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Before Councilmember Brooke Pinto, Chairwoman
Committee on the Judiciary and Public Safety

Public Hearing on B25-291, the Safer Stronger Amendment Act of 2023
Tuesday, June 27, 2023, at 12:00 PM

Introduction

Chairwoman Pinto, Councilmembers, and residents of the District of Columbia. Thank you for the opportunity to testify about the proposed Safer Stronger Amendment Act of 2023.

For the last 20 months—during my campaign and transition, and since being sworn in as DC Attorney General in January—I have been meeting with and listening to DC residents in every ward and neighborhood of our City. From these conversations, one thing is abundantly clear: people are very worried about crime and, in particular, gun violence. They are justifiably asking their elected leaders what we are doing to protect them, their families, their businesses and their communities. They are not interested in finger pointing or political posturing. They want us to work together to address crime with the same sense of urgency they are feeling.

My views on this bill are informed by those conversations. I share the urgent desire to improve public safety, but in my view, this bill will do little to accomplish that goal. To be sure, there are a handful of helpful provisions that close existing loopholes but, overall, the legislation defaults back to tried-and-failed policies that will not make us safer. When it comes to juvenile justice, this bill will result in locking up more kids pre-trial even though there is no good data to suggest that kids who are released pre-trial are committing violent or serious offenses, and even though there is decades of research indicating that incarcerating children leads to *increased* crime rates. If we are serious about improving public safety, we must focus our resources and attention on programs that address and disrupt the underlying causes of crime. Unfortunately, on that critical front, the proposed legislation is silent.

Before addressing some specifics in the bill, I want to discuss what my office is doing to address crime, and how we think about the pressing issues at hand. At the Office of Attorney General for the District of Columbia (OAG), there is no higher priority than promoting public safety. When people don't feel safe walking to school, shopping for groceries, pumping gas or riding on the Metro, we can't get to the other hard and necessary work of creating a more prosperous, thriving, inclusive Washington, DC where the abundant resources, opportunities, and potential of our great City are shared equitably and by everyone. Given the bifurcated nature of our criminal justice system under the Home Rule Act and our lack of Statehood, OAG has authority to prosecute only a small segment of crime in the District—juvenile crime and some adult misdemeanors. But OAG is the only prosecution office in the District headed by an elected official accountable directly to District voters. For that reason, we have a unique perspective on criminal justice issues, as well as a unique responsibility to think critically about improving public safety for everyone who lives in, works in and visits the District. From that unique vantage point, OAG has been able to identify gaps in the District's public safety ecosystem and develop innovative, evidence-based solutions to address those gaps, including violence interruption, truancy prevention, restorative justice, and other similar programs.

Another way OAG tries to address gaps is by proposing new legislation when we have determined that existing laws require amendment or supplementation. As you know, we have worked regularly with the Council to improve laws that protect DC residents, consumers, seniors, tenants, workers, and the environment. We appreciate that the proposed legislation is being offered to address residents' very real fears about crime. At the same time, we know DC residents want and expect

their leaders to identify what is causing the crime problem and to develop *effective* strategies that will result in real solutions. It is incumbent upon this Committee and the Council to identify and accurately diagnose the problem, determine whether the proposed legislation will *effectively* address that problem, and ensure that the proposed solutions do not cause avoidable collateral damage. In engaging in that careful analysis, data, evidence, and history should be our guides.

There are some provisions of the proposed legislation that appropriately strengthen existing law. For example, several provisions strengthen our gun laws by more specifically addressing machine guns and ghost guns, and strengthen domestic violence laws by making strangulation a felony assault and by requiring the earlier collection of DNA evidence in sexual assault cases for uploading to CODIS. Other provisions will helpfully close loopholes, by, for example, extending existing protections for taxi drivers to also cover ride share drivers, broadening protections for Metro station managers to also cover line employees, and requiring contractors and volunteers who work in schools to abide by the laws pertaining to sexual abuse of children by someone in a position of trust. Because we believe, on balance, these provisions may help improve public safety in DC, OAG encourages the Council to pass those specific provisions into law.

Several provisions of this proposed legislation, however, are problematic. They default back to the flawed assumption that easier and lengthier incarceration—both pretrial and after adjudication—will improve public safety. In doing so, the provisions fail to heed the painful lessons our history teaches: that unnecessary or unnecessarily lengthy incarceration does not make us safer. Instead, it undermines public safety, devastates people and communities, and exacerbates racial inequality. Perhaps most critically, none of the proposed provisions address the underlying issues that are driving the increase in crime.

Given OAG's role as the chief juvenile justice prosecutor, I will focus most of my comments on why the Council should not adopt the proposed changes to the statute governing juvenile pre-trial detention. I will then very briefly address the proposed changes to the Second Look Amendment Act.

Juvenile Pre-Trial Detention

The proposed changes to the juvenile detention statute presume that the recent uptick in juvenile crime is caused by not detaining enough children pre-adjudication. That is not the case. OAG prosecutors are prosecuting juvenile delinquency cases every day, including gun cases, carjackings, armed robberies, assaults with deadly weapons and homicides. We do not divert these serious cases, and we recognize that pre-trial detention in these cases is often necessary to protect public safety. When that is the case, our prosecutors move the Superior Court to securely detain the child pre-trial. And, under the existing statute, the judge must detain the child if she determines the child presents a danger to the community. Under the existing statute, the judge must presume there is a threat to public safety if the child is accused of certain serious and violent crimes. OAG prosecutors are applying the existing legal standard every day, and our informed view is that the current detention statute does not need to be fixed or changed.

What is very concerning about the current situation is that we younger and younger children are being arrested for the first time for very serious offenses. We must tackle that phenomenon head on. Changing the juvenile pretrial detention statute will not have any impact on addressing these

very young first-time offenders. Again, we are not experiencing widespread difficulty securing pretrial detention for these first-time offenders under the current statutory scheme.

Importantly, the District's juvenile pretrial detention statute was amended just six years ago. At that time, the Council carefully considered and passed amendments allowing for tailored decision making based on the specific facts of the case and the specific circumstances of the child. The 2017 amendments thoughtfully balanced the need to protect public safety and the very real costs—to the child and to public safety—of placing children in secured detention, particularly before they have been adjudicated. The 2017 legislation recognized the practical, legal, and constitutional problems created by over-crowding in DC's juvenile detention facilities.

Against this relatively recent legislative backdrop, the proposed legislation, without any careful analysis or evidentiary support, will result in more children being locked up pre-trial, even where they pose no threat to public safety. It does so by allowing judges to detain children for their own safety and by significantly expanding the crimes that create a presumption that a child must be detained. I urge the Council to reject this approach.

First, morally and constitutionally, locking up children for their own safety is wrong. In the United States, we do not incarcerate people—and certainly not children—because they might be in danger of becoming a victim of a crime. Our job is to protect them from harm, not punish them because they might be harmed. Locking up children does not protect them; to the contrary, detention places their safety and well-being at risk. Incarcerating a lower-risk child with those who do present a public safety risk increases the risk that child will engage in more serious crime. The decision to separate a child from their family, from their school, and from their normal lives carries serious negative consequences. Accordingly, that separation should only happen when there is a legitimate and significant risk to public safety.

Second, we cannot ignore the long and dark chapter of our City's history that only recently closed with the settlement of the *Jerry M* consent decree. For over 35 years, the District was under a consent decree arising out of the deplorable, unsafe conditions in its secure juvenile detention facilities. One of the lessons of that consent decree is that pre-trial detention works best when the population is small and manageable. Otherwise, conditions deteriorate, placing children and staff at significant risk of harm.

The proposed changes to the statute risk recreating the same conditions that prompted the *Jerry M* consent decree. Prior to 2017, when the juvenile detention statute allowed for the detention of children for their own safety, the Youth Services Center (YSC) was consistently over-capacity. Once the Council changed the statute to remove that provision, the population at YSC significantly decreased, helping to improve conditions. In connection with the 2020 termination of the *Jerry M* consent decree, the Executive Office of the Mayor established an independent office to monitor DYRS' secure facilities to ensure that the progress made during implementation of the consent decree would be sustained. Importantly, the Executive Director of that independent office, the Office of Independent Juvenile Justice Facilities, recently warned in testimony before the Council:

"If the population of [YSC] were to increase significantly with the current workforce, it would place extreme pressure on the agency's ability to operate the facilities safely."[1]

Third, it is well-established that incarcerating children rarely reduces crime and, in fact, can do the opposite. For decades, researchers have studied this issue. Study after study has shown that detention increases recidivism.[2] Incarcerating young people drives them deeper into crime, reduces the chances they will reenroll in or finish school, removes them from protective factors, and harms their physical and mental health.[3] Youth who are incarcerated have higher rates of re-arrest compared with youth who are placed on probation or given other community alternatives to confinement.[4] And because Black children are much more likely to become involved in the criminal justice system, increasing the incarceration of youth exacerbates racial inequality. Finally, incarcerating youth is not an effective deterrent: data show that declines in youth incarceration do not result in increases in youth crime.[5]

These national studies have been confirmed locally. In 2017, the Council tasked the Criminal Justice Coordinating Council (CJCC) with studying the causes of youth crime in the District. In its report, issued in 2020, the CJCC said: "While the juvenile justice system is intended to rehabilitate children, involvement in the system, particularly secure detention, is well-established to have lasting negative effects on youth, such as increased risk of adult incarceration, decreased likelihood of high school graduation and success in the labor market, and worsening of mental health disorders."[6]

The proposed changes to the juvenile pre-trial detention statute fail to balance the known and serious harms caused by increased juvenile detention against the speculative, unidentified benefit of locking up more youth pre-trial. The proposed changes appear intended to respond to what is sometimes misleadingly and disparagingly referred to as a "revolving door of juvenile justice," a colorful phrase for when children are released after being arrested by the police. The legal standard a police officer must meet before arresting someone is probable cause—meaning the police officer must have a reasonable belief that the person being arrested committed a crime. The probable cause standard for making an arrest is considerably lower than proof beyond a reasonable doubt—the standard prosecutors must meet to charge and prove criminal guilt. In OAG's experience, when

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[1] Testimony Of Mark Jordan, Executive Director, Office of Independent Juvenile Justice Facilities Oversight, Department Of Youth Rehabilitation Services Performance Oversight Hearing before the Committee On Recreation, Libraries & Youth Affairs, February 13, 2023.

[2] *See, e.g.,* Why Youth Incarceration Fails: An Updated Review of the Evidence, Richard Mendel, The Sentencing Project, March 1, 2023, available at https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence; The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities, A Justice Policy Institute Report By Barry Holman and Jason Ziedenberg, November 28, 2006, available at https://justicepolicy.org/wp-content/uploads/justicepolicy/documents/dangers_of_detention.pdf

[3] Id.

[4] Id.

[5] Id.

[6] Criminal Justice Coordinating Council, "A Study of the Root Causes of Juvenile Justice System Involvement Report," Prepared by Kaitlyn Sill, PhD, Statistician November 2020, available at https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/CJCC%20Root%20Cause%20Analysis%20Report_Compressed.pdf

young people who have been arrested for serious crimes are subsequently released, it is usually not because the existing statutory standard for pre-trial detention cannot be met. Rather, it is because there is not enough evidence to prosecute, so the charges are dropped, or "no papered," unless and until enough evidence is obtained to prove them. I want to emphasize, under my leadership, OAG prosecutes all serious, violent cases—including all carjacking and gun cases—when we have enough, constitutionally acquired, admissible evidence to prove the case beyond a reasonable doubt. If there is not enough evidence to prove the case, we don't prosecute the case and the child is released. That's precisely what prosecutors with integrity working in a constitutional system must do. The alternative—locking up people for crimes where there is not enough evidence to prove them—is antithetical to the fundamental principles of our constitutional system. We do a disservice to our constitutional system by denigrating that reality as "revolving door" justice.

After a crime has occurred, we work closely with the Metropolitan Police Department (MPD) to ensure we build strong cases. In addition to collaborating with MPD detectives to marshal evidence after a child has been arrested and booked, we have established a 24-hour hotline that MPD officers can call in real time from the scene of a crime or arrest to speak to a prosecutor to make sure all necessary evidence is lawfully collected. We also have established a multi-jurisdictional task force to facilitate effective prosecution of cases that cross jurisdictional borders, and we are working to include more jurisdictions in that task force. OAG leadership meets regularly with MPD, as well as with the U.S. Attorneys Office, to discuss how our respective agencies are working together to successfully investigate and prosecute serious crimes and to identify and resolve any impediments to effective investigations and prosecutions.

But investigation and prosecution, by definition, occurs after a crime has already happened. If we want to make DC safer, we need to prevent crime *before* it happens, and to do that, we have to address root causes. The CJCC has already developed a roadmap to do just that. It conducted a rigorous analysis to identify the drivers of youth crime in the District and recommended concrete solutions to address them.[7] The CJCC report makes the following clear: to effectively reduce youth crime, we must invest in programs that address the underlying causes of crime. There are several ways the District could do this in the short term. First, we should establish a process that works across agencies to identify and intervene with at-risk youth and, where appropriate, their families, before they commit a crime, are arrested or become system involved. Agencies with information and expertise—DCPS, CFSA, DHS, DBH, and DYRS—should convene to identify the child's needs and provide community based, supportive, wraparound services to the child and their family. Second, we need to ensure children have access to high quality services to address their trauma and mental health needs—needs that were compounded during the pandemic. We can do this by, among other things, funding sufficient counselors in schools, and by creating a high-quality residential psychiatric treatment facility in the District. Third, recognizing that the drivers of youth violence are frequently different than those of adult violence, we should invest in violence interruption programs specifically tailored to youth.

[7] Id.

Changes to the Incarceration Reduction Amendment Act

I will turn now briefly to the proposed changes to the Incarceration Reduction Amendment Act, the law that currently allows judges to modify the sentences of people who were sentenced for crimes they committed when they were young and who have served at least 15 years in prison, but only when the judge finds that the person is not a danger and that the interests of justice warrant a sentence modification. The changes to IRAA in the proposed legislation will make it more difficult for DC residents who have served long prison sentences to avail themselves of the relief IRAA provides and to come home.

Since the law was passed in 2017, 155 DC residents have come home. The vast, vast majority—more than 93 percent—have not been charged with a crime and are contributing in important ways to our city. Many are working to convince young people not to make the mistakes they made. Some have served as mentors and credible messengers, working to reduce gun violence in their communities, including working on our Cure the Streets teams. The Office of Attorney General has benefitted from having returning citizens working as paralegals, investigators and clerks. When I speak to these men—some of whom testified today—I am struck by their genuine remorse, their resilience, and all the human potential that was locked away for years with them. The provisions in this proposed bill will make it less likely that those who have served long sentences for crimes they committed when they were young, who no longer pose a danger and who have something valuable to give back to our community, will be able to come home and make a positive contribution to the District. Keeping them locked up in the Federal Bureau of Prisons, often thousands of miles away from their families and friends, will not make us safer or stronger.

Conclusion

At OAG, we are keenly aware that violent crime is on the rise in the District, a trend sadly mirrored in communities across the country. We talk with victims of crime everyday and the pain and trauma that violent crime visits on their lives informs our work day-in and day-out. While the draft legislation contains some helpful proposals, its overemphasis on incarceration—pretrial detention, longer sentences and diminished IRAA relief—is not going to make DC safer or stronger.

I and the nearly 700 professionals working at OAG are committed to working with the Council, the Mayor and the executive agencies, with our federal and state law enforcement partners, and with the community to develop a comprehensive and proactive plan that addresses the actual drivers of crime. We must come together to focus on issues like ramping up access to mental health services in our schools, addressing barriers to school attendance, developing violence interruption programs specifically focused on youth, and addressing risk factors like housing instability and access to economic opportunities for children at risk of involvement in the criminal justice system.

Under my leadership, OAG will not give up on kids or on doing all that we can to ensure that all DC kids, no matter where they live or where they go to school, grow up healthy, hopeful and on the path to discover, pursue and realize their dreams. Hopeful children are safer children—to themselves and those around them. By committing ourselves to positive youth development and proactive investments to keep children and their families away from the criminal justice system, and by resisting the temptation to double down on failed carceral responses, we can together ensure a safer and stronger Washington, DC.