

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE ON THE JUDICIARY  
“Returning Citizens Opportunity to Succeed Amendment Act of 2017”**

**Testimony of Philip Fornaci, Director, D.C. Prisoners’ Project  
Washington Lawyers’ Committee for Civil Rights and Urban Affairs  
December 7, 2017**

Thank you for this opportunity to provide testimony regarding the proposed “Returning Citizens Opportunity to Succeed Amendment Act of 2017” (B22-268). For nearly fifty years, the Washington Lawyers’ Committee for Civil Rights and Urban Affairs (“the Committee”) has addressed issues of discrimination, racial injustice, and entrenched poverty through litigation and policy advocacy. The Committee has also since 2006 provided direct representation and other services to D.C. prisoners and returning citizens.

Despite its limitations (as described in this testimony), the Committee supports passage of this bill, which includes extremely modest expansions of the role of the Mayor’s Office on Returning Citizen Affairs (MORCA) and provides even more limited benefits for returning citizens to secure legal identification and limited transportation subsidies immediately after release from Bureau of Prisons (BOP) custody.

However, as a serious step toward addressing the needs of D.C. residents returning from a period of incarceration, the bill’s benefits are woefully insufficient. Further, although the bill expands some functions of MORCA, the Council has previously failed to provide anything close to adequate funding for MORCA to carry out meaningful activities to support returning citizens. The expansion of MORCA activities envisioned in this bill does little to address the housing, employment and social services needs of returning citizens. It also does nothing to address the underlying structures that have created these issues.

Finally, and most importantly, the provisions of the bill requiring MORCA to maintain a database of D.C. prisoners expected to be released within the six months simply cannot be implemented without a change in the relationship between the federal BOP and the District government. Introduced twenty years after enactment of the D.C. Revitalization Act, the Returning Citizens Opportunity to Succeed Amendment Act of 2017 highlights BOP’s lack of accountability to the D.C. government regarding the treatment, housing and conditions of release of D.C. prisoners. For twenty years since the federalization of the D.C. criminal system, the D.C. Council and the Mayor have collectively failed in their responsibility to monitor the treatment of D.C. prisoners held in the BOP and to take any meaningful steps to improve their conditions or the conditions of D.C.’s returning citizens.

**The BOP and the District Government**

As advocates have frequently explained to BOP officials over the last two decades, the BOP is effectively the District’s state prison. All of our prisoners with felony convictions are housed at the BOP. In an actual state prison system, it would be possible

to provide meaningful resources on job opportunities and housing to prisoners. Interviews with housing and employment providers could be arranged, along with other social services. But we do not have such a system.

The BOP does not recognize itself as the District's state prison system. It finds itself under no obligation, legally or politically, to provide to the District government even the names and release dates of D.C. residents returning from the BOP. Every day, returning citizens are left at bus stops or train stations with little or no funds, often without a place to spend their first night at "home." Such a situation cannot lead to positive outcomes for returning citizens or for District residents, who rightly have concerns about the unstructured and chaotic release practices for people who have served sometimes very lengthy prison terms and return to D.C. without housing, a job or financial resources. Yet this situation has persisted for 20 years.

The Criminal Justice Coordinating Council (CJCC), which was organized in the wake of the D.C. Revitalization Act in 1997, includes representation from all relevant D.C. and federal agencies involved with D.C. prisoners and returning citizens. Representatives from the BOP, CSOSA and the U.S. Parole Commission (USPC), along with D.C. Deputy Mayor for Public Safety and the D.C. Department of Corrections, are CJCC members. Countless "comprehensive reentry plans" have been developed by the CJCC, often in collaboration with community advocates and service providers, yet none has been shown to be effective, and most have never been implemented. This is because the federal agencies involved simply refuse to cooperate with D.C. government agencies, and cannot be compelled to do so.

During the two decades of federal control of the D.C. criminal system, which includes complete responsibility for prosecution, defense, incarceration, parole and release supervision of the D.C. Code offenders, D.C. officials have abdicated their responsibilities. In the face of federal agency recalcitrance, no D.C. government agency has taken responsibility for addressing the frequently abysmal and inhumane conditions under which D.C. prisoners are held. No D.C. agency has sought to limit the authoritarian role of the USPC in limiting release of D.C. prisoners on parole and aggressive prosecution of minor parole violations. No D.C. agency has sought to intervene in the absolute control that CSOSA maintains over the day-to-day activities of D.C. residents under its supervision.

The Corrections Information Council (CIC) was created formally under the D.C. Revitalization Act to "inspect, monitor, and report on the conditions of confinement at facilities where DC residents are incarcerated." This role was expanded to include the D.C. jail facilities in 2003. For most of its history, the CIC received virtually no funding and for many years the Mayor and the Council failed to even name members to serve in this voluntary capacity. A few years ago, the Council finally provided funding for CIC staff, and now the CIC monitors a handful of BOP facilities, dutifully releasing reports on the facilities it investigates. Those reports are widely disregarded by the BOP and by D.C. government officials. As noted, the CIC also receives information about D.C. prisoners prior to their release dates, but is bound by its arrangements with the BOP not to release that information to any other D.C. agency.

Our organization has long been the primary entity responding to the complaints of D.C. prisoners over conditions of confinement in the BOP, along with a handful of other private organizations and the D.C. Public Defender Service that engage in even more modest efforts. Over the last decade, the Committee has engaged in protracted and expensive litigation on behalf of D.C. prisoners in the BOP in attempts to enforce even minimal Constitutional standards on the BOP. We have filed class action lawsuits challenging the brutal conditions in the BOP's "supermax" facility in Colorado, the disgraceful conditions at the privately-owned Rivers Correctional Institution and the abuse of prisoners with mental illness held at the BOP facility in Lewisburg, Pennsylvania. We have litigated dozens of cases on behalf of individuals who have been assaulted, raped, and denied medical care or accommodations for disabilities in BOP facilities.

The Committee's efforts, undertaken by a few staff and with the generous support of the private bar in D.C., have been at best marginally successful in improving conditions for D.C. prisoners in the BOP. Yet these are the most comprehensive legal efforts to support D.C. prisoners being made by any public or private entity in D.C. The D.C. government has left to private agencies the enforcement of the basic rights of D.C. prisoners, without supporting those agencies and usually without even taking notice of our efforts. We have repeatedly over the last two decades implored the D.C. Council and the Mayor to accept responsibility for D.C. prisoners in the BOP, and for D.C.'s returning citizens under the supervision of the USPC and CSOSA. The single step the D.C. government has taken during this period to even monitor conditions of D.C. prisoners in the BOP has been to (under)fund the CIC, whose efforts are similarly ignored by D.C. officials.

## **Moving Forward**

Last week, an important event was held at the University of the District of Columbia School of Law where advocates proposed that the D.C. government begin the process of restoring local control of its criminal system by taking over the responsibilities currently held by the USPC. (See attached flyer.) Attended by more than 100 D.C. residents (but no D.C. elected officials), attendees heard presentations by attorneys, advocates for D.C. statehood and returning citizens about the urgent need to wrest control over D.C. parole matters from the USPC, a federal agency with no accountability to the D.C. government or its residents. But beyond the urgent need to restore local control of parole, many raised the issue of federal control of D.C. prisoners more broadly, and asked when we would develop a plan to repeal the D.C. Revitalization Act, to secure fairness for D.C. prisoners and to further the goal of D.C. Statehood. The time to develop such a plan is now.

The WLC urges the Council to take notice of the growing public demand for local control of the D.C. criminal system. In 1997, the District government was in dire financial straits, and it welcomed federal government control over and financial responsibility for our criminal system. Over the last 20 years, however, D.C. prisoners and returning citizens have paid an enormous price for this financial bailout. Nearly 5,000 D.C. prisoners are scattered across more than 100 different federal facilities, none closer than 200 miles from D.C. and many thousands of miles away. They are cut off from contact with their families,

friends and legal support. More than 12,000 returning citizens are subject to supervision and potential re-incarceration under the sole authority of the federal USPC and CSOSA. It is time for the Mayor and the D.C. Council to finally take leadership roles in developing a short-term plan to take over parole responsibilities, along with a longer-term schedule for returning D.C. prisoners to D.C. government control. This issue is even more pressing as the current federal authorization for the USPC is set to expire in November 2018.

### **Limited Benefits to Returning Citizens Under the Proposed Legislation**

The Returning Citizens Opportunity to Succeed Amendment Act proposes to address the needs of returning citizens in four specific ways:

- Provide up to \$100 per month in transportation (Metro) subsidies to returning citizens after their release from BOP custody for up to three months;
- Facilitate returning citizens' ability to secure birth certificates and non-driver identification cards prior to their release from the BOP;
- Enable returning citizens to apply for "special identification cards" prior to their release from the BOP; and
- Put returning citizens in contact with MORCA six months prior to his or her release from the BOP so as to enable MORCA to provide "information detailing available housing and employment resources" and application forms to apply for those resources.

### **The Metro Subsidy**

The Metro subsidy is the only tangible benefit for returning citizens in the bill, and even this is minimal. It is unclear whether eligibility for this subsidy will be available to residents in BOP-contracted halfway houses, with the stipulation that the benefit is available "within 3 months of his or her release from incarceration" by the BOP. Because halfway house residents remain legally under BOP custody, the bill should clarify whether the subsidy could be secured by residents of BOP halfway houses, when they are technically "released from incarceration." This clarification must be carefully considered.

BOP halfway house providers are legally required to provide transportation subsidies to halfway house residents to assist in their efforts to secure housing, employment and social services. However, reports from halfway house residents reveal that transportation subsidies are in practice difficult, and often impossible, to secure from halfway house providers.<sup>1</sup> While we support the provision of transportation subsidies to

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<sup>1</sup> According to a September 7, 2016 memo from the D.C. Corrections Information Council (CIC) to the BOP Contracting Officer, Stefanie Skroch, publicly released by the CIC, the only BOP halfway house in the District for men, Hope Village, is not providing the required subsidies: "In June of 2016 the CIC interviewed a current Hope Village resident and determined that obtaining transportation assistance remains a concern. According to Hope Village, tokens are provided to indigent residents. However, current residents report that they do not have access to tokens even when they repeatedly request tokens. They further state that "indigent" status is determined on a case-by-case basis and is usually denied if a resident has received funds from family or friends. Community service providers also

halfway house residents, such transportation subsidies should already be provided by the private, for-profit halfway house owners. The fact that halfway houses are not providing these subsidies now is an issue the District government should have addressed with the BOP years ago. The District is side-stepping the failure of BOP oversight of its halfway houses by in effect subsidizing the for-profit halfway houses.

### **Facilitation of Legal Identification Documents**

The bill proposes to facilitate the ability of returning citizens to secure legal identification documents in the District. Such documents are essential for returning citizens to even enter most government buildings in D.C. Former BOP prisoners are already provided a BOP identification, which will meet this basic need, but the bill aims to facilitate the securing of a District government identification card. This very minor provision simply instructs the District government to accept the BOP identification document as “one permissible form of identification to substantiate a request for a special identification card.”

Current law allows returning citizens to secure a six-month legal identification card by presenting a “CSOSA [Court Services and Offender Supervision Agency] and DC DOC [Department of Corrections] sole source document” to the Department of Motor Vehicles.<sup>2</sup> It appears that the language in this bill will simply allow the BOP identification document to serve the same purpose as the CSOSA and DC DOC sole source document.

Combined with the provision facilitating application for a birth certificate while a person is still incarceration, the identification card provisions in the bill are at best extremely modest efforts to facilitate the reintegration of returning citizens. The bill does not address the significant costs of applying for a birth certificate (at least \$29, depending on delivery options) but also the challenges of even applying for a birth certificate while incarcerated. The D.C. Department of Health contracts with a private company, Vital Check, to process mail-in and online requests for birth certificates. If applying by mail (and all prisoners will have to select this method as online ordering would be impossible), applicants must provide a personal check, credit card or money order, with only the latter option feasible for an incarcerated person. Even if a D.C. prisoner has the necessary funds and time to secure a birth certificate, he or she will have the additional difficulty of securing a money order while in the BOP.

The bill should be amended to create special provisions waiving the birth certificate application fee for incarcerated people and returning citizens. Additionally, the DC Department of Health should adopt special application procedures to enable prisoners to secure birth certificates. Currently, returning citizens must apply for birth certificates on their own, with substantial financial support provided by private organizations to cover the

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state that Hope Village clients have difficulty with commuting to and from Hope Village when searching for jobs, obtaining identification, and traveling to health care visits.”

<sup>2</sup> The D.C. Department of Motor Vehicles (DMV) already accepts a “Letter with picture from Court Services and Offender Supervision Agency (CSOSA) or DC Department of Corrections (DC DOC) certifying name and DC residency issued within the last 60 days.” DC DMV document. “Proof of Current District of Columbia Residency.”

fees. The District has relied for years on private charity to pay birth certificate fees when it could simply waive the fee entirely for returning citizens. This bill does not address the issue of fees, exposing the very limited nature of the assistance it intends to provide to returning citizens and the apparent ignorance of the very real challenges returning citizens face.

### **MORCA Contact with Prisoners Nearing Their Release Dates**

The centerpiece of the bill is the requirement that MORCA contact all D.C. prisoners within six months of their anticipated release dates to provide “information detailing available housing and employment resources” and application forms to apply for those resources.” There are several problems with this provision, which cannot have any practical effect.

First, the bill assumes that the BOP will provide to MORCA the names and locations of D.C. prisoners six months prior to their release, which the BOP has refused for most of the last 20 years to provide to any D.C. agency except the D.C. Corrections Information Council (CIC). Currently, the BOP provides information about anticipated release dates of D.C.’s returning citizens to the CIC and to the Court Services and Offender Supervision Agency (CSOSA). The former is bound by confidentiality agreements not to re-release that information and the latter is a federal agency with no accountability to the D.C. government.

For several years, advocates have implored BOP officials to provide this information to MORCA or to any D.C. agency capable of utilizing the information to serve returning citizens, and the BOP has failed to respond. In face-to-face meetings between D.C. advocates (including MORCA officials) and the BOP, BOP officials have expressed distrust of D.C. agencies and have simply refused to even respond to this request, much less to cooperate. Nothing in this bill compels any D.C. government agency besides MORCA to engage with the BOP in negotiations on this point. In light of the BOP’s repeated failures to negotiate with MORCA, it is difficult to see how this provision could be successful.

Second, this provision simply assumes that there are “housing and employment resources” for which prisoners can simply submit an application form. In reality, it is virtually impossible for a returning citizen to secure housing while incarcerated. No private housing provider will accept a new resident without an in-person interview. Even if a returning citizen could afford to pay even subsidized rent, the logistics of securing housing while incarcerated are insurmountable for most prisoners. Further, there are no D.C. government programs to provide free short-term housing for prisoners coming home to D.C. Those returning citizens who are released to a halfway house (only about one-half or fewer of returning citizens<sup>3</sup>) can attempt to navigate the complexities of securing housing

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<sup>3</sup> According to CSOSA, “Approximately 50 percent of all offenders returning to D.C. transition through a halfway houses. Another 30 percent enter post-release supervision without a halfway house stay. The remaining 20 percent are released with no supervision obligation.”

in D.C. without a job or resources, but those released directly to the street from prison have no such opportunities.

Similarly, it is an extraordinarily naïve notion to anticipate that an incarcerated person could apply for and secure non-governmental employment prior to release. Surely this Committee is aware that securing employment in D.C. can be extremely difficult, particularly for those with possibly limited marketable skills and experience, compounded with the burden of a criminal record. Further, the only D.C. government program that regularly hires returning citizens, Project Empowerment, can only be navigated after a prisoner is released.

Third, MORCA is grossly underfunded to accomplish this task, even if the goals were achievable. The bill requires that MORCA contact every D.C. prisoner prior to his or her release, but only if the BOP allows release of this information to MORCA, a condition the BOP has shown no signs of accepting. Yet even if the BOP provided this information to MORCA, the latter would need to be in contact with 100 to 200 D.C. prisoners every month. They could not hope to provide more than summary information through resource guides and the like, and certainly could not provide useful housing or employment options. Such options simply do not exist, nor does MORCA have the staff resources to provide this level of assistance if they did exist.

## **Conclusions**

The bill under discussion today exposes the failure of the D.C. government to support people convicted under its laws. The D.C. government has failed to address the terrible conditions of confinement many D.C. prisoners endure in the BOP. It has failed to address the often arbitrary and unaccountable decisions of the USPC in prolonging incarceration and re-incarcerating returning citizens. This bill at best addresses extremely minor issues facing returning citizens, without taking notice of the much more significant concerns around housing, employment, and social services.

The D.C. government has failed to accept responsibility for providing even short-term (much less long-term) housing for returning citizens, leaving only a patchwork of private and inadequate housing programs, and even more inadequate employment opportunities. The bill's conceit that there are "available housing and employment options" for returning citizens betrays the failure to recognize the seriousness of the problem, and proposes no meaningful solutions. This bill proposes far too little to rectify this situation, and leaves in place the current failed structures.

The Committee strongly urges to Council to move forward in developing concrete plans for moving toward local control of the D.C. criminal system, beginning with the re-establishment of a D.C. Board of Parole. The Committee, along with numerous criminal justice and D.C. Statehood advocates are prepared to support and participate in developing such plans, alongside the relevant D.C. government officials and agencies.