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

Performance Oversight Hearing for the Deputy Mayor for Public Safety and Justice

February 8, 2019

Good morning, Chairman Allen and members of the Committee. My name is Emily Tatro, and I serve as Deputy Director for the Council for Court Excellence (CCE). For the past 37 years, CCE, a nonpartisan, nonprofit, civic organization has identified and proposed justice system solutions by collaborating with diverse stakeholders to conduct research, advance policy, educate the public, and increase civic engagement. As is our practice, no judicial members of the CCE Board of Directors participated in the formulation of this testimony.

CCE wants to start by thanking Deputy Mayor Donahue and his team for their willingness to meet with and engage in dialogue with CCE – demonstrating some willingness to learn from community partners like us, and get our input, as well as a willingness to educate us on their concerns and priorities. Our testimony today addresses five different issues related to the agencies under the auspices of the Office Deputy Mayor for Public Safety and Justice (DMPSJ), and to DMPSJ itself. First, we were grateful for the District's support of D.C. Courts through the most recent federal shutdown. Second, we urge DMPSJ to release information the District has that is crucial to the consideration of a new jail. Third, we present recommendations about the pre-arrest diversion program. Fourth, we recommend moving the Mayor's Office

of Returning Citizens' Affairs to the public safety and justice cluster. Finally, we recommend increased high-level coordination between the deputy mayors and their clusters.

Supporting D.C. Courts' "Non-Essential" Functions

CCE was impressed by the Mayor Bowser's quick response to supporting several of the D.C. Court's so-called "non-essential" functions throughout the most recent federal shutdown in December 2018 and January 2019. We are grateful that the District stepped up to provide marriage licenses during this time and know that problem solving actions around other functions were also being considered – and remain in consideration in light of the risk for an additional shutdown in the coming weeks. One topic of particular concern to CCE is the D.C. Courts' potential inability to administer the February Bar exam and to admit new attorneys to the D.C. Bar during a shutdown. This is of concern to many of the firms and non-profits who are on CCE's Board, but generally to lawyers across town whose work requires them to be licensed to practice. The shutdown hamstringing of the Court of Appeals' admissions functions can also have serious consequences for attorneys currently practicing under waivers, many of whom practice at legal services organizations, and their clients. We encourage DMPSJ to proactively consider what additional functions of our local courts the District may be able to support in the event of a future shutdown.

Release Information to Support New Jail Project

The Central Detention Facility (CDF) has long been in a state of disrepair, and CCE is proud to have received FY2019 funding from the Office of Victim Services and Justice Grants to analyze D.C.'s current jail population, synthesize best practices for planning a new facility, and conduct deep engagement work with all those impacted by our jail system to articulate the community's vision and

priorities for a new facility. CCE is partnering with the Vera Institute of Justice and the National Reentry Network for Returning Citizens to complete this work. Questions to be examined include *who* should be incarcerated at DC's jail, *what* programming should be available to people incarcerated at DC's jail, *how* the facility should be designed to promote the health and safety of everyone who steps foot inside, *where* DC's jail should be located, and *how* to fund the construction of a new facility.

CCE is creating a commission of community stakeholders to provide oversight and guidance for the project, and this commission needs all available information to produce the highest quality findings and recommendations. In May 2016, the Dept. of Corrections (DOC) issued Solicitation No. DCAM-16-AE-0106, Architectural Program for New Correctional Facility, which was awarded by the Dept. of General Services to SORG Architects. Among other things, the final product of this solicitation was required to include preliminary project capital cost estimates, plans for programming and services, and architectural space and security guidelines.¹ CCE requests that DMPSJ release the final report document to the commission so that it can be used to inform their work.

MPD and DBH's Pre-Arrest Diversion Program

Since April 2018, DBH and MPD staff have piloted a pre-arrest diversion (PAD) program that was designed to have two entry points for participants.² First, instead of being arrested on the scene of an incident, people who have mental health conditions or substance use disorders could be diverted to needed services upon becoming a suspect in certain minor crimes. This diversion would be in lieu

¹ <https://dgs.dc.gov/sites/default/files/dc/sites/dgs/publication/attachments/DCAM-15-AE-0106%20DOC%20Architectural%20Program.pdf>.

² <https://dhs.dc.gov/page/dc-pre-arrest-diversion-pilot-program>.

of an arrest, with no arrest, booking, or charges being filed at that point. Second, participants could be connected through a “social referral” where their potential need for support is identified by DBH or MPD outside of the context of an arrest. We are happy to hear that 69 officers have received PAD training so far and is supported by MPD and DBH leadership. CCE understands that 71 people have been enrolled in the program to date and is eager to see reports on PAD’s outcomes. While CCE fully supports MPD and DBH’s efforts to develop the social referral program, we want to emphasize that this effort should complement, not substitute, what we would consider a true pre-arrest diversion program.

In nearly a year of operation, it is our understanding that fewer than 10 people have been actually diverted for treatment in lieu of arrest, as opposed to being referred to the program through a social contact. We understand the pilot is a work in progress, and that the pre-arrest diversion component will continue to be developed with time. We hope this is true. Diversion instead of arrest should be the program’s center, and we are troubled that it seems to have been forced to the periphery and underemphasized as the primary purpose.

We are also concerned that data critical to a robust evaluation of the program is not being collected. To give an example: it is unclear why the number of diversions is so low. Two critical pieces of data could provide a window into what is happening: first, the number of individuals who have been arrested by PAD trained officers who were eligible for diversion but did not receive it, and second, the number of individuals who have been offered diversion, whether they accept it or not. These are both important evaluation questions to ask, especially during a pilot period, and, as best we can tell, neither of these data points are being collected by the Lab, PAD’s outside evaluator, MPD or DBH.

CCE continues to encourage MPD and DBH to facilitate open lines of communication with community stakeholders and get support in helping hone and improve the PAD pilot. While the program's managers have made strides in this direction, critical decisions related to pre-arrest diversion are still being made with no input from the network of social workers, medical professionals, advocates, and justice-involved people who encounter these issues every day. For example, we were informed last month that the program no longer plans to move forward with active outreach to people identified by data systems as being at high risk of future arrest. This decision was made with no community input or comment. Programming designed to foster community trust and engagement requires input from the individuals it seeks to serve. CCE is hopeful that this engagement will continue to grow, and that we will see the success of the PAD program grow with it.

Place MORCA in the Public Safety and Justice Cluster

Since its inception, CCE has actively monitored and evaluated the impact of and resources for the Mayor's Office on Returning Citizen Affairs (MORCA).³ We are invested in the office's success in achieving its mission and setting strategic priorities. As you know, MORCA is not currently under the auspices of the DMPSJ, and is instead situated in the Community Affairs cluster. Re-entry initiatives cannot be effectively implemented if the District's public safety and justice coordinating body does not include the office charged with empowering returning citizens. Especially now that the READY Center is opening, and potentially hundreds of additional people will be referred to MORCA each month, MORCA must have clear lines of communication, strategy, and accountability with DOC and

³ See, Council for Court Excellence, *Beyond Second Chances*, Dec. 2016, <http://www.courtexcellence.org/uploads/File/BSC-FINAL-web.pdf>.

DMPSJ. Thus, CCE recommends that the Executive Office of the Mayor move MORCA to their public safety and justice cluster, alongside D.C.'s other similarly purposed agencies.

High-level Coordination with Other Deputy Mayors and Agency Clusters

Finally, during our 2017-2018 audit of DBH's services for justice-involved consumers,⁴ CCE was disappointed to find that there was little high-level coordination between DMPSJ and the Deputy Mayor for Health and Human Services, particularly related to the District's provision of mental health services for justice-involved people. Such coordination is necessary for the District to fulfill its promise to implement a true public health approach to violence prevention and safety. As we have explained, the current siloing leaves gaps between MPD and DBH in pre-arrest diversion, between MORCA and DOC in reentry, and at many other places along the intercepts of justice-involvement. While we know they each have complex and significant portfolios, the offices of the deputy mayors cannot and should not operate in siloes without well-organized staff collaboration and information sharing.

Conclusion

The public safety and justice cluster has taken many positive steps in the past year, and CCE looks forward to continuing to work with DMPSJ, its cluster agencies, and the Council around all of these important issues. Thank you for your attention today; we are happy to address any questions that you may have.

⁴ See Office of the District of Columbia Auditor, *Improving Mental Health Services and Outcomes for All: The D.C. Department of Behavioral Health and the Justice System*, Feb. 2018, http://www.courtexcellence.org/uploads/publications/ODCA_Report_Audit_of_DBH_2.pdf

