


Government of the District of Columbia
Office of the Chief Financial Officer



Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Jeffrey S. DeWitt
Chief Financial Officer 

DATE: July 11, 2019

SUBJECT: Fiscal Impact Statement – Sexual Assault Victims’ Rights Amendment Act of 2019

REFERENCE: Bill 23-67, Draft Committee Print as shared with the Office of Revenue Analysis on July 8, 2019

Conclusion

Funds are sufficient in the fiscal year 2019 budget and the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill.

Background

The DC Sexual Assault Nurse Examiner Program (DC SANE Program) provides comprehensive care to adult sexual assault victims, including an examination from a trained forensic nurse.¹ The DC SANE Program is a collaboration between the Office of Victim Services and Justice Grants (OVSJG), the Network for Victim Recovery of DC,² and the MedStar Washington Hospital Center. Adult sexual assault victims are afforded certain rights, including the right to have a sexual assault victim advocate present at any point during examinations and interviews and notification of the results of forensic examinations.

The bill establishes the DC Child and Adolescent Sexual Assault Nurse Examiner Program (DC CASANE Program) to extend sexual assault victims’ protections and rights to victims aged 13 to 17 years old. The DC CASANE Program will provide comprehensive care through the Freddie Mac Foundation Child and Adolescent Protection Center (CAPC), administered by Children’s National

¹ District of Columbia Forensic Nurse Examiners (<http://dcforensicnurses.org/>).

² The DC non-profit that provides advocacy, legal, and therapeutic services (<https://www.nvrdc.org/>).

Health System.³ The DC CASANE Program will connect youth sexual assault victims who present at CAPC with a sexual assault child and adolescent victim advocate who can be present during any physical examinations and interviews conducted by the Metropolitan Police Department (MPD) or other District agencies, excluding interviews that take place at the scene of the alleged sexual assault. The bill ensures that several protections, rights, and oversight responsibilities are extended to these youth victims. These include that youth victims can request an advocate at any time, even if the presence of one was previously declined, that sexual assault counselors can share confidential information with DC CASANE Program participants, and that the OVSJG independent expert consultant should ensure that DC CASANE Program cases are accounted for in MPD casework data.

The bill makes other changes to the District's sexual assault victims' rights laws through the expansion of rights, clearly defined expectations for counselors and advocates, increased government reporting and disclosure requirements, and greater transparency in the assault kit processing system.

The bill requires anyone desiring to become a sexual assault counselor, a sexual assault victim advocate, or a sexual assault child and adolescent victim advocate to complete training conducted by OVSJG or community organization using a Sexual Assault Response Team (SART)⁴ approved curriculum. To become a sexual assault counselor, an individual must complete forty hours of training. An individual who is a sexual assault counselor and completes an additional twenty hours of training can become a sexual assault advocate. An individual who is a sexual assault advocate and then completes an additional forty hours of training can become a sexual assault child and adolescent victim advocate.

The bill ensures that sexual assault victim counselors are exempt from any mandatory reporting requirements unless the victim is under 13 years of age, the perpetrator or alleged perpetrator has a significant relationship to the victim, or the perpetrator or alleged perpetrator is more than four years older than the victim. The bill expands the situations in which confidentiality of communications between sexual assault victims and counselors must be maintained to include the presence of a third party, group counseling, third party communications made at the request of the sexual assault victim. The bill prohibits a sexual assault counselor from disclosing any confidential communications unless written consent is provided from the victim or the victim's personal representation. The bill requires MPD to provide a victim with a Sexual Assault Victim's Rights Card and a brochure developed by OVSJG that inform a victim of his or her rights as a sexual assault victim⁵ and to notify a sexual assault victim about its intent to communicate with a suspect prior to communicating with the suspect or as soon as is reasonably possible. The bill also requires a hospital that provides emergency care to sexual assault victims to orally inform the victims of their rights as a sexual assault victim in a language the victim understands. Hospitals must also immediately notify the sexual assault victim advocate dispatch system.

The bill establishes more comprehensive rights for victims of sexual assault to access and store information related to their cases' Physical Evidence Recovery Kit (PERK). MPD must inform a victim

³ <https://childrensnational.org/departments/child-and-adolescent-protection>.

⁴ Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 4-561.12).

⁵ Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 23-1909).

about the status and results of the PERK, any forensic exams, DNA profile match, or toxicology reports;⁶ store a PERK for the duration of the statute of limitations; and provide written information on all policies governing the administration and preservation of a PERK. MPD must notify a victim before destroying a PERK prior to the expiration of the statute of limitations on the incident.⁷ The bill requires MPD to include in its annual sexual assault report to the Mayor and Council the number of sexual assault victims who request and who do not request the results of their PERK.⁸ The bill reaffirms that the District prohibits a hospital from charging a sexual assault victim for a PERK or the processing of a PERK.

The bill provides the Department of Forensic Science (DFS) with additional time to process a sexual assault forensic examination kit if the kit is subject to consumption litigation.⁹ DFS will have 75 days to process a kit once the court system issues a consumption determination. DFS maintains 90 days to process PERKs that are not subject to a consumption litigation. The bill also allows DFS to contract with another laboratory to process PERKs. These laboratories must deliver the PERK processing results to DFS within 60 days. The bill expands what information related to PERKs DFS must include in its annual report on all DFS activities. DFS must report on the number of PERKs processed by a contracted laboratory and the time it takes that laboratory to process those kits, the number of PERKs where the contracted laboratory took longer than 60 days to provide testing results, the number of PERKs involved in consumption litigation, the number of PERKs that took longer than 90 days due to the consumption litigation, and the number of days each PERK processing was delayed while awaiting a consumption litigation determination. Currently, DFS only needs to report on the number of PERKs it receives from MPD, the number it processes, and the time it takes to process them.

The bill expands the SART membership to include the director of a community-based organization that is part of the DC CASANE Program, the director of a victim advocacy services organization that is called on to support a sexual assault victim prior to any examinations,¹⁰ and members of the District's Multidisciplinary Investigation Team.¹¹ The bill also enhances the training, duties, and reporting requirements of the SART and its members. OVSJG, in conjunction with DFS and the Office of the Chief Medical Examiner, must provide annual training for members of the SART to explain, in a victim-centered manner, the results of sexual assault forensic exams, PERKs, or toxicology tests. The SART's overall duties are expanded to include making recommendations to improve the continuum of services in the District for sexual assault victims. The SART also must establish a Feedback Review Committee to receive and investigate complaints from sexual assault victims. The SART must also annually report to Council and the Mayor by January 1, 2022 information from the

⁶ MPD must provide these results within 15 days from the date when the results become available. MPD does not need to disclose the identity of a DNA profile match if the investigation is open or prosecution active.

⁷ The victim must be provided written notification at least 60 days prior to the date of destruction and the victim can request that the PERK be maintained until the statute of limitations has expired.

⁸ Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 4-561.09).

⁹ The bill defines this as litigation in a criminal proceeding initiated by notification to the defense of the need to consume an entire DNA sample in forensic testing. Both the prosecution and the defense have the right to examine evidence, but if the sample is likely to be wholly consumed through one examination, the courts will determine the most equitable way for evidence examination.

¹⁰ Sexual Assault Victims' Rights Act of 2014, effective November 20, 2014 (D.C. Law 20-139; D.C. Official Code § 23-1909).

¹¹ Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.51).

The Honorable Phil Mendelson

FIS: Bill 23-67, "Sexual Assault Victims' Rights Amendment Act of 2019," Draft Committee Print as shared with the Office of Revenue Analysis on July 8, 2019

Feedback Review Committee, a summary of its case review activities, MPD's activities around providing PERK results, and prior year and year-ahead planned activities. SART members must also provide data on cases that fall under their purview that relate to cases the SART chooses to review. The bill limits the SART's case review activities to those cases involving sexual assault victims 18 years of age or older.

The bill also allows a victim of sexual assault to receive compensation from the Crime Victim's Compensation Fund¹² without first processing an insurance policy claim.

The bill adds the OVSJG Director as a member of the Criminal Justice Coordinating Council.¹³

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 budget and the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the bill. The bill's establishment of the DC CASANE Program lowers to 13 the age of a sexual assault victim who can access advocacy services if they are examined a CAPC. This increases the need for advocates known as sexual assault child and adolescent victim advocates. To help meet this need and the new tiers of counselors and advocates, OVSJG will establish an advocate training curriculum that must be approved by SART. OVSJG is in the process of developing a training curriculum and can absorb the costs associated with the its implementation.

The bill also creates a greater right for victims to access information about a PERK. OVSJG and MPD launched a database to track PERKS in 2018 so MPD can readily access and share that information with a victim as required in the bill. The agencies do not need any additional resources to meet this requirement. The bill also requires that MPD store PERKS until the statute of limitations on a crime has expired. MPD currently stores evidence until the statute of limitations on a crime has expired and there are no additional costs associated with these provisions. OVSJG must also develop a Sexual Assault Victim's Rights Card and brochure for MPD to provide to a sexual assault victim. OVSJG will develop the card and brochure and provide it to MPD within its existing budgeted resources.

The bill also gives DFS additional time to process a PERK if the PERK is subject to consumption litigation. This change will relieve operational pressures at DFS where currently the agency is expected to process a PERK within 90 days of receipt even if consumption litigation has delayed the agency's ability to process it. Under the bill DFS must process a PERK within 75 days of the court's consumption determination. The bill also allows DFS to contract with outside laboratories to process a PERK, but the bill only grants the outside laboratory 60 days to provide testing results to DFS. DFS has existing relationships with outside laboratories and DFS can work with them to test a PERK as needed within those existing contracts and the associated budgeted resources.

The bill's additional reporting requirements can be implemented by the relevant entities, such as MPD or the SART members' agencies, and any administrative costs can be absorbed.

The bill also allows a victim of sexual assault to access victim's compensation funds through the Crime Victims Compensation Fund without having to first access any private insurance payments.

¹² Victims of Violent Crime Compensation Act of 1996, effective April 9, 1997 (D.C. Law 11-243; D.C. Official Code § 4-515).

¹³ Criminal Justice Coordinating Council for the District of Columbia Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 22-4231 et seq.).

The Honorable Phil Mendelson

FIS: Bill 23-67, "Sexual Assault Victims' Rights Amendment Act of 2019," Draft Committee Print as shared with the Office of Revenue Analysis on July 8, 2019

This could increase the payout amounts to victims of sexual assault and reduce the funds available for other purposes, but the DC Courts manage this Fund and award payments. The DC Courts paid out nearly \$7 million in 2017 and approximately \$5.6 million in 2018 from the Fund. The average payout per claim was approximately \$1,900 in both 2017 and 2018.