



DCBAR

**2023
District of Columbia
Judicial & Bar Conference**

APRIL 28, 2023



The Past, Present, and Future of D.C.'s Bifurcated Criminal Legal System

April 28, 2023
2:15 p.m. – 3:45 p.m.



Continuing Legal Education

The Past, Present, and Future of D.C.'s Bifurcated Criminal Legal System

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¹ These numbers correspond to those in bold at the lower-right corner of each page.

The Past, Present, and Future of D.C.'s Bifurcated Criminal Legal System

About the Speakers (Listed Alphabetically)

Rashida Edmondson, Chief of the Parole Division, has represented indigent clients at parole and supervised release revocation hearings for more than a decade. She has also served as the parole division's systemic challenge advocate/litigator, focusing on policy and legal and procedural issues affecting returning citizens under supervised release and parole supervision. Rashida has also served as the dedicated defense attorney in the D.C. Superior Court Drug Court Program and has prior experience advocating for, assisting, and aiding in training and resource development for juvenile indigent defense attorneys, nationwide as well as working on compassionate release cases and campaigns to improve medical care in prisons and to move toward a world without prisons. Born and raised in D.C. and PG County, Rashida holds a J.D. from Stanford Law School and is dedicated to supporting and lifting the voices of the community that are at risk of being silenced and ignored.

Councilmember Brooke Pinto serves as the Chairwoman of the Committee on the Judiciary and Public Safety and the Ward 2 Councilmember. Councilmember Pinto was sworn in on June 27, 2020, becoming the youngest member in the history of the Council of the District of Columbia, and the first woman to represent Ward 2. In office, Councilmember Pinto has focused on addressing public safety, supporting small businesses, and promoting Downtown revitalization, advancing housing and homelessness solutions, protecting the environment, providing accessible transportation, and empowering women and girls. As the Chairwoman of the Committee on the Judiciary and Public Safety, she has made reducing gun violence and crime in our communities, tackling domestic violence and hate crimes and ensuring robust opportunities and programming for our youth and returning citizens to drive down recidivism her top priorities.

Prior to being elected, Councilmember Pinto served as the Assistant Attorney General for Policy and Legislative Affairs and as a tax attorney at the District of Columbia Office of the Attorney General where she represented the Office of Tax and Revenue. She earned her BS from Cornell University's School of Hotel Administration and brings her hospitality training and perspective to her role as Councilmember. She is a proud graduate of Georgetown University Law Center, where she was an active participant in the Ward 2 and broader D.C. community through her work with the Washington Legal Clinic for the Homeless and

Georgetown University Medical School to address the intersectionality of health and legal issues.

Patrick McGlone (Moderator) is the Senior Vice President, General Counsel and Chief Compliance Officer at Ullico Inc., an insurance and financial services company that primarily serves labor unions, multiemployer benefit plans, and union members. He is responsible for the legal, compliance and corporate governance matters of Ullico and its subsidiaries. Patrick has served in Ullico's Law Department since 2002, was promoted to his current position in 2011, and supervises a staff of ten attorneys, compliance professionals and support staff.

Patrick had previously been a senior in-house counsel at Mobil Corporation and U.S. Office Products, Inc., and has held positions at the Federal Deposit Insurance Corporation and the law firm now known as Hunton Andrews Kurth LLP. Patrick is a 1986 graduate of the George Washington University Law School (with High Honors), where he was an editor of the G.W. Law Review, and a 1983 graduate of Fordham College (summa cum laude).

Patrick was the 2017-2018 President of the District of Columbia Bar, the largest integrated bar in the United States. He has been a member of the D.C. Bar Pro Bono Center Committee since August 2019 and in 2020 served on the Pro Bono Center's Strategic Planning Committee. Since June 2019, Patrick has served as President of the Council for Court Excellence, a nonpartisan civic organization dedicated to justice system improvements in the federal and local courts of the District of Columbia. He had served as CCE's Vice President from 2010 to 2016. Patrick is a member of the Board of Directors of the Washington Lawyers' Committee for Civil Rights, the D.C. Access to Justice Commission Foundation, and the Pro Bono Committee of the Association of Corporate Counsel National Capital Region chapter. From August 2013 to June 2016, he served as Treasurer of the D.C. Bar Foundation. Patrick is a Life Fellow of the American Bar Association. He has been a member of the ABA's Subcommittee on the Federal Courts of the Standing Committee on the American Judicial System and a member of the ABA's Commission on Sexual Orientation and Gender Identity. He served as Finance Officer and Council Member of the ABA's Section of Civil Rights & Social Justice. From 2009 to 2016, Patrick served as Treasurer of Us Helping Us, People Into Living, Inc., a Washington, D.C. non-profit that provides HIV/AIDS prevention, counseling and testing services. In the 1990s, Patrick served as Co-President of the LGBT Bar Association of D.C.

Patrick has received the following awards in recognition of his professional and community activities: Career Achievement Award from the Association of Corporate Counsel National Capital Region chapter (2019); Justice Potter Stewart Award of the Council for Court Excellence (2018); Washington Business Journal Legal Champion Award (2014); National Law Journal/Legal Times Champions and Visionaries Award

(2012); Outstanding Community Service Award from ACC-NCR (2011); and Chairman's Award from Us Helping Us (2001).

Tyrone Walker, Civic Director, Council for Court Excellence. After serving nearly 25 years in prison, Tyrone earned a certificate in business and entrepreneurship through the Georgetown Pivot Program. His Pivot Program internship with the Justice Policy Institute (JPI) led to a full-time position, in which he used his lived experience and subject matter expertise to effect policy changes. There, Tyrone spent two years advocating for sentencing reform and managing JPI's projects around D.C.'s Incarceration Reduction Amendment Act (IRAA) and Second Chance Amendment Act. As Director of Reentry Services with Georgetown Prisons and Justice Initiative, he supports students with their pre- and post-reentry needs. He believes that helping men and women while they are incarcerated is the most effective way to bridge the gap toward successful reentry. When he is not working, Tyrone is taking classes to earn his Bachelor of Arts in Liberal Studies.

TAB ONE

Materials for
“The Past, Present, and Future of D.C.’s Bifurcated Criminal Legal System”
Presented on April 28, 2023 at the
2023 District of Columbia Judicial & Bar Conference

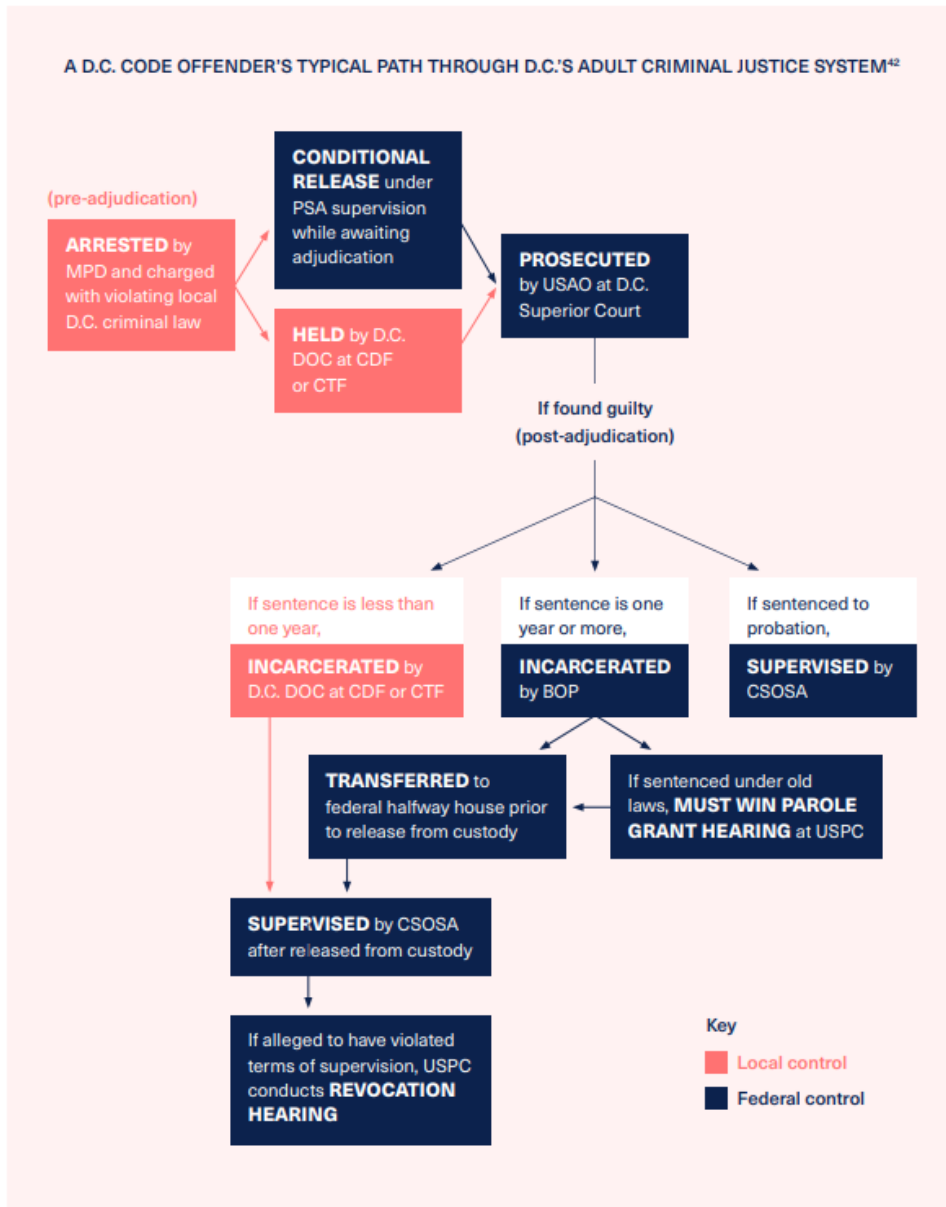
Relevant Statutes

- District of Columbia Home Rule Act, Pub. L. No. 93-198, 87 Stat. 774 (1973), <https://code.dccouncil.gov/us/dc/council/code/titles/1/chapters/2>. (“Home Rule Act”)
- National Capital Revitalization and Self-Government Improvement Act of 1997, Pub. L. 105-33, 111 Stat. 712 (1997), <https://www.congress.gov/bill/105th-congress/house-bill/2015/text>. (“Revitalization Act”)

Select Bibliography

- JON BOUKER, THE D.C. REVITALIZATION ACT: HISTORY, PROVISIONS AND PROMISES, (2008).
- CHRISTOPHER M. DAVIS, CONGRESSIONAL RESEARCH SERVICE, CONGRESSIONAL DISAPPROVAL OF DISTRICT OF COLUMBIA LAW UNDER THE HOME RULE ACT (2023), <https://crsreports.congress.gov/product/pdf/IN/IN12119>.
- EMILIA CALMA & YESMIN SAYIN, D.C. POLICY CENTER, THE DISTRICT OF COLUMBIA’S CRIMINAL JUSTICE SYSTEM UNDER THE REVITALIZATION ACT (2023), <https://dcpolicycenter.wpenginepowered.com/wp-content/uploads/2023/02/The-District-of-Columbias-Criminal-Justice-System-under-the-Revitalization-Act-FINAL.pdf>.
- Peter R. Kolker, *Organization, Budgeting, and Funding of the District of Columbia’s Local Courts*, 11 U.D.C. L. REV. 43 (2008), <https://digitalcommons.law.udc.edu/udclr/vol11/iss1/7/>.
- John Payton, *Should the District of Columbia have Responsibility for the Prosecution of Criminal Offenses Arising Under the District of Columbia Code?*, 11 U.D.C. L. REV. 35 (2008), <https://digitalcommons.law.udc.edu/cgi/viewcontent.cgi?article=1122&context=udclr>.
- Philip G. Schrag, *The Future of District of Columbia Home Rule*, 39 CATH. U. L. REV. 311 (1990), <https://scholarship.law.georgetown.edu/facpub/1166>.

Relevant Graphics and Charts



Source: Council for Court Excellence (2022).

**Significant D.C. Criminal Legal System Changes of Authority
Under the Home Rule and Revitalization Acts**

Changes Under Home Rule Act in 1973

Established the D.C. Council, with legislative powers that “extend to all rightful subjects of legislation within the District...” as well as the power to “create, abolish, or organize any office, agency, department, or instrumentality of the government of the District and to define the powers, duties, and responsibilities of any such office, agency, department, or instrumentality.” <i>Home Rule Act §§1-203.02 and 1-204.04(b).</i>
Specifically restricted the Council’s authority to enact any act, resolution, or rule with respect to the organization and jurisdiction of the D.C. courts, or to the duties or powers of the U.S. Attorney or the U.S. Marshal for the District. <i>Home Rule Act §1-206.02(a)(4) and (8).</i>
Vested the judicial powers for the District in the “Court of Appeals and the Superior Court of the District of Columbia...[with] jurisdiction...of any criminal case under any law applicable exclusively to the District.” <i>Home Rule Act §1-204.31.</i>
Established the D.C. Judicial Nomination Commission, tasked with designating the D.C. courts’ chief judges and sending recommendations for judicial nominees to the U.S. President. <i>Home Rule Act §1-204.34.</i>
Granted the President the power to take emergency control of D.C. police whenever they “determine[] that special conditions of an emergency nature exist which require the use of the Metropolitan Police force for federal purposes.” <i>Home Rule Act §1-207.40(a).</i>

Changes Under Revitalization Act in 1997

Closed D.C.’s Lorton Correctional Complex, which housed people convicted of D.C. Code offenses, and transferred custody of people convicted of D.C. Code offenses sentenced to over a year to the federal Bureau of Prisons. <i>Revitalization Act §11201(b).</i>
Abolished the D.C. Board of Parole and transferred decision-making authority over parole matters to the U.S. Parole Commission <i>Revitalization Act §11231(a).</i>
Transferred pre-trial and post-conviction community service responsibilities from the courts to the Pretrial Services Agency and Court Services and Offender Supervision Agency, both federally funded entities. <i>Revitalization Act §11233.</i>
Gave the federal government financial responsibility over the operations of D.C. Superior Court and D.C. Court of Appeals. <i>Revitalization Act §11241(a).</i>
Classified the Public Defender Service for the District of Columbia as a federally funded, independent entity. <i>Revitalization Act §11234.</i>
Established the Truth in Sentencing Commission, later named the District of Columbia Sentencing Commission. <i>Revitalization Act §11211.</i>

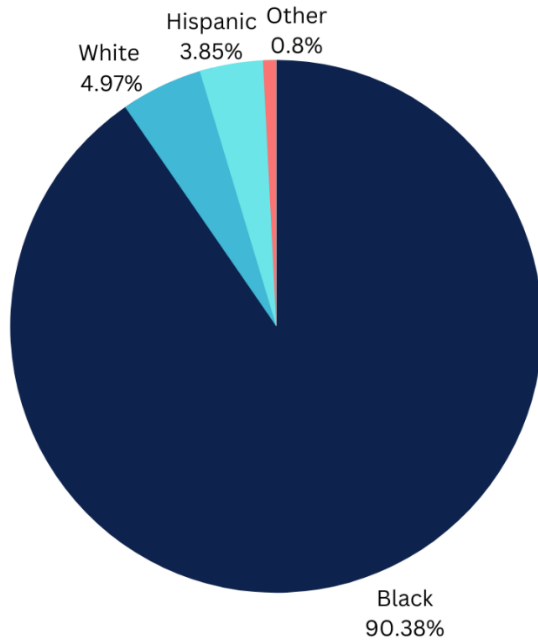
Table 1. Fiscal relief from the Revitalization Act in Fiscal Year 1999

Action	Budget relief in 1999	Notes
Closing of the Lorton Correctional Facility and transfer of residing incarcerated population to the custody of the BOP, to be sent to federal or privately run prisons. ¹⁷	\$184.8 million	In FY 1999, the District allocated \$184 million to the Corrections Trustee for the transfer and incarceration of D.C. Code Offenders.
Transfer of all court operations to the federal government. ¹⁸	\$110.1 million	This is the last budget appropriation in the District's local budget for the Court of Appeals, D.C. Superior Court, and the Court system.
Transfer of Public Defender Service from a local entity to an independent, federally funded agency.	\$7.9 million	The \$7.9 million cost reflects what D.C. appropriated in FY 1995. By 1999, the amount allocated to defender services (by the federal government) was \$14,486,000.
Transfer of authority for parole decisions to the United States Parole Commission, and the abolition of the District of Columbia Board of Parole.	\$5.7 million	The \$5.7 million budget reflects what D.C. paid in FY 1995. This included the supervision of D.C. Code offenders on parole, a function that was transferred to CSOSA when the agency was created. CSOSA is also responsible for the supervision of people on probation, which was previously conducted by the courts, and supervised release. The first year the federal government budgeted for CSOSA, the appropriation was \$44 million. ¹⁹
Placement of the pension liabilities for teachers, firefighters, police officers that accrued until 1997 with the federal government. At that time, the federal government also took over the liability for the pension plan for judges permanently. D.C. inherited this pension liability in January of 1975, when the Home Rule Act became effective. At that time the estimated unfunded pension liability was \$2 billion. At the time of the Home Rule Act, this amount was estimated at \$5 billion.	\$293 million	Fiscal Year 1993 is the last full year appropriation in the District's local budget. In 1994 and 1995, the District deferred its pension contributions because of cash flow problems.
Transfer of the Judicial Nomination Commission from a local entity to both a federally funded and locally funded entity.	\$87 thousand	\$87 thousand was the last amount budgeted in the District's local budget. In FY 2022, the JNC budget was \$308,000, almost all federally funded.

Sources: Fiscal Year 1995 Budget Report, Committee of the Whole, retrieved from <https://lms.dccouncil.gov/downloads/LIMS/4147/Other/B11-0159-COMMITTEEREPORT7.pdf>; 1999 Budget Request Background Materials and Correspondence, retrieved from <https://lms.dccouncil.gov/downloads/LIMS/6153/Other/B12-0587-BACKGROUND MATERIALS AND CORRESPONDENCE.pdf>; Budget of the United States government, Fiscal Year 2000, retrieved from <https://www.govinfo.gov/content/pkg/BUDGET-2000-BUD/pdf/BUDGET-2000-BUD.pdf>

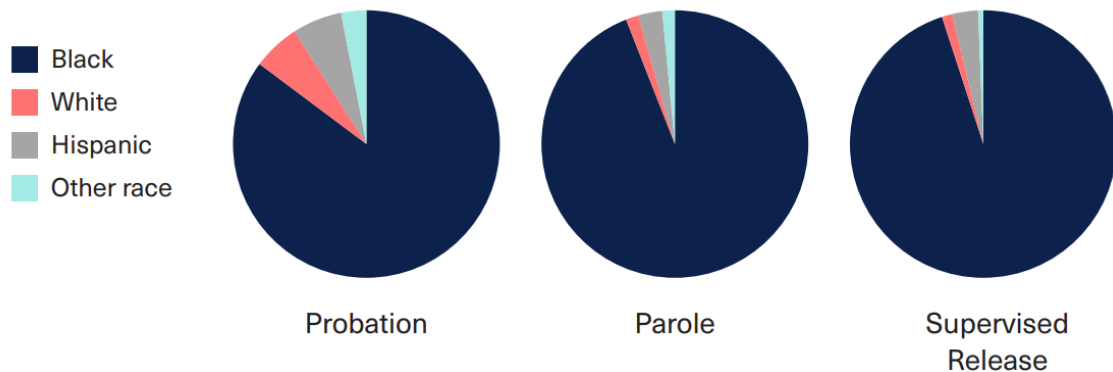
Source: DC Policy Center, THE DISTRICT OF COLUMBIA'S CRIMINAL JUSTICE SYSTEM UNDER THE REVITALIZATION ACT, PAGE 4 (2023).

Department of Corrections Population By Race, January 2023



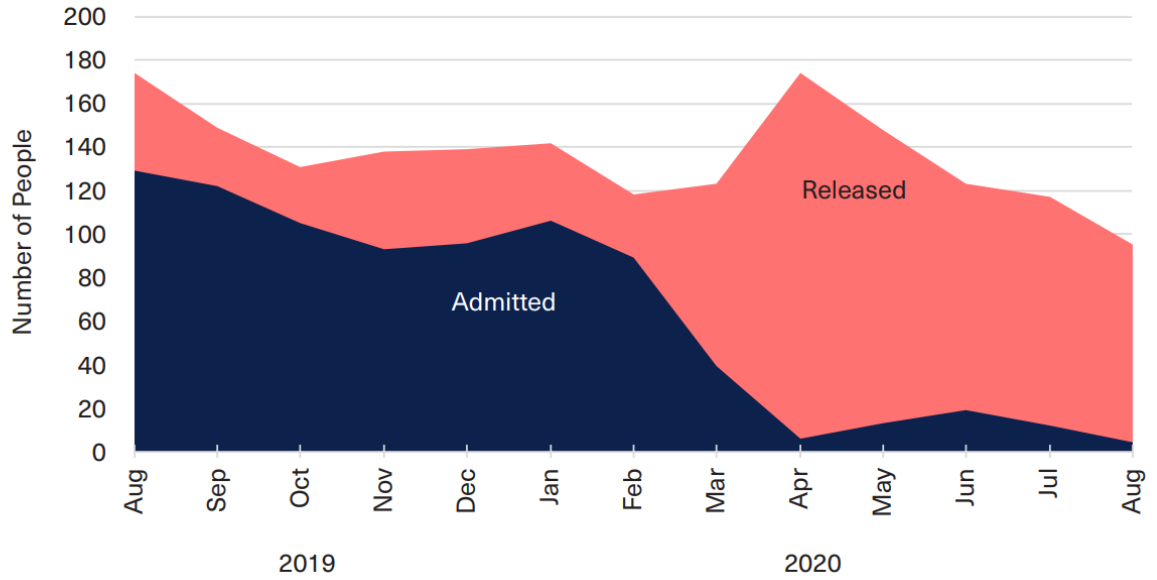
Source: D.C. Department of Corrections Facts and Figures (2023).

Race of people under CSOSA supervision, January 2019–September 2021.¹³⁹



Source: Council for Court Excellence (2022).

People convicted of D.C. Code offenses entering and exiting BOP custody, August 2019–August 2020.⁸⁵



Source: Council for Court Excellence (2022).

