

1
2
3
4 _____
5 Chairman Phil Mendelson
6 at the request of the Attorney General
7

8 A BILL
9
10 _____
11

12
13 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
14
15 _____
16

17
18 Chairman Mendelson, at the request of the Attorney General, introduced the following bill,
19 which was referred to the Committee on _____
20

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, DCHA and
23 DCRA inspectors, and employees and contractors of public utilities and cable operators
24 as mandated reporters; to require mandated reporters to report when a child has been or is
25 in immediate danger of being assaulted by a teacher, counselor, principal, coach, day care
26 worker or other person of authority in a preschool or elementary or secondary school; to
27 replace references to prostitution with references to terms contained in the Prohibition
28 Against Human Trafficking Amendment Act of 2010; to expand existing reporting
29 requirements by professionals; to require mandated reporters to notify the board of
30 governors, if any, of any facility or institution of a mandated report; to require the chair
31 of the board of governors, if any, to make a separate report to MPD or CFSA; to require
32 clergy to testify in Family Court proceedings concerning information for which they must
33 report; to increase the penalty for failure to report; to require OAG to report a guilty
34 verdict against a mandatory reporter to the relevant licensing board; to establish training
35 requirements for mandated reporters; to establish a civil penalty for the failure of a
36 mandated reporter to take the required training; to require OAG in consultation with
37 CFSA to develop and approve training curriculum for mandated reporters and to give the
38 Mayor rulemaking authority to implement the provisions of the Act; to amend the Office
39 of Administrative Hearings Establishment Act of 2001 to provide a mechanism for a
40 mandated reporter to challenge the civil penalty for failing to take the required training;
41 to exempt, from the limitations on OAG's authority to issue subpoenas, subpoenas issued
42 concerning the violation of the mandatory reporting requirements; to amend the Adult
43 Protective Services Act of 1984 to clarify the reporting requirement and increase the
44 penalty for failure to report; and to amend the Child Development Facilities Regulation
45 Act of 1998 to clarify that violations of the rules promulgated pursuant to that act are
46 subject to criminal penalties.

1
2 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
3 act may be cited as the “Protecting Children and Vulnerable Adults Through Mandatory
4 Reporting Amendment Act of 2021”.

5 TITLE I. MANDATED REPORTING OF ABUSE, NEGLECT, AND OTHER HARM
6 TO CHILDREN

7 Sec. 101. Short title.

8 This title may be cited as the “Protecting Children Through Mandatory Reporting
9 Amendment Act of 2021”.

10 Sec. 102. An Act To provide for the mandatory reporting by physicians and institutions in
11 the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80
12 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.), is amended as follows:

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

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

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

20 “(1) A child:

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

1 “(B) Has been or is in immediate danger of being assaulted by a teacher,
2 counselor, principal, coach, day care worker or other person of authority in a preschool or
3 elementary or secondary school.

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

7 “(D) Performed, or was encouraged, commanded, induced, or facilitated to
8 perform, a commercial sex act, as that term is defined in section 101(4) of the Prohibition
9 Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-
10 239; D.C. Official Code § 22-1831(4));

11 “(E) Was a victim of sex trafficking of children, as described in section
12 104 of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October
13 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1834).

14 “(F) Has an injury caused by a bullet; or

15 “(G) Has an injury caused by a knife or other sharp object which has been
16 caused by other than accidental means; or

17 “(2) An individual was as a child:

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

22 “(B) Performed, or was encouraged, commanded, induced, or facilitated to
23 perform, a commercial sex act, as that term is defined in section 101(4) of the Prohibition

1 Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-
2 239; D.C. Official Code § 22-1831(4)).”.

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

4 “(b)(1) Persons required to report pursuant to subsection (a) of this section are Child and
5 Family Services Agency employees, agents, and contractors, and every physician, psychologist,
6 medical examiner, dentist, chiropractor, registered nurse, licensed practical nurse, person
7 involved in the care and treatment of patients, law-enforcement officer, humane officer or any
8 employee of an agency charged with the enforcement of animal cruelty laws, school official,
9 teacher, athletic coach, Department of Parks and Recreation employee, public housing resident
10 manager, social service worker, day care worker, District of Columbia Housing Authority
11 inspector, Department of Consumer and Regulatory Affairs inspector, employee or contractor of
12 a public utility or a cable operator, minister, human trafficking counselor, domestic violence
13 counselor, and mental health professional. Notwithstanding paragraph (4) of this subsection,
14 such persons are not required to report when employed by a lawyer who is providing
15 representation in a criminal, civil, including family law, or delinquency matter and the basis for
16 the knowledge or suspicion arises solely in the course of that representation.

17 “(2) Whenever a person is required to report in his or her capacity as a member of
18 the staff of a hospital, religious facility or institution, school, social agency, or similar facility or
19 institution, he or she shall also immediately notify the person in charge of the facility or
20 institution, or his or her designated agent, and the facility or institution’s board of directors, if
21 any. The fact that such a notification has been made shall not relieve the person who was
22 originally required to report from his or her duty under subsection (a) of this section to have a

1 report made promptly to the Metropolitan Police Department or the Child and Family Services
2 Agency.

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

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

13 “(5)(A) Notwithstanding paragraph (4) of this subsection, a minister shall not be
14 required to report if the basis for the minister’s knowledge or belief is the result of a confession
15 or penitential communication made by a penitent directly to the minister, or of any personal
16 observations made by the minister in the course of that communication, if:

17 “(i) The penitent made the confession or penitential
18 communication in confidence;

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

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

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

3 “(B) A confession or penitential communication made under any other
4 circumstances shall not fall under this exemption.

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

9 (3) Subsection (e) is repealed.

10 (4) New subsection (i) is added to read as follows:

11 “(i) For the purposes of this section:

12 “(1) “Assault” means what it means in section 806 of An Act To establish a code
13 of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code
14 § 22-404).

15 “(2) “Cable operator” means what it means in section 103(6) of the Cable
16 Television Reform Act of 2002, effective October 9, 2002 (D.C. Law 14-193; D.C. Official Code
17 § 34-1251.03(6)).

18 “(3) “Domestic violence counselor” means what it means in D.C. Official Code §
19 14-310(a)(2).

20 “(4) “Human trafficking counselor” means what it means in D.C. Official Code §
21 14-311(a)(2).

1 “(5) “Mental health professional” means what it means in section 101(11) of the
2 District of Columbia Mental Health Information Act of 1978, effective March 3, 1979 (D.C. Law
3 2-136; D.C. Official Code § 7-1201.01(11).

4 “(6) “Minister” means any priest, clergyman, rabbi, or other duly licensed,
5 ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the
6 District of Columbia, and any duly accredited practitioner of Christian Science.

7 “(7) “Public utility” means what it means in section 8, paragraph 1, third
8 unnumbered paragraph, of An Act Making appropriations to provide for the expenses of the
9 government of the District of Columbia for the fiscal year ending June thirtieth, nineteen
10 hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; D.C.
11 Official Code § 34-214).”.

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

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

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

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

17 “(b) Notwithstanding D.C. Official Code § 14-309, the sole clergy privilege applicable in
18 the Family Court shall be the privilege described in section 2(b)(5).”.

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

20 “Sec. 7. Failure to make report.

21 “(a) Any person required to make a report under this act who willfully fails to make such
22 a report shall be fined not more than \$2,500 or imprisoned not more than 180 days for a first
23 offense and fined not more than \$5,000 or imprisoned not more than 180 days for a second or

1 subsequent offense. The fines set forth in this subsection shall not be limited by section 101 of
2 the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law
3 19-317; D.C. Official Code § 22-3571.01). Violations of this act shall be prosecuted by the
4 Attorney General of the District of Columbia or his or her agent in the name of the District of
5 Columbia.

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

9 (d) New sections 8 and 9 are added to read as follows:

10 “Sec. 8. Training for mandatory reporters.

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

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

17 “(c) The training shall include:

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

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

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

- 1 “(4) How to report;
- 2 “(5) The scope of the mandated report;
- 3 “(6) Dual reporting requirements;
- 4 “(7) What happens after a report is filed;
- 5 “(8) What protections the law provides for a mandated reporter;
- 6 “(9) The penalty for failing to make a report; and
- 7 “(10) The hotline phone number for the Child and Family Services Agency.

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

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

11 “(2) Adjudication of any infraction of this subchapter shall be handled by the
12 Office of Administrative Hearings pursuant to section 6(b-28) of the Office of Administrative
13 Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official
14 Code § 2-1831.03(b-28)).

15 “Sec. 9. Rulemaking authority.

16 “Within 180 days after the effective date of the Protecting Children Through Mandatory
17 Reporting Amendment Act of 2021, as introduced on _____, 2021 (Bill 24-___), the Mayor, in
18 consultation with the Attorney General for the District of Columbia, shall issue rules to
19 implement the Act, including:

- 20 “(1) The scope of the training;
- 21 “(2) The minimum number of training hours mandated reporters must attend;
- 22 “(3) How much time a new practitioner has to take the training;
- 23 “(4) How often mandated reporters must take training;

1 “(5) The process for approving the training curriculum given by CFSA, other District
2 agencies, or third parties; and

3 “(6) The process for certifying that mandated reporters have taken the required training.”.

4 Sec. 103. Section 252(c)(2) of the Anti-Sexual Abuse Act of 1994, effective May 23,
5 1995 (D.C. Law 10-257; D.C. Official Code § 22-3020.52(c)(2)) is amended as follows:

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

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

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

19 Sec. 104. Section 6 of the Office of Administrative Hearings Establishment Act of 2001,
20 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by
21 adding a new subsection (b-28) to read as follows:

22 “(b-28) This act shall apply to all adjudicated cases involving the failure of mandated
23 reporters to take mandated reporter training pursuant to An Act To provide for the mandatory

1 reporting by physicians and institutions in the District of Columbia of certain physical abuse of
2 children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.).”.

3 Sec. 105. Subpoena Power

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

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

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

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

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

17 “(A) An Act To provide for the mandatory reporting by physicians and
18 institutions in the District of Columbia of certain physical abuse of children, approved November
19 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.01 et seq.); or

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

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

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

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

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

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

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

15 Sec. 106. Definitional amendment.

16 D.C. Official Code § 16-2301(12)(C) is amended to read as follows:

17 “(C) who is an employee of a residential facility, in the case of the placement of an
18 abused or neglected child.”.

19 TITLE II. MANDATED REPORTING OF ABUSE, NEGLECT, AND
20 EXPLOITATION OF VULNERABLE ADULTS

21 Sec. 201. Short title.

22 This title may be cited as the “Protecting Vulnerable Adults Through Mandatory
23 Reporting Amendment Act of 2021”.

1 Sec. 202. The Adult Protective Services Act of 1984, effective March 14, 1985 (D.C.
2 Law 5-156, D.C. Official Code § 7-1901 *et seq.*), is amended as follows:

3 (a) Section 4 (D.C. Official Code § 7-1903) is amended as follows:

4 (1) Subsection (a)(1) is amended as follows:

5 (A) Strike the phrase “social worker has as” and insert the phrase “social
6 worker knows or has reasonable cause to suspect, as” in its place.

7 (B) Strike the phrase “practice substantial cause to believe” and insert the
8 phrase “practice,” in its place.

9 (C) Strike the phrase “this belief” and insert the phrase “such knowledge
10 or suspicion” in its place.

11 (2) Subsection (c) is amended by striking the phrase “the division within the
12 Department designated by the Mayor to receive these reports” and inserting the phrase “either
13 the Metropolitan Police Department or Adult Protective Services” in its place.

14 (b) Section 13(a)(1) (D.C. Official Code § 7-1912(a)(1)) is amended by striking the
15 phrase “\$300” and inserting the phrase “the amount set forth in section 101 of the Criminal Fine
16 Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C.
17 Official Code § 22-3571.01), or imprisonment for not more than 180 days” in its place.

18 Sec. 203. Section 303 of the Disability Services Reform Amendment Act of 2018,
19 effective May 5, 2018 (D.C. Law 22-93; D.C. Official Code § 7-2133), is amended as follows:

20 (a) Subsection (c)(1) is amended by striking the phrase “has substantial cause to believe”
21 and inserting the phrase “knows or has reasonable cause to suspect” in its place.

22 (b) Subsection (d) is amended by striking the phrase “has substantial cause to believe”
23 and inserting the phrase “knows or has reasonable cause to suspect” in its place.

1 (c) Subsection (f) is amended to read as follows:

2 “(f)(1) If a District employee is aware of the existence of a supported decision-making
3 agreement, knows or has reasonable cause to suspect that the supported person is an adult in
4 need of protective services, and knows or has reasonable cause to suspect that the person is being
5 abused, neglected, or exploited, the District employee shall immediately report that the known or
6 suspected abuse, neglect, or exploitation to the District agency where the supported person
7 receives services.

8 “(2) This subsection shall not be construed to limit the reporting duties applicable
9 to a mandated reporter under section 4 of the Adult Protective Services Act of 1984, effective
10 March 14, 1985 (D.C. Law 5-156, D.C. Official Code § 7-1903).”.

11 TITLE III. CLARIFICATION OF PENALTIES FOR VIOLATIONS OF
12 REGULATIONS ISSUED PURSUANT TO THE CHILD DEVELOPMENT FACILITIES
13 REGULATION ACT OF 1998

14 Sec. 301. Short title.

15 This title may be cited as the "Child Development Facilities Regulation Amendment Act
16 of 2020”.

17 Sec. 302. Section 17(a) of the Child Development Facilities Regulation Act of 1998,
18 effective April 13, 1999 (D.C. Law 12-215; D.C. Official Code § 7-2046(a)), is amended by
19 striking the phrase “provision of this act” and inserting the phrase “provision of this act or of
20 rules issued under the authority of this act” in its place.

21 TITLE IV. FISCAL IMPACT STATEMENT AND EFFECTIVE DATE

22 Sec. 401. Fiscal impact statement.

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

4 Sec. 402. Effective date.

5 This act shall take effect following approval by the Mayor (or in the event of veto by the
6 Mayor, action by the Council to override the veto), a 30-day period of congressional review as
7 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
8 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
9 Columbia Register.