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Before the

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

Public Oversight Hearing
on
Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018"

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Good morning Chairman Allen and members of the Committee on Judiciary and Public Safety. I am Mina Malik, Deputy Attorney General for the Public Safety Division of the Office of the Attorney General for the District of Columbia (OAG), and with me today is Janese Bechtol, Chief of the Domestic Violence Section. We are here to express the Attorney General's wholehearted and enthusiastic support for Bill 22-780, the "Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018."

As you know, the Office of the Attorney General has been an integral partner in the city's legal response to domestic violence since the first Intrafamily Offenses Act passed in 1970. Today, OAG represents domestic violence victims in obtaining civil protection orders, prosecutes violations of civil protection orders, helps staff the city's two Domestic Violence Intake Centers located at Superior Court of the District of Columbia ("D.C. Superior Court") and United Medical Center in Southeast, and participates in a variety of coordinated efforts addressing issues of domestic violence. We are proud to be an active participant in the multi-agency working group that began meeting regularly in 2015 to draft the proposal that became the bill under consideration today.

My testimony will address the two most substantial changes to existing law included in this bill: (1) reducing eligibility for civil protection orders and creating

anti-stalking orders; and (2) expanding the available timelines for temporary protection orders and civil protection orders.

I. NEED TO REDUCE CIVIL PROTECTION ORDER ELIGIBILITY AND CREATE ANTI-STALKING ORDERS

The need to reduce eligibility for civil protection orders and create anti-stalking orders is two-fold. First, the reduction is needed to allow the D.C. Superior Court Domestic Violence Unit to fully focus on its specialized purpose of serving domestic violence victims. Second, once removed from the Intrafamily Offenses Act, stalking victims need an alternative streamlined, enforceable process that currently does not exist.

A. The Domestic Violence Unit of D.C. Superior Court

The Domestic Violence Unit of D.C. Superior Court was established in November 1996, as part of the District's Domestic Violence Plan. The Plan grew out of a multi-year coordinated effort by representatives of all stakeholders in the system. The resulting Plan concluded:

> A key element of the Plan is the creation of the Domestic Violence Project of the D.C. Superior Court, a unified domestic violence court that processes both noncriminal and criminal cases in which domestic violence is the underlying issue. The purposes for creating a unified case-processing system for domestic violence cases are to promote specialization among judges, prosecutors, defense attorneys, and other system components; to encourage the handling of each case in the manner most appropriate to the individual circumstances of the case; to impose offender accountability through the imposition of a variety of sanctions including jail and jail treatment, in appropriate cases, and monitored treatment programs for those offenders who enter the system early in the cycle of violence; to promote

> maximum allocation of scarce resources; and to provide judicial review and monitoring of each case, upon disposition, through a coordinated approach to ensure that the judge who has the best understanding of the history of violence between the involved parties will monitor the case.

District of Columbia Domestic Violence Plan, p.8 (Dec. 12, 1995). Given that the types of relationships included in the Intrafamily Offenses Act, and therefore heard in the Domestic Violence Unit, have expanded over the years, fulfilling these purposes has become more difficult.

In 2007, 3863 petitions for civil protection orders were filed in the Unit. At the end of 2017, that number was 5973 – an increase of over 2000 cases. However, the number of judges hearing these cases has remained the same. As a result, the judges' ability to give domestic violence victims the attention they need and deserve, as well as the victims' ability to have their cases resolved quickly, have suffered. Based on my office's review of case filings, approximately 15%, or nearly 900 of 2017's cases, fall into the categories of non-domestic violence cases this bill seeks to remove from the Intrafamily Offenses Act. Such cases also involve contested hearings and multiple filings at rates higher than their domestic violence counterparts, thus squandering even more of the Unit's specialized resources. Removal of these non-domestic violence cases likely will allow our critical domestic violence resources to be used in a more efficient and effective manner.

B. Mismatch of Common Partner, Roommates, and Stalking Victims with the Specialized Expertise of the Domestic Violence Unit

The relationships defined as intrafamily offenses, and therefore heard in the Domestic Violence Unit, have broadened substantially since 1970, and several of those relationships – common partners, roommates, and certain types of stalking – bear little in common with the intimate partner and family violence traditionally considered domestic violence.

1. Common Partners

Common partners were added to the statute over the objection of the domestic violence community in 2006. "Common partner" is the shorthand term used to refer to people who currently, or have previously, been in an intimate relationship with the same third person. They were added to the statute by one subsection of a 22-Title Omnibus Public Safety Act. When domestic violence stakeholders were consulted late in the legislative process,[1] they opposed adding common partners, but failed to gain any traction.[2]

At the same time, the domestic violence community had been drafting its own comprehensive overhaul of the Intrafamily Offenses Act. That bill[3] was originally introduced in September 2006, and went into effect in 2009.[4] The

[1] The bill was first presented at a D.C. Coalition Against Domestic Violence meeting on May 10, 2005, and the hearing on the bill was May 31, 2005.
[2] *See* Report on Bill16-247, the "Omnibus Public Safety Act of 2006," Statement of Larisa Kofman, Policy and Community Organizing Advisor, D.C. Coalition Against Domestic Violence (April 28, 2006)
[3] *Intrafamily Offenses Amendment Act of 2006*, Bill 18-899, 53 D.C. Reg. 7832 (Sept. 29, 2006)
[4] *Intrafamily Offenses Act of 2008,* D.C. Law 17-368, 56 D.C. Reg. 1338 (Feb. 13, 2009)

primary changes of the 2009 overhaul were updating archaic language and references contained in the statute that no longer reflected actual practice; creating direct access to court protection for teen victims of intimate partner violence; adding protection for all victims of sexual assault regardless of the underlying relationship; making the court's authority to extend temporary protection orders explicit; adding relinquishment of firearms as an explicit remedy; and adding a new section addressing jurisdiction. Considering how recent the criminal justice effort to add common partners had been, the domestic violence community did not seek to remove common partners from the statute in the overhaul, but did ensure that they and roommates were identified separately in the statute[5] to allow legal distinctions between them and victims of family or intimate partner violence.

Now, with 12 years of experience of having common partner cases in the Domestic Violence Unit at D.C. Superior Court, the domestic violence community continues to believe that these cases do not belong in the Domestic Violence Unit, where they consume a disproportionate amount of court time and attention but have no need for, and therefore do not benefit from, the specialized training and focus for which the Unit was developed. In the clear majority of common partner cases, the dispute is primarily between the parties, and the intimate partner in common does not pose a threat to either party.

[5] *See* D.C. Code § 16-1001(6).

2. Roommates

The bill will also limit the eligibility for civil protection orders of people whose only relationship is sharing a mutual residence. To seek protection, such people will need to demonstrate that they have both shared a mutual residence within the past year and have "a close relationship rendering application of the statute appropriate." This change will take the statute back to its purpose of combatting domestic violence and eliminate abuse of the statute by landlords seeking to evict tenants without going through landlord-tenant court.

For the statute's first 25 years, it contained the proposed limitation. From 1970 to 1982, the statute included those who cohabited in a "close relationship" rendering application of the statute appropriate.[6] In 1982, the language was changed to those who shared a mutual residence within the past year and an "intimate relationship" rendering application of the statute appropriate.[7] In 1995, when the Council added coverage for dating violence victims, it also removed the intimate relationship language for people who lived together.[8] Over time, that removal has come to be used as a tool for landlords[9] to attempt to remove unwanted tenants without proceeding through landlord-tenant court and for

[6] *District of Columbia Court Reform and Criminal Procedure Act of 1970*, Pub. L. No. 91-358, § 131, 84 Stat. 546 (July 29, 1970).
[7] *Proceedings Regarding Intrafamily Offenses Amendment Act of 1982*, D.C. Law 4-144, 29 D.C. Reg. 3131 (Sept. 14, 1982).
[8] *Domestic Violence in Romantic Relationships Act of 1994*, D.C. Law 10-237, 42 D.C. Reg. 36 (March 21, 1995).
[9] *See e.g. Caldwell v. Tanner*, D.C. Super. Ct. Case No. 2015 CPO 3061; *Caldwell v. Wynn*, D.C. Sup. Ct. Case No. 2015 CPO 3062.

homeless shelter residents to seek exclusion of other residents. Such efforts require none of the Domestic Violence Unit's specialized training and resources and should not provide an end run around existing procedures for such cases.

3. Stalking

Finally, the bill will create an alternative process for stalking victims who have no underlying covered relationship with the offender. Unlike some other jurisdictions, the District does not have a separate harassment and stalking law.[10] As a result, the breadth of cases captured by our stalking law[11] is vast – from squabbling neighbors to romantically fixated predators. The bill seeks to create an alternative process for any of those cases that do not involve the pursuit of a romantic relationship. Such a practice is consistent with other jurisdictions that have separate orders for stalking.[12] In continuing conversations about the proposal submitted to the Council, the working group also suggests improvements to section 16-1001(6A) of the bill to ensure it appropriately captures stalking cases that involve the pursuit of, or a delusional belief in, a romantic relationship. Our proposed language is included in the attachment.

[10] *See e.g.* Conn. Gen. Stat. § 53a-183; Del. Code Ann. tit. 11, § 131; Md. Code Ann. Crim. Law § 3-803; N.J. Stat. Ann. § 2C:33-4; N.Y. Penal Law § 240.26; 18 Pa. Cons. Stat. § 2709.
[11] D.C. Code §§ 22-3132, 3133
[12] *See e.g.* Fla. Stat. § 784.0485; 740 Ill. Comp. Stat. 21/105; Haw. Rev. Stat. § 604-10.5; Mass. Gen. Laws ch. 258E, § 3; Me. Rev. Stat. tit. 5, § 4655; Md. Code Ann., Cts. & Jud. Proc. § 3-1505; Mich. Comp. Laws § 600.2950a; Minn. Stat. § 609.748; Or. Rev. Stat. § 163.738; Va. Code Ann. § 19.2-152.10; Wash. Rev. Code § 7.92.130.

Additionally, allowing all stalking victims to be eligible for civil protection orders would thwart any effort to remove common partner cases, because the basis for most common partner cases are social media battles and telephone interactions that qualify as stalking under our statute.

Having reviewed statutes from other jurisdictions and in deference to the concerns of D.C. Superior Court of the District of Columbia, the bill contains a 90-day time limit for filing for an anti-stalking order. Upon further review of the language, however, we realize the 90-day language could be misconstrued to require two occasions of the stalking course of conduct (a completed act of stalking) to occur within the previous 90 days. In recognition of the reality that stalking patterns can occur over a substantial period with gaps in between, we have attached proposed clarifying language that only one occasion of a stalking course of conduct need occur within the previous 90 days.

C. <u>The Existing Restraining Order Process is Not Sufficient to Fulfill the Need for Stalking Orders</u>

One of the primary reasons the Intrafamily Offenses Act has come to encompass so many types of cases that have no resemblance to domestic violence is because, unlike other jurisdictions, the District has no equally effective, alternative system for providing immediate and enforceable court protection. This bill would change that. Without this new process, the only option for stalking victims no longer eligible for civil protection orders would be to file for a

restraining order under a common law cause of action, an option already exercised by many stalking victims when they have no domestic relationship with the stalker out of confusion about their eligibility for civil protection orders. However, unlike temporary protection orders, temporary restraining orders have no requirement that they be heard immediately and are regularly heard for the first time weeks after filing, thus offering no protection in emergency situations.

Even when a victim succeeds in obtaining a restraining order, effective enforcement is elusive. While under both its inherent power and D.C. Code § 11-944, the D.C. Superior Court has the authority to punish for disobedience of its orders, practical use of that authority requires the victim to notify the court and request subsequent court action. There is typically no immediate police protection if someone comes to a victim's home in violation of a restraining order. By mirroring the misdemeanor violation language from the civil protection order statute, the bill will ensure stalking victims maintain the same enforcement protections currently available to them under civil protection orders.

II. THE NEED TO EXPAND THE AVAILABLE TIMELINES FOR TEMPORARY PROTECTION ORDERS AND CIVIL PROTECTION ORDERS

The Office of the Attorney General also strongly supports extending the current timelines for civil protection orders (CPOs) and temporary protection orders (TPOs).

The D.C. Superior Court can currently issue a CPO for a period of up to one year. After one year, a victim may file for a one-year extension of the CPO, and must apply for additional one-year extensions thereafter. The majority of jurisdictions in this country provide for a longer period of protection, and even among the states with a one-year period for the initial order, seven allow for longer extension periods when appropriate. The bill would expand that initial period to up to two years, which would put the duration of CPOs in the District in line with Illinois, Indiana, Maine, Minnesota, New York, Texas, and Virginia, but still shorter than 22 other states, such as Pennsylvania (three years) and California (five years), and 12 states that provide no statutory time limit.

The option of an order that covers a longer period of time is especially important for parties with related domestic relations matters. To the extent either party seeks a permanent custody and visitation order, such proceedings regularly last more than a year and having the protection order in place during that time is extremely valuable. Similarly, the separation imposed by a civil protection order allows a victim to file for divorce after one year; however, to have the civil protection order expire just as the victim qualifies to file for divorce can place the victim at increased risk if the victim chooses to file for divorce.[13]

[13] *See* Janice Roehl, Ph.D, et al., Intimate Partner Violence Risk Assessment Validation Study, p. 10 (2005) available at https://www.ncjrs.gov/pdffiles1/nij/grants/209731.pdf

While the current statute is silent on the length of time the court can extend a CPO, most judges interpret the length as an additional year at a time. Forcing victims to return to court every year when the court has good cause to believe a longer period is in the victim's best interest makes no sense. OAG has worked on multiple cases over the years that have required multiple extensions due to ongoing violations. Indeed, one case resulted in a CPO being in place for 12 years. In another case that spanned nearly nine years, it was obvious the respondent used litigation as a way to maintain contact with the petitioner. Still, for each extension, the petitioner had to endure multiple days of trial to get just one more year of protection because the court did not believe it had the authority to grant a longer period. This bill will correct that injustice and ensure that, when appropriate based on the case history, the court will have the discretion to grant longer periods of extended protection.

The bill will similarly give the court the ability to extend TPOs as needed to appropriately resolve a case. The explicit ability to extend TPOs was first added to the statute in the 2009 overhaul and allows for extensions beyond 14 days with the consent of both parties. While helpful, the unintended side effect of this language is that if a case needs to be continued for more than 14 days for any number of legitimate reasons – court availability, party availability, witness availability, trailing a related case – the court currently has no discretion to extend the TPO for

the full time without the respondent's consent and, by withholding consent, the respondent can require all the parties to return to court on an interim date(s) just to extend the TPO.

The current statute also fails to allow for different treatment of pre-service and post-service TPO extensions. If a petitioner needs an extension longer than 14 days to effectuate service, the court is currently unable to grant a TPO extension for that period because the respondent is obviously unable to consent, even though without service he has suffered no prejudice since he is not constrained by the TPO until he is served with it. This again requires the petitioner to return to court for TPO extensions when, under the circumstances, the court may otherwise have been willing to grant a longer continuance. Giving the court the discretion not to schedule unnecessary hearings will conserve scarce judicial time and resources without compromising the expeditious nature of the proceedings.

III.CONCLUSION

The Intrafamily Offenses and Anti-Stalking Orders Amendment Act of 2018 is a critical bill that will vastly improve the experience of domestic violence victims in obtaining civil protection orders and create an efficient, enforceable process for stalking victims to obtain comparable protections. The bill has my office's wholehearted support. In reviewing the bill, the Office of the Attorney General noticed the need for several technical corrections and two changes from

the draft created by the community. OAG's response to those changes are noted and explained in the attachment, along with suggested changes for those pursuing a romantic relationship and for the 90-day stalking requirement.

I thank you for your time. My colleague, Janese Bechtol, and I are happy to answer any questions you may have.

ATTACHMENT

Suggested change to Intimate Partner Definition

Current bill
16-1001 (6A) "Intimate partner" means a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is, was, or is seeking to be in a romantic, dating, or sexual relationship.

Suggested change
16-1001 (6A) "Intimate partner" means a person to whom one is or was married; with whom one is or was in a domestic partnership; with whom one has a child in common; or with whom one is or was in a romantic, dating, or sexual relationship. For purposes of this chapter, "intimate partner" also includes a person who is or has been pursuing such a relationship with the person filing or claims such a relationship exists or existed with the person filing.

Rationale
As drafted the section could be interpreted that the petitioner had to be seeking a relationship with the respondent instead of the other way around. It also does not necessarily cover respondents who are delusional in their belief that there already is a relationship. This change should fix both of those problems.

Suggested changes to 16-1062(a) & (b)

16-1062(a) A person may file a complaint for an anti-stalking order and a request for an interim anti-stalking order in the Civil Division against another person who has allegedly stalked that person, with at least one occasion of the course of conduct occurring within 90 days prior to the date of filing~~, has allegedly stalked that person~~. A minor's parent, guardian, or custodian, or other appropriate adult may file a complaint for an anti-stalking order on the minor's behalf. A minor who is 16 years of age or older may file a complaint for an anti-stalking order on the minor's own behalf.

16-1063(b) If, after a hearing, the judicial officer finds by a preponderance of the evidence that ~~within 90 days prior to the complaint being filed,~~ the defendant stalked the plaintiff and at least one occasion of the course of conduct occurred within the 90 days prior to filing, or after receiving the parties' consent, a judicial officer may issue a final anti-stalking order ~~that:~~. In determining the appropriate remedies for the order, the court shall consider the totality of the circumstances surrounding the allegations. Appropriate remedies may include:

Rationale:
Because the statutory definition of stalking requires two or more occasions, we realized that as written, the statute could be interpreted to require two or more occasions in the previous 90 days which was not the drafters' intent. By tracking the language of the stalking statute, the suggest change should eliminate the possibility of this interpretation.

The bill omits the final sentence above which was included in the drafters' proposal. We urge the Council to include the language which is extremely important in stalking cases to understand how seemingly innocent actions, when combined, become menacing.

Suggested Addition of §16-1063(f)

Suggested addition
§ 16-1063(f) Any person who violates any interim or final order issued under this subchapter shall be chargeable with a misdemeanor and upon conviction shall be punished by a fine of not more than the amount set forth in [§ 22-3571.01] or by imprisonment for not more than 180 days, or both.

Rationale:
The bill omits the misdemeanor crime section from anti-stalking orders that currently exists for stalking victims under civil protection orders. Taking this enforcement mechanism away from stalking victims would remove one of the two factors (expediency and enforceability) that would make anti-stalking orders effective and essentially equivalent to civil protection orders. Without the section, the victim in the community would have no meaningful protection.

Technical Corrections

- The numbering in § 16-1001 needs to be corrected and § 16-1001(9) was accidentally not deleted.

- § 16-1005(h) refers to subsections (f) and (g). It should be (f), (g) and (g-1).

- Change in § 16-1005(d-1) from rescind to vacate was not changed in § 16-1005(e) which still contains rescission.

  Suggested change
  16-1005(e) Any final order issued pursuant to this section and any order granting or denying a motion to extend, modify, or vacate such an order shall be appealable.

- § 16-1063(h) refers to subsection (g). It should be (f) and (g).