Statement of Natalie O. Ludaway
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Before

The Committee on the Judiciary & Public Safety
The Honorable Charles Allen, Chair

Public Oversight Hearing
On

Bill 22-472, the "Protection from Sexual Extortion Amendment Act of 2017"

Bill 22-628, the "Revised Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2017"

July 11, 2018 @ 9:30am
Room 123
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia 20004

Introduction

Greetings Chairman Allen, Councilmembers, staff, and residents. My name is Natalie O. Ludaway, Chief Deputy Attorney General for the District of Columbia, and I am pleased to appear on behalf of Attorney General Karl A. Racine to urge enactment of two bills the Attorney General introduced for Council consideration: Bill 22-472, the *Protection from Sexual Extortion Amendment Act of 2017* and Bill 22-628, the *Revised Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2017* (SAFE DC).

Revised Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2017

While this legislation is 39 pages and includes lists of chemical compounds, it really is quite simple. SAFE DC criminally schedules synthetic drugs, specifically synthetic cannabinoids and fentanyl, based on their class of chemical compound and not by the specific chemical formula of one discovered drug. Classifying new substances based on the class of the compound solves three problems law enforcement across the nation has been grappling with:

- It minimizes the necessity of enumerating specific synthetic drug compounds on Schedule I of the District of Columbia's Controlled Substances List;
- It makes laboratory testing for synthetic drugs more efficient; and
- Law enforcement will no longer need to rely on an impractical controlled substances analogue statute to prosecute emerging synthetic drugs.

This legislation derives from the Office of the Attorney General's Emerging Drug Trends Task Force's collaboration with the Department of Forensic Science and other local and federal government partners. By combining information and enforcement tactics from multiple jurisdictions across the country, the proposed legislation is at the forefront of synthetic drug testing statutes in the nation.

Attorney General Racine wants to be clear, and I would like the legislative record to reflect, that OAG strongly believes that drug use is a public health concern and not a criminal justice issue. The purpose of this legislation is to successfully prosecute distributers and suppliers—not to further criminalize use. This legislation is designed to save the lives of District residents. OAG previously supported the *Controlled Substance Testing Emergency Amendment Act of 2017* to decriminalize fentanyl testing strips, and urge the increased distribution of naloxone to anyone in need. For the same reason, this legislation also is critically needed.

Attached to my testimony, I included a May 2018 declassified Drug Enforcement Administration report entitled, *Fentanyl Remains the Most Significant Synthetic Opioid Threat and Poses the Greatest Threat to the Opioid User Market in the United States*. I strongly urge the public to review this declassified report. It is chilling to read the problem synthetic fentanyl is causing in our country. The report concludes that, "fentanyl is the most prevalent and most significant synthetic opioid threat to the United States and will very likely remain the most prevalent synthetic opioid threat in the near term." The DEA finds that the fentanyl threat remains most severe in the white powder heroin user market in the Midwest and Northeast United States, and fentanyl availability continues to be primarily by itself or with heroin.

In the District of Columbia, which has approximately 700,000 residents, we saw an average of about 30 deaths per year from opioid overdoses until 2013. According to an Office of Chief Medical Examiner report dated October 25, 2017: the number of fatalities went up to 83 in 2014; in 2015, we saw 114 deaths from overdoses; in 2016, opioid overdoses led to 231 deaths. In 2017, 279 people died from opioid overdoses in the District of Columbia. This is an almost 21 percent increase over 2016, and more than three times the number of opioid overdose deaths in 2014. Disturbingly, more than 80% of those decedents had fentanyl in their systems. Also, the

face of the opioid crisis in the District of Columbia is not the face that has been put on this crisis nationally – low-income, largely rural white people. It is, instead, black people – mainly men – 40 and older. Four out of five people who have died from opioid addiction here in D.C. are African-American. And those deaths are concentrated in the eastern half of the city, with the greatest numbers – 91, almost one-third – in wards 7 and 8. According to data compiled by the Centers for Disease Control, 78 people on average are dying from an opioid-related overdose every day in this country. That's more than three people every hour. Equally concerning is the finding from the Substance Abuse and Mental Health Services Administration that 3,900 new people start abusing prescription opioids every day, and another 580 people start abusing heroin for the first time. This makes attempting to identify forms of synthetic fentanyl even more urgent.

I am pleased to report that the District's opioid working group, under the leadership of the Department of Behavioral Health and the Department of Health, is taking a holistic look at the challenge we are facing regarding the national opioid crisis, and OAG is working with them for a stronger and more collaborative approach to this problem. The *Revised Synthetics Abatement and Full Enforcement Drug Control Amendment Act of 2017* has the support of the working group, and will make it easier to combat the problem of synthetic drugs. OAG looks forward to assisting the Committee move this legislation forward.

Protection from Sexual Extortion Amendment Act of 2017

I will be testifying regarding the revised legislative language for the *Protection from Sexual Extortion Amendment Act of 2017* submitted to the Committee this week.[1] After further review by OAG staff, we decided to revise the language to better clarify our intent. The bill amends sections 151 and 152 of the *District of Columbia Theft and White Collar Crimes Act of*

[1] Attached

1982 to add sexual extortion and sexual blackmail to the offenses of extortion and blackmail. Sexual extortion would occur when a person induces another to have sexual contact or perform sexual acts through actual or threatened violence, wrongful threat of economic injury, or injury to the reputation. Sexual blackmail would occur when a person engages in specified conduct to obtain sexually explicit images of another. Sexual extortion and blackmail are new, computer-based types of sexual conduct that have arisen in the District. Sexual extortion and blackmail occur when a person:

- Obtains possession of sexually explicit images (through hacking or other means); and
- Demands that another person (the victim – presumably the subject of the images), provide additional images or in-person sex acts under threat of distributing the images.[2]

This conduct may not fit within any existing sexual offenses. For example, in one case of sexual extortion, *United States v. Mijangos*,[3] a perpetrator hacked into women's and girls' computer webcams. He secretly recorded his victims, obtaining nude images. He used these images to demand more sexually-explicit images and posted at least one sexually explicit picture online. Despite the sexual nature of these crimes, the perpetrator only pled guilty to the computer-based crimes of computer hacking and wiretapping because the existing laws did not describe sexual extortion as a crime. The proposed legislation would disallow this type of evasion and hold sextortion actors legally responsible.

[2] *See, e.g.*, Legal Momentum, *A Call to Action: Ending Sextortion in the Digital Age* ("Legal Momentum White Paper") (July 2016), available at: http://www.legalmomentum.org/sites/default/files/reports/Ending%20Sextortion_digital.pdf.
[3] *Id.* at 20, citing *United States v. Mijangos*, Docket No. CR 10-743 GHK (C.D.C.A.), available at https://www.courtlistener.com/docket/4145933/united-states-v-mijangos/, last visited September 13, 2017.

The District does not already have laws that criminalize sexual exploitation. A related law is the District's "revenge porn" law,[4] which criminalizes the distribution of sexually explicit images without consent. The revenge porn laws apply only when a perpetrator *shares* sexually explicit images. Revenge porn laws are implicated in sexual extortion cases only if there is distribution.

This legislation is the result of collaborative efforts of the Office of the Attorney General, Legal Momentum and Orrick, Herrington, and Sutcliffe LLP. Legal Momentum has been advocating on behalf of girls and women for almost 50 years, and they along with Orrick have been working with states across the country to pass legislation to criminalize sexual extortion.

Conclusion

OAG greatly appreciates the opportunity to testify on these two bills. I am happy to answer any questions.

[4] Criminalization of Non-Consensual Pornography Act of 2014, effective May 7, 2015 (D.C. Law 20-275; D.C. Official Code § 22-3051) *et. seq.* (2016 Repl.)).