

### **How do youth end up being prosecuted as adults in Florida?**

Almost 98 percent of youth prosecuted in adult criminal court in Florida are sent there by a prosecutor via a process known as “direct file.” State law allows prosecutors to charge 14- and 15-year olds in adult court for any one of 21 specified felonies, and 16- and 17-year-olds for any felony at all. (That is, the defendant's case is *filed directly* with the adult court.) The prosecutor's decision to send a child to adult court via direct file is not subject to judicial review and cannot be appealed.

### **How many youth are prosecuted as adults in Florida each year?**

An average of 2,420 youth were prosecuted in the adult system per year in the five years between 2008 and 2013. While the overall number of transfers has decreased over this period (as the juvenile violent crime rate has fallen), the percentage of juveniles arrested who are prosecuted in the adult system has remained steady.

### **Why the focus on Florida?**

Florida is one of 15 states (and the District of Columbia) that give prosecutors discretion via direct file laws to charge children as adults without a judge playing any role in that decision. Florida's direct file law is among the broadest, and Florida transfers more children to adult court than any other state. Of the 13 US states that report the rate at which they remove children from the juvenile system and prosecute them in the adult criminal system, Florida charged children as adults at a rate of 164.7 per 100,000 juveniles from 2003-2008, almost twice the rate of Oregon, which came in second.

### **What sorts of crimes have youth prosecuted in adult court typically committed?**

Over the last five years, 59 percent of the children prosecuted in adult court were sent there for nonviolent crimes. Violent felonies accounted for 39 percent of the offenses for which children were sent to adult court; property offenses made up another 39 percent (burglary was the most common offense, making up 27.6 percent of transferred cases). The remaining cases include drug felonies, misdemeanors, and other charges.

### **Why do prosecutors in Florida transfer so many youth to adult court?**

It is hard to say, not least because prosecutors are not required to explain or justify their decisions to send a child to adult court via direct file. Judges and defense attorneys throughout the state described direct file decisions as haphazard—“basically arbitrary” according to one juvenile court judge. And indeed, Human Rights Watch found enormous diversity among Florida jurisdictions in the use of direct file. Different jurisdictions transfer children to adult court and sentence them to incarceration in adult facilities at different rates that cannot be explained by neutral factors such as the seriousness of the offense or the size of the city or town they come from. Some prosecutors transfer all children charged with certain crimes; others not. Some send a lot of children to adult court, others relatively few.

### **What harm is there in sending children to adult court?**

Prosecuting children as adults harms both the children themselves and the larger community. Children in adult court lose access to the services, like specialized counseling and support groups, provided in the juvenile justice system. Adult court

proceedings are not tailored to children, who often don't understand the terminology used and find the fast-paced proceedings difficult to grasp.

### **What is the difference between juvenile court and adult court?**

Juvenile court is geared towards rehabilitation, while adult court emphasizes punishment. Juvenile courts also recognize the family unit in a way that adult courts do not; while parents get to stand next to their children in juvenile court and speak with juvenile court judges about what the situation is at home, they are not allowed the same level of participation in adult criminal court, which doesn't have the same focus on the family unit and how that unit can be a part of the rehabilitation process. Unless they can afford to pay a bond, children prosecuted as adults stay in adult jails pending trial, and if convicted, they may serve adult sentences in adult facilities, which lack specialized counseling and educational resources available in juvenile facilities, and where children are often exposed to violence at the hands of staff and fellow inmates.

Unlike juvenile court records, which are sealed automatically once a person reaches age 24 or 26 (depending on factors like prior juvenile record), an adult felony conviction marks a child for life. That child will be excluded from many jobs, and can be barred from public housing. In the state of Florida, they will not be able to vote.

### **How does prosecuting children as adults harm the larger community?**

Numerous studies have shown that children prosecuted as adults are more likely to reoffend than those who stay in the juvenile justice system.

### **Why do prosecutors have this unfettered power to transfer children to adult court?**

Florida was one of the first states, in 1978, to implement a law that gave prosecutors the power to decide when to charge a child as an adult. The state's 1978 direct file law prescribed a limited set of circumstances in which prosecutors could charge children in adult court. In the 1990s, in response to a spike in juvenile crime and amid fears of an oncoming wave of juvenile "superpredators," Florida expanded the direct file statute to include younger children, and to allow those children to be charged in adult court for a broader array of crimes. The "superpredator" wave never materialized, and juvenile arrests are at their lowest level since the 1980s. Nevertheless, the direct file law remains on the books.

### **Why is this a human rights issue?**

International law (like US law) recognizes that children are different— that they are still developing and maturing and that they are less culpable and more amenable to rehabilitation. The International Covenant on Civil and Political Rights, a treaty which the US has signed and ratified, says that the government should treat children, even those accused of crimes, in a way that reflects their age and capacity for rehabilitation. For a child accused of a crime, this right to special treatment extends to all aspects of any proceeding against her or him, from arrest to sentencing and incarceration. In the United States, this is usually accomplished in the juvenile courts, which are designed to take children's unique status into consideration. When it ratified the Covenant, the US entered a reservation saying that it could prosecute children as adults in "exceptional

circumstances.” In practice, Florida is prosecuting hundreds of children as adults in circumstances that are clearly not exceptional, including for first offenses and nonviolent crimes.

**How can Florida fix this problem?**

Every child charged with a crime should at least get a hearing before being taken out of juvenile court and prosecuted in adult court. Prosecutors should stop the practice of direct file for children under 18. And the Florida legislature should pass legislation requiring that all decisions to transfer children to the adult system be made by a judge based on testimony and evidence presented in a hearing, with a new presumption included in the law that children should remain in the juvenile system.