

A RESOLUTION

23-510

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 22, 2020

To declare the sense of the Council in opposition to the United States Attorney for the District of Columbia’s prosecution of the offense of felon-in-possession pursuant to federal law in the United States District Court for the District of Columbia rather than pursuant to the District of Columbia Official Code in the Superior Court of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sense of the Council in Opposition to the Prosecution of Local Gun Offenses in District Court Resolution of 2020”.

Sec. 2. The Council finds that:

(1) On February 6, 2019, Mayor Muriel Bowser and United States Attorney for the District of Columbia Jessie Liu announced a new initiative by the United States Attorney to prosecute the offense of possessing a firearm by an individual previously convicted of a felony – known as the “felon-in-possession” statute – under federal law in the United States District Court for the District of Columbia rather than under District law in the Superior Court of the District of Columbia.

(2) The prosecution of the offense of felon-in-possession under federal law is redundant. D.C. Official Code § 22-4503(a)(1) already criminalizes the possession of a firearm by an individual who has previously been convicted of a felony, and the United States Attorney has historically chosen to charge and prosecute hundreds of these cases annually in the Superior Court of the District of Columbia.

(3) In support of the new initiative, the Deputy Mayor for Public Safety and Justice stated, “There must be swift and certain accountability when people commit gun crimes[.]” However, there is no evidence to show that the time to trial in the Superior Court – the swiftness with which cases are adjudicated – is longer than in the U.S. District Court, justifying a change in venue. In addition, in 2018 and 2019, the Superior Court’s sentences were almost universally compliant with the District’s sentencing guidelines, at 98% compliant. The federal courts’ judicial compliance rates under the federal sentencing guidelines were 49% and 51%, respectively. Therefore, the claim that the accountability of gun offenders if federally prosecuted will be more “certain” is also unsubstantiated.

(4) The reason for the timing of the new initiative was unclear. In 2018, the United States Attorney brought approximately 350 felon-in-possession cases, with only 1/4 of those cases brought in the U.S. District Court. If the argument were that the new initiative would improve public safety outcomes by bringing these cases federally, it is puzzling as to why the United States Attorney waited until early 2019 to change its prosecution venue.

(5) Another stated goal of the new initiative was to utilize the resources of the Federal Bureau of Investigation and the Bureau of Alcohol, Tobacco, Firearms and Explosives. United States Attorney Liu said that her “goal is to investigate and prosecute violent crimes more fully” with these agencies’ assistance, but under current practice, those agencies could already have supported locally charged felon-in-possession cases.

(6) The new initiative strains the resources of the Federal Public Defender for the District of Columbia, which represents indigent defendants in federal criminal cases and has fewer than one dozen attorneys on staff. It is approximately 1/6 the size of the Public Defender Service for the District of Columbia, which represents indigent defendants for offenses in the District of Columbia Official Code. It is possible that, if the initiative is continued, this strain could result in overburdened legal counsel for federally-charged individuals.

(7) Individuals sentenced in federal court for felon-in-possession are generally exposed to significantly longer prison sentences than in the Superior Court. Long sentences are not proven to deter crime or prevent recidivism; they contribute to the District having the highest incarceration rate in the United States and, possibly, the world, and they overwhelmingly affect Black men.

(8) The felon-in-possession initiative disrespects the policymaking of District residents and elected officials by circumventing the District’s local sentencing and reentry tools. For example, in recent years, this Council reformed its sentencing laws for young adults in response to the scientific evidence supporting young adults’ needs for developmentally appropriate sentences and their increased capacity for rehabilitation, and these reforms do not apply to young adults convicted of federal offenses. The Council also recently passed legislation to provide an opportunity for sentence review for individuals who are convicted as juveniles and serve long sentences, and these reforms also do not apply to individuals convicted of federal offenses. Similarly, individuals with federal charges or convictions are ineligible for relief under the District’s record sealing and expungement laws.

(9) Studies regarding the success of other efforts to prosecute firearms-related offenses in federal court, such as Project Exile, have been inconclusive at best. Further, the United States Attorney has released almost no data about the initiative, so its efficacy cannot be analyzed. This also means that individuals with prior felony convictions looking to possess a weapon would have no way of knowing how frequently similar individuals have been charged, convicted, and for how long they have been sentenced. Even if one assumes that prospective gun offenders are rational actors and act with this information in mind, it would therefore be

impossible to create any deterrent effect from the initiative due to the secrecy behind its operation.

(10) The felon-in-possession initiative, and the Executive's support for it, undermine the District's efforts to achieve statehood, strengthen Home Rule, and regain control of our justice system. A multitude of efforts are underway by the District government to advocate for the District's autonomy from the federal government, including record congressional support – with 27 cosponsors – and a historic hearing and vote in the U.S. House of Representatives for H.R. 51, the Washington, D.C. Admission Act.

(11) Regaining control of the District's justice system is of paramount importance. The current opaque and unaccountable system results in poor outcomes for federally incarcerated individuals and District residents.

(12) The prosecution of criminal offenses is a local function that should be the charge of an entity accountable to District residents, such as the Attorney General for the District of Columbia. In fact, Attorney General Karl Racine has stated his opposition to prosecuting local gun crimes in federal courts, reasoning that it undermines Home Rule, disproportionately harms African Americans, "intentionally sidesteps our local courts, thus denying offenders the benefits of these reforms, and reverts to a failed federal tough-on-crime approach." The United States Attorney for the District of Columbia is nominated by the President of the United States of America and confirmed by the United States Senate, a legislative body in which the District of Columbia is unrepresented.

(13) The District does not have a role in nominating judges to the U.S. District Court. In contrast, the judges on the Superior Court are screened, selected, and recommended by the Judicial Nomination Commission, an agency directly under the Council's oversight and to whose board the Council nominates members.

(14) Nearly 2 years after the felon-in-possession initiative was launched, it was recently revealed in court records that the initiative was designed to exclusively target Metropolitan Police Department Districts 5, 6, and 7, predominantly African-American wards. Such over-prosecution in Black neighborhoods has contributed to the District leading the country in mass incarceration and undermines the District's work to focus on reducing racial disparities in policing and criminal justice.

Sec. 3. It is the sense of the Council that:

(1) The recent increase in homicides in the District presents an opportunity to use data and evidence-based practices to improve public safety, including arrest, charging, and sentencing practices, and the disclosure of related information to policymakers and the public;

(2) The Executive and the United States Attorney should work collaboratively and transparently with the Council to identify barriers to the prosecution of gun crimes and opportunities for improvement in the current process and in sourcing guns;

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(3) A public-health approach to public safety meaningfully addresses firearms-related violence, without resorting to speculative law enforcement and prosecution strategies or harsh sentencing policies; and

(4) The Executive and the United States Attorney should learn from the ineffectual and unjust criminal justice policies of the past and immediately abandon their initiative to prosecute certain firearm-related offenses under federal law.

Sec. 4. Transmittal.

The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor, the Deputy Mayor for Public Safety and Justice, the Chief of the Metropolitan Police Department, the United States Attorney for the District of Columbia, the Federal Public Defender for the District of Columbia, the Director of the Public Defender Service for the District of Columbia, the Chief Judge of the Superior Court of the District of Columbia, the Chief Judge of the United States District Court for the District of Columbia, the Attorney General for the District of Columbia, and the Congresswoman from the District of Columbia in the House of Representatives.

Sec. 5. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.