

By: Donald L. Paillette

SUBJECT: VEHICLE OFFENSE PROCEDURES FOR JUVENILES

I. EXISTING OREGON STATUTES

419.476 Children within jurisdiction of juvenile court. (1) The juvenile court has exclusive original jurisdiction in any case involving a person who is under 18 years of age and:

(a) Who has committed an act which is a violation, or which if done by an adult would constitute a violation, of a law or ordinance of the United States or a state, county or city; or

(b) Who is beyond the control of his parents, guardian or other person having his custody; or

(c) Whose behavior, condition or circumstances are such as to endanger his own welfare or the welfare of others; or

(d) Who is dependent for care and support on a public or private child-caring agency that needs the services of the court in planning for his best interests; or

(e) Either his parents or any other person having his custody have abandoned him, failed to provide him with the support or education required by law, subjected him to cruelty or depravity or to unexplained physical injury or failed to provide him with the care, guidance and protection necessary for his physical, mental or emotional well-being; or

(f) Who has run away from his home.

(2) The court shall have jurisdiction under subsection (1) of this section even though the child is receiving adequate care from the person having his physical custody.

(3) The provisions of subsection (1) of this section do not prevent a court of competent jurisdiction from entertaining a civil action or suit involving a child.

[Subsection (1) enacted as 1959 c.432 §2; subsection (3) enacted as 1959 c.432 §3 (2); 1963 c.496 §1; 1971 c.451 §17]

419.482 Petition or information that child is in juvenile court's jurisdiction; preliminary inquiry concerning action to be taken by court; court action. (1) Any person may file a petition in the juvenile court alleging that a child named therein is within the jurisdiction of the court as provided in subsection (1) of ORS 419.476.

(2) If any person informs the court that a child is or appears to be within its jurisdiction, as provided in subsection (1) of ORS 419.476, a preliminary inquiry shall be made to determine whether the interests of the child or the public require that further action be taken. Upon the basis of the preliminary inquiry, the court may:

(a) Make such informal recommendations to the child and his parent or person having his custody as are appropriate in the circumstances;

(b) Direct that a petition be filed; or

(c) Direct that a juvenile motor vehicle offense be handled as provided in ORS 419.535 to 419.541.

(3) At any time after a petition is filed, the court may make an order providing for temporary custody of the child.

(4) At any time after a petition is filed, the court in the circumstances set forth in ORS 419.533 may remand the case to the appropriate court handling criminal actions, or to municipal court.

(5) The court may dismiss the petition at any stage of the proceedings.
[1959 c.432 §6]

419.507 Child as ward of the court; court's authority over child; Children's Services Division's authority over child; plan for medical care or special treatment. A child found to be within the jurisdiction of the court as provided in subsection (1) of ORS 419.476, may be made a ward of the court. Where a child has been found to be within its jurisdiction, and when the court determines it would be in the best interest and welfare of the child, the court may:

(1) Place the child on probation or under protective supervision. The court may direct that the child remain in the legal custody of his parents or other person with whom he is living or may direct that the child be placed in the legal custody of some relative or some person maintaining a foster home approved by the court, or in a child care center or a youth care center authorized to accept the child. The court may specify particular requirements to be observed during the probation or protective supervision consistent with recognized juvenile court practice, including but not limited to restrictions on visitation by the child's parents, restrictions on the child's associates, occupation and activities, restrictions on and requirements to be observed by the person having the child's legal custody and requirements for visitation by and consultation with a juvenile counselor or other suitable counselor. Restitution for property taken, damaged or destroyed by the child may be required as a condition of probation.

(2) Place the child in the legal custody of the Children's Services Division for care, placement and supervision.

(a) The division may place the child in a child care center authorized to accept the child.

(b) If the child has been placed in the custody of the Children's Services Division, the court shall make no commitment directly to any residential facility, but shall cause the child to be delivered into the custody of the Children's Services Division at the time and place fixed by rules of the division. No child so committed shall be placed in the Oregon State Penitentiary or the Oregon State Correctional Institution.

(c) Uniform commitment blanks, in a form approved by the Administrator of the Children's Services Division, shall be used by all courts for placing children in the legal custody of the Children's Services Division.

(d) To insure effective planning for children, the Children's Services Division shall take into consideration recommendations and information provided by the committing court before placement in any facility certified by the Children's Services Division.

(e) Whenever a child who is in need of medical care or other special treatment by reason of his physical or mental condition is placed in the custody of the Children's Services Division by the juvenile court, the division shall prepare a plan for care or treatment within 14 days after assuming custody of the child. The court may indicate in general terms the type of care which it regards as initially appropriate. A copy of the plan, including a time schedule for its implementation, shall be sent to the juvenile court which committed the child to the division. The court may at any time request regular progress reports on implementation of the plan. The division shall notify the court when the plan is implemented, and shall report to the court concerning the progress of the child annually thereafter. If the plan is subsequently revised, the division shall notify the court of the revisions and the reasons therefor.

(f) Commitment of a child to the Children's Services Division does not terminate the court's continuing jurisdiction to protect the rights of the child or his parents or guardians.

(3) If there is an interstate compact or agreement or an informal arrangement with another state permitting the child to reside in another state while on probation or under protective supervision, or to be placed in an institution or with an agency in another state, place the child on probation or under protective supervision in such other state, or, subject to ORS 419.509, place the child in an institution in such other state in accordance with the compact, agreement or arrangement.

(4) In the circumstances set forth in ORS 419.533, remand the child to the appropriate court handling criminal actions, or to municipal court.

(5) As used in this section, "child care center" means a residential facility for the care and supervision of children which meets the certification requirements under ORS 418.225, and is annually certified under the provisions of ORS 418.240.

(6) "Youth care center" has the meaning given it in ORS 420.855.

(7) The juvenile court shall retain wardship and the Children's Services Division shall retain legal custody of the child committed to it regardless of the physical placement of the child by the Children's Services Division.

[1959 c.432 §17; 1963 c.81 §1; 1965 c.616 §88; 1969 c.679 §1; 1971 c.401 §91; 1971 c.698 §2; 1973 c.495 §1]

419.533 Remanding of child to another court. (1) A child may be remanded to a circuit, district, justice or municipal court of competent jurisdiction for disposition as an adult if:

(a) The child is at the time of the remand 16 years of age or older; and

(b) The child committed or is alleged to have committed a criminal offense or a violation of a municipal ordinance; and

(c) The juvenile court determines that retaining jurisdiction will not serve the best interests of the child and the public;

(2) The juvenile court may enter an order directing that all cases involving violation of law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws be remanded to criminal or municipal court, subject to the following conditions:

(a) That the criminal or municipal court prior to hearing a case, other than a case involving a parking violation, in which the defendant is or appears to be under 18 years of age notify the juvenile court of that fact; and

(b) That the juvenile court may direct that any such case be remanded to the juvenile court for further proceedings.

(3) After the juvenile court has entered an order remanding a child to an adult court for doing an act which is a violation or which if done by an adult would constitute a violation of a law or ordinance of the United States or a state, county or city, the court may enter a subsequent order providing that in all future cases involving the same child, the child shall be remanded to the appropriate court without further proceedings under subsections (1) and (2) of this section.

(4) The juvenile court may at any time direct that the subsequent order entered under subsection (3) of this section shall be vacated or that a pending case be remanded to the juvenile court for further proceedings.
[1959 c.432 §31; 1971 c.199 §3; subsections (3) and (4) enacted as 1971 c.199 §2]

419.535 Handling of motor vehicle, boating or game offenses. If the preliminary inquiry pursuant to ORS 419.482 discloses that the child's conduct consists, or is alleged to consist, of a violation of a law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws and it appears to the court that the nature of the offense and the child's background are such that a proceeding as provided in ORS 419.484 to 419.527 is not warranted, the court may handle the case as provided in ORS 419.537 to 419.541.

[1959 c.432 §32; 1971 c.199 §4]

419.537 Petition and summons. (1) A petition relating to motor vehicle, boating or game offenses shall be filed as provided in ORS 419.482 and 419.484.

(2) Summons as provided in subsection (1) of ORS 419.486 shall be issued to the parent or other person having physical custody of the child, requiring him to appear with the child before the court at the time and place stated in the summons.

(3) The summons may be served as provided in ORS 419.488 or by mailing a copy thereof to the parent or other person having physical custody of the child. If the summons is served personally, a warrant may be issued as provided in ORS 419.490.

[1959 c.432 §33; 1971 c.199 §5]

419.539 Hearing and finding. A hearing shall be held as provided in ORS 419.493 to 419.500. At the termination of the hearing, if the court finds the matters alleged in the petition to be true, it may enter an order finding the child to be a juvenile motor vehicle offender or a boating law offender or a game law offender and may dispose of the case as provided in subsections (1) and (2) of ORS 419.541.

[1959 c.432 §34; 1971 c.199 §6]

419.541 Disposition of juvenile offenders. (1) The court may recommend suspension of a child's operator's license or driving permit, and may order the child to attend a traffic school or driver training program operated under auspices of the police, the public schools or other qualified body, where the court finds in a proceeding under ORS 419.484 to 419.527 or a proceeding under ORS 419.535 to 419.539 that the child:

(a) Violated a law or ordinance relating to the privilege of operating a motor vehicle or to the operation of a motor vehicle; or

(b) Operated a motor vehicle in the course of violating a law or ordinance; or

(c) Violated a law or ordinance in the course of attempting to obtain a motor vehicle, motor vehicle parts or accessories or motor vehicle fuel.

(2) The court may recommend suspension of operator's license or permit for a period of up to one year from the date of the recommendation.

(3) In a proceeding under ORS 419.484 to 419.527, the juvenile court may recommend suspension of the child's license or permit and may direct the child to attend traffic or driving school as provided in subsection (1) of this section in addition to or in lieu of any other disposition of the motor vehicle case.

(4) In a proceeding under ORS 419.484 to 419.527, the juvenile court may suspend a hunting or fishing license or permit where a game violation is involved and may make such other recommendations where a boating violation is involved.

[1959 c.432 §35; 1971 c.199 §7]

II. OREGON CASES

Under ORS 419.541 juvenile courts possess virtually plenary power to suspend the driving privileges of children found guilty of violating the motor vehicle code, whether or not such children are wards of the court.

State v. Williams, 241 Or 207, 405 P2d 371 (1965).

Where juvenile court has generally remanded juvenile traffic cases to criminal or municipal court, citation to and warrant by such criminal or municipal court may be enforced without reference to jurisdictional provisions of juvenile code.

30 Op Atty Gen 182 (1960-62).

III. UNIFORM VEHICLE CODE

§ 16-206—When person to be given five-day notice to appear in court

(a) Whenever a person is halted by a police officer for any violation of this act punishable as a misdemeanor and is not taken before a magistrate as hereinbefore required or permitted, the officer shall prepare a written traffic citation. (REVISED, 1971.)

(b) The time specified in the notice to appear must be at least five days after the alleged violation unless the person charged with the violation shall demand an earlier hearing.

(c) The place specified in the notice to appear must be before a magistrate, as designated in § 16-208.¹ (REVISED, 1971.)

(d) The person charged with the violation may give his written promise to appear in court by signing at least one copy of the written traffic citation prepared by the officer, in which event the officer shall deliver a copy of the citation to the person, and thereupon the officer shall not take the person into physical custody for the violation.

(e) Any officer violating any of the provisions of this section is guilty of misconduct in office and shall be subject to removal from office. (FORMERLY § 16-109; RENUMBERED, 1971.)

¹ It is recommended that jurisdiction over juvenile traffic offenders be vested in the traffic courts except where juvenile delinquency involves offenses in addition to or other than traffic offenses. In such latter event, jurisdiction should be vested as at present in most cities in the juvenile court.

IV. OTHER

The Proposed Juvenile Code submitted to the 1973 Legislature (HB 2050) recommended several changes in juvenile traffic offense procedures. Following are extracts of text and commentary from the Juvenile Code Committee's Final Draft and Report (October 1972).

Section 15. Special provisions for motor vehicle, game and boating offenses. (1) In any proceeding in which a child under 15 years of age is alleged to have committed a motor vehicle, game or boating offense, the appropriate uniform citation shall be filed with the clerk of the juvenile court of the county in which the child resides and may serve in lieu of petition and summons as provided in the Juvenile Code.

IV. OTHER (Continued)

(2) The appropriate court handling adult violations shall have original jurisdiction of any proceeding in which a child at least 15 years of age but under 18 years of age is alleged to have committed a motor vehicle, game or boating offense. Following determination by the adult court that the child committed the offense as charged, it may transfer the child to juvenile court of the county in which the child resides for disposition in lieu of sentencing if it appears to the adult court that:

(a) The child's behavior or past motor vehicle record manifests a serious behavioral problem; or

(b) The juvenile court has facilities to more appropriately assist the child than those available through the adult court. Prior to transferring the case, the court shall inform the child and a parent or custodian of its intention to transfer and allow time, if requested, for the child or his parent or custodian to be heard in objection thereto.

(3) No child shall be detained or imprisoned in a jail or other facility for the detention of adults unless the facility conforms to subsection (1) of section 20 of this Act, or the child has been remanded for alleged commission of a delinquent act as provided in the Juvenile Code.

(4) Upon receipt of transfer from the adult court, the juvenile court shall set the case for hearing in the manner established for disposition. A finding of guilty by the adult court shall be accepted by the juvenile court and accorded effect as if it were its own finding.

COMMENTARY

This section, in connection with paragraph (e) of subsection (1) and paragraph (c) of subsection (4) of section 10 provides the appropriate jurisdictional powers and the procedure for the special handling of these cases. When read together, the sections regarding motor vehicle, game and boating offenses accomplish the following:

(1) Offenses by children under 15 (before the age when a driving permit may be issued) are in the juvenile court, originally and exclusively;

(2) Offenses by children 15 to 18 are in the adult court originally, with power in the adult court to transfer the matter to juvenile court under limited circumstances;

(3) Certain major traffic offenses (reckless driving, the two drunk driving laws, criminally negligent homicide) remain in the juvenile court as delinquent acts, regardless of whether the child is under or above 15.

Presently all motor vehicle, game and boating offenses are legally under the jurisdiction of the juvenile court. There is a provision, however, that the juvenile court may remand *all* such offenses to the adult court. Before the adult court can act it must notify the juvenile court of particular cases and then the juvenile court, if it wishes, may exempt (pull-back) a certain case from the blanket remand. All those not pulled back remain in the adult court. At present, it is believed that 34 of the 36 counties have a blanket remand order in effect.

The present procedure raises several problems, including at least two constitutional questions. *Kent v. United States* held that remand was a "critical stage" of a proceeding, and due process requires a right to a hearing.

The blanket remand probably does not require a hearing since it does not remand a particular child, but is remanding a class of cases. It is not part of a proceeding, but rather a discretionary legislative power delegated by the legislature.

IV. OTHER (Continued)

The exemption or "pull-back" from the remand does, however, fit within the *Kent* rule. It is a proceeding concerning a particular child; the choice of courts may be critical to the child; no hearing is afforded. Thus, the due process requirements of *Kent* would probably render the provisions of "pull-back" unconstitutional.

The present "pull-back" procedures may also violate "equal protections of the laws." There is no criteria established to determine when one child should be treated differently from another of his class. An age classification or an offense classification, if reasonable, generally have been held to create acceptable criteria for different treatment. Within the classification, however, the treatment and protections of the laws must be reasonably uniform. "Pulling back" from a class remand would require sufficient criteria to justify the different treatment, and would probably necessitate a hearing to allow a child to protest his special classification.

Disagreement exists and has existed for some time over which court system should be concerned with juvenile traffic offenders. Some strongly urge the retention of all such cases in juvenile court to protect the child from the rigors of the adult system. Some urge that all traffic offenses—without regard to age of the offender—should be in a specialized court for traffic offenders. These sections of the proposed code take a middle position:

(1) Oregon allows children to obtain driving permits at age 15, thus placing certain adult privileges in the child at that time. Responsibility should follow the privilege, as should also protections and rights of the child to be treated the same as an adult with an equal privilege.

(2) Prior to age 15, a child has no driving privileges and driving at that time is more apt to indicate a substantial behavioral problem. Also, it was felt that 15 was about the minimum age at which a child could reasonably be expected to cope emotionally with the adult court motor vehicle proceeding.

(3) There are exceptional cases where the driving record of the child or other behavioral traits show a developing serious problem with the child. In such cases, the probation and counseling services of the juvenile court should be available to divert the youth from further problems. The adult court in such cases should still determine guilt or innocence to avoid "due process" and "equal protection" objections

as to the form of the hearing. Reasonable criteria is established to avoid "equal protection" objections to "disposition" in juvenile court in place of "sentencing" in adult court, and an opportunity to be heard in objection to the transfer is made available to avoid "due process" objections.

Subsection (3) of this section provides that a child cannot be imprisoned with adults for violation of motor vehicle, game or boating offenses unless he has been remanded to adult court. Any detention of a child would have to be in a facility which would meet the requirements of a detention family.

Relationship to Existing Law

Subsection (1). ORS 419.535 sets no minimum age in handling motor vehicle, boating or game offenses as does the draft in subsection (1). The present statute merely states that if it appears to the court that the nature of the offense and the child's background are such that a proceeding as provided in ORS 419.484 to 419.527 is not warranted, then the case may be handled as a motor vehicle, boating or game offense.

Subsection (2). Under the present statute, the court may enter an order directing that all cases involving a violation of law or ordinance relating to the use or operation of a motor vehicle, boating laws or game laws, be remanded to the proper adult court subject to the following conditions:

(1) The adult court must notify the juvenile court of the violation (except parking violations); and

(2) The juvenile court may direct that the case be remanded to the juvenile court.

The draft gives the adult court original jurisdiction where the child is at least 15 years of age. This provision allowing the transfer of the child to the juvenile court for disposition after the determination of fact is new.

Subsection (3). ORS 419.575 provides in part that a child may not be detained in a jail or place where adults are detained except where remanded to the adult court. There appears to be no statutory prohibition under the present law for detaining a child in a regular jail facility for a motor vehicle offense which is under a blanket remand, while a child could not be kept for a more serious offense until he was 16 and remanded in a special proceeding.

Subsection (4). New.

IV. OTHER (Continued)

Section 50. Disposition of motor vehicle, game or boating offense. If a child under 15 years is found to have committed a motor vehicle, game or boating offense or a child was transferred to juvenile court as provided in section 15 of this Act, the court shall enter such findings as are appropriate and may do one or more of the following:

- (1) Levy such fine against the child as could be levied against an adult for the same offense.
- (2) Place the child on probation under such conditions as the court may require.
- (3) Require the child to attend a school or other training program related to the type of offense.
- (4) Suspend a motor vehicle operator's license or permit or game license or permit or recommend such suspension to the Department of Motor Vehicles or Game Commission where an adult court could cause such suspension or make such recommendation.
- (5) Suspend the child's right to drive a motor vehicle, operate a boat or fish or hunt and hold any license or permit for a period not greater than 30 days.
- (6) Dismiss the proceeding without condition or restriction.

COMMENTARY

This section allows the juvenile court to treat the child in a special way or to treat him as an adult could be treated, as the situation may require.

Adult courts can levy fines, use probation and recommend suspension of a license to the appropriate department, and can, under the terms of probation, require attendance in special programs.

Juvenile courts under this section could levy fines, use probation (the juvenile court has probation officers to make it more meaningful, while adult courts do not generally have probation services), require attendance at schools or programs (this can be done with or without probation), recommend suspensions as the adult court can, or avoid a sus-

Subsection (4). ORS 419.541 (1) and (2) allow the court to recommend the suspension of the child's license or permit, whichever the case may be, for a period of up to one year from the date of the recommendation. There is presently no authorization for actual suspension by the court, however, although

pension record on the child's license by holding a license under a court suspension for up to 30 days, which would not amount to a license suspension by the Department of Motor Vehicles.

Relationship to Existing Law

Present statutes—ORS 419.507 and 419.535 to 419.541

Subsection (1). There is no direct authorization allowing the court to levy a fine against the child in such a case in the present statutes.

Subsection (3). This subsection relates directly to ORS 419.541 (1) and (3).

this is done by holding the license in a number of courts.

Subsection (5) is new.

Subsection (6). This provision is not stated in the present statute; it is implicit, however, in the court's dispositional powers.