U.S. Department of Justice

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VIA ELECTRONIC MAIL

The Honorable Charles Allen
Chairman
Committee on the Judiciary & Public Safety
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Suite 110
Washington, D.C. 20004

Dear Chairman Allen:

Thank you for the opportunity to submit comments on behalf of the United States Attorney's Office for the District of Columbia on Bill 23-127 (the "Second Look Amendment Act of 2019") and on the implementation of the sentence review provisions of the Incarceration Reduction Amendment Act of 2016 (section 306(b) of D.C. Law 21-238; D.C. Code § 24-403.03) ("IRAA"), and to respond to your letter to me of March 11, 2019. At the outset, I would like to reiterate this Office's commitment to working with the Council to make the District a safe and just city. I also want to reiterate this Office's agreement with the overarching principle, which the Council has sought to ensure through the IRAA and other provisions in the D.C. Code, that the sentences imposed in this jurisdiction are fair and are imposed to further justice for all. Like the Council, this Office wants defendants who are released under the IRAA, and indeed all defendants who are released, to succeed – for their own sake and for the sake of the broader community that they are rejoining. We commend the Council for its role in furthering these goals.

We also encourage these goals because our role in this community is to represent the entire community, and offenders are part of that community. We work on a daily basis to further these goals with respect to youthful offenders by taking the youthfulness of the defendant into account when making charging decisions, extending plea offers, and offering sentencing recommendations.

The Implementation of the IRAA to Date

To date, and to our knowledge, there are fifty-plus defendants who are in the process of preparing IRAA motions or who have brought IRAA motions and been granted relief after a hearing. Because the statute in its current, original version applies only to juveniles whose offenses and history warranted prosecution under Title 16, the defendants filing these motions invariably committed serious, violent crimes such as murder. In some cases, the victims of these crimes have been the intended target; in other cases, they merely had the misfortune of being present. The victims have included a seven-year-old child, a 24-year-old mother who was shot in the back, and a number of young men who were either under the age of 18 or in their early 20's. The victims generally have been people of color and, in a number of cases, were from the same communities as the defendants.

Our Office has assisted the defense bar in several respects in the preparation and filing of IRAA motions. For example, upon request by defense counsel and approval from the Court, we have submitted writs to secure the presence of the defendant in this jurisdiction. To date, approximately forty-plus defendants have been brought to the jurisdiction pending resolution of their IRAA motions. In addition, my Office recently agreed to notify the D.C. Department of Corrections each time the Office submits a writ in a pending IRAA matter. We understand that our efforts in this regard will allow the Department of Corrections to better track the number of IRAA defendants and, importantly, to ensure that proper programming for these defendants is made available to them. Further, shortly before the IRAA took effect in April 2017, our Office volunteered to serve as the conduit between the federal Bureau of Prisons ("BOP") and defense counsel to facilitate the defense's receipt of BOP documents that pertain to the defendant. In this way, we have helped ensure that defense counsel are able easily to gain access to the BOP documents that are integral to the preparation of IRAA filings.

Our Office has devoted a tremendous amount of time and effort to IRAA motions because we recognize how critical the issue of sentencing is in this context, not just to the defendants but to the victims and the community at large. As you know, the IRAA created a new procedure whereby individuals who committed crimes when they were juveniles and were prosecuted as adults in D.C. Superior Court could seek a sentence reduction from the Court if they had served at least 20 years and had

not yet become eligible for parole. D.C. Code § 24-403.03(a)(1)(A) and (a)(1)(B). The IRAA requires that the Court consider eleven factors in assessing the defendant's request for a sentence reduction. D.C. Code § 24-403.03(c)(1)-(c)(11). To grant a reduction, the Court must be satisfied that "the defendant is not a danger to the safety of any person or the community and that the interests of justice warrant a sentence modification." D.C. Code § 24-403.03(a)(2).

One of the factors that the Court must consider under the IRAA is the oral or written statement of the victim or, if the victim is deceased, of the victim's family. D.C. Code § 24-403.03(c)(6). During the public hearing on March 26, 2019, a number of speakers noted that when a defendant is sentenced to jail, it is as if the defendant's family also has been sentenced. It is equally true that when an individual becomes a victim, that person's family also feels that it has been made a victim. We have devoted untold hours to locating victims and their families, a task that can be difficult given that at least 20 years have passed since the crime was committed. If we are able to locate the victim or family, our victim advocates and attorneys carefully assess how to conduct the notification, knowing that their sudden and unexpected contact with the victims, after so many years, will be deeply traumatizing. The advocate and attorney devote hours to speaking with the victims to educate them about the IRAA and to periodically update them on the status of the IRAA litigation. Because these victims and families suffered immense trauma as a result of the original offense and because they typically expected that the case was over, our outreach to them requires acute sensitivity.

Notably, because IRAA motions are defense-driven, our Office often does not become aware of the defendant's intent to file until we receive some indication of this from the defense. What this means is that in some cases, the defense team is able to contact the victim before we have even learned about the potential filing. In those instances, this sensitive notification procedure and important provision of information is being conducted by the party with the *least* interest in the victim's well-being. As such, the victim's or family's wound is, in effect, being reopened by the defendant who caused the wound in the first place. These family members have been particularly upset, confused, and distressed by this experience.

In preparing our response to these motions, we do not subscribe to an approach of "unilateral opposition" (*see* Letter from Charles Allen to Jessie K. Liu, dated March 11, 2019, at 2). Instead, we thoroughly review each motion and evaluate the defendant's request for a sentence reduction. For each of our responsive pleadings, we have painstakingly considered our position, based on the eleven factors set forth in the statute and the two-part standard that must be met. We recognize that the defense counsel who bring these motions are required to represent their clients with diligence and zeal. *See* Rule 1.3, D.C. Rules of Professional Conduct. Thus, the role of defense counsel in these motions is to present their clients in the best possible light.

Our role in IRAA litigation is different and broader: We must consider the interests of the defendant as well as the interests of the victim and the community at large. We begin by carefully scrutinizing the defendant's claim for relief, his motion and attachments, and the case records. Our filings discuss both the factors in defendant's favor and any concerns, inaccuracies, or unresolved questions that suggest early release is not appropriate. We are cognizant of the fact that if we do not bring a concern to the attention of the Court, that concern might well go unheeded. Given the gravity of the question presented by these motions – whether the early release of a defendant who in the past committed a serious, violent crime is merited under the statute– we believe that caution is the appropriate approach here.

Although we do not want to comment on any specific case, in general, we will note that we often have been unable to agree that a defendant should be granted a sentence reduction, or at least a reduction at this time,[1] because in our assessment, the defendant has not fully accepted responsibility for his actions or expressed true remorse for the grievous and lasting harm that he has caused the victim and the victim's family. These issues are directly relevant to the fifth factor in the IRAA: whether the defendant "has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction." D.C. Code § 24-403.03(c)(5). If a defendant has not truly grappled with the serious harm that he has done to another human being, and acknowledged his culpability for the role he played in harming that other human being, he has not shown sufficient rehabilitation and maturity or a fitness to re-enter society. And if a defendant is not sufficiently rehabilitated, mature, and fit to re-enter society, we have a serious concern about whether the defendant will be a danger to the community. D.C. Code § 24-403.03(a)(2).

We also take a broad view on the question of whether the interests of justice warrant a sentence reduction. In our view, any fair conceptualization of the interests of justice must be broad enough to encompass the defendant, the victim and victim's family, and the community at large. We take this broad view of because, as noted, this Office represents the entire community, not any one person.

Bill 22-255, the Coming Changes to the IRAA, and the Impact on the Victims and Their Families

As originally adopted, the second factor of the IRAA requires, in part, that the Court consider the "nature of the offense." D.C. Code § 24-403.03(c)(2). Approximately

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[1] In several of our oppositions, we have taken the position that the defendant should not be granted relief "at this time," an implicit recognition that the defendant perhaps should be granted relief in a future motion, the filing of which is expressly contemplated under the IRAA. D.C. Code § 24-403.03(d).

three months ago, the Council passed, and the Mayor signed, Bill 22-255, the Omnibus Public Safety and Justice Amendment Act of 2018 (D.C. Act 22-614), one section of which amends the IRAA. I understand that these amendments to the IRAA currently are projected to take effect in May 2019.

Bill 22-255 struck the phrase, "nature of the offense," from the second factor. As a result, once this change takes effect, the Court will no longer be directed to consider the nature of the crime that the defendant committed. Bill 22-255 also added language to the tenth factor that the Court must consider. In the original version of the statute, the tenth factor directed the Court to consider "the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to a lifetime in prison." D.C. Code § 24-403.03(c)(10). Bill 22-255 modified the tenth factor as follows: the Court is to consider "the diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, *despite the brutality or cold-blooded nature of any particular crime*" (emphasis added). In addition, Bill 22-255 tilted the IRAA in favor of granting a sentence reduction by directing that the Court "shall" – rather than "may" – reduce a term of imprisonment if the Court finds that the defendant is not a danger to any person or the community and that the interests of justice warrant a sentence of modification.

Read together, the deletion of the phrase "nature of the offense" from the second factor, the addition of the phrase, "despite the brutality or cold-blooded nature" of the crime to the tenth factor, and the substitution of the word "shall" for the word "may" in the text pertaining to the Court's discretion in granting a reduction, strongly suggest that the Court's predominant focus is to be on the defendant in assessing whether a sentence reduction is warranted.

More than one speaker during the public hearing on March 26, 2019 before the Committee on the Judiciary and Public Safety (the "Committee") expressed the view that these defendants deserve the opportunity to have a new beginning. The unfortunate corollary to that sentiment is that, in giving these defendants the chance to open a new chapter in their lives, the IRAA consigns victims and their families to reopen and relive the most painful chapter in their lives. Cases in which IRAA motions have been filed, or are in the process of being prepared, have included some shockingly violent crimes. To briefly describe just a few: the kidnapping of a victim who was held in the back of a stolen van and repeatedly gang raped; the murder of a seven-year-old boy who was simply a bystander; and the murder of the intended victim, whose corpse was stuffed into a trashcan, followed by the murder of the victim's girlfriend, apparently because it was thought that she could be a witness.

Violent crime of this nature affects victims, their families, and the community on many levels, both immediately and for years to come.

As noted, the sixth factor in the IRAA requires the Court to consider the oral or written statement of the victim or, if the victim is deceased – which has been the case in the majority of the motions filed to date – of the victim's family. D.C. Code § 24-403.03(c)(6). To notify a victim, 15 or 20 years after the fact and seemingly out of the blue, that the person who violently raped them or the person who killed their loved one is under consideration for a sentence reduction shatters this sense of finality, re-opens old wounds, and causes new trauma. The reactivation of the trauma causes neurobiological distress that can include flashbacks, PTSD, and substance use/abuse/relapse among other things. The victim's neurological response triggered by the notification is identical to the initial trauma experienced at the time of the crime 15, 20, or more years ago.[2] Many victims have told us that they feel like they are re-living the trauma all over again and are forced to restart the process of healing anew.

During the public hearing on March 26, 2019, there was much discussion of the support services needed for defendants returning to the community; however, there was little talk of supporting the victims and their families when defendants file these motions 15 or 20 years after the crimes were committed. The Council should be aware, if it is not already, that there is a lack of compensation available to these victims for therapy due to time limitations in the existing Crime Victims Compensation statute. D.C. Code § 24-506(a)(2).

To have to relive the pain, trauma, and anguish all over again should at least come with the real possibility that if victims participate in the process and endure this trauma, their voices will not only be heard but will be *considered*. Unfortunately, the changes set to become law tilt the IRAA more strongly in favor of granting relief regardless of the nature of the offense and the impact described by the victim. It is difficult to conceive how the Court can truly appreciate the effect that the defendant's violent actions had on the victim or on his or her family, if the Court is not allowed to consider the nature of the offense or its "brutality or cold-blooded nature." The impact on the victim, their family, and the community is inherently intertwined with the nature of the offense because the nature of the offense indelibly shapes their experience, their trauma, and ultimately their healing. The Court cannot fully and fairly consider one without considering the other. By not considering the nature of the offense, we fear that the Council is sending the unintended message that the

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[2] Campbell, R. (2013). Sexual Assault Cold Case Survivors and the Neurobiology of Trauma [webinar]. Retrieved from http://victimsofcrime.org/top-links/events/2013/04/23/default-calendar/sexual-assault-cold-case-survivors-and-the-neurobiology-of-trauma.

violent crimes committed against these victims and their families do not matter. That is a profoundly disturbing message.

We want the Council to be aware that in several of these cases to date, and despite our extensive efforts, we have been unable to locate the victim or the victim's family members simply due to the passage of time. We also have found that in some of the cases where the victim was murdered, the victim's closest surviving family member is now deceased. Thus, the fact that the sixth factor of the IRAA requires that the Court consider the statement of the victim or the victim's family means perhaps less than the Council intended because often the victim or the family cannot be present. This factor therefore plays out as a nullity in many of these cases. The result is that some of these motions will be granted and defendants released without the victim ever knowing. That is the very thing that crime victims' rights statutes were designed to prevent. We are troubled that little more than two weeks after Crime Victims' Rights Week, we find ourselves speaking out on behalf of crime victims in opposition to legislation that would, in effect, diminish the rights of victims.

For all these reasons, and in our role as a representative of the entire community, we thus cannot agree with the notion that the nature of the offense is irrelevant and should be disregarded in deciding whether the interests of justice warrant a reduction under the IRAA.

Bill 23-127: The Proposed Changes and Our Concerns

Bill 23-127 proposes, among other things, to amend the IRAA by extending it to defendants who have committed their crimes before age 25. With the changes already adopted in Bill 22-255, the IRAA thus would apply to all defendants who have committed their crimes before age 25, if they have served at least 15 years, and regardless of whether they have already been considered for parole. As discussed above, the Court would not be directed to consider the nature of the offense in considering these motions to reduce sentence. Respectfully, this Office does not support Bill 23-127.

As an initial matter, we note that Bill 23-127 proposes that a defendant be considered for a sentence reduction *notwithstanding* his or her prior consideration for parole The District of Columbia Home Rule Act provides that "[t]he Council shall have no authority to pass any act . . . or to . . . [e]nact any act . . . which concerns the functions or property of the United States . . . ." D.C. Code § 1-206.02(a)(3). One of the principal functions of the United States Parole Commission is to determine the propriety of release into community supervision of offenders under its jurisdiction. Under the current legal framework, therefore, the Second Look Act's grant of eligibility for sentence review and reduction under the IRAA for defendants subject to federal parole system arguably would be invalid.

Our understanding from the March 26, 2019 public hearing is that it is currently unknown how many cases potentially are affected by the age expansion proposed in Bill 23-127. Our Office conducted a rough approximation of the cases potentially affected during one five-year window: 1999 through 2004. During this period, there were approximately 143 cases in which defendants between the ages of 18 and 24 were convicted of crimes and sentenced to 15 years or more. The overall number of cases potentially implicated by the proposed legislation is thus quite large. This gives us serious concern for three main reasons.

First, we are greatly concerned about the number of victims and their families potentially affected. Our brief review of cases during the 1999 through 2004 window include some violent and disturbing crimes, including, for example, the defendant's first degree murder of his two roommates, where the 21-year-old defendant used a hammer in the killing; and the kidnapping and repeated rape of a waitress by the 22-year-old defendant who was a customer at the restaurant where the victim worked. In our view, the benefit that this proposed legislation offers to a wider group of defendants is outweighed by the harm that the legislation will do to a wider group of victims and their families.

Relatedly, we note here that in the Youth Rehabilitation Amendment Act of 2018 ("YRAA"), the Council recently addressed the needs of youthful offenders. Under that legislation, which took effect in December 2018, a defendant who committed his or her crimes before age 25 can apply to the Court to have his conviction set aside, unless the defendant committed certain very serious crimes. D.C. Code § 24-906(e-1). Hence, under the YRAA, the needs of offenders who committed crimes before the age of 25 have already been addressed in a very practical way, thus diminishing the need for further relief for these offenders.

Second, given the gravity of the relief sought in these motions – *i.e.*, the early release of a defendant who committed what is likely to have been a serious, violent offense – we are concerned about whether the defense bar, this Office, and the Superior Court will have sufficient resources available thoroughly to address and litigate these important motions. We are mindful that a mistaken judgment on the question of whether one of these offenders should receive a sentence reduction has the potential of resulting in tragedy. The parties should not be rushed in litigating these motions, and the judges should not make these important decisions in haste, driven by the large numbers of motions being filed or the overall demands of their respective caseloads. Moreover, the requests made in these motions should not intrude on the ability of the Court, the defense bar, or this Office to handle active, ongoing criminal cases. Because so little is known about the number of cases potentially affected by Bill 23-127, and because our five-year approximation suggests that the number could be quite large, we think the Council should not proceed with

this proposed amendment pending further review of the numbers of cases involved and the impact on the litigating parties and the court system. [3]

Our third area of concern relates to how the defendants will fare once they gain release. This issue will have implications for the broader community. A number of the speakers at the March 26, 2019 public hearing emphasized the importance of having a fulsome support structure in place to assist defendants in returning to the community. We wholeheartedly agree with this sentiment. Any defendant released from imprisonment faces a difficult transition back to civil society. For defendants eligible for relief under the IRAA, the challenges are even greater. These defendants entered the penal system at a young age and often before they developed the habits of responsibility, spent at least 20 (soon to be 15) years in an exceedingly structured environment, and must return to a world that is unstructured and immeasurably different than the one that they left. For their sake, and for the sake of the community at large, it is imperative that a well-thought-out and appropriately resourced support system be established before they are released. It is not clear that such a comprehensive support system is in place.[4]

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[3] We know of no jurisdiction that has undertaken an expansion of the sentence reduction process such as that being contemplated here. The laws of Florida and Delaware, cited by the Council in passing the initial version of the IRAA, only apply to individuals who committed their crimes when they were under 18. To our knowledge, these laws have not been broadened in the ensuing years. In 2017 in California, the Governor signed AB 1308, which expanded the existing Youth Offender Parole to include people who were age 25 or younger at the time of their crime. Youth Offender Parole originally began in 2014 for individuals who were under the age of 18. Individuals are eligible for a Youth Offender Parole hearing after serving a specific number of years on their sentence (15 years for determinate sentences, 20 years for sentences less than 25 to life, and 25 years for 25 to life sentences). At a Youth Offender Parole hearing, the parole board is required to give great weight to factors specific to youth offenders, such as the diminished culpability of juveniles. This program gives individuals the opportunity to be released on parole but does not appear to modify their original sentence. Hence, there is no data from other jurisdictions to help the Council gauge the consequences of this proposed legislation. This counsels in favor of a measured and deliberate approach here.

[4] The "*Unger* case" in Maryland was mentioned during the March 26, 2019 public hearing. As a result of that case, approximately 188 Maryland state prisoners, who had been sentenced before 1981 and had served more than 30 years, began to gain release starting in 2012. At least one speaker during the hearing noted that persons released pursuant to the Unger case have had a near-zero recidivism rate. But there was no discussion during the hearing of the average age of the Unger defendants upon release, which was 64. Individuals released under the IRAA, and Bill 23-127 in particular, are likely to be younger; thus, the Unger defendants differ in a key respect from defendants released under the IRAA.

It also is worth noting that the reentry model that assisted the Unger offenders was developed by a number of groups, including the University of Maryland School of Law and School of Social Work. There were multiple stages of assistance that involved the creation of individualized release plans, coordination with institutional staff, family members, and service providers, and direct assistance with social workers after release from prison. Seven tiers of support were developed depending on the needs of individuals.

For all these reasons – the harm that this increase in age range will do to a large pool of victims, the risk that the number of motions filed will overwhelm the criminal justice system's ability thoughtfully to litigate these matters and the system's ability to adjudicate pending cases, and the uncertainty about whether sufficient aftercare resources are in place to assist a large pool of defendants returning to the community – we strongly urge that the Council reject Bill 23-0127 pending further deliberation of the serious concerns that we have identified here.

Bill 23-127: A Possible Alternative Approach

Alternatively, if the Council wishes to keep the expanded age range proposed in Bill 23-127, we urge the Council to align the bill with the recently enacted YRAA. The YRAA applies to persons between the ages of 18 and 24 who 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 and second degree sexual abuse, and first degree child sexual abuse. D.C. Code § 24-901(6). Thus, the YRAA excepts certain very violent crimes. At the very least, Bill 23-127 should be amended accordingly. Such a change to Bill 23-127 would preserve the Council's wish to broaden the age range of defendants who may seek relief, while sparing victims of these violent offenses from further trauma. This alternative also would promote the safety of the community by excepting the most dangerous of offenders; help ensure that the number of motions filed under the IRAA would not overwhelm the criminal justice system's ability to handle the motions; and limit the number of persons needing an intensive amount of resources upon release.

The Public Defender Service's Suggested Revisions to Bill 23-127 and Our Concerns

During the March 26, 2019 public hearing, the Public Defender Service for the District of Columbia ("PDS") suggested seven changes to Bill 23-127. We address each proposed change below:

1. All defendants, regardless of their age when they committed their crimes, should be allowed to move for a sentence reduction.

Hence, the *Unger* case highlights the need for a well-planned and well-executed support model. In this respect, we agree that the *Unger* case provides useful insights that could be applied here. A link to the November 2018 Justice Policy Institute 5-year study is found here: https://www.abell.org/sites/default/files/files/JPI_The%20Ungers%205%20Years%20and%20Counting_Nov_2018.pdf.

This proposed change cannot be justified by the Council's rationale that prompted the IRAA and the revisions to the statute thus far because this change affects *all* offenders, not just juvenile offenders or youthful offenders. Moreover, the serious concerns discussed above would be greatly aggravated by extending the IRAA to all defendants. Rather than expanding the pool of potentially eligible defendants, the Council should pause at this juncture, closely monitor how defendants released under the existing law are faring, and ensure that the appropriate resources are in place for the defendants and the victims. We urge the Committee not to proceed in haste on this important point and to reject this proposal.

2. <u>There should be a rebuttable presumption of release</u>.

   This proposed change is not necessary. With the adoption of Bill 22-255, the Council recently directed that the Court "shall" – rather than "may" – reduce a term of imprisonment if the Court finds that the defendant is not a danger to any person or the community and that the interests of justice warrant a sentence of modification. The statute should not be further tilted toward a presumption of release. Notably, PDS did not proffer any rationale for this provision and we know of none. The Committee should reject this proposal.

3. <u>The defendant's compliance with BOP regulations and completion of BOP programming should be considered only after defendant turns 25</u>.

   The IRAA directs the Court to consider, among other factors, "[w]hether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available." D.C. Code § 24-403.03(c)(3). In our view, the Courts that have considered IRAA motions have adopted the common sense approach that generally, a defendant's early infractions or lack of completion of programming matters less than what the defendant has done in more recent years. The Committee should not limit the Court's ability to deviate from this general approach where warranted (*i.e.*, if a defendant murders another inmate or attempts to smuggle drugs into the prison, the Court should not be prevented from considering these actions simply because the defendant was under 25 when he carried out the actions). The Committee should reject this proposal.

4. <u>There should be time limits placed on IRAA litigation</u>.

   Under this proposal, the government would be required to file its response within 60 days and the Court would be required to issue its decision within 30

days, with extensions granted for good cause. The fundamental problem with PDS's suggestion for time limits on IRAA litigation is that these limits do not apply to the defense. As noted earlier, most motions that have been filed to date have been quite lengthy. Mr. Anderson explained in his remarks that these motions require an extensive amount of investigation and preparation. We take him at his word on this point, and we have seen the evidence of the defense bar's extensive labors in the motions that we have reviewed. Under PDS's proposal, the defense would have as long as it needs to investigate and prepare its motion, but the government would be limited in its response time and the Court also would have an abbreviated period to consider the defendant's significant request for a reduction in sentence. Even allowing for good cause extensions, putting time limits on the government and the Court would unfairly rush them both, thereby jeopardizing their ability thoroughly and fairly to review the motions. The Committee should reject this proposal.

5. The defendant should have the right to return to the District.

   The IRAA mandates that a hearing be held on the defendant's motion and provides that a defendant "shall be present at any hearing" unless the defendant waives that right. D.C. Code 24-403.03(b)(2), (b)(3). The statute also states that "the requirement of a defendant's presence is satisfied" if the defendant appears by videoconferencing. D.C. Code § 24-403.03(b)(3). In practice, most, if not all, defendants have been brought via a writ to this jurisdiction for their hearings. PDS did not explain why this change is necessary. But this proposal would affect the D.C. Department of Corrections and we therefore take no position.

6. The Court should consider whether another person, rather than just an adult, was involved in the offense.

   The IRAA directs the Court to consider, among other factors, "whether and to what extent an adult was involved in the offense." D.C. Code § 24-403.03(c)(9). This factor is meant to address whether a juvenile or young offender was unduly influenced by an adult. PDS's proposal that that the Court consider whether any other person, regardless of age, takes several steps away from that notion and sets the stage for defendants to blame someone else, regardless of age, for their own actions. The Committee should reject this proposal.

7. The use of Rule17 subpoenas should be broadened.

   Pursuant to Rule 17, a party may seek a subpoena, signed by the Court, directing the witness to "attend and testify" or produce documents and objects "at the time and place the subpoena specifies" (*i.e.*, a court hearing). D.C. R.

Crim. P. 17. PDS appears to want to broaden the use of subpoenas to allow the defense to seek documents even if there is no court hearing. The procedure in place is working well, however, as evidenced by the fulsome IRAA motions that the defense bar is filing. The Committee should reject this proposal.

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Again, we applaud the Committee's goal of promoting fair and just sentences in the District of Columbia. We urge, however, that all stakeholders work together closely to ensure that a structure is put in place that permits participation, consideration, and restoration of victims and impacted communities; and that planning and fiscal support are dedicated to empirically-based, long-term rehabilitative programs that will enhance the success of defendants returning to District communities.

Sincerely,

Jessie K. Liu
United States Attorney

cc: The Honorable Muriel Bowser, Mayor
The Honorable Kevin Donahue, Deputy Mayor
for Public Safety & Justice and Deputy City Administrator
The Honorable Phil Mendelson, Chairman, Committee of the Whole
The Honorable Kenyan McDuffie, Chairman Pro Tempore, Council
The Honorable Anita Bonds, Councilmember, Judiciary Committee
The Honorable Mary M. Cheh, Councilmember, Judiciary Committee
The Honorable Vincent C. Gray, Councilmember, Judiciary Committee
The Honorable David Grosso, Councilmember, Judiciary Committee