

Juveniles Tried as Adults up 170% -D.A. Cites Gang Prosecution

By Raul Hernandez

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1 In the past two years, the number of juvenile offenders tried as adults has nearly tripled from 10 in 2006 to 27 in 2007, officials say — a nearly 170 percent increase.

2 Also, in the four previous years — from 2002 to 2005 — the total number of such cases was just five, according to figures from the Ventura County District Attorney's Office.

3 "It's a big jump," said Senior Deputy District Attorney Brian Rafelson. "Eighty-five percent are gang cases."

4 The increase is attributed to several factors, including more resources earmarked for gang prosecution, Rafelson said. He said prosecutors have better ways to identify and prosecute gang members.

5 "It allows us to pursue those cases more vigorously," he said.

6 McInerney is accused of the alleged hate-crime killing of a classmate, 15-year-old Larry King, on Tuesday at E.O. Green School in Oxnard. McInerney has not yet entered a plea.

7 The first-degree murder charge carries a prison sentence of 25 years to life, as does the felony charge of using a firearm in a crime.

8 The hate-crime allegation could add up to three years to the sentence.

9 A juvenile convicted of murder in the juvenile justice system can be incarcerated only until he or she is 25 years old.

Prosecutors' sole discretion

10 The decision to prosecute McInerney as an adult has renewed the arguments over Proposition 21, the state ballot measure that California voters passed in 2000. It gives prosecutors sole discretion on whether juveniles 14 and older who commit serious crimes will be tried in adult courts.

11 Before Proposition 21, a fitness hearing was held, and a judge would determine whether a juvenile could be charged as an adult.

12 State voters overwhelmingly approved the ballot measure.

13 Supporters of Proposition 21 say prosecutors must have more power in dealing with gang members. Supporters also say they are tired of "slap on the wrist" justice meted out by judges, which, they say, has made a mockery of the juvenile justice system.

14 Two of the staunchest supporters of Proposition 21 were the California District Attorneys Association and the California Correctional Peace Officers Association.

15 Lance Corcoran, spokesman for the Peace Officers Association — whose 34,000 members work in state prisons — said the organization supports the law because it allows juveniles involved in serious, vicious or premeditated crimes to be transferred to adult courts.

16 Meanwhile, opponents of Proposition 21 have argued that youngsters lack the mental development and maturity to understand the crimes they commit.

17 Ventura County Senior Deputy Public Defender William "Bill" Markov said politics is a big factor in determining whether prosecutors file a juvenile case in adult court.

18 He said prosecutors in general like to be perceived as tough on crime. He also said prosecutors get public pressure, and vocal special-interest groups weigh in on cases, especially in high-profile cases like McInerney's.

19 Markov questions whether prosecutors should have "unbridled discretion" to send youngsters to the adult criminal justice system.

'Increase is alarming'

20 Ventura County isn't alone in getting tough with juvenile offenders.

21 There is a growing trend throughout the country toward locking up juveniles, said Eric Solomon, spokesman for the Campaign for Youth Justice.

22 Data gathered by the Justice Policy Institute, a think tank based in Washington, D.C., show tens of thousands of young people end up in the adult system for nonviolent offenses, according to a study released last year by the institute.

23 The Justice Policy Institute advocates ending what it describes as the nation's reliance on jails and prisons to fight crime.

24 In 2003, more than half the youths in California's adult system were prosecuted for misdemeanors, and fewer than 30 percent received prison sentences, suggesting that the majority of the youths could be handled in the juvenile justice system, the study says.

25 "One in five of incarcerated youth in adult and juvenile jails in the nation are from California," said Solomon. "It's real easy to get incarcerated in California. It's just the way it is."

26 Defense attorney Jay Leiderman said he was surprised by the rise in the number of juveniles whose cases are being sent to adult courts in Ventura County.

27 "The increase is alarming," said Leiderman, who is the president of the Ventura County Criminal Defense Bar Association. "Human behavior hasn't changed that much from 2006 to 2007 to justify that increase."

28 Leiderman said it doesn't bode well when society's solution to juvenile crime is to lock up young offenders with adults.

29 "It's a terrible failure on us," he said.

One of 30 felony offenses

30 The district attorney prosecutes juveniles in adult courts if the juveniles are accused of committing serious felonies and generally have significant records in the juvenile justice system, said Michael K. Frawley, chief deputy district attorney.

31 If a juvenile commits one of 30 felony offenses spelled out in the law, ranging from murder to witness intimidation, the law allows prosecutors to send the case to adult court, according to Rafelson.

32 However, he said, the district attorney takes into consideration prior criminal history and whether the crime was gang-related.

33 Last year, there were 2,602 misdemeanor and felony criminal charges filed against youthful offenders in juvenile court in Ventura County, said Rafelson, noting that some juveniles had one or more charges against them.

34 Of the juveniles whose cases were prosecuted as adults in 2007, all but one were male, and the average age was 16 years, Rafelson said.

35 In 2007, robbery, assault with a deadly weapon including a firearm, witness intimidation, attempted murder and carjacking were the top crimes committed by juveniles that put them in the adult criminal system.

36 That number includes a 14-year-old boy who was arrested Dec. 13 for a gang-related assault with a deadly weapon, a knife, Rafelson said.

37 Last year, the lone female offender whose juvenile case was transferred to adult court was charged with carjacking. The case is still pending.

38 In 2006, robberies, attempted murders, assaults with deadly weapons and carjacking, sent 10 juveniles into the adult courts.

'I think it's a mistake'

39 Rafelson said most of the juvenile offenders who are tried in adult courts live in Oxnard because there are more gangs there. He said they don't keep records of their ethnicity.

40 McInerney isn't the only 14-year-old boy charged as an adult in a homicide.

41 In 2001, Rocky Mattley was 14 when he was arrested on suspicion of helping to kill a homeless man. Mattley was convicted the following year in adult court and sentenced to seven years in the California Youth Authority.

42 Corcoran said 14-year-old murder suspects should be tried in adult court only after considering all the circumstances and facts surrounding the crimes. "Do I think it should be the rule? No."

43 McInerney's lawyer, Brian Vogel, said Friday that he's doing legal research to prepare a strong defense, including challenging the constitutionality of Proposition 21.

44 He said it was a mistake to remove from a judge's discretion the decision of whether a child is fit to be tried as an adult.

45 "I think it's a mistake in a constitutional magnitude," Vogel said, adding that he is aware that he has an uphill legal battle.

46 Although the state Supreme Court has rejected constitutional challenges to Proposition 21, Vogel said, he can still take his case to the federal courts.

47 "We are hopeful that the 9th Circuit Court of Appeals or the U.S. Supreme Court will overturn it," he said.

48 Markov said he launched the first constitutional challenge to Proposition 21 in the county nine months after the bill was passed by voters. The case involved 17-year-old Isaac Lara, who was charged with shooting a Santa Paula woman. Markov argued that the initiative violates the separation of powers, giving prosecutors too much discretion.

49 Prosecutors successfully argued in that case that they already hold broad powers and make decisions such as which charges are filed against a defendant, including whether the death penalty will be sought. Proposition 21 is simply an extension of that power, they maintained.

50 Ultimately, Lara was convicted in adult court of the first-degree murder of Joanna Orozco in 2002.

Have no respect for life

51 Supporters of trying juveniles who commit serious crimes in adult courts often point to convicted teen killers like Rodolfo "Rudy" Sandoval and Nathan Sessing, who, they say, have no respect for life, to bolster their arguments.

52 Sandoval fired two shotgun blasts in the middle of a Ventura street, killing Ryan Briner two years ago. The victim's mother, Linda Briner, recently testified that when she found her dying son near her home, Sandoval and co-defendant and fellow gang member, Javier "Listo" Acevedo, were laughing as they drove away. The music inside Acevedo's car was cranked up, she testified.

53 In an unrelated case, Sessing stabbed Larry Phifer, 61, in the neck six times, beat him with a baseball bat and stole a DVD player from his home on Dec. 2, 2004. Sessing stabbed Brett Cook two days before Phifer was killed. Sessing tried to burglarize Cook's girlfriend's car and was confronted by Cook.

54 Both Sessing and Sandoval, who were 17 when they committed the murders, were sentenced to life in prison without the possibility of parole. Acevedo was an adult defendant and received a similar sentence.

55 Proponents argue that juveniles should be punished for their crimes, but the law must take into consideration that a youngster's brain isn't fully developed.

56 State Sen. Leland Yee, D-San Francisco, said that a teenager's brain isn't completely developed, and a teen's impulse control, planning and critical thinking are still not yet fully matured.

57 Yee's spokesman, Adam Keigman, said Yee has introduced a bill to do away with sentencing juveniles to life without the possibility of parole. The bill was supposed to go to the Senate for a vote in January, but Yee postponed that action in hopes of getting the necessary two-thirds support later this year.

58 Yee believes that a sentence of 25 years to life is fair, and it gives some hope to youngsters that, if they behave in prison, they will be eligible for parole after serving 25 years, said Keigman.

On the decline

59 There are 232 inmates in the state prison system who committed crimes as juveniles, were prosecuted as adults and sentenced to life in prison without parole, said Seth Unger, spokesman for the California Department of Corrections. Unger said he didn't have the breakdown on how many of those inmates were convicted in Ventura County.

60 Although juvenile crime is on the decline, persuading the public to soften its stance on youthful offenders like McInerney is a hard sell, Solomon said.

61 In Ventura County, the rate of juvenile felony arrests dropped 44 percent since the peak year of 1995, down 928 per 100,000 teens from 1,650, according to a Department of Justice report in 2006.

62 In the county, in California, and across the nation, the incidence of violent juvenile crime, which peaked in the mid-1990s, was as low as it's been since the early 1970s.

63 Still, there is opposition to Yee's bill, including the Peace Officers Association.

64 Corcoran, who has interviewed killers including one as young as 14, said 232 inmates isn't that many when you consider the population of the state.

65 "What they are not going to have is the opportunity to kill another person," he said.