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Information Report on Juveniles in the Adult Criminal Justice System

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WHEN IS A CHILD NOT A CHILD?

Information Report on
Juveniles in the Adult Criminal Justice SystemIntroduction

At what age should a juvenile offender be tried as an adult? Should juvenile courts be required to make determinations on remand (transfer of juveniles to adult court) on specific crimes and criteria? These and other questions on remand have been topics of increasing public debate in recent years. Pressures from prosecutors, victims and others have added impetus to an already growing movement, based on public perception of increasing juvenile crime, to "get tough" with Oregon's serious juvenile offenders.

Three similar bills (SB 154, SB 595, HB 2955) were introduced in the 1983 legislative session to lower the remand age from 16 to 14 for violent crimes only. An opposing bill (SB 719) retained the age at 16 and added more stringent criteria to consider in making the remand decision. None of the bills, except HB 2955, received consideration. Proponents rallied behind HB 2955, which passed the House but died without a hearing in the Senate Judiciary Committee. Opposing sides were attempting compromise when the legislature adjourned. Having been introduced in the last two sessions, the remand issue is likely to surface again in 1985.

Present Use of Remand in Oregon

Any juvenile 16 or older may be transferred to adult court for any law or ordinance violation which would be an offense if committed by an adult. Oregon's only criterion is a judicial determination, based on a "specific, detailed written finding of fact" that "retaining jurisdiction will not serve the best interests of the child because the child is not amenable to rehabilitation in facilities or programs available to the court." In Oregon, the remand decision is based on the age of the juvenile at the time of the remand hearing, not the age at the time of the alleged offense. Following an original remand, the juvenile court may issue a "permanent" remand order directing that all future cases involving the child be heard in adult court, although the court may revoke the order at any time.

A recent nationwide study commissioned by the U.S. Department of Justice showed that Oregon remanded 524 children in 1978, at a rate of 13.5 per 10,000 persons aged 8 to 17 (the second highest in the nation), as contrasted with the national rate of 3.3. Oregon remand rates differed markedly from county to county, with no relationship based on population density. This disparity suggests widely varying standards for deciding if a youth is amenable to treatment in the juvenile system.

Remand in Oregon has not been used primarily to protect the public from violent crimes. Additional research on 504 of the youths revealed that 43 percent were accused of public order offenses, 39 percent for property offenses and only 11 percent for crimes against persons (6 percent for violent offenses). Only a small minority were sentenced to long periods in adult institutions; three-fourths were fined or placed on probation. Fifty-six percent received only fines. Seventy-nine percent of all remanded youth were 17 years old.

Similarly, an Oregon Law Enforcement Council (OLEC) study of 76 juveniles arrested and remanded for serious felonies in 1979 indicated that

over 70 percent of the crimes were non-violent, i.e. burglary or larceny. As in the earlier study, the average age exceeded 17 years. CLEC also found that a small proportion of those convicted were incarcerated (29 out of 63). Probation was granted for such offenses as criminally negligent homicide, Rape I, Robbery I and Assault I.

Two 1983 statutory changes could reduce future remand for lesser offenses: 1) Youth arrested close to their 18th birthday may be admitted to a juvenile training school after the 18th birthday; 2) Fines may be imposed by the juvenile court on a child in circumstances where an adult could be fined.

Arguments For and Against Remand

Those who favor remand, particularly for violent offenders, do so because the adult court, unlike the juvenile court, may hold such persons beyond their 21st birthday. Supporters believe remand is necessary to protect the public, inspire public confidence in the juvenile courts, and hold youth accountable for their antisocial acts when the juvenile system has run out of options. Opponents believe remand, particularly for the younger teenager, is contrary to the juvenile justice system's basic rehabilitative philosophy. They also list potential physical and psychological dangers to young persons associating with hardened criminals, decreased opportunities for education, and acquisition of a criminal record. Some opponents fear lowering the age would boost Oregon's remand rate even higher, citing national research which shows that juvenile court judges have been more likely to remand older juveniles if they also had the authority to remand 14 and 15 year olds.

Legislative Approaches

HB 2955 had three major components: 1) Lowered the age of remand to 14 for violent crimes only but retained the present statutory age of 16 for all law and ordinance violations; 2) Provided that no juveniles under 16 would be held in an adult facility; 3) Eliminated amenability to treatment in the juvenile justice system and substituted "best interests of society" to specific criteria which must be weighed in making the remand decision.

SB 719 would have, among other things, revamped the entire remand statute, adding specific notice and hearing requirements, right to an attorney, different judges at the remand hearing and at the trial for the offense, and a list of criteria to consider in making the remand decision that a child is not amenable to treatment in the juvenile justice system. The remand age was left at 16 and was limited to specific violent offenses.

When it became obvious that HB 2955 was the only bill that would be considered, opponents of a lowered remand age offered amendments, some of which were adopted. The two sides continued to differ on the right to an attorney, what crimes would make a juvenile eligible for remand over 15, the requirement that no youth be detained or imprisoned in an adult facility prior to age 18, and provision for the Children's Services Division to retain capability for parole recommendations for youth assigned to a juvenile training school.

Respectfully submitted,

Subcommittee on Juvenile Justice, Law & Public Safety Standing Committee