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**Statement of the Council for Court Excellence
Before the Committee on Housing and Executive Administration
of the Council of the District of Columbia**

**Performance Oversight Hearing for the
Executive Office of the Mayor**

March 18, 2021

Good morning, Chairwoman Bonds and other distinguished members of the Committee. My name is Casey Anderson and I am a Policy Analyst at the Council for Court Excellence (CCE). Please note that per 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. Our organization has long been supportive of the establishment of a local Clemency Board, but I am here today to present the recommendations of the District Task Force on Jails & Justice (Task Force) regarding the Clemency Board, housed under the Executive Office of the Mayor.

Three years ago, D.C. Council passed the Clemency Board Establishment Act of 2017, creating the District's first ever Clemency Board. This Board is extraordinarily important for our residents, not only because of the difficulty that individuals convicted of D.C. Code offenses face in seeking mercy from the executive branch, but also because the impacts of a person's release should be considered by those in the very community where that person was convicted. The D.C. Clemency Board will ensure meaningful local participation in those requests for the first time.

People who are convicted of D.C. Code offenses experience unique barriers in trying to access clemency. Unlike the fifty states, where a person convicted of a state offense can request clemency from the governor, the mayor of the District of Columbia does not possess the authority to grant clemency to people convicted in D.C. – only the President of the United States can do that. Unsurprisingly however, the federal clemency system is designed for – and focused on – people convicted of federal offenses. We have no way of knowing how many people incarcerated under the D.C. Code have applied for clemency through the federal system, but we do know that they represent about 2.4% of the Federal Bureau of Prisons’ (BOP) population, but only account for .037% of clemency grants. Only one person convicted of a D.C. Code offense, Alfred Mack, has ever been granted clemency. We know that the District’s incarcerated population is overwhelmingly Black, and 95% of people convicted of D.C. Code offenses in the BOP are Black.¹ Getting D.C.’s Clemency Board up and running is both a racial justice issue and a local control priority.

Understanding the importance of getting D.C.’s Clemency Board up and running, the Task Force recommended that the District “immediately begin operations of the local Clemency Board” in their 2019 Phase I Report, *Jails & Justice: A Framework for Change*. We are heartened to see that the District’s Clemency Board has been meeting since August 2020, and in that time has selected a chairperson, drafted and adopted bylaws, and adopted a work plan. CCE

¹ Council for Court Excellence. (2020, September 30). *Analysis of BOP Data Snapshot from July 4, 2020 for the District Task Force on Jails and Justice*.
http://www.courtexcellence.org/uploads/publications/Analysis_of_BOP_Data_Snapshot_from_7420.pdf

is also glad to see that the Clemency Board is receiving assistance from the Howard University School of Law's Reentry Clinic on drafting regulations and an application form.²

During Phase II of the Task Force's work, the Committee on Local Control developed a detailed implementation timeline for the District's Clemency Board. This implementation timeline was approved by the full Task Force and published last month in its Phase II report, *Jails & Justice: Our Transformation Starts Today*. The timeline spanned from September 2020 to July 2021, and as of today, the Clemency Board had accomplished several of the items the Task Force recommended be completed in 2020, including drafting internal policies and regulations.

The Task Force also recommended that between September and November 2020, the Clemency Board should: i) develop a system for managing and tracking applications and publishing outcomes, ii) draft MOUs with other agencies, such as D.C. Superior Court, the Federal Bureau of Prisons (BOP), and White House Counsel, iii) draft application forms and materials, iv) work with the Corrections Information Council to plan dissemination of information about clemency eligibility and application procedures to all individuals convicted of D.C. Code offenses in BOP custody, v) work with the legal community to build capacity for representation of clemency applicants, and vi) work with IT specialists to develop secure methods for storing and transferring personally identifiable information.³ Based on the information we have received, some but not all of this has been accomplished to date.

² District Task Force on Jails & Justice. (2021, February 11). Report on the Committee on Local Control, pg. 12. http://www.courtexcellence.org/uploads/publications/Local_Control_Committee_Report_to_the_Task_Force.pdf

³ *Id at 13*.

For this past winter, the Task Force recommended the Clemency Board: i) publish public notice of rulemaking, ii) finalize the clemency application, iii) publish and publicize the clemency application, iv) schedule recurring meetings for reviewing applications, and v) develop a meeting plan. On behalf of the diverse and interdisciplinary Task Force, we urge the Clemency Board and its support staff to complete any of the above action items that have not yet been completed as soon as possible in order to ensure that it is able to review and send the first set of recommendations for clemency to the President of the United States by summer 2021.⁴

We would welcome an update from EOM as to the viability of the Task Force's timeline to begin collecting, reviewing, and making recommendations on applications, or if not, what are the hindrances. When its plan was developed in fall 2020, the Task Force set a pace for what it determined to be a realistic target for beginning to receive initial applications as early as March through June 2021. The Board should review each complete application and vote, within six months, on whether to recommend the applicant for clemency. As mentioned above, this timeline would have made the Clemency Board poised to send the first set of recommendations to the President of the United States in July 2021.⁵ However, it is clear that this timeline will have to be adjusted in light of the progress made to date. We believe it is important for this Committee to understand which steps remain and how quickly each can be completed to allow the Clemency Board to begin its operations in earnest and start considering applications.

Members of the Task Force, as well as CCE, stand ready to support the District and the Clemency Board in successfully completing the steps outlined in the Task Force's Phase II

⁴ *Id.*

⁵ *Id.*

report. Further, we urge the D.C. Council to provide the resources and support necessary to ensure that the District's Clemency Board sends its first set of recommendations to the President of the United States by July 2021. We appreciate the Council's efforts to make sure people convicted of D.C. Code offenses have meaningful access to clemency, and moving D.C. one-step closer to local control of our criminal justice system. Thank you for your time, and I am pleased to answer any questions you may have.