AN ACT

D.C. ACT 22-451

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

SEPTEMBER 6, 2018

To amend the National Capital Revitalization and Self-Government Improvement Act of 1997 to require the Corrections Information Council to submit an annual report on the conditions of confinement and programming provided to District of Columbia youth offenders in the custody of the federal Bureau of Prisons; to amend the Youth Rehabilitation Amendment Act of 1985 to modify the definitions of “committed youth offender”, “treatment”, and “youth offender”, to require the Mayor to submit a strategic plan to the Council to provide facilities, treatment, and services to certain youth offenders and persons at risk of becoming youth offenders, to require youth offenders 15 to 24 years of age to perform not fewer than 90 hours of community service as part of probation, to clarify the act’s application to the sentencing of youth offenders convicted of offenses with mandatory-minimum terms, to provide a list of factors to guide the court in making the determination of whether a youth offender should be sentenced under the act or have his or her conviction set aside, to require written statements of judges’ sentencing and set aside decisions, to shift the decision of whether a youth offender’s conviction should be set aside from sentencing to after the completion of the youth offender’s probation or sentence of incarceration, supervised release, or parole, whichever is later, to provide grants to organizations to assist victims of crime and youth offenders in understanding and navigating the act’s sentencing and set aside provisions, to require the Criminal Justice Coordinating Council to conduct a biennial analysis of the act, and to require certain District government agencies to provide the Criminal Justice Coordinating Council with data necessary to conduct the analysis; to establish a Clemency Board to facilitate clemency applications to the President of the United States; and to amend the Office on Ex-Offender Affairs and Commission on Re-Entry and Ex-Offender Affairs Establishment Act of 2006 to establish a pilot program to provide transportation subsidies to returning citizens.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Youth Rehabilitation Amendment Act of 2018”.
TITLE I. YOUTH REHABILITATION AMENDMENT

Sec. 101. Section 11201a(f)(1) of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01(f)(1)), is amended as follows:

(a) Subparagraph (A) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Subparagraph (B) is amended by striking the period and inserting the phrase “; and” in its place.

(c) A new subparagraph (C) is added to read as follows:

“(C) A report on the conditions of confinement of and programming provided to District of Columbia youth offenders, as that term is defined in section 2(6) of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901(6)), in the custody of the Bureau of Prisons.”.

Sec. 102. The Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Official Code § 24-901 et seq.), is amended as follows:

(a) Section 2 (D.C. Official Code § 24-902) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “individual committed” and inserting the phrase “individual sentenced” in its place.

(2) Paragraph (5) is amended to read as follows:

“(5) “Treatment” means guidance for youth offenders designed to improve public safety by facilitating rehabilitation and preventing recidivism.”.

(3) Paragraph (6) is amended to read as follows:

“(6) “Youth offender” means a person 24 years of age or younger at the time that the person committed a crime other than murder, first degree murder that constitutes an act of terrorism, second degree murder that constitutes an act of terrorism, first degree sexual abuse, second degree sexual abuse, and first degree child sexual abuse.”.

(b) Section 3 (D.C. Official Code § 24-902) is amended as follows:

(1) The section heading is amended to read as follows:

“Sec. 3. Facilities, treatment, and services for youth offenders.”.

(2) Subsection (a) is amended to read as follows:

“(a) The Mayor shall provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, and protection of the following youth offenders:

“(1) Those pending trial on charges of having committed misdemeanor or felony offenses under District law; and

“(2) Those convicted of misdemeanor or felony offenses under District law and who are in the District’s care or custody.”.

(3) A new subsection (a-1) is added to read as follows:
“(a-1)(1) By September 30, 2019, the Mayor shall develop and submit to the Council a strategic plan for providing the facilities, treatment, and services for youth offenders required by subsection (a) of this section.

“(2) The strategic plan shall include recommendations for adopting and implementing inter-agency programming by District agencies to address the following:

“(A) The educational, workforce development, behavioral and physical health care, housing, family, and reentry needs of youth offenders before commitment, while in District or federal care or custody, and upon reentry;

“(B) The availability of a continuum of developmentally appropriate, community-based services for youth offenders before commitment, while in District care or custody, and upon reentry;

“(C) Best practices in restorative justice for victims, youth offenders, including for youth offenders convicted of violent offenses, and persons at risk of becoming youth offenders;

“(D) The expansion of diversion programs for persons at risk of becoming youth offenders; and

“(E) Outreach by the District to committed youth offenders in District or federal care or custody to identify needs for services and plan for reentry.

“(3) In developing the strategic plan required by this subsection, the Mayor shall consult with community-based organizations with expertise in juvenile justice issues and justice system-involved young adults 18 through 24 years of age.”.

(4) Subsection (b) is repealed.

(5) Subsection (c) is amended to read as follows:

“(c) The federal Bureau of Prisons is authorized to provide facilities, treatment, and services for the developmentally appropriate care, custody, subsistence, education, workforce training, segregation, and protection of youth offenders convicted of felony offenses under District law and in federal care or custody.”.

(c) Section 4 (D.C. Official Code § 24-903) is amended as follows:

(1) Subsection (a) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “If the court is of the opinion that the youth offender does not need commitment,” and inserting the phrase “If the court determines that a youth offender would be better served by probation instead of confinement,” in its place.

(B) Paragraph (2) is amended to read as follows:

“(2) The court, as part of an order of probation of a youth offender 15 to 24 years of age, shall require the youth offender to perform not fewer than 90 hours of community service for a District government agency, a nonprofit, or a community service organization, unless the court determines that an order of community service would be unreasonable.”.

(C) Paragraph (3) is amended by striking the phrase “Within 120 days of January 31, 1990,” and inserting the phrase “By September 30, 2019,” in its place.
(2) Subsections (b), (c), and (d) are amended to read as follows:

“(b)(1) If the offense for which a youth offender is convicted is punishable by imprisonment under applicable provisions of law other than this subsection, the court may use its discretion in sentencing the youth offender pursuant to this act, up to the maximum penalty of imprisonment otherwise provided by law.

“(2) Notwithstanding any other law, the court may, in its discretion, issue a sentence less than any mandatory-minimum term otherwise required by law.

“(3) The youth offender shall serve the court’s sentence unless released sooner as provided in section 5.

“(c)(1) If the court sentences a youth offender under this act, the court shall make a written statement on the record of the reasons for its determination. Any statement concerning or related to the youth offender’s contacts with the juvenile justice system or child welfare authorities, or medical and mental health records, shall be conducted at the bench and placed under seal. The youth offender shall be entitled to present to the court facts that would affect the court’s sentencing decision.

“(2) In using its discretion in sentencing a youth offender under this act, the court shall consider:

“(A) The youth offender’s age at the time of the offense;

“(B) The nature of the offense, including the extent of the youth offender’s role in the offense and whether and to what extent an adult was involved in the offense;

“(C) Whether the youth offender was previously sentenced under this act;

“(D) The youth offender’s compliance with the rules of the facility to which the youth offender has been committed, and with supervision and pretrial release, if applicable;

“(E) The youth offender’s current participation in rehabilitative District programs;

“(F) The youth offender’s previous contacts with the juvenile and criminal justice systems;

“(G) The youth offender’s family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;

“(H) The youth offender’s ability to appreciate the risks and consequences of the youth offender’s conduct;

“(I) Any reports of physical, mental, or psychiatric examinations of the youth offender conducted by licensed health care professionals;

“(J) The youth offender’s use of controlled substances that are unlawful under District law;

“(K) The youth offender’s capacity for rehabilitation;
“(L) Any oral or written statement provided pursuant to D.C. Official Code § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense, or by a family member of the victim if the victim is deceased; and

“(M) Any other information the court deems relevant to its decision.

“(d) If the court does not sentence a youth offender under this act, the court shall make a written statement on the record of the reasons for its determination and may sentence the youth offender under any other applicable penalty provision. Any statement concerning or related to the youth offender’s contacts with the juvenile justice system or child welfare authorities, or medical and mental health records, shall be conducted at the bench and placed under seal.”.

(3) Subsection (e) is amended by striking the phrase “will derive benefit from treatment” and inserting the phrase “will benefit from sentencing” in its place.

(d) Section 6 (D.C. Official Code § 24-905) is repealed.

(e) Section 7 (D.C. Official Code § 24-906) is amended as follows:

(1) Subsection (d) is repealed.

(2) Subsection (e) is amended by striking the phrase “conviction. In any case where the court sets aside the conviction of a youth offender, the court shall issue to the youth offender a certificate to that effect.” and inserting the phrase “conviction.” in its place.

(3) New subsections (e-1) and (e-2) are added to read as follows:

“(e-1)(1) A youth offender, regardless of whether the youth offender was sentenced under this act, may, after the completion of the youth offender’s probation or sentence of incarceration, supervised release, or parole, whichever is later, file a motion to have the youth offender’s conviction set aside under this section. The court may, in its discretion, set aside the conviction.

“(2) In making the determination under paragraph (1) of this subsection, the court shall consider the factors listed in section 4(c)(2) and make a written statement on the record of the reasons for its determination. The youth offender shall be entitled to present to the court facts that would affect the court’s set aside decision.

“(e-2) In any case in which the youth offender’s conviction is set aside, the youth offender shall be issued a certificate to that effect.”.

(4) Subsection (f)(4) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

(f) New sections 7a and 7b are added to read as follows:

“Sec. 7a. Grants for victims of crime and youth offenders.

“The Office of Victim Services and Justice Grants shall, on an annual basis, provide grants to organizations to assist victims of crime and youth offenders in understanding and navigating the sentencing and set aside provisions of this act. Annual grant amounts shall be limited to funds included in an approved budget and financial plan.

“Sec. 7b. Biennial analysis and information-sharing.

“(a) By October 1, 2022, and every 2 years thereafter, the Criminal Justice Coordinating Council shall analyze and submit to the Mayor and Council a report on the following:
“(1) The number of cases and persons eligible for sentencing and to have their convictions set aside under this act, and how many persons were sentenced or had their convictions set aside under this act;

“(2) The factors that affected the likelihood of receiving a sentence under this act, such as assessed offense type, prior arrests, prior juvenile commitment, or age;

“(3) The extent to which cases eligible to be sentenced under this act were subject to mandatory-minimum terms, and if so, the extent to which mandatory-minimum terms were imposed;

“(4) The type and length of sentences for those sentenced under this act, compared to those not sentenced under this act;

“(5) The factors that affected the likelihood that those sentenced under this act would have their convictions set aside;

“(6) A comparison of the recidivism of those sentenced under this act who had their convictions set aside, compared to those sentenced under this act who did not have their convictions set aside;

“(7) A comparison of the recidivism of those sentenced under this act to similarly situated persons not sentenced under this act; and

“(8) The impact of programming provided to youth offenders under this act.

“(b) To aid in the development of the reports required by subsection (a) of this section, the following agencies shall provide the information listed below, upon request by the Criminal Justice Coordinating Council:

“(1) The Department of Corrections:

“(A) Incarceration and release dates, with type of discharge;

“(B) Federal registration numbers; and

“(C) Programming provided to individuals committed to Department of Corrections care or custody;

“(2) The Metropolitan Police Department: arrest histories for District arrests, including juvenile and adult histories;

“(3) The Department of Youth Rehabilitation Services: past commitments to the Department of Youth Rehabilitation Services, including end dates of those commitments; and

“(4) The District of Columbia Sentencing Commission: aggregate data on sentences imposed in cases sentenced under this act and cases not sentenced under this act, by type of offense and type of criminal history score.”.

TITLE II. CLEMENCY BOARD ESTABLISHMENT

SUBTITLE A
Sec. 201. Short title.
This title may be cited as the "Clemency Board Establishment Act of 2018".
For the purposes of this title, the term:
(1) "Board" means the Clemency Board established in section 203.
(2) "Clemency" means the power of the President of the United States to modify an individual’s criminal sentence through either commutation or pardon.
(3) "Commutation" means a reduction in a sentence or fine imposed on an individual.
(4) "District offenders" means a person convicted of violating a District law or regulation.
(5) "EOM" means the Executive Office of the Mayor.
(6) "Pardon" means the removal of collateral consequences associated with the punishment imposed on an individual, usually granted to restore an individual’s civil rights.

Sec. 203. Establishment and duties.
(a) There is established a Clemency Board within the EOM to review the applications of District offenders and determine which applicants to recommend to the President of the United States for clemency. The EOM’s General Counsel shall provide staff, office space, and administrative support to the Board.
(b) The Board shall:
(1) Develop criteria and an application for clemency recommendations and publicize the application procedure;
(2) Review each application and determine, within 6 months after a complete application is received, whether to recommend the application to the President of the United States;
(3) Consider both cases of actual innocence and cases of those who are remorseful and can show that they have been rehabilitated;
(4) Give special consideration to applicants who are terminally ill or elderly, or who no longer present a danger to the community;
(5) Develop criteria for the consideration of an applicant’s background, which may include procedures by which the Board obtains information from outside organizations that the applicant has interacted with;
(6) Whenever feasible, conduct in-person, telephone, or video conference hearings with applicants;
(7) Allow applicants to have access to an attorney or non-attorney representative at any hearing before the Board;
(8) When the Board decides to recommend an application to the President of the United States:
(A) Send the application, along with a narrative describing why the Board recommended the application, to the Office of the Pardon Attorney and to the President of the United States; and
(B) Provide notification, to include the applicant's name, to the Chairman of the Council and the chairperson of the Council committee with jurisdiction over judiciary matters; and

(9) Track and publish the number of applications the Board grants and denies, including the number of applications recommended to the President of the United States, in an annual report to the Council and on the Board's website: provided, that the annual report shall exclude personally identifiable information.

Sec. 204. Composition.
(a) The Board shall consist of the following members:

(1) Five individuals appointed by the Mayor pursuant to section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(c)), with the following qualifications:
   (A) One member with a background in returning citizen issues;
   (B) One mental-health professional;
   (C) One member with a background in victim's rights;
   (D) One member of the District of Columbia Bar in good standing, with experience in criminal law; and
   (E) One District resident community member;

(2) The Attorney General for the District of Columbia, or the Attorney General's designee; and

(3) The chairperson of the Council committee with jurisdiction over judiciary and public safety matters, or the chairperson's designee.

(b) In addition to the members described in subsection (a) of this section, the Mayor shall invite the Director of the Public Defender Service for the District of Columbia, or the Director's designee, and the United States Attorney for the District of Columbia, or the United States Attorney's designee, to participate as members of the Board.

(c) The Board shall select a chairperson from among the members appointed pursuant to subsection (a)(1) of this section.

(d)(1) At the first meeting of the Board, the Board shall determine what constitutes a quorum for the transaction of business.

   (2) Applications for clemency shall be approved for recommendation to the President of the United States by a majority vote of the members present and voting.

(e)(1) Board members appointed pursuant to subsection (a)(1) of this section shall serve for terms of 4 years, except as provided in paragraph (2) of this subsection.

   (2) Of the members initially appointed under subsection (a)(1) of this section, 3 members shall be appointed to serve for a 4-year term and 2 members shall be appointed to serve for a 3-year term. The terms of the members first appointed pursuant to subsection (a)(1) of this section shall begin on the date by which a majority of the members appointed pursuant to
ENROLLED ORIGINAL

subsection (a)(1) of this section are sworn in, which shall become the anniversary date for all subsequent appointments.

Sec. 205. Eligibility for a clemency recommendation.
(a) All District offenders shall be eligible to apply for a clemency recommendation from the Board.
(b) No application for a clemency recommendation shall be filed pursuant to this subtitle if other forms of judicial or administrative relief are available based on existing law and already-discovered evidence.
(c) The application criteria developed by the Board, pursuant to section 203(b)(1), for applicants seeking a pardon shall require the applicant to:
   (1) Before applying, wait 5 years after the date of the release of the applicant from confinement or, in case no prison sentence was imposed, wait 5 years after the date of the conviction of the applicant;
   (2) Not have been convicted of any other criminal offense that is relevant to the conviction for which the applicant seeks clemency, as determined by the Board;
   (3) Not be subject to any pending criminal charge that is relevant to the conviction for which the applicant seeks clemency, as determined by the Board;
   (4) Not be a party to a past or pending civil case that is relevant to the conviction for which the applicant seeks clemency, as determined by the Board;
   (5) Demonstrate that the applicant has been rehabilitated; and
   (6) Describe how the receipt of a pardon would help the applicant achieve his or her goals and contribute to the community.
(d) The application criteria developed by the Board, pursuant to section 203(b)(1), for applicants seeking a commutation shall require the applicant to:
   (1) Demonstrate that the applicant has been rehabilitated; and
   (2) Describe how commutation would help the applicant achieve his or her goals and contribute to the community.
(e) An applicant shall be given special consideration if the sentencing scheme, including a mandatory-minimum sentence, for the offense for which he or she was convicted was changed to provide for less severe penalties after the applicant was convicted under the sentencing scheme.

Sec. 206. Confidentiality of proceedings.
(a) Proceedings of the Board shall be subject to the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 et seq.), except that the Board shall hold closed sessions when:
   (1) Considering applications for clemency recommendations; or
(2) Discussing matters that would allow for the identity of any person who is a subject of the discussion, other than a person who has expressly consented to be identified, to be ascertained.

(b)(1) Persons other than Board members who attend any Board meeting that is closed to the public shall not disclose what occurred at the meeting to anyone who was not in attendance, except insofar as disclosure is necessary for that person to comply with a request for information from the Board.

(2) Board members who attend closed meetings shall not disclose what occurred with anyone who was not in attendance (except other Board members), except insofar as disclosure is necessary to carry out the duties of the Board.

Sec. 207. Confidentiality of information.
(a) Except as provided by this section, information and records of the Board shall not be disclosed voluntarily, pursuant to a subpoena, in response to a request for discovery in any adjudicative proceeding, or in response to a request made under the Freedom of Information Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 et seq.), nor shall they be introduced into evidence in any administrative, civil, or criminal proceeding.

(b)(1) Information and records of the Board may be disclosed by members of the Board only as necessary to carry out the Board’s duties and purposes.

(2) A member of the Board who discloses information pursuant to this act shall take all reasonable steps to ensure that the information disclosed, and the persons to whom the information is disclosed, are as limited as possible.

(c) Information and records presented to the Board shall not be immune from subpoena or request for discovery in an adjudicative proceeding or prohibited from being introduced into evidence solely because the information and records were presented to the Board, if the information and records have been obtained through sources other than the Board or its members.

Sec. 208. Rules.
The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this title.

SUBTITLE B
Sec. 221. Section 2(e) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(e)), is amended as follows:
(a) Paragraph (33) is amended by striking the phrase “; and” and inserting a semicolon in its place.
(b) Paragraph (34) is amended by striking the period and inserting the phrase “; and” in its place.
(c) A new paragraph (35) is added to read as follows:

“(35) The Clemency Board, established by section 203 of the Youth Rehabilitation Amendment Act of 2018, passed on 3rd reading on July 10, 2018 (Enrolled version of Bill 22-451).”.

Sec. 222. Section 204(a) of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-534(a)), is amended as follows:

(a) Paragraph (15) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(b) Paragraph (16) is amended by striking the period and inserting the phrase “; and” in its place.

(c) A new paragraph (17) is added to read as follows:

“(17) Information exempt from disclosure pursuant to section 207(a) of the Youth Rehabilitation Amendment Act of 2018, passed on 3rd reading on July 10, 2018 (Enrolled version of Bill 22-451).”.

TITLE III. RETURNING CITIZENS OPPORTUNITY TO SUCCEED TRANSPORTATION PILOT PROGRAM

Sec. 301. The Office on Ex-Offender Affairs and Commission on Re-Entry and Ex-Offender Affairs Establishment Act of 2006, effective March 8, 2007 (D.C. Law 16-243; D.C. Official Code § 24-1301 et seq.), is amended as follows:

(a) Section 3 (D.C. Official Code § 24-1302) is amended as follows:

(1) Subsection (a) is amended by striking the word “career” and inserting the word “workforce” in its place.

(2) Subsection (b) is amended as follows:

(A) Paragraph (2) is amended as follows:

(i) Subparagraph (B) is amended by striking the phrase “the returning” and inserting the word “returning” in its place.

(ii) Subparagraph (H) is amended by striking the phrase “; and” and inserting a semicolon in its place.

(iii) Subparagraph (I) is amended by striking the period and inserting the phrase “; and” in its place.

(iv) A new subparagraph (J) is added to read as follows:

“(J) Establish a pilot program for Fiscal Year 2019 to provide transportation subsidies to returning citizens, pursuant to criteria to be developed by the Office, in the amount of $60,000.”.

(B) A new paragraph (4) is added to read as follows:
“(4) The Director may communicate and coordinate with and seek information from the federal Bureau of Prisons (“BOP”), including by:

“(A) Developing and maintaining a database containing the name, location of incarceration, and contact information for each District resident incarcerated by the BOP who is expected to be released within the next 6 months; and

“(B) Contacting each District resident incarcerated by the BOP who is expected to be released within the next 6 months to provide:

“(i) Information detailing available housing and employment resources, including any necessary application forms;

“(ii) The Office’s contact information; and

“(iii) The necessary information to apply for birth certificates and non-driver identification cards.”.

(b) Section 4(b)(1) (D.C. Official Code § 24-1303(b)(1)) is amended as follows:

(1) Subparagraph (I) is amended by striking the word “Rehabilitative” and inserting the word “Rehabilitation” in its place.

(2) Subparagraph (L) is amended by striking the word “Mental” and inserting the word “Behavioral” in its place.

TITLE IV. FISCAL IMPACT STATEMENT AND EFFECTIVE DATE

Sec. 401. Fiscal impact statement.


Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review as
provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

UN SIGNED

Mayor
District of Columbia
September 5, 2018
COUNCIL OF THE DISTRICT OF COLUMBIA  
WASHINGTON, DC, 20004

Docket No. B22-0451

FIRST READING CC, Jun 5, 2018

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SECRETION RECORD

Secretary to the Council

7.24.18

Date

FINAL READING CC, Jul 10, 2018

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SECRETION RECORD

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