

MEMORANDUM

TO: Juvenile Justice Conferees' Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Liz Ryan (CDF)
Co-Chairs, Juvenile Justice Coalition

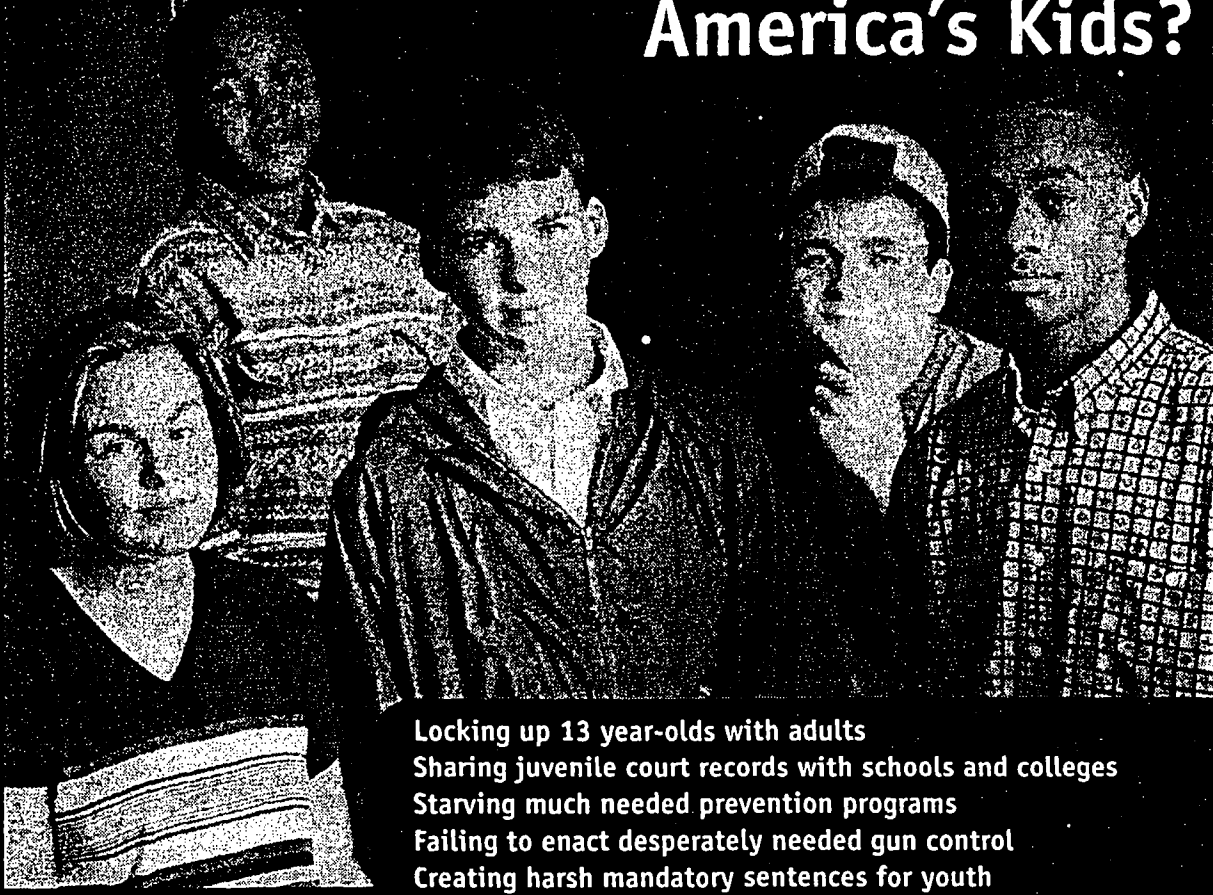
DATE: September 28, 1999

RE: Juvenile Justice legislation

As conferees consider juvenile justice legislation, we've provided you with the attached briefing materials, including a recently released study from the Justice Policy Institute on the impact of trying children as adults.

If you need additional information, please feel free to contact either of us. We can be reached by phone at: 202/637-0377 (Marc) or 202/662-3586 (Liz) or by email at: mschindler.ylc@erols.com or Lryan@childrensdefense.org.

Is Congress Giving Up on America's Kids?



Locking up 13 year-olds with adults
Sharing juvenile court records with schools and colleges
Starving much needed prevention programs
Failing to enact desperately needed gun control
Creating harsh mandatory sentences for youth

These and numerous other draconian provisions are currently contained in a juvenile crime bill that is about to be discussed by a House/Senate Conference Committee.

If included in the final bill, these provisions will cause more harm to kids who are already troubled, instead of holding them accountable and helping them to turn their lives around.

Call your Senators and Representatives at their local offices or in Washington at 202/224-3121, and tell them **not to give up on America's kids!**

- Fund prevention programs adequately
- Keep kids out of adult jails, and don't ruin their future prospects by publicizing their youthful indiscretions
- Make sure all youth are sentenced fairly, regardless of race or ethnicity
- Require common-sense gun safety measures like safety locks for all guns and background checks for purchasers.

Tell Congress not to give up on our kids!

A MESSAGE FROM:

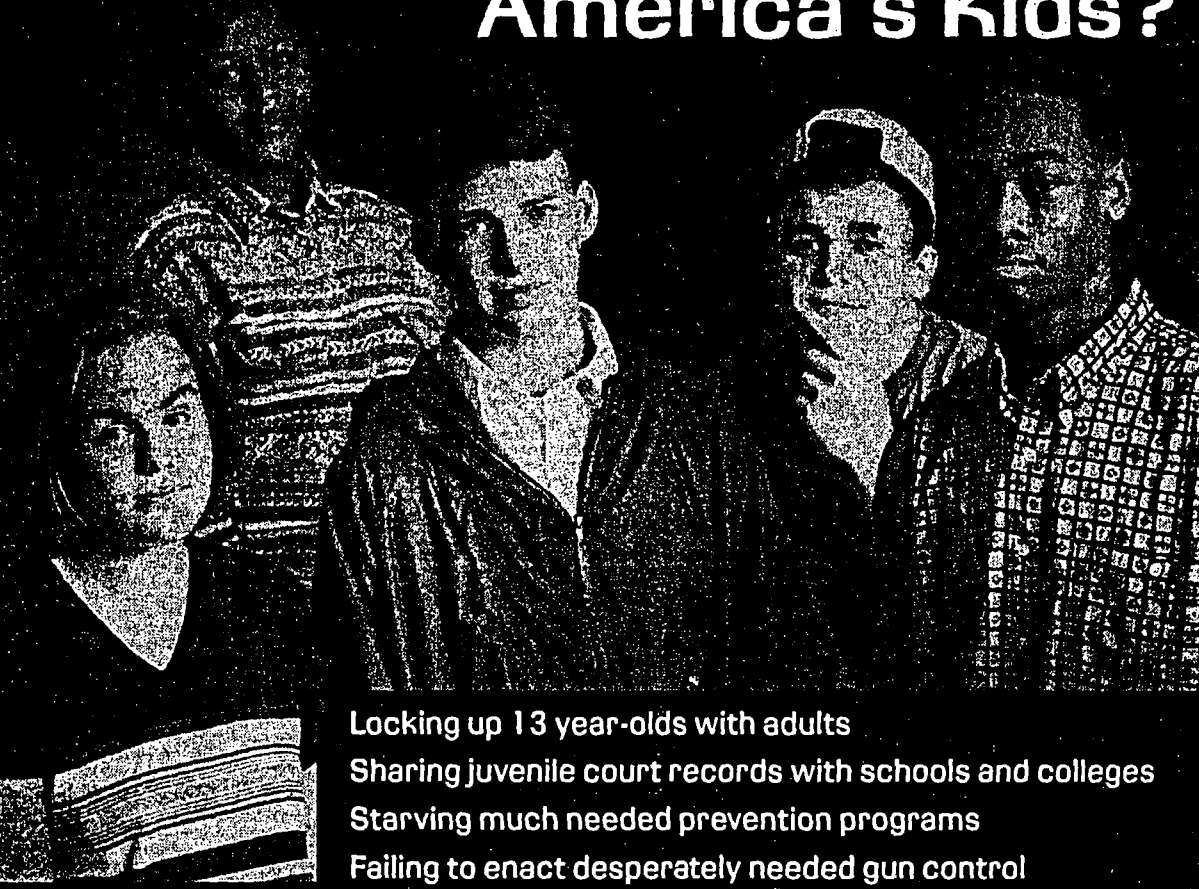
Children's Aid Society of Pennsylvania
Children's Choice, Inc.
Children's Defense Fund
Children's Service, Inc.
Child Welfare League of America
Episcopal Community Services
Lutheran Children and Family Service

Philadelphia Society for Services to Children
Southern Home Services
Women's Association for Women's Alternatives, Inc.
Women's Christian Alliance
Youth Law Center
Youth Services, Inc.

Friday, September 17, 1999

THE PHILADELPHIA INQUIRER
COMMENTARY

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A MESSAGE FROM:

CWLA

Child Welfare League of America

Children's Defense Fund

YOUTH LAW CENTER

FRIDAY, SEPT. 17, 1999

...

THE NEWS JOURNAL

B9

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Orrin G. Hatch
SR-131 Russell Senate Office Building
Washington, DC 20510-4402

Dear Senator Hatch:

We understand that the conference committee is presently working to develop a final version of the juvenile justice legislation.

Over one million children encounter the justice system each year. Well over 90 percent of these children have committed nonviolent offenses. In 1997, the U.S. Department of Justice reported that 2.8 million adolescents were victims of crime and another nine million witnessed serious violent crime.

Demand for larger police forces, more prisons, and harsher sentences often follow incidences of violent attacks and gun violence. As people of faith we are compelled to demonstrate alternatives.

Many of our constituents and congregations intervene on behalf of juveniles. They know that meting out mere punishment is not adequate. Their work demonstrates how important restorative and preventive efforts are in the lives of youth. Juvenile justice legislation will critically affect their work -- touching the lives of countless youth and their communities.

We would like to take this opportunity to bring several concerns to your attention.

We urge Congress to maintain, even strengthen, the core protections of the Juvenile Justice and Delinquency Prevention Act (JJDP), not weaken or eliminate its time-tested provisions. We suggest that a substantial level of juvenile justice funds be guaranteed for prevention efforts.

Approval of the attached gun control amendments must not be delayed. We are mindful that nearly 13 children are killed by guns in America every day. At a minimum, gun safety provisions as approved by the Senate should be included in the final juvenile justice legislation.

Letter to Juvenile Justice Legislation Conferees

In particular, we urge the adoption of language that:

- closes gun-show loopholes via mandatory background checks, requires child safety locks, and bans the import of high-capacity ammunition clips;
- maintains separation of juveniles from adult inmates;
- maintains a requirement to address disproportionate minority confinement;
- adds further prevention activities to the Juvenile Accountability Incentive Block Grant (JAIBG) programs and sets aside a minimum of 25% JAIBG funding for prevention purposes;
- urges prompt mental health intervention services for children with mental disabilities who bring guns to school; and
- includes screening, research, training, violence prevention and counseling programs regarding juvenile mental health issues.

We firmly oppose provisions that would:

- terminate consent decrees which have kept children out of adult jails and prohibited abusive practices;
- encourage the prosecution of children as young as 13 as adults through the federal system;
- give prosecutors unchecked discretion to prosecute children as adults without judicial review;
- impose arbitrary, mandatory sentencing on juveniles;
- restrict states' discretion in implementing graduated sanctions and require mandatory application of graduated sanctions as a condition of receiving federal funds;
- erode confidentiality protections of juvenile court proceedings and juvenile records;
- automatically cease educational services to students with mental disabilities who bring guns to school;
- sunset the Juvenile Justice and Delinquency Prevention Act; and
- eliminate The Office of Juvenile Justice And Delinquency Prevention.

From the Hebrew Bible we are reminded that God “executes justice for the orphan and the widow, and ...loves the strangers...” (Deuteronomy 10:18). God also calls us to do the same: “Give justice to the weak and the orphan; maintain the right of the lowly and the destitute” (Psalm 82:3). Surely a large number of the youth who encounter the juvenile justice system can be included in these concerns and deserve fairness and justice.

We appreciate your diligent efforts to assure that the final juvenile justice legislation protects children.

Sincerely,

American Ethical Union, Washington Ethical Action Office

Friends Committee on National Legislation (Quaker)

The Episcopal Church

The General Board of Church and Society of the United Methodist Church

Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America

Mennonite Central Committee U.S., Washington Office

National Council of the Churches of Christ in the USA

Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Henry J. Hyde
2110 Rayburn House Office Building
Washington, DC 20515-1306

Dear Representative Hyde:

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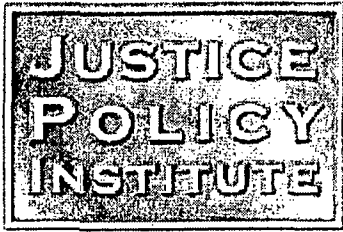
Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees



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FOR IMMEDIATE RELEASE

**New Study finds “prosecutorial discretion waiver,”
which is currently under consideration by Congress,
disparately applied, ineffective at curbing crime**

**House-Senate Conference Committee Discusses Bill This Week Granting
Federal Prosecutors Discretion to Try Juveniles As Adults.**

Washington, DC: A new report profiling Florida’s experiment with allowing prosecutors to decide whether juveniles should be tried in adult court (“prosecutorial discretion waiver”) has failed to reduce crime and has been implemented in a racially disparate manner. Further, although touted as targeting the “worst of the worse”, the survey shows that the vast majority of youth referred to adult court by prosecutors were charged with nonviolent offenses.

The report, by the DC-based Justice Policy Institute reviewed research compiled by academics at the University of Central Florida and Florida State University, Florida’s Department of Juvenile Justice, the Urban Institute and the latest juvenile crime statistics from the Justice Department. “On every indicator for which we evaluated prosecutorial discretion waiver, from public safety, to targeting violent offenders, to racial equity, the practice was found sorely wanting,” stated Jason Ziedenberg, policy analyst for the Justice Policy Institute and co-author of the report.

In Legislation which recently passed the House of Representatives (HR 1501, sponsored by Congressman Bill McCollum of Florida), federal prosecutors would be given non-reviewable discretion to try youths as young as 13 in adult court for violent and non-violent offenses. A ballot initiative which will go before California voters in March, 2000 (Proposition 6) would also grant prosecutors discretion to decide whether a juvenile should be tried in adult court. In both the federal and California systems, neutral judges are currently vested with the authority of deciding whether a juvenile should be tried as an adult upon motion from a prosecutor, a practice known as “judicial waiver.”

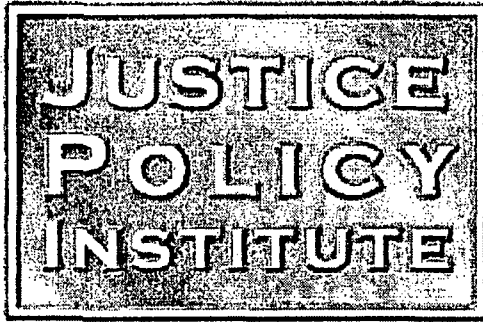
Florida pioneered prosecutorial discretion waiver in 1981 and is the state which uses the practice most frequently. In fact, in 1995, the study reports that Florida prosecutors by themselves sent nearly as many juveniles to adult court (7,000) as judges tried in the entire U.S. (9,700). Despite this fact, Florida had the second highest rate of violent juvenile crime in the U.S. in 1995, 48% higher than the national average. The report's major findings include:

- Youth sent to Florida's adult court system are a third more likely to be rearrested than youth with similar prior arrests and current charges who are retained in Florida's juvenile justice system.
- Youths transferred to the adult system in Florida get rearrested almost twice as quickly upon release as youth retained in the state's juvenile justice system.
- When they reoffended, youths transferred to the adult system in Florida committed serious crimes at twice the rate of youth retained in the juvenile justice system.
- In the jurisdictions studied, only 28% of youths transferred by Florida prosecutors to adult court were charged with violent offenses.
- African Americans were 2.3 times more likely than white youth to be transferred to adult court.

"Prosecutorial discretion waiver is not a policy innovation which Congressman McCollum should export from his home state," noted Vincent Schiraldi, the Institute's director. "Federal judges, most of whom are Republican-appointed former prosecutors, are perfectly able to decide which kids ought to be tried as adults."

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A copy of the Institute's study, and case-studies of how prosecutorial discretion has been misused in Florida are available either by calling the Justice Policy Institute at (202) 678-9282 or from the Institute's web site at www.cjcj.org/jpi/prosecutor.html. The Justice Policy Institute is a policy development and research body which promotes effective and sensible approaches to America's justice system. JPI is a project of the non-profit Center on Juvenile and Criminal Justice.



<http://www.cjcj.org/jpi>

JUSTICE POLICY INSTITUTE
JULY 1999

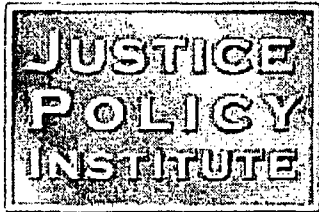
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The Florida Experiment:

An Analysis of the Impact
of Granting Prosecutors
Discretion to try Juveniles
as Adults

VINCENT SCHIRALDI AND
JASON ZIEDENBERG



The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to try Juveniles as Adults

<http://www.cjcj.org/jpi>

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JPI is a project of the Center
on Juvenile & Criminal Justice

BY VINCENT SCHIRALDI AND JASON ZIEDENBERG

"Anthony Laster is the kind of kid who has never been a danger to anyone. A 15-year-old, eighth grader with an IQ of 58, Anthony is described by relatives as having the mind of a five-year-old. Late last year, a few days after his mother died, Anthony asked another boy in his class at a Florida middle school to give him lunch money, claiming he was hungry. When the boy refused, Anthony reached into his pocket and took \$2. That's when Anthony ran smack into Palm Beach County prosecutor Barry Kirscher's brand of compassionless conservatism. Rather than handling the case in the principal's office, where it belonged, Mr. Kirscher decided to prosecute Anthony as an adult for this, his first arrest. Anthony spent the next seven weeks—including his first Christmas since his mother died—in custody, much of it in an adult jail."

Introduction

Anthony Laster was one of 4,660 youth who Florida prosecutors sent to adult court last year under the wide ranging powers they enjoy with the state's direct file provisions. Florida is one of 15 states that allow prosecutors—not a judge—to decide whether children arrested for crimes ranging from shoplifting to robbery should be dealt with in the juvenile justice or criminal justice system.² While 43 states have changed their laws to make it easier for judges to send children into the adult criminal system since 1993, Florida is leading the nation in using prosecutors to make the decision to try children as adults. In 1995 alone (Graph I), Florida prosecutors sent 7,000 cases to adult court nearly matching the number of cases judges sent to the criminal justice system nationwide that year.³

Juvenile Offenders generally follow one of three paths to adult court

Judicial Waiver: A juvenile court judge waives jurisdiction over the case after considering the merits of transfer for the individual youth.

Legislative Exclusion: A state legislature determines that an entire class of juvenile crimes should be sent to adult court automatically, usually serious and violent offenses.

Prosecutorial Discretion: A state or local prosecutor has the authority to file charges against some juveniles directly in adult court.

Source: The Urban Institute

A juvenile crime bill currently being considered by the U.S. Congress (House-Senate Conference Committee) would give U.S. Attorneys even greater powers than those enjoyed by prosecutors in Florida.

The change in federal law would remove judges from the process of deciding which justice system would serve young people, and transfer that power to the sole discretion of prosecutors. The Justice Department also appears to support giving prosecutors expanded powers to try youth as adults in federal court.⁴ Given the current legislative drive, it is worthwhile to examine the Florida experience to see what the future will hold for the nation.

Profile: Who are prosecutors sending to adult court in Florida?

I. Offense Category

When prosecutorial waiver was introduced in 1981, the percentage of delinquency cases transferred to adult court in Florida soared from 1.2% to nearly 9% by 1987.⁵ In fiscal year 1997-98, 6,425 of the 94,693 cases disposed of by judicial processing in Florida resulted in transfer to adult court. While these waiver provisions were originally designed to ensure that violent juvenile offenders were being detained, a 1991 study of two representative Florida counties showed that only 29% of the youths prosecutors waived to adult court were for violent crimes.⁶ More than half (55%) of the youths prosecutors

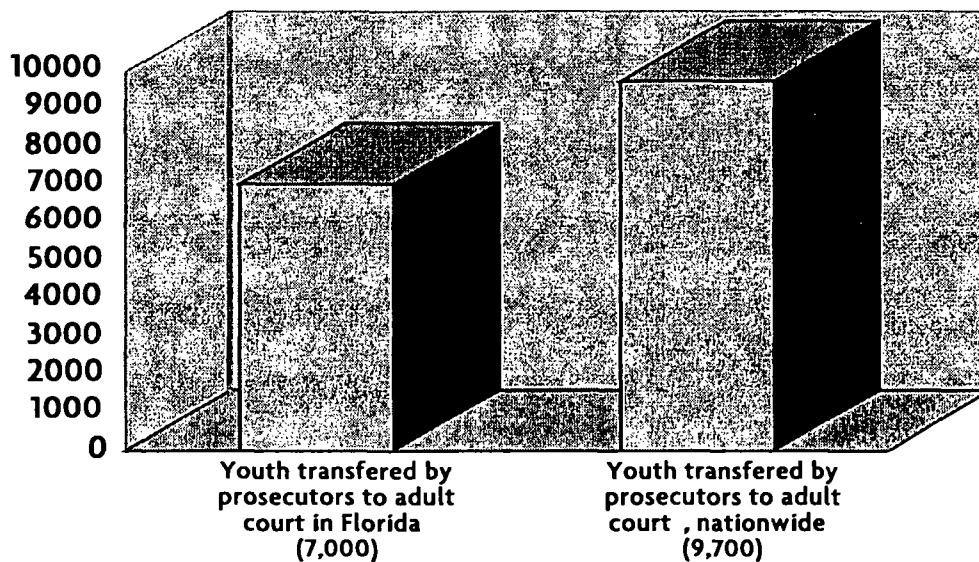
THE FLORIDA EXPERIMENT

sent to adult court were charged with property offenses that involved no violence, and fully 5% were tried as adults for misdemeanors (Graph II). Almost a quarter of the cases waived were first time, low level offenders.⁷

II. Disproportionate Minority Confinement

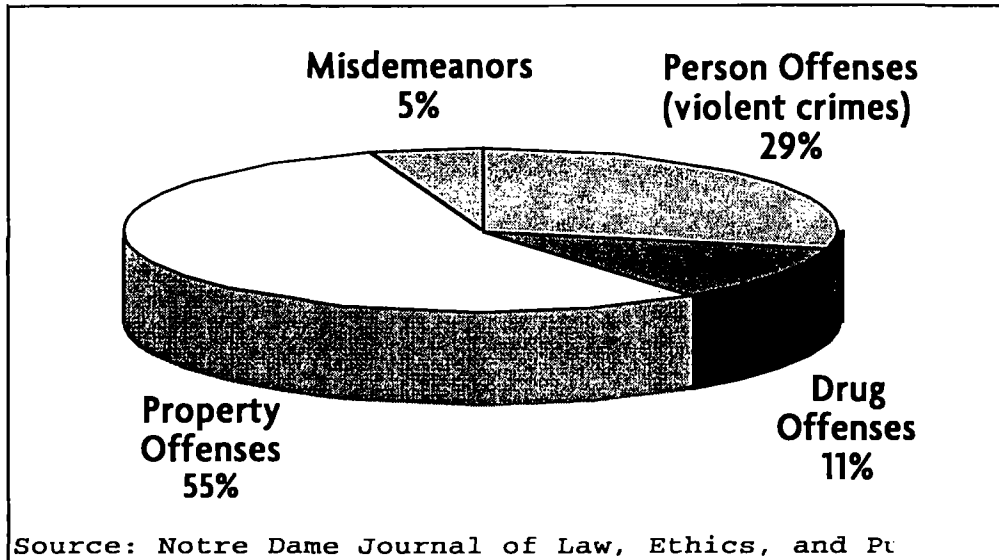
The most striking feature of Florida's transferred youth population profile is the extent to which minority youth are overrepresented in the ranks of the youth being referred to adult court. One study conducted by the Florida Department of Juvenile Justice found that black youths were 2.3 times more likely than white youth to be transferred in Florida.⁸ Even though non-whites account for 24% of the 10-17 age bracket in Florida, they currently represent 74% of those 10-17 held in the Florida prison system.⁹ "I think the way the system sets up programs shows some institutional bias," is the way one candid Florida prosecutor describes it.¹⁰

Graph 1: Florida Prosecutors Rival Judges in the rest of U.S. in Sending Youth to Adult Court



Source: The Urban Insti

Graph 2: Most Youth Transferred by Prosecutors in Florida Were Charged with Non-Violent Offenses



Policy Impact in Florida

I. Sentencing: Longer Terms for Youths in Adult Court?

While some have suggested that huge numbers of children are being held in adult facilities across the state, it is not clear that youth going to adult court via prosecutorial waiver are serving long sentences. A study published in the *Notre Dame Journal of Law, Ethics and Public Policy* found that, of the youth who were incarcerated after disposition, half received short sentences, some shorter than they would have received in the juvenile justice system. The majority (54%) of those sentenced to prison were released within three years.¹¹ A 1998 survey of the Florida transferred population shows that a majority of youth prosecutors sent to adult court for property, drug and weapons offenses received jail sentences or probation terms well within the range of what could have been prescribed to them in the juvenile court.¹² The same study showed that in 1995, 61% of the youth found guilty in adult court were incarcerated, but only 31% were prison terms.¹³

II. More Youths to Adult Jail and to Juvenile Detention

While it might be expected that prosecutorial waiver would reduce the number of youths being funneled into Florida's juvenile justice system, the opposite has been true. Between 1993 and 1998, the number of annual commitments to Florida's juvenile justice system increased by 85% despite its liberal use of waiver to adult court. Florida has the sixth highest incarceration rate for youth per 100,000 in the nation, and detains young people at a rate 25% greater than the national average.¹⁴ This happened during a time when the number of waiver cases was increasing, and the number of felony referrals to the juvenile justice system was decreasing. This is happening, despite the fact that youths waived to adult court are held before trial in adult jails, further reducing the numbers that would need to be held in juvenile detention. Rather than the happy prospect of devoting more resources in the juvenile justice system to fewer youths, the system has widened its "net of control" by committing youth for lower level offenses.¹⁵

Crime Control Impact

I. Recidivism: Adult Court Prosecution Increases Propensity for Crime

Quantitative: Studies and Data

A number of studies have shown that youth sent to adult court generally recidivate at a higher rate than they do if they are sent to the juvenile justice system. A series of studies in Florida have analyzed what happens to youth referred to adult court—90% of whom are referred there directly by a prosecutor. A study published in the journal *Crime and Delinquency* showed that youth transferred to adult court in Florida were a third more likely to reoffend than those sent to the juvenile justice system.¹⁶ The transferred youths

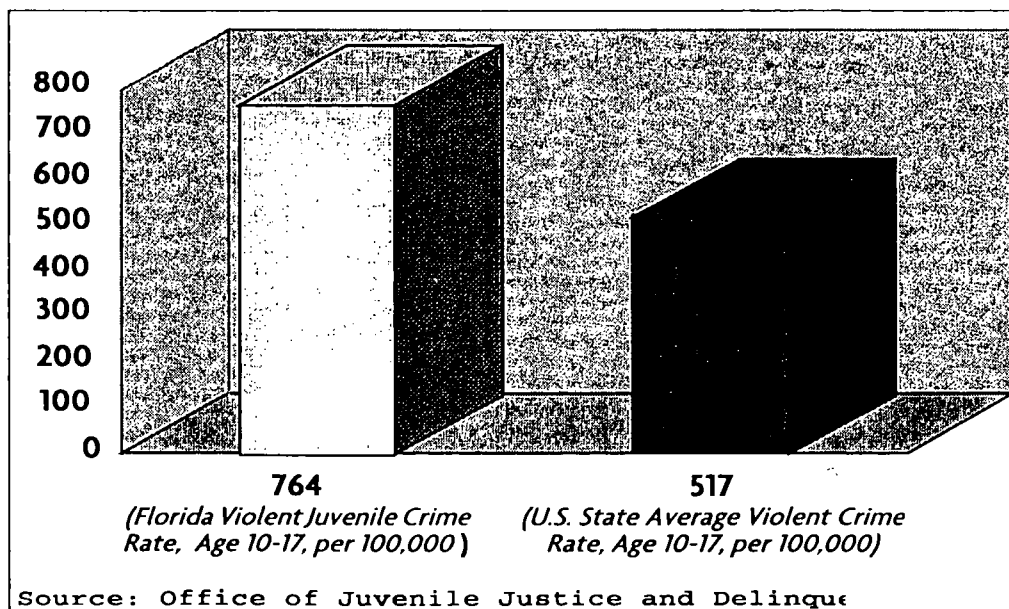
"A 1991 study showed that more than half of the youths prosecutors sent to adult court were charged with property crimes-offenses that involved no violence, and fully 5% were tried as adults for misdemeanors."

reoffended almost twice as fast as those who were sent to juvenile detention.¹⁷ Of those who committed new crimes, the youth who had previously been tried as adults committed serious crimes at double the rate of those sent to juvenile court.¹⁸ While a 1997 study by the same authors showed similar rearrest rates for transferred and non-transferred “property offenders,” the youths sent to prison and jail were still re-arrested more quickly than their counterparts in the juvenile justice system, and for more serious offenses.¹⁹ (The very fact that there are “similarly paired youth”—youth convicted of property offenses and other comparable crime categories—in both jail and deep end juvenile detention denotes the arbitrariness of prosecutorial transfer in Florida.)

Qualitative: Interviews with Youths in “Deep-End” Juvenile Programs

The same authors recently conducted in-depth interviews with fifty youths sent to prison by Florida prosecutors, versus fifty who were sent to a state “maximum risk” deep end juvenile detention facility.²⁰ This study found that the youth themselves recognized the

Graph 3: Florida Has the Second Highest Violent Crime Rate in the Country, 48% Higher than the National Average.



THE FLORIDA EXPERIMENT

rehabilitative strengths of the juvenile justice system in contrast to the adult prison system.

Sixty percent of the sample sent to the deep end juvenile program said they expected would not reoffend, 30% said they were uncertain whether they would reoffend, while 3% said they would likely reoffend. Of those who expected not to reoffend, 90% said good juvenile justice programming and services were the reason for their rehabilitation. Only one of the youths in juvenile detention said they were learning new ways to commit crimes. Most reported at least one favorable contact with a staff person that helped them. As such, the juvenile justice system responses were overwhelmingly positive:

A: *"This place is all about rehabilitation and counseling.... This place here, we have people to listen to when you have something on your mind...and need to talk. They understand you and help you."*

B: *"They helped me know how to act. I never knew any of this stuff. That really helped me, cause I ain't had too good a life."*²¹

By contrast, 40% of the transferred youth said they were learning new ways to commit crimes in prison. Most reported that the guards and staff in prisons were indifferent, hostile, and showed little care for them. Only 1/3 of the youths in prison said they expected not to reoffend. Not surprisingly, the youths sent to prison by prosecutors responded in an overwhelmingly despondent and negative way:

C: *"When I was in juvenile programs, they were telling me that I am somebody and that I can change my ways, and get back on the right tracks. In here, they tell me I am nobody and I never will be anybody."*

"40% of the transferred youth said they were learning new ways to commit crimes in prison. Only 1/3 of the youths in prison said they expected not to reoffend."

“Florida has the second highest overall crime rate of any state in the country, and is fully 32% higher than the national average.”

D: *“In the juvenile systems, the staff and I were real close. They wanted to help me. They were hopeful for me here. They think I am nothing but a convict now.”*

II. Crime Control Impact: Crime Rate

Despite having prosecutorial waiver on the books since 1981, Florida has the second highest overall violent crime rate of any state in the country, and that status has remained virtually unchanged throughout the 1990s.²² Florida’s violent juvenile crime rate is fully 48% higher than the national average (Graph III).²³

Though Florida leads the nation in using prosecutorial waiver, the other 14 states which allow states attorneys discretion to send youth to criminal court do not fare much better. Of the 15 states that currently employ prosecutorial waiver provisions, five (Florida, Arizona, Massachusetts, the District of Columbia and Louisiana) are among the ten states with the highest violent crime arrest rate (age 10-17). While the rest of the nation enjoyed a decline in juvenile crime between 1992 and 1996, five states that employ prosecutorial waiver-Arkansas, Nebraska, Arizona, Virginia and New Hampshire-actually experienced an increase in their violent juvenile crime rates.²⁴

The Risks Youth Face in Adult Jails

The children who prosecutors are sending to adult court in Florida face greater threats to their life, limb and future when they enter Florida’s adult jail and prison systems. These well-documented risks affect both the youth who are convicted in adult court, and those (like Anthony Laster) who are merely being held in pre-trial

detention in jail, on crimes of which they may be exonerated.

One study has shown that youths are five times more likely to report being a victim of rape when they are held in an adult facility versus juvenile detention.²⁵ Youth in adult jails are also twice as likely to report being beaten by staff and 50% more likely to be attacked with a weapon. A Justice Department study done in 1981 showed that the suicide rate of juveniles in adult jails is 7.7 times higher than that of youth in juvenile detention centers.²⁶

The Will of the People?: Public Opinion and Prosecutorial Waiver

A survey published in the journal *Crime and Delinquency* found that a majority of Americans oppose changing federal law to allow for prosecutorial waiver of youth to adult court.²⁷ When asked, "Would you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that federal prosecutors should have total discretion to try juveniles as adults for all felonies?," 56% of a nationally representative sample of Americans disagreed or disagreed strongly with the idea (41% agreed, and 3% said they had no opinion). Nearly twice as many respondents were strongly opposed to the idea compared to those who strongly supported it (29% vs. 16%).²⁸

Conclusion

As the United States Congress and states around the country weigh various approaches to curbing juvenile crime, the "Florida Experiment" of giving prosecutors broad discretion to decide whether juveniles should be tried as adults has come under serious consideration.²⁹ On almost every measure examined in this report—statewide crime control, individual recidivism, racial equity and the youth's own perception of future offense behavior—the Florida system of prosecutorial discretion waiver was found wanting.

*"The transferred youth
reoffended almost twice
as fast as those who
were sent to juvenile
detention."*

Endnotes

- 1 Schiraldi, Vincent. Prosecutorial Zeal vs. America's kids. *The Christian Science Monitor*, March 22, 1999.
- 2 The 15 states or jurisdictions which employ Direct File (prosecutorial discretion waiver) include Arkansas, Colorado, Florida, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia. Griffin, P., Torbet, P., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: Analysis of State Transfer Provisions*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- 3 Butts, Jeffrey A. and Adele V. Harrell. "Delinquents or Criminals: Policy Options for Young Offenders." Washington, D.C.: The Urban Institute, 1998, p. 6.
- 4 "In our view, the system should be fundamentally altered so that, in appropriate circumstances, the prosecutor alone determines whether to prosecute the juvenile as an adult." Gregory, Kevin V. Deputy Assistant Attorney General, in Testimony before the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, March 10, 1999.
- 5 1999 Annual Report and Juvenile Justice Fact Book, Florida Juvenile Justice Accountability Board, February, 1999.
- 6 Bishop, Donna M. and Charles E. Frazier. "Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Discretion." *The Notre Dame Journal of Law, Ethics and Public Policy*, Vol. 5: p. 281-302, 1991.
- 7 Ibid.
- 8 Department of Juvenile Justice- Management Report, No #42. March 24, 1996
- 9 Inmate Population: Current Inmate Age. Agency Annual Report, Department of Corrections, 1998.
- 10 Bishop, Donna. M. and Charles E. Frazier. "Race Effects in Juvenile Justice Decision Making: Findings of a Statewide Analysis." *The Journal of Criminal Law and Criminology*, Vol. 86, 1996.
- 11 Bishop, et al., 1991.
- 12 Bishop, Donna M. and Charles E. Frazier, "The Consequences of Transfer." in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*. Chicago: University of Chicago Press [in press]
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- 14 Snyder, Howard N. and Melissa Sickmund. "Juvenile Offenders and Victims: Update on Violence." Washington, DC: Office of Juvenile Justice and Delinquency Prevention, 1998.
- 15 Bishop and Frazier, [in press]
- 16 Bishop, Donna M. et al. "The Transfer of Juveniles to Criminal Court: Does it make a difference?" *Crime & Delinquency*, Vol. 42, No. 2, April 1996.
- 17 Ibid.
- 18 Ibid.
- 19 Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce and Lawrence Winner. "The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term." *Crime and Delinquency*, Vol. 43, No. 4, October 1997.
- 20 Bishop and Frazier, Office of Juvenile Justice and Delinquency Prevention, 1998.
- 21 Ibid, and keynote address, National Association of Sentencing Advocates Conference, Miami, Florida, April 15, 1999.
- 22 Snyder, p. 22.
- 23 Ibid.
- 24 Kathleen Maguire and Ann L. Pastore, eds., *Sourcebook of Criminal Justice Statistics 1997*. U.S. Department of Justice, Bureau of Justice Statistics, 1997; (1996); (1995). U.S. Department of Justice, Bureau of Justice Statistics. Washington, D.C., USGPO, 1998 (1997); (1996).
- 25 Fagan, Jeffrey, Martin Forst and T. Scott Vivona. "Youth in Prisons and Training Schools: Perceptions and the Consequences of the Treatment Custody Dichotomy." *Juvenile and Family Court*, No. 2, 1989, p.10.
- 26 Flaherty, Michael G. "An Assessment of the National Incidences of Juvenile Suicides in Adult jails, lockups and juvenile detention centers." The University of Illinois, Urbana-Champaign, 1980.
- 27 Schiraldi, Vincent and Mark Soler. "The Will of the People: The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997." *Crime and Delinquency*, Vol. 44., No. 4, October, 1998.
- 28 Ibid.
- 29 For example, in March, 2000, Californians will be voting on the "Gang Violence and Juvenile Crime Prevention Act of 1998" initiative, which will give prosecutors discretion to try certain juveniles as adults at the age of 14.

MEMORANDUM

TO: Juvenile Justice Conferees' Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Liz Ryan (CDF)
Co-Chairs, Juvenile Justice Coalition

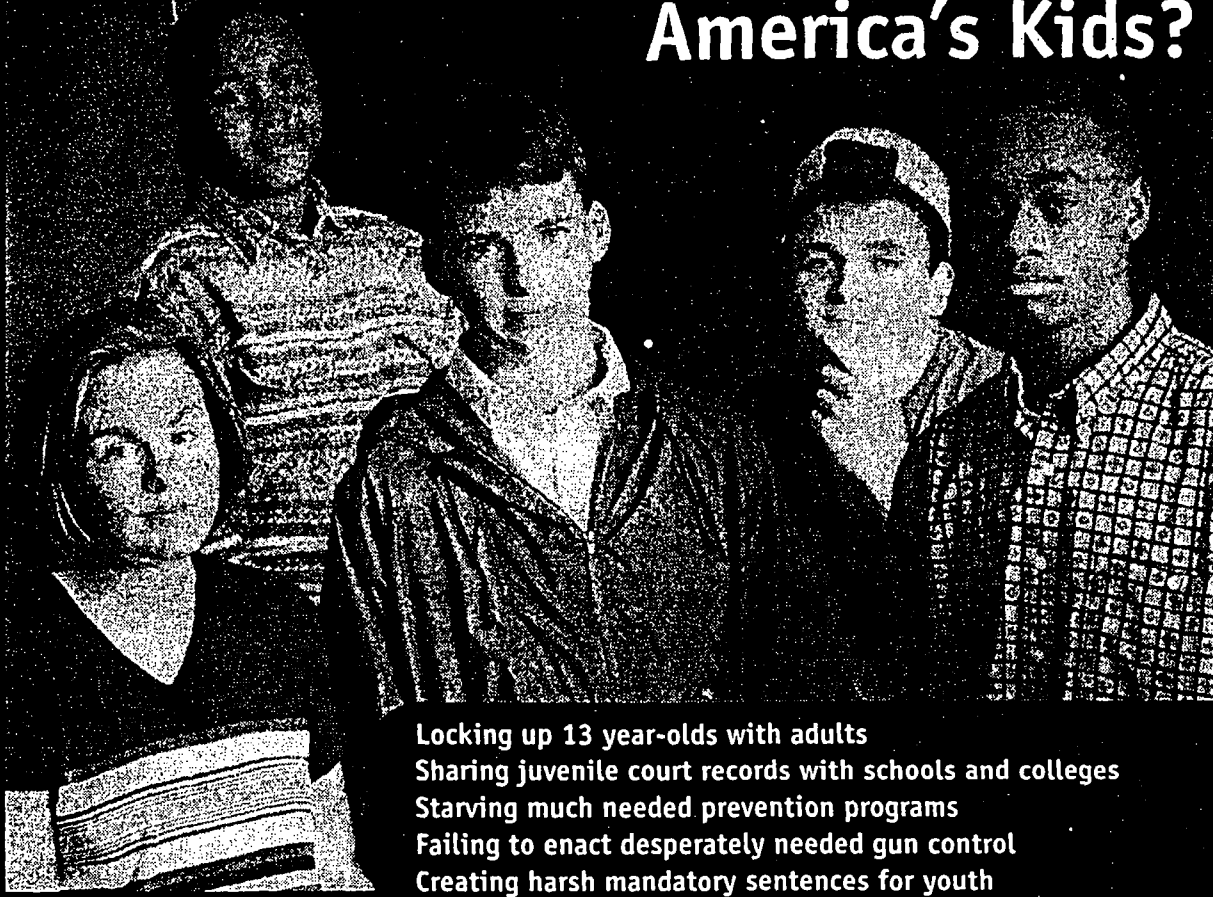
DATE: September 28, 1999

RE: Juvenile Justice legislation

As conferees consider juvenile justice legislation, we've provided you with the attached briefing materials, including a recently released study from the Justice Policy Institute on the impact of trying children as adults.

If you need additional information, please feel free to contact either of us. We can be reached by phone at: 202/637-0377 (Marc) or 202/662-3586 (Liz) or by email at: mschindler.ylc@erols.com or Lryan@childrensdefense.org.

Is Congress Giving Up on America's Kids?



Locking up 13 year-olds with adults
Sharing juvenile court records with schools and colleges
Starving much needed prevention programs
Failing to enact desperately needed gun control
Creating harsh mandatory sentences for youth

These and numerous other draconian provisions are currently contained in a juvenile crime bill that is about to be discussed by a House/Senate Conference Committee.

If included in the final bill, these provisions will cause more harm to kids who are already troubled, instead of holding them accountable and helping them to turn their lives around.

Call your Senators and Representatives at their local offices or in Washington at 202/224-3121, and tell them **not to give up on America's kids!**

- Fund prevention programs adequately
- Keep kids out of adult jails, and don't ruin their future prospects by publicizing their youthful indiscretions
- Make sure all youth are sentenced fairly, regardless of race or ethnicity
- Require common-sense gun safety measures like safety locks for all guns and background checks for purchasers.

Tell Congress not to give up on our kids!

A MESSAGE FROM:

Children's Aid Society of Pennsylvania
Children's Choice, Inc.
Children's Defense Fund
Children's Service, Inc.
Child Welfare League of America
Episcopal Community Services
Lutheran Children and Family Service

Philadelphia Society for Services to Children
Southern Home Services
Women's Association for Women's Alternatives, Inc.
Women's Christian Alliance
Youth Law Center
Youth Services, Inc.

Friday, September 17, 1999

THE PHILADELPHIA INQUIRER
COMMENTARY

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Tell Congress not to give up on our kids!

A MESSAGE FROM:

CWLA

Child Welfare League of America

Children's Defense Fund

YOUTH LAW CENTER

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Orrin G. Hatch
SR-131 Russell Senate Office Building
Washington, DC 20510-4402

Dear Senator Hatch:

We understand that the conference committee is presently working to develop a final version of the juvenile justice legislation.

Over one million children encounter the justice system each year. Well over 90 percent of these children have committed nonviolent offenses. In 1997, the U.S. Department of Justice reported that 2.8 million adolescents were victims of crime and another nine million witnessed serious violent crime.

Demand for larger police forces, more prisons, and harsher sentences often follow incidences of violent attacks and gun violence. As people of faith we are compelled to demonstrate alternatives.

Many of our constituents and congregations intervene on behalf of juveniles. They know that meting out mere punishment is not adequate. Their work demonstrates how important restorative and preventive efforts are in the lives of youth. Juvenile justice legislation will critically affect their work -- touching the lives of countless youth and their communities.

We would like to take this opportunity to bring several concerns to your attention.

We urge Congress to maintain, even strengthen, the core protections of the Juvenile Justice and Delinquency Prevention Act (JJDP), not weaken or eliminate its time-tested provisions. We suggest that a substantial level of juvenile justice funds be guaranteed for prevention efforts.

Approval of the attached gun control amendments must not be delayed. We are mindful that nearly 13 children are killed by guns in America every day. At a minimum, gun safety provisions as approved by the Senate should be included in the final juvenile justice legislation.

Letter to Juvenile Justice Legislation Conferees

In particular, we urge the adoption of language that:

- closes gun-show loopholes via mandatory background checks, requires child safety locks, and bans the import of high-capacity ammunition clips;
- maintains separation of juveniles from adult inmates;
- maintains a requirement to address disproportionate minority confinement;
- adds further prevention activities to the Juvenile Accountability Incentive Block Grant (JAIBG) programs and sets aside a minimum of 25% JAIBG funding for prevention purposes;
- urges prompt mental health intervention services for children with mental disabilities who bring guns to school; and
- includes screening, research, training, violence prevention and counseling programs regarding juvenile mental health issues.

We firmly oppose provisions that would:

- terminate consent decrees which have kept children out of adult jails and prohibited abusive practices;
- encourage the prosecution of children as young as 13 as adults through the federal system;
- give prosecutors unchecked discretion to prosecute children as adults without judicial review;
- impose arbitrary, mandatory sentencing on juveniles;
- restrict states' discretion in implementing graduated sanctions and require mandatory application of graduated sanctions as a condition of receiving federal funds;
- erode confidentiality protections of juvenile court proceedings and juvenile records;
- automatically cease educational services to students with mental disabilities who bring guns to school;
- sunset the Juvenile Justice and Delinquency Prevention Act; and
- eliminate The Office of Juvenile Justice And Delinquency Prevention.

From the Hebrew Bible we are reminded that God “executes justice for the orphan and the widow, and ...loves the strangers...” (Deuteronomy 10:18). God also calls us to do the same: “Give justice to the weak and the orphan; maintain the right of the lowly and the destitute” (Psalm 82:3). Surely a large number of the youth who encounter the juvenile justice system can be included in these concerns and deserve fairness and justice.

We appreciate your diligent efforts to assure that the final juvenile justice legislation protects children.

Sincerely,

American Ethical Union, Washington Ethical Action Office

Friends Committee on National Legislation (Quaker)

The Episcopal Church

The General Board of Church and Society of the United Methodist Church

Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America

Mennonite Central Committee U.S., Washington Office

National Council of the Churches of Christ in the USA

Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Henry J. Hyde
2110 Rayburn House Office Building
Washington, DC 20515-1306

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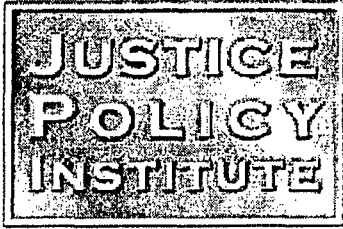
Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees



THE JUSTICE POLICY INSTITUTE
2208 Martin Luther King, Jr. Ave, S.E.
Washington, DC 20020
(202) 678-9282
Fax (202) 678-9321
<http://www.cjcj.org/jpi>

FOR IMMEDIATE RELEASE

**New Study finds "prosecutorial discretion waiver,"
which is currently under consideration by Congress,
disparately applied, ineffective at curbing crime**

**House-Senate Conference Committee Discusses Bill This Week Granting
Federal Prosecutors Discretion to Try Juveniles As Adults.**

Washington, DC: A new report profiling Florida's experiment with allowing prosecutors to decide whether juveniles should be tried in adult court ("prosecutorial discretion waiver") has failed to reduce crime and has been implemented in a racially disparate manner. Further, although touted as targeting the "worst of the worse", the survey shows that the vast majority of youth referred to adult court by prosecutors were charged with nonviolent offenses.

The report, by the DC-based Justice Policy Institute reviewed research compiled by academics at the University of Central Florida and Florida State University, Florida's Department of Juvenile Justice, the Urban Institute and the latest juvenile crime statistics from the Justice Department. "On every indicator for which we evaluated prosecutorial discretion waiver, from public safety, to targeting violent offenders, to racial equity, the practice was found sorely wanting," stated Jason Ziedenberg, policy analyst for the Justice Policy Institute and co-author of the report.

In Legislation which recently passed the House of Representatives (HR 1501, sponsored by Congressman Bill McCollum of Florida), federal prosecutors would be given non-reviewable discretion to try youths as young as 13 in adult court for violent and non-violent offenses. A ballot initiative which will go before California voters in March, 2000 (Proposition 6) would also grant prosecutors discretion to decide whether a juvenile should be tried in adult court. In both the federal and California systems, neutral judges are currently vested with the authority of deciding whether a juvenile should be tried as an adult upon motion from a prosecutor, a practice known as "judicial waiver."

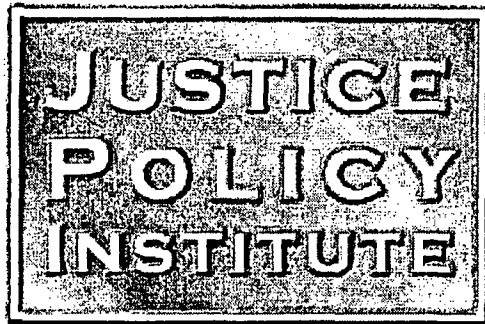
Florida pioneered prosecutorial discretion waiver in 1981 and is the state which uses the practice most frequently. In fact, in 1995, the study reports that Florida prosecutors by themselves sent nearly as many juveniles to adult court (7,000) as judges tried in the entire U.S. (9,700). Despite this fact, Florida had the second highest rate of violent juvenile crime in the U.S. in 1995, 48% higher than the national average. The report's major findings include:

- Youth sent to Florida's adult court system are a third more likely to be rearrested than youth with similar prior arrests and current charges who are retained in Florida's juvenile justice system.
- Youths transferred to the adult system in Florida get rearrested almost twice as quickly upon release as youth retained in the state's juvenile justice system.
- When they reoffended, youths transferred to the adult system in Florida committed serious crimes at twice the rate of youth retained in the juvenile justice system.
- In the jurisdictions studied, only 28% of youths transferred by Florida prosecutors to adult court were charged with violent offenses.
- African Americans were 2.3 times more likely than white youth to be transferred to adult court.

"Prosecutorial discretion waiver is not a policy innovation which Congressman McCollum should export from his home state," noted Vincent Schiraldi, the Institute's director. "Federal judges, most of whom are Republican-appointed former prosecutors, are perfectly able to decide which kids ought to be tried as adults."

////////////////////////////////////

A copy of the Institute's study, and case-studies of how prosecutorial discretion has been misused in Florida are available either by calling the Justice Policy Institute at (202) 678-9282 or from the Institute's web site at www.cjcj.org/jpi/prosecutor.html. The Justice Policy Institute is a policy development and research body which promotes effective and sensible approaches to America's justice system. JPI is a project of the non-profit Center on Juvenile and Criminal Justice.



<http://www.cjcj.org/jpi>

JUSTICE POLICY INSTITUTE
JULY 1999

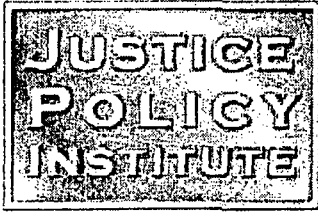
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The Florida Experiment:

An Analysis of the Impact
of Granting Prosecutors
Discretion to try Juveniles
as Adults

VINCENT SCHIRALDI AND
JASON ZIEDENBERG



The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to try Juveniles as Adults

<http://www.cjcj.org/jpi>

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JPI is a project of the Center
on Juvenile & Criminal Justice

BY VINCENT SCHIRALDI AND JASON ZIEDENBERG

*"Anthony Laster is the kind of kid who has never been a danger to anyone. A 15-year-old, eighth grader with an IQ of 58, Anthony is described by relatives as having the mind of a five-year-old. Late last year, a few days after his mother died, Anthony asked another boy in his class at a Florida middle school to give him lunch money, claiming he was hungry. When the boy refused, Anthony reached into his pocket and took \$2. That's when Anthony ran smack into Palm Beach County prosecutor Barry Kirscher's brand of compassionless conservatism. Rather than handling the case in the principal's office, where it belonged, Mr. Kirscher decided to prosecute Anthony as an adult for this, his first arrest. Anthony spent the next seven weeks—including his first Christmas since his mother died—in custody, much of it in an adult jail."*¹

Introduction

Anthony Laster was one of 4,660 youth who Florida prosecutors sent to adult court last year under the wide ranging powers they enjoy with the state's direct file provisions. Florida is one of 15 states that allow prosecutors—not a judge—to decide whether children arrested for crimes ranging from shoplifting to robbery should be dealt with in the juvenile justice or criminal justice system.² While 43 states have changed their laws to make it easier for judges to send children into the adult criminal system since 1993, Florida is leading the nation in using prosecutors to make the decision to try children as adults. In 1995 alone (Graph 1), Florida prosecutors sent 7,000 cases to adult court nearly matching the number of cases judges sent to the criminal justice system nationwide that year.³

**Juvenile Offenders generally follow
one of three paths to adult court**

Judicial Waiver: A juvenile court judge waives jurisdiction over the case after considering the merits of transfer for the individual youth.

Legislative Exclusion: A state legislature determines that an entire class of juvenile crimes should be sent to adult court automatically, usually serious and violent offenses.

Prosecutorial Discretion: A state or local prosecutor has the authority to file charges against some juveniles directly in adult court.

Source: The Urban Institute

A juvenile crime bill currently being considered by the U.S. Congress (House-Senate Conference Committee) would give U.S. Attorneys even greater powers than those enjoyed by prosecutors in Florida.

The change in federal law would remove judges from the process of deciding which justice system would serve young people, and transfer that power to the sole discretion of prosecutors. The Justice Department also appears to support giving prosecutors expanded powers to try youth as adults in federal court.⁴ Given the current legislative drive, it is worthwhile to examine the Florida experience to see what the future will hold for the nation.

Profile: Who are prosecutors sending to adult court in Florida?

I. Offense Category

When prosecutorial waiver was introduced in 1981, the percentage of delinquency cases transferred to adult court in Florida soared from 1.2% to nearly 9% by 1987.⁵ In fiscal year 1997-98, 6,425 of the 94,693 cases disposed of by judicial processing in Florida resulted in transfer to adult court. While these waiver provisions were originally designed to ensure that violent juvenile offenders were being detained, a 1991 study of two representative Florida counties showed that only 29% of the youths prosecutors waived to adult court were for violent crimes.⁶ More than half (55%) of the youths prosecutors

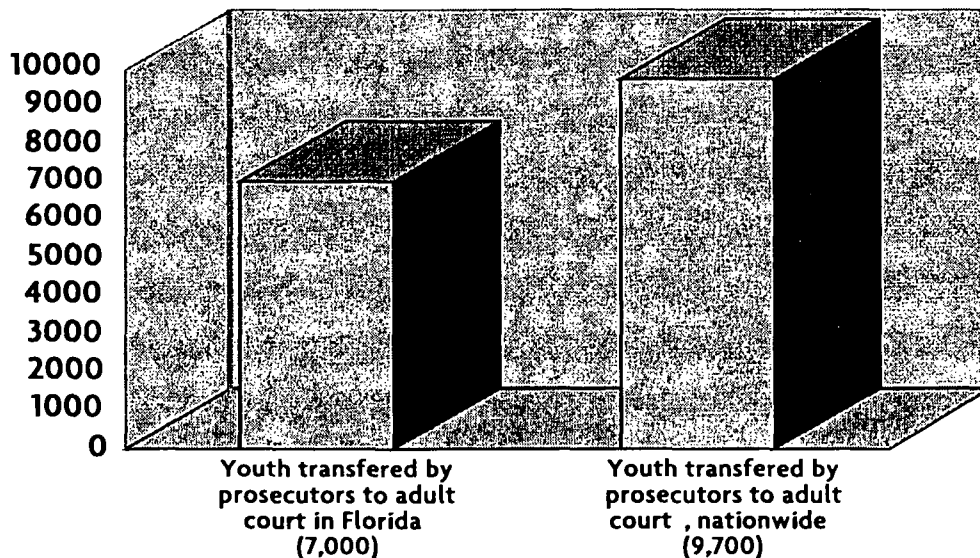
THE FLORIDA EXPERIMENT

sent to adult court were charged with property offenses that involved no violence, and fully 5% were tried as adults for misdemeanors (Graph II). Almost a quarter of the cases waived were first time, low level offenders.⁷

II. Disproportionate Minority Confinement

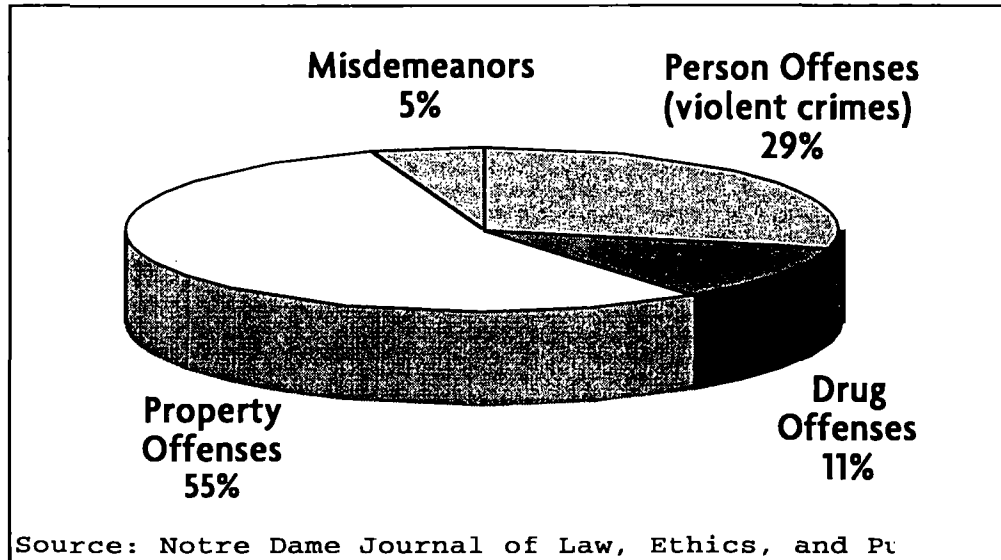
The most striking feature of Florida's transferred youth population profile is the extent to which minority youth are overrepresented in the ranks of the youth being referred to adult court. One study conducted by the Florida Department of Juvenile Justice found that black youths were 2.3 times more likely than white youth to be transferred in Florida.⁸ Even though non-whites account for 24% of the 10-17 age bracket in Florida, they currently represent 74% of those 10-17 held in the Florida prison system.⁹ "I think the way the system sets up programs shows some institutional bias," is the way one candid Florida prosecutor describes it.¹⁰

Graph 1: Florida Prosecutors Rival Judges in the rest of U.S. in Sending Youth to Adult Court



Source: The Urban Insti

Graph 2: Most Youth Transferred by Prosecutors in Florida Were Charged with Non-Violent Offenses



Policy Impact in Florida

I. Sentencing: Longer Terms for Youths in Adult Court?

While some have suggested that huge numbers of children are being held in adult facilities across the state, it is not clear that youth going to adult court via prosecutorial waiver are serving long sentences. A study published in the *Notre Dame Journal of Law, Ethics and Public Policy* found that, of the youth who were incarcerated after disposition, half received short sentences, some shorter than they would have received in the juvenile justice system. The majority (54%) of those sentenced to prison were released within three years.¹¹ A 1998 survey of the Florida transferred population shows that a majority of youth prosecutors sent to adult court for property, drug and weapons offenses received jail sentences or probation terms well within the range of what could have been prescribed to them in the juvenile court.¹² The same study showed that in 1995, 61% of the youth found guilty in adult court were incarcerated, but only 31% were prison terms.¹³

II. More Youths to Adult Jail and to Juvenile Detention

While it might be expected that prosecutorial waiver would reduce the number of youths being funneled into Florida's juvenile justice system, the opposite has been true. Between 1993 and 1998, the number of annual commitments to Florida's juvenile justice system increased by 85% despite its liberal use of waiver to adult court. Florida has the sixth highest incarceration rate for youth per 100,000 in the nation, and detains young people at a rate 25% greater than the national average.¹⁴ This happened during a time when the number of waiver cases was increasing, and the number of felony referrals to the juvenile justice system was decreasing. This is happening, despite the fact that youths waived to adult court are held before trial in adult jails, further reducing the numbers that would need to be held in juvenile detention. Rather than the happy prospect of devoting more resources in the juvenile justice system to fewer youths, the system has widened its "net of control" by committing youth for lower level offenses.¹⁵

Crime Control Impact

I. Recidivism: Adult Court Prosecution Increases Propensity for Crime

Quantitative: Studies and Data

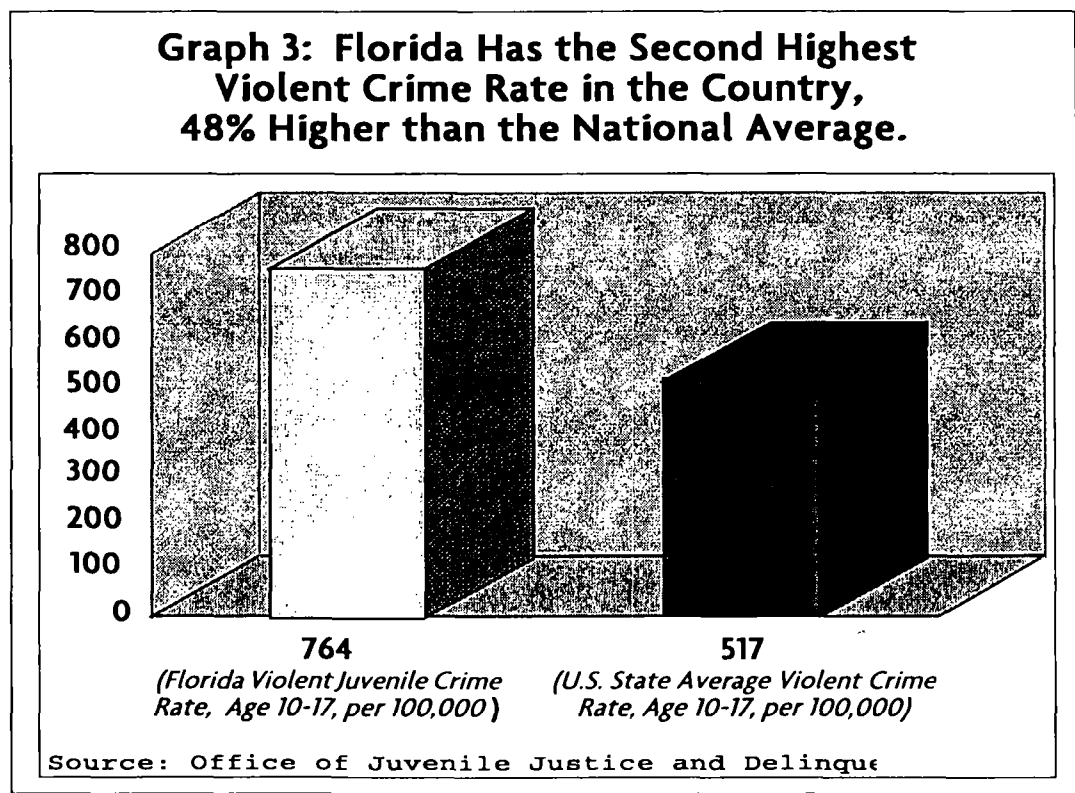
A number of studies have shown that youth sent to adult court generally recidivate at a higher rate than they do if they are sent to the juvenile justice system. A series of studies in Florida have analyzed what happens to youth referred to adult court—90% of whom are referred there directly by a prosecutor. A study published in the journal *Crime and Delinquency* showed that youth transferred to adult court in Florida were a third more likely to reoffend than those sent to the juvenile justice system.¹⁶ The transferred youths

"A 1991 study showed that more than half of the youths prosecutors sent to adult court were charged with property crimes—offenses that involved no violence, and fully 5% were tried as adults for misdemeanors."

reoffended almost twice as fast as those who were sent to juvenile detention.¹⁷ Of those who committed new crimes, the youth who had previously been tried as adults committed serious crimes at double the rate of those sent to juvenile court.¹⁸ While a 1997 study by the same authors showed similar rearrest rates for transferred and non-transferred “property offenders,” the youths sent to prison and jail were still re-arrested more quickly than their counterparts in the juvenile justice system, and for more serious offenses.¹⁹ (The very fact that there are “similarly paired youth”—youth convicted of property offenses and other comparable crime categories—in both jail and deep end juvenile detention denotes the arbitrariness of prosecutorial transfer in Florida.)

Qualitative: Interviews with Youths in “Deep-End” Juvenile Programs

The same authors recently conducted in-depth interviews with fifty youths sent to prison by Florida prosecutors, versus fifty who were sent to a state “maximum risk” deep end juvenile detention facility.²⁰ This study found that the youth themselves recognized the



THE FLORIDA EXPERIMENT

rehabilitative strengths of the juvenile justice system in contrast to the adult prison system.

Sixty percent of the sample sent to the deep end juvenile program said they expected would not reoffend, 30% said they were uncertain whether they would reoffend, while 3% said they would likely reoffend. Of those who expected not to reoffend, 90% said good juvenile justice programming and services were the reason for their rehabilitation. Only one of the youths in juvenile detention said they were learning new ways to commit crimes. Most reported at least one favorable contact with a staff person that helped them. As such, the juvenile justice system responses were overwhelmingly positive:

A: *"This place is all about rehabilitation and counseling.... This place here, we have people to listen to when you have something on your mind...and need to talk. They understand you and help you."*

B: *"They helped me know how to act. I never knew any of this stuff. That really helped me, cause I ain't had too good a life."¹*

By contrast, 40% of the transferred youth said they were learning new ways to commit crimes in prison. Most reported that the guards and staff in prisons were indifferent, hostile, and showed little care for them. Only 1/3 of the youths in prison said they expected not to reoffend. Not surprisingly, the youths sent to prison by prosecutors responded in an overwhelmingly despondent and negative way:

C: *"When I was in juvenile programs, they were telling me that I am somebody and that I can change my ways, and get back on the right tracks. In here, they tell me I am nobody and I never will be anybody."*

"40% of the transferred youth said they were learning new ways to commit crimes in prison. Only 1/3 of the youths in prison said they expected not to reoffend."

"Florida has the second highest overall crime rate of any state in the country, and is fully 32% higher than the national average."

D: *"In the juvenile systems, the staff and I were real close. They wanted to help me. They were hopeful for me here. They think I am nothing but a convict now."*

II. Crime Control Impact: Crime Rate

Despite having prosecutorial waiver on the books since 1981, Florida has the second highest overall violent crime rate of any state in the country, and that status has remained virtually unchanged throughout the 1990s.²² Florida's violent juvenile crime rate is fully 48% higher than the national average (Graph III).²³

Though Florida leads the nation in using prosecutorial waiver, the other 14 states which allow states attorneys discretion to send youth to criminal court do not fare much better. Of the 15 states that currently employ prosecutorial waiver provisions, five (Florida, Arizona, Massachusetts, the District of Columbia and Louisiana) are among the ten states with the highest violent crime arrest rate (age 10-17). While the rest of the nation enjoyed a decline in juvenile crime between 1992 and 1996, five states that employ prosecutorial waiver-Arkansas, Nebraska, Arizona, Virginia and New Hampshire-actually experienced an increase in their violent juvenile crime rates.²⁴

The Risks Youth Face in Adult Jails

The children who prosecutors are sending to adult court in Florida face greater threats to their life, limb and future when they enter Florida's adult jail and prison systems. These well-documented risks affect both the youth who are convicted in adult court, and those (like Anthony Laster) who are merely being held in pre-trial

detention in jail, on crimes of which they may be exonerated.

One study has shown that youths are five times more likely to report being a victim of rape when they are held in an adult facility versus juvenile detention.²⁵ Youth in adult jails are also twice as likely to report being beaten by staff and 50% more likely to be attacked with a weapon. A Justice Department study done in 1981 showed that the suicide rate of juveniles in adult jails is 7.7 times higher than that of youth in juvenile detention centers.²⁶

The Will of the People?: Public Opinion and Prosecutorial Waiver

A survey published in the journal *Crime and Delinquency* found that a majority of Americans oppose changing federal law to allow for prosecutorial waiver of youth to adult court.²⁷ When asked, "Would you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that federal prosecutors should have total discretion to try juveniles as adults for all felonies?," 56% of a nationally representative sample of Americans disagreed or disagreed strongly with the idea (41% agreed, and 3% said they had no opinion). Nearly twice as many respondents were strongly opposed to the idea compared to those who strongly supported it (29% vs. 16%).²⁸

Conclusion

As the United States Congress and states around the country weigh various approaches to curbing juvenile crime, the "Florida Experiment" of giving prosecutors broad discretion to decide whether juveniles should be tried as adults has come under serious consideration.²⁹ On almost every measure examined in this report—statewide crime control, individual recidivism, racial equity and the youth's own perception of future offense behavior—the Florida system of prosecutorial discretion waiver was found wanting.

*"The transferred youth
reoffended almost twice
as fast as those who
were sent to juvenile
detention."*

THE JUSTICE POLICY INSTITUTE

Endnotes

- 1 Schiraldi, Vincent. Prosecutorial Zeal vs. America's kids. *The Christian Science Monitor*, March 22, 1999.
- 2 The 15 states or jurisdictions which employ Direct File (prosecutorial discretion waiver) include Arkansas, Colorado, Florida, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia. Griffin, P., Torbet, P., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: Analysis of State Transfer Provisions*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- 3 Butts, Jeffrey A. and Adele V. Harrell. "Delinquents or Criminals: Policy Options for Young Offenders." Washington, D.C.: The Urban Institute, 1998, p. 6.
- 4 "In our view, the system should be fundamentally altered so that, in appropriate circumstances, the prosecutor alone determines whether to prosecute the juvenile as an adult." Gregory, Kevin V. Deputy Assistant Attorney General, in Testimony before the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives, March 10, 1999.
- 5 1999 Annual Report and Juvenile Justice Fact Book, Florida Juvenile Justice Accountability Board, February, 1999.
- 6 Bishop, Donna M. and Charles E. Frazier. "Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Discretion." *The Notre Dame Journal of Law, Ethics and Public Policy*, Vol. 5: p. 281-302, 1991.
- 7 Ibid.
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- 9 Inmate Population: Current Inmate Age. Agency Annual Report, Department of Corrections, 1998.
- 10 Bishop, Donna. M. and Charles E. Frazier. "Race Effects in Juvenile Justice Decision Making: Findings of a Statewide Analysis." *The Journal of Criminal Law and Criminology*, Vol. 86, 1996.
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- 12 Bishop, Donna M. and Charles E. Frazier, "The Consequences of Transfer." in *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court*. Chicago: University of Chicago Press [in press]
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- 15 Bishop and Frazier, [in press]
- 16 Bishop, Donna M. et al. "The Transfer of Juveniles to Criminal Court: Does it make a difference?" *Crime & Delinquency*, Vol. 42, No. 2, April 1996.
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- 18 Ibid.
- 19 Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce and Lawrence Winner. "The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term." *Crime and Delinquency*, Vol. 43, No. 4, October 1997.
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- 21 Ibid, and keynote address, National Association of Sentencing Advocates Conference, Miami, Florida, April 15, 1999.
- 22 Snyder, p. 22.
- 23 Ibid.
- 24 Kathleen Maguire and Ann L. Pastore, eds., *Sourcebook of Criminal Justice Statistics 1997*. U.S. Department of Justice, Bureau of Justice Statistics, 1997; (1996); (1995). U.S. Department of Justice, Bureau of Justice Statistics. Washington, D.C., USGPO, 1998 (1997); (1996).
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- 26 Flaherty, Michael G. "An Assessment of the National Incidences of Juvenile Suicides in Adult jails, lockups and juvenile detention centers." The University of Illinois, Urbana-Champaign, 1980.
- 27 Schiraldi, Vincent and Mark Soler. "The Will of the People: The Public's Opinion of the Violent and Repeat Juvenile Offender Act of 1997." *Crime and Delinquency*, Vol. 44., No. 4, October, 1998.
- 28 Ibid.
- 29 For example, in March, 2000, Californians will be voting on the "Gang Violence and Juvenile Crime Prevention Act of 1998" initiative, which will give prosecutors discretion to try certain juveniles as adults at the age of 14.

MEMORANDUM

TO: Juvenile Justice Conferees' Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Liz Ryan (CDF)
Co-Chairs, Juvenile Justice Coalition

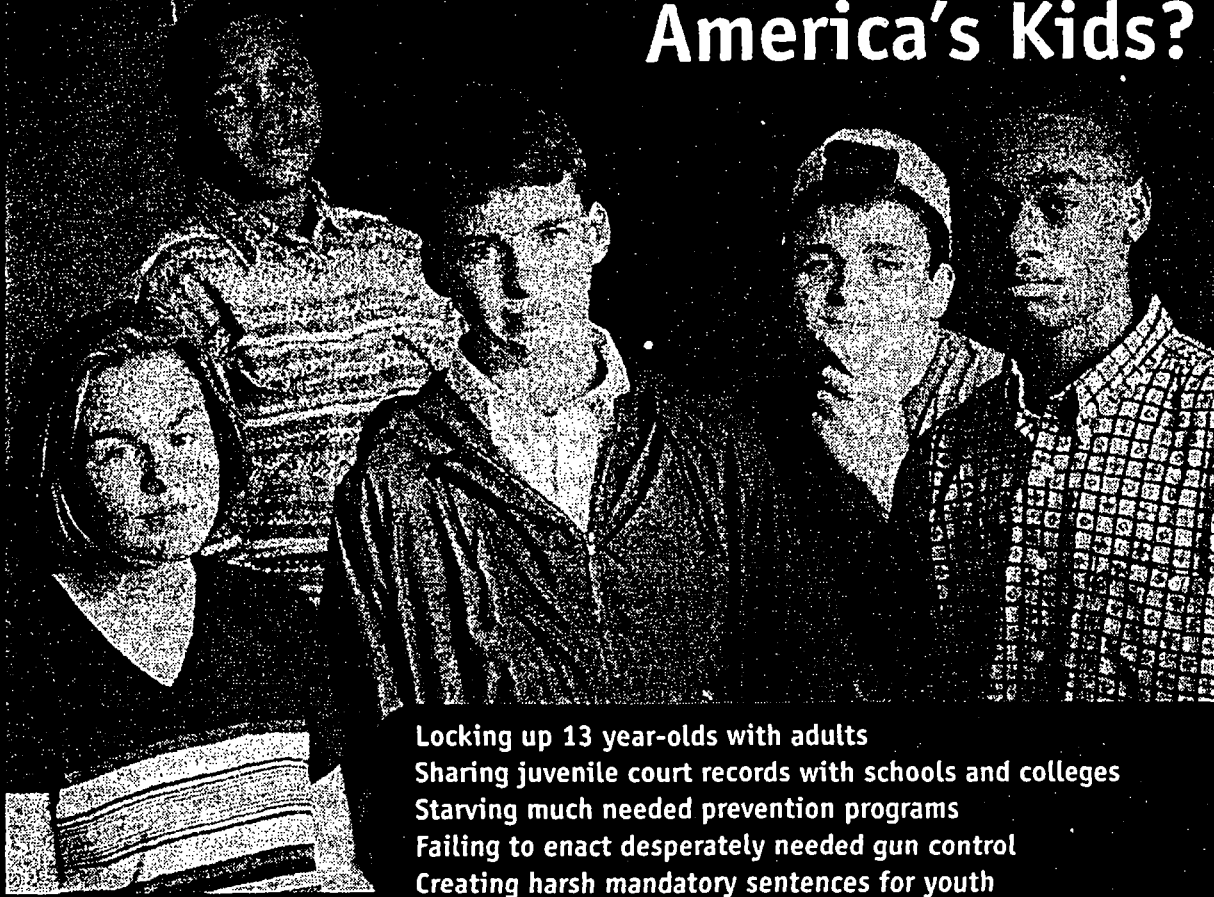
DATE: September 28, 1999

RE: Juvenile Justice legislation

As conferees consider juvenile justice legislation, we've provided you with the attached briefing materials, including a recently released study from the Justice Policy Institute on the impact of trying children as adults.

If you need additional information, please feel free to contact either of us. We can be reached by phone at: 202/637-0377 (Marc) or 202/662-3586 (Liz) or by email at: mschindler.ylc@erols.com or Lryan@childrensdefense.org.

Is Congress Giving Up on America's Kids?



Locking up 13 year-olds with adults
Sharing juvenile court records with schools and colleges
Starving much needed prevention programs
Failing to enact desperately needed gun control
Creating harsh mandatory sentences for youth

These and numerous other draconian provisions are currently contained in a juvenile crime bill that is about to be discussed by a House/Senate Conference Committee.

If included in the final bill, these provisions will cause more harm to kids who are already troubled, instead of holding them accountable and helping them to turn their lives around.

Call your Senators and Representatives at their local offices or in Washington at 202/224-3121, and tell them **not to give up on America's kids!**

- Fund prevention programs adequately
- Keep kids out of adult jails, and don't ruin their future prospects by publicizing their youthful indiscretions
- Make sure all youth are sentenced fairly, regardless of race or ethnicity
- Require common-sense gun safety measures like safety locks for all guns and background checks for purchasers.

Tell Congress not to give up on our kids!

A MESSAGE FROM:

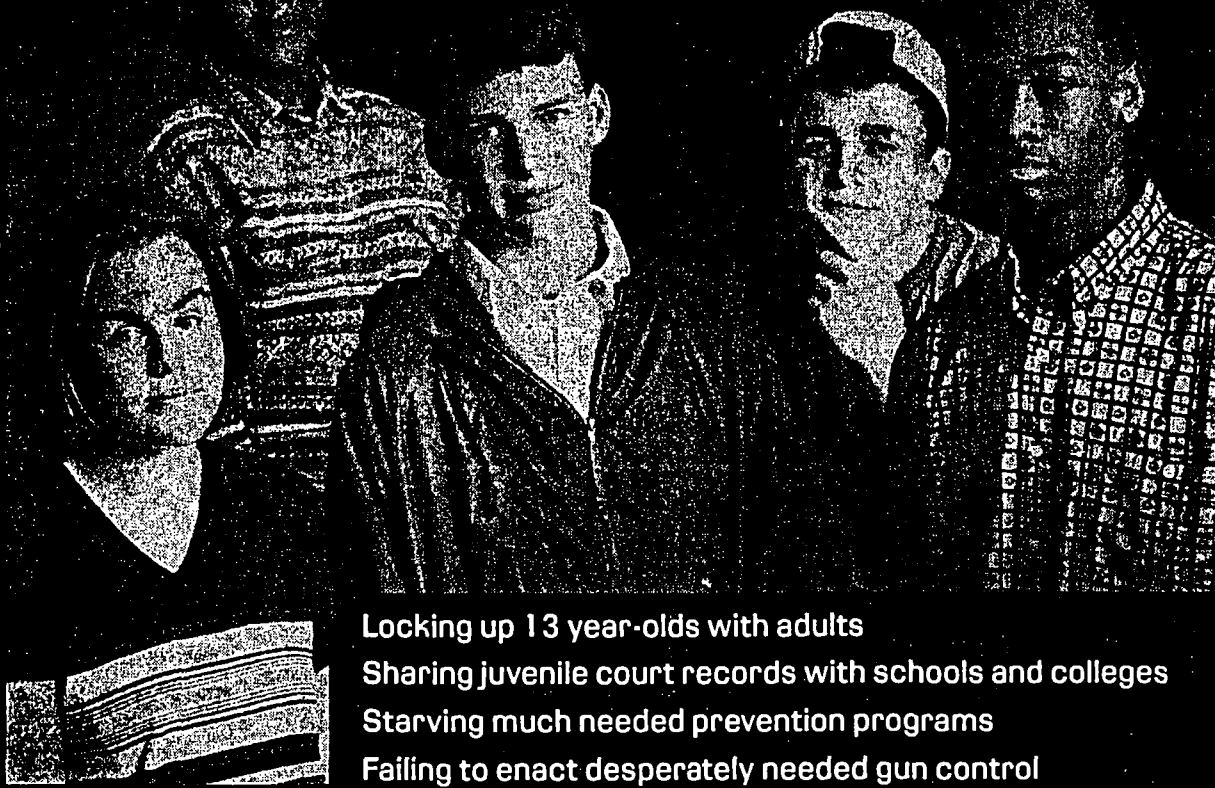
Children's Aid Society of Pennsylvania
Children's Choice, Inc.
Children's Defense Fund
Children's Service, Inc.
Child Welfare League of America
Episcopal Community Services
Lutheran Children and Family Service

Philadelphia Society for Services to Children
Southern Home Services
Women's Association for Women's Alternatives, Inc.
Women's Christian Alliance
Youth Law Center
Youth Services, Inc.

Friday, September 17, 1999

THE PHILADELPHIA INQUIRER
COMMENTARY

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Tell Congress not to give up on our kids!

A MESSAGE FROM:

CWLA

Child Welfare League of America

Children's Defense Fund

YOUTH LAW CENTER

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Orrin G. Hatch
SR-131 Russell Senate Office Building
Washington, DC 20510-4402

Dear Senator Hatch:

We understand that the conference committee is presently working to develop a final version of the juvenile justice legislation.

Over one million children encounter the justice system each year. Well over 90 percent of these children have committed nonviolent offenses. In 1997, the U.S. Department of Justice reported that 2.8 million adolescents were victims of crime and another nine million witnessed serious violent crime.

Demand for larger police forces, more prisons, and harsher sentences often follow incidences of violent attacks and gun violence. As people of faith we are compelled to demonstrate alternatives.

Many of our constituents and congregations intervene on behalf of juveniles. They know that meting out mere punishment is not adequate. Their work demonstrates how important restorative and preventive efforts are in the lives of youth. Juvenile justice legislation will critically affect their work -- touching the lives of countless youth and their communities.

We would like to take this opportunity to bring several concerns to your attention.

We urge Congress to maintain, even strengthen, the core protections of the Juvenile Justice and Delinquency Prevention Act (JJDP), not weaken or eliminate its time-tested provisions. We suggest that a substantial level of juvenile justice funds be guaranteed for prevention efforts.

Approval of the attached gun control amendments must not be delayed. We are mindful that nearly 13 children are killed by guns in America every day. At a minimum, gun safety provisions as approved by the Senate should be included in the final juvenile justice legislation.

Letter to Juvenile Justice Legislation Conferees

In particular, we urge the adoption of language that:

- closes gun-show loopholes via mandatory background checks, requires child safety locks, and bans the import of high-capacity ammunition clips;
- maintains separation of juveniles from adult inmates;
- maintains a requirement to address disproportionate minority confinement;
- adds further prevention activities to the Juvenile Accountability Incentive Block Grant (JAIBG) programs and sets aside a minimum of 25% JAIBG funding for prevention purposes;
- urges prompt mental health intervention services for children with mental disabilities who bring guns to school; and
- includes screening, research, training, violence prevention and counseling programs regarding juvenile mental health issues.

We firmly oppose provisions that would:

- terminate consent decrees which have kept children out of adult jails and prohibited abusive practices;
- encourage the prosecution of children as young as 13 as adults through the federal system;
- give prosecutors unchecked discretion to prosecute children as adults without judicial review;
- impose arbitrary, mandatory sentencing on juveniles;
- restrict states' discretion in implementing graduated sanctions and require mandatory application of graduated sanctions as a condition of receiving federal funds;
- erode confidentiality protections of juvenile court proceedings and juvenile records;
- automatically cease educational services to students with mental disabilities who bring guns to school;
- sunset the Juvenile Justice and Delinquency Prevention Act; and
- eliminate The Office of Juvenile Justice And Delinquency Prevention.

From the Hebrew Bible we are reminded that God “executes justice for the orphan and the widow, and ...loves the strangers...” (Deuteronomy 10:18). God also calls us to do the same: “Give justice to the weak and the orphan; maintain the right of the lowly and the destitute” (Psalm 82:3). Surely a large number of the youth who encounter the juvenile justice system can be included in these concerns and deserve fairness and justice.

We appreciate your diligent efforts to assure that the final juvenile justice legislation protects children.

Sincerely,

American Ethical Union, Washington Ethical Action Office

Friends Committee on National Legislation (Quaker)

The Episcopal Church

The General Board of Church and Society of the United Methodist Church

Lutheran Office for Governmental Affairs, Evangelical Lutheran Church in America

Mennonite Central Committee U.S., Washington Office

National Council of the Churches of Christ in the USA

Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees

Washington Interreligious Staff Community

Civil, Human and Voting Rights Task Force

110 Maryland Avenue NE, Suite 502 • Washington, DC 20002 • (202) 544-2350

September 23, 1999

The Honorable Henry J. Hyde
2110 Rayburn House Office Building
Washington, DC 20515-1306

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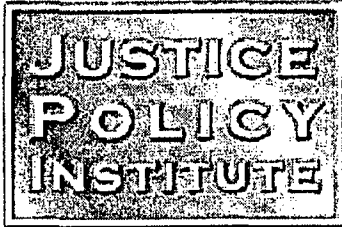
Presbyterian Church (USA), Washington Office

Religious Action Center of Reform Judaism

Unitarian Universalist Association

United Church of Christ, Office for Church in Society

cc: Juvenile Justice Legislation Conferees



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Washington, DC 20020
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Fax (202) 678-9321
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FOR IMMEDIATE RELEASE

**New Study finds "prosecutorial discretion waiver,"
which is currently under consideration by Congress,
disparately applied, ineffective at curbing crime**

**House-Senate Conference Committee Discusses Bill This Week Granting
Federal Prosecutors Discretion to Try Juveniles As Adults.**

Washington, DC: A new report profiling Florida's experiment with allowing prosecutors to decide whether juveniles should be tried in adult court ("prosecutorial discretion waiver") has failed to reduce crime and has been implemented in a racially disparate manner. Further, although touted as targeting the "worst of the worse", the survey shows that the vast majority of youth referred to adult court by prosecutors were charged with nonviolent offenses.

The report, by the DC-based Justice Policy Institute reviewed research compiled by academics at the University of Central Florida and Florida State University, Florida's Department of Juvenile Justice, the Urban Institute and the latest juvenile crime statistics from the Justice Department. "On every indicator for which we evaluated prosecutorial discretion waiver, from public safety, to targeting violent offenders, to racial equity, the practice was found sorely wanting," stated Jason Ziedenberg, policy analyst for the Justice Policy Institute and co-author of the report.

In Legislation which recently passed the House of Representatives (HR 1501, sponsored by Congressman Bill McCollum of Florida), federal prosecutors would be given non-reviewable discretion to try youths as young as 13 in adult court for violent and non-violent offenses. A ballot initiative which will go before California voters in March, 2000 (Proposition 6) would also grant prosecutors discretion to decide whether a juvenile should be tried in adult court. In both the federal and California systems, neutral judges are currently vested with the authority of deciding whether a juvenile should be tried as an adult upon motion from a prosecutor, a practice known as "judicial waiver."

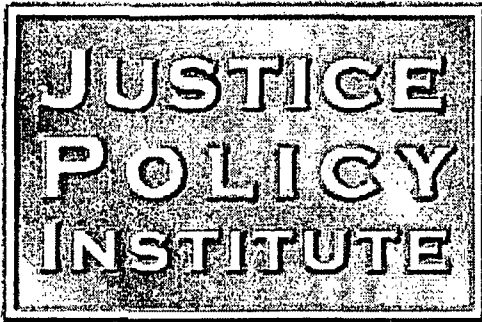
Florida pioneered prosecutorial discretion waiver in 1981 and is the state which uses the practice most frequently. In fact, in 1995, the study reports that Florida prosecutors by themselves sent nearly as many juveniles to adult court (7,000) as judges tried in the entire U.S. (9,700). Despite this fact, Florida had the second highest rate of violent juvenile crime in the U.S. in 1995, 48% higher than the national average. The report's major findings include:

- Youth sent to Florida's adult court system are a third more likely to be rearrested than youth with similar prior arrests and current charges who are retained in Florida's juvenile justice system.
- Youths transferred to the adult system in Florida get rearrested almost twice as quickly upon release as youth retained in the state's juvenile justice system.
- When they reoffended, youths transferred to the adult system in Florida committed serious crimes at twice the rate of youth retained in the juvenile justice system.
- In the jurisdictions studied, only 28% of youths transferred by Florida prosecutors to adult court were charged with violent offenses.
- African Americans were 2.3 times more likely than white youth to be transferred to adult court.

"Prosecutorial discretion waiver is not a policy innovation which Congressman McCollum should export from his home state," noted Vincent Schiraldi, the Institute's director. "Federal judges, most of whom are Republican-appointed former prosecutors, are perfectly able to decide which kids ought to be tried as adults."

////////////////////////////////////

A copy of the Institute's study, and case-studies of how prosecutorial discretion has been misused in Florida are available either by calling the Justice Policy Institute at (202) 678-9282 or from the Institute's web site at www.cjcj.org/jpi/prosecutor.html. The Justice Policy Institute is a policy development and research body which promotes effective and sensible approaches to America's justice system. JPI is a project of the non-profit Center on Juvenile and Criminal Justice.



<http://www.cjcj.org/jpi>

JUSTICE POLICY INSTITUTE
JULY 1999

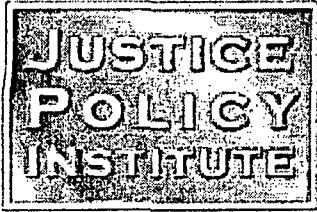
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WEST COAST:
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The Florida Experiment:

An Analysis of the Impact
of Granting Prosecutors
Discretion to try Juveniles
as Adults

VINCENT SCHIRALDI AND
JASON ZIEDENBERG



The Florida Experiment: An Analysis of the Impact of Granting Prosecutors Discretion to try Juveniles as Adults

<http://www.cjcj.org/jpi>

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JPI is a project of the Center
on Juvenile & Criminal Justice

BY VINCENT SCHIRALDI AND JASON ZIEDENBERG

*"Anthony Laster is the kind of kid who has never been a danger to anyone. A 15-year-old, eighth grader with an IQ of 58, Anthony is described by relatives as having the mind of a five-year-old. Late last year, a few days after his mother died, Anthony asked another boy in his class at a Florida middle school to give him lunch money, claiming he was hungry. When the boy refused, Anthony reached into his pocket and took \$2. That's when Anthony ran smack into Palm Beach County prosecutor Barry Kirscher's brand of compassionless conservatism. Rather than handling the case in the principal's office, where it belonged, Mr. Kirscher decided to prosecute Anthony as an adult for this, his first arrest. Anthony spent the next seven weeks—including his first Christmas since his mother died—in custody, much of it in an adult jail."*¹

Introduction

Anthony Laster was one of 4,660 youth who Florida prosecutors sent to adult court last year under the wide ranging powers they enjoy with the state's direct file provisions. Florida is one of 15 states that allow prosecutors—not a judge—to decide whether children arrested for crimes ranging from shoplifting to robbery should be dealt with in the juvenile justice or criminal justice system.² While 43 states have changed their laws to make it easier for judges to send children into the adult criminal system since 1993, Florida is leading the nation in using prosecutors to make the decision to try children as adults. In 1995 alone (Graph I), Florida prosecutors sent 7,000 cases to adult court nearly matching the number of cases judges sent to the criminal justice system nationwide that year.³

**Juvenile Offenders generally follow
one of three paths to adult court**

Judicial Waiver: A juvenile court judge waives jurisdiction over the case after considering the merits of transfer for the individual youth.

Legislative Exclusion: A state legislature determines that an entire class of juvenile crimes should be sent to adult court automatically, usually serious and violent offenses.

Prosecutorial Discretion: A state or local prosecutor has the authority to file charges against some juveniles directly in adult court.

Source: The Urban Institute

A juvenile crime bill currently being considered by the U.S. Congress (House-Senate Conference Committee) would give U.S. Attorneys even greater powers than those enjoyed by prosecutors in Florida.

The change in federal law would remove judges from the process of deciding which justice system would serve young people, and transfer that power to the sole discretion of prosecutors. The Justice Department also appears to support giving prosecutors expanded powers to try youth as adults in federal court.⁴ Given the current legislative drive, it is worthwhile to examine the Florida experience to see what the future will hold for the nation.

Profile: Who are prosecutors sending to adult court in Florida?

I. Offense Category

When prosecutorial waiver was introduced in 1981, the percentage of delinquency cases transferred to adult court in Florida soared from 1.2% to nearly 9% by 1987.⁵ In fiscal year 1997-98, 6,425 of the 94,693 cases disposed of by judicial processing in Florida resulted in transfer to adult court. While these waiver provisions were originally designed to ensure that violent juvenile offenders were being detained, a 1991 study of two representative Florida counties showed that only 29% of the youths prosecutors waived to adult court were for violent crimes.⁶ More than half (55%) of the youths prosecutors

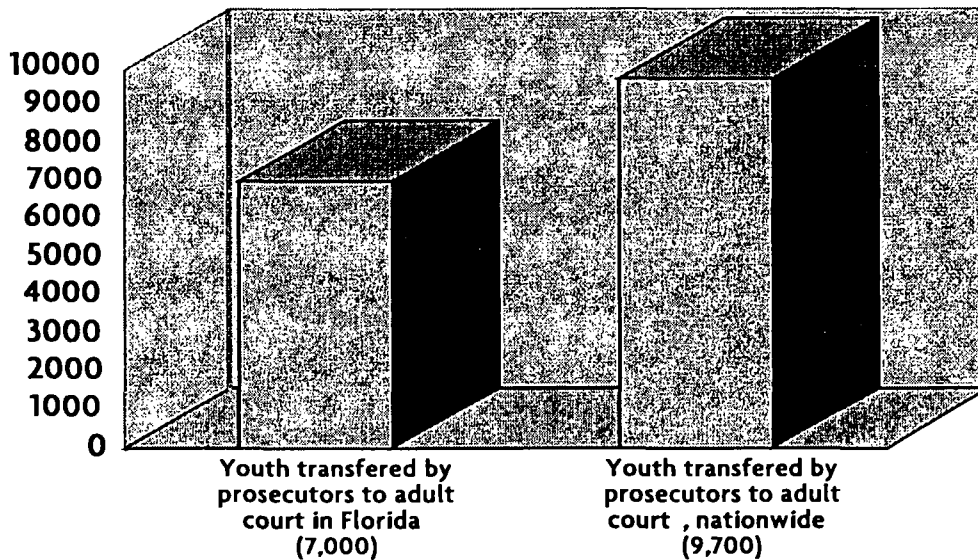
THE FLORIDA EXPERIMENT

sent to adult court were charged with property offenses that involved no violence, and fully 5% were tried as adults for misdemeanors (Graph II). Almost a quarter of the cases waived were first time, low level offenders.⁷

II. Disproportionate Minority Confinement

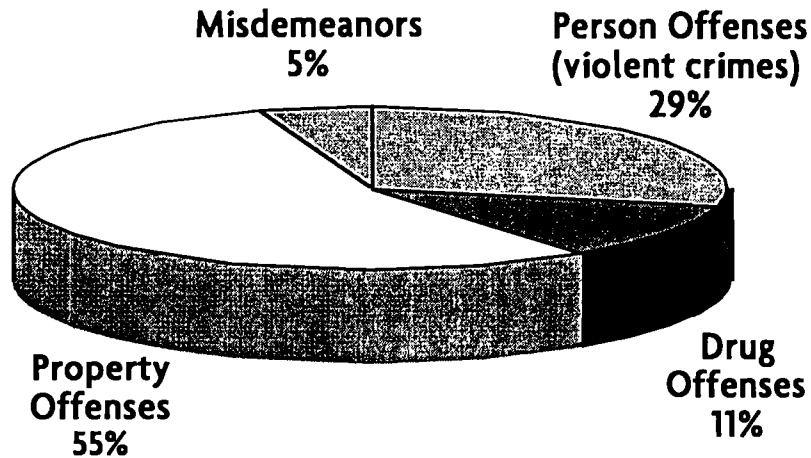
The most striking feature of Florida's transferred youth population profile is the extent to which minority youth are overrepresented in the ranks of the youth being referred to adult court. One study conducted by the Florida Department of Juvenile Justice found that black youths were 2.3 times more likely than white youth to be transferred in Florida.⁸ Even though non-whites account for 24% of the 10-17 age bracket in Florida, they currently represent 74% of those 10-17 held in the Florida prison system.⁹ "I think the way the system sets up programs shows some institutional bias," is the way one candid Florida prosecutor describes it.¹⁰

Graph 1: Florida Prosecutors Rival Judges in the rest of U.S. in Sending Youth to Adult Court



Source: The Urban Insti

Graph 2: Most Youth Transferred by Prosecutors in Florida Were Charged with Non-Violent Offenses



Source: Notre Dame Journal of Law, Ethics, and Public Policy

Policy Impact in Florida

I. Sentencing: Longer Terms for Youths in Adult Court?

While some have suggested that huge numbers of children are being held in adult facilities across the state, it is not clear that youth going to adult court via prosecutorial waiver are serving long sentences. A study published in the *Notre Dame Journal of Law, Ethics and Public Policy* found that, of the youth who were incarcerated after disposition, half received short sentences, some shorter than they would have received in the juvenile justice system. The majority (54%) of those sentenced to prison were released within three years.¹¹ A 1998 survey of the Florida transferred population shows that a majority of youth prosecutors sent to adult court for property, drug and weapons offenses received jail sentences or probation terms well within the range of what could have been prescribed to them in the juvenile court.¹² The same study showed that in 1995, 61% of the youth found guilty in adult court were incarcerated, but only 31% were prison terms.¹³

II. More Youths to Adult Jail and to Juvenile Detention

While it might be expected that prosecutorial waiver would reduce the number of youths being funneled into Florida's juvenile justice system, the opposite has been true. Between 1993 and 1998, the number of annual commitments to Florida's juvenile justice system increased by 85% despite its liberal use of waiver to adult court. Florida has the sixth highest incarceration rate for youth per 100,000 in the nation, and detains young people at a rate 25% greater than the national average.¹⁴ This happened during a time when the number of waiver cases was increasing, and the number of felony referrals to the juvenile justice system was decreasing. This is happening, despite the fact that youths waived to adult court are held before trial in adult jails, further reducing the numbers that would need to be held in juvenile detention. Rather than the happy prospect of devoting more resources in the juvenile justice system to fewer youths, the system has widened its "net of control" by committing youth for lower level offenses.¹⁵

Crime Control Impact

I. Recidivism: Adult Court Prosecution Increases Propensity for Crime

Quantitative: Studies and Data

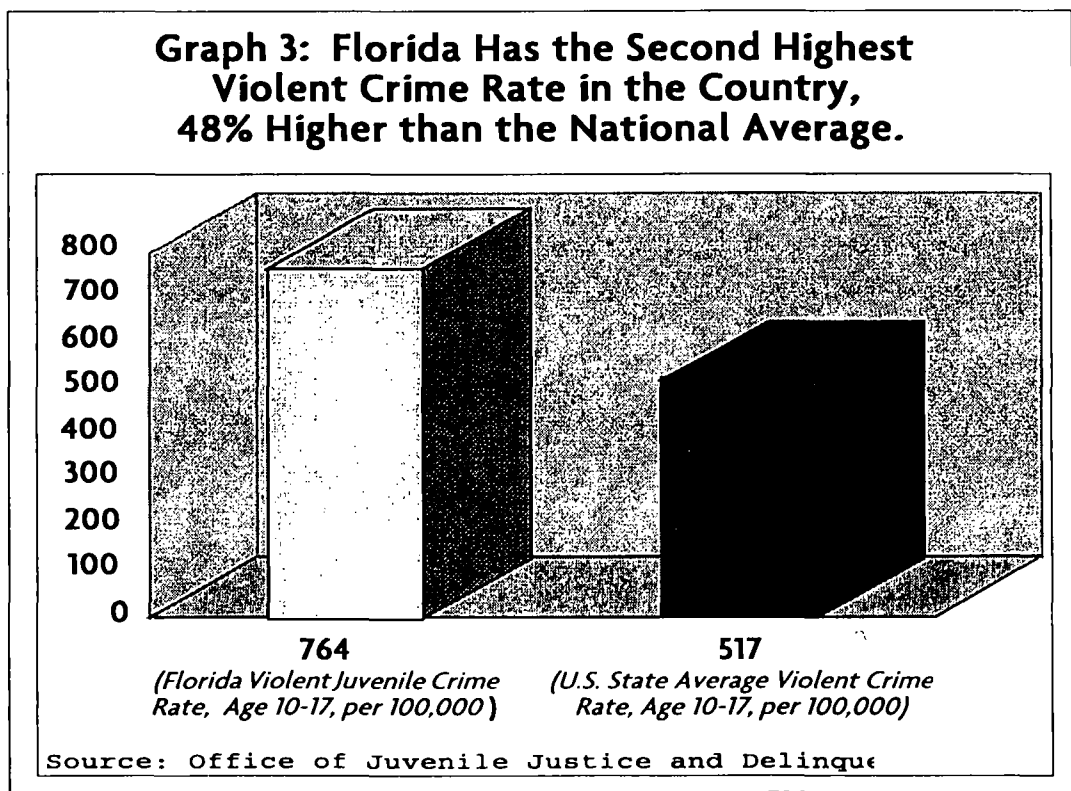
A number of studies have shown that youth sent to adult court generally recidivate at a higher rate than they do if they are sent to the juvenile justice system. A series of studies in Florida have analyzed what happens to youth referred to adult court—90% of whom are referred there directly by a prosecutor. A study published in the journal *Crime and Delinquency* showed that youth transferred to adult court in Florida were a third more likely to reoffend than those sent to the juvenile justice system.¹⁶ The transferred youths

"A 1991 study showed that more than half of the youths prosecutors sent to adult court were charged with property crimes—offenses that involved no violence, and fully 5% were tried as adults for misdemeanors."

reoffended almost twice as fast as those who were sent to juvenile detention.¹⁷ Of those who committed new crimes, the youth who had previously been tried as adults committed serious crimes at double the rate of those sent to juvenile court.¹⁸ While a 1997 study by the same authors showed similar rearrest rates for transferred and non-transferred “property offenders,” the youths sent to prison and jail were still re-arrested more quickly than their counterparts in the juvenile justice system, and for more serious offenses.¹⁹ (The very fact that there are “similarly paired youth”—youth convicted of property offenses and other comparable crime categories—in both jail and deep end juvenile detention denotes the arbitrariness of prosecutorial transfer in Florida.)

Qualitative: Interviews with Youths in “Deep-End” Juvenile Programs

The same authors recently conducted in-depth interviews with fifty youths sent to prison by Florida prosecutors, versus fifty who were sent to a state “maximum risk” deep end juvenile detention facility.²⁰ This study found that the youth themselves recognized the



THE FLORIDA EXPERIMENT

rehabilitative strengths of the juvenile justice system in contrast to the adult prison system.

Sixty percent of the sample sent to the deep end juvenile program said they expected would not reoffend, 30% said they were uncertain whether they would reoffend, while 3% said they would likely reoffend. Of those who expected not to reoffend, 90% said good juvenile justice programming and services were the reason for their rehabilitation. Only one of the youths in juvenile detention said they were learning new ways to commit crimes. Most reported at least one favorable contact with a staff person that helped them. As such, the juvenile justice system responses were overwhelmingly positive:

A: *"This place is all about rehabilitation and counseling.... This place here, we have people to listen to when you have something on your mind...and need to talk. They understand you and help you."*

B: *"They helped me know how to act. I never knew any of this stuff. That really helped me, cause I ain't had too good a life."²¹*

By contrast, 40% of the transferred youth said they were learning new ways to commit crimes in prison. Most reported that the guards and staff in prisons were indifferent, hostile, and showed little care for them. Only 1/3 of the youths in prison said they expected not to reoffend. Not surprisingly, the youths sent to prison by prosecutors responded in an overwhelmingly despondent and negative way:

C: *"When I was in juvenile programs, they were telling me that I am somebody and that I can change my ways, and get back on the right tracks. In here, they tell me I am nobody and I never will be anybody."*

"40% of the transferred youth said they were learning new ways to commit crimes in prison. Only 1/3 of the youths in prison said they expected not to reoffend."

“Florida has the second highest overall crime rate of any state in the country, and is fully 32% higher than the national average.”

D: *“In the juvenile systems, the staff and I were real close. They wanted to help me. They were hopeful for me here. They think I am nothing but a convict now.”*

II. Crime Control Impact: Crime Rate

Despite having prosecutorial waiver on the books since 1981, Florida has the second highest overall violent crime rate of any state in the country, and that status has remained virtually unchanged throughout the 1990s.²² Florida’s violent juvenile crime rate is fully 48% higher than the national average (Graph III).²³

Though Florida leads the nation in using prosecutorial waiver, the other 14 states which allow states attorneys discretion to send youth to criminal court do not fare much better. Of the 15 states that currently employ prosecutorial waiver provisions, five (Florida, Arizona, Massachusetts, the District of Columbia and Louisiana) are among the ten states with the highest violent crime arrest rate (age 10-17). While the rest of the nation enjoyed a decline in juvenile crime between 1992 and 1996, five states that employ prosecutorial waiver-Arkansas, Nebraska, Arizona, Virginia and New Hampshire-actually experienced an increase in their violent juvenile crime rates.²⁴

The Risks Youth Face in Adult Jails

The children who prosecutors are sending to adult court in Florida face greater threats to their life, limb and future when they enter Florida’s adult jail and prison systems. These well-documented risks affect both the youth who are convicted in adult court, and those (like Anthony Laster) who are merely being held in pre-trial

detention in jail, on crimes of which they may be exonerated.

One study has shown that youths are five times more likely to report being a victim of rape when they are held in an adult facility versus juvenile detention.²⁵ Youth in adult jails are also twice as likely to report being beaten by staff and 50% more likely to be attacked with a weapon. A Justice Department study done in 1981 showed that the suicide rate of juveniles in adult jails is 7.7 times higher than that of youth in juvenile detention centers.²⁶

The Will of the People?: Public Opinion and Prosecutorial Waiver

A survey published in the journal *Crime and Delinquency* found that a majority of Americans oppose changing federal law to allow for prosecutorial waiver of youth to adult court.²⁷ When asked, "Would you agree strongly, agree somewhat, disagree somewhat, or disagree strongly that federal prosecutors should have total discretion to try juveniles as adults for all felonies?," 56% of a nationally representative sample of Americans disagreed or disagreed strongly with the idea (41% agreed, and 3% said they had no opinion). Nearly twice as many respondents were strongly opposed to the idea compared to those who strongly supported it (29% vs. 16%).²⁸

Conclusion

As the United States Congress and states around the country weigh various approaches to curbing juvenile crime, the "Florida Experiment" of giving prosecutors broad discretion to decide whether juveniles should be tried as adults has come under serious consideration.²⁹ On almost every measure examined in this report—statewide crime control, individual recidivism, racial equity and the youth's own perception of future offense behavior—the Florida system of prosecutorial discretion waiver was found wanting.

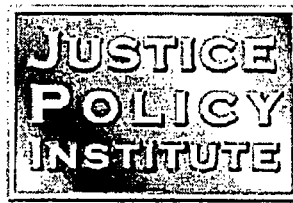
"The transferred youth reoffended almost twice as fast as those who were sent to juvenile detention."

Endnotes

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- 2 The 15 states or jurisdictions which employ Direct File (prosecutorial discretion waiver) include Arkansas, Colorado, Florida, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia. Griffin, P., Torbet, P., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: Analysis of State Transfer Provisions*. Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
- 3 Butts, Jeffrey A. and Adele V. Harrell. "Delinquents or Criminals: Policy Options for Young Offenders." Washington, D.C.: The Urban Institute, 1998, p. 6.
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- 19 Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce and Lawrence Winner. "The Transfer of Juveniles to Criminal Court: Reexamining Recidivism Over the Long Term." *Crime and Delinquency*, Vol. 43, No. 4, October 1997.
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- 29 For example, in March, 2000, Californians will be voting on the "Gang Violence and Juvenile Crime Prevention Act of 1998" initiative, which will give prosecutors discretion to try certain juveniles as adults at the age of 14.



Shattering "Broken Windows": An Analysis of San Francisco's Alternative Crime Policies

By Khaled Taqi-Eddin and Dan Macallair

Introduction

In March of 1982, conservative theorists James Q. Wilson and George L. Kelling published an article in the Atlantic Monthly introducing a new crime fighting theory known as "broken windows." The theory states:

if the first broken window in a building is not repaired, then people who like breaking windows will assume that no one cares about the building and more windows will be broken. Soon the building will have no windows....

The theory endorsed the belief that crime was the result of lax police efforts and that stricter law enforcement policy is the primary ingredient to promoting safer communities. Wilson and Kelling theorized that if rude remarks by loitering youth were left unchallenged, they will be under the impression that no one cares and their behavior will likely escalate to more serious crimes. As crime became a major political issue during the 1980's and 90's, many politicians quickly echoed the commonsense nature of the "broken windows" theory.

Nowhere has "broken windows" become more prominent than in New York City. Upon his election in 1994, Mayor Rudolph Giuliani instituted sweeping changes in his police department adopting a zero tolerance approach stressed by "broken windows." Giuliani ordered his police to enforce even the lowest level offenses including jaywalking, vagrancy and public intoxication. Coinciding with these policies was a dramatic drop in overall crime, particularly serious crime. These declining crime rates catapulted Mayor Giuliani into the national spotlight as his policies seemed to confirm the assumptions of conservative commentators and law enforcement advocates.

During the time that New York City was being heralded as a national model, similar crime rate declines were occurring in other cities around the country. These equally dramatic crime rate decreases occurred despite the absence of "broken windows" policies. The most notable antithesis to New York City is San Francisco. In recent years, San Francisco adopted less strident law enforcement policies that reduced arrests, prosecutions and incarceration rates. Long derided by conservatives for its alternative crime policies, San Francisco registered reductions in crime that exceed or equal comparable cities and jurisdictions - including New York.

The study is the first analysis of San Francisco's crime rates in relation to more traditional or conservative jurisdictions that are typically cited as national models. San Francisco is also compared to

other comparable California jurisdictions.

Methodology

This analysis is based on data gathered from the Federal Bureau of Investigation, the United States Census Bureau, California Criminal Justice Statistics Center, California Youth Authority and California Department of Corrections Data Analysis Unit. To measure changes in crime by city and county, Part I serious offenses reported to police are analyzed. Ten national comparison cities were chosen based on their designation by the United States Department of Justice as models of effective crime policy. These cities are Boston, Charlotte, Chicago, Dallas, Denver, Jacksonville, New Orleans, New York City, Phoenix, and Washington, DC. In addition, San Francisco was also compared to the three largest California cities - Los Angeles, San Diego and San Jose and to the eight largest California counties.

The National Comparison

Crime has been a problem for politicians at the national, state, and local levels. Politicians who have made the most use out of the crime issue have been "law and order" politicians who embrace a conservative approach (Conklin, 1992). Conservative approaches (i.e. "broken windows") emphasize deterrence through arrests, incapacitation through imprisonment, and just desserts through harsh sentencing, and rely on the criminal justice system to mete out certain, severe, prompt, and just penalties (Conklin, 1992). The "broken windows" approach stresses increasing the number of officers on the streets and arresting and prosecuting all crimes. Between 1990 and 1996, New York City increased its number of police officers by 7,000 and police have been directed to crack down on public drinking, graffiti, vandalism, and other public disorders (Council on Crime in America, 1996). While there is no evidence supporting the claims that the number of officers and arrests per capita affects the crime rate, public perception seems to accept this premise. San Francisco on the other hand utilized an alternative approach to crime that stresses alternative sentences and community involvement. Conservative critics like Guiliani have labeled this approach as "soft on crime" and continuously claim that they do not work.

Despite popular assumptions, San Francisco experienced a larger decline in reported crime than most comparable national cities while enforcing these alternative policies. As Table 1 illustrates, San Francisco's decline in Part I offenses exceeded the average of the 10 comparison cities in almost all categories and time periods. Violent crime rates exceeded the average of the ten national comparison cities chosen over the three time periods. In fact, San Francisco's decreases far surpassed the average of the national comparison cities in all categories except for burglary in two time periods.

Table 1: Comparison of Reported Crime Rate Changes										
	Total	Violent	Murder	Rape	Robbery	Agg Assault	Property	Burglary	Theft	MV Theft
San Francisco										
1998 v 1990	-38%	-43%	-44%	-44%	-46%	-38%	-37%	-39%	-33%	-43%
1998 v 1992	-42	-47	-50	-39	-53	-38	-40	-44	-36	-47
1998 v 1995	-26	-33	-41	-19	-39	-23	-24	-6	-28	-19
Avg., Other 10 cities										
1998 v 1990	-30	-34	-39	-32	-42	-26	-29	-43	-22	-27
1998 v 1992	-24	-33	-35	-23	-39	-26	-22	-35	-14	-23
1998 v 1995	-16	-21	-29	-17	-26	-17	-15	-19	-14	-16

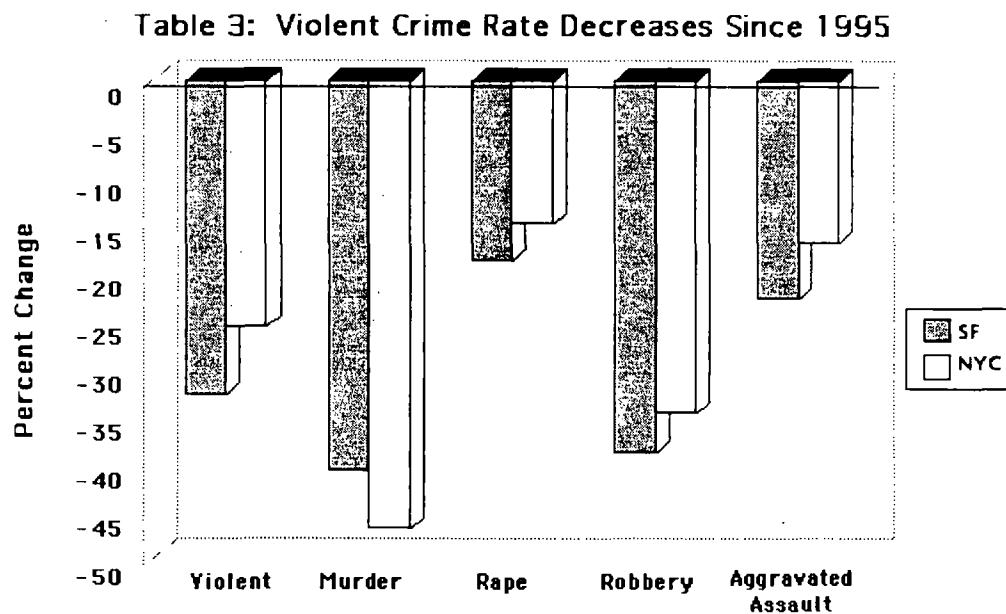
Source: FBI Uniform Crime Reports, 1990-1998. Offenses Known to Police. Uniform Crime Reports

Since 1992, San Francisco has outperformed New York City in violent crime rate declines and has received virtually no media attention. For example, in reported violent crime between 1992 and 1998 San Francisco's rates decreased 47% while New York's rate declined 46% (see Table 2 below). Since

1995, one year after Giuliani was elected, San Francisco recorded a 33% decrease in reported violent crime compared to only 26% in New York City (see Table 3 below). These declines were occurring at a time when New York City was vigorously pursuing "broken windows" policy and being cited by commentators as a national model.

	Total	Violent	Murder	Rape	Robbery	Agg Assault	Property	Burglary	Theft	MV Theft
San Francisco										
1998 v 1990	-38%	-43%	-44%	-44%	-46%	-38%	-37%	-39%	-33%	-43%
1998 v 1992	-42	-47	-50	-39	-53	-38	-40	-44	-36	-47
1998 v 1995	-26	-33	-41	-19	-39	-23	-24	-6	-28	-19
New York										
1998 v 1990	-55	-51	-72	-36	-61	-37	-56	-62	-46	-70
1998 v 1992	-49	-46	-69	-28	-57	-31	-49	-56	-38	-66
1998 v 1995	-28	-26	-47	-15	-35	-17	-29	-38	-21	-40

Source: FBI Uniform Crime Reports, 1990-1998, Offenses Known to Police, Uniform Crime Reports



San Francisco's violent crime decreases exceeded most of the nations in the 1990's. For the better part of the decade, San Francisco had greater declines in all Part I offenses and reported violent crime than most of the comparison cities. Between 1992 and 1998, San Francisco's violent crime decreases were unmatched by the ten national comparison cities (see Table 4). San Francisco's declines coincided with declining misdemeanor and felony arrest rates. New York City, on the other hand, increased its felony and misdemeanor arrest rates and yet only equaled San Francisco's violent crime rate declines.

Table 4: SF Versus All National Comparison Cities in Total Part I and Violent Offenses						
	All Part I Offenses			Total Violent Crime		
	98 v 90	98 v 92	98 v 95	98 v 90	98 v 92	98 v 95
San Francisco	-38%	-42%	-26%	-43%	-47%	-33%
Boston	-47%	-36%	-34%	-44%	-34%	-23%
Charlotte	-17%	-17%	-9%	-26%	-26%	1%
Chicago	-20%	-14%	-9%	-25%	-25%	-16%
Dallas	-40%	-25%	-1%	-39%	-29%	-3%
Denver	-30%	-34%	-21%	-35%	-46%	-32%
Jacksonville	-25%	-25%	-12%	-36%	-33%	-17%
New Orleans	-30%	-12%	-20%	-35%	-25%	-34%
New York City	-55%	-49%	-28%	-51%	-46%	-26%
Phoenix	-19%	-5%	-20%	-2%	-22%	-20%
Washington, D.C.	-18%	-23%	-27%	-30%	-39%	-35%

Source: FBI Uniform Crime Reports, 1990-1998, Offenses Known to Police Uniform Crime Reports

The California Analysis

County-by-County Comparison

Among large California counties, San Francisco is unique because it is the only combined city and county. Comparing San Francisco to other counties is difficult in this context since it is the only combined city and county and it is solely a large urban area and population. Historically, crime rates in San Francisco have always been higher than the mixed urban suburban counties. However, in recent years San Francisco's crime rate reductions exceeded those of California's largest counties.

Between 1994 and 1998, San Francisco witnessed a 35% reduction in reported violent crime rates, second only to Orange County (see Tables 5 and 7). In the last decade, reported crime rates in San Francisco fell 33% exceeding or equaling every other county except for Los Angeles where crime rates fell 40% (see Tables 6 and 8)

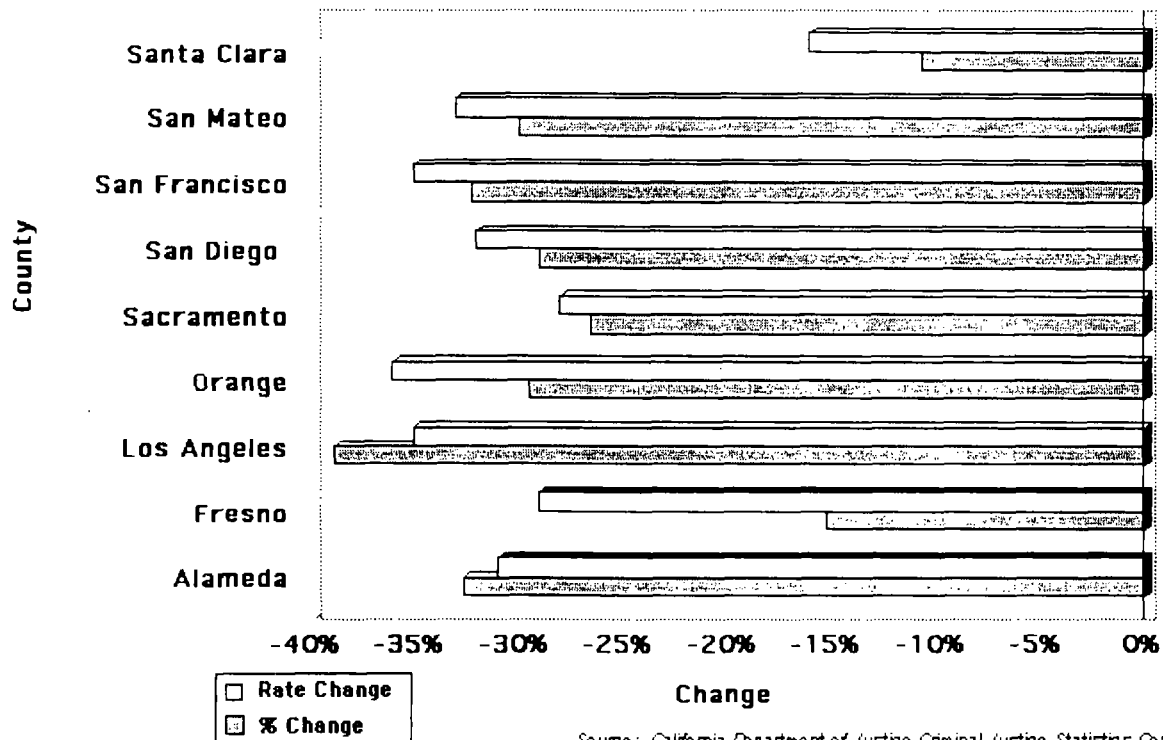
Table 5: Change in Reported Violent Crime (1994 v 1998)				
	1994	1998	% Change	Rate Change
Alameda	17,647	11,894	-33%	-31%
Fresno	8,130	6,894	-15%	-29%
Los Angeles	153,876	94,164	-39%	-35%
Orange	13,456	9,497	-29%	-36%
Sacramento	10,628	7,813	-26%	-28%
San Diego	23,371	16,594	-29%	-32%
San Francisco	10,937	7,409	-32%	-35%
San Mateo	3,370	2,361	-30%	-33%
Santa Clara	9,036	8,078	-11%	-16%

Source: California Department of Justice Criminal Justice Statistics Center

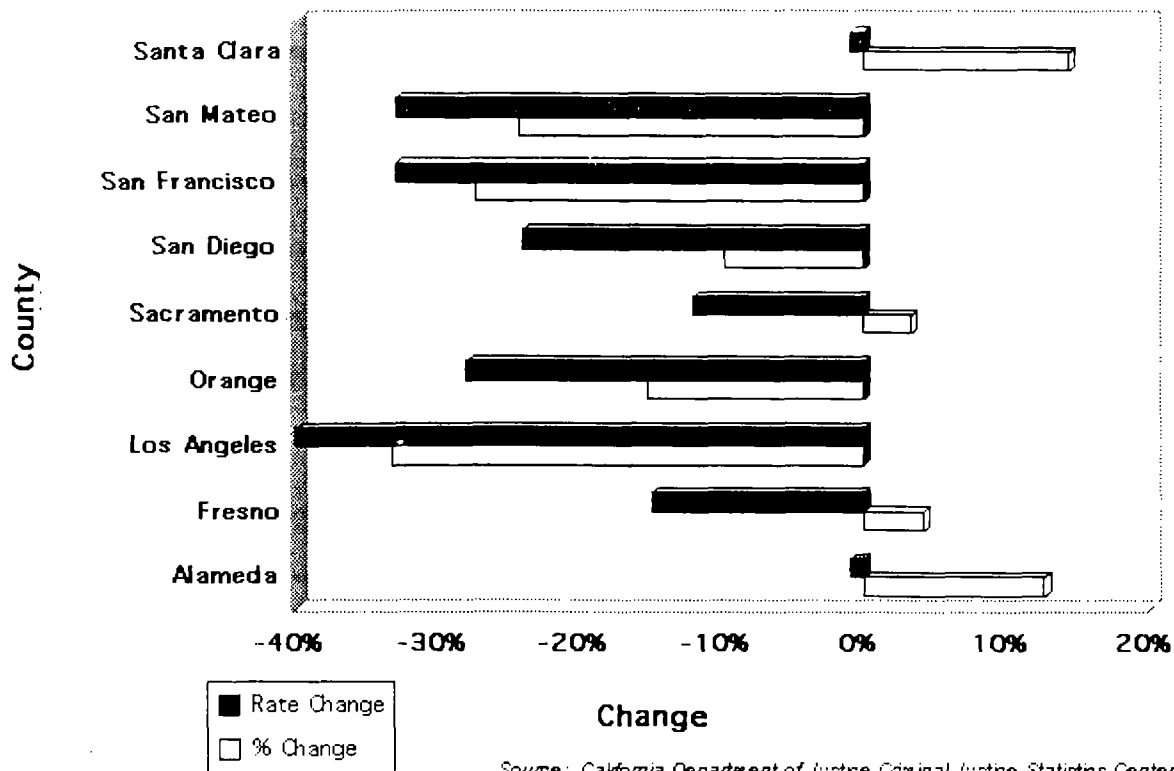
**Table 6: Change in Reported Violent Crime
(1989 v 1998)**

	1989	1998	% Change	Rate Change
Alameda	10,563	11,894	13%	-1%
Fresno	6,622	6,894	4%	-15%
Los Angeles	141,137	94,164	-33%	-40%
Orange	11,197	9,497	-15%	-28%
Sacramento	7,558	7,813	3%	-12%
San Diego	18,400	16,594	-10%	-24%
San Francisco	10,190	7,409	-27%	-33%
San Mateo	3,116	2,361	-24%	-33%
Santa Clara	7,066	8,078	14%	-1%

Source: California Department of Justice Criminal Justice Statistics Center

Table 7: Change in Reported Violent Crime (1994 v. 1998)

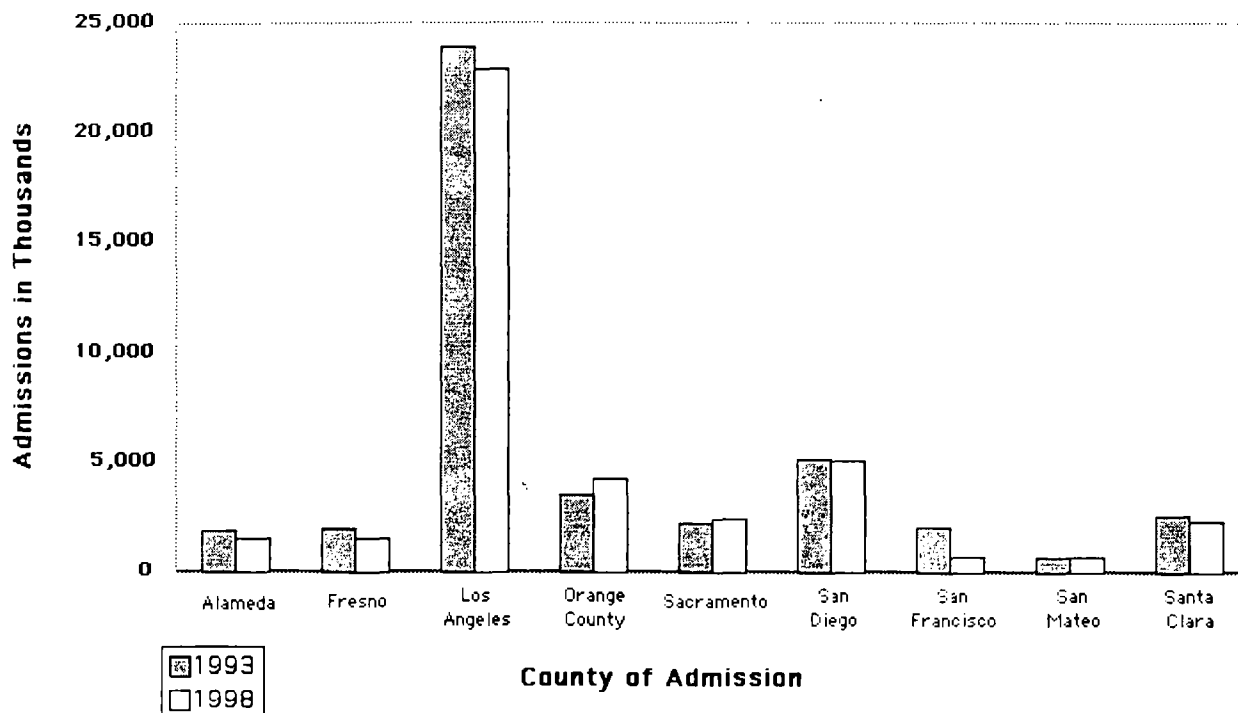
Source: California Department of Justice Criminal Justice Statistics Center

Table 8: Change in Reported Violent Crime (1989 v 1998)

Prison as Crime Control

While crime throughout the United States continues to decline, the prison population also continues to rise. Jurisdictions that utilize the conservative approach attribute their declining crime rates partly to the use of incarceration as a mechanism of its crime fighting policy. The conservative approach stresses that imprisonment offers at least four types of social benefits which are retribution, deterrence, rehabilitation and incapacitation (Council on Crime in America, 1996). Former Attorney General William Barr stated that California should serve as a model and that the country had a choice of either building more prisons or tolerating higher violent crime rates (Irwin, 1994).

Commensurate with its declining crime and arrest rates, San Francisco also reduced its state commitments. For example, in 1993 San Francisco sent 2136 individuals to prison while in 1998 only 703 were committed. In contrast other counties increased or maintained their prison commitments during the same period (see Table 9).

Table 9: Felon Admissions to CDC by County of Commitment

Source: FBI Uniform Crime Reports, 1992-1998, Offenses Known to Police

As seen above, San Francisco's crime rate declined as arrest rates and prison commitments decreased. Declining prison commitments coinciding with falling crime rates is counter to conservative tenets about crime control. In 1995, following the election of liberal San Francisco District Attorney Terrence Hallinan, neighboring conservative Santa Clara County District Attorney George Kennedy stated, "We're trying to decide if some of the benefit here wouldn't be that some of our problem persons would be drawn up there." However, contrary to this assumption, San Francisco outperformed Santa Clara County in almost all aspects of crime reduction since 1993. Table 10, 11 and 12 illustrate Part I crime comparisons between San Francisco and Santa Clara for the three years before and after Hallinan took office.

Table 10: Absolute Change in Reported Violent Crime Between 1993-1995 and 1996-1998 in San Francisco

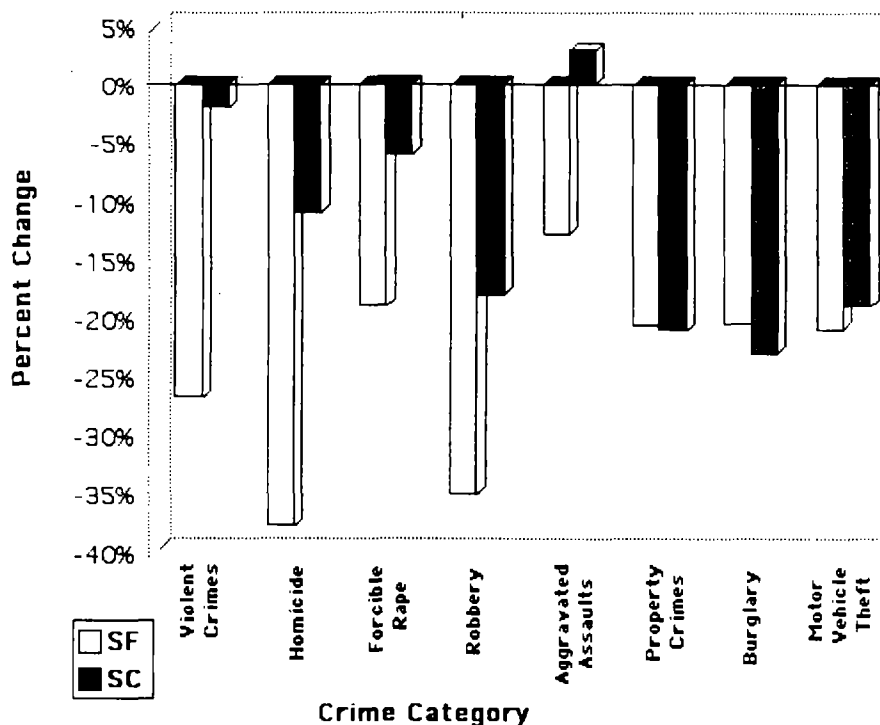
	1993	1994	1995	2-year Total	1996	1997	1998	2-year Total	% Change
Violent Crimes	13,536	10,937	10,998	35,471	9,946	8,608	7,409	25,963	-27%
Homicide	129	92	99	320	82	59	58	199	-38%
Forcible Rape	364	295	305	964	299	236	246	781	-19%
Robbery	8,544	6,677	6,522	21,743	5,565	4,618	3,957	14,140	-35%
Aggravated Assaults	4,499	3,873	4,072	12,444	4,000	3,695	3,148	10,843	-13%
Property Crimes	22,559	17,452	15,550	55,561	15,791	14,706	13,581	44,078	-21%
Burglary	11,324	8,113	7,196	26,633	7,168	7,237	6,792	21,197	-20%
Motor Vehicle Theft	11,235	9,339	8,354	28,928	8,623	7,469	6,789	22,881	-21%

Source: California Department of Justice Criminal Justice Statistics Center

Table 11: Absolute Change in Reported Violent Crime Between 1993-1995 and 1996-1998 in Santa Clara

	1993	1994	1995	2-year Total	1996	1997	1998	2-year Total	% Change
Violent Crimes	8,180	9,036	9,716	26,932	8,965	9,307	8,078	26,350	-2%
Homicide	61	56	56	173	48	62	44	154	-11%
Forcible Rape	593	562	569	1,724	544	539	538	1,621	-6%
Robbery	1,820	1,868	2,000	5,688	1,774	1,438	1,426	4,638	-18%
Aggravated Assaults	5,706	6,550	7,091	19,347	6,599	7,268	6,070	19,937	3%
Property Crimes	18,498	17,948	16,761	53,207	14,636	14,641	12,701	41,978	-21%
Burglary	11,808	10,902	10,224	32,934	8,925	8,763	7,822	25,510	-23%
Motor Vehicle Theft	6,690	7,046	6,537	20,273	5,711	5,878	4,879	16,468	-19%

Source: California Department of Justice Criminal Justice Statistics Center

Table 12: Absolute Change in Reported Crime Between 1993-1995 and 1996-1998 in San Francisco and Santa Clara

Source: California Department of Correction Data Analysis Unit

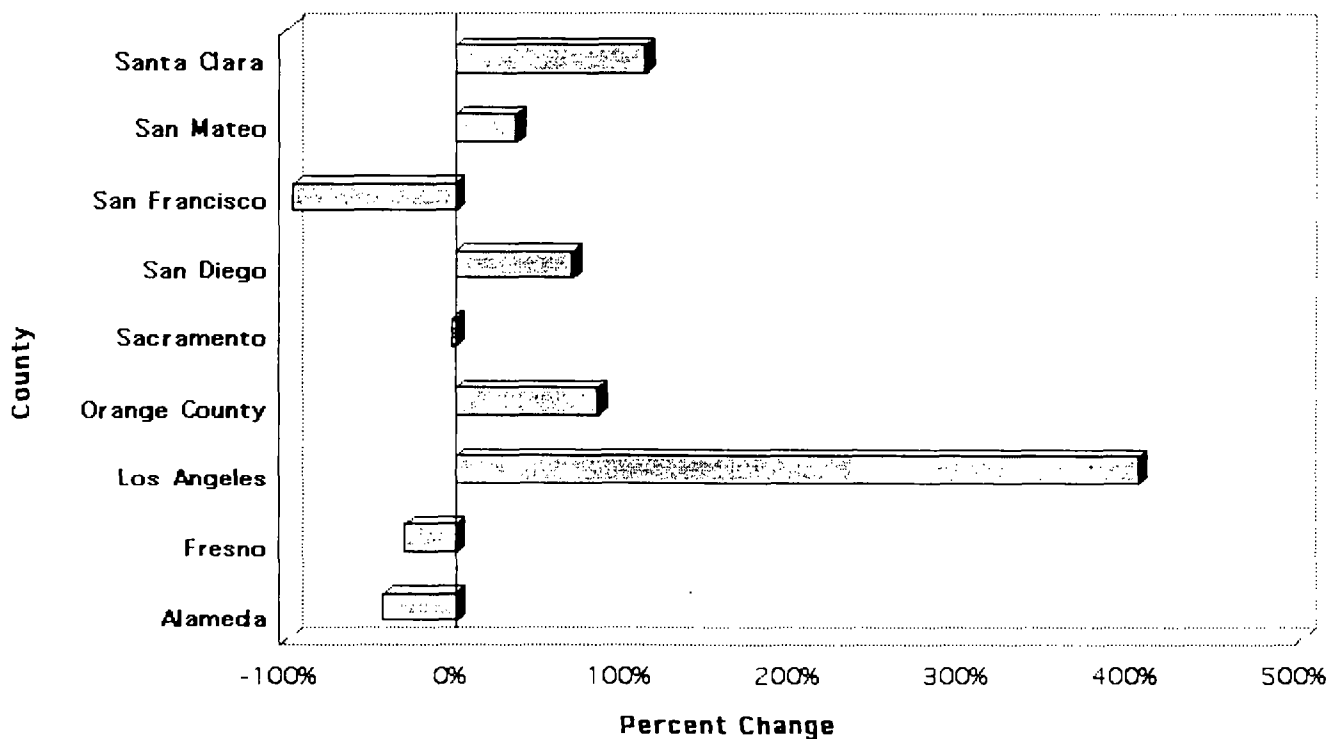
Conservative critics such as George Kennedy assume that straying away from the normal approaches to "law and order" will result in crime increases. But as the data above illustrates, since Hallinan took office, San Francisco declines in violent crime rates are unmatched by his predecessor. More poignantly, San Francisco declines under Hallinan in Part I crime offenses far surpassed those of Santa Clara County. The views expressed by Kennedy are typical of conservative critics' disbelief in the effects of liberal crime policies on crime rates. The comparison of crime in Santa Clara County and San Francisco under Hallinan are important to illustrate these effects compared to those of a more conservative approach.

Juvenile Crime Declines

"Broken window" approaches to crime control have a great impact on how youth are handled by the police and the criminal justice system. While many legislative efforts aimed at trying youth as adults have been introduced in the last decade, juvenile crime has continued to decline sometimes at a greater rate than those of adults. Recent studies have shown that juvenile crime declines are driving the national crime rate declines contrary to popular sentiments that youth crime is on a rise. Conservative jurisdictions such as Santa Clara County rigorously enforce status offense arrests (i.e. curfew violations) under the impression that they prevent more serious crimes from occurring.

By abandoning a curfew law nearly ten years ago when other counties were increasing enforcement, San Francisco Juvenile crime was expected to rise relative to California's other large counties. According to the "broken windows" theory, youth in San Francisco should have had a message sent to them that no one cares and crime should have risen accordingly. However, as the following graph illustrates below, by almost abandoning the enforcement of status offenses all together, San Francisco has witnessed similar if not greater drops in juvenile felony arrests. Homicides decreased by 57% (7 -1989, 3 -1998) over a ten year period and 79% (14 -1994, 3 -1998) over five years.

Table 13: Percent Change in Status Arrests From 1989 to 1998



Source: California Department of Justice Criminal Justice Statistics Center

San Francisco has also lowered its number of commitments to the California Youth Authority from both juvenile and adult court more so than most of the comparison counties. San Francisco District Attorneys have opted to rely on more diversionary programs that stress prevention and not detention. While these policies were being adopted, juvenile crime declined in San Francisco.

Table 14: CYA Commitments From Juvenile and Adult Courts

County	1994		1998		% Change	% Change
	CYA Juvenile	CYA Criminal	CYA Juvenile	CYA Criminal	CYA Juvenile	CYA Criminal
Alameda	137	4	82	0	-40%	-100%
Fresno	165	24	118	2	-28%	-92%
Los Angeles	620	57	472	23	-24%	-60%
Orange County	58	34	141	11	143%	-68%
Sacramento	97	1	32	4	-67%	300%
San Diego	269	15	113	8	-58%	-47%
San Francisco	27	5	13	0	-52%	-100%
San Mateo	39	1	32	0	-18%	-100%
Santa Clara	101	12	86	2	-15%	-83%

City-by-City Analysis

While San Francisco crime rate declines equaled or exceeded those of California's eight largest counties, a comparison between SF and Los Angeles, San Diego and San Jose revealed more striking results. In the comparison, San Francisco's violent crime reductions matched or exceeded all three jurisdictions. All three cities are noted for their stringent enforcement policies and high number of state prison commitments. In the last decade, San Francisco crime rate declines were unequaled by most of California's large cities. The declines in San Francisco far exceeded those of San Jose, Santa Clara County's largest city in all three time periods examined. Since 1992, San Francisco violent crime declines were unmatched by all three California comparison cities.

Table 15: Change in Reported Violent Crime Rate for California's Four Largest Cities

	Violent	Murder	Rape	Robbery	Agg Ast
San Francisco					
1998 v 1990	-43%	-44%	-44%	-46%	-38%
1998 v 1992	-47%	-50%	-39%	-53%	-38%
1998 v 1995	-33%	-41%	-19%	-39%	-23%
Los Angeles					
1998 v 1990	-45%	-61%	-36%	-59%	-34%
1998 v 1992	-46%	-63%	-29%	-62%	-35%
1998 v 1995	-33%	-52%	-16%	-47%	-22%
San Diego					
1998 v 1990	-34%	-72%	-24%	-56%	-21%
1998 v 1992	-45%	-73%	-29%	-63%	-35%
1998 v 1995	-24%	-55%	4%	-37%	-19%
San Jose					
1998 v 1990	-5%	-29%	-26%	-25%	4%
1998 v 1992	-16%	-40%	-29%	-35%	-8%
1998 v 1995	-27%	-29%	-14%	-30%	-28%

Source: FBI Uniform Crime Reports, 1990-1998, Offenses Known to Police LCA

Conclusion

San Francisco Mayor Willie Brown recently sent his Director on Homelessness to New York to observe how the city handled its homeless problem. Shortly thereafter, a new policy arose in San Francisco to confiscate shopping carts from the homeless. Later, when subjected to intense criticism, Mayor Brown backed off from the policy saying, "I am not trying to gain the Giuliani vote."

Importing a "broken windows" approach to San Francisco is unnecessary as the evidence above illustrates. Utilizing alternative crime policy, San Francisco crime declines matched and exceeded those of comparable national cities. These results suggest a new evaluation of popular assumptions and crime policy.

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Acknowledgments

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MEMORANDUM

TO: Juvenile Justice Conferees' Legislative Assistants

FROM: Marc Schindler (Youth Law Center) & Jill Ward (CDF)
Co-Chairs, Juvenile Justice Coalition

DATE: October 28, 1999

RE: Juvenile Justice legislation

As conferees consider juvenile justice legislation, we've provided you with a packet of recent news clippings and a copy of Justice Policy Institute's recent study on San Francisco's alternative crime policies and its declining crime rates.

If you need additional information, please feel free to contact either of us. We can be reached by phone at: 202/637-0377 (Marc) or 202/662-3503 (Jill) or by email at: mschindler.ylc@erols.com or jward@childrensdefense.org.

Friday October 8, 1999

Protecting children should be a
priority for Congress

by Keith Myers
Special to The Times

Editorials & Opinion

THE juvenile-justice bills now before a House-Senate conference committee in Congress contain punitive measures that, if included in the final bill that the full Congress is expected to vote on this fall, would make worse a juvenile-justice system already characterized by Amnesty International as being harmful to children.

Regressive measures in the two bills the committee will merge fail to take into account the downward trend in juvenile crime and, instead, hit hard on the punitive side. Incredibly, one proposal would allow offenders as young as 13 to be housed with adult inmates in federal prisons, subjecting them to greater likelihood of sexual abuse and suicide.

Any new federal legislation must balance accountability for criminal activity with prevention measures that help kids stay on the straight and narrow - and it must retain basic protections for children and youth who are already in contact with the juvenile-justice system.

Besides the proposal to house young offenders with adult prisoners, other potentially injurious measures include scrapping confidentiality protections, thereby reducing the likelihood that youthful offenders could re-enter mainstream society; expanding prosecution of juveniles in federal courts; allowing prosecutors alone, without review by judges, to determine if youthful offenders should be tried as juveniles or adults; and preventing judges from considering each case on its merits, requiring them to impose long sentences on offenders regardless of age.

Five U.S. senators, including Orrin Hatch (R-Utah), Jeff Sessions (R-Ala.), Strom Thurmond (R-S.C.), Patrick Leahy (D-Vt.) and Edward Kennedy (D-Mass.) and 20 House members will consider these proposals during the current session of Congress. Rejecting unnecessarily harsh proposals and placing emphasis on increasing resources for proven juvenile-crime-prevention programs will provide the most long-term benefit.

In particular, the committee should adopt two provisions in the Senate bill that would increase funding for prevention. One involves setting aside for prevention programs 25 percent of an existing block grant for juvenile programs. The other calls for establishment of a "parenting as prevention" program.

Because investments in proven crime-prevention programs are the key to curbing juvenile crime, it is essential for the conferees to adopt the 25 percent set-aside guarantee; otherwise, the funds will go for the establishment of more detention and correctional programs and facilities at the expense of helping children avoid getting into trouble in the first place.

The House bill is especially disturbing because it reinstitutes the dangerous practice of allowing young offenders in the federal system to be placed in cells with adults. Research has shown that juveniles commit suicide in adult jails eight times as often as those held in juvenile-detention facilities. They are five times more likely to be sexually assaulted, twice as likely to be assaulted by staff and 50 percent more likely to be attacked with a weapon.

The final bill should maintain current provisions calling for separation of children and adults, although even under present law more than 3,700 juvenile offenders have been sentenced to prisons where they are not separated from adults, according to Amnesty International.

The Senate bill repeals the already weak provision in federal law requiring states to address the disproportionate confinement of minority youth, who, like minority adults, are overrepresented in the nation's jails and prisons. The Senate provision should be dropped.

And both bills inappropriately give parents the right to waive federal protections for their errant children, granting them unwarranted powers and possibly subjecting the children to unacceptably long periods when they would be incarcerated with adults. This provision also should be dropped.

These are the best hopes for further reductions in juvenile crime.

Keith Myers is vice-president of counseling and consultation services for Family Services of Seattle, past president of the Washington State Society for Clinical Social Work, and president-elect of the Clinical Social Work Federation.

Real Data Necessary to Guide Juvenile Justice

By Vincent Schiraldi

SHORTLY AFTER Congress reconvened following its summer recess, Senate Judiciary Chair Orrin Hatch, R-Utah, announced that passage of his juvenile crime bill was one of his major priorities. Unfortunately, lost amid the clamor over the bill's gun-control provisions was an equally important debate over race and America's juvenile justice system.

When the bill passed the Senate, it quietly eliminated a 7-year-old provision that required states to examine whether they were discriminating against minorities in their juvenile justice systems. The tenor of the debate over the issue was shocking.

Sen. Hatch surprised both his Senate colleagues and the civil rights community by stating flatly that he believed the justice system to be completely "color blind." In his floor statement, Hatch claimed, "I haven't heard one shred of information that proves there is discrimination here. When you prove that, I will be right there, side by side with you." More divisively, he asked, "Should they not be convicted when they sell drugs to our kids? Every body knows that it happens."

The program Hatch wants to eliminate has uncovered plenty of disparities. In 1991, the long-term custody rate for African American youth was nearly five times

the rate for white youth. In 1995, a black youth was seven times as likely to be held in a public detention facility as a white youth. Although national survey data show that whites and blacks use drugs at about the same rate, black males are confined for drug offenses at 30 times the rate of white males. In 1993, funded ironically by the federal monies now in jeopardy, Carl Pope and Richard Feyerherm found that even when youths had similar prior records and offenses, a minor's race affected the outcome of his or her case for the worse in about two-thirds of the studies analyzed.

The state-by-state data are even more alarming. In Wisconsin, minorities are 11 percent of the youth population, 19 percent of juveniles arrested, and 75 percent of juveniles locked up in adult prisons. And in both Connecticut and Texas, 100 percent of the juveniles held in adult jails in 1996 were minorities.

None of this is to say that black and white teenagers commit exactly the same amount of crime and should therefore be locked up at exactly the same rate. But studies show that black teenagers report committing violent crime at a rate 50 percent higher than white teenagers, a much lower disparity than shows up in arrest or prison data. For example, at these same ages, black teenagers are about four times

as likely to be arrested and seven times as likely to be incarcerated for violent crimes as are white teenagers.

After their teenage years, however, white and black teenagers follow a different path. Studies show that white teenagers "mature out" of criminal behavior and begin to show sharply declining involvement in violence. African American teenagers show a resurgence of violence.

Importantly, when the teenagers under study possess either a job or a stable relationship, both whites and blacks experience the same sharp drop in violent behavior. While white teenagers are being afforded the opportunities to gain employment and form relationships that will help them grow out of their youthful violence, black teenagers are learning the hard lessons taught in America's jails and prisons.

These findings have profound implications for how we should treat these youths if we want them to "mature out" of violence at the same rate. That is a lesson we could not have learned if we had not taken a hard look at real data. Yet just when we are starting to gather the facts that will help inform enlightened policy, Sen. Hatch would plunge us back into a barroom conversation full of biases and half-truths.

Vincent Schiraldi is director of the Justice Policy Institute.

Opinion

Editorial: Wrong way on kid crime

Congress would make Florida the model for juvenile justice, even though Florida doesn't deserve to be the model.

While Congress bickers over the federal budget, a bad juvenile justice proposal that earmarks no money for crime prevention hangs in the balance.

The proposal, which Rep. Bill McCollum, R-Altamonte Springs, and Sen. Orrin Hatch, R-Utah, have championed, would give prosecutors the power to send youths as young as 13 to adult court for violent and nonviolent offenses. They have patterned the bill after Florida's system, which allows prosecutors to bypass juvenile court when they charge children 14 or older with multiple or violent crimes.

The problem: Florida doesn't deserve to be the national model. In 1995, Florida prosecutors sent nearly as many juveniles to adult court as all other states combined. That year, Florida had the second-highest rate of violent juvenile crime, 48 percent higher than the national average.

The Justice Policy Institute in Washington used research from the University of Central Florida, Florida State University, the Florida Department of Juvenile Justice, the Urban Institute and the U.S. Department of Justice to study Florida's practice of sending children to adult court. The study covered the period from 1981 through 1998. Among the findings:

Children sent to Florida's adult court system are 33 percent more likely to be arrested again than youths with similar records and charges who go through juvenile court.

Children transferred to adult court are arrested again nearly twice as quickly after their release as those in juvenile justice programs.

Children who have been through the adult system and are arrested again commit serious crimes at twice the rate of children who go through the juvenile justice system.

Across the country, arrests of juveniles for violent crime dropped 8 percent between 1997 and '98. Adult crime, by comparison, dropped only 4 percent. Yet Congress is determined to rewrite laws governing children who commit federal crimes. House and Senate negotiators are trying to reconcile different versions of the proposal, which would abolish basic protections for child defendants. It would allow jails to incarcerate children with adults, scrap confidentiality provisions for their records, require judges to impose long sentences regardless of age or circumstances and encourage states to build prison cells.

Locking up some violent children is necessary. Locking up all children simply will teach them how to be better criminals.

3

months

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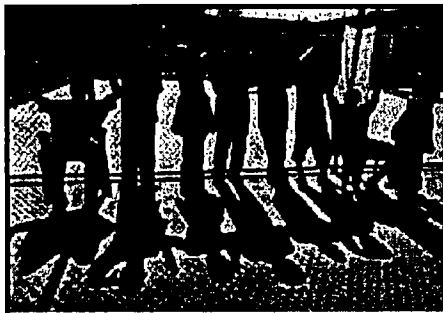
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YOUNG AND DEADLY

WHY CHILDREN KILL

The issue of age. Children gather in the recreation area of Orange County's 33rd Street facility, which is designed for adults. Florida leads the country in the number of juvenile delinquents transferred to adult criminal court.



GEORGE SKENE/THE ORLANDO SENTINEL

A child, a crime -- an adult punishment

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 21, 1999.

Prosecutors and politicians have a mantra: adult crime, adult time.

Given the widespread concern with juvenile violence, who could argue with such a policy?

Plenty of people, it turns out.

Kids who kill make headlines, turn stomachs and drive new policy. Reacting to their horrific and puzzling crimes, politicians have passed laws that make it easier to punish juveniles as adults.

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Not just kids who kill, though, but kids who break into their grandma's house, steal a pizza from a deliveryman, smoke a joint or even steal \$2 from a classmate.

Florida, in fact, leads the nation when it comes to transferring juvenile delinquents to adult criminal court. Almost 4,700 Florida children younger than 18, one not even 10, were sent to adult court last year -- nearly all of them by prosecutors who have broad discretion to charge offenders as young as 14 as adults. Their most common crimes: burglary, robbery and drugs.

"It's a very one-dimensional response that does more harm than good," said Randy Bazemore, a criminologist at Florida Atlantic University. "The idea that there is a new breed of 'superpredator' out there is largely a myth. But if you wanted to create a superpredator, you couldn't do any better than taking 14-year-olds and locking them in prison with other criminals."

Juvenile-justice authorities counter, however, that unlike other states, Florida chooses which children to treat as adults. George Hinchliffe, assistant secretary at the state Department of Juvenile Justice, notes that New York long ago lowered the age limit in its juvenile court to 15, effectively treating all 16- and 17-year-olds as adults. Florida, meanwhile, has kept its age limit at 17.

"We're painted as Neanderthals and fascists because we transfer 14-year-olds," he said. "But we're liberal compared to other states."

Those who oppose sending juveniles into the adult system agree that even young offenders deserve punishment. But many criminologists, psychologists and child advocates say the punishment needs to be smarter, not tougher.

They contend that the snappy "adult crime, adult time" sound bite is driven by fear and not facts. Research is thin, but every study on the subject, including the most thorough one conducted at the University of Florida, has shown that young offenders sent to adult prison commit more serious crimes quicker and more often after their releases than similar offenders who remain in the juvenile system.

Lee County Circuit Judge James Seals is not surprised.

"People think if we put more juveniles away, we'll



be safer, but it's not true because they're not going to stay in prison," the juvenile-court judge said. "And when they do get out, probably having been abused, denied an education and exposed to few positive role models, we're going to get exactly what we paid for: an alienated, ostracized man or woman at the peak of his or her physical powers."

**Adult crime,
adult time?**

'People think if we put more juveniles away, we'll be safer, but it's not true because they're not going to stay in prison,' says Judge James Seals, who deals with juveniles.



GEORGE SKENE/THE ORLANDO SENTINEL

'Badge of shame'

Crime policy is, however, more often guided by emotion and fear than by research and reason. That was the case in Florida five years ago when, spurred by a series of sensational tourist murders committed by teenagers, the state Legislature revamped the juvenile-justice system.

At the time, people were fed up with the perception that youthful offenders could thumb their noses at the juvenile system. The kids' often-truthful taunt: "You can't do nothing to me; I'm a juvenile."

Today, what once was a social-services agency dedicated to protecting the interests of the child is a criminal-justice department focused on protecting society. Caseworkers are now probation officers. Juvenile-commitment programs, the equivalent of jail or prison in the adult system, now include maximum-security institutions with 12-foot fences, razor wire and longer sentences.

And prosecutors now have broad discretion to file charges in adult court against any 14- or 15-year-old accused of certain felonies -- a power they previously possessed only for 16- and 17-year-olds.

Although the overwhelming number of juveniles convicted in adult court wind up on adult probation -- contrary to the get-tough image behind the transfer policy -- hundreds of kids are sent to adult prison in Florida every year. In 1997-98 alone, the number was 804.

The impact has been significant. Today, more than 5,800 of the 66,000 inmates in the adult system were sent to prison for crimes committed when they were 17 or younger.

"Florida should wear that number as a badge of shame," said Steve Drizin of the Children and Family Justice Center at Northwestern University's School of Law. "Can we say with any degree of certainty that because a child has committed a horrible act while a teenager that we need to write him off for the rest of his life? From a research perspective the answer is clearly no."

That is a source of great frustration for child advocates and defense attorneys. They criticize politicians and prosecutors for ignoring the research and focusing more on the crime than the child.

In Orange and Osceola counties, for example, almost any youngster who uses a gun during a crime will be treated as an adult, even if the teenager has never been arrested before and the firearm is a BB gun.

Jason Stahlin, 16, a trumpet player in the Colonial High School band, was charged in June with robbing a Subway sandwich shop with an accomplice who pointed the BB gun. Charged with armed robbery as an adult, Jason faces 15 years in state prison.

"I've never even been in juvenile-detention before," Jason said, from the Orange County Jail. "I don't think I belong in prison."

In Palm Beach County any youngster who commits a violent act in school will be dealt with as an adult. No matter how minor the violence.

That latter policy turned Anthony Laster, a 15-year-old retarded and near-deaf middle-schooler, into a national poster child for the potential abuses in such a get-tough approach.

Shortly after his mother's death last year, Anthony asked a boy in his special-education class for lunch money. When the boy refused, Anthony reached into the student's pocket and grabbed \$2.

Instead of being hauled to the principal's office, Anthony was arrested and charged with strong-arm robbery and battery -- as an adult. He spent 48 days, including his first Christmas without his mother, behind bars.

After the case sparked widespread outrage, Palm Beach County State Attorney Barry Krischer dropped the charges, but, he said, only because the

victim had changed his story.

"Depicting and treating this forcible felony, this strong-arm robbery, in terms as though it were no more than a \$2 shoplifting fosters and promotes violence in our schools," Krischer wrote in defending his "zero-tolerance" policy for violence on school grounds.

Other transfer cases are not nearly as clear-cut nor as likely to engender public outrage. Orlando lawyer Lisa Munyon knows this when she mentions the case of Stacy Taylor, an Orlando boy who robbed three restaurants at gunpoint, shooting a waitress in the buttocks, in 1996.

Before the robberies, Stacy, 16 and college-bound on a scholarship, had never been in trouble. When his dad learned about the robberies, he took his son to the police station, where the teen confessed and named his accomplices.

Today, Stacy is serving 17 years in state prison, at an average cost of \$19,000 a year. Munyon thinks a wiser, more economical solution could have been found, with better long-term results.

"It was an extremely serious crime, and he deserves to be punished," Munyon said. "I know the state attorney says 'I'm sorry is not enough,' but could it have been handled differently and society would be as safe as it is now? I think so. You can't lock them all up."

Oddly enough, former state Sen. Gary Siegel, a Republican from Longwood, agrees. Siegel, chief sponsor of the 1994 juvenile-justice reforms, said he regrets the consequences of those reforms -- particularly if first-time offenders are being sent to state prison.

"I'm sick about it," he said. "No one at the time envisioned that we would be putting hundreds of children in adult prison. These are kids!"

Even prosecutors decry the lack of middle ground in Florida. Many would like to see a hybrid system that could keep young offenders in the more reform-oriented juvenile system at least until they mature.

"It would be wonderful if we could keep them to 19 and then boot them to the adult system," said Jim Phillips, a prosecutor in Marion County. "They're kids. They need special handling. Some of them have special needs."

Judge Seals agrees, but he sums up in a one word why such a solution is not viable: money. "Juvenile justice is supposed to be therapeutic and rehabilitative, and that's more costly."

What is a child?

Treating kids as adults does not, of course, make them adults -- a fact that even hardened cops acknowledged when two Brevard County siblings -- ages 12 and 13 -- shot and killed their father's girlfriend earlier this year. Indicted as adults, Cathy Jones and Curtis Fairchild Jones pleaded guilty to second-degree murder and were sentenced Wednesday to 18 years in prison -- even though police acknowledged they had kid impulses, kid intentions and a child's limited understanding of culpability.

But as violent juvenile crime spiraled upward during the past decade, that indisputable distinction between kids and adults has blurred. Especially in Florida, which first gave prosecutors the power to charge children as adults in 1978.

Just 20 years ago, juvenile-court judges in Florida had the final say on most of those decisions after hearing arguments from both prosecutors and defense attorneys. Today, such hearings are extremely rare. Prosecutors make the unilateral decision 93 percent of the time -- something Siegel would change if he could do it all over again.

But he can't stop what Florida unleashed. Although the state has the most aggressive policy regarding the transfer of children to the adult justice system, it is by no means alone. Between 1992 and 1995, 14 more states gave prosecutors the power to send young offenders to adult court. And 41 states have passed laws expanding the offenses that make children eligible for adult prosecution. U.S. Rep. Bill McCollum, R-Longwood, wants to do the same at the federal level, giving prosecutors the discretion to try children as young as 13 in federal court.

"That small minority of kids who commit the most heinous crimes should be locked up in jail, and the key should be thrown away," McCollum said. "We then can concentrate our resources on the kids we can reach."

The dramatic shift, critics say, underscores the decreasing role of judges and a regression from the humanitarian goals of the juvenile-justice system. To child advocates, it also raises an important question on the eve of the new millennium: What is our vision of childhood?

"The vision used to be to integrate children into the social fabric, for the good of the child and for the good of society," said Stephen Harper, a veteran public defender who once headed the juvenile division in Miami-Dade County. "Now a child who commits a crime is disposable. Now we're saying, 'Regardless of the problems children have, regardless of their bad lives, they'll always be a danger, and we'll treat them that way.' That's the new vision. It's short-sighted, myopic and mean."

Prosecutors counter by saying their job is to protect society, and kids today just aren't like kids of yesteryear. They *must* be treated differently.

"Some of the choices these kids are making are not kid actions," said Nancy Clark, chief juvenile prosecutor in Orange County. "They are planning robberies and drive-by shootings. Those are not kid acts."

No angels

The first juvenile court was created in Chicago in 1899 by reformers who were appalled that children were being housed in jails with hardened criminals. Central to the reform movement was a recognition that children are not just miniadults. They think and act and perceive the world differently. They don't weigh risks and consequences. They're easily influenced by peers and are less culpable for their actions.

And most importantly, they are more amenable to intervention and change -- which the juvenile-justice system was supposed to provide and foster. The assumption was that most delinquent children were struggling with other problems in life and simply needed help getting back on track so they could be productive adults.

But everybody on both sides of the issue recognizes the juvenile system has many flaws. Chronically underfunded and understaffed, it rarely provides troubled kids with the training, therapy, nurturing and punishment they need, for as long as they need.

Skip White, executive director of Florida's Juvenile Justice Accountability Board, equates the shortage of resources and effective programs in Florida to treating a patient with a deadly disease with only a partial dose of medicine.

"We give them subtherapeutic interventions and then send them right back to where they came from," White said. "When you've done that three times,

who can blame the prosecutor from saying, 'Hey look, this kid has had three interventions and hasn't learned; let's send him off to the adult system.' "

It is unclear how many youngsters sent to adult prison had the benefit of juvenile programs, but most have lengthy arrest records, according to the state Department of Corrections.

In February, a department analysis found that 477 of the inmates who were 17 or younger at the time had, on average, 16 prior arrests, with an average of 3.4 arrests for violent crimes.

"If you believe in the arrest stuff, these aren't choir boys and girls," said Bill Bales, who did the evaluation.

Critics, though, are bothered by another statistic: Black boys make up 27 percent of the juveniles arrested in Florida -- 40 percent of those arrested for violent offenses. But they make up 53 percent of the youngsters transferred to adult court. And last year alone, they made up 67 percent of the kids sent to adult prison.

Charles Frazier, one of the lead researchers on the UF transfer study, and other criminologists offer explanations beyond a higher violent crime rate or overt racism. They say white children are more likely to have better resources and stronger support systems that help keep them out of the juvenile system than poorer, minority kids. For instance, the parents of a white child may have insurance policies that pay for counseling and drug treatment.

Many black or other minority children aren't as fortunate. They are more likely to have single mothers who don't have insurance or even a car to drive their children to therapy. So instead of entrusting those children to concerned parents, judges send them to juvenile programs.

"Blacks are more likely to be processed deeper into the criminal-justice system because of their social circumstances -- because they live with only one parent, because they live in poverty, because they have no social assets," said Barry Feld, University of Minnesota law professor who studies race in the criminal-justice system.

And that, critics say, underscores the real tragedy when Florida sends children to adult court: Kids who need the most help in overcoming youthful mistakes and problems may be getting it the least.

"The whole intention of that policy is to send a



message that these behaviors will not be tolerated," said Darryl Norvelle Roland, a black psychotherapist who works with students in Orange County schools. "I think it's a good message, but it's directed at the wrong folks. It needs to be directed at us."

[Posted 10/20/1999 9:30 PM EST]

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YOUNG AND DEADLY

WHY CHILDREN KILL

Life of chaos.
Stephanie Powell, shown in prison recently, was 13 years old when she shot a West Palm Beach cabdriver to death



SUN-SENTINEL
FILE

'She knew she wasn't important'

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 20, 1999.

MONTICELLO -- Her smile is riveting, lighting up her face. Her laughter spills forth at odd moments.

"Did your mom ever tell you she loved you?" she is asked.

"Nnnnooooo!" she says, her giggles fading into defiance: "It's not that kind of family."

It is the same odd behavior that prompted a veteran detective to call Stephanie Powell, 13 at the time, the coldest killer he had seen since his days in Vietnam.

It is the same attitude that made an annoyed judge ask, "Is there something funny about this?" when the sixth-grader pleaded guilty to second-degree murder in 1995 for shooting a cabdriver in the head as he gave her a ride home from a mall in West Palm Beach.

It is the same behavior that her uncle thinks is a

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regrettable coping mechanism for a child who all but raised herself and who was so poorly socialized she asked, "What's a father?" after she killed somebody else's.

Now 19 and serving a 21-year sentence, Stephanie still laughs a lot. She is cheerful and lively, a far cry from the seething and profane girl who spent so much time in solitary confinement for misbehavior that she was not able to see her family since being sent to prison.

She rarely thinks about Yves Quettant, the 39-year-old cabbie who worked two jobs to support relatives in Haiti and his family in West Palm Beach, including an unborn child he would never see.

"I just keep it behind me," Stephanie said, fidgeting in a prison conference room. "It bothers me, but I try not to think about it 'cause I get sad. And when I get sad I get attitude. And when I get attitude I get in trouble."

During her first few years in prison, Stephanie sent the unmistakable message that she didn't give a damn about anything.

She demolished a prison sink and sent a bomb threat to the prison superintendent. She repeatedly disobeyed, spat on and ridiculed guards. "Big fat whore," she called one. "Motherf-- afterbirth," she called another. She refused to cooperate in internal investigations, or she gave impolitic explanations in her defense.

"Yes I did say it and f--- ya'll!" she wrote once. "I did not say that, but who cares!" she wrote another time, concluding with a big happy face.

Her antics succeeded in getting her a transfer. In 1997, she was moved out of a prison for youthful offenders, where she was entitled to milk and special meals meant for growing bodies. She ended up at Jefferson Correctional Institution and then Broward Correctional -- where there are no special rations.

For Stephanie, that was par for the course. Her life, records show, is a textbook study of unmet needs. She grew up in a chaotic, violent home, devoid of routine, discipline, nurturing and love.

By the time she was 12, a school counselor said, she was so shut down emotionally that she couldn't talk. A year later, she would become an archetype for juvenile violence, spurring newspaper editorials and legislative proposals to treat all children older than

13 as adults if they commit a crime.

'I wasn't thinking'

Though a poor student who had failed two grades, Stephanie had never been in trouble before that January day in 1994 when she and two acquaintances, Willona Perry, then 17, and Kimberlee Smith, then 15, went to the mall and took a .25-caliber pistol with them. The gun belonged to Kimberlee's boyfriend, who was keeping it as collateral for an unpaid debt.

As the girls left the mall, planning to hail a cab and stiff the driver for the fare, Stephanie hid the gun in her waistband.

"I asked for the gun," she recalled, a hint of pride in her voice. "I wasn't thinking. I was the type of person who just does things without thinking."

As Quettant drove to the housing project where Stephanie and Willona lived, Stephanie began fiddling with the gun. Sitting in the back seat, she took the safety off. She aimed the pistol toward Quettant's head, wondering, she told police, what would happen if she pulled the trigger.

As the cab rolled to a stop, Willona said, she was about to tell Quettant she didn't have any money when -- bam! -- the gun fired. The bullet ripped through Quettant's head. Blood and brain spattered the dashboard, the odometer, the seat. Stephanie's mouth dropped open, Willona said, "like she was in shock."

With Stephanie still in the back seat, the station wagon sped downhill, crashing into a parked truck at 40 mph. Bewildered, Stephanie dashed from the cab and ran home, where a neighbor overheard her sobbing: "I didn't mean to do it. I didn't mean to do it."

Quettant died the next day, his heart strong, but his brain dead. Stephanie, Kimberlee and Willona were indicted as adults on first-degree murder, robbery and several other charges.

Today, Stephanie rebuffs questions about her version of Quettant's death. "It was something that just happened," she said, sounding exasperated. "It wasn't planned. It was an accident."

Prosecutors disagreed, but intentions didn't really matter. If someone dies during a felony, everybody

involved can be charged with murder. As far as prosecutors were concerned, all three girls planned to rob Quettant, so all were guilty of the ultimate crime.

For Stephanie, who was evaluated as borderline retarded, it was a concept difficult to grasp. "That's stupid," she told one psychologist.

Harder for just about everyone else to understand was her attitude. When she confessed to police, she sucked her thumb and displayed no remorse.

Or she smiled. Smiled at court hearings. Smiled when psychologists asked about the shooting. Smiled when her uncle explained his household rules.

A life of chaos

Rules were alien to Stephanie. She never had been subjected to any -- couldn't even venture a guess as to why games had them.

Living in the projects in West Palm Beach, she was essentially the head of her chaotic household, the caretaker for her younger siblings, court records show.

She went to school tired and hungry. Her hair was uncombed. Her clothes were too big. Her coping skills were nonexistent. She was the butt of cruel jokes. By the time she was 8, guidance counselor Barbara Mendez wrote, "She knew she wasn't important." By the time she was 12, "She was so shut down emotionally that she couldn't talk."

At night, she came and went as she pleased, often staying out until morning, drinking beer and smoking pot. By the time she was 13, she was sexually active. Asked why her mother allowed her to run wild, she was puzzled: "She couldn't physically stop me."

Stephanie's mother, Dorothea Winn, 43, was reluctant to talk about her older daughter or the abusive relationships court records indicate Winn endured with Stephanie's father and other boyfriends. Instead, Winn cooed over her new grandchild: a baby girl recently born to Stephanie's 16-year-old sister.

A laundress at a nursing home, Dorothea Winn is the only one of six siblings who never achieved middle-class success. No education. No car. No

home of her own. She suffered a head injury as a child and is, according to court records, less capable than Stephanie of making sound decisions.

Sitting in his lovely home in the suburbs, one of Dorothea's brothers expressed regret that he had only "snapshots, not movies," of his niece's life. When he saw Stephanie at occasional family gatherings she seemed to be a happy, normal child.

An electronics technician for the U.S. Postal Service, Stephanie's uncle Al Winn would learn otherwise when he and his wife, Virginia, took Stephanie into their home after her arrest. They were stunned by her immaturity, her disobedience and her total lack of common sense and social graces.

She grew sullen when her uncle forbade her from calling the boy who brought the gun to the projects that fateful day. She didn't understand why she shouldn't wear jeans and a T-shirt to court.

She couldn't begin to fathom why Quettant's 16-year-old daughter was pictured crying in the local newspaper.

"When I told her it was because her father was dead, she said, 'What's a father?' " her aunt recalled. "She couldn't relate to someone grieving over a father."

She was similarly nonchalant about her grim situation, a facade one psychologist attributed to her way of coping with feelings of fear, hurt and abandonment that had defined her life.

The Winns think their niece deserved to be punished for Quettant's death. Given the circumstances, though, they say the punishment was too harsh, too heavy on retribution and too light on treatment.

"She was misconstrued," Al Winn said. "Nobody looked beyond what they mistook for impudence and arrogance to the raw child."

That's not the issue for Jeanne Howard, the prosecutor who decided to treat Stephanie as an adult.

"She took someone's life," Howard said. "That's the issue. In a perfect world, our prison system might be able to address those other issues. But we don't have a perfect world, so we have to protect public safety."

Now a young woman whose world is defined by barbed wire, chain-link fences and prison blues, Stephanie dreams about being a "computer engineer" one day. Laughing, she admits she really doesn't

know what one is. She is more certain about how her life could have been different.

"Somebody could've taken more time with me," she said. "Anybody."

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YOUNG AND DEADLY

WHY CHILDREN KILL

It's not race, poverty -- it's injured souls

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 19, 1999.

T. Willard Fair looks at the faces of youngsters who kill and sees something that breaks his heart: So many of them are black teenagers.

Fair, a civil-rights leader in Miami-Dade County, does not shy away from the truth, though. He confronts it head-on, dismissing racial stereotypes that cloud the picture and challenging others to understand the real issues driving the tragic trend.

Young black males kill seven times more frequently than white males in the United States. And they are seven times more likely to die as a result of a homicide. In fact, blacks of all ages, including women and girls, kill and are killed at an alarmingly higher rate than their white counterparts.



Ernest Code, 15 (left), Christopher Hodges, 16 (center), and Sam Moore, 17, are awaiting trial in the Orange County Jail on charges of killing 3 different people. Code lived with relatives while his mom was in prison, and Moore grew up in foster homes.

GEORGE SKENE/THE ORLANDO SENTINEL

In Florida alone, black males make up 66 percent of the inmates in adult prison for killings or attempted slayings committed when they were juveniles.

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While many scholars point to poverty and racism as primary causes, Fair does not. The blame, he says, rests squarely with people who do not take responsibility for children they bring into the world.

Growing up in the inner city can be a living hell, Fair acknowledges. He has fought despair in those war zones -- neighborhoods with telling nicknames such as Germ City -- for 36 years in Miami-Dade County. The president of the Urban League of Greater Miami knows boys who would just as soon pull out a revolver and shoot someone dead than apologize for a slight.

But he also knows kids who are considerate and caring, who will escape the projects for futures full of promise.

Most of those children, he said, have an inner drive and strength that help them navigate through adversity. But most importantly, they have at least one caring, law-abiding adult in their lives.

"It may not be a mother or a father," Fair said. "It may be Miss Annie Pearl down the street, Coach Jones at the park, the reverend at church -- somebody who said, 'You're going to be somebody. I'm going to help you.' "

He is loath to blame poverty for the lethal violence and other social ills in poor, black communities. Rather, he points to a system of collapsing values in the United States, that, celebrated daily on television, is changing the boundaries of acceptable behavior -- from the White House down to the bleakest barrio.

The series

Sunday

They are children when they kill -- some no more than 12 or 13 years old. And they have plenty of accomplices: adults who either abandon them or abuse them and a society that offers them easy access to their weapon of choice: the gun.

What forces led Damon Peterson to that fateful encounter in which he took the life of German tourist Jorg Schell? Damon looks back on his hopeless childhood, his criminal life and the shot heard across the Atlantic.

Monday

Dennis Calabrese, a devoted Boy Scout and gifted student, went from being his mom's pride and joy to her greatest shame and sorrow. What forces led Dennis to blow away two young men he hardly knew and then laugh about it?

Today

Look at the faces of youngsters who kill, and many of them are black teenagers. Why? This is an explosive question, but the answer says more about the toxic combination of concentrated poverty, decaying values and the effects of racism than it says about race.

Selling crack cocaine gave Juan Calvin Langley an identity. It made him feel like somebody. Then Juan, just 13 at the time, shot his own cousin to death in a cheap drug deal.

Wednesday

Her smile is riveting. Her laughter spills forth at odd moments. "Did your mom ever tell you she loved

Poverty, he said, exacerbates the consequences of decaying values and, in a vicious cycle, decaying values perpetuate poverty.

"It's not poverty, and it has nothing to do with the color of skin. It's the behavior and expectation and values promulgated by the adults on watch. It's that simple," Fair said.

The media, Fair said, also contribute to the deterioration. He indignantly recalled watching the Will Smith TV show *Fresh Prince of Bel-Air* in which a woman was in bed with a man she had met two days earlier.

"Why would anybody think a child would have any problem with promiscuous sex?" Fair said. "When I was growing up, there was a set of values that said, 'You will not and shall not, and if you do there is a penalty.' "

The cycle of teenage motherhood that produces so many children in poverty is one of the most damaging consequences of corroding values, Fair said. When he was growing up, Fair, 60, notes, there was a penalty for having a baby out of wedlock: The whole family was embarrassed, and the girl was ostracized. Today, children having children is often encouraged.

While teen motherhood is

ever tell you she loved you? she is asked. "Nnnnooooo!" she says, her giggles fading into defiance: "It's not that kind of family." It is the same odd behavior that prompted a veteran detective to call Stephanie Powell, 13 at the time, the coldest killer he'd seen since his days in Vietnam.

Thursday

Kids who kill make headlines, turn stomachs and drive new policy. Reacting to these crimes, politicians passed laws making it easier to punish juveniles as adults. Not just kids who kill, though, but kids who smoke a joint or even steal \$2 from a classmate. Florida leads the nation in transferring juvenile delinquents to criminal court.

Her dad named her Eve because he thought she was so beautiful that she looked like an angel. But Eve Postell turned out to be a hell raiser and, eventually, a killer.

James Conley shrugs when asked to talk about that day when, at age 12, he helped murder a homeless man. "Everybody was bragging me on -- keep going! It got out of hand. It was exciting."

While teen motherhood is by no means confined to the black community -- whites gave birth to 56 percent of the 69,000 babies born out of wedlock in Florida in 1997 -- the number born to blacks is disproportionately higher, and the effects are disproportionately harmful.

Whites are more apt to have a support network and the resources to break the cycle.

"Some of our youth have little emotional compunction to behave," said Darryl Norvelle Roland, a black psychotherapist who works with students in Orange County schools. "They are unnurtured, untutored, undisciplined and unafraid. Many are being raised by teenage parents with no training. Or by grandparents. They're not getting the rules laid down. Youngsters look for discipline and guidance, and they're lost without it."

Many also are lost by the time they get to school, which contributes to their low self-esteem, said psychologist Larry Capp, who has interviewed hundreds of delinquents in Miami-Dade.

"They have a hard time in school because they need to conform to a culture of education which is alien to them," Capp said. "These are often children whose mothers never read to them. Some of their mothers can't read."

Lost souls

Thomas Moore, author of *Care of the Soul*, writes this: "The great malady of the twentieth century, implicated in all of our troubles and affecting us individually and socially, is 'loss of soul.' When soul

is neglected, it doesn't just go away; it appears symptomatically in obsessions, addictions, violence and loss of meaning."

Soul, Moore says, is tied to all of life -- "good food, satisfying conversation, genuine friends and experiences that stay in the memory and touch the heart. Soul is revealed in attachment, love and community."



Community activist T. Willard Fair blames the lack of caring, law-abiding adults in children's lives and parents who take no responsibility for their own children.

SUN-SENTINEL FILE

Look into the lives of most kids who kill, and you will find dead or dying souls. It is the common link, experts on violence say, no matter what their color, where they come from or why they kill.

They feel an overwhelming sense of humiliation and shame, often brought on by parents who abandon them.

Whatever the reason, psychologists say, nothing wounds soul more than rejection.

Those feelings, which boys are taught to hide, are likely to be more pronounced in black boys born to absent fathers and teenage mothers. In addition to the shame inflicted by their parents, black boys are often burdened by another pervasive layer of rejection -- from society at large.

"Racism is central to that," said James Gilligan, a Harvard University psychiatrist and author of *Violence: Reflections on a National Epidemic*.

"People commit violence when they are subjected to overwhelming degrees of shame and humiliation, and in America there is no group that is treated more regularly . . . as if they were inferior than blacks."

As former medical director for the Massachusetts state prison system, Gilligan has interviewed scores

of inmates and learned that most who turn to violence are filling a void in their lives.

"I used to think armed robbers committed their crimes for money," Gilligan said. "But time after time, year after year, I heard from young men, 'I never got so much respect as I did when I pointed a gun at some dude's face.' The real motive behind armed violence is a wish for instant respect."

That wish often is passed on from generation to generation, by example. Tom Petersen, a retired Miami-Dade juvenile judge who spent 30 years in the justice system, remembers a 15-year-old girl with three children who worked at a grocery store Petersen started in the inner city. The young mother resolved a dispute with another girl by grabbing a butcher knife and trying to stab her foe in the back. Years later, Petersen can't forget the face of the young mother's toddler, wide-eyed on the porch, absorbing it all.

"The message that these kids learn in their culture and subculture is, the way you solve problems is by aggressiveness; the way you survive is by aggressiveness," Petersen said. "Negotiating skills are not big on the stoop."

Branded

So when the most damaged souls prey on society, they are dismissed as "superpredators."

Few people ask how they became this way.

"Rarely do we hear of inquiries into their emotional lives or of efforts to make sense of their acts. Why is that?" Cornell University psychologist James Garbarino asks in his book, *Lost Boys*.

As James Bell of the Youth Law Center in San Francisco notes: "You saw the response to Columbine. When was the last time they sent grief counselors into the inner city after a drive-by shooting?" It's like, 'Oh those people -- they're used to that.' "

They may live with it, but they never get used to it. Across the country, desperate, grief-stricken residents in high-crime areas are banding together -- marching against violence and even confronting drug dealers on the streets.

They've had enough of the guns-and-drugs culture that has decimated their neighborhoods.

The NAACP has gotten into the act as well. In July,

the civil-rights organization filed suit against almost 100 gun makers in hopes of reducing killings by restricting the flow of firearms to kids. And the National Medical Association, the voice of black physicians, is starting an institute to combat violence in schools and homes, particularly among black males.



'Some of our youth have little emotional compunction to behave. They are unnurtured, untutored, undisciplined and unafraid,' says psychotherapist Darryl Norvelle Roland, who works with students in Orange County schools.

FRANK RIVERA/THE ORLANDO SENTINEL

themselves as middle class, but 39 percent of black children live below the poverty line.

Poverty by itself does not breed violence. Many poor people grow up to be successful adults, the vast majority of them never breaking a law.

But poor black people are, by and large, the only population concentrated in isolated pockets of poverty. And those pockets, experts say, are fertile grounds for virtually every risk factor known to increase a boy's chances of killing.

"There are more poor white people than black, but a white person in poverty is more likely to live in a nonpoor neighborhood," said Barry Feld, a professor and author of *Bad Kids: Race and the Transformation of the Juvenile Court*.

"It's not just that they are poor, but they are living with other poor people, and that concentration of unemployment, teenage mothers, lack of role models going to work -- the whole lifestyle of dependence and despair -- creates niches of alienation and crime

When the juvenile homicide rate peaked in 1993, black youths were killing 11 times more frequently than white youths. Criminologists blamed the escalation on drug warfare, but that hardly explains the historic trend. To understand that, researchers say, requires an understanding of what it's like for young black boys growing up in poverty.

Forty percent of black Americans classify

that profoundly affect the abilities of people to make choices."

Choices? Some poor black boys don't think they have choices. They look around their neighborhoods and are hard pressed to find men who get up and go to work every day. Some men sit on the corner drinking beer. Others are in jail. The boys figure they'll land there one day, too, and the odds are 1-to-3 they will.

One-third of all black men in their 20s either are in prison, in jail, on probation or on parole, a fact that Marc Mauer, assistant director of The Sentencing Project, traces to the uneven enforcement of tough, new anti-drug laws on minorities. In Florida alone, blacks made up 75 percent of all drug offenders sentenced to state prison last year.

The drug trade, particularly the easy-money crack street trade, is a powerful lure to young boys who see no future. Boys such as Juan Langley, who describes himself as "an unwanted child," found his place in the world, and his sense of self, on the dope corners in Brooksville.

A crack dealer before he reached his teens, Langley became a killer at 13, shooting his cousin over a crack deal.

Garbarino, who for 25 years studied youth violence in war zones abroad, said Juan lived in a perfect Petri dish for nourishing a killer:

"Neglect and/or abuse him early on, systematically deny him effective adult supervision, turn him, untreated and traumatized, loose on the social environment, enlist him in the illicit drug economy and give him access to a weapon."

[Posted 10/18/1999 8:36 PM EST]

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YOUNG AND DEADLY

WHY CHILDREN KILL

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The kid next door, except he's a murderer

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 18, 1999.

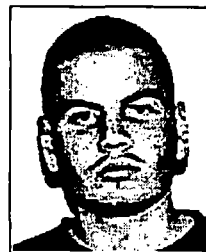
BLOUNTSTOWN -- He held so much promise, this easy-going boy who could count beyond 10,000 by age 3. Even then, he wanted to be a pilot, and his mom knew he had the right stuff.

By 5, he was absorbing books about volcanoes while other kids in his New York neighborhood were hypnotized by video games. In elementary school, he drove the teachers in his gifted classes half crazy, always raising his hand because he always knew the answer.

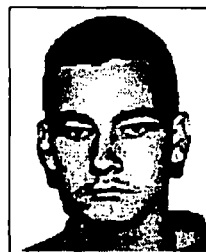
A Boy Scout in name and deed, he rescued gopher turtles, painting his phone number in white-out on their shells in his back yard.

Respectful and trustworthy, he baby-sat the children of his mother's friends and helped at the concession stand for the youth softball association to which his parents devoted their time after moving to Palm Bay.

In middle and high school, he took honors classes and loved mind challenges, exploring science and solving problems.



Robert McKevitt



Geoffrey Calvert

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problems.

Skipping five ranks in his ROTC classes in one year, he was on his way to being a Marine aviator.

Dennis Calabrese, at 15, was his mother's pride and joy.

Rebellion. The price of Dennis Calabrese's wild streak: 2 dead.

SPECIAL TO THE SENTINEL

And then, almost overnight, he became her greatest shame and sorrow.

In one month in 1995, this golden boy with so much promise walked down the road to self-destruction and never returned.

On Feb. 7, he and some pals broke into a pawnshop, hauling away gold chains and a cache of handguns, including a midnight blue .357 Magnum that witnesses said he kept for himself. A week later, he indiscriminately fired the .357 at passing cars, indifferent to the two teens who were lucky to survive gunshot wounds.

Then two weeks after that, witnesses said, he casually blew away two young men he hardly knew, later laughing at their deaths and lamenting that his hollow-point bullets didn't do enough damage.

How could a good kid go so haywire?

There were plenty of explanations at his trial: His stepfather's closed-fist punches. His distracted mother's second divorce. A corrosive combo of drugs and alcohol. Wild, unsupervised friends.

And then there's the very simple and blunt explanation offered by Brevard County prosecutor Jack Griesbaum.

Dennis was just plain evil.

"He's smart, polite, nice, good-looking -- the kid next door," Palm Bay Detective George Santiago said.

"Except he's a murderer."

Road to ruin

Now, 21, Dennis laughs at the detective's words. "Good ol' Santiago," he says. "He's always been hard-headed."

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Small and boyish, Dennis hardly looks like someone to fear in the pecking order of state prison. Yet he holds his own at Calhoun Correctional Institution in Florida's Panhandle.

The series

Sunday

They are children when they kill — some no more than 12 or 13 years old. And they have plenty of accomplices: adults who either abandon them or abuse them and a society that offers them easy access to their weapon of choice: the gun.

What forces led Damon Peterson to that fateful encounter in which he took the life of German tourist Jorg Schell? Damon looks back on his hopeless childhood, his criminal life and the shot heard across the Atlantic.

Today

Dennis Calabrese, a devoted Boy Scout and gifted student, went from being his mom's pride and joy to her greatest shame and sorrow. What forces led Dennis to blow away two young men he hardly knew and then laugh about it?

Tuesday

Look at the faces of youngsters who kill, and many of them are black teenagers. Why? This is an explosive question, but the answer says more about the toxic combination of concentrated poverty, decaying values and the effects of racism than it says about race.

Selling crack cocaine gave Juan Calvin Langley an identity. It made him feel like somebody. Then Juan, just 13 at the time, shot his own cousin to death in a cheap drug deal.

"Most people don't want to be involved with someone like me 'cause of my charges," said Dennis, serving three life sentences for murder and armed robbery. "All they see is this big record that looks real bad, and they think, 'Man, this dude's crazy.' "

He was not crazy, just bored and rebellious, when he dropped out of school and began drinking alcohol, smoking pot and binging on LSD after his mother left his stepfather. It was the summer of 1994 and, free from what court records describe as his stepfather's harsh discipline and hot temper, Dennis chafed under any authority, including that of his mother, Rose Geier.

The once dutiful student stopped going to class. By Christmas of 1994, Rose called school and pleaded for help. She was losing her son. Someone recommended a program for incorrigible teens. Rose jotted down the number but never called.

"Where do you think you're going?" she would ask as he dressed late at night.

"Out," he would answer, playfully mussing her hair.

"Oh no you're not," she would insist as he walked

deal.

Wednesday

Her smile is riveting. Her laughter spills forth at odd moments. "Did your mom ever tell you she loved you? she is asked. "Nnnnooooo!" she says, her giggles fading into defiance: "It's not that kind of family." It is the same odd behavior that prompted a veteran detective to call Stephanie Powell, 13 at the time, the coldest killer he'd seen since his days in Vietnam.

Thursday

Kids who kill make headlines, turn stomachs and drive new policy. Reacting to these crimes, politicians passed laws making it easier to punish juveniles as adults. Not just kids who kill, though, but kids who smoke a joint or even steal \$2 from a classmate. Florida leads the nation in transferring juvenile delinquents to criminal court.

Her dad named her Eve because he thought she was so beautiful that she looked like an angel. But Eve Postell turned out to be a hell raiser and, eventually, a killer.

James Conley shrugs when asked to talk about that day when, at age 12, he helped murder a homeless man. "Everybody was bragging me on -- keep going! It got out of hand. It was exciting."

would insist as he walked out the door.

He walked right into a laissez-faire world, where parenting was loose at best, where teens picked hallucinogenic mushrooms in cow pastures, where 13-year-old girls slept at their boyfriends' houses, where a pudgy, beeper-wearing teen delivered drugs on his skateboard, his knowing mother happy to have the extra income.

It was the thrill and thought of easy money, Dennis said, that drove him to take part in the burglary of Palm Bay's Affordable Pawn Shop with a group of friends who called themselves Latino Spice. Among them were the two teens now serving life sentences with him: his boyhood chum, Geoffrey Calvert, 18, and a new friend, Robert McKevitt, 16, described by police and witnesses as a bully and "gang wannabe."

Dennis says he does not remember planning the break-in because he wanted a gun, as his friends later told police. But he might have. He was so drugged up during those days, he said, that

he doesn't remember much at all.

"The pawnshop was all insured. That's the way I looked at it," he said, laughing his easy laugh. "They weren't going to miss it. I guess that was drugs talking more than anything else. It was fun. Had it been left at that, we probably would have laughed about it 20 years from now, saying, 'That was stupid.'"

But they didn't leave it at that. A week later,

witnesses said, McKevitt encouraged Dennis, Calvert and some others to play a deadly game in the woods where they hung out: shooting randomly at passing cars.

One bullet grazed a driver's head. Another hit a passenger's back.

"I fired, but I wasn't trying to hit nobody," Dennis said. "That right there should have been a clue to get out. When I started to realize what kind of people I was around, what kind of trouble. . . . You look back now and say, 'Well, OK, it happened.' "

The shootings, it turns out, were just a warm-up for what happened 10 days later.

McKevitt's parents were out of town and McKevitt, Dennis, Calvert and some other teens were hanging at his house, hunting for some LSD.

McKevitt beeped a neighborhood kid, Kris Miller, a pudgy 15-year-old who rode over on a skateboard.

Smoking joints in the garage, the boys made a deal. Kris gave them one tablet of Ecstasy for a .25-caliber gun stolen from the pawnshop. Dennis and McKevitt split the inhibition-erasing drug and agreed to bring the gun to a midnight rendezvous at a nearby convenience store, where they could pick up 25 hits of acid.

As afternoon wore into evening, witnesses said, the talk turned to "jacking" Kris. McKevitt wanted the LSD but didn't want to part with any cash. So he suggested robbing Kris of his goods.

But what if Kris came with a ride instead of on his skateboard? As the evening wore on, witnesses said, McKevitt refined the plan:

After getting the LSD from Kris, Dennis would pretend to reach for his money, instead pulling out his gun and shooting the boy dead. McKevitt would shoot the driver. Calvert would take care of a third person, if there was one.

There was one hitch. McKevitt, the street tough, chickened out. When the moment came, he told police, he cocked his gun and pretended it was jammed.

"I was afraid to tell them that I couldn't pull the trigger," McKevitt testified in a deal that spared him the electric chair.

But Dennis had no such qualms, according to

McKevitt, Calvert and Dennis' friends. When Kris handed him the sheet of acid, they testified, Dennis pulled out his .357 and shot him in the neck. Pushing McKevitt, he then fired one shot into the passenger window of Matthew Amos' Blazer, shattering the glass and hitting Amos in the side.

Trying desperately to drive away, Amos, 22, held a black notebook to his head to deflect more shots. But the next hollow-point bullet tore through the paper, ripping off Amos' finger and embedding in his temple. He was unconscious for five days before dying.

The trio ran back to McKevitt's house and, as police sirens and ambulances wailed, fell asleep. The next day, they split the acid and started tripping. As the days passed, they also started talking.

Dennis "said he went up and put the gun right up to the back of the guy's head and fired," one of his best friends testified in court. "And he said it was the funniest thing in the world he ever saw."

Dennis maintained in his trial -- as he does today -- that McKevitt was the trigger man. He said he had no knowledge of the planned rip-off and insists he was just in the wrong place at the wrong time. Even so, he still counts McKevitt as a friend.

"Things happen," he said, shrugging. "We all did what we had to do, and we knew it. He told me, 'Look, they're offering me a deal, and I'm thinking about taking it. They're trying to put me in the chair.' I said, 'I understand you're going to say what you gotta say, and I'm going to say what I gotta say to get outta here.' "

Oddly enough, Dennis said, he's glad he's still in prison. Had he been convicted of just the pawnshop burglary, he said, he would probably have been committing even more crimes.

"If I just did a couple of years, I probably would have just got out and been even more rebellious," he said. "Like, 'All right you caught me this time. Well, catch me again.' That's the way I was thinking back then."

Those were the days he was more concerned about making up for lost fun than having a future. His mother had just left his stepfather, and Dennis took his newfound freedom to extremes.

Night after night, Dennis drank until dawn at block parties on dead-end streets. Or he gathered at the makeshift campsite that Latino Spice took over in a

remote, wooded area of Palm Bay. His bookshelf at home was lined with trophies of his exploits: dozens of empty beer and liquor bottles.

By the summer of 1994, Dennis hooked up with McKevitt, whom police, witnesses and court records painted as a tough guy who easily lost his cool.

When a girlfriend made fun of his nonstop jabber, she said, McKevitt pulled out a pistol and stuck it in her face. When he and his pals were sitting around watching TV, he made it known he was a tough guy who would take on any of them at the slightest provocation. When his stepfather and he argued, McKevitt fetched his gun and threatened him with it.

McKevitt was chubby as a young boy and was often bullied, beaten and teased, said his mother, Leslie. When he grew big and strong, he took revenge on his tormentors. For some reason, easygoing, laid-back Dennis was drawn to him.

"He had the same kind of rebelliousness in him that I did," Dennis said. "I guess that's what it was: Opposites attract."

Rough love

But that certainly was not the case when it came to Dennis and his stepfather.

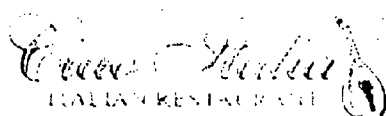
Depicted in court records as dictatorial and abusive, Ed Geier, now the mayor of Palm Bay, kept tight reins and imposed rigid rules on Dennis and his older brother, Jason. For instance, Rose Geier testified, Ed demanded the boys vacuum the house every single day. No excuses.

"He was, 'Just do it.' He didn't explain himself," Dennis said. "I don't think we ever had a whole conversation. I don't remember one in 11 years."

Dennis, Jason and their mother do remember a man they described in court as easily enraged over little things, such as dishes left on the counter. They said Geier would punch his stepsons with closed fists, in the face, the head, the ribs.

Sometimes, Rose testified, he made the boys balance phone books in their outstretched hands for long periods, hitting them if their hands dipped. Rose testified she left her husband of nine years when he dragged Jason from a car and beat him for going to a movie for which she had given permission.

Geier, elected to the Palm Bay City Council days after Dennis' convictions, did not testify and would



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YOUNG AND DEADLY

WHY CHILDREN KILL

Alone, confused and armed

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 17, 1999.

Juan Langley learned the value of obedience early in life. When his mother asked for crack cocaine, the 12-year-old obliged and bought it for her.

Eve Postell learned the value of hard work. When she needed money, she went out to "make some" -- not by baby-sitting like other 13-year-olds, but by yanking gold chains off people's necks.

Damon Peterson learned the value of guns when he was 13, living by the golden rule: "Bite or be bitten."

James Conley learned the value of sharing. By the time he was 8, he was allowed a beer or two from his stepfather's six-pack.

By age 12, James had followed the tradition of most men in his life, landing behind bars but with a distinction all his own. He had become the youngest killer in Florida's adult prison system.

Today, Peterson, Postell, Langley and Conley are among Florida's growing army of young marauders, born in innocence but bred into violence.

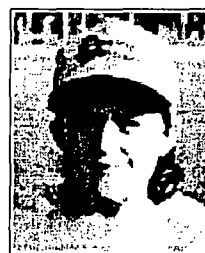
Values? Compassion? Respect for life?

Such ideas were as foreign to them as theoretical physics or microbiology. And few people in the justice system -- prosecutors, defense attorneys, judges, child psychologists -- are surprised.

Young predators will continue to kill, they say, as long as children are born in chaos to irresponsible or inept parents, and as long as the weapon of choice -- the gun -- is easily accessible.



Dennis Calabrese



James Conley

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Most wayward children, of course, never kill or maim. And some children from seemingly loving, stable backgrounds commit unthinkable crimes.

As a rule, though, most children who kill have accomplices. It could be a detached mother trapped in poverty. An anonymous father. Dead-end role models. Drugs, abuse or neglect. A neighborhood awash in violence. Or a justice system too overburdened to recognize a child's cry for direction, or just plain love.

Florida warehouses a lot of these kids. Today, more than 1,250 inmates are serving time for killing someone or attempting to kill when they were 17 or younger. Ninety-five were 12, 13, or 14 at the time. Thirty-six are still under 18. Sixty-six percent are black males. Nearly 400 are serving life sentences. Seven are on death row.

Stephanie Powell, who at age 13 shot a cab driver in the head before skipping out on the \$6 fare, could be the poster child for many of her violent peers: She pretty much raised herself. Severely under socialized, the Palm Beach County teen never thought about consequences.

When told she killed someone's father, she replied: "What's a father?"

Across Florida, the scenes are eerily similar:

Timothy Brown and Keith King, 14 and 17, were riding double on a bike, high on pot and cocaine, when they made a bet: The first to kill a cop wins. The loser: a Broward County deputy finishing paperwork in his patrol car. One of the boys fired a .38-caliber pistol at the officer's head. He died instantly.

Fourteen-year-old Ricardo Gray shot a young man with a MAC 11 submachine gun a few days after the victim demanded that Gray apologize for stepping on his toe at a Miami flea market.

Ending a long-running feud, 13-year-old Princess Haliburton shot and killed her 14-year-old Orlando neighbor, who Princess thought was threatening her.

After each killing came the predictable, anguished communal cry, "How could this happen?"

There are no excuses, but there are plenty of clues.

Keith King watched his dad kill his mother and later die of AIDS. Tim Brown's mother, an addict,

box every business day.

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abandoned him as a baby. His father left when he was 11, and later was murdered.

Ricardo Gray, a runaway and dropout at age 14, lived on his own with siblings and friends, drinking and smoking pot.

Princess Haliburton's mother gave her the gun to carry for protection when Princess was only 11.

"I'm really the guilty person here," Jeannie Haliburton said as her daughter was led to prison.

What about Columbine?

Like most children who kill, these youngsters came from a different world than the kids whose murderous school rampages stunned the nation in the past two years.

In one world, crime and death are staples of life. In the other, they're just staples of the nightly news or the latest computer game.

In one world, soccer moms haul their kids to practice in SUVs. In the other, mothers or grandmothers teach their children the survival game: how to dive into the bathtub when bullets fly.

That becomes second nature when homicide is the leading cause of death among minority youths in the United States.

Until a few months ago, most Americans didn't concern themselves with that world, or the children who populate it.

Then came Columbine in Littleton, Colo.

High school outcasts Dylan Klebold and Eric Harris, middle-class boys from two-parent families, killed 12 classmates, a teacher and then themselves, proving that the forces that lead children to kill are neither simple nor singular. No matter whose children they are. No matter where they live.

Littleton was a massacre, but it was quick -- one afternoon, 14 kids dead, noted James Garbarino, Cornell University psychologist and author of a new book about boys who kill.

"There is a long, slow massacre that has been going on for years that accounts for twice as many kids killing or getting killed every week," Garbarino said. "The families and communities of these kids have been putting teddy bears at memorials for a generation now, largely in silence."

Now, they are joined in their grief. Columbine established a common ground.

"No longer can we believe that we and our children are immune to lethal youth violence," Garbarino wrote, "because today almost every teenager . . . goes to school with a kid who is troubled enough to become the next killer, and chances are that kid has the access to the weapons necessary to do so."

An explosive mix

Damon Peterson can teach that lesson better than any professor. Now 22, he has had six years to reflect on his hopeless childhood and the forces that led him to kill.

His words do not ring with the hollowness that comes from other killers who voice regret. Instead, they reflect a young man who has had time to think about himself and others who grew up under similar circumstances.

First, he says, he never should have been born. And neither should have many other children.

"There should be a law: If you want to have a child, have 15 years of planning," he says. "Someone who's not going to love their child, teach their child discipline and really nourish and train their child's mind should not have the right. If you want to fill your sexual desire, get a condom. But if you want a child, have 15 years."

It took 16 years for Peterson to become a killer.

He offers his advice from Charlotte Correctional Institution, where he is serving a life sentence for killing a German tourist during a robbery attempt. Abandoned by his crack-addicted mother and fending for himself since age 10, guns were his security blanket.

Peterson insists he didn't intend to murder Jorg Schell in 1993. The gun, he said, went off by accident during a robbery attempt in Homestead.

That's not unusual. Most kids who kill don't plan their murders. More common are haphazard killings by youngsters who are out of control, out of the mainstream, out of luck.

And in easy reach of a gun.

Even in the rarer cases of kids who plot their murders, guns play a major role. Nobody will ever

know whether Brevard County siblings Cathy Jones and Curtis Fairchild Jones would have killed Sonya Speights if they hadn't swiped their daddy's gun and hunted down the ammunition. But they did, taking turns shooting their father's fiancée, a teachers aide who the children feared would compete for their dad's love.

In Lake County, 11-year-old Patrick Boykin took his parents' revolver from a closet and shot his 13-year-old sister, Constance, four times.

Whatever their motives, these and thousands of other kids became lethal because of guns.

The number of killings committed by armed juveniles in the United States quadrupled between 1983 and 1993, the year the death toll peaked at 3,486. That was, on average, more than 67 slayings every week by a child with firepower. During the same period, however, nongun killings by youngsters barely changed.

In other words, remove guns from the mix and the seismic leap in juvenile killings this past decade would have been flat. The same is true for juvenile suicides.

"It's the guns, stupid," said Vincent Schiraldi, executive director of the Center on Juvenile and Criminal Justice. "If you wanted to make kids in America more murderous, you could hardly do better than double their number in poverty and give them a whole bunch more guns. That's basically what we did."

Researchers blame another scourge: crack. The introduction of the cheap form of cocaine into inner cities in the 1980s kick-started a youth arms race, according to a study by Alfred Blumstein, a criminologist at Carnegie Mellon University in Pittsburgh.

Poor people such as Juan Langley's mother, a welfare mom from the projects in Brooksville, could buy the drug one hit at a time -- or even send their children to buy it for them. Piecemeal street buying, though, required piecemeal street sellers who came cheap: impoverished kids who, looking around them, could not imagine a better future.

Suddenly, Blumstein said, youngsters such as Langley were vulnerable to theft and unable to go to the police. So they got guns from older boys. Or they traded for them. Or they stole them.

Over time, guns became status symbols, signaling

power, safety, manhood. Langley would use his gun to shoot his cousin in a fight that started over a \$5 crack sale.

By 1988, Blumstein said, the diffusion of guns reached white neighborhoods, and the youth arms race was on. Two years later, one of every 20 students reported having carried a gun to school in the previous 30 days, according to the U.S. Department of Justice.

Suddenly neighborhood brawls that used to end in bloody noses ended in shootouts. And drug deals too often ended in death.

The case of Brevard teens Dennis Calabrese, Robert McKevitt and Geoffrey Calvert is typical. All are serving life sentences after stealing guns, ambushing two young drug pushers and shooting them dead during an LSD deal.

"American kids are not more violent by nature," said Larry Steinberg, director of the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice. "We don't lead the world in non-gun violence -- assault, battery, aggravated assaults -- but compare gun-related violence, and we're off the charts."

Actually, out of this world: In 1996, handguns killed 30 in Great Britain, 15 in Japan and 9,390 in the United States.

Few people think, though, that ending youth homicide is as simple as keeping guns from kids. "People think the issue is guns," said Randy Means of the Orange-Osceola State Attorney's Office. "It's not. It's violence. Kids are violent, and they're violent for some reason."

The brain change

Science has been shedding light on some of those reasons, and they pretty much parallel Means' armchair philosophy: "It begins at home. It's a function of poverty and parenting."

Deprivation or inadequate parenting, of course, is no excuse for murder. "For every murderer, there are five people who grew up in the same environment and didn't kill," said Chuck Morton, the Broward prosecutor who convicted the two teens who killed Deputy Patrick Behan on a dare.

However, scientists note that not every smoker gets

lung cancer, either. The key is sorting out who is at risk, and researchers in the hybrid field of child development and biology have made a pivotal discovery about the roots of violence:

Experience changes the brain.

In short, the brains of children repeatedly subjected to trauma -- chaos, abuse, neglect, fear -- are perceptibly different than the brains of kids blessed with most of the right stuff. The buttons that make them react to stress are permanently reset on high-alert, or on dead-numb.

Given the right set of wrong circumstances, some of these children will resort to violence. Given access to a gun, some will kill.

It's not the genetics of the brain that are changing, but the modern experiences imprinted on the brain, said Bruce Perry, a child psychiatrist and neurobiologist doing pioneering research on violence at Baylor College of Medicine.

Many children in today's violence-saturated world of walled communities and public housing are untethered. They have fewer ties to a belief system, to their culture, parents or communities. Across all socioeconomic spectrums, Perry said, they feel alienated.

And growing up in such a world changes how children behave because that's what the brain is designed to do, Perry said.

That's why specialists have said for 20 years that early experiences are so vital to healthy development. The experiences branded on the brain during the first three years of life act as a template, directing how a child will perceive, organize information, behave and respond to stress.

Imprinted with too much chaos, too many stressors and too little love, young brains physically change. Some adopt a persistent state of fear. Their flight or fight switch is always on. Others shut down emotionally, which Perry said may explain Stephanie Powell, the girl who killed the cabdriver.

"Explanations are not exculpations. So when kids do violent things, they should be held accountable," Perry said. "But the question is: 'Do we hold them accountable in the same way as a person who methodically planned a murder?'"

Call for reform

Jan Staniszkis doesn't think so.

A real estate developer in Orlando, Staniszkis was foreman of the jury that convicted Princess Haliburton of manslaughter. The 13-year-old Orlando girl had been charged as an adult with first-degree murder and faced life in prison. The jury, though, decided that she did not plan to shoot neighbor Erika Bearden.

Three years later, Staniszkis still can't get the case off his mind.

"One kid is dead," he said. "The other is in prison. Why? For premeditation? No. Because her mother gave her a gun. Give any child a gun at age 11 and there's a good chance it will be used."

He worries about Princess' future -- and ours. He finds it incomprehensible that a child her age was sent to a woman's prison for seven years because Florida's juvenile-justice system doesn't have a program appropriate for girls such as her.

Her attorney tried to get Princess in a program in another state, but the cost was too high. To Staniszkis, the cost of not doing so is even higher.

"Obviously, you have to make a child aware of the gravity of the crime and be held accountable, but not in the same way as pathological killers," he said. "We have to be accountable, too. There needs to be reform with punishment."

Staniszkis' lament is common. When kids kill, there is much anguish about the appropriate punishment and the likely result of their spending their formative years in prison with hardened criminals. One police officer described as cherubs the Brevard children who executed their father's girlfriend. He could not reconcile their sweet faces with their deeds.

But when faced with a child who kills, prosecutors have trouble reconciling their crimes with the limited punishment available in the juvenile system.

Juvenile offenders can be held only until they turn 19, or sometimes 21, but rarely is punishment lengthy.

The obvious solution would be to keep young killers, especially those who will be turned loose one day, in the juvenile system until they are old enough to be moved to the adult system.

And while that option is discussed, it also is dismissed as too expensive. Locking up kids in adult prison is much cheaper than treating them in a juvenile program.

But an increasing number of prosecutors and judges realize that the justice system can't afford to shrug off damaged children with an, "Oh well, another of life's casualties."

And little by little that attitude is changing. The juvenile homicide rate is dropping, and many factors are credited: gun buy-backs, get-tough policies, a strong economy and, not least of all, prevention, intervention and mentoring programs.

The approaches may differ from community to community, but the results of ignoring them don't.

Last year, 95 youngsters and teens were arrested across Florida on charges of murder, attempted murder or manslaughter; 72 were charged as adults. More than half were black males. Most were 16 or 17 years old, but 20 of them were 13 or 14.

If other children grow up like Damon Peterson, now a model inmate, a self-taught writer and the spiritual leader of Muslims in his prison, they may find incarceration their salvation from a worse fate.

"If I could trade my experience for a million dollars, I wouldn't do it," Peterson said.

"I wouldn't do it. Because the man I've become now, the feet that I'm standing on now, there ain't no way in hell I would have obtained that on the street."

[Posted 10/16/1999 11:26 PM EST]

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YOUNG AND DEADLY

WHY CHILDREN KILL

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Damon Peterson

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He learned what he was taught -- to survive

Maya Bell
of The Sentinel Staff

Published in The Orlando Sentinel on October 17, 1999.

PUNTA GORDA -- Damon Peterson doesn't remember the first time he held a gun. But the moment is frozen in time, documented in baby pictures that are as haunting as his life.

In one snapshot, the diapered toddler balances on the hip of his grandmother's bleary-eyed friend. Hanging from the man's other hip is a big, shiny revolver.

In another photograph, Damon, still in diapers, is perched on the edge of a bed holding the gun in his dimpled hands. His eyes shine with excitement.

Today, at 22, those eyes are deep, penetrating, profound. They have seen much sorrow: A mother



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much sorrow: A mother who cared more about crack cocaine than about him. A father who never acknowledged his existence. A stream of violence that swept him up in its current. A life full of promise, wasted.



His hands are large, powerful, graceful. They have held many guns. Revolvers. Semiautomatics. Shotguns. Assault rifles. They have caused their share of pain, fear and outrage. Once, they killed a man in a shot heard across the Atlantic.

For Damon, guns were a security blanket. By the time he was 13 or 14, he rarely went anywhere without one. Growing up alone, on the street, in a world without hugs or bedtime stories, they provided him a measure of comfort.

Later, guns were the tools of his trade, guided by a commandment of the street: Never sell a gun. It can help you get money.

He was packing the day he first met his dad, the only time he ever talked to the man whose name belongs in the blank on his birth certificate. An airline maintenance worker, his father was sitting in a car.

"He jumped out and said, 'Yeah, you must be Damon, 'cause you look just like me,' " Damon recalled. "He couldn't even look me in the eye."

Damon's father grabbed his son in a hug, their first hug, but he quickly drew back, repelled by the hard piece of steel he felt against his boy's belly.

"He said, 'I see you're growing up quick,' " Damon recounted. "I said, 'I ain't had no choice. You know my mother threw me out in the jungle.' "

Gypsy boy

Damon's jungle was Miami's urban heart of darkness, nourished by a river of chaos and deprivation.

Born to Jo Ann Allen when she was 20, Damon spent his first years living with his mother and grandmother, women who shared two very bad habits: hooking up with abusive men and failing to mother their own children.

Damon's grandmother, Mary Corston, had five kids by four different men and sent daughter Jo Ann away because she "couldn't take care of her."

"I was on welfare and I had all those children,"

Corston, now 63, explained.

When Jo Ann grew up and had Damon, she didn't do any better, discovering alcohol and crack cocaine when he was about 3. From then on, little else registered on her radar. Not her job at a nursing home. Not her future. Not her son.

Allen and Damon began roaming Miami's poor neighborhoods gypsylike, sleeping in cars, or staying with one of several boyfriends who supported her habits. Violent or drug-addicted, they were the only male role models in the boy's life. And she treated Damon like the only real man in hers. Allen would often look to her young son to do for her what she never did for him: Protect her. Comfort her. Love her.

"Take care of your Mama," his mother would plead, sobbing on the couch after one of her boyfriends had beaten her.

Barely school-age at the time, Damon would stay by her side all night, devoted to her well-being, clinging to her neediness. He mistook it for affection.

As he grew older he felt responsible, but powerless, to keep his mother safe. He could not stop the grown men who fractured her arms, blackened her eyes, bruised her ribs and broke a toilet seat over her head. He could only cower when they turned their wrath on him, punching him, or breaking a broom handle on his leg.

Sometimes his mom abandoned him, leaving him to sleep on the floor and scavenge for food at one boyfriend's home while she moved on to another. But soon, her men friends booted him back out on the street.

He stayed with his grandma, a neighbor or a schoolmate. More often, though, he was homeless, hungry and alone.

His favorite haunts didn't include a ballpark or a fishing hole, but a Winn-Dixie.

"I never really had anyone cook me a meal," he said. "My favorite thing was to run into the store and eat it out until they run me out."

By the time Damon was 9, he spent many nights in Miami's Little River Park, stealing shirts from backyard clothes lines so he could go to school, not that school did him any good. Moving from place to place as he did, he attended nine schools in 10 years where he picked up a label -- severely learning

disabled -- but little value for, or concept of, education.

"I thought school was putting on nice clothes and looking good for the girls," he said.

Strung-out mom

Through his early teen years, Damon stayed off and on with a family who lived by Little River Park. The son, noticing Damon in old, tattered clothing with no place to go, invited him home. The mother was a drug dealer and often out of town for weeks at a time, but Damon said, "she treated me like a son."

She agreed: "If he did something wrong, I would beat him just like I'd beat my own." At least he had an occasional place to eat and sleep.

Hanging in the neighborhood, he often saw his strung-out mother on the street. Other kids made fun of her, calling her "the baser." Oblivious, she often walked right past Damon, without a hint of recognition. Other times, she came to him, bumming money.

More often, though, he would seek her out, knowing which boyfriend's place she would be on which pay day. When he found her, she would greet him as if they had just finished dinner. "Hey, baby," she would say, "walk me to the store."

Just before his 14th birthday, he was accompanying his mother when a man beat her with a stick, cracking her ribs, fracturing her arm and damaging her hearing. At his mother's suggestion, Damon hunted down the man. He planned to kill that day, but his shotgun jammed, so he smashed the barrel against the man's head and walked away.

Police suspected his mother's boyfriend in the assault, so his mother turned in her son. After Damon completed his time for the attack, his mother left him at juvenile hall. She often did that, a cousin said, "just so she didn't have to bother with him."

By the time he was 15, Damon had been victim as much as victimizer. In a case of mistaken revenge, he was thrown in a car trunk, doused with gasoline and driven to a warehouse where he was sure he would die. Another time he was stabbed by an older woman. The scar is still there, covered by a tattoo on his stomach that reads: The Strong Survive.

He also had been arrested 10 times, for burglary, auto theft, larceny, grand theft, criminal mischief, robbery and shooting a deadly missile.

Usually the "missile" was a spark plug. Hurling through windshields, spark plugs shatter the glass, making it easy for someone to reach into a car and grab valuables from startled motorists.

In his view, he had no choice. He didn't see any other way of putting food in his mouth and clothes on his back.

"This was a way of life," he said, laughing the pained laugh of someone trying not to cry. "If I'm laughing, it's because I realize how much in darkness I was. I really thought that I was doing an occupation. I really thought that this was all I could do. . . . It's ugly. It's very ugly."

He remembers the moment when he subconsciously chose the dark side. It was the night he banished fear from his life. Sitting in Little River Park, he was tired and famished. He had nowhere to go, nothing to eat. Mosquitoes were having a feast.

"I cried like a baby. I cried so much I got mad and bit my lip. I promised myself that I would never give in to weakness again," he said. "I figured I didn't have time to be a little boy. . . . I wiped out fear. I left it in the park. I guess that's where it started."

The arrests continued, and so did the warning flags raised in juvenile court and school records.

Over and over again, experts chronicled Damon's plight. His home life was nonexistent. His emotional and physical needs were going unmet. Barely able to read, he was failing school. He suffered from chronic depression. If his mother bothered to show up for court at all, she was intoxicated.

Psychiatrists and social workers attributed his criminal behavior to "his chronic lack of any kind of effective parenting" and his need to "provide himself with the basic necessities of life."

And, as so many others would, they often recognized something intangibly special about him: " . . . [A]mazingly enough for one who has been kicked around from pillar-to-post, he still has the ability to form empathetic bonds with other people," one clinical psychologist wrote.

For the second time, the psychologist recommended the state assume custody of Damon and place him in a foster home. No one bothered.

Instead, he was sent to one delinquency program after another where, under daily structure, positive

reinforcement and a bed to sleep in, he usually thrived.

Fatal choice

But soon after being released again to the chaos of the streets, he returned to his old ways. Just 31 days after finishing a stint in state school and the after-care program that followed, Damon made headlines around the world.

He was 16 at the time and spending the night at his girlfriend's townhouse in Homestead. A woman five years his senior, his girlfriend already had three children. Damon reveled in telling people he was the youngest child's father. It was the first time, he said, he felt "wanted and part of a family."

He loved being a dad and took the duty seriously. If his girlfriend wanted to go out but couldn't find a sitter, Damon stayed home. He yearned to be a role model, the man of the house, the provider, but filtered the responsibility through his own warped lens. From where he sat, there was only one way to make money.

"It's not like I wanted to be bad," he said. "It's not like I woke up and said, 'It's good weather for robbing.' I did what I did because I was forced. I didn't see where I had a choice."

On the night of March 11, 1993, Damon and two friends, one of them his girlfriend's brother, were driving around Homestead smoking pot and looking for someone to "jack." About 9:30 p.m., they spotted their target -- an elderly couple in an Alamo rental car. Following the car into the Days Inn lot, the boys watched eagerly as the wife locked the car and walked toward Room 112, where her husband was opening the door.

"Watch her," the driver said. "See if she's got a pocketbook."

Bingo! There it was on her arm. Damon jumped out of the car and raced toward the woman, a .380 semiautomatic revolver in his left hand. "Gimme your pocketbook," he yelled, grabbing for the purse.

"No! No!" the woman screamed. As her husband rushed to her aid, Damon was shocked. Why didn't she give it up? he thought. Didn't she see the gun? Didn't she know the rules of the street? What'd she want to be -- a hero?

Reaching over the woman's head, Damon said, he tried to smack her husband in the face with the gun.

Bam! It went off. Jorg Schell never had a chance. The bullet ripped into the hollow above his collarbone, drilling downward, cutting every major artery, tearing his lung and cracking four ribs before exiting his back. The German factory owner crumbled to the ground. His wife of 30 years, Sonja, collapsed in hysterics. Airlifted to the hospital, Schell died two hours later, literally bled dry.

Damon ran to the getaway car, the gun still hot in his left hand, his right hand empty. He hadn't even gotten the purse.

The next day, he would vaguely remember hearing Schell had died, but he didn't know the German tourist was the sixth foreign visitor in four months slain during a robbery attempt in Florida. He was equally clueless about the international uproar the murders caused.

The governor and tourism officials were in crisis mode. The Sunshine State had a huge black eye. Foreign governments were warning tourists to stay away. When Schell's killer was caught, the state would seek the death penalty.

No matter. In the world Damon lived in, headlines, like life, had little meaning. He went blithely and brazenly about his business -- in broad daylight. When most 16-year-olds were still in school, he, his girlfriend's brother and another buddy were in a Hyundai at a stoplight. Just ahead, they spotted another elderly couple in a car with an out-of-state tag.

Another target. Damon ran to the car, pitched a spark plug through the windshield and, reaching in, grabbed the passenger's purse. When Damon ran back to the Hyundai, his buddy burned rubber and, and driving at 75 mph, his friend raced back to the townhouse.

A truck driver who saw the robbery chased the Hyundai, but gave up when Damon leaned out of the passenger window and began firing at the truck. He was using the same .380 semiautomatic that, barely 12 hours before, had killed Jorg Schell.

The truck driver jotted down the Hyundai's tag number and within 30 minutes police were at the townhouse. In Damon's front pocket, they found four .380 rounds and \$111 cash. Under a mattress, they found the gun.

Later, Damon confessed to Schell's murder, just as he always confessed after an arrest. This time, he told the detective he had planned to buy "my kids"

Pampers and some clothes with his share of the take. Then he cried.

"It wasn't my intent to kill that man," he said. "It wasn't supposed to happen. I tried to hit him with the gun and it went off. It went off."

Flora Seff, the assistant state attorney who prosecuted Damon, agrees he probably didn't mean to kill Schell. "It was just something to do," she said. "Like going to the movies."

As Damon sat in the Dade County Jail, facing the electric chair at age 18, defense lawyers and social workers spent hundreds of hours documenting his life. The tragedy they uncovered persuaded Seff's boss, Miami-Dade State Attorney Katherine Fernandez Rundle, to waive the death penalty.

"The system clearly failed him," she would tell his attorney.

A new man?

Sitting in an interview room at the Charlotte Correctional Institution just south of Punta Gorda, Damon is like a jungle cat. His eyes darting, his spine tense, he notes every movement, ready to pounce. When Seff's words about "just something to do" are repeated to him, his shoulders slump and his resonant voice quiets. He is visibly distressed, as if the words punched him in the stomach.

Just days before, he replayed in his head that scene in the Days Inn parking lot six years ago: He jumps out of the car. He runs toward Sonja Schell. He grabs her purse. And he wonders: "Why didn't you leave the gun in the damn car? Why? Damn!"

From his place in the world, he does not wonder: "Why did I rob? Why didn't I learn a different trade? Why didn't I become a doctor or a lawyer?" Such choices are inconceivable to a young man who grew up to be exactly what his baby pictures portended.

"I think society knows the problem," he said. "They know people aren't born evil or without soul. Society knows if someone lives in toxic waste, they're going to be toxic. They just don't want to take responsibility."

He takes responsibility for his own crimes, but he believes he is no longer the person who committed them. He thinks of Jorg Schell "all the time, sometimes too much." He thinks how the 59-year-old businessman was the backbone of his family, just like his own grandmother is "the

backbone of my so-called family." He thinks about how much pain Schell's widow feels. How Schell's daughter married without her father there. How he wishes he could tell Schell how it "wasn't me who did it."

Asked, "Who was it?" he pauses for a long moment.

"Someone caught in a trance," he said. "Someone caught in a way of life he didn't even understand."

"I know what you're thinking: That's bull. I knew what I was doing. I knew right from wrong. But at the time, right from wrong don't matter. Rules don't matter. They never applied to me. Rules are, you have a family, they help you build your mind. They teach you how to live. I had to live my own rules. I never had anyone believe in me. Never. Never. Never. I can't even remember anytime anyone really sat down and said, 'Damon, how ya doing?' "

[Posted 10/16/1999 11:30 PM EST]

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Keith Hill

H.R. 1501 (juvenile justice) - ED letter to conferees

DRAFT
AUGUST 19, 1999
11:45 AM

Honorable [insert name of conferee]:

I am writing to express my serious concerns relating to certain provisions of the two juvenile crime bills recently passed by the House of Representatives and the Senate, respectively, H.R. 1501, the "Juvenile Justice Reform Act of 1999" and S. 254, the "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999." Improving the effectiveness of the Nation's juvenile justice system is a goal we all share, and is vitally important to the maintenance of our schools as safe and orderly centers of learning. Because the overwhelming majority of the provisions of both bills relate directly to the operation of the juvenile justice system, I defer overall to the Attorney General with respect to both bills.

However, both bills also contain a variety of provisions, added during floor debate, that would directly affect the administration of Federal education programs at the elementary and secondary education level as well as the ability of local school systems throughout the Nation to provide a safe, high-quality education. I urge the conferees not to include these provisions in the final bill, but to consider them, instead, as part of a more comprehensive and deliberate review of Federal elementary and secondary education programs that will occur as the Congress debates the upcoming reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). In this connection, I urge the Congress to act favorably on the President's ESEA reauthorization proposal, the "Educational Excellence for All Children Act of 1999," and, in particular, the many improvements that proposal would make to Title IV of the ESEA, the "Safe and Drug-Free Schools and Communities Act." If, however, the conferees feel compelled to address these issues in conference, I urge you to delete or modify the provisions described below.

IDEA. My strongest objections are to the amendments in both bills to the Individuals with Disabilities Education Act (IDEA). These amendments would allow school personnel in public elementary and secondary schools, for the first time, to suspend or expel children with disabilities from their schools for unlimited periods of time, without any educational services (including behavioral intervention services), and without the impartial hearing now required by the IDEA, for carrying or possessing a "gun or firearm" (Senate) or a "weapon" (House) to, or at, school or a school function. Congress need not, and should not, make these changes. Just two years ago, Congress, after thoughtful deliberation, amended the IDEA to give school officials new tools to address the issue of children with disabilities bringing such weapons to school, or otherwise threatening teachers and other students. For example, school officials may remove, for up to 45 days, a child with a disability who takes a weapon to school, and may request a hearing officer to similarly remove a child who is substantially likely to injure himself or others, if the child's parents object to the removal. Furthermore, the IDEA currently allows hearing officers to keep these students out of the regular educational environment beyond 45 days if they continue to pose a threat to the rest of the student body. Finally,

the 1997 amendments to the IDEA help prevent dangerous situations from arising, by encouraging schools to address misbehavior before it becomes serious, through the provision of behavioral interventions and other appropriate services. I am convinced that these new tools will be effective if given a chance to work.

In contrast, the amendments now under consideration would deny vital educational services to children with disabilities who are removed from school, including behavioral interventions that are designed to prevent dangerous behavior from recurring. Continued provision of educational services, including these behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuing educational services is the wrong decision in the short run, and, in the long run, will result in significant costs in terms of increased crime, dependency on public assistance, unemployment, and alienation from society. We cannot afford to throw away a single child.

Also, the applicable definition of "weapon" (current section 615(k)(10)(D) of the IDEA), as used in the House bill, is very broad and open to subjective application--covering anything, such as a rock picked up on the way to school or a baseball bat intended for an after-school ball game--that is "readily capable of causing death or serious bodily injury," whether or not it is designed as a weapon and without regard to the student's intention in bringing it to school. A statutory standard this broad is sure to lead to inconsistent application at the local level and widespread confusion.

The exclusion of children with disabilities from school -- without the impartial due-process hearing and the continued services that the IDEA now requires -- is the wrong response. I urge you to reject these amendments to the IDEA.

Religious Expression. Both bills contain amendments relating to the expression of religious beliefs at public schools. This Administration has a strong record of protecting religious expression in schools. In 1995, the President directed the Attorney General and me to issue guidelines that would help schools preserve the religious freedom of students. I sent these guidelines to every school district in the nation in 1995 and again last year, to ensure that parents, teachers, students, and schools officials understand that schools need not be religious-free zones. These guidelines make clear that schools may not forbid students from expressing their religious views or beliefs solely because of their religious nature, and that any student in an American public school may pray, bring a Bible to school, say grace at lunch, or voluntarily participate in "see you at the flagpole" gatherings. In addition, I share the Department of Justice's concerns over the constitutionality of the provisions in H.R. 1501 and S. 254.

Internet Filtering. The House bill contains an amendment that would require elementary and secondary schools and libraries receiving universal-service assistance to select, install, and use filters that block access to child pornographic materials and obscene materials on all computers with Internet access, and to certify to the Federal Communication Commission that they have done so. Make no mistake, I strongly

support the goal of protecting children from inappropriate material on the Internet. However, we should not mandate our schools and libraries to use technologies that may cut too wide a swath, and also block access to material that is entirely appropriate for educational and other uses, nor should we impose unwarranted paperwork burdens on them, as the House bill would do. Rather, just as schools must develop technology plans in order to participate in our Technology Literacy Challenge Fund program, I believe that schools and libraries that benefit from universal-service assistance should, in consultation with parents and other interested parties, have a plan in place to protect children from inappropriate material on the Internet—and that we should allow them to adopt the approach that best meets the needs of their students and communities. To give but one example, schools and libraries might wish to institute signed "compacts" between themselves and the students and their parents regarding responsible use of the Internet, and integrate lessons about its responsible use with broader lessons about personal and civic responsibility. There are a variety of approaches, which do not involve the mandatory use of filtering systems, that schools and libraries should be free to try.

Safe Schools. The Senate bill would expand the Gun-Free Schools Act of 1994--which requires school districts to expel from school for at least one year any student who brings a firearm to school--to require States to pass a law that would compel the same punishment for students who possess at school a "felonious quantit[y] of an illegal drug." Clearly, the presence of illegal drugs at school is unacceptable. However, I oppose this provision as drafted. First, I do not favor expanding the number of students who are expelled from school for long periods of time—for the sake of the students, themselves, and their communities. Many students who are expelled for a long period of time never return to school, thereby ending their education and casting them troubled and ill-prepared onto the streets. We have no children to waste in this country. Secondly, expelling students in this manner based on whether the amount of illegal drugs they possessed at school did, or did not, constitute a felony under State or Federal law would not only lead to inconsistent results--and confusion--across the country in the application of this Federal requirement, it would force school administrators to become expert in the application of criminal law and to function, in effect, as prosecutors.

I believe that the criminal justice system should be brought to bear vigorously on any student who brings illegal drugs to school. Accordingly, I believe a better approach would be to require schools that have not already done so to adopt and enforce sanctions against students who bring illegal drugs to school, and to make it mandatory that school authorities refer to the appropriate law-enforcement authorities any student who brings an illegal drug to school, whether felonious or not.

The Senate bill would also amend current Titles IV and VI of the ESEA to expressly permit school districts to use an unlimited amount of their resources under those two titles to "purchase school security equipment," such as metal detectors. While such equipment can be an important part of local efforts to make schools safe, it is vital that school districts continue to look at a variety of other approaches to addressing their individual needs, because we know that metal detectors alone will not make schools safe.

Our reauthorization proposal for the Safe and Drug-Free Schools program would provide school districts additional flexibility to purchase such equipment. I urge the conferees to omit the Senate provision from the final bill, so that the Congress and the Administration can work together to address this issue as part of the pending reauthorization of the entire Safe and Drug-Free Schools program and the rest of the ESEA.

Thank you for the opportunity to present these views.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

Richard W. Riley

DPC edits 8/12/99

Honorable Richard A. Gephardt

I am writing to express my serious concerns relating to certain provisions of the two juvenile crime bills recently passed by the House of Representatives and the Senate, respectively, H.R. 1501, the "Juvenile Justice Reform Act of 1999" and S. 254, the "Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999." Improving the effectiveness of the Nation's juvenile justice system is a goal we all share, and is vitally important to the maintenance of our schools as safe and orderly centers of learning. Because the overwhelming majority of the provisions of both bills relate directly to the operation of the juvenile justice system, I defer overall to the Attorney General with respect to both bills.

However, both bills also contain a variety of provisions that were added during floor debate, ~~—and that are only peripherally related (if related at all) to the juvenile justice system—~~that would directly affect the administration of Federal education programs at the elementary and secondary education level as well as the ability of local school systems throughout the Nation to provide a safe, high-quality education. ~~At best, many of these provisions merely duplicate existing authority and activities and are therefore unnecessary and wasteful; at worst, some of these provisions would undermine the effectiveness of existing programs, raise significant constitutional problems, and divert our attention from the real problems we face in making sure our schools are safe places to learn. I urge you to delete these well intentioned, but ill considered provisions, particularly those discussed below.~~ I urge you to defer ~~At the very least,~~ consideration of these education-related provisions ~~should be deferred and made~~ instead include them as part of a more comprehensive and deliberate review of Federal elementary and secondary education programs that will take place as Congress debates, ~~as part of the upcoming~~ reauthorization of the Elementary and Secondary Education Act of 1965 (ESEA). In this connection, I urge your consideration of the President's reauthorization proposal, the "Educational Excellence for All Children Act of 1999," and, in particular, the many improvements that proposal would make to title IV of the ESEA, the "Safe and Drug-Free Schools and Communities Act." At a minimum, however, I urge you to delete or modify the provisions described below.

IDEA. My strongest objections are to the amendments in both bills to the Individuals with Disabilities Education Act (IDEA). These amendments would allow school personnel in schools that receive certain Federal education funds, for the first time, to suspend or expel children with disabilities from their schools for unlimited periods of time, without any educational services (including behavioral intervention services), and without the impartial hearing now required by the IDEA, for carrying or possessing a "gun or firearm" (Senate) or a "weapon" (House) to, or at, school or a school function. Congress need not, and should not, make these changes. Just two years ago, Congress, after thoughtful deliberation, amended the IDEA to give school officials new tools to

address the issue of children with disabilities bringing such weapons to school, or otherwise threatening teachers and other students. For example, school officials may remove, for up to 45 days, a child with a disability who takes a weapon to school, and may request a hearing officer to similarly remove a child who is substantially likely to injure himself or others, if the child's parents object to the removal. Furthermore, the IDEA currently allows hearing officers to keep these students out of the regular educational environment beyond 45 days if they continue to pose a threat to the rest of the student body. Finally, the 1997 amendments to the IDEA help prevent dangerous situations from arising, by encouraging schools to address misbehavior before it becomes serious, through the provision of behavioral interventions and other appropriate services. I am convinced that these new tools will be effective if given a chance to work.

These amendments would deny vital educational services to children with disabilities who are removed from school, including behavioral interventions that are designed to prevent dangerous behavior from recurring. Continued provision of educational services, including these behavioral interventions, offers the best chance for improving the long-term prospects for these children. Discontinuing educational services is the wrong decision in the short run, and, in the long run, will result in significant costs in terms of increased crime, dependency on public assistance, unemployment, and alienation from society. We cannot afford to throw away a single child.

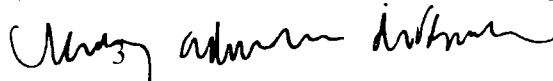
~~These amendments would also undo vital protections in the IDEA that were included to protect children with disabilities from widespread abuses of their civil rights. Under this amendment, for example, the IDEA would no longer require schools to determine, when suspending or expelling a child with a disability, whether the behavior of the child in carrying or possessing a weapon is related to the child's disability. Such a determination, which can currently be made while the child has been removed from school, is needed to ensure that children are not unjustly denied educational services during their removal without considering the effects of the child's disability on their behavior. The "manifestation" determination required by the IDEA is an important tool schools use to appropriately understand the relationship between a child's behavior and his or her disability in order to best implement behavior intervention strategies.~~

| Finally Also, the applicable definition of "weapon" (current section 615(k)(10)(D) of the IDEA), as used in the House bill, is very broad and open to subjective application--covering anything, such as a rock picked up on the way to school or a baseball bat intended for an after-school ball game--that is "readily capable of causing death or serious bodily injury," whether or not it is designed as a weapon and without regard to the student's intention in bringing it to school. A statutory standard this broad is sure to lead to inconsistent application at the local level and widespread confusion.

The exclusion of children with disabilities from school -- without the impartial due-process hearing and the continued services that the IDEA now requires -- is the wrong response. I urge you to reject these amendments to IDEA.

Religious Expression. Both bills contain amendments relating to the expression of religious beliefs at public schools. This Administration has a strong record of protecting religious expression in schools. In 1995, the President directed the Attorney General and me to issue guidelines that would help schools preserve the religious freedom of students. I sent these guidelines to every school district in the nation in 1995 and again last year, to ensure that parents, teachers, students, and schools officials understand that schools need not be religious-free zones. These guidelines make clear that schools may not forbid students from expressing their religious views or beliefs solely because of their religious nature. Any student in an American public school may pray, bring a Bible to school, say grace at lunch, or voluntarily participate in "see you at the flagpole" gatherings. ~~These~~ However, the amendments proposed in H.R. 1501 and S. 254 raise significant constitutional issues; indeed, one of them appears to be plainly inconsistent with existing Supreme Court precedent. ~~To the extent that these amendments raise constitutional issues, and I defer to the views of the Department of Justice on these matters. I remain~~ troubled by them, however, not simply because I believe they divert attention from the real problems of reforming our juvenile justice system and keeping guns out of the hands of our children, but because they evince a misunderstanding of the hospitality that our public schools offer to student prayer and the expression of religious views under current law. Far from being hostile to the rights of students to express their religious beliefs and values, our public schools protect the rights of all students -- Christian, non-Christian, and non-believers. Any student in an American public school may pray, bring a Bible to school, say grace at lunch, or voluntarily participate in "see you at the flagpole" gatherings. In 1995, President Clinton directed the Attorney General and me to issue guidelines on religious expression in public schools. These guidelines were re-issued in 1998 and sent to every principal in the country. The guidelines clearly spell out the many constitutional and statutory protections that American school children have to express their religious faith in the public schools. Religion is very much alive and well in our public schools, and needs no further protection in this legislation.

Internet Filtering. The House bill contains an amendment that would require elementary and secondary schools and libraries receiving universal service assistance to select, install, and use filters that block access to child pornographic materials and obscene materials on all computers with Internet access. Make no mistake, I strongly support the goal of protecting children from inappropriate harmful material on the Internet. ~~However, quite apart from the administrative burdens and harshness associated with requiring every such school and library to certify to the Federal Communications Commission its compliance for all its computers (at the risk of being forced "to repay immediately the full amount of all universal assistance the school or library received" since the date of noncompliance), I oppose a Federal mandate to use of filtering systems.~~



~~We~~ However, we should not mandate ~~for~~ our schools and libraries ~~the~~ to use of technologies that ~~often~~ may cut too wide a swath, ~~and~~ also blocking access to material that is entirely appropriate for educational and other uses. Rather, just as schools are required to develop technology plans, I believe that the beneficiaries of universal service assistance should, in consultation with parents and other interested parties, certify that they have a plan in place to protect children from inappropriate ~~develop and implement strategies to prevent minors from gaining access to harmful~~ material on the Internet—and that we should allow those beneficiaries to adopt the approach that best meets the needs of their students and communities. To give but one example, schools and libraries might wish to institute signed "compacts" between themselves and the students and their parents regarding responsible use of the Internet, and integrate lessons about its responsible use with broader lessons about personal and civic responsibility. There are a variety of approaches, which do not involve the mandatory use of filtering systems, that schools and libraries should be free to try.

Safe Schools. ~~The Senate bill would amend the Gun-Free Schools Act of 1994—which requires school districts to expel from school for at least one year any student who brings a firearm to school—to require States to pass a law that would compel the same punishment for students who possess at school a "felonious quantit[y] of an illegal drug."~~ While I strongly support the Gun-Free Schools Act, and believe the criminal justice system should be brought to bear vigorously on any student who brings illegal drugs to school, I oppose the provision of the Senate bill that would expand the Act to include felonious quantities of illegal drugs. First, I do not favor expanding the number of students who are expelled from school for long periods of time—for the sake of the students, themselves, and their communities. Many students who are expelled for a long period of time never return to school, thereby ending their education and casting them troubled and ill-prepared onto the streets. We have no children to waste in this country. Secondly, expelling students in this manner based on whether the amount of illegal drugs they possessed at school did, or did not, constitute a felony under State law would lead to inconsistent results—and confusion—across the country in the application of this Federal requirement.

Safe Schools. The Senate bill would also amend current Titles IV and VI of the ESEA to expressly permit school districts to use an unlimited amount of their resources under those two titles to "purchase school safety equipment," such as metal detectors. While such equipment can be an important part of local safe school plans, ~~has its place,~~ and may be acquired under current law subject to certain limits, schools should also be able to spend a large portion of their resources on comprehensive research-based programs that address a school's specific needs. Accordingly, we would recommend that spending for schools safety equipment be increased, but capped at no more than 30 percent of a school's overall safety expenditures. ~~it is often perceived as a quick and easy solution for school violence and discipline problems. But it isn't. What we know works to reduce these~~

~~problems are comprehensive, research-based programs that address diagnosed needs—in short, the type of programs included in the President's proposed Safe and Drug-Free Schools and Communities Act. I oppose these provisions of the Senate bill, because I believe they do a disservice to well-meaning, but shortsighted, school districts.~~

~~Other Concerns. Finally, both bills would authorize a welter of overlapping commissions, studies, and reports on various facets of the problem of youth violence in our Nation. I urge the Congress to move with care in this area. We already have a great deal of useful information about the causes and nature of youth violence, but few resources to waste by plowing over the same ground.~~

Thank you for the opportunity to present these views.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Yours sincerely,

Richard W. Riley

O'Leary, Ann

From: O'Leary, Ann
Sent: Monday, August 16, 1999 5:40 PM
To: Riddle, Paul; Cohen, Larry; Cohen, Mike; Cook, Sandra; Corwin, Thomas; Fleming, Scott; Jones, Lonna; Johnson, Judith; Kelley, Thomas; Kristy, Jack; Modzeleski, Bill; O'Neil, Brendan; Peterson, Terry; Rogers, Diane; Rosenfelt, Phil; Rudy, Deborah; Smith, Mike; Veta, Jean
Subject: RE: Juvenile crime bill: White House re-write of our letter to the conferees
Importance: High

Update on status of JJ letter:

Bill and Deborah are collecting more information regarding the issue of "felonious quantities of illegal drugs" - specifically, I think we need to be able to make a strong case for the argument that this provision would be implemented very unevenly across states by showing the minimum and maximum quantities specified in state statutes. We also need to be able to show some numbers of how the expulsion rate would skyrocket under this proposal.

I spoke with Lesile Mustain who said that Barbara Chow had been on vacation during these discussions last week. She suggested that I talk to Barbara and have Barbara help us lobby Bruce. I've placed a call into her, but also want to be able to share the numbers with her.

The other issue that I think we need to raise (although Leslie warned me that she did not think we would get much sympathy from Barbara) is the 30% cap. At this point the letter seems confusing. Under current law, can a school use unlimited funds in Title VI for purchasing school safety equipment? I know in Title IV, we have the cap at 20%. Would an overall cap of 30% be a reduction or an expansion? What does a 30% cap for "overall school expenditure" mean - does it include state and local dollars? What is our reaction?

Once we collect this additional information, I will check back in with OMB to see how they would like to proceed.

-----Original Message-----

From: Riddle, Paul
Sent: Thursday, August 12, 1999 1:43 PM
To: Cichowski, Carol; Cohen, Larry; Cohen, Mike; Colvin, Mari; Cook, Sandra; Corwin, Thomas; Craig, Susan; Fleming, Scott; Guard, Patty; Heumann, Judy; Jones, Lonna; Judith Johnson, Judith; Kelley, Thomas; Kristy, Jack; Link, Phil; March, Greg; Modzeleski, Bill; O'Leary, Ann; O'Neil, Brendan; Peterson, Terry; Reynolds, JoLeta; Roberts, Linda; Rogers, Diane; Rosenfelt, Phil; Rudy, Deborah; Sheridan, Suzanne; Smith, Mike; Somerville, Leslie; Veta, Jean; Warner, Delores; Wexler, Rob; Winston, Judith
Subject: Juvenile crime bill: White House re-write of our letter to the conferees

Attached, as sent to us by OMB, is the White House's proposed re-write of our letter to the conferees on H.R. 1501, the juvenile-crime legislation. Deletions are marked through, while additions are underlined.

OMB advises that the White House edits are the product of high-level discussions among John Podesta, Bruce Reed, and others, and that the actual language has been approved by Mr. Reed. Note, especially, the deletions and other edits relating to the IDEA and to the Gun-Free Schools Act.

OMB also advises that there may be additional edits of our discussion of Internet filters.

Please review the White House edits and give me your reactions by noon tomorrow (Friday), if possible.

Thanks.

<< File: ED-WhiteHouse.doc >>

O'Leary, Ann

From: Riddle, Paul
Sent: Thursday, August 12, 1999 1:43 PM
To: Cichowski, Carol; Cohen, Larry; Cohen, Mike; Colvin, Mari; Cook, Sandra; Corwin, Thomas; Craig, Susan; Fleming, Scott; Guard, Patty; Heumann, Judy; Jones, Lonna; Judith Johnson, Judith; Kelley, Thomas; Kristy, Jack; Link, Phil; March, Greg; Modzeleski, Bill; O'Leary, Ann; O'Neil, Brendan; Peterson, Terry; Reynolds, JoLeta; Roberts, Linda; Rogers, Diane; Rosenfelt, Phil; Rudy, Deborah; Sheridan, Suzanne; Smith, Mike; Somerville, Leslie; Veta, Jean; Warner, Delores; Wexler, Rob; Winston, Judith
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Thanks.



ED-WhiteHouse.doc

O'Leary, Ann

From: Kristy, Jack
Sent: Friday, August 20, 1999 12:04 PM
To: Veta, Jean; O'Leary, Ann; Cohen, Mike; Cohen, Mike
Subject: FW: Internet filtering

Oh, brother. Here's the VP's completely different re-write of internet filtering. Off the top of my head, I don't know what constitutional issues, etc. they are talking about. As soon as I get back from my next meeting, I'll try to figure out what this means.

-----Original Message-----

From: Ronald_E._Jones@omb.eop.gov [SMTP:Ronald_E._Jones@omb.eop.gov]
Sent: Friday, August 20, 1999 11:42 AM
To: jack_kristy@ed.gov
Cc: Richard_E._Green@omb.eop.gov
Subject: Internet filtering

Here's the proposed replacement paragraph. Apparently it was worked out with a person at Education. If you have any objections to this replacement, please call Richard Green at 395-4607.

The Riley letter still hasn't been cleared. DPC staff are trying to close the loop with Eric Liu.

I'll be out for two weeks starting this afternoon.

----- Forwarded by Ronald E. Jones/OMB/EOP on 08/20/99
11:44 AM -----

Leanne A. Shimabukuro
08/20/99 11:04:13 AM

Record Type: Record

To: Ronald E. Jones/OMB/EOP@EOP

cc: Jim Kohlenberger/OVP@OVP, Eric P. Liu/OPD/EOP@EOP
Subject: Internet filtering

Ron -- I've attached the language that we worked out with OVP on filtering. Education (Carole Waycey) was part of the re-drafting discussions.

Thanks,
Leanne

(See attached file: Internet Filtering.doc)



Lotus Manuscript 1.0

file: JJ bill



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

August 18, 1999

NOTE TO: Mike Cohen, OS
Terry Dozier, OS
Heather Moore, OS
Ann O'Leary, ODS
Linda Roberts, ODS
Tom Corwin, OESE
Bill Modzeleski, OESE
Deborah Rudy, OESE
Delores Warner, OESE
Greg March, OSERS
Lonna Jones, OUS/BS
Larry Cohen, OUS/BS
Carol Cichowski, OUS/BS
Matt Onstott, OUS/BS
Sue Betka, OERI
Tom Kelley, OLCA
Heidi Bonner, OLCA
Sandra Cook, OLCA
Jean Veta
Phil Rosenfelt
Steve Freid
Mari Colvin
Susan Craig
Suzanne Sheridan
Jack Kristy
Jennifer Orzechowski

FROM: Paul Riddle

Paul Riddle

RE: Department of Justice letter to conferees on juvenile crime bill

Attached, for your information, are: (1) the comments we sent OMB on DOJ's draft letter; and (2) DOJ's letter, as transmitted to the conferees, with education-related excerpts from their detailed statement of views.

Attachments

cc: Leslie Somerville



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF THE GENERAL COUNSEL

August 11, 1999

TO: Ron Jones, OMB

FAX NO: 395-3109

FROM: Paul Riddle, Division of Legislative Counsel
Phone: (202) 401-6269 Fax: (202) 205-2689

TIME: 11:54 AM

PAGES (including this sheet): 24

ED's comments on DOJ's draft letter on H.R. 1501/S. 254.

In addition to 1 page of typed comments, we have comments on--

pp. 2, 3, 4, and 5 of the cover letter; and

pp. 1, 5, 24, 33, 34, 36, 38, 39, 62, 63, 64, 72, 83, 86, 88, 100, 101, and 103 of the attachment.

Department of Education comments on
draft Department of Justice letter to conferees on
H.R. 1501/S. 254, juvenile justice legislation
August 11, 1999

In addition to the comments noted on the draft letter and attachment, we have the following comments on the attachment:

p. 64, Violence Prevention Training for Early Childhood Educators

We recommend deletion of this paragraph, which "enthusiastically supports" a program that would be administered by the Department of Education, which does not support it. We previously administered a very similar program (Training in Early Childhood Education and Violence Counseling), which Congress eliminated in 1995 without objection from the Administration, which has not sought its restoration. ED would be able to carry out these activities under the "Early Childhood Educator Professional Development" program, which the President proposed be enacted as Part C of Title II of the Elementary and Secondary Education Act of 1965 (ESEA) in his comprehensive ESEA reauthorization proposal transmitted to Congress on May 24.

p. 64, Preventing Juvenile Delinquency Through Character Education

Similarly, DOJ's letter should not support this new program, which would be administered by ED. The President's ESEA reauthorization proposal, which DOJ should recommend instead, would enact a new ESEA section 10103, "Character Education Research, Dissemination, and Evaluation", which is preferable to the program in S. 254.

Messrs. Hatch, Hyde and Goodling

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small portion ^{who are} of violent offenders, and, at the same time, respond with effective prevention and early intervention initiatives to the many millions of young Americans who may be at risk for delinquency and can be helped to become productive and law-abiding citizens. ✓

not clear why some are singular and some are plural
In recent years, this country has made extraordinary progress in reversing disturbing trends in juvenile violence. For three straight years, juvenile arrest rates for violent crimes have dropped significantly – indeed, the rate in 1997 was a full 23 percent lower than in the peak year of 1994. More specifically, juvenile arrest rates for murder dropped more than 40 percent from 1993 to 1997; the rate for robbery was down 28 percent; and juvenile weapons offense arrest rates declined by 24 percent. The juvenile arrest rate for property crime offenses (including burglary, theft, and arson) was lower in 1997 than at any point in the past 13 years.

see p. 3
Among the reasons for these dramatic declines in youth violence is the infusion of community police officers into cities and towns across the nation – law enforcement personnel who have worked in close partnership with prosecutors, parents, school officials, and youth workers, as well as with concerned government officials, practitioners, and citizen volunteers – to help America's communities get their young people back on track. The 106th Congress can promote continued declines in youth crime by embracing a comprehensive approach to community safety that includes support for law enforcement and for America's youth.

This is also a pivotal moment in our ongoing effort to fight crime and gun violence, especially as they affect our children. Although the number of violent crimes committed with firearms has fallen by 27 percent since 1993, the Columbine High School murders in Littleton, Colorado, the deaths of 13 young people every day due to shootings at school and elsewhere, and the recent workplace shooting in Atlanta, Georgia, underscore how much more we must do to reduce firearms violence even further. While we may never fully understand all the reasons why incidents like these occur, it stands to reason that if the young people and adult criminals who committed these crimes had a tougher time getting their hands on guns, these horrible crimes might have been prevented. We can – indeed we must – build upon the successes of existing state and federal laws to provide greater protections for our children and all of our citizens. ✓

Our specific views reflect our overall approach to strengthening our juvenile justice system and keeping guns out of the hands of criminals and children. First, the federal government supports the administration of juvenile justice by state and local governments, which handle the vast majority of issues that concern children, families, and communities, and the crime and delinquency that can result when any of those begin to falter. Consequently, the Administration believes it is a critical federal responsibility to provide adequate funds to states and communities in a way that ensures both necessary flexibility and the fundamental protection of juveniles.

Delete or edit to drop "at school"; as written, it implies that the school is the place at which a majority of these shootings occur; that's a very bad (and false) message

Messrs. Hatch, Hyde and Goodling

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Second, although we provide direct federal investigative and prosecutorial resources in a very small number of juvenile cases, we need to have strong laws in place for those occasions when we do prosecute juveniles. And, since the majority of these cases arise in Indian country, we must pay particular attention to the needs of the tribes in the creation and execution of laws concerning juveniles in the federal system. *not capitalized on p. 2*

Finally, in order to protect the safety and well-being of juveniles throughout the Nation, it is vital that we have sensible, effective measures to keep guns and explosives away from them, and from criminals who would harm them (as well as the rest of us). We urge the conferees to ensure that such measures are included in the final bill.

Our detailed analysis and comments concerning H.R. 1501 and S. 254 are provided in the attached document. However, we would like to highlight several specific provisions that the Administration considers critical to any piece of juvenile justice legislation.

Close the gun show loophole. The Brady Law's background check requirement has worked to prevent more than 400,000 illegal, over-the-counter gun sales to felons, fugitives, and other prohibited persons. The Brady Law's requirement, however, does not apply to the many guns sold by unlicensed gun sellers at gun shows. In a bipartisan vote, the Senate passed a provision that would close this loophole in the Brady Law, and would also allow law enforcement to trace firearms sold at gun shows if those firearms were later used in crime. The Senate provision does this without weakening current law, creating any new bureaucracies, or intruding on the interests of law-abiding gun buyers and sellers. The Administration strongly supports the Senate's gun show provision and the instruction – approved overwhelmingly by the House – that the conferees produce a final bill that includes meaningful legislation to close the gun show loophole once and for all.

Require safe storage devices to be sold with every handgun. Safety locks and gun lockboxes can prevent some crime and many accidental shootings. Every gun sold in the United States by a licensed firearms dealer should have such a device with it. The Administration supports the Senate's provision requiring such devices to be sold with every handgun.

Keep guns out of the hands of persons who have committed serious juvenile offenses. Our federal gun laws recognize that persons who commit serious violent criminal offenses should not be allowed to possess firearms. However, persons who commit serious drug or violent criminal offenses as juveniles are not prevented from owning firearms once they reach the age of majority. This is wrong. Although the Senate passed a measure designed to address this problem, the provision contains language that could delay its implementation for decades. The Administration looks forward to working with the conferees on this important provision.

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Ban the importation of large-capacity ammunition clips. The 1994 Assault Weapons Ban was passed to limit the general public's access to assault weapons and magazines with a capacity of more than 10 rounds. The 1994 law, however, contained a provision to allow possession and importation of existing large capacity ammunition clips. This has led to an influx of new imported large capacity clips, which – as a practical matter – are indistinguishable from older clips. The Senate passed a provision – which the Administration fully supports – to close this loophole.

Prohibit youth from possessing assault weapons. Youth gun access is an especially serious problem, because when guns replace fists or knives to settle a dispute or commit a robbery, the chance of a fatality is many times greater. In fact, youth homicide victimization rates doubled from the mid-1980s to the early 1990s, increasing at a higher rate than any other violent crimes for which statistics are available. This rise in youth homicide is due entirely to guns. Between 1990 and 1996, there were an average of over 3,200 gun homicides among young people ages 19 and under. S. 254 includes a provision prohibiting anyone less than 18 years of age from possessing a semiautomatic assault weapon. The Administration supports this sensible prohibition, but believes that it does not go far enough. Congress should adopt the Administration's proposal to prohibit anyone less than 21 years from possessing assault weapons and handguns.

Provide effective firearms enforcement. Over the past several years, the Justice Department, in cooperation with the Department of the Treasury, has supported several innovative and effective firearms prosecution programs around the country, including Project Exile in Richmond, Virginia and Operation Ceasefire in Boston, Massachusetts, among others. Every one of these programs has been developed collaboratively by state and local – as well as federal – officials and tailored to address the gun violence problem specific to the locale by enforcing the toughest laws available. We support giving our United States Attorneys the resources to work with state and local authorities to develop individualized firearms violence reduction programs in their districts, but we oppose provisions in the Senate and House Bills that would diminish the programs' effectiveness by requiring U.S. Attorneys to adopt a "cookie-cutter" approach to the problem, and would mandate wholesale federalization of crimes even when state or local laws provide more stringent penalties.

Strengthen firearms and explosives laws. We strongly support provisions in the Senate and House Bills to strengthen our federal firearms and explosive laws. For example, we support increasing the penalties on "straw purchasers" who facilitate illegal gun trafficking, prohibiting juvenile possession of explosives, and extending background checks and permit requirements to the purchase and possession of explosives by adults. ✓

Prevent juvenile crime before it starts. It has long been the Administration's position that tough law enforcement measures that hold young people accountable for their actions must be balanced

→ This is beyond the conferees' jurisdiction.

Messrs. Hatch, Hyde and Goodling

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with smart, targeted prevention efforts that keep young people out of trouble in the first place. The bills that passed the House and Senate have made much larger commitments to prevention, and we applaud the Congress for moving in this direction. We urge the conferees to ensure that the final bill authorizes substantial prevention spending and that the appropriations process ultimately reflects this priority as well. larger than what?

Reform the federal juvenile justice system. As stated above, the federal government plays a small but vital role in investigating and prosecuting juvenile cases. Federal prosecutors need certain additional tools to bring their cases in a just and efficient way, and in a manner that does not unduly burden victims, witnesses, or the resources of the court. It is important, however, in our zeal to protect communities, that we not compromise the rights and interests of juveniles, and we urge the conferees to adopt an appropriate balance, as described in the accompanying views letter.

→ not capitalized before this
Preserve the core requirements. The Administration further believes that states should have substantial flexibility in the formation and implementation of their own juvenile justice policies. However, there are certain fundamental areas in which we know – from documented, tragic experience – that federal baselines save lives. The four “core requirements” that serve as funding conditions in the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, have protected thousands of juveniles in state juvenile justice systems from serious physical and emotional harm and addressed racial disparity in the juvenile justice system. Again, the Administration commends the House and Senate for the very substantial steps they have taken to protect these requirements, giving States additional needed flexibility. We are disappointed, however, with the Senate’s virtual elimination of the requirement relating to Disproportionate Minority Confinement, and we urge the conferees to retain that requirement as the House has done. Additional recommendations are detailed in the accompanying views letter. Finally, on the question of other requirements or funding conditions, we are pleased with and grateful for the removal of some of the expensive and burdensome funding conditions that were included in earlier versions of these bills.

Break the link between mental health problems and crime. We must take seriously the relationship between mental illness and delinquency. Too often, children with mental health problems end up in the juvenile justice system having never gotten treatment for their problems, and then, once in the system, they still do not get the care they need. We commend both houses for adding provisions to their bills this year that begin to address mental health needs in the juvenile justice system.

→ it
Extend juvenile justice protections to Indian tribes. In contrast to downward trends nationally, juvenile crime in Indian country is on the rise, and it is vitally important that tribes have access as directly as possible to the federal resources they need to combat their juvenile crime problems. Although several of the funding allocations in the Senate Bill specifically make Indian tribal

* In neither bill is the word "the" part of the short title. See 51(a) of each bill.

INTRODUCTION

* This document contains the detailed views of the United States Department of Justice on H.R. 1501, ~~"The Juvenile Justice Reform Act of 1999"~~ and its companion bill, S. 254, ~~"The Violent and Repeat Juvenile Offender Accountability And Rehabilitation Act of 1999,"~~ which ~~was the basis for the Senate amendment to H.R. 1501.~~ ✓
↳ constitutes ✓
↳ the text of ✓

Part I of this document addresses S. 254 and provisions of the House-passed version of H.R. 1501 that correspond to it, where those correspondences exist. Remaining provisions of the House-passed version of H.R. 1501 are addressed in Part II.

Page numbers throughout this document refer to the Senate and House versions of S. 254 and H.R. 1501, respectively. For S. 254, they refer to the GPO version of the bill as it was engrossed in the Senate. For H.R. 1501, they refer to the GPO version that was placed on the Senate calendar (number 165) on June 23, 1999.

S. 254 § 102, amending 18 U.S.C. § 5032(a)(1)(B) (page 14), would require prosecution as an adult (i.e. criminal prosecution) of any person over age 14 charged in federal court with certain felonies. Under current law, violations of 18 U.S.C. § 922(x) (juvenile in possession of a handgun), a misdemeanor, can also result in adult prosecution. In order to carry forward this ability under S. 254, the Department urges the conferees to add a reference to 18 U.S.C. § 922(x) (or to its penalty provision, 924(a)(6)) if that offense is not elevated under the bill to felony status. The equivalent House provision is in H.R. 1501 § 201, amending 18 U.S.C. § 5032(b)(4) (page 65). Under S. 254 § 601, amending 18 U.S.C. § 924(a) (page 362), the basic possession offense is left as a misdemeanor (see page 362), but under S. 254 § 851, amending 18 U.S.C. § 924(a) (page 390), it is made a five-year felony. If S. 254 § 601 prevails, 18 U.S.C. § 922(x) should be added to 18 U.S.C. § 5032 as a predicate for adult prosecution notwithstanding its misdemeanor status. (The Department also notes a technical flaw in § 851 of S. 254 in that, on page 390, line 14, the reference to 922(x)(2) should be to (x)(3), as this is the possession offense (see page 393), whereas (x)(2) is the transfer offense. Also, on page 394, line 7, "temporary" should be inserted before "possession," just as that word appears on line 4, to clarify that the possession for the specified exempted activities is temporary).

Another potentially troublesome omission in S. 254 (also one mirrored in current law) with respect to adult prosecution is the Gun Free School Zones Act, 18 U.S.C. § 922(q). This offense, notwithstanding its five-year maximum prison term, contains the unusual language, set forth in the penalty provision, 18 U.S.C. § 924(a)(4), that it must be considered as a misdemeanor "for the purpose of any other law." Unless this language is changed, no adult prosecution under the proposed revisions to 18 U.S.C. § 5032 will lie for a § 922(q) violation, nor could a fingerprint-supported record under proposed 18 U.S.C. § 5038 relating to an adjudication of delinquency for this offense be kept. S. 254 § 108, amending 18 U.S.C. § 5038 (page 40). Although state and local authorities will handle the vast majority of these cases (as is appropriate), removing the misdemeanor language from the penalty provision of the Gun Free School Zones Act would allow for federal prosecution as adult under the amended § 5032 in certain serious violations of 18 U.S.C. § 922(q). Absent amending the penalty for 922(q), listing the statute as a predicate for adult prosecution remedies the bar to an adult prosecution but not the record keeping problem. For these reasons, the Department supports the language in H.R. 1501 that lists 18 U.S.C. § 924(a)(4) as a predicate for adult prosecution (H.R. 1501 § 201, amending 18 U.S.C. § 5032 (page 65)).

C. REVIEWABILITY OF CERTIFICATION.

The Department is concerned about some of the provisions related to certifications for federal prosecution, because of the possibility that they could be construed to provide for inappropriate court review of prosecutorial decisions. S. 254 § 102, amending 18 U.S.C. § 5032(a)(1)(B) (page 14), states that a juvenile may be prosecuted in federal court "upon certification by the Attorney General (which certification shall not be subject to review in or by any court, except as provided in subsection (d)(2))." Subsection (d)(2), on page 17, however, permits the juvenile to move the court to order that the juvenile be proceeded against as a

This is hard to understand

support of proposed sections 204 (OJJDP), 205 (Prevention Block Grant Program) and 221 (Formula Grants Program). H.R. 1501 falls short in providing these critical program support set-asides. Only the Juvenile Accountability Block Grant Program includes a set-aside, which amounts to 3 percent for research and evaluation activities and for program administration. No funds are provided for training and technical assistance.

We laud S. 254 for its program support set-asides, and propose that they be extended in conference to support *each* of the major funding streams in the bill, particularly the Juvenile Accountability Block Grant Program and the Mentoring Program, which currently lack any program supports. Further, inasmuch as under the restructure plan, the research and evaluation function would be administered by NIJ, and the remaining functions by the Juvenile Justice Office, we recommend that these functions each be given a discrete funding allocation. To ensure adequate set-asides for each of these critical purposes, we recommend that *every* grant program authorized in the final bill provide, at a minimum, 3 percent for research and evaluation consistent with the program; not more than 2 percent for training and technical assistance consistent with the program; and not more than 1 percent, of the amount *authorized*, for administration of the program.

Mental Health

Why not be more specific: §222 (a)(7)(B)(iii) of the JJDBA, as it would be added by §302 (which rewrites all of Title II of the JJDBA, and goes on for many pages)?

✓ We are very pleased that both the House and Senate bills address the mental health needs of juveniles -- both within and outside the juvenile justice system. Both bills require that state formula grant plans include provisions for needed mental health services (Sec. 302 of the Senate bill and Sec. 1310 of the House bill). They also allow Juvenile

(1)(F)(ii)

Delinquency Prevention Block Grant funds to be used for initial mental health intake screenings for all youth entering the system, for administering mental health services for juveniles with serious mental and emotional disturbances, for ensuring that juveniles receiving psychotropic medication be under the care of a licensed mental health professional, and for projects that provide mental health treatment programs for at-risk children. The Senate bill further allows states to use Juvenile Accountability Block Grant (JABG) funds to cross-train mental health and juvenile justice system personnel on appropriate mental health alternatives to juvenile justice placements, while the House bill allows JABG funds to be used for mental health and substance abuse treatment programs.

Further, the House bill instructs the Juvenile Justice Office and the National Institute for Mental Health to collaborate on a comprehensive study of the mental health needs of youth in the juvenile justice system, as well as to survey services currently available. We applaud these efforts to ensure that young people with specific mental health problems receive the appropriate screening, intervention, and treatment they need.

Centralized Authority

Next, we have some specific concerns about the centralized authority proposed in the

→ why not use "the Juvenile Justice and Delinquency Prevention Act of 1974" (or "JJDA") throughout? That's how PL 93-415 is commonly known, isn't it?
see p. 34

effectiveness of the program and diminish its capacity to ensure a balanced approach to juvenile justice programming. Therefore, we recommend that State Advisory Groups retain supervisory policy and program responsibilities.

As a technical matter, S. 254 has two overlapping and seemingly duplicating sections related to the provision of technical and financial assistance to an organization composed of member representatives of the State Advisory Groups. S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) § 204(b)(9) (1974) (page 110), directs the Administrator to provide technical and financial assistance to an organization composed of member representatives of the State Advisory groups so that it may conduct an annual conference of such member groups; disseminate information, data, standards, advanced techniques, and program models; and advise the Administrator with respect to particular functions or aspects of the work of the office. S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) § 204(b)(10) (1974) (page 111), directs the Administrator to do the same. We recommend clarifying the intended differences between the two provisions or, if no differences were intended, eliminating the second section to avoid duplication.

Gang-free Schools and Communities

→ et seq. ✓
✓
✓
✓
✓
✓
S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) §§ 251-54 (1974) (pages 189-203), proposes to continue the Gang-free Schools and Communities/Community-based Gang Intervention Program; H.R. 1501 does not. We recommend that the Senate gang program be retained in the conference bill with the following modifications. First, the program should place a greater emphasis on multidisciplinary programs that focus on prevention, intervention, and suppression; on services to families of gang-involved youth; and on educating parents of youth at high risk of gang involvement. Second, there should be an increase in the upper age limit under these provisions to age 25, because gang recruitment and membership of youth does not stop at age 22. Gang data indicate that most gang violence generally occurs with youth ages 15-24. We find that youth ages 19-24 are particularly influential in the gang and need to be dealt with through intervention and/or suppression before we can effectively intervene with the younger youth.

Developing, Testing, and Demonstrating New Programs/Grants for Training and Technical Assistance

✓ free ← We commend the inclusion of programs to provide for the development, testing, and demonstration of new programs; and for the provision of technical assistance. S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) §§ 261-64 (1974) (pages 203-05); H.R. 1501 § 1313, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) §§ 261-64 (1974) (pages 186-88). The provisions are identical in both bills, except that the House authorizes "such sums as may be necessary" for the program, and the Senate bill authorizes \$20 million, to be shared with the bill's two gang programs (Gang-free Schools and Communities, and Community-based Gang Intervention). We urge the

→
"Gang data" sounds like data kept by gangs.

Is DOJ endorsing each of these 4 programs? If so, they should explain why.

conferees to ensure that an adequate level of funds is authorized to support these important functions. (Currently, the OJJDP Gang Program is appropriated at \$12 million, which under this scheme would leave only \$8 million to fund demonstration, training, and technical assistance programs. This amount is insufficient to support the office's national program demonstration and support activities, and we suspect it would result in deep cuts to ongoing programs, including ones to prevent child abuse and neglect.)

Mentoring Program

see p. 33
see § 273(b) [S. 254 § 302, amending Pub. L. No. 93-415 (42 U.S.C. § 5611) §§ 271-80 (1974) (pages 205-15), establishes four grant programs to support the use of mentors for at-risk youth: (1) Local Education Grants for local education agencies and nonprofit organizations; (2) Family to Family Mentoring Grants that match volunteer families with at-risk families, allowing parents to directly work with parents and children to work directly with children; (3) Family Mentoring Program grants that match college age or young adult mentors directly with at-risk youth and use retirement-age couples to work with the parents and siblings of at-risk youth; and (4) Capacity Building funding to a national organization for the purpose of expanding and replicating capacity building programs to reduce the incidence of juvenile crime and delinquency among at-risk youth. A total of \$20 million dollars is authorized to carry out these programs. The House bill does not establish any dedicated mentoring programs. Rather, mentoring activities are incorporated into the authorized purpose areas of the Formula Grants and Prevention Block Grant Programs. We laud the Senate's inclusion of a dedicated mentoring program and recommend that it be included in the conference bill.] *al (see § 273(a))* *(see § 273(a))*

Religiously Affiliated Organizations

each year [see § 291(a) and (b)(7)]
Both the House and Senate bills include provisions specifying that religiously affiliated organizations should be allowed to participate, generally on the same basis as other private organizations, in programs in which nongovernmental organizations use government funds to provide certain services or benefits to individual beneficiaries of the law. Section 302 of the Senate bill would substantially amend Title II of the Juvenile Justice and Delinquency Prevention Act of 1974 ("JJDPA"), 42 U.S.C. § 5611 et seq., to create several different programs in which federal grants are provided, through states and localities, to private organizations to perform various social services. A new § 292(a) of the JJDPA would provide that "[t]he provisions of section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (~~Pub. L. No. 104-193~~ 42 U.S.C. § 604a) (~~§ 104 (1996)~~) shall apply to a State or local government exercising its authority to distribute grants to applicants under this title." S. 254 § 302, Amending Pub. L. No. 93-415 (42 U.S.C. § 5611 et seq.) § 292 (1974) (beginning page 217). Section 114 of the House bill similarly would add a new § 299J to the JJDPA, which also would expressly incorporate subsections (b) through (k) of § 104 of the Personal Responsibility

the deleted material is not in the quoted provision; see proposed § 292(a), p. 217 of the Senate bill

insert a blank line

this constitutional requirement, § 104(j) of the PRWORA, 42 U.S.C. § 604a(j), provides that “[n]o funds provided directly to institutions or organizations to provide services and administer programs under subsection (a)(1)(A) of this section shall be expended for sectarian worship, instruction, or proselytization.” We presume that, by incorporating PRWORA § 104(j), the House and Senate bills would operate to impose this condition on the operation of grant programs under Title II of the JJDPA.

91 Second, even where a statute includes (as PRWORA § 104(j) does) an express condition that the federal aid not be used for sectarian worship, instruction, or proselytization, the government nevertheless may not provide funds directly to “pervasively sectarian” institutions, defined as institutions in which “‘religion is so pervasive that a substantial portion of [their] functions are subsumed in the religious mission.’” Kendrick, 487 U.S. at 610 (quoting Hunt, 413 U.S. at 743); see also id. at 621 (holding that, apart from the question whether aid was being used for religious purposes, Establishment Clause would be violated if the plaintiffs could show that aid flowed to grantees that could be considered “pervasively sectarian religious institutions”).

the
As the Court has explained, the reason for the prohibition on provision of governmental funds directly to pervasively sectarian institutions is the unacceptable risk that where – as in a pervasively sectarian organization – secular and religious functions are “inextricably intertwined,” government funds, although designated for a secular purpose, in fact will invariably advance the institution’s religious mission. Id. at 610.³ Again, it is immaterial to this part of the Court’s analysis that the provision of assistance would serve a legitimate secular purpose. See id. at 602. What is critical is that the assistance also would have the effect of advancing religious activities because of the pervasively sectarian character of the recipients. And even if it were possible, as a theoretical matter, for a pervasively sectarian organization to use government assistance exclusively for secular functions in such institutions, the degree and kind of governmental monitoring necessary to ensure compliance with the requisite restrictions typically would itself create serious Establishment Clause problems (problems that are not raised by the more minimal level of monitoring that is necessary with respect to organizations that are not pervasively sectarian). Id. at 615-17.⁴

³ This prohibition does not apply with respect to forms of aid that, by their nature, are virtually incapable of diversion to sectarian use. For example, in Committee for Public Educ. & Religious Liberty v. Regan, 444 U.S. 646 (1980), the Court upheld a statute that authorized the state to pay private schools for the actual costs incurred in complying with state-mandated testing. The Court reasoned that, because nonpublic schools did not control the content of the tests, “there was no substantial risk that the examinations could be used for religious educational purposes.” Id. at 656.

⁴ In a case currently pending in the Supreme Court, the United States is taking the position that the government can constitutionally provide certain forms of “[d]irect material aid” (other than funding) to religious primary and secondary schools (which the Court often has treated as pervasively sectarian institutions) so long as (i) such aid is not “so extensive as to supplant resources that the [institution] itself would otherwise provide or obtain,” (ii) the aid is “protected against diversion to religious use by adequate safeguards,” and (iii) the government does not favor religious institutions over secular institutions. Brief for the Secretary of Education [on Petitions for a Writ

It is unclear which, if any, of the religious organizations that would receive funding under Title II of the JJDPA would be “pervasively sectarian.” The boundaries of the “pervasively sectarian” category are not well-defined. It certainly encompasses churches, synagogues, and mosques; and the Supreme Court has used it to describe certain primary and secondary educational institutions. The Court has indicated that numerous considerations are relevant in determining whether an institution is pervasively sectarian. Included among those considerations is whether an organization has explicit corporate ties to a particular religious faith, and bylaws or policies that prohibit any deviation from religious doctrine. Kendrick, 487 U.S. at 620 n.16. The Court also has treated the existence of religious qualifications for admission and hiring as a relevant factor in determining whether a school is pervasively sectarian. Compare Roemer, 426 U.S. at 757-58 (plurality opinion) (same) and Hunt, 413 U.S. at 743-44 (no religious qualifications for faculty or students), with School Dist. of Grand Rapids v. Ball, 473 U.S. 373, 384 n.6 (1985) (preference in attending private school afforded to children belonging to organizational denomination) and Committee for Pub. Educ. v. Nyquist, 413 U.S. 756, 767-68 (1973) (religious restrictions on admissions and faculty appointments).

As explained above, § 104(j) of the PRWORA provides that “[n]o funds provided directly to institutions or organizations to provide services and administer programs . . . shall be expended for sectarian worship, instruction, or proselytization.” However, other portions of § 104 contain provisions that strongly imply some congressional intent that pervasively sectarian religious organizations would be eligible to receive direct governmental funding. Pub. L. No. 104-193 (42 U.S.C. § 604a(d)(1)) § 104(d)(1) (1996) ✓ provides that a recipient organization “shall retain its independence from Federal, State, and local governments, including such organization's control over the definition, development, practice, and expression of its religious beliefs”; and Pub. L. No. 104-193 (42 U.S.C. § 604a(d)(2)(A)) § 104(d)(2)(A) (1996) ✓ provides that “[n]either the Federal Government nor a State shall require a [recipient] religious organization to alter its form of internal governance in order to be eligible to contract to provide assistance, or to accept certificates, vouchers, or other forms of disbursement, funded under a [covered] program.”

These provisions imply some intent that pervasively sectarian religious organizations would be eligible to receive direct governmental funding. In order to ensure that § 302 of S.254 and § 114 of the H.R.1501 are not construed to permit funding of pervasively sectarian organizations, and that direct governmental funding therefore is not used to support religious activities, we recommend that the Conference Committee add a proviso to that effect. For example, the following proviso could be added to the end of S.254's proposed new § 292(a): ✓

Provided, that such a State or local government may not provide grants directly to pervasively sectarian organizations.

→ do

In offering this recommendation, we do not mean to suggest that a government should, for example, be able to "control . . . the definition, development, practice, and expression of . . . beliefs" of a nonpervasively sectarian religious organization that receives JJDPA grants but does not use government funds for sectarian worship, instruction, or proselytization. Nor ~~should we be understood as suggesting~~ ^{do} that a government may "require" such an organization "to alter its form of internal governance." We merely wish to ensure that the federal, state and local governments involved in disbursing JJDPA grants may take into account the structure and operations of a religious organization in determining whether such an organization is or is not pervasively sectarian. Where such an organization is pervasively sectarian, *i.e.*, where the secular and religious functions of the organization are so "inextricably intertwined." *Kendrick*, 487 U.S. at 610, that it would be impossible (at least without impermissible entanglement) to ensure that the organization does not use government funds to advance religion, the organization may not receive and use JJDPA grants. *Why add this? It implies that receipt is OK, as long as there is no "use".*

SUBTITLE B: ACCOUNTABILITY FOR JUVENILE OFFENDERS AND PUBLIC PROTECTION INCENTIVE GRANTS

BLOCK GRANT PROGRAM

Both S. 254 and H.R. 1501 authorize a version of the Juvenile Accountability Incentive Block Grants (JAIBG) program, a program that has been appropriated, but not authorized, for the last two years.

Each bill amends the current program slightly differently, both renaming it the Juvenile Accountability Block Grants (JABG) program. Overall, the Department strongly supports the Senate's version, because the Senate JABG not only adds delinquency *prevention* to the list of permissible purposes, but also requires that 25 percent of state and local funds be spent on those prevention activities. The Department enthusiastically supports both of these amendments to the current program and urges the conferees to include both in the final bill.

Apart from that very substantial change, we do not recommend altering the current program in any way. Both the House and Senate bills establish different funding eligibility requirements for states and units of local government, provide different formulas for the allocation of funds, and create different mechanisms to accomplish a waiver of the local pass-through. Most notably, the Senate bill divides the JAIBG purposes and authorizes separate grant programs to assist state and local juvenile courts and to support the integration of juvenile records into criminal records database systems. (S. 254 also expands the Community-based Justice Grants for Prosecutors program in the Violent Crime Control and Law Enforcement Act of 1974 (42 U.S.C. § 13862) to allow the hiring of additional prosecutors; assist prosecutors to address drug, gang, and youth violence more effectively; and provide technology, equipment, and training for prosecutors; among other purposes.) While we enthusiastically support the

→ similar arguments should be made about the school safety technology center on pp 85-86

However, in response to concerns raised by a particular manufacturer of a safety device, the proposed amendment contained an overly broad definition of "gun safety device" which would have essentially obviated the requirement. In the amendment, a gun safety device is any part of the handgun that, if removed, renders the gun inoperable. Since all guns have parts that, if removed, render the gun inoperable, the amendment would have rendered meaningless the requirement. To the extent that the conferees consider the House version of the provision, the problem can be easily fixed, and we can work with the conferees to craft appropriate statutory language.

TITLE XI – SCHOOL SAFETY AND VIOLENCE PREVENTION

SCHOOL VIOLENCE RESEARCH

Section 1105 of S. 254 (page 413) ^{would} establish the National Center for Rural Law Enforcement as a clearinghouse for school violence research. While we agree that the activities specified in the bill are needed, we object to the provision because it does not provide for a competitive selection process. Furthermore, the new National Institute for Juvenile Crime Control and Delinquency Prevention (within NIJ) is – in this bill – already designated as a central point for all juvenile violence-related research. Pursuant to a competitive grant award process, the Justice Department (through OJJDP) is now funding the Northwestern Regional Educational Laboratory, which provides research-based training and technical assistance on school safety issues through its National Safe Schools Resource Center. Pursuant to Congressional direction, OJJDP is also funding the Hamilton Fish National Institute on School and Community Violence, a consortium of eight universities, which focuses on school and community violence research. Further, both the current and proposed Juvenile Justice Office and the Education Department manage information clearinghouses. The Center for Rural Law Enforcement has no particular expertise in school violence, especially urban or suburban violence; and the Center should not be rewarded for trying to receive direct funding from Congress without going through the regular process of competitively applying for a grant. See comments on S. 254 §§ 1674-76 and 1683-85 on this latter point. The House bill does not contain a similar provision, and we support eliminating it in the final bill.

NATIONAL COMMISSION ON CHARACTER DEVELOPMENT

S. 254 § 1107 (pages 417-21) would establish a National Commission on Character Development, which would study and make recommendations with respect to the impact of current cultural influences on the process of developing and instilling "the key aspects of character." The Commission would consist of 36 members. Section 1107(b)(2)(D) would require that six of those Commission members be "members of the clergy." This requirement is unconstitutional. Although clergy may, of course, be appointed to government commissions, the religion clauses of the First Amendment prohibit the government from conditioning employment, appointment, or benefit on satisfaction of any test of religious belief, conduct, or status, and the Religious Test Clause, Art. VI, cl. 3, provides that "no religious Test shall ever be required as a

Does DOJ have a policy position on whether this Commission is needed?

→ ~~place additional skip a line~~
Qualification to any Office or public Trust under the United States." See Board of Educ. of Kiryas Joel School Dist. v. Grumet, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring in part and concurring in the judgment); McDaniel v. Paty, 435 U.S. 618 (1978); Torcaso v. Watkins, 367 U.S. 488 (1961).

The constitutional problem could be avoided if subsection 1107(b)(2)(D) were amended to replace "members of the clergy" with a phrase such as "persons experienced in positions of moral leadership (including, for example, members of the clergy)".

DRUG TESTS

→ and
S. 254 §§ 1110, 1611, amending ~~Pub. L. No. 89-10~~ ^{§ 4116(b) of the Elementary and Secondary Education Act of 1965} (20 U.S.C. § 7116(b)) § 4116(b) (1965) (pages 425, 494), are substantially similar. Each would amend ~~20 U.S.C. § 7116(b)~~ to authorize drug testing of students in certain circumstances, while § 1611 would also amend § 7116(b) to allow locker inspections. There is no provision in ~~§ 1611~~ that would nullify the provisions of § 1110, and therefore it is unclear which section is intended to take precedence.

either section (or elsewhere in the bill) stating which of these

TITLE XII -- TEACHER LIABILITY PROTECTION ACT

→ of 1979
S. 254 §§ 1201-1207 (pages 426-35) and H.R. 1501 §§ 1501-1507 (pages 244-53) would create the "Teacher Liability Protection Act" ("TLPA"), which would place various limits on the liability of a teacher for harm caused by the teacher's acts on behalf of a school. For example, section 1504(a) of S. 254 (section 1204(a) of H.R. 1501) would provide that no teacher shall be liable if the teacher was acting within the scope of employment; if the teacher's actions were consistent with local, state, or federal rules governing school discipline; if the teacher was properly licensed; if the harm was not caused by willful or criminal conduct, gross negligence, recklessness, or a conscious, flagrant indifference to the rights or safety of the person harmed; and if the harm was not caused by the teacher's operation of a car or other motor vehicle.

Section 1503(a) of S. 254 (section 1203(a) of H.R. 1501) would expressly preempt state law that is inconsistent with this liability limitation. Section 1503(b) of S. 254 (section 1203(b) of H.R. 1501) would, however, provide that the preemption rule shall not apply to any civil action in state court in which all parties are citizens of the state if that state, after enactment of the TLPA, enacts a statute ~~which~~ ^{that}, among other things, declares the election of the state that the TLPA shall not apply to such a civil action in the state, and contains no other provisions.

The TLPA does not specify its constitutional source of authority, and no such authority is obvious. In particular, the TLPA would not appear to be a proper exercise of Congress's power to regulate interstate commerce. The Act does not appear to regulate an economic activity (or to regulate "commerce," as such); it includes no jurisdictional limitation (or "element") limiting its effect to particular cases having a connection to interstate commerce; it contains no findings regarding the effect that teacher liability has on interstate commerce; and it expressly indicates (S. 254 § 1502(b); H.R. 1501 § 1202(b)) that the TLPA's regulation of teacher liability is for the purpose of improving the learning environment. In United States v. Lopez, 514 U.S. 549 (1995), the Supreme Court held that the Gun-Free School Zone Act, a federal statute prohibiting the

→ it's the other way around: e.g.,
§ 1504(a) of H.R. 1501 and
§ 1204(a) of S. 254.

§ 2 of 1990

want them to, but would this be good public policy?

possession of a firearm near a school, exceeded Congress's authority under the Commerce Clause. In so doing, the Court rejected the government's argument (and Justice Breyer's argument in dissent) that a meaningful interference in the educational process necessarily provides the requisite effect on interstate commerce to justify the exercise of congressional power. Id. at 564-68. → c

They could, but does the Administration

We thus have serious reservations about whether Congress has the power to enact the TLPA. Congress could accomplish the objectives of the TLPA, however, by reformulating the Act as an exercise of its Spending Clause authority. Congress could, for instance, make state enactment of the provisions in the TLPA a condition of a state's receipt of certain education-related federal funds. See New York v. United States, 505 U.S. 144, 167, 171-73 (1992); South Dakota v. Dole, 483 U.S. 203 (1987).

→ it's be administered by the Department of Education,

TITLE XIII – VIOLENCE PREVENTION TRAINING FOR EARLY CHILDHOOD
EDUCATORS

See typed comments

would

Title XIII of S. 254 (Sections 1301-1308, p. 435-442), the "Violence Prevention Training for Early Childhood Educators Act," establishes a grant program to help institutions that train educators of young children to recognize and appropriately respond to violence in children's lives. Knowing the significant links between children's exposure to violence and the increased likelihood of future delinquency, the Department enthusiastically supports this program.

TITLE XIV – PREVENTING JUVENILE DELINQUENCY THROUGH CHARACTER
EDUCATION

program

This title creates a \$25 million grant, to be administered by the Department of Education, to support community-based programs that develop character education, defined as "an organized educational program that works to reinforce core elements of character, including caring, civic virtue and citizenship, justice and fairness, respect, responsibility, and trustworthiness." The Department fully concurs in the value of character education, (and supports this title) but believes the Congress should enact the character-

education program proposed by the President as part of

TITLE XV -- VIOLENT OFFENDER DNA IDENTIFICATION ACT OF 1999

Title XV of S. 254 contains provisions to strengthen and extend the DNA identification system. The major elements of the proposal include: (1) authorizing assistance to the states to clear their backlogs of unanalyzed convicted offender DNA samples; (2) providing necessary assignments of responsibility and grants of authority to collect DNA samples from federal, military, and D.C. offenders convicted of specified crimes; and (3) authorization of appropriations to federal agencies for related costs. The House bill contains no corresponding provisions.

the pending reauthorization of the Elementary and Secondary Education Act of 1965.

[see typed comments]

be added as an additional federal agency with joint responsibility for conducting the study. We believe a study of this nature will further our understanding of how children are exposed to images of firearms through the media and advertising.

APPLICATION OF SECTION 923(J) AND (M)

✓ Section 1605 of the Senate bill, which allowed licensed dealers to sell guns at out-of-state gun shows, was rendered null and void, and superseded in its entirety, by § 1635 of Title XVI of the Senate bill. See discussion of § 1635, *infra*. During debate on this provision in the Senate, we strongly opposed any effort to weaken over thirty years of federal law designed to allow states to control the flow of firearms across its borders, by prohibiting licensees from going to out-of-state gun shows to sell guns. We strongly support § 1635, including the repeal of § 1605. ✓

ATTORNEYS FEES EXEMPTION FOR SUITS ESTABLISHING UNCONSTITUTIONAL RELIGIOUS EXPRESSION AT SCHOOL MEMORIAL SERVICES

~~(We note that)~~ the Department is reviewing S. 254 § 1606 for constitutional concerns and ~~(we will provide further comments if necessary)~~ at a later time. ✓
→ *Any*

CONTENT OF MATERIALS PRODUCED WITH FEDERAL FUNDS

Section 1609(a) of the Senate bill would require "[a]ll materials produced, procured, or distributed, in whole or in part, as a result of Federal funding authorized under this Act," to contain a provision telling readers where they might raise any objections concerning the religious content of the material. Specifically, it requires the creation of a special office within the Department to field any such complaints, and requires that office to issue periodic reports to Congress on the nature and quantity of any such complaints received. The Department vehemently opposes this provision.

First, in light of all the provisions in the bill separately labeled as "Act[s]," it is unclear whether this provision is intended to apply to the entire text of S. 254, or only to some subset of its provisions. Second, in either case, it would impose an unnecessary, expensive burden on all state agencies and their subawardees who would need to monitor compliance. For its part, the Department already clearly identifies its publications, and lists departmental addresses (or clearinghouse contacts) where the public may address questions to the Department or raise concerns on *any* topic. The controlled correspondence system already in place is equipped to and, indeed, does answer any written concerns raised to the Department about Department publications. We believe this additional requirement will merely add expense and undue burden, particularly on the States.

AIMEE'S LAW

→ How about noting that Ed's letter objects to § 1637 of S. 254, which would expand the Gun-Free Schools Act of 1994 to cover knives?

appropriate interventions and services, including mental health interventions and services, are provided to a child removed from school for any act of violence." Presumably, many of the "school personnel" to whom this command would be addressed would be state and local public employees. Congress generally may not "commandeer" state and local officials and employees to enforce or implement federal programs. See Printz v. United States, 521 U.S. 898 (1997). The directive in § 1636(a), therefore, would appear to be unconstitutional. It also is not apparent what Congress's source of authority would be for enactment of this provision. The constitutional problems could be eliminated by amending the provision to make the directive a condition on states' receipt of certain education-related federal funds. See New York v. United States, 505 U.S. 144, 167, 171-73 (1992); South Dakota v. Dole, 483 U.S. 203 (1987).

PROHIBITION ON DISTRIBUTION OF EXPLOSIVES INFORMATION

Section 1639 of S. 254 and Section 501 of H.R. 1501 would create a new criminal prohibition, to be codified at 18 U.S.C. § 842(p), that would make it unlawful under certain circumstances to teach or demonstrate the making or use of an explosive, a destructive device, or a weapon of mass destruction, or to distribute by any means information pertaining to, in whole or in part, the manufacture or use of an explosive, destructive device, or weapon of mass destruction. The Department supports this prohibition, the terms of which are consistent with recommendations that the Department made in a Report submitted to Congress in April 1997. See United States Department of Justice, Report on the Availability of Bombmaking Information, the Extent to Which Its Dissemination is Controlled by Federal Law, and the Extent to Which Such Dissemination May Be Subject to Regulation Consistent with the First Amendment to the United States Constitution (April 1997) ("DOJ Report") (<http://www.usdoj.gov/criminal/cybercrime/bombmakinginfo.html>).

We note that this provision recently was passed in S. 606 and will shortly be sent to the President for his signature. Therefore, S. 254 § 1639 and H.R. 1501 § 501 are no longer necessary.

SUBTITLE B: JAMES GUELFF BODY ARMOR ACT

PROHIBITION OF PURCHASE, USE, OR POSSESSION OF BODY ARMOR BY VIOLENT FELONS

Section 1645(b) of S. 254, amending 18 U.S.C. § 931 (pages 571-73), would, with certain exceptions, make it unlawful "for a person to purchase, own, or possess body armor, if that person has been convicted of a felony that is [a crime of violence]." Unlike similar provisions that prohibit felons from receiving or possessing any explosive or firearm that "has been shipped or transported in interstate or foreign commerce," see 18 U.S.C. § 842(i) (explosives) and 18 U.S.C. § 922(g) (firearms), S. 254 § 1645(b), amending 18 U.S.C. § 931 (pages 571-73), would contain no jurisdictional "commerce" element. Section 1642(3) of S. 254 would contain a congressional finding that "there is a traffic in body armor moving in or otherwise affecting interstate commerce," but the findings would not address the effects that body armor ownership

DOJ should insist that, if there is to be a center, it be funded on a competitive basis. (See discussion of school violence research, p 62.)

of security technology, and more limited but also adequate experience in school security technology, we are concerned that it may not possess the requisite expertise in behavioral sciences relevant to the school environment. In addition, the proposed function for the Center to “monitor and report on schools that implement school security technologies” is not consistent with the role of a technology development organization. It would be more appropriate to have another, independent organization perform this function, perhaps as part of its broader work with the schools.

It would be better to strongly object to this section (because of redundancy) and urge its deletion.

FINDINGS OF SECOND AMENDMENT RIGHTS

Section 1662(1) of S. 254 would contain the congressional “find[ing]” that “[c]itizens have an individual right, under the Second Amendment to the United States Constitution, to keep and bear arms.” This subsection would not, in and of itself, have any operative legal effect. Nevertheless, we note that this “finding” would be at odds with governing precedent. In United States v. Miller, 307 U.S. 174 (1939), for example, the Court rejected a Second Amendment challenge to a statute requiring registration for possession of certain shotguns, due to the absence of any evidence that such possession “has some reasonable relationship to the preservation or efficiency of a well regulated militia.” Id. at 178.

SUBTITLE G: PARTNERSHIPS FOR HIGH RISK YOUTH

ESTABLISHMENT OF DEMONSTRATION PROJECT

Section 1674 of S.254 would require the Attorney General to award a grant to “Public-Private Ventures, Inc.,” to enable that organization “to award grants to eligible partnerships to pay for the Federal share of the cost of carrying out collaborative intervention programs for high-risk youth” in twelve specified cities. Section 1675(a)(3)(A), in turn, would provide that, in order to be eligible for a grant under § 1674, a partnership “shall be a collaborative entity that includes representatives of local government, juvenile detention service providers, local law enforcement, probation officers, youth street workers, and local educational agencies, and religious institutions that have resident-to-membership percentages of at least 40 percent.”

The Department strongly opposes this section. While its purposes are laudable, we believe the structure of the program is ill-advised and unworkable. As a general rule, grant laws do not specify recipient private nonprofit agencies for grant funds, leaving this matter to agency discretion. This section authorizes the award to grassroots organizations and subsidiaries of Public-Private Ventures in specific cities – an unwarranted limitation on competition – and a violation of the long-established principle that the award or (sub-award) of federal grant funds is inherently a governmental function. Further, while Public-Private Ventures may be a highly regarded organization, it has no experience in or capacity to award, administer, monitor, and evaluate sub-grant awards or to provide the quality and level of technical assistance and training, comprehensive support services, and evaluation that would be required by such a program.

be developed by a "juvenile crime enforcement coalition" consisting of individuals representing various specified government entities and private organizations, including "religious affiliated, fraternal, nonprofit, or social service organizations involved in crime prevention."

SUBTITLE H: NATIONAL YOUTH CRIME PREVENTION

NATIONAL YOUTH CRIME PREVENTION DEMONSTRATION PROJECT

Please see the above discussion on S. 254, Title XVI, Subtitle G (§§ 1674-76). That discussion was originally crafted to respond to these sections (§§ 1683-85) when this legislation was introduced in the 105th Congress as H.R. 3607 and again in the 106th as H.R. 102. We strongly object to the directed nature of this grant program in an authorization bill. Generally, such directed funding is usually left to the appropriations process to allow for flexibility in the event of changed circumstances or other problems.

SUBTITLE I: NATIONAL YOUTH VIOLENCE COMMISSION

NATIONAL YOUTH VIOLENCE COMMISSION

Does DOJ have any policy views on this section?

Section 1692 of the Senate bill would establish the National Youth Violence Commission, to be composed of 16 members. ~~Sub~~Sections 1692(b)(2)(C)(ii) and 1692(b)(2)(D)(iv) would require that two of those members be "recognized religious leader[s]." This requirement is unconstitutional. Although clergy may, of course, be appointed to government commissions, the religion clauses of the First Amendment prohibit the government from conditioning employment, appointment or benefit on satisfaction of any test of religious belief, conduct or status, and the Religious Test Clause, Art. VI, cl. 3, provides that "no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States." See Board of Educ. of Kiryas Joel School Dist. v. Grumet, 512 U.S. 687, 715 (1994) (O'Connor, J., concurring in part and concurring in the judgment); McDaniel v. Paty, 435 U.S. 618 (1978); Torcaso v. Watkins, 367 U.S. 488 (1961). ✓

The constitutional problem could be avoided if ~~Sub~~Sections 1692(b)(2)(C)(ii) and 1692(b)(2)(D)(iv) were amended to replace "recognized religious leader" with something like "a person experienced in a position of moral leadership (including, for example, a recognized religious leader)". ✓

AMENDMENTS TO THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

The Administration's position on S. 254 § 1699 and H.R. 1501 § 118 is presented in a letter ~~that has been submitted by~~ the Department of Education. ✓

from [ED's letter will follow, not precede, DOJ's]

TITLE XI -- LIMITATION ON RECOVERY OF ATTORNEYS FEES IN CERTAIN CASES

DENIAL OF ATTORNEYS' FEES FOR SUCCESSFUL ESTABLISHMENT CLAUSE SUITS INVOLVING STUDENTS' RELIGIOUS EXPRESSION

We note that the Department is reviewing H.R. 1501 § 1101 for constitutional concerns and we will provide further comments, if necessary, at a later time.

see comments p. 12

TITLE XII RIGHTS TO RELIGIOUS LIBERTY

TEN COMMANDMENTS DISPLAYS, RELIGIOUS EXPRESSION, AND DIRECTING COURTS' CONSTITUTIONAL INTERPRETATION

Section 1202(a) of H.R.1501 provides:

The power to display the Ten Commandments on or within property owned or administered by the several States or political subdivisions thereof is hereby declared to be among the powers reserved to the States respectively.

Section 1202(b), in turn, provides:

The expression of religious faith by individual persons on or within property owned or administered by the several States or political subdivisions thereof is hereby—

(1) declared to be among the rights secured against laws respecting an establishment of religion or prohibiting the free exercise of religion made or enforced by the United States Government or by any department or executive or judicial officer thereof; and

(2) declared to be among the liberties of which no State shall deprive any person without due process of law made in pursuance of powers reserved to the States respectively.

These “declar[ations]” would not, in and of themselves, have any operative legal effect. Nevertheless, we note that the “declar[ations]” are not, as a categorical matter, a correct description of constitutional law under governing First Amendment precedents.

For example, in certain contexts a display of the Ten Commandments in a government building might be constitutional, such as where it is part of a broader tableau depicting historical lawgivers, see Allegheny County v. American Civil Liberties Union, Greater

→ “tableaux” is plural; drop the “x”.

his or
Pittsburgh Chapter, 492 U.S. 573, 652-53 & n.13 (1989) (Stevens, J., concurring in part and dissenting in part); see also Edwards v. Aguillard, 482 U.S. 578, 593-94 (1987), or in a context in which it is apparent that the display reflects merely the private expression or sentiments of a government employee in her personal capacity. In many other contexts, however, such displays will violate the Establishment Clause. See, e.g., Stone v. Graham, 449 U.S. 39 (1980) (per curiam).⁶ Similarly, as explained in detail in the Administration's guidelines entitled "Religious Expression in Public Schools" (revised May 1998) and "Guidelines on Religious Exercise and Religious Expression in the Federal Workplace" (Aug. 1997), there are many contexts in which the expression of religious faith by individual persons on or within government property is permissible, or even protected by statutory or constitutional law. See also, e.g., Board of Educ. of Westside Community Schools v. Mergens, 496 U.S. 226 (1990); Widmar v. Vincent, 454 U.S. 263 (1981); Chandler v. James, ___ F.3d ___, 1999 WL 493495 (11th Cir. July 13, 1999). But there also are contexts in which such expression (or the government's endorsement of, or preference for, such expression) would violate the Establishment Clause — in particular, where such expression is, or would reasonably be perceived as being, the state's own religious speech, or as having been endorsed or preferred by the state. See, e.g., Lee v. Weisman, 505 U.S. 577 (1992); Allegheny County, *supra*; Engel v. Vitale, 370 U.S. 421 (1962); Chandler, 1999 WL 493495, at *3-*4, *8, *9; Doe v. Santa Fe Indep. School Dist., 168 F.3d 806 (5th Cir. 1999); Ingebretsen v. Jackson Public School Dist., 88 F.3d 274 (5th Cir.), *cert. denied sub nom. Moore v. Ingebretsen*, 519 U.S. 965 (1996); ACLU of New Jersey v. Black Horse Pike Regional Board of Educ., 84 F.3d 1471 (3d Cir. 1996). The Establishment Clause analysis will depend in large part on the facts and circumstances of each case, including, e.g., the persons responsible for the religious expression, the government's endorsement of, or preference for, the expression, the extent to which the expression can be said to occur in a "public forum," the extent to which the expression is conveyed in a situation where the government has created a "captive audience," and whether governmental action results in any sectarian discrimination.

Subsection 1202(c) of H.R.1501 would violate the constitutional separation of powers. That subsection would provide that "[t]he courts constituted, ordained, and established by the

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⁶ The provision in question would state that the power to display the Ten Commandments on or within state property is "among the power reserved to the States respectively," a finding that would, in turn, be based on the "find[ing]" that "[t]he Tenth Amendment reserves to the States respectively the powers not delegated to the United States Government, nor prohibited to the States." Section 1201(5) (emphasis added). As explained in the text, however, the Establishment Clause does, in certain contexts, "prohibit[]" the states from effecting such displays.

Perhaps include the argument that this is counterproductive, because it only draws attention to the fact that for SOME people, religious faith is associated with prejudice.]

SUBTITLE E STUDIES AND EVALUATION

STUDY OF MENTAL HEALTH NEEDS OF JUVENILES IN SECURE AND NON-SECURE PLACEMENTS IN THE JUVENILE JUSTICE SYSTEM

Section 1362 of H.R. 1501 authorizes a study of mental health services offered by state and local governments. We support this; please see discussion above concerning mental health provisions generally.

GENERAL ACCOUNTING REPORT

Section 1364 of the House bill authorizes a GAO study of certain services available in local communities. Because of the federal trust responsibility to tribes, it would be particularly appropriate to study circumstances in Indian country. We recommend amending subsection (2) to require that at least two or three of the fifteen communities studied be located in Indian country as that term is defined by 18 U.S.C. § 1151.

TITLE XIV— CHILDREN'S INTERNET PROTECTION

REQUIRING SCHOOLS AND LIBRARIES TO IMPLEMENT AN INTERNET FILTERING TECHNOLOGY IN ORDER TO BE ELIGIBLE TO RECEIVE UNIVERSAL SERVICE ASSISTANCE

~~We note that~~ the Department of Education ^{is} ~~has already submitted~~ ^{ing} to you ^{its} ~~their~~ objections. ✓
to this provision. ~~We note that~~ the Department is reviewing H.R. 1501 § 1402(a) for
constitutional concerns and ~~we will~~ provide further comments ^{Not Justice} ~~(if necessary)~~ at a later time. ==

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TITLE XV – TEACHER LIABILITY PROTECTION

Please see the discussion of Title XII of ~~the~~ S. 254. ✓