

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Executive Office of Mayor Muriel Bowser**



Public Hearing on

**Bill 22-588, the “Possession of Firearm and Ammunition Penalties  
Amendment Act of 2017”**

**Bill 22-400, the “Extreme Risk Civil Protection Order  
Amendment Act of 2017”**

**Bill 22-193, the “Temporary Protection Order Firearm Relinquishment  
Amendment Act of 2017”**

**Proposed Resolution 22-552, the “Sense of the Council in Opposition to Concealed Carry  
Reciprocity Resolution of 2017”**

**Proposed Resolution 22-796, the “Sense of the Council Virginia and Maryland Assault  
Rifle Prohibition Resolution of 2018”**

Testimony of  
**Kevin Donahue**

Deputy City Administrator  
Deputy Mayor for Public Safety and Justice

Committee on the Judiciary and Public Safety  
Council of the District of Columbia  
The Honorable Charles Allen, Chairperson

John A. Wilson Building  
Room 500  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004  
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11:00 a.m.

Good morning, Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Kevin Donahue, Deputy Mayor for Public Safety and Justice, and I am joined by Peter Newsham, Chief of Police of the Metropolitan Police Department.

We are here to testify in support of Bill 22-588, the “Possession of Firearm and Ammunition Penalties Amendment Act of 2017,” which was introduced by Mayor Muriel Bowser. We also will speak in support of Bill 22-714, the “Bump Stock Prohibition Amendment Act of 2018,” which was also introduced by Mayor Bowser, but which I understand was not added to today’s hearing because of Council procedural rules. We will also speak to two other bills that propose reasonable policies for keeping firearms away from people who may use the weapons to harm themselves or others. Our overriding concern in analyzing each of these bills is the protection of our residents’ safety, while also ensuring all constitutional requirements are met.

### **Promoting DC Values through Sensible Gun Laws**

While there has been a great deal of attention paid to the horror that happened in Parkland, Florida, our own city has known the horror of gun violence for decades. Far too many District residents have lost someone because of guns and suffer a lifetime of trauma from that pain. As a nation, we mourn the massacre of students who thought they were safe at school and we remember Columbine, Newtown, Virginia Tech, and now Parkland. But as a city, we should not forget the names of our own young people whose lives were tragically cut short by gun violence. We need to remember Steven Slaughter, age 14; James Colter, 17; Davon Fisher, 17; Chicano Phillips, 18; and Paris Brown, 19. These five teenagers were killed this year alone – struck down by bullets. We, as a city, need to honor their memories by recommitting ourselves to preventing gun violence.

Our collective actions as a government to prevent gun violence take many forms. This means funding our forensics lab to expand ballistics testing. It means working closely as a unified justice system to fairly prosecute gun crimes. It means surrounding families with quality education, recreation, and healthy communities. It means directly engaging with individuals considering violence as a solution. It means addressing the trauma, anger, and lack of opportunity that create the conditions from which violence arises. It is committing ourselves to all of this and not being enticed by the idea that any one action will end gun violence.

Our purpose here, however, is more focused. Today, we focus on one specific issue that cities across the country are facing: how to keep guns out of the hands of people who are likely to use them to commit acts of violence.

We commend the activism and passion of students who have become extraordinary advocates for demanding responsible gun control legislation nationwide. But we also must recognize and honor the work being done here in the District by our own students, community members, nonprofit organizations, and advocacy groups. We share their commitment to making all our residents feel safe no matter where in our city they live. While some federal officials have latched on to a reckless scheme of turning teachers into armed guards, the District is committed to discussing real common sense solutions to stopping gun violence.

This weekend, the District will host several hundred thousand people who are coming here to tell Congress that enough is enough. We need sensible gun control laws at the federal level. But if Congress refuses to listen, then it is up to the District and other states to take the lead.

### **Prohibiting Lethal Weapons and Bump Stocks**

I now turn to the two bills introduced by Mayor Bowser, Bill 22-588, the “Possession of Firearm and Ammunition Penalties Amendment Act of 2017,” and Bill 22-714, the “Bump Stock Prohibition Amendment Act of 2018.” Both bills focus on reasonable gun control and accountability for gun trafficking.

In 2009, Council enacted legislation to model certain parts of District firearms laws after the federal law. This allowed for charges to be filed in the D.C. Superior Court because it can be challenging to bring low-level federal cases in the U.S. District Court. Two provisions of Bill 22-588 are a continuation of this effort. The bill prohibits the possession, sale, or disposal of a stolen firearm or ammunition or the possession of a firearm whose serial number has been removed, obliterated, or altered. The proposed penalty for such offenses – not less than two years and not more than five years – reflects the gravity with which we hold illegal gun trafficking. The bill adds an enhanced penalty for possessing firearms with intent to sell, which is another typical gun trafficking offense, of not less than two years and not more than 10 years. Collectively, these will support police efforts to ensure that when they are able to identify someone trafficking in illegal firearms, the District can hold the offenders accountable.

The bill creates a new misdemeanor for felons in possession of ammunition and creates an enhanced penalty for possession of a high-capacity magazine, increasing it from less than a year to not more than five years. The increased penalty for possession of high-capacity magazines reflects the ability of these weapons to inflict a large number of casualties – something that has become more common at shootings in the District over the past several years.

Additionally, the bill adds new criminal gun offenses to the District’s existing immunity provisions that are available to persons voluntarily surrendering stolen guns or guns with obliterated serial numbers – the two new offenses I just discussed. Our intent is to encourage the voluntary surrender of these illegal guns so that they are taken off our streets. Finally, the bill denies civil penalties or administrative sanctions for convicted felons transporting unregistered guns or ammunition. These types of sanctions originally were created to exempt from criminal liability those non-residents traveling through the District with unregistered firearms or ammunition; however, a felon in possession of an unregistered firearm should not be entitled to this exemption.

Although Bill 22-714 is not a subject of this hearing, I do want to highlight it to make clear that Mayor Bowser believes it is important to amend District law to ban the possession of bump stocks. As we saw in the horrible massacre in Las Vegas, bump stocks can lead to a massive number of casualties by substantially increasing a weapon’s rate of fire – sometimes up to as many as 400 rounds a minute. The bill prohibits the possession of bump stocks and any other type of item that simulates automatic or machinegun fire.

The Mayor's proposal to ban bump stocks mirrors similar efforts in California, Massachusetts, New Jersey, Washington, and Florida. Several cities have adopted a ban, including Denver, Cincinnati, and Columbia, South Carolina. Finally, on March 19, the Maryland legislature approved a similar law that Governor Larry Hogan is expected to sign.

I'd like to address an argument that there is no need to ban bump stocks in the District because they're either not a problem here or we can just wait for federal law to be changed. Because bump stocks are currently legal to possess, MPD does not have data on how many may be in the District. However, we know the lethal harm that bump stocks can inflict on victims. It would be irresponsible for us to simply wait until there's a mass shooting in the District with a weapon outfitted with a bump stock, before taking action.

A few weeks ago, the U.S. Department of Justice stated its intent to propose a rulemaking to ban bump stocks. While we support this belated action to regulate guns at the federal level, it is impossible to predict when this rulemaking would take effect and the outcome of inevitable litigation. We don't need to keep waiting for the federal government to take action; the District can lead by taking action now.

### **Keeping Firearms Away from Dangerous Individuals**

The two Council bills, B22-400, the "Extreme Risk Civil Protection Order Amendment Act of 2017" and B22-193, the "Temporary Protection Order Firearm Relinquishment Amendment Act of 2017," have the goal of keeping firearms out of the hands of people who may use them to cause harm, whether to themselves or to others.

Bill 22-400 establishes two new types of "Extreme Risk Civil Protection Orders" or ERCPOs. Unlike existing protection orders in the District, which generally are limited to petitions filed by domestic violence victims, ERCPOs can be filed by anyone with personal knowledge of another person's danger to themselves or others, and their possession of, or access to, firearms.

We support the intent of such proposals, known as "red flag" laws, which have been enacted in several states, including Connecticut, California, Indiana, Massachusetts, Oregon, and, most recently, Florida, and are also under consideration in dozens of other jurisdictions. Our understanding is that "red flag" laws have withstood constitutional challenges in California and Indiana state courts and have been credited with preventing one suicide for every 10.5 guns seized in Connecticut. These laws are narrowly crafted to address immediate and present dangers by temporarily removing firearms from dangerous persons in order to prevent harm to those persons or others. They are also sparingly used: in California in 2016, the year the law first went into effect, 84 "red flag" orders were issued; last year, that number increased to 104. And in Connecticut, which has had these laws in place for almost 20 years, only about 1,500 "red flag" orders have been issued in that entire time.

The "red flag" laws are undoubtedly complicated and we want to work closely with the Committee, the Attorney General, and the D.C. Superior Court to ensure the District's legislation meets both constitutional requirements and practical concerns. At the macro level, we believe these protection orders would allow family members, police officers, or any other person with

personal knowledge of specified dangers to obtain prompt judicial review of temporary firearms removals in narrowly crafted circumstances.

B22-193 requires the relinquishment of firearms by anyone who is the subject to a temporary protection order (TPO). Under current law, a TPO may be filed by a person alleging they are the victim of interpersonal, intimate partner, or intrafamily violence; stalking; sexual assault; or sexual abuse. A court may issue a TPO when it finds the petitioner to be “immediately endangered” by another person.

We support this bill as an important tool that can keep guns out of the hands of abusers. But we have concerns about how the TPO would impact the relinquishing of illegal firearms in a person’s possession. We suggest the Committee consider merging this proposal with the extreme risk civil protection order bill so they can supplement each other and increase the protections offered to the victims of violence while at the same time complying with constitutional requirements.

### **Working Together to Make Our City Safer**

We look forward to working in close cooperation with the Committee and full Council, the Attorney General, advocates, and our residents – especially those who have been most affected by gun violence – to improve our ability to protect our city from firearms, while still adhering to the mandates of the *Heller* litigation and its progeny. We believe that by enacting the bills discussed today, including the Mayor’s bill to ban bump stocks, the District will increase the safety of our residents

I want to end with a quote from Marjory Stoneman Douglass, whom the school in Parkland, Florida is named after:

*“Be a nuisance when it counts. Do your part to inform and stimulate the public to join your action. Be depressed, discouraged, and disappointed at failure and the disheartening effects of ignorance, greed, corruption, and bad politics – but never give up.”*

I applaud all the students and activists who stand up against those members of Congress who seem determined to prevent change. I urge them to never give up their fight. We support them, we stand with them, and we are inspired about the future that they are ushering in.

Thank you for the opportunity to testify today. I welcome any questions.