Pending Juvenile Legislation

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THE PRIMARY responsibility for the apprehension, adjudication, and treatment of juvenile offenders has traditionally rested with the states. Accordingly, it is the states that have the resources and expertise for handling these difficult and sensitive cases. The federal criminal justice system has clearly had a role in the treatment of juvenile offenders, but it has for the most part been a minor one. It is true that, in recent years, the federal juvenile case load has been growing. For example, in FY 1994, juvenile delinquency proceedings were commenced against only 77 juveniles in the federal courts. By FY 1997, that number had increased to 218, and in FY 1998, to 245. Still, of the total number of defendants against whom federal criminal proceedings were commenced in 1998 (78,287), juvenile cases comprised a mere .31 percent. Thus, it is clear that, even despite these recent increases, the federal role is very minor.

There are indications, however, that the federal role in the treatment of juvenile offenders may expand significantly. In recent years, Congress has expressed considerable interest in amending the federal statutes governing the prosecution of juveniles and has proposed a number of bills that would result in significant changes to the existing juvenile provisions, including a potential increase in the number of juvenile proceedings. While none of the proposals has been enacted into law as of this writing, the degree of interest suggests that attempts to amend the laws will continue. The various proposals differ in some respects, but the issues upon which they focus are similar. The two major juvenile bills currently pending in Congress are typical in this respect: S. 254, the "Violent and Repeat Juvenile Offender and Rehabilitation Act of 1999," introduced on January 20, 1999 by Senator Orrin Hatch (R-UT), Chairman of the Senate Judiciary Committee, and H.R. 1501, the "Consequences for Juvenile Offenders Act of 1999," introduced on April 21, 1999, by Representative Bill McCollum (R-FL), Chairman of the House Judiciary Committee's Subcommittee on Crime.

Both bills amend the current law regarding the determination to prosecute a juvenile action in federal as opposed to state court, the prosecution of a juvenile as an adult, time limits for juvenile proceedings, the disposition or penalties of a juvenile determined delinquent, and the openness of the proceedings and records of the juvenile action. Accordingly, it may be helpful to become generally familiar with those provisions that would most affect the duties and responsibilities of United States probation and pretrial services officers.

The current provisions that stipulate when juveniles may be prosecuted in federal court express a clear preference for state prosecution by providing that a juvenile alleged to have committed an act that would be a federal criminal offense if committed by an adult "shall not be proceeded against in any court of the United States unless the Attorney General certifies" that: 1) the state refuses to assume jurisdiction; 2) the state does not have adequate programs and services available for the needs of juveniles; or 3) the offense charged is a crime of violence or serious drug offense, and there is a substantial federal interest in the case or the offense. 18 U.S.C. § 5032. This certification has generally been held not to be subject to review by the court, but it does make clear that state prosecution of juveniles is the norm and federal prosecution the exception. This preference maintains the traditional role of the state and federal criminal justice systems, and generally reflects the views of the Judicial Conference of the United States, which at its September 1997 meeting reaffirmed its "long-standing position that criminal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts" and affirmed that "this policy is particularly applicable to the prosecution of juveniles."[1] In fact, bills similar to S. 254 and H.R. 1501 were described as "especially troubling" by the Chief Justice of the United States.[2] During an address before the American Law Institute on May 11, 1998, the Chief Justice warned such legislation would "eviscerate" the traditional deference to state prosecution of juvenile offenders, "thereby increasing substantially the potential workload of the federal judiciary."[3]

As with most of the juvenile bills introduced in the last several years, S. 254 and H.R. 1501 change the current certification requirement to reduce the level of the preference for state prosecution. Instead of requiring that juvenile proceedings be brought in state court *unless* certain facts are certified by the United States Attorney, S. 254 provides that the prosecutor must "exercise a presumption" in favor of referral to the state or Indian tribe that has jurisdiction over a juvenile unless the prosecutor certifies that the state or tribal authorities cannot or will not assume jurisdiction and there is a substantial federal interest in the case. This may be a subtle distinction, but it reduces the clarity of the preference and could signal to prosecutors that more juveniles should be proceeded against in federal court.

The amendments that would be made in this balance by H.R. 1501 are not so subtle. That bill would provide that,

except for certain minor offenses that occur in the special maritime or territorial jurisdictions of the United States, which may always be brought in federal court, a juvenile may be proceeded against in federal court if the government certifies that the juvenile court of the state or the Indian tribe does not have jurisdiction or declines to assume jurisdiction, or there is substantial federal interest in the case. This iteration eliminates all preference language and allows the prosecutor to determine to prosecute solely on the basis of the prosecutor's assessment of the federal interest, particularly since the bill would explicitly provide that the certification is not reviewable by the court.

Other provisions of the proposed legislation also indicate an interest in increasing the involvement of the federal criminal justice system in juvenile offenders. For example, S. 254 would amend 42 U.S.C. § 5611 to create in the Department of Justice an "Office of Juvenile Crime Control and Prevention" that would replace the current "Office of Juvenile Justice and Delinquency Prevention." There are a number of changes in the wording of the mission of the new agency, but of particular interest is the specific requirement that the Administrator of the agency advise the Attorney General on "the policies relating to juveniles prosecuted or adjudicated in the federal courts." A number of other references in the section also suggest that the office's mandate should include more active oversight of federal juvenile prosecutions and adjudications as well as state juvenile delinquency policies than the current statutory mandate provides. This in turn suggests an intent that there be more of an active federal role in the prosecution and adjudication of juveniles.

Recent legislative proposals have also reflected Congressional interest in allowing, or, in many cases, compelling adult prosecution of juveniles accused of certain offenses. Current law provides that a juvenile who commits a crime of violence, a controlled substance offense, or certain firearms offenses after the juvenile's fifteenth birthday may be transferred to adult status upon motion of the government. Certain more serious offenses committed by a juvenile of over thirteen may also result in such a motion, as may second offenses for a number of numerated offenses committed by a juvenile over sixteen years old. 18 U.S.C. 5032.

S. 254 would require adult prosecution of any person over age 14 charged in federal court with a federal offense that (1) is a crime of violence as defined in 18 U.S.C. §16, or (2) involves a controlled substance offense for which the penalty is a term of imprisonment of not less than five years. Juveniles of not less than 14 years of age may be tried as adults at the unreviewable discretion of the United States Attorney if the United States Attorney finds that there is a substantial federal interest in the case or the offense warrants the exercise of federal jurisdiction. The court, however, may entertain a motion to transfer a juvenile between the ages of fourteen and sixteen.

H.R. 1501 would provide for adult prosecution if the alleged offense was committed after the juvenile had attained the age of 14 years, and if the offense was a violent felony or a serious drug offense, unless the government certifies that the interests of public safety are best served by proceeding against the juvenile as a juvenile. The Attorney General would be authorized to prosecute as an adult a juvenile of 13 years who would be proceeded against as an adult if 14 years old. The commission of certain other offenses could lead to trial as an adult if committed by a juvenile of 14 years.

Proposed juvenile legislation has consistently attempted to extend the procedural time periods, or juvenile speedy trial provisions. S. 254 would amend 18 U.S.C. § 5036, to require that a juvenile being prosecuted as a juvenile and who is detained prior to disposition be tried within 70 instead of the current 30 days from the date detention commenced. Speedy Trial Act exclusions would apply to this period. It would also amend the disposition provisions of 18 U.S.C. § 5037 to add a requirement that the court determine a disposition of the juvenile within 40 days after conviction. H.R. 1502 would require that a juvenile being prosecuted as a juvenile and who is detained prior to disposition be tried within 45 instead of the current 30 days from the date detention commenced. Speedy Trial Act exclusions would apply to this period. Like S. 254, it would give the court 40 days after conviction to determine disposition of the juvenile.

The bills also amend the provisions that set out the possible dispositions for juveniles adjudicated delinquent by extending periods of criminal justice supervision and adding adult sentencing options. Currently, a juvenile may not be placed on probation or incarcerated beyond the juvenile's twenty-first birthday, or in the case of a juvenile sentenced between her eighteenth and twenty-first birthday, three years. No supervised release after imprisonment is authorized and there is no authority to impose sentences of fines or restitution.

S. 254 would for the first time require that a predisposition report be prepared by the probation office. Currently, such reports are prepared in some cases, but without any statutory requirement that they be prepared. The bill would permit the court to impose a term of probation up to the term that would be available if the juvenile had been convicted as an adult. The court could impose detention not to exceed the earlier of the delinquent's 26th birthday or the term that would be available if the juvenile had been convicted as an adult. Supervised release would be available on the same terms and conditions as an adult. The restitution provisions of 18 U.S.C. § 3663 would be applicable to juveniles. This limited reference would appear not to include mandatory restitution.

H.R. 1502 is similar. It would also require a predisposition report. The court could impose probation up to the term that would be available if the juvenile had been convicted as an adult. The court could impose detention not to exceed the lesser of the term that would be available if the juvenile had been convicted as an adult, ten years, or the juvenile's 26th birthday. Restitution pursuant to 18 U.S.C. § 3556, which includes mandatory restitution, would be included in the sanctions. Supervised release would also be available

for a term of up to five years under the same conditions as adult supervised release. The Sentencing Commission would be required to develop a list of possible sanctions for juveniles adjudicated delinquent.

The proposed legislation would significantly relax the level of confidentiality that currently protects the use of juvenile records. S. 254 would amend the provisions of 18 U.S.C. § 5038 for persons proceeded against as juveniles to add educational institutions to the list of entities that have access to juvenile records and would permit full access to any juvenile records by a United States Attorney in connection with a decision to prosecute a juvenile. H.R. 1502 would simply make juvenile records available for "official purposes."

While not technically part of the amendments to the juvenile delinquency provisions of federal law, the bills including such amendments have routinely included closely related provisions that would impose criminal sanctions for certain gang-related activities. Because these activities primarily involve juveniles, any increased prosecution for those activities would inevitably result in more federal juvenile cases. Both S. 254 and H.R. 1502 include several of these kinds of provisions. Both would add a new section 522 to title 18, United States Code, which would prohibit the recruitment of gang members. This is a modest enough expansion of federal criminal jurisdiction, but S. 254 would establish the authority in the Attorney General to designate certain areas as "high intensity interstate gang activity areas." Task forces could be created within such areas to coordinate investigation and prosecution of criminal activities of gangs. The bill would authorize appropriations of $100,000,000 for each of five years for the effort. While not specified in the bill, it is certainly possible that some of the task forces' prosecutions could end up in federal courts. But the bill would also provide grants for additional state prosecutors to "address drug, gang, and youth violence." Authorization of appropriations of $50,000,000 would be provided for this purpose for each of five years.

In addition, H.R. 1502 would amend 18 U.S.C. § 521, which currently provides a sentencing enhancement of up to 10 years for the commission of certain offenses involving criminal street gangs. The amendment would broaden the definition of "criminal street gang" and expand the number of offenses to which the enhancement might apply.

Both bills would also amend the Travel Act (18 U.S.C. § 1952) to prohibit travel or use of mail or other facility in interstate or foreign commerce with the intent to perform *and* the subsequent performance or attempt to perform any of the following: committing a crime of violence in furtherance of unlawful activity, distributing the proceeds of unlawful activity, or promoting, managing, establishing, carrying on, or facilitating any unlawful activity. Unlawful activity is defined as any business enterprise that involves controlled substances, gambling or liquor without payment of taxes, prostitution, a number of listed (mostly violent and obstruction of justice) offenses, or money laundering.

While neither of these bills has been enacted into law, they have been under active consideration during this Congress and have received considerable attention. The consideration of both bills was expedited dramatically as a result of the shooting incident at Columbine High School in Littleton, Colorado. During debate on the Senate floor, S. 254 was heavily amended with a number of gun control provisions, passing the Senate on May 20, 1999 by a vote of 73 to 25. Extensive gun amendments were voted down in the House, and on June 17 the House passed H.R. 1501 on a vote of 287 to 139. Although a House/Senate Conference Committee has been trying to work out a compromise bill since early August, final passage of a juvenile crime bill did not pass during this past session of Congress, due to the lack of agreement on the contentious gun control issues. But Congress may reconsider this proposed bill in the next session.

Regardless of the immediate prospects for the current legislation, Congressional interest in the juvenile arena will likely remain strong. Indeed, the general concepts contained today in S. 254 and H.R. 1501 are likely to be considered again in the future, and may one day become federal law.

NOTES

[1]Sept. 1997 *Report of the Proceedings of the Judicial Conference of the United States*, p. 65.

[2]*Rehnquist: Is Federalism Dead?*, Legal Times (Washington, D.C.), May 18, 1998, at 12.

[3]Id.