



**FWD.us Written Testimony on B25-0291, The Safer Stronger DC Amendment Act of 2023
Committee on the Judiciary and Public Safety Public Hearing
July 3, 2023**

FWD.us is a bipartisan political organization that works to address the harms caused by our immigration and criminal justice systems. FWD.us was founded by leaders in the technology and business communities and believes that America's families, communities, and economy thrive when more individuals are able to achieve their full potential.

This written testimony is submitted by Dawit Getachew, D.C. Director for Criminal Justice Reform at FWD.us, to the Committee on the Judiciary and Public Safety of the D.C. Council following the hearing on June 27, 2023 on the Safer Stronger Amendment Act of 2023 (SSDC). Mr. Getachew, who lives in Ward 8, provided oral testimony at the hearing and this written testimony expands on the position of FWD.us.

FWD.us strongly opposes the SSDC because of decades of research showing that unnecessary pretrial detention and longer prison sentences increase taxpayer spending, hurt families and communities, and provide no public safety benefits. The SSDC moves the District's criminal justice system in the wrong direction and will make it harder for the D.C. Council to invest in evidence-based public safety solutions that would be more effective.

Specifically, we oppose the policy changes in the SSDC that would dramatically increase incarceration without making D.C. residents, or the communities hardest hit by mass incarceration and violent crime, any safer. The most harmful of the proposed policies are the changes that would:

1. Significantly increase pretrial detention for youth and adults;
2. Create new mandatory minimums and sentencing enhancements that undermine judicial discretion; and
3. Roll back D.C.'s successful Second Look law

D.C. leaders cannot afford to return to failed policies that created the current mass incarceration crisis. Instead, it's critical to support policies that do not increase incarceration and advance long term public safety in the District.

The Problem of Mass Incarceration in the District

Although the District has made strides in reducing its bloated prison and jail populations, nearly 4,000 D.C. residents are incarcerated in its jails and in federal prisons.¹ The District's incarceration rate of 590 people per 100,000 residents remains above the national average. The racial disparities in the District's criminal justice system also remain stubbornly high. Black residents are 21 times more likely to be imprisoned than white residents and 17 times more likely to be incarcerated in jail.²

These statistics and their corresponding harm are not lost on District voters, who strongly prefer investments in social services and treatment in the community to more incarceration. According to polling conducted by HIT Strategies in 2022, 81 percent of D.C. voters believe it is important to reduce the jail and prison population in the District, including 87% of Black voters.³ Likely voters are also nearly twice as likely to say that hiring more social workers, funding vocational and job training, and funding treatment programs would make them feel "much safer" compared to sending more people to jail or prison.⁴

Any policy changes that would further increase incarceration or exacerbate racial disparities in the District would therefore only worsen the District's already high incarceration rate and stand in stark contrast to voters' preference for real public safety solutions.

Increasing Incarceration Will Not Increase Public Safety

Decades of research and evidence show that doubling down on more criminalization and incarceration will not advance public safety. To the contrary, incarceration actually increases the likelihood that people will be reincarcerated and directly contributes to the destabilization of communities, without improving public safety.⁵

A recent meta analysis that reviewed every study published comparing outcomes for people who received incarceration sanctions (jail or prison) to those who received non-incarceration sanctions such as probation found that putting people in jail or prison either has no impact on

¹ D.C. Corrections Information Council, "CIC Bulletin" https://cic.dc.gov/sites/default/files/dc/sites/cic/release_content/attachments/CIC%20Bulletin%20-%20June%202023.pdf

² FWD.us analysis of D.C. Residents in Federal Bureau of Prisons Custody at the end of August 2022, available via the District of Columbia Justice Statistical Analysis Tool (DC JSAT) at <https://www.dcjsat.net/FBOP.html>, and Washington, D.C. population estimates from the U.S. Census Bureau, July 2022. Analysis was limited to individuals in secure institutions and does not account for D.C. residents in residential reentry confinement.

³ HIT Strategies. "District Voters Overwhelmingly Support Revised Criminal Code Act." April 2022. Available:

<https://hitstrat.com/wp-content/uploads/2022/06/DC-Justice-Lab-Memo-District-Voters-Support-RCCA.pdf>

⁴ Ibid.

⁵ Charles E. Loeffler¹ and Daniel S. Nagin. "The Impact of Incarceration on Recidivism." Annual Review of Criminology. January 2022. Available: <https://www.annualreviews.org/doi/10.1146/annurev-criminol-030920-112506>

their likelihood of reoffending or makes them more likely to commit another crime.⁶ On average, across all of the studies, they found that putting someone in jail or prison made them eight percentage points more likely to recidivate in the future.⁷

That is one of the reasons why 37 states were able to reduce their imprisonment rate and their crime rate simultaneously between 2009 and 2019.⁸ In fact, crime fell faster in the states that reduced their imprisonment rate than in states that did not. Indeed, D.C. also experienced declines in both its incarceration rate and crime rate during this period. This shows that public safety and a fairer, smaller criminal justice system are not in conflict and are actually two sides of the same coin.

Since incarceration is one of the least effective and most expensive approaches to crime prevention, increasing incarceration undermines taxpayer investments in real public safety solutions and unnecessarily harms already disadvantaged communities. These effects have multi-generational negative impacts for the communities that are disproportionately harmed, especially Black communities. This harm extends beyond the people who are incarcerated, and their children and other family members also experience reduced financial stability, housing security, educational achievement, and physical and mental health outcomes.⁹

Increasing Pretrial Incarceration Hurts Families and Will Not Reduce Crime

The proposal to increase pretrial detention for youth and adults would have a devastating consequence for families and unravel the progress that the District has made over the years in reducing the number of people held in jail while awaiting trial. Pretrial releases are not connected to any increase in crime. In the last fiscal year, 93% of people who were released pretrial in D.C. were not rearrested in the District for any offense while awaiting trial. Only 1% of those released pretrial were re-arrested for a violent crime.¹⁰

⁶ Damon M. Petrich, Travis C. Pratt, Cheryl Lero Jonson, and Francis T. Cullen, "Custodial Sanctions and Reoffending: A Meta-Analytic Review," *Crime and Justice*, volume 50, 2021. Available: <https://www.journals.uchicago.edu/doi/pdf/10.1086/715100>

⁷ Ibid.

⁸ FWD.us. "Advancing Public Safety and Moving Justice Forward." Fall 2022. Available: <https://www.fwd.us/wp-content/uploads/2022/09/Advancing-Public-Safety.pdf>

⁹ Brennan Center for Justice. "Conviction, Imprisonment, and Lost Earnings: How Involvement with the Criminal Justice System Deepens Inequality." September 2020. Available: <https://www.brennancenter.org/our-work/research-reports/conviction-imprisonment-and-lost-earnings-how-involvement-criminal>;

Prison Policy Initiative. "Incarceration Shortens Life Expectancy." June 2017. Available: https://www.prisonpolicy.org/blog/2017/06/26/life_expectancy/;

Ella Baker Center. "Who Pays? The True Cost of Incarceration on Families." September 2015. Available: <https://ellabakercenter.org/who-pays-the-true-cost-of-incarceration-on-families/>;

Sundaresh, R., Yi, Y., Harvey, T. "Exposure to Family Member Incarceration and Adult Well-being in the United States," *JAMA Network*, May 2021, <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2780438>

¹⁰ Court Services and Offender Supervision Agency for the District of Columbia, "FY 2022 Agency Financial Report," Available:

<https://www.psa.gov/sites/default/files/FY%202022%20Agency%20Financial%20Report.pdf>

Research shows that even short term incarceration can have far-reaching consequences, including loss of employment and housing, that cause families significant economic and social hardship. Overwhelming evidence makes clear that the proposed change would hurt public safety: holding people in pretrial detention (youth or adults) has been shown to increase, rather than decrease, the likelihood that a person is rearrested again.¹¹

Similarly, expanding pretrial detention of children is not an effective public safety intervention. It goes against the goal of the youth justice system to rehabilitate and flies in the face of research showing incarceration leads to worse outcomes and increased risk of recidivism for kids.¹²

The bill significantly broadens the scope and purpose of D.C.'s detention law enabling courts to detain children pre-adjudication for the purported purpose of protecting “the person or property of others or *of the child* from significant harm.” However, data shows that incarceration will serve no such purpose. Additionally, children accused of committing a range of offenses would also be subject to a presumption of detention.

The notion of incarcerating children for their own safety is fundamentally flawed. Youth detention centers, which are primarily designed to isolate and punish, are inherently ill equipped to foster the nurturing and supportive environment that is crucial for healthy child development. Numerous studies have shown that confining children in secure detention facilities exposes children to physical and emotional harm that undermines a child’s wellbeing and would actually increase the likelihood of recidivism.¹³

New Mandatory Minimum Penalties and Arbitrary Sentence Enhancements will not Improve Public Safety

The SSDC will also increase the number of people who will be sentenced to prison and the length of time they will be imprisoned, despite evidence that clearly shows that long sentences do not improve public safety.

Importantly, provisions that include mandatory minimum sentences and other enhancements to the District’s already long sentences echo failed policies that were key drivers of mass incarceration in the District. These punitive policies have resulted in significant racial disparities in the criminal justice system and Black D.C. residents have borne the brunt of these harsh sentencing laws. The high rates of incarceration has had a domino effect leading to cycles of poverty, disenfranchisement and inequities that continues to impact communities even today.

¹¹ Charles E. Loeffler and Daniel S. Nagin, “The Impact of Incarceration on Recidivism,” Annual Review of Criminology 2022 5:1, 133-152.

<https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-030920-112506>

¹² Petrich et al 2021.

¹³ The Sentencing Project, “Why Youth Incarceration Fails: An Updated Review of the Evidence,” March 1, 2023

<https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/>

Indeed, the D.C. Council recognized the harmful and disproportionate impact of mandatory minimums on Black Washingtonians as outlined in its racial equity impact assessment (REIA) during consideration of the Revised Criminal Code Amendment Act (RCCA) last year.¹⁴ The REIA noted that the “elimination of all mandatory minimum sentences will empower and protect the rights of crime victims in the District, who are disproportionately Black.”¹⁵

Today there is a bipartisan understanding that mandatory minimums are a wasteful, one-size-fits-all approach that undermines judicial discretion and worsens racial disparities. Mandatory minimum sentences constrain judges, removing their ability to consider the individual circumstance of each case and individual. Mandatory minimums undermine the principle of fair and proportionate punishment and judicial discretion. States across the country, including conservative states like Louisiana and Mississippi, are rolling back or rejecting mandatory minimums. and it is regressive for D.C. to even consider adding new ones.

The proposals compound on the problems underlying the District’s antiquated code by adding new penalties instead of comprehensively revising our current sentencing laws.

Rolling Back IRAA Would Undermine Public Safety

Third, the proposed changes to the District’s Incarceration Reduction Amendment Act (IRAA) would undo a successful policy that has given more than 100 people a meaningful second chance to return to their communities, without compromising public safety.

The proposed change to IRAA purports to give judges more flexibility whether sentences should be modified but overlooks the fact that the existing law already offers broad discretion. After people have served at least 15 years, IRAA allows courts to alter a sentence upon finding that a petitioner wouldn’t be a danger to others and that resentencing the individual would be in the interests of justice.¹⁶ The bill also aims to more heavily weigh the nature of the crime in the judge’s consideration. By amplifying the weight of the original offense—a factor that individuals cannot change—it would inevitably overshadow personal growth and rehabilitation demonstrated by individuals, factors that are far more relevant to a person’s ability to successfully return to their communities without compromising public safety.

This successful law has led to over a hundred people successfully reintegrating back in their communities. Individuals who have been released under IRAA have remarkably low recidivism rates, underscoring the law’s success in reducing incarceration and giving people a second chance. People who have been released under IRAA have been able to rebuild their lives and reconnect with their families. Many have become active leaders contributing to their

¹⁴ Council Office of Racial Equity, “Bill 24-0416 - Racial Equity Impact Assessment Revised Criminal Code Act of 2022,” October, 2022. Available: <https://lms.dccouncil.gov/downloads/LIMS/47954/Other/B24-0416-REIA - Bill 24-0416 - Revised Criminal Code Act of 2022.pdf?Id=148223>

¹⁵ Ibid.

¹⁶ D.C. Code §24-403.03

communities, including as credible messengers, and spearheading initiatives to reduce gun violence and promote peace across the city.¹⁷

D.C. Leaders Cannot Afford to Return to Failed Policies

In this moment, where our city has seen a troubling increase in gun violence and some serious offenses, it is critical for elected officials not to revert to failed policies that will only deepen harm to our communities. Instead, this moment must be met with data-driven solutions like the RCCA and investments in public health, infrastructure, and public safety.

By relying on more criminalization and incarceration instead of true public safety solutions, these proposals fall short of offering tangible public safety improvements for D.C residents and overshadow what's needed to build safe communities. We urge the Council to reject this bill and advance evidence-based policies that will reduce incarceration and make our communities safer.

¹⁷ Will Lennon, Bolts, "Waiting for Second Look," March 17, 2022 Available: <https://boltsmag.org/waiting-for-a-second-look/>