THE AFFLUENZA DEFENSE AND CRIMINAL LAW

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ABSTRACT

This Article contributes to the academic scholarship in the area of criminal law by being the first law review article comprehensively analyzing both the citation of affluenza in jurisprudence as well as discussing legislative efforts to ban the affluenza defense. With the continued notation of affluenza in jurisprudence as well as the news, we conclude at this time that state legislatures should more closely examine a general prohibition of the affluenza defense in criminal cases to uphold equality under the law.

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INTRODUCTION

Just over a decade ago, in 2013, the peculiar case of a Texas teenager who was the operator of a motor vehicle while intoxicated, which caused the deaths of four individuals, received national attention.[1] The driver, a 16-year-old at the time of the incident on June 15, 2013, reportedly tested with a blood alcohol content level of approximately 0.24 (three times the legal limit) after the crash.[2] The driver faced the possibility of a maximum of 20 years of incarceration – but to the surprise of many, only received a sentence of 10 years of probation with no incarceration.[3]

A psychologist called by the defense in the case generally opined that the driver of the vehicle had received everything he had wanted thus far in life and that the parents generally did not set limits on him – essentially, that the driver had "affluenza."[4] The "affluenza" defense appeared to work.[5]

The decision of the judge in the case to just sentence the teenage driver to probation sparked much controversy.[6] Family members of the victims expressed disappointment with the decision.[7] Legal experts expressed outrage with the decision on probation, with Sunny Hostin calling it "incomprehensible."[8] Jane Velez-Mitchell described the decision as " … a crock and a travesty. There is no such thing as affluenza. It's a totally made-up condition."[9] Some even called for the removal of the judge from the bench by the Texas Governor because of the decision.[10]

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1. *See* Dana Ford, *Texas Teen Ethan Couch Gets 10 Years' Probation for Driving Drunk, Killing 4*, CNN (Dec. 11, 2013, 1:25 PM), https://www.cnn.com/2013/12/11/us/texas-teen-dwi-wreck/index.html (on file with the Syracuse Law Review) [hereinafter *Ford*].

2. *See id.*

3. *See id.*

4. *See* Dana Ford, *'Affluenza' Defense Psychologist: 'I Wish I Hadn't Used that Term'*, CNN (Dec. 12, 2013, 10:53 PM), https://www.cnn.com/2013/12/12/justice/texas-teen-dwi-wreck/index.html (on file with the Syracuse Law Review).

5. *See id.*

6. *See Victims' Families Outraged over 'Affluenza' Teen's Sentence,* FOX (Feb. 6, 2014, 7:28 AM), https://www.foxnews.com/world/victims-families-outraged-over-affluenza-teens-sentence (on file with the Syracuse Law Review).

7. *See id.*

8. *See* Ford, *supra* note 1.

9. *'Affluenza' Author Disagrees With Defense in DUI Trial*, INSIDE EDITION (Dec. 13, 2013, 7:55 AM), https://www.insideedition.com/7488-affluenza-author-disagrees-with-defense-in-dui-trial (on file with Syracuse Law Review).

10. *See Judge Becomes Target of Criticism in "Affluenza" Case*, NBC DFW (Dec. 13, 2013, 1:08 PM), https://www.nbcdfw.com/news/local/judge-jean-boyd-

The outrage and skepticism over the successful assertion of an "affluenza" defense resulted in efforts in two states to enact legislation to prohibit the defense in criminal cases. Such efforts were made in both California[11] as well as Texas,[12] but efforts to enact legislation were unsuccessful.[13]

Over a decade later, "affluenza" continues to be mentioned in jurisprudence[14] as well as the news.[15] While there are law review articles which discuss the role wealth plays in criminal sentencing and in the affluenza defense[16] as well as "sportsfluenza,"[17] there are currently no law review articles which comprehensively discuss legislation to prohibit the affluenza defense.

This Article contributes to the academic scholarship in the area of criminal law by being the first law review article to comprehensively analyze both the citation of affluenza in jurisprudence and legislative efforts to ban the affluenza defense. With the continued notation of affluenza in the news, we conclude that at this time, state legislatures should more closely examine a general prohibition of the affluenza defense in criminal cases to uphold equality under the law.

becomes-target-of-ethan-couch-affluenza-case-criticism/2122383/(on file with the Syracuse Law Review).

11. *See* Max Pringle, *California Bill Would Ban So-Called "Affluenza" Court Defense*, KPBS (Jan. 28, 2014, 3:00 AM), https://www.kpbs.org/news/public-safety/2014/01/28/california-bill-would-ban-so-called-affluenza-court-defense (on file with the Syracuse Law Review).

12. *See Texas Legislators Aim to Ban 'Affluenza' Defense*, CBS NEWS (Dec. 10, 2014, 10:20 PM), https://www.cbsnews.com/texas/news/texas-legislators-aim-to-ban-affluenza-defense/ (on file with the Syracuse Law Review).

13. *See* Kathy Steinmetz, *California Bill Banning 'Affluenza' Defense is Nixed*, TIME (Apr. 22, 2014, 2:52 PM), https://time.com/72227/affluenza-bill-gets-killed/ (on file with the Syracuse Law Review).

14. *See infra* Part II.

15. *See* John de Graaf, *Black Friday, Affluenza, and the Election*, FRONT PORCH REPUBLIC (Dec. 10, 2024), https://www.frontporchrepublic.com/2024/12/black-friday-affluenza-and-the-election/ (on file with the Syracuse Law Review).

16. *See generally* Danielle Eckenroth, *Wealthy "Justice": The Role Wealth Plays in Sentencing and in the Affluenza Defense*, 41 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 443 (2015) (arguing that a person's wealth and lifestyle should not be a part of a legal defense nor be considered in sentencing).

17. *See generally* Stephanie S.E. Smith, *"Sportsfluenza": The Result of Not Holding Athletes Accountable for Bad Behavior*, 40 L. & PSYCH. REV. 345 (2016) (describing the mental state of athletes who receive privileged treatment which causes them to believe that society's standard of behavior does not apply to them).

I. THE "AFFLUENZA" DEFENSE AND JURISPRUDENCE

Since 2013, affluenza has not faded away in the annals of jurisprudence—in fact, at least three appellate court decisions have mentioned affluenza in one way or another. The three appellate court mentions of affluenza have appeared in cases before the Texas Court of Appeals (in 2014),[18] the Iowa Supreme Court (in 2017),[19] and the Texas Court of Criminal Appeals (in 2021).[20] While affluenza may have received notoriety in 2013, its first utilization in the courts may have been decades before.

A. A Brief History and Overview of Affluenza

The historical background of the affluenza defense may have originated with a case involving the legendary defense attorney Clarence Darrow.[21] In 1924, Darrow represented two individuals, Nathan Leopold and Richard Loeb, who had confessed to the murder of a 14-year-old boy.[22] Darrow argued against the death penalty, arguing in the case that both had grown up in wealthy households and were "stunted by their privilege."[23] Leopold and Loeb received life sentences in prison but were spared the death penalty.[24]

The term affluenza was coined by the authors John De Graaf, David Wann and Thomas H. Naylor in their book *Affluenza: The All-Consuming Epidemic*.[25] In an affluenza case, "the person, who has no boundaries, plenty of money, and enjoys a plush lifestyle, believes ordinary societal rules are not applicable to them."[26] Affluenza has not

18. *See* In re E.C., 444 S.W.3d 760, 768–69 (Tex. App. 2014).

19. *See* State v. Roby, 897 N.W.2d 127, 156 (Iowa 2017).

20. *See* Ex parte Garza, 620 S.W.3d 801, 829–30 (Tex. Crim. App. 2021).

21. *See, e.g.,* Gerald F. Uelmen, *Who is the Lawyer of the Century*, 33 LOY. L.A. L. REV. 613, 646 (2000) (with Uelmen stating that "[m]y image of the trial lawyer remained Clarence Darrow, who had sided with the working man, with minorities and radicals, and who had fought for due process and a fair trial and against bigotry, ignorance, and hate. But Darrow was larger than life, a man of impassioned eloquence whose power I could never imagine equaling. The criteria of professional reputation, participation in trials of the century, public recognition, and accessibility of information all point to Clarence Darrow as the lawyer of the century").

22. *See* Lily Rothman, *The 'Affluenza' Defense Is Older Than You Think*, TIME (Feb. 9, 2016, 8:00 AM), https://time.com/4206296/affluenza-leopold-loeb/ (on file with the Syracuse Law Review).

23. *Id.*

24. *See id.*

25. *See* Barbara O'Neill, *Book Review: Affluenza: The All-Consuming Epidemic (2d ed.)*, 19 J. OF FINANC. COUNS'ING AND PLAN. 70, 70–72 (2008).

26. Eckenroth, *supra* note 16 at 457.

been recognized as a psychological illness or diagnosis by the American Psychiatric Association.[27]

At least three appellate courts have cited affluenza in court decisions since 2014, each discussed below.

B. In re E.C.

The first appellate decision which mentioned affluenza was a civil case arising out of the 2013 case of a Texas teenager who operated a motor vehicle while intoxicated, resulting in the deaths of four individuals.[28] A civil lawsuit was ultimately filed against the teenager for negligence and gross negligence arising out of the accident.[29] A subpoena for production of documents and a deposition upon written questions was filed to seek the records of the psychologist in the juvenile proceeding who testified on the affluenza defense.[30] The teenager sought a motion for protective order and to quash the deposition of the psychologist, citing confidentiality.[31] The trial court denied the motion for protective order.[32]

A mandamus petition was ultimately filed on the basis that the psychologist's records were confidential under Texas Family Code § 51.13(b) and Texas Family Code § 58.005(a).[33] Utilizing statutory construction analysis, the Texas Court of Appeals held that the trial court did not abuse its discretion in finding both asserted provisions of the Texas Family Code did not apply and that the trial court also did not abuse its discretion in finding that the work-product privilege, attorney-client privilege, and mental-health privileges did not apply to the case.[34]

C. State v. Roby

The 2017 case of *State v. Roby* underscored the controversial use of psychological defenses like affluenza in sentencing juveniles, highlighting the debate over accountability and the impact of privilege on

27. *See* Ashley Welch, *What Psychiatrists Think of the "Affluenza" Defense*, CBS NEWS (Dec. 30, 2015, 9:17 PM), https://www.cbsnews.com/news/what-psychologists-think-of-the-affluenza-defense/ (on file with the Syracuse Law Review).

28. *See In re E.C.*, 444 S.W.3d at 762, 768.

29. *See id.* at 762.

30. *See id.* at 763.

31. *See id.*

32. *See id.*

33. *See In re E.C.*, 444 S.W.3d at 763.

34. *See id.* at 767, 769-770.

legal outcomes.[35] The defendant was convicted of sexual abuse for acts committed as a juvenile, and his defense argued that his upbringing, marked by familial dysfunction, neglect, and abuse, diminished his culpability, echoing the affluenza argument seen in other high-profile cases.[36] The trial court initially sentenced Roby to a mandatory minimum prison term typical of the state's statutory requirements for juvenile offenders.[37]

However, following Iowa Supreme Court rulings that such mandatory sentences could be a cruel and unusual punishment for juveniles, Roby's case was brought back for resentencing.[38] Under Iowa law, several factors are relevant to examine juvenile sentencing: these factors include:

> (1) the age of the offender, the features of youthful behavior, such as "immaturity, impetuosity, and failure to appreciate risks and consequences"; (2) the particular "family and home environment" that surrounds the youth; (3) the circumstances of the particular crime and all circumstances relating to the youth that may have played a role in the commission of the crime; (4) the challenges for youthful offenders in navigating through the criminal process; and (5) the possibility of rehabilitation and the capacity for change.[39]

The defense emphasized factors which echo affluenza, such as the defendant's troubled upbringing, lack of familial support, and impaired decision-making capabilities due to his youth.[40] They argued that these factors warranted leniency, typical of how the affluenza defense had previously been used to argue that privileged upbringing could insulate young offenders from understanding the consequences of their actions.[41]

The court acknowledged Roby's challenging background and it ultimately upheld his sentencing.[42] It also concluded that the Iowa Constitution does not necessarily completely prohibit the imposition of a sentence without the possibility of parole for a juvenile offender, but only after a court conducts "a complete and careful consideration

35. *See Roby*, 897 N.W.2d at 127.
36. *See id.* at 135.
37. *See id.*
38. *See id.*
39. *See* State v. Lyle, 854 N.W.2d 378, 404 (Iowa 2014).
40. *See Roby*, 897 N.W.2d at 134.
41. *See id.*
42. *See id.* at 148.

of the relevant mitigating factors of youth."[43] The *Roby* decision exemplifies that affluenza remains in jurisprudence as a potential defense that diminishes responsibility based on personal background, whether rooted in privilege or deprivation.

D. Ex Parte Garza

This case outlined the deficiencies in the performance of Garza's counsel during the capital murder trial that led to him being sentenced to death for leading his gang, called the Tri-City Bombers, in murdering six men.[44]

During his trial, Garza's counsel failed to investigate and present critical mitigating factors such as his exposure to severe childhood trauma, including witnessing a murder, physical and sexual abuse, and growing up in a dysfunctional family involved in drug trafficking and violence.[45] The Court's opinion also criticized the defense's reliance on Garza's mother to gather information, which resulted in a superficial and incomplete mitigation presentation.[46] Despite evidence of severe psychological impairments, including post-traumatic stress disorder and fetal alcohol spectrum disorder, the defense did not present these details effectively nor hire a mitigation specialist or a mental health expert to screen Garza for possible disorders.[47] This led to a failure to provide the jury with a complete picture of Garza's culpability.[48] This evidence may have influenced at least one juror to vote against the death penalty.[49] Due to this, the Court concluded that Garza was entitled to a new punishment trial.[50]

However, the dissenting judge argued the mitigating evidence in Garza's habeas application did not sufficiently counterbalance the aggravating factors, such as his extensive criminal history and the leading role he took in the violent crime that occurred.[51] The dissent also referred to affluenza and criticized using Garza's upbringing as a defense strategy to excuse his behavior, suggesting that such a defense undermines accountability.[52] In conclusion, the *Garza* case

43. *Id.*
44. *See Ex parte Garza*, 620 S.W.3d at 801.
45. *See id.* at 807.
46. *See id.* at 806.
47. *See id.* at 823–24.
48. *See id.* at 826.
49. *See Ex parte Garza*, 620 S.W.3d at 826.
50. *See id.* at 828.
51. *See id.* at 829.
52. *See id.* at 829–30.

underscores the ongoing debate over the fairness and effectiveness of psychological defenses in the criminal justice system, particularly when they intersect with deeply troubling background factors like those present in *Garza*.

II. THE FUTURE OF THE "AFFLUENZA" DEFENSE

A. Proposed Legislation

In 2014, a bill was introduced by Assemblyman Mike Gatto in the California State Assembly to essentially prohibit the consideration of the affluenza defense in criminal cases by judges and juries.[53] The bill, AB-1508, proposed to add the following language to the California Penal Code:

> As a matter of public policy, it shall not be a defense in any criminal action or juvenile adjudication that a person did not understand the consequences of his or her actions because he or she was raised in an affluent or overly permissive household, nor shall any act committed by a person be less criminal by reason of his or her having been raised in an affluent or overly permissive household.[54]

In examining the text of AB-1508 closely, the proposal would prohibit any defense when an individual may have been raised in an "affluent" or "overly permissive" household. During the discussion over the bill in committee, a concern was raised over the inclusion of the language "overly permissive" in that the language could encompass situations that involve less affluent, absentee parents.[55] Interestingly, the bill's sponsor, a Democrat, received support for the bill from the two Republican legislators on the committee.[56] However, all the other Democrats on the committee abstained, and the bill did not pass.[57]

Later in 2014, State Representative James White, a Texas Republican, introduced legislation similar to the California bill in the Texas

53. *See* Eliott C. McLaughlin, *California bill wuld ban 'affluenza' defense in criminal cases*, CNN (Jan. 16, 2014, 12:56 PM), https://www.cnn.com/2014/01/16/justice/california-affluenza-legislation/index.html (on file with the Syracuse Law Review).

54. Assemb. B. No. 1508, 2013–2014 Leg., Reg. Sess. (Cal. 2014).

55. *See* Steinmetz, *supra* note 13.

56. *See id.*

57. *See id.*

House of Representatives.[58] The Texas bill, HB 109, proposed to add the following language to the Texas Code of Criminal Procedure:

> Notwithstanding any other law, at the sentencing proceeding of a defendant, the trier of fact may not consider any evidence offered to establish that the defendant did not understand the consequences of the defendant's actions because the defendant was raised in a household that was overly permissive due to affluent circumstances.[59]

In comparing both the California and Texas bills, the Texas bill essentially addresses the issue of an "overly permissive" household applying for the affluenza defense in situations where the defendant may grow up in a less affluent household—the bill specifically notes the affluenza defense does not apply in cases where the defendant was raised in an "overly permissive [household] due to affluent circumstances."[60] In addition, the Texas bill differs from the California bill in that the California bill addresses a ban on the affluenza defense generally, while the Texas bill limits it to the sentencing phase of a criminal proceeding (and not the adjudicatory phase with the issue of guilt). The Texas bill never made it past the committee phase in the Texas legislature.[61]

Since the introduction of the California and Texas affluenza bills, to our knowledge, it appears that no state has implemented any legislation that prohibits the affluenza defense in criminal cases, whether in the adjudicatory phase or sentencing phase of a criminal proceeding. As affluenza has continued to be discussed in jurisprudence and with the news media, arguments for and against legislation to prohibit the affluenza defense have emerged.

B. Arguments in Favor of Legislation Banning Affluenza Defense

One of the strongest criticisms of the affluenza defense is that it inherently benefits those from affluent backgrounds. If this defense is allowed to be asserted in the future, it will provide a potential legal avenue for those from a wealthy background to avoid their criminal

58. *See Texas Legislators Aim to Ban 'Affluenza' Defense,* CBS NEWS (Dec. 10, 2014, 10:20 PM), https://www.cbsnews.com/texas/news/texas-legislators-aim-to-ban-affluenza-defense/ (on file with the Syracuse Law Review).

59. H.B. 109, 84th Leg., Reg. Sess. (Tex. 2014).

60. *See id.*

61. *See Texas Legislature Online Bill Stages*, TEX. LEGIS. ONLINE, https://capitol.texas.gov/billlookup/BillStages.aspx?LegSess=84R&Bill=HB109 (last visited Sept. 21, 2025) (on file with the Syracuse Law Review).

liability, as seen in the case of the Texas teenager who received probation instead of prison time.[62] Unlike the case of the Texas teenager, however, indigent defendants do not have the financial resources to excuse their behavior, as no such defense is available.[63] This kind of defense can potentially create an apparent disparity in the legal outcomes between wealthy criminal defendants as opposed to indigent defendants, where the affluent ones continue to receive a more lenient treatment because of their socioeconomic status.[64]

One of the most common fears about the defense is due to the dangerous precedent this defense will have on the fairness and integrity of the judicial system.[65] Allowing the affluenza defense will, in the long run, give affluent defendants the ability to escape full accountability for their actions by claiming their privilege, leaving them unable to understand the consequences of their behavior.[66] This can lead to a decline in public confidence, cause public outrage, and further a lack of faith in the system, as seen in the case of the Texas teenager, which sparked widespread public outrage as many people saw it as an avenue to excuse serious criminal behavior based on wealth.[67]

The affluenza defense is not recognized as a legitimate psychological disorder within the medical community and is not a recognized diagnosis in the Diagnostic and Statistical Manual of Mental Disorders.[68] Running with the lack of recognition of this defense, this then begs the question of the scientific validity of the defense and if it should actually be accepted in courtrooms, especially as there is an absence of a solid psychological foundation.[69] Looking at it at face

62. *See* Mike Schlosser, *The "Affluenza" Defense: Right or Wrong?*, LAWLOR, WRIGHT & MURPHEY, https://www.lwmpersonalinjurylawyers.com/blog/affluenza-defense-right-wrong/ (last visited Mar. 16, 2025) (on file with the Syracuse Law Review).

63. *See id.*

64. *See* Dmitry Gorin, *Can The "Affluenza" Defense Be Used in California?,* EISNER GORIN LLP (Dec. 4, 2023), https://www.egattorneys.com/affluenza-defense (on file with the Syracuse Law Review).

65. *See id.*

66. *See* Schlosser, *supra* note 62.

67. *See* Derek Hawkins, *'Affluenza' teen whose lawyers argued he was too spoiled to go to jail is locked up again*, SEATTLE TIMES (Jan. 2, 2020, 7:41 PM), https://www.seattletimes.com/nation-world/affluenza-teen-whose-lawyers-argued-he-was-too-spoiled-to-go-to-jail-is-locked-up-again/ (on file with the Syracuse Law Review).

68. *See* Gorin, *supra* note 64.

69. *See id.*

value, the defense seems to be more like a legal loophole than a legitimate argument about the mental health of the defendant.[70]

While the affluenza defense is inherently beneficial to wealthy defendants, the use of a negative affluent background defense by non-wealthy individuals, as seen in cases like the *Roby* case and the *Garza* case, could potentially lead to inequality and promote a lack of personal responsibility.[71] The defense may create a disparity in that those with challenging backgrounds can be seen as less culpable, thereby bringing in a similar inconsistency of application as seen in the case of the Texas teenager, where justice is based on socioeconomic or personal history.[72] In addition, accepting affluenza as a defense may lead to the expansion of similar defenses, where personal circumstances or affluence could help dodge responsibility, thereby overwhelming the legal system with subjective defenses and making it harder to deliver fair and objective judgment.[73]

The affluenza defense also risks defendants exaggerating or fabricating aspects of their pasts to gain sympathy or leniency, which could be contrary to the Fifth Amendment.[74] The Fifth Amendment ensures due process of law is upheld, implicitly requiring that legal proceedings be free from fraud and manipulation.[75] In addition, even though the Sixth Amendment guarantees the accused the right to a fair trial,[76] it does not circumvent the rights of victims to see that justice is served in a fair and balanced manner.[77] Thus, a defense that seeks to use challenging backgrounds or affluence as a strategy should not be at the expense of the victim's right to a just resolution of their suffering and loss.[78] The impact of the crime on the victims and their families should be of central concern in any criminal proceeding, and the hardship of the defendant should not overshadow the severity of the crime by excusing the defendant due to their past experiences.[79]

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70. *See id.*

71. *See Roby*, 897 N.W.2d at 132–49; *Ex parte Garza*, 620 S.W.3d at 805–28.

72. *See* Gorin, *supra* note 64.

73. *See id.*

74. *See* U.S. CONST. amend. V.

75. *See* Peter Strauss, *Due Process,* CORNELL L. SCH. LEGAL INFO. INST. https://www.law.cornell.edu/wex/due_process#:~:text=The%20Fifth%20Amendment%20says%20to,Incorporation (on file with the Syracuse Law Review) (last visited Sept. 21, 2025).

76. *See* U.S. CONST. amend. VI.

77. *See* Strauss*, supra* note 73.

78. *See, e.g., Roby*, 897 N.W.2d at 146.

79. *See id.*

C. Arguments Against Legislation Banning Affluenza Defense

Drawing from the cases previously highlighted, a defense that seeks to understand the defendant's life circumstances may help the court understand the root causes of the criminal's behavior, thereby leading to a sentence focused on rehabilitating the defendant rather than purely punitive measures.[80] Also, a look into the background of the defendant may assist society in critically examining how societal issues like poverty, abuse, and lack of access to good education and mental services may be a leading cause of criminal tendencies.[81] This can then lead to providing a preventive way of dealing with crimes, as this may aid in stopping individuals from committing crimes in the first place.

The affluenza defense may also help in shedding light on the struggles of such defendants, thereby helping to humanize them in the eyes of the court and jury.[82] The defense may also help the judicial system to not use a one-size-fits-all approach in the sentencing of defendants.[83] These sentences would arguably help in not only bringing forth an empathetic judgment but also a judgment that understands the individual circumstances which can then help in providing equity in the justice system.[84]

Finally, one of the other arguments against legislation prohibiting the affluenza defense is that such legislation is simply a reactionary approach that seeks to address perceived miscarriages of justice.[85]

One who may oppose legislation prohibiting the affluenza defense may contend that, given the affluenza defense is arguably based on "junk science,"[86] the legislation is unnecessary since expert testimony would be excluded during a court proceeding as it does not satisfy the *Daubert* standard of relevance and reliability for expert testimony.[87] However, a counterargument to this is the *Daubert* factors

80. *See, e.g., Ex parte Garza*, 620 S.W.3d at 826.

81. *See, e.g., Roby*, 897 N.W.2d at 134.

82. *See, e.g.*, *Ex parte Garza*, 620 S.W.3d at 826.

83. *See id.* at 825–26.

84. *See id.* at 826.

85. *See* Michael McGough, *A rush to judgment (and lawmaking) on 'affluenza'*, L.A. TIMES (Jan. 16, 2024, 10:59 AM), https://www.latimes.com/opinion/opinion-la/la-ol-affluenza-justice-ethan-couch-20140116-story.html (on file with the Syracuse Law Review).

86. *See* Christopher J. Ferguson, *Psychologist: "Affluenza" is Junk Science*, TIME (Dec. 14, 2013), https://ideas.time.com/2013/12/14/psychologist-affluenza-is-junk-science/ (on file with the Syracuse Law Review).

87. *See* Susan Haack, *Mind the Analytical Gap! Tracing a Fault Line in Daubert*, 61 WAYNE L. REV. 653, 654 (2016).

would cover only expert testimony and not all testimony—testimony asserting an affluenza defense could theoretically be admitted given the discretion of a trial judge who allows such testimony.[88] Therefore, statutory legislation to prohibit the affluenza defense would be arguably necessary to ensure such a situation would not occur.

CONCLUSION

Overall, a criminal defense based on "affluenza" strikes against the very heart of one of the most fundamental principles of justice in the United States – equality under the law. Today's economy in the United States has been increasingly bifurcated between those individuals who have comfortable economic means and affluence and those that are struggling to make ends meet.[89] In the future, some criminal defendants may have the privilege of arguing an affluenza or affluenza-like defense, while others of lower socioeconomic means would not be afforded such a luxury.

Far from being out of the news completely, affluenza continues to reappear.[90] With this, it is now time for states to seriously consider promoting equality under the law and implementing legislation at the state level to reduce and/or eliminate the affluenza defense.

88. *See* Hon. Manuel L. Real, *Daubert – A Judge's View*, 11 NO. 3 PRAC. LITIG. 7 (2000).

89. *See* Yuheng Zhan, *The US is Dealing with a Rare Bifurcation of the Economy, and It's Raising the Odds of a Recession, Piper Sandler chief economist says*, BUS. INSIDER (Apr. 24, 2024, 3:03 PM), https://www.businessinsider.com/recession-extremely-rare-economy-bifurcation-downturn-inflation-fed-rate-cut-2024-4 (on file with the Syracuse Law Review).

90. *See, e.g.,* Devon Frye, *Is "Affluenza" Just a Creative Way to Justify Being Mean?*, PSYCH. TODAY (Aug. 12, 2024), https://www.psychologytoday.com/us/blog/dark-creativity/202408/is-affluenza-just-a-creative-way-to-justify-being-mean (on file with the Syracuse Law Review).