ACLU OF WASHINGTON LEGAL DOCKET

2017

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CRIMINAL JUSTICE 1
DISABILITY RIGHTS 2
FREE SPEECH & EXPRESSION 3
GOVERNMENT TRANSPARENCY 3
IMMIGRANTS' RIGHTS 4
LGBT RIGHTS 6
PRIVACY 7
RACIAL JUSTICE 8
SECOND CHANCES 8
YOUTH 10

CRIMINAL JUSTICE

Monitoring King County Correctional Facility Conditions. In 1989, the ACLU sued King County for terrible conditions at the King County Correctional Facility (KCCF) to improve the conditions of confinement and ensure adequate medical services. Part of the settlement required KCCF to maintain accreditation through the National Commission on Correctional Health Care (NCCHC). On December 1, 2014, KCCF lost its NCCHC accreditation because it failed to meet all essential standards. In the spring of 2017, KCCF was re-evaluated by NCCHC and was found to be only 85% compliant with the essential standards. The facility will not be awarded full accreditation unless it can prove 100% compliance with these standards by October 31st, 2017. Of particular concern to the ACLU is the treatment of individuals with mental illness and opioid dependency, as well as practices around solitary confinement. The ACLU will continue to closely monitor KCCF and push towards full compliance with NCCHC in order to ensure the safety and health of individuals incarcerated at the facility. (*Hammer v. King County*, ACLU Equal Justice Works Fellow Jessica Wolfe; Cooperating Attorney: Fred Diamondstone).

Protecting the Homeless from Illegal Search and Seizure. Each year, more and more City of Seattle residents are forced to live outside on public property. Based on official policies and longstanding practices, the City of Seattle and Washington State Department of Transportation (WSDOT) have embarked upon a program of "sweeps" in which they seize and destroy the property—including tents and other items needed for survival—of the growing homeless population. Since 2015, the City and WSDOT have conducted more than 1000 of these sweeps. This practice targets a vulnerable population and makes them even more susceptible to bad weather, poverty, and continued homelessness. In January of 2017, the ACLU filed a lawsuit to stand up for the right of the homeless to due process under state and federal law. On September 7, a federal district court will decide whether we are entitled to a preliminary injunction. (*Hooper v. City of Seattle,* ACLU attorneys Breanne Schuster and Nancy Talner; Cooperating Attorneys: Todd Williams and Eric Lindberg (Corr Cronin); Suzanne Skinner).

Demanding Constitutionally Adequate Public Defense for Juveniles. On April 3, 2017, ACLU-WA filed a class-action lawsuit against the State and the state Office of Public Defense (OPD) for failing to enforce the constitutional requirement of adequate public defense for juveniles in Grays Harbor County. Children, just like adults, have a right to a lawyer, and with children, who often cannot advocate for their own rights without guidance, the right to a lawyer who provides actual advocacy is especially important. The lack of adequate representation is detrimental to the children accused of offenses and detained in Grays Harbor. They plead guilty without understanding the alternatives or consequences, are held in detention longer than is legal, and receive harsher sentences than their cases warrant. The lawsuit, filed in Thurston County Superior Court, asks the court to declare that the public defense services that juveniles in Grays Harbor County receive are constitutionally inadequate, and to declare that OPD has the authority to take the measures necessary to ensure the provision of constitutionally adequate services. A trial date has been set for June 18th, 2018. (*Davison v. OPD*, ACLU Attorneys John Midgley, Nancy Talner; Cooperating Attorneys: Theresa Wang & Mathew Harrison (Stokes Lawrence)).

Washington's Death Penalty is Racially Discriminatory. The ACLU-WA and the national ACLU filed an amicus brief in a death penalty case in the Washington Supreme Court. The brief was joined by several organizations and individuals, including Washington judges and a former US Attorney. It asked the Court to rule that Washington's death penalty system is racially discriminatory and violates the state constitution. On February 25, 2016, the case was argued in the Supreme Court and the ACLU presented the arguments from our brief. The Court then issued an order requiring further proceedings on the racial discrimination issue. The parties' statistical experts have both made submissions to the Court. (*State v. Gregory*, ACLU of Washington Attorney Nancy Talner; National ACLU Attorneys Jeff Robinson and Cassandra Stubbs; Cooperating Attorneys: Marc Shapiro, Aravind Swaminathan, David Keenan, and John Wolfe (Orrick Herrington & Sutcliffe LLP)).

Unconstitutional Death Penalty Decisions Based on IQ. In 2015 Cecil Davis filed a Personal Restraint Petition (PRP), arguing that Washington's death penalty statute should be ruled unconstitutional. The PRP argues that legal flaws in the IQ part of the statute make it unconstitutional (the statute defines intellectual disability as having an IQ of 70 or less and forecloses all further exploration of intellectual disability in those with higher IQs). Unfortunately, the court found procedural flaws in the record and dismissed the petition in May of 2017. A motion for reconsideration is being filed in early September 2017 and the ACLU will submit an amicus brief in support of reconsideration. (*In re PRP Cecil Davis*, ACLU Attorney Nancy Talner; Cooperating Attorney: Stacey Marchesano (Garvey Schubert Barer)).

Mandatory Drug Testing as a Condition of Pretrial Release. The ACLU submitted an amicus brief to the Washington Supreme Court on this case on April 24th, 2017 asking the court to rule that random, warrantless, suspicionless mandatory drug testing as condition of pretrial release is unconstitutional. Oral argument was heard in June and we are awaiting the court's decision. (*Blomstrom v. Tripp*, ACLU Attorney Nancy Talner; Cooperating Attorneys: Jim Lobsenz & Theresa Wang (Stokes Lawrence PS)).

DISABILITY RIGHTS

Holding People with Mental Disabilities in Jail. If you are charged with a crime and are mentally ill, you have a right to be evaluated and treated before being brought to trial. In Washington State, people suspected of being mentally ill have long languished in jails while they wait for the State to provide them with court-ordered mental health services, so the ACLU sued to bring those wait times into compliance with the Constitution. A federal district court judge agreed with us, finding that our clients' due process rights had been violated and ordered the Department of Social and Health Services to provide competency services to class members within seven days. On appeal, the Ninth Circuit Court of Appeals asked the district court to reconsider the seven-day timeframe for in-jail evaluations, a specific subset of the competency services in the judge's original order. Following a three-day hearing, the district court set a 14-day deadline for the provision of competency services. The State has since paid more than $20 million in contempt fines into an account that funds diversion programming for class members. The ACLU has concluded its work on this case at the district court level, but will continue to represent the class in the Ninth Circuit Court of Appeals, where there is currently one appeal

pending. (*A.B. ex rel. Trueblood et al. v. Washington State DSHS, et al.*, ACLU Attorneys John Midgley and ACLU Equal Justice Works Fellow Jessica Wolfe; Co-Counsel: Emily Cooper, Anna Guy, and David Carlson (Disability Rights Washington) David Fahth and Eric Balaban (National Prison Project); Cooperating Attorney: Christopher R. Carney (Carney Gillespie & Isitt PLLP)).

Individuals Should Be Allowed to Appear in Person At Their Court Proceedings. The ACLU submitted an amicus brief to the Court of Appeals in February of 2017 arguing that the policy of the King County Superior Court to have individuals appear for mental commitment trials by video violates their rights. Research has shown that video participation in a court proceeding interferes with communication and impacts judicial outcomes. In order to have true due process of the law, people must be allowed to appear in person for court proceedings whenever possible. An unpublished Opinion Dismissed the appeal because the plaintiff was no longer impacted by the order, but in a related case the Court ruled the individual's statutory right to be present was violated by conducting the hearing via video. (*In re Detention of T.M.L.*, ACLU Attorneys Nancy Talner and Mark Cooke and ACLU Equal Justice Works Fellow Jessica Wolfe).

FREE SPEECH & EXPRESSION

DOJ Regulation Preventing Partial Representation by Non-Profit Lawyers. In May of 2017, the ACLU submitted an amicus brief in support of Northwest Immigrant Rights Project's (NWIRP) challenge to Department of Justice restriction on their ability to consult with clients unless they are formally representing them in court. This regulation severely restricts NWIRP's First Amendment right to shape its legal mission and to speak with immigrants. The court agreed with us and granted a preliminary injunction, preventing the enforcement of the regulation until the conclusion of this case. (*NWIRP et al. v. Sessions et al.*, ACLU Equal Justice Works Fellow Jessica Wolfe; Cooperating Attorney: Jake Ewart (Hillis Clark Martin & Peterson, P.S.)).

Washington's Cyberstalking Laws Violate the 1st Amendment. The ACLU submitted a joint Amicus Brief with the Electronic Frontier Foundation on August 21st, 2017 arguing that Washington's cyberstalking statute is too broad and violates the right to free speech. The ACLU is waiting for the opinion of the court. (*Rynearson v. Ferguson*, ACLU Attorney Nancy Talner).

GOVERNMENT TRANSPARENCY

Use of Stingrays to Search Cell Phones. The Tacoma Police Department ("TPD") owns and operates a cell site simulator, commonly referred to by its brand name, "Stingray." Stingrays trick cell phones into connecting with the device instead of a cell phone tower and providing the phone's location—as well as possibly information about calls, texts, and previous locations. They also often sweep in private data from all cell phones within an approximately one-mile radius. Without appropriate limits on the use of this technology, law enforcement agencies can obtain data from many people who were not the target of the search and potentially use that information at a later date. The ACLU has sued TPD for failing to provide public records in response to our requests about its use of cell site simulators. Our Complaint was filed in

February 2016. Trial is currently scheduled for November 14th, 2017, in Pierce County Superior Court. (*Banks et al. v. City of Tacoma*, ACLU Attorneys John Midgley, Lisa Nowlin; Cooperating Attorneys: Jennifer Campbell, James R. Edwards (Schwabe, Williamson & Wyatt P.C.))

Death Penalty Jury Selection Must Be Open to the Public. The ACLU of Washington filed an amicus curiae brief in 2015 urging the Washington Supreme Court to decide that all parts of jury selection that involve discretion must occur in open court. The act of dismissing jurors is a critical part of a criminal trial and, if not undertaken in a fair and open manner, is fraught with potential for undermining trust in the judicial system. This is especially critical in death penalty cases where the public has a strong interest in safeguarding against arbitrary power. The ACLU is currently waiting for an opinion from the court. (*State v. Schierman*, ACLU Attorney Nancy Talner; Cooperating Attorney: Margaret Pak Enslow (Enslow Martin PLLC)).

No Common Interest Block to Public Nature of Shared Government Documents. On March 2, 2017, ACLU-WA joined the Washington Coalition for Open Government in an *amicus* brief filed in the Washington Supreme Court. The brief explained that when government employees of two different agencies share documents, they cannot shield the documents from public disclosure unless the narrow and strict requirements for "common interest" work product privilege are met. The ACLU is waiting for the opinion of the court. (*Kittitas County v. Allphin*, ACLU Attorney Nancy Talner; Cooperating Attorney: Margaret Pak Enslow (Enslow Martin PLLC)).

IMMIGRANTS' RIGHTS

Right to Counsel for Unaccompanied Minors. Each year, the federal government initiates deportation proceedings against thousands of children who are required to appear in court without an attorney. Without legal representation, these children face a very real risk of being sent back to the perilous circumstances they left. That's why the ACLU filed a nationwide, class-action lawsuit on behalf of thousands of children to challenge the federal government's failure to provide them with legal representation in deportation proceedings. Although the Ninth Circuit ruled in September 2016 that the case cannot proceed in District Court and the right to counsel claim should be raised in individual children's immigration proceedings, Plaintiffs have sought rehearing before the full Ninth Circuit court. Separately, the ACLU has filed a Petition for Review in the Ninth Circuit on behalf of a child who was unrepresented in his immigration proceedings (*C.J.L.G. v. Sessions)*. On August 8th, 2017 this case went before the Ninth Circuit Court for Oral Arguments. The ACLU is now awaiting a decision and is hopeful for one which will prevent the absurd practice of children defending themselves against trained prosecutors. (*F.L.B. v. Sessions*, ACLU of Washington Attorney Emily Chiang; ACLU National Attorneys Cecillia Wang and Stephen Kang; ACLU of Southern California Attorneys Ahilan Arulanantham and Carmen Iguina; Co-Counsel: Theodore J. Angelis and Todd Nunn (K&L Gates LLP); Matt Adams and Glenda M. Aldana Madrid (Northwest Immigrant Rights Project); Kristen Jackson and Talia Inlender (Public Counsel); Melissa Crow and Karolina Walters (American Immigration Council); and Kristin Macleod-Ball (National Lawyers Guild)).

Use of Extreme Vetting in Immigration Cases. On January 23, 2017, the ACLU filed a lawsuit challenging the use of an "extreme vetting" program called the Controlled Application Review and Resolution Program (CARRP). This program is designed to delay and deny citizenship and permanent residency to Muslim immigrants and immigrants from Muslim majority countries using flawed watch lists and overly expansive criteria. It frequently denies the opportunity to gain citizenship or residency to people who otherwise meet all the congressionally approved standards for naturalization or residency. In June, the court allowed the case to become a nationwide class suit on behalf of all people with cases pending before the U.S. Citizenship and Immigration Services that might be or are subject to CARRP. The outcome of this case will be key to reforming the illegal practice of extreme vetting in U.S. immigration. (*Wagafe v. Trump,* The ACLU Immigrant Rights Project with the ACLU of Southern California and ACLU of Washington attorney Emily Chiang; Co-Counsel and Cooperating Attorneys: NWIRP; the National Immigration Project of the National Lawyers Guild; Law Offices of Stacy Tolchin; Nick Gellert, Harry Schneider, and David Perez (Perkins Coie)).

Release of Immigrants from Mandatory Detention When Not Detained Promptly. On August 4th, 2016 the Ninth Circuit Court issued opinions on two cases (*Khoury v. Asher and Preap v. Johnson*) which stated that a non-citizen convicted of a crime is exempt from mandatory detention if they are not taken into immigration custody promptly after their release from criminal custody. The decision halted the practice of suddenly detaining non-citizens, often years after their release from criminal custody and keeping them in detention with no opportunity to prove that they are not a flight risk. On May 11th, 2017, the U.S. government filed an appeal of that decision to the U.S. Supreme Court, arguing that the Ninth Circuit Court was wrong. The ACLU opposed the petition to the Supreme Court. (*Kelly v. Preap and Wilcox v. Khoury*, Lead Counsel: ACLU of Washington attorney Emily Chiang; ACLU National Attorney David D. Cole; Michael Tan, Judy Rabinovitz, Cecillia Wang, and Omar Jadwat (ACLU Immigrants' Rights Project); Cooperating Attorneys: Matt Adams (NWIRP); Robert Pauw (Gibbs Houston Pauw); Devin T. Theriot-Orr (Sunbird Law PLLC)).

Freedom of Information Related to the Trump Administration Travel Ban. On April 12, 2017 the ACLU of Washington along with the ACLU of Montana and ACLU of North Dakota filed a lawsuit against the US Department of Homeland Security (DHS) and the US Customs and Border Protection (CBP) for failing to produce records in response to a Freedom of Information Act request for documents related to the local implementation of President Trump's travel ban. DHS and CBP filed to consolidate the thirteen suits against them by various ACLU affiliates and were turned down by the court on August 2nd, 2017. The ACLU of Washington will continue our suit against DHS to gain the records and information we requested. (*ACLU-WA v. DHS*, ACLU-WA Attorney Emily Chiang; Cooperating Attorney: Eric Stahl (Davis Wright Tremaine)).

Police Race Discrimination Leads to ICE Detention for Victim of Traffic Accident. Northwest Immigrant Rights and the ACLU have sued the City of Spokane and one of its officers for race discrimination and unlawfully detaining a Latino driver who was hit by another driver. After investigating the accident the officer kept our client, who was innocent of any wrongdoing and was injured in the accident, from leaving while Immigration Enforcement was

summoned. The officer did not return the client's papers to him until after ICE arrested him and took him to immigration detention. The complaint alleges that the detention delaying the client was unlawful under the Washington Constitution, and that the officer's contacting of ICE was race or national origin discrimination prohibited by the Washington Law Against Discrimination. The suit seeks damages and improvement in Spokane's police policies and training. (*Gomez v. City of Spokane*, *et al*., ACLU Attorney John Midgley; Cooperating Attorneys: Matt Adams, Glenda M. Aldana Madrid, Leila Kang (Northwest Immigrant Rights Project)).

Fighting Back Against President Trump's Muslim Ban. The ACLU-WA filed a class action lawsuit in the Western District of Washington in response to President Trump's executive order restricting travel from seven predominately Muslim countries. Our lawsuit is brought on behalf of people with non-immigrant visas, like students at the University of Washington; the Episcopal Diocese of Olympia, whose refugee resettlement program has been seriously hampered by the ban; and the Council on American Islamic Relations of Washington State, which has had to divert resources to deal with the increase in bigotry in the wake of the executive order. Our Complaint was filed on February 7th and the case is currently on hold while two similar cases go up to the U.S. Supreme Court on appeal. (*Jane Doe et al. v. Donald Trump* et al., ACLU Attorney Emily Chiang; Cooperating Attorneys: Tana Lin, Lynn Lincoln Sarko, Amy Williams-Derry, Derek W. Loeser, Alison Gaffney, Laurie B. Ashton, and Alison Chase (Keller Rohrback, LLP)).

Trump Muslim Travel Ban. On February 2, 2017 and again on February 6, 2017, we filed amicus briefs in support of Washington State's lawsuit against Trump's Muslim travel ban. On February 2nd, we filed a brief before the Western District of Washington to bring to light harms suffered by individuals from the seven countries affected by the ban and on February 6th, we filed a brief before the Ninth Circuit to further underscore those harms and also to elaborate upon some of the legal arguments at issue before that court. The case is currently paused and awaiting the decision in a related case. (*Washington v. Trump*, ACLU Attorney Emily Chiang; ACLU National Attorneys Daniel Mach and Heather L. Weaver; ACLU's Immigration Rights Project Attorneys Lee Gelernt, Omar Jadwat, and Spencer Amdur; ACLU of California Attorneys Cecillia Wang and Cody Wofsy; Cooperating Attorneys: Paul Lawrence, Kymberly Evanson, and Alanna Peterson (Pacifica Law Group)).

LGBT RIGHTS

Using Religion to Discriminate Against Gay Couples. When Robert Ingersoll and Curt Freed got engaged and started planning their wedding, they knew they wanted their longtime florist to do the flowers. Having purchased from Arlene's Flowers on many occasions, Ingersoll approached the florist in March 2013, but was turned away on the grounds that selling him flowers for his wedding would violate the flower shop owner's religious beliefs. We sued on behalf of Robert and Curt, and in February, 2017 the Washington Supreme Court unanimously ruled in their favor. The case is now being appealed by Arlene's Flowers to the U.S. Supreme Court where, if accepted for review by the court, the ACLU will continue to argue for the rights of LGBT couples. (*Ingersoll v. Arlene's Flowers*, ACLU Attorney Emily Chiang; ACLU LGBT

Project Attorneys James Esseks, Leslie Cooper, and Elizabeth Gill; Cooperating Attorneys: Michael R. Scott, Amit Ranade, and Jake Ewart (Hillis Clark Martin & Peterson P.S)).

PRIVACY

Level 1 Sex Offender Registry and Evaluations. We are engaged in several related cases involving the release of personal information of Level I sex offenders. Level 1 sex offenders are those who the State has determined are least likely to re-offend—such as minors and adults who have successfully completed all aspects of their original sentences and are frequently no longer even required by Washington to register as sex offenders. As a result, their personal information is not published on the State's online registry of sex offenders. Level I sex offenders are also often allowed access to sentencing alternatives, such as the Special Sex Offender Sentencing Alternative (SSOSA) for adults and the Special Sex Offender Disposition Alternative (SSODA) for juveniles. These cases arose after a resident of Mesa, Washington sought SSOSA and SSODA evaluations of defendants across the state, including from the Department of Corrections, and Thurston, and Pierce Counties.

We argued in each of these cases that exceptions to the Public Records Act (PRA) should block the release of these records because the evaluations are protected medical records containing medical and psychological diagnoses and history. Release of these evaluations can also re-traumatize victims and other innocent third parties. We obtained favorable rulings on all cases at the Superior Court level. The case related to SSOSA evaluations is currently on appeal in the Washington Supreme Court. (*Does v. DOC et al.; Does v. King County; Does v. Thurston County; Does v. Pierce County,* ACLU Attorney Prachi Dave; Cooperating Attorney: Benjamin Gould (Keller Rohrback)).

Privacy Protections for Homeless Persons. On December 22, 2016, the ACLU filed an amicus brief with Division Two of the Court of Appeals in this case involving the search of a homeless person's makeshift shelter. Our amicus brief argues that Pippin's shelter was his home, which is explicitly protected by the Washington State Constitution. We emphasized that our constitution protects the privacy of all people, even those forced to live without adequate housing. The ACLU is waiting for the opinion of the court. (*State v. Pippin*, ACLU Attorney Nancy Talner and Volunteer Attorney Doug Klunder).

Warrantless Protective Sweeps are Unconstitutional. The ACLU filed a joint Amicus Brief with the Supreme Court of Washington on May 4th, 2017 with Washington Association of Criminal Defense Lawyers and the Washington Defender Association (WACDL) arguing that a warrantless "protective sweep" of a person's home is unconstitutional. Police may not search a home without a warrant based solely upon an invitation into the home to speak with a resident. Oral argument for this case will be heard on November 14, 2017. (*State v. Blockman*, ACLU Attorney Nancy Talner and Volunteer Attorney Doug Klunder).

Use of Unintentionally Recorded Voicemail as Evidence. The ACLU filed an Amicus Brief on April 24, 2017 arguing that an unintentionally made voicemail recording of a domestic violence incident is a private conversation and can fall within the protections of the Privacy Act. We argue however, that in this case, the violent incident recorded falls within a bodily threat exception to the Act and that the recording could be used as evidence. (*State v. Smith*, ACLU Attorney Nancy Talner; Volunteer Attorney Rabi Lahiri).

RACIAL JUSTICE

Refusal to Hire Based on Prior Opposition to Racial Discrimination. The ACLU submitted an Amicus Brief to the Supreme Court of Washington on July 28, 2017 arguing that the Washington Law Against Discrimination prohibits retaliation against a prospective employee for the employee's past discrimination claims against a different employer. (*Zhu v. North Central Educational Service District No. 171*, ACLU Attorney Nancy Talner; Cooperating Attorney: Rabi Lahiri).

Proposing a Court Rule to Reduce Bias in Jury Selection. On July 14, 2016 the ACLU proposed a change to the court rules in Washington State surrounding jury selection. The proposed rule goes beyond the current rule, which requires proof of intentional discrimination to reject the removal of a potential juror based on race and has not been effective at preventing biased jury selection. The ACLU's proposal would consider the role of implicit bias and has received significant support from diverse groups and associations. The Washington Supreme Court has since formed a work group to study the proposed rule. **(***Batson Court Rule***,** ACLU of Washington Attorney Nancy Talner and ACLU National Attorney Jeff Robinson; Cooperating Attorneys: Sal Mungia (Gordon Honeywell and Thomas); Lila Silverstein (Washington Appellate Project); Jim Lobsenz (Carney Badley Spellman)).

SECOND CHANCES

Review of Ability to Pay in Advance of Imposing Legal Financial Obligations. It has long been the practice in Grant County District Court not to make adequate inquiries (as required by the state constitution and previous court decisions) into whether a defendant has the ability to pay before imposing legal financial obligations (LFOs). Its failure to do so inhibits reentry into society and reinforces a cycle of poverty as people are trapped by debt they cannot pay. On April 3, 2017, we filed a writ of mandamus in the Washington Supreme Court, asking the court to direct a Grant County District Court judge to conduct the required assessments of ability to pay prior to imposing LFOs. Briefing was complete on May 19, 2017, after which the court commissioner referred the case to the Washington Supreme Court for consideration on September 5th, 2017. (*Killian v. Fitterer,* ACLU Attorney Prachi Dave; Cooperating Attorneys: Andrew Murphy and Jessica Kerr (Hillis Clark Martin & Peterson)).

Denial of Housing Rentals on the Basis of Past Evictions Filings. On March 30, 2017, the ACLU filed a lawsuit against Wasatch Property Management challenging its policy of denying rentals on the basis of past evictions cases, which disproportionately impacts people of color and women of color in particular. Policies like this can lead to predatory practices by landlords, who can use the threat of even an unsuccessful evictions case against tenants. This case is set for trial on July 9, 2018. (*Smith v. Wasatch Property Management*, ACLU Attorney Prachi Dave, Co-counsel: Allyson O'Malley-Jones and Matthew Brady (Northwest Justice Project); Sandra S. Park and Lenora M. Lapidus (ACLU Women's Rights Project); and Eric Dunn (Virginia Poverty Law Center)).

Backdating Certificate of Discharge. On January 23, 2017, ACLU-WA filed an amicus brief in this case in support of Mr. Hubbard, who was granted a Certificate of Discharge (COD) that was backdated to February 23, 2013, the date on which he completed the terms of his sentence. Our brief argues that the court's decision to backdate the COD is in keeping with the legislative history and intent of Washington law, which seeks to avoid increasing the collateral consequences of arrest. Because a COD is needed to vacate a prior criminal conviction, it is essential for many people to gain access to housing and employment—key factors in combatting recidivism. Unfortunately, the court disagreed with us and remanded the case to superior court for reissuance of a COD reflecting the date the court was notified that Hubbard has completed his terms of service. (*State v. Hubbard*, ACLU Attorneys Prachi Dave and Nancy Talner).

Denial of Bar Membership due to Criminal History. The ACLU submitted an amicus brief to the Supreme Court of Washington in support of an appeal of a denial of bar membership based on the applicant's criminal history. Criminal history should not automatically exclude a person from the practice of the law and both the applicant and others in her situation deserve a chance fully to reenter society. The Supreme Court Commissioner has directed the Washington State Bar Association to file an answer to the ACLU brief by September 11th, 2017, and oral argument will be held in November 2017. (*In re Tarra Simmons*, ACLU Attorney Prachi Dave; Cooperating Attorneys: T. David Copley, Laura R. Gerber, and Tana Lin (Keller Rohrback, LLP)).

Removing Barriers to Reentry. On April 12, 2016, we filed a complaint in King County Superior Court on behalf of a woman whose child care license was revoked by the Department of Early Learning (DEL) when it learned about her 27-year-old conviction for attempted robbery (*Fields v. Washington Dep't of Early Learning*). The client has put her criminal history behind her and has been an exemplary member of the community for years, but her criminal history poses a barrier to her success because state law prevents DEL from giving child care licenses to everyone with this type of conviction regardless of changed circumstances. Our complaint argued that Ms. Fields has a right to demonstrate her qualification and fitness for being awarded the license. On August 21, 2017, the Washington Court of Appeals ruled against Ms. Fields and we will be appealing to the Washington Supreme Court. (*Fields v. Washington Department of Early Learning*, ACLU Attorney Prachi Dave; Cooperating Attorney: Keith Scully (Newman Du Wors LLP)).

YOUTH

Excessive Discipline of Students with Disabilities in Washington Schools. On June 8, 2017 the ACLU filed a class action lawsuit against the Office of the Superintendent of Public Instruction (OSPI) on behalf of students with special education needs who have been wrongfully disciplined for behavior related to their disabilities in the Yakima and Pasco school districts. The suit asks the court to declare that the excessive and discriminatory discipline has deprived students of their basic right to an education, and that OSPI's failure to monitor and exercise appropriate supervisory authority over Washington's schools and school districts violates the Washington State Constitution and Washington Law Against Discrimination. (*A.D. et al. v. OSPI et al.,* ACLU Attorneys Vanessa Hernandez, Breanne Schuster, John Midgley, and ACLU Legal Fellow Jennifer Gunnell; Cooperating Attorneys: Karen King, Alex Hyman, and Elizabeth Curran (Paul Weiss)).

Solitary Confinement and Abuse of Juvenile in Detention. ACLU-WA filed this lawsuit in March 2017 on behalf of a youth who was repeatedly subjected to solitary confinement in the Grays Harbor County juvenile detention center, all for minor misbehavior like talking back or passing notes. During one 8-day stretch of solitary confinement, the plaintiff was kept in isolation in a filthy room with nothing in it, and fed only peanut butter and jelly sandwiches and small amounts of water. The county requested early mediation, and a settlement agreement was reached at the mediation held May 30, 2017. The agreement calls for the county to change its policy so that if involuntary isolation is used at all, it must be only a temporary means to address an immediate threat of harm, escape, or substantial disruption. (*M.D. v. Grays Harbor County et al.*, ACLU Attorney Nancy Talner; Cooperating Attorney: David J. Whedbee (MacDonald Hoague & Bayless)).

Juvenile Sexting is Not Child Pornography. On March 31, 2017, ACLU-WA filed a supplemental amicus brief in the Washington Supreme Court, joined by the Juvenile Law Center, Team Child, and Columbia Legal Services, asking the Court to rule that when a teenager sends a sexually explicit photo of himself to an adult woman, he should not be prosecuted for the felony of "dealing in depictions" of child pornography. Oral argument was held for this case and the ACLU is awaiting the judgment of the court. (*State v. E.G.,* ACLU Attorney Nancy Talner; Cooperating Attorneys: Steve Fogg and Kelly Sheridan (Corr Cronin Michelson Baumgardner Fogg & Moore LLP)).

New Constitutional Requirements for Juvenile Sentencing Should Apply Retroactively. The ACLU submitted a joint amicus brief in the Washington Supreme Court on July 28th, 2017 with Columbia Legal Services, Juvenile Law Center, National Juvenile Defender Center, Team Child, Washington Association of Criminal Defense Lawyers, and the Washington Defender Association to the Washington Supreme Court on the appeal of this case. It argues that juvenile sentencing must take into account that juvenile brain development is a mitigating factor in culpability and that the sentence at issue did not take this into account. (*State v. Scott*, ACLU Attorneys Nancy Talner and Vanessa Hernandez and ACLU Legal Fellow Jennifer Gunnell; Cooperating Attorney: Shawn Larsen-Bright (Dorsey Whitney LLP)).

Double Charging of a Juvenile for Marijuana Possession. The ACLU filed a joint amicus brief with Team Child on March 2, 2017 arguing that prosecution of a juvenile for both a probation violation and a criminal charge for the same marijuana possession offense is not legal. Our brief also argues that the over-criminalization and the removal of young people from school exacerbates the school to prison pipeline and poses a public harm. The ACLU is currently awaiting the opinion of the court. (*State v. Brestoff*, ACLU Attorneys Vanessa Hernandez; Co-Counsel: Sara Zier and Bonnie Linville (Team Child)).