

The University of Chicago

**The Incarceration Reduction Amendment Act:
Successful Decarceration Legislation Navigating an Adversarial
Criminal Legal System**

By Indira Rajkumar



A thesis submitted in partial fulfillment of the requirements for the degree of
Bachelor of Arts in Public Policy Studies

Paper presented to:

Public Policy Studies Preceptor, Kelsey Berryman

Faculty Advisor, Sorcha Brophy

Department of Public Policy Studies

April 2021

ABSTRACT

Through an investigation into the implementation of Washington D.C.'s Incarceration Reduction Amendment Act (IRAA), this study explores what successful decarceration legislation reveals about the flawed criminal legal system within which it operates and what makes it successful in the face of adversarial structures. Through interviews with key actors in IRAA's development and implementation, results indicate that the criminal justice system incentivizes prosecutors to keep people incarcerated, lacks restorative justice options for victims, and fails to offer rehabilitative alternatives to incarceration for offenders. IRAA remains successful in the midst of these adversarial structures because local conditions including community networks and receptive judges contributed to IRAA accomplishing its goal of decarceration. Findings suggest that local conditions can be instrumental to the success of progressive legislation operating within an otherwise adversarial criminal legal system. Policy recommendations surround how reform policy can navigate a broken system.

Acknowledgements

Thank you to my preceptor, Kelsey Berryman, for providing me with feedback on my work in countless office hours. I'd like to thank Sorcha Brophy, whose experience and wisdom guided me through this long and unfamiliar process. Thank you to my roommate and friend, Cora Alperin, for being a constant sounding board for new ideas. Finally, I would not know what IRAA is today had I not worked at the Public Defender Service in Washington D.C. Thank you to my colleagues and mentors there, who's hard work defending clients under IRAA every day inspired my thesis topic.

Table of Contents

Introduction	4
Background & Context	6
Literature Review & Theory	15
Data & Methods	19
Findings & Analysis	22
<u>Adversarial Structures in the Criminal Justice System</u>	23
1. <i>Prosecutorial Conduct - Opposition to IRAA Motions, Interactions with Victims, & Prosecutorial Incentives</i>	23
a. <i>Opposition to IRAA Motions</i>	24
b. <i>Prosecutorial Incentives – Universal Opposition</i>	31
c. <i>Interactions with Victims</i>	32
d. <i>Prosecutorial Incentives – Interactions with Victims</i>	36
2. <i>The Lack of Avenues for Victim Healing</i>	37
3. <i>Factor #3: The Consideration of a Client’s Disciplinary Record in Prison & the Lack of Rehabilitative Alternatives to Incarceration for Offenders</i>	42
a. <i>The Consideration of a Client’s Disciplinary Record in Prison</i>	42
b. <i>The Lack of Rehabilitative Alternatives to Incarceration for Offenders</i>	46
<u>Local Conditions That Contributed to IRAA’s Success</u>	49
4. <i>Informal Information Network & Community</i>	49
5. <i>Receptive Judges</i>	49
<u>Discussion</u>	58
Policy Recommendations	61
Conclusion	61
Works Cited	65
Appendices	72

Introduction

There has been a growing conversation about criminal legal system sentencing reform due to the high rates of incarceration in the U.S. (Mauer 2011), specifically surrounding second look sentencing (Serota 2020). Second-look sentencing gives incarcerated individuals the opportunity to motion to the court for a sentence reduction after serving a certain period of their sentence, which typically ranges from 10 to 20 years (Serota 2020). There is a unique subset of individuals who committed crimes as juveniles, those under the age of 18 years old, were charged as adults, and were given lengthy sentences. A noteworthy proportion of the prison population remains serving time today for crimes committed as juveniles (Nellis 2017). Juveniles of color are disproportionately charged as adults and therefore overrepresented within this group (Prison Policy Initiative 2018).

The Incarceration Reduction Amendment Act (IRAA) was created in response to a flurry of supreme court cases that banned juvenile life without parole. IRAA attempts to remedy the issue of adults serving time today for crimes committed as juveniles in Washington D.C.. IRAA eliminated mandatory minimums for juveniles charged as adults, banned the use of juvenile life sentences without parole, and allows for individuals who have served 15 years or more in prison for crimes committed as juveniles to petition for early release from prison (§ 24-403.03). IRAA has had tangible, positive impacts on the population it seeks to decarcerate, evident through its high grant rates - almost all IRAA motions have been granted, releasing over 50 men from prison early, and it is therefore considered successful legislation. This research project explores what IRAA tells us about how successful decarceration legislation navigates a broken criminal justice system. While scholars have written about flaws in the criminal legal system and possible

reforms, there is no research on how policy can remain successful in the face of structural adversity.

I attempted to answer my research questions through conversations with actors who had experience with IRAA-related litigation and advocacy. I interviewed juvenile justice advocates, attorneys, prison educators, mitigation specialists, D.C. Council committee directors, D.C. government workers, and investigators. I analyzed my data by coding interview transcripts, highlighting common themes. I begin my paper by explaining the context in which IRAA was created, specifically that of abolishing juvenile life without parole and establishing second-look sentencing for those still in prison. I then present my findings and analysis, first discussing what challenges faced in the litigation of IRAA reveal about the adversarial nature of the criminal legal system and subsequently addressing what conditions contributed to IRAA's success in the face of the aforementioned challenges. I conclude with a discussion of the implications and limitations of my study and policy recommendations based on my findings. Policy recommendations surround how lessons learned from IRAA can inform future criminal justice policy implementation.

Informants reveal that prosecutorial conduct in IRAA motions and the judge's consideration of the client's prison disciplinary records reveal the adversarial nature of the criminal legal system, including prosecutor incentives to keep people incarcerated, the absence of avenues for restorative justice for victims, and the lack of rehabilitative alternatives to incarceration for offenders. Aspects of the local conditions in which IRAA was implemented, including an IRAA informational support network and D.C. judges, contributed to IRAA's success in granting the targeted population early release from prison.

Background & Context

The intersection between the era of national mandatory minimums, the war on crack in Washington D.C., and D.C. code allowing juveniles to be charged as adults led to juveniles being given long sentences in Washington D.C. IRAA seeks to decarcerate those serving long sentences today for crimes committed as juveniles. Wars on drugs and crime beginning in the 1980s contributed to the high rates of incarceration in the U.S. today (Equal Justice Under the Law). These campaigns spurred an era of mandatory minimums, sentences of a minimum number of years in prison which targeted drug- and firearm-related offenses (Equal Justice Under the Law). Mandatory minimums were typically lengthy, often ranging from 10 to 20 years and longer (Equal Justice Under the Law). Impacts of mandatory minimums and lengthy sentencing in general from the 1980s can still be seen in today's incarcerated population.

The crack epidemic in Washington D.C. made the war on drugs in the city particularly punitive. Crack became popular in Washington D.C. in 1986, when it was introduced as a cheaper version of the already popular cocaine (Fenston). The crack epidemic introduced lucrative business opportunities for poor communities in particular. The prevalence of crack in D.C. led to mass drug addiction and associated gun violence, raising murder rates (Fenston). In the late 80s and 90s, Washington D.C. had the highest murder rates in the country, earning the title the "nation's murder capital" (Fenston). President Bush announced he was renewing the war on drugs, targeting Washington D.C.'s crack epidemic (Fenston). Washington D.C. police cracked down, leading to mass arrests of dealers and others involved in violent crime in some of the poorest neighborhoods and disproportionately impacting young black men (Fenston). The number of sentenced prisoners increased by about 40% between 1986 and 1990 alone in Washington D.C. (BJS). In 1989 and 1990, Washington D.C. prisoners accounted for about 9%

of the total U.S. prison population when the city constituted only 0.2% of the U.S. population (BJS).

D.C. juveniles charged as adults felt the impact of the era of mandatory minimums and the long sentences associated with it. Although D.C. has an established juvenile justice court, D.C. code allows for juveniles to be convicted in adult court for certain crimes (A Capital Offense, 2007). Title 16 of D.C. Code allows youth in D.C. to be tried, sentenced, and incarcerated in the adult criminal justice system either through a judicial waiver or a direct filing by the U.S. Attorney (USAO). Direct filing by a prosecutor began in the 1990s, making transfers faster, easier, and requiring less review. In D.C., the U.S. Attorney can send youth under the age of 18 into the adult criminal justice system if charged with “(i) murder, first-degree sexual abuse, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense” (D.C. Code §16-2307). IRAA clients were convicted of such crimes. In addition, Title 16 was passed by Congress. Only Congress — not D.C. residents legislating through their elected representatives on the D.C. Council — can change it and the D.C. Home Rule Act bars the Council from enacting any law relating to the jurisdiction of D.C. courts or the power of the U.S. Attorney (Gimbel).

Washington D.C. is a unique hybrid jurisdiction of federal and state rules that impacts how cases are prosecuted. Because Washington D.C. is a federal district and not a state, the D.C. Council enacts criminal justice legislation, but federal U.S. attorneys enforce and prosecute the law (Lerner 2019). Federal prosecutors are appointed by the president, not elected as they are in states, so they are not accountable to the legislature in the same way (Lerner 2019). Many believe this leads D.C. prosecutors to take more aggressive stances, as they have in IRAA cases,

because they do not have to think about reelection (Lerner 2019). To compare, no other prosecutors in the country have unilaterally opposed every juvenile offender's resentencing, as the USAO has done in almost every IRAA case (Lerner 2019). Given the punitive nature of the criminal legal system both on a national and local level in Washington D.C., a significant number of people are serving life sentences today for crimes committed as juveniles.

In 2016, almost 12,000 people were serving life sentences for crimes they committed as juveniles (Youth Sentenced to Life Imprisonment 2019). This figure includes those serving life without parole, life with parole, and virtual life sentences, sentences of 50 years or more that exceed typical life expectancy (Youth Sentenced to Life Imprisonment 2019, Appendix C). 1 in 17 of the total life-sentenced population nationwide is serving a life or virtual life sentence for crimes they committed as a juvenile (Nellis 2017). Race statistics of juveniles sentenced as adults reflect racial disparities observed in the total prison population. 98% of youth in the justice system are male, 80% of youth are people of color, and over half of those of color are black (Nellis 2017). In fact, youth of color comprise a significantly greater proportion of the total life without parole, life with parole, and virtually life-sentenced populations compared to their adult counterparts in each of these three categories (Nellis 2017). Black youth are 8.6 times more likely to receive an adult prison sentence compared to their white peers (Prison Policy Initiative 2018). Indeed, the majority of those who have motioned under IRAA have been black, and all of them have been men (JJA1).

Over the past two decades, the Supreme Court has made a series of decisions that brought to light and began to remedy injustices surrounding juvenile sentencing. One of their first major decisions in this area was in 2005, when the Supreme Court ruled in *Roper vs. Simmons* that juveniles cannot be sentenced to death because it violates the 8th amendment, which prohibits

the federal government from imposing cruel and unusual punishment (Roper 2005). Those in favor of the decision argued that immaturity and susceptibility to influence diminishes juveniles' culpability. In addition, youth have increased capacity for rehabilitation compared to adults, so they should receive a different type of punishment (Roper at 560 2005). In the wake of the decision, 12 states banned the death penalty for all groups, 18 more banned it for juvenile offenders (Rovner 2021), and 72 juveniles on death row in 12 states were affected by the decision (Death Penalty Information Center 2005). In 2010, *Graham vs. Florida* banned the use of life without parole for juveniles not convicted of homicide because it was also cruel and unusual (Graham 2010 at 2024). However, 2,500 adults remained serving sentences of life without parole for crimes they committed as juveniles, all of whom were convicted of homicide-related offenses (Rovner 2021).

Two years later, in 2012, the Supreme Court decided *Miller v. Alabama*, which extended *Graham* to prohibit life without parole (LWOP) sentences for juveniles who committed homicide crimes and received a mandatory minimum sentence (Nellis 2017). The majority statement emphasized that judges should be able to consider the circumstances of the individual defendant in order to determine a fair sentence relevant to the individual's experiences given adolescence is marked by "transient rashness, proclivity for risk, and inability to assess consequences" (Miller at 2465 2012). Since 2012, 28 states and Washington D.C. have changed their laws for juvenile offenders convicted of homicide, including felony murder (Rovner 2021). However, states applied the decision retroactively on an inconsistent basis. Supreme Courts in 14 states ruled that *Miller* applied retroactively, while seven other states ruled it did not. California, Delaware, Nebraska, Nevada, North Carolina, and Wyoming passed juvenile sentencing legislation that applied retroactivity (Slow to Act 2014). The January 2016 decision on *Montgomery v.*

Louisiana clarified this ambiguity, officially making *Miller* retroactive (Montgomery 2016). The majority noted that the Court in *Roper*, *Graham*, and *Miller* found that “children are constitutionally different from adults in their level of culpability” (Montgomery 2016 Slip Op. at 22). In *Montgomery*, the Court ruled that “allowing those offenders to be considered for parole ensures that juveniles whose crimes reflected only transient immaturity – and who have since matured – will not be forced to serve a disproportionate sentence in violation of the 8th Amendment” (Montgomery 2016). Through rulings and explanations, the Supreme Court established that juveniles are different than adults and should be treated differently in the justice system.

In the midst of states inconsistently applying the Supreme Court decisions discussed above, Washington D.C. established the Incarceration Reduction Amendment Act (IRAA) to reflect the new national standards for sentencing. The original act, often referred to as IRAA 1.0, was signed in 2016 and allowed those who had received life or virtual life sentences as juveniles and had served at least 20 years of their prison sentence to petition for early release (Act 21-568). Later in 2019, the D.C. council decreased the minimum time spent in prison to be eligible to motion from 20 to 15 years (§ 24-403.03). Most of those motioning under IRAA today were convicted during the crack and policing era in the 1990s for serious crimes including rape and murder. Because of the sentencing scheme in Washington D.C., these individuals received long sentences reflecting the era of mandatory minimums.

The Second Look Amendment Act (SLAA) is a third iteration of IRAA currently under review. SLAA is essentially the same as IRAA, but it would expand IRAA eligibility to those who committed crimes under the age of 25 years old based on research on the diminished culpability of not only juveniles but also emerging adults into their 20s (B23-0127). In IRAA

cases, judges can consider eleven factors when deciding whether to grant or deny a motion for release (Appendix D). Some of these factors include the client's age at the time of the offense, history and characteristics, compliance with rules while in prison, maturity and rehabilitation, community circumstances at the time of the offense, and the client's role in the offense. Other factors include the diminished culpability of juveniles, the government's response to the motion from the U.S Attorney's Office, and a statement from the victim of the IRAA crime or the victim's family (§ 24-403.03).

IRAA is based on a juvenile's immature brain development at the time of the original crime, the mitigating circumstances under which juveniles committed crimes, and second look sentencing. Neuroscience research renders juveniles less culpable of their actions than adults. Juvenile brains are at a unique intersection of development. Juveniles have an overactive social-emotional system, which increases their need for reward and sensation seeking behavior and predisposes them to more reactive emotional responses (Tyler 2015). At the same time, juveniles also have an underdeveloped cognitive control system, which checks the social-emotional system and increases impulse control, regulates emotion, increases foresight, improves planning, and increases resistance to peer pressure (Tyler 2015). In other words, juvenile brains are "being given the 'gas' of the social-emotional system without having mature 'brakes' of the cognitive control system" (Tyler 2015).

The result of the underdeveloped juvenile brain is evident in the age-crime relationship. A plethora of research refers to "aging out of crime", and the age-crime curve visually depicts this phenomenon: offending tends to increase from late childhood, peak in adolescence between ages 15 and 19, and decline in the early 20s, creating a bell-shaped curve (Taxman 2014, Appendix E). The age-crime relationship initially addressed juveniles only, those under the age

of 18, but more recent research shows that the age-crime relationship can be applied into the early- to mid- 20s (Ulmer 2014). Developmental studies of late adolescence and early adulthood do not support the notion that there is any naturally occurring break in the prevalence of offending at age 18, despite the fact that the law has decided people are adults at this age (NJJ). The Pittsburgh Youth Study found that more than half of juvenile offenders continue to offend up to age 25, and this number drops by two-thirds in the subsequent five years (Stouthamer-Loeber). Studies show that 40 to 60 percent of juvenile delinquents stop offending by early adulthood (Taxman 2014). Many young people who offend between ages 18 and 20, which brings them into the adult justice system, would have been likely to desist naturally in the next few years (NJJ). These statistics do not even take into account the juveniles under the age of 18 who are also charged as adults.

In addition to biological evidence that renders juveniles less culpable for their actions than adults, most juveniles commit crimes in the midst of violence, abuse, substance-abuse, and other mitigating circumstances in their surrounding environments. Mitigating circumstances are legally defined as “factors that lessen the severity or culpability of a criminal act, including, but not limited to, defendant's age or extreme mental or emotional disturbance at the time the crime was committed, mental retardation, and lack of a prior criminal record” (Cornell Law). A juvenile’s age alone is mitigating evidence, but several other environmental factors contribute to a youth offenders’ mitigating circumstances. A significant component of IRAA motions is the mitigation report, a history of an IRAA clients’ life to contextualize the circumstances under which they committed their crimes. The mitigation report sheds light on circumstances related to drug abuse, physical abuse, violence, and other sources of instability in the client’s life that statistically increase one’s chances of being involved in criminal behavior. The role of mitigating

circumstances on crime is reflected in the fact that the age-crime curve is higher and wider for young, minority men (NJJ). Young, minority men commit more crime and continue to be involved in criminal activity for longer compared to the general population because environmental circumstances due to generations of structural racism have left minority communities more likely to be economically and socially marginalized compared to their white counterparts (Bullard 2004). Justice Kagan, in the *Miller* ruling, wrote that Alabama and Arkansas were wrong to impose a mandatory sentencing structure because it does not “tak[e] into account the family and home environment” (Miller 2012 at 2468.). In 2012, The Sentencing Project published findings from a survey of people sentenced to life in prison as juveniles that showed that mitigating circumstances are common amongst this population. 79% of those sentenced to life in prison as juveniles witnessed violence in their homes regularly, 32% grew up in public housing, 40% had been enrolled in special education classes, fewer than half were attending school at the time of their offense, and 47% were physically abused (Nellis 2017). Another longitudinal study collected significant data on factors such as substance abuse and instability in daily routine that lead to youth recidivism (Mulvey 2011). Mitigating circumstances statistically tend to plague young, minority communities to a greater extent than the general population.

Years of scientific research on juvenile brain development and mitigating childhood circumstances spurred the Supreme Court decisions for juvenile sentencing reform. While these are impactful reforms for juveniles sentenced moving forward, they do little for those already serving lengthy, mandated sentences given how the Supreme Court decisions making *Miller* retroactive were not automatically implemented nationally. Thus began the push for second-look sentencing, which allows judges to reexamine sentences that, under the current criminal justice

reform landscape, are now considered excessive, introducing the possibilities of sentence reduction and even release (Serota 2020). Second look sentencing for juvenile offenders is based on the research on juvenile brain development and mitigating circumstances. Youth have a right to second look sentencing due to their lower impulse control and a higher tendency to take on risk without considering consequences compared to fully developed adults (Second Look 2020). In addition, many juveniles are driven to commit violent crimes due to unstable home and school situations colored by substance- and physical-abuse, lacking educational and other social resources, neighborhoods plagued by gangs and related violence, and other mitigating circumstances, as discussed above (Second Look 2020). IRAA is reformatory policy that makes second look sentencing possible.

Although a relatively recent legislation, Washington D.C. has already seen IRAA's positive impact over the past few years. As of December 2020, 53 men have been granted reduced sentences, 5 people have had their motions denied, and none have reoffended (Alexander 2020). Prior to the COVID-19 outbreak in March 2020, 90% of men released under IRAA were employed (Behr 2020). Those released under IRAA work in violence prevention, youth mentoring, the D.C. council, and juvenile sentencing advocacy in Washington D.C. (Behr 2020, JJA1, PD1, A2, I1, D.C.2). The statistics on IRAA grants, the lack of recidivism, and releasees' occupations are corroborated by interview subjects. By these measures, IRAA is considered successful in its goal of decarcerating the specific population it targets. This research explores how IRAA remains successful in the midst of an adversarial criminal legal system.

Literature Review & Theory

The U.S. criminal legal system's overreliance on incarceration has spurred discussion surrounding the structures that contribute to high rates of incarceration. The current criminal legal system relies on incarceration as punishment for crimes, leading to overcrowded prisons and bloated correctional budgets (Wexler et al 2011). The high costs of the carceral system have taken away funds from educational and social programs (Wexler et al. 2011). In response, advocacy groups have called for correctional reforms, citing the overuse of incarceration and its costliness compared to sentencing alternatives that improve community safety and offender rehabilitation in ways that incarceration does not (Wexler et al. 2011). Others argue in favor of systems of post-sentence review because they incentivize rehabilitation and prevent the unnecessary and costly incarceration of the elderly (Beckett 2018). Given the criminal justice system's overreliance on incarceration and its associated costs, scholars have criticized the punitive aspects of the criminal legal system that contribute to high incarceration rates. Existing literature implicates harmful prosecutorial tendencies and the absence of alternatives to incarceration, offering ideas for reform.

The New, Tainted Prosecutor

Scholars have written about how the role of the prosecutor has evolved over the past several years in a way that negatively impacts offenders, spiking incarceration rates. One author dubbed this phenomenon "the new prosecutor", referring to how prosecutors wield more power and are allowed more discretion outside of judicial control today (Gershman 1992). Further, "prosecutors are increasingly immune to ethical restraints" (Gershman 1992). Courts have made it easier for prosecutors to win convictions, and the Sentencing Reform Act of 1984 produced federal sentencing guidelines designed to restrict judges' discretion in sentencing, giving

prosecutors more agency over prison sentences (Gershman 1992). The new prosecutor was born from the transition from a due process-oriented criminal justice system to one that emphasizes crime control and prevention (Gershman 1992). The increase in prosecutorial discretion and power has skewed the balance of the advantage in criminal justice in favor of the state.

Similar to the “new prosecutor”, Podger writes about the “tainted federal prosecutor”. Like the new prosecutor, the tainted federal prosecutor has similarly expanded power and discretion (Podger 2010). In addition, investigations reveal that politics have infiltrated the DOJ, despite the role of the federal prosecutor being technically labeled “non-political”, because U.S. attorneys are appointed by the president and confirmed by the senate (Podger 2010).

Other scholars are concerned with prosecutor incentives. Compensating prosecutors based on conviction rates incentivizes prosecutors to make convictions, even if a conviction does not constitute justice in every case (Bibas 2009, Gershman 1992). Political support is another harmful incentive for prosecutors discussed in the literature. Voters, or elected officials who appoint prosecutors who want to please constituents, want prosecutors to be tough on crime, which they measure using prosecutors’ conviction rates in the absence of other information about prosecutor behavior and details of individual cases (Gordon and Huber 2002). So too is the new prosecutor incentivized to convict. The new prosecutor grew out of the prosecutor’s dual role with competing goals: convictions and justice (Gershman 1992). Justice may not always prevail from a conviction, but prosecutors simultaneously seek both (Gershman 1992). Other scholars have echoed similar sentiments, including the tension between competing visions of the purpose of the criminal justice system: peace and public safety focused on preventing crime and resolving conflicts versus the affirmation of various legal rights and a reliance on a formal, adversarial adjudicatory process (Dandurand 2014). Conflicting goals incentivize prosecutors to seek

convictions instead of dismissing cases, interpret laws more broadly, seek severe sentences, and engage in inflammatory trial conduct (Gershman 1992).

Prosecutors are influenced by the system of which they are a part. Gershman acknowledges that not all prosecutors are unethical, but the current system allows for misconduct that many prosecutors take advantage of - hence, the new prosecutor (Gershman 1992). In a fair criminal justice system, it would follow that a prosecutor would prioritize protecting individual rights and justice (Gershman 1992). But in a criminal justice system that prioritizes crime control over protecting individual rights, it does not necessarily follow for a prosecutor to seek justice (Gershman 1992).

In criticizing realities of the criminal legal system, scholars recommend changing incentives for prosecutors so that convictions are no longer the goal. Perhaps removing Senate confirmation from the process of becoming a U.S Attorney, redefining the role of prosecutors in the federal system, and restricting contact between U.S attorneys and political officials could depoliticize the role (Podger 2010). Others identify incentivizing prosecutors to reduce penal severity as a promising way of addressing mass incarceration because it does not require legislative authorization (Beckett 2018). Some suggest prosecutors be paid based on feedback from multiple sources of the parties involved in cases, including judges, defendants, and victims, in order to encourage prosecutors to serve all its constituencies (Bibas 2009). Gershman proposes de-professionalizing the prosecutor role, citing a case in Britain where private attorneys are loaned to prosecutors' offices when prosecutors are overloaded with cases. Private attorneys reduce the pressure on prosecutors, and they prosecute cases without incentives to convict (Gershman 1992).

The Absence of Restorative Alternatives to Incarceration

In addition to problematic prosecutorial incentives, scholars have written about the lack of restorative justice options in the existing criminal legal system, harming both offenders and victims of crimes (Englebrecht et al.). The current system relies on incarceration to heal wounds and solve differences, but that is not always the solution (Englebrecht et al.). Studies suggest that many families leave the criminal justice system feeling marginalized and revictimized (Englebrecht et al.). The study calls into question the current criminal justice system's ability to meet the needs of crime victims and their families (Englebrecht et al.). Scholars believe "our adversarial system of justice, while necessary to protect the rights of defendants, insulates both the victim and the defendant from the very real human contact that is often necessary" (Gay 2000). Offenders often want to apologize for their crimes, and victims often want to express their feelings about what happened to them to offenders, but the criminal justice system is not designed to facilitate such an exchange.

In response to the lack of restorative justice opportunities, scholars have written about potential remedies, including restorative justice practices for both victims and offenders. Restorative justice addresses public safety and the needs of victims of crimes. It focuses on reparation, restitution, and accountability, and puts less emphasis on punishment. The goal is to remedy harm, not exact punishment (Gay 2000). Gay suggests a reform that emulates one case study, where a victim offender reconciliation program facilitated a conversation between the offender and the victim, to those who were willing, prior to sentencing (Gay 2000). For offenders who participate in the program, the state can reduce the charge or recommend favorable sentencing to the court. In addition to restorative justice opportunities that help victims heal, scholars have discussed options for restorative justice alternatives to prison sentencing. Gay

advocates for a restorative justice program in which offenders have the opportunity to receive alternative sentences through programming in the fields of education, substance abuse, behavior, and job training in place of prison or probation (Gay 2000).

Amongst the extensive literature about the flaws in the justice system and ideas for its reform, former president of the American Civil Liberties Union (ACLU) Susan Herman discussed three necessary preconditions for criminal justice reform to be impactful: bipartisan cooperation, appropriate attention to state and local initiatives, and educational efforts promoting supportive public opinion (Herman 2018). Federal courts play an essential role in administering an equitable criminal justice system, but change does not happen on the federal level (Herman 2018). Local leadership is important because reformers cannot expect a national cure or even leadership from the federal government within criminal justice reform (Herman 2018). While Herman's research speaks to the conditions necessary for reform, it does not take into account how the context of a flawed criminal legal system impacts progressive legislation and how reform remains successful in that landscape.

Scholars have written extensively about the adversarial nature of the criminal legal system and ideas for its reform. There is even limited discussion about preconditions for criminal justice reform. However, what is missing is an exploration into how progressive criminal justice policy navigates the adversarial criminal legal system in which it operates and how it remains successful in the face of a broken system.

Data & Methods

In order to investigate what IRAA tells us about the criminal legal system and how it remains successful in the face this adversity, I conducted 17 semi-structured interviews with juvenile justice advocates, public defenders, private attorneys, prison educators, mitigation

specialists, D.C. Council committee directors, D.C. government workers, and investigators in Washington D.C. (Appendix A). Interview subjects all had experience with IRAA through litigation, legislation development, advocacy, or personal experience motioning under IRAA. I asked interviewees about their experience with IRAA, the ways in which it works and the challenges they faced or witnessed in its litigation. I connected with interviewees initially through convenience sampling. I first learned about IRAA at a public defender's office in Washington D.C. where I worked. I reached out to contacts I had there for my first few interviews. Thereafter, I conducted snowball sampling - interviewees continued to connect me with colleagues at their organizations. Through this exercise, I learned that the Washington D.C. IRAA community is relatively small - interviewees began to connect me with people with whom I had already spoken towards the end of my data collection.

I conducted interviews either over Zoom or the phone, for 45 minutes to one hour. I recorded all interviews over Zoom except for two, interviews with Public Defender1 (PD1) and Educator for System-Impacted People & Reentry Specialist (E2). I interviewed PD1 over Zoom, but she preferred not to be recorded. E2 had no preference on the recording component of the interview, but preferred speaking over the phone rather than Zoom; I was unable to record this interview. All 15 other interviews were conducted over Zoom, recorded, and transcribed using the transcription software Otter.ai. I assigned all interviewees code names based on their occupation in order to protect their identities and these names are abbreviated throughout my paper (Appendix A).

Interviews were semi-structured. I asked each interview subject specific yet open-ended questions (Appendix B), but I often asked impromptu follow-up questions if I was interested in hearing more about certain topics they brought up. I chose to conduct an interview-based research project because interviews amplify individual voices that are often lost in quantitative

statistics. Individual perspectives and experiences were essential to understanding intimate details about the litigation of IRAA that occur behind the scenes, what they indicated about the criminal justice system in which IRAA operates, and how IRAA managed to be successful in the face of structural conflict.

Among its strengths, there are weaknesses to a qualitative, interview-based data collection method. Interviewees' perspectives ultimately reflect their own experiences and personal opinions, so I could not interpret this data as truth necessarily. For example, I could not determine that interviewees' interpretations of prosecutors' actions or the motivations for these actions are necessarily true without speaking to prosecutors directly. To account for this, throughout my paper I speak about interviewees' perceptions about prosecutors instead of stating their thoughts as truth. My own bias is another aspect of my data collection method for which I had to control. I asked the interview questions, giving me a certain degree of control over the direction in which the conversations went. To mitigate this bias, I asked all interviewees the same main questions and tried to maintain a backseat during interviews. In addition, this paper explores themes that emerged and were reinforced by most if not all other informants in order to amplify subjects' voices.

To analyze my data, I coded interview transcripts, flagging topics that interview subjects spoke about that corroborated other interviewees' experiences. For example, any time an informant referred to something that had to do with the prosecutor, I coded this language "Prosecutor". I did the same for "Client's Disciplinary Record in Prison", "Recruit and Train Attorneys", and "Judges Receptive", to name a few. Once I had coded all of my interviews, I grouped quotes given the same code into tables based on their code name. Reading through the tables, I observed sub themes within the larger themes. For example, within the larger theme "Prosecutor", some quotes had to do with the prosecutor's frequent opposition of IRAA motions

and other quotes related to the prosecutor's interactions with the victim of the crime. I labeled these "Universal Opposition" and "Interactions with Victims". One strength of this method is that it is comprehensive. Quotes enabled me to present each interviewee's individual opinion using their voice and simultaneously show how individual accounts contributed to the same consistent themes about IRAA, enhancing the themes' validity. The pitfall of this was, however, that I had to select a few major themes into which to dive deep. With the goal of developing a paper of a reasonable length in mind, I realistically could not discuss every interesting topic interviewees brought up. Some other interviewees spoke about include the role of the nature of the offense, the role of the parole board, the community that has developed among those released and petitioning under IRAA, and many others.

Findings & Analysis

Informants shed light on what challenges associated with litigating IRAA reveal about the adversarial criminal legal system and conditions that contributed to IRAA's success operating within those structural barriers. Informants faced or witnessed ardent prosecutor opposition and prosecutors' problematic interactions with victims of crimes in addition to the judge's consideration of the client's disciplinary record while in prison. These challenges reflect the adversarial nature of the criminal legal system, specifically that it 1) incentivizes prosecutors to keep people in prison, 2) lacks restorative justice options for victim healing, and 3) lacks rehabilitative alternatives to incarceration for offenders. Conversations with informants revealed that two conditions of the local community in Washington D.C. contributed to IRAAs success in releasing clients from prison: 1) an information network and community surrounding IRAA and 2) judges who were receptive and supportive of IRAA. IRAA speaks to how local context can

contribute to the successful implementation of progressive legislation operating within an adversarial criminal legal system.

Adversarial Structures in the Criminal Legal System

Interview subjects faced challenges throughout the litigation of IRAA that speak to the adversarial nature of the criminal legal system. Informants discussed hurdles they faced or witnessed litigating IRAA cases: prosecutor conduct and the judge's consideration of the client's disciplinary record in prison when deciding whether or not to release a client from prison. First, prosecutors have opposed almost all IRAA motions regardless of the case facts, and informants perceive prosecutors to intentionally elicit emotional responses from the victims of IRAA crimes, whether the victim opposes release of the IRAA client or not, in order to use the victim's emotion as evidence to support the prosecutor's argument to oppose release. The second main hurdle informants discussed was the ability for judges to deny IRAA motions based on a client's disciplinary record in prison. Informants believe this factor is unfair because the court sent IRAA clients to violent prison environments that necessitated violence as a means for survival without offering them any alternative means for rehabilitation. Challenges in the litigation of IRAA reflect the adversarial nature of the criminal legal system because it incentivizes prosecutors to keep people imprisoned, lacks restorative justice options for victims, and lacks rehabilitative alternatives to incarceration for offenders. Overall, the challenges associated with the litigation of IRAA reveal structural shortcomings of the larger criminal legal system in which IRAA operates. It is important to understand how successful progressive decarceration legislation navigates this system.

1. Prosecutorial Conduct - Opposition to IRAA Motions, Interactions with Victims, & Prosecutorial Incentives

a. Opposition to IRAA Motions

Almost all interview subjects reported that prosecutors have opposed almost every IRAA motion, with a few exceptions, regardless of whether the client has demonstrated rehabilitation or not. One of the factors the judge is to consider when deciding on IRAA petitions is “any report or recommendation received from the United States Attorney”. When a defense attorney submits an IRAA motion to the court, the U.S. government is allowed to respond to the motion. They can either oppose the motion or concede the motion, which means they support the petitioner’s early release under IRAA. Interviewees reported that even in the few cases prosecutors have conceded IRAA motions, they argue for more time served or some other form of surveillance as opposed to immediate release. The ardent opposition to IRAA motions reveals how the criminal justice system incentivizes prosecutors to keep people imprisoned, leading them to oppose release in IRAA cases at all costs.

Almost all interviewees reported that the prosecution has expressed universal opposition to IRAA cases, besides a few exceptions (Appendix F, Table 3). Attorney1 (A1) is the founder and executive director of a law firm dedicated to litigating second look sentencing cases for those who cannot afford representation, with a focus on IRAA cases. A1 described prosecutorial opposition as “the biggest challenge” in defending IRAA cases (A1). Public Defender 2 (PD2) is a public defender in Washington D.C. PD2 said the USAO has expressed public opposition to IRAA and has tried to garner opposition from the local community. Their opposition to IRAA is “no secret” (PD2). Juvenile Justice Advocate 1 (JJA1) is a community assessment and engagement manager with a juvenile justice advocacy organization in D.C. From what she has seen, JJA1 believes prosecutorial opposition is “categorical - there's no rhyme or reason...It was universal opposition to it, no matter what the case was” (JJA1). Interviewees perceived

prosecutors as opposing motions for no reason, regardless of if the case facts were in favor of the IRAA client. PD2 has been “disappointed” in the prosecutors because of how they've opposed these cases (PD2).

Interviewees perceive prosecutors' opposition to IRAA cases comes from a directive from above and does not necessarily reflect individual attorneys' beliefs (Appendix F, Table 4). From watching prosecutors in court, JJA1 does not believe prosecutors' opposition to IRAA motions stems from a genuine individual belief that the client has not rehabilitated. On prosecutors' opposition to IRAA motions, PD2 similarly “suspect[s] its political” (PD2). In other words, PD2 suspects the USAO decided to collectively oppose IRAA motions as an institution to some political end. However, this perception contradicts what the USAO has told the public. In 2019, after the government opposed the first 14 petitions, the USAO made an official statement saying it ““does not subscribe to an approach of unilateral opposition”” (Lerner 2019). Regardless of what the USAO has said to the public, Attorney 3, counsel at a private law firm who has worked on IRAA cases, concluded the same based on her observations. She has “not dealt with anyone who has been supportive. At best, they've been resigned” (A3). A3 interprets the “resignation” of individual prosecutors, or their lack of engagement with the opposition for which they argue, as prosecutors merely doing a job instead of genuinely believing a client should not be released. While it is not confirmed that the USAO has given a directive to oppose all IRAA cases, informants believed this to be true based on their observations and interactions with prosecutors. Regardless of prosecutors' motivations, their opposition makes every IRAA case a “tooth and nail fight with the other side”, even when the client has an exceptionally strong case for reentry (A1).

Informants expressed frustration about prosecutors opposing almost all IRAA motions, especially the motions of clients who demonstrated rehabilitation and had strong cases for early release. IRAA is based on the philosophy that when someone is rehabilitated, they need not continue to be in prison. However, prosecutorial opposition in cases of those who have demonstrated rehabilitation undermines the IRAA statute and treats prison as retribution for a crime. PD2 described a time when his client had a strong case for release: the victim's family supported release, the client had a few minor infractions in prison, he had gotten his GED and completed job training programs in prison, and he had a strong reentry plan. In addition to the client's impressive record, he was already scheduled to be released from prison three months after the IRAA hearing, "and the government still opposed [the motion]" (PD2). The prosecutor opposed release for a client who fulfilled the criteria required of him under IRAA. Informants perceived this to be evidence that prosecutors' opposition is not grounded in the case facts. PD2 said it is often so obvious when the government opposes a motion for a client they know has rehabilitated that in the government's written response, "You could have just changed the intro and the conclusion to, 'We support granting this motion', and you wouldn't have to change any of the body" (PD2). In other words, PD2 has seen prosecutors' responses where they are unable to cite reasons why clients with impressive records in prison should not be granted release and remain in prison. D.C. Government 1 (DCG1) is a program analyst for a council in the D.C. government. He was released from prison under IRAA. Reflecting on his experience with the prosecutor, he felt

That wasn't really a good experience...They tried to put to the side all the things that I had accomplished in my life, while in prison, and even the mitigating factors prior to prison. They just tried to disregard everything and basically was like 'He doesn't need to be released from prison'. And that was their stance (DCG1).

In DCG1's experience, the prosecutor ignored the aspects of his case that made him a good fit for release and opposed his motion. Investigator1 (I1) is an investigations supervisor at a law clinic in Washington D.C. I1 has also seen "cases where I thought if this person isn't deserving of [IRAA], who is?" (I1). She wonders: "Is there no one deserving in [the prosecutor's] mind?" (I1). Based on their ardent opposition to release, I1 perceives the prosecutor's stance to be that no one deserves to be released from prison. PD2 believes that in some cases, if the prosecutor compared the criteria for release under IRAA and the client's case for reentry, "you could not make a good faith argument that my client didn't meet all of the factors" (PD2). The prosecutor has opposed all of PD2's IRAA motions, including motions where the client has met all of the necessary factors listed in the IRAA statute. Juvenile Justice Advocate 2 (JJA2) is an advocate for incarcerated children at the same organization as JJA1. JJA2 said he has seen the government oppose an IRAA motion and say, "I still don't think [the client] should be granted [IRAA release], but I don't really have [an] argument" (JJA2). JJA2 reports seeing the government admit to opposing a motion with what appears to be no argument. While interviewees cannot confirm what motivates prosecutors to oppose IRAA motions, informants recounted times when prosecutors opposed IRAA motions in cases where the client demonstrated rehabilitation, suggesting there is a force motivating prosecutors' opposition besides the lack of rehabilitation.

Informants have observed prosecutors go to great lengths in their argumentation to oppose IRAA motions. Juvenile Justice Advocate 3 (JJA3) is litigation counsel for the same juvenile justice organization that JJA1 and JJA2 work for. JJA3 perceived prosecutors to be "really willing to go out on a limb on arguments", bringing up evidence that "a little outrageous" (JJA3). JJA3 described a time when the government had asked an IRAA client to testify in a different case, but the client told the prosecution he could not help them because he did not know

anything about the case. During the client's IRAA hearing, the U.S. Attorney's Office (USAO) said that the client "didn't want to help the government out so he hasn't rehabilitated" and should therefore not be granted early release (JJA3). The prosecution tried to characterize the situation to appear as if the client a) refused to help the government and b) that this was a sign he had not rehabilitated to strengthen their argument to oppose the client's release under IRAA. A1 echoed the sentiment that prosecutors' arguments are "oftentimes in bad faith or dishonest and kind of manipulate the facts" (A1). Public Defender 1 (PD1) is another public defender in Washington D.C. PD1 said prosecutors tend to focus on remorse as a criterion that must be met, even though it is not outlined under the IRAA statute, and emphasizes when clients do not meet it, often ignoring apologies from clients. In fact, JJA2 witnessed a prosecutor manipulate the facts of a case to make the defendant look as if he lacked remorse. The client apologized to the victim for the first time during the IRAA hearing but had not reached out to the victim during the client's years of incarceration. JJA2 said the prosecutor accused the client of being disingenuous, arguing that the client only apologized to the victim because he thought it would strengthen his case for early release if he expressed remorse for his actions. In fact, clients are legally barred from contacting the victim or the victim's family once convicted of a crime (JJA2). JJA2 perceived the prosecutor to have manipulated this fact to argue that the client did not have remorse for his actions, reflected in his lack of apology to the victim prior to the IRAA hearing. Finally, PD1 has seen prosecutors dismiss evidence in mitigation reports and argue that the mitigating circumstances did not cause the crime so they should not be discussed in the hearing, echoing DCG1's experience with the prosecutor when he motioned under IRAA. JJA2 remembers a time when an IRAA client had not done much programming in prison because he had been given a life sentence, and people with life sentences are often restricted from programming. The

prosecutor argued that this indicated the client had not rehabilitated and should therefore not be granted early release. According to A3, “The government does what the government wants to do”, referring to some of the questionable arguments the prosecution puts forth during hearings. In addition to opposing almost all IRAA motions, informants perceived some prosecutors’ made arguments in bad faith to enhance their opposition.

On the rare occasions the government has conceded IRAA motions, informants report that the prosecutor acknowledged rehabilitation but did not agree to immediate release or argued in favor of another form of supervision, like parole or probation. PD2 has never seen prosecutors “fully consent[] to release this person immediately and free of any supervision” (PD2). While the government conceded in one or two of PD2’s cases, the prosecutor fought for further retribution in the form of more prison time or release under community supervision like parole or probation. Although people under community supervision are not incarcerated in prison, parole and probation significantly restrict individuals’ activities and there are severe consequences for violating community supervision, including being sent back to prison. JJA1 similarly reported a time when a prosecutor admitted the client had “a phenomenal record” but still argued for the client to serve five more years in prison (JJA1). Mitigation Specialist 2 (MS2) is a mitigation specialist at a public defender office in Washington D.C., meaning she is in charge of writing the mitigation report in the IRAA motion. MS2 described prosecutors’ concessions as “half-hearted... [The prosecutor] usually can't point to a reason for [opposing release] ...because usually they're conceding that the [client is] not dangerous” (MS2). MS2 has witnessed the prosecutor concede that the client is not a danger to society but argue the client should spend a few more years in prison. JJA2 remembered a time when a prosecutor conceded a motion but argued the client should not be able to “move around”, meaning move outside of Washington

D.C. However, the client's family had moved to Maryland and that was where he intended to move once released. Putting sanctions on a client that isolates them from their limited reentry support systems can have major ramifications for the client's reentry process. JJA2 also saw a prosecutor concede a motion but argue to keep a client in prison for 60 more days during the COVID-19 pandemic. JJA2 said this felt "petty" given the short amount of additional prison time for which the prosecutor was arguing and the fact that the prosecutor was arguing in favor of the client remaining in prison during a pandemic, when many incarcerated people across the country were being released from institutions to reduce the spread of COVID-19. Informants expressed confusion and frustration that the prosecution would concede an IRAA motion, meaning they acknowledge the client is rehabilitated, and simultaneously argue for more prison time.

Some might argue that prosecutors' opposition to IRAA motions and their interactions with victims are informed by measured and thoughtful decision-making. However, informants have witnessed prosecutors deny cases with clients who meet all the IRAA criteria for release and admit to a client's rehabilitation but still oppose the motion or oppose immediate release in a way that makes informants believe that the government is not in fact making judicious decisions. PD1 "believes the government has discretion and can use that discretion to make weighted, informed, rational decisions, but it is not using discretion in meaningful ways in IRAA cases" (PD1). The government has the power to make weighted decisions, but informants perceive government opposition to be coming from a directive from the USAO's office above.

Informants perceive the prosecutor's office to have a directive to oppose IRAA motions. Interviewees base their perception on their experiences with prosecutors who have opposed almost all IRAA motions, even motions with strong cases for reentry, and witnessing individual prosecutors make arguments that appear to be disingenuous. On the rare occasion the

government conceded an IRAA motion, informants reported that the prosecution has argued for more prison time, community supervision upon release, or some other seemingly arbitrary restriction that would inhibit the client's reentry process. However, PD2 noted one potential positive outcome of the government's universal opposition. PD2 noted that,

I'm glad that it's now commonly known among the judges that the U.S Attorney's Office basically uniformly opposes these motions. If [the prosecution] actually took a more judicious and fair reading of these cases and neutrally applied the law, like they claim to be doing, their opposition would carry more weight (PD2).

According to PD2, part of the reason IRAA is still successful in the face of ardent government opposition may be because this repeated opposition undermines the weight of the USAO's response in the eyes of judges. While government opposition may not have a tangible impact on the success of IRAA, it reflects the adversarial nature of the larger criminal legal system.

Prosecutors clearly have an incentive to keep IRAA clients in prison.

b. Prosecutor Incentives - Universal Opposition

Universal government opposition to IRAA cases reflects how the criminal legal system incentivizes prosecutors to keep people imprisoned. Investigator1 (I1) is an investigations supervisor at a law clinic in Washington D.C. She believes this motion-oppose relationship between the defense and the government reflects "the adversarial nature of the system" (I1). While it is impossible to know for certain the motivations behind the government's opposition without speaking to prosecutors, informants' experiences with prosecutors and observations of prosecutors' actions indicate that the government goes to great lengths to try to prevent offender release and keep people in prison, regardless of evidence that the person has rehabilitated. Government resistance to IRAA release might indicate that the government has an incentive to keep people imprisoned and oppose early release and sentence reductions at all costs. As noted above, informants suspect that ardent prosecutorial opposition comes from a political, system-

level “directive” to oppose all IRAA motions. Informants’ comments about a directive to oppose and its potential political nature indicate that the USAO may be opposing IRAA motions as a means to some political end. The USAO is, after all, elected by the president and is inherently a political position. Prosecutorial incentives to keep people in prison is a major systemic flaw in the justice system and it has the potential to inhibit the success of decarceration legislation. Prosecutor incentives motivating the government to oppose release also appear to influence their interactions with victims.

c. Interactions with Victims

Interviewees perceived prosecutors to use various tactics to anger victims, including delaying victim notification of the IRAA hearing and manipulating facts of the IRAA case, in an effort to enhance their opposition to release (Appendix F, Table 5). One of the 11 factors the judge is to consider in deciding whether or not to grant an IRAA motion is a statement given by the victim of the crime in which the IRAA client was involved. If the victim is deceased or otherwise unable or unwilling to speak at the IRAA hearing, the victim’s family can provide a statement during the IRAA hearing. While informants cannot be sure about the intentions behind prosecutors’ actions, informants perceive prosecutors’ tactics surrounding victims to be a strategy to elicit an emotional response from victims to strengthen the prosecutor’s argument against the client’s release. In addition, some informants witnessed prosecutors’ arguments contradict what the victim wanted from the IRAA hearing in terms of resentencing. The government’s problematic interactions with victims further reflect how incentives to keep people imprisoned motivate prosecutors to maintain convictions at the expense of victim healing.

Informants reported witnessing prosecutors practice different strategies to make the victim or the victim’s family angry prior to the IRAA hearing. A1 perceives that, “the

prosecutor's approach, it's about getting these people as angry as possible so that they will oppose release" (A1). In other words, it appears to be "an effort to kind of make the victims' opposition to relief as kind of strident and aggressive as possible" (A1). A1 has seen prosecutors try to make victims angry about the possibility of a client's early release. He perceives the prosecutor's intention with this tactic to strengthen their argument to oppose release using the victim's emotions. A1 recalled a time when a prosecutor told the victim's family the client had started a prison riot, which was not accurate (A1). A1 interpreted this as the prosecutor's attempt to characterize the client as violent in an effort to garner the victim's support in opposing the client's early release.

Several informants discussed a strategy wherein the prosecutor delayed notifying the victim or the victims' family about the IRAA hearing. JJA2 feels "troubled" by the way prosecutors treat victims and victims' families. He has heard prosecutors notify victims or their families about the IRAA hearing over the phone the day of the hearing. JJA2 heard the prosecutor tell the victim "'They're about to resentence him, I don't understand why you don't know about this.' They didn't know because you didn't tell them" (JJA2). JJA2 says when the victim or the victim's family believes the court planned to go forward with resentencing without the victim's input, it makes them "enraged... [They think,] 'How can this happen without me?'" (JJA2). JJA2 has seen prosecutors wait to tell the victim or their family about the resentencing trial until the last minute and interprets this as a tactic to make the victim feel like the court was going to release the client without any input from the victim. According to JJA2, it is the prosecutor's responsibility to notify the victim about the IRAA hearing and IRAA hearing dates are set months in advance (JJA2). JJA2 has seen this happen multiple times and other informants echoed witnessing the same tactic by prosecutors. JJA3 called this phenomenon "coordinated

victim opposition” and it has been “really influential in the cases in a way that sometimes prevents people from being released” (JJA3).

JJA3 described witnessing similar situations where the prosecutor used the victim “as a tool to delay sentencing” (JJA3). She describes witnessing situations where the prosecutor waited to tell the victim about the hearing until the day before, echoing what JJA2 said. When the victim can't make the trial on short notice, the court is forced to reschedule because the victim has a right to be at the trial. JJA3 says this happens when it is clear the judge is going to grant the motion (JJA3). JJA3 perceives the intention behind delaying IRAA hearings as to not only keep the IRAA client imprisoned, but also to “buy more time to try to get the victims to say what they want them to say” (JJA3). JJA3 says this “gamesmanship” of delaying the trial because of something “[the prosecutor] could have informed the victims of weeks prior [-] it's frustrating” (JJA3). D.C. Council 1 (DCC1) is a committee director for a D.C. councilmember. DCC1 has also witnessed similar victim notification. She saw a case where the mother of the victim testified during an IRAA hearing and said she had been notified about the hearing the day before. “Well, that's just an unacceptable way to treat a family member of crime” (DCC1). DCC1 echoed other informants’ experiences. She believes notifying the victim of the hearing at the last minute is unacceptable, especially if this is a tactic to manipulate victims’ emotions as a means to IRAA opposition, as JJA3 alluded to. It is unclear what prosecutors’ motivations behind this type of victim notification are without speaking with them directly. However, informants perceive the government’s actions as tactics to get the victim to oppose release.

Informants have seen prosecutors treat victims as if they all oppose early release. In fact, some victims oppose the release of an IRAA client, some support release, and some do not care either way and do not want to be involved in the IRAA process. Regardless, “some prosecutors

and other politicians want to make [victims] the same", meaning some prosecutors characterize all victims as opposing release even if that is not accurate (JJA2). JJA2 works with many families who did not forgive IRAA clients at first but changed their mind (JJA2). In his experience, however, the prosecutor has acted as if all victims oppose release "because it's better for [the prosecutor's] job than it is for what's right" (JJA2). JJA2 believes prosecutors treat all victims as if they oppose release because it serves the prosecutor's opposition to release. DCC1 echoed that regardless of whether a victim or their family supports release under IRAA, the USAO opposes the majority of IRAA motions anyway (DCC1). Informants perceive prosecutors as not prioritizing victims' needs in the IRAA sentencing process, only their own desires to keep clients imprisoned.

JJA2 also highlighted the victims who neither ardently support nor oppose early release under IRAA, but simply do not want to be involved in the IRAA process. However, he perceives that "prosecutors make their own interpretation" (JJA2). He says prosecutors will interpret a victim not wanting to be involved as "[they] don't [want to] be involved because they're just hurt'... [But] [the victim] didn't tell you that. They said they don't want to be involved" (JJA2). JJA2 has seen the prosecutor characterize the victim as being too traumatized to be involved, when that did not necessarily reflect the victim's feelings. According to JJA2, some victims just want to move on (JJA2). DCC1 similarly said in some cases, "because the U.S Attorney's Office represents the public interest, not the individual...they have taken a position that's contrary to what the victim wants" (DCC1). DCC1 interprets the government's behavior to indicate that the USAO may oppose release under IRAA even though it is contrary to what the victim wants in order to appeal to the public. This reiterates what was discussed in the previous section -

informants perceive the USAO's opposition and their interactions with victims to be a means to a political end.

Interviewees perceive the prosecutor to utilize tactics to anger the victim or delay the IRAA hearing in order to oppose release and keep the IRAA client imprisoned for longer. In addition, informants commented that prosecutor's do not appear to prioritize the victims' desires in IRAA proceedings, which are often more nuanced than all victims opposing release. The prosecutors' willingness to use victim emotions as a means to further their opposition to IRAA motions demonstrated the strength of the incentives for prosecutors to keep people imprisoned.

d. Prosecutor Incentives - Interactions with Victims

Prosecutor's interactions with victims reflect the structural flaw in the criminal justice system that incentivizes prosecutors to keep people imprisoned at the expense of victim healing. Informants commented how they believe the ways in which prosecutors interact with victims can be harmful and detrimental to their healing process. A1 believes "the manner in which the prosecutors interact with victims' families is one that is not designed to facilitate healing. It's not about reparation, it's not about helping people move on, it is about kind of ginning up" (A1). Based on his experience, A1 believes the prosecutor's treatment of the victim generates anger about the possibility of release of an IRAA client which "is actually very harmful for victims" (A1). In other words, A1 is saying that to be made emotional and angry about the original crime in the midst of working through trauma can interrupt that process and be harmful. JJA2 shed light on why prosecutors may be less concerned with the victim's wellbeing. He said "[the prosecutors] are not worried about the [victim's] family. They're worried about having a conviction" (JJA2). JJA2 believes prosecutors act with the goal of convictions in mind - in IRAA cases, the equivalent of convictions are motion denials. JJA2 perceives prosecutors to use

victims to enhance their opposition with the goal of keeping IRAA clients in prison. A1 echoed this sentiment: “The prosecutors don't care about families’ healing, that's not their interest. Their interest is preserving these sentences and keeping people incarcerated” (A1).

Informants interpret the government’s actions as being focused on a conviction and, in IRAA cases, preventing IRAA motions from being granted and IRAA clients from being released. Victims become collateral damage - prosecutors use their emotions to propel their argument for opposition forward, regardless of what the victims want out of the sentencing hearing. This further reflects the adversarial nature of the criminal legal system: the system is designed to incentivize prosecutors to keep people imprisoned, at the expense of victim healing. While it may not be realistic to suggest nor expect that the criminal justice system be the space that offers victims room to heal, it need not be a place where prosecutorial incentives result in interactions that inflict harm to the victim.

Challenges that informants faced or observed with prosecutors in the IRAA process reveal aspects of the adversarial nature of the criminal legal system in which IRAA operates. Interviewees reported facing almost universal prosecutorial opposition to IRAA motions, reflecting how prosecutor incentives to keep people in prison drive prosecutors to oppose IRAA motions even when the client has demonstrated rehabilitation. Informants observed prosecutors prioritize opposing IRAA motions over the emotional health of the victims of IRAA crimes, further demonstrating how the government’s incentive to maintain prosecutions can lead to harmful behavior.

2. The Lack of Avenues for Victim Healing

Conversations about prosecutors’ interactions with victims led informants to comment on how the criminal legal system structurally does not offer restorative opportunities for victim

healing. The goals of restorative justice are to repair harm from crimes by bringing offenders and victims together to hold offenders accountable and empower victims. The term also is used to refer to rehabilitative alternatives to traditional incarceration more generally. The system does not take into account what victims need to heal when deciding an offender's punishment for a crime, relying on incarceration as the solution. Informants reported that not all victims feel closure from the IRAA client's initial sentencing. In addition, some victims would like to communicate with their offender, but communication between the IRAA client and the victim is prohibited. Overall, the IRAA process involving offender and victim relations revealed the absence of options for victim healing besides lengthy incarceration for the IRAA client, which is not always what victims need or want. The structural lack of restorative justice options in the system prevents even progressive advocates of restorative justice from offering victims healing options.

Long prison sentences are not what all victims need in order to heal from a crime committed against them. DCC1 said that

Some [victims] have expressed that they expected the original sentence to give them a sense of finality and closure. And for some that didn't happen, because pain doesn't just go away because of a gavel. So, it has illuminated the challenges of over reliance on our traditional justice system as a place of resolving community harm and individual harm (DCC1).

DCC1 has seen victims remain in pain after an IRAA client has been sent to prison for a long time because prison time is not what all victims need to heal. Reliance on the traditional criminal legal system to solve the harm caused by serious crimes, like the ones committed in IRAA cases, means that the only option victims have is lengthy incarceration and the needs of individual victims are often overlooked.

The prohibition of communication between IRAA clients and victims during

incarceration exacerbates the lack of closure for victims who may find healing through communicating with their offender. This can be harmful to victims in IRAA cases who wish to receive an apology or have some other sort of conversation with the IRAA client. DCC1 remembers “hearing some victims also say, ‘[The client] didn't reach out to me in the 20 years he was incarcerated’”, expressing anger and confusion over why that might be the case (DCC1). JJA2 explained above that once convicted, clients are legally barred from communicating with the victim of the crime. But this legal prohibition does not represent how every victim feels - some victims would like to speak with their offender. DCC1 continues, saying

Speaking with the men and some victims after has really underscored the deep need for other options to extreme sentences. And that's not anti-victim, that's pro victim, because there are many victims who want another option (DCC1).

Some victims actually want to hear from IRAA clients because it is beneficial to their healing, especially when a long prison sentence alone is not. According to DCC1, many victims would like an alternative to lengthy sentencing, because long sentences do not always make victims feel healed. The lack of communication while incarcerated is also harmful to IRAA clients who would like to apologize to their victims. DCC1 recalled that

[IRAA clients] uniformly would say, ‘I would really like to reach out to the victim of their family or apologize...But our system doesn't work with that. Either there is a stay away order or [the client] wasn't able to communicate for 20 years while [they were] inside [prison] (DCC1).

IRAA clients are barred from contacting victims when they are incarcerated, even if they want to apologize. This legal barrier denies victims the opportunity for healing based on their individual needs, and it simultaneously harms IRAA clients who would also benefit from being given the chance to apologize and speak with the victim of the crime they committed. The prohibition of communication between IRAA clients and their victims is another example of how the criminal

legal system does not offer IRAA clients themselves avenues for healing, as well as denying victims restorative justice avenues.

Restorative justice practices are limited in Washington D.C. and require cooperation with the U.S Attorney's Office that often does not occur. Restorative justice practices

just [don't] exist in D.C....We have some restorative justice for juveniles and less serious offenses. But unfortunately, even though there's an MOU that's been executed between our [Office of the Attorney General (OAG)] and the U.S Attorney's Office, the U.S Attorney's Office doesn't refer cases to the OAG for restorative justice (DCC1).

DCC1 refers to Attorney General Karl Racine's restorative justice program, which began in 2016. Restorative justice specialists work alongside prosecutors in juvenile cases. The program attempts to repair harm from crimes by bringing the offenders and victims together in a way that holds offenders accountable and empowers victims (OAG 2016). However, the USAO must refer cases to the OAG in order for cases involving juveniles to be prosecuted using restorative justice practices, and prosecutors rarely do this according to DCC1. In addition, the current restorative justice program in D.C. only applies to initial juvenile sentencing and less serious offenses. It does not offer restorative justice options to cases of serious crimes involving those over the age of 18. It does not offer victims of IRAA cases avenues over which to participate in restorative justice throughout the IRAA client's incarceration or at the time of the IRAA hearing when initial juvenile sentencing has already occurred. In practice,

We have created a criminal justice system that offers only certain options to harm restoration...As a victim of crime, if you don't want to pursue one of those paths, there aren't a lot of door number twos. The U.S Attorney's Office doesn't have a restorative justice program. If you really just wanted to talk to the person who harmed you and reach an agreement that way, the default is incarceration (DCC1).

The legal system is not designed for restorative justice for victims and relies on incarceration as the solution. If victims and offenders wanted to explore restitution options other than incarceration, they are legally barred from doing so. The government cannot offer victims

avenues for healing and closure because, according to interviewees, they do not exist in the U.S. criminal legal system. The government can only offer incarceration as retribution, which does not help all victims heal.

The structural absence of options for victim healing in the criminal legal system prevents even progressive, restorative justice-minded advocates from offering victims alternatives to incarceration. A1 reflected, saying

We're not in a position as advocates to engender or cultivate that healing or restoration that I think a better kind of legal system would...so we're limited in what we can do as advocates and lawyers on our side (A1).

Even the defense, which in IRAA cases appears to be more progressive and open to change than the prosecutors according to informants, struggles to offer restorative options for healing. A1 specifies that this is because of how the criminal justice system is designed. The defense is forced to operate within the confines of the larger criminal justice system, even if they believe in restorative alternatives to incarceration for the victim. DCC1 concludes by suggesting a survivor-centered approach for the criminal legal system to adopt. She says,

I think a real survivor centered approach means giving survivors a menu of options. And they decide what is best for them. And one of those means restorative justice, even for really serious cases (DCC1).

DCC1 believes that the justice system should offer victims options that include alternatives to lengthy incarceration. She specifies that restorative justice need not be reserved for minor infractions and must be applicable in cases of more serious crimes. Victims would be able to choose the path that would best facilitate their healing, and offenders might also benefit from these restorative practices healing wise, if not through a reduced sentence.

Interviewees commented that the IRAA process reveals the absence of restorative justice avenues to facilitate victim healing within the current criminal justice system. Long prison

sentences do not give all victims closure, and the illegality of communication between IRAA clients and victims while the client is incarcerated prevents healing for victims and clients who want that dialogue. While interviewees observed how prosecutors did not appear to prioritize what victims want in IRAA hearings, informants also commented that defenders and advocates who are supportive of IRAA also struggle to offer victims avenues over which to heal, revealing how they too operate within a system in which these opportunities do not exist. The IRAA process speaks to the adversarial criminal justice system's major shortcoming in the area of victim healing. This flaw calls into question the purpose of the criminal justice system and the extent of reform. While victim healing is salient, it is important to keep in mind that the criminal justice system may not be the appropriate space for it. My policy recommendations address the potential limits to criminal justice reform in the area of restorative justice and victim healing.

3. Factor #3: The Consideration of a Client's Disciplinary Record in Prison & the Lack of Rehabilitative Alternatives to Incarceration for Offenders

a. The Consideration of a Client's Disciplinary Record in Prison

Interview subjects commented that the factor that allows judges to consider a client's disciplinary record in prison in their decision to grant release or not is not an effective or fair way to determine a person's rehabilitation and fitness to reenter society (Appendix F, Table 6). The third factor of the 11 factors that the judge is allowed to consider under IRAA is "Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available" (Appendix D). Informants commented that a client's disciplinary record has an impact on judges' IRAA decision-making on the grounds that violence in prison is a sign that someone remains a danger to society. However, violent behavior in prison is not

necessarily representative of how someone will behave in society. Based on informants' personal experiences and conversations with clients, interviewees reported that violence in prison is often a means to survival because clients are sent to violent prison environments without an opportunity for rehabilitation. The third factor reflects how the criminal legal system does not offer adequate means for rehabilitation for those who commit crimes, only incarceration in violent prisons. The IRAA provision that allows judges to consider clients' disciplinary record in prison expects clients to succeed in a prison system that sets them up for failure.

Informants reported that the client's disciplinary record in prison has an impact on judges' decisions because they see violent behavior in prison as a sign that a person may still be a danger to the community. A1 said that where motions have been denied, it has been because of people's institutional disciplinary records "almost without exception" in his experience (A1). MS2 agrees that judges see a client's disciplinary history as "something they can point to that shows that that person is a danger today" (MS2). Mitigation Specialist 1 (MS1) is a mitigation specialist at a private firm who works on IRAA cases. MS1 had a case where a judge granted a sentence modification, but not immediate release, because of the client's disciplinary history. Although the disciplinary incidents had declined in frequency over time, the fact that they were there at all were enough to make the judge uncomfortable granting immediate release. However, disciplinary incidents in prison often follow a similar trajectory to the age-crime curve. A1 and JJA3 said there are many instances where clients have more disciplinary infractions at the beginning of their incarceration, but these decrease in frequency over time. In these cases, "judges most of the time have not held that against people" (A1). However, if a disciplinary act is more recent in the client's incarceration, judges may interpret this as a sign that the client may be a danger to society. Criminal Justice Policy Associate1 (CJPA1) is an associate at a policy

organization in Washington D.C. He was released from prison under IRAA. CJPA1 does not agree with denials on the grounds of a prison disciplinary record. If a judge denies a motion, the client must wait three years before motioning under IRAA again. CJPA1 said in those three years, the client is going to “go back and sit in a prison cell. You think he’s gonna change?” (CJPA1). According to CJPA1, denying someone based on their prison history and sending them back to prison does not give them the necessary tools to rehabilitate and change their behavior because the client remains in a violent environment that necessitates violence. JJA3 describes the consideration of the disciplinary record as a “hurdle” (JJA3). Informants believe a client’s prison disciplinary record should not be a reason their IRAA motion is denied.

Interviewees commented on how prisons are violent environments that beget violence, and judges do not always understand that. CJPA1 said coming home from prison, “we’ve been in an environment that breeds violence” (CJPA1). He referred to research showing “being imprisoned is similar to being in a war” in terms of the violence and trauma involved (CJPA1). JJA3 also said “[prisons] are remarkably dangerous facilities” and “people might have felt the need to defend themselves...It’s remarkably hard to keep a clean record in the Federal Bureau of Prisons” (JJA3). The violent circumstances of prison often necessitate violence for self-defense in response to violence, even if a person is not inherently dangerous. But this violent context is not always reflected in a client’s prison history (JJA3). A3 describes prisons as “savage environments” (A3). A3 said the government and judges often have “no real understanding of what it was like to live in prison”, which makes their consideration of disciplinary records, and denials based on it, out of context and unfair (A3). The judge’s consideration of a client’s disciplinary record has also created a new social dynamic that was not anticipated. D.C. Council 2 (DCC2) is a committee director for a D.C. councilmember. According to DCC2, when faced

with an altercation in prison, some IRAA clients did not want to defend themselves for fear it would result in a disciplinary infraction and that would negatively impact their chances of release under IRAA (DCC2). IRAA clients “became victims inside” because of this (DCC2). IRAA clients feared having their disciplinary records used against them, so they did not defend themselves, ultimately making themselves victims in prison. Judges often do not understand the violent context within which IRAA clients live in prison, making their consideration of a client’s disciplinary record misguided.

Interviewees commented that violence in prison is often a means for survival and does not necessarily signal someone is a danger to society. A1 says a lot of behaviors in prison can appear dangerous to someone who is not familiar with the prison environment, as discussed above. In reality, violence in prison “really may have been the only viable means of survival” rather than an intentional and malicious action (A1). CJPA1 said in prison, “you[‘ve] got to survive”, and people will do this in the most effective and relevant ways, which often means violence (CJPA1). Based on her conversations with clients, A3 says a component of surviving in prison is “giving into the savagery” - participating in violence to some extent is essential to surviving in the violent environment (A3). Further, someone’s adaptation to the prison environment is not reflective of how they will behave in the free world because prison is not an accurate reflection of what the real world looks like given its heightened violence (A1). A3 says a big part of her job is convincing judges that prison is different from real life (A3). To deny based on a client’s behavior in prison is “a defective kind of reasoning to apply” (A1). According to A1, this is especially true given how many people who had disciplinary problems while incarcerated were released and adjusted to the community well “because [society] is not the same

[as prison]” and therefore does not require the same violent behavior (A1). Statistics showing zero recidivism amongst IRAA releasees corroborate A1’s words.

Informants disagreed with the factor that allows judges to consider the client’s prison disciplinary record because judges often lack context of the violent prison environment, violence is often a means to survival in response to this environment, and violence in prison is therefore not necessarily an indication that a person will be a danger to society. The consideration of the client’s disciplinary record in IRAA hearings ultimately reflects how the criminal justice system does not offer rehabilitative alternatives to incarceration for offenders.

b. The Lack of Rehabilitative Alternatives to Incarceration for Offenders

The consideration of the client’s disciplinary record in prison in IRAA cases reveals how the criminal legal system does not offer offenders the opportunity to rehabilitate. Instead, courts send them to violent prisons that often lead them to participate in violence themselves.

Interviewees comment on how the court itself put IRAA clients into violent prison environments without offering them an opportunity for rehabilitation. The criminal justice system does not “present [kids] with any meaningful opportunity for rehabilitation or change” because it relies on incarceration in violent prisons (A1). A1 said

[The court] just took these kids from one chaotic, violent environment, and just put them into environments that were progressively more chaotic and more violent, and where the only reasonable response, and really the only viable means of survival for most of them, was to be violent and to commit violence as a means of adaptation (A1).

The court itself took children from violent neighborhoods and other mitigating circumstances and placed them into more dangerous carceral environments. The system does not have a less violent, rehabilitative path to offer. On the consideration of a client’s prison disciplinary record,

MS2

[doesn't] feel great about it. We put people in a situation where we expect them to succeed, but very much they're set up for failure from the second they go into the system as children. They go in and they are preyed upon by older incarcerated people. Oftentimes, our clients haven't finished school, a lot of my clients didn't know how to read or write when they first came to prison, which not only affected their ability to communicate with others, but even just maintain relationships with their family (MS2).

IRAA clients enter prison as children, more vulnerable than other incarcerated age groups because of their youth. Using a client's disciplinary record against them at the IRAA hearing sends the message that they should have done better and overcome the violence in prison, not participated in it. The IRAA provision that allows the judge to consider the client's disciplinary record in prison essentially expects them to succeed in a prison system that sets clients up for violent altercations in order to survive. A1 says "it's rigged" - the court holds a client's prison behavior against them after sending them there without providing a rehabilitative alternative (A1). A3 says "[the system] [does] so much damage to these guys" by putting them in prison with no other options for rehabilitation; the system is responsible for the violence and trauma clients experience while incarcerated, not the clients themselves (A3).

Those convicted in Washington D.C. do not have the opportunity to be housed in the select prisons which offer better programming and where violence is more controlled. D.C. is not a state, so it does not have a state jail. Those convicted in D.C. are sent to the Federal Bureau of Prisons (BOP), the national prison system, so they are housed across the country. Educator for Incarcerated People1 (E1) is the managing director of a program that teaches courses at the D.C. jail, where he teaches some IRAA clients held there for resentencing. The D.C. jail grants access to a Georgetown college education, whereas federal prisons are known to be more violent and have limited access to programming (E1). E1 said "If you serve your sentence in some of the worst federal prisons, you end up not having any opportunities to demonstrate rehabilitation" (E1). Because IRAA clients are sent to the BOP, they end up in some of the worst prisons in the

country, severely limiting their access to the already limited and inadequate rehabilitative programs and services that are more available in state prisons.

CJPA1 offers an idea to incorporate some rehabilitative practices into the resentencing process. He suggests that instead of judges denying IRAA petitioners because of their disciplinary record and sending them back to prison, judges should send clients to a halfway house (CJPA1). A halfway house provides a “structured environment” where the judge could ensure “the community is safe”, unlike in prison where the environment is violent (CJPA1). CJPA1 says the judge can also monitor IRAA clients’ progress at a halfway house. CJPA1 offers this solution as a mechanism that might set clients up for success and rehabilitation instead of perpetuating the cycle of violence in prison, for which IRAA clients are then held responsible.

Some might argue that a client’s prison disciplinary history is the only way to measure whether that person could be a danger to society if released, and it is therefore an essential component of the criminal justice resentencing process. However, there are so many other components of the mitigation report and motion that comment on a client’s rehabilitation and fitness to reenter society, like how much programming they completed in prison (that was available to them) and their reentry plan if released. These factors should be given more weight considering they are a better predictor of how someone might fare in society and the judge already weighs these factors to assess a client’s fitness to enter society.

Prisons are violent places, and disciplinary infractions in prison are often an adaptation to the environment, not reflective of how that person may behave in the free world. The U.S. criminal justice system is designed to put people in prison and does not have safe alternatives to incarceration that prioritize rehabilitation. This is a problem for offenders at initial sentencing, but it also presents hurdles for those motioning to be released from prison early.

Through working with IRAA, interview subjects faced challenges that reflect the adversarial nature of the criminal legal system. However, IRAA remains successful legislation in the face of this adversity. As noted above, almost every IRAA motion has been granted, and clients are usually granted immediate release. It is important to understand how progressive policy navigates the flawed criminal legal system in which it operates and what makes it successful despite these hurdles.

Local Conditions That Contributed to IRAA's Success

Conversations with informants revealed that an informal information network and community formed around the litigation of IRAA when the legislation was initially passed, ensuring that those motioning under IRAA received robust representation. Informants also revealed that overall judges were receptive and supportive of IRAA. Judges decide whether or not to grant a sentence reduction under IRAA, so judges' understanding disposition towards the act contributed to IRAA's high grant rates. Both of these factors represent conditions of the locale in which IRAA was implemented that contributed to IRAA's success in releasing the target population from prison. Both factors occurred naturally around IRAA and speak to the important role of the local conditions in which progressive legislation is implemented in a policy's success when operating within an adversarial criminal justice system.

1. Informal Information Network & Community

Juvenile justice advocates and attorneys worked together to create a supportive informal network that facilitated the aggregation and flow of knowledge related to the effective litigation of IRAA, contributing to IRAA's successful implementation. The network facilitated the sharing of information about what IRAA was and how it was to be litigated, strengthening attorneys'

defense of clients and clients' access to representation. In addition, the D.C. Council provided grants to legal clinics specifically for the investigation and representation of IRAA cases. The network is informal because it sprung up naturally in response to the creation of IRAA and was not specified in the legislation itself. The IRAA community network is an example of how local conditions can influence the success of legislation.

Informants commented on how the recruitment and training of attorneys about IRAA prepared the relevant actors to successfully litigate IRAA cases and ensured IRAA clients were assigned robust representation (Appendix F, Table 1). An advocacy organization in Washington D.C. recruited attorneys to represent IRAA clients and hosted trainings for attorneys to learn how to litigate IRAA. JJA1's organization does not represent clients itself because it is an advocacy organization. When IRAA passed, however, JJA1's organization recruited pro bono attorneys from law firms with which they had relationships (JJA1). JJA1 said that recruiting attorneys "was key to ensuring as many impacted [by IRAA] were represented by effective legal counsel" (JJA1). Subsequent to recruiting attorneys and assigning them to IRAA clients, JJA1's organization hosted a training for attorneys. The organization distributed information packets to attorneys including information about what D.C. was like during the time that IRAA clients were incarcerated, example IRAA motions so attorneys could see how an IRAA motion was supposed to be compiled, and other helpful informational materials. JJA1's organization "gave them ongoing support throughout the process to ensure that they were knowledgeable about IRAA: the law, the realities of the prison system, and mitigation work that was needed..." (JJA1). Another component of this support was the organization created a listserv with all the attorneys who had done IRAA cases "so the attorneys [could] talk each other through the [IRAA] process" (JJA1). Although JJA1's advocacy organization did not have the power to represent clients itself, it

united attorneys from external law firms and facilitated their education about IRAA. This not only ensured IRAA clients had representation at all, but also enhanced the quality of the representation that clients received despite IRAA being brand new, unfamiliar legislation.

The Public Defender Service of Washington D.C. (PDS) similarly recruited and trained attorneys to learn how best to litigate IRAA. While PDS has defenders of its own, they also reached out to attorneys and mitigation specialists in private practices and invited them to a training at PDS to learn about IRAA and to represent IRAA clients. A1 went to a training at PDS early on when many attorneys were still confused on how IRAA was to be litigated. The PDS training “set forth what a best practice model of litigating IRAA cases would look like” (A1). As more lawyers began taking on IRAA cases, A1 became a resource for them because he was further along in the IRAA process (A1). He even started his own practice dedicated to litigating cases for those charged as juveniles given lengthy sentences under IRAA and new D.C. compassionate release laws, adding to the organizational network (A1). MS1 also attended a training at PDS (MS1). PDS not only educated its own public defenders about IRAA, but also those in the private sector and facilitated the information flow to those outside of the public defense community. PDS ultimately created more, and enhanced the quality of, resources that made IRAA litigation more robust. JJA1’s advocacy and PDS together contributed to the informal IRAA network.

Observing IRAA hearings and communicating about mistakes that were being made in its litigation also ensured that attorneys did not repeat the same mistakes during IRAA hearings and provided the best counsel. When IRAA first passed, JJA1 and her colleagues attended IRAA hearings to observe how it was being litigated. JJA1 witnessed attorneys give five- or nine-page motions, when IRAA motions are often up to 150 pages because the mitigation investigation is

so thorough (JJA1). JJA1 and her colleagues wanted to be able to catch mistakes early on and “quickly pivot to get the messaging out to a lot of attorneys so they wouldn't make the wrong move” (JJA1). JJA3 echoed JJA1’s desire to communicate the best ways to litigate IRAA based on mistakes she witnessed in the courtroom. JJA3 said when IRAA first passed, she and her colleagues felt they needed to “[track] what actually happens at these hearings and we need to figure out if there are problems with it, and if we need to make adjustments to it” (JJA3). JJA1 and JJA3 were able to communicate mistakes being made in IRAA hearings to attorneys based on their observations. The informal network between advocacy organizations and PDS discussed above facilitated the communication of observed areas of improvement and their solutions, enhancing the litigation of IRAA cases.

Financial support from the D.C. Council, although it came late, further contributed to the informal network surrounding IRAA discussed above leading to more robust representation of IRAA clients. Initially, the D.C. Council had not included money for defense work for IRAA cases in its budget (DCC2). But the Council soon learned that “[IRAA] is close to a death penalty case in terms of the level of time and effort it takes to prove all these factors for the judge” (DCC2). The D.C. Council realized how many resources were necessary for the investigation work behind IRAA motions. DCC1 said after this realization, councilmembers created money in the budget and issued grants to Georgetown Law Clinic and the law firm that A1 created for representation and investigation associated with IRAA cases (DCC1). However, DCC2 said the budget was an unanticipated challenge that “ended up solving itself”. The informational network was created in the absence of the grant money when IRAA was first passed; the monetary support that came later merely enhanced what had already occurred naturally (DCC2). JJA1 confirmed that by the time the D.C. Council issued the grants, the vast

majority of IRAA clients had already been assigned representation (JJA1).

JJA1 and JJA3's juvenile justice organization and PDS recruited and trained attorneys and mitigation specialists about IRAA, observed IRAA hearings, and created an informal information network to quickly communicate mistakes being made and ways to improve defense. Clients were not only assigned representation - they received robust representation from the get-go, despite IRAA being brand new, unfamiliar legislation. Defense teams had a system of communication and support that allowed them to constantly improve litigation along the way. The informal information IRAA network shortened the learning curve surrounding the new and unfamiliar legislation and improved the consistency and robustness of IRAA representation, contributing to IRAA's success in releasing clients from prison. The IRAA informational network speaks to how a local effort born from the justice advocacy community contributed to the success of this progressive decarceration legislation, despite the adverse challenges faced along the way.

2. Receptive Judges

Almost all informants commented on how judges have been receptive to IRAA (Appendix F, Table 2). Interviewees define receptive as open to and supportive of the new ideas presented in IRAA including juvenile brain science, childhood mitigating circumstances, and second look sentencing. Having judges who understand and support IRAA has contributed to the number of releases under IRAA because judges decide whether or not to grant someone early release. JJA3 said judges have "weighed these factors and people have come home", indicating that the judge's decision-making has led to IRAA clients being released (JJA3). DCC1 has not had personal conversations with judges, but she thinks "the numbers just themselves would suggest to us that [judges] are open to [IRAA]" (DCC1). DCC1 refers to the fact that almost all

IRAA motions have been granted immediate release. As of November 2020, 53 IRAA motions had been granted, while only 5 had been denied (Alexander 2021). Both imply that judges' receptiveness to IRAA has contributed to high grant rates. Judges' support of IRAA is another aspect of the local context that has contributed to IRAA's success.

Informants reported that judges see IRAA as an opportunity to reconsider lengthy sentences. As those who dole out sentences, many of which are lengthy, informants found judges open to the opportunity to revisit lengthy sentences under IRAA. JJA1 heard a judge express that IRAA is “a phenomenal opportunity to get to look at cases from years ago” (JJA1). As a result, “many judges have treated them with the kind of seriousness and thoughtfulness that they demand” (A1). Some judges are so supportive of IRAA that PD2 and other informants have heard them say they wish they could conduct the second look sentencing process that IRAA demands with all cases, not just cases involving those convicted as juveniles (PD2). PD1 said many judges don't feel good about sentencing juveniles to long sentences, even if it is the appropriate sentence in the name of the law, so IRAA for judges is “a breath of fresh air” (PD1). PD2 contextualized judges' support for IRAA, saying that within the flawed criminal justice system, IRAA is “a rare opportunity” to see if an extremely long sentence can be cut short (PD2). JJA3 believes that judges see IRAA as a “chance to undo some of that damage” from the crack era and look at cases through a lens colored by new, progressive knowledge (JJA3). DCC1 described IRAA as “restorative” for some judges, who may feel that IRAA is remedying damage that they have personally inflicted through handing out long sentences (DCC1). Informants' perceptions of how judges see IRAA, either through conversations with or observations of judges, indicate that judges are open and supportive to the ideas behind IRAA, making them more inclined to take the process seriously and give the decision the time and thought it

deserves. Judges' agreeing with the science behind IRAA and supporting its mission to release those who have rehabilitated from prison early has contributed to the high proportion of IRAA motions which have been granted.

Judges almost always grant immediate release when they grant IRAA motions and rarely decide to resentence someone, further demonstrating their understanding of IRAA. Under the IRAA statute, granting an IRAA motion can either mean granting the client immediate early release from prison or reducing a client's sentence, but the client must remain in prison for some time longer and go before the parole board to motion for early release. Thus far, however, judges have on the whole granted immediate release when they grant IRAA motions. MS2 believes that judges granting immediate release more often than sentence reduction is a reflection that judges truly understand the meaning behind IRAA. She says if a judge concludes that a client is rehabilitated, there is no reason for the client to continue to live in prison besides for retribution. IRAA is based on the belief that lengthy sentences should not be used as retribution for a crime, so judges granting immediate release as opposed to sentence modifications demonstrates their understanding of and agreement with the foundations behind the statute. JJA3 believes judges' granting of immediate release reflects judges' understanding that teenagers and adults are different and should be treated differently (JJA3). JJA3 believes judges also recognize the racial disparities at play - almost all IRAA clients have been black, and all of them have been men (JJA3). Informants perceive judges' reception to and understanding of IRAA to lead them to grant more IRAA motions, specifically immediate releases versus sentence reductions.

Some judges have given IRAA clients the information and tools they need to succeed in the IRAA process, reflecting another way judges support IRAA and IRAA clients within a punitive and cruel criminal justice system. MS1 shared a story of a time when a judge denied her

client's IRAA motion but was clear about how the client could improve his case for the next time he motioned under IRAA. The judge told the client and the defense team that he wanted more information about the client's disciplinary history in prison. The defense team was able to prepare the client's defense according to the judge's request and the next time the client motioned, the judge was "satisfied" and released the client (MS1). The judge in this case gave the IRAA client's defense team the opportunity to improve the client's IRAA case and ultimately be released. JJA2 echoed a similar experience with a judge who explains to clients exactly what information he needs from them in their IRAA hearings in order to feel comfortable releasing them. The judge's guidance helps IRAA clients prepare their IRAA motions and increases their chances of being granted. The judge's behavior in these examples is especially noteworthy within a system that often sets people up for failure.

Judges have also been reported to be sympathetic to the emotional toll that the IRAA process takes on everybody involved. PD2 has seen judges give clients the necessary space to give statements or collect themselves emotionally during an IRAA hearing. PD2 has seen judges allow clients to change from their jail clothes to professional courtroom attire, which "should not be a big deal, but it can be in what's otherwise often a very cruel system" (PD2). The seemingly "little" things that might increase someone's comfort and dignity during a criminal hearing have a large impact during a process that takes a high emotional toll, and judges invite space for this. This is especially noteworthy of an actor in the criminal justice space because "often you don't even see that at a criminal sentencing itself, which is kind of these hearings in reverse. Those can be a little bit more rote and a little bit more going through the motions" (PD2). Normal sentencing hearings tend to be more emotionally detached, and PD2 was pleasantly surprised to see judges recognize the emotional weight of IRAA hearings. Not only does judges' respect for

clients' emotions in IRAA hearings further represent their understanding and support of the IRAA process, but it also defies the cruel and punitive norm established in the larger criminal justice system around them.

Overall, informants commented that judges have been receptive to and supportive of IRAA. However, informants spoke about certain situations where judges have not been as supportive of IRAA, revealing the subjectivity of judges' decision-making and their concern with their public perception. JJA1 said she has seen external factors impact judges' decision-making. When there was negative media coverage surrounding the Second Look Amendment Act (SLAA), judges handed down many denials - "it was like a firestorm for a few weeks" (JJA1). JJA1 perceived this slew of denials to be a response to the negative media attention surrounding SLAA, perhaps out of fear that granting motions when the public was so overtly opposed to IRAA would somehow harm the judges' reputation. However, the judges' true intentions are unclear. Along a similar vein, PD1 believes some judges are uncomfortable with the IRAA process because they do not want to be responsible if the person they release ends up being a danger to society. In addition, a judge's support of IRAA depends on "the lens they see things through", meaning judges' attitudes towards IRAA depends on how much background information they may have about the science and philosophy behind the act (PD1). To follow, MS2 said "there are still a few judges who seem to require absolute perfection" from IRAA clients, "not substantially good", which is "just unrealistic" (MS2). IRAA clients must only meet the criteria under the IRAA statute to be granted release, not the standards of perfection, but some judges still expect this in order to grant release. MS2 has seen some judges grant IRAA motions with a sentence modification instead of immediate release, meaning the client's early release is decided by the parole board. MS2 disagrees with this because part of the purpose of

IRAA was to circumvent the parole board, which is notorious for denying people early release. Judges granting a sentence modification and leaving it up to the parole board “kind of contravenes the purpose of what IRAA was supposed to accomplish” (MS2). According to JJA1, “everyone has inherent biases”, meaning judges’ denials may not always be based on case facts (JJA1). While informants reported that overall judges are receptive and supportive of IRAA, interviewees have also perceived judges to make subjective or unreasonable decisions.

Overall, informants perceive judges see IRAA as an opportunity to reevaluate lengthy sentences, grant immediate release instead of sentence modifications, give clients an opportunity to improve their cases for release, and recognize and respect the emotions involved in IRAA proceedings. Their supportive disposition towards IRAA has contributed to the over 90% of IRAA motions which have been granted. More symbolically, informants spoke about how judges’ respectful behavior in IRAA cases juxtaposes the adversarial structures within which they operate. Receptive judges and the support network that grew around IRAA both represent conditions of the local environment in which IRAA was implemented that contributed to its success in decarcerating the target prison population.

Discussion

Findings from the IRAA case revealed the adversarial nature of the criminal legal system. Informants faced challenges when it came to prosecutorial opposition to IRAA motions, problematic interactions between the prosecutor and the victim, and the consideration of the client’s disciplinary record in prison when deciding on IRAA motions. These challenges faced in the IRAA process speak to flaws in the larger adversarial system in which progressive legislation must operate. IRAA reveals that prosecutors have incentives to keep people in prison regardless of if they have rehabilitated or not and what the victim wants, the system lacks avenues for

restorative justice to aid victim healing, and there are no alternatives to incarceration for offenders, forcing people into violent prison environments with little to no opportunities for rehabilitation. But IRAA remained successful in the face of this adversity because local conditions contributed to IRAA's success in granting the majority of men who have motioned early release from prison. An informal information network and community grew around the new act, ensuring that IRAA clients received representation and attorneys were adequately prepared to litigate the unfamiliar legislation. The judges who decide IRAA cases have also been instrumental to IRAA's success. Judges have been receptive to and supportive of the science and philosophy behind IRAA. The IRAA case speaks to how progressive decarceration criminal justice legislation can navigate the broken roads of the criminal legal system and remain successful because of external factors.

The findings of my study are both limited and generalizable. IRAA is legislation specific to Washington D.C., and local conditions made legislation like IRAA possible in theory and effective in practice including the D.C. Council and D.C. judges. I1 said "we are fortunate to have a progressive city council that passed [IRAA] and most recently passed what's nicknamed IRAA 3.0" or the SLAA (I1). The D.C. Council votes to pass D.C. legislation, so without them IRAA, and its subsequent iterations, would not exist. In addition, informants believe judges were instrumental to IRAA's success in practice, as discussed above. A1 said "[D.C.] judges are not perfect, but by and large, we're very lucky to have the judges that we do compared to a lot of other jurisdictions" (A1). A1 expresses that the judges in D.C. may be more progressive and open to legislation like IRAA compared to other jurisdictions, affecting its implementation. While certain aspects of this research are specific to Washington D.C., IRAA sheds light on flaws in the criminal legal system, many of which operate at the federal level. The systemic

adversities shown in this research and the ways progressive policy navigate them and triumph in their midst therefore may be extrapolated to other jurisdictions nationwide.

While a primarily interview-based research approach is essential to storytelling, it also comes with limitations. First, my sample size is relatively small. I was not able to speak with every person or organization who worked on the development or implementation of IRAA. Interviewee responses therefore may only offer a singular view, especially those from the same organization, that is specific to their unique experiences and cannot necessarily be extrapolated to others who have worked with IRAA. However, IRAA is legislation specific to Washington D.C., meaning there are only a few organizations who developed it and use it to defend clients. Given the specificity of the act to Washington D.C., the small sample size was less of a problem than if I studied a national law that impacted different jurisdictions and populations. Towards the end of my data collection, interview subjects began to connect me with people with which I had already spoken, confirming the small size of the IRAA advocacy community and showing that I had exhausted most if not all of my possible data sources.

Another limitation of my research is that all my interviews were conducted virtually due to COVID-19. I truly believe in the power of the physical human element in interviews. Virtual interviews can eliminate some degree of intimacy and vulnerability that occurs naturally during in-person interviews. The intimacy created from in-person conversations can be essential for the interviewee to feel comfortable responding to questions; the lack of human presence may have had an impact on interviewees' inclination to be candid in their responses. To mitigate this, I hosted my interviews over video when I could, except for one which occurred over the phone at the request of the interviewee, to achieve some degree of face-to-face interaction. Further, other forms of field work, including visits to IRAA hearings in court, would have been useful for my

research to observe IRAA in action first-hand. However, these in-person opportunities were not possible due to the COVID-19 pandemic.

Policy Recommendations

Based on the findings presented above, my policy recommendations surround how criminal justice reform policymakers can develop and implement future decarceration legislation given the research on how progressive policy remains successful in navigating an adversarial criminal justice system.

1. Assess the climate of the area in which a policy is to be implemented.

I recommend that policy makers assess the climate of the jurisdiction in which a policy is to be implemented prior to the policy's implementation. In the case of IRAA, the local advocacy community came together around the act and the judges were inclined to be receptive and supportive. Both of these local conditions contributed to IRAA's success in the face of a flawed legal system, mitigating the effect of systemic adversity on the policy's efficacy. Prior to implementing new criminal justice policy, policy developers could assess a jurisdiction in several ways. An assessment could include an exploration into the legislative history of an area which could give policymakers a sense of what kind of legislation has been passed before and how that legislation fared in the local context. Policy reformers could speak with actors in the field who worked with these past policies including local advocates, judges, and defense attorneys to better understand what worked well and challenges faced. It is important to understand how a policy may be received amongst the group of people who actually apply it, not only the group of people who vote the legislation into law. Policy makers could assess if there is a strong community surrounding the group that a new policy targets, which may create a supportive context for the policy's implementation. The informal informational network created

around IRAA was driven by the community of local advocacy organizations dedicated to juvenile justice. These groups joined forces with public defenders, and together they recruited external attorneys and trained them to litigate IRAA. The community dedication to the population that was targeted by IRAA contributed to the network that formed around the legislation. Understanding the legislative climate in which criminal justice policy is to be implemented may give policy makers a sense of the conditions that could influence the policy's success, or not, in the face of structural hurdles.

Barriers to the implementation of this policy could be unexpected factors that cannot be anticipated from an assessment. To mitigate this, policymakers could roll out policies in different phases. Researchers would assess how the initial phases of the new policy are received. If the policy experiences significant unexpected implementation issues, policymakers could consider halting the rollout of the new policy and modifying it accordingly. If the initial rollout phases are received well and appear to be working, policymakers could continue implementing the subsequent stages of the new policy. To measure the efficacy of this program, every 3 years after a policy's implementation, researchers could evaluate how the climate assessment prior to the policy's implementation predicted the policy's implementation in practice.

2. Dedicate space for victim healing in the policy itself.

I recommend that future decarceration policies address victim needs and create space for restorative justice to facilitate victim healing, assuming victims are involved. The justice system is designed for punitive incarceration, not for victim healing. Informants identified this as a major structural flaw in the criminal justice system, calling into question the purpose of the criminal legal system and what it should and should not make space for. The criminal legal system may never be a space where community harm is repaired, so policymakers should

dedicate their reform efforts instead to specifying space for victims healing in future decarceration legislation itself. For example, future legislation could facilitate communication between offenders and victims. Restorative options may also benefit offenders who would appreciate the opportunity to speak with the victim of the crime in which they were involved.

It is difficult to say whether judges and prosecutors steeped in the status quo of the existing justice system would comply with a new policy's avenue for victim healing or even be equipped to facilitate such opportunities for victims. To mitigate this potential barrier, a professional victim counselor could be assigned to each case to facilitate communication between victims and offenders and generally listen to and address other victim needs that arise. To measure the efficacy of this policy reform, every year researchers can evaluate new policies which include a restorative justice provision and interview victims and their families to assess whether or not restorative justice opportunities were offered and if they were helpful.

Understanding the limits to reform and having appropriate expectations of the justice system can guide reformers to dedicate their efforts to feasible areas of policy reform. It may be unrealistic to rely on the criminal justice system to become a space for repairing community harm. Incorporating space for victims into specific decarceration policies is one way policymakers can engage with the structural absence of victim healing in a productive way without succumbing to it.

Conclusion

I sought to understand what IRAA tells us about how progressive decarceration legislation navigates a broken criminal legal system yet remains successful in its goals to decarcerate. According to informants' experiences and perceptions, the litigation of IRAA revealed the adversarial nature of the criminal legal system in terms of prosecutor incentives to

keep people imprisoned, the lack of restorative justice options for victim healing, and the absence of rehabilitative alternatives to incarceration for offenders. But aspects of the local context in which IRAA was implemented contributed to the legislation's success in the face of this adversity, including the informal information network surrounding IRAA and receptive judges.

The criminal legal system has been long established to be flawed in many significant ways. Reforms to these large-scale flaws have limitations given their grand scale. Policymakers should therefore adjust their expectations for changes to the system as a whole. Their efforts may be more effectively dedicated to learning how to develop policy that navigates these barriers successfully. Perhaps over time, developing individual policies that accomplish their reformative goals in the face of the adversarial criminal legal system will change the system from the inside out.

Works Cited

Code of the District of Columbia. “§ 16–2307. Transfer for Criminal Prosecution.,” n.d. <https://code.D.C.council.us/D.C./council/code/sections/16-2307.html>.

Code of the District of Columbia. “§ 24–403.03. Modification of an Imposed Term of Imprisonment for Violations of Law Committed before 18 Years of Age.,” 2016. <https://code.D.C.council.us/D.C./council/code/sections/24-403.03.html>.

“A CAPITAL OFFENSE: Youth In D.C.’s Adult Criminal Justice System and Strategies for Reform,” 2007. <http://www.campaignforyouthjustice.org/Downloads/NEWS/C4YJ004-D.C. Chapter.pdf>.

The Sentencing Project. “A Second Look at Long Sentences Is the Bold Approach We Need On,” September 2019. <https://www.sentencingproject.org/news/second-look-long-sentences-bold-approach-need-criminal-justice-reform/>.

Alexander, Keith. “D.C. Council Weighs Controversial Measure That Would Allow Hundreds of Inmates to Seek Release from Prison after 15 Years of Incarceration.” *Washington Post*, November 27, 2020. https://www.washingtonpost.com/local/public-safety/prison-reform-early-release/2020/11/27/39b75184-30bc-11eb-bae0-50bb17126614_story.html.

Austermuhle, Martin. “D.C. Inmates Serve Time Hundreds Of Miles From Home. Is It Time To Bring Them Back?” *WAMU 88.5*, August 2017. <https://wamu.org/story/17/08/10/d-c-inmates-serving-time-means-hundreds-miles-home-time-bring-back/>.

———. “District Of Corrections: Does D.C. Really Have The Highest Incarceration Rate In The Country?” *WAMU 88.5*, September 2019. <https://wamu.org/story/19/09/10/district-of-corrections-does-d-c-really-have-the-highest-incarceration-rate-in-the-country/>.

“B23-0127 - Second Look Amendment Act of 2019 (Now Known as ‘Omnibus Public Safety and Justice Amendment Act of 2020’).” Council of the District of Columbia, n.d. <https://lims.D.C.council.us/Legislation/B23-0127>.

Beckett, Katherine. "The Politics, Promise, and Peril of Criminal Justice Reform in the Context of Mass Incarceration." *Annual Review of Criminology* 1 (January 2018): 235–59. https://www.annualreviews.org/doi/abs/10.1146/annurev-criminol-032317-092458?casa_token=fdRiLyFbSjsAAAAA%3A19UdnKRiCQi1FocEP56MuKTVNQ2NHGIIzrwqW6TxXpuiOZpcYzaKleFnzGIs1GXyIC9EZk1W-0Xq.

Behr, Natalie. "Specialized Parole and Resentencing Focused on Emerging Adults." *Emerging Adult Justice Project*, September 2020. https://justicelab.columbia.edu/sites/default/files/content/EAJP_Specialized%20Parole%20and%20Resentencing%20Laws%20Focused%20on%20EAs.pdf.

Bibas, Stephanos. "Rewarding Prosecutors for Performance." *Ohio State Journal of Criminal Law* 6, no. 2 (Spring 2009): 441–52. https://heinonline-org.proxy.uchicago.edu/HOL/Page?collection=journals&handle=hein.journals/osjcl6&id=446&men_tab=srchresults.

Brian K. WILLIAMS, Appellant, v. UNITED STATES, Appellee. (April 11, 2019).

Bullard, Robert. *Highway Robbery: Transportation Racism and New Routes to Equity*. Cambridge, MA: South End Press., 2004.

Cohen, Robyn. "Prisoners in 1990." Bureau of Justice Statistics, 1990. <https://www.bjs.gov/content/pub/pdf/p90.pdf>.

Dam-Mieras, M. C. van, A. J. Slotboom, W. A. Pieterse, and G. H. de Haas. "The Interaction of Phospholipase A2 with Micellar Interfaces. The Role of the N-Terminal Region." *Biochemistry* 14, no. 25 (December 16, 1975): 5387–94. <https://doi.org/10.1021/bi00696a001>.

Dandurand, Yvon. "CRIMINAL JUSTICE REFORM AND THE SYSTEM'S." *Criminal Law Forum University of the Fraser Valley*, 2014. <https://link.springer.com/content/pdf/10.1007/s10609-014-9235-y.pdf>.

D.C. Council. "D.C. ACT 21-568 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA," December 2016. https://lms.D.C.council.us/downloads/LIMS/35539/Signed_Act/B21-0683-SignedAct.pdf.

Department of Justice U.S. Attorney's Office District of Columbia. "New Bill Seeks to Make Over 500 Violent Criminals (Including Many Rapists and Murderers) Immediately Eligible for Early Release," August 9, 2019. <https://www.justice.gov/usao-D.C./pr/new-bill-seeks-make-over-500-violent-criminals-including-many-rapists-and-murderers>.

"District of Columbia Profile." *Prison Policy Initiative*, n.d. <https://www.prisonpolicy.org/profiles/D.C..html>.

Englebrecht, Christine, Derek T. Mason, and Margaret J. Adams. "The Experiences of Homicide Victims' Families With the Criminal Justice System: An Exploratory Study." *Violence and Victims* 29, no. 3 (n.d.). <https://connect.springerpub.com/content/sgrvv/29/3/407>.

Fenston, Jacob. "Crack's Rapid Rise Brought Chaos To D.C.," January 2014. https://wamu.org/story/14/01/27/crack_1/.

Gay, Frederick W. "Restorative Justice and the Prosecutor." *Forham Urban Law Journal* 27, no. 5 (June 2000): 1651–62. https://heinonline-org.proxy.uchicago.edu/HOL/Page?collection=journals&handle=hein.journals/frdurb27&id=1666&men_tab=srchresults#.

Gershman, Bennett. "The New Prosecutors." *University of Pittsburgh Law Review* 53, no. 2 (Winter 1992): 393–458.

Gimbel, Noah. "There Are No Children Here: D.C. Youth in the Criminal Justice System." *Georgetown Law Journal* 104, no. No. 5 (July 2016): 38. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2803969.

Gordon, Sanford, and Gregory Huber. "Citizen Oversight and the Electoral Incentives of Criminal Prosecutors." *American Journal of Political Science* 46, no. 2 (2002): 334–51. <https://shibbolethsp.jstor.org/start?entityID=urn%3Aamace%3Aincommon%3Auchicago.edu&dest=https://www.jstor.org/stable/3088380&site=jstor>.

Grablick, Colleen. “D.C. Council Advances Bill Seeking Early Release For People Convicted of Violent Offenses Before Turning 25.” *D.C.ist*, December 1, 2020.

<https://D.C.ist.com/story/20/12/01/D.C.-council-approves-criminal-justice-reform-bill/>.

GRAHAM v. FLORIDA (No. 08-7412) (May 2010).

Herman, Susan N. “Getting There: On Strategies for Implementing Criminal Justice Reform.”

Berkeley Journal of Criminal Law 23, no. 1 (Spring 2018): 32–72. https://heinonline-org.proxy.uchicago.edu/HOL/Page?collection=journals&handle=hein.journals/bjcl23&id=36&men_tab=srchresults.

Hopwood, Shon. “Second Looks and Second Chances.” *Cardozo Law Review*, n.d.

<http://cardozolawreview.com/second-looks-second-chances/>.

“IRAA and IRAA Related Legislation.Pdf,” n.d.

Keller, Bill. “Seven Things to Know About Repeat Offenders.” The Marshall Project, March 9, 2016. <https://www.themarshallproject.org/2016/03/09/seven-things-to-know-about-repeat-offenders>.

Laub, JH, and RJ Sampson. “Crime and Deviance in the Life Course.” *Annual Review of Sociology* 18 (1992): 63–84.

https://www.jstor.org/stable/2083446?seq=1#metadata_info_tab_contents.

———. “Crime in the Making: Pathways and Turning Points through Life.” *Harvard University Press: London*, 1993.

file:///Users/indirarajkumar/Downloads/Crime_in_the_Making_Pathways_and_Turning_Points_Th.pdf.

Lerner, Kira. “Federal Prosecutors Have Opposed Every Request For Early Release Under A Local Law Aimed At Juvenile Offenders.” *The Appeal*, May 23, 2019.

<https://D.C.ist.com/story/19/05/23/federal-prosecutors-have-opposed-every-request-for-early-release-under-a-local-law-aimed-at-juvenile-offenders/>.

Liu, Jessie. "Letter from Jessie Liu U.S Attorney to Charles Allen at the Department of Justice," April 23, 2019. <https://www.justice.gov/usao-D.C./press-release/file/1200646/download>.

Prison Policy Initiative. "Locking up Youth with Adults: An Update," February 2018. <https://www.prisonpolicy.org/blog/2018/02/27/youth/>.

Maruna, S. "Making Good: How Ex-Convicts Reform and Rebuild Their Lives." *American Psychological Association Books: Washington D.C.*, 2001.

Mauer, Marc. "Long-Term Sentences: Time to Reconsider the Scale of Punishment," November 2018. <https://www.sentencingproject.org/publications/long-term-sentences-time-reconsider-scale-punishment/>.

———. "Sentencing Reform: Amid Mass Incarceration - Guarded Optimism." *The Sentencing Project*, 2011. <https://www.sentencingproject.org/wp-content/uploads/2016/01/ABA-Sentencing-Reform-Amid-Mass-Incarcerations-Guarded-Optimism.pdf>.

Miller v. Alabama, 132 S.Ct. 2455 (2012) (June 25, 2012).

Cornell Law School Legal Information Institute. "Mitigating Circumstances," n.d. https://www.law.cornell.edu/wex/mitigating_circumstances#:~:text=Definition,of%20a%20prior%20criminal%20record.

MONTGOMERY v. LOUISIANA, No. No. 14–280 (CERTIORARI TO THE SUPREME COURT OF LOUISIANA January 25, 2016).

Mulvey, Edward. "Highlights From Pathways to Desistance: A Longitudinal Study of Serious Adolescent Offenders." *U.S. Department of Justice*, March 2011. <https://www.ncjrs.gov/pdffiles1/ojdp/230971.pdf>.

Nellis, Ashley. "Life Sentences, Long Sentences Imposed on Youth Need 2nd Look." *Juvenile Justice Information Exchange*, August 2017. <https://jjie.org/2017/08/02/life-and-long-sentences-imposed-on-youth-need-a-second-look/>.

———. “STILL LIFE’s Increasing Use of Life and Long-Term.” *The Sentencing Project*, 2017. <https://www.sentencingproject.org/wp-content/uploads/2017/05/Still-Life.pdf>.

———. “The Lives of Juvenile Lifers: Findings from a National Survey.” *The Sentencing Project*, March 2012. <https://www.sentencingproject.org/publications/the-lives-of-juvenile-lifers-findings-from-a-national-survey/>.

Equal Justice Under the Law. “Opposing Mandatory Minimums,” n.d. <https://equaljusticeunderlaw.org/mandatory-minimums-1>.

Podger, Ellen S. “The Tainted Federal Prosecutor in an Overcriminalized Justice System.” *Washington and Lee Law Review* 67, no. 4 (Fall 2010): 1569–86. https://heinonline.org.proxy.uchicago.edu/HOL/Page?collection=journals&handle=hein.journals/waslee67&id=1581&men_tab=srchresults#.

“Probation and Parole Officers Are Rethinking Their Rules As Coronavirus Spreads.” *The Marshall Project*, April 2020. <https://www.themarshallproject.org/2020/04/03/probation-and-parole-officers-are-rethinking-their-rules-as-coronavirus-spreads>.

Racine, Karl. “OP-ED: No, D.C.’s Criminal Justice Reform Efforts Don’t Go Too Far,” August 30, 2019. <https://oag.D.C.gov/blog/op-ed-no-D.C.s-criminal-justice-reform-efforts-dont>.

Office of the Attorney General for the District of Columbia. “Restorative Justice Program,” 2016. <https://oag.D.C.gov/public-safety/restorative-justice-program>.

Rovner, Josh. “Juvenile Life Without Parole: An Overview,” March 2021. <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>.

Ryan, Meghan. “Taking Another Look at Second-Look Sentencing.” *Brooklyn Law Review*, 2015. <https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1444&context=blr>.

“Second Look for Justice, Safety, and Savings.” *Texas Criminal Justice Coalition*, May 2020. <https://www.texascjc.org/system/files/publications/Second%20Look%20for%20Justice%20Safety%20and%20Savings.pdf>.

Families Against Mandatory Minimums. “Second Look Sentencing Explained,” n.d. <https://famm.org/secondlook/>.

Serota, Michael. “Second Looks & Criminal Legislation.” *The University of Chicago D’Angelo Law Library*, December 2019. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3499088.

———. “Taking a Second Look at (In)Justice.” *The University of Chicago Law Review Online*, January 2020. <https://lawreviewblog.uchicago.edu/2020/01/23/taking-a-second-look-at-injustice-by-michael-serota/>.

“Slow to Act: State Responses to 2012 Supreme Court Mandate on Life Without Parole.” *The Sentencing Project*, 2014. <https://www.sentencingproject.org/wp-content/uploads/2015/11/Slow-to-Act-State-Responses-to-Miller.pdf>.

“Statement on the Future of Community Corrections.” *Columbia University Justice Lab*, 2017. <https://justicelab.columbia.edu/statement-future-community-corrections>.

Taxman, Faye S., Michael Caudy, and Stephanie Maass. “Actualizing Risk-Need-Responsivity,” 2014. file:///Users/indirarajkumar/Downloads/Loeber-Farrington2014_ReferenceWorkEntry_Age-CrimeCurve.pdf.

The Public Defender Service for the District of Columbia. “The Anticipated Law: The Second Look Amendment Act,” March 29, 2021. <https://www.pdsD.C..org/need-legal-advice/second-look-amendment-act>.

Tyler, Morgan. “Understanding the Adolescent Brain and Legal Culpability.” American Bar Association, August 2015. https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/.

Death Penalty Information Center. “U. S. Supreme Court: Roper v. Simmons, No. 03-633,” March 2005. <https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/significant-supreme-court-opinions/roper-v-simmons-resource-page>.

Ulmer, Jefferey. “The Age and Crime Relationship.” *Pennsylvania State University*, 2014. https://www.sagepub.com/sites/default/files/upm-binaries/60294_Chapter_23.pdf.

“Virtual Life Sentences.” The Sentencing Project, August 2019. <https://www.sentencingproject.org/publications/virtual-life-sentences/>.

Wallis, Luke. “‘Designed to Demobilize’: The Participatory Consequences of Mass Incarceration in the United States.” *Haverford College, Political Science Department*, April 2020. <https://scholarship.tricolib.brynmawr.edu/bitstream/handle/10066/22752/2020WallisL.pdf?sequence=1&isAllowed=y>.

Wexler, Harry K., Arthur J. Lurigio, and Pamela F. Rodriguez. “Reforming the Criminal Justice System in the United States: Issues and Recommendations.” *The Prison Journal* 91, no. 3 (August 19, 2011): 1S-11S. <https://journals.sagepub.com/doi/abs/10.1177/0032885511415205>.

“Youth Sentenced to Life Imprisonment.” The Sentencing Project, October 8, 2019. <https://www.sentencingproject.org/publications/youth-sentenced-life-imprisonment/>.

Appendices

Appendix A: Interview Participants

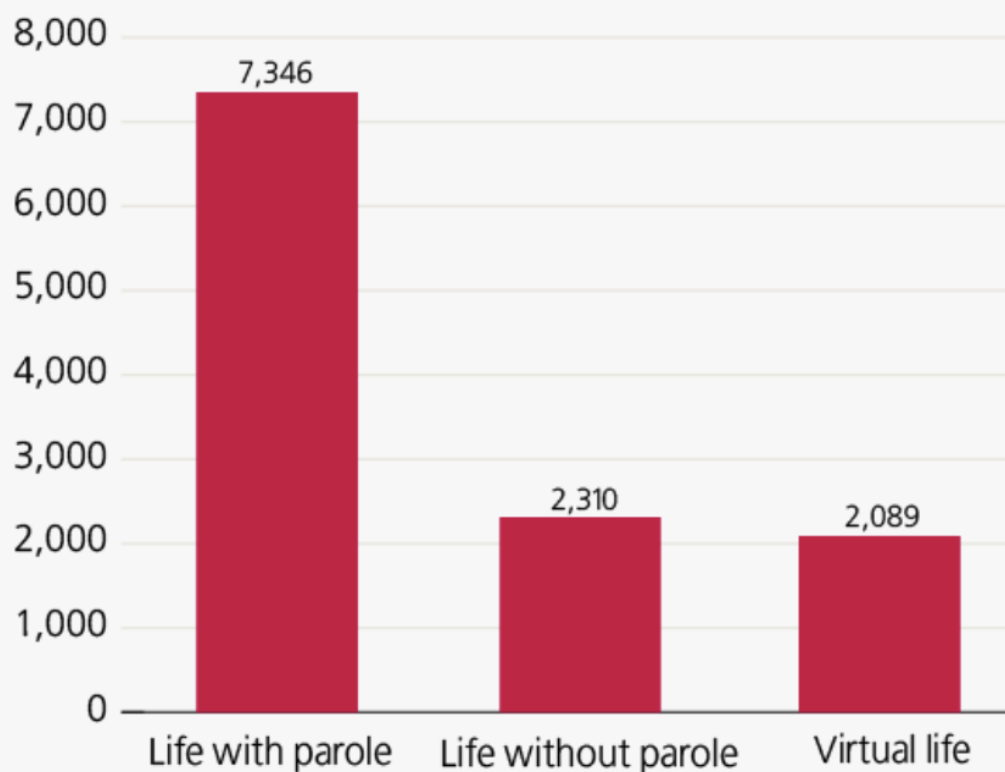
<u>Interviewee Title</u>	<u>Abbreviation</u>
Juvenile Justice Advocate 1	JJA1
Juvenile Justice Advocate2	JJA2
Juvenile Justice Advocate3	JJA3

Attorney1	A1
Attorney2	A2
Attorney3	A3
Public Defender1	PD1
Public Defender2	PD2
Mitigation Specialist1	MS1
Mitigation Specialist2	MS2
D.C. Council1	DCC1
D.C. Council2	DCC2
Criminal Justice Policy Advocate1	CJPA1
Investigator1	I1
D.C. Government	DCG1
Educator for Incarcerated People	E1
Educator for System-Impacted People & Reentry Specialist	E2

Appendix B: Interview Questions

1. How did you come to be in your role at your organization?
2. Can you tell me about you and your organization's role in developing and implementing IRAA?
3. Can you walk me through what you/your organization were/was thinking at the beginning of the development process?
4. Can you walk me through the process of developing the act?
5. Do you think the IRAA has accomplished what it intended to?
6. Can you tell me about anything that was challenging about this development process?
7. Are you aware of any challenges in its implementation?
8. How would you describe IRAA within the larger criminal justice reform landscape?
9. Can you tell me about a judge you interacted with and how they responded to a clients mitigation report?
10. Can you tell me about prosecutors and how they respond to motions?
11. Can you tell me about a recent client and how they responded to the IRAA?

Appendix C: Juveniles Serving Life Sentences, 2016

Figure 1. Juveniles Serving Life Sentence, 2016**Appendix D: 11 IRAA Factors for Judge's Consideration**

- “(1) The defendant's age at the time of the offense;
- (2) The history and characteristics of the defendant;
- (3) Whether the defendant has substantially complied with the rules of the institution to which he or she has been confined and whether the defendant has completed any educational, vocational, or other program, where available;
- (4) Any report or recommendation received from the United States Attorney;
- (5) Whether the defendant has demonstrated maturity, rehabilitation, and a fitness to reenter society sufficient to justify a sentence reduction;

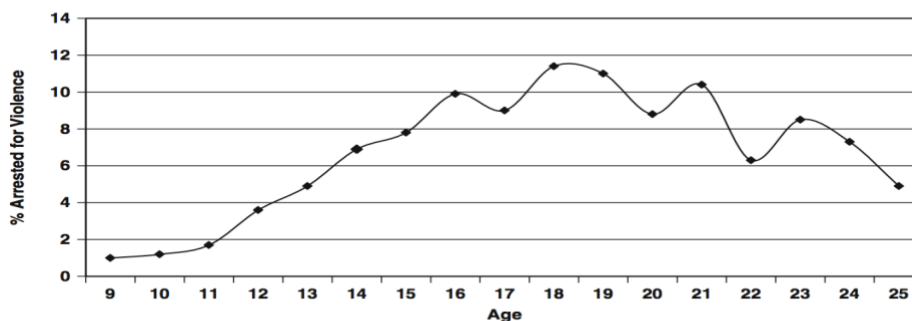
- (6) Any statement, provided orally or in writing, provided pursuant to § 23-1904 or 18 U.S.C. § 3771 by a victim of the offense for which the defendant is imprisoned, or by a family member of the victim if the victim is deceased;
- (7) Any reports of physical, mental, or psychiatric examinations of the defendant conducted by licensed health care professionals;
- (8) The defendant's family and community circumstances at the time of the offense, including any history of abuse, trauma, or involvement in the child welfare system;
- (9) The extent of the defendant's role in the offense and whether and to what extent an adult was involved in the offense;
- (10) The diminished culpability of juveniles as compared to that of adults, and the hallmark features of youth, including immaturity, impetuosity, and failure to appreciate risks and consequences, which counsel against sentencing them to lengthy terms in prison, despite the brutality or cold-blooded nature of any particular crime; and
- (11) Any other information the court deems relevant to its decision” (§ 24–403.03).

Appendix E: The Age-Crime Curve

Age-Crime Curve

13

A



Age-Crime Curve, Fig. 1 Age-crime curve, based on longitudinal data from the Pittsburgh Youth Study (oldest cohort) and using self-reported delinquency and official records of offending

A

Appendix F: Thematic Quote Tables

Table 1 - Recruiting and Training Attorneys

<p>“The campaign doesn't represent clients themselves but [we] recruit pro bono attorneys from law firms, so we have relationships with law firms...that was key to ensuring as many impacted were represented by effective legal counsel” (JJA1).</p>
<p>“Georgetown just got the grant recently, but by the time they got the grant...mostly 97% of the people had attorneys already...That's why Georgetown had to pivot to the potential for second look at the attorney support, because we had already taken care of, you know, a huge part of the population” (JJA1).</p>
<p>“We hosted trainings for attorneys. So for all the pro bono attorneys, and even for some advocates that gave them ongoing support throughout the process to ensure that they were knowledgeable about IRAA. The law, the realities of the prison system, and mitigation work that was needed...So if new attorneys came on, we gave them packets of like, what D.C. was like, what the landscape was like during the times that a person was incarcerated. Some helpful articles that we have put together and compiled, we gave them sample packages IRAA submissions, IRAA motions, so they can kind of see how it needs to be put together. Things that we thought were the best approach, you know, so that was good. And I know that PDS started creating their own routine, which was phenomenal, right?” (JJA1).</p>
<p>“We created a listserv early on that has all the attorneys that had test cases. So the attorneys can kind of talk to each other through the process. We did an attorney clinic with Jennifer Wicks early on as well to kind of train lawyers. But it was just more so being able to quickly pivot to get the messaging out to a lot of attorneys so they wouldn't make the wrong move” (JJA1).</p>
<p>“We've seen attorneys come in and give a five page, it was like nine pages, the whole motion. Have you seen IRAA motions? Yeah. They're like 60,70,100 [pages]. Some of them [are] like 150 pages, you know, because the mitigation work is extreme. Nine pages? Can you imagine? And I'm talking about including the reentry plan” (JJA1).</p>
<p>“After it went into effect, there was an email that went out to the D.C. Superior Court, CJ panel, which again, it's kind of our collection of court appointed attorneys, asking for volunteers who are willing to take these cases” (A1).</p>
<p>“I went to a training that was hosted by the Public Defender Service, which was, again, very early on, it was still kind of a big question mark what these cases actually looked like, but they did a training, which really kind of set forth what I think what a best practice model of litigating IRAA cases would look like” (A1).</p>
<p>“As other people started doing these cases and had questions about how they're supposed to be done, I was someone who ended up kind of answering a lot of those questions simply because I was a little further along in the process” (A1).</p>
<p>“But our hope in starting the Second Look Project was to be able to represent and bring as</p>

many people home as we can. But also to meet the needs of the legal community as it relates to these cases” (A1).

“So I had actually gone to training in late 2017 for IRAA at that point. It was actually hosted by PDS and maybe in conjunction with some other organization, I don't remember. But at that time, they were essentially trying to recruit people in private practice, both attorneys and mitigation specialists to kind of get involved with these IRAA cases” (MS1).

“Okay, [IRAA] is in place and now a lot of people need lawyers and we need to start tracking what actually happens at these hearings and we need to figure out if there are problems with it, and if we need to make adjustments to it, just kind of how 2.0 came to be...We started trying to gather family members and have informational meetings, we started recruiting attorneys, we started having these meetings with the Public Defender Service and with panel attorneys about how do we go about this in a systematic, organized way. And that's kind of where I came in, because part of my job had been this pro bono recruitment piece” (JJA3).

“So the way that has worked is we've created money in the budget process for the past three cycles, for agencies to issue grants around particular areas....One was for the Georgetown Law Clinic to take on legal representation. One was to the Second Look Project, which will also handle representation” (D.C.C1).

“PDS actually took a huge leadership role...I don't think at the time that I was drafting it, I fully contemplated just how many resources it was going to take for that many factors...And so we didn't budget for it. PDS, I don't even know where the resources came from, frankly, to represent all these people and to work with law firms all over the city who were willing to do it. And from what I've understood, [IRAA] is close to a death penalty case in terms of the level of time and effort and so forth it takes to prove all these factors for the judge. So, you know, I think that was one of the challenges that I hadn't quite contemplated, but ended up solving itself” (D.C.C2)

Table 2 - Supportive Judges

“I think the judges have been thus far overall overwhelmingly great. I think they've been thoughtful” (JJA1).

“You had judges that stepped above and beyond after IRAA was put into place and have spoken to how great it was. One judge on the bench said, ‘Judges have this phenomenal opportunity to get to look at cases from years ago’” (JJA1).

“Now, our judges, for the most part, have done very well with these cases. And there have been plenty of cases where people had infractions and challenges early on in their incarceration, and they made a shift at some point and where people can demonstrate that they made that change, judges most of the time have not held that against people” (A1).

“Judges have just generally responded very well to these cases and treated them with the kind of seriousness and thoughtfulness that they demand” (A1).

“Our judges are not perfect, but by and large, we're very lucky to have the judges that we do compared to a lot of other jurisdictions. And by and large, they have viewed and treated these cases with the kind of seriousness and respect and gravity that they demand.” (A1).

“So PDS on their appeal basically went in and did the things the court had initially suggested strongly that they do and said, you know, his original counsel erred and not doing these things that the judge made very clear he wanted more information about and so PDS did that. They hired two other experts. They actually had their investigative team investigate some of the incidents, the fights and the stabbings that had happened in prison, do interviews and such. And they put together a fantastic appeal brief. And the judge goes, ‘Okay, now I'm satisfied. I'll release this man’. And he did” (MS1).

“I've heard a couple of judges that have had IRAA cases before say that they wish that they could do this sentencing look back for everyone, not just for juveniles, but for adults that they hand down 20-year sentences now. I think judges are appreciative of this opportunity. When you're looking at someone in the eye in your courtroom and trying to figure out what's an appropriate sentence, I think that I just wish that they could be like, why don't I sentence you to five years and come back and talk in five years and see how things are going and see if you really need to be in prison for longer? I think some judges feel that way. And it really gives judges an opportunity to do that. It's never the same judge as the judge who sentenced them in the 1990s. But it's a rare opportunity to go back and take a look at an extremely long sentence and to see if that can be cut short” (PD2).

“I think judges are very attuned to and sensitive to the high emotional toll that these proceedings take on our clients, on victims, family members, on community members, on our clients' family members. And so they kind of give a lot of space to our clients to give lengthy statements in court about their remorse, long breaks for our clients to collect themselves emotionally. They'll let our clients and this should not be a big deal, but it can be in what's otherwise often a very cruel system, they will let our clients change from jail clothes into professional courtroom attire” (PD2).

“They treat it with a lot of respect. It's been my experience” (PD2).

“But on the whole, I think they recognize what a big deal these cases are for everyone involved. And often you don't even see that at a criminal sentencing itself, which is kind of these hearings in reverse. Those can be a little bit more rote and a little bit more going through the motions. And I think these are judges recognizing that they're pretty powerful hearings. So I think they take it seriously. At least has been my experience” (PD2).

PD1: Some embrace IRAA because they don't feel good when sentencing juveniles to long sentences, even if they believe it is the right sentence in the name of the law, inherently will feel something about it because it's a kid. For these judges, IRAA serves as a “breath of fresh air” - an opportunity to feel good and revisit some cases of juveniles given long sentences. Some judges are interested in people's time spent in prison because they don't see people after sending them to jail. One judge said she wished she did the IRAA process in all cases she handles, alluding to the fact that mitigation and rehabilitation are important conversations for

all cases, not just IRAA. This doesn't mean judges treat people more easily, but they have compassion (PD1).

"They know that the prosecution has to do their job or whatever. I think their job is to do justice, and not to just oppose everything, but sometimes the judges will write in their opinions, 'The prosecution did their job by opposing this motion'. But they didn't really articulate a reason for why this person should still be in jail. And I don't see a reason to myself, so they'll kind of go with that" (MS2).

"And I'm glad that it's now commonly known among the judges that the U.S Attorney's Office basically uniformly opposes these motions. So, if they actually took a more judicious and fair reading of these cases and they followed and neutrally applied the law, like they claim to be doing, their opposition would carry more weight, if they didn't oppose all of them, but for whatever reason, and I suspect it's political. They have opposed almost all of my cases" (PD2).

"I think the more cases that have gone forward, the more judges are familiar with this law and know the things that they should be looking out for" (MS2).

"I think the judges understand that for the most part, if they've reached the decision they have to make about IRAA, it's not really a hard decision to then figure out what the sentence should be..That's partially because of the way the laws written, it's like, the things that the judge has to reach to grant someone IRAA, are basically that they're no longer a danger to any person and that they're rehabilitated. So if you reach that, it kind of doesn't make a lot of sense why someone would still need time in prison. This is basically a concession that, you know, they've already reached the point where they're not a danger, there's no penal logical purpose for keeping them in prison other than retribution" (MS2).

"A judge back in one of the IRAA cases, she said, 'You know, I wish there was an IRAA for everyone in the criminal justice system'" (MS2).

"But Judge Lee simplifies everything. In his ruling, his conversation, his questioning, which just makes it an educational moment. And it's a moment where he's not being biased. He's talking about what he needs, what he wants, what he wants to see...And I've really loved being in his courtroom, listening to his rulings [about] why, and why not? (JJA2).

"The judges have done a good job for the most part" (JJA2).

"I think the judges have been on the whole really balanced in D.C." (JJA3).

"And I think the judges have been really thoughtful about these cases, and they've really weighed these factors, and people have come home" (JJA3).

"From what I've seen, most of the judges, get it, they understand the difference between teenagers and older adults, and they understand the reasons that they should be treated differently and kind of understand the reasons behind why we passed this law" (JJA3).

"They're used to these weighing of factor tests. And I think a lot of them have found it to be a really valuable process in terms of like, you know, this was an injustice that was done, it was a

lot of these cases are from the peak of the D.C. crack epidemic, the murder capital era of D.C., when we were just the most punitive, especially to black male teenagers. They kind of recognize that this is a chance to re-examine those cases in that era and look at it through current knowledge about what we know about teenagers and what we know about how like the super predator thing never came to pass wasn't real. And now they got a chance to kind of undo some of that damage. Even if they don't know the statistics, a lot of judges recognize and kind of know from being in courtrooms, sentencing people that there are huge racial disparities at play here. I think 98% of the IRAA population is black and all of the IRAA eligible people so far are men. So this is definitely not something that was really impacting white people, in terms of like, super harsh sentencing as kids. And so I think the judges recognize all those things, and they've been really thoughtful" (JJA3).

"The Superior Court bench has been very favorably disposed to IRAA...It helps to be in a jurisdiction where the bench is receptive" (A2).

"I have found so far all of the judges to be very, very receptive to IRAA, to the D.C. City Council's goals. I think, in interpreting the law itself, I have found them to be to a person thoughtful, which is not to say pushovers...I have not had what I would describe as a negative experience, which is not to say that it's all going my way. I don't mean that that way. But I could never say that the judges that I appeared before, so far, haven't been very, very thoughtful about it. And not pushovers, but really interested in the issues and really curious and wanting to be fair" (A3).

"We have a very sophisticated bench that cares a lot about the community and fairness. And I think that to not come at this with nuance underestimates the bench, and I think it's a failure of advocacy. Unless the case is so incredibly obvious that someone should just be out" (A3).

"I think for judges it is restorative and provides a sense of hope that there is a future especially for children and young people. But yeah, in individual cases, I think they're incredibly thoughtful" (D.C.C1).

"Judges that to date seem in support of it seem sort of understanding and accepting of the science and the reasoning behind it. I haven't had any personal conversations with the judges. But the numbers just themselves would suggest to us that they're open to it, that they are accepting of it, that they're supportive of it" (I1).

"The judges are, understandably, very interested in what is the reentry plan? Where are they going to live? Talk me through the logistics of how will they get food? How will they get clothing? There's the brain science piece of it way in the beginning, there's the reentry services when you're out. And then in the middle there's the courts and the defense teams. The defense teams, in my opinion, are doing a good job of having a real plan in place, even before they step out the door. And then when they step out the door, you know, those services and agencies are there to assist, but that it is, you know, sort of really thinking through." (I1)

Table 3 - Prosecutor Opposition to IRAA

"Early on, you started seeing...categorical [opposition], like there's no rhyme or reason. They

just oppose, oppose, oppose, oppose, oppose, oppose...it was like universal opposition to it, no matter what the case was. I don't care what the case facts [are]" (JJA1).

"The biggest challenge, I think, has been that the United States Attorney's Office prosecuting authority for felony cases in D.C. almost always opposes relief in these cases" (A1).

"It's always a tooth and nail fight with the other side, even when your client may be a gold star candidate, they still oppose relief almost all the time" (A1).

PD1: Prosecutors typically oppose motions.

"I've been disappointed in the prosecutors...I'm not sure what the internal politics of the U.S Attorney's Office are. I think the government has opposed every single one of my IRAA cases. In the seven that I've done, from start to finish, I think there were a couple that stood out to me as like, if you really looked at the IRAA statute and you looked at the law, the purpose of the law, the text of the law, and you looked at my client's records, you could not make a good faith argument that my client didn't meet all of the factors" (PD2)

"And I'm glad that it's now commonly known among the judges that the U.S Attorney's Office, basically, uniformly opposes these motions. So, if they actually took a more, I think, judicious and fair reading of these cases, and they followed and neutrally applied the law like they claim to be doing, their opposition would carry more weight, if they didn't oppose all of them, but for whatever reason, and I suspect it's political, they have opposed almost all of my cases" (PD2).

PD1: Believes that the government has discretion and can use that discretion to make weighted, informed, rational decisions, but it is not using discretion in "meaningful ways" in this case." (PD1).

"So there's been very few where prosecution has conceded and even when they do, they often do this half- hearted concession where they're like, The IRAA should be granted because clearly legally he meets all of these things, but he shouldn't be granted immediate release. Because we don't think they're deserving of it. And they usually can't point to a reason for why they're saying this person should spend more years in prison, because usually they're conceding that the person's not dangerous and that the person's rehabilitated" (MS2).

"But the U.S Attorney's Office has been kind of uniformly opposed to these petitions...In like 98% of cases, the U.S Attorney's Office has been super super opposed" (JJA3).

"And once things actually started happening in courts, at first, we just saw universal opposition to everyone's case" (JJA3).

"They elected to oppose in every single case to start. More recently, there have been a couple of cases where they've conceded and things have moved forward without U.S Attorney opposition, but I would say for the first few years of this process, they opposed everybody and were really willing to kind of go out on a limb on arguments" (JJA3).

"We generally saw pretty aggressive opposition from them and also pretty aggressive opposition legislatively to Second Look so far from them as well" (JJA3).

“Charles Allen has been quoted as saying the U.S Attorney's office has opposed every single one of the IRAA cases that has come up as far. At least at the time he was quoted, that was the case” (A2).

“The U.S Attorney's office just reflexively opposes all [IRAA motions]” (A2).

“Legislatively, what we saw in the first couple years of the law’s implementation was that the U.S Attorney's office was opposing every single case regardless of whether someone was rehabilitated or even whether the victim or their family member supported reentry or sentence modification....Their justification was that the original offense was so serious in nature, that the person should never be released” (D.C.C1).

“And their particular criminal justice philosophy has certainly informed I'm sure their policy decision which had been to oppose almost every case....So they have taken the policy of opposition” (D.C.C1).

“I have never seen or heard of them not opposing an IRAA application” (D.C.C1).

“For some silly reason that I think was deeply misguided, they set their sights on opposing every single application, even the good ones, and doing it in specious and bad ways. And so that's a big obstacle” (E1).

“And so now with a more aggressive U.S attorney who is going to go to bat to oppose every single motion” (D.C.C2).

“It was only after it was implemented that it became clear the U.S Attorney was going to attempt to block every single petition. And every single petition they were going to do so by saying, well, they did a bad thing. Well, by their very nature, they wouldn't be here if they hadn't done a bad” (D.C.C2).

“They've issued press releases...they've held community meetings where they have tried to get local D.C. politicians like the local advisory neighborhood commissions to oppose IRAA, any expansion of IRAA, things like that. So it's no secret. And so maybe that might be a reason why they have chosen to oppose at least all of my cases” (PD2).

Table 4 - Prosecutor’s Perceived to Have Directive to Deny

“Some prosecutors you could tell that they[‘re] not into arguing about crazy stuff, they just really want to do their job, but they're not gonna fight that much on certain things...You can kind of tell they got the directive to do it...Their heart might be in the right place, and they're not arguing as firmly on certain issues” (JJA1)

“...For whatever reason, and I suspect it's political, they have opposed almost all of my cases” (PD2).

“I think IRAA just philosophically can be threatening to prosecutors, because it means they sought the wrong sentence sometimes in the first place, right? And you don't want to be on the record as saying we did something wrong 20 years ago. [But] It doesn't necessarily mean that

right? It could just mean that society's values have evolved. But it can feel that way...So I think the prosecution can sometimes take that perspective.” (D.C.C1).

“I think that I think it's their job to oppose...I don't get the sense from some of the cases I've seen that the prosecutor is really passionately gunning to keep the person in prison. Which is sort of a messed up position to be in where you're opposing, just for the sake of opposing, just because that's your job. I have seen cases where they've opposed and I thought, well, if this person isn't deserving of [IRAA], who is? For example, someone with virtually no disciplinary history, and an incredible work record and a million certificates and a ton of family support” (I1).

“I kind of get the feeling [prosecutors are] just opposing because it's [their] job to oppose...That seems particularly crazy to me, you know...Is there, no one deserving in your mind?” (I1)

“I mean, I think it in some respects, it's probably just as simple as like, that's what the boss said to do like that your job is to oppose IRAA motions. Like, I think it may just in some respects, kind of be that simple is like, we asked for the person to be released. They asked them to stay in...That is just sort of how the system works, I guess, the adversarial nature of the system” (I1)

“And I think in some occasions, they even feel like this person is deserving of release, but there seems to be a directive from the prosecutor's office, or maybe just the whole prosecutorial system as a whole to kind of fight all of these cases anyway...But I think that whatever weak opposition that they're doing, I don't feel like it's often coming from the prosecutors themselves. Like, I think you can tell when they're arguing sometimes that they just don't fully believe it. Like, that's my opinion of watching them” (MS2).

“They are not in any way receptive to the idea of release to a person...And I don't know if that's a personal thing or something that comes down from the top, you know, for what the office has determined is eligible or who they think would be a safe release or not? I just don't know. I have not dealt with anyone who has been supportive, at best, they've been resigned” (A3).

“The U.S Attorney's Office kind of as an internal policy had taken a position of opposition” (D.C.C1).

Table 5: Prosecutor Interactions with Victims

“The manner in which the prosecutors interact with victims' families is one that is not designed to facilitate healing. It's not about reparations, it's not about helping people move on, it is about kind of ginning up. And maybe that's a poor phrase to use. But the prosecutor's approach, it's about getting these people as kind of angry as possible, so that they will oppose release, because they the prosecutors don't care about families healing, that's not their interest. Their interest is preserving these sentences and keeping people incarcerated. And they approach these cases and deal with victims and victims' families in ways that I think are actually very harmful for victims, in an effort to kind of make the victims opposition to relief as kind of strident and aggressive as possible” (A1).

“Somebody at the U.S Attorney's Office basically lied to the victim's family about my client's prison record saying that he started a prison riot which is just not an accurate characterization at all...” (A1).

“And so we're not in a position as advocates to engender or cultivate that healing or restoration that I think a better legal system would...so we're limited in what we can do as advocates and lawyers on our side” (A1).

“It's only a problem for prosecutors...They're not worried about the family. They are not worried about the family. Right? They're worried about having a conviction. The case is close, they're not worried about the family members...” (JJA2)

“So we work closely with...a lot of supportive family members that didn't forgive at first. But [for] whatever reason, they wanted to forgive, they chose to forgive. And they reached out. And we work alongside them with educating us and helping us understand these things. And understanding that all survivor victims are not the same. And unfortunately, some prosecutors and other politicians want to make them the same. Right? Some...trying to [say] that no victims want people to come home. Right. And my question to them is, if you have five people who support people coming home and five who don't,...But what about those people? Do you ignore them? They are victims too, what, you decide to ignore them? Because it's [] better for your job than it is for what's right” (JJA2).

“Early on, in some cases, some prosecutors were making statements and saying, ‘Oh, now they want to apologize because IRAAs here. No, the law states that I cannot contact [the] victim's family. If I send a letter to the victim's family, I can be charged. So no, it's not because IRAA just came. But yes, it is. Right? Because the reality is the law states I can't just contact them. But they can contact me. They can send me a letter saying I'm upset about what you did” (JJA2).

“What was troublesome for me was the way that a lot of these prosecutors treated the victims and the victim's family. I've heard prosecutors call the victim's family the day of [the IRAA hearing]. ‘They're about to resentence him, I don't understand why you don't know about this.’ They didn't know because you didn't tell him. So that makes the person's family member what? ‘I'm enraged. How can this happen without me?’ ‘I don't know. That's why I'm calling you now.’ No, the court date was set for this. You had this amount of time to do this. You didn't contact these people? Right. So I[‘ve] seen a lot of that experience” (JJA2).

“I didn't know the prosecutor...He approached us on the phone with people. ‘Well, you need to get up here. I mean, they[‘re] gonna let him go. You know, I don't want them to let him go. You need to get up here.’ And I'm just like, Damn, this person [is] probably at work, or at home and they didn't even know none of this was going on. But it's made to seem like it's the court's fault when it's the prosecutor's job to call them, and the courts are to mediate to make sure that things [are] going right. The prosecutor's job is to call the victims. Some victims say I don't want to be involved. I don't want to be involved. And prosecutors make their own interpretation. Now, I won't be involved because they just hurt. They didn't tell you that. They said they don't want to be involved” (JJA2).

“I just think that they were overlooking the fact that some victims have moved on. I don't have to forgive, I just move on. I don't want to keep talking about it. I don't want to keep doing this, whatever happened just happened. And some victims are like, ‘No, I don't want them to come home’ which they have a right to, so it's been a mixed bag with the prosecutors and the tactics that they've used” (JJA2).

“One of the things that we've seen that is really influential in the cases in a way that sometimes prevents people from being released is coordinated victim opposition. One of the factors is that judges should take into account victim impact testimony, and the victims have a right to be present at sentencing, and to talk about their feelings about it. But one thing that we've seen is that prosecutors, not all of them, but sometimes prosecutors have kind of used that as a tool to delay sentencing. And so people will be sitting at the jail, and they'll be waiting and like, it'll be clear that the judge is going to grant their motion. And because the victims have a right to be at sentencing, their prosecutors will kind of use that as a way to delay. They won't tell the person that the hearing is coming up until like, the day before, and then they won't be able to come and then they'll have to reschedule. It's just kind of another step in this multi-step process that can really delay things sometimes, if they do choose to be present” (JJA3).

“But in some of these cases, they've just basically done everything that they could to prevent it from happening. And that means that they need to buy more time to try to get the victims to say what they want them to say. They'll do that” (JJA3).

“Some of the victims who testified have been completely in favor of the person being released, and they've been supportive of that. And they've said that on the stand which is great. And some of them have been really opposed. And that's also well within their rights. And I understand that too. It's more the kind of gamesmanship of using this as a reason. If you have a resentencing date, and then the prosecutor comes in and says, ‘Oh, we actually have to delay because of something that [we] could have informed the victims of weeks prior.’ It's frustrating” (JJA3).

“In individual cases, I think the U.S Attorney's Office has in many times tried to convey what the victim in the case if they were not deceased at the time or their family members have wanted. And in other cases, because the U.S Attorney's Office represents the public interest, not the individual, they represent the community, they have taken a position that's contrary to what the victim wants. I've seen some strategic decisions around victim notification that have been disturbing to me recognizing that it can be very difficult to find people this long...For example, I sat in one case in which the mother of the person who was killed, testified via phone...in the courtroom and expressed that she had been notified of the hearing the day before. Well, that's unacceptable. Like that's just an unacceptable way to treat a survivor, a family member of crime. You know, so I think sometimes there are, unfortunately, strategic decisions that have been made to not offer victims or their family members information about the full spectrum of potential avenues for restoring harm” (D.C.C1).

“We have created a criminal justice system that offers only certain options to harm restoration. And if you don't want to, as a victim of crime, pursue one of those paths, there aren't a lot of door number twos. The U.S Attorney's Office doesn't have a restorative justice program. If you really just wanted to talk to the person who harmed you and reach an agreement that way, the

default is incarceration” (D.C.C1).

“I have seen cases where family members of victims have taken different positions on resentencing. I think many crime survivors come to forgiveness or not in different ways” (D.C.C1).

“So like victim sensitivity stuff, how our justice system doesn't really think about it, or like the mom who didn't get a call ahead of time, right?” (D.C.C1).

Table 6 - Consideration of Prison Disciplinary Record

“Almost without exception, where motions have been denied, and it may be entirely without exception it's because of people's institutional disciplinary records while incarcerated” (A1).

“Where people have been denied it's been because of that under the idea that it creates some sort of safety concern. Because one of the statutory factors is that you have to find someone's not dangerous, and that's one of my biggest frustrations around these cases and the way that they played out is that those denials are rooted in to some significant degree, a real misunderstanding of what prison is like and especially what it means for clients like like ours who...were children and teenagers in an atmosphere of pretty severe deprivation and violence” (A1).

“And so you just took these kids from one chaotic, violent environment, and just put them into environments that were progressively more chaotic and more violent, and where the only reasonable response, and really the only viable means of survival for most of them, was to be violent and to commit violence as a means of adaptation. That doesn't mean that everybody who was incarcerated during this time went down that path. But it was a common story. That is how you learned how to survive in these places, you had to demonstrate a willingness to be violent to defend yourself” (A1).

“Most of these guys over time learn how to navigate these environments without getting in trouble” (A1).

“Whether it's kind of possession of weapons or fighting infractions and things like that, to someone who's not really familiar with these environments, [it] can look like, Oh, this guy was just getting into all sorts of trouble while they were in this prison, really may have been the only viable means of survival” (A1).

“It's kind of predictable for some guys who were, since childhood, just kind of taken from one kind of violent and traumatic and turbulent environment to another, and another and another without any kind of therapeutic interventions, without any kind of counseling, without any kind of treatment of any kind, learn to rely on those kind of adaptive mechanisms that they developed over time as kind of the only way they know to survive in these environments” (A1).

“To take these kids and just put them in these environments and never present them with any meaningful opportunity for rehabilitation or change, then later on down the line say, ‘No, you

can't get out because you haven't demonstrated enough rehabilitation, you haven't changed enough', is just, it's rigged" (A1).

"A person's adaptation to that prison environment and the way they handled themselves in those spaces is not..., most of the time, an accurate reflection of how they will handle themselves out in the free world" (A1).

"And so it's to say that, 'Oh, we don't think this person can be safe in the community because they've gotten in this trouble while they're incarcerated, I think is [a] defective kind of reasoning to apply. We've seen a lot of people who may have had those disciplinary problems while incarcerated can get out in the justice community just fine because it's not the same" (A1).

"The new current sentencing regime where we have determinate sentencing, we don't use parole anymore, which means that, you know, if you committed an offense after August of 2000, and you received a 15 or 20 year sentence, you're getting out on that release date. Whether you received 30 infractions in the preceding year or you received zero, because we don't condition somebody's release date on their prison record anymore, what we did under parole, and also what we do effectively under laws like IRAA. Um, and so, you know, the reality is that we have people coming home from the BOP every day, regardless of their institutional history, and we rely on things like community supervision and probation and things like that to kind of provide us the assurance that we can release these people safely" (A1).

"The individual had 10 violent incidents on record in the entire time he'd been in prison. And he did note that this individual had the incident had declined in frequency. And he had shown some effort and programming and stuff like that. So he said, I think it warrants a sentence modification, but I'm not convinced that he's no longer a danger to the community. And so he couldn't meet that prong on the case. So he did reduce the sentence, but not to a level that would result in the individual being released" (MS1).

PD1: It is hard to explain to someone who has not experienced prison themselves because cannot emulate that experience, it is a lived experience.

"Typically, when [judges] have reservations about letting someone out, that's usually because of disciplinary history, something they can point to that shows that person is a danger today" (MS2).

"I don't feel great about it...We put people in a situation where we expect them to succeed, but very much they're set up for failure" (MS2).

"So it's really difficult for people to maintain that clean, disciplinary record, and the judges kind of understand that to an extent, but I think they still see any incident of violence as that person's choice, especially if they were an adult when they did it. And I don't think that's right, because when people are in prison, they can't really escape situations, they can't really avoid situations, they are kind of forced into committing violence sometimes just to be able to save their own lives or to stand up for something that they believe in. So, for example, I had one

client who stood up to other people in the juvenile block because they were taking away meal trays from this person who was starving. And he didn't think that was right. So he ultimately had to fight them to be able to get the meal trays and give it to this person. It's just a subculture where respect is that way. And I think it's really hard for people to be away from that. But you can really see, I think, from people's disciplinary records, almost always there's a clear point where people start to follow the rules more and get more comfortable with everything. Especially if they go to lower security institutions, they have more freedoms and programming. And that all helps people keep out of trouble. I think the hardest part for them is usually those first few years where there's not really opportunities to do anything else, and you're just trying to survive this really violent environment” (MS2).

“I see my job is more just contextualizing everything that was happening in that person's life during prison as well, because it's not in a vacuum. They still experience loss, a lot of my clients have lost their parents while incarcerated, and that can have a huge effect, not only emotionally, but financially if their parents were supporting them. So it makes people sometimes have to find other people who'd be able to provide for them. And there's often a really lonely period after periods of loss where lashing out, you'll see that more. And that's true in the community, too. I think when people are going through grief or loss, they might act in ways that are uncharacteristic of who they actually are...In the prison records, they don't often record really good things that our clients do. So I'll learn that maybe my client was a GED tutor - that doesn't appear anywhere. I might learn that they were a mentor for someone or they started this program. I recently learned a client started a black history program at his facility. That doesn't appear anywhere on his transcript, but [it's] something he has been doing for years. And the same is true for work, too. You might see someones in the education department, and you don't really know what that position is. But when you look into it, it's actually like, oh, they're like a substitute teacher, they're joining these classes, really holding very, like legitimate jobs in the facility. So that's where I like to go with it, highlighting the challenges people face in prison, but also all the amazing things they were able to accomplish despite being in that place” (MS2).

“It was some problems early on with...mitigation people not bringing BOP professionals to come in and talk about the environments of prisons or older correctional officers who retired from Lorton...So people might have write ups and things like that and prosecutors may not understand why you have a write up, why you have a fight, and why do you have a stabbing, but not understanding the dangerousness of a lot of these prisons” (JJA2).

“So you tell me that I shouldn't have a knife to protect myself. But this man died less than 24 hours of being in the prison. But you question me, why would I want a knife to defend myself? Why did I fight to defend myself? These are the reasons why” (JJA2).

“They[‘ve] been locked in a cage and its other people that I'm around, look how they[‘re] living too...you got to survive. Denying the person and telling them to come back in three years...I'm gonna do what, go back and sit in the prison cell? You think he's gonna to change? I think you need to be more like sending them to a halfway house for a year, 18 months. That way you can better monitor his progress. You can help ensure that he's...in a structured environment in a halfway building, also make sure that the community is safe too” (CJPA1)

“Coming home, we've been in such an environment that breeds violence. So you come home, you got nobody even thinking about it in this term. But some research [shows how] being imprisoned is similar to being in a war” (CJPA1).

“This is probably something I should have said in terms of the hurdles. Some judges weigh evidence of the disciplinary record while they were in prison more heavily than others. And that can be tricky, because while certainly there's a lot to learn from that, whether someone has an impeccable record or whether someone potentially assaulted someone while they were incarcerated, those records miss a lot of the context around disciplinary write ups in prison. And the fact that these are remarkably dangerous facilities in a lot of cases and people might have felt the need to defend themselves. And that's not necessarily reflected in a prison write up. It's remarkably hard to keep a clean record in the Federal Bureau of Prisons...sometimes you will get set up for a write up, sometimes people get written up for just like bogus stuff. And so I think a lot of that context is missed” (JJA3).

“There's also this tendency for people who went into prison when they are teenagers, they'll get a lot of write ups when they first go in, and it's the whole age crime curve thing, they'll age out of it. But the period from like 17 when they go in until they're 25, or 26, it's a dangerous situation, they're trying to prove themselves, they're still immature and making bad choices. And so they'll have all these write ups at the beginning, and then they'll slowly taper down” (JJA3).

“That context can be missed...Not all judges have that knowledge of how prison works, how the Federal Bureau of Prisons works in reality enough to fully grapple with that factor sometimes...It also just depends a lot on the individual case, that varies a lot by person. So I think that one has maybe the most variability” (JJA3).

“Perfection is not expected from these clients. So the fact that they may have some blemishes during their tenure, during the time they were incarcerated, that alone doesn't defeat their eligibility, nor whether they should be granted a reduction of sentence. I mean, none of us could do 15 years in the Bureau of Prisons, I don't think I could do 15 days, or 15 hours” (A2).

“I would say the difficulty is the sort of the savage environment that they're thrown into...Their survival [is] part luck, part giving into the savagery, and part whatever humanity they can maintain by maintaining or keeping relationships with family and friends” (A3).

“The government gets these disciplinary reports, and they make much of them like ‘He did this, he did that’ with no real understanding of what it was like to live in prison” (A3).

“They don't want to let people out that are going to hurt people. So convincing the judges that prison is different from life” (A3).

“We do so much damage to these guys when they're in prison for so long, it's a wonder that they're actually coming out as healthy as they are” (A3).

“you know, an evidence based way to respond to the Supreme Court statute, and we had no idea like the life that it would take on. Or it's important to the District of Columbia which

incarcerated 1000s and 1000s of mostly young black men in the 1980s and 90s. As a result of the crack, crack epidemic, and violence associated with it, right, we disappeared, whole communities, and the impacts have been felt generationally.” (D.C.C1).

“We are D.C., which means all of our prisoners go off to the Federal Bureau of Prisons. And if you serve your sentence in some of the worst federal prisons, you end up not having any opportunities to demonstrate rehabilitation...You're locked in your cell for two thirds of the year at a time, you get no access to programming...I can't confirm this, but I read an article once that said there were 30,000 people waiting for their turn in the FBI to get access to some basic literacy trainings...If you come to the D.C. jail, you've got access to a Georgetown college education. But if you're stuck in [the BOP] or something like that, you have no opportunities” (E1).

“The people who aren't district residents in those same facilities know that that person can't do anything or they will never be released. Right. And what we saw...was that they became victims inside. Because if they defended themselves they might be caught up in a charge inside, which might impact their IRAA position. And I don't know that we've fully figured out how to make sure that doesn't happen. A lot of our guys they'll be coming back to the D.C. jail. But even in the D.C. jail, there's a risk of that sometimes. So that was one of the other challenges that we didn't anticipate really, was this new social dynamic within prisons, and the desire for some people with spotless records now might actually result in them being victimized on the inside” (D.C.C2).

“Our judges, for the most part, have done very well with these cases. And there have been plenty of cases where people had infractions and challenges early on in their incarceration, and they made a shift at some point and where people can demonstrate that they made that change, judges most of the time have not held that against people” (A1).

Table 7 - Successful Reentry

Occupations	Zero Recidivism
<p>“I think it's kind of easing off a little bit, because they've seen some of these cases, they're seeing, you know, certain people on TV and doing all these great and wonderful things they like in government positions, you know, like these people that came home under this bill. So I think it's like, the fight is like, okay, let's focus on something else” (JJA1).</p>	<p>“And, you know, so so those kind of human stories along with the fact that we haven't had any, any recidivism, we've released like five people off overwhelmingly off murder convictions and, and sexual assault, but mostly murders. And there hasn't been a single new criminal offense out of that, like 50, something people that haven't even been any technical probation violations, which is, I mean, it could be that there have been some at some point recently, but there certainly haven't been any new criminal offenses of any significance. And it's my belief, I think there haven't been any violations of any kind.” (A1).</p>

<p>“the guys are just so phenomenal like all of them working for like great organizations doing work giving back. I mean, you see them like, even with this, you know, the COVID crisis, they out building tents for students to learn outside and getting up at six o'clock, five o'clock in the morning, the guarded abilities, tent outside areas for students in D.C. to learn these little pods with this organization. They just phenomenal going to schools or you know, helping being violence interrupters, you know, stopping the violence across the street” (JJA1).</p>	<p>“ And I think I always say, you know, to the IRA, guys, I mean, the best mitigation that we have now that we didn't have back in 2018, is that the group of men that had been released under IRA thus far, I've not nobody's recidivating they've gone on, I mean, I've got former clients that are working for the mayor's office that are working for the D.C. city government that are coming back and, you know, teaching at Georgetown or teaching in the jail. And so they're doing really awesome things. And, you know, they have become the best theme of mitigation is like, look at how these guys are taking advantage of this second opportunity at life” (MS1).</p>
<p>“they just doing some phenomenal work. You have some of them thats in the jail. You know, one person worked for the CIC council to you know, go into the prisons, you know, see what's what's wrong. You got Halim, that's a great artists, you know,” (JJA1).</p>	<p>“But I think it's kind of balancing out now, when people are seeing that, you know, it's been over two years since some of them been home. And like I said, they're proving why this law was important. And it should have been done.” (JJA2).</p>
<p>“Believed IRAA has accomplished what it intended. IRAA has “overaccomplished” not in the sense of its doing more legislatively than it said it would but more because when drafting IRAA, no one could have known the community that would come out of it, they dedicate their lives to mentoring others because of unique experience. IRAA also successfully addresses wrongs of treating juveniles as adults.” (PD1).</p>	<p>“in a negative sense, again, if we noted the nature defense don't change. Why is it there? It doesn't need to be there. It doesn't need to be there. And it's shown that the judges know what they doing. And we have no rearrest. That 55 people out.” (JJA2).</p>
<p>Clients are interested in helping youth when they get out. In that regard, IRAA has created a community focused on youth, and IRAA guys can impact youth in ways that others can't because they are “credible messengers”. (PD1)</p>	<p>“When you know, 53 people have come home and her IRA one and two, no one has murdered anybody, like no one is back in prison. Like the they're leading law abiding lives, they're like, back with their families and working and contributing to their communities.” (JJA3).</p>
<p>“Hopefully, there's finally a realization and to the extent that there are success stories out of IRA people who, you know, had life</p>	<p>“the statistical evidence such that recidivism declines after someone's in their mid 30s, mid 40s, you know, and older, so if you have someone to take, so, you know, to your</p>

<p>sentences, and they get out after 15 years, and they do terrific things. You know, the power of redemption, and you know, the people's capacity for change. The proof is in the pudding.” (A2).</p>	<p>question, if we, are we going to expand it beyond people who were, you know, 26, or 27? Well, if they've done 25 years after they're 27, they're in their mid 50s, in their early 50s. Statistically, the likelihood of recidivism at that age is gone down significantly. I mean, there's Department of Justice studies that show that your prison studies law review articles, I mean, all kinds of things you can find. So you would hope that even if there isn't an expansion of IRA, there's an awareness of the same. Know that the same rationale should apply to generally should apply generally to long and draconian sentences period, regardless of the age of the offender at the time, the sentences imposed.” (A2).</p>
<p>“the more we'll get granted, like, the more the more cases that are granted, and the more people who come home and are doing well, you know, it's that that will only mean that more that additional cases are granted.” (I)</p>	<p>“Nobody, I haven't come across one guy yet, who I felt was like, he's not. He's not ready. I don't want him on the metro next to me, not one. They're all they're all like, really? like they've grown up.” (A3).</p>
<p>“And so the thinking was, let's give people a chance, if they've proven if they've proven themselves, as far as the court is concerned, if the court believes they've proven themselves was given the chance to come home. And I think the fact that everyone is has home and stayed home and is doing well, I think is Yeah, I think it's doing what, hopefully, what, what it intended it to do,” (I)</p>	<p>“And as I was writing the report, I was reflecting now, three years later, and not a single person is refunded, which is very common, we see that in other jurisdictions that have sentence juvenile resonance, people who are juveniles to life without parole sentences, like in Philadelphia, and in California that has a similar statute usually see extremely low recidivism among people who have served extreme sentences because they're so old, you age out of crime, you become a different person while you're incarcerated. And it has been the same with IRA, no one has been reconvicted for a new crime. So that argument, while I'd very much respected it, at the time, it has kind of lost weight as IRA has been implemented, because well, are you know, you kind of ask the question, Are you waiting for people to fail? Like you have evidence in front of you that folks are doing really well, in the middle of a pandemic? And,</p>

	you know, not having been an adult outside of caves? And all of those things? So?" (D.C.1).
<p>“ And what we've seen since IRA is the guys who come out had been leading our public safety efforts in the communities they used to live in you know these are guys who come out they've been are credible messengers. They've been our violence interrupters. They're working for our agencies in their communities. And as of the data that I've had, most recently, we're talking about 0% recidivism, which is unheard of, for criminal justice reform.” (D.C.2)</p>	
<p>“But for the most part, most crime trails off. And that's what we've seen, I wasn't prepared for just how, how aboveboard, these guys have been, and I don't want to put too much weight on this. Because you know, some, at some point, somebody is going to do something like, it's the nature of thing of crimes, you know, that that an IRA guy will eventually, you know, get arrested for something else. But the fact that recidivism has been as low as it is, was, really was really a surprise to me. The other thing that was really surprised to me about the success of IRA was, I assumed that when people got out, they would want to just go on with their lives, right, they just go get a job in the private sector, they, you know, they go back to their families. And one of the great things that Iris getting to see, a lot of guys have their mothers for the first time in many, many years. But I assume that like, they would want to be done with the district government, right, they would want to be done with the system that had incarcerated so many people in their neighborhoods. And for the most part, that's not what we've seen, these guys come out with a fire under them, and a passion to change the system for other people. So that they don't get involved in it and to reform the system from the outside. And it's been really inspiring to see. And they get plugged in, in</p>	

all kinds of different ways to do that. And I really didn't anticipate it because I thought, well, I when we were writing this, I thought crime isn't going to go up because we know the science, I don't think there's gonna have a negative public safety impact. Where I didn't think about so much was, it's possible that, you know, while crime in the district has been going up recently, in the last couple years, it's possible that IRA has actually reduced public the crime rate in appreciable ways because the guys coming out not only are they not not participating in crime, but are actually engaging in progressive criminal justice practices that are that are outside of policing and mass incarceration. They're actually participating in violence interruption participating, credible messaging, they're participating in progressive criminal justice reform. And so we're actually seeing the opposite of what many of the opponents would say it would suggest is that, you know, we're reading hardened criminals, and they're gonna, they're gonna prey on the city. We're seeing them come in and change the system for the better for their own communities. And that's, that's a really powerful thing.” (D.C.2)