

## DIRECT FILE

“Direct File” (also known as “Prosecutorial Discretion”) is a statutory power that allows prosecutors to decide whether to bring charges against young people in juvenile court or in adult criminal court. Four states and the District of Columbia do not even allow the defense to challenge or a judge to review this decision.<sup>1</sup>

### Direct file is unnecessary and unfair. All states that use direct file have other mechanisms to transfer youth

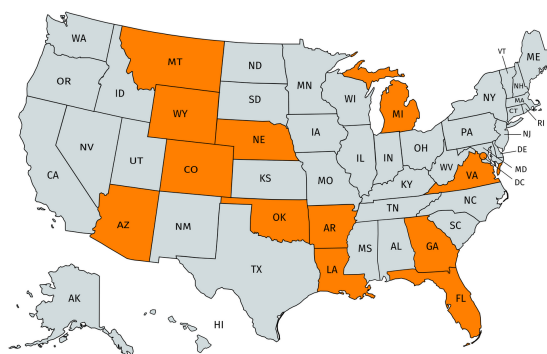
- It lacks oversight – When a prosecutor chooses to directly file a youth’s case in adult criminal court they effectively override any juvenile or family court jurisdiction over a case without input from an independent fact-finder like a judge.
- It lacks consistency – There is no way to tell whether prosecutors are applying their decision to direct file consistently across cases or across jurisdictions because most states do not have statutory criteria for prosecutors to consider when deciding whether to direct file a case.
- It lacks transparency and accountability – No direct file states require that prosecutors to provide a reason for their decision to direct file a case in adult court.
- It short-circuits justice – Direct file can be used to pressure youth to plead guilty to avoid adult court. 37 states don’t use this practice at all; instead they give judges the authority to individually review each case to determine when a transfer is appropriate.
- It reduces public safety – While consistent data is not collected on direct file, jurisdictions that do collect data have found that many youth direct filed in adult court end up on probation, or the judge waives the youth back to juvenile jurisdiction.<sup>2</sup> Youth with adult convictions are 34% more likely to recidivate than their peers in the juvenile justice system.
- It exacerbates racial disparities – In California introducing direct file led to bigger racial and ethnic disparities of children charged as adults<sup>3</sup>.

### A majority of states, including California and Vermont, are moving away from the Direct File of youth into the adult system

- Some states that previously had allowed prosecutors to direct file youth to adult court have ended the practice because “sending kids directly to adult court undermined the rehabilitative mission of the juvenile system.”<sup>4</sup>
- In 2012 Colorado successfully limited their direct file statute to only the most severe crimes and to youth over 16-years old and established a process for cases to be moved back (called “reverse waiver”) to juvenile court.<sup>5</sup>
- In November 2016, California passed Proposition 57, which abolished direct file. Prop. 57 required “that judges, instead of prosecutors, will decide whether to try a minor as an adult.”<sup>6</sup> On February 1, 2018, the California Supreme Court ruled that the repeal of direct file was retroactive for pending court cases.<sup>7</sup>
- Vermont also ended direct file in 2017.<sup>8</sup>

### Currently 12 states and Washington, D.C., allow prosecutors to direct file youth to adult court.

- The states that continue to allow prosecutors to direct file youth into adult court are: AR, AZ, CO, DC, FL, GA, LA, MI, MT, NE, OK, VA, WY.<sup>9</sup>
- Once direct filed in DC, FL, LA, MI, VA, and in some cases GA, a youth has no opportunity to seek a “reverse waiver” back to juvenile court.<sup>10</sup>



CAMPAIGN FOR

**YOUTH JUSTICE**

BECAUSE THE CONSEQUENCES AREN'T MINOR

To learn more, or to get involved in changing things in your state, contact:

Brian Evans, State Campaign Coordinator, Campaign for Youth Justice  
202-558-3580 ext. 1606 | bevans@cfyj.org

last updated: Dec. 10, 2018

## END NOTES:

1 Florida, Louisiana, Michigan, and Virginia; see Juvenile Justice Geography, Policy, Practice & Statistics. Available at <http://www.ijgps.org/jurisdictional-boundaries#transfer-provisions?year=2015&type=6>.

2 <http://www.cjci.org/news/10469> (California); <https://www.splcenter.org/20160217/more-harm-good-how-children-are-unjustly-tried-adults-new-orleans> (New Orleans, Louisiana); <https://www.hrw.org/report/2014/04/10/branded-life/floridas-prosecution-children-adults-under-its-direct-file-statute#> (Florida)

3 <http://www.cjci.org/news/10469>

4 Sago, Renata. Sentenced To Adulthood: Direct File Laws Bypass Juvenile Justice System (Aug. 2017). Available online at <http://www.npr.org/2017/08/15/542609000/sentenced-to-adulthood-direct-file-laws-bypass-juvenile-justice-system>.

5 HB 1271, 2012 Leg., 68th Sess. (Co. 2012) [https://leg.colorado.gov/sites/default/files/images/olls/2012a\\_sl\\_128.pdf](https://leg.colorado.gov/sites/default/files/images/olls/2012a_sl_128.pdf).

6 Bhandal, Navnit and Nevarez, Tessa. Proposition 57: Criminal Sentence. Parole. Juvenile Criminal Proceedings and Sentencing. "The Public Safety and Rehabilitation Act of 2016". (May 2016). Available at [http://www.mcgeorge.edu/Documents/Publications/prop57\\_CIR2016.pdf](http://www.mcgeorge.edu/Documents/Publications/prop57_CIR2016.pdf).

7 <http://www.pjdc.org/2018/02/california-supreme-court-holds-proposition-57-ban-on-direct-file-is-retroactive/>

8 H. 95, 2016 Leg. Sess. (Vt. 2016) <http://legislature.vermont.gov/bill/status/2016/H.95>; Barr, Sarah. "Several States Look To Keep Teenagers Out of Criminal Court". Juvenile Justice Information Exchange. (June 23, 2016). Available online at <http://jjie.org/2016/06/23/several-states-look-to-keep-teenagers-out-of-criminal-court/>.

9 -

Arkansas: Ark. Code Ann. § 9-27-318(b). Available at <https://law.justia.com/codes/arkansas/2010/title-9/subtitle-3/chapter-27/subchapter-3/9-27-318/>;

Arizona: Ariz. Rev. Stat. Ann. § 8-327(A). Available at <https://law.justia.com/codes/arizona/2011/title8/section8-201>;

Colorado: Colo. Rev. Stat. § 19-2-518(1)(a). Available at <http://codes.findlaw.com/co/title-19-childrens-code/co-rev-st-sect-19-2-518.html>;

District of Columbia: D.C. Code § 16-2307(a). Available at <https://beta.code.dccouncil.us/dc/council/code/sections/16-2307.html>;

Florida: Fla. Stat. Ann. § 985.556(2). Available at

[http://www.leg.state.fl.us/statutes/index.cfm?App\\_mode=Display\\_Statute&URL=0900-0999/0985/Sections/0985.556.html](http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0900-0999/0985/Sections/0985.556.html);

Georgia: Ga. Code Ann. § 15-11-561(a). Available at <https://law.justia.com/codes/georgia/2014/title-15/chapter-11/article-6/part-9/section-15-11-561/>;

Louisiana: La. Child. Code Ann. art. 305(A). Available at <https://law.justia.com/codes/louisiana/2011/chc/chc305/>;

Michigan: 712A.2d. Available at

[http://www.legislature.mi.gov/\(S\(1pf5n2hlvdmfowtpbqgsoge0\)\)/mileg.aspx?page=GetObject&objectname=mcl-712A-2d](http://www.legislature.mi.gov/(S(1pf5n2hlvdmfowtpbqgsoge0))/mileg.aspx?page=GetObject&objectname=mcl-712A-2d);

Montana: Mont. Code Ann. § 41-5-206(1). Available at <http://leg.mt.gov/bills/mca/41/5/41-5-206.htm>;

Nebraska: Neb. Rev. Stat. § 43-276(1). Available at <http://nebraskalegislature.gov/laws/statutes.php?statute=43-276>;

Oklahoma: Okla. Stat. Ann. tit. 10A § 2-5-205. Available at <https://law.justia.com/codes/oklahoma/2014/title-10a/section-10a-2-5-205/>;

Virginia: Va. Code Ann. 16.1-269.1. Available at <https://law.justia.com/codes/virginia/2006/toc1601000/16.1-269.1.html>;

Wyoming: Wyo. Stat. Ann. § 14-6-203(f). Available at <https://law.justia.com/codes/wyoming/2011/title14/chapter6/section14-6-203/>.

10 Juvenile Justice Geography, Policy, Practice & Statistics. Available at <http://www.ijgps.org/jurisdictional-boundaries#transferprovisions?year=2015&type=6>.