

Striking Out Juveniles: A Reexamination of the Right to a Jury Trial in Light of California's "Three Strikes" Legislation

INTRODUCTION

John J. Delinquent is a nineteen-year-old man residing in the state of California.¹ When John J. was thirteen, a California juvenile court sentenced him to six months in a California Youth Authority detention center for burglarizing a neighbor's house.² A year later, he received a one year sentence for forcefully taking a fellow student's lunch money.³ John J. did not receive jury trials in those juvenile proceedings because, under California law, he did not have the right to a jury trial.⁴

Currently, John J. Delinquent is serving twenty-five years to life in a California state prison for robbing a slice of pizza from a child.⁵ Under California's "three strikes" law, Proposition 184, the trial court used John J.'s two prior juvenile adjudications to enhance his sentence to a minimum of twenty-five years.⁶ If

¹ John J. Delinquent is a fictional character, and the following facts represent a hypothetical situation based on current California law.

² See CAL. PENAL CODE § 459 (West Supp. 1995) (defining burglary); *id.* § 1192.7(c) (West Supp. 1995) (defining "serious" felony and listing burglary among statutory serious felonies).

³ See *id.* § 211 (West 1988) (defining robbery); *id.* 1192.7(c) (listing robbery among serious felonies).

⁴ *Ex parte Daedler*, 228 P. 467 (Cal. 1924). See *infra* notes 69-79 and accompanying text (discussing right to jury trial in California juvenile proceedings).

⁵ See CAL. PENAL CODE § 1170.12(c)(2)(A) (West Supp. 1995) (requiring sentence enhancement of twenty-five years to life if defendant has two prior felony convictions). This hypothetical is not entirely unrealistic. In March, 1995, a twenty-seven year old man was sentenced, under California's "three strikes" law, to twenty-five years to life in prison for stealing a slice of pepperoni pizza. *25 Years for a Slice of Pizza*, N.Y. TIMES, Mar. 5, 1995, § 1, at 21.

⁶ See *infra* notes 117-26 and accompanying text (describing sentence enhancement provisions of Proposition 184).

John J. had been an adult when he committed the prior offenses, he would have had a right to a jury trial.⁷ Because John J. Delinquent was a juvenile, however, the state could use the two prior adjudications, obtained without jury trials, to enhance his sentence to life imprisonment.⁸

This distinction between the rights of juveniles and adults arises from the fundamentally different foundational premises on which the juvenile and criminal justice systems were based.⁹ While the criminal justice system sought to punish criminals and protect the public,¹⁰ the juvenile system endeavored toward the goals of treatment and rehabilitation.¹¹ Articulating this distinction, the California Supreme Court held in *Ex parte Daedler* that, because juvenile proceedings¹² are not punitive in nature, a juvenile has no right to a jury trial.¹³

⁷ See CAL. CONST. art. I, § 16 (stating that right to jury trial shall be secure to all). The United States Constitution guarantees a jury trial in all criminal prosecutions. *Duncan v. Louisiana*, 391 U.S. 145, 149 (1969).

⁸ See CAL. PENAL CODE § 1170.12(b)(3) (stating that prior juvenile adjudications shall constitute prior felony convictions for purpose of sentence enhancement).

⁹ See THOMAS J. BERNARD, *THE CYCLE OF JUVENILE JUSTICE* 83-107 (1992) (discussing origins of juvenile justice system); BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* 8-52 (1993) (discussing historical approaches to juvenile delinquency); ROY LOTZ ET AL., *JUVENILE DELINQUENCY AND JUVENILE JUSTICE* 229-39 (1985) (discussing origins of juvenile court); LaMar T. Empey, *The Social Construction of Childhood Delinquency and Social Reform*, in *THE JUVENILE JUSTICE SYSTEM* 47-51 (Malcolm W. Klein ed., 1976) (explaining creation of juvenile courts); Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment Treatment and the Difference It Makes*, 68 B.U. L. REV. 821, 824 (1988) (explaining origins of juvenile court and that purpose was to remove children from criminal justice system to provide them with individualized treatment); Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909) (explaining that society's goal was to make child feel that she was object of state's care and solicitude).

¹⁰ See *Ex parte Daedler*, 228 P. 467, 469 (Cal. 1924) (stating that juvenile adjudication did not amount to criminal prosecution because purpose of juvenile adjudication was not punishment).

¹¹ See *id.* at 471 (holding that purpose of Juvenile Court Act is to benefit juvenile by surrounding her with positive influence and training her to be useful member of society); Barry C. Feld, *The Transformation of the Juvenile Court*, 75 MINN. L. REV. 691, 691-94 (1991) (discussing rehabilitative goals of juvenile court laws); *infra* notes 46-54 and accompanying text (outlining historical rationale for differentiating between criminal justice system and juvenile justice system).

¹² This Comment uses the term "juvenile proceeding" to refer to a wardship adjudication under § 602 of the California Welfare and Institutions Code. CAL. WELF. & INST. CODE § 602 (West 1984). Section 602 states that any person under the age of eighteen who violates any law, other than a curfew ordinance, is within the jurisdiction of the juvenile court. *Id.* The juvenile court may declare such person a ward of the court. *Id.*

¹³ See *Daedler*, 228 P. at 472 (holding that because juvenile processes are not penal in

Since the original creation of juvenile courts, however, the focus of the juvenile justice system has shifted from rehabilitation to punishment.¹⁴ Proposition 184 is perhaps the most significant attempt by the people of California to transform its juvenile justice system into a punitive system. Its enactment raises serious questions about the continuing validity of the holding in *Ex parte Daedler*.¹⁵ Before the passage of Proposition 184, the state could not use juvenile adjudications to enhance sentences.¹⁶ Now the state *must* use qualifying prior juvenile adjudications to enhance the sentence for a felony conviction. Such enhancements may result in life imprisonment.¹⁷

Because modern juvenile proceedings have potentially severe punitive consequences,¹⁸ the California Supreme Court should reconsider whether juveniles have a right to a jury trial in juvenile proceedings. The *Daedler* court may have been correct in characterizing the juvenile process of 1924 as benevolent and

nature, minor has no inherent right to jury trial). The United States Supreme Court has denied juveniles the right to jury trial on similar grounds. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545-46 (1971) (holding that juveniles did not have right to jury trial in Pennsylvania's juvenile courts because they were not criminal proceedings which could result in criminal convictions). California is among the majority of jurisdictions that do not provide juveniles with jury trials. Joseph B. Sanborn Jr., *The Right to a Public Jury Trial: A Need for Today's Juvenile*, 76 JUDICATURE 230, 233 (1993). Currently, fourteen states grant juveniles the right to a jury trial. See *infra* note 158 and accompanying text (listing states that have extended right to jury trial to juveniles).

¹⁴ See *Feld*, *supra* note 11, at 692 (arguing that juvenile courts have converged substantively and procedurally with adult criminal courts); Sanborn, *supra* note 13, at 234 (discussing criminalization of adjudicatory hearing process and difficulty of distinguishing modern juvenile justice system from adult criminal system).

¹⁵ See *infra* notes 113-16 and accompanying text (explaining punitive nature of Proposition 184 as it applies to juvenile adjudications).

¹⁶ See *People v. West*, 201 Cal. Rptr. 63, 64 (Ct. App. 1984) (holding that prior juvenile adjudications could not be used to enhance sentence because they were not convictions within definition of sentence enhancement statute).

¹⁷ See CAL. PENAL CODE § 1170.12(c) (mandating sentence enhancement when defendant has qualifying prior juvenile adjudications); *infra* notes 109-15 and accompanying text (explaining sentence enhancement provisions of Proposition 184 and their application to juvenile adjudications).

¹⁸ See *infra* notes 117-33 and accompanying text (describing punitive consequences of juvenile adjudications).

rehabilitative.¹⁹ However, Proposition 184 takes juvenile adjudications out of the rehabilitative arena and places them squarely within the punitive criminal justice system.²⁰

This Comment explores the constitutional problems of using prior juvenile adjudications as felony convictions for the purpose of sentence enhancement. Part I examines the historical basis for denying juveniles the right to a jury trial. Part II discusses the transformation of the juvenile justice system from a rehabilitative system into a punitive system. Part III proposes reform of the juvenile justice system that would provide, depending on the severity of the offense, either a right to a jury trial or a right to treatment. Combining the right to a jury trial for serious offenders²¹ with a right to treatment for nonserious offenders²² could enable the system to balance the conflicting goals of punishment and rehabilitation.

I. OVERVIEW OF THE HISTORICAL BASIS FOR DENYING JUVENILES THE RIGHT TO A JURY TRIAL

A. *Right to a Jury Trial*

The right to a jury trial in criminal proceedings has been an essential element of the American legal system throughout its history.²³ English colonists that settled in the United States dur-

¹⁹ See *Ex parte Daedler*, 228 P. 467, 472 (Cal. 1924) (describing processes of juvenile court law as beneficial and merciful, and holding that jury trial is not necessary because juvenile justice system does not punish).

²⁰ See *infra* notes 113-16 and accompanying text (explaining punitive impact of Proposition 184 as it relates to juvenile justice system).

²¹ This Comment uses the term "serious offender" to refer to a juvenile offender accused of committing a serious or "violent" felony, as defined in the California Penal Code. See CAL. PENAL CODE § 1192.7(c) (West Supp. 1995) (defining serious felony); *id.* § 667.5(c) (West Supp. 1995) (defining violent felony); *infra* notes 111-12 and accompanying text (discussing definition of serious or violent felony).

²² This Comment uses the term "non-serious offender" to refer to a juvenile offender accused of committing anything other than a serious or violent felony, as defined in the California Penal Code. See CAL. PENAL CODE § 1192.7(c) (West Supp. 1995) (defining serious felony); *id.* § 667.5(c) (defining violent felony); *infra* notes 111-12 and accompanying text (discussing definition of serious or violent felony).

²³ See PAULA DiPERNA, JURIES ON TRIAL: FACES OF AMERICAN JUSTICE 21-30 (1984) (discussing history of jury); JOHN PROFFATT, TRIAL BY JURY 120-158 (San Francisco, S. Whitney 1877) (discussing right to jury trial); RITA J. SIMON, THE JURY: ITS ROLE IN AMERICAN SOCIETY 3-9 (1980) (discussing history of American jury).

ing the seventeenth century held the right to a jury trial in high regard,²⁴ as evidenced by its conspicuous appearance in every enumeration of rights and immunities by the English colonies.²⁵ The First Continental Congress of 1774 declared that the English colonists had the right to a jury trial.²⁶ Eventually, the right to a jury trial played a role in the colonists' push for independence. The colonists listed among their grievances in the Declaration of Independence that the English king had, in many cases, deprived them of the benefits of a jury trial.²⁷ Today, the United States Constitution, in Article III, Section 2 and the Sixth Amendment, provides for jury trials in all criminal cases.²⁸ The United States Supreme Court, analyzing these constitutional provisions, has found that the Sixth Amendment right to a jury trial is "fundamental to the American scheme of justice," and applies to all state criminal prosecutions.²⁹

The importance of the right to a jury trial has been recognized throughout this nation. In addition to its conspicuous appearance in the United States Constitution, many state constitutions specifically adopted the right to a jury trial.³⁰ Article I, Section 16 of the California Constitution states that the right to a jury trial is inviolate and shall be secure to all.³¹ In construing the meaning of the word "inviolate," the California Supreme Court found that the right mirrors that which existed at English common law when the state adopted its constitution.³² There-

²⁴ See SIMON, *supra* note 23, at 5 (stating that jury became symbol of rebellion against England and bulwark of democracy).

²⁵ See PROFFATT, *supra* note 23, at 121 (stating that English colonists brought right to jury trial with them and established it as one of their dearest privileges).

²⁶ SIMON, *supra* note 23, at 5.

²⁷ THE DECLARATION OF INDEPENDENCE para. 20 (U.S. 1776).

²⁸ U.S. CONST. art. III, § 2; U.S. CONST. amend. VI. The drafters of the United States Constitution placed high value on the right to a jury trial. See THE FEDERALIST No. 83, at 499 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (stating that trial by jury provides protection in criminal proceedings against arbitrary methods of prosecuting pretended offenses and arbitrary punishments for arbitrary convictions).

²⁹ *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

³⁰ See PROFFATT, *supra* note 23, at 124 (stating that many state constitutions expressly guarantee right to jury trial).

³¹ CAL. CONST. art. I, § 16.

³² See *People v. One 1941 Chevrolet Coupe*, 231 P.2d 832, 835 (Cal. 1951) (mandating jury trial when case is similar to one in which litigants had right to jury trial under English common law in 1850).

fore, according to the California Supreme Court, defining the right to a jury trial in California is a matter of historical inquiry into the rule of English common law in 1850.³³

Historical inquiry into the English common law provides an explanation for the right's continued endurance as an essential element of the American legal system. The right to a jury trial occupied a position of paramount importance at common law.³⁴ The jury trial was the mechanism that protected an individual's person, property and liberty from the whims of the state.³⁵ In light of the jury trial's perceived importance, English common law judges believed that society should guard against the introduction of new methods of trial which, although seemingly benign, could undermine the foundation of liberty.³⁶

The jury trial's significance at English common law later carried over to the American system. Ever since the adoption of the right to a jury trial in the constitutions of this nation and its constituent states, the right has been an essential component of free democracy.³⁷ One of the main purposes of the jury trial, or trial by the people, is to protect the people from oppression by the government.³⁸ Under the doctrine of jury nullification, a jury may prevent government oppression by ignoring the law to achieve what it perceives as a just result.³⁹ Our nation's history

³³ See *id.* at 836 (stating that to determine scope of California's constitutional guarantee of jury trial, it is necessary to ascertain rule of English common law in 1850).

³⁴ See 3 WILLIAM BLACKSTONE, COMMENTARIES *379 (1783) (stating that jury has been and always will be glory of English law).

³⁵ See *id.* at *379 (stating that right to jury is most important right that any citizen can enjoy because state cannot affect her liberty or property without unanimous consent of twelve peers).

³⁶ See *id.* at *381 (stating that it is duty of every citizen to guard against introduction of new and arbitrary methods of trial). Regarding juvenile offenders, an English court could only convict a child of a criminal act on a finding of guilt by a jury. See 4 *id.* *23 (1783) (stating that child could be convicted if court and jury found that child had consciousness of guilt).

³⁷ See ALEXIS DE TOCQUEVILLE, DEMOCRACY IN AMERICA 271-276 (J.P. Mayer ed. & George Lawrence trans., Anchor 1969) (13th ed. 1850) (stating that jury trials put people, as opposed to rulers, in control of society).

³⁸ See LYSANDER SPOONER, AN ESSAY ON THE TRIAL BY JURY 6 (Da Capo Press 1971) (1852) (stating that jury trials allow people to guard against oppression by government by determining their own liberties).

³⁹ See Paul Butler, *Racially Based Jury Nullification: Black Power in the Criminal Justice System*, 105 YALE L.J. (forthcoming Dec. 1995) (explaining legal doctrine of jury nullification).

is filled with examples of juries using the power of nullification.⁴⁰

Without the right to a jury trial, people have little protection from the whims of the judicial system in criminal prosecutions.⁴¹ In the American scheme of justice, the jury trial plays a pivotal role in criminal prosecutions.⁴² The government cannot prevail against a defendant without a unanimous finding of guilt by a jury of the defendant's peers.⁴³ However, despite the important role that the right to a jury trial has played throughout history, juveniles do not enjoy this right in juvenile proceedings.⁴⁴

B. History of Juvenile Courts

Until the turn of the century, children and adults both had a legal right to a jury trial.⁴⁵ This changed, however, with the advent of the Progressive Era. Near the end of the 19th century,⁴⁶ progressive reformers began advocating benevolent state

⁴⁰ A celebrated example of a jury preventing such oppression is the trial of William Penn in 1670. DIPERNA, *supra* note 23, at 28. The English government charged Penn with unlawful assembly and disturbing the peace. *Id.* However, the jury refused to return a verdict of guilty, finding that Penn was guilty only of speaking. *Id.* In the nineteenth century, Northern juries freed slaves that had escaped to the North and were on trial for violating the Fugitive Slave Law. See Butler, *supra* note 39 (explaining that jury nullification has been part of English and American law for centuries). In the 1920s, juries refused to convict violators of prohibition laws. SIMON, *supra* note 23, at 7.

⁴¹ See SPOONER, *supra* note 38, at 6 (defining any government that determines its own powers over people as despot).

⁴² See *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (finding that Sixth Amendment right to jury trial in criminal proceedings is incorporated in Fourteenth Amendment, and therefore applies to all state criminal prosecutions).

⁴³ See DIPERNA, *supra* note 23, at 71 (stating that all states require unanimous jury verdicts in felony prosecutions).

⁴⁴ See *Ex parte Daedler*, 228 P. 467, 472 (Cal. 1924) (holding that juvenile offender did not have right to jury trial in juvenile delinquency proceeding).

⁴⁵ See Feld, *supra* note 11, at 694 (explaining changing conception of children during Progressive movement in United States). Society and the law viewed children as miniature adults. *Id.* at 694. Generally, beyond the age of seven, the criminal justice system dealt with children in the same manner as adults. See BERNARD, *supra* note 9, at 106 (explaining that age was factor believed to influence ability to form criminal intent).

⁴⁶ See LOTZ ET AL., *supra* note 9, at 233 (discussing origins of juvenile court). The first juvenile court was created in Chicago in 1899. *Id.* An 1899 Illinois legislative act created the court to regulate the treatment and control of delinquent children. *Id.* at 234. According to Illinois law, a delinquent child was any person under the age of sixteen that violated any state law or local ordinance. *Id.*

action as an instrument of social policy.⁴⁷ Simultaneously, the state began to characterize children as vulnerable innocent beings who needed benevolent care and guidance, rather than as guilty offenders requiring punishment.⁴⁸

In response to these changing perspectives, reformers demanded that the state take more responsibility for improving the lives of delinquent children.⁴⁹ Seeking to further the goals of rehabilitation and treatment, the progressive reformers created juvenile courts throughout the United States.⁵⁰ Under the English common law doctrine of *parens patriae*, the State as parent, courts and legislatures began to assert jurisdiction over unruly children when the state deemed parental care inadequate.⁵¹ In addition, the new juvenile justice system adopted the theory that juveniles lack the *mens rea* for the offenses they commit.⁵²

⁴⁷ See KRISBERG & AUSTIN, *supra* note 9, at 27 (describing interrelation of juvenile delinquency and Progressive Era). Historians often refer to the late nineteenth and early twentieth centuries as the Progressive Era. *Id.* It was a time of major social structural change. *Id.* As the United States changed from a rural agrarian society, to an urban, industrial one, many new social problems developed. *Id.* A reform movement, the Progressives, emerged to address these problems. See Feld, *supra* note 11 at 694. The Progressives believed that they could cure all of society's ills with benevolent state action. *Id.* at 693 (discussing Progressive Era reforms). Many of the reforms focused on children, and included child labor laws, compulsory school attendance laws, and the juvenile court system. *Id.*

⁴⁸ See Feld, *supra* note 11, at 694. Changes in the underlying theories about the causes of crime accompanied the Progressive reform movement. *Id.* Instead of seeing crime as the result of free-willed action, the Progressives thought that an individual's surroundings determined the existence of criminal tendencies. *Id.*

⁴⁹ *Id.* at 695.

⁵⁰ See Feld, *supra* note 9, at 824 (documenting pervasive reforms of Progressive reformers in late nineteenth century). The legal doctrine of *parens patriae* allowed the state wider discretion to interfere in the lives of young offenders. See *Ex parte Daedler*, 228 P. 467, 469 (Cal. 1924) (explaining that source of court's jurisdiction over juvenile delinquents is English common law doctrine of *parens patriae*). See also Feld, *supra* note 9, at 825 (discussing theory of *parens patriae*).

⁵¹ See Feld, *supra* note 11, at 695 (explaining *parens patriae* doctrine). One of the earliest judicial expressions of the *parens patriae* doctrine occurred in Philadelphia in 1838. LOTZ ET AL., *supra* note 9, at 231 (discussing early history of institutional control of juveniles). A mother committed her child to the Philadelphia House of Refuge and charged her with incorrigibility. *Id.* The child's father disagreed and argued that the commitment procedures were unfair because the child did not receive any defense or trial. *Id.* Affirming the commitment of the child, the court held that the state, under the doctrine of *parens patriae*, could supersede the interests of the natural parents. *Id.* at 232.

⁵² See BERNARD, *supra* note 9, at 160 (explaining that system should treat juveniles differently because they do not act with same mental states as adults).

Therefore, the juvenile justice system focused on reform and treatment of offenders, instead of guilt or innocence.⁵³

The procedural approach of the juvenile courts also differed from the traditional criminal justice system.⁵⁴ The states adopted informal, discretionary procedures to decriminalize the processes of the juvenile justice system.⁵⁵ They reasoned that procedural protection was unnecessary because the juvenile courts were rehabilitating rather than punishing juveniles.⁵⁶ As a result, juvenile courts rejected traditional procedural safeguards of the criminal system such as lawyers and jury trials.⁵⁷

II. CURRENT LAW REGARDING THE RIGHT TO A JURY TRIAL FOR JUVENILES

A. California's Treatment of Juveniles

In California, the juvenile justice system originated in the judiciary.⁵⁸ The distinction between juveniles and adults, regarding the right to a jury trial, was first drawn by the California Supreme Court in 1876, in *Ex parte Ah Peen*.⁵⁹ In *Ah Peen*, a minor appealed a magistrate's decision to commit him to an industrial school for rehabilitation.⁶⁰ The minor appealed the decision because the magistrate denied him a jury trial, but the California Supreme Court upheld the decision.⁶¹ The court held that the provisions of the California Constitution which guarantee a jury trial do not apply to minors.⁶² In reaching this

⁵³ Feld, *supra* note 9, at 824. The juvenile court movement attempted to remove children from the adult criminal justice system, and provide them with individual care. *Id.*

⁵⁴ See Feld, *supra* note 9, at 825 (discussing rejection of traditional criminal law jurisprudence by juvenile justice system).

⁵⁵ *Id.* The states altered the proceedings to eliminate any similarities to adult criminal trials. *Id.*

⁵⁶ *Ex parte Daedler*, 228 P. 467, 472 (Cal. 1924).

⁵⁷ Feld, *supra* note 9, at 825. Juvenile court proceedings focused on the background of the child, rather than the details of the alleged offense. *Id.* Therefore, reformers saw juries, lawyers, and the rules of procedure and evidence found in adult criminal proceedings as unnecessary. *Id.*

⁵⁸ See *Daedler*, 228 P. at 469 (discussing adoption of juvenile court law in California).

⁵⁹ *Ex parte Ah Peen*, 51 Cal. 280 (1876).

⁶⁰ *Id.* at 281.

⁶¹ *Id.* at 280.

⁶² *Id.* at 281. The *Ah Peen* court stated that the state had jurisdiction over the child under the doctrine of *parens patriae*. *Id.* Under the doctrine of *parens patriae*, the restraint

decision, the *Ah Peen* court distinguished the magistrate's industrial school sentence from a criminal sentence. The court reasoned that the purpose of the proceeding against the minor and the resulting industrial school sentence was reform.⁶³ On the other hand, the purpose of an adult criminal sentence was punishment.⁶⁴ Finally, the court held that, because the right to a jury trial only arises when the state seeks to punish, juvenile courts may dispense with the jury trial.⁶⁵

In the 1924 landmark decision *Ex parte Daedler*, the California Supreme Court reconsidered whether the state must provide a jury trial to a fourteen-year-old minor charged with murder.⁶⁶ The defendant, Daedler, relied on the provision of the California Constitution which declared, "the right of trial by jury shall be secure to all, and remain inviolate."⁶⁷ Echoing the rationale of *Ah Peen*, the *Daedler* court emphasized that because juvenile proceedings are not penal proceedings, juveniles do not have the same rights that adults have in criminal proceedings.⁶⁸ In other words, because the consequences of a juvenile adjudica-

placed upon the juvenile is similar to that which parents or guardians can impose. *Id.*

⁶³ *Id.*

⁶⁴ *Id.* The Juvenile Court Act of 1909 codified the holding of *Ah Peen*. See *Ex parte Daedler*, 228 P. 467, 470 (Cal. 1924) (stating that state legislature later codified principles of *Ah Peen* in California's juvenile court legislation). In 1897, the California Supreme Court reexamined the issue of jury trials in juvenile proceedings in *Ex parte Becknell*. *Ex parte Becknell* 51 P. 692 (Cal. 1897). In *Becknell*, the California Supreme Court held that an order of the superior court committing a minor to a state juvenile institution was void because the state did not give the minor a jury trial. *Id.* at 692. The California Supreme Court examined a statute which authorized a grand jury to declare a juvenile suitable for commission to a state juvenile institution. *Id.* The statute authorized a court to commit the juvenile on the basis of the grand jury's recommendation, without holding a criminal trial. *Id.*

The *Becknell* court found this procedure unconstitutional, and held that the state could not imprison a minor as a criminal without a jury trial. *Id.* at 693. The *Becknell* court also found that the state could not constitutionally achieve the same result by characterizing the proceeding as a guardianship hearing. *Id.* at 692. The California Supreme Court, however, later rejected and overturned *Becknell* in *Ex parte Daedler*. *Daedler*, 228 P. at 470.

⁶⁵ *Ah Peen*, 51 Cal. at 281.

⁶⁶ *Daedler*, 228 P. at 468.

⁶⁷ See *id.* (citing CAL. CONST. art. I, § 7, which was subsequently repealed and replaced by CAL. CONST. art. I, § 16).

⁶⁸ *Daedler*, 228 P. at 472. The *Daedler* court explained that a minor has no greater rights than an adult. *Id.* Adults do not have the right to a jury trial unless they face punishment for an alleged crime. *Id.*

tion are not punitive, a minor has no constitutional right to a jury trial.⁶⁹

In addition to denying the right to a jury trial, California courts after *Daedler* denied juveniles other criminal procedural rights.⁷⁰ *Daedler's* rationale was subsequently invoked to deny constitutional guarantees such as the right to a public trial.⁷¹ However, in 1967, the United States Supreme Court narrowed the extension of *Daedler* by expanding the juvenile justice system's procedural protections in *In re Gault*.⁷²

In re Gault brought dramatic procedural reform to the nation's juvenile courts.⁷³ In the underlying case, a juvenile court committed Gault to the state industrial school without conducting a trial or providing Gault with counsel.⁷⁴ Gault appealed on the ground that the order removing him from the custody of his parents violated the Due Process Clause of the Fourteenth Amendment.⁷⁵

The United States Supreme Court reversed, holding that the juvenile court denied Gault due process.⁷⁶ In reversing the juvenile court's decision, the majority acknowledged the benevolent motivations of the juvenile courts' creators.⁷⁷ At the same time, however, the majority stated that failing to observe due process standards was likely to result in unfairness and lead to inade-

⁶⁹ *Id.*

⁷⁰ See, e.g., *Weber v. Fifield*, 289 P.2d 303, 304 (Cal. Dist. Ct. App. 1955) (holding that constitutional guarantee of right to counsel does not apply in juvenile proceeding). The California legislature rewrote the juvenile court law in 1961, and added a right to counsel in juvenile delinquency proceedings. CAL. WELF. AND INST. CODE § 679 (West 1984).

⁷¹ See, e.g., *In re Jesse McM.*, 164 Cal. Rptr. 199, 199 (Ct. App. 1980) (holding that minor has no constitutional right to public trial in juvenile proceeding).

⁷² *In re Gault*, 387 U.S. 1 (1967).

⁷³ See *Feld*, *supra* note 11, at 695 (explaining that *Gault* decision shifted formal focus of juvenile courts from "real needs" to legal guilt).

⁷⁴ *Gault*, 387 U.S. at 7. Gerald Francis Gault was a fifteen-year-old that allegedly made lewd remarks on the telephone to a neighbor. *Id.* at 4. The police arrested Gault without notifying his parents. *Id.* at 5. The offense, for which Gault received a six year sentence to the State Industrial School, was a misdemeanor for adults. *Id.* at 8. The adult penalty for the same offense was a five to fifty dollar fine, or not more than two months of imprisonment. *Id.* at 9.

⁷⁵ *Id.* at 10.

⁷⁶ See *id.* at 19 (warning that system must not degenerate into one in which judges impose their own brand of culture and morals on juveniles).

⁷⁷ See *id.* at 17 (stating that "highest" motivations and "most enlightened impulses" led to juvenile justice system).

quate findings of fact.⁷⁸ “Unbridled discretion,” according to the *Gault* Court, is a poor substitute for procedural due process.⁷⁹

While focusing on the potential unfairness that could result from a denial of due process, the *Gault* Court identified a conspicuous gap between the foundational premises and the reality of the juvenile justice system.⁸⁰ Although the state labeled its juvenile justice system as treatment-oriented, the reality was that juveniles received harsh punitive consequences.⁸¹ The *Gault* majority stated that despite the label the state placed on its dispositional proceedings, the practical effect was often deprivation of liberty.⁸²

Consequently, *Gault* resulted in a new set of due process rights for the nation’s juveniles.⁸³ Specifically, the Court held that juveniles have the right to notice of charges,⁸⁴ counsel,⁸⁵ confrontation and cross-examination of witnesses, and the privilege against self-incrimination.⁸⁶ However, the right to a jury trial was not at issue in *Gault*.⁸⁷

Since the *Gault* decision, the United States Supreme Court has expanded juvenile due process rights to include a requirement of proof beyond a reasonable doubt⁸⁸ and a ban on double jeopardy.⁸⁹ The functional equivalence between adult crimi-

⁷⁸ See *id.* at 20 (stating that “[d]ue process of law is the primary and indispensable foundation of individual freedom”).

⁷⁹ See *id.* at 21 (disagreeing with state’s argument that juveniles receive benefits from special juvenile procedures which offset disadvantages of denial of due process).

⁸⁰ See *id.* at 26 (stating that even though intention behind informal processes of juvenile court was to save juveniles from downward careers, juvenile proceedings do more harm to juveniles than good).

⁸¹ See *id.* at 27 (stating that when court confronts reality of consequences of juvenile proceedings, it finds boy committed to prison-like institution for years).

⁸² See *id.* at 27 (stating that labeling institution State Industrial School, instead of prison, is constitutionally irrelevant).

⁸³ See *id.* at 31-60 (reversing Arizona Supreme Court and granting juveniles set of due process rights).

⁸⁴ *Id.* at 31-34.

⁸⁵ *Id.* at 34-42.

⁸⁶ *Id.* at 42-57.

⁸⁷ See *id.* at 10 (outlining list of due process violations alleged by appellants).

⁸⁸ See *In re Winship*, 387 U.S. 358 (1970). The *Gault* Court held that neither the Fourteenth Amendment nor the Bill of Rights applied to adults alone. *Gault*, 387 U.S. at 13. Since *Gault*, the Supreme Court has declared that the state’s burden of proof is reasonable doubt, rather than lower civil burdens of proof. *Winship*, 387 U.S. at 358.

⁸⁹ See *Breed v. Jones*, 421 U.S. 519, 531 (1975) (holding that prosecution of defendant

nal and juvenile proceedings was emphasized in these decisions.⁹⁰ The trend, however, has stopped short of procedural protections that are fully equivalent to those in an adult criminal prosecution.⁹¹ Specifically, juveniles still do not have a federal constitutional right to a jury trial.⁹²

Following *Gault*, in *McKeiver v. Pennsylvania*, the Court held that trial by jury in juvenile adjudications was not a federal constitutional right guaranteed by the Due Process Clause.⁹³ However, it emphasized that its decision did not affect each individual state's ability to require jury trials in juvenile proceedings.⁹⁴ In other words, the Supreme Court acknowledged that a state's own constitution could require jury trials in juvenile proceed-

in adult criminal court, after juvenile adjudication for same offense, violated Double Jeopardy Clause of Fifth Amendment).

⁹⁰ See *id.* at 530 (1975) (stating that little distinguishes California juvenile adjudication from traditional criminal prosecution); *id.* (observing that because of purpose and consequences of juvenile adjudications, such proceedings impose heavy burden on offender).

⁹¹ See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (holding that U.S. Constitution does not require jury trial in juvenile adjudication).

⁹² *Id.*

⁹³ *Id.* at 545. The *McKeiver* Court outlined thirteen reasons for denying juveniles the right to jury trial in juvenile adjudications. First, the Court stated that *Gault* had accomplished the goal of "injecting procedural orderliness into the juvenile court system," so that jury trials were unnecessary. *Id.* Second, the Court stated that jury trials would put an effective end to what has been the idealistic prospect of an informal, protective proceeding. *Id.* Third, the Court relied on a presidential Task Force Report which expressly recommended against abandonment of the juvenile justice system. *Id.* at 546. Fourth, the Court cited dictum in *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968), which stated that trial by jury is not necessary in every criminal process as long as the process is fair and equitable. *Id.* at 547. Fifth, the court stated that jury trials would not greatly strengthen the fact finding function of the trial court. *Id.* Sixth, the Court was reluctant to give up on the rehabilitative goals of the juvenile justice system. *Id.* Seventh, the Court recognized that there had been abuse, but stated that the abuses are not of constitutional dimension. *Id.* Eighth, nothing prevents juvenile court judges from using impaneling juries when they think it necessary. *Id.* at 547-48. Ninth, a large number of states deny juveniles the right to a trial by jury. *Id.* Tenth, the great majority of states, since *Gault*, have held that *Gault* does not require them to provide trial by jury. *Id.* at 549. Eleventh, the Uniform Juvenile Court Act does not propose jury trials for juveniles. *Id.* Twelfth, jury trials would bring with them the traditional delay, formality, and clamor of the adversary system. *Id.* at 550. Finally, the Court stated that to grant jury trials would end the distinction between the criminal and juvenile systems. *Id.* In that case, there would be no need for the continued existence of the juvenile system, and the Court did not want to abandon the paternalistic goals of the system. *Id.*

⁹⁴ *Id.* at 547.

ings.⁹⁵ Furthermore, a majority of the Court agreed that if juvenile proceedings truly involved punitive consequences, the state would have to provide juveniles with jury trials.⁹⁶ Thus, if the modern juvenile justice system in California has become essentially punitive, juveniles should have the right to a jury trial under both federal and state constitutional law.⁹⁷

⁹⁵ *Id.*

⁹⁶ *Id.* at 558. Three members of the Court dissented, and argued that the guarantees of the Bill of Rights, made applicable to the states by the Fourteenth Amendment, require a jury trial for juveniles. *Id.* at 558 (Douglas, J., dissenting). Two of the justices in the majority emphasized that they based their concurrences only on the Pennsylvania juvenile system. *See id.* at 554 (Brennan, J., concurring) (stating that denial of jury trial is only constitutional if state provides alternate procedure that adequately protects interests that Sixth Amendment serves).

⁹⁷ *See Ex parte Daedler*, 228 P. 467, 472 (Cal. 1924) (holding that juveniles do not have right to jury trial because juvenile adjudications are not punitive); *supra* notes 94-97 and accompanying text (outlining rationale for denying juveniles right to jury trial under United States Constitution). California courts have had opportunities to expand due process rights to include the right to jury trial, but have not done so. *See People v. West*, 201 Cal. Rptr. 63, 67 (Ct. App. 1984) (rejecting state's argument that juvenile adjudications were convictions for purpose of sentence enhancement). The 1982 passage of Proposition 8, the "victim's bill of rights", gave California courts the opportunity to examine the constitutionality of depriving juveniles of the right to jury trial. Proposition 8 added § 667 to the California Penal Code. CAL. PENAL CODE § 667 (West 1988). The proposition also added Article I, § 28 to the California Constitution. CAL. CONST. art. I, § 28. The new section states: "Any prior felony conviction of any person in any criminal proceeding, whether adult or juvenile, shall subsequently be used without limitation for purposes of enhancement of sentence in any criminal proceeding." *Id.* Therefore, under Proposition 8, the courts can use any prior felony conviction, whether adult or juvenile, for the purpose of sentence enhancement. *Id.*

A California appellate court had the opportunity to explore the constitutionality of the statute in *People v. West*. *West*, 201 Cal. Rptr. at 64. In *West*, the trial court convicted the defendant of burglary, robbery, and assault. *Id.* In appealing the sentence, the defendant argued that the trial court erred in imposing two five-year sentence enhancements for each of the defendant's prior juvenile adjudications. *Id.* at 66. The state argued that the language of Article I, § 28 of the state constitution was clear and mandatory, and that juvenile convictions could only refer to juvenile adjudications. *Id.* at 67. The *West* court was forced to determine whether the new constitutional provision officially equated juvenile proceedings with criminal proceedings for purposes of sentence enhancement. *Id.*

If the court construed the statute to define juvenile proceedings as criminal proceedings resulting in criminal convictions, juveniles would have the right to jury trial. *See Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) (holding that right to jury trial in criminal cases is guaranteed by Sixth and Fourteenth Amendments). However, the *West* court sidestepped the issue of whether the statute defined juvenile proceedings as criminal proceedings. *See West*, 201 Cal. Rptr. at 68 (interpreting juvenile conviction to mean conviction of juvenile in adult criminal proceeding). The *West* court stated that juvenile adjudications are not the only "conviction" to which Article I, § 28 of the state constitution could refer. *Id.* The court reasoned that the statute may refer instead to the trial and

B. Nature of the Modern Juvenile Justice System

Since the era of *Ex parte Daedler*, the phenomenon of juvenile crime in America has changed radically, and this change has been accompanied by changes in the juvenile justice system. A recent United States Justice Department report states that the number of juveniles arrested for violent crimes has soared in the last decade.⁹⁸ In California, juvenile crime has risen steadily and state legislative analysts estimate that the number of juveniles arrested for violent crimes will double in the next decade.⁹⁹

conviction of juveniles in adult criminal court. *Id.*

Following this rationale, the *West* court held that the statute only applied to juveniles with prior convictions in adult criminal court. *Id.* at 69. Since in adult proceedings, juveniles receive the same procedural protections as adults, the constitutional issue was moot. *See id.* (construing the statute to only apply to convictions obtained in adult criminal proceedings). The court examined the analysis of the legislative analyst which accompanied Proposition 8 in the ballot pamphlet. *Id.* at 68.

The legislative analysis states that courts will use convictions resulting in commitment to the California Youth Authority to enhance sentences. *Id.* at 69. While the legislative analysis clearly seemed to refer to juvenile adjudications, the *West* court assumed that the legislative analyst was aware of existing law. *Id.* In other words, the *West* court assumed that the legislative analyst understood the fundamental difference between convictions and juvenile adjudications. Thus, the omission of a statement explicitly equating convictions and adjudications must have been intentional. *Id.* at 69. This interpretation has gone unchallenged for ten years. Seven courts have cited *West* without questioning the *West* court's interpretation of Proposition 8. *See In re Jovan B.*, 863 P.2d 673, 678 (Cal. 1993) (finding that statutory enhancement provisions apply in juvenile proceedings); *People v. Weidert*, 705 P.2d 380, 384 (Cal. 1985) (holding that sentence enhancement of death or life imprisonment without possibility of parole for killing witness to prevent testimony did not apply to defendant who killed witness to prevent testimony in juvenile proceeding); *People v. Jacob*, 220 Cal. Rptr. 520, 523 (Ct. App. 1985) (holding that use of defendant's prior conviction, which occurred prior to passage of Proposition 8, to enhance sentence, did not violate ex post facto clause); *People v. Leever*, 219 Cal. Rptr. 581, 596 (Ct. App. 1985) (holding that court could not use prior federal convictions for five-year sentence enhancement); *People v. Blankenship*, 213 Cal. Rptr. 666, 673 (Ct. App. 1985) (holding that court could use prior Wyoming felony conviction to enhance defendant's sentence); *In re Javier A.*, 206 Cal. Rptr. 386, 416 (Ct. App. 1984) (holding, under doctrine of stare decisis, that juveniles are not entitled to jury trials as matter of California constitutional law); *In re Anthony R.*, 201 Cal. Rptr. 299, 302 (Ct. App. 1984) (holding that court could not use defendant's prior juvenile adjudications to enhance sentence for present felony conviction).

⁹⁸ See Jan Crawford Greenburg, *Crime Rate Among Teens Soars, U.S. Says*, CHI. TRIB., Sept. 8, 1995, at N6 (explaining that number of juveniles who have committed homicides has doubled in last decade, while number of adults committing homicides has only increased by twenty percent).

⁹⁹ *Juvenile Crime on Rise in Calif.*, UPI, May 18, 1995, available in LEXIS, Nexis Library,

Concurrent with the dramatic increase in juvenile crime, the state of California has made equally dramatic changes in the juvenile justice system. In purpose,¹⁰⁰ procedure,¹⁰¹ and most importantly consequence,¹⁰² the juvenile system has undergone fundamental changes. Foremost among these changes is Proposition 184,¹⁰³ California's "three strikes" legislation, which exposes juveniles to the possibility of life in prison as a consequence of multiple juvenile adjudications.¹⁰⁴

By imposing punitive consequences for juvenile adjudications, Proposition 184 revives the issue of whether juveniles should have the right to a jury trial in juvenile proceedings.¹⁰⁵

UPI File. According to the report by California's legislative analyst, violent crime among teenagers rose 53% since 1984. *Id.* The report also determined that juveniles commit a disproportionate number of crimes. *Id.* In 1993, for example, juveniles constituted 9.3% of California's population but accounted for 16% of felony arrests. *Id.*

¹⁰⁰ See HISTORICAL AND STATUTORY NOTES, reprinted in CAL. PENAL CODE § 1170.12, at 100 (West Supp. 1995) [hereinafter STATUTORY NOTES] (stating that purpose of Proposition 184 is to provide harsh punitive consequences for repeat offenders); see *infra* notes 124-36 and accompanying text (discussing punitive purpose of modern juvenile justice system).

¹⁰¹ See *Javier A.*, 206 Cal. Rptr. at 418-19 (stating that in years since *Daedler*, state has replaced all informalities of juvenile court with formalities of adult criminal trial); *infra* notes 137-41 and accompanying text (explaining how procedures in juvenile adjudications now mirror those in adult criminal proceedings).

¹⁰² See CAL. PENAL CODE § 1170.12(b)(3)(A) (West Supp. 1995) (stating that "prior juvenile adjudication shall constitute a prior felony conviction for purposes of sentence enhancement"). See *infra* notes 109-22 and accompanying text (discussing punitive consequences of juvenile adjudications in modern juvenile justice system).

¹⁰³ CAL. PENAL CODE § 1170.12 (West Supp. 1995). Proposition 184 provides that juvenile adjudications will constitute felony convictions for purposes of sentence enhancement if the prior offense qualifies as a serious or violent felony. *Id.*

¹⁰⁴ *Id.* § 1170.12(c)(2)(A) (West Supp. 1995). See *infra* notes 117-26 and accompanying text (discussing punitive consequences of juvenile adjudications under Proposition 184).

¹⁰⁵ See *Daedler*, 228 P. at 471 (finding that juvenile adjudications do not involve punitive consequences). In the seventy years since *Daedler*, the California Supreme Court has cited *Daedler* eight times, but has never reconsidered its rationale. See *People v. Superior Court*, 539 P.2d 807, 813 (Cal. 1975) (holding juvenile court judges have legal power to impanel juries for delinquency proceedings); *People v. Lara*, 432 P.2d 202, 224 (Cal. 1967) (Peters, J., dissenting) (criticizing *parens patriae* doctrine embraced in *Daedler*), *cert. denied*, 392 U.S. 945 (1968); *In re Florence*, 300 P.2d 825, 827 (Cal. 1956) (holding that juvenile court procedure did not violate due process principles); *People v. Dotson*, 299 P.2d 875, 878 (Cal. 1956) (holding that due process did not require representation by counsel in juvenile proceedings); *In re Herrera*, 143 P.2d 345, 349 (Cal. 1943) (holding that Youth Correction Authority Act was not unconstitutionally discriminatory because minor could remain in custody longer than adult for same offense); *People v. Sanchez*, 132 P.2d 810, 813 (Cal. 1942) (holding that jurisdiction of juvenile court was exclusive, and therefore other court could not sentence juvenile to state prison); *Ex parte Edwards*, 284 P. 916, 919 (Cal. 1930)

Daedler's denial of the right to a jury trial in juvenile proceedings was premised on the notion that juvenile proceedings are not punitive.¹⁰⁶ Thus, the punitive consequences of Proposition 184 raise serious doubts about the continued validity of *Daedler's* holding.¹⁰⁷

1. Proposition 184 and Punitive Consequences

The primary punitive consequence of a juvenile adjudication is that it may constitute a "strike" when enhancing a criminal sentence.¹⁰⁸ The law enhances the sentence for a felony conviction whenever the defendant has a prior felony conviction.¹⁰⁹ Prior felony conviction is defined as any "violent" offense in Section 667.5(c) of the California Penal Code or any "serious" offense in Section 1192.7(c) of the Penal Code.¹¹⁰ Examples of qualifying felonies include kidnapping, arson, carjacking, burglary, robbery, murder, and rape.¹¹¹

(holding that juvenile court's declaration of wardship is not enough to deprive parents of custody without specific finding of abandonment); *People v. Hoffman*, 248 P. 504, 506 (Cal. 1926) (holding that guilty plea in juvenile court cannot impeach defendant).

¹⁰⁶ *Daedler*, 228 P. at 472. See *supra* notes 69-70 and accompanying text (explaining *Daedler's* rationale).

¹⁰⁷ See *Daedler*, 228 P. at 471 (holding that juveniles do not have right to jury trial because juvenile proceedings do not involve punishment). Because *Daedler* presumed that the juvenile justice system is rehabilitative in nature, the punitive transformation of the system means *Daedler's* holding does not reflect today's reality. See *supra* notes 69-70 and accompanying text (explaining rationale of *Daedler* court).

¹⁰⁸ See CAL. PENAL CODE § 1170.12(b)(3)(A) (West Supp. 1995) (stating that juvenile adjudication constitutes prior felony conviction for sentence enhancement purposes). Each prior qualifying felony conviction or juvenile adjudication counts as a "strike" against the prior offender. *Id.* § 1170.12(c). Proposition 184 mandates twenty-five years to life imprisonment for an offender that has accumulated three "strikes." *Id.* § 1170.12(c)(2)(A).

¹⁰⁹ *Id.* § 1170.12(c). The express purpose of Proposition 184 is to ensure greater punishment for those who commit a felony and have prior convictions for serious or violent offenses. STATUTORY NOTES, *supra* note 101, at 100.

¹¹⁰ CAL. PENAL CODE § 1170.12 (b)(1) (West Supp. 1995). The statute specifies certain sentence enhancements, depending on the number of prior felony convictions. *Id.* § 1170.12(c). If a defendant has one prior felony conviction the term shall be twice the term otherwise provided as punishment. *Id.* § 1170.12(c)(1). If the defendant has two or more qualifying prior felony convictions, the court will impose an indeterminate term of life imprisonment. *Id.* § 1170.12(c)(2)(A). The minimum term of the indeterminate sentence will be the greater of: 1) three times the term otherwise provided as punishment for the current felony conviction, or 2) twenty-five years, or 3) the term determined by the court pursuant to Penal Code § 1170. *Id.* § 1170.12(c)(2)(A).

¹¹¹ *Id.* § 1192.7(c) (West Supp. 1995).

Proposition 184 treats juvenile adjudications as prior felony convictions if the offense qualifies as a serious or violent felony.¹¹² Thus, if the offense meets the statutory definition of a violent or serious offense, the juvenile adjudication of that offense will be a conviction for the purposes of sentence enhancement.¹¹³ Two prior qualifying juvenile adjudications could result in an enhancement to a maximum term of life imprisonment with a minimum of twenty-five years.¹¹⁴ By subjecting juveniles to potential life imprisonment as a direct consequence of their juvenile adjudications, Proposition 184 has created punitive consequences of juvenile adjudications. Thus, the California electorate has converted a theoretically rehabilitative process into a punitive one.¹¹⁵

In addition to Proposition 184's punitive consequences, the nature of the modern juvenile justice system itself exposes juveniles to punitive consequences. For example, the juvenile courts have begun to emphasize retribution, as opposed to rehabilitation.¹¹⁶ Sentences in juvenile courts are often harsh and punitive.¹¹⁷ In California, the nature of the offense determines the length of incarceration,¹¹⁸ and if the juvenile has committed a felony, the length of incarceration can be as long as an adult term for the same offense.¹¹⁹ In addition to long terms of in-

¹¹² *Id.* § 1170.12(b)(3).

¹¹³ *Id.* Whereas Proposition 8 mandated sentence enhancement using juvenile "convictions," Proposition 184 explicitly declared that courts will use "juvenile adjudications" for sentence enhancement. *Id.* Prior juvenile adjudications will enhance juvenile sentences, only if the juvenile was sixteen or older at the time she committed the offense. *Id.* § 1170.12(b)(3)(A). Finally, the juvenile must be a ward of the juvenile court within the meaning of § 602 of the Welfare and Institutions Code. *Id.* § 1170.12(b)(3)(D).

¹¹⁴ *Id.* § 1170.12(c)(2)(A)(ii).

¹¹⁵ See STATUTORY NOTES, *supra* note 101, at 100 (stating that Proposition 184's purpose is to create more punitive consequences for people, including juveniles, with multiple felony convictions).

¹¹⁶ See Feld, *supra* note 9, at 831 (arguing that underlying purposes and sentencing framework of juvenile courts reflect substantive goals of criminal law).

¹¹⁷ See, e.g., *People v. West*, 201 Cal. Rptr. 63, 64 (Ct. App. 1984) (stating that juvenile received eighteen year term of imprisonment for committing assault and robbery); *In re Javier A.*, 206 Cal. Rptr. 386, 390 (Ct. App. 1984) (stating that juvenile defendant received sixteen year term).

¹¹⁸ See CAL. PENAL CODE § 1170(a)(1) (West Supp. 1995) (stating legislative purpose of Determinate Sentencing Law is to fix terms of imprisonment proportionate to seriousness of offense committed).

¹¹⁹ See *In re Jovan B.*, 863 P.2d 673, 678 (Cal. 1993) (stating that for purposes of calcu-

carceration, the juvenile facilities themselves are just as harsh as adult prisons.¹²⁰ Recent studies of the California Youth Authority (CYA) have revealed severe problems with inmate violence and overcrowding.¹²¹

lating juvenile ward's term of confinement, enhancement scheme of Determinate Sentencing Law should apply).

¹²⁰ STEVE LERNER/COMMONWEALTH RESEARCH INSTITUTE, *THE CYA REPORT PART TWO: THE PATTERN OF FEAR AND VIOLENCE AT THE CALIFORNIA YOUTH AUTHORITY* 11-12 (1982). Punitive consequences for juveniles include a worsening of conditions of confinement in the California Youth Authority (CYA). *Id.* A report on the CYA reveals that conditions of confinement for juveniles have changed dramatically since *Daedler*. *See id.* (discussing conditions of confinement in CYA). The state established the Youth Authority in 1941 to provide training and treatment for juvenile offenders. *Id.* By the late 1940s, the CYA had a reputation for being progressive and compassionate in its treatment of juveniles, and its facilities were models for other states. *Id.* at 11. Today, however, living conditions have deteriorated rapidly in the overcrowded system. *Id.* at 11. The state, instead of treating juveniles, incarcerates them in large institutions that resemble prisons in many ways. *Id.* at 65. The large juvenile institutions are dangerously overcrowded. *See id.* at 65-66 (explaining overcrowding in California Youth Authority). The CYA system is so understaffed that the staff cannot protect its inmates from beatings or intimidation by other prisoners. *Id.* at 12.

The courts have recognized that the place of confinement's label is not determinative in deciding what standards of due process should apply. *See Breed v. Jones*, 421 U.S. 519, 530 n.12 (1975) (stating that regardless of rehabilitative goals of juvenile justice system, incarceration is ultimately punitive). Incarceration in a juvenile facility is virtually the same, or worse, than incarceration in an adult prison. *See infra* note 122 and accompanying text (discussing incarceration in California Youth Authority). In *In re Gault*, the United States Supreme Court acknowledged that juvenile confinement compares in seriousness to adult imprisonment. *See In re Gault*, 387 U.S. 1, 36 (1967) (holding that juvenile needs assistance of counsel because of serious nature of juvenile proceedings). The *Gault* Court stated that commitment is a deprivation of liberty, and it is incarceration against one's will whether the label is criminal or civil. *Id.* *See Breed*, 421 U.S. at 530 (citing *Gault* court's holding that for purposes of self incrimination, commitment is deprivation of liberty).

¹²¹ *See LERNER, supra* note 121, at 65 (discussing conditions under which inmates live in California Youth Authority); Leonard Bernstein, *Juvenile Hall Care Lacking, Expert Testifies*, LOS ANGELES TIMES, November 21, 1991, at B1 (discussing expert testimony in lawsuit over conditions of confinement at juvenile hall); John Hurst, *Inside the State's Juvenile Jails: Unruly Youths Face Shackles, Isolation*, LOS ANGELES TIMES, July 22, 1984, at A1 (discussing conditions in juvenile halls and camps); Maria Newman, *Tension High in O.C.'s Jammed Juvenile Hall*, LOS ANGELES TIMES, May 12, 1991, at A1 (discussing overcrowding in Orange County's juvenile halls).

2. Evolution of Punitive Purposes

Aside from the punitive consequences¹²² of juvenile proceedings, the express purpose of the juvenile justice system has also become more punitive since *Daedler*.¹²³ At the time of the *Daedler* opinion, the stated legislative purpose of the juvenile justice system was to serve the spiritual, emotional, mental, and physical welfare of the minor.¹²⁴ In 1977, however, the California legislature amended the Welfare and Institutions Code to reflect a significant change in the purpose of the juvenile justice system.¹²⁵

The legislature now states that the purpose of the juvenile justice system is to protect the public and impose a sense of responsibility on minors for their acts.¹²⁶ Thus, instead of concern for the best interest of the child, the state now emphasizes protecting the public and punishing the minor offender.¹²⁷ This change in legislative purpose has not gone unnoticed by the courts.¹²⁸

Both California and federal courts have recognized the shifting purpose of the juvenile justice system.¹²⁹ In 1975, in *Breed*

¹²² See CAL. PENAL CODE § 1170.12(c) (West Supp. 1995) (mandating sentence enhancement when offender has prior serious or violent juvenile adjudications); *supra* notes 109-22 and accompanying text (explaining punitive consequences of juvenile adjudications in modern juvenile justice system).

¹²³ See *Daedler*, 228 P. at 471 (stating that juvenile justice system is not penal in nature); STATUTORY NOTES, *supra* note 101, at 100 (stating that Proposition 184's purpose is to create more punitive consequences for juveniles with multiple felony convictions); *infra* notes 125-35 and accompanying text (explaining shift in juvenile justice system's purpose from rehabilitation to punishment).

¹²⁴ Law of July 14, 1961, ch.1673, § 2, 1961 Cal. Stat. 3460 (amended by 1977 Cal. Stat. 2782). Additionally, the stated purpose of the juvenile court law was to secure custody, care, and discipline for the minor that would be nearly equivalent to that which the parents would provide. *Id.*

¹²⁵ Law of Sept. 20, 1977, ch. 910, § 1, 1977 Cal. Stat. 2782 (current version at CAL. WELF. & INST. CODE § 202 (West Supp. 1995)).

¹²⁶ CAL. WELF. & INST. CODE § 202 (West Supp. 1995).

¹²⁷ *Id.*

¹²⁸ See *Breed v. Jones*, 421 U.S. 519, 528 (1975) (discussing shifting purpose of juvenile justice system in California). The California Court of Appeal considered the issue in 1984. See *In re Javier A.*, 206 Cal. Rptr. 386, 417 (Ct. App. 1984) (stating that purposes of juvenile delinquency law are no longer limited to acting in best interests of juvenile). The California Supreme Court has agreed with the characterization of juvenile proceedings as criminal in nature. *In re Jerald C.*, 678 P.2d 917, 920-21 (Cal. 1984).

¹²⁹ See *Breed*, 421 U.S. at 531 (finding that juvenile adjudications in California are virtu-

v. Jones,¹⁵⁰ the United States Supreme Court acknowledged a gap between the originally benign goals of the juvenile justice system and reality.¹⁵¹ While acknowledging that rehabilitative goals are admirable, the Court stated that they do not change the drastic consequences of juvenile proceedings.¹⁵² The California Supreme Court has also acknowledged the changing purpose of juvenile proceedings.¹⁵³ In *In re Jerald C.*, it stated that juvenile proceedings are realistically criminal and characterized the claim that these proceedings are for the protection of minors as "pure fiction."¹⁵⁴

3. Procedures in the Juvenile Justice System

In addition to the dramatic change in the consequences and purpose of juvenile proceedings, the procedural rights have also changed. When the California Supreme court decided *Daedler* in 1924, juvenile proceedings were private and informal.¹⁵⁵ Indeed, part of *Daedler's* rationale for denying the right to a jury trials was a desire to maintain a private and informal process.¹⁵⁶ However, in 1995, a modern process that is virtually identical to the adult criminal system has replaced the private and informal juvenile proceeding of the past.¹⁵⁷

The due process rights of juveniles now include the right to confront and cross-examine witnesses, appointed counsel, *Miranda* warnings, notice and hearing, and the privilege against self-incrimination.¹⁵⁸ These changes have resulted in juvenile

ally identical to criminal proceedings); *In re Jerald C.*, 678 P.2d at 921 (disagreeing with argument that juvenile proceedings are solely for protection of juvenile).

¹⁵⁰ *Breed*, 421 U.S. at 519.

¹⁵¹ *Id.* at 521. The United States Supreme Court could not find a persuasive distinction between juvenile and criminal proceedings. *Id.* at 531.

¹⁵² *Id.* at 530 n.12.

¹⁵³ *In re Jerald C.*, 678 P.2d 917, 920-21 (Cal. 1984).

¹⁵⁴ *Id.* at 921 n.4 (citing with approval *In re Gregory K.*, 165 Cal. Rptr. 35 (Ct. App. 1980)).

¹⁵⁵ See *Daedler*, 228 P. at 471 (explaining that purpose of juvenile court law is to avoid formalities of public trial for child's benefit).

¹⁵⁶ *Id.* at 472.

¹⁵⁷ See *In re Javier A.*, 206 Cal. Rptr. 386, 418 (Ct. App. 1984) (explaining that present process in juvenile proceeding is virtually identical to adult criminal court).

¹⁵⁸ See *id.* at 419 (stating that in years since *Daedler*, California has replaced all informalities of juvenile court with formalities of adult criminal trial).

proceedings that are no longer the private informal proceedings to which the *Daedler* opinion referred.¹³⁹ Thus, in light of the modern reality of a process that mirrors the adult criminal process, *Daedler's* rationale makes little sense.

III. A TWO-PART PROPOSAL FOR RECOGNIZING A RIGHT TO A JURY TRIAL IN JUVENILE PROCEEDINGS

Faced with the juvenile justice system's transformation into a punitive system,¹⁴⁰ the California Supreme Court should revisit its decision in *Daedler*. This Comment proposes that the California Supreme Court recognize two rights for juvenile offenders. First, the court should grant serious juvenile offenders the right to a jury trial.¹⁴¹ With the advent of Proposition 184, juveniles who commit serious offenses suffer harsh punitive consequences.¹⁴² The courts should recognize that, as a result of Proposition 184, the juvenile justice system is no longer the benign rehabilitative system referred to by the *Daedler* court.¹⁴³ With respect to serious offenders, *Daedler's* rationale is no longer valid.¹⁴⁴

Second, the California Supreme Court should recognize a right to treatment for nonserious juvenile offenders.¹⁴⁵ Giving serious juvenile offenders the right to a jury trial does not mean that the juvenile justice system should abandon the foundational premises of treatment and rehabilitation.¹⁴⁶ Providing treatment

¹³⁹ *Id.*

¹⁴⁰ *See id.* at 419 (stating that modern juvenile adjudications are procedurally identical to criminal prosecutions); *supra* notes 102-47 and accompanying text (discussing punitive nature of modern juvenile justice system).

¹⁴¹ *See infra* notes 149-71 and accompanying text (arguing that California courts should recognize right to trial by jury for serious juvenile offenders).

¹⁴² *See* CAL. PENAL CODE § 1170.12 (West Supp. 1995) (mandating sentence enhancement of current felony conviction when offender has prior serious or violent juvenile adjudications); *supra* notes 114-23 and accompanying text (discussing punitive consequences of juvenile adjudications for serious juvenile offenders).

¹⁴³ *See Daedler*, 228 P. at 472 (describing juvenile justice system of 1924 as benign); *supra* notes 102-47 and accompanying text (explaining punitive nature of modern juvenile justice system).

¹⁴⁴ *See Daedler*, 228 P. at 471 (reasoning that juveniles do not have right to jury trial in juvenile proceedings because the proceedings are not punitive).

¹⁴⁵ *See supra* note 11 and accompanying text (explaining that goals of juvenile justice system are treatment and rehabilitation).

¹⁴⁶ *See* *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (articulating Court's reluc-

to nonserious offenders would enable the juvenile justice system to avoid the administrative burden of providing all juvenile offenders with jury trials. Furthermore, a right to treatment would allow the state to pursue rehabilitative goals, while ensuring that nonserious juvenile offenders do not suffer abuse in the name of rehabilitation.

A. Right to a Jury Trial for Serious Offenders

If serious juvenile offenders are going to suffer the punitive consequences of Proposition 184, the California Supreme Court should grant the right to a jury trial.¹⁴⁷ The right to a jury trial would ensure adequate due process protection for these offenders.¹⁴⁸ However, not everyone agrees that jury trials are essential for the protection of juveniles.¹⁴⁹

In the past, the United States Supreme Court held that jury trials were unnecessary for the protection of juveniles.¹⁵⁰ The Court noted that jury trials would transform the proceeding into a fully adversarial process and end the idealistic prospect of informal, intimate, and protective proceedings.¹⁵¹ However, the Court based its holding on an assumption that the state would protect and rehabilitate, rather than punish juvenile offenders.¹⁵²

The California Supreme Court should grant the right to a jury trial because the juvenile justice system has moved away

tance to abandon idealism of juvenile court legislation).

¹⁴⁷ See *Daedler*, 228 P. at 471 (reasoning that juveniles do not have right to jury trial in juvenile proceedings because proceedings are not punitive); *supra* notes 69-70 and accompanying text (discussing *Daedler* court's rationale for denying juveniles right to jury trial).

¹⁴⁸ See *In re Javier A.*, 206 Cal. Rptr. 368 at 419 (Ct. App. 1984) (stating that in years since *Daedler*, state has replaced all informalities of juvenile court with formalities of adult criminal trial); *supra* notes 139-41 and accompanying text (explaining that procedures in contemporary juvenile proceedings are virtually identical to those in adult criminal proceedings).

¹⁴⁹ See Rorie Sherman, *Juvenile Judges Say: Time to Get Tough*, NAT'L L.J., Aug. 8, 1994, at A1 (explaining that nation's juvenile court judges are overwhelmingly opposed to certification of juveniles for trial in adult criminal court).

¹⁵⁰ See *McKeiver*, 403 U.S. at 547 (stating that jury trial is not necessary part of fair and equitable judicial process).

¹⁵¹ *Id.* at 545.

¹⁵² See *id.* (stating that idealistic prospect of rehabilitative system led court to deny right to jury trial in juvenile proceedings).

from its rehabilitative goals. California courts have already recognized the shifting nature of the juvenile justice system.¹⁵³ In 1984, in *In re Javier A.*, one California appellate court urged the Supreme Court to overturn *Daedler*.¹⁵⁴ Furthermore, members of the California Supreme Court have questioned the continued denial of the right to a jury trial.¹⁵⁵ In *In re Mitchell P.*, the Chief Justice of the California Supreme Court stated that, in light of changes in the function of the juvenile court system, continuing to deny juveniles the right to a jury trial could be unconstitutional.¹⁵⁶

California would not be the first state to recognize the punitive aspects of the modern juvenile justice system and extend the right to a jury trial to juveniles.¹⁵⁷ At least fourteen states currently extend jury trials to juveniles.¹⁵⁸ In light of Proposition 184 and its punitive consequences, the California Supreme

¹⁵³ See *supra* notes 100-41 and accompanying text (comparing punitive nature of modern juvenile justice system with idealistic rehabilitative system of which *Daedler* court spoke).

¹⁵⁴ See *In re Javier A.*, 206 Cal. Rptr. 386, 419 (Ct. App. 1984) (finding dramatic differences between modern juvenile adjudications and those of which the *Daedler* court spoke).

¹⁵⁵ See *In re Mitchell P.*, 587 P.2d 1144, 1154 (Cal. 1978) (Bird, C.J., dissenting) (stating that there is no persuasive distinction in California between juvenile and criminal proceedings), *cert. denied*, 444 U.S. 845 (1979).

¹⁵⁶ *Id.* at 1155 n.14.

¹⁵⁷ See *RLR v. State*, 487 P.2d 27, 32 (Alaska 1971) (holding that right to jury trial in either criminal or juvenile proceeding should depend on possibility of loss of liberty for substantial amount of time); *People ex rel. Carey v. Chrastka*, 413 N.E.2d 1269, 1271 (Ill. 1980) (stating that any minor prosecuted as habitual juvenile offender shall have right to jury trial); *Commonwealth v. Perry P.*, 641 N.E.2d 1313, 1315 (Mass. 1994) (stating that juvenile had waived constitutional and statutory right to jury trial); *People v. McFarlin*, 208 N.W.2d 504, 512 (Mich. 1973) (explaining that state has accorded juveniles right to jury trial in Michigan, since establishment of juvenile courts); *Peyton v. Nord*, 437 P.2d 716, 722 (N.M. 1968) (holding that New Mexico Constitution guarantees right to jury trial for juvenile facing restraint of liberty); *In re A.E.*, 743 P.2d 1041, 1043 (Okla. 1987) (stating that Oklahoma Constitution and Oklahoma Juvenile Code mandate right to jury trial); *State v. William T.*, 338 S.E.2d 215, 216 (W.Va. 1985) (stating that juvenile has right to demand jury trial in adjudicatory hearing); *In re N.E.*, 361 N.W.2d 693, 694 (Wis. 1985) (discussing juvenile's statutory right to jury trial in Wisconsin); *In re ALJ*, 836 P.2d 307, 315 (Wyo. 1992) (stating that juvenile has right to jury trial under Wyoming statute). *Cf. People ex rel. T.M.*, 742 P.2d 905, 908 (Colo. 1987) (stating that juveniles may have right to jury trial in some juvenile delinquency proceedings); *Findlay v. State*, 681 P.2d 20, 22 (Kan. 1984) (stating that judge may order jury trial).

¹⁵⁸ See *supra* note 158 and accompanying text (listing states in which juveniles have right to jury trial).

Court should join those states by extending the right to a jury trial to serious juvenile offenders.¹⁵⁹

Despite the grave consequences of juvenile adjudications for serious juvenile offenders, there is still considerable opposition to extending the right to a jury trial.¹⁶⁰ For example, the United States Supreme Court in *McKeiver v. Pennsylvania* expressed concern about the administrative burden that would result from introducing jury trials into juvenile proceedings.¹⁶¹ At a time when the California judicial system is already stretched beyond its limits, one might argue that providing juveniles with jury trials would be economically and administratively unfeasible. However, under this Comment's proposal to extend the right to a jury trial to serious offenders only, the resulting administrative burden would be limited.¹⁶²

Most juvenile court cases involve nonserious offenders.¹⁶³ The state can constitutionally deny these offenders the right to a jury trial because adjudicating these nonserious offenses generally does not result in incarceration.¹⁶⁴ The right to a jury trial protects an individual's liberty interest. If there is no danger of incarceration, the jury trial right is not implicated.¹⁶⁵ Another large group of juvenile court cases involve juvenile offenders that spend short periods of time in private treatment-oriented

¹⁵⁹ See *infra* notes 161-70 and accompanying text (arguing that California courts should recognize constitutional right to trial by jury for serious juvenile offenders).

¹⁶⁰ See Sherman, *supra* note 150, at A1 (discussing opposition by juvenile court judges to criminalization of juvenile justice system).

¹⁶¹ See *McKeiver*, 403 U.S. at 550 (discussing Court's fear that jury trials would inject "traditional delay" and "clamor of adversary system" into juvenile proceedings).

¹⁶² See *id.* (discussing possible administrative burden that would result from extending right to jury trials to juveniles); *infra* notes 165-69 and accompanying text (discussing limited numbers of serious juvenile offenders that would require jury trials).

¹⁶³ See Sanborn, *supra* note 14, at 238 (arguing that granting juveniles right to jury trial would not create administrative burden).

¹⁶⁴ The right to a jury trial is only implicated when the defendant faces the possibility of imprisonment as punishment. See *Baldwin v. N.Y.*, 399 U.S. 66, 69 (1970) (holding that offense with potential for sentence of imprisonment greater than six months is sufficiently severe to require trial by jury). Another reason that states can constitutionally deny nonserious offenders the right to a jury trial is that nonserious offenses do not fall within the scope of Proposition 184. See *supra* notes 110-12 and accompanying text (discussing provisions of Proposition 184 as applied to juveniles). Thus, nonserious offenders are not subject to the harsh punitive consequences that Proposition 184 imposes on California's serious offenders.

¹⁶⁵ *Id.* at 68.

facilities.¹⁶⁶ As long as these juveniles receive treatment, rather than punishment, the denial of jury trials would not have constitutional implications.¹⁶⁷ Thus, the number of serious juvenile offenders that would receive jury trials is limited,¹⁶⁸ and the juvenile justice system should be able to avoid the administrative burden foreseen by *McKeiver*.

B. Right to Treatment for Nonserious Offenders

Providing jury trials only to serious juvenile offenders would allow the state to deal flexibly with nonserious offenders.¹⁶⁹ Juvenile courts would be free to provide rehabilitation when punishment is not necessary, and punish serious offenders without denying them essential due process rights.¹⁷⁰ However, in order to prevent juvenile courts from punishing under the guise of rehabilitation, the California Supreme Court should establish a right to treatment for nonserious offenders.¹⁷¹ This approach

¹⁶⁶ See Sanborn, *supra* note 14, at 238 (explaining that many juveniles would not want or even need jury trials).

¹⁶⁷ See *Ex parte Daedler*, 228 P. 467, 472 (Cal. 1924) (stating juveniles receiving treatment, instead of punishment, do not have constitutional right to jury trial).

¹⁶⁸ See Sanborn, *supra* note 13, at 238 (explaining that many juveniles would not want or even need jury trials); *supra* notes 185-89 and accompanying text (discussing limited number of serious juvenile offenders that would require jury trials).

¹⁶⁹ See *Daedler*, 228 P. at 472 (finding that if juveniles receive treatment, state does not have to provide criminal procedural protections equivalent to those found in adult criminal court).

¹⁷⁰ *Id.*

¹⁷¹ See BERNARD, *supra* note 9, at 161-62 (discussing right to treatment for juvenile offenders). Some federal courts have already recognized that juveniles have a right to rehabilitative treatment. See *Nelson v. Heyne*, 491 F.2d 352, 360 (7th Cir. 1974) (holding that constitutional right to treatment includes right to minimum acceptable standards of care and treatment for juveniles); *Johanns v. New York City Dep't of Social Serv.*, 670 F. Supp. 1145, 1177 (S.D.N.Y. 1987) (acknowledging juvenile plaintiff's right to adequate care and treatment); *Pena v. New York State Div. for Youth*, 419 F. Supp. 203, 206 (S.D.N.Y. 1976) (holding that juveniles in custody have constitutional right to rehabilitative treatment). In *Nelson v. Heyne*, a federal district court held that inmates in an Indiana juvenile facility had the right to treatment, and the Seventh Circuit Court of Appeals affirmed. *Nelson*, 491 F.2d at 358 (holding that juvenile offenders have right to treatment under both Indiana law and federal constitutional law). The circuit court stated that, whether recognized by statute or derived from the constitutional requirements of due process, the right to treatment exists. *Id.*

The Seventh Circuit based its decision on a concern that juveniles had not received the rehabilitative treatment which the juvenile justice system promised. *Id.* at 359. Similarly in California, juveniles have not received the treatment that the *Daedler* court envisioned. See *supra* notes 109-22 and accompanying text (discussing punitive consequences of juvenile

would restore balance to the juvenile justice system.¹⁷² California could implement the goal of rehabilitation, without the interference of cumbersome jury trials.¹⁷³ At the same time, the state could punish serious offenders who would have full procedural protection with the right to a jury trial.¹⁷⁴

CONCLUSION

Proposition 184 has fundamentally altered the nature of juvenile court proceedings in a manner that *Ex parte Daedler* never

adjudications). Therefore, out of concern that juveniles are receiving neither treatment nor the procedural protections granted to adults, the Supreme Court should extend the right to treatment to non-serious offenders.

Instead of a right to treatment for non-serious offenders, some commentators argue for reform of the entire juvenile justice system, so that it truly reflects its rehabilitative origins. See BERNARD, *supra* note 9, at 83-107 (proposing more treatment for juveniles because juveniles lack capacity to understand consequences of actions). These commentators argue that because all juveniles are fundamentally different from adults, the juvenile system should seek to rehabilitate all juvenile offenders, instead of punish them. *Id.* However, while a blanket treatment-oriented approach may be desirable for its simplicity, it may also be an unrealistic alternative. Cf. CAL. PENAL CODE § 1170.12 (West Supp. 1995) (stating that purpose of Proposition 184 is to ensure greater punishment). Judging from recent developments in the law, such as Proposition 184, a treatment oriented approach would probably be unpopular.

Starting in the mid-1970s, many states began to emphasize punishment over rehabilitation in the treatment of juvenile delinquency. See Mark Curriden, *Hard Times for Bad Kids*, A.B.A. J., Feb., 1995, at 67 (describing shift in purpose of juvenile justice system in several states); *supra* notes 135-42 and accompanying text (discussing change in legislative purpose of juvenile court law in California). The trend towards punishment has continued into the nineties with new laws such as Proposition 184. See *supra* notes 109-16 and accompanying text (discussing punitive nature of Proposition 184, and its effect on juvenile justice system). Therefore, it seems unlikely that in the present "get tough" political atmosphere, proposals for treatment could succeed. Furthermore, even if proposals for treatment were successful, the "get tough" reformers would likely return in the future with renewed efforts to impose punitive measures. See BERNARD, *supra* note 9, at 155 (arguing that cyclical pattern has developed in juvenile justice policy that alternates between reform efforts for leniency and "get tough" proposals). So, in order to protect juveniles from present and future injustice, the California Supreme Court should give non-serious juvenile offenders a right to treatment.

¹⁷² See *Kent v. United States*, 383 U.S. 541, 566 (1966) (describing lack of balance in current juvenile justice system that results from denying juveniles both right to jury trial and treatment).

¹⁷³ See *McKeiver v. Pennsylvania*, 403 U.S. 528, 550 (stating that introducing jury trial into juvenile justice system would cause administrative burden).

¹⁷⁴ See *Feld*, *supra* note 11, at 824 (explaining that goal of juvenile justice system was to provide treatment and rehabilitation to delinquent children); *supra* notes 47-54 and accompanying text (describing rehabilitative goals of juvenile justice system).

contemplated. While the *Daedler* court found that the juvenile proceedings of its era were benign in nature,¹⁷⁵ the essence of juvenile proceedings has changed dramatically in 1995. Today, California defines juvenile adjudications as felony convictions for the purpose of sentence enhancement. In California, a sentencing court can use a prior juvenile adjudication to enhance an adult criminal sentence to a maximum of life imprisonment. The nature of Proposition 184 is clearly punitive, and it has created extremely harsh punitive consequences of juvenile adjudications for serious juvenile offenders. In addition, the purpose and processes of juvenile proceedings now reflect the punitive nature of the adult criminal justice system.

If the nature of juvenile proceedings has become essentially punitive, the continued validity of the rationale for denying juveniles the right to a jury trial is questionable. To solve this legal dilemma, the state should grant serious juvenile offenders the same procedural protections that adults enjoy in the adult criminal justice system. In other words, serious juvenile offenders should have the right to a jury trial. Furthermore, nonserious juvenile offenders that do not require jury trials should have a right to treatment. The right to a jury trial, combined with a right to treatment, would enable the state to balance rehabilitative goals with the need for procedural protection of juveniles.

David C. Owen

¹⁷⁵ *Daedler*, 228 P. 467 at 472.