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Senate Bill 93
Juvenile – Court Jurisdiction (Youth Equity & Safety Act)
Ending Automatic Charging of Youths As Adults
February 16, 2023
Support

Dear Chair Smith, Vice Chair Waldstreicher, and Members of the Judicial Proceedings Committee,

My name is Dr. James Fleming. I am a resident of District 18. I am submitting this testimony in support of SB 93, the Youth Equity & Safety Act. I am a forensic psychologist who has practiced in that specialty in the State of Maryland for 27 years. I am an expert in the evaluation and treatment of adolescent offenders who have committed violent offenses and in the research on the effects of incarcerating juveniles as adults. In the course of my work, I have been frequently retained by the Office of the Public Defender (OPD) and private attorneys to testify regarding issues related to that expertise.

My testimony addresses four topics that pertain to issues raised by the Act:

- Differences in brain development between juvenile and adult offenders, and the consequences of those differences
- The effect on violent recidivism of incarcerating juveniles as adults
- The negative effects of adult incarceration on juveniles
- Whether more time incarcerated increases the accountability of juvenile offenders

Differences in brain development between juvenile and adult offenders, and the consequences of those differences

Juvenile offenders' brains are physiologically different than those of adult offenders. Beginning in the early 2000s, brain-imaging studies determined that the pre-frontal cortexes of juveniles are not fully developed. The pre-frontal cortex is the executive decision-making area of the brain that regulates our thoughts, actions and emotions. This finding explained the long-standing consensus among mental health professionals that adolescents are less able than adults to perceive and understand the long-term consequences of their acts, to think autonomously instead of bending to peer pressure or the influence of older friends and acquaintances, and to control their emotions and act rationally instead of impulsively. All of these tendencies affect an adolescent's ability to make reasoned decisions.

The effect on violent recidivism of incarcerating juveniles as adults

In my professional opinion there is now a research consensus that, on average, incarcerating juveniles convicted of violent offenses as adults results in increased violent recidivism in comparison to adjudicating comparable offenders in juvenile systems. In June 2010, Richard E. Redding reviewed the extant research on the effects of incarcerating juveniles as adults in article for the federal Office of Juvenile Justice and Delinquency Prevention (OJJDP). He found six large-scale studies that had been conducted on the specific deterrent and recidivism effects of the transfer of juveniles to adult jurisdiction by comparing juveniles adjudicated as adults to juveniles who remained in the juvenile system. Notably, these studies overturned long-held beliefs that juveniles who were adjudicated as adults recidivated at greater rates than juveniles who remained in the juvenile system only because their adult incarceration reflected courts' well-considered responses to their ostensibly greater criminality, that is, that such offenders were "bad apples," who solely by the definition of the circumstances of their adjudication were more likely to re-offend. The studies achieved this by using various methodologies to ensure that the offenders in the two groups were comparable, especially on the key variables of severity of offense and severity of prior criminal history. All six studies found substantially higher recidivism rates for violent offending among offenders who had been transferred to adult courts. Redding concluded, "The strong consistency in results across the studies is all the more compelling given that they used different samples and methodologies, thereby providing a measure of convergent validity for the findings."

The foregoing findings were also cited by the UCLA School of Law's Juvenile Justice Project's July 2010 review of prosecuting youth in the adult criminal justice system, which concluded, "While transfer laws do not seem capable of seriously deterring crime, research indicates that they have a marked negative impact on recidivism." And, subsequently, reviewing these and other empirical findings, a national committee (the Committee on Assessing Juvenile Justice Reform, Committee on Law and Justice, Division of Behavioral and Social Sciences and Education, the National Academy of Sciences), and a national task force (the Attorney General's National Task Force on Children Exposed to Violence), both recommended minimizing the transfer of juveniles to adult jurisdictions.

The negative effects of adult incarceration on juveniles

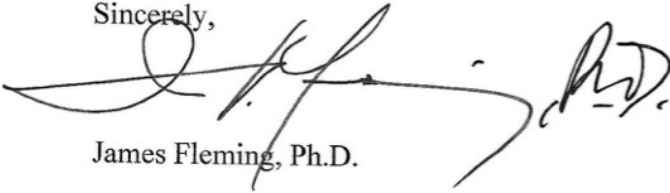
In my professional opinion, the increase in recidivism associated with the incarceration of juveniles as adults reflects the negative effects of such confinement. First, juvenile offenders incarcerated in adult prisons are more vulnerable to victimization because, on average, they are physically and mentally less developed than their adult contemporaries. In my opinion, the primary driver of criminal behavior is grievance. More frequently victimized, juvenile offenders housed with adults accordingly become more aggrieved, which is likely to fuel future negative behavior. Second, juveniles are more vulnerable to the negative influence of their adult antisocial contemporaries because, as noted above, they are more vulnerable to peer pressure or the influence of older friends and acquaintances. Accordingly, they can absorb adult offenders' antisocial attitudes and learn their criminal strategies. Third, by the definition of their developmental circumstances, juveniles require greater attachment to their families, for security and development. The greater separation involved in adult incarceration thwarts those needs

and, accordingly, appropriate development, which again leaves juveniles more vulnerable to engaging in negative behavior.

Whether more time incarcerated increases the accountability of juvenile offenders

For all of us, it is difficult to think clearly about crime, because crime is both a matter of public safety and a matter of morality. Accordingly, the belief that greater punishment will deter recidivism because it will subject offenders to greater accountability (a moral issue), while compelling, does not comport with the empirical evidence proffered above regarding the increased threat to public safety posed by incarcerating juveniles as adults. That is, it may feel wrong to subject juveniles to less punishment but doing so better protects the public.

Sincerely,

A handwritten signature in black ink, appearing to read 'James Fleming, Ph.D.', written over a horizontal line.

James Fleming, Ph.D.