



**Statement of Emily Gunston  
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**Before the Committee on the Judiciary and Public Safety**

**Public Oversight Roundtable on Local Control of Parole in the District of  
Columbia**

**May 6, 2021  
9:30 am**

**Virtual Hearing via Zoom**

Good afternoon. Thank you, Councilmember Allen and members of the Committee on Judiciary and Public Safety, for holding this roundtable. My name is Emily Gunston. I serve as Deputy Attorney General for Legislative Affairs and Policy at the Office of the Attorney General for the District of Columbia (OAG). I am proud to represent OAG and Attorney General Karl Racine and to testify before you on Local Control of Parole in the District of Columbia.

Because the District has been denied statehood, many aspects of our criminal justice system are controlled by the federal government. This includes our system of parole. Currently, the United States Parole Commission (USPC) makes all decisions about whether someone will be granted parole, whether his or her parole will be revoked, and ultimately, the amount of time he or she is incarcerated for a parole-eligible offense. These consequential sentencing determinations have been entirely divorced from the values espoused by District of Columbia residents. Too many DC residents, mostly Black, have been incarcerated, and reincarcerated, for far too long, without any public safety justification. It is time to return parole decision making to the District of Columbia.

The question, of course, is what form the District's parole sentencing system should take. Two competing models have emerged: First, the creation of a new District agency to make all parole release and revocation decisions and second, the transfer of these functions to judges in the District of Columbia Superior Court. In making this important choice—one that will have enormous consequence for the hundreds of people who are parole-eligible but still incarcerated; the hundreds more who risk reincarceration for technical violations of their parole; and their families, loved ones, and communities—I urge the Council to be guided by the defining principles of a fair and just parole system and the research and data about which of these two competing systems best matches those principles.

The ideal parole system is substantively and procedurally fair, which is to say transparent, fact-based, and apolitical. First, decisions on whether to grant or deny parole, whether to revoke parole or supervised release, and about the length of any additional incarceration must be made in a setting that is open to the public and accessible to community members, victims, the defendant's family, and media. Second, the decisions should be based on a common, known set of facts, and be grounded in public safety and the treatment and rehabilitative needs of the individual. The person facing continued incarceration or reincarceration should also have access to counsel. Finally, these sentencing decisions must be insulated from the political process.

Research on parole boards demonstrate that it may not be possible to design a parole board that can achieve these goals. The agreed upon failures of the USPC—its failure to provide a fair process; its inclination to err on the side of locking people up; and its lack of transparency—stem partly from the fact that it is a federal agency whose decision making is untethered to the values of the District of Columbia. However, these failures also are endemic to parole boards generally, including the D.C. Board of Parole, which predated the USPC. As part of a nearly 10-year-long review of sentencing nationwide, the American Law Institute (ALI) concluded that parole boards are “failed institutions.”<sup>1</sup> Its extensive research on parole boards found that, as a rule, they lack

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<sup>1</sup> American Law Institute, Model Penal Code: Sentencing, Proposed Final Draft, (approved May 2017), at 148.

transparency; they are ineffective at determining proportionate lengths of sentences; their procedural protections are “unacceptably poor” as compared to those in a court; and they contribute to the growth of the prison population.<sup>2</sup>

There is appeal to the idea that we can study the failures of other parole boards and create a local board that corrects these mistakes, and I share the desire to reassert local control over our criminal justice system where possible. My concern, however, is that it is not possible because these failures are inherent in the structure of parole boards—that even the most thoughtfully designed board simply cannot provide the procedural protections that judges can, and that they are too susceptible to political pressure, pressure that history demonstrates tends to result in more incarceration, not less. That concern is reinforced by the ALI’s finding that no jurisdiction ever has been successful in creating a board that is fair and equitable. In coming to the conclusion that parole boards are failed institutions, the ALI stated that, in its ten years of revising the Model Penal Code, “no one...documented an example in contemporary practice, or from any historical era, of a parole-release system that has performed reasonably well in discharging its goals....”<sup>3</sup>

Judges, on the other hand, are accustomed to deploying the principles of substantive and procedural fairness to reach decisions and engaging in the fact-finding and balancing of needs involved in sentencing, insulated from the political pressures that beset parole boards. Indeed, since the passage of the Incarceration Reduction Amendment Act and the District’s compassionate release law, Superior Court judges have adjudicated the reduction of sentences based on factors identified by the Council, resulting in more equitable outcomes that reflect the District’s values.

Local control is important. And we should fight to achieve it. But, if the answer is that only judges can do this fairly, we should not create an inadequate and unfair system in the name of local control. Rather, we should do what is right for the people most impacted by this decision and continue our fight for statehood. Of course, if the Council, after considering this research and gathering the community input at this roundtable, determines that a local board can be effective and is in the best interests of the District, OAG will work to ensure it is successful. As always, we are ready to help. I thank you for your ongoing efforts to localize the functions of the USPC. I look forward to working with you as we envision a more equitable and transparent system for the District of Columbia.

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<sup>2</sup> *Id.* at 147-148.

<sup>3</sup> *Id.* At 148.