



RESEARCH AND ADVOCACY FOR REFORM

**Testimony of
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**Before the D.C. Jails and
Justice Task Force**

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Thank you for accepting submitted testimony about the future of jail capacity and criminal justice priorities. I live Uptown in Ward 4 where I have been a part of the Petworth – Brightwood Park community for over ten years. In that time, I have worked as Director of Advocacy for The Sentencing Project a national research and advocacy organization that works for a fair and effective U.S. criminal justice system by promoting reforms in sentencing policy, addressing unjust racial disparities and practices, and advocating for alternatives to incarceration.

When I think of safety, I think of the community I worship with at Brightwood Park United Methodist Church at 8th and Jefferson Street NW. Since I've been a member, we've helped each other through health and other life challenges. We also organize church events for the broader community that includes health and expungement fairs as well as job trainings. The church's initiatives are developed to strengthen safety and community.

In recent years, daytime shootings have led the church to host public safety discussions and sponsor neighborhood forums. Living Uptown has shown me that my neighbors and church family are looking for community solutions to prevent violence and neighborhood crime. Those solutions don't start with a call to the police or demands to disappear people into the jail. They start with finding ways to meet people's basic needs with a focus on preventing crime and affirming community connections.

Addressing DC's Incarceration Practices

Discussions about the District's jail must start with questioning the purpose of incarceration and respond to increasing calls to decarcerate and prioritize safety resources towards crime prevention and restorative healing.

As of 2018, there were 2,070 people incarcerated locally under the jurisdiction of the District's Department of Corrections on average on any given day, including persons incarcerated in the Central Detention Facility, the Correctional Treatment Facility, and in halfway houses.¹ During 2018, DCDOC received 11,516 unique admissions; 57 percent of men and 70 percent of women released that year spent fewer than 31 days in local custody. Yet, due to long jail terms for certain residents, the average length of stay for persons released from DCDOC facilities was 72 days.²

Many of the persons incarcerated are held pretrial, including approximately 57 percent of men and 54 percent of women. In 2017, men held pretrial with felony charges spent an average of 7.5 months (225 days) incarcerated, while women held pretrial while facing felony charges spent an average of over three months (105 days) in local jail facilities.³

Recent trends in the District's criminal justice system reinforce opportunities to adjust status quo approaches to crime and justice. Further, the District's local governance offers space for city officials, practitioners and stakeholders to imagine and develop new safety infrastructure.

¹ See The Urban Institute, ACLU DC, "Blueprint for Smart Justice: The District of Columbia" (2019) Accessed: <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-DC.pdf> "D.C. Department of Corrections, Facts and Figures (September 2018): <https://www.dccorrections.gov/press-and-media/facts-and-figures/September2018.pdf> The figure DC Department of Corrections Facts and Figures September 2018.pdf

³ See The Urban Institute, ACLU DC, "Blueprint for Smart Justice: The District of Columbia" (2019) Accessed: <https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-DC.pdf>

Imagining New Infrastructure as Pathway to Decarceration

Attorney General Racine launched a Restorative Justice Program several years ago to address underlying causes of crime and conflict. The approach offers prosecutors handling juvenile cases a pathway to alternative prosecution. Restorative justice conferencing allows time and safe spaces for conflict resolution focusing on repairing harm to victims. This program brings those affected by a crime together with the persons who committed the crime to achieve accountability, empower victims and repair the harm caused by crime.⁴

The OAG's restorative justice approach has been celebrated in national circles by demonstrating a pragmatic approach to public safety that does not center punitiveness and shows what might be possible in other areas of the District's criminal justice system.

Restorative justice offers a pathway to care first for persons harmed by crime and those at risk of committing crime. These experiences often overlap. A study by The Sentencing Project concluded that of juveniles sentenced to life prison terms more than half reported witnessing violence in their communities, while 79 percent reported observing violence in their homes.⁵ In the District, a study found that 78 percent of 3-to-4-year-old African-American children had been exposed to community violence.⁶

To support safety, District officials and lawmakers should consider restorative practices that expand the work underway in the OAG's office to other criminal justice practices including cases involving adult residents convicted of violent offenses.

Centering Restorative Justice as a Response to Violence

Common Justice is a restorative justice program in the New York boroughs of Brooklyn and the Bronx. The initiative is an alternative-to-incarceration and victim-service program focused on accountability for violent felonies, including assault and robbery.

Common Justice convenes restorative justice circles that include the crime survivor and the person who did the harm to address root causes and find agreement on repairing harm. Through these circles, formal agreements are reached about what the responsible party can do to make things right. Common Justice staff monitor adherence to the circle agreements—which may include restitution, community service, and commitments to attend school and work—while supervising their completion of a 12- to 15-month intensive violence intervention program. Responsible parties who successfully complete both their commitments to those they harmed and the violence intervention program do not serve the jail or prison sentences they would otherwise have faced.⁷

The Common Justice framework mirrors a case experienced by James Forman Jr., author of *Locking Up Our Own: Crime and Punishment in Black America*, who was also an attorney with D.C.'s Public

⁴ See Office of Attorney General Karla A. Racine "Restorative Justice Program" (2019). Accessed: <https://oag.dc.gov/public-safety/restorative-justice-program>

⁵ A. Nellis (2012), "*The Lives of Juvenile Lifers*" The Sentencing Project, Washington, DC. Accessed: <https://sentencingproject.org/wp-content/uploads/2016/01/The-Lives-of-Juvenile-Lifers.pdf>

⁶ N. Porter and K. Volker (2015), "Treating the Infectious Disease of Violent Crime" *Governing*. Accessed: <https://www.governing.com/gov-institute/voices/col-city-homicide-treating-infectious-disease-violent-crime.html>

⁷ Common Justice (2019). "The Common Justice Model" New York, NY Accessed: https://www.commonjustice.org/common_justice_model

Defender Services. As a PDS lawyer, Forman helped divert a prison bound client convicted of armed robbery into an alternative to incarceration program. In working to get the best outcome for his client, Forman contacted the victim and shared his client's apology which resulted in the crime survivor's support of prison diversion. Forman concludes, "The collective work ahead is to deepen and broaden these efforts [criminal justice reforms], all the while ensuring they don't remain limited to the category of nonviolent [offenses]."⁸

The work Forman did at PDS along with other colleagues may have laid the foundation for the OAG's restorative justice initiative. As the District considers other policies and initiatives to fund and implement, expanding restorative justice diversion programs for prison bound defendants should be prioritized. Expansion includes authorizing alternatives to incarceration for qualifying robbery and assault cases contingent on completion of court supervised program participation.

Expanding Accountability for Assaults

Addressing the underlying cases of family and interpersonal violence is key to scaling back incarceration *and* crime prevention. The circumstances of assault vary case by case and in many instances are situational exacerbated by drugs, alcohol or unaddressed issues⁹ that can lead to violence.

Effective interventions targeted to justice involved youth might assist in reducing arrests for other family members. Research shows that programs prioritizing family interactions are the most successful, probably because they focus on providing skills to adults who influence the behavior of at-risk youth. Examples include Functional Family Therapy (FFT) and Multi-Systemic Therapy (MST). FFT focuses on changing interactions between family members and seeks to improve the functioning of the family unit by strengthening problem solving skills, enhancing emotional connections among family members, and connecting families to services with the goal addressing stressors that often lead to conflict.¹⁰ MST is also a family based program focused on helping parents deal effectively with their child's behavior problems and is demonstrated to connect families to services improving interpersonal relationships.¹¹

Delivering these court sanctioned accountability efforts develops new infrastructure staffed by persons qualified with social work and therapeutic training. Implementation might start with piloting alternative prosecution for qualifying assault cases that connects prison bound defendants to therapeutic interventions demonstrated to reduce violence and improve family relationships.

Addressing persons who commit domestic violence through court diversion might help, too. Reports suggest that a sizable proportion of persons are incarcerated in the D.C. jail on simple assault charges. While each case is different, alternative prosecution might be expanded to include qualifying cases. According to the National Conference of State Legislatures, the District is not among jurisdictions that authorize pretrial diversion for domestic violence cases, while ten states do.¹² Establishing court

⁸ Forman, James (2017). *Locking Up Our Own: Crime and Punishment in Black America*. (Farrar, Straus and Giroux)

⁹ See "Homes not Handcuffs: The Criminalization of Homelessness in U.S. Cities," The National Law Center on Homelessness & Poverty and the National Coalition for the Homeless, July 2009, http://www.nationalhomeless.org/publications/crimreport/crimreport_2009.pdf

¹⁰ Henggeler, S. W., Melton, G. B., Brondino, M. J., Scherer, D. G., & Hanley, J. H. (1997). "Multisystemic therapy with violent and chronic juvenile offenders and their families: The role of treatment fidelity in successful dissemination." *Journal of Consulting and Clinical Psychology*, 65, 821-33.

¹¹ Sawyer AM. And Borduin CM., "Effects of multisystemic therapy through midlife: a 21.9-year follow up-up to a randomized clinical trial with serious and violent juvenile offenders." *Journal of Consulting and Clinical Psychology*. 2011 Oct; 79(5): 643-52.

¹² National Council of State Legislatures, "Pre Trial Diversion," Accessed: <http://www.ncsl.org/research/civil-and-criminal-justice/pretrial-diversion.aspx>

diversion should connect families with a history of violence to necessary services that can help prevent future violent interactions and strengthen personal and public safety.

Authorizing a specialty gun court might also help the District respond to violent crime and offer more opportunities to hold prison bound defendants accountable, model effective conflict techniques for residents at risk of justice involvement, and prevent future court interactions. Several jurisdictions operate gun courts, including Providence, R.I., Philadelphia, PA, and New York, NY.

The specialty court in Philadelphia evidences a promising approach. City officials introduced its gun court in 2005 to reduce recidivism for defendants whose most serious charge was a violation of the state's gun law, the Uniform Firearms Act. A study of the specialty court found that defendants who went through the court in the first 18 months of its development were almost half less likely to be rearrested as defendants charged with similar crimes before the program began.¹³

As the District considers court diversion it must center any unintended consequences that widen the net of social control rather than addressing the underlying causes of crime, as well as the punitiveness currently dominating criminal justice practices. There has been documentation of court diversion efforts that advantage prison bound defendants who can afford to pay required fees as well as incentivize charging practices with certain offenses that reinforce alternative prosecutions.¹⁴ The District's alternative prosecution and diversion programs should not be limited to prison bound defendants who can afford fines and fees.

Reorienting Justice in the District

Currently, the District is exploring the purpose of a jail and the future of incarceration. This moment offers space to innovate new justice practices. The distance between decarceration rhetoric and court dispositions offers an opportunity to implement restorative justice practices targeted to prison bound defendants.

As the District explores issues related to jails and justice officials must be willing to establish new initiatives that substantially reorient punitive criminal justice policies in ways that center restorative healing, safety, and well-being.

If you have questions and would like to discuss this further, please contact Nicole D. Porter, director of advocacy, at 202-628-0871 or nporter@sentencingproject.org

¹³ Johnson, F (2007). *Philadelphia's Gun Court: Process and Outcome Evaluation*. Accessed: <https://www.courts.phila.gov/pdf/criminal-reports/Gun-Court-Evaluation-report-executive-summary.pdf> See court overview here: <https://www.courts.phila.gov/pdf/notices/2005/notice-2005-guncourt-fact-sheet.pdf>

¹⁴ Burns R., (2018). "Diversion Programs Say They Offer a Path Away From Court, but Critics Say the Tolls Are Hefty," *Pro Publica* Accessed: <https://www.propublica.org/article/diversion-programs-illinois-criminal-justice-system-bounceback-correctivesolutions>