Supplemental Testimony Submitted by Malcolm C. Young for the ReThink Justice DC Coalition
To the Public Oversight Roundtable on Local Control of Parole
in the District of Columbia

Committee on the Judiciary and Public Safety
Councilmember Charles Allen, Chairperson,
Thursday May 6, 2021
Submitted for the record on May 14, 2021

Dear Chairperson Allen and Council Members of the Committee on the Judiciary and Public Safety:

Again, we appreciate that Chairperson Allen held the Oversight Roundtable on Local Control of Parole in the District of Columbia as we are all in agreement that there is little time for D.C, to settle on the manner in which it will handle the parole authority. We also appreciate that, as the Chairperson stated, there are "pros and cons" to assigning the parole decision-making to Superior Court and to a separate entity or agency. The decision for the Council is not made easier by the fact that all parties have the best interests of D. C. residents at heart, are advocating in good faith fully aware that no solution absolutely guarantees success.

The ReThink Justice DC Coalition and Reentry Task Force do wish to reiterate, that we had no predisposition in favor of either a court or an agency model when we began our internal deliberations. We arrived at a preference for an agency model after defining the functions that we think a fair, effective parole authority could and should do.

We submit this Supplemental Testimony in order to respond to several points raised after representatives of our two organizations testified at the hearing on May 6, 2021:

(1) Clarifying the role of CSOSA This $188M federally-funded agency supervises individuals on probation and, of concern here, on parole or supervised release. CSOSA reports alleged violations of conditions of parole or supervised release to the United States Parole Commission.

The legislation pending in Congress does not change CSOSA's role except that the agency will report alleged violations to the parole authority created by the DC government, whether in Superior Court or in a District agency. What can change is how the parole authority responds to reports of alleged violations. As both we and those who prefer that the parole function be assigned to Superior Court have stated, the parole authority determines whether to issue a summons (which do not involve jail incarceration) or a warrant for arrest (which leads to jail incarceration) when CSOSA reports an alleged violation. The parole authority determines whether a violation has been proven, and, if one is proven, the consequences. The parole authority can decline to incarcerate individuals it finds violated conditions of parole or conditions of release and would be guided in this decision by enabling legislation. We agree that a parole authority which, absent exigent circumstances, declines to incarcerate individuals who commit technical violations such as testing positive for drug use or missing an appointment would likely discourage CSOSA from requesting arrests and incarceration as frequently as at present, leading to a decrease in case load.

However, in the agency model we propose, the parole authority would employ "Field Investigators" to proactively investigate community resources, including those funded by

CSOSA, available to meet the needs of individuals who have difficulty complying with conditions of supervision. We envision a collaborative relationship with CSOSA, but one which gives the District the capability to ensure that CSOSA is making maximum use of its immense resources for constructive assistance and that available community resources are utilized for individuals under supervision.

In addition, at present, the chiefs of the USPC, CSOSA and Superior Court meet to discuss policy matters such as the nature of violations which should result in incarceration. Creating a parole authority that is a D. C. agency led by D. C. residents gives the District government a seat with a co-equal voice as a participant in the room where operations and policy affecting its citizens are decided.

(2) The claim that "there is no successful parole board model" On this there is general agreement. But critical reviews of parole in the states offers guidance, even encouragement, for the creation of a new parole authority, and not condemnation of the concept of parole release.

For example, the intriguing and ambitious survey of state parole statutes and regulations published by the Prison Policy Institute,[1] cited in testimony for the large number of "F's" it awarded state parole systems, implicitly endorses a well-constructed parole function. In the survey, states with no parole – of which there are 16-- received an automatic, blanket "F" rating. States that limit parole eligibility to certain types of crimes were marked down. A new parole authority incorporating some of the same elements we have proposed would likely receive high marks in a similar evaluation. [2]

To take one very important example, the PPI report documents that very few parole agencies provide assistance or direction to parole applicants prior to their hearing. PPI found just eight that make any promise of providing support to parole applicants in advance of their hearings; only five of these actually assign case managers or staff to fulfil this responsibility and the extent of support is not reported.[3] We propose a parole authority which employs Parole Release Investigators to encourage and assist parole applicants in connecting with their family, community and the reentry programs and agencies that will help them navigate their return. Parole Release Investigators, likely including formerly incarcerated individuals, will help acclimate and counsel the parole applicant along a path that they have successfully navigated. The same methodology worked to great success when employed by Project New Opportunity to assist individuals

[1] Jorge Renaud, Grading the parole release systems of all 50 states, Prison Policy Initiative (February 26, 2019) accessed at https://www.prisonpolicy.org/reports/grading_parole.html

[2] Appendix to the previously cited PPI report, at https://www.prisonpolicy.org/reports/parole_grades_table.html The PPI report grades state parole according to whether or not enabling legislation and rules meet certain criteria. The report does not measure outcomes. Not everyone would agree with all criteria. For example, parole systems get additional points if the bar the participation of victims or survivors. Among provisions we recommend for D. C.'s parole authority that would result in a "good grade" if graded for the PPI study: the opportunity to contest inaccurate information and present supporting information including from the individual's community; a presumption in favor of parole release; yearly reconsideration if parole is denied; transparency and public accounting of outcomes; and, a meaningful appeals process.

[3] Ibid. The five states are: Idaho, Mississippi, North Dakota, Rhode Island, and Wyoming.

being released from the BOP after grants of clemency or who were beneficiaries of shortened federal drug sentences.[4]

Prejudice against anything called a "parole board" is understandable. After the hearing, we realized that some witnesses who expressed opposition to an independent parole authority have in mind a classic parole board, which is not what the group from ReThink Justice DC coalition and the D. C. Reentry Task Force have proposed for the government's consideration.

(3) <u>The claim that only judges, with lawyers arguing to them, can deliver due process and fair outcomes:</u>

We have several observations:

a. Much credit goes to DC lawyers, mostly Public Defender Service attorneys, for strenuously litigating against practices and decisions of the USPC. That litigation, of course, will be less necessary if the District provides careful guidance and limits discretion in its enabling legislation. This will be true regardless of whether D. C. forms a new agency or gives parole responsibility to the Superior Court.

b. Generally, outside the context of the USPC and, before that, the DC parole agency, the decisions in most parole release and supervision violations cases do not turn on legal issue. The truth is, many individuals accused of violating conditions of release, apart from committing new crimes, did violate those conditions: failed to show up for drug tests, left home at an unauthorized hour, or did come close to violating a stay-away order. The question in these cases is, "What should be done as a result of the violation?"

The DC government can partially answer this question by writing enabling legislation that prohibits incarceration for such violations in all but a narrow range of cases. The DC government can further assure that alternative solutions rather than incarceration are employed by directing the parole authority to consider all options and by providing the parole authority investigator staff who can confer with CSOSA's staff, the individual's advocates or sponsors in the community to ascertain whether additional support and alternatives to incarceration are available.

Historically, finding solutions for individuals who violated conditions of parole or supervised release has been a task assigned to the highly capable non-lawyer staff in the Public Defender Service's Offender Rehabilitation Division (ORD). The

[4] For an evaluative report of Project New Opportunity, a reentry program developed and directed by Malcolm C. Young with the support of the Soros Foundations, see Marsha Weissman, Ph. D., *Project New Opportunity: An Innovative Model for Reintegration and Reentry*, Center for Community Alternatives (February 26, 2018), available at: https://bit.ly/3w1xOQA PNO's Deputy Director and five of six of the longest serving consulting staff were individuals who had been incarcerated in the BOP.

parole authority we propose should be expected to work hand in glove with PDS and ORD staff to find solutions in each individual violation.

c. We found the expressed notion, that lay people are not qualified to help find solutions, reach decisions about, and advocate for individuals facing punishment in the criminal system is, somewhat jarring. We live in a system in which the ultimate, and most difficult, factual questions are given, not to a judge or to "experts", but to a jury of one's peers. In the world of sentencing in criminal courts, many public defenders and private lawyers have long learned to rely upon non-lawyer sentencing specialists to make the best case for people facing severe punishment. Capable defense attorneys in death penalty cases consider non-lawyer team members and experts essential in their practice. PDS and ORD have been leaders in recognizing the value of non-lawyer skill sets in proposing community-based sentences over incarceration.

d. Then, too, there has been much talk about keeping the parole function responsive to the community, and to engaging members of the most affected communities in its decision-making. Our proposal attempts to honor that desire. Arguments that decisions are best left to attorneys arguing before judges not even appointed by the DC citizens or their government seems to move in the opposite direction and are contrary to the spirit of maintaining community involvement.

(4) <u>The Second Look initiative suggests a better model than an independent parole authority</u>.

We were struck by observations about a court-based parole authority offered by witness Eric Spenser: (1) Prosecutors, who often oppose release, are in the courtrooms and will definitely have a say opposing parole release; (2) One should not assume that because courts are willing to release individuals who have served 15 -20 years or more for crimes committed before the age of 25 that they will be willing to grant parole for individuals who have served considerably less time; and (3) in his experience, "courts answer to no one" and won't be responsible to the DC community or its elected officials.

Adding to these observations and to the testimony offered by the Council on Court Excellence, it is quite certain that parole cases would take much longer to resolve in Superior Court than in a separate agency. After the May 6, 2021 hearing, we received an informative advisory issued by the four agencies spearheading implementation of the Second Look Amendment Act of 2019. The advisory states:

> The process will be a long one for someone to be released . . . most people will probably not receive decisions in their cases until at least 2022 or 2023, and not all of those decisions will result in the movant's release.

Whatever the considerable virtues are of the Second Look Act, expediency is not one of them. On the other hand, we have proposed a program model that can reasonably aspire to reviewing up to 200 parole applicants in its first year of full operation. Of course, it is staffed, and the District would pay for that staff. But by doing so, the District would retain control over the scheduling and pace at which hearings are conducted, avoiding

likely backlogs in parole release and revocation cases in an understaffed, underfunded Superior Court.

(5) A locally-controlled parole authority would become another self-perpetuating criminal justice agency, even as the number of parole eligible individuals dwindles.

We agree that this is a risk. If the parole authority acts as we believe it should, the number of potential parole release decisions will decrease over time to the point where there is little justification to maintain a funded parole authority.

We also believe there are solutions to this.

One solution would be to establish a life expectancy for the parole release decision function of (for purposes of discussion only) three years. The enabling legislation could be written to assign the parole authority the task of assessing the situation of all individuals not released on parole or not parole eligible at the end of this period and to charge it with the responsibility of recommending a legislated resolution in those cases which would not require a decision by a paroling authority. Again, for purposes of this discussion, such solutions might include making all or certain categories of these individuals eligible for medical or compassionate release, while mandating release to treatment for others.

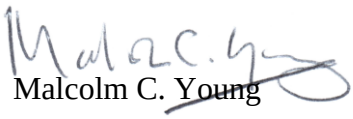
Thank you again for your attention.

We have attached the following documents which we asked to submit for the record:

1. Concerns and Frequently Asked Questions about a New Parole Authority in the District of Columbia: Parole Release Decision Making (May 6, 2021); and

2. Concerns and Frequently Asked Questions about a New Parole Authority in the District of Columbia: Revocation of Parole and Supervised Release (May 10, 2021)

Respectfully submitted,



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