

RAISING THE FLOOR: ADVANCING YOUTH RIGHTS THROUGH STATE CONSTITUTIONAL PROTECTIONS

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INTRODUCTION

While the U.S. Supreme Court has produced several consequential judicial decisions affirming child rights,¹ numerous other cases brought before the Court have failed to yield civil rights gains for children.² In recent years, narrowing interpretations of some constitutional protections have further diminished the likelihood of success in federal civil rights litigation generally.³ Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,⁴ scholars and advocates have increasingly urged consideration of state constitutions as vehicles for protecting individual rights. Why would advocates not take advantage of this strategy to challenge state action on behalf of their clients? Whatever the reason, the fact remains that most fail to do so.⁵

This failure to consider raising state constitutional claims deprives clients of potentially viable avenues for relief. Where a state constitutional provision has no federal analog—such as a state constitutional provision providing a right to education—the

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1. See, e.g., *In re Gault*, 387 U.S. 1, 30–31 (1967) (recognizing the rights of minors to due process protections in juvenile court); *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (recognizing student free speech rights).

2. See, e.g., *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (“[T]rial by jury in the juvenile court’s adjudicative stage is not a constitutional requirement.”); *S.A. Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973) (“Education . . . is not among the rights afforded explicit protection under our Federal Constitution.”); *Ingraham v. Wright*, 430 U.S. 651, 671 (1977) (“[W]hen public school teachers or administrators impose disciplinary corporal punishment, the Eighth Amendment is inapplicable.”); *Parham v. J.R.*, 442 U.S. 584, 613 (1979) (finding that risk of error in civil commitment process for minors would not be “significantly reduced by a more formal, judicial-type hearing”).

3. Michael Milov-Cordoba & Alicia L. Bannon, *Foreword: The Promise and Limits of State Constitutions*, 99 N.Y.U. L. REV. 1915, 1915 (2024).

4. 142 S. Ct. 2228, 2242 (2022); Helen Hershkoff, *Introductory Remarks: The Promise and Limits of State Constitutions*, 99 N.Y.U. L. REV. 1895, 1904–05 (2024) [hereinafter Hershkoff, *The Promise and Limits of State Constitutions*] (“[A] renewed focus on state constitutions, a restart said to be made urgent by ‘a stacked federal bench,’ the Supreme Court’s embrace of originalism, its refusal to redress partisan gerrymanders, its decision in *Dobbs* to return the question of reproductive autonomy to the states, and its newly mined approach to stare decisis that puts equal protection, due process, and the work of the administrative state in jeopardy.”).

5. See JEFFREY S. SUTTON, 51 IMPERFECT SOLUTIONS: STATES AND THE MAKING OF AMERICAN CONSTITUTIONAL LAW 8 (2018) (“[M]ost lawyers take one shot rather than two, and usually raise the federal claim rather than the state one.”).

claim may offer a singular path to success.⁶ Where there is a federal analog, even where the wording is identical, state courts may interpret their constitutional provisions more broadly, extending greater protection of individual rights than their federal counterparts.⁷ Importantly, “[a] loss in the U.S. Supreme Court under the U.S. Constitution need not foreshadow a loss in a [s]tate [h]igh [c]ourt under a comparable guarantee found in the state constitution.”⁸

There are additional advantages to litigating under state constitutions. First, successful claims in state courts may offer a measure of finality unavailable in federal constitutional litigation.⁹ When decided on “independent and adequate state grounds,” a state court judgment is not reviewable by the U.S. Supreme Court, even when federal law is referenced in the state court decision.¹⁰ Second, in some states, plaintiffs asserting state constitutional claims may be able to join a federal claim brought under Section 1983 of the Civil Rights Act of 1871 (“Section 1983”), opening the door to obtaining attorney fees.¹¹

State constitutional claims may be particularly useful in cases involving child rights, which have always faced unique challenges. The rights of children face limitations in relation to parental rights and the common view that children lack the maturity to exercise autonomy. Today, with the federal judiciary increasingly hostile to rights-expanding arguments,¹² state courts may prove to be more receptive venues, relying on state constitutional text and case law that at times offer stronger protection for individual liberties. The challenges associated with litigating child rights will not be absent, but with the changing character of the federal courts, state courts offer an intriguing alternative that has produced positive results in the past.

For example, state supreme courts have relied on clauses expressly referencing privacy and public education in recognizing rights afforded to children under state constitutions.¹³ State courts have also found protection for child rights under state constitutional clauses prohibiting cruel and/or unusual punishment and those guaranteeing due process.¹⁴ This landscape, characterized by a broader interpretation of constitutional provisions, offers an opportunity to develop innovative rights claims. One such potential claim is a right to dignity. Although a right to dignity is often associated with human rights or natural rights frameworks, state courts have, in fact, recognized a dignity right in some state constitutional claims.¹⁵

6. See, e.g., FLA. CONST., art. IX, § 1.

7. JENNIFER FRIESEN, STATE CONSTITUTIONAL LAW: LITIGATING INDIVIDUAL RIGHTS, CLAIMS, AND DEFENSES 1–11 (4th ed. 2006).

8. SUTTON, *supra* note 5, at 9.

9. See FRIESEN, *supra* note 7, at 1–11 (“Unlike federally based decisions, state law decisions upholding constitutional rights on independent and adequate state grounds cannot be reviewed or reversed by the Supreme Court.”).

10. *Id.*

11. *Id.* at 1–36.

12. Milov-Cordoba & Bannon, *supra* note 3, at 1915.

13. See *infra* Part I.A.1.a.

14. See *infra* Part I.A.1.b.

15. See *infra* Section IV.

This Essay explores these points in three parts. Section I explains the history and opportunities for rights protection under state constitutions, rooted in the doctrine of new judicial federalism. Although this doctrine is no longer new, it warrants renewed attention in light of current trends. Section II focuses on the intersection of child rights and state constitutional litigation, highlighting major successes in state courts under clauses unique to state constitutions, as well as examples of successful claims brought under clauses with federal analogs. Section III focuses on litigation examples brought under state due process clauses, which present opportunities for future advocacy. Finally, Section IV explores a novel idea of using express and implied dignity rights under state constitutions to enhance claims on behalf of children and youth in the youth justice system.

I. THE NOT-SO-NEW JUDICIAL FEDERALISM

A. *The Roots of the Movement*

Almost half a century ago, Justice Brennan wrote that “state courts no less than federal are and ought to be the guardians of our liberties.”¹⁶ In his seminal law review article, *State Constitutions and the Protection of Individual Rights*, he emphasized that “[s]tate constitutions, too, are a font of individual liberties, their protections often extending beyond those required by the Supreme Court’s interpretation of federal law.”¹⁷ He observed, following the Supreme Court’s shift away from the expansion of civil rights under the Warren Court, that state courts were increasingly interpreting state constitutional provisions as more protective of individual liberties than their federal counterparts—even when worded identically.¹⁸

Justice Brennan encouraged state courts to construe their own constitutions to afford broader rights than the U.S. Supreme Court recognized under the U.S. Constitution, promoting what was called a “New Judicial Federalism.”¹⁹ This call to action arose from Justice Brennan’s concern that individual rights previously recognized by the Court were under threat.²⁰ As valid as the concerns were at that time, modern commentators note that the current Court under Chief Justice Roberts may in fact be “pursuing a more aggressive retrenchment of previous recognitions of civil rights.”²¹ This has led to an apparent resurgence of interest in judicial federalism in recent years.²²

16. William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 491 (1977).

17. *Id.*

18. *Id.* at 500. Justice Brennan went on to highlight the Supreme Court of Hawaii’s conclusion that “while this results in a divergence of meaning between words which are the same in both federal and state constitutions, the system of federalism envisaged by the United States Constitution tolerates such divergence where the result is greater protection of individual rights under state laws than under federal law.” *Id.* (quoting *State v. Kaluna*, 520 P.2d 51, 58 n.6 (Haw. 1974)).

19. Milov-Cordoba & Bannon, *supra* note 3, at 1916.

20. Catherine R. Connors & Connor Finch, *Primacy in Theory and Application: Lessons from a Half-Century of New Judicial Federalism*, 75 ME. L. REV. 1, 9 (2023).

21. *Id.*

22. *Id.*

1. Rights Protection Under State Constitutions

State constitutions were already doing the work of protecting civil liberties at the time the Federal Constitution was ratified.²³ Following the incorporation of the Bill of Rights through the Fourteenth Amendment, the U.S. Constitution assumed the role of primary protector of individual rights.²⁴ But the fact remains that where the U.S. Constitution creates a floor—a minimum level of protection of civil rights—states are free to provide greater protection under their own constitutions.²⁵ And many do. This can take the form of constitutional provisions that include specific rights-creating language not found in the Federal Constitution, or a broader judicial interpretation of provisions similar or identical to federal constitutional provisions.

a. State Constitutional Provisions with No Federal Analog

Some state constitutions contain clauses that expressly articulate rights not explicitly found in the U.S. Constitution, providing the best, and maybe only, way to succeed in some cases.²⁶ For example, Article I, Section 1 of the California Constitution lists among guaranteed individual rights that of “pursuing and obtaining safety, happiness, and privacy.”²⁷ This privacy provision has provided a basis for recognizing robust reproductive rights, broader even than those historically protected by the U.S. Constitution as interpreted by Supreme Court precedent.²⁸ This includes the right of minors to obtain an abortion without parental consent or court order.²⁹

Additionally, every state constitution includes language mandating a system of public education,³⁰ and some state courts have interpreted those provisions as creating a child’s right to education. For example, the New Jersey Constitution mandates that “[t]he [l]egislature shall provide for the maintenance and support of a thorough and efficient system of free public schools.”³¹ This provision formed the basis for lawsuits that resulted in a series of public school reforms mandated by the Supreme Court of New

23. *Id.* at 5.

24. *Id.* at 6.

25. Hershkoff, *The Promise and Limits of State Constitutions*, *supra* note 4, at 1899.

26. See SUTTON, *supra* note 5, at 19 (“In some settings, the only way a lawyer can win is through the state constitution because it is the only constitution with a provision on point. State constitutions have a variety of clauses found nowhere in the U.S. Constitution . . .”).

27. CAL. CONST. art. I, § 1; *cf.* ALASKA CONST. art. I, § 22 (“The right of the people to privacy is recognized and shall not be infringed.”).

28. *Am. Acad. of Pediatrics v. Lungren*, 940 P.2d 797, 808 (Cal. 1997) (“Finally, and most significantly, not only is the state constitutional right of privacy embodied in explicit constitutional language not present in the [F]ederal Constitution, but past California cases establish that, in many contexts, the scope and application of the state constitutional right of privacy is broader and more protective of privacy than the federal constitutional right of privacy as interpreted by the federal courts.”).

29. *Id.* at 816.

30. EMILY PARKER, EDUC. COMM’N OF THE STATES, 50-STATE REVIEW: CONSTITUTIONAL OBLIGATIONS FOR PUBLIC EDUCATION 1 (2016), <https://www.ecs.org/wp-content/uploads/2016-Constitutional-obligations-for-public-education-1.pdf> [<https://perma.cc/7ES9-DJUA>].

31. N.J. CONST. art. VIII, § 4, para. 1.

Jersey.³² Numerous other litigants have successfully argued for public school reform based on similar state constitutional language.³³

It is generally understood that rights under the Federal Constitution are negative rights, defining what state actors are prohibited from doing, rather than requiring that they do anything.³⁴ In contrast, state constitutions may impose affirmative duties. State constitutions articulate substantive goals and mandate government action in service of these goals.³⁵ Clauses requiring the state to provide a system of public education, mentioned above, are one example.³⁶ A state constitution can be a source of other social and economic rights, including environmental protection and employment rights.³⁷ Some state constitutions even include provisions requiring the government to provide social services such as welfare.³⁸ Rather than limiting claims to circumstances in which rights are constrained, state constitutional litigation under such provisions can give rise to positive claims against the government that are otherwise unavailable under the Federal Constitution.³⁹

b. State Constitutional Provisions with Federal Analogs

Even where state constitutional provisions are similar to, or exactly mirror, federal constitutional provisions, state constitutional litigation in state courts offers the benefit of not being limited by federal court precedent.⁴⁰ As noted by Judge Sutton:

State courts have authority to construe their own constitutional provisions however they wish. Nothing compels the state courts to imitate federal interpretations of the liberty and property guarantees in the U.S. Constitution when it comes to the rights guarantees found in their own constitutions, even guarantees that match the federal ones letter for letter. As long as a state court's interpretation of its own constitution does not violate a federal

32. See *School Funding*, EDUC. L. CTR., <https://edlawcenter.org/issues/school-funding/> [<https://perma.cc/CU68-QC8G>] (last visited Apr. 6, 2026).

33. See *id.*; SUTTON, *supra* note 5, at 30.

34. EMILY ZACKIN, *LOOKING FOR RIGHTS IN ALL THE WRONG PLACES: WHY STATE CONSTITUTIONS CONTAIN AMERICA'S POSITIVE RIGHTS* 39–40 (2013); see also Tamar Ezer, *A Positive Right to Protection for Children*, 7 *YALE HUM. RTS. & DEV. L.J.* 1, 6–9 (2004) (“The United States prides itself on having a negative constitution that tells state officials what they may not do, rather than what they must do.”).

35. Helen Hershkoff, *Positive Rights and State Constitutions: The Limits of Federal Rationality Review*, 112 *HARV. L. REV.* 1132, 1135, 1138 (1999) [hereinafter Hershkoff, *Positive Rights*].

36. See SUTTON, *supra* note 5, at 35.

37. *Id.*; see also Hershkoff, *Positive Rights*, *supra* note 35, at 1135 (“Unlike the Federal Constitution, every state constitution in the United States addresses social and economic concerns, and provides the basis for a variety of positive claims against the government.”); WYO. CONST. art. I, § 22 (“The rights of labor shall have just protection through laws calculated to secure to the laborer proper rewards for his service . . .”); MONT. CONST. art. II, § 3 (“The state and each person shall maintain and improve a clean and healthful environment for present and future generations.”).

38. Goodwin Liu, *State Constitutions and the Protection of Individual Rights: A Reappraisal*, 92 *N.Y.U. L. REV.* 1307, 1313 (2017). For example, New York’s Constitution includes the provision that “[t]he aid, care and support of the needy are public concerns and shall be provided by the state.” *N.Y. CONST.* art. XVII, § 1.

39. Ezer, *supra* note 34, at 8.

40. Brennan, *supra* note 16, at 500–02.

requirement, it will stand, and, better than that, it will be impervious to challenge in the U.S. Supreme Court.⁴¹

Supreme Court of California Justice Liu counsels that state courts should engage in independent analysis, unburdened by any obligation or habit to follow federal court reasoning or conclusions regarding state constitutional issues.⁴² Unconstrained by federal precedent, courts interpreting state constitutional provisions with federal analogs (e.g., due process) may extend greater protections than under federal law, including when those protections apply to minors.

With such freedom, state courts can be innovative.⁴³ Such innovation is consistent with federalism, in which the dual court system establishes boundaries between federal and state government: States fulfill the role of “laboratories of democracy,” where decisions can be informed by a closer proximity to the communities and individuals impacted by their decisions.⁴⁴

B. *Limitations of State Constitutional Litigation*

Of course, this strategy is not a panacea. Not all state constitutions provide explicit or implicit rights exceeding federal guarantees and not all state courts are open to expansive readings of provisions such as due process or inherent rights. Courts may be reluctant to break new ground, particularly in light of conflicting federal precedent.⁴⁵ Additionally, some argue that state constitutions are so easy to amend that there is little consolation or benefit in recognition of a right under an existing state provision.⁴⁶

There are also practical and economic challenges related to state constitutional litigation. Public defenders—the attorneys most likely to represent youth involved in the justice system—often lack the resources to engage in the research and briefing necessary to bring novel state constitutional claims.⁴⁷ For private attorneys or public interest organizations, obtaining attorney fees may be difficult if federal claims are not joined, since most states do not have fee-shifting statutes or an analog to Section 1983.⁴⁸

A criticism of relying on state constitutional litigation is that the protections only have effect in the state in which the challenge is brought.⁴⁹ However, decisions under state constitutional law can nevertheless have a persuasive influence on the decisions of other state courts and even on federal litigation.⁵⁰ State courts can take the lead on

41. SUTTON, *supra* note 5, at 16.

42. Liu, *supra* note 38, at 1314–15.

43. SUTTON, *supra* note 5, at 21.

44. Milov-Cordoba & Bannon, *supra* note 3, at 1919; *see also* Hershkoff, *Positive Rights*, *supra* note 35, at 1135.

45. Jonathan L. Marshfield, *State Constitutional Rights, State Courts, and the Future of Substantive Due Process Protections*, 76 SMU L. REV. 519, 522 (2023).

46. *See* Hershkoff, *The Promise and Limits of State Constitutions*, *supra* note 4, at 1902. Alternatively, the ease of the state constitutional amendment process can be seen as a virtue—encouraging democratic opportunity by facilitating popular input. *See id.*

47. *Id.* at 1909.

48. Milov-Cordoba & Bannon, *supra* note 3, at 1919.

49. *See* Erwin Chemerinsky, *Two Cheers for State Constitutional Law*, 62 STAN. L. REV. 1695, 1701 (2010).

50. SUTTON, *supra* note 5, at 2.

rights-expanding constitutional interpretation, which may later be embraced by the U.S. Supreme Court.⁵¹ If, on the other hand, a constitutional right is first recognized by the U.S. Supreme Court, the Court may be more cautious in its articulation of the right, aware of its binding authority in all federal districts.⁵²

Another caution is that state constitutional litigation may lead to the restriction of individual rights rather than to their expansion.⁵³ For example, state courts embracing an interpretation that state constitutional rights apply to the unborn may restrict the reproductive rights of pregnant individuals.⁵⁴ At least one scholar notes a concern regarding the framing of federal law as a floor, highlighting a “disturbing countertrend” of “state court decisions with ‘below-the-floor’ readings of federal constitutional rights that evade Supreme Court review.”⁵⁵

While these concerns suggest that the state constitutional landscape should be viewed with some caution, it remains a dynamic and underutilized complement to, or even substitute for, federal litigation. For children in particular, state constitutions offer avenues that merit consideration. The next Section turns to these opportunities, examining how advocates have strategically leveraged state constitutional provisions to advance the rights of children and youth.

II. EXAMPLES OF CHILD RIGHTS LITIGATION UNDER STATE CONSTITUTIONS

There is potential under state constitutions for challenges to state laws or policies that harm children, even when no federal claim is available or likely to succeed. As noted above, the potential for recognizing positive rights is greater under state constitutions, and children may provide the ideal vehicle for such recognition. Where arguments for recognizing positive rights for adults may be rejected, children hold a unique status within our legal system, reflecting a societal interest in their development.⁵⁶ This interest, in concert with state constitutional text, provides an opportunity to assert that a state government has affirmative obligations to provide for children’s welfare, education, health, or safety. Within this framework there is exciting potential for attorneys and courts to devise arguments that can result in the development of new constitutional law.⁵⁷

51. Milov-Cordoba & Bannon, *supra* note 3, at 1919. For example, landmark Supreme Court decisions such as *Mapp v. Ohio*, 367 U.S. 643 (1961), and *Batson v. Kentucky*, 476 U.S. 79 (1986), were substantially informed by the rulings of state courts interpreting their own constitutions. See Jerry Dickinson, *The U.S. Supreme Court’s History of Adopting State Supreme Court Guidance*, STATE CT. REP. (Feb. 12, 2024), <https://statecourtreport.org/our-work/analysis-opinion/us-supreme-courts-history-adopting-state-supreme-court-guidance> [<https://perma.cc/X7GX-3RKE>].

52. See SUTTON, *supra* note 5, at 36–37.

53. See generally Marc L. Miller & Ronald F. Wright, *Leaky Floors: State Law Below Federal Constitutional Limits*, 50 ARIZ. L. REV. 227 (2008) (highlighting examples of state court criminal procedure decisions that have been more restrictive of individual rights and protections).

54. See Alicia Bannon, *Alabama IVF Ruling Puts Spotlight on Fetal Personhood Rights*, STATE CT. REP. (Feb. 29, 2024), <https://statecourtreport.org/our-work/analysis-opinion/alabama-ivf-ruling-puts-spotlight-fetal-personhood-rights> [<https://perma.cc/AU2P-QMYR>].

55. Hershkoff, *The Promise and Limits of State Constitutions*, *supra* note 4, at 1911–12 (providing the example of the Supreme Court of North Carolina requiring the use of the “beyond a reasonable doubt” standard for proving discriminatory intent or disparate impact in racial discrimination cases).

56. Ezer, *supra* note 34, at 3.

57. FRIESEN, *supra* note 7, at 1–4.

The development of new constitutional protections for children under state law can be informed by examples of successful litigation that has relied on both explicit rights-granting provisions found only in state constitutions—education and privacy—and provisions mirroring federal provisions but interpreted more broadly, such as bans on cruel and unusual punishment.

A. Education

A key example of successful state constitutional litigation on behalf of children is challenges to state funding schemes for public schools. The Supreme Court considered such a challenge in *San Antonio Independent School District v. Rodriguez*.⁵⁸ Plaintiffs argued that the Texas public school funding system created inequities for students that violated equal protection under the Fourteenth Amendment and urged the Court to apply strict scrutiny on the basis that education was a fundamental right.⁵⁹ Writing for the majority, Justice Powell rejected this argument, reasoning that education was nowhere mentioned in the Constitution and that the provision of government benefits, regardless of their importance, did not necessarily give rise to enforceable rights.⁶⁰

Justice Marshall, in his dissent, offered an opening. He counseled that state constitutions remained an avenue for challenging education funding issues.⁶¹ As it turns out, every state constitution mandates the establishment of a system of public education.⁶² Many state courts have interpreted these provisions as providing a positive right to education.⁶³ The result has been extensive and often successful litigation over the past forty years, leading to significant education finance reform.⁶⁴

The earliest example of this strategy can be seen in *Serrano v. Priest*, where the Supreme Court of California struck down California's school funding scheme.⁶⁵ A stated goal of the litigation team in *Serrano* was “to define and establish, for the first time, the legal right to equal educational opportunity in the public school system.”⁶⁶ They

58. 411 U.S. 1, 4–6 (1973).

59. SUTTON, *supra* note 5, at 22–23.

60. *Id.* at 25.

61. *Rodriguez*, 411 U.S. at 133 n.100 (Marshall, J., dissenting) (“Of course, nothing in the Court’s decision today should inhibit further review of state educational funding schemes under state constitutional provisions.”).

62. PARKER, *supra* note 30, at 1.

63. ZACKIN, *supra* note 34, at 101–05; *see also* Allen W. Hubsch, *Education and Self-Government: The Right to Education Under State Constitutional Law*, 18 J.L. & EDUC. 93, 99 (1989) (“The language of the state constitutional education provisions plainly indicates an affirmative duty of state government to educate its citizens and the history of education at the time of their adoption strongly supports that interpretation.”); Michael A. Rebell, *State Courts and Education Finance: Past, Present and Future*, 2021 B.Y.U. EDUC. & L.J. 113, 113–14 (2022) (noting that state courts in forty-eight states have heard challenges to state education funding, with 65% of these courts finding a right to education under the state constitution).

64. *See, e.g.*, *Abbott ex rel. Abbott v. Burke*, 710 A.2d 450, 473–74 (N.J. 1998) (ordering the state to adopt “whole school reform,” supplemental programs, and improvements to facilities to satisfy the state constitutional right to a “thorough and efficient” education); *Claremont Sch. Dist. v. Governor*, 703 A.2d 1353, 1360 (N.H. 1997) (finding that the state public education financing system was unconstitutional).

65. *Serrano v. Priest (Serrano I)*, 487 P.2d 1241, 1244 (Cal. 1971).

66. Sid Wolinsky, *Reflections of a Litigator: Serrano v. Priest Goals and Strategies*, 2021 B.Y.U. EDUC. & L.J. 29, 30.

succeeded. The Supreme Court of California held that education was a fundamental right under both the Federal Constitution and the California Constitution and that wealth-based discrimination was a suspect classification; therefore, strict scrutiny would apply to claims that the state education funding scheme violated equal protection.⁶⁷ The court found that there was no compelling state interest in tying school funding to local property taxes, a scheme which had resulted in extreme funding disparities between neighborhoods.⁶⁸ The *Serrano* holding was later affirmed independently on state constitutional grounds, which insulated the ruling from the Supreme Court's contrary holding in *Rodriguez*.⁶⁹ The strategic choice to file in state court rather than in federal court was a vital part of the case's success.⁷⁰

The lessons from these cases are twofold: First, as noted by Judge Sutton, *Rodriguez* teaches that “any serious effort at civil rights litigation should account for the possibility that the state guarantees may be the most promising source of rights, the state courts the most promising venue for vindicating them.”⁷¹ Second, even when the Supreme Court closes a door, states can still open a window. Again, Judge Sutton notes:

When *Rodriguez* indicated that solutions to the country's public-school funding problems would have to come from state courts (or state legislatures), the political pressures at the state level increased—to considerable effect. One can fairly wonder whether the reforms developed by fifty state legislatures and required by twenty-eight state supreme courts over the last forty-five years would have been as far-reaching if the *Rodriguez* Court had not shifted the spotlight on this issue to the States.⁷²

B. Privacy

Several states have constitutional provisions expressly recognizing an individual right of privacy—a right not explicitly mentioned in the Federal Constitution.⁷³ For example, Article 1, Section 1 of the California Constitution includes a right to privacy that has been described as “the most comprehensive constitutional right to privacy in the

67. *Serrano I*, 487 P.2d at 1258, 1263–64.

68. *Id.* at 1263. The disparities were stark, with the largely Mexican-American community of Baldwin Park Unified School District able to spend \$577.49 per pupil while the community of Beverly Hills Unified spent \$1,231.72. Oscar Jimenez-Castellanos & Lawrence O. Picus, *Serrano v. Priest 50th Anniversary: Origins, Impact and Future*, 2021 B.Y.U. EDUC. & L.J. 1, 3. Such differences were rooted in a history of policies and practices that discriminated against Mexican Americans in California. *Id.* at 2–3.

69. See *Serrano v. Priest (Serrano II)*, 557 P.2d 929, 950 (Cal. 1976) (“[O]ur state equal protection provisions, while substantially the equivalent of the guarantees contained in the Fourteenth Amendment to the United States Constitution, are possessed of an independent vitality which, in a given case, may demand an analysis different from that which would obtain if only the federal standard were applicable.” (internal quotation marks omitted)). Notably, the Supreme Court of Texas ultimately struck down the school financing system upheld in *Rodriguez* under the Texas Constitution, specifically its “efficient” clause. SUTTON, *supra* note 5, at 31. This has led to reforms that have improved test scores and provided substantially equal access to education funds. *Id.*

70. Wolinsky, *supra* note 66, at 32.

71. SUTTON, *supra* note 5, at 33.

72. *Id.* at 37.

73. See FRIESEN, *supra* note 7, at 1–3.

world.”⁷⁴ Advocates have relied on this provision for asserting a minor’s autonomy rights with regard to reproductive health care.⁷⁵ Similar opinions have been issued by other state courts on the basis of constitutional guarantees of privacy, with a recent example from the Montana Supreme Court in 2024, which struck down a parental consent law in the state, notably after the decision of the U.S. Supreme Court in *Dobbs*.⁷⁶

Also on the basis of the state’s privacy provision, the Montana Supreme Court affirmed the lower court’s preliminary injunction to block a state law banning gender-affirming care for transgender minors.⁷⁷ The court ruled that the ban violated a youth’s fundamental right to privacy under the state constitution, which provides protection that “exceed[s] even that provided by the [F]ederal [C]onstitution.”⁷⁸ Despite the U.S. Supreme Court subsequently upholding a similar ban enacted by the Tennessee legislature in *United States v. Skrametti*,⁷⁹ the Montana decision will continue to protect the rights of transgender youth in Montana because it relied on the state’s constitution.

These privacy examples suggest that it is worth mining state constitutional text for provisions that may explicitly name rights where the Federal Constitution only implies them. Such provisions can lead to more comprehensive protection for youth.

C. Prohibition on Cruel and/or Unusual Punishment

A common state constitutional claim brought on behalf of youth centers on the sentencing of youth transferred from juvenile court to adult criminal court. Although the U.S. Supreme Court produced a substantial body of case law limiting sentencing of juveniles under the Eighth Amendment,⁸⁰ state constitutional claims have addressed gaps the Court has left unresolved. For example, in *State v. Kelliher*, the North Carolina Supreme Court addressed the constitutionality of de facto life without parole sentences

74. Nicole Ozer, *It’s Time To Revitalize California’s Constitutional Right to Privacy*, STATE CT. REP. (Aug. 11, 2025), <https://statecourtreport.org/our-work/analysis-opinion/its-time-revitalize-californias-constitutional-right-privacy> [<https://perma.cc/QP3Y-88HV>] (noting, despite its expansive scope, that California’s Privacy Clause has not been as liberally construed in recent years and has been underutilized throughout most of its history).

75. See FRIESEN, *supra* note 7, at 1–3 n.8. Note that the 1972 ballot argument in favor of the constitutional provision clearly articulated that “[t]here should be no ambiguity about whether our constitutional freedoms are for every man, woman[,] and child in this state.” Nicole A. Ozer, *Golden State Sword: The History and Future of California’s Constitutional Right to Privacy To Defend and Promote Rights, Justice, and Democracy in the Modern Digital Age*, 39 BERKELEY TECH. L.J. 963, 986 (2024).

76. *Planned Parenthood of Montana v. State*, 554 P.3d 153, 164–65 (Mont. 2024) (“‘[U]nder Montana’s Constitution, the right of individual privacy—that is, the right of personal autonomy or the right to be let alone—is fundamental.’ . . . We conclude that minors, like adults, have a fundamental right to privacy, which includes procreative autonomy and making medical decisions affecting his or her bodily integrity and health in partnership with a chosen health care provider free from governmental interest.” (alteration in original) (quoting *Gryczan v. State*, 942 P.2d 112, 125 (Mont. 1997))).

77. *Cross ex rel. Cross v. State*, 560 P.3d 637, 654 (Mont. 2024).

78. *Id.* at 646 (first alteration in original) (quoting *Armstrong v. State*, 989 P.2d 364, 373–74 (Mont. 1999)).

79. *United States v. Skrametti*, 145 S. Ct. 1816, 1837 (2025).

80. See *Roper v. Simmons*, 543 U.S. 551, 573–75 (2005) (prohibiting the death penalty for juveniles); *Graham v. Florida*, 560 U.S. 48, 74–75 (2010) (prohibiting sentences of life without the possibility of parole for juvenile nonhomicide convictions); *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (prohibiting mandatory sentences of life without the possibility of parole for all convicted juveniles).

for youth—lengthy sentences that, in the aggregate, result in parole eligibility so remote that in practice it is unlikely the sentenced juvenile would be released within their life expectancy.⁸¹ The court found that consecutive sentences requiring more than forty years before parole eligibility for a youth convicted of homicide who was found to be “neither incorrigible nor irredeemable” violated Article I, Section 27 of the North Carolina Constitution.⁸²

In *Kelliher*, the state argued that the state constitutional provision prohibiting cruel or unusual punishment should be interpreted in lockstep with the Federal Constitution’s Eighth Amendment.⁸³ However, the Supreme Court of North Carolina concluded that the provisions were distinct, noting that the Federal Constitution used the conjunction “and” where the state provision used “or.”⁸⁴ The court thus concluded that the state provision offered broader protection than its federal counterpart.⁸⁵ The court additionally asserted its authority to construe even identical provisions as more protective of its citizens.⁸⁶ Importantly, the court noted its obligation to consider its own unique constitutional provisions, such as those highlighting the reformation of the offender as a primary purpose of punishment, especially in the case of juvenile offenders.⁸⁷ As another example, the court referenced “North Carolina’s constitutionally expressed commitment to nurturing the potential of all [the] state’s children.”⁸⁸ The court rooted that commitment in its education provisions, stating:

This commitment is enumerated in two different provisions of our constitution: [A]rticle I, [S]ection 15, which states that “[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right,” and [A]rticle IX, [S]ection 1, which states that “[r]eligion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.” Our constitution’s recognition that “[t]he promotion of education generally, and educational opportunity in particular, is of paramount public importance to our state” reflects the understanding that “our collective citizenry” benefits when all children are given the chance to realize their potential.⁸⁹

Just this year, the Michigan Court of Appeals held that a fifty-year minimum sentence for a juvenile offender convicted of second-degree murder violated the Michigan Constitution’s ban on cruel or unusual punishment, based on the same

81. *State v. Kelliher*, 873 S.E.2d 366, 380–81 (N.C. 2022).

82. *Id.* at 370.

83. *Id.* at 382.

84. *Id.*

85. *Id.* at 382–83.

86. *Id.* (“Further, even where a provision of the North Carolina Constitution precisely mirrors a provision of the United States Constitution, ‘we have the authority to construe our own constitution differently from the construction by the United States Supreme Court of the Federal Constitution, as long as our citizens are thereby accorded no lesser rights than they are guaranteed by the parallel provision.’” (quoting *State v. Carter*, 370 S.E.2d 553, 555 (1988))).

87. *Id.* at 385–86.

88. *Id.* at 386.

89. *Id.* (alterations in original).

rationale: a broad interpretation of the state's constitutional protections against cruel *or* unusual punishment.⁹⁰

In 2024 Massachusetts became the first state in the country to bar life sentences without the possibility of parole for “emerging adults”—those aged eighteen to twenty—concluding that the Massachusetts Constitution's ban on cruel or unusual punishment prohibits any sentence of life in prison without parole for anyone under twenty-one.⁹¹ These holdings go beyond the federal floor established under U.S. Supreme Court interpretations of the Federal Constitution.⁹²

A state constitutional prohibition on cruel and/or unusual punishment can also be used to challenge conditions of confinement. A case involving an adult prisoner from Washington is instructive. In the case of *In re Williams*, the Washington Supreme Court held that the prisoner's “lack of reasonable access to bathroom facilities and running water, as well as . . . failure to provide [the prisoner] with appropriate assistance in light of his physical disabilities,” violated the state's Cruel Punishment Clause.⁹³ The court reaffirmed that analysis of the protections provided by a state constitution is guided by the six nonexclusive factors articulated in *State v. Gunwall*:

(1) the textual language of the state constitution, (2) differences in the texts of parallel provisions of the federal and state constitutions, (3) state constitutional and common law history, (4) preexisting state law, (5) structural differences between the federal and state constitutions, and (6) matters of particular state interest or local concern.⁹⁴

This approach offers a helpful framework for developing arguments under a state constitutional provision that has a federal counterpart, ensuring that the analysis begins with the state's own constitutional text, legislative history, and local concerns.

III. STATE CONSTITUTIONS, DUE PROCESS, AND CHILDREN

This Section provides a more extensive explanation of cases in which due process rights of juvenile offenders found protection under state law constitutional clauses. This has particular utility, as every state constitution has a “due process” clause, most using this exact phrase and others using phrasing generally deemed equivalent, such as “law of

90. See *People v. Eads*, No. 357332, 2025 WL 223470, at *7 (Mich. Ct. App. Jan. 16, 2025) (“The Michigan Constitution prohibits cruel *or* unusual punishment, [MICH. CONST.] art. [I], § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, [U.S. CONST. amend.] VIII.’ . . . The Michigan Constitution, in this respect, contains broader language and correspondingly provides greater protection than the United States Constitution.” (quoting *People v. Benton*, 817 N.W.2d 599, 607 (Mich. 2011))), *appeal granted sub nom.*, *People v. Eads*, 25 N.W.3d 118 (Mich. 2025).

91. *Commonwealth v. Mattis*, 224 N.E.3d 410, 428 (Mass. 2024).

92. Kristina Kersey, *Massachusetts Reminds Youth Defense Attorneys To Consider State Constitutions*, STATE CT. REP. (Jan. 17, 2024), <https://statecourtreport.org/our-work/analysis-opinion/massachusetts-reminds-youth-defense-attorneys-consider-state> [<https://perma.cc/VR2E-B5TJ>].

93. 496 P.3d 289, 293 (Wash. 2021) (en banc).

94. *Id.* at 296–97 (citing *State v. Gunwall*, 720 P.2d 808, 812–13 (Wash. 1986) (en banc)).

the land”⁹⁵ or “due course of the law of the land.”⁹⁶ As with the U.S. Constitution, such a phrase gives rise to both substantive and procedural rights.

A. *Challenges to Collateral Consequences of Juvenile Adjudication*

Advocates have successfully advanced substantive due process claims under state constitutions to challenge collateral consequences arising from juvenile adjudications. In *State ex rel. C.K.*, the Supreme Court of New Jersey considered the constitutionality of permanent lifetime registration and notification requirements under New Jersey’s Megan’s Law for juveniles adjudicated of certain sex offenses.⁹⁷ New Jersey state law allowed juveniles adjudicated of *other* categories of sex offenses the opportunity to have these requirements lifted after fifteen years of nonoffending and after a judicial determination that they are no longer a risk, but no such opportunity existed for offenders like the plaintiff.⁹⁸

The plaintiff claimed the lifetime requirement without exception violated Article I, Paragraph 1 of the New Jersey Constitution, which states: “All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness.”⁹⁹ The Supreme Court of New Jersey noted that although the provision lacks specific reference to “due process,” it nevertheless “embraces that fundamental guarantee.”¹⁰⁰

Relying on state court precedent, the court stated that due process requires that the government’s actions reasonably relate to a legitimate state purpose and must not create arbitrary or discriminatory burdens on a group.¹⁰¹ The court determined that the lifetime requirements as applied to juveniles bore no relationship to a legitimate state interest.¹⁰² The court considered the science of adolescent development, recognizing that juveniles, unlike adults, are still developing behavior control and are particularly amenable to rehabilitation.¹⁰³ The court also looked to research indicating that among those adjudicated as juveniles who are assessed as low risk and who have ceased offending, the risk of reoffending was significantly low.¹⁰⁴ With that, the court concluded that “continued constraints on [juveniles’] lives and liberty . . . long after they have become adults, takes on a punitive aspect that cannot be justified by our [c]onstitution.”¹⁰⁵

95. N.C. CONST. art. I, § 19 (“No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land.”).

96. TEX. CONST. art. I, § 19 (“No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.”).

97. 182 A.3d 917, 918–19 (N.J. 2018).

98. *Id.* at 919.

99. N.J. CONST. art. I, para. 1.

100. *C.K.*, 182 A.3d at 933.

101. *Id.* at 933–34.

102. *Id.* at 935.

103. *Id.* at 931.

104. *See id.*

105. *Id.* at 935.

Other states have similarly struck down lifetime registration and notification requirements, even where laws provide an opportunity to eventually have the requirements lifted.¹⁰⁶ In 2014 the Supreme Court of Pennsylvania declared that a statute imposing lifetime registration requirements on sexually violent juvenile offenders violated the commonwealth's constitution.¹⁰⁷ Although the statute provided for termination of the registration requirement after twenty-five years of nonoffending, successful completion of a rehabilitation program and court-ordered supervision, and a determination that the individual was unlikely to pose a threat to others, the court rejected the validity of the statute's underlying presumption—that juvenile sex offenders are at high risk of reoffending.¹⁰⁸ Instead, the court referenced studies showing that the commission of sex offenses by juveniles is largely due to “impulsivity and sexual curiosity,” which are impermanent characteristics.¹⁰⁹ Yet, the commonwealth's registration law branded all juvenile offenders as dangerous and likely to recidivate, significantly impacting their reputations.¹¹⁰

The Commonwealth's argument in support of the law relied on federal precedent holding that “reputation, under [U.S. constitutional] law, is not in and of itself protected under the [D]ue [P]rocess [C]ause unless it is linked to another deprivation of life, liberty, or property.”¹¹¹ The Pennsylvania court rejected the Commonwealth's arguments, noting that “the Commonwealth fails to speak to the Pennsylvania Constitution's inclusion of reputation as an inherent right.”¹¹² This clause is more detailed and expansive than the Fourteenth Amendment: “All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.”¹¹³ This broader provision allowed for the Supreme Court of Pennsylvania to strike down the commonwealth's juvenile registration law on the basis of a due process right¹¹⁴—a result unlikely to come about under U.S. constitutional reasoning.

This same reasoning can be seen in the Supreme Court of Ohio's decision in *State v. Hand*, which ruled that the use of a prior juvenile adjudication to enhance an adult sentence violated a defendant's right to due process and the right to trial by jury as guaranteed by both the Federal Constitution and the Ohio Constitution.¹¹⁵ In *Hand*, the court acknowledged that the same sentencing issue had previously come before multiple federal circuit courts, which held that the lack of a right to a jury trial in juvenile proceedings did not bar the use of such adjudications to enhance a sentence under federal

106. See, e.g., *In re C.P.*, 967 N.E.2d 729, 732, 737 (Ohio 2012); *In re J.B.*, 107 A.3d 1, 19–20 (Pa. 2014).

107. *In re J.B.*, 107 A.3d at 19–20.

108. *Id.* at 17.

109. *Id.*

110. *Id.* at 19.

111. *Id.* at 12.

112. *Id.*

113. PA. CONST. art. I, § 1.

114. *In re J.B.*, 107 A.3d at 19–20.

115. 73 N.E.3d 448, 459 (Ohio 2016).

law.¹¹⁶ However, because the Supreme Court of Ohio rooted its holding in *Hand* in both federal *and* state constitutional grounds, should the issue ultimately come before the U.S. Supreme Court, the state court's holding would remain valid, regardless of what the Supreme Court decides. This is an example of the independent and adequate grounds doctrine, discussed above, that limits the U.S. Supreme Court jurisdiction where a decision is sufficiently supported by state law and does not depend on federal law.¹¹⁷

B. Challenges to Conditions of Confinement

Advocates have also challenged conditions of confinement for juveniles under state constitutional due process provisions. In the Louisiana case *State ex rel. S.D.*, S.D.—a juvenile placed in a youth correctional facility—was punched by a guard, breaking S.D.'s jaw.¹¹⁸ Such violence was allegedly common at the facility.¹¹⁹ S.D. reported seeing fights at the facility daily and living under the threat of retaliation if abuse was reported.¹²⁰ Assessment of S.D.'s individual needs revealed that he was of low average intelligence with serious depression and a limited capacity to solve problems.¹²¹ Yet almost no research-based interventions had been utilized to treat and rehabilitate S.D., contravening the legislative purpose of the state's juvenile justice system.¹²²

On these facts, the Louisiana Court of Appeals found that the physical abuse S.D. suffered in the custody of the state violated his federal due process rights.¹²³ Furthermore, the court indicated that federal due process required the maintenance of a “minimally adequate mental health treatment system.”¹²⁴ Thus, the court found a Fourteenth Amendment violation based on the assault and unsafe environment.¹²⁵

With federal due process considered, the court went on to consider the claim of due process violations under the Louisiana Constitution, recognizing that “[d]ue process rights guaranteed by Article I, [Section] 2 of the Louisiana Constitution exceed those

116. *Id.* at 456 (“These courts reasoned that *Apprendi* specifically excluded prior convictions from its general rule that sentence enhancements could not be premised on facts not determined by a jury, because procedural safeguards—the right to a jury trial and the right to have guilt proved beyond a reasonable doubt—buttress the prior convictions. But these courts held that juvenile adjudications have sufficient procedural safeguards to render them reliable enough to satisfy *Apprendi*'s exception even though the juvenile did not have the right to a trial by jury.” (citations omitted)).

117. See *Adequate and Independent State Grounds*, CORN. L. SCH.: WEX, https://www.law.cornell.edu/wex/adequate_and_independent_state_grounds [https://perma.cc/ZNT3-7PPC] (last visited Apr. 6, 2026).

118. 832 So. 2d 415, 415 (La. Ct. App. 2002).

119. *Id.* at 430 (“[V]ulgarity, incendiary profanity, and the expression of aggressively hostile feelings constitute the normal tone of interactions between guards and youth on both sides. . . . Aggression, violence, and the use of force appear to be accepted methods of settling disputes.”).

120. *Id.* at 417–19.

121. *Id.* at 429.

122. *Id.*

123. *Id.* at 435.

124. *Id.* at 434 (“Minimally adequate mental health treatment should include trained staff providing services that may include the following: emergency mental health services, a professional evaluation and development of a treatment plan, periodic follow-up evaluations, and regular mental health services, including counseling.”).

125. *Id.* at 435.

guaranteed by the Fourteenth Amendment.”¹²⁶ Furthermore, the court referenced Article V, Section 9 of the Louisiana Constitution, which entitles youth adjudicated delinquent to “special juvenile procedures which shall be provided by law.”¹²⁷ The court emphasized not only the juvenile justice system’s focus on rehabilitation and treatment, but also its statutory “duty to act as a parent with respect to children in custody.”¹²⁸ Louisiana law specifically states that “[i]n those instances when [a child] is removed from the control of his parents, *the court shall secure for him care as nearly as possible equivalent to that which his parents should have given him.*”¹²⁹ The court then reasoned that this provision requires the child to receive care that would not be considered abusive or neglectful under state law.¹³⁰ The court thus held that subjecting S.D. to abusive conduct and failing to provide him with the necessary care and treatment to meet his needs violated his state due process rights.¹³¹

Ultimately, S.D.’s claims under the U.S. Constitution were successful, but the state constitutional claims allowed the court to recognize broader protections under Louisiana’s Due Process Clause—the care and treatment necessary to meet his needs. As discussed above, the dual protections under federal and state constitutions can also serve to insulate the recognition of the youth’s rights in custody from potential constriction of due process rights by federal courts. This case illustrates how advocates might pursue parallel state constitutional claims to secure broader and more secure rights protections for youth in custody.

C. *Right to Rehabilitation*

Another potential claim under a state due process clause is that juveniles have a right to rehabilitation. For example, the Supreme Court of Appeals of West Virginia held in *Cooper v. Gwinn* that incarcerated people have a statutory right to rehabilitation, which is guaranteed by the Due Process Clause of the West Virginia Constitution.¹³² The relevant statute directed that

persons committed to institutions of the State for crime or delinquency shall be afforded individual and group treatment to reestablish their ability to live peaceably and, consistent with the protection of the community, to release

126. *Id.*

127. *Id.*

128. *Id.* at 436.

129. *Id.* (quoting LA. CHILD. CODE ANN. art. 102 (2000)).

130. *Id.*

131. *Id.* (“[The facility] has not provided the necessary care, treatment, and counseling to meet S.D.’s identified needs regarding substance abuse counseling, counseling for victims of physical and sexual abuse, remedial education and vocational training services, and his need for on-going psychiatric care and treatment by psychotropic medication.”).

132. 298 S.E.2d 781, 787 (W. Va. 1981) (“The petitioners assert that they have a right to rehabilitation by virtue of the substantive due process mandate of [A]rticle 3, [S]ection 10 of the West Virginia Constitution, which provides that ‘[n]o person shall be deprived of life, liberty, or property, without due process of law’” (third alteration in original) (omission in original) (quoting W. VA. CONST. art. III, § 10)). The petitioners claimed that they were denied outdoor exercise, adequate education or vocational training, and work and rehabilitative programs. *Id.* at 793.

such individuals at the earliest possible date, and to establish a just, humane and efficient program.¹³³

The court reasoned that “[i]nherent in the guarantee of due process contained in the West Virginia Constitution is the concept that ‘the law must actually make good in securing the object for which it has ostensibly been enacted.’”¹³⁴ The court concluded that the petitioners were entitled to a writ of mandamus requiring compliance with the statutory mandate for rehabilitative programming.¹³⁵ Although this case involved an adult, the same argument could apply with greater force to a juvenile, given the rehabilitative purpose of the juvenile justice system articulated in most state codes.¹³⁶

As a final example, in 1996, amid increasing rates of youth incarceration, Louisiana enacted a law allowing for the transfer of juveniles seventeen or older to adult correctional facilities in order to make room for younger juveniles.¹³⁷ The transferred youth would be subject to the same work requirements and discipline as adult inmates.¹³⁸ The Supreme Court of Louisiana held that the regulation promulgated under the law denied affected juveniles their due process right under Article I, Section 2 of the Louisiana Constitution by imposing a de facto criminal sentence—including hard labor—without the right to a trial by jury guaranteed by the state constitution.¹³⁹ Notably, the court reasoned that “[b]ecause we find the statute as applied violates our state constitution, we will not address whether these same constitutional infirmities would also be present at the federal level.”¹⁴⁰

D. Involuntary Commitment

In *Native Village of Kwinhagak v. State Department of Health & Social Services*, the Alaska Supreme Court considered claims brought by a Native American tribe on behalf of a tribal member within the state’s foster care system—Mira—who was placed in a hospital and then a psychiatric facility for a total of forty-six days before any judicial review occurred.¹⁴¹ When considering the due process claims brought by the tribe, the Alaska Supreme Court acknowledged the U.S. Supreme Court decision in *Parham v. J.R.*,¹⁴² which held that a child’s placement into involuntary psychiatric commitment by their parents did not require judicial review to satisfy due process.¹⁴³ However, the court noted that “[b]ecause the Alaska Constitution’s guarantee of due process is more protective than that of the U.S. Constitution, we are guided by, but not tethered to, the *Parham* decision.”¹⁴⁴

133. *Id.* at 788.

134. *Id.* at 789.

135. *Id.* at 795.

136. See Emily K. Pelletier, *U.S. Juvenile Justice Purpose Clauses: Themes and Evaluation Opportunities*, 25 YOUTH JUST. 12, 18 (2025).

137. *In re C.B.*, 708 So. 2d 391, 393 (La. 1998).

138. *Id.* at 399.

139. *Id.* at 395.

140. *Id.*

141. 542 P.3d 1099, 1105–06 (Alaska 2024).

142. 442 U.S. 584, 616–17 (1979).

143. *Kwinhagak*, 542 P.3d at 1119.

144. *Id.* at 1120.

The court recognized the significant risk of unnecessary or extended hospitalization of children in a similar position to Mira, especially given the lack of available foster homes and large social worker caseloads that make it easy for children to “fall[] through the cracks.”¹⁴⁵ Weighing this risk in its procedural due process analysis, the court determined that untimely notice and the forty-six-day wait for a hearing to determine the appropriateness of her hospitalization violated Mira’s rights under the state constitution.¹⁴⁶

These cases illustrate the distinctive promise of state constitutional due process claims on behalf of children. States have demonstrated both a willingness and a doctrinal capacity to read due process more expansively than the federal baseline, often in ways that align with developmental science and the rehabilitative purposes of juvenile justice systems. This jurisprudence underscores the importance of turning to state constitutions not merely as a fallback option, but as an independent source of liberty and protection. The state constitutional due process tradition also provides fertile ground for advancing innovative theories, including the recognition of dignity as a constitutional right, which offers a novel basis for protecting children’s rights in often dehumanizing systems.

IV. DIGNITY AS A RIGHT UNDER STATE CONSTITUTIONS

A. *Dignity as a Complementary Right*

The constitutional concept of dignity is not new, nor is it absent in court opinions and scholarship.¹⁴⁷ Although it is not found in the text of the U.S. Constitution, the Supreme Court has referred to dignity in numerous and notable opinions.¹⁴⁸ Yet, despite its prolific use of the word, the Supreme Court has not recognized dignity as a constitutional right.¹⁴⁹

The opportunity to recognize dignity rights may be stronger under state constitutions. Numerous state constitutional texts include references to dignity, although most are found in provisions related to the rights of crime victims.¹⁵⁰ The Louisiana Constitution includes a section titled “Right to Individual Dignity” that guarantees equal protection and prohibits discrimination, slavery, and involuntary servitude.¹⁵¹ Most

145. *Id.* at 1121.

146. *Id.* at 1105, 1114.

147. *See, e.g.*, Michael L. Smith, *Dignity and Abortion Rights Under State Constitutional Law*, 75 SYRACUSE L. REV. 863, 867 (2025); Noah B. Lindell, *The Dignity Canon*, 27 CORNELL J.L. & PUB. POL’Y 415, 418–19 (2017); Rex D. Glensy, *The Right to Dignity*, 43 COLUM. HUM. RTS. L. REV. 65, 93 (2011); David A. Hyman, *Does Technology Spell Trouble with a Capital “T”?: Human Dignity and Public Policy*, 27 HARV. J.L. & PUB. POL’Y 3, 3 (2003).

148. Lindell, *supra* note 147, at 419 (noting that the Supreme Court has included the word “dignity” in more than nine hundred opinions).

149. *Id.* at 420.

150. Smith, *supra* note 147, at 873; *see, e.g.*, ILL. CONST. art. I, § 8.1(a)(1) (“Crime victims . . . shall have the . . . right to be treated with fairness and respect for their dignity and privacy . . . throughout the criminal justice process.”). The Illinois Constitution also includes a dignity provision that condemns communications that insult particular groups. *Id.* art. I, § 20 (“To promote individual dignity, communications that portray criminality, depravity or lack of virtue in, or that incite violence, hatred, abuse or hostility toward, a person or group of persons by reason of or by reference to religious, racial, ethnic, national or regional affiliation are condemned.”).

151. LA. CONST. art. I, § 3.

recently, a provision was added to the Vermont Constitution referencing reproductive autonomy as central to human dignity.¹⁵² The constitutions of Montana¹⁵³ and Puerto Rico¹⁵⁴ are of particular relevance, both specifically articulating a broader right to individual dignity.

Case law related to the right to dignity in state constitutions is underdeveloped, although such clauses have been used as a right that bolsters other rights.¹⁵⁵ Used this way, as a complementary right, dignity

can inform, reciprocally, the meaning and force of . . . other, especially the more abstract, rights . . . like the equal protection or the privacy rights.

Operating in this way, the application of the dignity right can play a mutually complementary role, supporting or being supported by the other right.¹⁵⁶

Montana courts have viewed their state constitutional dignity right in this way, giving greater effect to other rights under the state's constitution.¹⁵⁷ This complementary approach was used in *Walker v. State*, where the Montana Supreme Court found that state prison practices regarding behavior modification plans violated a mentally ill inmate's rights on the basis of both the state constitutional provisions barring "cruel and unusual punishment" (Article II, Section 22) and guaranteeing the right to human dignity (Article II, Section 4).¹⁵⁸ The court explained that:

[T]he dignity provision of the Montana Constitution together with Article II, [S]ection 22 [of the state constitution] provide[s] Montana citizens greater protections from cruel and unusual punishment than does the [F]ederal [C]onstitution. The [F]ederal [C]onstitution does not expressly provide for the right to human dignity. . . . [T]he rights found in Montana's Declaration of Rights [are] "fundamental," meaning that these rights are significant components of liberty, any infringement of which will trigger the highest level of scrutiny, and, thus, the highest level of protection by the courts. Thus, while

152. VT. CONST. ch. 1, art. XXII ("That an individual's right to personal reproductive autonomy is central to the liberty and dignity to determine one's own life course and shall not be denied or infringed unless justified by a compelling State interest achieved by the least restrictive means.").

153. MONT. CONST. art. II, § 4 ("The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.").

154. P.R. CONST. art. II, § 1 ("The dignity of the human being is inviolable. All men are equal before the law. No discrimination shall be made on account of race, color, sex, birth, social origin or condition, or political or religious ideas. Both the laws and the system of public education shall embody these principles of essential human equality.").

155. Mary Helen McNeal, *Toward a "Civil Gideon" Under the Montana Constitution: Parental Rights as the Starting Point*, 66 MONT. L. REV. 81, 101 (2005); see, e.g., *Walker v. State*, 68 P.3d 872, 885 (Mont. 2003) ("[T]he living conditions . . . constitute an affront to the inviolable right of human dignity possessed by the inmate and that such punishment constitutes cruel and unusual punishment when it exacerbates the inmate's mental health condition.").

156. McNeal, *supra* note 155, at 101–02 (quoting Matthew O. Clifford & Thomas P. Huff, *Some Thoughts on the Meaning and Scope of the Montana Constitution's "Dignity Clause" with Possible Applications*, 61 MONT. L. REV. 301, 325–26 (2000)).

157. Glensy, *supra* note 147, at 94.

158. 68 P.3d at 885 ("[T]he living conditions constitute an affront to the inviolable right of human dignity possessed by the inmate and that such punishment constitutes cruel and unusual punishment when it exacerbates the inmate's mental health condition.").

appellate courts will analyze most cruel and unusual punishment questions implicating Article II, [S]ection 22 of Montana's Constitution by reference to that section alone, in certain instances where Montana's constitutional right to individual dignity . . . is also specially implicated, [the appellate court] must, of necessity, consider and address the effect of that constitutional mandate on the question before [it].¹⁵⁹

These rights, considered in concert with one another, led the court to conclude that punishment and reform cannot be undertaken in a way that "degrades the humanity, the dignity, of the prisoner."¹⁶⁰ The court directed that protecting the dignity of prisoners should include "security from physical harm, including security from sexual violation, by other prisoners or guards. It should also include attention to such basic human needs as adequate medical care, humane rules for visitation, adequate exercise, and adequate opportunity for education or other capacity-developing activity."¹⁶¹

Montana's constitution also includes a provision specifically guaranteeing that the fundamental rights enjoyed by adults be guaranteed to minors.¹⁶² With regard to children, Justice Nelson of the Montana Supreme Court noted in a concurring opinion that these fundamental rights include "[a]t a bare minimum . . . inalienable rights to a clean and healthful environment, to pursue life's basic necessities, to enjoy a safe, healthy and happy life (Article II, Section 3) and to basic human dignity (Article II, Section 4)."¹⁶³ Recognizing a constitutional right to dignity, specifically one held by children, provides an excellent opportunity for advocacy on behalf of children involved in the youth justice system—at least in Montana.

In other states where dignity is mentioned in the state constitution but not enumerated as a specific right, a holistic reading of a state constitution—a common approach among state courts—can give definition and effect to dignity provisions.¹⁶⁴ As noted above, such provisions can be used to bolster or strengthen more established rights, such as privacy and due process.¹⁶⁵ The concept of dignity as a complementary right has the potential for wide-ranging utility. As articulated by one scholar, "under the rubric of dignity rights, we have observed dignity as a barrier to illicit state behavior, dignity as autonomy, dignity as liberty, dignity as respect, and dignity as basic decency."¹⁶⁶ Where it is more specifically articulated, dignity also has the potential to give rise to a positive right, imposing affirmative duties on the government to provide for the needs of its citizens.¹⁶⁷ With regard to children, it has been noted that "regimes that uphold positive

159. *Id.* at 883 (citations omitted).

160. *Id.* at 884.

161. *Id.*

162. MONT. CONST. art. II, § 15 ("The rights of persons under [eighteen] years of age shall include, but not be limited to, all the fundamental rights of this Article unless specifically precluded by laws which enhance the protection of such persons.").

163. *Girard v. Williams*, 966 P.2d 1155, 1171 (Mont. 1998) (Nelson, J., concurring).

164. *Smith*, *supra* note 147, at 865.

165. *Id.*

166. *Glensy*, *supra* note 147, at 93.

167. *Id.* at 111–14.

rights for children almost invariably invoke the concept of dignity. . . . The right to dignity yields a doctrinal push that a right to privacy lacks.”¹⁶⁸

Admittedly, advocates may not have a clear idea about how to use the right of dignity in litigation. There is no body of successful case law that can provide guidance. However, the potential for dignity to serve as a basis for child rights is worth exploring. Advocates are encouraged to not only consider the potential to succeed with such novel claims for the purpose of present litigation, but also to contribute to the evolution of individual rights jurisprudence in the face of federal barriers.¹⁶⁹

The Part below identifies opportunities for raising a right to dignity—either express or implied—under state constitutions to bolster existing rights frameworks utilized to protect youth rights in the youth justice system.

B. *Potential Claims*

Over many decades, youth justice advocates have raised numerous constitutional claims on behalf of youth to challenge conditions of confinement, ensure fair procedures in court, and protect liberty interests such as reputation. Claims in these areas, when brought under state constitutions, have often relied on cruel or unusual punishment clauses, as well as procedural and substantive due process clauses.¹⁷⁰ Attaching a right to dignity can potentially strengthen these arguments where the right is enumerated in a state constitution, or even where implied. In the alternative, advocates can position dignity as an interpretive principle that can guide courts to view other clauses through a developmental lens, aligning state constitutional interpretation with developmental science and the rehabilitative purpose of youth justice.

Central to such claims are arguments that certain policies or practices undermine a youth’s humanity and rehabilitation. These arguments may be bolstered by adolescent development research pointing to the fact that still-developing children can be harmed by dehumanizing treatment.¹⁷¹ Such treatment—including a lack of individualized procedures, assessments, or responses, or placement in unsafe and jail-like

168. Ezer, *supra* note 34, at 37.

169. See Glensy, *supra* note 147, at 107–08 (“It is not that the right to dignity *has* to be shapeless by its very nature, and thus is subject to inconsistent use, but rather, that so far there has been no coalescence (particularly in the United States) around the rational possibilities that exist for a coherent legal theory of human dignity. That is why, in a variety of contexts, commentators advocate for explicit references to the right, so that first regularity, and then consistency, can become achievable goals.”).

170. See *supra* Sections II, III.

171. See generally SUE BURRELL, *THE NAT’L CHILD TRAUMATIC STRESS NETWORK, TRAUMA AND THE ENVIRONMENT OF CARE IN JUVENILE INSTITUTIONS* (2013), <https://www.ncetsn.org/sites/default/files/resources/trauma-and-environment-of-care-in-juvenile-institutions.pdf> [<https://perma.cc/3P9J-YBML>] (arguing for a trauma-informed model to be implemented in juvenile facilities to reduce harm); Caitlin Cavanaugh, *Healthy Adolescent Development and the Juvenile Justice System: Challenges and Solutions*, 16 *CHILD DEV. PERSP.* 141 (2022) (explaining the need for developmentally appropriate strategies within the juvenile justice system to reduce harm). The National Academy of Sciences notes that “treating youth fairly and ensuring that they perceive that they are being treated fairly and with dignity contribute to positive outcomes in the normal processes of social learning, moral development, and legal socialization during adolescence.” NAT’L RSCH. COUNCIL OF THE NAT’L ACADS., *REFORMING JUVENILE JUSTICE: A DEVELOPMENTAL APPROACH* 6 (Richard J. Bonnie, Robert L. Johnson, Betty M. Chemers & Julie A. Schuck eds., 2013).

facilities—naturally raises issues of dignity. Practitioners can strengthen dignity arguments by including declarations from adolescent development experts, policy statements from well-regarded groups such as the American Academy of Pediatrics, and amicus briefs to demonstrate the negative impact of degrading treatment on the developing adolescent. This can help reviewing courts understand dignity as a concrete, evidence-based component of youth justice and child well-being.

It can also be argued that youth are entitled to rehabilitation, which requires developmentally appropriate practices and procedures as well as evidence-based strategies for building competencies.¹⁷² Further support for these arguments can be found in the purpose statements for youth justice and juvenile courts in state codes, which often reference a commitment to rehabilitation and youth development. Practitioners can seek remedies in the form of categorical bans on certain practices or injunctions requiring the development of new policies and training.

As an example, advocates could utilize the right to dignity as a supportive claim when challenging policies allowing for routine or indiscriminate shackling of children in court or transport.¹⁷³ The argument can focus on visual restraints being degrading, particularly given the child's already existing vulnerability in the custody of adults. Any blanket policy lacking an assessment of individualized risk of danger violates dignity and due process.

A right to dignity can also be utilized to support claims challenging the lack of trauma-informed practices in investigations, in court, and in facilities. Any practices that disrespect the vulnerable nature of children and take advantage of their tendency to yield to authority can be challenged as violative not only of due process but also of the dignity of youth. Court practices such as ensuring meaningful participation in hearings are expressions of one's right to dignity, as well as respect for a child's culture, religion, or gender identity. Challenges to conditions of confinement are fertile ground for such claims. The right to bodily integrity and basic needs, such as bathroom privacy, adequate nutrition and exercise, and access to appropriate hygiene materials, especially those that meet specific cultural needs, is an expression of dignity.

Ending degrading punishment, such as solitary confinement or discipline tactics utilizing humiliation, can be challenged as violative of dignity rights. Placements that respect gender identity can be framed as a requirement under a right to dignity. The ability to communicate with family can be argued as a dignity right that attaches to a right to family integrity.

An example of a complaint in a state with an explicit right to dignity could include an initial cause of action claiming a violation of a youth's right to due process, asserting that the youth has a liberty interest in freedom from arbitrary and punitive treatment while in state custody. The use of isolation, restraints, or denial of services without

172. Cavanaugh, *supra* note 171, at 143–44.

173. The practice of indiscriminate shackling has been challenged in a number of states through litigation, with claims raised on the basis of due process. *See, e.g.,* Tiffany A. v. Superior Court, 59 Cal. Rptr. 3d 363, 364–65 (Ct. App. 2007); *In re Millican*, 906 P.2d 857, 859 (Or. Ct. App. 1995); *In re R.W.S.*, 728 N.W.2d 326, 330 (N.D. 2007). In at least one case, “the interest in maintaining human dignity” has been referenced as an essential component of fair treatment. *Tiffany A.*, 59 Cal. Rptr. 3d at 374–75.

individualized justification or meaningful review constitutes a violation of procedural and substantive due process under the state constitution.¹⁷⁴

A second cause of action would claim that subjecting children to degrading conditions violates their inviolable right to dignity, a right explicitly protected under the state constitution. The complaint would assert that current practices treat children as criminals rather than developing individuals in need of support, contrary to the rehabilitative goals of the juvenile justice system.

A final cause of action could include a juvenile's right of rehabilitation, if articulated in the state constitution or code. The complaint would assert that denial of access to education, therapy, and vocational services violates the state's constitutional obligation to provide for the education and rehabilitation of all youth, including those in custody.¹⁷⁵

Even in states whose constitutions lack explicit references to dignity, advocates can frame dignity-based claims through due process, equal protection, or inherent rights provisions. Such arguments invite courts to interpret those clauses in light of the broader purposes of state constitutions—to safeguard human worth and to reflect contemporary understandings of justice and child development. A complaint challenging, for example, the prolonged isolation of youth in detention could argue that such treatment violates the state's due process guarantee because it offends the dignity and humanity of children and contravenes the rehabilitative aims that animate juvenile justice systems. Whether explicit or implied, dignity can thus serve as a unifying principle through which state constitutions recognize children not merely as subjects of protection, but as rights-bearing individuals.

CONCLUSION

State constitutions represent an underutilized but promising vehicle for advancing the rights of children. State courts have demonstrated both the capacity and the willingness to interpret their own constitutions expansively—whether in the context of education funding, privacy, or protection from cruel and unusual punishment. For children, whose liberty interests are uniquely shaped by their developmental needs and society's obligation to nurture them, state constitutions offer doctrinal and practical advantages that should not be overlooked. Advocates can build on these foundations by pressing due process claims in state courts and by exploring dignity provisions, whether explicit or implied, as complementary bases for safeguarding youth from degrading and dehumanizing treatment. Doing so not only opens additional avenues for immediate relief but also contributes to the evolution of a jurisprudence that treats children as full individuals entitled to safety, respect, and opportunity.

174. *See supra* Section III.

175. *See supra* Part III.C.