



**Statement of Janese Bechtol
Chief, Domestic Violence & Special Victims Section,
Office of the Attorney General for the District of Columbia and
Chair, Crime Victims Compensation Advisory Commission**

Before the

**The Committee on the Judiciary and Public Safety
The Honorable Charles Allen, Chair**

**Public Hearing
on**

**B24-0075, the “Expanding Supports for Crime Victims
Amendment Act of 2021”**

AND

B24-0116, the “Victims’ Protection Amendment Act of 2021”

May 13, 2021

9:30 am

Room 123

**Virtual Hearing via Zoom
Washington, District of Columbia**

Good morning Chairman Allen and members of the Committee on Judiciary and Public Safety. I am Janese Bechtol, Chief of the Domestic Violence & Special Victims Section of the Office of the Attorney General for the District of Columbia, and, important for this hearing, the Chair of the Crime Victims Compensation Advisory Commission. I am here today to express the Commission's gratitude to the Council for taking up the proposed amendments to the Crime Victims Compensation statute in Bill 24-0075, the "Expanding Supports for Crime Victims Amendment Act of 2021," and to express the Commission's wholehearted support for those amendments plus several additions. I am also here to recommend two additional provisions to that bill on behalf of the Attorney General.

The Crime Victims Compensation Program, or CVC, is a vital resource of last resort for victims of violent crime in the District of Columbia to help them and their dependents heal from the injuries, both physical and mental, inflicted by the crime and re-establish a measure of personal security. As a resource of last resort, the Program often serves our most vulnerable residents who lack access to other resources such as insurance, worker's compensation, or other benefits.

Section 504 of Title 4 of the D.C. Code establishes the 15-member Crime Victims Advisory Commission to be appointed by the Chief Judge of the Superior Court of the District of Columbia. The Commission consists of victim service providers, persons with knowledge of the issues facing victims, an emergency department doctor, a mental health professional, and representatives from the United States Attorney's Office, the Metropolitan Police Department, the Public Defender Service, the Department of Corrections, the Office of the Attorney General, and this Committee. The Commission members are an engaged and committed group and it has been my privilege to chair the Commission since its first meeting in December 2017.

Following one of its statutory mandates to advise the Court on rules and regulations for the administration of the Crime Victims Compensation Program, the Commission devoted most of its time in 2019 to reviewing the governing statutes of the Program and drafting proposed amendments that it submitted to the Council in January 2020, many of which are contained in Bill 24-75.

The Commission fully supports the provisions to add licensed professional counselors as approved providers for mental health counseling expenses; to allow the Program to identify a covered crime from the reported facts even if the classification in the police report or criminal charge is not covered; and to increase the overall funding cap for a victimization of a parent or guardian caring for multiple children.

Much of the Commission's drafting efforts focused on subsection (6) of section 4-501, which defines the crimes eligible for compensation. Drawing on the diverse experience of the members with many types of survivors, the Commission evaluated additional crimes for their effect on victims, their alignment with the purpose of the CVC Program, and their fit within the compensation categories available under the program. The Commission concluded five new categories of crimes should be added to the programs coverage and is gratified to see most of them included in Bill 24-75:

- criminal abuse of a vulnerable adult or elderly person;
- cruelty to animals of the victim's animal;
- destruction of property in intimate partner cases;
- destruction of property resulting from the discharge of a firearm into the victim's residence or vehicle while the victim was present;
- trafficking; and
- voyeurism.

The Commission encourages the Council to make two more changes to this list. First, include all the crimes in Chapter 9A of Title 22 of the D.C. Code – criminal abuse, criminal

neglect, and financial exploitation of vulnerable adults or elderly persons – not just criminal abuse. Second, remove the requirement in the bill that a person be present when a firearm is discharged into their home or vehicle in order to be eligible for compensation. In working with many such victims, Commission members see little difference in the trauma experienced by those who are present and those who are not.

A complementary goal of the Commission was to make the list of eligible crimes more accessible to the average reader. The current statute is a dense, complex, single paragraph that is extremely difficult to decipher. While an improvement, the Bill's list of crimes runs over 60 specific statutory provisions – a still daunting list for a crime victim or claims examiner. For a claims examiner or crime victim, there is no meaningful difference between the 17 definitions of sexual abuse, six types of assault, five trafficking crimes, five types of homicide, or armed versus unarmed carjacking. The Commission encourages the Council to simplify the list as much as possible to make it accessible to the lay people who will refer to it most often.

The Commission also applauds inclusion in the Bill of its proposal to align the reporting requirements of both domestic violence and sexual assault victims to allow both to use either a civil protection order or a forensic examination. The Commission recommends that the language in these provisions be changed from “seeking” a protection order or forensic examination to “obtaining” a protection order or forensic examination to ensure someone successfully completes the process to be eligible rather than just initiate it.

Finally, the Commission recommends an amendment that affords victims additional time to apply for compensation if they learn that the person who victimized them has filed for a sentence modification. While the current law requires a victim to file an application within one year of learning of the program, sentence modification filings can occur years after the original

offense and re-ignite trauma requiring mental health treatment for the victim. Such needs should remain eligible for compensation based on the re-triggering court action.

Changing my hat to my role at the Office of the Attorney General, the Attorney General is requesting two additions to the Bill to make confidentiality statutes better serve victims. The first would provide additional resources to locate missing youth, especially those who are, or who are at risk of being, victims of commercial sexual exploitation. The Court operates a juvenile specialty court called HOPE Court for such youth. Youth who are arrested for delinquency matters or petitioned for status offenses but present significant risk factors for exploitation may accept a referral to HOPE Court where they can receive a variety of resources to help reduce their risk factors. Victim service agencies, the Court, the Department of Behavioral Health, the Child and Family Services, Agency, the defense bar and OAG all partner in HOPE Court.

Frequent running away is a common characteristic of these at-risk youth. When they runaway while court involved – or “abscond” in court speak – the court issues a custody order for them. The running away itself is part of what puts them at risk of exploitation. HOPE Court partner agencies have long been frustrated that the juvenile confidentiality statute bars their ability to make missing person’s reports for these youth when there is a custody order in place. A missing person’s report can trigger a report to the National Center for Missing and Exploited Children referred to as NCMEC. NCMEC offers extensive resources in locating missing and exploited youth. To make it possible to make a missing person’s report for these youth, OAG proposes an amendment to D.C. Code § 16-2331 to allow the Court to order MPD to take a missing person’s report in these circumstances.

The second addition would maintain the exception to doctor/patient confidentiality for all cases involving elderly and vulnerable victims recently added to D.C. Code § 14-307(b)(4) by the Omnibus Public Safety and Justice Amendment Act of 2020 which went into effect on April 27, 2021. That amendment created an exception where a person is alleged to have financially exploited an elderly or vulnerable adult. That exception appears to have been inadvertently omitted from the current Bill. OAG recommends reinstating that exception and expanding it to include all crimes in which an elderly or vulnerable adult was defrauded. Cases involving elderly or vulnerable adult victims often require assessment of the victim's medical records but there are currently very limited means of obtaining these records and such records cannot be subpoenaed. The proposed change would permit prosecutors to obtain this information through a subpoena but also ensure that the victim is involved in the process.

Draft language for both additions as well as a number of suggested technical fixes to Bill 24-75 are attached to this testimony.

Regarding Bill 24-75's amendment of D.C. Code § 14-307 to add confidentiality protections for newly created crime victim advocates and hospital-based violence intervention programs, OAG recognizes a number of such programs are already in existence, agrees that victims could benefit from confidential communications with such advocates, and supports that concept. Regarding the creation of a statutory right to a hospital-based program and the requirement that it be funded by the Office of Victim Services and Justice Grants, however, OAG has a number of logistical and safety concerns and recommends not creating a new right that would intervene between the victim and law enforcement's immediate response.

Finally, OAG would like to express its wholehearted support for most provisions of Bill 24-0116, the "Victims' Protection Amendment Act of 2021." Filling the nonsensical gap in the

law that allows police to enforce other types of court ordered stay aways but not those issued after a person is convicted of a crime is a gap the domestic violence advocacy community has long sought to fill. With regard to the provisions that create a standalone felony offense for strangulation, OAG is gathering additional information and is not taking a position at this time. Thank you for taking up these two bills.

ATTACHMENT

Proposed Amendments to Bill 24-75 from the
Office of the Attorney General for the District of Columbia

D.C. Code § 4-501. Definitions.

For the purposes of this chapter the term:

(1) “Board” means the Crime Victims Compensation Appeals Board.

(2) “Claimant” means a person who makes a claim for compensation under this chapter and who is a:

(A) Victim; ~~or~~

(B) Secondary victim; ~~or~~

~~(C) Person acting on behalf of a victim or a secondary victim, but not including a provider of services.~~

Rationale: This subsection is unnecessary and causes confusion. It is better addressed by § 4-512 which states “(a) . . . A claim may be filed by a person eligible for compensation as provided in § 4-506, or if that person is a minor or legally incompetent, by the claimant’s parent, guardian, or personal representative.”

D.C. Code § 4-501(6)(EE) Prostitution, where a person was compelled to engage in prostitution ~~or was a minor~~ in ~~a felony~~ violation of an act codified in Chapter 27 of Title 22.”

Rationale: After amendments in 2015, under D.C. Code § 22-2701, a felony violation requires two or more prior convictions for prostitution or soliciting for prostitution but makes a person under 18 immune from prosecution. Accordingly, a person under 18 could no longer meet this requirement. The targeted crime for children is covered by the trafficking of children statute which is separately included in the list of covered crimes.

D.C. Code § 4-501 (7)(A) “Economic loss” means:

...

(xi) The reasonable cost of alternate transportation, including a rental car, for the period of time that an automobile is being held by the police as evidence or to collect evidence;

Rationale: With the proliferation of rideshare companies for example, victims now have more options for alternate transportation than a rental car when their vehicle is being held.

D.C. Code § 4-506(a) A victim or secondary victim is eligible to receive compensation under this chapter if the victim or secondary victim:

(1) Suffered ~~personal injury-economic loss~~ as a result of a crime;

Rationale: There should not be a requirement for secondary victims to establish that they suffered personal injury as a result of the crime committed against the victim. The personal injury requirement is contained in the definition of victim and so does not need to be repeated here.

D.C. Code § 4-506(a)(3) ~~Reported the crime~~The crime was reported to a law enforcement office within 7 days of its occurrence. If the crime cannot be reasonably reported within that time period, the crime must be reported within 7 days from the time a report can reasonably be made.

Rationale: As written the victim or secondary victim themselves must be the one to report the crime to the police. In fact, especially in the case of secondary victims, severely injured victims, or children, it is often someone else who makes the report.

D.C. Code § 4-506(a-1) (4) If the offense listed on the police report or criminal charge is not an eligible crime. ~~t~~The Program may ~~make its determination determine~~of a victim's eligibility based on the facts of the crime for which compensation is sought instead of the offense listed in the police report or criminal charge.

Rationale: If the report contains a covered crime, there is no need for CVC to review the facts. This provision is intended to give claims examiners discretion to identify covered crimes from the facts even when the listed charge is not covered. Arrest charges and prosecutorial charging decisions are based on a variety of factors often very different than any possible charges from the facts of the crime. As a result, victims whose cases are not classified as covered crimes can currently be directed to track down police officers and obtain reclassified police reports in order to be eligible for compensation. This process is onerous, daunting, and unnecessary for a crime victim who, by the reported facts, should already be eligible.

D.C. Code §§ 4-506(c)(1)(B), 4-506(c)(3)(A)(ii, and 23-1906a(b)(1)

Forensic medical, ~~evidentiary, or physical~~ examination;

Rationale: As written, it reads as if any physical examination will suffice. A forensic medical examination by definition includes an evidentiary examination and a physical examination, so those words should be deleted to avoid confusion. Alternatively, the word forensic could be inserted in front of evidentiary and physical.

D.C. Code §§ 4-506(c), Notwithstanding subsection (a)(3) of this section, a victim who does not report the crime to the local police department within 7 days may satisfy the reporting requirement by:

Rationale: Without this clarification, the new 4-506(c)(3)(B) does not make sense because it refers to reporting the case to law enforcement.

D.C. Code § 14-307(b)(4) In a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded:

(a) the District of Columbia or federal government in relation to receiving or providing services under the District of Columbia medical assistance program authorized by title 19 of the Social Security Act, approved July 30, 1965 (79 Stat. 343; 42 U.S.C. § 1396 *et seq.*); ~~or~~

(b) ~~where a person is alleged to have defrauded~~ a health care benefit program; or

(c) an elderly person or vulnerable adult, as those terms are defined in 203a of the Criminal Abuse and Neglect of Vulnerable Adults Act of 2000, effective June 8, 2001 (D.C. Law 13-301; D.C. Official Code § 22-932); or

Rationale: As drafted, the Bill deletes, presumably inadvertently, an amendment from the Omnibus Public Safety and Justice Amendment Act of 2020 that just went into effect on April 27, 2021. That amendment added an exception for proceedings in which the person “is alleged to have violated section 203a of the Criminal Abuse and Neglect of Vulnerable Adults Act of 2000, effective November 23, 2016 (D.C. Law 21-166; D.C. Official Code § 22-933.01).” This proposed language more accurately captures prosecutors need to obtain records to prove a victim’s capacity in these cases.

Proposed Amendment to Add a New Subsection (e-1) to D.C. Code § 16-2331:

- (e-1) (1) Notwithstanding subsection (b) of this section, the Court may order the Metropolitan Police Department to take a missing person’s report for a child who has a custody order for absence from a Department of Youth Rehabilitation Services placement or court ordered placement, so that a missing person’s report can be made to the National Center for Missing and Exploited Children.
- (2) Evidence of the following factors shall be considered in determining whether such an order is in the child’s best interest, the public’s safety interests, and the safety interests of the persons who may search for the child as a result of the missing person’s report to National Center for Missing and Exploited Children:
- (A) the child’s age;
 - (B) the nature of the present delinquency offense or in need of supervision offense and the extent and nature of the child’s prior record, including whether the child has been sexually exploited or is at risk of sexual exploitation;
 - (C) whether there have been reports of abuse and neglect involving the child and whether there is an open neglect case;
 - (D) the child’s mental condition, including any disabilities; and
 - (E) the child’s history of abscondences from the Department of Youth Rehabilitation Services or court ordered placements and the child’s history of running away from home.
- (3) If the Court orders the Metropolitan Police Department to take a missing person’s report, pursuant to this section, any person with knowledge of the custody order may make a missing person’s report to National Center for Missing and Exploited Children. However, any person making such a report shall not disclose that there is a custody order in effect.
- (4) For the purposes of this section, the term “child” means a person who has not attained the age of 18 years.