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COMMENT

FROM PLAYPENS TO PRISONS: WHAT THE GANG VIOLENCE AND JUVENILE CRIME PREVENTION ACT OF 1998 DOES TO CALIFORNIA'S JUVENILE JUSTICE SYSTEM AND REASONS TO REPEAL IT

Californians deserve to live without fear of violent crime and to enjoy safe neighborhoods, parks, and schools. This act addresses each of these issues with the goal of creating a safer California for ourselves and our children, in the twenty-first century.[1]

I. INTRODUCTION

On March 7, 2000, California voters approved Proposition 21.[2] Proposition 21, an initiative that was titled the Gang Violence and Juvenile Crime Prevention Act (GVJCPA), proposed thirty-two changes to the state's Penal Code and Welfare

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[1] *See* GANG VIOLENCE AND JUVENILE CRIME PREVENTION ACT OF 1998, § (2)(k), Ballot Measure 4, 1999-2000 Legis. Sess. (Cal. 1999) [hereinafter GVJCPA].

[2] *See* California Secretary of State, Vote 2000 California Primary Election Status Report on State Ballot Measures (visited on Mar. 8, 2000) <http://Vote2000.ss.ca.gov> (stating that with one-hundred percent of precincts reporting, sixty-two percent of California voters approved of Proposition 21, while only thirty-eight percent had voted against it). However, Prop. 21 failed by nearly the same margin in five California counties; Marin, San Francisco, Alameda, San Mateo, and Santa Cruz). *See id.*

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and Institutions Code.[3] These changes have revamped California's juvenile justice system as well as the methods currently used to address gang violence.[4] As a result, the GVJCPA has quickly become California's contribution to the growing collection of measures that have been written throughout the United States in an effort to "get-tough" on gang related and juvenile crime.[5] The above quoted passage demonstrates that the GVJCPA was designed to protect the public.[6] However important the goals of public safety and protection may be, they come at the expense of the minors who become involved in crime.[7]

By passing the GVJCPA, Californians made fifteen changes to the Penal Code which focus on gang-related crimes committed by adults.[8] Additionally, Californians approved of seventeen substantial changes to the Welfare and Institutions Code, all of which focus on the violent quality of crime perpetrated by juveniles and impose harsher punishment.[9] The legislative intent behind the GVJCPA was to deter juveniles from becoming involved in crime by trying them as adults and imposing harsher penalties.[10] However, the problem inherent in "get-tough" legislative solutions such as the GVJCPA is that they are not designed to repair the rips in the social fabric that are the root causes of gang violence and juvenile crime.[11] Rather than focus on problems such as poverty, neglect, abuse, and violence, the GVJCPA and similar legislation focuses on

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3 *See* GVJCPA, *supra* note 1.

4 *See id.*

5 *See* Malcolm C. Young, *The Criminal Class of 2000 Playing With Juvenile Justice on Capitol Hill*, LEGAL TIMES, June 30, 1997, at 25.

6 *See* GVJCPA, *supra* note 1, at § 2.

7 *See infra* notes 260-369 and accompanying text.

8 *See* GVJCPA, *supra* note 1, at §§ (3)-(17).

9 *See id.* §§ (18)-(34).

10 *See* Thomas F. Geraghty, *Symposium On The Future Of The Juvenile Court: Justice For Children: How Do We Get There?*, 88 J. CRIM. L. & CRIMINOLOGY 190 (1997).

11 *See id.*

punishment while ignoring the underlying causes of juvenile crime.[12]

This comment will explore the most significant changes that the GVJCPA made to California's juvenile justice system. It will also discuss and propose alternative methods to curb juvenile crime. Part II will examine the juvenile justice system, including the context in which it was created, and juvenile crime across the country. It will then discuss how courts, legislatures, and local governments have confronted the changing nature of juvenile crime, focusing on efforts in California. Part II will also include an introduction to the GVJCPA. Part III will discuss the most important changes that the GVJCPA has made to the juvenile justice system. Part III will also examine the history of the incarceration of juveniles and the transfer of juveniles to the adult criminal courts. Part IV critiques the changes discussed in Part III. Part V proposes a reformed juvenile justice system, designed to implement the rehabilitative philosophy upon which the system was originally founded. Finally, Part V, will explain various reasons to repeal the most damaging Sections of the GVJCPA.

II. JUVENILE CRIME IN CALIFORNIA AND THE REST OF THE COUNTRY: RESPONSES BY THE COURTS AND LEGISLATURES

From the inception of the juvenile courts, there has been widespread frustration with the system.[13] The first juvenile court, established in Cook County, Illinois, had only one judge, an overabundance of cases, and a lack of funding and support for the children that became wards of the court.[14] The second presiding judge of that court, the Honorable Julian W. Mack, made a habit of placing minors on probation instead of com-

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[12] *See* Laureen D'Ambra, *A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders Is Not a Panacea*, 2 ROGER WILLIAMS L. REV. 277, 279 (1997).

[13] *See* Geraghty, *supra* note 10, at 230-231.

[14] *See id* at 231.

mitting them to child care agencies.[15] He did this so that he could personally supervise their rehabilitation and ensure that these minors were given the necessary attention.[16]

The system described above is that of parens patriae.[17] This doctrine provided the backbone of the juvenile courts.[18] The essence of parens patriae[19] is that the state, through its courts, should act in the best interests of children who have fallen through society's cracks.[20] Parens patriae empowered American courts to preside over juvenile delinquency proceedings.[21] However, the states' parens patriae power has been curtailed over the course of the century.[22] As a result, the juvenile court's authority and jurisdiction over certain types of cases has been challenged.[23]

A. A BRIEF HISTORY OF JUVENILE JUSTICE: AMERICAN STYLE

The juvenile justice system in this country has gone from non-existent, to a cause championed by social reformers, to a system whose effectiveness is in doubt.[24] These changes have spanned the course of just one century. In that time, juvenile

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[15] *See id.*

[16] *See id.*

[17] *See* Christine Stieb Stickler, Note: *In re S.G.; Parens Patriae and Wardship Proceedings – Exactly Who Should Determine the Best Interests of the Child?*, 7 WIDENER J. PUBLIC L. 377 (1998).

[18] *See* Michael Kennedy Burke, *This Old Court: Abolitionists Once Again Line Up the Wrecking Ball on the Juvenile Court When All It Needs is a Few Minor Alterations*, 26 U. TOL. L. REV. 1027, 1033 (1995).

[19] "Parens patriae" is literally translated as "parent of the country." *See* BLACK'S LAW DICTIONARY 1114 (6th ed. 1990).

[20] *See* Stickler, *supra* note 17, at 382.

[21] *See id.* at 383.

[22] *See id.* at 382 (citing Meyer v. Nebraska 262 U.S. 390, 399 (1923) (holding that custody of a child is more than a privilege; it is something to which a parent has a fundamental right)).

[23] *See id.*

[24] *See* Ira M. Schwarz et al., *Nine Lives and Then Some: Why the Juvenile Court Does Not Roll Over and Die*, 33 WAKE FOREST L. REV. 533, 533 (1998).

crime has also changed, appearing to have become more common and exceedingly violent.[25] As a result, federal and state courts and legislatures have tried to solve the problem of juvenile crime.[26] Local government and community groups have also made attempts to do the same.[27]

1. The Progressive Movement of the Late Nineteenth Century

The juvenile justice system is a product of the Progressive Movement of the late nineteenth century.[28] The Progressives were social reformers whose platform focused on social welfare and justice.[29] In creating the juvenile courts, the Progressives had two primary objectives: to protect the general public from juvenile crime,[30] and to rehabilitate the juvenile offenders.[31] Before the juvenile court was created, juveniles were tried in adult criminal courts and sentenced to terms in adult prisons.[32] They were arrested, indicted by a grand jury, tried by a jury, and imprisoned in adult prisons if found guilty.[33] The only defense available to juvenile offenders was that of infancy.[34]

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[25] *See* Joseph F. Yeckel, Note, *Violent Juvenile Offenders: Rethinking Federal Intervention in Juvenile Justice*, 51 WASH U. J. URB. & CONTEMP. L. 331, 332 (1997).

[26] *See* Geraghty, *supra* note 10, at 191 note 3.

[27] *See* Schwarz, *supra* note 32, at 542.

[28] *See id.* at 534.

[29] *See id.* at 535.

[30] *See* Burke, *supra* note 18, at 1033.

[31] *See id.*

[32] *See id.* at 1032.

[33] *See* Yeckel, *supra* note 25, at 334 note 14 (citing Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104 (1909)).

[34] *See id.* The infancy defense was a common law presumption that children under the age of seven were incapable of forming a criminal intent. In addition, there was a rebuttable presumption of infancy that was applicable to children between the ages of seven and fourteen. These presumptions lost their power in the 1960's as a casualty of the Due Process Revolution, during which courts became willing to extend criminal safeguards and constitutional protections to juvenile offenders. *See* D'Ambra, *supra* note 12, at 280. The concept behind the infancy defense is nothing new. It dates back to the time of the Greek philosopher Aristotle, who believed that children should not be held responsible for anything because they were too young to be capable of making

The Progressives believed that the punitive system[35] that was, and still is, used on adult criminals should not be applied to children.[36] Because the Progressives believed that children should not be treated as hardened criminals, they created a system based on the belief that juvenile delinquents could be reformed.[37] The Progressives attributed the responsibility for juvenile crime not to the children who were the perpetrators, but to a lack of good parenting and a paucity of resources for urban youth.[38]

2. The Rise and "Fall" of the Juvenile Justice System

The first juvenile court was established in 1899 in Cook County, Illinois.[39] The new system diverged from that applicable to adult criminals in four important ways.[40] First, the juvenile courts were conceived to be a social service agency.[41] Second, rather than punish minors with adult prison sentences, the new juvenile court offered troubled youth guidance and assistance designed to keep them in school and out of

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deliberate choices. *See* Arthur R. Blum, *Comment: Disclosing the Identities of Juvenile Felons: Introducing Accountability to Juvenile Justice*, 27 LOY. U. CHI. L.J. 349, 356 (1996).

[35] A punitive system necessarily includes fines, punishments, or penalties inflicted on an individual by the court for a crime or offense that he has committed. Punitive measures may deprive a person of his liberty, property, life, or any other right. *See* BLACK'S LAW DICTIONARY 1234 (6th ed. 1990).

[36] *See* Burke, *supra* note 18, at 1032. The Progressives believed that the adult punitive system was inappropriate and ineffective in meeting the needs of juvenile offenders. *See id.* Not only were its punitive goals inappropriate for the purposes of reforming juvenile offenders, the rigidity and formality of the proceedings and the cruelty of the adult prisons were an unacceptable means of treatment. *See* Blum, *supra* note 34, at 351.

[37] *See* Burke, *supra* note 18, at 1032.

[38] *See* Schwarz, *supra* note 24, at 535. This theory was derived from the philosophy of determinism. Determinism is the theory that human behavior is a product of environmental, biological, or social determinants, and not of free will. *See* Blum, *supra* note 34, at 351. It was clear in the Progressives' minds that the adult criminal justice system was an insufficient way to remedy those social ills that the Progressives believed to be the main contributor to juvenile crime. *See* Schwarz, *supra* note 24, at 535.

[39] *See id.* at 534-535.

[40] *See* Burke, *supra* note 18, at 1035.

[41] *See* Schwarz, *supra* note 24, at 534.

trouble.[42] Third, trials, in which guilt was sought to be proved, were no longer held.[43] Instead, hearings were held in which the court decided how best to rehabilitate and treat each minor.[44] In order to protect minors from the social stigma of a public hearing, juvenile cases were heard behind closed doors, away from the public eye.[45] Fourth, to further protect privacy, juvenile records were sealed and then expunged when the minor reached the age of majority.[46]

The most significant result of the creation of a new juvenile justice system was that minors were no longer subjected to the adult criminal justice system.[47] Instead, juvenile cases were heard in delinquency proceedings, where the issue was not whether the minor was guilty of a particular crime, but whether the minor was delinquent.[48] Rather than place the primary focus on the offense, as would have occurred in adult criminal court, the purpose of the juvenile court was to focus on the offender.[49] Regardless of the offense, juvenile cases were heard only to decide whether the minor was delinquent and required supervision of the court.[50] For example, a minor who committed murder would not be found guilty of murder.[51] Instead, the minor would simply be found delinquent[52] and

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[42] *See* Burke, *supra* note 18, at 1032.

[43] *See id.* at 1033.

[44] *See id.*

[45] *See* Yeckel, *supra* note 25, at 335.

[46] *See id.*

[47] *See* Geraghty, *supra* note 10, at 230-232.

[48] *See* Yeckel, *supra* note 25, at 334 note 17 (citing Ralph A. Rossum, *Holding Juveniles Accountable: Reforming America's "Juvenile Injustice System,"* 22 PEPP. L. REV. 907, 914 (1995)). "Guilty" can be defined as having committed a crime or being justly chargeable with a crime. It is further defined as carrying the connotation of evil. *See* BLACK'S LAW DICTIONARY 708 (6th ed. 1990). "Delinquent" may be defined as a child who has either violated a criminal law or been disobedient and is in need of rehabilitation or supervision. *See* BLACK'S LAW DICTIONARY 428 (6th ed. 1990).

[49] *See* Yeckel, *supra* note 25, at 335.

[50] *See id.* at 334 note 17 (citing Rossum, *supra* note 48, at 914).

[51] *See id.*

[52] *See id.*

would thereafter become a ward of the court.[53] The same proceeding applied to all minors.[54]

Once the minor was adjudged delinquent, the crime that he actually committed was treated as a symptom of the disease of delinquency.[55] Treatment was tailored on an individual basis, depending on the specific facts of each minor's case.[56] The theory was that if the minor was placed in a juvenile hall or other child care agency, his needs could be addressed and served better than they would have been in an adult prison.[57] Slowly, juvenile courts began to incorporate professionals from the social sciences into the judicial process.[58] This integration of disciplines was a response to the growing realization that rehabilitation would be effective only if the juvenile offenders were treated as children as opposed to adults.[59] As a result, special attention had to be paid to the emotional and behavioral development of the wards of the court.[60]

3. Changes in Juvenile Crime

The juvenile court docket has always been filled with delinquency, dependency and status offense cases.[61] Delinquency cases involve minors who commit criminal offenses.[62] Dependency cases address the needs of minors who have been abused or neglected.[63] Status offense cases involve non-criminal acts

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[53] *See* Geraghty, *supra* note 10, at 230-232.

[54] *See* Yeckel, *supra* note 25, at 334 note 17 (citing Rossum, *supra* note 48, at 914).

[55] *See id.*

[56] *See id.*

[57] *See* Geraghty, *supra* note 10, at 230-232.

[58] *See* Schwarz, *supra* note 24, at 536.

[59] *See id.* at 535-536.

[60] *See id.*

[61] *See id.* at 537.

[62] *See* Schwarz, *supra* note 24, at 542.

[63] *See id.* at 537.

committed by minors,[64] and include school truancy, running away from home, and curfew violations.[65] Traditionally, the juvenile court was primarily concerned with status offenses.[66] However, delinquency cases have taken center stage in the juvenile court.[67] This shift is the result of a perception that violent juvenile crime has increased dramatically.[68] As a result, state legislatures and courts across the country have considered reforms, and even abolition, of the juvenile justice system.[69]

B. STATE RESPONSES TO THE INCREASE AND CHANGE IN JUVENILE CRIME

Rather than abandon their juvenile courts, many states have chosen to modify their existing systems.[70] In general, the changes have focused on delinquency offenses and mandate harsher punishment within the existing juvenile justice system.[71] Changes have also created increased conditions under which minors may be tried and sentenced as adults.[72] States justify this development in three ways: first, the threat of severe punishment will deter juveniles from becoming involved in crime; second, juveniles who are incarcerated will be unable to commit more crime; and third, punishment gives society the

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[64] *See id.* at 542.

[65] *See id.*

[66] *See* Schwarz, *supra* note 24, at 542.

[67] *See* Geraghty, *supra* note 10, at 191 note 2.

[68] *See* Burke, *supra* note 18, at 1030-1031. *See also infra* notes 329-338 and accompanying text.

[69] *See id.* Abolitionists cite three reasons why the juvenile courts should be dismantled. One, the atmosphere created by United States Supreme Court decisions guaranteeing minors procedural due process nearly mirrors adult criminal courts. *See id.* at 1028. Two, abolition would result in substantial monetary savings, as a second justice system would not need to be maintained. *See id.* Three, the system as it stands is too soft on juvenile crime, as evidenced by the high juvenile crime rate. *See id.* at 1029.

[70] *See* Geraghty, *supra* note 10, at 191 note 3.

[71] *See id* at 192 note 6.

[72] *See id.*

satisfaction of holding juvenile offenders publicly accountable for their crimes.[73] Several states have even revised the statutes that provide for their juvenile courts to reflect a growing concern for public protection.[74]

In addition to revising existing law, states have tried other methods to discourage minors from becoming involved in serious crime.[75] The most drastic example of such efforts is Oklahoma's attempt to apply the death penalty to certain juvenile offenders.[76] However, the United States Supreme Court struck down this use of the death penalty in *Thompson v. Oklahoma.*[77] In *Thompson*, a fifteen year-old boy was tried and convicted of first-degree murder for the brutal beating and drowning death of his brother-in-law.[78] Under an Oklahoma statute that gave the juvenile court the discretion to transfer minors to adult criminal court,[79] the fifteen year-old boy was tried as an adult.[80] The boy was subsequently convicted and sentenced to death.[81] The Court overturned the death sentence, holding that to sentence a fifteen year-old to death con-

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[73] *See* Yeckel, *supra* note 25, at 345-346.

[74] *See generally* Yeckel, *supra* note 25, at 350 note 99 (citing WASH. REV. CODE ANN. § 13.40.010(2) (West 1993) which provides that "it is the intent of the legislature that youth be held accountable for their offenses;" HAW. REV. STAT. § 571-1 (1985), which calls upon the juvenile courts to "render appropriate punishment to offenders;" CAL. WELF. & INST. CODE § 202 (West Supp. 1996), which provides "for the protection and safety of the public;" and NY FAM. CT. ACT § 301.1 (McKinney 1983), which reads that the "court shall consider [...] the need for protection of the community.").

[75] *See* Burke, *supra* note 18, at 1030-1031.

[76] *See* Thompson v. Oklahoma, 487 U.S. 815 (1988).

[77] *See id.*

[78] *See id.* at 819.

[79] *See id.* at 818. Prior to the March 7, 2000 election, California also employed judicial waiver. *See infra* notes 200-239 and accompanying text.

[80] *See id.* at 819-820 (1988).

[81] *See Thompson, supra* note 76, at 820.

stituted cruel and unusual punishment, and therefore, the punishment as applied was unconstitutional.[82]

C. FEDERAL INVOLVEMENT IN JUVENILE JUSTICE

Although the states have historically been responsible for the creation and maintenance of their juvenile justice systems,[83] the federal government has also addressed the problems created by the escalation in juvenile crime.[84] In 1974, Congress passed the Juvenile Justice and Delinquency Prevention Act (the Act) in response to the rise in delinquency offenses.[85] Congress intended to encourage the states to devise alternatives to institutionalizing juvenile offenders, and to develop community-based preventive programs.[86]

To entice them to participate, the Act provides financial incentives to states that implement the federally mandated programs.[87] To receive federal funding, states are required to satisfy three requirements.[88] First, all status offenders must be deinstitutionalized.[89] Second, any juvenile offenders that remain in institutions must be placed in facilities where they will be completely separated from incarcerated adults.[90] Third, states wishing to benefit from the program are required to es-

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[82] *See id.* at 830. The Eighth Amendment prohibits the state from inflicting cruel and unusual punishment. *See* U.S. CONST. amend. VIII. The Thompson Court reasoned that the normal fifteen year-old is not equipped with the faculties of a comparable adult. As a result, there is no logical way that the state should expect him to assume full responsibility through the applicable adult punishment. *See Thompson*, *supra* note 76, at 824.

[83] *See* Yeckel, *supra* note 25, at 333.

[84] *See id.*

[85] *See* JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT OF 1974, Pub. L. no. 93-415, 88 Stat. 1109, codified in part at 42 U.S.C. § 5633 (1999).

[86] *See* 42 U.S.C. § 5633 (a)(10)(A) (1999).

[87] *See id.*

[88] *See generally* 42 U.S.C. § 5633 (1999).

[89] *See* 42 U.S.C. § 5633 (a)(12)(A) (1999).

[90] *See* 42 U.S.C. § 5633 (a)(13) (1999).

tablish a system to monitor juvenile detention facilities to ensure that institutionalized juveniles do not come into contact with incarcerated adults.[91]

In addition to deinstitutionalizing status offenders, cities and states wishing to receive federal funding under the Act must fulfill three additional conditions unrelated to status offenders.[92] First, the community is required to organize a Local Prevention Policy Board, composed of representatives with backgrounds in social sciences, crime prevention or juvenile law.[93] Second, the community must submit to the state a three-year plan for juvenile crime prevention.[94] Third, each community is required to match fifty percent of the federal grant, either in cash or in kind.[95]

A total of fifty-six states and U.S. territories have received federal funding through the Act.[96] However, the consensus among the participants is that the Act, while helpful, has been largely ineffective.[97] The reasons for this discontent are several.[98] First, the federal funding is too limited.[99] Second, the problem of juvenile crime is too large for the resources provided by the federal government.[100] Third, the Office of Juvenile Justice Delinquency and Prevention must be modernized

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[91] *See id.*

[92] *See* Janet Quist, *Congress Plans to Grapple with Crime Issues*, NATION'S CITIES WEEKLY, February 3, 1997, at 15.

[93] *See id.*

[94] *See id.*

[95] *See id.*

[96] *See* Prepared Statement of Lavonda Taylor on behalf of the Coalition for Juvenile Justice, before the Senate Judiciary Committee Subcommittee on Youth Violence, May 8, 1996 [hereinafter Statement of Lavonda Taylor].

[97] *See id.*

[98] *See id. See also* Testimony of Clayton Hollopeter, executive Director of the Boys and Girls Clubs of San Gabriel Valley, before the House of Representatives Committee on Education and the Workforce, April 1, 1997 [hereinafter Statement of Clayton Hollopeter].

[99] *See* Statement of Lavonda Taylor, *supra* note 96.

[100] *See id.*

to keep up with the changes in juvenile crime.[101] Fourth, the funding provided by the Act is too minimal to make a substantial difference in the social problems that contribute to juvenile crime.[102] Fifth, the financial requirements of the Act are too burdensome for rural or depressed states to comply.[103]

In addition to financial incentives, the federal government has also provided means by which minors may be removed entirely from the state system and tried as adults in federal court.[104] For example, a federal prosecutor may invoke jurisdiction over a juvenile if the state lacks or refuses to assert jurisdiction, the state's programs do not meet the needs of the juvenile, or there is a substantial federal interest in the prosecution.[105] Similarly, another federal provision allows federal prosecutors to try juvenile offenders as adults.[106]

Federal involvement in juvenile crime is not limited to statutes. It has also been exhibited through the role played by the United States Supreme Court.[107] During the Due Process revolution of the late 1960's and early 1970's the power of the Court was used to guarantee procedural safeguards for minors,[108] addressing such issues as the constitutionality of waiver[109] and the prosecution's burden of proof.[110] However,

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[101] *See* Testimony of Clayton Hollopeter, *supra* note 98.

[102] *See* Statement of Lavonda Taylor, *supra* note 96.

[103] *See* Janet Quist, *NLC Testifies on Juvenile Justice Mandates; National League of Cities, Juvenile Justice Delinquency and Prevention Act*, NATION'S CITIES WEEKLY, May 12, 1997, at 16.

[104] *See* 18 U.S.C. § 5032 (1999).

[105] *See id.*

[106] *See id.* This transfer is permitted in three circumstances: (1) the juvenile consents to an adult trial; (2) the attorney general requests an adult trial if the juvenile is charged with a violent felony; or (3) by mandatory transfer to adult criminal court by virtue of the fact that the juvenile is sixteen years of age or older and is charged with certain serious offenses. *See id.*

[107] *See* Burke, *supra* note 18, at 1029.

[108] *See* Geraghty, *supra* note 10, at 231.

[109] *See* Kent v. U.S., 383 U.S. 541 (1966).

[110] *See In re* Winship, 397 U.S. 358 (1970).

the Court's decision in *In re Gault,*[111] decided in 1967, solidified minors' rights to due process.[112]

In *Gault*, a fifteen year old boy was taken into police custody after a neighbor complained that he made obscene phone calls to her residence.[113] The Court determined that several of the events surrounding the boy's detention and disposition violated his rights to due process.[114] First, his parents were not notified of the arrest.[115] Second, the boy was not served with notice that a petition against him had been filed.[116] Third, as the complaining witness did not attend the hearing, the boy was deprived of his right to confront his accuser.[117]

D. LOCAL GOVERNMENT RESPONSES TO JUVENILE CRIME

Despite efforts made by state and federal officials to curb juvenile crime, the most effective steps are often those taken by local government or private community groups.[118] Curfews, locally sponsored teen centers, diversion programs, and new types of juvenile halls have all been implemented throughout California. These steps are usually taken at the initiative of city government and have varying degrees of success.[119]

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[111] 387 U.S. 1 (1967).

[112] *See id.* In reviewing Gerald Gault's case, the Court extended several procedural safeguards to juveniles in delinquency proceedings. First, a juvenile in a delinquency proceeding has a right to be notified of the charges against him. *See id,* at 33-34. Second, such a minor has a right to counsel. *See id,* at 35. Third, he also has a right to confront and cross examine his accuser. *See id,* at 56-57. Fourth, a minor has a right against self incrimination. *See Gault,* 387 U.S. 1 at 56.

[113] *See id.* at 4.

[114] *See id.*

[115] *See id.* at 5.

[116] *See id.*

[117] *See Gault,* 387 U.S. at 5.

[118] *See* Schwarz, *supra* note 24, at 542.

[119] *See supra* notes 120-160 and accompanying text.

1. Curfews

Curfews are a popular tool used by local law enforcement agencies to reduce juvenile crime.[120] Their use has been urged by such leaders as United States President Bill Clinton, former California Governor Pete Wilson, and former California Attorney General Dan Lungren.[121] However, despite the enormous popularity of imposing curfews, recent studies suggest that although the overall juvenile crime rate has declined, little evidence links that decline to the implementation of curfews.[122] A 1998 study conducted by the Justice Policy Institute (JPI)[123] showed that curfews have had little impact whatsoever on juvenile crime when comparing statistics by location and type of crime.[124] In fact, the most significant impact of California's curfews appeared to be an increase in juvenile crime.[125] In particular, marked increases were noted statewide in misdemeanor arrest rates for Caucasian, Hispanic, and Asian minors.[126]

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[120] *See* Teresa Moore, *Youth Curfews Don't Cut Crime, Study Says, San Jose Official Disputes Advocacy Group's Findings*, S.F. CHRONICLE, June 10, 1998, at A14.

[121] *See* Dan Macallair and Mike Males, *The Impact of Juvenile Curfew Laws in California*, study published by the Justice Policy Institute (1998) [hereinafter JPI Curfew Study].

[122] *See* Moore, *supra* note 120. The city of San Jose, California has instituted what it considers to be a highly successful curfew. Soon after the results of the JPI study were released, the city's gang policy manager, Dick de la Rosa, disputed the findings that the reduction in juvenile crime cannot be linked to curfews. He explained that the success of San Jose's curfew depended upon the fact that it was used for the purpose of intervening in juvenile crime, as opposed to using it to suppress juvenile crime. When minors in San Jose are picked up for violating the curfew, they are taken to a place where their individual situations are evaluated. Those minors are given access to counseling as well as referrals to agencies that may be able to serve them and their families. *See id.*

[123] The Justice Policy Institute is a branch of the Center on Juvenile Crime and Justice. It was created to research juvenile justice issues and to develop policy according to its results. *See* Justice Policy Institute website (visited Feb. 2, 2000) <http://www.cjcj.org/jpi>.

[124] *See* JPI Curfew Study, *supra* note 121.

[125] *See id.*

[126] *See id.*

Most curfews do not seem to work because they are not used to intervene in juvenile crime.[127] Rather, they are used to prevent it.[128] Curfews that do nothing more than remove minors from the street and take them to detention centers may be successful in stopping juvenile crime before it starts, but do little to remedy the social problems that contribute to delinquency.[129] JPI explained that curfews are largely ineffective because they are either used to deter[130] or incapacitate.[131] Deterrent curfews provide certain and swift punishment to minors who are on the streets at prohibited times.[132] Law enforcement hopes that such curfews will cause minors to think of the punishment and choose not to break curfew.[133] Likewise, curfews that are used to incapacitate minors are rooted in the theory that juvenile crime is only committed by a select group of minors.[134] Curfews of this nature are often applied selectively, targeting repeat offenders and minors on probation who are known to the police.[135] Curfews that incapacitate are not only ineffective, but have been criticized as being unconstitutional because they are unequally applied.[136]

2. Locally and Privately Sponsored Teen Centers

Teen centers were established to assist in preventing juvenile crime by offering minors an alternative to being left unsupervised.[137] Instead of wandering the streets, minors are encouraged to come to the teen centers where they can partici-

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[127] *See* Moore, *supra* note 120.

[128] *See id.*

[129] *See id.*

[130] *See* JPI Curfew Study, *supra* note 121.

[131] *See id.*

[132] *See id.*

[133] *See id.*

[134] *See id.*

[135] *See* JPI Curfew Study, *supra* note 121.

[136] *See id.*

[137] *See* Tanya Schevitz, *Centering on Teens: Trying to Curtail Juvenile Crimes, Cities Create Places for Young People to Gather*, S.F. CHRONICLE, Oct. 19, 1998, at A17.

pate in various activities.[138] Most towns that build teen centers involve the teens themselves in designing the centers and planning the activities.[139] As a result, teen centers have grown in popularity in the last several years, and have been established in many towns and cities throughout California.[140] Between 1993 and 1998, the number of teen centers in California grew by thirty percent.[141]

Local law enforcement agencies find that teen centers are more effective than curfews in preventing juvenile crime.[142] Teen centers provide minors with a recreational outlet, while curfews are simply a law enforcement tool.[143] Several California towns report that since opening teen centers, they have experienced declines in both violent juvenile offenses and in drug and alcohol offenses.[144] Studies show that teen centers in urban areas reap similar benefits, in effect breaking down racial and social tension between neighborhoods that might otherwise erupt in violence.[145]

3. Diversion Programs

The diversion program is another juvenile crime prevention tool that is growing in popularity among local law enforcement

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[138] *See id.* Offerings range from Saturday night concerts and dance parties, to afternoon cooking classes, opportunities to participate in sports or the arts, or simply a chance to do nothing at all in a safe environment. *See id.*

[139] *See id.*

[140] *See id.*

[141] *See* Schevitz, supra note 137.

[142] *See id.* Teenagers are also positive about the effect of teen centers on their communities. They enjoy going to the teen centers because they are treated as adults when they are there. In return, the teens gain a sense of maturity and independence. The only downside to teen centers is that older minors tend to lose interest in them, causing some towns to refocus their services to younger teens or, in extreme cases, to close their doors. *See id.*

[143] *See id.*

[144] *See id.*

[145] *See* Schevitz, *supra* note 137.

agencies.[146] Diversion programs are rooted in the philosophy of restorative justice.[147] Rather than relying on the courts, restorative justice emphasizes the involvement of the victim, the offender, and the community in disposing of a criminal charge.[148] When employed in the context of juvenile law, restorative justice effectively diverts minors away from the juvenile justice system entirely.[149] Instead, the minor's case is disposed of within the community where he lives and where the offense occurred.[150] The goals of such diversion programs are to give the victims closure, instill in the offenders the human impact of their actions, and compensate the victims through restitution.[151]

Most diversion programs only handle first-time misdemeanor and traffic offenders.[152] The programs are typically informal, conducted within the community by local law enforcement officers.[153] The minor is required to play a large role in determining how to dispose of his case.[154] In so doing, he is required to accept full responsibility for his actions.[155] Furthermore, there are many benefits of diversion programs.[156]

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[146] *See* Marianne McConnell, *Mediation: An Alternative Approach for the New Jersey Juvenile Justice System?*, 20 SETON HALL LEGIS. J. 433, 438 (1996).

[147] *See id. See also* RANDOM HOUSE WEBSTER'S COLLEGE DICTIONARY, 1108. (defining "restorative" as anything that is capable of renewing health or strength).

[148] *See* McConnell, *supra* note 146, at 438.

[149] *See id.*

[150] *See* Schwarz, *supra* note 24, at 542.

[151] *See* McConnell, *supra* note 146, at 438 note 21.

[152] *See* Det. Craig F. Cooper, *Orinda's Juvenile Diversion Program*, THE ORINDA NEWS, September/October 1999, 15.

[153] *See id.*

[154] *See id.*

[155] *See id.*

[156] *See id.* Orinda, California is a small city east of San Francisco which has instituted a successful diversion program. In Orinda, juvenile offenders and their parents who wish to partake in the diversion program must sign a contract with the local police department. The contract details the way in which the minor's case will be disposed. The minor, the victim, the parents or guardians, and the police discuss the disposition prior to signing the contract. Dispositions range from restitution and writ-

For instance, the minor is kept out of the juvenile justice system.[157] The minor also remains in his community.[158] Usually the victims are satisfied with the results.[159] Finally, diverting first-time misdemeanor offenders away from the juvenile justice system creates room within that system for more serious and violent juvenile offenders.[160]

E. THE CREATION OF THE GANG VIOLENCE AND JUVENILE CRIME PREVENTION ACT

In the last one hundred years the crimes and offenses committed by minors have become increasingly violent.[161] Rather than focusing on the social factors at the root of this increase in violence, the prevailing reaction at both the federal and state levels has been to "get-tough."[162] As a result, the focus of the juvenile justice system has begun to shift from a system designed to rehabilitate wayward children, to one that protects and vindicates the public by incarcerating juvenile delinquents.[163] California's GVJCPA is one such "get-tough" response to juvenile crime.[164]

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ten apologies, to attending drug and alcohol counseling and performing community service. Petitions are only filed in juvenile court if the minor fails to perform his contract. However, if the minor fully performs his part of the contract, the case is closed. A file of the disposition is then maintained at the police department until the minor's eighteenth birthday, at which point it is destroyed. *See* Cooper, *supra* note 152.

[157] *See id.*

[158] *See id.*

[159] *See id.*

[160] *See* McConnell, *supra* note 146, at 438.

[161] *See* Geraghty, *supra* note 10, at 191 note 2.

[162] *See id.*

[163] *See id.*

[164] *See e.g.* Van Jones, *Taking on the Youth Crime Initiative*, ACLU News, November-December 1999 (visited on February 2, 2000) <http://www.aclu.org> [hereinafter ACLU News] (describing the GVJCPA as "a massive incarceration measure," that will "effectively [turn] loose several thousand Kenneth Starrs on the state's children."). All fifty states have enacted statutes that allow minors to be tried as adults. In the last six years, forty-three states have made those laws more lenient, in favor of prosecuting

In 1998, to garner public support for a new ballot measure, the GVJCPA, former California Governor Pete Wilson[165] wrote about a need for tougher laws concerning juvenile offenders.[166] Governor Wilson noted that although the crime rate in California was lower than it had been in thirty years, crimes committed by juveniles between 1967 and 1995 had skyrocketed 260 percent for robbery and 300 percent for murder.[167] Governor Wilson called for sweeping reforms in juvenile law that he claimed were long overdue.[168]

Prior to Governor Wilson's announcement of the GVJCPA, the California legislature attempted to "get-tough" on juvenile crime numerous times between 1995 and 1998.[169] Despite the effort, eleven of the tougher bills that faced a vote in California's legislature were defeated before reaching the Governor's desk.[170] Those eleven pieces of failed legislation became the GVJCPA.[171] With the assistance of the California District Attorneys Association, which drafted the final version of the ballot measure,[172] funding from corporate donors,[173] and an army

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minors as adults. *See* Tamar Lewin, *Racial Discrepancy Found in Trying of Youths*, NEW YORK TIMES, February 3, 2000 at A14.

[165] *See generally, Who's Who in American Politics* (October, 1997). Pete Wilson, a representative of the Republican Party, was Governor of California for two terms, starting in 1991. *See id.*

[166] *See* Pete Wilson, *The Governor vs. The Gangs*, S.F. EXAMINER, Aug. 2, 1998, at D7.

[167] *See id.*

[168] *See id.*

[169] Telephone Interview with Tracy Kenny, Legislative Analyst, CA Sec. of State, Aug. 3, 1999 [hereinafter Tracy Kenny].

[170] *Id.* The bills from the 1995-1996 legislative session are A.B. 2723, A.B. 3224, and A.B. 2143. The bills from the 1997-1998 legislative session are A.B. 1031, A.B. 1538, A.B. 987, A.B. 26, S.B. 1229, S.B. 1333, and S.B. 688. *Id.*

[171] *Id.*

[172] *Id.* The California District Attorneys Association is an organization whose purpose is to educate prosecutors and advocate on their behalf in the political arena. *See* California District Attorneys Association website (visited Feb. 2, 2000) <http://www.cdaa.org>.

[173] *See* Bob Egelko, *Voters Get Tough on Teen Criminals*, THE CONTRA COSTA TIMES, March 8, 2000, at A8.

of petitioners, the GVJCPA was slated for the March 2000 election.[174] By virtue of its thirty-two provisions, the GVJCPA facilitates the transfer of juveniles to adult criminal court, and calls for the prohibition of sealing juvenile records.[175]

The GVJCPA cites several compelling statistics concerning juvenile crime rates in California and the rest of the country. For instance, the United States Department of Justice reported in 1996 that the rate of juvenile arrests for the commission of serious crimes rose forty-six percent between 1983 and 1992.[176] Additionally, the California Department of Justice reported that the number of juveniles committing murder doubled and the rate of arrests for violent offenses rose fifty-four percent between 1986 and 1995.[177] By relying on these statistics, supporters of the GVJCPA hope to demonstrate that the juvenile justice system as it has existed for one hundred years does not work.[178]

The GVJCPA has overhauled California's juvenile justice system.[179] It describes the traditional juvenile court's philosophy of rehabilitation and treatment as inadequate and ill-equipped to handle the substantial growth in increasingly violent juvenile offenses.[180] It also paints the juvenile justice system as one unable to respond to a perceived need for public protection from juvenile offenders.[181] The GVJCPA's overarching concern is that as the per-capita number of teenagers

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[174] Tracy Kenny, *supra* note 169.

[175] *See* GVJCPA, *supra* note 1. All thirty-two proposals in the GVJCPA can be found in one of the eleven pieces of failed legislation. Tracy Kenny, *supra* note 177.

[176] *See* GVJCPA, *supra* note 1, § 2(A).

[177] *See id.*

[178] *See* Burke, *supra* note 18, at 1027.

[179] *See* GVJCPA, *supra* note 1, § 2(I).

[180] *See id.*

[181] *See id.*

increases in California, so too will California's juvenile crime rate.[182]

III. THE MOST SIGNIFICANT CHANGES PRESENTED BY THE GVJCPA

Half of the GVJCPA rewrote the Welfare and Institutions Code in an effort to correct the problem of serious and violent juvenile crime,[183] while the other half fine-tuned provisions of the Penal Code concerning gang-related crime.[184] Although some of the changes to the Penal Code may have a positive effect on California's war on gang-related crime,[185] those parts of the GVJCPA are not the focus of this Comment and will not be discussed. Rather, the purpose of this Comment is to closely analyze and assess California's juvenile law prior to March 7, 2000 and to evaluate the GVJCPA's changes. Thus, only the most significant of the changes to the Welfare and Institutions Code will be addressed.

A. THE JURISDICTION OF THE JUVENILE COURTS

Welfare and Institutions Code Section 602 once provided the juvenile court with jurisdiction over any person who was under the age of eighteen at the time he was alleged to have violated any state or federal law, or any local or county ordinance.[186] The GVJCPA essentially retains this basis for juris-

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[182] *See id.* at § 2(D).

[183] *See id.* at §§ 18-34.

[184] *See* GVJCPA, *supra* note 1, §§ 3-17.

[185] *See id.* §§ 3-17. Section 4 of the GVJCPA amends § 186.22 of the Penal Code, creating an aggravating circumstance for any person who commits a gang-related felony offense on the grounds of or within 1,000 feet of a school. Section 4 of the GVJCPA also mandates life sentences for anyone convicted of certain felonies with the intent of promoting or assisting a criminal street gang. Section 6 of the GVJCPA adds § 186.26 to the Penal Code, creating a felony offense for soliciting minors to join or assist a gang. Section 7 of the GVJCPA, adding § 186.30 to the Penal Code, requires anyone convicted of a gang-related crime to register with the local sheriff's office within ten days of being released from custody. *See id.*

[186] *See* CAL. WELF. AND INST. CODE § 602 (Deering 1999).

diction.[187] However, the GVJCPA creates a large exception for minors aged fourteen and over who are alleged to have committed certain crimes.[188] In effect, the exception statutorily excludes a large number of minors from the juvenile justice system.[189] Minors as young as fourteen years old may now be automatically transferred out of the juvenile system.[190] Their cases will subsequently be heard in adult criminal court according to the rules of criminal procedure.[191]

Furthermore, this amendment results in a substantial deviation from judicial waiver, the only system used in California prior to the March 7, 2000 election to transfer minors to adult court.[192] Judicial waiver requires the prosecuting officer to request a fitness hearing, at which the judge determines whether the minor is unfit for treatment within the juvenile system.[193] Under judicial waiver, the decision to transfer a minor to adult court lies in the hands of the judge.[194] The new Section 602(b) eliminates most of that judicial discretion.[195] As a result, a

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[187] *See* GVJCPA, *supra* note 1, § 18, 1999-2000 Legis. Sess. (Cal. 1999).

[188] *See id.* The crimes that automatically remove a minor aged fourteen or older from the jurisdiction of the juvenile courts are murder (where the minor is alleged to have killed the victim personally), or one of seven sex offenses. The seven sex offenses are: (1) rape, (2) spousal rape, (3) forcible sex offenses in concert with another, (4) forcible lewd and lascivious acts on a child under the age of four, (5) forcible penetration by a foreign object, (6) sodomy or oral copulation by force, violence, duress, menace, or fear of bodily injury, and (7) lewd and lascivious acts on a child under the age of fourteen years. *See id.*

[189] *See Juvenile Justice: Prosecution of Minors in Adult Criminal Court; Confidentiality; Juvenile Records Sealing; Other Juvenile Court Matters: Hearing on A.B. 2723 Before the Senate Comm. on Crim. Proc.*, 1995-1996 Legis. Sess. (Cal. 1996) (author unavailable) [hereinafter Hearing on A.B. 2723].

[190] *See id.*

[191] *See id.*

[192] *See* CAL. WELF. AND INST. CODE § 707 (Deering 1999).

[193] *See id.*

[194] *See* Hearing on A.B. 2723, *supra* note 189.

[195] *See id.*

large number of minors who once would have been entitled to a fitness hearing are no longer so entitled.[196]

B. INCREASED PROSECUTORIAL POWER TO TRANSFER MINORS TO ADULT CRIMINAL COURT

Prior to the recent election, judicial waiver, codified in Section 707 of the Welfare and Institutions Code, was the only system used in California to waive juvenile offenders to adult court.[197] Several amendments to Section 707 were made by Section 26 of the GVJCPA.[198] These amendments removed the discretion that now lies with the court, and instead places it with the prosecutors.[199]

1. California's Judicial Waiver System, as it was Codified in Welfare and Institutions Code Section 707 Prior to the March 7, 2000 Election[200]

Before the March 7, 2000 election, the court had the discretion to waive jurisdiction over juvenile cases in which the minor was at least sixteen years old when alleged to have committed any crime that was not listed in Section 707(b).[201] When the prosecutor filed a motion to conduct a fitness hearing, the court would conduct an investigation to determine whether the minor was fit to be treated within the juvenile justice system.[202] The criteria evaluated by the judge included:

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[196] *See id.* Provisions for a fitness hearing are currently made under Section 707 of the of the California Welfare and Institutions Code. For a discussion of Section 707, *see infra* notes 197-239 and accompanying text.

[197] *See* CAL. WELF. AND INST. CODE § 707 (Deering 1999).

[198] *See* GVJCPA, *supra* note 1, § 26.

[199] *See* Hearing on A.B. 2723, *supra* note 189.

[200] *See* CAL. WELF. AND INST. CODE § 707 (Deering 1999).

[201] *See* CAL. WELF. AND INST. CODE § 707(a) (Deering 1999). The 707(b) crimes currently include, but are not limited to: murder, arson, robbery, rape or sodomy by force, several forms of kidnapping, attempted murder, assault, and carjacking. *See id.*

[202] *See id.*

(1) the minor's criminal sophistication;[203] (2) the chance that the minor is capable of being rehabilitated;[204] (3) the minor's previous encounters with the law;[205] (4) the success of the juvenile justice system's previous attempts to rehabilitate the minor;[206] and (5) the circumstances and gravity of the crime charged.[207]

Section 707 included limited circumstances under which a minor would be presumed unfit for juvenile court.[208] A minor aged sixteen or older would be presumed unfit upon a determination by the judge that, at a time prior to the current allegation, he was at least sixteen when he committed a 707(b) crime.[209] The 707(b) crimes included murder,[210] arson,[211] robbery,[212] rape,[213] kidnapping,[214] assault with a firearm,[215] manufacturing or selling half an ounce of a controlled substance,[216] escape by force from a juvenile hall,[217] torture,[218] and carjacking.[219] A minor could overcome a presumption of unfitness only if he could produce substantial evidence that he was indeed

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[203] *See id.* § 707(a)(1).

[204] *See id.* § 707(a)(2).

[205] *See* CAL. WELF. AND INST. CODE § 707(a)(3) (Deering 1999).

[206] *See id.* § 707(a)(4).

[207] *See id.* § 707(a)(5).

[208] *See id.* § 707(b) and (c).

[209] *See id.* § 707(c).

[210] *See* CAL. WELF. AND INST. CODE § 707(b)(1) (Deering 1999).

[211] *See id.* § 707(b)(2).

[212] *See id.* § 707(b)(3).

[213] *See id.* § 707(b)(4).

[214] *See id.* § 707(b)(9), (10), (11), (26), (27).

[215] *See* CAL. WELF. AND INST. CODE § 707(b)(13) (Deering 1999).

[216] *See id.* § 707(b)(20).

[217] *See id.* § 707(b)(22).

[218] *See id.* § 707(b)(23).

[219] *See id.* § 707(b)(25).

amenable to the treatments offered by the juvenile system.[220] The court could also consider any extenuating or mitigating circumstances.[221] It was also possible for a minor as young as fourteen years old to become the subject of a fitness hearing if, at the age of eleven or older, he had committed one of the 707(b) crimes.[222]

2. How the GVJCPA Has Changed Section 707 and Judicial Waiver

The amendments to Section 707 included within the GVJCPA lowered the age at which fitness hearings become appropriate, from sixteen years old to fourteen years old.[223] This change permits a minor as young as fourteen years old to be automatically transferred to adult criminal court.[224] Additionally, a minor aged sixteen or older shall be presumed unfit if he committed two or more other felony offenses when he was at least fourteen years of age.[225]

If a minor is aged fourteen or fifteen, the GVJCPA provides that prosecutorial waiver be invoked in cases not automatically waived under the proposed amendment to Section 602.[226] For the prosecutor to waive a fourteen or fifteen year-old to adult criminal court, one of three special circumstances must be present:[227] (1) the minor must be accused of committing a crime that would be punishable by death or life imprisonment had it

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[220] *See* CAL. WELF. AND INST. CODE § 707(c) (Deering 1999).

[221] *See id.* § 707(c).

[222] *See id.* § 707(d).

[223] *See* GVJCPA, *supra* note 1, § 26.

[224] *See id.*

[225] *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707 (a)(2).

[226] *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707 (d)(2). *See also supra* notes 186-196 and accompanying text.

[227] *See* GVJCPA, *supra* note 1, § 26. Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2).

been committed by an adult;[228] (2) the minor allegedly used a firearm in the commission of a felony;[229] or (3) the minor currently stands accused of committing any crime in conjunction with a criminal street gang,[230] any offense committed for the purpose of intimidating or interfering with the victim's constitutional rights,[231] any crime against a victim who was sixty-five years old or older,[232] or is alleged to have committed any of the 602(b) crimes.[233]

With the passage of the GVJCPA, prosecutors may now file accusatory pleadings in adult criminal court against minors aged sixteen and older if one of two factors is present.[234] First, the minor must not be subject to the proposed automatic waiver found in the amendment to Section 602.[235] Second, the minor must be alleged to have committed any one of the 707(b) crimes against any victim,[236] or any other crime when one of the following conditions is met: (1) the crime was committed against a victim who was at least sixty-five years old,[237] (2) the crime was committed with the intent to intimidate or interfere

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228 *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2)(a).

229 *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2)(b).

230 *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2)(c).

231 *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2)(c).

232 *See* GVJCPA, *supra* note 1, § 26. Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d)(2)(c).

233 *See id.* Specifically, within § 26, refer to CAL. WELF. AND INST. CODE §§ 707(d)(2)(c) and 602(b), which lists murder and several sex offenses as being grounds for automatic transfer. *See also supra* notes 186-196 and accompanying text.

234 *See Prosecutorial Direct Filing: Hearing on A.B. 987 Before the Assembly Comm. on Appropriations.,* 1997-1998 Legis. Sess. (Cal. 1998) (statement of Jerome McGuire, assembly publications) [hereinafter Hearing on 987].

235 *See* GVJCPA, *supra* note 1, § 18. *See also supra* notes 186-196 and accompanying text.

236 *See* CAL. WELF. AND INST. CODE § 707(b) (Deering 1999).

237 *See* GVJCPA, *supra* note 1, § 26. Specifically, within § 26, refer to CAL. WELF. AND INST. CODE § 707(d).

with the victim's constitutional rights,[238] or (3) the crime was committed in conjunction with a criminal street gang.[239]

C. STEPS TO PROTECT THE PUBLIC AND PROVIDE ACCOUNTABILITY

In addition to changing the jurisdiction of the juvenile courts and establishing a system of prosecutorial waiver, the GVJCPA includes provisions intended to protect the public from juvenile offenders.[240] For example, the new Welfare and Institutions Code Section 602.5 requires juvenile courts to report the records of all juvenile delinquents to the California Department of Justice.[241] The Department of Justice now retains all juvenile records, making them available to the public.[242]

The GVJCPA's proposed changes also affect the manner in which minors are detained.[243] Welfare and Institutions Code Section 625.3 previously provided that minors accused of using firearms in the commission of a felony be detained until a hearing is held before the court.[244] The GVJCPA expands this Section,[245] further requiring that minors alleged to have committed any of the 707(b) crimes, with or without a firearm, be detained until a hearing is held before the court.[246] This amendment keeps those minors off of the street and away from

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[238] *See id.*

[239] *See id.*

[240] *See id.* § 2(K) (discussing the need to provide Californians with a safer state).

[241] *See id.* § 19.

[242] *See* GVJCPA, *supra* note 1, § 19.

[243] *See id.* § 20.

[244] *See* CAL. WELF. AND INST. CODE § 625.3 (Deering 1999).

[245] *See* GVJCPA, *supra* note 1, § 20.

[246] *See id.*

the public until a determination can be made of the offense committed.[247]

Another method for holding minors accountable for their acts and requiring them to answer in court is found in the amendment to Welfare and Institutions Code Section 629.[248] Section 629 once allowed probation officers to require the minor and/or his parent or guardian to sign a promise to appear before the juvenile court as a condition of probation.[249] In all cases involving a minor aged fourteen or older who is taken in to custody for the commission of or attempt to commit a felony, the amended Section 629 requires the minor's written, signed promise to appear.[250]

While many juvenile offenders are placed on probation instead of committed to the youth authority, in many circumstances that option is not available.[251] An amendment to Welfare and Institutions Code Section 654.3 expands that list.[252] The circumstances now include any minor who is alleged to have committed any felony offense when he was at least fourteen years old.[253]

Finally, the GVJCPA limits the privacy and confidentiality rights of juvenile delinquents.[254] Welfare and Institutions Code Section 676 already provided a lengthy list of offenses for

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[247] *See id.*

[248] *See id.* § 21.

[249] *See* CAL. WELF. AND INST. CODE § 629 (Deering 1999).

[250] *See* GVJCPA, *supra* note 1, § 21. Specifically, within § 21, refer to amendment of § 629.

[251] *See* CAL. WELF. AND INST. CODE § 654.3 (Deering 1999). For example, probation is not available where a minor has committed a 707(b) crime, sold or possessed a controlled substance, assaulted a school employee with a firearm, committed any crime as part of a criminal street gang, has already been on probation, or has already been a ward of the court. *See id.*

[252] *See* GVJCPA, *supra* note 1, § 22. Specifically, within § 22, refer to amendment of § 654.3.

[253] *See id.*

[254] *See id.* § 25. Specifically, within § 25, refer to amendment of § 676.

which juvenile proceedings may be open to the public[255] and allowed the public disclosure of the minor's name under certain, limited circumstances.[256] The judge was given discretion, however, to keep the name and records of the proceedings confidential, should she find good cause to do so.[257] The GVJCPA's amendments to Section 676 severely limit the interpretation of "good cause" to mean necessary to protect the personal safety of the minor, the victim, or the public at large, severely restricting a judge's ability to keep juvenile delinquency proceedings closed to the public.[258] The amendment imposes a requirement that the court conspicuously post a roster of all cases involving juvenile defendants, indicating where and when the hearings are taking place, and whether they are open to the public.[259]

IV. CRITIQUE: WHY THE PROPOSED CHANGES WILL NOT FIX THE SYSTEM

> *"The passage of this measure would result in the de facto destruction of the juvenile justice system as we know it. Many of the basic protections for young people – that they won't be tried in adult courts, that they will get a clean record and a fresh start when they turn eighteen – will be gone."*[260]

The GVJCPA is not the answer to California's juvenile crime problem. Rather than put an end to juvenile crime, it

[255] *See* CAL. WELF. AND INST. CODE § 676 (a)(1)-(28) (Deering 1999). For example, prior to the election, confidentiality was only limited in cases where a minor has committed crimes such as murder, arson, robbery, rape, kidnapping, burglary, and drive by shooting. *See id.*

[256] *See id.* § 676 (c).

[257] *See id.* § 676 (c), (d), (e).

[258] *See* GVJCPA, *supra* note 1, § 25. Specifically, within § 25, refer to amendment of CAL. WELF. AND INST. CODE § 676(c).

[259] *See id.* Specifically, within § 25, refer to CAL. WELF. AND INST. CODE § 676(g).

[260] *See* ACLU News, *supra* note 164.

will erode the jurisdiction of the juvenile court,[261] transfer too much power to prosecutors,[262] and dismantle what is left of the confidentiality provisions that were once the back bone of the juvenile justice system.[263] Furthermore, the need for the GVJCPA is premature, rendering it unnecessary, as the truth behind the statistics proves that the juvenile crime problem in California is no bigger now than it ever has been.[264] Also, similar laws in other parts of the country have been attacked as violative of due process.[265] Furthermore, there is evidence that get-tough measures such as the GVJCPA do not work over time.[266] Finally, implementing and maintaining the GVJCPA is cost prohibitive.[267]

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261 *See infra* notes 264-277 and accompanying text.

262 *See infra* notes 278-307 and accompanying text.

263 *See infra* notes 308-328 and accompanying text.

264 *See infra* notes 329-338 and accompanying text.

265 *See infra* notes 339-358 and accompanying text.

266 *See infra* notes 359-369 and accompanying text.

267 *See* California Quick Reference Voter Information Guide for the March 7, 2000 Primary Election at 6 [hereinafter Voter's Guide]. According to the summary of Proposition 21, the initial cost to the state is likely to be $750 million. *See id.* Subsequent state costs are likely to cost $330 million a year. *See id.* This does not include projected local costs, expected to amount to an initial cost between $200 and $300 million, as well as yearly costs of up to $100 million. *See id.* These costs would be necessary to institute and maintain the GVJCPA, as the Act would fail without allocating more money to prisons and police. *See* ACLU News, *supra* note 164. According to the American Civil Liberties Union (ACLU), most of this money would be used to incarcerate minors. *See id.* Despite all the money allocated, none would be spent on juvenile crime prevention. *See id.* However, it is well documented that money spent on prevention is much more effective than that spent on incarceration. *See id.* Although not a study of juvenile crime prevention, the Rand Corporation determined that the money spent implementing California's controversial "Three Strikes" law would have prevented far more crime had it been used on preventative and deterrent programs. *See id.*

A. ERODING THE JURISDICTION OF THE JUVENILE COURTS

Until 1971, the jurisdiction of California juvenile courts included minors aged twenty-one and under.[268] In 1971, Welfare and Institutions Code Section 602 was amended, lowering the age limit to eighteen.[269] California voters have now lowered that age limit to fourteen in several circumstances.[270]

The California legislature's propensity to battle juvenile crime by restricting the jurisdiction of the juvenile courts is objectionable. It is a scheme that purports to lower juvenile crime statistics by virtue of changing the legal age of adulthood.[271] Instead of lowering rates of juvenile crime, lowering the age limit simply funnels a larger number of minors in to the adult criminal justice system where they stand little chance of rehabilitation.[272]

Since age is extremely important to the effectiveness of the rehabilitation of juvenile offenders, the legislature is correct in considering it.[273] However, the legislature would be better advised if it examined age in conjunction with how best to rehabilitate juvenile offenders, rather than how best to determine their guilt and punishment. Studies suggest that a minor's tendency to commit crime is age specific.[274] Typically, a minor's involvement in crime peaks in his late teenage years, and declines in subsequent years.[275] Such studies demonstrate that

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[268] *See* CAL. WELF. AND INST. CODE § 602 (Deering 1999). In particular, refer to the 1971 amendment to § 602, lowering the upper age limit of the juvenile courts from age twenty-one to age eighteen. *See id.*

[269] *See id.*

[270] *See* GVJCPA, *supra* note 1, § 18. *See also supra* notes 186-196 and accompanying text.

[271] *See* D'Ambra, *supra* note 12, at 299.

[272] *See id.* at 295. The reasons why the adult criminal justice system is ineffective in rehabilitating juvenile offenders are several. *See infra* notes 278-307 and accompanying text.

[273] *See* D'Ambra, *supra* note 12, at 285.

[274] *See id.*

[275] *See id.*

those who commit criminal offenses at young ages are not necessarily on a fast track to becoming life-long criminals.[276] Rather, these studies confirm that such offenders are in a phase in their lives in which rehabilitation would be highly effective.[277]

B. THE PROBLEM INHERENT IN TRANSFERRING THE POWER TO THE PROSECUTORS

As discussed above, the GVJCPA changes Section 707 of the Welfare and Institutions Code, shifting California's waiver system from one of judicial waiver to one of prosecutorial waiver.[278] The principle characteristic of the judicial waiver system is the tremendous amount of discretion and deliberation that is required of a judge before the jurisdiction over a juvenile, his case, and subsequent treatment is waived to adult court.[279] Just as important as the judicial discretion is the fact that the ultimate decision to transfer a juvenile's case is made by a judge, a third party with no interest in the case who reaches a decision in open court.[280] Removing the judge from the decision-making process shifts all responsibility and power to transfer a juvenile's case to the prosecutor.[281] The prosecutor, whose main interests lie in securing convictions and taking criminals off of the street, is far from a neutral third party.[282] Furthermore, the prosecutor's decision is made in private, iso-

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[276] *See id.*

[277] *See id.*

[278] *See* Hearing on A.B. 987, *supra* note 234.

[279] *See id.*

[280] *See id.*

[281] *See Juvenile Justice: Prosecution of Minors in Adult Criminal Court: Hearing on A.B. 2143 Before the Senate Comm. on Crim. Proc.*, 1995-1996 Legis. Sess. (Cal. 1996) (author unavailable) [hereinafter Hearing on A.B. 2143] (discussing the reaction of the California Public Defenders Association.) *See also* Hearing on A.B. 987, *supra* note 234.

[282] *See id.*

lated from both judicial review and public scrutiny, and can only be challenged when a discriminatory purpose is shown.[283]

Prosecutorial waiver will likely result in a substantial reduction in the time, money, and resources that ordinarily would have been spent on Section 707 fitness hearings.[284] After all, the main criticism of California's previous judicial waiver system was that the fitness hearings required by Section 707 were time consuming and expensive.[285] However, while the shift to prosecutorial waiver would likely save money and time, there is a genuine and reasonable fear in the legal community that many young people who might otherwise have been given a second chance, would not be so fortunate under prosecutorial waiver.[286]

Further, supporters of prosecutorial waiver urge a shift away from judicial waiver in hopes that it will send a strong message that minors who commit adult crimes will face adult punishment.[287] However, harsh measures such as these are far from effective.[288] Studies cited before Congress indicate that most minors who are tried as adults do not receive punishments any heavier than those they would have received from the juvenile court.[289] Additionally, these studies have produced no evidence to suggest that trying minors as adults reduces recidivism.[290] In fact, the recidivism rate among juveniles tried as adults tends to be higher than that among minors who are

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[283] *See* Hearing on A.B. 987, *supra* note 234.

[284] *See* Hearing on A.B. 2143, *supra* note 281.

[285] *See id.*

[286] *See id*

[287] *See id.*

[288] *See id.* (discussing a 1995 study conducted by the federal Office of Juvenile Justice and Delinquency Prevention, which examined the effect of prosecutorial waiver on juvenile crime in several jurisdictions).

[289] *See* Hearing on A.B. 2143, *supra* note 281.

[290] *See id.*

treated by the juvenile justice system.[291] Furthermore, the studies suggest that minors tried as adults are likely to become more violent than they might have become had they remained in the juvenile justice system.[292]

In 1998, experts brought before the California legislature urged lawmakers to retain judicial waiver.[293] Their primary reason was that the "adult crime, adult time" philosophy ignores the significant intellectual and emotional differences that exist between adults and children.[294] Implementing prosecutorial waiver sacrifices wayward children instead of reforming them and offering them a second chance.[295] This, by far, is the best argument against deviating from judicial waiver.[296] Children are not adults, and the states recognize this fact by treating minors as such in most other areas of the law. For example, a minor may not serve on a jury in any state.[297] Additionally, most states have legislation that prevents minors from driving or marrying without some form of

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[291] *See* Hearing on A.B. 987, *supra* note 234 (comparing national juvenile crime statistics between jurisdictions that use judicial waiver, prosecutorial waiver, statutory waiver, or a combination of some or all three). The statistics indicate that judicial waiver is far more effective than the other forms of waiver in the war against juvenile crime. The reason for this seems to be that judicial waiver requires a judge, a neutral party, to make a fact specific determination as to the minor and his case before any decision to transfer the jurisdiction over the minor can be made. *See id. See also* D'Ambra, *supra* note 12, at 285.

[292] *See* Hearing on A.B. 987, *supra* note 234. Along the same lines, minors who are incarcerated in adult prisons are much more likely to become career criminals upon release. The reasons for this are many, including the possibility of forming relationships with older, more sophisticated and depraved criminals and repeat offenders; a greater exposure to harm and danger in the prisons; and the fact that these minors tend to be deprived of the education, counseling, and guidance that they would have received from the juvenile system. *See* D'Ambra, *supra* note 12, at 295. The effect of waiver is that the minor emerges from an adult prison sentence having grown up and matured in a criminal underworld, with no useful tools to use on the outside, and stigmatized by society as a lost cause. *See id.*

[293] *See* Hearing on A.B. 987, *supra* note 234.

[294] *See id.*

[295] *See id.*

[296] *See id.*

[297] *See e.g.*, Thompson v. Oklahoma, 487 U.S. 815, 840 (1988).

parental consent.[298] Furthermore, minors in every state are prohibited from purchasing pornographic or obscene material with or without a parent's consent.[299] In states where some form of legalized gambling is permitted, the vast majority of them either prohibit minors from gambling or require parental consent.[300] Similarly, state laws that prohibit minors from drinking alcohol or purchasing tobacco products are common.[301] That the state ceases to treat children as children in cases where criminal activity is involved is not legally consistent with the states' overwhelming recognition that children should be treated differently than adults.

The law draws a line between the rights and responsibilities of adults and children. In Justice Sandra Day O'Connor's concurring opinion in *Thompson v. Oklahoma*, she described the basis for bright line rules such as those based on age as reflective of the "relevant social consensus."[302] That consensus reflects the "settled notions of common decency" within the community concerning how children should be treated.[303] The relevant social consensus that the Court relied upon in *Thompson* prohibited a state from applying the death penalty to a fifteen year old based on society's value that children, regardless of their crimes, should not be put to death.[304] Likewise, statutes that prohibit minors from drinking, gambling, marrying, and smoking are based on social mores that grant certain rights and responsibilities to adults. The social mores exclude children from certain activities because children are in-

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[298] *See id.* at 842 and 843.

[299] *See id.* at 845.

[300] *See id.* at 847.

[301] *See e.g.* CAL. BUS. AND PROF. CODE § 22958 (Deering 1999) (allowing the state to impose civil penalties against any person or business that provides tobacco products to any person under the age of eighteen). *See also e.g.* CAL. BUS. AND PROF. CODE § 25658 (Deering 1999) (covering sale to and consumption by minors under the age of 21 of alcohol, as well as providing criminal penalties).

[302] *See Thompson,* 487 U.S. 815 at 848 (O'Connor, J., concurring).

[303] *See id.* at 852 (O'Connor, J., concurring).

[304] *See id.* at 818.

capable of engaging in them with respect, responsibility, or a full understanding of their effects.

A similar relevant social consensus exists when deciding to give prosecutors the power to waive juvenile cases to adult criminal court. That consensus supports the proposition that such an important power should remain in the hands of a judge.[305] In a recent debate in San Francisco, California between five candidates for the District Attorney's office, a question concerning the possible shift to prosecutorial waiver was posed.[306] All candidates were unanimous in expressing concern that such a change would place too much power in the hands of prosecutors, and all stated that leaving the decision in the hands of a judge would best serve California.[307]

C. PROTECTING THE PUBLIC: THE NEW GOAL OF THE JUVENILE JUSTICE SYSTEM?

The portions of the GVJCPA that purport to protect the public are inconsistent with the intent of the creators of the original juvenile justice system.[308] Although public protection was included in the Progressives' stated goals when developing the juvenile justice system, their primary goal was rehabilitation.[309] Unfortunately, these two goals are largely incompati-

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[305] *District Attorney Candidate Debate* (Live, Golden Gate University School of Law, San Francisco, Cal., Oct. 8, 1999). The question posed was, "What is your position on allowing prosecutors to file juvenile cases directly in adult criminal court?" The candidates were Matt Gonzalez, Steve Castleman, Terrence Hallinan, Bill Fazio, and Mike Schaefer.

[306] *Id.*

[307] *Id.*

[308] *See supra* notes 39-60 and 240-259 and accompanying text.

[309] *See generally* Burke, *supra* note 18.

ble.[310] Rather than rehabilitate, publicizing a minor's trouble with the law is more likely to handicap him in the future.[311]

Proposals that increase a minor's accountability and responsibility are not necessarily dangerous. Requiring a minor to sign a promise to appear in court before being released from custody is a strong way of communicating to a minor the seriousness of what he is accused of having done. The promise to appear holds the minor accountable and compels him to take responsibility for his actions. Furthermore, proposals that require longer periods of detention would also benefit, rather than punish the minor, if that detention keeps him away from a turbulent and dangerous home or street life.[312]

However, proposals that restrict the confidentiality of the juvenile courts pose more serious problems.[313] Preserving a juvenile offender's anonymity was part of the foundation upon which the Progressives built the original juvenile justice system.[314] Confidentiality and the cloak of privacy it shed over the minor was an essential part of protecting him from the social stigma associated with being convicted in a criminal proceeding.[315] For this reason, the Progressives fought to include confidentiality in the juvenile justice system.[316] In their opinion, all the rehabilitative efforts in the world would amount to nothing if a minor were to emerge from the juvenile justice system after having been publicly branded a "*convict*."[317] In fact, confidentiality was seen as being so critical to rehabilitation that the Progressives likened any attempt to interfere

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[310] *See* Kara E. Nelson, *Comment: The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A New System of False Promises*, 81 MARQ. L. REV. 1101, 1107 (1998).

[311] *See id.* at 1106.

[312] *See infra* notes 373-385 and accompanying text for more discussion of the contributing factors to the profile of a juvenile offender.

[313] *See* Nelson, *supra* note 310, *passim.*

[314] *See id.* at 1119.

[315] *See* Blum, *supra* note 34, at 351-352.

[316] *See* Nelson, *supra* note 310, at 1118.

[317] *See* Blum, *supra* note 34, at 352.

with it to an attempt to interfere with a doctor's treatment of a trauma patient.[318]

Critics of the juvenile justice system believe that it has failed in its mission to rehabilitate, and therefore state that no reason exists to maintain provisions for confidentiality.[319] As a result, critics believe that the public is entitled to know the identities of the minors in the community who may pose a threat.[320] However, should the element of confidentiality be dismantled, nearly every juvenile case in California could become a headline on the evening news.[321]

There are several reasons why public knowledge will not help the effort to rehabilitate juvenile delinquents. First, public knowledge of a minor's criminal past will stigmatize him.[322] The social perception that delinquency of any kind is deviant, and therefore bad, has adverse effects on a minor's reassimilation into society.[323] Second, public knowledge prevents a minor from reassimilating in to society[324] because it stands in the way of such important endeavors as getting a job, obtaining various licenses, and establishing financial credit.[325] The minor's opportunity to participate fully in society is crippled due to the adverse effect knowledge of the adjudication could have on his education and job prospects.[326] Third, public knowledge creates notoriety.[327] This notoriety often contributes to recidivism, as

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[318] *See id.* at 355.

[319] *See id.* at 369.

[320] *See id.* at 349, 369 and 388.

[321] *See id.* at 349.

[322] *See* Nelson, *supra* note 310, at 1149.

[323] *See id.* at 1150.

[324] *See id.* at 1151.

[325] *See id.* at 1151 note 369.

[326] *See id.* at 1153.

[327] *See* Nelson, *supra* note 310, at 1149.

some minors commit crimes simply to gain social recognition and acceptance.[328]

D. THE TRUTH BEHIND THE STATISTICS PROVES THAT JUVENILE CRIME IS NOT SPIRALING OUT OF CONTROL

Supporters of the GVJCPA often claim that juvenile crime is skyrocketing out of control.[329] The drafters of the GVJCPA even included statistics that buoy this position within its text.[330] However, when considering this evidence, a familiar quote comes to mind: "There are three types of lies; lies, damn lies, and statistics."[331]

The statistics relied upon by the GVJCPA should scare and shock the average voter in to believing that juvenile crime is growing at an uncontrollable rate.[332] However, that is simply not the case.[333] Statistics such as those cited in the GVJCPA are extremely misleading and do not paint an accurate picture of the true nature of juvenile crime.[334]

For example, the statistics fail to reflect the fact that there has been little change, if any, in the correlation between adult and juvenile crime rates in California.[335] Furthermore, the statistics cited do not reveal the thirty percent decrease in both juvenile and adult crime between 1990 and 1994.[336] Any statis-

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[328] *See id.*

[329] *See supra* notes 161-182 and accompanying text.

[330] *See id.*

[331] *See* THE OXFORD DICTIONARY OF QUOTATIONS 249: 13 (4th ed. 1992) (attributing the above quote to Benjamin Disraeli, a British Conservative politician and novelist, in MARK TWAIN AUTOBIOGRAPHY (1924)).

[332] *See* Vincent Schiraldi and Jason Zeidenberg, *Runaway Juvenile Crime? The Context of Juvenile Crime Arrests*, a study by the Justice Policy Institute (1998) [hereinafter JPI Arrest Study].

[333] *See id.*

[334] *See id.*

[335] *See* JPI Curfew Study, *supra* note 121.

[336] *See id.*

tical indication that there has been a marked increase in juvenile crime is likely tied to a higher number of curfew arrests, as well as an increase in the number of reported crimes.[337] However, the GVJCPA's use of statistics is intended to prove that violent juvenile crime is on the rise, despite the fact that further inquiry shows that such a contention is simply untrue.[338]

E. PROSECUTORIAL WAIVER MAY VIOLATE DUE PROCESS

Although the United States Supreme Court has not ruled on the constitutionality of transferring a minor to adult court without the benefit of a fitness hearing,[339] it did publish a dissent which addressed that very question.[340] At issue in *U.S. v. Bland* was whether prosecutorial waiver denies minors due process of law.[341] Jerome Bland, sixteen years old, was tried as an adult for the crime of armed robbery in Washington D.C.[342] Under an Act of Congress, the United States Attorney had the authority to waive juvenile offenders to adult criminal court without the benefit of a fitness hearing.[343] Bland moved to dismiss the indictment, arguing that the court did not have jurisdiction over him because the system of prosecutorial waiver denied him due process of law.[344]

The United States District Court for the District of Columbia denounced the statutory scheme that allowed prosecutorial waiver as a "short cut," inspired by the "pressures generated by

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[337] *See id.*

[338] *See* GVJCPA, *supra* note 1, § (2). *See also* JPI Arrest Study, *supra* note 332.

[339] *See supra* notes 201-222 and accompanying text (discussing judicial waiver, as it was codified in California prior to the March 7, 2000 election).

[340] *See* Bland v. U.S., 412 U.S. 909 (1973) (Douglas, J., dissenting; Brennan and Marshall, J.J., joining in the dissent).

[341] *See* U.S. v. Bland, 330 F. Supp. 34 (1971).

[342] *See id.*

[343] *See id.* at 35.

[344] *See id.* at 34.

the growing [juvenile] crime waive."[345] The court attacked this short cut as having been implemented merely to avoid the "difficulties" associated with judicial waiver,[346] primarily the fitness hearings.[347] The court then condemned the unlimited power that such a scheme places in the hands of the prosecutor as streamlining the juvenile justice system "at the expense of the individual's right to due process safeguards."[348] The court further criticized prosecutorial waiver as carrying with it a presumption of guilt, as well as an assumption that most juvenile offenders are hardened criminals who are beyond help.[349] The district court held that the statute in question in fact violated due process, and therefore dismissed the indictment against Jerome Bland.[350]

The Court of Appeals reversed the judgment of the District Court.[351] When asked to decide once and for all whether prosecutorial waiver violates a minor's due process, the United States Supreme Court denied certiorari.[352] Nevertheless, Justices Douglas, Brennan, and Marshall published a strong dissent on that issue.[353] The dissenting justices wrote that certiorari to this question should have been granted because prosecutorial waiver raises two "substantial" questions worthy of the Court's attention.[354] Of primary importance, the dissent urged that a serious constitutional question is raised any time a minor is faced with the possibility of arbitrarily being treated as

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[345] *See id.* at 36-37.

[346] *See Bland*, 330 F. Supp. 34 at 36.

[347] *See id.* *See also* Kent v. U.S., 383 U.S. 541 (1966). In *Kent*, the U.S. Supreme Court described the fitness hearing as "critically important" to a minor's due process rights.

[348] *See Bland*, 330 F. Supp. 34 at 36.

[349] *See id.* at 37.

[350] *See id.* at 39.

[351] *See* U.S. v. Bland, 472 F.2d 1329 (1972); *cert. denied*, 412 U.S. 909 (1973).

[352] *See* Bland v. U.S., 412 U.S. 909 (1973) (Douglas, J., dissenting; Brennan and Marshall, J.J., joining).

[353] *See id.*

[354] *See id.* at 911

an adult criminal.[355] Denying a minor a fitness hearing deprives him of any opportunity to rebut the prosecution's assumption that he should cease to be treated like other minors, and thereby violates due process.[356] Further, a prosecutor's decision to waive a minor to adult court is immune from judicial review.[357] As a result, the decision is made in isolation by someone who is not governed by procedural rules, leaving ripe the possibility for unchecked abuse of discretion.[358]

F. SIMILAR ATTEMPTS IN OTHER STATES HAVE NOT WORKED

The final reason why the GVJCPA is not the answer to California's juvenile crime problem is that it simply will not work. Other states, most notably the state of Washington, have adopted similar get-tough measures only to find that juvenile crime remains a problem.[359] Washington abandoned its rehabilitative juvenile justice system in favor of a punitive system in 1977.[360] The change was made for a variety of reasons, namely a perceived rise in juvenile crime, and what was considered by the legislature to be an insensitivity towards public safety and protection.[361] Washington's Juvenile Justice Act of 1977 was similar to the GVJCPA in several ways: first, it abandoned closed courts for juvenile proceedings;[362] second, it opened juvenile files for public inspection;[363] third, it created provisions for both statutory and prosecutorial waiver;[364] and

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[355] *See id.*

[356] *See id.*

[357] *See Bland*, 412 U.S. 909 at 911.

[358] *See id.* at 913.

[359] *See* Jeffrey K. Day, *Comment: Juvenile Justice in Washington: A Punitive System in Need of Rehabilitation,* 16 PUGET SOUND L. REV. 399 (1992).

[360] *See id.* at 399.

[361] *See id.* at 407-408. Note that these reasons are substantially similar to the reasons cited by supporters of the GVJCPA. *See e.g.* GVJCPA, *supra* note 1, § (2).

[362] *See* Day, *supra* note 359 at 410.

[363] *See id.* at 412.

[364] *See id.* at 422.

fourth, it based sentencing on the crime committed, rather than on the treatment required by the particular minor.[365] Only fifteen years after it was enacted, Washington's punitive system was criticized as a failure.[366] The cost of maintaining the system had become prohibitive.[367] Additionally, the seriousness and frequency of juvenile crime continued to rise.[368] Furthermore, the state's recidivism rate did not improve.[369]

V. TREATING JUVENILE CRIME AS BOTH A SOCIAL PROBLEM AND A LEGAL PROBLEM AND REASONS TO REPEAL THE GVJCPA

California's juvenile justice system has been examined and the ways in which the GVJCPA has changed it have been considered. Two primary facts exist upon which all parties can agree. First, juvenile courts were conceived at a time when the majority of offenses committed by minors were status offenses, such as skipping school and shoplifting penny-candy from the corner store.[370] Second, in recent years juvenile crime has taken a far more serious form. From petty drug offenses and violent robberies to capital murders and rapes, criminal activity committed by minors is becoming a more serious concern across the country.[371] California is no exception.

Despite their importance, these reasons alone are not sufficient to mandate treating minors as adults under criminal law. Now, more than ever before, law makers should strive to rehabilitate juvenile offenders rather than sacrifice them to the adult criminal justice system. The relevant social consensus referred to in Justice O'Connor's concurrence in *Thompson v.*

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[365] *See id.* at 428.

[366] *See id.*

[367] *See* Day, *supra* note 359 at 428.

[368] *See id.*

[369] *See id.*

[370] *See* D'Ambra, *supra* note 12, at 282.

[371] *See id.*

Oklahoma requires it.[372] In California, the social consensus requires us to treat our children as children, even when they have committed terrible crimes. As a result, juvenile crime must be viewed not only as a legal problem, but as a social problem as well.

A. TREATING JUVENILE CRIME AS A SOCIAL PROBLEM

The first step in treating juvenile crime as a social problem is to determine the profile of the average juvenile offender.[373] These minors often have similar social and personal characteristics.[374] For example, juvenile offenders typically come from an impoverished upbringing, having grown up with substandard housing, healthcare, and educational experiences.[375] Socially, these minors tend to be alienated from their families and other children, and are often rebellious or contentious with parents and authority figures.[376] Furthermore, these minors are more likely than others to have been neglected by their parents, or sexually or physically abused by a parent or other care-taker.[377] It is also highly likely that these minors come from neighborhoods where poverty, drug abuse, and crime are rampant.[378] Additionally, the typical juvenile offender either lacks a peer group or has one that is extremely influential in a negative way.[379]

The profile of the average juvenile offender poses numerous social problems that demand serious legislative attention in the areas of poverty, physical abuse, drugs, neglect, crime, housing, and education. Legislators must make a concerted

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[372] *See Thompson*, 487 U.S. 815 at 847.

[373] *See* D'Ambra, *supra* note 12, at 300.

[374] *See id.* at 299.

[375] *See id.*

[376] *See id.*

[377] *See id.*

[378] *See* D'Ambra, *supra* note 12, at 300.

[379] *See id.*

effort to urge every governmental agency to work together to mend these holes. This effort must include substantial government involvement in areas such as pre-natal care, education, job training, housing, and community programs to prevent and intervene in juvenile crime.[380] The legislative efforts must also take the form of aggressive funding and implementation of preventive and informative programs in schools and communities.

A second tactic in treating juvenile crime as a social problem is to train teachers and other authority figures in mentoring skills.[381] Many minors often lack exposure to caring adults,[382] which inevitably contributes to their delinquency.[383] However, there is evidence that training teachers and other school administrators to mentor students has a positive impact on juvenile crime.[384] Studies conducted by the Federal Office of Juvenile Justice and Delinquency Prevention prove that mentoring reduces drug and alcohol use, aggressive behavior, and improves academic performance.[385]

B. TREATING JUVENILE CRIME AS A LEGAL PROBLEM

Juvenile crime must also be treated as a legal problem. A main criticism of the current juvenile justice system is that it has failed in its efforts to rehabilitate.[386] However, this does not mean that rehabilitation should be set aside as a legal goal. Rather, effective rehabilitation must become a legislative priority. Instead of treating all juvenile offenders alike, reha-

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[380] *See id.* at 301 (discussing U.S. Attorney General Janet Reno's proposal for a high level of governmental involvement in curbing juvenile crime).

[381] Statement of the Hon. Shay Bilchik before the House Subcommittee on Early Childhood, Youth, and Families, May 21, 1997 [hereinafter Statement of Shay Bilchik].

[382] *See* D'Ambra, *supra* note 12, at 299.

[383] *See id.*

[384] *See* Statement of Shay Bilchik, *supra* note 381.

[385] *See id.*

[386] *See* Blum, *supra* note 34, at 369.

bilitation must be tailored to fit first-time offenders, repeat offenders, and serious and violent offenders.[387] If the rehabilitative methods currently employed have been unsuccessful, that failure may be due to the fact that the system is outdated.[388] Rather than surrender efforts to rehabilitate, the legislature and the courts must focus more attention on developing better, more effective means of rehabilitation. Both the legislature and the courts must strive to make the scope of treatment fit the offense and the offender.[389]

1. First-time and Misdemeanor Juvenile Offenders

Because of the high rate of success in communities that have instituted diversion programs,[390] California's legislature should establish a state-wide system of diversion programs. Instead of forcing first-time and misdemeanor juvenile offenders through the juvenile courts, diversion programs would be used to rehabilitate those minors and provide the community and victims with accountability.[391] First-time and misdemeanor juvenile offenders would be rehabilitated, and the system would have more room and resources for minors who pose a greater threat to the public and require more attention.

2. Repeat Juvenile Offenders

Minors who fail to complete their contracts under the diversion programs,[392] or who complete their contracts yet return to crime, are proper candidates for the juvenile court.[393] However, if the rehabilitative methods currently used are to be effective, they must be reformed. Legislative attention must be placed on reforming these minors emotionally, physically, and

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387 *See* Day, *supra* note 359 at 421.

388 *See* Burke, *supra* note 18, at 1027.

389 *See* Day, *supra* note 359 at 421.

390 *See* Cooper, *supra* note 152.

391 *See id.*

392 *See id.*

393 *See* Day, *supra* note 359 at 420.

practically, so that through their treatment they become valued members of society.[394]

Rehabilitation may be achieved in a campus setting where juvenile offenders are sent after being adjudicated delinquent.[395] A school reflects the traditional notion of how an effective juvenile institution would be designed.[396] Rather than a prison or dormitory-like facility, an institute modeled after a school would make it easier for officials to classify juvenile offenders by criteria such as age, offense, and gender.[397] Small groups of minors with similar delinquent and social histories should be placed together. All juvenile offenders would experience extensive counseling, in both individual and group sessions. Through treatment, each juvenile would be taught the reasons why his actions led to certain consequences.[398] Additionally, the minors would learn responsibility by cooking, cleaning, and having jobs on campus. Further, education and job training must be stressed. As a result, the juvenile leaves the youth authority confident, skilled, and equipped to be a productive member of society.

The above plan provides effective rehabilitation by fully addressing the emotional and physical needs of juvenile offenders, yet the reform remains incomplete by modern standards. The public demands accountability. To address this concern, features of the diversion programs should be included.[399] For example, written apologies, restitution, and community service should be performed in conjunction with the minor's detention.

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[394] *See id.*

[395] *See* Marshall Wilson, *Plan for New Juvenile Hall OK'd, San Mateo County Wants Facility to Offer Preventive Programs*, S.F. CHRONICLE, February 10, 1999, at A16.

[396] *See* Day, *supra* note 359, at 423.

[397] *See id.*

[398] *See id.*

[399] Recall, however that the purpose of a diversion program is to spare the minor the experience of being put through the juvenile justice system. *See supra* notes 146-160 and accompanying text.

This step would provide accountability, thereby completing the reform.[400]

3. Serious, Violent, and/or Felony Juvenile Offenders

Critics of the current juvenile justice system are correct in asserting that because juvenile crime has taken a violent turn in recent years, the system as it stands is insufficient to treat the more dangerous perpetrators.[401] However, judicial waiver[402] remains the appropriate method to transfer these more violent, threatening minors to adult criminal court.[403] Judicial waiver stops just short of abandoning the most threatening juvenile offenders.[404] While it provides the state with a vehicle to prosecute dangerous minors as adult criminals,[405] judicial waiver requires the court to conduct a thorough investigation into the minor's history, propensity, and amenability to the rehabilitative services offered by the juvenile justice system.[406] The benefit of judicial waiver that does not exist with prosecutorial waiver is that it considers the interests of the minor as well as the interests of the state and the community.

C. THE ULTIMATE GOAL

The ultimate goal of any plan to reform the juvenile justice system must be to enable all minors to become valued, productive members of society. This goal will be achieved if minors are taught to communicate with parents, teachers and each other. However, this goal is only be possible if minors are given alternatives to crime. Thus, the state must fund aggressive juvenile crime prevention programs that target the entire community, involving family, schools, and social centers.

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[400] *See* Day, *supra* note 359, at 421.

[401] *See id.*

[402] *See* CAL. WELF. AND INST. CODE § 707 (Deering 1999).

[403] *See supra* notes 201-222 and accompanying text.

[404] *See id.*

[405] *See id.*

[406] *See* CAL. WELF. AND INST. CODE § 707 (Deering 1999).

For minors that have already become part of the juvenile justice system, it is critical that they are treated, and not simply punished. A treatment-based juvenile justice system can work.[407] For example, Massachusetts abandoned its punitive juvenile justice system in the early 1970's, replacing it with a treatment-based system.[408] The transition between the two systems was not without difficulty, but the results have been ideal.[409] In Massachusetts, juvenile offenders are placed in small, community based programs with a high staff-to-resident ratio.[410] The program emphasizes group and individual counseling, typically shaped by the juvenile offenders' backgrounds.[411] The Massachusetts program also pays close attention to each juvenile offender's reentry to society.[412] As a result of the shift, Massachusetts has seen a below average recidivism rate, as well as an overall drop in the juvenile crime rate.[413]

D. GROUNDS FOR REPEAL

There are many reasons why the GVJCPA should be repealed, invalidated, or, at the very least, modified. The reasons discussed *supra* in Part IV[414] are all pertinent to an argument supporting repeal. Eroding the jurisdiction of the juvenile courts, giving the prosecution full reign over a minor's fate, and destroying confidentiality will do nothing to mend the problem of juvenile crime in California.[415] Furthermore, the GVJCPA presents potential constitutional concerns. In addi-

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[407] *See* Day, *supra* note 359, at 438.

[408] *See id.*

[409] *See id.*

[410] *See id.*

[411] *See id.* at 439.

[412] *See* Day, *supra* note 359, at 438.

[413] *See id.* at 438-439.

[414] *See supra* notes 260-369 and accompanying text.

[415] *See id.*

tion to a due process challenge,[416] the complexity and broad scope of the GVJCPA may pose a violation of the California Constitution's "single subject" rule for all initiatives.[417] If challenged in the courts, the unconstitutional portions of the GVJCPA could be severed from the rest of the initiative. Alternatively, the entire act could be invalidated.

There are several ways to repeal an initiative approved by the voters. One of the best ways to do this is through the initiative process. The California Constitution provides that the citizens of the state may propose initiatives which are then submitted to the state's voters.[418] Thus, Californians who remain opposed to the passage of the GVJCPA should create an initiative that would repeal Proposition 21. However, if Californians do not place an initiative in the next major election, they may still lobby the legislature to repeal or amend the GVJCPA.[419] Due to its statutory construction, repealing the GVJCPA through the legislature would require a two-thirds vote of both houses or a voter approved statute.[420] Further, if Californians fail to repeal the GVJCPA through either legislation or the initiative process, the state courts may be employed to invalidate all or part of the GVJCPA.[421] This method is often used by California voters when they are not pleased with the outcome of an election.[422] Nevertheless, it is within the power of the courts to review initiatives for their constitution-

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416 *See id.*

417 *See* CAL. CONST. art. II, § 8, cl. d (reading, "an initiative measure embracing more than one subject may not be submitted to the electors or have any effect.").

418 *See* CAL. CONST. art. II, § 8. The initiative power is that of the people to propose law and reject or accept it. *See id.* at cl. a.

419 *See* CAL. CONST. art. II, § 10.

420 *See id.*

421 *See e.g.* Kopp v. Fair Political Practices Comm., 11 Cal. 4th 607 (1995) (standing for the proposition that the court's ability to reform statutes enacted by the voters does not interfere with the legislature's authority to repeal or amend the initiative).

422 *See e.g.* Senate of California v. Jones, 21 Cal. 4th 1142 (1999) (declaring Proposition 24 – which would have reduced the salaries of states legislators – unconstitutional, and removing it from the March 7, 2000 ballot before the election); Bramberg v. Jones, 20 Cal. 4th 1045 (1999) (attacking the constitutionality of Proposition 225, an initiative addressing congressional term limits).

ality.[423] All three of these methods, the electoral, the political, and the judicial, should be exhausted in attempts to repeal or invalidate the GVJCPA.

VI. CONCLUSION

The critical problem with the GVJCPA is that it punishes minors for their transgressions without rehabilitating them. By approving the GVJCPA, Californians have established a punitive juvenile justice system and pushed the state closer to abandoning the hope that lies behind the rehabilitative philosophy. In so doing, California continues to avoid making any commitment to repairing the underlying causes of juvenile crime. As a result, both juvenile crime and its contributing causes, poverty, drugs, and neglect, continue to exist and flourish.

Rather than sacrifice what is left of the rehabilitative juvenile justice system, Californians should push for a repeal of the GVJCPA. At the same time, legislators must focus their energy and resources on improving the services offered by the current system. Developing state-wide diversion programs and aggressive juvenile crime prevention programs, reinforcing rehabilitation within the current system, and retaining judicial waiver are all tools that will benefit California as a state, and its minors as a generation.

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[423] *See* CAL. CONST. art. II, § 8.

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