

**Committee on the Judiciary & Public Safety
Bill 25-0345, “Accountability and Victim Protection Amendment Act of 2023” and Bill 25-348,
“Ensuring Safe Forensic Evidence Handling for Sexual Assault Survivors Amendment Act of
2023.”**

**Oral Testimony for Naida Henao, Network for Victim Recovery of DC’s Head of Engagement
September 18, 2023**

Thank you Chairperson Pinto, Committee members, and staff for considering my testimony today. My name is Naida Henao, and I am testifying as Network for Victim Recovery of DC’s Head of Engagement. Since 2012, NVRDC has supported over 9,000 crime victims and survivors in the District through our advocacy, legal and therapeutic services. As an organization that serves the unique needs of not only gender-based violence survivors but also underserved gun violence victims and surviving family members of homicide, NVRDC understands the Council's urgency to address increasing violent crime. Our proposals today for bills 25-345 and 25-348 are guided by our experience supporting survivors.

I’d like to begin with Bill 25-345. Despite differences in philosophical approaches to crime prevention, statistically speaking, we know that a very small number of victims will see the person who harmed them prosecuted and convicted, and even less will result in incarceration. For example, a person is sexually assaulted every 68 seconds in this country, yet only 25 out of every 1,000 sexual assaults will end in incarceration.¹ This means that a bill that is heavily focused on sentencing will not benefit many DC survivors and will completely exclude those who did not want to (or feel safe) engaging with the criminal legal system in the first place.

The solutions to public safety can be complex but are not impossible to achieve. For example, this bill seeks to make strangulation a felony. This is most likely motivated by the high lethality associated with strangulation, as will likely be explained by other domestic violence providers today. However, the dangers posed by strangulation will not be single-handedly solved by making it a felony. What will make a difference are policies like: ensuring safe, accessible, and confidential spaces for survivors; training

¹ National Sexual Assault Hotline, <https://www.rainn.org/statistics/criminal-justice-system>.

agencies on identifying the unique injuries associated with strangulation; and educating the public and necessary professions on the lethality risks associated with strangulation. There are many complex reasons survivors do not engage in formal reporting systems, only changing a crime to a felony without any investment in real trauma-informed services and holistic education campaigns, feels like another empty promise to survivors that is more about pretending we've increased safety without actually doing so. Is our goal to signal a political win or to structurally address the problem of domestic violence?

My colleague, Lindsey Silverberg, will testify about the HIV testing provision of this bill. While getting more information to survivors about their HIV exposure is important, without access to medication within the 72 hour exposure window, it does not prevent HIV. Our proposed approach to get survivors free access to HIV-prevention medication does. Additional recommendations for offenses like unlawful publication, and changes to the statute of limitations will be in our written testimony.

My colleague, Kristin Eliason, will testify about the proposed changes to §14-307, which impacts the disclosure of a survivor's sensitive and confidential records to other parties. I want to highlight this as a provision within the bill that we feel is the antithesis of providing accountability and protections to victims and is instead a direct threat to their privacy rights, which is why NVRDC has opposed this type of change for over a decade.

“Ensuring Safe Forensic Evidence Handling for Sexual Assault Survivors Amendment Act of 2023.”

Turning to Bill 25-348, which we feel is much more responsive to the issues that NVRDC and other providers have been identifying as directly impacting our clients.

First, we strongly support the clarifying modifications made to the mandatory reporting provisions for victim support roles, such as sexual assault and domestic violence counselors. This change was desperately needed. The existing language is too broad and endangers the ability for these roles to

provide safe and confidential spaces for survivors, thereby undermining the very essence of these roles. We greatly appreciate the responsiveness of the Council in hearing these concerns.

NVRDC also supports the two provisions regarding medical forensic care. The first change, which amends the definition of “medical forensic care”² to include aspects like documentation of injuries, strangulation assessments, etc, rightfully clarifies that the forensic evidence collection process is not limited to a sexual assault forensic exam. This change not only has an impact on survivors' understanding of their right to access this care but also affects their eligibility for crime victims compensation. By expanding this definition, we are providing greater flexibility for situations where a traditional exam may not be medically necessary, wanted or even appropriate for the victimization experienced. Minor feedback will be included in our written testimony.

Finally, we support the bill’s proposal about a need for clearly established protocols surrounding the processing of forensic evidence that is tied to survivors who choose not to report to the police. However, we do agree with the recommendations by the SAVRAA Independent Consultant on how this provision could be strengthened (e.g. not involving MPD in the delivery of the kits and having the DC SANE program manage notifications to victims).

Crime and its impacts affect everyone in our community. Taking an oversimplified approach of “punishing” individuals who caused harm does a disservice to the entire ecosystem—ignoring the sobering reality that the current response systems are limited in achieving true accountability, and healing. Survivors, including the significant portion who never report to the police, deserve to have policy changes that actually impact their safety, support, and lives.

² Under DC Code § 4-561.01.

Committee on the Judiciary & Public Safety
Hearing on Bill 25-0345, “Accountability and Victim Protection Amendment Act of 2023.”
Oral Testimony of Lindsey Silverberg, *Network for Victim Recovery of DC’s Deputy Director*
September 18, 2023

Thank you Chairperson Pinto, Committee members, and staff for your commitment to protecting the rights of victims in the District. My name is Lindsey Silverberg, and I am testifying on behalf of Network for Victim Recovery of DC (NVRDC) in my capacity as its Deputy Director. NVRDC is a local nonprofit that has provided advocacy, legal, and therapeutic services to over 9,000 victims and survivors of crime in the District since 2012. As part of our services, NVRDC ran the adult advocacy response for the District’s sexual assault crisis response services between 2012-2021, and now shares the responsibilities with the DC Rape Crisis Center. It is based on this experience that I share my testimony today.

I first want to thank the committee for recognizing the importance of providing survivors of sexual assault with as much information as possible to achieve self-determination. However, we are concerned with the bills’ proposed goal of HIV-testing defendants after they have been charged with sexual assault. While this may be a useful option for some, we are concerned about promises on paper that will not increase access or improve health safety in the vast majority of sexual assault survivors’ lives. In order to ensure the effectiveness of Non-occupational Post Exposure Prophylaxis (nPEP), one must begin treatment within 72 hours of exposure¹. We strongly believe that the time needed to locate and detain a defendant, to have a judge evaluate the request for testing, and then arrange for the defendant to be tested would exceed this time limit. Furthermore, by the time this process is complete, survivors may have already completed

¹MedScape. (2021). HIV Postexposure Prophylaxis (PEP), Non-occupational (nPEP).
<https://emedicine.medscape.com/article/2172304-overview>

the 28 day medication regimen. NVRDC instead asks for support in increasing survivors' access to this critical medication using the infrastructure already in place through the District's sexual assault crisis response. In addition to this being a faster response than what is proposed in this bill, it focuses the approach on the survivor, rather than the testing of the person who caused them harm.

With that being said, there is a significant barrier for survivors wanting to access HIV-prevention medication that this Council can address – the financial burden. NVRDC has provided hospital advocacy to thousands of survivors of sexual assault and has witnessed firsthand the barriers survivors face when trying to obtain HIV preventative medications. While studies show that potential side effects are self-limited and often mild², the *cost* of these medications is one of the most significant barriers. The cost is not covered under the free Physical Evidence Recovery Kit (PERK) unlike other STI medications. While some insurance companies can cover part of the expenses, this is never guaranteed. Over the years, we have seen amounts owed range anywhere from \$7 to \$4000³.

While the Crime Victims Compensation (CVC) program is able to cover the costs, survivors are obligated to first use their insurance coverage. This mandate creates a lack of privacy and confidentiality if survivors share insurance coverage with others – thereby creating a barrier towards achieving true autonomy over their healthcare decisions. It is not fair to put survivors in crisis in this position, nor is it practical to have the District invest in testing of defendants when there is a more direct solution in supporting survivors with exposure to HIV.

² Centers for Disease Control and Prevention. (2022). About PEP. <https://www.cdc.gov/hiv/basics/pep/about-pep.html>

³ Grossman KH. 987. Improving Patient Access to HIV Post-Exposure Prophylaxis with Pharmacist Involvement. *Open Forum Infect Dis.* 2020 Dec 31;7(Suppl 1):S522. doi: 10.1093/ofid/ofaa439.1173. PMID: PMC7777320.

If the problem this bill is trying to address is how to make sexual assault survivors exposed to HIV safer, then the solution must center the safety of survivors. We fear that this bill's focus on the defendant and their HIV status detracts from a solution that can instead center survivors' experiences, options and expertise of their own lives to truly make "informed decisions about their healthcare." As we all know, the stigma and misinformation surrounding HIV is an additional barrier which can inhibit folks from engaging in medications or regular testing which is advised for HIV prevention.⁴ NVRDC asks that the Council discourage policies where District residents are depending on others to get tested first instead of being able to take their health into their own hands.

Thank you all for your continued effort to address the rights of sexual assault survivors. I'm happy to take any questions you may have.

⁴ HIV.org. (2023). Standing up to Stigma.
<https://www.hiv.gov/hiv-basics/overview/making-a-difference/standing-up-to-stigma/>

Committee on the Judiciary & Public Safety

Bill 25-0345, “Accountability and Victim Protection Amendment Act of 2023.”

Oral Testimony for Kristin Eliason, Network for Victim Recovery of DC’s Head of Services

September 18, 2023

Thank you Chairperson Pinto, Committee members, and staff for considering my testimony today. My name is Kristin Eliason, and I am testifying on behalf of Network for Victim Recovery of DC (NVRDC) in my capacity as its Head of Services. In addition to supporting over 9,000 crime victims and survivors¹ in the District, NVRDC is one of the very few organizations nationwide specializing in crime victims’ rights advocacy and litigation, and is the only nonprofit in the District that litigates these issues on a daily basis.

For more than a decade, NVRDC has fought a critical battle unseen to most members of the public – a fight for survivors’ rights to privacy under DC Code provision §14-307, which allows for the piercing of various professional privileges resulting in the disclosure of a victim’s personal and confidential information, including in criminal matters.² To provide a digestible example, this provision could allow a sexual assault survivor’s therapist’s notes to be disclosed to the person who caused them harm. For years, this process would occur without any notification to the survivor that the records were requested and turned over. Survivors were often not given the opportunity to redact sensitive and irrelevant information before the records were obtained by the court or, possibly one of the parties. If District residents knew about this phenomenon, most would be outraged. It has been difficult to see many survivors be retraumatized by having the person who caused them harm use their personal and confidential

¹ “Survivor” is a term that many individuals prefer when referring to their victimization or the victimization of others and NVRDC supports the use of this term; however, under various laws referenced in this testimony, the term victim is used to refer to someone who has experienced a crime and is entitled to certain rights and protections. For these reasons, both terms are referenced in this testimony.

² The disclosure must be determined to be “in the interest of justice.” DC Code 14-307(c)(1)(B).

information--such as therapists notes, sexuality, and reproductive history--against them. These disclosures are especially traumatizing because most of us are under the impression that these records are amongst the most guarded information in our legal system.

The 14 day notice requirement brought by the Expanding Supports for Crime Victims Act was a welcome change for survivors and privacy advocates and was, in NVRDC's understanding, in response to a strong collective vocalization of the crime victim advocacy community. While the proposed change to §14-307 to allow for parties to bypass the 14-day victim notification requirement³ under “exceptional circumstances” mirrors the federal and local court rules, it does not abrogate the harm to survivors’ privacy rights. It essentially sends us right back to where we were prior to Expanding Supports.. The District should not take a step back in survivors’ rights for the sake of consistency.

NVRDC has seen time and time again how the principle of “exceptional circumstances” has become the exception that swallows the rule in most of our clients’ cases. We want to be clear that NVRDC is not advocating for these provisions to ignore the realities of court proceedings or a defendant’s constitutional rights – what we are asking for is the maintenance of needed safeguards to ensure that victim notification is the default, as it is intended (and should) be. Additionally, all too often arguments for this method of violating a victim’s right to privacy rely on a defendant’s constitutional rights under the 6th Amendment; however, that right is a trial right, not a pretrial discovery tool.⁴

³ DC Code §14-307(d)(1).

⁴ The Supreme Court has specifically held that the 6th Amendment right to confront your accusers does *not* include the power to compel the pretrial disclosure of *all* information that could be potentially useful in contradicting a witness’ testimony – especially when the records at issue are privileged.

It is often those who hold power that ask for exceptions to the rules. We want victims to be treated equitably, and are extremely concerned at this push to have victims' privacy rights subject to the discretion of parties who are not tasked with protecting such rights. As we know, even a prosecutor's duty is to the public, not to the specific victim in the case. After experiencing a victimization, the least we can do for victims is to provide them with the basic courtesy of knowing when their most private and sensitive records are being sought and to be heard on any opposition to a subpoena. The current §14-307 is not perfect, but it is stronger than the current court rules in ensuring that litigants do not exploit exceptions and attempt to use the 6th Amendment as a pre-trial discovery tool. NVRDC asks the DC Council to keep it this way.