

AN ACT

Bill 19-647
Act 19-627
effective
January 22,
2013

Codification
District of
Columbia
Official Code
2001 Edition

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 provide that persons who violate the reporting requirements of the act shall not be prosecuted under Title II-A of the Anti-Sexual Abuse Act of 1994 and to increase the penalty for those who are required to report but fail to do so; to amend the Office of Administrative Hearings Establishment Act of 2001 to provide the office with jurisdiction over adjudicated cases involving the failure to report known or reasonably believed child sexual abuse pursuant to Title II-A of the Anti-Sexual Abuse Act of 1994; and to amend the Anti-Sexual Abuse Act of 1994 to require the reporting of child sexual abuse to the Metropolitan Police Department, the 911 Emergency Call Center, or the Child and Family Services Agency, to require any adult, except for those covered by the attorney-client or the clergy-penitent privilege, with knowledge or reasonable cause to believe that a child is a victim of sexual abuse to make a report, to exempt adult survivors of child sexual abuse from having to report their abuser, to create a defense to non-reporting for victims of domestic violence, and to establish penalties for the failure to report.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Child Sexual Abuse Reporting Amendment Act of 2012”.

Child Sexual
Abuse
Reporting
Amendment
Act of 2012

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

(a) Section 2 (D.C. Official Code § 4-1321.02) is amended by adding a new subsection (g) to read as follows:

Amend
§ 4-1321.02

“(g) A person who violates this section shall not be prosecuted under Title II-A of the Anti-Sexual Abuse Act of 1994, passed on 2nd reading on December 4, 2012 (Enrolled version of Bill 19-647).”.

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

Amend
§ 4-1321.07

“Sec. 7. Failure to make report.

“Any person required to make a report under this act who willfully fails to make such a report shall be fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, passed on 2nd reading on November 1, 2012 (Enrolled version of Bill 19-214), imprisoned not more than 180 days, or both. Violations of this act shall be prosecuted by the Attorney General of the District of Columbia or his or her agent in the name of the District of Columbia.”.

Sec. 3. Section 6 of the Office of Administrative Hearings Establishment Act of 2001, effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03,) is amended by adding a new subsection (b-6) to read as follows:

Amend
§ 2-1831.03

“(b-6) In addition to those adjudicated cases listed in subsections (a), (b), (b-1), (b-2), (b-3), (b-4), and (b-5) of this section, this act shall apply to all adjudicated cases involving the failure to report known or reasonably believed child sexual abuse pursuant to Title II-A of the Anti-Sexual Abuse Act of 1994, passed on 2nd reading on December 4, 2012 (Enrolled version of Bill 19-647).”.

Sec. 4. The Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3001 *et seq.*), is amended as follows:

(a) A new Title II-A is added to read as follows:

“TTITLE II-A. REPORTING REQUIREMENTS IN CHILD SEXUAL ABUSE
OFFENSE CASES.

“Sec. 251. Definitions.

New
§ 22-3020.51

“For the purposes of this title, the term:

“(1) “Child” means an individual who has not yet attained the age of 16 years.

“(2) “Person” means an individual 18 years of age or older.

“(3) “Police” means the Metropolitan Police Department.

“(4) “Sexual abuse” means any act that is a violation of:

“(A) Section 104 of the Prohibition Against Human Trafficking
Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1834);

“(B) Section 813 of An Act To establish a code of law for the District of
Columbia, approved March 3, 1901 (31 Stat. 1322; D.C. Official Code § 22-2704);

“(C) This act (D.C. Official Code § 22-3001 *et seq.*); or

“(D) Section 3 of the District of Columbia Protection of Minors Act of
1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-3102).

“Sec. 252. Reporting requirements and privileges.

New
§ 22-3020.52

“(a) Any person who knows, or has reasonable cause to believe, that a child is a victim of sexual abuse shall immediately report such knowledge or belief to the police. For the purposes of this title, a call to 911, or a report to the Child and Family Services Agency, shall be deemed a report to the police.

“(b) Any person who is or has been a victim of sexual abuse is not required to report pursuant to subsection (a) of this section if the identity of the alleged perpetrator matches the identity of the victim’s abuser.

“(c) No legally recognized privilege, except for the following, shall apply to this title:

“(1) A lawyer or a person employed by a lawyer is not required to report pursuant to subsection (a) of this section if the lawyer or employee is providing representation in a criminal, civil, or delinquency matter, and the basis for the knowledge or belief arises solely in the course of that representation.

“(2)(A) The notification requirements of subsection (a) of this subsection do not apply to a priest, clergyman, rabbi, or other duly appointed, licensed, ordained, or consecrated minister of a given religion in the District of Columbia, or a duly accredited practitioner of

Christian Science in the District of Columbia, if the basis for the knowledge or belief is the result of a confession or penitential communication made by a penitent directly to the minister if:

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

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

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

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

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

“(d) This section should not be construed as altering the special duty to report by persons specified in section 2(b) of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.02(b)).

“Sec. 253. Defense to non-reporting.

New
§ 22-3020.53

“(a) Any survivor of domestic violence may use such domestic violence as a defense to his or her failure to report under this title.

“(b) For the purposes of this section, the term “domestic violence” means intimate partner violence, as defined in D.C. Official Code § 16-1001(7), and intrafamily violence, as defined in D.C. Official Code § 16-1001(9).

“Sec. 254. Penalties.

New
§ 22-3020.54

“(a) Any person required to make a report under this title who willfully fails to make such a report shall be subject to a civil fine of \$300.

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

“Sec. 255. Immunity from liability.

New
§ 22-3020.55

“(a) Any person who in good faith makes a report pursuant to this title shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of the report or any participation in any judicial proceeding involving the report. In all civil or criminal proceedings concerning the child or resulting from the report, good faith shall be presumed unless rebutted.

“(b) Any person who makes a good-faith report pursuant to this title and, as a result thereof, is discharged from his or her employment or in any other manner discriminated against with respect to compensation, hire, tenure, or terms, conditions, or privileges of employment, may commence a civil action for appropriate relief. If the court finds that the person is an individual who was required to report, who in good faith made a report, and who was discharged

or discriminated against as a result, the court may issue an order granting appropriate relief, including reinstatement with back pay. The District may intervene in any action commenced under this subsection.”.

Sec. 5. Fiscal impact statement.

The Council adopts the November 15, 2012, fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.