

University of South Carolina School of Law
Juvenile Justice, Laws 797
Spring 2025
Professor Madalyn Wasilczuk
(wuh-SIL-check)

This course meets Wednesdays, 2:40-4:45 p.m.

Office Hours

Location: 355 (in the clinic suite on the Gervais St. side of the building)

Office Phone: (803) 777-3393

Email: mwasilczuk@sc.edu.

I keep regular office hours on Wednesdays from 9:00 a.m. to noon. I mostly work from the office and so am reasonably easy to find there other times. All students are encouraged to come talk with me about material discussed in class, or about the law and practice of youth justice or related children's law fields. If you cannot meet with me during my regular office hours, please email me, and I will be happy to arrange a time, or simply stop by.

Course Overview & Learning Objectives

This course will introduce students to some of the most important legal doctrines, legal disputes, and policy questions in youth justice. We will explore a range of policy issues, including quality of and access to counsel for youth in delinquency cases, systemic racial and ethnic disparities, the incarceration of youth, the role of schools as feeders into the justice system, the transfer of youth to the adult criminal justice system, and sentencing standards for children convicted of crimes. We will also spend some time examining the state of the juvenile legal system in South Carolina.

Themes of the course include: (1) distinguishing children from adults, or, more precisely, when the legal system should treat violations of the law differently due to a person's age, and, when doing so, how to balance treatment and punishment of adjudicated children, (2) how police investigation should or should not change when suspects are children, (3) the role of courts, agencies, schools, and lawyers in a unique legal system, including the overlap between different institutions (such as between schools and juvenile courts), and (4) how the juvenile legal system operates in regards to particular demographic groups.

Learning objectives include:

- Learning the substantive law connected to the themes of the course discussed above
- Identifying potential future case law, legislative, and other reform efforts in light of legal developments and core principles
- Analyzing the law in light of children's development
- Writing persuasive and critical analysis of difficult legal issues

Course Requirements

This course requires your attendance, reading and preparation before class, your engaged participation in class – both in class discussions and occasional exercises – and several written

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exercises. It is also offered for an optional third credit, which can be earned through completion of a research paper, described below.

Textbook

The assigned casebook is:

BARRY C. FELD, CASES AND MATERIALS ON JUVENILE JUSTICE ADMINISTRATION (6th ed.) 2022.

Additional readings will be posted on the course's Blackboard site.

Many, if not most, readings advocate for an individual's or organization's perspective on a contested issue. Placement of a reading on the syllabus does not indicate an endorsement of the reading's perspective. Students are expected to read all material critically.

Class attendance and participation

Class attendance and participation are mandatory and will be a significant factor in your grade. I will take attendance at the beginning of every class. Excessive absences (including excessive tardiness) will negatively impact your grade.

Students should be prepared to contribute meaningfully to class discussions. Class participation – measured by the quality, not quantity, of class contributions – will count towards 15% of your final grade.

Most class discussions will be based on students volunteering – and I encourage everyone to participate. I will call on students to ensure that the class hears from all voices. If you would like to avoid being called on, volunteer to speak.

Discussion Questions

Students are required to submit discussion questions prior to each class beginning Wednesday, January 22. Each student should submit at least three questions that raise issues for classroom discussion based on the day's reading. The questions should reflect the student's reading of the entire assignment, and some critical analysis of the material. These should not be yes/no questions but should instead be designed to spark class discussion. Students should write discussion questions in Word and upload discussion questions to Blackboard **no later than 9:00 a.m. on the day of class**. (This will enable me to review the discussion questions before class and incorporate them into my plans for class.) These questions are not designed to be questions you have about the reading or questions about additional facts related to this area. Those questions should be asked in class rather than asked as part of your discussion questions.

Discussion questions will account for 15% of your final grade.

You may skip discussion questions for 1 class session of your choosing without negatively affecting your grade. You are also not required to complete discussion questions for the first class session.

Writing assignments

Students taking the course for two credits will write four assignments over the course of the semester. (Three-credit students will write the first two of these assignments plus a 30-page paper, as described below.) The first three will each be 5-6 pages in length (12 point Times New Roman font, double spaced, one-inch margins). They will be due on dates indicated in the schedule section below. Extensions will not be granted absent extenuating circumstances.

These writing assignments are designed for you to consider the assigned readings and class discussion over several weeks. You will have the benefit of class discussions to help inform your papers. Each assignment will, however, require you to offer original insight, and not merely summarize class discussion.

I will provide comments on and grade each paper. They will cumulatively account for 70% of your final grade.

I will grade each paper anonymously. To facilitate this, students must follow this procedure: Lisa Davis (clinics office manager) will assign each student a numerical code. Students will put only that code, and not their names, on their papers. Students will email their papers to Ms. Davis (at lisa@law.sc.edu). Ms. Davis will then send all papers to me with any identifiers (like your email addresses) removed.

Three of these four writing assignments will be assigned during the course of the semester.

The fourth and final writing assignment will be due on the final day of exams (May 6). Students are encouraged to work on the final writing assignment well before exam period so you can complete it before the final due date. No extensions will be granted. (Note that students taking the course for 3 credits will need to write the first two papers; a 30-page paper is substituted for this final paper and the third short paper.) Here is that fourth short writing assignment:

Your assignment is to (a) choose any topic that we have studied through the semester in which you believe the legal rule (whether via case law, statutes, or any other source of law) is wrong, (b) explain why you believe it is wrong, (c) propose any change to that legal rule, and (d) explain why your proposal would solve the problem you identified. You should make clear whether you propose that legislatures should enact a new statute, whether a court should revisit a precedent, or whatever other method or methods you propose for changing the law. Your paper should engage with relevant authorities and commentary assigned for class.

You may not repeat a proposal from an earlier writing assignment. You will be required to justify your proposal, including responding to counterarguments. You will need to include at least one original source in your paper – that is, one source not assigned on the syllabus.

Your paper should be 5-6 pages (12-point Times New Roman font, double-spaced, one-inch margins). The citations must be footnotes in Bluebook format. This paper will also be graded anonymously following the procedures outlined in the prior section.

3 Credit Writing Option

This course is offered for two credits. Students may earn three credits for this course if they elect to complete the 30-page writing option. Students should refer to the student handbook's degree requirements section (<http://www.law.sc.edu/registrar/handbook/>) for criteria for the writing requirement.

Students in the Children's Law Concentration must complete a writing requirement in children's law; doing so in this course would satisfy that Concentration requirement.

Students electing the writing option must submit their paper to me in four stages:

- 1) A paper topic proposal, including a [literature review](#) and tentative thesis
- 2) An outline
- 3) A draft paper
- 4) The final paper to be graded.

The final paper will be due on the final day of exams: May 6.

Students must elect whether they are taking this course for 2 or 3 credits by the end of the drop/add period. **The registrar's office will not permit changes to the number of credits after drop/add.**

Students taking the course for 3 credits must complete the first two short paper assignments, but do not need to complete the third and fourth short writing assignments. The 30-page paper will account for that portion of the grade. Students taking the course for 3 credits must still complete the first two writing assignments.

Blackboard & the electronic library

Reading assignments not in the casebook will be posted to Blackboard, as will more details regarding writing assignments, and discussion questions.

The Blackboard page also has a link to an electronic library of resources on various topics related to juvenile justice. This is provided to aid students in their writing assignments and to help students identify topics and resources for the writing option or for any other juvenile justice research. The electronic library is by no means complete or anywhere close to it. It does not replace your research at the law library or elsewhere; rather, it provides one possible starting place for your work.

Laptop Policy

Laptop use in class is limited to accessing any readings posted on Blackboard and note taking. Email, social media, and anything not class-related must be closed. I impose this policy to facilitate meaningful discussion and participation in class for all students.

Grades

Your grade will be determined based on the following factors:

Two-credit students

- Writing assignments 1-3: 50%
- Final writing assignment: 20%

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- Discussion Questions: 15%
- Class Participation: 15%

Three-credit students

- 30-page writing requirement: 50%
- Writing assignments 1-2: 30%
- Discussion questions (see above):10%
- Class participation: 10%

Schedule & Assignments

Notes:

- 1) **This schedule is subject to change.** Any changes will be announced in class and an updated syllabus posted on Blackboard.
- 2) Assigned readings are mandatory.
- 3) Optional readings are just that – optional. They are closely related to the topics discussed in the assigned readings, and I may summarize relevant points in class. These readings may be useful as you prepare your writing assignments or may help spark paper topic ideas for students taking the course with the writing option. They remain entirely optional.

UNIT 1: SENTENCES OF YOUTH IN CRIMINAL COURT AND DISPOSITIONS OF YOUTH IN JUVENILE COURT (A.K.A. “CHILDREN ARE DIFFERENT”)

Class 1

January 15 Introduction to the juvenile court, and trends and tensions in youth justice “Get Tough” policies & adolescent culpability

Read:

- Casebook, 3-5
- Casebook, 7 (Illinois Juvenile Court Act of 1899, § 9). This statute is the first juvenile court statute in the United States.
- Casebook, 9-13 (excerpt from Mack, *The Juvenile Court*)
- Excerpts from The Sentencing Project, *Bringing More Teens Home*
- Casebook, 32-35 (get tough policy changes)
- Casebook, 36-37 (introduction to adolescent culpability)
- Casebook, 37-47 Scott and Steinberg “Blaming Youth” – summary of developmental research which suggests adolescents have systemically worse decision-making capabilities and thus are less culpable.
- Center for Youth Wellness, *Adverse Childhood Experiences, Toxic Stress, and Implications for Juvenile Justice*, page 4-8

Class 2

January 22 The Eighth Amendment and youth sentencing

First discussion questions are due for this class

Read:

- Casebook, 639-46, 649-51 (*Roper v. Simmons*, Justice Kennedy’s opinion for the Court and Justice Scalia’s dissent)

- Casebook, 657-64, 665-67 (*Graham v. Florida* – Justice Kennedy’s opinion for the Court and Justice Thomas’s dissent)
- Casebook 668-74, 675-76 (*Miller v. Alabama/Jackson v. Hobbs* – Justice Kagan’s opinion for the Court and Chief Justice Roberts’s dissent)
- Optional reading:
 - Steinberg, et al., “Are Adolescents Less Mature Than Adults: Minors’ Access to Abortion, the Juvenile Death Penalty, and the Alleged APA ‘Flip-Flop’”

Class 3

January 29 What’s next after *Miller*?

Transfer and Waiver

What’s next after *Miller*?

- Read excerpts from *Jones v. Mississippi*, posted to Blackboard
- Casebook, 687-90 (Youth Discount proposal)
- Read (if you have not done so already) Writing Assignment 1 (which is due February 3). This assignment is based on juvenile sentencing questions raised by the *Roper* line of cases.
- Read the following portions of the South Carolina Youthful Offender Statute:
 - S.C. Code § 24-19-10 (definitions – please read in particular part (d) defining “youthful offender” and part (e) defining “treatment”)
 - S.C. Code § 24-19-20 & 24-1-30 (establishing the Youthful Offender Division within the Department of Corrections and listing its duties)
 - S.C. Code § 24-19-50 (court options for sentencing youthful offenders; note also that some portions of the “youthful offender” definition in § 24-19-10 govern sentencing)
 - S.C. Code § 24-19-60 (institutions for treatment of youthful offenders)
- Optional:
 - Read excerpts from *Aiken et al. v. Byars*, posted on Blackboard
 - Bryan Stevenson, excerpts from *Just Mercy* regarding JLWOP cases (including those he litigated on behalf of the defendant)

Transfer and Waiver

Read:

- Casebook, 507- (second to last paragraph) - 09 (introduction & summary of various forms of waiver)
- Judicial waiver: Casebook, 514-21 (*Kent v. United States*)
- USC Children’s Law Center Quick Reference Guide to South Carolina’s Juvenile Justice System, pages 47-50 (2019)
- S.C. Code § 63-19-20(1) (defining “child” for purposes of Family Court jurisdiction)
- Casebook, 570-81 (blended sentencing)

Class 4

February 5 Juvenile Court Dispositions, collateral consequences

Read:

- S.C. Code § 63-19-1410 (excerpts on Blackboard)

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- Ga. Stat. § 15-11-601 (excerpts on Blackboard)
- Casebook, 857-58 (introduction)
- Critiques of Probation:
 - National Juvenile Defender Center, *Promoting Positive Development: The Critical Need to Reform Youth Probation Orders* (2016) (on Blackboard)
 - Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting it Right* (2018) (excerpts on Blackboard)
- Disposition examples (on Blackboard)
- Collateral consequences:
 - Casebook, 626-39 (Juvenile records to enhance adult sentences)
 - South Carolina Commission on Indigent Defense, *The South Carolina Juvenile Collateral Consequences Checklist* (2015), pages 2-3, 5-6 (items #5-6), 7 (item #9) (The full document is posted on Blackboard)
- Raised on the Registry:
http://www.hrw.org/sites/default/files/reports/us0513_ForUpload_1.pdf , pages 1-8 (summary)

Class 5

February 12 *In re Gault's* “constitutional domestication” of juvenile court [first hour]

Guest speaker: TBD

In re Gault

Read:

- Casebook, 693-710 (*Gault's* facts and discussion of certain due process rights, Justice Stewart's dissent)
- Casebook, 25-30 (*Gault's* discussion of juvenile court history and policy)
- Casebook, 347 (confidentiality)

Writing assignment 1 due Friday, February 14. Assignment is posted to Blackboard. (All students)

UNIT 2: PROCEDURE IN JUVENILE COURT AND DURING INVESTIGATIONS OF YOUTH: When should juvenile procedures mirror adult procedures, and when do developmental differences or the juvenile court's rehabilitative goals justify different legal rules?

Class 6

February 19 *Gault's* “constitutional domestication,” continued
No jury trial right for children

Read:

- Casebook, 720-26 (*In re Winship*)
- Casebook, 726-32 (*McKeiver v. Pennsylvania*)
- Casebook, 744-46 (Guggenheim & Hertz critique of *McKeiver*)

Optional reading:

- Casebook, 733-39 (Justice Brennan's *McKeiver* partial dissent, Justice Douglas's *McKeiver* dissent)

Class 7

February 26 Juvenile Interrogations: Due Process Voluntariness, applying *Miranda* to children

Read:

- Casebook, 273-83 (*Fare v. Michael C.* and totality test of *Miranda* waivers)
- Casebook, 297-99 (juvenile understanding of *Miranda* warnings)
- Casebook, 283-89 (*J.D.B.* what is custody for *Miranda* purposes)
- *Dassey v. Dittmann* problem
- Calif. Welf. & Inst. Code § 625.6
- 705 Ill. Comp. Stat. § 405/5-401.6

Optional reading:

- Casebook, 299-318 (summarizing data on juvenile false confessions, and what happens in interrogation – which techniques police use, and what information it reveals)

Class 8

**March 5 The Fourth Amendment and Children: School Searches
Police in Schools: School Searches and Interrogations in Schools**

Read:

- Casebook, 185-200 (*New Jersey v. T.L.O.*)
- Casebook, 291-92 (Notes following *J.D.B.* and *Fare*)
- Casebook, 200-12 (Notes following *T.L.O.*)
- *State v. Meneese* (excerpts on Blackboard; compare this case to *Dilworth* in the casebook)
- MOU Between Richland County School District One and the Richland County Sheriffs Department for the 2019-20 school year. Please focus on pages 3-4 (Duties of SROs) and paragraph 30 on page 6. Please consider: do the duties of the school resource officer outlined here support the decision in *Meneese* or *Dilworth* more?

UNIT 3: THE JUVENILE JUSTICE SYSTEM IN PRACTICE: ROLES OF SCHOOLS, LAWYERS, RACE, CLASS, SEX, SEXUAL ORIENTATION, AND RELATED SOCIAL FACTORS

Class 9

**March 19 The “School to prison pipeline”
Race and class disparities in juvenile court**

School-to-prison pipeline

Read:

- “For More Teens, Arrests by Police Replace School Discipline,” Wall Street Journal, Oct. 20, 2014
- *Kenny v. Wilson*, October 2021 summary judgment order (excerpts on Blackboard)
- Clayton County, GA “Cooperative Agreement.” Note that this agreement was reached in response to the sharp increase in school-based delinquency charges noted in the Wall Street Journal article assigned above. The entire agreement is on Blackboard. Please read:
 - Definition of “Focused acts” at the bottom of page 4/top page 5.

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- Part III.A., pages 5-7
- S.C. Reg. § 43-279(IV)(B)(3), and (IV)(C)
 - Note that these regulations were promulgated in 2017 and were largely in response to the incident at Spring Valley High School (in Columbia) in October 2015 involving an SRO. (If you are unfamiliar with that incident, please google it.)
 - The entire regulation is on Blackboard, but I am only assigning the indicated sections.
 - Please evaluate how both this SC regulation and the Clayton County Cooperative Agreement seek to limit the roles of SROs and thereby limit delinquency petitions.

Race and class disparities

- Casebook, 930-41
- Tamar Birkhead, *Delinquent by Reason of Poverty* [excerpt on Blackboard]
- Kristin N. Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 Cornell L. Rev. 383 (2013) [excerpt on Blackboard]
- U.S. Department of Justice, Civil Rights Division, Investigation of the St. Louis County Juvenile Court, 7/31/2015, pages 55-58
- If you have not done so before, take an implicit bias test: <https://implicit.harvard.edu/implicit/takeatest.html>. (Please choose a category which you would like to take. I will not ask you to report your results.)
- Optional reading:
 - U.S. DOJ, Civil Rights Division, Investigation of the St. Louis County Juvenile Court (pages not assigned above)

Assignment 2 is due Friday, March 21 (All students)

Class 10

March 26

Speaker:

Diversion or prosecution: Role of juvenile prosecutors, Guest

TBD

Roles of juvenile prosecutors and juvenile defenders

Read:

- S.C. Code § 63-19-1010
- SC DJJ 2019 Data Resource Guide excerpts. These excerpts are assigned to provide an overview of the range of cases referred to family courts, including the most frequent charges, the frequency of violent crimes charged compared with other crimes, and the frequency of diversion versus prosecution.
- Annie E. Casey Foundation, *Transforming Juvenile Probation: A Vision for Getting it Right* (2018) (excerpts regarding diversion on Blackboard)
- Casebook, 359-66
- Casebook, 374-86

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- National Juvenile Defender Center, *Access Denied: A National Snapshot of States' Failure to Protect Children's Right to Counsel* (2017), excerpts on Blackboard
- National Juvenile Defender Center, *South Carolina Juvenile Indigent Defense: A Report on Access to Counsel and Quality of Representation in Delinquency Proceedings* (2010): 18, 21-23 (Introduction to Part I, and Parts I.B-I.C).

Class 11

April 2 Conditions of Confinement

Read:

- Casebook, 941-46
- *Alexander S. v. Boyd* [excerpted on Blackboard]
- Solitary confinement of juveniles
 - *V.W. v. Conway* [excerpted on Blackboard]
 - 2018 First Step Act reforms to juvenile solitary in the federal system
 - US Department of Justice, *Investigation into South Carolina Department of Juvenile Justice*, February 2020 [excerpts on Blackboard]
- US Department of Justice, Bureau of Justice Statistics, *Sexual Victimization in Juvenile Facilities Reported by Youth, 2012* [excerpts on Blackboard]
- Annie E. Casey Foundation, *The Missouri Model: Reinventing the Practice of Rehabilitating Youthful Offenders* (2010), 4-12
 - Optional Reading: Pages 13-35

Class 12

April 9 Status Offenses

Read:

- Casebook, 121-46
- Casebook, 949-59 (read through the end of note 3) (dispositions and bootstrapping)
- Excerpt from the December 2018 amendments to the federal JJDP (on Blackboard)
- Francine Sherman & Annie Balck, National Women's Law Center, *Gender Injustice: System-Level Juvenile Justice Reforms for Girls* (2015) (excerpts on Blackboard)

In addition to the readings and questions, please consider whether juvenile courts should have jurisdiction over status offenses at all. Put another way, if a child runs away from home, is "incorrigible (beyond the control of a parent)" (S.C. Code § 63-1-40(6)) or truant, but does not commit any crimes, do they belong in the juvenile justice system or some other system entirely?

Class 13

April 16 Youth Justice reform & retrenchment – South Carolina and the nation

Read:

- S.C. Senate Select Committee on Raise the Age Report to the Senate, Sept. 1, 2020. As you read:
 - Please note references to reforms in other states
 - Please identify reforms you would support and those you would oppose, and why

Assignment 3 is due Friday, April 18 (2 credit students only)

Assignment 4 (described above) is due May 6 (2 credit students only)

30-page paper is due May 6 (3-credit students only)