BEFORE THE
COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
COUNCILMEMBER BROOKE PINTO, CHAIRWOMAN

PUBLIC HEARING

on

The Peace DC Plan
Bill 26-0188, the "Pretrial Detention Amendment Act of 2025"
Bill 26-0203, the "Kidnapping Amendment Act of 2025"
Bill 26-0027, the "Case Closure and Witness Support Amendment Act of 2025"

STATEMENT OF ELANA SUTTENBERG
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Thursday, April 24, 2025, 9:30 a.m.

Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

Chairwoman Pinto and Members of the Council:

My name is Elana Suttenberg, and I am the Special Counsel for Policy and Legislative Affairs at the United States Attorney's Office for the District of Columbia (USAO-DC). I thank you for the opportunity to appear at today's public hearing and to testify regarding the Peace DC Plan, Bill 26-0188, the "Pretrial Detention Amendment Act of 2025," Bill 26-0203, the "Kidnapping Amendment Act of 2025," and Bill 26-0027, the "Case Closure and Witness Support Amendment Act of 2025."

Bill 26-0188, the "Pretrial Detention Amendment Act of 2025"

USAO-DC strongly supports the "Pretrial Detention Amendment Act of 2025," which would make permanent the changes to adult pretrial detention that are already in place pursuant to the "Secure DC Omnibus Amendment Act of 2024" (Secure DC).

In early 2024, the DC Council passed the Secure DC legislation, spearheaded by Councilmember Pinto. Secure DC demonstrated the Council's commitment to public safety, accountability, and the reduction of violent crime and gun crime. It provided targeted tools to prosecutors, police, and judges, resulting in greater accountability for the people who are harming our communities. Since its passage, the District has seen the fruits of Secure DC. At the end of 2024, the District experienced its lowest violent crime rate in 30 years. So far in 2025, the District has experienced a violent crime reduction rate of 27% from this time in 2024. At the same time, we are focused on continuing to drive down all categories of crime in the District—particularly violent crime and gun crime.

Secure DC made targeted changes to pretrial detention to ensure that judges had the necessary tools to hold violent defendants pretrial, and these changes should be implemented on a permanent basis. Providing judges with these additional tools is a crucial part of protecting community safety and detaining dangerous defendants, and Secure DC provides more transparency to the community when judges decide to release defendants charged with serious offenses pretrial. Under Secure DC, judges maintain ultimate discretion to detain or release defendants pretrial at the preliminary hearing.

Expansion of charges eligible for rebuttable presumption of detention at preliminary hearing

For the most part, Secure DC did not change which charges were *eligible* for pretrial detention at *either* the initial appearance or preliminary hearing. In other words, with very limited exceptions, Secure DC *did not* make more defendants eligible to be detained pretrial. This appears to have been a common misunderstanding of Secure DC. Instead, for certain offenses, Secure DC changed the legal analysis judges must use when deciding whether to hold someone who is eligible to be held pretrial by expanding the crimes for which a *rebuttable presumption of detention* applies at the preliminary hearing.

Secure DC made all "crimes of violence," as defined in § 23-1331(4), subject to a rebuttable presumption of detention. Because crimes of violence "while armed" and 2 or more crimes of violence from separate incidents joined in a case were eligible for a presumption of detention before Secure DC, practically, this meant that unarmed, single incidents of crimes of violence became newly eligible for a presumption of detention under Secure DC. They were

already *eligible* for pretrial detention before Secure DC. For example, before Secure DC, the following crimes of violence, among others, *were* eligible for pretrial detention, but were *not* eligible for a presumption of detention in the legal analysis: first degree sexual abuse (rape), child sexual abuse, aggravated assault, first degree child cruelty, kidnapping, manslaughter, and carjacking.

A rebuttable presumption of detention means that it is presumed that no condition or combination or conditions will reasonably assure the safety of any other person and the community. Without a rebuttable presumption of detention, there is a general presumption of pretrial release, and a judge shall only order detention if the judge finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community. Pursuant to caselaw in the District, without the presumption, no matter how horrific the facts of the particular case are, a judge is not allowed to hold a defendant in jail for that reason alone. This has meant that prior to Secure DC, defendants have been released in violent rape cases and stabbings where individuals have almost died, because no presumption applied.

At the same time, Secure DC does not *require* the judge to detain someone pretrial, even where there *is* a rebuttable presumption of detention, as a judge maintains discretion to find that the presumption has been rebutted and release the defendant pretrial.

USAO-DC supports extending this provision on a permanent basis because it ensures that the most serious violent crimes are all treated proportionately for purposes of pretrial detention, and it gives judges the necessary tools to hold violent defendants pretrial. It fixes a small but important gap that previously existed and allowed extremely dangerous offenders who committed horrific offenses to be released into the community.

Where there is rebuttable presumption of detention, requirement of a written statement of reasons for release where a defendant is released pretrial

Before Secure DC, where there was a rebuttable presumption of detention and a defendant was *detained*, a judge was required to explain their decision on pretrial detention in writing. Under Secure DC, where there is a rebuttable presumption of detention, a judge is *always* required to explain their decision on pretrial detention in writing, regardless of whether the judge decides to detain or release the defendant. The community often does not understand why a person charged with a very serious crime was released pending trial, and this provides the community with transparency into that decision. USAO-DC supports extending this provision on a permanent basis because judges have only begun implementing it, and once fully implemented, this will provide crucial transparency to the public.

Extension to maximum permissible length of a trial continuance in a 100-day case

Before Secure DC, when a judge found that there was good cause to grant the government a continuance in a 100-day cases, the maximum continuance that a judge could grant was 20 days. Under Secure DC, the maximum continuance that a judge can grant is 45 days. Notably, this timeline represents a *maximum* in the timeline, and a judge can exercise their discretion to grant a shorter continuance. USAO-DC supports extending this provision on a permanent basis because it creates efficiencies in the court system, which allows courts to align

trial schedules with the needs of the case creates greater predictability for the parties and for witnesses. For example, even if the judge agreed that a continuance of 20 days would be an insufficient amount of time to continue a case, for example because of forensic testing that would not be completed in that amount of time, the trial judge was previously limited to continuing the case in 20-day increments; now, the judge can continue the trial date for up to 45 days at a time, which could create a more realistic timeframe for a trial.

Alignment of § 1325(a) presumption standard with the § 1322(c) presumption standard

Before Secure DC, there was only a rebuttable presumption of detention under § 23-1325(a) for murder and assault with intent to kill while armed (AWIKWA) where the judge found a "substantial probability" of the evidence. Under *Jeffers v. United States*, 208 A.3d 357 (D.C. 2019), "to establish a substantial probability the United States must show at a minimum that it is more likely than not that the defendant would be found guilty beyond a reasonable doubt at trial of an offense permitting detention under § 23-1325." In addition, as the detention statute changed throughout the years, the legal standard for rebutting the presumption of detention for less serious crimes was lowered to a probable cause standard but wasn't adjusted for murder. Secure DC fixed this issue by aligning the standard for a rebuttable presumption of detention under § 23-1325(a) with the standard for a rebuttable presumption of detention for less serious crimes under § 23-1322(c)—probable cause. USAO-DC supports extending this provision on a permanent basis because it creates parity between the standards in these provisions.

Expansion of § 1325(a) presumption to include offenses committed with any weapon

Before Secure DC, there was only a rebuttable presumption of detention under § 23-1325(a) where murder or AWIKWA was committed with a "pistol, firearm, or imitation firearm," even though for the other armed offenses there was a presumption when committed with other dangerous weapons. Secure DC expanded this presumption to include murder or AWIKWA when committed with any "other deadly or dangerous weapon." This means that, for example, a stabbing homicide committed with a knife is now treated the same as a shooting homicide committed with a firearm in terms of the legal standard for pretrial detention. USAO-DC supports extending this provision on a permanent basis because it creates parity between murders and AWIKWAs committed with any weapon, regardless of the type of weapon used.

Addition of new crimes to definitions of "crime of violence" and "dangerous crime"

Secure DC and Prioritizing Public Safety created several new crimes, including strangulation and felony-level misdemeanor sexual abuse/misdemeanor sexual abuse of a child for serial conduct. Consistent with the severity of those crimes, both were categorized as "crimes of violence" under § 23-1331(4). In addition to other implications, this means that these crimes are now newly eligible for pretrial detention under § 23-1322(b)(1)(A), and that they are eligible for a rebuttable presumption of detention under § 23-1322(c).

Secure DC also newly designated "any felony offense under Chapter 30 of Title 22 (Sexual Abuse) as a "dangerous crime" under § 23-1331(3). Although several of the most serious

sexual offenses are designated as "crimes of violence," there are many felony sex offenses that were not designated as either a "crime of violence" or a "dangerous crime," such as sexual abuse of a patient or client, and sexual abuse of a ward, patient, client, arrestee, detainee, or prisoner. As "dangerous crimes," they are newly eligible for pretrial detention under § 23-1322(b)(1)(A), *but* they are only eligible for a rebuttable presumption of detention when they fall under a previously existing presumption in § 23-1322(c), such as when there are 2 or more joined dangerous crimes from separate incidents.

USAO-DC support extending this provision on a permanent basis because it proportionally designates these offenses as crimes of violence and dangerous crimes based on their relative levels of severity, which—among other implications—allows for people charged with these offenses to be detained pretrial.

Bill 26-0203, the "Kidnapping Amendment Act of 2025"

USAO-DC strongly supports the "Kidnapping Amendment Act of 2025," which would make crucial amendments to the District's kidnapping statute in light of recent caselaw.

In May 2024, the *en banc* D.C. Court of Appeals (DCCA) issued a seminal opinion limiting the scope of the District's kidnapping statute in *Cardozo v. United States*, 315 A.3d 658 (D.C. 2024) (*en banc*). In that case, the DCCA held the following:

> We now reverse Velasquez's kidnapping conviction and, in the process, we overrule our precedents holding that any momentary seizure against another's will is a kidnapping. *To hold or detain somebody in the context of the District's kidnapping statute, we now conclude, means to detain them for a substantial period of time, so that the perpetrator could fairly be described as holding another captive like a hostage or a prisoner.* Because Velasquez was convicted of kidnapping based on what could only be described as a momentary seizure, and not a substantial detention amounting to holding somebody captive like a hostage or a prisoner (and there was no evidence that he intended such a substantial detention), we reverse Velasquez's kidnapping conviction.

Cardozo, 315 A.3d at 661 (emphasis added). The DCCA further held:

> [I]t is the duration of the detention that tends to be the dispositive factor in cases that purport to scrutinize whether the detention was incidental to another offense. The cases can be roughly sorted by that factor alone. Courts tend to treat detentions of less than thirty minutes as short of a kidnapping and incidental to other offenses. On the other hand, they generally treat detentions of more than an hour as sufficient to constitute kidnappings and non-incidental to other offenses.
>
> Without endorsing those specific results, or adopting any particular bright line, we view the above outcomes as generally sensible and consistent with what it means to detain somebody under our statute, that is, in captivity for a substantial period of time like a hostage or a prisoner. *We doubt detentions of less than thirty minutes should be sustained as kidnappings under our statute*— unless there were some evidence that a lengthier detention was intended—either by this court or by trial courts ruling on motions for judgments of acquittal. We likewise doubt that a

> kidnapping conviction for a detention of more than an hour should ever be disturbed for insufficiency of the evidence as to the holding or detaining element.

Id. at 677-78 (internal citations omitted) (emphasis added).

After this opinion, our Office's ability to charge defendants with kidnapping has largely disappeared, as the statute was interpreted to be limited to the very rare situations that involve a person being held "in captivity for a substantial period of time like a hostage or a prisoner." *See id.* Given the DCCA's interpretation of the current statute in *Cardozo*, there are numerous fact patterns that the community would likely largely agree should constitute a "kidnapping," but for which there is likely no kidnapping liability under current law. For example, there was a recent crime in which the defendant got into the front seat of a car that already had another person (a stranger to the defendant) in the front passenger seat, drove that passenger around the city for approximately 20 minutes, and, after approximately 20 minutes, crashed the car into the building housing USAO-DC. Due to the 30-minute temporal requirement imputed by the DCCA, there would likely be no liability for kidnapping under current law for this incident. As a further hypothetical example, if a person who was a stranger to a child grabbed a child from the child's front lawn and transported the child in their car for 20 minutes, the 30-minute temporal requirement would mean that there would likely be no liability for kidnapping under current law. Following *Cardozo*, there have been cases that USAO-DC is unable to prosecute as kidnapping, or where a judge has dismissed a kidnapping charge pursuant to *Cardozo*.

USAO-DC supports recodifying the kidnapping statute, drawing from the proposed language in the Revised Criminal Code Act (RCCA) as a baseline, to ensure accountability for situations like those mentioned above. This bill, however, makes several important amendments to the language proposed in the RCCA.

First, in response to the DCCA's interpretation of the current kidnapping statute in *Cardozo*, this bill defines "substantially confines or moves" directly in the statute. The RCCA proposed creating new statutory language that would require that a kidnapping "substantially confine[] or move[] the complainant." However, the proposed RCCA did not define this language. As a matter of statutory interpretation, the *Cardozo* court inferred that a "substantial" holding or detention is akin to "holding another captive like a hostage or a prisoner," which "doubt[ed that] detention of less than thirty minutes should be sustained as kidnappings under our statute." *Id.* This temporal limit is inconsistent with the reality of the kidnappings that we see in the District that last a shorter period of time.

Further, to ensure that attempt liability for kidnapping is proportionate to the severity of the offense, the bill specifies that an attempt to commit an offense in this subchapter carries a maximum of not more than ½ the imprisonment and fine otherwise required. This draws from D.C. Code § 22-3018, which provides that attempts to commit sexual offenses (where the maximum is a penalty other than life imprisonment) carry a maximum of not more than ½ of the maximum prison sentence and maximum fine otherwise authorized for that offense, and also draws from the RCCA's proposed penalty scheme for attempt liability, which provided the same for all offenses.

Second, this bill removes language proposed in the RCCA that would have required the offense of kidnapping to merge with another offense "when the confinement or movement was incidental to the commission of the other offense." However, the non-incidental test is unworkable in practice. While recognizing that other jurisdictions often employ a non-incidental

test for kidnapping, the DCCA in *Cardozo* declined to impute a non-incidental test into the current kidnapping statute. The court said:

> Put simply, an hours-long detention is no less a kidnapping by virtue of it being accompanied by a protracted rape or some extended torture; if anything those attendant offenses make it more obviously a kidnapping. Consider literary and cinematic character Jame Gumb, a.k.a. Buffalo Bill, who detained his victims in a manner that was merely incidental to his ultimate plan of desecrating their corpses, a criminal offense in the states where Gumb operated. Gumb kept his victims alive and detained them in a pit for days in order to starve them, thereby loosening their skin, while having them apply lotion periodically, thereby softening it. That their detentions were merely incidental to his ultimate goal of making a suit from their flesh hardly seems like a point that counts against Gumb being a kidnapper. To be sure, there will be a strong correlation between the duration of a detention and whether it was appreciably longer than the time required to commit any attendant offenses, which is likely why so many federal courts have gravitated toward this "incidental to another offense" factor. But the fact that it is a pretty good proxy for a detention's duration is no reason to give it any independent force. It is far better to narrow the focus onto duration of the detention, without the distractions of its rough correlates.

Cardozo, 315 A.3d at 676-77 (internal citations omitted). As in this example, it is unclear how a court would ascertain whether a kidnapping was "incidental" to another offense in many scenarios. For example, if the defendant grabbed a victim off of her busy front lawn and transported her to a quiet neighboring park, where he subsequently raped her, would the kidnapping be "incidental" to the rape because the defendant was seeking to commit the rape in a place where he would be less likely to be apprehended?

Third, this bill includes a clarification on factfinder unanimity on the intent language. Although this language retains the general intent gradations proposed in the RCCA—which distinguish the degree of the offense based on the severity of the intent—it clarifies how this intent language should be applied by a factfinder. Although a factfinder—including a jury—must be unanimous as to the fact that the defendant acted with *one* of the intents proscribed by the statute, it need not conclude *which* intent the defendant acted with. For example, if a defendant forcefully grabbed a person off the street and drove that person in their car for a long distance, but did not specify what their intent was before they were thwarted by law enforcement, a jury or judge (or even the victim) may not be able to ascertain what the defendant's intent was: for example, was the defendant's intent to inflict death, commit a sexual offense, or facilitate the commission of another felony? So long as the factfinder could ascertain that the defendant acted with *one* of the intents specified, it need not conclude or be unanimous as to *which* intent would apply.

Fourth, this bill ensures that, for second degree kidnapping, there is liability where a defendant acts with the intent to "commit any criminal offense" or "facilitate the commission of any criminal offense or flight thereof." This contrasts with the liability for first degree kidnapping, which requires that the defendant act with the intent to commit severe harms or specified serious offenses, or to "facilitate the commission of any felony or flight thereof." This ensures liability for this conduct while maintaining proportionate penalty schemes for this conduct.

Fifth, this bill modifies the penalties to align with current law. The proposed RCCA proposed a maximum of 18 years' incarceration for first degree kidnapping, a maximum of 8 years' incarceration for second degree kidnapping, and a maximum of 1 year incarceration for criminal restraint. The current maximum penalty for kidnapping under D.C. Code § 22-2001 is 30 years' incarceration, and this proposed language aligns the penalty for first degree kidnapping with the current penalty for kidnapping. It also creates a proportionate lower maximum penalty of 15 years' incarceration for second degree kidnapping, and a misdemeanor maximum penalty of 180 days' incarceration for criminal restraint.

Sixth, this bill includes several technical changes. First, it ensures that liability attaches either where the defendant confines or moves the complainant, or where the defendant "causes the complainant to be substantially confined or moved." This would ensure that there is liability for kidnapping where, for example, a defendant jumps into a passenger seat of a car, holds a gun to the driver's head, and forces the driver to drive the passenger. Second, it ensures that liability attaches where the defendant commits the kidnapping by means of "securing, locking, or blocking any door, passageway, or other means of egress." This would ensure that there is liability for kidnapping where, for example, a defendant sneaks up on a person and locks them in a room, even if there is no "physical force" or "deception" or other specific means of liability. Third, it ensures that liability attaches where a young child or incapacitated person provides either "explicit or implicit" acquiescence to the act. This clarifies that there is liability for kidnapping where, for example, a defendant snatches a young child, whether or not the young child expresses their acquiescence directly. Fourth, it ensures that liability attaches where the defendant confines or moves the victim with intent to hold the victim for "24 hours or more," rather 72 hours or more. An intent to hold a victim for 24 hours or more is a substantial period for a kidnapping, and liability should attach in that situation.

Bill 26-0027, the "Case Closure and Witness Support Amendment Act of 2025"

We appreciate the goals of Bill 26-0207, the "Case Closure and Witness Support Amendment Act of 2025," and agree with many of its goals. However, we are concerned that certain provisions in practice may have the opposite of their intended effect, and therefore would recommend that the Council reconsider many of the provisions in the bill.

First, we agree with encouraging community members to provide law enforcement with information that leads to a conviction in a homicide case. However, we have concerns with the proposed *mandatory* payment of *no less than $50,000* to any person who provides information that leads to the conviction or adjudication of the person or persons responsible for committing any homicide in the District. As prosecutors, we want to ensure that we are receiving reliable information in all of our prosecutions. With such a substantial mandatory payment, there could be concerns related to the bias of witnesses receiving these payments in our prosecutions, which could cause juries to doubt the testimony of those witnesses. This could make homicides more difficult to prosecute and result in fewer homicide convictions, which would run counter to our shared public safety goals and the goals of this legislation.

Second, we agree with providing comprehensive supports to victims of crime and witnesses to crime, accounting for their safety and needs. Indeed, USAO-DC has a robust Victim Witness Division that provides assistance to a wide range of victims and witnesses in cases prosecuted by our Office. This includes safety planning, service referrals, payment for alarms

and other safety enhancements, payment for emergency housing, payment for security deposits, moving, and other expenses for a victim or witness to relocate to new permanent housing outside of the danger zone through our Emergency Witness Assistance Program. We also work with the U.S. Marshals Service on the Federal Witness Security Program that may provide new identifications and permanent interventions related to the security, health and safety of government witnesses. Taken together, the United States Attorney's Office provides safety services and referrals to well over 1,000 victims and witnesses a year. A Witness Protection and Assistance Program on the substantially broader level envisioned in the bill may be difficult to implement on a District-wide level and would create a significant financial cost to be borne by the District. We would welcome continued partnership with District agencies, though, to support victims and witnesses in criminal cases, and would strongly support other ways to create additional resources for witnesses in homicide cases.

Additional Proposed Changes

We also recommend several additional statutory changes that are consistent with the goals of Peace DC.

Youth Rehabilitation Act

While we are concerned with all crime, we are particularly concerned with crime committed by juveniles and young adults. We want to ensure that all juveniles and young adults have the supports necessary to permit them to thrive in their communities, while also ensuring that there is appropriate accountability for juveniles and young adults who commit crimes. As this Committee is aware, USAO-DC is responsible for prosecuting all violent crime in the District committed by individuals who are 18 or older, along with "Title 16" prosecutorial authority to charge 16- and 17-year-olds in adult court who are alleged to have committed a small subset of the most serious violent crimes. Other than that small subset of Title 16 eligibility, the DC Office of the Attorney General is responsible for prosecuting all crimes committed by juveniles in the District. Despite our lack of authority to prosecute most juvenile crime, we remain concerned by juvenile crime in the community and want to express to the Council our desire to work together to tackle issues relating to juvenile crime.

In addition, with respect to young adults, we want to ensure that District law appropriately balances rehabilitation with accountability. Accordingly, consistent with the Peace DC goals of preventing violence and strengthening neighborhood harmony, we recommend several changes to the Youth Rehabilitation Act (YRA), codified at D.C. Code § 24-901 *et seq.*

First, we recommend adding several violent offenses to the list of offenses that are categorically ineligible for YRA. In particular, the offenses of manslaughter, assault with intent to kill, aggravated assault, first degree burglary, carjacking, and armed carjacking, and any crime of violence committed while armed with any pistol or firearm pursuant to D.C. Code § 22-4502, should be categorically ineligible for a sentence under YRA. The YRA operates similarly to a record sealing statute, shielding a conviction and case records from public view, without any waiting period after a person serves his or her sentence. Thus, when a conviction has been set aside under the YRA, no records of the case or subsequent conviction will be available in public court records immediately after. Given their severity, these offenses should not be shielded from

the public and should be deemed too serious to permit a YRA sentence.

Second, we recommend that a defendant can only receive the benefit of a YRA sentence for ***one*** felony offense. A defendant could still, however, be sentenced under YRA for multiple misdemeanors. This would ensure that the statute is primarily focused on youth *rehabilitative* goals: the purpose of the statute is to allow a young adult to move past a youthful indiscretion, but if they are convicted of *another* offense after receiving the benefit of the YRA for a *felony* conviction, they have inherently not been adequately rehabilitated from that conduct and should not receive the benefit of a subsequent set aside.

Third, we recommend that a defendant can only be permitted to request a YRA sentence *either* at the time of sentencing *or* at a later point. Under current law, a defendant can request a YRA sentence *both* at the time of initial sentencing *and* at a later point, even if it was denied at sentencing. Currently law provides that if the sentencing judge initially *denies* sentencing the defendant under the YRA, a defendant "may, after the completion of the youth offender's probation or sentence of incarceration, supervised release, or parole, whichever is later, file a motion to have the youth offender's conviction set aside under this section," and the court has discretion to set aside the conviction. We recommend that, where the sentencing judge made a determination *not* to sentence the person under YRA at the time of sentencing, the person should not be eligible to again request a YRA sentence at a later point.

Fourth, we recommend that unconditional discharge of a committed youth offender or termination of supervised release before its expiration should not lead to *automatic* YRA set aside. Rather, the supervising authority (either DC Superior Court or the US Parole Commission, as applicable) should have *discretion* to set aside a conviction and hear arguments before making this decision. Further, notably, YRA relief exists in addition to any record sealing relief that may be available.

Fifth, we recommend updating the permitted uses of YRA set aside convictions under § 24-906(f) to align with permitted uses of sealed convictions. As part of that update, we also recommend clarifying that a conviction set aside under the YRA may be used "in determining whether a person has been in possession of a firearm in violation of § 22-4053 *or 18 U.S.C. § 922*."

Accordingly, we recommend the following changes to current law:

§ 24-901. Definitions.

(6) "Youth offender" means a person 24 years of age or younger at the time that the person committed a crime other than murder, first degree murder that constitutes an act of terrorism, second degree murder that constitutes an act of terrorism, first degree sexual abuse, second degree sexual abuse, ~~and~~ first degree child sexual abuse, manslaughter, assault with intent to kill, aggravated assault, first degree burglary, carjacking, armed carjacking, and any crime of violence committed while armed with any pistol or firearm, who has not previously been sentenced for a felony offense as a youth offender under this subchapter.

§ 24–906. Unconditional discharge sets aside conviction.

(a) Upon unconditional discharge of a committed youth offender before the expiration of the sentence imposed, ~~the youth offender's conviction shall be automatically set aside~~ the court or the United States Parole Commission, as applicable, may, in its discretion, set aside the conviction.

(b) If the sentence of a committed youth offender expires before unconditional discharge, the court or the United States Parole Commission may, in its discretion, set aside the conviction.

(c) Where a youth offender is sentenced to commitment and a term of supervised release for a felony committed on or after August 5, 2000, and the United States Parole Commission exercises its authority pursuant to 18 U.S.C. § 3583(e)(1) to terminate the term of supervised release before its expiration, ~~the youth offender's conviction shall be automatically set aside~~ the United States Parole Commission may, in its discretion, set aside the conviction.

(d) Repealed.

(e) Where a youth offender has been placed on probation by the court, the court may, in its discretion, unconditionally discharge the youth offender from probation before the end of the maximum period of probation previously fixed by the court. The discharge shall automatically set aside the conviction. If the sentence of a youth offender who has been placed on probation by the court expires before unconditional discharge, the court may, in its discretion, set aside the conviction.

(e-1)(1) A youth offender~~, regardless of whether the youth offender was sentenced under this subchapter,~~ may, after the completion of the youth offender's probation or sentence of incarceration, supervised release, or parole, whichever is later, file a motion to have the youth offender's conviction set aside under this section. The court may, in its discretion, set aside the conviction. Where the sentencing judge made a determination not to sentence the youth offender under this subchapter at the time of sentencing, the youth offender shall not be eligible to file a motion under this subsection.

(2) In making the determination under paragraph (1) of this subsection, the court shall consider the factors listed in § 24-903(c)(2) and make a written statement on the record of the reasons for its determination. The youth offender shall be entitled to present to the court facts that would affect the court's set aside decision.

(e-2) In any case in which the youth offender's conviction is set aside, the youth offender shall be issued a certificate to that effect.

Enhanced Penalties for Violence Witnessed by a Young Child

Consistent with the Peace DC goals of preventing violence and strengthening neighborhood harmony, we continue to support creation of an enhancement that would apply to an intrafamily offense or crime of violence where the defendant committed the offense in the presence of a child, or where the child otherwise witnessed the offense, including by sight, sound, or otherwise. This enhancement could be defeated upon a showing by the defendant that

the defendant reasonably believed that the child was not present and would not otherwise be able to witness the offense. This enhancement would apply when the child is not the victim of the charged offense (as that would result in its own liability).

Family violence has an adverse impact, often deep and profound, on a child's physical, cognitive, emotional, and social development. "Research shows that even when children are not direct targets of violence in the home, they can be harmed by witnessing its occurrence. . . . Children who witness domestic violence can suffer severe emotional and developmental difficulties that are similar to those of children who are direct victims of abuse."[1] Other states have taken similar actions. "In many States, a conviction for domestic violence that was committed in the presence of a child may result in harsher penalties than a conviction for domestic violence without a child present. Approximately 9 States consider an act of domestic violence committed in the presence of a child an 'aggravating circumstance' in their sentencing guidelines. This usually results in a longer jail term, an increased fine, or both. An additional seven States, while not using the term 'aggravating circumstances,' require more severe penalties. In five other States, committing domestic violence in the presence of a child is a separate crime that may be charged separately or in addition to the act of violence."[2] This enhancement, consistent with these other states, creates stronger penalties and accountability structures for committing intrafamily violence in the presence of a child, which would relate in proportionate liability for this harmful conduct.

This enhancement would also apply to a crime of violence where the defendant committed the offense in the presence of a child, or where the child otherwise witnessed the offense. "Crime of violence" is defined in D.C. Code § 23-1331(4). For similar reasons to intrafamily violence, a child being exposed to the commission of a serious, violent crime can cause trauma to that child and have an adverse impact on that child's development and wellbeing.

Accordingly, we recommend the following language:

Enhanced penalty for committing intrafamily offense or crime of violence in the presence of a young child.

(a) Any adult who commits an intrafamily offense or crime of violence may be punished by a fine of up to 1 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both, where either the adult committed the offense in the presence of a young child or a young child witnessed the offense.

(b) It is an affirmative defense that the accused reasonably believed that the young child was not present at the time of the offense and that the young child would not be able to witness the offense. This defense shall be established by the defendant by a preponderance of the evidence.

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[1] U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau, *Child Witnesses to Domestic Violence*, Child Welfare Information Gateway (2021), *available at* https://www.childwelfare.gov/pubPDFs/witnessdv.pdf.

[2] *Id.*

(c) This enhancement shall not apply when the young child is the victim of the charged intrafamily offense or crime of violence.

(d) For the purposes of this section, the term:

(1) "Adult" means a person 18 years of age or older at the time of the offense.

(2) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(3) "Intrafamily offense" shall have the same meaning as provided in § 16-1001(8).

(4) "Young child" means a person under 13 years of age at the time of the offense.

* * *

We appreciate the Council's continued commitment to enhancing our public safety laws, and creating additional tools to combat violent crime. We look forward to continuing to work with the Council on issues critical to the safety of our community.