

# The District of Columbia's Criminal Injustice System:

Why Statehood is Imperative

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**Shelley Broderick**

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**★ Statehood  
= Research DC**

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**SRDC is a nonprofit 501(c)3 organization that seeks to educate the public and policymakers about the economic, financial and historical aspects of the movement for DC statehood. It fulfills its research agenda through publication of papers and other materials. It was created by prominent members of the DC business community and is being incubated at the Federal City Council, a nonprofit, nonpartisan business civic organization committed to the improvement of the District of Columbia.**

# About the Author

## Shelley Broderick

Shelley Broderick, Dean Emerita and Joseph L. Rauh Jr., Chair of Social Justice at the University of the District of Columbia David A. Clarke School of Law, served as interim and then Dean for twenty years, stepping down in 2018. Prior to becoming dean, she directed the Criminal Defense Clinic at the Antioch School of Law for ten years representing more than 2,000 individuals charged with crimes in the Superior and District Courts of the District of Columbia. She also co-directed the Legislation Clinic for four years, supervising students working primarily on health and safety, environmental justice and criminal justice legislation with the D.C. Council. She currently teaches State and Local Government Law, First Amendment Demonstration Law, and Professional Responsibility, and she directs the Externship Program.

Dean Broderick chairs the D.C. Task Force on Jails and Justice. This blue-ribbon task force is charged with redefining and reinventing the District of Columbia criminal justice system and ensuring that the jail is one part of a just and equitable system. She serves on the Boards of D.C. Appleaseed and D.C. Vote. Professor Broderick was named to the Norton Federal Law Enforcement Nominating Commission in 2009 and continues to serve. She served four terms on the District of Columbia's Access to Justice Commission. A committed civil libertarian, Professor Broderick is a past president and served on the Board of the American Civil Liberties Union of the Nation's Capital for many years. She continues to serve on the Nominations Committee. Dean Broderick was a founder of and ardent participant in the D.C. Consortium of Legal Services Providers, an organization committed to increasing the quantity, improving the quality, and coordinating the delivery of legal services to low-income D.C. residents. "In recognition of her exemplary legal career dedicated to service in the public interest, in the pursuit of equal justice and opportunity for all Americans," Dean Broderick received the 2020 "Thurgood Marshall Award" from the D.C. Bar. She also received the "Potter Stewart Award" from the Council for Court Excellence in 2018, among other awards.

# I. Introduction

The federal government manages and controls the criminal justice system for just one city in the nation—the District of Columbia. By contrast, state officials, both elected and appointed, manage state criminal justice systems. In doing so, state officials tend to act in accordance with state values and priorities as they are answerable to state residents who vote. DC residents have no vote, and little say in the manner in which the District’s criminal justice system is run.

This federal control results in a host of injustices for DC residents:

- Judicial vacancies abound because Congress fails to prioritize appointments to the District’s local trial and appellate courts;
- As a result of the vacancies, judges throughout the system are overwhelmed with work and cases move far more slowly than they should;<sup>1</sup>
- Federal prosecutors make charging decisions and sentencing recommendations regarding DC Code offenders, yet they are not answerable to DC residents or to their elected officials;<sup>2</sup>
- Judges who make sentencing decisions regarding DC Code offenders aren’t either;<sup>3</sup>
- The Federal Bureau of Prisons houses DC Code offenders in 122 federal facilities in 37 states where they are separated from their families, subject to higher levels of violence, and unable to access programs necessary to secure parole and to successfully reenter society;<sup>4</sup>
- Under federal control, DC residents experience one of the highest incarceration rates in the country, a rate of 911 per 100,000;<sup>5</sup>
- DC residents experience racially disparate treatment throughout the criminal justice system. For example, tragically, 95.7 percent of the DC residents incarcerated in the Bureau of Prisons (BOP) are Black or African American while the DC population overall is 45 percent Black or African American;<sup>6</sup>

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\* Katherine “Shelley” Broderick, Dean Emerita and Joseph L. Rauh, Jr. Chair of Social Justice, University of the District of Columbia David A. Clarke School of Law. The author is grateful to the Federal City Council for its commitment to Statehood Research DC and for actively commissioning research into the negative effects experienced by District residents as a result of not having statehood. The author is also forever grateful to Julian Hunter Pendarvis whose incisive and deft hand at editing is only matched by his footnote wizardry, good humor, and patience. Finally, the author thanks Alan Morrison for his close read, helpful comments, encyclopedic knowledge, and ongoing efforts to move the needle forward on DC democracy. A longer, more comprehensive version of this article can be found at \_\_ UDC L. Rev. \_ entitled, *Statehood: The Bridge to Transforming the District of Columbia’s Criminal Justice System*.

<sup>1</sup> See, Section III, A, *infra*.

<sup>2</sup> See, section IV, *infra*.

<sup>3</sup> See, section III, *infra*.

<sup>4</sup> Bureau of Prisons, *Our Locations*, <https://www.bop.gov/locations/list.jsp> [<https://perma.cc/H88N-NGG6>] (select “Prisons” under Facility Type and select “By State” under Category).

<sup>5</sup> See EMILY WIDRA & TIANA HERRING, STATES OF INCARCERATION: THE GLOBAL CONTEXT 2021, PRISON POLICY INITIATIVE (2021), <https://www.prisonpolicy.org/global/2021.html> (DC would have the eighth worst rate in the nation).

<sup>6</sup> Federal Bureau of Prisons, DC JUST. STAT. ANALYSIS TOOL, <https://www.dcjsat.net/FBOP.html> [<https://perma.cc/49PE-3WZJ>]; U.S. Census, U.S. QuickFacts: District of Columbia, <https://www.census.gov/quickfacts/fact/table/DC/PST045222> [<https://perma.cc/QT7G-GTRR>].

- DC Code offenders must navigate the federal parole system, which is much slower to release and faster to revoke prisoners than the DC Parole board;<sup>7</sup>
- The BOP operates the halfway houses available to DC Code offenders but has not provided one in the District for men since April of 2020,<sup>8</sup> and the women’s halfway house is significantly under capacity and the subject of countless complaints;
- Federal control of clemency has resulted in the grant of just two petitions since the first Bush presidency, a miniscule rate compared to state clemency grants;<sup>9</sup>
- DC residents also experience poor management and service delivery, underfunding, inattentive leadership, and a plethora of other injustices throughout the system.

DC voters long for more local control and have made some incremental progress toward achieving some measures of democracy. In 2010, 76 percent of DC voters approved a referendum requiring an amendment to the Home Rule charter to transform the local attorney general from an appointed to an elected office,<sup>10</sup> and in 2013, 86 percent of DC voters approved another amendment to secure budget autonomy.<sup>11</sup> Most recently, DC voters overwhelmingly—by 86 percent—approved passage of the Washington, DC Statehood Referendum, which included approval of a new state constitution<sup>12</sup> and new boundaries for the District.<sup>13</sup> That constitution will provide DC residents with the rights and responsibilities available to residents of every state in the union, including the ability to secure local control of its criminal justice system. On the same day DC residents approved the new state constitution,<sup>14</sup> President Trump was also elected, and the Democratic party lost control of Congress. Hopes for DC statehood were crushed, at least for the time being.

When the DC Statehood Admission Act<sup>15</sup> is passed, and the constitution for the State of Washington Douglass Commonwealth comes into effect, the District will launch the process of assuming complete local control for the first time over the courts, the prosecution function, and pardons and clemency. The District will also commence the process of regaining local control over the administration of a prison over which it, not the federal government, will have control, and of auxiliary agencies including the Court Services and Offender Supervision Agency (CSOSA), the Pretrial Services Agency (PSA), and the Public Defender Service (PDS).

This article will describe the current political structure governing each of the components of the District’s criminal justice system. Each section will then detail injustices DC residents experience

<sup>7</sup> See, section IV, *infra*.

<sup>8</sup> See, section IV, *infra*.

<sup>9</sup> See, section V, *infra*.

<sup>10</sup> District of Columbia Board of Elections, General Election 2010 - Certified Results, [https://electionresults.dcboe.org/election\\_results/2010-General-Election](https://electionresults.dcboe.org/election_results/2010-General-Election), [https://perma.cc/2ZJC-973Z]; DC Code § 1-204.35.

<sup>11</sup> District of Columbia Board of Elections, Special Election 2013 - Certified Results, [https://electionresults.dcboe.org/election\\_results/2013-Special-Election](https://electionresults.dcboe.org/election_results/2013-Special-Election) [https://perma.cc/LPN9-HPQT]; See Walter A. Smith Jr. & Kevin M. Hilgers, *Laboratory Of Democracy: How the District of Columbia is Using the Home Rule Act to Achieve Elements of Statehood*, 21 U.DC L. REV. 108, 144-120 (2019) (describing the processes and politics involved in these efforts).

<sup>12</sup> DC CONST. art. (as enacted in DC Res. 21-621).

<sup>13</sup> Voters approved the measure by 85.69%. District of Columbia Board of Elections, General Election 2016 - Certified Results, [https://electionresults.dcboe.org/election\\_results/2016-General-Election](https://electionresults.dcboe.org/election_results/2016-General-Election) [https://perma.cc/BYN4-H9AX].

<sup>14</sup> DC CONST. art. (as enacted in DC Res. 21-621).

<sup>15</sup> Washington, DC Admission Act, H.R. 51, 118 Cong. (2023).

resulting from federal control. Finally, each section will review recommendations made by the thoughtful and committed organizations and individuals determined, with local control, to transform the District's criminal justice system into one aligned with DC values and priorities and, as a result, one that is significantly more fair and just. The article will identify structural, legislative, and policy options that are available to the District as it centers DC values in planning for the future. In doing so, this article makes clear why the time for DC Statehood is now.

## ***II. Sources of Governing Authority***

The power to govern the District's criminal justice system stems primarily from four documents: the U.S. Constitution,<sup>16</sup> the District of Columbia Court Reorganization Act of 1970 (Court Reorganization Act),<sup>17</sup> the Home Rule Act (HRA),<sup>18</sup> and the District of Columbia Revitalization Act of 1997 (Revitalization Act).<sup>19</sup> In the U.S. Constitution, Congress retained the power to exercise "exclusive legislation in all cases whatsoever" over the "Seat of Government of the United States."<sup>20</sup> Congress established the District of Columbia as the seat of government after the Constitution was ratified.<sup>21</sup> The HRA, which was enacted in 1973, expressly prohibited the DC Council from exercising any legislative authority over the organization and jurisdiction of the District's courts or the duties or powers of the U.S. Attorney for the District of Columbia.<sup>22</sup> Congress has always retained its authority over the District's courts and prosecutorial functions and, within limits, the power to amend its criminal laws.<sup>23</sup>

## ***III. The Courts***

The District's local judges are appointed by the President of the United States and confirmed by the U.S. Senate. These local appointments are a low priority for the federal actors and long delays in appointments are routine, causing excessive workloads for current judges and significant delays in trials, sentencings, and at other points in the administration of justice.

### **A. The Current Processes for Appointing and Removing Judges**

The Court Reorganization Act established the District of Columbia Court of Appeals and the Superior Court of the District of Columbia pursuant to Article I of the U.S. Constitution.<sup>24</sup> The Court Reorganization Act authorized the President of the United States to nominate, and with the advice and consent of the U.S. Senate to appoint, all judges to the DC Superior Court and to the DC Court of

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<sup>16</sup> U.S. CONST. art. I, § 8, cl. 17.

<sup>17</sup> District of Columbia Court Reform and Criminal Procedure Act of 1970, Pub. L. No. 91-358, 84 Stat. 473 (1970).

<sup>18</sup> District of Columbia Self Government and Governmental Reorganization Act, Pub. L. No. 93-198, 87 Stat. 774 (1973).

<sup>19</sup> National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. No. 105-33, 111 Stat. 712 (1997).

<sup>20</sup> U.S. CONST. art. I, § 8, cl. 17.

<sup>21</sup> The Residence Act of 1790, Pub. L. No. 1-28, 1 Stat. 130 (1790).

<sup>22</sup> Home Rule Act § 602(a)(4), (8), 87 Stat. at 813-814.

<sup>23</sup> Home Rule Act §§ 601, -602(a)(9), 87 Stat. at 813-814.

<sup>24</sup> Court Reorganization Act § 11-101(2), 84 Stat. 475.

Appeals.<sup>25</sup> The HRA established the District of Columbia Judicial Nominations Committee (JNC), which screens, selects, and recommends to the President of the United States three candidates to fill each vacancy for the District's local courts.<sup>26</sup> The Court Reorganization Act also established a Commission on Judicial Disabilities and Tenure (the Commission) with the power to suspend, involuntarily retire, or remove judges.<sup>27</sup> The Home Rule Act refined some provisions of the Court Reorganization Act such that the president appoints one of the five members of the Commission<sup>28</sup> and the Chief Judge of the U.S. District Court for the District of Columbia appoints another member who must be an active or retired federal judge.<sup>29</sup> These two members of the Commission are not answerable to DC residents, and they are in a position to sway critical decisions regarding reappointment, suspension, and removal.

Since the Court Reorganization Act was enacted in 1970, ten presidents have appointed judges to the DC Superior Court and to the DC Court of Appeals. Six of those Presidents serving a combined eight terms were Republican while four of those Presidents serving a combined six terms have been Democratic. The District has long voted overwhelmingly Democratic. In the most recent Presidential election, 92.1 percent of DC voters voted Democratic.<sup>30</sup>

When presidents, and particularly Republican presidents, appoint judges to the District's courts, they are not representing the values and priorities of District residents. Nevertheless, these judges are empowered to make critical decisions in the criminal justice system, sometimes for decades. No other jurisdiction in the country has as little local empowerment and accountability in judicial selections as the District experiences—to the detriment of those enmeshed in the system.

Without local control over DC courts, the local administration of justice suffers. Once the JNC sends candidates for judicial selection to the president, the president selects and forwards the nomination to the Senate Homeland Security and Government Affairs Committee. The Senate Committee is notorious for delaying judicial appointments to the District's courts.<sup>31</sup> As of February 27, 2024, fourteen of the sixty-two D.C. Superior Court seats were vacant, one since 2018.<sup>32</sup> Two of the nine D.C. Court of Appeals seats are

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<sup>25</sup> Court Reorganization Act § 11-1501, 84 Stat. at 491.

<sup>26</sup> Home Rule Act § 434, 87 Stat. at 796-97.

<sup>27</sup> Court Reform Act § 11-1521, 84 Stat. at 473, 492

<sup>28</sup> Home Rule Act § 431(e)(3)(A), 87 Stat. at 793.

<sup>29</sup> *Id.* § 431(e)(3)(E) (Other members are appointed by the Board of Governors of the DC Bar (2), the Mayor (1), and the DC Council (1)).

<sup>30</sup> District of Columbia Board of Elections, General Election 2020 - Certified Results, [https://electionresults.dcboe.org/election\\_results/2020-General-Election](https://electionresults.dcboe.org/election_results/2020-General-Election), [<https://perma.cc/Q6WT-U232>].

<sup>31</sup> Meagan Flynn & Michael Brice-Saddler, *DC pleads for attention from Senate, Biden on big judicial vacancies*, WASH. POST (Nov. 23, 2022, 6:00 AM), <https://www.washingtonpost.com/dc-md-va/2022/11/23/dc-pleads-attention-senate-biden-major-judicial-vacancies/> [<https://perma.cc/J7YA-4WF7>] (In just one recent example, in October, 2022, Senator Gary Peter (D. Mich.) highlighted problems caused by judicial vacancies at a hearing on three candidates. Nevertheless, Senator Rick Scott (R. Fla.) blocked the effort to confirm the candidates by unanimous consent noting that he “had absolutely no faith that Joe Biden’s radical far-left nominees will uphold the rule of law.”)

<sup>32</sup> JUD. NOMINATION COMM’N, D.C. COURTS VACANCIES & NOMINATIONS (2024), [https://jnc.dc.gov/sites/default/files/dc/sites/jnc/page\\_content/attachments/DC Courts Vacancies- Nominations-Website\\_2-27-2024.pdf](https://jnc.dc.gov/sites/default/files/dc/sites/jnc/page_content/attachments/DC%20Courts%20Vacancies-%20Nominations-Website_2-27-2024.pdf) [<https://perma.cc/3XQE-NBU6>].



vacant,<sup>33</sup> and one has been since 2013.<sup>34</sup> In 2022, Court spokesperson Doug Buchanan gave a lengthy statement, in which he acknowledged the “long standing vacancy crisis within the local DC Court system, regardless of which party controls the Senate.”<sup>35</sup> He described the impact, noting that the lack of judicial resources in the Court of Appeals led to delay in 200 cases per year, which in turn led to “aging caseloads, increased workloads on existing judges, and an increase in the average time on Appeal.”<sup>36</sup> With regard to the DC Superior Court, Buchanan concluded: “Without additional judges, this significant increase in our workload is untenable and will adversely impact the Court’s ability to meet basic constitutional requirements of providing speedy trials in cases across the criminal division.”<sup>37</sup> Charles Allen, then Chair of the DC Council Committee on the Judiciary and Public Safety, pointed out that “the vacancies cause delays in justice for perpetrators, victims and survivors,” adding that “some people have been waiting for trial in the DC Jail for longer than they would serve if they were convicted.”<sup>38</sup>

Congresswoman Eleanor Holmes Norton reintroduced the DC Courts Vacancy Reduction Act, on January 24, 2023, which would create a thirty-day congressional review period for local DC judicial nominations. Under the proposed act, if Congress does not object to a nominee within thirty working days, the nominee would be automatically confirmed. Norton’s introductory remarks described the sole purpose of the bill as “protect[ing] public safety and promot[ing] justice by ending the perpetual judicial vacancy crisis in the local DC courts.”<sup>39</sup> The bill was referred to the Committee on Oversight and Accountability and to the Rules Committee, but no further action is expected, as there is no will in Congress to address the District’s judicial selection crisis. The delay and dysfunction continue unabated.

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<sup>33</sup> *Id.*; Press Release, Jud. Nomination Comm’n, Notice of Judicial Vacancy on the District of Columbia Court of Appeals, (Dec. 7, 2023), <https://jnc.dc.gov/release/notice-judicial-vacancy-district-columbia-court-appeals-2> [<https://perma.cc/3XQE-NBU6>]; see generally, Meagan Flynn & Michael Brice-Saddler, *D.C. courts ‘sound the alarm’ on judicial vacancies as local officials demand movement in Senate*, WASH. POST (Jan. 1, 2022, 9:52 AM), <https://www.washingtonpost.com/dc-md-va/2022/01/01/dc-judges-vacancy-senate/> [<https://perma.cc/XW9Z-QML8>]. note Error! Bookmark not defined

<sup>34</sup> JUD. NOMINATION COMM’N, *supra* note 32. Judge Oberly retired from the court on November 1, 2013, and President Obama nominated former DC Solicitor general Todd Kim to the seat in February 2014. The Senate did not schedule a hearing, and the nomination was returned to the White House in December 2014 under the Senate’s rules. President Obama re-nominated Todd in April 2015, but the Senate still did not hold a hearing, and his nomination was returned to the (soon-to-be Trump) White House in January 2017. The nomination sat at the Trump White House for 3.5 years. In June 2020, President Trump nominated John P. Howard III to the Oberly seat in June 2020, but no hearing was conducted before President Trump’s term ended. (Judge Howard has since been nominated and confirmed for a separate seat by President Biden). President Biden withdrew that nomination in early 2021 and nominated another candidate in June 2021. That candidate asked the White House to withdraw her nomination in July 2022. No further nominations have been made for this position. D.C. JUD. NOMINATION COMM’N, DISTRICT OF COLUMBIA JUDICIAL NOMINATION COMMISSION REPORT OF RECOMMENDATIONS AND CHIEF JUDGE DESIGNATIONS AND PRESIDENTIAL APPOINTMENTS TO THE DISTRICT OF COLUMBIA COURT OF APPEALS AND THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA MAY 8, 1975 TO SEPTEMBER 30, 2022 3–4, n.16–17 (2022), [https://jnc.dc.gov/sites/default/files/dc/sites/jnc/publication/attachments/2022%20JNC%20Report%20of%20Recomendations\\_FINAL%20v2.pdf](https://jnc.dc.gov/sites/default/files/dc/sites/jnc/publication/attachments/2022%20JNC%20Report%20of%20Recomendations_FINAL%20v2.pdf) [<https://perma.cc/9YVQ-DM5R>].

<sup>35</sup> Meagan Flynn & Michael Brice-Saddler, *supra*.

<sup>36</sup> *Id.*

<sup>37</sup> Meagan Flynn & Michael Brice-Saddler, *supra*, note 31.

<sup>38</sup> *Id.*

<sup>39</sup> 169 Cong. Rec. E49 (daily ed. Jan. 24, 2023) (statement of Del. Norton).



## B. The DC Courts Under Statehood

The DC Constitution requires that the legislative assembly convene a Constitutional Convention to be held no later than the second anniversary of the date of admission to “assess the functionality of this Constitution in the transition from a federal district to statehood.”<sup>40</sup> The Legislative Assembly will be free to consider appointive or elective methods of judicial selection. With statehood, local judges would therefore be more accountable to DC residents.

Article III of the DC Constitution<sup>41</sup> continues the assisted appointment method of judicial selection now in place at least until the Constitutional Convention two years after Washington, DC is admitted as a state. Under the assisted appointment scheme, local control will be achieved as the governor (now the mayor) will replace the president and the Legislative Assembly (now the DC Council) will replace the U.S. Senate in the process. The DC Constitution continues the JNC, but the Legislative Assembly will be empowered to assure local control and representation as it “provide[s] for the composition, method of selection, and the procedures for the State of Washington DC [JNC] to use in carrying out its duties.” Similarly, the Judicial Disabilities and Tenure Commission will be empowered to reappoint, remove, or sanction a judge and the Legislative Assembly will be empowered to assure local control and representation as it “provide(s) for the composition, method of selection, and procedures that the Commission would use in carrying out its duties.” Federal actors will no longer play any role in the District’s judicial selection and removal processes.

The Legislative Assembly will have an array of additional options to consider as it moves forward to determine the best structures to put in place for Washington, DC. In 2022, DC Appleseed prepared a “Blueprint for Elements of the DC Criminal Justice System After Statehood” for Mayor Muriel Bowser.<sup>42</sup> In the section on the Courts, the Blueprint explores the varied makeup of Judicial Nomination Commissions, which range from six to seventeen members, some with a majority of lawyers. Terms of Service on JNCs range from two to six years and the number of recommendations per vacancy varies from two to seven.

Currently, DC judges serve fifteen-year terms, which is longer than in most states.<sup>43</sup> The 2016 DC Constitution continues the fifteen-year terms both because the system is working and because it assures judicial independence.

The Blueprint notes that applicants for judgeships must be DC residents and must remain so as long as they serve.<sup>44</sup> The Blueprint asserts that a change in that requirement is not justified and points out that as a result of gentrification, the residency requirement may serve to reduce minority applicants.<sup>45</sup> It exhorts elected officials to explore ways to reduce this problem.

## IV. Prosecution

DC Code offenders are prosecuted by federal prosecutors who are not answerable to DC elected officials or voters. As a result, decisions about what charges to bring, what cases to decline to prosecute, and what sentences to seek, are often out of sync with DC values and priorities.

<sup>40</sup> DC CONST. art. VII, § 4(a) (as enacted in DC Res. 21-621).

<sup>41</sup> DC CONST. art. III (as enacted in DC Res. 21-621).

<sup>42</sup> Memorandum from DC Appleseed Center for Law and Justice to Mayor Muriel Bowser (May 24, 2022) (on file with Author) [hereinafter DC Appleseed Blueprint].

<sup>43</sup> Home Rule Ac § 431(c), 87 Stat. at 774, 793.

<sup>44</sup> DC Appleseed Blueprint, *supra* note 42 at 54 (citing DC Code § 1-204.33).

<sup>45</sup> *Id.* at 55.

## A. The United States Attorney

The District of Columbia is the sole jurisdiction in which the United States Attorney Office (USAO) prosecutes violations of the local criminal code in addition to violations of federal law. The DC USAO is the largest office in the United States with more than 330 Assistant U.S. Attorneys and about the same number of support staff. The Superior Court Division is responsible for prosecuting nearly all local non-federal crimes.<sup>46</sup>

The President of the United States appoints and may remove the U.S. Attorney for the District of Columbia.<sup>47</sup> All U.S. Attorneys are required to live in the jurisdiction to which they are appointed, with the exceptions of the District of Columbia (and two others) who may live within twenty miles of their District.<sup>48</sup> Congresswoman Norton introduced legislation in 2021 that would require the DC U.S. Attorney to live in the District of Columbia, noting that “[t]hey should be part of the community they serve and fully understand the unique issues facing District residents, which can only be fully realized by residing in the District.”<sup>49</sup> There is no requirement that the U.S. Attorney for the District of Columbia ever have lived or practiced law in the District prior to appointment, much less share the District’s values and priorities. Local residence is deeply valued by the District as evidenced by DC law requiring senior appointed and elected officials to live in the District.<sup>50</sup>

The mayor, DC Council, and DC residents play no role in the appointment, removal, or oversight of the individual who prosecutes local DC Code offenders. This has had serious negative consequences for the District. In 2022, the USAO declined to prosecute 67 percent of those arrested by police officers who would have been tried in DC Superior Court.<sup>51</sup> By comparison, local prosecutors in Wayne County, which includes Detroit, declined to prosecute 33 percent of its cases last year, while Philadelphia prosecutors declined 4 percent and Cook County, which includes Chicago, declined 14 percent. Matthew Graves, the current DC U.S. Attorney, said cases declined were mostly gun, drug possession, and misdemeanor cases. He cited expenses associated with the need to send forensic evidence to outside laboratories and the decision to pull fifteen prosecutors from DC Superior Court to reassign them to prosecute the January 6th-related federal offenses as reasons for the precipitous drop in prosecutions. By contrast, in 2022, the locally elected DC Attorney General (OAG) declined to prosecute just 26 percent of its far less serious criminal caseload. Local control would likely lead to different prosecution outcomes for the District.

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<sup>46</sup> *Superior Court Division*, United States Attorney’s Office: District of Columbia, <https://www.justice.gov/usao-dc/superior-court-division> [https://perma.cc/RBP5-55EJ].

<sup>47</sup> 28 U.S.C. § 541(a-c).

<sup>48</sup> 28 U.S.C. § 545.

<sup>49</sup> Press Release, Eleanor Holmes Norton, Delegate, House of Representatives, Norton to Introduce Bill to Require U.S. Attorney, Federal Judges and U.S. Marshals Serving DC To Live In DC (June 2, 2021), <https://norton.house.gov/media-center/press-releases/norton-to-introduce-bill-to-require-us-attorney-federal-judges-and-us> [https://perma.cc/J438-TVSV].

<sup>50</sup> DC Code § 1-515.03.

<sup>51</sup> Keith L. Alexander, *DC U.S. attorney declined to prosecute 67% of those arrested. Here’s why.*, WASH. POST (Mar. 29, 2023) <https://www.washingtonpost.com/dc-md-va/2023/03/29/us-attorneys-office-charges-declined-dc-police/#> [https://perma.cc/N36K-QWB2].

## B. The DC Attorney General

The OAG is the chief legal officer of the District of Columbia and is charged with enforcing the laws of the District, providing legal advice to the District's government agencies, and promoting the interests of DC residents.<sup>52</sup> The OAG is elected to a four-year term in a partisan election.<sup>53</sup> In contrast to the presidentially appointed DC U.S. Attorney, candidates for election as OAG must be bona fide residents of the District, and members in good standing with the bar of the District of Columbia for at least five years.<sup>54</sup> In addition, candidates must have been actively engaged, for at least five of the ten years immediately preceding the assumption of the position of OAG, as an attorney in the practice of law in the District, a judge of a court in the District, a professor at a law school in the District, or an attorney employed by the United States or the District of Columbia.<sup>55</sup> The DC Council developed these criteria in order to ensure that its top legal officer has knowledge of, connection to, and experience with the District in order to best serve DC residents.

The OAG has approximately 275 attorneys and 300 professional staff members. The Court Reorganization Act severely limited the District's authority to prosecute adult criminal offenses to a narrow set of misdemeanors.<sup>56</sup> The OAG is the chief juvenile prosecutor for the District. The OAG has ten divisions including the Public Safety Division, which handles Juvenile Law violators and prosecutes select adult misdemeanor cases.<sup>57</sup> All other prosecutions are conducted by the federally appointed DC U.S. Attorney.<sup>58</sup>

## C. The DC Criminal Code

State legislatures enjoy the power to legislate, within the bounds set by the state constitution, in keeping with the values and priorities of the voters in their states. By contrast, Congress retains complete power over the District of Columbia.<sup>59</sup> Congress recently exercised its awesome power over the District when it passed a joint resolution disapproving the DC Criminal Code Revision Act in 2023, which had been approved unanimously by the DC Council. Neither Congress nor the Executive Branch could have interfered with the same legislation if approved by any state. DC voters had no vote and no say.

The new criminal code, a 450-page document sixteen years in the making, is much needed and long overdue. The goal of the reform was to ensure that "that provisions are reviewed and revised together, rather in isolation, to ensure the entire legal framework is clear, complete, consistent, and proportionate."<sup>60</sup>

The absence of a modern criminal code harms DC residents, who continue to be prosecuted for violation of non-federal laws under the outdated and deeply flawed DC Code promulgated by Congress in 1901.

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<sup>52</sup> *What We Do*, Office of the Attorney General for the District of Columbia, <https://oag.dc.gov/about-oag/what-we-do> [https://perma.cc/67QV-FVfV].

<sup>53</sup> DC Code § 204.35(a).

<sup>54</sup> DC Code § 301.83(a)(2-4).

<sup>55</sup> DC Code § 301.83(a)(5)(A-D).

<sup>56</sup> Court Reform Act § 23-101(a-b), 84 Stat. at 604-05; DC Code § 22-1112.

<sup>57</sup> *What we do*, *supra* note 52.

<sup>58</sup> Court Reform Act § 23-101(c), 84 Stat. at 605.

<sup>59</sup> Home Rule Act § 601, 87 Stat. at 813; see also DC Code § 1-206.01

<sup>60</sup> Transmittal Letter from Richard Schmechel, Exec. Dir., D.C. Crim. Code Reform Comm'n, to Muriel Bowser, Mayor & Phil Mendelson, Chairman, Council of D.C. (2021), <https://ccrc.dc.gov/sites/default/files/dc/sites/ccrc/publication/attachments/CCRC-Executive-Director-Transmittal-Letter-to-the-Mayor-and-Council-March-31-2021.pdf> [https://perma.cc/42KK-SUMG].

The current code has been ranked among the worst codes in the country.<sup>61</sup> With statehood, the DC Legislative Assembly would be free to effectuate the will of DC voters and approve a new criminal code along with other legislation related to the local criminal justice system.

## **D. The Prosecution Function After Statehood**

DC Appleaseed's "Blueprint for Elements of the DC Criminal Justice System After Statehood," identifies three options for the prosecution function: (1) assign responsibility for the prosecution of DC Code offenses now handled by the OUSA for DC to the OAG; (2) create a new District agency to handle all criminal prosecution including the minor matters now handled by the Office of the Attorney General (OAG); or (3) create a new DC agency to handle only the prosecution of DC Code offenses now handled by the DC U.S. Attorney and leave the matters now handled by the OAG in place.<sup>62</sup> The Blueprint includes a description of the organizational structures of four cities of similar size and/or racial makeup to the District, each of which has two agencies, one that operates like an Attorney General and another that operates like a District Attorney.<sup>63</sup> Typically, the Attorneys General are appointed and the District Attorneys are elected. By contrast, at the state level, the vast majority of Attorneys General are elected. Just five are appointed at the state level.

Concluding that the separate agency structure works well in the four similar cities reviewed, the Blueprint recommends the hybrid approach, in which the OAG would retain its current juvenile and minor misdemeanor responsibilities and the District would create a new District Attorney agency to assume the current US Attorney responsibilities. According to the Blueprint, this approach would leverage the OAG's existing knowledge and experience, promote stability, and provide the opportunity for enhanced coordination between prosecutorial functions for adults while not overburdening the OAG and subjecting it to more political pressure.<sup>64</sup> The Blueprint recommends that the new District Attorney be an elected position in keeping with the District's "commitment to a robust democracy."<sup>65</sup>

Current DC Attorney General Brian Schwalb strongly supports expanded Home Rule authorities and, eventually statehood, for the District and believes that the OAG is best suited to take on the responsibility of prosecuting all local crime.<sup>66</sup> Mr. Schwalb notes several reasons in support of his approach. First, the Attorney General is an elected prosecutor, accountable and responsive to the community. Second, OAG already is prosecuting juvenile crime and some adult misdemeanors and therefore has the experience, infrastructure, and personnel in place to expand its prosecutorial role. Third, efficiencies would be achieved with one entity handling all criminal and juvenile matters. Fourth, the expense and effort of holding elections for two separate prosecutorial offices is unnecessary. Finally, the OAG Office of the Solicitor General is well suited to expand its capacity to handle criminal appeals.

In fact, AG Schwalb reported that the "[OAG] has the expertise to take on an expanded prosecutorial role ... AG Schwalb sees a clear roadmap for OAG to assume responsibility for prosecution of all local

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<sup>61</sup> Michael Cahill et al., *The Five Worst (and Five Best) American Criminal Codes*, 45 Nw. U.L. Rev. 1, 61 (2000) (ranking the District's criminal code 45 out of 52 (the list included all fifty states, DC, and U.S.C.)).

<sup>62</sup> DC Appleaseed Blueprint, *supra* note 42 at 22-23.

<sup>63</sup> *Id.* at 34 (analyzing Boston, Philadelphia, Denver, and Seattle).

<sup>64</sup> *Id.* at 42-43.

<sup>65</sup> *Id.* at 43.

<sup>66</sup> Telephone Interview with Brian Schwalb, DC Att'y Gen. (June 20, 2023).

criminal cases, beginning with OAG taking over prosecution of misdemeanors, which account for 73.2 percent<sup>67</sup> of all criminal cases brought in the District.<sup>68</sup>

With statehood, the Legislative Assembly will design the structure and jurisdiction of the office. Whichever approach is taken—a newly created office for criminal prosecution, adding additional criminal prosecution authority to the OAG, or a hybrid approach— at long last, local prosecutors would make charging decisions and sentencing recommendations for DC Code offenders. The Legislative Assembly will also have the authority to adopt a modern criminal code that better serves District residents by reflecting the values and priorities of the District.

## V. Clemency

### A. Authority to Grant Clemency

Clemency offers a stark example of the ways in which DC residents receive unjust treatment as a result of not being a state. Presidents have awarded clemency to 1,556 and awarded pardons to 950 federal offenders since November of 1993.<sup>69</sup> Just two DC Code offenders have received any form of clemency, either commutation or pardon, during that twenty-nine-year period.<sup>70</sup> Nation-wide, state-code offenders petition their state clemency board. Family and community advocates can weigh in with the state boards and governors. State clemency boards are accountable to state officials and others who appoint them. Governors are accountable to state residents who elect them. State governors and clemency boards make decisions in keeping with the values and interests of their particular states. The District has never had local control of the clemency process. Historically, clemency in the District, except for a few minor offenses covered by the DC Code,<sup>71</sup> has been governed by the U.S. Constitution,<sup>72</sup> which confers the power to grant reprieves and pardons for all offenses against the United States on the President of the United States. Petitions for clemency for DC Code offenders are sent to the Office of the Pardon Attorney housed in the Department of Justice (DOJ).<sup>73</sup> Neither the president nor the pardon attorney have any direct accountability to the District. The DOJ office otherwise handles only requests for clemency for

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<sup>67</sup> In FY22, USAO presented 3,250 misdemeanor cases and 1,804 felony cases. DEP'T OF JUST., UNITED STATES ATTORNEYS' ANNUAL STATISTICAL REPORT 65 (2022), <https://www.justice.gov/usao/file/1574596/dl?inline> [<https://perma.cc/EQ8T-G5YP>]. According to the OAG, OAG opened 1,678 misdemeanor cases from Jan 1, 2022–Nov. 15, 2022. *Prosecution Data Portal: Cases Disposed*, Office of the Attorney General for the District of Columbia, <https://oag.dc.gov/prosecution-data-portal-cases-disposed-0> [<https://perma.cc/4D5F-R4D3>] (portal data as of Mar. 6 2024 on file with author).

<sup>68</sup> E-mail from Brian Schwalb, DC Att'y Gen., to Shelley Broderick, Professor of L., David A. Clarke School of L. (Sept. 7, 2023, 10:00 EST) (on file with author).

<sup>69</sup> Office of the Pardon Attorney, Clemency Statistics, Dep't of Justice, <https://www.justice.gov/pardon/clemency-statistics> [<https://perma.cc/5FTG-RXAV>].

<sup>70</sup> *Id.* (The second of these was approved by President Biden on April 26, 2022).

<sup>71</sup> DC Code § 1-301.76.

<sup>72</sup> U.S. Const. art. II, § 2; *See also*, Letter from Roger C. Adams, Pardon Attorney, to David A. Guard, Crim. Just. Pol'y Found. (2001) (on file with author) [hereinafter Pardon Attorney Letter] (outlining rationale for Presidential authority over majority of clemency decisions for DC).

<sup>73</sup> *See* Pardon Attorney Letter, *supra* note 72; *see also*, 28 C.F.R. §§ 0.35, 0.36, and 1.1 – 1.11 (outlining clemency procedures).



those convicted of federal offenses. All fifty states manage their own clemency processes for state law offenders.<sup>74</sup> Only the District of Columbia does not.

In 2016, advocacy groups and elected officials began taking steps to try to achieve some local control over the clemency process. The Council for Court Excellence and the Community Justice Project, a clinical program at Georgetown University Law Center, jointly published *Toward Greater Access: A Proposal for A Clemency Solution for DC* in order to “create an effective clemency system for DC” and to “increase local control over DC affairs.”<sup>75</sup> The Council for Court Excellence testified in favor of the Clemency Board Establishment Act of 2018 and worked with the DC Council Committee on the Judiciary and Public Safety to build support for the legislation.<sup>76</sup>

Also in 2016, DC Congresswoman Eleanor Holmes Norton introduced legislation that would have allowed the District to establish law authorizing the grant of clemency,<sup>77</sup> and she wrote to President Obama requesting that he delegate presidential authority to the mayor.<sup>78</sup> However, the Department of Justice concluded that the president’s Article II power to grant clemency was nondelegable.<sup>79</sup>

In 2018, the DC Council approved the Clemency Board Establishment Act,<sup>80</sup> in the hope that positive recommendations from the DC Clemency Board will better engage the attention of the Pardon Attorney who will be more likely to make positive recommendations to the President. At a minimum, the DC Clemency Board will have an opportunity to make recommendations expressing DC values, and those values will be part of the mix considered by the Pardon Authority and the President.

The Clemency Board is composed of nine members. Four Board members are not accountable to elected officials or residents of the District, including two federal employees, the DC Public Defender and the DC U.S. Attorney,<sup>81</sup> and they may potentially sway policy as well as actual clemency decisions. Still, the new legislation, for the first time, provides the District with a modicum of local control, and keeps majority control in local hands. DC Code offenders may now send their applications directly to the DC Clemency Board. The legislation requires the Board to “review each application and determine, within six months after a complete application is received, whether to recommend the application to the President of the United States[.]”<sup>82</sup> After years of delay, the Executive Office of the Mayor “stood up” the new

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<sup>74</sup> See Kathleen (Cookie) Ridolfi & Seth Gordon, *Gubernatorial Clemency Powers: Justice or Mercy?*, Fall 2009 CRIM. JUST. 31 (Surveying all fifty States Clemency power structures, the author’s found that there are three broad categories 1) states with the clemency power vested exclusively in the Governor, 2) states with the clemency power vest exclusively in an executive board, and 3) states with a hybrid system.)

<sup>75</sup> TIM HUETHER ET AL., *TOWARD GREATER ACCESS: A PROPOSAL FOR A CLEMENCY SOLUTION FOR DC*, COUNCIL FOR COURT EXCELLENCE 4 (2016).

<sup>76</sup> *DC’s New Clemency Board*, APRIL 2019 NEWSL. (Council for Ct. Excellence, Washington, DC), Apr. 2019, at 3.

<sup>77</sup> District of Columbia Home Rule Clemency Act, H.R. 4338, 114th Cong. (2016). (The bill was referred to the House Oversight Committee January 6, 2016, where no further action was taken. The bill has been reintroduced in 2017, 2019, 2021, and 2023).

<sup>78</sup> Press Release, Eleanor Holmes Norton, Member, House of Representatives, Norton Asks President Obama to Give Local Clemency Authority to DC Mayor (March 21, 2016), <https://norton.house.gov/media-center/press-releases/norton-asks-presidentobama-to-give-local-clemency-authority-to-dc-mayor>. [<https://perma.cc/HM7W-XEVM>].

<sup>79</sup> Letter from Peter Kadzik, Assistant Att’y Gen., to Congresswoman Eleanor Holmes Norton. (2016) (on file with CCE) (stating the clemency power is a nondelegable Presidential power).

<sup>80</sup> DC Code § 24-481.03.

<sup>81</sup> DC Code § 24-483.04 The statute also designates seven local appointees, five appointed by the mayors as well as the DC Attorney General and the DC Council Chair of the Committee on the Judiciary and Public Safety or their designees.

<sup>82</sup> DC Code § 24-481.03(b)(2); DC Code § 24-481.03(b)(8)(A); DC Code § 24-481.03(a).

DC Clemency Board and in March of 2022, the Clemency Board announced that they were accepting applications from DC Code offenders.<sup>83</sup> The Executive Office of the Mayor (EOM) is working to generate completed applications, but the process is far more arduous than that required by state clemency processes.<sup>84</sup>

When the Board sends recommendations to the President, it must also forward them to the Department of Justice Office of the Pardon Attorney.<sup>85</sup> These recommendations are not applications for clemency, and individuals must still formally request clemency in a whole additional process from the Pardon Attorney.<sup>86</sup>

The EOM has facilitated partnerships to make the process more accessible to potential applicants and their families and to increase the likelihood of success.<sup>87</sup> Elizabeth Oyer, the Federal Pardon Attorney and staff members from her office, along with members of the Clemency Board, EOM staff, the Public Defender Service,<sup>88</sup> and a person who has received a pardon, have participated in four community events in different quadrants of the District.<sup>89</sup> The Clemency Board, the Mayor's Office of Returning Citizen Affairs, and the Mayor's Office of Religious Affairs, plan additional outreach to potential applicants and their families and friends at churches, and with governmental employers of returning citizens, among others. The hope is that the Clemency Board will begin holding its first hearings in 2024.

## **B. Clemency After Statehood**

With the achievement of statehood and implementation of the DC Constitution, the governor will be granted "[t]he plenary power to grant pardons, computations, and reprieves and to remit, forgive or reduce fines and forfeitures, for all offenses against the laws of the State of Washington, DC."<sup>90</sup> The DC Clemency Board, made up entirely of DC residents reflecting DC values, would send recommendations for clemency for DC Code offenders directly to the Governor for consideration.

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<sup>83</sup>Paul Duggan, *Only the president can pardon DC's convicted offenders, but a city panel will begin making recommendations to the White House*, WASH. POST (Mar. 18, 2022 5:56 PM), <https://www.washingtonpost.com/dc-md-va/2022/03/18/dc-prisoners-clemency-board/> [<https://perma.cc/GL7C-PDAF>].

<sup>84</sup>E-mail from Betsy Cavendish, Gen. Counsel, Exec. Off. of the Mayor, to Shelley Broderick, Professor of L., David A. Clarke School of L. (Sept. 18, 2023, 10:30 AM EST) (on file with author) [hereinafter Gen. Counsel Cavendish Email]. One explanation proffered for the lack of completed applications thus far is that the District has progressive policies like "Ban the Box" along with progressive programs for affirmative second chance hiring, training programs like Project Empowerment, and grant money for starting businesses—all of which may make the arduous process of applying for clemency seem unnecessary. *Id.*; see also, DC Code § 24-481.05; DC CLEMENCY Bd., DC CLEMENCY BOARD APPLICATION WITH ROI FORMS 13-26 (2023) (requiring six separate requests for information from various DC and Federal Agencies).

<sup>85</sup>DC Code § 24-481.03(b)(8)(A).

<sup>86</sup>DC Code § 24-481.03(a) (There is established a Clemency Board within the EOM to *review the applications* of individuals convicted of violating District laws or regulations and determine which applicants to *recommend* to the President of the United States for clemency.) (emphasis added).

<sup>87</sup> See Gen. Counsel Cavendish Email, *supra* note 84.

<sup>88</sup> *Id.* (PDS assists potential applicants with related needs including, e.g., straightening out good time credits, applying for medical, geriatric, or general parole, applying for a reduction in minimum sentence, applying for IRRRA "second-look" and compassionate release.) *Id.*

<sup>89</sup> *Id.* (Liz Oyer participates "to let people know that even though the DC process is only for a letter of recommendation, the Federal Pardon Attorney takes the DC process very seriously.")

<sup>90</sup> DC CONST. art. II pt. 2 § 3(k) (as enacted in DC Res. 21-621).



With statehood, the District’s Legislative Assembly may choose to continue with the hybrid process established in the DC Constitution or select another hybrid model, in which the governor shares power with a board (where the governor is a member of the board, the governor may consult with the board, or both).<sup>91</sup> Alternatively, the District may prefer to establish an independent clemency board as the best choice to increase the number of clemency grants. Six states—across the political spectrum—have independent pardon and parole boards which regularly grant a large percentage of pardon petitions.<sup>92</sup> For example, in 2019, Alabama granted 889 pardons, which represented 79 percent of petitions heard.<sup>93</sup> That same year, Connecticut granted 760 full pardons, for an 80 percent overall grant rate.<sup>94</sup>

## **VI. The Impact of the Revitalization Act**

The District nearly went bankrupt as a result of a declining population and lowered tax base, fiscal mismanagement,<sup>95</sup> and the structural deficit Congress baked into the Home Rule Act.<sup>96</sup> With the grant of Home Rule, former federal employees, including local teachers, police, and firefighters, among others, were reclassified as DC employees and the District inherited a \$2 billion unfunded pension liability. That liability grew to \$5 billion over the next twenty years.<sup>97</sup>

In 1997, Congress enacted the Revitalization Act to address the District’s unfunded pension liability, as well as its \$722 million operating deficit and junk bond status that hugely inflated the cost of borrowing for the District.<sup>98</sup> The Revitalization Act significantly impacted the District’s criminal justice system by mandating: the closure of Lorton Prison and the transfer of sentenced felons to the Federal Bureau of Prisons;<sup>99</sup> the transfer of authority for parole matters to the U.S. Parole Commission and the abolition of the DC Board of Parole;<sup>100</sup> the establishment of the Court Services and Offender Supervision Agency (CSOSA), an independent, federal agency within the Executive Branch now responsible for supervising DC residents on pretrial release, probation, and parole; the establishment of the Public Defender Service (PDS) as a federally funded entity; and the establishment of the Truth in Sentencing Commission.<sup>101</sup>

With statehood, the District will be able to raise more revenue to administer each of the components of the criminal justice system, making federal control unnecessary. The District will eliminate the structural

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<sup>91</sup> Margaret Colgate Love, *50-State Comparison: Pardon Policy & Practice*, Restoration of Rights Project, COLLATERAL CONSEQUENCES RES. CTR., <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisoncharacteristics-of-pardon-authorities-2/> [<https://perma.cc/US6C-QW25>].

<sup>92</sup> *Id.* (Alabama, Connecticut, Georgia, Idaho, South Carolina, and Utah).

<sup>93</sup> ALABAMA BUREAU OF PARDONS & PAROLES, FY 2019 ANNUAL REPORT 8 (2019).

<sup>94</sup> CONNECTICUT BOARD OF PARDONS AND PAROLES, DEPARTMENT OF CORRECTION, 2018-2019 DIGEST OF ADMINISTRATIVE REPORT TO THE GOVERNOR 3 (2019).

<sup>95</sup> DC POLICY CENTER, THE DISTRICT OF COLUMBIA’S CRIMINAL JUSTICE SYSTEM UNDER THE REVITALIZATION ACT 1 (2023) [hereinafter CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT].

<sup>96</sup> Home Rule Act § 602(a)(5), 87 Stat. at 813–814 (Prohibiting the taxation of income of non-residents); Yesim Yilmaz, *The Effect of Federal Preemption on the District of Columbia’s Tax Revenue*, STATE TAX NOTES, Jan. 5, 2009 at 31–32 (Finding that preemption of DC’s taxing authority resulted in an estimated \$2.2 billion in lost income taxes and \$540 million in lost property tax value (while noting that the property tax numbers were a “gross underesti[mate]” due to lack of current data)).

<sup>97</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 1; JON BOUKER, BUILDING THE BEST CAPITAL CITY IN THE WORLD: APPENDIX ONE 85 (2008).

<sup>98</sup> BOUKER, *supra* note 97 at 81 (2008).

<sup>99</sup> Revitalization Act § 11201, 111 Stat. at 734–37.

<sup>100</sup> Revitalization Act § 11231, 111 Stat. at 745–46.

<sup>101</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 2.

deficit Congress created with the restrictions imposed in the Home Rule Act. For the first time, the District will be able to tax nonresidents who earn 57.7 percent of total income earned in the District. It will also be able to build buildings higher than approximately ten stories, the maximum height now permitted by the Home Rule Act,<sup>102</sup> providing previously unavailable and highly remunerative development and taxing opportunities for the District.

## **A. Prisons, the DC Jail, and Halfway Houses**

### **I. Prisons**

Because the District no longer has local control of a prison,<sup>103</sup> DC Code offenders who are convicted of felonies are delivered into the custody of the U.S. Bureau of Prisons (BOP), and they are housed in BOP facilities across the country.<sup>104</sup> As of December 31, 2023, 2,183 DC resident prisoners,<sup>105</sup> 95.6 percent of whom are African American,<sup>106</sup> are separated from their families and communities and scattered across the country.<sup>107</sup> DC Congresswoman Eleanor Holmes Norton introduced a bill in 2023 that would require the BOP to place DC Code offenders in facilities within 250 miles of the District, with the goal of helping them “maintain relationships with family and support networks and help them reenter society.”<sup>108</sup> The bill would also require the BOP to provide the District with information so that it can provide necessary and appropriate services to returning citizens.

Much has been written about the injustices faced by DC Code offenders in federal facilities and the poor outcomes they experience.<sup>109</sup> In 2016, the DC Corrections Information Council (CIC)<sup>110</sup> visited Hazleton, a medium-security Federal Correctional Institution located 194 miles from DC—one of the closer facilities to the city. Their report on the visit identified several problems DC inmates said they faced:

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<sup>102</sup> Home Rule Act § 602(a)(6), 87 Stat. at 813.

<sup>103</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 3 (Lorton Prison was under local control when it was built in 1910 and came under the auspices of the DC Department of Corrections beginning in 1946 when the DC DOC was established. The revitalization act “closed the Lorton Correctional Facility and transferred custody over DC Code offenders with sentences that exceed a year to the Bureau of Prisons.

<sup>104</sup> Bureau of Prisons, *Our Locations*, <https://www.bop.gov/locations/list.jsp> [<https://perma.cc/H88N-NGG6>] (select “Prisons” under Facility Type and select “By State” under Category).

<sup>105</sup> *Federal Bureau of Prisons*, DC JUST. STAT. ANALYSIS TOOL, <https://www.dcjsat.net/FBOP.html> [<https://perma.cc/49PE-3WZJ>]; see also Cmty. Supervision Program, Ct. Servs. and Offender Supervision Agency, Cong. Budget Justification Fiscal Year 2024 49 (2023) (sixty-six of the prisoners were female).

<sup>106</sup> See *Federal Bureau of Prisons*, DC JUST. STAT. ANALYSIS TOOL, <https://www.dcjsat.net/FBOP.html> [<https://perma.cc/49PE-3WZJ>] (The racial statistics represent end-of-year population as of 2022)

<sup>107</sup> *Id.*; Bureau of Prisons, *Our Locations*, <https://www.bop.gov/locations/list.jsp> [<https://perma.cc/H88N-NGG6>] (select “Prisons” under Facility Type and select “By State” under Category).

<sup>108</sup> Improving Reentry for District of Columbia Residents in the Bureau of Prisons Act of 2023, H.R. 3339, 118th Cong. (2023) (the bill was referred to the House Judiciary Committee where no action has been taken).

<sup>109</sup> See, Martin Austerhuhle, *DC Inmates Serve Time Hundreds Of Miles From Home. Is It Time To Bring Them Back?*, American University Radio, (Aug. 10, 2017), <https://wamu.org/story/17/08/10/d-c-inmates-serving-time-means-hundreds-miles-home-time-bring-back/> [<https://perma.cc/WQ44-ZYBX>];

<sup>110</sup> *About the DC Corrections Information Council*, DC Corrections Information Council, <https://cic.dc.gov/page/about-cic> [<https://perma.cc/C6Q8-8Y5T>] (“The ... CIC is an independent monitoring body mandated by [ ] Congress and the DC Council to inspect, monitor and report on the conditions of confinement at facilities where DC residents are incarcerated. ... The CIC was established by the Revitalization Act and expanded through the DC Jail Improvement Act of 2003.”); DC Code § 24-101.01.

The majority of DC residents reported that staff treats them worse than other inmates and that other inmates treat DC residents the same. DC residents reported staff harassment due to their DC residency status and that they are more likely to have their visitors turned away. The CIC also received reports that DC residents are discriminated against with regards to employment and recreation. Incarcerated DC residents were nearly unanimous in expressing their desire to move closer to home.<sup>111</sup>

In February of 2022, the DC Public Defender Service filed a federal class action lawsuit<sup>112</sup> against the BOP alleging that the BOP's two-tiered system for calculating criminal history scores is arbitrary, capricious, and contrary to law, in violation of the Administrative Procedures Act and racially discriminatory in violation of the Equal Protection Clause of the Fifth Amendment. The complaint alleges that DC Code offenders are treated unfairly because the system used to calculate their security designations, systematically leads to higher criminal history scores than does the U.S. Sentencing Guidelines system used to calculate security designations for those charged with federal offenses in the District and across the federal system.<sup>113</sup>

According to the complaint, as a direct result of the system applied, DC Code offenders are more likely to serve time in higher security facilities where they are subject to greater violence, have more rigorous constraints on their liberty, less access to programming and work opportunities, less access to religious activities, and they are denied opportunities to seek release to home confinement than might otherwise be available to them. Perhaps most damning, according to the lawsuit, 39 percent of people convicted of DC offenses—95.6 percent of whom are Black—are incarcerated in high-security facilities, compared to 12 percent of the overall BOP population, which is majority white.<sup>114</sup>

In the fall of 2020, the Council for Court Excellence (CCE) obtained and analyzed the point-in-time data acquired from the BOP that describes DC Code offenders incarcerated on July 4, 2020.<sup>115</sup> Several disturbing facts were uncovered. CCE found that very few people nearing release on DC Code offenses had participated in any kind of program, notwithstanding a BOP policy that prioritizes participation

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<sup>111</sup> DC CORR. INFO. COUNCIL, FCI HAZELTON INSPECTION REPORT 2 (2019).

<sup>112</sup> Class Action Complaint for Declaratory and Injunctive Relief, *Blades v. Garland*, Case 1:22-cv-00279 (D.D.C. Feb. 3, 2022) [hereinafter PDS Complaint] As of this writing, the case is stayed pending mediation until April 15, 2024. Minute Order, 1:22-cv-00279 (2024).

<sup>113</sup> *Id.* at 2–3. Specifically, the lawsuit alleges that DC Code § 24-101 requires that individuals “sentenced pursuant to the DC Code \*\*\* shall be subject to any law or regulation applicable to persons committed for violations of laws of the United States \*\*\* and the Bureau of Prisons shall be responsible for [their] custody.” Therefore, security designations for DC Code offenders should be calculated using the same system applied to federal offenders. PDS Complaint, *supra* note 112 at 30.

<sup>114</sup> *Id.* at 3–4.

<sup>115</sup> COUNCIL FOR COURT EXCELLENCE, ANALYSIS OF BOP DATA SNAPSHOT FROM JULY 4, 2020, FOR THE DISTRICT TASK FORCE ON JAILS & JUSTICE (2020). The Council for Court Excellence (CCE) received funding from the Office of Victim Services and Justice grants in January 2019 to “build stakeholder engagement and solicit feedback related to the design and construction of a new correctional facility in the District of Columbia.” CCE partnered with the National Reentry Network for Returning Citizens and the Vera Institute of Justice and created the DC Task Force on Jails & Justice, a twenty-six-member independent blue ribbon advisory Board now in its fourth year of operation. CCE also published the three Task Force reports issued to date, *Jails & Justice: A Framework For Change*, *Jails & Justice: Our Transformation Starts Today*, and *Jails & Justice: Tracking Change*. The author is honored to chair the Task Force.

in programs for people within two years of release.<sup>116</sup> One-third had taken part in the most common program, a drug education program, within two years of release. However, participation in the more intensive behavioral health programming was much more limited, with only 10 percent participating in the BOP's Non-residential Drug Abuse Program and only 2 percent participating in either the Residential Drug Abuse Program or the BOP's Cognitive Behavioral Therapy Program called "Challenge." Especially concerning, only seven of the 1,024 individuals who were returning home from the BOP within the next two years had completed at least one parenting, technology, or vocational education program. The BOP's failure to adequately prepare DC Code offenders for successful re-entry into the community is tragic for the returning citizens, their families, and the community as a whole.

The organization More Than Our Crimes and The Washington Lawyers' Committee published *Voices From Within the Federal Bureau of Prisons: A System Designed to Silence and Dehumanize* in September, 2022.<sup>117</sup> The report describes a parade of horrors within the BOP associated with medical care, mental health, on-the-job training, drug abuse treatment, and education programming. food and daily life, lockdowns, abuse, grievances and retaliation. In addition to providing investigative reports by the Office of the Inspector General and other reports from neutral observers, media coverage, and research studies, the report centers the harrowing accounts by currently incarcerated individuals who speak their truths regarding their nightmarish experiences in the federal BOP. Each of the conditions described applies to facilities and conditions experienced every day by DC Code offenders. The report concludes with a call to action recommending that Congress create an independent body with oversight authority and that the grievance process be mandated to be safe and fair. The answer for DC Code offenders is to remove them from the BOP and bring them home to the District.

## **2. The DC Jail**

An important District priority is to achieve local control over DC Code offenders. The DC Task Force on Jails & Justice conducted extensive community engagement,<sup>118</sup> and developed eighty recommendations and a detailed implementation plan designed to overhaul the District's jails and justice system in three stages over ten years and restore local control over DC Code offenders.<sup>119</sup> Community investments in treatment and housing along with legislative and policy changes are called for that, when implemented, will shrink the number of people incarcerated and the length of time for which they are incarcerated by one-third to one-half over ten years.<sup>120</sup>

The Task Force plan calls for continuing the use of both DC jails, the Correctional Detention Facility (CDF) and the Correctional Treatment Facility (CTF) until FY 2026, while building a new, smaller

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<sup>116</sup> DISTRICT TASK FORCE ON JAILS & JUSTICE, JAILS & JUSTICE: OUR TRANSFORMATION STARTS TODAY 16 (2021) [HEREINAFTER TASK FORCE: PHASE II].

<sup>117</sup> MORE THAN OUR CRIMES, VOICES FROM WITHIN THE FEDERAL BUREAU OF PRISONS: A SYSTEM DESIGNED TO SILENCE AND DEHUMANIZE (2022).

<sup>118</sup> Among other efforts, the Task Force conducted twenty-one stakeholder focus groups with 177 participants, two community-visioning workshops, a town hall meeting at which people testified, and surveyed 1700 individuals during Phase I of Task Force operation. (information on meetings on file with author).

<sup>119</sup> TASK FORCE: PHASE II, *supra* note 116 at 23.

<sup>120</sup> *Id.* at 25-76, 58 (The DC Jail population shrank by 30% during the pandemic. With the passage of emergency legislation, PR25-0341, on July 11, 2023, providing for presumptive pre-trial detention for adults and juveniles charged with many felonies, the jail population has risen by 12.4% from 1341 to 1507). DC DEP'T OF CORR., THE DAILY POPULATION REPORT FROM SEPTEMBER 2ND THROUGH SEPTEMBER 8TH 2023; DC DEP'T OF CORR., THE DAILY POPULATION REPORT FROM JUNE 17TH THROUGH JUNE 23RD 2023.

non-traditional jail correctional treatment facility, the CTF Annex. The Task Force recommended that as soon as space permits, DC Code offenders in BOP facilities should be transferred to DC Department of Corrections (DOC) custody.<sup>121</sup> The Task Force calls for prioritizing the return of prisoners based on a number of factors.<sup>122</sup>

Both of the District's jails are in dire need of replacement, and, in the opinion of the US Marshall Service, the CDF does not meet minimum federal standards.<sup>123</sup> The Task Force proposed a three-stage timeline to replace the current jails with a new main facility and annex, with reliance on BOP ending in FY 2030.<sup>124</sup>

The Task Force described the steps that will be required for the District to move forward on local control, prior to statehood. The Mayor, the DOC, and the BOP would broker an agreement to transfer DC Code offenders to the DOC, and the DC Council would increase the DC budget for this purpose.<sup>125</sup> The DOC and the BOP would have to negotiate the rate to be paid per inmate.<sup>126</sup>

The Blueprint<sup>127</sup> listed three options for local control of DC prisoners, but strongly recommended that the District build a prison in the District,<sup>128</sup> following the three-stage process described by the Task Force for returning BOP prisoners to local control. A recent report from the D.C. Policy Center also recommends the best option for the District is to build a new prison. The report suggests "build[ing] a unified system for the entirety of its incarcerated population—including a state prison, a jail, Correctional Treatment Facility (CTF), and halfway homes" noting that "six other states with populations similar to DC's have such systems." This approach, in the authors' view, would allow the District to "leverage the [DOC] existing budget, existing facilities, and even settle on policies that reduce the number of incarcerated DC residents."<sup>129</sup>

The District is committed to improving conditions for individuals who are incarcerated in DC Jail facilities, which are under local control and doing so with significant input from the community. The Mayor's FY 2024 budget included \$276.5 million for the new CTF Annex.<sup>130</sup> The initial stages of the design process for the CTF Annex is underway,<sup>131</sup> with significant input from the Task Force. The scope of work for the architectural planning consultant, CGL, requires surveys of employees and inmates in the DC Jail and

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<sup>121</sup> *Id.* at 60.

<sup>122</sup> TASK FORCE: PHASE II, *supra* note 116 at 60.

<sup>123</sup> Press Release, U.S. Marshals Serv., Statement by the U.S. Marshals Service Re: Recent Inspection of DC Jail Facilities (Nov. 2, 2021) <https://www.usmarshals.gov/news/press-release/statement-us-marshals-service#:~:text=The%20U.S.%20Marshal's%20inspection%20of%20Central%20Detention%20Facility%20revealed%20that,Federal%20Performance%2DBased%20Detention%20Standards.> [<https://perma.cc/N8W5-EHTF>]

<sup>124</sup> TASK FORCE: PHASE II, *supra* note 116 at 59.

<sup>125</sup> *Id.* at 60

<sup>126</sup> *Id.* (The District has refused to accept the \$80 per day per person rate the BOP pays. DOC spends \$120-\$130 per day per person).

<sup>127</sup> DC Appleseed Blueprint, *supra* note 4

<sup>128</sup> DC Appleseed Blueprint, *supra* note 42 at 7; See also *infra* Calma & Saxin note 129 (reporting only 74 unfilled beds in Maryland).

<sup>129</sup> Emilia Calma & Yesim Saxin, *How much Would it Cost to Build and Maintain a New DC Prison*, DC POLICY CENTER (Mar. 8, 2023), <https://www.dcpolicycenter.org/publications/cost-new-dc-prison/> [<https://perma.cc/Q2E7-SC3Q>].

<sup>130</sup> 5 OFFICE OF BUDGET AND PERFORMANCE MANAGEMENT, GOVERNMENT OF THE DISTRICT OF COLUMBIA, FY 2024-2029 CAPITAL IMPROVEMENT PLAN 105-FL0.

<sup>131</sup> Press Release, DC Dep't of Corr. & Dep't of Gen. Servs., Bowser Administration Announces Selection of Architectural Program Consultant for Correctional Treatment Facility Annex at DC Jail (May 13, 2023) <https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DOCDGSPressReleaseCTFJailAnnex.pdf> [<https://perma.cc/5XB8-NEW6>]



of the advocacy community as well as consultation throughout the process with the Task Force.<sup>132</sup> This approach stands in sharp contrast to the BOP under federal control, which does not seek input from DC officials or residents.

The District has not announced plans for a second correctional facility or to demolish either the CDF or the CTF as recommended by the Task Force. Nevertheless, the CDF is expected to be demolished, which will require the new correctional annex to house the higher security level offenders now housed in the CDF.<sup>133</sup>

### **3. Prisons after Statehood**

With statehood, if not before, BOP custody of sentenced DC Code offenders will end, and the DC Department of Corrections (DOC) will resume authority over them. When DC Code offenders return to the District, they will have more access to family, friends, and religious activities. They will benefit from behavioral health, workforce development, educational and vocational opportunities not available in the BOP facilities where the majority are housed. Research has shown that contact with family while in prison is a predictor of strong job prospects after release and lower recidivism rates.<sup>134</sup> As long as the District budgets appropriately, the DOC (rather than the BOP) custody will have a positive impact on the rates of recidivism and successful reentry.

### **4. Halfway Houses**

The BOP contracts with residential reentry centers to provide reentry services to men and women who are nearing release from custody. The BOP operated a troubled men's halfway house, Hope Village, for forty-two years. The CCE and the CIC raised concerns about Hope Village, including inadequate assistance in job searches and transportation, inadequate drug treatment and medical care,<sup>135</sup> and inadequate grievance and disciplinary procedures.<sup>136</sup> Hope Village was finally closed in 2020 after the Washington Lawyers' Committee filed a federal lawsuit on behalf of inmates who alleged a lack of cleaning supplies and inability to practice social distancing during the pandemic.<sup>137</sup> Nearly four years later, the District still does not have a replacement, and DC residents are sent to halfway houses in other jurisdictions. The BOP awarded a \$63.5 million contract to a new Halfway House provider, Core DC, in

<sup>132</sup> DC DEP'T OF CORR., DCAM-23-CS-RFP-0007, REQUEST FOR PROPOSAL: ARCHITECTURAL PROGRAM CONSULTANT- CORRECTIONAL TREATMENT FACILITY ANNEX 12 (2023).

<sup>133</sup> DOC Director Thomas Faust in a meeting with the author in her capacity as chair of the Task Force, noted that he is committed to ensuring that the new correctional annex provides more programming and services, including mental health services, for this higher security jail population as its needs are greater. He encouraged the Task Force to advocate for funding for this purpose. Director Faust's collaborative efforts are much appreciated by the Task Force. Interview with Thomas Faust, DC Dep't of Corr. Dir. (Aug. 9, 2023).

<sup>134</sup> CHARLES COLSON TASK FORCE ON FEDERAL CORRECTIONS, TRANSFORMING PRISONS, RESTORING LIVES 39-41 (2016).

<sup>135</sup> COUNCIL FOR CT. EXCELLENCE, BEYOND SECOND CHANCES 14-20 (2016).

<sup>136</sup> DC CORR. INFO. COUNCIL, CIC HOPE VILLAGE REPORT 13-36 (2013).

<sup>137</sup> Class Action Complaint for Injunctive and Declaratory Relief and Class Petition for Writs of Habeas Corpus, *Williams v. Fed. Bureau of Prisons*, No. 1:20-cv-890-RC (D.DC Apr. 2, 2020), *dismissed*, Notice of Dismissal of Action Without Prejudice, *Williams v. Fed. Bureau of Prisons*, No. 1:20-cv-890-RC (D.DC Apr. 28, 2020) (case was dismissed without prejudice following BOP actions that rendered the matter moot).

June of 2020.<sup>138</sup> After multiple delays due to wrangling among DC Council members and residents of Wards 5 and 7, the 300 bed Core DC Halfway house is targeting a 2024 opening.<sup>139</sup>

The BOP contracts with Reynolds and Associates, Inc. which has operated Fairview, the District's halfway house for women for twenty-five years. Fairview has a capacity of sixty women, but at the time of the most recent CIC inspection, only twenty were under supervision.<sup>140</sup> The DOJ Office of the Inspector General conducted an audit of the BOP contract with Reynolds to operate Fairview in September, 2018.<sup>141</sup> The audit concluded that the BOP could improve its monitoring of Reynolds' compliance with tracking longstanding repetitive deficiencies, that Reynolds had significant record keeping shortcomings regarding provision of core services (like drug and alcohol testing) such that the company could not document that it fully provided services under the contract. The audit further asserted that Reynolds needed to strengthen its internal controls and provide complete employment information to substantiate the fees collected from those in custody.<sup>142</sup> The Inspector General also recommended that Reynolds document explanations for why eligible inmates were not placed in home confinement.<sup>143</sup>

Successful reentry is less likely to happen when returning citizens are not assigned to a halfway house at all or are assigned to a halfway house in a distant jurisdiction staffed by individuals without knowledge or connection to the District. Failure to make an effective transition leads to potential danger for DC residents. Regaining local control is imperative if the District is to improve outcomes for returning citizens.<sup>144</sup>

## **5. Halfway Houses After Statehood**

With or without statehood, the District needs to do more for returning citizens. The Task Force recommended that the District "increase support for the successful reentry from ... prison and jail by investing in housing, education, training, and employment, behavioral health treatment and social and emotional support, and providing protections in law from discrimination in housing, employment, education and other areas based on criminal record."<sup>145</sup> The Task Force is committed to continuing to advocate for legislative, policy, and budgetary changes needed to achieve better outcomes for DC residents.

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<sup>138</sup> Justin Wm. Moyer, *Halfway house for 300 men will open in Northeast after departure of Hope Village*, WASH. POST (June 8, 2020 6:47 PM) [https://www.washingtonpost.com/local/halfway-house-for-300-men-will-open-in-northeast-after-departure-of-hope-village/2020/06/08/d93aa506-a996-11ea-868b-93d63cd833b2\\_story.html](https://www.washingtonpost.com/local/halfway-house-for-300-men-will-open-in-northeast-after-departure-of-hope-village/2020/06/08/d93aa506-a996-11ea-868b-93d63cd833b2_story.html) [<https://perma.cc/36QM-9UEC>] [Hereinafter *Hope Village Article*].

<sup>139</sup> Reverend Graylan Hagler updated the DC Task Force on Jails & Justice at its meeting, Sept. 7, 2023, (Additional delays were caused by excess water which must be pumped. The modular components for the building are being manufactured in Pennsylvania, and will be trucked to DC when the foundation is completed).

<sup>140</sup> *Id.* at 7 ("At the time of the inspection, there were 20 residents under Fairview supervision, 16 of whom were living at the facility (15 BOP and one DOC) and four of whom were on home confinement.").

<sup>141</sup> U.S. DEP'T OF JUST., OFF. OF THE INSPECTOR GEN., AUDIT OF THE FEDERAL BUREAU OF PRISONS' RESIDENTIAL REENTRY CENTER CONTRACTS AWARDED TO REYNOLDS & ASSOCIATES, INC., WASHINGTON, DC, <https://www.oversight.gov/sites/default/files/oig-reports/a1830.pdf> [<https://perma.cc/EW47-3VAE>] (2018).

<sup>142</sup> *Id.* at 28.

<sup>143</sup> *Id.* at 29.

<sup>144</sup> From September 2021–August 2022 (the most recent data available) an average of 105 DC Residents were in a BOP Residential Reentry Center or Community Placement. See, *Federal Bureau of Prisons*, DC JUST. STAT. ANALYSIS TOOL, <https://www.dcjsat.net/FBOP.html> [<https://perma.cc/49PE-3WZJ>]

<sup>145</sup> DISTRICT TASK FORCE ON JAILS & JUSTICE, JAILS & JUSTICE: A FRAMEWORK FOR CHANGE 43(2019) [HEREINAFTER TASK FORCE: PHASE I].



When the District has statehood, it will control its own halfway houses and operate them in a manner consistent with DC goals and values. The District should immediately reverse the policy currently employed by the BOP that authorizes halfway houses to take “subsistence payments,” in the amount of 25 percent of resident’s gross wages and funds from Veterans Assistance, Worker’s Compensation, Social Security, retirement income, and income from the sale of property as a means to “promote financial responsibility.”<sup>146</sup> This practice results in preventing reentering citizens from “saving for rent, paying child support, and paying fees and fines.”<sup>147</sup> Halfway houses are permitted to charge subsistence payments even when they are supervising individuals living in home confinement. CCE suggested that “putting 25 percent of resident’s wages into savings accounts to be used by the resident upon completing the RRC term would better support successful reentry.”<sup>148</sup>

Under statehood, DC Department of General Services will manage leases and local elected officials and agency staff familiar with the needs of returning citizens will have the authority to determine the locations selected, the most appropriate size for the facilities, and the services and programming to be offered. Returnees will have improved access to local job training and educational, vocational, and workforce development opportunities. Returning citizens need assistance with the transition back to the community in which they will live and work, attend vocational school or pursue an academic route, secure substance abuse, health, and mental health treatment, and most importantly connect with family, friends, and faith-based options. Never again will returning citizens be sent to other jurisdictions. Families and friends will be close by and more readily able to offer the love and support that are so important to successful reentry and reduced recidivism.

## **B. Post-Incarceration Supervision of DC Code Offenders**

### ***1. The U.S. Parole Commission (USPC)***

In 2000, after the Revitalization Act came into effect, the USPC assumed authority over all decisions regarding the release of incarcerated DC Code offenders. The Truth in Sentencing Commission,<sup>149</sup> also created by the Revitalization Act, was directed to develop recommendations to the DC Council on amendments to the DC Code with respect to sentences to be imposed for felonies committed on or after August 5, 2000. As a result of their efforts, two separate systems now govern the release of DC Code offenders after imprisonment.<sup>150</sup> Those who were convicted prior to the implementation of the Revitalization Act were given indeterminate sentences, for example, of ten to thirty years. They must serve at least the minimum period, in this example ten years, and are then parole eligible for the remaining twenty years of their sentence under the authority of the USPC. Congress was explicit, however, in requiring that the USPC “shall” exercise its authority “pursuant to the parole laws and regulations of the District of Columbia” as opposed to the federal parole laws.<sup>151</sup>

<sup>146</sup> BUREAU OF PRISONS, STATEMENT OF WORK RESIDENTIAL REENTRY CENTER 61–63 (REV 07 2016).

<sup>147</sup> BEYOND SECOND CHANCES, *supra* note 135 at 15.

<sup>148</sup> *Id.* at 16.

<sup>149</sup> Revitalization Act § 11211, 111 Stat. at 740–41.

<sup>150</sup> JUST. POL’Y INST., RESTORING LOCAL CONTROL OF PAROLE TO THE DISTRICT OF COLUMBIA 6 (2019) [Hereinafter RESTORING LOCAL CONTROL OF PAROLE].

<sup>151</sup> DC Code § 24-131(c); Revitalization Act § 11231, 111 Stat. at 745.

DC Code offenders convicted after August 5, 2000, are subject to the Truth in Sentencing guidelines.<sup>152</sup> They receive determinate sentences and may also be sentenced to a period of supervised release, for example, with thirty years incarceration plus five years of supervised release. They must serve a minimum of 85 percent of their sentence and may earn up to a maximum of 15 percent off their sentence for participating in academic or other programming and earning good time credits.<sup>153</sup>

USPC's 2000 Parole Guidelines were put in place to govern those with determinate sentences. For the most part, the two regulatory regimes are the same with regard to the procedures for revocation, fact finding, and sentencing guidelines.<sup>154</sup> The two systems produce notably different outcomes, however, as the USPC system employs different definitions of program achievement and negative institutional behavior, a different scoring system that gave more weight to the type of offense, and it added language that affords additional discretion in some parole decisions.<sup>155</sup>

DC Code offenders fared much better when the locally appointed DC Parole Board made decisions regarding release on parole. According to the D.C. Policy Center, parole was granted to 77 percent of DC Code offenders within one year of their initial eligibility, under the prior regime.<sup>156</sup> The D.C. Policy Center notes that release decisions and length of sentences served data is not made available.<sup>157</sup> However, the District Court, in *Sellmon v. Riley*,<sup>158</sup> found that the 2000 USPC Guidelines could “substantially increase the risk [of serving] additional time.” Data analysis conducted by the Government Accountability Office revealed that only 53 percent of D.C. Code offenders eligible for parole between 2002 and 2014 had been granted parole.<sup>159</sup> The rate of release is much lower in part because application of the USPC Guidelines results in much higher criminal history scores, which in turn results in DC Code offenders being assigned to much higher security facilities where they are much less likely to find programming required to secure a favorable score on the “program achievement” measure. These facilities also have a higher incidence of violence,<sup>160</sup> Another factor impacting the lower rate of release is the lower frequency of parole hearings. USPC conducts hearings every three to five years rather than annually,<sup>161</sup>

JPI's 2019 report *Restoring Local Control of Parole to the District of Columbia* described challenges and concerns raised by attorneys, stakeholders who work on DC parole applications with the USPC, justice involved individuals, and their families.<sup>162</sup> It concluded that “the USPC systematically denies parole based on the severity of an individual's original offense, rather than on evidence of a person's progress toward rehabilitation ... This approach imposes the USPC as a sort of re-sentencing court, usurping control

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<sup>152</sup> Revitalization Act § 11211, 111 Stat. at 740–41.

<sup>153</sup> 18 U.S.C. § 3624.

<sup>154</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 26.

<sup>155</sup> *Id.*

<sup>156</sup> *Id.* at 25 (forty percent at the initial hearing and an additional 61.4% at the first rehearing).

<sup>157</sup> *Id.* at 24

<sup>158</sup> *Sellmon v. Riley*, 551 F. Supp. 2d 66, 92 (D.D.C. 2008); see also Sophia Browning, Note, *Three Ring Circus: How Three Iterations of DC Parole Policy Have up to Tripled the Intended Sentence for DC Code Offenders*, 14 GEO. J.L. PUB. POLICY 577, 594.

<sup>159</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note at 95 at 26

<sup>160</sup> Browning, *supra* note 158 at 585-91.

<sup>161</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 26.

<sup>162</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 30 n.74.

over sentencing from the sentencing judge and substituting its own judgment about how much time a prisoner should serve.”<sup>163</sup>

A panoply of additional concerns were raised, including: poor communication between the BOP and the USPC with parole applicants regarding parole eligibility, notification, and scheduling; the need for attorneys to file FOIA requests to receive critical relevant information from BOP and USPC in preparation for parole hearings; lost documents; extensive unnecessary delays; refusal to allow more than one representative such that witnesses, family and supporters are not permitted; rejection of positive parole recommendations by hearing examiners based on the nature of the offense; insufficient guidance on how to mitigate factors that led to denial; and recommendations for programs either unavailable at the prison where the inmate is housed or no longer available at all.<sup>164</sup>

The USPC employs only two commissioners<sup>165</sup> who are appointed by the President and confirmed by the Senate. The USPC caseload is dwindling after the abolition of federal parole in 1984.<sup>166</sup> In fact, the USPC was set to be shuttered in the 2000s but gained new life when DC Code offenders came under its jurisdiction.<sup>167</sup> Today, DC Code offenders comprise 86 percent of the USPC caseload, or 5,141, of which 1,275 (21 percent) are DC parolees and 3,866 (65 percent) are on supervised release.<sup>168</sup> Local elected officials have no say in determining who will be appointed to manage the release and supervision of DC Code offenders. The commissioners are not required to live in the District or to reflect DC values or priorities in their decision making.

DC Code offenders experience over-incarceration under federal control. The JPI Report criticizes both the USPC’s imposition of unusually long periods of incarceration and its parole revocation record, calling the USPC’s approach “out of step with practices now used in many other jurisdictions.”<sup>169</sup> The USPC has also been criticized for not providing notice to those on parole of their right to request early termination, which has led to individuals staying on parole for longer periods than are necessary.<sup>170</sup> The USPC is required to review each case after two years to determine whether the supervisee has demonstrated conduct consistent with early termination of parole. If early termination is denied, the supervisee has a presumption of termination at five years barring evidence of future criminal behavior. The JPI Report noted complaints of individuals continuing on parole beyond five years despite no evidence of future criminal conduct.

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<sup>163</sup> *Id.* at 31, 34 (quoting Philip Fornaci, Washington Lawyers’ Committee for Civil Rights and Urban Affairs); *See also*, Scott Rodd, *DC’s Broken Parole System*, WASH. CITY PAPER, <https://washingtoncitypaper.com/article/194525/dcs-broken-parole-system/> (Sept. 30, 2016)

<sup>164</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 at 31–33.

<sup>165</sup> An Acting Chair, Patricia Cushwa, a former member of the Maryland Parole Board for twelve years and Charles Massarone, a former police officer who later served for three years as a member of the Kentucky Parole Board; U.S. Parole Comm’n, *Acting Chairman, U.S. Parole Commission Patricia K. Cushwa*, <https://www.justice.gov/uspc/staff-profile/patricia-k-cushwa>

<sup>166</sup> Sentencing Reform Act of 1984, Pub. L. No. 98-473, 98 Stat. 1987 (1984).

<sup>167</sup> *See*, Pub. L. 118–42, div. G, title III, §302(b), Mar. 9, 2024, 138 Stat. 451, (extending the period from 36 years and 129 days to 36 years and 335 days, through October 1, 2024.)

<sup>168</sup> DEP’T OF JUSTICE, FY2023 PERFORMANCE BUDGET USPC 13 (2022).

<sup>169</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 at 34.

<sup>170</sup> *Id.* at 35

The JPI Report finds USPC revocations for technical violations particularly troubling, noting that typical sentences for technical violations are twelve to sixteen months. Unlike the District under the USPC, many states have set revocation caps substantially limiting prison time for parole violations. The JPI Report raises the concern that revocation decisions are made pursuant to policy positions set by two parole commissioners who have “no connection to the DC community or government and may be out-of-step with local priorities and national trends.” The USPC has been criticized for a practice of sometimes revoking parole or supervised release leading to incarceration after a finding of probable cause on a new arrest, using a preponderance of the evidence standard, even when the person under supervision is found not guilty or when the case is dismissed before trial.<sup>171</sup> By contrast, DC Superior Court judges normally revoke probation only after a finding of guilt on a new arrest.<sup>172</sup>

## **2. Court Services and Offender Supervision Agency (CSOSA)**

### **a. Release on Parole, Supervised Release, and Probation**

The USPC has jurisdiction over the Court Services and Offender Supervision Agency (CSOSA), which, through its Community Supervision Program (CSP), determines whether and when to grant parole to those who are eligible, enforces parole conditions, and may revoke parole after violations. The USPC, through CSOSA’s CSP, also determines conditions of release and revocation for those sentenced to supervised release under the Truth in Sentencing guidelines.<sup>173</sup> CSOSA’s CSP supervises adults released by the Superior Court of the District of Columbia on probation.<sup>174</sup> Finally, the CSP develops and provides the court and the USPC with information for sentencing determinations, supervision conditions, and offender compliance.

The President of the United States appoints the Director of CSOSA who then must be confirmed by the U.S. Senate. The Director, charged with overseeing thousands of DC Code offenders, is not accountable to elected officials or to DC residents. Neither the Director nor the Director of the PSA are required to live in the District. DC Congresswoman Eleanor Holmes Norton introduced legislation in 2023 that would require the Directors of both CSOSA and PSA to live in the District, noting that the primary reason that residency laws exist is so that “government officials have a connection to the residents they serve, and in-depth knowledge of the unique issues and challenges faced by residents.”<sup>175</sup>

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<sup>171</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 at 30, 34.

<sup>172</sup> Memorandum from proponents of the Superior Ct. of the DC Paroling Authority Model to the Council of Ct. Excellence Task Force on Jails & Justice 3 (2020) [hereinafter Superior Ct. Memorandum] (on file with author).

<sup>173</sup> PUB. DEF. SERV. FOR DC, CRIM. PRAC. INST. MANUAL § 12.1 (2015).

<sup>174</sup> CT. SERVS. AND OFFENDER SUPERVISION AGENCY, CONG. BUDGET JUSTIFICATION FY2024 3 (2023) [hereinafter CSOSA FY2024 BUDGET]. CSP monitored or supervised approximately 6,550 adults on any given day and 9,963 different persons over the course of the fiscal year. During FY 2022, 4,151 persons entered CSOSA supervision: 3,614 individuals were ordered to CSOSA supervision by the Superior Court of the District of Columbia and 537 offenders released from incarceration in a Federal BOP facility on parole or supervised release. *Id.* All told in FY 2022, CSOSA supervised 663 parolees and 1,517 people on supervised release. CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 4.

<sup>175</sup> Press Release, Eleanor Holmes Norton, Member, House of Representatives, Norton Introduces Bill to Require Federal Officials in Charge of DC Supervision Agencies to Reside in DC (July 17, 2023), <https://norton.house.gov/media/press-releases/norton-introduces-bill-require-federal-officials-charge-dc-supervision> [<https://perma.cc/3ZTS-5U6H>] [hereinafter Norton Supervision Press Release] (The bill was previously introduced in 2018, 2019, and 2022).

CSOSA assumed the adult probation function from the Superior Court for the District of Columbia, and the parole function from the DC Board of Parole. The DC Parole Board based its decisions regarding DC Code offenders with indeterminate sentences on the 1987 Regulations, along with the 1991 Guidelines (which were adopted to ensure uniform application of the 1987 Regulations).<sup>176</sup> CSOSA is legally required to apply that system for DC Code offenders with indeterminate sentences.<sup>177</sup>

The current parole system in the District is broken. According to the D.C. Policy Center, “[O]ur “parole system [...] is not transparent” with “surprisingly little public information on the outcomes of parole hearings and whether USPC makes timely decisions to reduce the amount of time served after eligibility for parole or supervision.”<sup>178</sup> Under statehood, local elected officials will appoint DC residents, with stakes in the community, to the leadership of agencies charged with making incarceration and release decisions for DC Code offenders.

### ***b. Revocation***

In 2022, CSOSA initiated revocation proceedings by filing 3,315 Alleged Violation Reports (AVR).<sup>179</sup> Thirty-two (11 percent) of revocations were for purely technical violations<sup>180</sup> and 77 percent of the revocations were based a combination of new arrest and technical violations.<sup>181</sup>

In 2022, 285 individuals successfully completed parole, 859 successfully completed supervised release, and 2,890 successfully completed probation.<sup>182</sup> “DC Code offenders under probation typically remain under CSP supervision for nearly two years, DC Code offenders under parole for twelve to eighteen years, and those under supervised release for typically longer than three years.”<sup>183</sup>

### ***3. Pretrial Services Agency (PSA)***

The Pretrial services Agency (PSA) became an independent entity within CSOSA with its own budget and organizational structure per the Revitalization Act. PSA makes pretrial release recommendations to the courts regarding those who are arrested in the District. PSA also provides, for those who are released, supervision and coordinated services, including treatment needs assessment, drug court for misdemeanants and non-violent felonies, and special services for defendants with mental health treatment needs. According to PSA’s 2024 Budget justification, during 2022, PSA served just under 32,600 individuals.<sup>184</sup> During 2022, defendants remained under supervision for an average of 134 days.<sup>185</sup>

PSA staff are federal employees not accountable to elected officials or residents in the District. The executive committee for the agency includes just two employees of the District, the chief judge of the DC Court of Appeals, who serves as chair, and the chief judge of the DC Superior Court.<sup>186</sup> All other

<sup>176</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 25.

<sup>177</sup> *Id.* at 26.

<sup>178</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 30.

<sup>179</sup> CSOSA FY2024 BUDGET, *supra* note 176 at 31 (of these, 34% were on parole or supervised release, 64% were on probation, and 2% were interstate authorities).

<sup>180</sup> *Id.* at 31, 35–37 (More than 87% of technical violations were drug related, the remainder were for violations such as failure to report for supervision, a GPS violation, or failure to complete CSOSA programs).

<sup>181</sup> *Id.* at 31.

<sup>182</sup> *Id.* at 33.

<sup>183</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 28.

<sup>184</sup> *Id.* at 1–2.

<sup>185</sup> *Id.* (this number has risen a dramatic 42% from the pre pandemic average of ninety-four days).

<sup>186</sup> Both of whom are appointed by the President. See *supra*–Part III The Courts.



members—two federal judges, the U.S. Attorney and Public Defender for the District and the Director of CSOSA—are federal employees. The executive committee, without input or oversight from the District, sets policy and direction for the agency that oversees the incarceration status of thousands of primarily low-income African American alleged DC Code offenders.<sup>187</sup>

The Task Force made eleven recommendations to address perceived shortcomings by improving PSA operations and policies in order to promote transparency, reduce the burdens of supervision and the risk of revocation, add due process and other procedural protections for both those on release and for victims of crime, increase training, and increase community resources, among other goals.<sup>188</sup> These changes will require additional budgetary support, legislative and policy changes, and education for role players in the criminal justice system. With statehood, the District can adopt changes that will result in fairer and more just outcomes for individuals charged with DC crimes.

#### **4. Pretrial Release, Parole, Supervised Release, and Probation after Statehood**

When the USPC authorization sunsets—or when statehood is achieved—the District will have the opportunity to select the systems, policies and procedures best suited to serve the District’s values and priorities. The District is likely to continue with the determinate sentencing regime put in place with the Revitalization Act. Research shows that states with determinate sentencing systems and presumptive sentencing guidelines have both lower rates of incarceration and lower prison population growth.<sup>189</sup> States with discretionary release experienced faster prison growth during the high growth years of 1980 to 2009 and remain today the states with the highest incarceration rates.<sup>190</sup> Parole boards composed of appointed members are subject to outside pressure from state governors, area advocates and the media, and they become “risk averse.” During the get-tough-on-crime era of the 1980s and 1990s, appointed parole boards adopted harsher release policies.<sup>191</sup>

DC advocates call for reducing the District’s incarceration rate,<sup>192</sup> but opinion is split about whether the DC Superior Court or a new DC Parole Board is best suited to make post-conviction release decisions. Talented and deeply committed advocates discussed the issues at countless community gatherings, including Task Force and committee meetings, and they testified at public hearings arguing their positions persuasively. Members of the Task Force were so divided that they could not come to consensus on just this one recommendation. As a result, the Task Force Local Control Committee Report in 2020 developed competing memoranda prepared by the opposing sides, one by the proponents of the DC Superior Court as paroling authority and one by the proponents of establishing a new DC Parole Board to assist elected officials in determining which route to choose.<sup>193</sup> While it appeared for a time that Mayor Bowser was committed to supporting federal legislation that would establish a new DC paroling

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<sup>187</sup> Norton Supervision Press Release, *supra* note 177.

<sup>188</sup> TASK FORCE: PHASE II, *supra* note 116 at 46–51.

<sup>189</sup> DON STEMEN ET AL., OF FRAGMENTATION AND FERMENT: THE IMPACT OF STATE SENTENCING POLICIES ON INCARCERATION RATES, 1975-2002, 11 (2005)

<sup>190</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 at 38.

<sup>191</sup> *Id.* at 39.

<sup>192</sup> See *e.g.*, TASK FORCE: PHASE I, *supra* note 145 at 43 (“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.”).

<sup>193</sup> Superior Ct. Memorandum, *supra* note 231; Memorandum from proponents New Board of Parole Paroling Authority Mode to the Council of Ct. Excellence Task Force on Jails & Justice 3 (2020) [hereinafter New Parole Bd. Memorandum] (on file with author).

authority,<sup>194</sup> momentum has “vanished” in the words of one commentator and advocacy efforts have languished in the face of a “newly hostile Congress” regarded as highly unlikely to support local paroling authority for the District and “ongoing divisions among advocates.”<sup>195</sup> Whenever the congressional landscape changes, and the push for local control gains fresh momentum, the pros and cons of the two options addressed by the Task Force will likely be reconsidered.

Each memo addressed the qualities that the District’s new paroling authority should ensure:<sup>196</sup> The paroling authority will reduce incarceration while increasing public safety and accountability; there will be strong local control of paroling authority and accountability; there will be strong protections for people seeking a parole grant or facing revocation of parole or supervised release; and a new local paroling authority should embody the humane, equitable approach to criminal justice articulated by the full Task Force, including a public health approach to community safety and incarceration, fairness in administration, treating all with dignity and encouraging restorative practices and trauma-informed healing -centered practices.<sup>197</sup> Each quality is accompanied by detailed descriptions providing additional guidance,<sup>198</sup> regardless of the authority chosen. Each memorandum makes important points and there is evident merit to both options.

The Blueprint and the JPI report each recommended a hybrid approach. In the Blueprint model, at least until the District gets local control of judicial appointments,<sup>199</sup> the DC Superior Court would continue to have jurisdiction over second-look sentencing and compassionate release, and the new parole board would handle parole grants, revocations, and early terminations.<sup>200</sup>

Under the JPI Report’s hybrid approach, those subject to indeterminate sentences would have their parole release decided by an independent parole board while those subject to determinate sentences would have parole decided by a judge.<sup>201</sup>

The DC Jails & Justice Task Force called for Congress to abolish the USPC’s authority over people convicted of DC Code offenses and urged the District to plan now to localize parole and supervised release decision-making.<sup>202</sup> In its Phase II Report, the Task Force published ten recommendations regarding probation, parole, and supervised release that would reduce onerous periods of supervision and the frequency of reporting, reduce revocations for technical violations, prohibit revocations based on new charges unless a finding of guilt has been made, and raise the evidentiary standard at revocation hearings to clear and convincing, among other improvements.<sup>203</sup> The Task Force urged adoption of a mechanism that will reduce incarceration consistent with public safety, strengthen due process

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<sup>194</sup> Alex Koma, *DC’s Efforts to Take Back Control of Parole from the Feds Are ‘As Good as Dead’*, Wash. City Paper (Aug. 29, 2023), <https://washingtoncitypaper.com/article/621314/d-c-s-efforts-to-take-back-control-of-parole-from-the-feds-are-as-good-as-dead/> (quoting Mayor Bowser’s 2020 letter to Congresswoman Norton in support of local control).

<sup>195</sup> *Id.*

<sup>196</sup> Superior Ct. Memorandum, *supra* note 231; New Parole Bd. Memorandum, *supra* note 195.

<sup>197</sup> Superior Ct. Memorandum, *supra* note 231; New Parole Bd. Memorandum, *supra* note 195.

<sup>198</sup> COMMITTEE ON LOCAL CONTROL, DISTRICT TASK FORCE ON JAILS & JUSTICE, REPORT 5-6 (2020).

<sup>199</sup> DC Appleseed Blueprint, *supra* note 42 at 11.

<sup>200</sup> *Id.*

<sup>201</sup> RESTORING LOCAL CONTROL OF PAROLE, *supra* note 150 at 86.

<sup>202</sup> TASK FORCE: PHASE I, *supra* note 145 at 48.

<sup>203</sup> TASK FORCE: PHASE II, *supra* note 116 at 67-72.



and other protections, and ensure local control, transparency, and accountability over process and decisions.<sup>204</sup>

As a practical matter, the hybrid approach suggested by the Blueprint makes the most sense as the Superior Court does not have the judicial, financial, or spatial resources to take on the burden of handling parole in addition to its existing obligations. Further, the District has no authority or mechanism to require Congress to appoint currently approved judges, much less the power to secure funding for the additional judges needed to undertake the paroling task. Advocates and experts have laid out comprehensive recommendations, options, and rationales that will guide the District's elected officials going forward. Whichever approaches are selected, the District, with local control, will have the opportunity to establish a model for the nation and to radically improve the fairness, consistency, transparency, and effectiveness of its treatment of DC Code offenders—all impossible now under the federal regime.

### **C. The Public Defender Service for the District of Columbia**

The Court Reorganization Act also established the District of Columbia Public Defender Service (PDS).<sup>205</sup> The powers of PDS are vested in what is now, pursuant to the Home Rule Act and then the Revitalization Act, an eleven-member Board of Trustees<sup>206</sup> that sets policy but does not direct the conduct of particular cases. The members of the Board are appointed by a panel, including the Chief Judges of the U.S. District Court, the DC Court of Appeals, the DC Superior Court, and the Mayor.<sup>207</sup> The panel is presided over by the Chief Judge of the DC Court of Appeals or her designee. Four members of the Board must be DC residents who are not lawyers. Judges may not be appointed.<sup>208</sup> The PDS website describes the importance of the Board of Trustees as it establishes and maintains PDS's independence and serves as a monitor and protector.<sup>209</sup>

The Revitalization Act provided for PDS to become an independent federally funded defender service.<sup>210</sup> The agency is funded by a direct appropriation from Congress.<sup>211</sup> PDS is highly regarded locally and nationally, as the gold standard for indigent defense.<sup>212</sup>

## **VII. PDS After Statehood**

Because of its excellent quality, the Blueprint recommends that PDS maintain its independent status under the authorizing statute.<sup>213</sup> With statehood, the Legislative Assembly will have the opportunity to

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<sup>204</sup> *Id.* at 72.

<sup>205</sup> Court Reorganization Act §§ 301-309. (The Reorganization Act redesignated what had been the Legal Aid Agency for the District as the new PDS).

<sup>206</sup> D.C. Code § 2-1603.

<sup>207</sup> D.C. Code § 2-1603(b)(1)(A-D).

<sup>208</sup> DC Code § 2-1603(b)(2-4).

<sup>209</sup> *Our Leadership, Board of Trustees*, PUB. DEF. SERV. FOR DC, <https://www.pdsdc.org/about/our-leadership> [<https://perma.cc/QZR3-CN49>] (select Board of Trustees after navigating to the page).

<sup>210</sup> CRIMINAL JUSTICE UNDER THE REVITALIZATION ACT, *supra* note 95 at 2.

<sup>211</sup> *Mission and Purpose*, PUB. DEF. SERV. FOR DC, <https://www.pdsdc.org/about/mission-purpose> [<https://perma.cc/H4ST-7X4U>] (beginning with the 2007 Appropriation Act).

<sup>212</sup> Radley Balko, *The government wants to move the D.C. public defender's office. That could be disastrous.*, Wash. Post. (Dec. 12, 2019, 1:51PM), <https://www.washingtonpost.com/opinions/2019/12/12/government-wants-move-dc-public-defenders-office-that-could-be-disastrous/>.

<sup>213</sup> DC Appleseed Blueprint, *supra* note 42 at 19.

remove the federally appointed Chief Judge of the U.S. District Court from the PDS Board of Trustees to ensure local control and accountability going forward. With statehood, the PDS budget will become a District responsibility.

## **VII. Conclusion**

Statehood is the bridge to transforming the District of Columbia's criminal justice system. Under the current system, federal prosecutors make charging decisions and sentencing recommendations, federal judges appointed by the President making sentencing and some revocation decisions, and the federal agency CSOSA oversees supervision, revocation and release. Under the current system, the District experiences over-incarceration, rampant racial disparities and a host of other injustices throughout its criminal justice system.<sup>214</sup> With the achievement of statehood, the District can reverse course and apply DC values and priorities as it identifies and selects systems, policies, procedures, and personnel that reflect DC values and priorities that reduce over-incarceration, address racial disparities, enhance community services, and improve management and service delivery throughout its criminal justice system. The time for DC Statehood is now!

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<sup>214</sup> WIDRA & HERRING, *supra* note 5; *Federal Bureau of Prisons*, DC JUST. STAT. ANALYSIS TOOL, <https://www.dcsat.net/FBOP.html> [<https://perma.cc/49PE-3WZJ>]; U.S. Census, U.S. *QuickFacts: District of Columbia*, <https://www.census.gov/quickfacts/fact/table/DC/PST045222> [<https://perma.cc/QT7G-GTRR>].



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