

**Testimony before the District of Columbia Council
Committee on Public Safety and the Judiciary
Hearing on the Child Sexual Abuse Reporting Act of 2012**

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The Legal Aid Society of the District of Columbia (“Legal Aid”) unequivocally shares the Council’s commitment to ensuring that all District children are safe from sexual abuse. We also share the Council’s concern that, for all too many children, this is not yet a reality. We applaud the Council’s desire to encourage victims and third parties to feel safe coming forward to report these crimes, and we also support its efforts to ensure that third-party reporters who do speak up are protected from any form of retaliation by their employers.

That said, we have serious reservations about the Child Sexual Abuse Reporting Act of 2012 (the “Act”). We believe that, as drafted, the Act presents a number of irreconcilable problems that strongly militate against its passage. We agree with our colleagues at the Children’s Law Center and the D.C. Coalition against Domestic Violence that mandating reporting from all persons in the District, without exception, would do more harm than good.

As an initial matter, we are unaware of any credible evidence to support the notion that laws imposing a mandatory duty to report abuse on every member of the public reduces the number of child abuse incidents.¹ No doubt the members of this committee know that under existing D.C. law, teachers, school officials, social service workers, day care workers, and health practitioners are already mandated reporters.² Existing law also permits any other member of the public to make a report of suspected abuse. This Act, however, would radically extend the legal obligation to report – and the corresponding criminal and civil penalties – to all adults in the District. Given the difficulty for even trained professionals who work with children and families day in and day out to correctly identify actual child abuse,³ there is simply no reason to believe that creating a legal obligation for everyone to report would increase child safety.

The lack of evidence demonstrating that broad mandatory reporting laws like this one are effective in improving child safety makes the harms and burdens of this Act – on the public, on District families, on governmental agencies, and on civil legal services organizations like Legal Aid – even more problematic. First, Legal Aid’s client community directly overlaps with the

¹ See NATIONAL RESEARCH COUNCIL, VIOLENCE IN FAMILIES: ASSESSING PREVENTION AND TREATMENT PROGRAMS 160-63 (Rosemary Chalk & Patricia A. King, eds., The National Academies Press, 1998).

² See generally D.C. Code § 16-2301 (2008).

³ See CHILDREN’S BUREAU, U.S. DEP’T OF HEALTH & HUM. SERV., CHILD MALTREATMENT: 2010 12 (2011) (reporting that, of the 5,579 reports of child abuse in D.C. in 2010, 3,882 were unsubstantiated after investigation).

population of District residents already most likely to be reported for child abuse – families in poverty or struggling on the cusp of poverty, racial, ethnic, and language minorities, single parents, families with infants, and those battling drug and alcohol dependencies. Many of our adult clients are already subject to regular government intrusion into their private lives in order to obtain housing, healthcare, and sustenance. But investigations into allegations of suspected abuse, filed by individuals fearing civil or criminal liability if they say nothing about their suspicions, are especially traumatic for the child. The child could be removed from the home for the duration of the investigation (which could last several months) and, in the case of sexual abuse, could be subject to invasive physical examinations. Research suggests that any forced removal from the home can have lasting negative consequences on a child’s cognitive, social and behavioral wellbeing.⁴ The possibility that such removals can and will occur more often because third-party observers, fearing liability, merely suspect the possibility of abuse will have a dramatic and negative impact on this vulnerable segment of the District’s population.

Second, by enforcing universal mandated reporting with the threat of civil and criminal sanctions, the Act would incentivize District residents to protect themselves by reporting any suspicion of abuse, however frivolous or spurious. The Act could dramatically increase the number of reports and corresponding investigations into families, thereby increasing the number of children harmed by unnecessary removals from their homes. This increased volume, in turn, would dilute Child Protective Services’ ability to focus on the most egregious cases, risking the possibility that a true case of child sexual abuse might slip through the cracks. Especially given that research has not proven mandated reporting to be effective at increasing child safety, Legal Aid does not think that this Act is a desirable public policy.

Third, Legal Aid is deeply concerned about the negative impact the Act would have on victims of domestic and sexual violence. Domestic violence often affects the entire household, yet a victim with knowledge of child sexual abuse is often unable to safely report the abuser while he or she remains in the home or subject to the control of the abuser. The Act provides no exception for these circumstances. Nor does the Act consider the oftentimes severe mental health trauma associated with abuse. A child who turns 18 may be psychologically unable to report an abuser, even if a younger child remains in the household subject to the same abuse. Rather than acknowledging the complexities of these horrific situations, this Act would subject these victims to civil and criminal penalties, including possible incarceration.

Finally, as the oldest and one of the largest general civil legal services providers in the District, Legal Aid believes it is especially problematic that the Act lacks any exception for attorney-client communications. The D.C. Rules of Professional Conduct governing attorneys barred in the District mandates that attorneys keep confidential their client’s confidences and

⁴ See Fred Wulczyn, *Epidemiological Perspectives on Maltreatment Prevention*, THE FUTURE OF CHILDREN, Fall 2009, at 41.

secrets. Furthermore, the United States Supreme Court and the D.C. Court of Appeals recognize an attorney-client privilege to testifying against a client.⁵ The Act would undercut both of these long-standing institutions of the legal profession, disabling our ability to represent the most vulnerable clients effectively.

For these reasons, Legal Aid strongly encourages Chairman Mendelson and the Judiciary Committee to oppose enactment of the Child Sexual Abuse Reporting Act as currently drafted. Legal Aid would welcome the opportunity to work with the Chairman and the Committee in the future to craft more nuanced legislation to address our shared concerns about child sexual abuse.

⁵ *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981); accord *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888).