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2 Councilmember Tommy Wells

Chairman Phil Mendelson

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11 A BILL
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16 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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21 Chairman Phil Mendelson and Councilmember Tommy Wells introduced the following bill
22 which was referred to the Committee on _____.
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24 To amend the Office of Citizen Complaint Review Establishment Act of 1998 to specify that the
25 jurisdiction of the Police Complaints Board and Office of Police Complaints includes the
26 Metropolitan Police Department’s handling of complaints of sexual assault; to amend
27 Title 23 of the District of Columbia Official Code to provide that a sexual assault victim
28 shall have the right to have a sexual assault victim advocate present at medical
29 examinations and at interviews with law enforcement, prosecutors, and defense attorneys;
30 to amend Title 14 of the District of Columbia Official Code to provide that
31 communications between a sexual assault victim and a sexual assault victim advocate are
32 confidential and privileged; to require that the Metropolitan Police Department process
33 sexual assault forensic examination kits in a timely manner; and to provide that hospitals
34 in the District of Columbia shall not bill a sexual assault victim for a sexual assault
35 forensic examination kit.
36

37 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
38 act may be cited as the “Sexual Assault Victims’ Rights Amendment Act of 2013”.

39 TITLE I – JURISDICTION FOR POLICE COMPLAINTS

40 Sec. 101. The Office of Citizen Complaint Review Establishment Act of 1998, effective
41 March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 *et seq.*), is amended as follows:

1 (a) Section 4 (D.C. Official Code § 5-1103) is amended by adding a new paragraph (5)
2 to read as follows:

3 “(5) “Sexual assault” means any offense set forth in title II of the Anti-Sexual
4 Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et*
5 *seq.*)”.

6 (b) Section 5 (D.C. Official Code § 5-1104) is amended by adding a new subsection (d-
7 2) to read as follows:

8 “(d-2) The Board may, where appropriate, monitor and evaluate MPD’s handling of, and
9 response to, complaints of sexual assault.

10 (c) Section 8(a) (D.C. Official Code § 5-1107(a)), is amended as follows:

11 (1) Paragraph (5) is amended by striking the word “or” at the end.

12 (2) Paragraph (6) is amended by striking the period at the end and inserting a
13 semicolon followed by the word “or” in its place.

14 (3) A new paragraph (7) is added to read as follows:

15 “(7) Failure to follow MPD policy or protocol with regard to the handling of
16 complaints of sexual assault.”.

17 TITLE II –VICTIMS’ RIGHTS; CONFIDENTIAL COMMUNICATIONS

18 Sec. 201. Title 23 of the District of Columbia Official Code is amended as follows:

19 (a) The table of contents for Chapter 19 is amended by adding the following after “23-
20 1903. Crime victim privacy and security.”:

21 “23-1903a. Rights for sexual assault victims.”.

22

23 (b) A new section 23-1903a is added to read as follows:

24 “23-1903a. Rights for sexual assault victims.

1 “(a) For the purposes of this section, the term:

2 “(1) “Sexual assault” means any offense set forth subchapter II of Chapter 30 of
3 Title 22.

4 “(2) “Sexual assault victim” means a person against whom sexual assault has
5 been committed or is alleged to have been committed.

6 “(3) “Sexual assault victim advocate” means an employee, contractor, or
7 volunteer of a sexual assault program who:

8 “(A) Is rendering support, counseling, or assistance to a victim;

9 “(B) Has undergone not less than 40 hours of sexual assault victim
10 advocate training conducted by a sexual assault program that includes dynamics of sexual
11 assault, trauma resulting from sexual assault, crisis intervention, personal safety, risk
12 management, criminal and civil court processes, and resources available to victims; and

13 “(C)(i) Is or is under the supervision of a licensed social worker, nurse,
14 physician, psychologist, or psychotherapist; or

15 “(ii) Is or is under the supervision of a person who has a minimum
16 of 5 years of experience rendering support, counseling, or assistance to persons against whom
17 sexual assault has been committed or is alleged to have been committed, of which at least 2 years
18 of experience involves victims.

19 “(b) A sexual assault victim shall have the right to have a sexual assault victim advocate
20 present at any:

21 “(1) Medical, evidentiary, or physical examination; and

22 “(2) Interview with law enforcement, prosecutors, or defense attorneys.

23 “(c) Prior to the commencement of any initial medical, evidentiary, or physical

1 examination arising out of a sexual assault, the hospital personnel or the certified forensic sexual
2 assault nurse examiner assigned to the case shall immediately summon a sexual assault victim
3 advocate to be present, unless:

4 “(1) The sexual assault victim declines the presence of such an advocate; or

5 “(2) The hospital personnel or the certified forensic sexual assault nurse examiner
6 determines that the sexual assault victim advocate will be detrimental to the purpose of the
7 examination.

8 “(d) Prior to the commencement of any initial interview with law enforcement,
9 prosecutors, or defense attorneys arising out of a sexual assault, the law enforcement official,
10 prosecutor, or defense attorney shall immediately summon a sexual assault victim advocate to be
11 present, unless:

12 “(1) The sexual assault victim declines the presence of such an advocate; or

13 “(2) The law enforcement official, prosecutor, or defense attorney determines
14 that the sexual assault victim advocate will be detrimental to the purpose of the interview.

15 “(e) If after declining the presence of such an advocate, a sexual assault victim requests
16 that such an advocate be present at any later time, including at any subsequent interview with
17 law enforcement, prosecutors, or defense attorneys, the sexual assault victim advocate shall be
18 permitted to be present with the victim during such interview, unless the law enforcement
19 official, prosecutor, or defense attorney determines that the advocate will be detrimental to the
20 purpose of the interview.”.

21 Sec. 202. Title 14 of the District of Columbia Official Code is amended as follows:

22 (a) The table of contents for Chapter 3 is amended by adding at the end the phrase “14-
23 312. Sexual assault victim advocates.”.

1 (b) Section 14-307 is amended by striking the phrase “or a human trafficking counselor
2 as defined in § 14-311(a)(2)” and inserting the phrase “a human trafficking counselor as defined
3 in § 14-311(a)(2), or a sexual assault victim advocate as defined in § 14-312(a)(4)” in its place.

4 (c) A new section 14-312 is added to read as follows:

5 “14-312. Sexual assault victim advocates.

6 “(a) For the purposes of this section, the term:

7 “(1) “Confidential communication” means information exchanged between a
8 victim and a sexual assault victim advocate during the course of the advocate providing
9 counseling, support, and assistance to a victim, including all records kept by the advocate and the
10 sexual assault program concerning the victim and services provided to the victim.

11 “(2) “Sexual assault” means any offense set forth subchapter II of Chapter 30 of
12 Title 22.

13 “(3) “Sexual assault program” means a nonprofit, non-governmental organization
14 that supports, counsels, and assists victims of sexual assault, including a rape crisis center.

15 “(4) “Sexual assault victim advocate” means an employee, contractor, or
16 volunteer of a sexual assault program who:

17 “(A) Is rendering support, counseling, or assistance to a victim;

18 “(B) Has undergone not less than 40 hours of sexual assault victim
19 advocate training conducted by a sexual assault program that includes dynamics of sexual
20 assault, trauma resulting from sexual assault, crisis intervention, personal safety, risk
21 management, criminal and civil court processes, and resources available to victims; and

22 “(C)(i) Is or is under the supervision of a licensed social worker, nurse,
23 physician, psychologist, or psychotherapist; or

1 “(ii) Is or is under the supervision of a person who has a minimum
2 of 5 years of experience rendering support, counseling, or assistance to persons against whom
3 sexual assault has been committed or is alleged to have been committed, of which at least 2 years
4 of experience involves victims.

5 “(5) “Victim” means a person against whom sexual assault has been committed
6 or is alleged to have been committed.

7 “(b)(1) A sexual assault victim advocate shall not disclose a confidential communication
8 except:

9 “(A) As required by statute or by a court of law;

10 “(B) As voluntarily authorized in writing by the victim;

11 “(C) To other individuals employed at the sexual assault program and
12 third party providers when and to the extent necessary to facilitate the delivery of services to the
13 victim;

14 “(D) To the Metropolitan Police Department or other law enforcement
15 agency to the extent necessary to protect the victim or another individual from a substantial risk
16 of imminent and serious physical injury;

17 “(E) To compile statistical or anecdotal information, without personal
18 identifying information, for research or public information purposes; or

19 “(F) For any confidential communications relevant to a claim or defense
20 if the victim files a lawsuit against a sexual assault victim advocate or a sexual assault program.

21 “(2) Unless the disclosure is public, confidential communications disclosed
22 pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except
23 as authorized in paragraph (1) of this subsection.

1 “(3) Confidential communications are not waived by the presence of a sign
2 language or foreign language interpreter. Such an interpreter is subject to the same disclosure
3 limitations set forth in paragraph (1) of this subsection and the same privilege set forth in
4 subsection (c) of this section.

5 “(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12
6 years of age, has been adjudicated incompetent by a court of competent jurisdiction for the
7 purpose of asserting or waiving the privilege established by this section, or is deceased, the
8 victim’s parent, guardian, or personal representative may assert or waive the privilege.

9 “(2) If the parent, guardian, or personal representative of a victim described in
10 paragraph (1) of this subsection has been charged with an intrafamily offense, sexual assault, or
11 has had a protection order or a neglect petition entered against him or her at the request of or on
12 behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the
13 assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting
14 or waiving the privilege.

15 “(d) The assertion of any privilege under this section is not admissible in evidence.”.

16 TITLE III – SEXUAL ASSAULT FORENSIC EXAMINATION KITS

17 Sec. 301. Definitions.

18 For the purposes of this title, “sexual assault” means any offense set forth in title II of the
19 Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code §
20 22-3002 *et seq.*).

21 Sec. 302. Processing by the Metropolitan Police Department.

22 All sexual assault forensic examination kits shall be processed by the Metropolitan Police
23 Department in a timely manner, at a maximum 90 days from the date the evidence was collected

1 from a victim of alleged sexual assault.

2 Sec. 303. Payment for sexual assault forensic examination kits.

3 Hospitals in the District of Columbia shall not bill a victim of sexual assault for the
4 administration of a sexual assault forensic examination kit or for the kit itself. The hospital may
5 submit a bill to the D.C. Crime Victims Compensation Program, pursuant to the Victims of
6 Violent Crime Compensation Act of 1996, effective April 9, 1997 (D.C. Law 11-243; D.C.
7 Official Code § 4-501 *et seq.*).

8 TITLE IV – FISCAL IMPACT; EFFECTIVE DATE

9 Sec. 401. Fiscal impact statement.

10 The Council adopts the fiscal impact statement in the committee report as the fiscal
11 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
12 approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

13 Sec. 402. Effective date.

14 This act shall take effect following approval by the Mayor (or in the event of veto by the
15 Mayor, action by the Council to override the veto), a 60-day period of Congressional review as
16 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
17 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of
18 Columbia Register.