on Assemb. B. 6 Before the Assemb. Comm. on Judiciary*, 2005 Leg., 73rd Sess. 3 (Nev. 2005), <https://www.leg.state.nv.us/Session/73rd2005/Minutes/Assembly/JUD/Final/3524.pdf> [<https://perma.cc/79QL-RHK9>].

⁴⁷ See *Prohibits Imposition of Sentence of Death upon Person for Crime Committed While Person Was Under Age of 18 Years: Hearing on Assemb. B. 6 Before the Assemb. Comm. on Judiciary*, 2005 Leg., 73rd Sess. 8 (Nev. 2005), <https://www.leg.state.nv.us/Session/73rd2005/Minutes/Assembly/JUD/Final/3613.pdf> [<https://perma.cc/RG8W-YAGM>].

⁴⁸ *Roper v. Simmons*, 543 U.S. 551, 568 (2005).

⁴⁹ See *AB6*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Session/73rd2005/Reports/history.cfm?ID=1285> [<https://perma.cc/Q8BA-ZBVD>].

ly (we believed) seized marijuana into evidence, and then ruled against us.⁵⁰ The student attorneys were unwavering in their conviction that the marijuana had been illegally seized, so the next stop was an appeal to Judge William Voy.⁵¹ Fortunately, Judge Voy saw the folly in the jurisdictional assertion by the school police and granted our motion to suppress, which led to the dismissal of all charges against our client. Although the judge's order was not precedent setting, it sent ripples throughout the school district and armed public defenders with strong ammunition if they faced similar circumstances in the future.

At the same time, we were increasingly troubled by the juvenile court practice of shackling every child, no matter how small and no matter the nature of the charges against him, before he was brought into court from juvenile detention. Shackling meant belly chains with handcuffs locked to them so that the child's hands were virtually immobile and anchored at the waist, and leg irons, with chains around and between the ankles. The plight of one young client really disturbed us. He was eight years old and tiny. The belly chains had to be wrapped around his waist three times to take up the slack, and he tripped over the ankle chains as he was brought into the courtroom. The hearing master was unmoved by our pleas to remove the chains. We encountered the same response in later cases that we took to trial, asking each time to have the handcuffs unlocked so that our clients could more easily make notes to assist their student attorneys in their defense. The students and I could not get past the sheer outrageousness of the practice, and so we became determined to do something about it.

Beginning in the Fall 2011 semester, Juvenile Justice Clinic students researched shackling practices nationwide and created a detailed PowerPoint presentation about the indiscriminate shackling practices in Clark County and reforms in a number of states that had ended indiscriminate shackling by either legislative or state supreme court action. The clinic students took their PowerPoint on the road and made the pitch for ending indiscriminate shackling in Clark County to various community groups, including the Thomas and Mack

⁵⁰ In juvenile court, there are no jury trials; all trials are before a hearing master or judge. "The Nevada Supreme Court has ruled that . . . jury trials are not required in juvenile court." RESEARCH DIV., NEV. LEGISLATIVE COUNSEL BUREAU, POLICY AND PROGRAM REPORT: JUVENILE JUSTICE 1 (Apr. 2016), <https://www.leg.state.nv.us/Division/Research/Publications/PandPReport/31-JJ.pdf> [<https://perma.cc/9QS4-QJGB>]. "The district judges serving in the family division may appoint one or more masters to serve on a full-time or part-time basis as a juvenile hearing master." NEV. CT. R. 1.46. Although some jurisdictions do provide for jury trials, see NAT'L JUVENILE DEF. CTR., JUVENILE RIGHT TO JURY TRIAL CHART (2014), <http://njdc.info/wp-content/uploads/2014/01/Right-to-Jury-Trial-Chart-7-18-14-Final.pdf> [<https://perma.cc/3P9A-7H8C>], the United States Supreme Court has ruled that jury trials are not a constitutional requirement in delinquency court, as they are not essential to the fundamental fairness of the proceedings, unlike the right to counsel, for example. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 543, 545 (1971).

⁵¹ In juvenile court, the hearing masters can conduct plea hearings and trials, but only the judge in charge of delinquency cases can sign a final order. NEV. REV. STAT. § 62B.030 (2015).

Legal Clinic Community Advisory Board, a group comprised of high level lawyers, federal and state judges, legislators, and others whose role was to serve as a sounding board for our various clinical projects and to provide counsel to us on matters of concern to us or members of the board. The advisory board members' reactions to the indiscriminate shackling PowerPoint and presentation by Juvenile Justice Clinic students mirrored our own. The path was clear: we had to bring an end to indiscriminate shackling in Clark County.

Because the Nevada legislature would not meet in 2012, any legislative action would have to wait. At the time, we were focused only on Clark County, and we did not yet know whether the practice of indiscriminate shackling was statewide. That mystery was cleared up after a clinic student surveyed the sixteen counties and Carson City and found, based on conversations he had with court personnel in all those localities, that no other jurisdiction was shackling every child who appeared in delinquency court, without regard to whether they posed a danger to themselves or others or were a flight risk. After updating and streamlining the original shackling PowerPoint, clinic students again began sharing what they had learned with the larger community. Then, in June 2012, I had the opportunity to write an article for the *Nevada Lawyer* and used that platform to call for an end to indiscriminate shackling in Clark County's juvenile court.⁵² Ending shackling would end the practice of treating children like wild animals and effectively denying them the presumption of innocence to which they are entitled.⁵³ Unchaining the children, I said, was essential to the fulfillment of the juvenile court's mission of protecting and, where necessary, rehabilitating our children.⁵⁴ Not long after the article appeared, Judge Voy set in motion the steps necessary to allow children to appear in court free of chains, and we began to see our clients in court as they deserved to be: unchained.

After their clients were unshackled, clinic students observed that they were more relaxed, less anxious, and generally more forthcoming in their communications with their student attorneys as they prepared for their court appearances than they had been when they were wrapped in chains. Unshackling them, it turned out, was good not only for our clients' self-esteem and sense of well-being, but for the attorney-client relationship and the overall representation. Thus, we had achieved far more than we ever had imagined when we embarked on our mission to unchain the children in juvenile court.

During the Fall 2012 semester, clinic students and I noticed a disturbing trend in the charges being brought against our clients. What we saw, repeatedly, were charges of domestic violence against our clients for what were often mere scuffles with siblings or desperate efforts to protect a mother or another sibling from an abusive, often drunk or otherwise impaired, father or boyfriend. Invariably, the juvenile was arrested and charged with battery domestic vio-

⁵² Mary Berkheiser, *Unchain the Children*, NEV. LAW., June 2012, at 30–31.

⁵³ *Id.* at 31.

⁵⁴ *Id.*

lence, and the parent was left to continue to batter his family with impunity. While we recognized that our clients should be held accountable for their acts of physical violence, we could not square the facts of our clients' cases with a domestic violence charge and the collateral consequences it carries with it. What we were seeing did not meet the National Coalition Against Domestic Violence definition of domestic violence: "[T]he willful intimidation, physical assault, battery, sexual assault, and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one intimate partner against another. It includes physical violence, sexual violence, psychological violence, and emotional abuse."⁵⁵

Once again, we decided that a legislative fix was required. With the help of Assemblyman Jason Frierson and sponsorship by Assemblyman James Ohrenschall, Assembly Bill 207 (A.B. 207) came into being.⁵⁶ A.B. 207 added a subsection to Nevada Revised Statute section 33.018 that spelled out the intimate partner relationships that would qualify juvenile acts of violence for treatment as domestic violence.⁵⁷ A.B. 207 also contained a provision that would lead to a domestic violence charge if it was established "by clear and convincing evidence that the person committing the act engaged in a pattern of abusive behavior toward the other person for the purpose of establishing or maintaining power and control over the other person."⁵⁸

To bolster our legislative efforts, clinic students had conducted a study of the 135 domestic violence charges brought against juveniles in Clark County between May and October 2012 and later testified at the Assembly Judiciary Committee hearing on April 2, 2013.⁵⁹ The students reported that, of those 135 cases, only 13 percent were truly domestic violence cases that met the A.B. 207 definition; the remaining 87 percent were other forms of battery.⁶⁰ Given the common-sense legislative changes we were proposing and the detailed evidence of the misuse of domestic violence in charging juveniles, we were confident that legislators would see the importance of distinguishing between ordinary acts of violence and the very specific and sharply defined violence that is domestic violence when charging juveniles. We were unprepared for the firestorm of opposition that would ensue.

The Executive Director of the Nevada Network Against Domestic Violence vehemently opposed A.B. 207, warning that "we will be taking two steps

⁵⁵ *What Is Domestic Violence?*, NAT'L COAL. AGAINST DOMESTIC VIOLENCE, <http://www.ncadv.org/learn-more/what-is-domestic-violence> [https://perma.cc/5GB4-FPRT] (last visited Mar. 6, 2017).

⁵⁶ Assemb. B. 207, 2013 Leg., 77th Sess. (Nev. 2013).

⁵⁷ *Id.* § 1(2)(a)–(d).

⁵⁸ *Id.* § 1(2)(e).

⁵⁹ *Revises Provisions Relating to Juveniles: Hearing on Assemb. B. 207 Before the Assemb. Comm. on Judiciary*, 2013 Leg., 77th Sess. 26 (Nev. 2013) (statement of Denise Mariscales), <https://www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/JUD/Final/716.pdf> [https://perma.cc/56FN-4Z8F].

⁶⁰ *Id.*

back and again suggesting that some domestic violence isn't real violence and should be dealt with in the privacy of the home."⁶¹ The Chief Deputy District Attorney for the Juvenile Division of the Clark County District Attorney's Office dismissed concerns clinic students had raised about the serious collateral consequences of domestic violence charges, including bars to joining the military and attempting to adjust immigration status, saying that juveniles can request that their records be sealed if they have not had a recent charge.⁶² Others echoed the concerns of the domestic violence community and district attorney's offices.⁶³

It was clear that our desired changes were going nowhere, so we turned to Assemblyman Ohrenschall to try to salvage something from the effort. He was able to negotiate an amendment that gutted the clinic's provisions and replaced them with language that would give prosecutors discretion in determining whether to file domestic violence charges against juveniles (then current law permitted no discretion).⁶⁴ With those changes, A.B. 207 passed out of the Assembly Judiciary Committee unanimously on April 12, 2013.⁶⁵ But opposition to the amended A.B. 207 intensified in the Senate, with testimony from, among others, a representative of the Nevada Network Against Domestic Violence and with members of that organization submitting a proposed amendment that would require a prosecutor to document the considerations that led to a decision not to charge domestic violence.⁶⁶ The group later backed away from the proposal, saying that they could not support A.B. 207, even with their own amendment.⁶⁷ Senate Judiciary Committee Chairman Tick Segerblom chastised the group for its flip-flopping, but in the end, the Senate Committee could not go against the advocacy group.⁶⁸ The bill was dead, with no chance of revival.

How had this resounding defeat come to pass? What lessons could we take from it? We obviously had underestimated the power of the domestic violence advocacy community. Any future forays into the arena of juvenile domestic vi-

⁶¹ *Id.* at 30–32 (statement of Susan Meuschke, Executive Director, Nevada Network Against Domestic Violence).

⁶² *Id.* at 34. Of course, record sealing does not wipe out the charge, and questions by potential employers and others regarding any history of domestic violence still must be answered, so the District Attorney's facile dismissal of our concerns is a bit of a red herring.

⁶³ *Id.* at 34–36.

⁶⁴ ASSEMB. B. 207 First Reprint, 2013 Leg., 77th Sess. (Nev. 2013).

⁶⁵ *Revises Provisions Relating to Juveniles: Hearing on Assemb. B. 207 Before the Assemb. Comm. on Judiciary*, 2013 Leg., 77th Sess. 14 (Nev. 2013), <https://www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/JUD/Final/815.pdf> [<https://perma.cc/CU9F-ZXYQ>].

⁶⁶ *See Revises Provisions Relating to Juveniles: Hearing on Assemb. B. 207 Before the S. Comm. on Judiciary*, 2013 Leg., 77th Sess. 29–31 (Nev. 2013), <https://www.leg.state.nv.us/Session/77th2013/Minutes/Senate/JUD/Final/1033.pdf> [<https://perma.cc/2FBB-QLCF>].

⁶⁷ *Revises Provisions Relating to Juveniles: Hearing on Assemb. B. 207 Before the S. Comm. on Judiciary*, 2013 Leg., 77th Sess. 11 (Nev. 2013), <https://www.leg.state.nv.us/Session/77th2013/Minutes/Senate/JUD/Final/1186.pdf> [<https://perma.cc/K4JJ-RNZD>].

⁶⁸ *Id.* at 12–13.

olence reform would need to include more serious outreach to that community than we had attempted in 2012. But would any such efforts at coalition building, no matter how heroic, ever be able to overcome the unspoken but deeply embedded fears of violence at the hands of minority youth? It is true that, unlike every other legislative reform we had championed, in this one we had no coalition partners. But it is also true that, even with community partners, the very nature of the reforms we were seeking struck so close to the heart of the advocacy community's safety concerns that we might be forever foreclosed from achieving our goals. It is clear, however, that if we are to have any chance of prevailing, we must work together with community partners who come together for the purpose of passing targeted legislation that will improve the lives of our young people. Although we did not renew our efforts to amend the domestic violence laws in the next legislative session, we did carry that message, loud and clear, to the 2015 Nevada legislative session.

The 2015 legislative session was a remarkably productive one for the Juvenile Justice Clinic. We saw victories in (un)shackling, the creation of a legal "safe harbor" for child victims of sex trafficking, and the abolition of juvenile life without parole sentences. In all three cases, we worked with broad coalitions to educate legislators and persuade them to take action.

We returned to the goal of seeing all of Nevada's children unshackled when they appeared in delinquency court. Even though we had achieved the result we sought in Clark County in 2012, there was no assurance that if Judge Voy were replaced with a different judge, the juvenile court would not return to its old practices. Legislative action remained the gold standard, and although it took three more years and coordination by a staff person from the National Juvenile Defender Center in Washington, D.C., finally in the 2015 Nevada legislative session, anti-shackling legislation passed both the Assembly and the Senate unanimously and was signed into law by Governor Brian Sandoval on June 5, 2015.⁶⁹ The bill's passage was a triumph for a united coalition that included the National Juvenile Defender Center, the Juvenile Division of the Clark County Public Defender, the Elko County Public Defender's Office, the American Civil Liberties Union of Nevada, the Juvenile Justice Clinic, and others. The new law specified that restraints could be used on a child during a court proceeding *only if* the restraint was necessary to prevent the child from "[i]nfllicting physical harm on himself or herself or another person" or "[e]scaping from the courtroom."⁷⁰

In the sex trafficking arena, we were fortunate to be able to work with Nevada Attorney General Catherine Cortez Masto after she had championed a bill in the 2013 legislative session that criminalized sex trafficking of minors.⁷¹

⁶⁹ AB8, NEV. LEGISLATURE, <https://www.leg.state.nv.us/Session/78th2015/Reports/history.cfm?ID=19> [<https://perma.cc/LXK6-SLNS>].

⁷⁰ Assemb. B. 8, 2015 Leg., 78th Sess. § 3.5 (Nev. 2015).

⁷¹ Assemb. B. 67, 2013 Leg., 77th Sess. (Nev. 2013).

That bill passed in both the Assembly⁷² and the Senate Judiciary Committees,⁷³ and was signed by Governor Sandoval on June 6, 2013.⁷⁴ The new law, codified in Nevada Revised Statute section 201.300, defined sex trafficking as follows: “A person [i]s guilty of sex trafficking if the person [i]nduces, causes, recruits, harbors, transports, provides, obtains or maintains a child to engage in prostitution, or to enter any place within this State in which prostitution is practiced, encouraged or allowed for the purpose of sexual conduct or prostitution.”⁷⁵ It is notable that the new law does not require a showing of force, fraud, or coercion by the trafficker,⁷⁶ and so it was consistent with existing federal law on the subject.⁷⁷ The Nevada law makes sex trafficking of a child punishable as a category-A felony, with sentences of life with the possibility of parole with parole eligibility beginning after fifteen years for trafficking a child under fourteen years of age, life with the possibility of parole with parole eligibility beginning after ten years for trafficking a child between ages fourteen and sixteen, and life with the possibility of parole with parole eligibility beginning after five years for trafficking a child between the ages of sixteen and eighteen.⁷⁸

With child sex trafficking now criminalized and traffickers facing stiff penalties, the next step for clinic students was to turn their attention to their clients, a number of whom were young victims of sex trafficking. Throughout 2013 and 2014, clinic students conducted a fifty-state study to discover what other jurisdictions were doing to assure that child victims of sex trafficking were not being prosecuted for prostitution, solicitation, and related sex offenses. What they found was that a number of states had enacted “safe harbor” laws that mandated treatment of child victims of sex trafficking as victims and barred any prosecution of them for sex-related crimes. The students’ experience in Judge Voy’s sexually exploited youth court had taught them that we had a long way to go to achieve a safe harbor for their clients and others who were being prosecuted even while they were victims of sex trafficking.

Together with Susan Roske, Chief Deputy Public Defender, with the Clark County Public Defender’s Office and an adjunct professor who co-taught the Juvenile Justice Clinic with me, our clinic students and I decided it was time to move “safe harbor” legislation to the top of our legislative priority list for the

⁷² *Revises Provisions Relating to Crimes: Hearing on Assemb. B. 67 Before the Assemb. Comm. on Judiciary*, 2013 Leg., 77th Sess. 2–3 (Nev. 2013), <http://www.leg.state.nv.us/Session/77th2013/Minutes/Assembly/JUD/Final/796.pdf> [<https://perma.cc/65HE-YRWP>].

⁷³ *Revises Provisions Relating to Crimes: Hearing on Assemb. B. 67 Before the S. Comm. on Judiciary*, 2013 Leg., 77th Sess. 13 (Nev. 2013), <https://www.leg.state.nv.us/Session/77th2013/Minutes/Senate/JUD/Final/1308.pdf> [<https://perma.cc/BU5E-VWR5>].

⁷⁴ See AB67, NEV. LEGISLATURE, <https://www.leg.state.nv.us/Session/77th2013/Reports/history.cfm?DocumentType=1&BillNo=67> [<https://perma.cc/3WWF-J499>].

⁷⁵ NEV. REV. STAT. § 201.300(2)(a)(1) (2015).

⁷⁶ See *id.*

⁷⁷ See 22 U.S.C. § 7102 (2012).

⁷⁸ NEV. REV. STAT. § 201.300(2)(b)(2) (2015).

2015 legislative session. First, we knew we needed to do some groundwork to garner support for the legislation, so we decided to do what we had done with shackling and make the case for safe harbor legislation by taking a PowerPoint we created on the road. Both my students and I made presentations to a number of community groups, including the Thomas & Mack Community Advisory Board and several Rotary Clubs. The principal piece of legislation we were advocating was a measure that would classify child sex trafficking victims as “Children in Need of Supervision” (“CHINS”).⁷⁹ This would counter the insidious practice in juvenile court of continuing to prosecute and treat as criminals those whom the law already recognized to be victims—by arresting and charging them with delinquency and detaining them with other juveniles facing delinquency charges for a variety of crimes. The CHINS designation is reserved for non-delinquency offenses, such as truancy and running away from home, that are not crimes but that call out for supervision by juvenile authorities;⁸⁰ as such, we thought it was the appropriate vehicle for addressing the status of child victims of sex trafficking.

What we had not realized at the outset was that the federal Juvenile Justice and Delinquency Prevention Act prohibits the detention of those designated CHINS—they cannot be detained at all.⁸¹ Because Clark County, the primary hub of child sex trafficking in Nevada, has no separate placement for child victims of sex trafficking, they must be detained in the regular juvenile detention facility, in most instances, for their own safety. Thus, while the Assembly bill we had drafted, A.B. 153, received the sponsorship of Speaker Hambrick, Assemblyman Nelson Araujo, and others, and was overwhelmingly supported at its first Assembly Judiciary Committee hearing on March 3, 2015,⁸² it required an amendment that would still provide a safe harbor for child victims of sex trafficking while not running afoul of the Juvenile Justice and Delinquency Prevention Act.

On March 19, 2015, the Chief Deputy District Attorney of the Clark County District Attorney’s Office presented an amended A.B. 153, which replaced

⁷⁹ See generally NEV. REV. STAT. § 62B.320 (2015) (defining a “child in need of supervision” under Nevada law).

⁸⁰ Compare NEV. REV. STAT. § 62B.320 (2015), with NEV. REV. STAT. § 62B.330 (2015).

⁸¹ Juvenile Justice and Delinquency Prevention Act of 1974 § 223, 42 U.S.C. § 5633 (a)(11)(A) (2012).

⁸² Those testifying in support included, in addition to Susan Roske, Juvenile Justice Clinic students, and myself; Jason Frierson, former Chair of the Interim Legislative Committee on Child Welfare and Juvenile Justice; John Jones, representing the Nevada District Attorneys Association; Esther Brown, founder of the Embracing Project; and representatives of the Children’s Advocacy Alliance, the Division of Child and Family Services in the Nevada Department of Health and Human Services, Las Vegas Metropolitan Police Department, Washoe County Sheriff’s Office, and Washoe County Public Defender’s Office. *Revises Various Provisions Related to Sexually Exploited Children: Hearing on Assemb. B. 153 Before the Assemb. Comm. on Judiciary*, 2015 Leg., 78th Sess. 3–17 (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/328.pdf> [<https://perma.cc/RXP9-FNW4>].

the original CHINS language with language requiring the juvenile court, upon the filing by the district attorney of a petition that alleged that a child under the age of eighteen had engaged in prostitution or the solicitation of prostitution, to “[p]lace the child under the supervision of the juvenile court pursuant to a supervision and consent decree, without a formal adjudication of delinquency” for the offenses of prostitution and/or solicitation of prostitution.⁸³ The newly amended A.B. 153 also required the juvenile court to “[o]rder that the terms and conditions of the supervision and consent decree include services to address the sexual exploitation . . . of the child including but not limited to medical and psychological treatment . . . of victims of sexual assault.”⁸⁴ A.B. 153, as amended, passed the Assembly Judiciary Committee unanimously on March 19, 2015,⁸⁵ and the full Assembly on April 14, 2015, with members voting 40-0.⁸⁶ In the Senate, the bill sailed through the Senate Judiciary Committee, again passing unanimously,⁸⁷ and was passed unanimously by the full Senate on May 17, 2015, with a vote of 21-0.⁸⁸ Governor Sandoval signed the bill and on May 25, 2015, it became law.⁸⁹

We were not completely content with the final version of A.B. 153 because, in our view, the young victims of sex trafficking should not have to face delinquency charges at all. After all, they are victims, not criminal actors. However, the new law did provide a safe harbor from prosecution by requiring that these young victims not be adjudicated delinquent, but instead be placed under the supervision of the juvenile court pursuant to a supervision and consent decree and be provided services to address their medical and psychological needs. A.B. 153 was definitely another step in the right direction toward full protection and rehabilitation of these victims. What remains is for Nevada to create a safe house in which child victims of sex trafficking would be cared for. Although this was a topic of an extended discussion in the Assembly Judiciary Committee,⁹⁰ the Assembly was not ready to address the obvious fiscal implications of making the creation and maintenance of a safe house a legislative

⁸³ *Revises Various Provisions Related to Sexually Exploited Children: Hearing on Assemb. B. 153 Before the Assemb. Comm. on Judiciary*, 2015 Leg., 78th Sess. 5 (Nev. 2015), <http://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/517.pdf> [<https://perma.cc/NU7R-UXZ9>].

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ ASSEMB. DAILY JOURNAL, 78th Sess., at 47 (Nev. 2015).

⁸⁷ *Revises Various Provisions Related to Sexually Exploited Children: Hearing on Assemb. B. 153 Before the S. Comm. on Judiciary*, 2015 Leg., 78th Sess. 19–20 (Nev. 2015), <http://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/1125.pdf> [<https://perma.cc/H5T2-GY4Q>].

⁸⁸ S. DAILY JOURNAL, 78th Sess., at 98 (Nev. 2015).

⁸⁹ *Governor Brian Sandoval Signs Hundreds of Bills into Law*, 2NEWS (June 3, 2015, 12:43 PM), <http://www.ktvn.com/story/29231486/governor-brian-sandoval-signs-hundreds-of-bills-into-law>.

⁹⁰ *Revises Various Provisions Related to Sexually Exploited Children: Hearing on Assemb. B. 153 Before the Assemb. Comm. on Judiciary*, *supra* note 82.

mandate. That final step in Nevada's recognition of the victimization of children who have been sex trafficked would have to await another day.

As with the safe harbor legislation, the push to end life without parole sentences for juvenile offenders enjoyed the support of a broad coalition of Nevada individuals and organizations and, like the campaign to end indiscriminate shackling, was coordinated by a representative of a Washington, D.C. based advocacy group devoted to juvenile justice reform.⁹¹ The high level of interest in addressing juvenile life without parole was not surprising, as the United States Supreme Court had twice struck down those sentences in recent years: first ruling that juveniles convicted of non-homicide offenses could not be sentenced to life without parole;⁹² and then ruling that mandatory life without parole sentences could not be imposed on juvenile homicide offenders.⁹³ I had studied both cases very closely and written law journal articles about both of them,⁹⁴ so I was eager to see Nevada join the growing number of states that had abolished juvenile life without parole.

The 2015 legislative session saw the introduction of Assembly Bill 267 ("A.B. 267"), which banned the imposition of a sentence of life without parole on anyone who was under the age of eighteen at the time of his crime.⁹⁵ The bill had wide bipartisan support from the beginning, and it would end with unanimous votes in favor in both the Assembly⁹⁶ and the Senate.⁹⁷ On its way to passage, A.B. 267 generated a host of supporters, including the Campaign for Fair Sentencing of Youth, Nevada criminal defense lawyers who represent individuals serving juvenile life without parole, the Juvenile Justice Clinic and myself, a University of Nevada, Reno professor of human development and family studies, the Roman Catholic Diocese, the Religious Alliance in Nevada, the Clark County Public Defender, the American Civil Liberties Union of Nevada, Nevada Attorneys for Criminal Justice, the Embracing Project, HOPE for Prisoners, the Chair of the State Board of Parole Commissioners, and several formerly incarcerated youth who had received long sentences—but not life

⁹¹ The organization was the Campaign for Fair Sentencing of Youth, and its representative in Nevada was a lawyer named James Dold, who had grown up in Nevada and graduated from UNLV.

⁹² *Graham v. Florida*, 560 U.S. 48, 82 (2010).

⁹³ *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012).

⁹⁴ Mary Berkheiser, *Developmental Detour: How the Minimalism of Miller v. Alabama Led the Court's "Kids Are Different" Eighth Amendment Jurisprudence Down a Blind Alley*, 46 AKRON L. REV. 489 (2013); Mary Berkheiser, *Death Is Not So Different After All: Graham v. Florida and the Court's "Kids Are Different" Eighth Amendment Jurisprudence*, 36 VT. L. REV. 1 (2011).

⁹⁵ See *Revises Provisions Concerning the Sentencing and Parole of Persons Convicted as an Adult for a Crime Committed When the Person Was Less Than 18 Years of Age: Hearing on Assemb. B. 267 Before the Assemb. Comm. on Judiciary*, 2015 Leg., 78th Sess. 3–4 (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Assembly/JUD/Final/566.pdf> [<https://perma.cc/4DT8-AJXW>].

⁹⁶ ASSEMB. DAILY JOURNAL, 78th Sess., at 1284 (Nev. 2015).

⁹⁷ S. DAILY JOURNAL, 78th Sess., at 106 (Nev. 2015).

without parole—for crimes committed between the ages of thirteen and sixteen, and later obtained release.⁹⁸

After A.B. 267 was amended to raise eligibility for parole consideration from fifteen to twenty years for crimes that resulted in the death of a person, even the Nevada District Attorneys Association supported it.⁹⁹ Although that organization initially had opposed the retroactive application of A.B. 267, supporters of the bill, and in particular, Megan Hoffman, Chief of the Non-Capital Habeas Unit at the Office of the Federal Public Defender, had insisted that no legitimate reason existed to abolish juvenile life without parole for defendants convicted today and not for those convicted yesterday.¹⁰⁰ Applying A.B. 267 retroactively would bring a measure of justice to the sixteen¹⁰¹ men serving juvenile life without parole sentences. Like those convicted after passage of the bill, these men could apply for parole at the appropriate time. Hoffman's dogged determination that the bill retroactively apply left no room for compromise, and eventually the retroactive provision gained everyone's full support. Following the Senate's unanimous approval of the bill, on May 25, 2015, Governor Sandoval signed it, and it became effective October 1, 2015.¹⁰² Since October 1, parole hearings for those afforded the right to seek parole from juvenile life without parole sentences have proceeded as provided in A.B. 267, and at the time of this writing, at least one individual has been granted parole.¹⁰³

From the first days of the Juvenile Justice Clinic, we have been committed to fighting the good fight, both in the courtroom and in the statehouse. We have achieved much in a short time, but more remains to be done. The cause of juvenile justice asks much of us and delivers more when we act. It is for the Juvenile Justice Clinic alumni to continue to act—as legislators, advisors, defenders, and prosecutors—so that Nevada's youth will always know that someone is standing up for them.

⁹⁸ See *Revises Provisions Concerning the Sentencing and Parole of Persons Convicted as an Adult for a Crime Committed When the Person Was Less Than 18 Years of Age: Hearing on Assemb. B. 267 Before the Assemb. Comm. on Judiciary*, *supra* note 95, at 3–21, 43.

⁹⁹ *Revises Provisions Concerning the Sentencing and Parole of Persons Convicted as an Adult for a Crime Committed When the Person Was Less Than 18 Years of Age: Hearing on Assemb. B. 267 Before S. Comm. on Judiciary*, 2015 Leg., 78th Sess. 22 (Nev. 2015), <https://www.leg.state.nv.us/Session/78th2015/Minutes/Senate/JUD/Final/1207.pdf> [<https://perma.cc/Y8PQ-CA3G>].

¹⁰⁰ See *Revises Various Provisions Related to Sexually Exploited Children: Hearing on Assemb. B. 153 Before the S. Comm. on Judiciary*, *supra* note 95, at 23–24 (statement of Megan Hoffman).

¹⁰¹ *Id.* at 9 (statement of James Dold, Campaign for the Fair Sentencing of Youth).

¹⁰² See *Governor Brian Sandoval Signs Hundreds of Bills into Law*, *supra* note 89.

¹⁰³ One of Megan Hoffman's clients was granted parole on May 24, 2016.

