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Chapter 919: Audrie's Law Dramatically Increases the Punishment for Rape of a Defenseless Victim

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Chapter 919: Audrie’s Law Dramatically Increases the Punishment for Rape of a Defenseless Victim

Andrew Pinasco

Code Sections Affected

Welfare and Institutions Code §§ 676, 730, 790 (amended).
SB 838 (Beall); 2014 STAT. Ch. 919.

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I. INTRODUCTION

It was Labor Day weekend and a popular high school girl’s parents were going to be out of town.¹ The absence of parental supervision provided the ideal venue for reckless teenage behavior and underage alcohol use.² Late that evening—unconscious from excessive alcohol consumption—Audrie Pott lay defenseless as three boys defaced her body with pens and penetrated her with their fingers while taking photographs with their phones.³ The boys shared the photographs with classmates, rumors were spread, and a seemingly permanent

1. See Nina Burleigh, *Sexting, Shame, and Suicide*, ROLLING STONE (Sept. 17, 2013), available at <http://www.rollingstone.com/culture/news/sexting-shame-and-suicide-20130917> (on file with the *McGeorge Law Review*) (detailing the events that took place in Saratoga, California leading up to the suicide of Audrie Pott).

2. *Id.*

3. *Id.*

digital record of Audrie's sexual assault was exposed.⁴ Nine days later, Audrie Pott hung herself.⁵

The three boys admitted to the felony sex crimes.⁶ However, two of the three received just 30-day sentences and the other was sentenced to 45 days.⁷ Since these convictions, two of the three juveniles have reoffended, committing similar crimes.⁸ The boys avoided harsher penalties—up to ten years in prison—under a California statute permitting the State to try minors over 14 as adults for *forcible* sexual assaults only.⁹ Sexual assaults against “defenseless victims” do not fall under the purview of that statute.¹⁰ The law's different treatment of forcible rape and sex crimes against defenseless victims was the impetus for Chapter 919.¹¹ However, Chapter 919 fails to resolve this disparity meaningfully and instead, when minors are accused of a sex crime against a defenseless victim, merely grants the public greater access to juvenile proceedings, requires these minors to attend sex offender treatment programs, and bars them from receiving a deferred entry of judgment.¹²

4. See Jessica Calefati, *Audrie Pott Case: Sex Assault Bill Named for Saratoga Teen Moves Forward*, SAN JOSE MERCURY NEWS (Apr. 29, 2014), available at http://www.mercurynews.com/california/ci_25660180/sex-assault-bill-named-saratoga-teen-clears-state (on file with the *McGeorge Law Review*) (reporting that Audrie Pott relived the sexual assault over and over through digital images of the crime that circulated amongst the social circle).

5. Burleigh, *supra* note 1.

6. See Khalida Sarwari, *Criminal Trial Result Brings Some Closure for the Pott Family*, SAN JOSE MERCURY NEWS (Jan. 29, 2014), available at http://www.mercurynews.com/saratoga/ci_25022538/criminal-trial-result-brings-some-closure-pott-family (on file with the *McGeorge Law Review*) (reporting that the three accused teenagers each plead guilty to various felonies).

7. *Id.*

8. Enya Kuo, *Proposed 'Audrie's Law' Ignites New Debate Over Juvenile Justice Sentences*, SAN JOSE MERCURY NEWS (June 26, 2014), available at http://www.mercurynews.com/ci_26040672/proposed-audries-law-ignites-new-debate-over-juvenile (on file with the *McGeorge Law Review*) (reporting that two of the three boys involved in the sexual assault of Audrie Pott have reoffended since being adjudicated).

9. See CAL. WELF. & INST. CODE § 707 (West 2014) (enumerating serious violent crimes that enable the court to try juvenile offenders as adults, which does not include sex crimes against defenseless victims); Julia Prodis Sulek, *Audrie Pott: Boys Admit Sexually Assaulting Saratoga Teen Who Committed Suicide*, SAN JOSE MERCURY NEWS (Jan. 14, 2014), available at http://www.mercurynews.com/crime-courts/ci_24913018/audrie-pott-boys-admit-sexually-assaulting-saratoga-teen (on file with the *McGeorge Law Review*).

10. Burleigh, *supra* note 1; WELF. & INST. § 676(a)(4)–(6) (amended by Chapter 919) (A defenseless victim” is a “person is prevented from resisting due to being rendered unconscious by any intoxicating, anesthetizing, or controlled substance, or when the victim is at the time incapable, because of a disability, of giving consent, and this is known or reasonably should be known to the person committing the offense.”).

11. See Calefati, *supra* note 4 (indicating the outrage that compelled supporters of the law to seek equal treatment for sexual assault victims regardless of whether the victim was unconscious or not).

12. See WELF. & INST. § 707 (enumerating serious violent crimes that provide the petitioner and court the opportunity to require the offending juvenile be tried in adult criminal court, which carries severe punishments rather than a rehabilitative probation available in juvenile court, but does not, even after Chapter 919, include sex crimes against defenseless victims); David Finkelhor, Richard Ormrod, & Mark Chaffin, *Juveniles who Commit Sex Offenses Against Minors*, JUVENILE JUSTICE BULLETIN (Dec. 2009), at 1, 4, available at <https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf> (on file with the *McGeorge Law Review*) (indicating the difference between ‘forcible’ and ‘not forcible’ in the context of sex offenses).

II. LEGAL BACKGROUND

California law treats juveniles fundamentally differently than adults.¹³ Unlike the adult criminal justice system, California's juvenile justice system focuses on the offender and rehabilitation, not the offense and punishment.¹⁴ However, when minors commit multiple felonies or certain violent crimes even the juvenile justice system favors punitive measures over rehabilitation.¹⁵

Upon committing a crime, a minor becomes a ward of the court and subject to its jurisdiction.¹⁶ A court then maintains broad control over the proceedings, including the determination of the confidentiality of the proceedings and the resolution of the matter.¹⁷ While a juvenile adjudication is not supposed to hinder the juvenile later in life,¹⁸ there are circumstances where a sustained petition¹⁹ can haunt the juvenile into adulthood.²⁰

Building on legislation that allowed minors as young as 14 to be tried as adults in some cases,²¹ Proposition 21 lowered the eligible age from 16 to 14 for a variety of criminal penalty enhancers.²² Proposition 21 promulgated a punitive approach to violent juvenile crime by: (1) requiring more juvenile offenders to be tried in adult courts; (2) mandating that certain juvenile offenders be incarcerated in local or state correctional facilities; and (3) expanding the list of violent and serious offenses that qualify for longer sentences.²³ Proposition 21 also continued

13. See *How Does California's Juvenile Justice System Work?*, LEGISLATIVE ANALYST'S OFFICE, May 1995, at 1, available at http://www.lao.ca.gov/1995/050195_juv_crime/kkpart5.aspx (on file with the *McGeorge Law Review*) (indicating that California's adult system is premised on punishment while California's juvenile system is premised on treatment and rehabilitation).

14. See WELF. & INST. § 202 (West 2008) (describing the juvenile justice system's goal of rehabilitation "appropriate for their circumstances."); HOWARD N. SNYDER & MELISSA SICKMUND, NAT'L CTR. FOR JUVENILE JUSTICE, 86 (1999), available at <https://www.ncjrs.gov/html/ojjdp/nationalreport99/chapter4.pdf> (on file with the *McGeorge Law Review*) (explaining the history and philosophy of the juvenile justice system).

15. See LEGISLATIVE ANALYST'S OFFICE, PROPOSITION 21, 1 (March 21, 2000), available at http://www.lao.ca.gov/ballot/2000/21_03_2000.html.

16. See WELF. & INST. § 601.

17. See *id.* §§ 676(a), 730(a)–(b), 790 (outlining the court's jurisdiction over the minor with regard to confidentiality of the proceedings, the types of rehabilitation of the ward, and determination if a minor is eligible for deferred entry of judgment).

18. See *id.* § 203 ("An order adjudging a minor to be a ward of the juvenile court shall not be deemed a conviction of a crime for any purpose, nor shall a proceeding in the juvenile court be deemed a criminal proceeding.").

19. *Id.* § 726(d).

20. See PENAL § 290.008(a)–(c) (defining the offenses juveniles are required to register as sex offenders upon release from the California Department of Corrections and Rehabilitation, Division of Juvenile Justice).

21. JENNIFER LYNN-WHALEY & ANDREA RUSSI, U. OF CAL., BERKELEY L. SCH., IMPROVING JUVENILE JUSTICE POLICY IN CALIFORNIA: A CLOSER LOOK AT TRANSFER LAWS' IMPACT ON YOUNG MEN & BOYS OF COLOR 3 (2011), available at https://www.law.berkeley.edu/files/BMOC_Brief_Juvenile_Justice_CA_final.pdf (on file with the *McGeorge Law Review*).

22. Gang Violence and Juvenile Crime Prevention Act of 1998, Proposition 21 §§ 18, 26 (Cal. 2000).

23. *Id.*

the current practice of only lifting the confidentiality of juvenile proceedings when certain enumerated offenses were alleged.²⁴

Absent a request from the accused minor, juvenile court hearings are closed to the public.²⁵ However, hearings involving allegations of a murder, armed robbery, torture, and some kidnappings, burglaries, arsons, and assaults are open to the public.²⁶ While hearings regarding forceful and violent sex crimes are also largely open to the public, the court can protect the victim's testimony from the public at the request of the district attorney or if the victim was under 16.²⁷

Juvenile courts have retained the ability to determine what reasonable conditions are necessary to help reform and rehabilitate juveniles, including those juveniles who have committed sex crimes.²⁸ This discretion enables juvenile courts to send minors to various educational and treatment programs, including youth ranches and forestry camps.²⁹

Deferred entry of judgment (DEJ) provides a way for minors to admit to the charged offense and avoid the entry of an adverse judgment on the petition, providing they successfully complete the prescribed probation.³⁰ While DEJ is unavailable to minors accused of forceful sex crimes and other violent crimes, it was available to sex crimes committed against defenseless victims.³¹

III. CHAPTER 919

Chapter 919 amends existing law to impose more significant consequences on juveniles who commit sex crimes against "defenseless victims."³² First, Chapter 919 enables the public to access juvenile proceedings involving sex crimes against defenseless victims, while maintaining the prior safeguards to protect victim anonymity.³³ Second, Chapter 919 requires mandatory sex offender treatment for minors adjudicated of sex crimes, including sex crimes against

24. *Id.* § 31.

25. WELF. & INST. § 676(a) (West 2008).

26. *Id.*

27. *Id.* § 676(b) ("[M]embers of the public shall not be admitted to the hearing in either of the following instances: (1) Upon a motion for a closed hearing by the district attorney, who shall make the motion if so requested by the victim; (2) During the victim's testimony, if, at the time of the offense the victim was under 16 years of age.")

28. *See Id.* § 730(a)–(b) (describing the autonomy given to the juvenile court to prescribe rehabilitative probation to the juvenile).

29. *Id.* § 730(a)–(c).

30. *See id.* §§ 790–795 (demonstrating the eligibility, procedure, terms and conditions, and official oversight regarding deferred entry of judgment).

31. *Id.* § 790(a)(2).

32. *See id.* §§ 676(a)(4)–(6), 730, 790 (amended by Chapter 919).

33. *Id.* § 676 (amended by Chapter 919).

defenseless victims.³⁴ Third, Chapter 919 removes the opportunity for minors accused of sex crimes against defenseless victims to receive DEJ.³⁵

IV. ANALYSIS

Sexual assault by juveniles is a serious problem, accounting for more than one-third of all sexual offenses against minors.³⁶ However, Chapter 919's approach largely overrides the juvenile justice system's goal to rehabilitate the offending juvenile and instead provides the victim of the sex crime reassurance that the proceedings against the accused will be subjected to greater public scrutiny.³⁷ While intended to increase the punishment for sex crimes against defenseless victims,³⁸ Chapter 919 presents a host unintended consequences.³⁹

Part A of this section discusses how the elimination of the possibility for DEJ and making the hearings public fail to serve the rehabilitative goals of the juvenile justice system and force victims to relive their trauma.⁴⁰ Part B describes the potential legal challenges that may stem from public access to juvenile court proceedings for sex crimes against defenseless victims.⁴¹ Part C discusses Chapter 919's rehabilitative goal as it is furthered by mandatory sex offender treatment for minors adjudicated of sex crimes.⁴²

A. *Chapter 919 Harms Both Minors Accused of Rape of a Defenseless Victim and the Victim Himself or Herself*

Chapter 919 forecloses DEJ to minors charged with sex crimes against defenseless victims.⁴³ This provides victims with assurances that those accused

34. *See id.* § 730(d) (amended by Chapter 919).

35. *See id.* § 790(a)(7) (as amended by Chapter 919).

36. Finkelhor, *supra* note 12, at 3 (indicating the statistics relating to the substantial portion of sex offenses committed by juveniles).

37. *See* WELF. & INST. § 202 (outlining the rehabilitative objective of the juvenile justice system); *id.* at § 676 (amended by Chapter 919) (allowing public access to juvenile proceedings for sex crimes against defenseless victims); *id.* at § 790 (amended by Chapter 919) (denying deferred entry judgment to the accused which requires the juvenile delinquency process to proceed through the formal trial process).

38. *See* ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 838, at 4 (June 17, 2014) (stating that Audrie's Law would create "stiffer penalties for juveniles who sexually assault a developmentally disabled or unconscious victim").

39. *See* discussion *infra* Part IV.A–C.

40. *See infra* Section IV Part A.

41. *See infra* Section IV Part B.

42. *See infra* Section IV Part C.

43. *Id.* § 790 (as amended by Chapter 919).

minors may face greater public scrutiny,⁴⁴ straying from the rehabilitative roots of the juvenile justice system.⁴⁵

Under Chapter 919, the option to avoid potentially lengthy proceedings by allowing the juvenile to admit responsibility for committing a sex crime against a defenseless victim and willingly accept court ordered probation.⁴⁶ Instead, the adjudication will now proceed when the prosecutor or probation department files a petition indicating the accused juvenile committed a sex crime against a defenseless victim.⁴⁷ The matter then advances to a jurisdictional hearing,⁴⁸ when the judge may decide there is potentially enough evidence to prove the juvenile committed the crime, the adjudication moves to the disposition hearing.⁴⁹ These hearings, under Chapter 919, will all be open to the public.⁵⁰ Normally the option for DEJ is offered to qualifying juveniles before or just after the attorney files the petition,⁵¹ however, there is no option for DEJ under Chapter 919 for sex crimes committed against defenseless victims.⁵²

Absent DEJ, the time from arrest to a court appearance can be a matter days if the minor is currently in custody, or weeks if not.⁵³ Attorneys may continue hearings for several weeks while attempting to negotiate a favorable resolution.⁵⁴ Not only does this extend the amount of time the victim must endure the

44. *See id.* (indicating that DEJ will not be available and the matter will proceed to trial absent a plea); CAL. R. CT. 5.534 (West Supp. 2014) (indicating the general provisions of the juvenile proceedings including control, conduct, and burden of proof requirements).

45. *See* WELF. & INST. § 202 (describing the juvenile justice system's goal of rehabilitation "appropriate for their circumstances"); SNYDER, *supra* note 14, at 86 (explaining the history and philosophy of the juvenile justice system).

46. *See* WELF. & INST. § 790 (amended by Chapter 919) (denying DEJ for juveniles accused of sex crimes against defenseless victims).

47. *See id.* § 630 (West 2008) (establishing the procedure associated with filing a petition against the juvenile, notice of the hearing, and the privileges and rights of the juvenile); CALIFORNIA COURTS, THE JUD. BRANCH OF CAL., GUIDE TO JUVENILE COURT, *available at* <http://www.courts.ca.gov/1216.htm?print=1> (defining instances in which juvenile petitions are filed).

48. *See* CALIFORNIA COURTS, *supra* note 47 (explaining the procedure California courts follow after a petition is filed, in that a jurisdiction hearing is where a judge decides whether or not the juvenile is guilty).

49. *See id.* (explaining the options available to the judge for the disposition hearing).

50. WELF. & INST. § 676(b) (amended by Chapter 919).

51. *See* CAL. R. CT. 5.800 (West Supp. 2014) (defining the procedure followed by the court for making juveniles eligible for deferred entry of judgment).

52. *See* WELF. & INST. § 790 (amended by Chapter 919) (forbidding deferred entry of judgment for juveniles that commit sex crimes against defenseless victims).

53. *See id.* § 657(a) (West 2008) (stating that upon filing a petition, the court shall set the hearing within 30 days unless the minor is in custody, at which time the hearing must be within 15 days of the detention); JUVENILE DEFENDER CTR., CALIFORNIA JUVENILE COURT PROCESS FOR DELINQUENCY CASES 3 (2009), *available at* <http://www.pjdc.org/wp/wp-content/uploads/2009/06/Fact-Sheet-for-Upload-Juvenile-Court-Process.pdf> [hereinafter COURT PROCESS FOR DELINQUENCY CASES] (on file with the *McGeorge Law Review*) (pointing out that juvenile justice cases may occur within five or six weeks of initial contact with law enforcement, but in practice may take longer due to continuances or delays in placement).

54. *See* COURT PROCESS FOR DELINQUENCY CASES, *supra* note 53, at 2 (explaining the options available to the accused, including denial and motions for appointment of experts, all of which tack time onto the proceeding).

proceedings, but it also lengthens the time between the minor's offending behavior and the consequences for it.⁵⁵ Rather than adhering to the principles of rehabilitation underlying the current juvenile justice system,⁵⁶ Chapter 919 punishes minors accused of sex crimes against defenseless victims by ensuring they experience greater publicity than they would under prior law.⁵⁷ Furthermore, this extends the period for which victims must wait for a resolution and increases the likelihood that they will need to testify, expounding the trauma of the incident.⁵⁸

DEJ hold juvenile offenders accountable and is only offered to statutorily eligible juveniles whom the court determines will benefit from the opportunity.⁵⁹ Before the juvenile is given the opportunity for DEJ, a prosecutor decides whether the minor is statutorily eligible and then requires him to admit to the offense and demonstrate a willingness to cooperate with the probation.⁶⁰ When the accused meets the statutory requirements for DEJ, the court decides whether or not he or she will receive the benefits of DEJ, taking into account his or her "age, maturity, education, family relationships, level of motivation, and treatment history."⁶¹ Juveniles cannot contest any allegation in the petition in order to remain eligible for DEJ.⁶² A swift process, when a minor can make immediate admissions and there are no potential continuances, benefits his or her rehabilitation.⁶³ Additionally, a speedy process assists victims who want

55. See Megan Kurlychek, Patricia Torbet & Melanie Bozynski, *Focus on Accountability: Best Practices for Juvenile Court and Probation*, JAIBG BULLETIN, Aug. 1999, at 1 (identifying swift application of consequences to reduce further law violations).

56. See Jennifer Taylor, Note, *California's Proposition 21: A Case of Juvenile Injustice*, S. CAL. L. REV. 983, 986 (2002) (describing the underlying rehabilitative purpose of the juvenile justice system in California).

57. See WELF. & INST. § 790 (amended by Chapter 919) (withholding availability of deferred entry of judgment from juveniles accused of sex crimes against defenseless victims); see also *id.* § 676 (amended by Chapter 919) (allowing for juvenile proceedings regarding sex crimes against defenseless victims to be opened to the public).

58. SENATE RULES COMMITTEE, UNFINISHED BUSINESS at 5 (Aug. 8, 2014) (argument in opposition).

59. See WELF. & INST. §§ 790, 791(6)(b) (outlining the eligibility requirements for juveniles to be offered DEJ as well as the accountability requirements that accompany the opportunity).

60. *Id.*

61. *Id.* § 791 (providing for an investigation by the probation department to determine whether the minor "is a person who would be benefitted by education, treatment, or rehabilitation"); see CAL. R. CT. 5.800 (West Supp. 2014) (defining the procedure followed by the court for instances of juveniles eligible for deferred entry of judgment); *Martha C. v. Sup. Ct.*, 108 Cal. App. 4th 556, 561, 133 Cal. Rptr. 2d 544, 547 (4th Dist. 2003) (finding it important for the trial court to look at whether or not the juvenile could benefit from or be rehabilitated by deferred entry of judgment).

62. See *In re T.J.*, 185 Cal. App. 4th 1504, 1511, 111 Cal. Rptr. 3d 298, 301 (3d Dist. 2010) ("If the minor elects to contest some allegations but not others, or to contest an element of an allegation but not others, the statutory scheme does not entitle the minor to DEJ.").

63. See David E. Arrendondo, M.D., *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14.1 STAN. L. & POL'Y REV. 13, 16 (2003) ("From a child development perspective, the predictability and consistency . . . is often what is most important. If a child learns that his social environment will respond inconsistently, he is much more likely to continue a behavior in the hopes that he will 'get away with it this time.'").

resolution and closure, rather than ongoing court hearings that draw out the process.⁶⁴

DEJ also requires buy-in from the juvenile, his or her family, the prosecutor, the defense attorney, the probation officer, and the court.⁶⁵ DEJ increases the juvenile's chances of success through collaboration of the juvenile's family or guardians and court representatives in the rehabilitation effort.⁶⁶ However, the prosecutor or probation officer has the ultimate discretion whether or not the juvenile is "performing satisfactorily," further motivating the juvenile to complete the probation successfully so the court does not lift the deferral and enter judgment for the crime committed.⁶⁷

The adverse effect a juvenile criminal record has on future employment, eligibility for state licenses, qualifications for loans, and housing applications may be eliminated once a minor's record becomes sealed if the requirements of the DEJ and other requirements are met.⁶⁸ When the court grants a petition to seal a juvenile's criminal record, it closes the file so that the documents containing any convictions essentially cease to exist,⁶⁹ thus alleviating further stigmatization of a former juvenile offender.⁷⁰

The act of sealing a juvenile's record for sex crimes against defenseless victims is made possible because Chapter 919 failed to include sex crimes against defenseless victims among the serious crimes for which a minor can be tried as

64. See Mark S. Umbreit, *Restorative Justice Through Victim-Offender Mediation: A Multi-Site Assessment*, 1 W. CRIMINOLOGY REV. 1, 3 (1998), available at <http://wcr.sonoma.edu/v1n1/umbreit.html> (on file with the *McGeorge Law Review*) (stating that absent an offender's accountability, victims generally feel twice victimized, first by the offender, and second by the criminal justice system).

65. See R. CT. 5.800 (defining the procedure followed by the court for instances of juveniles eligible for deferred entry of judgment); *Martha C.*, 108 Cal. App. 4th at 561, 133 Cal. Rptr. 2d at 547 (finding it important for the trial court to look at whether or not the juvenile could benefit from or be rehabilitated by deferred entry of judgment); see also WELF. & INST. § 791 (providing for an investigation by the probation department to determine whether the minor "is a person who would be benefitted by education, treatment, or rehabilitation").

66. See CAL. R. CT. 5.800 (requiring the court to conduct a progress hearing to determine whether or not the juvenile has satisfactorily completed the probation); U.S. DEPT. OF JUSTICE, CTR. FOR SEX OFFENDER MGMT., UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR: EMERGING RESEARCH, TREATMENT APPROACHES AND MANAGEMENT PRACTICES 6, (Dec. 1999) [hereinafter UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR] (indicating a correlation between willingness to participate in deferred entry of judgment and successful completion of the ordered probation).

67. See WELF. & INST. § 793(a) (stating that the court "shall lift the deferred entry of judgment and schedule a dispositional hearing").

68. See *id.* § 781 (setting forth that a juvenile that "has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court" may have his criminal record sealed, effectively shielding its contents to virtually anyone wishing to access it).

69. *In re James H.*, 154 Cal. App. 4th 1078, 1088, 65 Cal. Rptr. 3d 410 (1st Dist. 2007) (holding that a juvenile court exceeded its authority when it provided the parole board with copies of records that it had previously ordered sealed, furthering the notion that once juvenile records are sealed, they are virtually unreachable).

70. See Taylor, *supra* note 56, at 985 (stating that the purpose of the juvenile justice system is to rehabilitate the juvenile by providing individualized assessments to prevent further delinquent behavior through educational, vocational, social, and emotional skills).

an adult.⁷¹ The omission signifies that sex crimes against defenseless victims are not yet considered to be among the most serious types of offenses that require adult criminal jurisdiction.⁷² This distinction is important because a juvenile who has been convicted of an offense that was statutorily required to be within adult criminal court jurisdiction is ineligible for both DEJ as well as having their juvenile record sealed.⁷³ Chapter 919 merely takes the rehabilitative option of DEJ away and increases public access to the proceedings, while leaving open the opportunity to seal the juvenile's record.⁷⁴

While acknowledging that sex crimes against defenseless victims are serious, the law appears to treat these as less serious than forcible sex crimes.⁷⁵ Because defenseless victims are incapacitated, legally the perpetrator has not used force, keeping the offending juvenile beyond the reach of a waiver of juvenile jurisdiction.⁷⁶ This enables offending juveniles to continue to avoid the punitive punishments available through the adult criminal system for sex crimes against defenseless victims;⁷⁷ however, under Chapter 919 both the accused and the victim are subjected to the public and endure a longer process, much like in an adult criminal proceeding.⁷⁸

71. See S.B. 838, 2013–2014 Sess. (Cal. 2014) (demonstrating that sex crimes against defenseless victims do not allow the juvenile court to waive jurisdiction to allow jurisdiction of the adult criminal court, rather it merely allows public access to the proceedings, takes away deferred entry of judgment, and forces sex offender treatment).

72. See WELF. & INST. § 707(b) (including offenses of murder, arson, robbery, rape with force, and kidnapping).

73. See *id.* § 781(a) (noting that offenses enumerated in subsection (b) of section 707 of the Welfare and Institutions Code are not eligible for sealing).

74. See *id.* § 790 (as amended by Chapter 919) (denying eligibility for DEJ for juveniles accused of sex crimes against defenseless victims); *id.* § 781 (setting forth that a juvenile that “has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court” may have his criminal record sealed, effectively shielding its contents to virtually anyone wishing to access it).

75. Compare *id.* § 676(a)(4)–(6), (b) (amended by Chapter 919) (equating a sex crime against a defenseless victim the same as a forcible sex crime for the purposes of the confidentiality of the hearing), and *id.* § 730 (amended by Chapter 919) (equating a sex crime against a defenseless victim the same as a forcible sex crime for the purposes of mandatory sex offender treatment), with *id.* § 602 (requiring a sex crime be committed using force to try the minor as an adult).

76. See *id.* (defining violent sex crimes which the juvenile court may waive its jurisdiction as crimes committed with “force”).

77. See *id.* (demonstrating that sex crimes against defenseless victims are not included in the crimes that make the juvenile eligible for adult criminal court jurisdiction); PENAL § 264 (defining the punishments for forcible rape which range from seven years to thirteen years of confinement).

78. See generally COURT PROCESS FOR DELINQUENCY CASES, *supra* note 53, at 3–4 (describing the juvenile delinquency hearing procedure which includes appointment of an attorney, presentation of evidence, and reading of the court's disposition); *How Criminal Cases Work*, CAL. CTS., <http://www.courts.ca.gov/1069.htm?print=1> (last visited Aug. 18, 2014) (on file with the *McGeorge Law Review*) (describing the adult criminal court procedure which includes appointment of an attorney, presentation of evidence, and reading of the verdict).

DEJ gives some first-time felony offenders the opportunity to have their cases dealt with quickly,⁷⁹ providing accountability and rehabilitation without the consequences of a criminal record.⁸⁰ Chapter 919 abolishes this rehabilitative tool for juveniles adjudicated of sex crimes against defenseless victims and increases the publicity that the accused and victims may face.⁸¹

B. Constitutional Issues with Public Juvenile Proceedings

Chapter 919 provides the public access to juvenile proceedings for sex crimes against defenseless victims, which may raise constitutional issues.⁸² The U.S. Supreme Court emphasized that a juvenile's loss of liberty requires due process.⁸³ Constitutional guarantees of due process and equal protection apply in juvenile delinquency hearings.⁸⁴ However, juveniles are not afforded all of the rights available to adults in criminal cases.⁸⁵ Courts conduct juvenile proceedings with the underlying objectives of guiding and rehabilitating the child and thereby protecting society, not applying criminal punishment to the child.⁸⁶ Because juvenile proceedings are civil in nature and not criminal, the juvenile can only claim the fundamental due process right of fair treatment.⁸⁷

The public also has a first amendment right to attend criminal trials.⁸⁸ This right is qualified and a showing of a compelling state interest may overcome it.⁸⁹

79. *See id.* § 790 (excluding minors previously declared ward of the court for commission of felony offense and specific violent felonies, thus only available for first time juvenile felons).

80. *See id.* § 793(c) (indicating that upon successful completion of the probation "the arrest upon which the judgment was deferred shall be deemed never to have occurred").

81. *See id.* § 676 (as amended by Chapter 919) (denying deferred entry of judgment for juveniles accused of sex crimes against defenseless victims).

82. *San Bernardino Cnty. Dept. of Pub. Soc. Servs. v. Sup. Ct.*, 232 Cal. App. 3d 188, 195 n.4 (4th Dist. 1991) ("If public access to juvenile court proceedings is a constitutionally protected right, the juvenile court . . . must comply with the United States Supreme Court decisions which hold that the court cannot exclude the public absent a showing of overriding compelling state interest and that any order of exclusion would be required to be narrowly tailored to serve that interest.").

83. *See In re Gault* 387 U.S. 1, 78 (1967) (holding that juveniles are entitled to: (1) adequate and timely notice of charges; (2) legal counsel; (3) confrontation and cross-examination of witnesses; and (4) the privilege against self-incrimination); *In re Winship*, 397 U.S. 358, 368 (1970) (holding that guilt be established by proof beyond a reasonable doubt in juvenile proceedings); *Breed v. Jones*, 421 U.S. 519, 526 (1975) (holding that the Double Jeopardy Clause is "is fully applicable to juvenile court proceedings").

84. *See id.* at 13 (explaining that "neither the Fourteenth Amendment or the Bill of Rights is for adults alone").

85. *See Kent v. U.S.*, 383 U.S. 541, 555 (1966) (holding that juveniles are "not entitled to bail; to indictment by grand jury; to a speedy and public trial; [or] to trial by jury").

86. *See Joel F. Handler, The Juvenile Court and the Adversary System: Problems of Function and Form*, 1965 WIS. L. REV. 7, 10 (positing that the State is the *parens patriae* rather than prosecuting attorney and judge).

87. *See Pee v. U.S.*, 274 F.2d 556, 559 (1959) (holding that the constitutional safeguards are determined "from the requirements of due process and fair treatment and not by direct application of clauses of the Constitution which in terms apply to criminal cases").

88. *See Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 576 (1980).

89. *See Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 510 (1984) (holding that the public can only be

For example, a statute that mandates closed proceedings for the testimony of minor victims in criminal trials involving sex offenses is unconstitutional.⁹⁰ The reason why mandatory closure is unconstitutional is that while a state has a compelling interest in “safeguarding the physical and psychological well-being of a minor,” the mandate is not narrowly tailored to serve the interest.⁹¹ Thus, the court must look at each case individually to decide whether to deny access to criminal proceedings.⁹²

Here, Chapter 919 gives the victim the option to close juvenile hearings at the prosecutor’s request—who shall make the motion if so requested by the victim or during the victim’s testimony, if the crime occurred while the victim was under 16 years old.⁹³ Because the closure is at the option of the victim, Chapter 919 is not overly broad in that not all proceedings involving victims of sex crimes are to be closed.⁹⁴ Further, California has exhibited a compelling interest in juveniles under 16 years of age.⁹⁵

Meanwhile, Chapter 919 admits the public to hearings containing the accused’s testimony regarding a sex crime committed against a defenseless victim.⁹⁶ Admitting the public to the otherwise closed juvenile hearing may compromise the accused’s fundamental due process right to fairness.⁹⁷ Thus, excluding the public during the victim’s testimony will be fair only if the state shows its interest justifies closure.⁹⁸ Because Chapter 919 potentially infringes on a constitutional right, the accused is not required to show prejudice; he or she

barred from criminal trials when there is “a compelling governmental interest, and is narrowly tailored to service that interest”).

90. See *San Bernardino Cnty. Dept. of Pub. Soc. Servs. v. Super. Ct.*, 232 Cal. App. 3d 188, 196, 283 Cal. Rptr. 332 (4th Dist. 1991) (indicating that a state statute mandating testimony of minor victims of sex crimes be taken in closed proceedings has been deemed unconstitutional).

91. See *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607, 609 (1982) (stating that the mandatory closure statute was not narrowly tailored to serve a governmental interest because it required closed proceedings even in instances when it was unnecessary to protect the well-being of the minor victim).

92. See *San Bernardino Cnty. Dept. of Pub. Soc. Servs.*, 232 Cal. App. 3d at 196, 283 Cal. Rptr. at 332 (holding that the issue of access is determined on a case-by-case basis).

93. CAL. WELF. & INST. CODE § 676 (as amended by Chapter 919).

94. *Id.*; see *San Bernardino Cnty. Dept. of Pub. Soc. Servs.*, 232 Cal. App. 3d at 196, 283 Cal. Rptr. 332 (indicating that a state statute mandating testimony of all minor victims of sex crimes be taken in closed proceedings has been deemed unconstitutional).

95. See PENAL § 859.1 (protecting testimony of a minor under the age of 16 from testifying in a criminal proceeding); *Globe Newspaper Co. v. Super. Ct.*, 457 U.S. 596, 607 (1982) (holding that “the protection of minor victims of sex crimes from further trauma and embarrassment” is a compelling interest).

96. WELF. & INST. § 676 (as amended by Chapter 919).

97. See *In re Gault*, 387 U.S. 1, 13 (1967) (holding that the Due Process clause of the Fourteenth Amendment requires that juvenile court delinquency hearings measure up to essentials of due process and fair treatment); *L.A. Times v. Sup. Ct.*, 114 Cal. App. 4th 247, 250, 7 Cal. Rptr. 3d 524, 525 (2d Dist. 2003) (holding that based on the assurance of fairness “the right to open public trial is a shared right of the accused and the public”). When read together, these decisions indicate that due to Chapter 919’s requirement that juvenile proceedings for sex crimes against defenseless victims be opened to the public, a right is created in the accused. In *re Gault*, 387 U.S. at 30; *L.A. Times*, 114 Cal. App. 4th at 250, 7 Cal. Rptr. 3d 524 at 525.

98. See *Kent v. U.S.*, 383 U.S. 541, 555 (1966) (stating that juvenile adjudications “must measure up to the essentials of due process and fair treatment”).

must only prove that the right has been violated.⁹⁹ Therefore, Chapter 919 may provide an opportunity for the accused to challenge the legitimacy of the state's interest in maintaining an open proceeding while closing the proceeding for the victim.¹⁰⁰

C. Mandatory Sex Offender Treatment Program

Chapter 919 usurps the judge's broad discretion in the juvenile justice system by requiring minors adjudged or continued as a ward of the court for commission of sex crimes to complete a sex offender treatment program.¹⁰¹ This change codifies California's juvenile justice system's existing responsibility to rehabilitate, educate, and punish minors who violate the law.¹⁰²

For example, in juvenile court, if a minor admits his or her guilt or becomes a delinquent after trial, the proceeding shifts from an adjudicatory stage to a dispositional stage in which the judge must determine what sentence to impose.¹⁰³ Prior to making such determinations, a juvenile court judge often uses his or her significant discretionary powers to order an assessment of the offender to determine whether the juvenile can be rehabilitated.¹⁰⁴ The juvenile court has wide powers of disposition¹⁰⁵ that are necessary to determine what should be done in each case for the best interests of the minor and the public.¹⁰⁶ Chapter 919, however, requires juvenile court judges to prescribe sex offender treatment to juveniles adjudicated of sex crimes against defenseless victims regardless of probationary findings or the availability of sex offender treatment within the jurisdiction.¹⁰⁷ While juvenile sex offenders generally reflect common

99. See *Waller*, 467 U.S. at 49 (holding that the defendant "should not be required to prove specific prejudice in order to obtain relief for a violation of the public-trial guarantee").

100. *People v. Baldwin*, 142 Cal. App. 4th 1416, 1421–22 Cal. Rptr. 3d 792, 795 (3d Dist. 2006) (holding that information before the trial court at the time of the closure motion were the charges against the defendant and prosecutor's representation that the child "was going to have difficulty testifying" was not sufficient to uphold the trial court decision to close the court).

101. See CAL. WELF. & INST. CODE § 730(d) (defining sex crimes as "rape, sodomy, oral copulation, or an act of sexual penetration specified in Section 289 of the Penal Code").

102. ELLA BAKER CTR. FOR HUMAN RIGHTS, YOUR CHILD AND THE JUVENILE JUSTICE SYSTEM 9 (2009), available at http://www.pjdc.org/wp/wp-content/uploads/2009/06/resource_209-Handbook-Your-Child-and-the-Juvenile-Justice-System-Books-Not-Bars.pdf (on file with the *McGeorge Law Review*) (describing the responsibility of rehabilitation and education that the California juvenile justice system has to offenders).

103. See WELF. & INST. § 730 (defining the dispositional options juvenile judges may choose from).

104. See *id.* §§ 702, 706 (indicating that in the order of disposition, "the court shall state the social study . . . has been read and . . . considered by the court"); CAL. R. CT. 5.785 (West Supp. 2014) (specifying the general conduct of a dispositional hearing).

105. WELF. & INST. § 727 (amended by Chapter 919).

106. *Youth in the Justice System: An Overview*, JUVENILE L. CTR., <http://www.jlc.org/news-room/media-resources/youth-justice-system-overview> (last visited July 14, 2014) (on file with the *McGeorge Law Review*) (providing that the juvenile justice system offers a range of legal options to meet "both the safety needs of the public and treatment needs of the youth").

107. WELF. & INST. § 730.

characteristics,¹⁰⁸ careful application of specialized treatment that will be effective for a juvenile is essential to success of the treatment.¹⁰⁹

Success under Chapter 919 relies on the availability of the various treatments necessary to treat the specific needs of the adjudicated juvenile.¹¹⁰ There is no one-size-fits-all type of sex offender treatment.¹¹¹ Therefore, the jurisdiction in which a juvenile is adjudicated must have the ability to prescribe specific treatment that will effectively combat juvenile sex crimes.¹¹² Without specialized application of sex offender treatment, the benefits of that treatment to juveniles will not be as meaningful.¹¹³

Currently, few counties have juvenile sex offender programs other than those housed in correctional facilities.¹¹⁴ Chapter 919's requirement that juveniles convicted of sex crimes attend sex offender treatment will require more treatment programs, as there are currently too few to meet this future growing need.¹¹⁵ It is unclear whether the state or counties would bear the burden of creating these new programs, a cost that could run upwards of millions of dollars.¹¹⁶ Chapter 919 does require, however, a juvenile convicted of a sex offense to pay at least a portion of the sex offender treatment program's cost.¹¹⁷ Chapter 919 takes a positive step toward the goal of sex crime prevention by coordinating essential sex offender education with tailored probation in the juvenile justice system.¹¹⁸

V. CONCLUSION

Chapter 919 is a direct result of the disparity between strict legal consequences associated with forcible rape and lesser consequences for sex

108. See UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR, *supra* note 66, at 1–3 (demonstrating various characteristics juvenile sex offenders share such as physical and sexual abuse and developmental progression).

109. See *id.* at 6–7 (explaining the various factors necessary for success in sex offender treatment for juveniles).

110. See *id.* at 10 (indicating the importance of specific treatment identification to effective treatment of juvenile sex offenders).

111. *Id.* at 7 (outlining the various methods of sex offender treatment and warning of problems arising from admitting juveniles to programs that would not be effective for the offending juvenile's particular situation).

112. *Id.*

113. See *generally id.* (outlining the positive effects of successfully and appropriately administered sex offender treatment).

114. See ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 838, at 2 (Aug. 6, 2014) (indicating that few counties have sex offender treatment programs).

115. *Id.*

116. *Id.* (pointing out the uncertainty of who is responsible for the operation cost of the required sex offender treatment programs).

117. CAL. WELF & INST. CODE § 730 (amended by Chapter 919).

118. UNDERSTANDING JUVENILE SEXUAL OFFENDING BEHAVIOR, *supra* note 66, at 6 (pointing out the positive effects of coordination between the criminal justice system and sex offender treatment providers).

crimes against defenseless victims.¹¹⁹ The law's supporters find it "unreasonable and arbitrary" that a victim's ability to resist during a sexual attack makes any difference in the legal characterization of the potential consequences.¹²⁰

The bill began as an attempt by the law's supporters to incorporate sex crimes against defenseless victims into the more serious forcible category, along with requiring mandatory out-of-home placement for juveniles convicted of these sex crimes.¹²¹ Chapter 919 disposes of previously valuable rehabilitative tools,¹²² and favors formal adjudication proceedings and required treatment.¹²³ However, its final form seems to have missed the target, instead making juvenile proceedings resemble its adult criminal counterparts, but without the ability to impose similar adult punishments.¹²⁴

119. Calefati, *supra* note 4 (indicating the outrage that compelled supporters of the law to seek equal treatment for sexual assault victims regardless of whether the victim was unconscious or not).

120. See ASSEMBLY COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF SB 838, at 4 (June 17, 2014) ("Juvenile victims of sex crime need to be protected equally, just the same as adult victims, regardless of why they were vulnerable to a horrible assault.").

121. See SB 838, 2014 Leg., 2013–2014 Sess. (Cal. 2014) (as amended on Mar. 5, 2014, but not enacted) (demonstrating the aggressive approach to amending the law to include sex crimes against defenseless victims in the same category as forcible sex crimes).

122. Compare WELF. & INST. § 790 (allowing deferred entry of judgment of juveniles unless the accusation is for one of the enumerated violent crimes or forcible sex crimes, which do not include sex crimes against defenseless victims) with *id.* § 676 (amended by Chapter 919) (demonstrating that deferred entry of judgment is no longer available for juveniles accused of sex crimes against defenseless victims).

123. See *id.* § 676 (as amended by Chapter 919) (demonstrating the prohibition of deferred entry of judgment, which if offered requires the juvenile to admit to all crimes listed in the petition and exhibit a willingness to participate in the probation).

124. Compare *id.* § 676(a)(4)–(6), (b) (amended by Chapter 919) (equating a sex crime against a defenseless victim the same as a forcible sex crime for the purposes of the confidentiality of the hearing); *id.* § 730 (amended by Chapter 919) (equating a sex crime against a defenseless victim the same as a forcible sex crime for the purposes of mandatory sex offender treatment), with *id.* § 602 (requiring a sex crime be committed using force to try the minor as an adult).