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A Tale of Two Systems: a Comparative Analysis of Scotland's Community-Based Juvenile Justice and America's Prosecutorial Discretion Laws

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**A TALE OF TWO SYSTEMS: A COMPARATIVE ANALYSIS OF
SCOTLAND'S COMMUNITY-BASED JUVENILE JUSTICE AND
AMERICA'S PROSECUTORIAL DISCRETION LAWS.**

*By Tiffany Hornback**

ABSTRACT

America's juvenile justice system's most notable shift came in the 1980s when states deferred the power to prosecute children in adult courts to prosecutors. Prosecutorial discretion over juvenile cases was a rather dormant power, exercised in less than 2% of juvenile cases across the country until the early 2000s. Over the last five years, in response to a growing call to exercise the full power of America's punitive justice system, states broadened the prosecutor's discretionary powers. In some cases, prosecutors were given the full discretion to direct file children into adult courts – a decision that could not be reviewed or blocked by a judge. But as America grabbles with a shifted focus on punishing child offenders, Scotland embraces its own revolutionary juvenile justice system. Nearly fifty years ago, Scotland abandoned its juvenile justice system and traded punitive juvenile courts for community-based justice. Since then, Scotland's juvenile justice program evolved into a nation-wide project that shifted the country's perspective and approaches toward juvenile crime. This paper dives into the history and details behind America's prosecutorial discretion laws and Scotland's community-based justice system. Then, by analyzing implications, I argue America's punitive justice system should opt for a more rehabilitative system approach to juvenile justice; a system that mirrors Scotland's effective, and inherently just, nationwide approach.

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I. INTRODUCTION

Sonny Rugani’s summer vacation came to an abrupt stop on the evening of June 25.¹ Sonny was two months shy of his senior year at Coral Springs High School in South Florida when he broke into a neighbor’s Mercedes Benz and stole a backpack that happened to have a gun inside.² What 17-year-old Sonny did not know was that the presence of the gun was all prosecutors needed to concoct an armed robbery charge, a felony, and transfer Sonny from juvenile court to adult court.³ Just one month after prosecutors charged Sonny with grand theft of a firearm and armed robbery and transferred him to an adult prison, Sonny was found hanging from a makeshift noose in his jail cell. He died a few days after he was found.⁴

Sonny’s story, and the outrage that accompanies it, is not an anomaly. Prosecutors in Florida, and thirteen other states, possess the power to escalate the crimes leveled at children because of direct file statutes.⁵ Unlike judicial waivers or other methods of transferring children to adult courts, direct file statutes give prosecutors full discretion to transfer a juvenile case to adult court without judicial

¹ Rafael Olmeda, *Teen on Life Support After Hanging Himself at Broward Jail*, SUN-SENTINEL, (Sept. 3, 2019, 8:04 PM), <https://www.sun-sentinel.com/local/broward/fl-ne-jailed-teenager-suicide-20190904-fftr7ooywbgexe7kx7ldo3u2q4-story.html>.

² *Id.*; Rafael Olmeda, *Teen Found Hanging in Broward Jail Cell Dies*, SUN-SENTINEL, (Sept. 5, 2019, 5:24 PM), <https://www.sun-sentinel.com/news/crime/fl-ne-broward-jail-suicide-response-20190904-vntb6z44ffsrme5gv5alkeye4-story.html>.

³ *Id.*

⁴ *Id.*

⁵ *Keeping Children Out of Florida’s Adult Criminal Justice System would have Positive Economic Impact, Study Says*, HUMAN RIGHTS WATCH, (March 7, 2019), <https://www.splcenter.org/news/2019/03/07/keeping-children-out-florida%E2%80%99s-adult-criminal-justice-system-would-have-positive-economic>.

review.⁶ Some states, like Florida, do not require a hearing before prosecutors can direct file a juvenile.⁷ Academia often refers to direct file statutes as prosecutorial discretion laws or “prosecutorial waivers” because of the lack of oversight and judicial review surrounding the prosecutor’s decisions.⁸

Of the fourteen states that have prosecutorial discretion laws, Florida ranks the highest in the number of juvenile cases directly filed in adult criminal court annually. Most states, admittedly, do not track the nature of the cases prosecutors direct file to adult court, let alone how many cases are direct filed.⁹ However, one of the only studies conducted by the Department of Justice on direct file laws found that Florida had “five times the average transfer rate” compared to the other states that publicly reported their transfer rates to the Department of Justice.¹⁰ Florida’s high transfer rate is undoubtedly tied to the state’s direct file statute, which makes it easier to transfer children to adult court as compared to states with judicial waivers.¹¹ Further, Florida not only leads other states in the number of youth transfers to adult court, but most of the cases Florida transfers involve crimes committed by black boys.¹² In Florida, “black boys make up 27.2 percent of children arrested for crime, but account for 51.4 percent of youth sent to adult court; whereas white boys make up 28 percent of children arrested and account for only 24.4 percent of youth tried in adult court.”¹³ Therefore, Florida remains the leading example of the

⁶ Jessica Williams, *The Consequences of Florida’s Discretionary Direct File Law and Its Particular Impact on Young African American Males*, 9 S. J. POL’Y & JUST. 57, 58 (2015).

⁷ *Id.*

⁸ Marlon J. Baquedano, *Taking the Direct File Statute to Criminal Court: Immigration Consequences for Juveniles*, 6 U. MIAMI RACE & SOC. JUST. L. REV. 169, 174 (2015-2016).

⁹ Office of Juvenile Justice and Delinquency Programs, *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, U.S. DEP’T OF JUST. (2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf>.

¹⁰ *Id.*

¹¹ *Id.*

¹² HUMAN RIGHTS WATCH, *BRANDED FOR LIFE: FLORIDA PROSECUTION OF CHILDREN AS ADULTS UNDER ITS “DIRECT FILE” STATUTE 4* (2014) https://www.hrw.org/sites/default/files/reports/us0414_ForUpload%202.pdf.

¹³ *Id.*

disproportionate effects direct file laws have on marginalized communities.

While direct file laws are America's new approach to juvenile criminal justice, there is an alternative approach that has already been tried, tested and proven. As part of the Social Work Act of 1968, Scotland introduced its community-based juvenile justice program which focuses on rehabilitation rather than punishment.¹⁴ As a result, Scotland has almost entirely eradicated its juvenile courts, opting for community panel hearings and reserving judicial decision-making for repeat offenders of more serious crimes.¹⁵

This note argues that direct file statutes are counterproductive to the goals of a juvenile justice system. Scotland's community-based juvenile justice program exemplifies why jurisdictions should opt for rehabilitative approaches rather than punitive approaches. Part I of this note explores Scotland's model of community-based justice. Part II of this note explores Florida's model and direct file statute. Part III compares the problems facing Scotland when they shifted to a community justice program and the problems currently plaguing America's juvenile justice system. Finally, Part IV draws implications from both programs and argues why, in light of social and economic impacts, American jurisdictions should model their juvenile justice approach after Scotland's approach.

II. A PLAN FOR COMMUNITIES — SCOTLAND'S APPROACH

Scotland's reformations to their juvenile justice system are based on a set of goals and an evolving understanding of their approach to juvenile justice.¹⁶ Scotland uses a "Whole System Approach" which focuses on six primary goals: (1) Early and Effective Intervention (EEI), (2) increasing community alternatives to secure care and custody, (3) maximizing opportunities to divert young people from prosecution, (4) managing high risk, (5) providing court support

¹⁴ See *A Guide to Youth Justice in Scotland: policy, practice and legislation*, Centre for Youth and Criminal Justice (last visited Jan. 16, 2020), <https://www.cycj.org.uk/wp-content/uploads/2019/06/Guide-to-YJ-Overview-2019-1.pdf> [hereinafter CYJC].

¹⁵ See INTERNATIONAL HANDBOOK OF JUVENILE JUSTICE 463-469 (Josine Junger-Tas & Scott H. Decker eds., 2006) [hereinafter *International Handbook*].

¹⁶ See CYJC, *supra* note 14, at 3.

to young people, and (6) improving reintegration and transitions back into the community.¹⁷ One of the most notable aspects of the Scottish juvenile justice system is their Child Hearing System, which comes from goal (3) maximizing opportunities to divert young people from prosecution.¹⁸

Rather than using Scottish juvenile courts as places to disperse punishment, the new approach is a “multidisciplinary system” that considers a child’s welfare or background before making decisions about their future.¹⁹ The Children’s Hearing System is a series of informal discussions, but the individuals appointed to the hearings are equipped to make decisions about a child’s education and supervision in light of their background, and are encouraged to do so rather than punish children.²⁰ The supervising authority, the Scottish Children’s Reporter Administration (SCRA), oversees hearings and ensures they are functioning in the best interest of the community and the children.²¹

Children’s hearings mirror informal tribunals led by a panel comprised of volunteers from various communities in Scotland.²² Hearing panel volunteers must be between eighteen and sixty years old and undergo a selection process and training before the Secretary of State of Scotland officially appoints them to their local area’s panel.²³ The other significant role in the Children’s Hearing System is the Reporter whose duty is to report the crime to the hearing panel. Reporters receive referrals from the police or community members and are tasked with bringing the crime and child to the attention of the panel for resolution.²⁴ When a panel is appointed to a case, the parents of the accused child, the child, representatives from Scotland’s Social

¹⁷ *Youth Justice Strategy: Progress Report*, SCOT. GOV’T (Jun. 21, 2017) <https://www.gov.scot/publications/youth-justice-strategy-preventing-offending-getting-right-children-young-people/>.

¹⁸ See International Handbook, *supra* note 15, at 441.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Susan McVie, *Alternative Models for Youth Justice: Lessons from Scotland and Northern Ireland*, 6 *Journal of Children’s Services* 104, 105 (2011). See also International Handbook, *supra* note 15, at 442.

²³ International Handbook, *supra* note 15, at 442.

²⁴ *Id.*

Work Department, and the Reporter join the panel to discuss the child's needs.²⁵ There is one panel for each of Scotland's thirty-six communities, all of which also have their own children's hearing center.²⁶

The age of criminal responsibility in Scotland is officially eighteen years old.²⁷ However, children over sixteen can still be prosecuted in Scottish criminal courts.²⁸ Children between the ages of twelve and sixteen can be transferred to criminal courts only after approval by the Lord Advocate, which is the chief judiciary officer in the proceeding.²⁹ The age of criminality in Scotland was only raised from eight years old to twelve years old in 2000 after much debate between advocates who wanted a higher age of criminal responsibility.³⁰ It is important to note that Scotland's choice to raise the age of criminal responsibility amid their community justice program was reflective of a general shift in Europe's approach to ages of criminal responsibility, which were typically lower in surrounding countries before a paradigm shift in the early 2000s.³¹ Since Scotland maintains the possibility of prosecuting children as young as sixteen in criminal courts, some cases are resolved in the criminal justice system that involve children.³² Notwithstanding, criminal prosecution of children only involve serious threats or repeat offenders, and most criminal cases involve children that are either seventeen or eighteen years old.³³

Another instrumental characteristic of Scotland's innovative juvenile justice system is the country's focus on Early and Effective

²⁵ *Id.*

²⁶ Serverin Carrell, *How Scotland's Youth Justice System puts Welfare at its Heart*, GUARDIAN (Nov. 7, 2019, 1:00 PM), <https://www.theguardian.com/society/2019/nov/07/scotland-youth-justice-system-welfare-heart>.

²⁷ *Children and the Scottish Criminal Justice System*, SPICE INFO. CTR., http://www.parliament.scot/ResearchBriefingsAndFactsheets/S5/SB_1654_Children_and_the_Scottish_Criminal_Justice_System.pdf, (last visited Jan. 16, 2020) [hereinafter SPICE Information Center].

²⁸ *Id.*

²⁹ *Id.*

³⁰ See International Handbook, *supra* note 15, at 445.

³¹ Franklin E. Zimring, Maximo Langer & David S. Tenenhaus, *Juvenile Justice in Global Perspective* 48-49 (2015).

³² See SPICE, *supra* note 27.

³³ *Id.*

Intervention, a program designed to intervene with children who show early signs of antisocial or delinquent behavior.³⁴ Early and Effective Intervention focuses on helping children solve their problems early on in their communities, to avoid further encounters with delinquent behaviors or crimes.³⁵ Early and Effective Intervention programs are voluntary programs that families and children can choose to participate in at the recommendation of a committee.³⁶ In 2003, Scotland introduced the Youth Crime Prevention Fund which allotted eleven-million euros over three years to develop support to at-risk children and families and develop support programs for victims and their families.³⁷

Scotland's Early and Effective Intervention program also involves the police.³⁸ Scotland does not have a national police force.³⁹ However, local communities use their own police forces to help identify cases and refer children to the Reporters for hearings.⁴⁰ Local laws often restrict police forces by how long they can detain a child before transferring the case to a reporter. Scottish police are not the primary source for the government to build a criminal case against the child.⁴¹ Police can also issue informal warnings to children rather than immediately referring children to Reporters.⁴²

Finally, Scotland's child hearings do not issue punishment except in rare cases.⁴³ In fact, the hearing panels lack authority to issue punishments other than dismissing a previous case and opening a new case if a child violates their order's probationary terms.⁴⁴ Rather,

³⁴ *Id.* at 453.

³⁵ Safer Scotland, *Preventing Offending: Getting it Right for Children and Young People*, <https://www.gov.scot/publications/preventing-offending-getting-right-childr-en-young-people/pages/2/> (last visited Jan. 16, 2020).

³⁶ SPICE Information Center, *supra* note 27.

³⁷ *See* International Handbook, *supra* note 15, at 455.

³⁸ *Id.*

³⁹ *Id.* at 455-456.

⁴⁰ *Id.*

⁴¹ *See id.* at 457 (explaining that while police can detain children for up to six hours in most communities, detention should only be used to help police gather information, fill out reports, or hold the child until police can contact a parent or guardian).

⁴² *Id.* at 457.

⁴³ CYCJ, *supra* note 14.

⁴⁴ Dave Smith, *Learning from the Scottish Juvenile Justice System*, 47 PROB. J. 12, 13 (2000).

children are given Community Service Orders (CSO) or Community Payback Orders (CPO).⁴⁵ Both orders are guided by a social worker that serves on the hearing panel and requires regular check-ins with the child to ensure they are consistently participating in community service or payback programs.⁴⁶ Sanctions function like America's parole system. Even when the sanctions are violated, if the violation is not coupled with a significant threat, the children's hearing panel can decide to reinstate the community order with new or existing parameters.⁴⁷ Furthermore, the hearing panels do not make judgments on the evidence, only the disposition of the case.⁴⁸ Evidence is generally handled by a Reporter, who is tasked with investigating the cases and determining whether there are statutory grounds to bring a case forward.⁴⁹ Before a reporter can bring the case to a hearing panel, "both the child and their parents had to accept the grounds for referral," otherwise they could dispute any facts in a Sheriff's Court (Scotland's midlevel court).⁵⁰

Children under sixteen benefit the most from alternative sanctions like community service and community payback programs.⁵¹ However, alternative sanctions are also helpful for children that are between the ages of sixteen and twenty-one and deemed not mature enough to enter the Scottish criminal justice system.⁵² This approach seems to help overall offense levels too, as the number of cases referred to children's hearings drops by about three percent from 2018 to 2019.⁵³

Nearly thirteen thousand cases were referred to the child's hearing system in 2017.⁵⁴ Scotland's approach is best described as a holistic approach that considers the welfare of the child as well as the

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Carrell, *supra* note 26.

⁴⁸ Lesley McAra, *The Cultural and Institutional Dynamics of Transformation: Youth Justice in Scotland, England, and Wales*, 35 *CAMBRIAN L. REV.* 23, 28 (2004).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Juvenile Justice in Global Perspective, *supra* note 31.

⁵² *Id.*

⁵³ Carrell, *supra* note 26.

⁵⁴ *Id.*

welfare of the community with the utmost importance.⁵⁵ Establishing innocence or guilt is not the priority of Scotland's youth justice system.⁵⁶

III. CRIME AND PUNISHMENT – FLORIDA'S APPROACH

Florida's direct file laws are complicated because they blend judicial waivers for some crimes committed by children and mandatory waivers for other crimes with prosecutorial discretionary waivers.⁵⁷ Unlike direct file prosecutorial discretionary waivers, judicial waivers allow a judge to make a decision, though sometimes they are obligated, to transfer a case from juvenile court to adult court.⁵⁸ Florida has two kinds of judicial waivers – voluntary waivers and mandatory waivers.⁵⁹ The first portion of Florida's direct file statute allows for a voluntary judicial waiver.⁶⁰ Voluntary waivers are requests made by children, in the presence of a parent or guardian, to be tried in adult criminal court.⁶¹ Voluntary waivers also require a transfer hearing and are at the discretion of the judge.⁶²

The second portion of Florida's direct file statute mandates that the court transfer a child to adult court in three scenarios. First, a child must be transferred if (1) the child is over the age of fourteen years old, (2) has committed one of the statute's listed crimes before, and (3) is before the court for one of the listed crimes again. In the second scenario, a child must be transferred to adult court if (1) the child is over fourteen years old and (2) is before the court for their fourth alleged felony.⁶³ Finally, if a child commits three felonies, one

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Jessica Williams, *The Consequences of Florida's Discretionary Direct File Law and Its Particular Impact on Young African American Males*, 9 S. J. POL'Y & JUST. 57, 65 (2015).

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ FLA. STAT. § 985.556(1) (2019).

⁶¹ *Id.*

⁶² FLA. STAT. § 985.556(4) (2019).

⁶³ FLA. STAT. § 985.556(2) (2019). The crimes listed by the statute include "commission of, attempt to commit, or conspiracy to commit murder, sexual battery, armed or strong-armed robbery, carjacking, home-invasion robbery, aggravated

of which was with the commission of a firearm or violence against a person, they may also be subject to a mandatory waiver by the court. Unlike prosecutorial discretion laws, mandatory waivers also require a hearing, but because the waiver is mandatory the hearing is merely a procedural placeholder.⁶⁴ Judicial waivers, both voluntary and mandatory, only make up about two percent of Florida's cases that are transferred from juvenile court to adult court.⁶⁵

The third, and final, portion of Florida's direct file laws allow for prosecutorial discretion.⁶⁶ Direct File laws give Prosecutors full discretion to transfer a child older than fourteen years old to adult criminal court if they commit one of the crimes listed in the statute.⁶⁷ Children over the age of sixteen years old charged with a felony may also be directly filed by prosecutorial discretion.⁶⁸ Children that are direct filed to adult criminal court automatically face the penalties that adults face for the same crimes.⁶⁹ Ninety-eight percent of Florida's juvenile transfers to adult court are made using prosecutorial discretion laws, making it the primary means for transferring juvenile cases to adult court in the state.⁷⁰ In total, nearly one thousand children are direct filed from juvenile court to adult court and prosecuted as adults in Florida every year.⁷¹

Florida's prosecutorial discretion laws do not require, nor do they allow for, much oversight. Like most direct file laws, in Florida, there is no required hearing to determine if transferring the child to

battery, aggravated assault, or burglary with an assault or battery, and the child is currently charged with a second or subsequent violent crime against a person[.]”

⁶⁴ See FLA. STAT. § 985.556(4) (2019). See also Kristen Chirino, *Florida's Direct File Statute: A Prosecutor's Playground*, 31 ST. THOMAS L. REV. 224, 234-35 (2019).

⁶⁵ See Williams, *supra* note 57, at 65. See also Human Rights Watch, *supra* note 12.

⁶⁶ See FLA. STAT. § 985.557(1) (2019).

⁶⁷ *Id.*

⁶⁸ See FLA. STAT. § 985.557(1)(b) (2019).

⁶⁹ FLA. STAT. § 985.557(2)(b) (2019).

⁷⁰ Chirino, *supra* note 64 at 236 (citing Patrick Griffin et al., *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, JUVENILE OFFENDERS AND VICTIMS: NAT'L REP. SERIES BULL., 1-5 (Sept. 2011), <https://www.ncjrs.gov/pdffiles/ojdp/232434.pdf>); see also *Direct File: Unjust Process, Unjust Results*, American Civil Liberties Union Florida (last visited Jan. 16, 2020) <https://www.aclufl.org/en/direct-file-unjust-process-unjust-results> [*hereinafter* ACLU] (explaining Prosecutors opt for a prosecutorial waiver in Florida in 98% of juvenile transfer cases).

⁷¹ See ACLU, *supra* note 70.

adult court is appropriate.⁷² Florida's law also lacks a provision guiding prosecutors as to *when* transferring an adult is appropriate.⁷³ Florida's direct file statute merely guides prosecutors on when they can invoke their discretion based on the crimes a child allegedly committed.⁷⁴ The law only requires prosecutors to file an information with the court, notifying the judge that the case is being transferred to adult criminal court.⁷⁵ In fact, children are not even afforded a hearing before their case is directly filed to adult criminal court.⁷⁶ As a result, prosecutors typically apply a "once an adult always an adult" philosophy to children, opting to charge them as adults even when they do not have a prior record.⁷⁷ A recent study of Florida prosecutors found that "nearly half" of the prosecutors surveyed admitted to charging children as adults even when they did not pose a threat to society and in cases where the child was not a repeat offender.⁷⁸ Prosecutors opt to charge children as adults more often than not despite Florida's direct file provision, which allows prosecutors to keep a child in juvenile court if the prosecutor has good cause to believe that exceptional circumstances exist that preclude the just prosecution of a child in adult court."⁷⁹

Under Florida's direct file statute, the prosecutor is not required to assess the child's background, there is no investigation into the circumstances surrounding the child's life, and there is no required counseling or mental health examination of the child before a transfer can be initiated.⁸⁰ A child, or their parents or guardian, cannot appeal a prosecutor's decision to direct file their case, nor can a judge order a

⁷² See Williams, *supra* note 57, at 62.

⁷³ *Id.*

⁷⁴ See FLA. STAT. § 985.557 (2019).

⁷⁵ FLA. STAT. § 985.557(1) (2019); see also Chirino, *supra* note 64 at 236.

⁷⁶ FLA. STAT. § 985.557(1) (2019).

⁷⁷ See Chirino, *supra* note 64, at 236.

⁷⁸ Josh Gupta-Kagan, *Rethinking Family-Court Prosecutors: Elected and Agency Prosecutors and Prosecutorial Discretion in Juvenile Delinquency and Child Protection Cases*, 85 U. CHI. L. REV. 743, 778 (2018) (citing Donna M. Bishop and Charles E. Frazier, *Transfer of Juveniles to Criminal Court: A Case Study and Analysis of Prosecutorial Waiver*, 5 NOTRE DAME J. L., ETHICS & PUB. POL'Y 281 (1991)).

⁷⁹ Williams, *supra* note 57, at 66 (internal quotations omitted).

⁸⁰ See ACLU, *supra* note 70.

transfer be stopped if a transfer is invoked under prosecutorial waiver or discretion in Florida.⁸¹ Because of a lack of oversight as to the kinds of cases that are transferred from juvenile to adult court, most children charged in adult court in Florida do not score high enough on the criminal sentencing guidelines to warrant a sentence other than probation. However, an adult probation sentence means that thirty percent of children who violate their probation serve time in an adult prison.⁸² Children who are not sentenced to probation also serve their sentence in an adult prison.⁸³ Consequentially, Florida has more juveniles serving sentences in adult prisons than any other state in America.⁸⁴ Florida also has the most juveniles under the age of sixteen serving their sentences in adult prisons compared to any other state.⁸⁵

IV. TWO ROADS DIVERGED IN A WOOD: A COMPARISON

Scotland's rehabilitative system and Florida's punitive system, comparatively, are dramatically different in some ways and surprisingly similar in others. Specifically, Scotland's system and Florida's system have similar origins with parallel problems facing each country as they set forth on their respective journeys to change their juvenile justice systems. Yet, their court systems are very different, which may cast doubt on the United States' ability to successfully implement Scotland's system. However, other countries have implemented a system like Scotland's, suggesting the United States is not bound to the punitive system of the status quo.

⁸¹ *Id.*; see also Jesse Kelley, *Florida Prosecutors Need to Limit Direct File of Juveniles until Legislation Protects them*, JUVENILE JUSTICE INFORMATION EXCHANGE (Mar. 25, 2019), <https://jjie.org/2019/03/25/florida-prosecutors-need-to-limit-direct-file-of-juveniles-until-legislation-protects-them/> ("The latter mechanism allows prosecutors to unilaterally opt to file a criminal case against a minor in the adult criminal justice system. This type of direct file cannot be appealed or reviewed by a judge, meaning the juvenile's case is sent directly to adult court with no opportunity for the child or their parents to challenge the prosecutor's decision.").

⁸² *Id.*

⁸³ See *id.*

⁸⁴ Frazier et al., *Get-Tough Juvenile Justice Reforms: The Florida Experience*, 561 THE ANNALS OF THE AM. ACAD. OF POL. & SOC. SCI. 167, 168 (1999).

⁸⁵ *Id.*

The problems facing Florida's juvenile crimes are not unlike the problems that faced Scotland. Post-war Scotland experienced a significant rise in the number of child and youthful criminal offenders, but was not equipped to deal with mass incarceration rates.⁸⁶ Factors like economic and social change as well as industrialization and displacement contributed to this rise in juvenile crime rates throughout Scotland.⁸⁷ At the time, Scotland administered juvenile justice through the Home Department of the Scottish Office.⁸⁸ Scotland's government also had complete control over the justice system, including juvenile justice.⁸⁹

Subsequently, Lord Kilbrandon, a senior Scottish judge, constructed a landmark report on the then-current state of the Scottish juvenile justice system, with recommendations that focused on child welfare, rehabilitation, and prevention. Scotland's approach was, and still is, a departure from the juvenile justice systems that span the rest of Western Europe and even Great Britain.⁹⁰ Still, Scotland took the dive and radically changed its juvenile justice system, opting for the Children's Hearing System it has today whilst still maintaining some juvenile courts and prisons for children who commit particularly serious crimes or are repeat offenders.⁹¹

As problems arise, Scotland's system evolves to ensure that the Children's Hearings System still focuses on welfare and prevention, taking special care to focus on the child's circumstances.⁹² Notably, the "implementation of the Children's Hearings System signaled a major reconfiguration in the power and influence of key players in matters of juvenile justice."⁹³ This shift still stands, for the most part, true to

⁸⁶ See International Handbook, *supra* note 15, at 440; see also McVie, *supra* note 22, at 108-9.

⁸⁷ Christine Kelley, *Reforming Juvenile justice in Nineteenth-Century Scotland: The Subversion of the Scottish Day Industrial School Movement*, 20 CRIME, HISTORY, & SOCIETIES 55, 57 (2016).

⁸⁸ Lesley McAra, *Crime, Criminology and Criminal Justice in Scotland*, 5 EUR. J. OF CRIMINOLOGY 481, 482 (2008). The Scottish Office existed before Scotland's governmental devolution. The office once existed in Edinburgh.

⁸⁹ McAra, *supra* note 48, at 27.

⁹⁰ See McVie, *supra* note 22, at 108.

⁹¹ See *id.* at 109; see also International Handbook, *supra* note 15, at 440.

⁹² See McVie, *supra* note 22, at 109.

⁹³ McAra, *supra* note 48, at 29.

form today. In fact, since Scotland adopted Kilbrandon's system in the 1960s, the country's leaders have revamped the juvenile justice system three times: once in 1999, in 2003, and then again in 2007.⁹⁴

In 1999, in the wake of government devolution, Scotland's leaders published a series of reports on the state of juvenile crime and justice in Scotland.⁹⁵ Despite growing political tensions, which emphasized a "tough on crime" mantra for politicians, Kilbrandon's emphasis on welfare remained the central focus of the system.⁹⁶ In 2003, the Scottish government made two additions to the Scottish juvenile justice system after noticing changing trends in juvenile crimes. First, the government established the Youth Justice Agency which would oversee Community Responsibility Orders, custody of children and various other parameters that could be ordered by a hearing panel.⁹⁷ The Scottish government also ordered the first Youth Conference Service in 2003, which was aimed at developing a ten-year strategy for youth in Ireland and juvenile crime.⁹⁸

Then, in 2007, Scotland's government experienced a massive structural and ideological shift which affected their approach to crime.⁹⁹ Still, the government pulled together teams and advocates from across the country and developed stronger prevention plans for youthful offenders that are still in place today.¹⁰⁰ Even today, during political division and upheaval throughout the region, Scotland's Children's Hearings System maintains significant support from Scottish leaders and citizens.¹⁰¹

By comparison, Florida's approach is focused more on "primarily punishing the offender, with goals of rehabilitation secondary."¹⁰² As part of the United States' political push to "get tough on crime," Florida introduced its first prosecutorial discretion law in 1978.¹⁰³ However, multiple events in the early 1990s then laid the

⁹⁴ *See id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *See id.* at 110.

⁹⁸ *Id.*

⁹⁹ *Id.* at 109.

¹⁰⁰ *Id.*

¹⁰¹ *See Smith, supra* note 44.

¹⁰² ACLU, *supra* note 70.

¹⁰³ *See FRAZIER ET AL., supra* note 84.

foundation for Florida's punishment-oriented juvenile justice system.¹⁰⁴ In 1990, in the wake of the *Bobby M.* case settlement,¹⁰⁵ Florida enacted the Juvenile Justice Reform Act.¹⁰⁶ Much like Scotland's legislative overhaul, the Juvenile Justice Reform Act aimed to provide more services and prevention for juveniles and related crimes.¹⁰⁷ Second, despite the Juvenile Justice Reform Act's lofty goals, the Florida legislature failed to provide the funding necessary to carry out the Act's provisions.¹⁰⁸ As a result, alternative placements for youth became backlogged and waiting lists for programs grew longer with each passing year, turning Florida's potential for a rehabilitative system into chaos.¹⁰⁹

Then, in the early 1990s "juvenile arrest rates rose in Florida – especially for felony offenses – and commitment rates increased correspondingly."¹¹⁰ Because the system was so backlogged, children could not be processed within the fifteen-day pre-trial detention limit enforced by the Juvenile Justice Reform Act.¹¹¹ So, many children were preliminarily processed and then awaited trial in their homes, which is suggested to have led to even more crime caused by children facing at home detention.¹¹²

The origins of Scotland's and Florida's juvenile justice systems do not differ by much. Both states experienced a rise in juvenile crime but enacted rehabilitative plans instead of punitive plans, despite a push by the surrounding political climate to do otherwise.¹¹³ Florida's Juvenile Justice Reform Act suggests that a rehabilitative approach to America's, and more specifically Florida's, juvenile justice system was

¹⁰⁴ *Id.*

¹⁰⁵ *Bobby M v. Chiles*, 907 F. Supp. 368 (N.D. Fla. 1995) (consent decree entered 8 May 1987). The *Bobby M* case was a federal class action lawsuit filed on behalf of the residents of Florida's training schools. The lawsuit alleged overcrowding, inadequate medical care, lack of treatment and abuse in youth centers throughout Florida. The lawsuit resulted in a statewide mandate to reduce youth populations in state facilities.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Bobby M*, 907 F. Supp. 368

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ See FRAZIER ET AL., *supra* note 84; McAra, *supra* note 48, at 29.

not originally seen as unrealistic as today's legislators make it seem.¹¹⁴ Rather, the divergence between the two systems comes down to a lack of funding. Where Scotland was quick to dedicate millions of dollars towards rehabilitative efforts, Florida did the opposite.¹¹⁵ Florida's system did not fail because they tried and tested a rehabilitative system that did not fit with America's criminal justice system.¹¹⁶ Rather, Florida's attempt at a rehabilitative system ultimately failed because they neglected to follow their plan through with the funding necessary to make it successful.¹¹⁷

Next, Scotland's court system is also not all that different from courts in the United States. Scotland has three levels of criminal courts.¹¹⁸ First, district courts, otherwise known as justice of the peace courts, hear minor cases before lay justices appointed to the courts.¹¹⁹ Second, sheriff courts hear more serious cases and are tried before a sheriff who acts as the trier of law. Sheriff courts may also have juries if the case involves a more serious crime.¹²⁰ Finally, the high court deals with "solemn cases" and is decided by a judge and jury.¹²¹ High courts act as superior courts and courts of appeals as they may hear cases from below and issue guidelines to other courts.¹²² However, unlike the United States and even other countries surrounding Scotland, there is not a set of sentencing guidelines or reforms to guide the courts' penal practices.¹²³

An argument against modeling America's criminal justice system after another country's system rests on the dramatic differences between factors such as the basic structure of each country's criminal justice system.¹²⁴ Indeed, "the classification and recording of crime

¹¹⁴ *Id.*

¹¹⁵ See FRAZIER ET AL., *supra* note 84; see International Handbook, *supra* note 15, at 455.

¹¹⁶ FRAZIER ET AL., *supra* note 84.

¹¹⁷ *Id.*

¹¹⁸ McAra, *supra* note 88, at 482.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 483.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ John Mucie, *Policy Transfers and 'What Works': Some Reflections on Comparative Youth Justice*, 1 YOUTH JUSTICE 27, 30 (2001).

differ and different countries have developed different judicial systems for defining and dealing with young offenders.”¹²⁵ This is an unavoidable barrier facing advocates who want to implement a version of Scotland’s system in American courts. Scotland’s court system bases who hears a case and in what forum on the severity of the case, as opposed to America’s system of federal courts feeding cases to high courts on appeal with state courts operating in the same manner.¹²⁶

However, other countries besides Scotland have implemented rehabilitative approaches to youth justice successfully, despite their varying court and penal systems.¹²⁷ Holland reduced penal capacities for young adults which reduced the number of young offenders in prison.¹²⁸ As a result, between 2008 and 2011, Holland experienced a thirty-three percent decline in the number of crimes committed by people below the age of 18.¹²⁹ Belgium maintains special youth brigades, officers with social work backgrounds, to work as preliminary officers who intervene in juvenile crime-related situations before sending children to prison.¹³⁰ This is arguably why Belgian officials dismiss charges in 70% of cases involving children and opt for a warning instead.¹³¹ Of the cases that do go to juvenile court in

¹²⁵ *Id.*

¹²⁶ McAra, *supra* note 88, at 482.

¹²⁷ *See* Mucie, *supra* note 124, at 31.

¹²⁸ *Id.* at 32. *See also* Mathijs Euwema & Esther Miedema, *Keeping Youth Away From Crime- Searching for Best European Practices: The Netherlands National Report*, INT’L JUV. JUST. OBSERVATORY, <http://www.oijj.org/sites/default/files/netherlands>.

¹²⁹ *See* Euwema & Miedema, *supra* note 128, at 9 (“In 2011, a total of 54,000 young people below the age of 18 were suspected of having committed a crime. This represents a decrease of roughly 33% when compared to 2008 figures. According to Van der Laan and Blom, the most important development in the most recent years of measurement (namely 2010) is the decrease in the proportion of offenders among minors of 12 to 18 years of age compared to the preceding year, irrespective of the type of data source used”).

¹³⁰ *Id.*

¹³¹ Sabien Hespel & Johan Put, Int’l Juvenile Justice Observatory, *Alternatives to Custody for Young Offenders- National Report on Juvenile Justice Trends: Belgium 15*, INT’L JUV. JUST. OBSERVATORY (last visited Jan. 17, 2020), http://www.oijj.org/sites/default/files/baaf_belgium1.pdf (“A majority of the registered measures entails an ambulant measure (57%). In the judgment stage, this percentage is even higher: 76% of the measures are ambulant (as opposed to 41% in the investigatory stage). The

Belgium, most children are sentenced to a service order, like community service.¹³² Italy allows its judges to pardon young offenders, reserving jail sentences for youth who commit serious crimes.¹³³ Italy also allows judges to suspend imprisonment “on the condition that a period of probation was successfully completed.”¹³⁴ Probation, for the Italian system, also focuses on rehabilitative efforts by “allowing [] the youth to reflect on and try to repair the committed offense [by] doing something useful for society and test[ing] himself/herself and his/her skills and abilities within a safe and controlled context facilitating the social-working inclusion pathway and promoting the direct participation of civil society.”¹³⁵

The rehabilitative efforts employed in Scotland’s juvenile justice system may not be an exact fit for the United States’ juvenile justice system. However, countries like Italy, Holland, and Belgium are just a few of the many examples that suggest rehabilitative systems can work if a country is willing to make it work.¹³⁶ The United States’ court systems are less of an unsurmountable barrier, but more of a hurdle to overcome in the race to justice.

V. IMPLICATIONS — IS IT WORTH IT?

There are vast implications to Scotland’s rehabilitative juvenile justice system as well as Florida’s punitive juvenile justice system. Thus, the following section will dive into Scotland’s statistics on crime and the Scottish government’s evaluations on their current system.

imposition of conditions is most popular (33% of registered decisions). Conditions include, among others: community service (19%), participation in an educational program (18%), school attendance (15%), house arrest (12%), compliance with medical or pedagogical guidelines (10%).”

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Juvenile Offenders Detention Alternatives in Europe- National Report: Italy*, CRIM. JUST. PROGRAMME OF THE EUR. UNION http://www.oijj.org/sites/default/files/joda_nationalreport_it.pdf.

¹³⁶ *See id.*; see Hespel & Put, *supra* note 131; see also Euwema & Miedema, *supra* note 128 (the aforementioned publications explain past and relevant work in each country to implement a rehabilitative juvenile justice system).

Then, this section will follow through the racial, economic, and societal implications provoked by Florida's current punitive system.

Scotland's rehabilitative juvenile justice system, while supported by the government today, does not go without contention every once in a while.¹³⁷ Every few years, the Scottish government conducts studies on the efficiency of its juvenile justice system.¹³⁸ In its most recent study published online, Scotland reported a 78 percent reduction in young people prosecuted in their courts, an 83 percent reduction in the number of children referred to Reporters for investigation, and a 64 percent reduction in the number of sixteen and seventeen-year-olds in the custody of the Scottish government.¹³⁹ Furthermore, the proportion of crimes committed by children under sixteen years old is only 15 percent, which is down 9 percent over the span of five years.¹⁴⁰ The Scottish Government attributes the overall decrease in juvenile crime and juvenile prosecution to the Whole System Approach, which showed to have increased diversion from prosecution rates.¹⁴¹

Conversely, Florida's implications are not statistics of success, but of dangers and failures. The first implication of Florida's punitive

¹³⁷ See International Handbook, *supra* note 15.

¹³⁸ See *Youth Strategy Progress Report*, GOV. SCOT (Jun. 21, 2017), <https://www.gov.scot/publications/youth-justice-strategy-preventing-offending-getting-right-children-young-people/> (*hereinafter Progress Report*).

¹³⁹ *Id.*

¹⁴⁰ *Id.* ("The Scottish Crime and Justice Survey 2014-15 found that the proportion of crimes thought to have been committed by school-age children (under 16) has decreased from 26% (363) in 2008-09 to 15% (100) in 2014-15.")

¹⁴¹ See *id.*; see also *Whole System Approach to Young People Who Offend: Evaluation* GOV. SCOT. (Jun. 17, 2015) <https://www.gov.scot/publications/evaluation-whole-system-approach-young-people-offend-scotland/pages/8/> ("Overall there has been an increase in diversion, although the percentage age-distribution of diversion cases varies across the three local authorities. The majority of diversions in Authority A pertain to younger age-groups. In Authorities B and C young people account for a smaller proportion of all diversions. Between 2005/6 and 2013/14, Authority A reserved diversion for young people, with no diversions for over-26-year-olds, whilst *all* diversions before 2008/9 involved 16-17-year-olds. The expansion of diversion to those aged between 18 and 20 years in 2009/10 shows a change in policy and practice, which is in line with expanding GIRFEC to young adults up to the age of 21. Authority B reserved diversion primarily for older adults. Until recently 51 percent and 62 percent of cases involved those aged 31 years and over. Authority C diversion use is low, with no clear trends in terms of age.")

system is that prosecutorial discretion waivers are predominately used on children of color. Between 2013-2014, Florida prosecutors transferred “1,133 Black youth, 271 Hispanic youth, and 421 White youth to adult court.”¹⁴² Within two consecutive years, “Florida transferred a total of 2,407 Black youth, 529 Hispanic youth, and 1,030 White youth. During this time, minority children were disproportionately transferred to adult court at more than double the rate of their White counterparts.”¹⁴³ In parts of Florida like Orange County, where a majority of juvenile arrests are transferred to adult criminal court, 64 percent of the arrests were of black boys.¹⁴⁴ Some of those boys were as young as twelve-years-old and some as old as sixteen-years-old.¹⁴⁵ It is important to consider that racial disparities in direct file laws are not unique to Florida.¹⁴⁶ A Department of Justice study surveyed 40 counties in states with direct file laws and found that 62 percent of the children transferred to adult court from juvenile court were black.¹⁴⁷

While black males account for less than 28 percent of the children processed by the United States’ juvenile justice system, they account for nearly 52 percent of the cases transferred to adult court.¹⁴⁸ White boys, on the other hand, account for 28 percent of the children processed by the United States juvenile justice system but account for less than 25 percent of the cases waived from juvenile court to adult

¹⁴² Gabrielle M. Thomas, *The Fate of Black Youth in the Criminal Justice System: The Racially Discriminatory Implications of Prosecutorial Discretion and Juvenile Waiver*, 17 RUTGERS RACE & L. REV. 267, 278 (2016).

¹⁴³ *Id.*

¹⁴⁴ *Investigative Report Explores Florida County with Highest Juvenile arrest Rate*, EQUAL JUST. INITIATIVE (May 10, 2017), <https://eji.org/news/investigative-report-explores-florida-county-highest-juvenile-arrest-rate/> (*hereinafter* Equal Justice Initiative). See also Renata Sago, *A Quick Explainer: What to Take Away from Orange County’s Juvenile Arrest Rate*, 90.7 WMFE NEWS (Mar. 31, 2017), <https://www.wmfe.org/analysis-why-orange-county-leads-florida-in-juvenile-arrests/71132>.

¹⁴⁵ See Equal Justice Initiative, *supra* note 144.

¹⁴⁶ *Id.*

¹⁴⁷ See *id.*; see also PATRICK GRIFFIN ET AL., TRYING JUVENILES AS ADULTS: AN ANALYSIS OF STATE TRANSFER LAWS AND REPORTING 12 (U.S. Dep’t of Just. ed. 2011), <https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf> (“Demographics. Defendants were overwhelmingly male (96%) and predominantly black (62%).”).

¹⁴⁸ See Thomas, *supra* note 142, at 281.

criminal court.¹⁴⁹ Furthermore, nearly one-third of the youth spending time in adult prisons are not serving sentences for violent crimes, and a majority of those children are also minorities.¹⁵⁰ In Florida, 60 percent of the cases waived from juvenile court to adult criminal court by prosecutors were nonviolent cases.¹⁵¹

However, race is not the only issue at hand. There are severe economic implications to Florida's, and other states', prosecutorial discretion laws.¹⁵² Critics of juvenile justice reform argue rehabilitative efforts would provoke massive debts on behalf of the states that choose to forego a punitive approach and opt for rehabilitative resources.¹⁵³ However, studies suggest that the opposite is true.¹⁵⁴ The Southern Poverty Law Center conducted a study that suggests, over ten years, transitioning from a punitive to a rehabilitative system would save the State of Florida over twelve million dollars.¹⁵⁵ Indeed, at the onset, the cost of reform, incurred by the Department of Juvenile Justice, would amount to over twenty-four million dollars.¹⁵⁶ But, accounting for recidivism rates, court procedures or costs, costs to adjust facilities to

¹⁴⁹ *Id.*

¹⁵⁰ *Id.* at 280.

¹⁵¹ *Id.*

¹⁵² CENTER FOR ECONOMIC FORECASTING AND ANALYSIS ET AL., AN ECONOMIC AND FISCAL ANALYSIS OF DIRECT FILE REFORM PROPOSALS 35-36 (2019), https://www.splcenter.org/sites/default/files/djj_3-4-2019_final_report.pdf (*hereinafter* SPLC REPORT) (The Southern Poverty Law Center used the following factors in their analysis of economic costs and benefits: "The Vera Institute of Justice²¹ defines the five basic steps of cost-benefit analysis as: (a). Determine the effects of the initiative; (b). Determine whose perspectives matter; (c). Measure costs in dollars and cents; (d). Measure benefits in dollars and cents, and; (e.) Compare the costs and benefits. The Office of Juvenile Justice and Delinquency Prevention (2002) defines the cost-benefit analysis routine as: (a). **Identify benefits.** Benefits for whom? What is the dollar value of reduced crime? What about the non-crime-related benefits? What do we know about the long run? What are the marginal costs? (b). **Subtract costs.** Estimate what the programs themselves cost (capital costs and operating costs) to run. (c). **Calculate bottom line.** Compare costs and benefits obtained from step (a) and (b) in a timeframe. (d). **Compare options.** Compare the cost-benefit analysis results of a range of alternatives. (e). **Test riskiness.** It is important to test how sensitive the bottom-line conclusion is to changes in key input assumptions") (emphasis in original) .

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

house children in co-habitation with adults, etc., the costs eventually cancel out what savings a state would experience.¹⁵⁷ This is also keeping in mind that Florida spends an average of \$21,758 every year for each inmate they house in adult prisons.¹⁵⁸ Between 2017 and 2018, that price tag costs states nearly two billion dollars every year.¹⁵⁹ The Southern Poverty Law Center's same study noted that the 306 children that were under the age of 18, but held in adult prisons, cost the state of Missouri 20.7 million dollars between 2017 and 2018.¹⁶⁰

States like Florida house far more juvenile inmates than Missouri.¹⁶¹ However, if a state like Florida were to opt for a rehabilitative system rather than a punitive one, it could save the state almost 17.5 million dollars each year. Furthermore, if those 306 children were sent to rehabilitative services or monitored via probation rather than serving a prison sentence, their "estimated lifetime tax contribution would be \$51.971 million more than if those youth had been sent to adult prison."¹⁶²

The economic implications are, nevertheless, inexplicably linked with the societal implications derived from housing children in adult prisons. First, this is in part due to recidivism rates.¹⁶³ Children who are sent to adult prisons and then released have a 67 percent recidivism rate, as compared to children who "were kept in juvenile residential programs" for whom the recidivism rate is only 15

¹⁵⁷ SPLC REPORT, *supra* note 152, at 38 ("The PAJ and JMI used the disposition predictions from the DJJ Disposition Matrix and publicly available data (including the cost per day and the average length of stay for each type of disposition) to estimate the costs incurred by DJJ every year from FY 2016-17 to FY 2025-26[.]")

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² SPLC REPORT, *supra* note 152, at 47 ("Subsequent tax gain can be even larger if one takes into account that prison released juveniles have a 67% recidivism rate whereas the recidivism rate for youths who were kept in juvenile residential programs is 15%²⁹. According to Mitchell's (2017) annual tax studies, if every year 306 new juveniles are entering the juvenile justice system due to Raise the Age program, and they are released four years later, the compound average annual growth rate in tax revenue of this cohort is equal to 22.37% per year. The yearly tax revenue will continue increasing and reach the annual contribution of \$3.457 million when the first group of 306 juveniles is 29 years old.")

¹⁶³ *Id.*

percent.¹⁶⁴ Children who are convicted in adult court are also 36 times more likely to be arrested again than children convicted in juvenile court.¹⁶⁵ Recidivism is directly linked to the lack of resources offered to children in adult prisons.¹⁶⁶ For example, many of the children in adult jails are only offered GED courses, which prevents them from ever getting a high school diploma.¹⁶⁷ For the jails that do offer high school classes to children, typically only larger facilities that house twenty to one hundred and thirty children, they do not give the required three hundred minutes of instruction a day to meet the requirements for awarding a child their high school diploma on time, if at all.¹⁶⁸ Educational opportunities in adult prisons during pre-trial detention or sentence serving are even worse for children with disabilities, given that many jails do not offer the adapted educational programs they are required to provide.¹⁶⁹ Furthermore, children in solitary confinement often do not receive educational services at all.¹⁷⁰ If they do receive education services, it is sometimes no more than two to three hours weekly, exemplifying the gross neglect of educational services given to children during their confinement.¹⁷¹

Juveniles that are transferred to adult court are encouraged to take pleas more often than their counterparts who stay in juvenile courts because of factors like “the differential between juvenile court and adult court sanctions and the long term consequences of an adult conviction.”¹⁷² Furthermore, youth who are convicted of a crime in adult court cannot get their record sealed and must deal with an adult

¹⁶⁴ *Id.*

¹⁶⁵ *Children Tried as Adults Face Danger, Less Chance for Rehabilitation*, SOUTHERN POVERTY LAW CENTER (Oct. 30, 2014), <https://www.splcenter.org/news/2014/10/30/children-tried-adults-face-danger-less-chance-rehabilitation>.

¹⁶⁶ SPLC REPORT, *supra* note 152.

¹⁶⁷ *Destined to Fail: How Florida's Jails Deprive Children of Schooling*, S. POVERTY L. CTR. (Feb. 12, 2018), <https://www.splcenter.org/20180212/destined-fail-how-floridas-jails-deprive-children-schooling>.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ See ACLU, *supra* note 70.

¹⁷² See Human Rights Watch, *supra* note 12.

criminal conviction for the rest of their lives.¹⁷³ In an interview with Human Rights Watch, a public defender in Miami noted

the moment they announce intent to direct file, the kid coughs up a plea. According to that same public defender, children often plea specifically to avoid a charge in adult court, and do so before they or their lawyer has even had a chance to obtain discovery of evidence from the prosecutor, without which it is difficult to weigh the advisability of going to trial.¹⁷⁴

Finally, there are harrowing societal implications linked to what happens to children, physically and mentally, when they are forced to serve out their pre-trial detention or their sentences in adult prisons.¹⁷⁵ Children are housed in the same jails as adults, which exponentially increases the risk they will be sexually assaulted or physically abused while in prison.¹⁷⁶ Some prisons separate children from adults, but such an environment mirrors solitary confinement which has been shown to worsen a child's mental health during their confinement.¹⁷⁷ Children convicted in adult criminal courts and condemned to serve their sentence in an adult jail are nine times more likely to commit suicide during their confinement in an adult prison, compared to their counterparts who are processed through the juvenile justice system.¹⁷⁸

Suicide rates for offenders under age 25 in adult jails accounted for 53 percent of deaths in that age group -- five times more than among young people not in custody, according to researchers. Most died by hanging or suffocation, and most of the victims were in adult jails awaiting trial or sentencing.¹⁷⁹

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Children in Adult Prison*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/children-in-prison/> (last visited Jan. 19, 2020).

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ Steven Reinburg, *Teens' Odds for Suicide May Triple While in Jail: Study*, U.S. NEWS, AND WORLD REPORT (Jan 25, 2019, 12:00 PM), <https://www.usnews.com> (“[W]hile all teens and young adults suffer similar mental health problems, those in jail are less likely to have their problems recognized”).

VI. CONCLUSION

In the wake of political tensions, government upheaval and increasing juvenile crime rates, Scotland managed something that American jurisdictions only think of as a myth: they developed a rehabilitative system for juvenile crime and turned juvenile justice into community justice.¹⁸⁰ Scotland's juvenile justice system focuses on the wellbeing of the children involved and ensuring they do not re-offend.¹⁸¹ Conversely, Florida's system of punitive juvenile justice does the opposite. Florida's direct file laws allow prosecutors to unilaterally change the forum in which children face the justice system, and more often than not opt to try children as adults and unleash adult punishments on them.¹⁸²

The lack of oversight on prosecutorial discretion laws in Florida, and similar laws around the United States, creates lasting impacts. Economically, processing children as adults is more costly to the American government and taxpayers.¹⁸³ Racially, prosecutors elect to transfer more black children to adult courts than white children.¹⁸⁴ Thus, the direct file system in Florida and similar states exemplifies the racist underpinnings of the decisions to transfer children to adult court. Finally, the societal implications associated with transferring children to adult court remain equally as daunting with a lack of educational resources, increased pressure to plead guilty, high sexual assault rates, and even higher suicide rates.¹⁸⁵

Scotland's system may not perfectly fit into America's court system. However, it serves as a reminder and an example of how children should be treated when they are caught up in the criminal justice system. Other countries managed to follow Scotland's lead with great success. Perhaps America should follow their lead as well.

¹⁸⁰ International Handbook, *supra* note 15, at 442.

¹⁸¹ *Id.*

¹⁸² See FLA. STAT. § 985.557 (1)(b) (2019).

¹⁸³ SPLC REPORT, *supra* note 152.

¹⁸⁴ See Thomas, *supra* note 142 at 281.

¹⁸⁵ See Equal Justice Initiative, *supra* note 175.