

2021-2022

OFFICERS

CHAIR OF THE BOARD

Marianela Peralta
Aerotek, Inc.

PRESIDENT

Patrick McGlone
Ullico Inc.

IMMEDIATE PAST PRESIDENT

Irvin B. Nathan
Arnold & Porter LLP (ret.)

VICE PRESIDENT

James H. Hulme
Arent Fox LLP

SECRETARY

John B. (Jay) Kennedy
The Washington Post

TREASURER &
FINANCE COMMITTEE CHAIR

Julia A. Matthews

EXECUTIVE COMMITTEE

Debra R. Beloff
Jones Day

Joshua B. Bernstein
*Bernstein Management
Company*

Abigail Blomstrom
Monumental Sports

Carol Elder Bruce
*Law Office of Carol Elder
Bruce, PLLC*

Kevin A. Chambers
U.S. Department of Justice

Paulette E. Chapman
*Koonz, McKenney, Johnson, &
DePaolis LLP*

David H. Cox
Jackson & Campbell, P.C.

Karen E. Evans
The Cochran Firm

Eric S. Glover

Victor E. Long
Regan Zambri Long PLLC

Benjamin J. Razi
Covington & Burling LLP

Elizabeth A. Scully
BakerHostetler

Natalie S. Walker
Webster & Fredrickson, PLLC

Tami Weerasingha-Cote
Children's Law Center

Cynthia G. Wright

Joanne L. Zimolzak

Lisa B. Zycherman
Davis Wright Tremaine LLP

NOMINATING COMMITTEE
CHAIR

Brian L. Schwalb
Venable LLP

EXECUTIVE DIRECTOR

Misty C. Thomas

Judicial leaders not listed.

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

Public Oversight Roundtable on Conditions of Confinement at the D.C. Jail

Wednesday, November 10, 2021

Good afternoon, Councilmember Allen and members of the Committee.

My name is Emily Tatro, and I am the Deputy Director of the Council for Court Excellence (CCE). CCE is a nonpartisan, nonprofit organization with the mission to enhance justice in the District of Columbia. For nearly 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.

I led CCE's facilitation of the District Task Force on Jails & Justice (Task Force), an independent advisory body, founded in 2019, dedicated to redefining the District's approach to incarceration by building city-wide engagement; centering the voices of those with lived experiences; understanding community priorities; and exploring the use and design of secure detention and community-based solutions. Two years of deep community engagement in partnership with The National Reentry Network for Returning Citizens, focused data analysis, research into evidence-based practices, and deliberations, culminated in the

creation of a ten-year, three-stage plan to transform the D.C. justice system. The Task Force released its [Phase II Report](#) in February 2021, providing 80 recommendations for investment in community safety, lower incarceration rates, and an end to the over-criminalization of Black people in the District.¹ The Task Force's recommendations can, and should, serve as guideposts as D.C. grapples with a decaying facility, safely reducing its incarcerated population, and addressing racial disparities within our criminal legal system.

Today I want to focus specifically on the Task Force's decarceration recommendations. We cannot move forward with building a new non-traditional facility and demolishing our current jails, as the Task Force recommends, without first prioritizing decarceration and safely removing people facing unsafe conditions at the D.C. Jail. The unsanitary and uninhabitable conditions at the D.C. Jail are well and thoroughly documented, and have been for years. In 2015, the Washington Lawyer's Committee for Civil Rights and Urban Affairs and Covington & Burling released a report citing mold growth, water penetration through the walls, leaking plumbing fixtures, and generally deteriorating conditions at the D.C. Jail. This report, written over six years ago, ultimately recommended building a new facility.² Similarly, a 2019 report from the Office of the District of Columbia Auditor on the conditions at the D.C. Jail and found that the D.C. Department of Health repeatedly cited the D.C. Department of Corrections (DOC) for violating industry standards related to environmental conditions, including conditions such as water penetration

¹ See generally District Task Force on Jails and Justice, *Jails & Justice: Our Transformation Starts Today, Phase II Findings and Implementation Plan*, February, 2021, <http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>

² *Washington Lawyers' Committee for Civil Rights & Urban Affairs. D.C. Prisoners: Conditions of Confinement in the District of Columbia*. June 2015. https://www.washlaw.org/pdf/conditions_of_confinement_report.pdf

through the walls³ – an issue the Washington Lawyer’s Committee and Covington report highlighted four years earlier. Mayor Bowser herself saw the need to close D.C. Jail and began planning for a new correctional facility in 2016.⁴ Last week’s U.S. Marshals Service letter to the DOC detailing unsanitary living conditions and punitive denial of food and water shows that little has changed regarding the jail’s conditions.⁵

Of the people booked into DOC custody in 2018 (the most recent detailed data available), 58% exclusively had non-violent charges.⁶ The DOC generally holds people in its jails for one of four reasons: 1) pretrial detention, 2) serving sentences under the D.C. code of less than a year, 3) those holding a person in the custody of another jurisdiction, such as the federal government or neighboring states, and 4) detention by the United States Parole Commission pending a revocation of supervised release or parole, most of whom are only facing technical violations. In 2018, 36% of the average daily population (ADP) at DOC was unsentenced, 14% was sentenced, 16% was held by the USPC, and 34% was held in DOC custody due to a warrant for another jurisdiction or

³ Office of the District of Columbia Auditor. *Poor Conditions Persist at Aging D.C. Jail: New Facility Needed to Mitigate Risks*. February 2019. <https://dcauditor.org/report/poor-conditions-persist-at-aging-d-c-jail-new-facility-needed-to-mitigate-risks/>

⁴ See Request for Qualification Statement Architect/Engineering Services, Dept. of Corrections Architectural Program for New Correctional Facility Solicitation No. DCAM-16-AE-0106 at <https://dgs.dc.gov/sites/default/files/dc/sites/dgs/publication/attachments/DCAM-15-AE-0106%20DOC%20Architectural%20Program.pdf> and Monica Hopkins-Maxwell and Jeremy Mohler, “D.C. wants to build a new jail – but officials aren’t talking about it”, *The Washington Post*, May 4, 2017, <https://www.washingtonpost.com/blogs/all-opinions-are-local/wp/2017/05/04/d-c-wants-to-build-a-new-jail-but-officials-arent-talking-about-it/>.

⁵ Spencer S. Hsu, Emily Davies, Paul Duggan, “D.C. Jail Ordered U.S. Marshals to Leave After Surprise inspections, Judge Says”, *The Washington Post*, November 3, 2021, https://www.washingtonpost.com/local/legal-issues/dc-jail-conditions-inspection/2021/11/03/c75d08ea-3c27-11ec-bfad-8283439871ec_story.html

⁶ Committee on Decarceration of the District Task Force on Jails & Justice. *Report of the Committee on Decarceration to the District Task Force on Jails & Justice*. August 2019. <http://www.courtexcellence.org/uploads/publications/Decarceration.pdf>

in transit to another jurisdiction.⁷ The U.S. Marshals Service investigation, and pending transfer of 400 people from the D.C. Jail, can only impact people who are at DOC but in federal custody, either because they are facing federal charges, because they have already been sentenced to felonies under D.C. law but have not yet transferred to a federal Bureau of Prisons (BOP) facility, or because they have been moved from the BOP back to D.C. for a court hearing. The U.S. Parole Commission has authority over another 16% of the ADP. The District itself has jurisdiction over the remaining half of the population and should implement the Task Force’s decarceration recommendations to safely lower that number.

Specifically, the Task Force makes two dozen recommendations that, if implemented, will cut D.C.’s total incarcerated population by up to one-half by Fiscal Year 2030. D.C. Council and the Mayor can, and should, quickly enact the Task Force’s decarceration measures, as well as those recommended by the D.C. Criminal Code Reform Commission and the Police Reform Commission. Using a year’s worth of DOC data from 2018, the Task Force’s “[Incarcerated Population Project Analysis](#)” estimates that ADP was 1,863 people.⁸ Our analysis found that by no longer holding people for “technical violations” of their parole or supervised release that do not include any new offenses,⁹ the DOC’s ADP would shrink by roughly 141 people. Releasing people held pre-trial on non-violent charges would shrink DOC’s ADP by 27 people; releasing those who are sentenced but incarcerated at DOC for less than 30 days for non-violent offenses

⁷ District Task Force on Jails & Justice. *Jails & Justice: A Framework for Change*. October 2019. Page 18, Figure 2. <http://www.courtexcellence.org/uploads/publications/FrameworkForChange.pdf>

⁸ District Task Force on Jails & Justice. *Future D.C. Incarcerated Population Projection for the District Task Force on Jails & Justice*. November 2020.

http://www.courtexcellence.org/uploads/publications/Future_DC_Incarcerated_Population_Projection.pdf

⁹ The Task Force ultimately made this recommendation with the exception of individuals whose technical violation includes a violating stay away or no contact order connected to a person.

would drop DOC's ADP by 71 people. If the DOC released people with a Substance Use Disorder (SUD) or Serious Mental Illness (SMI) who had only non-violent charges, DOC's ADP would be reduced by 308 people.¹⁰ If citation release were used more often for eligible arrests, DOC's ADP would drop by 219 people. If youth who are under 21 were all prosecuted as juveniles, another 91 people would leave DOC's ADP and move to DYRS instead. If all these policy changes were implemented together, DOC's ADP would drop by 31%, allowing 524 people per day to be safely released from DOC.

The Task Force also recommended amending the requirements to make more DOC residents eligible for work release and increase the number of residents transferred to a halfway house or home confinement. In FY18, DOC spent an average \$241 a day per person incarcerated,¹¹ compared to Fairview, the BOP-contracted halfway house for women, which charged about \$100 per day per person.¹² These changes would also significantly reduce the DOC sentenced population.

Reducing the population at the DOC will not only remove people from the deteriorating conditions at the D.C. Jail, it may also help DOC improve the conditions for those still incarcerated. Decreasing the population at DOC would require less funding to be spent on food, sanitary needs, and healthcare for individuals, freeing up funding in DOC's budget to improve

¹⁰ District Task Force on Jails & Justice. *Future D.C. Incarcerated Population Projection for the District Task Force on Jails & Justice*. November 2020.

http://www.courtexcellence.org/uploads/publications/Future_DC_Incarcerated_Population_Projection.pdf

¹¹ District Task Force on Jails and Justice, *Jails & Justice: Our Transformation Starts Today, Phase II Findings and Implementation Plan*, February, 2021, Page 42.

<http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>

¹² District Task Force on Jails and Justice, *Jails & Justice: Our Transformation Starts Today, Phase II Findings and Implementation Plan*, February, 2021, Page 59-60.

<http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>

services and facilities for remaining residents. However, we must also note that the U.S. Marshals Service pays \$122.28 per day per person for those held in the DOC; when the Marshals transfer 400 people from the D.C. Jail, DOC will lose \$48,912 per day from its budget.¹³ Additionally, DOC is functioning with limited staff capacity. Decreasing DOC's population would increase the corrections officer to incarcerated person ratio and could give DOC the flexibility to enact staffing changes or shifting staffing patterns to address the concerns raised in the U.S. Marshals Service's letter regarding DOC staff treatment of people incarcerated at the jail. While the Task Force ultimately recommends building a new, non-traditional facility, we must still prioritize ensuring that our current facility is as clean, safe, habitable, and dignified as possible for those it houses.

We recommend you consider all recommendations of the Task Force to decarcerate now to help prepare to build a new, non-traditional facility and demolish D.C. Jail as soon as possible. CCE is committed to assisting this effort in any way. This concludes my testimony. Thank you for your time, and I look forward to answering any questions you may have.

¹³ Notes from call with Dept. of Corrections, on file with CCE.