



TESTIMONY BY MARC SCHINDLER
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DC COUNCIL COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

**BILL 20-825, THE “YOUTH OFFENDER ACCOUNTABILITY
AND REHABILITATION ACT OF 2014”**

Wednesday, October 22, 2014, 11 a.m.
John A. Wilson Building, Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Good morning, Chairman Wells and members of the Committee. Thank you for the opportunity to provide testimony in support of Bill 20-825 today.

By way of background, I have been fortunate in my career that I have had the opportunity to view the justice system from several different angles, and therefore I come to this issue today from a number of different perspectives.

Currently, I am Executive Director of the Justice Policy Institute (JPI), a national non-profit research and policy organization dedicated to reducing the use of incarceration in the juvenile and criminal justice systems. As you are aware, I held several leadership roles within the DC Department of Youth Rehabilitation Services (DYRS), including serving as General Counsel, Chief of Staff and Interim Director between 2005 and 2010. Prior to working at DYRS, I spent eight years as a staff attorney with the Youth Law Center, where I advocated at the national and state level on issues related to conditions of confinement, racial disparities, indigent defense and other juvenile justice issues. While at the Youth Law Center I also had the honor of serving as co-chair of the National Juvenile Justice and Delinquency Prevention Coalition, where I worked closely on issues related to reauthorization of the federal Juvenile Justice & Delinquency Prevention Act. Prior to joining JPI, for three years I was a partner with Venture Philanthropy Partners (VPP), a Washington-based philanthropic organization. While there I led VPP’s Social Innovation Fund *youthCONNECT* initiative – a five year \$40 million dollar innovative philanthropic effort aligning public-private capital, evaluation, and high performing non-profit organizations to improve the education, employment and health outcomes of 14-24 year old disconnected youth in the Washington metro region. Finally, I have been a resident of the District for almost 20 years, and currently live in Ward 5 with my wife, a DC Public School Principal, and my two children.

Having helped lead DYRS and being very familiar with the District's justice system, I know first-hand from that experience and from a review of extensive research on these issues, that youth who are currently being prosecuted and housed in the adult system could be better handled in the juvenile justice system. This approach would be better for public safety, safer for our young people, and create a fairer and more effective justice system in the District.

This issue has been studied recently, with the release of a new report, *Capital City Correction: Reforming DC's Use of Adult Incarceration Against Youth*. Released by DC Lawyers for Youth and the Campaign for Youth Justice, the report looks at how young people are prosecuted in the adult criminal justice system in Washington, D.C.

The report showed that 541 youth under the age of 18 were detained or incarcerated in adult facilities in D.C. between 2007 and 2012 and that youth spent 10,000 days – the equivalent of 27 years – in adult jail. These young people face inadequate facilities, higher risk of being victimized while locked up, increased chances of solitary confinement, and unfortunately often carry the long-term consequences of adult felony convictions when they leave the system. We also know from decades of research across the country, including by the Centers for Disease Control and Prevention, that transfer to adult court actually increases recidivism, with youth prosecuted as adults more likely to commit crimes upon release than similar youth handled in the juvenile system.

Even a short exposure of a young person to an adult correctional setting can result in negative outcomes. As an attorney that represented young people in conditions of confinement cases, I saw first-hand the kind of harm that can occur when a young person is jailed with adults, or institutionalized in a place that doesn't meet their needs.

At DYRS we navigated the need to serve young people of all ages and offense backgrounds. When I was at the agency, one third of the youth committed to the agency were over 18 years old, and a significant number had serious offense histories, including behaviors that could have seen them direct filed). DYRS serves young people up to age 21, and according to a 2012 research brief from the agency, young people 18 and older were actually less likely to commit a new offense than younger youth. In reviewing the data in D.C. and around the country, what we see is that youth who are being tried as adults, and the youth who stay in the juvenile system, are quite similar in terms of offense history and backgrounds.

Thus, from state-to-state to the District of Columbia, the young people tried as adults do not look dramatically different from the youth who are kept in the juvenile system. Indeed, an increasing number of states around the country have taken steps to address this issue, including:

Texas: Research by the University of Texas at Austin Lyndon Banes Johnson School of Public Affairs found that youth who were tried as adults had similar characteristics to youth who had the option of staying in the juvenile system: The youth who had to be transferred were shown to have similar prior offense histories (including the proportions that had no violent histories), and had about the same number of previous referrals to a local probation department. Of the youth who were transferred, seven out of 10 had no prior violent criminal history, a third were first time offenders, and nine out of

10 had never received services of the Texas Department of Juvenile Justice – suggesting that few of them have a serious history of delinquency of any kind. Texas recently passed legislation that encourages counties to hold youth pretrial in the juvenile justice system if a court is considering transfer to the adult system.

Massachusetts: To help frame the issue for policymakers on why the 17 year olds from the adult court system could be served in the juvenile justice system, researchers looked at the arrests of youth under, and over 17. They found that their 17 year olds are arrested for the same, predominantly low-level, non-violent offenses as younger teens. Massachusetts recently “Raised-the-Age” so that young people will no longer be exposed to adult jails and prisons.

Oregon: Research from the Oregon Youth Authority on the young people who were transferred to the adult system found that, of all the youth in custody, those youth sent there by juvenile departments were at greater risk of reoffending on an objective risk assessment than those youth who had been tried as adults. In other words, the assessment showed that transferred youth were not more “serious” than youth who stayed in the juvenile justice system. Oregon recently passed legislation to encourage counties to hold youth in juvenile facilities, pretrial, and the state is studying the practice of transferring youth to the adult system for future legislative review.

We have also seen states across the country that are making changes to reduce the number of young people being held in adult jails, both pre and post trial. These states include Texas, Pennsylvania, [Colorado](#), ~~Colorado~~, Ohio and others.

Most of these states have linked reform of their approaches to handling youth in the adult system to juvenile correctional reforms. My colleague Jason Ziedenis will discuss this in more detail later today. Such reforms have included **1) expanded use of diversion, 2) reduced confinement in the juvenile justice system, 3) increased resources so that young people in juvenile custody could be served in the community**—and **4) used the empty space** within the revamped juvenile justice system to serve those young adults who had once been confined in the adult system. I think the first three of these approaches should sound familiar to those in the District, since the reforms in our city include all of these practices.

We also need look no further than Virginia and Maryland to see policies and practices that we would do well to follow. For example, the Virginia legislature passed a measure that will help keep Virginia youth out of adult jails. This year, Maryland passed legislation that restores some judicial discretion to transfer youth from adult court to juvenile.

The Supreme Court has also consistently recognized over the past 10 years that being charged as an adult does not make a 16 or 17-year-old any less of a child. Up until their mid-twenties, youth are not fully developed, and in turn are particularly susceptible to both the positive influences and the negative influences around them. As a result, a youth’s sentence can in many ways determine whether that child will go on to recidivate or be on a track that will reduce the likelihood of future criminal acts.

We also have reason to believe that the juvenile justice reforms in the District are having positive results. Youth in DC's juvenile justice system are now increasingly receiving a holistic set of services, supports and opportunities in the community, including job training, mentoring, educational and recreational activities, in addition to mental health and substance abuse treatment.

An increasing number of youth are achieving successful life outcomes, including earning job training certificates, experiencing educational gains, earning high school credentials, and enrolling in college.

At the same time, young people are increasingly staying out of trouble. Recidivism for DYRS youth is down. It was 45% for youth committed in 2008 and has dropped to 29% for youth committed in 2011 and who have spent at least a year in the community.

DYRS is placing more youth in the community and keeping youth closer to home. A number of these outcomes are from after I left the agency, and I appreciate the work of current Director Neil Stanley and his team, Deputy Mayor's Otero and Quander, and other city leaders who have continued the hard work of improving our city's juvenile justice system. A system that had been viewed for decades as one of the worst in the country, is now viewed as system that is implementing model and innovative approaches that others are looking to for replication. We can and should do better as it relates to how we handle youth who are subject to prosecution as adults, and I believe passing and implementing this legislation will do just that.

I also want to note that the legislation being proposed today is consistent with the recommendations of the Mayor's Blue Ribbon Commission on Youth Safety and Juvenile Justice Reform. As you know, that Commission was composed of respected stakeholders from across the system and the community, and was ably chaired by the late Judge Eugene Hamilton. Included in their recommendations was providing flexibility for judges to allow them the ability to assign a youth to the juvenile system. Though today's proposed legislation doesn't do so, they also recommended doing away completely with the direct file authority of the US Attorney, and instead requiring that any youth prosecuted as adult first have a transfer hearing before a family court judge.

I also support the proposed plan to implement YOARA, which includes:

1. Move all pre-sentencing youth charged as adults from the Juvenile Unit at the Correctional Treatment Facility (CTF) to the Youth Services Center (YSC).
2. Move all youth convicted in adult court and sentenced to incarceration from the Juvenile Unit at CTF to the New Beginnings Youth Development Center (New Beginnings).

I believe this approach promotes public safety and efficient use of taxpayer dollars.

I understand some have raised concerns that this plan would cause challenges for DYRS and could run afoul of the District's efforts to exit the Jerry M. Consent Decree. I think any such challenges can be addressed and I would be happy to discuss these issues with the Committee if they are of concern.

Finally, and very importantly, this is also a civil rights and racial justice issue. According to the data I have seen, virtually all of the youth who are being prosecuted and housed as adults in the District are either African-American or Latino (with those housed at CTF between 2007 and 2012 being 97%

African American and 3% Latino). I sincerely believe that if these policies were disproportionately impacting White youth, we would not see such policies and practices.

Thank you for your time today and I am happy to answer any questions you may have.