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Before the

Committee on the Judiciary
Kenyan McDuffie, Chairperson

Public Hearing

Bill 21-683, the Comprehensive Youth Justice Amendment Act of 2016

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Introduction

Good morning Chairman McDuffie, Councilmembers, and staff. I am Natalie O. Ludaway, and I have the privilege of serving as the Chief Deputy Attorney General for the District of Columbia. I am pleased to testify on behalf of Attorney General Karl A. Racine and the Office of the Attorney General (OAG) regarding Bill 21-683, the *Comprehensive Youth Justice Amendment Act of 2016* (Bill), introduced by Chairman McDuffie; Councilmembers Grosso, Nadeau, Bonds, May, Silverman; and Council Chairman Mendelson. OAG supports the goals of the Bill and greatly appreciates the inclusive approach Chairman McDuffie and the Committee on Judiciary are taking with this legislation. I am joined here today by OAG's Deputy Attorney General for Public Safety, Tamar Meekins. Ms. Meekins and her team have been working on many of the issues reflected in the legislation, and she will assist me in answering any questions you may have once I conclude my testimony.

Under the leadership of Attorney General Racine, and with the support of the Committee on the Judiciary, OAG is striving to reform how we approach juvenile justice in the District. For example, OAG achieved a six-fold increase in the rate at which prosecutors divert low-risk youth to programs designed to provide them with the therapeutic support and services they need to avoid re-offending. The ACE diversion program is one such example. Of the youth who have completed the ACE diversion program, more than 90% of them have remained arrest-free in the District. We believe that additional programs and policies that have proven positive outcomes should be adopted and supported. Conversely, those programs and policies that have no long-

term benefit or positive outcomes for the public safety of the community should be examined, revised or restructured. OAG appreciates that this is clearly the spirit in which this Bill was drafted. I will now highlight parts of the legislation and make some additional recommendations to advance these aims.

Title 16 Youth

The Bill proposes a major change to how Title 16 youth are detained. Title 16 youth are those statutorily defined young people, aged 16 or 17, who are charged by the United States Attorney's Office with certain serious offenses and prosecuted as adults.[1] The Bill would require that these youth be detained or imprisoned in juvenile facilities until they reach age 18. As a policy matter, OAG recognizes the growing body of scientific study supporting this as a best practice. The Centers for Disease Control have estimated that juveniles are 35% more likely to reoffend after placement in an adult facility. However, OAG is mindful of the logistical and capacity concerns that would result from this change. Therefore, OAG proposes that a feasibility study be done in a time-certain as determined by the Committee and the Executive, to explore how these changes can be accomplished given current staffing and space constraints.

The Bill also proposes to eliminate mandatory minimum sentencing requirements for Title 16 youth. Attorney General Racine has been consistent in stating that requiring mandatory minimum sentences are not sound policy. Mandatory minimum sentences take away needed

[1] D.C. Official Code Section 16-2301(3) (A).

discretion from judges and prosecutors in fashioning the appropriate dispositions in criminal cases. Each case, circumstance, and defendant is unique. This legislation would permit judges to fashion appropriate sentences based upon the facts, circumstances and arguments of counsel.

Pretrial Detention & Juvenile Sentencing

The Bill proposes to strengthen the pre-disposition presumption against detention for youth. This provision raises some concerns for OAG. The presumption for detention in the cases of alleged violent offenders, including allegations of weapon use, is a sound policy that, when coupled with due process protections, is necessary to public safety in many instances. OAG is happy to work with the Committee and relevant stakeholders between now and mark-up to determine the specific issues to be addressed and amendments to the Code that will adequately protect the public while ensuring fairness in the juvenile justice system.

The Bill also proposes to ban the pre-disposition detention of status offenders. OAG appreciates, and generally supports, the reasoning underlying this provision. However, our practice with status offenders reveals that in some instances there are not adequate and immediate community-based options for the youth. For example, because of the probability of human trafficking, there may be a fear that placement in the community without adequate supports may further place a status offender in danger. In such a circumstance, OAG and the court struggle to identify appropriate placement for the youth – and often the only safe course of action is secure detention at DYRS facilities. OAG believes it is important to prioritize the safety

of the child; therefore we would suggest that, until other options to secure detention are identified, secure DYRS detention should remain available. We would be happy to work with the Council and other juvenile justice stakeholders to suggest and review any other options for this very vulnerable population of youth.

With regard to any proposals regarding outlawing the use of restraints on confined juveniles, I want to first thank Chief Judge Lee F. Satterfield of the Superior Court of the District of Columbia; Councilmember David Grosso; our partners at the Public Defender Service; and you, Chairman McDuffie, for working with OAG last year to develop standards for individualized determinations for restraints on youth during court hearings. Chief Judge Satterfield's leadership on this issue is particularly exemplary. As you may recall, last spring Chief Judge Satterfield issued an Administrative Order that required individual determination of the need for physical restraints on juveniles during initial hearings. Just this week, the Chief Judge issued an updated order, *Administrative Order 16-09: Individual Determinations for the Use of Restraints on Respondents*.[2] This new order makes clear that judges are required to hold a hearing on the need for restraints at all delinquency court hearings. It was necessary to amend the Administrative Order because of an inconsistency in implementation of the original Administrative Order. OAG suggests that data on the use of restraints and outcomes be consistently collected and tracked so that the public and this body can monitor compliance with the spirit of the Administrative Order.

[2] Supersedes *Administrative Order 15-07*

With respect to this Bill at hand today, the restraints provision is narrow and applies specifically to the use of restraints during transportation for pregnant females and those in labor. OAG supports this provision. OAG is advised that there may be a proposal to codify the individualized determination for youth restraints in the Superior Court. If so, we urge the Council, in any such proposed legislation, to closely track Chief Judge Satterfield's order.

Data Collection and Analysis

The Office of the Attorney General wholeheartedly supports any measures that provide the government with data and analysis to best combat delinquency and support youth in the District. In order to maintain safe communities, robust information gathering and review is vital. As written, the Bill requires the Department of Youth Rehabilitation Services to do an annual analysis of the root causes of delinquency and to collect information to evaluate the efficacy of diversion programs. While analysis of the causes of delinquency generally has been done by academic and social justice organizations before, OAG wholeheartedly supports the evaluation of mental health, substance abuse, family therapy, and other services provided to court-involved youth through city contracts. This type of data gathering will not only lead to better public safety outcomes for the public and justice-involved youth, but will lead to increased efficiency in how the city allocates funding. Without this necessary tool, we are left to operate with anecdotal information that could have long-term costly and deleterious effects. OAG suggests, given the breadth of the work and responsibility that DYRS has already and the need to coordinate the data

analysis with all juvenile-justice stakeholders, that this information gathering and analysis responsibility be housed with the Criminal Justice Coordinating Council (CJCC). CJCC member agencies can contribute useful, relevant and helpful information that CJCC staff can then comprehensively analyze.

Establishment of a Victim-Offender Mediation Program

Section 302 of the Bill states:

> *The Attorney General shall develop a program to provide victim-offender mediation as an alternative to the prosecution of juveniles in cases deemed appropriate by the Attorney General; provided, that participation in the mediation program established in this subsection shall be voluntary for both the victim and the offender.*

OAG supports this concept. However, currently we do not have the infrastructure to effectuate this requirement in a manner that would provide the best outcomes. Therefore, OAG supports a pilot Restorative Justice victim-offender mediation program as an alternative to prosecution provided that OAG receive resources for an additional 3 FTEs to supplement the 1 Restorative Justice lawyer the Council granted us in the FY 2017 budget.

Amendment – Domestic Violence[3]

The Office of the Attorney General proposes that a provision be added to clarify domestic violence situations involving the mandatory arrest of juveniles. Under current law,[4] if two brothers or two sisters get into a fight where one is injured, and a parent/guardian or a neighbor calls the police to assist, the police must arrest the youth. Similarly, if a youth injures a parent

[3] This amendment was shared with the DC Coalition Against Domestic Violence for their review and comments. They asked for clarification that the definition of "intimate partner violence" would cover co-parenting situations. The DC Coalition Against Domestic Violence has no objection to this amendment.
[4] DC Official Code § 16-1031

and a neighbor calls the police, the youth must be arrested. In many cases, an arrest is not the best option for the child, the family or the arresting officers. Family counseling and behavioral health supports are far better in these situations. There is frequently no reason that the youth needs to have an arrest record. To permit these youth to be diverted pre-arrest, OAG submitted language to the Committee that amends DC Official Code § 16-1031 as follows:

> *Notwithstanding paragraphs (a) and (b), a law enforcement officer shall not be required to arrest a child, as that term is defined in D.C. Official Code § 16-2301 (3), when there is probable cause to believe that the child has committed an intrafamily offense that does not involve intimate partner violence if the Metropolitan Police Department diverts the child to a program that provides behavioral health and community support services.*

Amendment – Juvenile Sealing Statute

The Office of the Attorney General recommends amending D.C. Official Code §16-2335 to close a loophole in the statute that prevents some deserving youth from having their records sealed. While D.C. Official Code §16-2335.01 establishes the procedure for the immediate sealing of all juvenile records on the ground of actual innocence, D.C. Official Code §16-2335 establishes the procedure for sealing all other juvenile records, upon compliance with time and other restrictions, in situations where the government has filed a petition. It does not, however, specifically provide for the sealing of juvenile arrest records when no petition has been filed. OAG recommends that the Code be amended to specifically permit the sealing of arrest records (records pertaining to youth who have been taken into police custody).[5] We propose amending D.C. Official Code §16-2335(a) to make clear that either an arrest or the filing of a petition may act as the triggering event for the sealing of juvenile records. As noted above, some youth may

[5] D.C. Official Code §16-2335(a) should be amended to read as follows "On motion of a person who has been taken into custody pursuant to section 16-2309 or has been the subject of a petition filed pursuant to section 16-2305, or on the Division's own motion, the Division shall vacate its order and findings and shall order the sealing of the case and social records referred to in sections 16-2331 and 16-2332 and the law enforcement records and files referred to in section 16-2333, or those of any other agency active in the case if it finds that…" [Proposed language underlined.]

be arrested, but not prosecuted. Conversely, the vast majority of youth charged with being in need of supervision (PINS) are not arrested, but a petition is filed. This amendment clarifies that all qualifying youth may have their juvenile justice records sealed.

Conclusion

The Office of the Attorney General provided the Committee with a privileged legal sufficiency memo that discusses some concerns that can be addressed rather easily. In the interest of time, I will not discuss them now, but we greatly appreciate the Committee's invitation to work with them over the summer on this Bill. We are pleased to answer any questions that the members of the Committee may have. Thank you for the opportunity to testify.