

**Constitution Revision Commission  
Declaration Of Rights Committee  
Proposal Analysis**

(This document is based on the provisions contained in the proposal as of the latest date listed below.)

Proposal #: P 73

Relating to: DECLARATION OF RIGHTS, Prosecution for crime; offenses committed by children

Introducer(s): Commissioner Coxe

Article/Section affected: Article I, Section 15.

Date: January 18, 2018

	REFERENCE	ACTION
1.	<u>DR</u>	<u>Pre-meeting</u>
2.	<u>EX</u>	<u></u>

**I. SUMMARY:**

Article I, Section 15(b) of the Florida Constitution authorizes the Florida Legislature to charge violations of law committed by juveniles as an act of delinquency rather than a crime. Pursuant to this power, the Florida Legislature has established a system of juvenile justice wherein juveniles charged with a crime may be adjudicated delinquent and receive criminal sanctions in the juvenile justice system rather than as an adult.

However, a juvenile has the right to be treated as a juvenile delinquent only to the extent provided by the Legislature, and the Florida Legislature has authorized the prosecution of juveniles in adult court for certain law violations. There are several mechanisms by which juveniles may be transferred from the juvenile justice system for adult prosecution including:

- Voluntary Waiver (does not require court approval if waiver is voluntary);
- Grand Jury Indictment (does not require court approval);
- Judicial Waiver (requires court approval);
- Direct File by a State Attorney (Discretionary or Mandatory)(does not require court approval);

The proposal requires state attorneys to petition the circuit court for approval if he or she decides to pursue prosecution of a child as an adult in a criminal court rather than in juvenile court. The court must consider the differences between children and adults in determining whether to approve the transfer request. In essence, the proposal requires a judicial waiver process for all transfers from juvenile court to adult court, abrogating transfer by direct file, voluntary waiver, and grand jury indictment.

If approved by the Constitution Revision Commission, the proposal will be placed on the ballot at the November 6, 2018, General Election. Sixty percent voter approval is required for adoption. If approved by the voters, the proposal will take effect on January 8, 2019. The proposal is silent with regard to retroactivity or applicability to pending cases.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

At common law, juvenile criminal offenders were treated the same as adult criminal offenders. In the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, recognizing that children were different from adults in terms of criminal culpability and needs, every state moved to establish a separate system of justice, commonly known today as juvenile justice systems. Juvenile justice systems treat crimes committed by juveniles as delinquent acts with the goal of diverting youth from potentially harsher punishments in criminal courts and encouraging rehabilitation based on the juvenile's individual needs.

Article I, Section 15(b) of the Florida Constitution authorizes the Legislature to establish a system of juvenile justice in Florida wherein children,<sup>1</sup> as defined by the Legislature, may be charged with a violation of law as an act of delinquency instead of crime and tried without a jury or other requirements applicable to criminal cases. Pursuant to this power, the Legislature has established a comprehensive juvenile justice system governed by the provisions of ch. 985, F.S. However, a juvenile charged in the juvenile justice system has a constitutional right to be tried in an appropriate court as an adult if a demand is made prior to an adjudicatory hearing in the juvenile court.

Of greatest constitutional import, as noted in *State v. Cain*, 381 So.2d 1361 (Fla. 1980), a juvenile has the right to be treated as a juvenile delinquent *only* to the extent provided by the Legislature, and in some circumstances the Legislature has authorized the treatment of juvenile criminal offenders as adults. Under such circumstances, a juvenile criminal offender may be transferred to adult court for prosecution.

### History of the Juvenile Justice System

#### Generally

Prior to the the 20<sup>th</sup> Century, juvenile criminal offenders were generally treated the same as adult criminal offenders.<sup>2</sup> America's juvenile justice system emerged in the late 1890s in response to dissatisfaction with a criminal court system that detained, tried, and punished children in the same manner as adults.<sup>3</sup> Early juvenile law generally grew from citizen concern for children who, lacking parental control, discipline, and supervision, were coming before the criminal court for truancy, begging, homelessness, and petty criminal activity.<sup>4</sup> Several states recognized the need for the government and courts to step in for the absent parent and control the behavior of children that, although not illegal, was considered undesirable by society.<sup>5</sup>

In 1899, Illinois created the first statewide system of juvenile courts through the Cook County Circuit Court with jurisdiction over cases of dependency, neglect, and delinquency. It took several

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<sup>1</sup> "Child" has been defined by the Legislature as any person under the age of 18 or any person who is alleged to have committed a violation of law occurring prior to the time that person reached the age of 18 years. s. 985.03(7), F.S.

<sup>2</sup> Except that children age 6 and younger could not be held liable for their actions, but all others were not distinguished from adults. See NATIONAL CONFERENCE OF STATE LEGISLATURES, *Adolescent Development & Competency: Juvenile Justice Guide Book for Legislators*, <http://www.ncsl.org/documents/cj/jjguidebook-adolescent.pdf> (last visited January 17, 2018).

<sup>3</sup> William W. Booth, "History and Philosophy of the Juvenile Court," *Florida Juvenile Law and Practice*, THE FLORIDA BAR, § 1.6: Origins of Concept, (14<sup>th</sup> ed.).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

decades for every state to enact legislation establishing a juvenile justice system, but by the mid-1900s, it had become widely accepted that children were inherently different from adults and should not be subject to the harsh treatment of the criminal justice system.<sup>6</sup> By 1945, juvenile court legislation had been enacted by all states and for use in the federal courts.<sup>7</sup>

Early juvenile courts implemented benevolent and paternalistic policies. The mere existence of the courts represented the belief that children should not be held solely and fully responsible for their actions. Instead, the courts acted to protect children and to maintain their best interests. The underlying goal of juvenile courts was to rehabilitate offenders through individualized justice, with the ultimate belief that children have greater capacity for rehabilitation. Dispositions reflected the preference for treatment over punitive measures. Juveniles rarely were transferred to criminal courts, although that option was possible.<sup>8</sup>

#### Development in Florida

In Florida, the Florida Constitution of 1885 embodied for the first time public concern about the separation of juveniles and adults in the criminal justice context. Article XIII, Section 2 of the 1885 Constitution provided:

A State Prison shall be established and maintained in such manner as may be prescribed by law. ***Provision may be made by law for the establishment and maintenance of a house of refuge for juvenile offenders***; and the Legislature shall have power to establish a home and work-house for common vagrants.

However, the Florida Constitution of 1885 did not create juvenile courts, instead vesting jurisdiction in other courts to try alleged law violators without regard to age. In 1911, the Legislature attempted to create a juvenile court through the use of county judges acting in an ex officio capacity in limited cases – those involving behavior problems of children that *did not* constitute law violations.<sup>9</sup> It was not until 1914, after an amendment to the 1885 Constitution, that separate juvenile courts were created.<sup>10</sup> However, the 1914 amendment did not affect the constitutional allocation of criminal jurisdiction, and thus neither the juvenile jurisdiction of the county court nor the jurisdiction of the separate juvenile court included cases of children accused of law violations.<sup>11</sup>

In 1950, the Florida Constitution was amended to define violations of law committed by children as “acts of delinquency” rather than as crimes. Article I, Section 15(b), delegated to the Florida Legislature the power to define which children would be subject to the jurisdiction of the court.<sup>12</sup> The Florida Juvenile Court Act of 1951 gave to the juvenile court exclusive original jurisdiction of proceedings in which a child was alleged to be dependent or delinquent. The principal effect

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<sup>6</sup> *Supra* note 2.

<sup>7</sup> *Supra* note 3.

<sup>8</sup> *Supra* note 2.

<sup>9</sup> William W. Booth, “History and Philosophy of the Juvenile Court,” Florida Juvenile Law and Practice, THE FLORIDA BAR, § 1.7: In General, (14th ed.).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

was to give to the juvenile court authority to hear all types of children's cases, including law violations, entirely outside of the adult system. The juvenile court's philosophy and purpose were, in part, "to protect society more effectively by substituting for retributive punishment methods of training and treatment directed toward the correction and rehabilitation of children who violate the laws..."<sup>13</sup>

#### Shift in Focus of Juvenile Justice Systems

Public sentiment regarding juvenile crime shifted drastically beginning in the 1980s due to rising crime rates, especially for homicides.<sup>14</sup> The increase in juvenile crime, accompanied by heightened media attention, prompted a shift from a sympathetic view of juveniles. Rehabilitative policies were considered inadequate due to high recidivism rates, and some serious offenders were viewed as unreceptive to treatment-oriented sentences.

Consequently, more punitive criminal justice policies began to replace rehabilitative goals, and the transfer of juveniles to adult courts became more common. Several states lowered the age at which juveniles could be within criminal court jurisdiction; many states eased the methods for transferring juveniles; and some states expanded the list of offenses for which a transfer is possible.<sup>15</sup>

In Florida, high-profile juvenile gun homicides gave impetus to many of the get-tough reforms in the Florida Juvenile Justice system during the 1990s. The 1994 Juvenile Justice Act<sup>16</sup> broadened the ability of state attorneys to direct file juveniles to adult court, and was further expanded in 2000 to mandate adult sentencing for some children as young as 14.<sup>17</sup>

#### **Juvenile Transfers to Adult Court**

Virtually every state has created processes in which juveniles can be transferred to adult court. While these processes vary, the National Conference of State Legislatures generally categorizes such processes into three groups:<sup>18</sup>

- **Judicial Waiver (Judicially Controlled Transfer)** - Judicial waiver laws allow juvenile courts to waive jurisdiction to adult court on a case-by-case basis. Cases in judicial waiver jurisdictions are originally filed in juvenile court, but may be transferred to adult court after the court holds a waiver hearing and finds the transfer is appropriate using statutory standards.<sup>19</sup>
- **Mandatory Direct File (Statutory Exclusion)** - Mandatory direct file laws grant adult courts exclusive jurisdiction over certain categories of cases involving juveniles. If a case falls

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<sup>13</sup> Section 39.20, F.S. (1951).

<sup>14</sup> *Supra* note 2.

<sup>15</sup> *Id.*

<sup>16</sup> Ch. 94-249, Laws of Fla.

<sup>17</sup> Ch. 2000-119, Laws of Fla.

<sup>18</sup> *Infra* note 23.

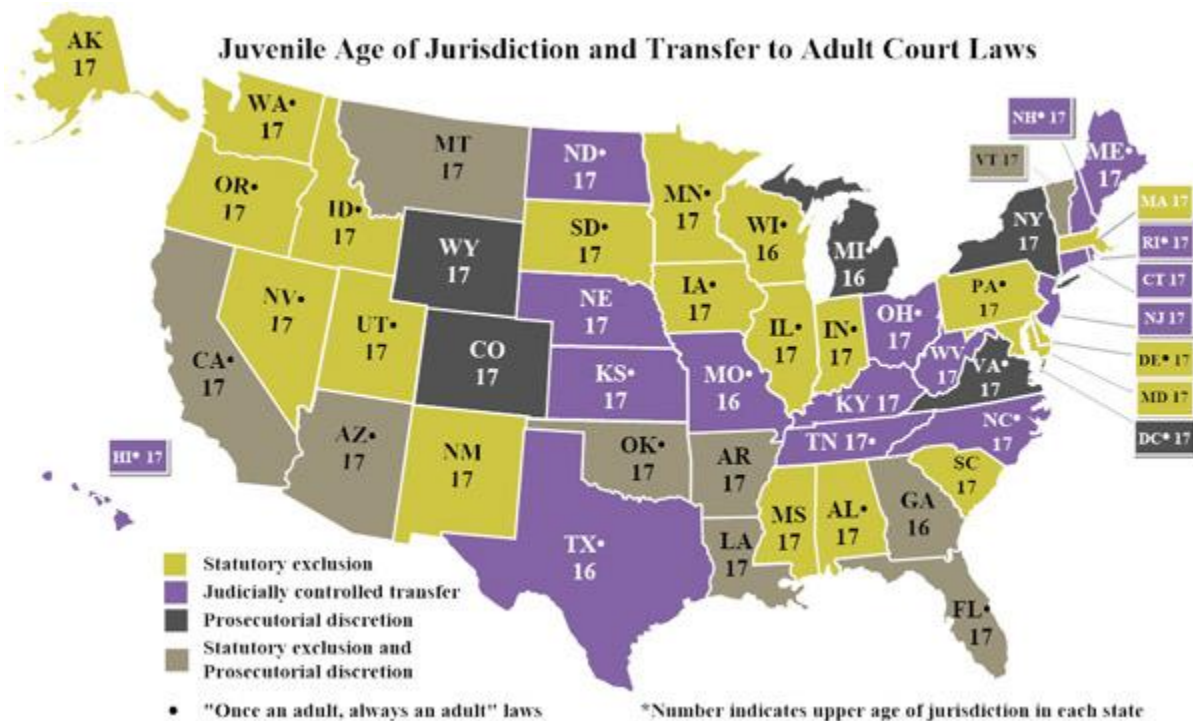
<sup>19</sup> States that utilize judicial waiver solely include: Connecticut; Hawaii; Kansas; Kentucky; Maine; Missouri; Nebraska; New Hampshire; New Jersey; North Carolina; North Dakota; Ohio; Rhode Island; Tennessee; Texas; and West Virginia.

within a statutory exclusion category, it must be filed in adult court. Murder and serious violent felony cases are most commonly "excluded" from juvenile court.<sup>20</sup>

- Discretionary Direct File (Prosecutorial Discretion Transfer) - Discretionary direct file laws allow the prosecutor to bring a case into adult court without a waiver hearing. The filing of these cases is entirely entrusted to the prosecutor and may or may not have any statutorily articulated standards that the prosecutor has to use in making their decision.<sup>21</sup>

Jurisdictions may combine or use any of the transfer methods exclusively. Additionally, many states also have one or more of the following:

- “Once an adult, always an adult” policies, which require a juvenile’s case to be transferred to adult court if the juvenile has had a prior case transferred to adult court;
- Reverse waiver hearings, which allow a juvenile to petition for a transfer of their case back to juvenile court;<sup>22</sup> and
- Blended sentencing laws, which allow adult courts to impose juvenile sanctions and vice versa.



Source: National Conference of State Legislatures<sup>23</sup>

<sup>20</sup> States that utilize statutory exclusion solely include: Alabama; Alaska; Delaware; Idaho; Illinois; Indiana; Iowa; Maryland; Massachusetts; Minnesota; Mississippi; Nevada; New Mexico; Oregon; Pennsylvania; South Carolina; South Dakota; Utah; Washington; and Wisconsin.

<sup>21</sup> Jurisdictions that utilize prosecutorial discretion solely include: Colorado; Michigan; New York; Virginia; Washington, D.C.; and Wyoming.

<sup>22</sup> States that provide for reverse waiver hearings include: Arizona; Arkansas; California; Colorado; Connecticut; Delaware; Georgia; Iowa; Kentucky; Maryland; Mississippi; Montana; Nebraska; Nevada; New York; Oklahoma; Oregon; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; Wisconsin; and Wyoming.

<sup>23</sup> Anne Teigen, *Juvenile Age of Jurisdiction and Transfer to Adult Court Laws*, NATIONAL CONFERENCE OF STATE LEGISLATURES, Apr. 17, 2017, available at <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx> (last visited Jan. 15, 2018).

### **Florida Transfer Process**

In Florida, there are several methods for transferring a child to adult court for prosecution:

- Voluntary waiver;
- Judicial waiver;
- Indictment by a grand jury; or
- Direct filing an information, commonly known as “direct file.”

This section provides a detailed description of each transfer method.

#### Voluntary Waiver (1.5% of annual transfers<sup>24</sup>)

Pursuant to Article I, Section 15(b) of the Florida Constitution, a juvenile *of any age* charged as a delinquent has the right to be tried in an adult court upon his or her demand if the request is made prior to the commencement of the adjudicatory hearing in the juvenile court. The juvenile may voluntarily request a transfer for a variety of reasons, including to avail themselves of procedural rights which are unavailable in the juvenile court, such as a jury trial. Section 985.556(1), F.S., requires the juvenile court to transfer and certify the child’s criminal case for trial as an adult pursuant to his or her voluntary exercise of this right.

A juvenile transferred to adult court for prosecution pursuant to a voluntary waiver and found to have committed the charged offense, or a lesser included offense, is thereafter treated as an adult for any subsequent violation of law unless the court imposed juvenile sanctions.

#### Indictment (.5% of annual transfers)

Section 985.56, F.S., provides that a juvenile *of any age* who is charged with an offense punishable by death or life imprisonment is subject to the jurisdiction of the juvenile courts unless and until an indictment is returned on the charge by a grand jury. If the grand jury returns an indictment on the charge, the juvenile must be transferred to adult court and treated as an adult in every respect.<sup>25</sup>

The decision to seek indictment rests entirely with the state attorney. If the juvenile is found to have committed the offense, the court must sentence the juvenile as an adult.<sup>26</sup> If the juvenile is found not to have committed the indictable offense, but is found to have committed a lesser included offense or any other offense for which he or she was indicted as part of the criminal episode, the court may sentence the juvenile as an adult, as a youthful offenders, or as a juvenile.<sup>27</sup> Over the past 5 years, there has been an average of 7 such transfers each year.<sup>28</sup>

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<sup>24</sup> This percentage represents the total of voluntary and judicial waivers combined.

<sup>25</sup> s. 985.56(1), F.S. The charge punishable by death or life imprisonment must be transferred, as well as 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 life imprisonment.

<sup>26</sup> s. 985.565(4)(a)1., F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Department of Juvenile Justice, Agency Analysis of 2017-2018 CRC Proposal 73, p. 2 (Nov. 20, 2017)(on file with Declaration of Rights Committee)

### Judicial Waiver (1.5% of annual transfers<sup>29</sup>)

The judicial waiver process allows juvenile courts to waive jurisdiction to adult court on a case-by case basis for juveniles **14 years of age or older** at the request of a state attorney. Section 985.556, F.S., provides for two types of waiver requests by state attorneys: discretionary and mandatory.

- Involuntary Discretionary Waiver –A state may file a motion requesting that the juvenile court transfer any case where the juvenile is 14 years of age or older;<sup>30</sup> and
- Involuntary Mandatory Waiver – A state attorney must request the transfer of a juvenile 14 years of age or older if the juvenile was:
  - Previously adjudicated delinquent for a specified felony and he or she is currently charged with a second or subsequent violent crime against a person; or
  - 14 years of age or older at the time of commission of a fourth or subsequent felony offense and he or she was previously adjudicated delinquent or had adjudication withheld for three felony offenses, and one or more of such felony offenses involved the use or possession of a firearm or violence against a person.<sup>31</sup>

If the state attorney files a motion to transfer a juvenile to adult court, the court must hold a hearing to determine whether the juvenile should be transferred.<sup>32</sup> The court must consider a variety of statutorily articulated factors when determining whether transfer is appropriate (e.g., the seriousness of the offense, the sophistication and maturity of the juvenile, the record and previous history of the juvenile, whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner, etc.).<sup>33</sup> The court must also provide an order specifying the reasons for its decision to impose adult sanctions.<sup>34</sup>

If a juvenile transferred to adult court pursuant to a voluntary or involuntary discretionary waiver is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.<sup>35</sup> If the transfer was pursuant to an involuntary mandatory waiver, the court must impose adult sanctions.<sup>36</sup>

### Direct File (98% of annual transfers)

While judicial waiver and indictment are both available transfer tools, they are rarely used as s. 985.557, F.S., provides a state attorney with the power to directly file certain cases in adult court without the necessity of judicial approval or grand jury indictment. Direct file accounts for 98% of the juvenile cases transferred to adult court. “Discretionary direct file” is generally the most controversial of the transfer processes.

- *Discretionary Direct File* – Section 985.557(1), F.S., establishes Florida’s discretionary direct file method. This subsection *permits* a state attorney to file an information on certain juveniles’ cases in adult court, without a judicial waiver hearing, when, in the state

<sup>29</sup> This percentage represents the total of voluntary and judicial waivers combined.

<sup>30</sup> s. 985.556(2), F.S.

<sup>31</sup> s. 985.556(3), F.S.

<sup>32</sup> s. 985.556(4), F.S.

<sup>33</sup> s. 985.556(4)(c), F.S.

<sup>34</sup> s. 985.556(4)(e), F.S.

<sup>35</sup> s. 985.565(4)(a)2., F.S.

<sup>36</sup> s. 985.565(4)(a)3., F.S.

attorney's judgment, the public interest requires that adult sanctions be imposed. Specifically, a state attorney may file an information<sup>37</sup> in adult court when a juvenile who is:

- **14 or 15 years old** is charged with one of the following felony offenses:
  - Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated assault; aggravated stalking; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; specified burglary of a dwelling or structure; burglary with an assault or battery; aggravated battery; any lewd or lascivious offense committed upon or in the presence of a person less than 16; carrying, displaying, using, threatening, or attempting to use a weapon or firearm during the commission of a felony; grand theft; possessing or discharging any weapon or firearm on school property; home invasion robbery; carjacking; grand theft of a motor vehicle; or grand theft of a motor vehicle valued at \$20,000 or more if the child has a previous adjudication for grand theft of a motor vehicle.<sup>38</sup>
- **16 or 17 years old** is charged with any felony offense;<sup>39</sup> and
- **16 or 17 years old** is charged with any misdemeanor, provided the juvenile has had at least two previous adjudications or adjudications withheld for delinquent acts, one of which is a felony.<sup>40</sup>

Current law does not provide any standards that a state attorney must consider or use when determining whether to file a juvenile's case in adult court pursuant to the discretionary direct file power.

If a juvenile transferred to adult court pursuant to the discretionary direct file process is found to have committed the offense or a lesser included offense, the court may sentence the juvenile as an adult, as a youthful offender, or as a juvenile.<sup>41</sup>

- **Mandatory Direct File** - Section 985.557(2), F.S., establishes Florida's mandatory direct file method. The subsection *requires* that a state attorney file a juvenile's case in adult court when a juvenile who is:
  - **16 or 17 years old** at the time of the alleged offense:
    - Has been previously adjudicated delinquent for an enumerated felony<sup>42</sup> and is currently charged with a second or subsequent violent crime against a person;

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<sup>37</sup> An "information" is the charging document that initiates prosecution. Any information filed pursuant to the direct file statute may include all charges that are based on the same act, criminal episode, or transaction as the primary offenses. s. 985.557(3), F.S.

<sup>38</sup> s. 985.557(1)(a), F.S.

<sup>39</sup> s. 985.557(1)(b), F.S.

<sup>40</sup> *Id.*

<sup>41</sup> s. 985.565(4)(a)2. and (b), F.S.

<sup>42</sup> The enumerated felonies listed in this subsection include the commission of, attempt to commit, or conspiracy to commit: murder; sexual battery; armed or strong-armed robbery; carjacking; home-invasion robbery; aggravated battery; or aggravated assault.



- Is currently charged with a forcible felony<sup>43</sup> and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred within 45 days of each other;<sup>44</sup> or
- Is charged with committing or attempting to commit an offense enumerated in s. 775.087(2)(a)1.a.-q., F.S.,<sup>45</sup> and, during the commission of the offense, actually possessed or discharged a firearm or destructive device.<sup>46</sup>
- **Any age** who is alleged to have committed an act that involves stealing a vehicle where the juvenile caused serious bodily injury or death to a person who was not involved in the underlying offense while possessing the vehicle.<sup>47</sup>

The court has discretion to sentence a child transferred to adult court by mandatory direct file as an adult, a youthful offender, or a juvenile if:

- The child was 16 or 17 years old at the time of the offense, the charged offense is listed in s. 775.087(2)(a)1.a.-p., F.S., and during the commission of the offense the child actually possessed or discharged a firearm or destructive device; or
- The charged offense involves stealing a vehicle in which the child, while possessing the vehicle, caused serious bodily injury or death to a person who was not involved in the underlying offense.<sup>48</sup>

The court must impose adult sanctions on a child transferred to adult court by mandatory direct file who was 16 or 17 years old at the time of the offense and:

- Is charged with committing a second or subsequent violent crime against a person and has been previously adjudicated delinquent for an enumerated felony; or
- Is charged with committing a forcible felony and has been previously adjudicated delinquent or had adjudication withheld for three felonies that each occurred at least 45 days apart from each other.<sup>49</sup>

#### Imposition of Adult or Juvenile Sanctions in Adult Court

As noted above, unless specifically required to sentence a transferred child as an adult, judges have discretion to impose adult or juvenile sanctions under certain circumstances. In such instances, the

<sup>43</sup> Section 776.08, F.S., defines “forcible felony” to mean treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

<sup>44</sup> Section 985.557(2)(b), F.S., also states that this paragraph does not apply when the state attorney has good cause to believe that exceptional circumstances exist which preclude the just prosecution of the juvenile in adult court.

<sup>45</sup>This list includes: murder; sexual battery; robbery; burglary; arson; aggravated assault; aggravated battery; kidnapping; escape; aircraft piracy; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; unlawful throwing, placing, or discharging of a destructive device or bomb; carjacking; home-invasion robbery; aggravated stalking; trafficking in cannabis, trafficking in cocaine, capital importation of cocaine, trafficking in illegal drugs, capital importation of illegal drugs, trafficking in phencyclidine, capital importation of phencyclidine, trafficking in methaqualone, capital importation of methaqualone, trafficking in amphetamine, capital importation of amphetamine, trafficking in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB), trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or other violation of s. 893.135(1), F.S.

<sup>46</sup> The terms “firearm” and “destructive device” are defined in s. 790.001, F.S.

<sup>47</sup> s. 985.557(2)(c), F.S.

<sup>48</sup> s. 985.565(4)(a)2., F.S.

<sup>49</sup> s. 985.565(4)(a)3., F.S.

judge must consider a number of statutorily enumerated factors in determining whether adult or juvenile sanctions are appropriate for the child. Such factors include:

- The seriousness of the offense to the community and whether the community would best be protected by juvenile or adult sanctions;
- Whether the offense was committed in an aggressive, violent, premeditated, or willful manner;
- Whether the offense was against persons or against property;<sup>50</sup>
- The sophistication and maturity of the offender;
- The record and previous history of the offender;
- The prospects for adequate protection of the public and the likelihood of deterrence and reasonable rehabilitation of the offender if assigned to DJJ services and facilities;
- Whether DJJ has appropriate programs, facilities, and services immediately available; and
- Whether adult sanctions would provide more appropriate punishment and deterrence to further violations of law than juvenile sanctions.<sup>51</sup>

A pre-sentence investigation report (PSI) is prepared by the Department of Corrections (DOC) regarding the suitability of a juvenile for disposition as an adult or juvenile to assist the judge in his sentencing determination.<sup>52</sup> The PSI report must include a comments section prepared by DJJ, with its recommendations as to disposition.<sup>53</sup> The court must give all parties<sup>54</sup> present at the disposition hearing an opportunity to comment on the issue of sentence and any proposed rehabilitative plan, and may receive and consider any other relevant and material evidence.<sup>55</sup>

If the court imposes juvenile sanctions, the court must adjudge the child to have committed a delinquent act.<sup>56</sup> Upon adjudicating a child delinquent, the court may:

- Place the juvenile in a probation program under the supervision of DJJ for an indeterminate period of time until the child reaches the age of 19 years or sooner if discharged by order of the court;
- Commit the juvenile to DJJ for treatment in an appropriate program for an indeterminate period of time until the child is 21 or sooner if discharged by DJJ;<sup>57</sup> or
- Order, if the court determines not to impose youthful offender or adult sanctions, any of the following:<sup>58</sup>
  - Probation and post commitment probation or community service under s. 985.435, F.S.;
  - Restitution under s. 985.437, F.S.;

<sup>50</sup> Greater weight is given to offenses against persons, especially if personal injury resulted.

<sup>51</sup> s. 985.565(1)(b), F.S.

<sup>52</sup> s. 985.565(3), F.S. This report requirement may be waived by the offender.

<sup>53</sup> *Id.*

<sup>54</sup> This includes the parent, guardian, or legal custodian of the offender; the offender's counsel; the State; representatives of DOC and DJJ; the victim or victim's representative; representatives of the school system; and LEOs involved in the case.

<sup>55</sup> *Id.* Other relevant evidence may include other reports, written or oral, in its effort to determine the action to be taken with regard to the child. This evidence may be relied upon by the court to the extent of its probative value even if the evidence would not be competent in an adjudicatory hearing.

<sup>56</sup> s. 985.565(4)(b), F.S. Adjudication of delinquency is not deemed a conviction, nor does it operate to impose any of the civil disabilities ordinarily resulting from a conviction.

<sup>57</sup> DJJ must notify the court of its intent to discharge the juvenile from the commitment program no later than 14 days prior to discharge. Failure of the court to timely respond to the department's notice shall be considered approval for discharge.

<sup>58</sup> s. 985.565(4)(b), F.S.

- Violation of probation or post commitment probation under s. 985.439, F.S.;
- Commitment under s. 985.441, F.S.;
- Work program liability and remuneration under s. 985.45, F.S.; and
- Other dispositions under s. 985.455, F.S.

In cases in which the court has imposed juvenile sanctions, if DJJ determines that the sanction is unsuitable for the juvenile, DJJ must return custody of the juvenile to the sentencing court for further proceedings, including the imposition of adult sanctions.<sup>59</sup>

Any sentence imposing adult sanctions is presumed appropriate, and the court is not required to set forth specific findings or list the criteria used as any basis for its decision to impose adult sanctions.<sup>60</sup>

A court may not sentence a child to a combination of adult and juvenile sanctions.<sup>61</sup>

#### Effect of Transferring a Child to Adult Court on Contemporaneous or Subsequent Law Violations

If a child transferred to adult court is found to have committed the offense, or a lesser included offense, the child must thereafter be treated as an adult in all respects for any subsequent law violations.<sup>62</sup> The court must also immediately transfer and certify all unresolved<sup>63</sup> felony cases pertaining to the child to adult court for prosecution.<sup>64</sup>

#### **Florida Transfer Statistics**

Since FY 12-13, there has been a significant reduction (-31 percent) in children transferred to adult court, as well as a significant reduction in the overall incidence of juvenile arrests (-24%).<sup>65</sup> The most recent fiscal year data available, FY 16-17, shows there were a total of 1,101 youth statewide that were transferred to adult court, mostly for felony offenses (98%).<sup>66</sup> The majority of transferred youth were 17 years of age or older (67%) and overwhelming male (96%).<sup>67</sup> The ten most common offenses that resulted in youth being transferred to adult court in FY 16-17 included:<sup>68</sup>

- Burglary (247 youth, 22%<sup>69</sup>)
- Armed Robbery (227, 21%)
- Aggravated Assault/Battery (154, 14%)

<sup>59</sup> *Id.* DJJ also has recourse if the judge imposes a juvenile sanction and the child proves not to be suitable to the sanction. In such instances, DJJ must provide the sentencing court a written report outlining the basis for its objections to the juvenile sanction and schedule a hearing. Upon hearing, the court may revoke the previous adjudication, impose an adjudication of guilt, and impose any adult sanction it may have originally lawfully imposed. s. 985.565(4)(c), F.S.

<sup>60</sup> s. 985.565(4)(a)4., F.S.

<sup>61</sup> *Id.*

<sup>62</sup> ss. 985.556(5), 985.56(4), and 985.557(3), F.S. This provision does not apply if the adult court imposes juvenile sanctions under s. 985.565, F.S.

<sup>63</sup> Unresolved cases include those which have not yet resulted in a plea of guilty or nolo contendere or in which a finding of guilt has not been made. s. 985.557(3), F.S.

<sup>64</sup> ss. 985.556(5), 985.56(4), and 985.557(3), F.S.

<sup>65</sup> Department of Juvenile Justice Delinquency Profile 2017, <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last visited Jan. 15, 2018).

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> All percentages rounded to the next whole number.

- Weapon/Firearm (96, 9%)
- Murder/Manslaughter (55, 5%)
- Felony Drug (48, 4%)
- Auto Theft (43, 4%)
- Sexual Battery (36, 3%)
- Attempted Murder/Manslaughter (34, 3%)
- Other Robbery (28, 3%)

Additional DJJ statistical data relating to the transfer of youth to adult court is provided in **Appendix “A.”**

### **Recent Public Policy Debates Related to Juvenile Transfers to Adult Court**

In recent years, public policy debates have emerged regarding the appropriateness of adult prosecution of juveniles due to their emotional and developmental differences from adults as well as the breadth of prosecutorial discretion to pursue cases against juveniles in adult court.

Opponents of juvenile transfers point to a body of research which shows that adolescent brains are not fully developed until about age 25, and the immature, emotional, and impulsive nature that is characteristic of adolescents makes them more susceptible to commit crimes.<sup>70</sup> Some studies have shown that juveniles who do commit crimes or otherwise engage in socially deviant behavior are not necessarily destined to be criminals as adults.<sup>71</sup>

Relying on similar types of studies, the U.S. Supreme Court in recent years has found in multiple cases that the differences between children and adults require separate consideration and treatment under the law. In *Roper v. Simmons*, 543 U.S. 551 (2005), in which the court prohibited the execution of any person for a crime committed before age 18, the court pointed out that juveniles’ susceptibility to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult. The Court also found that because juveniles are still struggling to define their identity, it is less supportable to conclude that even the commission of a heinous crime is evidence of an irretrievably depraved character. The Supreme Court would go on to prohibit mandatory life sentences without the possibility of parole for juvenile offenders<sup>72</sup> and prohibit life imprisonment without parole for non-homicide offenses<sup>73</sup> based on similar concerns in subsequent cases and the recognition of the diminished culpability of juveniles as compared to adults.

### **Recent Legislative Efforts**

In each of the past five years, legislation has been filed that attempted to modify Florida’s direct file system.<sup>74</sup> While there were variations in each years’ bills, the bills generally attempted to:

- Repeal mandatory direct file;

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<sup>70</sup> *Supra* note 2.

<sup>71</sup> *Supra* note 2.

<sup>72</sup> *Miller v. Alabama*, 567 U.S. 460 (2012).

<sup>73</sup> *Graham v. Florida*, 560 U.S. 48 (2010).

<sup>74</sup> SB 392 (2018), SB 192 (2017), HB 129 (2016), SB 314 (2016), HB 195 (2015), HB 783 (2015), SB 980 (2014), SB 280 (2013).

- Establish statutory criteria for use by state attorneys when deciding whether to exercise the discretion to transfer a case to adult court;
- Require a state attorney to file a written explanation with the court as to why transfer was appropriate; and
- Create a reverse waiver process.

Prior to 2011, state attorneys were required to develop written policies to govern discretionary direct file determinations.<sup>75</sup> These policies had to be submitted to the Governor, Senate, and House of Representatives annually. In 2011, this requirement was repealed by the Legislature.<sup>76</sup>

## **B. EFFECT OF PROPOSED CHANGES:**

The proposal requires that state attorneys petition the circuit court for approval if the state attorney “decides to pursue prosecution” of a child as an adult in criminal court rather than in juvenile court. This provision appears to require a judicial waiver process for all juvenile transfers to adult court, abrogating transfer by voluntary waiver, grand jury indictment or discretionary direct file. It is unclear if mandatory direct file is affected by the proposal as state attorneys have no discretion to “decide to pursue prosecution” in cases that are subject to mandatory direct file unless they do not pursue charges at all.

The proposal also requires that the circuit court consider the differences in the development of adults and children in determining whether to approve a state attorney’s petition to prosecute a child as an adult in criminal court. It is unclear if factors specified in the current judicial waiver process satisfy this requirement, or if courts must rely on the type of medical, psychological, or other similar research considered by the U.S. Supreme Court in the *Roper*, *Graham*, and *Miller* cases.

If approved by the voters, the proposal will take effect on January 8, 2019.<sup>77</sup> The proposal is silent with regard to retroactivity or applicability to pending cases.

See “*Technical Deficiencies*” for additional discussion of proposal impacts.

## **C. FISCAL IMPACT:**

If passage of the proposal results in the reduction of youth who are transferred to adult court, it could be expected that at least a portion of such youth would be served by the Department of Juvenile Justice (DJJ) instead of the Department of Corrections. To the extent this shift of juveniles to the juvenile justice system occurs, the proposal will likely result in a negative prison bed impact on the Department of Corrections and a positive residential bed impact on DJJ.

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<sup>75</sup> See s. 985.557(4), F.S. (2010).

<sup>76</sup> Ch. 2011-200, Laws of Fla.

<sup>77</sup> See FLA. CONST. ART XI, S. 5(E) (1968) (“Unless otherwise specifically provided for elsewhere in this constitution, if the proposed amendment or revision is approved by vote of at least sixty percent of the electors voting on the measure, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.”)

DJJ estimates that such youth would likely be served through secure detention, commitment to a residential program, and/or community probation, all which would have a fiscal impact to DJJ.<sup>78</sup> Local governments, which are partially responsible for the funding of local detention centers, may also be impacted by the retention of such youth who would likely spend time in secure detention.<sup>79</sup>

### III. Additional Information:

#### A. Statement of Changes:

(Summarizing differences between the current version and the prior version of the proposal.)

None.

#### B. Amendments:

None.

#### C. Technical Deficiencies:

The proposal repeals the current constitutional provision relating to the juvenile justice system and replaces it with the language of the proposal. Article I, Section 15(b), the current constitutional provision governing the juvenile justice system, provides:

“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 requirements applicable to criminal cases. Any child so charged shall, upon demand made as provided by law before a trial in a juvenile proceeding, be tried in an appropriate court as an adult. A child found delinquent shall be disciplined as provided by law.”

Unless the current language of Article I, Section 15(b) is retained in conjunction with the proposed amendment, there no longer appears to be an organic source for the creation of a juvenile justice system. In other words, the proposal would repeal the Legislature’s authority to create a juvenile justice system and to define children that may be treated as juvenile delinquents. The meaning of the term “child” would be subject to judicial interpretation.

The repeal of the current language also removes a child’s right to demand adult prosecution instead of prosecution in juvenile court, thereby availing themselves of procedural rights, such as the right to a trial by jury, which are unavailable in the juvenile court. This may implicate the child’s right to due process.

Additionally, the proposal provides that the state attorney must petition “the circuit court” to try a child (however defined) in adult court, but does not specify whether the petition

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<sup>78</sup> *Supra* note 28.

<sup>79</sup> *Supra* note 28.

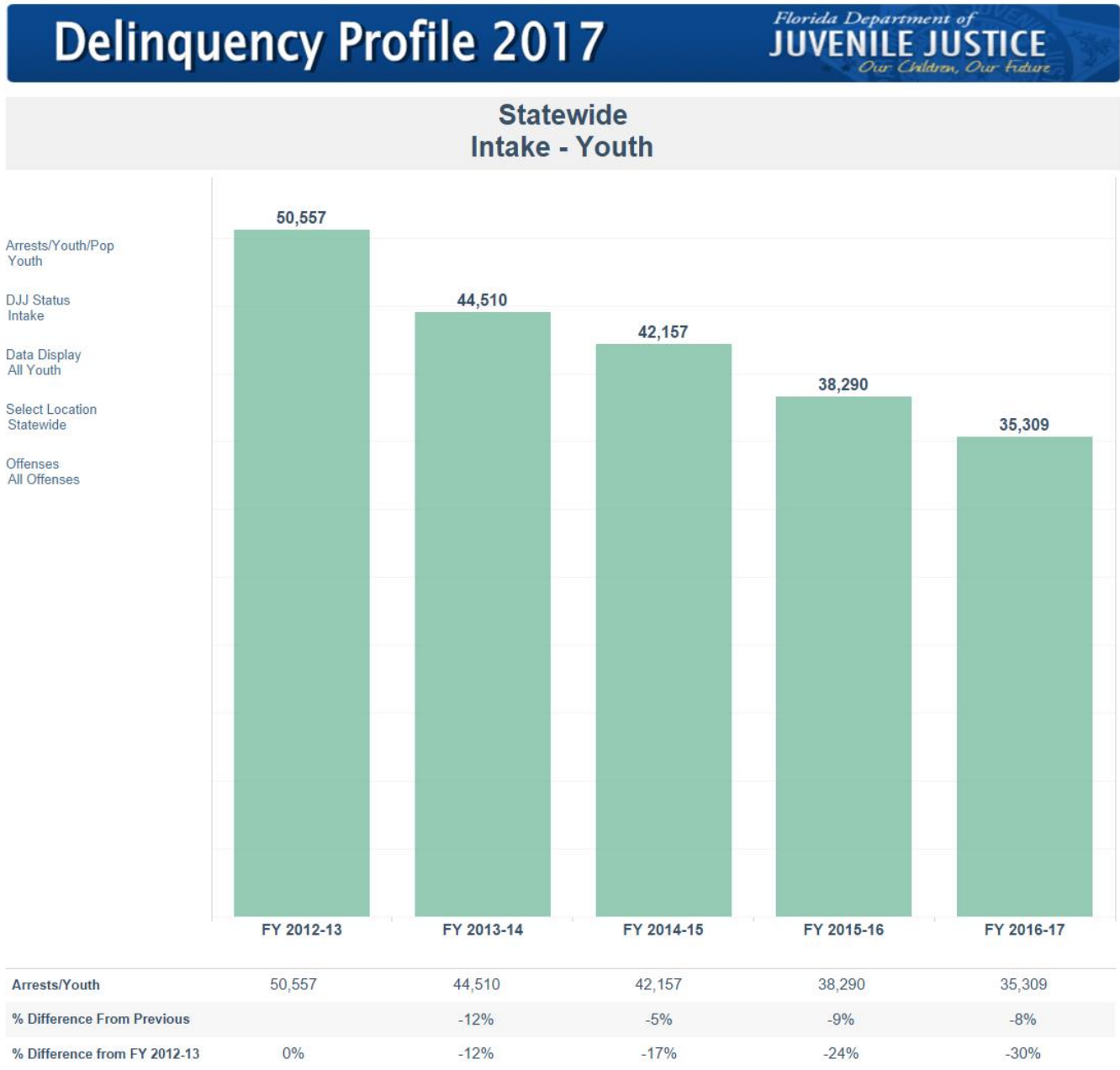
must be filed in the juvenile division or the adult criminal division. Thus, it is unclear whether the proposal contemplates a waiver process (state attorney files in the juvenile division and transferred to adult court) or a reverse waiver process (state attorney may file in the adult criminal division, but court may transfer to juvenile division).

**D. Related Issues:**

None.

### Appendix "A"

**Fig. 1**



This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

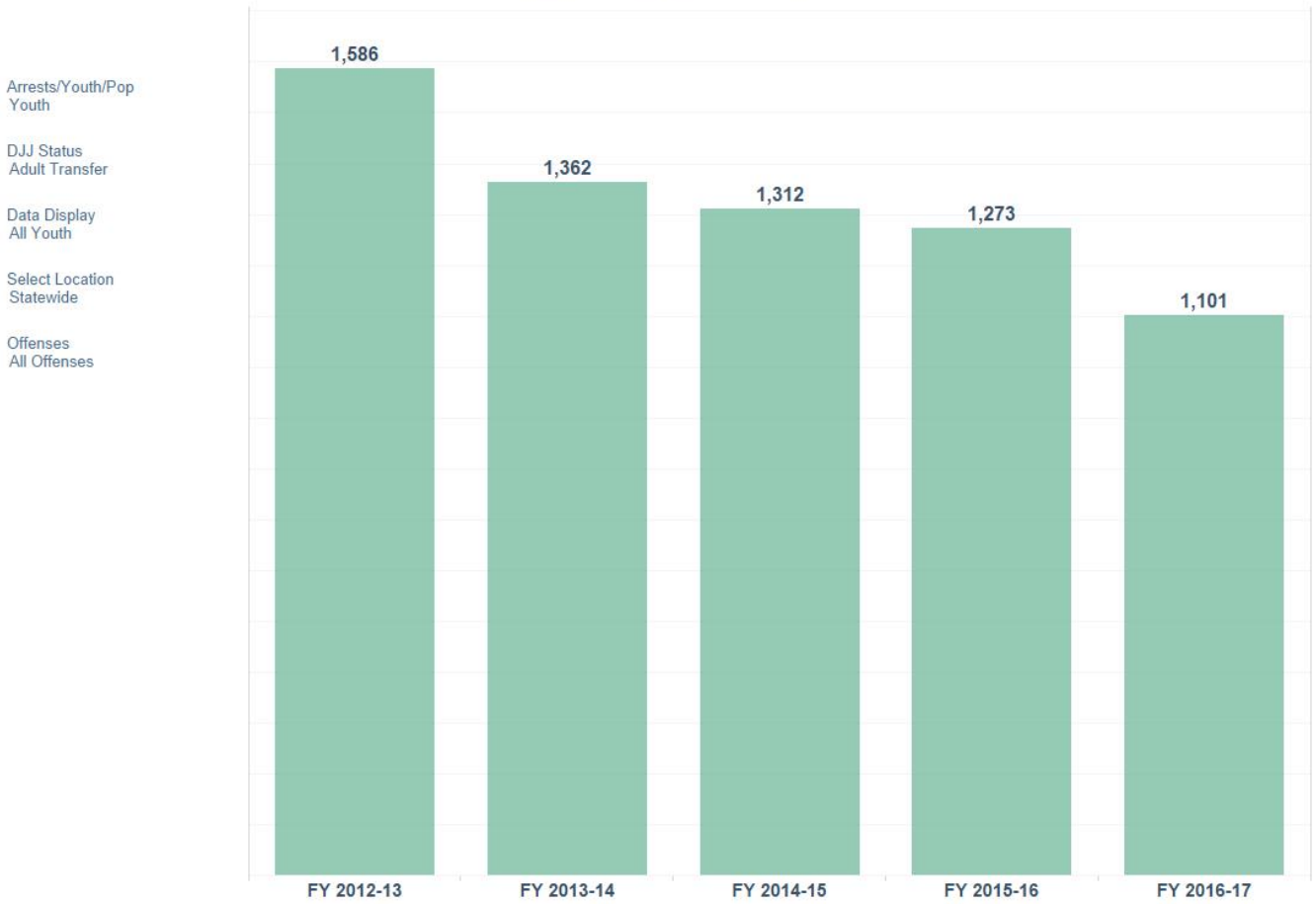


Fig 2.

# Delinquency Profile 2017

Florida Department of  
**JUVENILE JUSTICE**  
*Our Children, Our Future*

## Statewide Adult Transfer - Youth



Arrests/Youth	1,586	1,362	1,312	1,273	1,101
% Difference From Previous		-14%	-4%	-3%	-14%
% Difference from FY 2012-13	0%	-14%	-17%	-20%	-31%

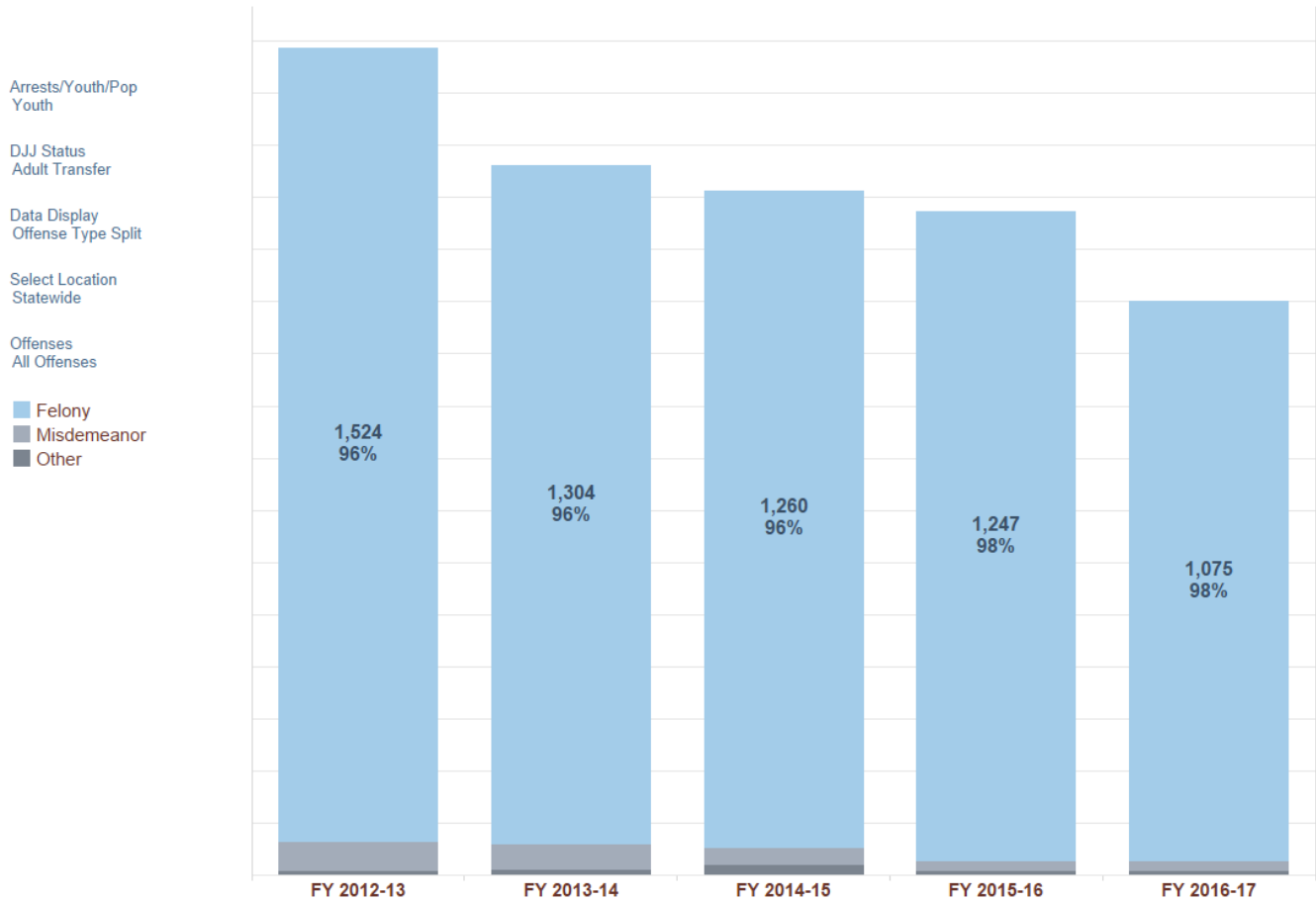
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 3

# Delinquency Profile 2017

Florida Department of  
**JUVENILE JUSTICE**  
*Our Children, Our Future*

## Statewide - All Offenses Adult Transfer - Youth - Offense Type Split



Offense Type	FY 2012-13	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17
Felony	1,524	1,304	1,260	1,247	1,075
Misdemeanor	54	49	34	20	18
Other	8	9	18	6	8

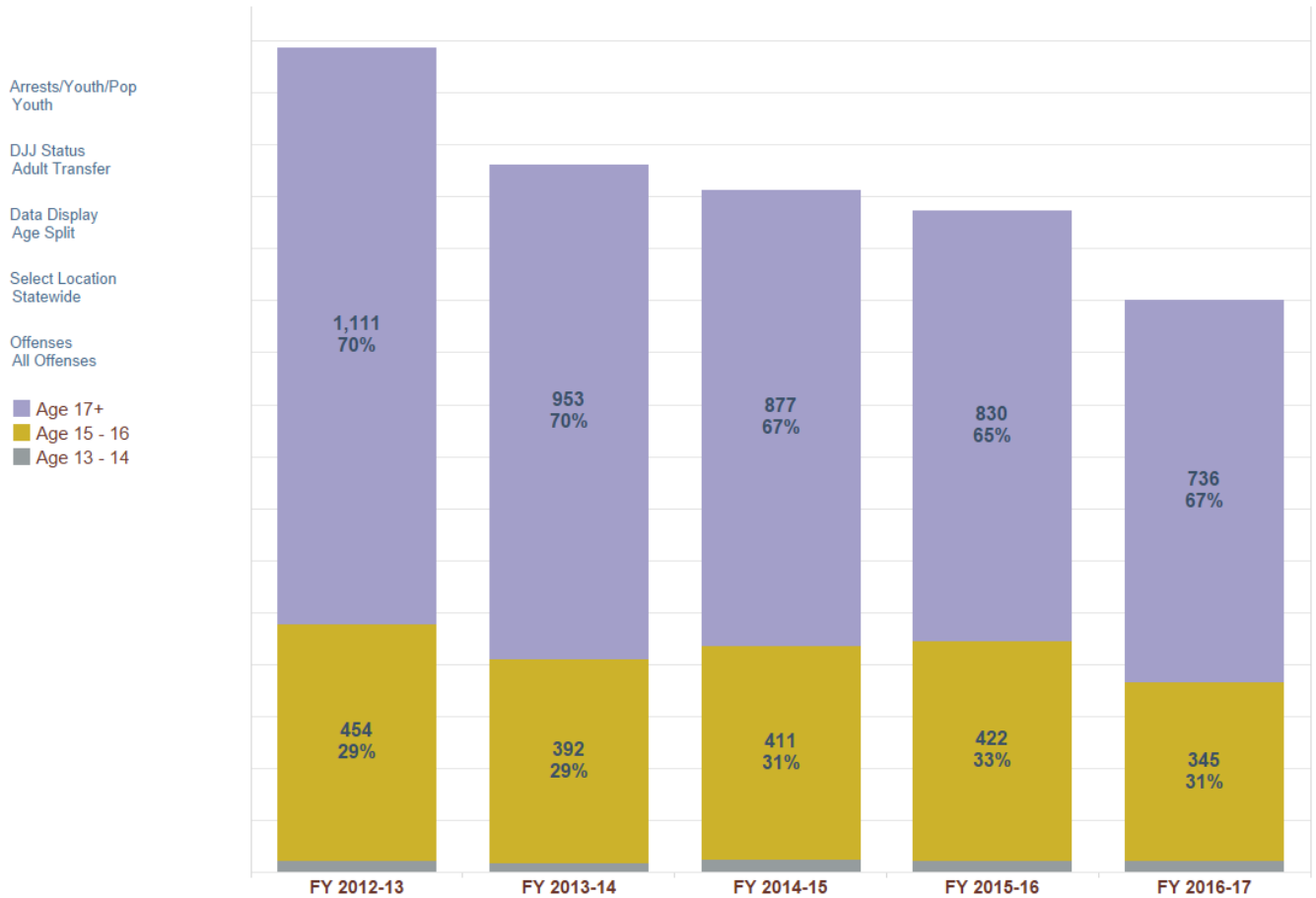
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 4

# Delinquency Profile 2017

Florida Department of  
**JUVENILE JUSTICE**  
*Our Children, Our Future*

## Statewide - All Offenses Adult Transfer - Youth - Age Split



Age 17+	1,111	953	877	830	736
Age 15 - 16	454	392	411	422	345
Age 13 - 14	21	17	24	21	20

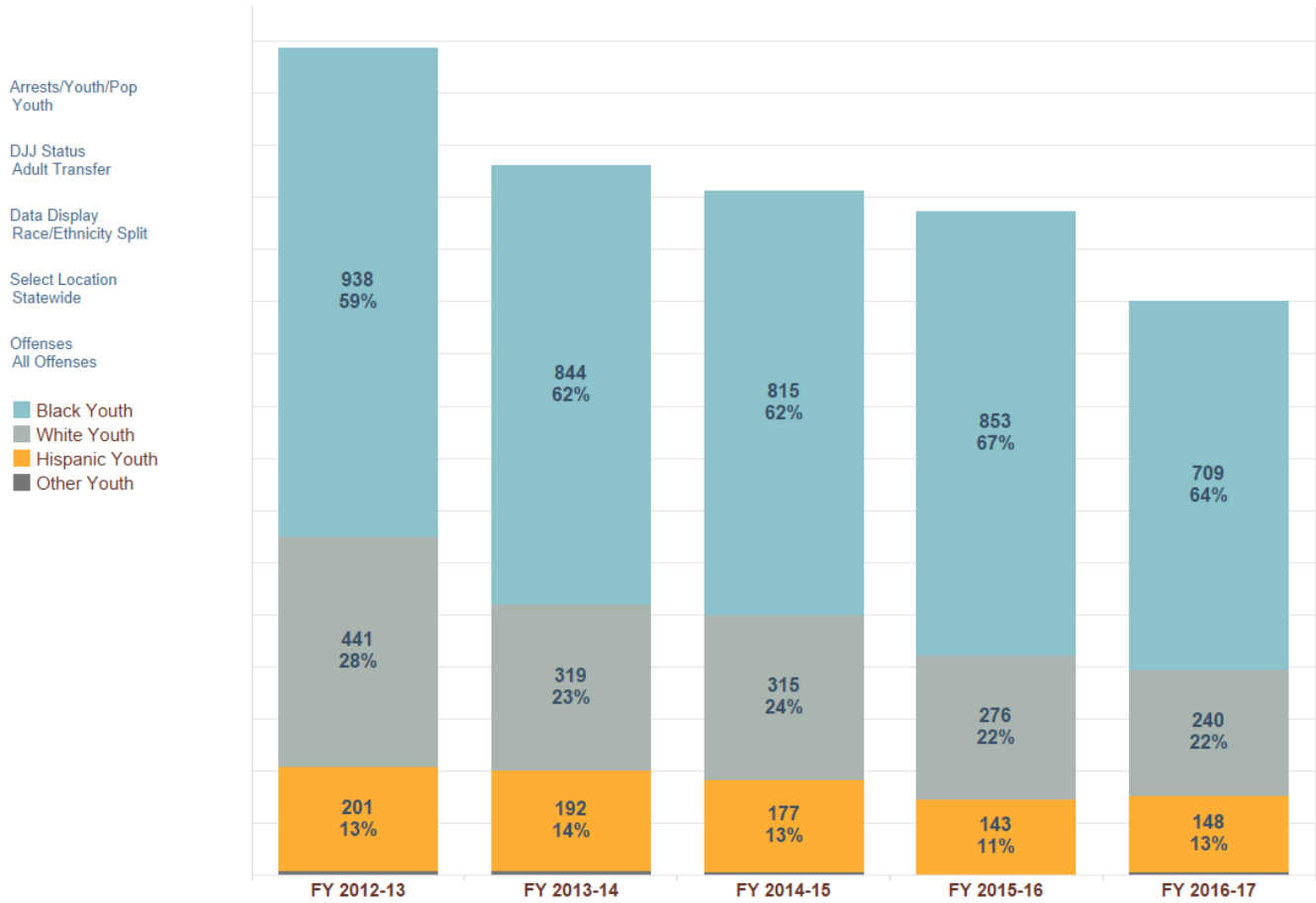
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 5

# Delinquency Profile 2017

Florida Department of  
**JUVENILE JUSTICE**  
*Our Children, Our Future*

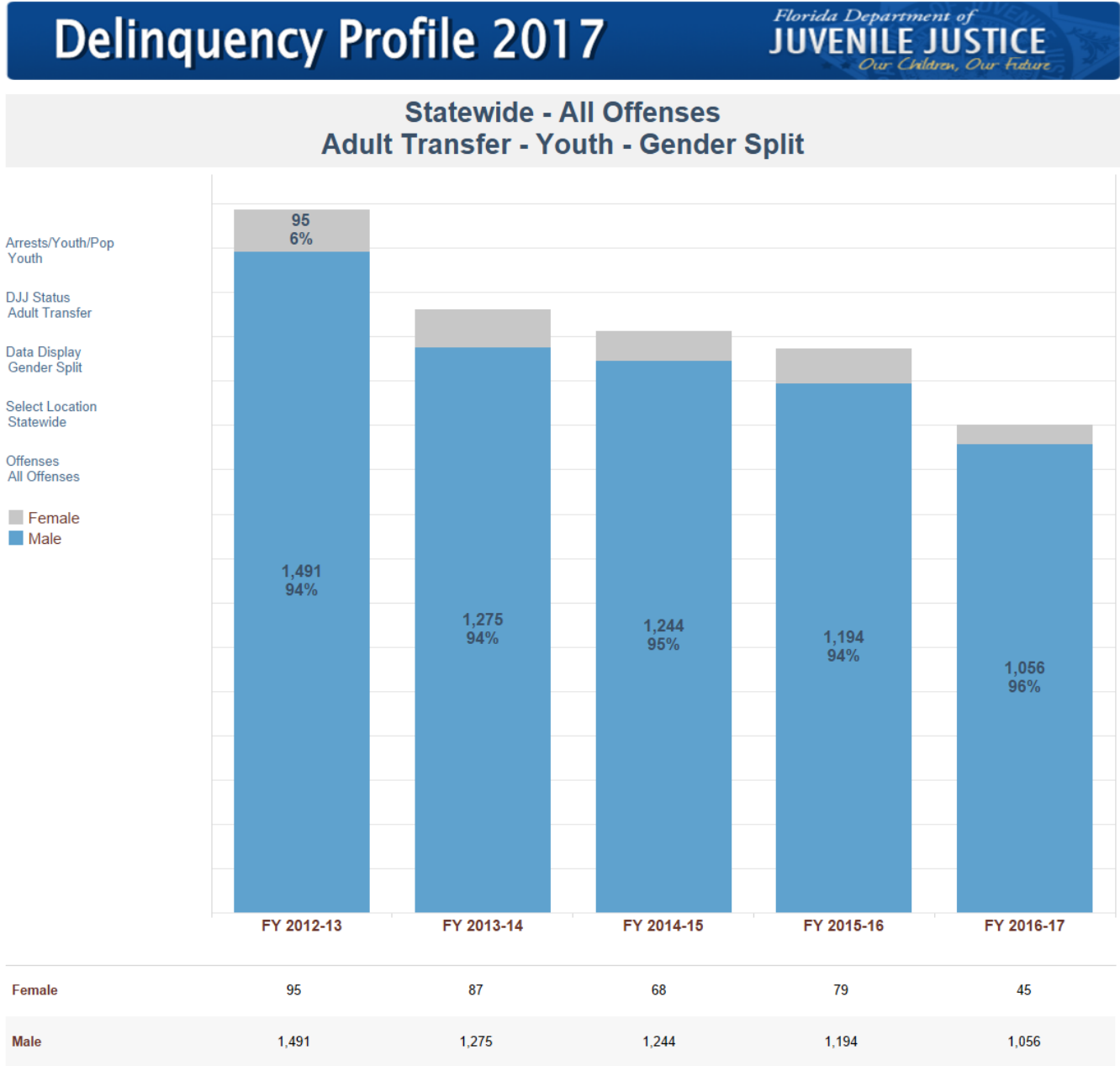
## Statewide - All Offenses Adult Transfer - Youth - Race/Ethnicity Split



Black Youth	938	844	815	853	709
White Youth	441	319	315	276	240
Hispanic Youth	201	192	177	143	148
Other Youth	6	7	5	1	4

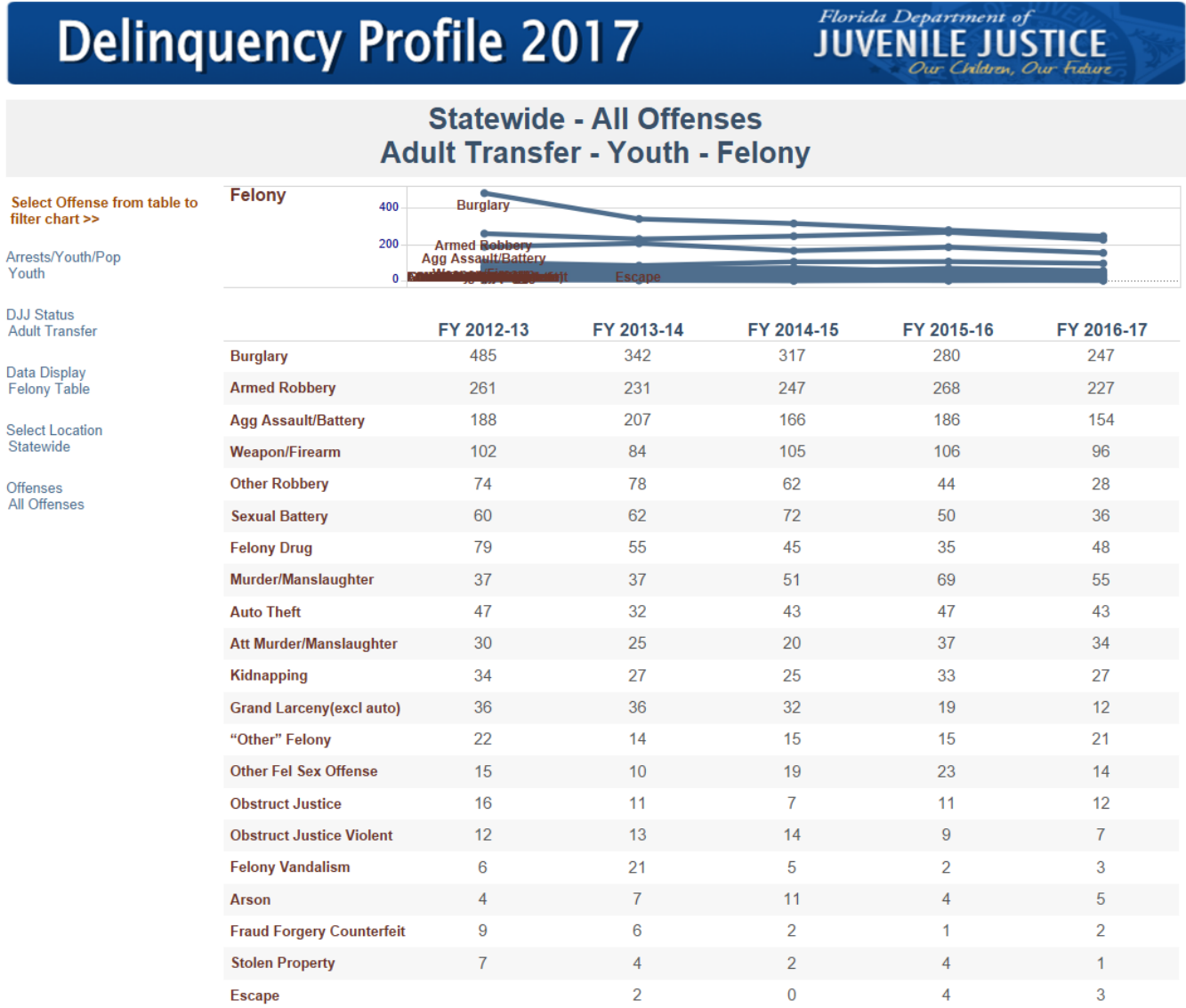
This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 6



This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>

Fig. 7



This report was compiled using data from the Juvenile Justice Information System (JJIS). For more information, visit <http://www.djj.state.fl.us>