

The Constitutionality of Florida's "Direct File" Policy: Transferring Children to the Adult Criminal Justice System via Prosecutorial Discretion



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Introduction

1911 – First form of Juvenile Justice System established in U.S.

- ❖ Based on premise that "children are different," and are thus entitled to different protections under the law
- ❖ Purpose of **rehabilitation** due to youth's diminished criminal culpability and heightened capacity for change

Many Supreme Court decisions have since upheld the fundamentals of the juvenile system, citing children's developmental, cognitive, and personal delays as reasons for offering youth special protections.

Roper v. Simmons (2005) **Graham v. FL (2010)** **Miller v. AL (2011)**

What is "Direct File" in Florida?

Despite the creation of the juvenile system to handle the distinctly sensitive nature of children, many U.S. states allow the transfer of youth from the juvenile system into the adult criminal justice system. 12 states and Washington D.C. have "Direct File" statutes, which grant state prosecutors the sole power to transfer children from the juvenile system to the adult criminal justice system. In Florida, there are no requirements or guidelines for this transfer decision, and it is ineligible for review by a judge or any independent body. Once a state prosecutor decides to charge the child as an adult, **nothing can be done to stop it**. The child is now considered an adult, and the only check on this power is the possibility of a judge deciding not to sentence the child with adult sanctions.

In Florida, **over 12,000 children** were transferred to adult court via Direct File within the last 5 years. Florida's transfer rate is **five** times higher than the national average and there are significant racial and geographic disparities as to which children will be transferred to adult court. **Research shows that the decision to Direct File cannot be explained by the seriousness of the offense and is alarmingly arbitrary in application (HRW.)**

"A child's odds of being prosecuted as an adult depend more on where he or she lives than what he or she has done" (SPLC)

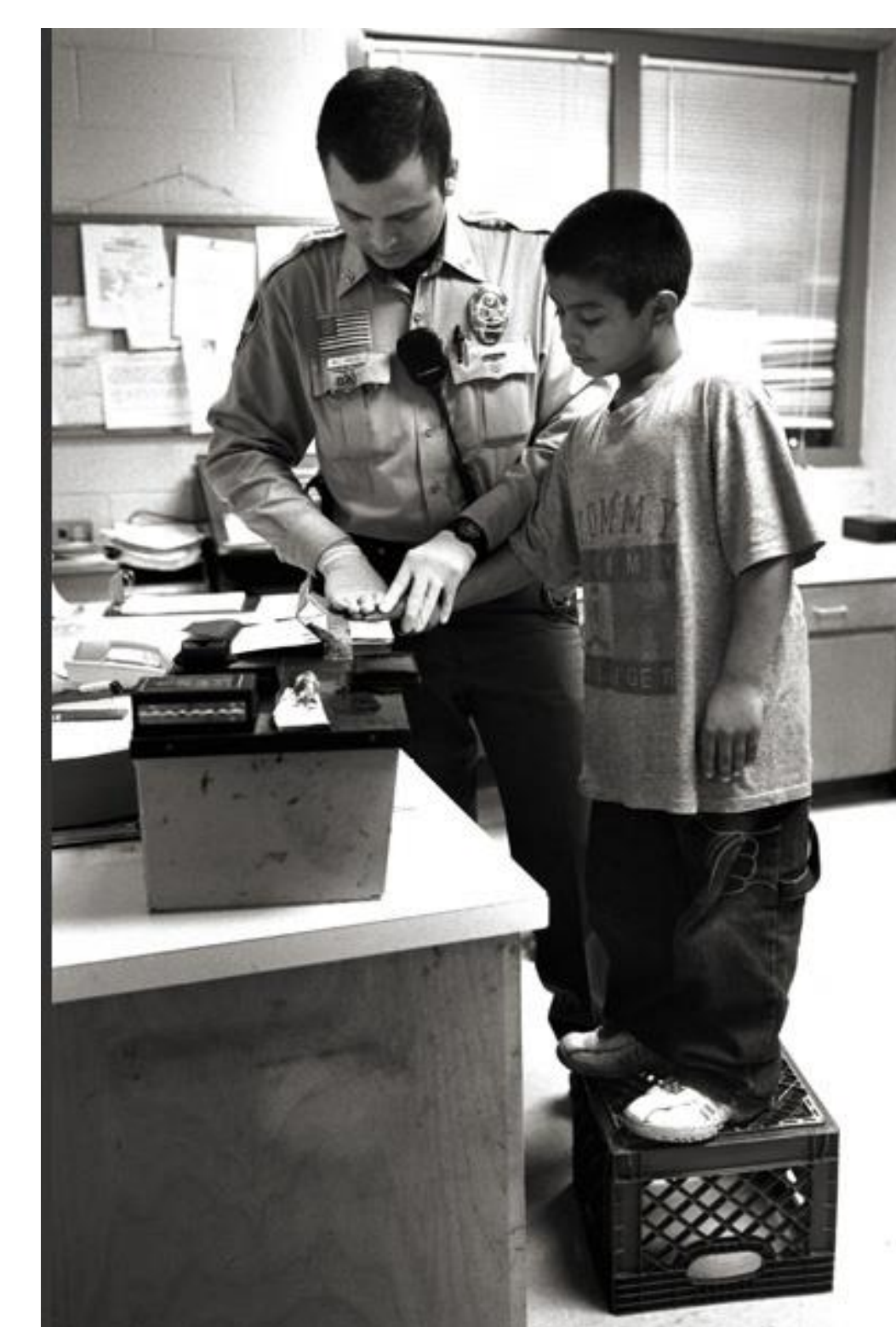
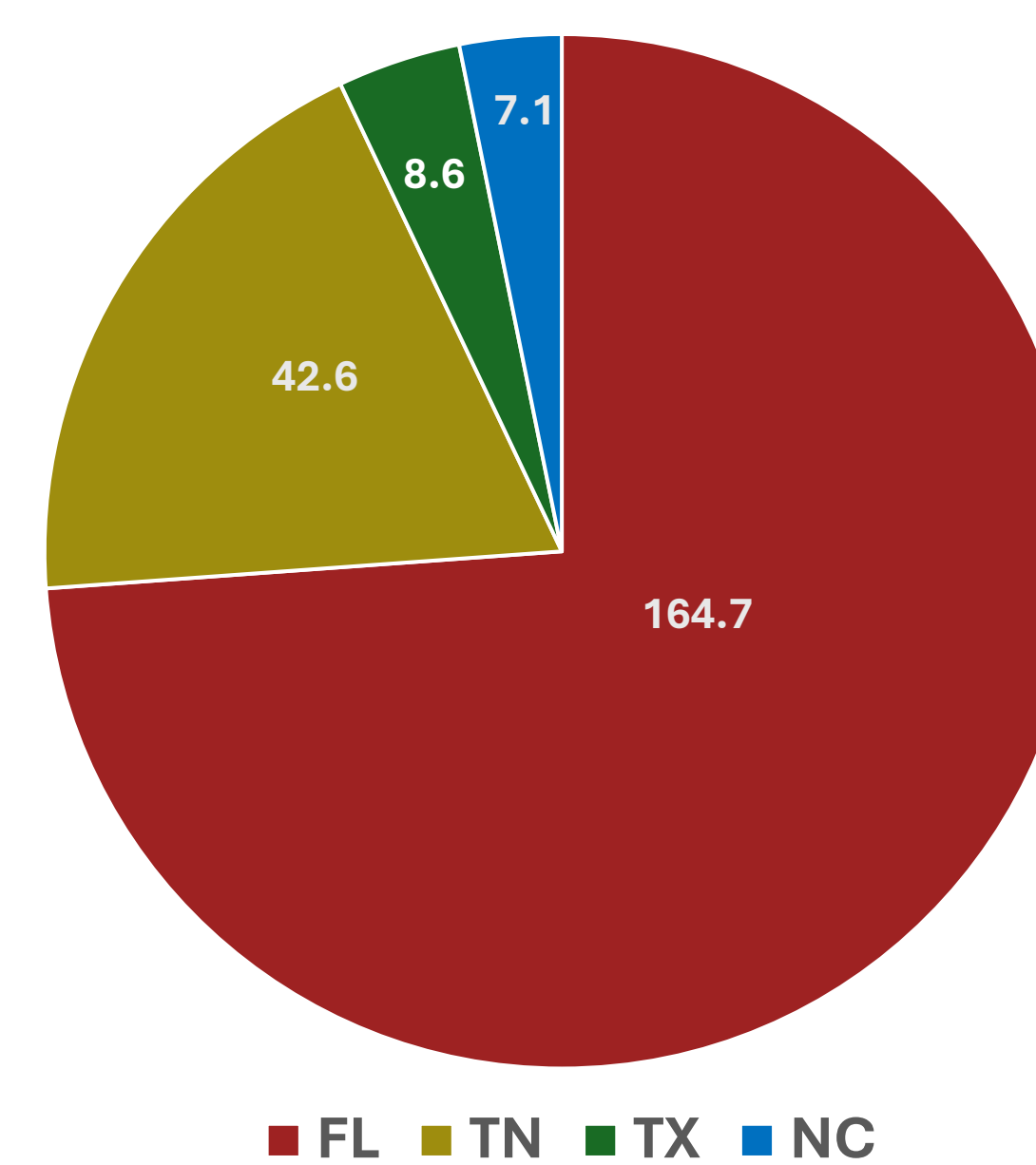
Florida's Geographic Disparities

Circuit	# of DF Youth
16 th	4
3 rd	11
7 th	39
1 st	125

2015-2016

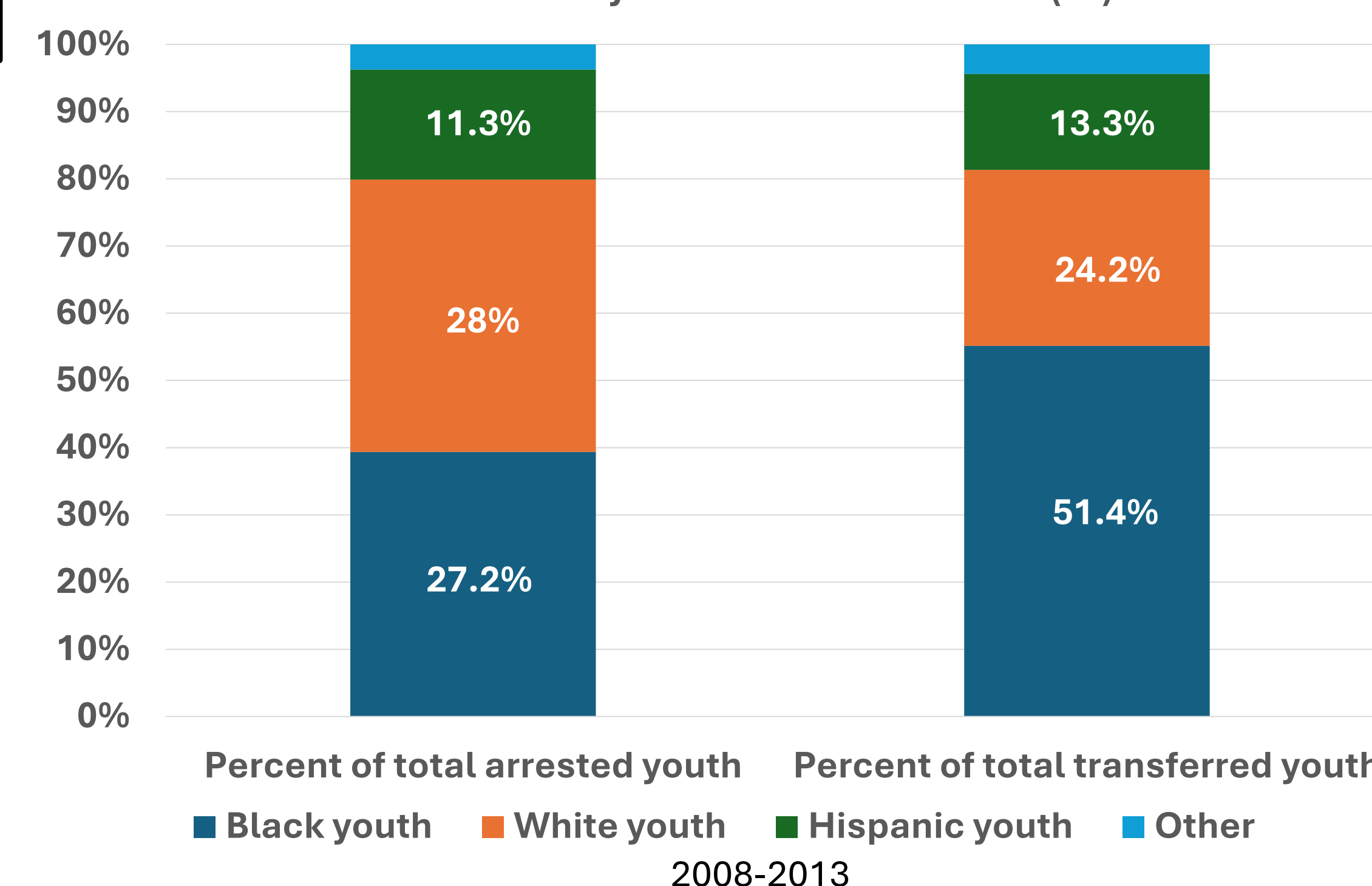
Florida's 67 counties have vastly different Direct File transfer rates. While population sizes vary among the state's judicial circuits, transfer rates are still highly disproportionate, raising concerns about the fairness of this policy's implementation.

Average Transfer Rate
(per 100,000 juveniles aged 10-17)



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Percent of male youth arrests & transfers (FL)



Constitutional Violations

Florida's implementation of Direct File violates several constitutional rights of our state's children. Given the arbitrary nature of adult transfer necessitated by granting state prosecutors sole discretion, children are transferred at drastically different rates. Much of the decision to Direct File seems to have more to do with race and geographic location than with the seriousness of the offense.

5th Amendment: Self-incrimination

The 5th Amendment of the U.S. Constitution guarantees the protection against self-incrimination for all citizens. Since state prosecutors often use the threat of Direct File to obtain guilty pleas from children, Florida youth are at threat of being coerced into self-incrimination out of fear of being prosecuted as an adult.

- ❖ **Malloy vs. Hogan (1966):** "When determining if state officers properly obtained a confession, one must focus on whether the statements were made freely and voluntarily without any direct or implied promise or improper influence"

8th Amendment: Cruel & Unusual Punishment

The Constitution's 8th Amendment protects against cruel and unusual punishment. Direct File often allows for extremely disproportionate sentencing as over 60% of cases transferred are for nonviolent felonies and children as young as 12 years old can face life sentences under this statute.

- ❖ **Harmelin vs. Michigan (1991):** upheld prohibition on sentencing that is "grossly disproportionate to the crime"

14th Amendment: Due Process

The 14th Amendment provides U.S. citizens the right to due process, which Direct File violates.

- ❖ **Procedural Due Process- Kent vs. U.S. (1966):** juvenile transfer waiver invalid in part because no statement of reasons was provided, and no judicial hearing was held. "Parens Patriae" does not give courts the right to procedural arbitrariness.
- ❖ **Substantive Due Process:** juvenile delinquent right to privacy is overridden when Direct File charges are imposed as juvenile record sealing no longer applies

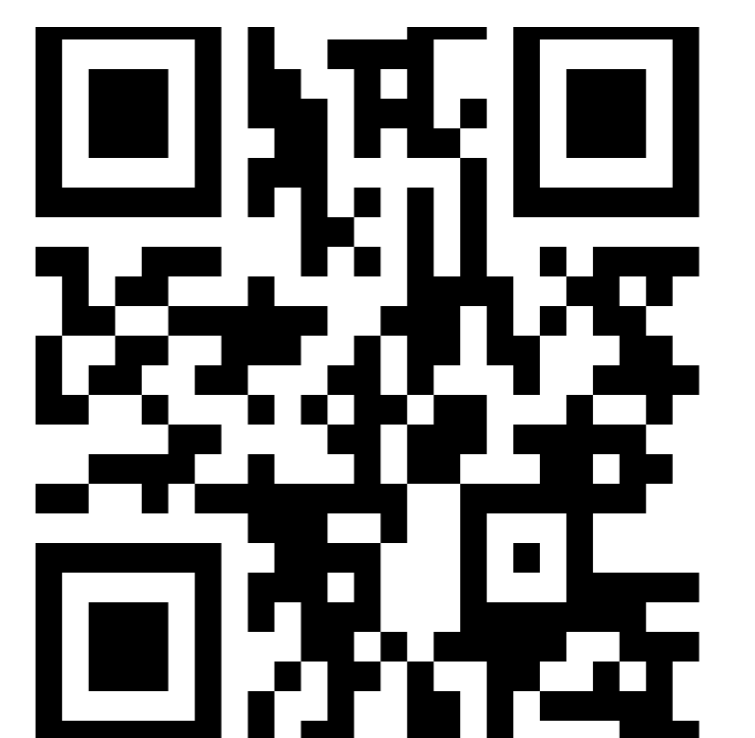
Alternatives to Direct File

Florida must do more to protect the rights of our youth. If juvenile transfers are permitted, this decision should not be only in the hands of state attorneys.

- ❖ Independent review via judicial hearings must be implemented
- ❖ Opportunity for "reverse waiver" must be reinstated
- ❖ More explicit requirements to qualify a child for transfer

Scan here to learn more

- ❖ EJI "All children Are Children" Report



References: *An Economic and Fiscal Analysis of Direct File Reform Proposals*, Human Rights Watch; *Branded for Life*, Justia, *Sunshine Statutes*, Southern Poverty Law Center