

A DJJ Success Story

Trends in Transfer of Juveniles to Adult Criminal Court



Florida Department of Juvenile Justice

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This is a summary of research contained in *Juvenile Transfer to Criminal Court Study: Final Report*, with additional comments. For the full text of this report, point your browser to

<http://www.djj.state.fl.us/statsnresearch/contractreports/juveniletransfers.pdf>

A DJJ SUCCESS STORY: TRENDS IN TRANSFER OF JUVENILES TO ADULT CRIMINAL COURT

Strengthening specialized treatment and deep-end capacity by the Florida Department of Juvenile Justice is showing positive results. Researchers have recently completed a 5-year study, summarizing the results in *Juvenile Transfer to Criminal Court Study: Final Report*. The researchers found that youth who receive sanctions and rehabilitation in Florida's juvenile justice system have a lower rate of recidivism than their counterparts who are transferred to adult criminal court. The group reported that when the youth did recidivate, those transferred to the adult system committed more felony offenses.

Transfer is more likely to aggravate recidivism than to stem it.

Juvenile Transfer to Criminal Court Study

In February 1995 the legislature's task force for the Review of Criminal Justice and Correctional Systems received a report from Drs. Charles Frazier, Donna Bishop, Lonn Lanza-Kaduce and Lawrence Winner titled *Juvenile Justice Transfer Legislation in Florida: Assessing the Impact on the Criminal Justice and Corrections Systems*. Relying on data from the Office of State Courts Administrator and the Department of Health and Rehabilitative Services, the researchers found that transferred youth were more likely to recidivate than youth retained in the juvenile system. They also recidivated at a faster rate, with more serious offenses and with a greater number of offenses.

State prosecutors and others were quick to point out that the data used in the research did not capture all of the information which differentiated transfer cases from those which remained in the juvenile system. In response, the Juvenile Justice Advisory Board of the Florida Legislature submitted a research proposal to the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention in 1996. The intent of the proposal was to replicate the study using case file reviews rather than automated data. The JJAB contracted with the authors of the previous research to conduct the study. The researchers were asked to take a closer look at offender and offense characteristics that would enable them to match youth retained in the juvenile system to those who had been transferred to adult criminal court more accurately.

The researchers first matched on seven criteria:

1. gender;
2. age;
3. race;
4. presenting offense;
5. number of current counts or charges;
6. number of previous juvenile referrals; and
7. most serious prior referral offense.

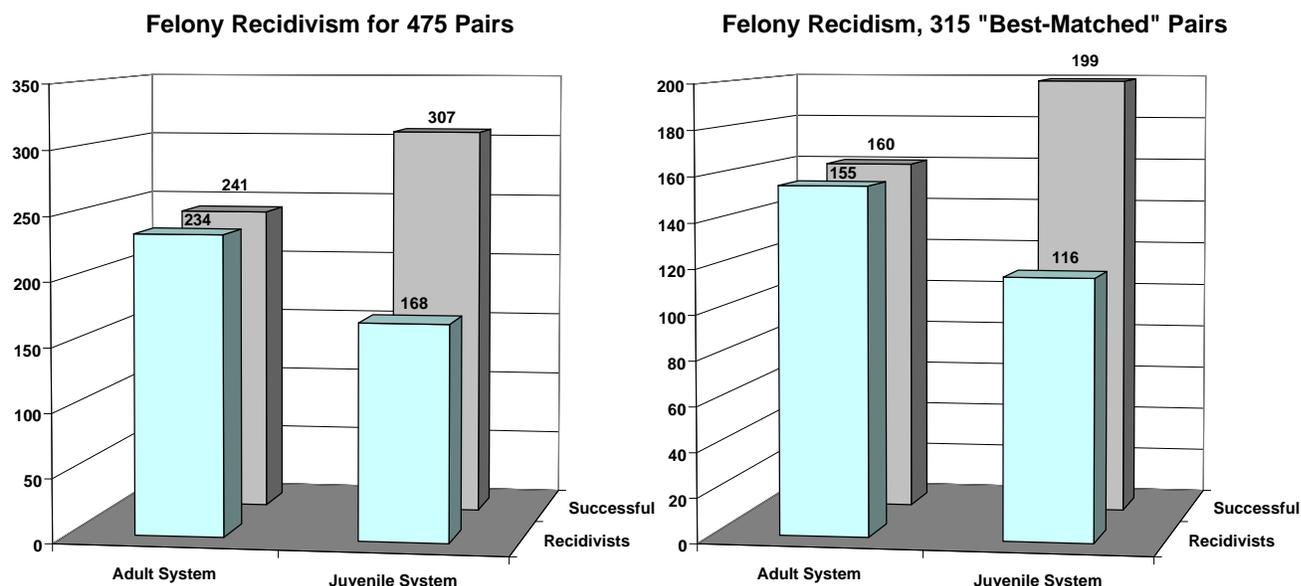
Initially obtaining 475 pairs of offenders, one a transfer to the adult system, the other retained in the juvenile system, the researchers conducted a careful review of court documents, police affidavits and DJJ case files to compile a complete history on each youth.

The case file review took into account such factors as weapon use, victim injury, property damage/loss, gang involvement, involvement with accomplices and co-defendants, the number of counts or charges involved, the complexity of the case (whether it was a single incident or stemmed from multiple incidents), intervening legal complications (failure to appear, new arrests, escapes, violation of conditions of release), and extra-legal problems (e.g., dropping out of school, functioning below grade level, learning disabilities, drug use/addiction, alcohol abuse/addiction, prior abuse history). Using these more specific criteria, the researchers refined the sample to 315 “best-matched” pairs, making the study the most methodologically sound of its type ever completed.

Research Results

Having obtained 315 pairs of best-matched offenders from both systems, the researchers compared their subsequent offending behavior. They followed the pairs to determine whether either member committed a felony after reaching 18 years of age (the pairs were matched on age, so the follow-up period was the same for both members of each pair).

Of the initial group of 475 pairs of offenders, 49% of the youth transferred recidivated, compared with 35% of those who remained in the juvenile system. Of the best-matched pairs, 49% of the youth transferred to adult court recidivated, compared with 37% of those who remained in the juvenile system.



The researchers also examined the 98 pairs in which both youth re-offended. Although in more than a third of these pairs re-offenses were of an equally serious nature, in 40% of the pairs, the transferred youth committed a more serious felony or violent crime, while in 24% of the pairs the youth retained in the juvenile system committed a more serious crime.

Development of Transfer Policy

Under the current laws of Florida, there are three means by which a youth may be transferred to criminal court where the juvenile may be prosecuted as an adult. These methods are:

- **Indictment by a Grand Jury.** The state attorney may seek a grand jury indictment against a child of any age who is charged with an offense punishable by death or life imprisonment.
- **Judicial Waiver.** There are two types of waivers, voluntary (upon request by the youth and the parent, guardian or guardian ad litem) or involuntary (upon request by the state attorney, or statutorily mandated). In either case, a hearing is held and the court decides where the case must be processed.
- **Direct Filing of an Information (Direct File).** State attorneys have discretion in circumstances detailed in Florida Statute to file charges against a juvenile directly in adult criminal court. In other circumstances, Florida laws mandate that the state attorney *must* file in criminal court.

Consequences for Youth

Once a youth has been transferred to criminal court and has been adjudicated as an adult, the youth must be handled thereafter as an adult for any subsequent violations of state law.

Involuntary waivers and direct file provisions apply mostly to youth who were 14 to 17 years of age at the time of the commission of specific serious crimes listed in statute. Mandatory direct files apply to youth 16 or 17 years of age at the time of a subsequent violent crime against a person, if they had previously been adjudicated delinquent for commission, attempted commission or conspiring to commit any of the following violent crimes against a person:

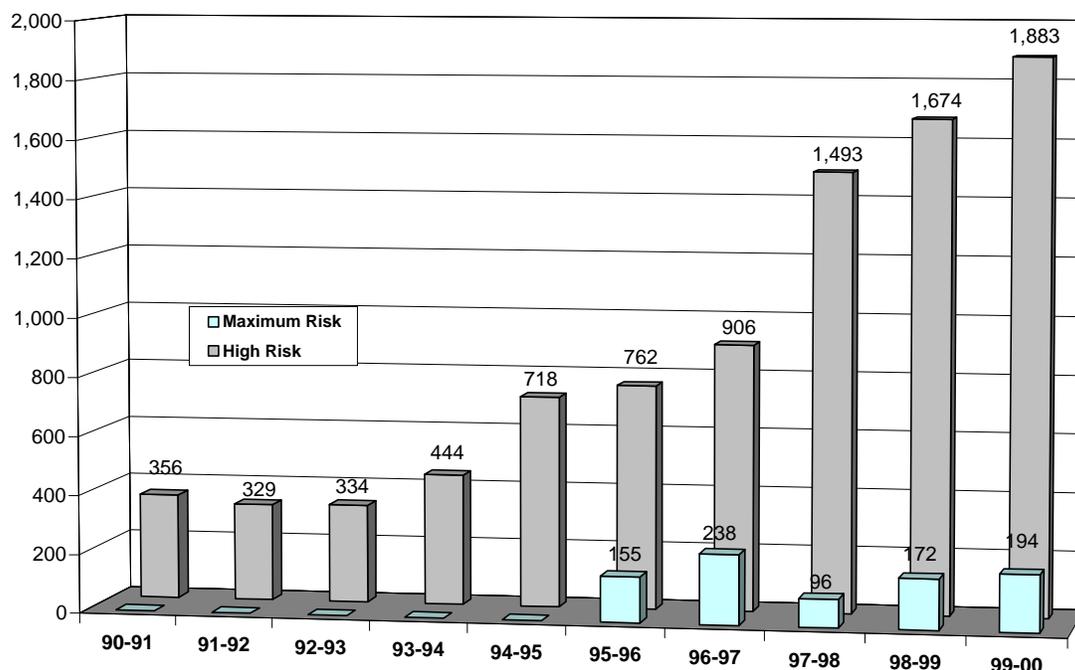
- murder;
- sexual battery;
- armed or strong-armed robbery;
- home-invasion robbery;
- carjacking;
- aggravated battery; or
- aggravated assault.

Indictment and waiver were established in Florida in the 1960's, and transfer provisions were broadened through the establishment of direct filing in 1978. The goal of these efforts was to ensure that juveniles who by the severity or chronicity of their offenses proved to be incorrigible were dealt with in the adult system, for their punishment and incapacitation. During the decade of the 1990's, juvenile crime increased faster than expansion of the Florida juvenile justice system could accommodate it. In an attempt to stem the tide of serious juvenile crime, Florida policy makers responded by enacting major reforms of the juvenile justice system, particularly in 1990 and 1994. These reforms contained shifts in policy that included:

- Separating the child welfare system from the juvenile delinquency system, creating a new Department of Juvenile Justice;

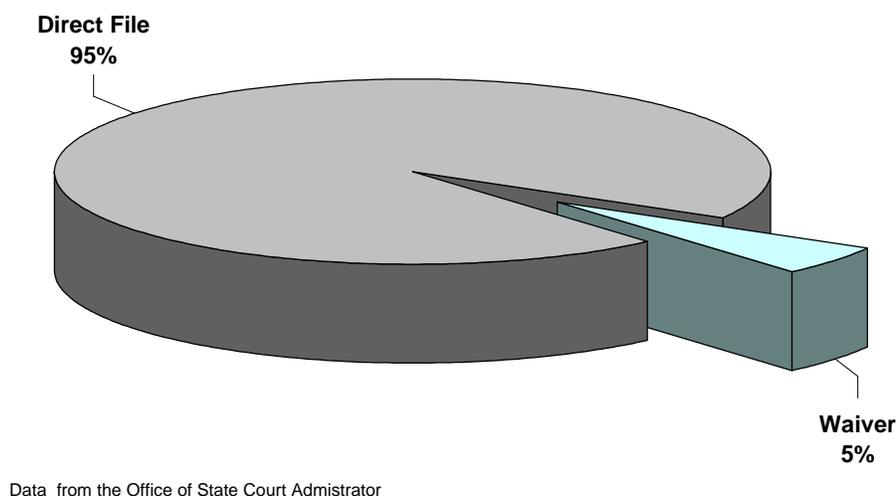
- Emphasizing the importance of public safety with a determined effort to provide swift, sure consequences for youth, while meeting their need for treatment and education;
- Increasing the funding for resources and facilities to accept more high-risk offenders with serious need for treatment; and
- Increasing the discretionary authority of state attorneys to transfer youth to the adult system.

High- and Maximum-Risk Capacity



Development of deep-end capacity, spurred by the *Bobby M* case, began in the early 1990's. Even with funding in place, there was a considerable lag in time until programs could be contracted, sited and opened to accept juvenile offenders. In the five years from 1990 to 1995, deep-end capacity doubled. In 1995, the new "Maximum Risk" programs came on line, and by the end of the decade, deep-end capacity had more than doubled once again.

While the development of capacity quietly pushed forward, Florida policy makers were engaged in the process of developing wider discretionary and mandatory waiver and direct file laws. This trend continued through the 2000 legislative session: The *Juvenile "Four Strikes"* law and the *"10-20-Life for Juveniles"* law are recent examples that provide for adult prosecution of juveniles who are serious chronic offenders, or who possess or discharge a firearm during the commission of a crime. As the pioneer of the direct filing system in the late 1970's, Florida has led the nation in transferring youth to the adult criminal court system mostly via direct file.

2000 Transfers by Waiver or Direct Filing

Florida has been widely recognized as the leader of the transfer experiment. During almost the entire last decade, Florida transferred between 6,000 and 7,000 juvenile cases to adult court, mostly through direct filings. The Bureau of Justice Statistics reported that Florida held more juveniles in prison in the year 2000 than any other state.¹

To better understand the factors contributing to the increased use of transfer, one part of the first phase of the *Juvenile Transfer* research involved telephone interviews of judges and prosecutors in the summer of 1997. The purpose of the survey was to examine the reasons behind their decisions to waive or direct file youth to adult court. Twenty-eight (28) prosecutors and 25 judges from throughout the state were surveyed about practices in their jurisdictions

What the researchers found was that the perceptions of judges and prosecutors were largely that the capacity of the juvenile justice system to deal with serious and chronic offenders was less than adequate.

- Less than a third of respondents believed that current DJJ program options for serious offenders were adequate.

¹ Beck, A. J. & Karbey, J. S. (2001). Prison and jail inmates at midyear 2000. Washington, DC: Bureau of Justice Statistics, Department of Justice.

- All but two of the prosecutors responding to the survey indicated that the availability of more severe punishments in the adult criminal courts was an important consideration in the transfer decision.
- Prosecutors tended to under-estimate the seriousness of sanctions received by juveniles in adult court. Juvenile prosecutors estimated that almost 25% of the transfers who were convicted go to adult prison as compared to an average estimate of only half that (12.5%) by criminal prosecutors. In 1995, about 74% of those who pled or were found guilty as adults were sentenced to incarceration (39% to prison and 35% to jail).²
- Only 36% of the prosecutors indicated that they believed changes (up to 1997) in DJJ programs have had an impact on practice in their circuits. They attributed this to the addition of Level 8 and 10 beds. Even a smaller portion (20%) of the judges had this perception.

Changing Perceptions of Juvenile Transfer

Policy-makers, legislators, judges, state attorneys, public defenders, private attorneys and others continue to ask whether transfer mechanisms are successful in effectively reducing crime and recidivism. The original study, *Juvenile Justice Transfer Legislation in Florida*, brought the effectiveness issue into open debate. Since then, other research has tended to confirm that earlier study, including the *Juvenile Transfers to Criminal Court Study: Final Report*.³

The mounting evidence of the greater effectiveness of juvenile treatment of serious offenders, coupled with the availability of deep-end juvenile resources may motivate prosecutors and judges to re-examine direct filing and waiver practices. The Department's development of high- and maximum-risk juvenile justice programs, featuring longer stays and specialized treatment, present prosecutors and judges with more satisfactory options, compared to what was available in 1997.

Innovative programs, such as the Miami-Dade Juvenile Sentencing Advocacy Project, encourage judges to use the "sentence-back" option: sentencing youth found guilty in criminal court back to the juvenile system for sanctions there. At least one evaluation study has found the practice successful in decreasing recidivism and obtaining rehabilitative treatment

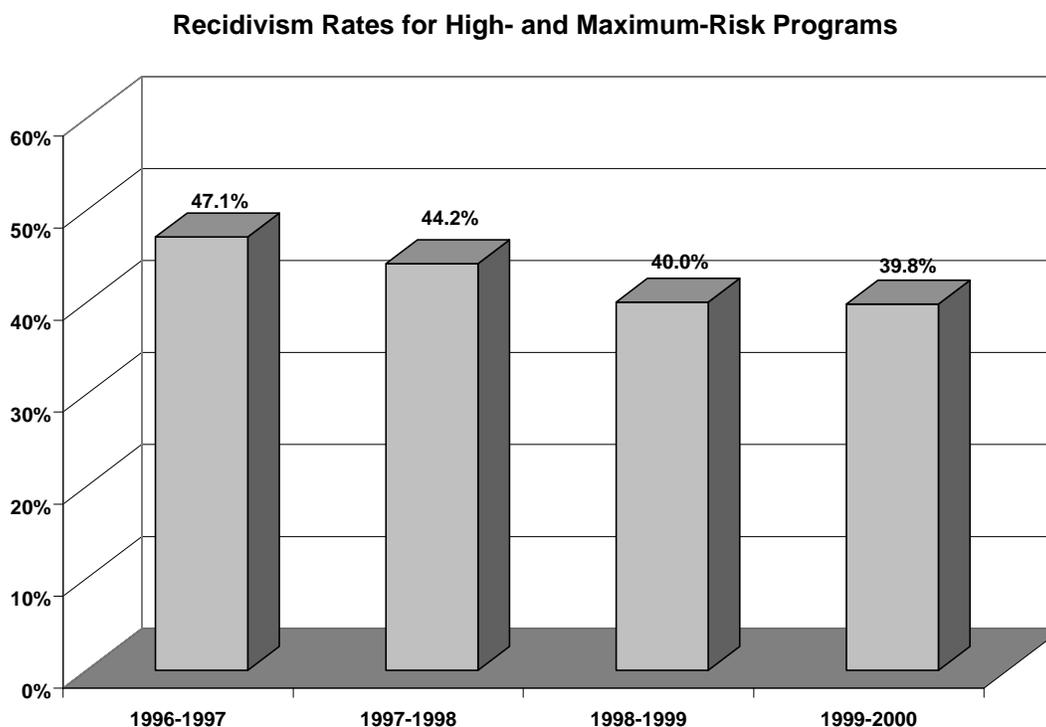
JSAP

The Juvenile Sentencing Advocacy Project (JSAP) of the Miami-Dade Public Defender's Office collected, analyzed and provided information that helped adult court judges make informed sentencing decisions that included sentencing youth back to the juvenile system. An evaluation study conducted by Dr. Craig Mason (then) of the University of Miami found that the number of youth receiving juvenile court sanctions increased 350% from 1998 to 1999, and that juveniles sentenced back offended less than half as often as their counterparts sentenced as adults. This was found to be true even when they had similar offense histories.

² Based on 1995 data from the Office of the State Courts Administrator.

³ See also Fagan, J. (1996). The comparative advantage of juvenile versus criminal court sanctions on recidivism among adolescent felony offenders. *Law & Policy*, 18, 77-114; and Mason, C. A. & Chang, S. (2001). *Re-arrest rates among youth sentenced in adult court*. Submitted to Miami-Dade County Public Defenders Office. Miami, FL: Miami-Dade Public Defender's Office <<http://www.pdmiami.com>>.

for these juveniles (See note 4, below). In addition, high-risk and maximum-risk DJJ programs have continued improvement in their ability to minimize recidivism to commend them.

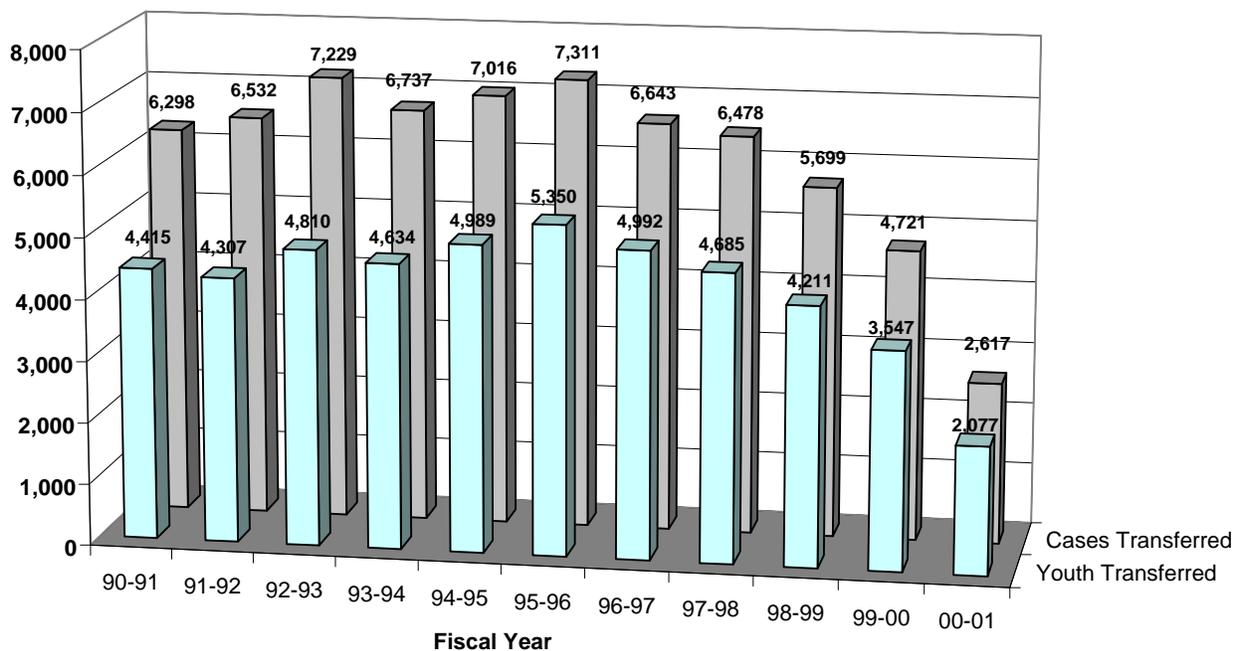


These positive outcomes are the result of the Department's emphasis on treatment and rehabilitation. These factors were reflected in interviews conducted by the *Juvenile Transfer to Criminal Court* researchers with the youth themselves. Youth cited longer time in deep-end programs and the greater intensity of skills training and treatment offered there as reasons why believed deep-end programs were more beneficial. In the following excerpt one youth discussed the differential impacts of probation (formerly community control) and the Level 10 program he was in at the time of interview:

I didn't like the community control counselor; I was trying to get over on the system. I needed somebody to stop me. I needed a program to teach me manners and stuff. . . . This place [Level 10] is good. They treat me right. They understand and talk to you when you're mad. They are helping to try to teach me to spell and read, and I am learnin'. Somebody needed to make me sit in my seat and do stuff. I didn't like it, but it was good for me. . . . I been here for eight months, I've made lots of changes. They taught me respect, to say, "sir, yes sir"--if you have a problem to talk it out, not use violence. They need to make more Level 10s.

Judging from recent changes in the numbers of youth being transferred, enhancements in deep-end capacity and treatment effectiveness have not escaped the attention of prosecutors responsible for direct filings. High-risk and maximum-risk juvenile correctional facilities have become a viable alternative to adult criminal sanctions. In Florida, the number of juveniles sent to the adult system has decreased dramatically to the lowest level in 15 years.

Youth and Cases Transferred to Adult Criminal Court



Most would agree that there will always be a small subset of youth who by the severity or chronicity of their offenses are best dealt with by the adult system. The findings of the *Juvenile Transfer to Criminal Court Study: Final Report*, the increase in deep-end capacity and specialized treatment, the continuing improvement of success rates, and the dramatic decline in the number of juveniles transferred to the adult system are evidence that Florida's juvenile justice system is gaining credibility among prosecutors and judges as an appropriate place to rehabilitate serious juvenile offenders.

For the full text of the report, *Juvenile Transfer to Criminal Court Study: Final Report*, point your browser to

<http://www.djj.state.fl.us/RnD>