In 1966, the United States Supreme Court said that, when a juvenile is tried in juvenile court, the state is supposed to act in its parens patriae role and not in its adversarial role. Thus, accused juveniles are not automatically entitled to certain basic rights that they would otherwise enjoy in criminal court, such as the right to bail. *Kent v. United States*, 383 U.S. 541 (1966).

Currently, the following 16 states statutorily permit bail for juveniles in pre-adjudicatory proceedings: Colorado, Connecticut, Delaware, Georgia, Louisiana, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Oklahoma, Oregon, South Carolina, South Dakota, Wisconsin and Wyoming.

Seventeen states and the District of Columbia have case law, statutes or court rules specifically denying juveniles the right to pre-adjudicatory bail: Alaska, California, Hawaii, Idaho, Indiana, Kansas, Kentucky, Maryland, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Texas, and Utah.

The remaining 17 states have no case law, statute or court rule on this issue: Alabama, Arizona, Arkansas, Florida, Illinois, Iowa, Maine, Mississippi, Missouri, Nevada, New Hampshire, North Dakota, Tennessee, Vermont, Virginia, Washington, and West Virginia.

All of the state courts that have looked at the issue have uniformly held that juveniles in juvenile court have no constitutional right to bail during the pre-adjudicatory proceedings.

The conflict underlying this issue pits the juvenile court’s parens patriae tradition of preserving and promoting the welfare of the juvenile against the trend of the juvenile court to function more and more like a criminal court in many respects.

State appellate courts have given a variety of reasons for denying juveniles bail during pre-adjudicatory proceedings. For example, the right to bail would really make the juvenile’s release dependent on the financial circumstances of his or her parent. Also, courts have found that an adequate substitute for bail already exists. In many jurisdictions, the juvenile court judge already has the statutory power to turn custody of the juvenile over to the parent or to establish reasonable means for release of the juvenile pending the hearing.

Traditionally, a juvenile is not held to the same standard for individual responsibility for his or her conduct, as is an adult, so courts have found an adequate reason for different procedures concerning the two classes.

However, there are also sound arguments for granting juveniles bail. For example, if the purpose of parens patriae is to grant the juvenile greater protection than he or she would experience under the criminal law, why deny him or her any constitutional rights guaranteed adults?

In addition, it has been argued (unsuccessfully) that a juvenile often faces a very real deprivation of liberty no matter what euphemistic name is given to the detention facility where he or she is confined without the possibility of bail.

And the debate rages on. Recently a Boston juvenile court judge set bail at $250,000 for a 12-year-old boy charged with firing a gun in the city. The District Attorney’s office had asked for $5,000 bail for the juvenile.