

**Statement of Karl A. Racine
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Before the

**Committee on the Judiciary and Public Safety
Charles Allen, Chairperson**

**Office of the Attorney General
Hearing on Fiscal Year 2022 Budget**



June 3, 2021

Good afternoon Chairman Allen, Councilmembers, and staff. I am Karl A. Racine, and I have the privilege of serving as the Attorney General for the District of Columbia and the President of the National Association of Attorneys General. I am honored to have this opportunity to testify regarding the Office of the Attorney General's Fiscal Year 2022 budget. I am joined today by my Chief Deputy, Jason Downs, as well as OAG's acting Chief Operating Officer, Tarifah Coaxum, our Agency Fiscal Officer, Shilonda Wiggins, and other leaders from across OAG.

Since I appeared before you for our performance oversight hearing three months ago, much has changed. Vaccines have become much more widely available, the District's COVID-19 numbers have started to fall, our fiscal picture has improved, and we are starting to see a glimmer of hope after a devastating, difficult, and disruptive year. Yet, racial disparities in vaccination rates, COVID-19 case counts, and deaths remain stubbornly high. The economic fallout from the pandemic also was not evenly felt throughout the District, and racial disparities in the speed of recovery will unfortunately persist. Even as we get the virus under control, our most vulnerable residents will need support to get back on their feet. There is much we need to do to not only ensure that all communities recover from this pandemic, but that we build a District that is fairer and more equitable than it was before COVID-19. This budget process is critical to accomplishing that important goal, and OAG and I are ready to contribute in any way we can.

OAG's work of protecting District residents, as well as the District fisc, has continued throughout the pandemic. Let me start with the numbers. In FY 2020, we preserved nearly \$75 million in tax revenue, successfully defended the District against claims that exceeded half a billion dollars, collected nearly \$60 million in child support, brought in more than \$4 million to District agencies, and recovered more than \$10 million in our affirmative litigation. In FY 2021 so far, we have already recovered more than \$65 million through our affirmative litigation protecting workers, consumers, tenants, and our environment. And I am most proud that in FY 2021, we have returned \$4.75 million in restitution to District residents who were harmed by illegal conduct of businesses at a time when people needed this the most.

As the courts reopen following the pandemic, we expect the pace of litigation to increase. OAG's budget must ensure that we have the resources necessary to defend the District and advance the rights of its residents. A properly and fully funded OAG can protect tax dollars and generate revenue. I am grateful for the Council's investments in developing OAG into a premier public law firm over the last several years and urge the Council to ensure that OAG remains strong in FY 2022.

A Few Important Matters

Before I turn to the Mayor's proposed budget, and our recommendations on enhancements and Budget Support Act provisions, I want to highlight a few contributions of OAG's lawyers and non-lawyer professionals to protecting taxpayer dollars. These cases shed light on the numbers we routinely discuss at these hearings.

OAG's most direct contributions to the District fisc are in our tax cases—which are both civil and criminal. In the criminal realm, OAG recently obtained a guilty plea from a District dentist who failed to file a tax return. As part of the plea deal, the defendant agreed to pay nearly \$300,000 in back taxes, interest, and penalties. This case took significant work on the part of our lawyers in the Public Safety Division, who worked closely with a special agent at the Office of Tax and Revenue. On the civil side, we recently obtained dismissal in three cases in which taxpayers challenged the amounts they owed and sought a combined \$6.8 million in refunded taxes from the District. These cases required significant briefing from lawyers in our Commercial Division against well funded lawyers from a top national law firm. OAG also recovered over \$3.5 million in FY 2020 for the District's Medicaid program through recovery of liens and overpayments. This money goes directly back to the agency to help cover health care costs for the District's most needy residents. Lastly, we recovered more than a half a million dollars in fines levied by the Alcoholic Beverage Regulation Administration, Department of Health, and other agencies.

While these cases present a direct example of OAG's contributions to the District's finances, our defensive litigation more broadly saves the District significant sums. In one recent case, a plaintiff filed suit seeking millions of dollars due to an alleged fall on a sidewalk. The plaintiff bolstered her claims of injury by lying under oath about her financial and medical history and falsifying medical records. OAG's lawyers and paralegal staff combed through voluminous records to uncover discrepancies and examined both the plaintiff and her former employer about them. Based on the evidence OAG uncovered, we were able to get the case dismissed. This case demonstrates the hard work that goes into our defensive litigation, which requires thorough, independent factual and legal analysis to ensure that the District is protected from unmeritorious claims while ensuring that those who are legitimately injured are compensated fairly and quickly.

Last, let me mention two long-running consent decree cases that we were able to wind down this year: *Jerry M.*—a 35-year-old consent decree related to the Department of Youth Rehabilitation Services—and *LaShawn*—a 32-year-old case related to the Child and Family Services Agency. We must never lose sight of the fact that the conclusion of these cases represents a significant improvement in the services the District provides vulnerable District youth. But it is also worth remembering that these cases are expensive and generally require millions of dollars in attorneys' fees and costs for court monitors. Thanks to the hard work of OAG lawyers collaborating with our client agencies, negotiating with opposing counsel, coordinating with monitors, these cases are coming to a close, saving the District from having to spend these significant sums going forward.

These numbers and cases demonstrate how investing in OAG can protect taxpayer dollars and is thus a significant return on investment.

Mayor's Budget and Process

I will now turn to our Fiscal Year 2022 budget. Before I dig into the numbers though, I want to reiterate that OAG's budget process is flawed. It does not reflect the reality that OAG is an independent agency headed by an elected official. The budget process continues to treat OAG

as a subordinate agency, allowing the Mayor, rather than the Attorney General, to exercise discretion on the initial budget proposal to the Council. Despite this flawed process, I am deeply grateful for the Council's support for OAG during my tenure. This year's budget process was also unlike any other because of the changing economic forecasts, the infusion of federal stimulus funds, and the changes to the schedule that resulted.

Ultimately, the Mayor proposed a FY 2022 local operating budget for OAG that amounts to \$86.3 million, which is the same as OAG's FY 2021 local budget. A flat budget is significantly better than many of the Mayor's earlier proposals when the District's financial picture was more dire. But it nevertheless represents a cut to our budget because the costs of running the agency go up each year. Thanks to the hard work of OAG's operations team, we can navigate this cut without harming the services we provide District residents or our colleagues in government.

I note that the Mayor granted OAG's request for a little more than \$3 million in capital funds in FY 2022 and a commitment of an additional \$1.5 million in FY 2023 to continue our upgrade of the District's legacy child support system, DCSSES. OAG has spent nearly \$6 million from its TANF Fund to support DCSSES modernization because a prior request for capital dollars was denied. This depleted the TANF Fund, which is used to pay for a range of operational costs of our Child Support Services Division. The infusion of capital dollars to complete this important modernization project is a critical step toward ensuring that we can improve services for District children while maintaining adequate operational funds.

Enhancements

As the Committee is aware, because of the flawed budget process, OAG brings its enhancement requests to the Council. This year, OAG is seeking enhancements to continue our work of improving public safety and building a first-rate public law firm. Before making these requests, we closely analyzed our existing budget and resources and, to the extent possible, reallocated existing resources. Thanks to our financial prudence in the early part of FY 2021 in anticipation of potential budget shortfalls in FY 2021 and FY 2022, we were able to reallocate funds to address many of OAG's needs. The enhancements OAG will present to this Committee today are only those that I believe are critical to improving public safety and advancing OAG's core mission. I will now highlight our three key priorities.

First, we are seeking a significant expansion of our restorative justice program—the first such program housed in a prosecutor's office. As the Committee knows, that program provides an alternative to traditional prosecution for young people who have caused harm to others if the victim agrees to participate. Instead of incarceration, the program allows youth to connect with those whom they hurt, understand the pain they have caused, and take steps toward self-improvement and rehabilitation while empowering victims of crime. In the last year, we have expanded the program to include young people who committed more serious or violent offenses, added cognitive behavioral therapy, and launched a rigorous empirical analysis of the program. OAG was able to implement this program expansion, in part due to a three-year, \$500,000 federal grant we received.

In FY 2022, we would like to expand the program even further in several ways. First, we would like to include even more young people in the program, including youth accused of violating the full range of laws that OAG enforces. Second, thanks to the change in federal administration, we have an Acting United States Attorney who is more receptive to restorative justice. We would like to work with the United States Attorney's Office to receive referrals of young people under the age of 25 who are accused of violating the laws that Office enforces. And last, we would like to consider utilizing restorative justice programs in other matters where appropriate. For example, in many elder abuse cases, the senior is financially exploited by a relative. In many circumstances, the senior seeks a path to accountability and recovery that is not retributive. Restorative justice could provide accountability in such cases. We are also interested in exploring how restorative justice can be helpful to victims and defendants who seek resentencing under the newly amended Incarceration Reduction Amendment Act.

We are requesting a significant enhancement to accomplish these goals. Specifically, we are asking the Council to double the size of our restorative justice program by adding nine full time employees at a total cost of nearly \$1 million. This investment in restorative justice will ensure that we continue to innovate to provide a victim-centered approach to accountability and behavior change for individuals in the justice system. My colleague Seema Gajwani, who spearheads our restorative justice efforts, is here with me today, and we look forward to digging into this proposal with the Committee.

Second, we are requesting that the Council invest additional funds to grow the Cure the Streets program. Cure the Streets is an innovative, data-driven program that treats gun violence as a public health crisis that can be interrupted. Credible messengers connect with their neighbors and community members to address the root causes of violence by engaging with those who are most likely to be involved in gun violence and by mediating disputes. The work of Cure the Streets has continued despite the pandemic and the resulting challenges. Indeed, just last week, one Cure the Streets team was able to help a participant—by definition, a person who was at high risk of being involved in gun violence—find full-time work and surrender his firearm.

Over the last year, Cure the Streets has operated six sites and has largely been funded by OAG's Litigation Support Fund, rather than local funds. OAG remains committed to funding the program at its current level out of the Litigation Support Fund for FY 2022, with perhaps modest increases to ensure that frontline workers receive pay increases, an issue I will discuss in more detail later.

With gun violence increasing across the country and in the District and early indications that the Cure model is successful, we should expand Cure the Streets. We are requesting local dollars to add at least two more sites and welcome a dialogue with the Council on the scope of expansion. Each site costs \$814,322. We suggest expansion to two additional sites in FY 2022. That will cost \$1,731,631, which includes the cost of providing additional managerial support for the new sites. If the Council supports expanding the program, we will select the location for new sites based on gun violence, other public safety data, research on the type on conflict in the area, and feedback from the community.

Third, we are seeking \$2 million in funds to achieve pay parity for attorneys with their federal counterparts, as required by the Legal Services Amendment Act, as well as career ladder promotions for managers and non-attorney professionals. As the Committee is aware, District law requires pay parity between attorneys in the District government and attorneys in federal service. The District pay scale lags the federal pay scale, and significant pay disparities result from the fact that promotions are slower at OAG than for similarly situated federal government lawyers. Because of a lack of funding, many attorneys who are eligible for a promotion and whose work would merit a promotion languish for years. This creates significant recruiting and retention challenges, particularly when, as now, federal service is appealing to a wide swath of lawyers in the District. Nearly every attorney who has departed OAG in the last year has cited lack of promotions as a basis. If granted, this enhancement will put a dent in OAG's years-long promotions backlog, which only grew during the pandemic-related spending freeze.

In addition to these priorities, we are seeking additional attorney resources to enforce the recently enacted expansion to the False Claims Act and to maintain and grow our robust federal initiatives practice. We are also seeking non-attorney professional support for our housing conditions work, Family Services Division, and Civil Litigation Division.

Budget Support Act Recommendations

I will conclude by highlighting the Budget Support Act language that we have provided the Committee and briefly summarize these requests.

First, I have proposed creating a Tenant Receivership Act Fund. As the Committee knows, OAG petitions the Superior Court to appoint receivers in cases where a landlord's neglect or failure to maintain residential rental housing has threatened the health, safety, or security of the tenants. However, occasionally, the landlord lacks sufficient funding to compensate the receiver for the full extent of the repairs needed to rehabilitate the property. In such cases, courts have been reluctant to appoint a receiver out of a concern that such an appointment would not be effective due to lack of funding or the receiver has needed to delay necessary repairs.

I have requested that the Council create a separate fund out of which OAG could pay these receivers directly, which would encourage courts to appoint receivers in appropriate cases. OAG would try to recoup any amounts paid from this fund from the landlord. I should note that we are not seeking any additional taxpayer dollars for this fund. Instead, OAG will utilize unclaimed recoveries from the Restitution Fund to establish the Tenant Receivership Act Fund. This provision is critical to helping ensure that we robustly protect the health, safety, and security of tenants—something we can do at no additional cost to the District.

Second, I am proposing changes to strengthen and streamline the Litigation Support Fund. The Council created this Fund in 2015 to ensure that OAG had the resources necessary to defend the District and advance the public interest without needing the support of the Executive or dollars from the General Fund. That proved to be successful, and the Fund has expanded, thanks to increases in its cap and the growing success of OAG's affirmative litigation, as well as expansions in uses of the Fund—from hiring employees to funding public safety initiatives.

Through the last couple of years, the Fund has had two separate caps—one total cap and a separate cap for the current Fiscal Year. For example, in FY 2021, the Litigation Support Fund cap is \$17 million, but there is an exemption under which up to \$19.1 million can be retained through the end of the Fiscal Year. I propose simplifying this to have a single cap of \$19 million that is effective for FY 2022 and beyond. This cap will ensure that OAG can support its increasingly complex litigation, with heightened demands on e-discovery and experts. In addition, with this cap, OAG is in a better position to support violence interruption services. Since 2018, when Cure the Streets was started, the salaries for violence interrupters, outreach workers, and other personnel have remained flat. Increasing the Litigation Support Fund cap will ensure that OAG can increase the size of the grants as needed, so that the grantees can provide reasonable salary increases for these workers. Last, an increased cap will help ensure that OAG can fund a temporary conviction integrity review unit that may be necessitated by the turmoil at the Department of Forensic Sciences.

The other change I have suggested is to ensure that payments to contingency counsel are not counted toward the Fund's cap. As the Committee is aware, OAG has entered several contingency contracts with outside counsel to bolster our efforts to hold high-profile, well funded companies accountable for violating District law. These contracts allow us to multiply our resources at no cost to District residents. Outside counsel are paid a small portion of any recovery we obtain, and they receive no recovery if the litigation is unsuccessful. We anticipate that in the next few years, many of these contracts will bear fruit, with significant recoveries for the District, and in turn, for outside counsel. The Litigation Support Fund serves as a pass-through for these payments to outside counsel, and there is potential that the outside counsel fee could amount to a significant portion of the total Fund cap. Exempting these pass-through amounts from the Fund cap will ensure that a significant recovery does not hamper OAG's ability to pay for litigation support services. The Council exempted \$7.3 million in attorneys' fees that passed through the Fund for the *Monsanto* attorneys' fees from the cap, and we urge that the Council make this permanent.

Third, I have urged changes to the Delinquent Debt Recovery Act. Under that law, District agencies must refer all delinquent debt to the Central Collections Unit. For debts resulting from OAG's affirmative litigation, however, this referral should be optional. Whether to collect on a debt is a part of OAG's prosecutorial discretion. There may be reasons related to a defendant's quick completion of its obligations under an injunction or other characteristics that may warrant OAG's choosing not to collect the full amount of a debt owed.

In addition, I have urged the Council to change the law to ensure that any amounts the Central Collections Unit recovers are returned to the Fund to which those debts would have gone, rather than the Delinquent Debt Fund. For example, where an entity owes restitution to a consumer, worker, tenant, or elder abuse victim, any restitution collected should go back to the appropriate restitution fund so that it can be returned to the victim. To the extent that the Central Collections Unit applies fees and costs, those are properly maintained in the Delinquent Debt Fund.

Fourth, under the Consumer Protection Procedures Act, a nonprofit can bring a consumer protection case on behalf of the general public. This is a critical tool that supplements OAG's work in bringing consumer cases that are in the public interest. Unfortunately, where there is a nonprofit public-interest action and an OAG public-interest action, there can be inconsistent rulings that adversely affect the case. I have thus proposed that OAG be permitted to seek a stay of a parallel nonprofit public-interest action. This recognizes that it primarily falls to government to protect the public at large. This proposal is similar to the False Claims Act, where private parties who are pursuing a case in support of the public must give notice and an opportunity for OAG to handle the matter, as well as similar provisions in other states' laws, from Massachusetts to Hawaii. This provision would not affect the law in circumstances where an individual brings a consumer protection claim to vindicate his or her own rights or where a nonprofit brings an action on behalf of its members. It applies only where a nonprofit brings an action on behalf of the general public.

Last, under current law, the Restitution Fund is subject to annual audits by the Office of the Inspector General (OIG). I have recommended changing this audit requirement to every five years. While we welcome OIG's oversight of the Fund, the annual audit has proven burdensome for both OIG and OAG, and the Fund is relatively small with less than \$4 million in annual transactions. Both agencies thus agree that an audit every five years strikes the appropriate balance between oversight and resource constraints.

Conclusion

I would like to thank you, Chairman Allen, as well as Chairman Mendelson, the members of this Committee, and the Council generally for your support of OAG through these difficult times. With brighter days ahead, I look forward to working with you all to continue improving OAG and making the District a fairer, safer place to live. My colleagues and I are happy to answer any questions you may have.