



Statement of Toni Michelle Jackson
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Before the

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

Public Hearing

“Hate Crimes in the District of Columbia and the Failure to Prosecute by the
United States Attorney’s Office”

October 23, 2019
Time 10:00am
Room 412
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, District of Columbia 20004

Introduction

Greetings Chairman Allen, Councilmembers, staff, and residents of the District of Columbia. My name is Toni Michelle Jackson, and I have the privilege to serve as the Deputy Attorney General of the Public Interest Division in the Office of the Attorney General for the District of Columbia. I am pleased to appear before the Committee on Judiciary and Public Safety on behalf of Attorney General Karl A. Racine to testify on hate crimes in the District of Columbia and the prohibition of the panic defense.

Bias-Motivated Violence in the District of Columbia

Bias-motivated violence is on the rise in the District of Columbia. MPD's data show that the total number of bias-motivated violent incidents more than doubled from 2011 to 2018, and we are on track for an even higher number in 2019.¹ In particular, there have been sharp increases in bias-motivated violence based on ethnicity, national origin, religion, gender identity, and gender expression. For example, there has been a seven-fold increase in bias-motivated violence based on ethnicity and national origin and a three-fold increase in such violence based on gender identity and expression. These troubling trendlines are continuing.

We know that bias-motivated violence is on the rise not only from the data, but also from our conversations with our neighbors and constituents. This summer, OAG held a series of five listening sessions across the District to discuss civil rights issues and to hear directly from District residents on the issues they are encountering in their communities. In every listening session, we heard from attendees about the same issues reflected in the data: bias-motivated violence against the LGBTQ+ community and the rise of anti-Semitic, anti-Muslim, and anti-immigrant violence.

¹ There were 92 reported bias-motivated violent incidents in 2011 and 205 such incidents in 2018. The year-to-date numbers in 2019 exceed those of 2018. Metropolitan Police Department, Bias-Related Crimes (Hate Crimes Data), <https://mpdc.dc.gov/hatecrimes>.

In addition, Attorney General Racine met with advocates for the LGBTQ+ community this summer to discuss civil rights issues, and the spike in violence targeting that community was their primary concern.

For our office, ensuring that District residents are free to be and express themselves and are safe while doing so is an utmost priority. Our office's jurisdiction over bias-motivated criminal conduct is limited to prosecution of juvenile offenders. Although OAG has not seen many incidents of juvenile arrests for bias-motivated crime, when we do, we take those cases very seriously. These efforts are necessarily and appropriately private because the purpose of the juvenile system is to hold offenders accountable and to rehabilitate them. Doing so requires confidentiality. As juvenile prosecutors, we have the dual responsibility of working to keep our community and victims safe and addressing the care and rehabilitative needs of the youth in our justice system. Thus, it is our duty to examine the reasons a youth engages in criminal conduct and devise a rehabilitative plan to effect change in a young person's life so they will not engage in criminal conduct in the future. When we are presented with a youth involved in bias-motivated crime, we strive to break down stereotypes and fears that often motivate the conduct through Restorative Justice conferencing and the ACE Diversion Program. Of course, if the criminal conduct is very serious, we prosecute those cases to our fullest ability while also working to provide services, counseling and mentoring to change a youth's thinking about people in our community who may be different from them. On behalf of Attorney General Racine, we want to assure you that we utilize every tool available to bring about change in juvenile offender's mentality.

Civil Bias-Motivated Violence Statute

While OAG's criminal jurisdiction in this arena is limited, there are other opportunities for OAG to complement the efforts of the U.S. Attorney's Office. In particular, there are important

civil actions that we can bring to help combat the rise in bias-motivated violence. And we have the staff resources to do just that. Thanks to the Council, as of the beginning of this fiscal year, we have four attorneys and an investigator to work on civil rights issues. Attorney General Racine greatly appreciates these investments to bolster OAG's commitment to ending discrimination, harassment, and, importantly, violence.

To fully harness these resources, we have introduced legislation that would give express authority to OAG to bring *civil* actions against those who commit bias-motivated violence. Under current District law, individual victims of bias-motivated violence can bring civil actions against perpetrators, and they can seek injunctions, damages, punitive damages, and attorney's fees.² This civil cause of action has not been used frequently, in part because it can be very difficult for an individual victim of a bias-motivated violent offense to find a lawyer and prosecute a case where financial recovery may be uncertain.³

Our proposed legislation addresses that problem by allowing the Attorney General to bring a civil action in the public interest. The Attorney General can do so regardless of whether the U.S. Attorney's Office criminally prosecutes the perpetrator. Under the law that we have proposed, the Attorney General would be able to investigate these matters and seek the same remedies that exist in current law. In addition, the Attorney General would be able to seek restitution for the victim and civil penalties from the perpetrator. This type of civil cause of action gives District residents a direct voice in the enforcement of our laws against bias-motivated violence. The Attorney

² D.C. Code § 22-3704.

³ There are only two reported lawsuits under the statute that have been filed since 2011 despite more than 1,000 bias-motivated violent incidents. There are likely other cases that have not been reported. Nevertheless, because some perpetrators of these offenses may be judgment proof, victims may have difficulty securing private counsel to pursue these claims, making Attorney General enforcement particularly important.

General, acting in the name of the District, can send a clear message that this type of violence is not tolerated in the District.

The proposed legislation also expands the category of conduct that is within the ambit of the civil bias-motivated offense. Specifically, in addition to providing a cause of action against those who commit violent offenses motivated by protected classes like race, sex, disability, gender identity, religion, and national origin, the statute also creates a cause of action against individuals who commit offenses that interfere with rights protected by District and federal law. That means, for example, that if an individual commits a violent offense that interferes with a person's right to seek reproductive health care, the victim or the Attorney General can bring a civil cause of action under the statute.

This proposed legislation brings District law in line with the trend in other states. For example, Massachusetts has a substantially similar statute. Using that authority, the Attorney General of Massachusetts obtained a preliminary injunction against an individual who used a homophobic slur and violently attacked three individuals at a bar. The Massachusetts Attorney General also has brought litigation against a landlord who violently evicted a tenant based on the tenant's national origin and religion, even though there were no criminal charges. The Connecticut Attorney General's Office has pending legislation that would give it similar authority.

The proposed legislation also makes some clarifying technical changes to existing law. For example, existing law only created a civil cause of action for violent offenses motivated by the victim's *physical* disability. This legislation makes clear that bias-motivated offenses based on any disability are actionable. The legislation also makes clear that the prohibition on bias-motivated offenses applies to businesses as it does to people.

We urge passage of this legislation to create a new tool to attack bias-motivated crimes, so that the District and its residents have an opportunity to publicly condemn violence motivated by bias and violence that interferes with an individual's ability to live their lives freely.

Panic Defense

Finally, we also recognize that other aspects of our laws further marginalize communities that are targeted by violence, such as the LGBTQ+ community. One aspect of this, as the Committee has recognized, is the so-called panic defense. This defense provides an excuse for violent crime based on the victim's identity. OAG supports eliminating this defense, which only compounds the negative effects of the increase in bias-motivated violence. OAG does not believe that there is any valid criminal justice reason to allow a perpetrator to use a victim's identity to justify or excuse violence. To the contrary, sanctioning the notion that a victim's LGBTQ+ identity, for example, can justify violence only opens these communities up to further bias-motivated violence. We support eliminating this defense, as eight other states have done, and requiring courts to give anti-bias jury instructions when a party so requests.

Conclusion

I greatly appreciate the opportunity to testify at this this Public Hearing concerning these important issues. OAG stands ready to work with the Council, Executive, U.S. Attorney's Office, community, and other stakeholders to eradicate the scourge of bias-motivated violence in the District of Columbia and to make the District's laws more just for all members of our community. I am happy to answer any questions that members may have.