



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

JUSTICE POLICY INSTITUTE
JULY 1999

EAST COAST:
2208 Martin Luther King, Jr. Ave., S.E.
Washington, DC 20020
202-678-9282 • Fax: 202-678-9321

WEST COAST:
1622 Folsom Street
San Francisco, CA 94103
415-621-5661 • Fax: 415-621-5466

JUSTICE
POLICY
INSTITUTE

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>

Advisory Board Members:

ALVIN J. BRONSTEIN
Director Emeritus
National Prison Project of the ACLU

MEDA CHESNEY-LIND, PhD
University of Hawaii at Manoa
Women's Studies Program

ELLIOTT CURRIE, PhD
Center for the Study of Law and Society
University of California at Berkeley

TERENCE HALLINAN
District Attorney
City and County of San Francisco

RONALD HAMPTON
Executive Director
National Black Police Association

JULIANNE MALVEAUX, PhD
Last Word Productions, Inc.

JEROME G. MILLER DSW
President
National Center on Institutions
and Alternatives

JAY RORTY, ESQ.
Attorney at Law
Assistant Federal Public Defender

ANDREA SHORTER
Deputy Director
Names Project Foundation

DR. MIMI SILBERT
Delancey Street Foundation

BRYAN A. STEVENSON, ESQ.
Equal Justice Institute of Alabama

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 stole \$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

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

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, 1998

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

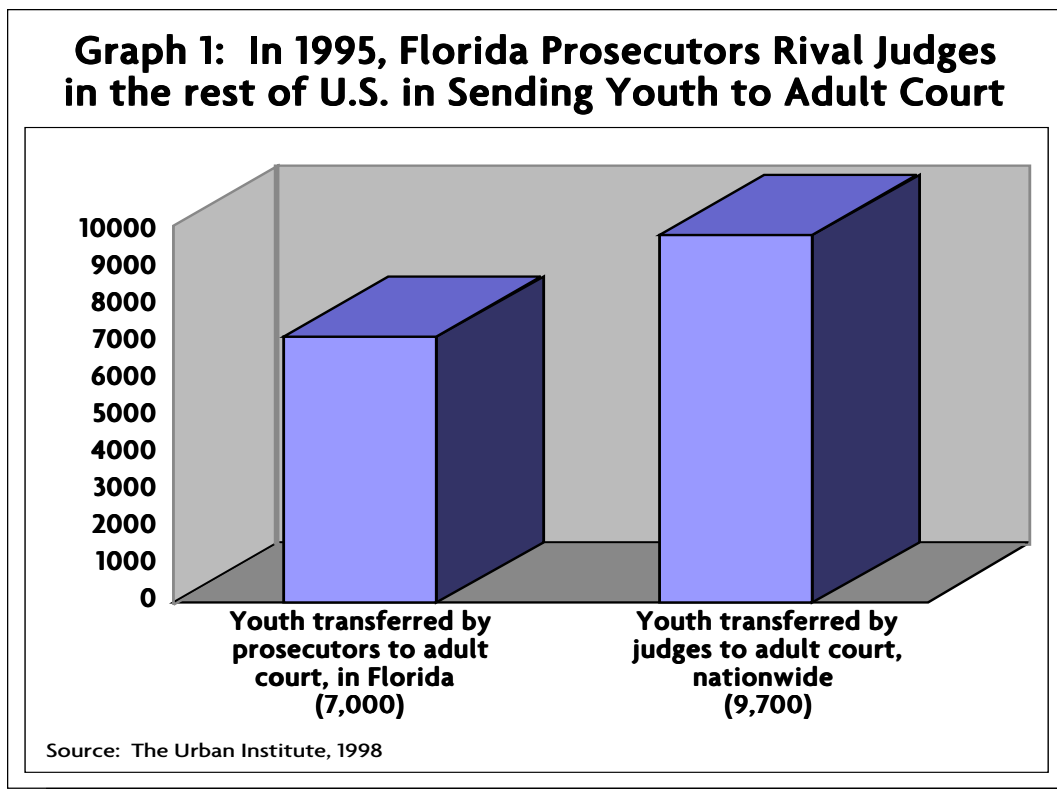
When prosecutorial waiver was introduced in 1981, the percentage of delinquency cases transferred to adult court in Florida soared from 1.2% to nearly 9% by 1987.⁵ In fiscal year 1997-98, 6,425 of the 94,693 cases disposed of by judicial processing in Florida resulted in transfer to adult court. While 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 28% of the youths prosecutors waived to adult court were for violent crimes.⁶ More than half (55%) of the youths prosecutors

THE JUSTICE POLICY INSTITUTE

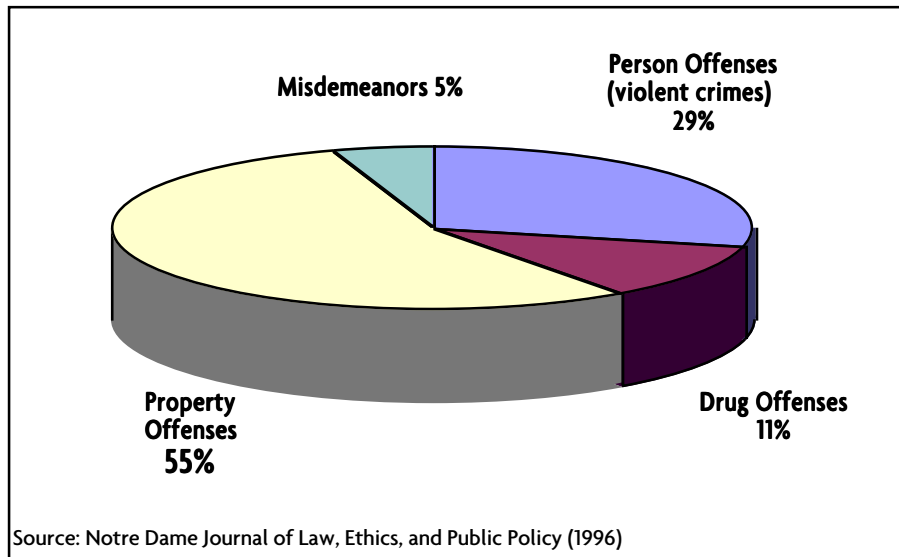
sent to adult court were charged with property crimes offenses that involved no violence, and fully 5% were tried as adult for misdemeanors (Graph II). Almost a quarter of the cases waived were first time, low level offenders.⁷

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 transfer 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 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, drugs 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 kids found guilty in adult court were incarcerated, but only 31% were served 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 slackening 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

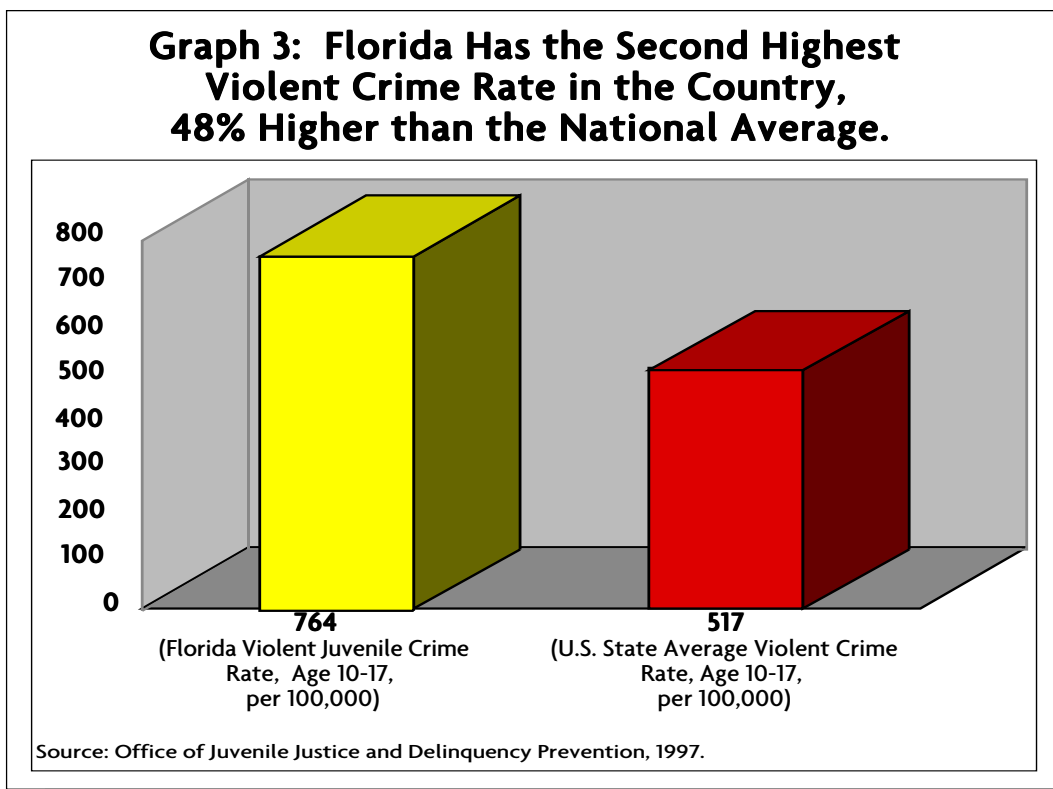
“A 1991 study showed that more than half of the youths prosecutors sent to adult court were charged with property crimes-offenses that involved no violence, and fully 5% were tried as adults for misdemeanors.”

THE FLORIDA EXPERIMENT

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 that property offenders were slightly less likely to recidivate when transferred to adult court. The authors note: “Once the effect of offense type was controlled, the logistic regression analysis indicated that transfer led to more recidivism. Moreover, the transferred youths who subsequently reoffended were rearrested more times and more quickly than were the non-transferee youth who reoffended regardless of the offense for which they were prosecuted...although property felons who were transferred may have been less likely to reoffend, when they did reoffend they reoffend more often and more quickly.”¹⁹

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” juvenile detention facility.²⁰ This study found that the youth themselves recognized the rehabilitative strengths of the juvenile justice system in contrast to the adult prison system.



THE JUSTICE POLICY INSTITUTE

Sixty percent of the sample sent to juvenile detention said they expect would not reoffend, 30% said they were uncertain whether they would reoffend, while 3% they would likely reoffend. Of those 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.”*

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.”*

“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.”

THE FLORIDA EXPERIMENT

II. Crime Control Impact: Crime Rate

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

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 attorney’s 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

THE JUSTICE POLICY INSTITUTE

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 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 FLORIDA EXPERIMENT

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 direction 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]
- 13 Bishop, Donna M., Charles E. Frazier, Lonn Lanza-Kaduce and Henry George White. "Juvenile Transfers to Criminal Court Study: Phase I Final Report." Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, 1998.

THE JUSTICE POLICY INSTITUTE

- 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, Lon 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 some discretion to try certain juveniles as adults at the age of 14.



*2208 Martin Luther King Jr., Ave., S.E.
Washington, DC 20020*

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