WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

HEARING ON

B20-0825:
YOUTH OFFENDER ACCOUNTABILITY AND REHABILITATION ACT OF 2014

OCTOBER 22, 2014

TESTIMONY OF THE
WASHINGTON LAWYERS' COMMITTEE FOR CIVIL RIGHTS
AND URBAN AFFAIRS

I am Dennis Corkery, a staff attorney at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. I am pleased to present the testimony of the Lawyer's Committee. I have provided complete written comments and I will summarize them here. I am happy to answer any questions at the end.

We thank Councilmember Graham and Councilmember Wells for your leadership on this issue. We also thank Councilmembers Orange, Barry, Bonds, Grosso, Alexander, and Bowser for your co-sponsorship of this bill.

Fundamentally, children are different from adults. They belong in a system focused on rehabilitation and designed for their safety. The United States Supreme Court has recently reiterated that our constitutional system, required to meet evolving standards of human decency, demands that children be treated distinctly in our criminal law. In a recent line of cases – involving the death penalty,[1] sentences of life without parole,[2] and custodial interrogations[3] – differences between youth and adults, particularly with regard to brain development, have driven the Court to articulate distinct Constitutional standards for youth. These standards recognize that age is relevant to when a child is considered to be in custody (for *Miranda* purposes) and when a punishment is considered cruel and unusual (as are the juvenile death penalty, life without parole for non-homicide offenses, and mandatory life without parole for homicide offenses). We know that the Council understands this important point – children must be treated differently than adults. Many other witnesses today will discuss these particularities.

My testimony today will focus on the authority that the Council has to enact this law. We understand that there have been some questions raised as to that authority. The Lawyers' Committee believes that the Council certainly has the power to do so and would be ultimately able to vindicate local control in any subsequent court challenge.

[1] Roper v. Simmons, 453 U.S. 551 (2005).
[2] Graham v. Florida, 130 S.Ct. 2011 (2010); Miller v. Alabama, 132 S.Ct. 2455 (2012).
[3] J.D.B. v. North Carolina, 564 U.S. __ (2011).

As you well know, the Council of the District of Columbia has broad powers of legislation, which are constrained only by the dictates of the Constitution and the Home Rule Act.[4]

There are two provisions of the Home Rule Act that, as we understand it, opponents of this act have cited. One provisions prohibits the Council from "enact[ing] any act, resolution, or rule with respect to any provision of Title 11 (relating to organization and jurisdiction of the District of Columbia courts)"[5] The other prohibits the Council from "enact[ing] any act or regulation . . . relating to the duties or powers of the United States Attorney."[6] I will take each in turn.

Title 11 is the section of DC Code that delineates the basic structure and jurisdiction of our courts, both Superior and United States District. The United States Constitution gives Congress the power to establish any courts necessary required by the federal government.[7] Simply put, the Act did not delegate Congress's Article III power to the Council. However, nothing stops the Council from adding or deleting procedures or criminal statutes without affecting the organization and jurisdiction of the courts. If it were otherwise, our local statutes and procedures would be frozen in the 1970s and the Council would have no power to do anything. Obviously that is not the case: the Council has the authority to alter underlying substantive and procedural law, even when such alterations affect the number and type of cases that enter the courts.

Several court cases have made this point clear. Take, for example, the case of *District of Columbia v. Sullivan*.[8] In *Sullivan*, the DC Court of Appeals considered a challenge to Council legislation that decriminalized some traffic offenses and established procedures for them to be handled administratively, with appeals to the DC Superior Court available.[9] The District of Columbia Court of Appeals rejected Sullivan's argument that the legislation violated Congress' prohibition against Council alteration of the organization and jurisdiction of the courts and held that Council can legislate the criminal status of specific acts.[10] The Court of Appeals reasoned that "the Superior Court's trial level jurisdiction of criminal cases remains intact, as does the appellate jurisdiction of this court. What has changed is that certain violations no longer constitute *criminal* offenses."[11]

Similarly, in *Dimond v. District of Columbia*, the US Court of Appeals for the District of Columbia Circuit held that a statute prohibiting tort suits by automobile accident victims who

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[4] Convention Center Referendum Committee v. District of Columbia Bd. of Elections and Ethics, 441 A.2d 889, 903 (D.C. 1981).

[5] D.C. Code § 1-206.02(a)(4).

[6] DC Code § 1–206.02(a)(8)

[7] U.S. Const. art. III, § 1.

[8] *District of Columbia v. Sullivan*, 436 A.2d 364 (D.C. 1981) (When *Sullivan* was decided, § 1–206.02(a)(4) was codified as § 1-147(a)(4)).

[9] *Id.*

[10] *Sullivan*, 436 A.2d at 366.

[11] *Id.* Italics in original.

incurred less than $5,000 in medical expenses did not alter the Superior Court's jurisdiction, but rather eliminated a cause of action in tort for certain types of cases.[12] In so holding, the court observed that "Although the partial abolition of a cause of action inevitably affects the cases a court adjudicates, this incidental byproduct does not amount to an alteration of the local and federal courts."[13]

In another similar case, *Hessey v. Burden*, the DC Court of Appeals considered a Home Rule Act challenge to a ballot initiative (in which the voters directly exercise the same legislative authority granted to the Council) that would establish an Office of Public Advocate for Assessments and Taxation empowered to appeal assessments in the Tax Division of the Superior Court.[14] Reasoning that the Home Rule Act challenge "conflated jurisdiction under title 11 and the question of who has standing to appeal under title 47 of the Code," the court did not invalidate the ballot initiative.[15]

Similar case law supports the right of Council to change procedure in Title 16, not just underlying substantive law. In *Flemming v. United States*, the court considered a possible change to Title 16, designed to resolve an inconsistency with a Superior Court rule.[16] Examining the power of the Council to change a Superior Court procedural rule, the court wrote, "Although the Council is prohibited by [the Home Rule Act][17] from amending any provision of title 11 of the Code . . . it is not barred from amending [this statute] which is in title 16."[18]

The section of the Home Rule Act that prohibits the Council from changing anything relating to the duties or powers of the United States Attorney similarly does not prohibit this legislation. Under YOARA, the USAO continues to be responsible for adult felony prosecutions and the OAG remains responsible for delinquency prosecutions. Transfer of a case to the juvenile system under YOARA merely changes the type of case from an adult criminal prosecution to a delinquency prosecution. YOARA would not directly change the scope of either the USAO's or the OAG's prosecutorial authority, but rather the types of cases that fall within the preexisting divisions of their prosecutorial responsibility.

Notably, and with all respect to our legal colleagues at the US Attorneys' Office, objections from the federal executive branch cannot be allowed to "pre-veto" legislation. The Lawyers' Committee believes in and stands behind the Council's authority to enact YOARA. If, however, there remains a conflict about the Council's ability to legislate matters of local significance, the courts stand ready to decide the dispute.

Finally, we note and further congratulate the Council on one recent change to Title 16, the Marijuana Possession Decriminalization Amendment Act of 2014, A20-0305. This law

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[12] *Dimond v. District of Columbia*, 792 F.2d 179, 182-83 (D.C. Cir. 1986).

[13] *Id.* at 190.

[14] *Hessey v. Burden*, 584 A.2d 1, 2 (D.C. 1990).

[15] *Id.* at 6.

[16] *Flemming v. United States*, 546 A.2d 1001 (D.C. 1988).

[17] When *Flemming* was decided, § 1–206.02(a)(4) was codified as § 1-233(a)(4).

[18] *Id.* at 1005 n.9.

obviously took a class of former crimes out of the hands of the US Attorneys' Office and took cases away from Superior Court. This law has been in effect since July 17, 2014. The sky has not fallen. Our constitutional system of government has not collapsed. Rather, this Council recognized the damaging civil rights impact of the old law, and decided to save the lives of many children and young adults by keeping them out of the criminal system altogether. We support your continued efforts to protect the children in this city by passing this legislation.

Thank you for your time.