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America the Free! (Age Restrictions May Apply)

Sarah Nuckel

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America the Free! (Age Restrictions May Apply)

Sarah Nuckel*

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I. INTRODUCTION

In the eyes of California’s legal system, age is far more than just a number.¹ One sunny California day, Kevin and Oscar were walking home from school and noticed a parked car with a wallet inside.² After confirming the coast was clear, the boys quickly broke the car’s window, grabbed the wallet, and ran.³

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1. See generally *Juvenile Justice Hearings*, SUPERIOR CT. OF CAL., CNTY. OF SANTA CLARA, https://www.sccourt.org/self_help/juvenile/jjustice/process.shtml (last visited Oct. 31, 2020) (on file with the *University of the Pacific Law Review*) (illustrating a child’s path through juvenile court).

2. See Interviews with “Kevin” and “Oscar” in Sacramento, Cal. (June–July 2020) (altering names and other minor details to protect the juveniles’ identity).

3. *Id.*

Unbeknownst to them, an officer witnessed the crime and arrested them both within minutes.⁴

It is at this point that their lives sharply diverged and the similarities between their criminal cases ended.⁵ Despite committing the same crime, the police officer sent the two boys to different locations.⁶ After the arrest, Kevin went to juvenile hall, while Oscar went back to the police station and was processed in the adult system.⁷ Three months later, both boys faced the same charges and continued to wait for trial dates.⁸ However, Kevin has not been home since his arrest; he lives in juvenile hall and has not attended school.⁹ On the other hand, Oscar has not spent a single night behind bars and awaits his trial date from the comfort of his home.¹⁰

The reason for such a disparity in pretrial life is due to their age.¹¹ At the time of arrest, Kevin was seventeen years old, while Oscar—six months older—had recently turned eighteen.¹² Because Oscar’s case was in the adult criminal court system’s jurisdiction, he was able to pay bail for his freedom.¹³ On the other hand, Kevin is a minor in the state of California.¹⁴ Thus, Kevin’s case is under the jurisdiction of the California juvenile court system—where there is no bail.¹⁵ After an officer decides to hold a juvenile, the only option is detention until trial.¹⁶ As Kevin and Oscar’s story demonstrates, age determines a criminal defendant’s constitutional rights.¹⁷

California currently does not provide bail to juvenile defendants, yet the juvenile court system effectively treats and punishes minors similarly to adult criminals.¹⁸ This oversight results from a forgotten system rather than the state legislature making conscious policy choices.¹⁹ This Comment proposes that California grant minors in the juvenile court system the same right to bail as

4. *Id.*

5. *Id.*

6. *Id.*

7. Interviews with “Kevin” and “Oscar,” *supra* note 2.

8. *Id.*

9. *Id.*

10. *Id.*

11. See generally John M. Kalnins, *Right to Bail for Juveniles*, 48 CHI.-KENT L. REV. 99, 105–106 (1971) (highlighting the discrepancy in treatment between adults and juveniles).

12. Interviews with “Kevin” and “Oscar,” *supra* note 2.

13. See Kalnins, *supra*, note 11, at 104–107 (arguing that denying bails to juveniles but not to adults violates equal protection principles).

14. Interviews with “Kevin” and “Oscar,” *supra* note 2.

15. *Juvenile Justice Hearings*, *supra* note 1.

16. *Id.*

17. *Id.*

18. Kalnins, *supra*, note 11, at 105–107.

19. Evan Sernoffsky & Joaquin Palomino, *Locked Up, Left Behind*, S.F. CHRON. (Oct. 3, 2019), <https://www.sfchronicle.com/bayarea/article/California-once-sent-thousands-of-juveniles-to-14480958.php> (on file with the *University of the Pacific Law Review*).

adults.²⁰ Bail parity is a long-overdue, yet easily implemented, update to the criminal law that is necessary, considering the current inequalities between the court systems.²¹

This Comment argues that in light of dramatically evolving juvenile justice policy over the last century, California should update the criminal law to guarantee juveniles the same right to bail as adults going forward.²² Part II provides the relevant historical and legal background of the American juvenile court system.²³ Part III then examines current California criminal law by comparing the juvenile court process to the adult bail system and addresses a recent failed ballot Proposition concerning bail.²⁴ Part IV presents and explains a proposal for implementing the adult bail system into the juvenile system.²⁵ Part V then provides a final summary of the ideas presented.²⁶

II. THE AMERICAN JUVENILE COURT SYSTEM: BACKGROUND AND HISTORY

The timeline of American juvenile law encompasses three main stages.²⁷ Section A outlines the American juvenile court system from its founding in the early 1900s until policy began to shift in the 1960s.²⁸ Section B then describes a short-lived era of due process rights for juvenile defendants in the 1960s.²⁹ Finally, Section C explains the trend of harsh punishment sweeping through the nation from the 1970s to present, the effects of which juveniles are still feeling today.³⁰

A. Stage One: *Parens Patriae*

Juvenile law and the criminal court system for minors is likely a foreign concept to many people.³¹ There is no *Juvenile Law and Order* constantly playing in syndication, and there has never been a *Delinquency Judge Judy*.³² The juvenile court system is an often forgotten and largely unknown aspect of our legal system, yet its impact in shaping the potential criminals of tomorrow is far-reaching.³³

20. *Infra* Part IV.

21. John M. Kalnins, *supra*, note 11, at 99.

22. *Infra* Parts II–V.

23. *Infra* Part II.

24. *Infra* Part III.

25. *Infra* Part IV.

26. *Infra* Part V.

27. *Infra* Part II.

28. *Infra* Section II.A.

29. *Infra* Section II.B.

30. *Infra* Section II.C.

31. See generally Sernoffsky & Palomino, *supra* note 19 (reporting on the “untold number of people arrested as children and tried as adults [who] remain imprisoned”).

32. See generally *id.* (distinguishing the brutal crimes that the media reports on compared to most cases).

33. *Id.*

Each state in the country has its own separate juvenile court system plus an adult criminal court system.³⁴ All minors arrested and charged with a criminal offense are under the jurisdiction of the juvenile court in that state.³⁵ The age of majority in California and most other states is eighteen years old.³⁶ This legal technicality determines which court system will charge, try, and sentence a defendant.³⁷ For example, a boy steals a car and gets arrested the day before his eighteenth birthday.³⁸ He is still technically seventeen years old; thus, he would be sent to juvenile hall and processed through the juvenile court system.³⁹ But if the same boy had waited one more day to steal the car and was arrested on his eighteenth birthday, he would then be an adult in California.⁴⁰ Although only a day of difference, he would instead go through the process as an adult criminal and have a vastly different experience.⁴¹

The first juvenile courts emerged during the early twentieth century.⁴² By 1925, there was a separate juvenile court system in all but two states.⁴³ Prior to 1967, when the United States Supreme Court issued one of its few landmark decisions on juvenile rights, the principle of *parens patriae* defined the system.⁴⁴ *Parens patriae*, literally translated as “father of the nation,” helps explain the differentiation between adult and children criminals from the inception of the juvenile court system.⁴⁵ The principle holds that society’s role is not to determine whether a child is guilty or innocent but rather to help and protect the child as a father would.⁴⁶ In dealing with the child defendant, the court took the place of the real parent and made decisions in the child’s best interest.⁴⁷

The purpose of juvenile court during this time was to examine the problems of the child and provide protection based on that assessment.⁴⁸ This stood in stark

34. *Juvenile Court*, NAT’L CTR. FOR JUV. JUST., <http://www.jjgps.org/about/juvenile-court#purposeclauses> (last visited Oct. 31, 2020) (on file with the *University of the Pacific Law Review*).

35. *Id.*

36. SB 439, 2018 Leg., 2017–2018 Sess. (Cal. 2019); *State Legal Ages Law*, FINDLAW.COM (last visited Sept. 8, 2021), <https://statelaws.findlaw.com/family-laws/legal-ages.html> (on file with the *University of the Pacific Law Review*).

37. *Juvenile Justice Hearings*, *supra* note 1.

38. *See also supra* Part I.

39. *See Juvenile Justice Hearings*, *supra* note 1.

40. *Id.*

41. *See id.*

42. *Juvenile Court*, *supra* note 34.

43. *1999 National Report Series. Juvenile Justice: A Century of Change*, U.S. DEP’T OF JUST. (1999), <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1000&context=ojjdp> (on file with the *University of the Pacific Law Review*).

44. John M. Kalnins, *supra*, note 11, at 105–107.

45. *Id.*

46. *Id.*

47. *Id.* at 105–108.

48. THE CTR. FOR LEGIS. IMPROVEMENT, BAIL FOR JUVENILES IN THE 50 STATES –REPORT NO. 1, at 1 (1980), <https://www.ncjrs.gov/pdffiles1/Digitization/70710NCJRS.pdf> (on file with the *University of the Pacific Law Review*).

contrast with the goal of criminal court for adults, which existed to punish offenders for their wrongdoings.⁴⁹ Therefore, the entire juvenile court process was originally non-adversarial.⁵⁰ To this end, many fundamental adult criminal court procedures were not only inapplicable but detrimental to the goals of the juvenile court system.⁵¹ From inception, this included the rights to counsel, confront and cross-examine witnesses, written notice of charges, and a public trial by jury.⁵² Upon the founding of the juvenile system, all of these rights fundamental to adult criminals were intentionally denied to minors.⁵³

B. Stage Two: A Brief Era of Due Process Rights

The era of *parens patriae* officially came to a halt in 1967 when the United States Supreme Court announced its decision in *In re Gault*.⁵⁴ Before *Gault*, the Court had not addressed which, if any, rights a juvenile defendant is constitutionally guaranteed.⁵⁵ Consequently, there was a severe lack of uniformity and accountability in juvenile courts from state to state.⁵⁶

Gerald Gault was fifteen years old when he was arrested and taken into custody for allegedly making a lewd phone call.⁵⁷ Police never notified his parents of their son's arrest nor his right to counsel.⁵⁸ Police also never notified Gault of his charges.⁵⁹ He sat alone and clueless at his trial and was sentenced to commitment in a juvenile detention center until the age of twenty-one, a six-year imprisonment.⁶⁰ At that time, an adult charged with the same crime in the same jurisdiction—lewd phone calls—would receive a maximum sentence of two months in jail and a \$50 fine.⁶¹

The Court in *Gault* held that juveniles were entitled to certain due process rights to secure the fundamental fairness of the proceeding.⁶² Regardless of the philosophy of the juvenile court as being “protective of the child,” children are often deprived of fundamental liberties without the benefit of the most basic procedural rights.⁶³ The Court in *Gault* expressly granted juveniles the right to an

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. See Kalnins, *supra*, note 11, at 106–108 (observing that the child's best interests rendered most criminal procedures inapplicable).

54. *Id.*

55. *Id.*

56. See generally BAIL FOR JUVENILES IN THE 50 STATES, *supra* note 48.

57. *In re Gault*, 387 U.S. 1, 4–5 (1967).

58. *Id.*

59. *Id.* at 5–7.

60. *Id.* at 7.

61. *Id.* at 8–9.

62. *In re Gault*, 387 U.S. at 55–59.

63. See *id.* at 23 (observing that the juvenile court system has largely functioned “free of constitutional

attorney, to remain silent, to notice of the charges, and to a full hearing on the merits of the case.⁶⁴

In re Winship in 1970 followed *Gault's* lead when the Supreme Court again applied a fundamental due process right to juvenile defendants.⁶⁵ The Court in *Winship* held that the same standard of proof, beyond a reasonable doubt, is required for conviction in juvenile courts as adult criminal trials.⁶⁶ *Gault* and *Winship* seemingly signaled the Court opening the door to eliminating special juvenile court procedures and eventually abolishing the court itself.⁶⁷ However, the Supreme Court swiftly ended any notion of this in the 1971 case of *McKeiver v. Pennsylvania*.⁶⁸

The Court in *McKeiver* expressly refused to apply the right to a trial by jury to juvenile defendants.⁶⁹ However, the greater legacy of *McKeiver* is the Court's definitive statement that juveniles do not receive all rights constitutionally guaranteed to adult criminals.⁷⁰ Justice Harry Blackmun's plurality opinion discussed the decision to deny juveniles the right to a jury trial at length, heavily weighing the repercussions of both scenarios.⁷¹ He approached the decision similar to a cost-benefit analysis.⁷² Justice Blackmun conceded:

We must recognize . . . that the fond and idealistic hopes of the juvenile court proponents and early reformers of three generations ago have not been realized. . . . Too often, the juvenile court judge falls far short of that stalwart, protective, and communicating figure the system envisaged.⁷³

However, he feared that granting juvenile defendants the right to a jury trial would leave little difference between the two court systems.⁷⁴ That precedent could easily lead to a complete collapse of a separate juvenile system and any hope of treating juveniles differently than adult criminals.⁷⁵ Blackmun explained:

[T]he jury trial, if required as a matter of constitutional precept, will remake the juvenile proceeding into a fully adversary process and will put

inhibitions").

64. *Id.* at 55–59.

65. *In re Winship*, 397 U.S. 358, 368 (1970).

66. *Id.*

67. BAIL FOR JUVENILES IN THE 50 STATES *supra* note 48, at 1.

68. *Id.* at 2.

69. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971).

70. BAIL FOR JUVENILES IN THE 50 STATES, *supra* note 48, at 2.

71. *McKeiver*, 403 U.S. at 543–44.

72. *See id.* at 543–44 (finding there is “much to be said” for the value of juries, “but we have been content to pursue other ways for determining facts”).

73. *Id.*

74. *Id.*

75. *Id.*

effective end to what has been the idealistic prospect of an intimate, informal protective proceeding.⁷⁶

His fears would prove to be well-founded, as the second half of the twentieth century became the most punitive period of criminal justice in American history.⁷⁷

C. Stage Three: Harsh Punishment for All Ages

The third and final stage of American juvenile criminal policy explains the trend of punitive treatment of criminals sweeping through the nation from the 1970s to present.⁷⁸ Subsection 1 explains the first step California took towards changing its view on criminal defendants through passing the Uniform Determinate Sentencing Act of 1976.⁷⁹ Subsection 2 highlights the negative effect this era had on juvenile criminals and how minors today are still feeling the effects.⁸⁰

1. Determinate Sentencing: Surprisingly Detrimental

Beginning in the mid-1970s, California followed the rest of the country's lead and began to rethink the policy behind criminal justice.⁸¹ In a complete reversal from the state's historical legislative perspective of prisons, the Uniform Determinate Sentencing Act of 1976 amended the Penal Code's stated purpose for prisons.⁸² The act asserted that—as opposed to rehabilitation—the primary purpose of prison for crime in California is punishment.⁸³ The statute's passage dramatically changed sentencing requirements in the California Penal Code, opening the door to decades of harsh treatment towards criminal defendants of all ages.⁸⁴

This change came as the public opinion in California—and across America—shifted towards harsher views on sentencing criminals.⁸⁵ One California State Senator said in 1976:

76. *McKeiver*, 403 U.S. at 545.

77. *See generally* Sernoffsky & Palomino, *supra* note 19 (reporting on adults serving sentences for crimes they committed as juveniles).

78. *Infra* Section II.C.

79. *Infra* Subsection II.C.1.

80. *Infra* Subsection II.C.2.

81. *See generally* *Juvenile Court*, *supra* note 34 (summarizing the due process reforms of the 1960s through the early 1980s).

82. Albert J. Lipson & Mark A. Peterson, *California Justice Under Determinate Sentencing: A Review and Agenda for Research*, 6 CAL. AGENCIES 246, 4 (1971).

83. *Id.*

84. *Contra* Lipson & Peterson, *supra* note 82, at 5 (arguing the statute and subsequent legislation made important improvements).

85. *Id.* at 12.

Public attitudes have gotten tougher over the last five years . . . and the legislature . . . has responded to the get-tough view. The people are tired of violent crime and want the legislature to ‘do something’ about it. The legislature doesn’t know what to do to solve the crime problem and is frustrated with unsuccessful efforts at rehabilitation. The only thing we can do immediately is raise penalties.⁸⁶

Sentences for most offenses converted from an indeterminate sentence length at the discretion of a parole board to a determinate sentence length set by the Legislature.⁸⁷ For example, an indeterminate sentence length for armed robbery might be five years to life.⁸⁸ The parole board would then determine the appropriate sentence for a defendant from this recommendation.⁸⁹ In contrast, determinate sentencing requires that the Legislature define lower, middle, and upper prison terms for most offenses.⁹⁰ For example, a determinate sentence length for armed robbery might be five years, ten years, or fifteen to life.⁹¹ A judge must then choose the appropriate prison sentence from these options based on the defendant’s level of culpability for the offense.⁹²

Determinate sentencing theoretically provides greater sentencing accountability, uniformity, and fairness by eliminating discretionary authority from the sentencing process.⁹³ However, in practice, the prison population skyrocketed.⁹⁴ The California state prison budget in 1977 was \$346 million, but by 1997, the budget had ballooned to over \$4.4 billion.⁹⁵

2. *The Juvenile Superpredator That Never Was*

The “tough on crime” trend extended to juveniles.⁹⁶ Minors committing crimes in California and across the country peaked in the early 1990s.⁹⁷ Between 1986

86. *Id.*

87. *Id.* at 2.

88. *Id.* at 3 tbl.1.

89. Lipson & Peterson, *supra* note 82, at 2.

90. *Id.*

91. *Id.* at 3 tbl.1.

92. *Id.* at 2.

93. See generally April K. Cassou & Brian Taugher, *Determinate Sentencing in California: The New Numbers Game*, 9 PAC. L.J. 5 (1978) (explaining the background, history, and legislative intent of the Uniform Determinate Sentencing Act of 1976).

94. Joshua Aiken, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth*, PRISON POL’Y INITIATIVE (May 2017), https://www.prisonpolicy.org/graphs/CA_Prison_Jail_Population_1978-2015.html (last visited Sept. 9, 2021) (on file with the *University of the Pacific Law Review*).

95. *Program Expenditures by Fund*, INTERNET ARCHIVE 1–4 (2020), https://web.archive.org/web/20200628010739/http://www.dof.ca.gov/budget/summary_schedules_charts/documents/Jan-2020/CHART-C-1.pdf (on file with the *University of the Pacific Law Review*).

96. Sernoffsky & Palomino, *supra* note 19.

97. *Id.*

and 1994, the juvenile murder rate in California quadrupled.⁹⁸ By 1995, juveniles arrested for violent felonies reached an all-time high, averaging sixty per day.⁹⁹ The subsequent prevailing legal theory to explain these record crime numbers amongst minors is now widely regarded as a “legal myth.”¹⁰⁰ Fear of the “juvenile superpredator” swept the nation and changed how Americans viewed children committing crimes.¹⁰¹ And although the scientific community disavowed the theory long ago, juveniles in California are still paying the price.¹⁰²

Princeton criminologist John Dilulio widely popularized the juvenile superpredator theory, but he has since retracted his proposition.¹⁰³ After examining the juvenile crime rates in light of decades of relatively steady increases, Diulio identified a new type of criminal.¹⁰⁴ Far more terrifying and less empathetic than any offender the world had seen before, these were the impending juvenile superpredators.¹⁰⁵ He explained, “A superpredator is a young juvenile criminal who is so impulsive, so remorseless, that he can kill, rape, maim, without giving it a second thought.”¹⁰⁶

Dilulio predicted a large increase in youth crime and violence due to superpredators in the coming twenty-first century.¹⁰⁷ The hysteria peaked after First Lady Hillary Clinton warned of the juvenile superpredator during a live national television broadcast in 1996.¹⁰⁸ “We need to take these people on . . . they are not just gangs of kids anymore they are often the kinds of kids that are called superpredators. No conscience, no empathy”¹⁰⁹

Public opinion toward juvenile criminals followed, and lawmakers jumped into action.¹¹⁰ Lawmakers implemented tough-on-crime legislation for juvenile offenders across the country.¹¹¹ California passed AB 560 in 1994, lowering the minimum age to charge a minor in adult court to fourteen years old.¹¹² The juvenile detention population in California peaked in 1996 with almost 10,000 children in

98. *Id.*

99. *Id.*

100. Priyanka Boghani, *They Were Sentenced as Superpredators. Who Were They Really?*, PBS FRONTLINE (May 2, 2017), <https://www.pbs.org/wgbh/frontline/article/they-were-sentenced-as-superpredators-who-were-they-really/> (on file with the *University of the Pacific Law Review*).

101. *Id.*

102. Sernoffsky & Palomino, *supra* note 19.

103. Boghani, *supra* note 100.

104. *Id.*

105. *See id.* (explaining the formulation of the juvenile superpredator theory by criminologists at the time).

106. *Id.*

107. *Id.*

108. Anne Gearan & Abby Phillip, *Clinton Regrets 1996 Remark on ‘Super-Predators’ After Encounter with Activist*, WASH. POST (Feb. 25, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/02/25/clinton-heckled-by-black-lives-matter-activist/> (on file with the *University of the Pacific Law Review*).

109. *Id.*

110. Boghani, *supra* note 100.

111. *Id.*

112. Sernoffsky & Palomino, *supra* note 19.

custody.¹¹³ In anticipation of the coming youth crime wave, the state devoted \$750 million to construct new juvenile facilities in 1997.¹¹⁴ Some highlights included a new 358-bed juvenile hall in Alameda County, 250 additional beds in Los Angeles County, and a new 48-bed, minimum-security “boot camp” in Yuba County.¹¹⁵ But in 2000, California lawmakers and voters delivered the decisive blow to juvenile criminal rights.¹¹⁶

Voters approved Proposition 21 (“Prop 21”) in 2000, completely redefining how juvenile criminals are treated and sentenced in California.¹¹⁷ Prop 21 officially erased any remainder of a line separating the juvenile and adult court systems.¹¹⁸ It rewrote the laws for juvenile criminals to reflect the same primary purpose as the laws for adults: imprisonment for crime is punishment, not rehabilitation.¹¹⁹ It significantly increased the penalties and sentencing terms for offenses by minor defendants.¹²⁰

For example, consider gang-related activity.¹²¹ Before Prop 21, a minor convicted of a gang-related crime received an extra prison term of one, two, or three years.¹²² Prop 21 increased the extra prison terms for gang-related crimes to two, three, or four years.¹²³ Additionally, if the crime qualifies as “serious” or “violent,” the extra prison terms would be five and ten years, respectively.¹²⁴ The proposition also added gang-related murder to the list of “special circumstances” that make offenders eligible for the death penalty.¹²⁵

However, the provision of Prop 21 that over twenty years after its passage would prove to be the most harmful and far-reaching is only a few lines long.¹²⁶ In 2000, Prop 21 also created Welfare and Institutions Code (“WIC”) Section 625.3, which Section III.A analyzes at length.¹²⁷

113. Daniel Macallair, Mike Males, & Catherine McCracken, *Closing California’s Division of Juvenile Facilities: An Analysis of County Institutional Capacity*, CTR. ON JUV. AND CRIM. JUST. at 1 (May 2009), http://www.cjcg.org/uploads/cjcg/documents/closing_californias_djf_2009.pdf (on file with the *University of the Pacific Law Review*).

114. *The Number of Youth in Juvenile Detention in California Has Quietly Plummeted*, CHIEF PROB. OFFICERS OF CAL., <https://www.cpoc.org/post/number-youth-juvenile-detention-california-has-quietly-plummeted> (last visited Sept. 9, 2021) (on file with the *University of the Pacific Law Review*).

115. Macallair, Males, & McCracken, *supra* note 113, at 19–23.

116. Sernoffsky & Palomino, *supra* note 19.

117. *Id.*

118. *See id.* (noting the law permits prosecutors to file charges against juveniles in adult court).

119. *See id.* (noting the initiative was a response to concerns over superpredators).

120. *Proposition 21*, LEGIS. ANALYST’S OFF., https://lao.ca.gov/ballot/2000/21_03_2000.html (last visited Jan. 9, 2020) (on file with the *University of the Pacific Law Review*).

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *See* CAL.WELF. & INST. CODE § 625.3 (West 2021) (requiring juvenile arrestees to appear before a judicial officer before release).

127. *Infra* Section III.A.

By the turn of the century, California had fully prepared itself for the impending wave of juvenile terror, but the wave never hit.¹²⁸ Juveniles arrested for violent felonies dropped 68% between 1994 and 2014, and youth homicides—which peaked in 1993—have declined by 83% percent since then.¹²⁹ The total arrest rate of young people under the age of twenty-five for violent felonies in California between 1978 and 2015 fell 55%.¹³⁰ Yet Prop 21 and its decisive control over the juvenile court system remains, with little identifiable difference in policy today between the treatment of adults and minors in California courts.¹³¹

III. COMPARING CURRENT CALIFORNIA PRETRIAL LAW: THE PARITY PROBLEM

The juvenile court system and the adult criminal bail process are complex issues requiring thorough explanation.¹³² Section A explains the juvenile court system in California, with a step-by-step illustration of what happens when a minor gets arrested today.¹³³ Section B explains the bail system for adult criminals in California.¹³⁴ Finally, Section C addresses a recent failed ballot Proposition concerning bail.¹³⁵

A. Current California Juvenile Law

Section A explains the juvenile court system in California, with a step-by-step illustration of what happens today when a minor is arrested.¹³⁶ Subsection 1 explains the first step in the process every minor arrested or charged with a crime in California takes: a detention risk assessment screening.¹³⁷ Subsection 2 explains the mandatory detention exception to the detention risk assessment and its tremendous impact on the process.¹³⁸

128. *The Number of Youth in Juvenile Detention in California Has Quietly Plummeted*, CHIEF PROB. OFFICERS OF CAL., <https://www.cpoc.org/post/number-youth-juvenile-detention-california-has-quietly-plummeted> (last visited Sept. 9, 2021) (on file with the *University of the Pacific Law Review*).

129. Macallair, Males, & McCracken, *supra* note 113, at 1.

130. Sernoffsky & Palomino, *supra* note 19.

131. *See generally id.* (describing the fallout from sending thousands of teenagers to adult courts and prisons).

132. *Infra* Part III.

133. *Infra* Section III.A.

134. *Infra* Section III.B.

135. *Infra* Section III.C.

136. *Infra* Section III.A.

137. *Infra* Subsection III.A.1.

138. *Infra* Subsection III.A.2.

1. *The Detention Risk Assessment*

Under current California law, after an officer arrests a minor, a process that resembles a choose-your-own-adventure children's book commences.¹³⁹ There is a multitude of paths a child defendant might follow through the juvenile court system.¹⁴⁰ Upon arrest, a police officer takes the juvenile to a juvenile detention center for initial intake.¹⁴¹ A probation officer then makes the initial decision on the child's fate.¹⁴² At this point, the officer determines whether the child goes home with a parent or guardian, or remains in custody at a juvenile detention hall until the first court appearance.¹⁴³

The decision to release or detain a juvenile is made using a form called a detention risk assessment ("DRA").¹⁴⁴ Upon intake, an eligible official at juvenile hall examines each child using a DRA to determine whether detention until the first hearing is appropriate.¹⁴⁵ Officials apply a DRA's checklist of criteria to rate each minor for specific detention-related risks.¹⁴⁶ DRA forms use a point-scale system, assigning points for each risk factor to produce a total score.¹⁴⁷ If the total score—called a "DRA score"—exceeds the cutoff value at the end of the assessment, the official must classify the juvenile as high-risk and recommend detention.¹⁴⁸ The DRA scoring process in California juvenile courts produces just as arbitrary results as a magazine quiz.¹⁴⁹

In California, each county has its own juvenile court; thus, although similar, each county uses its own version of a DRA.¹⁵⁰ For example, in Sacramento County, a final DRA score of seven or lower equals release, while scores of between eight and fourteen equal alternative detention like house arrest or an ankle monitor.¹⁵¹ If

139. See *Juvenile Delinquency*, JUD. COUNCIL OF CAL., <https://www.courts.ca.gov/selfhelp-delinquency.htm?rdeLocaleAttr=en> (last visited Oct. 31, 2020) (on file with the *University of the Pacific Law Review*) (detailing the possible routes authorities can take after arresting a minor).

140. See *id.* (providing the five options an officer has after they arrest a minor).

141. *Juvenile Justice Hearings*, *supra* note 1.

142. *Id.*

143. *Id.*

144. *Juvenile Detention Risk Assessment: A Practice Guide to Juvenile Detention Reform*, JUV. DET. ALTS. INITIATIVE 5 (2006), <https://www.aecf.org/m/resourceimg/aecf-juviledetentionriskassessment1-2006.pdf> (on file with the *University of the Pacific Law Review*).

145. *Screenings and Assessments Used in The Juvenile Justice System*, JUD. COUNCIL OF CAL. 1 (Dec. 2011), https://www.courts.ca.gov/documents/AOCBrief_RiskAndNeedsAssesment_rev011012.pdf (on file with the *University of the Pacific Law Review*).

146. *Juvenile Detention Risk Assessment*, *supra* note 144, at 5.

147. *Id.*

148. *Id.*

149. See *id.* (providing objective scores to subjective cases).

150. See *Screenings and Assessments Used in The Juvenile Justice System*, JUD. COUNCIL OF CAL. 8–9 (Dec. 2011), https://www.courts.ca.gov/documents/AOCBrief_RiskAndNeedsAssesment_rev011012.pdf (on file with the *University of the Pacific Law Review*) (detailing California counties' adoption of different risk assessment systems).

151. *Sacramento County Detention Risk Assessment*, SACRAMENTO CNTY. PROB. (June 2020) (on file with the *University of the Pacific Law Review*).

a juvenile scores fifteen or higher, they remain in detention automatically until the first court appearance no exceptions or overrides.¹⁵² Bail is not an option for juvenile defendants with a score of fifteen or higher, they stay behind bars until their first hearing.¹⁵³ Santa Clara County has a slightly different scale; a DRA score of from zero to six equals release, seven to nine equals alternative detention, and ten or higher equals detention.¹⁵⁴ Each county employs different factors on their DRA forms; therefore, comparing numbers is almost meaningless.¹⁵⁵

In general, all juvenile DRA forms facilitate grading and assigning a number to the offense; the more serious the offense, the higher the number.¹⁵⁶ For example, in Santa Clara County, possession of narcotics receives a six, while property crimes receive a five.¹⁵⁷ Next, the defendant receives a grade for prior criminal history.¹⁵⁸ A clean criminal history receives a zero.¹⁵⁹ The number increases based on the recency of the prior offense.¹⁶⁰ A juvenile with a different case currently pending receives a six, while a juvenile with a prior offense within the last 36 months receives a three.¹⁶¹

A list of mitigating and aggravating factors constitute one point each.¹⁶² Mitigating factors subtract from the total DRA score.¹⁶³ Some mitigating factors include stability in school, remote involvement in the crime, and the presence of a guardian in the child's life.¹⁶⁴ Aggravating factors add to the total DRA score.¹⁶⁵ Examples of aggravating factors include: if the minor is a flight risk, the crime was particularly violent, or the minor was under the influence of drugs or alcohol.¹⁶⁶ Adding all these factors together at the end yields a total DRA score for each juvenile defendant, and the result determines custody until the first court appearance.¹⁶⁷

152. *Id.*

153. *Id.*

154. *Juvenile Detention Risk Assessment*, *supra* note 144, at 100.

155. *See Screenings and Assessments*, *supra* note 145, at 1 (noting DRA forms' varying goals and purposes).

156. *See Juvenile Detention Risk Assessment*, *supra* note 144, at 11 (listing, for example, the sale of narcotics as ten points but the mere possession as three points).

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *Juvenile Detention Risk Assessment*, *supra* note 144, at 11.

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Id.*

2. *The Mandatory Detention Exception: WIC Section 625.3*

Perhaps surprisingly, employing an arbitrary, nonuniform system of scoring children in a matter of minutes to determine their right to freedom is not the main issue with the current system.¹⁶⁸ A loophole known as “mandatory detention offenses” is the ultimate source of the illogical disparity in California pretrial rights.¹⁶⁹ This loophole is the cause for the all-too-frequent occurrence explained in the Introduction using Kevin and Oscar.¹⁷⁰

At the bottom of every juvenile DRA form, regardless of the county, is one final criteria point.¹⁷¹ If the probation officer checks off this one item, the juvenile defendant receives mandatory detention, regardless of their total DRA score.¹⁷² The reason for statewide uniformity on this sole aspect of juvenile DRA forms is due to Prop 21 and WIC Section 625.3, which reads:

A minor who is 14 years of age or older and who is taken into custody by a peace officer for the personal use of a firearm in the commission or attempted commission of a felony or any offense listed in subdivision (b) of Section 707 shall not be released until that minor is brought before a judicial officer.¹⁷³

So, the initial “decision” concerning custody is mandatory and automatic when a juvenile is charged with committing a felony with a firearm, or one of the listed offenses under Section 707(b).¹⁷⁴ Under Section 707(b), there are thirty different offenses listed, some encompassing more than one crime.¹⁷⁵ For example, the first few are simple: murder, arson, and robbery.¹⁷⁶ But Section 707(b)(17) reads, “an offense described in Section 12022.5 or 12022.53 of the Penal Code.”¹⁷⁷ Section 12022.53 of the Penal Code alone lists 18 additional offenses.¹⁷⁸

A juvenile’s first court appearance depends on their post-arrest custody status.¹⁷⁹ If the juvenile was sent home with a parent or guardian after the DRA screening, the first court appearance is an arraignment.¹⁸⁰ At the arraignment, the

168. See also *Juvenile Detention Risk Assessment*, *supra* note 144, at 79–85 (troubleshooting problems with risk assessment instruments).

169. *Id.* at 81.

170. See *supra* Part I.

171. E.g., *Juvenile Detention Risk Assessment*, *supra* note 144, at 11.

172. *Id.* at 81.

173. CAL. WELF. & INST. CODE § 625.3 (West 2021).

174. *Juvenile Detention Risk Assessment*, *supra* note 144, at 23.

175. CAL. WELF. & INST. CODE § 707(b) (West 2021).

176. *Id.*

177. *Id.*

178. CAL. PENAL CODE § 12022.53 (West 2021).

179. See *Juvenile Justice Hearings*, *supra* note 1 (listing the requirement for a hearing within fifteen days after the arrest if the minor is held in detention or within thirty days if the minor was not held in detention).

180. *Id.*

juvenile receives formal charges, and another court date is set to resolve the case.¹⁸¹ However, the first court appearance will act as both arraignment and detention hearing if the detention officer placed the juvenile in detention after arrest and DRA screening.¹⁸²

In juvenile court, a detention hearing is where a judge decides whether the juvenile should remain in detention until the case gets resolved.¹⁸³ The detention hearing will be the first opportunity for a public defender or another defense attorney to argue for a juvenile's freedom.¹⁸⁴ The decision is completely left to the judge's discretion.¹⁸⁵ A detention hearing is strikingly similar to a bail hearing in California's adult criminal court.¹⁸⁶

B. California Adult Bail

California law allows adult criminal suspects in custody to make a bail payment to obtain release until their first court hearing.¹⁸⁷ Any adult arrested for, or charged with, an offense other than a capital offense has the right to bail in California.¹⁸⁸ California Penal Code Section 1272 specifically states that courts may admit bail to a defendant charged with an offense not punishable by death "as a matter of right."¹⁸⁹ Upon posting bail, the defendant or arrestee must receive release from custody immediately as to the offense on which the bail is posted.¹⁹⁰

California uses a bail schedule system, which is a fixed, uniform amount of money a suspect must pay for an offense charged.¹⁹¹ Under the California Penal Code, the superior court judges in each county must annually revise and adopt a uniform schedule of bail for all bailable offenses.¹⁹² The schedule gets distributed to each judge in the county for use in setting the appropriate bail amount for a given offense.¹⁹³ The schedule must contain a general clause for designated amounts of bail for any offenses not specifically listed on the schedule.¹⁹⁴ The California Penal Code highly regulates the rules of bail and the bail schedule system to best ensure uniformity in setting bail amounts.¹⁹⁵

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Juvenile Justice Hearings*, *supra* note 1.

186. *See id.* (noting that minors can question preparers of evidence and people who gave information, call witnesses, and present evidence at a detention hearing).

187. Curtis E. Karnow, *Setting Bail for Public Safety*, 13 BERKELEY J. CRIM. L. 1, 3 (2008).

188. *Id.* at 9.

189. CAL. PENAL CODE § 1272 (West 2021).

190. Karnow, *supra*, note 185, at 13.

191. *Id.*

192. *Id.*

193. *Id.*

194. CAL. PENAL CODE § 1269b(f) (West 2021).

195. *See* CAL. PENAL CODE § 1269b(c) (West 2021) (requiring "superior court judges in each county to

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For context, the 2021 Los Angeles County felony bail schedule sets the bail for voluntary manslaughter at \$100,000, while involuntary manslaughter is \$25,000.¹⁹⁶ By contrast, the 2021 Los Angeles County infractions and misdemeanors bail schedule sets the bail for all civil code violations at \$250.¹⁹⁷ The idea of the bail schedule system is to increase the amount of bail required as the seriousness of the offense charged increases.¹⁹⁸

When a defendant is charged under one of four classes of offenses, the Penal Code requires a public bail hearing before a defendant can pay bail for their release.¹⁹⁹ The four classes of offenses are: “serious” or “violent” felonies as defined by the Penal Code, knowingly dissuading a witness from giving testimony, domestic battery, and violating a restraining order.²⁰⁰ Judges retain a significant role in setting the bail amount during a bail hearing.²⁰¹ The judge considers several factors during the bail hearing, including the defendant’s history of prior arrests, maximum potential sentence of the charged offense, and potential dangers posed.²⁰² The judge then makes a determination on the defendant’s right to bail, with three possible outcomes.²⁰³ First, the court may choose to release the defendant on payment of bail according to the bail schedule.²⁰⁴ Second, the court may require the defendant to pay an amount that exceeds what is outlined in the bail schedule.²⁰⁵ Or, third, the judge could completely deny bail to the defendant if necessary in light of the evidence.²⁰⁶

However, denying bail to a defendant not charged with a capital offense is difficult because receiving bail is a constitutional matter of right.²⁰⁷ Courts automatically review bail denials on the issue within five days of denial.²⁰⁸ At this hearing, the Penal Code requires that the court set bail if the defendant can simply show that they are not a flight risk or dangerous to others.²⁰⁹ To put this in

prepare, adopt, and annually revise a uniform countywide schedule of bail”).

196. *2021 Felony Bail Schedule*, SUPERIOR CT. OF CAL. CNTY. OF L.A. 5 (2021), <https://www.lacourt.org/division/criminal/pdf/felony.pdf> (on file with the *University of the Pacific Law Review*).

197. *2021 Bail Schedule for Infractions and Misdemeanors*, SUPERIOR CT. OF CAL. CNTY. OF L.A. 1 (2021), <https://www.lacourt.org/division/criminal/pdf/misd.pdf> (on file with the *University of the Pacific Law Review*).

198. *See 2021 Felony Bail Schedule*, *supra* note 196, at 5–11 (setting forth higher bail amounts for the more serious offenses).

199. CAL. PENAL CODE § 1270.1 (West 2021).

200. *Id.*

201. *See Karnow, supra*, note 185, at 1 (noting “the judge determines whether the defendant, presumed innocent, should be kept in custody pending trial or, instead, released on bail”).

202. CAL. PENAL CODE § 1275 (West 2021).

203. Karnow, *supra*, note 185, at 3.

204. *Id.*

205. *Id.*

206. *Id.*

207. *See also id.* at 2 (highlighting the “conundrum created by the existing statutory scheme, which on the one hand generally prevents judges from denying bail”).

208. CAL. PENAL CODE § 1270.2 (West 2021).

209. *See* CAL. PENAL CODE § 1272.1 (West 2021) (requiring a court to release a defendant on bail if they

perspective, California denies bail to only 5% of adult defendants annually.²¹⁰ Meanwhile, California denies bail to 100% of juvenile defendants annually, regardless of the offense charged.²¹¹

C. California Proposition 25

In 2018, the California Legislature attempted to eliminate cash bail; however, it was ultimately unsuccessful.²¹² That August, Governor Jerry Brown signed SB 10, which would have replaced all-cash bail with pretrial detention based on court risk assessments beginning in the fall of 2019.²¹³ These new court risk assessments were eerily similar to the DRA forms from the juvenile court system.²¹⁴ Instead of a bail schedule system, adult defendants upon intake would receive grades according to several factors determining whether bail should be an option and the appropriate amount.²¹⁵ These factors would help identify the level of risk a defendant poses; for example, the degree of violence associated with the crime, criminal history, and risk of fleeing.²¹⁶ Groups that defend the current bail system—and those that advocate for reform, including the American Civil Liberties Union and Human Rights Watch—starkly opposed the newly suggested system.²¹⁷

The opposition against SB 10 was so strong that, in January 2019, groups including the American Bail Coalition gathered the required signatures to prevent the implementing the law until California voters could decide on the matter at the ballot through a proposition.²¹⁸ This prevented the law from going into effect until a majority of California voters approved the change in the November 2020 election, where the question of whether to pass SB 10 appeared to voters as Proposition 25.²¹⁹ The American Civil Liberties Union's official statement on the proposition read:

show by clear and convincing evidence they are not likely to flee and do not pose a danger to the community).

210. Sonya Tafoya, *Pretrial Detention and Jail Capacity in California*, PUB. POL'Y INST. OF CAL. 6 n.14 (July 2015), https://www.ppic.org/wp-content/uploads/rs_archive/pubs/report/R_715STR.pdf (on file with the *University of the Pacific Law Review*).

211. See *Juvenile Detention Risk Assessment*, *supra* note 144, at 7 (describing the nation's policy toward children in delinquency proceedings as "limited due process").

212. *California Proposition 25, Replace Cash Bail with Risk Assessments Referendum (2020)*, BALLOTOPEdia, [https://ballotpedia.org/California_Proposition_25_Replace_Cash_Bail_with_Risk_Assessment_s_Referendum_\(2020\)](https://ballotpedia.org/California_Proposition_25_Replace_Cash_Bail_with_Risk_Assessment_s_Referendum_(2020)) (last visited Jan. 9, 2021) (on file with the *University of the Pacific Law Review*).

213. SB 10, 2018 Leg., 2017–2018 Sess. (Cal. 2018) (enacted).

214. Compare *id.*, with *Juvenile Detention Risk Assessment*, *supra* note 144, at 7.

215. *California Proposition 25*, *supra* note 212.

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

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SB 10 is deeply flawed. Although it would eliminate the predatory commercial bail industry, it would replace it with a risk assessment-based system that perpetuates racial disparities in pretrial detention, and it would grant judges and pretrial service agencies wide discretion to detain broad categories of people.²²⁰

A majority of people voted “no” on Proposition 25 in the November 2020 election.²²¹ The defeat of Proposition 25 officially vetoed SB 10 and left the California bail schedule system in place.²²²

IV. PROPOSAL FOR JUVENILE BAIL IN CALIFORNIA: THE SOLUTION

Juvenile criminal policy has dramatically evolved since its inception in the early 1900s.²²³ In light of this evolution, this Comment argues that California should update the juvenile criminal law to reflect these changes.²²⁴ Granting youth defendants in California’s juvenile court system the same right to bail as adult criminal defendants could be a fairly easy process.²²⁵

Implementing the adult bail model to juveniles would be a simple transition for the delinquency courts and judges to make because of the current systems already in place.²²⁶ Under this proposal, a juvenile would have the same right to bail as an adult defendant in California; this right would remain identical, incorporating future changes to adult bail rights.²²⁷ Legislators should operate with the understanding that all legislation that alters or reforms the bail law for adults will also apply to juveniles.²²⁸ The key is parity for all defendants of a crucial pretrial right regardless of age.²²⁹

Juveniles would have the equal right to bail that adults have.²³⁰ Admittance to bail will be a matter of right for all offenses charged other than those punishable by death.²³¹ Once a juvenile arrestee arrives at juvenile hall for processing, a probation officer or other eligible official would still make the same initial

220. Press Release, ACLU of N. Cal., ACLU of N. Cal. Statement on Prop. 25, (Oct. 1, 2020), <https://www.aclunc.org/news/aclu-northern-california-statement-prop-25> (on file with the *University of the Pacific Law Review*).

221. *California Proposition 25*, *supra* note 212.

222. *Id.*

223. See BAIL FOR JUVENILES IN THE 50 STATES, *supra* note 48, at 7 (noting the “new trend toward treating juveniles alleged to have committed crimes more like adults”).

224. *Infra* Part IV.

225. See Kalnins, *supra*, note 11, at 104.

226. *Id.*

227. Kalnins, *supra*, note 11, at 105–108.

228. *Id.*

229. *Id.*

230. See CAL. PENAL CODE § 1272 (West 2021) (delineating bail rights).

231. See *id.* (granting this right to adults).

decision.²³² Authorities would either release the child into the custody of a parent or guardian until their first court hearing or detain the child in juvenile hall until then.²³³ This is where the DRA scoring process would still be useful.²³⁴ However, the new DRA forms would not contain a clause at the end for mandatory detention.²³⁵

If the officer decides—through use of the DRA score—the child should remain in detention rather than go straight home then, as a matter of right, the juvenile will qualify for bail.²³⁶ Like adult defendants, juveniles would have the option to pay bail for their release from custody until their first court appearance.²³⁷

Like adult bail, juvenile bail would operate under a bail schedule system, and certain offenses charged would require a bail hearing.²³⁸ These offenses would be the “serious offenses” listed under WIC Section 707(b), which previously required mandatory detention until the first court appearance.²³⁹ The 707(b) offenses perfectly mirror the serious or violent felonies that require a bail hearing for adult defendants.²⁴⁰ Furthermore, the state legislature has already identified 707(b) offenses as rendering a juvenile unfit for release.²⁴¹ Juvenile bail hearings would replace detention hearings, with the defendant arguing for his freedom in the same manner he would have previously.²⁴² So, instead of 707(b) offenses equating to automatic mandatory detention until the first court appearance, these offenses would call for a mandatory bail hearing, same as adults.²⁴³

As for the bail schedule system, delinquency court judges in each county would annually revise and adopt a uniform schedule of bail for allailable offenses.²⁴⁴ Each delinquency court judge in the county would receive this schedule to set the appropriate bail amount for a given offense.²⁴⁵ If the offense charged is a 707(b) offense, the juvenile defendant would need to receive a bail hearing before having an opportunity to pay bail for his release.²⁴⁶

232. See generally *Screenings and Assessments*, *supra* note 145, at 1.

233. See *id.* (discussing risk assessment instruments).

234. See Kalnins, *supra*, note 11, at 105.

235. *Contra Juvenile Detention Risk Assessment*, *supra* note 144, at 7 (reproducing Santa Clara County’s instrument with the mandatory detention item).

236. See CAL. PENAL CODE § 1272 (West 2021) (granting rights to adults that would be granted to children under this proposal).

237. *Id.*

238. See Karnow, *supra*, note 185, at 13 (describing process and procedures for setting bail for adults).

239. CAL. WELF. & INST. CODE § 707(b) (West 2021).

240. Compare CAL. WELF. & INST. CODE § 707(b) (West 2021), with CAL. WELF. & INST. CODE § 625.3 (West 2021).

241. CAL. WELF. & INST. CODE § 707(b) (West 2021).

242. See Kalnins, *supra*, note 11, at 104 (illuminating how the court can conduct a bail hearing for the juvenile where the detention hearing usually takes place).

243. Compare CAL. WELF. & INST. CODE § 707(b) (West 2021), with CAL. WELF. & INST. CODE § 625.3 (West 2021).

244. See CAL. PENAL CODE § 1269b(f) (West 2021) (codifying this system for adults).

245. *Id.*

246. Compare CAL. WELF. & INST. CODE § 707(b) (West 2021), with CAL. CONST. art. I, § 12.

Thus, a bail system is largely already set in place.²⁴⁷ The crucial difference is, under this revised system, more children will sleep in their own beds at night.²⁴⁸ Delinquency court judges would have more options other than either detention until the first court appearance or sending juveniles home with their parents with no further punishment.²⁴⁹ Both are polarizing options: strict punishment or no punishment.²⁵⁰ This proposal presents an option for an in-between category, and delinquency judges would not feel obligated to detain a juvenile defendant because free release is too lenient.²⁵¹

Since Prop 21's enactment in 2000, some aspects of the law—but not all—were remedied, and what remains is a dysfunctional juvenile court system.²⁵² The next step is deleting WIC Section 625.3 and implementing the adult bail system to the juvenile court system.²⁵³ California fails to afford minors fundamental legal protection by denying bail to juveniles, but not adults.²⁵⁴ Courts place all juveniles defendants in the same position as adults accused of capital offenses by categorically denying them bail.²⁵⁵ The logic simply does not add up, and the often-forgotten juvenile court system requires an update.²⁵⁶ The youth of California deserve an update; they deserve better.²⁵⁷

V. CONCLUSION

WIC Section 625.3 is an immensely powerful and, in some cases, life-changing statute that completely compromises the integrity of juvenile DRA forms in California.²⁵⁸ The statutorily prescribed exception clause at the end of every DRA form requiring mandatory detention for over thirty offenses defeats the entire purpose of assessing each child.²⁵⁹ The Juvenile Detention Alternatives Initiative (“JDAI”)—a children’s rights organization devoted to researching, modifying, and distributing DRA forms nationwide—expressly took exception to California’s

247. Kalnins, *supra*, note 11, at 104.

248. *See id.* at 105 (explaining the simple and logical potential positive effects of granting bail to juveniles as well as adults).

249. *See Juvenile Justice Hearings, supra* note 1 (laying out a system that leaves only these options).

250. *Id.*

251. *See* Kalnins, *supra*, note 11, at 104 (arguing that the positive aspects of the juvenile process would remain undisturbed).

252. *See* Sernoffsky & Palomino, *supra* note 19 (providing a timeline of legislation that changed juvenile court system).

253. *See* CAL.WELF. & INST. CODE § 625.3 (West 2021) (requiring detention of a minor for the use of a firearm in the commission of a felony).

254. Kalnins, *supra*, note 11, at 106 (arguing that denial of bail is a violation of equal protection principles).

255. *Id.*

256. *Id.*

257. *Id.*

258. *Juvenile Detention Risk Assessment, supra* note 144, at 22.

259. *See id.* at 16 (explaining how mandatory detention cases bypass risk scoring).

screening system.²⁶⁰ JDAI's 2005 nationwide report on juvenile DRA forms singled out California as an example of what not to do.²⁶¹ JDAI especially took issue with the mandatory detention exception on all juvenile DRA forms, Section 625.3.²⁶²

Santa Clara County, yielding a 75% detention rate, was "high" according to the JDAI.²⁶³ This means three out of four child arrests in Santa Clara County resulted in detention until the first court appearance.²⁶⁴ The JDAI commented:

Though there is no national guideline or benchmark for what is an acceptable total detention rate, this result suggests a need to identify the factors (such as high override rates) that may be contributing to this rather high overall detention rate.²⁶⁵

Since its inception, the goal of juvenile justice in America was to help—rather than punish—the child, which justifies an entirely separate court system.²⁶⁶ The rationale behind this separation was that many practices of the adult criminal court system were detrimental to the goals of juvenile justice.²⁶⁷ Releasing juveniles into parent or guardian custody until trial was more appropriate than the "punishment" of requiring payment for freedom (i.e., bail).²⁶⁸ However, over time, the overwhelming trend in juvenile justice was to treat juveniles committing crimes more like adults.²⁶⁹ The result is a juvenile court system in California that is far more punitive in the pretrial stage than the adult court system.²⁷⁰

While juvenile courts hold children increasingly accountable for their actions and treat them like adult criminals, courts and lawmakers both apply adult procedural rights sparingly and disproportionately to children.²⁷¹ Today in California, an adult accused of a non-capital crime generally will have far more pretrial rights and freedoms than a juvenile accused of the same crime.²⁷² This disparity in rights for adults and children in California criminal law is a sad truth, one seventeen-year-old Kevin can tell you, through his detention cell bars, is all

260. *Id.* at 55.

261. *Id.* at 81.

262. *Id.* at 55.

263. *Juvenile Detention Risk Assessment*, *supra* note 144, at 55.

264. *Id.*

265. *Id.*

266. *See* Kalnins, *supra*, note 11, at 105–107 (reaffirming that the role of juvenile justice was to figure out what could be done to save the child).

267. *See id.* at 105–109 (finding that criminal procedures were inapplicable to juvenile justice because the focus was to save the child).

268. *Id.*

269. BAIL FOR JUVENILES IN THE 50 STATES, *supra* note 48, at 2.

270. *See id.* (stating that the legislature may want to reconsider having bail for juveniles because they are being alleged to have committed crimes like adults).

271. *See* Kalnins, *supra*, note 11, at 100 (framing the disparity as a violation of equal protection principles).

272. Compare CAL. WELF. & INST. CODE § 707(b) (West 1975), with CAL. WELF. & INST. CODE § 625.3 (West 2000).

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too common.²⁷³ California must grant minors in the juvenile court system the same right to bail as adults in the criminal court system.²⁷⁴ The superpredators that never were still need bailing out.²⁷⁵

273. *See supra* Part I.

274. *See* Kalnins, *supra*, note 11, at 105–107 (arguing that courts violate a juveniles’ equal protection rights by denying bail).

275. *See* Boghani, *supra* note 100 (reviewing data since the “superpredator” theory caused a crack down on juvenile crime).

