



501 3rd Street, NW · 8th Floor
Washington, DC 20001
T 202.467.4900 · F 202.467.4949
childrenslawcenter.org

Testimony Before the District of Columbia Council
Committee of the Whole
November 2, 2022

Public Hearing:
B24-0989, Educator Background Check Streamlining Amendment Act of 2022

Tami Weerasingha-Cote
Supervising Policy Attorney
Children's Law Center

Introduction

Good afternoon, Chairman Mendelson, and members of the Committee of the Whole. My name is Tami Weerasingha-Cote. I am the Supervising Policy Attorney at Children's Law Center¹ and a resident of the District with two children who attend DC public school. I am testifying today on behalf of Children's Law Center, which fights so every DC child can grow up with a stable family, good health, and a quality education. With nearly 100 staff and hundreds of pro bono lawyers, Children's Law Center reaches 1 out of every 9 children in DC's poorest neighborhoods – more than 5,000 children and families each year.

Thank you for the opportunity to testify today regarding B24-0989, the Educator Background Check Streamlining Amendment Act of 2022 (the "Act"). Children's Law Center serves DC's children and their families in many different capacities across a variety of systems – in the foster care system, in schools, and in healthcare and housing.² Advocating for the safety and well-being of DC's children is our top priority.

Although this draft legislation is largely focused on streamlining the suitability screening process for individuals applying to work as a teacher or volunteer in DC schools and educational programs, this Act also has important implications for child safety and the District's Child Protection Register.

Children's Law Center supports all schools having the staffing resources they need to fully meet the needs of the children they serve. We also feel strongly that any

person entrusted with the responsibility and care of children in our schools should be screened for their child abuse history in the District, and in any place where they have lived or worked. To this end, although we support the proposed legislation's goal of limiting the reach of the child abuse and neglect check to states in which the applicant has lived or worked – we believe that these remaining checks are critical to maintaining child safety, because these registries often contain information about serious instances of child abuse that will not show up in other parts of the background check.³ Further, we are concerned that the Act proposes repealing all of DC Code § 38–951.03(a)(3).⁴ This subsection requires hiring local education agencies to review an applicant's employment history and contact former employers to ask whether the applicant has a history of abusing children or sexual misconduct.⁵ We do not believe the intent of the Act is to eliminate any requirement to contact former employers, and therefore urge that DC Code § 38–951.03(a)(3) remain as it is to ensure this important step is taken.

Children's Law Center is strongly supportive of the proposed legislation's efforts to reform the Child Protection Register statute by creating a pathway for expungement.⁶ Currently, placement on the Child Protection Register is largely permanent, resulting in lifetime barriers to employment and family stability – both of which directly impact the well-being of children and families in the District. We share the Committee's goal of creating a tiered structure that allows for expungement in some cases. This interest, however, must be balanced with adequate protections for child

safety. To this end, we urge the Committee to make two changes to the proposed legislation to strengthen it and ensure it conforms with the recommendation of the Children’s Justice Act Task Force:⁷ (1) broaden the definition of “serious physical injury” for Tier 3 offenses to include the full scope of injuries included in the Task Force’s recommendations; and (2) ensure the legislation requires a petition-based process for expungement, rather than an automatic date-triggered process.

The Current Child Protection Registry Statute Imposes Lifelong Consequences that Harm Families

Under the current Child Protection Registry statute, “substantiated reports shall not be expunged from the Child Protection Register.”⁸ Substantiated reports include a wide variety of circumstances, including reports stemming from issues of neglect – such as a child missing too many days of school, inadequate supervision, poor housing conditions, and other situations that do not involve violence against children. Such reports are not necessarily helpful in determining whether a person is capable of safely caring for children – especially when they are decades old. Under our current statute, however, such reports continue to impose lifelong consequences – long after the underlying situation has been resolved, rehabilitation completed, children reunified, and cases closed.

Being placed on the Child Protection Register most significantly impacts families in two critical areas: employment and family stability. Placement on the Child Protection Register prevents individuals from obtaining jobs involving close contact

with children. This includes schools, daycares, aftercare/out-of-school time programs, and all manner of child-serving programs (tutoring, sports clubs, extracurricular programs, etc.). In addition to being sectors where the District is suffering serious workforce shortages,⁹ these are also critical jobs and incomes that many families need access to in order to meet their children's basic needs.

Placement on the Child Protection Register also impacts family stability by preventing individuals from being able to serve as caregivers or kin foster parents for members of their own family. We have seen cases where grandparents or other extended family members of children who have been removed from their parents are unable to get licensed because of decades-old reports placing them on the Child Protection Register. As a result, children in these families are faced with the much more traumatic experience of entering the foster care system instead of staying with family members they know and love. This needlessly harms children and does not serve the interest of child safety.

The Proposed Legislation Should be Revised to Conform with Children's Justice Act Task Force Recommendations

In 2010, the District of Columbia Children's Justice Act (CJA) Task Force was established to improve the government systems and processes that protect the interests of child victims of abuse and neglect. The CJA Task Force includes professionals from across the District with expertise in the fields of criminal justice, child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment-related

fatalities.¹⁰ In 2017, the CJA Task Force took up the issue of reforming the expungement provision of the District’s Child Protection Register statute, largely for the same reasons discussed above. The CJA Task Force engaged in a several-year long process of research and consultation with government and community stakeholders from across the city – resulting in a set of recommendations in 2020.

It is our understanding that the proposed legislation before the Committee today is intended to be the legislative equivalent of the CJA Task Force recommendations. The draft language in the Act, however, differs from the CJA Task Force recommendations in two key areas: (1) the definition of “serious physical injury,” and (2) the process by which substantiated reports will be expunged from the Child Protection Register.

The Definition of “Serious Physical Injury” Should Include All Injuries Indicative of Intentional Extreme Violence Against Children

The proposed legislation creates a tiered structure that allows for different types of reports to be expunged from the Child Protection Register after one, three, or five years depending on the report type and other circumstances.¹¹ The Act states, however, that “substantiated reports involving a child fatality, sexual abuse, and serious physical injury shall not be expunged from the Child Protection Register” and defines “serious physical injury” as “a physical injury which creates a substantial risk of death, or which causes serious and protracted impairment of health or protracted loss or impairment of the function of any bodily organ.”¹² Although the report categories identified as not

being eligible for expungement are identical to the CJA Task Force recommendation – the definition of “serious physical injury” in the proposed legislation is much narrower than the definition provided by the CJA Task Force recommendation. The CJA Task Force recommendation definition includes specific types of injuries that – while not necessarily life-threatening – demonstrate intentional extreme violence against children, including suspicious burns, broken bones or fractures, suspicious head injuries, injuries with an implausible explanation, injuries of different ages which are indicative of a pattern of abuse, medical abuse, adult-sized human bites, cases involving children who have been tortured, tied or confined, and other serious injuries that involve hospitalization or surgical procedures.

We believe the definition of “serious physical injury” in the current version of the Act is far too narrow, and the CJA Task Force recommendation provides the right level of detail to ensure individuals who have committed intentional acts of extreme violence against children remain flagged in the Child Protection Register. We therefore strongly urge the Committee to revise the language in the proposed legislation to conform with the CJA Task Force recommendation definition of “serious physical injury.”

Substantiated Reports Should Be Expunged Through a Petition-Based Process and Not Through an Automated Process

The proposed legislation appears to contemplate an automated, date-triggered process for expunging reports from the Child Protection Register. Each subsection that

requires expungement simply starts with the statement “The staff which maintains the Child Protection Register shall expunge...” and describes the conditions and time period by which expungement shall occur.¹³

The CJA Task Force recommendations, however, contemplate a more intentional petition-based process for determining whether and when expungement should take place. Specifically, the CJA Task Force recommendations note that individuals with substantiated reports can have their names expunged from the Child Protection Register “by way of a Program Administrator’s Review (PAR) or an appeal through the fair hearing process with or without a Court hearing.”¹⁴

We believe the determination of whether and when expungement is appropriate should be done through a petition-based process that places responsibility on one or more persons to make an intentional and informed expungement decision that considers all available information. The exercise of careful judgment will be particularly important when determining whether a substantiated report falls under the category of “serious physical injury” – and is therefore not eligible for expungement – versus non-serious physical injury that can be expunged with three to five years. Utilizing a petition-based process is not only critical to ensuring good decision-making, it is also important to allow for due process, so that individual have the ability to challenge decisions to not allow expungement. To these ends, we urge the Committee

to ensure the proposed legislation includes a petition-based process for making expungement decisions.

Conclusion

Thank you for the opportunity to testify today. I welcome any questions the Committee may have.

¹ Children’s Law Center fights so every child in DC can grow up with a stable family, good health, and a quality education. Judges, pediatricians, and families turn to us to advocate for children who are abused or neglected, who aren’t learning in school, or who have health problems that can’t be solved by medicine alone. With more than 100 staff and hundreds of pro bono lawyers, we reach 1 out of every 9 children in DC’s poorest neighborhoods – more than 5,000 children and families each year. And we multiply this impact by advocating for city-wide solutions that benefit all children.

² DC’s Children’s Law Center, *Our Impact*, available at: <https://childrenslawcenter.org/our-impact/>.

³ Although not the main focus of our testimony or this legislation, we must challenge several points made in the Statement of Introduction accompanying this proposed legislation. First, the Statement asserts that “CFSA cannot investigate school personnel alleged to have abused a student.” This is incorrect – CFSA is able to investigate such incidents and include the findings of these investigations on the Register but exercises its discretion to limit its enforcement actions to families. Second, such abuses by school and childcare personnel often will not appear in a criminal background check. Prosecutions of such incidents are rare for many reasons – and convictions even more so. More often, such incidents result in employment termination but no other consequences. It is simply incorrect that “most substantiated allegations in the Child Protection Register will overlap with the findings of one or all of the FBI Criminal History Record, the MPD criminal history record, and the National Sex Offender Registry.” In fact, we have seen abusive personnel simply move from school to school in the District, with our clients suffering as victims, because of this gap. For these reasons, Children’s Law Center has long taken the position that CFSA should exercise its jurisdiction to investigate abuses by school and childcare personnel and any substantiated claims of child abuse should be included in the Child Protection Register.

⁴ B24-0989, *Educator Background Check Streamlining Amendment Act of 2022*, Sec. 2, Section 103(a)(2), line 40.

⁵ See DC Code § 38–951.03(a)(3), “(3) Conducts a review of the employment history of the applicant by contacting any former employers identified pursuant to subparagraph (1)(A) of this subsection to determine whether the applicant: (A) Has been the subject of any child abuse or sexual misconduct investigation by any such employer, state licensing agency, law enforcement agency, or the Child and Family Services Agency or another state’s equivalent, unless the investigation resulted in a finding that the allegations were false, or the alleged incident of child abuse or sexual misconduct was determined unsubstantiated; (B) Has ever been disciplined, discharged, nonrenewed, asked to resign from employment, or has resigned from or otherwise separated from any employment while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct; or (C) Has ever had a license, professional license, or certificate suspended, surrendered, or revoked while allegations of child abuse or sexual misconduct were pending or under investigation, or due to an adjudication or finding of child abuse or sexual misconduct.”

⁶ B24-0989, *Educator Background Check Streamlining Amendment Act of 2022*, Sec. 3, Sec. 207(a)-(e), lines 66-97.

⁷ The District of Columbia Children’s Justice Act (CJA) Task Force was established in 2010 to enhance investigative, administrative, prosecutorial, and judicial processes that protect the interests of child victims of abuse and neglect. The Task Force includes professionals from across the District with expertise in the fields of criminal justice, child physical abuse, child neglect, child sexual abuse and exploitation, and child maltreatment-related fatalities. A staff member from the Child and Family Services Agency (CFSA) satisfies the requirement for representation from a Child

Protective Service's Agency. See Child Welfare Information Gateway, *State Children's Justice Act Grantees*, available at: https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspList&rolType=Custom&RS_ID=140. See also Capacity Building Center for States, CJA 101: Quick Facts About the Children's Justice Act Grant, available at: https://capacity.childwelfare.gov/sites/default/files/media_pdf/cja-101-factsheet-cp-00048.pdf. See also Child and Family Services Agency (CFSA), *Annual Report FY2014*, available at: https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/FY2014%20APR%20%28FINAL%29_0.pdf; Child and Family Services Agency (CFSA), *Annual Report FY2015*, available at: https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/page_content/attachments/Annual%20Public%20Report%20FY15.pdf; Child and Family Services Agency (CFSA), *Annual Report FY2016*, available at: <https://cfsa.dc.gov/sites/default/files/dc/sites/cfsa/publication/attachments/FY2016-CFSA-APR.pdf>.

⁸ DC Code § 4-1302.07(a). For inconclusive reports, personally identifying information is expunged when the subject child turns 18 (provided there is no reasonable suspicion or evidence that another child living in the same household or under the care of the same parent, guardian, or custodian has been abused or neglected) or after the 5th year after the termination of the social rehabilitation services directed toward the abuse and neglect. See DC Code § 4-1302.07(b).

⁹ James Wright Jr., *D.C. Schools Face Major Substitute Teacher Shortage: Analysis*, *The Washington Informer*, August 3, 2022, available at: <https://www.washingtoninformer.com/d-c-schools-face-major-substitute-teacher-shortage-analysis/>; James Treuthardt, *Chart of the week: School districts are struggling to retain and recruit teachers*, D.C. Policy Center, September 9, 2022, available at: <https://www.dcpolicycenter.org/publications/school-districts-struggle-retain-recruit-teachers/>; Lauren Lumpkin, *Survey shows low morale, frustration among D.C. teachers*, *the Washington Post*, October 25, 2022, available at: <https://www.washingtonpost.com/education/2022/10/24/dc-teachers-survey-retention/>; Jaclyn Diaz, *Bonus checks! One year free! How states are trying to fix a broken child care system*, NPR News, available at: <https://www.ktoo.org/2022/07/13/from-pay-care-states-pandemic-aid-childcare/>; Secretary Cardona Lays Out Vision to Support and Elevate the Teaching Profession, U.S. Department of Education, June 9, 2022, available at: <https://www.ed.gov/news/press-releases/secretary-cardona-lays-out-vision-support-and-elevate-teaching-profession>; Early Care & Education Consortium, *The Child Care Workforce Shortage: Solutions from Around the Country*, June 2022, available at: https://www.ececonsortium.org/wp-content/uploads/2022/06/ECEC_Workforce-Report_6.2.22.pdf; and Lauraine Langreo, *After-School Programs Face Perfect Storm of Staffing and Funding Problems, Survey Finds*, *Education Week*, available at: <https://www.edweek.org/leadership/after-school-programs-face-perfect-storm-of-staffing-and-funding-problems-survey-finds/2022/07>.

¹⁰ Child Welfare Information Gateway, *State Children's Justice Act Grantees*, available at: https://www.childwelfare.gov/organizations/?CWIGFunctionsaction=rols:main.dspList&rolType=Custom&RS_ID=140; Capacity Building Center for States, CJA 101: Quick Facts About the Children's Justice Act Grant, available at: https://capacity.childwelfare.gov/sites/default/files/media_pdf/cja-101-factsheet-cp-00048.pdf.

¹¹ B24-0989, *Educator Background Check Streamlining Amendment Act of 2022*, Sec. 3, Sec. 207(a)-(f), lines 66 -100.

¹² *Id.* at Sec. 3, Sec. 207(f), lines 98-100.

¹³ B24-0989, *Educator Background Check Streamlining Amendment Act of 2022*, Sec. 3, Sec. 207(a)-(f), lines 66 -83, "(a) The staff which maintains the Child Protection Register shall expunge an inconclusive report from the Child Protection Register one year after the date the report was entered in the Child Protection Register if no subsequent substantiated or inconclusive reports involving the person identified as responsible for the abuse or neglect was entered in the Child Protection Register during the one-year period. (b) The staff which maintains the Child Protection Register shall expunge a substantiated report from the Child Protection Register: (1) Three years after the date the report was entered in the Child Protection Register if the child was not removed pursuant to § 4-1303.04 and no subsequent substantiated or inconclusive report involving the person identified as responsible for the abuse or neglect was entered in the Child Protection Register during the 3 year period; or (2) Three years from the date that the child, if removed pursuant to § 4-1303.04 and a court did not make a finding that the child was abused or neglected, was reunified with the person identified as responsible for the abuse or neglect, or 5 years from the date that the substantiated report was entered in the Child Protection Register, whichever occurs first provided that no subsequent substantiated or inconclusive report involving the person identified as responsible for the abuse or neglect was entered in the Child Protection Register."

¹⁴ Children's Justice Act Task Force Recommendations, on file with the CJA Task Force (not publicly available).