HUMAN RIGHTS WATCH

BRANDED FOR LIFE

Florida's Prosecution of Children as Adults under its "Direct File" Statute

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Summary

Oliver B. was prosecuted in adult court in Florida when he was 16 for stealing two laptops from a high school classroom. Matthew N., also 17, was prosecuted in adult court for stealing a printer from the back porch of a house. The experiences of Oliver and Matthew—removed from the juvenile justice system as teenagers and tried in adult court for nonviolent crimes—are far from unique.

Florida transfers more children out of the juvenile system and into adult court than any other state. In the last five years alone, more than 12,000 juvenile crime suspects in Florida were transferred to the adult court system. New statistics developed by Human Rights Watch based on official Florida state data show that more than 60 percent of the juveniles Florida transferred to adult court during this period were charged with nonviolent felonies. Only 2.7 percent were prosecuted for murder.

Whether a particular youth accused of a particular crime in Florida ends up in adult court is in an important sense arbitrary. The new data show that nearly 98 percent of the juveniles in adult court in Florida end up there pursuant to the state's "direct file" statute, which gives prosecutors unfettered discretion to move a wide range of juvenile cases to adult court (including any 16- and 17-year-old accused of a felony), with no involvement by a judge whatsoever. The data show that this discretion is being exercised differently by prosecutors in different judicial circuits within Florida. Too often, as detailed below, the same crime is treated differently depending on the predilections of the prosecutor where the crime occurs: different judicial circuit, different outcome. And there is evidence that racial bias is affecting that exercise of discretion with respect to certain crimes.

Most states in the United States do not allow for direct file. International law requires that children, including those accused of crimes, be treated as children. And for good reason. Neuroscience, recent US Supreme Court decisions, and a by-now large and growing literature show that children, including 16- and 17-year-old juveniles, are different and in important respects less culpable than adults who commit the same crimes, and more amenable to rehabilitation, a key objective that the juvenile system is designed to achieve. At present, however, while teens 17 and under cannot legally vote, drink, or buy cigarettes in Florida, they can be branded as felons for life.

Florida's direct file law is a remnant of the "super-predator" panic of the late 1980s, the fear that America was becoming prey to a new generation of particularly depraved and

violent teenagers. The panic was born of an overreaction to a nationwide spike in juvenile crime that has long since abated. Even the professor who coined the term now acknowledges that the super-predator prediction "was never fulfilled."

Florida's direct file law is not effectively serving public safety. Indeed, recent studies link transfers of juveniles to adult court to increases, not decreases, in recidivism. And, as this report shows, "direct file" is having negative, at times devastating, effects on the lives of thousands of children and their families.

Human Rights Watch spoke to over 100 youth and family members of youth charged directly in adult court by Florida's prosecutors. Young people described feeling confused and abandoned once in adult court. Many encountered violence upon entering adult jails and prisons. In nearly every case documented in this report, they pled guilty to felonies that will mark them forever without having a full understanding of the repercussions. Some of them were unable, even months and years after entering their guilty pleas, to explain the process that resulted in their criminal convictions.

Florida should reverse course and adopt an approach grounded more firmly in fact and reason. Florida's legislature should start by eliminating "direct file" and instead require that all decisions to transfer juveniles to adult court be made by a judge after a hearing, with a strong presumption that all children 17 and under should remain in the juvenile system.

* * *

> I felt like my life was gone.
> —John C., prosecuted as an adult at age 16, May 29, 2013

Many people know that children in Florida can be tried as adults for serious crimes of violence. Lionel Tate made headlines in 2001 when, at age 12, he was convicted and sentenced to life in prison without parole for the killing of a 6-year-old neighbor. Far less widely appreciated is that Tate represents a tiny minority: far more common are cases—like Oliver's and Matthew's—in which Florida children are tried in adult court for nonviolent crimes. Of the 1,535 children tried in adult court in Florida in 2012-13, 865 had been accused of committing nonviolent felonies; another 54 were sent to adult court to face misdemeanor or other non-felony charges.

As noted above, roughly 98 percent (98.3 percent in 2012-13) of juvenile cases transferred to adult criminal court in Florida in recent years ended up there pursuant to the state's

direct file statute. The statute gives prosecutors unfettered discretion to charge 16- and 17-year-olds accused of any felony in adult court and to charge 14- and 15-year-olds as adults with respect to certain specific felonies.

None of the children prosecuted under Florida's direct file statute have the benefit of hearings where they can challenge the decision to transfer them to the adult system before an impartial decision-maker. The statute does not give judges any role to play in the decision to pursue direct file; a juvenile court judge cannot stop a prosecutor from charging a child in adult court, and an adult court judge has no power to refuse to hear a case and send it to juvenile court, regardless of how unsuitable the case is for criminal court. Florida fails to provide even the most basic of safeguards—a fair hearing —when determining the fate of its children.

Rather than being prosecuted in the juvenile system, which is intended to be rehabilitative and to balance the needs of society and the best interests of the child, such children are shunted off to the adult criminal justice system, which values punishment over everything else. They are placed in adult jails, deprived of age-appropriate programs, and subjected to harsh sentences and the life-altering consequences of adult felony convictions.

Many teens find out they are going to be tried as adults only when they are taken from juvenile detention to an adult jail, where many become victims of and witnesses to violence. Some go through the entire adult court process—from arrest and bond hearing to guilty plea—without fully understanding what is happening.

The decision to deny a child access to the rehabilitative services offered by the juvenile justice system and subject him or her to the more punitive adult system is, in most cases, made by the prosecutor, who is an adverse party in the proceedings and has no obligation to consider the defendant's status as a child. While Florida's still on-the-books but rarely used judicial waiver statute sets out eight factors, including "the likelihood of reasonable rehabilitation of the child," that a *judge* is required to consider before ordering transfer to adult court, the direct file statute empowering *prosecutors* contains no such factors. Prosecutors are not even required to state why they are choosing to charge a child in adult court. Their decision is final and cannot be challenged.

As noted above, new statistics developed by Human Rights Watch for this report show that the overwhelming power Florida has handed to prosecutors is playing out in arbitrary and unjust ways. Florida's judicial circuits send arrested children to adult courts at vastly different rates. This variation cannot be explained by the seriousness of offenses, the size

of circuit youth populations, or other data Human Rights Watch examined. Even more disturbingly, once children are charged in adult court, some Florida circuits impose severe adult penalties at frequencies that are out of proportion to the levels of youth crime in those circuits.

Statewide, Florida is also treating its black male youth more harshly than their white counterparts. Black boys make up 27.2 percent of children arrested for crime, but account for 51.4 percent of youth sent to adult court; whereas white boys make up 28 percent of children arrested and account for only 24.4 percent of youth tried in adult court. A simple explanation might be that the crimes of black boys are more serious than those of white boys; Human Rights Watch looked into transfer rates for different categories of crime in an effort to find out. While for some crimes the transfer rates are similar, for others there is a marked disparity, particularly in certain judicial circuits. The 13th Circuit, for example, transferred 8.8 percent of white youths arrested for drug felonies to adult court; for black youth arrested for the same crimes, that figure was 30.1 percent, more than three times higher. The available data do not include important details of the cases that may partly account for the disparities, including the drug quantities involved and the criminal histories of the offenders, but the consistency and size of the racial disparities nonetheless are of serious concern.

The racial disparities and the variations between circuits are disturbing evidence of the unchecked discretion of Florida's prosecutors. They are also problematic because the youth charged in Florida's adult courts suffer extraordinarily severe consequences. Nearly every child charged and convicted in adult court ends up with an adult felony record that will haunt him or her for life. Many will serve time in Florida's adult prisons. Even those who are charged in adult court but ultimately have their cases dismissed discover that their adult arrest records haunt them when they apply for jobs or housing. The permanent consequences of a felony conviction or a felony arrest record are difficult for any person to live with, but this is particularly so for a child. Those with convictions are barred by law from many types of employment, and suffer many other deprivations, including permanent loss of the right to vote.

The broad discretion the direct file statute gives prosecutors also has a corrupting effect on the juvenile system—Human Rights Watch learned that prosecutors in some jurisdictions are using the threat of direct file in order to obtain guilty pleas in juvenile court, thereby discouraging defendants from exercising their right to present a defense and avoid incarceration in juvenile facilities.

Once they are charged directly in adult court by Florida's prosecutors, children are moved to adult jails pending disposition of their cases, and often serve their sentences in adult facilities. While Florida law requires that they be kept separate from adults, the experience of adult jail or prison is still traumatic. Many interviewees reported that violence was prevalent in adult jails and prisons. Furthermore, adult facilities are simply not designed to house children—interviewees suffered from inadequate time outdoors, a lack of appropriate counseling, and were prevented from visiting privately in person with their families (some were instead limited to video phone calls with their loved ones). They also noted that corrections officers lacked the skills or patience required to deal with adolescents. Additionally, the long distances between the prisons that housed them and their hometowns meant that family visits were rare.

The US Supreme Court, in a series of four recent cases, has underscored what every adult knows—that children are different. Their bodies, personalities, and brains are in the process of maturing, which means they are uniquely suited to the rehabilitative programs offered in the juvenile justice system. Although they can be held accountable for crimes, their punishment should take into account their diminished culpability, because they are less able to reason logically, to withstand peer pressure, to predict future outcomes in order to guide their behavior, and to make careful decisions. This extends to 16- and 17-year-olds. One judge who has presided over juvenile court for 14 years told Human Rights Watch, "I've been here long enough to understand that when someone is 16 and I ask them why they did it and they say 'I don't know,' I believe them."

This understanding is also reflected in international law, which has long recognized that children are fundamentally different from adults. International law requires that children receive special protection in all proceedings, including criminal proceedings. To comply with international standards, any criminal process that a child is subjected to must take into account the fact that children are uniquely capable of rehabilitation.

Some children are charged directly in adult court for their first offense. Others are subjected to direct file after a series of offenses adjudicated in juvenile court. In neither case is the unfettered power of prosecutors to charge them as adults warranted. Irrespective of any prior offenses, international human rights law requires that children receive treatment tailored to their development and well-being until they reach the age of 18. Even repeat offenders are entitled to that basic safeguard. There are practical reasons for exempting children from adult procedures and sanctions as well. Research shows that criminal behaviors peak in the teenage years, then decline rapidly and continue to slowly decline in late adulthood.

Florida should stop shunting children off to adult court to face processes they do not understand, to spend time in adult facilities not suited to children, and to serve adult sentences that bring a lifetime of consequences that they cannot fully grasp. Florida should re-examine its decision to give prosecutors sole authority to take children away from the juvenile system, where their parents can continue to play a role in their lives, in favor of placing them in the adult system, where parents have very little power and extremely limited contact with their children. The victims of crimes committed by children deserve justice, but children, including teens, can be held accountable without subjecting them to treatment as harsh as that meted out by the state of Florida.

Recommendations

To the Florida Legislature

- Repeal statutory authorization for direct file and instead require that all decisions to transfer children (youth 17 and under) to the adult system be made by a judge based on testimony and evidence presented in a hearing, with a statutory presumption that they remain in the juvenile system. The hearing should include consideration of the juvenile's amenability to rehabilitation.
- To the extent youth 17 and under continue to be prosecuted in adult court, stop their pretrial confinement in adult jails and instead allow them to remain in the custody of the Department of Juvenile Justice.
- Make sealing or expungement of criminal records automatic upon completion of sentence for crimes committed by people 17 and under.

To Elected State Attorneys

- Until direct file is eliminated, apply the discretion conferred on prosecutors by Florida law to stop the practice of direct file.
- To ensure that prosecutions are conducted in a way that takes into account the specific characteristics of children and the desirability of promoting their rehabilitation, create specialized units of prosecutors tasked with prosecuting all cases in which the suspect is 17 or younger at the time of the offense.
- Provide training to all attorneys prosecuting juveniles in Florida in how to deal with juveniles, including information about adolescent brain development.

To Juvenile Court Judges

- Until direct file is eliminated, order state attorneys to indicate their intent to directly charge a juvenile in adult court at least 5 days prior to filing the case in adult court in order to give defense attorneys an opportunity to explain the procedure to their juvenile clients in a manner that the clients can comprehend.
- Until direct file is eliminated, provide an on-the-record explanation to children subject to possible direct file of what it is and what to expect if they go to adult court.
- Once direct file is eliminated, provide an on-the-record explanation to children subject to possible judicial waiver hearings of what those hearings entail and what to expect if they go to adult court.

To Circuit Court Judges

- Exercise all possible discretion to allow children charged as adults to remain in the community, or in the custody of the juvenile justice system if custody is required, rather than in adult jail pending trial.
- Tailor criminal procedures to children's capacity to understand as well as to their needs and rehabilitative potential.
- When sentencing children convicted as adults, take into account the child's developmental status and capacity for rehabilitation.

To the Office of Court Administration

- Require all judges who preside over criminal cases to attend trainings in adolescent brain development and in how to address the needs of children tried as adults.

To Public Defenders

- Require all lawyers to attend trainings in adolescent brain development and in how to work with juvenile clients.
- Create specialized units to handle cases of children subject to the jurisdiction of adult courts so that felony lawyers can develop expertise in dealing with juvenile clients.

To the Department of Juvenile Justice

- Collect and make publicly available data on the disposition of cases where defendants are prosecuted in adult court for crimes committed while 17 or younger.
- Collect data on how often cases that are considered for direct file result in guilty pleas in juvenile court.
- Use all power and authority available to the agency to limit the number of youth held in adult facilities or tried in adult courts.

To the Department of Corrections

- Require all probation officers to attend trainings in adolescent brain development and in how to interact with children convicted of crimes.

Methodology

This report is based on interviews and correspondence with 107 individuals and relatives of individuals who were sent directly to adult court by Florida's prosecutors, pursuant to Florida's direct file statute, for crimes committed when they were 17 or younger. Human Rights Watch interviewed 42 of the 107 in person and three via phone. Of the people we interviewed in person, 23 were incarcerated at the time we spoke with them. We corresponded with the 62 remaining persons.

Human Rights Watch identified individuals prosecuted in adult court by searching the Florida Department of Corrections offender database, available at http://www.dc.state.fl.us/pub/obis_request.html. Human Rights Watch sent a letter and survey, the templates of which are included in Appendix A of this report, to 656 incarcerated individuals and probationers whose dates of offense and dates of birth indicated that they were likely prosecuted in adult court for offenses committed prior to age 18. The letters asked people to respond only if their cases had been filed in adult court by a prosecutor, rather than transferred there by a judge or after indictment by a grand jury. Several child advocates and defense attorneys also distributed the surveys to an unknown number of children they knew to have been sent directly to adult court by a Florida prosecutor.

Of the people who received surveys, 75 responded. Of those 75, Human Rights Watch was able to interview 11 in person. Nine of those were incarcerated at Sumter Correctional Institution when they spoke to Human Rights Watch. Human Rights Watch interviewed two additional people at Sumter who had not filled out surveys. At the time Human Rights Watch was conducting interviews, Sumter and Lancaster Correctional Institution were the two Florida prisons with the highest number of inmates aged 17 or younger. Lancaster authorities refused to give Human Rights Watch access to any incarcerated individuals. While the prison administration at Sumter did allow Human Rights Watch to conduct interviews at the facility, they would not allow interviews with any incarcerated people who were in solitary confinement. Ten incarcerated youth who responded to the Human Rights Watch survey were in solitary confinement on the days interviews were conducted, and were thus unavailable.

Four other survey respondents we interviewed were being held under house arrest, were on probation, or had completed their sentences. Of these, we interviewed three in their homes and one at a coffee shop.

Two individuals we interviewed came to our attention after their stories appeared in the media. We interviewed one at her place of business, the other by telephone. Finally, 13 children who were represented by the Ninth Judicial Circuit Office of the Public Defender and incarcerated at the Orange County Jail agreed to speak to Human Rights Watch but had not completed written surveys.

Human Rights Watch also spoke to 42 prosecutors, judges, defense attorneys, child advocates, and juvenile system probation officers who had been involved in cases prosecuted under Florida's direct file statute. Human Rights Watch attempted to speak to adult system probation officers, repeatedly contacting several regional probation offices as well as the Florida Department of Corrections, which oversees adult felony probation, in an effort to speak to adult system probation officers who had supervised youth who had been subject to Florida's direct file statute. We received no response.

This report focuses on Florida because it was among the first states to give prosecutors, rather than judges, the discretion to decide when a child should be charged as an adult. Historically, Florida has charged children as adults at a higher rate than other states. Thirteen US states report the rate at which children are removed from the juvenile system and prosecuted in the adult criminal system. Of these 13 states, Florida charged children as adults at a rate of 164.7 per 100,000 juveniles from 2003-2008, almost twice the rate of Oregon, which came in second.

In this report, in line with international law, the terms "child" and "children" refer to a person or persons below the age of 18. We use the term "young person" to refer to those who were older than 18 at the time of their interviews or correspondence with Human Rights Watch but had been prosecuted in adult criminal courts for crimes they committed as children. "Transfer" refers to the practice of removing a child from juvenile court jurisdiction and prosecuting him or her in adult court, regardless of whether the child gets to the adult system through direct file, judicial waiver, or some other process. Finally, in this report, we use the phrase "charged directly in adult court" as a shorthand for "charged in adult court pursuant to Florida's direct file statute."

Florida comprises 67 counties, which are organized into 20 judicial circuits. Each circuit organizes its own criminal and juvenile courts, and has an elected state attorney, or prosecutor, and an elected public defender. Human Rights Watch was not able to interview people in every county or circuit. In selecting which jurisdictions to visit, we focused on those circuits with the highest rates of juveniles prosecuted in adult court, but also aimed to include both densely and sparsely populated circuits.

All individuals we interviewed about their experience provided informed consent to participate in the research. Interviews at Sumter Correctional Institution and the Orange County Jail were conducted in private, outside of the hearing of jail and prison staff. An attorney from the Ninth Circuit Public Defender's Office was present for the interviews conducted in Orange County Jail, since the majority of the children interviewed there had pending cases and were advised not to speak without their lawyer present. We explained to each interviewee that participation in the interview was completely voluntary, that we could not offer any legal advice or other assistance, and that the interviewee could stop the interview at any time. We gave no incentives to interviewees. One individual declined to be interviewed. We ended a second interview shortly after it began when the child being interviewed gave indications that he did not understand what was happening or what the purpose of the interview was.

All interviewees were given the choice of using their real names or a pseudonym. Due to the serious stigma of arrest and conviction, and the possibility that at least some of the children and young people interviewed might not know if their cases could be eligible for sealing, expungement, or pardon in the future, we decided to use pseudonyms for all of the children and young people interviewed except for two: Kiera Wilmot and Veronica Limia. Kiera's arrest received national media coverage. She and her mother both agreed that her name could be used in this report. Veronica Limia, who was prosecuted directly in adult court at age 17, is now 31 years old and an attorney. Her law school graduation, as well as her background as a child in the criminal system, have been covered in local newspapers, and she gave consent to use her name in this report.

The statistics in this report are all based on data provided by Florida's Department of Juvenile Justice (DJJ).

In April 2013, Human Rights Watch sent freedom of information requests to state attorneys in all 20 Florida circuits, requesting individual record data for all juveniles charged directly by prosecutors in their adult courts from 2007 until April 2013. State attorneys for the following judicial circuits provided the requested information: 1st Judicial Circuit, 4th Judicial Circuit, 6th Judicial Circuit, 7th Judicial Circuit, 8th Judicial Circuit, 9th Judicial Circuit, 12th Judicial Circuit, and 18th Judicial Circuit. State attorneys for the following judicial circuits claimed that they had no responsive records or were not obligated to provide them by Florida's public records law: 3rd Judicial Circuit, 6th Judicial Circuit, 11th Judicial Circuit, and 13th Judicial Circuit. State attorneys for the following judicial circuits had not responded to Human Rights Watch's request by the time of this writing: 14th Judicial Circuit, 15th Judicial Circuit, 16th Judicial Circuit, 17th Judicial Circuit, 19th Judicial Circuit, and 20th

Judicial Circuit. State attorneys for the following circuits had indicated an intention to provide the requested information, but had not provided it by the time of this writing: 2nd Judicial Circuit, 5th Judicial Circuit, and 10th Judicial Circuit.

Because some responsive circuits provided individual record level data as per our original request, whereas others provided aggregated data, Human Rights Watch was not able to use that data to compare between circuits. Accordingly, we have relied on the data provided by the DJJ.

Finally, Human Rights Watch asked Florida's Office of Court Administration (OCA) for data on youth charged directly in adult court by Florida's prosecutors. The OCA made several attempts to provide responsive data, but their data did not include information on whether individuals were transferred from juvenile court or their ages at the time of offense, making it impossible to extract the information sought by Human Rights Watch.

I. Background

Juvenile Courts in the United States

Since the founding of the world's first juvenile court in Illinois in the 1890s, legal systems in the United States have recognized that children are different from adults and should be treated differently.[1] While criminal justice has traditionally been understood to achieve four goals—retribution, incapacitation, deterrence, and rehabilitation—adult criminal courts in the United States have become increasingly focused on retribution and incapacitation. Juvenile courts, on the other hand, have always prioritized rehabilitation.[2]

Almost every juvenile court system in the United States has had, since its inception, some form of judicial waiver procedure, whereby a judge could determine when a juvenile should be transferred to adult court.[3] Prior to the 1980s, and consistent with the preference for treating children in the juvenile court, such waivers were rarely used.[4] Beginning in the 1980s, however, at least in part in response to an increase in juvenile crime, nearly every US state made it easier to transfer children from juvenile courts to more punitive adult courts.[5]

The national trend to transfer more juveniles to adult court came at a time when the United States was experiencing a steep escalation in crime rates, including rates of violent crime by adolescents.[6] Politicians and pundits warned about an oncoming wave of adolescent "super-predators," a term coined by then-Princeton Professor John DiIulio, and deployed in

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[1] David Tannenbaum, "The Evolution of Transfer out of the Juvenile Court," in *The Changing Borders of Juvenile Justice*, ed. Jeffrey Fagan and Franklin Zimring (Chicago: University of Chicago Press, 2000), p. 17.

[2] Barry Feld, "Legislative Exclusion of Offenses from Juvenile Court Jurisdiction: a History and Critique," in *The Changing Borders of Juvenile Justice*, p. 83; See also *Kent v. United States,* 383 U.S. 541, 554 (1966) ("The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.").

[3] Donna Bishop, *Juvenile Offenders in the Adult Criminal Justice System* (Chicago: University of Chicago Press, 2000); See also Feld, "Legislative Exclusion of Offenses from Juvenile Court Jurisdiction," p. 87; Patrick Griffin et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting," September 2011, https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf (accessed November 25, 2013), p. 8.

[4] Even when youth crime rates were at their highest, in the early 1990s, judicial waiver never exceeded 2 percent of all delinquency cases. United States General Accounting Office, "Juvenile Justice: Juveniles Processed in Criminal Court and Case Dispositions," August 1995, http://www.gao.gov/assets/230/221507.pdf (accessed November 25, 2013), p. 7.

[5] Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 1.

[6] Office of Juvenile Justice and Delinquency Prevention, National Center for Juvenile Justice, "Juvenile Arrest Rates by Offense, Sex, and Race (1980-2010)", www.ojjdp.gov/ojstatbb/crime/excel/jar_2010.xls (accessed October 3, 2012). See also Feld, "Legislative Exclusion of Offenses from Juvenile Court Jurisdiction," p. 11 ("juvenile arrests for violent crime increased sixty-two percent from 1988 to 1994.").

a highly racialized narrative.[7] In a 1995 article, DiIulio warned that "Americans are sitting atop a demographic crime bomb" and predicted that the following decade would "unleash an army of young male predatory street criminals who will make even the leaders of the Bloods and Crips—known as O.G.s, for 'original gangsters'—look tame by comparison[.]"[8] Youth of color were overrepresented in media portrayals of crime during this period.[9]

The spike in juvenile crime actually had already peaked when DiIulio wrote those words. The apex came in 1994, by which point the violent crime index[10] arrest rate for juveniles had increased over 68 percent from its 1980 level.[11] By 2010, the violent crime index arrest rate for juveniles had plummeted to well below the 1980 level.[12] In 2012, the juvenile violent crime arrest rate hit a 32-year low.[13] DiIulio himself has acknowledged that his dire predictions were wrong, and now advocates for programs and prevention over incarceration.[14] In 2012, he was a signatory to an amicus brief in *Miller v. Alabama*, the Supreme Court case challenging juvenile life without parole sentences. The brief stated,

> The prediction of a juvenile superpredator epidemic turned out to be wrong; in fact, there was no superpredator generation. Professor DiIulio, the original proponent of the juvenile superpredator notion and a signatory to this brief, has repudiated the idea and "expressed regret, acknowledging that the prediction was never fulfilled."[15]

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[7] Bob Greene, "'Superpredators May Be Just the Beginning," *Chicago Tribune*, December 27, 1995, http://articles.chicagotribune.com/1995-12-27/features/9512270002_1_superpredators-young-criminals-meanest (accessed November 22, 2013); John J. DiIulio, Jr., "My Black Crime Problem, and Ours," *City Journal*, Spring 1996, http://www.city-journal.org/html/6_2_my_black.html (accessed November 22, 2013); George Will, "'187': In-Your-Face Look at a Society Run Amok," *Chicago Sun-Times*, August 10, 1997; Christopher Reed, "Natural Born Teen Killers Plague US," *The Guardian Foreign*, August 22, 1996.

[8] Lori Montgomery, "'Super-Predator' – Or Just A Kid With A Gun? – Skyrocketing Number of Teen Killers Brings Debate On Causes," *Seattle Times*, May 30, 1996.

[9] See Elizabeth S. Scott and Laurence Steinberg, *Rethinking Juvenile Justice* (President and Fellows of Harvard College, 2008), p. 107.

[10] The violent crime index includes rates of murder, rape and sexual assault, robbery, and assault.

[11] Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Statistical Briefing Book," December 17, 2012, http://www.ojjdp.gov/ojstatbb/crime/JAR_Display.asp?ID=qa05201 (accessed November 25, 2013).

[12] Ibid.

[13] See Jeffrey Butts, John Jay College of Criminal Justice Research and Evaluation Center, "Violent Youth Crime in U.S. Falls to New 32-Year Low," October 4, 2013, http://johnjayresearch.org/rec/files/2013/10/databit201304.pdf (accessed December 5, 2013).

[14] See Elizabeth Becker, "As Ex-Theorist on Young 'Superpredators,' Bush Aide Has Regrets," *New York Times*, February 9, 2001, http://www.nytimes.com/2001/02/09/us/as-ex-theorist-on-young-superpredators-bush-aide-has-regrets.html (accessed December 5, 2013).

[15] Brief for Petitioner at 18-19 *Miller v. Alabama,* 132 S. Ct. 2455 (2012) (No. 10-9646), 2012 *available at* http://eji.org/files/10-9647,%2010-9646%20tsac%20Jeffrey%20Fagan,%20et%20al..pdf (accessed November 25, 2013).

While there has been some softening of the transfer laws passed in the wake of the "super-predator" hype,[16] many of the most punitive laws remain on the books,[17] despite that fact that transfer to adult court has been linked to an increase in recidivism.[18]

Research has shown the ineffectiveness of punishing children, including teens, as adults in order to deter future crime. A 2007 study by the Centers for Disease Control found that "evidence indicates that transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth."[19] A Department of Justice analysis of all transfer studies conducted as of 2010 determined that none had proven that juvenile transfer laws were an effective deterrent to crime.[20] Florida-specific studies have come to the same conclusions. One 2002 study compared 475 youth charged in adult court with 475 youth who remained in the juvenile system and found that "nearly 50 percent of the transfers re-offended after age 18 but only 35 percent of the juvenile cases did[,]" even though the youth charged as adults were similar in age, gender, race, prior record, and seriousness of offense.[21] Further, the transferred juveniles who re-offended were more likely to commit more serious felonies than the non-transferred juveniles.[22]

Shay Bilchik, who served as an assistant to Florida Attorney General Janet Reno during the height of the state's use of direct file in the 1990s later acknowledged that "'[k]ids prosecuted as adults tend to re-offend more quickly, they re-offend for more serious offenses, and they tend to re-offend more often." Those results, he said, were "the trifecta of bad crime policy.'"[23]

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[16] Four states raised the age of juvenile court jurisdiction between 2005 and 2013. Three states—Arizona, Colorado, and Ohio—introduced reverse transfer mechanisms, allowing transferred children to obtain hearings to determine whether they should go back to juvenile court. Colorado and Nevada narrowed their transfer statutes. Campaign for Youth Justice, "State Trends – Legislative Victories from 2011-2013: Removing Youth from the Adult Criminal Justice System," October 2013, http://www.campaignforyouthjustice.org/documents/ST2013.pdf (accessed December 5, 2013).

[17] See Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 9 ("Despite the steady decline in juvenile crime and violence rates since 1994, there has as yet been no discernible pendulum swing away from transfer.").

[18] Robert Hahn et al., Department of Health and Human Services, Centers for Disease Control and Prevention, "Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services," November 30, 2007, http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm (accessed December 11, 2013), pp. 6-9.

[19] Ibid.; see also Kristin Johnson, Lonn Lanza-Kaduce, and Jennifer Woolard, "Disregarding Graduated Treatment: Why Transfer Aggravates Recidivism," *Crime & Delinquency,* vol. 57, no. 5 (September 2011).

[20] Richard Redding, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?," June 2010, https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf (accessed March 20, 2014).

[21] Lonn Lanza-Kaduce et al., Florida Department of Juvenile Justice, "Juvenile Transfer to Criminal Court: Final Report," January 8, 2002, http://www.prisonpolicy.org/scans/juveniletransfers.pdf (accessed March 20, 2014), pp. i-ii.

[22] Ibid., p. ii.

[23] Jeff Kunerth, "Adult charges harmful to kids?," *Orlando Sentinel*, March 22, 2007, http://articles.orlandosentinel.com/2007-03-22/news/JUVYJAIL22_1_juveniles-charged-juveniles-in-adult-juvenile-justice-system (accessed March 20, 2014).

Prosecutorial Direct File: The National Context

Every state has at least one mechanism that allows for the transfer of children to adult court. Most states use judicial waiver, where a judge presides over a hearing to determine whether it is appropriate to remove a child from the jurisdiction of the juvenile court and prosecute him or her in adult court.[24] Both the prosecution and the defense have the right to be heard at a waiver hearing, and the presiding judge considers several factors, including the child's amenability to rehabilitation, before deciding whether to send a child to adult court for prosecution.[25]

In Florida, the statute governing waiver hearings requires the juvenile court judge to consider factors including the seriousness of the offense, the child's prior record, and the child's amenability to rehabilitation before deciding to transfer that child to adult court.[26] At the hearing, the judge will hear from the defense attorney, the Department of Juvenile Justice, the child's parents or guardians, and the child herself, as well as the state attorney.[27] If the judge decides to transfer the child, that decision must be in writing and can be appealed.[28]

Fifteen states and the District of Columbia also give prosecutors the option, through a process called direct file, to charge juveniles directly in adult court, removing them from the jurisdiction of the juvenile court and thus from further involvement by juvenile court judges in decisions to charge juvenile suspects in adult court.[29] Some of these states, including Florida, also have mandatory provisions requiring the prosecutor to charge certain cases directly in adult court.[30]

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[24] Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 2.

[25] The United States Supreme Court enumerated these factors in *Kent,* 383 U.S. at 541.

[26] "Waiver of Juvenile Court Jurisdiction; Hearing," Florida Statute § 985.556(4).

[27] Florida Statute § 985.556(4)(d)g.

[28] Florida Statute § 985.556(4)(e).

[29] The jurisdictions that have direct file statutes are: Arizona (Arizona Revised Statute §§ 13-501, 13-504, 8-302), Arkansas (Arkansas Code Annotated § 9-27-318), California (California Welfare & Institutions Code §§ 707(d)(1) & (3) (16 and older), 707(d)(2) (14 and older)), Colorado (Colorado Revised Statutes §§ 19-2-517, 19-2-518), District of Columbia (District of Columbia Code § 16-2307), Florida (Florida Statute § 985.557), Georgia (Georgia Code. Annotated §15-11-28), Louisiana (Louisiana Children's Code Article 305), Massachusetts (Massachusetts General Laws chapter 119, §§ 54, 72B, 74), Michigan (Michigan Compiled Laws § 600.606), Montana (Montana Code Ann. § 41-5-206), Nebraska (Nebraska Revised Statutes § 43-276), Oklahoma (Oklahoma Statutes title 10A, §§ 10A-2-5-201-10A-2-5-208), Vermont (Vermont Statutes Annotated title 33, §§ 5201-5204a), Virginia (Virginia Code Annotated §16.1-269.1), and Wyoming (Wyoming Statutes Annotated § 14-6-203). For a general overview of juvenile transfer laws, see Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, pp. 2-3, 5.

[30] See, e.g., Arizona Revised Statutes § 13-501(A); Official Code of Georgia Code Annotated § 15-11-28(b); Florida Statute 985.557(2); Louisiana Children's Code Article 305(A); Montana Code Annotated § 41-5-206.

Under direct file laws, the prosecutor's decision is generally made without any oversight from either the juvenile court or the adult criminal court. In nearly all states with direct file laws, the statutes do not provide guidance as to what factors prosecutors should consider in making the decision to charge a child directly in adult court. Even in the few states that provide guidance to prosecutors, there is no way to ensure that the guidance is being followed, as there is often no record of the decision or opportunity to challenge it. Indeed, in the view of the US Department of Justice, "it is possible that prosecutorial discretion laws in some places operate like statutory exclusions, sweeping whole categories into criminal court with little or no individualized consideration."[31]

Ten jurisdictions, including Florida, give prosecutors discretion to charge a 14-year-old in adult criminal court for some offenses.[32] In Montana, a prosecutor can charge a 12-year-old in criminal court for certain personal offenses. In Nebraska, there is no age limit for certain felonies. In Florida, Nebraska, and Vermont, a prosecutor may choose to prosecute any juvenile starting at age 16 for any felony. In Wyoming, that age drops to 13.[33] Florida even permits youth accused of misdemeanors to be charged as adults under certain circumstances.[34] This patchwork of direct file laws means that a juvenile's chances of facing such charges, and of facing them without judicial oversight, depend a great deal on where the child happened to commit her crime.

Florida: At the Forefront of Treating Children as Adults

Currently, Florida ostensibly has three mechanisms for transferring children from juvenile to adult court. Two of them, judicial waiver[35] and indictment, which requires a prosecutor to present a case to a grand jury before moving forward with it in criminal court,[36] account for less than 2 percent of cases of children prosecuted in adult court. The third,

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[31] Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 5.

[32] Those states are Arkansas, California, District of Columbia, Florida, Massachusetts, Michigan, Montana, Vermont, Virginia, and Wyoming.

[33] Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p.6.

[34] "Direct Filing of an Information; Discretionary and Mandatory Criteria," Florida Statute § 985.557(1)(b).

[35] Waiver may be voluntary on the part of the child, discretionary on the part of the prosecutor, or mandatory. Florida Statute § 985.556(1)(3). All waivers require the prosecutor to file a motion and the court to conduct a hearing on that motion to determine whether that particular case should be transferred to adult court. Florida Statute § 985.556(4).

[36] "A child of any age who is charged with a violation of state law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in s. 985.0301(2) unless and until an indictment on the charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, must be dismissed and the child must be tried and handled in every respect as an adult." "Indictment of a Juvenile," Florida Statute § 985.56(1). If a prosecutor opts not to present the case to the grand jury or the grand jury declines to indict, the case may be brought in the juvenile court. Florida Statute § 985.56(2).

prosecutorial direct file, which gives prosecutors discretion to file charges in adult court, accounts for approximately 98 percent of cases and is the subject of this report.[37]

Florida has one of the harshest prosecutorial direct file laws in the United States[38] and has transferred more children out of the juvenile and into the adult system than any other state.[39] From 2003 to 2008, Florida transferred youth to adult court at 1.7 times the rate of Oregon, the state with the second-highest transfer rate, and 2 times the rate of Arizona, the state with the third-highest transfer rate.[40] During that period, Florida's transfer rate was 8 times the rate of California and 5 times the average transfer rate in 12 other states.[41] Florida's direct file statute is also one of the oldest in the United States—the Florida legislature passed the state's first direct file law in 1978.[42]

Florida's Direct File Statute

Florida's direct file statute is complex—it has both discretionary and mandatory provisions, and whether a particular case is eligible for direct file depends on the child's age, charges, and prior history. At its core, however, it allows for a breathtakingly broad array of cases to be brought in adult court at the sole discretion of the prosecutor and without judicial review. The following three cases illustrate this range.

On the morning of April 22, 2013, 16-year-old honor student Kiera Wilmot decided to see what would happen if she mixed a household cleaner and some aluminum foil in a plastic bottle.[43] She conducted her experiment on the grounds of Bartow High School before classes had started.[44] The result? The bottle top popped off, there was some smoke, and Kiera was arrested and charged with "making, possessing, throwing, projecting, placing, or

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37 Florida Statute § 985.557.

38 Redding, "Juvenile Transfer Laws?," https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf ("Florida … has some of the most aggressive transfer policies in the Nation[.]").

39 Colleen Jenkins, "Florida Leads Nation in Locking Up Kids in Adult Jails," *Tampa Bay Times*, November 11, 2009, http://www.tampabay.com/news/courts/florida-leads-nation-in-locking-up-kids-in-adult-jails/1051218 (accessed November 23, 2013). Some states set the age of criminal court jurisdiction below 18. These states presumably try more juveniles as adults than Florida. Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 21.

40 Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 18.

41 Ibid.

42 Donna Bishop et al., Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Juvenile Transfers to Criminal Court Study: Phase I," April 19, 1998, https://www.ncjrs.gov/pdffiles1/Digitization/179568NCJRS.pdf (accessed December 4, 2013), p. 27.

43 Kyle Munzenrieder, "Florida Teen Girl Charged with Felony After Science Experiment Goes Bad," *Miami New Times*, April 26, 2013, http://blogs.miaminewtimes.com/riptide/2013/04/florida_teen_girl_charged_with.php (accessed December 5, 2013); see also Jennifer Welsh, "16-Year-Old Florida Honor Student Charged With Two Felonies For Doing A Science Experiment," *Business Insider*, May 2, 2013, http://www.businessinsider.com/kiera-wilmot-arrested-for-science-explosion-2013-5 (accessed December 5, 2013).

44 Ibid.

discharging any destructive device," a felony charge that can be brought in adult court as long as the defendant is 14 or older.[45] Fortunately, Kiera was not immediately charged in adult court (because she was 16, the prosecutor could have done so under Florida's direct file law) and, after months of public outrage over what many saw as an unjust prosecution,[46] Kiera was permitted to accept a plea to a diversion program in juvenile court.[47] She is relieved to not have an adult felony conviction, but the time between her arrest and the plea was challenging. Her lawyer told her that she was could face up to 10 years in prison if convicted. She had never been in trouble before, and the possibility of incarceration frightened her.[48]

On March 6, 2012, Oliver B. was arrested at his high school, together with two other boys, for breaking into an empty office at the school a week earlier and stealing two laptops, a blackberry, a Palm Pilot, and $8 in cash. Oliver was offered a sentence of 18 months in a residential facility if he pled guilty to juvenile charges. If he turned down the plea, his lawyer warned him, his case would likely be charged directly in adult court, where he could face up to 15 years in prison. Oliver had been in trouble before, for possession of some stolen calculators. In that case, he had pled guilty and been sentenced to juvenile probation. Oliver's public defender in the high school theft case "pleaded with [him]" to accept the offer and avoid a conviction in adult court, but Oliver maintained his innocence and refused the offer of juvenile sanctions. The prosecutor charged Oliver directly in adult court. Oliver pled guilty and was sentenced to probation.[49]

On December 31, 2009, 16-year-old Kenneth Ray Stephens and two friends stole a gun from a parked car.[50] The following week, Kenneth and a friend were together in a house when two other teenagers in a different room of the house heard a gunshot, then heard Kenneth

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[45] Tim Elfrink, "Florida School Responds to Criticism for Expelling Student Over Science Project: There Are Consequences to Actions," *Miami New Times*, May 1, 2013, http://blogs.miaminewtimes.com/riptide/2013/05/florida_school_responds_to_cri.php (accessed December 4, 2013) (includes link to arrest report).

[46] Andrew David Thaler, "On Stifling Scientific Curiosity, in the Most Egregious Way Possible," post to "Southern Fried Science" (blog), May 1, 2013, http://www.southernfriedscience.com/?p=14864 (accessed November 23, 2013); Danielle Lee, "Scientists' Support for Kiera Wilmot #Solidarity4Wilmot," post to "The Urban Scientist" (blog), *Scientific American*, May 3, 2013, http://blogs.scientificamerican.com/urban-scientist/2013/05/03/scientists-support-for-kiera-wilmot-solidarity4wilmot/ (accessed November 23, 2013); Petition to State Attorney Jerry Hill: Drop charges against Kiera Wilmot (195,916 signatures), http://www.change.org/petitions/state-attorney-jerry-hill-drop-charges-against-kiera-wilmot (accessed December 4, 2013).

[47] Human Rights Watch telephone interview with Kiera Wilmot, Bartow, Florida, June 13, 2013.

[48] Ibid.

[49] Human Rights Watch interview with Christina S., mother of Oliver B., West Palm Beach, Florida, August 21, 2013.

[50] Larry Hannan, "Alex Ross says he helped steal firearm a week before he was shot," *The Florida Times-Union*, July 7, 2010, http://jacksonville.com/news/metro/2010-07-07/story/alex-ross-says-he-helped-steal-firearm-week-he-was-shot (accessed December 5, 2013).

yell the victim's name and start to cry.[51] The victim, while badly injured by a gunshot wound to the head, survived.[52] Prosecutors disagreed with Kenneth's claim that the shooting was accidental, charging him in adult court with attempted murder. It was Kenneth's first arrest. At the time of his arrest, he was an honor roll student and member of the football team. No judge had the power to review the decision to charge Kenneth in adult court. Facing a 30-year maximum sentence on the attempted murder charge, Kenneth eventually pled to aggravated assault in exchange for a 15-year sentence. The Florida Department of Corrections has listed his release date as January 2, 2025.

Under Florida's direct file statute, prosecutors had discretion to charge Kiera, Matthew, and Kenneth directly in adult court without any judicial review of the appropriateness of adult court.

Initially introduced in 1978, Florida's legislators expanded the reach of the direct file statute several times during the 1990s.[53] Florida's current direct file law has both discretionary and mandatory provisions. The discretionary provision allows prosecutors to file charges directly against any child aged 16 or older in adult court "when in the state attorney's judgment and discretion the public interest requires that adult sanctions be considered or imposed."[54] Children 16 or older charged with a misdemeanor may also be tried in adult court if they have had 2 prior delinquency adjudications or adjudications withheld,[55] at least one of which was for an act that would be considered a felony in adult criminal court. It also allows prosecutors to directly charge 14- and 15-year-olds in adult court for any of 19 enumerated felonies—California is the only state with a longer list of felonies that make a 14-year-old eligible for adult court.[56] In none of these "discretionary" provisions does the statute provide guidance or set forth limitations on the prosecutor's power.

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[51] Ibid.

[52] Hannan, "Alex Ross says he helped steal firearm a week before he was shot," *The Florida Times-Union*, http://jacksonville.com/news/metro/2010-07-07/story/alex-ross-says-he-helped-steal-firearm-week-he-was-shot.

[53] Lanza-Kaduce et al., "Juvenile Transfer to Criminal Court Study," http://www.prisonpolicy.org/scans/juveniletransfers.pdf, pp. 3, 65. But see Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 8 (stating that Florida had prosecutorial direct file laws on the books before 1970).

[54] Florida Statute §985.557.

[55] If a juvenile judge finds that the allegations set out in the delinquency petition are proven beyond a reasonable doubt, she may withhold an adjudication of delinquency and impose a program or other conditions on the child. If the child violates those conditions, the judge may enter an adjudication of delinquency "after a hearing to establish the lack of compliance, but without further evidence of the state of delinquency[.]" "Adjudicatory Hearings; Withheld Adjudications; Orders of Adjudication," Florida Statute § 985.35(4)(a).

[56] In Florida, those felonies are: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary and related offenses; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16 years of age; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking;

The mandatory provision outlines four circumstances in which a prosecutor "shall" direct file a child: (1) any 16- or 17-year-old who is charged with a violent crime against a person[57] and who was previously adjudicated, or found guilty,[58] of " the commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated battery, or aggravated assault[;]" (2) any 16- or 17-year-old charged with a forcible felony[59] who has three prior felony adjudications in juvenile court;[60] (3) any child of any age who is accused of any crime involving theft of a motor vehicle "and while the child was in possession of the stolen motor vehicle the child caused serious bodily injury to or the death of a person who was not involved in the underlying offense[;]" and (4) any 16- or 17-year-old who is charged with committing certain crimes while in possession of a weapon or other destructive device.[61]

Notwithstanding these mandatory provisions, the statute also provides that the prosecutor may at any time keep any case in juvenile court if she "has good cause to believe that exceptional circumstances exist that preclude the just prosecution of the child in adult court." The statute provides no guidance as to what those exceptional circumstances might be.[62]

Prosecutors must also charge a child in adult court when she was previously charged and sentenced as an adult. Under the "once an adult, always an adult" provision of Florida's direct file statute, once a child is sentenced as an adult, that child will automatically be tried in adult court for any subsequent offense, no matter how minor.[63] For example, a 15-

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and grand theft of a motor vehicle. Florida Statute § 985.557. California's direct file statute lists 21 felonies for which children as young as 14 can be charged in adult court. California Welfare and Institutions Code §§ 707(d)(d)(2).

[57] The statute does not define "violent crime against a person."

[58] A finding of guilt in juvenile court is referred to as an "adjudication" rather than a conviction.

[59] Forcible felonies are defined as: "treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual." "Forcible Felony," Florida Statute § 776.08.

[60] This subsection of the statute further says that it is not applicable "when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court." The inclusion of this exception in this subsection appears superfluous since the larger statute also contains an "escape hatch" provision.

[61] The crimes, enumerated in "Possession or Use of Weapon; Aggravated Battery; Felony Reclassification; Minimum Sentence," Florida Statute § 775.087(2)(a)1.a.-q, are: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; and drug trafficking.

[62] Prosecutors, of course, have broad discretion in deciding which charges to bring. See *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) ("so long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion."); see also Lanza-Kaduce et al., "Juvenile Transfer to Criminal Court Study: Final Report," http://www.prisonpolicy.org/scans/juveniletransfers.pdf, p. 70.

[63] Florida Statute § 985.557(3)(a).

year-old who steals a car for a joy ride could be charged with grand theft in adult court, since grand theft is one of the 19 enumerated felonies for which 14- and 15-year-olds can be tried as adults. Stealing a car is a third degree felony,[64] punishable by up to five years in prison.[65] If, a year later, that same child steals a bag of chips from a grocery store, any larceny charges brought against her would have to be filed in adult court.[66]

Direct file has almost entirely displaced judicial waiver in Florida, as the data below shows.[67] Human Rights Watch's interviews for this report bear out the statistics: when asked if he ever requested judicial waiver hearings, one prosecutor responded "why would I?"[68]

Which Children Are Being Prosecuted in Florida's Adult Courts?

Types of Offenses

According to new analysis of Florida data conducted by Human Rights Watch for this report, more than 12,000 juveniles were arrested for crime and transferred from Florida's juvenile justice system to the adult system in the five-year period from fiscal year 2009 to fiscal year 2013, an average of 2,420 juveniles annually. The vast majority of those cases—97.8 percent—reached adult court via direct file. In 2012-13, that figure was 98.3 percent. Thus, while the discussion of data that follows in this section embraces all transfer cases, it is important to recall that the vast majority of those cases are children charged as adults pursuant to Florida's direct file statute.[69]

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[64] "Theft," Florida Statute § 812.014(2)(c)(6).

[65] "Penalties; Applicability of Sentencing Structures; Mandatory Minimum Sentences for Certain Reoffenders Previously Released From Prison," Florida Statute § 775.082(3)(d).

[66] While 34 states have "once an adult, always an adult" provisions, only two other jurisdictions—the District of Columbia and Oklahoma—automatically treat a child as an adult for any subsequent offense. See District of Columbia Code § 16-2307(h); Oklahoma Statutes title 10A, §§ 10A-2-2-403(C), 10A-2-5-204(G), 10A-2-5-205(B). The other 29 states with such provisions place limitations on when a child with a prior adult conviction can be sent to adult court.

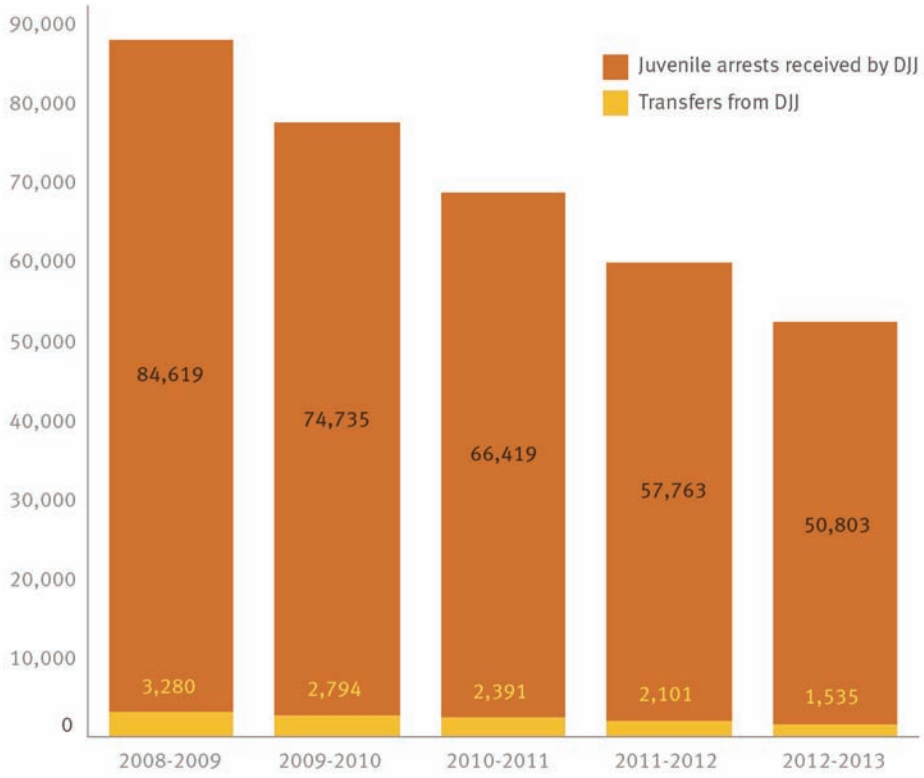
[67] From 2003 until 2008, the latest years for which data is available, judicial waivers accounted for 4 percent of transfers in Florida. See Griffin et al., "Trying Juveniles as Adults," https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf, p. 18.

[68] Human Rights Watch interview with William Cervone, 8th Circuit State Attorney, Gainesville, Florida, May 31, 2013. See also Robert O. Dawson, "Judicial Waiver in Theory and Practice," in *The Changing Borders of Juvenile Justice*, ed. Jeffrey Fagan and Franklin E. Zimring (Chicago: University of Chicago Press, 2000), p. 74 ("A prosecutor is unlikely to forgo direct filing but pursue judicial waiver. In a situation in which both are available, a prosecutor will almost always choose direct filing.).

[69] Only a small minority of cases reach adult courts through indictment, where a grand jury reviews the evidence. An even smaller percentage reach adult court by means of a contested judicial waiver hearing, where both the defense and the prosecutor can present arguments and the judge can consider factors such as the child's amenability to reform if given age-appropriate services. Data provided by Florida's Department of Juvenile Justice indicates that 0.6 percent of transfers occurred via judicial waiver. However, when Human Rights Watch contacted the state attorney for the 14th Judicial Circuit, which accounted for an unusually high percentage of judicial waiver hearings, a representative from his office said they had conducted no judicial waiver hearings during that time period.

Each year, an average of 3.6 percent of juveniles who are arrested in Florida will have their cases transferred to the adult system. While the overall number of transfers has decreased by 53.2 percent over the past five years, this is mainly due to a 40 percent decrease in the overall number of youth entering the juvenile justice system ("juvenile arrests received") during the same time period. The percentage of juveniles arrested who are prosecuted in the adult system ("juveniles transferred") has remained steady even as violent crime rates have fallen.

FIGURE 1:
TOTAL NUMBER OF YOUTH ARRESTS RECEIVED BY THE FLORIDA DEPARTMENT OF JUVENILE JUSTICE AND THE NUMBER TRANSFERRED TO ADULT COURT



Over the last five years, property felonies and violent felonies each accounted for 39 percent of charges for which youth were sent to adult court. Drug felonies made up 8 percent of transferred offenses, followed by misdemeanors at 4 percent, and "other felonies" at 1.2 percent.[70] Of youth transferred to the adult system between 2008-09 and 2012-13, most were arrested for burglary (27.6 percent) and armed robbery (15.7 percent).

[70] Additionally, there are small numbers of other non-felony or non-misdemeanor offenses and unknown felony offenses.

TABLE 1:
OFFENSES OF TRANSFERRED YOUTH (2008-09 - 2012-13)

OFFENSE	% OF TOTAL TRANSFERS ACCOUNTED BY OFFENSE
Burglary	27.6%
Armed Robbery	15.7%
Aggravated Assault or Battery	13.4%
Drug Felony	8.0%
Weapon Felony	6.7%
Other Robbery	5.2%
Misdemeanor Offense	4.0%
Sexual Battery	3.1%
Murder	2.7%
Grand Larceny	2.3%
Auto Theft	2.2%
Kidnapping	1.9%
Other Felonies	1.2%
Attempted Murder	1.2%
Non Violent Resisting Arrest	0.9%
Resist Arrest with Violence	0.8%
Other Offense (Non-Felony and Non-Misdemeanor)	0.7%
Felony Sex Offense	0.7%
Stolen Property	0.5%
Arson	0.5%
Fraud	0.4%
Felony Vandalism	0.3%
Escape	0.1%

The vast majority—93.1 percent—of children charged in adult court are boys. Less than 1 percent of the girls who enter the juvenile justice system are sent to adult court compared with nearly 5 percent of boys. In sheer numbers, there are over 13 times more male youth transferred than females. There are only 2.2 times as many arrests of boys than of girls. We were not able to assess the extent to which the differences in transfer rates for girls were due to the nature of the offenses for which they were arrested or other factors.

FIGURE 2:
YOUTH TRANSFERRED TO ADULT COURT BY OFFENSE AND YEAR

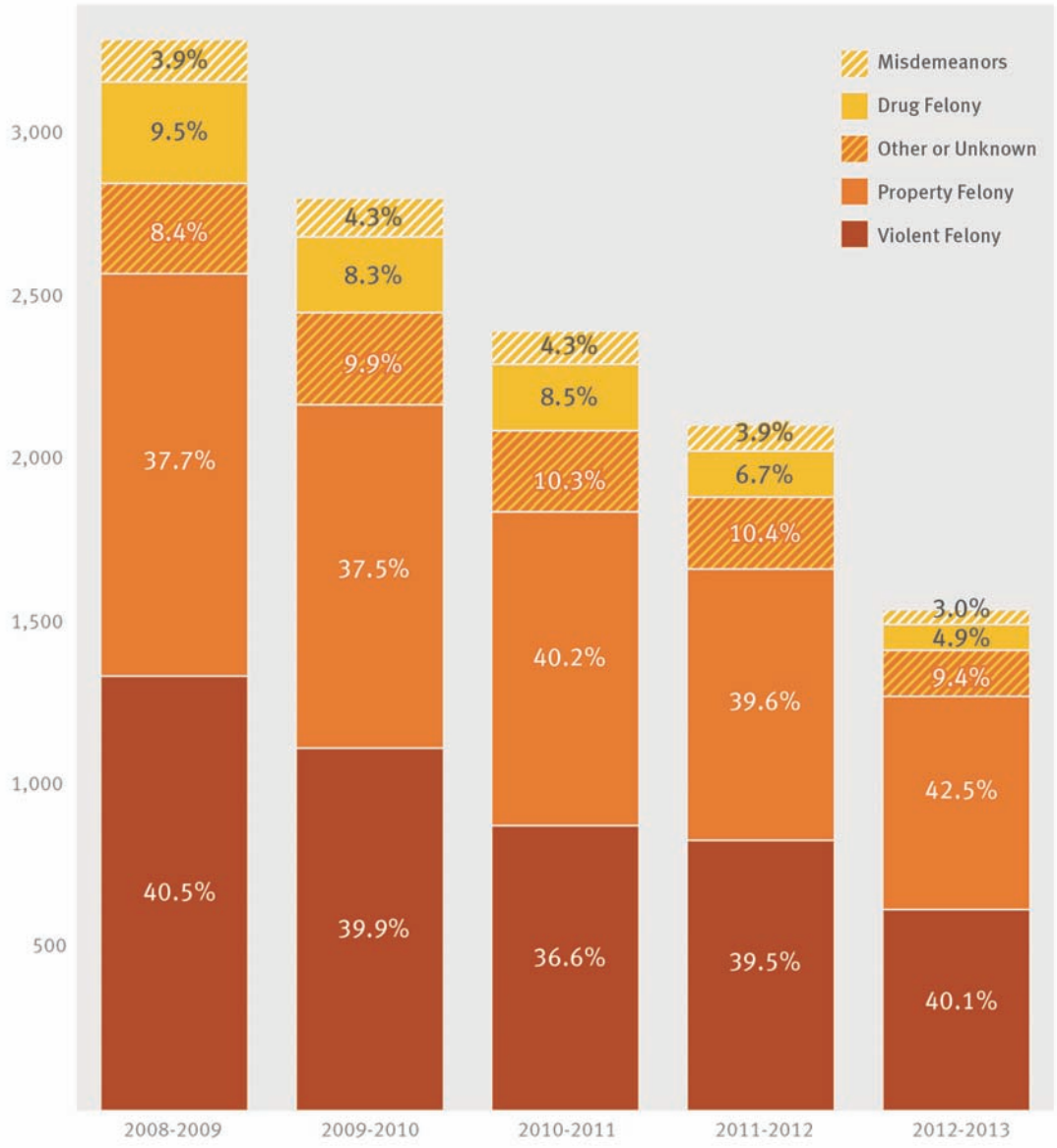
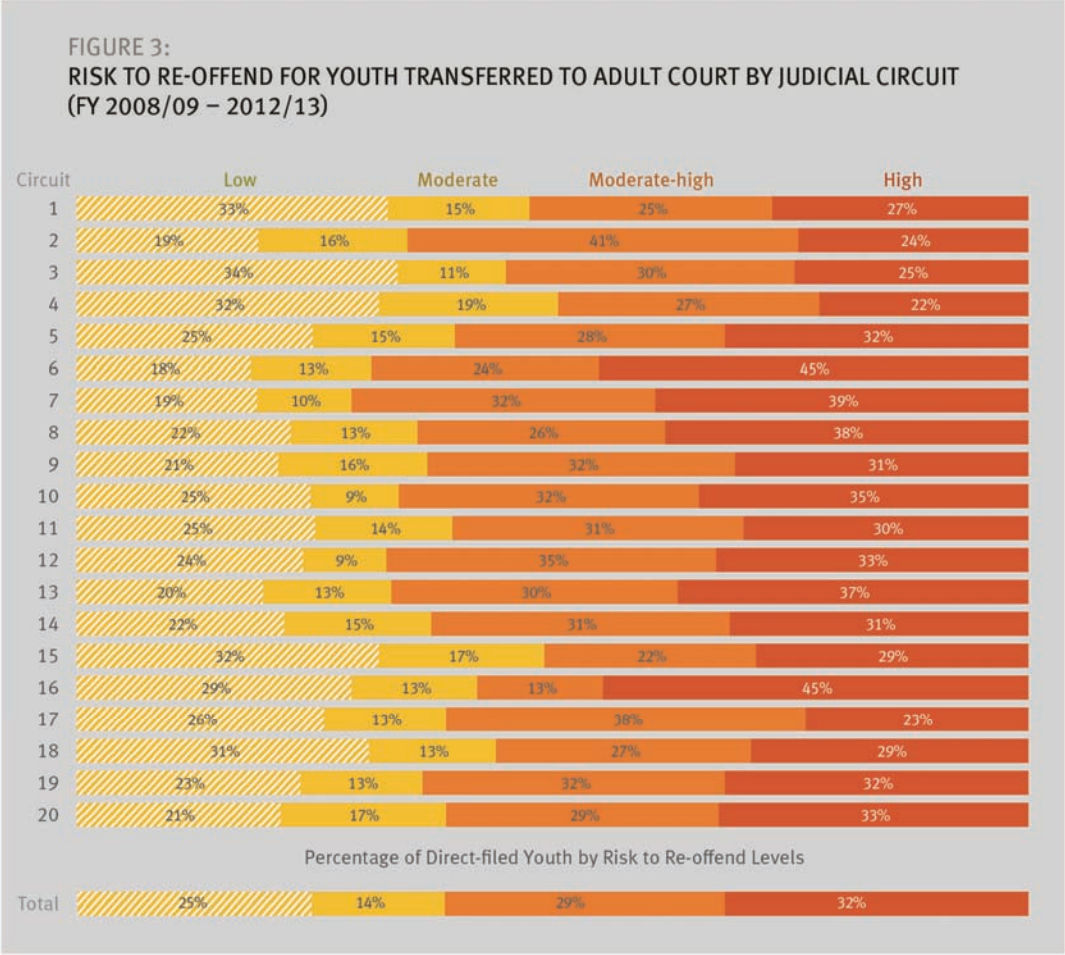


Figure 2, above, shows that children are prosecuted in adult court approximately as often for property crimes as they are for violent felonies. In other words, transfer to adult court is not limited to the most heinous crimes. This finding is consistent with a study conducted in Florida in the late 1990s that concluded that the children directly charged in adult court were not consistently the most serious offenders.[71]

[71] In the late 1990s, a trio of criminology professors conducted an in-depth study comparing 227 cases prosecuted in Florida's juvenile justice system in 1995 with an equal number of "matching" cases where juveniles had been prosecuted in adult court during that

Our analysis further reveals that direct file is also not being reserved for those who are at the highest risk for reoffending according to the Department of Juvenile Justice's risk assessment tool.[72] Many of those charged directly in adult court by Florida's prosecutors are not categorized as being at "high" risk to re-offend. In fact, over the five years for which Human Rights Watch was able to obtain data, nearly two of every five youths directly charged in adult court were categorized as being at "low" or "moderate" risk to re-offend. In contrast, less than one-third were categorized as being at "high" risk to re-offend.



same year. Lonn Lanza-Kaduce, Charles E. Frazier, and Donna M. Bishop, "Juvenile Transfers in Florida: The Worst of the Worst?," *University of Florida Journal of Law & Public Policy*, vol. 10 (1999), p. 292. Cases were considered to match based on seven criteria: offense, number of counts, prior history, most serious prior offense, age, gender, and race. Ibid., p. 289. The authors found some small differences between the two groups in the aggregate—those sent to adult court, for example, had on average slightly longer prior records. Ibid., p. 305. When they looked at each matched pair using a 12-variable index they had developed to measure seriousness of the cases, however, they found that children prosecuted in adult court "did not stand out as being clearly worse in most of the paired comparisons." In fact, the researchers found that "in 7% [of the matched pairs], the transfer case was *less* severe." Ibid., p. 308.

[72] The Florida Department of Juvenile Justice uses the "Positive Achievement Change Tool," http://www.djj.state.fl.us/docs/partners-providers-staff/cpact-pre-screen-assessment.pdf?sfvrsn=10 (accessed March 19, 2014) to assess a juvenile's risk to reoffend.

According to our analysis, where children directly charged in adult court fall along the risk-to-reoffend continuum varies widely among Florida's 20 judicial circuits, with prosecutors in some circuits charging far more low-risk children than others. In 5 of the 20 circuits (the 1st, 3rd, 4th, 15th, and 18th), more of the children charged directly as adults were categorized as being at "low" risk to re-offend than as being at "moderate," "moderate-high," or "high" risk to reoffend. In 10 of the 20 circuits, by contrast, more were in the "high" risk to re-offend category than in the other categories.

Racial Disparities

Our analysis reveals that black boys make up 27.2 percent of children received by the juvenile justice system (arrested and initially sent for processing to the Department of Juvenile Justice), but account for 51.4 percent of transfers to the adult system. White boys make up 28 percent of children received by the juvenile justice system, but account for only 24.4 percent of transfers.

TABLE 2:
GENDER AND RACE OF ARRESTED AND TRANSFERRED YOUTH (FY 2008/09 - 2012/13)

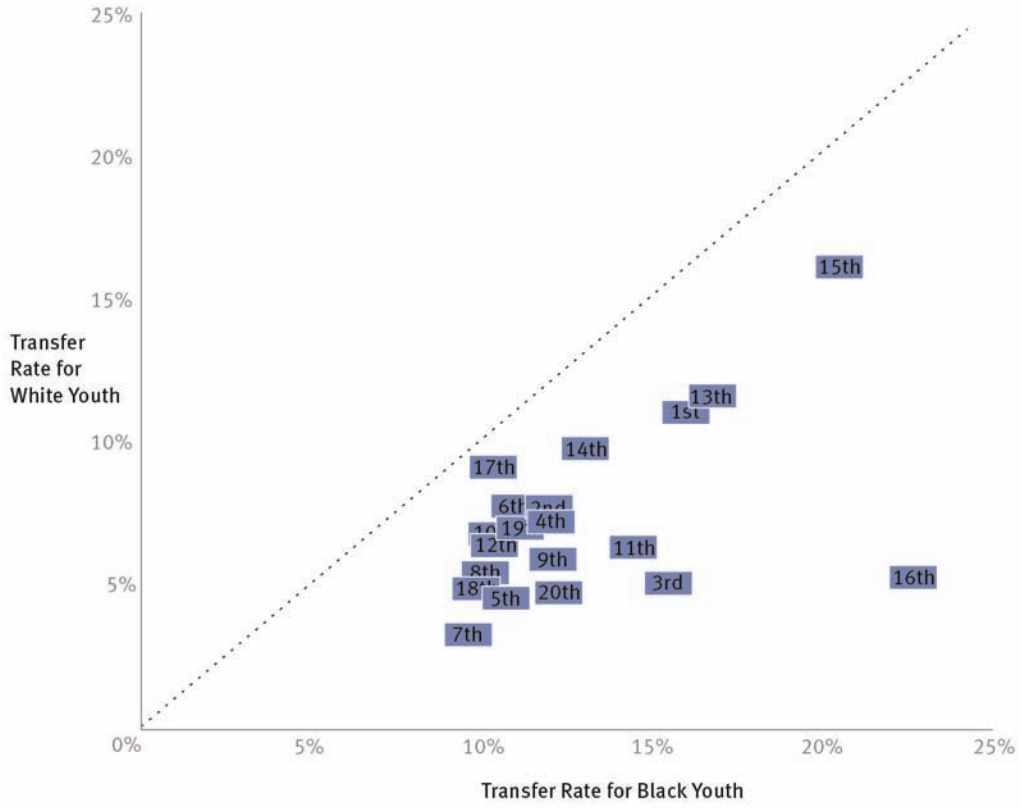
GENDER/RACE	PERCENT OF ARRESTED YOUTH THAT ARE TRANSFERRED (WITHIN RACE/GENDER GROUP)	PERCENT OF TOTAL ARRESTED YOUTH	PERCENT OF TOTAL TRANSFERRED YOUTH
Black Males	6.8%	27.2%	51.4%
White Males	3.2%	28.0%	24.4%
Hispanic Males	4.2%	11.3%	13.3%
Other Males	5.8%	2.6%	4.1%
Black Females	0.9%	12.2%	3.0%
White Females	0.7%	13.5%	2.8%
Hispanic Females	0.7%	4.2%	0.9%
Other Females	0.8%	0.9%	0.2%

A simple explanation for this racial disparity might be that the crimes of black boys are more serious than the crimes of white boys. To that end, we analyzed for this report whether black and white youth arrested for similar crimes are transferred to adult court at similar rates. For some crimes, such as murder and property crimes, the transfer rates do

seem to be similar (see Appendix B). For others, however, there is a marked disparity. Black boys, for example, are significantly more likely than white boys to be transferred to adult court after being arrested for violent offenses other than murder: from fiscal year 2008 to fiscal year 2013, 13.3 percent of black boys were transferred to adult court whereas only 7.4 percent of white boys were transferred following such arrests.[73]

In the graph below, if black and white arrests were transferred at similar rates, the circuits should be clustered close to (both slightly above and slightly below) the line. Yet, every circuit lies below the line, indicating that each and every circuit in the state transfers black youth arrested for violent felonies at higher rates than white youth arrested for violent felonies.

FIGURE 4:
TRANSFER RATES FOR BLACK AND WHITE YOUTH CHARGED WITH VIOLENT OFFENSES OTHER THAN MURDER, BY JUDICIAL CIRCUIT (FY 2008/09 – 2012/13)

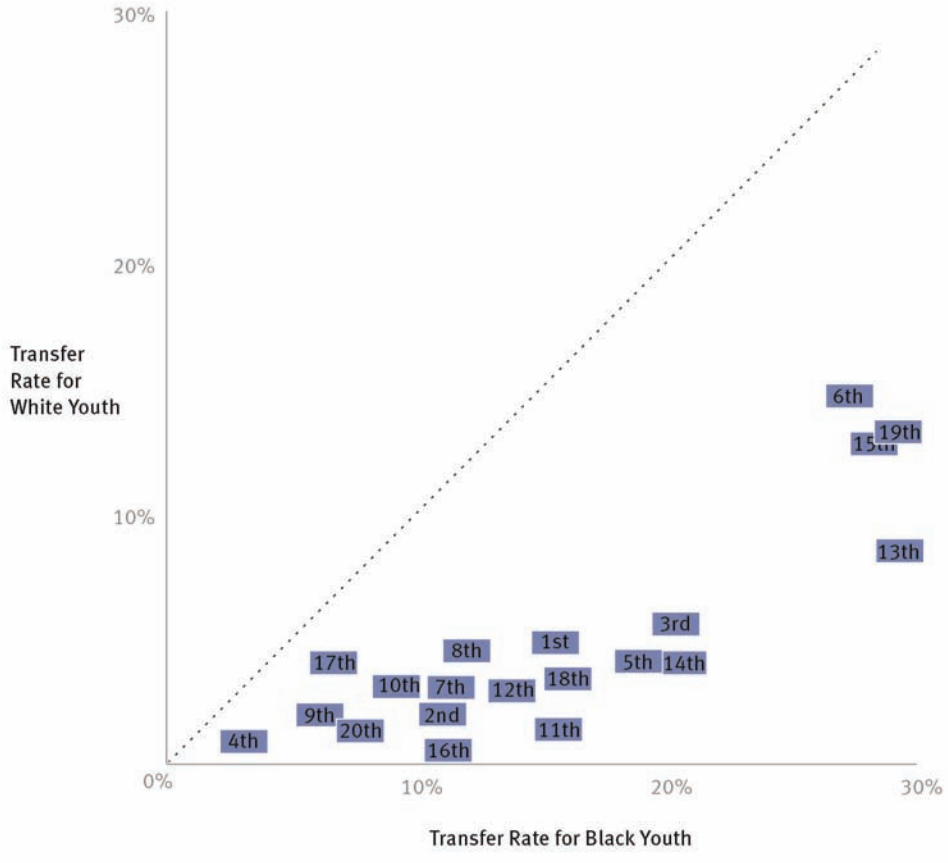


[73] Two Sample T-Test, p=3.75e-7.

The graph shows that the 17th Circuit lies closest to the line, indicating that although it transfers black youth arrested for violent felonies to adult courts at higher rates than white youth, the rates are very close to each other. The 16th Circuit lies furthest from the line, indicating the largest racial disparity for violent felony arrest transfer rates.[74]

We found similar racial disparities in drug felony arrests. In the graph below, every circuit lies below the line, indicating that each circuit transfers to adult court black youth that have been arrested for drug felonies at higher rates than white youth arrested for drug felonies. We find the highest disparity in the circuit that transfers the second highest number of drug felony arrests in the state: the 13th Circuit transferred 8.8 percent of white youth arrested for drug felonies and 30.1 percent of black youth arrested for drug felonies.

FIGURE 5:
TRANSFER RATES FOR BLACK AND WHITE YOUTH CHARGED WITH DRUG FELONY OFFENSES, BY JUDICIAL CIRCUIT (FY 2008/9 – 2012/13)



[74] The 16th Circuit is an outlier from other circuits, as it has a very low number of arrests.

For both the violent felony and drug felony racial disparity analyses, the available data do not allow us to more closely examine the nature of the offenses (e.g., drug quantities) or criminal histories of the offenders, which may offer some explanation for these disparities.[75] Despite the absence of those details, the consistency and size of these racial disparities are concerning.[76]

[75] There is no disaggregated data for drug felonies and the sample sizes for violent felony offenses are small.

[76] This racial disparity echoes disparities found throughout the United States criminal justice system. Racial disparities permeate every aspect of the criminal process—from what behavior gets criminalized, to who gets arrested, to what sentences they receive if convicted. Michelle Alexander, *The New Jim Crow* (New York: The New Press, 2010); Michael Tonry, *Punishing Race: A Continuing American Dilemma* (New York: Oxford University Press, 1995); David Cole, *No Equal Justice* (New York: The New Press, 1999). For example, according to a 2008 Human Rights Watch report, African Americans were 10.1 times more likely than whites to go to prison for drug offenses. An African American man was 11.8 times more likely than a white man to go to prison for a drug offense, while an African American woman was 4.8 times more likely to go to prison than a white woman for a drug offense. Human Rights Watch, *Targeting Blacks: Drug Law Enforcement and Race in the United States,* May 5, 2008, http://www.hrw.org/reports/2008/05/04/targeting-blacks, p. 3.

II. Do Children Belong in the Adult Criminal Justice System?

Children are Different

It is axiomatic that children are in the process of growing up, both physically and mentally. Their developing identities make young people, including those convicted of crimes, excellent candidates for rehabilitation: they are far more able than adults to learn new skills, embrace new values, and re-embark on a new, law-abiding life. Justice is best served when these rehabilitative principles, at the core of human rights standards, are also central to the process afforded children accused of breaking the law. The justice system must take into account both the gravity of the charged crime as well as the culpability or blameworthiness of the offender. The question of culpability is part of what separates children from adults. While children can commit acts as violent and deadly as those adults commit, their blameworthiness is different by virtue of their immaturity. Their punishment, and the adjudicative process to which they are subjected, should acknowledge that substantial difference. International law recognizes these differences and expresses a strong preference for using juvenile courts to deal with cases of children accused of breaking the law.[77]

Children may know right from wrong: proponents of transfer provisions for children correctly point out that most children can tell us that it is wrong to steal. But by virtue of their immaturity, children have less developed capacities than adults to control their impulses, to use reason to guide their behavior, and to think about the consequences of their conduct. They are, in short, still "growing up." Removing children from the juvenile system and placing them into the adult criminal system negates that reality, treating children as though their characters are already irrevocably set.

The Difference According to Psychology and Neuroscience

Psychological research confirms what every adult knows: children, including teenagers, act more irrationally and immaturely than adults. Psychologists have long attributed the differences between adults and children to either cognitive or psychosocial differences. Cognitive theories suggest that children simply think differently than adults, while psychosocial explanations propose that children lack social and emotional capabilities that are better developed in adults.[78]

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[77] See Section IV, "International Law: The Child's Right to Special Treatment."

[78] See, e.g., Steinberg et al., "Age Differences in Future Orientation and Delay Discounting," *Child Development*, vol. 80, no. 1 (January/February 2009), pp. 28-44. Elizabeth Cauffman and Laurence Steinberg, "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults," *Behavioral Science and Law*, vol. 18 (2000), pp. 742-43.

A large body of research has established that adolescent thinking is present-oriented and tends to either ignore or discount future outcomes and implications.[79] At least one researcher has found that teenagers typically have a very short time-horizon, looking only a few days into the future when making decisions.[80] Another study concluded that only 25 percent of 10th graders (whose average age is 16), compared to 42 percent of 12th graders (whose average age is 18), considered the long-term consequences of important decisions.[81] To the extent that adolescents do consider the implications of their acts, they emphasize short-term consequences, perceiving and weighing longer-term consequences to a lesser degree.[82]

Psychological research also consistently demonstrates that children have a greater tendency than adults to make decisions based on emotions, such as anger or fear, rather than logic and reason.[83] Studies further confirm that stressful situations only heighten the risk that emotion, rather than rational thought, will guide the choices children make.[84] In the most emotionally taxing circumstances, children are less able to use whatever high-level reasoning skills they may possess, meaning that even mature young people will often revert to more child-like and impulsive decision-making processes under extreme

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[79] See, e.g., Steinberg et al., "Age Differences in Future Orientation and Delay Discounting;" William Gardner and Janna Herman, "Adolescent's AIDS Risk Taking: A Rational Choice Perspective," in *Adolescents in the AIDS Epidemic*, ed. William Gardner et al. (San Francisco: Jossey Bass, 1990), pp. 17, 25-26; Marty Beyer, "Recognizing the Child in the Delinquent," *Kentucky Child Rights Journal*, vol. 7 (Summer 1999), pp. 16-17; National Juvenile Justice Network, "Using Adolescent Brain Research to Inform Policy: A Guide for Juvenile Justice Advocates," September 2012, http://www.njjn.org/uploads/digital-library/Brain-Development-Policy-Paper_Updated_FINAL-9-27-12.pdf (accessed March 20, 2014), pp. 1-2.

[80] See Meghan M. Deerin, "The Teen Brain Theory," *Chicago Tribune*, August 12, 2001, p. C1 (citing Russell Barkley, professor of psychiatry and neurology at the University of Massachusetts Medical School).

[81] Catherine C. Lewis, "How Adolescents Approach Decisions: Changes over Grades Seven to Twelve and Policy Implications," *Child Development*, vol. 52 (1981), pp. 538, 541-42 (noting that subjects in grades seven and eight considered future consequences only 11 percent of the time).

[82] See Gardner and Herman, "Adolescent's AIDS Risk Taking" (concluding that adolescents often focus only on short-term implications of their actions, while ignoring long-term negative consequences); Barbara Kaban and Ann E. Tobey, "When Police Question Children: Are Protections Adequate?" *Journal of the Center for Children and the Courts*, vol. 1 (1999), pp. 151, 155 (concluding that "research supports the notion that adolescents' failure to consider long-term consequences may compromise youthful decision making. A failure to consider consequences may be due to a lack of understanding of the consequences as well as a failure to consider them."); Marty Beyer, "Immaturity, Culpability & Competency in Juveniles: A Study of 17 Cases," *Summary of Criminal Justice*, vol.15, no. 27 (2000); Lewis, "How Adolescents Approach Decisions," *Child Development* , p. 541 (reporting results of an empirical study of juvenile decision-making which found that only 11 percent of seventh-eighth graders, 25 percent of tenth graders, and 48 percent of twelfth graders considered long-term consequences when making significant medical decisions).

[83] See Thomas Grisso, "What We Know About Youth's Capacities," in *Youth on Trial: A Developmental Perspective on Juvenile Justice*, ed. Thomas Grisso and Robert G. Schwartz (Chicago: University of Chicago Press, 2000), pp. 267-69 (reviewing literature on effects of emotion on children's cognitive capacities).

[84] See, e.g., Kim Taylor-Thompson, "States of Mind/States of Development," *Stanford Law and Policy Review,* vol. 14 (2003), p. 155, fn. 107-108 (reviewing research on effects of stress on juvenile decision-making).

pressure.[85] All of these differences mean that children, including teenagers, are not as deterred by the threat of criminal punishment as adults are.[86]

Neuroscientists using magnetic resonance imaging (MRI) to study the brain are now providing a physiological explanation for the features of childhood that developmental psychologists—as well as parents and teachers—have identified for years. These MRI studies reveal that children have physiologically less-developed means of controlling themselves.[87]

A key difference between adolescent and adult brains concerns the frontal lobe. Researchers have linked the frontal lobe (especially a part of the frontal lobe called the prefrontal cortex) to "regulating aggression, long-range planning, mental flexibility, abstract thinking, the capacity to hold in mind related pieces of information, and perhaps moral judgment."[88] The frontal lobe has also been linked to the ability to evaluate potential risks and rewards.[89] In children, the frontal lobe has not developed sufficiently to perform these functions. Throughout puberty, the frontal lobe undergoes substantial transformations that increase the individual's ability to undertake decision-making that projects into the future and to weigh rationally the consequences of a particular course of action.[90] MRI studies have also confirmed that adolescents are more likely to engage in risky behavior when in the presence of peers.[91]

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[85] Beyer, "Immaturity, Culpability & Competence in Juveniles," *Summary of Criminal Justice*, p. 27. See also Taylor-Thompson, "States of Mind/States of Development," *Stanford Law and Policy Review*, p. 153.

[86] Christopher Slobogin, "Treating Juveniles as Juveniles," *Texas Tech Law Review*, vol. 46 (Fall 2013), p. 103.

[87] See, e.g., Neir Eshel et al., "Neural Substrates of Choice Selection in Adults and Adolescents: Development of the Ventrolateral Prefrontal and Anterior Cingulate Cortices," *Neuropsychologia*, vol. 45, no. 6 (2007), pp. 1270–1279, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2700731/#__ffn_sectitle (accessed November 29, 2013); Jeffrey Arnett, "Reckless Behavior in Adolescence: A Developmental Perspective," *Developmental Review*, vol. 12 (1992), p. 339; Charles E. Irwin, Jr., "Adolescence and Risk Taking: How are They Related?" in *Adolescent Risk Taking,* ed. Nancy J. Bell and Robert W. Bell (Thousand Oaks: SAGE Publications, January 1993), p. 7; Jay N. Giedd et al., "Brain Development During Childhood and Adolescence: A Longitudinal MRI Study," *Nature Neuroscience*, vol. 2 (1999), p. 861 (discussing an MRI study of the brains of 145 children, images taken up to 5 times per child over 10 years); Kenneth K. Kwong et al., "Dynamic Magnetic Resonance Imaging of Human Brain Activity During Primary Sensory Stimulation," *Proceedings of the National Academy of Science*, vol. 89 (1992), p. 5675.

[88] Bruce Bower, "Teen Brains On Trial: The Science Of Neural Development Tangles with the Juvenile Death Penalty," *Science News*, vol. 165, no. 19 (May 8, 2004), http://www.sciencenews.org/articles/20040508/bob9.asp (accessed on October 4, 2013).

[89] Jason Chein et al., "Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry," *Developmental Science*, vol. 14, no. 2 (March 2011) p.F1.

[90] Elizabeth Scott and Laurence Steinberg, *Rethinking Juvenile Justice* (Cambridge: Harvard University Press, 2008), p. 40. See also Elkhonon Goldberg, *The Executive Brain: Frontal Lobes and the Civilized Mind* (New York: Oxford University Press, 2001), p. 434; Allan L. Reiss et al., "Brain Development, Gender and IQ in Children: A Volumetric Imaging Study," *Brain*, vol. 119 (1996), p. 1768; Elizabeth R. Sowell et al., "Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation," *Journal of Neuroscience*, vol. 21 (2001), p. 8821.

[91] Chein et al., "Peers Increase Adolescent Risk Taking by Enhancing Activity in the Brain's Reward Circuitry," *Developmental Science,* p. F1. A study compared how adolescents and adults made decisions when confronted with a driving simulation game that asked them to complete a driving course in two situations: alone and with peers. The study looked at how

These cell and neural developments in the brain provide an anatomical basis for concluding that youth up to age 18 are, on average, less responsible for criminal acts than adults. As Daniel Weinberger, director of the Clinical Brain Disorders Laboratory at the National Institutes of Health, explains, the developed frontal lobe, including its prefrontal cortex, "allows us to act on the basis of reason. It can preclude an overwhelming tendency for action…. It also allows us to consciously control our tendency to have impulsive behavior."[92]

In addition, because their frontal lobe functions poorly, adolescents tend to use a part of the brain called the amygdala during their decision-making.[93] The amygdala is a locus for impulsive and aggressive behavior, and its dominance over the undeveloped frontal lobe makes adolescents "more prone to react with gut instinct."[94] In adult brains, the frontal lobe offers a check on the emotions and impulses originating from the amygdala.[95]

The Difference According to Florida Youth

Many of the youth directly charged in adult court interviewed for this report were, in retrospect, acutely aware of the ways in which their young age and lack of maturity affected their decision-making capabilities at the time of their crimes.

Luke R., serving a 3-year prison sentence for robbery, reflected upon the choices he'd made. "I was impulsive. I wouldn't think about the consequences."[96] Another young man, now 22 and still on probation for a crime he committed when he was 17, reflected that, "I don't do the same things I was doing. I think about things before I do them."[97] Ava L., who was arrested at

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subjects reacted to a changing traffic light. The study found that while "adolescents and older participants behaved comparably when tested alone … only adolescents took significantly more risks when observed by peers than when alone, as evidenced by a significantly increased number of" decisions to go through the changing light and resulting crashes. Brain imaging conducted as part of the study revealed "greater activation" in the reward-perceiving parts of the brain in adolescents when they were in a peer group, but no such greater activation when adolescents were alone, or for adults in any circumstance. Ibid., pp. F5-F6. See also Laurence Steinberg, "Risk Taking in Adolescence: New Perspectives from Brain and Behavioral Science," *Current Directions in Psychological Science*, vol. 16, no. 2 (2007), p. 56 ("In the presence of peers or under conditions of emotional arousal … the socioemotional network becomes sufficiently activated to diminish the regulatory effectiveness of the cognitive-control network.").

[92] See Daniel R. Weinberger, "A Brain Too Young For Good Judgment," *New York Times*, March 10, 2001, http://www.nytimes.com/2001/03/10/opinion/a-brain-too-young-for-good-judgment.html (accessed March 20, 2014).

[93] See, e.g., Jan Glascher and Ralph Adolphs, "Processing of the Arousal of Subliminal and Supraliminal Emotional Stimuli by the Human Amygdala," *Journal of Neuroscience*, vol. 23 (2003), p. 10274.

[94] Robert Lee Hotz, "Rebels With a Cause: Studies of Adolescents' Brains Find Possible Physiological Basis for Turbulent Teenage Emotions," *Los Angeles Times*, June 25, 1998, http://articles.latimes.com/1998/jun/25/local/me-63475 (accessed March 20, 2014) (quoting Deborah Yurgen-Todd, director of neuro-psychology and cognitive neuro-imaging at McLean Psychiatric Hospital).

[95] Gargi Talukder, "Decision-Making is Still a Work in Progress for Teenagers," post to "Brain Connection" (blog), March 20, 2013, http://brainconnection.positscience.com/decision-making-is-still-a-work-in-progress-for-teenagers/ (accessed March 19, 2014).

[96] Human Rights Watch interview with Luke R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[97] Human Rights Watch interview with Thomas G., Orlando, Florida, August 14, 2013.

17 for drunk driving, said that "It didn't hit me until I turned 19 that I need to get my life together and I feel like I got [it] together but it's still on my record."[98] Janine C., a 17-year-old who served a one-year jail sentence after pleading guilty to a burglary she had committed when she was 16, pointed out that, for juveniles, "the light bulb could still go off."[99]

The idea that teenagers are in the process of maturing and able to be rehabilitated was also mentioned repeatedly.

- "I'd never done anything like that before. I don't think they understood that everyone makes mistakes. Everyone does something bad once."[100]
- "I don't think kids should be in adult prison, what they need is a deeper route through the juvenile system so that kids can really change."[101]
- "You know everybody makes mistakes, you learn as you go on."[102]

Parents and family members agreed. Stephanie G., Thomas G.'s mother, said about direct file, "They are young. They need some guidance. Kids do stuff all the time and a lot of time they don't know what they're doing or why."[103] One judge who has presided over juvenile court for 14 years observed, "I've been here long enough to understand that when someone is 16 and I ask them why they did it and they say 'I don't know,' I believe them."[104]

[98] Human Rights Watch interview with Ava L., Orlando, Florida, August 13, 2013.

[99] Human Rights Watch interview with Janine C., Orange County Jail, Orlando, Florida, August 23, 2013.

[100] Human Rights Watch interview with Thomas G., Orlando, Florida, August 14, 2013.

[101] Human Rights Watch interview with Mark V., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[102] Human Rights Watch interview with Langston T., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[103] Human Rights Watch interview with Stephanie G., Orlando, Florida, August 14, 2013.

[104] Human Rights Watch telephone interview with Judge Ron Alvarez, West Palm Beach, Florida, August 26, 2013.

Case Study: Matthew N.

When Matthew N. was 17 years old, he and two friends were arrested for burglarizing a house. According to the police report, the couple who lived in the house called 911 when they heard what sounded like someone trying to get in through the back door. When police arrived at the scene, Matthew and the two other perpetrators were walking towards the car they had parked in the driveway. They had cut through the rear porch's screen door, removed a printer from the porch, and left the printer by the side of the house. Matthew had been arrested before for burglary, trespass, and vandalism and was on juvenile probation at the time of the break-in. He and his co-defendants (both adults) in the printer case all eventually pled guilty. Matthew received an adult felony conviction and was sentenced to two years of house arrest followed by one year of probation.

Matthew was surprised to have been charged directly in adult court. "I thought they based it on the seriousness of the charges," he said. The experience of adult court was stressful for Matthew. "In adult court you could tell there were a lot of people coming through so the judge didn't really care about your case other than what the charges are, and the prosecutors were just trying to get you as much time as they can," he said. To him, it seemed like the judge played less of a role in adult court than in juvenile court. "In adult court the prosecutor does more." He also recalled that "in adult court there was a lot I didn't really understand." Indeed, at the time of his interview he was still under the impression that "the juvenile judge makes the decision" to send a case to adult court.

Being in Orange County Jail, where he was incarcerated for five months before pleading guilty, was even more stressful for Matthew. The corrections officers, he said,

> were crazy. They be doing some crazy stuff. I remember one time somebody had stolen some bread off the lunch cart and they had everyone locked down for three days. One time I had gotten kicked out of the classroom for something stupid—I was in the hallway trying to talk to someone in another class.

In jail, he said, "I missed my bed, missed my home. I missed just being able to walk outside."

At the time of his interview with Human Rights Watch, Matthew was serving the house arrest part of his sentence. He was attending college and lamented the decisions he had made that had led to his arrest. "I feel like I got my head more on the right track. I've got a plan. If I could go back to that night, I'd give myself the plan I have now." He did not agree with the decision to charge him directly in adult court, or with Florida's direct file policies in general. "Kids in adult court, that could ruin the rest of their life."[105]

[105] Human Rights Watch interview with Matthew N., Orlando, Florida, August 14, 2013.

III. Rights Put at Risk by Direct File

Charging Decisions: Opaque and Unlimited Discretion

The direct file law does not adequately take into account the best interests of the child, is difficult for children to understand, and produces arbitrary results.

So perfunctory is the process that many young people Human Rights Watch spoke to had no idea what was happening until they were taken from juvenile detention to adult jail. "When they came to get me I thought I was going home," one youth recalled, "instead they took me to county jail!"[106]

Langston T. realized that he was being tried in adult court only when he appeared at his bond hearing in criminal court. "Before that I didn't even know you could go to county [jail]. I thought you had to be 18," he said.[107] When asked to explain what direct file was and how the process worked, Langston said "I think direct filed is charged as an adult. I don't know who decides."[108]

Kingston S. was also unaware of what direct file was prior to being transferred. "This whole time I thought, 'I'm a juvenile, I go to juvenile court.' I didn't want to go to the county jail. I first heard the words direct file at my bond hearing over the TV [many bond hearings are conducted over television feeds between the courthouse and the jail]."[109]

Each of Florida's 20 state attorneys' offices is free to determine its own criteria and practices for making direct file determinations. As a result, practices vary widely. For example:

- The 4th Circuit (which includes Clay, Duval, and Nassau counties) has written guidelines which track the direct file statute closely.[110] The discretionary direct file section of the guidelines includes all of the enumerated felonies found in the statute except for murder, which the 4th Circuit guidelines consider to be a mandatory direct file charge.
- In the 8th Circuit (which includes Levy, Baker, Union, Bradford, Alachua, and Gilchrist counties), the juvenile division chief state attorney consults with the chief

[106] Human Rights Watch interview with Jacob M., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[107] Human Rights Watch interview with Langston T., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[108] Ibid.

[109] Human Rights Watch interview with Kingston S., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[110] See Office of the State Attorney, 4th Judicial Circuit 2011 Direct File Policies, included is this report as Appendix C.

assistant state attorney, who has the final say in direct file decisions. The elected state attorney may also be consulted. In deciding whether to direct file, the 8th Circuit state attorney considers the age of the child, the nature of the crime, and the child's record. "We're a small legal community. We listen to the defense attorneys. It's not policy to hear from them, there's not a formal process."[111]

- In the 11th Circuit (which consists entirely of Miami-Dade County), the juvenile division chief state attorney reviews every juvenile case and makes a determination of whether to file a notice of intent to direct file, based on the child's age and prior record, as well as the nature of the charges.[112] Once the notice of intent has been filed, if the defense indicates an interest in entering a plea in juvenile court, the case is set for a "multistaffing," or meeting that includes the prosecutor, defendant, defense counsel, and representatives from the Department of Juvenile Justice. If all parties agree on a disposition, the case remains with the juvenile court.[113]
- In the 17th Circuit (which consists entirely of Broward County), two assistant state attorneys, the assistant state attorney in charge of the juvenile division, and a junior colleague review every case considered for direct file and make the final determination, with input from the elected state attorney in high profile cases.[114] Maria Schneider, the attorney-in-charge of the juvenile division, says that her office files a "notice of intent to review for direct file" in cases where the charge is a violent crime against a person or the defendant has an "extremely long record" or is about to turn 18.[115]
- In Tampa, Florida, there is no single person or team tasked with making direct file determinations.[116] The intake state attorney who gets the case makes a determination in consultation with her division chief or with the juvenile bureau chief in the state attorney's office (there are "eight or nine regular intake divisions").[117]

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[111] Human Rights Watch interview with William Cervone, 8th Circuit State Attorney, Gainesville, Florida, May 31, 2013; email from William Cervone to Human Rights Watch, October 2, 2013.

[112] Human Rights Watch interview with Todd Bass, Juvenile Division Chief, Miami-Dade Office of the State Attorney, Miami, Florida, June 7, 2013.

[113] Ibid.; attendance at multistaffing meeting, August 20, 2013. Mandatory direct files and direct files requested by the defendant do not get multistaffings. Ibid.

[114] Human Rights Watch interview with Maria Schneider, Assistant State Attorney in charge of the Juvenile Division, 17th Judicial Circuit of Florida, Fort Lauderdale, Florida, June 6, 2013.

[115] Ibid.

[116] Human Rights Watch telephone interview with Chris Moody and Megan Newcomb, Assistant State Attorneys, State Attorney's Office, 13th Judicial Circuit, Tampa, Florida August 20, 2013.

[117] Ibid.

Judges and defense attorneys throughout the state describe direct file decisions as haphazard. The use of direct file is "basically arbitrary, as I see it," said Judge Henry Davis, who presides over juvenile court in Jacksonville, Florida, which is part of the 4th Circuit.[118] Judge Davis stated that he did not "know whether there's any consistency. I don't see a pattern."[119] Buddy Schulz, a Jacksonville private attorney who has done pro bono work on children's issues for decades, told us that he has started receiving many more calls from judges asking him to take on juvenile cases directly charged in the adult courts in the last five years, and has handled over a dozen such cases in that time period.[120] Mr. Schulz told Human Rights Watch he saw "no rhyme or reason" to determinations of which cases should be directly charged in adult court. One public defender who practices in the 10th Circuit noted prosecutors do not have "real guidelines." She said that "if they just don't like a kid they can direct file. If they don't want to go to trial they can direct file. It shouldn't be for just any reason."[121]

In Jacksonville, defense attorneys stated that prosecutors choose to directly charge children in adult court "more on a whim and more for leverage."[122] They said that prosecutors in Jacksonville were loath to litigate in juvenile court. "If there's any kind of suppression issue [like a defendant's claim that evidence against him was wrongfully obtained], they'll send it up [to adult court]," said one Jacksonville defense attorney.[123] The Jacksonville defense attorney said that, in one instance, prosecutors had indicated that they had reviewed a case for direct file and decided to keep it in juvenile court. The case proceeded in juvenile court, but, after the defendant turned down several pleas and requested a trial, the prosecutor announced that they were once again reviewing whether the case should be directly charged in adult court.[124]

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[118] 117 children were charged in adult court in Duval County in 2011-12. See Department of Juvenile Justice Delinquency profile, http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile (accessed March 18, 2014).

[119] Human Rights Watch interview with Judge Henry Davis, Jacksonville, Florida, June 4, 2013.

[120] Human Rights Watch interview with Buddy Schulz, Partner, Holland & Knight, Jacksonville, Florida, June 5, 2013. Mr. Schulz was part of the defense team in the high-profile case of Christian Fernandez, a 12-year-old who was charged in Duval County criminal court with killing his half-brother. See also Matt Augustine, "New Lawyers for Christian Fernandez," *wokv.com*, February 1, 2012, http://www.wokv.com/news/news/local/switch-in-attorneys-could-save-taxpayers/nHQRH/ (accessed March 19, 2014).

[121] Human Rights Watch telephone interview with Shondi Cole, Assistant Public Defender, Polk County Public Defender's Office, Bartow, Florida, July 17, 2013.

[122] Human Rights Watch interview with Rob Mason, Director of the Juvenile Division, Office of the Public Defender, 4th Judicial Circuit, Jacksonville, Florida, May 29, 2013.

[123] Human Rights Watch interview with Courtney Drew, Assistant Public Defender, Office of the Public Defender, 4th Judicial Circuit, Jacksonville, Florida, May 29, 2013.

[124] Ibid.

Other lawyers described the system as valuing consistency over individualization by subjecting *all* crimes within certain categories to direct charge in adult court. "Here, their attitude is if you're 16 or 17, and you burglarized a house, they're going to direct file you. If you steal a car, they're going to direct file you," said one Tampa (13th Circuit) public defender, "anything with a gun they'll direct file."[125] Representatives of the 13th Circuit state attorney's office denied that they automatically direct filed all gun cases, but said the presence of a gun was a factor they considered.

Teenagers themselves were much less clear about what charges could land a person in adult court. One teenager who was awaiting trial in Orange County Jail had heard about direct file because he had "seen other people from [the juvenile detention center] get direct filed."[126] In his mind, "[i]f you had a serious charge you could go to the adult place." He had no idea that he was eligible to be charged directly in adult court until he was picked up from the juvenile detention center and taken to the adult jail. "I felt bad," he recalled. "I didn't know where I was going. It was a third degree felony and I thought you only went in [to adult jail] for murder and stuff."[127]

Young people who spoke to Human Rights Watch overwhelmingly felt that direct file decisions were arbitrary. Many people interviewed for this report did not even know that the prosecutor made the decision to send them to adult court. One child thought he had been charged directly in adult court because "the [juvenile] judge got tired of seeing me."[128] Another young person, who was 14 years old at the time of arrest, said in a letter to Human Rights Watch that "I was prosecutorial direct file by my juvenile judge which was my adult judge best friend."[129] Those who did know that the prosecutor was responsible for the decision criticized the process as biased. "I feel like the prosecutor's one-sided," said one teenager who was on probation for a robbery attempt. "I feel like if anybody should do that it's the judge. The judge is supposed to try to mediate. The prosecutor's all for the state."[130] Kyle F., who is serving three-and–a-half years after pleading guilty to a robbery charge, said, "you can't put that much control in one person's hands."[131]

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[125] Human Rights Watch interview with Chris Watson, Felony Bureau Chief, Public Defender of Hillsborough County, 13th Judicial Circuit, Tampa, Florida, August 15, 2014.

[126] Human Rights Watch interview with Jack H., Orange County Jail, Orlando, Florida, August 23, 2013.

[127] Ibid.

[128] Human Rights Watch interview with Jason R., Orange County Jail, Orlando, Florida, August 23, 2013.

[129] Letter from Taj P. to Human Rights Watch, April 18, 2013.

[130] Human Rights Watch interview with Matthew N., Orlando, Florida, August 14, 2013.

[131] Human Rights Watch interview with Kyle F., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

The lack of a review mechanism for direct file decisions compounds the problems caused by giving prosecutors such broad discretion.[132] Most prosecutors interviewed for this report felt that their responsibility to the "community" that elected them was an appropriate check on broad prosecutorial discretion to charge children directly in adult court. When asked about the potential for a prosecutor to abuse her discretion, Maria Schneider, head of the juvenile division of the 17th Circuit state attorney's office, said "that's always a threat in criminal justice. That's why the community has to get involved."[133] William Cervone, the elected state attorney for the 8th Circuit of Florida, stated that prosecutors are in a better position to make direct file determinations because they better reflect "the community perspective. Community members can come into my office and meet with me," he said, "judges don't really do that."[134] Todd Bass, the juvenile division chief for the 11th Circuit, which consists entirely of Miami-Dade County, stated that, "We are the only agency that is both responsible for the wellbeing of the child and the best interest of the community."[135]

Whether a state attorney's office is opting for direct file arbitrarily, as a matter of convenience to avoid juvenile court litigation, or automatically transferring all children charged with certain crimes, children's protected status or capacity for rehabilitation is not taken into account. Many young people interviewed for this report seemed to understand this, and felt a sense of injustice and hopelessness as a result. Luke R. described feeling hopeless once in adult court, saying, "I've seen people, juveniles [get in trouble] three, four times and never get prison. I never had a felony on my record [and they sent me to adult court]. I may as well just quit, that's how I felt."[136] John C. felt similarly hopeless when he found out he was being charged in the adult system. "I felt like my life was gone," he said. [137]

Judge Janet Ferris, a retired judge who began her career as a prosecutor, oversaw hundreds of juvenile cases during her 11 years on the bench. She described the current direct file system as one in which "the state attorney holds all the cards and everyone

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[132] The Convention on the Rights of the Child (CRC) states the following in regards to the right to appeal: "If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law[.]" Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 40(2)(v). While a decision to charge a child in adult court is not a final adjudication of guilt, such a decision has serious repercussions for the child, including loss of the rehabilitative opportunities offered by the juvenile court and exposure to long adult sentences, and should be subject to the same level of review.

[133] Human Rights Watch interview with Maria Schneider, June 6, 2013.

[134] Human Rights Watch telephone interview with William Cervone, June 31, 2013.

[135] Human Rights Watch interview with Todd Bass, June 7, 2013.

[136] Human Rights Watch interview with Luke R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[137] Human Rights Watch interview with John C., Sumter Correctional Institution, Sumter, Florida, May 29, 2013.

else is scrambling."[138] "As long as you're giving one party all the tools," she said, "that's not justice."[139]

Arbitrary Use of Direct File and Resulting Disparities

As the data below shows, there is enormous diversity among Florida judicial circuits in transferring children to adult court. While Florida state transfer data does not distinguish between juvenile court transfers to adult court and cases filed directly by prosecutors in adult court, remember that the latter cases account for 98 percent of all transfers, allowing one to draw fairly robust conclusions about direct file cases even though the direct file cases are not separated out in the data.

For example, 1,436 youth were transferred to adult court in the 13th Circuit during fiscal years 2008 to 2012, whereas only 27 were transferred in the 16th Circuit during the same time period.

TABLE 3

PERCENT OF ARRESTS TRANSFERRED BY CIRCUIT (FY 2008/09 - 2012/13)

CIRCUIT	AVG. ANNUAL YOUTH POPULATION	NUMBER OF YOUTH ARRESTS RECEIVED BY DJJ	PERCENT OF FELONY ARRESTS TRANSFERRED	PERCENT OF ALL ARRESTS TRANSFERRED
11th	253,980	28,696	8.3%	4.2%
17th	183,190	30,430	6.8%	2.7%
9th	157,760	32,612	8.3%	3.1%
13th	133,854	26,245	13.5%	5.5%
15th	124,307	17,800	16.3%	6.6%
4th	122,164	21,134	8.3%	3.4%
6th	121,776	21,743	10.6%	5.0%
20th	101,118	17,906	4.5%	1.5%
18th	99,025	16,920	7.8%	2.9%
5th	88,675	16,019	6.5%	2.8%

[138] Human Rights Watch interview with Judge Janet Ferris, Tallahassee, Florida, May 29, 2013.

[139] Ibid.

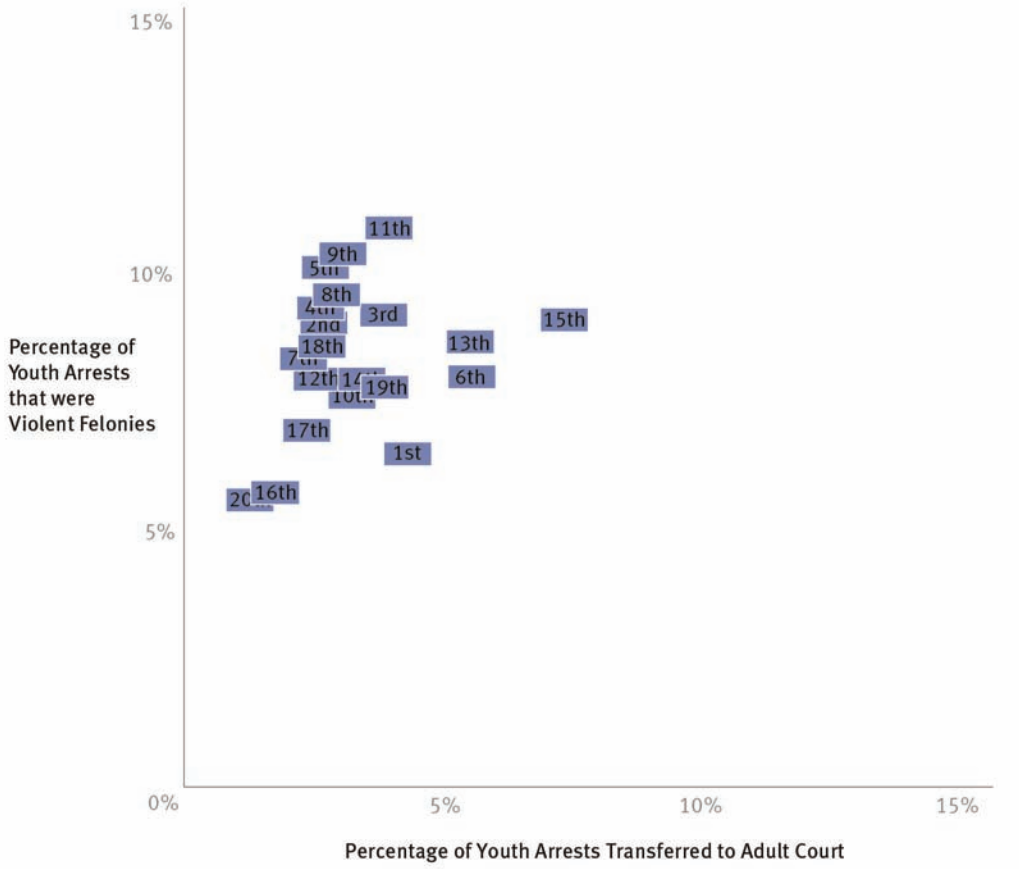
CIRCUIT	AVG. ANNUAL YOUTH POPULATION	NUMBER OF YOUTH ARRESTS RECEIVED BY DJJ	PERCENT OF FELONY ARRESTS TRANSFERRED	PERCENT OF ALL ARRESTS TRANSFERRED
7th	81,727	17,926	5.9%	2.5%
10th	73,659	19,545	9.8%	3.6%
1st	70,019	14,260	11.7%	4.3%
12th	58,506	12,350	7.8%	3.0%
19th	56,816	11,261	10.7%	3.9%
2nd	34,393	6,345	8.4%	3.3%
8th	32,338	7,032	7.0%	2.9%
14th	27,420	5,001	9.5%	3.7%
3rd	17,908	3,532	9.5%	4.4%
16th	5,279	1,111	6.2%	2.4%

The variance among circuits in the percentage of youth transferred to adult court is not clearly correlated with the seriousness of youth crime in the circuit. The average annual rate at which circuits transferred arrested youth to adult court ranged from 1.5 percent of arrested youth transferred in the 20th Circuit to 6.6 percent in the 15th Circuit. We examined the relationship between the percentage of youth arrests that are transferred and the percentage of youth arrests that are violent in each circuit to determine whether circuits with more serious crime transfer children to adult court at higher rates. There appears to be no significant correlation between these two factors and no linear relationship between them.[140]

As the below graph illustrates, if there were a linear relationship between criminality and transfer rates, we would expect circuits to be plotted along an ordered line. In other words, if the decision to transfer a child to adult court has to do with the violence of the crime, we would expect to see the trend in a plot that shows the percentage of transferred youth arrests increasing as the percentage of violent youth arrests increases. Instead, circuits are plotted in a nonlinear, jumbled order.

[140] Pearson's Correlation coefficient = .276, p-value = 0.2373.

FIGURE 6:
YOUTH VIOLENT CRIME ARRESTS PLOTTED AGAINST YOUTH TRANSFERS TO ADULT COURT, BY JUDICIAL CIRCUIT (FY 2008/09 – 2012/13)



Of even greater concern are the tremendous discrepancies in the punishment received by transferred youth. For example, the 4th Circuit sentenced 74.3 percent of transferred youth to adult jail or prison time; by contrast, the 11th Circuit sentenced 11.9 percent of such children to adult jail or prison time. Human Rights Watch compared these outcomes to possible differences in population size, rate of transfer to adult court, and whether the transfers to adult court involved crimes of violence, and in each case found the punishment rates unrelated to these factors.

If the violent nature of a child's offense or the population size of her town or city cannot explain disparities among Florida's circuits regarding the decision to prosecute children in adult court or what sentences children receive upon conviction, it is clear something else must be at play. While we cannot reach a definitive conclusion, the data suggest that these differences are rooted in the way Florida's prosecutors choose to exercise their considerable discretion.

Proceedings Not Tailored to Children

Due process in a criminal prosecution is meaningless if the person charged does not understand the proceedings. Most young people interviewed for this report described adult court as a baffling place. Matthew N. acknowledged that "in adult court there was a lot I didn't really understand."[141] Even the bond hearing, where the only decision being made is whether and how much bail to set, was confusing to many. Florida law allows for bond hearings to be conducted over an audiovisual feed rather than in person, which can compound the confusion. Luke R., when asked about his bond hearing, said that all he remembered was "big words."[142] Kingston S. recalled that his bond hearing "was scary for me because my father and attorney weren't there with me. You had to see them through a screen."[143] Kingston's comprehension did not increase as the proceedings went along. "No one explained to me how direct file works. Even after I heard the words, I didn't know what it meant," he said.[144]

For some of the young people Human Rights Watch spoke to, the incomprehensibility of adult court proceedings stood in stark contrast to the more easily understood juvenile proceedings they had experienced before. Samuel H., who was subjected to direct file and convicted of grand theft for having stolen jewelry at age 16, compared his experiences in adult court and juvenile court:

> Here [in adult court], they use all these types of big words and you don't really comprehend. They're talking about you but you don't know what they're saying. In juvenile court, they'll ask you if you understand and they'll actually break it down for you. Here you're just lost until your attorney sees you…[145]

The pace of criminal court and the lack of parental participation in proceedings also hampered juveniles' ability to understand what was going on. "They don't take the time to explain what's going on—they just want to get you in and get you out as soon as possible. If they had taken the time to explain, that would've been better," said Luke R. who was charged directly in adult court and pled guilty to a burglary committed two months after his 17th birthday.[146] "In juvenile the judge would ask my mom how I'm doing and actually listen to her," recalled Samuel H., who, when he spoke to Human Rights Watch, was in jail for

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[141] Human Rights Watch interview with Matthew N., Orlando, Florida, August 14, 2014.

[142] Human Rights Watch interview with Luke R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[143] Human Rights Watch interview with Kingston S., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[144] Ibid.

[145] Human Rights Watch interview with Samuel H., Orange County Jail, Orlando, Florida, August 23, 2013.

[146] Human Rights Watch interview with Luke R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

violating a probation sentence he had received for a burglary he committed at age 15.[147] "Here, you're only in the courtroom for five seconds, and you have to get up at like 4 in the morning [to get to court from jail]."[148] For Keith L., in juvenile court it "felt comfortable to have my mom next to me. [In criminal court] it felt different. Like I'm by myself or something."[149]

Young defendants also perceived a difference in terms of how the people in charge treated them in adult versus juvenile court. Matthew N. observed,

> In juvenile court, I felt like the judge cared a little more than adult court. In adult court you could tell there were a lot of people coming through so the judge didn't really care about your case other than what the charges are, and the prosecutors were just trying to give you as much time as they can.[150]

Regarding who controlled each process, Matthew stated that "in juvenile court I didn't really deal with the prosecutor. The judge does more. In adult court the prosecutor does more."[151] In John C.'s experience, the juvenile court judge was much more understanding than judges in criminal court: "He didn't treat me like I was a menace to society. He actually treated me like I wasn't a piece of shit who deserved to do a long time. He treated me like a kid who had made a mistake."[152]

Mark V. had a similar opinion regarding the differences in juvenile and adult court judges, saying that "[j]uvenile judges were a little bit more open to what I had to say. They always were looking for alternatives to incarcerating me. This judge [in adult court] looked at me like I was an animal."[153] Sander A. observed that "in adult court, they want to lock us up. In juvenile court they want to help us make better choices."[154] Manuel R. felt that in adult court "it seemed like their only plan for me was to take me away for as long as they could and just put me right back in the streets."[155] Jacob M. agreed that, in adult court, "it seems like they want you to do more time."[156]

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[147] Human Rights Watch interview with Samuel H., August 23, 2013.

[148] Ibid.

[149] Human Rights Watch interview with Keith L., Orange County Jail, Orlando, Florida, August 23, 2013.

[150] Human Rights Watch interview with Matthew N., Orlando, Florida, August 14, 2013.

[151] Ibid.

[152] Human Rights Watch interview with John C., Sumter Correctional Institution, Sumter, Florida, May 29, 2013.

[153] Human Rights Watch interview with Mark V., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[154] Human Rights Watch interview with Sander A., Sumter Correctional Institution, Sumter, Florida, May 29, 2013.

[155] Human Rights Watch interview with Manuel R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[156] Human Rights Watch interview with Jacob M., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

Parents are often as bewildered as their children by the process in adult court, which is not tailored to the needs of their children and, unlike the juvenile court process, does not treat parents as active participants in their children's lives. Parents who spoke to Human Rights Watch explained that they were confronted with an adult court system where they did not necessarily have any input into their child's case. Michelle Stephens' son, Kenneth, pled guilty to shooting a friend, an act which Kenneth maintains was accidental. When Kenneth's case was still in the juvenile division, Michelle remembers an orderly process that differed markedly from the chaos she encountered in adult court:

> When he was in [juvenile court], when he showed up to court, the bailiff would check to see if you [the family members] are here, how many people you have. He'd check the list. When your child's case was called, you could go and stand with your child. As soon as [Kenneth] was [subject to direct file], we had to go to adult court. It was crazy. Nobody was keeping a list. The first time we went, the court was full and they wouldn't let us in. Finally [Kenneth's] lawyer came out and got us. Seeing all of the adults there was very scary. You sit in there, you can't hear. They're talking about my son and I can't hear anything. Next thing you know it's over and I had no idea what just happened.[157]

The mother of Thomas G. similarly remembered adult court as "more stressful"[158] than juvenile court. Victoria C., the grandmother of Jarvis J., thought that adult court was a humiliating experience. "Walking into adult court, I felt shame," she recounted. "We had people behind us talking about how he must've done something really bad if he was so young and in adult court."[159] Oliver B.'s mother, Christina, remembers her first day in adult court as "scary. I was crying the whole time." She said that "criminal court was mean. The judge was very intimidating. When [Oliver] said he wanted to fight the case, he looked at [Oliver] like he was crazy. He said 'did you know you can get 15 years for this?'"[160] Her son eventually pled guilty, resulting in an adult felony record and a sentence of three years' adult probation.

[157] Human Rights Watch interview with Michelle Stephens, Jacksonville, Florida, May 31, 2014.

[158] Human Rights Watch interview with Stephanie G., Orlando, Florida, August 14, 2013.

[159] Human Rights Watch interview with Victoria C., Tampa, Florida, August 2, 2013.

[160] Human Rights Watch interview with Christina S., West Palm Beach, Florida, August 21, 2013.

Children Under Pressure to Plea

The pressure to plea affects both adults and children in the US criminal justice system.[161] However, due to the developmental factors discussed earlier, juveniles are particularly ill-suited to handle this pressure.[162] One 2003 study examining trial competency among a sample of 1,393 children and young adults found that the ability to comprehend trial proceedings was lower among younger people—children aged 11-13 demonstrated lower levels of comprehension than did 14-15 year olds, who in turn demonstrated lower comprehension than 16-17 year olds. When presented with identical hypothetical plea scenarios, younger participants were significantly more likely to plead guilty than were older participants. The study also found that people 17 and younger are more likely than people aged 18-24 "to make choices that reflect a propensity to comply with authority figures, such as confessing to the police rather than remaining silent or accepting a prosecutor's offer of plea agreement."[163]

Conversely, a juvenile's reduced capacity to effectively weigh risks can also result in turning down a favorable plea offer.[164] In a law review article discussing the difficulties of counseling young clients in plea negotiations, Abbe Smith, a defense attorney and law professor, described the reluctance of one teenaged client ("Benny") to accept a very favorable plea offer:

> It was hard to know what exactly was going on with Benny. Consistent with what we know from developmental psychology, Benny seemed to overestimate rewards ("I ain't takin' no plea cause we're gonna beat this case and then I'm goin' home.") and underestimate risks ("Nobody will believe that crackhead complainant."). Although we didn't know whom exactly he was talking to about his case, he seemed to be influenced by his peers in the jail ("Everyone here is sayin' I should fight the case, not take no plea."). He seemed utterly incapable of considering and weighing the long-term consequences of rejecting the plea offer because he could not

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161 Human Rights Watch, *An Offer You Can't Refuse: How US Federal Prosecutors Force Drug Defendants to Plead Guilty*, December 5, 2013, http://www.hrw.org/reports/2013/12/05/offer-you-can-t-refuse.

162 Elizabeth S. Scott and Thomas Grisso, "Developmental Incompetence, Due Process, and Juvenile Justice Policy," *North Carolina Law* Review, vol. 83 (2005), pp. 823-24.

163 Thomas Grisso et al., "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defenants," *Law and Human Behavior*, vol. 27, no. 4 (August 2003), p. 357.

164 See Abbe Smith, "I Ain't Takin' No Plea: The Challenge in Counseling Young People Facing Serious Time," *Rutgers Law Rev*iew, vol. 60 (2007), p. 11. See also Patricia Allard and Malcolm Young, The Sentencing Project, "Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners," 2002, http://sentencingproject.org/doc/publications/sl_prosecutingjuveniles.pdf (accessed December 11, 2013), p. 6.

fathom being in prison for any period of time. ("Two years? I might as well be locked up for seven. Ain't no difference.").[165]

Regardless of whether a teenager's immaturity manifests itself as a proclivity to take unfavorable pleas or to refuse favorable pleas, plea decisions are particularly challenging for children who might feel extra pressure in the context of a threat by the prosecutor to charge them directly in adult court.

In the direct file context, the pressure to plea arises both before charges are filed in adult court and afterwards. Prior to bringing adult charges, there is tremendous incentive for juveniles to take pleas, even pleas that involve confinement, in order to avoid being charged in an adult system where they face much longer sentencing exposure and an adult felony conviction. We have no way of knowing how many children accept unfavorable pleas in the juvenile court in order to avoid adult court and criminal sanctions. We know that fewer than 5 percent of juvenile delinquency cases go to trial.[166] It was not possible to identify and interview juveniles who pled guilty in juvenile court for the sole purpose of avoiding a prosecutor's threat to charge them directly in adult court.[167]

In the context of a threat to file charges directly in adult court, the pressure to plea stems from the differential between juvenile court and adult court sanctions and the long-term consequences of an adult conviction. A juvenile court judge has a range of sentencing options, the most severe of which is sending the child to a "maximum risk" juvenile residential facility for 36 months. Those sentencing options are geared toward rehabilitation, with programs provided even in maximum risk facilities. In Florida, juvenile records are sealed automatically once the defendant turns 24 or 26, depending on the defendant's offense history. In contrast, adult court judges can, and often *must* impose very lengthy sentences due to mandatory minimum sentencing laws. Youth convicted in adult court must also contend with an adult criminal record for the rest of their lives. While adult court judges also have the option to impose juvenile sanctions in many cases, they do not often exercise this option, as discussed below.

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[165] Smith, "I Ain't Takin' No Plea," *Rutgers Law Review*, p. 21.

[166] Office of the State Courts Administrator, "Florida's Juvenile Delinquency Court Assessment," April 2003, http://flcourts.org/gen_public/family/bin/delinquencyfinalreport.pdf (accessed December 3, 2013), p. 3.

[167] However, a 2013 study by the Department of Juvenile Justice found that a high proportion of youth who entered into plea agreements that involved placement into juvenile facilities had fewer prior offenses and less serious prior offenses than youth who were placed in detention absent a plea agreement. The study did not examine why so many low-risk youth were accepting pleas that involved incarceration. See Department of Juvenile Justice, "Briefing Report: Direct Commitments," June 21, 2013, http://www.djj.state.fl.us/docs/research2/briefing-report-direct-commitments-revised-mb.pdf?sfvrsn=0 (accessed March 18, 2014).

In some jurisdictions, children are explicitly threatened to either agree to placement in a maximum or high-risk juvenile facility or face charges in adult court.[168] Harry Shorstein, who served as the elected state attorney for the 4th Circuit from 1991 until 2008 and who is in private practice in Jacksonville, stated that using a direct file threat to obtain a plea "…is prolific here. The policy is to overcharge everyone with the idea of extracting a plea."[169] A public defender in Tampa observed that "[prosecutors will] say, we'll keep it in juvenile if you take a plea."[170]

Even where the threat is not explicit, the possibility of direct file is often enough to cause defendants to feel tremendous pressure. One Miami public defender explained, "the moment they announce intent to direct file, the kid coughs up a plea."[171] According to that same public defender, children often plea specifically to avoid a charge in adult court, and do so before they or their lawyer has even had a chance to obtain discovery of evidence from the prosecutor, without which it is difficult to weigh the advisability of going to trial.[172]

Another lawyer commented on the lack of influence defense attorneys in the juvenile division have when prosecutors have unfettered power to directly charge a child in adult court. A juvenile defense attorney cannot challenge the direct file decision, and is left with only two options: accept a guilty plea in juvenile court (assuming one is offered), regardless of whether the case presents any issues worthy of trial, or allow the child to be moved to adult court, where she will be assigned an adult-division lawyer. "As an attorney, I feel like I've lost when I hear 'direct file' because there is nothing else I can do for this child," said one attorney in the juvenile division of the Jacksonville public defender's office, "I no longer have a chance to fight for this kid."[173] Defense attorneys feel particularly powerless because the consequences in the adult system are so serious. "It's such a major disparity between the juvenile and adult sanctions that you basically have to bend and agree to everything, no matter how unreasonable," said one attorney. "The risk of rolling those dice—I think it's safer to play Russian roulette with a loaded revolver than it is to willingly go to direct file."[174]

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[168] Human Rights Watch interview with Courtney Drew, May 29, 2013.

[169] Human Rights Watch telephone interview with Harry Shorstein, former elected State Attorney, Jacksonville, Florida, June 16, 2013.

[170] Human Rights Watch interview with Chris Watson, August 13, 2013.

[171] Human Rights Watch interview with Marie Osborne, Chief Assistant Public Defender, Miami-Dade Public Defender, Miami, Florida, June 7, 2013.

[172] Human Rights Watch interview with Carlos Martinez, elected Public Defender, Miami-Dade Public Defender, Miami, Florida, June 7, 2013.

[173] Human Rights Watch telephone interview with Joshua Beard, Assistant Public Defender, Juvenile Division, Office of the Public Defender, 4th Judicial Circuit, Jacksonville, Florida, October 22, 2013.

[174] Ibid.

One study by Florida's Department of Juvenile Justice (DJJ) found that, perversely, children whose risk of reoffending makes them the least deserving of punitive time in custody are the ones more likely to accept pleas. The study found that youth at low risk of reoffending were more likely than high-risk youth to accept pleas involving time in a residential facility, bypassing the opportunity to have the Florida Department of Juvenile Justice asses the youth and provide a sentencing recommendation.[175] While the DJJ study did not examine the role of direct file threats in these decisions to plead guilty, the direct file threat may well influence the plea decisions made by low-risk youth. A recent article in *Florida Times-Union* came to the conclusion that threats of prosecution under the direct file statute were influencing plea decisions in Jacksonville-area juvenile courts.[176] According to data obtained by that journalist, the 4th Judicial Circuit (which includes Jacksonville) sentenced more children to residential facilities than any other circuit, many of them through plea agreements.[177] An estimated 4 out of 5 children in Jacksonville who agreed to plea deals in juvenile court involving residential placement did so after being threatened with prosecution in adult court.[178]

[175] Florida Department of Juvenile Justice, "Briefing Report: Direct Commitments," June 21, 2013, http://www.djj.state.fl.us/docs/research2/briefing-report-direct-commitments-revised-mb.pdf?sfvrsn=0 (accessed January 18, 2014), pp. 2-4.

[176] Topher Sanders, "Angela Corey's Office Threatens Jacksonville Area Juveniles with Adult Charges, Matt Shirk and Private Attorneys Say," *Florida Times-Union*, February 1, 2014, http://members.jacksonville.com/news/metro/2014-02-01/story/angela-coreys-office-threatens-jacksonville-area-juveniles-adult-charges (accessed March 21, 2014).

[177] Ibid.

[178] Ibid.

Case Study: Oliver B.

Christina S. thought nothing of letting her 16-year-old son Oliver B. walk to his high school with some friends one Tuesday night. She had church choir practice, and Oliver wanted to play basketball on the high school's courts. Oliver returned from playing basketball that night and their life resumed its regular routines. But one week later she got a call from a school resource officer telling her that Oliver had been arrested—that the previous Tuesday, three boys had broken into an empty office at the high school and stolen two laptops, a blackberry, a Palm Pilot, and $8 in cash.

Oliver's case went to juvenile court, where he was offered a sentence of 18 months in a residential facility if he pled guilty. If he turned down the plea, his lawyer warned him, his case would likely be sent to adult court, where he could face up to 15 years in prison. Oliver's public defender "pleaded with [him]" to accept the offer and avoid a conviction in adult court, Christina said. Oliver maintained his innocence, however, and wanted to fight the case. His mother supported his decision. "They were not going to take my baby from me for a year and a half," she recalled thinking.

Oliver had been in trouble before, for possession of some stolen calculators. In that case, he had pled guilty and been sentenced to juvenile probation. While Christina thinks that the prior arrest was the reason the prosecutor decided to send Oliver to adult court, she does not know with any certainty—in Florida, prosecutors can transfer a 16-year-old charged with any felony to adult court without stating any reason.

Once his case was moved to adult court, Oliver was taken to county jail. His mother went to court for his bond hearing. "I was crying the whole time. He was in for a day. Not even a day" before Christina was able to get him out on a $12,500 bond. In adult court, the prosecutor offered Oliver three-years' probation if he pled guilty. For six months, Oliver refused the plea, insisting on going to trial and proving his innocence. The first time he declined the plea, "the judge looked at me crazy and said to me 'you do know that if you are found guilty you will face 11-15 years in prison?'" he said. Oliver's adult court lawyer also encouraged him to take the plea. "Everyone told us 'if you go to trial, the people judging you will be the people across the bridge,'" in the whiter, wealthier parts of town, Christina said. Oliver did finally take the plea, four days before his trial was scheduled to begin. "If I would have let a jury decide my fate I would have gotten 11-15 years in prison, so I chose to be … a felon at 16," said Oliver. "What happened to me was unfair, I am afraid to leave my home in fear that anything will land me in prison."[179]

[179] Human Rights Watch interview with Christina S., West Palm Beach, Florida, August 21, 2013. Letter from Oliver B. to Human Rights Watch, August 20, 2013.

Case Study: Ava L.

In July 2010, less than a month after her seventeenth birthday and while on vacation from her Job Corps program, Ava L. went to a party, drank too much, and took some Xanax. While driving home, she was pulled over by a police officer. Rather than comply, she fled in her car, causing an accident in the process, though fortunately no one was injured. She was eventually caught and arrested, and the case was brought in juvenile court. While that case was pending, a friend who was a year or two older than her introduced her to a new drug, "Roxies." She and the friend tried to rob a woman outside of a pawn shop in order to get more money for the drug. The attempt failed, and police came to Ava's house to arrest her. This time, Ava was not taken to the Juvenile Assessment Center, where arrestees younger than 18 are generally processed. Instead, she was taken directly to the adult county jail.

"There were no other juveniles there," she recalled. "It was so lonely." Even visitation was painful for Ava. "In county [jail] you have to visit through a phone, you're watching through a screen. It hurt 'cause I couldn't see my mom for so long."

Prior to the two incidents that got her to adult court, Ava had one prior arrest—for a trespass committed while she was skipping school. She had dropped out of regular high school at 16 and started a job training program. "I was getting it together," she recalled. "Then I was on vacation so I was like, 'let's party,'" she said of the drunk driving incident. "I never thought I'd have something on my record for the rest of my life."

Ava looks at the offenses that got her into adult court and her adult felony record with deep regret. "It didn't hit me until I turned 19 that I need to get my life together and I feel like I got it together but I still have a record."[180]

Children are also making pre-file plea decisions in the absence of complete information about their cases. Because of the fact that a child can only be held in the custody of the Department of Juvenile Justice for 21 days and prosecutors seem reluctant to have people released, most of the young people interviewed for this report were charged directly in adult court close to that 21st day. In practice, this means that plea decisions are made quickly before charges are brought in adult court and without the defendant having a good idea of what the evidence is in the case. Even in jurisdictions where the prosecutor's policy is to hand over evidence promptly, 21 days does not provide sufficient time. "They have been fair," said one Broward county public defender about the state attorney's office in her

[180] Human Rights Watch interview with Ava L., Orlando, Florida, August 13, 2013.

circuit, "[w]ithin the first 21 days we get a file, a police report, their record. They provide us with whatever they have but they don't always have everything."[181]

Once a child is charged in adult court, the incentives to plea are equally powerful. As described above, the preliminary hearings and procedures in adult court and confinement in adult jail may pressure a young defendant to plea. Moreover, the prosecutors who make the charging decisions exercise control over the final sentence which judges have little power to mitigate because many offenses carry mandatory minimum sentences.

In discretionary direct file cases, judges may, with some exceptions, impose juvenile sanctions (meaning the child serves his sentence under the jurisdiction of the Department of Juvenile Justice) or may sentence the defendant under Florida's Youthful Offender Statute, which limits sentencing exposure to six years for defendants younger than 21, but still leaves a child with an adult felony conviction.[182] However, in order for the judge to avail herself of this discretion, the defendant must enter an "open plea" or a "plea to the bench." In other words, the defendant must enter a plea of guilty to the most serious charge (only prosecutors have the discretion to dismiss charges)[183] without any agreed-upon sentence, and throw himself on the mercy of the court in hopes that the judge will choose to impose juvenile sanctions or give her a Youthful Offender sentence.[184] Defendants faced with lengthy sentences may be reluctant to take their chances with an "open plea," preferring the certainty that an agreed-upon plea provides.[185]

Not a single young person interviewed for this report went to trial.[186] Many of these individuals seemed not to have had much opportunity to fully comprehend their pleas. Mark V., who was 17 at the time of his arrest and is now serving a four-year prison sentence (to be followed by two years of probation) for his adult felony conviction, recalled his impatience with the criminal process, saying that he opted to take a plea because "I just

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[181] Human Rights Watch telephone interview with Nadine Girault Levy, Assistant Public Defender, 17th Judicial Circuit, Fort Lauderdale, Florida, July 10, 2013.

[182] See "Judicial Disposition of Youthful Offenders," Florida Statute § 958.04.

[183] Human Rights Watch telephone interview with Joshua Beard, October 22, 2013.

[184] Human Rights Watch telephone interview with Carrie Lee, Assistant Public Defender, Office of the Public Defender, 9th Judicial Circuit, Orlando, Florida, October 8, 2013.

[185] Human Rights Watch telephone interview with Joshua Beard, October 22, 2013.

[186] Trial rates are low both nationwide and within Florida. Florida Bar Association, "Report of the Special Committee to Study the Decline in Jury Trials," December 2011, https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/2CC9BF48C4496442852579950050E988/$FILE/final%20report%20jury%20special.pdf?OpenElement (accessed March 20, 2014). Furthermore, as previously noted, due to privacy protections afforded to children who remain in the juvenile system, Human Rights Watch was unable to interview children who were prosecuted in juvenile court.

wanted to get it over with."[187] Even though he remembered that the judge asked him whether he wanted to try to get juvenile sanctions (which would have allowed him to avoid a felony record), Mark said that he took the adult sentence because he "didn't want to have to wait and go through all the court stuff."[188] Similarly, when Langston T. was given an offer of a 3-year adult prison sentence in addition to probation, he "was thinking I might as well just take it and run with it. I just want a chance to get out; get my GED, go to community college."[189] Jacob M., who is serving a 10-year prison sentence for a series of robberies he committed at age 16, said he decided to take a plea because he "was just going with the flow."[190] His sentencing exposure was, he said, "30 years, or life."

Many of the young people who spoke to Human Rights Watch made the decision to plea in the face of the lengthy adult sentences they would face if convicted at trial. "To me, a month feels like a long time," said John C. when asked how he felt when he heard the prosecutor's initial offer of an 8-year prison sentence.[191] Karl A., who was in Orange County Jail awaiting trial when he spoke to Human Rights Watch, was initially told he was facing a 25-year maximum sentence when he was directly charged in adult court. "That made tears come out my eyes and I got a little woozy," he recalled.[192] "That's a long time to be away from my grandmother." At the time he spoke to Human Rights Watch, Karl's case was still pending before the trial court and he could not discuss his charges. He later pled guilty and, according to the Florida Department of Corrections website, he received an adult felony conviction and sentence of 5 years' adult probation for assault, criminal mischief, and related charges.

In a letter, Lawrence F. explained that "[t]here was no use in taking my case to trial because if I lost I could have been sentenced to 25 to 35 years. Believe me at age 16 that is not worth risking."[193] Jacob M., who pled guilty to an adult felony conviction and is serving a Youthful Offender sentence of 2 years in prison, 2 years of house arrest, and 2 years of probation, had trouble explaining how he felt when he was told about his sentencing exposure if he took his case to trial. "Can you imagine being 17 and someone tells you you're going away for 10 years?" he asked. "It's crazy to me how they're going to lock up a teenager for the rest of their lives for one mistake."[194]

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[187] Human Rights Watch interview with Mark V., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[188] Ibid.

[189] Human Rights Watch interview with Langston T., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[190] Human Rights Watch interview with Jacob M., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[191] Human Rights Watch interview with John C., Sumter Correctional Institution, Sumter, Florida, May 29, 2013.

[192] Human Rights Watch interview with Karl A., Orange County Jail, Orlando, Florida, August 23, 2013.

[193] Letter from Lawrence F. to Human Rights Watch, April 25, 2013.

[194] Human Rights Watch interview with Jacob M., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

Matthew N. decided to plead guilty when he learned he faced a 15-year maximum sentence. Despite the fact that he might have had a good defense, "I wasn't trying to take it to trial," he said. "I think maybe I could win but 15 years is a long time. That's a lot of time. You could do a whole lot in 15 years."[195] He took a plea to an adult felony conviction in exchange for 2 years of house arrest and one year of probation, and is currently attending college.[196]

Adult Sentences and Collateral Consequences

The Convention on the Rights of the Child, an international treaty ratified by every country in the world save the United States and Somalia, states that sentencing of children should take into account "the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[197] While Florida judges technically have sentencing options that allow them to take into account the specific characteristics of individual youth, due to the mechanics of the plea negotiation process and the application of mandatory minimums or other mandatory sentencing laws in the adult system, youth-specific sentencing options are often not available.

Sentencing After Direct File

While judges have the option to consider a juvenile sentence for some juveniles convicted in adult court, the default is to impose an adult sentence without consideration of the child's needs and capacity for rehabilitation.[198] The sentencing statute that applies to juveniles convicted in adult court requires adult sentences for all juveniles prosecuted pursuant to the mandatory provision of the direct file statute.[199] In other cases, the law gives judges the option to impose juvenile sentences (served under the supervision of the Department of Juvenile Justice rather than the Department of Corrections) but, even in the cases for which juvenile sanctions are available, the statute states that an adult sentence is "presumed appropriate."[200] By contrast, a judge considering imposing a juvenile sentence on a child convicted in adult court must take eight different factors into account before making that decision.[201] If a child defendant wants to place the sentencing decision

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[195] Human Rights Watch interview with Matthew N., Orlando, Florida, August 14, 2014.

[196] Ibid.

[197] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 40(1).

[198] A judge does not have discretion to keep a child in the custody of the Department of Juvenile Justice, rather than in the county jail, pending disposition. *State v. G.G.*, 941 So. 2d 484 (Fla. Dist. Ct. App. 2006).

[199] "Sentencing Powers; Procedures; Alternatives for Juveniles Prosecuted as Adults," Florida Statute § 985.565.

[200] Florida Statute § 985.565(4)(a)(4). The statute further states that "the court is not required to set forth specific findings or enumerate the criteria … for its decision to impose adult sanctions."

[201] Those factors are:

in the hands of the judge, she must either plead guilty to the top charge the prosecutor brings, or go to trial.[202]

As shown in table 4, below, the percentage of children who receive juvenile sentences varies among jurisdictions. The Florida Department of Juvenile Justice provided Human Rights Watch with previously unavailable data on the sentences given to children prosecuted in adult court between fiscal years 2010 and 2012. During that time period, the percentage of children who received juvenile sanctions in adult court ranged from zero in the 14th Circuit to 25 percent in the 15th Circuit.[203]

> (1) The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions. (2) Whether the offense was committed in an aggressive, violent, premeditated, or willful manner. (3) Whether the offense was against persons or against property, with greater weight being given to offenses against persons, especially if personal injury resulted. (4) The sophistication and maturity of the offender. (5) The record and previous history of the offender, including: a. Previous contacts with the Department of Corrections, the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, law enforcement agencies, and the courts. b. Prior periods of probation. c. Prior adjudications that the offender committed a delinquent act or violation of law as a child. d. Prior commitments to the Department of Juvenile Justice, the former Department of Health and Rehabilitative Services, the Department of Children and Family Services, or other facilities or institutions. (6) The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to services and facilities of the Department of Juvenile Justice. (7) Whether the Department of Juvenile Justice has appropriate programs, facilities, and services immediately available. (8) Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than the imposition of juvenile sanctions.

Ibid.

[202] For the proposition that charging decisions can only be made by prosecutors, see *Wayte v. United States*, 470 U.S. 598, 607 (1985) ("So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether or not to prosecute, and what charge to file … generally rests entirely in his discretion.")) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978); *State v. Cotton*, 769 So. 2d 345, 351 (Fla. 2000) (prosecutorial discretion to pursue enhanced sentences "is not generally subject to judicial review"); *State v. K.L.*, 626 So.2d 1027, *1 (Fla. Dist. Ct. App. 1993) (trial court erred in dismissing a delinquency petition because "[t]he law is well settled that once the prosecutor has determined that a particular case should be prosecuted, it then becomes the responsibility of the trial court to adjudicate only those issues properly placed before the court.").

[203] Youthful Offender sentences, since they represent adult felony convictions, were counted as adult sentences for the purposes of this data.

TABLE 4

PERCENT OF CONVICTIONS OF ADULT OR JUVENILE SENTENCES BY CIRCUIT (FY 2010-2012)

CIRCUITS	ADULT JAIL	ADULT PRISON	ADULT PROBATION	TOTAL NUMBER OF ADULT SENTENCES	% OF CONVICTIONS FOR ADULT SENTENCES	TOTAL NUMBER OF JUVENILE SENTENCES	% OF CONVICTIONS FOR JUVENILE SENTENCES
15th Circuit	16%	22%	37%	371	75%	123	25%
17th Circuit	4%	26%	46%	285	77%	87	23%
6th Circuit	23%	21%	38%	419	81%	96	19%
16th Circuit	8%	8%	67%	10	83%	2	17%
13th Circuit	11%	26%	49%	574	86%	94	14%
Out of State	14%	36%	36%	19	86%	3	14%
11th Circuit	6%	6%	74%	450	86%	71	14%
8th Circuit	10%	30%	49%	74	89%	9	11%
12th Circuit	25%	30%	35%	172	90%	19	10%
1st Circuit	9%	34%	47%	216	90%	23	10%
19th Circuit	29%	38%	25%	167	92%	15	8%
3rd Circuit	7%	10%	76%	87	93%	7	7%
2nd Circuit	18%	39%	37%	94	93%	7	7%
10th Circuit	23%	24%	47%	357	94%	23	6%
18th Circuit	14%	19%	62%	177	95%	9	5%
7th Circuit	27%	20%	48%	230	95%	11	5%
5th Circuit	18%	43%	35%	195	96%	8	4%
20th Circuit	16%	52%	30%	92	98%	2	2%
4th Circuit	16%	58%	24%	355	98%	7	2%
9th Circuit	24%	37%	38%	453	99%	5	1%
14th Circuit	8%	43%	49%	96	100%	0	0%

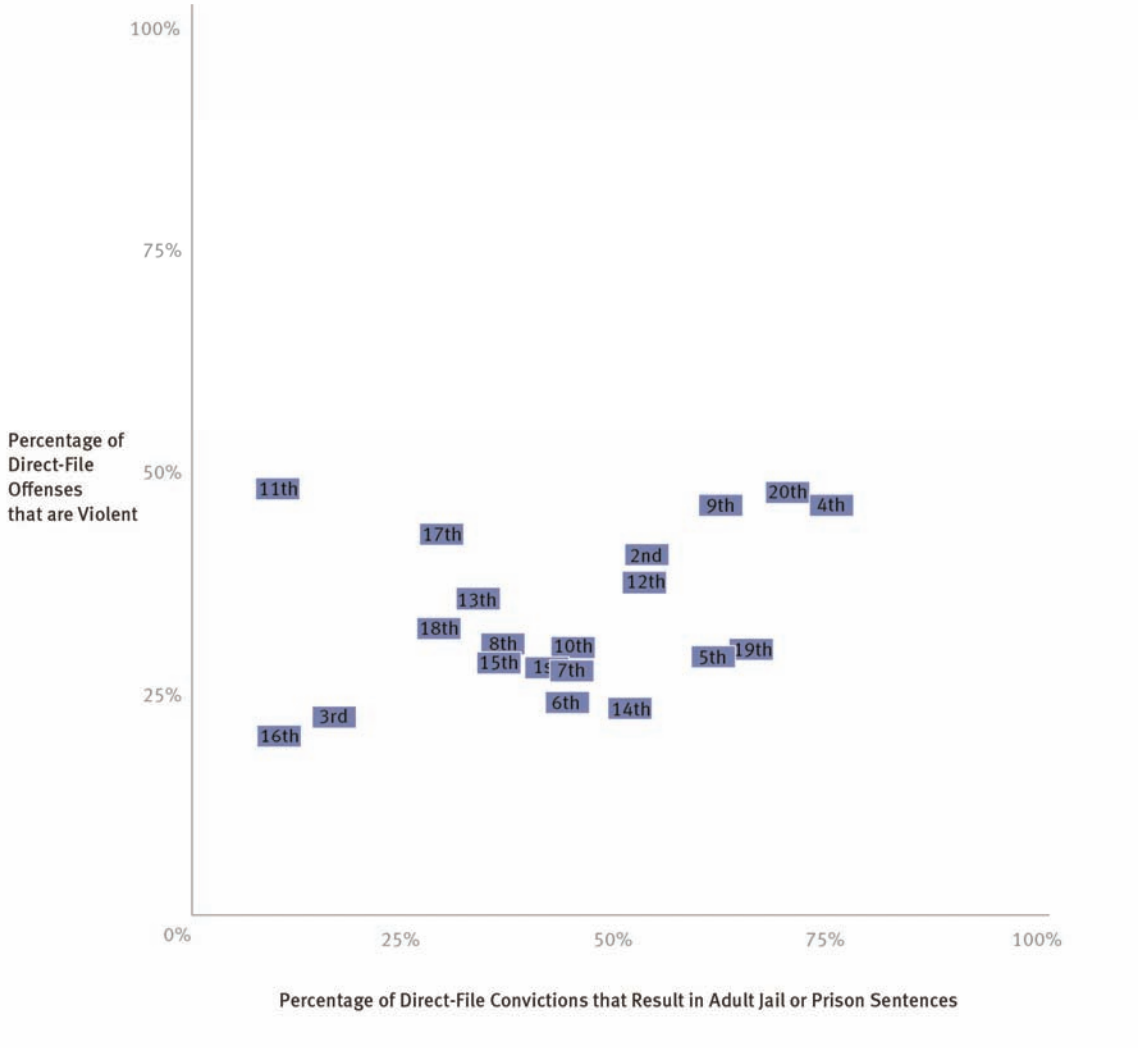
There is also wide variation among circuits with regards to the percentage of children who receive adult jail or prison sentences (rather than adult probation) after being charged in adult court. From fiscal year 2010-2012, the 4th Circuit, which includes Jacksonville, Florida, sentenced 74.3 percent of children prosecuted pursuant to the direct file statute to incarceration in the adult system, while the 11th Circuit, which includes Miami, Florida, sentenced 11.9 percent of such children to incarceration in the adult system.

TABLE 5
DIRECT FILE ENDING IN ADULT INCARCERATION BY DISTRICT (FY 2010-2012)

CIRCUIT	PERCENTAGE OF DIRECT FILED CONVICTIONS SENTENCED TO ADULT JAIL OR PRISON	AVERAGE ANNUAL POPULATION OF YOUTH (10-17)
4th Circuit	74.3%	124,497
20th Circuit	68.1%	101,647
19th Circuit	66.5%	57,105
9th Circuit	61.1%	157,358
5th Circuit	61.1%	89,763
12th Circuit	56.4%	61,958
2nd Circuit	55.5%	35,054
14th Circuit	51.0%	28,263
7th Circuit	47.3%	82,260
10th Circuit	46.6%	73,641
6th Circuit	43.3%	122,864
1st Circuit	43.1%	71,105
8th Circuit	39.8%	33,181
15th Circuit	38.1%	124,811
13th Circuit	36.8%	133,608
18th Circuit	32.8%	100,048
17th Circuit	30.4%	184,019
3rd Circuit	17.0%	18,609
16th Circuit	16.7%	5,504
11th Circuit	11.9%	256,831

This variation cannot be explained by the types of crimes for which children are being directly charged in adult court. As the figure below illustrates, violent offenses accounted for 46-48 percent of direct file cases in the 4th, 9th, 11th and 20th Circuits, yet these circuits sentenced children who were charged directly in adult court to adult incarceration at vastly different rates. If there were a strong correlation between the percentage of arrests for violent offenses and the percentage of transferred youth receiving adult incarceration, we would expect circuits to be plotted along a rough diagonal from the bottom left corner of the plot toward the upper right corner. Rather, we find circuits plotted with no order.

FIGURE 7:
DIRECT-FILE CASES INVOLVING VIOLENCE PLOTTED AGAINST
DIRECT-FILE CASES THAT RESULT IN ADULT JAIL OR PRISON SENTENCES



Human Rights Watch analyzed a variety of variables to determine if other factors could explain the variation in the percentages of children sentenced to adult incarceration. None of the variables we analyzed could do so, including the overall population of the circuit (a proxy for possible urban/rural differences), the racial composition of circuits, how frequently youth are charged in adult court (rate of transfers per 1,000 youth), or racial disparities in transfer rates. Our research also does not reveal any differences in the availability of adult probation services in these jurisdictions which might explain why prosecutors or judges would prefer incarceration. The more punitive responses in certain circuits appear to indicate that prosecutors and judges are simply exercising their discretion differently in obtaining pleas and sentencing juveniles to incarceration in adult facilities.

A child who is convicted in adult court will have a felony conviction on her record unless given a juvenile sentence to be served under the supervision of the Department of Juvenile Justice. Youthful Offender status, which is available to adults between the ages of 18 and 21, as well as to children under 18, can reduce the sentence but still leaves the child with a felony conviction on her record.

Sentencing Under the "Youthful Offender" Statute

If a defendant is younger than 21, a judge can impose a sentence under the Youthful Offender statute, which limits the sentence to a maximum of 6 years of probation, community control (commonly known as house arrest), incarceration in an adult facility, or some combination of those sanctions.[204] A judge who grants Youthful Offender status is not bound by mandatory minimums. The Youthful Offender statute is only available to defendants who (1) are between the ages of 18 and 21 or (2) have been transferred from juvenile to adult court.[205] A defendant who has been previously given a Youthful Offender sentence is not permitted to receive such a sentence again. A defendant convicted of a crime punishable by a life sentence or the death penalty is also not eligible for Youthful Offender status. Children who are sentenced as Youthful Offenders are sent to designated Youthful Offender facilities, which can be either stand-alone prisons that house only Youthful Offenders or designated Youthful Offender units within a prison that houses other inmates (mostly adults) who are not designated Youthful Offenders. Conviction as a Youthful Offender is still an adult felony conviction, and children serving Youthful Offender sentences are under the supervision of the Department of Corrections.

[204] Florida Statute § 958.04.

[205] Ibid.

Judges often do not have the opportunity to weigh the possibility of a juvenile sentence because plea bargaining effectively cuts the judge out of the sentencing decision.[206] In general, the only way for a defendant to have any certainty about what sentence she will receive in Florida is to negotiate a plea with the prosecutor in which both parties (prosecution and defense) agree on the charge to which the defendant will plead guilty and what sentence she will receive. If a prosecutor will not agree to juvenile sanctions, the defendant's only chance at obtaining them is to plead to the most serious charge and ask the judge to sentence her, without an agreement from the prosecutor (this is called an "open plea" or a "plea to the bench"). The risk is that the judge may opt against a juvenile sentence and instead decide to sentence the child to a regular adult sentence.

"Juvenile sanctions require a plea to the judge and a roll of the dice," explained Joshua Beard, a felony public defender in Jacksonville, Florida.[207] He has never had or heard of a case in which a prosecutor, after charging a child in adult court under Florida's direct file statute, agreed to juvenile sanctions. Human Rights Watch was also unable to find any examples of a prosecutor agreeing to juvenile sanctions once a case had been filed in adult court. Thus, in his experience, the only way a child could receive those sanctions after direct file is if the young person pled to the most serious charge and took her chances with the judge—a risky proposition, given the lengthy sentences at stake. Jackson A., who was 15 years old at the time of his arrest, did take that risk. "I pleaded to the bench so I would have a great chance of going back to play football on probation or something," he wrote. His roll of the dice did not work out. He received a sentence of two years and four months in prison and has an adult felony record. He wrote, "I'm 17 and leave [prison] in 6 months."[208]

[206] See Suevon Lee, "Given Fla.'s budget, some look to ease sentencing laws", *Ocala Star-Banner,* April 25, 2010, http://www.ocala.com/article/20100425/ARTICLES/4251014?p=1&tc=pg (accessed March 19 2014).

[207] Human Rights Watch telephone interview with Joshua Beard, October 22, 2013.

[208] Letter from Jackson A. to Human Rights Watch, April 26, 2013.

A "Lucky" Result After Making an Open Plea

In Florida's 4th Judicial Circuit, the odds are overwhelming that a child prosecuted in adult court will receive an adult sentence—between 2010 and 2012, only 2 percent of the children convicted in criminal court in that circuit received a juvenile sentence. Brian T. was one of those lucky few. After initially facing the possibility of a 65-year prison sentence, he received a sentence of juvenile probation. This "luck" came only after months of investigation and hard work by his attorney, during which Brian was confined in an adult jail.

Brian was 17 years old and walking on the beach with several friends one January afternoon when they found a BB gun. Brian picked up the BB gun. Shortly thereafter, he and his friends encountered a homeless couple. With encouragement from his friends, Brian brandished the BB gun at the couple, threatening them. The group moved on—Brian never pulled the trigger, and nobody was injured. The couple called the police and reported that they had been robbed at gunpoint. They also provided a description of the perpetrators. Later that evening, Brian was arrested for stealing a motorized grocery cart from a supermarket, a crime which he was later able to prove he did not commit. Police making the arrest for the grocery cart theft noticed that he matched the description for the earlier crime against the homeless couple, and Brian was charged with that crime, as well. Brian still had the BB gun with him when he was arrested.

A month-and-a-half after Brian's arrest, prosecutors charged Brian under the direct file statute for both of the cases and did not offer Brian a juvenile court plea. The adult court judge ordered him held in county jail without bond, and he remained incarcerated throughout the case. Prosecutors initially charged Brian with attempted armed robbery with a firearm or other deadly weapon, a first degree felony[209] punishable by up to 30 years in prison. Under Florida's "10-20-life" statute, which imposes mandatory minimum sentences for certain felonies that involve firearms, Brian was facing a minimum sentence of 10 years.[210] While a BB gun is not considered a firearm under the statute,[211] prosecutors were initially reluctant to concede that the gun used was, in fact, a BB gun. The grocery cart incident, which prosecutors charged as a grand theft, carried a 5-year maximum sentence in adult court. Under Florida law, these sentences would run consecutively unless the judge decided otherwise.[212]

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[209] "Robbery," Florida Statute § 812.13.

[210] "Possession or Use of Weapon; Aggravated Battery; Felony Reclassification; Minimum Sentence," Florida Statute § 775.087. The statute establishes a 20-year sentence if the gun is fired, and a life sentence if the defendant shoots a person. The statute also establishes other mandatory minimums, such as a 3-year minimum prison sentence for a defendant convicted of being a felon in possession of a gun.

[211] See *Coley v. State*, 801 So. 2d 205, 206-07 (Fla. Dist. Ct. App. 2001) (holding that a "BB gun does not qualify as a firearm" necessitating the imposition of a mandatory minimum sentence.).

[212] "When Sentences to be Concurrent and When Consecutive," Florida Statute § 921.16.

Brian, who had only been in trouble with authorities once before, for violating Jacksonville's juvenile curfew statute,[213] was now facing a maximum sentence of 65 years in adult prison—up to 30 years for each victim in the attempted robbery case, and five years for the grocery cart theft. Unless his lawyer could somehow convince the prosecutor to amend the charges—something that only the prosecutor has the power could do—Brian was facing between 10 and 65 years in prison. If Brian had pled guilty at that point, the judge could have avoided the 10-year mandatory minimum by sentencing him to juvenile sanctions or sentencing him as a Youthful Offender. However, because the judge could still have legally sentenced him to 65 years, his lawyer, Joshua Beard, thought that entering a guilty plea at that point was much too risky. He needed to get the charges reduced. Brian was prepared to admit that he menaced the couple with a BB gun, but denied that he had asked for money or otherwise attempted to rob them. Prosecutors would not consider juvenile sanctions, would not agree to a Youthful Offender sentence, would not lower the charges, and insisted on Brian serving time in adult prison.

As part of his investigation of the cases, Mr. Beard obtained a video of the grocery cart theft from the supermarket. That video showed that somebody else, not Brian, had taken the cart. Mr. Beard also deposed the arresting officer, who admitted he had never viewed the exculpatory videotape. Confronted with the video and deposition testimony proving Brian's innocence, the prosecutor agreed to eventually drop those charges, but continued to insist on prison time for the attempted robbery. Because police seized a BB gun (rather than the handgun the victims said they had seen) from Brian when they arrested him, his lawyer was eventually able to convince the prosecutors that the weapon used to menace the homeless couple was, in fact, that BB gun and not a handgun. Prosecutors amended the charge to armed robbery with a deadly weapon, which carried a maximum sentence of 30 years. However, since the BB gun was not a "firearm," Brian was no longer subject to a minimum sentence of 10 years under the 10-20-life statute. At that point, Brian and his lawyer were willing to go to trial because he was no longer facing a mandatory minimum sentence.

Brian's lawyer subsequently convinced the prosecutors to amend the charges to two counts of attempted aggravated assault with a deadly weapon, a third degree felony punishable by up to five years in prison. The prosecution was still insisting on prison time, however, which Brian and his lawyer were reluctant to accept. Having reduced Brian's sentencing exposure to 10 years, Brian and his lawyer believed his best option was to enter a plea of guilty to the assault charges, and take their chances with the judge and argue for juvenile sanctions. Brian's lawyer acknowledged that the decision to enter the plea in hopes of obtaining juvenile sanctions was nerve-wracking. It was a very risky decision, and one that many other children tried as adults in Florida face. Indeed, every defendant faced with a plea decision faces a complicated calculus in deciding when to plea.

In order for Brian's case to reach the point where the decision to plead guilty was a calculated

[213] Jacksonville's municipal code, Chapter 603.201, forbids any child under the age of 18 from being out in public after 11 p.m. with very few exceptions (such as "engaged in lawful employment" or "accompanied by a parent or legal guardian").

risk that seemed worth taking, he and his lawyer had to engage in months of investigation and negotiations with the prosecutor in order to get the charges, and thereby Brian's sentencing exposure, reduced dramatically. During that time, Brian was incarcerated in an adult jail.

Brian and his attorney were lucky that they were able to reduce his most serious charge to one free of a mandatory minimum sentence. Brian's lawyer believes they were only able to get the more serious firearm charge dismissed because they were able to prove Brian's innocence of the grocery cart theft and because Brian still had the BB gun in his possession when he was arrested for that case. Because Brian was only facing one charge and not the original two charges, the judge, freed from having to impose a 10-year sentence, seemed willing to consider juvenile sentencing options. The outcome Brian achieved is relatively rare. Unlike Brian, many juvenile defendants lack affirmative evidence, such as the videotape, that they can use to assert their innocence or disprove an element of the charges. Brian's case turned out as well as it could have—the judge in Brian's case sentenced him to juvenile probation until his 21st birthday. By the time he entered the plea and received his sentence of probation, Brian had served 206 days in county jail.[214]

The Consequences of an Adult Sentence

As noted above, many young people interviewed for this report ended up with adult felony convictions with little understanding of the consequences of those convictions. Jacob M., interviewed at Sumter Correctional Institution, said that "[a]t a certain point, I knew I was in adult court but I still didn't understand what that meant or why I was there."[215] Similarly, Calvin W., who pled guilty to stealing a car and is hoping to be able to expunge his record, complained that "[t]hey really didn't tell me anything about what a felony conviction was. The kids around me and the probation officer from boot camp had to explain to me about expungement and stuff."[216] This lack of comprehension is particularly troubling given the broad and long-lasting effects of an adult felony conviction.

Probation

Both juvenile and adult probation place many restrictions and requirements on probationers, such as regular meetings with probation officers, random drug tests, curfews, and GPS monitoring. However, the approach and purposes of juvenile probation, overseen by the Department of Juvenile Justice, are very different from those of adult probation, overseen by the Department of Corrections. The statute governing juvenile probation states that, in determining the conditions of probation, the Department of Juvenile Justice

[214] Human Rights Watch telephone interview with Joshua Beard, October 22, 2013.

[215] Human Rights Watch interview with Jacob M., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[216] Human Rights Watch interview with Calvin W., Miami, Florida, August 20, 2013.

must take the child's needs into account and that any programs imposed "shall be designed to encourage the child toward acceptable and functional social behavior."[217] The statute governing adult probation contains no such language regarding rehabilitation.[218] Juvenile probation officers, unlike adult probation officers, also have training and experience specifically in working with adolescents.

A sentence of adult probation, while it may seem reasonable at first blush since it limits or eliminates the time that a teenager would spend incarcerated, can set a child up for failure. One defense attorney who practices in the 9th Circuit said, "I hate adult probation, I feel like you might as well send them to prison now," since the conditions of adult probation are not designed for adolescents and adult probation officers are not necessarily experienced in supervising juveniles.[219] Courtney Drew, a juvenile public defender, noticed a difference between juvenile and adult probation. "We have a lot of really good juvenile probation officers who will go out of their way to help the kids comply," she said.[220] There did not seem to be the same effort in the adult system. Judge Ralph Stoddard, who presides over juvenile court in Tampa, said that "[adult] probation tends to be a longer path to jail."[221] Amy Thornhill, a public defender in the 10th Circuit, observed that "very few people make it through [adult] probation here."[222]

The teenagers sentenced to adult probation can find it daunting both because of the requirements placed upon them and the looming prison sentences they face if they fail. For Calvin W., the scariest part of his probation sentence is that "the judge told me that if I violate I could get 2 life sentences."[223]

Case Study: Scott E.

Scott E.'s case was dismissed in adult court, but he is still suffering the consequences of his arrest. At 17, he was arrested for having allegedly planned a robbery with three other boys. He told us he had seen the robbery—"some kid at school got robbed by a bunch of dudes at the

[217] "Probation and Postcommitment Probation; Community Service," Florida Statute §. 985.435(4).

[218] "Terms and Conditions of Probation," Florida Statute § 948.03.

[219] Human Rights Watch interview with Lily McCarty, criminal defense attorney in private practice, Tampa, Florida, July 19, 2013.

[220] Human Rights Watch interview with Courtney Drew, Assistant Public Defender, Office of the Public Defender, 4th Judicial Circuit, Jacksonville, Florida, May 29, 2013.

[221] Human Rights Watch interview with Judge Ralph Stoddard, Tampa, Florida, August 13, 2013.

[222] Human Rights Watch interview with Amy Thornhill, Assistant Public Defender, Polk County Public Defender, Bartow, Florida, August 16, 2013.

[223] Human Rights Watch interview with Calvin W., Miami, Florida, August 20, 2013.

park," and said he actually walked the victim back to school to get help. He does not know why, but the victim later said Scott had planned the robbery.

Scott was arrested about a month after the incident. He remembers the arrest vividly—he had left school to buy lunch, and was walking back when six police cruisers pulled up and several officers came out, "guns in hand," sprinting at Scott. He was angry about the way the arrest happened, and, like the teenager he still is, he "was mad because of my food. I didn't get to eat it and I was really hungry, actually."

But the consequences of a wrongful arrest were much more serious than a missed lunch. Because he was 17 at the time, Scott's case started out in juvenile court, where he was offered one year of juvenile probation in exchange for a guilty plea. He turned down the plea, and the prosecutor charged Scott directly in adult court. Adult court "was crazy," said Scott. "I knew I was innocent but I had to prove my innocence to everybody." Scott did not know exactly why the case got sent to adult court. "I think the attitude is that we were 17 so we were pretty much adults," he speculated.

Once in adult court, the prosecutor offered Scott a sentence of three years' probation if he pled guilty. Scott declined that offer as well, but admits to being frightened going forward. "In adult court it seemed like I could actually get 10 years for something I didn't do. I was actually a little scared. I couldn't believe it was going as far as it did."

Although the prosecutor eventually dismissed the case, Scott is still in limbo. Last summer, he wanted to get a job with the city of Tampa as a lifeguard, but they would not hire him because of his arrest. He worries about his future job prospects, as well. "If [future employers] had to choose between me and another guy who's never been arrested, they're going to go with the other guy," he said. The fact that he has an adult arrest also prevented him from going to school to become a firefighter. "This criminal charge pretty much ruined all the plans I had," he said.

He and his family are trying to get his arrest expunged. His mother and father were frustrated with the process. His mother believes that Scott was charged directly in adult court because "people didn't want to do their due diligence. They just send it up for the adult court to sort out." His father agreed, saying "I think there should be some kind of safeguard before you throw these kids in adult court. It's not just the fact that he was arrested. He was kicked out of school. There's all these detectives scooping kids off the street, throwing charges at them and these kids are taking pleas whether or not they're guilty because they're scared." While his mother is grateful that Scott's charges got dismissed, she said that "they need to do more thorough investigation before throwing these kids under a bus. While [Scott is] not guilty, he's still got this black cloud hanging over him because he got direct filed."[224]

[224] Human Rights Watch interviews with Scott E., Tampa, Florida, August 15, 2013; Alison E., Tampa, Florida, August 15, 2013; and Jonathan E., Tampa, Florida, August 15, 2013.

Collateral Consequences

Once a child is sentenced as an adult, she is subject to all of the collateral consequences that result from an adult conviction. In addition to its well-known and much-criticized law barring former felons from voting, Florida restricts the rights of convicted felons in the areas of employment, education, housing, public assistance, driving privileges, adoptive and foster parenting, and student loans.[225] For the individuals interviewed by Human Rights Watch for this report, the barriers to employment loomed the largest. This consequence should be of grave concern to everyone, since studies have found that former offenders who are employed are much less likely to commit another crime.[226]

In Florida, at least 71 occupational groups restrict job opportunities for felons.[227] While Florida does not allow *public* employers to deny someone work solely because that person was once convicted of a crime, the state does not regulate what private employers do. In 2008, former Governor Jeb Bush commissioned a study of employment restrictions in Florida for convicted criminals. That study found that over 40 percent of jobs in Florida carried restrictions on the hiring of convicted criminals.[228] Florida also permits all employers to ask job candidates whether they have been arrested on criminal charges (charges under adult court jurisdiction), regardless of whether they resulted in convictions.[229]

Thomas G. finished serving a three-year prison sentence in May 2010 and has had trouble getting and keeping a job since his release. He attributes this difficulty to the fact that he is a convicted felon, and his frustration is palpable:

> That's why I say to this day that it is wrong to direct file any kid. What I did when I was 16, that's still following me and will follow me for the rest of my

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[225] See Legal Action Center, "After Prison: Roadblocks To Reentry: A Report On State Legal Barriers Facing People With Criminal Records," 2004, http://www.lac.org/roadblocks-to-reentry/upload/lacreport/LAC_PrintReport.pdf (accessed March 21, 2014).

[226] See Indianapolis-Marion County City-County Council, "Re-Entry Policy Study Commission Report," July 2013 (finding that "Employment was the number one predictor of recidivism."), http://www.indy.gov/eGov/Council/Committees/Documents/RE-ENTRY/Re-entry%20Policy%20Report.pdf (accessed March 20, 2014), p. 12.

[227] See testimony of Marc Mauer, Prepared for House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security, June 9, 2010, Washington, DC, http://www.sentencingproject.org/doc/publications/cc_House%20Jud%20Col%20Cons%20Testimony.pdf (accessed March 21, 2014).

[228] Linda Mills, The Annie E. Casey Foundation, "Inventorying and Reforming State-Created Employment Restrictions Based On Criminal Records: A Policy Brief and Guide," September 2008, http://www.aecf.org/~/media/PublicationFiles/Employment%20Restrictions%20Policy%20Guide%20Sept%2008.pdf (accessed March 20, 2014).

[229] Ibid., p. 11.

> life. I get a job, and they find out I was convicted of a felony, and they've got to let me go. I have no problem with if I did wrong, punish me. But don't keep it held over me for the rest of my life.[230]

Greg J., who served an eight-month jail sentence after being direct filed for possession of marijuana with intent to sell and battery of a law enforcement officer (for an accident with a police vehicle during a car chase), described the attitudes he had encountered from potential employers: "Do you have a record? That's the first thing they ask you. You have a conviction. They don't care about anything else. I applied to a moving company where on the application it said 'if you've ever been convicted as a felon, don't waste your time.'"[231] Greg is currently "between jobs" and reports to a labor pool on most days.[232] Samuel H., who was interviewed at the Orange County Jail shortly before he was to enter a guilty plea, said that his main concern about his pending conviction was that "it can be hard to find a job. I just think about the job. That's the main thing that hit me."[233] Karl A., interviewed while awaiting release from the Orange County Jail after accepting a plea deal that sentenced him to 2 years of house arrest followed by 2 years of probation, was relieved that his plea would not involve any jail time beyond the 63 days he had already served, but was already worried that "I won't be able to get a good job" due to the felony conviction.[234]

Even young people who did not receive adult convictions after being prosecuted under the direct file statute faced employment consequences, since adult arrests and criminal records are not sealed like juvenile arrest records.

Victoria C.'s grandson, Jarvis, also had his case dismissed after he was prosecuted as an adult under the direct file statute.[235] Victoria spoke to Human Rights Watch one morning while Jarvis was out applying for jobs. She said that the arrest was still hurting him. This arrest is still the first thing that comes up when you look him up [online]. That's going to hurt him in the long run. He has been trying to find a job. Constantly he's looking. He's out looking right now. I went with him to fill out an application to work selling fireworks and I saw when the guy entered his information into the computer the first thing that came up was this [arrest].[236]

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[230] Human Rights Watch interview with Thomas G., Orlando, Florida, August 14, 2013.

[231] Human Rights Watch interview with Greg J., Orlando, Florida, August 14, 2013.

[232] Ibid.

[233] Human Rights Watch interview with Samuel H., Orange County Jail, Orlando, Florida, August 23, 2013.

[234] Human Rights Watch interview with Karl A., Orange County Jail, Orlando, Florida, August 23, 2013.

[235] Human Rights Watch interview with Victoria C., Tampa, Florida, August 2, 2013.

[236] Ibid.

Veronica Limia was prosecuted as an adult under the direct file statute after being arrested for breaking into a neighbor's house at age 17. She received a juvenile sentence, and was thus able to avoid having a felony conviction on her record. She is now 31 years old and graduated from Florida International University School of Law in 2013. She also feels that her experience in adult court continues to have repercussions for her, particularly in the employment context. Even though she received juvenile sanctions and is thus not technically a convicted felon, she has encountered situations where people have seen the record of her arrest. "I've been very outspoken so there are some positive articles about what I've done, and I have to bring those articles with me on a job interview," she said. "I'm a lawyer, and [even] I can't figure out who does and does not have access to information about that arrest."[237]

Veronica also spoke about the repercussions her felony arrest had on her ability to obtain housing, something most of the young people who spoke with Human Rights Watch for this report had yet to encounter, since they were either incarcerated or living with their parents. "Do you know how hard it is to get an apartment with a criminal [arrest] record?" she asked. She recounts that when she moved to Miami for law school she "was up front—I had [a] felony arrest. I told them. I thought I had an apartment and as I was driving down, I got the call that I'd been denied. I had to keep the U-Haul for a week and was basically homeless." She ended up having to take an apartment in a neighborhood she said was not safe, since she got denied at all of the more desirable condominiums. "At some point there should be a way to allow a person to put that behind them if they did bad at 17," she stated.[238]

Veronica's experience with trying to rent an apartment is not surprising—criminal records, including adult arrest records, are public, and potential landlords are free to access them. Furthermore, federal law allows for the denial of public housing for people with certain prior offenses.[239] Local public housing authorities have broad discretion under this federal law to deny housing to ex-offenders. In Sarasota, Florida, for example, a person can be deemed ineligible for public housing for four years on the basis of a single drug misdemeanor.[240]

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[237] Human Rights Watch interview with Veronica Limia, Boynton Beach, Florida, August 21, 2013.

[238] Ibid.

[239] 42 United States Code § 13661; see also Human Rights Watch, No Second Chance: People with Criminal Records Denied Access to Public Housing, November 2004, http://www.hrw.org/reports/2004/usa1104/usa1104.pdf.

[240] Human Rights Watch, *No Second Chance*, p. 50.

Sealing and Expunging Adult Criminal Records: A Difficult Road

Many of the young people Human Rights Watch interviewed for this report expressed the hope that they would be able to have their direct file records sealed or expunged. While Florida does allow for adult records to be expunged (destroyed by the agency that keeps them) or sealed (made unavailable to the public), this is not easy to accomplish. Unlike juvenile records, which are expunged once the ex-offender turns 24 or 26 (the actual age depends on whether the person whose record it is was considered a habitual offender),[241] adult records can be expunged in Florida only in cases that did not result in convictions, and a person can only get one case expunged during their lifetime.[242] Expunction of adult records is not automatic—a person seeking to have a record expunged must petition the trial court, which has complete discretion as to whether to grant the petition.[243] A child who is convicted in adult court for a forcible felony also loses the opportunity to have any prior juvenile records expunged—in those cases, "the minor's criminal history record prior to the time of the minor's adjudication as an adult must be merged with his or her record as an adjudicated adult."[244]

Eligibility for having a record sealed is broader than it is for expunction—as long as a person was not convicted of certain enumerated offenses, she can petition to have her record sealed. As with expunction, a person is only allowed to have one record, related to a single arrest, sealed in her lifetime.[245]

Both the sealing and expunction processes are complicated, and can cost hundreds of dollars.[246] Furthermore, government agencies often sell criminal records to for-profit companies who, for example, provide background check services.[247] Those companies are not subject to the expunction and sealing laws, which only direct public agencies to destroy or seal records.[248] Thus, even those who go through the lengthy and expensive process of getting their records sealed or expunged can find that potential employers and landlords still have access to information about their prior arrests or convictions.

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[241] "Retention of Criminal History Records of Minors," Florida Statute § 943.0515.

[242] "Court-ordered Expunction of Criminal History Records," Florida Statute § 943.0585.

[243] Ibid.

[244] Florida Statute § 943.0515.

[245] "Court-ordered Sealing of Criminal History Records," Florida Statute § 943.059(1)(3).

[246] Colleen Jenkins and Andy Boyle, "Unemployment Driving Up Demand to Get Criminal Records Expunged or Sealed," *Tampa Bay Times*, November 29, 2009, http://www.tampabay.com/news/courts/unemployment-driving-up-demand-to-get-criminal-records-expunged-or-sealed/1055220 (accessed December 5, 2013).

[247] Adam Liptak, "Expunged Criminal Records Live to Tell Tales," *New York Times*, October 17, 2006, http://www.nytimes.com/2006/10/17/us/17expunge.html?pagewanted=all (accessed December 5, 2013).

[248] Jenkins and Boyle, "Unemployment Driving Up Demand to Get Criminal Records Expunged or Sealed." See also Human Rights Watch, *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, May 1, 2013, http://www.hrw.org/reports/2013/05/01/raised-registry-0, p. 7.

Children Confined in Adult Jails and Prisons

Transfer to Adult Jail

In Florida, once a prosecutor charges a child in adult court, that child is automatically moved to an adult jail.[249] Neither the juvenile judge who presides over the case pre-transfer nor the adult court judge who presides over the transferred case has any authority to keep a child in the custody of the Department of Juvenile Justice, even if those judges believe that the child would be better served there than in a county jail.[250]

In 2006, a Dade County juvenile court judge denied a prosecutor's motion to transfer a child who had been charged in adult court to the custody of the Department of Corrections. In denying the prosecutor's motion, the juvenile judge made the following finding on the record:

> The Court [feels] that it [is] not necessary to transport the Child to the Dade County Jail. The Child has always shown up to Court in his prior appearances with his parents and his attorney. The Court [feels] that there [is] no useful purpose in having the Child taken into custody and then transported to the Dade County Jail. Therefore, the Court decline[s] to have the child [sic] transported to the Dade County Jail. The only purpose that could be served by transporting this Child under this set of circumstances was to be punitive as there was no other useful purpose to be served by the Child's incarceration.

The appellate court quashed the judge's denial of the order to transfer the child to jail, holding the judge had no authority to halt the transfer; as a result the child was sent to adult jail.[251]

Conditions in Adult Jails and Prisons

Once incarcerated in adult jails and prisons, children are at risk of violence, sexual assault, and suicide.[252] They are separated from their families, lose access to educational and other services, and are exposed to adult criminals. One Department of Justice report explains the disruptive effect incarceration in adult facilities has on adolescent development:

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[249] "Detention Transfer and Release; Education; Adult Jails," Florida Statute § 985.265(5)(a).

[250] See *State v. G.G.*, 941 So. 2d 484 (Fla. Dist. Ct. App. 2006) (quashing juvenile judge's order denying transfer of defendant to the Dade County Jail). See also *State v. Lopez*, 748 So. 2d 384 (Fla. Dist. Ct. App. 2000) (same).

[251] See *State v. G.G.,* 941 So. 2d at 4.

[252] Michele Deitch et al., Special Project Report, Lyndon B. Johnson School of Public Affairs, The University of Texas at Austin, "From Time Out to Hard Time: Young Children in the Adult Criminal System," Spring 2008, http://www.campaignforyouthjustice.org/documents/NR_TimeOut.pdf (accessed March 21, 2014), pp. 55-56.

> Particularly vulnerable adolescents are … taking the next steps of their developmental journey in an environment that does not promote physical or emotional health and may harm their progress as well. Although an adolescent and an adult might receive what appears to be an equivalent sentence for a similar crime [e.g. 3 years for a felony assault], adolescents are paying for their crimes at a different point in their life journey; the impact of this experience may be more dramatic as a result.[253]

Adult jails and prisons have a different purpose and are subject to different standards than juvenile detention and residential centers, including in matters such as use of force.[254] For example, while the Florida Department of Juvenile Justice prohibits the use of pepper spray in its facilities, there is no such prohibition in adult facilities.[255] As one federal judge observed, "[m]oving juveniles from the DJJ facility to the central jail facility involved more than just a change in venues. Policy considerations and organizational cultures changed too."[256]

Although it was not a focus of our investigation, Human Rights Watch has found in our research that youth offenders serving time in adult facilities are often victims and witnesses of violence.[257] The perpetrators can be other inmates, guards, or both.

Kingston S., who was incarcerated in the Youthful Offender camp at Sumter Correctional Institution (an adult prison), described a "test of heart" where other inmates assaulted him, and if he cried during the beating, he had to give them his allotment from the canteen (where inmates are allowed to purchase snacks).[258] Chris D. also spoke of the violence he experienced at the hands of other inmates while at Sumter's Youthful Offender camp: "I've been flipped here. I got my ass beat. I had my eye socket popped. It's bad. Seen them stick broom sticks up people's asses."[259]

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[253] Mulvey and Schubert, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Transfer of Juveniles to Adult Court: Effects of a Broad Policy in One Court," December 2012, http://www.ojjdp.gov/pubs/232932.pdf (accessed March 21, 2014), p. 5.

[254] Report and Recommendation, *Hughes v. Judd*, No. 8:12-cv-568-T-23MAP, 2013 WL 1810806 (M.D. Fla. Apr. 30, 2013) No. (8:12-cv-568-T-23MAP) 2013 *available at* www.splcenter.org/sites/default/files/downloads/case/Report_and_Recommendation.pdf (accessed March 21, 2014), p. 3. (finding that the Polk County Jail houses juveniles but "applies FDLE's [Florida Department of Law Enforcement] force continuum, one that has been primarily designed for adults").

[255] Ibid. See also Transcript of Record Vol. XII at 11-15, 19, *Hughes*, 2013 WL 1810806.

[256] Report and Recommendation, *Hughes*, 2013 WL 1810806 *available at* www.splcenter.org/sites/default/files/downloads/case/Report_and_Recommendation.pdf (accessed March 21, 2014).

[257] Human Rights Watch, *Against All Odds: Prison Conditions for Youth Offenders Serving Life without Parole Sentences in the United States*, January 3, 2012, http://www.hrw.org/reports/2012/01/03/against-all-odds-0.

[258] Human Rights Watch interview with Kingston S., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[259] Human Rights Watch interview with Chris D., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

In March 2013, the magistrate judge overseeing a lawsuit against the Polk County Jail issued a "Report and Recommendation" that included the following description of one particularly horrific incident in which three boys attacked a fourth:

> [T]hree juvenile inmates were on lockdown in Foxtrot dorm, cell 8 (a blind cell dorm) when they beat a fourth cell mate, T.W., to the point of unconsciousness multiple times over the course of several hours. The inmates first wrapped a pillowcase around T.W.'s neck and strangled him until he passed out. Then they hogtied him with a sheet and punched him in the head. When T.W. eventually regained consciousness, his cell mates were whipping him with wet towels. The perpetrators, anticipating that a deputy would make rounds soon, untied the victim while a deputy walked past the cell (Id.). The deputy did not notice anything out of the ordinary and walked on. T.W. was then urinated on, sprayed in the face with a cleaning substance, and stripped of his clothes. The perpetrators wrapped a sheet around his neck, tied the other end around the bar on the window, and pulled the sheet tight until T.W. lost consciousness. This was repeated three times until a deputy finally noticed the commotion and broke up the assault.[260]

The magistrate judge presiding over the Polk County litigation found that "[f]ights occur at the jail with substantial frequency…. My review of the incident reports and protective action reports approximates 25 fights over a ten-month period." [261]

Many young people spoke about mistreatment and indifference from the corrections officers. Kyle F. alleged that the guards "beat us here. They treat us like dirt. They only have a little section for Y[outhful] O[ffender]s. This is an adult camp. They need a better program for us."[262] Ava L. observed that,

> [In adult jail] the [correction officers] treat you like you're a piece of crap. Especially when they're transferring you from one cell to another. I just can't even explain. It's horrible. In JDC [juvenile detention] it's not really like that. In JDC you're with other girls and it's just different. The [correction officers] at JDC are not as rough.[263]

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[260] Report and Recommendation at 25-26, *Hughes*, 2013 WL 1810806 *available at* www.splcenter.org/sites/default/files/downloads/case/Report_and_Recommendation.pdf (accessed March 21, 2014).

[261] Ibid., at 24-25.

[262] Human Rights Watch interview with Kyle F., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[263] Human Rights Watch interview with Ava L., Orlando, Florida, August 13, 2013.

Samuel H. said that, in county jail "the COs [corrections officers] put their hands on you, scream at you. These COs can do whatever they want to you. Juvenile COs were calmer. They talk to you, don't put their hands on you."[264] Terrence Q. felt that in county jail "officers are different. Some COs don't care. They just do stuff because they have a badge. In juvie they talk to you, try to guide you."[265]

Others said that "in jail, for any little thing they put you in [solitary] confinement"[266] and that they "were locked down most of the time."[267] In 2012, Human Rights Watch issued a report on the solitary confinement of youth. That report found that children held in solitary confinement were often allowed little exercise, time outside their cells other than for showers, or contact with loved ones. The effect on young people was harmful and in some cases devastating, resulting in suicide attempts.[268]

Florida's adult jails and prisons, moreover, are not designed to handle the educational, emotional, and social needs of teenagers.[269] One young person complained that "there's nothing to do [in adult jail]. It was boring. Only select people were allowed to go to school."[270] Another recalled that in juvenile detention "you were allowed outside a little bit. [In county jail] all I was allowed to do was go out into this concrete slab. I forgot what the grass looked like."[271]

Veronica Limia, the lawyer who had been directly charged in adult court as a teenager, believes that conditions in adult jail are much worse than in juvenile detention centers. "The detention center is built to be like a school," she pointed out. "Try finding a classroom in a jail. In juvenile facilities you have groups, you do learn a lot from other girls going through the same thing. Once you're in the county jail you're just doing time. That's what it amounts to. You're no longer a kid."[272] Samuel H., interviewed at the Orange County Jail, echoed this sentiment. "In [juvenile] detention you got counseling," he said. "One-on-one counseling, support groups. Here I haven't seen a counselor since I came in."[273]

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[264] Human Rights Watch interview with Samuel H., Orange County Jail, Orlando, Florida, August 23, 2013.

[265] Human Rights Watch interview with Terrence Q., Orange County Jail, Orlando, Florida, August 23, 2013.

[266] Human Rights Watch interview with Luke R., Sumter Correctional Institution, Sumter, Florida, May 28, 2013. See also Human Rights Watch, *Growing Up Locked Down: Youth in Solitary Confinement in Jails and Prisons Across the United States*, October 10, 2012, http://www.hrw.org/reports/2012/10/10/growing-locked-down.

[267] Human Rights Watch interview with Derrick T., Sumter Correctional Institution, Sumter, Florida, May 29, 2013.

[268] Human Rights Watch, *Growing Up Locked Down*, p. 122.

[269] Ibid.

[270] Human Rights Watch interview with Mark N., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[271] Human Rights Watch interview with Ava L., Orlando, Florida, August 14, 2013.

[272] Human Rights Watch interview with Veronica Limia, Boynton Beach, Florida, August 21, 2013.

[273] Human Rights Watch interview with Samuel H., Orange County Jail, Orlando, Florida, August 23, 2013.

Terrence Q. also recalled that juvenile detention offered counseling that adult jail did not. "They would send us to anger management and stuff [in juvenile]. They try to help you out. It was helpful. I used to be very disrespectful and that changed."[274]

Children who are placed in adult facilities are also separated from their families in a more extreme way than they would have been had they remained in the juvenile justice system. Because a large number of county jails provide for visitation only via video, many children who are charged in adult court and housed in adult jails are prohibited from having in-person visits with their families. Almost every young person Human Rights Watch spoke to described "video" visits in jail, where their family members would be in a separate physical location and they were only able to see them through a video monitor. Many children found this aspect of incarceration to be particularly upsetting. Calvin W. compared visitation in juvenile detention and adult jail: "In juvie they're right in front of you. In jail it was by phone. Just seeing them walk away and you can't even give them a kiss or a hug, that's bad. Not seeing your family is the worst thing."[275] Thomas G. stated that in juvenile detention he "was able to touch and hug my family, sit next to them, that kind of stuff. In county it was video so it wasn't even in the same facility. I felt more alone. I felt like I just hadn't gotten a hug in so long. It was crazy."[276] Ava L. said that "in county you have to visit through a phone, you're watching through a screen. It hurt 'cause I couldn't see my mom for so long." [277] Samuel H. said that visits with his mother in county jail where "you just have these little screens" were "stressful. You at least want to touch your mom and you can't even do that."[278]

Family separation is also an issue in prison. While prisons, unlike county jails, allow in-person visits, they are often located far from defendants' hometowns, making family visits impractical. Furthermore, anybody who wants to visit a prison inmate must submit an application to the prison where that inmate is housed.[279] Those applications can only be obtained from the inmate herself, and each inmate is only given 15 applications. According to the Florida Department of Corrections, potential visitors can be disqualified for "a criminal history, providing false or inaccurate information on a visiting application, mailing an incomplete application, etc."[280]

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[274] Human Rights Watch interview with Terrence Q., Orange County Jail, Orlando, Florida, August 23, 2013.

[275] Human Rights Watch interview with Calvin W., Miami, Florida, August 20, 2013.

[276] Human Rights Watch interview with Thomas G., Orlando, Florida, August 14, 2013.

[277] Human Rights Watch interview with Ava L., Orlando, Florida, August 14, 2013.

[278] Human Rights Watch interview with Samuel H., Orange County Jail, Orlando, Florida, August 23, 2013.

[279] Florida Department of Corrections, "Frequently Asked Questions Regarding Visitation," http://www.dc.state.fl.us/oth/inmates/visit.html (accessed December 5, 2013).

[280] Ibid.

Langston T. is serving a 3-year sentence in a prison that is approximately a 3.5 hour drive from his hometown of West Palm Beach, Florida. Nine months into his sentence, he had not had a single visit from his family. "It's a long trip," he said.[281] Kingston S. had been at Sumter for over eight months without a visitor.[282] Another young inmate had been in for slightly over six months and his family had yet to get approved for visitation by the prison.[283] Kyle F., serving a prison sentence of 3 years, 6 months, and 14 days, had his visitors' applications denied.[284] The difficulty that these children face in receiving visits is concerning both because it contravenes international standards that emphasize family unity and because it flies in the face of years of studies that show that regular visits from loved ones can help with rehabilitation and reduce recidivism.[285]

Almost every child sentenced to prison time in Florida is placed in one of several Youthful Offender facilities or "camps," which house people younger than 24. Even if a child is not sentenced as a Youthful Offender (see text box), the Department of Corrections can, and often does designate the child as a Youthful Offender for the purposes of placement.[286] But Youthful Offender facilities are hardly ideal conditions for children.

Children in Youthful Offender institutions receive more intensive programming, such as adult basic education and vocational programming, than adults do.[287] However, according to the young people we spoke with, even Youthful Offender prison facilities are harsh environments. Some young people interviewed for this report, such as Chris D. and Kingston S., quoted above, experienced and witnessed harrowing physical violence in Youthful Offender facilities.

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[281] Human Rights Watch interview with Langston T., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[282] Human Rights Watch interview with Kingston S., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[283] According to the Florida Department of Corrections, anybody who wants to visit an inmate must fill out an application, which the inmate must mail to them. That application normally takes 30 days to be processed. See Florida Department of Corrections, "Frequently Asked Questions Regarding Visitation," http://www.dc.state.fl.us/oth/inmates/visit.html.

[284] Human Rights Watch interview with Kyle F., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

[285] See Florida Department of Corrections, "Frequently Asked Questions Regarding Visitation," http://www.dc.state.fl.us/oth/inmates/visit.html; *Brandon v. State*, 938 P.2d 1029 (Alaska 1997) (citing the ABA standards for the proposition that "Virtually every statement on visitation by prison officials from the ACA Manual to the State Association of Correction Administrators (1972), every national study … and every major textbook on corrections stresses the critical nature of visitation both in terms of the reduction of tension inside the prison and the facilitation of the ultimate rehabilitation of the prisoner by strengthening his ties with the 'free world.'"); see also Minnesota Department of Corrections, "The Effects of Prison Visitation on Offender Recidivism," November 2011, http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf (accessed March 21, 2014) (finding that offenders who were visited in prison were significantly less likely to recidivate).

[286] Human Rights Watch telephone interview with Vickie Newsome, Assistant Bureau Chief, Department of Corrections, Tallahassee, Florida, November 8, 2013. The Youthful Offender designation determines the facility in which a child will serve her sentence. It has no bearing on a child's adult felony record.

[287] Ibid.

Furthermore, the mere fact that children in Youthful Offender camps receive more programming than adults do does not mean that such programming is sufficient to meet the needs of adolescents younger than 18. As one Department of Justice study found,

> Although [Florida Department of Corrections] administrators attempt to distinguish between very young offenders and young adults in housing assignments, no provisions are made to provide developmentally appropriate programming specific to the needs of 14-to-17-year-olds. Given the unique issues and needs of adolescents, the Florida program may compromise its effectiveness by targeting too broad an age group.[288]

Langston T. summarized his views on incarceration by saying "Adult prison? It ain't a place to be. It's just breathing and eating. You just a number in here."[289]

[288] Bureau of Justice Assistance, Department of Justice, "Juveniles in Adult Prisons and Jails: A National Assessment," October 2000, https://www.ncjrs.gov/pdffiles1/bja/182503.pdf (accessed March 21, 2014), p. 55.

[289] Human Rights Watch interview with Langston T., Sumter Correctional Institution, Sumter, Florida, May 28, 2013.

IV. Relevant Legal Standards

> In every other area of Florida Law, children are given an extra measure of scrutiny and protection…. [Y]et when a child is filed against in the adult criminal system, where the trauma and risks are extraordinary, no extra scrutiny or protection is afforded. This is especially troubling in light of the fact that at this stage the child is merely accused and still presumed innocent.[290]
>
> —The Honorable Judge Ralph Stoddard, 13th Judicial Circuit

> Don't brand a child with an adult felony record because it puts a burden [on him] that might not be overcome. Don't put him in an adult criminal environment. Put [him] in an environment geared to addressing the problems of young people.[291]
>
> —Harry Shorstein, former Florida 4th Circuit elected state attorney

Florida Law

Florida courts have repeatedly held that juveniles have no absolute right to be tried in juvenile court, and that transfer statutes are constitutional, most recently in the case *Hernandez v. State*.[292] While *Hernandez* cited extensively to the Supreme Court's *Roper, Miller,* and *Graham* decisions in vacating the sentence at issue, it did not apply any of the reasoning in those cases to its discussion of direct file and reaffirmed the dispositive status of an earlier case, *State v. Cain*.

State v. Cain interpreted a 1978 statute in Florida, which limited direct file in adult court to 16- and 17-year-olds. Under that statute, if a teen did not have two or more prior convictions, at least one of which was for a felony, she could be transferred back to the juvenile system.[293] In upholding that version of direct file, the *Cain* court reasoned that

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[290] Email from Judge Ralph Stoddard to Human Rights Watch, September 6, 2013.

[291] Human Rights Watch telephone interview with Harry Shorestein, former elected State Attorney, Jacksonville, Florida, June 16, 2013.

[292] See *Hernandez v. State*, 117 So. 3d 778, 785 (Fla. Dist. Ct. App. 2013); *Reyna v. State*, 866 So. 2d 214, 215 (Fla. Dist. Ct. App. 2004) ("Although the defendant correctly states that the direct file statute has been amended over the years, we conclude that *State v. Cain* remains dispositive and mandates rejection of the defendant's claim" (citations omitted)); *Brazill v. State*, 845 So. 2d 282, 287-89 (Fla. Dist. Ct. App. 2003) (defendant "was afforded the same procedural rights as anyone else charged with first degree murder by indictment. Due process does not require anything more because of his status as a child."); *Grier v. State*, 605 So. 2d 503, 504 (Fla. Dist. Ct. App. 1992) (state had "absolute discretion" to try defendant as an adult); *Jones v. State*, 443 So. 2d 434, 435 (Fla. Dist. Ct. App. 1984) ("the prosecutor has total and absolute discretion as to whom to charge and prosecute on what charge, be the accused an adult or not.").

[293] *State v. Cain*, 381 So. 2d 1361, 1362 (Fla. 1980).

"[t]here was no common law right to be specially treated as a juvenile delinquent instead of a criminal offender. Nor is there any inherent or constitutional right to preferred treatment as a juvenile delinquent."[294]

US Federal Law

While the US Supreme Court has never held the transfer of children to adult court to be unconstitutional,[295] the court has long recognized that teens are not adults, and that their limited life experience, immaturity, and the fact that their brains have not fully developed make them less culpable for their crimes and more amenable to rehabilitation than adults. Over the past decade, the United States Supreme Court has affirmed in four different decisions regarding the death penalty,[296] interrogations,[297] and life without parole[298] that people under age 18 are still developing and are inherently less culpable than adults.

International Law

The Child's Right to Special Treatment

International human rights law recognizes that people accused of crimes are entitled to due process, and that children need special protection. Being charged and even convicted of a crime, no matter how serious, does not extinguish a child's claim to just treatment at the hands of government. Children are entitled to all of the due process protections an adult would get and to additional accommodation because of their status as children.

The International Covenant on Civil and Political Rights (ICCPR), which the United States has ratified, specifically acknowledges the need for special treatment of children in the

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[294] *Id.* at 1363 (citations omitted).

[295] The Supreme Court has not squarely addressed the transfer of children to adult court since deciding *Kent v. United States*, 383 U.S. 541 (1966). The *Kent* Court reversed a juvenile court judge's summary transfer of a 16-year-old to the adult system. Given the "critically important" rights at issue, the court held, a child was entitled to a waiver hearing in which the judge considered a number of factors, including "the likelihood of reasonable rehabilitation of the juvenile … by the use of procedures, services and facilities currently available to the Juvenile Court."

[296] *Roper v. Simmons*, 543 U.S. 551 (2005) ("The differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability.").

[297] *J.D.B. v. North Carolina*, 131 S. Ct. 2394, 2397 (2011) ("We have observed that children 'generally are less mature and responsible than adults;' that they 'often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them;' that they 'are more vulnerable or susceptible to … outside pressures' than adults; and so on.… we have observed that events that 'would leave a man cold and unimpressed can overawe and overwhelm a lad in his early teens.' … Describing no one child in particular, these observations restate what 'any parent knows'—indeed, what any person knows—about children generally.").

[298] *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012) ("Because juveniles have diminished culpability and greater prospects for reform … 'they are less deserving of the most severe punishments.'"); *Graham v. Florida*, 560 U.S. 48, 56 (2012) (the "differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive a sentence of life without parole for a nonhomicide crime 'despite insufficient culpability.'").

criminal justice system and emphasizes the importance of their rehabilitation.[299] When children are accused of crimes, the ICCPR requires that "the *procedure* shall be such as will take account of their age and the desirability of promoting their rehabilitation" (emphasis added).[300] In other words, children's special status is to be protected throughout the criminal process, not just at the sentencing stage. In the words of a prominent jurist, while article 14 of the ICCPR "does not expressly require States parties to establish *juvenile* courts … they must ensure that criminal trials against juveniles are conducted differently than those against adults, this being normally accomplished by juvenile courts."[301]

When the United States ratified the ICCPR, it attached a limiting reservation maintaining "the right, in exceptional circumstances, to treat juveniles as adults, notwithstanding paragraphs 2(b) and 3 of article 10 and paragraph 4 of article 14."[302] The history of this reservation indicates that it was intended to permit—on an exceptional basis—the trial of children as adults and the incarceration of children and adults in the same prison facilities. The United States, as a co-sponsor of article 14, was keenly aware of the breadth and scope of its language. There is nothing in its reservation to suggest that the United States sought to reserve the right to try children as adults for practically any crime at all and at the whim of a prosecutor, or to disregard the special needs and vulnerabilities of children.[303] To the extent the reservation is interpreted broadly, it risks creating a loophole so broad as to allow for violation of the basic human rights of children in conflict with the law. The United States should withdraw the reservation and in the meantime should refrain from using it to justify actions that otherwise violate the ICCPR.

Although the US was one of the 78 members of the UN General Assembly that voted unanimously to adopt the Convention on the Rights of the Child (CRC), it is also one of only two countries (the other being Somalia) that has not ratified it. Despite the fact that the US has not yet ratified the CRC, the Supreme Court has cited it favorably in its decisions

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[299] The Human Rights Committee has interpreted the International Covenant on Civil and Political Rights' (ICCPR) provisions on child offenders to apply to all persons under the age of eighteen. UN Human Rights Committee, General Comment No. 21, Humane Treatment of Persons Deprived of Their Liberty (Article 10), (Forty-fourth Session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/Rev.7 (2004), p. 155, para. 13.

[300] ICCPR, adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, ratified by the United States on June 8, 1992, art. 14(4) (emphasis added).

[301] Manfred Nowak, U.N. Covenant on Civil and Political Rights: CCPR Commentary (Kehl: N.P. Engel, 1993), p. 347.

[302] ICCPR, United Stated of America: Reservations, para. 5.

[303] See Lonn Lanza-Kaduce, Charles E. Frazier, and Donna M. Bishop, "Juvenile Transfers in Florida: The Worst of the Worst?," *University of Florida Journal of Law & Public Policy*, vol. 10 (1999) (comparing Florida juveniles prosecuted in delinquency proceedings with juveniles charged in adult court and finding that "many transfer cases were not particularly serious").

interpreting the "cruel and unusual" clause of the Eighth Amendment as applied to juveniles.[304] The CRC states that "in all actions concerning children … the best interests of the child shall be a primary consideration."[305] Furthermore, article 40 of the CRC states that every child accused of committing a crime shall "be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."[306] The Committee on the Rights of the Child, in a General Comment, has stated that the principle behind article 40 "requires that all professionals involved in the administration of juvenile justice be knowledgeable about child development, the dynamic and continuing growth of children, what is appropriate to their well-being, and the pervasive forms of violence against children."[307]

The US is also a member of the Organization of American States, and as such, is legally bound to protect and prevent violations of the rights contained in the American Declaration on the Rights and Duties of Man ("American Declaration") and the American Convention on Human Rights, including the right of children to special protection, care and aid, as expressed in article VII of the American Declaration and "the right to the measures of protection required by his condition as a minor" as expressed in article 19 of the American Convention.[308]

The United Nations also promulgated a series of rules, which, while not binding, reflect international consensus and are considered authoritative. Most relevant to the issue of prosecutions of children in adult court are: the UN Minimum Standard Rules for the Administration of Juvenile Justice (The Beijing Rules), the UN Rules for the Protection of Juveniles Deprived of their Liberty, and the UN Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines). These rules provide further guidance on international standards for the treatment of children accused and convicted of crimes.

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[304] See *Roper*, 543 U.S. at 575 (noting that the Court had long turned to international authorities as "instructive.")

[305] Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, art. 3(1). The United States signed the CRC in 1995 but has not ratified.

[306] CRC, art. 40(1).

[307] UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), para. 13.

[308] American Declaration of the Rights and Duties of Man, adopted April 1948, O.A.S. Res. XXX, OAS/Ser.L/V/I.4 Rev. 9 (2003), art. VII; American Convention on Human Rights ("Pact of San José, Costa Rica"), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), art. 19.

Charging Decisions

International law does not bar prosecutorial discretion from playing a role in the charging process. Indeed, the Beijing Rules specifically contemplate the use of prosecutorial discretion in juvenile proceedings, but they state that "[e]fforts shall be made … to ensure sufficient accountability at all stages and levels in the exercise of any such discretion."[309] The UN has spoken on the proper use of discretion, stating that, in deciding whether to prosecute a juvenile in criminal court, a prosecutor should take the child's individual characteristics into account.[310] Similarly, the Inter-American Court of Human Rights has stated that "those who exercise discretion should be specially qualified or trained in the human rights of the child and child psychology to avoid any abuse of the discretionary authority and to ensure that the measures ordered in any case are appropriate and proportionate."[311]

Florida's direct file statute violates all of these international standards by making prosecutors' decisions to charge children directly in adult court unreviewable and final, and by failing to require prosecutors to consider a child's special status prior to making the direct file determination.

Court Processes

By allowing prosecutors to charge children directly in adult court where they undergo the exact same process as adults, Florida is failing to provide children with due process protections that "take account of their age and the desirability of promoting their rehabilitation," as required by the ICCPR.[312] Rule 14.2 of the Beijing Rules states that criminal proceedings against juveniles "shall be conducive to the best interests of the

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[309] United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), adopted November 29, 1985, G.A. Res. 40/33, annex, 40 U.N. GAOR Supp. (No. 53) at 207, U.N. Doc. A/40/53 (1985), rule 6.2. The commentary to that rule adds: "The formulation of specific guidelines on the exercise of discretion and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context." See also rule 7.1 (the right to appeal to a higher authority shall be guaranteed at all stages of proceedings).

[310] "In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary." Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 to September 7, 1990, Guideline 19.

[311] Inter-American Court of Human Rights, "Juvenile Reeducation Institute" Case, Judgment of September 2, 2004, Inter-Am.Ct.H.R., (Ser. C), No. 112 (2004), para. 211. In this case, the IACrtHR determined that Paraguay had violated the American Convention on Human Rights by failing to establish "a specialized court jurisdiction for children in conflict with the law or a proceeding other than the one followed in the case of adults and that adequately provided for their special status." Ibid., para. 213.

[312] ICCPR, art. 14(4).

juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely."[313]

The Committee on the Rights of the Child has explained that an accused child must "be able to effectively participate in the trial, and therefore needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony, and measure(s) to be imposed."[314] The Committee has stated that "modified courtroom procedures and practices" may be required in order to ensure that a child receives a fair trial.[315] The CRC states that a child has the right to have his or her case heard "in the presence of … his or her parents or legal guardians" unless there is a determination that such familial involvement is not in the best interests of the child.[316] The Committee on the Rights of the Child has read this requirement to mean that "[p]arents or legal guardians should also be present at the proceedings because they can provide general psychological and emotional assistance to the child."[317]

The youth interviewed for this report recounted attending criminal court proceedings that they did not understand, and feeling alone without their parents at their side. Many of them were unable to explain any aspect of the process that resulted in their convictions. Unlike in juvenile court, there are no special steps taken to ensure that proceedings are conducted using vocabulary that children can understand. Criminal court proceedings do not encourage familial support. The fact that children are subjected to proceedings that are incomprehensible to them is at odds with notions of fairness and due process, but it also offends notions of rehabilitation. It is difficult to see how children can be expected to learn anything from a procedure that they cannot understand.

Incarceration

While Florida law requires jails and prisons to house juveniles separately from adults, the fact remains that adult jails and prisons are not designed or operated in ways that take the special needs of juveniles into account. By housing young defendants in adult jails and prisons both pre- and post-conviction, Florida violates international law.

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[313] Beijing Rules, rule 14.2.

[314] UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), para. 46.

[315] Ibid.

[316] CRC, art. 40.2(b)(iii).

[317] UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), para. 53.

Article 10(2) of the ICCPR states that juveniles held pre-trial must be "separated from adults and brought as speedily as possible for adjudication."[318] Further, the Inter-American Court of Human Rights has stated that

> preventive detention is the most severe measure that can be applied regarding someone accused of a crime. Therefore, it should be reserved for the most exceptional cases, given the limits imposed by the right to presumption of innocence and the principles of necessity and proportionality that are essential in a democratic society…. When, however, preventive detention is deemed necessary in the case of a child, it must be for the shortest period possible.[319]

The young people who spoke to Human Rights Watch for this report uniformly spoke of the physical transfer from juvenile detention to adult jail as being traumatic and disruptive. To the extent that Florida continues to subject children to the jurisdiction of the adult criminal system, it should ensure that those children continue to be treated with consideration for their needs by keeping them in the custody of the Department of Juvenile Justice pending disposition.

A child's right to treatment consistent with her age and the desirability of her rehabilitation is not extinguished by conviction. Article 10(3) of the ICCPR requires the separation of convicted children from adults and the provision of "treatment appropriate to their age and legal status."[320] As in the pretrial context, housing children in adult prisons post-conviction violates these standards. While Florida has made an attempt to address the needs of youth through its "Youthful Offender" camps, the fact remains that those camps are still prisons that are oriented primarily towards punishment rather than rehabilitation.

Incarceration in adult prison also impinges upon the right to family unity and the right of the child to maintain family ties, due to the far-reaching restrictions on visitation in jails and prisons. Article 17 of the ICCPR states that no one shall be "subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence."[321] Article 23 provides that "[t]he family is the natural and fundamental group unit of society and is

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[318] ICCPR, art. 10(2).

[319] Inter-American Court of Human Rights, "Juvenile Reeducation Institute" Case, Judgment of September 2, 2004, Inter-Am.Ct.H.R., (Ser. C), No. 112 (2004), paras. 228 and 231.

[320] ICCPR, art. 10(3).

[321] Ibid., art. 17.

entitled to protection by society and the state."[322] The Convention on the Rights of the Child states "every child deprived of liberty … shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances."[323]

The Committee on the Rights of the Child has elaborated that "[i]n order to facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family."[324] For almost all of the people interviewed for this report, family contacts were constrained by the requirement in many jails that visits occur over video, and by the onerous visitor approvals process and long distances families must travel to visit their loved ones in prison.

Other Rights

Florida disenfranchises convicted felons for life.[325] This practice violates article 25 of the ICCPR, which states that every citizen "shall have the right and opportunity … (b) To vote and to be elected[.]"[326] While Article 25 does not completely disallow disenfranchisement pursuant to a criminal conviction, the UN Human Rights Committee has stated that "[i]f conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence."[327] Lifetime disenfranchisement for any felony, no matter how minor, is clearly arbitrary and disproportionate. Disenfranchisement imposed due to actions committed when a person was a mere adolescent is even more egregious.

Of the more than 1 million people barred from voting in Florida due to the state's felony disenfranchisement law, nearly 1 in 3 are African American men.[328] Florida's felony disenfranchisement law is thus also inconsistent with the principles of non-discrimination contained in the ICCPR and in the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Article 25 of the ICCPR prohibits racial discrimination with regard to voting rights. Article 5 of ICERD requires states parties to guarantee, without

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[322] Ibid., art. 23.

[323] CRC, art. 37(c).

[324] UN Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), para. 87.

[325] See Human Rights Watch, *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, October 1998, http://www.hrw.org/legacy/reports/reports98/vote/.

[326] ICCPR, art. 25.

[327] UN Human Rights Committee, General Comment No. 25, Participation in Public Affairs and the Right to Vote (Article 25), (Fifty-seventh session, 1996), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/Rev.7 (2004), p. 169, para. 14.

[328] James Ridgeway, "The Mother of All Vote-Suppression Tactics?" *Mother Jones*, July 5 2010, http://www.motherjones.com/politics/2012/07/felon-disenfranchisement-florida-vote-obama (accessed March 24, 2014).

distinction as to race, color, or national or ethnic origin, "[p]olitical rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage…"[329] ICERD does require discriminatory intent for a finding of discrimination. Rather, it defines racial discrimination as any law or practice which has the "the purpose or *effect*" of restricting rights on the basis of race.[330]

The right to privacy is also implicated by Florida's direct file law. The Committee on the Rights of the Child has stated that "[n]o information shall be published that may lead to the identification of a child offender because of its effect of stigmatization, and possible impact on his/her ability to have access to education, work, housing or to be safe."[331] Rule 8 of the Beijing Rules further states that "[t]he juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labeling."[332] These privacy concerns are well-founded, as Human Rights Watch learned in researching this report. The stigma of a felony conviction is real and long-lasting. Young defendants who had completed their sentences expressed frustration at how difficult it was to put their past mistakes behind them, and dismay that their adolescent actions would brand them for life.

[329] International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, ratified by the United States November 20, 1994, art. 5(c).

[330] ICERD, art. 1(1). Emphasis added.

[331] Committee on the Rights of the Child, General Comment No. 10, Children's Rights in Juvenile Justice, CRC/C/GC/10 (2007), para. 64.

[332] Beijing Rules, rule 8.1. The Official Commentary to the Beijing Rules explains the importance of rule 8.1 by stating that "[y]oung persons are particularly susceptible to stigmatization. Criminological research into labelling processes has provided evidence of the detrimental effects (of different kinds) resulting from the permanent identification of young persons as 'delinquent' or 'criminal.'"

V. Conclusion

The criminal punishment of any person is intended to further the policy goals of retribution, rehabilitation, incapacitation, and deterrence—all of which are meant to work together to protect public safety. When Florida's lawmakers developed the direct file statute, they undoubtedly had these goals in mind. Unfortunately, direct file in Florida fails to fulfill their intentions.

First, Florida's direct file statute does a poor job of ensuring retribution for the offenses committed by children, including teens. Teens prosecuted directly in adult court in Florida have committed offenses, some of them serious, causing varying degrees of harm to persons and property. Ensuring justice for the victims of their crimes is an essential responsibility of government, and retribution necessarily plays a part in that process. As the Supreme Court has stated, however, "The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender."[333] Children can commit the same acts as adults, but by virtue of their immaturity, they cannot be as blameworthy or as culpable. They do not have adults' developed abilities to think, to weigh consequences, to make sound decisions, to control their impulses, and to resist group pressures; their brains are anatomically different, still evolving into the brains of adults. These characteristics of children are what inspired the creation of juvenile courts in the first place.

As the Supreme Court stated in *Roper*, the differences between youth and adults "render suspect any conclusion that a juvenile falls among the worst offenders."[334] Thus, the urge for vengeance must be tempered by a careful attention to the unique qualities of youth offenders. By giving prosecutors broad discretion to charge Florida's youth directly in adult court and subject them to a system that pays scant attention to their diminished culpability, Florida's direct file system fails to achieve its retributive aims.

Second, Florida's decision to allow prosecutors to directly charge children in adult court fails to effectively serve the rehabilitative purpose of punishment. As this report has shown, rehabilitation can be stymied by the special hardships inherent in receiving an adult felony conviction, and in serving time in prison or on adult probation. Youth are denied the educational, vocational, and other programs to develop their minds and skills that juvenile justice systems were created to provide. After conviction, children are

333 *Tison v. Arizona*, 481 U.S. 137, 149 (1987).

334 *Roper,* 543 U.S. at 551.

plagued by an adult felony record for the rest of their lives; they are denied the right to vote in Florida and their job opportunities are severely impaired. Direct file not only undermines rehabilitative goals, it negates them.

Third, deterrence of future crime is also ill-served by direct file statutes. Supporters of adult punishment for children claim that children who pause to consider the consequences before committing a crime will be deterred best if they face charges in adult court and adult prison time. But given what all parents know and science tells us about adolescents' limited abilities to think rationally or beyond the short term, it is questionable whether the threat of adult punishment will deter them from crime.[335] Deterrence is also unlikely given that adolescents have difficulties grasping the true significance of their adult felony convictions and sentences. Not surprisingly, as summarized above, recent studies suggest as much: transfers to adult court are linked to increases, not decreases, in recidivism.

Fourth, while the purposes of incapacitation are undeniably served by adult prison, the juvenile justice system also provides for incapacitation. Indeed, because the juvenile system can combine incapacitation with rehabilitation, it is able to serve the overall goal of protecting public safety as well as or better than the adult justice system in juvenile cases.

Florida's direct file law and practice fail to effectively serve the purposes of punishment, violate the international human rights obligations of the United States, which are binding on the state of Florida, and are unnecessary to meet public safety goals. Children should be held accountable for their crimes. This is an important and fundamental human rights obligation of government. But ensuring that children are treated in a manner that takes into account their culpability, their particular needs, and their unique capacity to grow and change, is also a cornerstone of international human rights law. Both can be achieved by the state of Florida if it ends its unduly harsh and unnecessary system of directly charging children in adult courts.

[335] For a summary of studies concluding that transfer does not effectively serve the purposes of specific or general deterrence, see Christopher Slobogin, " Treating Juveniles Like Juveniles: Getting Rid of Transfer and Expanded Adult Court Jurisdiction," *Texas Tech Law Review*, vol. 46 (November 6, 2013), pp. 24-31.

Acknowledgments

Alba Morales, researcher in the US Program of Human Rights Watch, researched and wrote this report. Brian Root, quantitative analyst at Human Rights Watch, helped analyze and develop graphic representations of the sentencing data presented in the report. Alison Parker, director of the US Program of Human Rights Watch, and Elizabeth Calvin, Children Rights Division senior advocate, edited the report. General Counsel Dinah Pokempner and Deputy Program Director Joseph Saunders provided legal and program review. Layout and production were coordinated by Samantha Reiser and Grace Choi. Fitzroy Hepkins, administrative manager, provided production assistance. Valuable factual and legal research assistance was provided by Erin Lovall and Margaret Weirich, both Human Rights Watch interns.

We are deeply grateful to individuals who, as children, were charged as adults in Florida and shared their experiences for this report. We would also like to thank the families of those individuals, in particular the parents and grandparents who gave us valuable insights on the effect that seeing their loved ones prosecuted in the adult system at a young age had on them as caregivers. We would also like to acknowledge the victims who were harmed by the crimes committed by the young people featured in this report.

We thank Mark Greenwald and his staff in the Research and Planning division of the Florida Department of Juvenile Justice for their enormous patience with our many data requests.

We are grateful to each of the legal practitioners, scholars, and community advocates who spoke to us about their experiences with Florida's juvenile and criminal justice systems. Florida's public defenders, particularly those in the 4th, 9th, 10th, 11th, 13th, and 17th Judicial Circuits, gave freely of their time and expertise, and answered countless questions about Florida criminal procedure. The Southern Poverty Law Center provided much-needed insight on the often extreme conditions faced by youth incarcerated in adult facilities. Paolo Annino provided early consultation regarding Florida's treatment of young people accused of crimes, as did staff at the Campaign for Youth Justice. The staff at Barry University's Juvenile Justice Center gave us ongoing guidance and advice. We are grateful to the state attorneys and judges who spoke candidly about their experiences prosecuting and presiding over cases involving young defendants. We would also like to thank those jail and prison personnel who allowed us to conduct interviews at their facilities. We are thankful to the probation officers who spoke to us about their experiences supervising court-involved youth.

Susan Marcus, a criminal defense attorney in private practice, and Lily Shapiro, a legal writing instructor at New York University School of Law, provided helpful comments on a draft of this report.

Human Rights Watch is, of course, solely responsible for the conclusions we have drawn from these interviews and other research.

Appendix A: Human Rights Watch Letter and Survey

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300 ; 917-591-3452

HUMAN RIGHTS WATCH

HRW.org

April 15, 2013

[Inmate Name]
[Inmate Number]
[Address]

LEGAL MAIL-PRIVILEGED AND CONFIDENTIAL

Dear [Insert Name]:

My name is Alba Morales and I am a researcher at Human Rights Watch, an international human rights organization dedicated to protecting the rights of people around the world. I am writing to you because, according to the Florida Department of Corrections website, you are younger than 18 and doing time in an adult prison. I am currently doing research on how juveniles are prosecuted in adult court in Florida. My hope is that we can use these cases to write a report and convince the Florida legislature to reform the laws that prosecutors use to prosecute juveniles in adult court. Since it seems you were below the age of 18 at the time of your offense and are serving time in adult prison, I may be interested in talking to you about your experience. **Human Rights Watch does not litigate cases, so I would not be able to help you with your case.** Instead, I am asking you to help us as we try to make the system better for other young people. If you are willing to share your story with me, I would also be happy to change your name and any identifying information if you prefer.

Right now, I'm trying to identify people who were prosecuted in adult court when they were juveniles. I'd be grateful if you could answer the questions on the next page. Please feel free to add any other thoughts or comments. I've enclosed a stamped envelope addressed to Human Rights Watch for your reply. The address on the envelope (in case it gets lost) is:

Alba Morales
Florida Direct File Project
Human Rights Watch
350 5th Ave., 34th Floor,
New York, NY 10118

Also, if you'd be willing to talk to me, please add me to your call list.

It is up to you whether you respond to this letter and to all or some of the questions on the following page. Thank you so much for taking the time to read this letter. I appreciate your help, since I could not write this report without the personal stories of people like you.

Sincerely,

Alba Morales, Researcher
(212)216-1239

Questions

1. How old were you when you were arrested for the case you're doing time for?
2. What were the charges against you?
3. What was it like when you were first arrested by the police?
4. What was it like when you were first brought into custody?
5. When did you first see an attorney? What was that like?
6. If you know, was the case ever in juvenile court?
7. If you know, how did your case end up in adult court (for example, prosecutorial direct file or judicial waiver)?
8. Did you plead guilty or go to trial?
9. How did you decide what you wanted to do (either plead or go to trial)?
10. If you pled, what was it like talking to the prosecutor and judge?
11. If you went to trial, what was your trial like?
12. How old were you when you were convicted?
13. Did you have any prior arrests before you were picked up on the case you're doing time for? What were those arrests for? Were you convicted? What sentence did you get?
14. Were you ever adjudicated delinquent? For what offense(s)? What sentence(s) did you get?
15. If we visit the prison where you are, would you be willing to meet with us in person?
16. If you're willing to share them with us, what are the names and contact information for family members or attorneys we could get in touch with to learn more about your case?

Should you like, please use the below space to answer the questions. Please use more paper as needed.

350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212-290-4700
Fax: 212-736-1300 ; 917-591-3452

HUMAN RIGHTS WATCH

HRW.org

June 17, 2013

[Probationer Name]
[Probationer Address]

LEGAL MAIL-PRIVILEGED AND CONFIDENTIAL

Dear [Insert Name]:

My name is Alba Morales and I am a researcher at Human Rights Watch (www.hrw.org), an international human rights organization dedicated to protecting the rights of people around the world. I apologize if this is your second time receiving this letter, or if you previously received this letter, but it was addressed to a different individual. This was due to a clerical error, so we are resending this letter to make sure that it reaches you.

I am writing to you because, according to the Florida Department of Corrections website, you are younger than 18 and have been placed on adult probation. I am currently doing research on how juveniles are prosecuted in adult court in Florida. My hope is that we can use these cases to write a report and convince the Florida legislature to reform the laws that prosecutors use to prosecute juveniles in adult court. Since it seems you were below the age of 18 at the time of your offense, I may be interested in talking to you about your experience. **Human Rights Watch does not litigate cases, so I would not be able to help you with your case.** Instead, I am asking you to help us as we try to make the system better for other young people. If you are willing to share your story with me, I would also be happy to change your name and any identifying information if you prefer.

Right now, I'm trying to identify people who were prosecuted in adult court when they were juveniles. I'd also be grateful if you could answer the questions on the next page. Please feel free to add any other thoughts or comments, and mail it to the following address:

Alba Morales
Direct File Project
Human Rights Watch
350 5th Ave., 33rd Floor,
New York, NY 10118

You may also reply via email. My email address is morale@hrw.org.

It is up to you whether you respond to this letter and to all or some of the questions on the following page. Thank you so much for taking the time to read this letter. I appreciate your help, since I could not write this report without the personal stories of people like you.

Sincerely,

Alba Morales, Researcher
(212)216-1239

Name:
Phone #:
Email:
Address:

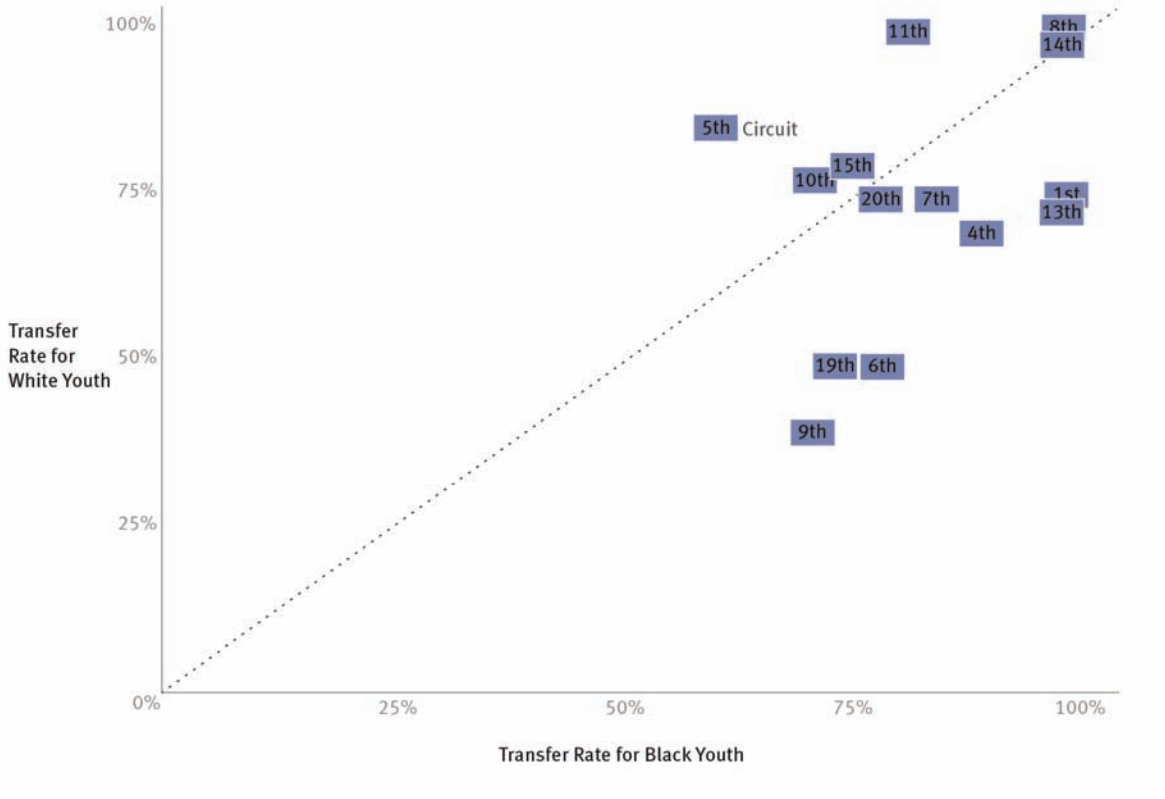
Questions

1. How old were you when you were arrested for the case you're doing time for?
2. What were the charges against you?
3. What was it like when you were first arrested by the police?
4. What was it like when you were first brought into custody?
5. When did you first see an attorney? What was that like?
6. If you know, was the case ever in juvenile court?
7. If you know, how did your case end up in adult court (for example, prosecutorial direct file or judicial waiver)?
8. Did you plead guilty or go to trial?
9. How did you decide what you wanted to do (either plead or go to trial)?
10. If you pled, what was it like talking to the prosecutor and judge?
11. If you went to trial, what was your trial like?
12. How old were you when you were convicted?
13. Did you have any prior arrests before you were picked up on the case you're on probation for? What were those arrests for? Were you convicted? What sentence did you get?
14. Were you ever adjudicated delinquent? For what offense(s)? What sentence(s) did you get?
15. Would you be willing to meet with us if we travel to your town/city?
16. If you're willing to share them with us, what are the names and contact information for family members or attorneys we could get in touch with to learn more about your case?

Appendix B: Transfer Rates for Murder and Property Crimes for Black and White Youth

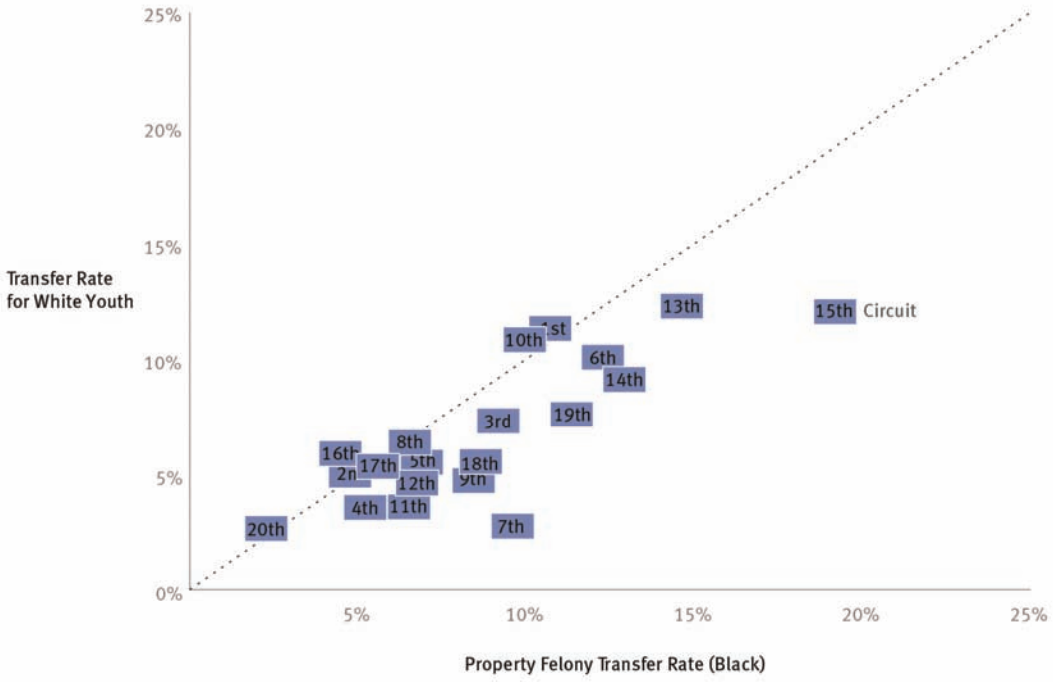
APPENDIX FIGURE 1:

JUDICIAL CIRCUITS BY TRANSFER RATES FOR BLACK AND WHITE YOUTH CHARGED WITH MURDER



APPENDIX FIGURE 2:

JUDICIAL CIRCUITS BY TRANSFER RATES FOR BLACK AND WHITE YOUTH CHARGED WITH PROPERTY FELONY OFFENSES



Appendix C: 2011 Direct File Policies of the 4th Judicial Circuit

OFFICE OF THE STATE ATTORNEY
FOURTH JUDICIAL CIRCUIT OF FLORIDA
WWW.SAO4TH.COM

220 EAST BAY STREET
JACKSONVILLE, FLORIDA 32202-3429
TEL: (904) 630-2400
FAX: (904) 630-1848

ANGELA B. COREY
STATE ATTORNEY

OFFICE OF THE STATE ATTORNEY, FOURTH JUDICIAL CIRCUIT

2011 DIRECT FILE POLICIES

Pursuant to Florida Statute 985.557(4), the Office of the State Attorney, Fourth Judicial Circuit, hereby submits the following written guidelines for filing an adult information on a juvenile.

I. MANDATORY DIRECT FILE OR MOTION TO CERTIFY PURSUANT TO FLORIDA STATUTES §985.556 AND §985.557

A. Pursuant to §985.556(3)(a), the State shall move to certify a juvenile who is 14 years or older and

1. The juvenile has been adjudicated delinquent for the commission or an attempt to commit or conspiracy to commit murder, sexual battery, carjacking, armed robbery, strong-armed, robbery, home invasion robbery, aggravated battery, aggravated assault, or burglary with an assault or battery and

2. The juvenile is currently charged with a second or subsequent violent crime against a person.

B. Pursuant to §985.556(3)(b), the State shall move to certify a juvenile 14 years old or older and

1. The juvenile is currently charged with a fourth or subsequent felony and

2. The juvenile has been adjudicated delinquent or had adjudication withheld for committing or attempting or conspiring to commit three felony offenses and

3. One or more of said felony offenses involved the use or possession of a firearm or violence against a person.

C. Pursuant to §985.557(2)(a), the State shall direct file a juvenile who is 16 or 17 years old and

1. The juvenile has been adjudicated delinquent for the commission or an attempt to commit or conspiracy to commit murder, sexual battery, carjacking, armed robbery, strong-armed robbery, home invasion robbery, aggravated battery, aggravated assault and

2. The juvenile is currently charged with a second or subsequent violent crime against a person.

D. Pursuant to §985.557(2)(b), the State shall direct file a juvenile who is 16 or 17 years old and

1. The juvenile is charged with a forcible felony and

2. The juvenile has been adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart.

E. Pursuant to §985.557(2)(c), the State shall direct file any juvenile that is charged with an offense involving theft of a motor vehicle, including carjacking, when while in possession of the vehicle the juvenile caused serious bodily injury to or death of a person who was not involved in the offense.

F. Pursuant to §985.557(2)(d), the State shall direct file a juvenile who is 16 or 17 years old and

1. The juvenile is charged with committing or attempting to commit an offense listed in §775.087(2)(a)1 and

2. The juvenile possessed a firearm.

II. MANDATORY DIRECT FILE BY POLICY OF THE OFFICE OF THE STATE ATTORNEY, FOURTH JUDICIAL CIRCUIT

A. The State shall direct file a juvenile who is 14 years old or older and is charged with murder, robbery with a firearm, armed carjacking, kidnapping, sexual battery with a weapon, or first degree felony arson.

B. The State shall direct file a juvenile who is 16 or 17 years old and is charged with a second degree felony or higher and

1. The juvenile has at least one prior adjudication for a second degree felony or higher, or

2. The juvenile has at least two prior adjudications for a third degree felony or higher.

C. The State shall direct file a juvenile who is 14 or 15 years old and is charged with a listed offense and

1. The juvenile has at least one prior adjudication for a second degree felony or higher, or

2. The juvenile has at least two prior adjudications for a third degree felony or higher.

D. The State shall direct file a juvenile who is 16 or 17 years old and

1. The juvenile is or has been committed to a Level 8 program or higher and

2. The juvenile is charged with a felony.

III. DISCRETIONARY DIRECT FILE OR MOTION TO CERTIFY BY POLICY OF THE OFFICE OF THE STATE ATTORNEY, FOURTH JUDICIAL CIRCUIT

A. The juvenile is charged with aggravated assault, aggravated battery, aggravated child abuse, aggravated stalking, armed burglary, arson, attempted murder, burglary of a dwelling, structure, or conveyance, burglary with an assault or battery, carjacking, grand theft, home invasion robbery, kidnapping, lewd or lascivious assault on a minor child, manslaughter, possession or discharge of firearms on school grounds, robbery, sale of a controlled substance, sexual battery, trafficking in controlled substance, unlawful throwing or discharging a destructive device or bomb, or the use of a weapon or firearm during the commission of a felony.

B. The juvenile is charged with a felony or violent misdemeanor and any additional factors such as but not limited to the following exist: the juvenile is 17 ½ years of age or older, the juvenile has adult co-defendants who are being prosecuted, the crime involves a firearm or other deadly weapon, the crime occurred on school property, there is gang involvement, the crime involves a large quantity of drugs or evidence exists that the juvenile is selling drugs, there is severe personal injury or death, there is restitution over $5,000.00, the crime involves a particularly vulnerable victim in the current crime or is the same victim from a previous crime, a law enforcement officer is injured or placed at great risk by the juvenile, the juvenile is a habitual runaway, habitual truant, frequently suspended from school, or a drug or alcohol abuser, the juvenile has prior felony juvenile adjudication(s) or violations of community control, the juvenile is currently charged with three or more felonies, the juvenile committed the current crime while on any DJJ supervision or has pending felony charges, the juvenile escaped from a juvenile facility or has frequent failures to appear in court.

C. Any case wherein the Office of the State Attorney determines that the violent behavior of the juvenile warrants direct file.

Angela B. Corey, State Attorney
Fourth Judicial Circuit of Florida

BRANDED FOR LIFE

Florida's Prosecution of Children as Adults under its "Direct File" Statute

Every year, thousands of children are prosecuted as adults in Florida. The overwhelming majority are teenagers sent from the juvenile justice system to adult court at the sole discretion of prosecutors, whose decisions are not subject to review. Once in the adult system, they are held in adult jails, subjected to adult court procedures they do not understand, and given adult sentences. Once convicted of a felony, these children suffer lifelong consequences, including stigma, disenfranchisement, and difficulty finding employment and housing.

Florida's prosecutors hold almost all the cards when it comes to choosing which children, aged 17 and younger, to prosecute as adults. They are not choosing to focus only on children charged with the most serious offenses. Over half of the children sent to adult court stand accused of property crimes. Last year, a mere 2.2 percent of children charged as adults were accused of murder.

Branded for Life examines the harms that result from Florida's practice of letting prosecutors decide which children to prosecute as adults. It describes pronounced disparities in how often children charged with the same offense end up prosecuted as adults within different judicial circuits. In some cases, the evidence suggests racial bias may be affecting which children prosecutors choose to take to adult court.

Children responsible for serious crimes should be held accountable. The practice of prosecuting children as adults, however, harms society as well as the youth facing criminal prosecution. Children prosecuted as adults lose access to age-appropriate education and programming provided in the juvenile court system, and are more likely to reoffend.

Human Rights Watch urges Florida to change its laws so that all decisions to transfer children to the adult system are made by judges, not prosecutors, and are made only after consideration of all relevant evidence at a hearing.

Veronica Limia leaves the Florida Institute for Girls on October 11, 2001. Veronica was prosecuted as an adult at age 17 for burglary.