

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
**Executive Office of Mayor Muriel Bowser**



Public Hearing on

**Hate Crimes in the District of Columbia and the Failure to Prosecute  
by the Office of the United States Attorney**

**Bill 23-409, the “Sexual Orientation and Gender Identity Panic Defense  
Prohibition Act of 2019”**

**and**

**Bill 23-435, the “Tony Hunter and Bella Evangelista Panic Defense  
Prohibition Act of 2019”**

Testimony of

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Before the  
Committee on the Judiciary and Public Safety  
Council of the District of Columbia  
The Honorable Charles Allen, Chairperson

John A. Wilson Building  
Room 412  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004  
October 23, 2019  
10:00 a.m.

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Kevin Donahue, Deputy Mayor for Public Safety and Justice, and I am here to discuss hate crimes in our city and the District government's response to them. I am joined by Kelly O'Meara, Director of the Strategic Change Division at the Metropolitan Police Department (MPD).

I want to begin by centering on the victims of hate crimes, their trauma, and their needs. Over the past few years, we have seen a nationwide increase in hate crimes targeting individuals for where they were born, what language they speak in public, who they love, what race or ethnicity they identify with, and what religion they follow. Places that we all thought were safe spaces – schools, churches, synagogues, government buildings – have all been targets of deadly hate. While the Internet has transformed our daily lives, it has also made it very easy to find receptive audiences for sharing and reveling in hatred, bigotry, and extremism. The combination of all too easy access to firearms plus individuals motivated by radical nationalism, white supremacy, and religious extremism has led to many instances of death and terror throughout the country.

It is distressing that active shooter trainings, metal detectors, and armed security guards are now a regular presence at our schools, our religious institutions, and many public gatherings. It is a sad reality of the world we live in. And, as government leaders, our role is to do all we can to reduce the likelihood of hate-fueled attacks and, if they do happen, to ensure the criminals who commit them are brought to justice and to provide their victims with everything they need to recover.

### ***Hate Crimes in the District of Columbia Have Spiked Since 2016***

The District is at the national forefront of how we respond to hate crimes. Our agencies work together to offer support for victims and communities who have been targeted and to train government employees to make notifications if they identify signs of a potential bias-related crime. As I later present data from MPD, it is important to remember that hate crime statistics are about “reported” cases, and MPD is focused on ensuring every crime that may have been motivated by bias is counted and investigated. The District government is working hard to support individuals and communities still traumatized by past attacks, while also identifying new instances of bias-related crimes.

Based on incidents reported to MPD, there has been a surge of hate crimes in the District over the past three years. In 2016, 106 hate crimes were reported to MPD, representing a spike of 60 percent over 2015. The number continued to spike in 2017, with 177 reported incidents, representing a 67 percent spike. In 2018, the number increased 16 percent, with 205 incidents reported. As of September 30, 2019, we have seen a 14 percent increase from the same time period last year, with 165 hate crimes reported to MPD.

In looking at the bias types of these hate crimes, we find that last year, crimes with bias motives based on sexual orientation were the most prevalent (60 instances), followed by ethnicity/national origin (49 instances), race (39 instances), and gender identity/expression (34 instances). The most common underlying crimes are simple assault (75 instances), threats/stalking (57 instances),

destruction of property/displaying symbols (38 instances), aggravated assault (20 instances), and robbery (11 instances).

While we strive to create an environment where residents feel safe and supported, the reality is that the District exists within the larger context of our country. In the past few years, we have seen our national political discourse veer towards more extreme politics that encourage and reward outlandish and offensive behavior. Unfortunately, some of that behavior has found its way to our city, but we continue to do our best to combat it and remain an inclusive, vibrant city.

### ***The District's Bias-Related Laws***

Under District law,<sup>1</sup> a bias-related crime is a criminal act or attempted criminal act “that demonstrates an accused’s prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation of a victim.”

It is important to note that while we often refer to “hate crimes,” District law doesn’t designate any specific crimes as such. Instead, it creates enhanced sentencing penalties for persons convicted of an underlying crime that was motivated, in whole or in part, by bias.<sup>2</sup>

There are some nuances here that are important to note because they easily get lost or misinterpreted. First, the incident must be a crime. Hateful speech – no matter how reprehensible – is protected by the First Amendment and is not, on its own, a hate crime. Second, a “hate crime” is not a crime itself, but rather is a defendant’s motive which, if proven, results in an enhanced sentencing penalty. Third, prosecutors have the challenge of establishing, beyond a reasonable doubt, that a defendant was motivated by prejudice because of an actual or perceived difference. The Executive strongly supports the use of enhanced sentencing penalties for criminal actions that are found to be hate crimes.

For all reported crimes, an MPD officer must affirm whether any hate crime indicators are present, but that officer does not determine if it is a hate crime. Instead, all potential hate crimes are jointly reviewed by an MPD panel consisting of the Criminal Investigations Division, the Strategic Change Division, the Intelligence Branch, and the Special Liaison Branch (SLB), to ensure that cases are appropriately classified. I want to emphasize that every hate crime reported to MPD is thoroughly investigated by detectives. The officers notify the SLB<sup>3</sup> so that members can work

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<sup>1</sup> D.C. Official Code § 22-3700 *et seq.*

<sup>2</sup> Under D.C. Official Code § 22-3703, a person who is found guilty of a bias-related crime may be sentenced and fined up to 1.5 times the maximum term and fine authorized for the underlying crime.

<sup>3</sup> The Special Liaison Branch serves the African, Asian, deaf and hard of hearing, LGBT, Latino, and religious minority communities. The SLB works closely with historically underserved communities, serving as a model for community policing. Members respond to crime scenes and incidents to support members of our community, whether they are arrestees, victims, or surviving family members. The SLB works closely with MPD’s Victims Services Unit and community organizations to ensure that crime victims have access to services. The Branch also works to support the community with incidents that are not necessarily criminal, such as with death notifications to family members, or in working to help locate missing persons. More proactively, SLB hosts and participates in meetings and presentations,

with the victim and the community. MPD detectives conduct a full investigation into both the criminal elements and the possible motive. We know how difficult it can be for victims to come forward, but we want to assure them that our officers take every incident seriously and that they will be treated with dignity and compassion.

If MPD is able to make an arrest, the case is presented to prosecutors, who then make their own determination on whether there is enough evidence to take the case to trial.

### ***District Government Responses to Hate Crime Incidents***

Now that we have a sense of the scope of the issue, I want to highlight some of the District's initiatives aimed at reducing the number and impact of hate crimes.

Since the 2016 election, some of our most vulnerable communities became more concerned and fearful. After meeting with representatives from the African, Asian, deaf and hard of hearing, Latino, and LGBTQ communities – all of which are served by MPD's special liaison programs – Chief Newsham moved MPD's Special Liaison Branch directly under his office and under the supervision of the Strategic Change Division, at the end of 2016. The change has helped to raise the profile of these issues within MPD so that the liaison units have greater access to coordinate with all bureaus.

MPD has also partnered with Rev. Thomas Bowen, the Director of the Mayor's Office of Religious Affairs, to respond to community fears and build community relationships moving forward. This began in the immediate aftermath of the January 2017 attack on a mosque in Quebec and the presidential Executive Orders on travel restrictions from predominantly Muslim countries. By visiting mosques and Islamic centers throughout the city, Rev. Bowen helped MPD to strengthen connections with members of the Muslim community. Rev. Bowen, Director Monica Palacio of the Office of Human Rights (OHR), and MPD have also hosted several weekly conference calls with religious leaders in response to attacks on religious communities in other parts of the country. Since then, the SLB has expanded its mission to include faith-based communities frequently targeted by bias within in the District.

The Office of Victims Services and Justice Grants (OVSJG) manages the DC Victim hotline, which is the single point of entry of all victims' services in the District. OVSJG produces hotline materials specifically directed at victims of hate crimes and is instrumental in helping victims quickly access services.

Since 2017, Director Palacio has led the Mayor's DC Values in Action initiative. Director Palacio works closely with MPD and others to coordinate critical information for District agencies and the public to know about how to respond to a hate crime or hate speech targeting people or property. As a result, the team developed a Hate Crime Protocol, which District agencies use to ensure timely coordinated responses to reported hate crimes and bias acts aimed to harm or instill fear in District residents.

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providing the community with public safety materials and information that will help promote a better understanding of interacting with MPD members in criminal and casual contact situations.

### ***The Bowser Administration Supports Elimination of the “Panic Defense”***

Before I close, I want to acknowledge the Executive’s general support for the two bills related to eliminating the “panic defense.” Both Bill 23-409, the “Sexual Orientation and Gender Identity Panic Defense Prohibition Act of 2019” and Bill 23-435, the “Tony Hunter and Bella Evangelista Panic Defense Prohibition Act of 2019” would prohibit defendants from using “gay panic” as a defense during a criminal trial.

The use of this defense implies that a victim’s sexual orientation or gender identity somehow justifies a defendant’s loss of self-control and subsequent attack. It implies that LGBTQ lives are worth less than others’ lives and that is not a public policy that we can ever support. In enacting this legislation, the District would join several other progressive states, such as California, Illinois, Rhode Island, Nevada, Connecticut, Maine, Hawaii, and New York. It is also important to get input from prosecutors on how these bills impact cases.

### ***The Need to Enact the “Community Harassment Prevention Amendment Act”***

Finally, I strongly urge the Committee to pass Bill 23-134, the “Community Harassment Prevention Amendment Act of 2019.” This legislation protects our communities by making it illegal to intentionally target specific entities with the intent of causing fear or distress. It also expands the properties where it would be illegal to display emblems intended to harm or intimidate people. By expanding the statute to apply to any public property or private property of another without permission, the bill provides additional recourse in cases of displays of certain symbols of hate. It is important to note that a substantial number of hate crimes – on average, one fifth to one third – are property crimes, primarily graffiti, not violent or interpersonal crimes. Providing law enforcement with a tool for combatting this harassment will ensure that individuals can safely assemble to advance their common interests and will fill a potential enforcement gap in the law.

This bill was introduced by Mayor Bowser a year ago and this Committee held a hearing on it in June. We appreciate that Council enacted the emergency<sup>4</sup> and temporary<sup>5</sup> versions of this legislation at the Mayor’s request. But, the emergency bill expired in May and the temporary bill expires in less than a month. We urge the Committee to move expeditiously to mark up the permanent bill and send it to the Council for a vote.

The Bowser Administration strongly supports holding perpetrators of hate crimes accountable for their actions against their victims and our communities.

Thank you for the opportunity to testify today on this important issue. I welcome any questions.

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<sup>4</sup> The Community Harassment Prevention Emergency Amendment Act of 2018, effective February 6, 2019 (D.C. Act 22-644, expiring on May 7, 2019).

<sup>5</sup> The Community Harassment Prevention Temporary Amendment Act of 2018, effective April 11, 2019 (D.C. Act 22-642, expiring on November 22, 2019).