



ACLU OF THE DISTRICT OF COLUMBIA
P.O. BOX 11637
WASHINGTON, DC 20008
(202) 457-0800
WWW.ACLU DC.ORG

**Statement on behalf of the
American Civil Liberties Union of the District of Columbia
before the
DC Council Committee on Judiciary and Public Safety
Public Hearing on Bill 22-451, the “Youth Rehabilitation Amendment Act of 2017”
Thursday, October 26, 2017**

by
Monica Hopkins-Maxwell, Executive Director

Good afternoon, Councilmember Allen and members of the Committee. My name is Monica Hopkins-Maxwell and I am the Executive Director of the American Civil Liberties Union of the District of Columbia (ACLU-DC). I present the following testimony on behalf of our more than 20,000 members in the District of Columbia.

The ACLU-DC is committed to working to reverse the tide of over-incarceration, safeguard fundamental liberties, eliminate racial disparities, and advocate for sensible, evidence-based reforms of criminal justice policies.

First, I’d like to thank Councilmember Allen and Committee staff for making the effort to get stakeholder input to inform the proposed changes to the District’s Youth Rehabilitation Act, both through the public roundtable held last winter and through the two working group sessions this past summer. Today, I’d like to testify in support of Bill B22-451, “the Youth Rehabilitation Amendment Act of 2017” and to offer suggestions for changes that would further strengthen the bill in meeting the goals of successful rehabilitation and reintegration for young offenders in the District.

I. Background

The main benefit of the Youth Rehabilitation Act of 1986 (the “YRA”) is to provide young adult offenders under age 22 the opportunity to have their convictions “set aside” if they successfully comply with all conditions of their release, and to provide courts with more sentencing options that go below mandatory minimums for certain crimes. The conviction “set aside” offered by the Youth Act is pivotal in affording young adults who have served their time the opportunity to successfully reintegrate into society and overcome the barriers that often contribute to recidivism, including difficulty in accessing housing and employment.

II. There are several provisions in Bill 22-451 that we feel would strengthen the YRA and will benefit DC residents:

First, the ACLU-DC supports the provision in this bill that moves the decision to set aside a conviction from initial sentencing to after sentence completion. The Criminal Justice

Coordinating Council's (CJCC) comprehensive analysis of the YRA revealed that currently, only about 7% of all criminal cases in the District are eligible for YRA sentencing, and only about half of those get sentenced under the YRA, allowing a very small percentage of young offenders to potentially set aside their conviction after they have fully completed their sentences.¹ Their report also found that recidivism rates do not increase among young adults who are similarly situated, yet sentenced under different guidelines.²

Moving the decision to set aside a conviction until after sentence completion has the potential to expand the pool of those eligible to earn the benefit of the YRA set aside, and does not put judges in the uncomfortable position of having to predict who will be successful in completing their sentence. We support this approach as one that would allow more youth offenders to unburden themselves of the collateral consequences that prevent them from acquiring gainful employment, access to services, and access to education, and thereby increasing their risk of recidivism.

This change in when the YRA determination is made can also empower a greater number of youth offenders to successfully complete their sentences with the knowledge that there is the potential for a set aside at the end of their term. We do have recommendations for process in how youth offenders will access this benefit that I will address later in my testimony.

The ACLU-DC also supports the requirement in the bill that the Mayor develop a strategic plan for providing developmentally appropriate facilities and services for youth offenders to aid in rehabilitation. One reason the YRA hasn't worked as intended is that there is guarantee of targeted rehabilitative services for youth sentenced under the Act. Too often, the criminal justice system is used as a way to disenfranchise, isolate, and punish individuals with little to no emphasis on rehabilitation. Young people sentenced to felonies get sent to prisons all over the country and receive little to no rehabilitation in facilities that often don't have the services they need, and make it impossible for them to maintain relationships with their families and ties to their community. While keeping our young adults closer to home may be a longer-term goal, ensuring that we are providing developmentally appropriate services to those who are in our custody right now is key. Requiring a strategic plan is a great first step in addressing the educational, health, workforce development, and other needs of this specific population. To create effective, developmentally appropriate programming, we recommend that the Mayor and Council include input from impacted communities into the strategic plan.

We are concerned with the timeframe for completion of this plan, which is currently set for January 1, 2019, meaning that no resources wouldn't be available to implement services for at least another two years, and no youth offenders would receive the supports necessary to aid their

¹ The District's Youth Rehabilitation Act: An Analysis, of the 70,000+ cases handled in DC Superior Court between 2010 – 2012, only about 5,000 were eligible to for the YRA. Report available at https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf

² The District's Youth Rehabilitation Act: An Analysis. The metric dispels the notion that YRA recipients are more likely to recommit a new offense. Report available at https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf

rehabilitation and successful reintegration in that time period. We recommend that the strategic plan be completed in time for monies to be budgeted for its implementation in the FY19 budget.

Additionally, we support the provision to base eligibility for the YRA set aside on the age of the youth offender at the time of the offense, rather than at the time of sentencing. Basing eligibility on the age of offenders at sentencing has had no recognizable public safety benefit to the community, serves to arbitrarily limit an individual's access to a set aside, and encourages bad plea deals for those who are afraid to age out of eligibility by the time of their sentencing.

And finally, we are pleased to see a requirement for regular data collection and analysis to promote accountability and transparency, and ensure that the policy reforms put in place have the desired effect.

III. The ACLU-DC recommends the following changes to Bill 22-451 to make the YRA more effective:

Bill 22-451 narrows the definition of who qualifies for the benefits of the YRA and excludes more offenses than the original law. We strongly disagree with this approach.³

We believe discretion as to who should be granted the benefit of the YRA should be left to judges, who are both capable and best positioned to make these determinations, rather than having blanket restrictions that could have unanticipated consequences.

The proposed legislation already requires judges to consider 12 common factors when deciding whether an individual qualifies for the YRA, and as the CJCC report highlights, it is very difficult to predict whether any given young adult has the potential for rehabilitation.⁴ Judges are the best positioned to take into account the full circumstances and history of the person before them and determine whether they would derive benefits from the rehabilitative services offered by the YRA, and after successful completion of a sentence, by the set aside.

Furthermore, the CJCC report found that there actually exists a strong relationship between a young adult's conviction being set aside and improved public safety outcomes.⁵ Further narrowing the crimes that are YRA eligible would work against public safety by arbitrarily excluding young offenders who may very well successfully rehabilitate and complete their sentences but not receive the benefits of the set aside, potentially increasing their risk for recidivism.

To ensure that individuals can access the benefits of this bill, we recommend the bill include additional language clarifying the process for obtaining a set aside and that this

³ The bill excludes "first degree sexual abuse, first degree child sexual abuse, and second degree sexual abuse" from eligible crimes for YRA consideration.

⁴ The District's Youth Rehabilitation Act: An Analysis, available at https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf

⁵ The District's Youth Rehabilitation Act: An Analysis, report shows that there were significantly lower re-arrest and reconviction rates for person who were successfully set aside under the YRA. Available at https://cjcc.dc.gov/sites/default/files/dc/sites/cjcc/page_content/attachments/District%27s%20YRA-An%20Analysis.pdf

language include a right to counsel for young offenders seeking this relief. One thing that the current YRA system is sorely lacking is clear standards and process that make clear what someone has to go through to receive the benefits of the law. We think a clear process for those seeking relief should be clarified, and we also would also suggest adding a right to counsel to assist young offenders in navigating the process of obtaining a set aside. Additionally, we would want to ensure that there is no strict time limit imposed upon those who have served their sentence and are seeking a set aside.

We also recommend expanding the age of eligibility for a YRA set aside to 25 years old. As we have testified before, 22 is an arbitrary cut-off for this benefit. Two decades of scientific research have demonstrated that brain development continues into a person’s mid-20s, and that youth has a particular impact on impulse control, resistance to peer pressure, planning, and thinking ahead. Young people who commit serious, even violent, offenses are not on the whole likely to participate in future crimes as they age into their mid-20s, and allowing those up to the age of 25 to be eligible for the set aside would help a larger number of young offenders successfully reintegrate.⁶

Finally, we suggest that Bill 22-451 include language to make it apply retroactively. Retroactively extending YRA benefits to other youth offenders would allow them new opportunities in their quest for education, housing, gainful employment, and services. Removing the barriers that a criminal conviction creates to accessing these resources would reduce recidivism rates and substantially improve public safety in the District.

IV. Conclusion

With incorporation of the recommendations we’ve outlined above, Bill 22-451 represents a step in the right direction in how we address the rehabilitation and reintegration needs of young DC offenders, recognizing the significant role that age and race⁷ can play in landing them in prison as well as their ability to grow and be contributing members of the community given the opportunity.

But successfully addressing crime and public safety in the District will also require significant prevention and intervention efforts to reduce the risk of our youth ever entering the system. We

⁶ACLU Report: How Parole Systems Fail Youth Facing Extreme Sentences, available at <https://www.aclu.org/report/report-false-hope-how-parole-systems-fail-youth-serving-extreme-sentences> Three USSC cases within the last decade acknowledging that young people grow and change—Roper v. Simmons (eliminating the death penalty for juveniles), Graham v. Florida (prohibiting life without parole for juveniles who commit non-homicide crimes), Millev. Alabama (banning life without parole as a mandatory sentence for juveniles)—“rested not only on common sense—on what ‘any parent knows’—but on science and social science as well.”

⁷ Racial disparities in both policing and sentencing make vulnerable communities subject to harsher sentences for similar crimes. For example, sentences imposed on black males in the federal system are nearly 20 percent longer than those imposed on white males convicted of similar crimes and with comparable criminal histories, and Black and Latino offenders sentenced in both state and federal courts face significantly greater odds of incarceration than similarly situated white offenders, available at <http://www.ussc.gov/research/congressional-reports/2012-report-congress-continuing-impact-united-states-v-booker-federal-sentencing>

must take a comprehensive public health approach that removes policing from the center of our public safety discussions and addresses the root causes of crime, including the under-resourcing of communities that lack access to basic needs and often face high rates of trauma and crime themselves.

We look forward to working with the Council and our community partners to improve public safety and make positive criminal justice reform through evidence-based solutions that prioritize public health interventions. Thank you.