

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of
Columbia
Official Code*

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To amend Chapter 23 of Title 16 of the District of Columbia Official Code to create a purpose clause that would express the goals of the District in creating a juvenile justice system capable of dealing with the problem of juvenile delinquency, while treating children as children and protecting the needs of communities and victims alike; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to establish a constitutional standard for adjudicating juvenile competency and a judicial procedure for committing an incompetent juvenile for treatment to attain competency; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to ensure the ability of governmental agencies to share information to carry out their official duties, to amend juvenile confidentiality provisions to comport with the requirements of the Family Court Act of 2001 and the Improved Child Abuse Investigations Act of 2002, and to provide that victims and eyewitnesses to crimes committed by juveniles have the right to certain information; to amend section 16-2307 of the District of Columbia Official Code to ensure that a transfer hearing is commenced within 30 days of the filing of a motion, subject only to one continuance of no more than 30 days, and that the judicial decision regarding transfer is rendered within 30 days after the conclusion of the transfer hearing; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to require that the court find by clear and convincing evidence that a juvenile who has pled or been found guilty of an offense is not in need of care or rehabilitation before the court can dismiss the matter at disposition, and to confirm that a case may not be dismissed under this subsection only on the grounds that a child is receiving care and rehabilitation in another case; to amend Chapter 23 of Title 16 of the District of Columbia Official Code to provide that victims and eyewitnesses to crimes committed by juveniles have certain rights, including HIV/AIDS testing of the juvenile, the right to be notified of and be present at certain hearings regarding the juvenile offender, the right to submit a victim impact statement, the right to restitution, the right to certain information regarding the juvenile offender, and to provide that victims and eyewitnesses be treated with dignity and respect for privacy, provided with a separate waiting area during proceedings, if practicable, be informed of financial or social services available to them, and the return of stolen property, and to ensure victim and eyewitness security by prohibiting the release of victim or eyewitness names and addresses unless otherwise required by law and by requiring a juvenile or an agent of the juvenile to properly identify himself or herself when dealing with a victim or eyewitness; to amend section 16-2320 of the District of Columbia Official Code to ensure that a child found in need of supervision is not committed to or placed in secured settings designed for delinquent youth; to amend section 16-2323 of the District of Columbia Official Code to provide that the Superior Court of the District of Columbia's Division of Social Services and the Department of Human Services' Youth Services Administration shall conduct periodic evaluations of a committed child to

determine if the services provided to the child have been effective; to amend section 16-2319 of the District of Columbia Official Code to require that when legal custody has been transferred to the Youth Services Administration pursuant to a dispositional order that the Youth Services Administration conduct an evaluation of every child taken into custody to determine the appropriate services necessary for rehabilitation of the child and to develop an individual treatment plan for the child, and to allow a child, parent of a child, or guardian of a child to petition the court to modify a disposition order based on the government's failure to provide necessary services; to amend section 16-2325.01 of the District of Columbia Official Code to require the involvement and participation of a parent, guardian, or other person with whom a child resides, in the rehabilitation process; and to require the District of Columbia to close the current Oak Hill Youth Detention Facility within 4 years and to replace it with new facilities designed according to best practices.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Juvenile Justice Act of 2004".

TITLE I. PURPOSE CLAUSE.

Sec. 101. Short title.

This title may be cited as the "Purpose Clause Act of 2004".

Sec. 102. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding the phrase "16-2301.01. Purpose." after the phrase "16-2301. Definitions."

(b) A new section 16-2301.01 is added to read as follows:
"§ 16-2301.01. Purpose.

"The purpose of this subchapter is to create a juvenile justice system capable of dealing with the problem of juvenile delinquency, a system that will treat children as children in all phases of their involvement, while protecting the needs of communities and victims alike. In furtherance of this purpose, the following goals have been established for delinquency cases in the Family Court:

"(1) To provide due process through which juveniles and all other interested parties are assured fair hearings, during which applicable constitutional and other legal rights are recognized and enforced;

"(2) To promote youth development and prevent delinquency through early intervention, diversion, and community-based alternatives;

"(3) To preserve and strengthen families whenever possible and to remove a child from the custody of the child's parents, guardian, or other custodian only when it is determined by the appropriate authority to be in the child's best interests or when necessary for the safety and protection of the public;

"(4) To hold a child found to be delinquent accountable for his or her actions, taking into consideration the child's age, education, mental and physical condition, background, and all other relevant factors;

"(5) To place a premium on the rehabilitation of children with the goal of creating productive citizens and to recognize that rehabilitation of children is inextricably connected to the well-being and strength of their families;

- possible; “(6) To serve children in their own neighborhood and communities whenever possible;
- “ (7) To hold the government accountable for the provision of reasonable rehabilitative services;
- “ (8) To provide for the safety of the public; and
- “ (9) To achieve the foregoing goals in the least restrictive settings necessary, with a preference at all times for the preservation of the family and the integration of parental, guardian, or custodial accountability and participation in treatment and counseling programs.”.

TITLE II. JUVENILE COMPETENCY.

Sec. 201. Short title.

This title may be cited as the “Juvenile Competency Act of 2004”.

Sec. 202. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

Amend.
§ 16-2301

(a) Section 16-2301 is amended by adding new paragraphs (38), (39), (40), (41), and (42) to read as follows:

“(38) The term “incompetent to proceed” means that a child alleged to be delinquent is not competent to participate in a hearing on the petition pursuant to section 16-2316(a) or any other hearing in a delinquency proceeding, except scheduling, status, and competency hearings, because he or she does not have sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as a factual, understanding of the proceedings against him or her.

“(39) The term “psychiatrist” means a physician who is licensed to practice medicine in the District of Columbia, or is employed by the federal government, and has completed a residency in psychiatry.

“(40) The term “qualified psychologist” means a person who is licensed pursuant to section 3-1205.01, and has one year of formal training within a hospital setting, or 2 years of supervised clinical experience in an organized health care setting, one of which must be post-doctoral.

“(41)(A) The term “victim” means any person, organization, partnership, business, corporation, agency or governmental entity:

“(i) against whom a crime, delinquent act, or an attempted crime or delinquent act has been committed;

“(ii) who suffers any physical or mental injury as a result of a crime, delinquent act, or an attempted crime or delinquent act;

“(iii) who may have been exposed to the HIV/AIDS virus as a result of a crime, delinquent act, or an attempted crime or delinquent act; or

“(iv) who suffers any loss of property, including pecuniary loss, as a result of a crime, delinquent act, or an attempted crime or delinquent act.

“(B) The term “victim” shall not include any person who committed or aided or abetted in the commission of the crime, delinquent act, or attempted crime or delinquent act.

“(42) The term “immediate family member” means:

“(A) the person’s parent, brother, sister, grandparent, or child, and the spouse of any such parent, brother, sister, grandparent, or child;

“(B) any person who maintains or has maintained a romantic relationship,

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not necessarily including a sexual relationship, with the person; or

“(C) any person who has a child in common with the person.”.

Amend,
§ 16-2307

(b) Section 16-2307(c) is amended to read as follows:

“(c) When there are grounds to believe that the child is incompetent to proceed, the Division shall stay the proceedings for the purpose of obtaining an examination pursuant to section 24-501. If the Division determines, pursuant to section 24-501, that the child is incompetent to proceed, the Division shall not proceed to a determination under subsection (d) of this section unless it subsequently has determined that the competency of the child has been restored.”.

Amend,
§ 16-2315

(c) Section 16-2315 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Designate the existing language as paragraph (1).

(B) New paragraphs (2) and (3) are added to read as follows:

“(2) An order for examination under this subsection shall include:

“(A) A copy of the petition;

“(B) The names and addresses of the attorney for the District of Columbia and the attorney for the respondent; and

“(C) A summary of the reasons for the examination request.

“(3) The court may issue such orders as may be necessary to procure any available mental health and educational records and other information that is deemed relevant for purposes of the examination.”.

(2) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended by adding the words “or qualified psychologist” after the word “psychiatrist” each time it appears.

(B) Paragraph (3) is amended to read as follows:

“(3)(A) Hospitalization for an examination shall be for a period of not more than 21 days, except that the Division may grant extensions which may not exceed 21 days in the aggregate if a psychiatrist or qualified psychologist certifies that a mental health examination has not been completed and cannot be effectively provided on an outpatient basis.

“(B) If the examination is to determine whether the child is incompetent to proceed, an extension of time may not be granted unless the psychiatrist or qualified psychologist also certifies that the psychiatrist or qualified psychologist is unable to determine whether the child is incompetent to proceed and needs an additional period of time to complete the examination.”.

(3) A new subsection (b-1) is added to read as follows:

“(b-1)A report of a mental health examination ordered under this section to determine whether a child is incompetent to proceed shall be made in writing and served on the court and the attorneys of record. The report shall include:

“(1) An assessment of the child’s capacity to understand the proceedings against him, including the nature of the charges and range of potential options available to the court at disposition;

“(2) An assessment of the child’s ability to assist his attorney; and

“(3) If the report concludes the child is incompetent to proceed:

“(A) The reasons and bases for the conclusion;

“(B) The suspected cause of the incompetence;

“(C) An assessment of the likelihood of the child attaining competence in the reasonably foreseeable future; and

“(D) If the child is assessed to be likely to attain competence in the reasonably foreseeable future:

“(i) Any recommended treatment and services that may render the child competent in the reasonably foreseeable future; and

“(ii) A certification as to the least restrictive setting for providing such treatment and services.”.

(4) Subsection (c) is amended to read as follows:

“(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is unlikely to attain competence in the reasonably foreseeable future, it shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

“(2)(A) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to proceed under the petition and is likely to attain competence in the reasonably foreseeable future, the Division shall order that the child receive such treatment on an outpatient basis, unless a psychiatrist or qualified psychologist certifies and the Division finds that inpatient hospitalization is the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

“(B) If the Division determines that hospitalization is not appropriate, the child may be ordered into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving treatment and services that may render the child competent in the reasonably foreseeable future.

“(3) If an order for inpatient hospitalization is made under paragraph (2) of this subsection, the Division may order the child sent to a hospital or mental health facility or unit designated by the Mayor as appropriate for treatment of juveniles alleged to be delinquent.

“(4) If, at any time after the child is ordered to undergo treatment under paragraph (2) of this subsection, the psychiatrist or qualified psychologist responsible for the treatment believes the child is competent, or, in the case of a child hospitalized under paragraph (3) of this subsection, determines that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the psychiatrist or qualified psychologist shall immediately send a report to the Division and attorneys of record stating the basis for the conclusion that the child has attained competency or that inpatient hospitalization is no longer the least restrictive setting.

“(5)(A) The Division shall hold a prompt hearing upon receipt of a report under paragraph (4) of this subsection, and no more than once in a 45-day period, the Division, on motion of the child or the Corporation Counsel, may hold a hearing to determine the child’s progress toward attaining competence.

“(B) At any hearing conducted pursuant to this paragraph, the Division shall determine whether continued treatment and services are supported by a finding that the child is likely to attain competence in the reasonably foreseeable future. Where the psychiatrist or qualified psychologist has reported that inpatient hospitalization is no longer the least restrictive setting for providing treatment and services that may render the child competent, the Division shall order that any further treatment and services be rendered on an outpatient basis. In such case, the Division may order the child into detention or shelter care if detention or shelter care would otherwise be warranted pursuant to section 16-2310 while receiving continued treatment and services.

“(6) The psychiatrist or qualified psychologist responsible for the treatment of the

child shall ensure that a report is prepared and submitted to the Division and attorneys of record every 2 months, or at such shorter intervals as ordered by the court, from the date the treatment order is issued under paragraph (2) of this subsection. The report shall contain information regarding the child's progress toward attaining competency, the treatment being provided, and any recommendations regarding changes to the treatment that would be likely to aid in achieving the goal of the order. If the child is hospitalized, the report shall also include a statement indicating whether inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent in the reasonably foreseeable future.

“(7)(A) No child ordered into a hospital, detention, or shelter care while receiving treatment and services under this section shall be so confined for more than 180 days, except the Division may order such confinement to continue for up to 180 more days if it finds that:

“(i) The child remains incompetent to proceed;

“(ii) There is a substantial probability the child will attain competence within the period of continued confinement; and

“(iii) In the case of a hospitalized child, that inpatient hospitalization continues to be the least restrictive setting for providing treatment and services that may render the child competent to proceed.

“(B) If at the end of 360 days a child so confined remains incompetent to proceed, and remains likely to attain competence in the reasonably foreseeable future, the Division shall lift the hospitalization, detention, or shelter care order and may order that the child receive on an outpatient basis such further treatment and services as may render the child competent in the reasonably foreseeable future.

“(8) If the Division at any time determines that the child receiving treatment and services under this subsection is unlikely to attain competence in the reasonably foreseeable future, the Division shall suspend further proceedings and the Corporation Counsel shall, where appropriate, initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21.

“(9) Nothing in this subsection shall prevent the Corporation Counsel from initiating commitment proceedings pursuant to Chapter 5 or 11 of Title 21 at any time.”.

TITLE III. CONFIDENTIALITY OF JUVENILE RECORDS.

Sec. 301. Short title.

This title may be cited as the “Confidentiality of Juvenile Records Act of 2004”.

Sec. 302. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2331 is amended as follows:

(1) Subsection (b) is amended as follows:

(A) A new paragraph (3A) is added to read as follows:

“(3A) at the discretion of the Corporation Counsel, each eyewitness, victim, or the immediate family members or custodians of each eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the information relates to release status, the level of respondent's placement, stay-away orders imposed, respondent's participation in diversion or a consent decree, the offenses charged in the petition, the terms of any plea agreements, findings, or verdicts related to the adjudication of the case, or commitment or probational status, unless the release of such information is otherwise prohibited by law or includes mental health information;”.

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(B) Paragraph (4) is amended to read as follows:

“(4) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court’s probation staff, and counsel for the respondent or defendant in that case;”.

(C) Paragraph (6) is amended to read as follows:

“(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys, or defense attorneys, when necessary for the discharge of their official duties;”.

(D) Paragraph (9) is amended to read as follows:

“(9) authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;”.

(E) Paragraph (10) is amended by striking the period at the end and inserting a semicolon in its place.

(F) New paragraphs (11), (12), and (13) are added to read as follows:

“(11) the Children’s Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph;

“(12) the Child and Family Services Agency, for the purposes of carrying out its official duties;

“(13) any law enforcement personnel when necessary for the discharge of their official duties.”.

(2) A new subsection (b-2) is added to read as follows:

“(b-2) Notwithstanding subsection (b) of this section, the Division, upon application of the Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the case record if:

“(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

“(2) Release of such information is necessary to protect the public safety and welfare; and

“(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).”.

(b) Section 16-2332(b) is amended as follows:

(1) Paragraph (6) is amended by striking the word “and” at the end.

(2) Paragraph (7) is amended by striking the period at the end and inserting the phrase “; and” in its place.

(3) New paragraphs (8), (9), and (10) are added to read as follows:

“(8) authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

“(9) the Child and Family Services Agency when necessary for the discharge of its official duties; and

“(10) law enforcement officers of the United States, the District of Columbia, and

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other jurisdictions when a custody order has issued for the respondent, except that such records shall be limited to photographs of the child, a physical description of the child, and any addresses where the child may be found, and the law enforcement officer may not be permitted access to any other documents or information contained in the social file.”.

(c) Section 16-2333 is amended as follows:

(1) Subsection (b) is amended as follows:

(A) A new paragraph (4A) is added to read as follows:

“(4A) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys when necessary for the discharge of their official duties;”.

(B) Paragraph (5) is amended to read as follows:

“(5) any court in which respondent is charged or convicted as a respondent in a delinquency matter, or status offense, or as a defendant in a criminal offense, or the court’s probation staff, and counsel for the respondent or defendant in that case;”.

(C) Paragraph (8) is amended by striking the word “and” at the end.

(D) Paragraph (9) is amended by striking the period at the end and inserting a semicolon in its place.

(E) New paragraphs (10), (11), and (12) are added to read as follows:

“(10) authorized personnel in the Mayor’s Family Court Liaison, the Department of Health, the Department of Mental Health, the Child and Family Services Agency, the Department of Human Services, and the District of Columbia Public Schools for the purpose of delivery of services to individuals under the jurisdiction of the Family Court, or their families;

“(11) the Children’s Advocacy Center and the public and private agencies and institutions that are members of the multidisciplinary investigation team, for purposes of carrying out their official duties, except that only information contained in the records, and not the records or copies of the records, may be provided pursuant to this paragraph; and

“(12) each eyewitness, victim, or the immediate family members or caretakers of the eyewitness or victim if the eyewitness or victim is a child or is deceased or incapacitated, and their duly authorized attorney, when the records relate to the incident in which they were an eyewitness or a victim.”.

(2) A new subsection (b-1) is added to read as follows:

“(b-1) Notwithstanding subsection (b) of this section, the Division, upon application of the Corporation Counsel and notice and opportunity for respondent or his counsel to respond to the application, may order the release of certain information contained in the law enforcement records if:

“(1) The respondent has escaped from detention or from the custody of the Youth Services Administration and is likely to pose a danger or threat of bodily harm to another person;

“(2) Release of such information is necessary to protect the public safety and welfare; and

“(3) The respondent has been charged with a crime of violence as defined in section 23-1331(4).”.

Amend,
§ 16-2333

TITLE IV. TRANSFER OF VIOLENT JUVENILE OFFENDERS.

Sec. 401. Short title.

This title may be cited as the “Violent Juvenile Offenders Transfer Act of 2004”.

Sec. 402. Section 16-2307(d) of the District of Columbia Official Code is amended to read as follows:

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“(d)(1)(A) Except as provided in subsection (c) of this section, the Division shall conduct a hearing on each transfer motion to determine whether to transfer the child for criminal prosecution. The hearing shall be held within 30 days (excluding Sundays and legal holidays) after the filing of the transfer motion. Upon motion of the child or the Corporation Counsel, for good cause shown, the hearing may be continued for an additional period not to exceed 30 days (excluding Sundays and legal holidays). If the hearing commences more than 60 days (excluding Sundays and legal holidays) after the filing of the transfer motion, the Division must state in the order the extraordinary circumstances for the delay.

“(B) The judicial decision whether to transfer the child shall be made within 30 days (excluding Sundays and legal holidays) after the conclusion of the transfer hearing. For good cause shown, the Division may extend the time in which to issue its decision by an additional period not to exceed 30 days (excluding Sundays and legal holidays).

“(2)(A) The Division shall 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.

“(B) A statement of the Division’s reasons for ordering the transfer shall accompany the transfer order. The Division’s findings with respect to each of the factors set forth in subsection (e) of this section relating to the public welfare and protection of the public security shall be included in the statement. The statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.”.

TITLE V. JUVENILE DISPOSITION.

Sec. 501. Short title.

This title may be cited as the “Juvenile Disposition Act of 2004”.

Sec. 502. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2309(a) is amended as follows:

(1) Paragraph (7) is amended by striking the word “or” at the end.

(2) Paragraph (8) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (9) is added to read as follows:

“(9) by a law enforcement officer when the officer has reasonable grounds to believe that the child has violated a court order.”.

(b) Section 16-2317 is amended as follows:

(1) Subsection (c)(2) is amended by striking the phrase “In the absence of evidence to the contrary, a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases.” and inserting the phrase “There shall be a rebuttable presumption that a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or

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rehabilitation in delinquency and need of supervision cases.” in its place.

(2) Subsection (d) is amended to read as follows:

“(d)(1) If the Division finds that the child is not in need of care and rehabilitation, it shall terminate the proceedings and discharge the child from detention, shelter care, or other restriction previously ordered.

“(2) Determinations of whether a child is in need of care or rehabilitation may only be made at or after the dispositional hearing, except that the Division may dismiss the petition and terminate proceedings, after giving the Corporation Counsel a reasonable opportunity to initiate commitment proceedings pursuant to Chapter 5 or 11 of Title 21, if the Division finds that the respondent is incompetent to proceed and that there is not a substantial probability that the respondent will attain competency in the reasonably foreseeable future. If the Division dismisses the petition based on the respondent’s incompetence to proceed, the dismissal shall be without prejudice to the government to refile if the respondent attains competence.

“(3) To overcome the presumption of a need for care or rehabilitation in subsection (c) of this section, the Division must find by clear and convincing evidence at the dispositional hearing that the child is not in need of care or rehabilitation before it may terminate proceedings.

“(4) The fact that a child is receiving care or rehabilitation in another case shall not be the only grounds for dismissal.”

(c) Section 16-2322(c) is amended by striking the phrase “Director of Social Services” and inserting the phrase “Director of Social Services or the Corporation Counsel” in its place.

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TITLE VI. VICTIMS OF JUVENILE OFFENDERS BILL OF RIGHTS AND DELINQUENCY ACCOUNTABILITY.

Sec. 601. Short title.

This title may be cited as the “Victims of Juvenile Offenders Bill of Rights and Delinquency Accountability Act of 2004”.

Sec. 602. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended as follows:

(1) Add the phrase “16-2320.01. Restitution.” after the phrase “16-2320. Disposition of child who is neglected, delinquent, or in need of supervision.”

(2) Add the phrase “16-2340. Treatment of victim or eyewitness of delinquent acts; rights of victims or eyewitnesses in delinquency proceedings; privacy and security of victims or eyewitnesses in delinquency proceedings.” after the phrase “16-2339. Immunity for juveniles who are eyewitnesses in juvenile proceedings.”

(b) Section 16-2315 is amended by adding a new subsection (f) to read as follows:

“(f) Upon request of the Corporation Counsel, or his or her designee, the Division shall hold a hearing to determine whether there is probable cause to believe that a victim or eyewitness to a delinquent act alleged to have been committed by the respondent may have been put at risk for the HIV/AIDS virus. If the Division finds there is probable cause that a victim or eyewitness has been put at risk for the HIV/AIDS virus as a result of witnessing or being the victim of the delinquent act alleged to have been committed by the respondent, the Division shall order that the respondent be tested for the HIV/AIDS virus. The results of the child’s HIV/AIDS testing shall be presented to the Corporation Counsel, or his or her designee, who shall provide

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the information to the respondent and to the victim or eyewitness to a delinquent act. The victim or eyewitness may only disclose the respondent's identity to a doctor or counselor.”.

(c) Section 16-2316(e) is amended to read as follows:

“(e)(1) All hearings and proceedings under this subchapter shall be recorded by appropriate means.

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“(2) Except in hearings to declare an adult in contempt of court, the general public shall be excluded from hearings arising under this subchapter.

“(3) Except as provided in paragraph (4) of this subsection, only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court of the District of Columbia, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of the child's family involved in the proceedings.

“(4) In cases involving delinquency proceedings, the victims and eyewitnesses and the immediate family members and custodians of the victims and eyewitnesses shall have a right to attend transfer, factfinding, disposition, and post-disposition hearings, subject to the rule on witnesses. Immediate family members and custodians of the victims and eyewitnesses shall have a right to be present during the victims' or eyewitnesses' testimony.

“(5) Any person who by virtue of this subsection attends a transfer, factfinding, disposition, or post-disposition hearing shall be bound by the confidentiality requirements of sections 16-2331, 16-2332, and 16-2333, and shall be informed by the Division of these confidentiality requirements and the penalties for their violation as set out in section 16-2336.”.

(d) Section 16-2317 is amended as follows:

(1) Subsection (d), as amended by section 502(b)(2), is amended by adding a new paragraph (5) to read as follows:

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“(5) In determining whether a child is in need of care and rehabilitation, the Division shall:

“(A) Consider any victim impact statement submitted to the Division;

“(B) Hear from any eyewitnesses and victims, or the immediate family members of any eyewitnesses or victims when the eyewitness or victim is a child or when the eyewitness or victim is deceased or incapacitated, that wish to be heard and appear before the court; and

“(C) Consider if the dismissal of the case is in the interest of the public welfare and the protection of the public security.”.

(2) A new subsection (f) is added to read as follows:

“(f) The Corporation Counsel shall give prompt notice, if practicable, of any disposition and post-disposition hearings to the victim, or the immediate family members or caretakers of the victim, or their duly authorized attorney, when the victim is a child or when the victim is deceased or incapacitated.”.

(e) Section 16-2319(a) is amended to read as follows:

“(a) After a motion for transfer has been filed, or after the Division has made findings pursuant to section 16-2317(c) sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency designated by the Division concerning the child, the child's family, the child's environment, and other matters relevant to the need for treatment or disposition of the case. The predisposition report shall include, and take into consideration, any victim impact statement submitted by the

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victim and the victim's immediate family members, the Director of Social Services, or by the Corporation Counsel. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing.”

(f) Section 16-2320 is amended by adding a new subsection (c-2) to read as follows:

“(c-2) When determining what disposition shall be ordered under subsection (c) of this section, the Division shall consider any victim impact statement submitted to the Division and the victim, or the immediate family members of the victim when the victim is a child or when the victim is deceased or incapacitated, shall have the right to make a statement at the disposition hearing. The absence of the victim at disposition shall not preclude the court from holding the hearing.”

Amend,
§ 16-2320

(g) A new section 16-2320.01 is added to read as follows:

“§ 16-2320.01. Restitution.

“(a)(1) Upon request of the Corporation Counsel, the victim, or on its own motion, the Division may enter a judgment of restitution in any case in which the court finds a child has committed a delinquent act and during or as a result of the commission of that delinquent act has:

“(A) Stolen, damaged, destroyed, converted, unlawfully obtained, or substantially decreased the value of the property of another;

“(B) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, funeral, or burial expenses, or lost wages; or

“(C) Caused the victim of the delinquent act to incur reasonable counseling or other mental health expenses from a licensed health care provider if the delinquent act involved personal injury, child or sexual abuse, robbery, or burglary.

“(2) The Division may order the parent or guardian of a child, a child, or both to make restitution to:

“(A) The victim;

“(B) Any governmental entity;

“(C) A third-party payor, including an insurer, that has made payment to the victim to compensate the victim for a property loss under paragraph (1)(A) of this subsection or pecuniary loss under paragraph (1)(B) or (C) of this subsection.

“(3) Payment of restitution to a victim under this section has priority over payments of restitution to a third-party payor or to any governmental entity.

“(4) If the victim has been compensated for the victim's loss by a third-party payor, the Division may order restitution payments to the third-party payor in the amount that the third-party payor compensated the victim.

“(b) The Division may order the child to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the age, circumstances, and financial ability of the child to pay. The Division may order the parent or guardian to make restitution directly to the victim, governmental entity, or third-party payor after consideration of the parent or guardian's financial ability to pay.

“(c)(1) A judgment of restitution under this section may not exceed:

“(A) As to property stolen, destroyed, converted, or unlawfully obtained, the lesser of the fair market value of the property or \$10,000;

“(B) As to property damaged, or substantially decreased in value, the lesser of the amount of damage or the decrease in value of the property, not to exceed the fair market value of the property, or \$10,000;

“(C) As to personal injuries inflicted, the lesser of the actual medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or \$10,000;

“(D) As to counseling or mental health expenses, the lesser of the actual expenses incurred by the injured person as a result of the incident or \$10,000.

“(2) As an absolute limit in each case against any one child, his or her parents or guardians, or both, a judgment rendered under this section may not exceed \$10,000 for all acts arising out of a single incident.

“(d) A restitution hearing to determine the liability of a parent or guardian, a child, or both, shall be held within 30 days after the disposition hearing and may be extended by the Division for good cause. A hearing under this section may be held as part of a factfinding or disposition hearing for the child. A judgment of restitution against a parent or guardian may not be entered unless the parent or guardian has been afforded a reasonable opportunity to be heard and to present appropriate evidence in the parent or guardian's behalf.

“(e) In a restitution hearing, a written statement or bill for medical, dental, hospital, funeral, or burial expenses, or repair and replacement of property shall be prima facie evidence that the amount indicated on the written statement or bill represents a fair and reasonable charge for the services or materials provided. The burden of proving that the amount indicated on the written statement or bill is not fair and reasonable shall be on the person challenging the fairness and reasonableness of the amount.

“(f) Upon request of the Corporation Counsel or the recipient of a judgment of restitution, the Division may enforce the judgment for restitution under this section in the same manner that a monetary judgment is enforced by the Superior Court of the District of Columbia under Title 15 and applicable court rules.

“(g) The Director of Social Services shall be responsible for monitoring the collection and disbursement of restitution payments when the judgment of restitution provides that restitution is to be made in periodic or installment payments.

“(h) A judgment of restitution under this section shall not preclude a civil action to recover damages from the child, parent, or guardian. A civil verdict shall be reduced by the amount paid under the judgment of restitution. A judgment of restitution may be filed under seal in any civil case.

“(i) If at the restitution hearing the Division finds that a child is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the child to perform community service or some other non-monetary service of equivalent value in lieu thereof. If at the restitution hearing the Division finds that a parent or guardian is financially unable to pay restitution pursuant to subsection (b) of this section, the Division may order the parent or guardian to perform community service or some other non-monetary service of equivalent value in lieu thereof.”

(h) A new section 16-2340 is added to read as follows:
“§ 16-2340. Rights of victims or eyewitnesses in delinquency proceedings.

“(a) A victim or a eyewitness of a delinquent act should:

“(1) Be treated with dignity, respect, courtesy, sensitivity, and with respect for the victim's or eyewitness' privacy;

“(2) Be notified in advance of dates and times of juvenile factfinding hearings, transfer hearings, disposition hearings, and post-disposition hearings;

“(3) During any phase of the investigative proceedings or court proceedings, be provided, to the extent practicable, a waiting area that is separate from the child alleged to be

delinquent and the family and friends of the child alleged to be delinquent;

“(4) Be informed by the appropriate juvenile justice agency of financial assistance, criminal injuries compensation, and any other social services available to the victim, and receive assistance or information on how to apply for such programs;

“(5) Be advised of the right to have stolen or other property promptly returned and, on written request, have the property promptly returned by law enforcement agencies when means can be employed to otherwise satisfy evidentiary requirements for prosecution, unless there is a compelling law enforcement reason for retaining the stolen property; and

“(6) Be informed, in appropriate cases, by the Corporation Counsel of the right to request restitution.

“(b) A victim and the victim’s immediate family members have the right to submit a victim impact statement in all cases and have the victim impact statement considered in the disposition of the case. The Corporation Counsel and the Director of Social Services shall inform the victim and the victim’s immediate family members or caretaker, or their duly authorized attorney, of such right.

“(c) Before, during, and immediately after any court proceeding, the court shall provide appropriate safeguards to minimize the contact that may occur between the respondent, or respondent’s family and witnesses for respondent, and the victim, eyewitnesses for the Corporation Counsel, and the family of the victim or the Corporation Counsel’s eyewitnesses.

“(d) Except as otherwise mandated by law, the District government shall not be required to disclose the names or addresses of its witnesses prior to a hearing.

“(e) The respondent, the respondent’s attorney or another person acting on behalf of the respondent shall clearly identify himself or herself as being, representing, or acting on behalf of the respondent at the beginning of any contact with the victim, the victim’s family, or other persons believed to be eyewitnesses to the offenses charged.

“(f) Nothing in this section shall be construed as creating a cause of action against the District of Columbia, any public official, employee, or public agency responsible for implementing or carrying out the provisions of this section.”.

TITLE VII. RELEASE OF CERTAIN CHILDREN IN NEED OF SUPERVISION.

Sec. 701. Short title.

This title may be cited as the “Release of Certain Children in Need of Supervision Act of 2004”.

Sec. 702. Section 16-2320(d) of the District of Columbia Official Code is amended to read as follows:

“(d) No child found in need of supervision, as defined by section 16-2301(8), unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children, but shall be released to the child’s parent, guardian, or custodian, unless the return of the child will result in placement in, or return to, an abusive situation, or the child’s parent, guardian, or custodian is unwilling or unable to care for or supervise the child. If the return of the child will result in placement in, or return to, an abusive situation, or if the child’s parent,

guardian, or custodian is unwilling or unable to care for or supervise the child, the Child and Family Services Agency shall open a neglect investigation.”.

Amend.
§ 16-2320

TITLE VIII. PERIODIC EVALUATIONS.

Sec. 801. Short title.

This title may be cited as the “Periodic Evaluations Act of 2004”.

Sec. 802. Section 16-2323 of the District of Columbia Official Code is amended by adding new subsections (g) and (h) to read as follows:

“(g) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division pursuant to section 16-2320, the Director of Court Social Services or the Youth Services Administration, whichever is responsible for supervision of the disposition order, shall conduct periodic evaluations of the child to:

Amend,
§ 16-2323

“(1) Determine if rehabilitative progress has been made and if the services provided to the child have been effective; and

“(2) Determine, in conjunction with the child, the child’s attorney, and the Corporation Counsel, what steps, if any, should be taken to ensure the rehabilitation and welfare of the child and the safety of the public.

“(h)(1) Not more than once in a 6-month period, the child, or the child’s parent or guardian, may petition the Division to modify a dispositional order, issued pursuant to section 16-2320, on the grounds that the child is not receiving appropriate services or level of placement.

“(2) If the Division finds that the child is not receiving appropriate services or level of placement, the Division may specify a plan for services that will promote the rehabilitation and welfare of the child and the safety of the public, except that the Division may not specify the treatment provider or facility.”.

Sec. 803. Section 16-2324 of the District of Columbia Official Code is amended as follows:

(a) The section heading is amended by striking the word “Modification” and inserting the word “Vacation” in its place.

Amend,
§ 16-2324

(b) Designate the existing language as subsection (a).

(c) A new subsection (b) is added to read as follows:

“(b) Not less than 6 months after issuing an order pursuant to section 16-2323(h)(2), the Division may terminate an order under this subchapter on the grounds that the Youth Services Administration is not providing or cannot provide appropriate services or level of placement.”.

TITLE IX. INDIVIDUALIZED TREATMENT PLAN.

Sec. 901. Short title.

This title may be cited as the “Individualized Treatment Plan Act of 2004”.

Sec. 902. Section 16-2319 of the District of Columbia Official Code is amended by adding new subsections (d) through (g) to read as follows:

“(d) When a child has been adjudicated delinquent and a dispositional order has been entered by the Division under sections 16-2317 and 16-2320 transferring legal custody of a child to the custody of the Youth Services Administration, the Youth Services Administration shall conduct an evaluation of the child to determine the appropriate services and to develop an individualized treatment plan for the child.

Amend,
§ 16-2319

“(e) The Youth Services Administration shall examine the child and investigate all pertinent circumstances in the child’s background that will contribute to the development of the

individualized treatment plan.

“(f) The Youth Services Administration shall complete an initial assessment of the child within 3 days of taking legal custody of the child and receipt of the social file from the Director of Court Social Services and shall develop the individualized treatment plan within 14 days of completing the initial assessment of the child, unless a longer diagnostic phase is needed for the child and is justified in writing in the child’s initial assessment. If the Youth Services Administration does not receive the social file within 7 days of the disposition order, the Division shall order the Director of Court Social Services to immediately produce the social file.

“(g) The Division may, on its own motion or the motion of any party, for good cause shown, extend the time periods set forth in subsection (f) of this section for completion of the initial assessment and the individualized treatment plan.”.

TITLE X. PARENTAL PARTICIPATION AND ACCOUNTABILITY.

Sec. 1001. Short title.

This title may be cited as the “Parental Participation and Accountability Act of 2004”.

Sec. 1002. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2305(c) is amended as follows:

(1) Designate the existing language as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

“(2) Where the delinquency petition filed by the Corporation Counsel is the 3rd petition filed against a child and the child is 13 years old or younger, the Child and Family Services Agency shall institute a child neglect investigation against the parent, guardian, or custodian of the child.”.

Amend,
§ 16-2305

(b) Section 16-2325.01 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Strike the word “may” and insert the word “shall” in its place.

(B) Strike the period at the end and insert the phrase “, unless the court determines that such an order is not in the best interest of the child.” in its place.

Amend,
§ 16-2325.01

(2) Subsection (b) is amended by striking the word “may” and inserting the word “shall” in its place.

(3) Subsection (c) is amended by striking the phrase “an order of participation” and inserting the phrase “an order issued under this section” in its place.

TITLE XI. DETENTION AND COMMITMENT FACILITIES.

Sec. 1101. Short title.

This title may be cited as the “Detention and Commitment Facilities Improvement Act of 2004”.

Sec. 1102. Closure of Oak Hill Youth Center; transfer of operations to new facilities.

“The Mayor shall develop and implement a comprehensive plan resulting in the closure of the existing Oak Hill Youth Center facility no later than 4 years after the effective date of this act and transfer operations to new facilities, one or more of which shall be located on the same property, consistent with the following criteria for a new rehabilitation and treatment model:

“(1) No new facility for committed youth shall house more than 40 committed

children within the same building, but a facility may contain more than one building;

“(2) Plans for the operation of facilities shall incorporate best practices for the provision of rehabilitative and other services and the safety of children, and shall be consistent with the applicable standards of accreditation of the American Correctional Association;

“(3) Individuals appointed by the Mayor shall provide on-site monitoring of the safety of children housed in any secure detention or commitment facility operated by the District of Columbia during all hours of operation; and

“(4) Individuals responsible for monitoring the safety of children under paragraph (3) of this subsection shall notify the child’s parent or guardian and the child’s legal representative whenever a child is injured.”.

TITLE XII. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 1201. 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. 1202. 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.

Chairman
Council of the District of Columbia

Mayor
district of Columbia