

July 10, 2023

Dear Chairperson Mendelson and Councilmembers Allen, Bonds, Frumin, Gray, Henderson, Lewis George, McDuffie, Nadeau, Parker, Pinto, Robert White, Trayon White:

We urge you to vote no on the “Prioritizing Public Safety Emergency Amendment Act of 2023,” or, as an alternative, to vote to strike the child and adult pretrial detention sections from the legislation.

There is no justification to move this specific legislation on an emergency basis and it is an improper way to move forward, without public input, without agency input, and without also seeking evidence-based solutions. On June 27, 2023, more than 100 witnesses testified at a hearing on the Mayor’s bill, B25-0291. The record for that hearing has not yet closed. Nonetheless, emergency legislation has been introduced that includes a mix of proposals from the Mayor’s bill and proposals that are entirely new and for which the public has had no opportunity to provide comment. There is no information about how many more adults and children will be needlessly subject to pretrial detention as a result of this legislation.

Adult Pretrial Detention

The emergency bill proposes a drastic rewrite of the adult pretrial detention statute based on the assumption that too many people have been released for serious crimes and that they are not complying with release conditions. The bill would create a rebuttable presumption of detention in each case where there is an accusation that an individual committed a “crime of violence.” However, the D.C. Code uses an out-dated and overbroad definition for “crime of violence” and the term includes offenses like pick pocketing and burglarizing an unoccupied commercial space. The bill would also lower the standard for pretrial detention in homicide cases – cases where individuals who are charged are often held for years before trial.

There is no evidence to support the belief that more pretrial detention is necessary in these cases or that current law is causing judges to make release decisions that result in a lack of public safety. Data from the Pretrial Services Agency shows that 92 percent of people remain arrest free during their pretrial supervision.¹ Only 2 percent of people who are arrested while on release are arrested for crimes of violence.²

¹ Pretrial Services Agency for the District of Columbia, Arrest-Free Rates for Defendants Released to the Community in Washington, DC: FY 2018 – 2022, at <https://www.psa.gov/sites/default/files/FY%202018-2022%20-%20Fact%20Sheet-Arrest-Free%20Rates%20for%20DC%20Defendants%20Under%20Pretrial%20Supervision.pdf>.

² Pretrial Services Agency for the District of Columbia, Congressional Budget Justification and Performance Budget Request Fiscal Year 2023, at <https://www.psa.gov/sites/default/files/FY%202023%20PSA%20CBI.pdf>.

Instead of seeking evidence-based solutions and examining the data to see how public safety may be improved, the emergency bill seeks to dramatically increase pretrial detention. There is no information about how many more District residents, who are accused of an offense and are presumed innocent, will be held in the District’s crumbling jail – the same place that the United States Marshal Service found in 2021 to be too abusive and dehumanizing to hold people with federal charges.³ Less than two years ago, the USMS reported that D.C. Jail staff appeared to be denying residents food and water for punitive reasons, that residents lived with a pervasive smell of sewage, and that residents had injuries that were unexplained by medical records or incident reports.⁴ These findings follow decades of evidence that the jail is failing residents in terms of health⁵, safety, and programming, and yet the emergency bill would send countless additional District residents there to await trial.⁶ There is no evidence that incarcerating more people who are presumed innocent and awaiting trial will have any positive impact for community safety. Instead, pretrial detention for people who can be safely supervised in the community will cause them to lose jobs, housing, time with their children and families, and their sense of stability. It will lead to worse outcomes upon release and will damage the District’s future in the long term.

If the Council wants to seek real solutions and not just incarceration for the accused, the first step would be analyzing data from the Pretrial Services Agency and hearing from that agency. The Council should learn the answers to questions like: What support is needed for individuals on pretrial release? Do individuals on release have the support and services that they need to thrive and succeed on pretrial release? What additional services are needed for the very small number of individuals who are on release and are rearrested for serious crimes? These are all questions and policy solutions that should be pursued instead of reflexively locking more people in the D.C. Jail.

Child Pretrial Detention

While the emergency bill is an improvement over the Mayor’s proposed legislation relating to the detention of children given that it strikes the protection of the child as a basis for detention and maintains the existing D.C. Code 16-2310(a-1)(2), the emergency bill’s proposed language is still far too broad and would do little to nothing to actually improve public safety while exposing significantly more youth to harmful and counterproductive detention.

³ See statement of the United States Marshal Service, noting that the Central Detention Facility (DC Jail) did not meet the “minimum standards for confinement...”

⁴ U.S. Marshals Service Nov. 1, 2023 memo regarding conditions at D.C. Jail, at https://www.washingtonpost.com/context/u-s-marshals-service-nov-1-memo-to-d-c-dept-of-corrections-re-d-c-jail-inspection/1ecd5c89-1655-4e86-9ccc-28f432af78c5/?itid=lk_interstitial_manual_10.

⁵ The Washington Lawyers’ Committee sued the Department of Corrections in 2023 for egregious failures in providing health care to residents. See <https://www.washlaw.org/district-of-columbia-sued-over-dc-department-of-corrections-lack-of-medical-care/>

⁶ See Washington Lawyers’ Committee, Report: D.C. Prisoners: Conditions of Confinement in the District of Columbia, June 2015, at https://www.washlaw.org/pdf/conditions_of_confinement_report.PDF.

First and foremost, it bears repeating that very few youth in the District commit crimes and that, overall, youth crime remains lower now than before the pandemic. In 2022, youth arrests and youth petitions were 39% and 33% lower, respectively, than before the pandemic (2019).⁷ This is true as well for most categories of offenses considered to be dangerous crimes or crimes of violence. Youth petitions for assault with intent to kill (-13%), rape (-83%), armed robbery (-43%), unarmed robbery (-70%), assault with a dangerous weapon (-25%), 1st degree burglary (-84%), and aggravated assault (-36%) were well below pre-pandemic levels in 2022.⁸ Indeed, the only two categories of petitions for offenses against persons that saw increases during the pandemic are homicides and carjackings - the vast majority of which are committed with a firearm or imitation firearm and, thus, already subject to a rebuttable presumption of detention under existing law. As such, amending the rebuttable presumption to apply to all crimes of violence or dangerous crimes will lead to the increased detention of youth without having any measurable positive impact on public safety.

Second, the impact of expanding the rebuttable presumption to all crimes of violence and dangerous crimes is that the exception to the presumption of release would become the rule. For instance, if we apply the proposed changes to the rebuttable presumption to the 2022 data on delinquency petitions, nearly two-thirds of all petitions would fall under the rebuttable presumption of detention.⁹ This is inconsistent with notions of fundamental fairness, procedural justice, and the presumption of innocence; runs counter to the research regarding the importance of individualizing interventions in delinquency cases;¹⁰ and ignores vast evidence of the counterproductive nature of detention.¹¹ Indeed, research analyzing recidivism rates in the District of Columbia confirm that young people who penetrate the delinquency system more deeply have higher rates of recidivism.¹²

Third, neither the Mayor's bill nor the emergency bill as introduced do anything proactive to address the root causes of delinquency in the District. Rather than trying to more punitively react to harm after it has occurred, we urge the Council to continue to invest in our youth, their families, and their communities and to hold the Mayor accountable for meaningfully and effectively

⁷ See MPD Annual Reports, 2019 to 2021, at <https://mpdc.dc.gov/page/mpdc-annual-reports>; 2022 Biannual Reports for Juvenile Arrests, at <https://mpdc.dc.gov/node/208852>; DC Superior Court of the District of Columbia Family Court Annual Reports to Congress, 2019 to 2022, at <https://www.dccourts.gov/superior-court/family-court-operations/family-court-annual-reports>.

⁸ See DC Superior Court of the District of Columbia Family Court Annual Reports to Congress, 2019 to 2022, at <https://www.dccourts.gov/superior-court/family-court-operations/family-court-annual-reports>.

⁹ DC Superior Court of the District of Columbia 2022 Family Court Report to Congress, at <https://www.dccourts.gov/superior-court/family-court-operations/family-court-annual-reports>.

¹⁰ Mark W. Lipsey, et al., Center for Juvenile Justice Reform, *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (2010).

¹¹ Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (The Sentencing Project, March 2023).

¹² Criminal Justice Coordinating Council, *Juvenile Recidivism: A 2018 Cohort Analysis*, at <https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/Juvenile%20Recidivism%202018%20Cohort%20Study.pdf>.

implementing the Council’s directives and investments as well as the Mayor’s own plans. We know that unaddressed trauma sits at the core of delinquent behavior.¹³ For instance, youth who have experienced abuse, neglect, or homelessness become involved with the juvenile legal system at higher rates.¹⁴ Our resources, time, and attention would be better spent preventing youth from encountering these adverse experiences or helping youth heal from such experiences. Thus, rather than pass the proposed provisions relating to increasing the detention of District children, we implore the Council to instead address the complex trauma experienced by too many of our youth and to do so with the same urgency that it has considered the Mayor’s bill and the pending emergency legislation.

In closing, Mayor Bowser’s bill, B25-0291, advances a carceral approach to complex public safety matters despite the Mayor’s May 15, 2023 order that directed Deputy Mayors to devise “whole of government” approaches to combating violence.¹⁵ While plans from Deputy Mayors were due on June 29, 2023, no new plans have been provided to the public. This emergency legislation employs the same non-solutions to complex matters. It should be voted down or, at the very least, amended to strike the child and adult pretrial detention sections.

If you have any questions, please do not hesitate to contact Sarah Comeau at scomeau@sjpdc.org.

Sincerely,

Thrive under 25 Coalition

Youth Justice Project Coalition

¹³ Criminal Justice Coordinating Council, *A Study of the Root Causes of Juvenile Justice System Involvement*, https://web.archive.org/web/20220515023900/https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20Root%20Cause%20Analysis%20Report_Companded.pdf; Criminal Justice Coordinating Council, *A Study of Factors that Affect the Likelihood of Juvenile Justice System Involvement*, at <https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20-%20A%20Study%20of%20Factors%20that%20Affect%20the%20Likelihood%20of%20Juvenile%20Justice%20System%20Involvement%20%28October%202022%29.pdf>.

¹⁴ *See id.*

¹⁵ *See* https://together.dc.gov/sites/default/files/dc/sites/together/page_content/attachments/2023-061-Districtwide-Review-of-Violence-Reduction-Programs.pdf.