

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ORDER 21-07

(Order Regarding the Transfer of Prisoners in Bureau of Prison Custody to District of Columbia Department of Corrections for Superior Court Cases)

WHEREAS, on March 18, 2020, the Superior Court Chief Judge issued the first series of deadline-tolling orders due to the coronavirus (COVID-19) pandemic, tolling “all deadlines and time limits in statutes, court rules, and standing and other orders that would otherwise expire before May 15, 2020.”¹ The Chief Judge issued numerous additional orders extending the tolling, again due to the coronavirus pandemic;² and

WHEREAS, the worldwide pandemic, city restrictions on indoor gatherings, and expert advice on the potential spread of COVID-19 at the Superior Court caused the Court to place limitations on in-person proceedings and summoning jurors needed to conduct jury trials and further considering the Court has prioritized resolving pending criminal cases in as safe and expedited manner as feasible; and

WHEREAS, the District of Columbia Department of Corrections (DOC) houses inmates who are detained pre-trial awaiting resolution of their cases.³ DOC also houses persons convicted of misdemeanors who receive a sentence that includes incarceration;⁴ and

WHEREAS, persons convicted of felonies pursuant to the District of Columbia Official Code and sentenced to incarceration serve their sentences at a penal or correctional facility operated or contracted by the federal Bureau of Prisons (BOP).⁵ As of July 4, 2020, BOP housed 3,221 persons convicted of D.C. Code offenses;⁶ and

WHEREAS, the D.C. Superior Court is authorized to rule upon a variety of post-conviction motions relating to BOP prisoners who are serving Superior Court sentences, such as: D.C. Code § 23-110 motions (motions attacking the sentence); motions made under the Incarceration Reduction Amendment Act (IRAA), codified at D.C. Code § 24-403.03 (for persons, charged as adults, who committed the crime(s) at age twenty-four or younger); and motions for compassionate release, pursuant to D.C. Code § 24-403.04 (for persons who have a

¹ Superior Court of the District of Columbia Order (Mar. 18, 2020) (<https://www.dccourts.gov/sites/default/files/Order-Attachment-PDFs/Order-3-19-20.pdf> <https://perma.cc/7Q98-F8C7>).

² See Superior Court of the District of Columbia Order (Jul. 14, 2021) (https://www.dccourts.gov/sites/default/files/2021-07/amended_general_order_july_2021.pdf).

³ D.C. Department of Corrections, Facts and Figures, June 2021, at 17 (<https://doc.dc.gov/sites/default/files/dc/sites/doc/publication/attachments/DC%20Department%20of%20Corrections%20Facts%20and%20Figures%20June%202021.pdf>).

⁴ *Id.*; Although the numbers are significantly smaller, DOC also houses fugitives wanted in other jurisdictions, parole/probation violators, persons in transit for U.S. Marshals or U.S. District Courts. *Id.*

⁵ D.C. Code § 24-101.

⁶ District Task Force on Jails & Justice, Jails & Justice: Our Transformation Starts Today, at 12 (Feb. 2021) (<http://www.courtexcellence.org/uploads/publications/TransformationStartsToday.pdf>).

terminal illness, are elderly, or have another extraordinary and compelling reason to have their sentence reduced); and

WHEREAS, the passage of IRAA⁷ and the compassionate release law⁸ have created a significant case load increase on the Superior Court at the very time that the Court is operating in a pandemic caused by the coronavirus. The United States Attorney’s Office for the District of Columbia estimates that approximately 583 persons are now eligible for relief under the expanded IRAA.⁹ As of June 6, 2021, 834 compassionate release motions have been filed with the Court.

WHEREAS, Superior Court judges have at times authorized the transport of defendants in BOP custody to be returned to DOC during the pendency of post-conviction litigation which can last for months. The transport of these defendants during a health pandemic could create health risks for: those being transported, as they may be exposed to the virus and new strains while being held in different facilities across the country; for those persons already housed at the DOC, who might be exposed to COVID-19 and strains that are not yet present at the DOC; and for anyone working or doing business at the D.C. Superior Court, who might be exposed at the time of in-person hearings; and

WHEREAS, the laws passed by the City Council allow the Superior Court, in its discretion, to consider these types of post-conviction motions without the personal appearance of the defendant or, in some cases, may allow the appearance through video-conferencing;¹⁰ and

⁷ IRAA went into effect in 2017 and was expanded significantly in 2019 and 2021. D.C. Law 21-238, § 306(b) (Apr. 4, 2017) (Comprehensive Youth Justice Amendment Act of 2016); D.C. Law 22-313, § 16(b) (May 10, 2019) (Omnibus Public Safety and Justice Amendment Act of 2018); D.C. Law 23-274, title VI, § 601 (Apr. 27, 2021) (Second Look Amendment Act of 2019 (SLAA)/Omnibus Public Safety and Justice Amendment Act of 2020).

⁸ The compassionate release law initially passed as temporary emergency legislation in 2020 but then passed as a permanent law in 2021. D.C. Law 23-274, title XII, § 1203(b) (Apr. 27, 2021).

⁹ Department of Justice, United States Attorney’s Office for the District of Columbia, *New Bill Seeks to Make Over 500 Violent Criminals ... Immediately Eligible for Early Release* (Aug. 9, 2019) (<https://www.justice.gov/usao-dc/pr/new-bill-seeks-make-over-500-violent-criminals-including-many-rapists-and-murderers>).

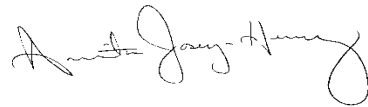
¹⁰ *See, e.g.*, D.C. Code § 23-110(d) (“A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.”); D.C. Code § 24-403.03(3) (“(A) Except as provided in subparagraph (B) of this paragraph, the defendant shall be present at any hearing conducted under this section unless the defendant waives the right to be present. Any proceeding under this section may occur by video teleconferencing, and the requirement of a defendant’s presence is satisfied by participation in the video teleconference. (B) During a period of time for which the Mayor has declared a public health emergency pursuant to § 7-2304.01, a defendant in the custody of the Bureau of Prisons who committed the offense for which the defendant has filed the application for sentence modification after the defendant’s 18th birthday but before the defendant’s 25th birthday may not petition the court to return to the Department of Corrections for a proceeding under this section”); D.C. Code § 24-403.04 (c) (“Although a hearing is not required, to provide for timely review of a motion made pursuant to this section and at the request of counsel for the defendant, the court may waive the appearance of a defendant currently held in the custody of the Bureau of Prisons.”).

WHEREAS, pursuant to this administrative order which furthers the health and safety measures implemented by this Court due to the COVID-19 virus and variants thereof; for the protection of those working in or otherwise utilizing the Superior Court of the District of Columbia and to reduce the opportunity for spreading COVID-19 and/or variants related thereto, it is hereby

ORDERED that judges may not authorize prisoners in the BOP system be returned to the District of Columbia, except if such prisoner is a witness or victim in a trial scheduled in the Criminal Division of the Superior Court before the end of the calendar year, 2021. Defendants presented on fugitive warrants are not subject to this order. Defendants litigating post-conviction matters including but not limited to 23-110, IRAA/SLAA, compassionate release, or other cases shall not be writed into the District of Columbia Superior Court, except with special permission of the Chief Judge. This order seeks to maintain the health and well-being of those persons in the Superior Court during the period of the pandemic by reducing the footprint and influx of prisoners from the BOP. This is especially important given the Superior Court has begun jury trials, and in-person trials and related hearings are prioritized. This order may be modified by the Chief Judge as necessary.

SO ORDERED.

August 2, 2021



Anita M. Josey-Herring
Chief Judge