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Cases, legislation reshape juvenile sentencing

By Henry Meier

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Juvenile justice advocates long have criticized California's willingness to try children as adults for a variety of crimes. The state is one of several that allows prosecutors, rather than judges, to make the final call on whether kids should face adult penalties.

But several recent court decisions and legislative actions are reshaping the state's approach to juvenile sentencing and limiting penalties for young offenders.

"This is a time of tremendous change," said Elizabeth Calvin, a senior advocate in the Children's Rights division of Human Rights Watch. "I think it reflects an understanding that youth offenders are not the same as adults."

On Sunday, Gov. Jerry Brown signed SB 9, which allows for juveniles serving life terms without the possibility of parole to have their sentences revisited after 25 years. In addition, the state Supreme Court in August decided *People v. Caballero*, 55 Cal.4th 262 (2012), which held that an adolescent defendant's 110-year sentence didn't provide a "meaningful opportunity to obtain release" based on maturity and rehabilitation and therefore constituted cruel and unusual punishment under U.S. Supreme Court precedent.

In another case impacting juvenile sentencing, the U.S. Supreme Court in June ruled in *Miller v. Alabama*, 132 S. Ct. 2455 (2012) that mandatory life sentences for children also constituted cruel and unusual punishment..

These decisions, as well as a number of other court cases stretching to *Roper v. Simmons*, 543 U.S. 551 (2005), have referenced the limited cognitive capacity and still developing moral compass of juveniles in limiting their sentences.

That's a big shift in looking to "why" a crime was committed and hearkens back towards how juvenile defendants used to be viewed according to Heidi Rummel, a professor at USC's Gould School of Law.

"If we look at the history of how we treated juveniles in the broader criminal justice system, originally they were tried, sentenced and held in a juvenile setting," she said.

But as juvenile crime spiked across the nation in the mid-1990s, legislators increasingly made allowances in criminal justice policy to try, sentence and incarcerate adolescents in the adult system, Rummel said.

In California, one of the biggest changes came with 2000's Proposition 21. It allowed district attorneys to "direct file" charges against a juvenile defendant in adult criminal court in a wide range of circumstances.

This change created a significant uptick in the number of juvenile cases filed in adult court, as well as in the number of young offenders housed in state juvenile facilities and adult institutions according to a report compiled by the Berkeley Center for Criminal Justice in 2010.

From 2003 through 2009, the report said the number of juveniles tried in adult court increased 88 percent while the number of offenders housed at the state level - in juvenile centers and adult prisons - rose 231 percent.

The study concluded the increases could hurt the state's long-term public safety since child offenders housed in adult institutions are 33.7 percent more likely to recidivate than adolescents put into the more rehabilitative juvenile system.

Andrea Russi, director of the Chief Justice Earl Warren Institute on Law and Social Policy at UC Berkeley School of Law and an author of the study, said the report underscores Prop. 21's impact.

"When Prop. 21 was passed, it was unclear the effect it would have," she said. "Based on the data out there, it definitely looks like it's had an enormous effect."

Scott Thorpe, the chief executive officer for the California District Attorneys Association said the changes implemented by Prop 21 allowed for more flexibility in charging cases that district attorneys thought were too serious for the juvenile system.

"The basic philosophy is that there are a small number of people under 18 that, because of the nature of the crime they committed or because of their criminal background, should be prosecuted as adults," he said.

Thorpe said despite the recent trend to protect juveniles from some of the harshest sentences based on their still developing cognitive capacity, nothing needs to be changed on the prosecutorial side.

"I think that's more a matter of sentencing because if you take the [direct file] option off the table, you get back to a situation where you don't have the ability to treat cases differently."

Jonathan Laba, an assistant public defender in the Contra Costa County public defender's office and the deputy director of the Pacific Juvenile Defender Center disagreed. He said the prior system, in which judges hold a preliminary hearing to determine a juvenile's fitness if a prosecutor requested a trial in adult court, was better because it allowed for mitigating factors to be examined prior to the juvenile being transferred.

Calvin, the Human Rights Watch advocate, said the judicial evaluation was an initial safeguard.

"We've lost the opportunity for an unbiased party - a judge - to evaluate whether a child's life will be thrown away," she said.

That's what advocates and academics like Calvin and USC's Rummel say happens when a child is brought through the adult system.

"The adult justice system does not present the best option for juveniles," Rummel said. "With so many juveniles being tried in adult courts, they are not being exposed to the programming and education that the juvenile system offers."

"Let's hold accountable and punish young people for their actions," Calvin added. "But let's use our limited resources and focus on getting these individuals back on the right path."

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