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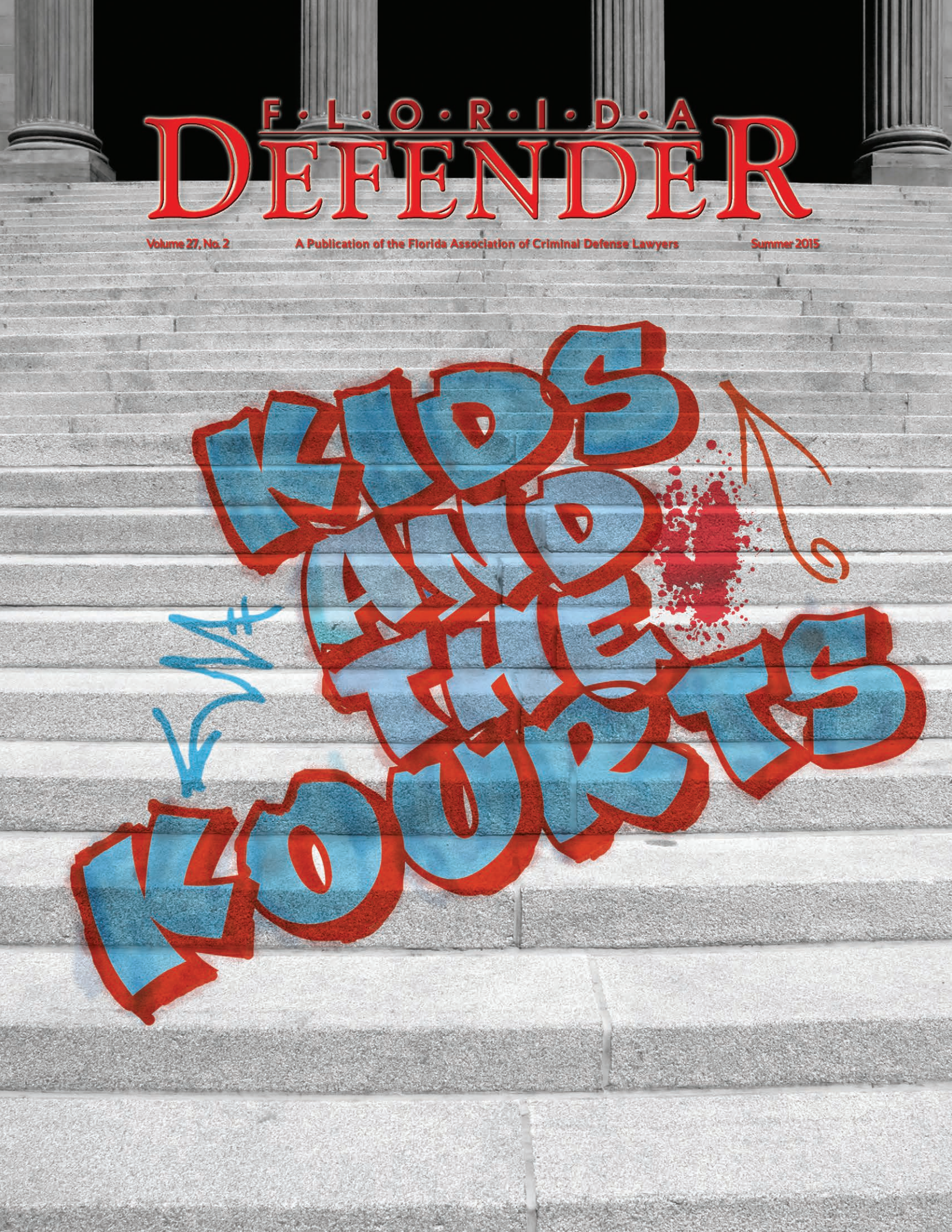

SENTENCING OF JUVENILE OFFENDERS IN FLORIDA'S ADULT CRIMINAL JUSTICE SYSTEM

Slow But Significant Progress

by
Ian
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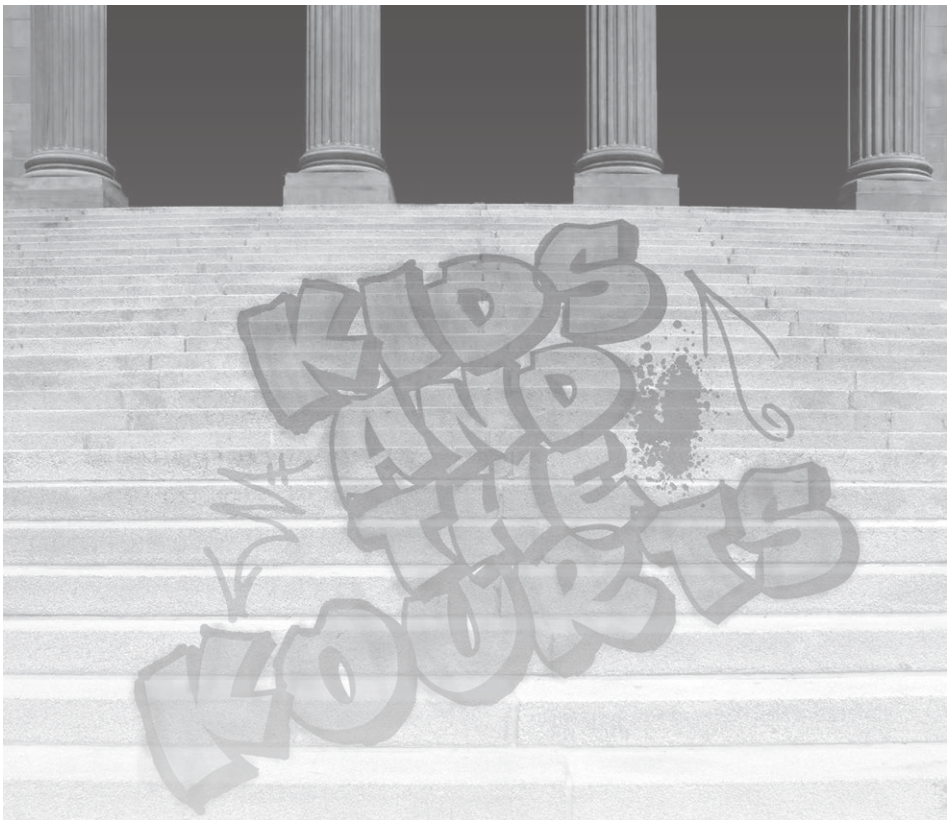

"Children across the state have been locked away in their early teens with no real chance at rehabilitation or ultimate release; effectively warehoused for life."

A recent article written by Eli Hager called Florida "The Worst State for Kids Up Against the Law" noted that Florida led the country in the number of juveniles transferred to adult court for prosecution, as well as the number of juveniles held in adult facilities.[1] Florida's barbaric treatment of juvenile offenders is improving, thanks to massive lobbying efforts and landmark decisions from the United States Supreme Court. There remains, however, much work to be done.

As a young lawyer, I learned very quickly how harsh our criminal justice system treats juvenile offenders. In recent years, Florida has become known as one of the worst states for juvenile criminal defendants. I was admitted to The Florida Bar in 1996, and a few months later was exposed to a case that forever shaped my impression of the way children are treated under Florida law. As a young associate of high-profile criminal defense attorney Michael Salnick, I had the rare opportunity to sit in on a first-degree murder trial involving a 16-year-old boy charged as an adult. It was a robbery gone bad. Nobody was supposed to get hurt. Our client wasn't the shooter, and the robbery was completely out of his control. In fact, a jury ultimately found that the robbery and murder were the independent act of his codefendant, and acquitted him of all charges. His "friend" and codefendant was 18 at the time, and he was the undisputed shooter. Nonetheless, there he sat, on the twelfth floor of the Palm Beach County Detention Center, facing a charge of first-degree murder in adult court. Even more incredible to me, naïve as I was, the State of Florida filed a Notice of Intent to Seek the Death Penalty! This was a child, and everyone knew he hadn't killed anyone, and yet the State sought the ultimate punishment at the time, death by electrocution. A motion to declare the death penalty unconstitutional as to this child was vigorously litigated. And denied. At the time, the Florida Supreme Court had ruled that the death penalty was unconstitutional as to 15-year-olds, but had also ruled that it was constitutional as to 17-year-olds. Sixteen-year-olds hadn't been specifically addressed, and the trial court ruled that the state sanctioned murder of a 16-year-old passed constitutional muster. Fortunately the issue never

had to be litigated on appeal, although I imagine a death sentence might very well have been upheld under the then current law.

Almost 20 years later, in the State of Florida, and across the country, we are making progress in the way the criminal justice system deals with juvenile offenders. The progress, however, remains painfully slow. We continue to sentence juveniles, many of them first offenders, to life in prison. Children across the state have been locked away in their early teens with no real chance at rehabilitation or ultimate release from custody; effectively warehoused for life. The system has simply thrown these children away and forgotten about them. Until recently, the law of the land stood firmly behind these practices, which were common not only in Florida, but across the country. Finally the United States Supreme Court has begun to address what many around the globe consider to be the barbaric treatment of children in the adult criminal justice system.

In 2010, the Supreme Court of the United States issued its landmark decision in *Graham v. Florida,*[2] overturning a mandatory sentence of life without the possibility of parole for Terrance Graham, who was just sixteen years of age when he committed the crime of Armed Burglary. Originally the recipient of a probationary sentence, and a withholding of adjudication, Terrance Graham was subsequently adjudicated guilty of Burglary and sentenced to life in prison without the possibility of parole when he violated his probation. The sentence was upheld by Florida Courts, but ultimately rejected by the Supreme Court of the United States, which held that the Eighth Amendment prohibits the imposition of a life without parole sentence on a juvenile offender convicted of non-homicide offenses; and that States (i.e. Florida) must give juvenile non-homicide offenders sentenced to life without parole the meaningful opportunity to obtain release.

Two years later, in 2012, the Supreme Court extended its rationale in *Graham* to juveniles convicted of homicide offenses. The Court issued its opinion in *Miller v. Alabama,*[3] which in conjunction with *Graham*, drastically impacted the way juveniles charged with serious crimes are treated. Evan Miller was a 14-year-old Alabama youth, convicted of capital murder and sentenced under a sentencing scheme which, as in Florida, called for a mandatory sentence of life imprisonment without the possibility of parole. The *Miller* Court held that mandatory life imprisonment without parole for those under the age of 18 at the time of their crimes, even for those convicted of murder, violates the Eighth Amendment's prohibition against cruel and unusual punishments.

Since the rulings in *Miller* and *Graham*, sentencing schemes in many states, and particularly in Florida, have been the subject of great debate. The Supreme Court opinions left Florida in a position where no lawful sentence existed for many juvenile offenders charged in adult courts. The laws called for mandatory sentences of life imprisonment, with no other options, and the Supreme Court of the land had ruled such sentences to be illegal. What ensued was years of debate, litigation, and extraordinary lobbying by many likeminded groups, including FACDL, for the legislature to fix the problem. To some degree, they have done so.

With the passage of HB 7035 during the 2014 legislative session, the Florida Statutes were amended in an attempt to comply with the dictates of *Miller* and *Graham.*[4] The statute now provides judges with discretion when sentencing juvenile defendants convicted of crimes which otherwise carry mandatory sentences of life without the possibility of parole. The law also provides for judicial review of lengthy sentences handed down to juvenile offenders after a designated period of time, depending on the offense of conviction and the length of the sentence imposed.[5] While many, including myself, felt that the legislature did not go far enough in revising the sentencing laws for Florida juveniles, it was an enormous step in the right direction, and would not have been possible without the efforts of many organizations lobbying on behalf of this important cause, including but certainly not limited to FACDL, Human Rights Watch, and the Southern Poverty Law Center.

The Florida Supreme Court has recently issued several opinions related to *Miller/Graham*, which have 1) held that *Miller* is retroactive,[6] 2) rejected the State's argument that *Miller* acted to effectively revive the prior sentence of life with the possibility of parole after 25 years as previously contained in Florida Statute §775.082,[7] 3) found that *Graham* does apply to lengthy "term-of-years" sentences, as opposed to only "life without parole" sentences,[8] and 4) precluded, under *Graham,* the imposition of a sentence of 70 years for a 14-year-old convicted of Attempted First Degree Murder.[9]

The progress we've seen in the last several years is encouraging. While there is much work to be done before Florida shakes the stigma of being the worst state for juvenile offenders, the above legislative and judicial decisions have brought us into compliance with United States Supreme Court holdings, and one step closer to dealing humanely with the issues surrounding the treatment of juvenile offenders in the adult criminal justice system.

[1] The Worst State for Kids Up Against the Law. It's Florida, Hands Down. Eli Hager.
[2] *Graham v. Florida*, 130, S.Ct. 2011 (2010).
[3] *Miller v. Alabama*, 132 S.Ct. 2455 (2012).
[4] Fla. Stat. § 775.082.
[5] Fla. Stat. § 921.1402(2).
[6] *Falcon v. State*, 2015 WL 1239365 (Fla. March 19, 2015).
[7] *Horsley v. State*, 2015 WL 1239284, (Fla. March 19, 2015).
[8] *Henry v. State*, 2015 WL 1239696, (Fla. March 19, 2015).
[9] *Gridine v. State*, 2015 WL 1239504, (Fla. March 19, 2015).

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