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"Waiving" Goodbye to Juvenile Defendants, Getting Smart vs. Getting Tough

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COMMENTS

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I. INTRODUCTION

Juvenile crime is one of the most challenging domestic problems facing our country today. Nationwide, the juvenile violent crime arrest rate has escalated during the past decade, reaching its highest level in 1990.¹ In particular, the juvenile crime arrest rate in Florida jumped fifty-three percent between 1986 and 1991.² As a result, Florida has the third highest rank in the nation for juvenile crime arrests.³

Numerous factors have been considered to cause juvenile delin-

1. In 1990, (the most current year for which statistics were available at this writing), per 100,000 juvenile arrests, 430 were for violent crimes such as murder, forcible rape, robbery and aggravated assault. This represents a 27% increase over 1980 figures. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, UNIFORM CRIME REP. 279 (1992).

2. Wilda L. White, *Survey: Florida Failing its Kids*, MIAMI HERALD, Mar. 29, 1993, at 1A (citing 1993 KIDS COUNT (1993)). This study evaluated the well-being of children both nationwide and state-by-state in 10 categories. Florida ranked below the national average in each of the 10 categories, which included family stability, educational achievement, health, employment, and safety. In 1992, Florida was 43rd in the study. In 1993, the state ranked 45th among the 50 states and the District of Columbia. *Id.*

3. *Id.* In addition, two recent reports have ranked Florida among the worst places for crime and safety, and have claimed that Florida's justice system leads the nation in its disarray. *Florida Ranked Among Worst in Crime, Justice*, SUN SENTINEL, Feb. 1, 1994, at 7A.

quency.⁴ Many believe that it is tied to social forces.⁵ For example, rising poverty and unemployment rates have contributed to creating an economic environment that has become more difficult and competitive.⁶ In addition, society has experienced the breakdown of families, schools and other social institutions.⁷ Finally, gun and drug use have increased among our country's youth, creating an environment which fosters juvenile crime.⁸

Others suggest the government's failure to fund adequate programs, despite available funds, exacerbates juvenile delinquency.⁹ For example, Former House Speaker Tom Gustafson pushed the Florida Legislature in 1990 to approve a fifty-one million dollar juvenile justice program.¹⁰ The legislation's primary focus was to provide long-term rehabilitation for troubled juveniles by opening new beds in residential treatment programs, halfway houses and wilderness camps.¹¹ These

4. Larry Barszewski, *Many Factors at Root of Teen Violence*, SUN SENTINEL, Jan. 23, 1994, at 10A (citing reasons such as single parent homes, lack of moral guidance from elders, and exposure to violence on television and in the movies).

5. BARRY KRISBERG & JAMES F. AUSTIN, *REINVENTING JUVENILE JUSTICE* ix-x (1993).

6. *Id.* at ix. See also Linda Kleindienst & Diane Hirth, *Youth Violence on Rise, Kids Joke About Juvenile Justice System*, SUN SENTINEL, Oct. 17, 1993, at 1A ("The number of children living in poverty has continued to grow over the decades. Unemployment remains high among juveniles—especially poor youth.").

7. See Mike Folks, *Youth Court New Venue for Judge Lindsey, Must Work With New Restrictions*, SUN SENTINEL, Feb. 6, 1994, at 1B (paraphrasing juvenile court Judge Lindsey, "[t]he increase in juvenile crime can't be attributed to one factor . . . juvenile crime can be linked to the breakdown of families, the lack of responsible role models, peer pressure or drugs."); see also 1993 KIDS COUNT DATA BOOK 25 (noting that in 1990, 65.7% of the children under 18 lived in a two-parent, married household; 22.5% lived in single-parent households; 11.8% lived in a household headed by neither parent).

8. FEDERAL BUREAU OF INVESTIGATION, U.S. DEP'T OF JUSTICE, *UNIFORM CRIME REP.* 279 (1992) (citing that during the past decade there has been a 79% increase in the number of juveniles who commit murders with guns. In 1990, three out of four juvenile murder offenders used guns to commit their crimes and, since 1980, the juvenile arrest rate trends for weapons law violations and heroin/cocaine violations have paralleled the trend for murder); see also *Drug Use by Youths on the Rise*, SUN SENTINEL, Feb. 1, 1994, at 1A ("In 1993, 9 percent of 8th graders had smoked marijuana, 19 percent of 10th graders and 26 percent of 12th graders.").

9. *Report Reveals Crisis For Kids In Florida*, MIAMI HERALD, April 24, 1993 at 2B. Florida, ranking 19th in per-capita income, is not a poor state. *Id.* See also Jim Clark, *Real Institutional Change is Needed Juvenile Justice Let's Get Smarter, Not Just Tougher*, MIAMI HERALD, Mar. 7, 1994, at 15A.

10. Peter Mitchell, *ORLANDO SENTINEL TRIB.*, June 3, 1990, at B3.

11. Regarding legislative intent for the Serious or Habitual Juvenile Offender program proposed in 1990, see FLA. STAT. § 39.002(5)(a) (1993):

Florida's juvenile justice system has an inadequate number of beds for serious or habitual juvenile offenders and an inadequate number of community and residential programs for a significant number of children whose delinquent behavior is due to or connected with illicit substance abuse. In addition, a significant number of children have been adjudicated in adult criminal court and placed in Florida's prisons where programs are inadequate to meet their rehabilitative needs and where space is needed for adult offenders.

programs would have had varied security levels, creating a continuum based on the particular needs of individual youths balanced with the security risk to the public.¹² The proposal passed and was to take effect upon the completion of the program facilities.¹³ However, when tax revenues fell due to the recession, these juvenile programs were not implemented despite the public's cry for reform.¹⁴

As a result of the increase in juvenile crime arrest rates and the problem of inadequate funding, the Florida Juvenile Justice System has been in constant flux. The desire for change has led the Florida Juvenile Justice System to go full circle, from prosecution of juveniles as adults in criminal courts, through adjudication and sentencing in a separate noncriminal system, and finally to the present practice of prosecuting and sentencing some juveniles in the adult system. Considering the mechanisms that are currently available under the Florida Juvenile Justice Act¹⁵ to prosecute and sentence juveniles as adults, in addition to the considerable amount of discretion that has been given to prosecutors,¹⁶ and the statutes that the legislation has created which circumvent both prosecutors and juvenile court judges,¹⁷ it may be argued that, although the age of majority is eighteen,¹⁸ Florida has structured its system so that fourteen-year-old juveniles are treated as adults. Consequently, the rehabilitative juvenile justice system has gradually disappeared.¹⁹

Many scholars argue that a need for a separate juvenile justice system no longer exists.²⁰ They believe that as a result of provisions such

12. Ch. 90-208, Laws of Fla. (1990). Nonsecure detention is an example of a new program that was to have been funded. This is an alternative for children who are permitted to be on home detention but do not have a viable home for release. *Id.* § 3, at 1089-90. Another proposal was the creation of a serious or habitual juvenile offender program. This was to have combined 9 to 12 months of intensive secure residential treatment with a minimum of 9 months of after-care. The program was to have included job training, placement and employability training skills. *Id.* § 5.

13. Ch. 90-208, §§ 21, 22, Laws of Fla. (1990).

14. Many Floridians supported the decision of legislators to spend more money on juvenile crime. Some editorial headlines include: *Prevention is Better-Help Juveniles Before They Become Career Criminals*, LAKELAND LEDGER, May 17, 1990; *Kids Need More Than Prison-There's Still a Chance to Help Young Offenders*, FT. MYERS NEWSPRESS, May 14, 1990; *Youth Rehabilitation Can Pay Off by Cutting down on Adult Criminals*, SUN SENTINEL, May. 7, 1990; *Fixing Juvenile Justice, A System Out of Control*, GAINESVILLE SUN, Nov. 13, 1989.

15. FLA. STAT. ch. 39 (1993).

16. *See infra* part III.A.2(a)(b).

17. *See infra* part III.A.3.

18. *See* FLA. STAT. § 39.01(7)(a) (1993).

19. *See infra* part II.A for a general review on the history of the juvenile court. *See generally* ANTHONY M. PLATT, *THE CHILD SAVERS: THE INVENTION OF DELINQUENCY*, (1977); Sanford J. Fox, *Juvenile Justice Reform: An Historical Perspective*, 22 STAN. L. REV. 1187 (1970); FREDERIC L. FAUST & PAUL J. BRANTINGHAM, *JUVENILE JUSTICE PHILOSOPHY* (1979).

20. *See* discussion *infra* part IV. *See generally* Janet E. Ainsworth, *Re-Imagining Childhood*

as those available in Florida courts,²¹ the legal victories that were achieved on behalf of juveniles in the 1960s and 1970s,²² and the increase in juvenile violent crime arrest rates,²³ the system has outlived its usefulness.

This Comment focuses primarily on the Florida Juvenile Justice System, which grants prosecutors and judges broader dispositional powers than those granted in many other states.²⁴ Part II of this Comment explores the origin and development of the juvenile justice system nationally and in Florida. Part III highlights the mechanisms used to bypass the juvenile courts and send juveniles into adult courts, and focuses on the concerns that this creates. Part IV analyzes the criticisms of the juvenile justice system and the argument for its abolishment.

This Comment concludes that the serious and escalating problem of youth violence deserves a serious response. Proposed "get-tough" measures, however, do not provide the answer. Measures which make it easier to try juveniles as adults are inconsistent with the original philosophy of a juvenile justice system that recognizes that juvenile offenders can and should be rehabilitated. Proponents of "get-tough" measures believe that the criminal justice system can, by itself, solve the complex problems of juvenile crime and violence.

In response, this Comment suggests that "get-smart" measures are more appropriate. "Get-smart" measures recognize that the juveniles who are committing violent crimes often come from impoverished households, live in substandard housing and have inadequate, if any,

and *Reconstructing the Legal Order: The Case for Abolishing the Juvenile Court*, 69 N.C. L. REV. 1083 (1991) (arguing that since society's current view of the nature of adolescence no longer comports with the turn of the century view that originally shaped the creation of the juvenile court, the ideological legitimacy of a separate court for juveniles is now undermined); Katherine H. Federle, *The Abolition of the Juvenile Court: A Proposal for the Preservation of Children's Legal Rights*, 16 J. CONTEMP. L. 23 (1990) (arguing that abolishing juvenile court will guarantee that those charged with violating the law will receive both constitutional and statutory protections); Barry Feld, *Juvenile (In) Justice and the Criminal Court Alternative*, CRIME AND DELINQ., Oct. 1993, at 403 (arguing that abolishing juvenile court and providing youth with full procedural and substantive safeguards could afford more protection than the juvenile court).

21. See discussion *infra* part III.

22. See *infra* part II.A.

23. See *supra* text accompanying notes 1-3.

24. Charles W. Thomas & Shay Bilchik, *Prosecuting Juveniles in Criminal Courts: A Legal and Empirical Analysis*, 76 J. CRIM. L. & CRIMINOLOGY 439, 466 (1985); see also *Study: Black Teens Face Tough Go In Court*, MIAMI HERALD, May 14, 1993, at 2B (stating that Florida, which tried 6,500 juveniles as adults in 1992, leads the nation in treating young offenders as adults and Florida prosecutors have the broadest authority in the nation in dealing with young offenders); Terry Neal, *Kid Crimes No Longer Treated with Kid Gloves*, MIAMI HERALD, Nov. 27, 1993, at 1A ("Already, Florida is a leader in prosecuting juveniles as adults—6,300 cases were handled that way in the last fiscal year. In comparison, Texas, a state of similar size and demographics, sent 300 last year.").

education.²⁵ These measures would attempt to reduce juvenile crime by attacking its sources, rather than throwing children into adult jails which are incapable of providing rehabilitative services.

II. ORIGIN AND DEVELOPMENT OF THE JUVENILE JUSTICE SYSTEM

A. *Emergence of the National Juvenile Justice System*

Ironically, public demands for reform led to the birth of juvenile courts over one hundred years ago.²⁶ Prior to the mid-nineteenth century, juveniles were arrested, jailed, tried, and sentenced as adults.²⁷ Conservative reformers felt that exposure to adult offenders increased juveniles' chances of becoming adult criminals.²⁸ Furthermore, the horrible conditions of adult jails caused judges and juries to acquit juveniles, rather than sentence them to adult prisons.²⁹

Initial efforts at reform resulted in juveniles being separated from adults by being placed in reformatories. The first reformatories housed mainly orphans, children from poor families, homeless children, and youths picked up for illegal activities.³⁰ Progressive social reformers sensed these schools' exploitation of their occupants and campaigned for new child labor and welfare laws, in addition to juvenile courts.³¹ Finally, in 1899, Illinois adopted the first juvenile court.³² Over the next twenty years, other states also created juvenile courts.³³ These courts stressed treatment rather than punishment, and judges were given broad

25. See *infra* part III.C.

26. Robert M. Mennel, *Origins of the Juvenile Court: Changing Perspectives on the Legal Rights of Juvenile Delinquents*, CRIME & DELINQ. 68 (1972).

27. FAUST & BRANTINGHAM, *supra* note 19, at 2-3.

28. Mennel, *supra* note 26, at 70.

29. *Id.*

30. KRISBERG & AUSTIN, *supra* note 5, at 16-19. Although the residents were provided with educational, religious and work training, the House of Refuge commonly set up a factory or contracted its residents to outside manufacturers to finance their programs. This led to economic exploitation and oppressive working conditions for the children. H.T. RUBINS, JUVENILE JUSTICE: POLICY PRACTICE AND LAW 35 (1979). See generally R. PICKETT, HOUSE OF REFUGE: ORIGINS OF JUVENILE REFORM IN NEW YORK STATE 1815-57 (1969) (describing New York's first House of Refuge, developed as a special form of discipline for adolescents to convert them into law-abiding citizens).

31. KRISBERG & AUSTIN, *supra* note 5, at 24-25. The years 1880-1920 are often referred to by historians as the Progressive Era, as it was a time of major social change in the United States. *Id.* at 27; PLATT, *supra* note 19, at 101-07.

32. Act of Apr. 21, 1899, Ill. Laws 131; KRISBERG & AUSTIN, *supra* note 5, at 1, 61, 76.

33. KRISBERG & AUSTIN, *supra* note 5, at 30. Between 1899 and 1904, Colorado, California, Indiana, Iowa, Maryland, Missouri, New Jersey, New York, Ohio, Pennsylvania, and Wisconsin passed laws giving juvenile jurisdiction to new or existing courts. By 1909, 20 more states and the District of Columbia had established juvenile laws, and in 1928 all but two states had a separate juvenile justice system. See FAUST & BRANTINGHAM, *supra* note 19, at 15; PLATT, *supra* note 19, at 139.

authority to act in the "best interests of the child" without regard for procedural safeguards such as lawyers, juries, or rules of evidence.³⁴

Between 1966 and 1973 the legal environment of the juvenile court changed substantially.³⁵ Critics began to examine and question major assumptions underlying the jurisprudence of the criminal court and to recognize the punitive nature of the juvenile court's actions.³⁶ As it became clear that the functions of the adult criminal system—apprehension, prosecution, and punishment,³⁷—closely resembled those of the juvenile court, a concern for procedural protections developed.³⁸ As a result, in 1966, the Supreme Court in *Kent v. United States*,³⁹ explaining that children were getting the "worst of both worlds,"⁴⁰ limited the discretion of the juvenile court judges to enable the transfer of youths to adult courts to avoid juvenile court sanctions.⁴¹ The following year, the landmark decision of *In re Gault*⁴² guaranteed juveniles in delinquency proceedings a right to counsel,⁴³ notice of charges,⁴⁴ the privilege against self incrimination,⁴⁵ and a right to cross-examine witnesses.⁴⁶ This trend, however, suffered a setback in 1971 when the Court held that a constitutional right to a jury trial does not exist for state juvenile delin-

34. The doctrine of *parens patriae* substituted state control for parental control under the rationale that the state would act in the best interests of the child and its intervention would enhance the child's welfare. See, e.g., KRISBERG & AUSTIN, *supra* note 5, at 17-18; Alexander W. Pisciotto, *Saving the Children: The Promise and Practice of Parens Patriae, 1838-1898*, 28 CRIME & DELINQ. 410 (1982) (explaining that the doctrine of *parens patriae* was carried over from the English common law).

35. DEAN J. CHAMPION & G. LARRY MAYS, TRANSFERRING JUVENILES TO CRIMINAL COURTS 56 (1991). The Supreme Court did not deal directly with the juvenile justice system until 1966, however, the Court had previously recognized that many of the factors implicit in the concept of due process applied to juveniles. See *Haley v. Ohio*, 332 U.S. 596 (1948) (excluding a murder confession of 15-year-old boy that was obtained after five hours of interrogation, without the boy being read his rights, and without the benefit or advice of counsel for violating the due process requirements of the Fourteenth Amendment); *Gallegos v. Colorado*, 370 U.S. 49 (1962) (holding that a confession, obtained from a 14-year-old boy after he was held five days without counsel and without being allowed to see his parents, was in violation of the due process requirements of the Fourteenth Amendment).

36. KRISBERG & AUSTIN, *supra* note 5, at 29.

37. See Stephen Wizner, *Discretionary Waiver of Juvenile Court Jurisdiction: An Invitation to Procedural Arbitrariness*, CRIM. JUST. ETHICS, Summer/Fall 1984, at 41.

38. KRISBERG & AUSTIN, *supra* note 5, at 29.

39. 383 U.S. 541 (1966).

40. *Id.* at 556.

41. For a discussion of the *Kent* holding and the impact *Kent* had on juvenile transfer statutes, see *infra* part III.A.

42. 387 U.S. 1 (1967).

43. *Id.* at 35.

44. *Id.* at 33.

45. *Id.* at 55.

46. *Id.* at 56.

quency proceedings.⁴⁷ Nonetheless, today, a juvenile is also entitled to a showing of proof of delinquency beyond a reasonable doubt.⁴⁸ Moreover, the rules of double jeopardy⁴⁹ and speedy trials apply,⁵⁰ and the youth's records are kept confidential and may be expunged when he or she reaches adulthood.⁵¹

B. *Emergence of the Florida Juvenile Justice System*

In the early 1900s, Florida, following the national trend, began to separate juvenile offenders from adults by housing juvenile offenders in reform schools.⁵² This, however, was only the first step in recognizing the differences between the child and the adult offender. Until 1950, the Florida Constitution vested jurisdiction over all criminal charges against juveniles in criminal courts.⁵³ After the constitution was amended to authorize the legislature to confer criminal jurisdiction over cases involving juveniles on juvenile courts,⁵⁴ the Florida Legislature responded by enacting the Florida Juvenile Justice Act ("the Act").⁵⁵ As originally enacted, the Act vested jurisdiction over cases involving violations of law allegedly committed by a child (then a person under seventeen) in juvenile courts or county courts in those counties where no

47. *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1971) (holding that right to a jury in criminal courts' adjudicative stage is not a constitutional requirement). The Court, however, left open the option for state legislatures to grant this right to its citizens if it wished. A number of states today grant juveniles such a right as a matter of state law. Florida, however, is not one of them. *CHAMPION & MAYS*, *supra* note 35, at 90. Jury trials are granted at a juvenile's request in Alaska, California, Kansas, Massachusetts, Michigan, Minnesota, New Mexico, Oklahoma, Texas, West Virginia, Wisconsin, and Wyoming. Juveniles are denied the right to a trial by jury in Alabama, Florida, Georgia, Hawaii, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, and Washington. A jury trial is granted by court order in South Dakota. *Id.*

48. *See In re Winship*, 397 U.S. 358, 364-65 (1970).

49. *See Breed v. Jones*, 421 U.S. 519, 529 (1975).

50. FLA. R. JUV. P. 8.090.

51. FLA. STAT. § 39.045 (1993).

52. Jodi Siegel, *Reforming Florida's Juvenile Justice System: A Case Example of Bobby M. v. Chiles*, 19 FLA. ST. U. L. REV. 693, 695-96 (1991) The first Florida reform school was called the Florida State Reform School and was located in Marianna, Florida. It served both girls and boys but segregated black youth from white youth until 1965. *Id.*

53. FLA. CONST. art. V. §§ 11, 17, 18, 22, 24, 25, 39 (1885).

54. S. J. Res. 25, Laws of Fla. (1949) (authorizing the legislature to confer on juvenile courts exclusive original jurisdiction over criminal cases in which the accused is a minor, and to define offenses committed by minors as acts of delinquency). For a summary of the reasons for the enactment of the amendment, see Roger J. Waybright, *A Proposed Juvenile Court Act for Florida*, 4 U. FLA. L. REV. 16 (1951).

55. Ch. 26880, Laws of Fla. (1951) (codified at FLA. STAT. ch. 39 (1991)). For a discussion of the Act when first enacted, see Sue Carter, *Chapter 39, The Florida Juvenile Justice Act: From Juvenile to Adult With the Stroke of a Pen*, 11 FLA. ST. U. L. REV. 921 (1984).

juvenile courts existed.⁵⁶ Another provision granted discretion to the juvenile court to transfer felony charges against juveniles fourteen years of age or older to adult criminal courts, but mandated that a juvenile sixteen years of age or older, if charged with a capital offense, be transferred to adult court.⁵⁷ Since 1951, the legislature has steadily expanded the transfer of criminal charges from juvenile to adult criminal courts and has similarly expanded and reiterated its decision that juveniles charged with capital offenses are to be tried and handled as adults.⁵⁸

At present, the legislature has vested the juvenile division of the circuit courts with exclusive original jurisdiction over all proceedings "in which a child is alleged to have committed a delinquent act or violation of law."⁵⁹ The court is empowered to "retain jurisdiction, unless relinquished by its order, until the child reaches nineteen."⁶⁰ Although the juvenile court is vested with exclusive jurisdiction to determine whether a child should be adjudicated delinquent, the Florida Legislature has determined that some children may not be amenable to juvenile court treatment.⁶¹ Thus, a child who is suspected of committing a delin-

56. FLA. STAT. §§ 39.01-.02 (1951).

57. FLA. STAT. § 39.02(6) (1951).

58. In 1955, the legislature amended section 39.02(6) to provide that "*any child, irrespective of age,*" indicted by a grand jury for an offense punishable by death or life imprisonment shall be tried in criminal court. Ch. 29900, Laws of Fla. (1955) (emphasis added).

In 1969, section 39.02(6)(c) was further revised and the legislative intent clarified by providing that:

When an indictment is returned by the grand jury charging a child of any age with a violation of Florida law punishable by death, *or punishable by life imprisonment*, the juvenile court shall be without jurisdiction, and the charge shall be made, and the child *shall be handled in every respect as if he were an adult*:

Ch. 69-146, § 1, Laws of Fla. (1969) (second emphasis added).

In 1973, the legislature substantially rewrote Chapter 39. Exclusive original jurisdiction over charges against juveniles was returned to the circuit court and provisions were made whereby the court could try any child 14 years of age or older as an adult on *any criminal charge*. A child was also redefined as anyone under 18 years of age. See Ch. 73-231, §§ 2,3 Laws of Fla. (1973). In 1975, Florida incorporated the *Kent* standards into the Florida Juvenile Justice Act. See FLA. STAT. § 39.052(2)(c). In 1978, a provision was added allowing a prosecutor to direct-file an information on a 16- or 17-year-old juvenile "when in his judgment and discretion the public interest requires that adult sanctions be considered or imposed." Ch. 78-414, § 7, Laws of Fla. (1978).

In 1981, the legislature further amended section 39.02(5) by providing that the trial of a juvenile charged with an offense punishable by death or life imprisonment would include prosecution for any other criminal violations connected with the primary offense. Further, if convicted of the offense punishable by death or life imprisonment "the child shall be sentenced as an adult." Ch. 81-269 § 1, Laws of Fla. (1981).

59. FLA. STAT. § 39.022(1) (1993).

60. FLA. STAT. § 39.022(4)(a) (1993).

61. See FLA. STAT. 39.002(5)(a) (1993) regarding legislative intent for serious and habitual juvenile offenders. The statute notes that "fighting crime effectively requires a multipronged effort focusing on particular classes of delinquent children and the development of particular problems".

quent act or violation of law is subject to one of eight actions by the state, regardless of any action or lack of action by the intake counselor or case manager.⁶² The state attorney may:

(1) File a petition for dependency; (2) File a petition pursuant to Part IV; (3) File a petition for delinquency; (4) File a petition for delinquency with a motion to transfer and certify the child pursuant to ss. 39.022(5) and 39.052(2) for prosecution as an adult; (5) With respect to any child who at the time of the commission of the alleged offense was 16 or 17 years of age, file an information when in his judgment and discretion the public interest requires adult sanctions be considered or imposed. However, the state attorney shall not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified under Florida law as a felony; (6) Refer the case to a grand jury; (7) Refer the case to a diversionary, pretrial intervention, arbitration, or mediation program, or to some other treatment or care program if such program commitment is voluntarily accepted by the child or his parents or legal guardian; or (8) Dismiss the case.⁶³

In addition to action by the prosecutor, a child of any age may assert his or her right to a jury trial in a criminal, rather than a juvenile court.⁶⁴ Accordingly, any juvenile charged with unlawful conduct has initial control over the forum in which he will be tried. This may be advantageous where juvenile court sanctions are more severe than those available in the adult court for a similar offense.⁶⁵ Florida appellate courts have upheld a juvenile's right to a jury trial on the basis that the Florida Constitution provides "that the right to a trial by jury shall be secure to all and remain inviolate."⁶⁶ Thus, any "child . . . charged with a violation of law as an act of delinquency instead of crime and tried

62. FLA. STAT. § 39.047(4)(e)(1993). Upon a juvenile's arrest, the child is taken by police to an HRS screening unit where he or she is processed by an HRS worker (intake counselor). The intake counselor makes two initial decisions. First, the counselor determines the detention status of the juvenile. Using a point system to ascertain whether the child can go home or must stay in detention (delinquency intake), the counselor considers factors such as the severity of the crime, previous record, and pending charges. No juvenile can be held in detention for longer than 21 days. Second, the intake counselor must decide on his or her recommendation to the state attorney with respect to judicial handling of the juvenile (file or drop charges, file a motion to waive to adult court, file a grand jury indictment, direct-file). Barbara Walsh & Trevor Jensen, *No Justice*, SUN SENTINEL, Nov. 4, 1993, at 18A.

63. FLA. STAT. § 39.047(4)(e)(1)-(8) (1993).

64. FLA. STAT. § 39.022(5)(b) (1993).

65. For example, a child who receives a traffic citation for a noncriminal offense may be subject to only a fine in the traffic court, whereas the same offense may subject him to detention or community control in the juvenile system. See Carter, *supra* note 55, at 941-43.

66. FLA. DECL. OF RIGHTS § 22, see *State ex rel. Summer v. Williams*, 304 So. 2d 472, 473 (Fla. 2d DCA 1974).

without a jury . . . shall, upon demand made as provided by law . . . be tried in an appropriate court as an adult."⁶⁷

III. APPLICATION OF FLORIDA JUVENILE LAW

A. Prosecution of Juvenile Offenders

1. JUDICIAL WAIVER

One type of transfer mechanism that can be used to prosecute juveniles in adult court is judicial waiver.⁶⁸ Judicial waiver is the process of transferring a juvenile to adult court pursuant to a judicial decision that the transfer is in the best interests of both the public and the child.⁶⁹ Under the judicial waiver mechanism, a child, who was fourteen years of age or older at the time of the commission of the offense for which he or she is charged, is brought before a juvenile court judge for a due process waiver hearing.⁷⁰ Based upon considerations such as

67. *Id.*; see also *F.S.N. v. Joyce*, 384 So. 2d 720, 721 (Fla. 4th DCA 1980) (holding that a voluntary transfer obtained by a juvenile does not prevent him from receiving future treatment as a juvenile pursuant to Chapter 39).

68. Judicial waiver is the primary way that juvenile courts make transfer decisions. *CHAMPION & MAYS*, *supra* note 35, at 68. Presently, Nebraska, New Mexico, and New York do not provide for judicial waiver. New York does not because its jurisdictional age is set at 16. Nebraska does not because its criminal and juvenile courts have concurrent jurisdiction over the more serious offenses. Finally, New Mexico does not provide for judicial waiver because the New Mexico code for dealing with older, serious offenders provides alternate means. SAMUEL M. DAVIS, *RIGHTS OF JUVENILES* § 4-1 (Release No. 14, (1994)).

69. *CHAMPION & MAYS*, *supra* note 35, at 68.

70. FLA. STAT. § 39.052(2)(c) (1993) provides:

- (c) The court shall conduct a hearing on all such motions for the purpose of determining whether a child should be transferred. In making its determination, the court shall consider:
 - 1. The seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions.
 - 2. Whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner.
 - 3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons, especially if personal injury resulted.
 - 4. The prosecutive merits of the report, affidavit, or complaint.
 - 5. The desirability of trial and disposition of the entire offense in one court when the child's associates in the alleged crime are adults or children who are to be tried as adults.
 - 6. The sophistication and maturity of the child.
 - 7. The record and previous history of the child, including:
 - a. Previous contacts with the department, other law enforcement agencies, and courts;
 - b. Prior periods of probation or community control;
 - c. Prior adjudications that the child committed a delinquent act or violation of law, greater weight being given if the child has previously been found by a court to have committed a delinquent act or violation of law

the child's age, background, and the nature of the charges, the court must decide whether to continue to treat the juvenile offender as a juvenile or to transfer the juvenile to the criminal justice system to be charged and tried as an adult.⁷¹

In Florida, these judicial waiver requirements are consistent with the Supreme Court's holding in *Kent v. United States*.⁷² In *Kent*, the Court held that although a minor has no constitutional right to treatment in a separate court system, once such a system is authorized by statute, a juvenile may not be transferred from it until due process requirements (i.e., a hearing and statement of reasons) are met.⁷³ Characterizing the waiver process as a "critically important" process that determines significant statutory rights for the juvenile, the Court held that due process requires that no transfer to a criminal court shall occur without a hearing and a statement of reasons.⁷⁴ In an appendix to the opinion, the Court announced eight criteria and principles for courts to consider during the waiver process.⁷⁵ If, after analyzing the criteria, a court determines that

involving an offense classified as a felony or has twice previously been found to have committed a delinquent act or violation of law involving an offense classified as a misdemeanor; and

d. Prior commitments to institutions.

8. The prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the child, if he is found to have committed the alleged offense, by the use of procedures, services, and facilities currently available to the court.

71. FLA. STAT. § 39.052(2)(e) (1993).

72. 383 U.S. 541 (1966).

73. *Id.* at 557.

74. *Id.* at 560-61.

75. *Id.* at 566-68. These criteria include:

1. The seriousness of the alleged offense to the community and whether the protection of the community requires waiver.

2. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner.

3. Whether the alleged offense was against persons or against property, greater weight being given to offenses against persons especially if personal injury resulted.

4. The prospective merit of the complaint, i.e., whether there is evidence upon which a Grand Jury may be expected to return an indictment

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

6. The sophistication and maturity of the juvenile . . . by consideration of his home, environmental situation, emotional attitude, and pattern of living.

7. The record and previous history of the juvenile, including previous contacts with . . . law enforcement agencies, juvenile courts and other jurisdictions, prior periods of probation or prior commitments to juvenile institutions;

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.

Id. at 567.

adult treatment is appropriate, the child is then bound over for prosecution, trial and sentencing as an adult criminal defendant.⁷⁶

Under Florida law, the prosecutor's decision to request a transfer is discretionary for juvenile offenders fourteen and older who are either violent or nonviolent first-time offenders.⁷⁷ If a child is currently charged with a violent crime against a person,⁷⁸ and is being charged with a second or subsequent violent crime, however, the prosecutor *must* file a motion requesting transfer of the child to adult court.⁷⁹ Although a judicial hearing is still required, the initial decision to file in juvenile court is taken away from the prosecutor because the statute *mandates* the filing of a motion to transfer.

A major concern with judicial waiver, as with any kind of transfer mechanism, is that it does not safeguard the basic premises of the juvenile system: treatment and rehabilitation.⁸⁰ Because the judge must differentiate between those juvenile offenders amenable to rehabilitative efforts and those whose behavior requires the punitive sanctions of the criminal justice system, waiver assumes that some youths are beyond rehabilitation.

Although in a judicial waiver proceeding the judge does not have *absolute* discretion in making a decision to transfer under *Kent*, the conflicting criteria presented to the judge under the statute allow for some discretion.⁸¹ A judge can selectively emphasize one set of factors over another to justify any disposition.⁸² The *Kent* factors are said to be "highly selective; the large number of factors that must be taken into consideration provide ample opportunity for selection and emphasis in

76. *Id.* at 566. *But see* discussion *infra*, part III.B. on the sentencing of juvenile offenders.

77. An example of a nonviolent offender would be a car thief or burglar. A violent offender would be a juvenile charged with a crime such as assault, battery or murder.

78. For example, murder, sexual battery, armed or strong-armed robbery, aggravated battery, or aggravated assault. *See also* FLA. STAT. § 39.052(2)(a) (1993) (enumerating previous delinquent acts sufficient to subject child to statutorily mandated filing of an information in adult court).

79. FLA. STAT. § 39.052(2)(a) (1993).

80. KRISBERG & AUSTIN, *supra* note 5, at 70; *see also* Nelson v. Heyne, 491 F.2d 352 (7th Cir. 1974), *cert. denied*, 471 U.S. 976 (1974) (holding that a juvenile institutionalized for crime has a constitutional right to rehabilitative treatment under the due process clause of the Fourteenth Amendment); Wyatt v. Stickney, 325 F. Supp. 781 (M.D. Ala. 1971) (holding that adults committed to institutions have a right to rehabilitation because such commitments are not intended as punishment, and incarceration without treatment constitutes cruel and unusual punishment prohibited by the Eighth Amendment).

81. The criteria are divided into two broad groups: danger to the public, based on the type of offense committed, and amenability to treatment, based on the individual juvenile's specific characteristics.

82. Barry Feld, *The Juvenile Court Meets the Principle of the Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471, 491 (1987).

discretionary decisions that shape the outcome of individual cases.”⁸³ It follows that any time a judge feels that the minor cannot be rehabilitated or that the adult court would be better suited to handle the child, he can overemphasize one or more of the factors to justify his decision, or simply fail to consider them at all. In fact, recent Florida cases indicate that factors are often weighed differently.⁸⁴

Because the judicial waiver criteria require a judge to determine the juvenile’s amenability to treatment, weighing that amenability against the threat of danger to the public, problems in decision making occur when the juvenile commits a violent crime and has no past record or “run-ins” with the law.

a. The Waiver of Francisco Del Rey

An example of how the waiver criteria can be difficult to apply in certain cases is seen in a recent Florida case involving a fifteen-year-old juvenile offender, Francisco Del Rey. While drag racing at three o’clock in the morning, Del Rey’s Corvette slammed into another car, killing its three occupants and paralyzing Del Rey’s passenger.⁸⁵ Del Rey was charged with three counts of manslaughter. After the accident, it was discovered that Del Rey had been driving illegally for months with a fake driver’s license obtained with the help of his parents.⁸⁶ After considering several highly publicized media reports on the accident and Del Rey’s family background, the State Attorney filed a motion to transfer the juvenile to be tried as an adult.⁸⁷ Consistent with Florida Statute

83. Franklin E. Zimring, *Notes Toward a Jurisprudence of Waiver*, in READINGS IN PUBLIC POLICY 195 (J. Hall et al. eds., 1981); see also Wizner, *supra* note 37, at 42 (arguing that legislation providing for waiver of juvenile court jurisdiction invites procedural arbitrariness because of vague standards and multiple criteria).

84. See *Whittington v. State*, 543 So. 2d 317 (Fla. 1st DCA 1989) (holding that trial court erred in permitting juvenile to be prosecuted, tried and sentenced as an adult in absence of court’s compliance with the statutory criteria necessary for judicial waiver regardless of juvenile indicating at the time of arrest that he was 18 instead of 15); *Lurry v. State*, 424 So. 2d 868 (Fla. 4th DCA 1982) (juvenile’s sentence vacated and remanded to juvenile division for entry of a transfer order setting forth findings of fact with respect to each of the waiver criteria in the statute); *Mills v. State*, 424 So. 2d 866 (Fla. 4th DCA 1982) (omission of one of the enumerated factors requires remand to juvenile division judge for consideration of that item); *Gainer v. State*, 401 So. 2d 924 (Fla. 2d DCA 1981) (certification order transferring juvenile to adult division did not contain required findings); *G.D.W. v. State*, 395 So. 2d 638 (Fla. 2d DCA 1981) (juvenile’s sentence vacated and remanded due to trial court’s failure to make findings of fact concerning each of the criteria in the written order); *Townsend v. State*, 398 So. 2d 829 (Fla. 5th DCA 1980) (court order of transfer waiving juvenile to adult court contained no findings of fact or statement of reasons for transfer).

85. Sydney P. Freedberg, *Judge Reduces Del Rey Charges*, MIAMI HERALD, Feb. 17, 1994, at 1B.

86. *Id.*

87. *Id.* Some headlines include: Liz Balmaseda, *Del Rey Saga Challenges Our Preconceptions*, MIAMI HERALD, Jan. 19, 1994, at 1B; Sydney P. Freedberg, *Teen to be Tried As*

section 39.052, a report by the Department of Health and Rehabilitative Services ("HRS") recommended that he be kept in the juvenile division because "HRS had appropriate means to supervise him."⁸⁸ A psychologist testified that Del Rey was "a victim of too much love and not enough discipline and supervision."⁸⁹ Furthermore, the psychologist testified that the legislature, by designing a separate juvenile justice system, intended for kids exactly like Del Rey to benefit from it; kids that were neither violent nor chronic offenders, who lacked guidance and who could benefit from treatment if given the opportunity.⁹⁰ HRS workers interviewing the juvenile also found him amenable to treatment and rehabilitation based on his low level of maturity, lack of criminal sophistication, and ability to relate well to authority, with no past or present signs of violent behavior.⁹¹

Despite all of the evidence describing his amenability to treatment, the juvenile court judge felt that Del Rey should be tried as an adult because the crime was of such an aggressive and willful nature.⁹² In the judge's opinion, the offense was given more weight than the juvenile's individual characteristics. The judge, however, stressed the fact that he didn't feel Del Rey should be *sentenced* as an adult.⁹³ He expressed concern that Del Rey wouldn't survive in an adult prison or even a juvenile institution housing predatory, aggressive kids with long records of violence.⁹⁴ In assessing the offense, the judge did not appear to blame the juvenile for driving at three o'clock in the morning in a car bought and given to him by his parents, but instead queried "What fifteen-year-old wouldn't drive the car and stay out all night if allowed and

An Adult in Fatal Crash; Judge Rips Parents For Almost Criminal Neglect, MIAMI HERALD, Feb. 10, 1994; Sydney P. Freedberg & Manny Garcia, *Del Rey Charged in Deaths of 3 Youths He Also Faces DUI Charges*, MIAMI HERALD, Jan. 25, 1994, at 1A; Sydney P. Freedberg & Manny Garcia, *Corvette Driver's Age is Questioned Is He 15 or 17? Records Differ*, MIAMI HERALD, Jan. 6, 1994, at 1A; Manny Garcia & Sydney P. Freedberg, *In New Del Rey Twist, Dad Charged With License Fraud*, MIAMI HERALD, Mar. 25, 1994, at 1A; Robert L. Steinback, *Is it A Crime to Spoil A Kid Too Much?*, MIAMI HERALD, Feb. 22, 1994; Robert L. Steinback, *Thrill of Living Should Temper Thrill of Speed*, MIAMI HERALD, Jan. 7, 1994, at 1B; Luisa Yanez, *Drag Racer To Be Tried As An Adult*, SUN SENTINEL, Feb. 18, 1994, at 3B.

88. See Freedberg, *supra* note 85, at 3B.

89. Notes from Del Rey Waiver Hearing in front of Judge Steve Levine on Feb. 18, 1994 at 1:30 p.m. (on file with the author).

90. *Id.*

91. *Id.*

92. *Id.* Specifically, Judge Levine said "Driving that 'Vette in that fashion resulted in tragedy, I can't imagine any more serious offense than manslaughter except murder." See also Freedberg, *supra* note 85, at 1A.

93. Notes from Del Rey Waiver Hearing in front of Judge Steve Levine on Feb. 18, 1994 at 1:30 p.m. (on file with the author).

94. *Id.*

encouraged by his parents?"⁹⁵ The judge stressed the necessity of letting the public know that this type of behavior by juveniles would not be tolerated. Because this was such a highly publicized case, the judge did not want it to appear that the court was going to be soft on juveniles who commit crimes with such dire consequences. Thus, the first criterion under the statute, "[t]he seriousness of the alleged offense to the community and whether the protection of the community is best served by transferring the child for adult sanctions,"⁹⁶ was interpreted by this particular juvenile court judge to mean that the public would suffer if the wrong message is sent to kids regarding the acceptability of this type of behavior. The judge rejected the interpretation that Del Rey is a violent, aggressive juvenile who should be locked up because he is a threat to the community—because this does not appear to be true.⁹⁷

The judge also seemed to rely on the fact that if Del Rey was sentenced as a juvenile to a juvenile facility and he did not finish his sentence, the judge would have no recourse.⁹⁸ Juveniles are not placed on probation like adults, nor do juvenile court judges have contempt power to sentence juveniles if they fail to complete a program.⁹⁹ If they fail to complete their time, they can only be reordered to finish the program.¹⁰⁰

Was this the right decision? Although the judge stated that he did not feel Del Rey should be sentenced as an adult, once juveniles are actually tried as adults they are usually labeled as adults and are given adult sanctions regardless of the statute that mandates the judge to reconsider similar criteria at sentencing.¹⁰¹ Because the sentencing criteria are virtually the same as the waiver criteria, the trial court judge is likely to come to the same conclusion as the juvenile court judge when applying similar criteria.¹⁰²

Perhaps trying and sentencing Del Rey as an adult will send a message to the public that the system is getting tough on juveniles and may temporarily ease the minds of the family and friends of the deceased and injured victims. Given the nature of Del Rey's offense, though, he will probably serve about the same amount of time if sen-

95. *Id.*

96. FLA. STAT. § 39.052(2) (1993).

97. Notes from Del Rey Waiver Hearing in front of Judge Steve Levine on Feb. 18, 1994 at 1:30 p.m. (on file with the author).

98. *Id.*

99. Folks, *supra* note 7.

100. *Id.*

101. In fact, this is what Del Rey's defense attorney argued in his closing argument. *See also infra* part III.B. and C. for a discussion of the sentencing of juvenile offenders and problems associated with it.

102. Although those who feel that the waiver criteria are arbitrary and discretionary would not necessarily feel this way.

tenced to an adult prison or a youthful offender facility¹⁰³ as he would have served in a juvenile facility.¹⁰⁴ If the main reasoning for transferring juveniles to adult courts is to ensure that they receive longer prison sentences, this rationale will not stand true, since juvenile court judges only have jurisdiction over them until they are nineteen years of age. Rather than receiving treatment and rehabilitation, Del Rey and other juveniles tried as adults will learn how to behave and think like hardened criminals as they try to survive their time in prison with violent repeat offenders.

b. The Waiver of Juvenile "Thomas"¹⁰⁵

The Del Rey case can be compared with another juvenile case that received no media attention; the kind of case that is seen by police, prosecutors and judges every day. Mike Thomas, a fifteen-year-old juvenile, was charged with grand theft of an automobile, reckless driving, leaving the scene of an accident, fleeing police officers, resisting arrest, driving without a license, armed robbery, armed burglary with assault, and aggravated burglary.¹⁰⁶ The state attorney filed a motion to waive the juvenile into adult court.¹⁰⁷ The juvenile court judge denied the motion, and, after a trial, imposed juvenile sanctions.¹⁰⁸ The HRS waiver report indicated that the juvenile had no prior contact with the system, came from a good family, was doing well in school, and suggested that Thomas remain in juvenile court.¹⁰⁹ In fact, the HRS worker recommended community control for Thomas, since she felt he was safe at home and did not need a residential treatment program.¹¹⁰ Despite the recommendation for community control, the judge sentenced Thomas to a residential commitment program for a couple of months. The judge did, note, however, that "this is the most serious type of case, other than a murder case" so community control would not be an appropriate rem-

103. FLA. STAT. § 958 (1993) allows offenders between the ages of 18 and 21 to be sentenced as Youthful Offenders.

104. FLA. STAT. § 782.07 (1992) makes manslaughter a second degree felony. FLA. STAT. § 775.082(c) (1992) states that the term of imprisonment shall not exceed 15 years. Since Del Rey was charged with three counts of manslaughter, if convicted, his time will be served concurrently for all three counts. The average sentence is usually from 7 to 10 years on a 15 year maximum term. Thus, Del Rey would end up doing about three to five years, taking into account the fact that prisoners are currently serving one half or less of their prison sentences.

105. The name of the juvenile in this case has been changed to protect his identity.

106. Information obtained from the juvenile arrest form (on file with the author).

107. Information obtained from the files of the Dade County Public Defender's office, Juvenile Division (on file with the author).

108. *Id.*

109. *Id.*

110. *Id.*

edy for this juvenile.¹¹¹

Since the consequences of the crime in this case were not as severe as in the Del Rey case, one may argue that Thomas should have been given a second chance and allowed to receive treatment and counseling in a juvenile facility; however, this crime, unlike the crime in Del Rey's case, was clearly intentional. Here the juvenile purposely pointed a gun at the victims' heads while ordering another juvenile to shoot the victims, robbed and assaulted the victims, fled in the victims' car and finally resisted arrest by the police. Is this juvenile less of a threat to society than a fifteen-year-old drag racer, told and encouraged by his parents to drive, who had no idea that his actions would harm anyone?

2. PROSECUTORIAL WAIVERS

Though judicial waiver is the most common statutory method for transferring a juvenile offender into the adult criminal justice system, it has allowed judges to abuse their discretion, and has proved to be a slow and somewhat complicated procedure.¹¹² This has led many legislators to seek alternate, faster methods to effect such transfers, such as grand jury indictment or filing an information directly with the circuit court.

a. Indictment by a Grand Jury

Another method for transferring juveniles to adult courts in Florida is pursuant to an indictment. Under this statutory provision, the state attorney has the discretion to decide whether to submit the charge to a grand jury.¹¹³ Once indicted, the child will be treated as an adult for that offense and for all other felonies or misdemeanors charged in the indictment and based on the same act or transaction as an offense punishable by life imprisonment or death.¹¹⁴

111. *Id.*

112. The procedure is slow, because of the time involved in waiting for a hearing to be set, and complicated, because it is considered a mini-trial that allows both sides to present witnesses, conduct cross-examination, and give opening and closing statements.

113. FLA. STAT. § 39.022(5)(c) (1993) provides:

(c)(1) A child of any age charged with a violation of Florida law punishable by death or by life imprisonment is subject to the jurisdiction of the court as set forth in 5.39.049(7) unless and until an indictment on such charge is returned by the grand jury. When such indictment is returned, the petition for delinquency, if any, shall be dismissed and the child shall be tried and handled in every respect as if he were an adult:

- a. On the offense punishable by death or by life imprisonment; and
- b. On all other felonies or misdemeanors charged in the indictment which are based on the same act or transaction as the offense punishable by death or by life imprisonment or on one or more acts or transactions connected with the offense punishable by death or by life imprisonment.

114. FLA. STAT. § 39.022(5)(c)(1)(a) (1993). See also *Florida ex rel Powers v. Schwartz*, 355

In *Johnson v. State*¹¹⁵ the Florida Supreme Court upheld the constitutionality of section 39.02(5)(c) against a direct attack based on due process and equal protection grounds.¹¹⁶ The juvenile defendant argued that the statutory provision was defective because it failed to set guidelines to assist the state attorney or grand jury in determining which child should be indicted and which should be dealt with as a delinquent.¹¹⁷ Thus, juveniles who commit similar acts could be treated very differently depending upon the criteria used by the state attorney. For instance, some juveniles who commit first-degree murder might be indicted and treated in every respect as though they were adults with the possibility of facing life in prison, whereas others who commit the same offense might not be indicted, but would be retained within the jurisdiction of the juvenile division to be "rehabilitated."¹¹⁸ In upholding the statute, the court found it to be within the scope of legislative authority under the Florida Constitution which "permits," but does not require that a child be charged with an act of delinquency instead of a crime.¹¹⁹ The court further reasoned that prosecutorial discretion is inherent in our system of criminal justice, dating back to the common law of England.¹²⁰

This provision is rarely used in Florida since under the statute the prosecutor can only submit the charge to the jury when the child has committed a crime punishable by life imprisonment or death.¹²¹ In Florida this would only apply to armed robberies committed with a fire-

So. 2d 460, 461 (Fla. 3d DCA 1978) ("A circuit court is without authority to treat an indicted juvenile under the protective provisions of Chapter 39," but must during pretrial proceedings treat him "as an adult in every respect including the setting of terms for bail or release or confinement").

115. 314 So. 2d 573 (Fla. 1975).

116. This section was renumbered as FLA. STAT. § 39.022(5)(c) (1991). See *Woodard v. Wainwright*, 556 F.2d 781 (5th Cir. 1977) (upholding the constitutionality of section 39.02(5)(c); *Russell v. Parratt*, 543 F.2d 1214, 1217 (8th Cir. 1976) ("[W]e cannot equate the prosecutorial decision with judicial proceedings, absent legislative direction."); *Cox v. United States*, 473 F.2d 334, 336 (4th Cir. 1973) (prosecutorial decisions, unlike judicial decisions, have no tradition that a hearing be given before a decision is rendered).

117. *Johnson*, 314 So. 2d at 575.

118. *Id.*

119. *Id.* at 577; see also FLA. DECL. OF RIGHTS § 15(b) providing: "When authorized by law, a child as therein defined may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirement applicable to criminal cases."; *Stokes v. Fair*, 581 F.2d 287, 289 (1st Cir. 1978) (holding that there is no inherent or constitutional right to preferred treatment as a juvenile delinquent).

120. 314 So. 2d at 577. Similarly, federal courts have consistently held that the discretion of the Attorney General, in deciding whether to prosecute, or whether to abandon a prosecution already begun, is absolute. See, e.g., *Smith v. United States*, 375 F.2d 243, 247 (5th Cir. 1967); see also *Powell v. Katzenbach*, 359 F.2d 234 (D.C. Cir. 1965), *cert. denied*, 384 U.S. 906 (1966), *reh'g denied*, 384 U.S. 967 (1966); *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965), *cert. denied*, 381 U.S. 935 (1965).

121. See *supra* note 113.

arm,¹²² attempted first-degree murder,¹²³ and first-degree murder.¹²⁴ It is also rarely used because sixteen- and seventeen-year-olds can be direct-filed into adult court.

b. Direct-Filing by Information

An alternate means of transferring a child to the adult criminal court is pursuant to an information filed directly in adult court by the state attorney.¹²⁵ Unlike judicial waiver, but similar to the indictment provision, the direct-file provision bypasses the juvenile court system altogether. The prosecutor is authorized to file an information on a child who was sixteen or seventeen years of age when the alleged crime was committed, "when in his judgment and discretion the public interest requires that adult sanctions be considered or imposed."¹²⁶ However, "the state attorney shall not file an information on a child charged with a misdemeanor, unless the child has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which involved an offense classified under Florida law as a felony."¹²⁷

In *State v. Cain*,¹²⁸ the Florida Supreme Court held that direct-filings do not require a due process hearing because, like the grand jury indictment provision, the filing is considered to be at the discretion of the prosecutor.¹²⁹ In *Cain*, the state charged Mark Cain, a minor, with two counts of armed burglary and two counts of grand theft.¹³⁰ Cain filed a motion to dismiss the state's information. He argued that the statute unconstitutionally delegated to the state attorney unfettered discretion to prosecute juveniles as adults and that the statute violated due process by permitting the transfer of the juvenile to adult court without a hearing.¹³¹ The circuit court dismissed the information and the state

122. FLA. STAT. § 812.13(2)(a) (West Supp. 1994).

123. FLA. STAT. § 777.04 (1992).

124. FLA. STAT. § 782.04 (1992).

125. FLA. STAT. § 39.047(4)(e)(5) (1993). This is often referred to as "direct-filing." See *State v. Everett*, 624 So. 2d 853, 853 (Fla. 3d DCA 1993) ("The state attorney is not precluded from direct-filing an information despite initially filing a delinquency petition.").

126. FLA. STAT. § 39.047(4)(e)(5) (1993).

127. *Id.*; see also *Lott v. State*, 400 So. 2d 10, 12 (Fla. 1981) (holding that the requirement that the juvenile show he has not committed two delinquent acts does not work a hardship on the juvenile). Under the statute, the juvenile is only required to submit some form of legally sufficient evidence that he has not committed the subject acts. An affidavit or testimony, for example would be satisfactory for this purpose. *Id.*

128. 381 So. 2d 1361 (Fla. 1980).

129. *Id.* at 1366. For a thorough discussion of the *Cain* case, see Tim Day, *Prosecutorial Waiver of Juveniles Into Adult Criminal Court: The Ends of Justice . . . Or The End of Justice?* *State v. Cain*, 5 NOVA L.J. 487 (1981).

130. *Cain*, 381 So. 2d at 1362.

131. *Id.*

appealed. The court held that a state attorney's decision to file an information is no different than the decision to seek an indictment from a grand jury.¹³² "In either case, the legislature has . . . returned to the state attorney his traditional prerogative of deciding who to criminally charge and with what offense."¹³³ The state attorney is still restricted in that he may only charge a sixteen- or seventeen-year-old, and an indictment only ensures that there is probable cause for the charge, not the propriety of prosecuting a juvenile as an adult. Regarding the due process claim, the court reasoned that while *Kent* applied to judicial proceedings, the court would not equate these prosecutorial decisions with judicial proceedings absent legislative direction.¹³⁴

Recently, in *State v. Everett*,¹³⁵ the Third District Court of Appeals further expanded prosecutorial discretion regarding the direct-filing provision. The prosecutor originally filed a delinquency petition against Everett in the juvenile division.¹³⁶ The prosecutor then filed a motion to transfer and certify Everett for trial as an adult pursuant to a judicial waiver hearing.¹³⁷ When the juvenile division denied the motion, the state direct-filed an information against Everett in the criminal division.¹³⁸ Upon the juvenile's motion to dismiss the information, the court entered an order transferring the case back to the juvenile division.¹³⁹ The appellate court held that the prosecutor is not precluded from direct-filing an information despite initially filing a petition for delinquency.¹⁴⁰ Furthermore, the state may direct-file an information irrespective of the juvenile court's denial of its motion to certify the juvenile for trial as an adult.¹⁴¹ Therefore, even after a judge decides that it is not in society's best interest to try the child as an adult, the state may disregard this ruling and direct-file an information.

The main concern with prosecutorial waivers, such as the direct-file and grand jury indictment provisions, is that the juvenile court will be bypassed entirely. The initial decision on how to treat an alleged juvenile offender will be taken away from the judge, a neutral and detached

132. *Id.* at 1364.

133. *Id.*

134. *Id.* at 1366.

135. 624 So. 2d 853 (Fla. 3d DCA 1993).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.* at 854 (based on *Lott v. State*, 400 So. 2d 10 (Fla. 1981), which held that no written waiver of transfer of jurisdiction from juvenile court is required when the state attorney first files a petition for delinquency and then direct-files an information).

141. 624 So. 2d at 854 (basing its decision on *Petithomme v. State*, 610 So. 2d 450, 452 (Fla. 3d DCA 1992), which held that because the juvenile had not yet been adjudicated, double jeopardy protections did not bar the state from seeking the indictment).

arbitrator, and put in the hands of the state attorney, an advocate for the state and adversary of the juvenile. This makes it unlikely that the child's best interests will be served. Indeed, state attorneys, like legislators, may seek transfer of juveniles in response to political pressures or society's demands for retribution.¹⁴² At the same time, if political safeguards need to be in place for judges, according to *Kent*, which characterized the transfer of a juvenile offender from the jurisdiction of the juvenile court to that of the adult court as "critically important,"¹⁴³ such safeguards should also be in place for prosecutors to compensate for their lack of neutrality. After all, the critical nature of the transfer decision does not change because it is controlled by the prosecutor rather than by the court.

Judge Skelly Wright emphasized another argument against these provisions in *United States v. Bland*.¹⁴⁴ In *Bland*, the court upheld the constitutionality of a District of Columbia statute that allows the prosecutor to indict a juvenile, sixteen years of age or older, who has committed one or more of the felonies enumerated in the statute.¹⁴⁵ In a compelling dissent, Judge Wright argued that the legislature "overruled" the Supreme Court's *Kent* decision by enacting statutes that do not require a hearing that would be subject to the requirements of due process.¹⁴⁶ The prosecutor avoids the risk and inconvenience of having to prove that the juvenile should be tried as an adult when he chooses to direct-file. This is true today in the filing of an information. The prosecutor can easily avoid "the encumbrance of a hearing, the requirement that he state reasons, the inconvenience of bearing the burden of proof, [and] the necessity of appointing counsel for the accused" by filing an information.¹⁴⁷ Over the past ten years, nearly five times more juveniles

142. Day, *supra* note 129, at 494; see also Mike Folks, *More Juveniles Face Adult Charges—Get-Tough Policy Acts as Crime Deterrent*, *Palm State Attorney Says*, SUN SENTINEL, Feb. 1, 1994, at 3B. Palm Beach County State Attorney Barry Krisher started a get-tough juvenile policy as soon as he took office in 1993. One of his policies requires that juvenile offenders aged 16 and 17, with two or more felony convictions, be charged as adults directly, without resort to a waiver hearing. This, Krisher states, was done to teach juvenile offenders that selling drugs "is not as romantic and sexy as it appears on TV and in the movies." *Id.*

143. 383 U.S. 541, 560 (1966).

144. 472 F.2d 1329 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 909 (1973).

145. *Id.* at 1338.

146. *Id.* at 1341.

147. *Id.* Judge Wright stated:

I think it is obvious that this second procedure was written into the Act in order to countermand the Supreme Court's decision in *Kent* . . . Indeed, the House Committee primarily responsible for drafting the provision virtually admitted as much. The Committee Report explains 16 D.C. Code § 2301(3)(A) as follows:

Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court

have been direct-filed into adult court than have been transferred by judicial waiver.¹⁴⁸

The prosecutor's unchecked decisionmaking authority is also a problem. Although decisions regarding judicial waiver are appealable, exercise of prosecutorial discretion is virtually without administrative or judicial review.¹⁴⁹ In fact, a considerable amount of authority exists for the proposition that prosecutorial discrimination is itself incident to the Constitution's separation of powers. Consequently, courts are not to interfere with the free exercise of the discretionary powers of the state prosecutors.¹⁵⁰ This means, in effect, that speedy decisions made in the

under present law, provisions are made in this subchapter for a better mechanism for separation of the violent youthful offender and recidivist from the rest of the juvenile community."

While the surface veneer of legalese which encrusts this explanation need fool no one, a simultaneous translation into ordinary English might, perhaps, prove helpful. The substantial difficulties . . . under present law to which the committee coyly refers are, of course, none other than the constitutional rights explicated in the *Kent* decision.

Id.

148. In Dade County in 1993, 24 juveniles were judicially waived into adult court and 750 were direct-filed. Juvenile Division of the Dade County Clerk (on file with the author).

The following represent the number of direct-files and judicial waivers over the past ten years:

	Direct Files		Waiver Hearings	
	Dade	Statewide	Dade	Statewide
1982	895	3,186	131	451
1983	490	2,701	80	366
1984	241	1,929	54	280
1985	173	2,339	27	276
1986	235	2,767	28	376
1987	513	3,505	48	490
1988	488	4,223	100	379
1989	584	4,974	63	531
1990	782	5,226	82	486
1991	679	5,562	62	398
1992	643	5,495	21	533

Data obtained from the Office of the State Court Administrator (on file with the author).

149. *CHAMPION & MAYS*, *supra* note 35, at 72; *see also* *Woodard v. Wainwright*, 556 F.2d 781, 785 (5th Cir. 1977) ("[T]reatment as a juvenile is not an inherent right but granted by the state legislature, therefore the legislature may restrict or qualify that right as it sees fit, as long as no arbitrary or discriminatory classification is involved.").

150. *State v. Bauman*, 425 So. 2d 32, 34 (Fla. 4th DCA 1982). *See also* *Woodard v. Wainwright*, 556 F.2d 781 (5th Cir. 1977); *Russell v. Parratt*, 543 F.2d 1214, 1216 (8th Cir. 1976); *United States v. Bland*, 472 F.2d 1329, 1335 (D.C. Cir. 1972), *cert. denied*, 412 U.S. 909 (1973); *United States v. Cox*, 342 F.2d 167, 171 (5th Cir. 1965), *cert. denied sub nom. Cox v. Hausberg*, 381 U.S. 935 (1965). Certain courts have also held that where the prosecutor can determine the forum, the court should give traditionally wide latitude to the exercise of prosecutorial discretion. *See* *Jackson v. State*, 311 So. 2d 658, 661 (Miss. 1975); *State v. Lytle*, 231 N.W.2d 681, 688 (Neb. 1975); *Myers v. District Court*, 518 P.2d 836 (Colo. 1974); *State v. Gray*, 215 N.W.2d 859, 860 (Neb. 1974).

prosecutor's office without uniform standards can result in conscious abuse or negligent misapplication of the statutes, and thus, in arbitrary decision making that goes unchecked and unreviewed.¹⁵¹

3. LEGISLATIVE WAIVER

In addition to judicial and prosecutorial waiver provisions, many states have legislative or automatic transfer provisions.¹⁵² Although the prosecutor's decision as to the offense charged decides the forum, under such waiver provisions, it is the legislature that has made the policy choice.¹⁵³ In both instances, however, the prosecutor controls the waiver decision either directly, by picking the court, or indirectly, through his decision to charge a specified offense.¹⁵⁴ Not all states have these provisions, so they are not as common as judicial and prosecutorial waiver provisions.¹⁵⁵ They are, however, gaining popularity in response to public demands for harsher sanctions for juvenile offenders.

One legislative waiver strategy is to lower the age at which a criminal court has jurisdiction.¹⁵⁶ Another, more common, strategy is for the legislature to specify those offenses for which a juvenile may not be adjudicated in juvenile court.¹⁵⁷ Under this type of provision, the legislature provides that if a juvenile has committed certain types of offenses (usually rape, homicide, or robbery), has been charged with a certain number of felonies, or has a certain number of previous delinquency adjudications, the juvenile court will lose jurisdiction and the juvenile will be tried as an adult.¹⁵⁸

These types of statutes are inconsistent with the rehabilitative philosophy of the juvenile court for a number of reasons. First, they focus

151. Wallace J. Mlyniec, *Juvenile Delinquent or Adult Convict—The Prosecutors Choice*, 14 AM. CRIM. L. REV. 29, 36-37 (1976); see also Thomas & Bilchik, *supra* note 24, at 478 (noting that while most of the powers vested in the judiciary are exercised in open court, prosecutorial decisions are exercised behind closed doors, and thus make enforcement of any regulations virtually impossible).

152. See, e.g., IDAHO CODE § 16-1806A (Supp. 1994) (excluding those at least 14 years of age who allegedly commit murder, robbery, rape, or murder from juvenile court jurisdiction); N.Y. PENAL LAW § 30.00(2) (McKinney 1987) (excluding those over 12 years of age charged with murder and those over 13 years of age charged with such crimes as kidnapping, arson, and rape from juvenile court jurisdiction).

153. Feld, *supra* note 82, at 514-15.

154. Mlyniec, *supra* note 151, at 44.

155. Twenty-three states and the District of Columbia exclude certain offenses from juvenile court jurisdiction. CHAMPION & MAYS, *supra* note 35, at 71.

156. In New York, for example, the jurisdictional age limit of the juvenile court is set at the age of 16. This is the youngest jurisdictional age in any state. N.Y. FAMILY COURT ACT, § 301.2(1) (McKinney 1983).

157. CHAMPION & MAYS, *supra* note 35, at 73.

158. *Id.*

on the offense rather than the individual juvenile's characteristics¹⁵⁹ and his or her ability to be rehabilitated, presuming instead that children who commit certain crimes are incapable of being rehabilitated through the juvenile process.¹⁶⁰ Thus, the court is denied the opportunity to get juveniles the help they may need. Second, since the statutes are usually the result of legislators responding to the public's demand for more punitive measures for juveniles to deter them from committing crimes,¹⁶¹ they are more public safety measures than long-term solutions to juvenile crime.¹⁶² "Get-tough" waiver legislation seldom addresses the possible consequences for youths incarcerated in adult correctional facilities, the quality or effectiveness of the programs available to youths, or the effects of juvenile versus adult dispositions on recidivism.¹⁶³ For example, California tried, in 1994, to pass new legislation to lower the age at which a juvenile could be tried for murder in adult court from sixteen to fourteen,¹⁶⁴ even though the average length of stay in adult prison in 1994 was 16.2 months, whereas in juvenile prisons, it was 26.1 months.¹⁶⁵ Because adults were often released before serving their maximum time and juveniles were not, juveniles served fifty percent longer sentences for the same homicide convictions than did their adult counterparts.¹⁶⁶ At the same time, California's juvenile recidivist rate was seventy percent and rising, and fifty percent of the state's imprisoned juveniles have been arrested more than six times.¹⁶⁷ Similarly, in Idaho, a recent study on the deterrent effects of a waiver statute indicated that since the law's enactment in 1981, serious juvenile crime has not been reduced.¹⁶⁸ Furthermore, juvenile offenders usually return

159. Feld, *supra* note 82, at 515.

160. Mlyniec, *supra* note 151, at 37.

161. Feld, *supra* note 82, at 519. Although, many argue that in reality, the children who really need to get the message rarely do. See Dowie, *When Kids Commit Adult Crimes, Some Say They Should Do Adult Time*, CAL. LAWYER, Oct. 1993, at 58 (quoting Barry Krisberg: "[C]an you imagine a bunch of 14 and 15 year old kids sitting around the 'hood saying, 'Gee, did you read that the Assembly just lowered the minimum adult-trial age to 14?'. The whole point of separate systems is that children are not small adults. When we lose touch with that, we lose touch with our whole legal system.").

162. Mlyniec, *supra* note 151, at 37.

163. Feld, *supra* note 82, at 519.

164. Cal. Assembly Bill 136 (SN), Regular Sess. (1993) (introduced by Charles Quackenbush); see also Dowie, *supra* note 161, at 56.

165. Dowie, *supra* note 161, at 58. But see *infra* part III.B. (concluding that generally kids tried in adult court actually receive lower sentences than their adult counterparts).

166. *Id.*

167. *Id.*

168. Eric L. Jensen & Linda K. Metsger, *A Test of the Deterrent Effect of Legislative Waiver on Violent Juvenile Crime*, 40 CRIME & DELINQ. 96, 101-02 (1994). The study compared the years 1976-1980 with 1982-1986. Idaho revised its legislative waiver statute in 1981. This law mandated the automatic waiver of juvenile court jurisdiction for youths 14 to 18 years of age who were accused of any degree of attempted murder, robbery, forcible rape, mayhem, assault and

from the adult process with little change in their attitudes toward the society that placed them there.¹⁶⁹

Besides being inconsistent with the rehabilitative philosophy of the juvenile court, these statutes often *appear* to be responding to the public's get-tough attitude without actually having any new effect. This kind of legislation has recently started to appear in Florida. Recent media reports on the state of crime in Florida have engendered public outcry and a get-tough attitude toward juvenile offenders.¹⁷⁰ In response, the Florida Legislature convened a special session in November 1993, to consider ways to attack juvenile crime.¹⁷¹ A bill introduced by Representative Martinez, and signed into law on November 24, 1993 by Governor Chiles,¹⁷² made major changes to Chapter 790,¹⁷³ which governs the regulation of weapons and firearms. The bill provides, among other things,¹⁷⁴ that a child fourteen or older at the time of the commission of a fourth or subsequent alleged felony offense, where one

battery with intent to commit any of the above specified crimes. *Id.* at 98; see IDAHO CODE § 16-1806A (1994).

169. See, e.g., *Teenage 'Adult' in Prison Shows System's Failure*, MIAMI HERALD, May 17, 1993, at 1B (quoting Florida's youngest inmate Eddie McGee, age 14: "They think prison is going to change you man. They just don't know how this is, man. I only learn how to do more better crimes. How to make more money. How to sell more dope. That's all people talk about . . . When you stay in here long, that's what makes your mind more devious.").

170. See, e.g., Ron Allen, *2 Teen-agers Sought In Shoot-Out*, SUN SENTINEL, Feb. 12, 1994, at 2B; *Student is Accused of Poisoning Teacher, Boy, 14, Charged With Attempted Murder*, SUN SENTINEL, Feb. 17, 1994, at 18A; Larry Barszewski, *Florida Lacks Programs for Youngest Criminals*, SUN SENTINEL, Feb. 21, 1994, at 1B; Battinto Batts, Jr., *Student Accused of Stabbing Involved in Previous Assault*, SUN SENTINEL, Feb. 18, 1994, at 1B; Aileen Dodd, *Teen Crime a Hot Topic*, SUN SENTINEL, Oct. 28, 1993, at 9B; *Florida Ranked Among Worst In Crime, Justice*, SUN SENTINEL, Feb. 1, 1994 at 7A; Linda Kleindienst, *Republican Candidates Blast Chiles, State Programs*, SUN SENTINEL, Oct. 26, 1993, at 7A; Linda Kleindienst & Diane Hirth, *Youth Violence on Rise—Kids Joke About Justice System*, SUN SENTINEL, Oct. 17, 1993, at 1A; Linda Kleindienst & Peter Mitchell, *Legislators Get Tough on Crime, Dodge New Taxes*, SUN SENTINEL, Feb. 24, 1994, at 1A; Stephanie Smith, *Three Girls to Stand Trial as Adults in Murder*, SUN SENTINEL, Jan. 27, 1994, at 1A.

171. Donna O' Neal, *Bill Takes Aim at Weapons for Kids; The Legislature Could Enact New Restrictions on Youths' Access to Firearms and BB Guns This Week as Part of its Anti-Crime Drive*, ORLANDO SENTINEL, Nov. 2, 1993, at B6.

172. FLA. H.B. 91, Sp. Sess. of Nov. 1 to Nov. 11, 1993.

173. FLA. STAT. ch. 790 (1993).

174. Further, this bill provides that: a law enforcement agency will be able to release the name and address of a minor child who has been convicted of an offense involving possession of a firearm; possession of a firearm by a minor will be a first-degree misdemeanor; a minor charged with an offense that involves the possession of a firearm will be required to perform 100 hours of community service and will have his driver's license revoked or withheld for up to one year; and a minor charged with an offense that involves use of a firearm shall be automatically detained in secure detention and shall be given a hearing by the judge to decide whether to keep the minor in detention until trial. If the judge finds that the minor is a clear and present danger to the community or himself, the juvenile may continue to be held in detention for the maximum time allowed under chapter 39. FLA. H.B. 91 §§ 1, 5(5)(a), 5(5)(a)(1), 5(8), Sp. Sess. of Nov. 1 to Nov. 11, 1993.

of the past felonies involved the use or possession of a firearm, will be tried as an adult unless the state attorney gives written reasons for not doing so.¹⁷⁵ This law is unnecessary. Florida law already permits a sixteen- or seventeen-year-old to be direct-filed into adult court upon the discretion of the prosecutor. Moreover, a prosecutor can also move for a waiver into adult court of a juvenile above the age of fourteen where trial as an adult would be in the best interest of the child or society.¹⁷⁶ Thus, juveniles who are on their fourth felony are usually tried as adults, as long as they are at least fourteen years old. By mandating that the state attorney file a motion to transfer, upon receipt of which motion the judge must issue the order, the legislature has only succeeded in taking the waiver decision away from the judge.

The 1994 Regular Session also witnessed the introduction of numerous bills aimed at taking discretion away from both juvenile court judges and prosecutors.¹⁷⁷ These bills ranged from authorizing the state attorney to file informations contemplating adult sanctions against certain juveniles based on the type or number of crimes committed by that juvenile in the past,¹⁷⁸ to lowering the age for juvenile court jurisdiction¹⁷⁹ and finally to authorizing law enforcement agencies to release the names of juveniles taken into custody for felonies and misdemeanors.¹⁸⁰ These measures are clearly the legislature's response to the public's

175. FLA. H.B. 91 § 8, Sp. Sess. of Nov. 1 to Nov. 11, 1993.

176. See *supra* part III.A1, III.A2(b).

177. Diane Hirth, *Juvenile Justice Legislation Favors Tough Punishment*, SUN SENTINEL, Mar. 8, 1994, at 11A; Tim Nickens, *Reform Bill: 3 Felonies Turn Youths to Adults*, MIAMI HERALD, Feb. 24, 1994, at 8B; Diane Hirth, *Session to Focus on Crime Legislators to Hear Cures For Violence*, SUN SENTINEL, Feb. 6, 1994, at 1A.

178. FLA. S.B. 2280, 1994 2d Reg. Sess. (requiring that a suspected child felon of any age be transferred for prosecution as an adult if he or she has been adjudicated delinquent for two or more separate prior offenses that would be felonies if committed by an adult); FLA. S.B. 1902, 1994 2d Reg. Sess. (authorizing the state attorney to file an information against a juvenile with previous felony adjudications if his or her current offense is classified under state law as capital felony or a life felony); FLA. H.B. 2099, 1994 2d Reg. Sess. (authorizing the state attorney to file an information on a child, regardless of age, who has previously been found to have committed six or more felonies); FLA. H.B. 1571, 1994 2d Reg. Sess. (authorizing the state attorney to file an information on a 14- or 15-year-old if charged with arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated assault, murder, manslaughter, unlawful throwing or discharging of a bomb, armed burglary, aggravated battery, lewd or lascivious assault or act in the presence of a child, or carrying or using a firearm during a felony).

179. FLA. S.B. 1306, 1994 2d Reg. Sess. (changing the age at which a child may be charged as an adult from 14 to 12; lowering the maximum age at which a person is considered a child for purposes of juvenile delinquency proceedings from 18 to 14). FLA. S.B. 266, 1994 2d Reg. Sess. (changing the maximum age for juvenile classification for delinquency proceedings to 16 years of age; changing court jurisdiction to 17 years of age for delinquent acts and 19 years of age for serious or habitual offenders).

180. FLA. H.B. 1737, 1994 2d Reg. Sess. (authorizing law enforcement agencies to release the names of juveniles taken into custody for offenses that would be felonies or misdemeanors if committed by adults).

growing fear of juvenile crime, and the media's overexaggeration of it.¹⁸¹

The political need to do "something," even if that something has not been successful in the past, is on the minds of legislators who are facing reelection. However, these recent bills are not only unnecessary, but they are also ineffective at deterring juvenile crime. Juveniles have been waived, direct-filed, and indicted into adult criminal court for many years,¹⁸² yet the crime rate has not decreased. In fact it has increased.¹⁸³ These get-tough measures are based on the notion that the risk of being prosecuted as an adult will deter juveniles from engaging in criminal acts.¹⁸⁴ There is, however, no evidence that this premise is valid. Indeed, a recent study by the Center for the Study of Youth Policy concluded: "At present, we possess no compelling evidence that either enhanced prosecution or stiffer penalties can prevent or control violent and serious youth crime."¹⁸⁵

In addition, kids tried in adult court generally receive lower sentences than adults.¹⁸⁶ A nationwide study of children sentenced as adults found that the majority of these children were either fined or placed on probation.¹⁸⁷ "In Florida, around one-half of the children waived into adult court in 1990-1992 received probation."¹⁸⁸ Many reasons have been set forth to explain why this occurs: A jury may be more likely than a judge to acquit a juvenile, a minor released on bail rather than held in pretrial detention is less likely to plead guilty and age often counts as a mitigating factor.¹⁸⁹ Juveniles actually sentenced as adults only spend about two years or less in prison because of Florida's overcrowded prison system.¹⁹⁰ In most cases this is less time than they

181. See FLA. H.B. 91, Sp. Sess. of Nov. 1 to Nov. 11, 1993, regarding legislative intent:

Whereas the love affair between juveniles and firearms has reached an all-time high here in Florida, and . . . it is the will of the legislature and all Floridians that parental involvement, accountability, and responsibility become the key to solving our existing broken juvenile criminal justice system, and . . . it is the will of Floridians all across this great state of ours that juveniles who violate laws pertaining to the illegal use of firearms be dealt with in a swift and certain and severe manner . . .

182. See *supra* part II.B.

183. See *supra* notes 1-3 and accompanying text.

184. See, e.g., Diane Hirth, *Juvenile Bills Draw Warnings Judges: Adult Prisons Won't Help Youngsters*, SUN SENTINEL, Mar. 9, 1994, at 1A; Linda Kleindienst & Ardy Friedberg, *Department For Juvenile Crime Ok'd*, SUN SENTINEL, Mar. 10, 1994, at 1A.

185. Laura Murphy Lee, *No: Avoid Simplistic Solutions*, A.B.A. J. Mar. 1994, at 47.

186. A.B.A. Presidential Working Group on the Unmet Legal Needs of Children and their Families, *America's Children At Risk*, July 1993, at 65 [hereinafter A.B.A. Working Group].

187. Feld, *supra* note 82, at 501.

188. A.B.A. Working Group, *supra* note 186, at 65.

189. Jan Costello, *Rejuvenation. How to Reform Juvenile Court*, CAL. LAWYER, Oct. 1993, at 65.

190. Hirth, *supra* note 177.

would spend in a juvenile facility where they could be getting treatment and counseling.¹⁹¹ Although these get-tough measures allow juveniles to be "tried" as adults, there is no guarantee that they will be sentenced as adults. However, the 1994 Legislative Session did not introduce any bills to address this issue.

B. *Sentencing of Juvenile Offenders*

After a juvenile has been tried and convicted as an adult, with the exception of a juvenile found to have committed an offense punishable by death or life imprisonment,¹⁹² the court may still impose juvenile sanctions.¹⁹³ The suitability of adult sanctions is determined by the court at a hearing after reviewing a predisposition report prepared by the Department of Health and Rehabilitative Services ("HRS"),¹⁹⁴ and by looking at six enumerated criteria in the statute.¹⁹⁵ The criteria include the seriousness of the offense to the community and whether the child should be sentenced as an adult to protect the community, whether the offense was committed in a violent manner, whether the offense was against persons or property, the maturity of the child, any past criminal record, the prospects for adequate protection of the public, and the likelihood of reasonable rehabilitation if the child is assigned to the services

191. Because juvenile court has jurisdiction over the juvenile only until he is 19 years of age, 17-year-olds can receive a maximum of 2 years, 16-year-olds a maximum of 3 years, and 15-year-olds a maximum of 4 years. FLA. STAT. § 39.022(4)(a). The exception to this is that the juvenile court may retain jurisdiction over a serious or habitual offender until the age of 21. FLA. STAT. § 39.022(4)(b).

192. *See Duke v. State*, 541 So. 2d 1170 (Fla. 1989) (holding that a child of any age who is convicted of a life felony, defined as an offense punishable by life imprisonment or death, should be sentenced as an adult pursuant to FLA. STAT. § 39.02(5)(c)(3)). Under the current statute, the trial and sentencing requirements of 39.059(7) apply to waivers and direct-filing cases. *See* FLA. STAT. § 39.022(5), 39.052(2).

193. FLA. STAT. § 39.059(1) (1993) provides:

(1) A child who is found to have committed a delinquent act or violation of law may, as an alternative to other dispositions, be committed to the department for treatment in an appropriate program for children outside the adult correctional system, be placed in a community control program, be classified as a youthful offender, or be classified as a serious or habitual juvenile offender pursuant to 39.058.

See also Duke v. State, 541 So. 2d 1170 (Fla. 1989) (holding that a convicted juvenile felon is not subject to youthful offender status and not subject to the enumerated sentencing criteria). By statute, a youthful offender may be placed on probation or incarcerated in a county facility, a department probation and restitution center, or a community residential facility. The court also has the option of imposing a split sentence, whereby the youthful offender is incarcerated and then placed on probation. Finally, the court may commit the offender to the department. FLA. STAT. § 958.04(b)-(d).

194. FLA. STAT. § 39.059(7)(a) (1993).

195. FLA. STAT. § 39.059(7)(c) (1993).

for delinquent children.¹⁹⁶ Under the Act, any decision to impose adult sanctions must be in writing and the court must render specific findings of fact and enumerate the reasons for the decision after evaluating each of the above criteria.¹⁹⁷ On their face, the criteria appear to grant broad dispositional alternatives to judges dealing with juvenile defendants, however, there remain a number of concerns regarding this statute.

First, trial courts have failed to properly employ the six-part test.¹⁹⁸ Although the Florida courts of appeal have overturned these improper decisions, the trial courts' reluctance to follow the criteria, either through defiance or ignorance, stresses the same problem as is seen with the waiver criteria: Trial judges can, and do, arbitrarily give more weight to one factor than others if they favor treating juveniles as adults. The juveniles' only recourse is the appellate courts. In 1993, the Supreme Court of Florida decided two cases which may eliminate the trial courts' inconsistency in applying the sentencing criteria.

In *Troutman v. State*,¹⁹⁹ the Supreme Court of Florida addressed the question of whether a trial court must consider each of the statutory criteria required under sections 39.059(7)(c) and (d) when sentencing a juvenile as an adult, and, if so, whether the resultant findings must be contemporaneously reduced to writing.²⁰⁰ The court had to resolve the conflict between the First District Court of Appeals previous decision in *Troutman*,²⁰¹ and those appellate courts which were following *Rhoden v. State*.²⁰² Troutman, a sixteen-year-old, was charged with kidnapping to facilitate a felony, grand theft of a car, and aggravated assault with a

196. *Id.* These criteria are almost exactly like the criteria required under *Kent* for judicial waiver. See *Kent v. United States*, 383 U.S. 541, 566-67 (1965).

197. FLA. STAT. § 39.059(7)(d) (1993).

198. See, e.g., *Martin v. State*, 547 So. 2d 998 (Fla. 1st DCA 1989) (holding that there must be some written indication, either in the form of a sentencing order or a transcript, that the court considered each of the six criteria); *Murphy v. State*, 546 So. 2d 1157 (Fla. 5th DCA 1989) (holding that a judge cannot make notations on a checklist in order to comply with Sec. 39.111; specific written findings of fact and reasons for the decision must be made and signed by the court); *Ervin v. State*, 561 So. 2d 423 (Fla. 3d DCA 1990) (holding that failure to write an opinion or specify actual findings of fact is reversible error); *Youngblood v. State*, 560 So. 2d 409 (Fla. 5th DCA 1990) (holding that the court must consider all six factors and must track them using nonconclusory language and must provide specific findings of fact and reasons for each); *Trueblood v. State* 610 So. 2d 14, 15 (Fla. 1st DCA 1992) (holding that the trial court's oral statement that the juvenile continued to break the law because he had not been properly punished in the past, and that "he didn't know what else to do" but to impose adult sanctions, does not amount to specific findings of fact).

199. 630 So. 2d 528 (Fla. 1993).

200. *Id.*

201. 603 So. 2d 608, 609 (Fla. 1st DCA 1992) (upholding the trial court's decision that the criteria were sufficiently considered when the written order and sentencing transcript were read together).

202. 448 So. 2d 1013, 1017 (Fla. 1984) (holding that Sec. 39.111(6)(d) requires that a decision to impose adult sanctions must specifically consider all statutory criteria and must be in writing),

deadly weapon.²⁰³ Troutman was direct-filed into adult court and pleaded no contest to false imprisonment and grand theft.²⁰⁴ Although the predisposition report recommended that Troutman be sentenced as a juvenile and placed on community control, and although he had no prior record, the trial judge concluded that juvenile sanctions were inadequate.²⁰⁵ In his written order, the trial judge only briefly addressed the six sentencing criteria with reference to the factual content of the case.²⁰⁶ On appeal, after looking at the sentencing transcript and the written order filed three days later, the court found compliance with the six criteria of section 39.059.²⁰⁷

Relying on the *Rhoden* decision, which recognized a juvenile's right to be treated differently from an adult under the juvenile justice statutory scheme,²⁰⁸ the supreme court held that the trial court must give an individualized determination of how a particular juvenile fits within the criteria, and furthermore, that any decision to impose adult sanctions must be in writing.²⁰⁹ In deciding that each criterion must be independently considered, the court noted that the statutory language of section 39.059 mandates adherence to the criteria.²¹⁰ In a footnote to the opinion, Justice Barkett noted that strict adherence is especially important in

followed in, e.g., *Flowers v. State*, 546 So. 2d 783 (Fla. 4th DCA 1989); *Bell v. State*, 598 So. 2d 203 (Fla. 4th DCA 1992); *Myers v. State*, 593 So. 2d 609 (Fla. 5th DCA 1992).

203. 630 So. 2d 528, 528-30.

204. *Id.*

205. *Id.* The trial judge stated: "[Troutman] has no prior record, but I think this is a very serious case. . . . I'm concerned about the ability of Juvenile sanctions in this case to impress upon Mr. Troutman the results of this type of action. So I am going to sentence him as an adult." *Id.* at 530 n.3.

206. In addressing the criteria, the trial judge wrote:

The court imposed adult sanctions in lieu of juvenile sanctions in this case for the following reasons:

1. The primary charge in this case, false imprisonment, was committed in a premeditated and willful manner and was extremely serious, given that the Defendant perpetrated the false imprisonment with the use of a scissors, which could be considered a deadly weapon. The Defendant is just shy of his seventeenth birthday; however, he demonstrates a certain street sophistication beyond his chronological age.
2. The Defendant has only one prior contact with the juvenile authorities, which was not a serious offense.
3. The period of time available to impose juvenile sanctions is insufficient to adequately protect the community and to afford the Defendant sufficient counseling to ensure his rehabilitation.
4. The imposition of juvenile sanctions are insufficient to impress upon the Defendant the seriousness of this type of action.

Id. at 530 n.4.

207. 603 So. 2d 608, 609 (Fla. 1st DCA 1992).

208. 448 So. 2d 1013, 1017.

209. 630 So. 2d 528, 531 (Fla. 1993).

210. *Id.*

cases like *Troutman*'s where the defendant is direct-filed into adult court, because it is "the only formal means of ensuring that the juvenile is being properly treated as an adult."²¹¹

The court explained its decision requiring a written decision by comparing the criteria for juvenile sentencing with two other sentencing schemes where statutes require written findings—findings in support of a death sentence and the reasons for departing from sentencing guidelines.²¹² The court noted that anytime trial judges treat individuals more harshly than is customary, statutory safeguards need to be strictly maintained.²¹³ Because the written findings in *Troutman*'s case were issued three days after sentencing, they were held to be untimely and therefore inadequate.²¹⁴ The court said, however, that even if they had been timely, the findings would still have been inadequate because they were merely conclusory.²¹⁵

It is evident from this opinion—and others which simply reverse on the absolute failure to comply with the law²¹⁶—that section 39.059(7) requires the trial court to review all six of the subsections, make factual findings with regard to each, and then set forth in writing the reasons for the decision to impose adult sanctions.²¹⁷

Troutman leaves unclear just what would make the trial court's decision to impose adult sanctions not "conclusory." In his dissent, Justice Overton disagreed with the court's finding that the transcript of the sentencing hearing and the written order did not, together, meet the requirements of section 39.059.²¹⁸ He said that the majority's strict construction of the statute would "only increase problems in the operation of an already overburdened juvenile justice system."²¹⁹ On the other hand, strict construction of a statute is necessary to ensure that the juvenile receives some kind of analysis as a juvenile, especially in instances

211. *Id.* at 531 n.5.

212. *Id.* at 532.

213. *Id.*

214. *Id.*

215. *Id.*

216. *See supra* note 198.

217. Since *Troutman*, several district courts have reversed trial courts sentencing of juveniles as adults based on its holding. *E.g.*, *State v. Veach*, 630 So. 2d 1096 (Fla. 1994) ("On authority of *Sirmons* and *Troutman* we approve the First District's decision in *Veach*."); *Dennis v. Florida*, 630 So. 2d 605 (Fla. 1st DCA 1993) (holding that "Dennis was sentenced without the protections of *Troutman*"); *Glidewell v. State*, 630 So. 2d 1152 (Fla. 5th DCA 1993) (reversing due to the trial court's failure to make written findings as required by Sec. 39.059(7) and *Troutman*); *Skipper v. State*, 630 So. 2d 652 (Fla. 1st DCA 1994) (holding that trial court committed reversible error by sentencing the juvenile as an adult without meeting the requirements of 39.059(7), state conceding error based upon *Troutman*).

218. 630 So. 2d 528, 533 (Fla. 1993).

219. *Id.*

like *Troutman*, where there is no judicial waiver hearing, only a direct-file.²²⁰ Failure by the trial court to consider the statutory criteria before sentencing a juvenile ignores the rehabilitative function of the juvenile justice system and abrogates the juvenile's right to be treated differently from an adult. An overburdened court system should not be the reason that a juvenile is denied the protection he or she is entitled to by statute.

A second concern with the sentencing of juvenile offenders is whether application of these criteria can ever be waived by the juvenile. In *Sirmons v. State*,²²¹ the court reviewed whether a juvenile who enters into a negotiated plea agreement that allows the court to consider the imposition of either adult or juvenile sanctions, necessarily waives the requirement that the court consider the six criteria for sentencing as an adult under section 39.059(7).²²² Initially, the state filed a delinquency petition against Sirmons, a fifteen-year-old, alleging he had committed robbery with a firearm and discharged a firearm into an occupied building.²²³ Later, the state moved to waive juvenile court jurisdiction over Sirmons and to transfer him for trial as an adult.²²⁴ After a waiver hearing, he was transferred to adult court. Subsequently, Sirmons entered a plea of nolo contendere to the charges in exchange for a maximum prison sentence of nine years with a three year minimum mandatory sentence if he was sentenced as an adult.²²⁵ After the judge considered the presentence and predisposition report, he sentenced Sirmons. The court did not express in writing its specific findings of fact and its reasons for the decision to impose adult sanctions.²²⁶ On appeal, Sirmons' sentence was affirmed based on *Davis v. State*.²²⁷ In *Davis*, the Second District Court of Appeal had held that a negotiated plea agreement "obviated the need for the court to make the written findings and reasons for imposing adult sanctions on a juvenile defendant."²²⁸ The court, however, recognized a conflict with the Fifth District Court of Appeal in *Lang v. State*.²²⁹ *Lang* held that a juvenile entering into a negotiated plea agree-

220. See *supra* part III.A.2(b) regarding direct-files.

221. 620 So. 2d 1249 (Fla. 1993).

222. *Id.* at 1250.

223. *Id.*

224. *Id.*

225. *Id.*

226. *Id.* at 1251.

227. 528 So. 2d 521 (Fla. 2d DCA), *rev. denied*, 536 So. 2d 243 (Fla. 1988).

228. *Id.* at 522.

229. 566 So. 2d 1354, 1357 (Fla. 5th DCA 1990). Other District Courts of Appeal were also in conflict. See, e.g., *Hill v. State*, 596 So. 2d 1210 (Fla. 1st DCA 1992) (holding that a waiver of right to juvenile sentence must be knowing, intelligent and manifested in the record); *Toussaint v. State*, 592 So. 2d 770 (Fla. 5th DCA 1992) (holding that negotiated plea is not a waiver of the right to a juvenile sentence, and that requirement of specific findings by trial court applies to juvenile tried by direct information as well as transfer from juvenile division); *McCray v. State*,

ment may waive the right to have the court to make the required specific findings before imposing adult sanctions, as long as a waiver is apparent either in the plea agreement or on the record.²³⁰ In addressing the state's argument that Sirmons' plea was a waiver of his juvenile rights, since the validity of the plea recognized Sirmons' knowledge that the plea included the possibility the court may impose adult sanctions, the supreme court relied on its decision in *Rhoden*.²³¹ Because juveniles have "a right to be treated differently from adults," they have a right to have the court evaluate the criteria listed in 39.059.²³² The Florida Supreme Court held that since the legislature has mandated the court to provide factual findings and reasons in a written order, this must apply in all situations.²³³ The supreme court did say, however, that a juvenile can negotiate a plea waiving this right under the proper circumstances. Those circumstances include the trial judge informing the juvenile of the rights provided by the legislature under section 39.059, and the judge ensuring that the juvenile is "voluntarily, knowingly and intelligently waiving those rights."²³⁴ Applying this rule to the facts in *Sirmons*, the court found that the record did not reflect that Sirmons gave a knowing and intelligent waiver of his rights.²³⁵ Given the mandatory language of the statute, however, it is doubtful that consideration of these criteria can ever be waived, despite the juvenile's intent.²³⁶

Once an appellate court finds that a trial court did not adequately follow the criteria, the case typically is remanded for proceedings in

588 So. 2d 298 (Fla. 2d DCA 1991) (holding that waiver or right to be sentenced as juvenile must be knowing and intelligent and the right is not waived where the defense counsel suggests the juvenile be sentenced as an adult); *Sullivan v. State*, 587 So. 2d 599 (Fla. 5th DCA 1991) (holding that written findings of fact and reasons for imposing adult sentences are not waived by a juvenile's no contest plea and thus, are still required to sustain the adults sentence); *Tighe v. State* 571 So. 2d 83 (Fla. 5th DCA 1990) (holding that a transcript which is part of the record might satisfy the statute if it contained findings of fact and reasons for the decision, as opposed to being part of the written record); *Taylor v. State*, 534 So. 2d 1181 (Fla. 4th DCA 1988) (holding that it is possible to waive the statutory criteria, however, they were not waived in this case).

230. While the appeal was pending to the Florida Supreme Court, the Second District Court of Appeal receded from its holding in *Davis*. In *Croskey v. State*, 601 So. 2d 1326 (Fla. 2d DCA 1992) (en banc), the court held it reversible error for a court to sentence a juvenile as an adult pursuant to a negotiated plea agreement without making the statutorily required findings under § 39.059(7)(c) or finding that the juvenile voluntarily, knowingly and intelligently waived those rights.

231. 620 So. 2d 1249, 1252 (Fla. 1993).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. See Justice Barkett's concurrence which provides: "It is the intent of the legislature that the foregoing criteria and guidelines shall be deemed mandatory . . . [t]hus I question whether the mandatory findings required in the statute can ever be waived by a juvenile, notwithstanding a juvenile's attempt to do so." *Id.* at 1252 (emphasis in opinion).

accordance with the appellate court's opinion.²³⁷ Some judges have suggested, however, that the appellate court remand to the trial court with instructions to impose juvenile sanctions. For example, in *Tighe v. State*,²³⁸ Judge Dauksch suggested applying the rule in *Pope v. State*²³⁹ to juvenile sentencing remands.²⁴⁰ In *Pope*, the court held that when an appellate court reverses for departing from sentencing guidelines because there were no written reasons presented, the court must remand for resentencing with no possibility of departure from the guidelines.²⁴¹ This was a result of the court's concern that, on remand, lower court judges would search for reasons to justify a departure sentence. Thus, the *Tighe* court did not want sentencing judges to search for "new" reasons to sentence a juvenile as an adult.²⁴² Judge Dauksch indicated that "in a remand to the trial court with instructions to impose juvenile sanctions . . . the same potential problems mentioned in *Pope* could arise in situations like this case."²⁴³ In *Troutman*, however, Justice Barkett distinguished *Pope* by stating that, in sentencing juveniles as adults, trial judges are limited to evaluating specific criteria whereas, in cases like *Pope*, trial judges could legitimately search for "new reasons."²⁴⁴ Justice Barkett's distinction is valid, however, only insofar as judges whose decisions have been reversed adhere to the specific procedures set forth in the statute. Given their reluctance to do so in the first instance, it may not be fruitful to count on their compliance on remand.

The sentencing criteria reflect the legislature's recognition that prosecutorial discretion, and perhaps even judicial discretion, may be abused in some cases, and may result in dire consequences. Yet, the most scrupulous adherence to the juvenile sentencing structure may have consequences just as dire, as long as the programs and facilities designed to receive these young offenders remain inadequate or insufficient in number.

C. Facilities and Programs for Juvenile Offenders

Before one can solve the problems of trying and sentencing juvenile offenders, one must understand what actually happens to juveniles once they are disposed of either as "delinquents" in the juvenile justice system or as "convicts" in the adult system. One of the main reasons

237. See *supra* notes 198, 217 regarding cases that have been so disposed.

238. 571 So. 2d 83 (Fla. 5th DCA 1990).

239. 561 So. 2d 554 (Fla. 1990).

240. 571 So. 2d 83, 84.

241. *Id.* at 556.

242. *Id.*

243. 571 So. 2d 83, 84.

244. *Troutman v. State*, 630 So. 2d 528, 532 n.6 (Fla. 1993).

that the public is fed up with the problem of juvenile crime and has adopted a get-tough attitude is that it feels that past efforts at rehabilitating juveniles have not worked and continue to fail as evidenced by the high number of new arrests each year and the high percentage of rearrests.²⁴⁵

When one looks at the types of juveniles being arrested and rearrested, it is easy to see that the conditions which contribute to their commission of crimes include negative peer pressure, lack of education and an absence of other more stable and constructive forces such as families, neighborhoods and churches.²⁴⁶ These juveniles are exactly the kind of children who need educational and vocational skills and counseling so that they do not feel a need to commit crimes in order to survive on the streets or make a living.

Presently, about two thousand spaces are available in Florida programs for juvenile offenders.²⁴⁷ In Dade County there are only about two hundred spaces available at any one time for juvenile offenders adjudicated delinquent and ordered to a juvenile facility.²⁴⁸ In 1991 over 250 juveniles were adjudicated delinquent in Dade County for violent crimes, and approximately one thousand for property crimes.²⁴⁹

Currently, the placement facilities for juvenile offenders in Dade County range from "Level Two" facilities to "Level Eight" facilities. "Level Two" is the lowest level of placement for juvenile offenders. These facilities usually contain minor offenders who commit first and second degree misdemeanors²⁵⁰ and who do not represent a threat to public safety because their patterns of offending are infrequent and non-violent.²⁵¹ These facilities are nonresidential and community-based programs.²⁵²

In Dade County, there are two types of "Level Two" facilities. The Associated Marine Institutes ("AMI") is a nonprofit organization that utilizes a marine science environment to promote social rehabilitation

245. See, e.g., Diane Hirth, *Session to Focus on Crime Legislators to Hear Cures for Violence*, SUN SENTINEL, Feb. 6, 1994, at 1A.

246. Judge Tom Petersen, *Juvenile Justice and Captain Scott's Children: Searching for a Solution to an Urban Dilemma* 22 (Oct. 30, 1993) (unpublished report, on file with the author).

247. Woodrow W. Harper, Department of Juvenile Justice Program Office, *Summary of Juvenile Justice Programs* (Dec. 30, 1993) (unpublished report, on file with the author).

248. *Id.* at 4-5.

249. Statistics from The Metro Dade Department of Justice Assistance, *Dade Justice Improvement Model* (on file with the author).

250. *Id.* at 6. Examples of these misdemeanors include: resisting arrest with or without violence, FLA. STAT. § 843.02 (West Supp. 1994); criminal mischief, FLA. STAT. § 806.13 (1994); petit theft, FLA. STAT. § 812.014(2)(d) (1994); unnatural and lascivious behavior, FLA. STAT. § 800.02 (1992).

251. Harper, *supra* note 247, at 6.

252. *Id.*

and educational and vocational instruction.²⁵³ This program is open to both males and females from ages fifteen to eighteen.²⁵⁴ AMI's current total capacity is about seventy juveniles. Other Dade County "Level Two" programs are Treatment Alternative for Youth Centers (TRY). Juveniles attend these centers during the day for intensive individual family and group counseling and also participate in educational and vocational programs.²⁵⁵ Miami TRY has the capacity for about twenty juveniles.²⁵⁶

"Level Four" facilities are residential, community-based commitment programs for low-risk offenders.²⁵⁷ The length of stay at these facilities can range anywhere from one month to six months.²⁵⁸ One "Level Four" facility exists in Dade County: the Dade Group Treatment Home, which houses about twenty-five juveniles.²⁵⁹ Juvenile offenses at this level range from first-degree misdemeanors to third-degree felonies.²⁶⁰ In addition, first-time second-degree felony offenders may be placed here if the court determines that they do not represent a risk to the public safety.²⁶¹

"Level Six" facilities are moderate-risk, residential, community-based commitment programs in which juveniles spend from three to nine months.²⁶² The offenders placed here have committed second- and third-degree felonies and represent a moderate risk to public safety.²⁶³ These facilities are usually physically secure.²⁶⁴ In Dade County, there are currently four "Level Six" halfway houses, each holding about twenty juveniles.²⁶⁵

"Level Eight" facilities, the highest risk residential programs, are physically secure.²⁶⁶ Offenders placed here have had prior adjudications for major property offenses, assaultive felony offenses and may have

253. *Id.* at 7.

254. *Id.* at 4.

255. *Id.* at 7.

256. *Id.* at 4.

257. *Id.* at 6.

258. HRS computer printout on current programs for juvenile offenders (Feb. 1993, on file with the author).

259. See Harper, *supra* note 247, at 4.

260. *Id.* at 6. Usually the first-degree misdemeanor offenders have performed unsuccessfully in their prior programs. *Id.* Third-degree felonies include: theft of a motor vehicle, FLA. STAT. § 812.014(2)(c)(4) (Supp. 1994); aggravated assault, FLA. STAT. § 784.021(2) (1992).

261. Harper, *supra* note 247, at 6. Second degree felonies include: dealing in stolen property, FLA. STAT. § 812.019(1) (Supp. 1994); loitering or prowling, FLA. STAT. § 856.021 (1976); assault, FLA. STAT. § 784.011(2) (1992); aggravated battery, FLA. STAT. § 784.045 (1992).

262. Harper, *supra* note 247, at 6.

263. *Id.*

264. *Id.*

265. *Id.* at 4.

266. *Id.* at 6.

had numerous prior placements in lower-level programs.²⁶⁷ The time spent in these facilities ranges anywhere from six to twelve months.²⁶⁸ Currently there is one "Level Eight" facility in Dade County. Eckerd Youth Development Center is the only Florida training school, other than Dozier Training School in northern Florida, that provides counseling, treatment, vocational and educational training, and work programs for violent juvenile offenders.²⁶⁹ Eckerd, located in Okeechobee, Florida, is the facility used for southern Florida generally, and currently has a capacity of about 130 beds.²⁷⁰ In addition to the training schools, there are other Level Eight programs located outside Dade County, including the Broward Control Treatment Center (a residential treatment program for girls),²⁷¹ the Elaine Gordon Sex Offender Program,²⁷² boot camps,²⁷³ serious habitual offender programs,²⁷⁴ and the Hillsborough Alternative Residential Program.²⁷⁵ Generally, space for juvenile offenders from Dade County is limited, if it exists at all.

Programs which provide diversion from judicial handling offer alternatives to these commitment programs. One of these programs is the Juvenile Alternative Services Program ("JASP") which provides community service, restitution, and individual or family counseling.²⁷⁶ Community control is another alternative to judicial handling.²⁷⁷ Under this program, an HRS Delinquency Case Manager provides supervision and support services to juvenile offenders to make sure that their sanctions are carried out.²⁷⁸ In 1992, almost twenty-eight thousand juveniles received community control.²⁷⁹

Tom Petersen, a Dade County Juvenile Court Judge, explored the problem of juvenile crime and the ways in which Dade County currently

267. *Id.*

268. *Id.*

269. *Id.*

270. *Id.* at 5; *see also* Siegel, *supra* note 52, at 695-96 for a brief history on the Eckerd Youth Development Center.

271. Harper, *supra* note 247, at 5. The capacity of this facility is about 20. *Id.*

272. *Id.* The capacity for juveniles at this facility is about 20. *Id.*

273. *Id.*; *see also* FLA. STAT. § 39.057 (3) (1993):

A child may be placed in a boot camp program if he is at least 14 years of age but less than 18 years of age at the time of adjudication and has been committed to the department for: (a) a capital, life, first degree or second degree felony; or (b) a third degree felony with two or more prior felony adjudications, of which one or more resulted in a residential commitment.

274. Harper, *supra* note 247, at 6. The capacity is about 20 spaces. *Id.*

275. *Id.* at 6. The capacity in this facility is about 20. *Id.*

276. *Id.* at 12.

277. *Id.* at 14.

278. *Id.*

279. *Id.*

deals with its juvenile offenders.²⁸⁰ He focused mainly on the effects of the juvenile justice system on the children of the approximately nine hundred families who live in the Scott Housing Project, which has the highest crime rate in Dade County.²⁸¹ Three out of four males from this project have been referred to the juvenile justice system at least once.²⁸² Judge Petersen chose the Scott Housing Project based on his belief that "if the juvenile justice system is to exist, it must work in places like the Scott homes."²⁸³ After interviewing various kids in the project, Judge Petersen came to the conclusion that the current community programs funded by Dade County, such as the Juvenile Justice Alternative Sanctions Systems ("JASS"), do not work.²⁸⁴ This may be due to the fact that the kids rarely participate in this program, and, when they do, they fail to participate successfully.²⁸⁵ The community control programs are also ineffective because the contacts between the juveniles and the inner city workers are infrequent and, if they do occur, violations such as skipping school are not reported to the courts because of all the time it takes to actually get back into court.²⁸⁶ If the juveniles are called back into court, in most instances nothing happens to them anyway.²⁸⁷

Judge Petersen also received responses from the interviewees about the commitment programs, like the halfway houses. Those interviewed responded that they were "essentially worthless experiences."²⁸⁸ In contrast, youths that participated in programs such as the Dade Marine Institute reported very positive experiences.²⁸⁹

Interviews with those kids who were involuntarily transferred to adult court supported Judge Petersen's hypothesis that referral into the adult system generally results in

'a four-and-two' (meaning four years incarceration in a youthful offender adult facility followed by two years probation) and that since one serves at best one-third of an incarceration sentence, with credit for time served while awaiting sentencing, the youth is back on the street in about a year.²⁹⁰

In addition, because these youths return from the adult court with the

280. Petersen, *supra* note 246.

281. *Id.* at 6.

282. *Id.*

283. *Id.* at 4.

284. *Id.* at 10-12. JASS is a diversion program that is an alternative to dealing with juveniles through the courts.

285. *Id.* at 100.

286. *Id.* at 11.

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.* at 12.

same problems that got them there in the first place (i.e., no skills, education or job), they end up violating their probation by stealing to survive, and thus find themselves back in jail again.²⁹¹

After concluding that the juvenile justice system does not work—where in fact it must if its existence is to be justified²⁹²—Judge Peterson put forth many positive ideas to improve the juvenile justice system in Dade County.²⁹³ His ideas include:

- 1) Making a shift from the mental health model which dominates *all* public delinquency programs to a sociological model that would identify peer pressure and educational deficits as the primary causes of delinquency (especially in the inner city).²⁹⁴
- 2) Making a shift from community probation programs that make kids perform tasks such as community service and cleaning parks to programs where time would be spent with educational tutors;²⁹⁵
- 3) Having more of the nonresidential programs that have proven to be highly successful (such as AMI) available at earlier stages, rather than only making them available to higher level offenders.²⁹⁶ To accomplish this, more programs of this type would have to be implemented and the current ones would need to be expanded;²⁹⁷ and,
- 4) Having more locked facilities for violent juvenile offenders who need to reside in secure facilities for the safety of the public.²⁹⁸

Instead of giving up on the juvenile justice system as most people have (admittedly for valid reasons in its current state of existence), more money should be invested in clever and innovative ways to help juveniles put their lives back on track. An example of a program that has proved to be effective in Dade County is the TROY (“Teaching and Rehabilitating Our Youth”) Community Academy.²⁹⁹ To compel attendance, this Academy is housed in two trailers outside the Juvenile Justice Center.³⁰⁰ In addition to attending school from nine to five o’clock, the juveniles work one day a week at the Teen Cuisine Restau-

291. *Id.*

292. *Id.*

293. *Id.* at 22-34.

294. *Id.* at 23.

295. *Id.* at 24.

296. *Id.* at 26.

297. *Id.*

298. *Id.* at 30. Because the facility in Okeechobee, Florida is the only locked facility, juveniles sent to halfway houses think that these houses are a joke because they are “only half locked.” *Id.* at 17. This leads the public to believe that the kids are being taken off the streets when in fact they are not. *Id.* at 30. The average juvenile stays at the halfway house about 27 days before running away. At any given day, 37% of the juveniles are on runaway status. *Id.* at 17.

299. *Id.* at 30.

300. *Id.* at 28.

rant in the Juvenile Justice Center, and can earn from thirty to fifty dollars per week.³⁰¹ The school contains mostly hard-core juveniles, currently has about an eighty percent attendance rate and has proved to be highly successful.³⁰² This success can be attributed to the motivated staff and the challenging curriculum that makes the juveniles want to attend. Moreover, since it is right outside the juvenile court, the court knows immediately if they do not come.³⁰³

Although the failure of the juvenile justice system can be attributed to no more than the lack of attention, money, and hope given to it in the past, critics seeking to abolish it remain.

IV. CRITICISM OF THE JUVENILE JUSTICE SYSTEM AND THE ARGUMENT FOR ITS ABOLISHMENT

This desire to eliminate the juvenile justice system is not new. Since the 1970s both conservative and liberal commentators have criticized the continued existence of a separate legal system for juveniles.³⁰⁴ Some scholars have concluded that because the rehabilitative philosophy of the juvenile court system has started to fade, the juvenile justice system should also.³⁰⁵ Some seek to eliminate juvenile court jurisdiction based on the offense,³⁰⁶ while others seek to eliminate the system based on the offender's age.³⁰⁷

Barry Feld, who has written numerous articles on the juvenile justice system,³⁰⁸ has proposed abolishing juvenile courts on the theory that it would be more desirable for both juveniles and society.³⁰⁹ He argues that because of the transformation of the juvenile court from "an informal, rehabilitative agency into a scaled-down, second-class criminal

301. *Id.*

302. *Id.*

303. *Id.*

304. *E.g.*, Martin Guggenheim, *A Call to Abolish the Juvenile Justice System*, CHILDREN'S RTS. REP., June 1978; Robert E. Shepherd, Jr., *Challenging the Rehabilitative Justification for Indeterminate sentencing in the Juvenile Justice System: The Right to Punishment*, 21 ST. LOUIS U. L.J., 12 (1977).

305. *See* Feld, *supra* note 20.

306. Feld, *supra* note 82.

307. Barbara Boland & James Q. Wilson, *Age, Crime & Punishment*, 51 PUB. INTEREST 22, 34 (1978).

308. *E.g.*, Barry C. Feld, *Juvenile Court Meets The Principle of Offense: Legislative Changes in Juvenile Waiver Statutes*, 78 J. CRIM. L. & CRIMINOLOGY 471 (1987); Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference it Makes*, 68 B.U. L. REV. 821 (1988); Barry C. Feld, *Juvenile Court Legislative Reform and the Serious Young Offender: Dismantling the Rehabilitative Ideal*, 65 MINN. L. REV. 167 (1981); Barry C. Feld, *Reference of Juvenile Offenders for Adult Prosecution: The Legislative Alternative to Asking Unanswerable Questions*, 62 MINN. L. REV. 515 (1978).

309. *See* Feld, *supra* note 20.

court, [there is no longer] any reason to maintain a separate punitive juvenile court whose only distinction is its persisting procedural deficiencies."³¹⁰ The procedural deficiencies that Feld speaks of result from holdings such as *Gault*, *Winship*, and *McKeiver*, which started the trend toward procedural safeguards for juveniles.³¹¹

Since *Gault*, most of the procedures of criminal courts are supposed to be employed in the juvenile court as well. "[B]oth courts apply the same laws of arrest, search, identification, and interrogatories to adults and juveniles, and increasingly subject juveniles charged with felony offenses to similar fingerprinting and booking processes as adults."³¹² Although, theoretically, the procedural safeguards in juvenile court resemble those protections afforded in adult courts, Feld argues that juveniles, in reality, rarely receive the justice that most adults insist upon.³¹³ He sees the deficiencies as emerging from four developments since *Gault*. Specifically, these developments are: (1) removal of status offenders; (2) waiving serious offenders; (3) increased punitiveness in sentencing; and (4) more formal procedures which have *transformed* the juvenile court, but not *reformed* it.³¹⁴

Professor Feld and other critics believe that if children were tried in criminal court, rationales would develop to give them special protection when guilt and punishment are ascertained.³¹⁵ These rationales would include giving a "youth discount" to juveniles tried in adult court so that they would invariably receive shorter sentences.³¹⁶ Further, the practice of expunging records, restoring civil rights and the common law's infancy defense (which presumes that children below the age of fourteen lack criminal capacity), would serve to protect juveniles more fully than the juvenile court does presently.³¹⁷

Other scholars have responded to this "procedural deficiency" argument by stating that the disparity in procedural and constitutional protection between adult and juvenile courts is not enough to justify its abolishment.³¹⁸ If juveniles were to be tried in adult courts it is possible that their immaturity and vulnerability would not be taken into account

310. *Id.* at 403.

311. See *supra* notes accompanying part II.A. for a discussion on *Winship* and *McKeiver* and the rights they have afforded to juveniles.

312. Feld, *supra* note 20, at 419.

313. *Id.* at 419-20.

314. *Id.* at 406.

315. See also Ainsworth, *supra* note 20, at 1131; Federle, *supra* note 20, at 50-51.

316. Feld, *supra* note 20, at 418-19.

317. *Id.* at 419-20.

318. See Irene M. Rosenberg, *Leaving Bad Enough Alone: A Response to the Juvenile Court Abolitionists*, WIS. L. REV. 163 (1993).

when sentences are determined and culpability is assessed.³¹⁹ Despite Feld's argument that the common law infancy defense still stands, it is doubtful whether courts would ultimately treat juveniles differently than adults. After all, trying a juvenile would hold little meaning if juveniles were given these enhanced safeguards.³²⁰

One procedural safeguard that has been struck down by the courts is the right to jury trial.³²¹ Because today a number of state laws grant this right independently,³²² and because relatively few trials by jury actually take place compared to the number of cases in which charges are filed, the right to a jury "ends up primarily being a chip to be used in the poker game of plea bargaining," and is, thus, not a major loss to juveniles.³²³ In the end, the few distinctions between adult and juvenile procedures become almost inconsequential since safeguards available in the criminal courts are often not upheld.³²⁴ These low levels of constitutional protections for adults seem insignificant when ninety percent of defendants plead guilty anyway.³²⁵

Barbara Boland and James Q. Wilson argue that the current two-track system (one for juveniles and one for adults) should be abolished, at least for serious repeat offenders.³²⁶ Their theory is based on the notion that having a two-track system means that the heaviest punishment falls on offenders at or near the end of their criminal careers.³²⁷ Since crime commission declines with age,³²⁸ this type of punishment rationale leaves adult prisoners feeling the criminal justice system is unfair and young offenders believing it is irrelevant.³²⁹ Boland and Wilson suggest that if there are going to be two tracks, these tracks should be defined by the nature of the criminal career and not the age of the offender.³³⁰ One system could deal with routine, intermittent offenders,

319. *Id.* at 175-80.

320. *Id.* at 175.

321. *Id.* at 169.

322. See *supra* note 47 and accompanying text.

323. *Id.* at 169.

324. *Id.* at 171-72.

325. *Id.* at 172.

326. Boland & Wilson, *supra* note 307, at 33.

327. *Id.* at 29.

328. They theorize:

That young males commit more crimes than older males is a well-established criminological fact, and there are any number of theories—most quite plausible, and few mutually exclusive—as to why this should be so. Youth is a period when energy is abundant, adult authority is suspect, and peer group reputation important. Young people develop passions and seek independence, expressing both in music, dress, sex, and occasionally crime.

Id. at 26.

329. *Id.* at 31-32.

330. *Id.* at 34.

or those with short criminal records, and the other with serious, intensive offenders.³³¹

Other critics of the juvenile justice system argue that a child has a *right to be punished*, not a right to be treated.³³² This notion is based on two premises: (1) that treatment does not work because there is no sure-fire way, short of killing someone, to stop a person from committing a crime; and, (2) the idea that a treatment and rehabilitation orientated justice system has great potential for abuse.³³³ Robert E. Shepherd Jr. bases his argument for a "right to punishment" on the notion that although the justification for a separate juvenile system is to avoid the harshness of the adult system, the emphasis on rehabilitation in the juvenile system has "fostered the imposition of indeterminate sentences."³³⁴ This has resulted in juveniles being incarcerated for much longer terms than adults who are sentenced for similar offenses. Shepherd also believes that punishment should be emphasized over treatment because the broad discretionary powers of the juvenile court overshadow the availability of its benefits.³³⁵ This argument, however, does not hold true everywhere. In Florida, overcrowding in both juvenile and adult facilities has resulted in juveniles rarely spending over a year in any facility, regardless of their crime.³³⁶

V. CONCLUSION

Get-tough mechanisms which subject juveniles to bearing full adult responsibility are clearly in conflict with the original rehabilitative philosophy of the juvenile justice system.³³⁷ These mechanisms are in conflict with theories about adolescence and furthermore, deprive juveniles of the special privileges to which they are entitled due to their status. The get-tough mentality strikes against generally accepted policies that have governed the legal and social status of juveniles. These policies gradually increase the opportunity for juveniles to exhibit independence and to exercise freedom and judgment.

The transition from childhood to adulthood is a developmental process. Children mature at different rates, in response to hereditary and

331. *Id.*

332. Sanford J. Fox, *The Reform of Juvenile Justice: The Child's Right to Punishment*, 25 Juv. JUST. 2 (1974); Shepherd, *supra* note 304.

333. Fox, *supra* note 332, at 3.

334. Robert E. Shepherd Jr. is director of the Youth Advocacy Clinic at the University of Richmond School of Law. See Shepherd, *supra* note 304, at 14.

335. *Id.* at 28.

336. See *supra* part III.A.3.

337. For a history on the adoption of "a right to treatment" for incarcerated juveniles, see Shepherd, *supra* note 304, at 21-25.

environmental factors. Some juveniles may be very mature at fourteen, while others are extremely immature at eighteen. Franklin E. Zimring has termed the gradual exposure of adolescents to adult rights as a "learning permit."³³⁸ The sequential phasing in of adult rights and related responsibilities based on age is how society moves youth toward adulthood and full maturity.³³⁹ It is evident that responsibility is not the product of a single event or act, but is a process based on a range of experiences.

For example, there are social rights that are not dictated by laws, but are instead formed within the family structure. These include such notions as the time for a juvenile to be home at night, the age a juvenile is able to start going out alone, dating, etc.³⁴⁰ There are also rights that are dictated by law. In Florida, a juvenile must be sixteen years of age or older to drive.³⁴¹ At fifteen, however, one can drive with a driver's permit under certain restrictions to become accustomed to the idea of driving.³⁴² In order to vote,³⁴³ sit on a jury,³⁴⁴ or purchase pornographic materials,³⁴⁵ one must be eighteen years of age. To purchase and consume alcohol one must be twenty-one years of age or older.³⁴⁶ All of these rights come about in sequence to allow adolescents to take on new tasks and accept responsibility gradually. Juveniles' rights are diminished because we have long recognized that they have diminished culpability.³⁴⁷ If we recognize this, we should also allow juveniles to have diminished accountability for their actions. They should be held responsible, but not to the same extent as adults.

In *Thompson v. Oklahoma*,³⁴⁸ the Supreme Court reiterated its view that less culpability should attach to a crime committed by a juvenile than to a crime committed by an adult.³⁴⁹ The Court confronted the question of whether the execution of Thompson, a fifteen-year-old who was convicted of first-degree murder and sentenced to death, would violate the Constitutional prohibition against the infliction of cruel and unusual punishment.³⁵⁰

338. FRANKLIN E. ZIMRING, *THE CHANGING LEGAL WORLD OF ADOLESCENCE* 89 (1982).

339. *Id.* at 108-10.

340. *Id.* at 108.

341. FLA. STAT. § 322.05 (Supp. 1994).

342. FLA. STAT. § 322.05 (Supp. 1994).

343. FLA. STAT. § 97.041(1)(a) (1993).

344. FLA. STAT. § 40.01 (1994).

345. FLA. STAT. § 847.012 (Supp. 1994).

346. FLA. STAT. § 562.111 (Supp. 1994).

347. *See, e.g.,* *Eddings v. Oklahoma*, 455 U.S. 104 (1982).

348. 487 U.S. 815 (1988).

349. *Id.* at 823.

350. *Id.*

In holding that the Eighth and Fourteenth Amendments prohibited the execution of a person who was under sixteen years of age at the time of his or her offense,³⁵¹ the Court relied on the notion that juveniles deserve reduced culpability.³⁵² The Court stressed that it had already endorsed, on several occasions, the proposition that less culpability should attach to a crime committed by a juvenile than to a comparable crime committed by an adult. To be sure, less experience, education, and maturity may make a teenager unable to evaluate the consequences of his or her conduct and more likely to be motivated by mere emotion or peer pressure than an adult.³⁵³ This lesser culpability makes the retributive purpose underlying the death penalty inappropriate for a fifteen-year-old.³⁵⁴ In making this determination, the Court relied on legislative history, designating the maximum age for juvenile court jurisdiction at no less than sixteen.³⁵⁵ The Court stated this "is consistent with the experience of mankind, as well as the long history of our law that the normal fifteen year old is not prepared to assume the full responsibilities of an adult."³⁵⁶

It is important to note that the mechanisms which permit the prosecutor to select the forum have not been reliable in preserving juvenile benefits for those who are entitled to them. Juvenile offenders enjoy special privileges which are not shared by adults. Along with the treatment function of the juvenile system, juvenile offenders are adjudicated "delinquent" rather than "convicted," thus a conviction is prohibited from appearing on their records and being subsequently used against them.³⁵⁷ Juveniles are also sheltered from publicity, due to the policy of confidentiality in the juvenile court.³⁵⁸ This confidentiality results in a diminished stigma and allows juveniles the opportunity to get a job and start over without their past mistakes being held against them. The possibility that juveniles might lose these benefits as a result of a waiver decision caused the Supreme Court to note in the *Kent* decision that this issue is "critically important," stating that there "is no place in our sys-

351. *Id.* at 838.

352. *Id.* at 834-35.

353. *Id.* at 835.

354. *Id.* at 836-37.

355. *Id.* at 824.

356. *Id.* at 824-25.

357. FLA. STAT. 39.053(4) (1994) provides: "An adjudication of delinquency by a court with respect to any child who has committed a delinquent act or violation of law shall not be deemed a conviction; nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication."

358. FLA. STAT. 39.045 (1994) provides: "The court shall preserve the records pertaining to a child charged with committing a delinquent act or violation of law until he reaches 24 years of age or reaches 26 of age if he is a serious or habitual offender . . . and may then destroy them."

tem of law for reaching a result of such tremendous consequences without ceremony—without hearing, without effective assistance of counsel, without a statement of reasons.”³⁵⁹

The juvenile system is not a place for every juvenile who engages in illegal behavior. Some misbehaving or rebelling juveniles do not belong in any court. Others, who commit major crimes of violence or who are serious chronic offenders, may be beyond the control of the juvenile court. Conceding that there are, and will continue to be, some juveniles who are not amenable to treatment, judicial waiver should be the means used for transferring a child to adult court. This will result in an individual analysis of each juvenile’s case to assure that the juvenile receives proper treatment so as to benefit himself and society.

“Getting smart” will require the public to become more aware of the laws that currently govern juveniles and to become more involved in the legislative process. Although outrage about juveniles committing crimes with more frequency is understandable, rather than just giving up on today’s juveniles by supporting a “lock-’em up” attitude, those concerned with the escalating crime rate should instead support preventative measures by looking at ways that will help ease juvenile crime rates. More important, the legislature needs to devote more money to crime prevention rather than to building more prisons. Such an investment in today’s youth and their families can make the need for future long-term incarceration programs unnecessary. Indeed, prisons have failed to return juveniles (and adult criminals), to the community as productive members of society. In sum, to direct money to the construction of new prisons is simply an investment that offers only a low-rate of return for those juveniles who desperately need “get smart” solutions to the problems of today’s juvenile justice system.

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359. *Kent v. United States*, 383 U.S. 541, 554 (1966).

* I dedicate this comment to my father and mother, who are the inspiration behind all of my accomplishments, and to Professor Johnathon Simon, whose in-depth knowledge of the criminal justice system proved invaluable in compiling this comment.