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

PUBLIC HEARING

on

Bill 25-0291, the "Safer Stronger Amendment Act of 2023"
Bill 25-0247, the "Female Genital Mutilation Prohibition Act of 2023"

STATEMENT OF ELANA SUTTENBERG
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Tuesday, June 27, 2023, 12:00 p.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 to share the Office's views on the proposed legislation. USAO-DC strongly supports both Bill 25-0291, the "Safer Stronger Amendment Act of 2023," and Bill 25-0247, the "Female Genital Mutilation Prohibition Act of 2023."

USAO-DC supports the "Safer Stronger Amendment Act" because it will make the community safer by increasing penalties for firearms and violent crimes; supporting violent crime investigations; enhancing pretrial detention for violent crimes; and expanding information considered in second look sentence reductions for the most serious violent crimes. This legislation offers targeted, common-sense measures to address shortcomings in our criminal justice system. Fixing these deficiencies will make our judicial system work better and, consequently, increase community safety.

Increasing Penalties for Firearms and Violent Crimes

We support this bill making several crimes felonies with higher penalties, including: unlawfully discharging a firearm; possessing a machine gun or a "ghost gun" (a privately manufactured firearm); and strangulation. Felony liability for unlawfully discharging a firearm fills a gap in current law, as any discharge of a firearm creates significant risk to the surrounding community, and the shots fired may hit any person nearby, causing death or serious injury. Felony liability for possession of a machine gun or a "ghost gun" reflects the potential increased danger to the community caused by possession of a machine gun—which includes possession of a "Glock switch" that can convert a semi-automatic firearm into an automatic firearm—or a "ghost gun" that is not traceable. Felony liability for strangulation recognizes that strangulation is one of the most dangerous forms of domestic violence, and a significant predictor for future lethal violence.

This bill also allows a judge to give a higher sentence when certain sentencing enhancements apply, including where the crime was committed against a Metro operator or passenger, a public or private for-hire driver (such as Lyft, Uber, or DoorDash), or a vulnerable adult.

Further, this bill strengthens accountability in several other ways. First, it fills a gap in liability by ensuring that an assault causing "any loss of consciousness" is punishable as felony assault. Second, it clarifies that a contractor or consultant of a church, school, synagogue, or similar institution may be charged with sexual abuse of a child, minor or student.

Felony Liability for Unlawful Discharge of a Firearm

We support creation of a felony offense of unlawful discharge of a firearm and believe that it fills a gap in current law. Unlawfully shooting a gun—even where it is not aimed at a person—can result in serious injury or death to others, including bystanders. We recommend that this offense carry a maximum penalty of at least 5 years' incarceration to account for the

significant danger created by discharging a firearm. Even where a person does not intend to hit someone, unlawfully discharging a firearm merits a higher maximum penalty.

Felony Liability for Possession of a Machine Gun or Ghost Gun

Under current law, possession of a machine gun[1] is generally punishable as misdemeanor possession of a prohibited weapon ("PPW"), with a statutory maximum of 1 year incarceration.[2] If a person "carries" a machine gun without a license outside their home or business, that conduct can be prosecuted as carrying a pistol without a license ("CPWL"), as the machine gun is a type of "pistol" or "deadly or dangerous weapon," with a statutory maximum of 5 years' incarceration. *See* D.C. Code § 22-4504(a)(1). Possession of a machine gun can often be prosecuted as CPWL, except where the person possesses the machine gun in their home, in the truck of their car, or in a similar location where they would not be "carrying" the machine gun. In those situations, possession of a machine gun would be subject to the 1-year maximum for PPW(a). Felony liability for this conduct, however, is proportionate to the severity of the conduct.

Felony Liability for Strangulation

Strangulation is widely recognized as one of the most dangerous forms of domestic violence, and a significant predictor for future lethal violence. However, virtually all non-fatal strangulation cases can be prosecuted in the District only as misdemeanor simple assault. By contrast, based on the documented physical and emotion harm associated with strangulation, particularly in the domestic violence context, and the fact that strangulation is a strong predictor of future domestic violence fatality, 49 states have a law allowing strangulation to be prosecuted as a felony.[3] There is overwhelming support from experts for the creation of felony liability for

[1] The definitions section in D.C. Code § 22-4501(4) cites to the "machine gun" definition in D.C. Code § 7-2501.01(10), which provides:

> "Machine gun" means any firearm which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term "machine gun" shall also include the frame or receiver of any such firearm, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a firearm into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

[2] *See* D.C. Code §§ 22-4514; 22-4515. If a person has been previously convicted in the District of Columbia of violating D.C. Code § 22-4514, or of a felony, either in the District of Columbia or in another jurisdiction, possession of a machine gun is punishable as a felony, with a statutory maximum of 10 years' incarceration. *See* D.C. Code § 22-4514(c).

[3] Since the public hearing on this bill in May 2021, one additional state—Ohio—now allows strangulation to be prosecuted as a felony. *See* https://www.news5cleveland.com/news/local-news/investigations/ohio-finally-recognizes-strangulation-as-a-felony-was-the-last-state-in-the-country-to-do-so. There is advocacy for South Carolina to create a stand-alone felony of strangulation as well. *See* https://www.live5news.com/2021/07/22/strangulation-not-standalone-felony-sc-advocates-call-change/.

strangulation. We presented detailed testimony in support of this proposal in May 2021,[4] alongside other witnesses who supported this proposal.[5]

Sentencing Enhancements

This bill proposes several sentencing enhancements to reflect the additional severity of committing crimes against certain protected classes of people. For example, the bill proposes a sentencing enhancement where a crime of violence or dangerous crime is committed against an adult who suffers from physical or mental impairment, or where certain crimes are committed against a Metro operator or passenger. This bill also proposes filling a gap in liability by extending the current sentencing enhancement that applies to a "taxicab driver"[6] to include people who operate both public vehicles-for-hire or private vehicles-for-hire. Limiting this enhancement to apply only to a "taxicab driver" is outdated, and does not reflect that private vehicles-for-hire—such as Lyft and Uber—have replaced many taxis.

These sentencing enhancements provide a judge discretion to impose an appropriate sentence, but do not require the imposition of an enhanced sentence. A statutory maximum does not represent the community's and legislature's sense of what the minimum amount, or even average amount, of punishment for a crime should entail. Rather, a statutory maximum—by definition—reflects the community's and legislature's belief as to what the sentence should be for committing the *worst* possible version of the offense, including when the person has a substantial criminal history. Crimes that are not the worst possible version of the offense or that are committed by individuals who lack a significant criminal history may be sentenced below the statutory maximum. To be sure, the certainty of being caught for a crime is a more powerful deterrent than the maximum punishment for a crime. But the maximum penalty for a crime does have some deterrent value and, even more importantly, the maximum penalty must be sufficiently high to hold a person who has already committed a serious, violent crime proportionately accountable for that crime and to ensure that a person who is a danger to the community is incarcerated for an appropriate length of time.[7]

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[4] *See* https://www.justice.gov/usao-dc/pr/statement-us-attorneys-office-district-columbia-dc-council-regarding-measures-strengthen.

[5] *See* https://lims.dccouncil.gov/downloads/LIMS/46637/Hearing_Record/B24-0116-Hearing_Record1.pdf.

[6] *See* D.C. Code § 22-3751.

[7] Social science literature indicates that the length of punishment may have some deterrent effect, though the *certainty* of being caught is a vastly more powerful deterrent than the punishment. Crucially, however, there are important reasons for lengthy sentences other than general deterrence—including punishment and incapacitation. The National Institute of Justice published a summary of research on deterrence, titled "Five Things About Deterrence." As to the length of sentences, the National Institute of Justice summary stated the following:

> It is important to note that while the assertion in the original "Five Things" focused only on the impact of sentencing on deterring the commission of future crimes, a prison sentence serves two primary purposes: punishment and incapacitation. Those two purposes combined are a linchpin of United States sentencing policy, and those who oversee sentencing or are involved in the development of sentencing policy should always keep that in mind."

National Institute of Justice, *Five Things About Deterrence*, https://nij.ojp.gov/topics/articles/five-things-about-deterrence (June 5, 2016). Further, the literature does not provide that the length of sentence has *no* deterrent effect; rather, the literature provides that the certainty of being caught is a vastly more powerful deterrent than the

Additional Accountability Mechanisms

Felony Liability for Any Loss of Consciousness

This bill provides that "any loss of consciousness" would constitute a "significant bodily injury" for the felony offense of assault with significant bodily injury under D.C. Code § 22-404(a)(2). Any loss of consciousness caused by an assault—regardless of the length of the loss of consciousness—is a serious injury that should result in felony liability.

Current District law implies that there is no felony liability for an assault resulting in a brief loss of consciousness. Aggravated assault is a felony with a 10-year statutory maximum, which requires a finding of "serious bodily injury."[8] Assault with significant bodily injury is a felony with a 3-year statutory maximum, which requires a finding of "significant bodily injury"—a lesser injury threshold.[9]

For purposes of the aggravated assault statute, "serious bodily injury" means an injury that involves a substantial risk of death, *unconsciousness*, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.[10] However, although the aggravated assault statute includes "unconsciousness" as a basis for "serious bodily injury," the D.C. Court of Appeals has held that a brief loss of consciousness of approximately a minute or less does not qualify as a "significant bodily injury."[11] In a separate case, the D.C. Court of Appeals has questioned, but not decided, whether any loss of consciousness, however brief, could amount to the requisite serious bodily injury to sustain an aggravated assault conviction.[12]

Moreover, if the victim is the only witness to the loss of consciousness, the victim may not be able to ascertain how long they were unconscious or be able to establish that the loss of consciousness lasted more than a brief time. Under this bill, no medical testimony or eyewitness testimony would be needed to establish the loss of consciousness required to establish that the victim had a loss of consciousness, and this level of "significant bodily injury" could be established by the victim's testimony that the assault resulted in a loss of consciousness.

Clarifying the Definition of "Significant Relationship" in Sexual Abuse Cases

This bill clarifies the definition of "significant relationship" in sexual abuse cases. This would fill a gap in liability by clarifying that a "contractor" or "consultant" of a school, church, synagogue, or similar institution has the same liability for sexual abuse as an "employee" or "volunteer" of the same.

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punishment. *Id.*

[8] *See* D.C. Code § 22-404.01.

[9] *See* D.C. Code § 22-4040(a)(2).

[10] *See Nixon v. United States*, 730 A.2d 145, 150 (D.C. 1999) (adopting definition of "serious bodily injury," now codified at D.C. Code § 22-3001(7), for purposes of the aggravated assault statute).

[11] *In re D.P.*, 122 A.3d 903, 913 (D.C. 2015).

[12] *Vaughn v. United States*, 93 A.3d 1237, 1269 n.39 (D.C. 2014) (cited in *D.P.*, 122 A.3d at 913 n.10)).

Under current law, there is liability for certain sexual offenses and enhancements where the defendant and victim are in a "significant relationship," as defined in D.C. Code § 22-3001(10). This includes circumstances where the defendant is an "employee" or "volunteer" of a school, church, synagogue, or similar institution. Adding the term "contractor" provides a more comprehensive definition of those responsible for the care and supervision of children at schools and other institutions. Many organizations do not hire all of their employees directly; rather, they enlist contractors as part of that staffing. The contractors have the same interactions with children and responsibilities as many of the direct employees do, and it makes no sense to distinguish them for purposes of liability. This bill would ensure that a "contractor" of such an organization would have the same liability as an "employee" or "volunteer," filling a gap in liability.

Supporting Violent Crime Investigations

Solving Crime Through Earlier Collection of DNA

Earlier collection of DNA would help to solve some of the District's most serious and violent crimes, and thereby help to prevent future crimes. 31 states and the federal government rely on earlier collection of DNA to help them solve violent crimes, and this bill would bring the District in line with the majority of states by providing the District with this additional tool to investigate violent crimes.

As the Supreme Court held in *Maryland v. King*, when upholding the constitutionality of collection and analysis of DNA at the time of arrest: "When officers make an arrest supported by probable cause to hold for a serious offense and they bring the suspect to the station to be detained in custody, taking and analyzing a check swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment."[13] The Supreme Court further held in *Maryland v. King*: "DNA identification is an advanced technique superior to fingerprinting in many ways, so much so that to insist on fingerprints as the norm would make little sense to either the forensic expert or a layperson."[14]

Accordingly, we support this bill, which would require law enforcement to collect DNA earlier in serious sexual abuse cases. We also support building on this bill by both: (1) requiring law enforcement to collect DNA from people arrested for all of the offenses for which DNA collection is mandated upon conviction; and (2) closing a loophole in the law by allowing District agencies to collect "lawfully owed" DNA from people previously convicted of offenses that already require a DNA sample to be provided.

After DNA collection, the DNA profiles would be analyzed and uploaded to the Combined DNA Index System ("CODIS"). CODIS is a national database operated by the Federal Bureau of Investigation ("FBI") that contains DNA profiles developed from crime scene evidence (such as, for example, semen collected during a sexual assault forensic examination or blood collected from a homicide crime scene) and known DNA profiles of certain convicted offenders and arrestees (from states with arrestee laws). When a convicted offender or arrestee

[13] *Maryland v. King*, 569 U.S. 435, 465-66 (2013).

[14] *Id.* at 459.

DNA profile is uploaded to CODIS, it allows the possibility of linking that known DNA profile to an unknown DNA crime scene profile, providing a crucial investigative link for law enforcement to solve serious and violent crimes.

Importantly, academic research has found that "DNA databases deter crime by profiled offenders, reduce crime rates, and are more cost-effective than traditional law enforcement tools."[15] Moreover, academic research has found that "DNA databases provide the cleanest test of the effect of increasing the probability of punishment, and there is strong evidence that this reduces recidivism across a wide range of offenders."[16] An academic study of a 2005 change to Denmark's DNA database collection law that "allowed police to add anyone charged with what is roughly equivalent to a felony in the United States"—which "increase[ed] offenders' average probability of being included in the DNA database dramatically"—found that "DNA registration reduces recidivism within the following year by up to 42 percent" and "increases the probability that offenders are identified if they recidivate."[17] As summarized by an author of that study: "The bottom line: Expanding government DNA databases to add more criminal offenders has a big deterrent effect, reducing the number of crimes committed."[18]

Aligning with Other Jurisdictions' Laws that Allow DNA Collection from Arrestees to Solve and Prevent Crime

Currently, at least 31 states and the federal government have laws permitting the taking of DNA upon arrest for certain crimes. The following states permit the taking of DNA upon arrest: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin. Of those 31 states, approximately 20 states allow the sample to be analyzed after it is collected at booking, and approximately 11 states allow it to be analyzed after a probable cause finding. Of those 31 states, approximately 19 states allow collection of DNA for all felonies, of which approximately 9 states also allow collection for certain misdemeanors; and approximately 12 states allow for collection of DNA for certain felonies and, for some of the states, certain misdemeanors as well.

In *Maryland v. King*, the Supreme Court cited to studies demonstrating the effects of state DNA collection laws on the state's ability to solve crime:

> In considering laws to require collecting DNA from arrestees, government agencies around the Nation found evidence of numerous cases in which felony arrestees would have been identified as violent through DNA identification matching them to previous

[15] Jennifer L. Doleac, *The Effects of DNA Databases on Crime*, American Economic Journal: Applied Economics 2017, 9(1), at 165 (2017).

[16] Jennifer L. Doleac, *Encouraging Desistance from Crime*, Journal of Economic Literature 2023, 61(2), at 386 (2023).

[17] Anne Sofie Tegner Anker, Jennifer L. Doleac, and Rasmus Landersø, *The Effects of DNA Databases on the Deterrence and Detection of Offenders*, American Economic Journal: Applied Economics 2021, 13(4), at 194-95 (2021).

[18] Jennifer L. Doleac, *How DNA Databases Deter Crime*, Bloomberg Opinion (Feb. 1, 2021).

> crimes but who later committed additional crimes because such identification was not used to detain them. *See* Denver's Study on Preventable Crimes (2009) (three examples), Chicago's Study on Preventable Crimes (2005) (five examples); Maryland Study on Preventable Crimes (2008) (three examples).[19]

Further, a recent article highlighting Louisiana's use of Rapid DNA to test arrestee DNA samples stated that, "[i]n the last eight months, the Louisiana State Police report five people have been connected to previous crimes via Rapid DNA, including a 2013 homicide, a 2020 carjacking case that is being investigated by the Georgia Bureau of Investigation, two burglaries, and the police officer shooting in the Baton Rouge area."[20]

In the District, there are several notable examples of how—if the District had a law allowing DNA collection and analysis from arrestees—this practice could have solved an open violent crime case, and even prevented the assailant from committing additional violent crimes. First, in 2012, an unidentified assailant raped a 26-year-old stranger at gunpoint. DNA from the evidence was entered into CODIS with no hits. In 2014, the later-identified assailant was arrested and charged with assault with a dangerous weapon and assault with significant bodily injury. In 2015, while that case was still pending, the same assailant sexually assaulted an 11-year-old girl. Detectives were later able to solve both sexual assault cases with leads from the second case. If this assailant's DNA had been collected at the time of his 2014 arrest, law enforcement would have *solved* the 2012 rape and *prevented* the rape of an 11-year-old child. Second, in 2001 and 2002, an unidentified assailant raped two different strangers while armed. In 2010, the later-identified assailant was arrested for assault with a dangerous weapon. In 2015, this case was ultimately solved by cold case detectives, who reinvestigated leads, but if this assailant's DNA had been collected at the time of his 2010 arrest, both cases could have been solved earlier.

Closing a Loophole for DNA Collection Post-Conviction for Qualifying District Offenses

This proposal would also close a loophole in the law as to who is permitted to collect DNA from individuals who already "lawfully owe" a DNA sample due to a qualifying conviction.

Federal law requires the Bureau of Prisons ("BOP") to "collect a DNA sample from each individual *in the custody of* the Bureau of Prisons who is, or has been, convicted of a qualifying District of Columbia offense."[21] Federal law also requires the Court Services and Offender Supervision Agency ("CSOSA") to "collect a DNA sample from each individual *under the supervision of the Agency who is on supervised release, parole, or probation* who is, or has been, convicted of a qualifying District of Columbia offense."[22] As to qualifying offenses, federal law provides: "The government of the District of Columbia may determine those offenders under the District of Columbia Code that shall be treated for purposes of this section as qualifying District

[19] *Maryland v. King*, 569 U.S. at 454 (internal citations to websites omitted).

[20] Roby Chavez, *How Louisiana police are using a DNA 'lab in a box' to solve crimes*, PBS News Hour (May 8, 2023).

[21] 34 U.S.C. § 40703(a)(1) (emphasis added).

[22] 34 U.S.C. § 40703(a)(2) (emphasis added).

of Columbia offenses."[23] District law defines "qualifying offenses for the purposes of DNA collection."[24]

There are two loopholes that this proposal remedies by providing District agencies authority to collect these "lawfully owed" DNA samples from convicted offenders. Under the first loophole, there are some people who are convicted of qualifying offenses who are never "in the custody" of BOP or "under the supervision" of CSOSA. For example, if a person receives a sentence of incarceration-only that is less than one year, without any period of supervision to follow, that person would serve their entire sentence in the D.C. Department of Corrections. Therefore, there would be no lawful opportunity for either BOP or CSOSA to collect the lawfully owed DNA sample. Under the second loophole, despite the requirement that BOP and CSOSA collect the samples from people in their custody or under their supervision who have been convicted of qualifying offenses, there are situations where BOP or CSOSA do not collect the sample. This proposal provides District agencies—including the Metropolitan Police Department and the D.C. Department of Corrections—authority to collect such samples from people who have been convicted of qualifying offenses.

Clarification of the Admissibility of GPS Data

This bill clarifies that GPS records from the Pretrial Services Agency ("PSA") are admissible in court as evidence of guilt in a criminal case or other judicial proceeding. This is a common-sense clarification that GPS records from PSA that, for example, indicate that a defendant was on the scene of a domestic violence incident or a murder can be admissible in that defendant's trial for domestic violence or murder. This clarification would not affect law regarding the admissibility of any statements that the defendant may make to PSA.

Global Positioning Systems (GPS) and other tracking devices are used by the court and the PSA as a condition of pretrial release designed to "reasonably assure the appearance of the person as required and the safety of any other person and the community."[25] As the Committee on Public Safety and the Judiciary noted in enacting D.C. Code § 22-1211 (Tampering with a detection device), GPS devices and "other electronic monitoring equipment serve as a deterrent for monitored persons to commit new crimes, thereby protecting public safety without the necessity of incarceration. Further, GPS devices can be utilized to identify probable suspects by matching their whereabouts to the scene of the crime."[26]

D.C. Code § 23-1303(d) currently reads:

> (d) Any information contained in the agency's files, presented in its report, or divulged during the course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding, but such information may be used in proceedings under sections 23-

[23] 34 U.S.C. § 40703(d).

[24] D.C. Code § 22-4151.

[25] D.C. Code § 23-1321(c)(1)(B).

[26] Committee on Public Safety and the Judiciary, *Report on Bill 18-0151, the "Public Safety and Justice Amendments Act of 2009"* at 5 (Council of the District of Columbia June 26, 2009).

1327, 23-1328, and 23-1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceeding.

In interpreting this statute, however, some defendants have attempted to construe D.C. Code § 23-1303(d), standing alone, to prohibit the use of GPS data collected by PSA not only in prosecuting a violation of D.C. Code § 22-1211, but also in prosecuting much more serious crimes, up to and including murder. It is important for the Council, therefore, to clarify that the limitations in D.C. Code § 23-1303 do not apply to GPS records that are in the possession of PSA. This clarification is consistent with the legislative intent of the statute.

In litigation, we consistently maintain that this statute allows for GPS records from PSA to be admissible as guilt in a court proceeding. Several trial court judges have addressed this issue and have agreed with our reading of the statute. Until the Council clarifies the plain language of the statute, however, there will likely be additional litigation on this point.

To remove any possible ambiguity about its scope, D.C. Code § 23-1303(d) should be amended so that its language is consistent with its original intent—that is, protecting communications between a defendant and a pretrial services officer, and not protecting a defendant on pretrial release from the use of probative evidence of the defendant's commission of another crime or from information from other sources. GPS monitoring would not serve as a deterrent to committing new crimes if GPS monitoring evidence could not be used in the prosecution of those crimes. The Council can resolve the question now and completely by amending the statute as proposed above. It would be tragic if we could prove that a person on pretrial release was on the site of a murder, rape, armed robbery, or aggravated assault, but were precluded from doing so because a court interpreted the language more broadly than intended by the statute.

Enhancing Pretrial Detention for Violent Crimes

Courts should have additional authority to detain adults charged with certain felony crimes pretrial when they pose a danger to the safety of another person or the community. In the District, there is a general statutory presumption that a person charged with a criminal offense will be released pending trial, except under limited circumstances. Thus, prosecutors can only request that a person be detained in jail pending trial when authorized by statute. We support this bill, which enhancing pretrial detention for violent crime. We also support building on this bill by creating a rebuttable presumption of detention where a judge has found probable cause to believe that the person committed any "crime of violence," by creating greater transparency to the community where a judge decides to release a person and a rebuttable presumption of pretrial detention exists, and by providing judges additional discretion to extend the 100-day trial clock when there is good cause to do so. Further, we support expanding the court's ability to detain people pretrial who are charged with the most serious sexual crimes—first degree sexual abuse and first degree child sexual abuse—and aligning the standard of proof for a presumption of detention for the most serious crimes with the standard of proof for most serious felonies.

Rebuttable Presumption of Pretrial Detention for a Crime of Violence

Under current law, when a person is charged with a crime and makes their first appearance in court, there are certain statutes that authorize prosecutors to request pretrial

detention, including: (1) where the person is charged with first or second degree murder, or assault with intent to kill while armed; (2) where the person is charged with a crime of violence or a dangerous crime; (3) where the person poses a risk of flight; or (4) where the person is on release in a pending case or is under post-conviction supervision.

When the court authorizes pretrial detention at that first appearance, the court holds a detention hearing, typically several days later. At the detention hearing, the court determines if there is probable cause to move forward with the case and whether the person should be detained pending trial. At this point, unless a statutory rebuttable presumption of pretrial detention applies, there is a presumption that a person will be released. The government must show by clear and convincing evidence that no condition or combination of conditions will reasonably assure the appearance of the person as required or the safety of any other person in the community.

There are certain situations, however, where there is a statutory rebuttable presumption that a person should be detained pending trial, and to release a person, the court must find evidence to rebut that presumption. The statute contains a rebuttable presumption of pretrial detention where, for example, the court finds probable cause that the person committed a crime of violence while armed with a firearm, threatened a witness or juror, or committed a crime of violence while on release pending trial.

By contrast, *there is no general presumption of detention when the court finds probable cause to believe that a person has committed a crime of violence*. This proposal would create a rebuttable presumption of detention where the person is charged with committing a "crime of violence," as defined in D.C. Code § 23-1331(4).

This proposal would also create more transparency and accountability to the community by requiring a judge to issue written findings of fact and a written statement of the reasons for the release when a rebuttable presumption applies, setting forth the evidence that it found had rebutted the statutory presumption. These written orders are akin to the orders that judges are required to issue pursuant to § 23-1322(g) when finding that a person should be detained pretrial. This proposal would also clarify the standard that a judge must find to release a person to the community where a rebuttable presumption applies.

This change would retain the general presumption of pretrial release for crimes that are not considered "crimes of violence" (including many felonies and all misdemeanors), but would provide a judge more discretion to protect the community where they have found probable cause to believe that the person committed any crime of violence, and where that person has been found to be a danger to the community. Notably, § 23-1322(c) only creates a *presumption* of detention, and does not require detention. Therefore, the court retains discretion to find that the presumption of detention has been rebutted, and to decide not to detain a person.

Enhanced Pretrial Detention for Serious Sexual Offenses

This proposal would align pretrial detention for the most serious sexual offenses—first degree sexual abuse (rape) and first degree child sexual abuse (non-forced sexual abuse of a child)—with the pretrial detention provisions for murder and assault with intent to kill while armed. Under current law, if a defendant is charged with first degree sexual abuse or first degree child sexual abuse and is pretrial, the case must be indicted within 90 days, and a trial must

commence within 100 days.[27] By contrast, if a defendant is charged with first degree murder, second degree murder, or assault with intent to kill while armed, and is preventatively detained pretrial, the case must be indicted within 9 months.[28]

Given that the government must indict these serious sex offenses within 90 days and go to trial within 100 days of arrest, the government is limited and often rushed in its investigations and trial preparation. The government has just over three months to investigate the offense, build trust with the victim(s) and witness(es), conduct DNA testing, and collect and review evidence. Although a 100-day case may be continued for good cause, continuances are typically limited.

Sexual assault cases are unique in that they often require more time to build trust with the victims, who are often very vulnerable. This is particularly true when the victim is a child. Moreover, many serious sexual offenses involve serial offenders, so the government must work with multiple victims as it investigates and prepares for indictment and trial. It is difficult to build so many meaningful relationships and fully investigate the allegations in the short span of 100 days, even if there are limited extensions of time granted. Further, as with homicide cases, multiple rounds of DNA testing are often needed. Allowing nine months to indict the most serious sexual offense cases allows the government time to ensure that it completes a comprehensive investigation of these serious allegations that disproportionately affect women and children.

Further, these offenses are recognized as some of the most serious offenses in other parts of the criminal justice system. The D.C. Sentencing Commission, for example, has recognized the seriousness of certain sexual offenses, aligning them with other serious offenses delineated in § 23-1325(a) in the voluntary sentencing guidelines. Second degree murder and first degree sexual abuse are both categorized as Group 2 offenses in the sentencing guidelines, which means that they are subject to the same sentencing guideline ranges. Likewise, assault with intent to kill while armed and first degree child sexual abuse are both categorized as Group 3 offenses, so they are also subject to the same sentencing guideline ranges. (First degree murder is categorized as a Group 1 offense.) Because first degree sexual abuse and first degree child sexual abuse are subject to the same guideline ranges as second degree murder and assault with intent to kill while armed, respectively, they should be treated comparably for purposes of pretrial detention.

Rebuttable Presumption Standard Under § 23-1325(a)

This proposal would create, in § 23-1325(a), a rebuttable presumption of detention for murder, assault with intent to kill where armed, and serious sexual offenses where a judge finds "probable cause" that the person committed the offense "while armed with or having readily available a pistol, firearm, or imitation firearm," rather than, as current law provides, "substantial probability" to believe that the person committed the offense while armed. This proposal would align the standard of proof that leads to a presumption of detention under § 23-1325(a) (which applies to the most serious crimes, including murder while armed, and allows up to 9 months to indict) with the standard of proof that leads to a presumption of detention under § 23-1322(c) (which applies to all other rebuttable presumptions, and allows 100 days for a trial). That is, if a

[27] *See* D.C. Code § 23-1322(h).

[28] *See* D.C. Code § 23-1325(a); D.C. Code § 23-102; D.C. Sup. Ct. Rule of Crim. Pro. 48(c).

judge finds "probable cause" to believe that the defendant committed the charged crime under § 23-1325(a) while armed, there would be a presumption of detention pretrial. Judges would still retain the ultimate decision as to whether the presumption has been rebutted, which could include consideration of the strength of the government's evidence.

Under current law, for example, there would be a presumption of pretrial detention under § 23-1322(c)(1) if a judge found probable cause that a person committed a carjacking while armed with a firearm. However, if a judge found probable cause that a person *murdered someone* while committing a carjacking while armed with a firearm, there would be *no* presumption of pretrial detention under § 23-1325(a), because this statute requires a substantial probability finding, not probable cause. This change would create parity between the standards in these provisions. (Likewise, if a judge found probable cause that a person committed an unarmed carjacking, there would be no rebuttable presumption of detention under § 23-1322(c), because there is no general presumption of detention for commission of a crime of violence.)

100-Day Trial Clock

When a person is detained pretrial for any offense other than an offense listed in § 23-1325(a), the trial must begin within 100 days of the initial detention. When the government is requesting more time to prepare for trial, the 100-day clock may be extended only in 20-day increments, for good cause shown.

This proposal would eliminate the requirement that extensions to the 100-day clock be granted only in 20-day increments. Rather, it would provide a judge discretion to approve an extension for the time that the judge believes is appropriate. If the judge believes that a 20-day continuance is appropriate, the judge may continue to impose a 20-day continuance, but this proposal would also provide a judge discretion to continue the trial beyond 20 days. The 20-day limitation means that, in practice, even if there is no expectation that either the government or the defense will be ready for trial in 20 days, the judge is limited to continuing the case in 20-day increments. This is inefficient for court and government resources, but also a burden on witnesses, who must be prepared for a new trial every 20 days and prepare to travel and take off work to testify at trial. For example, even if an essential witness were out of the country for 40 days on military duty, the trial could only be continued in 20-day increments. Notably, before any continuance at the government's request, the government would still need to show "good cause" to the judge as to the need for an extension of the 100-day clock.

Further, this proposal would create a presumption of good cause where the government requests additional time for trial due to forensic analysis of evidence that was requested within a reasonable time after the preliminary hearing or delayed due to defense motions. Forensic testing has expanded significantly since this statute was written, and this statute should be amended to recognize the modern realities of forensic testing, which include the significant time required to conduct testing in light of the expectation and desire for such testing in almost all serious cases.

Expanding Information Considered in Second Look Sentence Reductions for the Most Serious Violent Crimes

We support the bill's proposed changes to the Incarceration Reduction Amendment Act ("IRAA"), which would make the following changes.

First, this bill reinstates the requirement that the court consider the "nature of the offense" for which defendant was convicted when considering a sentence reduction. Although courts interpreting this statute have considered the nature of the offense under other factors under this statute, it is crucial that the statute expressly require the court to consider the nature of the offense. The only reason that a defendant is incarcerated at all is because of the "nature of the offense" that the defendant committed. It is only the most serious violent crimes in the District that would have received sentences of more than 15 years—murder, violent sexual assaults, or other violent crimes such as assault with intent to kill while armed and kidnapping while armed, and may involve either single victims or multiple victims.

Second, this bill removes language that counsels against sentencing people under 25 to lengthy terms in prison "despite the brutality or cold-blooded nature of any particular crime." Although a court will consider certain features of juveniles that may include immaturity, impetuosity, and failure to appreciate risks and consequences, it also is relevant to a sentencing assessment whether a person under 25 committed a particularly brutal or cold-blooded crime. Indeed, the existence of brutality or cold-bloodedness may indicate that the crime was *not* merely the result of juvenile immaturity, impetuosity, or a failure to appreciate risks and consequences.

Third, this bill requires the court to consider the defendant's "remorse" alongside other factors that would support rehabilitation. Remorse is a crucial part of accountability, growth, rehabilitation, and maturity. The court should be directed to consider whether a defendant has accepted responsibility for their actions that harmed another person—murdering them, seriously sexually assaulting them, or committing another violent crime against them—because such remorse is an essential component of whether the defendant has been rehabilitated and is fit to reenter society.

Fourth, this bill clarifies that the court may consider a "community impact statement," and that the court must consider "the position of the United States Attorney."

We also propose that the Council make additional changes to this statute.

First, we propose clarifying that, to be eligible for IRAA, a defendant must have served 15 years "resulting from the sentence imposed in this case." If, for example, a defendant has served 20 years' incarceration for a homicide that was committed in Maryland, but has not yet begun serving his sentence in the District for a different homicide that was committed in the District, the statute would appear to allow the defendant to be eligible for IRAA in the District because the defendant has been *imprisoned* for more than 15 years.

Second, we propose clarifying that a person is only eligible for IRAA when that person "is currently in prison or jail." At least one judge has ruled that a person who is on parole *is* eligible to file for a sentence reduction under IRAA; the effect of relief under IRAA would be resentencing to a shorter period of community supervision, or even to no supervision at all. This interpretation would both contravene the original intent of the statute—that is, allowing people who are currently in prison or jail an opportunity to move for release from incarceration—and would greatly increase the number of people eligible to apply for IRAA relief and exacerbate the burden on the courts.

Third, we propose clarifying that, when resentencing a defendant under IRAA, the court "shall not reduce the term of imprisonment to a term that is less than the term of imprisonment the defendant has already served." If a defendant's sentence is reduced below the amount of time that

the defendant has served, it would result in an overserved sentence. This would allow the defendant to be released from a wholly unrelated sentence imposed by a different judge or even in a different jurisdiction.

Factors that a Court Must Consider

Second look sentencing should provide an opportunity for a defendant to receive a second look at their sentence to ascertain if it remains an appropriate sentence, and should contain a balanced review of multiple factors, including: the offense that led to the defendant's term of incarceration, and its impact on the victim(s) and the community; the defendant's rehabilitation and growth while incarcerated; whether the defendant is a danger to the public safety of any person or the community; and whether a reduction is in the interests of justice. To ensure that a court is conducting a balanced and neutral look at the sentence and whether a reduction is justified, it is appropriate to make several changes to the factors that a court is required to consider under subsection (c) of D.C. Code § 24-403.03.

Mandatory Consideration of "the Nature of the Offense" under Subsection (c)(2)

This bill reinstates, in subsection (c)(2), the requirement that the court consider "the nature of the offense and the history and characteristics of the defendant." Although courts interpreting this statute have considered the nature of the offense as part of their consideration of the other factors under this statute—including the victim impact statement under subsection (c)(6) and the extent of the defendant's role in the offense under subsection (c)(9)—it is crucial that the statute expressly require the court to consider the nature of the offense as part of its "second look" at a defendant's sentence. The only reason that a defendant is incarcerated at all is because of the nature of the offense that the defendant committed. Indeed, it is only the most serious violent crimes in the District that would have received sentences of more than 15 or 20 years. The defendants who would be eligible for consideration under this section have primarily been convicted of murder, but also have been convicted of violent sexual assaults or other violent crimes, such as assault with intent to kill while armed and kidnapping while armed. Some of these offenses involve single victims, and some involve multiple victims who the defendant violently assaulted or murdered. In assessing whether a particular sentence remains appropriate, the nature of the offense must be considered. The D.C. Council's Committee on the Judiciary and Public Safety (Judiciary Committee) has stated: "As part of its 'second look' at a person's sentence, the Court also considers the underlying offense through its review of the various factors and evidence, including the pleadings, case files, the defendant's testimony, the government's position, and the testimony of the survivor of the crime, if they wish to participate either in support or opposition."[29] The Judiciary Committee has further stated: "The Committee is clear that the facts and circumstances of the underlying offense are interwoven through the statute, but to be explicit on this point, the Committee has included language in the Print that the 'court may consider any records related to

[29] Committee on the Judiciary and Public Safety, *Report on Bill 23-0127, the "Omnibus Public Safety and Justice Amendment Act of 2020"* at 18 (November 23, 2020).

the underlying offense,' as has been the practice in IRAA cases considered thus far, both before and after amendments to the statute."[30]

It is not sufficient, however, if the nature and circumstances of the offense are only included as part of a consideration of another factor. The Council's original language requiring the court consider "the nature and circumstances of the offense, and the history and characteristics of the defendant" is appropriate. Moreover, the change made by IRAA 3.0[31] to clarify that the court may consider "any records related to the underlying offense" is primarily an evidentiary modification, and does not modify the factors that a court is required to consider under subsection (c). Soon after the initial enactment of the IRAA, some expressed concerns that USAO was focusing too heavily on the nature of the offense to justify continued incarceration. The Judiciary Committee stated: "Prior standalone language in the list of factors—the 'nature and circumstances of the offense'—was unanimously removed by the Council in earlier legislation in response to the over-reliance on the underlying offense by the USAO as an argument for denying the petitions of potentially rehabilitated defendants."[32] It is wholly appropriate, however, to require the court to consider the nature and circumstances of the offense—along with the other factors set forth in the statute—in assessing whether the movant has established that they are not a danger and that a reduction is in the interests of justice. Although the Council's intent is clear that other factors must be considered as part of a court's analysis, removing the nature of the offense from the list of mandatory factors is not consistent with a holistic assessment of an appropriate outcome in an individual case.

IRAA 1.0 recognized the importance of mandatory consideration of this factor, as it required the court to consider, among other factors, "the nature of the offense and the history and characteristics of the defendant." IRAA 2.0 made certain modifications to that statute. Among other changes, IRAA 2.0 modified subsection (c)(2) to remove the words "the nature of the offense," so that subsection (c)(2) now requires the court to consider only "the history and characteristics of the defendant."

The Committee Report to IRAA 2.0 stated the following in making these changes:

> [T]he Committee Print amends a relatively new provision in Section 301 of the Comprehensive Youth Justice Amendment Act of 2016—the Incarceration Reduction Amendment Act of 2016—to account for lessons learned since its effective date. This act allows for sentence reviews for individuals who have served a certain number of years in prison for crimes committed as juveniles. The sentence reviews conducted by the Superior Court thus far have provided several opportunities for clarification and enhancement, but as of the date of this report, the Committee is quite pleased with Superior Court judges' interpretations of the new law. This section important[ly] now includes a wider number of individuals within the law's sentence review petition process, revisits the factors used by

[30] *Id.* at 19.

[31] The Comprehensive Youth Justice Amendment Act of 2016 (Law 21-0238), which contained the original version of the Incarceration Reduction Amendment Act (IRAA), is colloquially known as "IRAA 1.0." The Omnibus Public Safety and Justice Amendment Act of 2018 (Law 22-0313), which contained amendments to the IRAA, is colloquially known as "IRAA 2.0." The Omnibus Public Safety and Justice Amendment Act of 2020 (Law 23-0274) is colloquially known as "IRAA 3.0."

[32] *Report on Bill 23-0127*, at 19.

the court, and lowers the number of years an individual must have served prior to applying.[33]

The Council's removal of the words "nature of the offense" in IRAA 2.0 from the list of factors that a court must consider implied that the nature of the offense may be a less relevant factor for a court to consider. Although other factors such as a defendant's rehabilitation, remorse, and maturity are important factors that a court should consider, a second look takes place in a vacuum if the nature of the offense is not considered. We see firsthand the devastation that violent crime inflicts on victims and communities. These voices must be fully heard in any resentencing, which can only happen if a judge is permitted to fully consider the nature of the defendant's conduct to determine if the defendant remains a danger to the community and if a reduction is in the interests of justice. This is also consistent with 18 U.S.C. § 3553(a), which sets forth the factors that a court shall consider as part of a sentencing. 18 U.S.C. § 3553(a)(1) provides that, in determining the particular sentence to be imposed, the court shall consider "the nature and circumstances of the offense and the history and characteristics of the defendant."

Removal of the Words "Despite the Brutality or Cold-Blooded Nature of any Particular Crime" from Subsection (c)(10)

As part of IRAA 2.0, the Council made the following changes to what the court is required to consider under subsection (c)(10):

> 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~~ lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime.

For similar reasons as stated above with respect to express inclusion of "nature and circumstances of the offense," this bill removes the words "despite the brutality or cold-blooded nature of any particular crime" from subsection (c)(10). Although a court will consider certain features of juveniles that may include immaturity, impetuosity, and failure to appreciate risks and consequences, it also is relevant to a sentencing assessment whether a juvenile committed a particularly brutal or cold-blooded crime. Indeed, the existence of brutality or cold-bloodedness may indicate that the crime was *not* merely the result of juvenile immaturity, impetuosity, or a failure to appreciate risks and consequences.

In addition to removing this language, we propose reinstating language from IRAA 1.0, which provides that this diminished culpability counsels against sentencing juveniles to "a lifetime in prison," rather than the language changed by IRAA 2.0 to "lengthy terms in prison."

Addition of "Remorse" to Subsection (c)(5)

This bill amends subsection (c)(5) to read: "Whether the defendant has demonstrated maturity, rehabilitation, remorse, and a fitness to reenter society sufficient to justify a sentence reduction."

[33] Committee on the Judiciary and Public Safety, *Report on Bill 22-0255, the "Omnibus Public Safety and Justice Amendment Act of 2018"* at 8 (November 28, 2018).

Remorse is a crucial part of accountability, growth, rehabilitation, and maturity. The court should be directed to consider whether a defendant has accepted responsibility for their actions that harmed another person—murdering them, seriously sexually assaulting them, or committing another violent crime against them—because such remorse is an essential component of whether the defendant is fit to reenter society. If a defendant does not express genuine remorse and accept responsibility, the defendant necessarily cannot show that they have been rehabilitated.

Some—though not all—other jurisdictions include "remorse" or similar language as a factor that a court or a parole board must consider when evaluating whether a young person is eligible for release from incarceration.[34] Consistent with these jurisdictions, this bill requires that a court consider the defendant's remorse as part of its analysis.

It is important to note here that the addition of "remorse" to subsection (c)(5) would not be outcome-determinative. To the extent that a defendant contends that they are actually innocent of the charge of which they have been convicted, the court may give the "remorse" factor as much weight as the court deems appropriate, balanced alongside the other factors, and balanced with the fact that there are other statutory avenues in the D.C. Code for a defendant to allow a court to consider whether the defendant is actually innocent.

Clarification that a Court Must Consider a Community Impact Statement under Subsection (c)(6)

This bill clarifies that subsection (c)(6) includes consideration of any "community impact statement" submitted. Subsection (c)(6) provides that a court shall consider a victim impact statement from a victim or a victim's family member provided pursuant to D.C. Code § 23-1904. We note here that D.C. Code § 23-1904(f)(1) also allows a "representative of a community affected by the crime of which the defendant has been convicted" to submit a statement prior to imposition of sentence.

Clarification to the Position of USAO-DC in Subsection (c)(4)

Subsection (c)(4) provides that the court shall consider "any report or recommendation received from the United States Attorney." This bill modifies this provision to require consideration of "the position of the United States Attorney." One judge found the language of this subsection to be unclear, stating that this may either refer to recommendations from the government when a defendant cooperates, or may refer to the government's position with respect

[34] Florida requires consideration of, among other factors, "Whether the juvenile offender has shown sincere and sustained remorse for the criminal offense." § 921-1402(6)(e), Fla. Stat. Connecticut requires that the defendant demonstrate "substantial rehabilitation," as demonstrated by factors including "whether such person has demonstrated remorse and increased maturity since the date of the commission of the crime or crimes." Conn. Gen. Stat. Sec. 54-125a(f)(4)(C). California has implemented regulations that set forth additional parole considerations in hearings for youth offenders. One of those factors is "Subsequent Growth and Increased Maturity of the Inmate While Incarcerated, which includes, but is not limited to, consideration of the following factors: (1) Considered reflection; (2) Maturity of judgment including, but not limited to, improved impulse control, the development of pro-social relationships, or independence from negative influences; (3) Self-recognition of human worth and potential; (4) Remorse; (5) Positive institutional conduct; and (6) Other evidence of rehabilitation." 15 C.C.R. § 2446(c). Oregon requires consideration of factors including "Whether the person demonstrates accountability and responsibility for past and future conduct." Or. Rev. Stat. § 420A.203.

to relief under the IRAA statute. To remove any potential confusion, this bill clarifies this provision.

Clarifications Regarding Eligibility Under IRAA

Clarification Regarding Length of Incarceration

We propose clarifying that, to be eligible to move for relief under IRAA, a defendant must have served the requisite number of years "resulting from the sentence imposed in this case." If, for example, a defendant has served 20 years' incarceration for a homicide that was committed in Maryland, and has not yet begun serving the period of incarceration in the District for a homicide that was committed in the District, the plain language of the statute would appear to allow the defendant to move for relief in the District because the defendant has been *imprisoned* for more than 15 years.

Clarification Regarding Parole

We propose clarifying that a person is only eligible to move for relief under IRAA when that person is currently incarcerated. This clarification would provide that this statute applies to someone "who is currently in prison or jail." There has been some litigation over the issue of whether a person who previously served more than 15 years and was released on parole is eligible for relief under IRAA; the effect of relief under IRAA would be resentencing to a shorter period of community supervision or, in some circumstances, no supervision at all. At least one judge has ruled that a person who is on parole *is* eligible to file for a sentence reduction under IRAA. In addition to contravening what we understand to be the intent of the statute—that is, allowing people who are currently in prison or jail an opportunity to move for release from incarceration—interpreting the statute in this manner will greatly increase the number of people eligible to apply for IRAA relief and exacerbate the burden on the courts. We understand the Council's intent to allow a person who is incarcerated and awaiting review by the U.S. Parole Commission to be eligible for second look, and we recommend that the Council clarify this in the plain language of the statute.

Permitted Scope of Resentencing

We propose stating that, when resentencing a defendant pursuant to this provision, the court "shall not reduce the term of imprisonment to a term that is less than the term of imprisonment the defendant has already served." This language is taken from U.S. Sentencing Guidelines, Policy Statement § 1B1.10(b)(2)(C), which prohibits a reduction in the term of imprisonment as a result of an amended guideline range from being less than the term of imprisonment that the defendant has already served.

A defendant's reduced sentence under IRAA should only be permitted to be reduced to the amount of time that the defendant has already served on that sentence. If a defendant's sentence is reduced below the amount of time that the defendant has served on that sentence, it would result in an overserved sentence. This would allow the defendant to be released from a wholly unrelated sentence imposed by a different judge or even in a different jurisdiction.

For example, in one IRAA case, a defendant was originally sentenced to an aggregate sentence of approximately 26 years to life for murder and assault with intent to kill while armed. While incarcerated, he was convicted of assault with a dangerous weapon in another jurisdiction, for which he was sentenced to an additional sentence of 20 months of imprisonment—ordered to run consecutively to any other sentence. His IRAA petition was granted after he had been incarcerated for almost 26 years. When granting the defendant's IRAA petition, the court resentenced the defendant to 24 years' incarceration—that is, below the 26 years that he had already served—so that he could be immediately released and would not have to serve any additional time on the unrelated, consecutive 20-month sentence.

In a different IRAA case, the court granted the defendant's IRAA motion, sentencing the defendant to time served in that case. The defendant had not yet, however, served a separate 41-month sentence for assault with a dangerous weapon in another jurisdiction, which that court had ordered to run consecutively to the D.C. Superior Court sentence. When the Superior Court judge resentenced the defendant under the IRAA, the defendant requested that the court reduce his sentence to time served, back-dated to 2017. The government argued that this would effectively eliminate the defendant's sentence in an unrelated federal case imposed by a different court for a different crime. The Superior Court judge agreed with the government, and specifically declined to fashion a sentence reduction that would have eliminated the defendant's sentence in an unrelated case.

Additionally, permitting a less-than-time-served sentence under the IRAA would also allow the defendant to "bank time" against potential future incarceration related to his or her conviction in the Superior Court case. For example, an overserved sentence might affect the resolution of violations committed while on probation or supervised release, because BOP would credit the overserved time toward the possible later term of imprisonment.

For these reasons, this proposal codifies the principle that a sentence reduction under IRAA can serve only to reduce the defendant's sentence in that case, rather than, for example, having the effect of also reducing an unrelated sentence for a different crime imposed by a different judge, even in a different jurisdiction.

Bill 25-0247, the Female Genital Mutilation Prohibition Act of 2023

USAO-DC also supports Bill 25-0247, the "Female Genital Mutilation Prohibition Act of 2023." This bill will help to protect girls in our community who have been or are at risk of being subject to female genital mutilation or cutting (FGM/C). The Department of Justice has declared that there will be no tolerance for the harmful and traumatic practice of FGM, and the Department is dedicated to enforcing laws barring female genital mutilation to protect girls from this traumatic experience.[35] The U.S. Government opposes FGM/C, no matter the type, degree or severity, no matter what the motivation for performing it. The U.S. Government considers

[35] U.S. Department of Justice, *Justice Department, ICE and the FBI Recognize International Day of Zero Tolerance for Female Genital Mutilation* (Feb. 4, 2022), https://www.justice.gov/opa/pr/justice-department-ice-and-fbi-recognize-international-day-zero-tolerance-female-genital.

FGM/C to be a serious human rights abuse and a form of gender-based violence and child abuse.[36]

According to UNICEF, more than 200 million girls and women alive today have undergone FGM, which refers to procedures that injure the female genital organs for non-medical reasons.[37] While primarily concentrated in north, west, and central Africa, as well as parts of the Middle East and Asia, FGM also occurs in the United States. The Centers for Disease Control estimates that approximately 500,000 women and girls in the United States are either victims of FGM or are at risk of being subjected to it.[38] The practice is global in scope and found in multiple geographies, religions, and socioeconomic classes.

* * *

We appreciate the Committee's consideration of this legislation as part of a wholistic approach to improving the criminal justice system. We believe that this legislation takes meaningful steps to improve community safety and address issues related to violent crime. We look forward to continuing to work with the Council, our criminal justice partners, and the community on our common goals to improve public safety in the District.

[36] U.S. Department of State, *U.S. Government Fact Sheet on Female Genital Mutilation or Cutting (FGM/C)*, https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/fact-sheet-on-female-genital-mutilation-or-cutting.html.

[37] U.S. Centers for Disease Control and Prevention, *Female Genital Mutilation/Cutting (FGM/C)*, https://www.cdc.gov/reproductivehealth/womensrh/female-genital-mutilation.html.

[38] U.S. Government Accountability Office, *Female Genital Mutilation/Cutting: Existing Federal Effort to Increase Awareness Should Be Improved* (June 30, 2016), https://www.gao.gov/products/gao-16-645.

Appendix: Proposed Redline

Supporting Violent Crime Investigations: Solving Crime Through Earlier Collection of DNA

Proposed Redline to D.C. Code Title 22, Chapter 41B

§ 22–4151. Qualifying offenses.

(a) The following criminal offenses shall be qualifying offenses for the purposes of DNA collection under the DNA Analysis Backlog Elimination Act of 2000, approved December 19, 2000 (Pub. L. No. 106-546; 114 Stat. 2726) [42 U.S.C. §§ 14135-14135e]:

(1) Any felony;

(2) Any offense for which the penalty is greater than one year imprisonment;

(3) § 22-1312(b) (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));

(4) § 22-2201 (certain obscene activities involving minors);

(5) § 22-3102 (sexual performances using minors);

(6) § 22-3006 (misdemeanor sexual abuse);

(7) § 22-3010.01 (misdemeanor sexual abuse of a child or minor); and

(8) Attempt or conspiracy to commit any of the offenses listed in paragraphs (1) through (7) of this subsection.

(b) DNA collected by an agency of the District of Columbia shall not be searched for the purpose of identifying a family member related to the individual from whom the DNA sample was acquired.

§ 22-4152. Collection and use of DNA identification information from arrestees and defendants.

(a) *Collection of DNA samples.*

(1) The Metropolitan Police Department shall collect a DNA sample from each individual arrested for an offense set forth in D.C. Code § 22-4151.

(2) If an individual appears in court having been charged with an offense set forth in D.C. Code § 22-4151 without previously having a DNA sample collected, the court shall direct the collection of a DNA sample from that individual.

(3) DNA sample collection under this section may be limited to individuals who are fingerprinted.

(4) The Metropolitan Police Department or the court (as applicable) may authorize, or enter into agreements with, other local, state, or federal governmental agencies or private entities to collect DNA samples under this section.

(5) An agency or entity may, but need not, collect a DNA sample from an individual if:

(A) Another agency or entity has collected, or will collect, a DNA sample from that individual and has provided, or will provide, the sample for analysis and inclusion of the results in CODIS as provided in subsection (b); or

(B) CODIS already contains a DNA analysis with respect to that individual.

(6) DNA sample collection may be repeated if the agency or entity responsible for collection is informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into CODIS.

(b) *Analysis and use of DNA information collected under this section.* The Metropolitan Police Department or other authorized agency or entity (as applicable) shall furnish each DNA sample collected under this section to the Federal Bureau of Investigation Laboratory, or to another laboratory approved by the FBI, for the purpose of carrying out a DNA analysis on each such DNA sample and including the results in CODIS. The requirements of this subsection may be waived, with the permission of the Federal Bureau of Investigation, if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

(c) *Collection procedures.* Each individual described in subsection (a) shall cooperate in the collection of a DNA sample from that individual. If an individual from whom the collection of a DNA sample is authorized under this section refuses to cooperate in the collection of the sample:

(1) The Metropolitan Police Department or the court (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from the individual; and

(2) The individual shall be guilty of a misdemeanor and may be imprisoned for not more than one year.

(d) *Expungement.* DNA information secured pursuant to this section shall be expunged, in conformity with 34 U.S.C. § 12592(d), if all relevant charges have been dismissed or have resulted in acquittal, or no charges are brought within the applicable period.

(e) *Non-preemption of other authorities.* The authorization of DNA sample collection by this section does not limit DNA sample collection by any agency pursuant to any other authority.

(f) *Definitions.* In this section, the terms "DNA sample," "DNA analysis," and "Rapid DNA instruments," have the meanings set forth in 34 U.S.C. § 40703(c).

§ 22-4153. Collection of DNA identification information from convicted offenders.

(a) *Collection of DNA samples.*

(1) Agencies of the District of Columbia may collect a DNA sample from an individual who is, or has been, convicted of an offense set forth in D.C. Code § 22-4151.

(2) Agencies of the District of Columbia or the court (as applicable) may authorize, or enter into agreements with, other local, state, or federal governmental agencies or private entities to collect DNA samples under this section.

(3) An agency or entity may, but need not, collect a DNA sample from an individual if:

(A) Another agency or entity has collected, or will collect, a DNA sample from that individual and has provided, or will provide, the sample for analysis and inclusion of the results in CODIS as provided in subsection (b); or

(B) CODIS already contains a DNA analysis with respect to that individual.

(4) DNA sample collection may be repeated if the agency or entity responsible for collection is informed that a sample collected from the individual does not satisfy the requirements for analysis or for entry of the results of the analysis into CODIS.

(b) *Analysis and use of DNA information collected under this section.* The agency or entity (as applicable) shall furnish each DNA sample collected under this section to the Federal Bureau of Investigation Laboratory, or to another laboratory approved by the FBI, for the purpose of carrying out a DNA analysis on each such DNA sample and including the results in CODIS. The requirements of this subsection may be waived, with the permission of the Federal Bureau of Investigation, if DNA samples are analyzed by means of Rapid DNA instruments and the results are included in CODIS.

(c) *Collection procedures.* Each individual described in subsection (a) shall cooperate in the collection of a DNA sample from that individual. If an individual from whom the collection of a DNA sample is authorized under this section refuses to cooperate in the collection of the sample:

(1) The collecting agency or entity or the court (as applicable) may use or authorize the use of such means as are reasonably necessary to detain, restrain, and collect a DNA sample from the individual; and

(2) The individual shall be guilty of a misdemeanor and may be imprisoned for not more than one year.

(d) *Non-preemption of other authorities.* The authorization of DNA sample collection by this section does not limit DNA sample collection by any agency pursuant to any other authority.

(e) *Definitions.* In this section, the terms "DNA sample," "DNA analysis," and "Rapid DNA instruments," have the meanings set forth in 34 U.S.C. § 40703(c).

Conforming amendment to § 23-1321:

D.C. Code § 23-1321 is amended as follows:

(a) In subsection (b), by inserting "and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to § 22-4152" after "period of release"; and

(b) In subsection (c)(1)(A), by inserting "and that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to § 22-4152" after "period of release".

Enhancing Pretrial Detention for Violent Crimes

Proposed Redline to D.C. Code Title 23, Chapter 13, Subchapter II

§ 23-1321. Release prior to trial.

(a) Upon the appearance before a judicial officer of a person charged with an offense, other than murder in the first degree, murder in the second degree, first degree sexual abuse, first degree child sexual abuse, or assault with intent to kill while armed, which shall be treated in accordance with the provisions of § 23-1325, the judicial officer shall issue an order that, pending trial, the person be:

(1) Released on personal recognizance or upon execution of an unsecured appearance bond under subsection (b) of this section;

(2) Released on a condition or combination of conditions under subsection (c) of this section;

(3) Temporarily detained to permit revocation of conditional release under § 23-1322; or

(4) Detained under § 23-1322(b).

(b) The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a local, state, or federal crime during the period of release, unless the judicial officer determines that the release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c)(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, the judicial officer shall order the pretrial release of the person subject to the:

(A) Condition that the person not commit a local, state, or federal crime during the period of release; and

(B) Least restrictive further condition, or combination of conditions, that the judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition or combination of conditions that the person during the period of release shall:

(i) Remain in the custody of a designated person or organization that agrees to assume supervision and to report any violation of a condition of release to the court, if the designated person or organization is able to reasonably assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) Maintain employment, or, if unemployed, actively seek employment;

(iii) Maintain or commence an educational program;

(iv) Abide by specified restrictions on personal associations, place of abode, or travel;

(v) Avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) Report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) Comply with a specified curfew;

(viii) Refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) Refrain from excessive use of alcohol or marijuana, or any use of a narcotic drug or other controlled substance without a prescription by a licensed medical practitioner; provided, that a positive test for use of marijuana or a violation of § 48-1201 shall not be considered a violation of the conditions of pretrial release, unless the judicial officer expressly prohibits the use or possession of marijuana, as opposed to controlled substances generally, as a condition of pretrial release; the terms "narcotic drug" and "controlled substance" shall have the same meaning as in § 48-901.02;

(x) Undergo medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, if available, and remain in a specified institution if required for that purpose;

(xi) Return to custody for specified hours following release for employment, schooling, or other limited purposes;

(xii) Execute an agreement to forfeit upon failing to appear as required, the designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court the indicia of ownership of the property, or a percentage of the money as the judicial officer may specify;

(xiii) Execute a bail bond with solvent sureties in whatever amount is reasonably necessary to assure the appearance of the person as required; or

(xiv) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

(2) In considering the conditions of release described in paragraph (1)(B)(xii) or (xiii) of this subsection, the judicial officer may upon his own motion, or shall upon the motion of the government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation or the use as collateral of property that, because of its source, will not reasonably assure the appearance of the person as required.

(3) A judicial officer may not impose a financial condition under paragraph (1)(B)(xii) or (xiii) of this subsection to assure the safety of any other person or the community, but may impose such a financial condition to reasonably assure the defendant's presence at all court proceedings that does not result in the preventive detention of the person, except as provided in § 23-1322(b).

(4) A person for whom conditions of release are imposed and who, after 24 hours from the time of the release hearing, continues to be detained as a result of inability to meet the conditions of release, shall upon application be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, on another condition or conditions, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition that requires that the person return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is released on another condition or conditions, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed the conditions of release is not available, any other judicial officer may review the conditions.

(5) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Notwithstanding any other provision of law, when issuing an order of release pursuant to this section, the court shall, upon request of defense counsel and with the knowing, intelligent, and voluntary consent of the defendant, order that the defendant be transferred to the custody of the Department of Corrections for release from the Central Detention Facility or Correctional Treatment Facility within 5 hours after the issuance of the order.

§ 23-1322. Detention prior to trial.

(a) The judicial officer shall order the detention of a person charged with an offense for a period of not more than 5 days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the government to notify the appropriate court, probation or parole official, or local or state law enforcement official, if the judicial officer determines that the person charged with an offense:

(1) Was at the time the offense was committed, on:

(A) Release pending trial for a felony or misdemeanor under local, state, or federal law;

(B) Release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under local, state, or federal law; or

(C) Probation, parole or supervised release for an offense under local, state, or federal law; and

(2) May flee or pose a danger to any other person or the community or, when a hearing under § 23-1329(b) is requested, is likely to violate a condition of release. If the official fails or declines to take the person into custody during the 5-day period described in this subsection, the person shall be treated in accordance with other provisions of law governing release pending trial.

(b)(1) The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in § 23-1321(c) will reasonably assure the appearance of the

person as required and the safety of any other person and the community, upon oral motion of the attorney for the government, in a case that involves:

(A) A crime of violence, or a dangerous crime, as these terms are defined in § 23-1331;

(B) An offense under section 502 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-722);

(C) A serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror; or

(D) A serious risk that the person will flee.

(2) If, after a hearing pursuant to the provision of subsection (d) of this section, the judicial officer 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, the judicial officer shall order that the person be detained before trial.

(c) Rebuttable Presumptions: There shall be a rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community under certain circumstances. ~~if the judicial officer finds by probable cause that the person:~~If the judicial officer finds that a rebuttable presumption applies, the person shall be detained unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or to the community. To determine if the presumption has been rebutted, the judicial officer shall examine the factors articulated in subsection (e). Generally, one single factor standing alone, such as a lack of criminal history, will not be sufficient to rebut the presumption by clear and convincing evidence. A rebuttable presumption applies if the judicial officer finds by probable cause that the person:

(1) Committed a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, while armed with or having readily available a pistol, firearm, imitation firearm, or other deadly or dangerous weapon;

(2) Has threatened, injured, intimidated, or attempted to threaten, injure, or intimidate a law enforcement officer, an officer of the court, or a prospective witness or juror in any criminal investigation or judicial proceeding;

(3) Committed a dangerous crime or a crime of violence, as these terms are defined in § 23-1331, and has previously been convicted of a dangerous crime or a crime of violence which was committed while on release pending trial for a local, state, or federal offense;

(4) Committed a dangerous crime or a crime of violence while on release pending trial for a local, state, or federal offense;

(5) Committed 2 or more dangerous crimes or crimes of violence in separate incidents that are joined in the case before the judicial officer;

(6) Committed a robbery in which the victim sustained a physical injury;

(7) Violated § 22-4504(a) (carrying a pistol without a license), § 22-4504(a-1) (carrying a rifle or shotgun), § 22-4504(b) (possession of a firearm during the commission of a crime of violence or dangerous crime), or § 22-4503 (unlawful possession of a firearm); ~~or~~

(8) Violated [subchapter VIII of Chapter 25 of Title 7, § 7-2508.01 et seq.], while on probation, parole, or supervised release for committing a dangerous crime or a crime of violence, as these crimes are defined in § 23-1331, and while armed with or having readily available a firearm, imitation firearm, or other deadly or dangerous weapon as described in § 22-4502(a); or~~.~~

(9) Committed a crime of violence, as that term is defined in D.C. Code § 23-1331(4).

(d)(1) The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the government, seeks a continuance. Except for good cause, a continuance on motion of the person shall not exceed 5 days, and a continuance on motion of the attorney for the government shall not exceed 3 days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the government or sua sponte, may order that, while in custody, a person who appears to be an addict receive a medical examination to determine whether the person is an addict, as defined in § 23-1331.

(2) At the hearing, the person has the right to be represented by counsel and, if financially unable to obtain adequate representation, to have counsel appointed.

(3) The person shall be afforded an opportunity to testify. Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but the testimony shall be admissible in proceedings under §§ 23-1327, 23-1328, and 23-1329, in perjury proceedings, and for the purpose of impeachment in any subsequent proceedings.

(4) The person shall be afforded an opportunity to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing.

(5) The person shall be detained pending completion of the hearing.

(6) The hearing may be reopened at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue of whether there are conditions of release that will reasonably assure the appearance of the person as required or the safety of any other person or the community.

(7) When a person has been released pursuant to this section and it subsequently appears that the person may be subject to pretrial detention, the attorney for the government may initiate a pretrial detention hearing by ex parte written motion. Upon such motion, the judicial officer may issue a warrant for the arrest of the person and if the person is outside the District of Columbia, the person shall be brought before a judicial officer in the district where the person is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section.

(e) The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account information available concerning:

(1) The nature and circumstances of the offense charged, including whether the offense is a crime of violence or dangerous crime as these terms are defined in § 23-1331, or involves obstruction of justice as defined in § 22-722;

(2) The weight of the evidence against the person;

(3) The history and characteristics of the person, including:

(A) The person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) Whether, at the time of the current offense or arrest, the person was on probation, on parole, on supervised release, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under local, state, or federal law; and

(4) The nature and seriousness of the danger to any person or the community that would be posed by the person's release.

(f) In a release order issued under § 23-1321(b) or (c), the judicial officer shall:

(1) Include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) Advise the person of:

(A) The penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) The consequences of violating a condition of release, including immediate arrest or issuance of a warrant for the person's arrest; and

(C) The provisions of § 22-722, relating to threats, force, or intimidation of witnesses, jurors, and officers of the court, obstruction of criminal investigations and retaliating against a witness, victim, or an informant.

(3) Where there is a rebuttable presumption of detention pursuant to either § 23-1322(c) or § 23-1325(a), the judicial officer shall include written findings of fact and a written statement of the reasons for the release, setting forth the clear and convincing evidence that supported the rebuttal of the presumption.

(g) In a detention order issued under subsection (b) of this section, the judicial officer shall:

(1) Include written findings of fact and a written statement of the reasons for the detention;

(2) Direct that the person be committed to the custody of the Attorney General of the United States for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal; provided,

that after October 1, 2018, if the person is younger than 18 years of age, direct that the person be transferred to the custody of the Department of Youth Rehabilitation Services, subject to the federal standards under 28 C.F.R. § 115.14;

(3) Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) Direct that, on order of a judicial officer or on request of an attorney for the government, the person in charge of the corrections facility in which the person is confined deliver the person to the United States Marshal or other appropriate person for the purpose of an appearance in connection with a court proceeding.

(h)(1) The case of the person detained pursuant to subsection (b) of this section shall be placed on an expedited calendar and, consistent with the sound administration of justice, the person shall be indicted before the expiration of 90 days, and shall have trial of the case commence before the expiration of 100 days. However, the time within which the person shall be indicted or shall have the trial of the case commence may be extended. ~~for one or more additional periods not to exceed 20 days each~~ Extensions may be requested on the basis of a petition submitted by the attorney for the government and approved by the judicial officer. The additional period or periods of detention may be granted only on the basis of good cause shown, including due diligence and materiality, and shall be granted only for the additional time required to prepare for the expedited indictment and trial of the person. Good cause may include, but is not limited to, the unavailability of an essential witness, the necessity for forensic analysis of evidence, the ability to conduct a joint trial with a co-defendant or co-defendants, severance of co-defendants which permits only one trial to commence within the time period, complex or major investigations, complex or difficult legal issues, scheduling conflicts which arise shortly before the scheduled trial date, the inability to proceed to trial because of action taken by or at the behest of the defendant, an agreement between the government and the defense to dispose of the case by a guilty plea on or after the scheduled trial date, or the breakdown of a plea on or immediately before the trial date, and allowing reasonable time to prepare for an expedited trial after the circumstance giving rise to a tolling or extension of the 100-day period no longer exists. If the government petition requesting additional time is based on forensic analysis of evidence that was requested within a reasonable time after the preliminary hearing, or delayed due to defense motions, good cause will be presumed, and the burden will be on the defense to rebut the presumption. If the time within which the person must be indicted or the trial must commence is tolled or extended, an indictment must be returned at least 10 days before the new trial date.

(2) For the purposes of determining the maximum period of detention under this section, the period shall begin on the latest of:

(A) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia after arrest;

(B) The date the defendant is first detained under subsection (b) of this section by order of a judicial officer of the District of Columbia following a re-arrest or order of detention after having been conditionally released under § 23-1321 or after having escaped;

(C) The date on which the trial of a defendant detained under subsection (b) of this section ends in a mistrial;

(D) The date on which an order permitting the withdrawal of a guilty plea becomes final;

(E) The date on which the defendant reasserts his right to an expedited trial following a waiver of that right;

(F) The date on which the defendant, having previously been found incompetent to stand trial, is found competent to stand trial;

(G) The date on which an order granting a motion for a new trial becomes final; or

(H) The date on which the mandate is filed in the Superior Court after a case is reversed on appeal.

(3) After 100 days, as computed under paragraphs (2) and (4) of this section, or such period or periods of detention as extended under paragraph (1) of this section, the defendant shall be treated in accordance with § 23-1321(a) unless the trial is in progress, has been delayed by the timely filing of motions, excluding motions for continuance, or has been delayed at the request of the defendant.

(4) In computing the 100 days, the following periods shall be excluded:

(A) Any period from the filing of the notice of appeal to the issuance of the mandate in an interlocutory appeal;

(B) Any period attributable to any examination to determine the defendant's sanity or lack thereof or his or her mental competency or physical capacity to stand trial;

(C) Any period attributable to the inability of the defendant to participate in his or her defense because of mental incompetency or physical incapacity; and

(D) Any period in which the defendant is otherwise unavailable for trial.

(i) Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

§ 23–1325. Release in first degree murder, second degree murder, first degree sexual abuse, first degree child sexual abuse, and assault with intent to kill while armed cases or after conviction.

(a) A person who is charged with murder in the first degree, murder in the second degree, first degree sexual abuse, first degree child sexual abuse, or assault with intent to kill while armed shall be treated in accordance with the provisions of § 23-1321 unless the judicial officer has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, the person may be ordered detained. In any pretrial detention hearing under the provisions of this section, if the judicial officer finds that there is ~~a substantial probability~~probable cause that the person has committed any of the foregoing offenses while armed with or having readily available a pistol, firearm, or imitation firearm, there shall be a

rebuttable presumption that no condition or combination of conditions of release will reasonably assure the safety of any other person or the community.

(b) A person who has been convicted of an offense and is awaiting sentence shall be detained unless the judicial officer finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. Upon such finding, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(c) A person who has been convicted of an offense and sentenced to a term of confinement or imprisonment and has filed an appeal or a petition for a writ of certiorari shall be detained unless the judicial officer finds by clear and convincing evidence that (1) the person is not likely to flee or pose a danger to any other person or to the property of others, and (2) the appeal or petition for a writ of certiorari raises a substantial question of law or fact likely to result in a reversal or an order for new trial. Upon such findings, the judicial officer shall treat the person in accordance with the provisions of section 23-1321.

(d) The provisions of section 23-1324 shall apply to persons detained in accordance with this section, except that the finding of the judicial officer that the appeal or petition for writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial shall receive de novo consideration in the court in which review is sought.

Expanding Information Considered in Second Look Sentence Reductions for the Most Serious Violent Crimes

Proposed Redline to D.C. Code § 24-403.03

§ 24–403.03. Modification of an imposed term of imprisonment for violations of law committed before 25 years of age.

(a) Notwithstanding any other provision of law, the court may ~~shall~~ reduce a term of imprisonment imposed upon a defendant who is currently in prison or jail for an offense committed before the defendant's 25th birthday if:

(1) The defendant was sentenced pursuant to § 24-403 or § 24-403.01, or was committed pursuant to § 24-903, and has served at least 15 years in prison resulting from the sentence imposed in this case; and

(2) The court finds, after considering the factors set forth in subsection (c) of this section, 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.

(b)(1) A defendant convicted as an adult of an offense committed before the defendant's 25th birthday may file an application for a sentence modification under this section. The application shall be in the form of a motion to reduce the sentence. The application may include affidavits or other written material. The application shall be filed with the sentencing court and a copy shall be served on the United States Attorney.

(2) The court may direct the parties to expand the record by submitting additional testimony, examinations, or written materials related to the motion. The court shall hold a hearing on the motion at which the defendant and the defendant's counsel shall be given an opportunity to speak on the defendant's behalf. The court may permit the parties to introduce evidence. The court may consider any records related to the underlying offense.

(3)(A) Except as provided in subparagraph (B) of this paragraph, the defendant shall be present at any hearing conducted under this section unless the defendant waives the right to be present. Any proceeding under this section may occur by video teleconferencing, and the requirement of a defendant's presence is satisfied by participation in the video teleconference.

(B) During a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, a defendant in the custody of the Bureau of Prisons who committed the offense for which the defendant has filed the application for sentence modification after the defendant's 18th birthday but before the defendant's 25th birthday may not petition the court to return to the Department of Corrections for a proceeding under this section.

(4) The court shall issue an opinion in writing stating the reasons for granting or denying the application under this section, but the court may proceed to sentencing immediately after granting the application.

(c) The court, in determining whether to reduce a term of imprisonment pursuant to subsection (a) of this section, shall consider:

(1) The defendant's age at the time of the offense;

(2) The nature of the offense and the history and characteristics of the defendant;

(3) Whether the defendant has substantially complied with the rules of the institution to which the defendant has been confined, and whether the defendant has completed any educational, vocational, or other program, where available;

(4) ~~Any report or recommendation received from~~The position of the United States Attorney;

(5) Whether the defendant has demonstrated maturity, rehabilitation, remorse, and a fitness to reenter society sufficient to justify a sentence reduction;

(6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased, or a community impact statement provided pursuant to § 23-1904(f)(1);

(7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;

(8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

(9) The extent of the defendant's role in the offense and whether and to what extent another person was involved in the offense;

(10) The diminished culpability of juveniles and persons under age 25, as compared to that of older 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~~ a lifetime in prison, ~~despite the brutality or cold-blooded nature of any particular crime,~~ and the defendant's personal circumstances that support an aging out of crime; and

(11) Any other information the court deems relevant to its decision.

(d) If the court denies or grants only in part the defendant's 1st application under this section, a court shall entertain a 2nd application under this section no sooner than 3 years after the date that the order on the initial application becomes final. If the court denies or grants only in part the defendant's 2nd application under this section, a court shall entertain a 3rd and final application under this section no sooner than 3 years following the date that the order on the 2nd application becomes final. No court shall entertain a 4th or successive application under this section.

(e)(1) Any defendant whose sentence is reduced under this section shall be resentenced pursuant to § 24-403, § 24-403.01, or § 24-903, as applicable.

(2) Notwithstanding any other provision of law, when resentencing a defendant under this section, the court:

(A) May issue a sentence less than the minimum term otherwise required by law; ~~and~~

(B) Shall not impose a sentence of life imprisonment without the possibility of parole or release; and~~.~~

(C) Shall not reduce the term of imprisonment to a term that is less than the term of imprisonment the defendant has already served.

(f) The version of this section that was effective from May 10, 2019, to April 27, 2021 shall apply to all proceedings initiated under this section in any District of Columbia court, including any appeals thereof, by defendants who were eligible under this section prior to April 27, 2021 and shall apply to all proceedings under this section in any District of Columbia court, including any appeals thereof, that were pending prior to the April 27, 2021.

(g) In considering applications filed by defendants for offenses committed after the defendant's 18th birthday, the court shall endeavor to prioritize consideration of the applications of defendants who have been incarcerated the longest; except, that the inability to identify those defendants shall not delay the court acting on other applications under this section.

(h) Notwithstanding any other law, if a District government workforce development program requires District residency as a condition of program eligibility, the residency requirement shall be waived for defendants resentenced pursuant to this section.

(i) Beginning in Fiscal Year 2022, the Office of Victim Services and Justice Grants shall, on an annual basis, issue a grant of $200,000 to an organization that provides advocacy, case, management, and legal services, for the purpose of developing and offering restorative justice practices for survivors of violent crimes who seek such practices, such as for survivors impacted by post-conviction litigation.