

Committee on the Judiciary & Public Safety

Re: Bill 24-0075, “Expanding Supports for Crime Victims Amendment Act of 2021”

Written Testimony of Kristin Eliason, *Network for Victim Recovery of DC’s Director of Legal & Strategic Advocacy*

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Thank you Chairman Allen, Committee members, and staff for your commitment to protecting the rights of victims in DC. My name is Kristin Eliason and I am submitting this written testimony as a supplement to the May 13, 2021 oral testimony I provided on behalf of Network for Victim Recovery of DC (NVRDC) in my capacity as *Director of Legal & Strategic Advocacy*.

NVRDC has a broad mission and commitment to support those impacted by various forms of violence through holistic services. Since 2012, we have provided free legal representation, advocacy, crisis intervention, and case management to over 5,000 adults and children who have experienced crime in the District.

NVRDC is grateful to Councilmembers Allen, Cheh, Henderson, Nadeau, Bonds, McDuffie, R. White, Silverman, Lewis George, Pinto, and Chairman Mendelson for introducing Bill 24-0075 as it is a positive shift toward investments, not just in community-responses to harm, but to accountability for those tasked with responding to crime. Respectfully, NVRDC offers the following recommendations that aim to enhance equity in services available and provided to those impacted by crime in the District.

As a victim services organization, we know that, historically, the availability and accessibility of resources and rights for victims in the District has been tied to the type of crime they experience. For example, only sexual assault survivors are currently afforded a codified right to an advocate during a medical forensic exam or law enforcement interview and only three types of advocates (sexual assault, domestic violence, and human trafficking) have statutory responsibilities creating legal protections for victims’ information. The historic limitation of the rights and services to victims of certain crimes is a reflection of our failure as a city and community to account for how the allocation of rights and funding for victims of crime has been rooted in outdated, racist views of who can be a crime victim, what resources should be available to those who experience crime, and the accessibility of those resources. NVRDC strongly supports Bill 24-0075’s intention of increasing equity in access to victim services and support and we respectfully make the following recommendations to broaden Bill 24-0075’s application and enhance the meaningfulness of the District’s response to crime victims.

I. Expand the roles of the “member of a hospital-based violence intervention program (HVIP)” and “crime victim advocate.”

NVRDC’s ultimate goal is that every person who experiences crime in the District be guaranteed the support of an advocate. However, we understand that such a right requires responsible

planning, time, resources, and infrastructure. We applaud Bill 24-0075's long-overdue creation of a crime victim advocate role which will provide victims with a confidential, privileged, and knowledgeable support person;¹ however, we recommend the language of the bill be expanded to include victims of *all* types of crimes, not just the violent crimes that are listed in the bill. Trauma science has shown that trauma's impact is not just determined by the type or magnitude of an event, but also by the life experiences and resources available to the victim, including support and response systems (which can compound or mitigate the effects of trauma).²

The bill currently proposes the codification of two victim support roles, both of which are limited to specific victimizations. First, it guarantees members of hospital-based violence intervention programs (HVIPs) to victims with gun and stabbing-related injuries while they undergo medical, evidentiary, or physical exams or interviews by law enforcement while at the hospital. **NVRDC proposes that the right to have a HVIP member be expanded to include victims of serious assaults.** In testimony submitted by the DC Office of the Attorney General and the United States Attorney's Office for the District of Columbia both describe concerns that a member of a HVIP will interfere with law enforcement's ability to speak with a victim who has been dispatched to the trauma bay for their serious injuries; however, no qualitative or quantitative data, or even anecdotes, were provided by those agencies to support their concern.

Victims who are dispatched to the hospital that qualify for HVIP services are, as the Council heard from Dr. Hall on May 13th, receiving emergency medical care. Such care will often prevent law enforcement from interacting with a victim for hours while the victim receives emergency medical services, which would fall well outside the timeframe for any exigent circumstances for which law enforcement will need to speak to a victim right away. In fact, such a right *already exists* for adult survivors of sexual assault who are dispatched to Medstar Washington Hospital Center to receive a sexual assault medical-forensic exam. Those survivors are *guaranteed* the right to an advocate with them during the exam and law enforcement interviews at the hospital and elsewhere. Additionally, DC SAFE will often accompany members of MPD to calls related to domestic violence in the community, where they will meet with the survivor at the scene of the incident. Despite certain victims already having access to an advocate in the immediate time period after a crime occurs, no testimony was provided by government agencies referencing those advocates as interfering with their ability to speak with a victim. Just like those cases of sexual assault and

¹ During Bill 24-0075's hearing on May 13, 2021, there were witnesses who questioned the need for these types of advocates. While prosecutorial offices, like the U.S. Attorney's Office and the DC Office of Attorney General, sometimes offer witness-advocates, these types of advocates lack the crucial characteristics to make this type of role successful—confidentiality and privilege. If a survivor shares their worries and fears with an advocate and the advocate is made to disclose that information to a third party, there is a significant breach of trust. Consequently, survivors may be fearful or unwilling to further cooperate. Equally concerning is that the information that was confided in a support person may then be required to be relayed to a prosecutor, who may then in turn have to disclose the information to the defense attorney and person who harmed the survivor in the first place.

² See Center for Substance Abuse Treatment (US). Trauma-Informed Care in Behavioral Health Services. Rockville (MD): Substance Abuse and Mental Health Services Administration (US); 2014. (Treatment Improvement Protocol (TIP) Series, No. 57.) Chapter 3, Understanding the Impact of Trauma. Available from: <https://www.ncbi.nlm.nih.gov/books/NBK207191/>.

domestic violence with exigent circumstances, the mere presence of a member of a HVIP does not impede law enforcement from speaking with a victim when they are medically cleared to do so. It is concerning that the agencies tasked with prosecuting crimes in our community express arbitrary concerns over victims of gun, stabbing, and other serious assaults having the same support that is already entitled to victims of sexual assault, especially when considering the identities of the folks accessing HVIPs in the District.

Bill 24-0075 currently proposes that the second victim support role, the crime victim advocate, be available, but not guaranteed, for victims of other serious crimes outside the hospital-setting. This availability is extremely important in that it ensures that information provided to the advocate by the victim and conversations had between the victim and their advocate are legally protected; however, the bill does *not* provide victims with the right to bring an advocate with them to law enforcement interviews.³ **NVRDC recommends two changes to this provision: (1) expand the victimizations covered to all crime types and (2) codify the ability for victims to bring their crime victim advocate with them and remain present in law enforcement interviews.**

Expanding the role in this way can have the substantial impact of protecting information currently held by victim services employees while also protecting their client's privacy. Currently, DC organizations that are providing these services have no confidentiality or privilege protections they can offer their clients, unless they are covered by some other roles designation (e.g. sexual assault counselor) or unless a victim's advocate is working with an attorney on the victim's legal issue. Practically speaking, this puts these organizations in the uncomfortable space of both having to build trust with clients, while simultaneously worrying about whether they may be forced to disclose any of the client's information through litigation. NVRDC is frequently contacted to help our community partners navigate this difficult space. Expanding the crime victim advocate role to victims of all crime types will ensure that those protections are extended to as many crime victims in the District as possible.

We understand that unlike a member of HVIPs, crime victim advocates will not be guaranteed to victims under this provision; however, this bill can provide victims significant support during law enforcement interviews, which are often intimidating and retraumatizing for victims. Our recommendations provide a sustainable expansion of the bill's intent by leveraging existing services without creating empty promises to victims and the community.

II. Provide consistent protections across victimizations.

NVRDC applauds the Council's efforts to provide additional options for justice for survivors of sexual assault through this bill; however, NVRDC urges the Council to go further to address the

³ Currently, only sexual assault survivors have the right to an advocate's presence during a law enforcement interview per DC Code §23-1908(a)(3)(c). The benefits of having such a support person accompanying someone who experiences crime to such an interview are not limited to just sexual assault survivors and a victim who obtains a crime victim advocate should be permitted to bring such an advocate with them to report to the police or for any follow up interviews or meetings with police, regardless of the type of victimization.

inequitable access to services and inconsistent legal protections for all crime victims in the District. In addition to the recommendations listed above regarding the role expansion of the HVIP members and crime victim advocates, NVRDC recommends amending the bill and statutory detailed below in order to provide further clarity and consistency in the DC Code.

A. Ensure consistency by creating a DC Code section that houses all victim advocates and counselors.

Inconsistencies exist in the DC Code as a result of various pieces of legislation passed at different times. The District has a variety of support roles for survivors of sexual assault, domestic violence, and human trafficking; however, despite having the same core function, there are significant inconsistencies in the legal protections and provisions that apply across these roles. For example:

- *Sexual assault counselors* are required to train under a curriculum approved by the DC Office of Victims Services and Justice Grants (§23-1907(10)(b)); whereas *domestic violence and human trafficking counselors* do **not** have this requirement (§14-310 and §14-311).
- *Sexual assault counselors* have **different** mandatory reporting requirements for child sexual abuse, physical abuse, and neglect (§22-3020.52) than those required of *domestic violence and human trafficking counselors* (§4-1321.02) or Bill 24-0075’s proposed *crime victim advocates*.
- *Sexual assault youth advocates* can file for a civil protection order on behalf of a minor victim aged 13 or older, but **no other role** can file on behalf of minor victims aged 13 or older (§16-0003(d)(2)), despite civil protection orders being available to minor survivors of any type of intrafamily offense as long as they have the statutorily required relationship (§16-0003(a),(b)).
- *Sexual assault advocates* are currently distinguished from *sexual assault counselors* due to their additional training and ability to provide services at the hospital (§23-1907). Bill 24-0075 proposes the creation of a “victim advocate” role, which would not provide services at a hospital and is **inconsistent** with the terminology of other roles (e.g. the *domestic violence and human trafficking counselors*).

By grouping all these roles under one code provision, with similar uniform provisions and terminology (in addition to any specialized language that is necessary), we can ensure that there is a common and equitable foundation across victimization types (e.g. definitions, training and confidentiality provisions, terminology, etc.) and make more intentional decisions about provisions that treat certain victimizations differently. For example:

- The new “*member of the hospital-based violence interruption team*” role should be renamed to a “*crime victim advocate*” and rename the “*crime victim advocate*” role to “*crime victim counselor*” so that it mirrors the terminology and structure used by other similar roles (e.g. *sexual assault advocates and counselors*).

- NVRDC recommends that all victim support roles fall under the general umbrella of a “*crime victim counselor*” with additional training being required for “*crime victim advocates*”⁴ (currently referred to as *members of the HVIP*) and requiring additional subject matter training for specialized roles, such as *sexual assault counselors*.
- However, all roles would have the same baseline protections and privileges as other crime victim counselors. The differences in title would reflect marginal differences in specialization.
- Training and certification of victim support roles should be consistent and should NOT be contingent upon Office of Victim Services and Justice Grants (OVSJG) funding or curriculum approval.
 - All victim support roles should be trained in crime victims’ rights (and where necessary, additional laws like the Sexual Assault Victims’ Rights Amendment Act of 2019).
- Create consistent confidentiality and privilege protections across victim support roles (see additional discussion below).
 - NVRDC also recommends:
 - Explicitly naming the protections of communications of the support roles as “privilege” instead of using the phrase “confidentiality of confidential communications” to clarify the difference between confidentiality and privilege; and
 - Requiring that even in circumstances where a victim support role must disclose a protected communication with a victim, that the victim must be notified prior to the disclosure of any communication.
- Create consistent mandatory reporting requirements across victim support roles (see additional discussion below).
- Create a consistent definition of a victim (and include deceased individuals), what constitutes diminished capacity and who can exercise a victim’s rights on their behalf (see additional discussion below).
- Expand the right to injunctive relief to all victimizations (see additional discussion below).
- Expand the prohibitions of victim arrests during urgent medical treatment to all victimizations (see additional discussion below).

An example chart is attached at the end of this testimony (Attachment A).

B. Expand Bill 24-0075’s Safe Harbor Provision to Protect Victims Seeking HVIP Assistance

Currently, Bill 24-0075 provides safe harbor for sexual assault survivors seeking medical or forensic treatment. As the organization that currently provides advocates to victims seeking such

⁴ The term “advocate” should be used to distinguish the roles that are guaranteed statutorily and have the ability to respond in hospital settings.

treatment, NVRDC strongly supports this proposal; however, through NVRDC’s work with Medstar Washington Hospital Center’s Community Violence Intervention Program, we know that crime victims coming to their program as a result of serious bodily injury are often the same folks disparately impacted by violence and over-policing in their communities and are more often blamed for their injuries or suspected of engaging in illegal activity that contributed to their victimization. As a result, these victims would immensely benefit from such protections.

Additionally, in the spirit of this provision of Bill 24-0075 and to the extent the Council has such authority, NVRDC recommends creating a safe harbor provision regarding protecting immigrant victims seeking such treatment from being reported to immigration authorities, any District employee involved in the detection or investigation of crime, or by staff at the hospital treating the victim.

C. Expand Injunctive Relief

NVRDC strongly supports Bill 24-0075’s change to DC Code §23-1911, which currently prohibits sexual assault victims from seeking legal redress through the courts when the victim’s rights are violated under Subchapter II of Title 23, Chapter 19. The bill’s amendment would create opportunities of accountability through injunctive relief when government actors violate rights of sexual assault survivors; however, NVRDC recommends this enhancement apply to both the Sexual Assault and the DC Crime Victims’ Bill of Rights sections of the DC Code.⁵ Although we applaud the Council’s efforts to advance rights and protections for victims while also increasing accountability for those tasked with affording victims their rights, NVRDC feels that the District *must* account for and address the long-standing issues of siloing victims services based on racist views of who commits crime versus who experiences crime in our community. We ask that the Council take this opportunity to ensure that as many victims as possible are afforded equal protections, support, and opportunities for accountability when their rights are violated.

D. Expand and Clarify Crime Victims Compensation (CVC) Eligibility and Filing Requirements

Bill 24-0075 proposes amending the language of DC Code §4-506 to allow for a “domestic violence victim”⁶ to be eligible for CVC if they seek a temporary protection order or a civil protection order instead of reporting to law enforcement. While NVRDC strongly supports the availability of alternatives to police reports, we recommend that this provision does not limit itself to domestic violence, and instead be available to the following:

⁵ NVRDC recommends the following amendment to DC Code §23-1901(c): “This section does not create a cause of action for **damages** or defense in favor of any person arising out of the failure to accord to a victim the rights enumerated in subsection (b) of this section **or the violation of any other provision of this subchapter.**”

⁶ Bill 24-0075 does not include a definition of “domestic violence victim.”

- (1) victims of an intrafamily offense, where the petitioner is the victim, or, if the offense is punishable under §22-1001 or §22-1002, where the victim is an animal that the petitioner owns, possesses, or controls;
- (2) victims of sexual assault, where the petitioner is the victim;
- (3) victims of trafficking in labor or commercial sex acts, as described in §22-1833;
- (4) victims of sex trafficking of children, as described in §22-1834, where the petitioner is the victim.

This not only would create greater access for a larger group of victims, but also makes sense given that civil protection orders are available to all the victimizations listed above and not just domestic violence victims.

NVRDC also proposes amending the language under §4-512 regarding CVC Procedures for filing claims. Currently, minor or legally incompetent victims' claims must be filed by their parent, guardian, or personal representative. Not only does this provision lack a provision prohibiting such entities from filing if they are subject to a protective order from the victim (as further discussed below), but this provision fails to provide an alternative for victims who may not feel safe with their parent, guardian, or personal representative knowing about the crime. NVRDC recommends adding an alternative option for minor victims that mirrors the provision for minors who wish to petition for civil protection orders under §16-0003(d)(2),⁷ and allow for an adult to whom the minor is related to by blood, adoption, legal custody, marriage, or domestic partnership, or a crime victim counselor⁸ to file on the minor's behalf.

E. Create consistency throughout the DC Code regarding language used for victims with diminished capacity and who can act on behalf of the victim (i.e. language around parent/guardian/personal representatives).

There is inconsistency throughout the DC Code in the language about diminished capacity, the age that constitutes incapacity, the type of person who can be appointed to act on behalf of victims with diminished capacity, and exceptions to the appointment of a guardian for a victim where the guardian has been charged with offenses against the victim.

⁷ As an example of the need to modify mandatory reporting requirements for victim support roles, the passage of the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2019 modified §16-1003(d)(2)(A) to allow for a sexual assault youth counselor to be able to file a civil protection order on behalf of a child that is 13 years of age or older; however, under §14-312, a sexual assault counselor (including youth counselor) has mandatory reporting duties that may require them to report to MPD or the Child and Family Service Agency under §4-1321.02. This may be directly in conflict with the survivor's wishes to get a civil protection order by having a sexual assault youth counselor file on their behalf, instead of having someone like a parent or guardian with them. This option was created so that survivors who feel unsafe with parents, guardians or blood relatives could file a civil protection order without being dependent on telling those individuals, but requiring mandatory reporting of the youth counselor interferes with that.

⁸ Although §16-0003(d)(2) allows for a sexual assault youth advocate to file on behalf of a minor victim, given our recommendation, a sexual assault advocate may not always be the most relevant person to act on the victim's behalf. By changing the language to crime victim counselor, this would encompass all victim support roles, as well as specialized roles like sexual assault youth advocates.

Bill 24-0075 proposes to change the language in DC Code §14-307 (Confidential Information) to the following:

- (e) If the victim's ability to object pursuant to subsection (d)(1)(B) of this section is diminished because of minority, mental impairment, medical incapacity, or some other reason, the court:
- (1) Shall provide notice to the victim's parent, guardian, or custodian; or
 - (2) May appoint an attorney to receive the notice on the victim's behalf.

However, the bill's proposed § 14-307 amendments fail to include an exception for guardians who have been charged with an intrafamily offense or a neglect petition, or otherwise have an adverse interest, despite including such exceptions in the bill's proposed new sections, §14-313 (Hospital-based violence intervention programs) and §14-314 (Crime victim advocates), and despite these exceptions existing in other parts of the DC Code. The bill also has internal inconsistencies relating to whether a specific age constitutes incapacity, the inclusion of a victim's custodian or personal representative, and the exact terminology used for different types of incapacities. The language from §14-313 and §14-314 is included below:

- (c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.
- (2) If the parent, guardian, or personal representative of a victim described in paragraph (1) of this subsection has been charged with an intrafamily offense or has had a protection order or a neglect petition entered against the parent, guardian, or personal representative at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

The bill's differing provisions for the diminished capacity language also differ from what currently exists for §14-312 (sexual assault counselors),⁹ which does not mention at what age a minor victim

⁹ DC Code §14-312(c) "(1) Except as provided in paragraph (2) of this subsection, when a sexual assault victim has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the sexual assault victim's parent, guardian, or personal representative may assert or waive the privilege. (2) If the parent, guardian, or personal representative of the sexual assault victim described in paragraph (1) of this subsection has been charged with an intrafamily offense, sexual assault, or has had a protection order or a neglect petition entered against him or her at the request of or on behalf of the sexual assault victim, or otherwise has interests adverse to those of the sexual assault victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege."

lacks capacity, and also adds sexual assault of the victim as an exception for the ability of another person to assert or waive the victim's privilege.

NVRDC recommends the adoption of the language in §14-313 and 14-314 to apply to all the proposed and existing sections of the code, including sections like §4-512 for the filing of crime victims compensation claims with some minor amendments. The proposed language is as follows:

() Except as provided in paragraph (x) of this subsection, when a victim is under **13** years of age, has been adjudicated incompetent by a court of competent jurisdiction for the purpose of asserting or waiving the privilege established by this section, or is deceased, the victim's parent, guardian, or personal representative may assert or waive the privilege.

() If the parent, guardian, or personal representative of a victim described in paragraph (x) of this subsection has been charged with an intrafamily offense or sexual assault, or has had a protection order or a neglect petition entered against the parent, guardian, or personal representative at the request of or on behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting or waiving the privilege.

F. Create Consistency in Mandatory Reporting Obligations for Victim Support Roles

As mentioned above, sexual assault counselors have different mandatory reporting requirements for child sexual abuse, physical abuse and neglect (§22-3020.52(3))¹⁰ than requirements for domestic violence and human trafficking counselors (§4-1321.02(b) and (e)),¹¹ or than those

¹⁰ §22-3020.52(3) "Sexual assault counselors shall be exempt from reporting pursuant to subsection (a) of this section any crime disclosed in a confidential communication unless the sexual assault counselor has actual knowledge that the crime disclosed to the sexual assault counselor involves: (A) A victim under the age of 13; (B) A perpetrator or alleged perpetrator with whom the sexual assault victim has a significant relationship, as that term is defined in § 22-3001(10); or (C) A perpetrator or alleged perpetrator who is more than 4 years older than the sexual assault victim."

¹¹ §4-1321.02(b) "Persons required to report such abuse or neglect shall include [...] human trafficking counselor as defined in § 14-311(2), domestic violence counselor as defined in § 14-310(a)(2) [.] Such persons are not required to report when employed by a lawyer who is providing representation in a criminal, civil, including family law, or delinquency matter and the basis for the suspicion arises solely in the course of that representation. Whenever a person is required to report in his or her capacity as a member of the staff of a hospital, school, social agency or similar institution, he or she shall immediately notify the person in charge of the institution or his or her designated agent who shall then be required to make the report. The fact that such a notification has been made does not relieve the person who was originally required to report from his or her duty under subsection (a) of this section of having a report made promptly to the Metropolitan Police Department of the District of Columbia or the Child and Family Services Agency;" §4-1321.02(e) "Notwithstanding § 14-307, any person specified in subsection (b) of this section who knows or has reasonable cause to suspect that a child known to him or her in his or her professional or official capacity has been, or is in immediate danger of being, the victim of "sexual abuse" or "attempted sexual abuse" prohibited by Chapter 30 of Title 22 [§ 22-3001 et seq.]; or that the child was assisted, supported, caused, encouraged, commanded, enabled, induced, facilitated, or permitted to become a prostitute, as that term is defined in § 22-2701.01(3); or that the child has an injury caused by a bullet; or that the child has an injury caused by a knife or other sharp object which

requirements for the crime victim advocate role as proposed by Bill 24-0075 (which is currently silent on mandatory reporting for crime victim advocates). Furthermore, there is no guidance for individuals that may fall under more than one of these roles (e.g. domestic violence and sexual assault violence counselor) to help them determine which reporting duties are triggered if the survivor they're assisting is experiencing two types of victimizations at once (e.g. a sexual assault that occurs during an abusive relationship, which constitutes domestic violence under the law).¹²

NVRDC recommends providing consistent exceptions for mandatory reporting by victim support roles, the same way that attorneys or clergy members are exempt under §22-3020.52 for any disclosures made in the course of the victim trying to access their services:

A victim counselor [encompassing all other victim support roles, including domestic violence, human trafficking, and sexual assault] is not required to report pursuant to subsection (a) of this section if the victim counselor is providing support or advocacy services in a matter relating to the victimization, and the basis for the knowledge or belief arises solely in the course of that support or advocacy services.

In addition to the varying, arbitrary inconsistencies among the District's victim support roles, the current mandatory reporting requirements significantly interfere with any victim support role's ability to assist their clients. If the main purpose of a victim support role is to provide assistance after a crime occurs, then how can they be expected to provide that assistance (especially to minors) if the disclosure of a crime may trigger an unwanted report to law enforcement. The duty to report, regardless of the victim's wishes, significantly undermines the trust and effectiveness of a victim support role. Similar to an attorney-client relationship, victim support roles must have the ability to listen to the victim's needs and concerns and act based on how the victim wants to proceed, including in ways that do not involve law enforcement or parental notification.

For this reason, we ask that all victim support roles (which would fall under the "crime victim counselor" designation per NVRDC's recommendations), be exempt from reporting child sexual or physical abuse and neglect,¹³ if the information is learned solely in the course of their roles as counselors for that victim.¹⁴

has been caused by other than accidental means, shall immediately report or have a report made of such knowledge, information, or suspicion to the Metropolitan Police Department or the Child and Family Services Agency."

¹² As evidenced by DC SAFE's response to a question at the May 13th hearing, NVRDC is not alone in taking issue with the inconsistencies regarding different mandatory reporting requirements for counselor roles.

¹³ This would require amendments to § 22-3020.52 and § 4-1321.02.

¹⁴ As an example of the need to modify mandatory reporting requirements for victim support roles, the passage of the Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2019 modified §16-1003(d)(2)(A) to allow for a sexual assault youth counselor to be able to file a civil protection order on behalf of a child that is 13 years of age or older; however, under §14-312, a sexual assault counselor (including youth counselor) has mandatory reporting duties that may require them to report to MPD or the Child and Family Service Agency under §4-1321.02. This may be directly in conflict with the survivor's wishes to get a civil protection order by having a sexual assault youth counselor file on their behalf, instead of having someone like a parent or guardian with them. This option was created so that survivors who feel unsafe with parents, guardians, or blood relatives could file a civil protection order without being dependent on telling those individuals, but requiring mandatory reporting of the youth counselor interferes with that.

1. Amend the Mandatory Reporting Requirements for Physicians and Institutions to Facilitate Coordination with Advocates in Hospital Settings.

Under DC Code § 7-2601, if specified hospital employees have reasonable cause to believe that a person they are treating has suffered an injury from a firearm, they must make a report to law enforcement. Physicians and related medical providers have the same duties for reports of child sexual or physical abuse and neglect under § 22-3020.52 and § 4-1321.02.

As previously mentioned, it is critical for a crime victim to be able to access urgent medical care without being fearful of having a victim support role or a physician contact law enforcement. This fear has the potential to dissuade a victim from accessing medical services at all, or disclosing any victimizations in the future. While mandatory reporting provisions are well-intended, they often interfere with victims being empowered to make their own choices about law enforcement reports. Additionally, we would respectfully urge the Council to consult with the community violence intervention programs working in trauma bays throughout the city on their concerns regarding such mandated reporting.

For this reason, in order for the members of HVIP (or “crime victim advocates” as we propose calling them), or sexual assault advocates to be successful, it is important that any physician or hospital staff that treats the victim during the same period of crisis not be a mandated reporter.

G. Create Consistency in Paid Leave Protections

The District currently allows victims of sexual abuse, domestic violence, and stalking to receive paid leave from an employer for absences directly related to social or legal services pertaining to their victimization (§32-531.02(4)). These protections should be available to victims of crime beyond those three types of victimization. Victims of all crime types are frequently asked to be absent from work for a wide range of reasons related to their victimization, including but not limited to: appointments with victim services providers, prosecutors, and law enforcement; grand jury or court hearings; medical or mental health appointments; crime victims compensation applications, etc. The time and cost of going through the court system does not only affect survivors of sexual abuse, domestic violence and stalking. **Thus, NVRDC recommends expanding this provision to provide as much protection to as many victims as possible.**

III. Strengthen Privacy Protections for Victims of Crime in the District

From our experience litigating subpoenas requested in criminal cases for our crime victim-clients’ personal or confidential information, NVRDC understands the need for a significant shift toward enhancing victims’ privacy protections. Such a shift would require clarity in victim expectations *and* statutory requirements. Respectfully, and to that end, our proposed amendments aim to provide more transparency in the processes that often compromise the protected communications between victims and certain support roles (e.g. mental health providers, crime victim advocates)

and the confidentiality of victims' records (e.g. medical and therapeutic records, educational records, cell phone records).

A. Group Victim Support Roles Under One Common Confidentiality and Privilege Provision and Omit the Roles Under §14-307.

As previously discussed, by not grouping victim support roles together under one code section, the protections of each have resulted in seemingly random variations. One of the strongest examples of this is found by comparing the different provisions relating to confidentiality and privilege in §14-307 and §14-310 through 14-312.

NVRDC proposes to amend §14-310 to house all victim support roles,¹⁵ striking provisions §14-311 and 312 and incorporating any role-specific provisions into §14-310. We also propose that all victim support roles be struck from §14-307 (Confidential Information) since they will be addressed in the amended section. Our proposed language is below:

Chapter 3. Competency of Witnesses, §14-310. Crime Victim Counselors.

(a) In the Federal courts in the District of Columbia and District of Columbia courts, a crime victim counselor as defined in [*newly created code provision*], a domestic violence counselor as defined in [*newly created code provision*], a human trafficking counselor as defined in [*newly created code provision*], or a sexual assault counselor as defined in [*newly created code provision*], may not be permitted, without the consent of the victim, or of the victim's legal representative, to disclose any **information or records**, confidential in their nature, that the counselor has acquired in attending a victim in a professional capacity and that was necessary to enable the counselor to act in that capacity, whether the information was obtained from

¹⁵ Preferably grouping them under the term "crime victim counselor" per our recommendations.

the victim or from the victim's family or from the person or persons in charge of the victim.

(b)(1) The roles enumerated in subsection (a) shall not disclose a confidential communication except:

- (A) As required by statute;
- (B) As voluntarily authorized in writing by the victim;
- (C) To compile statistical or anecdotal information, without personal identifying information, for research or public information purposes; or
- (D) For any confidential communications relevant to a claim or defense if the victim files a lawsuit against a victim counselor or other role listed in subsection (a).

(2) Unless the disclosure is public, confidential communications disclosed pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except as authorized in paragraph (1) of this subsection.

(3) The **privilege** of a confidential communication shall not be waived by the presence of, or disclosure to a:

- (A) Sign language or foreign language interpreter; provided, that a sign language or foreign language interpreter shall be subject to the limitations and exceptions set forth in paragraph (1) of this subsection and the same privileges set forth in subsection (c) of this section;
- (B) Third party participating in group counseling with the victim; or
- (C) Third party with the consent of the victim where reasonably necessary to accomplish the purpose for which the victim counselor is consulted.

(4) Except as provided in this subsection, no role listed in subsection (a) counselor shall be compelled to reveal a confidential communication in any civil, criminal, or administrative proceeding, unless the victim has given written consent.

(5) *[Include NVRDC's proposed language for mandatory reporting discussed above]*

(c) *[Include NVRDC's proposed language regarding diminished capacity discussed above]*

(d) The assertion of any privilege under this section is not admissible in evidence.

(e) The presence of a crime victim counselor, or any of the roles enumerated in subsection (a), shall not waive any privilege otherwise guaranteed by law.

However, while NVRDC is proposing to move the victim support roles to another DC Code provision, we still strongly recommend the Committee adopt Bill 24-0075's proposed amendments

to §14-307 to strengthen the protections for victims' confidential information that is held by physicians or mental health professionals under §14-307. NVRDC is strongly supportive of the following amendments:

- Requiring that victims be served with notice by the Court when disclosure of the victim's personal or confidential information is being sought in various proceedings;
- Requiring that the court provide victims with 14 days from the date of service to object to the disclosure of information; and
- Requiring the court to consider the rights of crime victims when determining whether the disclosure of their personal or confidential information is required in the interest of justice (per §14-307(b)(1)).

These amendments provide for victims to have meaningful expectations regarding court processes to assess disclosures of their information and how to oppose such disclosure. Furthermore, because the rules of procedure around requests for victims' personal or confidential information vary depending on the court proceeding,¹⁶ the proposed changes offer much needed consistency in how a victims' personal or confidential information is sought in proceedings referenced in §14-307(b).¹⁷

B. Create Adequate Privacy Protections for Victims Seeking Crime Victims Compensation

Additionally, NVRDC encourages the Committee to consider statutory language that improves the current application of Rules 9 and 13 of the DC Superior Court Crime Victims Compensation Program Rules (hereinafter "CVC Rules") to ensure adequate protection of victims' personal,

¹⁶ For example, §14-307 applies to "(1) evidence in a grand jury, criminal, delinquency, family, or domestic violence proceeding where a person is targeted for or charged with causing the death of or injuring a human being, or with attempting or threatening to kill or injure a human being, or a report has been filed with the police pursuant to § 7-2601, and the disclosure is required in the interests of public justice; (2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or post trial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person; (3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court; (4) evidence in a grand jury, criminal, delinquency, or civil proceeding where a person is alleged to have defrauded 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.), where a person is alleged to have defrauded a health care benefit program, or where a person is alleged to have violated [§ 22-933.01]; or (5) evidence in a criminal or delinquency proceeding where a person is charged with an impaired driving offense and where the person caused the death of or injury to a human being, and the disclosure is required in the interest of public justice." Rule 17 of the DC Superior Court Rules of Criminal Procedure only applies to criminal cases. Rule 14 of the DC Superior Court Rules Governing Proceedings in the Domestic Violence Division govern all civil protection order proceedings.

¹⁷ For instance, the Rule 17 of the DC Superior Court Rules of Criminal Procedure outlines a process by which requests for subpoenas for victims' personal and confidential information may be made; Rule 14 of the Domestic Violence Division Rules of Procedure, however, states "Issuance of subpoenas for the medical records of an opposing party must be authorized by the Court as required by D.C. Code § 14-307." The proposed bill would account for such inconsistencies and increase protections for victims in the various proceedings mentioned in § 14-307(b).

confidential, private, or privileged information when CVC requires victims to share such information.

CVC Rule 9(i) specifies the contents of crime victims compensation applications and states that an application for a claim to the Crime Victims Compensation Program (hereinafter “CVC Program”) shall contain “[a]n information release authorization, including a written waiver of the physician-patient privilege regarding all medical records relating to the victim’s injuries, and an affirmation to be signed by the claimant.”¹⁸ This Rule is unduly burdensome to victims in terms of the documentation they must produce and the significant intrusion on their privacy. In an effort to obtain crime victims compensation, the current forms used by the CVC Program require victims to waive their physician-patient privilege (a privilege that is among the most protected privileges in the District), and creates the potential for such sensitive and confidential information to be used as a method for undermining the victim’s credibility during a criminal trial.¹⁹ As a victim services provider, it is difficult to assist victims in applying for CVC knowing that the CVC Program’s broad information release forms put victims and their privacy at great risk.

To address the gaps in protection created by Rules 9 and 13 and the current CVC law, NVRDC recommends the statutory language in §4–506 (Eligibility for CVC compensation) be amended to the following:

(d) Any CVC forms or requests for information release for providers of medical services to the victim, including but not limited to hospitals, physicians, and mental-health clinics, shall be made available to the public and shall **only** require:

- (1) A simple statement from the provider acknowledging their treatment of the victim-claimant;
- (2) A simple statement from the provider acknowledging that such treatment was in connection to the crime for which the victim is requesting compensation;
- (3) A time limitation for the duration of the authorization for release of information; and
- (4) A statement allowing the victim to submit a written revocation of the authorization;
- (5) A disclaimer that the provider is not authorized to discuss the victim’s health information or medical care with anyone other than the Crime Victims Compensation Program;
- (6) A disclaimer that the provider must notify the victim if any additional information about the victim’s treatment is requested by:
 - (a) the Crime Victims’ Compensation Program; or

¹⁸ Crime Victims Compensation Rule 9, DC R CVCP Rule 9. Current with amendments received through April 15, 2020.

¹⁹ Indeed, NVRDC has represented clients whose CVC application was sought as part of a criminal prosecution in order to obtain any such records the victim may have submitted to CVC as part of their application, including medical and mental health records.

- (b) Any other person or entity.²⁰
- (e) In evaluating the victim's application, the Crime Victims Compensation Program shall not:
- (1) Require more than the acknowledgment from providers of medical services provided in forms or information releases referenced in section (d);
 - (2) Require copies of the victim's medical records and bills for treatment relating to injuries from the offense for the sole purpose of substantiating the victim's claims; or
 - (3) Require a victim or secondary victim claiming compensation to affirmatively waive the physician-patient privilege as a condition to claiming such compensation.

Ultimately, the goal of the CVC Program is to provide reimbursement to victims and families. This can be achieved with a more targeted approach that does not unduly infringe upon victims' privacy rights but also recognizes the need to ensure that compensation is provided only for meritorious claims.

C. Enhance Privacy Protections for Applicants to the District's Address Confidentiality Program

Although not addressed in Bill 24-0075, NVRDC believes an amendment to the laws affecting enrollees in the District's Address Confidentiality Program would be in line with the spirit of this bill. NVRDC provides housing assistance to many of our clients impacted by crime, including helping them apply for the District's Address Confidentiality Program (ACP). Recently, we have discovered a shortcoming of the ACP that is compromising the safety of some of our clients. We believe several targeted changes to the law will close gaps in the ACP that currently put crime victims at risk, resulting in empowering victims to buy property in the District with robust protection and peace of mind.

The District's ACP, codified at District Code §§4-555.01 *et seq.*, is intended to allow victims of certain crimes to keep their home, work, and school addresses confidential. ACP participants can use a substitute address when interacting with District agencies to protect their actual address from being discovered by their abusers. The ACP currently requires ACP participants to use their actual addresses in documents filed with the District's office of Office of Tax and Revenue (OTR), like deeds and property tax records. *See* D.C. Code §4-555.05(d)(1). The law prohibits the OTR from indexing by a participant's name in its databases related to recorded documents and assessment and tax information. An exception is made for "a court order, a judgment, a lien, or any document

²⁰ See examples from the U.S. Department of Housing and Urban Development, <https://nccde.org/DocumentCenter/View/1455/Verification-of-Medical-Expenses-PDF>; the New York State Office of Victim Services, <https://ovs.ny.gov/sites/default/files/general-form/hipaa.pdf>; the Pennsylvania Victims Compensation Assistance Program, [https://pcv.pccd.pa.gov/available-services/Documents/Victims%20Compensation%20Assistance%20Program%20Short%20Form%20\(2\).pdf](https://pcv.pccd.pa.gov/available-services/Documents/Victims%20Compensation%20Assistance%20Program%20Short%20Form%20(2).pdf); and the DC Office of Health Care Finance, <https://dhcf.dc.gov/publication/authorization-release-medical-records>.

related to debt collection,” including taxes – these documents may be indexed by a participant’s name. *See* D.C. Code §4-555.05(d)(2)–(3). In addition, the law does not impose any obligation on OTR to “redact or otherwise erase a participant’s name or address in any document or electronic record in its online database.” D.C. Code §4-555.05(d)(4).

There are several problems with these provisions. The indexing provision seems intended to protect ACP participants, but it is ambiguous because it does not specify whether OTR filings may be indexed or made public in other ways. The express absence of an obligation to redact participants’ identifying information makes it possible for documents filed with a participant’s name and actual address to become accessible online. Lastly, there is no prohibition on including a participant’s name and actual address in the same document, making it possible that a document on OTR’s website could be used to locate an ACP participant.

Perhaps due to these flaws, some of NVRDC’s clients have found that their actual addresses are exposed on OTR’s website. As we understand it, our clients have found their actual addresses on property records. In some cases, their actual addresses have been taken from the OTR website and publicly posted on other websites. These individuals thought their addresses were protected, when in reality, they were discoverable, undermining the purpose of the ACP.

Understandably, a participant’s actual address must be reflected in documents filed with the OTR, but the potential for these documents to be made public endangers victims and undermines the goal of the ACP. That is why NVRDC proposes to expand the ACP to allow participants to shield their actual addresses and identity in filings with the OTR. The current system fails to fully protect victims and we believe that the changes we propose will ensure their confidentiality more effectively.

Our neighbor state of Maryland recently amended its ACP in a similar way. In 2016, Maryland’s governor established a task force to study how to protect the identities and addresses of victims when recording deeds. The task force studied the issue extensively over twelve months and produced a Final Report detailing their findings. The report recommended that Maryland establish a deed shielding procedure to remove an ACP participant’s deed and other records from public access, but allow for access in bona fide title searches. This protects victims’ identities and also allows legitimate, verified parties (such as attorneys, realtors, lenders, and title companies) to access information necessary for property transactions. Maryland established a deed shielding procedure that took effect on January 1, 2019, and is now part of its ACP.

Without a similar procedure, the only way victims in the District can fully ensure their privacy is by buying property through a trust or LLC. These entities must be in the name of a third party to ensure confidentiality, because District law requires an LLC that buys property to reveal its owner, and in some cases, trustees must reveal their identities. Further complicating matters, there is no clear solution for victims who have already bought homes or businesses in DC. There is no way to compel the redaction of their names from existing records, so in order to have confidentiality,

they would need to establish new records through a series of conveyances. Owning property through a trust or LLC raises its own set of difficulties, but we need not mention those to note that the current means for shielding victims' information in property records are unnecessarily complicated and costly. Maryland's task force rejected these solutions for the same reasons. It would be far better to create a simple system whereby victims can shield their addresses and identities from property records and other OTR records, ensuring their safety and peace of mind.

To this end, we respectfully propose that the Council amend Bill 24-0075 to include the proposed language in Appendix B, which establishes a mechanism for ACP participants to request the shielding of certain information in records maintained by the OTR online. At its core, Bill 24-0075 seeks to expand the support, resources, and protections for victims in DC and this amendment to the bill aligns with that goal by seeking to prevent a participant's name and address from ever appearing on the same document. Linking a participant's name with their address makes it possible for a participant's abuser to locate them, so keeping this information separate is essential to participants' safety.

IV. Enhance the Accessibility of the District's Crime Victims Compensation Program

A. Determine CVC eligibility based on the facts in the victim's application rather than solely on the charges listed in the police report or filed in court.

Firstly, as echoed by others during Bill 24-0075's hearing, NVRDC strongly supports the bill's proposal that CVC make its determination of a victim's eligibility based on the facts of the crime for which compensation is sought rather than the charges in the police report.²¹ NVRDC frequently represents victims in cases where the criminal charges are downgraded without any consideration of how the type of charge filed may affect a crime victim's access to services. The bill's language recognizes that the specifics of a charging decision have more to do with the confidence that law enforcement or prosecutors have in their ability to prove a case, which may not always reflect the severity of the crime inflicted on a victim, the extent of the injuries, or the gravity of the impact on victims' lives. This flexibility in the ability of CVC to evaluate claims will greatly enhance the accessibility of CVC for crime victims and have the additional effect of validating victims' experiences.

NVRDC recommends that the CVC statute be amended in the following way to expand accessibility for crime victims:

The CVC Program shall make its determination of a victim's eligibility based on the facts of the crime for which compensation is sought **instead** of the charges listed in the police report or filed in court. While the Program may take the police report into consideration, under no circumstances

²¹ Bill 24-0075 proposed amendments to §4-506(a-1)(4).

shall the Program determine eligibility **solely** based on the offense listed in the police report or criminal charge.

B. Expand the alternatives to law enforcement reporting under §4-506.

CVC is an additional pathway for support for victims but currently requires victims to interact with law enforcement, courts, or to access a medical forensic exam. Many crime victims may not feel safe interacting with these formal systems, being forced to choose between engaging with these systems—even if it compromises their safety or wellbeing—and going without such crucial financial support. NVRDC supports expanding CVC eligibility and implores the Committee to look at alternatives for how victims can provide documentation outside of the current requirements, such as submitting certifications from victim services organizations.²²

C. Expand the window of time for survivors to report to law enforcement under §4-506.

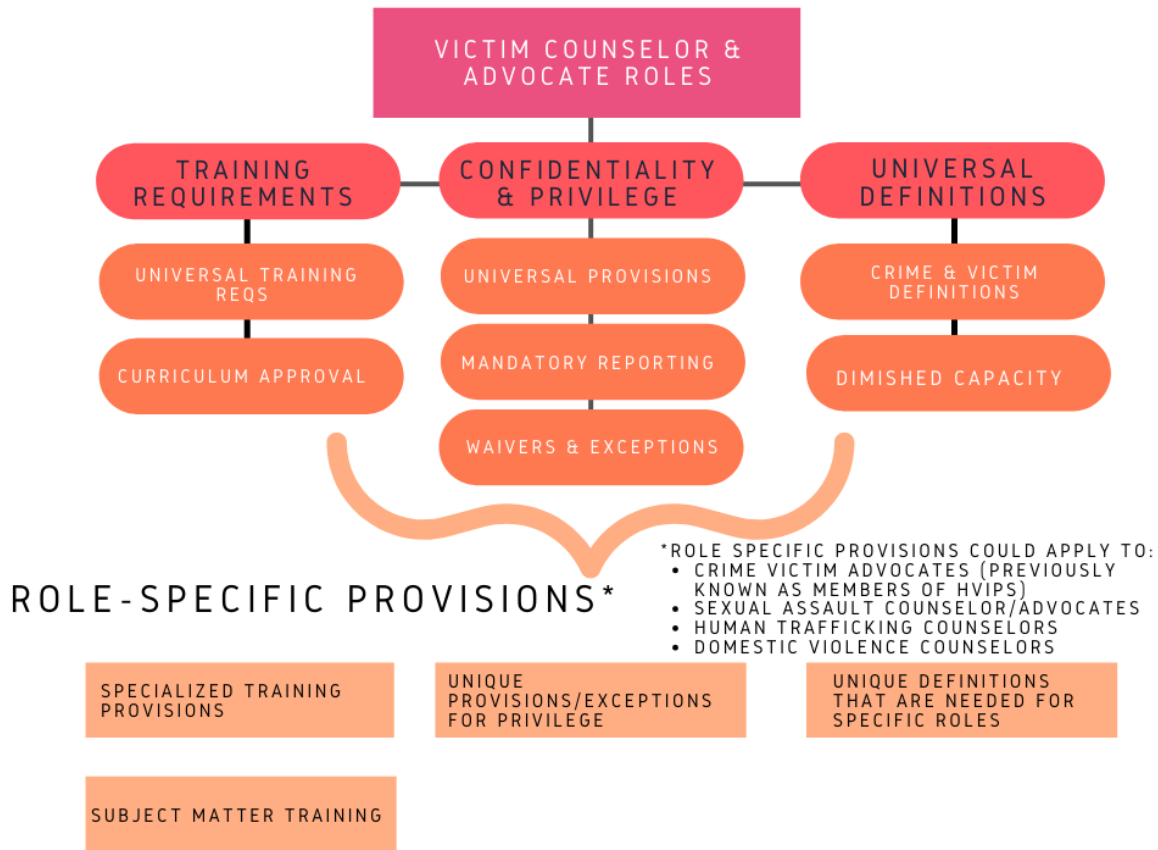
Additionally, a modification of the eligibility requirements in DC Code §4-506 could also benefit survivors who *may* want to report a crime to the police. NVRDC proposes removing the window of time in which to file a police report; however, at the very least we feel such a window should be expanded from 7 days to 14 days. This allows the survivor additional time to take care of more time-sensitive concerns they may have, like urgent medical care, housing and food assistance, as well as give them time to be able to reach out and secure services from victim services organizations.

V. Conclusion

Thank you Councilmembers Allen, Cheh, Henderson, Nadeau, Bonds, McDuffie, R. White, Silverman, Lewis George, Pinto, and Chairman Mendelson, this Committee, and the Council for its continued effort to expand support for crime victims. We support the intent of this bill and believe our recommendations strengthen these changes the District is making in its approach to criminal legal reform, access to justice, and accountability. Thank you for your time and consideration of our proposals.

²² An example of such certification can be found in the District’s Address Confidentiality Program, §4–555.03(2).

Attachment A:



ATTACHMENT B

Sec. 2. The Address Confidentiality Act of 2018 (D.C. Law 22-118, §§ 101 *et seq.*; D.C. Official Code §§ 4-555.01 *et seq.*) is amended as follows:

(a) Section 101 (D.C. Official Code § 4-555.01) is amended by adding a new paragraph (9a) to read as follows:

“(9a) “Identifying information” means information that can be used to directly or indirectly identify an individual, including but not limited to name, alias, signature, and identification number (e.g., driver’s license number, taxpayer identification number).”

(b) Section 102(b) (D.C. Official Code § 4-555.02(b)) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “and”.

(2) Paragraph (2) is amended by striking “.” and adding the phrase “; and”.

(3) A new paragraph (3) is added, to read as follows:

“(3) Issue Information Shielding Authorizations as provided in this subchapter to participants who have submitted an application in accordance with section 103a.”

(c) A new section 103a is added to read as follows:

“Sec. 103a. Information Shielding Authorization application and certification.

“(a) Any participant shall be eligible to apply for an Information Shielding Authorization. This is true regardless of whether the participant acquired an ownership interest in property prior to becoming a participant.

“(b) The application shall be on a form prescribed by OVSJG and contain the following:

“(1) The participant’s name;

“(2) A copy of the participant’s Program authorization card;

“(3) Documentation sufficient to enable OVSJG to determine that the participant has acquired, or is in the process of acquiring, an ownership interest in real property in the District of Columbia and to determine the actual address of that property;

“(4) A statement by the participant or the participant’s representative, under penalty of perjury, that to the best of the participant’s or the participant’s representative’s knowledge, the information contained in the application is true; and

“(5) The signature of the participant or the participant’s representative, and the date on which the application was signed.

“(c) A participant shall submit a separate application for each property in which the participant has acquired, or is in the process of acquiring, an ownership interest.

“(d) After reviewing a completed application, OVSJG shall certify a participant to receive an Information Shielding Authorization if there is sufficient evidence that the participant has acquired, or is in the process of acquiring, an ownership interest in real property in the District of Columbia.

“(e) Upon certifying a participant, OVSJG shall issue to the participant or the participant’s representative an Information Shielding Authorization, in a form to be prescribed by OVSJG, which shall identify the participant and the actual address of the property in which the participant has acquired, or is in the process of acquiring, an ownership interest.

“(f)(1) A certification shall be valid for as long as the participant is a participant in the Address Confidentiality Program, unless the certification is cancelled by OVSJG or the participant or the participant’s representative before the end of this period.

“(2) At least 60 days before a participant’s certification expires, OVSJG shall send the participant or the participant’s representative written notice of the upcoming expiration. The certification will be renewed and valid for as long as the participant is certified to participate in the Address Confidentiality Program.”

(d) A new section 104a is added to read as follows:

“104a. Cancellation of Information Shielding Authorization certification.

“(a) OVSJG may cancel a participant’s Information Shielding Authorization certification if:

“(1) The participant’s certification under the Address Confidentiality Program is cancelled by OVSJG or the participant or the participant’s representative; or

“(2) OVSJG determines that the participant has sold or otherwise relinquished an ownership interest in the property that was the subject of the Information Shielding Authorization application.

“(b) If the Director determines that there are grounds for cancelling the certification of a participant pursuant to subsection (a) of this section, the Director shall, at least 60 days before cancelling the participant’s certification, send written notice of the upcoming cancellation to the participant or the participant's representative that explains the reasons for cancellation.

“(c) A participant or the participant's representative may cancel her or his certification at any time.

“(d) When a certification for an Information Shielding Authorization is canceled, regardless of the reason for cancellation, the person who held the certification or the person’s representative shall be responsible for notifying the Office of Tax and Revenue and any other relevant person or entity that the certification is no longer valid.”

(e) Section 105(d) (D.C. Official Code § 4-555.05(d)) is amended as follows:

(1) Paragraph (4) is amended by striking the current paragraph (4) and inserting in its place the following:

“(4)(A) Upon receipt of a valid Information Shielding Authorization from a participant, the Office of Tax and Revenue shall ensure that the participant’s actual address and identifying information do not appear on the same document or electronic record in the Office of Tax and Revenue’s online database, regardless of the person or entity that submits said document or electronic record.

“(B) Notwithstanding any other law, if a participant’s identifying information and actual address are required to be on the same document or electronic record in the online database of the Office of Tax and Revenue, the Office of Tax and Revenue shall redact either the participant’s actual address or all of the participant’s identifying information from any version of the document or record made available to the public.

“(C) Notwithstanding any other law, the Office of Tax and Revenue shall only disclose the redacted information in accordance with section 106a of this subchapter.”

(f) Section 105(f)(3) (D.C. Official Code § 4-555.05(f)(3)) is amended by striking “.” and adding the following: “, which follows the procedure set forth in subsection (g).”

(g) Section 105 (D.C. Official Code § 4-555.05) is amended by adding a new subsection (g), to read as follows:

“(g)(1) If a participant or a participant’s representative is or becomes aware that the Office of Tax and Revenue has made public a document or electronic record containing both the participant’s actual address and identifying information, the participant or the participant’s representative may submit a written request, along with a copy of the participant’s Information Shielding Authorization, to the Office of Tax and Revenue, asking the Office of Tax and Revenue to remove any publicly accessible references to either the participant's actual address or the participant’s identifying information.

“(2) Notwithstanding any other law, within 5 business days of receiving a request pursuant to paragraph (1) of this subsection, the Office of Tax and Revenue shall redact either the participant’s actual address or identifying information from documents or records containing both. The Office of Tax and Revenue shall redact such information from documents

or records currently on file and from documents or records that are later filed, which contain both the participant's actual address and identifying information.”

(h) A new section 106a is added to read as follows:

“106a. Disclosure of information shielded pursuant to an Information Shielding Authorization.

“(a) The Office of Tax and Revenue shall only disclose information shielded pursuant to an Information Shielding authorization:

“(1) With the consent or at the direction of the participant or the participant's representative;

“(2) Pursuant to a court order; or

“(3) In accordance with subsection (b) below.

“(b) Upon request, OVSJG may authorize the Office of Tax and Revenue to disclose information that is shielded pursuant to an Information Shielding Authorization in response to a verifiable request by an individual with a legitimate purpose for accessing the information.

“(1) For purposes of this subsection, “legitimate purpose” means performing a bona fide title examination, enforcing the collection of a debt, performing a bona fide background search, and undertaking research necessary to perform service of process, bona fide credit reporting, or a law enforcement investigation of alleged criminal or delinquent conduct by a participant. OVSJG may determine additional legitimate purposes and establish these through rulemaking.

“(2) To request shielded information, an individual must submit a request to OVSJG stating:

“(A) The document or electronic file on the Office of Tax and Revenue's online database that is the subject of the request;

“(B) The name, title, address, and affiliated organization, if applicable, of the individual requesting the disclosure;

“(C) The individual's purpose for requesting the disclosure;

“(D) The individual's relationship, if any, to the participant;

“(E) If the request is for the purpose of a title examination, a legal description of the property subject to the title examination;

“(F) A statement that any information disclosed to the individual shall be treated as confidential and shall be used and disclosed only for the purpose identified in the request, and that subsequent disclosures will only be made under a legally enforceable requirement of confidentiality;

“(G) The individual's signature; and

“(H) Any other information that OVSJG may reasonably request in order to verify the requester's identity and the purpose of the request.

“(c)(1) Upon the receipt of a request pursuant to this section, OVSJG shall provide the participant or the participant's representative with:

“(A) Written notice of the request for disclosure received pursuant to this section; and

“(B) An opportunity to express whether the request should be granted.

“(2) Paragraph (1) of this subsection shall not apply if the request for disclosure is made by a law enforcement agency investigating alleged criminal or delinquent conduct by the participant or when complying with paragraph (1) of this subsection would jeopardize an ongoing investigation or the safety of law enforcement personnel.

“(d)(1) Within 30 days after receiving a request under this section, OVSJG shall determine whether to grant the request.

“(2) Upon making a determination under paragraph (1) of this subsection, OVSJG shall provide the participant or the participant's representative with written notice describing whether the request is being granted or denied.

“(3) Paragraph (2) of this paragraph shall not apply if the request for disclosure is made by a law enforcement agency investigating alleged criminal or delinquent conduct by the participant or when complying with paragraph (2) would jeopardize an ongoing investigation or the safety of law enforcement personnel.

“(e) If OVSJG denies a request under this section, OVSJG shall provide prompt written notice to the individual who submitted the request, setting forth the specific reasons for the denial.

“(f) If OVSJG grants a request under this section, it shall provide the individual who submitted the request with official documentation of this determination that authorizes the Office of Tax and Revenue to disclose the requested information to the individual. The individual who submitted the request must submit this documentation to the Office of Tax and Revenue, which is then authorized to disclose the shielded information.”

Sec. 3. Fiscal impact statement.

The fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a) shall be determined at a later date by any of the following: the appropriate Council committee, the Chief Financial Officer, or the Budget Director.

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.