

# Report of the Committee on Decarceration to the District Task Force on Jails & Justice

October 27, 2020

## Background

In 2019, the District Task Force on Jails & Justice published its Phase I report, with [seventeen recommendations](#), including these two sourced from the Committee on Decarceration:

6. The District should reduce the number of admissions and length of stay for people in its secure detention facilities, using incarceration only when an individual poses a specific risk of violence or harm that no community-based resources may mitigate.
7. The Task Force should evaluate the range of policy and practice changes at each decision point along the criminal justice continuum, with the goals of reducing harm, racial disparities, and incarceration, and increasing safety and accountability. These decision points include:
  - a. Contact pre-arrest;
  - b. Arrest and booking;
  - c. Charging;
  - d. Pretrial release;
  - e. Case processing, including time standards and specialty dockets/problem solving courts;
  - f. Disposition and sentencing;
  - g. Probation and parole proceedings; and
  - h. Post-release and supervision.

In Phase II, the Committee on Decarceration is now tasked with developing an implementation plan to guide the District in actualizing these recommendations. The implementation plan should answer the following questions:

- What is the recommended action?
- What is the intended outcome?
  - Number of people impacted
  - Type of impact (e.g. fewer people held at MPD stations and CCB awaiting arraignment, fewer people admitted to jail, shorter stays, more people released, less probation/parole time)
  - Size of impact (e.g. 10% of people admitted to jail, 5% reduction in average jail time)
  - Racial analysis
  - Analysis of impact on special populations:
    - People with physical health issues
    - People with serious mental illness and/or substance use disorders
    - People with intellectual disabilities
    - Young adults (18-25 years old)
    - Single parents with custody of minor children
    - Elders (60+ years old)

- “Short Stayers” (people who are in and out of jail within a week)
- People not charged with a crime against another person
- People who pose no risk of violence to the community
- How will the outcome be measured?
- What is the trigger of change? (law, regulation, policy, practice, and local or federal body with power to make that change)
- What are the steps required to achieve the outcome?
  - Actors
  - Deadlines
- How much will it cost? (budget and whether/how funded)
- How much of a priority is this? (based on impact, feasibility, community support, and ripeness - scored high, medium, low)

This memo identifies actions that could lead to the outcomes established by this Committee during Phase I: to increase community safety, decrease the number of people incarcerated, and decrease the length of time a person serves if incarcerated. A data analysis of the potential impact of these recommendations is forthcoming.

The following recommendations were discussed and developed by the entire Committee on Decarceration. Some committee members recused themselves from some discussion points. Not all committee members agreed on every recommendation, and a minority of members explicitly opposed certain recommendations. Although the Committee did not vote on each individual recommendation, no recommendation submitted in this memo received a majority opposition. The entire Committee on Decarceration agreed to submit this memo to the Task Force for further discussion, including recommendations that lacked consensus.

## **Law Enforcement Contact/Pre-Arrest**

1. Provide options for non-law enforcement responses to incidents.
  - a. Move civil traffic violation enforcement from MPD to another appropriate agency, like DDOT.
    - i. DDOT staff who conduct civil traffic enforcement should not be armed and should be required to complete anti-bias and de-escalation training.
    - ii. DDOT should increase the use of automated traffic enforcement, such as speed cameras, in place of discretionary enforcement. DDOT also should use other forms of contact-less civil violation enforcement, like photographing expired registrations and mailing infraction notices to the vehicle owner. DDOT must take care to ensure:
      1. Rigorous privacy protections; and
      2. Elimination of systemic bias, such as camera placement in areas that specifically target Black or low-income communities.
    - iii. MPD should continue to conduct traffic stops for criminal offenses that pose an immediate danger to public safety like DUIs and reckless driving.
  - b. Increase utilization of the Community Response Team (CRT) in cases where a person is likely to want or need a behavioral health intervention.

- i. Increase use of CRT for crisis response.
  1. Publicize the CRT’s 24-hour services, encouraging communities to contact this non-police team when people are “experiencing psychiatric emergencies, trauma, or show[ing] signs of mental health [or] substance use disorders.”<sup>1</sup>
  2. Create a three-tiered system for calls for emergency service:
    - a. Tier 1: CRT-only response (CAHOOTS responded to nearly 20% of all emergency calls without law enforcement assistance).
    - b. Tier 2: CRT lead with MPD officer present as back-up for situations in which a law enforcement response is deemed necessary for safety (CAHOOTS responded to less than 1% of its dispatches - 150 out of 24,000 - with LEO assistance).
    - c. Tier 3: MPD lead for calls that include a dangerous weapon or where there is another active risk of violence.
  3. CRT should begin contracting with non-uniformed, non-District employees from community-based organizations to respond to calls for service routed to CRT.
  4. Require the Office of Unified Communications (OUC) to train 911 and 311 operators to transfer appropriate calls to CRT instead of MPD.
    - a. Require OUC and/or DBH to publish data each year detailing the number of calls to 911, 311, and CRT; whether each call was categorized as emergency or non-emergency, and whether FEMS, MPD, and/or CRT were dispatched as responders. As of FY19, police non-emergency calls to 911 and 311 are routed to a non-emergency dispatch. This includes all calls related to an incident that does not pose an immediate threat to the safety of individuals and/or incidents that occurred at least one hour before the initial request for police assistance is made. In 2018, OUC received approximately 1.5 million 9-1-1 calls for service, and approximately 20 percent of those calls were for non-emergency incidents.
- ii. Increase pre-arrest diversions from MPD to CRT.
  1. Train more MPD officers in crisis intervention and pre-arrest diversion, including education on the effectiveness of treatment for mental illness and substance use disorders to reduce the risk of re-arrest and re-incarceration and training on interacting with people

---

<sup>1</sup>DC.gov. Department of Behavioral Health. “Community Response Team.” *DC.gov*. <https://dbh.dc.gov/service/community-response-team>

with autism and developmental and intellectual disabilities. As of [FY19](#) there were 800 CIOs (21%) and 69 Pre-Arrest Diversion (PAD) trained officers (2%) out of approximately 3,800 sworn officers.

2. MPD and CRT administrators should work to increase police officer participation in and support of PAD by providing ongoing opportunities for feedback and updating policies based on officer feedback.
3. Modify MPD's Pre-Arrest Diversion [General Order](#) eligibility criteria to allow for more participants.<sup>2</sup>
  - a. Require CRT diversion to be offered for any person who is exhibiting indicators of mental illness or substance use, including:
    - i. All misdemeanor offenses where the suspect has not been arrested in the previous 12 months, not including any time in custody; and
    - ii. Enumerated first-time felony offenses.
  - b. Establish procedures that allow an MPD officer to divert someone from arrest without handcuffing them or bringing them to a police station.
4. CRT administrators should ensure that external stakeholders directly advise the pre-arrest diversion program, consistent with best practices. The program should be transparent, creating a process for providing and responding to external feedback. CRT should continue referring individuals to community-based organizations for treatment.
5. CRT administrators should collaborate with community stakeholders to establish and publish a clear set of programmatic goals for PAD. Those goals should include measures of success for both improved health outcomes and reduced justice involvement.
6. CRT administrators should implement procedures to correct the PAD pilot's data collection and reporting shortcomings, including publishing information to help evaluate program efficacy and implementing data sharing procedures, consistent with best practices.
  - c. Use non-law enforcement officers for school safety and security.
    - i. Repeal the portion of the D.C. Code that authorizes contracting procedures for public school security, D.C. Code [§§ 5-132.01 – 5-132.06](#).

---

<sup>2</sup>Attachment A of the D.C. Metropolitan Police Department, *Pre-Arrest Diversion Pilot Program*, G.O. 502.04 (IV)(C) (effective April 24, 2018). [https://go.mpdconline.com/GO/GO\\_502\\_04.pdf](https://go.mpdconline.com/GO/GO_502_04.pdf).

- ii. Disestablish the MPD School Safety Division by repealing D.C. Code [§ 5-132.02](#).
  - iii. Replace School Resource Officers (SROs), Special Police, and school security with unarmed, badge-less Student Safety Coaches (SSCs) that focus on developing trust and relationships with students to build a safe school environment, address the needs of students who feel unsafe at school or at home, and provide intervention and support for students with behavioral health needs.
  - iv. Invest an additional \$6 million in trauma-informed behavioral health screenings, assessments, and treatment inside DCPS and charter schools.
  - v. Continue training educators and staff in de-escalation strategies, restorative practices, and positive behavioral interventions and supports.
  - vi. Encourage ongoing implementation of the D.C. School Safety and Safe Passage Working Group's [recommendations](#).
  - vii. Adopt additional recommendations from Dignity In Schools' [Model School Code](#), including that law enforcement entering schools shall be avoided whenever possible and shall be prohibited for incidents considered school discipline matters. The arrest or detention of a student shall be used only as a measure of last resort, and law enforcement should not come into schools for the purpose of arresting or questioning students about a non-school related incident.
2. By the end of 2022, D.C. Council should amend the criminal code to decriminalize certain offenses and convert others to civil offenses where enforcement is still desired. The D.C. Council should:
- a. Consider all recommendations of the D.C. Criminal Code Revision Commission.
  - b. Decriminalize an offense when:
    - i. A civil citation could achieve the same goal;
    - ii. Decriminalizing would improve public health;
    - iii. An arrest would not improve immediate public safety;
    - iv. The offense is overly vague or redundant; and
    - v. It criminalizes people living in poverty.
  - c. Avoid alternatives that:
    - i. Mark an individual's record with a criminal infraction, causing informal punishment in areas like employment and housing;
    - ii. Are initially punishable only by fine, but then allow incarceration for unpaid fines;
    - iii. Do not explicitly state that the police cannot arrest for that offense; and
    - iv. Allow police discretion between criminal and civil citations.
3. Limit interactions between law enforcement and residents.
- a. Permanently codify subsection (f) of the Council's [Comprehensive Policing and Justice Reform Second Emergency Amendment Act of 2020](#), amended as detailed below, to place the following limitations on consent searches. Before a law enforcement officer conducts a consent search, the officer must:

- i. “Explain, using plain and simple language delivered in a calm demeanor, that the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to a search” and provide the subject with an informational document that clearly states their rights in writing, akin to the Sexual Assault Victim’s Rights [card](#) required by [23-1909](#).
  - ii. “Advise the subject that:
    1. A search will not be conducted if the subject refuses to provide consent to the search; and
    2. The subject has a legal right to decline to consent to the search.”
  - iii. “Obtain consent to search without threats or promises of any kind being made to the subject.”
  - iv. “Confirm that the subject understands the information communicated by the officer.”
  - v. “Use interpretation services when seeking consent to conduct a search of a person:
    1. Who cannot adequately understand or express themselves in spoken or written English; or
    2. Who is deaf or hard of hearing.
  - vi. If there is no evidence of informed consent in writing or captured on bodycam footage, then the stop should be presumed non-consensual.
  - vii. Add a provision requiring a supervisory officer to approve consent searches, in writing or captured on bodycam footage, before they are conducted by the officer on scene.
- b. Limit “Terry Stops,” which currently allow a stop if an officer has reasonable suspicion that a person is engaged in criminal activity AND limit “protective pat down” or “frisk” searches, which are currently allowed a search if a police officer has “reasonable suspicion” that the targeted-individual is “carrying a concealed weapon or dangerous instrument and that a pat down is necessary to self-protect or protect others.”<sup>3</sup>
- i. Modify MPD GO 304.10<sup>4</sup> to adopt provisions from the Newark Police Department consent decree, prohibiting MPD officers from:<sup>5</sup>
    1. Conducting “pretext” vehicle stops or detentions without prior approval of a supervisor;
    2. Using pro forma or conclusory language without supporting detail in documents or reports documenting investigatory stops or detentions;
    3. Using information known to be materially false or incorrect in effectuating an investigatory stop or detention;
    4. Using any demographic category as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause during routine or spontaneous enforcement activities, except that officers may rely on a demographic category in a specific suspect

---

<sup>3</sup>Metropolitan Police Department General Order 304.10. [https://go.mpdonline.com/GO/GO\\_304\\_10.pdf](https://go.mpdonline.com/GO/GO_304_10.pdf). (pg. 7).

<sup>4</sup>Metropolitan Police Department General Order 304.10. [https://go.mpdonline.com/GO/GO\\_304\\_10.pdf](https://go.mpdonline.com/GO/GO_304_10.pdf). (pg. 7).

<sup>5</sup>USA v City of Newark. <https://www.justice.gov/crt/file/868131/download>. (pg. 14).

- description from a trustworthy source that is relevant to the locality or time;
5. Using an individual's geographic location, presence in a high crime area, or proximity to the scene of suspected or reported crimes without any other reliable indicator that an individual has or is engaged in criminal activity, as the basis for an investigatory stop or detention;
  6. Basing investigatory stops or detentions solely on an individual's response to the presence of police officers, such as an individual's attempt to avoid contact with an officer;
  7. Basing investigatory stops or detentions solely on information or evidence discovered after the stop was initiated (e.g., open warrants) or the fact that the individual was ultimately arrested; and
  8. Basing investigatory stops or detention solely on an individual's presence in the company of others suspected of criminal activity.
- ii. MPD should increase information about the type of encounters officers have with the public, without requiring identification be produced, consistent with the National Police Foundation's [recommendations](#) to update GO 304.10.
- c. Create a private right of action for inappropriate searches and seizures by making violations a matter of civil enforcement.
  - d. Make de-escalation by MPD officers<sup>6</sup> mandatory, with documentation of de-escalation efforts, and consequences if de-escalation is not appropriately used.
4. The District of Columbia has "[Cooperative Agreements](#)" with 32 federal law enforcement agencies, including ICE, the FBI and the Defense Protective Agency. These agreements create an expectation that federal agencies will be engaged in "crime suppression" and routine law enforcement patrols in areas adjacent to federal property and have access to all MPD records. The District should review these agreements and, in light of conduct by federal law enforcement to suppress First Amendment activity, modify the agreements to restrict the footprint of federal agencies to the greatest extent permitted by law.
  5. Continue to train MPD officers on interacting with people with disabilities, including mental illness, substance use disorders, autism, and intellectual and developmental disabilities; people who are deaf and/or heard of hearing; and people for whom English is not their first language.

## Arrest and Booking

---

<sup>6</sup>Metropolitan Police Department General Order 901.07. [https://go.mpdconline.com/GO/GO\\_901\\_07.pdf](https://go.mpdconline.com/GO/GO_901_07.pdf) (pg. 5).

1. Maintain the COVID-19 responsive changes to MPD’s citation release orders<sup>7</sup> in [D.C. Code § 23-1110](#) at least through the end of the public health emergency. The current temporary changes to the eligibility for citation release conditions include:
  - a. Removed requirement that charges had to be for nonviolent misdemeanors.
  - b. Removed requirement that prohibited participation if arrestee they inaccurately reported their name.
  - c. Previously, in order to be eligible for citation release, the arrestee must **not** have been charged with a “dangerous” crime ([D.C. Code § 23-1331\(3\)](#)) or “crime of violence” ([D.C. Code § 23-1331\(4\)](#)). Now, an arrestee is eligible for citation release if he or she was charged under Chapter 9 of Title 48 D.C. Code (§ 48-904 [\[Controlled Substances\]](#)), unless he or she was charged with Distribution (D.C. Code § 48-904.01(b)(1)).<sup>8</sup> Could also limit the definition of crimes of violence here to charges like arson, cruelty to children, 1st degree sexual abuse, human trafficking, etc.—high lethality and violent crimes, making others eligible for release.
  - d. Previously, in order to be eligible for citation release, the arrestee must not have been charged with any violation related to firearms or ammunition.<sup>9</sup> Now, an arrestee must not have been charged with any firearms violation under [Title 22, Chapter 45](#), felony violations of [Title 7, chapter 25](#), or a violation of an Extreme Risk Protection Order ([D.C. Code § 7- 2510.11](#)).
  - e. Previously, an arrestee was not eligible for citation release if he or she would legally have to be held pursuant to [D.C. Code § 23-1322](#) (Detention Prior to Trial) for any of the reasons below. The current changes include:
    - i. Is currently on probation, parole, or supervised release. Update: limited to currently on probation, parole, or supervised release for a felony;
    - ii. Is currently on release in a pending misdemeanor or felony case. Update: limited to felony;
    - iii. Is currently on release in a simple assault, domestic violence, or misdemeanor weapons offense. Update: limited to DV;
    - iv. Is arrested for a traffic offense and is on probation for or has a pending DWI, DUI, OWI, fleeing, reckless driving, or leaving after colliding (with property damage or personal injury) charge. Update: Is arrested for a traffic offense that has cause significant bodily injury and is on probation for or has a pending DWI, DUI, OWI, fleeing, reckless driving, or leaving after colliding (with property damage or personal injury) charge;
  - f. Has a current active warrant in the District of Columbia. Update: Has an additional current active warrant in the District of Columbia, other than for the offense of the current arrest;
  - g. The conditions below about an arrestee’s history have been completely removed:

---

<sup>7</sup>Metropolitan Police Department. “Coronavirus 2019 Modification to Citation Release Criteria (Number EO-20-011).” March 17, 2020.

<sup>8</sup>We do not have data from MPD to show how citation release has been utilized since April.

<sup>9</sup>Currently there is not a list of all the violations related to firearms or ammunition, so we do not know exactly what violations are excluded with this new eligibility criteria, but we may be able to comb through the DC code and find out in the future.

- i. Has a criminal history that includes a BRA, FTA, or escape conviction within the past two years;
  - ii. Has made a statement that he or she may not appear in response to the citation;
  - iii. It was determined the arrestee has failed to appear as required on a previous citation or other release mechanism; and
  - iv. Is a current GunStat candidate.<sup>10</sup>
2. Conduct a qualitative and quantitative evaluation of the outcomes of changes to citation release and field arrests within 6 months of the Mayor's Order ending the public health emergency, and make recommendations to amend the D.C. Code, MPD general orders, and D.C. Superior Court scheduling based upon what is learned.

## Charging

1. Establish a 24/7 pre-arrest charging decision hotline within USAO based on the Harris County model.<sup>11</sup>
  - a. Require officers to call a USAO before making a warrantless arrest. The prosecutor makes a decision on whether charges are improper prior to booking, instructing the officer to release the individual or to arrest them. This also gives the USAO an opportunity to direct evidence collection and to train officers on substantive law and criminal law/procedure.
  - b. USAO should also recommend diversion to CRT where the suspect is known by USAO to have a mental illness or a substance use disorder and is otherwise eligible.
  - c. Repeal D.C. Code [§5-115.03](#) and amend [§16-1031](#) to allow officers to release suspects without arrest if they receive dismissal instructions from the on-call prosecutor, even if they witnessed the offense or it is a DV offense.

---

<sup>10</sup>The document that this list is sourced from states that a current list of active GunStat candidates is searchable in the Washington Area Law Enforcement System, but I could not find such a list.

<sup>11</sup>Gershowitz, Adam M. "Justice on the Line: Prosecutorial Screening Before Arrest." *William & Mary Law School*. 2019. <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2965&context=facpubs>.

2. Consider comprehensive amendments to the D.C. Code to redefine “dangerous” crime ([D.C. Code § 23-1331\(3\)](#))<sup>12</sup> and “crime of violence” ([D.C. Code § 23-1331\(4\)](#)).<sup>13</sup>
3. D.C. should raise the age of juvenile jurisdiction to 21 and eliminate the waiver of youth into adult court.<sup>14</sup>

## Pretrial Release

1. The Pretrial Service Agency (PSA) should continue to regularly revalidate its Risk Assessment Instrument, paying particular attention to racial biases, and publicly share the process and results.<sup>15</sup>
2. PSA should publicly share the results of its scheduled assessment of supervision protocols, including any changes made to the mode and frequency of reporting conditions to ensure use of the least restrictive conditions to supervise defendants.
3. Codify PSA’s existing policy of prohibiting use of two-way live voice and audio recording capabilities on GPS monitors unless the defendant explicitly consents to the use of the technology and ban audio recordings from GPS monitors from being introduced as evidence in court.
4. Victims should consistently be provided notice of pre-trial release hearings, pursuant to D.C. Code [23-1901](#), and the court should make reasonable efforts to hear the victim during the pre-trial release assessment.

---

<sup>12</sup>“Dangerous crime” is defined as: (A) Any felony offense under [Chapter 45 of Title 22](#) (Weapons) or Unit A of [Chapter 25 of Title 7](#) (Firearms Control); (B) Any felony offense under [Chapter 27 of Title 22](#) (Prostitution, Pandering); (C) Any felony offense under Unit A of [Chapter 9 of Title 48](#) (Controlled Substances); (D) Arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business; (E) Burglary or attempted burglary; (F) Cruelty to children; (G) Robbery or attempted robbery; (H) Sexual abuse in the first degree, or assault with intent to commit first degree sexual abuse; (I) Any felony offense established by the Prohibition Against Human Trafficking Amendment Act of 2010 [[D.C. Law 18-239](#); [§ 22-1831](#) et seq.] or any conspiracy to commit such an offense; or (J) Fleeing from an officer in a motor vehicle (felony).

<sup>13</sup>The term “crime of violence” includes aggravated assault; act of terrorism; arson; assault on a police officer (felony); assault with a dangerous weapon; assault with intent to kill, commit first degree sexual abuse, commit second degree sexual abuse, or commit child sexual abuse; assault with significant bodily injury; assault with intent to commit any other offense; burglary; carjacking; armed carjacking; child sexual abuse; cruelty to children in the first degree; extortion or blackmail accompanied by threats of violence; gang recruitment, participation, or retention by the use or threatened use of force, coercion, or intimidation; kidnapping; malicious disfigurement; manslaughter; manufacture or possession of a weapon of mass destruction; mayhem; murder; robbery; sexual abuse in the first, second, or third degrees; use, dissemination, or detonation of a weapon of mass destruction; or an attempt, solicitation, or conspiracy to commit any of the foregoing offenses.

<sup>14</sup>Vermont recently raised it to 20, legislation is pending or has been suggested to do this in CT, CA, IL and MA

<sup>15</sup>Pretrial Services Agency for the District of Columbia. “PSA’s Risk Assessment Ensures Fair Administration of Pretrial Justice in the District of Columbia.” May 2020.

<https://www.psa.gov/sites/default/files/Pretrial%20Risk%20Assessment%20in%20DC-Status%20Statement-May%202020%20FINAL.pdf>.

5. Prohibit the drug testing of people who have been arrested while in lock-up. Defendants should only be tested after charges have been filed and the defendant has had the opportunity to consult with counsel.
6. Require, by statute, that to impose any condition of pre-trial release (including drug testing and GPS monitoring), a judge must find that the defendant's compliance with that condition will make them less likely to commit a new crime and/or more likely to appear in court.
7. In narrow circumstances where there is a judicial finding that active GPS tracking is necessary to safely release a defendant pre-trial and enforce a stay away order, PSA should actively GPS track supervisees with stay away orders to help ensure victim safety, providing automatic notifications to PSA and the victim if the supervisee enters an "excluded zone." PSA should be funded adequately to ensure active tracking is properly executed when ordered by the court. Estimated cost is \$9,000 per year, per client.
8. Overall, 94% of defendants at D.C. Superior Court are released pre-trial. However, 15% of defendants are initially detained and then later released pre-trial. If this Committee wants to continue to reduce pre-trial detention, it should focus on people who are initially detained and then subsequently released pre-trial. This accounts for more than half of the people initially detained on felony charges and two-thirds of the people initially detained on misdemeanor charges.<sup>16</sup> Potential options for reducing initial pre-trial detention include:
  - a. Amend [D.C. Code § 23-1322\(a.2\)](#) to require a determination that a person "poses a specific risk of violence or harm to a person, or a risk of flight, that no community-based resources may mitigate" instead of "may flee or pose a danger."
  - b. Amend [§ 1322\(e\)](#) to [require](#) that judges expressly weigh evidence presented regarding the effect of detention on the defendant's:
    - i. dependents;
    - ii. parental rights;
    - iii. employment;
    - iv. housing;
    - v. mental health;
    - vi. physical health;
    - vii. public benefits;
    - viii. immigration status; and
    - ix. any other adverse impact that the person's detention will have on the person or the person's community.
  - c. Repeal [D.C. Code § 1322\(c\)](#), which establishes a rebuttable presumption of pretrial incarceration for certain people. Instead, rely on the factors for individual determinations laid out in 1322 a and b.

---

<sup>16</sup>Pretrial Services Agency for the District of Columbia. "FY 2019 Release rates for Pretrial Defendants within Washington, DC." *Pretrial Services Agency*.  
<https://www.psa.gov/sites/default/files/2019%20Release%20Rates%20for%20DC%20Pretrial%20Defendants.pdf>.

- d. Amend [D.C. Code § 23-1323](#), to ensure that the pre-trial detention of people who are believed to be “an addict” is used exclusively to facilitate bed-to-bed transfers from detention to substance use disorder treatment.
- e. Amend [D.C. Code § 23-1329](#), to prohibit prosecution for contempt of court for violation of a condition of pre-trial release, except when that condition is a stay away order. Revocation of release can still be ordered without the prosecution for contempt.

## Case Processing

1. For all problem solving dockets at Superior Court (including Mental Health Community Court, Community Service Deferred Prosecution Agreements (DPA), Community Service Deferred Sentencing Agreements (DSA), Restorative Justice Deferred Sentencing Agreements (Restorative Justice DSA), Redirect Education-Track Deferred Sentencing Agreements (Redirect Education Track DSA) and Redirect Employment-Track Deferred Sentencing Agreements (Redirect Employment-Track DSA), Drug Court, and any future specialty courts):<sup>17</sup>
  - a. Open eligibility to all defendants facing misdemeanor and low-level felony charges. Individual determinations about participation should be retained by the judge, based on consideration of the following factors:
    - i. nature of current charge;
    - ii. history of substance use;
    - iii. mental health diagnosis;
    - iv. need for social service supports;
    - v. criminal record;
    - vi. other active charges or supervised release; and
    - vii. age.
  - b. Requests for assessment for problem solving court participation may be made by USAO, OAG, PSA, the defense attorney, the arresting agency, the judge, the defendant, or a family member.
  - c. Transfer to problem solving docket should be made by deferred prosecution agreement (DPA), with limited exceptions, in which case a deferred sentencing agreements (DSA) or amended sentencing agreements may be used (ASA).
  - d. D.C. Superior Court should set a maximum time for participation in problem solving court at 6 months.
  
3. D.C. Superior Court should create a Young Adult problem solving docket for felony offenders ages 18-25 to participate in a community-based multi-year rehabilitation program, modeled on [San Francisco's](#). After graduating from this program, the young adult's felony will be reduced to a misdemeanor or dismissed.

---

<sup>17</sup>Recommendations based upon: National Center for State Courts. “A Community Court Grows in Brooklyn: Comprehensive Evaluation of the Red Hook Community Justice Center.” November 2013. <https://www.courtinnovation.org/sites/default/files/documents/RH%20Evaluation%20Final%20Report.pdf>.

4. Revise Superior Court rules to institute a standard *Brady* colloquy,<sup>18</sup> where a judge questions “the prosecutor on the record about disclosure obligations,” to strengthen enforcement against Brady violations.
5. Reduce missed court appearances by:
  - a. Allowing defendants to waive their right to appear in misdemeanor court proceedings, except in domestic violence cases, letting an attorney appear in the defendant’s place;<sup>19</sup>
  - b. Redesigning the summons ticket to focus on the defendant’s court date and location and the consequence for not appearing; and
  - c. Creating a text-notification system to send automated reminders to defendants who provide their cell phone number one week, three days, and one day before their court date.<sup>20</sup>
6. D.C. Superior Court should hold [Safe Surrender](#) days at least twice a year.

## Disposition and Sentencing

1. Repeal all statutory and mandatory minimums.
2. Amend laws regarding drug free zones § [48-904.07a](#) to shrink the zone to 30 feet and change the enhancement to increase the severity of the penalty classification for the offense by one class.<sup>21</sup>
3. Amend laws regarding gun free zones § [22-4502.01](#) to shrink the zone to 30 feet and change the enhancement to increase the severity of the penalty classification for the offense by one class.<sup>22</sup>
4. Pass the Racial Equity Receives Real Change (REACH) Act with an amendment requiring D.C. Council to conduct a racial impact analysis, in partnership with a local university, on any future bill impacting arrests, pretrial detention, criminal procedure, sentencing, corrections, all forms of supervision.

---

<sup>18</sup>The Innocence Project. “How to Curb Brady Violations.” *The Innocence Project*. September 14, 2014.

<https://www.innocenceproject.org/how-to-curb-brady-violations/>

<sup>19</sup>California Legislative Information. Penal Code (976-1054.10).

[https://leginfo.ca.gov/faces/codes\\_displayText.xhtml?lawCode=PEN&division=&title=6.&part=2.&chapter=1.&article=](https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=6.&part=2.&chapter=1.&article=)

<sup>20</sup>Fishbane, A., Ouss, A., & Shah, A.K. “Behavioral nudges reduce failure to appear in court.” *Science Mag.* October 8, 2020. <https://science.sciencemag.org/content/early/2020/10/07/science.abb6591>

<sup>21</sup>Wiltz, Teresa. “Why States are Taking a Fresh Look at Drug-Free Zones.” *Pew*. September 15, 2016.

<https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/09/15/why-states-are-taking-a-fresh-look-at-drug-free-zones>

<sup>22</sup>Rather than focusing on sentencing enhancements, focus on creating real safety in and around schools, as detailed in Section 1 of this memo.

## Probation, Parole, and Supervised Release

1. D.C. Council should amend the law governing probation [§24-300](#) to:
  - a. set a maximum probation period of one year<sup>23</sup> for a misdemeanor offense and two years for a felony offense,<sup>24</sup> and
  - b. establish earned discharge credits, which decrease a probation term by 30 days for each month a probationer is compliant with all imposed conditions.<sup>25</sup>
2. D.C. Council should amend the law governing supervised release D.C. Code [§24-403.01](#) to:
  - a. Set a maximum supervised release period of two years;<sup>26</sup> and
  - b. Establish earned discharge credits, which decrease a supervised release term by 30 days for each month a probationer is compliant with all imposed conditions.<sup>27</sup>
3. CSOSA should assess its supervision protocols and institute changes to the mode and frequency of reporting conditions based upon successful alternative supervision methods used during the public health crisis<sup>28</sup> and ensuring use of the least restrictive conditions for supervision.
4. The United States Parole Commission (USPC) should amend [28 CFR 2.218](#) to raise the evidentiary standard at revocation hearings to “clear and convincing.” D.C.’s subsequent paroling authority should also operate using a clear and convincing standard.
5. USPC (and subsequent paroling authority) should permanently adopt its COVID-19 responsive changes, including:
  - a. Absent other compelling circumstances, do not prepare warrants for administrative violations unless the releasee is in loss of contact status or has been non-compliant with sex offender related conditions;

---

<sup>23</sup>California just shortened to 1 year misd. and 2 years for felony: Horowitz, Jake. “California Criminal Justice Reforms Can Safely Shorten Probation, Parole Terms.” *Pew*. October 13, 2020. <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/10/13/california-criminal-justice-reforms-can-safely-shorten-probation-parole-terms>

<sup>24</sup>See model legislation: American Legislative Exchange Council. “Model Policy on Probation Period Limits.” *ALEC*. September 3, 2019. <https://www.alec.org/model-policy/model-policy-on-probation-period-limits/>; examples from other jurisdictions: Wiltz, Teresa. “Doing Less Time: Some States Cut Back on Probation.” *Pew*. April 26, 2017. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/04/26/doing-less-time-some-states-cut-back-on-probation>.

<sup>25</sup>Used in many states including MS: “2014 Mississippi Code Title 47, Chapter 7.” *Justia*. 2014. <https://law.justia.com/codes/mississippi/2014/title-47/chapter-7/probation-and-parole-law/section-47-7-40/> and MO: Missouri Department of Corrections. “Early Discharge/Earned Compliance Credit.” August 28, 2012. <https://doc.mo.gov/divisions/probation-parole/early-discharge>

<sup>26</sup>As recommended by Pew: Pew Charitable Trusts. “Police Reforms Can Strengthen Community Supervision.” *Pew*. April 2020. [https://www.pewtrusts.org/-/media/assets/2020/04/policyreform\\_communitysupervision\\_report\\_final.pdf](https://www.pewtrusts.org/-/media/assets/2020/04/policyreform_communitysupervision_report_final.pdf), (pg. 29).

<sup>27</sup>Used in many states including MS: “2014 Mississippi Code Title 47, Chapter 7.” *Justia*. 2014. <https://law.justia.com/codes/mississippi/2014/title-47/chapter-7/probation-and-parole-law/section-47-7-40/> and MO: Missouri Department of Corrections. “Early Discharge/Earned Compliance Credit.” August 28, 2012. <https://doc.mo.gov/divisions/probation-parole/early-discharge>

<sup>28</sup>Changes outline in email from Cedric Hendricks of CSOSA, May 1

- b. In most cases, do not include/consider criminal charges that have been dismissed, no papered, etc.; and
  - c. For pending criminal charges, await the disposition of the criminal matter prior to initiating revocation proceedings unless the matter is a crime of violence or involved possession of a firearm.
6. For technical violations (unless the releasee is in loss of contact status or has been non-compliant with sex offender related conditions or violation of stay away/protective order) of parole and supervised release:
- a. Use summonses (non-custodial) rather than arrest warrants;
  - b. Use needs based model, connecting supervisees to required resources to prevent violations; and
  - c. Where necessary graduated sanctions, prohibiting revocation of release as a response to the first finding of violation.

## Release from Incarceration

1. Pass the [Second Look Amendment](#) to amend [D.C. Code § 24-403.03](#), but amend to allow for anyone to petition for resentencing who has served at least 10 years in prison and require the court to review sentences of any person who has served at least 20 years.<sup>29</sup> Reasonable efforts must be made to provide accurate and timely notice of hearings and release decisions to victims under [D.C. Code 23-1902](#).
  - a. Councilmember Allen [letter](#) to D.C. Superior court on legislative intent:
  - b. “The circumstances surrounding an original offense are important when considering an IRAA petition in order, for example, to contextualize a petitioner’s rehabilitation and any victims’ statements, but the Council’s intent in passing IRAA was to give foremost consideration to the rehabilitation of individuals sentenced to lengthy terms as juveniles and whether those individuals present a danger to the community upon release. Under IRAA, the Court is not being asked to put itself in the place of the original sentencing judge; the Council made this clear in passing IRAA 2.0, in which we struck language previously in the statute requiring the Court to consider the “nature of the offense” in resentencing.”
2. Good Time & Educational (Earned) Time
  - a. Permanently codify the change to [D.C. Code § 24-221.01c](#), which allows people incarcerated for a misdemeanor to receive more than 10 good time credits per month during the COVID crisis.
  - b. Codify the DOC’s policy changes to Good Time Credits for people serving misdemeanor convictions, including:
    - i. Once Good Time Credits are awarded, they are vested and cannot be forfeited;”<sup>30</sup> and

<sup>29</sup>Congress.gov. “S.2146 - Second Look Act of 2019.” <https://www.congress.gov/bill/116th-congress/senate-bill/2146/text>

<sup>30</sup>District of Columbia Department of Corrections. “Change Notice #19-002 Good Time Credits 4341.1B.” <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/Change%20Notice%2019-002%20>

- ii. Residents are eligible to receive up to 20 Good Time Credits per calendar month.<sup>31</sup>
  - c. Permanently codify the [emergency changes](#) to Good Time Credits for people serving felony sentences.
  - d. Amend [§ 24-221.01](#) so people are eligible for Education Good Time, regardless of date of sentencing.
  - e. Amend [D.C. Code § 24-221.01](#) to increase the number of educational good time credits available (currently only between 3 and 5 days a month).
  - f. Repeal or amend [D.C. Code § 24-221.01b](#), which limits educational and good time credits so that they cannot reduce a minimum sentence of anyone convicted of a crime of violence as defined by § 22-4501, by more than 15%.
- 3. Compassionate Release
  - a. Amend [23-403.04](#) to permanently adopt the provisions created by [D.C. Act 23-328 Coronavirus Support Congressional Review Emergency Amendment Act of 2020](#).
  - b. Add right to counsel.
  - c. Add language to explicitly take into account the special populations identified by this Committee (people with serious health issues, behavioral health issues, or intellectual disabilities, people who have not been charged with a crime against another person, young adults, single parent).
  - d. Amend D.C. 23-403.04(a)(2) to lower the age/time requirement for the petitioner to 55 years of age or older and has served at least 20 years in prison.
  - e. Amend (3)(b)(i) to lower the age/time requirement to 55 years of age or older and has served at least 15 years or the greater of 10 years or 75% of their sentence.
  - f. Amend D.C. 23-403.04(a)(3) to add:
    - i. clause (E), stating “suffers from a chronic or serious medical condition that causes an acute vulnerability to severe medical complications or death as a result of COVID-19,” and remove that language from (a)(3)(b)(iii)
    - ii. clause (F), stating “is a survivor of domestic or intrafamily violence.”
- 4. D.C. Clemency Board should begin processing petitions in early 2021.
- 5. Revise DOC Program Statement [8010.1B](#) governing work release of sentenced misdemeanants to a halfway house:
  - a. Remove the requirement that a person be within 180 days of release to be eligible to participate;
  - b. Reduce the waiting period for participation for a person with a history of escape/abscondence, or the commission of a crime of violence or assaultive behavior to 7 years;
  - c. Add eligibility for people serving felony sentences;
  - d. Require that each eligible DOC resident be screened for participation within 30 days; and

---

[%20GOOD%20TIME%20CREDIT%20-%20003-30-20.pdf](#), (pg. 2), Section 2 “Policy,” Subsection d of Change Notice #19-002 Good Time Credits 4341.1B [shorturl.at/ptO35](#)

<sup>31</sup>Id. at (pg. 3)

- e. also allow a person to be released to home confinement.
6. Pass omnibus criminal record sealing and expungement legislation before the end of the 2019-2020 D.C. Council Period.