

DESTINED TO FAIL

How Florida Jails Deprive Children of Schooling



SPLC



Southern Poverty Law Center

Fighting Hate
Teaching Tolerance
Seeking Justice

ABOUT THE SOUTHERN POVERTY LAW CENTER

The Southern Poverty Law Center, based in Montgomery, Ala., is a nonprofit civil rights organization founded in 1971 and dedicated to fighting hate and bigotry, and to seeking justice for the most vulnerable members of society.

For more information about

THE SOUTHERN POVERTY LAW CENTER
visit www.splcenter.org

DESTINED TO FAIL

How Florida Jails Deprive Children of Schooling

A REPORT BY THE SOUTHERN POVERTY LAW CENTER © 2018

The solution to these problems is simple: Children don't belong in adult jails.

Executive Summary

Florida prosecutes more children in the adult criminal justice system than any other state,¹ and as a consequence, hundreds of children are held in adult county jails² every year.

In the majority of cases, the decision to prosecute a child as an adult is made by the prosecutor, without judicial review or an individual assessment of the child's potential for rehabilitation. As a result, children as young as 12 have been incarcerated with adults. Many have not been found guilty, but are merely waiting for their cases to be adjudicated.³

While imprisoned, children still have rights under state and federal law to access education – a critical factor in their future.⁴ And with good reason: The further they fall behind, the less likely they are to become productive members of society.

Unfortunately, children in adult jails are being denied these rights as Florida's jails and school districts are not living up to their legal obligations. The educational services they provide to children held in adult jails are, in most cases, seriously deficient. For some children, the services are virtually nonexistent. Adult jails are simply not intended or equipped to house children.

For this review, which began in 2016, the Southern Poverty Law Center submitted public records requests to school districts across the state,⁵ spoke with public defenders and advocates, examined data from the U.S. Department of Education Civil Rights Data Collection, and interviewed children who are or have been held in county jails in Florida. The findings are troubling:

Many small jails (facilities holding fewer than 20 children in 2015-16) offer only GED courses to children, eliminating the opportunity for a child to pursue a

high school diploma while awaiting trial. Some children receive only two to three hours per week of instruction in these small county jails.⁶ When they return to their neighborhood schools, they often do not receive credit for their studies, including the GED work.

In large jails (facilities holding 20 to 130 children in 2015-16), children often receive educational services geared toward a high school diploma – though they don't all receive the legally required 300 minutes of instruction per day that is necessary for a total of 180 instruction days per year.⁷

At many small jails, students with disabilities receive limited – if any – educational services that are required by law because of their disabilities. At large jails, students' existing Individualized Education Programs (IEPs), which outline the services that a student with disabilities should receive, are sometimes altered⁸ – and even effectively closed out – leaving them without the services they deserve under the law.

At many large and small jails, students with IEPs between the ages of 18 and 22 must be proactive and ask for the education services to which they are entitled. Consequently, they often do not receive them.

Because county jails are not designed to accommodate children, there are multiple barriers that limit access to education. Small jails, in particular, do not have housing units for children, much less a space for classes. In such instances, children may be held in solitary confinement, which has been likened to torture.

Lacking access to materials and teachers, children in solitary may simply receive worksheets that don't count toward school credit and without any writing instruments to complete them.⁹

Large jails, on the other hand, may have cell blocks for youth and space for classes, but these arrangements pose problems as well. Youth units, for example, are often for boys. As a result, girls under 18 are routinely held in solitary confinement or in medical or mental health segregation wings, which are not equipped for providing education.

And as in small jails, children held in solitary confinement at large jails – whether for housing or discipline – are often left out of educational programming or provided with worksheets. In some counties, students are marked absent from the jail’s classes for each day they are held in confinement.¹⁰

The solution to these problems is simple: Children don’t belong in adult jails.

Florida should change the law allowing prosecutors to directly file charges against children in adult court without judicial review or an individualized assessment.

Children should be adjudicated in the juvenile justice system, which should be more equipped to meet their educational needs.

As long as Florida continues to prosecute children as adults, it must fulfill its legal mandate to provide an adequate education to children in adult jails. Currently, children are being deprived of the tool that can provide them with the best opportunity for a better future – an education.

Virtually all of these youth will eventually re-enter our communities. Failing to educate them not only deprives them of their rights, it increases the likelihood they will re-offend, a failure that Florida residents will pay for in tax dollars and loss of public safety.¹¹

Reform is urgently needed. Our children – and communities – deserve no less.

Recommendations are offered at the end of this report.

Miguel Rodriguez

Florida’s Failure to Educate Children in Jail

It’s hard for Miguel Rodriguez to forget the time he was held in the Pasco County Jail in Land O’ Lakes, Florida.

Miguel was sent into the adult system in 2009 at age 15. At the jail, there were no books, no library and no educational services offered to minors. Miguel believes the lack of school and other productive activities fostered violence, creating a fight club atmosphere.

“It was like a little dungeon,” he said.

But Miguel also believes it didn’t have to be that way. Classes – or any form of education – could have gone a long way toward changing the environment.

“[I]t would have made everything a lot less violent and a lot less scary,” he said.

Unfortunately, many children held in adult jails across Florida receive little – if any – education during their confinement, this Southern Poverty Law Center (SPLC) review, launched in 2016, found. In most of the counties surveyed, the educational services for children, as reported, fail to meet even the basic requirements of federal and state law.

As part of this review, the SPLC submitted public records requests to school districts to determine how they are educating children in adult jails,¹² spoke with public defenders and advocates, examined data from the U.S. Department of Education Civil Rights Data Collection, and interviewed children who are or have been held in county jails.

Small Jails

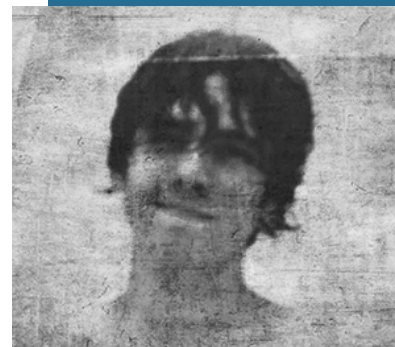
In many of Florida’s smaller counties, where jails housed fewer than 20 children in 2015-16, there is no dedicated

unit for children, much less a dedicated space for classes. For children held in some of these smaller counties, legal prohibitions on “sight and sound” contact with adult detainees¹³ have spurred the jails to frequently house children in solitary confinement, significantly impeding their ability to receive an education – and potentially violating federal law.

In Indian River County, for example, where in 2016 there were no more than two or three children in the county jail at any given time, they were almost always held in solitary confinement and denied educational services. The county school district had not budgeted for, among other things, a classroom, full-time teachers, or special education teachers at the jail.

Similarly, a public defender in Gadsden County reported that children transferred into the adult criminal justice system there were left in isolation for the entirety of their pre-trial detention – over six months in one case – while receiving no educational services. School districts in Gadsden and Levy counties also reported that they lacked a written agreement with the sheriff’s office to educate children at the jail.

In some instances across the state in 2016, children received worksheets but did not have access to a teacher, and the worksheets did not count toward class credit. Some counties provided worksheets to children in solitary confinement but did not even allow them to have



pens or pencils to complete them.¹⁴

Many smaller county jails offered only GED preparation to children.¹⁵ Such practices shortchange students, who often do not receive credit for their work, including GED work, when they return to their neighborhood schools. And the practices also may violate

federal requirements.

In addition, with few exceptions,¹⁶ the smaller county jails surveyed did not provide 300 minutes of daily instruction and 180 days of instruction per year to children, which are required under Florida law. Many provided just a few hours of instruction per week.

Isolated and deprived of an education

K.T. * spent almost five months in the St. Lucie County Jail after he was sent into the adult system at age 14.

During that time, he received an education with other youths in a classroom at the jail. He was housed in a cell block with other children tried as adults, including his co-defendants.

When he was transferred to the Broward County Jail in November 2017, things changed. He was initially placed in a cell block, but after his co-defendants arrived, he was moved into solitary confinement, per the jail's policy of segregating co-defendants.

K.T. was left in that cell for 23 hours a day. He was allowed out for an hour when the rest of the jail was on lock-down. He also could not attend school as long as he was in solitary. Before his arrest, K.T. was a ninth-grader at a public school in Fort Lauderdale. As a student with a disability, he had an Individualized Education Program (IEP) entitling him to one-on-one sessions with a counselor, which he had not received since being placed in solitary confinement.

When the SPLC met K.T., he had spent 10 days in solitary and faced the prospect of staying there for as long as his co-defendants remained at the jail, further depriving him of an education and the services he needed.

* K.T.'s initials have been changed to protect his privacy.

Small Jails Reviewed (0-19 children)*

Alachua	Franklin	Jefferson	Putnam
Baker	Gadsden	Lafayette	Santa Rosa
Bay	Gilchrist	Lake	St. Johns
Bradford	Glades	Lee	Sumter
Calhoun	Gulf	Levy	Suwannee
Charlotte	Hamilton	Liberty	Taylor
Citrus	Hardee	Madison	Union
Clay	Hendry	Marion	Volusia
Collier	Hernando	Martin	Wakulla
Columbia	Highlands	Monroe	Walton
DeSoto	Holmes	Nassau	Washington
Dixie	Indian River	Okeechobee	
Flagler	Jackson	Osceola	

Large Jails Reviewed (20+ children)*

Brevard	Polk
Broward	Sarasota
Dade	Seminole
Duval	St. Lucie
Escambia	
Hillsborough	
Leon	
Manatee	
Okaloosa	
Orange	
Palm Beach	
Pasco	
Pinellas	

*According to the 2015-16 transfer data supplied by the Department of Juvenile Justice.

Large Jails

Larger counties may have jails with separate units for children, but they don't fare much better in terms of educating the children in their care. Children in Palm Beach County, for example, are regularly placed in solitary confinement to keep multiple co-defendants separate. The solitary confinement cells look into the common room where class is held, but the students in these cells cannot see anything the teacher writes on the board and have a difficult time hearing lessons through their cell doors. Interviews at the Broward County Jail uncovered similar problems.

Although most of the larger county jails provided instruction for the required length of time to children housed in the general population, several of them failed to do so for children held in solitary confinement.¹⁷

Female students

The SPLC found that female students in jails – including jails with separate units for children – encounter barriers that hinder their education. Units for children are frequently limited to boys, meaning that girls under 18 are held separately in solitary confinement or in medical and mental health segregation wings.

The segregation units holding girls are not equipped for education. Failure to provide an education specifically to girls may violate Title IX of the Education Amendments of 1972, which provides girls with the right to the kinds of opportunities that are comparable to what boys receive.

When 15-year-old D.A. was held in the Sarasota County Jail in 2015 after being charged as an adult for burglary, she experienced how girls were treated differently than boys.¹⁸ A community advocate told the SPLC that D.A. was held on the jail's medical floor. She slept on a rubber mattress in a room that lacked a desk. She didn't receive educational services, books or any materials for learning. The community advocate said this is how all girls are treated at the jail.

Children with Disabilities

Children with disabilities represent a disproportionate number of the youth in jail and have an extensive and well-defined set of legal protections. Even so, the SPLC's review found that many do not receive the educational services to which they're entitled.¹⁹

Of the 55 out of 67 counties that responded to a records request, the SPLC found that small jails that hold fewer than 20 children per year fail to properly identify students with disabilities when they enter custody. As a result, these children receive few, if any, services. Such failures likely violate multiple federal laws.

The records produced by many of the smaller counties do not show that these children are being evaluated

by the local school districts' Exceptional Student Education (ESE) coordinator, the official responsible for ensuring that the needs of students with disabilities are being met.²⁰ In addition, some existing IEPs for students in facilities were not implemented as written. In several smaller counties, IEPs already in place were altered during the course of the children's stay at the county jail.²¹

Larger facilities, this review found, typically have a standard practice for identifying children with IEPs when they enter custody. For the most part, the school district assigns personnel to conduct the necessary assessments and develop IEPs. The plans, much like the IEPs in smaller counties, are sometimes rewritten, however. The SPLC encountered a few instances in which the plans were effectively terminated without an IEP meeting or re-evaluation, leaving students without services.²²

The high cost of Florida's failure

Children in Florida's adult jails face a number of dangers that can have disastrous consequences for their future.

They're in greater danger of abuse and assault, and are less likely to receive any rehabilitative services than children in juvenile facilities.²³ They also risk falling further behind in their education.²⁴ Unsurprisingly, they are more likely to re-offend upon release.

Despite these dangers, Florida's outdated law grants prosecutors unfettered discretion to charge children as adults.²⁵ Florida is not only out of step with the rest of the United States as a result, but it also charges more children as adults than any other state in the country.²⁶

Under current Florida law, these children must be housed in adult jail while awaiting disposition of their cases.²⁷ It's a process that can take months and, in some cases, years.

And the price is high for everyone involved. Incarceration of young people increases their chances of dropping out of high school.²⁸ Research shows that shortchanging the education of children has negative consequences. Failure to obtain a diploma reduces their prospects of future employment and economic independence.²⁹



When individuals participate in any kind of educational program while incarcerated, their chances of future incarceration drop by 13 percent.

Failing to educate these children also increases the risk to public safety because it increases the likelihood they will re-offend.³⁰ When individuals participate in any kind of educational program while incarcerated, however, their chances of future incarceration drop by 13 percent.³¹ And the rate of recidivism decreases as young people's educational achievements increase.³² What's more, every dollar spent on education for incarcerated people saves \$4 to \$5 in re-incarceration costs.³³

These costs are both immediate and long-term. On the front end, Florida spends a minimum of approximately \$20,000 per youth per year to incarcerate children, not including the costs of educating them. On the back end, it costs each child around \$400,000 in lost earnings over an average lifetime, and costs the state of Florida more than \$100,000 in tax revenues every time a youth fails to receive a high school diploma.³⁴

It's also worth noting that the public already funds a juvenile system whose ostensible purpose is to rehabilitate children who get into trouble with the law. From a fiscal perspective, it makes no sense to operate two separate systems of youth education in a correctional context – one in each of Florida's 67 county jails and another in Department of Juvenile Justice (DJJ) facilities. Because there are comparatively fewer children in the adult jails, youth education in the adult system will never be as economical.

Florida can clearly do better.



Legal and Policy Analysis

Children and the Florida Criminal Justice System

When examining the issue of children in the corrections system, it's important to acknowledge that the legal system recognizes that children are different from adults in a number of fundamental ways.

The U.S. and Florida Supreme Courts have each recognized that children lack the same maturity as adults; have less education and less life experiences to draw upon when assessing the consequences, risks, and propriety of their behavior; are more susceptible to negative societal and peer influence; and have not reached full psychological and physical brain development.³⁵ Such limitations diminish a child's level of culpability³⁶ and also increase the likelihood of rehabilitation with the right interventions and supports.³⁷

Florida, like all other states, maintains a separate justice system for children who break the law.³⁸ The state constitution provides that "a child ... may be charged with a violation of law as an act of delinquency instead of crime."³⁹

Florida statutes make clear that the purpose of this specialized juvenile justice system is "to increase public safety by reducing juvenile delinquency through effective prevention, intervention, and treatment services that strengthen and reform the lives of children; ... to provide an environment that fosters healthy social, emotional, intellectual, educational, and physical development; to ensure secure and safe custody; and to promote the health and well-being of all children under the state's care."⁴⁰

This statement of purpose is nothing new. When Florida lawmakers wrote those words, they were keeping with an old tradition – the rehabilitative tradition that goes back to the founding of the juvenile justice system more than a century ago.⁴¹

Yet Florida law currently allows some children to be removed from the delinquency system and tried as adults. Specifically, prosecutors may choose to transfer children ages 14 and 15 charged with certain felonies and children ages 16 and 17 charged with any felony to adult court.⁴²

This means that an eighth-grader can be charged as an adult with robbery for taking another child's bike, phone or lunch, or with burglary for entering a garden shed or abandoned house and taking anything of value; if the child has a pocket knife, he or she can be charged with armed burglary.⁴³ A 10th-grader can be charged as an adult for those same acts, as well as for any other felony, such as stealing a cell phone or video game system or taking a car without permission.⁴⁴

As noted earlier, Florida prosecutors try more children in adult court than any other state – more than 1,100 in fiscal year 2016-17.⁴⁵ The vast majority are “direct files,” meaning that the state attorney exercised his or her sole discretion to prosecute the child as an adult, without any input from a judge or the Department of Juvenile Justice (DJJ).⁴⁶ In a significant number of child transfer cases, about one-third in fiscal year 2015-16, transfer to adult court is mandated by law.⁴⁷

Adult Jail vs. the Juvenile Justice System

When a child is transferred to adult court and prosecuted as an adult, he or she goes into the adult carceral system. As outlined in this report, adult prisons and jails are ill-equipped to handle children and provide for their education and rehabilitation. In short, jail is no place for a child.

By contrast, the Florida juvenile justice system is at least designed by law to focus on children's capacity for rehabilitation, with the guiding principles that “prevention and education are paramount.”⁴⁸ Further, the Legislature has mandated that children in the juvenile justice system be guaranteed “equal opportunity and access to quality and effective education, which will meet the individual needs of each child.”⁴⁹

Federal law provides similar guarantees. Any facilities receiving Title I, Part D funds must, to the extent feasible, ensure that youth in juvenile justice residential facilities have the same opportunities to meet academic content standards and achievement standards as they would have if they were enrolled in a regular public school.⁵⁰

Because of its mandated focus on education and rehabilitation, the DJJ operates an Office of Education, which is meant to coordinate with the Florida Department of Education and with district school boards to ensure that children in DJJ custody receive an education.

The Legislature instructed the DJJ to “implement procedures to ensure that educational support activities are provided throughout the juvenile justice continuum,” including “mentoring, tutoring, group discussions, homework assistance, library support, designated reading times, independent living, personal finance, and other appropriate educational activities.”⁵¹ Further, a child's school records and IEP or 504 Plan⁵² are included in planning treatment objectives while in DJJ custody.⁵³

Children in Adult Jails Have Education Rights

Children charged with a crime who are being held in jail are legally entitled to access education under federal and state law.⁵⁴ Florida law requires school districts to offer educational services to minors in custody who have not graduated from high school and to students with disabilities under 22 who are in custody and lack a high school diploma.⁵⁵

The law requires the county sheriff to notify the local school district when a child under 21 is admitted to the jail; the sheriff and school district must develop a cooperative agreement reflecting the notification requirement and the provision of educational services reflecting each entity's legal obligations.⁵⁶ All children, no matter where they are educated, are entitled to 300 minutes of instruction per day and 180 days of instruction per year.⁵⁷

In addition, federal law makes clear that incarcerated children have a right to access education.⁵⁸ Recipients of Title I, Part D funds, as described above, must ensure that all children in facilities have access to comparable opportunities as those educated outside of facilities.⁵⁹ States and localities also have comparability of services obligations when it comes to providing services equitably for boys and girls in custody; under Title IX, girls in facilities have comparability rights and cannot be assigned to opportunities that are based on gender stereotypes.⁶⁰

States and localities also have obligations to English Learner (EL) students. Under Title VI of the Civil Rights Act of 1964 and under the Equal Education Opportunities Act of 1974, education agencies cannot, among other things, discriminate on the basis of a student's national origin and language status, and must take “appropriate action” to overcome EL students' language barriers so that they can meaningfully participate in their schools' educational programs. To that end, facilities must provide these students with an educationally sound and effective educational program, and afford meaningful access to all of the facility's educational programs.⁶¹

Separately, children with disabilities have a number of education rights that they retain no matter where they are held. As the U.S. Department of Education's Office

**Florida prosecutors
try more children in
adult court than any
other state.**

of Special Education and Rehabilitative Services clarified in 2014, “the fact that a student has been charged with or convicted of a crime does not diminish his or her substantive rights or the procedural safeguards and remedies provided under the Individuals with Disabilities Education Act (IDEA) to students with disabilities and their parents.”⁶²

Under IDEA, and similarly under other federal disability rights laws (i.e., Section of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, also known as the ADA), each child with a disability is entitled to various forms of evaluation and assistance. This includes assessment to determine which services are necessary to allow the child to fully access education and the receipt of those support services in a timely and consistent manner.⁶³

Facilities also must reasonably modify their policies, practices and procedures to account for children’s disabilities,⁶⁴ and must educate children in the most integrated, least restrictive setting appropriate to their needs.⁶⁵

Under disability rights laws, the state has ultimate responsibility for ensuring that an education is made available to all eligible students with disabilities.⁶⁶ The state educational agency must monitor and enforce implementation of the act to ensure compliance with the law.⁶⁷ Similarly, Section 504 binds all recipients of federal financial assistance,⁶⁸ which includes many justice facilities. The ADA also requires public entities, including states and local governments, to administer their programs without the purpose or effect of discriminating on the basis of disability.⁶⁹

Recommendations

Children are fundamentally different from adults.

Florida, however, continues to prosecute more children as adults than any other state, removing them from a system designed to give them a chance at turning their lives around. Instead, the state sends them into an adult system that virtually guarantees their failure by frequently depriving them of their right to an education.

It doesn’t have to be this way. There is a path for reform that can end this practice.

The simplest solution is to stop prosecuting children as adults.

- The adult system is designed to punish and deter criminal behavior rather than rehabilitate individuals: It is fundamentally incapable of accommodating children. While keeping children in the juvenile justice system is no guarantee that they will be rehabilitated, it is a system designed for children. Its shortcomings also are more easily addressed.

Short of ending the practice, the following reforms should be considered:

- Amend state law to limit the number of children prosecuted as adults.
- Amend state law so that children are not held in adult facilities pending disposition of their cases. Provide judges with the discretion to house them in juvenile facilities or at home while their cases are pending.
- Improve the oversight and accountability of school districts to ensure children are afforded their legally required education while in jail.
- Develop systems to better coordinate between criminal justice and education service agencies to ensure the smooth and consistent delivery of educational services to children in jail.
- If Florida insists on incarcerating children in adult jails, then it must, at the very least, provide education that meets state and federal legal requirements.

Endnotes

- 1 Deborah Brodsky, Cyrus O'Brien & Sal Nuzzo, *No Place for a Child: Direct File of Juveniles Comes at a High Cost; Time to Fix Statutes*, JMI Policy Brief (Feb. 2016), at 1, available at: <https://www.jamesmadison.org/Library/docLib/2016-Juvenile-Justice-Policy-Brief-21.pdf>.
- 2 Florida Department of Juvenile Justice Delinquency Profile (“DJJ Dashboard”), available at: <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard>. More than 1,100 youth were prosecuted as adults in FY 2016-17, although not all were housed pretrial in the adult jail if they were able to post bail.
- 3 Section 985.265, F.S.
- 4 Title I, Part D of the Every Student Succeeds Act, 20 U.S.C. 6421 et seq.; Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d–2000d-7 (Title VI); Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 et seq. (EEOA); Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. (Title IX); Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq. (ADA); Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.; and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq. (Section 504). The Florida Constitution establishes education as a “fundamental value of the people of the State of Florida” and “creates a paramount duty of the state to make adequate provision for the education of all children residing within its borders.” Fla. Const. Art. IX, 1(a). There are no exclusions of youth held in adult jails. See also generally United States Departments of Education and Justice, “Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities,” Dec. 8, 2014, available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-residential-facilities-201412.pdf> (DOJ/ED DCL).
- 5 The SPLC sent requests to every school district, seeking contracts between school districts and sheriffs’ departments as well as records documenting the allocation of resources for education programs, the capacity and scheduling of these programs, and teachers allocated to the jail. As of Feb. 1, 2018, of the state’s 67 school districts, eight simply did not respond (Clay, Duval, Flagler, Glades, Holmes, Leon, Okaloosa, and Washington counties), four would provide records only at a prohibitive cost (Bay, Brevard, Escambia, and Nassau counties), and 13 said they did not have responsive documents (Calhoun, Charlotte, Columbia, Dixie, Franklin, Gulf, Hamilton, Jefferson, Lafayette, Liberty, Pasco, Union, and Wakulla counties). As to these nonresponsive counties, local officials’ failure to provide documents leave open multiple possibilities, including that the school district does not comply with its obligations, that there have been no children in the jail to educate as students either posted bail or were never held in the jail, or that the school district lost track of students.
- 6 These range from one to two hours a week (Hernando and Walton) to three to six hours a week (Baker, DeSoto, Gadsden, Gilchrist, Hendry, Santa Rosa, and Taylor (but only for students with disabilities)) to something more, but less than the required minimum (Lake (but only for students under 18), Lee, Putnam, St. Johns, and Volusia). Several counties confirmed that they provide zero hours of instruction (Hardee, Liberty, Okeechobee, and Sumter). This does not account for the many small counties who did not provide responses to the SPLC’s records requests and who may or may not be in compliance with this requirement.
- 7 Dade and Polk counties meet the requirement. The other counties with large jails that provide the required amount of instruction to most students—including Manatee, Orange, Broward, and Palm Beach—restrict educational services for those in solitary confinement. And Sarasota, which has a large jail, certainly does not meet the requirement, as it provides 300 minutes of instruction *per week*, not 300 *per day*, as required by law. This does not account for large counties that did not respond to our requests.
- 8 Large counties that altered IEPs include Broward, Hillsborough, Manatee, Polk, and St. Lucie. Again, this does not include large counties that did not respond to our requests.
- 9 Hendry, Lake, Lee, Marion, Santa Rosa, and Walton counties do not allow pens and pencils in solitary confinement. This information comes from a variety of sources, including public records and interviews with public defenders, legal aid staff, and advocates on the ground in various jurisdictions.
- 10 Broward, Duval, Hillsborough, Manatee, Orange, and Palm Beach counties. This information comes from a variety of sources, including public records and interviews with public defenders, legal aid staff, and advocates on the ground in various jurisdictions.
- 11 Incarceration of juveniles increases the probability that they will recidivate—i.e., commit another criminal offense—as an adult by 22-26 percent. Anna Aizer & Joseph J. Doyle, Jr., *Juvenile Incarceration, Human Capital and Future Crime: Evidence from Randomly Assigned Judges*, National Bureau of Economic Research Working Paper 19102, at 3 (June 2013), available at: <http://www.nber.org/papers/w19102.pdf>.
- 12 See *supra* note 5.
- 13 Section 985.265, F.S. The sight and sound separation requirement is important for the safety of children held in the adult jail and is required by federal law in the Juvenile Justice and Delinquency Prevention Act.
- 14 See *supra* note 9.
- 15 Alachua, DeSoto, Gilchrist, Hendry, Hernando, St. Johns, and Sumter counties. In Seminole County, a little over half the children in 2014-16 received only GED services. This information comes from a variety of sources, including public records and interviews with public defenders, legal aid staff, and advocates on the ground in various jurisdictions.
- 16 See *supra* note 6.
- 17 Broward, Dade, Manatee, Orange, and Polk counties all generally provide at least 300 minutes of instruction per day to children in their jails, while Pinellas, Sarasota, and St. Lucie counties do not. Even among the counties that provide the required amount of instruction in the general population, Broward, Hillsborough, Manatee, and Orange restrict instruction for students who are in some type of solitary confinement.
- 18 D.A.’s initials have been changed to protect her privacy. The SPLC learned about D.A.’s experience from a community advocate in Sarasota and news reports about her sentence.
- 19 Children with disabilities represent a disproportionate number of children in jail. On average, 41 percent of the youth receiving educational services in Florida’s county jails have been identified as qualifying for services under the IDEA. The IDEA is designed to ensure students with disabilities receive “a free appropriate public education that emphasizes special education and related services.” 20 U.S.C. § 1400(d). The U.S. Department of Education, Office for Civil Rights receives data about individual schools throughout the country. See <http://ocrdata.ed.gov/DistrictSchoolSearch#schoolSearch>.
- 20 Of the small counties that replied to our public records request, the following did not provide affirmative responses when asked about num-

- ber of IEP evaluations conducted at the jail: Alachua, Baker, Bradford, Citrus, Collier, DeSoto, Gadsden, Hardee, Hernando, Highlands, Lake, Levy, Martin, Monroe, Okeechobee, Osceola, Putnam, St. Johns, Santa Rosa, Sumter, Suwannee, Taylor, and Walton.
- 21 Small counties that made changes to children’s IEPs included Baker, Gadsden, Gilchrist, Jackson, Lake, Marion, Putnam, Seminole, St. Johns, Taylor, and Walton. As before, this does not account for the counties who did not respond to the SPLC’s records requests.
 - 22 Large counties that altered IEPs include Broward, Hillsborough, Manatee, Polk, and St. Lucie. Large counties that reported that an IEP evaluation was never conducted include Orange and Pinellas. Again, this does not include large counties that did not respond to our requests.
 - 23 *National Prison Rape Elimination Commission Report 69* (June 2009), available at: http://nprec.us/files/pdfs/NPREC_FinalReport.PDF. See also Carmen Daugherty, *Zero Tolerance: How States Comply with PREA’s Youthful Inmate Standard*, Campaign for Youth Justice (2015), at 14, http://www.campaignforyouthjustice.org/images/pdf/Zero_Tolerance_Report.pdf; Irene Y. H. Ng, Rosemary C. Sarri, Jeffrey J. Shook & Elizabeth Stoffregen, *Comparison of Correctional Services for Youth Incarcerated in Adult and Juvenile Facilities in Michigan*, *The Prison Journal* (Dec. 2012), 92(4), 460-83, at 477, available at: https://www.researchgate.net/publication/258194434_Comparison_of_Correctional_Services_for_Youth_Incarcerated_in_Adult_and_Juvenile_Facilities_in_Michigan.
 - 24 Neelum Arya, *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, Campaign for Youth Justice (Nov. 2007), at 7, available at: http://www.campaignforyouthjustice.org/Downloads/NationalReportsArticles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf.
 - 25 Section 985.557, F.S.
 - 26 Brodsky, O’Brien & Nuzzo, *supra* note 1.
 - 27 Section 985.265, F.S. (Detention transfer and release; education; adult jails).
 - 28 Aizer & Doyle, *supra* note 11. Another study found that incarceration increases the likelihood of a youth dropping out of high school by between 11.1 and 18.8 percent. See Robert Apel and Gary Sweeten, *The Impact of Incarceration on Employment During the Transition to Adulthood*, *Social Problems* (2010), 57(3), 448-479, available at: www.jstor.org/stable/10.1525/sp.2010.57.3.448. See generally Amanda Peteruti, Marc Schindler & Jason Ziedenberg, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration*, Justice Policy Institute (Dec. 2014), available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/sticker_shock_final_v2.pdf.
 - 29 For example, the difference between the median annual income in 2013 for those who completed high school and those who did not is approximately \$20,000, which translates to a loss of about \$680,000 over the lifetime of an individual. See Joel McFarland, Patrick Stark & Jiashan Cui, *Trends in High School Dropout and Completion Rates in the United States: 2013*, U.S. Department of Education, National Center for Education Statistics (2016), available at: <https://nces.ed.gov/pubs2016/2016117rev.pdf>. In addition, employment data in 2014 for 16- to 24-year-olds indicates that fewer than one-third (28.7 percent) of high school dropouts were employed, compared with more than half (51.7 percent) of high school graduates who were employed. See *Employment and Unemployment of Recent High School Graduates and Dropouts*, Career Outlook, U.S. Bureau of Labor Statistics (July 2015), available at: https://www.bls.gov/careeroutlook/2015/data-on-display/dod_q4.htm. Further, youth who are incarcerated are more than twice as likely to rely on public assistance in adulthood. See Amanda B. Gilman, Karl G. Hill & J. David Hawkins, *When Is a Youth’s Debt to Society Paid? Examining the Long Term Consequences of Juvenile Incarceration for Adult Functioning*, *J. Dev. Life Course Criminology* (2015), 1:33-47, at 43-44, available at: <https://link.springer.com/content/pdf/10.1007%2Fs40865-015-0002-5.pdf>.
 - 30 Lois Davis, *et al*, *Evaluating the effectiveness of correctional education —A meta-analysis of programs that provide education to incarcerated adults*, RAND Corporation (2013), available at: https://www.rand.org/content/dam/rand/pubs/research_reports/RR200/RR266/RAND_RR266.sum.pdf.
 - 31 *Id.*
 - 32 Becky Pettit & Bruce Western, *Mass imprisonment and the life course: Race and class inequality in U.S. incarceration*, *American Sociological Review* (2004), 69(2), 151-169, available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.612.7385&rep=rep1&type=pdf>.
 - 33 Davis, *et al*, *supra* note 30.
 - 34 Calculations based on <http://all4ed.org/wp-content/uploads/2013/06/HighCost.pdf>.
 - 35 See *Roper v. Simmons*, 543 U.S. 551, 569-74 (2005); *Graham v. Florida*, 560 U.S. 48, 68-69 (2010); *Atwell v. State*, 197 So. 3d 1040, 1044-1045 (2016) (noting that juvenile offenders have diminished culpability and a greater likelihood of rehabilitation); *Henry v. State*, 175 So. 3d 675, 677-78 & 680 (2015) (“juveniles are different [than adults when it comes to criminal conduct and punishment]”).
 - 36 See *Graham*, 560 U.S. at 68; *Roper*, 543 U.S. at 570 (“The susceptibility of juveniles to immature and irresponsible behavior means their irresponsible conduct is not as morally reprehensible as that of an adult. Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment.”) (quotations and citations omitted).
 - 37 See *Roper*, 543 U.S. at 573; *Graham*, 560 U.S. at 68.
 - 38 See Fla. Const. Art. I, § 15; Chapter 985, F.S.
 - 39 Fla. Const. Art. I, § 15.
 - 40 Section 985.01, F.S. (Juvenile justice purposes and intent); section 985.02, F.S. (Legislative intent for the juvenile justice system).
 - 41 See, e.g., *Application of Gault*, 387 U.S. 1, 15-16 (1967) (“The early [juvenile justice] reformers were appalled by adult procedures and penalties, and by the fact that children could be given long prison sentences and mixed in jails with hardened criminals. . . . They believed that society’s role was not to ascertain whether the child was ‘guilty’ or ‘innocent,’ but ‘What is he, how has he become what he is, and what had best be done in his interest and in the interest of the state to save him from a downward career. The child—essentially good, as they saw it—was to be made ‘to feel that he is the object of (the state’s) care and solicitude.’ . . . The idea of crime and punishment was to be abandoned. The child was to be ‘treated’ and ‘rehabilitated’ and the procedures, from apprehension through institutionalization, were to be ‘clinical’ rather than punitive.”).
 - 42 Section 985.557, F.S.

- 43 If this child committed burglary and did \$1,000 or more worth of damage, such as by destroying a piece of lawn equipment, he could be charged with a first degree felony punishable with a life sentence. See § 810.02(2)(c)(2), F.S.
- 44 The child can be prosecuted as an adult not only for committing these felonies but also for merely attempting or even conspiring to commit the offenses. See § 985.557(1)(a), F.S.
- 45 See Brodsky, O'Brien & Nuzzo, *supra* note 1; DJJ Dashboard, *supra* note 2.
- 46 Office of Program Policy Analysis & Government Accountability, Report No. 17-06 (March 2017), available at: <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1706rpt.pdf>.
- 47 *Id.*
- 48 See § 985.01, F.S.; § 985.02, F.S. Whether the Department of Juvenile Justice has in fact been achieving that mission has been recently cast in doubt by the reporting of the *Miami Herald*. See Carol Marbin Miller and Audra D.S. Birch, *Fight Club*, *Miami Herald*, Oct. 10, 2017, available at: <http://www.miamiherald.com/news/special-reports/florida-prisons/article176773291.html>.
- 49 Section 958.02, F.S.
- 50 20 U.S.C. §§ 6434(a)(1)(A), 6435(c)(4), 6435(a)(2)(B), 6453(3), 6455(6).
- 51 Section 985.601(10), F.S.
- 52 29 U.S.C. § 794.
- 53 <http://www.djj.state.fl.us/faqs/education-development>.
- 54 See *supra* note 4. Indeed, school districts in Florida have been on notice of their legal duty to provide educational services to children in county jails for some time. In 2013, for example, the SPLC settled a claim against the Polk County School Board requiring the district to provide appropriate education. *The SPLC Reaches Agreement with Florida School District to Ensure Children at County Jail Receive an Education* (Sept. 23, 2013), available at: <https://www.splcenter.org/news/2013/09/24/splc-reaches-agreement-florida-school-district-ensure-children-county-jail-receive>. Long before that, the Alachua County School Board entered a consent decree requiring that children and eligible young adults in the jail received appropriate educational services after a lawsuit was filed by the Florida Justice Institute. *Green v. Sch. Bd. of Alachua Cnty.*, No. 2000-ca-3816K (Fla. 8th Cir. Ct. Feb 18, 2002).
- 55 See § 951.176, F.S.; § 1006.07(5), F.S. This requirement is consistent with federal obligations under IDEA.
- 56 *Id.*
- 57 Section 1003.02(g)1., F.S.; F.A.C. Rule 6A-1.045111.
- 58 See *supra* note 4.
- 59 Title I, Part D, as well as IDEA, also require that carceral authorities and education agencies work together on transition planning—i.e., on connecting children who are leaving facilities to opportunities in their communities to further education or employment. Cf. 20 U.S.C. §§ 6434(c)(9) & (15), 6453(12), 6455(2).
- 60 34 C.F.R. part 106, subpart D; *Jeldness v. Pearce*, 30 F.3d 1220, 1229 (9th Cir. 1994); *Lothes v. Butler Cnty Juvenile Rehab. Ctr.*, 243 Fed. Appx. 950, 954-55 (6th Cir. 2007). As an example, if a facility runs an auto mechanic program, the facility must allow girls equal access to it, and cannot make them enroll instead in, for instance, a cosmetology program.
- 61 *Castañeda v. Pickard*, 648 F.2d 989, 1009-1011 (5th Cir. 1981); Departments of Education and Justice, “Dear Colleague Letter, English Learner Students and Limited English Proficient Parents,” Jan. 7, 2015, available at: <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.
- 62 Office of Special Education and Rehabilitative Services, “Dear Colleague Letter: Students with Disabilities Who Are in Correctional Facilities and the Requirements of Part B of the Individuals with Disabilities Education Act,” Dec. 5, 2014, available at: <https://www2.ed.gov/policy/gen/guid/correctional-education/idea-letter.pdf> (OSERS DCL). See also 34 C.F.R. § 300.102(a)(2)(i). The IDEA and its implementing regulations provide a limited exception to this rule for students age 18 to 22 in adult correctional facilities who were not identified as having a disability under the IDEA at their last educational placement before incarceration and did not have an IEP under the IDEA. *Id.*
- 63 See generally DOJ/ED DCL; OSERS DCL.
- 64 28 C.F.R. § 35.130(b)(7).
- 65 42 U.S.C. § 12101; 28 C.F.R. § 35.130(d); see also United States Department of Justice, Civil Rights Division, “United States’ Investigation of the Georgia Network for Educational and Therapeutic Support, D.J. No. 169-19-71,” July 15, 2015, available at: <https://www.justice.gov/sites/default/files/crt/legacy/2015/07/15/gnetslof.pdf>.
- 66 See *supra* note 19; see also ADA, Section 504.
- 67 See 20 U.S.C. §§1412(a)(11), 1413(d), (g); 34 C.F.R. §300.600(e).
- 68 29 U.S.C. § 794.
- 69 28 C.F.R. § 35.130(b)(3)(i)-(ii).

Acknowledgments

The writing and analysis for this report was conducted by Shalini Agarwal, Lisa Carmona, Maya Goldman, Lisa Graybill, Carla Laroche, Michelle Llosa, Asim Lynch, Scott McCoy, Zoe Savitsky and Jessica Zagier Wallace. It was edited by Jamie Kizzire and Booth Gunter. Cierra Brinson designed the report.

SOUTHERN POVERTY LAW CENTER

CO-FOUNDERS Morris Dees, Joseph J. Levin Jr.

PRESIDENT & CEO J. Richard Cohen

INTELLIGENCE PROJECT DIRECTOR Heidi Beirich

OUTREACH DIRECTOR Lecia Brooks

LEGAL DIRECTOR Rhonda Brownstein

CHIEF COMMUNICATIONS & DEVELOPMENT OFFICER Wendy Via

DESIGN

DESIGN DIRECTOR Russell Estes

DEPUTY DESIGN DIRECTOR Valerie Downes

SENIOR DESIGNERS Michelle Leland, Scott Phillips

DESIGNERS Shannon Anderson, Cierra Brinson, Sunny Paulk, Kristina Turner

DESIGN ASSOCIATE Angela Greer



SPLC

Southern Poverty Law Center

400 Washington Avenue
Montgomery, AL 36104
(334) 956-8200
splcenter.org