CONCERNS AND FREQUENTLY ASKED QUESTIONS ABOUT A NEW PAROLE AUTHORITY IN THE DISTRICT OF COLUMBIA: **PAROLE RELEASE DECISION MAKING**

May 7, 2021

The United States Parole Commission (USPC) is scheduled to close on November 1, 2022. Legislation introduced by Congresswoman Eleanor Holmes Norton will give the people and the government of the District of Columbia the opportunity to design, from the ground up, an entirely new, locally-controlled parole and supervised release decision-making authority. This new parole authority will need to be in place, staffed and organized, sufficiently in advance of November 1, 2022 to enable a smooth handoff to it from the USPC of hundreds of cases of parole, violations of conditions of release, parole termination and medical parole.

But what will this new parole authority look like, and how it might benefit District of Columbia residents? What would be its guiding principles? How would it operate? Who would be on its staff?

Over the past two years, members of the D. C. Reentry Task Force and of the ReThink Justice DC coalition have deliberated over these and other questions. We have contributed to the "robust stakeholder and community engagement process" urged upon the District by the D. C. Task Force on Jails and Justice[1] with our research, a statement of principles, and our evolving recommendations. Our collective works may be found on the ReThink Justice DC's website.[2]

On April 7, 2021, we published a concept paper, *New Parole Authority for the District of Columbia*, in which we describe a District of Columbia Parole and Supervised Release Authority. This new parole authority would be capable of contributing to the District's goals of reducing incarceration, increasing public safety, and ensuring local control, transparency, and accountability.[3]

We are now publishing papers that address some of the concerns and specific questions that have been raised regarding the new parole authority in more detail than was possible in the short concept paper. **In this first of a series, we deal with the release decision for parole-eligible individuals.** A subsequent paper will address concerns about decision-making when an individual is alleged to have violated conditions of parole release or supervised release and other issues that arise.

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[1] District Task Force on Jails and Justice report, *Jails and Justice: Our Transformation Starts Today* – Phase II Findings and Implementation Plan (February 2021), Recommendation 9-10 at p. 72. (Hereafter, *Jails and Justice: Our Transformation Starts Today*.)

[2] https://rethinkjusticedc.org/category/local-control-of-parole

[3] *Jails and Justice: Our Transformation Starts Today - Phase II Findings and Implementation Plan*, op. cit.

Concern # 1 The USPC has repeatedly denied parole and then ordered set-offs (delays) up to five years before an individual can reapply.[4] The reasons given by the USPC for denial of parole are often "the seriousness of the offense," a factor the sentencing judge considered when setting a minimum term and which the applicant can never change.

To meet this concern, we propose:

1. Enabling legislation that establishes a presumption that individuals are to be released on parole when they first become eligible for parole under the terms of the sentence imposed by the judge, who heard the facts of the crime committed. Enabling legislation should further establish that the presumption may only be overridden by clear and convincing evidence that the individual presents an ongoing threat to the victim, to public safety, to themselves, or to others, and that those threats cannot be addressed through social services and community supervision.
2. Enabling legislation that explicitly prohibits the parole authority from denying parole based on the nature of the underlying offense which was considered by the trial court at the time of sentencing.
3. Enabling legislation that requires the new parole authority to fully consider and give weight to the individual's prison record, progress toward rehabilitation, reentry plans, and ties to their family and community. Consideration should extend to the individual's participation in personal improvement programs and similar self-initiated efforts, attempts to meet family responsibilities while incarcerated, and involvement in restorative justice processes.
4. Enabling legislation that requires the new parole authority to consider victims' and community members' concerns and respond respectfully to them with appropriate conditions on parole release, including conditions proposed by or negotiated with the parole applicant.
5. Enabling legislation that prohibits denial of parole based on minor infractions while in custody or any infractions while in custody that incurred more than five years prior to the parole release date.
6. Enabling legislation that requires that, whenever the parole authority denies parole release, it will: (1) recommend to the parole applicant and to the BOP or other agency or prison in which the applicant is held counseling, assessments or evaluations, medical or mental health treatment, restorative justice processes, or other support that the parole authority finds might reasonably be expected to improve prospects for release, including the individual's transfer to a facility where their needs can be met; and (2) schedule a status hearing no more than six months from the date of denial of parole to consider whether the parole applicant is being provided any or all of the recommended treatment, counseling, and services.
7. Enabling legislation that provides that, absent exigent circumstances and a waiver from the parole applicant, no "set-off" or order for a full re-hearing on parole release shall extend for more than one year (365 days) from the date of the denial of parole release.

Concern #2 There is currently a backlog of approximately 200 to 300 parole-eligible individuals, of whom about 120 have been denied parole for more than nine years, and some of whom have parole hearing dates scheduled years in the future.

To address the backlog as soon as the District has control of the parole functions, we propose:

[4] USPC guidelines effective in 1972 and 1987 established a "presumption" that a "rehearing" will follow denial of parole release within a year for certain offenses; the USPC frequently departed from this presumption, imposing a longer set off. Guidelines published in 2000 mandated that rehearings be conducted within three years of a parole denial but allowed a five-year set off for cases involving death of a victim. For a more complete explanation, see: Jessica K. Steinberg and Kathryn V. Ramsey, 2018 Parole Practice Manual for the District of Columbia, George Washington University Law School (2018) at p. 23.

1. That the new parole authority be organized and sufficiently staffed to provide hearings for all parole eligible individuals within the first 18 months of operation. Hearings are to be prioritized for individuals according to the number of times parole has been denied or the length of time since an individual's first parole hearing.

   The agency described in the concept paper, *New Parole Authority for the District of Columbia*, has a design capacity to conduct up to 200 parole hearings in the first year of implementation, and to continue at that pace until the applications of all parole eligible persons have been heard.

2. The District of Columbia government make every effort to have the BOP transfer individuals to correctional facilities, including BOP half-way houses or the District of Columbia Department of Corrections, at least six months prior to scheduled parole hearings. As is well understood, having individuals who are being considered for parole in or near Washington, D. C. would facilitate communications, reentry planning, and restorative justice process, as well as sharply curtail the time and cost of parole authority staff travel for parole hearings in distant BOP facilities.[5]

Concern #3 Some parole release decisions are understandably of great interest to, and sometimes opposed by, victims, survivors, or community members.

To meet the concerns of community members, including victims and survivors of crime, the District of Columbia Parole and Supervised Release Authority will implement an inclusive and restorative justice-oriented approach to the parole release decision process. To this end:

1. The parole authority is to notify known victims and survivors of parole grant hearings, provide them with the name of the assigned Hearing Officer, and invite them to provide information or share concerns with the Hearing Office assigned to the parole hearing in which they have an interest. Notification should be initiated at the time that the parole grant hearing is scheduled, or six months in advance of a scheduled hearing.
2. The District of Columbia government should facilitate victims' organizations and advocates in support of victims' participation in parole release decisions.
3. The parole authority is to promulgate rules for an informal, collaborative, non-adversarial conduct of parole release hearings focused on fact-gathering, identifying assets and supportive resources, confirming that the individual has a viable release plan, that the level of supervision and support is appropriate, and addressing victim or community concerns. The parole authority's rules, written materials and verbal communications should make explicit the inclusive, collaborative, problem-solving nature of the parole hearing and review hearing process.
4. The parole authority budget should include funds for staff training in collaborative problem solving, restorative justice principles and Nonviolent Communication techniques.
5. That the initial staffing plan include at least one, and preferably two or more, Hearing Officers, Parole Release Investigators or Field Investigators trained and experienced in restorative justice. These staff persons would be made available to educate parole authority staff and to counsel affected parties about a restorative justice approach when the victim and person who caused harm consents. In most cases, parole authority staff would refer affected parties to an independent community-based restorative justice facilitator.[6]

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[5] Bringing D. C. residents back to D. C. from the BOP would yield numerous benefits. The Jails and Justice Task Force suggests returning all individuals in the BOP to the District two years in advance of release as soon as space in local correctional facilities permits. See, *Jails and Justice: Our Transformation Starts Today - Phase II Findings and Implementation Plan,* Recommendation 7-4 at p. 60.

[6] The District Task Force on Jails and Justice envisions public access to community-based restorative justice programs. See, *Jails and Justice: Our Transformation Starts Today - Phase II Findings and Implementation Plan,* Recommendation 1-10 (that the District "Invest in community-led restorative and transformative justice work, including

6. That the parole authority's rules and regulations provide that, if an independent restorative justice process results in a consensus agreement involving an individual under the parole authority's jurisdiction, the parole authority is authorized to adopt and incorporate all or a portion of a consensus agreement in its findings and orders. For this purpose, and when requested by all parties involved in a restorative justice process, the parole authority may extend the time in which it is to decide parole release.
7. Where victims or survivors have participated in the hearing process or expressed an interest and the parole authority grants the applicant release on parole, the parole authority must advise the victim or survivors in writing how the information they provided was considered in its decision.

Concern #4 Reentry is challenging for individuals leaving long-term custody and resources for such people are largely inadequate. Many returning citizens are left to navigate their return home on their own. Challenges to reentry may act as barriers to parole release.

A key innovation of the District of Columbia Parole and Supervised Release Authority is the position of Parole Release Investigator (PRI). These positions will best, though not exclusively, be filled by individuals who have themselves successfully navigated the return from prison incarceration and who understand from experience and insight the pressures and demands of reentry. PRI's will be assigned to parole-eligible individuals six months in advance of their scheduled parole hearing. Following protocols and procedures developed by the parole authority, the PRI will provide information and guidance for reentry to the applicant and the applicant's counsel or advocate. Specifically:

1. The PRI will ascertain whether each individual coming up for parole has received the reentry planning and support to which they are entitled in advance of their release from the BOP, the BOP's assigned halfway house, CSOSA and any other corrections agency. The PRI will facilitate reentry planning with any of those agencies when possible.
2. In conjunction with the parole authority's Document Specialists, the PRI will assure that the parole authority has the individual's complete institutional record including information about relevant disciplinary, medical, treatment and program participation.
3. The PRI will assess the individual's situation and, where appropriate to that situation, provide navigation assistance. Examples of assistance the PRI may provide include, but are not limited to, connecting the applicant with family and community-based resources including reentry programs that can address identified needs such as housing, family reunification, social services, life skills, as well as access to government assistance and employment.
4. If it appears that the individuals may have medical or mental health issues or disabilities, the PRI will confer with qualified parole authority staff and, when appropriate, refer the individual to specialized legal, clinical and reentry services appropriate to the individual's situation. In most serious situations requiring attention upon release, the PRI and parole authority staff with expertise would attempt to confirm treatment as part of a release plan.
5. When appropriate, the PRI may introduce the individual to parole authority staff who are qualified in restorative justice and, together and with the consent of those harmed by the individual's actions, educate the applicant on the opportunity to engage in a restorative justice process.
6. In all parole release cases, the PRI is to work in conjunction with the Hearing Officer to the case. The PRI participates in the initial parole release hearing, in the three-person Hearing Officer review, and is available to participate in Release Review Panel deliberations.

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a restorative justice community center …" (p. 32)). Also, see Recommendation 1-7, p. 30 (that restorative justice processes be utilized as an alternative in the context of school discipline); and, Recommendation 3-3, p. 45 (restorative justice processes as an alternative to incarceration for youth).

It should be noted that the District of Columbia Parole and Supervised Release Authority reduces delays of up to nine months between the USPC's grant of parole release and actual release of the applicant for parole. This delay has been rationalized by the need to provide the parole applicant "time to finalize his release plan, as well as get it approved by BOP and the community supervision agency in the jurisdiction to which he will be released."[7] Through the efforts of the PRI, the new parole authority should expect most parole applicants to have substantially completed a release plan, with victim input when relevant, CSOSA's concurrence and BOP approval (to the extent required), by the time of the parole hearing. This process allows for a better-informed parole release decision and obviates the need for a long delay between a decision to grant parole release and release.

Concern #5 Parole decision-making is opaque and outcomes unreported.

The District of Columbia Parole and Supervised Release Authority will be designed and resourced to provide elected leaders, government officials and the public straightforward statistical information describing its operations and outcomes.

1. In the interest of full transparency, the parole authority will publish its schedule, a summary of proceedings and of decisions. The parole authority will publish Hearing Calendars six months in advance with periodic updates.
2. As a priority, the new parole authority will promulgate rules governing the information that is to be made available to community members, families, victims, and individuals affected by the applicant for parole. Restrictions on information available to the public should be limited and narrow as required by HIPPA, other legally mandated confidentiality provisions, and space and time limitations while respecting the privacy and safety concerns of the applicant for parole.
3. Enabling legislation should mandate that the parole authority collect and publish on its web site statistical data to include: numbers of hearings scheduled, held and continued; hearing outcomes by offense and length of time served; numbers of notification to victims; number of participants in parole release proceedings and hearing attendees (to include numbers of attorneys or advocates for the parole applicant, victims and community advocates); numbers of and reasons for denials of parole; and, length of set-offs when parole is denied. Importantly, the parole authority should report on implementation of its recommendations to the BOP following denials of parole as reported at the six month status hearing.

Concern #6 The Parole Authority may make decisions that are not responsive to the community and the District's values, and otherwise may not be held accountable to the District.

To ensure that the District of Columbia Parole and Supervised Release Authority is responsive to the community and the District's values in criminal justice:

1. Enabling legislation should require that a diverse staff include members of communities most directly affected by the criminal system:

a) Enabling legislation should set the qualifications and method of appointment of the five-member Release Review Panel. Qualifications should include that all members must be District of Columbia residents. No more than two should be lawyers. (Note that legal advice to the parole authority is provided by two staff attorneys who serve as legal counsel.) Panel members should be drawn from social and human services professionals, community advocates, reentry program administrators and community leaders with a demonstrated commitment to the fair and equitable administration of criminal justice.

b) The approximately seven to eight Hearing Officers should include residents of Wards 5, 7 and 8 (those most heavily represented in the criminal system) and a mix of individuals with corrections

[7] Jessica K. Steinberg and Kathryn V. Ramsey, 2018 Parole Practice Manual for the District of Columbia George Washington University Law School (2018) at p. 22.

experience, social and community service backgrounds, justice involved individuals and at least one experienced, certified restorative justice facilitator.

c) The approximately four Parole Release Investigators (PRI) should include at least three previously incarcerated or justice-involved individuals and one with a corrections or law enforcement background.

d) The approximately three Field Investigators should be individuals who have counseled or mentored returning citizens, have worked with reentry organizations, have knowledge of the District's social service and public assistance agencies, and who have strong ties to and lived experience in affected neighborhoods.

2. Enabling legislation should create an independent, part-time six person Community Advisory Council with the authority to review records and decisions and to make recommendations to the parole authority, City Council, the Mayor and the public.

Concern #7 Parole release decisions are unfairly made and do not afford the applicant due process.

The District of Columbia Parole and Supervised Release Authority will be designed to address concerns about fairness that attach to traditional parole decisions. The new parole authority operates under a presumption favoring release for parole eligible individuals, employs Parole Release Investigators (PRI's) to facilitate an individual's reentry planning prior to the parole release hearing, and takes an open, problem-solving approach toward addressing victim and community concerns.

Multiple staff contribute to parole decisions in a deliberative process. Each parole application is initially considered by an assigned Hearing Officer whose findings and recommendations are reviewed by two other Hearing Officers before going before three members of the Release Review Panel. Should the three members not fully agree, all five members of the Release Review Panel consider the case, with a majority vote required to decide the matter.[8]

To further assure fairness in the parole release decision process, we propose:

1. That the enabling legislation require that parole applicants have access to the assistance of legal counsel or an advocate of the applicant's choice unless the parole applicant waives such assistance after consultation with legal counsel.
2. That the information considered by the parole authority be made available to the applicant and/or the applicant's attorney or advocate and to the victim, if participating, in advance of any hearing or parole decision. The parole authority shall develop guidelines according to which information that is privileged or confidential may not be disclosed to the applicant or to outside parties.
3. That the applicant be provided an opportunity in advance of the parole release hearing to agree with, offer corrections to or object to the accuracy, reliability or admissibility of information considered by the Hearing Officer.
4. That the parole authority, through the agency of the PRI, encourage parole-eligible individuals, their legal counsel or an advocate of the applicant's selection to prepare a parole release plan, preferably well in advance of a scheduled parole hearing. Advocates may be the representative of a reentry organization or agency, a mental health provider, an individual mentor, or the member of a faith-based or other community organization. The parole authority shall look for opportunities to structure a "community

[8] At present, the recommendation of the single USPC Hearing Examiner who conducts a parole hearing is reviewed by one or more Hearing Examiners in seriatim until two agree, at which point the matter is submitted to a USPC Commissioner, who either affirms or rejects the recommendation. Apart from a rehearing which may be set off for up to five years, there is no further appeal of a denial of parole by, essentially, one Commissioner. See, Jessica K. Steinberg and Kathryn V. Ramsey, 2018 Parole Practice Manual for the District of Columbia George Washington University Law School (2018) at pp. 23 – 24.

safety" plan to meet the needs of a community or concerns of victims, and such plans, in appropriate situations, may be reviewed and "negotiated" among participating parties.

5. That the new parole authority promulgate rules for parole hearings which allow for meaningful participation by counsel or advocate of the applicant's choice, ending the USPC's "one representative" rule barring more than one witness from participating and arbitrarily-imposed blanket prohibitions against statements or inquiry by the parole applicant's attorney or advocate.[9]
6. That enabling legislation provide for appellate review from denials of parole release in specific situations. Specifically, individuals denied parole release by a three-member Release Review Panel have an immediate right to a rehearing before the full five-member Release Review Panel. Individuals denied parole by the full five-member Release Review Panel (or by all sitting panel members, if fewer than five) may appeal a denial of parole release to the D. C. Court of Appeals upon a factually-supported claim that either: (1) the applicant for parole was denied due process as defined by the enabling legislation, or (2) that the evidentiary findings were against the manifest weight of the evidence.
7. That enabling legislation provide that any individual denied parole by the new parole authority must be afforded an attorney or advocate of their choice to prepare for the mandated six month status check and the next scheduled parole release hearing.

ReThink Justice DC and the Reentry Task Force invite your comments. This paper is a work in progress and may be revised.

Please return comments and suggestions to:

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[9] Jessica K. Steinberg and Kathryn V. Ramsey, 2018 Parole Practice Manual for the District of Columbia George Washington University Law School (2018) at pp. 33 – 34.