

ENROLLED ORIGINAL

AN ACT
D.C. ACT 15-751

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
FEBRUARY 1, 2005

*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Winter
Supp.

West Group
Publisher

To require the Metropolitan Police Department to electronically record interrogations conducted in Metropolitan Police Department interview rooms, to establish standards and procedures for the recording of the interrogations, to authorize the Chief of Police to establish by General Order additional procedures for the recording of interrogations, to create a rebuttable presumption that a statement taken in violation of the procedures for the recording of interrogations established by this act is involuntary, and to repeal the Electronic Recording Procedures Act of 2002.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Electronic Recording Procedures Act of 2004".

TITLE I.

Sec. 101. Procedures for electronic recording of interrogations.

(a)(1) The Metropolitan Police Department shall electronically record, in their entirety, and to the greatest extent feasible, custodial interrogations of persons suspected of committing a crime of violence, as that term is defined in D.C. Official Code § 23-1331(4), when the interrogation takes place in Metropolitan Police Department interview rooms equipped with electronic recording equipment.

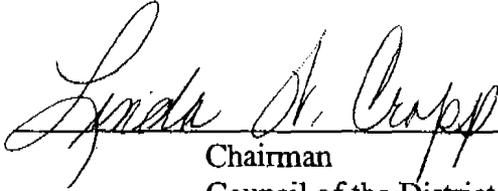
(2) The recording required by paragraph (1) of this subsection shall commence with the first contact between the suspect and law enforcement personnel once the suspect has been placed in the interview room and shall include all subsequent contacts between the suspect and law enforcement personnel in the interview room.

(3) Nothing in this subsection shall prevent the Metropolitan Police Department from recording the actions of the suspect while law enforcement personnel are not in the interview room.

(b) The recording required by subsection (a) of this section shall include the giving of any warnings as to rights required by law, the response of the suspect to such warnings, and the consent, if any, of the suspect to the interrogation. If the required warnings have been given prior to placing the suspect in the interview room, the suspect shall be asked to affirm that he was

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia

VETOED

Mayor
District of Columbia

January 21, 2005

COUNCIL OVERRIDE: FEBRUARY 1, 2005

ENROLLED ORIGINAL

AN ACT
D.C. ACT 15-752

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 19, 2005

*Codification
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To amend the District of Columbia Housing Authority Act of 1999 to clarify the original intent of the tax exemption provisions of the District of Columbia Housing Authority authorizing legislation to assure that the exemption is limited to affordable housing activities and ensure no interruption in the District of Columbia Housing Authority's revitalization and redevelopment projects involving critical affordable housing, to allow Board members to serve as Advisory Neighborhood Commissioners, to change the way the Board members' stipend is set, to alter the Board meeting requirement to one where the Board would have to meet regularly at least 10 times each calendar year; and to amend An Act To regulate the manufacturing, dispensing, selling, and possession of narcotic drugs in the District of Columbia to authorize the District of Columbia Housing Authority Police Department to obtain and act on search warrants for controlled substances.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District of Columbia Housing Authority Amendment Act of 2004".

Sec. 2. The District of Columbia Housing Authority Act of 1999, effective May 9, 2000 (D.C. Law 13-105; D.C. Official Code § 6-201 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 6-201) is amended by adding a new paragraph (19A) to read as follows:

Amend
 § 6-201

"(19A) "For-profit activities" means ancillary activities to the main activities of the District of Columbia Housing Authority, such as retail, commercial office, manufacturing, or recreational real property development activities undertaken by for-profit entities intended to support or contribute to the financial viability of Housing Properties, but does not include residential real property development activities."

(b) Section 5 (D.C. Official Code § 6-204) is amended as follows:

Amend
 § 6-204

(1) Subsection (a) is amended by striking the phrase "for-profit activities involving Housing Properties" and inserting the phrase "for-profit activities" in its place.

(2) Subsection (b) is amended by striking the phrase "for-profit activities involving Housing Properties" and inserting the phrase "for-profit activities" in its place.

(c) Section 12 (D.C. Official Code § 6-211) is amended as follows:

Amend
 § 6-211

(1) Subsection (q) is amended by striking the phrase "(including those that are purely advisory)" and inserting the phrase "(including those that are purely advisory, except for Advisory Neighborhood Commissions)" in its place.

(2) Subsection (s) is amended to read as follows:

"Each Commissioner, other than the *ex officio* Commissioner and the Chairperson, shall

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be entitled to a stipend of \$3,000 per year for their service on the Board; the Chairperson shall be entitled to a stipend of \$5,000 per year. Each Commissioner also shall be entitled to reimbursement of actual travel and other expenses reasonably related to attendance at Board meetings and fulfillment of official duties. Stipends and reimbursements shall be made at least quarterly."

(3) The first 3 sentences of subsection (w) are amended to read as follows:

"The Board shall meet regularly at least 10 times each calendar year. All meetings of the Board shall be conducted in public after publication of notice of the date, time, and location of the meeting, at least one week prior thereto, in the District of Columbia Register. Each meeting shall provide for a period for public comments, which shall not be limited in time, except that the time allowed each individual speaker may be reasonably limited."

Sec. 3. Section 14 of An Act To regulate the manufacturing, dispensing, selling, and possession of narcotic drugs in the District of Columbia, approved June 20, 1938 (52 Stat. 792; D.C. Official Code § 48-921.02), is amended as follows:

Amend
§ 48-921.02

(a) Subsection (e) is amended to read as follows:

"(e) If the judge or Magistrate is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he shall issue a search warrant, signed by him, to the Chief of Police of the District of Columbia or any member of the Metropolitan Police Department, the Chief or any member of the District of Columbia Housing Authority Police Department, or the Chief or any member of the United States Park Police, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding the Chief of Police or member of the Metropolitan Police Department, the Chief or member of the District of Columbia Housing Authority Police Department, or the Chief or member of the United States Park Police forthwith to search the place named for the property specified and to bring it before the judge or Magistrate."

(b) Subsection (j) is amended by striking the phrase "Metropolitan Police Department" and inserting the phrase "Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police" in its place.

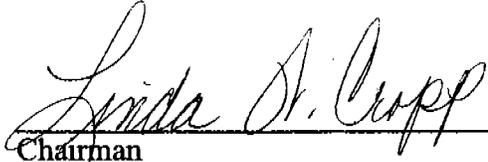
(c) Subsection (k) is amended by striking the phrase "Metropolitan Police Department" and inserting the phrase "Metropolitan Police Department, the District of Columbia Housing Authority Police Department, or the United States Park Police" in its place.

Sec. 4. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

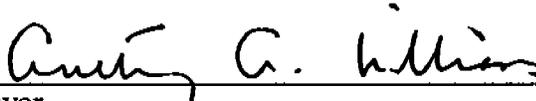
Sec. 5. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved

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December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 19, 2005

ENROLLED ORIGINAL

AN ACT
D.C. ACT 15-753

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 21, 2005

To provide equitable real property tax relief to the National Park Trust, Inc.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "National Park Trust Equitable Real Property Tax Relief Act of 2004".

Sec. 2. The Council of the District of Columbia orders that all real property taxes, interest, penalties, fees and other related charges assessed against the property located at 1329 Missouri Avenue, N.W., lot 802, square 2792, owned by the National Park Trust, Inc., and recording and transfer taxes assessed with respect to the acquisition of such property by National Park Trust, Inc., and its sale to the United States, for the period January 1, 2002, until the effective date of this act, be forgiven to the extent unpaid, and refunded without interest to the extent paid.

Sec. 3. Inclusion in the budget and financial plan.

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 4. Fiscal impact statement.

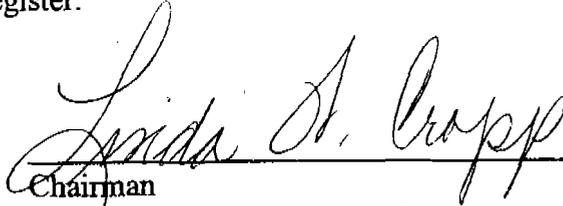
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

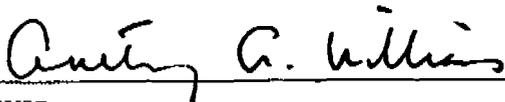
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 19, 2005

ENROLLED ORIGINAL

AN ACT
 D.C. ACT 15-754

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 19, 2005

*Codification
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To amend the Establishment of the Office of the Chief Medical Examiner Act of 2000 to permit the Mayor to waive the requirement that the Chief Medical Examiner be certified in forensic pathology by the American Board of Pathology or be eligible for such certification for any individual appointed as Chief Medical Examiner for the unexpired term ending on April 30, 2007, and to authorize the Mayor to appoint a replacement Chief Medical Examiner to fill the unexpired term of a prior Chief Medical Examiner.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Appointment of the Chief Medical Examiner Amendment Act of 2004".

Sec. 2. Section 2903 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1402), is amended as follows:

Note,
 § 5-1402

(a) Subsection (c) is amended to read as follows:

"(c) The CME, the Deputy CME, and any medical examiners appointed pursuant to subsection (b) of this section shall be physicians licensed to practice medicine in the District of Columbia. The CME, the Deputy CME, and any medical examiners appointed after October 19, 2000, shall be certified in forensic pathology by the American Board of Pathology or be eligible for such certification, except that the Mayor may waive the certification requirement for any individual appointed as CME to fill the unexpired term ending on April 30, 2007."

(b) A new subsection (f) is added to read as follows:

"(f) If a vacancy in the position of Chief Medical Examiner occurs as a consequence of resignation, disability, death, or a reason other than the expiration of the term of the Chief Medical Examiner, the Mayor shall appoint a replacement to fill the unexpired term in the same manner provided in section 2(a) of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01(a)). A person appointed to fill the unexpired term shall serve only for the remainder of the term."

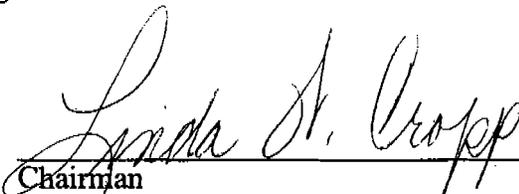
Sec. 3. Fiscal impact statement.

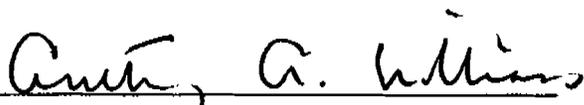
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED
January 19, 2005

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ENROLLED ORIGINAL

AN ACT
D.C. ACT 15-755

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 19, 2005

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To require the Public Service Commission to implement a renewable energy portfolio standard through which a fixed percentage of electric provider's supply source would be from renewable energy; require the standard to be met by the obtaining renewable energy credits; require the Public Service Commission to adopt regulations governing the application and transfer of credits and implementation of this act; provide for the eligibility of energy from specified sources; require electricity suppliers to submit an annual compliance report to the Public Service Commission which demonstrates an electricity supplier's compliance with the renewable energy portfolio standard or the amount of electricity sales by which the electricity supplier failed to meet the applicable renewable energy portfolio standard; require electricity suppliers to pay compliance fees for failure to comply with the renewable energy portfolio standard; provide for the recovery of fees and costs associated with complying with the renewable energy portfolio standard; establish a Renewable Energy Development Fund to be administered by the District of Columbia Energy Office; require the Public Service Commission to facilitate a renewable electricity tracking system; require the Public Service Commission to report to the Council each year on the status of implementation of this act; and require the Public Service Commission to establish standards to account for customer generation from eligible renewable resources for compliance with the renewable energy portfolio standard.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act be cited as the "Renewable Energy Portfolio Standard Act of 2004".

Sec. 2. The Council of the District of Columbia finds that:

(1) It is in the public interest to recognize the economic, environmental, fuel diversity, and security benefits of renewable energy resources, to establish a market for electricity from these resources in the District of Columbia, and to lower the cost to consumers of electricity produced from these resources.

(2) It is in the public interest to ensure that the benefits of electricity from renewable energy resources, including long-term decreased emissions and reliance on and vulnerability from imported energy sources, increased energy security and economic development, and a healthier environment, accrue to the public at large.

(3) Electricity suppliers and consumers share an obligation to develop a

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minimum level of these resources in the electricity supply portfolio of the District of Columbia.

Sec. 3. Definitions.

For the purposes of this act, the term:

- (1) "Brush" means shrubs and stands of short, scrubby trees that do not reach merchantable size.
- (2) "Commission" means the Public Service Commission.
- (3) "Customer generation" means generation that is not principally dedicated to selling power into the wholesale market.
- (4) "Dunnage" means loose materials or padding used to support or protect cargo within shipping containers.
- (5) "Energy Office" means the District of Columbia Energy Office.
- (6) "Electricity supplier" means a person, including an aggregator, broker, or marketer, who generates electricity; sells electricity; or purchases, brokers, arranges or, markets electricity for sale to customers. The term excludes the following:
 - (A) Building owners, lessees, or managers who manage the internal distribution system serving such building and who supply electricity solely to occupants of the building for use by the occupants;
 - (B)(i) Any person who purchases electricity for its own use or for the use of its subsidiaries or affiliates; or
 - (ii) Any apartment building or office building manager who aggregates electric service requirements for his or her building or buildings, and who does not:
 - (I) Take title to electricity;
 - (II) Market electric services to the individually-metered tenants of his or her building; or
 - (III) Engage in the resale of electric services to others;
 - (C) Property owners who supply small amounts of power, at cost, as an accommodation to lessors or licensees of the property; and
 - (D) A consolidator.
- (7) "Fund" means the District of Columbia Renewable Energy Development Fund.
- (8) "PJM Interconnection" means the regional transmission organization that is regulated by the Federal Energy Regulatory Commission that functionally controls the transmission system for the region that includes the District of Columbia.
- (9) "Qualifying biomass" means a solid, nonhazardous, cellulosic waste material that is segregated from other waste materials, and is derived from any of the following forest-related resources, with the exception of old growth timber, unsegregated solid waste, or post-consumer wastepaper:
 - (A) Mill residue;
 - (B) Precommercial soft wood thinning;
 - (C) Slash;
 - (D) Brush;
 - (E) Yard waste;
 - (F) A waste pallet, crate, or dunnage;
 - (G) Agricultural sources, including tree crops, vineyard materials, grain,

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legumes, sugar, and other crop by-products or residues; or

(H) Cofired biomass, subject to the condition under section 5(f).

(10) "Renewable energy credit" or "credit" means a credit representing one megawatt-hour of electricity consumed within the PJM Interconnection region that is derived from a tier one renewable source or a tier two renewable source that is located:

(A) In the PJM Interconnection region or in a state that is adjacent to the PJM Interconnection region; or

(B) Outside the area described in subparagraph (A) of this paragraph but in a control area that is adjacent to the PJM Interconnection region, if the electricity is delivered into the PJM Interconnection region.

(11) "Renewable energy portfolio standard" or "standard" means the percentage of electricity sales at retail in the District of Columbia that is to be derived from tier one renewable sources and tier two renewable sources in accordance with section 4(c).

(12) "Renewable on-site generator" means a person that generates electricity on site from a tier one renewable source or tier two renewable source for the person's own use.

(13) "Slash" means:

(A) Tree tops, branches, bark, or other residue left on the ground after logging or other forestry operations; or

(B) Tree debris left after a natural catastrophe.

(14) "Solar energy" means radiant energy, direct, diffuse, or reflected, received from the sun at wavelengths suitable for conversion into thermal, chemical, or electrical energy.

(15) "Tier one renewable source" means one or more of the following types of energy sources:

(A) Solar energy;

(B) Wind;

(C) Qualifying biomass;

(D) Methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;

(E) Geothermal;

(F) Ocean, including energy from waves, tides, currents, and thermal differences; and

(G) Fuel cells producing electricity from a tier one renewable source under subparagraph (C) or (D) of this paragraph.

(16) "Tier two renewable source" means one or more of the following types of energy sources:

(A) Hydroelectric power other than pumped storage generation; or

(B) Waste-to-energy.

Sec. 4. Renewable energy portfolio standard.

(a) The Commission shall implement a renewable energy portfolio standard which applies to all District of Columbia retail electricity sales, except as provided under subsection (b) of this section.

(b) If the standard becomes applicable to electricity sold to a customer after the start of a calendar year, the standard shall not apply to electricity sold to the customer during that portion of the year before the standard became applicable.

(c) The renewable energy portfolio standard shall be as follows:

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- (1) In 2007, 1.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.005% from solar energy;
 - (2) In 2008, 2% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.011 % from solar energy;
 - (3) In 2009, 2.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.019 % from solar energy;
 - (4) In 2010, 3% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.028 % from solar energy;
 - (5) In 2011, 3.5% from tier one renewable sources, 2.5% from tier two renewable sources, and 0.38% from solar energy;
 - (6) In 2012, 4% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.066 % from solar energy;
 - (7) In 2013, 4.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.083 % from solar energy;
 - (8) In 2014, 5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.104 % from solar energy;
 - (9) In 2015, 5.5% from tier one renewable sources, 2.5% from tier two renewable sources, and not less than 0.128 % from solar energy;
 - (10) In 2016, 6% from tier one renewable sources, 2% from tier two renewable sources, and not less than 0.157 % from solar energy;
 - (11) In 2017, 6.5% from tier one renewable sources, 1.5% from tier two renewable sources, and not less than 0.192% from solar energy;
 - (12) In 2018, 7% from tier one renewable sources, 1% from tier two renewable sources, and not less than 0.233% from solar energy;
 - (13) In 2019, 7.5% from tier one renewable sources, 0.5% from tier two renewable sources, and not less than 0.281 % from solar energy;
 - (14) In 2020, 8.5% from tier one renewable sources, 0% from tier two renewable sources, and not less than 0.329% from solar energy;
 - (15) In 2021, 9.5% from tier one renewable sources, 0 % from tier two renewable sources, and not less than 0.386 % from solar energy;
 - (16) In 2022 and later, 11% from tier one renewable sources, 0 % from tier two renewable sources, and not less than 0.386 % from solar energy.
- (d) Subject to subsections (a) and (c) of this section, an electricity supplier shall meet the standard by obtaining the equivalent amount of renewable energy credits that equal the percentage required under this section for each electricity product sold at retail by the electricity supplier.

Sec. 5. Renewable energy credits.**(a) Energy from a tier one renewable source:**

- (1) Shall be eligible for inclusion in meeting the standard regardless of when the generating system or facility was placed in service; and
- (2) May be applied to the percentage requirements of the standard for either tier one renewable sources or tier two renewable sources.

(b) Energy from a tier two renewable source shall be eligible for inclusion in meeting the renewable energy portfolio standard through 2017 if it is generated at a system or facility that existed and was operational as of January 1, 2004.

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- (c) On or after January 1, 2006, an electricity supplier may:
- (1) Receive renewable energy credits; and
 - (2) Accumulate renewable energy credits under this act.
- (d) On or before December 31, 2006, an electricity supplier shall receive 120% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.
- (e) After December 31, 2006, and on or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from wind or solar sources.
- (f) On or before December 31, 2009, an electricity supplier shall receive 110% credit toward meeting the renewable energy portfolio standard for energy derived from methane under section 3(14)(D).
- (g)(1) An electricity supplier may not use the incineration of solid waste to meet more than 20% of the standard for tier two renewable sources for a given year.
- (2) After December 31, 2012, the incineration of solid waste shall not be eligible to generate renewable energy credits.
- (h)(1) An electricity supplier shall receive credit toward meeting the standard for electricity derived from the biomass fraction of biomass cofired with other fuels.
- (2) Credits that a renewable on-site generator surrenders to its electricity supplier to meet the standard and that the electricity supplier relies on in submitting its compliance report shall not be resold or retransferred by the renewable on-site generator.
 - (3) The renewable on-site generator may retain or transfer any credits in excess of the amount needed to satisfy the standard for the renewable on-site generator's load.
 - (4) A renewable on-site generator that satisfies the standard applicable to the renewable on-site generator's load under this subsection shall not be required to contribute to a compliance fee recovered under section 7.
 - (5) The Commission shall adopt regulations or orders governing the application and transfer of credits under this subsection.
- (i) A tier one renewable source or tier two renewable source that creates a renewable energy credit shall comply with all applicable environmental and administrative requirements, including air quality, water quality, solid waste, and right-to-know provisions, permit conditions, and administrative orders.

Sec. 6. Reporting requirements and compliance fee.

- (a) Each electricity supplier shall submit an annual compliance report to the Commission, by a date and in a form prescribed by the Commission.
- (b)(1) Each report shall include clear and concise information that:
- (A) Demonstrates that the electricity supplier has complied with the applicable standard under section 4 and includes the submission of the required amount of renewable energy credits; or
 - (B) Demonstrates the amount of electricity sales by which the electricity supplier fails to meet the applicable renewable energy portfolio standard.
- (2) Each report shall also include any other information that the Commission by regulation or order may consider relevant.
- (c) If an electricity supplier fails to comply with the renewable energy portfolio standard for the applicable year, the electricity supplier shall pay into the Fund a compliance fee of:

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- (1) Two and ½ cents for each kilowatt-hour of shortfall from required tier one renewable sources;
- (2) One cent for each kilowatt-hour of shortfall from required tier two renewable sources; and
- (3) Thirty cents for each kilowatt-hour of shortfall from required solar energy sources.

Sec. 7. Recovery of fees and costs.

(a) The Commission shall allow the local distribution company to recover actual dollar-for-dollar prudently costs incurred, including a compliance fee under section 6, in complying with a mandated renewable energy portfolio standard. The electricity distribution company may also pass through its prudently incurred additional costs, if any, associated with complying with the standard, through the end of the year of standard offer service in which the requirement took effect.

(b) An electricity supplier may recover a compliance fee if:

- (1) The payment of a compliance fee is the least-cost measure to ratepayers as compared to the purchase of tier one renewable sources, tier two renewable sources, or solar energy to comply with a renewable energy portfolio standard; or
- (2) There are insufficient tier one renewable sources, tier two renewable sources, or solar energy available for the electricity supplier to comply with a renewable energy portfolio standard.

(c) Any cost recovery under this section:

- (1) May be in the form of a nonbypassable surcharge to current applicable customers; and
- (2) Shall be disclosed on applicable customer bills.

Sec. 8. Renewable Energy Development Fund.

(a) There is established a fund designated as the Renewable Energy Development Fund, which shall be separate from the General Fund of the District of Columbia and shall be used solely for the purposes set forth in this section. All fees, payment, investment earnings, or other funds received, and all interest on the funds, shall be deposited into the Fund without regard to fiscal year limitation and shall not any time be transferred to, or lapse into, or be commingled with the General Fund of the District of Columbia or any other fund or account of the District of Columbia. The Fund shall be continually available for the uses and purposes set forth in subsection (c) of this section.

(b) The Fund established by this section shall be administered by the Energy Office. The Energy Office shall receive and review applications for loans and grants for eligible projects from the Fund.

(c) The Fund shall be used solely for the purpose of making loans and grants to support the creation of new solar energy sources in the District of Columbia and for otherwise administering the Fund.

(d) Proceeds for the Fund shall be collected from the following:

- (1) Compliance fees paid under section 6;
- (2) Payments received in repayment of a loan;
- (3) Investment earnings of the Fund; and
- (4) Any other money from any other source accepted for the benefit of the Fund.

(e) The Energy Office shall establish the eligibility criteria for projects supported by the Fund. The Energy Office may allow the use of money of the Fund for administrative expenses related to the Fund and project review and oversight.

Sec. 9. Renewable electricity tracking system.

(a) The Commission shall select a market-based renewable electricity tracking system to facilitate the creation and transfer of renewable energy credits.

(b) The Commission may designate the Energy Office to administer the electricity tracking system. The Commission or the Energy Office may contract with a for-profit or a nonprofit entity to assist in the administration of the electricity tracking system required under this section.

(c) To the extent practicable, the tracking system shall be the generation attributes tracking system developed by PJM Interconnection.

Sec. 10. Application of renewable energy credits.

(a) An electricity supplier may use accumulated renewable energy credits to meet the renewable energy portfolio standard by submitting them to the Commission as evidence of compliance.

(b) A renewable energy credit may be sold or otherwise transferred.

(c) Except as authorized under section (d) of this section, a renewable energy credit shall exist for 3 years from the date created.

(d) A renewable energy credit may be diminished or extinguished before the expiration of 3 years by:

(1) The electricity supplier that received the credit;

(2) A nonaffiliated entity of the electricity supplier:

(A) That purchased the credit from the electricity supplier receiving the credit;

(B) To whom the electricity supplier otherwise transferred the credit; or

(3) Demonstrated compliance by the generating facility with the requirements of section 5(i).

Sec. 11. Rules, duties, and powers of the Commission.

(a) The Commission may impose an administrative fee on a renewable energy credit transaction, but the amount of the fee may not exceed the Commission's actual direct cost of processing the transaction.

(b) On or before April 1 of each year, the Commission shall provide a report to the Council on the status of implementation of this act, including the availability of tier one renewable sources, certification of the number of credits generated by the utilities meeting the requirements of section 4, and any other such information as the Council shall consider necessary.

(c) The Commission shall adopt regulations to implement the provisions of this act.

(d) The Commission shall establish standards, by order or regulation, to account for customer generation from eligible renewable resources for compliance with section 4.

Sec. 12. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal

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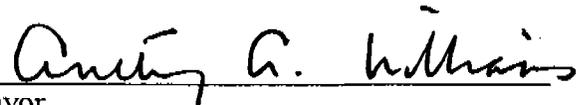
impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 13. Effective date.

This act shall take effect following approval by the Mayor (or in event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 19, 2005

AN ACT
D.C. ACT 15-756

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
JANUARY 19, 2005

Codification
District of
Columbia
Official Code

2001 Edition

2005 Winter
Supp.

West Group
Publisher

To amend, on an emergency basis, due to Congressional review, the Office of Property Management Establishment Act of 1998 to impose a requirement that the Office of Property Management report to the Council before entering into a contract in excess of \$500,000, including a contract with a party where multiple contracts with that party over a 12-month period exceed \$500,000 in the aggregate (in the case of sole source contracts in excess of \$50,000), and to require that all planned relocations of District government facilities be accompanied by a complete funding certification which analyzes all material, operational and other direct costs, such as anticipated lost revenue, likely to be incurred in relocating District government facilities; and to require a report by the Office of Property Management on the tenant representation program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office of Property Management Reform Second Congressional Review Emergency Amendment Act of 2004".

Sec. 2. The Office of Property Management Establishment Act of 1998, effective March 26 1999 (D.C. Law 12-175; D.C. Official Code § 10-1001 *et seq.*), is amended by adding new sections 1806a and 1806b to read as follows:

"Sec. 1806a. Report to the Council on certain contracts.

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

"(1) "Contract" includes a contract, lease, or any amendment or addendum to a contract or lease; task order; or purchase order.

"(2) "Party" includes any person or entity, including a corporation, general or limited partnership, limited liability company, trust, association, or cooperative, or any person, entity, owning or owned by (in any percentage) such person or entity.

"(b) At least 30 days before entering into any contract, the Office shall provide a report to the Council if the contract:

"(1) Exceeds \$500,000;

"(2) Is an addendum or an amendment to a contract, which contract, together

with all addenda or amendments, in the aggregate, exceeds \$500,000;

“(3) Together with all contracts between the Office and a single party, in the aggregate during a 12-month period, exceeds \$500,000;

“(4) Is a sole source contract which exceeds \$50,000;

“(5) Is an addendum or an amendment to a sole source contract, which contract, together with all addenda or amendments, in the aggregate, exceeds \$50,000; or

“(6) Together with all sole source contracts between the Office and a party which in the aggregate during a 12-month period, exceeds \$50,000 .

“(c) The report shall include:

“(1) A summary of the material terms of the contract;

“(2) A copy of the contract; and

“(3) If subsection (b)(2), (3), (5), or (6) of this section apply, a summary of the material terms of each contract and a copy of each contract.

“Sec. 1806b. Report to the Council on relocation.

At least 90 days prior to any relocation of District government facilities, the Office shall provide to the Council, a complete funding certification which analyzes all material, operational, and other direct costs, including anticipated lost revenues, likely to be incurred in relocating District government facilities.”.

Sec. 3. Applicability.

This act shall apply as of December 20, 2004.

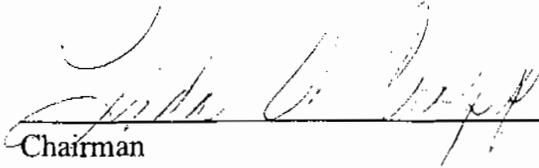
Sec. 4. Fiscal impact statement.

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

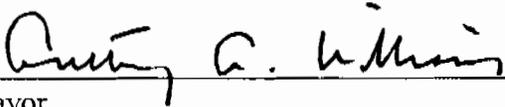
Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 19, 2005

AN ACT

D.C. ACT 15-757

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 26, 2005*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Winter
Supp.West Group
Publisher

To establish a policy for the District of Columbia regarding First Amendment assemblies; to require the Metropolitan Police Department ("MPD") to recognize and implement District policies regarding First Amendment assemblies, to require the Mayor to issue regulations governing the issuance of approved plans for First Amendment assemblies, to prohibit the use of a police line to encircle participants in a First Amendment assembly unless MPD has probable cause to arrest, and has decided to arrest, the participants, to require MPD to adopt a method of identifying officers during First Amendment assemblies that provides for more visible identification, to require that MPD officers document, either in writing or electronically, all arrests made during First Amendment assemblies, to establish a policy regarding the use of restraints while processing persons arrested during a First Amendment assembly, to require MPD to promptly process persons arrested in connection with a First Amendment assembly, to require MPD to provide persons arrested in connection with a First Amendment assembly with a written notice identifying their release options, to require the Chief of Police to issue rules regarding the issuance of police passes for members of the media, and to require appropriate training for MPD personnel who handle First Amendment assemblies; to amend the Office of Citizen Complaint Review Establishment Act of 1998 to give the Police Complaints Board the authority to monitor and evaluate police handling of First Amendment assemblies; to establish a policy of the District regarding MPD's investigation and surveillance of political activity and organizations, to establish a District policy that all MPD investigations and preliminary inquiries involving First Amendment activities shall be conducted for a legitimate law enforcement objective, to require the Chief of Police to issue regulations governing investigations and preliminary inquiries involving First Amendment activities, to allow MPD to conduct limited preliminary inquiries relating to upcoming First Amendment assemblies without additional authorization, to establish rules for maintaining MPD Intelligence Section files and records, to require that information entered into Intelligence Section files be evaluated for source reliability, and content validity and accuracy, to require the Office of the District of Columbia Auditor to audit annually MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities, and to provide that standards for police conduct may be relied upon by persons exercising First Amendment rights in any action alleging violations of statutory or common law rights; to establish procedures regarding the post-and-forfeit procedure and its use in resolving criminal charges, to require that MPD members, while in uniform, wear or display their nameplate and badge, and not remove or cover this identifying information or prevent persons from reading it, to provide that the provisions of this act establishing standards for police conduct may be relied upon by persons exercising First Amendment rights in any action alleging violations of statutory or common law rights; and to amend the Office of Citizen Complaint Review Establishment Act of 1998 to establish Police Complaints Board jurisdiction over complaints from members of the public alleging that

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MPD officers failed to wear required identification or refused to identify themselves when requested to do so by a member of the public.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "First Amendment Rights and Police Standards Act of 2004".

TITLE I. FIRST AMENDMENT ASSEMBLIES.

Sec. 101. Short title.

This title may be cited as the "First Amendment Assemblies Act of 2004".

Subtitle A.

Sec. 102. Definitions.

For the purposes of this title, the term:

(1) "First Amendment assembly" means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views;

(2) "MPD" means the Metropolitan Police Department.

Sec. 103. Policy on First Amendment assemblies.

It is the declared public policy of the District of Columbia that persons and groups have a right to organize and participate in peaceful First Amendment assemblies on the streets, sidewalks, and other public ways, and in the parks of the District of Columbia, and to engage in First Amendment assembly near the object of their protest so they may be seen and heard, subject to reasonable restrictions designed to protect public safety, persons, and property, and to accommodate the interest of persons not participating in the assemblies to use the streets, sidewalks, and other public ways to travel to their intended destinations, and use the parks for recreational purposes.

Sec. 104. Reasonable time, place, and manner restrictions on First Amendment assemblies.

(a) The MPD shall recognize and implement the District policy on First Amendment assemblies established in section 103 when enforcing any restrictions on First Amendment assemblies held on District streets, sidewalks, or other public ways, or in District parks.

(b) The MPD may enforce reasonable time, place, and manner restrictions on First Amendment assemblies by:

(1) Establishing reasonable restrictions on a proposed assembly prior to its planned occurrence though the approval of a plan, where the organizers of the assembly give notice;

(2) Enforcing reasonable restrictions during the occurrence of an assembly for which a plan has been approved, which are in addition to the restrictions set forth in the approved plan, where the additional restrictions are:

(A) Ancillary to the restrictions set forth in the approved plan and are designed to implement the substance and intent in the approval of the plan;

(B) Enforced in response to the occurrence of actions or events unrelated to the assembly that were not anticipated at the time of the approval of the plan and that were not caused by the plan-holder, counter-demonstrators, or the police; or

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(C) Enforced to address a determination by the MPD during the pendency of the assembly that there exists an imminent likelihood of violence endangering persons or threatening to cause significant property damage; or

(3) Enforcing reasonable restrictions on a First Amendment assembly during its occurrence where a plan was not approved for the assembly.

(c) No time, place, or manner restriction regarding a First Amendment assembly shall be based on the content of the beliefs expressed or anticipated to be expressed during the assembly, or on factors such as the attire or appearance of persons participating or expected to participate in an assembly, nor may such restrictions favor non-First Amendment activities over First Amendment activities.

Sec. 105. Notice and plan approval process for First Amendment assemblies--generally.

(a) It shall not be an offense to assemble or parade on a District street, sidewalk, or other public way, or in a District park, without having provided notice or obtained an approved assembly plan.

(b) The purpose of the notice and plan approval process is to avoid situations where more than one group seeks to use the same space at the same time and to provide the MPD and other District agencies the ability to provide appropriate police protection, traffic control, and other support for participants and other individuals.

(c) Except as provided in subsection (d) of this section, a person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall give notice and apply for approval of an assembly plan before conducting the assembly.

(d) A person or group who wishes to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, is not required to give notice or apply for approval of an assembly plan before conducting the assembly where:

(1) The assembly will take place on public sidewalks and crosswalks and will not prevent other pedestrians from using the sidewalks and crosswalks;

(2) The person or group reasonably anticipates that fewer than 50 persons will participate in the assembly, and the assembly will not occur on a District street; or

(3) The assembly is for the purpose of an immediate and spontaneous expression of views in response to a public event.

(e) The Mayor shall not enforce any user fees on persons or groups that organize or conduct First Amendment assemblies.

(f) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, or other District officials or agencies, as a prerequisite for making or delivering an address, speech, or sermon regarding any political, social, or religious subject in any District street, sidewalk, other public way, or park.

(g) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from the Chief of Police, the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for using a stand or structure in connection with such an assembly; provided, that a First Amendment assembly plan may contain limits on the nature, size, or number of stands or structures to be used as required to maintain public safety. Individuals conducting a First Amendment assembly under subsection (d) of this section may use a stand or structure so long as it does not prevent others from using the sidewalk.

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(h) The Mayor shall not require, separate from or in addition to the requirements for giving notice of or applying for approval of an assembly plan for a First Amendment assembly, that persons give notice to, or obtain a permit or plan from, the Chief of Police, the Director of the Department of Consumer and Regulatory Affairs, or any other District official or agency as a prerequisite for selling demonstration-related merchandise within an area covered by an approved plan or within an assembly covered by subsection (d) of this section; provided, that nothing in this subsection shall be construed to authorize any person to sell merchandise in a plan-approved area contrary to the wishes of the plan-holder.

Sec. 106. Notice and plan approval process for First Amendment assemblies—processing applications; appeals; rules.

(a)(1) Subject to the appeal process set forth in subsection (d) of this section, the authority to receive and review a notice of and an application for approval of a plan for a First Amendment assembly on District streets, sidewalks, and other public ways, and in District parks, and to grant, deny, or revoke an assembly plan, is vested exclusively with the Chief of Police or his or her designee.

(2) Persons or groups providing notice to and applying for approval of a plan from the District government to conduct a First Amendment assembly on a District street, sidewalk, or other public way, or in a District park, shall not be required to obtain approval for the assembly from any other official, agency, or entity in the District government, including the District of Columbia Emergency Management Agency, the Mayor's Special Events Task Group, or the Department of Parks and Recreation.

(b)(1) The Chief of Police shall take final action on a notice of and an application for approval of a plan for a First Amendment assembly within a reasonably prompt period of time following receipt of the completed application, considering such factors as the anticipated size of the assembly, the proposed date and location, and the number of days between the application date and the proposed assembly date, and shall establish specific timetables for processing an application by rules issued pursuant to subsection (e) of this section.

(2) Except as provided in paragraph (3) of this subsection, where a complete application for approval of a First Amendment assembly plan is filed 60 days or more prior to the proposed assembly date, the application shall receive final action no later than 30 days prior to the proposed assembly.

(3) Following the approval of an assembly plan in response to an application pursuant to paragraph (2) of this subsection, the Chief of Police may, after consultations with the person or group giving notice of the assembly, amend the plan to make reasonable modifications to the assembly location or route up until 10 days prior to the assembly date based on considerations of public safety.

(c) The Chief of Police shall inform the person or group giving notice of an assembly, in writing, of the reasons for any decision to:

- (1) Deny an application for approval of a First Amendment assembly plan;
- (2) Revoke an assembly plan prior to the date of the planned assembly; or
- (3) Approve an assembly plan subject to time, place, or manner restrictions that the applicant has advised the Chief of Police are objectionable to the applicant.

(d)(1) Any applicant whose proposed assembly plan has been denied, revoked prior to the date of the planned assembly, or granted subject to time, place, or manner restrictions deemed objectionable by the applicant, may appeal such decision to the Mayor or the Mayor's designee, who shall concur with, modify, or overrule the decision of the Chief of Police.

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(2) The Mayor shall make a decision on appeal expeditiously and prior to the date and time the assembly is planned to commence, and shall explain in writing the reasons for the decision.

(e)(1) Within 90 days of the effective date of this act, the Mayor, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et. seq.*), and in accordance with this title, shall issue rules governing the approval of plans to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks.

(2) Existing procedures for the issuance of permits to persons or groups seeking to conduct a First Amendment assembly on District streets, sidewalks, or other public ways, or in District parks, that are not inconsistent with this title shall remain in effect pending the issuance of the rules promulgated under paragraph (1) of this subsection.

Sec. 107. Police handling and response to First Amendment assemblies.

(a) The MPD's handling of, and response to, all First Amendment assemblies shall be designed and implemented to carry out the District policy on First Amendment assemblies established in section 103.

(b)(1) Where participants in a First Amendment assembly fail to comply with reasonable time, place, and manner restrictions, the MPD shall, to the extent reasonably possible, first seek to enforce the restrictions through voluntary compliance and then seek, as appropriate, to enforce the restrictions by issuing citations to, or by arresting, the specific non-compliant persons, where probable cause to issue a citation or to arrest is present.

(2) Nothing in this subsection is intended to restrict the authority of the MPD to arrest persons who engage in unlawful disorderly conduct, or violence directed at persons or property.

(c) Where participants in a First Amendment assembly, or other persons at the location of the assembly, engage in unlawful disorderly conduct, violence toward persons or property, or unlawfully threaten violence, the MPD shall, to the extent reasonably possible, respond by dispersing, controlling, or arresting the persons engaging in such conduct, and not by issuing a general order to disperse, thus allowing the First Amendment assembly to continue.

(d) The MPD shall not issue a general order to disperse to participants in a First Amendment assembly except where:

(1) A significant number or percentage of the assembly participants fail to adhere to the imposed time, place, and manner restrictions, and either the compliance measures set forth in subsection (b) of this section have failed to result in substantial compliance or there is no reasonable likelihood that the measures set forth in subsection (b) of this section will result in substantial compliance;

(2) A significant number or percentage of the assembly participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence toward persons or property; or

(3) A public safety emergency has been declared by the Mayor that is not based solely on the fact that the First Amendment assembly is occurring, and the Chief of Police determines that the public safety concerns that prompted the declaration require that the First Amendment assembly be dispersed.

(e)(1) If and when the MPD determines that a First Amendment assembly, or part thereof, should be dispersed, the MPD shall issue at least one clearly audible and understandable order to disperse using an amplification system or device, and shall provide the participants a reasonable and adequate time to disperse and a clear and safe route for dispersal.

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(2) Except where there is imminent danger of personal injury or significant damage to property, the MPD shall issue multiple dispersal orders and, if appropriate, shall issue the orders from multiple locations. The orders shall inform persons of the route or routes by which they may disperse and shall state that refusal to disperse will subject them to arrest.

(3) Whenever possible, MPD shall make an audio or video recording of orders to disperse.

(f)(1) Where a First Amendment assembly is held on a District street, sidewalk, or other public way, or in a District park, and an assembly plan has not been approved, the MPD shall, consistent with the interests of public safety, seek to respond to and handle the assembly in substantially the same manner as it responds to and handles assemblies with approved plans.

(2) An order to disperse or arrest assembly participants shall not be based solely on the fact that a plan has not been approved for the assembly.

(3) When responding to and handling a First Amendment assembly for which a plan has not been approved, the MPD may take into account any actual diminution, caused by the lack of advance notice, in its ability, or the ability of other governmental agencies, appropriately to organize and allocate their personnel and resources so as to protect the rights of both persons exercising free speech and other persons wishing to use the streets, sidewalks, other public ways, and parks.

Sec. 108. Use of police lines.

No emergency area or zone will be established by using a police line to encircle, or substantially encircle, a demonstration, rally, parade, march, picket line, or other similar assembly (or subpart thereof) conducted for the purpose of persons expressing their political, social, or religious views except where there is probable cause to believe that a significant number or percentage of the persons located in the area or zone have committed unlawful acts (other than failure to have an approved assembly plan) and the police have the ability to identify those individuals and have decided to arrest them; provided, that this section does not prohibit the use of a police line to encircle an assembly for the safety of the demonstrators.

Sec. 109. Identification of MPD personnel policing First Amendment assemblies.

The MPD shall implement a method for enhancing the visibility to the public of the name or badge number of officers policing a First Amendment assembly by modifying the manner in which those officers' names or badge numbers are affixed to the officers' uniforms or helmets. The MPD shall ensure that all uniformed officers assigned to police First Amendment assemblies are equipped with the enhanced identification and may be identified even if wearing riot gear.

Sec. 110. Documentation of arrests in connection with a First Amendment assembly.

(a) The MPD shall cause every arrest in connection with a First Amendment assembly to be documented, in writing or electronically, by the officer at the scene who makes the arrest.

(b) Except as provided in subsection (c) of this section, the arrest documentation shall be completed at a time reasonably contemporaneous with the arrest, and shall include:

- (1) The name of the person arrested;
- (2) The date and time of the arrest;
- (3) Each offense charged;
- (4) The location of the arrest, and of each offense;
- (5) A brief statement of the facts and evidence establishing the basis to arrest the person for each offense;
- (6) An identification of the arresting officer (name and badge number); and

(7) Any other information the MPD may determine is necessary.

(c)(1) The Chief of Police may implement a procedure for documenting arrests in connection with a First Amendment assembly different from that set forth in subsection (b) of this section where the Chief determines that an emergency exists with regard to a specific First Amendment assembly, and that implementation of the alternative procedure is necessary to assist police in protecting persons, property, or preventing unlawful conduct; provided, that any such procedure shall adequately document the basis that existed for each individual arrest.

(2) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be made in writing and shall include an explanation of the circumstances justifying the determination.

(3) The determination of the Chief of Police made pursuant to paragraph (1) of this subsection shall be valid for a period of 24 hours, and may be renewed by the Chief, or in the Chief's absence, the Chief's designee.

Sec. 111. Use of handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly.

(a) The MPD shall adhere to the standard set forth in subsection (b) of this section in using handcuffs, plastic cuffs, or other physical restraints on any person arrested in connection with a First Amendment assembly who is being held in custody in the following circumstances:

(1) The arrestee is being held in a police processing center:

(A) To determine whether the arrestee should be released or the method for release;

(B) To determine whether the arrestee should be presented to court; or

(C) Pending presentation to court;

(2) The arrestee is being held in an unsecured processing center, and is not being held in a cell; or

(3) The arrestee is charged solely with one or more misdemeanor offenses, none of which have, as one of their elements, the commission of a violent act toward another person or a threat to commit such an act, or the destruction of property, or a threat to destroy property.

(b) With regard to any person who is being held in custody by the MPD in the circumstances identified in subsection (a) of this section, the MPD shall use handcuffs, plastic cuffs, or other physical restraints only to the extent reasonably necessary, and in a manner reasonably necessary, for the safety of officers and arrestees; provided, that no such person shall be restrained by connecting his or her wrist to his or her ankle, and no such person shall be restrained in any other manner that forces the person to remain in a physically painful position.

(c) Nothing in this section is intended to restrict the otherwise lawful authority of the MPD to use handcuffs, plastic cuffs, or other physical restraints on persons arrested in connection with a First Amendment assembly at the time of or immediately following arrest, while arrestees are being transported to a processing center, or while arrestees are being transported to or from court.

Sec. 112. Prompt release of persons arrested in connection with a First Amendment assembly.

(a)(1) The MPD shall promptly process any person arrested in connection with a First Amendment assembly to determine whether the person is eligible for immediate release pursuant to a lawful release option, and shall promptly release any person so eligible who opts for release.

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(2) The MPD shall promptly release any person arrested in connection with a First Amendment assembly who, it is subsequently determined, should not be charged with any offense, or as to whom arrest documentation has not been prepared and preserved.

(b)(1) The MPD shall require that an officer holding a supervisory rank document and explain any instance in which a person arrested in connection with a First Amendment assembly who opts for release pursuant to any lawful release option or who is not charged with any offense is not released within 4 hours from the time of arrest.

(2) The MPD shall provide to any person not released within a reasonable time of arrest food appropriate to the person's health.

(c) The Chief of Police shall issue an annual public report that:

(1) Identifies the number of persons in the preceding year who were arrested in connection with a First Amendment assembly and opted for release pursuant to any lawful release option or were not charged with any offense and were not released from custody within 4 hours after the time of arrest;

(2) Discusses the reasons for the delay in processing such persons for release;
and

(3) Describes any steps taken or to be taken to ensure that all such persons are released within 4 hours from the time of arrest.

(d) The MPD shall ensure that it possesses an automated information processing system that enables it to promptly process for release or presentation to the court all persons arrested in connection with a First Amendment assembly, and shall ensure that such system is fully operational (with respect to its hardware, software, and staffing) prior to a First Amendment assembly that has a potential for a substantial number of arrests.

Sec. 113. Notice to persons arrested in connection with a First Amendment assembly of their release options.

(a) The MPD shall fully and accurately advise persons arrested in connection with a First Amendment assembly of all potential release options when processing them for release from custody or for presentation to court.

(b)(1) The MPD shall provide a written notice identifying all release options to each person arrested in connection with a First Amendment assembly who is charged solely with one or more misdemeanor offenses. The notice shall clearly indicate that the options are alternative methods for obtaining a prompt release, and that the availability of each option is dependent on a determination that the arrestee is eligible to participate in that release option. The notice shall also identify the misdemeanor charges lodged against the arrestee.

(2) The notice required by paragraph (1) of this subsection shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

Sec. 114. Police-media relations.

(a) Within 90 days of the effective date of this act, the Chief of Police, pursuant to Title 1 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code 2-501 *et seq.*), shall issue rules governing police passes for media personnel.

(b) Within 90 days of the effective date of this act, the Chief of Police shall develop and implement a written policy governing interactions between the MPD and media representatives who are in or near an area where a First Amendment assembly is ongoing and who are reporting

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on the First Amendment assembly. The policy shall be consistent with the requirements of subsection (c) of this section.

(c)(1) The MPD shall allow media representatives reasonable access to all areas where a First Amendment assembly is occurring. At a minimum, the MPD shall allow media representatives no less access than that enjoyed by members of the general public and, consistent with public safety considerations, shall allow media representatives access to promote public knowledge of the assembly.

(2) The MPD personnel located in or near an area where a First Amendment assembly is ongoing shall recognize and honor media credentials issued by or officially recognized by the MPD.

(3) The MPD shall make reasonable accommodations to allow media representatives effectively to use photographic, video, or other equipment relating to their reporting of a First Amendment assembly.

Sec. 115. Training for handling of, and response to, First Amendment assemblies.

The Chief of Police shall ensure that all relevant MPD personnel, including command staff, supervisory personnel, and line officers, are provided regular and periodic training on the handling of, and response to, First Amendment assemblies. The training shall be tailored to the duties and responsibilities assigned to different MPD positions and ranks during a First Amendment assembly. The training shall include instruction on the provisions of this title, and the regulations issued hereunder.

Sec. 116. Use of riot gear and riot tactics at First Amendment assemblies.

(a) Officers in riot gear shall be deployed consistent with the District policy on First Amendment assemblies and only where there is a danger of violence. Following any deployment of officers in riot gear, the commander at the scene shall make a written report to the Chief of Police within 48 hours and that report shall be available to the public on request.

(b)(1) Large scale canisters of chemical irritant shall not be used at First Amendment assemblies absent the approval of a commanding officer at the scene, and the chemical irritant is reasonable and necessary to protect officers or others from physical harm or to arrest actively resisting subjects.

(2) Chemical irritant shall not be used by officers to disperse a First Amendment assembly unless the assembly participants or others are committing acts of public disobedience endangering public safety and security.

(3) A commanding officer who makes the determination specified in paragraph (1) of this subsection shall file with the Chief of Police a written report explaining his or her action within 48 hours after the event.

Sec. 117. Construction.

The provisions of this title are intended to protect persons who are exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this title may be relied upon by such persons in any action alleging violations of statutory or common law rights.

Subtitle B.

Sec. 141. Section 5 of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1104), is amended by adding a new subsection (d-1) to read as follows:

Amend
§ 5-1104

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“(d-1) The Board may, where appropriate, monitor and evaluate MPD’s handling of, and response to, First Amendment assemblies, as defined in section 102 of the First Amendment Rights and Police Standards Act of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-968), held on District streets, sidewalks, or other public ways, or in District parks.”

Sec. 142. Section 705.1 of the District of Columbia Municipal Regulations is amended by striking the phrase "regulation." and inserting the phrase "regulation; provided, that the term "parade" shall not include a First Amendment assembly, as that term is defined in section 102(1) of the First Amendment Rights and Police Standards of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-968)." in its place.

DCMR

Sec. 143. Chapter 21 of Title 24 of the District of Columbia Municipal Regulations is amended as follows:

DCMR

(a) Section 2102.3 is amended to read as follows:

“2102.3 Passes shall be in the form and number approved by the Chief of Police.”

(b) Section 2102.4 is repealed.

TITLE II. POLICE INVESTIGATIONS CONCERNING FIRST AMENDMENT ACTIVITIES.

Sec. 201. Short title.

This title may be cited as the “Police Investigations Concerning First Amendment Activities Act of 2004”.

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) “First Amendment activities” means constitutionally protected speech or association, or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble, and the right to petition the government.

(2) “First Amendment assembly” means a demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of persons expressing their political, social, or religious views;

(3) “Informant” means a person who provides information to the police department motivated by the expectation of receiving compensation or benefit, or otherwise is acting under the direction of the MPD.

(4) “Intelligence Section” means the Intelligence Section of the Special Investigations Division of MPD, or its successor section or unit.

(5) “Intelligence Section file” means the investigative intelligence information gathered, received, developed, analyzed, and maintained by the Intelligence Section of the Metropolitan Police Department, pursuant to an investigation or preliminary inquiry involving First Amendment activity.

(6) “Legitimate law enforcement objective” means the detection, investigation, deterrence, or prevention of crime, or the apprehension and prosecution of a suspected criminal; provided, that a person shall not be considered to be pursuing a legitimate law enforcement objective if the person is acting based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group.

(7) “Mail cover” means the inspection and review of the outside of envelopes of posted mail and other delivered items.

(8) "Mail opening" means the opening and inspection and review of the contents of posted mail and other delivered items.

(9) "Minimization procedures" means reasonable precautions taken to minimize the interference with First Amendment activities, without impairing the success of the investigation or preliminary inquiry.

(10) "MPD" means the Metropolitan Police Department.

(11) "Reasonable suspicion" means a belief based on articulable facts and circumstances indicating a past, current, or impending violation of law. The reasonable suspicion standard is lower than the standard of probable cause; however, a mere hunch is insufficient as a basis for reasonable suspicion. A suspicion that is based upon the race, ethnicity, religion, national origin, lawful political affiliation or activity, or lawful news-gathering activity of an individual or group is not a reasonable suspicion.

Sec. 203. Purpose; scope.

This title establishes the responsibilities of and procedures for the MPD relating to investigations and preliminary inquiries, including criminal intelligence investigations and inquiries, that may affect activities protected by the First Amendment. This title does not apply to criminal investigations or inquiries that do not involve First Amendment activities.

Sec. 204. Policy on investigations and inquiries involving First Amendment activities.

The MPD shall conduct all investigations and preliminary inquiries involving First Amendment activities for a legitimate law enforcement objective and, in so doing, shall safeguard the constitutional rights and liberties of all persons. MPD members may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against any person engaged in First Amendment activity for the purpose of punishing, retaliating, preventing, or hindering the person from exercising his or her First Amendment rights.

Sec. 205. Authorization for investigations involving First Amendment activities.

(a) The MPD may conduct a criminal investigation that involves the First Amendment activities of persons, groups, or organizations only when there is reasonable suspicion to believe that the persons, groups, or organizations are planning or engaged in criminal activity, and the First Amendment activities are relevant to the criminal investigation.

(b) Except as provided in subsection (e) of this section, a MPD member may undertake an investigation under this section only after receiving prior written authorization from the Commander, Office of the Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations. No MPD member may conduct an investigation involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for an investigation under this section, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank as designated by MPD regulations:

- (1) Identifying the subject of the proposed investigation, if known;
- (2) Stating the facts and circumstances that create a reasonable suspicion of criminal activity; and
- (3) Describing the relevance of the First Amendment activities to the investigation.

(d)(1) Written authorization of an investigation under this section may be granted for a period of up to 120 days where the designated commander determines that there is reasonable suspicion of criminal activity.

(2) If the MPD seeks to continue an investigation past 120 days, a new memorandum and approval shall be obtained for each subsequent 120-day period. The new memorandum shall describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the investigation.

(3) The Chief of Police shall approve investigations open for more than one year, and shall do so in writing, stating the justification for the investigation.

(e) If there is an immediate threat of criminal activity, an investigation under this section may begin before a memorandum is prepared and approved; provided, that written approval must be obtained within 24 hours from the Chief of Police or his designee.

(f) An investigation involving First Amendment activities shall be terminated when logical leads have been exhausted and no legitimate law enforcement purpose justifies its continuance.

Sec. 206. Authorization for preliminary inquiries involving First Amendment activities.

(a) The MPD may initiate a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, where:

(1) The MPD receives information or an allegation the responsible handling of which requires further scrutiny; and

(2) The information or allegation received by MPD does not justify opening a full investigation because it does not establish reasonable suspicion that persons are planning or engaged in criminal activity.

(b)(1) A MPD member may undertake a preliminary inquiry involving First Amendment activities, to obtain sufficient information to determine whether or not an investigation is warranted, only by receiving prior written authorization from the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations.

(2) Except as provided in section 209, no MPD member may conduct a preliminary inquiry involving First Amendment activities without the authorization required by this section.

(c) To obtain authorization for a preliminary inquiry, a MPD member shall submit a memorandum to the Commander, Office of Superintendent of Detectives, or such other MPD commander of similar rank designated by MPD regulations:

(1) Identifying the subject of the proposed inquiry, if known;

(2) Stating the information or allegations that are the basis for the preliminary inquiry; and

(3) Describing the relevance of the First Amendment activities to the inquiry.

(d)(1) A preliminary inquiry under this section may be authorized for a period of up to 60 days.

(2) If the MPD seeks to continue this preliminary inquiry beyond 60 days, a new memorandum and approval must be obtained for an additional 60-day period. The new memorandum must describe the information already collected and demonstrate that an extension is reasonably necessary to pursue the inquiry.

(3) The Chief of Police shall approve a preliminary inquiry under this section that is to remain open for more than 120 days, and shall do so in writing, stating the justification for the preliminary inquiry.

(e) A preliminary inquiry under this section shall be terminated when it becomes apparent that a full investigation is not warranted.

Sec. 207. Techniques and procedures for investigations and preliminary inquiries.

(a) The investigative techniques used in any particular investigation or preliminary inquiry shall be dictated by the needs of the investigation or inquiry.

(b) The MPD shall employ minimization procedures in all investigations and preliminary inquiries involving First Amendment activities. Where the conduct of an investigation or preliminary inquiry presents a choice between the uses of more or less intrusive methods or investigative techniques, the MPD shall consider whether the information could be obtained in a timely and effective way by the less intrusive means.

(c) The following techniques may be used in an authorized investigation or authorized preliminary inquiry involving First Amendment activities, without additional authorization:

(1) Examination of public records and other sources of information available to the public;

(2) Examination of MPD indices, files, and records;

(3) Examination of records and files of other government or law enforcement agencies;

(4) Interviews of any person; and

(5) Physical, photographic, or video surveillance from places open to the public or otherwise legally made available.

(d) Undercover officers, informants, and mail covers may be used in an authorized preliminary inquiry after written approval and authorization is obtained from the Chief of Police or his designee. Mail openings and Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541, shall not be used in a preliminary inquiry.

(e) The following techniques may be used in an authorized investigation involving First Amendment activities, after written approval and authorization is obtained from the Chief of Police or his designee:

(1) Wire Interception and Interception of Oral Communications, as defined in D.C. Official Code § 23-541;

(2) Undercover officers and informants; and

(3) Mail covers, mail openings, pen registers, and trap and trace devices.

(f) If there is an immediate threat of criminal activity, verbal authority by the designated MPD commander to use the investigative techniques described in subsection (d) and (e) of this section is sufficient until a written authorization can be obtained; provided, that other legal requirements have been met. The required written authorization shall be obtained within 5 days of the occurrence of the emergency.

Sec. 208. Rules for investigations and preliminary inquiries.

(a) Within 90 days of the effective date of this title, the Chief of Police, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), and in accordance with this title, shall issue rules governing investigations and preliminary inquiries involving First Amendment activities, including the authorization, conduct, monitoring, and termination of investigations and preliminary inquiries, and the maintenance, dissemination, and purging of records, files, and information from such investigations and preliminary inquiries.

(b) The rules issued under subsection (a) of this section shall require the MPD to direct undercover officers and informants to refrain from:

(1) Participating in unlawful acts or threats of violence;

(2) Using unlawful techniques to obtain information;

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(3) Initiating, proposing, approving, directing, or suggesting unlawful acts or a plan to commit unlawful acts;

(4) Being present during criminal activity or remaining present during unanticipated criminal activity, unless it has been determined to be necessary for the investigation;

(5) Engaging in any conduct the purpose of which is to disrupt, prevent, or hinder the lawful exercise of First Amendment activities;

(6) Attending meetings or engaging in other activities for the purpose of obtaining legally privileged information, such as attorney-client communications or physician-patient communications; and

(7) Recording or maintaining a record concerning persons or organizations who are not a target of the investigation or preliminary inquiry, unless the information is material to the investigation or preliminary inquiry, or the information would itself justify an investigation or preliminary inquiry under this title.

(c) The rules issued under subsection (a) of this section shall require that all members assigned to the Intelligence Section, Special Investigations Branch, attend training on this title and the rules. The rules shall require that all members of the Intelligence Section sign an acknowledgment that they have received, read, understood, will abide by, and will maintain a copy of this title and the rules.

Sec. 209. Preliminary inquiries relating to First Amendment assemblies.

(a) A MPD member may initiate a preliminary inquiry relating to a First Amendment assembly, for public safety reasons, without authorization, as follows:

(1) Members may gather public information regarding future First Amendment assemblies and review notices and approved assembly plans.

(2) Members may communicate overtly with the organizers of a First Amendment assembly concerning the number of persons expected to participate, the activities anticipated, and other similar information regarding the time, place, and manner of the assembly.

(3) Members may communicate overtly with persons other than the organizers of a First Amendment assembly to obtain information relating to the number of persons expected to participate in the assembly.

(4) Members may collect information on prior First Amendment assemblies to determine what police resources may be necessary to adequately protect participants, bystanders, and the general public, and to enforce all applicable laws.

(b) Filming and photographing First Amendment assemblies may be conducted by MPD members for the purpose of documenting violations of law and police actions, as an aid to future coordination and deployment of police units, and for training purposes. Filming and photographing of First Amendment assemblies may not be conducted for the purpose of identifying and recording the presence of individual participants who are not engaged in unlawful conduct.

Sec. 210. Authorized public activities.

Nothing in this title shall be interpreted as prohibiting any MPD member from, in the course of their duties, visiting any place, and attending any event that is open to the public, or reviewing information that is in the public domain, on the same terms and conditions as members of the public, so long as members have a legitimate law enforcement objective; provided, that any undercover activities shall be authorized as required by section 207.

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Sec. 211. Files and records.

(a) Information to be retained in an Intelligence Section file shall be evaluated for the reliability of the source of the information and the validity and accuracy of the content of the information prior to filing. The file shall state whether the reliability, validity, and accuracy of the information have been corroborated.

(b) The MPD shall not collect or maintain information about the political, religious, social, or personal views, associations, or activities of any individual, group, or organization unless such information is material to an authorized investigation or preliminary inquiry involving First Amendment activities.

(c) No information shall be knowingly included in an Intelligence Section file that has been obtained in violation of any applicable federal, state, or local law, ordinance, or regulation. The Chief of Police, or his designee, shall be responsible for establishing that no information is entered in Intelligence Section files in violation of this subsection.

(d) The MPD may disseminate information obtained during preliminary inquiries and investigations involving First Amendment activities to federal, state, or local law enforcement agencies, or local criminal justice agencies, only when such information:

- (1) Falls within the investigative or protective jurisdiction or litigation-related responsibility of the agency;
- (2) May assist in preventing an unlawful act or the use of violence, or any other conduct dangerous to human life; or
- (3) Is required to be disseminated by an interagency agreement, statute, or other law.

(e) All requests for dissemination of information from an Intelligence Section file shall be evaluated and approved by the Chief of Police or his designee. All dissemination of information shall be done by written transmittal or recorded on a form that describes the documents or information transmitted, and a record of the dissemination shall be maintained for a minimum of one year.

(f) Intelligence Section file information shall not be disseminated to any non-law enforcement agency, department, group, organization, or individual, except as authorized by law.

(g) The Chief of Police or his designee shall periodically review information contained in Intelligence Section files and purge records that are not accurate, reliable, relevant, and timely.

Sec. 212. Monitoring and auditing of investigations and preliminary inquiries.

(a) Authorizations of investigations and preliminary inquiries involving First Amendment activities are to be reviewed every 90 days by a panel of no fewer than 3 MPD commanding officers designated by the Chief of Police.

(b) The Commander, Office of the Superintendent of Detectives, or a commander of similar rank designated in the MPD regulations, shall monitor the compliance of undercover officers and informants with the requirements of this title.

(c) The Chief of Police shall annually prepare a report on the MPD's investigations and preliminary inquiries involving First Amendment activities. The report shall be transmitted to the Mayor and Council and a notice of its publication shall be published in the District of Columbia Register. The report shall include, at a minimum,

- (1) The number of investigations authorized;
- (2) The number of authorizations for investigation sought but denied;
- (3) The number of requests from outside agencies, as documented by forms requesting access to records of investigations conducted pursuant to this title;

(4) The number of arrests, prosecutions, or other law enforcement actions taken as a result of such investigations; and

(5) A description of any violations of this title or the regulations issued pursuant to this title, and the actions taken as a result of the violations, including whether any officer was disciplined as a result of the violation.

(d)(1) The Office of the District of Columbia Auditor ("ODCA") shall serve as auditor of MPD's investigations and preliminary inquiries involving First Amendment activities in order to assess compliance with this title.

(2) On an annual basis, the ODCA shall audit MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities. In conducting the audit, the ODCA shall review each authorization granted pursuant to sections 205 and 206, requests for authorization that were denied, and investigative files associated with the authorizations. The ODCA shall prepare a public report of its audit that shall contain a general description of the files and records reviewed, and a discussion of any substantive violation of this title discovered during the audit. A preliminary report of the audit shall be provided by the ODCA to the Chief of Police for review and comment at least 30 days prior to issuance of a final audit.

(3) The ODCA shall have access to MPD files and records for purposes of its audit of investigations and preliminary inquiries involving First Amendment activities.

(4) In discharging its responsibilities, the ODCA shall protect the confidentiality of MPD files and records.

Sec. 213. Construction.

The provisions of this title are intended to protect persons who are exercising First Amendment rights in the District of Columbia, and the standards for police conduct set forth in this title may be relied upon by such persons in any action alleging violations of statutory or common law rights.

TITLE III. POST-AND-FORFEIT PROCEDURE; DISPLAY OF IDENTIFICATION BY POLICE OFFICERS.

Sec. 301. Short title.

This title may be cited as the "First Amendment Assembly Enforcement and Procedure Act of 2004".

Subtitle A.

Sec. 302. Enforcement of the post-and-forfeit procedure.

(a) For the purposes of this section, the term "post-and-forfeit procedure" shall mean the procedure enforced as part of the criminal justice system in the District of Columbia whereby a person charged with certain misdemeanors may simultaneously post and forfeit an amount as collateral (which otherwise would serve as security upon release to ensure the arrestee's appearance at trial) and thereby obtain a full and final resolution of the criminal charge.

(b) The resolution of a criminal charge using the post-and-forfeit procedure is not a conviction of a crime and shall not be equated to a criminal conviction. The fact that a person resolved a charge using the post-and-forfeit procedure may not be relied upon by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action to impose any sanction, penalty, enhanced sentence, or civil disability.

(c) Whenever the Metropolitan Police Department ("MPD") or the Office of the Attorney General for the District of Columbia tenders an offer to an arrestee to resolve a criminal charge using the post-and-forfeit procedure, the offer shall be accompanied with a written notice provided to the arrestee describing the post-and-forfeit procedure and the consequences of resolving the criminal charge using this procedure.

(d) The written notice required by subsection (c) of this section shall include, at a minimum, the following information:

(1) The identity of the misdemeanor crime that is to be resolved using the post-and-forfeit procedure and the amount of collateral that is to be posted and forfeited;

(2) A statement that the arrestee has the right to choose whether to accept the post-and-forfeit offer or, alternatively, proceed with the criminal case and a potential adjudication on the merits of the criminal charge;

(3) If the arrestee is in custody, a statement that if the arrestee elects to proceed with the criminal case he or she may also be eligible for prompt release on citation, or will be promptly brought to court for determination of bail;

(4) A statement that the resolution of the criminal charge using the post-and-forfeit procedure will preclude the arrestee from obtaining an adjudication on the merits of the criminal charge;

(5) A statement that the resolution of the criminal charge using the post-and-forfeit procedure is not a conviction of a crime and may not be equated to a criminal conviction, and may not result in the imposition of any sanction, penalty, enhanced sentence, or civil disability by any court of the District of Columbia or any agency of the District of Columbia in any subsequent criminal, civil, or administrative proceeding or administrative action;

(6) A statement that the agreement to resolve the charge using the post-and-forfeit procedure is final after the expiration of 90 days from the date the notice is signed and that, within the 90-day period, the arrestee or the Office of the Attorney General may file a motion with the Superior Court of the District of Columbia to set aside the forfeiture and proceed with the criminal case; and

(7) A statement that, following resolution of the charge using the post-and-forfeit procedure, the arrestee will continue to have an arrest record for the charge at issue, unless the arrestee successfully moves in the Superior Court of the District of Columbia to seal his or her arrest record.

(e) The notice required by subsection (c) of this section shall be offered in the Spanish language to those persons who require or desire notice in this manner, and shall be offered in other languages as is reasonable to ensure meaningful access to the notice for persons who are limited English proficient.

(f) An arrestee provided the written notice required by subsection (c) of this section who wishes to resolve the criminal charge using the post-and-forfeit procedure shall, after reading the notice, sign the bottom of the notice, thereby acknowledging the information provided in the notice and agreeing to accept the offer to resolve the charge using the post-and-forfeit procedure. After the arrestee signs the notice, the arrestee shall be provided with a copy of the signed notice.

(g) Within 90 days of the Superior Court of the District of Columbia issuing an updated bond and collateral list, the Chief of Police shall issue a list of all misdemeanor charges that MPD members are authorized to resolve using the post-and-forfeit procedure, and the collateral amount associated with each charge. The Chief shall make the list available to the public, including placing the list on the MPD website.

(h) The Mayor shall submit an annual public report to the Council identifying the total amount of money collected the previous year pursuant to the post-and-forfeit procedure and the

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number of criminal charges, by specific charge, resolved the previous year using the post-and-forfeit procedure. The data shall be reported separately for instances in which the post-and-forfeit procedure is independently used by the MPD (without the approval, on a case-by-case basis, of either the Office of the Attorney General or the Superior Court of the District of Columbia), and for all other instances in which the post-and-forfeit procedure is used. The report also shall identify the fund or funds in which the post-and-forfeit moneys were placed.

Subtitle B.

Sec. 321. Police identifying information.

Every member of the Metropolitan Police Department ("MPD"), while in uniform, shall wear or display the nameplate and badge issued by the MPD, or the equivalent identification issued by the MPD, and shall not alter or cover the identifying information or otherwise prevent or hinder a member of the public from reading the information.

Subtitle C.

Sec. 331. Section 8(a) of the Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1107(a)), is amended as follows:

Amend
§ 5-1107

(a) Paragraph (4) is amended by striking the word "or" at the end.

(b) Paragraph (5) is amended by striking the period at the end and inserting the phrase "or" in its place.

(c) A new paragraph (6) is added to read as follows:

"(6) Failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public."

TITLE IV. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 401. Fiscal impact statement.

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

Sec. 402. Effective date.

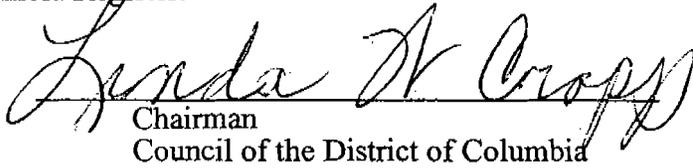
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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DISTRICT OF COLUMBIA REGISTER

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.


Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia

January 26, 2005

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AN ACT

D.C. ACT 15-758

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 19, 2005*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Spring
Supp.West Group
Publisher

To amend the Prevention of Child Abuse and Neglect Act of 1977 to provide definitions for the District's Children's Advocacy Center and the Citizen Review Panel, to require an investigation of alleged child abuse and neglect to commence within 24 hours of a report, to require an initial investigation to be completed within 24 hours of its commencement and to establish the mandatory aspects of the initial investigation, to require a full investigation to be completed within 30 days and to establish the mandatory aspects of the full investigation, to authorize photographs and radiological examinations of a child who is the subject of an abuse or neglect investigation, to establish that the Child and Family Services Agency ("Agency") does not need to make reasonable efforts to preserve and reunify a family if a parent committed the murder or voluntary manslaughter of anyone living in his or her household, or if the parent aided, abetted, attempted, conspired, or solicited to commit the murder or voluntary manslaughter of anyone living in his or her household, to provide for the confidentiality of information and records in the possession of the Children's Advocacy Center, subject to certain exceptions, to clarify that the Agency Director has the authority to investigate reports of both abuse and neglect, to clarify that the Agency Director has the authority to determine if a child should be removed from the home after investigating a report of abuse or neglect, to require the Agency Director to collect and report more detailed caseload and demographic data on the length of stay of children in foster care and the number of children who exited foster care into different types of placements, to provide more detailed guidance on the community and neighborhood-based services the Agency may support financially and to establish accountability and reporting requirements for community and neighborhood-based programs, to require the Agency to operate a single reporting line for cases of child abuse and neglect, to eliminate the Agency's authority to place children in unlicensed, informal third-party placements, to codify the establishment, composition, purpose, and duties of the Citizen Review Panel, to require that prospective adoptive and foster parents obtain criminal records checks from the Metropolitan Police Department and the law enforcement agency of any jurisdiction where he or she lived or worked as an adult, to establish that the Attorney General is responsible for prosecuting an individual's failure to provide all of the addresses required for a criminal records check, to authorize the Attorney General to receive

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information obtained in the criminal records check in order to recommend an appropriate placement for a child, to clarify that the Attorney General is responsible for prosecuting the unlawful release of criminal history information, and to mandate that any report of an abused or neglected child include the names of all children who reside in the same household where the alleged abuse or neglect took place; to amend the Child Fatality Review Committee Establishment Act of 2001 to require the Child Fatality Review Committee to review any child deaths if the child or his or her family was known to the child welfare system within the prior 4 years; to amend Title 16 of the District of Columbia Official Code to require the appointment of a guardian ad litem within 24 hours of a child being taken into custody due to a substantiated allegation of abuse or neglect, to require that a shelter care hearing commence within 72 hours after a child has been taken into custody, to authorize the Agency to convene a family team meeting within the 72-hour period to solicit the assistance of family members, relatives, social service workers, and the guardian ad litem in developing a safety plan for a child, and to require independent evaluations 6 months, 18 months, and 30 months after the effective date of this act to assess the impact of the 72-hour time frame and the family team meetings.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Child in Need of Protection Amendment Act of 2004".

Sec. 2. The Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code § 4-1301.01 *et seq.*), is amended as follows:

(a) Section 102 (D.C. Official Code § 4-1301.02) is amended as follows:

Amend
§ 4-1301.02

(1) A new paragraph (2B) is added to read as follows:

"(2B) "CAC" means Safe Shores, the District of Columbia's Children's Advocacy Center."

(2) A new paragraph (15A) is added to read as follows:

"(15A) "Panel" means the Citizen Review Panel established by section 351."

(b) Section 104 (D.C. Official Code § 4-1301.04) is amended to read as follows:

Amend
§ 4-1301.04

"Sec. 104. Handling of reports – By Agency.

"(a) The Agency shall conduct a thorough investigation of a report of suspected child abuse or neglect to protect the health and safety of the child or children.

"(b) The investigation shall commence:

"(1) Immediately upon receiving a report of suspected abuse or neglect indicating that the child's safety or health is in immediate danger; and

"(2) As soon as possible, and at least within 24 hours, upon receiving any report not involving immediate danger to the child.

"(c) The initial phase of the investigation shall:

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"(1) Be completed within 24 hours of its commencement;

"(2) Include notification and coordination with the Metropolitan Police Department when there is indication of a crime, including sexual or serious physical abuse; and

"(3) Include:

"(A) Seeing the child and all other children in the household outside of the presence of the caretaker or caretakers;

"(B) Conducting an interview with the child's caretaker or caretakers;

"(C) Speaking with the source of the report;

"(D) Assessing the safety and risk of harm to the child from abuse or neglect in the place where the child lives;

"(E) Deciding on the safety of the child and of other children in the household; and

"(F) Deciding on the safety of other children in the care or custody of the person or persons alleged to be abusing or neglecting the child.

"(d) The Agency may request the assistance of the Metropolitan Police Department to assist in the investigation or to ensure the safety of Agency staff."

(c) Section 106 (D.C. Official Code § 4-1301.06) is amended to read as follows:

"Sec. 106. Investigation.

Amend
§ 4-1301.06

"(a) The full investigation shall be completed no more than 30 days after the receipt of the first notice of the suspected abuse or neglect.

"(b) The investigation shall determine:

"(1) The nature, extent, and cause of the abuse or neglect, if any;

"(2) If mental injury, as defined in D. C. Official Code § 16-2301(31), is suspected, an assessment of the suspected mental injury by a physician, a psychologist, or a licensed clinical social worker;

"(3) If the suspected abuse or neglect is determined to be substantiated:

"(A) The identity of the person responsible for the abuse or neglect;

"(B) The name, age, sex, and condition of the abused or neglected child and all other children in the home;

"(C) The conditions in the home at the time of the alleged abuse or neglect;

"(D) Whether there is any child in the home whose health, safety, or welfare is at risk; and

"(E) Whether any child who is at risk should be removed from the home or can be protected by the provision of resources, such as those listed in sections 303 and 303a.

"(c)(1) Within 5 business days after the completion of the investigation, the Agency shall complete a final report of its findings.

"(2) The Agency shall provide a copy of a report regarding suspected abuse or neglect that addresses possible criminal activity to the Metropolitan Police Department, the Office of the Attorney General, and the United States Attorney for the District of Columbia.

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"(d) If the Agency determines that a report was made in bad faith, the Agency shall refer the report to the Office of the Attorney General, which shall determine whether prosecution of the person making the report in bad faith is warranted.

"(e) Nothing in this section shall be read as abrogating the responsibility of the Metropolitan Police Department for criminal investigations."

(d) Section 108 (D.C. Official Code § 4-1301.08) is amended to read as follows:

Amend § 4-1301.08

"Sec. 108. Photographs and radiological examination.

"As part of the investigation required by this title, any person responsible for the investigation may take, or have taken, photographs of each area of possible trauma on the child or photographs of the conditions surrounding the suspected abuse or neglect of the child, and if medically indicated, have radiological examinations, including full skeletal x-rays, performed on the child."

(e) Section 109a(d)(1) (D.C. Official Code § 4-1301.09a(d)(1)) is amended as follows:

Amend § 4-1301.09a

(1) Subparagraph (B) is amended by striking the word "child" and inserting the phrase "child, or of any other member of the household of the parent" in its place.

(2) Subparagraph (C) is amended by striking the word "child" and inserting the phrase "child, or of any other member of the household of the parent" in its place.

(f) A new section 152 is added to read as follows:

"Sec. 152. Confidentiality of information and records of the Children's Advocacy Center.

"(a)(1) Except as permitted by paragraph (2) of this subsection, all information and records in the possession of Safe Shores, the District of Columbia's Children's Advocacy Center, relating to victims or witnesses of alleged child abuse, neglect, or any alleged crime committed against a child shall not be subject to subpoena, discovery, inspection, or disclosure in any court proceeding.

"(2) A party may obtain information and records in the possession of the CAC that are covered by paragraph (1) of this subsection, and use such materials in a court proceeding, only upon making a particularized showing that:

"(A) The outcome of the proceeding probably would be different if the requested information and records were not disclosed;

"(B) The CAC is the only source of the requested information and records;

"(C) The requested information and records would be subject to disclosure in the proceeding if they were in the possession of the government; and

"(D) Disclosure of the requested information and records would not violate any other applicable law, rule, or regulation.

"(3)(A) No subpoenas shall be served upon the CAC. The particularized showing required by paragraph (2) of this subsection may be made only by formal, written

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motion submitted to the court, supported by an affidavit based upon personal knowledge, demonstrating strong prima facie evidence that the moving party has satisfied the requirements of paragraph (2) of this subsection.

“(B) If, after conducting an initial review of the motion and the supporting evidence, the court determines that the requisite prima facie showing has not been made, the court shall deny the motion.

“(C) If the court determines that the requisite prima facie showing has been made, the court shall notify the CAC of the preliminary ruling and afford the CAC an opportunity to oppose the motion within 10 days after the CAC’s receipt of the notice, or, for good cause shown, a longer period of time to be determined by the court.

“(4) If a party seeking access to information and records protected by paragraph (1) of this subsection prevails on its motion, the CAC shall submit the requested information and records to the court for an in camera review. The court shall permit disclosure only with respect to factual information for which the moving party has requested access and made a particularized showing of need pursuant to paragraph (2) of this subsection. All other information shall be redacted or otherwise protected from disclosure. Under no circumstances shall mental impressions, conclusions, opinions, or theories contained in protected CAC records be subject to disclosure.

“(5) The limitations imposed by this subsection do not apply to disclosures of protected CAC information and records to representatives of a multidisciplinary investigation team established under section 151, or their respective agents, for use in the performance of their official duties.

“(b) For the purposes of this section, the CAC is not an “agency,” as that term is defined in section 209 of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-539) (“APA”), and its records are not subject to the disclosure requirements of section 202 of the APA (D.C. Official Code § 2-532).”

(g) Section 203(h) (D.C. Official Code § 4-1302.03(h)) is amended by striking the word “police” and inserting the phrase “Metropolitan Police Department, to the Office of the Attorney General,” in its place. Amend
§ 4-1302.03

(h) Section 301a (D.C. Official Code § 4-1303.01a) is amended as follows: Amend
§ 4-1303.01a

(1) Subsection (b) is amended by adding a new paragraph (3A) to read as follows:

“(3A) Assessing child and family strengths and needs in response to reports of abuse and neglect;”

(2) Subsection (c) is repealed.

(i) Section 303 (D.C. Official Code § 4-1303.03) is amended as follows:

(1) Subsection (a) is amended as follows: Amend
§ 4-1303.03

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

(i) Strike the word “neglect” and insert the phrase “abuse or neglect” in its place.

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(ii) Strike the word "abused" and insert the phrase "abused or neglected" in its place.

(B) Paragraph (2) is amended by striking the phrase "the filing of" and inserting the phrase "that the Office of the Attorney General file" in its place.

(2) Subsection (a-1)(5) is amended to read as follows:

"(5) To facilitate meetings for a child in foster care with parents, siblings, relatives, and extended family members;"

(3) Subsection (b) is amended as follows:

(A) Paragraph (4) is amended as follows:

(i) Subparagraph (D) is amended to read as follows:

"(D) Family shelters and housing assistance;"

(ii) Subparagraph (F) is amended to read as follows:

"(F) Mental health services, including facilities providing medical, psychiatric, or other therapeutic services;"

(iii) Subparagraph (G) is amended by striking the word "and" at the end.

(iv) New subparagraphs (I), (J), and (K) are added to read as follows:

"(I) Domestic violence services;

"(J) Respite care; and

"(K) Substance abuse assessment and treatment;"

(B) Paragraph (9) is amended by striking the word "and" at the end.

(C) New paragraphs (9A) and (9B) are added to read as follows:

"(9A) Offer meeting facilitation services for extended family members when appropriate to meet permanency and safety goals as established by the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850);

"(9B) Develop procedures and practices for cooperation and joint activities with the Metropolitan Police Department; and"

(D) Paragraph (10)(B) is amended as follows:

(i) Sub-subparagraph (iii) is amended to read as follows:

"(iii) The number of children who have been in care for 24 months or longer, by their length of stay in care, including:

"(I) A breakdown in length of stay by permanency goal;

"(II) The number of children who became part of this class during the previous year; and

"(III) The ages and legal statuses of these children;"

(ii) Sub-subparagraph (iv) is amending by adding the word "and" at the end.

(iii) A new sub-subparagraph (v) is added to read as follows:

"(v) The number of children who left care during the previous

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year, by permanency goal; their length of stay in care, by permanency goal; the number of children whose placements were disrupted during the previous year, by placement type; and the number of children who re-entered care during the previous year;".

(j) A new section 303a is added to read as follows:

"Sec. 303a. Provision of neighborhood-based services; partnerships with neighborhood groups.

"(a) To implement the Director's authority to deliver child and family services pursuant to section 303(a-1)(3), the Agency may financially support, in cooperation with other public and private agencies, a program of neighborhood-based services to families with children to meet permanency and safety goals set forth in the Adoption and Safe Families Amendment Act of 2000, effective June 27, 2000 (D.C. Law 13-136; 47 DCR 2850).

"(b) Any program of neighborhood-based services to families with children that the Agency supports shall:

"(1) Give communities, through neighborhood-based collaboratives or other organizations, the maximum opportunity to design and deliver, or arrange for the delivery of, child welfare services consistent with:

"(A) The health and safety of the child;

"(B) The policies and programs of the Agency; and

"(C) The implementation plan in the *LaShawn v. Williams* case while it is in effect; and

"(2) Contain measurable performance outcomes by which the programs will be evaluated in conjunction with data provided by the Agency, including:

"(A) The numbers of children and families referred for services;

"(B) The number of children and families provided services, along with a breakdown of the particular services provided;

"(C) Subsequent referrals of children and families served by neighborhood-based programs to the Agency's child abuse and neglect reporting line; and

"(D) Subsequent foster care placements for children served by neighborhood-based programs.

"(3) The performance outcomes required by paragraph (2) of this subsection shall be included in the annual report to the Mayor, Council, and public required by section 303(b)(10), and shall be incorporated into any contract between the Agency and a neighborhood-based service provider.

"(c) For the purposes of this section, the term "services to families with children" means:

"(1) Assistance to help a family resolve a crisis that is brought on by catastrophe, crime, death, economic deprivation, desertion, domestic violence, lack of shelter, physical or mental illness, or substance abuse, and threatens the safety and welfare of the child;

"(2) Family interventions:

"(A) To resolve marital and relationship conflict, family conflict, and

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parent-child relationship problems; and

"(B) To teach parenting, and child care and development skills;

"(3) Information and referral services to teach families how to locate and use community services, including health care and legal services; and

"(4) Home management services to teach the management of household duties and responsibilities, including budgeting skills.

"(d) In implementing partnerships with neighborhood groups, the Agency may:

"(1) Report to the Mayor and Council on specific services needed but not available in sufficient number to prevent child endangerment;

"(2) To the extent possible:

"(A) Coordinate for families with children the delivery of day care, health, education, mental health, employment, housing, domestic violence, and other services provided by public and private agencies;

"(B) Deliver services through organizations based in the neighborhoods in which the recipients live;

"(C) Consult with families served by the Agency to determine appropriate services; and

"(3) Share information regarding its program with the Mayor's Advisory Committee on Child Abuse and Neglect and the Mayor's Commission on Violence Against Women.

"(e) The Mayor, in consultation with the Agency and in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement neighborhood-based programs under this section."

(k) A new section 303b is added to read as follows:

"303b. Single reporting line.

"(a) The Agency shall establish a single reporting line to receive reports of suspected child abuse and neglect.

"(b) The single reporting line shall be maintained by the Agency, with the assistance and support of the Metropolitan Police Department, and shall be staffed 24 hours a day, 7 days a week.

"(c) Upon receiving reports on the single reporting line, the Agency shall:

"(1) Review and screen the reports to collect relevant information from the source of the report; and

"(2) Transmit the reports to the entity with responsibility under the laws of the District of Columbia, or the appropriate governmental entity in another jurisdiction, for investigation or provision of services.

"(d) The Agency shall provide quarterly summaries to the Mayor and Council regarding the number and types of reports made to the single reporting line.

"(e) The Mayor, with the assistance and support of the Agency and the Metropolitan

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Police Department and in accordance with the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules for operating the single reporting line. The rules shall include:

"(1) The mechanics and logistics of the single reporting line, including location, staffing, and equipment;

"(2) The process for receiving calls, including forms and methods for the recording of information;

"(3) The process for the immediate transmittal of calls to the governmental entity responsible for investigation or provision of services;

"(4) Procedures for preserving the confidentiality of information and the retention of records; and

"(5) Training requirements for persons staffing the single reporting line."

(l) Section 304(b) (D.C. Official Code § 4-1303.04(b)) is amended by striking the phrase "and a 3rd-party placement cannot be made".

(m) A new Title III-B is added to read as follows:

"TITLE III-B.

"CITIZEN REVIEW PANEL.

"Sec. 351. Establishment of the Citizen Review Panel; purposes; duties.

"(a) There is hereby established the Citizen Review Panel, whose purpose is to serve as an external, independent oversight body for the District's child welfare system, evaluating the strengths and weaknesses of District government agencies involved in child protection as well as neighborhood-based services provided by vendors.

"(b) The Panel shall examine the policies, practices, and procedures of the Agency and any other District government agency that provides services to children at risk of abuse and neglect, or to children under the care of the Agency, including, as appropriate, the review of specific child cases. Based on this examination, the Panel shall evaluate the extent to which agencies serving children at risk of abuse or neglect, or children under the care of the Agency, are effectively discharging their child protection responsibilities in accordance with:

"(1) The State plan required by section 106(b) of the Child Abuse Prevention and Treatment Act, approved April 25, 1988 (102 Stat. 110; 42 U.S.C. § 5106A(b);

"(2) The child protection standards set forth in section 106(b) of the Child Abuse Prevention and Treatment Act, approved April 25, 1988 (102 Stat. 110; 42 U.S.C. § 5106A(b); and

"(3) Any other criteria that the Panel deems important to ensure the protection of children.

"(c) The Panel shall solicit public outreach and comment in order to assess the impact of current policies, practices, and procedures of the child welfare system on children and families in the District of Columbia.

"(d)(1) The Panel shall submit a report, no later than April 30th of each year, to the Mayor, Council, and Agency, summarizing the Panel's activities and findings during the prior

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calendar year, containing recommendations on how to improve child welfare services and outcomes in the District of Columbia, and providing information on the progress the District government is making in implementing the recommendations of the Panel.

“(2) The Agency shall make the annual report available to the public by providing access to it on its Internet site.

“(3) Not later than 6 months after the Panel publishes the annual report, the Agency shall provide a written response that describes whether or how the Agency, in coordination with other government agencies, will implement the Panel’s recommendations in order to make measurable progress in improving the child welfare system.

“Sec. 352. Panel membership.

“(a) The Panel shall be comprised of 15 members to be appointed as follows:

“(1) Eight members shall be appointed by the Mayor; and

“(2) Seven members shall be appointed by the Council by resolution.

“(b)(1) Panel members shall be residents of the District.

“(2) None of the members shall be employed by the District government.

“(3) No more than 2 members appointed by the Mayor, and no more than 2 members appointed by the Council, shall serve as an officer, director, partner, employee, consultant, or contractor with an organization that provides services to the Agency.

“(c) In making their appointments, the Mayor and Council shall establish a Panel that is broadly representative of the community and includes members who have expertise in the prevention and treatment of child abuse and neglect. The Mayor and Council shall seek to include a diversity of professional backgrounds on the panel, such as children’s attorneys, child advocates, parents, foster parents, and other consumer representatives, social workers, educators, and health and mental health professionals who are familiar with the child welfare system.

“(d) The Mayor’s initial 8 appointments shall include 3 members appointed to 3-year terms that begin on the effective date of the Child in Need of Protection Amendment Act of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-389) (“Act”), 3 members appointed to 2-year terms that begin on the effective date of the Act, and 2 members appointed to one year terms that begin on the effective date of the Act. All subsequent appointments by the Mayor shall be for 3-year terms.

“(e) The Council’s initial 7 appointments shall include 3 members appointed to 3-year terms that begin on the effective date of the Act, 2 members appointed to 2-year terms that begin on the effective date of the Act, and 2 members appointed to one-year terms that begin on the effective date of the Act. All subsequent appointments by the Council shall be for 3-year terms.

“(f)(1) Vacancies in membership shall be filled in the same manner in which the original appointment was made, with the newly appointed member serving the unexpired term of his or her predecessor.

“(2) Members may be reappointed to the Panel.

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“(g) The Mayor shall designate the Chairperson of the Panel and the Council shall designate the Vice Chairperson of the Panel.

“Sec. 353. Panel procedures; meetings; staff support.

“(a)(1) A quorum shall consist of 8 members and the Panel shall develop written bylaws, with the approval of a majority of Panel members, to establish other procedural requirements it considers necessary, including the designation of additional officers.

“(2) The Panel may establish such committees as it considers necessary, according to rules set forth in the bylaws.

“(3) The Panel may establish written protocols to guide its work in evaluating the policies, practices, procedures, and performance of the child welfare system.

“(b)(1) The Panel shall meet not less than once every 3 months, in appropriate meeting space provided by the Agency, at no cost.

“(2) Panel meetings shall be open to the public, except that the Panel shall meet in closed session when it is reviewing specific child cases.

“(3) Any resolution, rule, act, regulation, or other official action is effective only if it is taken, made, or enacted at an open meeting as defined in section 742 of the District of Columbia Home Rule Act, effective December 24, 1973 (87 Stat. 831; D.C. Official Code § 1-207.42).

“(c)(1) The Panel shall receive staff support from one or more employees of the Agency, as designated by the Director of the Agency.

“(2) The Agency shall include in its annual performance-based budget submission to the Mayor and Council, beginning in Fiscal Year 2007, an activity-level line item for the Panel, which will include personal services and non-personal services funding.

“Sec. 354. Access to information and confidentiality.

“(a) The Panel shall have access to data on children and families maintained by District government agencies, including the Agency, the Department of Human Services, the Department of Health, the Department of Mental Health, the Metropolitan Police Department, the Office of the Chief Medical Examiner, and the D.C. Public Schools. The Panel shall also have access to data kept by any private agency or organization that provides or arranges for services or out-of-home placements for children residing in the District of Columbia.

“(b) For the purposes of specific case review, the Panel shall have access to:

“(1) Police investigative data;

“(2) Autopsy records and other medical examiner investigative data;

“(3) Hospital, public health, or other medical records of the child;

“(4) Hospital and other medical records of the child’s parent that relate to prenatal care;

“(5) Records created by human or social service agencies, including the Agency, that provided or provide services to the child or family; and

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“(6) Personnel data related to an employee’s performance in discharging child protection responsibilities.

“(c)(1) All information and records generated by the Panel, including statistical compilations and reports, and all information and records acquired by, and in the possession of, the Panel are confidential.

“(2) Panel information and records may be disclosed only as necessary to carry out the Panel’s duties and purposes.

“(3) Statistical compilations and reports of the Panel that contain information that would reveal the identity of any person, other than a person who has consented to be identified, are not public records or information.

“(4) Each person attending a Panel meeting shall sign a confidentiality agreement at the beginning of each meeting of the Panel.

“(d) Findings and recommendations on the child welfare system required by section 351(d) shall be available to the public on request.

“(e) Except as permitted by this section, information and records of the Panel shall not be disclosed voluntarily, pursuant to a subpoena, in response to a request for discovery in any adjudicative proceeding, or in response to a request made under Title II of the District of Columbia Administrative Procedure Act, effective March 25, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), nor shall it be introduced into evidence in any administrative, civil, or criminal proceeding.

“(f)(1) Whoever discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be subject to a fine of not more than \$1,000.

“(2) Violations of this section shall be prosecuted by the Attorney General, or his or her designee, in the name of the District of Columbia.

“(3)(A) The Mayor may remove any of his or her appointees from the Panel for violating this section.

“(B) The Council may remove, by resolution, any of its appointees from the Panel for violating this section.”.

“Sec. 355. Conflict of interest.”

“Panel members shall be subject to the conflict of interest and disclosure requirements established by sections 601 and 602 of An Act To regulate certain political campaign finance practices in the District of Columbia, and for other purposes, approved August 14, 1974 (88 Stat. 465; D.C. Official Code §§ 1-1106.01 and 1-1106.02). Any member affiliated with an organization providing services to children or families, as an officer, director, partner, employee, consultant, or contractor, shall recuse himself or herself from any discussion of specific cases that involve the organization, and shall also recuse himself or herself from any discussion of findings or recommendations that involve the organization.”.

(n) Section 501(4) (D.C. Official Code § 4-1305.01(4)) is amended to read as follows:

“(4) “Criminal records check” means a search of criminal records to determine whether an individual has a criminal conviction that is performed by the Federal Bureau of

Amend
§ 4-1305.01

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Investigation of national records, and by:

District; or

“(B) The state’s law enforcement agency, if the individual resides outside of the District; and

“(C) The state law enforcement agency of any state in which the individual may have resided or worked, or is believed to have had another connection as an adult.”.

(o) Section 503(a) (D.C. Official Code § 4-1305.03(a)) is amended as follows:

Amend
§ 4-1305.03

(1) Paragraph (1) is amended by striking the word “and” at the end.

(2) Paragraph (2) is amended by striking the period at the end and inserting the phrase “; and” in its place.

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

“(3) A written statement, in a form established by the Agency, that includes the individual’s current and prior residences and employment addresses as an adult, and that authorizes the Agency to obtain the individual’s criminal records from a state in which the individual resided, worked, or is believed to have had another connection as an adult.”.

(p) Section 505 (D.C. Official Code § 4-1305.05) is amended by adding a new subsection (c) to read as follows:

Amend
§ 4-1305.05

“(c)(1) Except as provided in paragraph (2) of this subsection, the Agency shall request the law enforcement agency of each state in which the individual resided, worked, or is believed to have had another connection as an adult to conduct a state criminal records check and return the results to the Agency.

“(2) If the Agency has already determined that an individual has a disqualifying conviction, it is not required to make further requests to additional states.

“(3) The Agency may also use interstate databases or systems to conduct a single check for multiple states in which the individual resided, worked, or is believed to have had another connection as an adult.”.

(q) Section 506(b)(3) (D.C. Official Code § 4-1305.06(b)(3)) is amended by striking the phrase “Spousal abuse” and inserting the phrase “Intrafamily abuse, as defined in D.C. Official Code § 16-1001(5)” in its place.

Amend
§ 4-1305.06

(r) Section 508(a) (D.C. Official Code § 4-1305.08(a)) is amended as follows:

(1) Paragraph (2) is amended by striking the word “or” at the end.

Amend
§ 4-1305.08

(2) A new paragraph (2A) is added to read as follows:

“(2A) The Office of the Attorney General for the purpose of recommending an appropriate placement under Chapter 3 of Title 16 and § 16-2320(a)(2) or § 16-2320(a)(3)(C); or”.

(s) Section 509 (D.C. Official Code § 4-1305.09) is amended as follows:

Amend
§ 4-1305.09

(1) Designate the existing language as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

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“(b) An individual who fails to disclose all of the residences and addresses required by section 503(a)(3) shall be guilty of a criminal offense and, upon conviction, shall be subject to a fine of not more than \$1,000, a term of imprisonment of not more than 180 days, or both.

“(c) Violations of this section shall be prosecuted by the Attorney General for the District of Columbia, or his or her designee, in the name of the District of Columbia.”.

Sec. 3. Section 3(b)(1)(B) of An Act To provide for the mandatory reporting by physicians and institutions in the District of Columbia of certain physical abuse of children, approved November 6, 1966 (80 Stat. 1354; D.C. Official Code § 4-1321.03(b)(1)(B)), is amended to read as follows:

Amend § 4-1321.03

“(B) Each of the child’s siblings and other children in the household; and”.

Sec. 4. Subsection 4605(a) of the Child Fatality Review Committee Establishment Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 4-1371.05(a)), is amended to read as follows:

Amend § 4-1371.05

“(a) The Committee shall be responsible for reviewing the deaths of children who were residents of the District of Columbia and of such children who, or whose families, at the time of death:

“(1) Or at any point during the 2 years prior to the child’s death, were known to the juvenile justice or mental retardation or developmental disabilities systems of the District of Columbia; and

“(2) Or at any point during the 4 years prior to the child’s death, were known to the child welfare system of the District of Columbia.”.

Sec. 5. Chapter 23 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-2312 is amended as follows:

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

Amend § 16-2312

“(a)(1) When a child is not released as provided in section 16-2311 and the child is alleged to be abused or neglected:

“(A) A *guardian ad litem* shall be appointed to represent the child’s best interest within 24 hours (excluding Sundays) of the child having been taken into custody;

“(B) A shelter care hearing shall be commenced not later than 72 hours (excluding Sundays) after the child has been taken into custody; and

“(C) A petition shall be filed at or prior to the shelter care hearing.

“(2) When a child is not released as provided in section 16-2311 and the child is alleged to be delinquent or a child in need of supervision:

“(A) A detention hearing shall be commenced not later than the next day (excluding Sundays) after the child has been taken into custody or transferred from another

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court as provided by section 16-2302; and

“(B) A petition shall be filed at or prior to the detention hearing.”.

(2) A new subsection (a-1) is added to read as follows:

“(a-1)(1) During the 72-hour period authorized in subsection (a)(1) of this section, the Agency may convene a family team meeting to solicit the input of family members, relatives, and others concerned with the welfare of the child to develop a safety plan approved by the Agency. At a minimum, the Agency shall invite parents, relatives, caregivers, community representatives, service providers, and the *guardian ad litem* appointed to represent the child’s best interest to attend a family team meeting.

“(2) The Agency shall summarize the discussion from a family team meeting and record the safety plan approved by the Agency in the appropriate electronic database, and distribute a copy of the plan to all participants of the family team meeting. The safety plan shall clearly outline the roles and responsibilities of each participant and the target dates for each action set forth in the plan.”.

(b) A new section 16-2312a is added to read as follows:

New
§ 16-2312a

“Sec. 16-2312a. Evaluation of family team meetings and 72-hour time period for commencement of shelter care hearing.

“At intervals no later than 6 months, 18 months, and 30 months after the effective date of the Child in Need of Protection Emergency Act of 2004, passed on emergency basis on December 21, 2004 (Enrolled version of Bill 15-1170), the Agency shall commission an independent process and impact evaluation of the family team meetings authorized in section 16-2312(a-1) and the 72-hour period authorized in section 16-2312(a)(1). Each evaluation shall, at a minimum, assess the following processes and outcomes of the family team meetings:

“(1) Rates of participation in the meetings for different types of participants, including parents, children, and relatives;

“(2) Demographic information about children and families who participated in the meetings;

“(3) The percentage of meetings resulting in approved safety plans;

“(4) The supports and services included in approved safety plans;

“(5) The extent to which supports and services included in approved safety plans actually were provided;

“(6) The percentage of meetings that resulted in the filing of a petition in the Family Court to remove a child from the home, and the percentage of meetings that resulted in a decision not to file a petition in Family Court;

“(7) The placement outcomes for children who were the subject of the meetings, including:

“(A) The percentage of children living with parents;

“(B) The percentage of children living with relatives;

“(C) The percentage of children who have been adopted;

“(D) The percentage of children living in foster care; and

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“(E) Other applicable placements;

“(8) The percentage of children who received a permanent placement and whose cases were closed;

“(9) The percentage of children who were the subject of subsequent reports to the Agency’s abuse and neglect reporting line; and

“(10) The effect of the 72-hour time frame for the commencement of a Family Court hearing on families’ legal protections and due-process rights.”.

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
JANUARY 19, 2005

ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-759

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 19, 2005

*Codification
District of
Columbia
Official Code*

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To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish a mandatory drug and alcohol testing program for certain District of Columbia applicants and employees; to establish a criminal background check program for employees and unsupervised volunteers of certain providers that provide direct services to children or youth; to repeal the Recreation Volunteer Background Check and Screening Act of 2000; to establish uniform health screening requirements and the use of uniform health forms for all District of Columbia children; to authorize the Director of the Department of Youth Rehabilitation Services to take a child into custody when a child committed to the legal custody of the Department absconds from a community-based placement or violates any of the terms of his or her placement; to establish an Early Intervention Program to provide early intervention services for infants and toddlers from birth to 2 years of age and their families; to amend the District of Columbia Public School Nurse Assignment Act of 1987 to require that nurses be assigned to public charter schools; and to amend the District of Columbia Uniform Controlled Substances Act of 1981 to designate all areas within 1000 feet of public charter schools as drug free zones.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Child and Youth, Safety and Health Omnibus Amendment Act of 2004".

TITLE I. MANDATORY DRUG AND ALCOHOL TESTING PROGRAM.

Sec. 101. Short title.

This title may be cited as the "Mandatory Drug and Alcohol Testing for the Protection of Children Amendment Act of 2004".

Sec. 102. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is

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amended by adding a new title XX-C to read as follows:

"TITLE XX-C
"MANDATORY DRUG AND ALCOHOL TESTING FOR
CERTAIN EMPLOYEES WHO SERVE CHILDREN.

"Sec. 2031. Definitions.

"For the purposes of this title, the term:

"(1) "Applicant" means any person who has filed any written employment application forms to work as a District employee, or has been tentatively selected for employment.

"(2) "Child" means an individual 12 years of age and under.

"(3) "District employee" means a person employed by the District of Columbia government.

"(4) "Drug" means an unlawful drug and does not include over-the-counter prescription medications.

"(5) "Employee" means any person employed in a position for which he or she is paid for services on any basis.

"(6) "Post-accident employee" means an employee of the District of Columbia, who, while on duty, is involved in a vehicular or other type of accident resulting in personal injury or property damage, or both, in which the cause of the accident could reasonably be believed to have been the result, in whole or in part, from the use of drugs or alcohol on the part of the employee.

"(7) "Probable cause" or "reasonable suspicion" means a reasonable belief by a supervisor that an employee in a safety-sensitive position is under the influence of an illegal drug or alcohol to the extent that the employee's ability to perform his or her job is impaired.

"(8) "Random testing" means drug or alcohol testing conducted on an District employee in a safety-sensitive position at an unspecified time for purposes of determining whether any District employee subject to drug or alcohol testing has used drugs or alcohol and, as a result, is unable to satisfactorily perform his or her employment duties.

"(9) "Reasonable suspicion referral" means referral of an employee in a safety-sensitive position for testing by the District for drug or alcohol use.

"(10) "Safety-sensitive position" means:

"(A) Employment in which the District employee has direct contact with children or youth;

"(B) Is entrusted with the direct care and custody of children or youth;

and

"(C) Whose performance of his or her duties in the normal course of employment may affect the health, welfare, or safety of children or youth.

"(11) "Youth" means an individual between 13 and 17 years of age, inclusive.

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"Sec. 2032. Employee testing.

"(a) The following individuals shall be tested by the District government for drug and alcohol use:

- "(1) Applicants for employment in safety-sensitive positions;
- "(2) Those District employees who have had a reasonable suspicion referral; and
- "(3) Post-accident District employees, as soon as reasonably possible after the

accident.

"(b) The District shall subject District employees in safety-sensitive positions to random testing, unless a District agency has additional requirements for drug and alcohol testing of its employees, in which case the stricter requirements shall apply.

"(c) Supervisors shall be trained in substance abuse recognition and shall receive a second opinion from another supervisor prior to making a reasonable suspicion referral.

"(d) District employees shall be given written notice that the District is implementing a drug and alcohol testing program at least 30 days in advance of implementation of the program. Upon receipt of a written notice of the program, each employee shall be given one opportunity to seek treatment, if he or she has a drug or alcohol problem.

"(e) No employee may be tested under this title for drug or alcohol use prior to receiving the notice required by subsection (d) of this section.

"(f) Following the issuance of the 30-day written notice required by subsection (d) of this section, the Mayor shall procure a testing vendor and testing shall be implemented as described in this title.

"Sec. 2033. Motor vehicle operators.

"Any District government employee who operates a motor vehicle in the performance of his or her employment within the District of Columbia shall be deemed to have given his or her consent, subject to the conditions in this title, to the testing of the employee's urine or breath for the purpose of determining drug or alcohol content whenever a supervisor has probable cause or a police officer arrests such person for a violation of the law and has reasonable grounds to believe such person to have been operating or in physical control of a motor vehicle within the District while that person's breath contains .08 percent or more, by weight, of alcohol, or while under the influence of an intoxicating liquor or any drug or combination thereof, or while that person's ability to operate a motor vehicle is impaired by the consumption of intoxicating liquor.

"Sec. 2034. Testing methodology.

"(a) Testing shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job-related drug and alcohol forensic testing.

"(b) For random testing of District employees, the contractor shall, at a location designated by the District to collect urine specimens on-site, split each sample and perform enzyme-multiplied-immunossay technique ("EMIT") testing on one sample and store the split of that sample. Any positive EMIT test shall be then confirmed by the contractor, using the gas

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chromatography/mass spectrometry ("GCMS") methodology.

"(c) Any District employee found to have a confirmed positive urinalysis shall be notified of the result. The employee may then authorize that the stored sample be sent to another HHS-certified laboratory of his or her choice, at his or her expense, for a confirmation, using the GCMS testing method.

"(d) Reasonable suspicion and post-accident employee testing shall follow the same procedures set forth in subsections (a) through (c) of this section. In such cases, the employee shall be escorted by a supervisor to the contractor's test site for specimen collection or a breathalyser.

"(e) A breathalyser shall be deemed positive by the District's testing contractor if the contractor determines that 1 milliliter of the employee's breath (consisting of substantially alveolar air) contains .38 micrograms or more of alcohol.

"(f) Prior to testing, a physician must sit down with the employee and ask what medications he or she might have been taking to rule out any false positives in the drug screening results.

"Sec. 2035. Procedure and employee impact.

"(a) A drug and alcohol testing policy, including the notice required by section 2032(d), shall be issued at least 30 days in advance of implementing the drug and alcohol program to inform District employees of the requirements of the program and to allow each employee one opportunity to seek treatment, if he or she has a drug or alcohol problem. Thereafter, any confirmed positive drug test results, positive breathalyser test, or a refusal to submit to a drug test or breathalyser shall be grounds for termination of employment in accordance with this act.

"(b) The testing program shall be implemented as a single program.

"(c) The results of a random test conducted pursuant to this title shall not be turned over to any law enforcement agency without the employee's written consent.

"(d) An applicant may be offered employment contingent upon receipt of a satisfactory drug testing result, and may begin working in a position that is not a safety-sensitive position prior to receiving the results.

"Sec. 2036. Coverage of private contractual providers and private licensed providers.

"Each private provider that contracts with the District of Columbia to provide employees to work in safety-sensitive positions and each private entity licensed by the District government that has employees who work in safety-sensitive positions shall establish mandatory drug and alcohol testing policies and procedures that are consistent with the requirements of this title.

"Sec. 2037. Rules.

"The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title."

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TITLE II. CRIMINAL BACKGROUND CHECKS.

Sec. 201. Short title.

This title may be cited as the "Criminal Background Checks for the Protection of Children Act of 2004".

Subtitle A.

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Applicant" means an individual who has filed a written application for employment with a covered child or youth services provider or an individual who has made an affirmative effort through a written application or a verbal request to serve in an unsupervised volunteer position with a covered child or youth services provider.

(2) "Children" means individuals 12 years of age and under.

(3) "Covered child or youth services provider" means any District government agency providing direct services to children or youth and any private entity that contracts with the District to provide direct services to children or youth, or for the benefit of children or youth, that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. The term "covered child or youth services provider" does not include foster parents or grantees.

(4) "Criminal background check" means the investigation of an individual's criminal history through the record systems of the Federal Bureau of Investigation and the Metropolitan Police Department.

(5) "Employee" means an individual who is employed on a full-time, part-time, temporary, or contractual basis by any covered child or youth services provider.

(6) "FBI" means the Federal Bureau of Investigation.

(7) "MPD" means the Metropolitan Police Department.

(8) "Supervised" means any person who is under the direct supervision, at all times, of an employee or a volunteer who has received a current, satisfactory criminal background check.

(9) "Volunteer" means an individual who works without any monetary or any other financial compensation for a covered child or youth services provider.

(10) "Youth" means an individual between 13 and 17 years of age, inclusive.

Sec. 203. Criminal background checks required for certain individuals.

(a) Except as provided in subsections (b), (c), and (d) of this section, the following individuals shall apply for criminal background checks in accordance with the requirements of section 205 and any regulations issued pursuant to section 211:

(1) An applicant who is under consideration for paid employment by a covered child or youth services provider;

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(2) An applicant who is under consideration for voluntary service in an unsupervised position by a covered child or youth services provider;

(3) An employee of a covered child or youth services provider; and

(4) A volunteer who serves a covered child or youth services provider in an unsupervised position.

(b) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will not bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check.

(c) A volunteer at a covered child or youth services provider who has only supervised contact with children or youth is not required to submit to a criminal background check, but may be required to submit to a traffic check pursuant to section 204(b)(2).

(d) An applicant for, or an employee or a volunteer working in, a position at a covered child or youth services provider that will bring the employee or volunteer in direct contact with children and youth is not required to submit to a criminal background check if the applicant, employee, or volunteer has an active federal security clearance.

(e) An applicant for a position at a covered child or youth services provider may be offered employment contingent upon receipt of a satisfactory background check, and may begin working in a supervised setting prior to receiving the results.

(f) A volunteer serving any covered child or youth services provider in a position that brings the volunteer in direct contact with children shall not be allowed to begin volunteering in an unsupervised setting until the results of the criminal background check have been received and determined to be satisfactory.

(g) An employee or unsupervised volunteer shall be required to submit to periodic criminal background checks while employed by or volunteering at any covered child or youth services provider in an unsupervised setting.

Sec. 204. Authorization to obtain records.

(a) The Mayor may obtain criminal history records maintained by the Federal Bureau of Investigation and the Metropolitan Police Department, and traffic records maintained by the Department of Motor Vehicles, to investigate a person applying for employment, in either a compensated position or an unsupervised volunteer position, with any covered child or youth services provider, and to investigate each current employee and unsupervised volunteer serving any covered child or youth services provider.

(b) Before any applicant for employment with any covered child or youth services provider may be offered a compensated position or an unsupervised volunteer position, the Mayor or the covered child or youth services provider shall inform the applicant that:

(1) A criminal background check must be conducted on the applicant; and

(2) In the case of an employee or volunteer who will be required to drive a motor vehicle to transport children in the course of performing his or her duties, a traffic record check

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must be conducted on the applicant.

Sec. 205. Procedure for criminal background checks.

(a) The Mayor or the appropriate personnel authority shall conduct criminal background checks, including the fingerprinting of applicants, employees, and volunteers of a District agency required by this section, in accordance with FBI policies and procedures and in an FBI-approved environment.

(b)(1) An applicant, employee, or volunteer required to apply for a criminal background check under section 203 shall submit to a criminal background check by means of fingerprint and National Criminal Information Center checks conducted by the Mayor and the FBI.

(2) The fingerprints shall be available for use by the Mayor and the FBI to conduct a local and national criminal history record check of the applicant, employee, or volunteer.

(c) The Mayor or the appropriate personnel authority shall conduct a criminal background check once the applicant, employee, or volunteer has provided:

(1) A complete set of qualified, legible fingerprints on a fingerprint card, in a form approved by the FBI;

(2) Written authorization for the Mayor to conduct a criminal background check;

(3) Written confirmation that the applicant, employee, or volunteer has been informed by the Mayor or the covered child or youth services provider that the Mayor is authorized to conduct a criminal background check on the applicant, employee, or volunteer;

(4) Any additional identification that is required, including the name, social security number, birth date, and gender of the applicant, employee, or volunteer;

(5) A signed affirmation that the applicant, employee, or volunteer has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:

(A) Murder, attempted murder, manslaughter or arson;

(B) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;

(C) Burglary;

(D) Robbery;

(E) Kidnapping;

(F) Theft, fraud, forgery, extortion, or blackmail;

(G) Illegal use or possession of a firearm;

(H) Trespass or injury to property;

(I) Sexual offenses, including indecent exposure; promoting, procuring,

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compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape; sexual assault; sexual battery; or sexual abuse;

(J) Child abuse or cruelty to children; or

(K) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance;

(6) Written acknowledgment that the Mayor or the covered child or youth services provider has notified the applicant, employee, or volunteer of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report; and

(7) Written acknowledgment that the Mayor or the covered child or youth services provider may choose to deny the applicant employment or a volunteer position, or to terminate an employee or volunteer, based on the outcome of the criminal background check.

(d) Fingerprinting for the purposes of this section may be conducted by any person authorized to do so by the Mayor or the FBI.

(e) A volunteer may use the same criminal background check for a period of 2 years when applying to volunteer for multiple positions, if the volunteer provides a signed affirmation that he or she has not been convicted of a crime, has not pleaded nolo contendere, is not on probation before judgment or placement of a case upon a stet docket, and has not been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in subsection (c)(5) of this section, or their equivalent in any other state or territory, since the date of the most recent criminal background check conducted on him or her.

Sec. 206. Submission of positions of covered child or youth services providers subject to criminal background checks.

(a) Within 30 days of December 1, 2004, each District government agency shall submit to the Mayor the positions it has designated as subject to the criminal background check requirements of this title, including those of private entities that contract with the District to provide direct services to children or youth and that are under the contractual purview of the agency.

(b) Each District government agency shall submit an updated list of the positions subject to the criminal background check requirements of this title no later than December 1 of each year.

Sec. 207. Assessment of information on covered child or youth services providers.

The Mayor shall review the information on all proposed covered child or youth services providers submitted pursuant to section 206, and any other available information, to make a decision regarding the applicability of this title to each child or youth services provider.

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Sec. 208. Confidentiality of information to be maintained.

All criminal background records received by the Mayor shall be confidential and are for the exclusive use of making employment-related determinations under this title. The records shall not be released or otherwise disclosed to any person except when:

- (1) Required as one component of an application for employment with any covered child or youth services provider under this title;
- (2) Requested by the Mayor, or his or her designee, during an official inspection or investigation;
- (3) Ordered by a court;
- (4) Authorized by the written consent of the person being investigated; or
- (5) Utilized for a corrective, adverse, or administrative action in a personnel proceeding.

Sec. 209. Penalty for providing false information.

An applicant for employment or a volunteer position with any covered child or youth services provider who intentionally provides false information that is material to the application in the course of applying for the position shall be subject to prosecution pursuant to section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; D.C. Official Code § 22-2405).

Sec. 210. Penalties for disclosing confidential information.

(a) An individual who discloses confidential information in violation of section 208 is guilty of a criminal offense and, upon conviction, shall be fined not more than \$1,000 or imprisoned for not more than 180 days, or both.

(b) Prosecutions for violations of this title shall be brought in the Superior Court of the District of Columbia by the Office of the Attorney General.

Sec. 211. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title. The rules shall include:

- (1) Notice that applicants for employment with, and employees and unsupervised volunteers of, clearly identified covered child or youth services providers are required to apply for criminal background checks within 45 days from the date of publication of the rules;
- (2) The location of the office in which applications for criminal background checks are to be made;
- (3) Standards for determining which District agencies and private entities are considered to be covered child or youth services providers that are required to comply with the requirements of this title;

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- (4) Procedures for covered child or youth services providers to challenge the determination that they are required to comply with this title;
- (5) Procedures for an applicant or employee to challenge allegations that the applicant or employee committed a proscribed offense; and
- (6) A description of the corrective or adverse actions that may be taken against any covered child or youth services provider that, or any employee of a covered child or youth services provider who, is found to have violated the provisions of this title.

Subtitle B.

Sec. 251. The Recreation Volunteer Background Check and Screening Act of 2000, effective May 23, 2000 (D.C. Law 13-123; D.C. Official Code § 10-401 *et seq.*), is repealed.

Repeal
§§ 10-401-
10-413

TITLE III. CHILD HEALTH REQUIREMENTS

Subtitle A.

Sec. 301. Short title.

This title may be cited as the "Uniform Child Health Screening Requirements and Reporting Form Act of 2004".

Sec. 302. Purpose.

The purpose of this title is:

(1) To establish age-appropriate health screening requirements for all children, from birth to 21 years of age, in the District of Columbia, regardless of their insurance status, who:

- (A) Reside in the District;
- (B) Are wards of the District; or
- (C) Are children with special needs who reside or are receiving services

in another state;

(2) To improve the overall health status of all children by ensuring consistency in health screening and early detection of health problems and enabling children to obtain the necessary prevention, treatment, and intervention services at the earliest opportunity;

(3) To reduce parental stress and increase parental satisfaction and compliance with all child-related health, human or social services, and educational programs by using a uniform health assessment form; and

(4) To provide the Mayor with the information necessary to effectively plan, establish, and evaluate a comprehensive system of appropriate preventive services for children for early detection of potential health problems.

Sec. 303. Definitions.

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For the purposes of this title, the term:

(1) "Child-related educational program" means public and private schools, including pre-kindergarten, Head Start, child care, and special education.

(2) "Child-related health program" means Medicaid, Children Health Insurance Program ("CHIP"), Healthy Start, Healthy Families, Early Intervention, and private health insurance.

(3) "Child-related human or social services program" means children in foster care and Women, Infants and Children.

(4) "Children with special needs who reside or are receiving care in another state" means children:

(A) With physical or mental disabilities or illnesses who reside or receive care in other states, because the District does not have the facilities, resources, or services to appropriately treat the child's physical or mental disability or illness; and

(B) Whose parents or legal guardians reside in the District;

(5) "Health benefits plan" means any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term "health benefit plan" does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee health plans pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(6) "Health insurer" means any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital and medical services corporation, a fraternal benefit society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner.

(7) "Uniform health form" means a standardized health assessment form developed by the Mayor for use when enrolling a child in child-related educational, health, and human or social services programs.

Sec. 304. Establishment of uniform health screening requirements and health assessment enrollment forms.

(a) The Mayor shall establish uniform, age-appropriate health screening requirements consistent with the standards and schedules of the American Academy of Pediatrics for all

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children, from birth to 21 years of age, in the District of Columbia, regardless of insurance status who are:

- (1) Residents of the District;
- (2) Wards of the District; or
- (3) Children with special needs who reside in or who are receiving services in

another state.

(b) The Mayor shall develop a uniform health assessment form for enrollment of children in child-related health, human or social services, and educational programs. Use of the form is not intended to supersede the enrollment requirements of child-related health, educational, and human or social services programs. The form may be supplemented by additional forms used for enrollment that are not related to health assessment.

(c) Uniform health screenings shall not be required under this title, if a minor's parent or guardian or an adult youth submits in good faith a written notarized statement to the appropriate official affirming that the screening in question would violate the established tenets and practices of the parent's or guardian's church or religious denomination, or in the case of an adult youth, the adult youth's church or religious denomination.

Sec. 305. Payment for health screenings.

(a) A health insurer's health benefits plan shall include the uniform, age-appropriate health screening requirements for children from birth to age 21 years who are:

- (1) Residents of the District;
- (2) Wards of the District; or
- (3) Children with special needs who reside or are receiving services in another

state.

(b) The enrollments for Medicaid, Head Start, Healthy Families, and CHIP are expanded to include the requirement of uniform, age-appropriate health screenings for all children.

Sec. 306. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules to implement the provisions of this title.

Sec. 307. Applicability.

This title shall apply to all individual and group health benefit plans issued or renewed 120 days after the issuance of rules required under section 306.

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Subtitle B.

Sec. 351. Repealer.

Section 3 of the Newborn Health Insurance Act of 1979, effective October 20, 1979 (D.C. Law 3-33; D.C. Official Code § 31-3802), is repealed.

Repeal
§ 31-3802

TITLE IV. AUTHORIZATION FOR THE DEPARTMENT OF YOUTH REHABILITATION SERVICES TO TAKE CHILDREN INTO CUSTODY.

Sec. 401. Short title.

This title may be cited as the "Juvenile Protective Custody Act of 2004".

Sec. 402. Section 16-2309(a) of the District of Columbia Official Code is amended as follows:

Amend
§ 16-2309

(a) Paragraph (7) is amended by striking the word "or" at the end.

(b) Paragraph (8) is amended by striking the period at the end and inserting the phrase "; or" in its place.

(c) A new paragraph (9) is added to read as follows:

"(9) by the Director of the Department of Youth Rehabilitation Services when a child committed to the legal custody of the Department of Youth Rehabilitation Services absconds from a community-based placement or violates any of the terms of his or her aftercare placement. For the purposes of this paragraph, the term "aftercare placement" means the placing of a child who has been committed to the legal custody of the Department of Youth Rehabilitation Services in the community under the supervision of a trained social worker."

TITLE V. ESTABLISHMENT OF THE EARLY INTERVENTION PROGRAM.

Sec. 501. Short title.

This title may be cited as the "Early Intervention Program Establishment Act of 2004".

Sec. 502. Purpose.

The purpose of this title is:

(1) To enhance the development of infants and toddlers with disabilities and to minimize their potential for developmental delay;

(2) To reduce the educational costs to our society, including our schools, by minimizing the need for special education and related services after infants and toddlers with disabilities reach school age;

(3) To minimize the likelihood for institutionalization of individuals with disabilities and maximize the potential for their independent living in society;

(4) To enhance the capacity of families to meet the special needs of their infants and toddlers with disabilities;

(5) To establish collaborative activities among agencies of the District of

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Columbia that administer programs relating to young children to maximize the quality of early intervention services; and

(6) To enhance the capacity of city agencies and service providers to identify, evaluate, and meet the special needs of historically under-represented populations, particularly minorities and low-income and inner-city populations.

Sec. 503. Establishment of Early Intervention Program and Interagency Coordinating Council.

(a) There is established in the District of Columbia an Early Intervention Program ("Program") to provide early intervention services to infants and toddlers, from birth through 2 years of age, and their families. The Program will be administered and supervised by a lead agency designated by the Mayor. The services shall be provided in accordance with the requirements of the Individuals with Disabilities Education Act, approved June 4, 1997 (111 Stat. 37; 20 U.S.C. § 1400 *et seq.*).

(b) There is established an Interagency Coordinating Council to advise and assist the Mayor with the implementation of the Program, including the establishment of interagency agreements.

(c) Early intervention services shall not be required under this title, if a minor's parent or guardian submits in good faith a written notarized statement to the appropriate official affirming the intervention in question would violate the established tenets and practices of the parent's or guardian's church or religious denomination.

Sec. 504. Rules.

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

TITLE VI. ASSIGNMENT OF NURSES TO PUBLIC CHARTER SCHOOLS.

Sec. 601. Short title.

This title may be cited as the "Public Charter School Nurse Assignment Amendment Act of 2004".

Sec. 602. Section 2(a) of the District of Columbia Public School Nurse Assignment Act of 1987, effective December 10, 1987 (D.C. Law 7-45; D.C. Official Code § 38-621(a)), is amended by adding the phrase "and public charter" after the word "public".

Amend
§ 38-621

Sec. 603. This title shall be subject to the availability of appropriations.

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TITLE VII. DRUG FREE ZONES WITHIN 1000 FEET OF PUBLIC CHARTER SCHOOLS.

Sec. 701. Short title.

This title may be cited as the "Public Charter Schools Drug Free Amendment Act of 2004".

Sec. 702. Section 407a of the District of Columbia Uniform Controlled Substances Act of 1981, effective March 21, 1995 (D.C. Law 10-229; D.C. Official Code § 48-904.07a(a)), is amended by adding after the phrase "secondary school," the phrase "public charter school,".

Amend § 48-904.07a

TITLE VIII. FISCAL IMPACT STATEMENT.

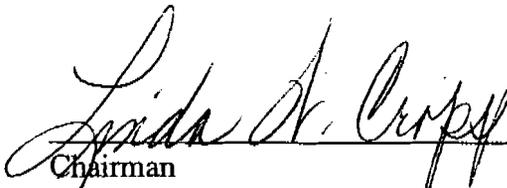
Sec. 801. Fiscal impact statement.

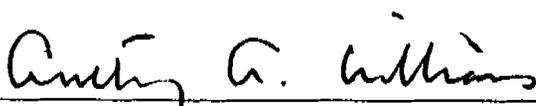
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

TITLE IX. EFFECTIVE DATE.

Sec. 901. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.


Chairman
Council of the District of Columbia


Mayor
District of Columbia

APPROVED January 19, 2005
Codification District of Columbia Official Code, 2001 Edition

RE-ENROLLED ORIGINAL

AN ACT

D.C. ACT 15-760

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 31, 2005*Codification
District of
Columbia
Official Code*

2001 Edition

2005 Spring
Supp.West Group
Publisher

To establish a Natural Gas Trust Fund; to clarify the authority of the Public Service Commission to regulate outdoor pay telephones and to increase the penalty for unregistered pay telephones; to amend the District of Columbia Procurement Practices Act of 1985 to exempt electricity purchases by the District government from certain provisions of the act; to amend An Act To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia to increase a fine; to amend AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes to require public utilities to notify both the Public Service Commission and the Office of the People's Counsel and submit a written report whenever there is an incident resulting in loss of human life, personal injury requiring hospitalization, or significant service interruption, to increase salaries for the Commissioners of the Public Service Commission, to reduce from 5 years to one year the time that Commission nominees are barred from holding a pecuniary interest in any utility company regulated by the Public Service Commission and limit the eligibility of individuals employed by a public utility or any other entity appearing before the Public Service Commission, to require that notice of rate applications or changes in condition of service be available on a public utility's website and either by written or electronic notice to customers, to require the Public Service Commission and the Office of the People's Counsel to refund assessments in inactive cases; to amend the Retail Electric Competition and Consumer Protection Act of 1999 to require emissions disclosure and to revise the date for filing annual agency fund deposit reports; to amend AN ACT Regulating the use of telephone wires in the District of Columbia and AN ACT Regulating the use of telegraph wires in the District of Columbia to revise or modernize the text authorizing government use of telephone conduit for its communications; to amend the Telecommunications Competition Act of 1996 to increase the authorized assessment in telecommunications cases; and to amend Title 15 of the District of Columbia Municipal Regulations to increase the penalty for unregistered pay telephones.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Utility Amendment Act of 2004".

Title I. NATURAL GAS

Sec. 101. Natural Gas Trust Fund; public purpose programs.

(a)(1) There is hereby established the Natural Gas Trust Fund, which shall be a proprietary fund in the nature of an enterprise fund as classified under D.C. Official Code § 47-373(1)(B).

(2) The gas company shall remit all proceeds collected under subsection (b) of this section to the Mayor on a monthly basis. The Mayor shall deposit those proceeds into the Natural Gas Trust Fund. All proceeds collected by the gas company under subsection (b) of this section shall be credited to the Natural Gas Trust Fund without regard to fiscal year limitation and shall not at any time be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia or any other fund or account of the District of Columbia.

(3) All interest earned on monies deposited in the Natural Gas Trust Fund shall be credited to the Natural Gas Trust Fund and shall be used solely for the purposes designated in this section. All revenue credited to the Natural Gas Trust Fund shall be used solely to fund the programs mandated by subsection (c) of this section.

(b)(1) All customers other than those participating in the residential essential service program established by the Commission shall contribute to the Natural Gas Trust Fund through a non-bypassable charge listed on customers' bills and collected by the gas company.

(2)(A) The charge mandated by paragraph (1) of this subsection shall be determined by the Commission and may not vary by customer class.

(B) Notwithstanding any other provision of this section, the charge mandated by this subsection shall not exceed \$.016434 per therm nor shall it be less than \$.005478 per therm. The minimum charge shall be applicable beginning May 1, 2005, unless or until the Commission establishes a different charge pursuant to this subsection.

(3) On an annual basis, the Commission shall evaluate the charge mandated by paragraph (1) of this subsection to determine whether it is set at an appropriate level to fund the programs mandated by subsection (c) of this section. Subject to the restrictions in paragraph (2) of this subsection, the Commission shall adjust the charge if the Commission finds that the charge is not set at an appropriate level.

(c)(1) The Commission shall establish a universal service program to assist low-income natural gas customers in the District of Columbia.

(2) The program established under this subsection shall be administered by the District of Columbia Office of Energy.

(d) The Commission shall establish a program to promote energy efficiency in the District of Columbia. The program shall be administered by the District of Columbia Office of Energy, and it may include:

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(1) Rate discounts or other rate-related incentives;
(2) Financial incentives for owners of low-income residential properties; and
(3) Energy efficiency assistance to customers who qualify for the universal service program under subsection (c)(1) of this section.

(e) At the discretion of the Commission, and to the extent allowed by District of Columbia or federal law, the universal service and energy efficiency programs developed under this section may be combined with any existing universal service and energy efficiency programs administered by the Commission or the District of Columbia Office of Energy.

TITLE II. PAY TELEPHONES

Sec. 201. Pay telephone service providers.

(a) The Public Service Commission shall have the power and authority to prescribe rules and regulations for the operation, maintenance, and location of outdoor pay telephones in the District of Columbia.

(b) The Commission shall, by rules or regulations, establish standards:

- (1) To certify a pay telephone service provider seeking to provide pay telephone services in the District of Columbia;
- (2) For the registration, renewal of a registration for a pay telephone, and transfer of ownership of a registered pay telephone;
- (3) For the installation and removal of a pay telephone;
- (4) To investigate a consumer complaint regarding pay telephone service; and
- (5) to establish operating requirements for all outdoor pay telephones.

(c) The Commission shall by regulation or order prescribe procedures for reviewing any complaint relating to pay telephone services in the District of Columbia. The regulation or order shall include provisions for a formal hearing, decision, and appeal arising from any complaint.

(d)(1) In weighing evidence regarding whether a pay telephone constitutes a public nuisance, the Public Service Commission shall give great weight to the:

(A) Written recommendation of the Advisory Neighborhood Commission in which the pay telephone is located or proposed to be located; and

(B) Written statement or testimony of a member of the Metropolitan Police Department.

(2) For the purpose of this section only, great weight means that, unless there is a compelling reason to do otherwise, the Public Service Commission shall defer to the opinion of the Metropolitan Police Department or Advisory Neighborhood Commission.

TITLE III. GENERAL

Sec. 301. Section 320 of the District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-303.20), is amended by adding a new subsection (r) to read as follows:

Amend
§ 2-303.20

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"(r)(1) Contracts for the delivery of electrical power and ancillary services for the District of Columbia shall be exempt from the following requirements of this act:

"(A) Section 304(d);

"(B) Section 105a(j)(1) and (2).

"(2) Approval of the Council shall be required in accordance with section 451(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(a))."

Sec. 302. Section 8 of AN ACT To provide alternative methods of enforcement of orders, rules, and regulations of the Joint Board and of the Public Utilities Commission of the District of Columbia, approved April 5, 1939 (53 Stat. 569; D.C. Official Code § 34-731), is amended by striking the phrase "\$300" and inserting the phrase "\$10,000" in its place. Amend
§ 34-731

Sec. 303. Section 8 of AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; codified in scattered sections of Title 34 of the District of Columbia Official Code), is amended as follows:

(a) Paragraph 89 (D.C. Official Code § 34-401) is amended to read as follows:

"(a) Every public utility shall, whenever an incident occurs within the District of Columbia that results in the loss of human life, personal injury requiring hospitalization, or service disruption directly or indirectly arising from or connected with its maintenance or operation, give immediate notice thereof to the Public Service Commission and the Office of the People's Counsel of the District of Columbia. In the event of any such incident, the public utility shall also submit a written report to the Commission that explains the cause of the incident, what steps if any the public utility will undertake to prevent such an occurrence in the future, and such other information which the Public Service Commission shall, by order or regulation, require. The Commission, by regulation or order, shall establish the minimum criteria for a service disruption (e.g., time period or minimum number of affected customers) that warrants notification and a report under this paragraph. The Commission, if it deems the public interest requires it, shall cause an investigation to be made of any incident. Amend
§ 34-401

"(b) The report required by subparagraph (a) of this paragraph shall not be admitted into evidence for any purpose in any suit or action for damages arising out of the loss of life, injury, or service interruption referred to in this section."

(b) Paragraph 85(a) (D.C. Official Code § 34-706(a)) is amended by striking is amended by striking the phrase "\$300" and inserting the phrase "\$5,000" in its place Amend
§ 34-706

(c) Paragraph 97(a) (D.C. Official Code § 34-801) is amended as follows:

(1) Strike the sentence "Each of the commissioners shall receive a salary equivalent to that received by an employee compensated at the top level of grade 16 pursuant to Title XI of the District of Columbia Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Amend
§ 34-801

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Law 2-139; D.C. Official Code § 1-611.01 *et seq.*”) and insert the phrase “The Chairperson shall receive a salary equivalent to that received by an employee compensated at grade 17, step 10 pursuant to Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01). The Commissioners shall receive a salary equivalent to that received by an employee compensated at grade 17, step 8 pursuant to Title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-611.01 *et seq.*)”.

(2) Strike the sentence “No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of 5 years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility.” and insert the phrase “No person shall be eligible to the office of commissioner of the Public Service Commission who is, or who shall have been during a period of one year preceding his appointment, directly or indirectly interested in any public utility or other entity appearing before the Commission or in any stock, bond, mortgage, security, or contract of any public utility or entity, except for stocks that are part of a publicly listed mutual fund other than a utility-focused mutual fund. A person shall not be eligible for appointment as a commissioner if the person, at any time during the 5 years preceding appointment, personally served as an officer, director, owner, manager, partner, or legal representative of a public utility, affiliate, or direct competitor of a public utility.” in its place.

(d) Paragraph 39(a) (D.C. Official Code § 34-909(a)) is amended by striking the second sentence and inserting the sentence “The notice shall be available for viewing at a utility’s website, and either by electronic notice to those ratepayers who have registered for electronic billing with the utility or by written notice in the affected ratepayer’s billing envelope.” in its place.

Amend
§ 34-909

(e) Paragraph 42(a) (D.C. Official Code § 34-912(a)) is amended as follows:

(1) Sub-subparagraph (2) is amended by striking the last sentence and inserting the phrase “The balance of any sums for a specific proceeding remaining in each fund after a 12-month period in which actual expenditures for that proceeding were 5% or less of the fund balance, shall be returned to the utility which made the deposit. The balance of any sums for a specific proceeding remaining after the final disposition of the proceeding or any litigation arising therefrom shall be returned promptly to the utility which made the deposit.” in its place.

Amend
§ 34-912

(2) Sub-subparagraph (7) is amended to read as follows:

“(7) The Commission and the Office shall issue reports to the Mayor and the Council by February 15 of the succeeding fiscal year on deposits to and disbursements from their respective agency funds during each fiscal year. Copies of the reports shall provided to each public utility.”.

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Sec. 304. The Retail Electric Competition and Consumer Protection Act of 1999, effective May 9, 2000 (D.C. Law 13-107; D.C. Official Code § 34-1501 *et seq.*), is amended as follows:

(a) Section 104(c)(2)(D.C. Official Code § 34-1504(c)(2)) is amended to read as follows:

Amend
§ 34-1504

“(c)(2)(A)(i) Under criteria established by Commission regulation or order, the Commission shall determine for each electricity supplier licensed under section 105 whether it is feasible for that electricity supplier to disclose every 6 months emissions on a pound per megawatt-hour basis and the fuel mix of the electricity sold by that supplier in the District of Columbia. For fuel mix, the categories include electricity generated from coal, natural gas, nuclear energy, oil, hydroelectric, solar, biomass, wind, and other sources. For emissions, the categories include carbon dioxide, nitrogen oxide, sulfur dioxide, and any other pollutants specified by the Commission.

“(ii) The Commission shall make a determination of feasibility under sub-subparagraph (i) of this subparagraph either within 6 months after the date on which an electricity supplier receives a license under section 105 or within 6 months of the effective date of the Omnibus Utility Amendment Act of 2004, passed on 2nd reading on December 21, 2004 (Enrolled version of Bill 15-872).

“(B) If the Commission determines under subparagraph (A)(i) of this paragraph that it is feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by that supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose every 6 months the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia in the categories provided in subparagraph (A)(i) of this paragraph.

“(C) If the Commission determines under subparagraph (A)(i) of this paragraph that it is not feasible for an electricity supplier to disclose the emissions and fuel mix of the electricity sold by the supplier in the District of Columbia, the Commission, by regulation or order, shall require the electricity supplier to disclose to its customers every 6 months a regional emissions and fuel mix average in the categories provided in subparagraph (A)(i) of this paragraph.”

(b) Section 114 is amended as follows:

(1) Subsection (b)(2)(C)(D.C. Official Code § 34-1514(b)(2)(C)) is amended by striking the period at the end of the last sentence and inserting the phrase “, but shall not be less than \$.0001 per kilowatt hour. Collection shall commence as of February 1, 2005.” in its place.

Amend
§ 34-1514

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

“(e) Proceedings regarding the establishment of programs under this section shall be legislative in nature and not be contested cases as defined in section 3(8) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502(8)).”

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Sec. 305. Section 5 of AN ACT Regulating the use of telephone wires in the District of Columbia, approved June 20, 1902 (32 Stat. 395; D.C. Official Code § 34-1911.05), is amended to read as follows: Amend
§ 34-1911.05

“All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this Act shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government as may be necessary for purposes related exclusively to the government and public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.”

Sec. 306. Section 5 of AN ACT Regulating the use of telephone wires in the District of Columbia, approved March 3, 1905 (33 Stat. 986; D.C. Official Code § 34-1921.05), is amended to read as follows: Amend
§ 34-1921.05

“All subways, conduits, manholes, and overhead lines constructed or erected under the provisions of this Act shall be subject to such reasonable regulations as the Council of the District of Columbia may from time to time prescribe as to inspection, location, character of conduit construction, and height of poles and wires; provided, that in all conduits so constructed, such space shall be furnished to the District government and the United States as may be necessary for purposes related exclusively to the government and public safety, free of charge; provided further, that the number of ducts so reserved in any one conduit shall not be more than 2.”

Sec. 307. Section 3(m) of the Telecommunications Competition Act of 1996, effective September 9, 1996 (D.C. Law 11-154; D.C. Official Code § 34-2002), is amended as follows: Amend
§ 34-2002

- (a) Strike the phrase "\$100,000" and insert the phrase "\$250,000" in its place.
- (b) Strike the phrase "\$50,000" and insert the phrase "\$150,000" in its place.

Sec. 308. Section 617 of Title 15 of the District of Columbia Municipal Regulations is amended by adding a new subsection 617.2 to read as follows: DCMR

“617.2 Operation of a pay telephone without first registering the instrument with the Commission shall subject the PSP to a fine of \$3,000.”

Title IV. APPLICABILITY, FISCAL IMPACT, EFFECTIVE DATE

Sec. 401. Applicability.

Sections 303(c)(1) and 307 shall apply as of October 1, 2004.

Note,
§§ 34-801,
34-2002

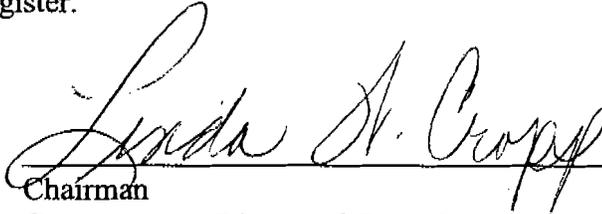
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Sec. 402. Fiscal impact statement.

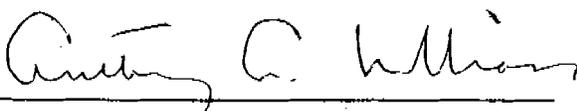
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 403. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 31, 2005