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A BILL  
23-409

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To amend the Human Rights Act of 1977 to clarify the definition of “place of public accommodation”; to amend the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to expand the offense of defacement of certain symbols or display of certain emblems; amend the Bias-Related Crime Act of 1989 to add definitions, clarify the definition of “bias-related crime”, provide civil enforcement authority to the Attorney General against persons who commit bias-related crimes or, through certain acts, interfere or attempt to interfere with an individual’s exercise of constitutional or District rights, or deprive an individual of equal protection, to provide subpoena authority, and specify appropriate relief; and to amend Chapter 1 of Title 23 to limit the scope of the defenses of heat of passion caused by adequate provocation, insanity, self-defense, defense of others, and defense of property if certain elements of the defense are based on the victim’s actual or perceived gender identity, gender expression, or sexual orientation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Bella Evangelista and Tony Hunter Panic Defense Prohibition and Hate Crimes Response Amendment Act of 2020”.

Sec. 2. Section 102(24) of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.02(24)), is amended by striking the phrase “all places included in the meaning of such terms as inns” and inserting the phrase “any person or place that provides, to a person in the District, access to an accommodation, service, or good, whether or not that person or place maintains a physical location in the District or charges for those goods or services, such as inns” in its place.

33           Sec. 3. Section 3 of the Anti-Intimidation and Defacing of Public or Private Property  
34 Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code §  
35 22-3312.02), is amended to read as follows:

36           “Sec. 3. Defacement of certain symbols; display of certain emblems.

37           “It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious  
38 or secular symbol, or place or display a sign, mark, symbol, impression, or other emblem,  
39 including a Nazi swastika, noose, or real or simulated burning cross, on the private property of  
40 another, without the permission of the owner or the owner’s designee, or on public property,  
41 where the person acts reckless to the fact that a reasonable person would perceive that the intent  
42 of the person acting is to:

43                   “(1) Deprive a person or class of persons of equal protection under federal or  
44 District law;

45                   “(2) Hinder or interfere with, or retaliate for, a person’s exercise of any right  
46 secured by federal or District law;

47                   “(3) Threaten to injure, break, or destroy a person’s property or harm a person’s  
48 financial interests; or

49                   “(4) Threaten to do bodily harm to a person.”.

50           Sec. 4. The Bias-Related Crime Act of 1989, effective May 8, 1990 (D.C. Law 8-121;  
51 D.C. Official Code § 22-3701 et *seq.*), is amended as follows:

52           (a) Section 2 (D.C. Official Code § 22-3701) is amended as follows:

53 (1) Paragraph (1) is redesignated as paragraph (1A).

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

55 “(1) “Attorney General” means the Attorney General for the District of  
56 Columbia.”.

57 (3) The newly redesignated paragraph (1A) is amended by striking the phrase  
58 “physical disability, matriculation, or political affiliation of a victim of the subject designated  
59 act” and inserting the phrase “disability, matriculation, or political affiliation of a victim of the  
60 subject designated act. A designated act need not solely be based on or because of an accused’s  
61 prejudice.” in its place.

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

63 “(2A) “Discrimination” means differential treatment on the basis of a trait  
64 identified in section 101 of the Human Rights Act of 1977, effective December 13, 1977 (D.C.  
65 Law 2-38; D.C. Official Code 2-1401.01).”.

66 (5) A new paragraph (5) is added to read as follows:

67 “(5) “Person” means any individual, firm, corporation, partnership, cooperative,  
68 association, or any other organization, legal entity, or group of individuals however organized;  
69 provided, that for the purposes of a civil action brought against an individual pursuant to section  
70 6, the term “person” shall not include an individual who is 17 years of age or younger.”.

71 (b) Section 3(a) (D.C. Official Code § 22-3702(a)) is amended by striking the phrase  
72 “Police force” and inserting the phrase “Police Department” in its place.

73 (c) Section 5 (D.C. Official Code § 22-3704) is amended by striking the phrase “physical  
74 disability,” both times it appears and inserting the phrase “disability,” in its place.

75 (d) A new section 6 is added to read as follows:

76 “Sec. 6. Attorney General civil enforcement.

77 “(a) The Attorney General may, irrespective of any criminal prosecution, the result of any  
78 criminal prosecution, or any cause of action brought pursuant to section 5, bring, in the name of  
79 the District of Columbia, a civil action for appropriate relief whenever any person, whether or  
80 not acting under color of law:

81 “(1) Commits a bias-related crime; or

82 “(2) Through any act of violence, force, fraud, intimidation, or discrimination:

83 “(A) Interferes or attempts to interfere with an individual’s exercise of any  
84 right secured by the United States Constitution or District law; or

85 “(B) Deprives any individual of the equal protection of the United States  
86 Constitution or District law.

87 “(b) In the course of an investigation to determine whether to seek relief under this  
88 section, the Attorney General may subpoena witnesses, administer oaths, require sworn written  
89 responses to written questions, examine an individual under oath, and compel production of  
90 records, books, papers, contracts, and other documents and materials, subject to the procedures in  
91 section 108d and 108e of the Attorney General for the District Columbia Clarification and

92 Elected Term Amendment Act of 2010, as added October 22, 2015 (D.C. Law 21-36; D.C.  
93 Official Code §§ 1-301.88d and 1-301.88e).

94 “(c) Appropriate relief under this section may include:

95 “(1) Injunctive relief;

96 “(2) Actual or nominal damages for economic or non-economic loss, including  
97 damages for emotional distress;

98 “(3) Punitive damages in an amount to be determined by a jury or a court sitting  
99 without a jury, which may include treble damages for any economic or non-economic loss the  
100 person suffered;

101 “(4) Reasonable attorneys’ fees and costs;

102 “(5) A civil penalty of up to \$10,000 per act giving rise to a cause of action under  
103 subsection (a) of this section; or

104 “(6) Any other relief which the court determines proper.”.

105 Sec. 5. Chapter 1 of Title 23 of the District of Columbia Official Code is amended as  
106 follows:

107 (a) The table of contents is amended by adding a new section designation to read as  
108 follows:

109 “23-115. Limits on defenses that justify, excuse, or mitigate a defendant’s conduct on the  
110 basis of a victim’s gender identity, gender expression, or sexual orientation.”.

111 (b) A new section 23-115 is added to read as follows:

112           “§ 23-115. Limits on defenses that justify, excuse, or mitigate a defendant’s conduct on  
113 the basis of a victim’s gender identity, gender expression, or sexual orientation.

114           “(a) In any prosecution, criminal proceeding, or criminal trial, when applicable to the  
115 offense charged, for the purposes of proving:

116                   “(1) Heat of passion caused by adequate provocation, a defendant’s provocation  
117 was not objectively adequate if it was based on discovery of, knowledge about, or the potential  
118 disclosure of the victim’s actual or perceived gender identity, gender expression, or sexual  
119 orientation;

120                   “(2) Insanity, the defendant did not lack substantial capacity if the mental disease  
121 or defect at issue was based on discovery of, knowledge about, or the potential disclosure of the  
122 victim’s actual or perceived gender identity, gender expression, or sexual orientation; or

123                   “(3) Self-defense, defense of others, or defense of property, the defendant was not  
124 justified in using force if the basis for their belief in imminent danger was based on discovery of,  
125 knowledge about, or the potential disclosure of the victim’s actual or perceived gender identity,  
126 gender expression, or sexual orientation.

127           “(b) Notwithstanding subsection (a) of this section, the defense may present evidence of  
128 prior trauma to the defendant for the purposes of excusing or justifying the defendant’s conduct  
129 or mitigating the severity of the offense.”.

130           Sec. 6. Applicability.

131 (a) Section 2 of this act shall apply upon the date of inclusion of its fiscal effect in an  
132 approved budget and financial plan.

133 (b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in  
134 an approved budget and financial plan, and provide notice to the Budget Director of the Council  
135 of the certification.

136 (c)(1) The Budget Director shall cause the notice of the certification to be published in  
137 the District of Columbia Register.

138 (2) The date of publication of the notice of the certification shall not affect the  
139 applicability of the provision identified in subsection (a) of this section.

140 Sec. 7. Fiscal impact statement.

141 The Council adopts the fiscal impact statement in the committee report as the fiscal  
142 impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
143 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

144 Sec. 8. Effective date.

145 This act shall take effect following approval by the Mayor (or in the event of veto by the  
146 Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
147 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December  
148 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
149 Columbia Register.