



Establishing Principles for the Creation of a Local Paroling Authority in Washington, D.C.

This document was produced as a joint effort by participants of the DC Reentry Taskforce and the ReThink Justice DC New Vision's Committee¹

Introduction

The U.S. Parole Commission (USPC) is currently responsible for four primary functions with regard to people convicted of offenses under the D.C. Code. These are:

1. **Parole grant decision-making** (for incarcerated D.C. Code offenders)
2. **Parole and supervised release revocation decisions** making (for returning citizens who have completed sentences for D.C. Code offenses)
3. **Parole termination** (for returning citizens who are serving parole under a D.C. Code offense)
4. **Compassionate release** (for D.C. incarcerated D.C. Code offenders in the federal prisons system)

Mayor Bowser has asked Congress for legislation to restore local control of USPC decision-making functions to the D.C. government. Assuming federal and local legislation is passed by November 2022, the U.S. Parole Commission (USPC) will no longer have authority over D.C. prisoners or returning citizens. Prior to that date, the D.C. government will need to assign responsibility for the four functions to a new or existing entity. In so doing the District government, through enabling legislation, and the paroling entity, through rule-making, will have the opportunity to revise current operating procedures and to develop new guidelines for carrying out each of these functions in ways that best serve the interests of D.C. prisoners and returning citizens, as well as serving the needs of the broader D.C. community.

D.C. residents, and in particular returning citizens, must clearly articulate not only how the new paroling authority is to perform these functions but also create a new structure for this entity. We want the new entity to not simply replace the USPC but to be an entity that will reduce mass incarceration in D.C., provide meaningful opportunities for successful reentry for returning citizens, and address the broad negative impacts brought about by decades of racism in the highly federalized system of criminal law enforcement in D.C. These aspirations are well within our grasp.

¹ Authors: Phil Fornaci, Isa Mirza, Louis Sawyer, Jr., John Stanard and Malcolm Young. To provide feedback and questions, contact: Phil Fornaci, philip.fornaci@gmail.com

Basic Facts Important to a New Paroling Authority

- Since the enactment of the D.C. Revitalization Act in 1997, nearly all enforcement of criminal laws in Washington, D.C. has been dominated and controlled by the federal government, with only the Metropolitan Police Department and the D.C. Department of Corrections under the authority of the D.C. government. All other related agencies, including the local courts, prosecutors, the Public Defender Service, prisons, pretrial and post-release supervision agencies, and parole decision-making are funded by the federal government and, in most cases, are federal agencies directly handling local responsibilities that are typically under the control of state agencies.
- Additionally, the D.C. Revitalization Act mandated the re-writing of all D.C. criminal sentencing statutes and abolished parole for those whose offenses occurred after August 5, 2000, while also barring the District from amending any laws affecting parole without federal consent. The restoration of local control of parole decision-making could be the first step toward restoring local D.C. control over all aspects of the D.C. criminal system, a necessary requirement for the broader aspirational goals of D.C. autonomy and statehood.
- Numerous scholarly studies and analyses have repeatedly demonstrated that the system of criminal law enforcement in the District is racially biased in the extreme, with African-Americans overwhelmingly and disproportionately arrested, convicted and repeatedly incarcerated. More than 90 percent of people arrested, incarcerated and/or under legal supervision under the D.C. Code are African-American. The restoration of local control of parole should lead to the creation of a restorative process that can begin to reverse the damage inflicted on the African-American population in the District and to address the harm inflicted on returning citizens by the criminal system.
- Historically, the District has had one of the highest incarceration rates of any jurisdiction in the country, spurred on by new harsh sentencing laws passed in the 1980s and 1990s, aggressive criminal prosecutions, restrictive parole grant procedures and practices, and punitive supervision revocation practices. Under federal control, these factors have combined to accelerate mass incarceration of the District's African-American population, with few options for reversing course. Restoration of local control of parole decision-making is a first step toward reducing the population of D.C. prisoners and people under court supervision by introducing fairness into the parole grant process and creating a system of release supervision that provides support for reentry, treatment for substance abuse and mental health issues, and that emphasizes principles of restorative justice and reconciliation rather than prioritizing aggressive enforcement of restrictive supervision rules.
- Local control can also lead to the termination of parole for returning citizens and for release of prisoners under more reasonable compassionate release rules. Both of these options are currently underutilized by the USPC, leaving many returning citizens under supervision for unnecessarily long periods (often their entire lives) and unnecessarily keeping sick, infirm and elderly prisoners incarcerated when they present no conceivable threat to public safety. The failure of the USPC to exercise its

compassionate release authority in particular has been evident during the Covid-19 emergency.

- The following principles, informed by the experiences of returning citizens and their advocates, are intended to guide the D.C. community and the D.C. government in making this important transition.

Principles for the Creation of a New Paroling Authority

1. **The new paroling authority the District will create to replace the USPC (the “paroling authority”) must be local**, that is, it must be fully accountable to the electorate of the District of Columbia through its elected officials, who in turn must be accountable to the people themselves. The new D.C. paroling authority ultimately derives its authority from the people of the District, to whom it is accountable.
2. **The new paroling authority the District will create should embody the humane, equitable approach to criminal justice articulated by the District Task Force on Jails and Justice and the values articulated by the Task Force, including a public health approach to community safety and incarceration, fairness in administration, treating all with dignity and encouraging restorative practices and trauma-informed healing-centered practices.**
3. **The practices and procedures of the new paroling authority must be fully accessible and transparent.** All rules and procedures, as well as the proceedings of the new entity, must be available to public review and scrutiny. The entity must make accurate statistical data (e.g., percentages of parole applications granted, release revocation orders, etc.), as well as the fundamental operations of the new entity fully available for public review and comment.
4. **To assure that the paroling authority reflects the interests of all communities, paroling authority leadership, hearing officers and staff should be drawn from all Wards of the District, including returning citizens** and people who reside in Wards in which returning citizens typically reside.
5. **The District should establish a Citizens’ Oversight Committee or Review Panel to address community concerns and provide authentic public oversight of the paroling authority’s work.**
6. **For parole grant applications, officials of the local paroling authority should presume parole release eligibility for those who have completed their minimum sentences.** All parole-eligible D.C. prisoners have served a minimum of 20 years in prison. Absent evidence that an individual parole applicant presents a demonstrated, credible and ongoing threat to public safety or to individuals upon release, new legislation and regulations should mandate that the paroling authority order his or her release.
7. **In the event the paroling authority denies a parole grant application, it will schedule subsequent parole grant hearings on an annual basis and provide a statement of goals and conditions for the applicant to meet prior to the next parole hearing.** The paroling authority should provide assistance to the prisoner to

secure support from appropriate community resources to prepare for eventual release at a subsequent hearing.

8. **No arrest should be ordered for an alleged technical violation of parole or supervised release, or following release after a misdemeanor arrest or conviction, pending a revocation hearing.** When CSOSA alleges a technical violation of the terms of parole or supervised release, or when a returning citizen has been charged or convicted of misdemeanor criminal offenses while on supervision, a summons for appearance at a probable cause hearing may be issued. However, arrest may only be ordered in the event a returning citizen fails to appear for a revocation probable cause hearing without appropriate extenuating circumstances.
9. Following receipt of a Notice of Violation from CSOSA and a probable cause hearing, the paroling authority should evaluate the documented allegations and request any additional information from CSOSA necessary for proper evaluation of the circumstances resulting in the Notice. **The paroling authority staff will determine what steps, if any, can be taken to prevent the necessity for a hearing to adjudicate revocation of parole or supervised release.**
10. **Revocation hearings should be conducted by hearing officers drawn from the subject's community and, when possible, by hearing officers with subject matter expertise.** Paroling authority staff should include investigative or assisting staff familiar with the communities in which individuals reside and those with appropriate subject matter expertise.
11. **The paroling authority should make efforts to insure that each returning citizen under its jurisdiction has an adequate, realistic release plan and provide connections to community resources.**
12. **The needs of returning citizens with disabilities, including substance abuse issues, must be recognized and addressed by the paroling authority.** No person should be denied their liberty simply because they have a disability or an addiction. The paroling authority should engage CSOSA, community-based organizations and reentry service providers, as well as other subject matter experts, to help meet the needs of people with disabilities or substance abuse issues so as to avoid a revocation.
13. The paroling authority must assure that, in the process of adjudicating alleged violations of parole or supervised release (during both the initial probable cause hearing and the full revocation hearings) and in the process of adjudication of requests for parole, **returning citizens and D.C. prisoners are guaranteed due process rights, including but not limited to:**
 - A written notice of revocation that details the alleged violations.
 - The right to a probable cause hearing soon after a revocation charge is initiated.
 - The burden of proof to demonstrate an actionable revocation violation should be heard under the preponderance of the evidence standard.
 - A presumption of innocence prior to adjudication.
 - Disclosure of all evidence to be presented against the returning citizen prior to the revocation hearing.
 - The right to present and cross-examine witnesses.

- A revocation hearing before a neutral fact-finder.
 - A written summary of facts and rulings after completion of the hearing process, with a notice detailing appeal rights and deadlines.
 - An opportunity to present witnesses in support of a parole grant application.
 - The presence of an attorney or non-attorney representative at a parole grant hearing.
 - The opportunity to review the paroling authority's case file prior to the hearing and to correct any errors.
14. **In the event a person is found to be liable for a violation of the terms of his or her release, without commission of a felony offense, such person should not be subject to re-incarceration, nor should he or she be re-incarcerated for a revocation after conviction for minor misdemeanor offenses.** The staff should work with CSOSA, community-based organizations and counsel or representatives of the individual to develop alternative supervision arrangements to address current and future violations of the terms of supervision.
 15. For parole revocation hearings following a period of incarceration for a new felony conviction while on supervision, any additional incarceration ordered by the paroling authority should be based on the prisoner's record during the felony incarceration. **There should be a presumption against further incarceration in such circumstances, absent public safety concerns.**
 16. **All final decisions of the paroling authority should be immediately appealable.** There should be an internal appeal mechanism where paroling authority decision-makers who had no role in the earlier decision can review any appeal as sought. If the internal appeal does not resolve the issues raised by the appellant and the outcome is incarceration, there should be a right to appeal to the D.C. Court of Appeals
 17. **In the event of a parole or supervised release revocation after a technical or new felony violation, there should be no loss of accumulated "street time,"** that is, no returning citizen should forfeit credit for successful time under supervision prior to a revocation, in effect re-serving supervision time.
 18. **The paroling authority should set up a system of application for parole termination or early release from supervised release,** with implementation of a fair hearing process for consideration of such applications. In the case of parole termination applications, annual reconsideration should follow every unsuccessful application for parole termination.
 19. **Compassionate release applications filed by D.C. prisoners to the paroling entity should not require prior exhaustion of the prison grievance process.**

D.C. Reentry Task Force

The mission of the D.C. Reentry Task Force is to empower and improve the lives of D.C. residents returning from incarceration through information-sharing and advocacy efforts.

ReThink Justice DC Coalition

ReThink Justice DC is an advocacy coalition committed to reshaping the District's criminal legal system. Participants advocate for reforms related to the D.C. jails, halfway houses and the reentry supports for returning citizens.