The Parole Revocation Process in DC: What DC Could Accomplish with Local Control

Prepared for the New Vision: Alternatives to Incarceration Committee of ReThink Justice DC

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Malcolm C. Young, with
Phil Fornaci
Ann Keep
John Stanard
Myra Wood

(For Contact Information for the authors, please refer to the last page)

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PURPOSE OF THIS REPORT

This Report was prepared for the New Visions Committee of the ReThink Justice DC Coalition http://rethinkjusticedc.org/ The Coalition is a group of diverse individuals committed to justice reform in the District of Columbia.

The New Vision Committee was chartered to promote alternatives to incarceration and investments in non-criminal-justice infrastructure (e. g., education, housing, mental health, and employment assistance), and to encourage a case-management response to problem-solving.

In June 2019, New Vision Committee members received reports that the Court Services and Offender Supervision Agency of the District of Columbia ("CSOSA"), the agency responsible for supervising individuals on probation, parole and supervised release, had modified its policies governing revocation of parole and supervision, resulting in increases in the jail population. New Vision Committee members, already committed to urging the District of Columbia's government to assume responsibility for, and prepare to assume control of, parole board functions, decided to investigate reported policy changes and any impact these policy changes may have had on incarceration in the District of Columbia's Department of Corrections ("jail").

The New Vision Committee's investigation was frustrated, however. Limitations on available data made it impossible to confirm or refute a connection between short-term changes in CSOSA policies and fluctuations in the jail population. But information gathered in the course of the investigation shed light on the advantages to the District and its residents of regaining control over the parole board functions and on the characteristics of a parole board which would most closely align with District of Columbia values. This report presents that information.

The purposes and goals for this report include:

- To describe the parole and supervised release revocation process including the allocation of resources during periods of supervision prior to revocation.
- To support, with specific recommendations, a parole / supervised release revocation process that does not rely upon incarceration to achieve success.
- To promote, also with specific recommendations, a parole board that acts in alignment with the principles and values recently described by the District of Columbia's Task Force on Jails and Justice. These include maximizing alternatives to incarceration, rehabilitation, and participation in constructive programs and involving impacted communities and justice-involved people in decision processes.

In furtherance of these goals, this report summarizes information about CSOSA's services and operations. CSOSA has significant resources in terms of dollars and the programs it offers. However, at present, the District government has no control over how these resources are used. CSOSA is seldom discussed in detail in hearings, meetings and publications. Committee members were of the opinion that in planning to return the parole function to local control, District of

Columbia officials and advocates for justice reform should consider carefully how best to integrate the parole function with CSOSA's resources.

THE PATH TOWARD PAROLE BOARD REFORM IN THE DISTRICT OF COLUMBIA

The parole function has been performed for the District of Columbia by the United States Parole Commission (USPC) for the past 20 years. Over this time, the parole board function in the District of Columbia has been evolving. Due to changes in sentencing law, the number of individuals sentenced to indeterminate terms and for whom the parole board determines a release date is diminishing. Increasingly, the USPC's function is to decide if and when to revoke previously-granted parole or, for all those sentenced for offenses committed on or after August 5, 2000, whether or not to revoke supervised release when an individual on supervised release is alleged to have violated the conditions of his or her release.

In recent years, questions about if, when and in what form the parole board function would be returned to the control of the District of Columbia and its residents have been slowly gaining traction. That any movement has occurred at all is due to the persistence of a handful of advocates. In 2017, those advocates created a Working Group to coordinate advocacy for returning local control over parole to the District of Columbia. Organizations represented included the D. C. Public Defender Service, the Washington Lawyer's Committee for Civil Rights, University Legal Services, the D. C. Reentry Task Force, the D. C Corrections Information Council, and the Statehood Coalition. In March 2018, the Working Group had obtained briefings for DC Council staff and the Mayor's office for Public Safety on the issue.

A monograph, *Restoring Control of Parole to DC,* prepared for the March 2018 briefings by Working Group members and a number of criminal justice professionals,[*] posited that restoring local control over the parole board function is a logical first step on a path toward the District of Columbia's regaining control over its criminal justice system from the federal government and, ultimately, obtaining statehood. This monograph remains today an influential document on this issue.

Following the March 2018 briefings, advocates continued to press the case for local control of the parole function at D. C. Council hearings and in other public forums, picking up support from elected officials, statehood advocates, academics and a broad array of criminal justice reform advocates.

The federal government's decision in late 2018 to "sunset" the United States Parole Commission by November 2020 added further impetus, and urgency, for action by D.C. officials.

The District of Columbia is also saddled with two aged, decrepit jail buildings, one of which was recently returned from private operation under contract to staffing by the District of Columbia's Department of Corrections. District government officials have fitfully considered building a new

[*] Phil Fornaci, Washington Lawyers' Committee for Civil Rights & Urban Affairs; with Olinda Moyd, Katerina Semyonova, Jamie Argento Rodriguez and Chiquisha Robinson, the Public Defender Service for the District of Columbia; Tammy Seltzer, University Legal Services; Louis Sawyer, DC Reentry Taskforce; Michelle Bonner, DC Corrections Information Council; Adam Schlosser, Drinker Biddle & Reath LLP, (March 16, 2018).

jail for at least the last decade. Advocates have opposed simply rebuilding or building anew another large jail facility.

Searching for solutions to the jail situation, in 2019 the District of Columbia government engaged in the first of a two-phase reexamination of its criminal justice system. The DC Council created and funded a new District Task Force on Jails & Justice to conduct the first phase. The non-profit Council for Court Excellence provided staff support. The Task Force and four committees relied on appointed volunteers. The Vera Institute was retained to provide data analysis and research. Funds were administered by the DC Office of Victims Services and Justice Grants (OVSJG).

Independently, but also drawing on the Council for Court Excellence, the Washington, DC-based Public Welfare Foundation engaged in a review of criminal justice in the District.

In FY 2019, Kevin Donahue, Deputy Mayor for Public Safety, awarded a contract to "study reestablishing local control over the federally-run DC Parole Board" to the Justice Policy Institute (JPI).

In October 2019 the District Task Force on Jails & Justice (the District Task Force) published results of Phase I of its work, *Jails and Justice: A Framework for Change* supported by four separate committee reports and a data compilation prepared by the Vera Institute. In the same month, the Public Welfare Foundation published *DC's Justice Systems: An Overview*.

JPI's report on returning the parole function to the District of Columbia was completed on schedule in September 2019. JPI's report was released by the Deputy Mayor's office several months later, on January 24, 2020.[*]

The District Task Force's *Framework for Change* and the Public Welfare Foundation's *Overview* describe criminal justice in the District generally. The *Framework for Change* provides a statement of values and guiding principles for yet-to-be defined strategies and concrete steps that clearly point away from traditional reliance upon arrest and punishment. (See Text Box "A Vision for Criminal Justice in the District of Columbia" on the following page.)

Additionally, *Framework for Change* published the results of the Task Force's community listening sessions and informal surveys of public opinion and community sentiment. Overall, Washington D. C. residents largely favored an increased reliance on community-based resources to reduce crime, increase public safety and improve the quality of life.

The specifics of how the Task Force's recommendations are to be accomplished are left to Phase Two of the work, to be completed during the District of Columbia's fiscal year 2020.

Yet, as the Task Force recognized, the District of Columbia doesn't have the luxury of delaying decisions about parole and revocations until the end of 2020. The Task Force's Committee on Local Control wrote: "The District must move quickly to select a solution and rapidly to put the resources in place to implement that solution."

[*] The New Vision Committee had completed its investigation and the final draft of this report by mid-January 2020, and was not in a position to respond or comment to the JPI report after its release.

The Task Force's eighth recommendation calls for prompt action:

THE TASK FORCE'S VISION FOR CRIMNAL JUSTICE IN THE DISTRICT OF COLUMBIA*

VISION

We envision a humane, equitable approach to criminal justice in Washington, D.C. that prioritizes prevention and care, and reimagines accountability through a rehabilitative lens, to create safe and thriving communities.

CORE VALUES

Urgency: We are compelled to create change now, to re-envision and plan an innovative public health approach to community safety and incarceration.

Accountability: We believe that the District's criminal justice system should be transparent, guided by evidence-based practices, results-oriented, and accountable to the public. We promise to conduct the business of this Task Force using these same values of accountability.

Equity: We believe that justice should be administered fairly and with attention to acknowledging and addressing the harms of past policies and practices rooted in racism and other systems of oppression.

Compassion: We are motivated by love for every human being and recognize that the criminal justice system often draws false dichotomies between victims and offenders. We believe that no matter how a person comes into contact with the system, they should be treated with dignity, given the opportunity to engage in restorative practices, and offered trauma-informed, healing-centered care.

**Jails and Justice: A Framework for Change* (Task Force on Jails and Justice, November 2019) at page 9.

> Congress should abolish the U.S. Parole Commission's authority over people convicted of D.C. Code offenses with the Revitalization Act's 2020 sunset provision, and the District should plan now to localize parole and supervised release decision-making.

The Task Force's Committee on Local Control articulated two generalized arguments for putting the parole function under local control: the sunsetting of the USPC presents the District with an opportunity to reclaim a portion of its criminal justice system from the federal government, one that is not terribly expensive; and, decisions by a local parole board "will be made by those who represent the values and priorities of the community and under policies set by District leaders that may better reflect District goals for public safety and fairness."

The Task Force's Committee on Decarceration grounded a third argument on the nexus between parole and supervised release decisions and jail incarceration. The Committee on Deincarceration also identified remedial strategies:

> As in many jurisdictions nationally, probation and parole violations are driving jail incarceration in the District. Some strategies to address this problem focus on reducing admissions. This includes ensuring that the conditions of supervision are not unnecessarily onerous and are designed to promote success, deploying graduated responses to violations and success, and using summonses rather than arrest when a technical violation is alleged. Other strategies focus on length of stay, by, for example, addressing delays in the hearing process for violations, allowing release to the community during the pendency of the process, and limiting the

amount of incarceration an individual can receive in response to a technical violation of probation.

The Task Force on Jails and Justice Committee on Decarceration's analysis was on point. Individuals charged with or found to have violated conditions of parole or supervised release add to the District of Columbia's Department of Correction's inmate population and to the federal Bureau of Prisons' roster of District of Columbia prisoners. We turn first to the jail numbers.

OUTSIZED IMPACT OF PAROLE AND SUPERVISED RELEASE VIOLATIONS ON THE DISTRICT OF COLUMBIA'S JAIL POPULATION

The average daily population confined in the two facilities operated by the District of Columbia Department of Correction hovered around 2,050 at the end of FY 2018 and in recent months. Data from the DOC shows that at least 300 and more likely close to 320 inmates, more than 15% of the total jail population, were incarcerated on average each day in most months because of parole and supervised release revocations.

However, the average daily population over a period of time understates the number of individuals who are subjected to incarceration during that period of time as the result of an alleged or proven revocation. Inmates "churn" through the facility, some being admitted as others are released. To reflect the numbers affected in the course of a month, the Department of Corrections also reported the number of "Total Distinct Persons" incarcerated because of a charged or proven parole or supervised release revocation on at least one day during a month. From March 2019 to July 2019 the number of "Total Distinct Persons" averaged 429 per month, or about 100 more individuals than the number reflected by the average daily population.

The Vera Institute's analysis of the jail population details a few of the burdens that parole and supervised release revocations place on the jail and District citizens:

- Violations of probation, parole and supervised release accounted for 20%—one in five — of all bookings into the DOC in FY2018. Violations of all three categories of supervision result in a larger portion of bookings into the jail than even the most common categories of crimes for which individuals are arrested and detained pre-trial:
  - simple assault (distinguished from aggravated assaults involving weapons or injury) - 12% of all bookings
  - drug offenses - 11% of all bookings; and,
  - property crimes - 10% of all bookings.

- Each booking into jail on account of a violation of parole or supervised release is a disruption for the individual. According to published DOC data, the average length of stay for male parole, probation or supervised release violators is 91.1 days. (For women in this category the average length of stay is a shorter 55.4 days). According to the Vera Institute analysis, even individuals who were eventually released with their parole reinstated—meaning released after no finding of a violation or no additional time imposed after a finding—were held for an average of 44 days.

- More than most other categories of jail inmates, individuals detained because of violations of parole and supervised release need treatment and services that are more challenging and

> expensive to provide in jail than in the community. According to the Vera Institute's analysis, more than four out of five (84%) of all individuals who were booked into the jail for a probation, parole or supervised release violation were seriously mentally ill (5%), identified as substance abusers (40%) or suffered dual diagnosis (39%).

Reducing jail incarceration for individuals whose supervision is being revoked would save tax-payer's money. While incremental decreases in corrections populations produce only marginal reductions in operating costs, the District of Columbia's government is in the beginning stages of planning a new or restructured corrections facility. Steps taken to reduce incarceration translate into reduced capital costs associated with any new construction.

At the moment individuals caught up in the revocation process occupy about 15% of the jail bed space. Assuming a 15% proportional share of the DOC's $178.8 million operating budget, the cost of detaining individuals in the revocation process currently approaches $25.7 million annually. It is our understanding that the federal government bears the costs for incarcerating those held on parole revocations at D.C. jail facilities. However, it is not known how these costs will be handled after a new D.C. parole agency is in place. Public officials could fairly conclude that if a parole authority under District of Columbia government control were to reduce the number of individuals incarcerated for parole or supervised release violations, and shorten the length of stay for others, considerably less jail space would be needed. Just halving the load would allow the District government to reduce capital costs of construction of around 150 cells and to plan for and ultimately realize at least $12 million annual reduction in jail costs associated with revocations.

Calculated on a per diem basis, and assuming a 90-day average length of stay for each parole or supervision revocation, each individual diverted from revocation and incarceration frees up $21,135 in jail resources. Just incarcerating individuals whose revocations conclude with a reinstatement of parole or a finding of "no violation" after the 44 day average length of stay determined by the Vera Institute draws down about $10,300 in corrections costs.

Finally, to avoid confusion, we should note that while our estimate of the number of DOC inmates detained because of revocations may appear to differ from the numbers reported by the Vera Institute for the District Task Force on Jails and Justice, the numbers are consistent. We explain the apparent difference and provide an explanation of the method by which the New Vision Committee estimated the jail population attributable to revocations in Appendix A.

SPOTLIGHTING CSOSA'S DOMINANT ROLE IN PAROLE AND SUPERVISED RELEASE IN THE DISTRICT OF COLUMBIA

The USPC makes the legal determination of whether or not an individual has violated USPC supervision rules and, if there is a violation, of the consequences to the individual. But in nearly all instances, revocation proceedings against probationers, parolees and individuals on supervised release are initiated by Community Service Officers (CSO's).

CSO's are employees of the Community Supervision Program (CSP) of the Court Services and Offender Supervision Agency of the District of Columbia (CSOSA). CSO's monitor individuals who have been convicted and sentenced in the District of Columbia's Superior Court and who are on probation, parole, or supervised release from the Bureau of Prisons.

CSOSA is a federal agency within the Executive Branch whose Director is appointed by the president. Congress determines its budget. Neither the District of Columbia government nor its citizens are part of CSOSA's governance in any official capacity. The agency determines its own structure, programming, staffing and policies, including those which govern revocations.

When it comes to matters pertaining to supervision of individuals on parole or supervised release, CSOSA is a powerful decision-maker, acting independently of the District of Columbia government and its residents, the Superior Court judges who sentence individuals, and even the U. S. Attorneys office, which prosecutes felony defendants.

CSOSA is huge. For FY 2020, CSOSA requested congressional authorization for the equivalent of 825 full-time employees and a budget just above $181 million, which is in line with the agency's staffing and budget in recent years. Measured by its budget, CSOSA's is the third largest executive branch criminal justice/ public safety agency in the District of Columbia, after the Metropolitan Police Department ($526M) and Fire and Emergency Services Department ($281M), and slightly larger than the entire District of Columbia Department of Corrections ($178.8M). Measured by the number of full-time equivalent employees, CSOSA is the District of Columbia's fourth-largest executive branch criminal justice agency, behind the DOC which employed almost 1,300 full-time or equivalent employees in 2019.

CSOSA budget dwarfs the District's total estimated expenditures of $4,265,000 in FY 2020, designated to aid and assist individuals returning from prison and identified in the following paragraphs.

The District of Columbia's approved FY 2020 budget increased funding for the Mayor's Office on Returning Citizen Affairs (MORCA) to $1,129,000, supporting a staff of 11 "full time equivalents." The District allocates an additional but unspecified amount through agencies including the Department of Human Services, the Department of Behavioral Health, the Department of Motor Vehicles, the Department of Employment Services, and the District of Columbia Housing Authority to staff the Department of Corrections' READY Center providing post-release services to returning citizens at the jail. The New Vision Committee believes that the READY Center's budget is in the range of $1M.

Several District of Columbia programs provide direct assistance to individuals who have been incarcerated. Key examples identified in the FY 2020 budget include:

- $250K to expand the ASPIRE program which helps returning citizens start their own businesses, part of a larger allocation of $610,000 for a transitional work program.
- $420.7K to support 20 units of affordable housing for returning citizens through MORCA, added as part of a $17.6 million increase for affordable housing initiatives.
- $87K combined fee waivers for returning citizens seeking driver's licenses and local identification documents under the Returning Citizens Opportunity to Succeed Act of 2019.

The District of Columbia government directs an annual appropriation toward 11 – 12 non-profit and faith-based programs that serve individuals released from jail and prison through the Office of Victims Services and Justice Grants (OVSJG). In FY 2019, OVSJG awarded approximately $800,000 in grants to eight programs to serve about 345 men and $1,182,700 in reentry grants to

three programs serving about 272 women.* In FY 2020, OVSG awarded over $960,000 to eight programs serving 280 men and $419,900 to two reentry programs serving 249 women. Programs varied from serving mentally-ill individuals to "job readiness" and peer-to-peer mentoring serving mentally ill youth and victimized adults, and to providing transitional housing for a relatively small number of returning citizens.

The Mayor's 2021 budget reportedly allocates a slim $400,000 to support reentry and community-based assistance programs. Of course, the budgets of many grant-funded programs are augmented by fees, foundation or private donor support and by volunteers. A number at least equal to the number of programs funded by the District of Columbia government operate on a volunteer basis or without any support from the DC government.

Many of these programs, some funded by the District government and others not, are members of the Reentry Action Network or "RAN," an umbrella organization which advocates for increased recognition and additional funding for reentry programs and services directed toward individuals on parole or supervised release. RAN is also funded for, essentially, one administrative position through the OVSJG.

Beyond the modestly-funded programs that serve individuals on parole or supervised release there are large unfunded holes in services for the most needing individuals. Critics assert without contradiction that the city has set aside little more than a token amount for mental health and substance abuse treatment for returning citizens.

There's more to the vast imbalance in resources between the District government and federal agencies. CSOSA houses the Pretrial Services Agency of the District of Columbia (PSA) within its administrative structure. PSA staff supervise individuals awaiting trial or disposition in criminal cases. PSA's budget, separate from CSOSA's, is currently proposed at $66.4 million and supports 350 equivalent full time employees.

Together, as shown in the table below, CSOSA and PSA exercised authority over something approaching 37,000 justice-involved DC residents over the course of FY 2018. Of concern for this report: 4,829 "unique clients," 1,266 on parole and 3,563 on supervised release.

Indiviuals under PSA and CSP Supervision FY 2018

	Pretrial Services Agency (PSA)	CSOSA's Community Supervision Program (CSP)					Total both Agencies
		Probation	Parole	Supervised Release	Other*	Total	
One day snapshot Sep 30 2018	4,232	5,926	950	2,382	411	9,669	13,901
"Unique client" population FY 2018	17,000	10,905	1,266	3,563	(Included under Probation)	15,734	(Less than 37,734)**

* "Other" are 201 Deferred Sentence Agreements and 210 Civil Protection Orders, usually of short duration.

** The mathematical total "unique client" population for PSA and CSOSA's Community Service Programs overstates the actual number by an unknown amount because, in the course of a year, a signficant number of PSA's clients are sentenced to probation and may therefore be counted twice. Similarly some Pretrial Service clients may also end up on supervised release or parole.

For the 950 individuals on parole and the 2,383 on supervised release on September 30, 2018, and like numbers on any one day since, the Community Supervision Officers staffing the CSP have

* Including one grant for Reentry Transitional Housing for women in the amount of $482,000. Most grants were in the $100,000 to $150,000 range. An additional $200,000 to $225,000 were granted programs serving youth.

multiple sources of information describing their social background and legal history, assets, shortcomings and needs. These include: pre-sentence reports which were previously prepared by CSOSA staff to help Superior Court judges determine an appropriate disposition after conviction; release plans which the Bureau of Prisons is supposed to forward several months in advance of an individuals' release and which should proscribe special conditions and programs and identify special needs such as mental health counseling, employment and housing.

CSOSA also undertakes its own reentry planning through its Transitional Intervention for Parole Supervision (or "TIPS") program. CSOSA reports utilizing TIPS for 1,202 individuals returning to the District of Columbia from the BOP FY 2018.

In addition to presentence reports, release plans and internal records that provide CSO's with information about the individuals they are supervising, CSP conducts its own initial and periodic risk assessments of individuals on parole or supervised release. Higher-risk individuals are screened every six months, lower risk individuals less frequently. CSOSA's investment in risk assessment is substantial: $24.6 million in FY 2018.

Tied to its risk assessment program, CSP engages in a proactive drug testing program. In 2018 CSOSA collected an average of 13,757 samples from on average 4,586 individuals each month, or nearly 55,000 tests annually. For those tested, this comes down to an average of three drug tests per-month.

(See Appendix B for more detailed description of the kinds of information available to CSP and CSO's about the individuals they supervise.)

The United States Congress has provided CSOSA with millions of dollars for programs and resources to help the individuals CSO's supervise. The agency's program resources include:

- A Re-Entry and Sanctions Center serving 834 individuals in FY 2018. The Center has units for women, individuals with dual diagnosis, and for people with addictions.
- A Halfway Back Residential Sanctions program, holding 103 individuals in halfway houses in 2018.
- Four Community Engagement and Achievement Centers ("CEAC's) to assess and "respond" to educational and vocational needs, assist in job development, and provide transitional employment.

CSOSA has budgeted over $51 million for third party treatment and support services for FY 2020. The agency reports having provided 1,643 placements for drug treatment in FY 2018. CSOSA offered short-term housing assistance to a portion of the more than 1,100 individuals who have access to housing it considers "unstable," such as shelters.

Almost $12.5 million of CSOSA's budget is allocated to support a staff of 55 engaged in forming and maintaining "Community Partnerships." These are supposed to create "opportunities for (individuals) to connect to natural support systems in the community," including "job training, housing and other services." CSOSA also maintains a Criminal Justice Advisory Network in each

police district as a locus for community and faith-based organizations , among others, to "promote opportunities" for individuals out of custody.

To deal with individuals who engage in "non-compliant" behavior, CSOSA employs a system of "graduated sanctions," a kind of step-down in punishment when incarceration is not in the cards. Tellingly, one of the types of "graduated sanctions" that CSOSA relies upon is electronic or "GPS" monitoring. Many experts regard electronic monitoring as more of a restriction and sanction than a constructive intervention.

(See Appendix C for more detailed description of CSOSA's resources and programs)

The existence of funded programs on this scale, including treatment and housing assistance, should yield benefits to the individuals under CSOSA's supervision and the District as a whole. But obviously, the way CSOSA administers these programs and services is critically important. Program capacity, efficiency and effectiveness, how and for whom programs and services are prioritized, the balance between rehabilitative goals and the goal of holding individuals "accountable"— a concept that has uncertain applicability when 84% of the individuals who are subjected to revocation and jail incarceration are severely mentally ill, have dual diagnosis or are in the grips of addiction—all bear directly on how individuals under CSOSA's supervision do for themselves and in their communities.

To repeat the District Task Force on Jails and Justice's Committee on Decarceration's observations: jail populations are driven by factors such as the strictness or rigidity of conditions of supervision, whether supervision is designed to promote success or just punish failure, and the use of graduated responses and summons instead of arrest and detention for technical rule-breaking violations.

CSOSA describes its own revocation process as:

> an outcome of a complex supervision process that seeks to balance public safety with supporting offender reintegration. Most offenders return to prison after a series of events demonstrate their inability to maintain compliant behavior on supervision. Non-compliance may involve one or more arrests, conviction for a new offense, repeated technical violations of release conditions (such as positive drug tests or missed office appointments), or a combination of arrest and technical violations. CSP strives to decrease revocations (and, overall, recidivism) by continuing to develop, implement and evaluate effective supervision programs and techniques.

In Washington, D. C. it is CSOSA's staff, not the USPC, who are pretty much in charge of how these factors play out. In all these matters, including a CSO's decision to initiate the revocation process, the government of the District of Columbia and its residents have at present virtually no say.

Indeed, for the District government and its residents, CSOSA is an opaque agency. CSOSA provides no information about the criteria by which individuals are selected (or rejected) for its programs or services. We found no information describing the extent of services provided to individuals before an AVR was submitted to the USPC or before individuals were revoked. We could not determine the number of violations reported before individuals were revoked to incarceration or the nature of those violations: new violent crime, new non-violent crime, technical

drug or technical non-drug violations. In short, it's immensely difficult to determine how, and to whose benefit, the agency's very significant resources are put to use before a CSO decides that an individual has demonstrated an "inability to maintain compliant behavior on supervision" and seeks to have that individua incarcerated.

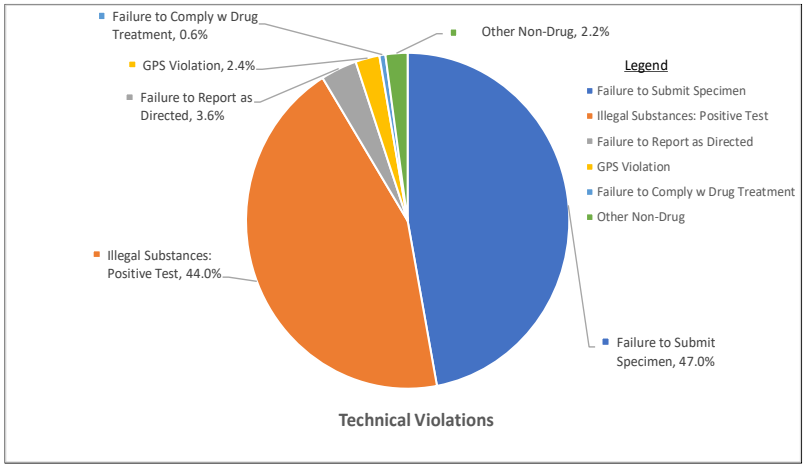
What information is provided suggests, somewhat obliquely, that CSOSA's model of supervision is weighted in favor of enforcing compliance with rules over diagnosis, treatment and rehabilitation. Consider, for example, CSOSA's approach to drug use by individuals under its supervision.

CSOSA's drug tests are analyzed by the Pretrial Service Agency. Each time one of the 55,000 drug tests administered in FY 2018 produced a positive result, The Pretrial Services Agency entered an "automatic violation" on CSOSA's networked system. The system notifies CSO's of a violation within 24 hours. There were a lot of these violations: in FY 2018, the system recorded about 41,800 technical violations for drug use, presumably detected by drug tests.

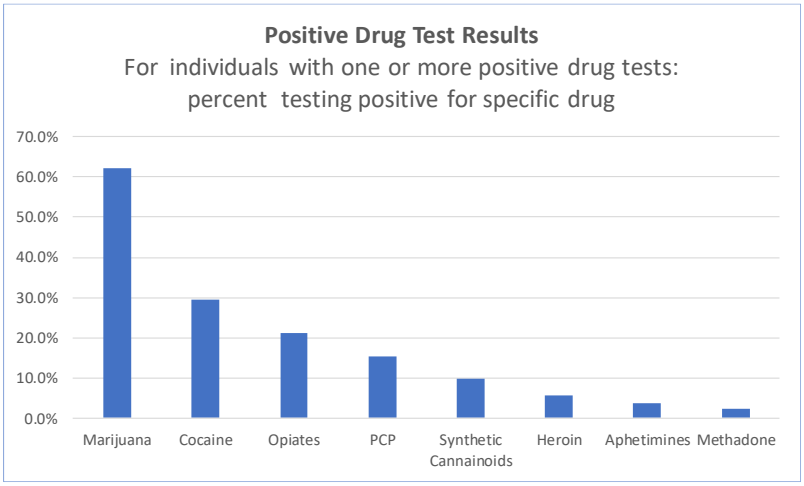
But CSOSA doesn't just count positive drug tests as drug technical violations. In FY 2018, CSOSA reported 44,476 additional violations, 47.0% of all technical violations, for failure to submit a test specimen, which includes failure to appear for testing. This despite the lack of a factual basis upon which to conclude that every person who failed to appear or to submit a test specimen was using drugs. Some may have been unable to arrange transportation or leave employment, others mismanaged their time or were hindered by a disability. Counting a failure to submit a test specimen as if it was a positive test result not only exaggerates the extent to which individuals are actually using illegal substances but obfuscates other problems in the individual's life, such as lack of transportation or mental health issues.

Added together, technical violations for drug use and for failure to appear for testing total 86,363 drug technical violations in FY 2018 – 30,000 more drug technical violations than administered drug tests! Given CSP's 15,734 "unique clients" in FY 2018, that's an average of 5.4 drug technical violations per client. As the following chart shows, violations for positive drug tests and for failure to submit a specimen comprise 91% of all technical violations. Clearly, if a more selective method of submitting actual drug use as a violation were employed, the overall number of technical violations could be decreased dramatically with, perhaps, more focus on constructively responding to individual substance abuse and related issues.

Drug and Non-Drug Technical Violations in FY 2018



It would not be difficult to reduce the number of drug technical violations. To be sure, the high 76%+ drug test failure rate might be explained because CSP targets high-risk and identified drug users for testing. But the rate of violations may also be elevated because CSP tests parolees and individuals on supervised release for marijuana, legal for personal use in the District of Columbia but prohibited to individuals on parole or supervised release. As shown in the chart below, marijuana showed up in the tests of 62.1% of the individuals who tested positive for drugs at least one time in FY 2018, more than twice as often as cocaine and three times as often as opiates. If CSOSA did not automatically violate an individual who tested positive for marijuana, the drug test failure rate would undoubtably decrease.



Compared to the number of technical violations, the number of individuals who were arrested and charged with a new crime while on parole or supervised release is much smaller, but significant. CSOSA reports that 1,033 individuals (192 or 15.2% of those on parole and 841 or 23.6% of those on supervised release) were arrested on new charges in FY 2018 in the District of Columbia.*

CSOSA does not report the most serious of the charges filed against each of those 1,033 individuals. Rather it reports the number and types of charges placed against all individuals under supervision who were arrested in the District of Columbia. As a result, the published data provides only a vague general picture of the range of types of new offenses for which individuals on supervision were prosecuted. Yet every indication is that most arrests were for less serious, property and public order offenses including, however, illegal possession of a weapon.

Because individuals are often charged with more than one crime, the number of charges reported is much larger than the number of arrested individuals.

CSOSA reports that 7,270 charges were placed against individuals arrested for new crimes in the District of Columbia while under CSP supervision in FY 2018. Of these, 1,750 or 24.1% were for crimes categorized as "violent." However, because the category includes both homicides and sexual assaults on the high end and low-level assaults characterized by street corner and bar fights on the other end, a large share of the individuals charged with these crimes would not be considered

* A relatively small additional number of individuals on supervision are arrested outside the District of Columbia for new crimes as well as on warrants issued for violations of parole or supervised release.

violent or dangerous. And in any case, nearly three-quarters of the charges involved in arrests were for non-violent property crimes, drug crimes and public order offenses.

The data says nothing about the disposition of the new criminal cases: how many cases were ultimately dismissed or whether or not individuals were convicted or found not guilty.

While an arrest automatically results in an AVR, we do not know which types of arrests resulted in reincarceration. CSO's appear to exercise discretion in deciding whether to initiate the revocation process for repeat drug users or individuals who commit public order or property offenses. There are no public guidelines or standards; for all that we can find out, the agency may elect to refer one individual to treatment and turn a similarly-situated person away simply because a program is filled to capacity or one CSO is less motivated than another.

Yet as independent in its decision-making as CSOSA and its CSO's appear to be at the moment, the agency is not entire free of oversight. In a process outlined in the next section, USPC staff and Commissioners ultimately decide whether or not an individual has violated parole or supervised release and what if any sanction is to be imposed as a result. (Superior Court judges have an analogous decision-making authority to decide whether a probationer has violated conditions and if so, what the consequences will be.) When the parole functions are returned to the District of Columbia, the District government and its residents will be in a position to influence CSOSA's parole and supervised release practices indirectly, through decisions made by officers and staff of the paroling authority.

The following section describes the current revocation process step by step to provide a foundation for recommendations for reforms which conclude the report.

THE PAROLE AND SUPERVISED RELEASE REVOCATION PROCESS IN THE DISTRICT OF COLUMBIA

A CSO initiates the revocation process with the USPC upon receiving information that an individual under supervision has been arrested or charged with a new crime or that an individual has failed to comply with rules or conditions of release from prison (a "technical violation"). When this occurs, the CSO submits an Alleged Violation Report ("AVR") to the USPC. The AVR triggers a request for a warrant for the arrest of the person under supervision. Submitting the AVR to the USPC raises the prospect that parole or supervised release may be revoked and the individual returned to prison, perhaps for years.

As shown in the chart below, CSOSA reported that CSO's initiated revocation of parole or supervised release for 1,688 District Residents, an average of 140 per month and just over one-third of the 4,829 individuals under their supervision while on parole or supervised release in FY 2018. Because an unspecified number of individuals were subjected to more than one revocation, the number of AVR's submitted was greater than 1,688 for the year and the average monthly number larger than 140.

CSOSA also reports that 1,033 individuals, 192 while on parole and 841 while on supervised release, were arrested on new criminal charges in the District of Columbia in FY 2018. CSOSA states that every arrest results in an AVR. Some of the AVR's issued following an arrest were the second or third AVR submitted for one individual. They would add to the 1,688 AVR's reported by CSOSA, which tallies only the number of individuals who were the subject of one or more AVR.

Finally, CSOSA reports that 635 individuals were revoked from parole and supervised release "to incarceration." But again, this number may understate the number who were actually incarcerated because of a revocation.

"AVR's," Arrests and Revocations to Incarceration

	CSOSA's Community Supervision Program (CSP)				
	Probation	Parole	Supervised Release	Subtotal Parole & Supervised Release	TOTAL CSP
"Unique client" population FY 2018	10,905	1,266	3,563	4,829	15,734
Individuals against who at least one AVR was submitted	3,084	288	1,400	1,688	4,772
Percent "Uniquie client" population who are individuals against who at least one AVR was submitted	28.3%	22.7%	39.3%	35.0%	30.3%
Number individuals arrested in D. C. for a new offense	1,843	192	841	1,033	2,876
Percent "Uniquie client" population arrested in D. C. for a new offense	16.9%	15.2%	23.6%	21.4%	18.3%
Number of individuals revoked to incarceration	872	68	567	635	1,507
Percent "Uniquie Client" population revoked to incarceration	8.0%	5.4%	15.9%	13.1%	9.6%

Source: CSOSA CSP *Congressional Budget Justification and Performance Plan/Report Fiscal Year 2020* pp. 25, 27, 29 & 30.

If a person on parole or supervised release is found guilty of a new felony offense, that person will be sentenced on the new offense and transferred to the BOP to serve out the new sentence. Not until after the conclusion of the sentence does the USPC holds a revocation hearing (usually at the BOP facility in Philadelphia) to determine how much additional prison time (if any) it will add before the person is re-released to community supervision. These individuals may not be counted as having been "revoked to incarceration" since their incarceration is the direct result of a new charge and conviction.

The USPC terminates the parole or supervised release on hundreds of men and women. Yet each Alleged Violation Report or AVR is constitutionally significant. American jurisprudence recognizes that termination of parole or supervised release can inflict a "grievous loss" at the hands of the government, entitling the parolee to limited but orderly due process protections outlined by the United States Supreme Court in *Morrissey v. Brewer* 408 U. S. 471 (1972), to wit: a notice describing particulars of the allegation and rights; a preliminary hearing at which a neutral officer determines whether there is probable cause to detain the individual; a limited right to call and cross examine witnesses at that hearing; the right to ask for release on bond; a record of the hearing and of a hearing officer's decision; a full hearing before a neutral officer determined on the basis of reliable evidence, with limited rights to call and cross-examine witnesses.

Constitutionally, a parole or supervised release revocation process has two steps: first, an inquiry to determine whether the individual violated conditions of release; and second, only if the hearing officer finds that he or she did violate conditions, an inquiry into whether the parolee should be recommitted to prison or whether other steps be taken to protect society and improve chances of rehabilitation.

A CSO's decision to submit an Alleged Violation Report fundamentally changes the nature of the individual's supervision. The relationship between the CSO and the supervised individual becomes adversarial. The CSO is now in opposition to the individual's liberty. having decided to pursue a revocation which will conclude with incarceration. The supervised individual, through the Public Defender Service or a private attorney, may be simultaneously contesting evidence of a violation and urging a hearing examiner that, even if found to have violated conditions of release, the individual need not be incarcerated.

As a practical matter, the approximately 300+ individuals incarcerated in the Department of Corrections waiting for a final revocation hearing are detached from their supporting services, treatment or other constructive interventions they may have been receiving from CSOSA, community-based organizations and non-profits, as well as from family and friends.

Each Alleged Violation Report submitted to the USPC triggers a series of steps in the revocation process as follows:

1. The AVR is reviewed by a USPC Analyst. The Analyst may ask for additional information and has three days to act. If the Analyst and a Commissioner approves, the USPC will issue either a summons requiring the individual to appear for a probable cause hearing or a warrant for apprehension, arrest and return of the individual. If the Analyst does not agree with the CSO's request for a warrant or summons, that decision is reviewed by higher officials until there is consensus. The Commission must decide on issuance of a warrant or summons within five business days of the receipt of a request.

2. The USPC's purported preference for community corrections. According to USPC rules, when an individual is found to have committed an administrative or technical violation, a community corrections or similar placement is preferred. If a CSO requests that a warrant or summons be issued for an administrative violation, the CSO must state whether intermediate sanctions were used to address the problem and to explain why they were not. Anecdotally, however, from the perspective of the Public Defender Service professionals who represent individuals before the USPC, we are told that when CSO's submit an AVR they almost invariably ask for a warrant for arrest and incarceration. CSOSA publishes no data that sheds light on the frequency with which CSO's profess to have exhausted intermediate sanctions or request warrants as opposed to summons. However, low utilization of the Halfway Back program provides an additional indication that the UPSC favors incarceration in the BOP over that intermediate sanction.

3. When the USPC issues a warrant, the clock stops. The USPC may issue a summons requiring an individual to appear before it, or a warrant for an individual's arrest. When the USPC issues a warrant, the individual no longer receives credit for time on supervised release. In effect the decision to issue a warrant as opposed to a summons extends the time during which the individual is on supervised release or parole, even beyond the date on which the original term of supervised release would have expired.

4. A warrant results in incarceration. Any federal or District of Columbia law enforcement officer or person assigned responsibility for serving warrants may

serve a warrant issued by the USPC and effect an arrest. When the individual is arrested in the District of Columbia, he or she is incarcerated in the jail at least until the USPC holds a probable cause hearing, required to be held within five days of the arrest. (A probable cause hearing is not required if the individual has been convicted of a new offense.) The USPC must notify the District of Columbia Public Defender Service of the hearing. The Public Defender Service (or the individual or a private attorney) may request a delay of up to 30 days, which by rule is routinely granted, during which time the individual remains in jail.

5. The probable cause hearing. Participants in the hearing are: the individual who has been arrested; his or her attorney (usually from the Public Defender Service but occasionally a private attorney); a Hearing Examiner, employed by the USPC; and, a representative from CSOSA.

   The hearings are often contested. The Hearing Examiner decides two issues: "whether there is probable cause to believe that the releasee has violated the conditions of supervised release as charged, and if so, whether a local or institutional revocation hearing should be conducted."

   At the conclusion of a probable cause hearing, the Hearing Examiner may: find probable cause and order the individual detained until the revocation hearing; find probable cause but release the individual from detention to await the full hearing; find probable cause but decline to refer the matter for a further hearing and return the individual to supervision; or, find no probable cause and return the individual to supervision.

   The probable cause hearing is not recorded or transcribed; the "record" consists of the Hearing Examiner's "digest:" a summary of evidence and the Hearing Examiner's findings along with documents such as underlying arrest reports. Public Defender Service attorneys often submit documents including support letters and diagnosis which will follow the individual through to his or her final revocation hearing before the parole board and, in the event of an appeal to the full Commission, to the USPC Commissioners.

6. Review of a Hearing Examiner's finding of probable cause. A Hearing Examiner's finding of probable cause must be affirmed by a USPC Commissioner. When a full revocation hearing is ordered, the Commission has 65 days from the date of arrest in which to provide the individual with a Revocation Hearing, also before a Hearing Examiner.

7. The Revocation Hearing. An individual subject of a revocation hearing is represented by defense counsel, usually from the District of Columbia Public Defender Service. The individual or attorney may request a shorter or later date for the hearing. The individual and attorney are to be provided the CSO's Alleged Violation Report, presentence reports and other information related to the alleged violation. Within limitations the individual may call witnesses and cross-examine the government's witnesses. Following District of Columbia case law, Parole Commission Rules explicitly recognize that PDS attorneys may vigorously contest

evidence against the individual, challenge insufficient charges, and propose alternative dispositions.

The District government and its agencies, including the Department of Behavioral Health, non-profits providing services to incarcerated and formerly incarcerated individuals, seldom participate in revocation hearings. Generally, the only interaction with District of Columbia agencies, service providers or non-profits are those which are arranged or offered by Public Defender Service attorneys.

8. Commissioners review the Hearing Examiners findings. At the conclusion of the revocation hearing, the findings of the Hearing Examiner, an untranscribed recording of the hearing, and the file are given to another Hearing Examiner for review. If the second Hearing Examiner concurs in the findings, the recording, documents and file are submitted to one of two sitting Commissioners who either concur or disagree with the Hearing Examiner's findings.

   The Public Defender Service's staff estimates that Commissioners disagree with the Hearing Examiner's findings about 15% of the time, but that in nearly all of the cases in which the Commissioner disagrees, the Commissioner's decision goes against the individual.

   The Commission is allowed 21 days to mail its decision, but generally takes about two weeks to confirm or reverse the Hearing Examiner's findings.

These steps are scheduled to be completed within an 86 day period. However, the DOC reports a 91.9 day average length of stay for the 14.9% of the total male population detained for parole or supervised release revocation proceedings. Given that, it's reasonable to assume that a number of individuals are incarcerated beyond the 86 day period before their case is concluded.

Neither the USPC nor CSOSA publish data which describes the outcomes of revocation hearings. But anecdotal reports, published sentencing guidelines and information from the BOP bespeak punitive consequences.

PAROLE AND SUPERVISED RELEASE REVOCATIONS' IMPACT ON THE DISTRICT OF COLUMBIA'S PRISON POPULATION

Parole and supervised release revocations drive prison incarceration for District of Columbia residents to an even greater degree than they drive the jail population in the DC Dept. of Corrections.

According to the latest available data, the number of admissions to the BOP from the District of Columbia for parole or supervised release revocations exceeds the number of admissions on new sentences. In a 2019 report, *Blueprint for Smart Justice* (subsequently withdrawn and now pending revision), the national ACLU and the Urban Institute analyzed data from the National Corrections Reporting Program to find that in 2014 more than half (55%) of 2,202 admissions to the BOP were for revocations of community supervision. Most of these admissions were for non-violent crimes, including 28% for drug crimes and 13% for property crimes. Significantly, 78% of the admissions

to the BOP from the District of Columbia for drug crimes were for revocations from community supervision.

In the March 2018 briefing, District of Columbia officials were told that, "thousands of DC returning citizens [have been] returned to incarceration for violation of the USPC's rules." As a result, 1,647 or more than one-third of the District of Columbia's 4,700 citizens housed in the Bureau of Prisons, were being held for parole or supervised release violations.

Revocations continue to feed District of Columbia residents into the BOP. According to the Vera Institute's analysis, in FY 2018 245 or 33.4% of a total of 732 individuals out of the population the Vera Institute reviewed were released from the DOC to the custody of the United States Marshall, "most likely for a transfer to a BOP facility following revocation of their parole." For reasons explained in Appendix A, the Vera Institute's estimate may be low by as much as one-third, in which case a reasonable estimate would have been that there were approximately 328 (out of the Vera sample of 732 people) transfers from DOC to the BOP in FY 2018.

Data reported by CSOSA suggest that revocations to prison are considerably higher than reported by the Vera Institute in *Jails and Justice: A Framework for Change*.

As shown in the table "AVR's Arrests and Revocations to Incarceration," (above at p. 14), CSOSA reported that in FY 2018, 635 individuals or 13.1% of the individuals on parole or supervised release were revoked to incarceration. One explanation of the lower numbers reported by the Vera Institute may be that some individuals revoked to incarceration were resentenced to time served or to serve a short amount of time in the DOC instead of being transferred to a BOP facility and hence not included in the data which sourced the Vera Institute's estimates.

The New Visions Committee was unable to find a readily-accessible report of the length of additional sentences the USPC imposes. Public Defender Service attorneys, advocates and formerly incarcerated individuals firmly maintain that the USPC imposes long sentences on individuals who are found to have violated conditions of parole or supervised release. Facts appear to confirm these impressions.

USPC applies "resentencing" guidelines that were developed for the USPC years ago, independent of guidelines developed for and used by judges in Superior Court. The methodology was roundly criticized in an evaluation completed by James Austin of the JFA Institute more than a dozen years ago but not publicly released.

The USPC guidelines are harsh. For example, they call for sentences of up to eight months additional incarceration for technical violations by individuals who scores for behavior (or "salient factors") are otherwise considered "good." Guidelines for individuals with more problematic scores or slightly more serious offenses quickly move into a year or more of incarceration and up.

In fact, Public Defender Service attorneys and other observer report that the USPC often imposes new revocation sentences that result in individuals serving more time on supervision than originally imposed by the sentencing judge. Sentencing provisions enacted by the DC Council and implemented through Parole Board rules do allow the USPC to ask the sentencing court to add time onto the original sentence. It was not clear how often the USPC actually asked the court to extend an original sentence.

But other provisions in DC law have the same effect as extending the original sentence. The Equitable Street Time Credit Amendment Act of 2008 (DC Law 17-389) permits the USPC to deny credit for a portion of the time a parolee spent under supervision after release from prison or jail ("street time") prior to a parole revocation if the parolee had failed to "respond to any reasonable request, order, summons or warrant." The statute also provides that if an individual under supervision is convicted of a new felony offense, the USPC must revoke all of the parolee's street time. (If convicted of a misdemeanor offense, the USPC has the discretion to rescind a parolee's street time.) This means that when an individual who is on parole is convicted and sentenced to a new prison term for new crime, he or she will first conclude the sentence for the new crime and then serve out the remaining time left on the original sentence, including "re-serving" time previously spent under supervision.

The USPC also has the authority to revoke street time for strictly technical violations, but reportedly refrains from doing so. This nonetheless leaves those found to have committed a technical violation vulnerable to repeatedly serving time on parole.

Many DC residents, especially those who served time in prison or care about individuals who have served prison time, angrily perceive that the USPC extends the original sentence beyond that authorized by the original sentencing judge. Attorneys and advocates share their frustration and sense of unfairness.

A New Vision for Parole and Supervised Release Revocations in the District of Columbia

With this paper, the ReThink Justice DC Coalition New Vision: Alternative to Incarceration Committee has attempted to show how the District of Columbia parole and supervised release revocation process is influenced as much by CSOSA as it is by the USPC. Both are independent federal agencies operating outside the District of Columbia government and not accountable to the District of Columbia's residents. For its part, the District of Columbia government has no direct input into CSOSA's operations, its supervision methods, drug or mental health treatment programming, or decisions about how it deploys its extensive resources.

This relationship will likely change, however, when the District of Columbia assumes local control of its paroling authority. Local control of the paroling authority provides an opportunity for the District to positively influence the way in which CSOSA supervises individuals on parole or supervised release.

A locally-controlled paroling authority will be in a position to influence the use of resources, such as CSOSA commands, in cases that are brought before it. In addition, a locally-controlled paroling authority could use its decision-making statutory power to encourage coordination and resource-sharing between CSOSA and the growing number of independent, grant-funded and non-profit reentry and community organizations serving justice-involved District residents.

In particular, the New Visions Committee envisions a paroling authority that carries forward the ideals and principles announced by the District's Task Force on Jails and Prisons by exercising its authority to incarcerate individuals only if there is clear and convincing evidence that that person poses a risk to the community or to him or her self. The New Visions Committee envisions a paroling authority that would impose additional prison time on an individual only if there was no other reasonable alternative and a criminogenic reason to do so.

The New Vision Committee envisions a paroling authority with both a decision-making and a policy-informing mission. The work of a paroling authority's staff and hearing officers, which must include data collection and analysis, provides a living window into the lives of those individuals who are having the greatest difficulty conforming their behavior to community norms, the services provided or not provided them, as well as their unmet needs or promising solutions. The District of Columbia government and its residents would benefit greatly from information that could come to it from a local paroling authority.

The New Vision Committee does not recommend a particular staffing model and does not address the parole-granting functions of a new paroling authority. Committee members observe that, in so far as revocation is concerned, the present staffing structure has positive points to recommend it. However, for purposes of discussion, we share a vision of a local parole authority employing five to seven Commissioners, ten to fourteen Hearing Examiners who review Alleged Violation Reports and conduct probable cause and revocation hearings, much as at present, a statistician, and two additional attorneys serving as counsel to the staff. Additional staff would include administrative support, transcribers, and investigators.

As an important national innovation, the New Vision Committee urges that Hearing Examiners be comprised of people with a mix of backgrounds: prosecutorial and criminal defense, victims' representatives, social workers or social scientists, justice advocates, justice-involved individuals and community representatives. The revocation process, which at present requires review by at least two Hearing Examiners and a Commissioner for the probable cause hearing, could be modified to assure a review by Hearing Examiners and one or more Commissioners with different backgrounds and perspectives prior to a final decision on probable cause and, if a case is not resolved in advance, at the revocation hearing. Thus, while Hearing Examiners bring diversity to the decision-making, the process we envision assures that decisions would reflect an informed consensus among people with different perspectives.

RECOMMENDATIONS

The Committee offers the following specific recommendations for legislation or rules governing a new paroling authority serving the District of Columbia and its residents:

1. Do not allow the paroling authority to incarcerate an individual for "technical" violations. Enabling legislation should prohibit the paroling authority from ordering the incarceration of "technical" or rule-breaking violators unless there is a clear showing that CSOSA has exhausted all reasonable treatment, programmatic and supervision alternatives to incarceration and that a failure to detain would pose a serious risk to the individual or his community. Enabling legislation should authorize the paroling authority to require that CSOSA and defense counsel vigorously investigate all reasonable alternative sanctions, treatment or support services for the paroling authority's consideration.
2. Reduce jail incarceration during the revocation process. As should be the case under current rules, a finding of probable cause that an individual violated term of probation, parole or supervised released should not result in automatic detention. Enabling legislation for a local parole authority should require that Hearing Examiners consider risk assessments, criminal history, recent conduct and ties to

the community and reasonable alternatives when deciding whether the new violation by a person already under close supervision by CSOSA should result in additional incarceration. The burden to justify detention should be assigned to the CSO or agent representing CSOSA or the government.

Recommendation # 10, below, proposes a hearing schedule intended to facilitate release from detention prior to a final disposition in revocation proceedings whenever reasonably possible.

3. Minimize reliance on incarceration as a sanction. Enabling legislation should require that, for individuals the paroling authority finds to be in violation of conditions of parole or supervision, the paroling authority should impose additional incarceration parsimoniously, favoring where possible community-based and rehabilitative sanctions and restorative justice principles.

   Enabling legislation should explicitly reject the guidelines currently in use by the USPC and set a cap on the length of additional incarceration that can be imposed for technical violations. Enabling legislation should discourage the paroling authority from revoking parole or supervised release or imposing additional incarceration on the basis of unsubstantiated vague assertions, such as "holding the defendant accountable" or "protecting the public."

   (Although these recommendations address violations of parole and supervision rather than original parole decisions, the Committee joins with many advocates to urge that all parole decisions be based on the applicant's post-offense behavior, development and accomplishments rather than the severity of the original crime for which sentence was imposed and in many cases served.)

4. Encourage community, advocacy and subject-matter expert participation in revocation hearings. The paroling authority should encourage participation in both probable cause and revocation proceedings by professional program staff including programs operated or funded by CSOSA, community-based programs including the District of Columbia's reentry programs, their membership organization, the Reentry Action Network (RAN), relevant mental health, treatment and substance abuse experts, and community representatives. Normally, defense counsel designates potential participants. The local paroling authority should designate a staff person to coordinate participation in hearings by interested parties who may not wish to coordinate with defense counsel. The Hearing Examiner and parties should be expected to assure that participation is relevant to the issues and disposition at each hearing, constructive, and managed so as not unreasonably extend scheduled hearings.

5. Decision-making informed by community-based and justice-involved staff. Enabling legislation should authorize the Director or lead hearing officer to assign Hearing Examiners who know the affected community or who have relevant expertise to conduct probable cause, revocation or other hearings, subject to precautions against conflict of interest. We have proposed that the paroling authority include Hearing Examiners with knowledge about D.C. communities and services available, as well as subject matter expertise. The paroling authority should be given the same authority now vested in the USPC to appoint Hearing Examiners and agency staff with relevant backgrounds to participate in hearings during the revocation process.

6. Credit for time served. Enabling legislation should eliminate forfeiture of street time credit following a parole revocation or a revocation of supervised release by striking relevant provisions of the Equitable Street Time Credit Amendment.

   Enabling legislation should prohibit the paroling authority from imposing sanctions that would extend an individual's sentence past the expiration of the maximum sentence imposed by the trial court. Any offense that is believed to require incarceration or supervision beyond the expiration of the maximum sentence imposed by a trial court should be prosecuted in a new criminal case.

7. Respect criminal court jurisdiction over newly-alleged crimes. Enabling legislation should require that, in instance of individuals charged with new crimes in the District of Columbia, the paroling authority should defer to the decisions of the trial courts in setting terms of release, in the disposition of the case, and in any sentence imposed unless there is an independent showing of a compelling reason not to accept the trial court's decisions regarding pretrial detention, guilt or punishment. For example, if the trial court imposes a short sentence on a misdemeanor charge and provides for release, the paroling authority should not require that person to be incarcerated pending a probable cause hearing. This recommendation preserves the prerogatives of the local court system and restores fair balance to the plea bargaining process. This recommendation applies to new charges in the District of Columbia. The paroling authority should exercise discretion in deferring to the judgments of courts in other jurisdictions.

8. Mandated data collection and transparency. The lack of clear, accurate data describing the actions of agencies and the fate of justice-involved individuals as they move through a complex process makes for an opaque, unaccountable justice system. Records-keeping and routine data collection, generic databases and off-the-shelf software can address this glaring deficiency in information in this critical area and turn the paroling authority into a source of valuable information of unique value to District of Columbia justice professionals and policy-makers.

   Enabling legislation should require the paroling authority to issue straightforward public reports monthly including information such as: the number of parolees and individuals on supervised release, their status, charges detailed in Alleged Violation Reports filed with the paroling authority, and the number of individuals ordered detained. The paroling authority should record and report on the length of time between receipt of an Alleged Violation Report, a preliminary hearing and finding of probable cause, and final finding or disposition. The paroling authority should report on sanctions imposed in each case by offense category and by the nature of the violation. The paroling agency should have modest research and reporting capacity.

9. Reduce time on supervision for parolees and individuals on supervised release.

   CSOSA inexplicably reports that parolees are "expected to remain under CSP supervision" from 12.0 to 17.5 years and individuals on supervised release are expected to remain under supervision from 40.5 months to 41.9 months. Research shows that prolonged supervision increases the likelihood of technical violations without benefiting public safety.

CSOSA's own data shows that individuals who break the rules tend to do so on the front end. On average, the 35% of parolees and individuals on supervised release who were subject to a Alleged Violation Report during the first year of supervision were tagged just over four months from the start of their supervision, leading CSOSA to suggest that "the beginning of supervision may be a particularly challenging time."

Under current law (D. C. Law 17-389 Equitable Street Time Credit Amendment Act of 2008), after two years under supervision the USPC must evaluate the need for continued supervision and may terminate it. Unfortunately, the USPC does not commonly exercise this authority. If the USPC does not opt to end supervision after two years, it is also required to review each parolee's status annually for potential parole termination. After five years under supervision, the USPC is required to terminate parole supervision unless it finds that "there is a likelihood the parolee will violate any criminal law." If the USPC does not terminate parole after five years, it is required to hold biannual hearings to determine whether to terminate parole supervision. Under local control, a parole authority that exercised its discretion under current law could significantly reduce its supervised caseload and free District residents of unnecessary and counter-productive supervision.

10. <u>Adjust the hearing schedule to reduce jail incarceration and encourage alternatives to revocation and incarceration.</u>

    At present, USPC hearings appear to operate on a set schedule under specified time limits, with the revocation hearing to be held 65 days after arrest and a final decision issued within 21 days thereafter, or 86 days after arrest. There are however allowances for continuances. Length of stay data and practitioners' accounts indicate that the proscribed schedule is often exceeded for individuals in custody. Apparently, requests for continuances frequently come from the individual or a defense attorney and are not necessarily contrary to either the individual's or government's interests.

    With one exception, the New Visions Committee rejects recommending a mandated shorter time frame in which hearings are necessarily to be held. The one exception is the 21 day period between the conclusion of a revocation hearing and mailing the Commission's findings and order. This time period seems unnecessarily long because the USPC issues many decisions within 14 days.

    Otherwise, the New Visions Committee recommends that enabling legislation empower the paroling authority to establish a hearing schedule that facilitates early, negotiated dispositions with an emphasis on the consideration of alternatives to revocation or incarceration while remaining flexible to meet exigent circumstances.

    The New Visions Committee recommends enabling legislation that authorizes a Hearing Examiner to order a review hearing seven days after a finding of probable cause if there is reason to believe that the parties have not fully considered all alternatives to revocation or continued detention prior to a full hearing. At the review hearing, the CSO or CSP representative and the individual or his or her attorney will be asked to demonstrate that they have considered all reasonable treatment, program or community-based alternatives to continued incarceration and to otherwise explore the availability of appropriate alternatives.

We further recommend that when a Hearing Examiner finds probable cause, the paroling authority should schedule a revocation hearing within 45 days of the probable cause hearing for individuals not in custody or who are in custody on a new charge or other hold. For individuals in custody on a warrant issued for the current violation, the paroling authority should schedule a revocation hearing within 30 days. Requests for one thirty day continuance should be routinely granted the individual or his or her attorney, as under current rules.

Additionally, and to facilitate the use of alternatives to incarceration, enabling legislation should authorize the paroling authority to hold the equivalent of a pretrial settlement conference on short notice at the mutual request of both parties. One party could also request such a settlement conference upon a representation that it is in possession of new information pertaining to release or to a disposition with alternatives to continued incarceration. Enabling legislation should authorize Hearing Examiners to issue orders releasing detained individuals from custody after such a conference subject to approval of a superior officer or Commissioner.

This is not an exclusive list of scheduling options. The New Vision Committee offers these recommendations as examples of ways in which the scheduling of hearings could encourage and facilitate efforts to assign individuals to appropriate alternatives to revocation or incarceration as well as enabling the paroling authority to act promptly when potential violations occur.

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March 3, 2020

APPENDIX A Method by which the New Vision Committee estimated the jail population attributable to revocations

The New Visions Committee was unable to obtain data showing a relationship between CSOSA's recent parole and supervised release policies and the jail population. The Committee was only able to obtain information sufficient to provide a fair estimate of the size of the jail population attributable to parole and supervised release violations.

The District of Columbia's Department of Corrections (DOC) provided the Committee with the monthly average number of parole and supervised release violators in DOC custody from July 2017 through July 2019. (The number of probation violators in DOC custody was under review for data quality and could not be reliably reported at the time of our inquiry to the DOC.) According to the DOC data, from July 2017 to July 2019, the monthly average of the daily parole and supervised release violators averaged 326 jail inmates, ranging from a low of 248 to a high of 402 (in September 2017). Most monthly averages were in the lower-mid 300's. Monthly totals for March 2019 – July 2019 averaged 311 inmates incarcerated because of parole or supervision revocations. The March 2019 – July 2019 numbers ranged between 303 and 321 and showed no distinct up or down trend.

Also, according to DOC data, the number of individuals incarcerated on one or more days during each month, or "Total Distinct Persons," between July 2017 and July 2019 averaged 498. The number of Total Distinct Persons incarcerated because of parole or supervised release violations from March 2019 to July 2019 averaged 429. These higher numbers reveal that approximately 100 or more individuals are incarcerated each month because of a violation charged against them than is suggested by the average daily population.

Statistics reported by the Vera Institute may appear inconsistent with the DOC data, but they are not.

The Vera Institute reported that the average daily population incarcerated in the DOC because of a violation of terms of parole or supervised release was 197 or 15% of the total average daily population. The Vera Institute also reported that an additional 125 or 9% of the total DOC population were the subject of probation violations. The absolute numbers are different from the DOC data, but with the Vera Institute's data, it's the percentages that are important.

By design, the Vera Institute excluded consideration of individuals who were the subject of legal "holds," warrants or legal actions that originated in other jurisdictions and over which the District exercises no control. According to the Vera Institute, individuals with "holds" comprised 704 or 34.2% of the DOC's average daily population of 2,061.

But individuals with "holds" for arrests, bond forfeitures, unanswered traffic or misdemeanor infractions or criminal convictions from other jurisdictions (including neighboring Maryland and Virginia) are also subject of probation, parole or supervised release violations in the District of Columbia. For that reason, the total number of probation, parole or supervised release violators in DOC custody is larger than the number included in the Vera Institute's analysis. In fact, if we apply the Vera Institute's 15% rate for parole or supervised release violators to the FY 2018 average daily population of 2,061, we're given an approximation of an average daily population of 309 individuals subject to parole or supervised release revocation --- close to numbers provided by the DOC.

Our approximation is also confirmed by the DOC's on-line report "Facts and Figures," to the effect that 15.9% of its male population and 12.6% of its (much smaller) female population is incarcerated for violation of probation, parole or supervised release.

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APPENDIX B – Description of the information available to CSP and CSO's

According to its annual report, CSOSA obtains or generates at least five types of documents and reports providing information about individuals under CSP supervision. These include the following:

- Prior agency records Approximately 21% of individuals who begin a period of supervision with CSOSA in 2018 had been in contact with the agency within the previous 36 months. This means, of course, that the agency has prior experience, records and reports for many individuals who return to CSOSA's supervision.

- Pre-sentence reports The Investigation, Diagnostics, and Evaluations Branch of CSOSA's Community Service Program has completed thousands of pre-sentence reports for individuals ultimately sentenced to the BOP. The CSP prepares these presentence reports to provide courts and the USPC the basis for determining appropriate dispositions. Presentence reports accompany individuals sentenced to the BOP. CSOSA's copy of pre-sentence reports are a useful source of history and background for each individual released to CSOSA's supervision after serving a prison sentence.

- Release plans prepared prior to an individual's release from the BOP Currently the BOP is supposed to forward to CSOSA a release plan prepared for and with an individual in the BOP's custody who will be returning to Washington DC three to six months prior to his or her release. CSOSA's supervision officer is expected to forward a request for any special conditions of supervised release to the USPC based on the supervision officers reading of the release plan. The New Visions Committee is frankly uncertain that this rule requirement is currently being met, but the requirement is there.

- Reentry planning In addition, perhaps augmenting the BOP's release planning, CSOSA strives to participate directly each individual's planning for his or her return to the District of Columbia. In FY 2018 CSO's assigned to the Transitional Intervention for Parole Supervision program, or "TIPS," met with 361 individuals who were released through the BOP's Residential Reentry Centers (RRC's) or halfway houses such as Hope Village in the District of Columbia to prepare plans for their return. The TIPS staff also prepared 841 Direct Release Plans for the 70% of individuals who by election or otherwise did not participate in BOP's halfway house programming. The agency's objective with these plans is to ensure that individuals returning through RRC's or directly into the community "receive assessment, counseling, and appropriate referrals for treatment and/or services." Plans completed with these objectives are bound to identify strengths, needs, and the community resources, treatment programs and the individual's personal capabilities and assets that CSOSA's staff determined to be appropriate at the outset of supervision.

- Periodic evaluative risk assessments CSP conducts an initial and then repeated risk assessments of individuals coming under parole or supervised release with the stated purposes of providing a basis for "case classification and the identification of the offender's specific needs" leading to "the automated development of an individualized prescriptive supervision plan." CSOSA uses two risk assessments: one, a risk assessment that can take up to five weeks to complete because they require investigation, developing rapport with the individual and home verification visits; the second a faster, "screener" risk assessment

intended to inform immediate custodial decisions. CSOSA reassesses medium level or higher classified individuals every six months, upon a re-arrest or other significant events.

The equivalent of 119 full time staff are engaged in CSOSA's risk/needs assessments which in 2020 will be supported by $24.6 million or 13% of CSOSA's proposed budget.

- Substance abuse and drug use history CSOSA also engages in a proactive drug testing program closely tied to its risk assessment program. In 2018, CSOSA collected an average of 13,757 samples from 4,586 individuals each month or more than 55,000 annually and amounting to an average of 459 each day or three drug tests per month for each individual tested.

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APPENDIX C: CSOSA's program resources

CSOSA has an array of agency-based assets and contracted programs to meet its clients' needs. The following is not an all-inclusive list or directory.

- Staffing CSOSA's staff-to-client ratios are sufficient to allow staff adequate time to develop relationships with and an understanding of the clients they supervise. CSO's in particular have a caseload that is on the manageable end of recommended scales. In FY 2018, the ratio of 9,669 supervised individuals to "on-board CSO positions" was 45.6:1, within range of professionally-recognized standards of 50:1 for medium risk individuals. Caseloads for special populations such as domestic violence and sex offenders are slightly higher than the 20:1 recommended ratio, as is the ratio of supervisors to men under general supervision.

- Residential treatment CSP operates a "residential treatment readiness facility", the Re-entry and Sanctions Center, to which 834 individuals were admitted in FY 2018. The Center provides programming for an unspecified number of high risk offenders/defendants who violate conditions of their release; dually diagnosed (mental health and substance abuse) male offenders; women; and, Pretrial Service clients.

  CSOSA has a contract with the Halfway Back Residential Sanctions program with which it placed 103 individuals in FY 2018.

- Non-residential treatment and support services CSOSA's proposed 2020 budget includes a little over $51 million for treatment and support services which it provides directly or through contracted third parties. However, the exact nature and the character of programs is not readily discernable from CSOSA's published information. For example, substance abuse problems are to be addressed through "drug testing and appropriate sanction-based treatment" which is promised to provide individuals "the support necessary to establish a productive, crime-free life." Toward this end, in FY 2018 CSP made 769 residential placements, 759 outpatient placements and 115 placements for detoxification, for a total of 1,643 placements for drug treatment in addition to placements for dually-diagnosed individuals in the Re-Entry and Sanctions Center.

- Housing assistance Recognizing that housing is an on-going challenge in Washington, DC's expensive real estate market, the CSP provides short term housing to an unspecified "limited number" of the 1,115 individuals on supervision that, by CSOSA's admittedly restrictive definition, were in unstable housing such as homeless shelters.

- Employment and educational assistance The CSP attempt to increase employment and educational achievement by assessing and "responding" to individual's educational and vocational needs and providing transitional employment programs and instruction in job development in four Community Engagement and Achievement Centers ("CEAC's"). CSOSA's internal efforts to improve employment are augmented by "partners" who provide literacy, workforce development, employment training and job placement services. Named partners include public entities: The Community College of the District of Columbia; the DC Office of the State Superintendent of Education; and, the DC Department of Employment Services.

- Community and neighborhood-based partnerships CSOSA's proposed 2020 budget allocates almost $12.5 million and 55 full time equivalent employees to support "Community Partnerships" with "city agencies, social service providers, businesses, the faith community and individual community members." The rationale for this effort is that "effective partnerships with community organizations facilitates and enhances the desire and ability to live as productive members of the community," and to create "opportunities for offenders to connect to natural support systems in the community," including specifically "job training, housing, education and other services … as well as to identify organizations with whom offenders can complete their community supervision requirements."

  In furtherance of its community-based efforts, CSOSA maintains a Criminal Justice Advisory Networks (CJAN) in each police district in which community members, faith-based organizations, government agencies, law enforcement entities and "other stakeholders who work together to, among other goals, "promote opportunities for offenders." Employees engaged in this project include Intergovernmental and Community Affairs Specialists who "mobilize the community, identify resources to address offender needs…. with goals that include increasing the number of jobs and services available to individuals under parole and supervision.

- Graduated Sanctions CSOSA describes graduated sanctions as a means of enforcing "offender accountability," a response to a violation of conditions of release short of returning the individual to the original "releasing authority." The emphasis is on the rapidity and uniformity with which sanctions are imposed. Graduated sanctions include measures such as increasing drug testing or supervision contacts, assignment to a CEAC, placement in a "residential sanction program," or placement on GPS-assisted monitoring. They do not appear to be purposed toward rehabilitative, treatment or counseling programs.

  This tally of CSOSA's programs and services, while possibly not complete, provides a fair picture of the agency's array of well-funded programs and services. The expressed purpose for most of them is to positively influence and meet the needs of individuals who are on parole or supervised release from the Bureau of Prisons. At the same time, programs such as "graduated sanctions" and frequent, invasive drug testing intrinsically tied to sanctions and the potential of a violation, do not inherently convey a supportive, rehabilitative goal.

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For more information about The Parole Revocation Process in DC: What DC Could Accomplish with Local Control, or to speak with one of the authors, please contact any of the following:

Malcolm C. Young
youngmalcolmc@gmail.com
773-726-8123

Phil Fornaci
Philip.fornaci@gmail.com
202-215-2184

John Stanard
202-667-6404
johnstanard@churchofscientology.net

Myra Woods
202-255-0203
myrawoods@gmail.com

Ann Keep
202-360-0576
ann.keep@gmail.com

For information about the ReThink Justice DC Coalition, see: http://rethinkjusticedc.org/