

BARRY UNIVERSITY'S SCHOOL OF LAW: Fighting for Florida's Juvenile Defendants



by
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The Barry University Dwayne O. Andreas School of Law in Orlando takes the lead on reducing the number of children unjustly prosecuted in the adult criminal justice system.

Dean Leticia M. Diaz and the faculty of the Barry University Dwayne O. Andreas School of Law created the Youth Defense Institute in 2012

based on the law school's leadership in serving as the statewide clearinghouse for strategic litigation on juvenile life without parole. Recently, the law school received \$150,000 from the Public Welfare Foundation to broaden YDI's discrete scope of work on juvenile life without parole to children prosecuted as adults generally. The Institute's new mission is to reduce the unjust prosecution of children in the adult criminal justice system. Our Youth Defense Institute has produced amazing results in just a few years' time, Diaz said.

The Institute's presence at the law school exemplifies the school's mission. Through service to the community, the

Barry Law School provides students with the opportunity to enhance their personal development. Barry Law prides itself on providing a robust legal education and experiential learning opportunities. The Institute is truly an innovative approach to complement the school's legal education, added Dean Diaz.

For three years, the law school has been working closely with the Florida Association of Criminal Defense Lawyers Association on the juvenile life without parole issue. The law school and FACDL began collaborating in June 2010. In partnership with FACDL members, elected and assistant public defenders, and the Regional Conflict Counsel, the Institute has been working to implement the United States Supreme Court's mandate in *Graham v. Florida* for states to provide a meaningful opportunity for review and release. In *Graham*, the Court abolished life without parole for children prosecuted in the adult criminal justice system for non-homicide cases. On June 25, 2012, the U.S. Supreme Court found mandatory juvenile life without parole for juvenile homicide offenders unconstitutional in *Jackson v. Hobbs* and *Miller v. Alabama*. The holding increased the number of cases YDI monitored and supported across the state from 115 to 313.

Through FACDL's leadership, more than 30 members of the private defense bar agreed to represent *Graham* clients pro bono. In an effort to support the generous pro bono efforts, Barry raised funds to hire mitigation specialists and experts to testify about adolescent development and rehabilitation. FACDL members not only provided litigation support, the organization itself donated \$10,000 to the Institute to ensure its success. Together FACDL and the Institute connected many defenders across the state who may not have worked together but for the Institute's work. Lawyers collaborated among one another and partnered with the Institute. Moving forward, YDI's collaboration with the defense bar and other experts will now focus on children prosecuted as adults.

Ian J. Goldstein, Chair of FACDL's

Juvenile Life without Parole ad hoc committee, acknowledged the value of the law school's efforts: FACDL is proud to partner with Barry University's Youth Defense Institute, which devotes an enormous amount of time and effort on behalf of children who have been swallowed up by Florida's draconian sentencing laws and adult penal system. Past-president Nellie King, Esq., started a relationship with Ilona Vila, the Institute's Director, which I have been proud to carry forward on FACDL's behalf for the past three years. FACDL has recognized the unique importance of the work being done at Barry University, and looks forward to continuing this partnership until the laws in the State of Florida pertaining to juvenile defendants are modified to reflect a child's lesser culpability and potential for rehabilitation.

Florida continues to lead the nation in the number of children it prosecutes as adults. Despite reductions in crime overall, Florida continues to lead the nation in the number of children it prosecutes in the adult system.¹ Even though violent youth crime in Florida dropped 57 percent over the past 15 years,² Florida did not reduce the number of children prosecuted as adults until five years ago. Within that time, Florida reduced the number of children prosecuted as adults by 64 percent. Despite the decrease, Florida's numbers still lead the nation.

With the exception of certain categories of offenses mandated by law, the decision to prosecute a child in the adult criminal justice system rests solely within the discretion of prosecutors. There is no other prescription or limitation on a prosecutor's decision. In many instances that discretion is abused in the juvenile justice system through the threat of direct file. Prosecutors threaten children to plea as charged in exchange for juvenile sanctions to avoid prosecution as adults, leaving juvenile defenders in an indefensible position. The abuse of discretion

applies to many children who have no prior juvenile record or who are charged with non-violent offenses. Director Vila said, Unfettered discretion is unjust and must be challenged every step of the way.

In many other states judges make decisions in delinquency courts waiver hearing, or in the adult system, reverse waiver to send a child back to the juvenile system. On the national level there have been extraordinary legisla-

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tive and policy victories on reducing the number of children prosecuted as adults.

In Florida, on July 17, 2013, The Florida Bar Association's Legal Needs of Children Committee made a strong statement that Florida should fall in line with advances in the law. The Committee voted to oppose the direct filing of children to adult court. The Committee also voted that should the law not be abolished in Florida, the decision to prosecute children as adults should rest with judges, not prosecutors. The position taken by the Committee is an acknowledgement that there are more effective mechanisms than prosecutorial discretion to protect children from the dangers associated with being prosecuted as adults and preserve public safety.

The trilogy of United States Supreme Court cases, beginning in 2005, abolishing the death penalty for children in *Roper v. Simmons* and later decisions expanding Eighth Amendment protections in *Graham* and *Miller/Jackson* to juvenile life without parole, repeatedly stand firm that children are different. The opinions are based on brain science demonstrating that during adolescence, children are different from

adults because they are less culpable, unable to appreciate the consequences of their actions, highly susceptible to peer pressure, and more likely to be rehabilitated. The opportunities that exist to creatively challenge direct file in Florida based on the cases are endless.

Marsha Levick, an advisor to the Institute and a national expert litigator on behalf of children, said, Florida continues to rank at the top among states prosecuting children in the adult criminal justice system, leaving them lagging behind in their attention to settled research about the relevant developmental differences between children and adults who commit crimes. The law school's efforts through the Institute aim to bring Florida in line with current views about the culpability of children and their capacity for rehabilitation. Simply put, most children can be tried in juvenile court with no decline in public safety. Levick is the Deputy Director and Chief Counsel of the Juvenile Law Center in Philadelphia.

JUSTICE BY GEOGRAPHY IN FLORIDA

Certain judicial circuits lead the state in the number of children prosecuted as adults. There are 20 judicial circuits in Florida. Data from the Florida Department of Juvenile Justice shows that eight of the 20 circuits account for 73 percent of all direct files. The top four circuits account for 43 percent of all direct files. Within some smaller jurisdictions, a single county accounts for the majority of direct files within that circuit. For example, in one judicial circuit with three counties, one county accounts for 92 percent of direct files; in a second judicial circuit with four counties, one county accounts for 67 percent of direct files; and in a third judicial circuit with six counties, one county accounts for 79 percent of all direct files.

ADDRESSING THE PROBLEM

The Youth Defense Institute currently uses successful strategies created and lessons learned during its experience working on juvenile life

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without parole to work with the defense bar and other experts. Strategic litigation is a multifaceted vehicle for impacting individual cases, similarly situated clients across the state, and law reform. Vila says. YDI hosts statewide conference calls to facilitate peer to peer discussion on direct file and provides individual case conferences. Individual case conferences provide an opportunity for lawyers or law offices needing guidance on a case to brainstorm with trial and appellate lawyers from around the state. YDI hosts a statewide listserv and is creating a comprehensive website.

YDI's Vila describes her work: The best part of my job is to listen to lawyers across the state and other experts strategize about how best to protect the rights of children sent to Florida's criminal justice system because of a decision made by one person. Our partners and colleagues have been committed to working together for more than three years and truly care about children in Florida. They are poised to continue the fight, and it is an honor for me to be part of this movement.

Over the next year, YDI plans to work specifically in three to five jurisdictions with the highest rates of direct file. YDI, in partnership with the public defender offices in those jurisdictions, will develop a litigation team model. YDI will collect data to identify direct file trends impacting those jurisdictions to inform litigation. The team model will include members of the public and private defense bars and civil litigation


firms. The Institute's success has made possible this new opportunity for the law school and its students to work with the Florida jurisdictions sending the most children to the adult criminal justice system, said Barry Law Dean Diaz.

Barry Law students work with the Director and attorneys to assist statewide efforts. Students provide legal and other research and assist in case preparation, including mitigation. Currently, YDI's two Public Interest fellows are assisting lawyers on two first-degree murder cases. Channel Andrews, a third-year law student and YDI Public Interest Fellow, describes her experience: My work here at the Institute allows me to grow professionally, as I get the opportunity to apply my ideas and research to real cases. I remember when *Graham* was first decided. I never imagined that not only would I be working on the issues in the case, but that I would have the opportunity to collaborate with the attorney who argued *Graham*. Our work here is important and I take it very seriously. Working on cases knowing that these teens could spend a significant part of their lives incarcerated in the adult system is challenging. However, that is the reality of working in the legal profession, and this challenge prepares me for my legal career after I graduate.

Strategic litigation is a critical component of law reform and YDI will work with advocates and other organizations to further policy development. Litigation can support current opportunities to change direct file overall. New light will

be shed on trends, abuses, and potential solutions through collaborative front-line litigation. Without this litigation at the forefront, Florida will continue to lead the nation in prosecuting the most children in the adult criminal justice system.

Simply warehousing juveniles in the adult prison system, with no opportunity for release or rehabilitation is nothing short of a civil rights crisis. Our system is not equipped to adequately provide for the proper punishment, care, treatment and rehabilitation of the youngest and often poorest members of our society. Until Florida law is changed to comport with national and international standards of decency and fairness, FACDL will stand beside the law school's Institute in order to do everything possible to fight the injustice of our criminal system in the handling of juvenile offenders.

—Ian Goldstein, Esq. 

¹ John Jay College of Criminal Justice Transfer of Juveniles to Criminal Court is Not Correlated with Falling Youth Violence, March 16, 2012 (evaluating data from 2005-2010). Florida prosecuted 3,659 children during the 2007-2008 fiscal year and 2,354 during fiscal year 2010-2011, resulting in a decrease of 64 percent (Florida Department of Juvenile Justice).

A brief query conducted by Barry Law School's Juvenile Justice Center in the June 2012 to its juvenile defender network across the state revealed no consistent policies or practices regarding the direct file decision and many reported either an increase in the number of direct files or no change.

² Violent juvenile crime in Florida decreased by 57% from 1995-2010 John Jay College of Criminal Justice (March 16, 2012).

ILONA VILA has served as the Director of the Juvenile Life without Parole Defense Resource Center at Barry University School for three years. As Director she coordinates and monitors statewide strategic litigation implementing the United States Supreme Court's decisions in *Graham v. Florida*, *Jackson v. Hobbs* and *Miller v. Alabama*. She has worked as a front line defender and on systemic reform in improving access to and quality of juvenile defense for fourteen years. She served as a front line juvenile public defender and directed two regional resource centers as part of a national effort to develop local and regional resources for juvenile defenders through the National Juvenile Defender center. Because of her assistance in the representation of over 150 youth abandoned post-Katrina without access to lawyers she was recruited to lead juvenile justice recovery efforts post-Katrina in New Orleans through the Annie E. Casey Foundation's Juvenile Detention Alternatives Initiative (JDAI). Prior to Directing the Juvenile Life without Parole Defense Resource Center at Barry University Law School she was the Director of the juvenile public defender's office in New Orleans.