



**THE CONSEQUENCES AREN'T MINOR**





## **WHAT IS THE LAW IN FLORIDA?<sup>1</sup>**

After the national news media broke the story of several 13- and 14-year-olds being sent to adult prisons in the late 1990s, Florida's adultification statutes gained national and international notoriety. Florida prosecutors have a great deal of power over transfer decisions, and during the 1990s, Florida prosecutors sent nearly as many youth to adult court (7,000) through the judicial waiver process as judges in the entire U.S. did.<sup>2</sup> In Florida, youth enter the adult system in five ways: prosecutorial waiver (commonly known in Florida as direct file), judicial waiver, mandatory waiver, indictment, or because the youth had a prior adult sentence. The following are the key features of Florida's adultification laws.

### **Prosecutorial waiver (direct file). Prosecutors have significant power and discretion to transfer young people to adult courts.**

Prior to 1994, prosecutors had discretion to transfer cases for juveniles age 16 and older and had limited discretion to transfer cases for 14- and 15-year-old juveniles. In 1994, the Florida State Legislature passed legislation that expanded prosecutorial discretion. Only 15 states or jurisdictions including Florida employ direct file (prosecutorial discretion waiver).<sup>3</sup> This legislation grants prosecutors discretion to transfer to adult court youth who are 14 or 15 and charged with the commission, attempt, or conspiracy to commit certain serious crimes (19 crimes apply). Prosecutors also have discretion to transfer cases in which the prosecutor views that the public interest requires that adult sanctions be considered or imposed. For any offenses other than misdemeanors, prosecutors may use direct file to transfer cases involving youth who are 16 and 17 years old. Prosecutors also may use direct file for misdemeanors for youth who are 16 and 17 and have at least two previous adjudications (or adjudications withheld) for delinquent acts, one of which involved a felony. Nearly 95% of Florida juvenile cases transferred in 2000 were via direct file.<sup>4</sup>

### **Mandatory waiver (statutory exclusion).**

#### **Young people must be sent to the adult court for certain acts.**

A prosecutor must direct file a case for young people who are 16 and 17 years old if they were:

- previously adjudicated delinquent for acts classified as a felony and facing repeated charges for violent crimes, or

- charged for offenses classified as a forcible felony and previously adjudicated delinquent—or had adjudication withheld—for three felonies that were committed within 45 days of each other.

Youth also are subject to mandatory waivers if:

- they are charged with the commission of a fourth felony offense for which they have previously been adjudicated delinquent;
- a previous felony adjudication has been withheld; or
- one of three previous felony adjudications for committing, attempting to commit, or conspiring to commit a felony involved the use or possession of a firearm, or involved violence against a person.

A prosecutor must direct file cases in which youth of any age are accused of causing serious bodily injury or death while stealing a motor vehicle or while in possession of a stolen vehicle. For crimes in which the mandatory minimum “10-20-life rule” applies, mandatory direct file must be used for youth who are 16 and 17 years old if their crime involved discharging a firearm or destructive device and resulted in bodily harm or death. Last, prosecutors must transfer the case to adult court via “indictment” in cases in which youth, regardless of age, are charged with capital charges meriting death or life without parole. In these cases, the juvenile court retains jurisdiction until the prosecutor seeks an indictment. Once transferred, these youth are tried and sentenced as adults in every aspect. Additionally, any cases still pending in the juvenile court for these youth are also transferred from juvenile court to adult court. This practice is commonly referred to as “coat tailing.” In the event that a youth is found guilty of a lesser felony charge than alleged in the indictment, the young person is eligible for juvenile sentencing.

**Judicial waiver. In Florida, regardless of the offense, the State Attorney’s Office may file a petition for a discretionary waiver before a judge.**

The waiver proceeding is a two-part hearing before a juvenile court judge who reviews the evidence presented by the prosecutor and defense counsel and then decides whether to transfer the youth to adult court. In order to transfer the case, the judge must find:

- sufficient probable cause to allege that the youth was involved in the delinquency act, and
- background information supporting the transfer to adult court.<sup>5</sup>

Waiver hearings can be voluntary or involuntary. A young person or his or her parents or guardians can request that the case be transferred to adult court for trial, or a prosecutor may direct file a case, either because they choose to or because the crime dictates that the youth be transferred.

**Once an adult, always an adult.**

As shown, young people who have served previous adult sentences are automatically tried as adults.

**Young people who await trial may be detained in juvenile facilities or adult jails.**

Within 24 hours of arrest, young people must appear before a juvenile judge, who determines whether the youth pose a public safety risk. Youth who are considered risks to public safety must remain in physically secure detention centers while awaiting trial. Generally, there is a 21-day limit to secure detention; however, young people who have been charged with serious offenses may be detained for up to 30 days. When youth are

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transferred to adult court, they must appear before an adult court judge within 48 hours of their transfer from juvenile court. Most young people whose cases have been transferred to adult court are detained in adult jails or freed on bond.

Although young people who are awaiting prosecution are generally kept separate from the adult population, they can be held in adult jails. Young people who turn 18 while awaiting prosecution in secure facilities are automatically transferred to adult facilities. If they are exceptionally young, youth who face adult charges are sometimes detained in juvenile facilities.<sup>6</sup> Regardless of the situation, youth who are detained in adult facilities must be separated from adult inmates by both sight and sound.

**Trial judges have discretion about where and how youth convicted as adults should serve their sentences.**

In 1994, Florida’s State Legislature passed legislation that made it easier to transfer youth to adult criminal court as well as provided broader discretion to the criminal court by allowing the court to levy juvenile dispositions or adult sentences on youth who have been tried as adults. Judges have two options:

1. *Juvenile sentencing options.* Some youth who have been convicted as adults may serve their sentences in juvenile correctional facilities or residential rehabilitative programs. In cases when adult courts are considering imposing juvenile dispositions, the Florida Departments of Corrections and Juvenile Justice submit reports to criminal court judges. These reports provide guidance to judges as they determine whether to impose juvenile or adult sanctions on the offender.<sup>7</sup> If their cases were transferred to adult court due to a mandatory direct file, youth who are 16 and 17 may not be eligible for juvenile sanctions.<sup>8</sup>
2. *Adult sentencing options.* Judges may sentence youth tried as adults to adult probation, where they are closely monitored, or to adult facilities. Youth sentenced to less than one year are incarcerated in county jails. Youth sentenced to longer than one year are incarcerated in adult prisons. In addition, Florida’s Youthful Offender Act provides sentencing options for youth between 18 and 21 years of age and convicted of first-time offenses that are not punishable by the death penalty. These youthful offenders may be detained in designated youthful offender facilities rather than in the adult system.

Data from the Florida Department of Juvenile Justice profiles database show that of the 2,794 juvenile cases transferred to adult court, 58% were transferred for non-violent (non-index) offenses and 42% were transferred for violent offenses.

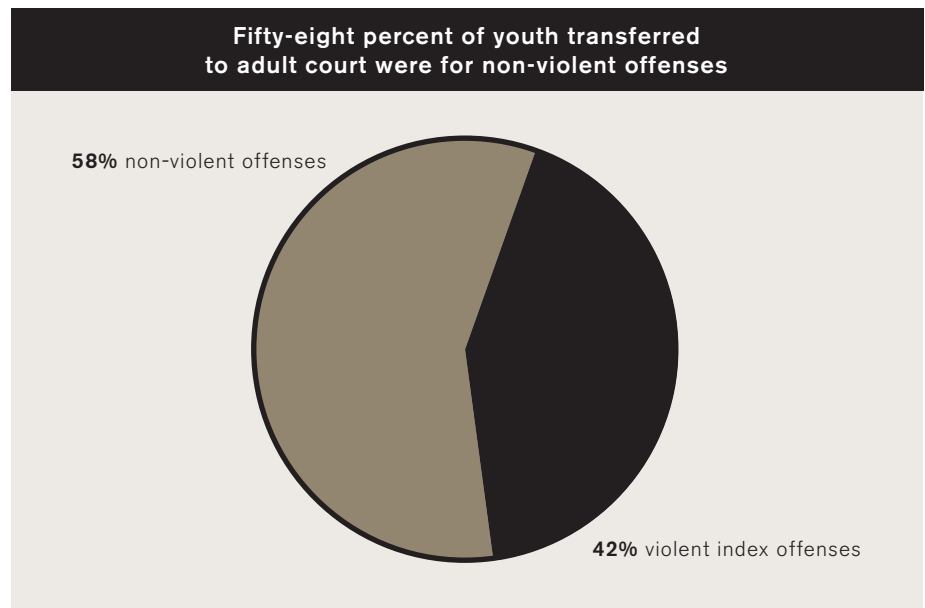
**WHO IS AFFECTED BY THE LAWS IN FLORIDA?**

**Most juvenile crime is not violent.**

According to Uniform Crime Reporting (UCR) data found on Florida’s Department of Law Enforcement website, in 2005, 35% of crimes committed by youth were “index” crimes (which include violent crimes, and burglary, larceny, theft of a motor vehicle, and arson) and the other 65% of youth crime were non-index crimes.<sup>9</sup>

Additionally, 2005-2006 data from the Florida Department of Juvenile Justice profiles database show that of the 2,794 juvenile cases transferred to adult court, 58% were transferred for non-violent (non-index) offenses and 42% were transferred for violent offenses.<sup>10</sup> This includes 127 cases that were transferred for misdemeanor offenses. According to these data, more cases were transferred to adult court for drug offenses<sup>11</sup> (475) than for armed robbery (404).

Source: the Florida Department of Juvenile Justice's Office of Research and Planning. (2007). 2005-2006 Delinquency Profiles. [http://www.djj.state.fl.us/Research/Delinquency\\_Profile/0506\\_Profile.html](http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html)



Furthermore, a 1991 analysis of young people transferred to adult court in two representative Florida counties showed that only 29% of the juveniles waived by prosecutors to adult court were transferred for violent crimes. More than half (55%) of the youth whom prosecutors sent to adult court were charged with property offenses that involved no violence, and 5% were tried as adults for misdemeanors.

**Thousands of young people come into contact with Florida's adult criminal justice system, but the number of youth transferred has declined.**

During Fiscal Year (FY) 2004-2005, the Florida Department of Juvenile Justice handled 150,687 delinquency referrals and 95,263 individual youth.<sup>12</sup> Of those, 3,279 referrals were transferred to adult court and 2,504 individual youth were transferred to the adult criminal justice system.<sup>13</sup> Between FY 2000-2001 and FY 2004-2005, transfers to adult court decreased by 23%.<sup>14</sup>

**Hundreds of young people are under the supervision of the adult corrections department.**

In FY 2003-2004—the latest year available—1,301 youth in Florida were sentenced to adult prisons.<sup>15</sup> On the average day in 2001, 465 juvenile males and 23 juvenile females were held for pre-trial in local jails. In cases when particularly young youth were transferred to adult court, rare exceptions were made to detain them in juvenile facilities.<sup>16</sup>

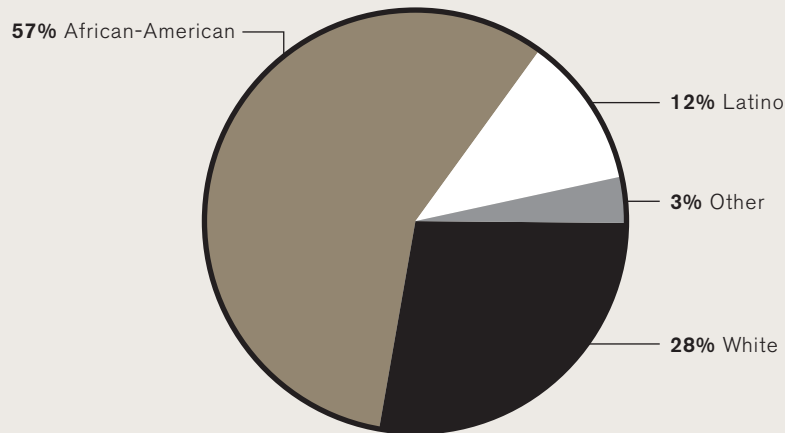
**In Florida, African-American youth are disproportionately overrepresented in transfers to adult courts.**

Statistics compiled by the Florida Department of Juvenile Justice in 1996 found that, in Florida, African-American young people were 2.3 times more likely than white young people to be transferred to adult court.<sup>17</sup> Although not calculated as a rate, the latest figures from Florida's DJJ still show a racially disparate impact.

In 2005-2006, while African-Americans represented 24% of the general youth population, African-Americans represented 57% of all the youth transferred to adult court. Although the Latino figures may underestimate young people who are Latino but were categorized as white, in 2005-06, Latinos accounted for 12% of the youth population and 12% of the youth transferred. All told, non-white young people accounted for about 7 out of 10 young people transferred to the adult system in Florida.<sup>18</sup>

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**Youth of color make up about 7 out of 10 youth transferred to adult court**



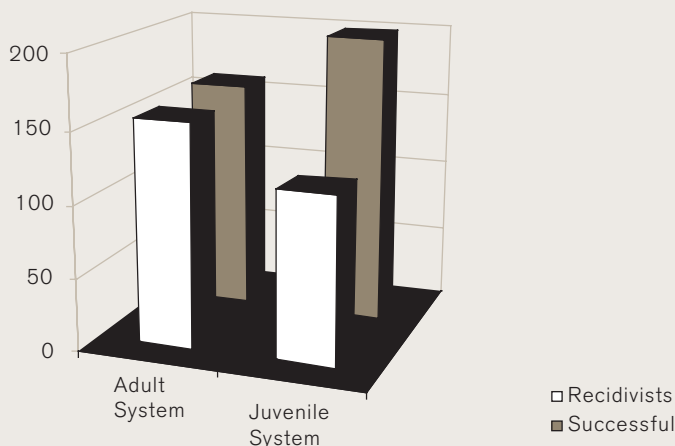
**Research has shown that young people who have been treated as juveniles are less likely to re-offend than young people treated as adults.**

Research funded and published by the U.S. Department of Justice and the Miami-Dade County Public Defender’s Office has found that young people tried as adults are more likely to re-offend than youth sent to the juvenile justice system, even when compared to young people with similar offense backgrounds.

1. *Academic and U.S. Justice Department studies of recidivism.* A 2002 report funded and published by the U.S. Department of Juvenile Justice found that youth in the juvenile system have lower recidivism rates than youth in the adult system. One study, *Juvenile Transfer to Criminal Court Study: Final Report*, compared the recidivism rates of 315 “best matched” young offenders—that is, young people with similar offense backgrounds. As summarized in a report by Florida’s Department of Juvenile Justice, “The researchers found that youth who receive sanctions and rehabilitation in Florida’s juvenile justice system have a lower rate of recidivism than their counterparts who are transferred to adult criminal court.” The 2002 report also argued that “when the youth recidivate, those transferred to the adult system committed more felony offenses.”<sup>19</sup>

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**Felony recidivism, 315 “best-matched” pairs**

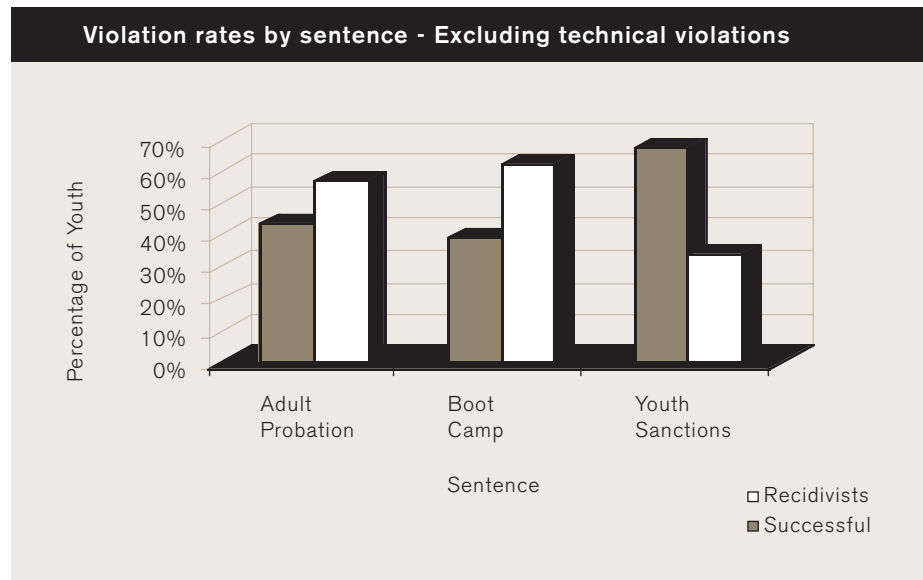


Source: Bishop, Lanza-Kaduce, & Winner, as cited in Florida Department of Juvenile Justice. (2002, January 8). *A DJJ success story: Trends in transfer of juveniles to adult criminal court.* p. 5. Retrieved October 5, 2006, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=564><sup>20</sup>

2. *Findings of the Miami-Dade County Public Defender's Office Juvenile Sentencing Advocacy Project.* In 1998, the Miami-Dade County Public Defender's Office initiated a program called the Juvenile Sentencing Advocacy Project. This project encourages judges in the adult system to "sentence back" youth tried as adults by implementing juvenile sanctions. In a 2001 study done on the program, the researchers compared re-arrest rates between Florida youth sentenced to adult probation and boot camp versus those given juvenile sanction (the "sentence-back" option). If technical violations—generally, violations of a condition of supervision, not a new crime—are included, youth receiving adult probation re-offended 89.2% of the time, while youth sentenced to boot camp re-offended 92.3% of the time. Youth receiving juvenile sanctions re-offended 39.4% of the time. This means that youth placed on adult probation or in boot camps were twice as likely to re-offend as youth receiving juvenile sanctions. When the researchers excluded technical violations, adult probationers re-offended more than 50% of the time and those sentenced to boot camp re-offended almost 60% of the time. Those receiving juvenile sanctions re-offended slightly more than 30% of the time. Even when controlled for race, initial charges, and age, youth with adult sanctions re-offended (excluding technical violations) 2.26 times more than youth receiving youth sanctions. When technical violations were included, youth receiving adult probation or boot camp re-offended 4.90 times more than youth receiving juvenile sanctions.<sup>21</sup>

**Juvenile Sentencing Advocacy Project:  
Young people sentenced to the juvenile justice system re-offended less.**

Source: Mason, C. A., & Chang, S. (2001, October 15). *Re-arrest rates among youth sentenced in adult courts: Evaluation report for juvenile sentencing advocacy project.* Retrieved October 12, 2006, from [http://www.pdmiami.com/JSAP\\_2001\\_Impact\\_Evaluation.pdf](http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf)



**YOUNG PEOPLE AND FAMILIES AFFECTED BY FLORIDA'S LAWS**

In recent years, a few high-profile cases have spurred debate on juvenile justice policy and reform in Florida. Some of these stories gained notoriety because they involved 13- and 14-year-olds engaged in serious crimes that resulted in long, adult prison sentences. Other cases involved young people engaged in routine delinquency who were tried and jailed as adults. These news stories have dominated the headlines and provided the public with insight into the impact of Florida's adultification statutes on young people, their families, and communities.<sup>22</sup>

### **Anthony Laster.**

When Anthony Laster was 15, his robbery case gained national attention. Laster, who was mentally disabled and hearing impaired, came to the attention of law enforcement for reaching into a classmate's pocket and stealing two dollars in lunch money.<sup>23</sup> Thanks to the West Palm Beach Junior High School's zero-tolerance policy, officials reported the incident to the police even though Laster had no previous criminal record and was not armed. Soon afterward, Florida prosecutor Barry Krischer filed three felony charges against Laster in adult court: strong-arm robbery, extortion, and petty theft. The young man faced the possibility of a 30-years-to-life sentence.

Laster spent three weeks in a detention center. On Christmas Eve, the judge in the adult court set bond at \$500, the minimum level for felony charges. Because Laster's family could not raise bail money, Laster spent the next four weeks, Christmas included, in county jail.

The county prosecutor explained his actions in *The Palm Beach Post*, describing Laster as "this schoolyard bully, this mugger." The prosecutor said that to treat "this forcible felony, this strong-arm robbery, in terms as though it were no more than a two-dollar shoplifting fosters and promotes violence in our schools."<sup>24</sup> Laster's case made national headlines, and the prosecutor dropped the case after a "60 Minutes" crew arrived in town to investigate.

### **Lionel Tate.**

For certain crimes, such as first-degree murder, Florida state law requires that youth of any age be tried in adult court. If found guilty, the law requires these youth to be sentenced to life without parole. In 2001, in a controversial case that garnered national headlines, the impact of the Florida statutes came into sharp relief. The incident occurred in 1999. Lionel Tate, who was 12 years old at the time, was "wrestling" with six-year-old playmate, Tiffany Eunick. Tate's actions resulted in Eunick's tragic death. In 2001, Tate was convicted in an adult court of first-degree murder and sentenced to life without parole.

The sentence caused many, including Florida Governor Jeb Bush, to publicly question the state's law. Bush stated, "As I have previously expressed, I am also concerned about the law which can require a life sentence—without any possibility of parole—for a crime committed by a 12-year-old child. I am not sure it is right to consign such a young child to a life without any hope... This is a concern that I know is shared by many Floridians."<sup>25</sup>

Tate's attorneys appealed. In late 2003, the State Appeals Court overturned the decision arguing that Tate, at 14, was not mentally competent enough to make informed decisions about his defense. Lionel Tate was granted a new trial, where he pleaded guilty to second-degree manslaughter and was sentenced to three years in jail. After he was released on January 29, 2004, he faced up to a year of house arrest and up to 10 years of probation. However, Tate did not successfully complete his sentence. In 2004 he was caught carrying a knife, and in 2006 he was arrested and convicted for an armed robbery of a Domino's pizza delivery man. He was eventually sentenced to 30 years in prison.

The question remains: did Lionel Tate receive sufficient rehabilitative services to successfully reintegrate into society? Michael Brannon, the psychologist who evaluated Tate for the court said, "We had a real chance. The right thing would have been to get this young man some help."<sup>26</sup> After rendering the guilty verdict, some jurors expressed mixed views on the options available to them under the law. "While they had sympathy for Lionel, they could not give a more sympathetic sentence because the law required them to give him life in prison without parole. Kathleen Pow-Sang, who was one of Tate's jurors said, 'Nobody wanted to put down a guilty verdict, because it was a child.'"<sup>27</sup>

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#### **Anthony.**

Anthony, an 18-year-old African-American male from Miami, Florida, is a middle child. He has three sisters and one brother. At age 12, he was charged with stealing a car. Anthony successfully completed his probation for that offense. In elementary school, Anthony was diagnosed with a mental health issue. He began having trouble in school and, because his exceptionalism could not be addressed in one school, he moved from school to school. Anthony has been to a total of eight schools. In January 2006, at age 17, he was arrested for grand theft auto and fleeing the scene of an accident with injuries. He was processed through the Juvenile Assessment Center where he was direct filed and charged as an adult. Anthony was custody released to his mother and was able to go home while awaiting the disposition of his case.

Upon conviction, Anthony was sentenced as a juvenile pursuant to Florida Statute 985.233 and committed to the Department of Juvenile Justice to await placement in a moderate risk residential facility. He is expected to be at the residential program for a period of six to nine months. Upon completion of the program, he will be placed on conditional release for an anticipated period of two to four months and he will be monitored by his juvenile probation officer and/or conditional release officer. If he does not successfully complete the conditions of his program and conditional release, he can be sentenced for up to 15 years in prison. While Anthony is awaiting placement in the residential program, he is required to maintain weekly contact with his juvenile probation officer. Anthony is not currently employed. His juvenile probation officer recommended that he wait until he is released from the program to get a job. However, because Anthony is on the waitlist for placement, he is unable to get on with his life until he gets placed into a program. In December 2005, Anthony was placed at RAM-C, a program that serves offenders with developmental disabilities.

#### **Dominique.**

Dominique, an 18-year-old Cuban girl from Princeton, Florida, is the oldest of four siblings. When Dominique was young, her mother died, and during much of her youth her father was in prison. She and her siblings lived with her grandparents, but her grandmother died and her grandfather did not have enough money to support Dominique and her brothers and sisters. Dominique moved in with her aunt and they moved frequently. In 2004, when Dominique was 16, she was charged with armed robbery and transferred to the adult criminal justice system via direct file. This charge was her first and only charge. Dominique was sentenced to two months in jail and one year of probation.

Dominique was held at the Women's Annex in downtown Miami for two months (December 17 to February 28). Dominique described the facility as nasty and said that "the guards don't care about you. They do things on their own time." She also said that they were racist and gave extra privileges (food, extra phone minutes) to girls they favored. The guards cursed and even flirted and acted inappropriately with some of the inmates.

Dominique also described the conditions of the Miami Dade Jail. Every time she had a court hearing, she had to go to the county jail where she would be held in a two-by-four cell. She was held there four or five times for up to 12 hours each time. Not only was the cell small, but the conditions of the jail were also poor. Dominique explained that when she asked to go to the bathroom, the guards would not listen or respond to her request, so she often had to go to the bathroom on the floor of the cell.

Dominique was held with three other girls. On a typical day, the four girls would wake up at 4:00 a.m. to shower, and then go back to bed. School started at 8:00 a.m. and ended at 2:00 p.m. From 2:00 p.m. to 4:00 p.m., they were locked down. At 4:00 p.m., they were allowed to use the phone. Afterwards, they were supposed to have recreation; however,

whether they did depended on the officer. Dominique estimated that they had recreation about four times a week. The rest of their night consisted of dinner, watching TV, and being locked in their cell.

Federal law states that youth in adult facilities are to be separated by sound and sight from adults. Therefore, the four youth in the Women's Annex lived in the same unit, ate together, and took classes together. However, this federal regulation often limited their activities. For example, when the girls had recreation, the rest of the facility had to be locked down. Oftentimes they did not get their recreation because the guards did not want to lock down the rest of the facility.

Towards the end of Dominique's sentence, a girl with chicken pox entered the facility and contaminated it. As a result, everyone was locked down for 21 days and no one could go to their court appearances. Dominique's release date had to be pushed back because she could not leave the facility to attend her court date.

Dominique has now finished her sentence and probation term. She attends Miami Dade Community College and plans to go to a university to study Forensic Psychology. She is currently a hostess at a restaurant. Dominique got this job on her own, with no help from her probation officer or the system.

Dominique believes that the system could be improved markedly by improving staff. As she mentioned, many officers did not care about the girls and some even interacted inappropriately with the inmates. She notes that even when an inmate was asking for help, an officer might turn his or her head to look at the inmate, but then not do anything about the situation. Dominique gave the example of witnessing a girl in the facility forcing another girl to have sex with her. When it was reported, nothing was done. Also, Dominique noted that recreation and the day's activities "depended on the officer." Some officers allowed the girls recreation, but some did not. Dominique also said that some of the "officers do not deserve to be in there. They did not help you." Dominique's story emphasizes that especially when dealing with incarcerated youth, whether in the adult system or in the juvenile system, the officers need to be responsive to the needs of the girls and care about them. Dominique says that this really makes a difference. The one person she believes cared was her teacher. She "gave the girls hope and treated us like she was our mom." The teacher left a strong impact on Dominique because she performed her job with a caring attitude.

Dominique's story highlights the problem that sight and sound laws create when sending youth to adult facilities. As Dominique noted, when youth are incarcerated in adult facilities and have to be separated by sight and sound, it complicates the procedure. Having to lock down the rest of the facility when the girls have recreation makes it more likely that the girls will not get recreation. Dominique noted that while it was good to be held with other youth, being in an adult facility, they were treated as adults.

Dominique also recommends that the incarcerated should have better access to medical care. She experienced two instances of delayed medical help and witnessed many others. She hurt her knee and asked a guard to see a nurse, but the guard told her the nurse was busy and that she would get to her when she could. Then the shift changed and a new officer came on duty. It took two days for a nurse to get to her. However, she witnessed much worse. A friend at the Women's Annex had a lump growing on her neck. She repeatedly asked for medical attention, but did not get it until she went to court. The lump turned out to be a tumor. Another inmate had gingivitis and was bleeding through her gums. The girl cried for days. Five days later, she was admitted to the hospital. Dominique's sister, who was also incarcerated at the Women's Annex, was diagnosed with bipolar disorder when she was admitted. They gave her

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medication to treat the disorder, but when she was released, she went to another doctor who told her she did not have bipolar disorder. Now her sister has developed a dependence on the medication and still takes it.

### WHAT ARE THE POLICY OPTIONS IN FLORIDA?

Policymakers expanded the ways in which young people could be tried as adults, in part because of the belief that it would lead to lower crime. Based on 2004 arrest rates, Florida had a violent juvenile crime rate of 468 per 100,000, making it the state with the fourth highest juvenile violent crime rate.<sup>28</sup> This is a distinction that has not changed much since the 1990s, when the Justice Department reported that the state had a juvenile violent crime rate 48% higher than the national average.<sup>29</sup>

Even though the juvenile justice system was created based on the notion that youth should be given special consideration, some Florida judges assert that youth have no right to special treatment. Commenting on Lionel Tate's case, Judge Barry J. Stone stated, "Florida courts have long recognized that there is no absolute right requiring children to be treated in a special system for juvenile offenders."<sup>30</sup> Judge Martha C. Warner said "there's no discretion exercised at all in this—no societal judgment...Age is not a consideration."<sup>31</sup> In a March 31, 2004, press release, Senator Geller reminds us that "These are kids. They're not old enough to vote, they're not old enough to drive, and they're not old enough to drink or do all these other things. Why do we assume that they're able to make adult decisions?"<sup>32</sup> Geller noted that "children are not simply short adults. They are different from adults and should be treated accordingly. We must impose punishments that fit the crime, but at the same time, we must also provide opportunities for rehabilitation."<sup>33</sup>

#### **Juvenile sentencing advocacy: How has the system accommodated Florida's ability to try thousands of young people as adults?**

Many note that youth receive insufficient treatment in adult courts and prisons. The Miami-Dade County Public Defender's office believes that 97% of transferred youth are not sentenced to appropriate juvenile intervention.<sup>34</sup> As Florida added even more laws to make it easier to transfer youth to the adult system, public defenders and local providers have been working at providing the courts with appropriate ways of serving young people's needs without adult sanctions. The Miami-Dade County Public Defender's Office Juvenile Sentencing Advocacy Project (JSAP) provides young people with aggressive sentencing advocacy, encouraging courts to provide juvenile dispositions to young people who are being tried in the adult system. As shown, young people receiving juvenile sanctions under the program have lower recidivism rates than young people receiving adult sanctions.<sup>35</sup> Despite the evidence of the program's effectiveness, the program is under-utilized. Many transferred youth are ineligible to be sentenced back and a number of judges are unaware of sentencing options. In addition, few defenders' offices have disposition specialists (social workers) to help attorneys develop sentencing options.<sup>36</sup>

#### **Florida's rigid punishments for adults means that young people tried as adults can face life in prison.**

The success of sentencing advocacy is tempered by the fact that these options are unavailable to many prison-bound young people. In many cases, the rigid punishment structure found in adult courts does not allow judges to consider a number of factors when sentencing, including prior record, special circumstances (i.e., family situation), willingness to change, age, and maturity. In some cases, once a young person is sentenced as an adult, sentencing requirements leave criminal court judges with few options. For example, the enactment of the "Tough Love" legislation trumped by then-

Governor Jeb Bush allows the automatic transfer to the adult system of young people ages 16 and 17 who have at least three prior felony adjudications and have committed an additional violent felony; or charged with mandatory minimum sentences.<sup>37</sup> As the 10-20-life law requires the automatic transfer of youth who commit gun crimes, they face long prison sentences. Some policymakers argue that sentencing requirements are meant to punish rather than rehabilitate youth who are tried as adults. Senator Walter “Skip” Campbell states that, “The purpose of the penal system is to punish, but I believe it’s also to rehabilitate. If we don’t allow the rehabilitation side to be pursued, then we’re really not a true, honest society.”<sup>38</sup>

#### **Legislators press for reforms to Florida’s adultification statutes.**

In 2003, in hopes that the media attention given to Lionel Tate’s case would draw support, Florida State Senator Steven Geller introduced Bill 530. Far from being wide sweeping, the bill would have continued to allow 16- and 17-year-old youth to be tried and sentenced as adults and incarcerated in adult prisons. It also still allowed for youth to serve life without parole. However, the bill provided parole eligibility for first-time offenders who were younger than 15 years old and convicted of offenses that carried a death or life sentence or a sentence of greater than 10 years. Following the bill’s defeat in 2004, Senator Geller commented about issues that sentence guidelines create: “No member of the Florida Legislature has ever been defeated for re-election or election to a higher post because they’re seen as too tough on crime. You only lose because you’re seen as too soft on crime.”<sup>39</sup> And Senator Geller says, “While it is important that criminals receive the punishment most suitable to their crime, we cannot continue to allow a ‘one size fits all’ policy to govern the way we prosecute children who commit bad acts.”<sup>40</sup>

#### **Concerns over adequacy of legal representation for youth in Florida have been raised.**

Because these laws have raised the stakes for young people before the courts, questions have arisen about the quality of legal counsel young people receive. According to a report released in the fall of 2006 by the National Juvenile Defender Center, *Florida: An Assessment of Access to Counsel and Quality of Representation in Delinquency Proceedings*, young people “were observed routinely waiving their Constitutional right to counsel. This often occurs with a wink or a nod—or even encouragement—from judges.”<sup>41</sup> The report found that young people are under the impression that waiving right to counsel makes the case easier to resolve because it means less time, less inconvenience to their parents, and less cost. In addition, the report notes that the legal counsel provided to youth is often inadequate. “Untimely appointment of counsel” and “inadequate resources, and excessive caseloads” all impede the effective representation of Florida’s youth.<sup>42</sup> Furthermore, the report states that because juvenile defenders carry “staggering caseloads,” many cases result in guilty pleas rather than adjudicatory hearings. As Florida laws grant prosecutors the discretion to file certain cases in adult court, this gives prosecutors additional leverage to extract guilty pleas from youth who fear being transferred to adult court for trial and sentencing.<sup>43</sup> In October 2005, Senator Stephen Wise proposed legislation (S. 526) that sought to ensure legal representation for youth and to protect youth from waiving their right to counsel before consulting with counsel. After passing the Florida Senate on April 26, 2006, the bill stalled in the House Committee on the Judiciary.<sup>44</sup>

“While it is important that criminals receive the punishment most suitable to their crime, we cannot continue to allow a ‘one size fits all’ policy to govern the way we prosecute children who commit bad acts.” Florida State Senator Steven Geller

### **FLORIDA RECOMMENDATIONS**

Just as Florida has led the nation in the use of prosecutorial mechanisms to try youth as adults, it has led the nation in documenting the impact of trying youth as adults through groundbreaking research on juvenile re-offending. The high-profile cases of Tate and

Laster also have served as reminders of the effects these harsh laws can have on Florida's youth. As a result, a number of juvenile justice leaders, legislators, and policymakers in Florida have made the following recommendations on how the state could change the way it treats young people before the courts.

- **Prohibit prosecutorial transfers of youth to adult court.**

Judges should have sole discretion in the determination of whether to transfer a youth to adult court. Prosecutorial transfers represent the bulk of Florida's transfers to adult court. Shifting decision-making power to judges would reduce the amount of cases transferred to adult court and would ensure that more youth have access to age-appropriate services. This access reduces recidivism and increases public safety.

- **Require judges to consider imposing juvenile dispositions for youth tried and convicted in adult court.**

Judges need discretion and flexibility when sentencing youth, particularly those in the adult court. Judges also should have the discretion to sentence transferred youth to juvenile treatment programs or adult court supervision. In addition, judges should be given the ability to waive minimum mandatory sentences for juveniles transferred to adult court.

- **Implement protections for youth who indicate a willingness to waive their right to counsel.**

It is imperative that youth understand the long-lasting consequences of juvenile adjudication or adult conviction. Well-trained, adequately resourced juvenile attorneys have the expertise to guide youth throughout the complicated court process.

- **Young people who are found to be incompetent should not be transferred to adult court.**

Under the adult system, the services available to individuals found incompetent are not youth-specific.

- **Create a centralized database to track prosecutorial transfer decision-making by circuit.**

It is important to be able to understand the extent to which prosecutors exercise their discretion to transfer juveniles to adult court, so that young people are not receiving vastly different outcomes from place to place.

- **Promote the public and social benefits of the "sentence back" option to judges and defenders.**

The JSAP program evaluation has shown that, despite the Florida adultification statutes, when young people are sentenced to juvenile dispositions, they are less likely to re-offend than young people sentenced to adult dispositions.

- **Expand eligibility and provide resources to allow more youth who have been transferred to be "sentenced back."**

In sharp contrast to high recidivism rates associated with trying youth as adults in Florida, the state has a number of promising programs that provide quality supervision, services, and rehabilitative options for young people in the juvenile justice system. The state should invest in expanding interventions such as those run by the Associated Marine Institute, Apalachicola Forest Youth Camp,<sup>45</sup> and the Culinary Education and Training Program for At-Risk Youth.<sup>46</sup> These programs have been shown to reduce re-offending among young people.

- **Eliminate statutory transfer to adult court.**

If this were eliminated, youth who pose a threat to public safety could still be placed in the adult system if the judge felt it necessary.

Judges need discretion and flexibility when sentencing youth, particularly those in the adult court. Judges also should have the discretion to sentence transferred youth to juvenile treatment programs or adult court supervision.

## NOTES

- <sup>1</sup> Information on Florida transfer laws was compiled by Carlos Martinez at the Miami-Dade County Public Defender's Office.
- <sup>2</sup> Butts, J. A., & Harrell, A.V. (1998). *Delinquents or criminals: Policy options for young offenders*. Washington, DC: The Urban Institute.
- <sup>3</sup> The other 14 states and jurisdictions are Arkansas, Colorado, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia. See Snyder, H. N., & Sickmund, M. (2006). *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. p. 113.
- <sup>4</sup> Florida Department of Juvenile Justice. (2002, January 8). A *DJJ success story: Trends in transfer of juveniles to adult criminal court*. p. 5. Retrieved October 5, 2006, from <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=564>
- <sup>5</sup> Fla. Stat. § 985.556.
- <sup>6</sup> Data request filed by Ted Tollett, Florida Department of Juvenile Justice, Office of Data and Research.
- <sup>7</sup> See Florida Department of Juvenile Justice, 4.
- <sup>8</sup> Fla. Stat. § 985.557(2)(a).
- <sup>9</sup> Florida Department of Law Enforcement. (2005). Arrest totals by age and sex: Florida January-December 2005. *Florida's uniform crime reports*. Retrieved October 26, 2006, from [http://www.fdle.state.fl.us/FSAC/UCR/2005/CifAge\\_annual05.pdf](http://www.fdle.state.fl.us/FSAC/UCR/2005/CifAge_annual05.pdf). Index crimes are defined as one of the eight crimes listed in Part 1 of the *Uniform crime reports* such as rape, robbery, murder, and aggravated assault.
- <sup>10</sup> The FBI designates violent index offenses as murder/non-negligent manslaughter, forcible rape, robbery, and aggravated assault. The non-violent offense category combines both misdemeanor and felony non-violent crimes.
- <sup>11</sup> Includes 33 misdemeanor drug transfers (28 marijuana, three possession of drug paraphernalia, and two for "other misdemeanor" drug cases) and 442 felony drug transfer cases (389 for felony non-marijuana drugs, 53 for marijuana felonies). Florida Department of Juvenile Justice's Office of Research and Planning. (2007). *2005-2006 delinquency profiles*. [http://www.djj.state.fl.us/Research/Delinquency\\_Profile/0506\\_Profile.html](http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html)
- <sup>12</sup> Florida Department of Juvenile Justice. (2006, February 5). Fast facts. *Key juvenile crime trends and conditions*. Retrieved October 3, 2006, from <http://www.djj.state.fl.us/Research/Trends.html>
- <sup>13</sup> Delinquency referrals count any charges on the same date as one case. The individual youth category counts any charges brought against a youth throughout the year as one referral. Therefore, a youth referred twice or more during a year is counted once for the most serious offense for the individual youth statistic, but is counted twice in the delinquency referrals statistic. See *2004-05 profile of delinquency cases and youths referred*, Office of Research and Planning, Florida Department of Juvenile Justice.
- <sup>14</sup> Data request filed by Ted Tollett Florida Department of Juvenile Justice, Office of Data and Research.
- <sup>15</sup> Ibid.
- <sup>16</sup> Ibid.
- <sup>17</sup> Department of Juvenile Justice. (1996, March 24). *Management report* (No 42). Tallahassee, FL: Author.
- <sup>18</sup> Florida Department of Juvenile Justice's Office of Research and Planning. (2007). *2005-2006 delinquency profiles*. [http://www.djj.state.fl.us/Research/Delinquency\\_Profile/0506\\_Profile.html](http://www.djj.state.fl.us/Research/Delinquency_Profile/0506_Profile.html)
- <sup>19</sup> Ibid, p. 1.
- <sup>20</sup> See Florida Department of Juvenile Justice, 4.
- <sup>21</sup> Mason, C. A., & Chang, S. (2001, October 15). *Re-arrest rates among youth sentenced in adult courts: Evaluation report for juvenile sentencing advocacy project*. Retrieved October 12, 2006, from [http://www.pdmiami.com/JSAP\\_2001\\_Impact\\_Evaluation.pdf](http://www.pdmiami.com/JSAP_2001_Impact_Evaluation.pdf)
- <sup>22</sup> See Florida Department of Law Enforcement, 9.
- <sup>23</sup> Twohey, M. (1999, June). The wrong answer to Littleton. *The Washington Monthly*. <http://www.washingtonmonthly.com/features/1999/9906.twohey.littleton.html>
- <sup>24</sup> Ibid.
- <sup>25</sup> Amnesty International. (2003, February 18). *United States of America (Florida): Legal concern, Lionel Tate*. From Amnesty International online library archive <http://news.amnesty.org/library/Index/ENGAMR510272003?open&of=ENG-USA>
- <sup>26</sup> Ibid.
- <sup>27</sup> Charles, N., Morrissey, S., & Trischitta, L. (2001, February 12). Judging Lionel. *People Weekly*, pp. 87-88.
- <sup>28</sup> Office of Juvenile Justice and Delinquency Prevention. (2006, September 8). *OJJDP statistical briefing book*. <http://ojjdp.ncjrs.gov/ojstabb/crime/qa05103.asp?qaDate=2004>
- <sup>29</sup> Snyder, H. N., & Sickmund, M. (1998). *Juvenile offenders and victims: Update on violence*. Washington, DC: Office of Juvenile Justice and Delinquency Prevention.
- <sup>30</sup> Critics challenge Florida law allowing child life sentences: Court throws out teen's murder conviction, life sentence. (2003, December 11). *Associated Press*. Retrieved October 5, 2006, from <http://www.nbc6.net/print/2698674/detail.html>
- <sup>31</sup> Ibid.
- <sup>32</sup> Ibid.
- <sup>33</sup> Office of Florida State Senator Geller. (2004, March 31). Senator Geller remains dedicated to reforming juvenile justice system despite legislative setback (Press Release). Retrieved October 5, 2006, from [http://www.flsenate.gov/cgi-bin/View\\_Page.pl?Tab=legislators&Submenu=1&File=033104.html&Directory=Legislators/senate/031/press](http://www.flsenate.gov/cgi-bin/View_Page.pl?Tab=legislators&Submenu=1&File=033104.html&Directory=Legislators/senate/031/press)
- <sup>34</sup> Miami-Dade County Public Defender's Office. *Juvenile sentencing advocacy program*. Retrieved October 13, 2006, from [http://www.pdmiami.com/juvenile\\_sentencing\\_advocacy\\_program.htm](http://www.pdmiami.com/juvenile_sentencing_advocacy_program.htm)
- <sup>35</sup> Mason, C. A., & Chang, S. (2001). *Impacting re-arrest rates among youth sentenced in adult court: An epidemiological examination*. Available from [http://www.pdmiami.com/juvenile\\_sentencing\\_advocacy\\_program.htm](http://www.pdmiami.com/juvenile_sentencing_advocacy_program.htm)
- <sup>36</sup> Information provided by Carlos Martinez at the Miami-Dade County Public Defender's Office.
- <sup>37</sup> Executive Office of Governor Jeb Bush. (2000, January 14). *Governor Bush proposes tough love approach to juvenile crime* (Press Release). Retrieved October 20, 2006, from <http://www.flgov.com/release/644>
- <sup>38</sup> Schwartz, N. (2004, February 8). Child advocates call for flexible juvenile justice system. *Sun-Sentinel*. Retrieved October 5, 2006, from <http://www.sun-sentinel.com/sfl-0208gough,0,6471392.story>
- <sup>39</sup> Ibid.
- <sup>40</sup> Office of Florida State Senator Geller. (2004, January 7). Senator Geller: Justice and humanity eluded by 'one size fits all' sentencing law (Press Release). Retrieved October 5, 2006, from [http://www.flsenate.gov/cgi-bin/View\\_Page.pl?Tab=legislators&Submenu=1&File=010704.html&Directory=Legislators/senate/031/press/&p=2](http://www.flsenate.gov/cgi-bin/View_Page.pl?Tab=legislators&Submenu=1&File=010704.html&Directory=Legislators/senate/031/press/&p=2)
- <sup>41</sup> Crawford, C., & Puritz, P. (2006, Fall). *Florida: An assessment of access to counsel and quality of representation in delinquency proceedings*. Washington, DC: National Juvenile Defender Center, p. 2.
- <sup>42</sup> Ibid.
- <sup>43</sup> Ibid.
- <sup>44</sup> Florida Senate. Senate 0526: *Relating to juvenile defendants/public defender*. Retrieved October 6, 2006, from [http://www.flsenate.gov/Session/index.cfm?Mode=Bills&SubMenu=1&Tab=session&BI\\_Mode=ViewBillInfo&BillNum=0526&Chamber=Senate&Year=2006&Title=%2D%3EBill%2520Info%3AS%25200526%2D%3ESession%25202006](http://www.flsenate.gov/Session/index.cfm?Mode=Bills&SubMenu=1&Tab=session&BI_Mode=ViewBillInfo&BillNum=0526&Chamber=Senate&Year=2006&Title=%2D%3EBill%2520Info%3AS%25200526%2D%3ESession%25202006)
- <sup>45</sup> Apalachicola Forest Youth Camp. Retrieved September 18, 2006, from <http://www.afycamp.com/>
- <sup>46</sup> U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention. (2001, April). *Culinary education and training program for at-risk youth*. Retrieved November 3, 2006, from <http://www.ncjrs.gov/pdffiles1/ojjdp/fs200107.pdf>