

# Stop Prosecuting Children as Adults in Florida

## THE FACTS

Florida prosecutes more children for felonies in the adult criminal justice system than any other state. During 2017-18, more than 900 children were prosecuted as adults. Even with a recent decrease in the number of direct file cases, Florida disproportionately sends more children to the adult system than other states — even compared to states like California and Texas with larger populations.<sup>1</sup> In 2016, Florida direct filed more youth than California, Texas, Pennsylvania, North Carolina, and Michigan combined. Since 2009, more than 16,000 children — some as young as 10 years old — have been prosecuted as adults in Florida. What's more, Florida disproportionately transfers children of color to the adult criminal justice system.

Almost all of the children prosecuted as adults in Florida are transferred to the adult system at the sole discretion of prosecutors, without a judge's input, through a process called "direct file." There is no way for a child to appeal this decision.

Most children prosecuted as adults are charged with nonviolent offenses and are not a threat to public safety, as demonstrated by the sanctions they receive. More than 70 percent of children convicted in adult court are sentenced to probation, not prison, calling into question whether the more serious, adult court transfer was necessary in the first place.

Public support exists for reforming the way children are treated within the criminal justice system. Seventy-seven percent of Floridians believe judges — not prosecutors — should decide whether to prosecute a child as an adult, according to a 2019 public opinion poll.<sup>2</sup> Another poll found that 74 percent of Floridians believe juveniles charged with crimes should stay in the juvenile justice system, not the adult criminal justice system.<sup>3</sup> Since 2005, 36 states have passed laws to reduce the number of children who are prosecuted and incarcerated in the adult criminal justice system.<sup>4</sup> And last year, Congress passed the federal Juvenile Justice Reform Act that will ban the incarceration of children in adult jails without the written approval of a judge.

## THE PROBLEM

**Funneling children into the adult system threatens public safety.** Recidivism rates for children prosecuted as adults are higher than the rates for children adjudicated in the juvenile justice system. This creates more crime — not less.

**Only juvenile facilities can provide appropriate education and transition services.** Without the appropriate education and special education services, children in adult facilities are less likely to get back on track. The educational services provided to children held in adult jails in Florida are, in most cases, seriously deficient and, in others, virtually nonexistent.<sup>5</sup>

**Prosecution as an adult brands a child with a felony conviction for life.** An adult felony conviction deprives a child of the opportunity to serve in the military or receive financial aid for college — all before he or she even turns 18.

**This harsh system disproportionately harms children of color.** Black children accounted for 63 percent of youth transferred to adult court in FY 2017-18 in Florida.<sup>6</sup> For comparison, black children made



**77%**

of Floridians believe that a judge, not a prosecutor, should decide whether to prosecute a child as an adult.

up only 22 percent of Florida's public school enrollment that same year.<sup>7</sup>

**Florida inflicts these severe penalties on children despite their unique propensity to change.** Research shows that young people's brains are still maturing, and they may not effectively judge the risks and consequences of dangerous or illegal behavior. Because of that, children should be treated and held accountable for their actions differently.

**Children in the adult system are at risk of victimization and suicide.** Children housed in adult facilities are 36 times more likely to commit suicide than those in juvenile facilities.<sup>8</sup> They are also at the highest risk for sexual abuse.<sup>9</sup>

**Jails are not designed to house children safely.** When children are prosecuted as adults, they are required to be held in adult jails but must be separated from adult offenders. To meet this requirement, jails often hold children in solitary confinement, despite widespread condemnation of the technique as so psychologically damaging that it is tantamount to torture.

## THE SOLUTIONS

**SUPPORT SB 850 and HB 339. Raise the floor and eliminate mandatory transfer to adult court.**

- Eliminate the ability to indict a child younger than 14 as an adult.
- Prohibit direct file of 14- and 15-year-olds. These children will still be held accountable by the juvenile justice system.
- Eliminate mandatory transfer of 16- and 17-year-olds for any crime, and limit discretionary transfer to only the most serious crimes, such as murder or manslaughter.

**SUPPORT SB 876, HB 1293 and HB 575. Create a due process hearing before a judge in which a child can request a return to juvenile court.**

- Let the judge, not the prosecutor, decide which court is more appropriate for a child.
- The judge would consider a number of factors such as the child's age and maturity, history of trauma, level of participation in the offense, and whether the child and community would be better served if the case were handled in the juvenile or adult system.
- Require the judge to explain the court's decision in writing in each case.

**SUPPORT SB 870 and HB 575. House children who are prosecuted as adults in juvenile facilities instead of adult jail as they await their trials.**

- Judges would have discretion to order youth to be housed elsewhere if the situation poses a threat to the security or safety of other children who are detained in the facility, or if the child requests to be detained elsewhere.



**86%**

of Floridians think that children should not be held in adult jail while awaiting trial.

1 *Jurisdictional Boundaries*, Juvenile Justice Geography, Policy, Practice & Statistics, National Center for Juvenile Justice, <http://www.jjgps.org/jurisdictional-boundaries#transfer-provisions?year=2015&type=6>.

2 Florida Statewide Survey, State Innovation Exchange (Jan. 2019).

3 Florida Poll Reveals Strong Support for Criminal Justice Reform, Right on Crime (Nov. 15, 2017), <http://rightoncrime.com/2017/11/florida-poll-reveals-strong-support-for-criminal-justice-reform/>.

4 Jeree Thomas, *Raising the Bar: State Trends in Keeping Youth Out of Adult Courts* (2015-2017), Campaign for Youth Justice (2017), [http://www.campaignforyouthjustice.org/images/StateTrends\\_Report\\_FINAL.pdf](http://www.campaignforyouthjustice.org/images/StateTrends_Report_FINAL.pdf).

5 *Destined to Fail: How Florida's Jails Deprive Children of Schooling*, Southern Poverty Law Center (Feb. 2018), <https://www.splcenter.org/20180212/destined-fail-how-floridas-jails-deprive-children-schooling>.

6 Florida Dept. of Juvenile Justice Dashboard, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>.

7 Student Enrollment, Florida Dept. of Education, <https://edstats.fldoe.org/SASWebReportStudio/gotoReportSection.do?sectionNumber=1>.

8 *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice (Nov. 2017), [http://www.campaignforyouthjustice.org/images/nationalreports/jailingjuveniles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/images/nationalreports/jailingjuveniles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf).

9 National Prison Rape Elimination Commission Report (June 2009), <https://www.ncjrs.gov/pdffiles1/226680.pdf>.