

CHALLENGE TO CALIFORNIA LAW ALLOWING TRANSFER OF YOUTH TO ADULT CRIMINAL COURT

By Darryl Hamm

California's Proposition 21, an initiative approved by voters on March 8, 2000, is back before the California Supreme Court for constitutional review. This initiative significantly revised the juvenile justice system of California, included a series of anti-gang provisions and amended several provisions of California's "Three Strikes" law. Among the many changes to the juvenile justice system, California law was amended to allow prosecutors, in their sole discretion, to file petitions in adult court against youth 14 or older who are charged with certain offenses.¹ In subsequent cases interpreting this provision, lower appellate courts have split on whether giving the prosecutor sole discretion to transfer a youth to adult court based on nothing more than age and specific criminal offense constitutes a violation of the state constitution's separation of powers provisions.²

On April 25, 2001, based on a petition for review from San Diego's District Attorney's Office, the California Supreme Court granted certiorari in *Manduley v. Superior Court*, 106 Cal. Rptr.2d 269 (2001), to review the appellate court's decision that the initiative did indeed constitute a violation of the California Constitution's separation of powers provision.

¹ CA Welf & Inst. Code §707 (d) (1) & (2).

² In *Bravo v. Superior Court*, 108 Cal. Rptr.2d 514 (2001), the appellate court upheld section 707(d) as constitutional and not a violation of the state's separation of power. On the other hand, in *Manduley v. Superior Court*, 104 Cal. Rptr. 2d. 140 (2001), the lower court held that the provision was indeed a violation of the state's separation of powers as the power delegated to the prosecutor was an unconstitutional delegation from the judicial to the executive branch.

National Trends

This case illustrates ongoing efforts throughout the country to ease the transfer of youth out of juvenile court and into adult criminal courts. Critics of juvenile courts believe that allowing prosecutors discretion to file a youth's case directly in adult court will expedite transfer to adult court and remove a potentially sympathetic fact finder, the juvenile court judge, from the decision-making process. Any approach that facilitates the transfer of youth to adult criminal courts appeases the critics who believe that youth should do "adult time" for "adult crimes." As of 1997, fifteen states gave prosecutors authority to file juvenile cases in adult criminal court for certain criminal offenses.³

In addition to the increased use of prosecutorial discretion, California and most other states also have laws that mandate that youth of a certain age who commit certain crimes must have their cases filed in the adult criminal court systems. The Office of Juvenile, Justice & Delinquency Prevention (OJJDP) reported in 1997 that 28 states had legislative waivers allowing for mandatory transfers of juveniles to adult criminal court based on the age and offense of the youth. In California and in many other states, these "legislative waivers" are typically reserved for the most serious offenses and typically involve youth who are 14 years of age or older. In at least six states, a youth charged with murder or a capital offense would be charged as an adult regardless of their age.⁴

³ Dawson, *Judicial Waiver in Theory and Practice in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Fagan & Zimring edits. 2000), p.49.

⁴ B. Feld, *Legislative Exclusion of Offenses from Juvenile Court Jurisdiction: A History and Critique in The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal*

The increased use of legislative waivers and the advent of prosecutorial discretion is a significant departure from the historical reliance on transfer hearings or fitness hearings in which a judge hears evidence from both the prosecutor and the defense to determine whether juvenile court or adult court is the appropriate forum for trying a youth's case. The criteria for these hearings typically include such factors as criminal sophistication, amenability to rehabilitation, prior delinquency history and the circumstances and gravity of the offense. While California and most other states continue their use of fitness or transfer hearings, the proportion of youth benefiting from these hearings has dwindled.

Problems with Prosecutorial Discretion

There is ample reason to fear the use of prosecutorial discretion as the basis for determining whether a youth is tried in juvenile or adult criminal court. First, the likelihood that many more youth will be transferred over to the adult system under such a system has been borne out in the practices of other states. In particular, the Urban Institute found that in 1995, prosecutors in the state of Florida, which has a prosecutorial discretion provision, sent 7,000 cases to adult court, which nearly matched the number of cases sent to the adult system by judges throughout the country.⁵

Second, the lack of critical information on matters such as a youth's mental health that would otherwise be developed through the hearing or transfer process is typically unavailable in a system that allows for prosecutorial discretion. Under California's Proposition 21, prosecutors would not have a means for

assessing a youth's mental health needs, such as a judge would have through a hearing process. "Criteria for jurisdiction that rely on age and offense alone are more likely to result in criminal adjudication of youths with developmental disabilities and mental illness who might have been screened out in states that formerly provided for waiver by judicial discretion alone."⁶

The absence of the individualized review that occurs when there is a fitness or transfer hearing would require prosecutors to make decisions in the dark regarding a particular youth's amenability to rehabilitation. "Profiles of youths who commit violent crimes are strikingly similar: (1) impoverished upbringing, (2) substandard housing and health care, (3) inadequate education, and (4) serious domestic problems ranging from parental absence and neglect to physical and sexual abuse."⁷ Studies have repeatedly shown that youth who commit violent crimes are frequently victims of violence and abuse themselves.⁸ In fact, studies have shown that "75 percent of violent juvenile offenders suffered serious abuse by a family member, 80 percent witnessed physical violence from beatings and killings, 50 percent came from homes with one parent families, and over 25 percent had a parent who abused drugs or alcohol."⁹

Court (Fagan & Zimring edits 2000), pp. 130-133.

⁵ See V. Schiraldi & J. Ziedenberg, the Florida Experiment: Transferring Power from Judges to Prosecutors, 2000 A.B.A. Sec. Crim. Just. 47, 47.

⁶ R. Bonnie & T. Grisso, *Adjudicative Competence and Youthful Offenders* in Youth on Trial: A Developmental Perspective on Juvenile Justice (Grisso & Schwartz, eds 2000), p.85.

⁷ Lauren D'Ambra, A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders is Not a Panacea, Roger Williams University Law Review 277, 299 (Spring 1997).

⁸ "For every youth arrested for a violent crime, there are fourteen youth victims of violent crime, and the overwhelming majority of the nearly one million young victims each year are victims of violent crimes by adults, not other juveniles." D'Ambra at 301.

⁹ Candace Zierdt, "The Little Engine That Arrived at the Wrong Station: How to Get Juvenile Justice Back on the Right Track", 33 U.S.F. L. Rev. 401, 427 (Spring 1999).

All of this critical information is not available at the time a prosecutor decides to transfer a youth to adult criminal court. This type of individual history is the very source of information that is needed for deciding who is not amenable to rehabilitation in the juvenile justice system. “Children deprived of nurturing in their early years, those who live in urban areas plagued by poverty and violence or who come from abusive homes – the most likely profile of juvenile offenders – are also those most likely to be immature and amenable to rehabilitation.”¹⁰ Thus, youth that could benefit from the rehabilitation services in the juvenile justice system will most likely be swept off to adult court without receiving the services most likely to reduce recidivism in the future.

Developmental Maturity

Subjecting more youth to the adult criminal system so that they can be judged on the same standards as adults also fails to take into account the developmental differences between adolescents and adults. The standards of competence that an adult criminal court will review primarily relate to whether the defendant is incapacitated by mental illness or mental retardation. Experts note that with adolescents, particularly those under 16 years of age, that a youths’ “developmental immaturity” does not fit neatly into this traditional model for determining competence in an adult criminal proceeding.¹¹

In addition to issues of competence, a youth’s developmental immaturity may play a significant role in adult criminal proceedings. Researchers who have studied differences between adult and adolescent understanding of “rights,” the trial process,

and the relationship between the adolescent and an attorney have found dramatic differences that impact due process rights. One study of youths’ understanding of Miranda rights found that only about one quarter of youth between the ages of 14 to 16 described a right in a way to define it as an entitlement compared to about one-half of adult offenders.¹²

Other studies have shown that even when youth understand a lawyer’s basic advocacy role, they cannot separate the defense attorney’s function from the court authority. In one such study about one-third of detained youth (as compared to 10 percent of detained adults), when asked why they must be truthful to counsel, stated it was necessary so the lawyer could decide whether to advocate the defendant’s position, to report the defendant’s guilt to the court or to decide whether to “let him go or send him up.”¹³ The failure to include a process for taking into account an individual’s developmental maturity under a system of prosecutorial waiver compromises an adolescent’s due process rights when transferred to the adult system. While some of these issues also arise for youth in the juvenile justice system, the consequences can be much more severe when a youth is transferred to adult court. In the adult system a youth faces exposure to an actual criminal conviction and a much lengthier sentence than in the juvenile system.

Legal Challenge to California’s Proposition 21

In *Manduley*, the San Diego County District Attorney’s Office seeks to have the California Supreme Court reverse the lower court ruling that Proposition 21’s prosecutorial discretion provision violates the state constitution’s separation of powers provision. On the other hand, defense attorneys for youth asserts that the decision

¹⁰ D’Ambra at 300-301.

¹¹ See More than Meets the Eye: Rethinking Assessment, Competency and Sentencing For a Harsher Era of Juvenile Justice, American Bar Association, Juvenile Justice Center at 24 (August 1997) (Authored by Dr. Marty Beyer, Dr. Thomas Grisso & Malcolm Young (hereinafter referred to as “Beyer et al.”)).

¹² T. Grisso, Juvenile’s Capacities to Waive Miranda Rights: An Empirical Analysis, 68 Cal. L. Rev. 1134 (1980).

¹³ Beyer, et al. at 31.

to transfer a youth from the juvenile delinquency system to an adult criminal court is more akin to a sentencing decision rather than the prosecutor's typical duty to charge a particular offense based on a set of underlying facts related to the alleged crime. Respondents argue that judges have long been recognized as the arbiters of the sentencing function, which turns on issues of whether the individual's circumstances warrant retributive punishment or rehabilitation and treatment.

In the context of transferring youth to adult criminal court, defense attorneys assert that whether a youth is transferred or not, the prosecutor still retains the right to charge a juvenile with whatever offense is supported by the underlying facts of the crime. However, they also note that the question of where the prosecutor files the charges, adult or juvenile court, constitutes an entirely different function. Accordingly, the decision on where to file the charges turns on considerations of the individual's circumstances such as the youth's amenability to rehabilitation and societal objectives similar to a sentencing decision. For this reason, defense attorneys argue that giving the transfer decision to the prosecutor improperly delegates a judicial function to an executive officer and therefore constitutes a violation of the state constitution's separation of powers provision.

Other courts that have confronted the constitutionality of prosecutorial discretion provisions for juvenile transfers have come down with varying results. For example, in *State v. Robert K. Mc.L.*, 496 S.E.2d 887 (W.Va 1997), the West Virginia Supreme Court upheld the prosecutor's right to file a direct transfer of a juvenile's case to adult court on the grounds that the state law had a safety valve for judicial consideration. Under West Virginia law, the adult criminal court could consider the juvenile's amenability to rehabilitation and "in its discretion, return a child to juvenile jurisdiction." 496 S.E. 2d at 893. Courts that have upheld prosecutor transfer provisions

typically note that juveniles have no constitutional right to have their cases heard in juvenile court and that the legislature can therefore define the bounds of access to juvenile court without violating constitutional rights.¹⁴

On the other hand, in *State v. Mohi*, 901 P.2d 991 (Utah 1995), the Utah Supreme Court found that prosecutorial discretion to direct file a juvenile case into adult criminal court violated the equal protection provision of the state constitution. The *Mohi* Court criticized the law for being arbitrary and standardless, as it did not provide guidelines or any rationale for prosecutors in making their transfer decisions. For this reason, the *Mohi* Court held that the prosecutorial transfer provision violated the state's uniform-operation-of laws provision requiring any law to treat similarly situated persons alike.¹⁵

Under California law, respondents argue that Proposition 21 has at least two major flaws that make it constitutionally suspect. First, there is no judicial "safety valve" by which the prosecutor's discretion would be subject to the type of judicial oversight that would allow an adult criminal court to transfer a youth back to a juvenile court forum.¹⁶ Second, other than the offense and the age of the youth, Proposition 21 provides no guidance or criteria for prosecutors in their exercise of discretion.

Conclusion

NCYL believes that unguided prosecutorial discretion without any

¹⁴ See e.g., *Chapman v. State*, 385 S.E.2d 661 (Georgia 1989); *In the Matter of Wood*, 768 P.2d 1370 (Mont. 1989); *Hansen v. State*, 904 P.2d 811 (Wyo. 1995).

¹⁵ *State v. Mohi*, 901 P.2d at 1002.

¹⁶ Under California law, the adult criminal court would only have discretion to return a youth to juvenile court if the adult criminal court finds at the preliminary hearing that the prosecution fails to establish reasonable cause for the offense upon which the prosecutor based her discretion to transfer the case. Cal. Welf. & Inst. Code § 707(d)(4).

significant criteria beyond age and the offense, and without significant judicial oversight violates the traditional notion of separation of powers between the executive and the judicial branch. To this end, NCYL, along with 12 other organizations, has filed an amicus brief in support of the petitioners in *Manduley* seeking to have the California Supreme Court uphold the lower court's decision in that case. The amicus brief was filed on September 20, 2001. The California Supreme Court has yet to set a date for oral argument.

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