

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

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ATTORNEY GENERAL
KARL A. RACINE



OFFICE OF THE
SECRETARY

January 23, 2019

The Honorable Phil Mendelson
Chairman, Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Suite 504
Washington, DC 20004

Dear Chairman Mendelson:

I am writing to transmit the *Protecting Children Through Mandatory Reporting Amendment Act of 2019* (“Bill”) for consideration and enactment by the Council of the District of Columbia.

Under current District law, certain kinds of professionals who regularly work with children – including teachers, school officials, health care workers, and daycare workers – are mandated reporters for suspected child abuse or neglect. The mandated reporters must immediately report the abuse to authorities as well as to the heads of any institutions at which they work, who must also report the abuse. The Office of the Attorney General (OAG) currently has the authority to bring charges leading to fines and/or jail time against teachers, doctors, and other people who are required to report suspected child abuse but fail to do so.

This Bill updates and expands the District’s mandatory reporting law by:

- **Strengthening protections for children:** The proposal broadens the circumstances under which mandatory reporters must contact the authorities. It ensures that reporters must report all suspected child abuse, whether or not they have come into direct contact with the child, and that reporters must notify authorities about child sex abuse even if the victim is now an adult.
- **Making clergy mandated reporters of child abuse:** The bill would add clergy to the list of individuals required to report abuse. The District would join the overwhelming majority of other jurisdictions that already require clergy to report abuse.
- **Requiring religious institutions and boards of directors to report child abuse:** The bill would add churches, synagogues and other religious institutions to the list of organizations

whose leaders have an independent responsibility to report abuse to authorities after becoming aware of it. This bill also requires mandated reporters to report not only to the police and child services, but also to the heads of their institutions and their boards of directors to protect all the children in that institution. The institution heads and chairpersons of the boards of directors would have an independent duty to, in turn, report that abuse.

- **Stiffening penalties for failure to report child abuse:** Currently, the potential penalties for failure to report under District law includes jail sentences of up to 180 days and fines of up to \$1,000. The bill would increase the maximum fine to \$2,500 for the first offense and up to \$5,000 for subsequent offenses. In addition, for mandated reporters in licensed professions, the bill would require OAG to notify the relevant licensing board of a conviction.
- **Requiring training and certification for mandated reporters:** Currently, there are no training or certification requirements for mandated reporters in the District. The new bill would create requirements for mandatory reporters to receive regular certification and training and establish a \$300 civil fine for failure to comply with those requirements. The specific requirements would be determined through regulations.

The Office of the Attorney General looks forward to working with the Council and other stakeholders to ensure the District continues to update our laws to best protect the health, safety, and wellbeing of residents. If you have any questions, you may contact me, or your staff may contact Deputy Attorney General James Pittman on (202) 724-6517.

Sincerely,



Karl A. Racine
Attorney General for the District of Columbia



Chairman Phil Mendelson
at the request of the Attorney General

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

To amend An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children to include clergy as mandated reporters; to expand existing reporting requirements by professionals; to require mandated reporters to notify the board of governors, if any, of any facility or institution of a mandated report; require the chair of the board of governors, if any, to make a separate report to MPD or CFSA; to require clergy to testify in Family Court proceedings concerning information for which they must report; to increase the penalty for failure to report; to require OAG to report a guilty verdict to the licensing board for which the mandated reporter may be licensed; to establish training requirements for mandated reporters; to establish a civil penalty for the failure of a mandated reporter to take the required training; to require OAG in consultation with CFSA to develop and approve training curriculum for mandated reporters and to give OAG rulemaking authority to implement the provisions of the Act; to amend the Office of Administrative Hearings Establishment Act of 2001 to provide a mechanism for a mandated reporter to challenge the civil penalty for failing to take the required training; and to exempt from the limitations on OAG's authority to issue subpoenas, subpoenas issued concerning the violation of the mandatory reporting requirements.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
act may be cited as the "Protecting Children Through Mandatory Reporting Amendment Act of
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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: James Pittman
Deputy Attorney General for Legislative, Intergovernmental, and
Community Engagement
Office of the Attorney General

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: January 18, 2019

SUBJECT: Legal Sufficiency Review – Draft “Protecting Children Through Mandatory
Reporting Amendment Act of 2019”
(AE-18-563 C)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in blue ink, appearing to read 'JMR/Janet Robins', written over a horizontal line.

Janet M. Robins