

TO: Mayor Bowser and Members of the DC Council:

We, the undersigned organizations, write to express unequivocal support for [Bill 24-0338, the Redefinition of Child Amendment Act of 2021](#) that was introduced at the DC Council at the request of Attorney General Karl Racine on June 30, 2021.

The Redefinition of Child Amendment Act would ensure that all cases involving children who are accused of criminal code violations begin in the developmentally responsive setting of juvenile court. Under this bill, children could still be transferred to adult criminal court, but only after a judge examines the unique circumstances of the youth, their capacity for rehabilitation in the juvenile system, and the interests of the public in transfer. The Redefinition of Child Amendment Act would end the ineffective decades-long practice of having the United States Attorney's Office directly file accusations against youth in adult criminal court – a practice which has set countless District youth on a path to isolation from their families, denial of rehabilitative services, and punitive supervision. Over the last 5 years, the Mayor and the Council have repeatedly affirmed the need for the law to reflect the now incontrovertible developmental research and to treat children as children.<sup>1</sup> The Redefinition of Child Amendment Act continues this process and will ensure better outcomes for District children and families as well as improve public safety.

**The current law allows the United States Attorney's Office to strip youth of their childhood without any due process.**

Children in the District can be prosecuted in adult criminal court as a result of their age and their charge. The Office of the United States Attorney for the District of Columbia (USAO) can directly file any child's case in adult criminal court if that child is 16 or 17 years old and accused of robbery while armed, first degree sexual abuse, murder, first degree burglary, or an assault with the intent to commit any of those offenses.<sup>2</sup> Typically, the decision to do so is made within hours of learning the young person has been arrested for such a charge. Once children are charged in adult criminal court, they remain there, even if they take a plea or are found guilty of a much less serious offense, including one that would not have been eligible for direct file in adult criminal court in the first instance.

There is no judicial review of the USAO's decision to charge a child as an adult and there are no judicially enforced standards that govern the decision to charge a youth in adult court. The child does not need to have any prior juvenile history in order to be charged by the USAO in adult criminal court. The USAO never has to show that available rehabilitative programming has failed in the past or would fail in the future. Rather, the federally-appointed USAO can charge every child accused of an adult court eligible offense in adult criminal court. The USAO can make these charging decisions without any internal policy criteria, and any criteria, should they exist, can change during a presidential administration or between administrations. As a result of the structure of the existing law, the District – the Mayor, the Council, the D.C. Attorney

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<sup>1</sup> See, e.g., Comprehensive Youth Justice Amendment Act of 2016, DC Law L21-0238, effective from April 4, 2017; Youth Rehabilitation Act of 2018, DC Law L22-0197, effective from December 13, 2018.

<sup>2</sup> D.C. Code §16-2301(3)(A).

General, the community – has no say about when the USAO chooses to charge children in adult criminal court.

**The current law is developmentally inappropriate and actively harms District children and families.**

The decision to charge a child in adult criminal court has a disastrous impact on the child, the child’s family, and the community. Children in adult criminal court lose all rights to confidentiality. The proceedings in their cases, and often their personal history of trauma and abuse, are laid bare in a public forum. Children who are convicted of felony offenses in adult criminal court are sent across the country to federal prisons run by the Bureau of Prisons (BOP) as soon as they reach age 18. Incarcerated young people, just like adults, frequently move between federal prisons and may spend months in transit, where programming, visitation, and phone access may be even more limited. Youth in the federal prison system often spend years without seeing their parents, grandparents, and siblings. They are isolated from their support networks and have to work even harder to reconnect with family when they return home. Youth in the BOP have no means of obtaining a high school diploma and face barriers such as wait lists and prison movement that prevent them from securing placement in a GED program. Even if they enroll in a GED program, in the BOP, incarcerated youth with disabilities and learning differences receive no specialized support to help them complete the program. Without a GED, District youth have extremely limited options for additional BOP programs, which typically require a GED as a prerequisite of participation. Upon release from the BOP, District youth are supervised by the Court Services and Offender Supervision Agency (CSOSA), a federal entity with no expertise or mission to further the rehabilitation of youth. Instead, District youth are further criminalized and excessively monitored in a way that impedes rather than advances their reentry.

**The current law disproportionately impacts Black youth.**

More than 94% of individuals who are sentenced for felony offenses in the District are Black.<sup>3</sup> The data are no different when it comes to charged youth; advocates universally report that nearly all youth who are charged as adults are Black. This should come as no surprise given the history of the law’s passage as well as recent research regarding the adultification of Black youth. The law that allows the United States Attorney’s Office to charge District youth in adult criminal court in circumvention of the due process required by the Supreme Court<sup>4</sup> was the product of Nixon-era calls to incarcerate Black youth.<sup>5</sup> Moreover, in practice, the decision to charge a Black youth as an adult is riddled with implicit bias. Studies have repeatedly shown that

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<sup>3</sup> DC Sentencing Commission, 2020 Annual Report. Available at: [https://scdc.dc.gov/sites/default/files/dc/sites/scdc/service\\_content/attachments/Annual\\_Report\\_2020.pdf](https://scdc.dc.gov/sites/default/files/dc/sites/scdc/service_content/attachments/Annual_Report_2020.pdf)

<sup>4</sup> *Kent v. United States*, 383 U.S. 541 (1966) (holding that due process was required prior waiving a youth to the adult criminal justice system).

<sup>5</sup> See Scott Laderman, *How Richard Nixon Captured White Rage – and Laid the Groundwork for Donald Trump*, Washington Post, Nov. 3, 2019. Available at: <https://www.washingtonpost.com/outlook/2019/11/03/how-richard-nixon-captured-white-rage-laid-groundwork-donald-trump/>.

Black youth are perceived as being older and more culpable than their white counterparts.<sup>6</sup> There is little doubt that if the children who were charged in adult criminal court and who were taken from their families were white, there would be widespread outraged calls to at least start their cases in the juvenile system. This is exactly what the Redefinition of Child Amendment Act does.

**The Redefinition of Child Amendment Act is the most just and effective way to address allegations of criminal conduct by District Youth.**

The Redefinition of Child Amendment Act will ensure that every child’s case remains in juvenile court unless the District’s elected Attorney General requests transfer of the case to adult criminal court and a judge approves the transfer. Under existing law, transferring a youth to adult court requires a robust process that is initiated by the District’s Attorney General and includes an evidentiary hearing where evidence of the facts of the child and the facts of the case are introduced. After hearing this information, the juvenile court must “order the transfer if it determines that it is in the interest of the public welfare and protection of the public security and there are no reasonable prospects for rehabilitation of the child.”<sup>7</sup> This transfer process provides for time, information, and a neutral decision-maker to make a well-reasoned decision about whether transfer to adult court serves the needs of the youth and community as a whole.

Youth who are then transferred to the adult criminal legal system have their cases proceed in the same manner as youth who are direct filed in that system under current law. They would be subject to the same statutory maximum sentences as adults and would serve incarceration for felony offenses in the BOP.

In contrast, youth who remain in the juvenile system may be committed to DYRS until age 21 or may receive supervision through Court Social Services, another youth-focused entity that can direct youth to existing District services that are tailored toward young people. Youth who are in the most acute need of care and rehabilitation will be committed to DYRS. Committed youth who are securely detained are housed near the District or at an appropriate residential facility where they can be visited by family. Committed youth have the ability to earn a high school diploma and receive appropriate trauma-informed mental health services and mentorship from credible messengers. They have access to youth-focused vocational, art, and sports programming – all of which are essential to treating the whole child and ensuring a successful return to the community. The care that committed children receive through DYRS is responsive and adaptable since unlike the various federal actors in the adult criminal legal system, DYRS is accountable to the Mayor, the Council, and ultimately to District residents.

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<sup>6</sup> Phillip Atiba Goff et al., *The Essence of Innocence: Consequences of Dehumanizing Black Children*, 106 J. Personality & Soc. Psychol. 526 (2014); Rebecca Epstein, et. al., *Girlhood Interrupted: The Erasure of Black Girls’ Childhood*, Center on Poverty Law & Inequality, Georgetown Law (2017).

<sup>7</sup> D.C. Code § 16-2307(d)(2)(B).

**The Redefinition of Child Amendment Act represents a long overdue exercise of the District’s power to decriminalize behavior and define childhood in the District.**

The District has the authority to take greater ownership over how District children are charged in adult criminal court. Just as the District decriminalized the possession of small amounts of marijuana in response to the discriminatory prosecution of the offense, rather than continuing to define “child” in a manner that defers the decision to charge certain children directly in adult court to the USAO, the District should redefine childhood so that every case begins in juvenile court where judicial officers will determine the most appropriate and rehabilitative path for each child as well as what is in the best interest of the public. The ability to define the appropriate trajectory for District children is an integral part of the District’s rightful exertion of its autonomy and self-determination.

**The Redefinition of Child Amendment Act is necessary to advance racial equity, combat systemic inequality, and further public safety.**

The current law and means by which children are charged in adult criminal court contributes to inter-generational poverty, unemployment, trauma, educational deficits, and the perpetuation of a system of racial inequality. District youth should not be automatically placed into an adult criminal legal system that will do nothing to address the root causes of their criminal involvement. As the District invests millions in addressing the root causes of violence, it must also address how its laws push youth deeper into the criminal legal system rather than fostering rehabilitation through the juvenile system. Having every child’s case start in the juvenile system will be a meaningful and lasting investment in the future of Black children in the District. It will be a commitment to providing rehabilitation, support, and services for children who desperately need them rather than committing them to an adult system that will only inflict more harm.

In closing, the undersigned urge the Mayor and the Council to pass [Bill 24-0338, the Redefinition of Child Amendment Act of 2021](#) as a necessary, common sense approach to juvenile justice reform that will create better outcomes for youth and communities, will treat children as children, and will make significant steps forward in advancing racial equity.

Sincerely,

ACLU-DC
Advocates for Justice and Education
All Souls Church Unitarian
Alliance for Concerned Men
AMARA Legal Center
American-Arab Anti-Discrimination Committee
Black Lives Matter - DC

Black Public Defender Association
Black Swan Academy
BreakFree Education
Campaign for Fair Sentencing of Youth
Children's Center for Law & Policy
Children's Law Center
Church of Scientology
Coalition for Juvenile Justice
Council for Court Excellence
Courtney's House
DC Action
DC Fiscal Policy Institute
DC Justice Lab
District of Columbia Behavioral Health Association
Fair and Just Prosecution
Fair Trials
Free Minds Book Club & Writing Workshop
Georgetown Juvenile Justice Clinic & Initiative
Georgetown Pivot Program
Harriet's Wildest Dreams
Homeless Children's Playtime Project
Justice Policy Institute
Juvenile Law Center
Law for Black Lives - DC
League of Women Voters DC
Maya Angelou Public Charter School
NAACP - DC Branch
National Juvenile Defender Center
National Juvenile Justice Network
National Lawyers Guild DC
Neighbors for Justice
Open City Advocates
PACA DMV

ParentWatch
Peace Walks DC
Public Defender Services of the District of Columbia
Rabbi Aaron L. Alexander (Adas Israel Congregation for institutional purposes only)
Resource Generation DC
Rights4Girls
Sasha Bruce Youthwork
School Justice Project
See Forever Foundation
Sentencing Project
Serve Your City
SPACEs in Action
Stop Police Terror Project DC
Strategic Sentencing Solutions, LLC
Sunrise DC
The Festival Center
The Reentry Network for Returning Citizens
The WIRE
Washington Lawyers' Committee for Civil Rights and Urban Affairs
Washington Legal Clinic for the Homeless
Youth First