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**Statement of the Council for Court Excellence
Before the Committee on Judiciary & Public Safety
of the Council of the District of Columbia**

**Hearing on B25-479, The Addressing Crime through Targeted Interventions
and Violence Enforcement (“ACTIVE”) Act of 2023**

Good morning Chairwoman Pinto and members of the Committee. My name is Olinda Moyd, and I am here today in my capacity as a Board leader for the Council for Court Excellence (CCE) and Co-Chair of CCE’s Criminal Justice Committee. I am joined today by CCE’s Senior Policy Manager, Casey Anderson. CCE is a nonpartisan, nonprofit organization with the mission to enhance justice in the District of Columbia. For over 40 years, CCE has worked to improve the administration of justice in the courts and related agencies in D.C. through research and policy analysis, convening diverse stakeholders, and creating educational resources for the public. Please note that in accordance with our policy, no judicial member of CCE participated in the formulation or approval of this testimony. This testimony does not reflect the specific views of, or endorsement by, any judicial member of CCE.

We are here today to urge D.C. Council to make several targeted changes to the *Addressing Crime through Targeted Interventions and Violence Enforcement (“ACTIVE”) Act of 2023*, to applaud the focus on diversion, and to remind this Committee how important it is to utilize evidence-based practices when developing policy responses, especially practices that impact people’s liberty. All of us involved with CCE very much understand and share the

urgency D.C. leaders feel to improve public safety in the District so that all residents feel safe and supported in their communities. And while CCE shares that sense of urgency and importance, we remain concerned about how effectively these proposed solutions will actually address the root causes of crime, that they expand the District’s criminal legal system footprint, and may significantly disproportionately impact our Black community members. Legislation must not be based on fear, but on sound evidence-based practices instead.

1) Protecting Individual Rights and Liberties

In June, CCE testified regarding the *Safer Stronger Amendment Act of 2023*, raising serious concerns about the ways in which that bill would impact and infringe upon an individual’s civil liberties. We are here today to testify about similar concerns with the *ACTIVE Act*. Most notably, the law would amend the *Firearm Regulations Act of 1975* to “require gun offenders who are on probation, supervised release, or parole to agree to submit to a search when they are in a public space.” When first reviewing the legislation, CCE also identified the same Constitutional concerns raised by [D.C. Chief Judges Anita Josey-Herring and Anna Blackburne-Rigsby in their September 18 letter](#). We are concerned that this provision may violate the Fourth Amendment’s prohibition on warrantless and suspicion-less searches of individuals without probable cause. Or at the very least it would make D.C. a significant outlier to how most jurisdictions – if not all – have interpreted the requirements of the Fourth Amendment. While we all want the District to be an innovative place and to be strategic in addressing our public safety challenges, interpretations of our Constitution that diminish citizens’ rights and decrease due process are ones where we should be wary of politically expedient changes.

Second, this amendment also introduces an increased opportunity for bias and racially discriminate interactions between law enforcement and the public, further exacerbating the racial disparities within D.C.’s criminal legal system. Data CCE has analyzed in recent years tells us that Black residents make up only 46% of the District’s population, but 67% of all non-arrest

police stops, and over 85% of subjects reported use of force incidents [according to a 2021 report by MPD](#). Given what the data tells us, it's quite likely that D.C.'s Black residents will be disproportionately stopped under this new provision, increasing interactions with law enforcement and creating further opportunities for traumatization and escalation.

Indeed, the legislative statement that it “is not the intent of the Council to authorize law enforcement officers to conduct searches for the sole purpose of harassment” implicitly concedes that the bill would create a broad discretionary power that may be prone to abuse and disparate application. That alone should give us significant pause in determining whether this is the appropriately tailored solution to the problems of gun violence we're facing in the District, where trust in our law enforcement officers is a critical factor in solving and preventing crimes.

Finally, in a city where we are seeking to create hope for our returning citizens who are doing the right thing, who are pursuing gainful employment, complying with their supervision requirements, and trying to reintegrate successfully – we need to recognize the message this policy change would send to them. Has the Committee considered what message this provision will send to individuals who have prior gun offenses but who are proactively working to improve their community, including those hired by the District, such as Credible Messengers? And how this may affect their ability to feel fully reintegrated into and a part of the community? This policy paints returning citizens with too broad a brush, and that may ultimately be detrimental to the District, where nearly 1 in 7 people has a criminal record, but where many are key actors in trying to *stop* gun violence rather than reoffend.

2) Removing Undue Burdens on the Courts

At the end of 2022, there were [1,532 felonies pending](#) before D.C. Superior Court. While that is a decrease from the 2,586 felonies pending at the end of 2021, D.C. Superior Court is still navigating a backlog of criminal cases due to the COVID-19 pandemic and continued judicial vacancies. If enacted as written, this bill would “require judges to issue written findings where

they decide against holding individuals pretrial.” CCE is concerned about how this amendment would increase the workload of the Superior Court Criminal Division, particularly at a time when we continue to navigate a judicial vacancy crisis and the pandemic backlogs of cases. We also understand this policy proposal to be an outlier among courts across the country.

This amendment will likely slow down the pretrial determination process significantly, a decision that must be carefully made after close consultation with the D.C. Courts. However, if the D.C. Council decides to move forward with implementing measures that would slow down the pretrial process, CCE urges this Committee to change the legislation to instead require a thoroughly holistic review in making detention decisions. In the District Task Force on Jails & Justice’s [Phase II report](#), its members recommended repealing the rebuttable presumption of pretrial incarceration, instead requiring individual determinations in all cases. Under this type of review, D.C. judges would be able to consider a more holistic approach to the situation by looking at not only the circumstances of the crime charged, but also the person’s life circumstances and the impact of incarceration on the person. (*See* pp. 49-50).

Finally, the *ACTIVE Act* is one of several bills currently before D.C. Council aimed at improving public safety in the District, with one bill, the *Prioritizing Public Safety Emergency Amendment Act*, already in effect. Aside from aiming to improve public safety, each of these bills will also likely expand the District’s arrested and pretrial populations. The Council should examine before it takes action how recently-passed legislation that already altered some pretrial processes has affected the Court’s adjudication of cases and has affected the detention or supervision of defendants, and how the additional proposed changes would affect them. CCE urges D.C. Council to conduct a robust analysis of how the *Public Safety Emergency Amendment Act* has affected the Court’s caseload and the District’s pretrial population, which will likely require interagency collaboration between the Criminal Justice Coordinating Council, D.C. Department of Corrections, and D.C. Courts. The Council should also consider developing

caseload and population projects for how this legislation, and others, will impact the Courts and the pretrial population in D.C.

3) Creating the Pre-Arrest Diversion Task Force

The *ACTIVE Act* also contemplates creating a Pre-Arrest Diversion Task Force, an area of focus that is welcomed and applauded by CCE. Diversion can be an important tool in preventing individuals from arrests or court involvement, and reducing racial disparities in and shrinking the overall footprint of D.C.'s criminal legal system. By investing more in diversion, D.C. leaders can ensure that detention and incarceration are reserved for only the most serious crimes, and that other individuals are met with the resources and supports they need to abstain from future criminal acts.

As the District moves to establish the Pre-Arrest Diversion Task Force, CCE hopes that the Committee and the newly formed Task Force will heed the guidance outlined in the *Neighborhood Engagement Achieves Results (NEAR) Act*. As indicated by the [Office of the District of Columbia Auditor's evaluation](#) of the implementation of the *NEAR Act*, the District has yet to establish an Office of Violence Prevention and Health Equity and the Metropolitan Police Department and Department of Behavioral Health have not yet formed officer-clinician teams to respond to behavioral health crisis. The audit also indicates that the District should gather more data to better evaluate whether violence intervention initiatives are effective. The Task Force may be well suited to lead on establishing the officer-clinician teams and ensuring more robust data collection. Finally, the legislation outlines who will serve on this Task Force, and CCE proposes that at least two individuals with lived experience be added as members of the Task Force, with at least one of the two members identifying as a woman.

Diversion programs are a subject of ongoing CCE research and we look forward to sharing our findings and future report with the Chairwoman and members of this Committee

soon.

4) Utilizing Evidence-Based Practices

Finally, we want to reiterate that it is important that changes like the ones proposed in B25-479 are well supported as evidence-based practices and that we have an accurate understanding of the current landscape in the District. Before the D.C. Council enacts a steady stream of new legislation in response to the ongoing conversation around crime in the District, we must first have transparent, accurate, and robust information on the effectiveness of the *Public Safety Emergency Amendment Act* available to the Council and to the public at large. Before legislation is passed that will expand the footprint of the District's criminal legal system and create new penalties or enhance existing ones, we must understand the full and complete picture of how the *Public Safety Emergency Amendment Act* has improved, diminished, or possibly had no discernable effect on, crime in the District. Such transparent analysis will allow the District to better refine its approach to addressing crime and improving public safety, having a more complete understanding of what is working and what is not. To date, there has been no publicly available information on the effectiveness and impact of the varied pieces of the *Public Safety Emergency Amendment Act*, like crime rates, the number of individuals detained pretrial, and the incarcerated population – and how those new data points meaningfully differ from the changes we typically see year-over-year as the summer ends and fall and winter begin, which are always notable.

While CCE believes the District must better examine the influence that previously-legislation has had on reducing crime before proceeding with B25-479, we do want to acknowledge where B25-479 is mirroring best practices. For instance, the Criminal Code Reform Commission, in the *Revised Criminal Code Act of 2022* (RCCA), included a provision on reckless endangerment with a firearm offense, which had a maximum penalty of two years. The creation of this

offense in the *ACTIVE Act*, and applying a felony liability, is consistent with the RCCA and it is CCE's hope that the Committee will continue to incorporate the recommendations of District-funded Commissions, Task Forces, and reports in the work that it does.

However, we would like to note that the enhancements outlined in the legislation are not consistent with the RCCA's recommendation. While we clearly need to develop new strategies to prevent dangerous crimes in D.C., data tells us that increasing the severity of punishment generally [does little to deter crime](#). Research has found that [increasing the length of already long prison sentences does not yield general deterrence effects to justify lengthy incarceration's high social and economic costs](#). Specifically for firearms offenses, there [has not been a clear consensus](#) on whether increasing penalties for these crimes has been successful in deterring offenses. Such research on sentence enhancements has yielded mixed findings, and has [generally failed to uncover](#) clear evidence of a deterrent effect. While research and [policy experts](#) continue to grapple with how to effectively reduce the number of firearm offenses committed, neither stacking penalties nor adjusting the maximum penalties have been advanced as effective solutions. Our judicial system is tasked with the authority to make sentencing decisions based on all of the evidence before it. Stripping our courts of this responsibility and inserting blanket mandates about how sentences should run is misguided and improper.

Conclusion

CCE believes that there are fundamental changes that need to be made to the *Addressing Crime through Targeted Interventions and Violence Enforcement Act of 2023* before it should proceed through Council. In summary, the legislation should be amended to remove the provision around requiring individuals convicted of gun crimes who are on probation, supervised release, or parole to agree to submit to a search when they are in a public space or fundamentally alter this provision so that there are no concerns about it violating an individual's Fourth Amendment rights. Additionally, if the

legislation is going to slow down the pretrial determination process– which is likely ill-advised from a pragmatic matter for our local Courts – CCE urges the Committee to amend the legislation to require judges use a holistic review and to conduct a robust analysis – that will be publicly available – on the impacts of the *Safer Stronger Amendment Act*. Finally, CCE wants to commend the Committee on the creation of a Pre-Arrest Diversion Task Force, and looks forward to the expansion of pre-arrest diversion in the District.

This concludes our testimony. Thank you for your time and we look forward to answering any questions you may have.