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## Statement of the Council for Court Excellence in support of Bill 24-0338, the "Redefinition of Child Amendment Act of 2021"

*October 15, 2021*

Dear Chairman Allen and other distinguished members of the Committee,

Please accept this document as the Council for Court Excellence's (CCE) official testimony regarding the proposed Redefinition of the Child Amendment Act. For nearly 40 years, CCE has worked to improve the administration of justice in D.C. through research and policy analysis, and has engaged in meaningful advocacy efforts surrounding juvenile justice. Please note that in accordance with 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. CCE testified earlier this year at the Performance Oversight Hearing for the Office of the Attorney General (OAG) regarding the need for Title 16 reform, and is submitting this document to build on that testimony.

Along with its more obvious challenges, the COVID-19 pandemic and the summer of protests following George Floyd's murder, have forced all of us to reckon with the disparate treatment of African Americans by our criminal justice system. For far too long, we have watched as Black men, women, and children have been brutalized, disproportionately punished, and ripped from their families. Along with states across the nation, D.C. must develop effective solutions to resolve these issues. However, unlike other states, federal domination of our local criminal justice system is a unique hurdle, preventing the District from tackling

these issues in a manner best suited for our community. Today, CCE urges this Committee to take one step forward in regaining control over its criminal reform efforts and protecting our children, especially Black children, by passing Bill 24-0338, the Redefinition of Child Amendment Act.

The D.C. Office of the Attorney General (OAG) is responsible for prosecuting youth who are charged with criminal offenses in Family Court.<sup>1</sup> However, as this committee is well aware, current law allows the United States Attorney's Office (USAO) to directly file any child's case in the adult criminal court, as long as the child is sixteen (16) or seventeen (17) years old and is accused of the following offenses: robbery while armed, first degree burglary, first degree sexual abuse, murder, or an assault with the intent to commit any of the aforementioned offenses.<sup>2</sup> These life-changing forum decisions are oftentimes made within hours of a charging decision.<sup>3</sup> Such drastic decision-making has no judicial review to ensure that alternative rehabilitative responses have been properly investigated and considered.<sup>4</sup> Once the USAO has filed for a child's case to be transferred to adult criminal court, the child is forced to remain in adult criminal court even if they are ultimately found guilty of a less serious offense that is not eligible for the USAO direct filing; plus, all future charges are necessarily tried in adult proceedings.<sup>5</sup> Furthermore, when a child is sentenced in the adult criminal system, on their eighteenth birthday they are relocated from D.C.'s Department of Youth Rehabilitation Services to one of 122 federal Bureau of Prison facilities, which are

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<sup>1</sup> Council for Court Excellence, *Guide to the Juvenile Justice System* (2009), available at [https://www.courtexcellence.org/uploads/publications/DCJuvenileJusticeGuideEnglish\\_Final.pdf](https://www.courtexcellence.org/uploads/publications/DCJuvenileJusticeGuideEnglish_Final.pdf).

<sup>2</sup> D.C. Code §16-2301(3)(A).

<sup>3</sup> Carrie Johnson, *Teens Can Get Swept Into Adult Prisons. D.C.'s Attorney General Wants to Change That*, NPR, (June 30, 2021), <https://www.npr.org/2021/06/30/1011411101/teens-can-get-swept-into-adult-prisons-d-c-s-attorney-general-wants-to-change-th>.

<sup>4</sup> Council for Court Excellence, *supra* note 1.

<sup>5</sup> D.C. Code §16-2307(h).

scattered all over the country because D.C. does not have its own adult prison.<sup>6</sup> This removal results in further isolation from the child's family, friends, and community, and offers very little, if any, access to rehabilitation programs and support.<sup>7</sup>

One would hope that such harsh responses would be justified by their effectiveness. Instead, we find ourselves dealing with a criminal procedure that is not only severe, but ineffective and unjust. Science has proven, and the Supreme Court has held, that children's brains do not fully develop until they reach the age of 25, and therefore they should not be held to the same standard of responsibility as adults.<sup>8</sup> Recent studies have shown that putting youth in adult prisons increases their chances of recidivism, not to mention the physical danger that we put youth in when they are placed in adult prisons.<sup>9</sup> The effects of these criminal procedures on our children are harmful, overly punitive, and obstruct children from any meaningful access to effective rehabilitation and growth. Unsurprisingly, these procedures are used disproportionately against Black and Brown children. Studies consistently show that Black children are often perceived as older and more reprehensible than White youth.<sup>10</sup> Between 2015 and 2019, 175 minors in D.C. were sentenced as adults, and over 90% of them were Black.<sup>11</sup>

The Redefinition of Child Amendment Act is a necessary tool to combat these issues and protect our children. By redefining childhood, the Act allows for juvenile cases to be heard in

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<sup>6</sup> More Than Our Crimes, *Title 16: Trying Minors as Adults in Washington, D.C.* (2021), available at <https://morethanourcrimes.org/title-16-trying-minors-as-adults-in-washington-dc/>.

<sup>7</sup> *Id.*

<sup>8</sup> Maddy Troilo, *Locking up Youth with Adults: An Update*, Prison Policy Initiative (Feb. 27, 2018), <https://www.prisonpolicy.org/blog/2018/02/27/youth/>.

<sup>9</sup> *Id.* See also *Roper v. Simmons*, 543 U.S. 551 (2005).

<sup>10</sup> Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526 (2014); Rebecca Epstein, et. al., *Girlhood Interrupted: The Erasure of Black Girls' Childhood*, Center on Poverty Law & Inequality, Georgetown Law (2017).

<sup>11</sup> More Than Our Crimes, *supra*. note 6.

Family Court – a forum that is most appropriate for rehabilitation and serving the best interest of the public – as Family Court judges are more likely to consider the developmental, social, and educational needs of each child. The Act also provides a safeguard for children who are still transferred into the adult criminal system. Under the Act, such a transfer can only occur upon the request of OAG, and only after a judge examines the circumstances of the case, the child’s capacity for rehabilitation, and whether the transfer is in the best interest of the public. The Act does not completely remove the option for prosecution in an adult criminal system. Rather, it ensures that such consequential decisions are only made after appropriate consideration and cogent reasoning is given, and studies have shown that the majority of crime survivors would prefer a criminal justice system that prioritizes rehabilitation over punishment.<sup>12</sup>

CCE would like to commend Attorney General Racine and his team for developing such a well thought-out Act, and we strongly support its passage. By passing this Act, D.C. will take one step closer towards lessening the disparate impact the criminal justice system has on Black and Brown children; applying a trauma-informed and restorative approach to juvenile justice; and regaining our autonomy in deciding what is best for our community. Thank you for your consideration and please do not hesitate to reach out should you have any questions.

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<sup>12</sup> Leigh Courtney and Elizabeth Pelletier, *What Do Victims Want from Criminal Justice Reform?*, Urban Institute (Aug. 4, 2016) <https://www.urban.org/urban-wire/what-do-victims-want-criminal-justice-reform>