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**Statement of the Council for Court Excellence
Before the Committee on the Judiciary and Public Safety
of the Council of the District of Columbia**

**Performance Oversight Hearing for the
Office of the Attorney General**

March 4, 2021

Good morning, Chairman Allen and other distinguished members of the Committee. My name is Paul Lee and I am the Pro Bono Counsel at Steptoe & Johnson and serve as the Co-Chair of the Council for Court Excellence's Youth Justice Committee. Please note that per our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of or endorsement by any judicial member of CCE.

Over the course of this past year, we have seen an outpouring of support for criminal justice reform in the wake of many tragic deaths and abuses of Black people at the hands of police. Across the country, and in D.C. particularly, there is a growing desire for change that will mitigate the disparate impacts that our criminal justice system has on Black and Brown children. My testimony today will focus on reform of D.C. Code §§ 16-2301 and 16-2307, commonly referred to as Title XVI. We believe that Title XVI does not provide sufficient judicial and prosecutorial discretion, nor does it reflect our community's desire to protect its children of color.

The D.C. Office of the Attorney General (OAG) is responsible for prosecuting youth who have been charged with committing most crimes under

the D.C. Code through delinquency petitions in D.C. Superior Court’s Family Court Division. However, through Title XVI, the U.S. Attorney’s office can move youth charged with certain crimes into the adult criminal system with no recourse. We believe that OAG should have a role in helping the court evaluate the appropriate jurisdiction for a case, and could lawfully be given the authority to weigh in on reverse waiver requests. We hope that Council will get more information from OAG about how such a law change would impact their office and would change the way these cases are handled.

As members of this committee know, Title XVI allows for juveniles as young as age 16 who are charged with certain felonies to be tried and convicted as adults in the Superior Court. In D.C., the U.S. Attorney’s Office may “direct file” certain serious cases, based on the top charge at the time of arrest, in adult court. This means that an Assistant U.S. Attorney alone, in their discretion, may decide to take the case directly to the adult Criminal Division without a Family Court judge’s approval.¹ In fact, D.C. is one of only four jurisdictions in the country that does not have a “reverse waiver” review process that would allow for youth to be removed from the adult criminal legal system and returned back to Family Court.²

This inflexible policy does not coincide with the Attorney General’s goal to reduce recidivism and support better outcomes for District youth. An additional effect of Title XVI is that once a juvenile has been convicted in an adult proceeding, no subsequent delinquency acts can ever be tried in Family Court; all become adult proceedings.³ We believe that OAG should

¹ Council for Court Excellence. (2009). *Guide to the DC Juvenile Justice System*.
https://www.courtexcellence.org/uploads/publications/DCJuvenileJusticeGuideEnglish_Final.pdf

² More Than Our Crimes. (2021). *Title 16: Trying Minors as Adults in Washington, D.C.*
<https://morethanourcrimes.org/title-16-trying-minors-as-adults-in-washington-dc/>

³ D.C. Code § 16-2307 (h); *see also* Campaign for Youth Justice. (2007). *A Capital Offense: Youth in DC’s Adult Criminal Justice System and Strategies for Reform*. http://www.cfyj.org/Downloads/NEWS/C4YJ004-DC_Chapter.pdf

have a role in helping the court evaluate the appropriate jurisdiction for a case, and could lawfully be giving the authority to weigh in on reverse waiver requests. If Title XVI is changed and D.C. adds a reverse waiver review process, it may ultimately strengthen OAG's jurisdiction over juvenile cases, allowing cases to be pursued as delinquency matters as well as enable it to offer youth-focused resources to some of our children who are pretty clearly in need of more support and services.

The consequences of transfers to adult proceedings have fallen disproportionately on Black youth in the District. Between 2015 and 2019, 175 children were tried and sentenced as adults in D.C., and all but 16 of these children were Black. Only two of these juveniles were White.⁴ The current criminal legal system in D.C. brings disparate burdens to justice-involved children of color and Title XVI serves as an additional detrimental factor that affects primarily Black children.

When D.C. children are sentenced to a period of incarceration in adult court, they are transferred out of a Department of Youth Rehabilitation Services facility and are sent to adult federal prisons upon turning 18. This means they can be incarcerated at prisons all across the country, placing them further away from family and community resources. Adolescent brain development research has proven that youth are more likely to be permanently traumatized by the harsh realities of the adult system.⁵ Youths are also more likely to respond positively to rehabilitation opportunities offered in the juvenile system, which they are unlikely to receive otherwise.⁶ Furthermore, national data shows that children who have had their cases heard in

⁴ D.C. Sentencing Commission. (2019). *2019 Dataset*. <https://scdc.dc.gov/node/1467606>.

⁵ National Research Council. (2013). *Reforming Juvenile Justice: A Developmental Approach*. The National Academies Press. <https://www.nap.edu/catalog/14685/reforming-juvenile-justice-a-developmental-approach>

⁶ Gottesman, D. (2011). *Juvenile Justice in the U.S.: Facts for Policymakers*. National Center for Children in Poverty. <https://www.nccp.org/publication/juvenile-justice-in-the-us/>

adult criminal court have a higher rate of recidivism than those whose cases were heard in Family Court.⁷

In short, Title XVI lacks sufficient safeguards to ensure that D.C. children are not being overcharged and sent into the adult system with no chance for judicial review. A reverse waiver process would give children who are charged with crimes the opportunity to return to the Office of the Attorney General's jurisdiction, where the Office's services focused on restorative justice and juvenile diversion could be offered to them. Providing the D.C. Attorney General authority to weigh in on transfers made by the U.S. Attorney's office during a reverse waiver judicial proceeding, in addition to the child's attorney, will ensure that the decision of whether a juvenile defendant is tried as an adult is not at the complete and unreviewable discretion of a federal prosecutor. A reverse waiver alternative would not limit the jurisdiction of the U.S. Attorney's Office, but rather provide an opportunity for review in individual cases of its exercise of the authority that it has been granted by Title XVI.

We urge the committee to ask the D.C. Office of the Attorney General to provide information on what the Office believes would be the impacts on its budget, staffing, and, most importantly, on the young people who would be in delinquency proceedings rather than adult court if Title XVI were to be amended. OAG's views on whether a reverse waiver law would provide District youth charged with serious crimes with a critical element of procedural due process, as well as support greater autonomy for D.C. and its residents, would be informative for the Council and the greater D.C. community.

⁷ American Civil Liberties Union. *Fact Sheet: Juvenile Justice System*. <https://www.aclu.org/other/fact-sheet-juvenile-justice-system>; see also Justice Policy Institute. (2020). *The Child not the Charge: Transfer Laws are not Advancing Public Safety*. http://www.justicepolicy.org/uploads/justicepolicy/documents/child_not_the_charge_report5.26.pdf

The greatest obstacle often cited to reforming Title XVI is the notion that such reforms would limit the jurisdiction of the U.S. Attorney's Office, which D.C. Council is prohibited from doing under the Home Rule Act. However, based on CCE's research, we submit that this view is incorrect. A reverse waiver option would only provide an opportunity for judicial review of the U.S. Attorney's discretion, rather than limiting the U.S. Attorney's jurisdiction over criminal matters in D.C. Hence this would not violate the Home Rule Act.

Shifting gears a bit, I wanted to note that the independent and interdisciplinary District Task Force on Jails & Justice, which CCE facilitated, recently recommended that D.C. raise the age of juvenile jurisdiction to 21 and eliminate the transfer of youth into adult criminal court.⁸ Under the Task Force's suggested reform, all youth up to age 21 who are charged with D.C. Code crimes would be under the jurisdiction of the Office of the Attorney General, rather than the U.S. Attorney's Office, thus allowing these young adults to be eligible for the Office of the Attorney General's diversion and restorative justice opportunities.

In conclusion, we believe that reform to D.C.'s Title XVI will alleviate some of the disparate impacts our criminal justice system has on Black and Brown children, improve procedural due process for local youth, and strengthen the District's autonomy. We are confident that there can be sufficient community justice and consequences for serious crimes under the Office of the Attorney General's delinquency authority, while also enhanced opportunities to focus on trauma-informed, restorative, and rehabilitative services, as a complement to the role of the U.S. Attorney's Office as our primary adult prosecutor. Thank you for your time and I welcome any questions you may have.

⁸ Council for Court Excellence. (2021). *Jails & Justice: Our Transformation Starts Today*. <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>