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Councilmember Phil Mendelson

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Councilmember Tommy Wells

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A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Councilmembers Mendelson and Wells introduced the following bill, which was referred to the Committee on \_\_\_\_\_.

To amend Title 16 of the District of Columbia Official Code to create oversight in the process for adjudicating juveniles as adults by adding a reverse waiver provision and preserving Family Division jurisdiction over subsequent juvenile cases, and by ending the pre-trial placement of youth in the D.C. Jail.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Juvenile Justice Improvement Amendment Act of 2008.”

Sec. 2. Title 16 of the District of Columbia Code is amended as follows:

(a) By adding a new section 16-714 to read as follows:

“Section 16-714. Waiving jurisdiction over juveniles.

“(a) On motion of the defendant in a criminal case where the defendant was not yet 18 years of age at the time the alleged crime was committed, a court exercising criminal jurisdiction in a case involving a child pursuant to sections 16-2307 or 16-2301(3) of the D.C. Code may

reverse waive the case, including all related alleged offenses, to the Family Division any time 1  
prior to sentencing if the court determines by a preponderance of the evidence that there are 2  
reasonable prospects for rehabilitating the defendant prior to his majority and it is in the interest 3  
of the public welfare to transfer jurisdiction. 4

“(b) The court shall conduct a hearing on each reverse waiver motion to determine 5  
whether to transfer the defendant to the Family Division. The hearing shall be held within 30 6  
days (excluding Sundays and legal holidays) after the filing of the transfer motion. Upon motion 7  
of the defendant or the U.S. Attorney, for good cause shown, the hearing may be continued for an 8  
additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing 9  
commences more than 60 days (excluding Sundays and legal holidays) after the filing of the 10  
transfer motion, the court must state in the order the extraordinary circumstances for the delay. 11  
The judicial decision whether to transfer the defendant shall be made within 10 days (excluding 12  
Sundays and legal holidays) after the conclusion of the transfer hearing. For good cause shown, 13  
the court may extend the time in which to issue its decision by an additional period not to exceed 14  
10 days (excluding Sundays and legal holidays). A hearing on a motion requesting that a 15  
defendant who is not yet 18 at the time of the motion be held in a juvenile facility pending a 16  
reverse waiver determination shall be held not later than the next court day after the motion is 17  
filed. The hearing on the motion requesting that a defendant who is not yet 18 at the time of the 18  
motion be held in a juvenile facility pending a reverse wavier determination may be continued for 19  
good cause shown for one period not to exceed two court days. 20

“(c) In determining whether to reverse waive jurisdiction under this section, the court 21  
shall consider: 22

“(1) the defendant’s age; 1

“(2) the nature of the present offense and the extent and nature of the defendant’s 2  
prior delinquency record; 3

“(3) the defendant’s mental condition; 4

“(4) the extent to which treatment has been offered to the defendant previously 5  
and the defendant’s response to those treatment efforts including whether the defendant has 6  
absconded from the legal custody of the Mayor or a juvenile institution; 7

“(5) the techniques, facilities, and personnel for rehabilitation available in the 8  
criminal system and that would be available to the court that would have jurisdiction after 9  
transfer; and 10

“(6) The potential rehabilitative effect on the defendant of providing parenting 11  
classes or family counseling for one or more members of the defendant’s family or for the 12  
defendant’s caregiver or guardian. 13

“(d)(1) In making a determination under this section, the court may order that a study be 14  
made concerning the defendant, the family of the defendant, the environment of the defendant, 15  
and any other factors the court determines to be relevant to making its determination. 16

“(2) No statements made by the defendant in the course of this study shall be used 17  
against the defendant during the adjudication of his or her case.”. 18

(b) By inserting a new section 16-2302(c) and re-designating the existing subsections (c) 19  
and (d) accordingly. The new subsection (c) shall read as follows: 20

“(c) In addition to the provisions in subsections (a) and (b) of this section, a court 21  
exercising criminal jurisdiction over a defendant who was not yet 18 at the time of the conduct 22

charged may transfer the defendant to the Family Division pursuant to section 16-714 of the D.C. Code.”. 1  
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(c) By adding a new section 16-2301(3)(D) to read as follows: 3

“(3)(D) Notwithstanding anything contained herein, a “child” shall include an 4  
individual who is initially charged as an adult by the United States Attorney pursuant to 5  
subsections (3)(A)-(C), but whose case is subsequently determined by the judge assigned to the 6  
case in the Criminal Division to be appropriate for resolution as a juvenile matter, and remanded 7  
to the Family Division for further proceedings under D.C. Code § 16-714.”. 8

(d) By amending section 16-2307(h) to read as follows: 9

“(h)(1) Transfer of a child for criminal prosecution does not terminate the jurisdiction of 10  
the Division over the child with respect to any subsequent delinquent act. Such prior transfer 11  
shall be a factor the Division considers in determining whether to transfer the child for criminal 12  
prosecution of any subsequent delinquent act. 13

“(2) Jurisdiction of the Division over a child previously transferred for criminal 14  
prosecution is restored if (i) the criminal prosecution is terminated other than by a plea of guilty, 15  
a verdict of guilty, or a verdict of not guilty by reason of insanity, and (ii) at the time of the 16  
termination of the criminal prosecution no indictment or information has been filed for criminal 17  
prosecution for an offense alleged to have been committed by the child subsequent to transfer.”. 18

(e) By amending section 16-2313(d) to read as follows: 19

“(d) Except as provided in subsection (e), no individual under 18 years of age may be 20  
detained in a jail or other facility for the detention of adults, unless convicted of a felony. The 21  
appropriate official of a jail or other facility for the detention of adults shall inform the Superior 22

Court immediately when an individual under the age of 18 years is received there (other than by transfer provided in subsection (e)) and shall:

“(1) Deliver him to the Director of Social Services upon request; or

“(2) Transfer him to a detention facility described in subsection (b)(3).”.

(f) By amending section 16-2313(e) to read as follows:

“(e) An individual 16 or 17 years of age who is alleged to be delinquent or who is the defendant in a criminal proceeding, and who is in detention, whose conduct constitutes a menace to other children, and who cannot be controlled, may on order of the Family or Criminal Division be transferred to a place of detention for adults, but shall be kept separate from adults.”.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.