

**COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON PUBLIC SAFETY AND THE JUDICIARY
COMMITTEE REPORT**

1350 Pennsylvania Avenue, NW, Washington, DC 20004

TO: All Councilmembers
FROM: Councilmember Phil Mendelson,
Chairman, Committee on Public Safety and the Judiciary
DATE: April 13, 2010
SUBJECT: Report on Bill 18-549, the “Community Impact Statement Act of 2010”

The Committee on Public Safety and the Judiciary, to which Bill 18-549, the “Community Impact Statement Act of 2010” was referred, reports favorably thereon with amendments, and recommends approval by the Council.

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I. BACKGROUND AND NEED

“One of the most difficult functions for a judge to fulfill is the setting of appropriate punishment after a person has been convicted of a crime. We believe judges can best fulfill this obligation when they are aware of the negative impact that a defendant’s activity had on a given community.”¹

Currently, D.C. Official Code § 23-1904 requires the Court to consider a Victim Impact Statement of an individual victim of a crime. This is a written statement made by the victim of the crime (either misdemeanor or felony) that describes the harm incurred by the victim and, more generally, the effect that the crime has had on his or her life. Then the statement is considered by the judge who is sentencing the offender. Bill 18-549 adds a new section to D.C. Code § 23-1904 to allow community members – through a representative – the right to submit

¹ Community Justice Initiative, Community Impact Statement, *available at* http://www.co.ho.md.us/StatesAttorney/SAMain/CommunityJusticeInitiative/SA_Communityimpact_Statement.asp

Community Impact Statements to assist the Court in making decisions regarding sentences for offenders convicted of a felony crime.

In the criminal justice system, the Victim Impact Statement is one of the most effective means to communicate the “voice of the victim.” The Victim Impact Statement was first used in 1976 by then-Chief Probation Officer James Rowland of Fresno County, California.² Officer Rowland believed that victims had valuable information they could provide to courts prior to sentencing.³ There has been a recent movement to extend this right to community members.⁴ Often, community members feel that the criminal justice system is too concerned with protecting the rights of offenders and has little regard for the needs of the community. Bill 18-549, granting community members the right to submit impact statements, seeks to redress some of the balance by providing community members with a voice on the crimes that have affected them. Community Impact Statements can be used as a link between the courts, prosecutors, and the local community, helping to ensure that a community’s concerns and issues are understood by the courts and prosecutors in the course of a criminal proceeding.

Judges have the difficult task of determining appropriate sentences after a person has been convicted of a crime. Sentencing decisions are made and plea negotiations are accepted based on factors such as criminal history and the severity of the offense. Community members may want to influence the duration and disposition of the sentence by describing the psychological and physical effect of the crime on their lives. Judges can best fulfill their obligation to determine appropriate sentences when they are aware of the negative impact that a specific offender or a specific crime has, not only on the victim(s) of the crime but also on the community in which the crime took place.

Concern was raised regarding Bill 18-549 that it would be unfair to use non-case-specific information about the prevalence of crime at the sentencing stage of a case. The introduced version of Bill 18-549 allowed community members to submit statements if they were “affected by the commission of the crime or type of crime”. Allowing statements regarding the “type of crime” would allow community members to submit statements about the category of crimes the offense is in instead of about the specific offense the defendant committed. This would “require the judge to consider when sentencing the defendant crimes in the community committed by someone else, with no time limit on when those crimes [were] committed ... [as well as] give weight to information about crimes committed by other people that are the type of crime for which the defendant was acquitted.”⁵ For example, if the defendant is accused of domestic violence, a type of assault, community members would be allowed to submit information about unrelated assault cases. This could include any person who was ever a victim of assault, knew a

² National Institute of Justice, Victim Impact Statements, *available at* <http://www.ojp.usdoj.gov/nij/topics/courts/restorative-justice/promising-practices/victim-impact-statements.htm>.

³ *Id.*

⁴ *See, e.g.*, R.I. Gen. Laws § 12-28-4 (2010) (allowing the use of Community Impact Statements if the crime has an impact on the community where it took place).

⁵ *Bill 18-549, Community Impact Statement Act of 2010: Hearing Before the DC Council Committee on Public Safety and the Judiciary*, February 8, 2010, at 5 (written testimony of Laura E. Hankins, Public Defender Service).

victim of assault, or happened to be present when someone was assaulted. Additionally, allowing statements regarding the “type of crime” would allow statements regarding the type of crime the defendant may have been previously acquitted of. The Committee believes that impact statements should be limited to the specific crime at issue and how the defendant’s actions affected the victim or the community. An important purpose to these statements is to hold offenders accountable to a degree appropriate for the actual crimes they committed.

Community Impact Statements should be viewed also as a restorative justice practice that allows neighborhoods and communities to articulate the physical, emotional, and financial impact of the crime they experienced. Community Impact Statements will support victim recovery from the trauma of the crime by allowing the community to participate in the decision making process to repair the harm caused by the crime. Additionally, Community Impact Statements will help offenders understand the consequences of their criminal behavior and accept responsibility which further assists in helping the victim and the community repair the damage caused by the crime.

The Committee recommends approval of Bill 18-549, the “Community Impact Statement Act of 2010”, as amended.

II. LEGISLATIVE CHRONOLOGY

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| December 1, 2009 | Bill 18-549, the “Community Impact Statement Amendment Act of 2009”, is introduced by Councilmembers Mendelson, Bowser, and Evans, and co-sponsored by Councilmember Graham. |
| December 11, 2009 | Notice of Intent to act on Bill 18-549 is published in the <i>D.C. Register</i> . |
| January 15, 2010 | Notice of a Public Hearing on Bill 18-549 is published in the <i>D.C. Register</i> . |
| February 8, 2010 | The Committee on Public Safety and the Judiciary holds a public hearing on Bill 18-549. |
| April 13, 2010 | The Committee on Public Safety and the Judiciary meets to mark-up and vote on the report and committee print of Bill 18-549. |

III. POSITION OF THE EXECUTIVE

On behalf of the administration, Melissa Hook, Director, Office of Victim Services, testified in support of Bill 18-556. Ms. Hook states “[t]he community impact statement is a strong restorative justice practice that will allow neighborhoods and communities in the District to articulate the physical, financial, and emotional impact of crime they experience.”

IV. COMMENTS OF ADVISORY NEIGHBORHOOD COMMISSIONS

The Committee received no testimony or comments from Advisory Neighborhood Commissions.

V. SUMMARY OF TESTIMONY

The Committee on Public Safety and the Judiciary held a public hearing on Bill 18-549, the “Community Impact Statement Act of 2010”, on Monday, February 8, 2010. The testimony together with comments subsequently submitted is summarized below. A copy of the testimony is attached to this report.

Bobby Pittman, Chairman, 1st District CAC Legislative Committee, testified in support of Bill 18-549. Mr. Pittman reviewed the bill and suggested several amendments. Generally, these suggestions are reflected in the committee print.

Richard Gilbert, Chair of the Legislative Committee of the DC Association of Criminal Defense Lawyers, testified in support of Bill 18-549. Mr. Gilbert suggested two amendments be made to the bill: 1) delete the word “adversely” to allow statements from community members regardless of whether they have been adversely affected; and 2) limit the bill to apply only to felony cases. The committee print reflects these changes.

Mary C. Williams, Public Witness, testified in support of Bill 18-549.

Patricia A. Riley, Special Counsel to the U.S. Attorney, U.S. Attorney’s Office, District of Columbia, testified in support of Bill 18-549. Ms. Riley stated “that the court often would benefit from hearing from the community in determining an appropriate sentence for a person who is found or pleads guilty to a crime[.]”

Sylvia Brown, Commissioner, Advisory Neighborhood Commission 7C04, submitted a letter in support of Bill 18-549. Ms. Brown believes “[l]aw enforcement includes empowering and involving residents and having an adjudication process that considers residents’ input.”

Khaliq Elhillali, Chairperson, Advisory Neighborhood Commission 7C, submitted a letter in support of Bill 18-549. Mr. Elhillali believes that allowing the submission of community impact statements “is a positive step toward addressing the concerns of a secured community, which will increase public safety.”

Laura E. Hankins, Special Counsel to the Director, Public Defender Service for the District of Columbia, submitted a letter in opposition to Bill 18-549. “The Public Defender Service supports the principle that the sentencing judge should consider a wide variety of

information when determining the most appropriate sentence to impose on a defendant”; however, “Bill 18-549 ... appears to require a sentencing judge to consider only negative statements and views of a community.”

Kenneth E. Noyes, Esq., Executive Director, DC Coalition Against Domestic Violence, submitted a letter in opposition to Bill 18-549. The letter reviews major points of the bill and suggests several technical changes. Mr. Noyes states that allowing the community the right to submit impact statements “will have the effect of devaluing or giving less weight to victims’ and survivors’ experiences.”

Martin Moulton, President, Convention Center Community Association, submitted a letter in support of Bill 18-549. Bill 18-549 will give judges the opportunity to consider the input of local communities concerning the “real impact of crime[.]”

Veronica O. Davis, President, Fairfax Village IV Condominium Association, submitted a letter in support of Bill 18-549. Bill 18-549 allows the community to send a message that it does not tolerate crime.

Keith Jarrell, Resident of Ward 4, submitted a statement supporting the bill urging that violent offenders not be given the identity of the author of any impact statements to protect from retaliation.

Lee F. Satterfield, Chief Judge, Superior Court of the District of Columbia, submitted a statement regarding Bill 18-549. The court does not take a position on the need for, or the importance of Bill 18-549. However, Judge Satterfield states that Bill 18-549, as introduced, would affect court efficiency and significantly delay sentencing in misdemeanor cases. The committee print takes this into consideration by limiting the statements to felony cases.

VI. IMPACT ON EXISTING LAW

Bill 18-549, the “Community Impact Statement Act of 2010”, amends D.C. Official Code § 23-1904, which provides, prior to the imposition of a sentence for a crime committed by a defendant, individual victims (and their family members) the right to submit Victim Impact Statements to be taken into consideration by a Judge when determining the appropriate sentence. Bill 18-549 extends this right to the larger public, through community groups, granting representatives of these groups affected by a felony crime the right to submit Community Impact Statements.

VII. FISCAL IMPACT

The attached February 19, 2010 fiscal impact statement from the Chief Financial Officer states that funds are sufficient in the FY 2010 through FY 2013 budget and financial plan to

implement the provisions of the proposed legislation. No additional District government resources are required by this legislation.

VIII. SECTION-BY-SECTION ANALYSIS

- Section 1 States the short title of Bill 18-549.
- Section 2 Amends D.C. Code § 23-1904 by adding a new subsection (f) to provide that a community representative has the right to submit a statement for the Court to consider when determining an appropriate sentence to impose on a defendant. “Community” is defined such that there could be multiple groups. This section allows the Community Impact Statement to address the effect of the crime or the criminal.
- There should be a standardized system for submitting Community Impact Statements. This section authorizes the Chief Judge to issue a single set of procedures that would apply throughout the Courthouse. Community Impact Statements should be received by a sentencing judge in sufficient time for them to be reviewed by the prosecutors and defense attorneys. Further, victims and defendants should not suffer from a delay in sentencing because the statement was submitted too late.
- This section also limits the submission of Community Impact Statements to felony crimes. Requiring the Court to review and consider Community Impact Statements for misdemeanor cases would have a negative effect on court efficiency. The Superior Court handles over 15,000 misdemeanor cases each year. In misdemeanor cases, the judge usually imposes the sentence immediately upon verdict or guilty plea. Requiring the judge to consider a Community Impact Statement in a misdemeanor case would require the judge to postpone sentencing to wait for the community to submit a statement. This would delay the speed in which offenders are held accountable through sentencing. Since judges order pre-sentence reports in most felony cases and continue sentencing for several weeks until the report is completed, requiring judges to consider Community Impact Statements in felony cases should not affect court efficiency.
- Section 3 Adopts the fiscal impact statement.
- Section 4 Establishes the effective date of this act: the standard 60-day Congressional Review for bills that include amendments to the criminal code.

IX. COMMITTEE ACTION

On April 13, 2010, the Committee on Public Safety and the Judiciary met to consider Bill 18-549, the "Community Impact Statement Act of 2010". The meeting was called to order at 2:14 p.m., and Bill 18-549 was the second item on the agenda. After ascertaining a quorum (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans present), Chairman Mendelson moved the print with leave for staff to make technical changes. After the opportunity for discussion, the vote on the print was unanimous (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans voting aye). Chairman Mendelson then moved the report with leave for staff to make technical and editorial changes. After the opportunity for discussion, the vote on the report was unanimous (Chairman Mendelson and Councilmembers Alexander, Bowser, Cheh, and Evans voting aye). The meeting adjourned at 2:40 p.m.

X. ATTACHMENTS

1. Bill 18-549 as introduced.
2. Written testimony and comments.
3. Fiscal Impact Statement.
4. Committee Print for Bill 18-549.