

TESTIMONY OF PROFESSOR RICHARD E. REDDING, J.D., PH.D.

**BEFORE THE D.C. COUNCIL COMMITTEE ON PUBLIC SAFETY
AND THE JUDICIARY**

**HEARING ON BILL 17-913, "JUVENILE JUSTICE IMPROVEMENT
AMENDMENT ACT OF 2008"**

OCTOBER 20, 2008

Chairman Mendelson, thank you for the opportunity to testify before your committee today on this important pending legislation. My name is Richard Redding, and I am a Professor of Law at Chapman University School of Law in Orange, California. Previously, I was Professor of Law at Villanova University School of Law, Research Professor of Psychology at Drexel University, and Director of the JD/PhD Program in Law and Psychology at Villanova and Drexel Universities. Prior to that, I was Assistant Professor and Associate Director of the Institute of Law, Psychiatry, and Public Policy at the University of Virginia. I am a lawyer and a psychologist, and for the last thirteen years I have conducted research on the effects of adjudicating and/or sentencing juvenile offenders as adults as well as the effects of incarcerating juveniles in adult facilities.

I am the author of the August, 2008 report published and distributed by the U.S. Justice Department, Office of Juvenile Justice and Delinquency Prevention, entitled "Juvenile Transfer Laws: An Effective Deterrent to Delinquency?," which is Attached. The report may also be accessed at www.ojp.usdoj.gov/ojjdp.

I am here today to discuss the findings of the report, which provides an analysis of all of empirical research published to date on the effects of trying and sentencing juveniles as adults. The methodologies and findings of all of the studies are discussed in detail in the report, and so I will not reiterate the report in my testimony today. Rather, I will summarize the key findings of the studies and discuss the policy implications of the findings with respect to Bill 17-913, the stated purpose of which is to create a "reverse waiver" provision in the D.C. Code that would allow a D.C. Superior Court judge to review the decision of the U.S. Attorney's Office to prosecute a juvenile in adult court. If the judge believes the youth can be rehabilitated and it is in the public's interest to do so, the judge can order, after holding a "reverse waiver" hearing, that the youth be sent back to the juvenile court for adjudication. The Bill also allows youth charged as adults to be held in juvenile, rather than adult, facilities prior to trial or pending a reverse waiver motion and hearing.

A principal goal of so-called "transfer" laws, which allow for the prosecution of juveniles as adults, is that such "punishment" will reduce the recidivism of those youth convicted of a crime. But the research demonstrates the reverse. Trying juveniles as adults only increases their

recidivism, and incarcerating juveniles in adults facilities has counter-rehabilitative effects.

TRYING JUVENILES AS ADULTS INCREASES THE LIKELIHOOD OF RECIDIVISM

With respect to specific deterrence – that is, whether trying juveniles as adults decreases the likelihood that they will reoffend – the six studies conducted to date have all found higher recidivism rates among juveniles convicted for violent offenses in criminal court when compared with similar offenders tried in juvenile court. These six studies used large sample sizes (between 494 and 5,476 participants), multiple measures of recidivism (e.g., time to first re-arrest, seriousness of subsequent offense), different study design and statistical analysis methodologies (natural experiment across two jurisdictions, matched groups within the same jurisdiction, or statistical controls), and were conducted in different jurisdictions (Florida, New Jersey, New York, Pennsylvania) having different types of transfer laws. The strong consistency in results across studies is all the more compelling given that they used different samples and methodologies.

All of the studies found generally higher recidivism rates among offenders who had been transferred to criminal court, compared with those who were retained in the juvenile system. This held true even for offenders who only received a sentence of probation from the criminal court, thus suggesting that criminal court processing alone, even without the imposition of any criminal sentence, increases recidivism. Juveniles' sense of injustice at criminal court processing may cause them to react defiantly by reoffending, and it may further harden an emergent criminal self-concept.

In particular, let me direct your attention to the findings of the two most recent studies, both funded by the U.S. Justice Department, which are the largest and most sophisticated studies to date. A 2005 Florida study included 950 young adult offenders, half of which had been charged by prosecutors in adult criminal court for offenses they had committed as juveniles; the other half remained in the juvenile system. This resulted in a sample of 475 matched pairs of transferred and retained cases. The cases were drawn from six urban and rural judicial circuits that differed in their rates of transfer. The cases were matched within each judicial circuit (thus controlling for geographical effects in case processing and decisionmaking) along seven relevant demographic, criminal history, and offense variables: age, gender, race, number of previous juvenile referrals, most serious prior offense, and number of charges. A subset of the group was further matched according to 12 other case characteristics: prior juvenile referrals, multiple charges at arrest, multiple incidents involved in the case, charge consolidation, legal problems during case processing, gang involvement, codefendants or accomplices, property loss or damage, victim injury, use of weapons, felony charges, and the presence of mitigating and aggravating factors. The measure of recidivism was the number of offenses committed after the youth turned age 18. Like earlier studies, this study found that transferred offenders were more likely to reoffend. The study found that:

* Overall, 49% of the transferred juvenile reoffended, compared with 35% of the retained

offenders.

- * For violent offenses, 24% of the transferred offenders reoffended, compared with 16% of the retained offenders.
- * For drug offenses, 11% of the transferred juveniles reoffended, compared with 9% of the retained offenders.
- * For property offenses, 14% of the transferred juveniles reoffended, compared with 10% of the retained offenders.

In the other most recent study, the researchers examined the time at-risk (time residing in the community) recidivism rates for 2,382 15- and 16-year-old juveniles charged with robbery, burglary, or assault. The study compared those charged in selected counties in northern New Jersey, where such cases all originate in the juvenile court, with those charged in matched counties in New York, where such cases originate in the criminal court. The New York and New Jersey counties are contiguous and part of a large shared metropolitan area that have very similar demographic, economic, and social characteristics as well as similar criminogenic influences and crime rate characteristics. All cases were followed for a 7-year period. The study statistically controlled for a variety of relevant demographics (age, gender, ethnicity), case and offense characteristics (e.g., most serious charge, weapon use, whether detained, case length), criminal history variables (age at first arrest, number of prior arrests, previous incarcerations) and sentence length. It used statistical techniques that analyzed recidivism in various ways (first rarest, severity of rarest charges, time to rarest, subsequent incarceration).

The study found a 100% greater likelihood of rarest for a violent offense and a 47% greater likelihood of rarest for a property offense, among the New York juveniles whose cases were processed in the criminal court than for the New Jersey juveniles. They also had a greater number of rearrests for such offenses and a 26% greater chance of being reincarcerated. The pattern of findings was even stronger for first-time offenders.

Thus, the available research provides strong evidence that transferring juvenile offenders to the criminal court does not engender community protection by reducing recidivism. On the contrary, transfer substantially increases recidivism. This is the same conclusion reached by the Centers for Disease Control in its 2007 published review of the research on transfer.¹

¹ See McGowan et al., Effects on Violence of Laws and Policies Facilitating the Transfer of Juveniles from the Juvenile Justice System to the Adult System. *32 American Journal of Preventive Medicine* S7 (2007).

WHY JUVENILES TRIED AS ADULTS HAVE HIGHER RECIDIVISM RATES

Why do juveniles tried and/or incarcerated as adults have higher recidivism rates than similar juveniles tried in the juvenile court? Researchers have identified several possible explanations:

- * The stigmatization and other negative effects of labeling juveniles as convicted felons, which may further harden an emergent criminal self-concept.
- * The sense of resentment and injustice juveniles feel about being tried and punished as an adult: Research shows that youth feel a sense of injustice about being tried as adults, which they find to be unfair, both because of their juvenile status and because they see themselves as being treated differently than other similarly situated juveniles.
- * The learning of criminal mores and behavior while incarcerated with adult offenders: Research shows that juveniles incarcerated with adults often feel brutalized by the experience and that they must adjust to the institution by accepting violence as a part of daily life, thus becoming even more violent. The adult criminals serve as negative role models for youth, exposing them to substantial criminogenic influences.
- * The decreased focus on rehabilitation and family support in the adult system: Research shows that as compared to youth in juvenile facilities, youth incarcerated in adult facilities have fewer rehabilitative and educational programs available and find the institutional environment to be more punitive than rehabilitative.
- * The exposure to brutality and victimization while incarcerated in adult offenders: Research shows that juveniles in adult facilities are far more likely to be assaulted, to be physically and sexually abused, and to commit suicide.
- * Decreased employment and community integration opportunities due to a felony conviction.

CONCLUSION:

BILL 17-913 WOULD ENHANCE COMMUNITY PROTECTION BY REDUCING THE NUMBER OF JUVENILES UNNECESSARILY TRANSFERRED TO CRIMINAL COURT AND INCARCERATED IN ADULT FACILITIES

The practice of trying and sentencing juvenile offenders in adult court has produced the unintended effect of increasing recidivism, thus reducing community protection over the long term. The studies show that this is particularly the case among first-time violent offenders, who often are the ones prosecuted as adults – the increase in recidivism is the greatest among violent and first-time offenders. Moreover, a large body of research demonstrates that the frequency of

offending (i.e., the prior offense history) – not the seriousness or violent nature of the first offense – is what best predicts recidivism and the risk for committing a subsequent violent offense.

Thus, to best achieve reductions in recidivism and community protection over the long term, the number of juveniles tried as adults should be minimized, and procedures and safeguards should be in place to ensure that juveniles who could be handled effectively in the juvenile system are not adjudicated and sentenced as adults. The proposed “reverse waiver” provision would institute such a safeguard by providing a judicial check on what is currently unfettered prosecutorial discretion to charge certain juvenile offenders as adults. The reverse waiver hearing would permit the full development and airing of evidence concerning the juvenile’s appropriateness for adult versus juvenile adjudication and sentencing and the prospects for rehabilitation in the juvenile system.

Bill 17-913 would also facilitate community protection and serve the best interests of youth, by allowing judges to order that they be held in juvenile rather than adult facilities on a pre-trial basis pending trial or the reverse waiver hearing. Holding juveniles in adult facilities, particularly when they have not yet been tried or convicted of an offense, serves *no* penal or rehabilitative purpose. Doing so only has counter-rehabilitative effects and exposes these juveniles to the real possibility of lasting physical and psychological harm.