



Testimony of Josh Rovner

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The Sentencing Project

**In support of B24-338, The
Redefinition of Child Amendment Act
of 2021**

Before the Council of the District of
Columbia, Committee on the Judiciary

October 7, 2021

Established in 1986, The Sentencing Project promotes effective and humane responses to crime that minimize imprisonment and criminalization of youth and adults by promoting racial, ethnic, economic, and gender justice. We are grateful for this opportunity to submit testimony endorsing Bill 24-338, the Redefinition of Child Amendment Act of 2021. We thank Attorney General Racine for proposing it and this Committee for holding today’s hearing on it.

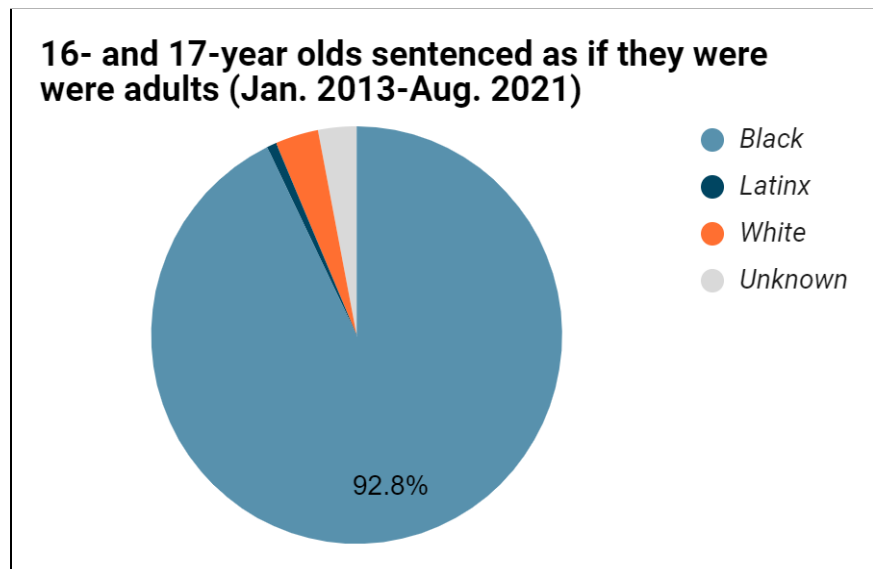
The Sentencing Project supports this bill for five reasons:

1. All children deserve to be treated as children.
2. District law usually recognizes 16- and 17-year olds are children.
3. Transfer of youth into adult courts is bad for youth, their families, and the District.
4. Most children sentenced under Title 16 could have completed their sentence under the supervision of juvenile courts.
5. The status quo empowers unelected and unaccountable prosecutors at the expense of children.

Children are not adults. Black children are not adults.

Today’s hearing will consider whether all of DC’s children should be seen as such. The bill would apply to 16- and 17-year-olds who have been charged with any one of a set of serious offenses.

According to data provided by the Sentencing Commission, between January 1, 2013, and August 31, 2021, there were 265 cases in which a 16-year old or 17-year old was sentenced as if he or she was an adult. For 246 out of 265 children, that child was known to be Black.¹ (Eight children’s demographic was unknown.) And under current law, all 265 were automatically viewed as having the same culpability as an adult. We all know that’s not true.

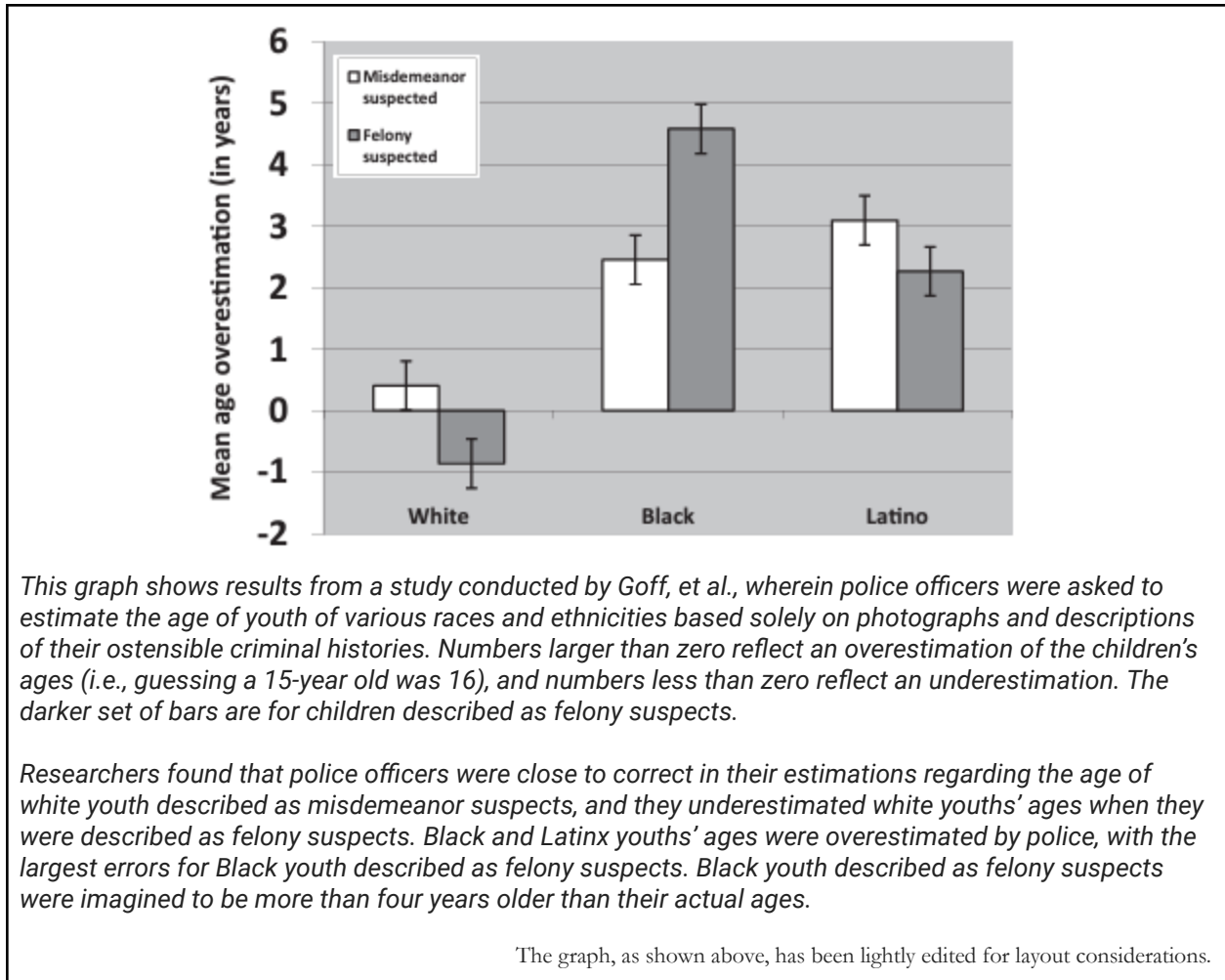


Our collective decision to view and thus charge Black children as if they were adults echoes the groundbreaking research from Dr. Philip Atiba Goff, co-founder and CEO of the Center for Policing Equity and a Professor of African-American Studies and Psychology at Yale University, and his colleagues.² Dr. Goff sampled sets of college students and police, asking them to estimate the ages of various youths based on their

¹ Memorandum and data file from Taylor Tarnalicki, D.C. Sentencing Commission, to Josh Rovner, dated Oct. 5, 2021, and sent via email. The memorandum is attached to this testimony. Data not appearing in the memorandum featured throughout this testimony were made by the author and are available upon request.

² Goff, P. A., Jackson, M. C., Di Leone, B. A. L., Culotta, C. M., & DiTomasso, N. A. (2014). The essence of innocence: Consequences of dehumanizing Black children. *Journal of Personality and Social Psychology*, 106(4), 526–545. <https://doi.org/10.1037/a0035663>

photos and descriptions of their criminal histories. The students overestimated the age of Black youth by four-and-a-half years when told they had been arrested on felony charges and two years when told they had been arrested on misdemeanor charges. No such gaps appeared for white or Latinx youth. As did the students, police officers overestimated the age of Black youth (again: when described as felony suspects) by four-and-a-half years but, unlike the students, underestimated the white youths' ages by one year (See Figure, below).



In short, our presumptions of innocence and immaturity -- and the decisions that will follow behind those presumptions -- disappear for Black youth charged with serious offenses. The study found we literally fail to see some Black children as children. Does this Committee agree?

District law generally recognizes 16- and 17-year olds are children

The bill's title asks for a redefinition of the word "child," but in reality it extends the existing definition of "child" to one of the few places it does not presently apply: the District's criminal legal system.

The members of this Committee are well aware that people under 18 cannot vote in general elections.³ They cannot serve on juries.⁴ They cannot write a valid will.⁵ They cannot buy lottery tickets.⁶ The District recently legalized gambling, but not for people under 18.⁷ People under 18 cannot get married⁸ or join the military⁹ without a parent's consent. They cannot be emancipated.¹⁰ They cannot attain a full drivers' licence -- not until age 21¹¹ -- nor a license to cut hair¹² and various other professional licenses.

Today, the Committee considers whether the Family Division of the Superior Court of the District of Columbia, operating under Title 16 of the DC Official Code, is allowed a carveout that is almost never offered to other agencies of this government.

Ending transfer is better for public safety

Almost all studies that have considered whether people under the age of 18 should be charged in adult courts have found the policy is damaging and ineffective. The National Research Council summarized this research, writing, “developmental knowledge indicates that punishing juveniles as adults is not likely to reduce recidivism and is likely to increase the social cost of juvenile crime.”¹³

In other words: the District's status quo probably causes more crime. Ending the transfer of youth will reduce, not increase, recidivism. Passing this bill will help public safety.

The National Research Council addressed the specific mechanism used by the U.S. Attorney's Office: allowing prosecutors -- and not judges -- to determine when youths may be charged as if they were adults on the basis of the charge. The evidence opposes this tactic:

*But even for youth charged with serious violent crimes (e.g., felonious assault, robbery, kidnapping, rape, carrying a firearm in the commission of a felony), an individualized decision by a judge in a transfer hearing should be the basis for the jurisdictional decision. **The committee counsels against allowing the prosecutor to make the jurisdictional decision, as is allowed under direct file statutes.** The committee also opposes automatic transfer based solely on the offense with which the youth is charged because it fails to consider the maturity, needs, and circumstances of the individual offender or even his or her role in the offense or past criminal record—all of which should be considered in a transfer hearing¹⁴ (emphasis added).*

³ D.C. Code Ann. § 1-1001.02

⁴ D.C. Code Ann. § 11-1906

⁵ D.C. Code Ann. § 18-102

⁶ D.C. Code Ann. § 36-601.34

⁷ D.C. Code Ann. § 36-601.34

⁸ D.C. Code Ann. § 46-411

⁹ 10 U.S.C.A. § 505

¹⁰ D.C. Code Ann. § 16-23.01

¹¹ D.C. Code Ann. § 50-1401.01

¹² District of Columbia Municipal Regulations 3703.1(a)

¹³ National Research Council. 2013. Reforming Juvenile Justice: A Developmental Approach. Washington, DC: The National Academies Press (p. 134).

¹⁴ National Research Council. 2013 (p. 135).

Cases presently referred should have remained under juvenile jurisdiction

The available data cover the period from January 1, 2013, to August 31, 2021. As noted above, 265 children, most of them Black, were convicted on 471 charges during these months.

Roughly five out of six of these convictions were the result of a plea bargain.¹⁵ Thereafter, there was no way for these children to have their sentence amended or for their cases to return to juvenile court. The District is one of only three jurisdictions (along with Louisiana and Michigan) where this is true.

We should not accept, even for the sake of argument, that 16- and 17-year old children are capable of carefully weighing the complexities of a plea bargain. After all, compared to adults, children value the present more heavily than the future. But the status quo forces them into decisions that even adults would struggle with. Accept the offer on the table or roll the dice with a trial? A shorter term in prison or a longer time on probation, unaware of what either entails?

But setting aside the complexities of that daunting decision, most of the resultant sentences still could have occurred in juvenile courts (see Table 1).

Table 1: Court Outcomes for 265 Children Sentenced in D.C. Superior Court

	16-year olds	17-year olds	Total
Probation only	22	19	41
	16-year olds	17-year olds	Total
Sentence includes prison	96	128	224
<i>Prison sentence would end before age 21</i>	<i>66</i>	<i>67</i>	<i>133</i>

Among the 265 16- and 17-year olds sentenced in D.C. Superior Court, 41 were sentenced to a term of probation (averaging 24 months) and 224 were sentenced to a combination of probation and prison.

A 16-year old sentenced to 60 months or less¹⁶ and a 17-year old sentenced to 45 months or less¹⁷ is sentenced to be home on their 21st birthday; 133 youths fit those parameters. These numbers are highlighted in gray in Table 1: 66 16-year olds and 67 17-year olds.

As such, two-thirds of the children (174 out of 265, or 66 percent) who were sentenced as if they were adults are due to be home by their 21st birthday. They could have completed these terms under the supervision of juvenile courts and returned home all the same but would have been offered age-appropriate rehabilitative services for youth in the juvenile system at the Department of Youth and Rehabilitative Services.

¹⁵ Memorandum from District of Columbia Sentencing Commission dated Aug. 28, 2020.

¹⁶ A sentence of 60 months, 80 percent served, equals 48 months.

¹⁷ A sentence of 45 months, 80 percent served, equals 36 months.

The status quo empowers unelected and unaccountable prosecutors at the expense of children

As noted above, the D.C. Sentencing Commission reported 265 youth were sentenced as if they were adults in D.C. Superior Court between 2013 and mid-year 2021 on 471 counts. Almost all of them were Black.

For 71 percent of these children (189 out of 265), the sentence was issued in regards to a non-Title 16 offense.

Others were sentenced as if they were adults on both Title 16 and non-Title 16 offenses, meaning 71 percent of the children and 77 percent of their sentences were for non-Title 16 offenses.

To put this another way: only one-in-four convictions (110 out of 471 charges, 23 percent) were tied to Title 16 enumerated offenses, the so-called adult offenses that allow adult processing to begin with. And these data do not even include the dozens of cases for which charges were dropped entirely; these are guilty pleas and (occasional) jury verdicts. The Sentencing Project's data request to the Sentencing Commission was limited to 16- and 17-year olds convicted in adult court, not the much larger set of children who were directly filed as if they were adults.

Under B24-338, serious charges could still be tried in adult courts. The process known as judicial waiver already exists in the District. A prosecutor who believes adult courts are the correct remedy for the District's children could file a motion in juvenile court leading to a hearing before a juvenile court judge regarding the venue for the court proceedings. The key difference is that the decision would be made by a judge, having listened to the prosecutor and the young person's legal counsel, weighing multiple sides to the question.

Conclusion

The status quo puts a life-altering decision in the hands of an unelected and unaccountable prosecutor. There are no legislative standards at work. There is no reverse waiver process as exists in 28 states (including Delaware, Maryland and Virginia) to return the case to juvenile courts, so this decision is final.¹⁸

Correctly defining "child" in one more corner of DC law is an easy fix to a terrible problem of justice. The Sentencing Project urges swift passage of this bill.

¹⁸ National Center for Juvenile Justice (n.d.) *Jurisdictional Boundaries: Transfer Provisions*.
<http://www.jjgps.org/jurisdictional-boundaries#delinquency-age-boundaries>