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A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the bail and social record statutes to allow for the use of information gathered from a detention device in the investigation and prosecution of crimes, delinquent acts, or violations of conditions of release.

RESOLVED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA that this resolution may be cited as the Bail Reform Clarification Emergency Declaration Resolution of 2014”.

Sec. 2. (a) The plain language of DC Code § 23-1303(d), enacted in the District of Columbia Court Reform and Criminal Procedure Act of 1970, could be construed to prohibit the use on the issue of guilt in a criminal case of “[a]ny information contained in the Agency’s files, presented in its report, or divulged during the course of any hearing,” (emphasis added) even though it was not provided by the defendant and even though it was not created, observed, or collected for the purpose of a detention or release recommendation.

(b) The rest of section 23-1303 and its legislative history support the conclusion that subsection (d) “was aimed [solely] at fostering the giving of bail information by the accused.” There is no indication that Congress meant to prohibit the use of information that PSA generates (such as a detention device) or acquires from other sources (such as statements made by third parties under no legal or practical compulsion to talk to PSA or an excited utterance) or, indeed,

1 obtains from defendant himself in a situation unrelated to the detention or release decision (such
2 as assaulting or threatening the PSA officer himself or someone else).

3 (c) There is no rational basis for excluding/suppressing such data or information on the
4 issue of guilt. Moreover, it would significantly undermine public safety if person under PSA
5 supervision were shielded from his or her criminal acts or conduct because the data or
6 information was recorded in PSA's file.

7 (d) The District of Columbia requires that defendants be released into the community
8 pending trial unless there is "no condition or combination of conditions of release [that] will
9 reasonably assure the appearance of the person as required or the safety of any other person and
10 the community." D.C. Code § 23-1322(b)(2); see also D.C. Code § 23-1321(b) and (c). As a
11 part of a release order for the High Intensity Supervision Program, defendants are ordered to wear
12 a detention device. As the Council recognized in enacting D.C. Code § 22-1211 (Tampering with
13 a detection device), GPS and "other electronic monitoring equipment serve as a deterrent for
14 monitored persons to commit new crimes, thereby protecting public safety without the necessity
15 of incarceration. Further, GPS devices can be utilized to identify probable suspects by matching
16 their whereabouts to the scene of the crime." If D.C. Code § 223-1303(d) is construed to prohibit
17 the use of such data on the issue of guilt either in the old case or a new one, such deterrence
18 cannot be achieved. Moreover, in some cases, the new crime cannot be prosecuted.

19 (e) There should be no question that detention device information that is generated by the
20 PSA should be admissible on the issue of guilt in a criminal case, just as it would be if were
21 generated by the Court Services and Offender Supervision Agency (CSOSA), or the Department
22 of Corrections. There should be no question that detention device information that is generated
23 by Court Social Services should be available for the investigation and prosecution of criminal or
24 delinquency cases, just as it would be if it were generated by the Department of Youth
25 Rehabilitation Services.

26 (f) Similarly, there should be no question that other information not provided by the
27 defendant in the interview conducted for the purposes of a detention or release recommendation

1 should be admissible on the issue of guilt in a criminal case, just as it would be if such
2 information were created by, conveyed to or witnessed by anyone other than PSA.

3 (g) The issue has arisen in criminal cases where detention device data is the sole or
4 primary evidence that ties a defendant to the scenes of violent crimes. Without the ability to
5 introduce this evidence on the issue of guilt, the perpetrator likely will go free, the victims will
6 not be vindicated, and public safety will remain at risk.

7 (h) Although the issue could be litigated, it could take years to resolve. The Council can
8 – and should – take immediate action to clarify the scope of D.C. Code § 23-1303(d) and D.C.
9 Code § 16-2332 so that important evidence is not excluded from the truth-seeking process.

10 Sec. 3. The Council of the District of Columbia determines that the circumstances
11 enumerated in section 2 constitute emergency circumstances making it necessary that the
12 University of the District of Columbia Fundraising Matching Deadline Extension Emergency
13 Act of 2014 is adopted after a single reading.

14 Sec. 4. This resolution shall take effect immediately.