
JUVENILE INFORMANTS — A NECESSARY EVIL?

I. INTRODUCTION

On March 3, 1998, authorities found the tortured and strangled body of seventeen-year-old Chad MacDonald in a Los Angeles alley.¹ Several hours earlier, Chad's girlfriend, raped, shot, and left to die, had been discovered in a local California canyon.² Chad had spent the past several weeks visiting a house frequented by drug dealers.³ Chad's mother, Cindy MacDonald, told reporters that her son's life was taken because of his relationship with California police.⁴ Although Chad was not "working" for the police on the day he was murdered, he had been acting as a police informant since his arrest earlier that year.⁵ The local papers explained that the murder had all the makings of a revenge killing for Chad's role as a police informant.⁶

Chad's story, horrifying and tragic, is not unique.⁷ Although not practiced by all law enforcement agencies, it is not unheard of for the local police department to enlist the services of a youth as an undercover informant.⁸ There are several ways in which police may use a juvenile informant. The youth may provide the police with information about drug dealers or future drug buys.⁹ The youth may also assist the police in undercover alcohol and tobacco operations by entering various establishments and attempting to purchase alcohol or tobacco.¹⁰ Due to

1. Stuart Pfeifer, *Mom: Slain Teen as Informer*, THE ORANGE COUNTY REGISTER, Mar. 22, 1998, at A1.

2. Eric Bailey, *Law Signed Limiting Use of Youth Informants Politics*, LOS ANGELES TIMES, Sept. 26, 1998, at B4.

3. Pfeifer, *supra* note 1, at A1.

4. Michael G. Wagner and Davan Maharaj, *Debate Flares After O.C. Teen Informant Dies*, LOS ANGELES TIMES, Mar. 25, 1998, at A1.

5. *Minors as Informants*, THE ORANGE COUNTY REGISTER, July 7, 1998, at B6. Chad had been arrested by Brea police on January 6, 1998, for possession of methamphetamine. Pfeifer, *supra* note 1, at A1. At that time, Chad agreed to become a police informant and his mother gave written consent. *Id.*

6. *Minors as Informants*, *supra* note 5, at B6.

7. For example, Cecil Calloway, a sixteen-year-old police informant, was murdered by drug dealers after they discovered him conversing with local vice officers. Stuart Pfeifer et al., *O.C. Teen Informer Case Has Parallels*, THE ORANGE COUNTY REGISTER, Mar. 29, 1998, at A1.

8. In California, local police departments set their own policies for the use of informants. Eric Bailey, *Teen's Death Reflects on Capizzi*, LOS ANGELES TIMES, Apr. 1, 1998, at B4.

9. For example, Chad MacDonald, after being arrested, agreed to do drug buys for the police. Eric Bailey, *Law Signed Limiting Use of Youth Informants Politics*, LOS ANGELES TIMES, Sept. 26, 1998, at B4.

10. Honorable Lee Sinclair & David L. Herbert, *The Use of Minors in Law Enforcement Undercover Operations*, 24 OHIO N.U. L. REV. 31 (1998); Bobby Little and Mike Bishop, *Minor Drinkers/Major Consequences: Enforcement Strategies for Underage Alcoholic Beverage Law Vio-*

the confidential nature of informants and undercover operations, the enlistment of youth as informants is seldom brought to the public's attention. When it is, it is often the result of a tragedy.¹¹

This Note will analyze the use of minors as undercover informants and the need to enact juvenile informant laws. Section II of this Note will provide a brief history of the use of informants by examining who are informers, their motivations, and why they are necessary for effective law enforcement. Section III will explore the issue of whether the use of minor informants is consistent with the ideals behind the juvenile justice system. Section IV will examine the rights of the involved parties: the juvenile, parents, and law enforcement. Section V will examine the California juvenile informant law. Finally, Section VI concludes with a brief summary and recommendations on how other states may use the California statute as a basis for creating their own juvenile informant law.

II. INFORMANTS: A HISTORICAL OVERVIEW

The history of informants can be traced back to common law England where a system of approvers and common informers was used.¹² The English system was heavily relied upon by the colonists and forms the basis for the modern use of informants in America.¹³ Today, informants are found in various areas of law enforcement,¹⁴ but are most often utilized to assist police in investigating victimless crimes.¹⁵ These crimes include: narcotics, gambling, and tax-evasion.¹⁶ In fact, it has

lators, FEDERAL BUREAU OF INVESTIGATION, THE FBI LAW ENFORCEMENT BULLETIN, Vol. 67, No. 6 (June 1, 1998).

11. Often the public learns of juvenile informant usage gone awry when an outraged parent brings a civil action against the respective law enforcement agency. See, e.g., Marc Davis, *Mother Settles Suit Over Son's Suicide*, THE VIRGINIAN-PILOT & THE LEDGER-STAR, Nov. 17, 1993, at D1 (reporting that the mother of a teen informant recovered \$48,750 from the city police after her son committed suicide); Larry Fruhling, *Dad Sues Officials After Slaying of Young Drug Informant*, CHI. TRIB., Mar. 11, 1999, at 18 (reporting that the father of Sky Erickson, the 15-year-old who was murdered by drug dealers, brought a federal court lawsuit claiming that the police placed his son in danger by utilizing him as an informant).

12. Clifford S. Zimmerman, *Toward a New Vision of Informants: A History of Abuses and Suggestions for Reform*, 22 HASTINGS CONST. L.Q. 81, 152 (1994). An approver was "a convicted criminal who had obtained a pardon conditional on ridding the world of some half-dozen of his associates by his appeals." *Id.* (quoting 3 SIR WILLIAM S. HOLDSWORTH, A HISTORY OF ENGLISH LAW 608, n.11). A common informer was "a person who brought certain transgressions to the notice of the authorities and instituted proceedings, not because he, personally, had been aggrieved or wished to see justice done, but because under the law he was entitled to a part of any fine which might be imposed." *Id.* (quoting 2 LEON RADZINOWICZ, A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750 138 (1948-1968)).

13. Zimmerman, *supra* note 12, at 166.

14. Many different law enforcement agencies, both federal and local, rely on the use of informants. Dennis G. Fitzgerald, *Inside the Informant File*, 22 MAY CHAMPION 14, 14 (1998). The DEA, FBI, and the United States Customs are the federal agencies that utilize the highest number of informants. *Id.*

15. Evan Haglund, *Impeaching the Underworld Informant*, 63 S. CAL. L. REV. 1405, 1411 (1990).

16. *Id.* See, e.g., *Merrick v. United States*, 18 Cl. Ct. 718 (1989) (holding that informant's re-

been said that “[w]ithout a network of informers . . . narcotics police cannot operate.”¹⁷

During narcotics investigations, law enforcement personnel tend to follow a policy of eliminating the “big supplier,” and thus efforts are concentrated on investigating this individual.¹⁸ It is believed that the use of informants is imperative in achieving this goal.¹⁹ These informants can be used to gather and report information from suspects, arrange for narcotics buys, and recruit new informants.²⁰ Often times, in order to get informants to do this work, law enforcement officials must trade a favor for a favor.²¹ In these situations, an informant’s charges may be dropped or a lighter punishment imposed in exchange for valuable information or services.²²

As an indispensable tool of undercover investigations, informant use provides many benefits. Such benefits include: 1) gathering information to initiate an investigation; 2) obtaining information that is more “accurate, efficient, and comprehensive than that available from other sources[;]” 3) corroborating information; 4) introducing an undercover operative into a particular suspect group; 5) initiating illegal purchases; and 6) acting as a communication link between the police and a suspect group.²³

There are several types of individuals who act as informants for law enforcement officials. Within the broad category of informants, there are two main types of informants: the reputable citizen and the individual with connections to the criminal underworld.²⁴ Both types of informants can provide valuable information to law enforcement personnel.²⁵ Additionally, both have distinctively different reasons for assisting law

ward for providing names of persons involved in unlawful tax shelters is limited to \$50,000); *United States v. Main*, 312 F. Supp. 736 (D. Del. 1970) (involving the use of informants to uncover a gambling operation).

17. JEROME H. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN DEMOCRATIC SOCIETY* 117 (3d ed. 1994).

18. Joseph Goldstein, *Police Discretion Not to Invoke the Criminal Process*, in *THE CRIMINAL JUSTICE SYSTEM: POLITICS AND POLICIES* 90, 90 (George F. Cole and Marc G. Gertz eds., 7th ed. 1998).

19. *Id.*

20. *Id.* at 91.

21. *Id.*

22. *Id.* at 90.

23. Zimmerman, *supra* note 12, at 83 (citing MICHAEL D. LYMAN, *PRACTICAL DRUG ENFORCEMENT* 132 (1989)). However, in the course of using an informant, a law enforcement officer needs to remember that “today’s informant could very well be tomorrow’s suspect.” TONY ALVAREZ, *UNDERCOVER OPERATIONS SURVIVAL IN NARCOTICS INVESTIGATIONS* 58 (1993). Informants may use information they learn about police investigations to better mask their own criminal activity. *Id.*

24. MALACHI L. HARNEY AND JOHN C. CROSS, *THE INFORMER IN LAW ENFORCEMENT* 31, 40 (2d ed. 1968).

25. Officer Tony Alvarez points out that “informants come in all shapes, colors, and genders” and all are “an outstanding tool which will enhance law enforcement personnel in their ability to apprehend suspects and seize contraband.” ALVAREZ, *supra* note 23, at 62.

enforcement officials. While this Note will introduce all of the different types of informants, its primary target will be those individuals, adults and juveniles, who have some connection to the criminal world.

The first type of informant, the citizen informant, is generally a reputable citizen in the community who has no ties to the criminal underworld.²⁶ The citizen informant is usually cooperative with law enforcement officials and has come forward out of a sense of obligation to the community.²⁷ Because this informant has nothing to gain except an intrinsic feeling of worth, law enforcement officers view him or her as generally reliable.²⁸

The second type of informant is the individual, often times a criminal, who has some tie to the criminal underworld.²⁹ This informant category can be further broken down into the tested informant and the untested informant.³⁰ The difference between the two is obvious: the tested informant has a proven track-record that establishes reliability, whereas the untested informant has no established basis for reliability.³¹ Because this distinction has little bearing upon the reasons for the individual's participation with the police, the motives for their police assistance will be analyzed together.

Criminals become police informants for many reasons. First, some individuals do it for the money.³² Basically, there are a number of individuals who are career informants.³³ These individuals may set up con-

26. ALVAREZ, *supra* note 23, at 55. Malachi Harney and John Cross provide a short list of potential citizen informers that includes: "neighbors, mailmen, automobile dealers, credit men, storekeepers, taxi drivers, waiters, barbers, housekeepers, house detectives, bellboys and doormen." HARNEY AND CROSS, *supra* note 24, at 31. Although this list seems partially outdated, it does establish the general concept that the citizen informant is just your everyday, ordinary person.

27. ALVAREZ, *supra* note 23, at 55.

28. *Id.*

29. HARNEY AND CROSS, *supra* note 24, at 40.

30. ALVAREZ, *supra* note 23, at 55.

31. *Id.* at 57. It is worth noting that the untested informant may desire to remain anonymous. *Id.* An informant's proven track-record may prove to be of vital importance when an officer seeks a warrant based upon information obtained from the informant. When determining the existence of probable cause, courts require a totality of the circumstances analysis. See *Illinois v. Gates*, 462 U.S. 213, 238 (1983) (abandoning the "two-prong test" that was typically used to establish the existence of probable cause). In using the totality of the circumstances analysis, probable cause may be established even when an informant is anonymous. *Id.* at 243. However, if the police have an informant with a proven track-record and unwavering reliability, probable cause may be established even if the informant is unable to provide an explanation for the basis of his knowledge about the crime in question. *Id.* at 233.

32. ALVAREZ, *supra* note 23, at 55. Harney and Cross compare modern informants to the bounty hunters of the old West that made "career[s] out of collecting head rewards." HARNEY AND CROSS, *supra* note 24, at 45. It is estimated that in 1993, federal agents paid out \$97 million to informants. Mark Curriden, *The Informant Trap: Secret Threat to Justice*, NAT'L L. J., Feb. 20, 1995, at A1, A28. The informant's pay may be calculated by the "significance of the target . . . , the danger the target presents to the informant, and the amount of the actual or potential seizure realized by the government." Fitzgerald, *supra* note 14, at 70.

33. In order to better serve their careers, informants may even go "shopping" among various law enforcement agencies to see who will pay the most for the information. ALVAREZ, *supra* note 23, at 56.

tingent fee arrangements and exchange information for payment.³⁴ Second, some individuals inform to gain consideration in a pending criminal case.³⁵ Once the individual provides valuable information, the police may request the informant's prosecuting attorney to reduce the informant's charges or dismiss them entirely.³⁶ Additionally, the police may overlook violations of the law that occur while the individual is acting as an informant.³⁷ Third, an individual may try to eliminate his or her competitors by informing on their illegal activity and sending them to jail.³⁸ Fourth, based on their experiences, some people learn the ways in which the police conduct their investigations in order to better insulate themselves from arrest.³⁹ Other motives include: revenge,⁴⁰ repentance,⁴¹ a detective complex,⁴² and an appreciation of police work.⁴³

Although research fails to explain why a juvenile would choose to act as an informant, it is logical to believe that many of the juvenile's motivations are the same as those discussed for the adults. However, some believe that juveniles are "more susceptible to being pressured into serving in this capacity for invalid reasons."⁴⁴ Additionally, it appears that adolescents are more prone to risk-taking⁴⁵ and lack the ability to make critical decisions in a mature manner.⁴⁶ Such characteristics would suggest that juveniles tend to jump into the decision to inform without a thought as to the potential ramifications.

One cannot continue to discuss this issue without briefly noting the inherent dangers that potentially face an informant. As Officer Tony Alvarez states in his book, *Undercover Operations Survival in Narcotics*

34. See Samuel A. Perroni & Mona J. McNutt, *Criminal Contingency Fee Agreements: How Fair are They?*, 16 U. ARK. LITTLE ROCK L.J. 211 (1994) (focusing on the history of the contingency fee agreement and examining the constitutionality of its use). The use of the contingent fee agreement does not preclude the admissibility of the informant's testimony in court; it is up to the jury to examine the witness's credibility. *United States v. Cervantes-Pacheco*, 826 F.2d 310, 315 (5th Cir. 1987). Strategically, the defense attorney should request a cautionary instruction explaining to the jury that the witness is a paid informant. See, e.g., *State v. Fuller*, 802 P.2d 599 (Kan. Ct. App. 1990) (holding that the trial court erred in refusing to give a cautionary instruction).

35. ALVAREZ, *supra* note 23, at 56.

36. Goldstein, *supra* note 18, at 90.

37. *Id.* Although informants are not given a "license to peddle," possession of substantial amounts of narcotics may be overlooked. *Id.* at 91. This would be particularly enticing to the drug addict who wants to continue to use his narcotics. Police may also be inclined to overlook the fact that an informant making a drug buy skims a little bit of the evidence/drugs for personal use. *Id.*

38. ALVAREZ, *supra* note 23, at 57.

39. *Id.* at 58.

40. See *id.* (noting that the police must move quickly on this motive before the sparing parties make amends).

41. HARNEY AND CROSS, *supra* note 24, at 47.

42. *Id.*

43. *Id.* at 48.

44. *Police Handling of Juvenile Problems*, 1990 A.B.A. JUV. JUST. STDS. 4.2.

45. E.S. Scott et al., *Evaluating Adolescent Decision Making in Legal Contexts*, 19 L & HUMAN BEH. 221 (1995).

46. See *Belloti v. Baird*, 443 U.S. 622, 634 (1979) (explaining that constitutional rights of juveniles are not to be equated to those of adults for several reasons including the juvenile's inability to make critical decisions).

Investigations, informants “have to deal with and inform on suspects who would not hesitate to have them killed.”⁴⁷ The risk of harm to an informant exists both while the informant is an active participant in the events leading up to the arrest of the suspect and after the arrest if the suspect learns the informant’s true identity.⁴⁸ Accordingly, it is imperative that the police take steps to keep the informant’s identity confidential.⁴⁹

III. JUVENILE INFORMANTS AND THE JUVENILE JUSTICE SYSTEM

This section will focus on the use of minors as informants and the issue of whether this practice is consistent with the juvenile justice system. It will examine whether the use of minor informants is consistent with the founding principles behind the juvenile justice system. Furthermore, it will analyze whether the practice can be reconciled with the more contemporary views of juveniles and juvenile crime.

Juvenile law has undergone a great amount of change since the common law. At common law, juvenile offenders were often tried as adults unless the child’s actions were excused by the infancy defense.⁵⁰

47. ALVAREZ, *supra* note 23, at 60.

48. *Williamson v. City of Virginia Beach*, 786 F. Supp. 1238, 1247 (E.D. Va. 1992). In *Williamson*, the mother of Robbie Williamson, a deceased juvenile informant, sued the police seeking to recover for her son’s suicide. *Id.* at 1238. Robbie, after helping police with a drug bust, was threatened by the persons he had “narked on.” *Id.* at 1246. Robbie’s mother contended that these threats led to her son’s suicide. *Id.* Another example demonstrating the need to protect witnesses occurred in Bridgeport, Connecticut, with the death of eight-year-old Leroy Brown Jr. THE ASSOCIATED PRESS, *Lawmakers: Slain Child Should Have Been Under Police Protection*, THE PATRIOT LEDGER, Jan. 11, 1999, at 5. Leroy Brown, who was left unprotected by the police, was the witness in a murder case. *Id.* Before the murder trial occurred, Leroy and his mother, Karen Clarke, were found murdered. *Id.*

On the federal level, legislators created the Witness Protection Program in order to protect witnesses from the potential harms they face when exposing violations of the law. Raneta J. Lawson, *Lying, Cheating and Stealing at Government Expense: Striking a Balance Between the Public Interest and the Interests of the Public in the Witness Protection Program*, 24 ARIZ. ST. L.J. 1429, 1429 (1992) (exploring the historical background of the duty to protect witnesses and the legislative authority to do so). On the state level, states must provide their own witness protection programs. THE ASSOCIATED PRESS, *supra* at 5.

49. ALVAREZ, *supra* note 23, at 60. Although police should take steps to insure the safety of their informants, this is not always the case. In *Williamson v. City of Virginia Beach*, the mother of a deceased juvenile informant sued the police seeking to recover for her son’s suicide. *Williamson*, 786 F. Supp. at 1238. Robbie Williamson committed suicide after he was threatened by the individuals whom he had informed against. *Id.* at 1246. His mother brought the civil suit against the City of Virginia Beach based upon her son’s status as an informer. *Id.* at 1241. The court held that because the situation was not analogous to incarceration and the informant voluntarily contacted the police there was no affirmative duty to protect the youth. *Id.* at 1253. The court further pointed out that the “recognized risk to an informant is the possibility of retaliatory harm against him or his family, not the possibility that the informant will take his own life.” *Id.* After losing the case in federal court, his mother refiled in state court seeking \$2.5 million in damages. Pfeifer et al., *supra* note 7, at A1. The City eventually settled for \$48,750. *Id.*

50. MARTIN R. GARDNER, UNDERSTANDING JUVENILE LAW 180 (1997). The infancy defense essentially provides that children under the age of seven are conclusively presumed to be incapable of taking responsibility for their actions in criminal matters. WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., HANDBOOK ON CRIMINAL LAW §46, at 351 (1972). Children between the ages of seven to fourteen are presumed to be incapable of criminal responsibility; however, the prosecution can rebut this presumption. *Id.* At common law, children over the age of fourteen are conclusively presumed to be capable of criminal responsibility and, thus, are treated as adults. *Id.*

Over time, a new form of juvenile jurisprudence was adopted and reforms were instituted. In 1899, the most notable reform occurred in the United States with the invention of the juvenile court system in Cook County, Illinois.⁵¹ This court system was the first of its kind to implement a procedural and philosophical approach unique to the juvenile offender.⁵² The system also marked a movement away from the practice of criminal law and towards a new juvenile jurisprudence.⁵³

This new juvenile system moved away from the criminal arena by remaining completely separate from the adult courts.⁵⁴ First, the new juvenile court system had original and exclusive jurisdiction over cases involving children.⁵⁵ Second, the actual court facilities were separate from those of the adult courts.⁵⁶ Third, the new juvenile court system had a language separate and unique from that of the adult court system.⁵⁷ For example, children were no longer “arrested,” but rather “taken into custody.”⁵⁸ Moreover, a “trial” was referred to as an “adjudicatory hearing,” and the youth was now handed a “disposition” instead of a “sentence.”⁵⁹ This new terminology helped to avoid the idea that the juvenile was being tried for a “crime.”⁶⁰

The founding philosophical goal of this separate juvenile system focused on rehabilitation, rather than punishment.⁶¹ Reformers saw a need for a “non-putative *parens patriae* alternative” that would serve to “promote the welfare of the offender.”⁶² This alternative was accomplished by studying the offender’s needs, as opposed to reacting to the crime committed.⁶³ This non-putative approach helped to ensure that

51. JOHN C. WATKINS, JR., *THE JUVENILE JUSTICE CENTURY: A SOCIOLEGAL COMMENTARY ON AMERICAN JUVENILE COURTS* 43 (1998). There are several reasons why the juvenile court system came into existence. Among them are: 1) a shift from an “agrarian to urban society; 2) violent and exploitive reform schools;” 3) a movement of community and civic minded women called the “child savers;” 4) a general distrust of the current state of juvenile justice by the courts; and 5) influence by the Chicago Bar Association. MARY CLEMENT, *THE JUVENILE JUSTICE SYSTEM: LAW AND PROCESS* 16-17 (1997).

52. See *infra* notes 54-65 and accompanying text.

53. See *infra* notes 54-65 and accompanying text.

54. The adult courts and juvenile courts were different in many ways. In addition to those differences discussed later in this Note, it is interesting that the juvenile court was a “court of no record” because it did not take a transcript of the proceedings. CLEMENT, *supra* note 51, at 19. Additionally, the juvenile court proceedings were closed to the public. *Id.*

55. Michael Kennedy Burke, Comment, *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, 1032 (1995).

56. WATKINS, *supra* note 51, at 47.

57. *Id.*

58. CLEMENT, *supra* note 51, at 19.

59. *Id.*

60. WATKINS, *supra* note 51, at 47.

61. CLEMENT, *supra* note 51, at 19.

62. GARDNER, *supra* note 50, at 179, 183. See generally ELIZABETH J. CLAPP, *MOTHERS OF ALL CHILDREN* (1998) (examining the role that women reformers played in the juvenile court movement).

63. Early women reformers “believed that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘[w]hat is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career.’” *In re*

the juvenile was rehabilitated, not stigmatized from a criminal conviction.⁶⁴ The informal procedure, new terminology, and separate facilities were all necessary steps in achieving the goal of rehabilitation.⁶⁵

Over the past several decades the founding goals and philosophies of the juvenile justice system have been eroded, being replaced by the "get tough" movement.⁶⁶ This trend is geared towards holding the juvenile offender accountable for his or her actions by delivering "swifter, harsher, and more certain justice and punishment."⁶⁷ Martin R. Gardner, in his book *Understanding Juvenile Law*, articulates several reasons for this tougher policy:

[A] loss of faith in the juvenile justice system's ability to rehabilitate; the Supreme Court's "criminalization" of juvenile court proceedings; a general rebirth of retributive theories of punishment throughout the legal system; an expanded view of children's capacity for responsibility; and a perceived increase in the rate of serious crime committed by juveniles.⁶⁸

Community perceptions of juvenile crime have been a major force in pushing for a more punitive juvenile system. With a rising numbers of crimes committed by juveniles,⁶⁹ public outcry has helped push the "get tough" movement into the juvenile justice system.⁷⁰ Interestingly

Gault, 387 U.S. 1, 15 (1967) (quoting Julian Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 119-20 (1909)).

64. JOHN P. KENNEY ET AL., POLICE WORK WITH JUVENILES AND THE ADMINISTRATION OF JUVENILE JUSTICE 17 (8th ed. 1995).

65. CLEMENT, *supra* note 51, at 19.

66. DEAN J. CHAMPION, THE JUVENILE JUSTICE SYSTEM: DELINQUENCY, PROCESSING, AND THE LAW 16 (2d ed. 1998).

67. *Id.* Many states have clearly noted in their juvenile codes that one purpose of their statutes is to hold the juvenile accountable for his or her actions. See, e.g., KAN. STAT. ANN. § 38-1601 (1993 & Supp. 1998) (explaining that the primary goals of the juvenile offenders code are "to promote public safety, hold juvenile offenders accountable for such juvenile's behavior and improve the ability of juveniles to live more productively and responsibly in the community"); N.C. GEN. STAT. § 7B-1500 (1999) (noting that one of the purposes of the code shall be to provide "swift, effective dispositions that emphasize the juvenile offender's accountability for the juvenile's actions"); OR. REV. STAT. § 419C.001 (1997 & Supp. 1998) (explaining that the juvenile justice system was founded on "principles of personal responsibility" and "accountability"); WASH. REV. CODE ANN. § 13.40.010 (West 1998) (requiring that the juvenile justice system make the juvenile offender responsible for his or her actions); WIS. STAT. ANN. § 938.01 (West 1998) (explaining that the purpose of the Juvenile Justice Code is to create a "system which will protect the community, impose accountability for violations of law and equip juvenile offenders with competencies to live responsibly and productively").

68. GARDNER, *supra* note 50, at 185 (citations omitted).

69. Since 1967, there has been a 26 percent increase in the amount of juveniles arrested for Index offenses. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 288 (1998). A statistic of even greater concern is that the number of juveniles arrested for violent crimes increased 143 percent from 1967 to 1996. *Id.* However, 1996 did see a decrease in violent crimes. *Id.* at 290-91. The FBI's statistics are alarming; however, some warn that these statistics are inaccurate. CHAMPION, *supra* note 66, at 55-56. Specifically, critics believe that there are many weaknesses to these statistics, such as: not taking into account population increase, failure of all law enforcement agencies to report crimes to the FBI, and not considering fluctuations in police activity. *Id.*

70. KENNEY ET AL., *supra* note 64, at 18-19. Beginning in the 1970's, the public was under the opinion that juveniles were "getting away with murder." *Id.* at 19. This belief pushed legislators to make substantive changes to their statutes moving the focus away from rehabilitation. *Id.* See also *supra* note 67 and accompanying text. In addition, this "get tough" policy started to emerge in the 1960's when our communities saw an increase in the criminal sanctions imposed against adults, es-

enough, in 1996, the number of violent crimes committed by juveniles did begin to decrease;⁷¹ however, this corresponded with a rise in highly visible and horrific crimes committed by juveniles.⁷² Some believe that this has resulted in a public that has "virtually foregone the pretense of rehabilitation, let alone prevention."⁷³ Others believe, however, that public opinion remains in favor of rehabilitation.⁷⁴

Regardless of the true state of public opinion, it is apparent that the delinquent juvenile is in a precarious position. Clearly, some members of the community feel that a juvenile who commits a crime should be treated in a criminal fashion, similar to an adult in the criminal justice system.⁷⁵ Others remain loyal to the position that a juvenile is in need of rehabilitation and should not be treated as a criminal.⁷⁶ This leaves the delinquent child and the juvenile informant in an uncertain state.

These conflicting models of juvenile justice beg the question of whether juveniles should act as informers in such a state of uncertainty. The use of a child as an informant by law enforcement personnel is patently in conflict with the founding rehabilitation principles of the juvenile justice system.⁷⁷ In order to promote rehabilitation, the child, although not totally free of responsibility, was removed from the adult criminal system. After the child was taken into custody, he or she was neither treated as a criminal, nor spoken of as a criminal. The goal was to prevent the child from thinking that he or she was a criminal and thus living up to this label via some self-fulfilling prophecy.⁷⁸

pecially for narcotics violations. KENNEY ET AL., *supra* note 64, at 18.

71. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, CRIME IN THE UNITED STATES 291 (1998).

72. Since 1997, there has been a string of highly publicized school shootings. *School Shootings Reviewed*, ASSOCIATED PRESS, Mar. 7, 1999. For example, in Jonesboro, Arkansas, two juveniles set off fire alarms and then ambushed the evacuating children with bullets, killing four students and a teacher. *Id.* In Paducah, Kentucky, a 15-year-old shot students attending a prayer meeting at the high school. *Id.* Three died. *Id.* And recently, in Littleton, Colorado, two students attacked the campus of Columbine High School with automatic weapons and homemade bombs, killing thirteen before committing suicide. Robert Weller, *Diary Details a Deadly Agenda*, TIMES UNION, Apr. 27, 1999, at A1.

73. KENNEY ET AL., *supra* note 64, at 8.

74. CHAMPION, *supra* note 66, at 16. Dean Champion explains that public opinion polls reveal that many people would like to see juvenile offenders receive specialized treatment or counseling, not incarceration. *Id.*

75. See generally Deborah L. Mills, Note, *United States v. Johnson: Acknowledging the Shift in the Juvenile Court System from Rehabilitation to Punishment*, 45 DEPAUL L. REV. 903 (1996) (advocating a more punitive approach to juvenile recidivism).

76. See, e.g., Charles J. Aron & Michele S.C. Hurley, *Juvenile Justice at the Crossroads*, 22 JUNE CHAMPION 10 (1998) (arguing that juvenile offenders are children with problematic lives, and therefore, the emphasis of the juvenile justice system should be rehabilitation, not punishment).

77. See *supra* notes 50-65 and accompanying text.

78. This is particularly true with juvenile records. It was believed that if others had access to these delinquency records and the child was labeled a "rotten apple" by others, this may become a self-fulfilling prophecy. Kara E. Nelson, Comment, *The Release of Juvenile Records Under Wisconsin's Juvenile Justice Code: A System of False Promises*, 81 MARQ. L. REV. 1101, 1159 n.358 (citing *Juvenile Records: Who Should Have Access?*, 3 CHILDREN'S LEGAL RTS. J. 9, 12 (1982)).

Today, if a child is used as an informant, he or she is "taken into custody" and thrust right back into the criminal underworld from which he or she was to be saved.⁷⁹ The child, whether delinquent or criminal, is faced with the reality that he or she has done something illegal and that, in order to avoid punishment, he or she must cooperate with law enforcement. Although such bargaining may help the child avoid spending time in a juvenile hall or other facility, it places the child in a very adult and very criminal world.⁸⁰

Conversely, the use of child informants can be reconciled under the more recent "get tough" movement of law enforcement. As mentioned above, the public outcry for tougher treatment of juveniles has been in response to the perceived rise in serious crimes committed by juveniles.⁸¹ One could argue that the juvenile justice system's goal of rehabilitation has failed and thus law enforcement personnel, in order to "get tough," must fight juvenile crime from a different vantage point. For example, the careful use of juveniles as informants can introduce the police into suspect juvenile groups that would otherwise be impenetrable.⁸² By infiltrating and attacking these groups from within, perhaps juvenile crime will decrease.

Regardless of the competing philosophies and arguments concerning the juvenile justice system, it is clear that the delinquent child is at the whim of public opinion and the current model of crime prevention. Thus, we are stuck at a crossroads where we must choose to put the interests of an individual child in the forefront or potentially sacrifice that child in order to fight crime. It is a choice that society must make.

IV. JUVENILE, PARENTS, AND LAW ENFORCEMENT

When examining the issue of whether a juvenile should be used as an informant, it is imperative to consider the rights of all the interested parties. In particular, it is necessary to analyze the rights of the juvenile, parents, and law enforcement.

A working definition of juvenile rights is difficult to articulate be-

79. In an interview with *The Orange County Register*, Steven Schandler, professor of psychology at Chapman University and chief of the addiction-research laboratory at the V.A. Medical Center of Long Beach, compared juvenile drug informing to "putting a child from an abusive family back into the same household to inform on the family." Teri Sforza, *Undercover Work Risky in Many Ways*, THE ORANGE COUNTY REGISTER, Mar. 26, 1998, available in 1998 WL 2619893. Schandler went on to state that "[t]herapeutically, it just could not be more of a mistake." *Id.*

80. Note that when a child is placed in a juvenile correctional facility, he or she may receive much needed services. For instances, at the Beloit Juvenile Correctional Facility, in Beloit, Kansas, there are a variety of clinical services available to juvenile offenders including social work, psychological services, therapeutic recreation, and drug and alcohol services. Juvenile Justice Authority, *Beloit Juvenile Correction Facility* (last modified July 30, 1999) <<http://www.ink.org/public/kjja/beloit.htm>> Additionally, the facility offers many educational programs including GED classes, career exploration, and vocational education. *Id.*

81. See *supra* notes 69-74 and accompanying text.

82. See *infra* notes 127-29 and accompanying text.

cause there are varying opinions as to what rights a juvenile is or should be entitled to claim. Specifically, there are two main theories of juvenile rights: protectionist and personhood.⁸³

The protectionist theory is based upon concepts similar to the founding principles of the juvenile justice system.⁸⁴ The protectionist theory recognizes that the juvenile is in need of paternalistic care and hence, the concept of *parens patriae*.⁸⁵ Under this theory, it is believed that juveniles are entitled to the rights of protection such as "rights to receive care, affection, discipline, and guidance enabling development into mature and responsible adulthood."⁸⁶ In general, it is believed that children must be protected from themselves and others because they lack the capacity to care for themselves and make rational decisions.⁸⁷

Undertones of the protectionist theory are found in various areas of juvenile law. For example, it has long been held that a child lacks the capacity to contract.⁸⁸ Hence, any contract entered into by a child is voidable by the child.⁸⁹ He or she may be entitled to this protection

83. GARDNER, *supra* note 50, at 9.

84. See *supra* notes 61-65 and accompanying text.

85. The doctrine of *parens patriae* originated in English common law and allowed the King to protect subjects who could not protect themselves. Stephen Wizner, *On Youth Crime & the Juvenile Court*, 36 B.C. L. REV. 1025, 1031 (1995). The duty to protect was later assigned to the chancellor who, acting as "supreme guardian," assumed the role of protecting "all infants, as well as idiots and lunatics; that is of all such persons as have not discretion enough to manage their own concerns." 1 WILLIAM BLACKSTONE, COMMENTARIES 463. In the United States, *parens patriae* has been described as the "power of the state to act *in loco parentis* for the purpose of protecting the property interests and the person of the child." *In re Gault*, 387 U.S. 1, 16 (1967).

86. GARDNER, *supra* note 50, at 11.

87. *Id.* It is said that "minors often lack the 'experience, perspective, and judgment' necessary to make 'important, affirmative choices with potentially serious consequences.'" *Moe v. Dinkins*, 533 F. Supp. 623, 629 (S.D.N.Y. 1981) (quoting *Bellotti v. Baird*, 443 U.S. 622, 635-36 (1979)).

88. The rules regarding a child's right to contract are outlined in the RESTATEMENT (SECOND) OF CONTRACTS Section 12:

(1) No one can be bound by contract who has not legal capacity to incur at least voidable contractual duties. Capacity to contract may be partial and its existence in respect of a particular transaction may depend upon the nature of the transaction or other circumstances.

(2) A natural person who manifests assent to a transaction has full legal capacity to incur contractual duties thereby unless he is

(a) under guardianship, or
 (b) an infant, or
 (c) mentally ill or defective, or
 (d) intoxicated.

RESTATEMENT (SECOND) OF CONTRACTS § 12 (1979).

89. *Id.* at § 14 cmt. a. This is commonly known as the infancy doctrine and its purpose is to "protect minors from their lack of judgment and 'from squandering their wealth through improvident contracts with crafty adults who would take advantage of them in the marketplace.'" *Dodson v. Shrader*, 824 S.W.2d 545, 547 (Tenn. 1992) (quoting *Halbman v. Lemke*, 298 N.W.2d 562, 564 (Wis. 1980)). This concept has been slowly eroded, holding juveniles more accountable for their actions when disaffirming contracts. In *Dodson v. Shrader*, a 16-year-old purchased a truck for approximately \$4900, and drove it for nine months knowing that it had mechanical problems. *Dodson*, 824 S.W.2d at 546. The truck eventually blew up. *Id.* Later, the truck, which was left in front of his mother's home, was struck by a hit and run driver. *Id.* The truck's value was reduced to \$500. *Id.* The Supreme Court of Tennessee held that where there is no overreaching, undue influence and a contract is fair and reasonable, a minor may recover the full purchase price minus reasonable compensation for use, depreciation and willful or negligent damage. *Id.* at 549. The court reasoned that: 1) minors today have money and should be able to spend that money; 2) adults need the ability

even if the child has misrepresented his or her age.⁹⁰ The protectionist view has also manifested itself in other areas of the law including a child's inability to consent to sexual intercourse⁹¹ and the need for parental or judicial consent in order to marry under a certain age.⁹² The law also protects children from unsafe working environments through child labor laws.⁹³

The use of juvenile informants directly conflicts with the protectionist theory of juvenile rights. This theory seeks to protect juveniles from their own irrational and impulsive choices.⁹⁴ When a juvenile is placed in a situation where he or she is given the option of making a deal with law enforcement officials, the juvenile may jump at the opportunity without fully considering the consequences of this action.⁹⁵ As discussed earlier, juveniles are more prone to risk-taking.⁹⁶ A juvenile could volunteer in hopes of experiencing an exciting and spy-like scenario. In light of the laws protecting juveniles from making bad contractual deals and preventing employers from placing kids in harm's way, it seems inconceivable that the law would allow a juvenile to enter into an informant agreement of any kind.⁹⁷

to deal with these juveniles; and 3) the rule encourages honesty and integrity in today's youth. *Id.* at 549-50.

90. RESTATEMENT (SECOND) OF CONTRACTS § 14 cmt. c (1979). Many jurisdictions prevent minors who have misrepresented their age from disaffirming a contract under the infancy doctrine. IOWA CODE ANN. § 599.3 (West 1996); KAN. STAT. ANN. § 38-103 (1993); UTAH CODE ANN. § 15-2-3 (1953); WASH. REV. CODE ANN. § 26.28.040 (1997).

91. K.S.A. § 21-3502 defines rape as "sexual intercourse with a child who is under 14 years of age." KAN. STAT. ANN. § 21-3502(a)(C)(2) (1995 & Supp. 1998). Mistake of age is not a defense. *See, e.g.*, Garnett v. Maryland, 632 A.2d 797 (Md. 1993) (holding that the second-degree rape statute is a strict liability statute, thus prohibiting any mistake of age defense); Michigan v. Cash, 351 N.W.2d 822 (Mich. 1984) (holding that mistake of age is not a defense to third-degree criminal sexual conduct with a 13 to 16 year-old, even though the defendant reasonably believed the complainant to be 17-years-old).

92. Many states proscribe 18 years of age as the minimum age at which a juvenile may marry without parental or judicial consent. HARRY D. KRAUSE ET AL., FAMILY LAW: CASES, COMMENTS, AND QUESTIONS 82 (4th ed. 1998). The parental consent requirement helps ensure that "at least one mature person will participate in the decision of a minor to marry." *Moe v. Dinkins*, 533 F. Supp. 623, 629 (S.D.N.Y. 1981).

93. The basic child labor provisions of the Fair Labor Standards Act [hereinafter FLSA] are located at 29 U.S.C.A. § 212 (1998). The purpose of FLSA is to "keep the arteries of commerce free from pollution by the sweat of child labor." *Lenroot v. Western Union Telegraph Co.*, 52 F. Supp. 142, 147-48 (S.D.N.Y. 1943), *rev'd*, 323 U.S. 490 (1945). This would protect adult employees from child labor competition and children from harmful labor practices. *Lenroot v. Interstate Bakeries Corp.*, 55 F. Supp. 234, 236 (D. Mo. 1944), *aff'd in part and rev'd in part on other grounds*, 146 F.2d 325 (8th Cir. 1945). The FLSA prohibits "oppressive child labor" which it defines as any employment of a youth under 16 years of age and the employment of children 16 to 18 years-old in "particularly hazardous occupations." 29 U.S.C.A. § 203(l) (1998). Thus far there are many occupations considered to be particularly hazardous. *See* 29 C.F.R. §§ 570.50-570.68 (1999). For example, such occupations would include: working in or about plants that make explosives, logging, slaughtering or meatpacking, roofing, and excavation. *Id.* In light of these prohibitions, perhaps it could be argued that juvenile informing violates child labor laws.

94. GARDNER, *supra* note 50, at 12.

95. *See supra* note 46 and accompanying text.

96. *See supra* note 45 and accompanying text.

97. Practitioners should be aware of informant agreements and the opportunity to use them to effectively attack the informant's credibility at trial. *See Fitzgerald, supra* note 14; Haglund, *supra*,

The second theory of juvenile rights is the personhood theory. The personhood theory, under the basic assumption that juveniles possess the same decision-making capacity as adults, holds that juveniles should receive the same rights as any autonomous person.⁹⁸ This theory, like the protectionist theory, has left its mark on various areas of juvenile law such as the juvenile's right to make medical choices as well as various criminal procedures.

The juvenile's right to autonomous choice has been vigorously argued in the medical arena. At common law, minors were unable to make medical decisions for themselves until they reached the age of majority.⁹⁹ This severely limited the scope of medical care available to minors, especially where the parent's consent was unobtainable.¹⁰⁰ For public policy reasons, several exceptions began to emerge.¹⁰¹ For example, many states allow a minor to be treated for sexually transmitted diseases without obtaining parental consent.¹⁰² Likewise, a child can also receive treatment for drug and alcohol abuse without the consent of a parent.¹⁰³ In these situations, society has deemed it more important for the juvenile to obtain treatment than to wait for parental consent.¹⁰⁴

Courts have also recognized a juvenile's right to make decisions regarding medical treatment without parental consent when the juvenile can pass the "mature minor" test. The mature minor doctrine is utilized in various areas such as abortion rights¹⁰⁵ and the juvenile's right to

note 15.

98. GARDNER, *supra* note 50, at 11. See also Gary B. Melton, *Developmental Psychology and the Law: The State of the Art*, 22 J. FAM. L. 445 (1984) (discussing the competence of children and the implication of their understanding in the law).

99. WILLIAM L. PROSSER, HANDBOOK OF THE LAW OF TORTS 102-103 (4th ed. 1971).

100. One author writes, "[b]esides hampering the minor's ability to obtain needed medical services in the absence of his or her parents' consent, the traditional concept of the parental right also led to extreme judicial reluctance to order medical care for a minor in opposition to a parent's express refusal to consent." Tania E. Wright, *A Minor's Right to Consent to Medical Care*, 25 HOW. L.J. 525, 527 (1982).

101. See generally ANGELA R. HOLDER, LEGAL ISSUES IN PEDIATRICS AND ADOLESCENT MEDICINE (1977) (discussing the various public policy exceptions to the common law rule that a child lacks the capacity to consent to medical care).

102. See, e.g., KAN. STAT. ANN. § 65-2892 (1992) (permitting a physician to treat a minor for a venereal disease without obtaining the consent or notifying the minor's parent or guardian); N.H. REV. STAT. ANN. § 141-C:18 (1998) (allowing minors 14 years of age or older to receive treatment for sexually transmitted diseases without parental consent); WIS. STAT. § 252.11 (1999) (permitting physicians or other health care professionals to treat minors with sexually transmitted diseases without parental consent). Additionally, the United States Supreme Court has held that minors cannot be denied access to contraceptive devices. *Carey v. Population Serv. Int'l*, 431 U.S. 52 (1976).

103. See, e.g., 410 ILL. COMP. STAT. ANN. 210/4 (West 1999) (explaining that parental consent is not necessary to authorize medical care for the treatment of alcohol or drug use, or sexually transmitted diseases); KAN. STAT. ANN. § 65-2892a (1992) (permitting the examination and treatment of a minor for drug abuse, misuse, or addiction, without obtaining parental consent).

104. See generally Janine P. Felsman, Note, *Eliminating Parental Consent Notification for Adolescent HIV Testing: A Legitimate Statutory Response to the AIDS Epidemic*, 5 J.L. & POL'Y 339 (1996) (arguing that HIV transmission decreases when teens have access to confidential testing and counseling).

105. See generally *Bellotti v. Baird*, 443 U.S. 622 (1979) (granting a pregnant minor the option

die.¹⁰⁶ The crux of the mature minor doctrine is that the age of eighteen is “not an impenetrable barrier that magically precludes a minor from possessing and exercising certain rights normally associated with adulthood.”¹⁰⁷

In mature minor cases, courts examine the issue of whether the juvenile displays the maturity necessary to make the decision at issue. Before rendering a decision on whether a juvenile should be considered a mature minor, courts examine various criteria such as the juvenile’s “age, ability, experience, education, training, and degree of maturity or judgment obtained by the minor.”¹⁰⁸ In addition, the courts often analyze the juvenile’s capacity to appreciate the nature, risks, and consequences of the treatment to be administered or withheld.¹⁰⁹ Once the child has demonstrated the requisite maturity, he or she is granted the same rights as an adult, namely, the right to choose.

Aside from the medical arena, manifestations of the personhood theory can be seen in various criminal procedures. Thus far, this Note has discussed how the personhood theory has granted juveniles the same rights as adults. Likewise, in the criminal arena, the personhood theory extends to juveniles many of the criminal procedures available to adults. This extension, however, also appears to correlate to an increased level of responsibility being placed upon juveniles.

In the context of the Fifth Amendment and Miranda rights, juveniles are entitled to the privilege against self-incrimination.¹¹⁰ This privilege, however, generally treats the youth as an adult for purposes of evaluating the constitutionality of an interrogation.¹¹¹ The United States Supreme Court held in *Fare v. Micheal C.*,¹¹² that in deciding whether a juvenile has freely and voluntarily waived his or her Miranda rights, the Court should analyze the “totality of the circumstances” the same for a juvenile as it would for an adult.¹¹³ The Court reasoned that the juvenile was capable of making this crucial decision on his own.¹¹⁴

of proving that she is mature enough to consent to an abortion without parental consent).

106. See, e.g., *In re E.G.*, 549 N.E.2d 322 (Ill. 1989) (holding that a 17-year-old female Jehovah’s Witness who exercised the judgment of an adult was a mature minor and could choose to refuse life sustaining medical procedures). But see *In re Long Island Jewish Medical Center*, 557 N.Y.S.2d 239 (N.Y. App. Div. 1990) (holding that a 17-year-old boy who did not understand his religious convictions, nor his medical condition was not a mature minor).

107. *In re E.G.*, 549 N.E.2d at 325.

108. *Belcher v. Charleston Area Medical Center*, 422 S.E.2d 827, 836 (W. Va. 1992) (citing *Cardwell v. Bechtol*, 724 S.W.2d 739, 748 (Tenn. 1987)).

109. *Id.*

110. *In re Gault*, 387 U.S. 1, 55 (1967).

111. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

112. *Id.*

113. *Id.*

114. *Id.* at 726-27 (noting that there was nothing to indicate that the juvenile did not understand the nature of his choices). In 1969, a test study was conducted where juveniles were given formal and informal Miranda warnings. Bruce Ferguson & Alan Charles Douglas, *A Study of Juvenile Waiver*, 7 SAN DIEGO L. REV. 39, 40 (1970). The researchers found that 81 of the 86 youth who

Although the juvenile's age, experience, and parental presence¹¹⁵ are all factors that the courts often consider, the juvenile's right against self-incrimination bears the risk that the child will receive little added consideration based upon his or her youth.

Another crucial criminal procedure that may have been influenced by the personhood theory is the juvenile waiver process.¹¹⁶ The waiver process, typically outlined by the legislature, essentially allows a state court to determine whether a juvenile should be treated as an adult within the adult criminal court system.¹¹⁷ In examining whether a juvenile should be tried as an adult, many state statutes provide delineated criteria for the court to consider.¹¹⁸ For example, the Kansas waiver statute requires that the judge consider factors such as: the seriousness of the offense, criminal history, sophistication or maturity of the juvenile, availability of rehabilitation services, and the community's need for protection.¹¹⁹ In essence, juvenile waiver statutes allow a child with the maturity of an adult to be tried as an adult.

As demonstrated above, under the personhood theory of juvenile rights, a juvenile should be allowed to make choices based upon his maturity and not just his age. If the juvenile has the capacity to make important decisions, such as the right to die or to have an abortion, the law should enable him or her to do so. Additionally, this theory forces children who can demonstrate the maturity of an adult, to take responsibility for their actions like an adult. Accordingly, under the personhood theory, one could argue that a juvenile should be allowed the right to choose to act as an informant if he or she can demonstrate sufficient maturity and the ability to comprehend the undertaking.

After analyzing the juvenile's rights, the parent's rights must also be considered when deciding whether to allow a juvenile to participate as an informant. It is a well-established constitutional principle, under

waived their Miranda rights did not fully understand their constitutional rights. *Id.* at 53. See also Thomas Grisso, *Juveniles' Capacity to Waive Miranda Rights: An Empirical Analysis*, 68 CALIF. L. REV. 1134 (1980) (finding that juveniles are far more likely than adults to not understand the nature of their rights).

115. *Fare*, 442 U.S. at 725; *In re B.M.B.*, 955 P.2d 1302 (Kan. 1998) (holding that when a youth under the age of 14 chooses to waive Miranda rights, the youth must be given the opportunity to consult with a parent). *In re B.M.B.* was later codified by K.S.A. § 38-1624(c)(3)(A), which requires the juvenile to actually consult with his parent or guardian before waiving his rights. See KAN. STAT. ANN. § 38-1624 (c)(3)(A) (1993 & Supp. 1998).

116. GARDNER, *supra* note 50, at 14.

117. The majority of states have this type of judicial waiver process. See, e.g., KAN. STAT. ANN. § 38-1636 (1993 & Supp. 1998); MICH. COMP. LAWS ANN. § 712A.4 (West 1999); TEX. FAM. CODE ANN. § 54.02 (West 1997).

118. Many of the factors found in state statutes are similar to those listed as "determinative factors" by the United States Supreme Court's Appendix to *Kent v. United States*, 383 U.S. 541, 566-67 (1966). See, e.g., COLO. REV. STAT. ANN. § 19-2-518(4)(b)(II) (West 1998) (requiring the juvenile court to consider whether the crime was committed in "an aggressive, violent, premeditated, or willful manner").

119. KAN. STAT. ANN. § 38-1636 (1993 & Supp. 1998).

the Fourteenth Amendment, that parents have the right to make important decisions for their children.¹²⁰ Parental rights include the right to care, custody, and maintenance of children.¹²¹ Additionally, the Supreme Court has articulated that our constitutional system recognizes that parents not only have a right to parental authority, but they also have a duty to prepare their children for additional obligations in the future.¹²² The parental duty shall include "the inculcation of moral standards, religious beliefs, and elements of good citizenship."¹²³

In light of these principles, parental consent should be obtained before a child is permitted to inform in any capacity. The Court has stated that "the natural bonds of affection lead parents to act with the best interest of their children."¹²⁴ If the parent feels that acting as an informant places the child in any type of risk, or is against the child's best interest in anyway, the parent should be able to prohibit the child's participation.

The final interests to consider are those of law enforcement officials. There is great debate as to whether law enforcement officers actually need the services of juveniles for informant purposes. Even within law enforcement there is a wide range of opinions on the issue. There is no uniformity on informant practices among law enforcement agencies because they each set their own internal policies.¹²⁵

Many officers express a special need for the use of minors as informants. For instance, in an effort to crackdown on the ease in which minors can buy alcohol, many police agencies set up sting operations where minors are used to purchase alcohol from a local merchant or tavern.¹²⁶ Additionally, it may be particularly difficult for an adult undercover operative to infiltrate a group of juvenile offenders.¹²⁷ San Diego Police Capt. Cheryl Meyers explains that "[o]ne of the hardest subcultures for law enforcement to penetrate is the teenage subculture."¹²⁸

120. *Pierce v. Society of the Sisters*, 268 U.S. 510, 534-35 (1925).

121. *Santosky v. Kramer*, 455 U.S. 745, 752 (1982).

122. *Pierce*, 268 U.S. at 535.

123. *Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972). The Court has expressed that "[a] democratic society rests, for its continuance, upon the healthy, well-rounded growth of young people into full mature citizens, with all that implies." *Prince v. Massachusetts*, 321 U.S. 158, 168 (1944).

124. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

125. Pfeifer et al., *supra* note 7, at A1. The International Association of Chiefs of Police has no specific policy on the use of juveniles as informants. *Id.*

126. Bobby Little and Mike Bishop, *Minor Drinkers/Major Consequences: Enforcement Strategies for Underage Alcoholic Beverage Law Violators*, FEDERAL BUREAU OF INVESTIGATION, THE FBI LAW ENFORCEMENT BULLETIN, Vol. 67, No. 6 (June 1, 1998). There are alternatives to using juveniles in alcohol stings. The Kansas Alcoholic Beverage Control (ABC) agency uses three main strategies to catch underage drinking: bar checks by agents, cops in shops, and underage helpers. Kevin Bates, *Undercover, Underage Teens Help ABC: Compliance with Liquor Laws Monitored*, THE TOPEKA CAPITAL JOURNAL, Oct. 30, 1998, at 1-A. When the ABC uses underage helpers the kids must be between the ages of 18 and 19½ and have no criminal record. *Id.*

127. Sinclair and Herbert, *supra* note 10, at 32. Obviously, an adult would be easily spotted when attempting to fit in with a group as young as eight-years-old. *Id.*

128. Wagner and Maharaj, *supra* note 4, at A1.

Thus, police need a way infiltrate this group because a juvenile may be the perpetrator or the only link to the particular crimes under investigation.¹²⁹

Conversely, there is skepticism about the effectiveness of juvenile informants. Aside from the argument that juveniles should not be used as informants based upon principle,¹³⁰ some opponents reason that juveniles cannot significantly help police anyway. First, the juvenile may not be reliable because children tend to exaggerate the truth.¹³¹ Second, juveniles usually lack the contacts needed to bring down the big guys.¹³² These arguments further support the notion that a juvenile should not be used as an informant unless the need is great and the juvenile can safely obtain the information.

V. CALIFORNIA'S JUVENILE INFORMANT LAW

In response to the death of seventeen-year-old Chad MacDonald, the California legislature passed a bill to control the use of minors as informants.¹³³ The bill was brought by Assemblyman Scott Baugh, and sought to completely prohibit the use of minors as informants.¹³⁴ Baugh later revised the bill proposal after he received political pressure from law enforcement officials.¹³⁵ The bill, eventually enacted, allows for the limited use of juveniles as informants.¹³⁶ The California statute attempts to balance the interests of the child, parents, and law enforcement. The basic structure and idea of the law provide a positive model for other states to follow; however, the law needs more in-depth criteria for the judiciary to consider before deciding whether a juvenile is mature enough to act as an informant.

First, the California law correctly prohibits the use of very young children as informants. The law states that "no peace officer or agent of a peace officer shall use a person who is 12 years of age or younger as a minor informant."¹³⁷ This provision is consistent with the founding principles of the juvenile justice system as well as the protectionist view

129. *Police Handling of Juvenile Problems*, 1990 A.B.A. JUV. JUST. STDS. 4.2.

130. Opponents of juvenile informant use argue that the job is just too risky for a juvenile. See Sforza, *supra* note 79, at B1 (interviewing William Steiner, a national consultant on children's issues). Specifically, Mr. Steiner points out that, unlike juvenile informants, "[u]ndercover police officers are highly trained, sophisticated and know how to handle themselves in dangerous situations." *Id.*

131. Wagner and Maharaj, *supra* note 4, at A1.

132. *Id.*

133. *Minors as Informants*, *supra* note 5, at B6.

134. Eric Bailey, *Assembly Oks Restrictions on Young Informants Legislation*, LOS ANGELES TIMES, Aug. 29, 1998, at B4.

135. *Minors as Informants*, *supra* note 5, at B6.

136. CAL. PENAL CODE § 701.5 (West 1999). The bill went into effect on September 25, 1998. *Id.*

137. CAL. PENAL CODE § 701.5(a) (West 1999). The law does allow children to be used in tobacco stings to the extent that this is consistent with the Stop Tobacco Access to Kids Enforcement Act. CAL. PENAL CODE § 701.5(b) (West 1999).

of juvenile rights.¹³⁸ The emphasis should be on the rehabilitation of these young children and on the State's attempt to remove them from the criminal world. Children of this tender age need care and guidance.¹³⁹ They should not be pumped for information. Furthermore, they are simply too young to be placed in the dangerous world of crime. Thus, a law enforcement official's need for an informant must simply take a backseat to the young child's right to protection. The California law recognizes this.

Second, the California law allows for the limited use of juvenile informants with a court order.¹⁴⁰ The decision to use a minor in this capacity is a crucial decision that should not be made by a police officer who, potentially, is more interested in his investigation than in the overall safety of the child's emotional and physical well-being.¹⁴¹ As such, the California law appropriately requires that the judiciary intervene in the decision to use a juvenile as an informant. The law requires that the judge consider various criteria before making this critical decision. Some of the court's considerations include: "(1) the age and maturity of the minor, (2) gravity of the minor's offense, (3) the safety of the public, and (4) the interests of justice, that the agreement to act as a minor informant is voluntary and is being entered into knowingly and intelligently."¹⁴² Prior to weighing these considerations, however, the court must find that several conditions have been satisfied:

- (1) The court has found probable cause that the minor committed the alleged offense. The finding of probable cause shall only be for the purpose of issuing the order pursuant to subdivision (b), and shall not prejudice the minor in any future proceedings.
- (2) The court has advised the minor of the minimum and maximum sentence for the alleged offense.
- (3) The court has disclosed the benefit the minor may obtain by cooperating with the peace officer or agent of the peace officer.
- (4) The minor's parent or guardian has consented to the agreement by the minor¹⁴³ unless the parent or guardian is a suspect in the criminal investigation.

The criteria and process outlined by the California legislature mimics the mature minor analysis in that it provides the court with

138. See *supra* notes 50-65, 84-97 and accompanying text.

139. Under the protectionist view of juvenile rights the child has a right to care, custody, nurturing and guidance. See *supra* notes 85-87 and accompanying text.

140. CAL. PENAL CODE § 701.5(b) (West 1999).

141. The Supreme Court requires that a neutral magistrate issue search warrants because "prosecutors and policemen simply cannot be asked to maintain the requisite neutrality with regard to their own investigations" *Coolidge v. New Hampshire*, 403 U.S. 443, 450 (1971). Thus, an issuing magistrate must exhibit the "neutrality and detachment demanded of a judicial officer" and not simply act as an "adjunct law enforcement officer." *United States v. Leon*, 468 U.S. 897, 914 (1984) (quoting *Lo-Ji Sales v. New York*, 442 U.S. 319, 326-27 (1979)).

142. CAL. PENAL CODE § 701.5(c) (West 1999).

143. CAL. PENAL CODE § 701.5(d) (West 1999).

guidelines for deciding whether the juvenile has intelligently made the decision to become an informant. Even though the California law attempts to look at the child's ability to make an informed choice, it falls short of the scrutiny necessary in determining whether a juvenile should be allowed to inform. In the juvenile informant arena, the courts should analyze the juvenile's decision-making abilities as thoroughly as they do in cases involving juveniles who are refusing medical care. As previously stated, there are very serious risks associated with informing.¹⁴⁴ Accordingly, there should be a very serious and thorough investigation into the child's decision to participate as an informant. California's statute only scratches the surface.

For example, the California statute requires the court to consider the child's age and maturity; however, it provides no other guidance.¹⁴⁵ The mature minor doctrine for health care decisions provides more specific criteria for the court to consider. As discussed in Section IV, when a court is deciding whether a child is mature enough to make the decision to refuse medical treatment, the court will look at the juvenile's age, ability to understand, experience, education, training, and degree of maturity or judgment obtained by the minor.¹⁴⁶ In addition, courts often analyze the juvenile's capacity to appreciate the nature, risks, and consequences of the choices that he or she makes.¹⁴⁷ These factors should also be consistently applied in cases involving juvenile informants. Thus, a juvenile informant law needs to specifically delineate criteria for the judiciary to review when deciding whether a juvenile is mature enough to inform.

In addition to the juvenile's maturity level, the California statute also requires that the court consider the gravity of the juvenile's offense when determining the juvenile's ability to act as an informant.¹⁴⁸ Although a judge should consider the nature of the offense committed by the juvenile, this should have little bearing on whether a child has the capacity to inform. The emphasis needs to be on the maturity of the youth, not on the gravity of the offense. A child that commits a very serious crime may be no more capable of making a mature decision to become an informant than a child who commits a petty offense. Again, for a state's juvenile informant law to be effective the emphasis must be on the child, not on the offense.

Next, the California statute requires that the court consider public safety and the interests of justice when analyzing a juvenile's choice to

144. See *supra* notes 47-49 and accompanying text.

145. CAL. PENAL CODE § 701.5(c) (West 1999).

146. *Belcher v. Charleston Area Medical Center*, 422 S.E.2d 827, 836 (W. Va. 1992).

147. *Id.*

148. CAL. PENAL CODE § 701.5(c) (West 1999).

act as an informant.¹⁴⁹ The court should consider the following factors and balance them with the juvenile informant's safety. First, as discussed earlier, there is a public interest in the reduction of juvenile crime. This interest is only heightened by recent and highly visible crimes such as the shooting spree at Columbine High School. Second, law enforcement officials argue that the use of juvenile informants may be the only way to gain access to necessary information.¹⁵⁰ While the court should keep these factors in mind, it is imperative that the court also considers the safety of the juvenile informant. Informing is a dangerous undertaking and the child's safety must be a primary concern. Thus, a state's juvenile informant law must have the child's safety as a factor for the court to consider. The California law completely leaves this vital aspect out of its statute.

Furthermore, while examining the interests of justice, the court should look at whether law enforcement officials have demonstrated that the juvenile would be an effective, as well as reliable, informant. As explained earlier, some people doubt whether a juvenile informant could really be of any assistance to a criminal investigation.¹⁵¹ In order to ensure that we are not putting minors into a potentially dangerous position for a worthless attempt at gaining information, the court should look at whether the juvenile can add anything of significance to the particular investigation. Additionally, the court should consider whether law enforcement officers have attempted to utilize other means of gaining access to the needed information.¹⁵² There is absolutely no reason to use a juvenile as an informant when there are alternatives. Therefore, if law enforcement officials have not explored other alternatives, or if they cannot prove that the particular juvenile would be an effective, reliable informant, the court should deny the juvenile's participation.

Aside from the above-explored considerations, the California statute further requires that various other conditions be met before allowing a juvenile to act as an informant.¹⁵³ One condition of particular im-

149. *Id.*

150. *See supra* notes 126-29 and accompanying text.

151. *See supra* notes 130-31 and accompanying text.

152. One particularly successful technique is the use of young-looking police officers going undercover as a student at the local school. For example, in Los Angeles, undercover officers made over 200 drug buys over a five-month period at local schools. Matt Lait, *Officers Easily Blend into School Drug Scene Narcotics*, LOS ANGELES TIMES, June 3, 1999, at B1. In Plano, Texas, the undercover work of a youthful 29-year-old police officer in a senior high school led to the arrest of fourteen students on drug charges. Linda Stewart Ball, *Undercover and Under Fire*, DALLAS MORNING NEWS, Mar. 26, 1998, at 33A. At Fremont County high schools, an undercover officer, posing as a student, was able to monitor a drug operation for over two months, leading to the arrests of seven students and two adults. Associated Press, *Undercover Policeman Schools 'Classmates' with Drug Sting*, THE IDAHO STATESMAN, May 3, 1998, at 6B.

153. CAL. PENAL CODE § 701.5(d) (West 1999).

portance is the parental consent provision.¹⁵⁴ This provision is absolutely necessary under the constitutional analysis discussed in Section IV which demands that parents have the right to make child-rearing decisions.¹⁵⁵ Moreover, it is believed that the parent will make these choices with the child's best interest at heart.¹⁵⁶ Accordingly, if a parent feels that informing is too dangerous for their child, the parent must be afforded the right to prevent the child from acting as an informant. Any state contemplating a juvenile informant law must provide the parent with this right.

VI. CONCLUSION

The issue of whether a child should be allowed to become an informant for law enforcement officials has created a heated debate. The answer is divided among proponents based upon the theories of juvenile justice, juvenile rights, and crime prevention. Many people oppose the practice; however, the fact remains that police do use juveniles as informants. Therefore, we need to establish some safeguards against potential abuse. It is not sufficient to rely upon the often times non-existent policies of law enforcement. States must establish laws. The goals of these laws should be: (1) to prohibit the use of very young children as informants; (2) to establish comprehensive guidelines for police and courts to use in order to decide whether a juvenile is mature enough to act as an informant; (3) to protect the potential informant from overly dangerous situations; and (4) to require officials to first look for alternative means of gathering the desired information before using a juvenile informant.

California legislators have attempted to provide such a law and thus, the California statute may be used as a skeleton structure for other states to build upon. The law appropriately recognizes that young children should not inform, period. However, it also recognizes that juvenile informing, at times, may be a necessary evil. The California legislators had the right idea by laying out criteria for the judiciary to consider when deciding whether a juvenile should be allowed to act as an informant. Unfortunately, the statute fails to provide enough safeguards for those children who may be allowed to inform. There are three main problems with the California statute. First, the statute fails to require the court to consider the risk the minor would face. Second, the California law fails to provide a necessary and thorough investigation into the maturity of the youth. The California law falls short of the neces-

154. CAL. PENAL CODE § 701.5(d)(4) (West 1999). The law does contain an exception that allows a minor to become an informant without parental consent if the parent or guardian is the suspect. *Id.*

155. See *supra* notes 120-24 and accompanying text.

156. *Parham v. J.R.*, 442 U.S. 584, 602 (1979).

sary inquiry. Third, it fails to push police towards the use of alternatives to recruiting juvenile informants. By using the California law for guidance and adding some additional considerations such as child safety, a quasi-mature minor doctrine, and potential alternatives, states should be able to produce a juvenile informant law that balances the rights, interests, and needs of all the parties involved.

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