Statement of
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of the COUNCIL FOR COURT EXCELLENCE
before the
DC COUNCIL COMMITTEE ON THE JUDICIARY
on BILL 15-0537, the
OMNIBUS JUVENILE JUSTICE, VICTIM'S RIGHTS AND PARENTAL PARTICIPATION ACT of 2003;
on BILL 15-0574, the JUVENILE JUSTICE ACT of 2003;
on BILL 15-0460, the
JUVENILE JUSTICE AND PARENTAL ACCOUNTABILITY AMENDMENT ACT of 2003; and
on BILL 15-0573, the JUVENILE JUSTICE TASK FORCE ESTABLISHMENT ACT of 2003
January 14, 2004

Good morning, Madame Chair and members of the Committee. We are pleased to be here on behalf of the Council for Court Excellence, which is a local non-partisan civic organization that works to improve the administration of justice in the courts and related agencies of our city. For 23 years, the Council for Court Excellence has been a unique resource for our city, bringing together members of the civic, legal, judicial, and business communities to work in common purpose to improve the administration of justice. Let me stress that no judicial member of the Council for Court Excellence has participated in the formulation of this testimony.

The Council for Court Excellence (CCE) has recently been engaged in several of the fundamental administration of justice reform efforts of the District of Columbia. Through its Criminal Justice Committee, CCE has just published a report that tracked the implementation of new arrest and criminal case processing procedures and analyzed police overtime data. In addition, CCE's Children in the Courts Committee will soon publish a comprehensive review of the city's child welfare system's compliance with federal and local law. CCE is focused continually on improving the administration of justice while enhancing the safety of our community. Although juvenile arrests for violent crimes have *decreased by 52%* in the District since 1995,[i] CCE recognizes that juvenile crime is still a legitimate public concern. However,

notwithstanding the language of their preambles, we do not believe that these bills are meaningful attempts to either "treat children as children within the justice system" *or* to "provide for the safety of the public at large."

The District's juvenile justice system has been operating under a court-supervised consent decree for 17 years.[ii] In August of 2000, Mayor Williams created the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform,[iii] composed of a broad membership of juvenile justice and community experts. The Commission members spent a year studying best practices and model programs throughout the country, mapping the juvenile justice system in the District and identifying its strengths and weaknesses, and developing policy recommendations based on their findings.[iv] In 2001, the Blue Ribbon Commission issued its report and recommendations meant to bring the city finally into compliance with the consent decree. The recommendations have not been implemented, nor do they appear in these proposals considered today. We are unaware if the Blue Ribbon Commission proposals have even been considered by the DC Council.

Though the Omnibus Act contains a few useful elements, including its statement of purpose and the creation of subpoena authority, there is still much work to be done to bring the city into compliance with the consent decree[v] and align the District of Columbia with national juvenile justice standards. We urge the DC Council to follow the blueprint set out by the Mayor's Blue Ribbon Commission and devote sincere effort to creating a juvenile justice system that responds to the needs of children and increases the security of our communities. We will now comment on several key issues in the bills.

I. Parental Accountability and Sanctions

Juvenile justice parental accountability rules that require parents to take part in their child's rehabilitation ensure that the parent is involved and becomes invested in the process. Title XII of the Omnibus Act amends current law to require parents to be present at court proceedings and participate in counseling and treatment programs. We support such a rule. However, there is no mention of notifying the parents that such a hearing is taking place. CCE recommends the addition of a detailed notification requirement.

On the other hand, the proposed sanctions on parents only further harm unstable families and arbitrarily punish poor parents. Suspending a parent's driver's license (15-0460 § 2),

allowing juvenile delinquency records to determine family housing assistance (15-0460 § 4), instituting a neglect investigation (15-0574 § 2(a)(1)), requiring drug testing (15-0537 § 1202(c)) or imposing monetary fines for a child's inappropriate behavior not only fail to address the underlying delinquency issues, but increase the stress on this city's most vulnerable families. Taking away a parent's means of transportation often means removing access to her employment. Fines will severely burden resources that are already stretched too thin. Basing housing eligibility on a child's misbehavior unfairly punishes families (both the parents *and* any other children in the household) for simply being poor. These proposals only serve to increase unemployment, poverty and homelessness, not to reduce delinquency or promote public safety.

Similarly, it makes little sense to mandate opening a child neglect prosecution in situations where a juvenile has had three delinquency petitions filed. Many of these youths have an open neglect case already. National researchers studying outcomes for children in the child neglect system consistently find high rates of juvenile delinquency, substance abuse, and teen pregnancy. In a Milwaukee study, 66% of male juvenile offenders previously had been victims in substantiated reports of abuse or neglect.[vi] In another three-state study, the proportion of juvenile offenders who had been victims of abuse ranged from 29% in Virginia, to 45% in Colorado, to 53% in Nevada.[vii] Instead of using a neglect case as a threat to parents, it seems preferable to provide children in the neglect system the services they need to become healthy and productive members of our community. The city has made some progress on that front in the past several years, but much more is needed.

In addition, all of these proposed sanctions are serious disincentives for extended family members who might otherwise become willing guardians for children in desperate need of a home – one of the primary goals of previous laws this Council has passed: the Adoption and Safe Families Amendment Act of 2000[viii] and the Foster Children's Guardianship Act of 2000.[ix] The DC Council should not pass legislation that will both increase the number of children in the neglect system and reduce the pool of safe and healthy homes for those children.

The imposition of sanctions on parents is largely untested as a means of decreasing juvenile delinquency, and no empirical studies have measured the policy's efficacy.[x] Rather than gambling on provisions that might do more harm to families, the DC Council should concentrate on establishing and funding the rehabilitative programs that the Blue Ribbon Commission found to protect children *and* reduce juvenile recidivism.[xi]

II. Transfer to Adult Criminal Court

Title IV of the Omnibus Juvenile Justice, Victim's Rights and Parental Participation Act of 2003 amends current law to make it easier to transfer youths charged with certain crimes to the adult criminal court. The bill increases the number of crimes for which the U.S. Attorney can directly charge a youth in adult criminal court, it increases the number of crimes for which a transfer to adult court may be sought via a judicial hearing, and it shifts the burden of proof in such a transfer hearing from the prosecutor to the youth.

Such provisions do not serve the stated purposes of the legislation – to treat children like children while providing for the safety of the public at large. Studies across the country have found that children placed in adult facilities are twice as likely to be assaulted, five times as likely to be sexually assaulted, and up to eight times more likely to commit suicide than youth held in juvenile facilities.[xii] The Sentencing Project found that children in adult facilities are treated the same as adults and frequently do not receive the educational, health and recreational services that are appropriate for their age.[xiii]

As a result, it is not surprising that children released from the adult criminal system commit even more serious crimes. In a matched-pair study of Florida's transfer provision, juveniles retained in the juvenile court were matched to youths sent to the adult criminal division. For 315 pairs, the juvenile crime was just as serious as the transferred crime, but upon release 50% of the transferred youths re-offended, while only 35% of the juvenile cases did.[xiv] In addition, the transferred youth was more likely to commit a more serious felony.

Prosecuting more children as adults is not a policy that will increase public safety. Rather it creates even better criminals by exposing the children to dangerous influences in adult prisons.

III. Confidentiality Provisions

The Omnibus Act would give victims, witnesses, and the families of victims and witnesses access to juvenile police and other law enforcement records and open records to more government agencies (Title III). In addition, court and probation personnel would gain access to juvenile records, not only when a youth is charged with a criminal offense, but also if a youth is charged with a delinquency matter or status offense. Opening juvenile records to public scrutiny presents both advantages and disadvantages. The Mayor's Blue Ribbon Commission recognized that there are potential benefits to easing the confidentiality restrictions on juvenile records. The

rehabilitative process is aided by the expansion of social service resources available to the child. Court and law enforcement officials have the information necessary to make informed and conscientious decisions about a youth. Additionally, opening the juvenile records can expose this failing system to much-needed public scrutiny, and restore public investment in youth services. There are also rehabilitative strategies that involve victims. However, the bills being considered today are not designed to rehabilitate juveniles or increase public involvement.

As a general matter, the Council for Court Excellence supports victim rights, but these rights must be balanced with the fairness interests and the rehabilitation of the young person. Victim rights can be protected without exposing the juvenile to social stigma, unemployment and the loss of familial relationships – severe burdens on the child's rehabilitation. A more equitable approach to the issue of juvenile records would be to allow the judge the discretion to weigh the competing interests of the parties involved. Retain a presumption of confidentiality, but give the judge the authority to determine whether and how victim participation would aid the juvenile's rehabilitation process.

IV. Title V - Corporation Counsel Subpoena Authority

CCE testified against the earlier version of Title V of the Omnibus Act, the DC Corporation Counsel Subpoena Authority Act of 2001, Bill #14-321, before the DC Council Judiciary Committee on December 5, 2002. That earlier proposed legislation offered a powerful tool - potentially subject to abuse, even if unintended - without sufficient restraints or limitations for witnesses and potential defendants or respondents. Among other things, that earlier legislation provided for the issuance of subpoenas at the prosecutor's discretion with respect to all civil and all criminal matters prosecuted by the Office of the Corporation Counsel. Though we opposed that bill, our earlier testimony noted that the Council for Court Excellence recognized "the need of the Corporation Counsel to be able to effectively investigate serious criminal offenses and to compel the production of documents and testimony toward that end."

With this need in mind, a working group from CCE studied the legislation and offered informal input with the Corporation Counsel's Office to address some problems with the earlier bill. We are pleased to see that the changes made correct many of the problems of the earlier proposed legislation and circumscribe the proposed Corporation Counsel subpoena authority. Title V now provides:

- DC Superior Court judicial review of the subpoena (Title V, Section 505(b));
- Recording and transcribing of witness testimony (Title V, Section 403(e));
- Specified and limited offenses to which subpoena authority applies (Title V, Section 502(a), (b));
- Subpoena authority delegable only to Assistant Corporation Counsels (Title V, Section 502);
- Allowance for objections on the record to any question (Title V, Section 505(c)); and
- Confidentiality requirements similar to those required of the U.S. Attorney's Office under a subpoena issued through a grand jury (Title V, Section 504).

Title V also offers a series of important witness protections, including notifying witnesses of their right to counsel at the time the subpoena is served. With expanded witness rights and protections, along with limiting the subpoena authority to prescribed criminal offenses, CCE believes that Title V for the most part appropriately balances the need for the prosecutor to compel testimony or document production with witnesses' rights.

While we endorse Title V, we make several suggestions to improve this section:

First, in terms of who may be present during the taking of testimony, Section 503(f) lists a number of specific parties and permits "other people involved in the investigation" to be present. This language seems unnecessarily vague. We would suggest amending this language to state, "authorized persons working in conjunction with the Office of the Corporation Counsel."

Second, Section 504 provides "the witness under examination and his or her attorney . . . shall not disclose any testimony taken pursuant to a subpoena issued pursuant to this act." This restriction is far more extensive than that provided in Rule 6(e) of the Federal Rules of Criminal Procedure relating to grand jury secrecy, which does not prevent a witness or his lawyer from revealing testimony before a grand jury. We do not believe that the defendant and his lawyer should be subject to secrecy restrictions more extensive than that which applies to grand jury proceedings.

Third, the compulsion provision, Section 506(a), is confusing and uncertain. It would be preferable to have this provision amended to state that the Superior Court may order compliance with the subpoena, and then hold the recalcitrant

witness in contempt of court if he fails to obey the court's order to comply with the subpoena.

Fourth, Section 506(b) misstates the law of perjury and should be revised or eliminated. Among other things, to constitute perjury, the willful false statement itself must be "material," not simply "about a material fact" as Section 506(b) provides. In addition, D.C. Code § 22-2402 would appear to cover perjury in a Title V deposition proceeding, although presumably such perjury would be prosecutable by the U.S. Attorney's Office rather than the Corporation Counsel.

In summary, the continuing inability of the Office of the Corporation Counsel to investigate serious crimes committed under their jurisdiction is bad public policy. The safety of the community is jeopardized when the prosecutor cannot investigate serious crime, and cannot compel testimony and documents when witnesses refuse to cooperate. We believe that Title V of Bill 15-537, with appropriate amendments, would redress this longstanding deficiency while appropriately balancing that need with witnesses' rights.

V. Effective Reform Efforts

As a general matter, CCE supports the establishment of the Juvenile Justice Task Force, but only if its mission is clear and it is appropriately funded and staffed. The Blue Ribbon Commission recommended the establishment of a District of Columbia Youth Coordinating Commission to implement the Blue Ribbon recommendations and set a policy vision for youth services and juvenile justice. Section 2 of Bill 15-0573 proposes a task force, but assigns duties that were completed by the Mayor's Blue Ribbon Commission *in 2001*.

No meaningful discussion about appropriate and quality youth services can be had without an extensive examination of the nature, extent, causes of, and conditions contributing to the delinquency of DC children. Creating a Task Force to identify the underlying problems associated with the DC juvenile justice system is a crucial first step before writing legislation meant to solve those problems.

For example, the Blue Ribbon Commission found that 100% of the committed youth in the District's juvenile justice system are African American and Latino, even though the researchers found white children and youth are arrested for a range of crimes. The DC Council must

uncover the reasons for this disparity before passing *any* legislation, and particularly legislation that imposes even more severe sanctions, further failing to address the needs of the city's minority youth.

CCE recommends that the Task Force undertake a study of the current Juvenile Justice system, closely examining the factors that have produced the disproportionate minority representation. As noted in the Blue Ribbon Commission recommendations, this study should also include juvenile arrest patterns, diversion, recidivism, probation revocation and detailed characteristics of the population served.

Scrutiny of the juvenile system should not be a one-time event. The DC Youth Services Administration has a long history of failing the children committed to its care. Thus, oversight of YSA performance should be standard, both as to individual cases and as to aggregate measures. The Blue Ribbon Commission recommended that YSA conduct periodic evaluations that included the child, the child's attorney, and the judge who originally committed the child, in determining the next steps. The Omnibus bill (§ 1002) creates these reviews, but replaces the judge with the Office of Corporation Counsel. The DC Court of Appeals recently held that under the current DC Code, the judge has no authority to oversee the child's case once the child is committed to YSA.[xv] We recommend that the Council amend the DC Code to authorize judicial oversight of adjudicated juveniles until they are released from YSA commitment, to parallel the statutory authority for judicial monitoring of neglected or abused children committed to the custody of the Child and Family Services Agency.

Most importantly, the DC Council must focus its legislative initiatives on proven prevention and rehabilitation strategies. The Blue Ribbon Commission identified several model state systems; the Office of Juvenile Justice and Delinquency Prevention (Department of Justice) has developed the Guide for Implementing the Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders;[xvi] and the Annie E. Casey Foundation has produced an extensive series of reports for understanding and implementing juvenile detention reform.[xvii] All of these sources offer practical recommendations for implementing proven prevention and treatment efforts. The DC Council should take this legislative opportunity to design a program that truly meets the needs of DC children and families, diverting children from becoming involved with the system and rehabilitating the children already involved in the justice system. The bills now before the Council do not meet that challenge.

Conclusion

Juvenile delinquency prevention is crucial to creating strong families and healthy communities. The proposals considered today are contrary to proven methods of reducing youth crime. These bills make some headway into reforming the system by delineating the guiding principles and giving the Office of the Corporation Counsel the authority to investigate crime. However, the egregious conditions of our city's juvenile justice system that led to the *Jerry M* consent decree continue to exist, yet none of the bills before this Committee today will be effective in truly reforming those conditions. Not only are the measures ineffective, they have the potential to damage already fragile youth and to diminish the safety of our city. We urge the Council to reject these bills and revise the juvenile code in a way that emulates proven best practices from around the nation. CCE offers our assistance to the DC Council in crafting legislation that truly treats children as children *and* provides for the safety of the public at large.

[i] Butts, Jeffrey A. 2003. *Juvenile Crime in Washington DC.* The Urban Institute: Justice Policy Center. p. 3.
[ii] *Jerry M., et. al v. District of Columbia, et. al.* No. 1519-85. (IFP) (D.C. Sup. Ct.).
[iii] Office of the Mayor. August 18, 2000. Mayor's Order 2000-130: Establishment – Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform.
[iv] *Final Report of the Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform.* November 6, 2001.
[v] *Jerry M., et. al. v. District of Columbia, et. al.* C.A. No. 1519-85 (IFP). Forty-fifth Report of the Monitor (April 1, 2001 – June 30, 2001).
[vi] Pawaserat, J. 1991. *Identifying Milwaukee Youth in Critical Need of Intervention: Lessons From the Past, Measures for the Future.* Milwaukee, WI: University of Wisconsin Employment and Training Institute, pp. 1–12.
[vii] Wiebush, R., McNulty, B., and Le, T. 2000. *Implementation of the Intensive Community-Based Aftercare Program.* Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.
[viii] Act No. 13-315 codified at D.C. Code §§ 4-1301 *et seq.* and D.C. Code §§ 16-2301 *et seq.*
[ix] Act No. 13-566 codified at D.C. Code §§ 16-2381 - 16-2399.
[x] Yee, Adelia. 1999. "Parental Responsibility in Juvenile Justice." *NCSL LegisBrief.* 7:3.
[xi] See "Chapter 4 – Administrative and Legislative Approaches to Reform." p. 119.
[xii] Austin, James, Johnson, Kelly Dedel & Gregoriou. 2000. *Juveniles in Adult Prisons and Jails: A National Assessment.* Washington, DC: Bureau of Justice Assistance.
[xiii] Young, Malcolm C. & Jenni Gainsborough. 2000. *Prosecuting Juveniles in Adult Court: An Assessment of Trends and Consequences.* The Sentencing Project. p.7.
[xiv] Lanza-Kaduce, Lonn, Frazier, Charles E., Lane, Jodi & Bishop, Donna. 2002. *Juvenile Transfer to Criminal Court Study: Final Report. Submitted to* Florida Department of Juvenile Justice. For a review of transfer studies from across the country, s*ee also*, Redding R.E. 2000. "Recidivism Rates in Juvenile versus Criminal Court." *Juvenile Justice Fact Sheet.* Charlottesville, VA: Institute of Law, Psychiatry, & Public Policy, University of Virginia.
[xv] *In re: P.S.* D.C. App. No. 02-FS-946 (April 24, 2003).
[xvi] Office of Juvenile Justice and Delinquency Prevention. 1995. *Guide for Implementing the Comprehensive Strategy for Serious, Violent and Chronic Juvenile Offenders.* Department of Justice.
[xvii] Juvenile Detention Alternatives Initiative. *The Pathways to Juvenile Detention Reform Series.* Annie E. Casey Foundation available at <http://www.aecf.org/initiatives/jdai/download.htm>.