



BECAUSE THE CONSEQUENCES AREN'T MINOR

**TESTIMONY OF LIZ RYAN
CAMPAIGN FOR YOUTH JUSTICE
FOR THE DC COUNCIL COMMITTEE ON PUBLIC SAFETY
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On behalf of the Campaign for Youth Justice (CFYJ), a national organization dedicated to ending the practice of trying, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system, I am respectfully submitting my testimony and recommendations on Department of Corrections (DOC) oversight issues and on the status of D.C. youth prosecuted in adult criminal court.

Background:

As you are aware, in 2000, Mayor Anthony Williams established the D.C. Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform (BRC) to investigate the state of the juvenile justice system in the District and the effectiveness of the rehabilitative programs in place, especially the Oak Hill Youth Center. In 2001, the BRC recommended limiting the cases under which youth could be tried as adults, as well as closure of the Oak Hill Youth Center, and more community-based alternatives to detention and incarceration. [For a copy of the report, visit: <https://digitalcommons.georgetown.edu/blogs/oakhill/documents-and-resources/blue-ribbon-commission/>].

In November 2004, the D.C. Council unanimously approved comprehensive reform legislation, the Omnibus Juvenile Justice Amendment Act of 2004 (D.C. Law 15-261), which emphasized rehabilitation and treatment and included many of the key recommendations in the Mayor's Blue Ribbon Commission (BRC) report such as closing Oak Hill and putting in place more effective programming. Youth, parents and families who were directly affected by juvenile justice policies, along with local groups and community members played a leading role in advocating for this reform effort and the passage of this landmark legislation.

In 2005, the Mayor established the new Department of Youth Rehabilitation Services (DYRS) to replace the old Youth Services Administration (YSA) and began implementation of the new approach to juvenile justice, designed to place young people in the least restrictive environment consistent with public safety. These reforms are based on best practices around the country that include the Missouri "approach" to juvenile corrections and model community-based alternatives to detention and incarceration. In May, 2009, the notorious Oak Hill was closed and replaced by "New Beginnings" – a smaller, homelike facility for 60 youth. The reforms have worked to reduce the city's reliance on incarceration as a response to juvenile crime.

D.C.'s juvenile justice reform effort is being lauded around the country as the most progressive reform effort underway. While more recently the effort has received criticism, the new DYRS leadership is poised to address these concerns and continue the progress underway. However, while the DYRS reform efforts incorporated many of the key recommendations of the Mayor's

Blue Ribbon Commission, there are several significant areas of “unfinished business” that have not yet been addressed such as the recommendation to reduce the prosecution of youth in adult criminal court.

Status of D.C. Youth under DOC custody, in adult criminal court:

To examine these issues further, the Campaign for Youth Justice released, *A Capital Offense: Youth in D.C.’s Adult Criminal Justice System and Strategies for Reform* on the status of children in the District of Columbia’s adult criminal justice system in July, 2007.

Key findings of the report showed that:

- Children as young as 15 can be prosecuted as adults, many without review by a judge or a court hearing;
- Youth cannot be returned to the juvenile justice system even if a judge determines that a child could benefit from the rehabilitative services in the juvenile justice system because the law does not provide a “reverse” waiver mechanism. A “reverse waiver” provision would allow youth to file a motion requesting a hearing at which a judicial officer would determine whether to transfer the youth back into the juvenile system based on that youth’s individual situation and the circumstances surrounding the offense;
- Youth prosecuted in the adult criminal justice system are held in the D.C. Jail, an adult facility run by the Department of Corrections where there is a dearth of youth appropriate activities and programs. Only a third of the youth attend school, and some youth can spend up to 23 ½ hours a day locked in their cells;
- Those youth who are sentenced to incarceration come under the custody of the Federal Bureau of Prisons (BOP) and are typically placed in facilities hundreds of miles from home, including states as far as Tennessee, North Dakota, and Wisconsin;
- Youth are not eligible for the rehabilitative services provided by the Department of Youth Rehabilitation Services (DYRS) through the comprehensive reform legislation, the Omnibus Juvenile Justice Amendment Act of 2004 (D.C. Law 15-261), approved by the D.C. Council. Enactment of this report’s recommendations would ensure that the greatest number of youth could benefit from the expanded rehabilitative services in the District’s juvenile justice system.

The report recommended that the District end the pre-trial placement of youth in the D.C. Jail; require that all transfer cases be decided by a judge; provide a “reverse” waiver mechanism for youth in adult court; encourage the Federal Bureau of Prisons to contract with the Department of Youth Rehabilitative Services; and collect and analyze data on youth tried and sentenced as adults on an on-going basis.

In 2008, a study was conducted by Dr. Jennifer Woolard of Georgetown University that highlighted inhumane conditions of confinement as well as serious flaws in programming for youth the youth unit at the D.C. Jail. The D.C. Department of Corrections released the report and Dr. Woolard testified on the findings before a joint hearing of the Judiciary and Human Services Committees.

Policy Reforms Needed:

Since the 2007 and 2008 studies, several modest changes to improve the status of youth prosecuted in adult court have been made including removing all the youth at the D.C. Jail and placing them at the Central Treatment Facility (CTF), a facility with more programming space, as well as placing youth sentenced as adults at CTF, rather than locations such as Devils Lake, North Dakota.

These are modest steps and substantially more progress is needed to improve the status of youth prosecuted in adult criminal court and increase public safety outcomes in the District for a number of key reasons:

First, an overwhelming body of research shows that prosecuting youth as adults does not work. Over the past four years, we have witnessed a steady stream of research demonstrating unequivocally that trying and sentencing children in adult court does not reduce crime; in fact, it does just the opposite. Trying youth as adults has both a detrimental impact on the youth tried as adults and harms public safety.

For example, in 2007, the Centers for Disease Control and Prevention (CDC) Task Force on Community Preventive Services examined every study on transfer policies that was in a published journal or had been conducted by a government agency, and the task force checked to make sure each study compared the same kind of youth charged with comparable offenses, recognizing that youth who are transferred to the adult court may be charged with more serious offenses, or may have more serious backgrounds that make them different from youth in the juvenile system. The CDC review made sure that those factors were taken into consideration when it was doing its analysis.

After assessing all the research, the CDC task force recommended “against laws or policies facilitating the transfer of juveniles from the juvenile to the adult judicial system.” Among the key findings of the report were the following conclusions: Transferring juveniles to the criminal justice system jeopardizes public safety because youth are more likely to commit additional crimes if prosecuted in the adult system. The task force found that juveniles transferred from the juvenile court system to the criminal system are approximately 34 percent more likely than youth retained in the juvenile court system to be rearrested for violent or other crime.

Widening use of transfer policies puts youth directly in danger because juveniles are often victimized in adult facilities, and are at a much higher risk for suicide. The review found that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility.

The CDC review found insufficient evidence to support the “deterrence theory” used as a common rationale for expanded transfer policies. The “deterrence theory” suggests that expanded transfer methods act as a general deterrent to prevent youth from committing crimes in the first place. The review found this not to be true, as well as finding no evidence to support a specific deterrence effect on youth who are tried in the adult system. The task force thus concluded that “to the extent that transfer policies are implemented to reduce violent or other criminal behavior, available evidence indicates that they do more harm than good,” and “the use of transfer laws and strengthened transfer policies is counterproductive to reducing juvenile violence and enhancing public safety.”

In addition, the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) released a research bulletin in 2008 with findings that mirrored those in the CDC report, i.e. laws that make it easier to transfer youth to the adult criminal court system have little or no general deterrent effect, meaning they do not prevent youth from engaging in criminal behavior.

The OJJDP report showed that youth transferred to the adult system are more likely to be rearrested and to re-offend than youth who committed similar crimes, but were retained in the juvenile justice system. In addition, the report explored why youth have higher recidivism rates. Higher recidivism rates are due to a number of factors including:

- Stigma and negative labeling effects of being labeled as a convicted felon
- A sense of resentment and injustice about being tried as an adult
- Learning more criminal behaviors from incarceration with adults
- Decreased access to rehabilitation and family support in the adult system
- Decreased employment and community integration opportunities due to a felony conviction.

After reviewing the research, OJJDP also concluded, "To best achieve reductions in recidivism, the overall number of juvenile offenders transferred to the criminal justice system should be minimized. Moreover, those who are transferred should be chronic repeat offenders – rather than first-time offenders – particularly in cases where the first-time offense is a violent offense."

Additionally, the Brookings Institution and The Woodrow Wilson School of Public and International Affairs at Princeton University, also released a policy brief entitled **Keeping Adolescents Out of Prison**. This brief discussed the history and purpose of the juvenile justice system which is to recognize the differences between youth and adults. These differences have been highlighted in recent years through research that has found major disparities between how youth and adults brains function. On the topic of trying youth as adults, the report stated that "at a minimum the practice of harsh sentences for adolescents does not work; it may even be counterproductive." Indeed the report recommends that "[a]bove all, youth should be kept out of the adult criminal system unless they have committed repeat violent offenses. This course of action is especially recommended because most youth who commit criminal offenses will abandon illegal behavior at roughly the same age as they exit adolescence."

Second, D.C. agencies including the Department of Corrections, the Department of Youth Rehabilitation Services, the Criminal Justice Coordinating Council, D.C. Superior Court, Court Social Services, Family Court, the Juvenile Justice Advisory Group, the D.C. Sentencing Commission, the Public Defender System, and the Office of the Attorney General, along with federal agencies such as the U.S. Attorney's Office for the District and the Court Services and Offender Supervision Agency for the District do not formally collect, analyze or report on the population of youth prosecuted in adult criminal court. CFYJ's report from 2007 was the first ever report on this topic. On-going data collection, analysis and research is needed to understand what happens to youth prosecuted in adult criminal court, where they are housed, sentencing outcomes, and placement issues.

Third, D.C. is out of step with the rest of the States. In light of the research, particularly the data showing that youth prosecuted in adult criminal court are much more likely to re-offend than similarly situated youth in the juvenile justice system, a number of states have begun to re-examine their states policies and several states have changed their policies. States across the

country have passed legislation to reduce the prosecution of youth in the adult criminal justice system over the past five years.

According to a new report, ***State Trends: Legislative Changes from 2005 to 2010 Removing Youth from the Adult Criminal Justice System***, released by the Campaign for Youth Justice on March 16, 2011, nearly half the States have enacted or are actively considering changes to their laws. [The report is available at:

http://www.campaignforyouthjustice.org/documents/CFYJ_State_Trends_Report.pdf].

Finally, the D.C. public strongly supports investing in rehabilitative approaches to help youth, not prosecution in adult court or placement in adult jails and prisons. All of the public opinion polling in recent years – commissioned by the MacArthur Foundation, the National Council on Crime & Delinquency, and the Campaign for Youth Justice – strongly shows that the public favors investment in rehabilitation and treatment of youth. There is strong consensus in the District and around the country that a judge, who is perceived by the public as a neutral decision maker, should decide whether or not a child should be prosecuted in adult court, rather than a prosecutor. The public also strongly opposes placing children in adult jails and prisons.

Recommendations:

As you consider oversight issues of the DC Department of Corrections, here are my recommendations for immediate action for your review and consideration:

- Immediately prohibit the use of solitary confinement, excessive use of isolation and other dangerous practices by the DOC at the Juvenile Unit of CTF.
- Create a community stakeholder committee, including parents and families of youth currently or formerly at CTF and/or the D.C. Jail, to advise your committee and the new Mayor on DOC issues on a monthly basis.
- Establish an independent monitoring capacity in a local non-profit organization with 24 hour access to CTF to ensure the safety and appropriate care of the youth at the Juvenile Unit at CTF, to receive complaints, and to report on the status of these youth monthly to this committee.
- Invite youth detained or incarcerated at CTF and their families to talk with you and your staff as you consider DOC oversight issues and policy reforms on youth in the adult criminal justice system.
- Collaborate with the Human Services Committee Chairman to halt any potential administrative actions involving the removal of youth, under both DYRS custody and CSOSA, from DYRS supervision, thereby increasing youth involvement in the adult criminal justice system.
- Require that all DOC staff working with youth at the Juvenile Unit of CTF regularly attend and successfully complete training in age appropriate treatment and strategies for working with incarcerated youth under 18.

- Require the new DOC Director to implement substantial operational, programmatic and environmental and culture changes at the Juvenile Unit at CTF through these ways and to report monthly to this committee on the status of these changes:
 - a. Staff training on adolescent development;
 - b. Increased daily programming (through federal grants; involving volunteer groups);
 - c. Improved re-entry services (by utilizing the plan developed by CJCC);
 - d. Increased access to counsel; and
 - e. Access to mental health services; and
 - e. Family engagement activities (e.g. increased visitation hours for families of youth).
- Remove DOC from its responsibilities at the Juvenile Unit at CTF by the end of 2012, and replace with the Department of Youth Rehabilitation Services (DYRS).
- Increase transparency by requiring DOC to collect data on the population of youth at CTF's Juvenile Unit, operations and programs at CTF and publish quarterly updates on the DOC website.
- Require DOC to collaborate with DYRS on re-entry services for youth prosecuted as adults such as mentoring, Job Corps, independent living and housing assistance, and specialized empowerment programs.

In addition, I recommend that you consider reintroducing legislation to revise the “transfer” law to reduce the number of youth prosecuted in adult court by having all transfer cases be heard by a judge (i.e. eliminating the U.S. Attorney’s authority to prosecute youth as adults or by providing a “Reverse Waiver” authority for adult court judges to send youth back to the juvenile court).

Finally, in your leadership role in the DC Council, I recommend that you support changes for the District in federal legislation, such as:

- Require the Bureau of Prisons (BOP) to report on the placement of DC youth once in the BOP system.
- Increase monitoring of the Bureau of Prisons placement and treatment of DC youth.
- Require the U.S. Attorneys Office and the Superior Court to provide comprehensive and regular data on youth prosecuted as adults.
- Increase and improve legal representation & advocacy for youth prosecuted in adult criminal court including requiring attorneys representing youth charged as adults to attend training.

I appreciate your consideration of these recommendations and I look forward to your support and working with you and members of your administration in the coming years to achieve further progress with juvenile justice in the District.