

# ADJUDICATED JUVENILES AND COLLATERAL RELIEF

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## ADJUDICATED JUVENILES AND COLLATERAL RELIEF

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### I. INTRODUCTION

Collateral relief is a vital part of the American criminal justice system. By filing post-conviction petitions after the close of direct appeal, defendants can raise claims based on evidence outside the record that was not known or available at the time of trial. One common use of post-conviction relief is to file a claim related to a previously unknown constitutional violation that occurred at trial, such as ineffective assistance of counsel. If a defendant's trial attorney performed ineffectively by failing to call, for instance, an alibi witness, then that omission is unlikely to be reflected in the trial record—but in post-conviction proceedings, the defendant may seek to expand the record to include evidence of such ineffectiveness. If a court, sitting in post-conviction, hears that evidence and sides with the defendant, the usual remedy is to grant a new trial. Without access to the opportunities to supplement the record that are afforded by these collateral proceedings, however, a defendant who suffers ineffective assistance of counsel often has no opportunity for relief.

Collateral proceedings are also often used to raise newly discovered evidence of innocence. This use of post-conviction proceedings, in particular, has met with much success, especially since the development of DNA technology has enabled attorneys to subject trial evidence to scientific testing and to introduce the test results as newly discovered evidence of innocence. To date, 291 individuals have been exonerated by DNA testing,<sup>1</sup> all of it conducted through collateral proceedings. Each of these individuals stands as living proof of the fact that access to post-conviction relief is an essential part of a justice-seeking judicial system.

This article examines the troubling disparities in access to collateral relief between criminal and juvenile court that appear to occur in many jurisdictions. Some states explicitly make collateral relief unavailable to defendants who are tried as juveniles, even while granting such access to adults. In many other states, legislatures have drafted laws governing the availability of post-conviction relief that are vague and ambiguous, leading to uncertainty about whether adjudicated juveniles may take advantage of such proceedings. This disparity exists despite the fact that those tried in juvenile court need access to collateral remedies just as much as those tried in adult court.

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1. INNOCENCE PROJECT, [www.innocenceproject.org](http://www.innocenceproject.org) (last visited May 25, 2012).

Part II of this article explains that individuals adjudicated in juvenile court may be in particular need of collateral remedies, while demonstrating that their access to these remedies is far too often unclear, severely limited, or explicitly denied. Part III offers two examples of real-life juvenile defendants who either were or would have been harmed by the unavailability of collateral relief. Part IV concludes with a call for clarity and increased juvenile access to collateral proceedings nationwide.

## II. JUVENILES AND POST-ADJUDICATION LITIGATION

### A. Adjudicated Juveniles Need Collateral Relief

The ability to invoke collateral relief is critical for adjudicated juveniles. Youth have been shown to be especially vulnerable as a population to wrongful conviction—and, in particular, to false confession. As the U.S. Supreme Court has recognized on several occasions, juveniles are categorically less mature, less able to weigh risks and long-term consequences, more vulnerable to external pressures, and more compliant with authority figures than are adults.<sup>2</sup> The Court has concluded, in turn, that these youthful traits mean that the risk of false confession is “all the more troubling” and “all the more acute” when the “subject of a custodial interrogation is a juvenile.”<sup>3</sup> This conclusion has roots that extend back to the 1967 Supreme Court case *In re Gault*, in which the Supreme Court explained that “authoritative opinion has cast formidable doubt upon the reliability and trustworthiness of ‘confessions’ by children.”<sup>4</sup>

A slew of empirical studies have affirmed the accuracy of this conclusion. The leading study of 125 proven false confession cases, cited by the Supreme Court in *Corley v. United States* and *J.D.B. v. North Carolina*, found that 63% of false confessors were under the age of twenty-five and 32% were under eighteen.<sup>5</sup> By way of comparison, contemporaneous statistics reveal that juveniles made up only 8% of the individuals arrested for murder and 16% of the individuals arrested for rape in the United States.<sup>6</sup> In another respected study of 340 exonerations that have

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2. See *Roper v. Simmons*, 543 U.S. 551, 569 (2005); *Graham v. Florida*, 130 S. Ct. 2011, 2026-27 (2010).

3. *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2401 (2011). See also *Corley v. United States*, 556 U.S. 303, 320-21 (2009) (“[T]here is mounting empirical evidence that these pressures [associated with custodial interrogation] can induce a frighteningly high percentage of people to confess to crimes they never committed”) (citations omitted).

4. *In re Gault*, 387 U.S. 1, 52 (1967). While *Gault* may be the first explicit example of the U.S. Supreme Court questioning the reliability of statements made by juveniles during custodial interrogation, the Court previously had questioned the voluntariness of juvenile statements made during intensive interrogation. See, e.g., *Haley v. Ohio*, 332 U.S. 596, 599 (1948) (“A 15-year old lad, questioned through the dead of night by relays of police, is a ready victim of the inquisition. Mature men possibly might stand the ordeal from midnight to 5 a.m. But we cannot believe that a lad of tender years is a match for the police in such a contest”); *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962) (“[A] 14-year-old boy, no matter how sophisticated, is unlikely to have any conception of what will confront him when he is made accessible only to the police [for interrogation]”).

5. Steven A. Drizin & Richard A. Leo, *The Problem of False Confessions in the Post-DNA World*, 82 N.C.L. REV. 891, 945 (2004).

6. HOWARD N. SNYDER, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, JUVENILE ARRESTS 2004, at 2 (2006), available at [www.ncjrs.gov/pdffiles1/ojjdp/214563.pdf](http://www.ncjrs.gov/pdffiles1/ojjdp/214563.pdf).

taken place since 1989, researchers found that juveniles under the age of eighteen were three times as likely to falsely confess as adults; a full 42% of juvenile exonerees in that study had falsely confessed, compared to only 13% of wrongfully convicted adults.<sup>7</sup> And the most recent study addressing the subject—an examination of 103 wrongful convictions of factually innocent teenagers and children—found that a false confession contributed to 31.1% of the juvenile cases studied, as compared against only 17.8% of adult wrongful convictions.<sup>8</sup> Laboratory studies, moreover, have replicated these real-world empirics. In one study, a majority of juvenile participants complied with a request to sign a false confession without uttering a word of protest.<sup>9</sup> The study concluded that juveniles between the ages of twelve and sixteen were far more likely to falsely confess than young adults between the ages of eighteen and twenty-six.<sup>10</sup>

This higher incidence of false confessions among juveniles exists because standard police tactics—which in all probability were designed with the hardened adult suspect in mind—are frequently deployed against far softer targets: children and adolescents.<sup>11</sup> Despite their common use during interrogations of children and adolescents, however, these tactics pose a particular risk to young suspects. In recognition of this fact, even John E. Reid & Associates—the leading police interrogation training firm in the country—recommends “special caution” when interrogating children.<sup>12</sup> Sadly, this recommendation goes underemphasized in Reid’s interrogation manual and trainings, and is rarely implemented in real life.

The problem of false confessions from children is particularly troubling because once a defendant has confessed, his or her conviction is all but guaranteed. Despite substantial evidence to the contrary, prosecutors, judges, jurors, and even some defense attorneys continue to adhere to the misapprehension that individuals do not confess to crimes they did not commit, resulting in wrongful prosecutions and convictions. Indeed, one Supreme Court justice has recognized that, for all practical purposes, “the introduction of a confession makes the other aspects of a trial in court superfluous”—a statement that holds true even for those who have falsely confessed.<sup>13</sup> Confessions can be so prejudicial that they can persuade jurors to convict despite the existence of significant exculpatory evidence, such as conflicting physical evidence, contradictory accounts from witnesses, and alibis.<sup>14</sup>

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7. Samuel R. Gross et al., *Exonerations in the United States, 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 545 (2005).

8. Joshua A. Tepfer, Laura H. Nirider, & Lynda Tricarico, *Arresting Development: Convictions of Innocent Youth*, 62 RUTGERS L. REV. 887, 904 (2010).

9. See Allison D. Redlich & Gail S. Goodman, *Taking Responsibility for an Act Not Committed: The Influence of Age and Suggestibility*, 27 LAW & HUM. BEHAV. 141, 150-51 (2003).

10. *Id.*

11. See, e.g., Jessica R. Meyer & N. Dickon Reppucci, *Police Practices and Perceptions Regarding Juvenile Interrogation and Interrogative Suggestibility*, 25 BEHAV. SCI. L. 757, 759 (2007).

12. JOHN E. REID & ASSOCS., INC, CLARIFYING MISINFORMATION ABOUT THE REID TECHNIQUE 1 (2012), available at [www.reid.com/pdfs/20120311.pdf](http://www.reid.com/pdfs/20120311.pdf).

13. *Colorado v. Connelly*, 479 U.S. 157, 182 (1986) (Brennan, J., dissenting) (quoting E. CLEARY, MCCORMICK ON EVIDENCE 316 (2d ed. 1972)). See Drizin & Leo, *supra* note 5, at 958 (81% of false confessors who took their cases to trial were convicted).

14. See Lisa E. Hasel & Saul M. Kassir, *On the Presumption of Evidentiary Independence: Can Confessions Corrupt Eyewitness Identifications?*, 20 PSYCHOL. SCI. 122, 122 (2009).

While the research on juvenile wrongful convictions is best developed in the arena of false confessions, there is reason to believe that youth may be particularly vulnerable to other types of evidentiary problems and errors that can also lead to wrongful convictions. Crimes involving youth often happen in groups, and the witnesses presented against children are often children themselves.<sup>15</sup> Those youthful witnesses may be particularly vulnerable even to unintentional suggestion during line-ups and other eyewitness identification procedures, due to an inherent desire to please authority figures or a simple desire to end the unpleasant experience of being at the police station.<sup>16</sup> All this is to say, in short, that no matter in which court their cases are tried, the mere fact of youthfulness makes children and teens more likely to be wrongfully convicted. As it so happens, most cases involving teens end up in juvenile court.

This fact, however, presents a second problem. The peculiar institution of juvenile court itself can be a “breeding ground” for wrongful convictions and constitutional violations, including ineffective assistance of counsel.<sup>17</sup> Juvenile court originated as an institution at the turn of the twentieth century, when reformers envisioned a body that would handle young people’s transgressions with an eye to rehabilitation and treatment, rather than punishment and long-term incarceration.<sup>18</sup> To facilitate this emphasis on rehabilitation, some of the adversarial aspects of adult criminal court were removed from juvenile court; for instance, all individuals in the courtroom—prosecutors, defense attorneys, and judges alike—were conceived of as benevolent actors seeking to promote children’s “best interests” and welfare.<sup>19</sup>

Unfortunately, these well-intentioned features of juvenile court, over time, have bred a court culture that today discourages and sometimes precludes zealous and adversarial advocacy.<sup>20</sup> Many juvenile courts continue to view zealous advocacy as “antithetical to rehabilitation.”<sup>21</sup> Some attorneys, believing that their clients will be best served by submitting to the consequences of a juvenile adjudication, may fail to research and investigate cases even when their clients request it.<sup>22</sup> They may fail to interview witnesses or visit the crime scene; they may omit to file pre-trial motions; and they may even arrive at dispositional hearings unprepared.<sup>23</sup> Scholars have suggested that ineffective assistance of counsel, sadly, is “routine and widespread” in this context.<sup>24</sup> Without post-

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15. Tepfer et al., *supra* note 8, at 908-10.

16. *Id.* at 921.

17. See Steven A. Drizin & Greg Luloff, *Are Juvenile Courts a Breeding Ground for Wrongful Convictions?*, 34 N. KY. L. REV. 257 (2007).

18. See *id.* at 262.

19. See Barry C. Feld, *Criminalizing Juvenile Justice Rules of Procedure for the Juvenile Court*, 69 MINN. L. REV. 141, 150 (1984).

20. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (noting that juvenile court proceedings lack the “fully adversary” character of adult criminal trials).

21. Katayoon Majd & Patricia Puritz, *The Cost of Justice: How Low-Income Youth Continue to Pay the Price of Failing Indigent Defense Systems*, 16 GEO. J. ON POVERTY L. & POL’Y 543, 555 (2009).

22. See Barbara Fedders, *Losing Hold of the Guiding Hand: Ineffective Assistance of Counsel in Juvenile Delinquency Representation*, 14 LEWIS & CLARK L. REV. 771, 794-95 (2010).

23. *Id.* at 792-93.

24. *Id.* at 791.

adjudication access, however, much of this ineffectiveness may never be remedied.

The apparent prevalence of ineffectiveness in juvenile court, in turn, circles back to an increased risk of wrongful convictions.<sup>25</sup> By discouraging juvenile defenders from zealously subjecting the State's claims to the full-blown "crucible of meaningful adversarial testing," juvenile court culture makes reliability a secondary concern.<sup>26</sup> In effect, accurate fact-finding can be subordinated to the attorney's or court's perception of the child's best interests and need for treatment.<sup>27</sup>

Because of the potential for ineffective assistance of counsel and the susceptibility of juvenile defendants to wrongful conviction, it is imperative to ensure that adjudicated juveniles have access to collateral relief that will allow them to raise and remedy these issues in court. Although adjudicated juveniles may not suffer penal consequences directly on par with convicted criminals in adult court, they can still be detained and sentenced for prolonged periods of time. Adjudications of delinquency, moreover, can and often do have far-reaching secondary consequences, such as lifetime sex offender registration for juveniles who have been adjudicated delinquent of certain sex offenses,<sup>28</sup> restrictions from serving in the military,<sup>29</sup> eviction from public housing,<sup>30</sup> and immigration-related penalties.<sup>31</sup> Unfortunately, however, the nature and extent of juveniles' access to collateral relief is far from clear in many jurisdictions. In some jurisdictions, moreover, such access is explicitly denied.

#### B. National Outlook: Access Unclear

Efforts to prove innocence after conviction are ubiquitous in jurisdictions all over the country. By far, the most generally accepted means of belatedly proving innocence is through DNA testing. Since the nation's first DNA exoneration in 1989, individuals have been exonerated through post-conviction DNA testing in thirty-six states.<sup>32</sup> Forty-nine states,<sup>33</sup> the District of Columbia,<sup>34</sup> and the federal

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25. See *Welch v. United States*, 604 F.3d 408, 432 (7th Cir. 2010) (Posner, J., dissenting) (juvenile adjudications "may well lack the reliability of real convictions in criminal courts").

26. See *United States v. Cronin*, 466 U.S. 648, 656 (1984).

27. Majd & Puritz, *supra* note 21, at 555-56 (describing reports that juvenile courts and judges place a "premium" on "maintaining a friendly atmosphere" that discourages some attorneys from filing motions or pursuing defenses).

28. See, e.g., 730 ILL. COMP. STAT. 150/2(A)(3)(a), (5) (2010); *In re J.W.*, 787 N.E.2d 747 (Ill. 2003).

29. See U.S. DEP'T OF ARMY, REG. 601-210, ACTIVE AND RESERVE COMPONENTS ENLISTMENT PROGRAM ¶¶ 4-4, 4-32 (2011).

30. See *Dept. of Hous. & Urban Dev. v. Rucker*, 535 U.S. 125, 136 (2002) (upholding the practice of evicting tenants from public housing due to their illegal conduct).

31. See *Wallace v. Gonzalez*, 463 F.3d 135 (2d Cir. 2006) (upholding the Board of Immigration Appeals' consideration of a prior juvenile adjudication in deciding whether to grant an alien's application for adjustment of status).

32. *Innocence Project Case Profiles*, INNOCENCE PROJECT, <http://www.innocenceproject.org/know/> (last visited Mar. 31, 2012).

33. Oklahoma is the only state that does not have a DNA testing statute. See *infra* notes 37-42 and accompanying text. Until this year, Massachusetts also lacked a post-conviction DNA testing statute, but a new law was signed by the Governor on February 17, 2012. See MASS. GEN. LAWS ch. 278A (effective May 17, 2012).

government<sup>35</sup> have post-conviction DNA testing statutes on the books. Although these DNA testing laws have enabled 291 convicted individuals to be proven innocent, not a single one of those individuals had been adjudicated delinquent in juvenile court, despite the fact that every jurisdiction has a separate juvenile court system.<sup>36</sup>

A closer look at the various post-conviction DNA statutes may offer at least one explanation. Of the fifty jurisdictions that have post-conviction DNA testing statutes, only five—Colorado,<sup>37</sup> the District of Columbia,<sup>38</sup> New Hampshire,<sup>39</sup> South Carolina,<sup>40</sup> and Wisconsin<sup>41</sup>—explicitly allow young people who have been adjudicated delinquent in juvenile court to seek relief under those statutes. While the remaining jurisdictions' statutes do not directly address juvenile access to post-adjudication DNA testing, there are strong reasons to believe that juveniles may not seek relief under many of those statutes.

The vast majority of DNA testing statutes share a common wording that limits access to those “convicted of” a crime or felony. Forty-one jurisdictions use this language or something similar.<sup>42</sup> This wording, however, may have the effect of

34. See D.C. CODE § 22-4133 (2012).

35. See Justice for All Act of 2004, Pub. L. No. 108-405, 118 Stat. 2260 (2004).

36. See CHARLES DOYLE, CONG. RESEARCH SERV., RL30822, JUVENILE DELINQUENTS AND FEDERAL CRIMINAL LAW: THE FEDERAL JUVENILE DELINQUENCY ACT AND RELATED MATTERS (2004), available at <http://www.policyarchive.org/handle/10207/bitstreams/1143.pdf> (discussing scope of federal juvenile jurisdiction); Carol S. Stevenson et al., *The Juvenile Court: Analysis and Recommendations*, THE JUVENILE COURT, Winter 1996, at 4, available at [http://futureofchildren.org/futureofchildren/publications/docs/06\\_03\\_Analysis.pdf](http://futureofchildren.org/futureofchildren/publications/docs/06_03_Analysis.pdf) (all fifty states have a juvenile court system); COUNCIL FOR COURT EXCELLENCE, GUIDE TO THE D.C. JUVENILE JUSTICE SYSTEM (2009), available at [http://www.courtexcellence.org/uploads/publications/DCJuvenileJusticeGuideEnglish\\_Final.pdf](http://www.courtexcellence.org/uploads/publications/DCJuvenileJusticeGuideEnglish_Final.pdf) (discussing the District of Columbia's juvenile court system).

37. COLO. REV. STAT. § 18-1-411(d) (2012) (including an individual incarcerated in “a juvenile facility following adjudication for an offense that would have been a felony if committed by an adult” among those who may access the statute).

38. D.C. CODE § 22-4133 (including those “adjudicated as a delinquent”).

39. N.H. REV. STAT. ANN. § 651-D:2 (2012) (providing access after “adjudication as a delinquent”).

40. S.C. CODE ANN. § 17-28-30 (2012) (including those “adjudicated delinquent”).

41. WIS. STAT. § 974.07 (2012) (including those “adjudicated delinquent”).

42. Alaska (ALASKA STAT. § 12.73.010 (2012)), Arizona (ARIZ. REV. STAT. ANN. § 13-4240 (West 2012)), Arkansas (ARK. CODE ANN. § 16-112-20 (West 2012)), California (CAL. PENAL CODE § 1405 (West 2012)), Connecticut (CONN. GEN. STAT. § 54-102kk (West 2012)), Delaware (DEL. CODE ANN. tit. 11, § 4504 (West 2012)), Florida (FLA. STAT. § 925.11 (2012)), Georgia (GA. CODE ANN. § 5-5-41 (West 2012)), Hawaii (HAW. REV. STAT. § 844D-121 (2012)), Idaho (IDAHO CODE ANN. § 19-4901 (West 2012)), Illinois (725 ILL. COMP. STAT. 5/166-3 (2012)), Indiana (IND. CODE. § 35-38-7-5 (2012)), Iowa (IOWA CODE § 81.10 (2012)), Kansas (KAN. STAT. ANN. § 21-2512 (2012)), Louisiana (LA. REV. STAT. ANN. § 926.1 (West 2012)), Maine (ME. REV. STAT. tit. 15, § 2137 (2012)), Maryland (MD. CODE ANN. CRIM. PROC. § 8-201 (West 2012)), Michigan (MICH. COMP. LAWS § 770.16 (2012)), Minnesota (MINN. STAT. § 590.01 (2012)), Montana (MONT. CODE ANN. § 46-21-110 (West 2012)), Nebraska (NEB. REV. STAT. § 29-4120 (2012)), Nevada (NEV. REV. STAT. § 176.0918 (2012)), New Jersey (N.J. STAT. ANN. § 2A:84A-32a (West 2012)), New Mexico (N.M. STAT. ANN. § 31-1A-2 (West 2012)), North Carolina (N.C. GEN. STAT. § 15A-269 (2012)), North Dakota (N.D. CENT. CODE § 29-32.1-15 (2012)), Ohio (OHIO REV. CODE ANN. § 2953.71-.84 (West 2012)), Oregon (OR. REV. STAT. § 136.690 (2012)), Pennsylvania (42 PA. CONS. STAT. § 9543 (2012)), Rhode Island (R.I. GEN. LAWS § 10-9.1-12 (2012)), South Dakota (S.D. CODIFIED LAWS § 23-5B-1 (2012)), Tennessee (TENN. CODE ANN. § 40-30-303 (2012)), Texas (TEX. CODE CRIM. PROC. ANN. art. 64.01 (West 2012)), Utah (UTAH CODE ANN. §

excluding young people who have been adjudicated delinquent in juvenile court.<sup>43</sup> State and federal laws generally draw a clear distinction between a “conviction” in criminal court and an “adjudication” in juvenile court.<sup>44</sup> Take, for example, California law, which holds that “an order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime *for any purpose*.”<sup>45</sup> At the same time, California’s post-conviction DNA testing statute limits access to any person “convicted of a felony.”<sup>46</sup> Under basic principles of statutory construction, it is difficult to imagine that an adjudicated juvenile is encompassed within the DNA statute.<sup>47</sup>

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78B-9-300 (West 2012)), Vermont (VT. STAT. ANN. tit. 13, § 5561 (West 2012)), Virginia (VA. CODE ANN. § 19.2-327.1 (West 2012)), Washington (WASH. REV. CODE § 10.73.170 (2012)), West Virginia (W. VA. CODE § 15-2B-14 (2012)), Wyoming (WYO. STAT. ANN. § 7-12-301 (West 2012)). *See also infra* note 47 for a discussion of Florida, Idaho, and Rhode Island’s statutes, which are worded slightly differently and may present different issues of statutory interpretation.

Alabama and Kentucky limit their post-conviction DNA testing to individuals convicted of a “capital offense.” ALA. CODE § 15-18-200 (2012); KY REV. STAT. ANN. § 422.285 (West 2012). Although an adjudicated delinquent could never receive a “capital sentence,” it appears under those states’ definitions that a juvenile could be adjudicated of a capital offense. ALA. CODE § 13A-5-39 (2012) (Alabama defining a capital offense as “[a]n offense for which a defendant shall be punished by a sentence of death or life imprisonment without parole according to the provisions of this article”); KY REV. STAT. ANN. § 640.040 (West 2011) (noting that a youthful offender can be adjudicated of a capital offense). The same question lingers regarding whether an “adjudication” of a capital offense would be deemed the same thing as a “conviction” of a capital offense. *See infra* notes 44-46.

43. It is fairly clear that juveniles who are charged and convicted in adult criminal court or who are otherwise given an adult sentence would be allowed to access DNA testing statutes. *See e.g.*, N.M. STAT. ANN. § 32A-2-18(C) (West 2012) (“If a judgment on a proceeding under the Delinquency Act results in an adult sentence, the determination of guilt at trial becomes a conviction for purposes of the Criminal Code.”).

44. *See, e.g.*, *People v. Taylor*, 850 N.E.2d 134, 147 (Ill. 2006) (holding that a juvenile who escapes from detention after an adjudication of delinquency cannot be convicted under an escape statute that limits its application to those “convicted of a felony”); *United States v. Brian N.*, 900 F.2d 218, 220 (10th Cir. 1990) (explaining that juvenile delinquency is “an adjudication of status—not a criminal conviction”).

45. CAL. WELF. & INST. CODE § 203 (West 2012).

46. CAL. PENAL CODE § 1405 (West 2012).

47. At least three states use language that, while ambiguous as to whether it includes adjudicated juveniles, may allow for better statutory interpretation arguments to the effect that it does. Mississippi grants access to “any person sentenced by a court of record of the State of Mississippi”; Missouri allows “a person in the custody of the department of corrections” to file a motion; and New York states merely that a “defendant” may bring a motion. *See* MISS. CODE ANN. § 99-39-5 (West 2012); MO. REV. STAT. § 547.035 (2012); N.Y. CRIM. PROC. LAW § 440.30(1a) (McKinney 2012). The question in these states turns not on whether an “adjudication” is the same thing as a “conviction,” but on whether an adjudicated juvenile is “sentenced by a court of record” to “the department of corrections” or whether a charged and adjudicated juvenile was a “defendant.”

Two states use statutory language that grants access to individuals “convicted of or sentenced” in connection with a crime or felony. *See* IDAHO CODE ANN. § 19-4901 (West 2012); R.I. GEN. LAWS § 10-9.1-12 (2012) (italics added). Juvenile petitioners in these states may claim that they fall within these statutes by arguing that they were “sentenced,” even if they were not technically “convicted.” *But see* *United States v. Moorer*, 383 F.3d 164, 169 n.3 (3d Cir. 2004) (“Under the New Jersey Code of Juvenile Justice, juveniles who are adjudicated delinquent are not sentenced but rather are subject to a ‘dispositional hearing.’” (citations omitted)); *In re J.J.M.*, 701 N.E.2d 1170, 1174 (Ill. App. Ct. 1998) (adjudicated juveniles are neither convicted nor given sentences). The vast majority of state statutes in which the term “sentencing” appears, however, use the conjunction “and,” which does not appear to aid



The structure of the Maine statutory scheme suggests the same conclusion. Access to post-conviction DNA testing in Maine is governed by title 15, section 2138 of the Maine Revised Statutes, which allows “a person convicted of and sentenced for” certain crimes to seek testing.<sup>48</sup> The statute does delineate those who may seek relief—such as individuals who are on parole—but adjudicated juveniles are not mentioned.<sup>49</sup> Even further, Maine statutes and case law make clear that a delinquency adjudication is not the equivalent of a felony conviction.<sup>50</sup> And the Maine statute governing non-DNA post-conviction claims for relief specifies clearly that adjudicated juveniles may seek relief under that statute—thus suggesting an intentional contrast between the scopes of the non-DNA and DNA post-conviction statutes.<sup>51</sup> While there does not appear to be any case law in Maine addressing this issue,<sup>52</sup> this statutory backdrop suggests that adjudicated juveniles are likely not encompassed within the DNA testing statute.

In fact, there appears to be little case law addressing this precise question in any jurisdiction. One of the few courts to address the issue—in Texas—has strongly suggested that juveniles cannot seek DNA testing when the DNA testing statute limits relief to those who have been “convicted.” Texas’ post-conviction DNA testing statute is found at article 64.01 of the Code of Criminal Procedure, which allows a “convicted person” to seek testing.<sup>53</sup> In the case of *In re R.J.M.*,<sup>54</sup> a juvenile sought leave to seek relief under this statute after his adjudication for aggravated sexual assault. The lower court denied the motion, finding that there were “no reasonable grounds for a motion to be filed.”<sup>55</sup> In dismissing the appeal for lack of jurisdiction, the appellate court noted that the legislature did not explicitly authorize a juvenile’s appeal of a denial of such a motion.<sup>56</sup> The court explained that the Code of Criminal Procedure does not generally apply to adjudicated juveniles unless the legislature specifically “evinces a contrary intent.”<sup>57</sup> It went on to note that no contrary intent appears in the DNA testing

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the statutory argument. See, e.g., ARIZ. REV. STAT. ANN. § 13-4240 (West 2012) (limited to individuals “convicted of and sentenced for”); CONN. GEN. STAT. § 54-102kk (“convicted of a crime and sentenced to”); HAW. REV. STAT. § 844D-121 (2012) (“convicted of and sentenced for”); ME. REV. STAT. tit 15, § 2138 (2012) (“convicted of and sentenced for”). One state, Florida, presents a similar issue: its statute permits DNA testing for those who have been “found guilty,” which could arguably include adjudicated juveniles. See FLA. STAT. § 925.11 (2012); *A.S.F. v. State*, 70 So. 3d 754, 755 (Fla. Dist. Ct. App. 2011) (referencing a juvenile who was “found guilty” of a crime); but see *State v. J.M.*, 824 So. 2d 105, 111 (Fla. 2002) (if the legislature had intended to include adjudicated juveniles within the scope of a different Act, it could have specifically said so).

48. ME. REV. STAT. tit 15, § 2138 (2012).

49. *Id.* § 2138(1).

50. *Id.* § 3310(6); *State v. Brockelbank*, 2011 ME 118, 33 A.3d 925.

51. ME. REV. STAT. tit 15, §§ 2121-32. Specifically, see section 2121(1), specifying that a “criminal judgment” includes an “adjudication and disposition in a juvenile case.”

52. Only two published appellate cases address the post-conviction DNA statute in Maine. See *Cookson v. State*, 2011 ME 53, 17 A.3d 1208; *State v. Donovan*, 2004 ME 81, 853 A.2d 772. Neither addresses this issue.

53. TEX. CODE CRIM. PROC. ANN. art. 64.01(a-1) (West 2012).

54. 211 S.W.3d 393 (Tex. Crim. App. 2006).

55. *Id.* at 394.

56. *Id.*

57. *Id.*

statute; rather, that statute is limited to those who have been “convicted,” and the Texas Family Code specifically states that “an order of an adjudication . . . is not a conviction of crime.”<sup>58</sup> Although the specific holding in this case was that an adjudicated juvenile cannot *appeal* the denial of a DNA testing motion, the decision strongly suggests that an adjudicated juvenile also cannot file such a motion in the first place.

Beyond the fundamental unfairness of not allowing adjudicated juveniles opportunities to prove their innocence, the apparent lack of juvenile access to post-conviction DNA testing in most jurisdictions also creates a troubling contradiction. The vast majority of states require juveniles to contribute a DNA sample to the Combined DNA Index System (CODIS)—a national DNA database developed to assist state and federal law enforcement agencies—after an adjudication of guilt in juvenile court.<sup>59</sup> For example, Kentucky and California, which appear to deny juveniles the right to seek post-conviction DNA testing, still require adjudicated juveniles to submit their DNA profiles into CODIS.<sup>60</sup> These statutory schemes create an odd dichotomy: juveniles’ DNA can be used only to prove their guilt, not their innocence.

Statutes and rules governing the availability of other, non-DNA forms of collateral relief—such as state-level writs of habeas corpus—often suffer from the same infirmity as DNA statutes: in many jurisdictions, it remains uncertain as to whether such relief is available to adjudicated juveniles. For example, Arizona Rule of Criminal Procedure 32.1 provides one method for pursuing state-level post-conviction relief; as with the vast majority of DNA testing statutes, however, this provision limits access to those who have been “convicted” of a criminal offense.<sup>61</sup> Indeed, the Arizona statute explicitly lists several categories of defendants who are permitted to file under this section—such as those who have violated probation—yet it omits to mention adjudicated juveniles.<sup>62</sup> Given this statutory backdrop, it is unclear, if not unlikely, that this provision is applicable to adjudicated juveniles. In other states, including North Dakota, Oregon, Pennsylvania, and Rhode Island, it is equally doubtful that adjudicated juveniles may seek relief for similar reasons.<sup>63</sup>

Although some states explicitly allow equal access<sup>64</sup>—including Maine, as

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58. *Id.* (quoting TEX. FAM. CODE ANN. § 51.13 (a) (2005)).

59. See SETH AXELRAD, AM. SOC’Y OF LAW, MED. & ETHICS, SURVEY OF STATE DNA DATABASE STATUTES (2004), available at [http://www.aslme.org/dna\\_04/grid/guide.pdf](http://www.aslme.org/dna_04/grid/guide.pdf). The same information is also available in spreadsheet form at [http://www.aslme.org/dna\\_04/grid/statute\\_grid\\_4\\_5\\_2006.html](http://www.aslme.org/dna_04/grid/statute_grid_4_5_2006.html).

60. KY. REV. STAT. ANN. § 17.174 (West 2012); CAL. PENAL CODE § 296 (West 2012).

61. ARIZ. R. CRIM. P. 32.1.

62. *Id.*

63. See N.D. CENT. CODE § 29-32.1-01 (2012) (limiting access to post-conviction procedures to persons “convicted of and sentenced for a crime”); OR. REV. STAT. § 419C.400 (2012) (limited to persons “convicted of a crime”); 42 PA. CONS. STAT. § 9543 (2012) (limiting post-conviction relief to persons “convicted of a crime”); R.I. GEN. LAWS § 10-9.1-1 (2012) (limiting post-conviction relief to persons “convicted of or sentenced for” a crime).

64. See e.g., ALA. CODE § 15-12-23(b) (2012) (allowing judges to appoint counsel for adjudicated juveniles seeking habeas corpus or other collateral relief); D.C. CODE § 16-2335.01(a) (2012) (allowing adjudicated juveniles to seek a new hearing on the grounds of actual innocence); OHIO REV. CODE ANN. § 2953.21 (West 2012) (allowing “any person convicted of a criminal offense or adjudicated a delinquent child” to pursue collateral relief); *In re Interest of J.M.*, 246 A.2d 536, 538-39 (N.J. Juv. & Dom. Rel. Ct. 1968) (allowing the delinquent juvenile collateral relief); *Robinson v. Boley State Sch.*

outlined above—a handful of states throughout the country explicitly prohibit adjudicated juveniles from seeking state-court collateral remedies. For example, adjudicated juveniles in Illinois are not permitted to seek relief pursuant to the Post-Conviction Hearing Act, the traditional means by which convicted adults raise non-forensic actual innocence claims and other constitutional violations.<sup>65</sup> Similarly, neither Arkansas<sup>66</sup> nor Texas<sup>67</sup> juveniles have access to state habeas corpus relief.

The South Carolina statutory scheme also appears to prohibit adjudicated juveniles from seeking non-DNA collateral relief. Recall that South Carolina was one of only five states to explicitly include juveniles in its post-conviction DNA testing statute.<sup>68</sup> Conversely, South Carolina’s Uniform Post-Conviction Procedure Act limits access to non-forensic collateral relief to those persons who have been “convicted” of a crime.<sup>69</sup> The legislature’s failure to explicitly mention adjudicated juveniles in this statute when it had done so in the DNA context strongly suggests that juveniles do not have access to non-DNA collateral remedies.

Other statutory schemes provide some means for adjudicated juveniles to seek collateral remedies, even while limiting their access to a greater degree than similarly situated adults. Consider Illinois, which prohibits juvenile access to the Post-Conviction Hearing Act as explained above, but which does allow adults and juveniles alike to seek relief from judgments based on errors of fact.<sup>70</sup> Although adult criminal defendants must seek this type of relief within the two-year period following their convictions,<sup>71</sup> the Illinois statutory scheme allows adjudicated juveniles only one year to pursue equivalent relief.<sup>72</sup> There is no apparent reason for this discrepancy.

In short, most jurisdictions have not established clear rules as to whether adjudicated juveniles have the same rights as adults to seek relief through collateral proceedings. Despite this lack of clarity, there is good reason to believe that access to all forms of collateral relief is severely limited for many adjudicated juveniles across the country. As exemplified by the two Illinois case studies below, these limitations are, or can be, disastrous.

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for Boys, 554 P.2d 44, 46 (Okla. Crim. App. 1976) (holding that as a matter of equal protection, juveniles must be afforded access to post-conviction procedures); State *ex rel.* R.S. v. Trent, 289 S.E.2d 166, 177 (W. Va. 1982) (granting state habeas relief to a West Virginia juvenile).

65. See *In re* A.G., 746 N.E.2d 732, 737 (Ill. 2001) (citing *In re* A.W.H., 420 N.E.2d 1041, 1042-43 (Ill. 1981); *In re* R.R., 394 N.E.2d 75, 76-77 (Ill. App. Ct. 1979)) (for the proposition that the Illinois high court has not reviewed lower court decisions holding that the Post-Conviction Hearing Act does not apply to juvenile proceedings). See also *People v. Washington*, 665 N.E.2d 1330, 1332-33 (Ill. 1996) (explaining that the Post-Conviction Hearing Act can be utilized to make claims of actual innocence and other constitutional violations).

66. *Robinson v. Shock*, 667 S.W.2d 956, 958-59 (Ark. 1984).

67. *Ex parte Valle*, 104 S.W.3d 888, 889 (Tex. Crim. App. 2003) (holding that adjudicated juveniles cannot request habeas relief because they were not “convicted”).

68. S.C. CODE ANN. § 17-28-30(A) (2012).

69. *Id.* § 17-27-20.

70. *People v. Gandy*, 591 N.E.2d 45, 64-65 (Ill. App. Ct. 1992); 735 ILL. COMP. STAT. 5/2-1401 (2012); 705 ILL. COMP. STAT. 405/2-32 (2012).

71. 735 ILL. COMP. STAT. 5/2-1401(c) (2012).

72. 705 ILL. COMP. STAT. 405/2-32 (2012).

## III. CASE STUDIES

A. *Alberto M.*

In early 1999, Alberto M., a twelve-year-old Latino boy living in Chicago with his parents, older sister, and two younger brothers, was having a difficult time.<sup>73</sup> His mother suffered from depression, anxiety, and possible bipolar disorder,<sup>74</sup> while his father abused drugs and alcohol,<sup>75</sup> all of which created a volatile home environment.<sup>76</sup> Perhaps in response, Alberto started lashing out and acting inappropriately, getting in some trouble at school and home. Before long, he started encountering law enforcement. In March 1999, after an altercation with his mother, he was arrested for domestic battery.<sup>77</sup> The case never made it to court, but it signaled mounting problems for Alberto.

In May, a distraught Alberto started telling friends that he was going to kill himself.<sup>78</sup> When he was discovered with a rope and a knife, he was admitted to a children's hospital, where he received two weeks of intensive psychological therapy.<sup>79</sup> He was also prescribed antidepressants and drugs designed to mitigate his attention deficit disorder.<sup>80</sup>

Alberto's problems multiplied greatly in September, however, when the Cook County State's Attorney's Office filed a petition for adjudication of wardship against him, alleging that Alberto had committed acts of sexual penetration against his nine-year-old brother, Evan.<sup>81</sup> According to the charges and court records, Alberto, who by this time had turned thirteen years old, was in his room with his brother Evan when he became aroused by a female wrestler on the television.<sup>82</sup> Alberto then allegedly sexually penetrated his brother.<sup>83</sup> Law enforcement became involved after Evan allegedly told their mother, who alerted Alberto's therapist, who then called the police.<sup>84</sup> Under questioning, Alberto confessed to committing these acts, while nine-year-old Evan also allegedly made statements implicating his brother.<sup>85</sup>

Outside of law enforcement's presence, however, Alberto told a far different

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73. The authors of this article represented Alberto in later proceedings, as noted *infra*. Some information discussed herein arises from their personal knowledge and experience with the case. The names of Alberto and his younger brother Evan have been changed to protect their identities.

74. Lutheran Social Services of Illinois, Psychiatric Evaluation, A.M., Oct. 27, 2000 [hereinafter Psychiatric Evaluation, Oct. 27, 2000] (on file with authors); Children's Memorial Hospital, Discharge Summary, A.M., Feb. 4, 2000 (on file with authors).

75. Psychiatric Evaluation, Oct. 27, 2000, *supra* note 74.

76. Children's Memorial Hospital, Discharge Summary, A.M., May 19, 1999 (on file with authors).

77. Chicago Police Department, Juvenile Summary Report, A.M. (on file with authors); Juvenile Court of Cook County, Social Investigation, A.M., June 13, 2000, at 4 [hereinafter Social Investigation, June 13, 2000] (on file with authors).

78. Social Investigation, June 13, 2000, *supra* note 77, at 6.

79. *Id.*

80. *Id.* at 7.

81. Petition for Adjudication of Wardship – Amended, *In re A.M.*, (on file with authors).

82. Social Investigation, June 13, 2000, *supra* note 77, at 4.

83. *Id.*

84. *Id.*

85. *Id.*

version of the events that led to his charges. According to Alberto, he and his brother were swimming nude in a family member's pool. While they were playing in the water, they began re-enacting a scene from *Mulan*, a 1998 animated Disney film, in which Alberto lifted his younger brother over his head. As they were doing so, their mother entered the pool area, saw them naked, overreacted, and called the police. When brought to the police station, Alberto was bombarded with questions from police officers, who accused him of committing sexual acts against his brother. After what seemed like hours of constant questioning and the police's adamant refusal to accept his denials, Alberto gave in. Scared and confused, he admitted to what the police were saying he did to his brother. Next thing Alberto knew, he was shipped off to the detention center and charged with serious crimes in juvenile court.

Although Alberto was released from detention after just a couple of days, he wasn't allowed back home. As the case wound its way through juvenile court, he was placed in the custody of the pastor of the family's church.<sup>86</sup> Alberto's problems, however, continued to escalate. Shortly after the New Year, Alberto was readmitted to the hospital for a week's worth of psychological treatment.<sup>87</sup> He had been acting erratically, including episodes of uncontrolled laughter and sobbing, and teachers reported that he spoke nonsensically at times.<sup>88</sup> He also had run away twice and allegedly had verbally and physically intimidated his guardian.<sup>89</sup> To further complicate matters, his older sister had been hospitalized following her own suicide attempt just two weeks earlier.<sup>90</sup> After his hospital admission, Alberto was diagnosed with bipolar disorder and prescribed lithium.<sup>91</sup>

At the same time, however, the State's case against Alberto suffered a significant setback. Per a court order, Alberto was evaluated by a psychologist, who determined that Alberto was incapable of knowingly understanding and waiving his *Miranda* rights.<sup>92</sup> In light of these conclusions, the Cook County State's Attorney was in all probability barred from using Alberto's confession against him at an adjudicatory hearing. Perhaps in response, the State offered Alberto a deal: in exchange for dropping seven of the eight allegations, including the most serious charges, Alberto could plead guilty to one count of sexual conduct with a family member under the age of eighteen and avoid detention entirely.<sup>93</sup> The deal required him to be on probation for five years and do some community service.<sup>94</sup> Alberto's counsel also explained to him that the deal required his registration as a sex offender for a period of ten years.<sup>95</sup> Given the seriousness of the charges, his other family and medical problems, and the risk of a long period of

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86. *Id.* at 5.

87. Children's Memorial Hospital, Discharge Summary, A.M., Jan. 30, 2000 (on file with authors).

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. The University of Chicago, Psychiatric Evaluation, A.M., Jan. 6, 2000 (on file with authors).

93. Motion to Withdraw Guilty Plea or Relief from Judgment Pursuant to 705 ILCS 405/2-32, at Ex. C, *In re* A.M., (transcript of court proceedings, Apr. 26, 2000) [hereinafter Motion to Withdraw Guilty Plea] (on file with authors).

94. *Id.*

95. *Id.* at 2 (Affidavit of A.M.).

detention if he went to trial, Alberto reluctantly decided to take the deal, despite his private insistence that he was innocent. In mid-2000, Alberto accepted the terms as read to him by his juvenile court judge and signed a form that required his registration as a sex offender for ten years. That form was later read into the record in open court by the prosecutor.<sup>96</sup>

Over the next year or so, unsurprisingly, Alberto's psychological and emotional problems only multiplied. He frequently missed school and counseling appointments; stopped taking his medications; had multiple violent episodes involving family members and classmates; and, in mid-2001, after again making suicidal statements, was hospitalized yet again.<sup>97</sup> Over this same time period, his parents separated and sought a divorce.<sup>98</sup> In November, he was arrested on two separate occasions.<sup>99</sup>

In early 2002, however, Alberto entered a therapeutic day school and began treatment with a new counselor.<sup>100</sup> Although his improvements were gradual, they were significant. Over time, Alberto's violent episodes began to subside. He improved his grades, attended his counseling sessions, and consistently took his medication.<sup>101</sup> In July 2005, he was discharged from probation, having satisfactorily met all the requirements.<sup>102</sup> The Cook County Juvenile Probation Department issued a report deeming him unlikely to sexually offend in the future; and he had not been adjudicated or convicted of any offense—sexual or otherwise—since his guilty plea in July 2000.<sup>103</sup> Alberto had also consistently complied with his annual sex offender registration duties.<sup>104</sup>

By his early twenties, it was clear that Alberto had entirely turned his life around. He had graduated from high school and now had a solid career as a department head at a home improvement store, enabling him to bring home a steady and significant paycheck.<sup>105</sup> As such, he was the primary means of financial support for his mother and two younger brothers, including Evan, with whom he lived.<sup>106</sup> He had a committed girlfriend and an older male friend who served as a close mentor.<sup>107</sup> In his spare time, Alberto wrote motivational lyrics and produced his own music.<sup>108</sup> He even found time to take some classes at a community college; pursuant to sex offender registration regulations, however, he was required to alert the administration of his status as a sex offender and eventually dropped out

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96. *Id.*

97. Hartgrove Hospital, Psychological Screening Evaluation, A.M., June 11, 2001 (on file with authors); Juvenile Court of Cook County, Supplemental Social Investigation, A.M., Aug. 13, 2001 [hereinafter Supplemental Social Investigation, Aug. 13, 2001] (on file with authors).

98. Supplemental Social Investigation, Aug. 13, 2001, *supra* note 97, at 4.

99. Juvenile Court of Cook County, Supplemental Social Investigation, A.M., Feb. 13, 2002, at 4 (on file with authors).

100. *Id.*

101. Monthly Case Log, A.M., Jan. 2002-July 2005 (on file with authors).

102. Juvenile Court of Cook County, Sexual Offense Risk Assessment, Sept. 1, 2010, at 4 (on file with authors).

103. *Id.* at 14.

104. *Id.* at 4.

105. *Id.* at 8.

106. *Id.* at 7.

107. *Id.* at 8.

108. *Id.*

because he felt ostracized.<sup>109</sup> All told, Alberto was eagerly looking forward to July 2010, when he was due to complete his sex offender registration requirements. At that time, he felt that he finally would be able to move beyond his past life.

In late 2009, however, Alberto learned something very troubling. At that time, law enforcement informed him that his registration was not due to be terminated and that he was going to have to register as a sex offender for the rest of his life.<sup>110</sup> Alberto was shocked, as he recalled his lawyer specifically informing him that his registration duties would last only ten years.<sup>111</sup> That ten-year limit had been a crucial factor in Alberto's choice to plead guilty, as his counsel had thoroughly relayed how arduous and embarrassing the registration requirements were.<sup>112</sup> Alberto immediately sought the advice of counsel, hoping that he could either terminate his registration requirements or somehow prove his innocence and get the charges vacated.

Alberto's counsel—who are the authors of this article—soon determined that under applicable Illinois law, the offense to which Alberto had pled did in fact require lifetime registration, even though Alberto had been a juvenile.<sup>113</sup> After ordering the court file and transcripts, however, counsel soon discovered that Alberto was never informed of this. To the contrary, the juvenile court judge's guilty plea admonishments specifically stated that Alberto was only required to register for ten years.<sup>114</sup> A boilerplate court form, signed and initialed by Alberto, said the same thing.<sup>115</sup> Counsel also interviewed Alberto's former public defender; while she had no specific recollection of the case, she did recall some confusion about the length of his sex offender registration obligations. In a notarized affidavit, Alberto swore that his counsel informed him that the requirements would last just ten years and that he relied on this information in choosing to plead guilty.<sup>116</sup>

At the same time, counsel began to investigate Alberto's claim of innocence by speaking to Alberto's younger brother Evan, the alleged victim. Alberto had warned his counsel that he did not know what Evan was going to say, given that the family never had spoken much about the alleged incident. When counsel met with Evan, who was now an eighteen-year-old high school senior, Evan stated without hesitation that the assault never happened.<sup>117</sup> He told a similar story to Alberto's, in which their mother had overreacted when she saw the two brothers playing naked in a family member's pool.<sup>118</sup> He recalled being questioned as a nine-year-old by multiple police officers about whether Alberto had assaulted him in a sexual way and remembered fearing that he was going to go to jail.<sup>119</sup> Evan could not

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109. *Id.*

110. Motion to Withdraw Guilty Plea, *supra* note 93, at Ex. D.

111. *Id.*

112. *Id.*

113. 730 ILL. COMP. STAT. 150/2(A-5), (E)(1) (2012); 730 ILL. COMP. STAT. 150/7; 1999 Ill. Legis. Serv. 91-48 (West) (effective July 1, 1999).

114. Motion to Withdraw Guilty Plea, *supra* note 93.

115. *Id.*

116. *Id.* at Ex. D.

117. Affidavit of E.M., April 30, 2010 (on file with authors).

118. *Id.*

119. *Id.*

actually recall whether he ultimately had told the police that Alberto had assaulted him, but he repeatedly declared that even if he did make that statement, it wasn't true: his brother had never sexually assaulted him in any way.<sup>120</sup> Evan signed a notarized affidavit attesting to this story and promised to testify consistently in court if he was ever called to do so.<sup>121</sup>

Armed with this new evidence, Alberto was geared up to pursue relief in the Illinois courts. His counsel intended to raise a claim of actual innocence based on Evan's affidavit as well as due process and ineffective assistance of counsel claims based on the affirmative misinformation that Alberto's attorney had told him about the length of his registration requirements.<sup>122</sup>

These efforts, however, were soon stymied. Alberto's attorney discovered that Illinois law precluded juveniles from filing petitions under the Post-Conviction Hearing Act,<sup>123</sup> the traditional means by which a criminal defendant raises non-forensic claims of actual innocence or constitutional violations based on newly discovered evidence.<sup>124</sup> Instead, the only way for Alberto to pursue any sort of collateral relief in juvenile court was to file a so-called petition for relief from final order, a traditional civil remedy that must be raised within one year of the date of adjudication.<sup>125</sup> One year, of course, had long since passed. When Alberto attempted nevertheless to file claims under this statute, a juvenile court judge refused to entertain his claims, citing the time limitation.<sup>126</sup> Despite the fact that Alberto had evidence of his innocence; that his guilty plea had been extracted based on misinformation from his defense attorney, the prosecutor, and even the judge; and that the delay in raising these issues was in no way Alberto's fault, Alberto had no legal vehicle for presenting his claims to the court.<sup>127</sup>

### B. Robert Taylor and Jonathan Barr

On the afternoon of November 19, 1991, fourteen-year-old Cateresa Matthews was on her way home from school in the close-knit, south Chicago suburb of Dixmoor.<sup>128</sup> Just as she did every day, Cateresa walked from Rosa L. Parks Middle

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120. *Id.*

121. *Id.*

122. Indeed, the substance of an ineffective assistance of counsel claim appeared to have merit, as the U.S. Supreme Court had recently ruled that an adult immigrant who pled guilty to a criminal offense after his counsel wrongly advised him that his conviction would not affect his immigration status could establish ineffective assistance of counsel. *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010). Alberto could have argued that affirmative misadvice about sex offender registration status was at least as important a collateral matter as immigration consequences and thus that the same result should lie.

123. 725 ILL. COMP. STAT. 5/122-1 to 122-8 (2012).

124. *In re William M.*, 795 N.E.2d 269, 274 (Ill. 2003).

125. 705 ILL. COMP. STAT. 405/2-32 (2012).

126. *In re A.M.*, Order, July 26, 2010.

127. Alberto's story does have a happy ending. Although Alberto was never able to prove his innocence in court, he applied to be removed from the sex offender registry through an Illinois statute that permits certain adjudicated juveniles to terminate their registration obligations early. *See* 730 ILL. COMP. STAT. 150/3-5 (2012). On March 2, 2011, Alberto was removed from the sex offender registry. *A.M.*, Court Order, March 2, 2011. In total, he spent roughly eight more months on the registry than he was instructed he would have to spend.

128. Motion for Forensic Testing Pursuant to 725 ILCS 5/116-3, at 2-3, *People v. Harden*, No. 92 CR 27247 [hereinafter *Dixmoor DNA Motion*] (on file with authors); Joint Petition For Relief From



School to her great-grandmother's house, where she ate a home-cooked meal.<sup>129</sup> After bidding her great-grandmother goodbye, she walked to a nearby city bus stop, where she usually caught the bus that took her home.<sup>130</sup> Inexplicably, however, Cateresa never arrived home. As the afternoon stretched into the evening, her mother placed several increasingly frantic telephone calls to the local police, hospitals, and Cateresa's friends and schoolmates—all to no avail. The next morning, Cateresa was still nowhere to be found.

Nearly three weeks later, Cateresa was still considered a missing person by authorities when a Dixmoor resident named Jesus Novoa made a shocking discovery. On the afternoon of December 8, Novoa was walking along a grassy area next to Interstate 57, which ran through his residential neighborhood.<sup>131</sup> Along a foot-hewn path that ran through tall grasses, he stumbled across the body of Cateresa Matthews.<sup>132</sup> She was lying on her back with her pants removed and her underwear dangling off one ankle.<sup>133</sup> A spent .25-caliber bullet casing sat on her chest.<sup>134</sup> She had been shot in the mouth.<sup>135</sup>

After Novoa and his family members called the police, crime scene investigators arrived on the scene. Almost immediately, they concluded that Cateresa had been killed recently. Her body did not show signs of decomposition or animal predation, as would be expected after three weeks in an open field.<sup>136</sup> Blood was still draining from her body, also suggesting a recent death.<sup>137</sup> And rigor mortis, which usually disappears within 36 hours of death, was present in her limbs.<sup>138</sup> Based on these observations, the medical examiner concluded that she had been killed on the day her body was discovered: December 8, 1991.<sup>139</sup>

Because her body was found on state property adjacent to an interstate highway, the Illinois State Police assumed control of the case. Their investigation, however, led nowhere. After canvassing the neighborhood and interviewing Cateresa's friends and relatives, police were at an apparent loss for leads.

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Judgment, Immediate Vacation of Convictions, and Release of Petitioners On Their Own Recognizance, at 3, *People v. Harden*, No. 92 CR 27247 [hereinafter *Dixmoor Motion to Vacate*]. As was the case with Alberto, the authors of this article represented Robert Taylor during post-conviction proceedings. Some information included herein arises from their personal knowledge and experience with the case.

129. See *Dixmoor DNA Motion*, *supra* note 128, at 2-3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3.

130. See *Dixmoor DNA Motion*, *supra* note 128, at 3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3.

131. See *Dixmoor DNA Motion*, *supra* note 128, at 2-3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3.

132. See *Dixmoor DNA Motion*, *supra* note 128, at 2-3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3.

133. See *Dixmoor Motion to Vacate*, *supra* note 128, at 3.

134. *Id.*

135. *Id.*

136. See *Dixmoor DNA Motion*, *supra* note 128, at 3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3-4.

137. See *Dixmoor DNA Motion*, *supra* note 128, at 3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3-4.

138. See *Dixmoor DNA Motion*, *supra* note 128, at 3; *Dixmoor Motion to Vacate*, *supra* note 128, at 3-4.

139. See *Direct Appeal Brief and Argument for Defendants-Appellants*, at 8-10, *People v. Harden*, No. 95-3905 [hereinafter *Dixmoor Direct Appeal Brief*].

Beginning in late February 1992, police reports reflect an eight-month period of law enforcement inactivity as Cateresa's murder transformed from an electrifying crime into just another cold case.

That changed in October 1992, when reports reflect that a fifteen-year-old student from Rosa Parks Middle School brought police new information. According to those reports, this young informant told police that another fifteen-year-old classmate, Jonathan Barr, had told him that he had seen Cateresa getting into a car with two other teens named Robert Taylor and Robert Lee Veal on the day she disappeared.<sup>140</sup> Interestingly, Barr was the younger brother of Cateresa's ex-boyfriend James Harden. Both Barr and Harden lived only a half-block away from where Cateresa's body had been found.

Armed with this information, the police brought Robert Lee Veal to the local State's Attorney's Office for questioning nine days later. Like Barr and Taylor, Veal was also fifteen; but unlike them, he suffered from severe learning disabilities and was generally considered slow.<sup>141</sup> Despite his limitations, police interrogated Veal about the crime without a parent or guardian present.<sup>142</sup> After several hours of questioning, Veal agreed to sign a statement that was written out by law enforcement.<sup>143</sup> In that statement, Veal admitted to participating in the gang-rape and murder of Cateresa Matthews, along with four other teens: Jonathan Barr, fifteen-year-old Robert Taylor, seventeen-year-old James Harden, and seventeen-year-old Shainne Sharp.<sup>144</sup>

The police arrested and interrogated Robert Taylor next. Again, after hours of interrogation, Taylor did as Veal had done: he signed a statement written out by law enforcement in which he admitted to participating in the gang-rape and murder of Cateresa with the same group of teens.<sup>145</sup> Two days later, police interrogated Shainne Sharp under similar circumstances; after enduring nearly a day of questioning without a parent or attorney present, he too signed a similar statement.<sup>146</sup>

The three inculpatory statements all admitted to the same basic nexus of events: an assault on Cateresa in the field where her body was found in which at least four of the five boys raped her and James Harden shot her.<sup>147</sup> The three accounts wildly diverged, however, when it came to the surrounding events. Taylor described being picked up from school by a car containing the other four boys and Cateresa; the group then allegedly drove directly to the field where the

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140. See Dixmoor DNA Motion, *supra* note 128, at 3; Dixmoor Motion to Vacate, *supra* note 128, at 4; Dixmoor Direct Appeal Brief, *supra* note 139, at 13.

141. See Dixmoor Direct Appeal Brief, *supra* note 139, at 13.

142. *Id.*

143. See Dixmoor Motion to Vacate, *supra* note 128, at 5; Dixmoor Direct Appeal Brief, *supra* note 139, at 13-14.

144. See Dixmoor Motion to Vacate, *supra* note 128, at 5; Dixmoor Direct Appeal Brief, *supra* note 139, at 13-14.

145. See Dixmoor Motion to Vacate, *supra* note 128, at 5; Dixmoor Direct Appeal Brief, *supra* note 139, at 13-14.

146. See Dixmoor DNA Motion, *supra* note 128, at 3-4; Dixmoor Motion to Vacate, *supra* note 128, at 5.

147. See Dixmoor DNA Motion, *supra* note 128, at 3-4; Dixmoor Motion to Vacate, *supra* note 128, at 4-5.

assault occurred.<sup>148</sup> Sharp described being picked up from a basketball game by a car containing Taylor, Harden, and Veal—although he didn't know Veal's name and called him simply "the light-skinned dude"—and then being driven to Harden's house to play dice, where Barr and Cateresa joined them.<sup>149</sup> For his part, Veal described being picked up on his way home from a local candy store by Taylor, Harden, and Sharp, who were in a car together; a few minutes later, they also picked up Barr and Cateresa and supposedly drove straight to the crime scene.<sup>150</sup> All three teens, however, agreed on one key fact. According to all three confessions, the assault and murder happened on the same day that Cateresa disappeared: November 19, 1991.

Following the confessions, all five teens were arrested and charged with a host of offenses, including Cateresa's sexual assault and murder. As the defendants awaited trial, law enforcement decided to take one further investigative step in order to corroborate the confessions with physical evidence: using then-nascent DNA testing techniques, they asked the Illinois State Police Crime Lab to compare the DNA from the semen left inside Cateresa's body against the DNA of the charged boys.<sup>151</sup> That scientific testing, however, left law enforcement with two surprising results. First, it turned out that the DNA had been left by a single male—not by four or five different individuals, as would be consistent with the three confessions.<sup>152</sup> Second, and even more notably, scientific testing conclusively established that the semen had not been left by any of the five charged teens. Instead, it belonged to some unknown man.<sup>153</sup>

Despite this startling result, the Cook County State's Attorney's Office barreled forward with all five prosecutions. Because of their ages, Taylor and Barr had to be charged in juvenile court, meaning that they faced far less prison time if they were adjudicated delinquent. The State of Illinois, however, proceeded to file motions requesting their transfer to adult criminal court, where they would face sentences of life in prison. After hearing argument, the juvenile court judge made a shocking decision: despite the seriousness of the charged offenses, he declined to transfer Taylor and Barr's cases to adult criminal court.<sup>154</sup> In so concluding, he reasoned that despite the existence of multiple written confessions, there was not sufficient evidence such that a grand jury would be expected to issue an indictment in adult proceedings.<sup>155</sup> Key to his decision was the fact that the three confessions simply got the date of Cateresa's death wrong: "How could they charge these guys with killing and raping this girl on November 19? She didn't die until December 8."<sup>156</sup>

The State immediately appealed this decision and the Illinois Appellate Court

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148. See Confession of Robert Taylor, October 29, 1992 (on file with authors).

149. Dixmoor Motion to Vacate, *supra* note 128, at 6-7.

150. *Id.*

151. See Dixmoor DNA Motion, *supra* note 128, at 5; Dixmoor Motion to Vacate, *supra* note 128, at 5; Dixmoor Direct Appeal Brief, *supra* note 139, at 14-15.

152. See Dixmoor Direct Appeal Brief, *supra* note 128, at 14-15.

153. *Id.*

154. See *In re R.T. & J.B.*, 648 N.E. 2d 1043, 1045 (Ill. App. Ct. 1995).

155. *Id.*

156. *Id.* at 1046.

reversed, sending Taylor and Barr's cases straight to adult criminal court.<sup>157</sup> With all five teenage defendants now facing adult time, the State was in a powerful position. Prosecutors accordingly offered Sharp and Veal sweetheart deals: if they pled guilty and testified against Harden, Taylor, and Barr, they would serve only about eight more years in prison.<sup>158</sup> Both Sharp and Veal accepted the deals, and based on their testimony (and, in Taylor's case, on his confession), Harden, Taylor, and Barr were convicted as adults and sentenced to the equivalent of life in prison.<sup>159</sup>

Some seventeen years later, attorneys for Harden, Taylor, and Barr (including the authors of this article, who represented Robert Taylor) filed post-conviction motions for DNA testing.<sup>160</sup> During those seventeen years, law enforcement had constructed the national CODIS database, which contains the DNA profiles of various criminal offenders and other individuals.<sup>161</sup> Although it was already known that the DNA left on Cateresa's body did not belong to the defendants, defense attorneys reasoned that perhaps the DNA donor could finally be identified. After the trial court agreed to grant the motions, the DNA testing proceeded, and on March 9, 2011, it was finally learned that the DNA belonged to a man named Willie Randolph.

Additional investigation revealed damning information about Randolph. At the time of Cateresa's murder, he had been thirty-three years old—much older than the five convicted defendants or the victim.<sup>162</sup> He had lived, moreover, only a mile away from Cateresa's great-grandmother's house in Dixmoor.<sup>163</sup> And he had a history of sexual violence. In 1977, Randolph had been convicted for raping a woman on the street.<sup>164</sup> Perhaps most strikingly, when he was in his early twenties, he also reportedly sexually assaulted his thirteen-year-old girlfriend in the very same field in which Cateresa's body was later found in 1991.<sup>165</sup>

Armed with this new evidence, defense attorneys filed post-conviction motions to vacate the convictions of all five of the convicted defendants.<sup>166</sup> After the State eventually dropped its opposition to those motions, the court vacated the convictions of Harden, Taylor, and Barr on November 3, 2011—only sixteen days shy of the twentieth anniversary of Cateresa's disappearance.<sup>167</sup> Now in their mid-thirties, Harden, Taylor, and Barr were immediately released from prison; within

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157. *Id.* The appellate court concluded that the trial court erred in considering the State's likely success at trial during the transfer hearing. *Id.*

158. Dixmoor Motion to Vacate, *supra* note 128, at 6.

159. *Id.* at 9.

160. *See, e.g.*, Dixmoor DNA Motion, *supra* note 128.

161. *See id.* at 2.

162. Dixmoor Motion to Vacate, *supra* note 128, at 10.

163. *Id.* at 11.

164. *Id.* at 10.

165. *See* Petitioners' Motion To Admit Evidence of Willie Randolph's Other Crimes and Bad Acts, at 4, Ex. B, *People v. Harden*, No. 92 CR 27247. Charges were never filed in connection with this alleged assault. *See id.*

166. Dixmoor Motion to Vacate, *supra* note 128.

167. Steve Mills & Andy Grimm, *Prosecutors Vacate Charges for 5 Who Served Years for Rape, Killing of 14-year-old Girl*, CHI. TRIB., Nov. 4, 2011, [http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104\\_1\\_dixmoor-case-dna-tests-dna-evidence](http://articles.chicagotribune.com/2011-11-04/news/ct-met-dna-murder-rape-20111104_1_dixmoor-case-dna-tests-dna-evidence).

weeks, the guilty pleas and convictions of Sharp and Veal, who had long ago finished their reduced prison sentences, were vacated too. As of the writing of this article, the Cook County State's Attorney's Office has not filed charges against Willie Randolph in connection with the death of Cateresa Matthews.

The story of these five defendants carries, at the least, the satisfaction of knowing that a long-festering injustice was corrected, albeit decades too late, through post-conviction proceedings. But the frightening corollary to that reality is the knowledge that in Illinois, such a resolution might not have been available for Taylor and Barr if their cases had remained in juvenile court as the original judge had ordered. The Illinois statutory provision that enabled them to file their motion for DNA testing—chapter 725, act 5, section 116-3 of the Illinois Compiled Statutes—permits a defendant to move for forensic testing in the trial court that entered judgment on his or her “conviction.” Generally speaking, Illinois jurisprudence has distinguished between juveniles “adjudicated delinquent” in juvenile court and adults “convicted” in criminal court.<sup>168</sup> Juveniles, for instance, are not permitted to file post-conviction petitions under the Illinois Post-Conviction Hearing Act.<sup>169</sup> While no case in Illinois has yet extended this reasoning to post-conviction motions for DNA testing, that legal vehicle may well be deemed unavailable to juveniles too; at minimum, it is unclear whether juveniles have access to DNA testing after their adjudications. Thus, despite the righteousness of their cause, access to the exonerating power of post-conviction DNA testing could easily have been denied to Taylor and Barr if their cases had remained in juvenile court—a sad irony, given that the institution of juvenile court was intended to provide extra protections for juveniles.

#### IV. CONCLUSION

In most ways, of course, Alberto was very lucky that his case was adjudicated in juvenile court rather than transferred to adult criminal court. The charges against him were very serious and could have carried up to thirty years in prison if he had been convicted in criminal court.<sup>170</sup> Robert Taylor and Jonathan Barr, for their part, were equally unlucky: had their cases remained in juvenile court, they would have been out of prison no later than their twenty-first birthdays instead of languishing behind bars until their mid-thirties for a crime they did not commit. On the other hand, Illinois laws prevented Alberto from pursuing his innocence post-adjudication or arguing that he had received constitutionally deficient counsel because he was tried in juvenile court, while Robert and Jonathan were able to clear their names only because they were subjected to the jurisdiction and penalties of criminal court. Such a result is nothing short of perverse.

Because juveniles like Alberto, Robert, and Jonathan face a heightened risk of wrongful conviction and a potentially heightened risk of ineffective assistance of counsel—and because the direct and collateral consequences of delinquency adjudications can be severe—it is fair, just, and urgently necessary for legislatures

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168. See *People v. Taylor*, 850 N.E.2d 134, 137 (Ill. 2006).

169. See, e.g., *In re A.W.H.*, 420 N.E.2d 1041, 1042 (Ill. App. Ct. 1981).

170. Aggravated criminal sexual assault is a Class X felony that carries a sentencing range of 6-30 years in prison. 720 ILL. COMP. STAT. 5/12-14(d) (2012); 730 ILL. COMP. STAT. 5/5-4.5-25.

to amend collateral remedy statutes to ensure access for adjudicated juveniles. The required amendment is uncomplicated: in the context of DNA testing, the forty-one jurisdictions that currently make relief available to those who have been “convicted” of crimes should simply add the phrase “or adjudicated delinquent” to their statutes. That is essentially what Colorado, the District of Columbia, New Hampshire, South Carolina, and Wisconsin have done, and the addition of those simple words has brought a dictionary’s worth of clarity to the law. Indeed, the same thing can be done in statutes governing the availability of non-forensic collateral remedies. These simple amendments will ensure that adjudicated juveniles are given the same desperately needed access to collateral proceedings that convicted adults receive.

One Virginia legislator is more than doing his part. Moved by the story of Virginia teen Edgar Coker, Jr., Republican General Assembly Delegate Gregory D. Habeeb has introduced legislation in Virginia that would actually *increase* juveniles’ post-conviction access even above the level of access that convicted adults typically receive.<sup>171</sup> Edgar Coker, Jr. spent seventeen months in juvenile detention—and still remains on the sex offender registry—after he pled guilty to raping a fourteen-year-old peer.<sup>172</sup> He entered the plea instead of risking adult charges and a far greater sentence.<sup>173</sup> Since that time, however, Edgar’s “victim” has admitted that she lied about being raped and that she had consented to the sex.<sup>174</sup> She and her mother have been fighting to vacate Edgar’s adjudication and remove him from the sex offender registry, but the Virginia courts have refused, claiming that their jurisdiction ended once Edgar was no longer on parole.<sup>175</sup> Delegate Habeeb has taken steps to correct this situation by introducing a bill that would allow adjudicated juveniles who plead guilty to seek a post-conviction writ of innocence; currently, neither adults nor juveniles who plead guilty may seek that form of relief.<sup>176</sup> In so doing, he has recognized the critical importance of juvenile access to collateral proceedings.

Legislators, advocates, and other stakeholders throughout the country must take similar steps to amend the law in their home jurisdictions to ensure that juveniles and adults have equal access to collateral relief. For Alberto, Robert, Jonathan, Edgar, and many more like them around the country, such steps could represent huge advances in juveniles’ access to justice.

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171. Chris L. Jenkins, *Wrongly Accused Rape Convict Takes Case to Va. Supreme Court*, WASH. POST, Jan. 13, 2012, [http://www.washingtonpost.com/local/therootdc/wrongly-accused-rape-convict-takes-case-to-va-supreme-court/2012/01/13/gIQAyJHNxP\\_story.html](http://www.washingtonpost.com/local/therootdc/wrongly-accused-rape-convict-takes-case-to-va-supreme-court/2012/01/13/gIQAyJHNxP_story.html).

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.*