

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@nvrhc.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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