



**Testimony to the D.C. Council in Support of the Redefinition of Child Amendment Act  
October 7, 2021, 9:00 AM  
Washington, D.C.**

Good afternoon Councilman Allen and members of the D.C. Council. Thank you for inviting us to speak today. My name is Miriam Krinsky, and I am the Executive Director of Fair and Just Prosecution. Fair and Just Prosecution (FJP) brings together elected prosecutors from around the nation as part of a bipartisan network of leaders committed to change and innovation. FJP hopes to enable a new generation of prosecutors to learn from best practices, respected experts, and innovative approaches aimed at promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. The bold and innovative leaders from around the nation that we work with hail from urban and rural areas — D.C., California, New York, and everywhere in between — and represent approximately 70 million people, more than 20% of our nation’s population.

We find ourselves at a pivotal moment in our criminal legal system. Communities nationwide — in particular communities of color — are calling out for change and reckoning with decades of “tough on crime” practices that have adversely impacted them and failed to promote public safety and public health. We now know much more from science and data about what works, and have seen other nations embrace approaches that have left the U.S. behind as an outlier in our rate and length of incarceration. I spent a decade and a half as a prosecutor and saw firsthand the failed “tough on crime” approaches of the 80s and the 90s. And we are here today to encourage this Council to embrace best practices and lessons learned in addressing the youngest individuals who come into contact with our justice system.

### **The Pending Bill**

We are heartened that the D.C. Council is considering an important and visionary bill — reforms that Fair and Just Prosecution support and that many elected prosecutors embrace. Prosecutors across the country are afforded *significant discretion* in charging children as adults, whether through their decisions to charge children with more serious offenses subject to mandatory direct file (rather than with lower-level offenses that can remain in juvenile court), choosing to direct file if state law and the offense allow for discretionary direct file, or requesting judicial transfer to adult criminal court.

A total of 45 states have transfer laws that allow a juvenile court, on a prosecutor’s motion, to transfer the case to adult court.<sup>1</sup> This bill focuses on **ending the direct filing** of children into adult court, a practice that remains in only 12 states and the District. The practice arose in the mid-1990s, when a temporary increase in violent crime, along with now-debunked research proclaiming the arrival of a generation of “super-predators” — a racially-charged, dehumanizing reference to Black youth — led states to create mechanisms to automatically charge kids as

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<sup>1</sup> Patrick Griffin et al. (2011), *Trying Juveniles as Adults: An Analysis of State Transfer Laws and Reporting*, Office of Juvenile Justice and Delinquency Prevention, 2, <https://www.ncjrs.gov/pdffiles1/ojdp/232434.pdf>.

adults. Prior to the 1990s, the widely accepted practice was to hold a hearing in front of a juvenile court judge to request a *waiver* to adult court. Today, D.C. is considering a return to that prior practice, thereby resurrecting the due process it affords 16- and 17-year-old youth.

## The Backdrop for Change

There are well settled reasons to embrace this proposed reform. Numerous neuroscience and psychiatric studies have shown that the adolescent brain is still in a state of flux that often causes impulsive behavior.<sup>2</sup> Children who enter the criminal justice system also have a high rate of mental illness and histories of abuse,<sup>3</sup> with at least 90% experiencing some form of trauma, and 30% showing signs of post-traumatic stress disorder.<sup>4</sup> Adult prisons and jails are unable to provide appropriate treatment for these conditions,<sup>5</sup> and children in their care are five times more likely to be sexually assaulted than their counterparts in juvenile facilities.<sup>6</sup>

While data on direct file is generally limited, states that have researched this practice, including Maryland, California, Washington State, and Louisiana, have found that the practice is both overused and ineffective. Frequent dismissal of cases and high rates of remanding cases to the juvenile court confirm prosecutorial overuse of direct file mechanisms. And youth who are put through the adult system are no more effectively incapacitated.<sup>7</sup> During this crucial developmental period, youth are held in often-dangerous adult prisons and do not receive the rehabilitative services typically provided in juvenile facilities. When they do return to their communities (which they inevitably will), they are that much more traumatized, have a harder time reintegrating, and are at greater risk of future criminal conduct.

## Prosecutors are Implementing and Supporting Change

As awareness of the flaws of past practices has grown, many prosecutors across the country have implemented juvenile justice reforms in their own offices to reduce the number of youth entering the adult system. Just as Attorney General Karl Racine is advancing change in so many critical ways here in D.C., we are also seeing initiatives in Florida, California, Colorado, Louisiana, Maryland, Pennsylvania, and Washington, to name a few. For example:

- In California, Los Angeles District Attorney George Gascón issued a directive on youth justice upon taking office. Among other policies, DA Gascón ended the practice of

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<sup>2</sup> Elizabeth Cauffman & Laurence Steinberg (2018), *(Im)Maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*, <https://pubmed.ncbi.nlm.nih.gov/11180420/>.

<sup>3</sup> Jason J. Washburn et al. (2015), *Detained Youth Processed in Juvenile and Adult Court: Psychiatric Disorders and Mental Health Needs*, Office of Juvenile Justice and Delinquency Prevention, <https://www.ojjdp.gov/pubs/248283.pdf>.

<sup>4</sup> Carly B. Dierkhising et al. (2013), *Trauma Histories Among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network*, *European Journal of Psychotraumatology*, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3714673/pdf/EJPT-4-20274.pdf>.

<sup>5</sup> Campaign for Youth Justice (2007), *Jailing Juveniles: The Dangers of Incarcerating Youth in Adult Jails in America*, 7-12, [http://www.campaignforyouthjustice.org/images/nationalreports/jailingjuveniles/CFYJ-Jailing\\_Juveniles\\_Report\\_2007-11-15.pdf](http://www.campaignforyouthjustice.org/images/nationalreports/jailingjuveniles/CFYJ-Jailing_Juveniles_Report_2007-11-15.pdf)

<sup>6</sup> National Prison Rape Elimination Commission (2009), *National Prison Rape Elimination Commission Report*, <https://www.ojp.gov/pdffiles1/226680.pdf>.

<sup>7</sup> 80% of youth in the adult system will return back to their communities by age 21 (the age of jurisdiction for more than half of state JJ systems) and 95% will return home by age 24 (7 states).

sending youth to the adult court system.<sup>8</sup> San Francisco District Attorney Chesa Boudin likewise has committed to ending the practice of charging youth in the adult system.<sup>9</sup>

- In Philadelphia, after the assumption of office by District Attorney Larry Krasner, the number of youth transferred to adult court fell from 127 in 2016 to less than 50 in 2018.<sup>10</sup> DA Krasner currently supports legislation repealing mandatory direct file and ending the prosecution of children under age 16 as adults.
- In Florida, State Attorney for Florida's 4th Judicial District Melissa Nelson introduced new practices to reduce the use of transfer to adult court, including requiring senior supervisor approval before filing to move cases to adult court. Shortly after this, Florida ended statutory exclusion in the state.
- In King County, Washington, Prosecuting Attorney Dan Satterberg pushed for legislative change and modified office policy to reduce the number of youth in the adult system, reducing the number of cases filed in adult court from an approximate average of 80 to just a handful each year.
- As a member of the Colorado House of Representatives, Beth McCann, Denver's current District Attorney, sponsored Colorado's 2012 direct file reform legislation requiring prosecutors to seek judicial waiver. She has since advocated for restorative justice programs for youth and young adults in Denver.<sup>11</sup>

Prosecutors are also seeking other approaches to keep youth out of adult court.

- Prosecutors have used their platforms to advocate for legislative change to raise the age of criminal responsibility and keep youth in juvenile court. In recent years, North Carolina, Michigan, and New York raised the age of juvenile jurisdiction to 18, often with the support of local prosecutors. In 2019, Massachusetts prosecutors Andrea Harrington (Berkshire County), Rachael Rollins (Suffolk County), and David Sullivan (Franklin/Hampshire County) called on state policymakers to raise the age of juvenile jurisdiction to keep youth out of the adult system through age 21.<sup>12</sup>
- Several jurisdictions offer robust alternatives to prosecution or incarceration for youth, and some have programs designed specifically to keep young adults out of the adult system.
  - The San Francisco District Attorney's Office has hired "Sentencing Planners" to aid assistant district attorneys in devising plea agreements that address individuals' underlying risks and needs.<sup>13</sup>

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<sup>8</sup> George Gascón (2020), *Special Directive 20-09*,

<https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-09.pdf>.

<sup>9</sup> Megan Cassidy (2021), *SFPD took murder case to Sacramento, where teen could be tried as an adult*, San Francisco Chronicle, <https://www.sfchronicle.com/bayarea/article/SFPD-took-murder-case-to-Sacramento-where-teen-15896519.php>.

<sup>10</sup> Joshua Vaughn (2019), *Number of Young People Charged in Philadelphia's Adult Court Drops Sharply*, The Appeal, <https://theappeal.org/krasner-juvenile-justice/>.

<sup>11</sup> Michael Roberts (2016), *The Race for Denver District Attorney: Meet Beth McCann*, Westword, <http://www.westword.com/news/the-race-for-denver-district-attorney-meet-beth-mccann-8259652>.

<sup>12</sup> Fair and Just Prosecution (2019), *Prosecutors Urge Policymakers to Raise the Age of the Juvenile Justice System to 21*, <https://fairandjustprosecution.org/wp-content/uploads/2019/06/MA-RTA-Release-FINAL.pdf>.

<sup>13</sup> San Francisco District Attorney's Office, *Sentence Planning*, <https://www.sfdistrictattorney.org/victim-services/sentence-planning/>.

- The Denver District Attorney’s Office launched a pre-file young adult diversion program to keep young adults who have committed less serious offenses out of the adult system.<sup>14</sup>
- Common Justice, a nonprofit in New York City, works closely with the Brooklyn and Bronx District Attorney’s Offices to employ a restorative justice framework to respond to serious crimes committed by young adults, including robbery and assault.<sup>15</sup>

All of these initiatives have sprung from well-established research showing that the practice of treating children as adults is applied inequitably, with more adult sentences meted out for youth of color. Black youth are 8.6 times more likely than their white peers to receive an adult prison sentence, while Latino youth are 40% more likely than white youth to be admitted to adult prison.<sup>16</sup>

Public safety is simply *not* improved by treating children as adults. Unnecessary justice system involvement inhibits the normal maturation process and prevents young people from aging out of criminal behavior. Transferring youth to federal prisons often means sending them across the country, severing critical family and community ties. Prosecuting children in adult court also prevents them from receiving age-appropriate educational and rehabilitative programming. Indeed, charging youth in the adult system may even increase the likelihood of their involvement in future criminal activity — one study found that youth charged as adults, compared to similar youth who were charged in the juvenile system, were 34% more likely to commit a crime in the future.<sup>17</sup>

Prosecutorial guidelines across the nation similarly recognize children’s unique vulnerabilities and capacity for change and routinely recommend that prosecutors reserve transfer to adult court for the *rarest* circumstances. In 2012, shortly after the Supreme Court issued its landmark decision in *Miller v Alabama* (acknowledging that children are different from adults and should be treated as such), then-U.S. Attorney General Eric Holder released recommendations from his Task Force on Children Exposed to Violence. Recommendation 6.9 of this report states, “Wherever possible prosecute young offenders in the juvenile justice system instead of transferring them to adult court.”<sup>18</sup>

The pending legislation aligns with this growing trend by implementing court processes that would impose adversarial testing and provide a check on youth transfers to adult court. Adversarial testing during a transfer hearing will allow children’s defense counsel to build a case rebutting the need for transfer. It will also improve prosecutorial decision-making, as prosecutors

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<sup>14</sup> Denver District Attorney’s Office (2018), *DA McCann Launches Denver’s First Adult Diversion Program*, <https://www.denverda.org/news-release/da-mccann-launches-denvers-first-adult-diversion-program/>.

<sup>15</sup> ShanaKay Salmon (2019), *Why Restorative Justice Should Be on Every Prosecutor’s To-Do List*, <https://www.prosecution.org/crime-report-why-restorative-justice-should-be-on-every-prosecutors-todo-list>.

<sup>16</sup> Campaign for Youth Justice (2016), *Key Facts: Youth in the Justice System*, <http://cfyj.org/images/factsheets/KeyYouthCrimeFactsJune72016final.pdf>.

<sup>17</sup> Centers for Disease Control and Prevention (2007), *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult System*, MMWR 2007;56(No. RR-9) <https://www.cdc.gov/mmwr/pdf/rr/rr5609.pdf>.

<sup>18</sup> Robert L. Listenbee, Jr. et al. (2012), *Report of the Attorney General’s Task Force on Children Exposed to Violence*, Office of Juvenile Justice and Delinquency Prevention, <https://www.justice.gov/defendingchildhood/cev-rpt-full.pdf>.

may receive additional information about the child's background and unique circumstances. And at the end of that process, judges would make the final call on the appropriate disposition. The young people who come into our criminal legal system deserve no less.

## Conclusion

In 1995, five years after the end of his own 27-year prison sentence, South African freedom fighter Nelson Mandela observed, "There can be no keener revelation of a society's soul than the way in which it treats its children."<sup>19</sup> Our country currently subjects children to the physical and emotional trauma of adult jails and prisons, stunting their development, harming their wellbeing, and leaving them less able to contribute to the community upon release.

We should do whatever is necessary to ensure that every American child has the opportunity to grow, develop, learn, and change. The Redefinition of Child Amendment Act of 2021 is a step toward progress: Children in the District of Columbia deserve to be treated as kids when they make mistakes.

Thank you for this opportunity to share important context on youth justice around the country. Please do not hesitate to let us know if we can provide additional information or resources.

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<sup>19</sup> Nelson Mandela (1995), *Speech by Nelson Mandela at the Launch of the Nelson Mandela Children's Fund*, [http://db.nelsonmandela.org/speeches/pub\\_view.asp?pg=item&ItemID=NMS250&txtstr=Dates:%201995%20-%201995](http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS250&txtstr=Dates:%201995%20-%201995).