Executive Summary

Think about what you were like at age 16. Now imagine that a federal prosecutor suspects you of a crime and decides to charge you as an adult. Even before you have a trial, you are sent to a Department of Corrections complex that holds about 2,200 adult inmates and 20 youth who have also been charged as adults. In the adult facility, you do not have access to rehabilitative programs – such as education, counseling, and job training – that are as good as those in juvenile facilities. You can only see your family through a video screen in the common area that you share with other inmates. If the facility administrators decide that you should be separated from other youth, you may be placed in solitary confinement for weeks or months. And this is all before you have even gone to trial or been found guilty of anything.

Once you are in this position, there is nothing that you or your attorney can do to get your case into juvenile court. The judge is not even able to hear arguments about why you should be in the juvenile system. You will be tried as an adult, and there is nothing you can do to stop it. You are no longer a child in the eyes of the law. You have quite literally had your childhood taken away from you.

This scenario gives you a small taste of the experience of the 541 youth tried as adults in the District of Columbia and held at the Correctional Treatment Facility (CTF) between 2007 and 2012. This report makes the case for policy changes that would decrease the use of this practice in such a way that promotes both public safety and the rehabilitation of incarcerated youth.

The report includes:

- This Executive Summary
- An explanation of how DC youth enter the adult system
- A summary of data on the demographic characteristics of youth who experience adult prosecution
- A review of the scientific literature on adolescent brain development and the effects of incarcerating youth in adult facilities
- A summary of the results of a recent evaluation of the Juvenile Unit at one of DC’s adult jails
- Information on trends in state legislation that decrease the use of adult prosecution and punishment against youth
- Policy recommendations that would modernize DC’s approach to prosecution of youth by promoting rehabilitation of young offenders and thereby improving public safety
The Scope of Adult Prosecution of DC Youth

There are two ways that a DC youth can enter the adult system: direct file or judicial transfer. In direct file cases, federal prosecutors from the US Attorney’s Office charge the case in the adult system, and there is no opportunity for judicial review of that decision. Federal prosecutors can direct file cases against youth aged 16 or 17 who are suspected of specific offenses. In judicial transfer cases, the proceeding instead begins in the juvenile system and prosecutors must convince a judge to move the case to the adult system. Since 2007, every youth tried as an adult has been direct filed. In addition, while transfer cases are handled initially by District prosecutors from the Office of the Attorney General, direct file cases are handled by federal prosecutors from the US Attorney’s Office.

In the past six years, hundreds of DC children have been tried in adult court and held in adult facilities. During fiscal years 2007-2012, the Metropolitan Police Department made 663 arrests of youth that, based on the top charge at arrest, were potentially eligible for direct file in adult court. From 2007 to 2012, 541 individual youth were held in adult facilities with one unit designated for juveniles. Demographically, nearly 97% of these youth were African American and 3% were Latino. Males made up 98% of those held and the remaining 2% were female. Geographically, nearly all youth held in DOC facilities lived in zip codes in the economically disadvantaged eastern half of the District, or they were listed as being homeless. During 2012 alone, DC youth spent 10,016 days imprisoned in adult facilities. Of these days, 59% were spent by youth who were awaiting trial.

Adult Prosecution Is Harmful to Youth and Does Not Promote Public Safety

DC continues this practice of prosecuting, detaining, and incarcerating youth in the adult system despite the fact that research consistently finds that adult prosecution of youth does not effectively deter crime. In 2007, the Centers for Disease Control and Prevention published a systematic review of scientific research that examined the effects of placing youth under age 18 in the adult criminal justice system. The review found that there was insufficient evidence to conclude that transfer to adult court decreased youth crime overall and found consistent evidence that transfer to adult court actually increased recidivism. In December 2013, the Washington State Institute for Public Policy (WSIPP) conducted an evaluation of the state’s statute requiring that certain youth offenses be prosecuted in adult court and found that, even when controlling for observed differences, the youth who were automatically processed through the adult system were more likely to recidivate than youth who were treated in the juvenile system.

The ongoing development of the adolescent brain means that youth have a far greater capacity for change than adults. Furthermore, neurological research demonstrates that brain development is not
complete until youth reach their 20s, and that the particular state of teenagers’ brains makes them less able to engage in higher-reasoning processes and fully evaluate the consequences of a situation. As the Supreme Court has recognized, this fact makes youth both less culpable and less likely to be deterred by increases in criminal sanctions.

Adult facilities are generally ill-equipped to provide the services that youth need for positive development, such as education, exercise, and pro-social interactions with positive role models. From their physical plant to their staff training, adult facilities are not designed for children. Compared to their peers in juvenile facilities, youth confined in adult institutions are 36 times more likely to commit suicide.

Prosecuting and sentencing a youth as an adult imposes negative consequences that can last a lifetime. District residents with adult felony convictions may be denied professional licenses in many fields, may be denied entrance to the District’s housing assistance voucher program, and may also be ineligible for certain forms of federally-funded education financial aid.

Over the past nine years, 23 states have enacted legislation to limit youth contact with the adult criminal justice system. Key trends include expanding juvenile court jurisdiction so that fewer youth are tried as adults, limiting the youth who can be housed in adult jails and prisons, and changing transfer statutes so that fewer youth are prosecuted as adults. The District’s neighboring states are included in these trends. Virginia has eliminated its “once an adult always an adult” rule for youth who were acquitted in adult court and passed legislation that requires all youth awaiting trial be held in juvenile facilities unless a judge finds them to be a safety risk. The Maryland State Legislature recently passed legislation that would permit more youth to request transfer of their cases from adult court to juvenile court.

Even independently of national trends, the time is particularly appropriate for reform in the District of Columbia. Youth arrest rates are at the lowest they have been in many years. Additionally, a poll of registered DC voters found that 77% believe youth awaiting trial should be held in a juvenile facility rather than an adult jail and 71% believe placing youth in adult facilities is minimally or not at all effective at rehabilitating youth.

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Proposed Policy Changes to Promote Youth Accountability and Rehabilitation

DC lawmakers and policymakers should pursue three key changes to the District’s justice system to promote public safety and the effective rehabilitation of youthful offenders: 1) allow judges to review a youth’s case to consider whether it should be moved to juvenile court, 2) end “once an adult always an adult,” and 3) prohibit the pretrial detention of youth in adult facilities.

1. Allow for “reverse transfer” motions

After youth are direct filed into the adult system, there is no mechanism for their case to be transferred to the juvenile system, no matter what additional facts become available. In many cases, further investigation or questioning of witnesses at trial reveals important information. Indeed, at trial, a youth may not even be found guilty of any offense that would have made him or her eligible for transfer. The District should make policy changes that allow the youth to ask the judge to transfer the case to juvenile court. Such a motion is often referred to as a “reverse waiver” or “reverse transfer” motion, mirroring the transfer motions that can be filed in juvenile court to move a case into the adult system. Such motions would allow for the decision about which system is most appropriate for an individual youth to be made by an impartial judge and when full information on the case is available.

2. End “once an adult always an adult”

Once a child is transferred for criminal prosecution as an adult, the juvenile court no longer has jurisdiction over the child for any subsequent delinquent act unless the youth is acquitted. This procedure improperly presumes that any youth who was once charged as an adult does not belong in the juvenile system. If a youth has been released from the custody of the adult system, a minor charge may be handled more appropriately by the juvenile system. The District should eliminate “once an adult always an adult,” setting the default rule that individuals under age 21 be charged in juvenile court for any offense alleged to have been committed prior to age 18.

3. Prohibit pretrial detention of youth in adult facilities

DC youth charged as adults are currently held at the Correctional Treatment Facility (CTF) while they await trial. In fact, 59% of all days that youth spent at CTF during 2012 were pretrial days. DC law should prohibit holding youth awaiting trial in adult facilities. This would allow more youth access to recidivism-reducing programs and ensure that youth are never exposed to the harmful environment of adult jail unless convicted of a crime.