

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

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To amend, on an emergency basis, due to congressional review, 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; 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; and to amend the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004 to make conforming amendments.

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 Congressional Review Emergency Amendment Act of 2005".

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 Congressional Review Emergency Amendment Act of 2005".

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 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.

"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 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."

TITLE II. CRIMINAL BACKGROUND CHECKS.

Sec. 201. Short title.

This title may be cited as the "Criminal Background Checks for the Protection of Children Congressional Review Emergency Act of 2005".

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;

(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

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,

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.

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;

(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.

Note,
§§ 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 Congressional Review Emergency Act of 2005".

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.

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 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.

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.

Note,
§ 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 Congressional Review Emergency Act of 2005".

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

Note,
§ 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 Congressional Review Emergency Act of 2005".

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 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 Congressional Review Emergency Amendment Act of 2005".

Sec. 602. Section 2(a) of the District of Columbia Public School Nurse Assignment Act

Note,
§ 38-621

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".

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

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 Congressional Review Emergency Amendment Act of 2005".

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,".

Note,
§ 48-904.07a

TITLE VIII. CONFORMING AMENDMENTS TO ACT 15-716.

Sec. 801. Short title.

This title may be cited as the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act Congressional Review Emergency Amendment Act of 2005.

Sec. 802. Title II of the Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004, signed by the Mayor December 29, 2004 (D.C. Act 15-716; 52 DCR ____), is amended to read as follows:

“TITLE II. CRIMINAL BACKGROUND CHECKS.

“Sec. 201. Short title.

“This title may be cited as the "Criminal Background Checks for the Protection of Children Congressional Review Emergency Act of 2005".

“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;

“(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 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, 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.

“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;

“(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.”.

TITLE IX. FISCAL IMPACT STATEMENT.

Sec. 901. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for Bill 15-607, the Child and Youth, Safety and Health Omnibus Amendment Act of 2004, signed by the Mayor January 19, 2005 (Act 15-759), 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 X. EFFECTIVE DATE.

Sec. 1001. Effective date.

ENROLLED ORIGINAL

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