



# Issue Commentary

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## Children Tried As Adults in Florida

A COMMON SENSE APPROACH TO ENSURE FAIRNESS AND ACCOUNTABILITY

### OVERVIEW

Florida prosecutors have virtually unfettered discretion to decide which children to try as adults. While Florida law authorizes “judicial waiver” (a court hearing to determine whether a child should be tried as an adult),<sup>1</sup> more than 98 percent of children tried as adults are “direct filed” in adult court by prosecutors—with no hearing, due process, oversight or input from a judge.<sup>2</sup>

Sole discretion results in wide disparities in how a child’s case is handled, depending on where he or she lives. Last year, a child charged with a felony offense was almost twice as likely to be tried as an adult in Duval or Hillsborough County, three times as likely in Palm Beach County, and four times as likely in Escambia County as compared to a child in Miami-Dade.<sup>3</sup>

### FLORIDA HAS THE HIGHEST NUMBER OF ADULT TRANSFERS REPORTED BY ANY STATE

Over the last five years, more than 10,000 children have been tried as adults in Florida.<sup>4</sup> While the number of youth in the adult system has been on the decline, this largely tracks the overall reduction in juvenile arrests.<sup>5</sup> Still, in 2013-2014 more than 1,300 children were transferred to adult court in Florida, the highest number of adult transfers reported by any state.<sup>6</sup> Countless other children are pressured to accept guilty pleas just to avoid the danger of adult transfer.<sup>7</sup>

Children tried as adults are “branded for life.” A child convicted in the adult system becomes a “felon” for life, severely limiting educational and employment opportunities forever. A child loses the right to vote before even acquiring

it. Children should not be placed in jeopardy of such serious consequences without a fair process.

### CHILDREN RECEIVE MOST EFFECTIVE TREATMENT IN THE JUVENILE JUSTICE SYSTEM

Youth who commit serious crimes should be held accountable in the juvenile justice system. Children in adult facilities do not receive the education, rehabilitative services and treatment they need to ensure they do not re-offend as adults. Prosecuting children in the adult system therefore leads to more crime, not less.<sup>8</sup> The cost to society is tangible: increased recidivism and incarceration, and decreased employment opportunities and economic self-reliance. Given recent reforms, Florida’s Department of Juvenile Justice is uniquely equipped to provide the interventions and controls necessary to hold young offenders accountable and reduce the risk to re-offend.

- **Let a Judge Decide.** Restore judicial waiver to allow a judge to decide whether a particular child should be tried as an adult.
- **Recognize Children are Different.** Given the unique needs and vulnerabilities of children, ensure fair criteria before a child can be tried as an adult, and house children only in juvenile facilities.
- **Do What Works.** Hold children accountable, protect public safety and use taxpayer funds effectively by treating children in the juvenile justice system, where better outcomes for the individual and community are the most likely.

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<sup>1</sup> Although Florida law provides a mechanism for judges to decide which cases should go to adult court (judicial waiver), prosecutors are able to bypass that system by “direct filing” eligible cases in adult court with no judicial review or oversight. See Fla. Stat. §§. 985.556, 985.557.

<sup>2</sup> Human Rights Watch, *Branded for Life: Florida’s Prosecution of Children as Adults* under its “Direct File” Statute (April 2014) (available at <http://passthrough.fw-notify.net/static/163899/downloader.html>).

<sup>3</sup> Florida Department of Juvenile Justice Delinquency Profile, *supra* at i. According to DJJ’s data, in Miami-Dade County approximately 4.2% of youth charged with felonies were transferred to adult court (79 of 1,899). That rate was 7% in Hillsborough (99 of 1,488), 7.4% in Duval (70 of 950), 12% in Palm Beach (133 of 1,118) and 16% in Escambia (70 of 438).

<sup>4</sup> Florida Department of Juvenile Justice Delinquency Profile, *Adult Transfers Statewide 2009-2010 to 2013-2014* (available at <http://www.djj.state.fl.us/research/delinquency-data/delinquency-profile/delinquency-profile-dashboard>).

<sup>5</sup> *Id.* Over the past five years, juvenile arrests in Florida have declined by 40% and the number of children transferred to adult court has declined by over 50%.

<sup>6</sup> *Id.* See also *Jurisdictional Boundaries: Transfer Trends, Juvenile Justice Geography, Policy, Practice and Statistics* (available at <http://www.jjgps.org/jurisdictional-boundaries>).

<sup>7</sup> See, e.g., Sanders, Topher. *Times-Union Investigation: Juvenile Justice?*, *The Florida Times Union* (available at <http://jacksonville.com/files/interactives/juvenilejustice/>) (more than 1,500 children in Duval County have taken “direct commitments” to juvenile facilities to avoid transfer to adult court).

<sup>8</sup> 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).

In conjunction with:

