

No Place for A Child: Direct File of Juveniles Comes at a High Cost; Time to Fix Statutes

Deborrah Brodsky, Director & Cyrus O'Brien, Researcher
The Florida State University Project on Accountable Justice

Sal Nuzzo, Vice President of Policy
The James Madison Institute

Introduction

At the turn of the 20th century, advocates of an alternate court process for juveniles highlighted problems that existed with prosecuting court-involved children in adult court where they principally faced punishment and surveillance. As an alternative, these advocates established juvenile courts, which reduced the severity of punishment and combined it with rehabilitative regimes and programs aimed at turning children's lives around. The first Juvenile Court was founded in Chicago and its guiding principles were that childhood should be a protected stage of life, that children were less culpable for their actions than adults, and that children were more receptive to reform and rehabilitation.

Despite the juvenile courts' founding principle that children are fundamentally different from adults, juvenile courts have historically allowed some children to be prosecuted as adults in

adult criminal court. A small minority of children, it was thought, were either not suitable for rehabilitation or were charged with politically-fraught offenses that might destabilize or delegitimize the juvenile court. These rare cases resulted in the occasional prosecution of children in adult court.

Since 2009, more than 12,000 children have been tried as adults in Florida over the last five years¹ -- 98 percent of these children are "direct filed" in adult court by prosecutors with no hearing, due process, oversight or input from a

judge.² This is because in Florida, prosecutors have virtually unfettered discretion to decide which children to try as adults. **Florida currently has the highest number of adult transfers reported of any state.**

It would be easy to come to the conclusion that when a child is tried



Photo via WFSU

(Continued on page 2)

(Continued from page 1)

“as an adult,” he or she has committed a heinous crime that requires prison time both as punishment and to protect public safety. What else could justify taking a child out of the juvenile justice system—developed for the very purpose of rehabilitating wayward children—and branding that child for life as a convicted felon?

Yet, we now know that both premises are wrong. Data reported by the Florida Department of Juvenile Justice shows that most children tried as adults in Florida are charged with non-violent felony offenses, primarily property and drug crimes, or misdemeanors. Moreover, more than 70 percent of children convicted in adult court are sentenced to probation, not prison, calling into question whether a more serious, adult court transfer was necessary in the first place. These facts are reason for concern and highlight the need for change in Florida’s “direct file” system.

Juvenile Transfer in Context

The most common way for juvenile courts to waive children into adult court was to hold a “transfer hearing.” Outside of Florida, transfer hearings continue to be the most common mechanism for children to be transferred to adult court.³ At a transfer hearing (which is sometimes called a “waiver hearing”), a judge rules on a prosecutor’s motion to transfer the case to adult court.⁴ The judge hears evidence about the alleged crime, as well as evidence about the child’s amenability to rehabilitation. In most states, the judge must determine, first, that there is probable cause that the child committed the alleged crime, and, second, that the child is not a suitable candidate for rehabilitation programs such as those offered through the juvenile courts.

Despite the fact that Florida leads the nation in transferring youth to adult court, transfer hearings in this state are not the norm. Florida’s direct file law, as it is written, grants prosecutors the sole discretion to transfer a child out of the juvenile court and

prosecute him or her as an adult. Direct file enables prosecutors to unilaterally determine whether a child will be sanctioned by a juvenile court or by an adult court. Judges have no authority in this decision. Judges do not hear evidence about the alleged crime, nor do they assess whether the child might be amenable to rehabilitation. **When a prosecutor utilizes Florida’s direct file law to transfer a child from the juvenile court, the judge reads no briefs, hears no evidence, and signs no order.** By the time he or she is aware of a prosecutor’s action, it is a *fait accompli*.

Justice by Geography: Prosecutors’ unchecked authority to transfer children to adult court distorts

the justice system in other ways. Because prosecutors work in distinct jurisdictions and because each prosecutor makes decisions according to his or her own processes, a child’s odds of being prosecuted as an adult depend more on where she lives than what she has done. In Palm Beach County, the prosecutor transferred 7 percent of 15-year olds charged with burglary to adult court. Just south in Broward County, the prosecutor did not transfer any 15-year olds for burglary.⁵ Similar jurisdictional disparities exist throughout the state. Florida’s direct file law is the reason that the state transfers more children to adult court than any other state.

“When a prosecutor utilizes Florida’s direct file law to transfer a child from the juvenile court, the judge reads no briefs, hears no evidence, and signs no order.”

Direct File Violates Basic Principles of Justice

When it comes to our system of Justice, having one’s day in court is a fundamental American right. The individuals who wield the authority of the state should be held accountable through systems of checks and balances. In addition, state actions should be fair, unbiased, and measurably effective, focusing on what works in the greatest interest of public safety.

Direct file flies in the face of each of these principles. By cutting the judge out of key decisions it denies children their day in court. By concentrating legal authority in a single state actor it eradicates checks and balances and inhibits accountability. **And reams of social scientific studies show that**

not only is direct file racially and geographically biased, but it actually increases crime and reduces public safety; youth transferred to adult court are more likely to recidivate than youth retained in the juvenile justice system.⁶

Direct file is especially vulnerable to ideological rhetoric and factual distortion because there is little known about its use. No centralized mechanism exists to track children as they cross over from juvenile courts to the adult criminal justice system. Adult and juvenile court records are maintained separately, and a child's records are divorced when he or she is transferred. The Florida Department of Juvenile Justice reports basic facts about the children who were transferred out of its system, but this is where solid information ceases; data that track what happens to children once they arrive in adult court are not systematically collected or reported.⁷

This policy brief is an analysis, both anecdotal and when possible, quantifiable, of direct file from multiple data sources. Statistical figures are derived from data provided to the Project on Accountable

Justice by the Florida Department of Corrections and from publicly available data from the Florida Department of Juvenile Justice. Researchers at the Project on Accountable Justice also reviewed the court files of more than 250 children prosecuted as adults; these public records are available from the clerks of court in each of Florida's counties.

The facts of direct file indicate that it is a short term choice with high, long term economic costs; a constitutional travesty of justice; and a foolish, irrational public policy that endangers public safety and leaves Floridians more vulnerable.

The Surprising Details of Direct File:

Two Myths

Two myths pervade debates about the practice of prosecuting children in adult court: 1) that children prosecuted as adults are charged with "heinous" offenses, and 2) that most of the children prosecuted as adults are sentenced to adult prison. This first myth



Miguel Rodriguez was one of four teenaged boys who made a reckless mistake of burglarizing an uninhabited home. Two of the boys, including the leader, were charged as juveniles and served probation without stepping foot in jail. Miguel and the third boy are serving four-year sentences in adult prison. Miguel was at summer camp when the three other boys were arrested, and upon coming home Miguel was immediately placed in an adult prison on bail for \$30,000, which took his mother three days to procure. In just those three days, Miguel was assaulted. Within hours of arriving at the jail, Miguel was ordered to fight another inmate and threatened with sexual assault if he refused. He was forced to lick a communal toilet seat and drink from it when he refused to fight. He was beaten and abused by other inmates until his bail was met. Read more about Miguel's story at: www.noplaceforachild.com.

The Costs of Doing Nothing Exceed the Costs of Reform

The reform of Florida’s direct file statute would result in fewer youth in the adult criminal justice system and more youth in the juvenile justice system, with a long-term impact of reduced recidivism and lower incarceration costs over time. How much of an economic impact would result is largely dependent on several factors. In order to provide a context for the long-term fiscal implications, researchers constructed a 10-year economic model that examined just the incarceration costs associated with a policy reform. The projection considers the costs of continuing to incarcerate children in the adult system, as well as the increased costs associated with more youth in the juvenile justice system if Florida’s direct file statute were reformed. It does not address any indirect impacts on lower social service consumption, greater employability, etc. As the projection shows, doing nothing to Florida’s direct file policy could cost Florida taxpayers approximately \$175 million over the next 10 years.

New Costs Incurred by DJJ

To estimate the new costs incurred by the Florida Department of Juvenile Justice (DJJ), The James Madison Institute (JMI) and the Project on Accountable Justice (PAJ) used recent data to estimate how children who were transferred to adult court in FY2015 would have been disposed had they remained in the juvenile justice system. The DJJ uses a standardized Disposition Matrix to guide juvenile courts in crafting appropriate sentences, as an evidence-informed practice. The Disposition Matrix takes into account a child’s risk score, prior interaction with the justice system, and offense. Based on these variables, the DJJ will recommend a range of disposition options, including diversion programs, probation, redirection, and placement in residential programs.⁸

PAJ and JMI used DJJ data to identify the likely dispositions of the 871 youth who would no longer be eligible for direct file according to reforms proposed in both the 2015 and 2016 legislative sessions. We found that the majority of transferred youth (57 percent) would not have been recommended for a residential program had they been retained in the juvenile justice system. Instead, most youth would have been sentenced to probation or other less restrictive sanctions. This finding corroborates data from the Florida Department of Corrections (FDC) that indicates that most children transferred to adult court are not considered threats to public safety. Rather than being incarcerated, most transferred youth would remain in their homes and communities.

How Would Transferred Youth Have Been Treated Had They Been Retained in the Juvenile Justice System?

	Number of Youth by Forecast Juvenile Disposition	Percent of Youth by Forecast Juvenile Disposition
Diversion	122	14%
Probation	203	23%
Redirection	169	19%
Non-Secure	252	29%
Secure	110	13%
No Data	15	2%
Total	871	100%

PAJ and JMI used the data from the Disposition Matrix, combined with publicly available data indicating the cost per day and the average length of stay for each type of disposition, to estimate the new costs incurred by DJJ.⁹ The estimates for subsequent years assume that the number of children retained in the juvenile system as a result of the reform of direct file will decline 10 percent each year.¹⁰ By FY2026, the annual cost of direct file reform to DJJ will fall below \$10 million.

Year	Costs of Reform (Incurred by DJJ)	Costs of Status Quo (Incurred by FDC)	Difference
FY2016-17	\$24,659,699	\$420,177	\$24,239,522
FY2017-18	\$22,569,731	\$12,634,987	\$9,934,744
FY2018-19	\$20,312,758	\$21,078,937	-\$766,179
FY2019-20	\$18,281,482	\$26,356,323	-\$8,074,841
FY2020-21	\$16,453,334	\$29,083,190	-\$12,629,856
FY2021-22	\$14,808,000	\$21,789,471	-\$6,981,471
FY2022-23	\$13,327,200	\$18,695,179	-\$5,367,979
FY2023-24	\$11,994,480	\$13,884,233	-\$1,889,753
FY2024-25	\$10,795,032	\$15,286,253	-\$4,491,221
FY2025-26	\$9,715,529	\$16,332,982	-\$6,617,453
Total Over Ten Years	\$162,917,246	\$175,561,732	-\$12,644,486

The Status Quo Costs FDC Millions

Florida’s direct file statute imposes considerable costs on the Florida Department of Corrections (FDC), which is tasked with incarcerating youth sentenced to prison for offenses they committed as children. If nothing is done, the FDC will incur more than \$175 million in costs over the next 10 years as more children continue to enter its facilities.

Although incarceration in juvenile facilities is more expensive on a per diem basis as rehabilitative and educational programming provided in the juvenile system has a cost, the use of the juvenile justice system saves money in the long run. This is not only because it is more effective at rehabilitating youth, but also because the lengths of incarceration in the adult system are significantly longer.

PAJ and JMI estimated the cost direct file incurs to DJJ by using admission and release data on children transferred for an offense committed in FY2009 and FY2010. This data was used to build a table indicating the dates when youth were actually confined in a FDC facility. As a result, the cost estimate for each fiscal year reflects not only the number of youth who would be committed to FDC that year, but also the number of youth who would have been committed in a prior year, but still remained in prison. Again, these estimates assume that the number of children affected by direct file reform will decline by 10 percent each year.¹¹

The costs of failing to reform direct file are slower to accrue, but approach \$30 million annually by FY2021. The portion of these costs that can be avoided by reforming direct file will depend on FDC’s ability and willingness to close facilities. Importantly, because this estimate is based on actual admission and release data – not on sentencing data – it does not include significant costs associated with confining these youths in county-operated facilities.

(Continued on page 6)

(Continued from page 5)

Conclusion

The juvenile justice system is more effective at promoting rehabilitation than the adult criminal justice system. Transferring youth to adult court has not been proved to deter crime, and in fact, makes the young offender more likely to reoffend, and, in some cases, offend more seriously. Youth sent to the adult criminal justice system were 34 percent more likely to be rearrested for felonies than youth who had been retained in the juvenile justice system.¹²

In the first year of implementation, the reform of direct file and handling more youths in the juvenile justice system will require an investment and cost-realignment to expand rehabilitation and education programs within the Florida Department of Juvenile Justice. Simultaneously, this will result in the reduction of obligation in the Department of Corrections. It is important to note that given the DOC's obligation to handle youth separately according to age and gender, this reduction in obligation is unlikely to translate into immediate significant fiscal savings in a vacuum. The issue of overall reduction of DOC fiscal outlays is a much broader topic for research. Cost reductions would be realized in lower actual counts of youth in the adult system, and gradually, over time, the real savings and cost avoidances would be incurred as more rehabilitated youth would not return to the Department of Corrections. This means, in the short term, the expenses of the Department of Corrections, namely staffing and the bricks and mortar and associated operational costs of running prisons, will remain relatively constant.

Nevertheless, this is a relatively short-term investment in the future of these youth, and more importantly, in the future of public safety for all Floridians. Florida policy makers should understand that simply throwing money at a problem is not the answer, but in realigning the placement of youth into a system designed to specifically address their developmental challenges and opportunities, we can further strengthen the impact of both the DJJ and the DOC. This can be achieved through a thoughtful reinvestment strategy that recognizes the importance of the investment and the true costs of successful public safety outcomes. Even the Department of Juvenile Justice publicly recognizes its role in the state's public safety agenda, which publicly commits to handling all youth in the juvenile justice system:

“Under no circumstances will staff recommend that a youth be transferred to the adult court on the State Attorney Recommendation form. The Department firmly believes that appropriate juvenile services and sanctions can be provided to youth charged with even the most severe offenses. Staff may continue to provide or assist with pre-disposition reports and pre-sentence investigations as requested or ordered by the court.”

In so doing, reforming Florida's direct file statute will result in \$12 million less in costs and will be a recognized, measurable step in maximizing precious taxpayer resources in the public interest.

is easily disproved: publicly available data indicate that the majority of children prosecuted as adults were charged with non-violent crimes. In addition, a 2014 report from Human Rights Watch revealed that many children are not at high-risk to reoffend, based on individualized assessments conducted and publicly reported by the Department of Juvenile Justice.

A review of data from the Florida Department of Corrections revealed that 794 children who were sentenced for an offense in FY2010 were not sentenced to prison upon arriving in adult court. Comparing this

to publicly available data from the Florida Department of Juvenile Justice reveals that approximately 72 percent of children prosecuted as adults are **not** initially sentenced to prison.¹³ (Researchers focused on data from FY2010 for reasons that will become clear later in this study. Briefly stated, direct file is a decision with long-term consequences. In order to understand the impacts of direct file, it is necessary to track youths' cases for significant periods of time.)

This figure – that 72 percent of children prosecuted as adults are not initially sentenced to prison

– illustrates that system administrators determined that the vast majority of children prosecuted did not belong in prison.

One possible explanation as to why many children were not initially sentenced to prison was that judges were intervening and playing a corrective role. It would be reasonable to hypothesize that prosecutorial authority was eventually checked by judicial power serving as independent arbiter. A prosecutor may unilaterally transfer a child out of juvenile court with no oversight. But, once a child gets his or her day in (adult) court, a judge weighs in and, more often than not, makes a determination that a child should not be sent to prison.

This reasoning would make sense, considering most children were charged with non-violent offenses and many were low-risk to reoffend.

However, analysis of the specific court records of youth who appeared in the Department of Corrections data, shows that – like most criminal defendants – children in adult court most often accepted plea bargains. Judges in these cases were not operating as checks or balances. Judges review plea agreements, but only after a prosecutor and defendant reach an agreement. Instead of judicial intervention forcing a change in outcomes, it appears that prosecutors themselves were making the decision to offer a plea to probation.

This begs an important public safety question: Why would a prosecutor use direct file to transfer a child to the adult criminal justice system – ostensibly because of the serious nature of his or her offense, or because she was a threat to public safety – and then offer him or her a plea deal that allowed her to go home minimally supervised?

A Slow Plea to Prison

To analyze this trend, researchers examined the cases of children who were transferred to adult court and

sentenced to probation.¹⁴ A total of 1,044 children who committed an offense in FY2010 were initially sentenced to adult probation after being transferred. Nearly all of these sentences were the result of plea agreements.¹⁵

Of those, 557 children (53 percent) initially placed on probation were eventually sentenced to adult prison.¹⁶ So, even though a large number of children were initially placed on probation, most ended up in prison eventually. The details of how these children came to be ultimately incarcerated serves as a strong indictment of the use of Florida’s direct file statutes.

Most of the youth who were eventually sent to prison were sentenced for a new offense. A total of 390 (70 percent of the youth initially sentenced to probation who eventually went to prison) committed another felony offense and were sentenced to prison. The other 30 percent (167) who eventually went to prison were sentenced to prison for a technical violation of probation. Technical violations of probation often include things such as violating curfew, failing to report to one’s probation officer, or otherwise violating the rules of supervision. Despite failing to comply with the terms of their supervision, these youth did not commit a new felony offense. Most of these youth were sentenced to prison long after they had been placed on probation: 65 percent were sentenced to prison more than a year afterward; 36 percent were sentenced to prison

more than two years afterward; and 18 percent were only sentenced to prison after more than three years on probation.

It is important to note that many children prosecuted as adults eventually go to prison because the adult system sets children up to fail, not because they were originally more likely to reoffend. When they left the juvenile justice system, the children whom prosecutors unilaterally transferred to adult court, as a group, had lower risk scores than

“It is important to note that many children prosecuted as adults eventually go to prison because the adult system sets children up to fail, not because they were originally more likely to reoffend.”

At 16 years old, Kenny Ray was prosecuted as an adult for an accidental shooting that seriously injured his friend. Because he was direct filed, Kenny was facing a sentence of up to life in prison, and ultimately accepted a plea deal of 15 years -- almost as long as he'd been alive when he committed the offense. Since Kenny has become entangled in Florida's justice system, his mother learned of teens serving even more time in adult prisons. She wonders what good comes out of throwing away a young life, especially when the child doesn't have a strong support system of family, friends, and community. Read more about Kenny's experience at www.noplaceforachild.com.



children committed to juvenile residential facilities.¹⁷ The high rates of failure on probation are less likely to be an indication of the dangerousness of youth who were direct filed than they are of challenges youth face on adult probation, which is not designed to account for the unique needs and vulnerabilities of children. Adult probation and an adult felony conviction result in relatively high supervision fees, increased difficulty finding employment, limitations regarding where children and their parents can live or attend school, as well as increased social stigma. These new challenges make youth who were moderately likely to reoffend at first more likely to reoffend after being prosecuted as adults.¹⁸

In effect, a plea agreement resulting in probation for a child prosecuted as an adult functions as a slow plea to prison. Odds are, the youth will eventually be sent to prison, either for committing a new offense or for violating probation. A prosecutor who uses direct file to unilaterally transfer a child to adult court and then offers him or her a plea agreement to probation can be reasonably confident that he or she will eventually secure a prison sentence.

Despite the increased risks to public safety, a slow plea to prison might be a reasonable option for a prosecutor because it expedites their work. Direct file is an action that can be taken unilaterally, with no opposition or oversight. Once in adult court, plea agreements to probation are handled as a matter of course in most jurisdictions and can be resolved quickly without the need for a trial. Later, when the

youth violates probation, the task of securing a prison sentence is easier. Instead of a trial, a hearing is all that is required for the court to revoke probation and send a youth to prison. The burden to prove a probation violation is significantly lower than having to prove a criminal offense beyond a reasonable doubt. And, in cases where a youth commits a new offense, the process of securing a plea agreement that results in a prison term is significantly easier if the individual is already on probation.¹⁹

These data indicate that, when it comes to the use of direct file, prosecutors are exchanging public safety for expediency.

What Will Happen When Florida Amends Direct File?

The most obvious outcome of reforming Florida's direct file statutes will be that prosecutors will no longer be able to unilaterally transfer children out of juvenile court. As is the process in nearly every other state, the decision about whether to prosecute a child as an adult will ultimately rest with a judge.

Based on the data discussed above, it is reasonable to assume that the abolition or reform of the direct file law in Florida will significantly diminish the number of children prosecuted as adults. Of course, it is possible that prosecutors may pursue transfer hearings as often as they currently use direct file, but this does not seem likely given that the vast

majority (72 percent) of children prosecuted as adults are not initially sentenced to prison. Would prosecutors initiate, prepare for, and litigate a transfer hearing, only to offer a plea bargain to adult probation after transfer? Perhaps, but it wouldn't be the most expedient path.

Research indicates that the number of children prosecuted as adults would drop by a significant number. Instead of being transferred to adult court, more children would be retained in the juvenile justice system, where they would be supervised and rehabilitated by the Department of Juvenile Justice.

A Boon to Public Safety

The retention of more children in the juvenile justice system would be a benefit to public safety. Numerous studies that have examined the effects of transfer to adult court in Florida have concluded that prosecuting children as adults makes them *more* likely to commit future crimes than retaining them in the juvenile justice system.²⁰ These conclusions are consistent with findings that more than half of children placed on adult probation for an offense committed in FY2010 were eventually sentenced to prison, and that most committed new felony offenses. Clearly, prosecuting children as adults is not the answer to making our communities safer.

An explanation of the differences between the adult and juvenile justice systems will make clear why, in most cases, transfer to adult court makes little sense from a public policy and public safety perspective. As explained previously, approximately 72 percent of children prosecuted as adults are not sentenced to prison, but are instead placed on adult probation or sentenced to other less restrictive punishments. This does little to protect public safety because adult probation in Florida has few rehabilitative elements, and offenders are usually only loosely supervised. Adult probation is not designed to account for the unique needs and challenges facing children.

In addition, the case loads of probation officers are too large to enable close monitoring, mentoring, or other forms of personal contact that are more appropriate to handling youth successfully. People on adult probation are typically required to report regularly to their supervising officer, adhere to a curfew, and comply with drug testing requirements. These enforcement techniques are an important part of ensuring accountability for offenders, but are insufficient if the societal goals are to ensure

appropriate sanctions *and* provide an opportunity for reforming behaviors. They are also required to pay fees on a monthly basis; this is difficult for many probationers, but places special burdens on youth. Given the constraints of high caseloads and relatively modest contact requirements, youth on adult probation are not generally in daily contact with their probation officers.

Moreover, because adult probation does not typically administer rehabilitative programs, children on adult probation are not subject to sanctions that have the rehabilitative components that are an integral part of the juvenile justice system, such as mandatory Cognitive Behavior Therapy, Multi-Systemic Therapy, and educational interventions that have proved to be effective tools to reduce offending. Under the supervision of the Department of Corrections, youth on probation go minimally monitored and negligibly rehabilitated. Further, children placed on adult probation are “branded for life.” A child convicted in the adult system becomes a “felon for life,” severely limiting educational, employment, housing and other opportunities. With no rehabilitative intervention and the increased challenges youth on adult probation face, it should be no surprise that more than half of these youth are eventually sentenced to prison – most for a new felony crime.²¹

The juvenile justice system, on the other hand, requires more intensive supervision and more individualized rehabilitative sanctions. Children who pose significant risks to public safety are not left unmonitored and untreated as they are when placed on adult probation. The Department of Juvenile Justice uses a number of tools – including the Positive Achievement Change Tool Assessment (PACT) and the Disposition Matrix – to determine what levels of supervision and what types of rehabilitative programs to impose on children. In general, this means that the more likely a youth is to commit an offense, the more closely he or she is supervised and the more intensely he or she is rehabilitated. The efforts of the Department of Juvenile Justice to appropriately sanction and treat delinquent children have proven to be relatively effective: when a child is appropriately supervised, he or she is less likely to recidivate.²² **The individualized aspects of the juvenile justice system are by no means perfect, but they are by far more effective than the one-size-fits-all approach of the adult criminal justice system that by-and-large sets children up to fail.**

Fix Direct File for Justice and Our Safety

It is not always easy to find the right balance between principles of justice and concerns for public safety. Often, policy makers are forced to choose between justice and public safety. They make difficult compromises and do their best to ensure that all citizens are safe and treated justly.

Direct file reform is one of the rare cases that requires no such compromises because the interests of justice and public safety align. The amendment of Florida's direct file statutes will serve justice: it will ensure that Florida children have their day in court, and it will restore checks and balances to court processing by making prosecutors more accountable to judges. Amending Florida's direct file statutes will also serve public safety: by helping to ensure that children are handled according to their individual needs and monitored appropriately it will reduce crime. It is true that prosecutors' jobs may become marginally more burdensome, but rarely does expedience serve justice or public safety.

Today, in the middle of the second decade of the 21st century, policymakers are beginning to reconsider the policies that resulted in mass incarceration, an experiment heretofore untested and unaccountable — and the results of which hobbled state governments with enormous tabs for prison expenditures. Many of these reforms are complicated and politically fraught. Amending Florida's direct file statute is one of the few reforms that is unambiguously positive. This reform will ensure that Florida's children are treated fairly as they are held accountable for crime and delinquency — and it will make Florida safer.

Endnotes

1. Patrick Griffin, Sean Addie, Benjamin Adams, and Kathy Firestone, "Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting," *Juvenile Offenders and Victims: National Report Series* (September 2011), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>; Florida Department of Juvenile Justice, The 2014–2015 *Delinquency Profile*, available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile>; and Human Rights Watch, *Branded for Life: Florida's Prosecution of Children as Adults under its "Direct File" Statute* (2014), available at http://www.hrw.org/sites/default/files/reports/us0414_ForUpload%202.pdf.
2. Human Rights Watch, *Branded for Life*; see also Florida Statutes § 985.557.
3. Howard N. Snyder and Melissa Sickmund, *Juvenile Offenders and Victims: 2006 National Report* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office

of Juvenile Justice and Delinquency Prevention, 2006), 111, available at <http://www.ojjdp.gov/ojstatbb/nr2006/downloads/NR2006.pdf>.

4. In some states, a motion to transfer jurisdiction to the criminal court can be filed by the child defendant. Some states, including Florida, have punishment schemes called "blended sentencing" that allow adult courts to sentence a child to both juvenile and adult sanctions. The limited data available about blended sentencing in Florida suggests that its use is rare.
5. Florida Department of Juvenile Justice, The 2014–2015 *Delinquency Profile*, available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile>.
6. See, for example, 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 2007), <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>; Neelum Arya, Campaign For Youth Justice, *State Trends: Legislative Changes From 2005 To 2010 Removing Youth From The Adult Criminal Justice System* (2011), available at http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf; Richard Redding, Office of Juvenile Justice and Delinquency Prevention, US Department of Justice, "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?," (June 2010), available at <https://www.ncjrs.gov/pdffiles1/ojjdp/220595.pdf>; Thomas A. Loughran, Edward P. Mulvey, corresponding author Carol A. Schubert, Laurie A. Chassin, Laurence Steinberg, Alex R. Piquero, Jeffrey Fagan, Sonia Cota-Robles, Elizabeth Cauffman, and Sandy Losoya, "Differential Effects of Adult Court Transfer on Juvenile Offender Recidivism," *Law and Human Behavior* 34:6 (2010), 476–488.
7. The Florida Department of Juvenile Justice has recently implemented a data gathering effort to track the adult system outcomes of children transferred out of its jurisdiction.
8. Michael Baglivio and Mark Russell, *The Florida Department of Juvenile Justice Disposition Matrix: A Validation Study* (February 2014), available at <http://www.djj.state.fl.us/docs/research2/the-fdjj-disposition-matrix-validation-study.pdf>.
9. Diaz de la Portilla, *SB314: Juvenile Justice* (last action January 12, 2016), available at <http://www.flsenate.gov/session/bill/2016/0314>.
10. PAJ and JMI relied on per diem rates and average lengths of stay as reflected in the DJJ's 2014 Comprehensive Accountability Report. Because no aggregate data are available for diversion programs, this analysis uses the figures for PACE, which is the most expensive diversion program in the state. See Florida Department of Juvenile Justice, 2014 *Comprehensive Accountability Report*, available at <http://www.djj.state.fl.us/research/reports/research-reports/car>.
11. Based on data presented elsewhere in this report, PAJ and JMI assumed that 53% of transferred youth would be incarcerated in adult prison facilities. This analysis assumed that two-thirds of transferred youth would be housed in a youthful offender facility for the first five years of their incarceration, and thereafter all youth confined in the FDC general population. The per diem figures for these facilities

- are \$74.50 and \$49.49, respectively. Florida Department of Corrections, FY2013–2014 Annual Report, available at <http://www.dc.state.fl.us/pub/annual/1314/budget.html>.
12. 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. MMWR 2007; 56 (No. RR-9); Richard E. Redding, Juvenile transfer laws: An effective deterrent to delinquency? (Washington, D.C.: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention) (June 2010)
 13. This comparison is not exactly one-to-one for the following reasons. FDC data capture the date of offense, but not the date of transfer. DJJ data are based on the date of transfer. As a result, this is a comparison of marginally different populations: The DOC data capture children who committed an offense in FY2010 and were sentenced to felony probation or prison whereas the DJJ data capture children who were transferred to adult court in FY2010, regardless of when the offense actually took place. If the rates of offending and transfer were constant, this would have no impact on these calculations. Declining rates of both offending and transfer suggest that a true one-to-one comparison would yield a slightly different but largely similar result. If the actual number of youth transferred to adult court for offenses committed in FY2010 were 5% smaller than the number of youth transferred to adult court in FY2010, the percent of children not initially sentenced to prison would be 70% instead of 72%.
 14. Between 850 and 950 (or 30-33%) individuals transferred to adult court for offenses they committed as children in FY2010 are absent from statewide datasets. This absence indicates that they were not placed in the custody or under the supervision of the Florida Department of Corrections for their FY2010 juvenile offense. Instead, many were probably acquitted, saw their charges reduced, sentenced to misdemeanor probation, placed in a pretrial diversion program, or sentenced to time in adult jail. An unknown number of them were eventually sentenced to for an offense committed after their 18th birthday or subsequent to FY2010. Because there is no centralized system that tracks the outcomes of children prosecuted as adults, no exact figures exist.
 15. None of the 257 court records examined by Project on Accountable Justice researchers indicated that probation was ordered following a jury trial.
 16. The Project on Accountable Justice used data from the Florida Department of Corrections to track youth through July 1, 2015. As is described in this paper, the consequences of Direct File emerge slowly. Many youth who were initially sentenced to probation were subsequently sentenced to prison *years* after their initial offense.
 17. Florida Department of Juvenile Justice, Pact Profile FY2013–2014, available at <http://www.djj.state.fl.us/research/delinquency-data/pact-profile/pact-profile-fy2013-14>.
 18. For a discussion of the increased challenges youth prosecuted as adults face (so-called collateral consequences) see Richard Redding, “The Effects of Adjudicating and Sentencing Juveniles as Adults: Research and Policy Implications,” *Youth Violence and Juvenile Justice* 1 (April 2003), 128–155.
 19. *Gagnon v. Scarpelli*, 411 U.S. 778 (1973)
 20. For studies specific to Florida, see Donna Bishop, “Juvenile Offenders in the Adult Criminal Justice System,” in Michael Tonry, ed., *Crime and Justice: A Review of Research, Volume 27* (Chicago: University of Chicago Press, 2000); Donna Bishop and Charles Frazier, “Consequences of Transfer,” in J. Fagan and F.E. Zimring, eds., *The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court* (Chicago: University of Chicago Press, 2000), 227–76; Donna Bishop, Charles Frazier, Lonn Lanza-Kaduce, and Lawrence Winner, “The Transfer Of Juveniles To Criminal Court: Does It Make A Difference?” *Crime and Delinquency* 42 (1996), 171–91; Craig Mason et al., “Impacting Re-Arrest Rates Among Youth Sentenced in Adult Court: An Epidemiological Examination of the Juvenile Sentencing Advocacy Project,” *Journal of Clinical Child and Adolescent Psychology* 32:2 (2003), 205–214; Lawrence Winner, Lonn Lanza-Kaduce, Donna Bishop, and Charles Frazier, “The Transfer of Juveniles to Criminal Court: Reexamining Recidivism over the Long Term,” *Crime and Delinquency* 43 (1997), 548–63; Lonn Lanza-Kaduce, Charles Frazier, and Donna Bishop, “Juvenile Transfers in Florida: The Worst of the Worst?” *University of Florida Journal of Law and Public Policy* 10 (1999), 277–312; and Lonn Lanza-Kaduce, Jodi Lane, Donna Bishop, and Charles Frazier, “Juvenile Offenders and Adult Felony Recidivism: The Impact of Transfer,” *Journal of Crime and Justice* 28 (2005), 59–77.
 21. This is especially true given the challenges that come with an adult felony conviction.
 22. Michael Baglivio and Mark Russell, *The Florida Department of Juvenile Justice Disposition Matrix: A Validation Study* (Bureau of Research and Planning Florida Department of Juvenile Justice, 2014), available at <http://www.djj.state.fl.us/docs/research2/the-fdjj-disposition-matrix-validation-study.pdf>.



**Special thanks to the following students at
The Florida State University who assisted with
the research for this policy publication:**

**Melissa Becker
Raul Hernandez
Sebastian Hoyos-Torres
Rosie Richeson
Rajkumari Sukhmandan
Gerrit Van Lent
Porche' Whitby**

The JAMES
MADISON
INSTITUTE



STAY }
CONNECTED }


The James Madison Institute


@JmsMadisonInst


[youtube.com/user/
JamesMadisonInstitut](https://youtube.com/user/JamesMadisonInstitut)


[flickr.com/photos/
jmsmadisoninst](https://flickr.com/photos/jmsmadisoninst)


[pinterest.com/
jmsmadisoninst/](https://pinterest.com/jmsmadisoninst/)