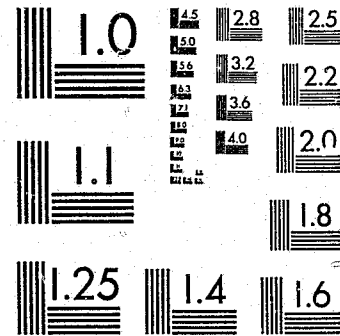


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Department of Justice

STATEMENT

N CJRS

JUN 6 1983

OF

ACQUISITIONS

JAMES KNAPP
DEPUTY ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON JUVENILE JUSTICE
UNITED STATES SENATE

CONCERNING

PROSECUTION OF JUVENILES AS ADULTS
(TITLE XVI, PART A OF S. 829)

ON

MAY 19, 1983

Mr. Chairman and Members of the Subcommittee:

I am pleased to have this opportunity to appear before the Subcommittee to discuss the provisions of the Administration's "Comprehensive Crime Control Act of 1983," S. 829, which address the need to strengthen our authority to proceed against juveniles who commit serious federal offenses. These provisions constitute Part A of Title XVI of the Act.

This part of our bill is based directly on the juvenile delinquency amendments of S. 2572, strong anti-crime legislation passed by the Senate in the last Congress by an overwhelming vote of ninety-five to one. These provisions of S. 2572 incorporated several improvements in federal juvenile offender statutes developed by the Judiciary Committee in its criminal code reform efforts in recent years and also include amendments similar to two of the juvenile crime recommendations of the Attorney General's Task Force on Violent Crime.

The problem of crimes committed by young people in this country is alarming, both in terms of their total numbers and in terms of their frequent violence and severity. In order to address this problem, the statutes governing the federal juvenile justice system must be changed so that the system can respond more effectively to juveniles who commit particularly serious federal offenses. We view the juvenile delinquency amendments of S. 829 as an important part of much needed comprehensive crime control legislation.

The premise underlying the current treatment of youthful offenders under the federal criminal justice system is that juvenile offenders are different from adult offenders and that rehabilitation should be the primary goal in proceedings against these persons. As a result, criminal prosecution of juvenile offenders is generally barred; alternative, non-criminal juvenile delinquency proceedings must be pursued; and retention and dissemination of information on criminal acts of juveniles is strictly limited. Moreover, in the federal system, youthful offenders must generally be diverted to State juvenile authorities.

As appealing as the goal of rehabilitation appears, the seriousness of the juvenile crime problem has convinced us to reconsider the extent to which a juvenile justice system rigidly circumscribed by a rehabilitative theory can effectively respond to particularly serious crimes committed by young people. About 20 percent of violent crimes and 44 percent of serious property crimes are committed by persons under 18.^{1/} We know that certain of the juveniles committing these crimes are cynical, street-wise, repeat offenders, indistinguishable, except for their age, from their adult criminal counterparts. Also adding to the seriousness of the juvenile crime problem is the presence in urban areas of large youth gangs -- ruthless criminal organizations involved in extortion, violence, and drug trafficking.

^{1/} United States Department of Justice, Sourcebook of Criminal Justice Statistics 1981 (Washington, D.C. 1981), p. 342.

For the category of most serious youthful offenders, particularly repeat offenders, a juvenile justice system that serves only rehabilitative purposes does not adequately protect the public interest. Instead, we need a system that can provide a better balance between meeting the special needs of the youthful offender and the need to protect the public from violent crime and to hold young people accountable for their acts when they engage in particularly heinous conduct. We believe that the juvenile delinquency amendments of S. 829 set forth a framework in which we could strike this better balance.

Current federal procedures for dealing with juvenile offenders are set forth in sections 5031 through 5042 of title 18, United States Code. For the purposes of these provisions, a juvenile is now defined as a person under the age of 18 or as a person up to the age of 21 who committed an act of juvenile delinquency prior to his eighteenth birthday. Generally, when a juvenile commits a federal offense, he must be transferred to State authorities. Only if the Attorney General certifies, after an investigation, that the State is unwilling or unable to assert jurisdiction over the juvenile, or that it has no suitable programs or services, is a juvenile subject to federal delinquency proceedings. Thus, transfer to State authorities is required even where the offense involved is a serious one in which there is a strong federal interest.

If the juvenile is not transferred to State authorities, he is subject to federal juvenile delinquency proceedings; but in most cases, criminal prosecution of the juvenile is barred. No prosecution of a person under sixteen is permitted, even though the seriousness of the offense and his past criminal record strongly indicate that prosecution as an adult would be proper. For persons over sixteen, criminal prosecution is permitted only if the offense charged is punishable by more than ten years' imprisonment, the Attorney General moves for his prosecution as an adult, and the court determines that such treatment is, after consideration of enumerated factors, in the interest of justice.

The juvenile offender amendments of S. 829 include six changes to current law. First, they lower from eighteen to seventeen the age at which a person is to be prosecuted as an adult. In our view, persons in the 17 to 18 year old age group who commit federal offenses are mature enough to be subject to the same procedures applicable to older offenders. The courts can give consideration to the youthfulness of such offenders in determining a proper sentence.

Second, these amendments add an additional basis for retaining federal jurisdiction over a juvenile (rather than transferring him to State authorities). Federal juvenile delinquency proceedings could occur if a juvenile has committed a

felony and the Attorney General certifies there is a substantial federal interest in the case or the offense to warrant the exercise of federal jurisdiction.^{2/}

Third, these amendments lower the minimum age for possible adult prosecution from 16 to 14. Under current law, as noted earlier, prosecution of a person under sixteen is barred completely. We believe this age limit should be. More than half the States permit adult prosecution of persons under sixteen.^{3/} Where a young person has committed a particularly serious crime, and especially where he has a significant criminal history, it is essential that criminal prosecution be available. Juvenile delinquency proceedings may be inadequate to impress upon the juvenile the seriousness of his conduct, or to provide a disposition that meets the need to punish and deter such conduct or, where appropriate, to incarcerate the juvenile and protect the public from further victimization.

^{2/} The juvenile offender provisions of S. 829 also include a provision drawn from past criminal code revision bills and incorporated in S. 2572 that would permit exercise of federal jurisdiction, without investigation and certification by the Attorney General, over petty offenses committed by juveniles on national lands and parks. Prompt disposition of such minor offenses such as traffic violations and littering is in the best interest of the juvenile and the courts, and the States are rarely willing to assume jurisdiction over the juvenile in these cases. Therefore, the investigation and certification requirements otherwise applicable to retaining federal jurisdiction are deleted with respect to these petty offenses. See S. Rept. No. 97-307, 97th Cong., 1st Sess., 1179 (1981).

^{3/} S. Rept. No. 97-307, supra note 2, at 155.

Unfortunately, instances of such serious criminal conduct are not confined to juveniles over the age of sixteen. In 1979, more than 5 percent of violent crimes and 16 percent of serious property crimes were committed by persons under the age of fifteen. The violent crimes included 206 homicides, more than 1,000 forcible rapes, and more than 10,000 robberies and 10,000 cases of aggravated assault.^{4/} This degree of serious criminality among younger teenagers is tragic. Barring prosecution of these juveniles does not help the situation. Indeed, we are concerned that current restrictions on prosecution of younger offenders is an aggravating factor. Savvy youthful offenders know the limits of the law, and come to view statutory restrictions on prosecution as a "carte blanche" to commit serious offenses until they reach the statutory age at which criminal prosecution is permitted. Adult criminals take advantage of these restrictions as well and recruit juveniles to do their dirty work, assuring them, quite correctly, that they cannot be prosecuted. Youth gangs usually use the younger members as "shooters" in gang assaults on rival gang members.

While we believe that there is a certain age below which a juvenile should not be subject to criminal prosecution, the current threshold age of sixteen is, in our view, too high. In S. 829, we have adopted S. 2572's reduction of this age limit to fourteen.

^{4/} United States Department of Justice, Sourcebook of Criminal Justice Statistics 1981, supra note 1.

Fourth, these amendments change the criteria for prosecuting a juvenile as an adult. Under current law, prosecution is permitted only when the offense is one punishable by imprisonment for ten years or more. These amendments permit prosecution only for offenses that are crimes of violence or specified drug trafficking offenses. In our view, this approach provides a better description of those serious offenses warranting criminal prosecution.

Fifth, these amendments modify the requirement of judicial concurrence for adult prosecution. S. 829 carries forward the requirement of current law that prosecution of a juvenile charged with a serious offense is permitted only when the court determines that such prosecution is in the interest of justice. However, these amendments also incorporate an exception to this general rule that was set forth in S. 2572. This exception provides that a judicial determination that prosecution is in the interest of justice is not required where the juvenile has previously been found guilty of committing an act that was a crime of violence or a drug trafficking offense. Past criminal activity by the juvenile is recognized in present law as a factor to be considered by the court in determining whether prosecution is appropriate. We believe that prior convictions for crimes of violence or drug trafficking are themselves sufficient justification for allowing prosecution for a juvenile's commission of yet another extremely serious offense.

Sixth, our ability to photograph and fingerprint juveniles who have committed serious offenses is enhanced by these amendments. Under current law, 18 U.S.C. 5038, the photographing and fingerprinting of juvenile offenders not prosecuted as adults is prohibited unless the judge specifically consents. This prohibition can seriously impede investigations of violent crimes. For this reason, the Attorney General's Task Force on Violent Crime recommended an amendment to section 5038 to provide for the photographing and fingerprinting of juveniles who have committed a crime of violence or a drug trafficking crime. This recommendation was adopted both in S. 2572 and in the criminal code revision bill, S. 1630, approved by the Judiciary Committee in the last Congress. This amendment, which we strongly endorse, is therefore incorporated in S. 829.

I understand that although the juvenile offender provisions of our comprehensive crime legislation are drawn directly from S. 2572, which I noted earlier was passed by an overwhelming vote in the Senate, the Subcommittee may wish to take this opportunity to improve and refine these provisions. The importance of these provisions lies in the concepts which are their framework and their purpose of strengthening our ability to address serious violent juvenile crime. We would be pleased to join in any effort by the Subcommittee to improve them.

Mr. Chairman, that completes my prepared statement, and I would be happy at this time to respond to any questions you or the members of the Subcommittee may have.

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