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3
4 Chairman Phil Mendelson
5 at the request of the Attorney General
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7
8 A BILL
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12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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18 Chairman Mendelson, at the request of the Attorney General, introduced the following bill,
19 which was referred to the Committee on _____
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21 To amend An Act To provide for the mandatory reporting by physicians and institutions in the
22 District of Columbia of certain physical abuse of children to include clergy as mandated
23 reporters; to expand existing reporting requirements by professionals; to require
24 mandated reporters to notify the board of governors, if any, of any facility or institution
25 of a mandated report; require the chair of the board of governors, if any, to make a
26 separate report to MPD or CFSA; to require clergy to testify in Family Court proceedings
27 concerning information for which they must report; to increase the penalty for failure to
28 report; to require OAG to report a guilty verdict to the licensing board for which the
29 mandated reporter may be licensed; to establish training requirements for mandated
30 reporters; to establish a civil penalty for the failure of a mandated reporter to take the
31 required training; to require OAG in consultation with CFSA to develop and approve
32 training curriculum for mandated reporters and to give OAG rulemaking authority to
33 implement the provisions of the Act; to amend the Office of Administrative Hearings
34 Establishment Act of 2001 to provide a mechanism for a mandated reporter to challenge
35 the civil penalty for failing to take the required training; and to exempt from the
36 limitations on OAG's authority to issue subpoenas, subpoenas issued concerning the
37 violation of the mandatory reporting requirements.
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39 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
40 act may be cited as the "Protecting Children Through Mandatory Reporting Amendment Act of
41 2019".

1 Sec. 2. An Act To provide for the mandatory reporting by physicians and institutions in
2 the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80
3 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.), is amended as follows:

4 (a) Section 2 (D.C. Official Code § 4-1321.02) is amended as follows:

5 (1) Subsection (a) is amended to read as follows:

6 “(a) Notwithstanding D.C. Official Code §§ 14-307 and 14-309, any person specified in
7 subsection (b) of this section shall immediately report or have a report made to the Metropolitan
8 Police Department, at 911, or the Child and Family Services Agency, at its official hotline
9 number, when in the performance of their professional duties the person knows or has reasonable
10 cause to suspect that:

11 “(1) A child:

12 “(A) Has been or is in immediate danger of being, a mentally or physically
13 abused or neglected child, as defined in D.C. Official Code § 16-2301(9);

14 “(B) Has been, or is in immediate danger of being, the victim of “sexual
15 abuse” or “attempted sexual abuse” prohibited by the Anti-Sexual Abuse Act of 1994, effective
16 May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 et seq.);

17 “(C) Was assisted, supported, caused, encouraged, commanded, enabled,
18 induced, facilitated, or permitted to become a prostitute, consistent with the definition of
19 “prostitution” in section 2(3) of the Control of Prostitution and Sale of Controlled Substances in
20 Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; D.C.
21 Official Code § 22-2701.01(3));

22 “(D) Has an injury caused by a bullet; or

1 “(E) Has an injury caused by a knife or other sharp object which has been
2 caused by other than accidental means; or

3 “(2) An individual was as a child:

4 “(A) The victim of “sexual abuse” or “attempted sexual abuse” prohibited
5 by the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official
6 Code § 22-3001 et seq.), unless the person specified in subsection (b) knows that the perpetrator
7 of the sexual abuse or attempted sexual abuse is dead or permanently incapacitated; or

8 “(B) Assisted, supported, caused, encouraged, commanded, enabled,
9 induced, facilitated, or permitted to become a prostitute, consistent with the definition of
10 “prostitution” in section 2(3) of the Control of Prostitution and Sale of Controlled Substances in
11 Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; D.C.
12 Official Code § 22-2701.01(3)).”.

13 (2) Subsection (b) is amended to read as follows:

14 “(b)(1) Persons required to report pursuant to subsection (a) of this section shall include
15 Child and Family Services Agency employees, agents, and contractors, and every physician,
16 psychologist, medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse,
17 person involved in the care and treatment of patients, law-enforcement officer, humane officer of
18 any agency charged with the enforcement of animal cruelty laws, school official, teacher, athletic
19 coach, Department of Parks and Recreation employee, public housing resident manager, social
20 service worker, day care worker, minister as defined in paragraph (5) of this subsection, human
21 trafficking counselor as defined in D.C. Official Code § 14-311(2), domestic violence counselor
22 as defined in D.C. Official Code § 14-310(a)(2), and mental health professional as defined in
23 section 101(11) of the District of Columbia Mental Health Information Act of 1978, effective

1 March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01(11). Notwithstanding
2 paragraph (4) of this subsection, such persons are not required to report when employed by a
3 lawyer who is providing representation in a criminal, civil, including family law, or delinquency
4 matter and the basis for the suspicion arises solely in the course of that representation.

5 “(2) Whenever a person is required to report in his or her capacity as a member of
6 the staff of a hospital, religious facility or institution, school, social agency, or similar facility or
7 institution, he or she shall immediately notify the person in charge of the facility or institution, or
8 his or her designated agent, and the facility or institution’s board of directors, if any. The fact
9 that such a notification has been made does not relieve the person who was originally required to
10 report from his or her duty under subsection (a) of this section to have a report made promptly to
11 the Metropolitan Police Department or the Child and Family Services Agency.

12 “(3) The person in charge of the facility or institution, or his or her designated
13 agent, and the chair of the board of directors, if any, shall promptly report to the Metropolitan
14 Police Department of the District of Columbia, at 911, or the Child and Family Services Agency,
15 at its designated hotline phone number. The fact that a report has already been made does not
16 relieve the person in charge of the facility or institution, or his or her designated agent, and the
17 chair of the board of directors, if any, of the duty to each promptly report as required by
18 subsection (a) of this section.

19 “(4) A person required to make reports to either the Metropolitan Police
20 Department or the Child and Family Services Agency pursuant to subsection (a) of this section
21 shall do so even if the person’s knowledge or suspicion arises from communications described in
22 D.C. Official Code § 14-307.

1 “(5) For the purpose of this subsection, the term “minister” means any priest,
2 clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion
3 authorized to perform a marriage ceremony in the District of Columbia, and any duly accredited
4 practitioner of Christian Science.”.

5 “(6)(A) Notwithstanding paragraph (4) of this subsection, ministers shall not be
6 required to report if the basis for their knowledge or belief is the result of a confession or
7 penitential communication made by a penitent directly to the minister, or of any personal
8 observations made by the minister in the course of that communication, if:

9 “(i) The penitent made the confession or penitential
10 communication in confidence;

11 “(ii) The confession or penitential communication was made
12 expressly for a spiritual or religious purpose;

13 “(iii) The penitent made the confession or penitential
14 communication to the minister in the minister’s professional capacity; and

15 “(iv) The confession or penitential communication was made in the
16 course of discipline enjoined by the church or other religious body to which the minister belongs.

17 “(B) A confession or penitential communication made under any other
18 circumstances does not fall under this exemption.

19 “(C) Notwithstanding subparagraph (A) of this paragraph, a minister shall
20 report pursuant to subsection (a) if the minister receives information, from a source other than
21 the communications described in subparagraph (A), that leads the minister to know or reasonably
22 believe that any of the circumstances described in subsection (a) of this section exists.”.

23 (3) Subsection (e) is repealed.

1 (b) Section 5 (D.C. Official Code § 4-1321.05) is amended as follows:

2 (1) Designate the existing text as subsection (a).

3 (2) The newly designated subsection (a) is amended by striking the phrase
4 “Family Division” wherever it appears and inserting the phrase “Family Court” in its place.

5 (3) A new subsection (b) is added to read as follows:

6 “(b) Notwithstanding D.C. Official Code § 14-309, the sole clergy privilege applicable in
7 the Family Court of the Superior Court of the District of Columbia shall be the privilege
8 described in section 2(b)(6).”.

9 (c) Section 7 (D.C. Official Code § 4-1321.07) is amended to read as follows:

10 “Sec. 7. Failure to make report.

11 “(a) Any person required to make a report under this act who willfully fails to make such
12 a report shall be fined not more than \$2,500 or imprisoned not more than 180 days for a first
13 offense and fined not more than \$5,000 or imprisoned not more than 180 days for a second or
14 subsequent offense. The fines set forth in this subsection shall not be limited by section 101 of
15 the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law
16 19-317; D.C. Official Code § 22-3571.01). Violations of this act shall be prosecuted by the
17 Attorney General of the District of Columbia or his or her agent in the name of the District of
18 Columbia.

19 “(b) The Office of the Attorney General of the District of Columbia shall promptly notify
20 any appropriate licensing authority if a mandated reporter is found guilty of any violation of
21 subsection (a) of this section.”.

22 (d) A new section 8 is added to read as follows:

23 “Sec. 8. Training for mandatory reporters.

1 “(a) The Office of the Attorney General (“OAG”), in consultation with the Child and
2 Family Services Agency (“CFSA”), shall develop and approve a training curriculum explaining
3 the reporting requirements of this act and any regulations that are issued pursuant to it.”

4 “(b) Any person required to report pursuant to this act shall complete a training based
5 upon the curriculum required by subsection (a) of this section which is conducted by OAG or
6 which has been approved by OAG and conducted by CFSA or a third party.”

7 “(c) The training shall include:

8 “(1) The purpose of the mandated reporting requirements;

9 “(2) The legal definition of abuse and neglect, and other forms of victimization of
10 children that fall within the mandated reporter requirements, including suspected sexual abuse,
11 prostitution, injury caused by a bullet; and injuries caused by a knife or other sharp object which
12 has been caused by other than accidental means;

13 “(3) The legal duties imposed on mandated reporters;

14 “(4) How to report;

15 “(5) The scope of the mandated report;

16 “(6) Dual reporting requirements;

17 “(7) What happens after a report is filed;

18 “(8) What protections the law provides for a mandated reporter;

19 “(9) The penalty for failing to make a report; and

20 “(10) The hotline phone number for the Child and Family Services Agency.

21 “(d) Penalties for mandated reporters’ failure to attend required training

22 “(1) Any person required to attend mandated reporter training under this section
23 who fails to attend the training as required shall be subject to a civil fine of \$300.

1 “(2) Adjudication of any infraction of this subchapter shall be handled by the
2 Office of Administrative Hearings pursuant to section 6(b-25) of the Office of Administrative
3 Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official
4 Code § 2-1831.03(b-25)).”.

5 Sec. 3. Section 252(c)(2) of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995
6 (D.C. Law 10-257; D.C. Official Code § 22-3020.52(c)) is amended as follows:

7 (a) Subparagraph (A) is amended by striking the phrase “priest, clergyman, rabbi, or
8 other duly appointed, licensed, ordained, or consecrated minister of a given religion in the
9 District of Columbia, or a duly accredited practitioner of Christian Science in the District of
10 Columbia,” and inserting the phrase “minister, as that term is defined in section 2(b)(5) of An
11 Act To provide for the mandatory reporting by physicians and institutions in the District of
12 Columbia of certain physical abuse of children, approved November 6, 1966 (80 Stat. 1354; D.C.
13 Official Code § 4-1321.02(b)(5))” in its place.

14 (b) A new subparagraph (C) is added to read as follows:

15 “(C) Notwithstanding subparagraph (A) of this paragraph, a minister shall
16 report pursuant to subsection (a) if the minister receives information, from a source other than
17 the communications described in subparagraph (A), that leads the minister to know or reasonably
18 believe that a child is a victim of sexual abuse, regardless of whether the minister also received
19 information from a confession or penitential communication.”.

20 Sec. 4. Section 6 of the Office of Administrative Hearings Establishment Act of 2001,
21 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by
22 adding a new subsection (b-25) to read as follows:

1 "(b-25) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2),
2 (b-3), (b-4), (b-5), (b-6), (b-7), (b-8), (b-9), (b-10), (b-11), (b-12), (b-13), (b-14), (b-15), (b-16),
3 (b-17), (b-18), (b-19), (b-20), (b-21), (b-22), (b-23), and (b-24), of this section, this act shall
4 apply to all adjudicated cases involving the failure of mandated reporters to take mandated
5 reporter training pursuant to An Act To provide for the mandatory reporting by physicians and
6 institutions in the District of Columbia of certain physical abuse of children, approved November
7 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.).”.

8 Sec. 5. Subpoena Power

9 Section 108c of the Attorney General for the District of Columbia Clarification and
10 Elected Term Amendment Act of 2010, effective June 3, 2011 (D.C. Law 18-76; D.C. Official
11 Code § 1-301.88c) is amended as follows:

12 (a) Subsection (a) is amended by striking the phrase “subsection (c)” and inserting the
13 phrase “subsection (c) or (g)” in its place.

14 (b) Subsection (b)(5) is amended by striking the phrase “that the documents sought are
15 not available by other means as defined in subsection (c)(2) of this section” and inserting the
16 phrase “either that the documents sought are not available by other means as defined in
17 subsection (c)(2) of this section, or that the condition described in subsection (g)(2) has been
18 satisfied, whichever is applicable.”.

19 (c) Subsection (c) is amended by adding a new paragraph (3) to read as follows:

20 “(3) This subsection shall not apply to any subpoena concerning a violation of the
21 mandatory reporting requirements in:

1 “(A) An Act To provide for the mandatory reporting by physicians and
2 institutions in the District of Columbia of certain physical abuse of children, approved November
3 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.); or

4 “(B) Section 252 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995
5 (D.C. Law 10-257; D.C. Official Code § 22-3020.52).”.

6 (d) Subsection (d)(2) is amended by striking the phrase “subsection (c)” and inserting the
7 phrase “subsection (c) or (g), whichever is applicable,” in its place.

8 (e) Subsection (f)(4) is amended by striking the phrase “of this section” and inserting the
9 phrase “of this section, if applicable,” in its place.

10 (f) A new subsection (g) is added to read as follows:

11 “(g) The Attorney General shall not have the authority to issue a subpoena concerning a
12 violation of the mandatory reporting requirements in An Act To provide for the mandatory
13 reporting by physicians and institutions in the District of Columbia of certain physical abuse of
14 children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.), or
15 in section 252 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257;
16 D.C. Official Code § 22-3020.52), if:

17 “(1) An indictment, information, or petition has been filed with the court formally
18 charging the target of the investigation; or

19 “(2) Consent has not been sought for the release of the documents, unless a
20 determination has been made that requesting such consent would threaten or impede the
21 investigation.”.

22 Sec. 6. Rulemaking authority.

1 Within 180 days after the effective date of this act, the Attorney General for the District of
2 Columbia, in consultation with the Mayor, shall issue rules to implement the Act, including:

- 3 (1) The scope of the training;
- 4 (2) The minimum number of training hours mandated reporters must attend;
- 5 (3) How much time a new practitioner has to take the training;
- 6 (4) How often mandated reporters must take training;
- 7 (5) The process for approving the training curriculum given by CFSA, other District
8 agencies, or third parties; and
- 9 (6) The process for certifying that mandated reporters have taken the required training.

10 Sec. 7. Fiscal impact statement.

11 The Council adopts the fiscal impact statement in the committee report as the fiscal
12 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
13 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

14 Sec. 8. Effective date.

15 This act shall take effect following approval by the Mayor (or in the event of veto by the
16 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
17 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
18 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
19 Columbia Register.