



2021 POLICY PLATFORM

REFORM THE JUVENILE JUSTICE SYSTEM

In Florida, children as young as 14 can be tried as adults in criminal court through a process known as “direct file.” In this system, the state has given prosecutors the power to directly file charges against a youth in adult criminal court rather than juvenile court, and decide what type of sentence that the child may face if convicted. As a result of direct file, youth receive public criminal records and long sentences in prisons and jails “that were not made to take their social or brain development into account.” Though this approach is not unique to Florida, our state has been one of the harshest for decades. Even in the past few years, Florida has prosecuted and imprisoned the highest number of children as adults in the country—with direct file representing the main cause. Nearly 98% of the state’s youth transferred to adult court between 2009 and 2014 were there due to direct file. More than 60% of those youth were charged with nonviolent and lower-level offenses.

Recognizing these patterns, the state passed a law in 2019 that eliminated mandatory direct file, which required direct file in certain cases. While this was a huge step toward ensuring youth rehabilitation and wellbeing in the justice system, prosecutors still have the option to pursue direct file in several cases. As a result, many Floridian children and their families are still subject to the harmful effects of direct file.

THE PROBLEMS

- **Criminalizing youth is more likely to hurt public safety than help it.** Efforts to be “tough on crime” have proven ineffective in deterring juvenile crime. Comprehensive research has repeatedly shown that harshly punishing youth by trying and sentencing them in adult court is actually associated with higher recidivism rates compared to youth charged with similar offenses who remained in juvenile court. For example, several studies on Florida’s justice system have analyzed the recidivism rates of youth tried as adults and youth tried as juveniles. By comparing cases that were very similar (except for whether the youth were tried as adults or juveniles), researchers found that recidivism by every measure considered was more likely among youth tried as adults than among their counterparts tried as juveniles. In addition, youth who were tried as adults were more likely to commit a felony, and more serious felonies at that, in adulthood.
- **Current approaches to juvenile justice are inequitable.** Youth of color are disproportionately affected at every stage of the juvenile court system. Research has found that these inequities hold true even after controlling for factors like the severity of the offense and a young person’s criminal history. At first contact with the justice system, youth of color are less likely to be offered alternatives to arrest such as diversion programs. Once charged, youth of color are more likely to be transferred to adult court and receive harsher sentences than white youth with similar circumstances and offenses. In a 2016 study of nearly 31,000 youth transferred to adult court in Florida, researchers found that transferred Black and Hispanic youth were more likely to be sentenced to jail or prison and to receive longer sentences compared to their white counterparts. In comparing the likelihood of a transferred youth being sentenced to incarceration rather than community supervision, Black youth were 2.3 more likely to be sentenced to adult jail and 1.7 times more likely to be sentenced to prison than their white peers. Hispanic youth were 1.4 times more likely to be sentenced to adult jail. And among transferred youth who were sentenced to prison, Black youth prison sentences were on average 7.8% longer than the sentences white youth received for the same type of offense.
- **Charging youth as adults ignores development science and hinders rehabilitation.** While the juvenile court system is intended to consider the causes of a youth’s unlawful behavior, the adult system is focused mainly on whether they are guilty or innocent. Yet development science shows that various factors in a child’s life—such as community disinvestment, poverty, trauma, and a greater likelihood to have mental-health needs—shape their behaviors. In a 2014 study, 97% of justice-involved youth in Florida reported having 1 or more adverse childhood experiences, such as abuse, neglect, family issues, and violence. In addition, youth are fundamentally different from adults in relevant ways for considering criminality: they are hardwired to be both more inclined to engage in rash and risky behavior and less able to assess consequences. Charging youth as adults directly ignores these factors, the science of adolescent development, and how a child could behave differently moving forward. As a result, the purpose of the justice system shifts from rehabilitation to punishment, with negative effects for youth.
- **The adult criminal system is particularly harmful to children.** Youth tried as adults are more likely to be convicted and receive harsher sentences than youth charged with similar crimes who remain in juvenile court. And when youth are incarcerated in adult facilities, they are more likely to experience abuse and illness. In

addition, being in adult facilities generally limits youth's access to appropriate treatment, educational and rehabilitative programs, and support networks. As a result of these and other harms, youth transferred to the adult system are more likely to suicide while incarcerated and to have psychiatric symptoms than youth in juvenile facilities. Even after release, youth charged as adults leave with adult criminal records. Thus, people who have been incarcerated since childhood must navigate reentry and the many consequences of having a record, including barriers to education and employment, without the lived experience of adults.

- **Charging and incarcerating youth as adults hurts their families.** The adult court process prevents the people who care about the child involved from being included or consulted in determining what happens to their loved one. This lack of a voice, particularly while their family member is experiencing the justice system at a young age, can cause mental and emotional harm to families. In addition, when youth are incarcerated, their families bear the financial burden of their conviction and incarceration, including legal fees, court costs, restitution, and visitation expenses. In a study of youth and adults who have been incarcerated in Florida and 13 other states, researchers found that nearly half of their families could not afford to pay these costs, and 1 in 5 of those families across income levels had to take out a loan to do so.

THE SOLUTIONS

- **Stop charging youth as adults.** While Florida has eliminated mandatory direct file, there are still many ways in which a prosecutor can request that a child's transfer to adult court be considered or even imposed. For example, there are 19 different offenses for which children as young as 14 can be charged as adults, even if they have no past criminal history. But regardless of the offense a young person might have committed, the adult court process and incarceration in adult facilities do not work for youth; they are in fact harmful to children's development, rehabilitation, and future success. And evidence suggests that even as juvenile transfers have become less common, Black youth remain disproportionately affected. Therefore, direct file should be eliminated except for in the most extreme cases, so that youth across races, ages, and circumstances can be provided the rehabilitation they need and deserve. In addition, Florida should follow the lead of other states and adopt processes to permit reverse transfers, so that youth who have already been tried in adult court may petition to have their case reconsidered in juvenile court.
- **Increase access to diversion programs.** To promote rehabilitation and prevent future contact with the justice system, it is not enough for youth to avoid the harms of adult court and punishment. Even before any criminal processes begin, youth should have the opportunity to participate in diversion programs. While court systems in Florida already offer diversion programs to youth, there are notable gaps in eligibility. For example, the courts serving Broward County refer youth who would otherwise be processed for a misdemeanor or non-violent third-degree felony for the first time to a diversion program. However, even children age 12 years or younger are not necessarily referred, and youth with significant mental disabilities are referred on a case-by-case basis. In addition, youth who would face charges for other felonies or youth who have been involved in the justice system before are not eligible at all. As direct file is eliminated, the default approach for these youth should not be just one step down in the justice system, juvenile court. Rather, Florida should maximize the types of cases that are eligible for diversion.
- **Improve the quality of diversion programs.** As more youth have access to diversion, it is important that these programs avoid the potential for causing harm. All diversion programs, including specialized ones for youth in unique circumstances, should adopt best practices to prioritize harm reduction and decarceration rather than exploitation and punishment. In particular, diversion programs should be available before formal charges or arrest, so that youth avoid the harmful, sometimes lifelong consequences of having a record. Connecting youth to diversion programs at this stage also benefits the justice system by saving time and resources that would otherwise be spent on "jail booking, attorney appointment, and early court and prosecutor case management." In addition, youth in all cases should not be forced to admit wrongdoing in order to enroll in a diversion program, a current practice that makes youth less likely to participate and exposes them to risk if they ultimately face charges. Lastly, youth and their families should not face financial stress in order to access diversion programs. In addition to eliminating fees, these programs should be designed to accommodate economic barriers like lack of transportation and conflicts with work or childcare, so that youth are not penalized for dealing with these challenges.

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