

Councilmember Patterson is moving The Millicent Allewelt Act of 2003 for approval at the Judiciary Committee's next Committee meeting. The Committee meeting is tentatively being held on December 3, 2003, with the final date and time to be confirmed early next week. Attached are the DRAFT committee print and report. You will note that there are still technical changes to be made to the print prior to mark-up next week.

The Committee has made substantial changes to the committee print. The bill as introduced required that evidence and records related to homicide and other violent crime investigations be preserved for 50 years. The Committee print makes the requirement 100 years for evidence and records related to homicide investigations (in response to testimony that 50 years may not be enough, given the fact that there is no statute of limitations for the crime of homicide). The requirement for non-homicide, violent crimes, has been substantially reduced to a period of time consistent with the statute of limitations for those crimes. The attached committee print shows the changes made by the Committee to the bill as introduced. I have also pasted below in this e mail message the Committee Reasoning section of the draft report, which explains the changes made between the bill as introduced and the committee print.

This legislation will not be moving on a fast track. It will be moved for consideration at the Committee of the Whole in December, first reading before the full Council in January, and second and final reading before the full Council in February. So if there are any recommended changes to the committee print, we have plenty of time to work through those before final consideration of the bill.

Please let me know if you have any comments or questions. And Happy Thanksgiving.

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As stated in the purpose and effect section of this report, Bill 15-34 seeks to avoid repetition of MPD's past negligence in the storage of evidence and records related to the investigation of homicides and other violent crimes.

The experience of the families of Millicent Allewelt and Diane Williams clearly illustrate the need for this legislation in the District of Columbia. District policy makers cannot afford to forget the impact of crime on individuals and society. Holly Kopp, Millicent Allewelt's niece who was seven years old when Allewelt was killed, testified:

"[Millicent's] death was devastating to my grandmother, Millicent's mother, Violet Allewelt. She suffered a huge stroke shortly after she received the news  
For the first time in my short life, I truly understood devastation."

Not preserving evidence that investigators need to solve violent crimes is an abrogation of duty to people like the Allewelts on the part of the District of Columbia government, particularly in light of recent advancements in forensic processing technology.

In response to those that may question the practicality of mandating the preservation of evidence for long periods of time, the success of the Los Angeles County police department's cold case review project, started on July 1, 2000 with the purpose of reviewing 3,000 previously unsolved cases, is instructive as to potential impact of such a mandate. As of May 1, 2003, LA County's cold case unit had:

\* reviewed 2,416 cases  
o identified 526 cases for further

investigation, of which:

- \* 118 cases were submitted for ballistic analysis
- \* 141 cases were submitted for physical/fingerprint analysis
- \* 66 cases were submitted for DNA analysis
- \* 201 cases were submitted for further field investigation

- o reassigned 115 cases to investigators
- o solved 33 cases

Those cases solved by LA County include a 1957 murder of two El Segundo police department officers, a 1977 rape murder, and a 1994 victim shot during an apparent narcotics transaction. The 1957 murder was solved with the use of new fingerprint processing technology. The 1977 murder was solved by extracting DNA from crime scene evidence and entering it into CODIS, the FBI database. The 1994 murder was solved by re-approaching witnesses who had changed their lifestyles and were later willing to testify. None of these cases could have been solved without the preservation of evidence and records from the original investigations.

The Committee further agrees with the argument made by Patricia Riley of the United States Attorney's Office during the Committee's public hearing on Bill 15-34. Ms. Riley noted that the Council passed the Innocence Protection Act in 2001 to preserve evidence from closed investigations with the purpose of protecting the innocent, and argued that fairness would dictate that the Council approve similar legislation requiring the preservation of evidence from open cases for the sake of victims and to aid the work of prosecutors.

The Committee has made several changes to Bill 15-34 as introduced. First, for homicide cases, the Committee print requires that evidence, case jackets and crime scene examination files be preserved for 100 years instead of the 50 years mandated by the bill as introduced. There is no statute of limitations for the crime of homicide. For this reason, the Committee concurs with the testimony of MPD and Ms. Riley that 50 years may not be

a

long enough retention period for evidence from homicide cases. According to Committee research, a 100-year requirement would be consistent with the policy and practice of other jurisdictions. The Prince Georges County, Maryland and LA County police departments both require that evidence from open homicide cases be preserved for 100 years. The Miami Dade County, Florida police department is required by state law to preserve evidence from both homicide and sexual assault investigations for 100 years.

The Committee print also eliminates the requirement that law enforcement agencies preserve for 50 years evidence from sexual assault cases, and from the following cases where there is biological material evidence: assault with intent to kill, aggravated assault, and assault with a deadly weapon.

The Committee originally made this proposal with the intent to capture investigations of attempted murder where there is DNA evidence, and for the purpose of exploring whether or not the Council should extend the statute of limitations for those crimes. The Committee concurs, however, that there is no practical rationale for preserving evidence from a crime after the statute of limitations has expired. While the Committee recommends reviewing whether the statute of limitations for some crimes should be extended, such a change in law will not be accomplished through Bill 15-34.

Instead of the 50-year requirement for non-homicide investigations, the committee print requires that MPD hold evidence and records from violent crime investigations for as long a period of time as is consistent with the relevant statute of limitations. Additional violent crimes have been added on the recommendation of the United States Attorney's Office. With this change, the reference to biological material evidence is no longer necessary and has been struck from the committee print. If the Council does ultimately decide to extend the statute of limitations for these crimes, the Millicent Allewelt Act would remain current since it merely references the section of the D.C. Official Code on statutes of limitations.

With the above changes to the Committee print, Bill 15-34 should be consistent with current MPD policy, given the fact that the crime of homicide has no statute of limitations. If MPD is not preserving evidence and records related to non-homicide investigations for as long as the District is able to bring charges against the perpetrators, then it certainly should be and will be required to do so with this act.

As for the issue of storage space, the Committee is confident that MPD's current facilities are capable of maintaining evidence and records pursuant to this legislation. MPD testified that its current evidence warehouse has 100,000 square feet of space and 1,000 square feet of refrigeration space off-site. A new storage facility planned by MPD will have 1,300 square feet of on-sight refrigerated space, 500 square feet of freezer space, and 103,601 total square feet (with 69,266 square feet for evidence storage). This is more storage space than the LA County police department has with 55,000 square feet of storage space, though LA County has 6,400 square feet of refrigerator space, more than MPD currently has or has planned. Further, since the public hearing on this legislation, MPD representatives have confirmed that MPD would be able to retain evidence and records from homicide investigations pursuant to this act, and that the main concern regarding lack of storage space had been related to the requirements in the bill as introduced related to non-homicide crimes. Deletion of the 50-year requirement for non-homicide items from the legislation should, therefore, eliminate any outstanding concerns. Finally, If it is not practical for MPD to preserve all pieces of evidence pursuant to this act, Section 3(e) of the Committee print allows for the disposal of bulky items when necessary. Regardless, the Committee recommends that MPD re-evaluate its plans and design for the new facility to ensure that it would be capable of complying with this act.

The Committee print requires the retention of case jackets and crime scene examination files for closed investigations only for as long as evidence

from those cases is preserved. The Committee agrees with the testimony of Rich Gilbert of the District of Columbia Association of Criminal Defense Lawyers that it does not make sense to preserve evidence pursuant to the Innocence Protection Act without preserving the files that go with the cases. MPD's own experience has borne out this argument. During the inventory conducted for the evidence audit, a lack of records with specific information regarding cases presented significant obstacles to matching evidence found with cases, and to matching open cases with evidence in the warehouse.

The Committee print also makes changes to the definitions of closed and open investigations contained in the bill as introduced. The Committee's intent is to only treat an investigation as closed if the perpetrator or perpetrators are convicted, or if there is no chance of ever prosecuting the individual or individuals responsible. An examination of conviction and prosecution rates show that cases often remain open beyond the MPD's initial arrest or closure of the case and this legislation requires that evidence and files be preserved until there is absolutely no chance of the case ever coming to final closure. The language in the committee print enumerates additional circumstances under which a case may never be closed that were not included in the bill as introduced.

The Committee print also requires that the United States Attorney and the D.C. Corporation Counsel, for cases under their respective jurisdictions, approve any destruction of evidence or records related to homicide cases.

The language creating a right to a civil action in section 4 has been narrowed and clarified in the Committee print so that only a victim or victim's family can bring a claim under section 4. Claims can be brought against a District of Columbia government employee or the District of Columbia government and only prospectively after enactment of the act.

A new section 6 has been added to the Committee print increasing the fine for committing the crime of tampering with evidence to \$5000.

The preliminary findings of the audit of MPD's Evidence Control Warehouse showed not only the extent of the negligence of MPD in preserving evidence in the past, but, more importantly, the amount of work to be

done

in the future. It is likely that there are open investigations that can be

closed through today's technology because of evidence sitting in the possession of MPD unfound or unprocessed. Just as the District of Columbia

has a responsibility to ensure that evidence is never again lost as it was

in the cases of Millicent Allewelt and Diane Williams, it has an equally great responsibility to ensure that everything possible is done to close those cases for which there is a possibility of closure.

MPD witnesses testified that there are two remaining phases of the evidence

audit and the Committee looks forward to those findings to come.

Further,

MPD testified that it would implement the recommendation of the evidence audit report that homicide cases be given one tracking number linking homicide case jackets and mobile crime files. This should help limit the confusion created by keeping different records of cases in different locations. Finally, the forensic services division began an audit of its own storage space shortly after the Committee's May 22, 2003 hearing.

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Committee looks forward to learning the results of this audit.

In its FY 2004 budget report authorizing funding for processing evidence from District cases in the Federal Bureau of Investigation's forensic lab, the Committee argued that greater focus on forensic analysis

in investigations would constitute a more pro-active, thorough approach to

investigating crime and better investigations overall. Bill 15-34 is consistent with this approach and the Committee recommends its approval to

the full Council.