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Redefinition of Child Amendment Act of 2021 Hearing
Wednesday, October 7, 2021

Good morning, Chairperson Allen and members of the Committee on the Judiciary and Public Safety. My name is Eduardo Ferrer. I am a Ward 5 resident, the Policy Director at the Georgetown Juvenile Justice Initiative, and a Visiting Professor in the Georgetown Juvenile Justice Clinic.¹ Thank you for the opportunity to testify today. And thank you to Attorney General Karl Racine and his colleagues in the Office of the Attorney General for their leadership in referring this bill to the Council. Finally, I want to acknowledge and thank the 61 local and national organizations that have signed the attached letter in support of this legislation.

The Redefinition of Child Amendment Act of 2021 is critically important and long overdue legislation. If passed, this bill will provide additional process when determining whether a youth should be transferred to adult court that will make our legal systems more developmentally responsive, more equitable, and more effective.

Our current approach is not developmentally responsive

First, both District leadership and residents have been clear that treating all children as children is imperative to the health and safety of our city.² And for good reason, we know that children differ from adults. As the Supreme Court has recognized, adolescent development research has repeatedly shown that youth are categorically different than adults in ways that matter for the application of the law. Children are less mature, more susceptible to and less able to extricate themselves from their circumstances, and have a great capacity for change.³ But as Justice Sonia Sotomayor opined in *J.D.B.*, we do not need to be experts in child development to know that our laws and legal systems must be responsive to adolescence; we just simply need the “commonsense” to know that children are not adults.⁴

¹ My testimony is informed by our work at the Georgetown Juvenile Justice Initiative and delivered on its behalf only. The opinions expressed herein do not represent a position on the issue taken by Georgetown University as a whole.

² See, e.g., Comprehensive Youth Justice Amendment Act of 2016, DC Law L21-0238, effective from April 4, 2017; Youth Rehabilitation Act of 2018, DC Law L22-0197, effective from December 13, 2018.

³ In *Roper*, the Supreme Court found that the following three general differences make youth under 18 categorically different from adults: 1) youth are less mature and have an underdeveloped sense of responsibility that “often result in impetuous and ill-considered actions and decisions;” 2) youth are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure; 3) the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. *Roper v. Simmons*, 543 U.S. 551 (2005).

⁴ *J.D.B. v. North Carolina*, 564 U.S. 261 (2011) (“Time and again, this Court has drawn these commonsense conclusions for itself. We have observed that children generally are less mature and responsible than adults; that they often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them; that they are more vulnerable or susceptible to outside pressures than adults; and so on.”); *Id.* (“[o]fficers

The importance of treating children as children is particularly important when we consider that 65% of youth sentenced as adults return home by their 21st birthday.⁵ Therefore, if all youth's cases started in the Family Court, as proposed by this bill, well over half of youth charged in adult court could serve their time in the more developmentally responsive delinquency system. Instead, children charged as adults in DC can expect:

- **No high school diploma** - Youth in the adult system lose their ability to earn a high school diploma once they are transferred to federal custody;
- **Damaged relationships** - Youth are sent across the country to federal facilities and can be sent as far as California and North Dakota. These locations make it difficult, if not virtually impossible for families to visit and maintain a relationship with the child. This means children can go years without seeing their parents, grandparents, siblings and loved ones;
- **No age-appropriate or developmentally tailored services in custody** - The Bureau of Prisons (BOP) does not provide nor are they equipped to provide these services for youth in their care;
- **No age-appropriate or developmentally tailored services under supervision** - The Court Services and Offender Supervision Agency (CSOSA) is similarly ill-equipped to provide services for young people but rather takes a punitive approach to compliance while youth are under supervision. For example, when scheduling reporting with young people returning to the District, CSOSA does not take into account school hours which causes young people to have to decide between commitment to their education and compliance;
- **Complete lack of rehabilitation** - While the DC juvenile system is purposed on promoting youth development and preventing delinquency, being transferred into federal custody increases rather than reduces recidivism⁶ and does nothing in the way of deterrence. Additionally, youth in federal custody experience physical and sexual assault and, in turn, are further traumatized by adult system involvement.

As a result, at the exact time our systems should be leaning in to provide the necessary academic and behavioral health services to support our youth, our system is not only creating more barriers for youth to access those services, but, in effect, taking away access entirely. Given that the vast majority of youth charged as adult could be committed in the delinquency system for as long or longer than they are currently being sentenced in the criminal system, starting these cases in the

and judges need no imaginative powers, knowledge of developmental psychology, training in cognitive science, or expertise in social and cultural anthropology to account for a child's age. They simply need the common sense to know that a 7-year-old is not a 13-year-old and neither is an adult.”)

⁵ Memorandum from Taylor Tarnalicki, Research Analyst, District of Columbia Sentencing Commission, to Josh Rovner, Senior Advocacy Associate, re Title 16 Sentencing Trends: 2013 – Present (October 5, 2021). Importantly, approximately 85% return home by their 25th birthday. See attachment to Memorandum from Taylor Tarnalicki, Research Analyst, District of Columbia Sentencing Commission, to Josh Rovner, Senior Advocacy Associate, re Title 16 Sentencing Trends: 2013 – Present (October 5, 2021).

⁶ OJJDP, Juvenile Transfer Laws: An Effective Deterrent to Delinquency? 6 (2010) (summarizing 6 large-scale studies on the deterrent effect of transfer to the adult system, all finding higher recidivism rates among offenders who had been transferred to criminal court rather than kept in the juvenile justice system. This was the case especially amongst violent offenders, finding that transfer to adult court promoted a “life-course of criminality”).

delinquency system, where they would receive developmentally responsive services, makes far more sense.

Our current approach disproportionately impacts Black youth

Second, the troubling truth is this: Although Black youth make up 56% of the District’s population of youth,⁷ at least 93% of youth charged as adults in DC are Black.⁸ To make matters worse, every client of mine who has been Title 16’d experienced significant amounts of complex, childhood trauma – indeed, my Title 16’d clients often report ACE (Adverse Childhood Experiences) scores of 8, 9, or 10. The combination of these two data points reflects the sad reality that our priorities are often backwards in the District – we are willing to invest in the incarceration of our youth, but we are often not willing to protect them or invest directly in them in the first place. Equity and justice require that we should be making sure this population receives developmentally-responsive and trauma-responsive supports that promote their healing and rehabilitation. The delinquency system is far bettered equipped than the adult system to meet these needs.

Our current approach is unfair and counter-productive

Third, the current process is unfair and counter-productive. Under existing law, transferring a youth to adult court requires a robust process that includes an evidentiary hearing and a determination whether the transfer is in the “interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation of the child.”⁹ All of this time and consideration serves to effectively balance the interests of the public and the life of the young person. The entire purpose of the direct file statute is geared at avoiding this process. Quite frankly, its laziness masquerading as “tough on crime” social policy. Indeed, currently, 16- and 17-year olds alleged to have committed specific offenses can be charged in adult court at the whim of the United States Attorney of DC, whose decision to charge youth in adult court typically takes place within hours of learning about the arrest. Eliminating direct file would not prevent a youth’s case from ending up in adult court given our existing transfer statute. Instead, it would merely require that we take the time to consider the question of whether a youth’s case should end up in adult court thoughtfully and fairly after having done a robust inquiry not just into the facts of the case, but also the facts of the child, and after having given the child the opportunity to be heard.

Moreover, despite the direct file statute being grounded in the claim that such avoidance of process improves public safety, the opposite is actually true. Charging youth as adults does act as a deterrent and, in fact, likely increases the probability of recidivism.¹⁰ In contrast, if

⁷ *Population by Age*, DC Kids Count, DC Action, (last accessed on October 5, 2021), available at: <https://dckidscount.org/demographics/#:~:text=DC's%20population%20of%20children%20increased,from%20roughly%2080%2C650%20to%2072%2C700>.

⁸ Memorandum from Taylor Tarnalicki, Research Analyst, District of Columbia Sentencing Commission, to Josh Rovner, Senior Advocacy Associate, re Title 16 Sentencing Trends: 2013 – Present (October 5, 2021).

⁹ D.C. Code § 16-2307(d)(2)(B).

¹⁰ Robert Hahn et al., “Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System,” at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr5609a1.htm>; Elizabeth Drake, The

youth are given the comprehensive services that support positive youth development, then they are less likely to re-offend and more likely to succeed in school and in the community.¹¹

Closing

Our way forward is clear: DC must modernize this process in line with what we know about children and pass the Redefinition of Child Amendment Act of 2021 to ensure that our processes for youth are developmentally responsive, just, and effective.

Thank you and I am available to answer any questions you may have.

Attachment: Redefinition of Child Sign On Letter.pdf

Effectiveness of Declining Juvenile Court Jurisdiction of Youth, 6, at http://www.wsipp.wa.gov/ReportFile/1551/Wsipp_The-Effectiveness-of-Declining-Juvenile-Court-Jurisdiction-of-Youth_PowerPoint-presentation-to-the-Early-Learning-Human-Services-Committee-January-15-2014.pdf.

¹¹ Jeffrey A. Butts, Gordon Bazemore, and Aundra Saa Meroe, *Positive Youth Justice: Framing Justice Interventions Using the Concepts of Positive Youth Development* (Washington, DC: Coalition for Juvenile Justice, 2010), <http://johnjayresearch.org/wp-content/uploads/2011/07/pyj2010.pdf>; Ashley Nellis and Richard Hooks Wayman, *Back on Track: Supporting Youth Reentry from Out-of-Home Placement to the Community* (Washington, DC: The Youth Reentry Task Force of the Juvenile Justice and Delinquency Prevention Coalition, 2009), http://www.sentencingproject.org/doc/publications/CC_youthreentryfall09report.pdf.