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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**

**Performance Oversight Hearing for the
Clemency Board**

February 27, 2020

Good morning Chairman Allen and members of the committee. My name is Emily Tatro and I am the Deputy Director of the Council for Court Excellence (CCE), a local non-partisan civic organization founded in 1982 to improve the administration of justice in the courts and related agencies in the District of Columbia. For 38 years, CCE has been a unique resource that brings together members of the civic, legal, business, and judicial communities to work in common purpose to identify and promote court reforms, improve public access to justice, and increase public understanding and support of our justice system. No judicial member of CCE participated in the formulation of this testimony.

Two years ago, D.C. Council passed what had been introduced as B22-0452, the Clemency Board Establishment Act of 2017 (“the Act”), as part of B22-0901, the Fiscal Year 2019 Budget Support Emergency Act of 2018, creating the District’s first ever Clemency Board. This Board is extraordinarily important for our residents, not only because of the difficulty that individuals who were convicted of D.C. crimes 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 allows meaningful local participation in those requests for the first time.

Indeed, people who were convicted of D.C. Code crimes experience unique barriers in trying to access this important remedy. 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 D.C. Code offenders – only the President of the United States can do that. But the federal clemency system is – unsurprisingly – designed for federal offenders. We have no way of knowing how many D.C. Code offenders 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 crime, Alfred Mack, has ever been granted clemency. The Board will consider both the cases of people who are remorseful and can show they have been rehabilitated, and the cases of people who seek to demonstrate their innocence and have exhausted all other court-related remedies. Both of these types of clemency review are vital functions in our justice system – and the residents of the District deserve equally serious local consideration of these requests.

We were excited to see the Mayor’s nomination of four members to serve on the Board in December of last year, and the confirmation hearing before your Committee earlier this month. We eagerly await the nomination of the Mayor’s fifth appointee, a member with a background in victim’s rights, and your selection for a representative, as well as those from the Office of the Attorney General, the U.S. Attorney’s Office for D.C., and the Public Defender Service.

However, based on our research and experience, it is unrealistic to expect appointed volunteer members of a newly-established Clemency Board to formulate the eligibility standards, policies, forms, and begin gathering and reviewing applications, without meaningful and

dedicated support from within the Mayor's Office of General Counsel (OGC), where the work of the Board is currently housed. Furthermore, the current staff of OGC is unlikely to have the expertise or capacity to tackle all of these elements while also fulfilling other responsibilities within the office.

We encourage the Council and the Mayor to ensure that there is at least one additional full-time employee in the Office of General Counsel (OGC) who is dedicated to serve as a staff attorney for the District's newly established Clemency Board. A full-time staff attorney is essential, as members serve only as volunteers, in addition to their own individual professions. While the OGC has not expressed a desire for such additional staffing, it is clear that there is ample work to be done – and work that should not be done piecemeal or through part-time efforts. This staff member must have the capacity to devote sufficient time to support Board policy development; work with the Board (as well as impacted residents and other stakeholders) to develop clemency eligibility requirements and application procedures specific to D.C. Code offenders; create clear instructions for incarcerated individuals; organize incoming application materials for Board review; schedule Board meetings and record minutes; and prepare the Board's recommendations of clemency for review by the President of the United States.

This staffing model has proven successful in other states, like Delaware, whose board has one full-time staff member serving a state with a similarly sized population of incarcerated people. Without a full-time staff member, it will be difficult for the Board to draft regulations, policies, and procedures in a timely manner and efficiently evaluate clemency applications. D.C. Code offenders have been waiting a long time for access to robust clemency review by people focused on the needs and values of this city. With the Clemency Board Establishment Act enacted and nominations of members pending confirmation, now is the time to devote modest

resources to ensure that the Board can actually begin to function and applications can be considered for the first time in the District's history. It is important that D.C. not delay these steps any longer, and, with appropriate focus and support, could have the Board reviewing applications within the year.

We appreciate the Council's efforts to make this important remedy accessible to all, and moving D.C. one step closer to local control of our criminal justice system. Thank you for your time, and we are pleased to answer any questions you may have.