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Statement of the Council for Court Excellence  
Before the Committee on Government Operations  
of the Council of the District of Columbia

Budget Oversight Hearing for the  
Executive Office of the Mayor

March 28, 2019

Good morning Chairman Todd and members of the committee. My name is Emily Tatro and I am deputy director of the Council for Court Excellence (CCE). Thank you for the opportunity to testify.

We appear today on behalf of the Council for Court Excellence, 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 37 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.

We are here to offer a narrow, but important, recommendation regarding the Fiscal Year 2020 budget for the Executive Office of the Mayor, and, specifically, the Office of General Counsel (OGC). We encourage the Council and the Mayor to ensure that there is at least one additional full-time employee in OGC that is dedicated to serve as a staff attorney for the District's newly established Clemency Board.

Last year, 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 District’s new Clemency Board will now establish clemency eligibility requirements and applications procedures specific to D.C. Code offenders, review applications for pardons and commutations, and determine which applications to recommend to the President of the United States for clemency. The Board will consider both cases of people who are remorseful and can show they have been rehabilitated and 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 are excited to see that the Mayor’s Office of Talent and Appointments (MOTA) has begun recruiting members to serve on the Board early this year. This is an important first step. However, appointed volunteer members of a newly-established Clemency Board cannot reasonably be expected to do all of the work to formulate the eligibility standards, policies, forms, and begin gathering and reviewing applications, without meaningful and dedicated support from within OGC. Further, 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.

For the Board to make meaningful strides towards reviewing cases and making recommendations to the President in FY2020, the Council must allocate funds for one full-time Clemency Board attorney in OGC. A paid full-time staff attorney is essential, as members will not be serving on the Board full time. This staff member would be able to devote sufficient time to support policy development, work with the Board to develop an application process, create compliant and clear instructions for incarcerated individuals, and assist with gathering application materials and preparing them for Board review.

This model has proven successful in other states, like Delaware, whose board has one full-time staff 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

MOTA considering Board appointments, now is the time to devote modest resources to ensure that the Board can actually begin to function and applications can start being considered.

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.