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2 Councilmember Tommy Wells

Chairman Phil Mendelson

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10 A BILL

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15 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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20 Chairman Phil Mendelson and Councilmember Tommy Wells introduced the following bill
21 which was referred to the Committee on _____.

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23 To amend title 23 of the District of Columbia Official Code to provide that a law enforcement
24 officer may arrest a person without a warrant when there is probable cause to believe that
25 the person has been released on citation to appear in court and has violated a stay away
26 order, to provide for a post-arrest process for individuals in the District of Columbia, to
27 clarify procedures for an official to issue citations or take money or bond, and to provide
28 authority for an official to issue a stay away order as a condition of release; and to amend
29 the First Amendment Assembly Enforcement and Procedure Act of 2004 to update and
30 clarify provisions related to the post-and-forfeit procedure.

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32 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
33 act may be cited as the "Post-Arrest Process Clarification Amendment Act of 2013".

34 Sec. 2. Title 23 of the District of Columbia Official Code is amended as follows:

35 (a) The table of contents for Chapter 5, Subchapter V is amended by adding at the end
36 the phrase "23-583. Processing arrests."

37 (b) Section 23-581 is amended by adding new subsection (a-10) to read as follows:

1 “(a-10) A law enforcement officer may arrest a person without a warrant if the officer
2 has probable cause to believe the person:

3 “(1) Has been released on citation to appear in court pursuant to § 23-583(e) or
4 (f); and

5 “(2) The person has been directed by a releasing official, as defined in § 23-
6 1110(e)(2), to stay away from a particular place or a particular person, and the person has
7 violated that directive.”.

8 (c) A new section 23-583 is added to read as follows:

9 “§ 23-583. Processing arrests.

10 “(a) Consistent with the provisions set forth in this section, every person arrested within
11 the District of Columbia for a violation of a District of Columbia criminal statute or regulation,
12 or for a violation of a court order or directive issued pursuant to § 23-1110(d), shall have his or
13 her arrest processed expeditiously, consistent with assuring the safety of the community and any
14 other person, and consistent with assuring the arrestee’s appearance in court to answer to the
15 charge. Unless a person is not eligible for release pursuant to this section, a person shall be
16 released if he or she promises to appear in court and abide by conditions of release, if any, and
17 shall not be detained pending his or her first appearance before a judicial officer.

18 “(b) In lieu of taking a person into custody, a law enforcement officer operating in the
19 District of Columbia may issue a field arrest form to a person whom he or she has arrested
20 without a warrant when the person:

21 “(1) Otherwise would be eligible for citation release; and

1 “(2) Is charged with committing a misdemeanor prosecuted by the Office of the
2 Attorney General for the District of Columbia and designated by the Chief of Police as being
3 eligible for a field arrest.

4 “(c) A field arrest form issued pursuant to subsection (b) of this section shall require the
5 person to appear within 15 days before an official of the relevant law enforcement agency, in
6 order to process that arrest in conformity with the provisions of this section.

7 “(d)(1) A releasing official shall determine whether a person taken into custody, or
8 appearing at a law enforcement agency following the issuance of a field arrest form, is eligible:

9 “(A) For release on citation pursuant to paragraph (2) of this subsection;

10 or

11 “(B) To use the post-and-forfeit procedure pursuant to paragraph (3) of
12 this subsection.

13 “(2) A person arrested without a warrant is eligible for release on citation unless:

14 “(A) There is reason to believe that the person may cause injury to him or
15 herself or any other person, may cause damage to any property, or will not appear in court to
16 answer to the charge; or

17 “(B) The person:

18 “(i) Is charged with a dangerous crime as defined in section 23-
19 1331(3) or a crime of violence as defined in § 23-1331(4);

20 “(ii) Is subject to detention prior to trial pursuant to § 23-1322 or
21 § 23-1325;

22 “(iii) Is charged with a felony offense;

1 “(iv) Is charged with a misdemeanor offense that is not designated
2 as eligible for citation release by the responsible prosecuting authority;

3 “(v) Is charged with an interpersonal violence offense as defined
4 in § 16-1001(6)(A), intimate partner violence as defined in § 16-1001(7), or intrafamily violence
5 as defined in § 16-1001(9);

6 “(vi) Is charged with an interpersonal violence offense as defined
7 in § 16-1001(6)(B) where the criminal offense committed or threatened to be committed is
8 violent;

9 “(vii) Cannot reliably be identified or inaccurately reports
10 information concerning his or her name or other identifying information;

11 “(viii) Is in violation of a court order, including conditions of
12 release, at the time of arrest;

13 “(ix) Is in violation of a directive issued pursuant to § 23-1110(d)
14 at the time of arrest; or

15 “(x) Has not cooperated in the booking process.

16 “(3) A person is eligible to use the post-and-forfeit procedure unless:

17 “(A) The person is not eligible for citation release pursuant to paragraph
18 (2) of this subsection; or

19 “(B) The person does not meet the criteria established pursuant to § 5-
20 335.01(c).

21 “(e) A releasing official is authorized to:

1 “(1) Issue a citation to appear on a future date in court, or at some other
2 designated place, to an arrested person who is otherwise eligible for release pursuant to
3 subsection (d)(2), and

4 “(2) Release that person from custody.

5 “(f) A releasing official may issue a citation to a person who otherwise is not eligible for
6 release under subsection (d)(2) of this section to appear on a future date in court, if the
7 responsible prosecuting authority approves of the person’s release, when:

8 “(1) The Chief Judge has declared that an event or condition significantly impairs
9 the functioning of the Superior Court;

10 “(2) A person has been admitted to a hospital during the course of the arrest
11 processing; or

12 “(3) Court is not in session and there is reason to believe that the arrestee should
13 not be held in custody pending his or her first appearance before a judicial officer.

14 “(g) The releasing official may condition release on a person’s agreement to stay away
15 from a particular place and to stay away from and have no contact with a victim of or witness to
16 the offense until his appearance before a judicial officer.

17 “(h) The releasing official may not release a person if the person refuses to agree to
18 abide by one or more conditions of release. A person who knowingly fails to abide by a
19 condition of release at any time prior to the first appearance before a judicial officer shall be
20 taken into custody for presentment before a judicial officer.

21 “(i) A person who, having been released on citation pursuant to subsection (e) or (f) of
22 this section or having posted bond pursuant to § 23-1110, willfully fails to appear as required
23 shall:

1 “(1) If the offense is a misdemeanor, be fined or imprisoned for not more than the
2 maximum provided for the offense for which such citation was issued, or

3 “(2) If the offense is a felony, be fined not more than \$5,000 and imprisoned for
4 not more than 5 years, or both.

5 “(j) For the purpose of this section, the term “releasing official” shall have the same
6 meaning as set forth in § 23-1110(e)(2).”.

7 (d) The table of contents for Chapter 11 is amended by striking the phrase “23-1110.
8 Designation of official to take bail or collateral when court is not in session; issuance of
9 citations.” and inserting the phrase “23-1110. Designation of official to issue citations or take
10 money or bond.” in its place.

11 (e) Section 23-1110 is amended to read as follows:

12 “23-1110. Designation of official to issue citations or take money or bond.

13 “(a) The judges of the Superior Court shall have the authority to appoint releasing
14 officials.

15 “(b) A releasing official shall:

16 (2) Receive no compensation for the services described in this section other than
17 his or her regular salary; and

18 (3) Be subject to the orders and rules of the Superior Court in the discharge of his
19 or her duties.

20 “(c) A releasing official may be removed as the clerk at any time by the judges of the
21 Superior Court.

22 “(d) A releasing official shall have the authority to direct any person who is to be
23 released with a future court appearance date under § 23-583(e) or (f), as a condition of that

1 release, to stay away from a particular place and to stay away from and have no contact with a
2 victim of or witness to the offense until his or her appearance before a judicial officer. The
3 releasing official shall deny release to a person who refuses to agree to abide by this directive.

4 “(e) For the purposes of this section, the term:

5 (1) “Releasing official” means an official of the Metropolitan Police Department
6 or other law enforcement agency operating in the District of Columbia appointed by the judges
7 of the Superior Court to:

8 “(A) Act as a clerk of the court with authority to issue citations pursuant
9 to § 23-583(e);

10 “(B) Take money pursuant to § 5-335.01; and

11 “(C) Take bond imposed upon the issuance of a bench warrant issued by a
12 judicial officer of the Superior Court, from persons charged with offenses triable in the Superior
13 Court.

14 (2) “Superior Court” means the Superior Court of the District of Columbia.”.

15 Sec. 3. Section 302 of the First Amendment Assembly Enforcement and Procedure Act
16 of 2004, effective April 12, 2005 (D.C. Law 15-352; D.C. Official Code § 5-335.01), is amended
17 to read as follows:

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

1 “(b) The post-and-forfeit procedure shall be offered only to individuals who:

2 “(1) Meet the eligibility criteria established by the Office of the Attorney General
3 for the District of Columbia (“OAG”); and

4 “(2) Are charged with a misdemeanor that the OAG, in consultation with the
5 Metropolitan Police Department (“MPD”), has determined is eligible to be resolved by the post-
6 and-forfeit procedure.

7 “(c) Whenever the MPD or other law enforcement agency operating in the District of
8 Columbia tenders an offer to an arrestee to resolve a criminal charge using the post-and-forfeit
9 procedure, the offer shall be accompanied by a written notice provided to the arrestee describing
10 the post-and-forfeit procedure and the consequences of resolving the criminal charge using this
11 procedure.

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

14 “(1) The amount of money that the person must post-and-forfeit in order to
15 terminate the criminal case, if the person is eligible for this procedure;

16 “(2) That the arrestee has the right to choose whether to:

17 “(A) Accept the post-and-forfeit offer and terminate the criminal case; or

18 “(B) Proceed with the criminal case and a potential adjudication on the
19 merits of the criminal charge;

20 “(3) That, if the arrestee elects to proceed with the criminal case, he or she will
21 be eligible for prompt release on citation to appear on a future date in court;

22 “(4) That the agreement to resolve the charge using the post-and-forfeit
23 procedure will be final 90 days after the date the notice is signed unless, within the 90-day

1 period, the arrestee or the OAG files a motion with the Superior Court of the District of
2 Columbia to set aside the forfeiture and proceed with the criminal case;

3 “(5) That, if the arrestee or the OAG does not file a motion to set aside the
4 forfeiture, the resolution of the criminal charge using the post-and-forfeit procedure will preclude
5 the arrestee from obtaining an adjudication on the merits of the criminal charge except if a
6 motion to set aside the forfeiture is granted pursuant to paragraph (4);

7 “(6) That the resolution of the criminal charge using the post-and-forfeit
8 procedure is not a conviction of a crime and may not be equated to a criminal conviction, and
9 may not result in the imposition of any sanction, penalty, enhanced sentence, or civil disability
10 by any court of the District of Columbia or any agency of the District of Columbia in any
11 subsequent criminal, civil, or administrative proceeding or administrative action; and

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

16 “(e) The notice required by subsection (c) of this section shall comply with the
17 provisions of the Language Access Act of 2004, effective June 19, 2004 (D.C. Law 15-167; D.C.
18 Official Code § 2-1931 *et seq.*).

19 “(f) An arrestee who is provided the written notice required by subsection (c) of this
20 section and who wishes to resolve the criminal charge using the post-and-forfeit procedure shall,
21 after reading the notice, sign the bottom of the notice, thereby acknowledging receiving the
22 information provided in the notice and agreeing to accept the offer to resolve the charge using

1 the post-and-forfeit procedure. After the arrestee signs the notice, the arrestee shall be provided
2 with a copy of the signed notice.

3 “(g) The Superior Court of the District of Columbia shall determine the amount of
4 money that is associated with each qualified misdemeanor determined by the OAG pursuant to
5 subsection (b)(2).

6 “(h) Within 90 days of the Superior Court of the District of Columbia issuing an updated
7 list of the amount of money associated with each charge, the Chief of Police shall issue the list of
8 charges that law enforcement officers are authorized to resolve using the post-and-forfeit
9 procedure. The Chief shall make the list available to the public, including placing the list on the
10 MPD website and having it available for review in each police station.

11 “(i) The Mayor shall submit an annual public report to the Council identifying the total
12 amount of money collected the previous year pursuant to the post-and-forfeit procedure and the
13 number of criminal charges, by specific charge, resolved the previous year pursuant to the
14 MPD’s use of the post-and-forfeit procedure.

15 “(j) For the purposes of this section, the term “post-and-forfeit procedure” means the
16 mechanism in the criminal justice system in the District of Columbia whereby a person charged
17 with certain misdemeanor crimes may post and simultaneously forfeit an amount of money and
18 thereby obtain a full and final resolution of the criminal charge.”.

19 Sec. 4. Fiscal impact statement.

20 The Council adopts the fiscal impact statement in the committee report as the fiscal
21 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
22 approved December 24, 1973 (87 Stat. 813; D.C. Official Code
23 § 1-206.02(c)(3)).

1 Sec. 5. Effective date.

2 This act shall take effect following approval by the Mayor (or in the event of veto by the
3 Mayor, action by the Council to override the veto), a 60-day period of Congressional review as
4 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
5 24, 1973 (87 Stat. 813; D.C. Official Code ' 1-206.02(c)(2)), and publication in the District of
6 Columbia Register.