


Councilmember Charles Allen

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, 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 warrants accompanying extreme risk protection orders, to add the Office of Attorney General and the Superior Court for the District of Columbia to the list of entities that shall receive from the

45 Metropolitan Police Department information related to extreme risk protection orders, to
46 require the Mayor or the Mayor’s designee to submit information about extreme risk
47 protection orders to the National Instant Criminal Background Check System for the
48 purposes of firearm purchaser background checks; to amend the Homeland Security, Risk
49 Reduction, and Preparedness Amendment Act of 2006 to create a quorum requirement for
50 the Comprehensive Homicide Elimination Strategy Task Force and extend its report
51 submission deadline; and to amend the Act to Regulate Public Conduct on Public Passenger
52 Vehicles to provide that certain violations of the act shall be punishable by civil fine and
53 adjudicated by the Office of Administrative Hearings and to authorize Metro Transit Police
54 Department officers to issue notices of infractions for alleged civil violations.
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56 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
57 act may be cited as the “Firearms Safety Omnibus Clarification Emergency Amendment Act of
58 2020”.

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

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

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

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

69 “Sec. 402. Civil commitment proceedings; extreme risk protection orders.

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

72 “(1) Initiate or seek civil commitment proceedings under D.C. Official Code § 21-
73 541; or

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

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

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

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

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

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

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

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

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

92 “(A)(i) Upon receipt of a petition filed under paragraph (1) of this
93 subsection, and for good cause shown, the court shall issue such orders as may be necessary to

94 obtain any mental health records and other information relevant for the purposes of the petition.
95 The order shall require the disclosure of records to the Office of the Attorney General so that the
96 Office of the Attorney General can conduct a search of the petitioner’s mental health records and
97 report its findings to the court as required by subparagraph (B) of this paragraph.

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

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

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

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

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

112 “The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act,
113 approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), may issue rules to
114 implement the provisions of this act. The proposed rules shall be submitted to the Council for a
115 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess.

116 If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution
117 within the 45-day review period, the proposed rules shall be deemed approved.”.

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

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

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

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

125 (B) Paragraph (4) is repealed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

154 “(2) Stated in hours:

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

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

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

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

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

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

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

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

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

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

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

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

180 hearing for a final extreme risk protection order, the court shall order that the Office of the Attorney

181 General:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

239 “(4) The respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

302 “Sec. 1007d. Disposition of property.

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

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

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

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

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

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

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

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

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

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

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

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

326 “(1A) If the petitioner or respondent was personally served in court when the
327 motion to terminate an extreme risk protection order was granted, the personal service requirement
328 of paragraph (1) of this subsection shall be waived with respect to the party served in court.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

370 Sec. 7. Fiscal impact statement.

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

374 Sec. 8. Effective date.

375 This act shall take effect following approval by the Mayor (or in the event of veto by the
376 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than
377 90 days, as provided for emergency acts of the Council of the District of Columbia in section
378 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;
379 D.C. Official Code § 1-204.12(a)).