Lawmakers Rethinking Hard Line on Sentencing of Young Offenders

Washington is among states weighing legislation that would give judges more discretion in how they deal with teens who commit violent crimes.

By Nancy Bartley
Seattle Times staff reporter

Heather Opel was 13 and felt cooped up inside the Snohomish County juvenile-detention center. When a prosecutor told her that Echo Glen Children's Center has a big outdoor exercise area and that's where she'd be sent if she admitted she helped kill her mother's employer, pleading guilty didn't seem like a big deal.

Against the advice of her own attorney, Heather entered a plea of guilty to first-degree murder and was sentenced to 22 years—the first seven at the Issaquah school for violent teens, the remainder in prison.

Her thinking: Going to prison wouldn't be so bad because she'd only be 35 when she got out--still young enough to fulfill her dream of playing professional women's basketball.

Impulsive and immature thinking, typical of many teenagers, can be tragic for victims and--some believe--the young lawbreakers as well, who may find themselves growing up in prison.

While kids who do horrific crimes need to be dealt with, prison isn't the answer, believes forensic psychologist Kenneth Muscatel, who has evaluated many youthful offenders on behalf of their defense lawyers.

After a crackdown in the 1990s that saw many teenagers sent to adult prisons for violent crimes such as murder, lawmakers in this and other states are reconsidering their earlier hard line. Bolstered by ongoing and recent medical and scientific studies of early brain development, many in the criminal-justice system are taking the position that juveniles should not necessarily be doomed to long prison terms for crimes they committed when their brains were not yet fully wired--when they may have been too young to control their impulses, make sound decisions or grasp the significance of their actions.

Two Paths to Adult Court
In Washington state, there are two ways for teens to end up in adult court. One way is automatic, the other discretionary:

• Typically, when a teen 16 or older commits a serious crime such as murder, trial must be in adult court, where the teen faces the same punishments as adult offenders. Those punishments can include life in prison or, in rare cases, life without the possibility of parole.

• Younger teens charged with murder start out in Juvenile Court, but depending on the circumstances, a judge may decline to keep the case there, deciding instead that it belongs in adult court. If a case remains in Juvenile Court, any sentence ends when the offender turns 21.

Over the past 10 years, some 20 states have passed what are called "blended-sentencing" laws for teens convicted as adults of the most serious offenses. While the laws vary from state to state, many give sentencing judges the flexibility to consider juvenile-court sentencing options, adult-sentencing options or some blend of both.

In Washington, a measure proposed by Rep. Mary Lou Dickerson, D-Seattle--House Bill 1187--would no longer require judges to impose certain adult prison terms for teens convicted in adult court of serious crimes such as murder.

The bill passed the House a month ago, with the Senate last week passing a version that would apply to fewer teens.

If the House agrees with the Senate version, the measure will be sent to Gov. Christine Gregoire for her signature. If the House does not agree, the two houses then will try to come to terms.

The House version has wide support, including from many prosecutors. Tom McBride, head of the state Prosecutors' Association, called the bill "an awesome remedy" for those relatively few cases in which a judge may not believe an adult prison sentence is appropriate for a young defendant.

Had the measure been in effect when Opel was sentenced, the judge could have elected to give her less than the mandatory 20-year-minimum sentence. Or he could have done exactly as he did, sentencing her to 22 years, still at the lower end of the range for first-degree murder.

"It takes us out of the position where it's all or nothing," McBride said. "It gives judges a little more discretion, especially with younger offenders."

But the measure is not without its detractors. Critics say juveniles tried in the adult system are already criminally savvy, and that subjecting them to adult sentences sends problem kids a strong message.

Teens who do horrific crimes should not be immune from adult-size punishment, believes Tami Perdue, a former King County deputy prosecutor who handled many murder cases--including some by juveniles.

Had Dickerson's legislation been in place, most of Washington's 204 prisoners serving time for murders committed before they turned 18 may have been considered for more lenient sentences.

Giving judges more flexibility in such cases is a concept that retired King County Superior Court judge Terrence Carroll, who presided over many juvenile cases, lobbied for when he was on the bench in the early 1990s. "But no one would listen to me," he said.

Simmie Baer, a nationally prominent juvenile-defense attorney from Seattle, believes the legislation doesn't go far enough.

"Juveniles are drastically different than adults," she said. "We know they're not good decision makers....We shouldn't be patting ourselves on the back. They shouldn't be tried as adults at all."
Sandra Youngen, superintendent of Green Hill School in Chehalis, the state's maximum-security detention center for juveniles, agrees. She often finds 16- and 17-year-old residents believing they are going to be sports heroes or earn six-figure salaries without ever having an entry-level job.

"Kids are at an extremely different developmental level than adults," she said.

**Brain Development**

Research into how the brain develops is ongoing at the University of Pennsylvania. In one study, a series of magnetic-resonance images on children shows that the brain has a growth spurt at the time of puberty, but the new connections don't solidify until a person is in his mid-20s, when the thinking process becomes fully adult. That research is continuing.

At Harvard, researchers studied the ability of young people to read facial expressions, recently finding that they are far less skilled than adults at understanding that form of communication and thus may be more likely to misread the intentions of others.

While some participating scientists caution the findings shouldn't be the sole factor in deciding whether to try a child as a juvenile or an adult, the research is being taken seriously. In its March 1 decision to ban the death penalty for all juveniles, the U.S. Supreme Court cited the brain-growth research being done in Pennsylvania.

The Pennsylvania study is also central to the Grant County case of Jake Eakin and Evan Savoie of Moses Lake, who were both 12 when they were charged with first-degree murder in the death of their 13-year-old playmate. Their trial in adult court is set for May 16.

Grant County Judge John Antosz ruled that the crime was so brutal--the victim had been stabbed many times in the head--that the boys should not be tried as juveniles despite their age.

Dickerson, a former program director at Echo Glen, disagrees; in fact, it was this case that prompted her to propose her measure.

Michele Shaw, Jake Eakin's new attorney, agrees with Dickerson. Both boys were special-education students with lower-than-average IQs, and not taking such factors into account is not serving justice, Shaw believes. When mistakes like that are made, "these children suffer horrifically."

**Question of Understanding**

Another part of the recent brain research is a MacArthur Foundation study that showed teens tried in adult court are unlikely to understand that process or help with their own defense. The study showed that children 11 to 13 and 14 and 15 are, respectively, three and two times as likely to be "seriously impaired" in their ability to understand the justice system, and that children with a low IQ are at an even greater risk.

It concluded that states that transfer juveniles 15 and under to adult courts may be subjecting them to proceedings they can't possibly understand. When that happens with children 13 or younger, according to the study, many of them should be considered incompetent to stand trial.

Muscatel, the forensic psychologist who evaluated Heather Opel, has examined many children charged with murder, among them the Grant County boys, whom he described as almost "pre-adolescent" in their lack of maturity, with interests that ran more to video games than court procedures.

In Opel's case, her life was chaotic before the murder, Muscatel said. Her defense attorney told the court at the time of her sentencing that she had been abused since she was an infant, yet still managed to become a good student and athlete.
While even prosecutors said her mother had manipulated her into helping commit murder, they still charged the 13-year-old as an accomplice and tried her as an adult.

Of all the cases he's evaluated, Muscatel finds Opel's the most tragic. Lacking a secure home life and the support needed to thrive, she often was unable to make decisions that would benefit herself, he said.

"I can guarantee you there is no child who had a well-socialized background and a supportive environment who goes out and commits offenses," he said.

When children are sent to prison, they miss out on a huge part of normal social development--everything from establishing relationships with the opposite sex to reading facial expressions and determining appropriate behavior on the job.

Like most of the prisoners incarcerated in Washington state for committing murder when they were children, Opel will one day be released back into society. How she'll fare, Muscatel believes, will depend on the skills she'll learn in the maximum-security, razor-wire-enclosed "home" at the Washington Corrections Center for Women, near Gig Harbor in the town of Pursy, from which she'll be released in 2023.

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