

Florida's Direct File Policy and the Need for Juvenile Justice Reform

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I. Introduction

In 2012, the U.S. Supreme Court ruled in *Miller v. Alabama* that children are constitutionally different from adults for criminal sentencing purposes.¹ However, it is currently legal in every U.S. state to transfer juveniles to adult court to receive adult sanctions, raising questions surrounding the constitutionality of this criminal procedure given the existing case law.² In Florida, children as young as fourteen can be transferred to adult court.³ There are multiple means by which this transfer can happen, but the Direct File Policy is currently responsible for 98% of juvenile transfers to adult court in Florida.⁴ This policy is a prosecutorial waiver that has two elements: mandatory and discretionary. The former requires children to be transferred if certain criteria are met, while the latter provides prosecutors broad discretion in determining this matter based on the severity of the crime, without review by a judge or grand jury.⁵ In 1978, Direct File was designed to deter an increase in juvenile delinquency through adult sanctions, but has since proven to be ineffective in the aggregate.⁶ Florida's Direct File Policy has been shown to yield poor long-term results and ignore scientific research as well as U.S. Supreme Court precedent, all of which highlight the need for juvenile justice reform in Florida.

¹ *Miller v. Alabama*, 567 U.S. 460 (2012).

² S. Poverty L. Ctr., *Criminal Injustice: States Unfairly Prosecute Children as Adults* (Jan. 2022), splcenter.org/resources/stories/criminal-injustice-states-unfairly-prosecute-children-adults.

³ Charles E. Frazier et al., *Get-Tough Juvenile Justice Reforms: The Florida Experience*, 564 *Annals Am. Acad. Pol. & Soc. Sci.* 167, 167–184 (1999).

⁴ *Id.* at 169.

⁵ Fla. Stat. § 985.557 (2021).

⁶ S. Poverty L. Ctr., *supra* note 2.

II. The Direct File Policy's Long-Term Ineffectiveness

Although Florida is not the only state that utilizes a Direct File Policy, it is among the most prolific. Between 2017 and 2022, Florida charged 4,446 minors as adults on felony charges, outnumbering all other states in this area.⁷ Of those children who are charged and sentenced as adults, up to 75% will be rearrested within three years.⁸ This high recidivism rate is a statistically observable negative effect of sentencing juveniles to adult prison, which happens primarily through the Direct File process.⁹ High recidivism alone reflects a failure of any criminal justice strategy if its purpose is to reduce crime, which was the original goal of Direct File.¹⁰

Additionally, when juveniles are incarcerated alongside adult criminals, they gain exposure to new methods of committing more violent and complex crime—methods they likely would not have otherwise encountered had they not interacted with adult offenders while in prison. This notion is supported by the fact that homicides perpetrated by juveniles increased by 65% from 2016–2022, with firearm involvement in juvenile offenses increasing by 21% in the same time frame.¹¹ The rise in homicides and greater use of firearms reflects an escalation of violence associated with juvenile offenses. As a result, juvenile incarceration not only yields high recidivism rates but also increases the likelihood of more violent and sophisticated crime.

Additionally, incarcerated children tend to experience poorer educational and career outcomes along with negative impacts to their health and well-being.¹² For example, studies show that incarceration makes it much less likely that a juvenile will graduate high school, enroll

⁷ *Id.*

⁸ Elizabeth Seigle et al., *Core Principles for Reducing Recidivism and Improving Other Outcomes for Youth in the Juvenile Justice System* 1 (N.Y.: Council State Gov't Just. Ctr. 2014).

⁹ Frazier et al., *supra* note 3, at 169.

¹⁰ *Id.* at 168.

¹¹ Brendan Lantz & Kyle G. Knapp, *Trends in Juvenile Offending: What You Need to Know*, Council Crim. Just. (Sept. 2024), counciloncj.org/trends-in-juvenile-offending-what-you-need-to-know.

¹² Richard Mendel, Sentencing Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* 4–28 (2023).

in college, or complete a college degree if incarcerated during their enrollment.¹³ Moreover, juveniles who have been incarcerated are far more likely to suffer from mental health problems, including suicidal thoughts, depression, and post-traumatic stress disorder (PTSD).¹⁴ Surveys of currently or previously incarcerated youth reveal that a statistically significant majority have been physically abused by fellow inmates or prison staff, and repeatedly witnessed these abuses during their sentences.¹⁵ These facts are not meant to suggest that conditions in juvenile detention centers do not lead to similar negative health effects. Rather, they should support the search for alternative approaches for juvenile justice. Given that juveniles sanctioned in adult prisons are more likely to recidivate at higher rates with increased violence, face poorer educational outcomes, and experience mental health problems as a result of their incarceration, Florida should reduce its use of Direct File and explore other rehabilitative juvenile justice options before transferring a child to adult court.

III. Developmental Science and Its Implications for Juvenile Justice Strategies

According to the American Academy of Child and Adolescent Psychiatry, pictures of the human brain show that adolescent brains operate differently than adults, specifically in relation to decision-making.¹⁶ Generally speaking, a child's actions are more guided by emotional and reactive parts of the brain, whereas the actions of adults are guided more by logical and thoughtful parts.¹⁷ Logic-based decision-making is the foundation for a concept known as deterrence, which is an approach to crime prevention.¹⁸ This concept employs the use of punishments, such as incarceration, to discourage a potential offender from committing the crime

¹³ *Id.*

¹⁴ Am. Acad. Child & Adolescent Psychiatry, *Teen Brain: Behavior, Problem Solving, and Decision Making* (Sept. 2017), www.aacap.org/AACAP/Families_and_Youth/Facts_for_Families/FFF-Guide/The-Teen-Brain-Behavior-Problem-Solving-and-Decision-Making-095.aspx.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Nat'l Inst. Just., U.S. Dep't of Just., *Five Things About Deterrence* 1 (2016).

in the first place.¹⁹ The key to deterrence, however, is that the would-be offender rationally weighs the crime with the punishment they would receive; according to developmental science, children do not have the fully developed capacity to engage in this cognitive reasoning.²⁰ Similarly, increased severity of punishments does little to deter crime, meaning a child might view prison and juvenile detention as equally valued deterrents although the former is more severe than the latter.²¹ The threat of adult court by the Direct File Policy is therefore ineffective in deterring juvenile delinquency, as its existence and consequences fail to serve as credible threats. The effects of punitive measures vary when dealing with children versus adults, and the juvenile justice system should adjust accordingly in order to produce more successful results.

IV. Key Supreme Court Decisions on Juvenile Sentencing

In light of developmental knowledge, U.S. Supreme Court Justice Elena Kagan wrote the majority opinion in *Miller v. Alabama*, wherein she quoted psychological studies to support the argument that children have “lesser moral culpability” and as such should have a diminished standard for punishment.²² In *Miller*, the Court ruled that imposing a mandatory life without the possibility of parole sentence for juvenile homicide offenders violates the Eighth Amendment’s prohibition against cruel and unusual punishment.²³ The Court held that while this sentence would not violate the Eighth Amendment for adults, such a sentence is an unconstitutionally disproportionate punishment for children.²⁴ This opinion reflects the findings of *Graham v. Florida* (2010), wherein it was determined the “case for retribution is not as strong with a minor as with an adult.”²⁵ Justice Kagan echoes this line of reasoning by asserting that the same

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Miller*, 567 U.S. at 472.

²³ *Id.* at 461.

²⁴ *Id.*

²⁵ *Id.* at 472 (quoting *Graham v. Florida*, 560 U.S. 48, 71 (2010)).

scientific findings that separate children from adults—those of transient rashness, inability to consider consequences, and so forth, should be refined with further neurological development.²⁶ Furthermore, she notes that by nature, a juvenile’s actions are less likely to be fixed, well-formed, or “evidence of irretrievable depravity,” but rather are actions that have the large prospect of developing and reforming with growth.²⁷ As such, a higher emphasis is placed on the exploration of rehabilitative efforts before resorting to retributive punishments like incarceration. Additionally, Kagan asserts that the concept of deterrence contradicts those noted characteristics, making it less likely for children to consider the potential punishments or consequences of their actions.²⁸ As a result, the goal of deterrence—preventing behavior through fear of consequences—is undermined.²⁹ Ultimately, *Miller* and other cases underscore the logic behind having separate justice systems for juveniles and adults, being that retribution applies in adult court but should not always be imposed on a child. Both *Miller* and *Graham* emphasize the importance of scientific knowledge as the foundation for decisions in juvenile justice. Consequently, Florida’s juvenile justice system should be informed by scientific research, yet the Direct File Policy ignores it.

V. Conclusion

Florida’s Direct File Policy represents a critical flaw within the state’s approach to juvenile justice that necessitates reform—the transferring of minors into adult court. The policy has been proven to be ineffective in a long-term analysis, producing higher recidivism rates and negative health effects in incarcerated youth. Furthermore, harsh consequences like incarceration are punitive measures that contradict scientific understanding of how children respond to

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 471.

²⁹ *Id.* at 461.

punishment. This renders the concept of deterrence ineffective and may even produce the opposite effect, leading to an increase in crime with an escalation of violence. Scientific evidence and U.S. Supreme Court precedent both support the view that children's brains are developmentally different than adults, specifically in their capacity for decision-making, which plays a role in establishing their moral culpability.³⁰ As such, juveniles should not be subject to the same punitive standards as adults.³¹ To align with both research-based understanding and case law, Florida should reconsider the Direct File Policy along with transferring children to adult court under any circumstance.

³⁰ *Id.* at 472.

³¹ *Id.* at 474.