

**“Housing of DC Felons Far Away From Home:
Effects on Crime, Recidivism and Reentry”
House of Representatives, Committee on
Oversight and Government Reform
Subcommittee on Federal Workforce, Postal Service and
the District of Columbia
May 5, 2010**

Testimony of
Philip Fornaci
Director, D.C. Prisoners' Project
Washington Lawyers' Committee for Civil Rights & Urban Affairs
11 Dupont Circle, N.W., Suite 400
Washington, D.C. 20036 (202)319-1000; Philip_fornaci@washlaw.org

Thank you for the opportunity to provide testimony for this hearing on the issue of housing DC felons far away from home, and the effects on crime, recidivism, and reentry. In particular, I would like to thank Congresswoman Norton for her leadership on important issues affecting DC prisoners.

My name is Philip Fornaci. I serve as Director of the D.C. Prisoners' Project, a section of the Washington Lawyers' Committee for Civil Rights & Urban Affairs. Our organization advocates for D.C. prisoners held both locally in D.C. jail facilities as well as those held in the federal Bureau of Prisons (BOP), where those convicted of felonies in D.C. are sent. We advocate for appropriate medical care, protection from violence, and access to basic constitutional rights. We also provide representation to DC prisoners at parole grant hearings.

Our organization was created in 1989, focused on the needs of DC prisoners held locally in the Lorton Prison Complex in Lorton, Virginia. With the enactment of the DC Revitalization Act in 1997, and the subsequent (2001) closing of Lorton and transfer of sentenced DC prisoners to the custody of the federal BOP, the focus of our work shifted to the BOP. Our organization receives calls and correspondence requesting legal assistance and advice from individuals living in dozens of these facilities every year. They seek help on a wide range of matters related to the conditions of their confinement in the BOP, including problems accessing health care and denial of care, protection from or compensation for acts of violence by staff and other inmates, prison disciplinary practices (including use of restraints and long-term isolation), and access to the courts and legal system.

Additionally, in the wake of the 2008 District Court decision, *Sellmon v. Reilly* (551 F. Supp. 2d 66 (D.D.C. 2008)), our organization has become deeply involved in efforts to secure release of hundreds of DC prisoners on parole. In a far-reaching opinion, Judge Ellen Huvelle ruled in *Sellmon* that the members of the US Parole Commission (USPC) had violated the *Ex Post Facto* Clause of the

U.S. Constitution by applying the USPC's own parole regulations and practices to DC prisoners, rather than the regulations and practices of the former DC Board of Parole in effect at the time the prisoner committed his or her offense. As a result of this decision, hundreds (and likely well over one thousand) of DC prisoners have been given new hearings. Our organization has recruited and trained dozens of private attorneys to represent several hundred DC prisoners at parole hearings in far-flung federal prisons, as well as engaging in substantial policy advocacy with the USPC. As a result, at least 400-600 additional DC prisoners were scheduled for release on parole in 2010 (nearly all released to DC), with many more to follow in 2011.

DC prisoners in the BOP face significant challenges, as described later in this testimony. Communication with family and friends, handling legal proceedings, and planning for eventual return to DC are among the most obvious, and serious, problems. However, nearly as significant is the day-to-day experience of DC prisoners in the BOP. Unlike most federal prisoners, whose sentences were handed down in federal court under federal charges, DC prisoners are primarily convicted of local "street crimes." As a result, most DC prisoners tend to be held in the highest security facilities, at least for the first several years of their sentences. Many DC prisoners are very young, with little or no previous experience in the federal system. They are overwhelmingly African-American (more than 90 percent); approximately 38 percent of the BOP population overall is African-American. Few BOP facilities hold more than 200 DC prisoners, leaving DC prisoners an isolated, urban, primarily African-American minority in any prison where they are designated. If they are serving long sentences, DC prisoners can anticipate being moved to a different prison every three to five years, and often more frequently.

The brutal reality of confinement within this system, combined with the isolation that is exacerbated by long distances from DC, creates additional reentry challenges for DC prisoners and for the DC community. Although all federal prisoners tend to be held at some distance from their homes, the BOP is effectively DC's "state" prison. The entire population of DC's returning citizens have endured BOP incarceration. As such, all DC prisoners returning from the BOP should have time and be provided support services for psychological adjustment and reorientation, in addition to housing, employment and health care. Such support services would contribute not only to their well-being but also contribute to public safety in DC. Unfortunately, few formerly incarcerated people returning to DC receive such time or services, and instead find themselves in a mad scramble to avoid homelessness and destitution from the first moment they arrive back in DC.

Background: The Unique Situation of DC prisoners – The 1997 DC Revitalization Act

Unlike “state” prisoners in other jurisdictions, DC Code offenders have a unique relationship with the federal government. DC prisoners are, for most purposes, treated as federal prisoners. The location and conditions of their incarceration, and the terms of their parole (or supervised release), are under the exclusive control of the federal government. Under the Revitalization Act, the federal government has removed the authority to perform these basic state functions of the criminal justice system from the Mayor and Council of the District of Columbia, and from the electorate of this jurisdiction.

President Clinton signed the D.C. Revitalization Act in 1997 at a time when the District of Columbia government was nearly bankrupt, and effectively managed by the D.C. Financial Control Board. The most obvious impact of the legislation was the closing of the Lorton prison complex, with the federal government taking over for the District the financial burden of incarcerating convicted DC felons. However, beyond the fiscal goals, the Revitalization Act radically transformed the DC criminal justice system, effectively putting the federal government in charge. The Revitalization Act:

- Mandated the closing of Lorton in January 2001, **transferring all DC prisoners with felony convictions (as well as parole/supervised release violators) to the BOP** and making them federal prisoners for purposes of facility designation, halfway house placement, and other rules. No DC government agency has any role in decisions about where DC prisoners are sent, nor can the DC government intervene in any situation involving alleged abuse or mistreatment of a DC prisoner.
- **Created the Corrections Information Council (CIC)**, a three-member, voluntary body intended to provide to the BOP “advice and information regarding matters affecting the District of Columbia sentenced felon population.” The CIC has never visited any BOP facility to examine conditions or to interview DC prisoners, in part because there has never been a Memorandum of Understanding with the BOP. The DC government has failed to appoint any members to the CIC since 2004, with the last terms expiring in 2006.
- The legislation required that one-half of **DC prisoners be sent to privately-owned prisons within the BOP**. There have never been enough private prison beds in the BOP to meet this requirement. However, approximately 15 percent of DC prisoners are held in privately-owned prisons within the BOP, most in one facility in North Carolina, the Rivers Correctional Institution.
- **Eliminated the DC Board of Parole in 1998, with many of its functions taken over by the federal U.S. Parole Commission (USPC)**. The primary function of the USPC is to make parole grant decisions for DC prisoners and to adjudicate parole revocations for DC parolees. Prior to

passage of the Revitalization Act, the USPC was on the verge of elimination as the federal government had eliminated parole under federal criminal statutes more than a dozen years before. Now, DC matters occupy more than two-thirds of the USPC's workload.

- **Created Court Services and Offender Supervision Agency (CSOSA)**, an independent federal agency with exclusive responsibility for pretrial, parole and supervised release supervision for DC offenders. These are responsibilities previously handled by the DC Board of Parole. The sole role of this new agency is supervision of formerly incarcerated DC residents (and pretrial defendants), yet it is not accountable to any DC government agency nor is it subject to oversight by any federal agency. Despite its statutory duties to report to the DC Superior Court, CSOSA claims sovereign immunity as a defense to any enforcement action by that Court.
- **Barred the District government from revising any laws or regulations "regarding parole"** that were in effect as of the date of the Act without the "concurrence of the Attorney General" (DC Code §24-131(c)).
- **Mandated the restructuring of DC sentencing laws** to match so-called "determinate" federal sentences, effectively abolishing parole for those convicted of offenses after August 2000.

DC Prisoners in the Federal Bureau of Prisons (BOP)

By January 2001, all DC prisoners had been moved out of the Lorton Prison Complex and moved into the federal BOP. Under current law, once convicted of a felony and sentenced to a prison term, DC prisoners are legally within the custody of the BOP. The BOP even pays the District to house these prisoners in DC jail facilities after they are sentenced and while they await designation and transportation to a BOP facility. The District government retains no discretion over which federal facilities will house the prisoners and what programs will be available to them, the prisoners' security levels within the BOP, or how far from DC they will be held. (Notably, the BOP even aggressively refuses to comply with sentencing orders mandating, for example, that a prisoner sent to the BOP receive psychological counseling or particular medical treatments.)

Under a 1998 Memorandum of Understanding (MOU) between the District and the BOP, the latter agreed to attempt to keep "most" DC prisoners within 500 miles of DC, with efforts to keep most of these within 250 miles. This MOU was consistent with pre-existing BOP policy, which attempts to keep all federal prisoners within 500 miles of their home jurisdictions. The federal government has provided no further accommodation or legal commitment for this influx of DC prisoners, about three to four percent the BOP population. For more 6,000 DC prisoners, the 500-mile radius is a geographic area that reaches from Indiana and Kentucky on the West, Georgia on the South and upper New York State on the North.

Despite this aspirational goal, hundreds of DC prisoners are housed beyond this range, including hundreds held in facilities in Louisiana, Florida, Texas, Arizona, California, and Colorado. In total, DC prisoners are held in 98 different federal prison complexes. Additionally, some are held in various state prisons, in arrangements created by the BOP.

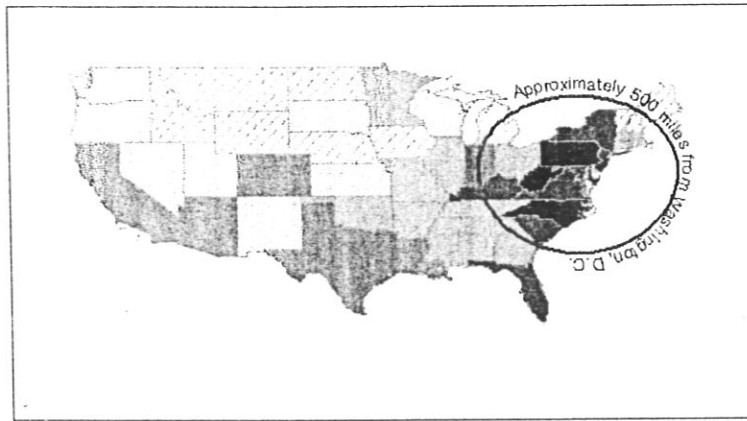
The 15 states with more than 100 DC prisoners are¹:

- Pennsylvania (953)
- North Carolina (738)
- West Virginia (586)
- Virginia (418)
- Kentucky (349)
- Florida (330)
- New Jersey (301)
- Maryland (194)
- New York (150)
- Texas (126)
- Indiana (111)
- Louisiana (106)
- California (103)
- Arizona (102)
- Colorado (101)

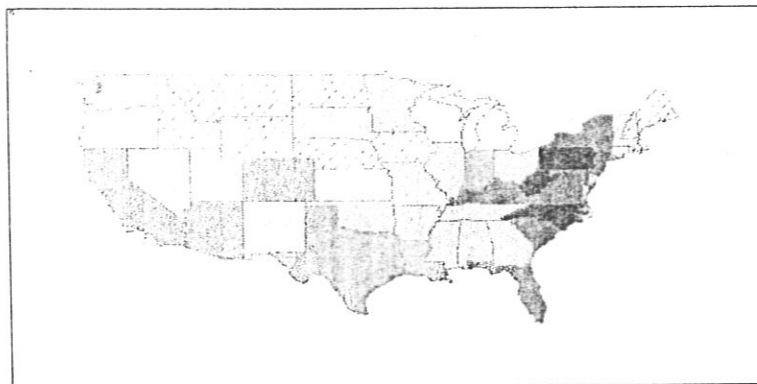
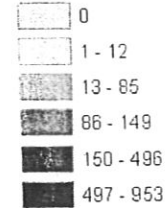
The following maps provide a broader picture of where DC prisoners are held as of March 2010, with the circle highlighting a distance of 500 miles from DC.² (The map does not include juveniles held in North Dakota.) It is important to note that some facilities, while within 500 miles of DC, are more difficult to reach than some further away. For example, the facilities in Eastern Kentucky involve a 12-14 hour drive from DC, which might be even more inaccessible than a prison near a major airport in Florida. The BOP complex nearest to DC is located in Cumberland, MD, about 130 miles away, with facilities for medium and low-security inmates.

¹ Court Services and Offender Supervision Agency (CSOSA), Office of Research and Evaluation, "Distribution of District of Columbia Inmates housed in a BOP facility by State and Gender" (April 2010).

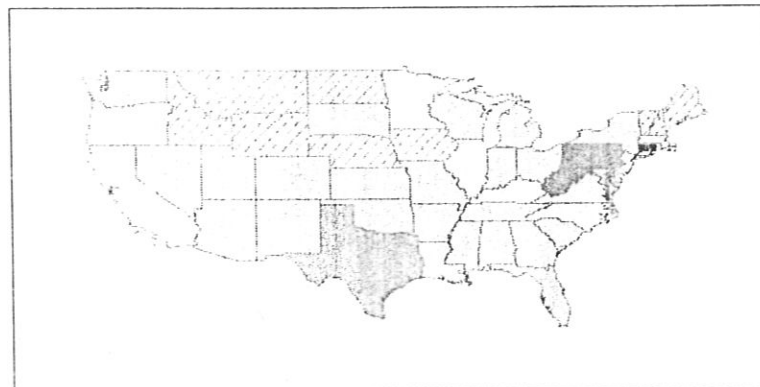
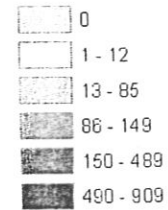
² Ibid.



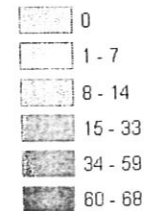
TOTAL



Males



Females



The Complications of Distance

Criminal justice experts agree that maintaining family and community ties is essential to successful community reintegration of ex-offenders. Unfortunately, maintaining family and other community ties is extremely difficult for DC prisoners when they are housed hundreds, even thousands of miles from home. Additionally, DC prisoners in the BOP are isolated not only by distance from DC

but also from each other within the BOP. These different forms of isolation reinforce and exacerbate problems in maintaining family unity.

Because prisons tend to be located in remote, rural areas, public transportation systems are rarely an option for visitation. Families must drive to the facilities, a significant hardship for families without automobiles. Because DC prisoners are dispersed so widely within the BOP, it is also difficult for DC-based social services organizations to arrange low-cost charter bus options so that families can visit loved ones in prison. When DC prisoners were held at Lorton, there were several transportation options available for visitation, and family ties were more easily maintained.

Families are generally unable to visit BOP facilities except in the rarest of circumstances, leaving telephone contact the primary remaining option. In most facilities, collect calls are the only way for prisoners to contact family members (although many now permit use of calling cards). Such calls are limited in time (generally 15 minutes) and costs average more than \$1/minute. Despite a great deal of advocacy nationally on this issue, including several lawsuits³ and legislative efforts, phone rates remain exorbitantly high, particularly in privately-owned prisons.

Distance and Reentry

Returning to DC from a prison 300 (or 1500) miles away makes reentry planning nearly impossible. Access to potential employers, housing services, or social services agencies is limited to letters and telephone calls. There are no job fairs taking place at the far-flung sites housing DC prisoners, nor any programs to encourage recruitment of a labor force from this population, as occurs in many state prisons. Even at Rivers Correctional Institution, which holds the largest number of DC prisoners in the BOP and where CSOSA engages in concerted efforts to provide information to pre-release prisoners, it is simply impossible for these men to successfully apply for jobs and housing while incarcerated.

Further complicating the reintegration of DC prisoners after their release from BOP facilities is the inability of BOP facility staff to effectively assist DC prisoners for their return home. With DC prisoners distributed among nearly 100 different BOP facilities, discharge planning efforts can only be piecemeal and completely inadequate. BOP staff are unfamiliar with the local DC community and the challenges facing ex-offenders in DC, which is unsurprising given the circumstances. As noted, CSOSA has attempted to work with staff at Rivers Correctional Institution to develop partnerships with potential employers and housing providers in DC after release from prison. Unfortunately, these efforts

³ See, for example, *Wright v. CCA* (CC Docket No. 96-128 - *Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking*, a national class action case challenging phone rates in private prisons.

have been generally ineffective in securing housing or employment upon release, although they help to inform prisoners of the existence of potential community resources. Rivers is a minimum security facility, with a generally older and better-educated population than most BOP facilities. Nonetheless, even in a more favorable economic climate, it would be very difficult to attract employers to a relatively small potential workforce hundreds of miles away.

During my visit to North Dakota in 2008 to meet with DC juveniles in the BOP, I asked a teacher at the facility what kind of local information would be helpful for him as he helped to prepare these young men to return to their lives in DC. He suggested that I send him a copy of the DC yellow pages. This startling conversation illuminated not only the complete inability of staff at this facility to assist DC youth in their efforts to prepare for reentry but also the low level of awareness about the urban environment into which these young men would be returning. Most of the young men I met at this facility were serving sentences of three years or less.

Approximately 2,500 to 3,000 formerly incarcerated people return to DC every year from the BOP, with most of these subject to ongoing supervision by the Court Services and Offender Supervision Agency (CSOSA), according to CSOSA statistics.⁴ Fewer than half of these returning residents are placed in halfway houses. Halfway house stays average approximately two to three months (despite the Second Chance Act's mandate for a full year of halfway house placement), during which residents must quickly find jobs, health care and housing (and often drug treatment), or fall into homelessness.

Of the remaining fifty percent of returnees, our estimate is that half of these (or 25 percent overall) are homeless immediately upon their return to DC. Some live in homeless shelters (which are now overcapacity), while others live informally with family or friends (sleeping on couches, floors, etc.) or on the streets. There are a small number of underfunded reentry programs in DC, providing job training and a few providing "transitional" housing. There are also a few limited housing slots available through DC government programs, primarily through the Department of Mental Health. Official statistics indicate that, in the District, 16 percent of people on parole had moved at least three times or lived in a shelter in the prior year, more than likely a significant undercounting, due to the reluctance of parolees to divulge their living arrangements with parole officers. More than 50 percent of people under CSOSA supervision are unemployed.

People returning to DC from the BOP are competing for the same limited social services also intended for homeless people, veterans, and others experiencing destitution in Washington, DC. For many employers and some service providers, a criminal background makes them far less attractive employees and clients than other impoverished people, regardless of their skills, education levels, or evidence of rehabilitation.

⁴ See the CSOSA Reentry Fact Sheet at http://csosa.gov/reentry/resources/reentry_fact_sheet.pdf.

Unless they have family or friends ready and able to house them and find them employment, it is extremely difficult for most formerly incarcerated DC residents to avoid returning to the most dire and unstable living circumstances. There is no organized, coordinated collaboration among the various federal agencies and DC government agencies to prevent these outcomes, which present obvious and dangerous consequences for formerly incarcerated people and for the community.

The Route to Prison to Parole Back to Prison

DC sends more people to prison every year for violations of their parole or supervised release than it imprisons for committing new felonies. In 2008, approximately 1,506 people were sentenced to felonies in the DC court system and sent to the BOP. That same year, more than 1,700 people were sent to the BOP on parole revocations. These violations were overwhelmingly technical or administrative in nature, not new criminal behavior. Overall, approximately 60 percent of all parole revocations are for technical violations, not for violation of any law.

As a result, the DC prisoner population is increasingly made up of older male prisoners serving relatively short prison terms for violating parole rules. Although most parole violators are sent to Rivers Correctional Institution (300 miles away in North Carolina) or to a facility in Pennsylvania, many are sent to even more distant facilities. Their lives are uprooted, their families separated, and employment lost when their parole is revoked. Regardless of the public policy merits (or lack thereof) of technical violations of parole, it is difficult to find a reasonable justification for the practice of imprisoning parole violators in prisons hundreds of miles from home.

The Challenge of *Sellmon*

As noted, the 2008 *Sellmon v. Reilly* (551 F. Supp. 2d 66 (D.D.C. 2008)) decision has led to the release on parole of hundreds of additional DC prisoners in 2009 and 2010. These are men and women who have been incarcerated for at least 12, and often for as long as 25 years. In most cases, they have been illegally over-incarcerated. They have proven to the US Parole Commission that they do not represent a serious risk to public safety and all have taken classes or worked while incarcerated. Overall, they are anxious to re-establish their lives after decades away from DC, with much to contribute.

There are approximately forty to fifty percent more prisoners being released to DC this year than in 2008 as a result of *Sellmon*. Unfortunately, there has been no increase in housing, employment, or drug treatment services made available in response to the increased demand for services. (In fact, there seem to be even fewer services available to them than in prior years, due to the current economic crisis.) Most of these parolees have secured at least some halfway house placement time, although many have been released directly to the

street or to CSOSA's Reentry & Sanctions Center for assessment of substance abuse needs.

Further complicating this situation has been the failure of the various federal agencies to effectively communicate and coordinate with local service providers about this influx of returning citizens. In recent months, CSOSA has taken some steps to address the resource coordination problem, but their efforts are complicated by the failure of the US Parole Commission and the BOP to coordinate release dates, halfway house availability, and other issues. As a result, the reintegration of these long-term DC prisoners has been chaotic and extremely difficult, with many already experiencing homelessness and unemployment.

The *Sellmon* parolees represent a significant opportunity to both understand the challenges of long-term DC prisoners returning home from the BOP and to create services for these and future returning citizens. Virtually all of them have spent time in Lorton as well as in the BOP. This would be an important moment for the federal agencies to finally work with the DC government to address the reentry needs of this significant population.

Recommendations

It is important that the federal government recognize the specific needs of DC prisoners, in particular the unique reentry issues caused by the dispersal of this population across dozens of different BOP facilities. The BOP is our "state prison," despite the federal control. As such, we have a deep interest in how our prisoners are treated there, and how they are returned to us. Unfortunately, as a result of DC's weak political status, our prisoners (and parolees) are subjected to the unfettered discretion of federal agencies over which we have no control.

Nonetheless, the federal government has a significant stake in contributing to public safety in the District and to making it a more livable city for its residents. Here are some basic proposals for the federal government to consider and adopt:

1. The BOP should house all DC prisoners in only a few BOP facilities in Maryland, Virginia, and Pennsylvania within 250 miles of the District, with concerted efforts to house DC prisoners as close as possible to DC. There are facilities in Maryland, Virginia, and Pennsylvania that could be utilized for this purpose. Except in the most extraordinary circumstances, no DC prisoner should be held more than 250 miles away from home.

2. The DC government should work with the BOP to develop local options for housing juveniles held in the BOP. The current system sends these youth to remote locations thousands of miles from home (North Dakota) due to a stated lack of comparable programs closer to DC. Sending 16- and 17-year-olds this distance prevents any real possibility of maintaining close family ties or achieving successful reentry.

3. In facilities housing DC prisoners, case management staff should be trained in appropriate discharge planning issues for the DC population, facilitating engagement by DC employers and social services agencies. Such a project is probably not feasible with DC prisoners spread out into 98 different prison complexes. However, with a more significant population of DC prisoners in only a few facilities, it would be worthwhile for potential employers and service providers to set up training and job placement programs to facilitate the successful reintegration of DC prisoners into the DC community.

4. To the extent feasible, DC prisoners should have access to halfway house placement a full year prior to their release, particularly those who have served lengthy sentences. The BOP must insure that BOP-contracted halfway houses do not discriminate on the basis of disability or other grounds, and that these halfway houses actually provide the housing, employment, and public benefits assistance they are contracted to provide. Most currently do not.

5. Pending before the Federal Communications Commission is the case of *Wright v. CCA* (CC Docket No. 96-128 - *Petition for Rulemaking or, in the Alternative, Petition to Address Referral Issues In Pending Rulemaking*), an effort to address the exorbitant telephone rates charged to families of prisoners. This case has been before the FCC for more than five years, without a decision on rulemaking. The FCC should immediately rule on the *Wright* petition and provide appropriate relief.

6. With the intervention of US Attorney General, the BOP must be compelled to initiate meaningful negotiations with representatives of the DC government and the Corrections Information Council to facilitate full access to BOP facilities and to DC prisoners held in those facilities.

7. The DC Revitalization Act requirement that fifty percent of DC prisoners be housed in privately-owned prisons should be repealed. There is not now, nor should there be, sufficient capacity in BOP contract facilities to meet this requirement, which has its origins in political deal-making, not criminal justice policy. So long as any prisoners remain in BOP-contracted private prisons, the BOP must effectively monitor and ensure that all privately-owned prisons meet the same standards as required of other federal prisons, including adequate medical and mental health care, a full range of programming opportunities, and expanded discharge planning resources for DC prisoners. Currently, the BOP formally denies any ongoing responsibility for monitoring the quality of medical care provided in its contract facilities.

8. CSOSA should be made subject to appropriate DC government oversight, with its rules and policies based on DC law and subject to court review. Although federally-funded, CSOSA must base its supervision policies and practices on DC law.

9. The USPC must immediately strengthen due process protections in parole revocation procedures, including provisions for judicial review of parole revocation decisions resulting in imprisonment. The responsibilities of the USPC over DC prisoners in parole rescission and revocation matters should be transitioned to the sentencing courts, with the USPC's role phased out.

10. The Justice Department should either support the DC Council's repeal of DC Code §24-131(c), or support federal legislation achieving the same goal. This statute, passed into the DC Code directly by Congress, requires the "concurrence" of the US Justice Department for any changes in DC local law affecting parole. This statute is arguably unconstitutional, and certainly violates the concept of DC home rule. The DC government should have the ability to alter or amend its own parole laws to suit the needs of the people of DC. The federal government should have no direct role in these local decisions.