ENROLLED ORIGINAL

AN ACT

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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; to amend the Bias-Related Crime Act of 1989 to 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 to specify appropriate relief; and to amend Chapter 1 of Title 23 of the District of Columbia Official Code 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.

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

"Sec. 3. Defacement of certain symbols; display of certain emblems.

"It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol, or to place or display a sign, mark, symbol, impression, or other emblem, including a Nazi swastika, noose, or real or simulated burning cross, on the private property of

another, without the permission of the owner or the owner's designee, or on public property, where the person acts reckless to the fact that a reasonable person would perceive that the intent of the person acting is to:

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

"(2) Hinder or interfere with, or retaliate for, a person's exercise of any right secured by federal or District law;

"(3) Threaten to injure, break, or destroy a person's property or harm a person's financial interests; or

"(4) Threaten to do bodily harm to a person.".

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

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

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

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

"(1) "Attorney General" means the Attorney General for the District of Columbia.".

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

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

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

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

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

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

"Sec. 6. Attorney General civil enforcement.

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

"(1) Commits a bias-related crime; or

"(2) Through any act of violence, force, fraud, or intimidation:

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

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

"(b) In the course of an investigation to determine whether to seek relief under this section, the Attorney General may subpoena witnesses, administer oaths, require sworn written responses to written questions, examine an individual under oath, and compel production of records, books, papers, contracts, and other documents and materials, subject to the procedures in section 108d and 108e of the Attorney General for the District Columbia Clarification and Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code §§ 1-301.88d and 1-301.88e).

"(c) Appropriate relief under this section may include:

"(1) Injunctive relief;

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

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

"(4) Reasonable attorneys' fees and costs;

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

"(6) Any other relief which the court determines proper.".

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

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

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

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

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

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

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

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

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

"(b) Notwithstanding subsection (a) of this section, the defense may present evidence of prior trauma to the defendant for the purposes of excusing or justifying the defendant's conduct or mitigating the severity of the offense.".

Sec. 6. Applicability.

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

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

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

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

Sec. 7. Fiscal impact statement.

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

Sec. 8. 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 60-day period of congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

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Chairman
Council of the District of Columbia

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Mayor
District of Columbia