

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION**

IN RE SENTENCED MISDEMEANANTS : 2020 CNC 000120
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**MOTION FOR LEAVE FOR THE NETWORK FOR VICTIM RECOVERY OF DC TO
FILE A BRIEF AS AMICUS CURIAE**

The Network for Victim Recovery of DC (“NVRDC”) respectfully submits this motion for leave to file the attached *amicus* brief in the above-captioned matter. A proposed order also accompanies this motion. Consent from the parties was sought prior to this submission but a response was not received from the United States Attorney’s Office for the District of Columbia prior to filing. The Office of the Attorney General for the District of Columbia consents to this Motion and Memoranda. The Public Defender Service for the District of Columbia opposes this Motion and Memoranda.

NVRDC provides free case management and legal services *pro bono* to victims of all crimes across the District of Columbia. In particular, NVRDC regularly assists survivors of domestic violence, sexual assault, and stalking in navigating the criminal investigation process and enforcing crime victims’ rights throughout prosecutorial proceedings.

NVRDC should be granted leave to file the attached *amicus* for two key reasons.

First, NVRDC has a strong and demonstrable interest in the outcome of the case: it has a vested interest in ensuring that the rights of the community it serves—victims of domestic violence, sexual abuse, and stalking—are still enforced during these unprecedented times. In particular, victims of interfamily offenses, sexual abuse, and stalking are at high risk for re-victimization immediately following release. Because of this heightened risk, it is vital that these

victims receive notice and the opportunity to be heard so they can adequately safety plan and request release conditions to ensure their safety.

Second, NVRDC provides a perspective on the dispute that is not duplicative of either of the parties: the perspective of why an assessment of the safety risks in domestic violence, sexual assault, and stalking cases should be completed before the release of certain misdemeanants. NVRDC can explain why an assessment is necessary and in which cases an assessment is necessary.

For all of the foregoing reasons, NVRDC respectfully requests that it be granted leave to file the attached *amicus* brief.

Dated: April 3, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on the 3rd day of April 2020, a copy of the foregoing Motion for the Network for Victim Recovery of DC to File a Brief as *Amici Curiae* and Memorandum of the Network for Victim Recovery of DC as to *Amicus Curiae* were served via CaseFileXpress on all parties.

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2020 CNC 000120

**MEMORANDUM OF THE NETWORK FOR VICTIM RECOVERY
OF DC TO AS *AMICUS CURIAE***

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Network for Victim Recovery of DC (“NVRDC” or “*Amicus*”)¹ provides free case management and legal services to crime victims in the District of Columbia. NVRDC is acutely aware of the particular challenges that victims of domestic violence, sexual assault and stalking face, and offer its position on the Public Defender Service’s (“PDS”) Emergency Motion for Order to Show Cause in light of its experience litigating crime victims’ rights cases. NVRDC, along with other organizations, has submitted a letter in response to PDS’ letter dated March 26, 2020 which was sent to the Mayor, DC Council, and other leadership in the District of Columbia. A copy of the NVRDC letter is attached as Exhibit 1.

ARGUMENT

Amicus opposes the wholesale release of all misdemeanor offenders as advocated by PDS because that request makes no exception for cases involving domestic violence, sexual assault, and stalking. *Amicus* recognizes that these are uncertain times, and agrees that offenders are entitled to healthy and safe conditions while incarcerated. And while *Amicus* believes in the need for strong, swift action, the wholesale approach PDS proposed will almost certainly strip crime victims of hard-fought, important civil liberties and put their physical safety at risk. PDS asserts that misdemeanor offenders “have not committed serious crimes” and that “[t]he individuals targeted by this motion do not pose difficult questions of public safety.” *Emergency Mot. for Order to Show Cause* at 3 (Mar. 26, 2020) [hereinafter “*Mot.*”] at 1, 4. PDS’ request is broad,

¹ No party or counsel for a party authored this brief in whole or in part. No party, counsel for party, or person other than *amicus curiae* or counsel made any monetary contribution intended to fund the preparation or submission of this brief. Consent from the parties was sought prior to this submission but a response was not received from the United States Attorney’s Office for the District of Columbia prior to filing. The Office of the Attorney General for the District of Columbia consents to this Motion and Memoranda. The Public Defender Service for the District of Columbia opposes this Motion and Memoranda.

unprecedented, and puts the lives of victims of domestic violence, sexual assault and stalking at risk. These offenses are serious and offenders who commit them may pose a risk to personal and public safety. The appropriate way to handle this particular category of cases is to review them case-by-case.

PDS and the USAO are both large and well-resourced professional legal organizations employing skilled, creative, and dedicated attorneys. The actions by both litigants in this action demonstrate that they have the ability to quickly and skillfully litigate issues that could arise in the small subset of remaining misdemeanor cases where the underlying crimes involve domestic violence, sexual abuse, and stalking. The Court, and the parties, *can* notify and hear from victims in these cases and *can* either litigate or agree in short order. It does not have to take weeks or months; the parties, victims, and institutions have the ability to work through these issues quickly and efficiently on a case-by-case basis, as they are doing in the instant action.

Amicus does not take a position on the legal standing or constitutional complications posed by PDS' motion and the United States Attorney's Office for the District of Columbia's (USAO) response regarding the wholesale commutation or suspension of the 94 misdemeanants in this action. *Amicus* does, however, point out that this action, for all its novelty, is one involving the release of defendants and is still a court proceeding where some of the cases at issue involve an offense against crime victims. *Amicus* further notes that providing these procedural guardrails would only implicate a limited number of misdemeanants and could be done in an expedited manner.

I. Crime Victims Have Rights In This Proceeding.

Victims of domestic violence, sexual assault and stalking are a special type of "crime victim." This Court has an affirmative obligation to see that crime victims are afforded their

rights. Here, in the District of Columbia, crime victims are protected by several procedural and substantive statutory provisions and court rules; to wit, the Crime Victims' Rights Act, 18 U.S.C. § 3771 ("CVRA"), the D.C. Crime Victims Bill of Rights ("DCCVBR") DC Code § 23-1901 *et seq.*, and D.C. Sup. Ct. R. 60. All of these sources bestow basic due-process-like procedural rights and substantive standing upon crime victims. The CVRA provides, *inter alia*, that crime victims have:

- (1) The right to be reasonably protected from the accused.
- (2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release ... of the accused.
- ...
- (4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.

18 USC § 3771(a); *accord* DC Code §§ 23-1901(b)(2), (b)(3) (providing that victims have the right to be protected from the accused offender and to be notified of court proceedings); D.C. Sup. Ct. Crim. R. 60(a)(4) (requiring that the Court permit the victim to be reasonably heard at any public proceeding concerning release, plea, or sentencing involving the crime).

Moreover, the CVRA places an affirmative obligation on this Court to ensure that the rights enumerated in the CVRA are afforded to crime victims in *any* court proceedings involving an offense against a crime victim. *See* 18 USC § 3771(b) (emphasis added). These proceedings fall squarely within this requirement.

II. Victims Of Domestic Violence, Sexual Assault And Stalking Face Serious Threats To Their Physical Safety If The Court Grants PDS' Request Without Special Considerations.

Ultimately, this Court's obligations to crime victims and the party-litigants will break down to a balancing test of competing interests. There will certainly be defendants and categories of crimes where PDS' recommendations make more sense than others, and the

purpose of this *Amicus* is to highlight the one group of cases where a case-by-case approach is crucial. Part of this case-by-case approach requires that victims be provided with notice and an opportunity to be heard. This is critical to the administration of justice and to ensure the safety of victims in cases involving domestic violence, sexual assault, and stalking. The victims in these cases, and the misdemeanants held for such crimes, are of special concern when this Court balances the competing forces in this action and fashions its response.

Research collated in *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, discusses heightened concerns for survivors' safety in cases of intimate partner violence, stating:

Studies agree that for those abusers who reoffend, a majority do so relatively quickly. In states where no-contact orders are automatically imposed after an arrest for domestic violence, rearrests for order violations begin to occur immediately upon the defendant's release from the police station or court ... *similarly, reoffending happened early among those convicted for misdemeanor or domestic violence violations.* Of those rearrested for domestic violence, approximately two-thirds reoffended within the first six months.

E.g., Andrew R. Klein, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, U.S. Dep't of Justice, Nat'l Inst. of Justice 21 (June 2009), <https://www.ncjrs.gov/pdffiles1/nij/225722.pdf><https://www.ncjrs.gov/pdffiles1/nij/225722.pdf>.

Additionally, when the person who has caused harm is released without adequate housing, there is concern for an increased risk of harm to the victim because the offender may return to the shared residence or community space where the crime originally occurred. These cases require that basic precautions, such as notice to victims and an opportunity to be heard by highlighting case-specific safety concerns, are brought to the Court's attention so the Court can craft the release conditions necessary to ensure victims safety. A victim's opportunity to be heard regarding the release of a defendant is critical to ensuring the victims' safety. The victim can

offer case-specific requests to the court, such as requesting a stay away/no contact order, that the defendant wear a GPS monitor, that the defendant be confined to house arrest, etc. PDS's wholesale request to release all misdemeanor defendants gives the Court no opportunity to consider these specific safety measures that are necessary to protect particularly vulnerable victims.

In cases involving domestic violence, sexual assault and stalking, these concerns are not pro-forma. Early and unexpected release, or release without housing and specifically considered stay-away conditions, create a dangerous environment for these victims, especially in times like these where victims are confined at home. This is an especially precarious situation where a defendant maybe returning to "shelter in place" with or immediately near the person he or she victimized. Moreover, victims may have intended to engage in additional measures to ensure their safety before a defendant's planned release, such as changing their locks or moving their residence, which they now will almost certainly be unable to do.

CONCLUSION

For the foregoing reasons, *Amicus* suggests that it is necessary for crime victims to be heard on the release of some misdemeanants, particularly in misdemeanor cases involving domestic violence, sexual abuse, and stalking.

Dated: April 3, 2020

Respectfully submitted,

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[PROPOSED] ORDER

Upon consideration of the Network for Victim Recovery of DC’s Motion for Leave to File a Brief as *Amicus Curiae* on this _____ day of _____, 2020 it is

ORDERED that Network for Victim Recovery of DC’s Motion for Leave to File a Brief as *Amicus Curiae* is GRANTED.

Juliet J. McKenna
Presiding Judge, Criminal Division

Danya A. Dayson
Deputy Presiding Judge, Criminal Division

EXHIBIT 1

April 3, 2020

To:

Muriel Bowser, Mayor

Kevin Donahue, Deputy Mayor for Public Safety and Justice

Phil Mendelson, Chairman, DC Council

Charles Allen, Councilmember, DC Council, Chairman, Committee on the Judiciary and Public Safety

Peter Newsham, Chief, Metropolitan Police Department

Robert Morin, Chief Judge, DC Superior Court

Congresswoman Eleanor Holmes Norton

Karl Racine, Attorney General for the District of Columbia

LaQuandra Nesbitt, Director, Department of Health

Patricia Cushwa, Chairperson, United States Parole Commission

Michael Carvajal, Director, Federal Bureau of Prisons

Quincy L. Booth, Director, DC Department of Corrections

**Re: Washington Lawyers' Committee, ACLU, Public Defender Service, et al.'s
Recommendations on Early Inmate Release During COVID-19**

Thank you for your efforts to continually prioritize the health and safety of our community, including those currently incarcerated. This letter is a response to the recent [letter](#) (“Letter”) to local leaders from the Washington Lawyers’ Committee, the ACLU, the Public Defender Service (PDS) for the District of Columbia, and other organizations.

We certainly share the desire to maintain the wellbeing of all DC residents. In these uniquely trying times, our ability to unite behind common-sense solutions is paramount to our shared obligation to stop the spread of COVID-19. The purpose of this response is not to advocate against release of defendants when such measures are required to protect their health, but rather to highlight specific considerations related to Recommendation 3¹ in the Letter. We are offering recommendations regarding the release of misdemeanants in cases involving an intrafamily offense, sexual abuse, or stalking.² In these cases, the victims must be given notice to adequately safety plan and prepare for a release, as well as an opportunity to inform the court of release conditions required to ensure effective protections.³

¹ Recommendation 3: “Releasing those who are serving misdemeanor sentences or who are held pretrial on misdemeanors.”

² In our community, DC legal services providers anticipate – and some are already seeing – a significant [increase](#) in domestic or sexual violence cases also being experienced [throughout the country](#).

³ See 18 U.S.C. § 3771, 34 U.S.C. § 20141, and D.C. Code § 23-1901.

Research collated in *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*⁴, discusses heightened concerns for survivors' safety in cases of intimate partner violence, stating:

Studies agree that for those abusers who reoffend, a majority do so relatively quickly. In states where no-contact orders are automatically imposed after an arrest for domestic violence, rearrests for order violations begin to occur immediately upon the defendant's release from the police station or court ... *similarly, reoffending happened early among those convicted for misdemeanor or domestic violence violations*. Of those rearrested for domestic violence, approximately two-thirds reoffended within the first six months.⁵

Additionally, when the person who has caused harm is released without adequate safe housing there is concern for increased risk due to the likely return to the shared residence or community space where the crime originally occurred.

With all stakeholders in the criminal legal system struggling to keep up with an ever-changing COVID-19 situation, we fear that survivors—and their right to be heard on release orders and conditions—risk falling through the cracks. We are advocating for an appropriate assessment of safety risks in intrafamily offense, sexual abuse, and stalking cases because an absence of adequate release conditions and proper notice could put the safety of a survivor and larger communities, at risk. Basic precautions, notice to victims, and an opportunity to highlight case-specific safety concerns can be implemented with commonsensical measures that will not substantially or dangerously delay critical public safety and health decisions for detainees.

For this reason, we ask that when decisions are made about the release of misdemeanants serving a sentence or being detained pretrial for a case involving an intrafamily offense, sexual abuse, or stalking, the following measures are taken:

1. Victims are provided sufficient notice of, and the opportunity to be heard, at (in writing or remotely via telephone) any release hearing.⁶
2. The court employs a balancing test that considers the danger that a defendant's release poses to the victim and the community in order to craft case specific release conditions; such conditions may include:
 - a. Stay away orders based on personal or geographic locations;
 - b. GPS monitoring;

⁴ U.S. Dep't of Justice, National Institute of Justice, *Practical Implications of Current Domestic Violence Research: For Law Enforcement, Prosecutors and Judges*, June 2009, available [here](#).

⁵ *Id.* at p. 21 (emphasis added).

⁶ While the scope of this letter is specific to release of misdemeanants, this recommendation, and the applicable legal requirements, also applies to victims who wish to be heard on any Emergency Motion for Release, pursuant to the DC Superior Court's March 22, 2020 [Amended Order](#). In these matters, it would help to expedite the process if defendants were required to notify any victims' counsel of record contemporaneously when seeking the Government's position prior to filing.

- c. Regular and required check-ins with CSOSA or PSA;
 - d. Adequate safe housing for inmates upon release; and
 - e. A physical copy of the release conditions, in the appropriate language, (including in juvenile cases) that provides the victim with sufficient information should the victim need to call the police because the offender violates the release conditions (such as a stay away and/or no contact order).
3. Collaboration among the entities coordinating release (prosecutors, correctional facilities, supervising agencies, and the court system) and victim service providers to ensure victims are notified prior to the release of an inmate, as required by the Crime Victims' Rights Act, the Victims' Rights and Restitution Act, and the DC Crime Victims' Bill of Rights.⁷

We agree that COVID-19 poses a real and imminent threat to the lives of those who are incarcerated, and we understand and support the need for an immediate response. But this response must balance the rights and safety of all members of our community. We must allow victims to be notified of any release, and must consider victims' concerns when making a release decision. This approach allows for consideration of victim safety without presumptively infringing on defendants' rights. It is crucial to understand that many crime victims strongly support anti-incarceration approaches to public safety.⁸ The data demonstrate that the role of individuals in the criminal justice system cannot be reduced to a false binary—that each person is either exclusively a victim or an offender, and that these two groups hold monolithic and diametrically opposed views with respect to all aspects of the criminal legal system. A blanket approach to release, without consideration of the relevant, individual risks and potential protective conditions, fails to acknowledge the individual circumstances of each defendant and each victim, and fails to sufficiently respect the humanity of both.

We respectfully request to be included in meetings held to discuss this issue to ensure further inclusion of our expressed recommendations. We are reaching out directly to Emily Gunston, Deputy Legal Director at the Washington Lawyers' Committee for Civil Rights and Urban Affairs and have shared this correspondence with Monica Hopkins, Executive Director, ACLU of the District of Columbia, in efforts to discuss how we might collaborate on our shared values. Follow up communications or questions can be directed to Network for Victim Recovery of DC by emailing Bridgette Stumpf at bridgette@nvrdc.org.

We thank you for your time and for your consideration of the safety of DC residents.

⁷ 18 U.S.C. § 3771, 34 U.S.C. § 20141, and D.C. Code § 23-1901.

⁸ “By a 2 to 1 margin, victims prefer that the criminal justice system focus more on rehabilitating people who commit crimes than punishing them...6 in 10 victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible.” Alliance for Safety and Justice, *Crime Survivors Speak*, available [here](#).

Sincerely,

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