

Direct Filing/Transfer of Juvenile Cases  
in Miami-Dade County, Florida

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## **Abstract**

The purpose of this project is two-fold. First, to research, review, and determine whether juvenile courts should retain jurisdiction over juvenile cases until the defendants reach age 18; and second, to establish whether there exists a disparity in the races of juveniles who have their cases directly filed or transferred to adult court. I selected Florida because Florida has been known for its record on juvenile direct files and has nationally held the lead for the number of juvenile cases transferred to criminal court. Beginning in the 1990s, many states made legislative changes to their juvenile laws to impose harsher sentences on juveniles who were charged with committing a series of crimes. These legislative changes were implemented as a deterrent to what everyone saw as an impending wave of violent crimes committed by youth.

The Direct File issue has long been one of substantial debate and conducting the research required reviewing the historical background of the juvenile system. In addition to reviewing Florida State data and data from Miami-Dade County, a survey was prepared for the Assistant State Attorneys and Assistant Public Defenders in Miami-Dade County. The survey consisted of questions based on Chapter 985 of the 2010 Florida Statutes which speaks to Juvenile Justice; Interstate Compact on Juveniles. The State Attorney's Office did not take the survey. Only the Public Defender's Office agreed to participate and take the survey,

With research I was able to establish that there is a disparity in the races of juveniles whose cases are direct filed. The disparity can be seen when viewing and comparing the number of cases with African American defendants who had their cases transferred to adult court to those cases with non-African American defendants whose cases were transferred to adult court. Also, of the cases direct filed in Florida, 75-80 percent of these cases had African Americans as defendants. Based on the responses received, the majority of the participants said that a disparity

does exist in the cases of juveniles who have their cases directly filed or transferred to adult court and juvenile courts should retain jurisdiction over juvenile cases until the youth reaches age 18.

## I. Introduction

Miami-Dade County is one of sixty-seven Counties in Florida, and the Eleventh Judicial Circuit is one of twenty circuits in Florida (Appendix 5). Miami-Dade County, the largest county in Florida, encompassing approximately 2,109 square miles; it is the fourth largest trial court in the nation. With a population of over two million people, Miami-Dade is located in the southern region of the state. “In 2007 there were approximately 269,331 youth between the ages of 10 and 17 residing in Miami-Dade County. Black youth comprised around 27 percent and Hispanic youth comprised around 53 percent of the total youth population.”<sup>1</sup> “Statewide, there were approximately 1,917,765 youth between the ages of 10 and 17. Black youth comprised around 22 percent and Hispanic youth comprised around 22 percent of the total youth population.”<sup>2</sup> “As of August 2010, Florida's population of 10 to 17 year-olds was estimated to be approximately 1.85 million.”<sup>3</sup>

There are ten court locations throughout Miami-Dade County, which provide equal access to the court. These locations are served by 123 judges, 80 presiding in the Circuit Court Divisions and 43 presiding in the County Court Divisions. The Eleventh Judicial Circuit currently employs more than 600 employees who serve the citizens of Miami-Dade County. Florida currently operates under a two-tier trial court system of circuit and county courts, which was established in 1972 with the adoption of Article V to the Florida Constitution. Article V defines the jurisdiction and organization of the Florida State Court System. The County Court’s jurisdiction is over minor civil and criminal cases, which includes misdemeanors and traffic

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<sup>1</sup> Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009 retrieved at <http://www.djj.state.fl.us/Research/DMC/FY2007-08-DMC-Report-Cards.pdf> (accessed December 6, 2010), p. 97.

<sup>2</sup> *op. cit.*, p. 13.

<sup>3</sup> Florida Department of Juvenile Justice, retrieved at <http://www.djj.state.fl.us/Research/Trends.html> (accessed January 13, 2011), p. 1.

cases. Domestic Violence cases are also heard by County Court judges. The Circuit Court hears major civil and criminal cases, which includes felony, family, juvenile, probate, and appellate matters.<sup>4</sup>

Florida has traditionally been known for its record on juvenile direct files and held the lead in the nation for the number of juvenile cases transferred to criminal court. According to a study conducted by Bishop, Frazier, Lanza-Kaduce, and White, published in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) Fact Sheet, titled “*A Study of Juvenile Transfers to Criminal Court in Florida*,”

In fiscal year 1994–95, nearly 5,000 juveniles (more than 7,000 cases) were transferred to criminal court. This represents more than 10 percent of the juvenile offenders handled judicially in the State. During that same period, 8,100 juvenile offenders received residential commitments in the juvenile justice system. The number of transfers has come to rival the number of residential placement dispositions for juvenile offenders in Florida.<sup>5</sup>

This research project demonstrates that juvenile courts should retain jurisdiction over juvenile delinquency cases until defendants are age 18. It also discusses the disparity in the races of juveniles who have their cases direct filed. “Racial disparity in the criminal justice system exists when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population.”<sup>6</sup>

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<sup>4</sup> Administrative Office of the Courts, **About the Court – Eleventh Circuit Overview**, retrieved at [http://www.jud11.flcourts.org/about\\_the\\_court/judicial\\_circuit\\_overview.htm](http://www.jud11.flcourts.org/about_the_court/judicial_circuit_overview.htm) (accessed July 10, 2010).

<sup>5</sup> Donna Bishop, Charles Frazier, Lonn Lanza-Kaduce, and Henry George White, “*A Study of Juvenile Transfers to Criminal Court in Florida*,” published in the OJJDP Fact Sheet, retrieved at, <http://www.ncjrs.gov/pdffiles1/fs99113.pdf> (accessed June 15, 2010), p. 1.

<sup>6</sup> The Sentencing Project Research for Advocacy and Reform, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, retrieved at [http://www.sentencingproject.org/doc/publications/rd\\_reducingracialdisparity.pdf](http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf) (accessed August 9, 2010), p. 1.

## II. Literature Review

The literature review takes a national look at the process where youth might be tried as adults. This process has a variety of names in each state, and may be known as direct file, prosecutorial waivers, transfers, or certifications. However the main focus of this Report will be on the Florida system, and primarily Miami-Dade County. Information contained in this literature review was obtained by internet searches to identify articles, journals, periodicals, books, and other materials that could be of use for this project. Information was also gathered from the National Center for State Courts (NCSC) library.

### A. Historical

A brief introduction to the juvenile justice system can be seen in the following excerpt:

Until the end of the 19th century, youth in the United States who were charged with criminal conduct were tried in the same courts as adults, with their age considered relevant mainly to the question of criminal responsibility. Children under age 7 were deemed too young to be held criminally responsible; those between 7 and 14 were presumed not responsible but the prosecution could refute the presumption; and those over 14 were considered equally culpable with adults. Once convicted, youth were subject to the same sentences as adults, including imprisonment, corporal punishment and execution.

Incarcerating young offenders in the same prisons as adults was a deadly mix, leading reformers in New York and Chicago to call for their removal from adult institutions and placement in "Houses of Refuge" and "Reform Schools." By the late 1800's, however, juvenile institutions had become prisons in all but name, and many young people were again jailed with adults. This led to renewed calls for reform.<sup>7</sup>

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<sup>7</sup> Building Blocks for Youth, *The Juvenile Court, One Hundred Years in the Making*, retrieved at [http://www.buildingblocksforyouth.org/juvenile\\_court.htm](http://www.buildingblocksforyouth.org/juvenile_court.htm) (accessed August 6, 2010), p. 1.

The first juvenile court in the United States was established in Chicago, Illinois in 1899 with passage of the Juvenile Court Act of 1899.<sup>8</sup> “By 1925, all states except Maine and Wyoming had separate juvenile courts.”<sup>9</sup> *Kent v. United States* (1966), *in re Gault* (1967), *in re Winship* (1970), and *Breed v. Jones* (1975), all landmark US Supreme Court cases pertaining to juvenile waivers. The ruling in *Kent v. United States*,

“...held that judicial waiver of juvenile court jurisdiction required a hearing with the essentials of due process. These included notice, right to counsel, confrontation of witnesses, written findings, and most importantly, satisfaction of minimum criteria including the maturity to face trial as an adult.”<sup>10</sup>

In *Breed v. Jones* the ruling established that, “...a minor could be tried in either juvenile court or criminal court, but not in both courts for the same offense...”<sup>11</sup> An appendix to *Kent v. United States*, “...listed eight factors that the Court suggested should be considered in ruling on the transfer in a discretionary waiver proceeding. These factors have been widely incorporated into state waiver laws...”<sup>12</sup> and appear below.

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<sup>8</sup> 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, retrieved at [www.campaignforyouthjustice.org/Downloads/laws/FL\\_Law.doc](http://www.campaignforyouthjustice.org/Downloads/laws/FL_Law.doc) (accessed July 8, 2010), p. 94.

<sup>9</sup> Commission on Behavioral and Social Sciences and Education. *Juvenile justice, juvenile crime*, Washington, DC: National Academy Press; 2000, p. 157.

<sup>10</sup> *Kent v. United States* 383 U. S. 541, 86 S. Ct. 1045 (1966).

<sup>11</sup> *Breed v. Jones*, 421 U.S. 519 (1975).

<sup>12</sup> Griffin, P. *Trying and sentencing juveniles as adults: an analysis of state transfer and blended sentencing laws*. Pittsburgh, PA: National Center for Juvenile Justice; 2003, p. 3.

State waiver laws reflect the influence of the U.S. Supreme Court's 1966 <i>Kent</i> decision		
<p>An appendix to <i>Kent v. United States</i> listed 8 factors that the Court suggested should be considered in ruling on the propriety of transfer in a discretionary waiver proceeding. These factors have been widely incorporated into state waiver laws:</p> <ol style="list-style-type: none"> <li>1. "The seriousness of the alleged offense to the community and whether the protection of the community requires waiver."</li> <li>2. "Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner."</li> <li>3. "Whether the alleged offense was against persons or against prop-</li> </ol>	<p>erty, greater weight being given to offenses against persons especially if personal injury resulted."</p> <ol style="list-style-type: none"> <li>4. "The prosecutive merit of the complaint...."</li> <li>5. "The desirability of trial and disposition of the entire offense in one court when the juvenile's associates in the alleged offense are adults...."</li> <li>6. "The sophistication and maturity of the juvenile as determined by consideration of his home, environmental situation, emotional attitude and pattern of living."</li> </ol>	<ol style="list-style-type: none"> <li>7. "The record and previous history of the juvenile, including previous contacts with the [juvenile justice agency], other law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation...or prior commitments to juvenile institutions."</li> <li>8. "The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the juvenile (if he is found to have committed the alleged offense) by the use of procedures, services and facilities currently available to the Juvenile Court."</li> </ol>

Chart 1- *Kent v. United States* (Factors for State Waivers)

During the 1990s, many states across the country made changes to their juvenile justice system.<sup>13</sup> Before these changes, judges were the ones responsible for making the decisions of whether a juvenile's case should be transferred or waived over to adult court. After the various legislative changes, that responsibility was moved to the prosecutor, district, or state's attorney. Florida's 1994 Juvenile Justice Act which was approved by the legislature was responsible for the state's reform.<sup>14</sup> The concept of trying more youth as adults and imposing harsher sentences fed into a myth that this would curb and deter what was foreseen as an impending tidal wave of juveniles committing violent crimes.<sup>15</sup> As research continues to demonstrate, this perception is indeed a myth. "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."<sup>16</sup> This approach worked to a degree. Juvenile crime decreased, but it

<sup>13</sup> Andrew Block and Kate Duvall, "Don't Throw Away the Key Reevaluating Adult Time for Youth Crime in Virginia," The JustChildren program of the Legal Aid Justice Center, retrieved at <http://donthrowawaythekey.files.wordpress.com/2009/11/final-dont-throw-away-the-key.pdf> (accessed February 23, 2010), p. 2.

<sup>14</sup> Putting the Judge Back in Juvenile Justice, *The Miami Herald*, April 12, 2010, at <http://www.miamiherald.com/2010/04/12/v-print/1574947/putting-the-judge-back-in-juvenile.html> (accessed April 12, 2010), p. 1.

<sup>15</sup> Block, op. cit., p. 3.

<sup>16</sup> *Campaign for Youth Justice: Because the Consequences Aren't Minor*, retrieved at [www.campaignforyouthjustice.org/Downloads/laws/FL\\_Law.doc](http://www.campaignforyouthjustice.org/Downloads/laws/FL_Law.doc) (accessed July 8, 2010), p. 7.

cost the state of Florida millions of dollars to build new prisons. It also placed children who stood a chance at being reformed with those who were already hard-core criminals, which in turn made juveniles more likely to become repeat offenders. The Florida *Governor's 2008 Blueprint Commission on Juvenile Justice* reported that investing more in under-age offenders early will spare prison costs later, and is a better plan.<sup>17</sup>

In addition to Florida, there are 14 other states or jurisdictions that use direct file or prosecutorial discretion waiver.<sup>18</sup> Those states are: Arkansas, Colorado, Georgia, Louisiana, Michigan, Nebraska, New Hampshire, Vermont, Arizona, Massachusetts, Montana, Oklahoma, Virginia, and the District of Columbia.<sup>19</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).<sup>20</sup> To further elaborate, there are three primary ways that juvenile offenders can move to the adult criminal justice system:

*Waiver provisions* leave transfer decision making to the State's juvenile courts: juveniles may not be prosecuted as if they were adult criminals pursuant to a waiver provision until a juvenile court judge has ordered it. Waiver provisions differ from one another in the degree of decision making flexibility they allow the courts. Some make the waiver decision entirely *discretionary*. Others set up a *presumption* in favor of waiver. And still others specify circumstances under which waiver is *mandatory*. But under all waiver provisions, a case against a juvenile must at least originate in juvenile court and cannot be channeled elsewhere without a juvenile court judge's formal approval.

*Direct File* provisions leave it up to the prosecutor to determine whether to initiate a case against a minor in juvenile court or in criminal (adult) court.

*Statutory Exclusion* provisions grant criminal courts original jurisdiction over a whole class of cases involving juveniles. Under statutory exclusion, a State

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<sup>17</sup> Block, op. cit., p. 3.

<sup>18</sup> Snyder, op. cit., p. 113.

<sup>19</sup> *Campaign for Youth Justice: Because the Consequences Aren't Minor*, p. 7.

<sup>20</sup> *Ibid.*, p. 1.

legislature is essentially predetermining the question of criminal prosecution for itself and taking the decision out of both the prosecutor's and the court's hands.<sup>21</sup>

In Andrew Block and Kate Duvall's, "*Don't Throw Away the Key: Reevaluating Adult Time for Youth Crime in Virginia*," Block and Duvall examine the changes to juvenile laws in Virginia. The purpose of their work through the JustChildren program of the Legal Aid Justice Center was to provide supplemental information to the Crime Commission. They wanted to provide a report which would give commissioners, lawmakers, and juvenile justice professionals, additional information that was helpful and necessary for the reexamination and reform of the current transfer system in Virginia. In doing so, they discuss the transfer system in place before the reforms, and note that the current system is overly broad and sweeps too many youth unnecessarily into the adult criminal system; plus it places an undue burden on the court system.

In a publication by the OJJDP titled, "*Juvenile Transfer to Criminal Court: Juvenile Justice Reform Initiatives in the States 1994-1996*," the National Center for Juvenile and Family Court Judges (NCJFCJ) advocates caution in juvenile transfer. The council maintains that:

Juvenile delinquency jurisdiction should be to age 18 in every State. In most cases, juvenile offenders can be effectively maintained in the juvenile justice system. In rare instances, the most violent offenders cannot be rehabilitated within the juvenile system and should be transferred for adult prosecution. However, the decision to transfer should only be made by the juvenile or family court judge.<sup>22</sup>

As young people continue to get their cases transferred to adult courts and have their freedom taken away, advocates all over the country continue the fight for reform of the system. Carlos J. Martinez, Esq., Public Defender, Miami-Dade County, Florida, is one such advocate. Through publications, editorials, and more, he perseveres. In the Sunday, February 7, 2010 issue of *The*

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<sup>21</sup> Griffin, P., Torbet, P., and Szymanski, L. 1998. *Trying Juveniles as Adults in Criminal Court: An Analysis of State Transfer Provisions*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, p. 9.

<sup>22</sup> *Juvenile Transfer to Criminal Court, Juvenile Justice Reform Initiatives in the States 1994-1996*, retrieved at [http://www.ojjdp.ncjrs.gov/PUBS/reform/ch2\\_j.html](http://www.ojjdp.ncjrs.gov/PUBS/reform/ch2_j.html) (accessed March 8, 2010), p. 7.

*Miami Herald*, Mr. Martinez titled his piece, “*Get rid of direct-file law.*” Mr. Martinez reiterates that following highly public tourist murders in Miami-Dade County, the Florida Legislature reacted by passing what he termed, “experimental” laws called prosecutorial transfers or direct files. He notes that these laws have proven to produce worse outcomes for juveniles, victims, and the public. Sixteen years later, the wave of juveniles committing violent crimes has yet to be realized. Today, through research by the Center for the Study and Prevention of Violence, and many other respected institutions, and publicized by the U.S. Department of Justice, a great deal more is known about adolescent brain development. And research has shown that juvenile intervention programs are superior to adult jail/prison in reducing recidivism by young offenders.<sup>23</sup>

The outcome of this legislation is that Florida continues to prosecute more youth as adults than any other state. According to the Department of Juvenile Justice (DJJ), to date, over 80,000 Florida youth have been transferred to adult court since the law passed.<sup>24</sup> In the 2007-2008 Fiscal Year, approximately 3,600 juvenile cases in Florida were transferred to adult court, and 443 youth under the age of 17 were sent to adult prisons.<sup>25</sup> This process continues despite a 10-year-old study conducted by the Florida Department of Juvenile Justice, which concluded that “transferring youth to the adult criminal system is more likely to aggravate recidivism than to stop it.”<sup>26</sup> During this same period, “Florida displayed a statewide average of referral received of black youth, based on a one-year Relative Rate Index (RRI), 2.5 times higher than the rate of

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<sup>23</sup> Carlos J. Martinez, Esq., *Get rid of direct-file law*, *The Miami Herald* retrieved at <http://www.miamiherald.com/2010/02/07/v-print/1466098/get-rid-of-direct-file-law.html> (accessed March 8, 2010), p. 1.

<sup>24</sup> Griffin, op. cit., p. 9.

<sup>25</sup> Wise to offer juveniles in prison a second chance, *The Daytona-Beach News Journal*, March 17, 2010 retrieved at <http://www.news-journalonline.com/opinion/editorials/2010/03/17/wise-to-offer-juveniles-in-prison-a-se/> (accessed March 23, 2010), p. 1.

<sup>26</sup> Martinez, op. cit., p. 1.

white youth referred to the juvenile justice system. Of Florida's 67 counties, all but one (98%) of the counties had black youth disproportionately overrepresented (nearly two times or higher)."<sup>27</sup>

On April 12, 2010, another publication in *The Miami Herald*, titled "*Putting the Judge Back in Juvenile Justice*," discussed a pending matter before the highest court in the land, the U.S. Supreme Court. "The issue to be decided, whether judges can sentence juveniles convicted of serious crimes that don't result in a death to life without parole."<sup>28</sup> This matter was *Graham v. Florida* (2010). The decision of the U.S. Supreme Court was that a juvenile offender cannot be sentenced to life in prison without parole for a nonhomicide crime.<sup>29</sup> Once again Florida is in the limelight. Florida holds the record for incarcerating the most juveniles sentenced to life without parole, 76 out of 109 in the United States,<sup>30</sup> or 70 percent of the total.

The chart which appears below (Appendix 6) was taken from the Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009. Information on the chart demonstrates the percentage of White, Black, and Hispanic youth in Florida's Department of Juvenile Justice's general youth population during Fiscal Year 2007-2008. It also displays the youth during the different stages of the juvenile justice system, which includes referrals, judicial and non-judicial dispositions, secure detention, secure residential placement, and transfers to criminal court.<sup>31</sup> In Miami-Dade County, the rate of black youth referred was 5.7 times higher than the rate of white youth referred in Fiscal Year 07-08. In further comparison to the statewide averages in Fiscal

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<sup>27</sup> Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009, p. 3.

<sup>28</sup> Putting the Judge Back in Juvenile Justice, op. cit., p. 1.

<sup>29</sup> *Graham v. Florida*, 560 So. 2d 57, (2009).

<sup>30</sup> Martinez, op. cit., p. 1.

<sup>31</sup> Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009, p. 8.

Year 07-08, black youth in Miami-Dade County were more likely to be detained, less likely to be committed and more likely to be transferred to adult court.<sup>32</sup>

## **B. Concept**

Research and discussions have shown that the disparity in the direct filing of cases with African American defendants is an undying issue. Reform must take place in how youth are tried and sentenced in adult courts. Many areas need to be addressed, and many areas will be impacted based on decisions made by legislators. This is an issue with ramifications at all levels, local, state and federal. Individuals are damaged. Families are damaged. Communities are affected. National reports have shown that as compared to adults, juveniles are more vulnerable and/or susceptible to outside pressures, including peer pressure, and are not always capable of making sound decisions. Even when it comes to assisting in their defense, juveniles are untrusting and tend to not be as forthcoming as adults, in assisting their attorney(s) in seeking and putting forth the best defense on their behalf.

## **C. Impact**

Having researched and perused a vast amount of material available on this topic, it is clear that there are many areas to be addressed when dealing with the issue of direct files, waivers, certifications and transfers. Child advocates, lawyers, researchers, doctors, judges, and the general public are all stakeholders in this issue. Sentencing and placement of youth who commit crimes, violent and non-violent, is something which affects everyone. Whether we

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<sup>32</sup> Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009, op. cit., p. 100.

choose to lock juveniles up with adults and throw away the key, or pour more funding into providing core services needed for help in rehabilitation, the decisions we make today can come back to haunt us tomorrow.

#### **D. Other Projects**

The information gleaned is just the tip of the iceberg. There are cost factors to be addressed. There are racial factors to be addressed. There are demographic factors to be addressed. “The transfer of children to adult court for the purpose of enhancing punishment is an ineffective and expensive substitute for use of prevention strategies that reduce juvenile violence and problems such as drug abuse, property crimes, and disruptive behavior.”<sup>33</sup> “Although youths transferred to the adult criminal justice system are more likely to be convicted and incarcerated, they are more likely to re-offend, re-offend earlier, and to commit more serious subsequent offenses than those who remain in the juvenile system.”<sup>34</sup>

The November 30, 2007 issue of the Morbidity and Mortality Weekly Report, (MMWR) published by the Department of Health and Human Services Centers for Disease Control and Prevention, contained a report titled, “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.*” The studies discussed in the report did assessments of the effects of tougher juvenile transfer laws in Washington, Pennsylvania, and parts of New York, Minnesota, and Florida. Because of the diversity of these states, both

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<sup>33</sup> The Sentencing Project Research for Advocacy and Reform, *Prosecuting Juveniles in Adult Court: Perspectives for Policymakers and Practitioners*, retrieved at [http://www.sentencingproject.org/doc/publications/sl\\_prosecutingjuveniles.pdf](http://www.sentencingproject.org/doc/publications/sl_prosecutingjuveniles.pdf) (accessed August 9, 2010), p. 11.

<sup>34</sup> Bishop, op. cit. p. 1.

geographically and demographically, the findings/results might be applicable in other states.<sup>35</sup>

The report stated “...transfer to the adult criminal justice system typically increases rather than decreases rates of violence among transferred youth.”<sup>36</sup> It was also reported that,

“...juveniles differ from adults in their biologic development and mental processes and capacities. Juveniles are less aware of consequences, less able to regulate impulses or inhibit behavior, and thus less culpable for their actions than adults. In addition, juveniles have less ability to understand and thus participate in the standard adult judicial process.”<sup>37</sup>

The Task Force also conducted six studies with a timeframe from 18 months to 6 years to “examine the effects of juvenile transfer on subsequent violent offending.”<sup>38</sup> The six states where the studies occurred were: New York, New Jersey, Florida, Minnesota, Pennsylvania, and Washington.<sup>39</sup> The Florida research consisted of two studies. The first study looked at juveniles who were arrested in 1987 and whose cases had either been transferred or kept within the juvenile system.<sup>40</sup> The second study looked at youth who had been arrested in the years 1990 and 1994, after Florida’s stronger legislative laws had been put into place. The researchers compared the youth who were transferred to the adult system to those who were retained in the juvenile system. They looked at factors of, “most serious offense, number of counts, number of previous referrals to the juvenile system; and most serious previous offense, age, and sex, and when possible, by race.”<sup>41</sup> The findings were that, “transfer increased recidivism over the short term but over the longer term reduced recidivism for some transferred juveniles and increased it

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<sup>35</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): p. 8.

<sup>36</sup> Centers for Disease Control and Prevention, op. cit., p. 1

<sup>37</sup> Ibid., p. 3.

<sup>38</sup> Ibid., p. 8.

<sup>39</sup> Ibid., p. 8.

<sup>40</sup> Ibid., p. 8.

<sup>41</sup> Ibid., p. 8.

for others.”<sup>42</sup> The outcome of the second study was to compare, “felony re-arrest, including nonviolent and violent felonies.”<sup>43</sup> The findings indicated that youth who had their cases transferred to the adult system reported 34 percent more felony re-arrests than those youth who had their cases retained in the juvenile system.<sup>44</sup> The results are that, “...the evidence from these studies is insufficient to determine whether or not laws or policies facilitating the transfer of juveniles to the adult criminal justice system are effective in preventing or reducing violence in the general juvenile population.”<sup>45</sup>

The report also stated that there is little evidence to confirm the thought that transferring juvenile cases to the adult system acts as a deterrent from violent crimes. In fact, there is indication that these stronger laws are actually counterproductive in reducing juvenile violence and making the community safer.<sup>46</sup> Also, additional research has shown that youth sentenced with adults have the tendency to be picked on; thus having more physical altercations which may result in disciplinary actions. The researchers in the Centers for Disease Control (CDC) go on to discourage against transferring juveniles to the adult system as a mechanism to deter violence.

The CDC report posed three questions:

(1) Do youth receive more rehabilitative programming in juvenile institutions than in adult institutions? (2) Has the programming in adult corrections changed in response to the influx of youthful offenders? (3) Do youth in adult correctional institutions have extensive contact with adult offenders and, if so, does that have negative effects on them or promote more subsequent offenses?<sup>47</sup>

It also offered recommendations to legislators suggesting they might want to discuss the economic cost and benefits to society of these transfer laws, policies, and legislation currently in

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<sup>42</sup> Ibid., p. 8.

<sup>43</sup> Ibid., p. 8.

<sup>44</sup> Ibid., p. 8.

<sup>45</sup> Ibid., p. 8.

<sup>46</sup> Ibid., p. 8.

<sup>47</sup> Ibid., p. 8.

place because, “little research has been conducted on the economic costs of transferring youth to the adult criminal justice system versus retaining them in the juvenile system.”<sup>48</sup>

### **III. Methods and Data Collection**

In beginning to collect data, a report was requested from the Administrative Office of the Court’s (AOC) Reporting and Statistics Group. The request was to generate a report of all juvenile cases direct filed in Miami-Dade County between the years 2003 – 2009. The resulting report produced a list of case numbers. The initial report consisted of 7,280 case numbers which included many duplicate case numbers. Once the duplicates were removed, the resulting number of cases and defendants for the years 2003 – 2009 was reduced to 2,627 cases. Of which 1,694 (64%) had black defendants, 931 (35%) had white defendants, and there were 2 (1%) unknowns. Of the cases with black defendants, 1,620 (96%) were males and 74 (4%) were females. Of the cases with white defendants, 894 (96%) were males and 37 (4%) were females. Both cases of the unknown races had male defendants. In 2009 there were a total of 238 cases of which 164 (69%) were black defendants and 73 (31%), (Appendix 8) were white defendants.

The data warehouse, or data mart, which is utilized by Law Enforcement Agencies in Miami-Dade County, the Miami-Dade Corrections and Rehabilitation Department, and the Eleventh Judicial Circuit, is called the Criminal Justice Information System or CJIS. Within CJIS, the system has the ability to accept five race codes. However, it appears only three codes were being used, Black (B), White (W), and Unknown (U). Filtering of the data and making contact with the two agencies, Public Defender and State Attorney, whose participation would be

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<sup>48</sup> Ibid., p. 8.

an integral part of this research project, became a much larger part of the project than initially anticipated.

Contacting both agencies started out to be relatively simple. An introductory email was sent to the State Attorney and the Public Defender on October 15, 2010 and October 18, 2010, respectively. Each email was sent under separate cover. In the response from the State Attorney, I was referred to someone in the office who was assigned to help me with the survey. Once I made contact, I shared with both agencies that I would provide them with the survey questions for review and approval. Upon their approval, I would also need to know how many individuals would be participating in the survey.

Once the final questions were formulated, they were sent via email to both contacts at the agencies. In the response from the Public Defender, I was told the survey would be distributed to approximately 180 Assistant Public Defenders. The final response I received from the State Attorney's Office advised me that they would not be participating. Further elaboration can be found below in my discussion of research problems encountered.

The method utilized for data collection was a web-based survey generated at [www.surveymonkey.com](http://www.surveymonkey.com). The application gave the option of posting a link to the survey on a website or sending a direct link via an email. Due to the confidentiality and security with email addresses, it was best that the survey link was sent to the agency for them to forward to their staff. The survey link was sent to the Public Defender on December 17, 2010 and on December 21, 2010 he in turn forwarded my email for distribution to the 193 Assistant Public Defenders in the agency. Immediately, on December 21, 2010, responses began to come in. Within the first day, 18 surveys had been completed.

The survey prepared was not a lengthy one, (Appendix 2). It consisted of six questions. Most of the questions were generated based on Chapter 985 of the 2010 Florida Statutes relating to Juvenile Justice. The first question asked whether the participant had ever handled a juvenile delinquency case. The purpose of this question was to capture the number of participants who had experience in the Juvenile legal area. It was important to ask this question since the survey would be distributed to all attorneys, as attorneys in both the State Attorney and Public Defender's Offices generally rotate amongst the various criminal areas (divisions) of the court.

The second question asked the participant to give a rating on the statement, 'some research has shown that cases with African American defendants are more likely to be direct filed than cases with non African American defendants.' This question was based on a common recurring theme found in several documents in the literature review. This question was necessary to support my primary research question.

Questions three and four, which appear below, were taken from text of Chapter 985 of the Statute as written into law.

3) The Florida Legislature finds that certain juveniles who have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. In your opinion, should juveniles be sentenced and placed within the adult system?

4) According to Florida law, once a child has been transferred to adult court for criminal prosecution and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions. In your opinion, do you agree these children should be handled as adults for subsequent matters?

The fifth question, "In your opinion, do you agree that, as compared to adults, juveniles have a lack of responsibility, and are more vulnerable or susceptible to negative influences and

outside pressures, including peer pressure, and that their characters are not as well formed," was generated based on information obtained in reading the Graham Decision,<sup>49</sup> and later discovered in *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* which states:

“...Youths aged 15 and younger performed more poorly than did young adults, with a greater proportion manifesting a level of impairment consistent with that of persons found incompetent to stand trial. Adolescents also tended more often than young adults to make choices (e.g., about plea agreements) that reflected compliance with authority, as well as influences of psychosocial immaturity.”<sup>50</sup>

The sixth and final question asked whether the participant thought the current direct file policy in place was effective, and to explain their response. This question allowed the participant to enter comments and state their opinion on Florida's Direct File policy currently in place.

### **A. Pre-Test**

Before distributing the final survey, as a pre-test, I forwarded the questions I had initially prepared (Appendix 1) to a group of 10 of my peers. Once I sent the survey out and solicited responses the feedback prompted me to tweak the questions. The response choices I had prepared required only a Yes or No response. One response suggested I use a Likert Scale of strongly agree, agree, neither agree nor disagree, strongly disagree and disagree instead of Yes or No. It was also suggested that I reposition questions 1 and 2 by simply switching the order as this might make for a softer opening and immediately identify the group I was dealing with. Also on question 1, instead of stating, “Research has shown...,” rephrase the sentence to read as, “Some research has shown...”

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<sup>49</sup> *Graham v. Florida*, 560 So. 2d 57, 14 (2009).

<sup>50</sup> Grisso T, Steinberg L, Woolard J, et al. Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants. **Law and Human Behavior** 2003;27:333-63.

## **B. Data Collection**

As Survey Monkey is a web-based application, the data collection site was any place which provided a computer with access to the internet. Several times each day I would visit the Survey Monkey website to access the survey and check to see whether additional responses had been submitted. After six weeks, I was still left with only 21 responses, or an 11 percent return rate.

As a result of the Miami-Dade State Attorney's Office declining to participate in the survey, the only participants remaining were the Assistant Public Defenders. As the focus of this project is Miami-Dade County it would not have been beneficial to approach another jurisdiction for participants. This placed limitations as the responses would now only come from one side and not the other as initially anticipated at the onset of this project.

Due to the limited number of responses, it was suggested that I make contact with the Justice Administrative Commission (JAC) who also serve in the role of defense attorneys, the equivalent of an Assistant Public Defender, to the indigent when there is a conflict in the Public Defender's Office with the defendant; such as in cases with co-defendants. Although an option, this suggestion was made at the eleventh hour prior to submission of this document which made it virtually impossible to make connections and possibly facilitate distribution of the survey to staff of the JAC. However, had time permitted, this option would have been pursued.

## **C. Dates/Technique of Data Collection**

The survey was provided to the Public Defender on December 17, 2010. The Public Defender forwarded the link to 193 Assistant Public Defenders on December 21, 2010. To date,

the survey has been open for six (6) weeks and remains open and available for additional responses, but to no avail. The responses to the survey were collected and analyzed using the web based software program Survey Monkey which was purchased for use with a monthly subscription.

#### **D. Return Rate of Survey Responses**

The first day the link to the survey was published, December 21, 2010, there were 18 responses. On December 22, 2010, there were two more responses. On December 27, 2010 there was only one additional response. After that there was a stagnant period which I attributed to the Christmas and New Year Holidays. With a total of only 21 responses, the equivalent of an 11 percent return rate, I was stumped. Nine days had passed and still no other responses. Three, four, five, six, weeks passed and still no additional responses.

Use of the Survey Monkey application simplified the process immensely. Not only did it generate the link, it also tabulated, and analyzed the results making it easier to gather the information and place it into charts and graphs. Having a question which allowed for the participant to enter a comment was especially useful as it displayed the concerns and thoughts of the participants. However summarizing the comments would be challenging on how to obtain the best effect, it would be best to accurately display the comment responses as they were received, pure and unadulterated.

#### **IV. Research Problems**

The first problem I encountered relates to the response from the State Attorney's Office.

The response I received stated,

“...we are in the process of evaluating the appropriateness of our participation. I apologize for the delay in getting back to you. I will hopefully have an answer for you by sometime either later this week or early next week. Thanks for your patience!”

After sometime had passed, I had a telephone conversation with the State Attorney's Office and after explaining my project and discussing the proposed questions, I was told that the survey would not be distributed to all Assistant State Attorneys as they were not all familiar with Statute 985 as it relates to Direct Files and this would be unfair to them. However it could possibly be distributed to a small sample as they are the core Assistant State Attorneys who work on juvenile cases which are direct filed. Once the survey questions were finalized, they were emailed to both agencies. In the response from the State Attorney's Office, I was advised that the agency had decided they could not participate in the survey. I received an apology for having been left with the impression that although the survey could not be distributed to their 200 plus attorneys it could be distributed to maybe a handful. It was also stated to me, that as it is the duty of the State Attorney to enforce the law they felt their participation would not be appropriate.

Once I received this final response from the State Attorney's Office I pondered it for a few days. I had a Plan B in which I had contemplated possibly contacting the Broward County State Attorney's Office. In giving it some thought I decided this would not be the ideal situation after all and I should simply move forward with the participants who were willingly available, understanding this would not be the ideal study since only a few participants had responded. On December 17, 2010 I forwarded the survey link to the Public Defender's Office. On December

21, 2010, I learned that the Public Defender had forwarded the link to the survey to the Assistant Public Defenders.

## **V. Findings**

The following contains information from the research I conducted and from the survey responses received. The data obtained was both valuable and interesting. The majority, or 57 percent, of the participants expressed that juvenile courts should retain jurisdiction over juvenile cases until the youth reaches age 18. They also stated they had indeed handled juvenile delinquency cases. In the State Attorney's decision not to participate, one can only wonder what the results might have shown.

In 1996 the Florida Department of Juvenile Justice conducted a study and concluded that black youths in Florida's Juvenile Justice System were 2.3 times more likely than white youths to be transferred to adult court.<sup>51</sup> In a review of number of cases direct filed in Miami-Dade County in 2009, the numbers clearly reflect a discrepancy in that there were a total of 238 cases of which 164 (69%) were black defendants and 73 (31%), were white defendants. The number of cases with black defendants is more than double the number of cases with white defendants.

The statistics presented by the Florida Department of Juvenile Justice also supports this observation. Again, "Racial disparity in the criminal justice system exists when the proportion of a racial or ethnic group within the control of the system is greater than the proportion of such groups in the general population."<sup>52</sup> In 2007 although black youth comprised around 27 percent

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<sup>51</sup> Florida Department of Juvenile Justice (1996). Management Report, No. 42, March 24, retrieved at [http://www.justicepolicy.org/images/upload/99-07\\_REP\\_FLExperiment\\_JJ.pdf](http://www.justicepolicy.org/images/upload/99-07_REP_FLExperiment_JJ.pdf) (accessed January 5, 2011), p. 4.

<sup>52</sup> The Sentencing Project Research for Advocacy and Reform, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, retrieved at [http://www.sentencingproject.org/doc/publications/rd\\_reducingracialdisparity.pdf](http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf) (accessed August 9, 2010), p. 1.

of the total youth population, and Hispanic youth comprised around 53 percent of the total youth population,<sup>53</sup> 69 percent of the juvenile cases which were direct filed had a black youth as the defendant(s).

Looking at each question on the survey, the following which appears below are derived from the survey responses which were provided by the Assistant Public Defenders. It was also determined almost unanimously that everyone agrees there is a disparity in the races of the youth whose cases are direct filed. Plus the legislature has allowed the prosecutor too broad an arm to direct file cases at their discretion. Juveniles have different issues affecting them that need to be addressed outside a criminal court. In direct filing these cases, the youth are being placed into positions where they are offered plea arrangements, which they in turn enter into without fully understanding the ramifications for their future. Their lack of understanding is not because the plea was not explained to them, but instead comes from the consequences of being a child who has been tried and has been found guilty as an adult. This places them into a group where all, if any, of their future interactions with the legal system will label them as adults for the purpose of prosecution and sentencing.

On February 4, 2011, “YOUTH Today” published an interview with Former Florida Juvenile Judge Irene Sullivan as they discussed her book, *Raised by the Courts*. Judge Sullivan was a team member of the *Florida Governor's 2008 Blueprint Commission on Juvenile Justice* which traveled throughout the state of Florida in an attempt to find avenues in which to reform the Florida Department of Juvenile Justice. In the interview Judge Sullivan stated that juveniles

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<sup>53</sup> Disproportionate Minority Contact *Racial and ethnic minority representation at various stages of the Florida juvenile justice system*, Benchmark Reports 2009 retrieved at <http://www.djj.state.fl.us/Research/DMC/FY2007-08-DMC-Report-Cards.pdf> (accessed December 6, 2010), p. 97.

with significant mental health problems should be treated outside of the juvenile justice system.<sup>54</sup>

This statement speaks volumes to the possible issue(s) of the circumstances and situations pertaining to the youth which might have led to their involvement, and placement, in the juvenile justice system. Also, when asked whether it was appropriate for teens to be tried as adults, Judge Sullivan stated,

“I think it is in a small number of cases...if there’s been a string of cases, of horrendous crimes. I wish judges had that final say. Before there were transfers, there were hearings. In Florida, it’s all prosecutorial discretion or mandatory [now]. I wish it was at the discretion of judge. Too many kids are being direct filed. Sometimes I wonder if that’s not part of the reason juvenile crime is going down. Those kids aren’t counted as juveniles.”<sup>55</sup>

Judge Sullivan’s statement echoes the responses received in Question 6 of the survey and can also be seen in comments made by the Assistant Public Defenders (Appendix 3). It could also be representative of the information obtained from the Florida DJJ showing a decline in juvenile cases from Fiscal Year 2007-08 to Fiscal Year 2009-10.<sup>56</sup> Keeping in mind that once a youth has been tried and sentenced as an adult, all future interactions of that child with the justice system will no longer be handled in juvenile court, or counted in the juvenile justice statistics, but will instead be added to the adult counts.

As a result of the ruling in *Graham v. Florida*, Miami-Dade County, and Florida overall, could begin to see appellate briefs being filed by the remaining youth who were sentenced to life without parole for non-homicidal crimes. One such brief has already been filed. On February 9, 2011 the Florida Third District Court of Appeal (3<sup>rd</sup> DCA) issued an Opinion in *Cunningham v. Florida*. However, the Opinion is “not final until disposition of timely filed motion for

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<sup>54</sup> Kelly, John, Q&A Juvenile Judge Irene Sullivan, Part Two, YOUTH Today, [http://www.youthtoday.org/view\\_article.cfm?article\\_id=4610](http://www.youthtoday.org/view_article.cfm?article_id=4610) (accessed February 9, 2011), p. 2.

<sup>55</sup> Kelly, op. cit., p. 2.

<sup>56</sup> Florida Department of Juvenile Justice, op. cit., p. 1.

rehearing.”<sup>57</sup> The Appellant/Petitioner, Michael Cunningham, was a juvenile at the time he was charged and sentenced for the commission of the crimes and was sentenced to four concurrent life sentences. In his brief, Cunningham argues that the sentence handed down to him violates *Graham v. Florida* which held that:

This Court now holds that for a juvenile offender who did not commit homicide the Eighth Amendment forbids the sentence of life without parole. This clear line is necessary to prevent the possibility that life without parole sentences will be imposed on juvenile nonhomicide offenders who are not sufficiently culpable to merit that punishment. Because “[t]he age of 18 is the point where society draws the line for many purposes between childhood and adulthood,” those who were below that age when the offense was committed may not be sentenced to life without parole for a nonhomicide crime.<sup>58 59</sup>

Also coming on the heels of the *Graham* ruling, there is a new proposal in the Florida State House which would allow for youth to be sentenced to what could still be considered a life sentence, for nonhomicidal crimes. The bill is authored by Florida State Representative Mike Weinstein and is pending in the Florida House. In an article published in *The Florida Times-Union*, on January 10, 2011, Representative Weinstein said, “he's trying to strike a balance between the court's mandate and the community's safety.”<sup>60</sup> As Florida no longer has a parole system, the bill authored by Weinstein proposes giving juveniles parole 25 years into a life sentence and if denied, they can try again every seven years.<sup>61</sup>

Appearing on the following pages, are the responses to each of the survey questions along with the analysis and graphs.

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<sup>57</sup> *Cunningham v. Florida*, No. 3D10-3409. Lower Tribunal No. 82-26408C

<sup>58</sup> *Graham v. Florida*, 130 S. Ct. 2011, 2030 (2010).

<sup>59</sup> *Cunningham v. Florida*, No. 3D10-3409. Lower Tribunal No. 82-26408C

<sup>60</sup> David Hunt, *Supreme Court Case Could Set Stage for Florida Juvenile Parole System*, retrieved at <http://jacksonville.com/news/crime/2011-01-10/story/supreme-court-case-could-set-stage-florida-juvenile-parole-system> (accessed January 12, 2011), p. 1.

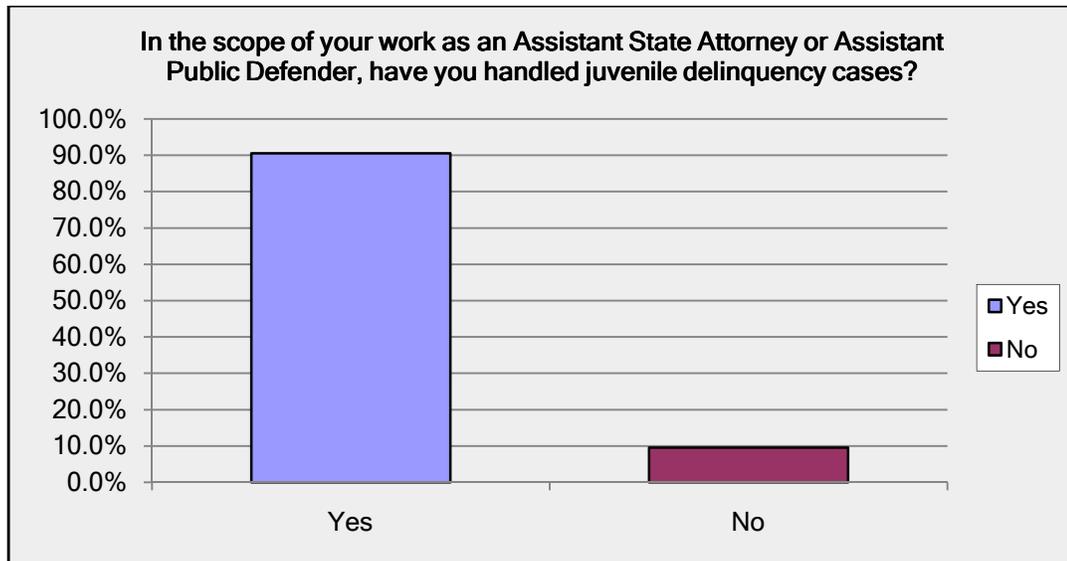
<sup>61</sup> *Supreme Court Case Could Set Stage for Florida Juvenile Parole System*, op. cit., p. 1.

**Question 1:** *In the scope of your work as an Assistant State Attorney or Assistant Public Defender, have you handled juvenile delinquency cases?*

The reference to ‘handling’ juvenile delinquency cases means representing a youth in a criminal juvenile proceeding. To this question, 91 percent of the respondents answered yes.

This answer was as I had expected as attorneys in the Public Defender’s Office (and State Attorney’s Office) rotate amongst the various criminal divisions of the court.

Chart 2 - Q1 Survey Response



Total of 21 Responses

**Question 2:** *Some research has shown cases with African American defendants are more likely to be direct filed as compared to cases with non-African American defendants. What is your opinion?*

This question was asked to support my primary question and to further support the findings of previous research. For this question,

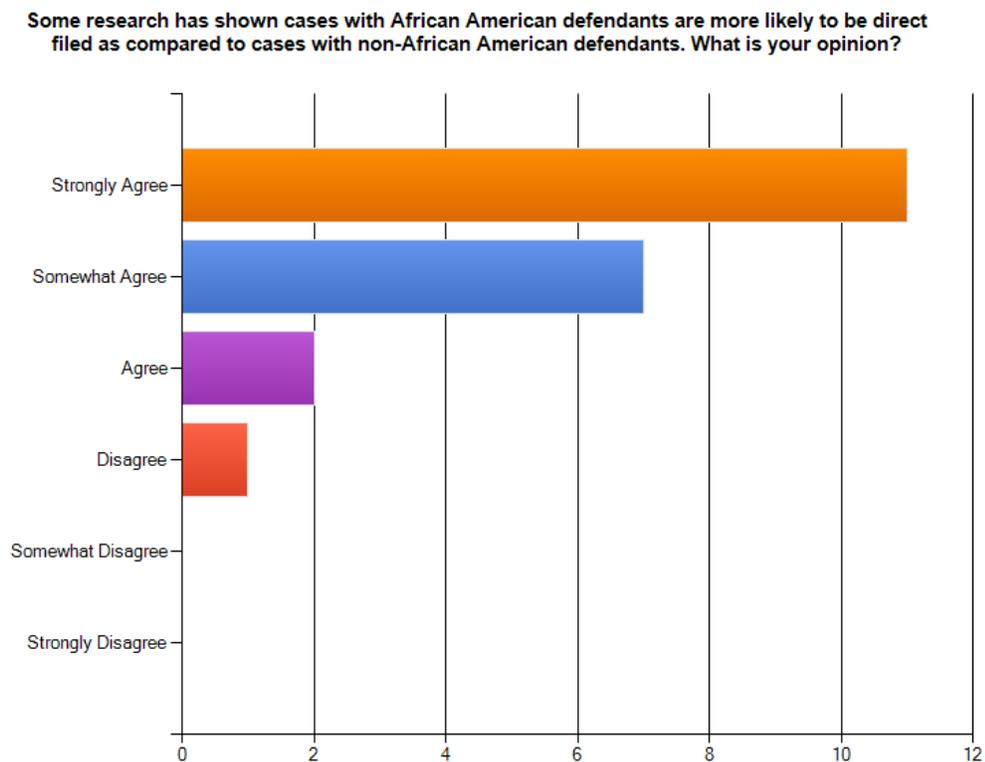
52% Strongly Agree

33% Somewhat Agree

10% Agree

5% Disagree

**Chart 3 - Q2 Survey Response**



*Total of 21 Responses*

**Question 3:** *The Florida Legislature finds that certain juveniles who have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. In your opinion, should juveniles be sentenced and placed within the adult system?*

This was another important question because research has shown that sentencing and placing juveniles within the adult system causes more harm than good.

In responding to this question,

5% Somewhat Agree

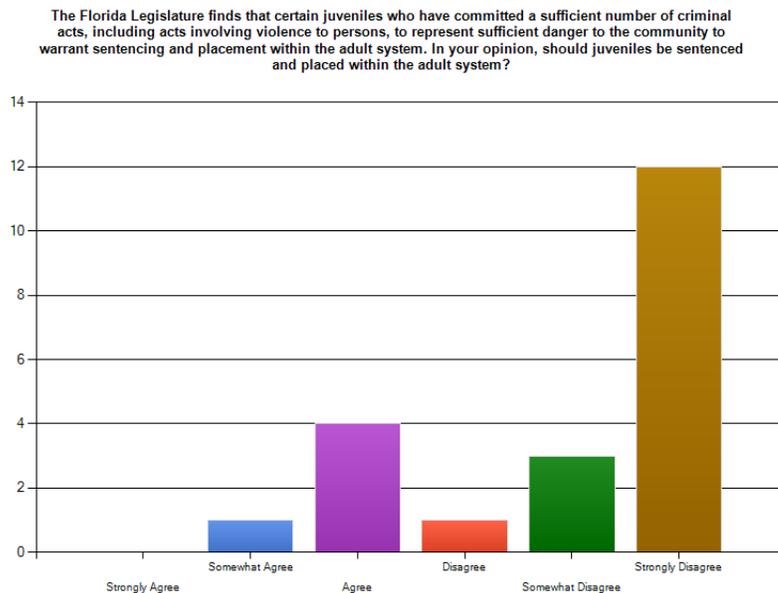
19% Agree

5% Disagree

14% Somewhat Disagree

57% Strongly Disagree

**Chart 4 - Q3 Survey Response**



*Total of 21 Responses*

**Question 4:** *According to Florida law, once a child has been transferred to adult court for criminal prosecution and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions. In your opinion, do you agree these children should be handled as adults for subsequent matters?*

This question garnered the following responses,

10% Agree

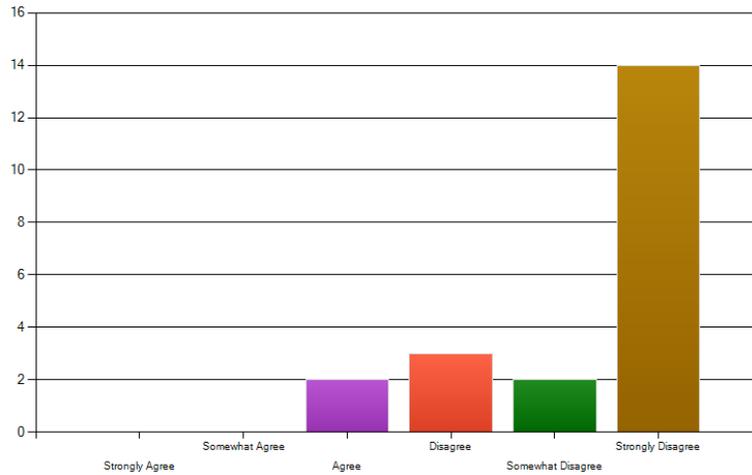
14% Disagree

10% Somewhat Disagree

67% Strongly Disagree

**Chart 5 - Q4 Survey Response**

According to Florida law, once a child has been transferred to adult court for criminal prosecution and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions. In your opinion, do you agree these children should be handled as adults for subsequent matters?



*Total of 21 Responses*

**Question 5:** *In your opinion, do you agree that, "as compared to adults, juveniles have a lack of responsibility, and are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure, and that their characters are not as well formed"?*

If the majority of Assistant Public Defenders feel strongly about this, one can only wonder how the Assistant State Attorneys feel when using their prosecutorial discretion when transferring juvenile cases to adult court.

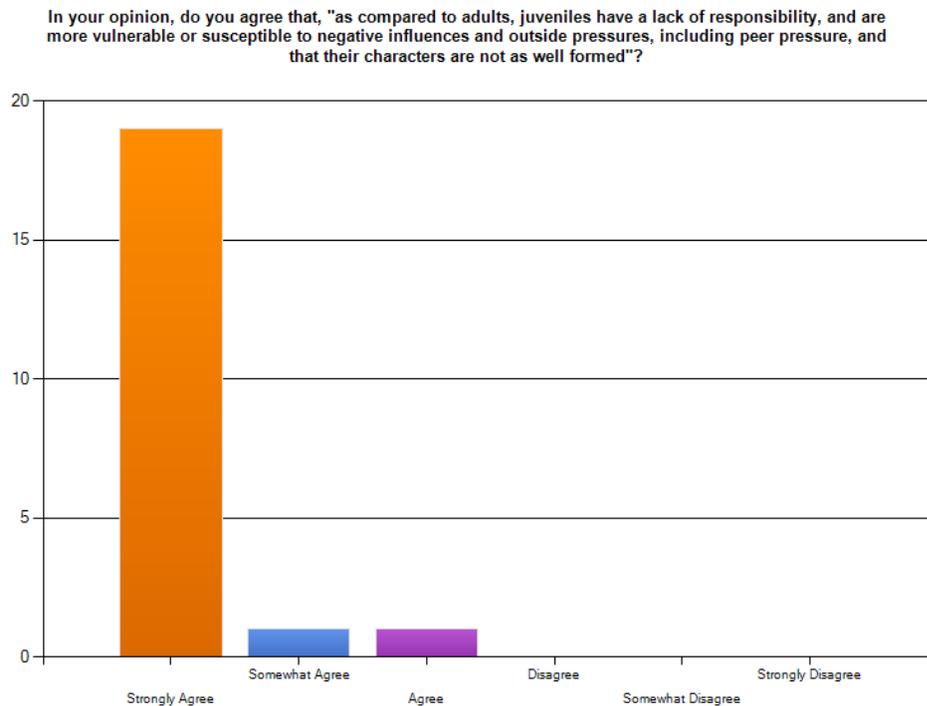
In response to this question,

90% Strongly Agree

5% Somewhat Agree

5% Agreed

**Chart 6 - Q5 Survey Response**



*Total of 21 Responses*

**Question 6:** *In your opinion, do you believe the current direct file policy in place is effective? Please explain.*

The response to this particular question was refreshing and gives hope that there might be reform of Chapter 985 of the Florida Statute. In addition to the scaled responses, this question allowed for comments and generated feedback from the participants. Of the scaled responses,

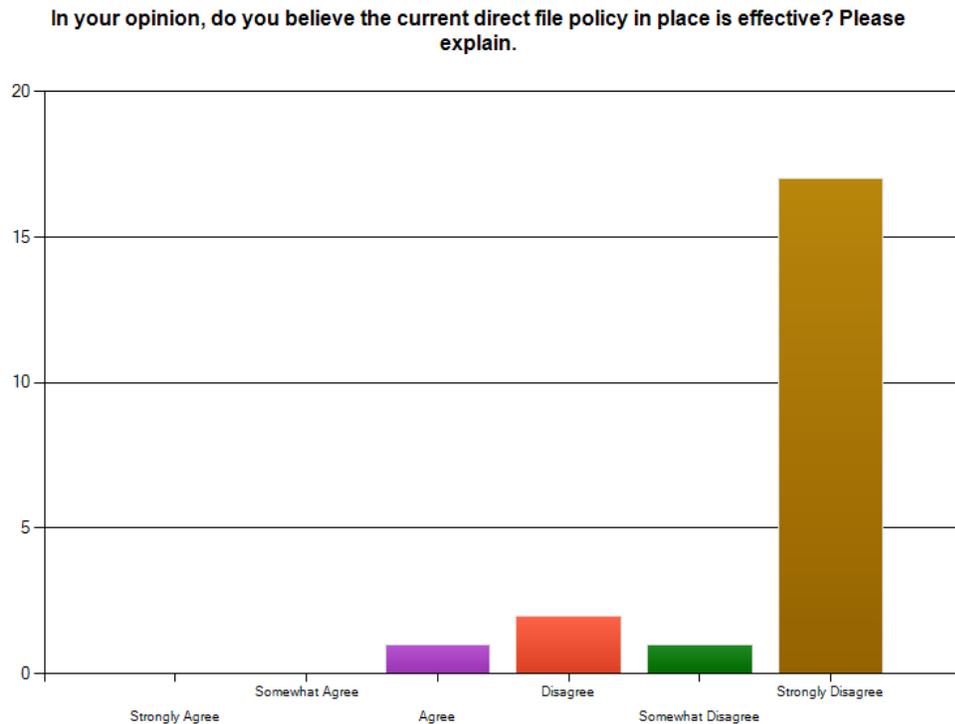
5% Agree

9% Disagreed

5% Somewhat Agree

81% Strongly Disagree

**Chart 7 - Q6 Survey Response**



*Total of 21 Responses*

Although the State Attorney's Office opted not to participate, the findings which could come from this is whether the presumptions are indeed true in that, yes, more cases with African American defendants are being direct filed. When the State Attorney's Office advised me that the number of participants for the survey would be very limited, I initially thought this could possibly be perceived as a good thing. Good in the sense that, instead of 200 attorneys working on juvenile direct file cases, there was only a small core group of Assistant State Attorneys dedicated to handling direct filed cases. A group who was more knowledgeable in the area, and who truly exercised their prosecutorial discretion, put more time into making sure that these youth were indeed being charged according to their crimes and that their cases were only being direct filed as a last resort. I initially thought this was going to prove the opposite of my research. However when the Office gave their final response I again started questioning that maybe what has been documented by previous research was indeed correct and that cases with African American defendants are direct filed more than cases with White defendants. Of the 11 percent response rate, 67 percent of the participants chose to enter a comment (Appendix 3).

There now appears to be light at the end of the tunnel as there has been a decline in the number of delinquency cases in Florida transferred to adult court. The number declined 5 percent, from 3,828 during Fiscal Year 2007-08 to 4,297 in Fiscal Year 2009-10.<sup>62</sup> As champions of this cause continue to wave the baton for reform, there is strong support for legislation which would release youth sentenced as adults, who after having served eight years of their sentence, without any disciplinary actions during the two years prior to, and who have completed a General Education Development (GED) Program. Although, completion of a GED Program would be challenging since only one third of Florida prisons have GED Programs. In

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<sup>62</sup> Florida Department of Juvenile Justice, *op. cit.*, p. 1.

addition, the youth would also be placed under mandatory, intense supervision as part of a two year reentry program. As restrictive as this might all seem, it would at least provide an opportunity for these youth to have a second chance.

## **VI. Conclusions and Recommendations**

In the article titled, *Juvenility and Punishment: Sentencing Juveniles in Adult Criminal Court*, published by the American Society of Criminology, the authors Kurlychek and Johnson open by stating, “One of the most profound developments in the recent evolution of juvenile justice has been the expansion of legal mechanisms for transferring juvenile offenders to adult court.”<sup>63</sup> This is a powerful statement in more ways than one. Along with transferring juvenile offenders we are also stealing the innocence of these young people who at one time in their young lives did something very bad. But with a transfer to adult court with adult sanctions and sentencing we significantly reduce the possibility of them ever receiving a second chance.

**CONCLUSION 1:** ENSURE THAT ALL POSSIBLE STAKEHOLDERS ARE INCLUDED WHEN COLLECTING DATA. As discovered towards the end of the research project, not all stakeholders were accounted for. The Juvenile Administrative Council (JAC) was not included. The JAC serve in the role of defense attorneys, the equivalent of an Assistant Public Defender, to the indigent when there is a conflict in the Public Defender’s Office with the defendant; such as in cases with co-defendants.

**RECOMMENDATION 1:** TAKE AN ASSESSMENT AND BE INCLUSIVE OF ALL POSSIBLE STAKEHOLDERS. Make contact with all who work directly with juvenile direct

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<sup>63</sup> Kurlychek, Megan C. and Johnson, Brian D., *Juvenility and Punishment: Sentencing Juveniles in Adult Criminal Court*. 2010 American Society of Criminology. Criminology Volume 48 Number 3 2010 725

filed cases. Include the Public Defender, the State Attorney, Juvenile Administrative Council, as well as members of the judiciary.

**CONCLUSION 2: THE CURRENT DIRECT FILE POLICY WHICH IS IN PLACE IS INEFFECTIVE.** According to the current policy, once a child has been transferred to adult court for criminal prosecution and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions. Of the survey responses, 67 percent strongly disagreed that the child should be handled as an adult for any future offenses. In addition, *Campaign for Youth Justice Fact Sheet: Trying Youth as Adults*, clearly state that, “Youth tried in the adult criminal court will receive little or no education, mental health treatment, or rehabilitative programming and are at greater risk of assault and death in adult jails and prisons with adult inmates.”<sup>64</sup>

**RECOMMENDATION 2: POLICY CHANGES SHOULD BE MADE SO YOUTH WILL NOT BE HANDLED AS ADULTS BECAUSE THEY WERE DIRECT FILED.** Judges need to be involved in the decision on whether a youth’s case should be direct filed or not. Although there are statutory criteria, the decision on whether or not a case should be direct filed should not be left up to the sole discretion of the prosecutor. Also, further research should take a look at the criteria used to determine if a youth is agreeable to treatment and with this determination develop a method to measure the level of danger for juveniles as youth tried and sentenced in adult court,

**CONCLUSION 3: ALTHOUGH WE ARE IN THE YEAR 2011, CASES WITH JUVENILE DELINQUENTS ARE STILL BEING HANDLED SIMILARLY TO THE WAY THEY WERE IN THE 1900s.** Yes, there is a separation of the various court divisions. However

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<sup>64</sup> Campaign for Youth Justice, op. cit., p. 2.

juvenile delinquency cases which are direct filed are being heard in adult court without much regard being given to the circumstances and situation of the child who plays a major role in why that child may have committed the crime which placed them in their current situation of being charged and sentenced as an adult.

**RECOMMENDATION 3: CREATE A SPECIALIZED COURT FOR HANDLING CASES INVOLVING YOUTH CHARGED WITH SERIOUS CRIMINAL OFFENSES.** Within the juvenile dependency system there are specialized courts which handle issues of substance abuse, physical abuse, neglect, and truancy. However not much is in place in the delinquency area. Within some jurisdictions there are juvenile drug courts which hear cases of youth who have substance abuse issues. Keeping in mind the budget constraints faced by all branches of government, the judiciary included, should there come a time when funding is available, or maybe even seek out grant funding, it would be beneficial to explore the possibility of putting into place a specialized court for review of cases with charges which currently merit being direct filed. As well as conducting reviews into the household situation and circumstances of the youth.

**CONCLUSION 4: REVIEW AND DETERMINE THE COST AND BENEFITS OF KEEPING JUVENILE CASES IN THE JUVENILE SYSTEM.** It appears little research has been conducted on the financial cost of transferring juvenile cases to adult court compared to keeping them in the juvenile system. There is the presumption that in handing down stronger punishment this will act as a deterrent for juveniles who are perceived as committing more serious crimes.

**RECOMMENDATION 4: OFFER RECOMMENDATION TO STATE LEGISLATORS.** Instead of putting money into brick and mortar and building additional

prisons, research must be done to determine whether putting money into more juvenile services might be the better solution especially since youth sentenced as and/or with adults, “will be more likely to re-offend than youth not exposed to the negative influences and toxic culture of the adult criminal punishment system.”<sup>65</sup>

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<sup>65</sup> Campaign for Youth Justice, *op. cit.*, p. 2.

## VII. Appendices

### Appendix 1 – Pre-Test

#### Pre-Test Question 1

##### 1. Thank you for your assistance!

1. In the scope of your work as an Assistant State Attorney or Assistant Public Defender, have you handled juvenile delinquency cases?

- Yes
- No

#### Pre-Test Question 2

2. Some research has shown cases with African American defendants are more likely to be direct filed as compared to cases with non-African American defendants. Do you agree?

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

#### Pre-Test Question 3

3. Of these cases, did you find the charges merited being direct filed?

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

**Pre-Test Question 4**

**4. In your opinion, do you think juveniles would be better served and receive more services if their cases remain in juvenile court?**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

**Pre-Test Question 5**

**5. In your opinion, do you think all direct filed juveniles should be sentenced to serve their time in a juvenile detention facility, instead of an adult correctional facility?**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

**Pre-Test Question 6**

**6. In your opinion, do you believe the current direct file policy in place is effective? Please explain.**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

Comment

**Pre-Test Question 7**

**7. Is there anything you would change about the current direct file policy in place? If yes, please explain in Question 8.**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

**Pre-Test Question 8**

**8. Please Explain:**

Done

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## Appendix 2 – Survey

### Survey Question 1

#### 1. Thank you for your assistance!

Presuming you are knowledgeable of Chapter 985 of the 2010 Florida Statutes relating to Juvenile Justice, the following questions are derived from this Statute.

**1. In the scope of your work as an Assistant State Attorney or Assistant Public Defender, have you handled juvenile delinquency cases?**

- Yes
- No

### Survey Question 2

**2. Some research has shown cases with African American defendants are more likely to be direct filed as compared to cases with non-African American defendants. What is your opinion?**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

### Survey Question 3

**3. The Florida Legislature finds that certain juveniles who have committed a sufficient number of criminal acts, including acts involving violence to persons, to represent sufficient danger to the community to warrant sentencing and placement within the adult system. In your opinion, should juveniles be sentenced and placed within the adult system?**

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

Survey Question 4

4. According to Florida law, once a child has been transferred to adult court for criminal prosecution and has been found to have committed the presenting offense or a lesser included offense, the child shall be handled thereafter in every respect as an adult for any subsequent violation of state law, unless the court imposes juvenile sanctions. In your opinion, do you agree these children should be handled as adults for subsequent matters?

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

Survey Question 5

5. In your opinion, do you agree that, "as compared to adults, juveniles have a lack of responsibility, and are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure, and that their characters are not as well formed"?

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

Survey Question 6

6. In your opinion, do you believe the current direct file policy in place is effective? Please explain.

- Strongly Agree
- Somewhat Agree
- Agree
- Disagree
- Somewhat Disagree
- Strongly Disagree

Comment

### Appendix 3 – Survey Comments

“The Juvenile system just sends its cases over to the adult system without any meaningful analysis of what is best for the child. In domestic cases, the standard is what is in the best interest of the child. Why shouldn't it be the same in the delinquency system as well?”

“This survey seems poorly drafted. At the very least the choices should be reorganized in a logical order (i.e. Strongly Agree, Agree, Somewhat Agree, Neutral, Somewhat Disagree, Disagree, Strongly Disagree)”

“Juvenciles have different issues than adults. Just as domestic cases are handled in particular courts, Juvenile cases should be handled in courts that can deal with Juvenile specific issues. Direct Filing children takes juveniles from a court built to deal with them and unfairly exposes them to life-long consequences for their actions when they are merely children or teenagers.”

“The State's discretion is too broad on whether to direct file. I feel the legislature should take more action.”

“In practice, the only thing I ever saw Florida's Direct File law accomplish is coercing juveniles into accepting a plea on sometimes very bad charges.”

“All competent studies show that between children otherwise matched for key variables, those who go to adult court re-offend sooner and more violently than those who remain in juvenile court.”

“That the direct file policy has no place for a formal hearing or for judicial discretion makes the process extremely coercive in terms of pressuring juveniles to take pleas in order that they avoid entry into the adult system.”

“As an Assistant Public Defender previously assigned to Juvenile Court, I ABSOLUTELY BELIEVE THAT AFRICAN AMERICAN CHILDREN ARE DIRECT FILED AT A RATE DISPROPORTIONATELY HIGHER THAN THEIR WHITE AND HISPANIC COUNTERPARTS. African American children (and adults) are arrested and incarcerated at a rate higher as well (this is a discussion that exceeds the parameters of this comment box). There are certain violent/sexual crimes that should be direct filed. However, if after the juvenile completes the adult sentence on the direct file charge, if the juvenile is arrested for a subsequent crime, (and so long as the juvenile court has jurisdiction b/c of

the juvenile's age) the juvenile should be charged in juvenile court. Also, the purported goal of the juvenile justice system is rehabilitation, while the goal of the adult system is retribution and punishment. Juveniles are often more reckless and negligent in their behavior, as opposed to adults who have the benefit of age and (hopefully) wisdom to understand the direct and indirect consequences of their actions. Because the adult system aims to punish, juveniles -- by virtue of their age and immaturity, will not get the rehabilitative aid they need. Instead they are in an adult system, with adult prisoners, and often leave jail worse than they were before sentencing.”

“Cases seem to be subject to direct filing without adequate consideration of the background and history of the offender.”

“Prosecutors have complete discretion. Judges who are more knowledgeable and who have less of a stake in the publicity of the case, should be able to make the decision after a full hearing of both sides.”

“I have seen the direct file system used most often as a threat to force juveniles into pleading in juvenile court. There is little transparency to the direct filing system and often times the children who end up facing adult sanctions appear to be arbitrary selections amongst many children charged with similar crimes with similar backgrounds. I also believe that direct filing is largely abused through overuse: a direct file should be much more rare and reserved for only those select instances where a child both has the capacity and understanding of their conduct like an adult and their conduct demonstrates this adult level of maturity. That Florida generally abuses the rights of those accused of crimes, especially in terms of exceeding constitutional limitations on the punishment of juveniles, was reflected in the recent ruling of *Graham v. Florida* in the US Supreme Court, which chastised Florida's practice of sentencing juveniles to life without parole. Of course, there remain in place many draconian aspects of law enforcement against juveniles, and the direct file system is no doubt one of them.”

“I think the system was more equitable when a judge had the authority to decide on waiver. The prosecutor’s office is too political in these decisions and too subject to influences from police and the alleged "victims.””

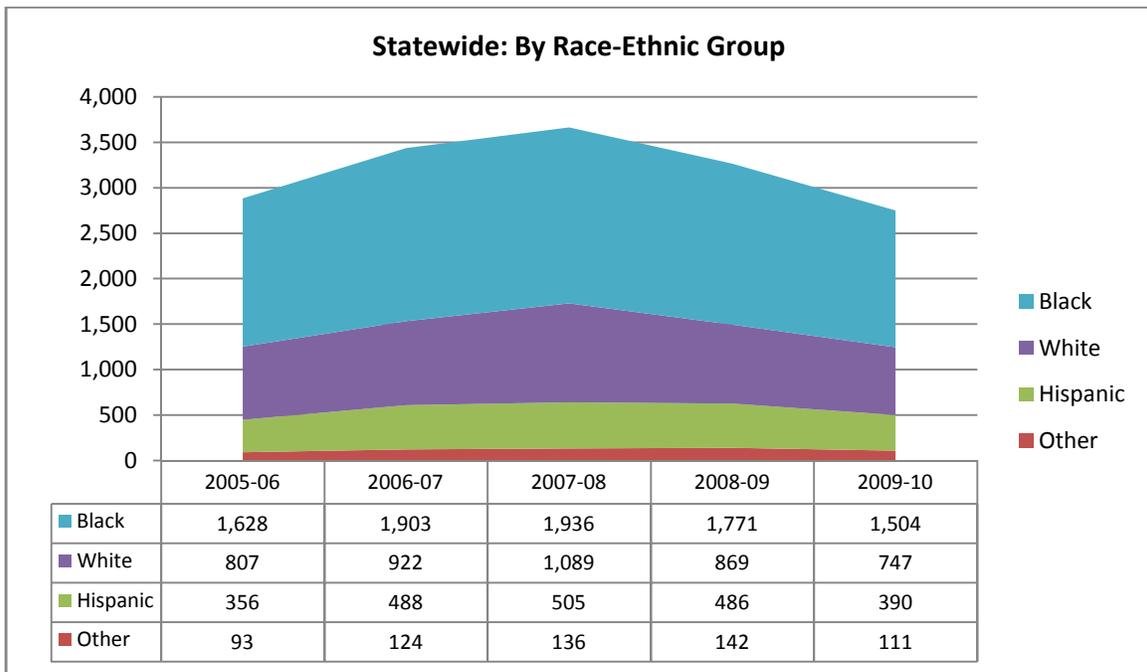
“In my experience, the direct filing process seems to be somewhat random. For instance, I'll have a kid who just turned 17 and has one or 2 felonies and intent to review for direct file is announced right at sounding. Alternatively, I will have a kid who just turned 17 with priors dating to when he was 12/13 including way more than one or 2 felonies and intent to review for direct file is never announced. The random selection process seems to be comparable to the choice by the ASAs to place an adult offender in Repeat Offender Court as opposed to leaving him or

her in regular division. I think the direct file process has become entirely about age and getting the older juveniles off of the clogged juvenile court dockets. I think the state often forgets that a 17 year old's mental development and a 30 year old's mental development are, in fact, different. Rehabilitation should play a much more significant role in the juvenile justice system than it does.”

“Too much power in the decision making process to one person or a group of people. Judges should play a bigger role in the process.”

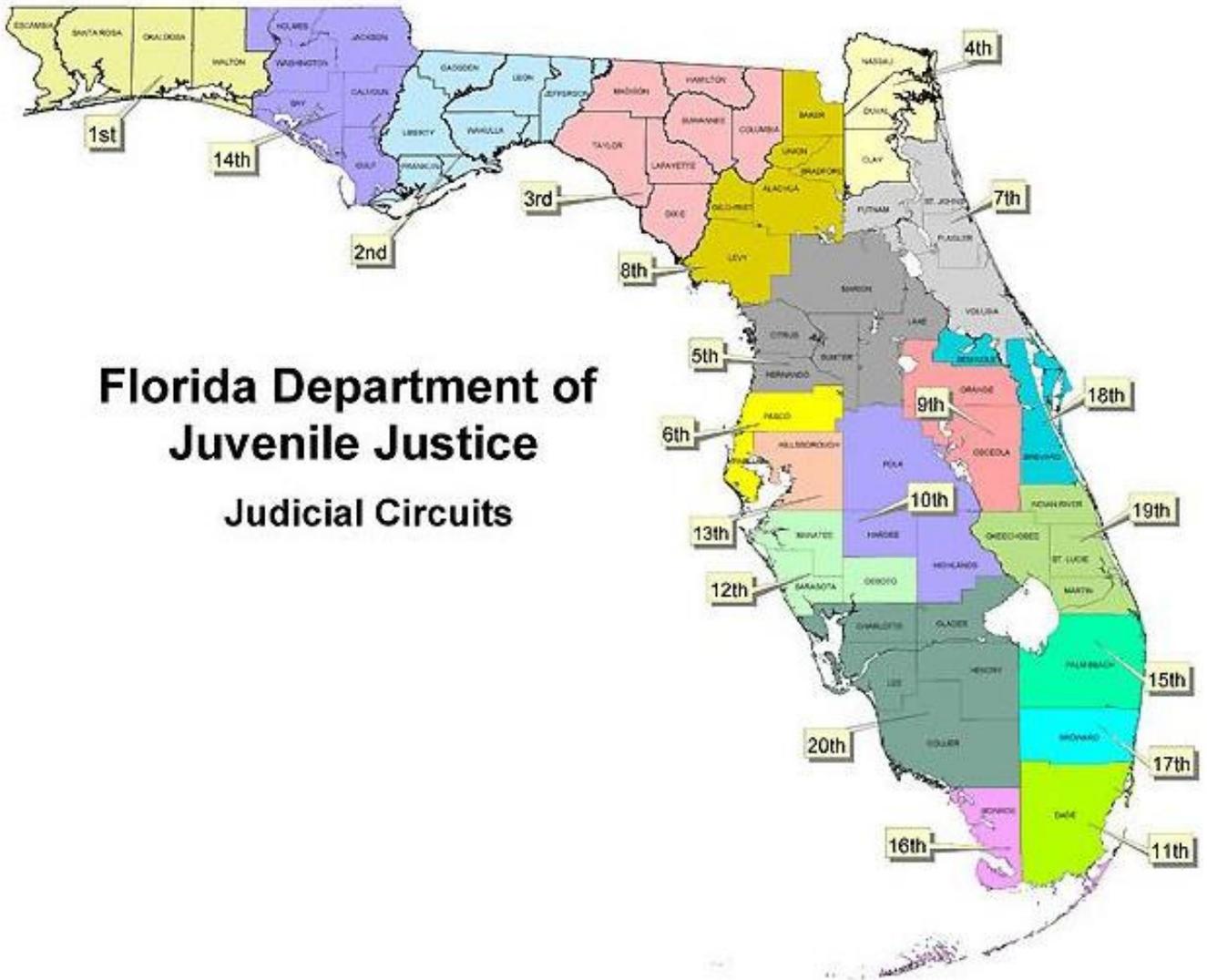
## Appendix 4 –

Chart 8- Obtained from Florida's Delinquency Profile



Appendix 5 – Map of the State of Florida

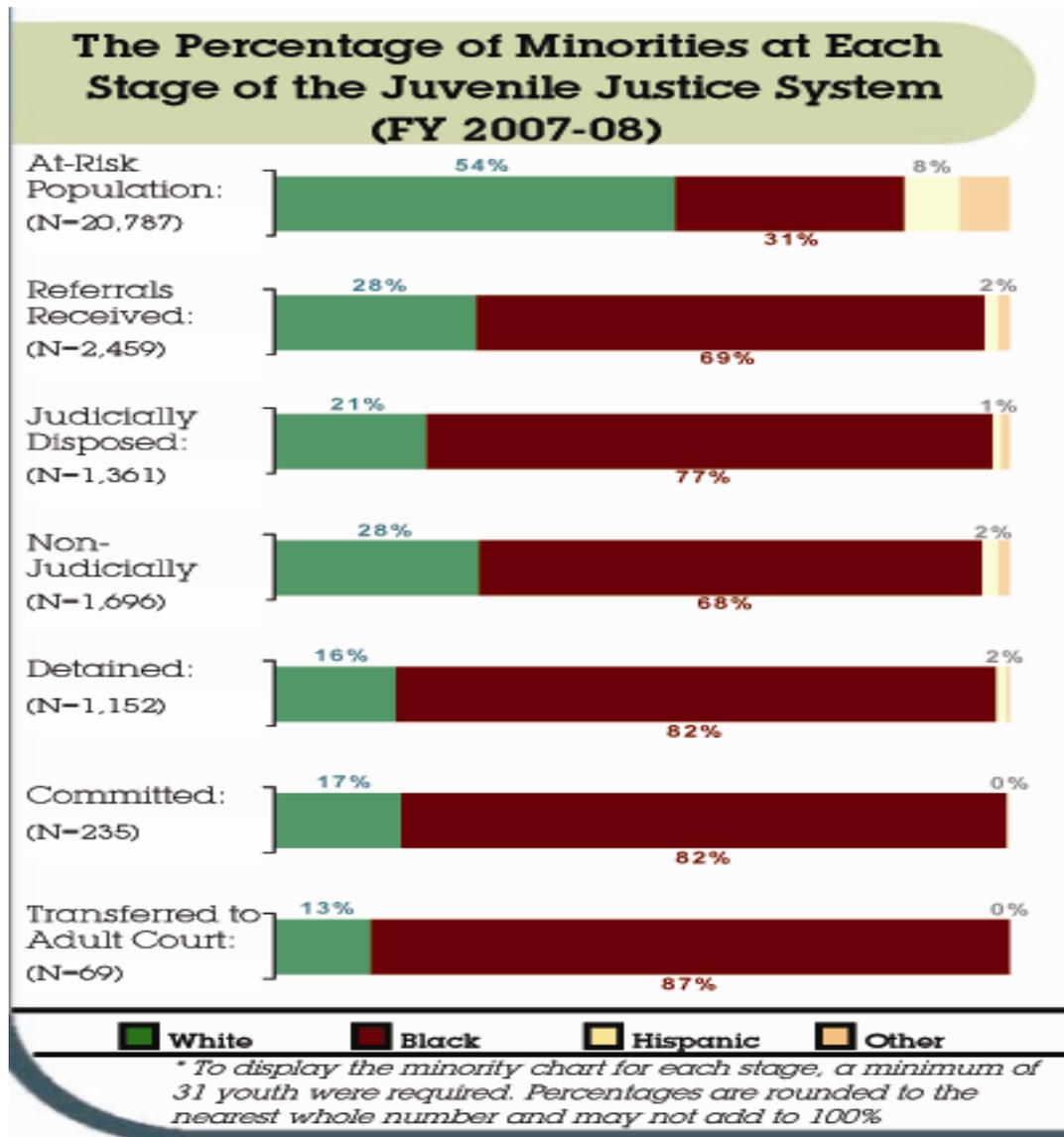
Chart 9 - Map of the State of Florida



**Florida Department of  
Juvenile Justice  
Judicial Circuits**

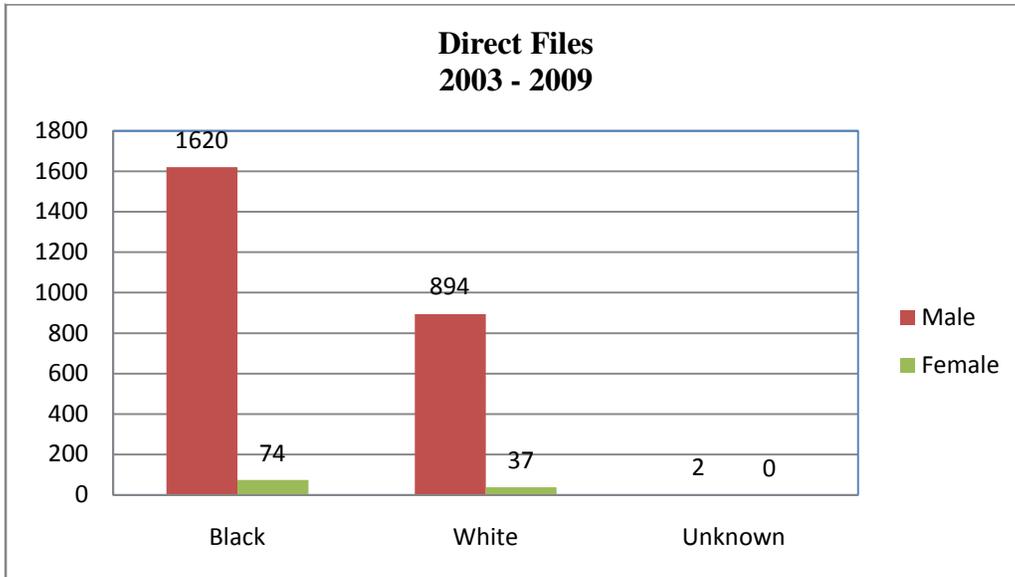
## Appendix 6 – Racial and Ethnic Representation of Florida’s Juvenile Justice System

Chart 10 - Racial and Ethnic Representation in Florida's Juvenile Justice System



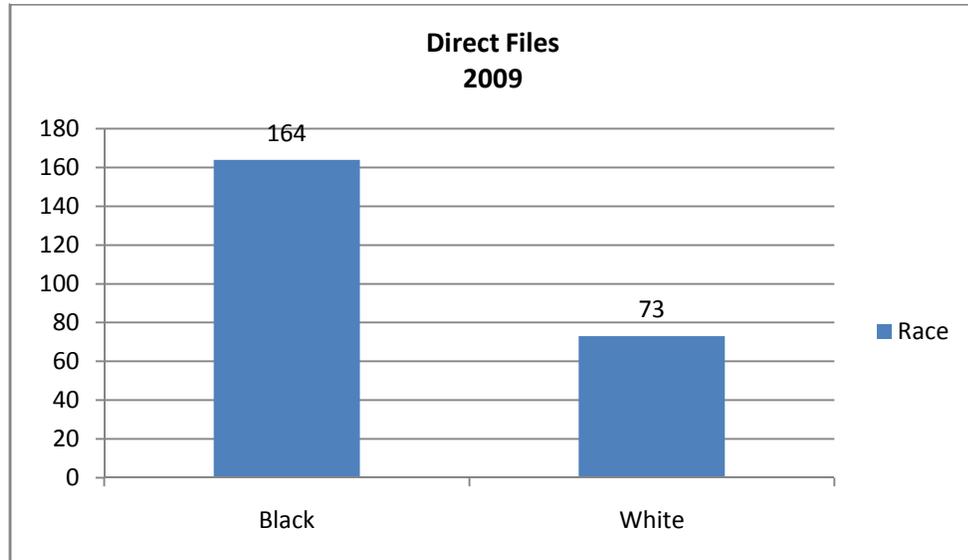
## Appendix 7 – Direct Files 2003-2009

Chart 11 - Miami-Dade County Direct Files 2003-2009



## Appendix 8 – Direct Files 2009

Chart 12 - Miami-Dade County Direct Files 2009



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