

## Future D.C. Incarcerated Population Projection for the District Task Force on Jails & Justice

*November 13, 2020*

### Introduction

This memo describes CCE's projection of the District of Columbia's correctional population in Fiscal Year 2030 for the District Task Force on Jails & Justice. It identifies a starting incarcerated population number, based on data from the D.C. Department of Corrections (DOC) and the federal Bureau of Prisons (BOP), and then explains how we estimated the ways in which that population might change over the next decade if policies recommended by the Task Force's four committees are implemented. Of course, this is just one prediction based upon a chosen set of assumptions – using different assumptions about the starting population or the impact of various policy decisions will lead to different results. Ultimately, we find that achieving the Task Force's goal of reducing D.C.'s incarcerated population by one-third to one-half by FY30 is possible if the policy changes recommended by the various committees are fully implemented.

### Data

These projections were made using a one-day population snapshot from the BOP, generated on July 4, 2020, and from data generated by DOC covering the whole year of 2018. While we have more recent population counts from each agency, these two datasets were the only ones available to CCE that included enough detail about incarcerated populations to perform this analysis.

The BOP dataset includes 3,221 individuals who are serving sentences for felony offenses under the D.C. Code. This includes every person in BOP custody who is at a BOP prison, a contracted jail or prison, a halfway house, or on home confinement. The BOP's one-day population counts have decreased significantly over the last few years, and even more so since the onset of COVID-19, which has accelerated releases from BOP custody and further decreased the number of people sentenced and entering BOP custody. The BOP's one-day count has been as high as 4,600 D.C. Code offenders in recent years. In April 2020, BOP reported 3,399 D.C. Code offenders, and in October 2020, BOP reported just 2,892 people in custody.

We calculated an average daily population (ADP) of 1,863 individuals at DOC in 2018. This calculation is a best estimate using commitment, release, and trial dates for each person in custody that year. DOC's ADP includes every person incarcerated at the D.C. Jail (Central Detention Facility or CDF) or Correctional Treatment Facility (CTF).

To calculate D.C.'s total starting incarcerated population, we added the individuals in BOP's one-day count to DOC's ADP. We then removed an average of 25 individuals per day who are double counted because they are technically in BOP custody (and therefore BOP's dataset) but are physically housed at DOC (and therefore also represented in DOC's dataset). We identify a starting daily count of 5,059 individuals as D.C.'s total combined incarcerated population.

## **Our Approach**

Our goal in this memo is to estimate how policy changes may influence the size of D.C.'s correctional population by FY30. We are limited in this task by the detail and time-constraints of the available data. Our approach to this challenge has three steps.

First, using the best available data, we identify individuals who may be released by a given policy change. For example, if a policy were to release all individuals being held pre-trial for non-violent offenses, we would create indicators for non-violent offenses and for time spent pre-trial, and then use those indicators to calculate the number of incarcerated days individuals with those characteristics contribute to the starting ADP.

We then repeat that process for as many of the Task Force's policy proposals as possible and identify overlaps between different policies. For example, another policy may call for release to treatment facilities of all individuals with a non-violent offense and an active substance use disorder (SUD) or serious mental illness (SMI). Some individuals would be eligible for release at different parts of their time in DOC both because they had a non-violent offense and were being held pre-trial, and because they had a non-violent offense and had a SUD or SMI. For these overlapping populations, we adjusted our projections so that any day a person is incarcerated is only counted once, even if the individual is eligible for release under multiple potential policies.

Finally, we know that policies such as the ones described above, if implemented, would likely have caveats: it may be that some people charged with only non-violent offenses merit being held pre-trial for reasons that are not clear to us from the data. To account for the discrepancy between policies as they are proposed and policies as they will be implemented, we calculated a range of outcomes. We assume that between 50 and 80% of the projected ADP reductions that we identified will occur. To be clear, this assumption was made to acknowledge the uncertainty of these projections and is not rooted in any empirical fact about actual correctional population changes as a function of policy change. We strongly caution that this is our best effort to acknowledge the uncertainty of this task and to create projections that have wide margins for error.

## **Opportunities for Incarcerated Population Reduction**

Below is a summary of the policies used to create our projections, starting with policies for reducing the population at BOP and moving to policies for reducing the population currently incarcerated at DOC.

### ***BOP Population***

*Parole eligible:* Individuals who will be eligible for parole by the year 2030. This is the only population for which we considered the individuals who would be eligible in 2030 rather than

those who are eligible today. We did this because the indeterminate sentences that lead to parole eligibility have not been used since 2000, so there is a definite set of people who will become parole eligible in the future, all of whom are represented and identified in our dataset.

*Compassionate release:* Emergency coronavirus legislation, effective June 8, 2020, expanded eligibility for the compassionate release of people incarcerated for D.C. Code offenses.<sup>1</sup> Permanent legislation is currently under consideration at D.C. Council and likely to pass before the end of 2020.<sup>2</sup>

For an individual to be eligible for compassionate release, the court must find that they are not a danger to the safety of another person or the community and find evidence of the individual's rehabilitation while incarcerated. We do not have data for this criterion and therefore do not include it in our analysis. If the initial criterion regarding safety and rehabilitation is met, an individual is eligible for compassionate release if they meet one of the three additional criteria.

First, an individual may qualify for compassionate release if they have a terminal illness. Second, an individual may qualify if they are 60+ years old and have served at least 25 years in prison. Third, an individual may qualify if they have a debilitating medical condition involving incurable, progressive illness or they are at least 60 years old, have served at least 20 years in prison or the greater of 10 years or 75% of their sentence, and have a chronic or serious medical condition. We used age, custody date, and a physical health variable for this analysis.

*IRAA 3.0:* The Incarceration Reduction Amendment Act (IRAA) is a D.C. law that allows individuals to petition a judge for resentencing if they committed their offense before their 18<sup>th</sup> birthday and have served at least 15 years of their prison sentence. D.C. Council is considering legislation dubbed "IRAA 3.0." IRAA 3.0 is likely to pass before the end of 2020 and would amend the current eligibility requirements by raising the age to allow individuals who committed crimes before their 25<sup>th</sup> birthday to petition for resentencing. We do not have an "age at time of offense" variable, so we created a proxy by using age at the time an individual was taken into BOP custody and subtracted two years to account for time passed during the arrest, court proceedings and sentencing, and transfer to BOP custody process. We also used the custody date to calculate years served.

*Parole/Supervision Violations:* In the future, people at BOP may no longer serve time for technical violations of their supervision or parole. The Task Force is considering a proposal to only incarcerate individuals who commit certain kinds of technical violations (like violating a stay-away order) and finding alternative solutions to other, less serious, violations. Individuals with less-serious technical violations may be allowed stay in the community. The variable for violations in BOP does not distinguish between technical violations and violations due to new arrests.

*Near Release:* Individuals in the last year of their sentence are eligible for transfer to a halfway house or home confinement. This was calculated using the BOP release date variable.

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<sup>1</sup> <https://code.dccouncil.us/dc/council/acts/23-328.html>

<sup>2</sup> <https://lims.dccouncil.us/Legislation/B23-0127>

## ***DOC Population***

*Short stays, non-violent, unsentenced:* These are individuals who spend less than 30 days in jail for a “non-violent,” “non-dangerous” offense and who are never sentenced or who are sentenced but never spend time in the jail after their sentencing. “Dangerous” and “Violent” are defined in DC Code § 23-1331(3)<sup>3</sup> and DC Code § 23-1331(4)<sup>4</sup> respectively. We used an indicator created by DOC to determine whether a crime was captured by one of the two preceding statutes, which we corroborated using the charging data available in our dataset. Throughout the memo, when we use the phrase “violent” and “dangerous” we are referring specifically to crimes enumerated under DC Code § 23-1331(3) and DC Code § 23-1331(4).

*Short stays, non-violent, short sentences:* These are individuals who spend less than 30 cumulative days in jail pre- and post-sentencing for an offense that was not violent or dangerous.

*Expanded citation release:* Changes were made to MPD’s citation release orders<sup>5</sup> to allow more people to report directly to court without being detained in response to the COVID-19 public health emergency. For the purpose of our analysis these include removing eligibility requirements that required the charge be a misdemeanor, eligibility requirements that stipulate that crimes can be neither violent nor dangerous, nor be violations of parole. There were also many other stipulations that allowed an individual to be held pre-trial, but for which we did not have data and therefore did not conduct analysis.<sup>6</sup>

*Violations with no additional offense:* These are individuals who are being held for “technical violations” of their supervision or parole (violations in which there is no new charge associated with the incarceration other than the violation) and who may not be subject to incarcerations in the future. The Task Force is considering a proposal to only incarcerate individuals who commit certain kinds of technical violations (like violating a stay-away order) and finding alternative solutions to other, less serious, violations that would allow individuals to stay in the community.

*SUD or SMI with non-violent offense:* The Task Force is considering a proposal under which individuals with non-violent charges who have an active SUD or SMI may be transferred to a treatment facility or program rather than be incarcerated. SUD and SMI variables are based on DOC’s internal SUD and SMI indicators. These may undercount the true number of individuals incarcerated who have a SUD or SMI. DOC estimates that between 2 and 9% of their population has a SUD, although external studies such as a survey of returning citizens conducted at the

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<sup>3</sup> <https://code.dccouncil.us/dc/council/code/sections/23-1331.html>

<sup>4</sup> <https://code.dccouncil.us/dc/council/code/sections/23-1331.html>

<sup>5</sup> MPD March 17, 2020 Coronavirus 2019 Modification to Citation Release Criteria (Number EO-20-011)

<sup>6</sup> There are several other criteria which constrain citation releases including that the arrest did not occur on White House Grounds, that MPD cannot identify the individual by name, that the individual cannot conduct a coherent interview, that the individual inaccurately reports information concerning his or her name, that MPD believe that the individual may flee, cause harm, or poses a serious risk to any person or property or is a serious risk of flight, that the individual is currently on release in a pending misdemeanor or felony case, is currently on release in a simple assault, domestic violence, or misdemeanor weapons offense, that the individual was arrested for a traffic offense while on probation for a DUI or reckless driving charge, and that the individual has an outstanding extraditable warrant from another jurisdiction. We do not have information for any of these features of the incarcerations analyzed.

READY Center and an Audit conducted by CCE suggest that around 40% of DOC residents likely have a SUD.<sup>7</sup>

*Under 21:* The Task Force is considering a recommendation to raise the age of juvenile jurisdiction from 18 to 21. If adopted, all incarcerated individuals under the age of 21 would be held at Department of Youth Rehabilitation Services (DYRS) rather than DOC facilities, regardless of offense.

### **Our Findings**

Below, we list the total number of individuals in the BOP and DOC populations who we could identify and who would be affected by each of the policy changes enumerated above. For each policy we provide two numbers. The first number is the raw count of the number of individuals in the population who we could identify as likely to be released under the proposed policy. The second number, bolded and in parentheses, is the marginal contribution of that proposed policy to the total number of individuals released under all policies.

For example, BOP “Parole Eligible” has a raw population reduction of 462 and a marginal contribution of 0. That means that there are 462 individuals in the ADP who could be eligible for release because they may be paroled out of BOP, but all of those individuals are also eligible for release under at least one other policy. Compassionate release has a raw number of 16 and a marginal contribution of 16, which means that none of the 16 individuals who are eligible to be released because of the proposed compassionate release policy would be eligible for release through a different policy.

In BOP, there were 117 individuals who were accounted for by more than one policy and in DOC there were 213 individuals who were accounted for by more than one policy. There was also an average of 25 individuals held under BOP custody who were at a DOC facility; those individuals were accounted for in BOP’s population total.

#### ***BOP Population Reduction***

*Parole Eligible:* 462 **(0)**

*Compassionate Release:* 16 **(16)**

*IRAA 3.0:* 346 **(344)**

*Parole Violations:* 323 **(206)**

*Near Release:* 177 **(62)**

*Total BOP population reduction without overlap:* **745**

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<sup>7</sup> [http://www.courtexcellence.org/uploads/File/SUD\\_Report\\_8\\_25\\_20.pdf](http://www.courtexcellence.org/uploads/File/SUD_Report_8_25_20.pdf)

### ***DOC Population Reduction***

*Non-violent, pretrial: 27 (0)*

*Non-violent, short sentence: 71 (0)*

*Non-violent SUD/SMI: 308 (117)*

*Citation release: 219 (32)*

*Under 21: 91 (72)*

*Violations: 141 (141)*

*Total DOC population reduction without overlap: 584*

### **Summary and Implications**

To put the above figures into the original context for this memo: we set out to create an estimate of the population implications of implementing policies proposed by the Decarceration Committee. We began with a starting correctional population of 5,059 individuals.

Using the figures above we identify a combined population of 1,354 individuals who may be eligible for release from BOP or DOC custody because of one of the policies described above. However, we know that not all individuals who could be released because of those policies will be. To account for that uncertainty, we assume that between 50 and 80% of the individuals who could be released under one of the above policies will be released.

If 80% of the individuals who are cumulatively eligible for release are released, that would result in a population reduction of 1,082 individuals. That would leave D.C. with a combined incarcerated population of 4,001 individuals in FY30. If 50% were to be released that would be a population reduction of 677 individuals. That would leave D.C. with a combined incarcerated population of 4,407 individuals in FY30.

This represents a 13-21% total combined incarcerated population reduction from the quantifiable aspects of the Task Force's proposed policy changes. We believe this reduction can be increased to at least 33% through a combination of:

- Aspects of policy changes proposed by the Task Force that were not quantifiable in our dataset, especially those that should reduce the intake of individuals into incarceration, such as the curtailing of consent searches and stops by MPD and the investment in community-based services;
- Continuing to expand eligibility criteria for release policies like IRAA and compassionate release and adding new avenues for release like the D.C. Clemency Board; and
- Reducing or eliminating the population of incarcerated people that DOC holds for other jurisdictions, which contributed 613 people to the ADP in 2018.