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

Public Hearing on
B25-791, Utilizing Partnerships and Local Interventions for Truancy and Safety Amendment Act of 2024 (Titles I through III only)

May 30, 2024

Introduction

Chairwoman Pinto, Councilmembers, I appreciate the opportunity to testify about the Mayor's proposed legislation, the Utilizing Partnerships and Local Interventions for Truancy and Safety Amendment Act. I thank Chairman Mendelson for bifurcating consideration of this bill between Titles I-III, which are the subject of today's hearing, and the remaining titles regarding truancy and school discipline. I will have much more to say on the latter topics at the Committee of the Whole's future hearing, but I appear before you today to express strong opposition to Titles II and III, which offer ill-conceived proposals that are divorced from the data, reflect an emphasis on politics over problem solving, and seek to violate the District Charter by infringing upon the independence and exclusive prosecutorial discretion of the Office of Attorney General. I will hold my concerns about Title I, which I also oppose, for further discussion after opening statements.

OAG's Responsible Use of Alternatives to Commitment Has a High Success Rate

At their core, Titles II and III of the Mayor's proposed legislation seek to force my office to funnel more youth into commitment with the Department of Youth Rehabilitation Services (DYRS), which we know is struggling to handle the youth already in its care. These proposals appear to be premised on the flimsy and misplaced assumption that last year's spike in youth crime was attributable to a lack of prosecution by my office. That assumption is inconsistent with the data, which simply does not bear that out.

My office prioritizes accountability and rehabilitation for youth, both of which are statutorily mandated under the Juvenile Criminal Code. That balance is key to reducing recidivism and preventing crime, and thus to promoting public safety. In every case before us, there are several possibilities for disposition, ranging from a dismissal to long-term commitment to DYRS.

Let me walk you through some of the outcomes for a young person who is arrested for a crime in the District. MPD has three main options at its disposal when it arrests a young person: 1) release the youth if MPD lacks probable cause that the young person committed the crime; 2) divert the youth to the Department of Human Services' Alternatives to the Court Experience (ACE) program without ever sending the case to my office; and 3) refer the case to my office after making an arrest.

Once a case comes to OAG, we have several options available. If we do not believe we have enough evidence to prove the case beyond a reasonable doubt—which, notably, is a higher standard of proof than required for an MPD arrest—we dismiss the case.

If we believe there is sufficient evidence to prosecute, we can, just as MPD, divert to ACE. Of note, last year, most referrals to ACE for juvenile delinquency cases came from MPD, *not* OAG. In 2023, my office referred 138 young people to ACE for delinquency, while MPD referred 156. Notably, only 6% of the referrals from both agencies—19 youth in total—involved dangerous crimes or crimes of violence.

Our office, in the exercise of its prosecutorial discretion, can also enter into court-approved consent decrees with the young person. Consent decrees, which are monitored by Court Social Services

(CSS), do not require an admission of guilt; they operate to suspend prosecution for a period of 6 months if the young person does not reoffend. If they fail to adhere to the agreement, they can be prosecuted for the underlying crime. We typically use consent decrees for youth who would otherwise be eligible for ACE, but who were not eligible during the intake due to the absence of a parent or some other technical procedural issue. In 2023, we did not enter into a consent decree for any case with a dangerous crime or a crime of violence.

We can also enter into deferred prosecution agreements, or DPAs, which are similar to consent decrees and are supervised by CSS. DPAs result in the charges being dropped if the youth complies with certain conditions, and the DPAs can be revoked if a youth fails to comply. In 2023, OAG offered DPAs to less than 4% of our 1,168 papered cases, fewer than 10 cases involved a commission of a dangerous crime or crime of violence while armed.

Let me pause before talking about deferred disposition agreements or DDAs. So far, we have delinquency diversions to ACE, the majority of which come from MPD, and only 19 of which were violent or dangerous crimes. We have consent decrees, none of which were used in the cases the Mayor's proposal is aiming at. And we have DPAs, which were used in fewer than 10 cases of the sort the Mayor's bill is focused on. All of these are pre-adjudication; in other words, in all of those cases, there has been no admission of guilt or finding in a court of law that the youth committed the crime, but they are still being given services and being held accountable by DHS or CSS.

That brings us to DDAs, which require a young person to take affirmative responsibility for their actions by pleading guilty. In a DDA, once a young person has admitted guilt and accepted accountability, the court will delay disposition and place the young person on what is effectively probation. If they comply with all the terms of the DDA, they will not be adjudicated or committed to DYRS custody. However, if they fail to comply with the DDA's requirements, including by reoffending, our office can ask the court to proceed to a disposition hearing, which may result in DYRS commitment until age 21. Last year, we used DDAs in only 89 cases involving a dangerous crime or a crime of violence while armed. That is less than 8% of all papered cases.

As I have just laid out, OAG uses diversion, consent decrees, DPAs, and DDAs sparingly, and in every instance, those agreements expressly require that the young person *not* reoffend during the period of supervision. If they reoffend, we retain the jurisdiction to reinstate their underlying case and can and do prosecute them to the full extent of the law. For DDAs, because the young person has pleaded guilty to the underlying offense, we are able to revoke the agreement and proceed immediately to disposition, which frequently involves a commitment to DYRS.

While we do not yet have complete data for the success rate of these alternatives in 2023, the data from the past 5 years shows that these discretionary tools are incredibly effective. Our successful completion rates—defined as the youth completing their probation or supervision period in accordance with the requirements—are high. From 2019 through January of this year, the successful completion rates were 92% for consent decrees, 73% for DPAs, and 86.5% for DDAs. According to the Criminal Justice Coordinating Council (CJCC), of the youth in ACE in 2023, only 9.7% of them were rearrested for a new offense during the program, suggesting high successful completion rates.

This data is backed up by an August 2022 CJCC study on juvenile justice outcomes, which showed diversion, consent decrees, DPAs, and DDAs having lower recidivism rates than commitment to DYRS.[1]

The evidence is clear: CJCC, which the Mayor chairs, has found that these alternatives, when used appropriately, are successful at reducing recidivism; our office uses these tools sparingly, and only after considering the facts of each individual case to identify those with the greatest chance of succeeding with these alternatives; and the vast majority of kids with these agreements successfully complete them without reoffending. Individualized interventions crafted by prosecutors work effectively to keep the District safe.

The Mayor's Proposal Will Irresponsibly Funnel More Youth into DYRS at a Time When that Agency is Already Under-Resourced

There is simply no factual basis for any assertion that the use of these interventions was a contributing factor to last year's spike in crime. The Mayor's proposal reflects a "talking points" approach to crime, not one rooted in data and facts. The focus on prosecution alternatives is perplexingly misplaced, even more so considering that one likely outcome of the bill is that more young people may be funneled into DYRS, an agency that is already struggling to meet its stated mission to rehabilitate kids. The most recent comprehensive study from the CJCC shows that 92.7% of kids committed to DYRS were rearrested during or within 2 years of commitment for either a new crime or a violation of their release conditions, and nearly 50% were adjudicated to have committed a new crime.

To be clear, I am not making an apples-to-apples comparison between OAG and DYRS data. DYRS is charged with rehabilitating the kids who have committed the most serious and violent offenses. That is a weighty and profoundly important obligation. But that reality makes it even more essential that we ensure DYRS uses its limited staff and resources effectively. We won't do anyone any favors by funneling more and more cases into DYRS if we can successfully prevent recidivism with pre-commitment tools like diversion, DPAs, and DDAs. Prudent use of those tools will make the District safer by putting kids back on the right track, keeping them from committing more crimes, and allowing DYRS to focus on the youth who require the most rehabilitation.

The Intent of This Legislation Violates Bedrock Principles of Prosecutorial Discretion

Aside from the lack of any factual basis supporting the bill, I want to express my concern about the legality of the Mayor's proposal.

The District Charter, like the federal Constitution, separates power among the three branches of government. Per decades of legal precedent, the intent of the Mayor's proposal violates the Charter's separation of powers. By design, the bill impermissibly seeks to intrude into the discretion a prosecutor has to determine when to bring charges (by forbidding diversion in certain

[1] *See* Crim. Justice Coordinating Council for the Dist. of Columbia, Report: Juvenile Recidivism: A 2018 Cohort Analysis (August 2022), https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/Juvenile%20Recidivism%202022%20-%20FINAL_v2.pdf.

cases) and when to dismiss charges once filed (by forbidding consent decrees, DPAs, and DDAs in certain cases). The proposal also impermissibly seeks to intrude on the specific authority to prosecute juvenile cases that the Charter now gives to an independently elected Attorney General.

By voting to establish an independent Attorney General no longer subordinate to the Mayor, District residents have entrusted my office to use the prosecutorial discretion the Charter gives us wisely. The data shows that we are doing so. My office will continue to prosecute every case where we have sufficient evidence to establish guilt beyond a reasonable doubt. If there is meaningful data showing that alternatives to commitment are not working in the discrete, individualized circumstances where we use them, we are ready to engage in a conversation to explore other solutions. But these alternatives *are* working. The Mayor's proposals are rooted in politics, not problem-solving. and we should not allow politics to trump public safety.

Conclusion

In closing, I want to reemphasize the importance of legislating evidence-based criminal justice policies. In this instance, the evidence shows that discretionary alternatives to commitment—when deployed prudently—are effective for certain youth populations. The evidence also shows that DYRS needs more resources to handle the kids in its care—not more kids to care for. I encourage this Committee and the Council to reject the reactionary provisions in Titles II and III, and instead take up the ROAD Act, which I introduced last week. That legislation focuses on helping DYRS get youth who are committed to its care back on the right path.