

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, due to congressional review, the Office of Administrative Hearings Establishment Act of 2001 to extend the jurisdiction of the Office of Administrative Hearings to adjudicated cases involving certain civil violations relating to fare evasion and other unlawful conduct on passenger vehicles; to amend the District of Columbia Mental Health Information Act of 1978 to authorize mental health professionals to disclose mental health information when necessary to request an extreme risk protection order and to require the disclosure of mental health information to the Office of Attorney General in response to a court order; to amend the Firearms Control Regulations Act of 1975 to prohibit the issuance of a firearm registration certificate to the subject of an extreme risk protection order, to require the Superior Court for the District of Columbia, for good cause shown, to issue such orders as may be necessary to obtain mental health records and other relevant information for the purposes of petitions for relief from disqualifications from firearm registration, to authorize the Mayor to issue rules - subject to Council review, to implement the provisions of the Firearms Control Regulations Act of 1975, to clarify that the Office of Attorney General may intervene and represent the interests of the District of Columbia with respect to petitions for extreme risk protection orders or provide individual legal representation, upon request, to a petitioner, to broaden the court's ability to place records related to extreme risk protection orders under seal, to establish procedures for computing periods of time relating to an extreme risk protection order, to provide for the use of calendar days instead of business days for timelines related to extreme risk protection orders, to require that the court consider the unlawful or reckless use, display, or brandishing of any weapon by the respondent in determining whether to issue an extreme risk protection order, to require that the initial hearing for a petition for a final extreme risk protection order be held within 14 days after the petition was filed, to require the Superior Court for the District of Columbia, for good cause shown, to issue such orders as may be necessary to obtain mental health records and other relevant information for the purposes of petitions for an extreme risk protection order, to modify the duration of ex parte extreme risk protection orders, to establish procedures for the issuance and execution of search

44 warrants accompanying extreme risk protection orders, to add the Office of Attorney
45 General and the Superior Court for the District of Columbia to the list of entities that shall
46 receive from the Metropolitan Police Department information related to extreme risk
47 protection orders, to require the Mayor or the Mayor's designee to submit information
48 about extreme risk protection orders to the National Instant Criminal Background Check
49 System for the purposes of firearm purchaser background checks; to amend the Homeland
50 Security, Risk Reduction, and Preparedness Amendment Act of 2006 to create a quorum
51 requirement for the Comprehensive Homicide Elimination Strategy Task Force and extend
52 its report submission deadline; and to amend the Act to Regulate Public Conduct on Public
53 Passenger Vehicles to provide that certain violations of the act shall be punishable by civil
54 fine and adjudicated by the Office of Administrative Hearings and to authorize Metro
55 Transit Police Department officers to issue notices of infractions for alleged civil
56 violations.

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58 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
59 act may be cited as the "Firearms Safety Omnibus Clarification Congressional Review Emergency
60 Amendment Act of 2020".

61 Sec. 2. Section 6 of the Office of Administrative Hearings Establishment Act of 2001,
62 effective March 6, 2002 (D.C. Law 14-76; D.C. Official Code § 2-1831.03), is amended by adding
63 a new subsection (b-26) to read as follows:

64 "(b-26) This act shall apply to all adjudicated cases involving a civil violation penalized
65 under section 5(a) of the Act to Regulate Public Conduct on Public Passenger Vehicles, effective
66 September 23, 1975 (D.C. Law 1-18; D.C. Official Code § 35-254(a)).".

67 Sec. 3. Title IV of the District of Columbia Mental Health Information Act of 1978,
68 effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1204.01 et seq.), is amended as
69 follows:

70 (a) Section 402 (D.C. Official Code § 7-1204.02) is amended to read as follows:

71 "Sec. 402. Civil commitment proceedings; extreme risk protection orders.

72 “Mental health information may be disclosed by a mental health professional when and to
73 the extent necessary to:

74 “(1) Initiate or seek civil commitment proceedings under D.C. Official Code § 21-
75 541; or

76 “(2) Request an extreme risk protection order under Title X of the Firearms Control
77 Regulations Act of 1975, effective May 10, 2019 (D.C. Law 22-314; 66 DCR 1672).”.

78 (b) Section 403 (D.C. Official Code § 7–1204.03) is amended by adding a new subsection
79 (c) to read as follows:

80 “(c) Mental health information shall be disclosed to the Office of the Attorney General for
81 the District of Columbia in response to a court order issued pursuant to section 203(f)(3)(A)(i) of
82 the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C.
83 Official Code § 7-2502.03(f)(3)(A)(i)) (“Firearms Act”) or section 1003(d)(2) of the Firearms Act
84 (D.C. Official Code § 7-2510.03(d)(2)).”.

85 Sec. 4. The Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C.
86 Law 1-85; D.C. Official Code § 7–2501.01 et seq.), is amended as follows:

87 (a) Section 203 (D.C. Official Code § 7-2502.03) is amended as follows:

88 (1) Subsection (a)(15) is amended to read as follows:

89 “(15) Is not the subject of an ex parte extreme risk protection order issued pursuant
90 to section 1004 or a final extreme risk protection order issued pursuant to section 1003 or renewed
91 pursuant to section 1006.”.

92 (2) Subsection (f)(3) is amended as follows:

93 (A) Subparagraph (A) is amended to read as follows:

94 “(A)(i) Upon receipt of a petition filed under paragraph (1) of this
95 subsection, and for good cause shown, the court shall issue such orders as may be necessary to
96 obtain any mental health records and other information relevant for the purposes of the petition.
97 The order shall require the disclosure of records to the Office of the Attorney General so that the
98 Office of the Attorney General can conduct a search of the petitioner’s mental health records and
99 report its findings to the court as required by subparagraph (B) of this paragraph.

100 “(ii) The court shall order the Office of the Attorney General to file
101 a response to the petition. Within 60 days after the court’s order for a response, the Office of the
102 Attorney General shall file a response indicating whether the Office of the Attorney General
103 supports or opposes the petition.

104 “(iii) The court may, for good cause shown, extend in 30-day
105 increments the date by which the Office of Attorney General must file its response under sub-
106 subparagraph (ii) of this subparagraph.”.

107 (B) Subparagraph (B) is amended by striking the phrase “criminal history”
108 and inserting the phrase “criminal history and firearms eligibility” in its place.

109 (b) Section 705(b) (D.C. Official Code § 7–2507.05(b)) is amended by striking the phrase
110 “the United States Attorney and the Corporation Counsel for the District whether” and inserting
111 the phrase “the United States Attorney’s Office and the Office of Attorney General whether” in its
112 place.

113 (c) Section 712 (D.C. Official Code § 7–2507.11) is amended to read as follows:

114 “The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,
115 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to

116 implement the provisions of this act. The proposed rules shall be submitted to the Council for a
117 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess.
118 If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution
119 within the 45-day review period, the proposed rules shall be deemed approved.”.

120 (d) Section 1001(2)(A) (D.C. Official Code § 7-2510.01(2)(A)) is amended by striking the
121 phrase “relationship rendering the application of this title appropriate” and inserting the word
122 “relationship” in its place.

123 (e) Section 1002 (D.C. Official Code § 7-2510.02) is amended as follows:

124 (1) Subsection (a) is amended as follows:

125 (A) Paragraph (3) is amended by striking the semicolon and inserting the
126 phrase “; and” in its place.

127 (B) Paragraph (4) is repealed.

128 (2) Subsection (c) is amended to read as follows:

129 “(c)(1) The Office of the Attorney General may:

130 “(A) Intervene in the case and represent the interests of the District of
131 Columbia; or

132 “(B) At the request of the petitioner, provide individual legal representation
133 to the petitioner in proceedings under this title.

134 “(2) If the Office of the Attorney General intervenes in a case under paragraph
135 (1)(A) of this subsection, the intervention shall continue until:

136 “(A) The court denies the petition for a final extreme risk protection order
137 pursuant to section 1003;

138 “(B) The court terminates a final extreme risk protection order pursuant to
139 section 1008; or

140 “(C) The Office of the Attorney General withdraws from the intervention.”.

141 (3) Subsection (d) is amended to read as follows:

142 “(d) The court may place any record or part of a proceeding related to the issuance, renewal,
143 or termination of an extreme risk protection order under seal for good cause shown.”.

144 (4) A new subsection (e) is added to read as follows:

145 “(e) When computing a time period specified in this title, or in an order issued under this
146 title:

147 “(1) Stated in days or a longer unit of time:

148 “(A) Exclude the day of the event that triggers the time period;

149 “(B) Count every day, including intermediate Saturdays, Sundays and legal
150 holidays; and

151 “(C) Include the last day of the time period, but if the last day of the time
152 period specified falls on a Saturday, Sunday, a legal holiday, or a day on which weather or other
153 conditions cause the court to be closed, the time period specified shall continue to run until the end
154 of the next day that is not a Saturday, Sunday, legal holiday, or a day on which weather or other
155 conditions cause the court to be closed.

156 “(2) Stated in hours:

157 “(A) Begin counting immediately on the occurrence of the event that
158 triggers the time period;

159 “(B) Count every hour, including hours during intermediate Saturdays,
160 Sundays, and legal holidays; and

161 “(C) If the time period would end on a Saturday, Sunday, legal holiday, or
162 a day on which weather or other conditions cause the court to be closed, the time period shall
163 continue to run until the same time on the next day that is not a Saturday, Sunday, legal holiday,
164 or a day on which weather or other conditions cause the court to be closed.”.

165 (f) Section 1003 (D.C. Official Code § 7-2510.03) is amended as follows:

166 (1) Subsection (a)(2) is amended to read as follows:

167 “(2) The initial hearing shall be held within 14 days after the date the petition was
168 filed.”.

169 (2) Subsection (b) is amended as follows:

170 (A) Paragraph (1) is amended by striking the phrase “5 business days” and
171 inserting the phrase “7 days” in its place.

172 (B) A new paragraph (3) is added to read as follows:

173 “(3) If the respondent is unable to be personally served after the court has set a new
174 hearing date and required new attempts at service pursuant to paragraph (2) of this subsection, the
175 court may dismiss the petition without prejudice.”.

176 (3) Subsection (d) is amended to read as follows:

177 “(d) Upon receipt of a petition filed under section 1002, and for good cause shown, the
178 court shall issue such orders as may be necessary to obtain any mental health records and other
179 information relevant for the purposes of the petition. The order shall require the disclosure of
180 records to the Office of the Attorney General so that it can conduct a search of the respondent’s

181 mental health records and report its findings to the court as required by this subsection. Before the
182 hearing for a final extreme risk protection order, the court shall order that the Office of the Attorney
183 General:

184 “(1) Conduct a reasonable search of all available records to determine whether the
185 respondent owns any firearms or ammunition;

186 “(2) Conduct a reasonable search of all available records of the respondent’s mental
187 health;

188 “(3) Perform a national criminal history and firearms eligibility background check
189 on the respondent; and

190 “(4) Submit its findings under this subsection to the court.”.

191 (4) The lead-in language for subsection (e) is amended by striking the phrase
192 “consider all relevant evidence,” and inserting the phrase “consider any exhibits, affidavits,
193 supporting documents, and all other relevant evidence,” in its place.

194 (5) Subsection (h)(6) is amended by striking the phrase “connected with a petition
195 filed under this title” and inserting the phrase “connected with this title” in its place.

196 (g) Section 1004 (D.C. Official Code § 7-2510.04) is amended as follows:

197 (1) Subsection (c) is amended as follows:

198 (A) The lead-in language for subsection (c) is amended by striking the
199 phrase “consider all relevant evidence,” and inserting the phrase “consider any exhibits, affidavits,
200 supporting documents, and all other relevant evidence,” in its place.

201 (B) Paragraph (4) is amended by striking the phrase “firearm by” and
202 inserting the phrase “firearm or other weapon by” in its place.

203 (2) Subsection (f) is amended by striking the phrase “to section” and inserting the
204 phrase “to this section” in its place.

205 (3) Subsection (g) is amended as follows:

206 (A) Paragraph (3) is amended to read as follows:

207 “(3) The date and time the order will expire;”.

208 (B) Paragraph (7) is amended to read as follows:

209 “(7) The procedures for the surrender of firearms, ammunition, registration
210 certificates, licenses to carry a concealed pistol, or dealer’s licenses in the respondent’s possession,
211 control, or ownership pursuant to section 1007; and”.

212 (4) Subsection (h) is amended to read as follows:

213 “(h) An ex parte extreme risk protection order issued pursuant to this section shall remain
214 in effect for an initial period not to exceed 14 days. The court may extend an ex parte extreme risk
215 protection order in additional 14-day increments for good cause shown.”.

216 (h) Section 1005(a) (D.C. Official Code § 7-2510.05) is amended as follows:

217 (1) Paragraph (2) is amended by striking the phrase “next business day” and
218 inserting the phrase “next day” in its place.

219 (2) Paragraph (3) is amended by striking the phrase “5 business days” and inserting
220 the phrase “7 days” in its place.

221 (3) Paragraph (4) is amended by striking the phrase “one business day” and
222 inserting the phrase “24 hours” in its place.

223 (i) Section 1006 (D.C. Official Code § 7-2510.06) is amended as follows:

224 (1) Subsection (c) is amended by striking the phrase “15 business days” and
225 inserting the phrase “21 days” in its place.

226 (2) Subsection (d)(4) is amended by striking the phrase “firearm by” and inserting
227 the phrase “firearm or other weapon by” in its place.

228 (j) Section 1007(a) (D.C. Official Code § 7-2510.07(a)) is repealed.

229 (k) New sections 1007a, 1007b, 1007c, and 1007d are added to read as follows:

230 “Sec. 1007a. Nature and issuance of search warrants.

231 “(a) If the court issues a final extreme risk protection order pursuant to section 1003, issues
232 an ex parte extreme risk protection order pursuant to section 1004, or renews a final extreme risk
233 protection order pursuant to section 1006, the court may issue an accompanying search warrant.
234 The search warrant may authorize a search to be conducted anywhere in the District of Columbia
235 and shall be executed pursuant to its terms.

236 “(b) A search warrant issued under this section may direct a search of any or all of the
237 following:

238 “(1) One or more designated or described places or premises;

239 “(2) One or more designated or described vehicles;

240 “(3) One or more designated or described physical objects; or

241 “(4) The respondent.

242 “(c) The search warrant shall authorize the search for, and seizure of, any firearms,
243 ammunition, registration certificates, licenses to carry a concealed pistol, or dealer’s licenses that
244 the respondent is prohibited from having possession or control of, purchasing, or receiving
245 pursuant to the terms of an extreme risk protection order issued or renewed under this title.

246 “(d) A search warrant issued under section 1007a may be addressed to a specific law
247 enforcement officer or to any classification of officers of the Metropolitan Police Department of
248 the District of Columbia or other agency authorized to make arrests or execute process in the
249 District of Columbia.

250 “(e) A search warrant issued under section 1007a shall contain:

251 “(1) The name of the issuing court, the name and signature of the issuing judge, and
252 the date of issuance;

253 “(2) If the search warrant is addressed to a specific officer, the name of that officer,
254 otherwise, the classifications of officers to whom the warrant is addressed;

255 “(3) A designation of the premises, vehicles, objects, or persons to be searched,
256 sufficient for certainty of identification;

257 “(4) A description of the property whose seizure is the object of the search warrant;

258 “(5) A direction that the search warrant be executed between 6 a.m. and 9:00 p.m.
259 or, where the court has found cause therefor, including one of the grounds set forth in section
260 1007b(c), an authorization for execution at any time of day or night; and

261 “(6) A direction that the search warrant and an inventory of any property seized
262 pursuant thereto be returned to the court within 72 hours after its execution.

263 “Sec. 1007b. Time of execution of search warrants.

264 “(a) A search warrant issued under section 1007a shall not be executed after the expiration
265 of the extreme risk protection order it accompanies, or after 10 days from the date the warrant was
266 issued, whichever is earlier.

267 “(b) The search warrant shall be returned to the court after its execution or expiration in
268 accordance with section 1007a(e)(6).

269 “(c) A search warrant issued under section 1007a may be executed on any day of the week
270 and, in the absence of express authorization in the warrant pursuant to subsection (c) of this section,
271 shall be executed only between 6 a.m. and 9:00 p.m.

272 “(d) If the court finds that there is probable cause to believe that the search warrant cannot
273 be executed between 6 a.m. and 9:00 p.m., the property sought is likely to be removed or destroyed
274 if not seized forthwith, or the property sought is not likely to be found except at certain times or in
275 certain circumstances, the court may include in the search warrant an authorization for execution
276 at any time of day or night.

277 “Sec. 1007c. Execution of search warrants.

278 “(a) An officer executing a search warrant issued under section 1007a directing a search of
279 a dwelling house or other building or a vehicle shall execute that search warrant in accordance
280 with 18 U.S.C. § 3109.

281 “(b) An officer executing a search warrant issued under section 1007a directing a search of
282 a person shall give, or make reasonable effort to give, notice of his identity and purpose to the
283 person, and, if such person thereafter resists or refuses to permit the search, such person shall be
284 subject to arrest by such officer pursuant to D.C. Official Code § 23-581(a) for violation of section
285 432a of the Revised Statutes of the District of Columbia (D.C. Official Code § 22-405.01), or other
286 applicable provision of law.

287 “(c)(1) An officer or agent executing a search warrant issued under section 1007a shall
288 write and subscribe an inventory setting forth the time of the execution of the search warrant and
289 the property seized under it.

290 “(2) If the search is of a person, a copy of the search warrant and of the return shall
291 be given to that person.

292 “(3) If the search is of a place, vehicle, or object, a copy of the search warrant and
293 of the return shall be given to the owner thereof or, if the owner is not present, to an occupant,
294 custodian, or other person present. If no person is present, the officer shall post a copy of the
295 warrant and of the return upon the premises, vehicle, or object searched.

296 “(d) A copy of the search warrant shall be filed with the court on the next court day after
297 its execution, together with a copy of the return.

298 “(e) An officer executing a search warrant issued under section 1007a directing a search of
299 premises or a vehicle may search any person therein to the extent reasonably necessary to:

300 “(1) Protect himself or others from the use of any weapon which may be concealed
301 upon the person; or

302 “(2) Find property enumerated in the warrant which may be concealed upon the
303 person.

304 “Sec. 1007d. Disposition of property.

305 “(a) A law enforcement officer or a designated civilian employee of the Metropolitan
306 Police Department who seizes property in the execution of a search warrant issued under section
307 1007a shall cause it to be safely kept until the property is returned to:

308 “(1) The respondent, upon the expiration of the extreme risk protection order that
309 the search warrant accompanied; or

310 “(2) A lawful owner, other than the respondent, claiming title to the property
311 pursuant to section 1007(d).

312 “(b) Nothing in subsection (a) of this section shall be construed to require the Metropolitan
313 Police Department to release property seized pursuant to a warrant to a person who did not legally
314 possess the property at the time it was taken.

315 “(c) No property seized shall be released or destroyed except in accordance with law and
316 upon order of a court or of the United States Attorney for the District of Columbia or the Office of
317 the Attorney General.”.

318 (1) Section 1008 (D.C. Official Code § 7-2510.08) is amended as follows:

319 (1) Subsection (a) is amended by striking the phrase “order in in effect” and
320 inserting the phrase “order is in effect” in its place.

321 (2) Subsection (c)(4) is amended by striking the phrase “firearm by” and inserting
322 “firearm or other weapon by” in its place.

323 (3) Subsection (f) is amended as follows:

324 (A) Paragraph (1) is amended as follows:

325 (i) Strike the phrase “upon the petitioner” and insert the phrase
326 “upon the petitioner and respondent” in its place.

327 (ii) A new paragraph (1A) is added to read as follows:

328 “(1A) If the petitioner or respondent was personally served in court when the
329 motion to terminate an extreme risk protection order was granted, the personal service requirement
330 of paragraph (1) of this subsection shall be waived with respect to the party served in court.”.

331 (B) Paragraph (2) is amended as follows:

332 (i) Strike the phrase “next business day” and insert the phrase “next
333 day” in its place.

334 (ii) Strike the phrase “the respondent” and insert the phrase “the
335 petitioner” in its place.

336 (C) Paragraph (3) is amended by striking the phrase “5 business days” and
337 inserting the phrase “7 days” in its place.

338 (D) Paragraph (4) is amended by striking the phrase “one business day” and
339 inserting the phrase “24 hours” in its place.

340 (m) Section 1010 (D.C. Official Code § 7-2510.10) is amended as follows:

341 (1) Subsection (a)(2) is amended by striking the phrase “available to any” and
342 inserting the phrase “available to the Superior Court for the District of Columbia, the Office of the
343 Attorney General, and any” in its place.

344 (2) Subsection (b) is amended by striking the phrase “Superior Court of the District
345 of Columbia” and inserting the phrase “Mayor, or the Mayor’s designee,” in its place.

346 Sec. 5. Section 501 of the Homeland Security, Risk Reduction, and Preparedness
347 Amendment Act of 2006, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 22-
348 4251), is amended as follows:

349 (a) Subsection (b)(1) is amended by striking the phrase “following entities” and inserting
350 the phrase “following entities, of which one-third shall constitute a quorum” in its place.

351 (b) Subsection (c) is amended by striking the phrase “June 1, 2019” and inserting the phrase
352 “June 1, 2020” in its place.

353 Sec. 6. Section 5(a) of the Act to Regulate Public Conduct on Public Passenger Vehicles,
354 effective September 23, 1975 (D.C. Law 1-18; D.C. Official Code § 35-254(a)), is amended to
355 read as follows:

356 “(a)(1) Except as provided in subsection (b)(1) of this section, a violation of section 2(b)
357 or section 3 shall be punishable by a civil fine of not more than \$50.

358 “(2)(A) Violations penalized under this subsection shall be adjudicated by the
359 Office of Administrative Hearings in accordance with Title II of the Marijuana Possession
360 Decriminalization Amendment Act of 2014, effective July 17, 2014 (D.C. Law 20-126; D.C.
361 Official Code § 48-1211 et seq.); provided, that a person issued a notice of infraction shall not be
362 assessed any additional penalties other than the civil fine for the violation, including the penalties
363 described in sections 202(e) and 203(d) of the Marijuana Possession Decriminalization
364 Amendment Act of 2014, effective July 17, 2014 (D.C. Law 20-126; D.C. Official Code §§ 48-
365 1212(e) and 48-1213(d)).

366 “(B) The Office of Administrative Hearings, pursuant to Title I of the
367 District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204;
368 D.C. Official Code § 2-501 et seq.), may issue rules to implement the provisions of this paragraph.

369 “(3) Individuals authorized to issue notices of infractions for the violations
370 penalized under this subsection include any police officer with authority to make arrests within the
371 District, including members of the Metro Transit Police Department.”.

372 Sec. 7. Applicability.

373 This act shall apply as of July 22, 2020.

374 Sec. 8. Fiscal impact statement.

375 The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact
376 statement required by section 4a of the General Legislative Procedures Act of 1975, approved
377 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

378 Sec. 9. Effective date.

379 This act shall take effect following approval by the Mayor (or in the event of veto by the
380 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
381 90 days, as provided for emergency acts of the Council of the District of Columbia in section
382 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
383 D.C. Official Code § 1-204.12(a)).