

# CHILDREN IN FLORIDA ADULT PRISONS: A CALL FOR A MORATORIUM

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## I. INTRODUCTION

Florida leads the nation in incarcerating children between the ages of thirteen and seventeen in adult prisons.<sup>1</sup> On October 1, 1999, a typical day, there were 465 children in Florida prisons.<sup>2</sup> Of the 465

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1. See BUREAU OF JUST. STAT., U.S. DEP'T OF JUSTICE, CORRECTIONAL POPULATIONS IN THE UNITED STATES, 1995, at 68 tbl.4.17 (1997) (providing the number of inmates under age 18 who are in state and federal correctional institutions), <http://www.ojp.usdoj.gov/bjs/pub/pdf/cpius95.pdf>; see also KEVIN J. STROM, U.S. DEP'T OF JUSTICE, PROFILE OF STATE PRISONERS UNDER AGE 18, 1985-97, at 1 (2000) ("The number of offenders under age 18 admitted to state prison [throughout the country] has more than doubled from 3,400 in 1985 to 7,400 in 1997 . . ."), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pspa1897.pdf>; Robert B. Levinson & John J. Greene III, *New "Boys" on the Block: A Study of Prison Inmates Under the Age of 18*, CORRECTIONS TODAY, Feb. 1999, at 60, 61 (stating that between 1995 and 1997, the national prison population for children under 18 years of age increased 18% per year).

2. See Department of Correct., SAS System Report for Oct. 1, 1999 (on file with Children's Advocacy Center (CAC)); see also DEPARTMENT OF CORRECT., 1998-99 ANN.

children, there were 3 fourteen-year-olds, 29 fifteen-year-olds, 108 sixteen-year-olds, and 327 seventeen-year-olds.<sup>3</sup> Occasionally, the Florida Department of Corrections (DOC) will admit a thirteen-year-old.<sup>4</sup> As of September 8, 2000, there were eleven inmates in Florida prisons who were imprisoned for crimes that they committed when they were less than thirteen years old.<sup>5</sup> One inmate committed his primary offense at the age of nine.<sup>6</sup>

Florida also leads the nation in prosecuting children as adults in criminal court.<sup>7</sup> Since 1994, the Florida Legislature has expanded the pool of children who can be prosecuted as adults and who can be sent to adult prison. In 1995 alone, Florida prosecuted over 7000 child defendants in adult court.<sup>8</sup> Indeed, Florida transfers so many children to adult court that it has been described as “a good laboratory to study the effects” of prosecuting children as adults.<sup>9</sup> A key effect is the locking up of children in adult prison.

In the 2000 session, the Florida Legislature continued the expansion of juvenile prosecutions in adult court by passing several bills, labeled by Governor Jeb Bush and the Florida Legislature as “Tough Love.”<sup>10</sup> DOC Secretary Michael Moore estimates that “Tough

REP., (counting 487 inmates under 18 on June 30, 1999), <http://www.dc.state.fl.us/pub/annual/9899/stats/im-pop.html> (last visited Sept. 27, 2000).

3. See Department of Correct., SAS System Report for Oct. 1, 1999 (on file with CAC).

4. See Department of Correct., SAS System Report for Sept. 30, 1998 (on file with CAC). Child-inmates Brandon Hartsoe and James Conley were 13 years old when admitted to the Hillsborough Correctional Institution and the Indian River Correctional Institution, respectively. See *id.*

5. See Department of Correct., SAS System Report for Sept. 8, 2000 (on file with CAC).

6. See *id.*

7. See VINCENT SCHIRALDI & JASON ZIEDENBERG, CENTER ON JUVENILE AND CRIM. JUST., THE FLORIDA EXPERIMENT: AN ANALYSIS OF THE IMPACT OF GRANTING PROSECUTORS DISCRETION TO TRY JUVENILES AS ADULTS 2 (1999) (noting that Florida is one of only 15 states that allow a prosecutor, rather than a judge, to decide whether a child offender will be dealt with in the juvenile or adult justice system), <http://www.ejej.org/florida/florida.pdf> (last visited Oct. 17, 2000).

8. See *id.*

9. Wallace J. Mylniec, *The Special Issues of Juvenile Justice: An Introduction*, CRIM. JUST., Spring 2000, at 4, 21.

10. See Lia Rodriguez, *Juvenile Legislation: Where's the Love in "Tough Love"*, FLA. BAR PUB. INTEREST L. SEC. REP., July 2000, at 11. Five bills passed in the 2000 session comprise the Tough Love Law: Senate Bill 2464, see Act effective July 1, 2000, ch. 2000-137, 2000 Fla. Laws 283; Senate Bill 1548, see Act effective Oct. 1, 2000, ch. 2000-135, 2000 Fla. Laws 281; Senate Bill 1196, see Act effective July 1, 2000, ch. 2000-135, 2000 Fla. Laws 209; Senate Bill 1192, see Act effective May 17, 2000, ch. 2000-134, 2000 Fla. Laws 197; House Bill 69, see Act effective Apr. 18, 2000, ch. 200-119, 2000 Fla. Laws 123; and Rodriguez reports that the Criminal Justice Estimating Conference predicts that “Tough Love” will add nearly 200 additional prison beds. See Rodriguez, *supra*, at 11.

Love” will produce “an increase of about 500 offenders over the first five years.”<sup>11</sup>

This Article argues that empirical research and the stories of child-inmates undermine the justification for Florida’s policy of incarcerating children in adult prisons. Florida’s policy is not based on facts but on empty rhetoric, such as “Tough Love.” This Article will critique three arguments for incarcerating children in Florida prisons: (1) that because the juvenile justice system has failed, the only place to incarcerate serious juvenile offenders is in the adult system; (2) that the public is better protected if juveniles are sentenced as adults; and (3) that children are better off in an adult prison because they may learn moral and legal lessons, may receive needed psychological and vocational services, and may become productive and rehabilitated citizens. These three arguments, as will be shown, are refuted by the facts. Thus, to prevent irreparable harm to Florida’s juvenile population, this Article urges the Florida Legislature to impose an immediate moratorium on imprisoning children aged twelve to sixteen in adult prisons.

## II. THE FIRST ARGUMENT: THE JUVENILE JUSTICE SYSTEM HAS NOT FAILED

A primary justification for imprisoning juvenile offenders in adult prisons is that the juvenile justice system has failed and that the only alternative is for children who commit serious crimes to be placed in the adult system.<sup>12</sup> The irony is, as history reveals, that the evils of adult prison spurred the development of the juvenile justice system in the first place. More importantly, empirical research conducted by the author indicates that, at least for some children in adult prison, it is nonsensical to say that the juvenile justice system has failed: these children went straight from the “streets” to adult prison, and they never had the opportunity to experience success or failure in the juvenile system.

### A. *The History and Structure of the Juvenile Justice System*

The juvenile justice system began in this country approximately 100 years ago in Chicago.<sup>13</sup> It is a “unique American invention that

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11. Bill Cotterell, *Crime Law Not Just for Adults*, TALL. DEM., Sept. 29, 2000, at A2 (describing a news conference about the 10-20-Life Law and quoting Moore).

12. For example, this sentiment has been expressed by former Representative Bill McCollum (R-Fla.). He has been quoted as saying that serious juvenile offenders “should be thrown in jail, the key should be thrown away and there should be very little or no effort to rehabilitate them.” Richard E. Redding, *Juvenile Offenders in Criminal Court and Adult Prison*, CORRECTIONS TODAY, Apr. 1999, at 92.

13. See Julian W. Mack, *The Juvenile Court*, 23 HARV. L. REV. 104, 107 (1909).

was the brainchild of a group of female Chicago activists in the 1800's."<sup>14</sup> The primary social impetus behind the creation of the juvenile justice system was the treatment of children when they were incarcerated with adults in jails and prisons.<sup>15</sup> Lucy L. Flowers, one of the founders of the juvenile justice system, described the confinement conditions she observed: there were "many pitiful cases of little children confined in the police stations or the jails and of one boy, in the former place, who had been bitten by rats."<sup>16</sup> The birth of the juvenile justice system has been described as follows:

In 1882, John Altgeld, an aspiring young lawyer who would later become governor of Illinois, toured the House of Corrections in Chicago and discovered that hundreds of children, including those as young as 8, were jailed alongside adults. Appalled by the tragic circumstances of these children, other Chicago reformers, such as Jane Addams, Lucy Flower and Julia Lathrop, pushed state lawmakers to create a separate justice system for children.<sup>17</sup>

The fact that children were tried as adults was not the primary evil; it was that children were sent to adult prisons and jails, where they were often brutalized and killed by adult inmates and where hardened criminals became the children's moral mentors.

The common law tradition permitted children over the age of seven to be tried as adults and "theoretically" permitted the imposition of capital punishment.<sup>18</sup> Children under seven were considered too young to possess criminal intent.<sup>19</sup> A rebuttable presumption of incapacity existed for children between seven and fourteen years old, depending on the child's maturity and experiences.<sup>20</sup>

The creation of the juvenile justice system made the United States the moral and legal model for the world. By 1925, forty-six states had created separate juvenile justice courts.<sup>21</sup> Juvenile justice scholars Vincent Schiraldi and Stephen Drizin have noted: "That same year Argentina, Austria, Belgium, Brazil, Canada, Croatia, France, Germany, Great Britain, Hungary, India, Japan, Madagascar, the Netherlands, Spain and Switzerland all had established separate

14. Vincent Schiraldi & Steven A. Drizin, *100 Years of the Children's Court: Giving Kids the Chance To Make Better Choices*, CORRECTIONS TODAY, Dec. 1999, at 24, 24.

15. *See id.*

16. Daniel E. Traver, *The Wrong Answer to a Serious Problem: A Story of School Shootings, Politics and Automatic Transfer*, 31 LOY. U. CHI. L.J. 281, 284 n.29 (2000).

17. Schiraldi & Drizin, *supra* note 14, at 24.

18. *Stanford v. Kentucky*, 492 U.S. 361, 368 (1989).

19. *See In re Gault*, 387 U.S. 1, 16 (1966); *see also* Ruth Stone Ezell, *History and Philosophy of the Juvenile Court*, in FLA. JUV. L. & PRAC. § 1.3 (Fla. Bar CLE Manual, 6th ed. 1999).

20. *See Ezell, supra* note 19, at § 1.3.

21. *See Schiraldi & Drizin, supra* note 14, at 24.

court systems for children.”<sup>22</sup> In *Kent v. United States*,<sup>23</sup> the Supreme Court described the theory behind the juvenile justice system as follows: “The Juvenile Court is theoretically engaged in determining the needs of the child and of society rather than adjudicating criminal conduct. The objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment.”<sup>24</sup> Those who advocated the juvenile justice system recognized that children are different from adults, are more amenable to rehabilitation, and need to be separated from adult inmates. The brutal consequences of treating children as adult prisoners led the nation to reject the common law paradigm and adopt a juvenile justice system which became the global ideal.<sup>25</sup>

In 1911, Florida adopted a hybrid version of the juvenile justice system.<sup>26</sup> The 1911 act authorized county courts to act as juvenile courts in limited types of cases.<sup>27</sup> It was not until 1951 that Florida gave the juvenile courts exclusive original jurisdiction of proceedings in which a “child” was alleged to be dependent or delinquent.<sup>28</sup>

In 1994, the Florida Legislature created the Department of Juvenile Justice (DJJ) to regulate and supervise the Florida juvenile justice system.<sup>29</sup> The mission of the DJJ is to rehabilitate the child and to protect the public.<sup>30</sup> Section 985.404(1), *Florida Statutes*, reads: “The Department of Juvenile Justice shall plan, develop, and coordinate comprehensive services and programs statewide for the

22. *Id.*

23. 383 U.S. 541 (1966).

24. *Id.* at 554.

25. See HUMAN RIGHTS WATCH, PRISON BOUND: THE DENIAL OF JUVENILE JUSTICE IN PAKISTAN 3 (1999), <http://www.hrw.org/reports/1999/pakistan2/Pakistan-03.htm> (last visited Oct. 20, 2000), for an example of a country aspiring to adopt a juvenile justice system similar to that of the United States. “Because Pakistan has largely failed to establish the juvenile institutions provided for in its laws, the vast majority of convicted children . . . are held in prisons[,] . . . sometimes in the same cells as adults.” *Id.* Pakistan acknowledges the U.S. juvenile justice system as an ideal, but it fails to implement the system. *See id.*

26. *See* Act effective Sept. 1, 1911, ch. 6216, 1911 Fla. Laws 181; *see also* Ezell, *supra* note 19, at § 1.8; Henry George White, et al., *A Socio-Legal History of Florida’s Juvenile Transfer Reforms*, 10 U. FLA. J.L. & PUB. POL’Y 249, 252 (1999).

27. *See* ch. 6216, §§ 9-10, 1911 Fla. Laws at 186. For instance, a county court having jurisdiction over a child less than 16 years of age and charged with certain crimes could turn the child over to a probation officer to be dealt with as a delinquent. However, such a procedure was not available for children charged with more serious, violent felonies. *See id.*

28. *See* Act effective Oct. 1, 1951, ch. 26880, 1951 Fla. Laws 986 (current version at FLA. STAT. § 985.201); White et al., *supra* note 26, at 252-53 (discussing the statute and the creation of the juvenile courts’ jurisdiction).

29. *See* Act approved May 18, 1994, ch. 94-209, 1994 Fla. Laws 1183 (codified as amended at FLA. STAT. § 20.316 (2000)); *see also* Michael J. Dale, *Juvenile Law: 1994 Survey of Florida Law*, 19 NOVA L. REV. 139, 139 (1994).

30. *See* FLA. STAT. § 985.01(1) (2000).

prevention, early intervention, control, and rehabilitative treatment of delinquent behavior.”<sup>31</sup> To accomplish its mission, the DJJ provides an array of diversionary, preventative, and rehabilitative commitment programs. However, none of these programs is available to juveniles placed in adult prison.

### B. Juvenile Justice Rehabilitative Programs

As stated above, a popular argument for incarcerating children in adult prison is based on the notion that the Florida DJJ commitment programs have failed.<sup>32</sup> Recent data on juvenile recidivism in Florida does not support such a conclusion.<sup>33</sup> Some juvenile justice residential commitment facilities have outstanding performances on nonrecidivism. For example, Vernon Place, in Vernon, Florida, is a high-risk residential placement for girls with an average length of stay of twelve months; Vernon Place emphasizes “relapse prevention, self esteem, parent education and community transition.”<sup>34</sup> In 1997-98, this facility had only a 3.8% recidivism rate!<sup>35</sup>

There is no dispute that the juvenile justice system needs repair. The DJJ supervises 192 residential juvenile facilities,<sup>36</sup> and the average recidivism rate for all of the Florida juvenile commitment facilities is 42%.<sup>37</sup> Forty-two percent is too high.

But the DJJ can improve this recidivism rate. It has initiated a performance-based evaluation system so that each of its 192 residential juvenile commitment programs can be held accountable.<sup>38</sup> As State Attorney Rod Smith stated: “Of the programs identified by experts as ‘not working,’ several are extensively relied upon in Florida. Although many types of boot camps and wilderness challenge programs have been demonstrably unsuccessful in curtailing recidivism, Florida continues to invest in both.”<sup>39</sup> Focusing on the results of individual programs offers a clear avenue for improvement.

31. FLA. STAT. § 985.404(1) (2000).

32. Cf. Kristin Choo, *Minor Hardships: Jailing Youths as Adults is gaining Ground—And so Are Its Critics*, A.B.A. J., Sept. 2000, at 20, 21 (“The No. 1 incentive for trying kids as adults is the failure of the juvenile justice system . . . .” (quoting Edward Griffith, spokesperson for the prosecutor’s office in Miami, Florida)).

33. See DEPARTMENT OF JUV. JUST., 2000 OUTCOME EVALUATION REP. 80.

34. Department of Juv. Just., Facts Resource Roster, Residential Commitment Programs, Apr. 13, 1999, at 7 (on file with CAC).

35. See DEPARTMENT OF JUV. JUST., *supra* note 33, at app. 5-15. The DJJ measures recidivism by whether the juvenile was adjudicated for an offense within a year of release from a commitment program. See *id.*

36. See Department of Juv. Just., *supra* note 34.

37. See DEPARTMENT OF JUV. JUST., *supra* note 33.

38. See *id.*

39. Rod Smith, *Toward a More Utilitarian Juvenile Court System*, 10 U. FLA. J.L. & PUB. POL’Y 237, 245 (1999).

To claim that the juvenile justice system has failed is too sweeping, just as it is too sweeping to claim that the public school system has failed: some particular schools have failed, but not all schools. Failing to distinguish between the successes like Vernon Place and the failures of the boot camps is tantamount to giving up intellectual rigor and accountability.

*C. Empirical Research on First-Time Child Offenders  
in Florida Prisons*

As part of an ongoing project, the Florida State University Children's Advocacy Center (CAC) has profiled thirteen- and fourteen-year-olds in Florida's adult prisons. A number of the youngest inmates reported that they never spent an evening in a juvenile justice commitment facility and that they went straight from the "streets" to adult prison. To substantiate these reports, the CAC made public records requests to the DOC and obtained identification information of all inmates who committed their primary criminal offense when fifteen years old or younger. Approximately 1100 inmates were in this category.<sup>40</sup> Next, this list of names was sent to the DJJ to determine how many of the 1100 inmates were ever committed to a juvenile justice commitment facility. Of the 994 that the DJJ identified, 43% were never committed to a juvenile commitment program.<sup>41</sup> This study establishes that for this group of children in adult prison, the juvenile justice system never had an opportunity to succeed because it was never given a chance.

Who are these children who were never given an opportunity for rehabilitation in the juvenile justice system? The typical child in this group has one or more of three characteristics: (1) the child committed her primary offense in association with older juveniles; (2) the child intended to commit a property crime—burglary, auto-theft, and so on—which turned into a violent crime—murder, kidnapping, and so on; or (3) the child was a bystander to a violent offense in which an older juvenile had the weapon.<sup>42</sup>

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40. See Department of Correct., SAS System Report for Sept. 18, 2000 (on file with CAC).

41. The DJJ informed the Children's Advocacy Center (CAC) that the DJJ was able to identify 88% of the inmates, totaling 994 youths. See Letter from Dr. Stephen F. Chapman, Florida Bureau of Data and Research, Department of Juv. Just., to Lia Rodriguez, Research Associate, Florida State Univ., Children's Advocacy Center, College of Law (Dec. 4, 2000) (on file with the CAC).

42. See Franklin E. Zimring, *Kids, Groups and Crime: Some Implications of a Well-Known Secret*, 72 J. CRIM. L. & CRIMINOLOGY 867, 871 (1981). A 1981 New York City study revealed that 81% of delinquent minors committed their crimes as members of a group. See *id.*

*D. Life Stories of Three Florida Inmates*

These characteristics are illustrated in the life stories of three Florida inmates: Jessica Robinson, Tim Kane, and Tiffany Lindoo. Jessica committed her primary offense at the age of thirteen, Tim and Tiffany at the age of fourteen. All three are currently in Florida adult prisons. Unlike most juvenile inmates whose records are usually sealed, these children's colored photographs and criminal histories are public record available on the DOC web page for the world to observe:<sup>43</sup> children are stripped of the confidentiality protections of the juvenile justice system once they are prosecuted as adults. For all legal purposes, children in adult prisons are treated as adults.

In *Kane v. State*,<sup>44</sup> a Florida appellate court describes Tim Kane's criminal story as follows:

The events leading to this result occurred when Tim Kane was fourteen years and three months old, a junior high student with an I.Q. of 137, and no prior association with the criminal justice system. On the night in question, Tim accompanied four older young men, led by Alvin Morton and Bobby Garner, both three to five years older than Tim. There was a plan to burglarize a house which Tim believed to be unoccupied. Prior to entering the house, two of the five young men withdrew from the plan and left. Tim entered the house with Morton and Garner. Unfortunately, the two victims were at home. The victims confronted the three young men and were brutally murdered by Morton and Garner. The brutality of the murders is described in *Morton v. State*, 689 So.2d 259 (Fla. 1997). Tim did not participate in killing the two victims.<sup>45</sup>

The court affirmed Tim's conviction and sentence and concluded its opinion with an admonishment to young people. The court stated:

At the age of fourteen, Tim made a decision to participate in a burglary for reasons which are difficult to understand. As serious as was the crime of burglary which Tim intended to commit, that crime pales in comparison to the two brutal murders for which he now stands convicted and for which he will be imprisoned at least until he reaches the age of thirty-nine. We wish the young people of this state could become aware of Tim Kane's story—how the decision to commit a burglary, a crime which would most probably result in juvenile probation, resulted in a minimum of twenty-five years' imprisonment.<sup>46</sup>

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43. See Search of Inmate Population Information, Department of Correct (Oct. 25, 2000), at <http://www.dc.state.fl.us/ActiveInmates/inmatesearch.asp>.

44. 698 So. 2d 1254 (Fla. 2d DCA 1997). The author wishes to thank Cindy McNeely for pointing out this case.

45. *Id.* at 1255.

46. *Id.* at 1256.

Tim Kane currently resides at Sumter Correctional Institution. His DOC number is 312339, and his release date reads “sentenced to life.”<sup>47</sup>

Like Tim Kane, Jessica Robinson went from the streets straight to adult prison, bypassing any residential juvenile justice commitment programs. Jessica’s story is similar to Tim’s: she was a follower with two older teenagers, she did not have a weapon, and she intended to commit a property crime but was convicted of a capital felony—kidnapping.<sup>48</sup>

Jessica’s photograph was on the September 10, 2000, cover of the *New York Times Sunday Magazine*.<sup>49</sup> Margaret Talbot describes Jessica’s criminal story as follows:

When Jessica Robinson was 13, she took part in a crime that Judge Barbara Levenson called “horrible, vile” and one of the most “deeply saddening” cases she had ever heard in her courtroom. On July 12, 1997, animated by a vague plan to go to Disney World with their spoils, Jessica and two older teenagers robbed her grandparents in their Miami home . . . .

Though Jessica had not actually wielded the knife or herded the victims onto the porch, she was charged with assault and armed kidnapping as well as armed robbery and sentenced to nine years in an adult prison.<sup>50</sup>

Jessica Robinson currently resides at Dade Correctional Institution. Jessica’s DOC inmate number is M10936, and her release date is June 15, 2006.<sup>51</sup>

Tiffany Lindoo’s story follows the pattern of Tim’s and Jessica’s. At the time of the crime, Tiffany was fourteen years old; she was with two older teenagers and a twenty-two-year-old, and she did not have a weapon.<sup>52</sup> Like Tim and Jessica, Tiffany was a passive bystander to the violence.<sup>53</sup> She also went straight from the streets to adult prison.<sup>54</sup> The *Miami Herald* recounts Tiffany’s criminal story as follows:

In early 1994, Tiffany Lindoo, who . . . had never committed a crime, was convicted of felony murder—being with a man and another teenager who murdered a Palm Beach businessman. Lindoo, then 14, went to a motel with her new boyfriend, Lewis

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47. Search of Inmate Population Information, *supra* note 43.

48. See Margaret Talbot, *The Maximum Security Adolescent*, N.Y. TIMES, Sept. 10, 2000, § 6 (Magazine), at 46.

49. See N.Y. TIMES, Sept. 10, 2000, § 6 (Magazine), at cover.

50. Talbot, *supra* note 48.

51. See Search of Inmate Population Information, *supra* note 43.

52. See Meg Laughlin, *Years in a Prison for Adults Keep a Child Frozen in Time*, MIAMI HERALD, Oct. 1, 2000, at 3L.

53. See *id.*

54. See *id.*

Crocker, 17, and another couple, Shannon Wofford, 16, and Mike Yates, 22. Palm Beach County businessman Ed Strother, then 45, met the girls outside the motel and made plans to take them out later that night. When he returned and entered their room, Yates and Crocker beat him to death with a bat and the butt of a gun.

Instead of running out and reporting the murder to police, Lindoo went with the other three to the dead man's house and helped rob it. She got 14 years for second-degree murder.

"It was a terrible crime and I should have left and reported them, but I was too out of it, too much of a follower, too immature," she now says.<sup>55</sup>

Tiffany Lindoo resides at Broward Correctional Institution in Pembroke Pines, Florida. Tiffany's DOC inmate number is 465599, and her release date is January 7, 2005.<sup>56</sup>

To summarize, the first argument for incarcerating children in adult prison broadly implies that all juvenile justice programs are failures. Also, the first argument fails to recognize the group of inmates like Tim Kane, Jessica Robinson, and Tiffany Lindoo who never had an opportunity to participate in a rehabilitative program of a juvenile justice commitment facility.

### III. THE SECOND ARGUMENT: THE PUBLIC IS NOT BETTER PROTECTED

#### A. *The Florida Department of Juvenile Justice Has Authority to Commit a Serious Offender Until His or Her Twenty-first Birthday*

The argument that the public is better protected when a juvenile is incarcerated in an adult prison assumes that the juvenile justice system is inept in protecting the public because it cannot commit a child for an adequate length of time. This assumption is false. As a matter of law, the DJJ has the authority to retain jurisdiction over a child who commits a serious crime until his or her twenty-first birthday.<sup>57</sup> For example, a fourteen-year-old who commits a serious crime may be kept in the juvenile justice system for up to seven years. During this time, the DJJ is required to provide the child with rehabilitative services to get the child back on track.<sup>58</sup>

Most children who are transferred into the Florida adult system receive less incarceration time than they could have received if they had been committed in the juvenile system.<sup>59</sup> For example, in 1997,

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55. *Id.*

56. See Search of Inmate Population Information., *supra* note 43.

57. See FLA. STAT. § 985.231(1)(a)(3) (2000).

58. See *id.* § 985.231(1).

59. See SCHIRALDI & ZIEDENBERG, *supra* note 7, at 3; Shannon F. McLatchey, *Juvenile Crime and Punishment: An Analysis of the "Get Tough" Approach*, 10 U. FLA. J.L. & PUB. POL'Y 401, 414-15 (1999).

there were 4952 youths transferred from the juvenile justice system to the adult criminal system.<sup>60</sup> Most of these children received time in county jail and/or probation.<sup>61</sup> The maximum jail sentence (as opposed to prison sentence) is one year.<sup>62</sup> Hence, the majority of these children could have received a longer commitment in the juvenile justice system.

In addition, out of the 4952 youths transferred in 1997, trial courts sentenced approximately 697 youths (seventeen years old and younger) to adult prison for more than a year.<sup>63</sup> The DOC reports that approximately 54% of its child inmate population is released within three years.<sup>64</sup> The majority of children sentenced to adult prison—as well as those sentenced to county jail—could have received a longer commitment in the Florida juvenile justice system. If protecting the public is measured by how long a child is committed, then the juvenile justice system has authority to protect the public and rehabilitate the child.

*B. Recidivism Rates Are Higher for Children in the Adult System than for Children in the Juvenile System*

For those children who are incarcerated in adult prisons, a popular argument is that the public is better protected than if such children were in the juvenile system.<sup>65</sup> This argument is also short-sighted. In a comprehensive empirical study of the recidivism rates of Florida children who are convicted and sentenced as adults, three prominent social scientists—Professors Donna Bishop, Lonn Lanza-Kaduce, and Charles Frazier—have found that 30% of children prosecuted in the Florida adult system were re-arrested within two years, while only 19% of children with matching crimes and backgrounds in the Florida juvenile justice system were re-arrested.<sup>66</sup> Based on 2738 matched pairs, Bishop, Lanza-Kaduce, and Frazier found that children released from adult prison recidivate much more quickly, commit more serious crimes (felonies), and average more subsequent re-arrests than children who are released from juvenile facilities.<sup>67</sup>

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60. See DEPARTMENT OF JUV. JUST. ADVISORY BOARD, 1998 ANN. REP. & JUV. JUST. FACT BOOK 2.

61. See McLatchey, *supra* note 59, at 414-15.

62. See FLA. STAT. § 922.051 (2000).

63. See DEPARTMENT OF JUV. JUST. ADVISORY BOARD, *supra* note 60, at 2.

64. See Cathy Hatcher, *Growing Up Behind Bars*, THE PALM BCH. POST, Jan. 23, 2000, at 2E.

65. See, e.g., Choo, *supra* note 32, at 21 (stating that the public believes that the juvenile justice system fails to deter violent young offenders).

66. See Donna M. Bishop et al., *Juvenile Justice Under Attack: An Analysis of the Causes and Impact of Recent Reforms*, 10 U. FLA. J.L. & PUB. POL'Y 129, 145-46 (1998).

67. See *id.*

The results of this empirical study should not be surprising. As the creators of the juvenile justice system recognized 100 years ago, prisons are the nurseries of crime and vice. Children thrown into the adult prison system are thrown into a world where their role models are hardened criminals.

The New York Times Magazine offered this description of Jessica Robinson's role models or "family":

In October of last year, however, Jessica was transferred to Dade County Correctional Institution, near Miami. Her "family" at Dade is larger and more elaborate than it was in Tallahassee—it includes women whom Jessica calls her grandparents, great-grandparents, uncles, cousins, sisters, brothers. It is also considerably rougher, and for this reason, it is easy to see how a girl could settle into a life not just of crime but of truly depraved crime. The woman Jessica now refers to as Mommy, a beautiful, blue-eyed, heavily tattooed 29-year-old with the nickname Blackie, is serving a life sentence for murder. She and a male accomplice robbed two elderly people and cut their throats with a machete. The other Dade prisoner who wanted to be Jessica's mommy—they staged a sort of custody battle—stole an elderly man's checks with an accomplice, who then beat the man to death.<sup>68</sup>

Jessica's "moral" role model, Blackie, is presently serving a 999-year sentence.

### *C. Limited Post-Prison Life Opportunities*

As convicted felons, child inmates have limited post-prison life opportunities. By law, they are excluded from a variety of types of employment, and they cannot join the military.<sup>69</sup> Criminal Defense Attorney Darrow Soll gave the following testimonial:

"I had juvenile referrals when I was a kid. . . . And if I came into the system now, I'd probably be incarcerated. I wouldn't have gotten into the military. I wouldn't have gotten an education. I sure wouldn't have entered the bar."

. . . .

"O.K., in my case, I took the golf cart and drove it into the pool at school—big prank," Soll explains. "But when I went to court, and I had this Roy Bean-type judge who said, 'Son, in the old days I could have sent you into the Army, and I can't now, but that's what I'd do with you.' And I did go into the Army, and I became a paratrooper, and it was a great educational experience for me and a lot of other rough-and-tumble kids like me. A whole lot better than fending off gangs in the state pen. If I'd done that today, I'd

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68. Talbot, *supra* note 48, at 46.

69. See Redding, *supra* note 12, at 94.

have a felony conviction and they wouldn't even let me in the Army."<sup>70</sup>

The New York Times Magazine offered this description of Jessica Robinson's life opportunities after prison:

Jessica will get out of prison when she is 22. She will have no education beyond the sixth grade, no job skills, no friends her age and no experience of ordinary, unincarcerated life after the age of 13. What she will have is a felony record—unlike the juvenile courts, adult courts do not preserve anonymity—and a collection of “mothers” and mentors, among whom a convicted embezzler is by far the most wholesome. She will have been raised by wolves, and then she will be released, like most juveniles convicted in adult court, when she is still young enough to commit many more crimes.<sup>71</sup>

The Miami Herald described Tiffany Lindoo's life opportunities after prison as follows:

And then there is Tiffany Lindoo, who, having grown up in prison, never talks about a career and never prays for a miracle.

“She has been in too long. By the time she gets out, she'll be a vegetable,” says her father, Ed Lindoo, a South Florida university professor.

. . . .

“Had she gotten out in three to five years, she could have been a productive citizen,” he says. “But now, she is completely institutionalized.”

. . . .

According to Department of Corrections paperwork, Tiffany Lindoo should get out of prison in five years, as long as she doesn't lose any more gain time. She has no idea what she'll do when the metal doors finally open and prison officials hand her \$100 in cash, a pair of pants without the stripe, a pair of flimsy shoes, and wish her well.

“I'm ashamed to admit this, but I'm afraid of that day,” says Lindoo. “I grew up in here, and I don't know anything about living.”<sup>72</sup>

Both Jessica and Tiffany are typical of child inmates: their postprison life opportunities are restricted and uncertain.

The public is better protected if such children are placed in the appropriate juvenile justice facility. The Bishop, Lanza-Kaduce, and Frazier study establishes that not only is there no benefit to the public by throwing children in the adult system, but in fact, this

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70. Talbot, *supra* note 48, at 88.

71. *Id.* at 47.

72. Laughlin, *supra* note 52, at 4L.

policy produces greater harm.<sup>73</sup> The last thing parents want is for their children to run with the wrong crowd. Without a doubt, placing a child in adult prison surrounds that child with the wrong crowd twenty-four hours a day. Our children should not have such role models, both because it is simply not morally right and because it is against our own self-interest.

#### IV. THE THIRD ARGUMENT: THE CHILD IS NOT BETTER OFF IN PRISON

Yet another argument sometimes offered for incarcerating juvenile offenders in adult prisons is that they are somehow better off there. There is no empirical evidence that a child is “better off” in any sense in a Florida adult prison.<sup>74</sup> Children who are thrown into a Florida adult prison are divided into two legally distinct but practically indistinguishable groups: Youthful Offenders<sup>75</sup> and regular inmates.

##### A. *Children Who Are Part of the Regular Inmate Population*

There are currently approximately 104 children under eighteen years old mixed in with the adult inmates.<sup>76</sup> Tim Kane, Jessica Robinson, and Tiffany Lindoo are part of the regular inmate population. These children are treated just as the adult inmates. A child in adult prisons eats with adult inmates, sleeps with adult inmates, and spends her day with adult inmates. The child receives the identical programs and services as an adult inmate. From the perspective of the DOC, the child *is* an adult inmate.

The existence of this group of child inmates is often denied. On a May 31, 2000, ABC Nightline report, Ted Koppel asked Palm Beach County Prosecutor, Barry Krischer, what happens to children who are sent to adult prison.<sup>77</sup> Mr. Krischer stated: “We do not mix children with adults in this state.”<sup>78</sup> Later in the program, Mr. Krischer partially retracted his statement in the case of “violent” or “aggressive youths.”<sup>79</sup> The undisputed fact is that these 104 child

73. See Bishop et al., *supra* note 66, at 145-46.

74. See generally SCHIRALDI & ZIEDENBERG, *supra* note 7.

75. See FLA. STAT. § 958.03 (2000).

76. See Justice Policy Inst., The Florida Experiment: Fact Sheet (2000), at <http://www.cj.org/florida/factsheet.html>. The number of children in prison fluctuates. This number is based on the number of children in the DOC as of May 2000. See *id.*

77. See *Nightline: Courts Give More Children Adult Punishment* (ABC television broadcast, May 31, 2000) (transcript available at <http://www.cj.org/florida/nightline.html>).

78. *Id.*

79. *Id.*

inmates exist and are mixed with adults.<sup>80</sup> Most of these child inmates are not statutorily eligible for the prison's Youthful Offender program because of the severity of their primary conviction and sentence.<sup>81</sup>

### *B. Florida's Youthful Offender Program*

The second group of inmates constitutes child inmates who are in the Youthful Offender program.<sup>82</sup> There are approximately 457 inmates in the Youthful Offender program.<sup>83</sup> These child inmates are in adult prisons but are theoretically separate from adult inmates. They should eat, sleep, work, and learn separately from adults. The statutory goal of the Youthful Offender Program is rehabilitation.<sup>84</sup> Thus, by statute, child inmates should receive a panoply of services, such as drug and alcohol counseling, anger management, and vocational training.<sup>85</sup> The rationale behind the goal of rehabilitation is similar to the rationale of the juvenile justice system: younger inmates are more amenable to rehabilitation than older inmates, and in the end, it is less costly for society to rehabilitate such child inmates.<sup>86</sup>

The number of Youthful Offenders is fluid because both the trial courts and the DOC have the jurisdiction to designate a child inmate as a Youthful Offender. A child can be designated as a Youthful Offender by the court if she is under the age of twenty-four and is sentenced to less than six years in prison.<sup>87</sup> The DOC also has the authority to transfer a child out of the Youthful Offender Program and into the regular adult population for disruptive behavior.<sup>88</sup>

The Youthful Offender Program has failed to achieve its legislative purpose. The Governor's Commission on Correction did an in-depth evaluation of the program and found that 86% of Florida Youthful Offenders are waiting for rehabilitative services.<sup>89</sup> The Miami Herald reports:

Department of Corrections spokesman Debbie Buchanan says that the state prison system is not geared toward education and is

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80. See Justice Policy Inst., *supra* note 76.

81. See FLA. STAT. § 958.04(1)(c) (2000); *Duke v. State*, 541 So. 2d 1170, 1171 (Fla. 1989) (holding that a child convicted of a crime punishable by death or life imprisonment under an indictment may not be sentenced as a Youthful Offender).

82. See FLA. STAT. § 958.011 (2000).

83. See Justice Policy Inst., *supra* note 76.

84. See FLA. STAT. § 958.021 (2000).

85. See *id.* § 958.12.

86. See *id.* § 958.021.

87. See *id.* § 958.04(2)(d). The DOC can designate one as a Youthful Offender if the youth is sentenced to less than 10 years and is under the age of 24. See *id.* § 958.11(4).

88. See *id.* § 958.11(3)(b).

89. See FLORIDA CORRECT. COMM'N, 1998 ANN. REP. 2.

not authorized or funded to offer the same “educational and rehabilitative opportunities” that are part of the juvenile system.

“We don’t make the laws; we just follow them,” says Buchanan. “According to the law, there are no children in our system, just youthful offenders who, for the most part, get treated like other inmates.”<sup>90</sup>

The DOC is required to separate the youngest Youthful Offenders, those fourteen to eighteen years old, from the oldest, those nineteen to twenty-four years old.<sup>91</sup> Despite this requirement, the Commission found that 43% of the youngest male inmates, fourteen to eighteen years old, were mingled with the older Youthful Offenders, eighteen to twenty-four years old.<sup>92</sup> The situation is worse for female inmates. The Commission found that the DOC houses all female Youthful Offenders, fourteen to twenty-four years old, together.<sup>93</sup> The legislative intent of the Youthful Offender statute is clear: “The purpose of this chapter is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by providing them with enhanced vocational, educational, counseling, or public service opportunities and by preventing their association with older and more experienced criminals . . . .”<sup>94</sup> As currently administered, the Youthful Offender program fails to live up to this goal by commingling young children with adults and by failing to provide the services necessary to achieve its goals.

There is one important advantage of the Youthful Offender program over the regular inmate services. Children in the Youthful Offender program receive an extra serving of milk and two extra servings of fruit a day compared to the children in the regular inmate population.<sup>95</sup> Children in the regular inmate population receive only one cup of milk a day and a less nutritious diet.<sup>96</sup> For example, a fourteen-year-old girl in the Youthful Offender program receives, on average, 1829 milligrams of calcium a day, whereas a fourteen-year-old girl in the regular inmate population receives, on average, 1517 milligrams of calcium a day.<sup>97</sup> These children want a more nutritious

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90. Laughlin, *supra* note 52, at 4L.

91. See FLA. STAT. § 958.11(1) (2000).

92. See FLORIDA CORRECT. COMM., *supra* note 89, at vii.

93. See *id.* at 38.

94. FLA. STAT. § 958.021 (2000).

95. See S. Elysha Luken, Milk Money: Who’s Paying For Children’s Nutrition in Adult Prisons? 11 (May 21, 1999) (unpublished manuscript, on file with CAC).

96. See Department of Correct., Adult Master Menu Nutrient Analysis, 1997-1998 (on file with CAC).

97. Compare Department of Correct., Youthful Offender Master Menu Nutrient Analysis, 1997-98 (on file with CAC) with Department of Correct., Adult Master Menu Nutrient Analysis, 1997-98 (on file with CAC).

diet. The New York Times Magazine recounted the following exchange between this author and Jessica Robinson:

When Annino first met Jessica, he concluded his interview by asking, as he asks all his clients, what she wanted from her association with him. Jessica “looked up sort of sleepily and said, ‘Milk,’” Annino recalls. “She wanted more milk than she was getting in the prison diet, which is based on the nutritional needs of an adult.”<sup>98</sup>

Why the difference between the two groups of children? The DOC, like many state correctional agencies, participates in the National School Lunch Program and School Breakfast Program. These are the same programs that subsidize breakfasts and lunches for millions of school children around the country.<sup>99</sup> The DOC receives approximately three million dollars a year from the National School Lunch/Breakfast Programs to subsidize the breakfast and lunch of child inmates in the Youthful Offender program.<sup>100</sup> In exchange for receiving these federal funds, the school district or prison must provide a diet that meets the minimum nutritional requirements of the National School Lunch Program.<sup>101</sup> The Federal Department of Agriculture, however, which funds and regulates the National School Lunch Program, prohibits the funding of breakfast or lunch in a facility where children and adults are not segregated.<sup>102</sup> Hence, those child inmates who are not in the Youthful Offender program are denied an extra serving of milk and a more nutritious diet.

The Youthful Offender Program also fails from the perspective of the child inmates. Child inmates describe the program as “gladiator school” because of the constant violence between Youthful Offenders.<sup>103</sup> In contrast to a child in the Youthful Offender program, a child inmate in the regular adult prison population may “luck out” and find a protective, nurturing adult inmate who will shield the child from the prison violence. For example, in profiling child inmate Jessica Robinson, the New York Times Magazine described inmate Suzanne Manning as such a protector.<sup>104</sup> The article states:

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98. Talbot, *supra* note 48, at 46-47.

99. See 42 U.S.C. §§ 1751, 1773 (1994).

100. See Luken, *supra* note 95, at 11.

101. See 42 U.S.C. § 228.195(4); see also Luken, *supra* note 95, at 12-15.

102. See Connecticut State Bd. of Educ. v. United States Department of Agric., No. CIV.A.396CV0764, 1997 WL 508155, at \*5 (D. Conn. Aug. 20, 1997) (holding that the USDA was entitled to reimbursement of funds used to provide meals to juveniles in a nonsegregated facility).

103. See Paolo Anino, Profiles of Children in Prison (ongoing research, on file with CAC).

104. See Talbot, *supra* note 48, at 46.

In prison, Jessica has found surrogate mothers to replace the real one who has yet to visit her incarcerated daughter. Jessica's first mother was a stocky, gray-haired woman named Susanne Manning, who was serving a 25-year term for embezzlement. Manning had a 13-year-old son of her own on the outside, and she pushed Jessica to do her homework, bought her snacks, read her "The Little Mermaid" and kept her out of fights when she could.<sup>105</sup>

Jessica's luck ran out when Suzanne Manning was moved to another prison.<sup>106</sup>

In sum, the Youthful Offender program fails to meet its purpose. Most children in adult facilities continue to be mingled with adult offenders and do not receive any rehabilitative services. They continue to be placed in a violent environment hardly conducive to self-betterment. And to the extent that it offers some improvement—better nutrition, for example—it is underinclusive in denying them to other child inmates.

### *C. The Tragedy*

There is very little empirical evidence of what happens to child inmates in Florida prisons.<sup>107</sup> However, national studies shed light on prison conditions for children. Studies have shown that children in prison have a higher disciplinary rate than adults and a higher rate of "segregation commitment," called the "box" by child inmates.<sup>108</sup> Studies have also established that children in jails are 7.7 times more likely to attempt suicide than children in juvenile commitment facilities.<sup>109</sup> An Ohio study has shown that 30% of children in the Ohio prison system have tried to commit suicide while in prison.<sup>110</sup> In Florida, Jessica Robinson illustrates these statistics. At the age of fourteen, she attempted suicide within two weeks of arriving at Jefferson Correctional Institution, a Florida adult prison.<sup>111</sup> National studies have also established that children in prison are five times more likely to be sexually assaulted by other inmates than in a

105. *Id.*

106. See *This American Life: Are You My Mommy?* (National Public Radio broadcast, May 12, 2000).

107. See Redding, *supra* note 12, at 124 ("There is virtually no research on the other psychological and behavioral effects of criminal court prosecution and/or incarceration in adult correction facilities.").

108. See Talmadge Owens, Jr., *Dual Track Management of the Youthful Offender*, CORRECTIONS TODAY, Apr. 1999, at 102, 104.

109. See MICHAEL G. FLAHERTY, U.S. DEP'T OF JUST., AN ASSESSMENT OF THE NATIONAL INCIDENCE OF JUVENILE SUICIDE IN ADULT JAILS, LOCKUPS, AND JUVENILE DETENTION CENTERS 3-5 (1980).

110. See Gloria Vasquez, *Resiliency: Juvenile Offenders Recognize Their Strength To Change Their Lives*, CORRECTIONS TODAY, June 2000, at 106, 106.

111. See Talbot, *supra* note 48, at 46.

juvenile commitment facility.<sup>112</sup> Because of the above conditions, the National Commission on Correctional Health Care, which accredits state correctional agencies, adopted the following statement: “[T]he incarceration of adolescents in adult correctional facilities is detrimental to the health and developmental well-being of youth.”<sup>113</sup>

The tragedy of one Florida child inmate, Michael Myers, illustrates the results of the national studies of brutality against children in adult prisons.<sup>114</sup> Michael was fifteen years old, a sickly boy, weighing 115 pounds.<sup>115</sup> He was prosecuted as an adult and sentenced to Martin Correctional Institution, a Florida adult prison. Michael was convicted of sex crimes and was profoundly mentally disturbed. At trial, Michael begged, “I do need help. I really want help. Please help.”<sup>116</sup>

At Martin Correctional Institution, an adult inmate, Christopher Soule made his wishes clearly known to the prison officials that he did not want to room with another prisoner and that he would “injure” any prospective “roomie.”<sup>117</sup> Mr. Soule was twenty-three years old, a skin-head with a white-power lightning bolt tattoo.<sup>118</sup> He weighed 195 pounds and was 6 foot 2 inches. He was considered “anti-social, even by prison standards.”<sup>119</sup> He had thirteen felony convictions and was serving a ten-year sentence.<sup>120</sup> In 1997, the DOC placed fifteen-year-old Michael with this violent adult inmate and within a few weeks, Michael Myers was dead. Mr. Soule had strangled Michael to death.<sup>121</sup>

## V. CONCLUSION

There is a clear alternative to throwing children in prison. This alternative is the juvenile justice system, where children are treated as children. A child inmate is not an adult. Any parent of a thirteen- or fourteen-year-old would agree.

The Chicago mothers were right: children do not belong in prison. As Clinical Professor Steven Drizin commented:

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112. See Justice Policy Inst., *supra* note 76.

113. *Corrections Health Group Makes Suggestions on Teen Prisoners*, CORRECTIONS J., July 8, 1998, at 3.

114. See Fred Grim, *Bomb Is Defused but at What Cost?*, MIAMI HERALD, June 12, 1997, at 5B; Fred Grim, *Inept Lawmakers Put Kids at Risk*, MIAMI HERALD, April 21, 2000, at 1B [hereinafter Grim, *Kids at Risk*]; Fred Grim, *Judge Must Pick Between Two Evils in Sex Cases*, MIAMI HERALD, April 14, 1996, at 7B [hereinafter Grim, *Two Evils*].

115. See Grim, *Two Evils*, *supra* note 114, at 7B.

116. *Id.*

117. Grim, *Kids at Risk*, *supra* note 114, at 1B.

118. See *id.*

119. *Id.*

120. See *id.*

121. See *id.*

Ironically, it was precisely these conditions—the increasing numbers of children being exposed to the harsh punishments of criminal court and the dangerous conditions of confinement for them in adult institutions—that inspired Jane Addams and the Hull House women to create a better and more humane alternative for Illinois children at the turn of the 19th century. If Addams and her colleagues were alive today, they would be appalled to see that history is repeating itself.<sup>122</sup>

The more humane alternative is the juvenile justice system.

The Florida Legislature should impose a moratorium on imprisoning children between the ages of twelve and sixteen years old. Three leading social scientists who study the Florida juvenile justice system, Donna Bishop, Lon Lanza-Kaduce, and Charles Frazier, have joined together to “recommend a moratorium on the criminalization of juvenile offenders so that a more informed policy can emerge.”<sup>123</sup> The present policy of expanding the pool of children who can be incarcerated in adult prisons is based on rhetoric rather than empirical studies. The tragic consequences of incarcerating children in prison is shown in the wasted lives of Tim Kane (fourteen years old), Jessica Robinson (fourteen years old), and Tiffany Lindoo (fourteen years old)—and in the death of Michael Myers (fifteen years old).

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122. Steven A. Drizin, *Net of ‘Automatic Transfer’ Growing Too Wide*, CHI. DAILY L. BULL., Apr. 24, 1999, WL 4/24/99 CHIDLB 4.

123. Bishop et al., *supra* note 66, at 155.