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The Committee on the Judiciary
Kenyan McDuffie, Chairperson



PUBLIC HEARING ON

BILL 21-326, "FINANCIAL EXPLOITATION OF VULNERABLE ADULTS AMENDMENT ACT OF 2015"

November 19, 2015 at 10am

Room 120

John A. Wilson Building

1350 Pennsylvania Avenue, NW

Washington, DC 20004

Good morning Chairman McDuffie, Councilmembers, and staff. I am Karl A. Racine, Attorney General for the District of Columbia, and I am pleased to be here before you to testify in full support of the goals and intent of Bill 21-326, the “Financial Exploitation of Vulnerable Adults Amendment Act of 2015” (the Bill). Before I begin, I want to thank you for holding this important hearing. I would also like to thank Councilmember Anita Bonds who has been in the forefront in the area of protecting our most vulnerable citizens. For example, last Council Period Councilmember Bonds authored the “Limitations of Guardianship Amendment Act of 2014”, which is now law. That bill addressed guardianship and conservatorship criteria and appointment guidelines designed to enhance our ability to protect vulnerable seniors. I also want to acknowledge senior rights advocates throughout the city, some of whom are here today, for meeting with me to identify issues affecting District seniors that should be vigorously addressed by our government.

The Office of the Attorney General (OAG) fully supports the goals and intent of the “Financial Exploitation of Vulnerable Adults Amendment Act of 2015.” The exploitation of our residents, particularly our seniors, is a problem that I identified as one of my top priorities when I ran for this office. I am particularly concerned about potential consumer fraud activities that take advantage of seniors, and others, in our community. According to data released by the Network for Victim Recovery the District is home to more than 70,000 people who are age 60 or older. They estimate that, every year, more than one out of every 10 of these seniors may be experiencing abuse, neglect or exploitation. Elder abuse is an often-hidden problem that impacts the District just like it does other communities across the country. For every elder abuse case that is brought to the attention of people who can help, the Network for Victim

Recovery says, there are 14 seniors who are suffering in silence. According to the National Criminal Justice Reference Service, only about four percent of elder abuse cases are reported. This is unconscionable.

One of the primary roles of the Office of the Attorney General is to uphold the public interest of the District's residents. In doing so, it is important that we receive feedback from residents on issues they find important and for OAG to aggressively pursue those topics. One of those issues has been consumer protection. As you know, I made consumer protection a top priority from day one. Thanks, in part to Chairman McDuffie's leadership on the Council, this fiscal year OAG has established the first ever stand-alone Office of Consumer Protection. We now have dedicated lawyers and staff focused exclusively on consumer protection issues, including the investigation and litigation against those who prey on our seniors. The Office will educate seniors so they can better protect themselves from scams, including identity theft, and will also be available to mediate complaints from consumers who are having problems with their purchases, bills, or other consumer issues.

As introduced, the "Financial Exploitation of Vulnerable Adults Amendment Act of 2015" redefines vulnerable adults to include persons aged 65 and over and makes financial exploitation of a vulnerable adult—including exploitation accomplished by deception, manipulation, or undue influence—a criminal offense. Moreover, the Bill proposes a definition for "undue influence," and establishes factors to determine whether a detrimental result was produced by undue influence. The Bill also establishes penalties for financial exploitation of vulnerable adults. These are all laudable goals.

Last week my staff met with staff members from both Chairperson McDuffie's office and the office of Councilmember Bonds to discuss some necessary drafting revisions, particularly related to clarifying definitions and identifying potential conflicts with existing laws. It was reported to me that this meeting went very well, and our respective staffs will continue to fine tune the Bill as it progresses through the legislative process. So in the interest of time, I will focus my testimony on ideas to strengthen the District's ability to protect vulnerable residents.

Because the Bill amends laws found in sections of Title 22 of the District of Columbia Code¹ to create new felony offenses and penalties, these criminal violations will be prosecuted by our federal partners in the United States Attorney's Office (USAO). I am pleased to report that OAG and USAO have a positive and productive working relationship and we will work closely on these prosecutions. In fact, we have already met with our new United States Attorney, Channing D. Phillips, regarding partnership opportunities to better protect our residents. Crimes against vulnerable seniors will be a part of our ongoing discussions.

When it comes to abuse, neglect, and financial exploitation, every second matters. While OAG is currently authorized to seek injunctive relief², it is only after cases are filed with the court. This is a process that often takes weeks. During that time, the exploitation continues, seniors are abused, and their finances are drained. What is needed are the tools to take action prior to filing a case in court. We recommend that staff from OAG and the Council work together towards legislative authority for our attorneys to intervene with banks or other financial institutions to temporarily freeze the accounts of exploited adults. This

¹ *District of Columbia Theft and White Collar Crimes Act of 1982 and the Criminal Abuse and Neglect of Vulnerable Adults Act of 2000.*

² District of Columbia Code §21-2051 and District of Columbia Code §21-2055

recommendation is consistent with recommendations found in the *Fiscal Year 2013 Department of Human Services – Adult Protective Services Annual Report to the Council of the District of Columbia*. I am pleased to learn that the DC Department of Insurance Securities and Banking is also exploring this concern. Although developing this language will require substantial thought and discussion, the ability to protect District seniors and other vulnerable adults is well worth our time and focus.

In Fiscal Year 2015, OAG attorneys went to court in 49 cases involving the exploitation of vulnerable adults. OAG and the Adult Protective Services Division (APS) of the Department of Human Services (DHS) have a memorandum of understanding (MOU) in which OAG provides the legal services to litigate and give advice and training to APS in exchange for partial payment of these services. I want to give a few quick examples of some of the dire situations OAG has addressed alongside our excellent partners in APS. I believe that these examples highlight the plight of seniors dealing with abuse, neglect, and exploitation, and the importance of being able to seek immediate relief in such cases.

In one case, an 86-year-old victim was unable to prevent her nephew's ongoing fraudulent activity, even though she had an attorney-in-fact. The nephew was billing the victim over and over for the same repairs to her rental property. The nephew also used the victim's property to engage in prostitution and drug activity. When the victim did not immediately pay her nephew, he intimidated and threatened her.

OAG filed a petition for a civil protection order on behalf of the victim against the nephew and obtained a temporary protection order requiring the nephew to vacate the home and stay away from the victim immediately. At the same time, OAG filed a petition for general

proceeding in probate court to get the victim a guardian and conservator for her long-term needs and a request for an expedited hearing for the appointment of a temporary conservator in the interim. A temporary conservator was appointed at a hearing approximately two weeks later. The victim's assets were then protected from further exploitation. All of this was achieved despite the fact that the victim was unable to testify due to her dementia. While we are proud of all that we did to protect this victim, it was frustrating that the nephew was nevertheless able to take thousands of dollars from the victim before we could help. This is one example of why we support the intent of this Bill.

In another case, a 77-year-old victim with dementia was being exploited by her partner and caregiver, a 55-year-old man. She was confused about her finances. She was writing him checks for large quantities of money, such as \$5,000 and \$6,000 at a time. He lied and told her that the money was being used to pay her dental bills. In short order, her savings account was depleted by nearly \$30,000. OAG filed a request for a temporary conservator to stop the exploitation of the victim. Strengthening the reaction time for OAG to intervene in cases like this is vital.

In yet another case, the husband of a 72-year-old victim was using her pension money to finance his alcoholism and addiction to heroin. He did not work. She suffered from dementia and was physically vulnerable, as she needed a wheelchair to ambulate. The couple had a history of domestic violence. In their small one-bedroom apartment, the victim's husband brought his brother, who was on parole, and his brother's girlfriend to live with them, without contributing financially to the household income. All of these individuals lived off of the victim's pension. When OAG learned of these conditions, we obtained a 21-day emergency

guardian for the victim due to the life-threatening violence used by the husband against his wife. Additionally, OAG obtained a civil protection order, and later a temporary conservator took control of the victim's money.

These stories illustrate the kinds of exploitation that we must strive to eliminate. In such cases, time is of the essence, and the quicker we can intervene in circumstances such as these, the better the outcomes we can achieve. Working together, I am confident that we can aggressively combat these types of problems by prompt, early, and decisive action. This is why I look forward to working with the Council, Executive, and federal partners to perfect the proposed legislation.

In conclusion, thank you again for the opportunity to testify on this important legislation. I am happy to answer any questions you may have.