Statement of Natalie O. Ludaway
Chief Deputy Attorney General for the District of Columbia

Before the

The Committee on the Judiciary & Public Safety
The Honorable Charles Allen, Chairperson

Public Oversight Roundtable On
Sentencing in the District of Columbia
Agency Roles and Responsibilities

February 9, 2016
9:30 AM
Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia

Good morning Chairman Allen, Councilmembers, staff, and residents. I am Natalie O. Ludaway, and I have the privilege of serving as the Chief Deputy Attorney General for the District of Columbia. I am pleased to appear on behalf of Attorney General Karl A. Racine before the Committee on the Judiciary & Public Safety at this Public Oversight Roundtable on Sentencing in the District of Columbia: Agency Roles and Responsibilities.

Most important to Attorney General Racine and the entire Office of the Attorney General, is that the District of Columbia is a safe place for everyone and that violent, dangerous, offenders are off of our streets.

The Role of OAG at Sentencing Hearings

The prosecution of adults who are charged with a crime is split between OAG and the United States Attorney's Office for the District of Columbia (USAO).[1] The USAO prosecutes felony and serious misdemeanor offenses and OAG prosecutes the remaining D.C. Code offenses and violations of all D.C. Municipal Regulations which may result in a maximum sentence of one year of incarceration. Among the most common offenses that OAG criminally prosecutes are impaired driving; possession of an unregistered firearm and unregistered ammunition;

[1] D.C. Official Code § 23-101, Conduct of prosecutions, provides, in relevant part, that:
"(a) Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the [Attorney General for the District of Columbia] or his assistants, except as otherwise provided in such ordinance, regulation, or statute, or in this section.
(b) Prosecutions for violations of section 6 of the Act of July 29, 1892 (D.C. Official Code, sec. 22-1307), relating to disorderly conduct, and for violations of section 9 of that Act (D.C. Official Code, sec. 22-1312), relating to lewd, indecent, or obscene acts, shall be conducted in the name of the District of Columbia by the [Attorney General for the District of Columbia] or his assistants.
(c) All other criminal prosecutions shall be conducted in the name of the United States by the United States Attorney for the District of Columbia or his assistants, except as otherwise provided by law."

disorderly conduct; indecent exposure; reckless driving; leaving after colliding; and other traffic offenses. At the time of sentencing, OAG prosecutors take seriously their twin responsibilities to protect public safety and offer offenders the best chance at rehabilitation. Successful rehabilitation is important because it reduces recidivism, and thus promotes public safety.

While the Court has the power to sentence someone who has been found guilty of an offense, both the prosecutor and the defense attorney are given an opportunity to orally advocate their positions, and when necessary, submit a presentence memorandum or other documentation or evidence that support their arguments, prior to the judge issuing a decision. OAG prosecutors consider several factors when making a sentencing recommendation to the court. First, they must ensure that victim's rights are observed and enforced. Second, they must tailor their sentencing recommendation to the defendant, given that person's criminal and social history. This tailoring must also factor in the effect that the crime had on a victim, and public safety as a whole. Third, prosecutors must review and consider any presentence report, victim impact statement, or defense submission. Fourth, they must abide by any plea agreement limitations on their ability to advocate at sentencing. Finally, they must note the penalty for the offense, including any penalty enhancements that may apply.

The History and Purpose of the Youth Act

While the focus of this roundtable is to speak to sentencing generally, failures of the Youth Act have been a focus of recent media reports. Therefore, I would like to discuss the Youth Act's history and intended outcomes. The Youth Act was enacted by the Council of the

District of Columbia in 1985. As explained in the Report of the Committee on the Judiciary associated with the bill, "[t]he purpose of the Youth Act is to provide 'rehabilitation opportunities for deserving young adult offenders,' whom the Youth Act defines as persons under twenty-two years of age not convicted of [certain charges]…" The D.C. Court of Appeals found the primary objectives of the Youth Act are "1) to give the court flexibility in sentencing a youth offender according to his individual needs; 2) to separate youth offenders from more mature, experienced offenders; and 3) to afford the opportunity for a deserving youth offender to start anew through expungement of his criminal record."[2] In addition to providing for expunging a criminal record, the Youth Act provides alternative sentencing options, including suspended imposition of a sentence. The Youth Act is not available to young adults convicted of murder.

In 1985, the intent of the Youth Act was to allow certain individuals to undergo rehabilitative services in order to have their records closed to the public if they successfully complete their sentences. This would allow these young adults to be contributing members of society without the stigma of a conviction, which can sometimes prevent someone from getting a job, obtaining housing, and moving past their involvement with the criminal justice system.

The Need for Data Concerning the Youth Act Outcomes to Better Inform Sentencing Policies

Keeping our City and its residents safe is best accomplished by using data-driven strategies to inform our criminal justice policies. Currently, criminal justice practitioners and District residents know too little about how the Youth Act is used and how effective it is.

[2] *Brown v. United States*, 579 A.2d 1158 (D.C. 1990).

Policymakers, prosecutors, judges, criminal justice stakeholders, and others must understand if sentencing tools such as the Youth Act are making communities more or less safe, so that any necessary changes to the law can be made. This requires the ongoing collection and analysis of data about recidivism outcomes. Criminal justice stakeholders in the District, including OAG, have had several recent discussions about the Youth Act through the Criminal Justice Coordinating Council (CJCC), which is made up of both local and federal criminal justice stakeholders. I am pleased to report that CJCC is implementing a deep and thorough review of: (1) who has benefited from the Youth Act; (2) for what offenses; (3) how many of those individuals go on to commit more crime, specifically violent crimes; and (4) whether the current rehabilitative services offered to Youth Act recipients improve outcomes for those individuals and the public. Additionally, one of CJCC's purposes is to bring together federal and local criminal justice stakeholders -- including OAG, CSOSA, the Superior Court of the District of Columbia, the US Attorney's Office, the US Parole Commission, and the Bureau of Prisons -- to enhance public safety by addressing gaps in the criminal justice system. Preliminary analysis done by CJCC shows that the large majority of young adults sentenced under the Youth Act succeed. In almost 80% of cases, young adults sentenced under the law do not go on to commit felony offenses afterward. And, in some cases, successful completion of a Youth Act sentence allowed those young adults to set aside their convictions, possibly enhancing their ability to secure employment. Approximately 27% of young adults sentenced under the Youth Act successfully petitioned the Court to have their convictions set aside. However, in about 11% of

cases, an individual sentenced under the Youth Act went on to commit a crime of violence. With more data, we can compare this rate to non-Youth Act recipients to better understand the efficacy of the policy. However, we can all agree that 11% is too high and needs to be addressed.

In considering ways to amend the Youth Act, all options are on the table for OAG. The law must make communities safer. And, those young adults who successfully serve their sentence and get back on the right track should be afforded an opportunity to secure employment without the debilitating and oftentimes prohibitive mark of a prior conviction on their records. Certainly, the Youth Act as drafted could be improved. For example, the law could set out specific expectations about if and how rehabilitative services should be provided to those eligible. Another option to reform the Youth Act is to amend it to allow judges the option to make the decision about who deserves the Youth Act ***after*** the offender has completed his or her sentence, when he or she can demonstrate positive life changes. Currently, a judge is required to decide whether to apply the Youth Act prior to sentencing, and therefore has to guess which young offenders will learn from their mistakes and take advantage of the potential set aside of the conviction the Youth Act offers. Research shows that the vast majority of those who go on to recidivate after serving a sentence do so within six months to a year of release. If a judge had the option of offering the Youth Act after sentencing, he or she could impose the regular sentence and wait until the offender completes the sentence and returns to the community. The judge could bring the young adult offender back to court after a period of time (six months or one year) and impose the Youth Act as a ***reward*** for completion of the sentence and successful reentry to

society, thereby setting aside the conviction. In those instances where the judge believes the young adult offender deserves a sentence below the statutory mandatory minimum sentence, the judge could still impose the Youth Act at the time of sentencing. What we know is that very few judges currently utilize that option and rarely depart downward from a mandatory minimum sentence.

The policy decision about reforming the Youth Act should be made after policy makers, including the Council with the public's input, have completed careful review of the law's implementation. We must find a way to preserve the aspects of the Youth Act that encourage offenders to become productive members of society, while curbing aspects of the law that embolden criminality.

Conclusion

The Office of the Attorney General appreciates the opportunity to testify on this important matter. The office will work with you, District residents, and our partners in the Criminal Justice Coordinating Council to ensure that our policies and laws are effective in protecting public safety and promoting the public interest. I am joined members of OAG's Public Safety Division, and we are pleased to answer any questions that the members of the Committee may have.