



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS



DC PRISONERS: Issues for the Obama Administration

PREPARED BY THE DC PRISONER'S PROJECT - WASHINGTON LAWYERS' COMMITTEE

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From its earliest days, the Washington Lawyers' Committee (WLC) has recognized that African-Americans and people of color are disproportionately involved in the criminal justice system, and suffer the brutal effects of that involvement. From the early 1970s, the WLC has addressed a broad range of prisoner reentry issues, including development of legislation permitting ex-felons to vote, removing professional licensing restrictions that hindered the ability of ex-offenders to earn a living, and successfully challenging zoning restrictions that threatened the closing of halfway houses in the District.

While paying attention to the needs of formerly incarcerated people, the WLC also focused on the conditions of confinement and the due process rights of prisoners held at the Lorton Prison Complex, DC's "state" prison. In the 1970s and 1980s, the WLC brought a series of damages actions in efforts to improve conditions at Lorton. In particular, the WLC brought wrongful death suits on behalf of families of inmates killed by deficient medical care and of inmates murdered in the unsafe and inadequately-staffed Lorton facilities. In response to the imposition of harsh disciplinary sanctions, the WLC engaged in litigation and ultimately legislative advocacy that resulted in the DC Council's 1983 adoption of disciplinary hearing procedures developed by the WLC.

Following in the footsteps of the WLC's early prisoners' rights advocacy work, the DC Prisoners' Legal Services Project, an independent organization, was founded in 1989, and took up many of the issues previously advocated by the WLC. Throughout the 1990s, the Project engaged in broad-based class action litigation, improving medical and mental health services, reducing overcrowding, and improving overall conditions at Lorton and in the DC Jail. In 1997, when the US Congress passed the DC Revitalization Act closing Lorton, the Project's mission expanded to address the needs of DC prisoners now housed in as many as 99 different Federal Bureau of Prisons (BOP) facilities across the country.

In a transition designed to better address the needs of DC prisoners, the Project merged into the Washington Lawyers' Committee for Civil Rights & Urban Affairs (WLC) in October 2006, creating the DC Prisoners' Project. The DC Prisoners' Project's work utilizes litigation, non-litigation advocacy, and public policy advocacy to achieve its goals. These goals include securing access to health care, redress for injuries resulting from violence and sexual assault while incarcerated, and protection of basic human rights for prisoners.

The 1997 DC Revitalization Act, in addition to closing Lorton, also transformed the District's parole system, creating the Court Services and Offender Supervision Agency (CSOSA) for parole supervision and replacing the DC Board of Parole with the US Parole Commission (USPC). The Project is involved in a broad range of issues affecting DC prisoners and formerly incarcerated DC residents affected by these changes, including litigation on conditions of confinement issues, providing representation for prisoners seeking release on parole, and addressing legal needs related to reentry.

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 DC Revitalization Act in 1997 at a time when the District of Columbia government was nearly bankrupt, and effectively managed by the DC 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 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.
- The legislation required that one-half of DC prisoners be sent to privately-owned prisons within the BOP. This requirement was subsequently superseded by later legislation. 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 US 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, yet it is not accountable to any DC government agency nor is it subject to oversight by any federal agency.
- 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[©]).
- 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.

Re-Thinking the DC Revitalization Act

More than a decade after the enactment of the DC Revitalization Act, we have learned a great deal about what has worked and what has been disastrous for DC prisoners and parolees, and for self-governance in the nation's capital. On the occasion of a new Presidential Administration, the DC Prisoners' Project of the Washington Lawyers' proposes that the Obama Administration, in collaboration with the private bar, advocates, and formerly incarcerated people, take a fresh look at some of the issues described below.

1 Transfer of DC Prisoners to the Federal Bureau of Prisons

By January 2001, all DC prisoners had been moved out of the Lorton Prison Complex and moved to the federal BOP. Under current law, once convicted of a felony and sentenced to a prison term, the prisoners are legally within the custody of the BOP. The BOP even pays the District to house these prisoners in DC jail facilities while they await 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.

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. This MOU was consistent with existing BOP policy, which attempts to keep 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, nearly five percent the BOP population. For 7,000 DC prisoners, the 500-mile radius is a geographic area that reaches from Indiana and Kentucky on the West, Georgia on the South and New York on the North. Despite this aspirational goal, hundreds of DC prisoners are housed beyond this range, including facilities in California, Florida, Texas, Arizona, and Colorado. Even more notably, many DC juveniles (adjudicated as adults) are held in North Dakota.

Maintaining family and other community ties is extremely difficult for DC prisoners under these circumstances. Families are unable to visit except in the rarest of circumstances. Exorbitant telephone rates and restrictive rules make even telephone communications difficult, and expensive. Criminal justice experts agree that maintaining family and community ties is essential to successful community reintegration of ex-offenders.

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 dozens of different BOP facilities, discharge planning efforts are 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. Some facilities have initiated scattered efforts to develop partnerships with potential employers and housing providers in DC after release from prison, but these are generally ineffective.

More than 2,000 people return to DC from the BOP every year. Most ex-offenders return to DC without employment or housing opportunities. Fewer than half are sent to halfway houses prior to their release, and fewer still have realistic hopes of independent housing, resulting in hundreds of ex-offenders released every year to unemployment and homelessness. Unsurprisingly, formerly incarcerated individuals represent the single largest group of homeless DC residents.

Recommendations

The BOP must 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.

- A. 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. Except in the most extraordinary circumstances, no DC prisoner should be held more than 250 miles away from home.
- B. 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 (many in 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.
- C. 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. With a more significant population of DC prisoners in these facilities, it would be worthwhile for potential employers and service providers to set up training and job placement programs to facilitate their successful reintegration into the DC community.
- D. To the extent feasible, DC prisoners should have access to halfway house placement a full six months prior to their release, particularly those who have served lengthy sentences. 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.
- E. 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 must immediately rule on the Wright petition and provide appropriate relief.

2 The Corrections Information Council (CIC)

The CIC was created under the DC Revitalization Act in an effort to provide a mechanism for the District to advise the BOP about issues affecting DC prisoners as they arise. This an important, if minimal, role for the sentencing jurisdiction to maintain. Although the first CIC members were appointed in 2002, they were unable to successfully negotiate an agreement with the BOP regarding access to federal facilities, and never visited a single BOP facility. As a result, the CIC has never played the role intended by the Revitalization Act, specifically: “to report to the Director of the Bureau of Prisons with advice and information regarding matters affecting the District of Columbia sentenced felon population.”

The DC Council expanded the role of the CIC within the District of Columbia Jail Improvement Amendment Act of 2003, mandating that the CIC have full access to local jail facilities (the Central Detention Facility, or “DC Jail” and the Correctional Treatment Facility), be permitted unmonitored interviews with inmates, perform inspections of all inmate-accessible areas, and receive a full range of reports from the DC Department of Corrections (DCDC). The CIC also receives an annual appropriation to support its activities.

However, since 2006, when the terms of its members expired, DC has failed to name any members to the CIC. In part, the failure to name new CIC members reflects the refusal of federal officials to allow CIC members a meaningful role in advocating for the needs of DC prisoners in the BOP.

Recommendations

- A. The DC Council and the Mayor must immediately name members to the three-member CIC. It should also take appropriate steps to hire professional staff to support the important work of the volunteer CIC membership
- B. With the intervention of US Attorney General, the BOP must be compelled to initiate meaningful negotiations with representatives of the DC government and the CIC to facilitate full access to BOP facilities and to DC prisoners held in those facilities.
- C. The CIC should have access to all investigative reports and receive prompt notification when DC prisoners are seriously injured, murdered, or die of medical causes while housed in BOP facilities. The CIC should serve as a resource for family members of prisoners to gain information about any incidents involving their loved ones.

3 DC prisoners sent to privately-owned prisons within the BOP

The Revitalization Act's mandate that 50 percent of DC prisoners be housed in privately-owned prisons (since repealed) led to the opening of the Rivers Correctional Institution in Winton, North Carolina by the Wackenhut Corporation (now The GEO Group) in 2001. That facility houses 1300 federal prisoners, including nearly 900 DC prisoners.

Since the first months after the facility was opened, the DC Prisoners' Project has received an onslaught of complaints about inadequate medical care and security issues. Medical treatment for this population of 1300 men is provided by one doctor, along with a small nursing staff. As is the case in other private prisons and in public prisons with privately-run medical services, complaints about medical care – and litigation – are rampant. A class action suit filed on behalf of all prisoners at Rivers was filed in June 2007.

Recommendations

- A. The BOP must ensure that all privately-owned prisons, in particular the Rivers Correctional Institution, 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.
- B. Private prisons under contract to the BOP must comply with the same Freedom of Information Act rules governing the release of medical and institutional records.
- C. Private prisons under contract to the BOP must have comparable internal grievance procedures as BOP facilities, including the ability to appeal adverse decisions to the BOP.
- D. The BOP should take steps to immediately investigate and resolve the issues raised in the Collins v. GEO Group litigation, and improve and expand medical services provided there.

4 Eliminated the DC Board of Parole in 1998, its functions taken over by the federal US Parole Commission (USPC), and created the Court Services and Offender Supervision Agency (CSOSA).

In addition to federalizing DC prisoners generally, the legislation also federalized life after prison for DC offenders. The Revitalization Act dismantled the DC Board of Parole which, until that time, had responsibility for making parole grant decisions and supervising individuals released on parole. The Parole Board also had the authority to revoke parole and send a parolee back to prison.

In 1998, the functions of the DC Board of Parole were split, with the US Parole Commission (USPC, part of the Justice Department) taking responsibility for parole grant and parole revocation decisions. This federal agency had lost most of its responsibilities with the elimination of federal parole in 1986, but was reinvigorated with the addition of more than 5,000 DC prisoners with parole-eligible sentences and thousands more on parole and subject to parole revocation by the USPC. In 2008, in response to a challenge by seven DC prisoners denied parole by the USPC, a federal court ruled that the USPC had been using the wrong standards in assessing parole eligibility. Thousands of DC prisoners had likely been illegally denied parole by USPC, and most remain incarcerated.

Congress delegated responsibility for parole supervision, including day-to-day community monitoring of parolees, to the Court Services and Offender Supervision Agency (CSOSA), an independent federal agency. CSOSA is subject to virtually no federal oversight beyond an annual appropriation hearing. It is not required to report to any DC agency, nor to the DC Council or Mayor. It has authority, in collaboration with the USPC, to sanction parolees (and those on supervised release) with ever-more restrictive supervision requirements (additional meetings with parole officers and urine testing, GPS monitoring, etc.) and can recommend parole revocation for violations of its rules. There are no due process protections within the sanctions scheme, except when revocation is pending.

CSOSA is the largest agency in DC addressing the needs of formerly incarcerated individuals, yet its policies and procedures, its sanctioning practices, and its public policy decisions are all beyond the reach of local government. CSOSA can secure the arrest and long-term incarceration of ex-offenders, for example, without any legal basis rooted in DC law.

Recommendations

- A. 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.
- B. CSOSA must develop and implement meaningful due process protections for individuals under its supervision who are subjected to myriad restrictions on their liberty beyond those articulated in parole documents.
- C. The USPC must immediately revise its policies and regulations regarding parole grant decisions for DC prisoners that are consistent with the 2008 *Sellmon v. Reilly* decision. All parole grant decisions affecting parole-eligible prisoners should be adjudicated according to DC Board of Parole rules and guidelines in place at the time of their convictions.
- D. The USPC must strengthen due process protections in parole revocation procedures, including provisions for judicial review of parole revocation decisions resulting in imprisonment.
- E. In consultation with DC government officials and advocates, the responsibilities of the USPC over DC prisoners should be transitioned to local authorities rather than a federal agency.

5 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)).

When the Revitalization Act was passed in 1997, the US Congress directly passed into the DC Code the statute cited here, requiring the “concurrence” of the US Justice Department for any changes in local law affecting parole. This statute is arguably unconstitutional, and certainly violates the concept of home rule. The DC government should have the ability to alter an 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.

Recommendation

- A. The Justice Department should support the DC Council’s repeal of DC Code §24-131(c).

The DC Prisoners' Project of the Washington Lawyers' Committee for Civil Rights & Urban Affairs advocates for the humane treatment and dignity of all persons convicted or charged with a criminal offense under DC law housed in prisons, jails, or in the community; to assist their family members with prison-related issues; and to promote progressive criminal justice reform. Since 2008, the Project has also taken on responsibility for protecting the rights of DC prisoners to fair parole hearings.

The Project is the only legal organization with a mission of advocating for the interests of over 8,000 DC prisoners currently held in 99 different federal Bureau of Prisons (BOP) facilities across the country, in addition to more than 3,500 held in the DC Jail and the Correctional Treatment Facility, and as many as 10,000 on parole and supervised release.

To contact the DC Prisoners' Project:

Philip Fornaci
Director, DC Prisoners' Project
(202) 319-1000
philip_fornaci@washlaw.org

Washington Lawyers' Committee
for Civil Rights & Urban Affairs
11 Dupont Circle, NW, Suite 400
Washington, DC 20036
www.washlaw.org



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