



Report #79 - Animal Cruelty Offenses

(First Draft)

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DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
441 FOURTH STREET, NW, SUITE 1C001 SOUTH
WASHINGTON, DC 20001
PHONE: (202) 442-8715
www.ccrdc.dc.gov

This Report contains draft revisions certain District criminal statutes, as well as recommendations for repeal of some statutes. These draft revisions and repeal recommendations are part of the D.C. Criminal Code Reform Commission’s (CCRC) efforts to issue recommendations for comprehensive reform of District criminal statutes.

This Report has two main parts: (1) statutory text for revised animal cruelty offenses; and (2) commentary on the draft statutory text, and the repeal commentary for two statutes.

The Report’s commentary on the revisions explains the meaning of each provision, considers whether existing District law would be changed by the provision (and if so, why this change is being recommended). The Report’s commentary on the repeal recommendations explains the reasoning behind the recommendation for repeal and addresses the ways in which the described offenses are covered by other statutes.

The appendix to this report includes text of the draft revised statutes without commentary.

A copy of this document and other work by the CCRC is available on the agency website at www.ccrdc.gov.

Report #79 – Animal Cruelty Offenses
Draft Revised Criminal Code (RCC) Text and Commentary
Corresponding D.C. Code statutes in {}

- § 22A-5501. Definitions. {D.C. Code §§ 22-861, 22-1006.01-1006.02, 22-1012.01, 22-1013}
 “Animal”
 “Animal fight”
 “Police animal”
 “Sexual activity with an animal”
- § 22A-5502. Animal Cruelty. {D.C. Code §§ 22-1001-1002}
- § 22A-5503. Criminal Neglect of an Animal. {D.C. Code §§ 22-1001-1002, 22-1007, 22-1011-1012}
- § 22A-5504. Animal Fighting. {D.C. Code §§ 22-1006.01, 22-1009, 22-1310}
- § 22A-5505. Attending or Wagering on an Animal Fight. {D.C. Code § 22-1006.01}
- § 22A-5506. Possession of Implements of Animal Fighting. {D.C. Code § 22-1006.02}
- § 22A-5507. Sexual Activity Between a Person and Animal. {D.C. Code § 22-1012.01}
- § 22A-5508. Unlawful Cat Declawing. {D.C. Code § 22-1012.03}
- § 22A-5509. Interference with a Police Animal. {D.C. Code § 22-861}

Statutes Recommended for Repeal

- § 22-1012.02. Creating or Distributing an Obscene Image or Audio Recording of an Animal.
- § 22-1310. Urging Dogs to Fight or Create Disorder.

§ 22A-5501. Definitions.

“Animal” means any nonhuman mammal, bird, reptile, or amphibian.

Explanatory Note. The term “animal” is used in offenses in this subchapter and replaces the definitions found in D.C. Code § 22-1013 and D.C. Code § 22-1006.01. The RCC definition of “animal” from this subchapter is used in the revised definitions of “animal fight”¹, “police animal”², and “sexual activity with an animal”³. The revised definition of “animal” is used in seven offenses.⁴

Relation to Current District Law. The revised definition of “animal” clearly changes current District law in one main way.

The definition of “animal” has been narrowed in the revised code. One definition of an animal in the current DC Code is “all living and sentient creatures (human beings excluded)”⁵. The term “sentient” has never been defined by statute or the DCCA. Indeed, there is no definition of sentience that is universally accepted.⁶ The term sentient is ordinarily used to indicate the ability to experience feelings.⁷ As there is no objective standard to determine which animals are sentient, the current definition does not give a clear indication as to which creatures are included.⁸ The revised definition more clearly specifies which living creatures are covered by this statute.

The current D.C. Criminal Code includes other definitions of the term, “animal.” The definition found in D.C. Code § 22-1013 indicates explicitly that it applies to all uses of the word “animal” in sections 1001-1009 and 1011. Nonetheless, subsequent legislation has created an alternate definition of “animal” that applies to D.C. Code § 22-1006.01.⁹ The revised definition provides a single consistent definition that applies across various animal cruelty offenses. Other states have a wide range of definitions of the term, “animal.”¹⁰ Some states only indicate what an

¹ RCC § 22A-5501(2).

² RCC § 22A-5501(3).

³ RCC § 22A-5501(4).

⁴ Animal cruelty, (RCC § 22A-5502); Criminal Neglect of an Animal, (RCC § 22A-5503); Animal Fighting (RCC § 22A-5504); Attending or Wagering on an Animal Fight (RCC § 22A-5504); Possession of Implements of Animal Fighting (RCC § 22A-5506); Sexual Activity Between a Person and Animal (RCC § 22A-5507); and Interference with a Police Animal (RCC § 22A-5509).

⁵ D.C. Code Ann. § 22-1013.

⁶ See, *Jane Kotzmann & Morgan Stonebridge, There Is Value in Stating the Obvious: Why United States Legislatures Should Explicitly Recognize Animal Sentience in Their Laws*, 30 Cornell J.L. & Pub. Pol’y 425, 467 (2021).

⁷ *Id.* at 430.

⁸ Relying on sentience may be overbroad as animals such as mosquitoes and crabs may be sentient. Including these creatures as “animals” subject to the animal cruelty statute would criminalize common practices involving killing or harming such animals.

⁹ D.C. Code § 22-1006.01, which criminalizes animal fighting, includes a separate definition of “animal” as used in that section. That section defines “animal” more narrowly to include “a vertebrate other than a human, including, but not limited to, dogs and cocks.” The commentary for the Animal Fighting offense under RCC § 22A-5504 discusses how the revised definition of “animal” changes the law as applied to that offense.

¹⁰ See e.g. Ariz. Rev. Stat. Ann. § 13-2910, (“Animal” means a mammal, bird, reptile or amphibian.); Colo. Rev. Stat. Ann. § 18-9-201, (“Animal” means any living dumb creature, including a certified police working dog, a police working horse, and a service animal as those terms are defined, respectively, in subsections (2.3), (2.4), and (4.7) of

animal is *not* and leave it to the courts to define what an animal actually is.¹¹ Other states define the term differently depending on the part of the code it applies to.¹² As a general matter there does not appear to be a national consensus as to what an animal actually is for the purposes of prohibiting animal cruelty.

The revised code lists only vertebrates under its definition of “animals” and states which classes of vertebrates this subchapter applies to. All vertebrate classes except for fish are included in this new definition. This change serves to provide clarity as to what living creatures are covered by these statutes.

“Animal fight” means an exhibition between two or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event.

Explanatory Note. The definition of “animal fight” is new in the revised code but the current code has a definition of “fighting” in the subsection describing the prohibition of animal fighting. The definition of “animal fight” in the revised code contains nearly the exact same language as the definition of “fighting” in the current code. The revised definition of “animal fight” is used in two offenses.¹³

this section.); Del. Code Ann. tit. 11, § 1325, (“Animal” shall not include fish, crustacea or molluska.); Fla. Stat. Ann. § 828.02 (In this chapter, and in every law of the state relating to or in any way affecting animals, the word “animal” shall be held to include every living dumb creature.); Ga. Code Ann. § 16-12-4 (“Animal” shall not include any fish nor shall such term include any pest that might be exterminated or removed from a business, residence, or other structure.); Haw. Rev. Stat. Ann. § 711-1109.8 (“Animal” includes every living or dead creature, except a human being.); Iowa Code Ann. § 717B.1 (“Animal” means a nonhuman vertebrate.); Kan. Stat. Ann. § 21-6411 (“Animal” means every living vertebrate except a human being); Ky. Rev. Stat. Ann. § 525.137 (“Animal” means any nonhuman creature); Minn. Stat. Ann. § 343.20 (“Animal” means every living creature except members of the human race.); Mo. Ann. Stat. § 273.325 (“Animal”, any dog or cat, which is being used, or is intended for use, for research, teaching, testing, breeding, or exhibition purposes, or as a pet.); Mont. Code Ann. § 45-8-210 (“animal” means any cock, bird, dog, or mammal except a human.); N.H. Rev. Stat. Ann. § 644:8 (“animal” means a domestic animal, a household pet or a wild animal in captivity.); N.J. Stat. Ann. § 4:22-15 (“Animal” or “creature” includes the whole brute creation.); Ohio Rev. Code Ann. § 959.21 (“Animal” means a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.); Or. Rev. Stat. Ann. § 167.310 (“Animal” means any nonhuman mammal, bird, reptile, amphibian or fish.); Tenn. Code Ann. § 39-14-201 (“Animal” means a domesticated living creature or a wild creature previously captured); Tex. Penal Code Ann. § 42.092 (“Animal” means a domesticated living creature, including any stray or feral cat or dog, and a wild living creature previously captured. The term does not include an uncaptured wild living creature or a livestock animal.); Utah Code Ann. § 76-9-301 (“Animal” means, except as provided in Subsection (1)(b)(ii), a live, nonhuman vertebrate creature.); Wash. Rev. Code Ann. § 16.52.011 (“Animal” means any nonhuman mammal, bird, reptile, or amphibian.).

¹¹ See egs. Ind. Code Ann. § 35-46-3-3 (As used in this chapter, “animal” does not include a human being.); N.M. Stat. Ann. § 30-18-1 (As used in this section, “animal” does not include insects or reptiles.).

¹² See *New Hampshire*: N.H. Rev. Stat. Ann. § 644:8 (In this section, “animal” means a domestic animal, a household pet or a wild animal in captivity.), N.H. Rev. Stat. Ann. § 644:8-c (“Animal” means any member of the kingdom of Animalia.), N.H. Rev. Stat. Ann. § 644:8-g (“Animal” means a nonhuman mammal, bird, reptile, or amphibian, either dead or alive.); and *Oregon*: Or. Rev. Stat. Ann. § 167.310 (“Animal” means any nonhuman mammal, bird, reptile, amphibian or fish.), Or. Rev. Stat. Ann. § 167.355 (“Animal” means any bird, reptile, amphibian, fish or nonhuman mammal, other than a dog or a fighting bird as defined in ORS 167.426.).

¹³ Attending or Wagering on an Animal Fight (RCC § 22A-5504); Possession of Implements of Animal Fighting (RCC § 22A-5506).

Relation to Current District Law. *The changes to the definition of “animal fight” are clarificatory in nature and are not intended to substantively change District law.*

The term “animal fight” is explicitly defined in the revised code. Under the current code there is no explicit definition offered but the code does prohibit certain activities surrounding the “exhibition between two or more animals of fighting, baiting, or causing injury to each other.”¹⁴ The revised code offers an explicit definition that an “animal fight” means an exhibition between two or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event. This new definition removes the term “baiting” from the definition of animal fighting and adds killing and maiming. The term “baiting” had been defined as “to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in fights with other animals.”¹⁵ Although there is no case law interpreting this definition, it appears that the conduct described in this definition would subject an actor to liability for animal fighting under subparagraph (a)(3) of the revised animal fighting statute.¹⁶

“Police animal” means a dog, horse, or other animal used by a law enforcement agency, correctional facility, fire department, or search and rescue unit or agency for the purpose of aiding in the detection of criminal activity, enforcement of laws, apprehension of criminal offenders, or search and rescue efforts, whether or not the dog, horse, or other animal is engaged in the performance of its official duties when a violation of this section occurs.

Explanatory Note. The definition of “police animal” in the revised code is nearly the same as in the current code section regarding the same conduct.¹⁷

Relation to Current District Law. *One change to the revised definition is clarificatory in nature and is not intended to substantively change District law.*

The revised definition of the term “police animal” omits a reference to animals used by a “police department.” Omitting this language is not intended to substantively change the scope of the definition. The term separately includes animals used by a “law enforcement agency.” The term “police department” is redundant, as all police departments are also “law enforcement agencies.”

“Sexual activity with an animal” means an any of the following acts between a person and an animal committed with the purpose to sexually arouse or gratify any person, or at the direction of someone with such a purpose:

¹⁴ D.C. Code § 22-1006.01(a)(1).

¹⁵ D.C. Code § 22-1006.01(c)(3). While this is the more common definition, animal baiting in some contexts can instead mean to overfeed an animal in order to make them an easier target for hunters. See <https://www.humanesociety.org/resources/facts-about-bear-baiting>.

¹⁶ RCC § 22A-5504(a)(3) (An actor commits animal fighting when the actor knowingly...Attacks, provokes, or harasses an animal with one or more animals for the purpose of training or preparing an animal to engage in fights with other animals.).

¹⁷ D.C. Code § 22-861(a)(1).

- (A) Contact between the genitalia or anus of one and the mouth, anus or genitalia of the other;**
- (B) Touching or fondling by a person of the genitalia or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose;**
- (C) A transfer or transmission of semen by the person upon any part of the animal; or**
- (D) The insertion, however slight, of a part of a person’s body or an object into the vaginal or anal opening of an animal or the insertion of a part of the animal’s body into the vaginal or anal opening of the person.**

Explanatory Note. The term “sexual activity with an animal” is used in § 22A-5507 in this subchapter and replaces the definitions found in D.C. Code § 22-1012.01(e)(3). The RCC definition of “animal” from this subchapter is used in the revised definition of the offense “sexual activity with an animal”¹⁸. Subparagraph (4)(B) references prohibited contact done either directly or through clothing. This specifies that the term includes touching an animal’s genitalia or anus through a person’s clothing as well as a gloved hand.

Relation to Current District Law. The revised definition of “sexual activity with an animal” clearly changes the definition of “sexual contact” in current District law in one main way.

The revised definition of “sexual activity with an animal” does not include making contact with an animal for “financial gain.” Under the current definition, the term “sexual contact” is defined as making contact with an animal’s sex organs or anus, transfer or transmittal of semen, or insertion into a vaginal or anal opening for “financial gain”, regardless of whether there is any additional intent to sexually arouse, gratify, or abuse. By contrast, the revised code in part defines “sexual activity with an animal” as being done with a “purpose to sexually arouse or gratify any person, or at the direction of someone with such a purpose.”¹⁹ The revised definition still includes touching an animal for financial gain in order to sexually arouse or gratify another person.²⁰ The current definition, as written, has the potential to criminalize non-sexual activity for financial gain, such as dog grooming that results in touching of the dog’s anus or genitals. Requiring intent to sexually arouse or gratify any person prevents criminalization of non-sexual touching of an animal and improves the proportionality of the revised criminal code.

In addition, to the one change noted above, revised definition of “sexual activity with an animal” may change the definition in one other way.

The revised definition of “sexual activity with an animal” removes the portion of the definition that refers to “sex organs” and replaces it with “genitalia.” Under the current code, sexual contact with an animal includes in part: “contact between the sex organs or anus of one and the mouth, anus or sex organs of the other; or touching or fondling by a person of the sex organs or anus of an animal, either directly or through clothing, without a bona fide veterinary or

¹⁸ RCC § 22A-5501(4).

¹⁹ *Id.*

²⁰ For example, a person who touches an animal’s genitals in exchange for money in order to arouse a third party would still be guilty of sexual activity with an animal.

animal husbandry purpose.”²¹ ”Sex organs” is not defined and there is no case law to offer any guidance as to what parts of the anatomy are included. The revised definition clarifies what body parts may or may not be touched by replacing “sex organs” with “genitals”. This change improves the clarity of the revised criminal code.

²¹ D.C. Code § 22-1012.01(e)(3)(A) and (B).

§ 22A-5502. Animal Cruelty.

- (a) *First degree.* An actor commits first degree animal cruelty when the actor knowingly causes death or serious bodily injury, prolonged pain, or extreme suffering to an animal.
- (b) *Second degree.* An actor commits second degree animal cruelty when the actor recklessly causes death or significant bodily injury, prolonged pain, or extreme suffering to an animal.
- (c) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by District law.
- (d) *Defenses.*
 - (1) It is a defense to liability under this section that the actor in fact:
 - (A) Engages in the conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering; and
 - (B) Such conduct is reasonable under all the circumstances.
 - (2) It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure.
 - (3) It is a defense to liability under this section that, in fact, the actor reasonably believes that:
 - (A) The actor, another person, or an animal is in imminent danger of bodily injury or death; and
 - (B) The conduct constituting the offense:
 - (i) Will protect against the harm; and
 - (ii) Is necessary in degree.
- (e) *Penalties.*
 - (1) First degree animal cruelty is a Class 9 felony.
 - (2) Second degree animal cruelty is a Class A misdemeanor.

Explanatory Note. This section establishes the animal cruelty offense and penalty gradations for the Revised Criminal Code (RCC). The offense prohibits knowingly or recklessly harming an animal. The penalty gradations are based on the intent of the actor and the nature of the harm. The offense replaces the definitions and penalties section from D.C. Code § 22-1001 and the animal cruelty offense D.C. Code § 22-1002.

Subsection (a) specifies the prohibited conduct for first degree animal cruelty. Subsection (a) specifies that the culpable mental state “knowingly” applies. This term, defined at RCC § 22A-206, means that the actor must have been aware or believed to a practical certainty that they would cause death or serious bodily injury, prolonged pain, or extreme suffering to an animal. “Serious bodily injury” is a defined term in RCC § 22A-101 that means bodily injury involving a substantial risk of death, or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ or protracted unconsciousness. “Animal” is a term, defined at defined at RCC § 22A-5501(1) for the purposes of this section to mean any nonhuman mammal, bird, reptile, or amphibian.

Subsection (b) specifies the prohibited conduct for second degree animal cruelty. Subsection (b) specifies a culpable mental state of “recklessly”. “Recklessly” is a defined term in RCC § 22A-206, which here means that the actor consciously disregarded a substantial risk of

causing the death, significant bodily injury, prolonged pain, or extreme suffering to an animal. “Significant bodily injury” is a defined term in RCC § 22A-101 that means a bodily injury that, to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer.²²

Subsection (c) codifies an exclusion from liability for the offense. The general provision in RCC § 22A-201 establishes the burdens of proof and production for all exclusions from liability in the RCC. An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation. Subsection (c) specifies “in fact,” a defined term in RCC §22A-207 that indicates there is no culpable mental state requirement as to a given element, here that the actor’s conduct is specifically permitted by a District statute or regulation. This exclusion ensures that conduct authorized by District law that would otherwise constitute animal cruelty is not criminalized. For example, Title 8, of the current D.C. Code, includes regulations permitting wildlife control services to kill wildlife.²³

Subsection (d) codifies three defenses for the animal cruelty statute. The general provision in RCC § 22A-201 establishes the requirements for the burden of production and the burden of proof for all defenses in the RCC.

Paragraph (d)(1) establishes a defense to subsection (a) and (b) of the revised statute that the actor in fact engages in conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering, and that the conduct is reasonable under all the circumstances. “Intent” is a defined term in RCC § 22A-206, that here means the actor was practically certain they would safeguard or promote the welfare of the animal. Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the actor safeguarded or promoted the welfare of the animal, only that they believed to a practical certainty that they would do so.

Paragraph (d)(2) establishes a defense to subsection (a) and (b) of the revised statute that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure. A lawful veterinary procedure is performed by a licensed veterinarian under conditions acceptable to the Board of Veterinary Medicine.²⁴ The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful veterinary procedure.

Paragraph (d)(3) establishes a defense to subsection (a) and (b) of the revised statute that the actor reasonably believes²⁵ that the actor, another person, or an animal is in imminent danger

²² In addition, the following injuries constitute at least a significant bodily injury: a fracture of a bone; a laceration that is at least one inch in length and at least one quarter of an inch in depth; a burn of at least second-degree severity; a brief loss of consciousness; a traumatic brain injury; and a contusion, petechia, or other bodily injury to the neck or head sustained during strangulation or suffocation.

²³ D.C. Code Ann. § 8-2202.

“(n) A wildlife control services provider shall kill wildlife only by methods that conform to the most recently published Report of the American Veterinary Medical Association Panel on Euthanasia, unless otherwise prohibited by this subchapter or rules promulgated by the Department.

“(o) A wildlife control services provider shall use the available method of euthanasia that is the quickest, least stressful, and least painful to the animal under the circumstances.”

²⁴ Established in D.C. Code Ann. § 3-1202.21.

²⁵ To satisfy this defense, the actor must only reasonably believe that the actor, another person, or animal is in imminent danger. Even if no person or animal is actually in danger, a reasonable belief, even if mistaken, satisfies this requirement of the defense.

of bodily injury or death, that their actions will protect against the harm, and that their actions are necessary in degree. “Bodily injury” is a defined term in RCC § 22A-101(9) that means physical pain, physical injury, illness, or impairment of physical condition.

Subsection (e) specifies relevant penalties for the offense. [See RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. *The revised animal cruelty statute clearly changes current District law in eight main ways.*

First, under the revised code, the mental states are clearly defined as knowingly for the felony offense and recklessly for the misdemeanor offense. While the current statute already has a mental state of knowingly for committing any act of animal cruelty, case law has indicated that there must be evidence of general intent with malice in order to prove animal cruelty.²⁶ The DCCA has defined malice to mean: “(1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result.”²⁷ Per the first part of this holding, animal cruelty is subject to various defenses more typically recognized in the context of murder.²⁸ Per the second part of this holding, the DCCA has further clarified that, as compared to the Model Penal Code (MPC) definitions of culpable mental states, malice in the current malicious destruction of property offense either requires the defendant act “purposely” (corresponding to an “actual intent to cause the particular harm”) or with a blend of “knowingly” and “recklessly” culpable mental states (corresponding to a mental state of “wanton and willful...with awareness of a plain and strong likelihood”).²⁹

In contrast, the RCC provides standardized definitions for each culpable mental state and specifies the relevant culpable mental states for the revised animal cruelty offense: knowledge or recklessness as to causing the death or pain of an animal. The “knowingly” culpable mental state is consistent with, but somewhat narrower than, existing DCCA case law insofar as malice is a blend of reckless and knowledge culpable mental states. However, applying a knowledge

²⁶ *Regalado v. United States*, 572 A.2d 416, 417 (D.C. 1990). In *Dauphine v. U.S.*, 73 A.3d 1029 (D.C. 2013), the D.C. Court of Appeals reaffirmed its holding in *Regalado* regarding the required mens rea and in footnote 5 defined malice as: “(1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result.” *Id.* at 1032 n.5 (quoting *Charles v. U.S.*, 371 A.2d 404, 411 (D.C. 1977), quoting Perkins, *Criminal Law*, 769-70 (2d ed. 1969)).

²⁷ *Harris v. United States*, 125 A.3d 704, 708 (D.C. 2015) (quoting *Guzman v. United States*, 821 A.2d 895, 898 (D.C.2003)). The DCCA has further stated that the culpable mental state of the current Animal Cruelty offense is one of “general intent with malice.” *Regalado* at 417. “General intent” is not used in or defined in the current MDP statute, but the DCCA has said that it is frequently defined as the “intent to do the prohibited act” which requires “the absence of an exculpatory state of mind.” *Morgan v. District of Columbia*, 476 A.2d 1128, 1132 (D.C. 1984).

²⁸ In the District, “[r]ecognized circumstances of mitigation” include, most notably, provocation: i.e. a situation “where the killer has been provoked or is acting in the heat of passion, with the latter including fear, resentment and terror, as well as rage and anger.” *Comber*, 584 A.2d at 41. In addition to provocation, however, DCCA case law also recognizes imperfect justifications and excuses (i.e. defenses based upon unreasonable mistakes of fact and/or law), “such as when excessive force is used in self-defense or in defense of another and a killing is committed in the mistaken belief that one may be in mortal danger,” as mitigating circumstances that preclude the formation of malice. *Id.*

²⁹ *Harris v. United States*, 125 A.3d 704, 708 n. 3 (D.C. 2015).

culpable mental state requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.³⁰ The “reckless” culpable mental state that the revised animal cruelty statute applies to the second degree offense is somewhat lower than existing DCCA case law insofar as malice is a blend of reckless and knowledge culpable mental states. However, the recklessness requirement still requires subjective awareness of the critical facts that distinguish innocent from criminal conduct,³¹ and provides liability for reckless behavior that may result in serious incidents of animal cruelty. These changes improve the clarity, completeness, and proportionality of the offense, by more clearly defining the mental state required.

Second, the revised animal cruelty statute distinguishes between knowingly and recklessly harming an animal. Under the current statute animal cruelty is a misdemeanor offense but becomes a felony if the defendant causes death or serious injury with “intent to commit serious bodily injury or death” or “under circumstances manifesting extreme indifference to animal life[.]” The statute does not distinguish between cases in which the person recklessly³² causes death or serious injury, and cases in which the animal suffers no physical injury. By contrast, the revised animal cruelty statute uses two penalty gradations distinguished in part by whether the actor knowingly or recklessly caused harm to an animal. This change improves the proportionality of the revised offense.

Third, under the revised code, first degree animal cruelty statute the general culpability principles for self-induced intoxication in RCC § 22A-209 allow a defendant to claim they did not act “knowingly” or with “intent” due to their self-induced intoxication. The current animal cruelty statute is silent as to the effect of intoxication. However, District law has established that animal cruelty is a general intent offense³³, which would preclude a defendant from receiving a jury instruction on whether intoxication prevented the defendant from forming the necessary culpable mental state requirement for the crime. This DCCA case law would also likely mean that a defendant would be precluded from directly raising, though not necessarily presenting evidence in support of the claim, that due to their self-induced intoxicated state, the defendant did not possess the knowledge or intent required to commit first degree animal cruelty.

In contrast, under the revised first degree animal cruelty offense, a defendant would both have a basis for, and will be able to raise and present relevant and admissible evidence in support of, a claim that voluntary intoxication prevented the defendant from forming the knowledge or intent required to prove first degree animal cruelty. Likewise, where appropriate, the defendant would be entitled to an instruction, which clarifies that a not guilty verdict is necessary if the

³⁰ See *Elonis v. United States*, 575 U.S. 723, 735 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

³¹ *Elonis* at 745. (Alito, J., concurring in part, dissenting in part) (“And when Congress does not specify a mens rea in a criminal statute, we have no justification for inferring that anything more than recklessness is needed. It is quite unusual for us to interpret a statute to contain a requirement that is nowhere set out in the text. Once we have reached recklessness, we have gone as far as we can without stepping over the line that separates interpretation from amendment.”).

³² The phrase “under circumstances manifesting extreme indifference” has been interpreted to require an extreme degree of recklessness. In the homicide context, this degree of extreme recklessness is commonly referred to as “depraved heart murder”; the recklessness is so extreme that it is deemed culpably equivalent to knowingly causing death of another. However, *ordinary* recklessness does not suffice and under the RCC recklessly causing death of another is treated as the separate lesser offense of involuntary manslaughter.

³³ *Id.*

defendant’s intoxicated state precludes the government from meeting its burden of proof with respect to the culpable mental state of knowledge or intent at issue in first degree animal cruelty. This change improves the clarity, consistency, and proportionality of the offense.

Fourth, under the revised code, language is added to explicitly prohibit causing prolonged pain or extreme suffering to an animal. The current code prohibits torture and torment in the animal cruelty section without offering a definition of those terms.³⁴ Additionally, the code section titled “other cruelties to animals” prohibits unnecessary torture, suffering, or cruelty of any kind.³⁵ No definitions are offered and there is no case law that provides guidance as to the meaning of these terms. Under the revised code it is anticipated that there would be instances where an actor’s conduct would cause prolonged pain or extreme suffering but would not cause serious significant or serious bodily injury. Forcing an animal in a confined space to be subjected to continuous loud noises would be one such example. Reasonable discipline would not be sufficient to sustain a conviction under this statute. The statute also does not contemplate short periods of discomfort such as exposure to the loud noises of a fireworks display as amounting to prolonged pain or extreme suffering.

Fifth, the revised statute does not explicitly include a person with the charge or custody of an animal failing to provide “proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather[.]”³⁶ If a failure to provide food, drink, air, etc. results in death or significant bodily injury to an animal, the person can still be liable under the revised animal cruelty statute, provided the mental state and omission liability requirements are satisfied.³⁷ For example, if a pet owner fails to feed a pet while consciously disregarding that failure to feed the pet creates a risk of death or serious bodily injury, and the pet starves to death, the pet owner can be liable under the revised animal cruelty statute. Alternatively, if death or significant bodily injury does not result, the person may still be liable under the separate criminal neglect of an animal offense.³⁸

Sixth, the revised code creates a defense where an actor’s conduct is reasonable and is intended to safeguard an animal or end its suffering. Subparagraph (d)(1) specifies the elements of this new defense. The current statute does not include this defense.³⁹ In contrast, the revised offense includes this defense to preclude liability when the actor acts with benign intent, and the conduct is reasonable. Criminal liability in these cases is inappropriate, and this change improves the proportionality of the revised offense.

Seventh, the revised code creates a defense for lawful veterinary procedures. Subparagraph (d)(2) sets out the elements of this new defense. Current D.C. Code § 22-1001 does not note any exception for actions by a veterinarian. Given that D.C. law requires the certification of euthanasia technicians⁴⁰ it appears that there is already an intent that someone who is trained and certified is intended to be exempt if they are acting in their professional

³⁴ D.C. Code § 22-1001.

³⁵ D.C. Code § 22-1002.

³⁶ D.C. Code § 22-1001.

³⁷ Under RCC § 22A-202, a person may be liable for a failure to act when that person has “is under a legal duty to act” and is either “Aware that the legal duty to act exists” or “[c]ulpably unaware that the legal duty to act exists.”

³⁸ RCC § 22A-5503.

³⁹ Other states’ animal cruelty statutes do include similar defenses. *See*, for example, Ala. Code § 13A-11-246(b); Iowa Code Ann. § 717B.2 (2)(a).

⁴⁰ D.C. Code Ann. § 3-1208.64 (West)

capacity. Including a defense for lawful veterinary procedures improves the clarity and proportionality of the revised statute.

Eighth, the revised code creates a legal defense for defense of self or property. The current code lists a very limited self-defense exception, which only applies to undomesticated and dangerous animals. Under the plain text of the current statute, the defense would be unavailable when harm was inflicted on any domesticated animal.⁴¹ This exception only appears to be applicable to the felony offense in the current code and not the misdemeanor offense. The revised code supplies a defense of self and others that applies to both first and second degree animal cruelty. It includes a requirement that an actor reasonably believe that there is a threat of bodily injury or death to themselves, another, or another animal.⁴² The conduct is still required to be in response to the harm as a method of protecting against it and it must be necessary in degree. The defense is available regardless of whether the animal is domesticated. This defense would be available, for instance, if one dog was attacking another and the only reasonably perceived option available for the actor to protect the dog being attacked was to physically injure the other dog. In such an instance this defense would potentially be available if all elements were met. Including a defense for lawful defense of self or property improves the clarity and proportionality of the revised statute.

Beyond these eight changes to current District law, four other aspects of the revised statute may constitute substantive changes to current District law.

First, under the revised code, the offense is divided into two distinct penalty grades based on the actor's intent and the resulting harm. First degree cruelty to animals requires the actor knowingly cause death, serious bodily injury, prolonged pain or extreme suffering. Second degree cruelty requires recklessly causing death, significant bodily injury prolonged pain or extreme suffering. The current statute is divided into felony and misdemeanor versions of the offense based on whether the animal is actually killed or suffers significant bodily injury.⁴³ Creating a *risk* of harm is criminalized under the current cruelty statute. Under the revised statute, both first- and second-degree animal cruelty require that harm be inflicted on the animal. Creating a risk of harm is separately criminalized under the criminal neglect of an animal offense.⁴⁴ Criminalizing actual infliction of harm under the animal cruelty offense and creating risk of harm under the criminal neglect offense improves the clarity and proportionality of the revised offense.

Second, the revised code clarifies the result element regarding the felony offense of animal cruelty. Under the revised code, first degree animal cruelty must result in death, serious

⁴¹ D.C. Code § 22-1001(d). (Except where the animal is an undomesticated and dangerous animal such as rats, bats, and snakes, and there is a reasonable apprehension of an imminent attack by such animal on that person or another...).

⁴² *Id.*

⁴³ Subsection (d) of the current animal cruelty offense provides for felony liability when the defendant acted “with the intent to commit serious bodily injury or death to an animal . . . under circumstances manifesting extreme indifference to animal life[.]”. D.C. Code 22-1001(d). However, this mental state does not differ from the misdemeanor version of the offense. The D.C. Court of Appeals has held that the *mens rea* for the current animal cruelty statute is “malice”, which includes both acting intentionally, or recklessly under circumstances manifesting extreme indifference to animal life. *Dauphine v. United States*, 73 A.3d 1029, 1032 (D.C. 2013).

Therefore, the mental state specified for the *felony* liability under subsection (d) does not differ from the mental state required for the misdemeanor form of the offense.

⁴⁴ RCC § 22A-5503.

bodily injury, prolonged pain, or extreme suffering to an animal. The current code has a result element of serious bodily injury or death.⁴⁵ In this section serious bodily injury is defined as, “bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.”⁴⁶ The language in the revised code is more compact and generally encompasses all the same harms but it is conceivable that a result of mistreatment could cause prolonged pain or extreme suffering but perhaps not extreme physical pain. Inversely, conduct that results in what could be considered extreme physical pain but that is not prolonged and does not rise to the level of suffering would be punishable under the revised code but not the current felony statute. The revised code provides a more consistent definition of the harm required for this offense. This improves the clarity and proportionality of the revised offense.

Third, the revised code clarifies the result element regarding the misdemeanor offense of animal cruelty. Under the revised code, second degree animal cruelty must result in death, significant bodily injury, prolonged pain, or extreme suffering to an animal. The current code has a result element of “causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly chained, cruelly beaten, or mutilated, and whoever, having the charge or custody of any animal, either as owner or otherwise, knowingly inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather.”⁴⁷ Like with the felony offense, the language in the revised code is more compact and generally encompasses all the same harms except for those that are more appropriately covered by the criminal neglect of an animal offense.⁴⁸ This improves the clarity and proportionality of the revised offense.

Fourth, the revised code offers more clarity as to the exceptions for when the killing of an animal may be necessary. Under the revised code there is an exclusion from liability for conduct that conforms to other provisions in District law. For example, efforts at rodent control under Title 8 Chapter 21 would be excluded from liability. Under the current code there is an exception for “an undomesticated dangerous animal such as rats, bats, and snakes and there is a reasonable apprehension of an imminent attack by such an animal on that person or another.”⁴⁹ Under the plain text of the current code killing a rat would only be permissible if there were reasonable apprehension of an imminent attack. The revised code clarifies that otherwise lawful conduct is excluded from this statute, regardless of whether or not an attack is imminent.

Other changes to the revised statute are clarificatory in nature and are not intended to substantively change District law.

The revised code replaces the definition of “serious bodily injury” in the current statute with the RCC definition. The current code defines “serious bodily injury” as “bodily injury that

⁴⁵ D.C. Code § 22-1001(d).

⁴⁶ D.C. Code § 22-1001(c).

⁴⁷ D.C. Code § 22-1001(a)(1).

⁴⁸ RCC § 22A-5503.

⁴⁹ D.C. Code § 22-1001(d).

involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.”⁵⁰ The revised code utilizes the standard definition of “serious bodily injury” that applies across the entire RCC. The RCC defines “serious bodily injury” as a “bodily injury or significant bodily injury that involves A) A substantial risk of death; (B) Protracted and obvious disfigurement; (C) Protracted loss or impairment of the function of a bodily member or organ; or (D) Protracted loss of consciousness.”⁵¹ Although the RCC definition of “serious bodily injury” is slightly narrower in not categorically including “broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions”, these injuries in almost all circumstances will constitute a “significant bodily injury,” and infliction of such injuries is covered by second degree animal cruelty.

⁵⁰ D.C. Code § 22-1001(d)

⁵¹ RCC § 22A-101.

§ 22A-5503. Criminal Neglect of an Animal.

- (a) *First degree.* An actor commits first degree criminal neglect of an animal when the actor:
- (1) Is reckless as to the fact that the actor is responsible for the animal as its owner or custodian as defined by D.C. Code § 8-1801; and
 - (2) Either:
 - (A) Creates or fails to mitigate or remedy, a substantial risk that the animal would experience serious bodily injury or death; or
 - (B) Knowingly leaves the animal in any place with intent to abandon the animal.
- (b) *Second degree.* An actor commits second degree criminal neglect of an animal when the actor:
- (1) Is reckless as to the fact that the actor is responsible for the animal as its owner or custodian as defined by D.C. Code § 8-1801; and
 - (2) Either:
 - (A) Fails to make a reasonable effort to provide food, shelter, supervision, medical services, medicine, or other items or care essential for the physical health or safety of the animal; or
 - (B) Creates, or fails to mitigate or remedy, a substantial risk that the animal would experience significant bodily injury or extreme suffering.
- (c) *Exclusions from liability.*
- (1) An actor does not commit an offense under (a)(2)(B) of this section when the actor, in fact, reasonably believes they are surrendering the animal to a person who will provide for the health, welfare, and supervision of the animal.
 - (2) An actor does not commit an offense under this section when the actor's conduct is specifically permitted by District law.
 - (3) An actor does not commit an offense under this section when they engage in the conduct constituting the offense as part of a lawful veterinary procedure.
 - (4) An actor does not commit an offense under this section when the conduct constituting the offense is a reasonable refusal to obtain medical care for the animal.
- (d) *Penalties.*
- (1) First degree criminal neglect of an animal is a Class B misdemeanor.
 - (2) Second degree criminal neglect of an animal is a Class C misdemeanor.

Explanatory Note. This section establishes the animal neglect offense and penalty gradations for the Revised Criminal Code (RCC). The offense prohibits a broad range of conduct in which there is a risk of harm to an animal. In addition to prohibiting a risk of harm to an animal, the RCC criminal neglect of an animal offense prohibits failing to provide an animal with necessary items or care, as well as abandoning an animal. The penalty gradations are based on the type of harm that is risked. The offense replaces portions of the animal cruelty chapters from D.C. Code § 22-1001 and 1002. It also replaces D.C. Code § 22-1007, D.C. Code § 22-1011, and D.C. Code § 22-1012.

Subsection (a) specifies the prohibited conduct for first degree criminal neglect of an animal. Paragraph (a)(1) requires that the actor is “reckless” as to the fact that they are the owner or custodian of the animal as defined by D.C. Code § 8-1801. “Reckless” is a defined term in RCC § 22A-206 that here means the actor must consciously disregard a substantial risk that they have a responsibility under civil law for the health, welfare, or supervision of the animal. “Owner” is a defined term in D.C. Code § 8-1801(16) that means a person who purchases or keeps an animal in temporary or permanent custody, except as provided in § 8-1804.⁵² “Custodian” is a defined term in D.C. Code § 8-1801(10) that means a person who has assumed responsibility for the care and well-being of an animal in place of the animal's owner with the owner's knowledge and permission.

Paragraph (a)(2) specifies two alternate means of committing first degree criminal neglect of an animal. Subparagraph (a)(2)(A) requires that the actor must have created, or failed to mitigate or remedy, a substantial risk that the animal would experience serious bodily injury or death. The term “serious bodily injury” is defined in RCC § 22A-101 as an injury “that involves: a substantial risk of death; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member or organ.” Per the rule of interpretation under RCC § 22A-207, the “reckless” mental state from paragraph (a)(1) also applies to the elements in subparagraph (a)(2)(A).

Subparagraph (a)(2)(B) requires that the actor knowingly leaves the animal in any place with intent to abandon the animal. “Knowingly” is a defined term in RCC § 22A-206 which, applied here, means the actor is practically certain that their conduct will result in leaving the animal in any place. The actor must also act “with intent to” abandon the animal. “Intent” is a defined term in RCC § 22A-206 which, applied here, means the actor was practically certain that they would abandon the animal. Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the animal was actually abandoned, just that the actor believed to a practical certainty, or consciously desired, that abandonment would result.

Subsection (b) specifies the prohibited conduct for second degree criminal neglect of an animal. Paragraph (b)(1) requires that the actor is “reckless” as to the fact that they have a “responsibility under civil law for the health, welfare, or supervision of an animal[.]” “Reckless” is a defined term in RCC § 22A-206 that here means the actor must consciously disregard a substantial risk that they have a responsibility under civil law for the health, welfare, or supervision of the animal.⁵³ This element is identical to the element under (a)(1) required for first degree criminal neglect of an animal. Subparagraphs (b)(2)(A) and (b)(2)(B) specify two alternate means of committing second degree criminal neglect of an animal. Subparagraph (b)(2)(A) requires that the actor “fails to make a reasonable effort to provide food, shelter, supervision, medical services, medicine, or other items or care essential for the physical health or safety of the animal.” Subparagraph (b)(2)(B) requires that the actor “creates, or fails to mitigate or remedy, a substantial risk that the animal would experience significant bodily injury or

⁵² D.C. Code § 8-1804 excludes veterinary hospitals, pet shops, and animal welfare agencies.

⁵³ Such a duty of care to the complainant may arise, for example, from the actor being an owner or pet sitter, depending on the facts of a case.

extreme suffering.”⁵⁴ “Significant bodily injury” is a term defined under RCC § 22A-101, as an injury that “to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer.”⁵⁵ Per the rule of interpretation under RCC § 22A-207, the “reckless” mental state from paragraph (b)(1) also applies to the elements in subparagraph (b)(2)(A) and (B). Under subparagraph (b)(2)(A), the actor must have consciously disregarded a substantial risk that they failed to make a reasonable effort to provide food, shelter, supervision, medical services, medicine, or other items or care essential for the physical health or safety of the animal. Under subparagraph (b)(2)(B), the actor must consciously disregard a substantial risk that they created, or failed to mitigate or remedy, a substantial risk that the animal would experience significant bodily injury or suffering.

Subsection (c) specifies four exclusions from liability. The general provision in RCC § 22A-201 establishes the burdens of proof and production for all exclusions from liability in the RCC. Under paragraph (c)(1) an actor does not commit an offense under subparagraph (a)(2)(B) when the actor reasonably believes that they are surrendering an animal to someone who will provide adequate care. Paragraph (c)(1) uses the term “in fact,” which specifies that no mental state is required for this exclusion. Per the rule of interpretation under RCC § 22A-207, the term “in fact” from paragraph (c)(1) also applies to the exclusions under paragraphs (c)(2)-(4). Under paragraph (c)(2) an actor does not commit an offense under the revised criminal neglect of an animal statute when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation. For example, lawful euthanasia of an animal does not constitute criminal neglect, although it creates a risk of death. Under paragraph (c)(3) an actor does not commit a violation of subsections (a) and (b) of the revised statute if that the actor was is a licensed veterinarian conducting a lawful procedure. Under paragraph (c)(4) an actor does not commit a violation of subsections (a) and (b) of the revised statute if that the actor reasonably refused to obtain medical care for an animal. For example, refusal to obtain expensive medical care for an animal may not constitute criminal neglect, even though it creates risk of death or serious injury to the animal.

Subsection (d) specifies relevant penalties for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. *The revised criminal neglect of an animal statute clearly changes current District law in five main ways.*

First, the revised code criminalizes neglect of animals under a single statute. Under the current code, neglectful conduct is criminalized under several statutes.⁵⁶ Some neglectful

⁵⁴ Extreme suffering without significant bodily injury is not defined by case law but would include, for example, subjecting an animal to prolonged confinement with exposure to loud music under circumstances that clearly cause the animal distress. This term is not anticipated to include something like a fireworks display that causes temporary discomfort but no physical harm.

⁵⁵ In addition, “significant bodily injury” also includes: “a fracture of a bone; a laceration that is at least one inch in length and at least one quarter inch in depth; a burn of at least second-degree severity; a temporary loss of consciousness; a traumatic brain injury; and a contusion or other bodily injury to the neck or head caused by strangulation or suffocation.” RCC §22E-101.

⁵⁶ For example, D.C. Code § 22-1001 prohibits “fail[ing] to provide [an animal] with proper food, drink, air, light, space, veterinary care, shelter”; § 22-1003 criminalizes animal neglect by a railroad company; § 22-1007 prohibits impounding animals without access to food and water; § 22-1011 prohibits neglect of sick or disabled animals; and § 22-1012 prohibits abandoning a disabled animal.

conduct is criminalized under statutes that criminalize animal *cruelty*, thus subjecting both types of conduct to the same penalties. For example, D.C. Code § 22-1001 criminalizes failing to provide an animal with proper shelter, and cruelly beating or mutilating an animal, and provides the same maximum penalty for both types of conduct.⁵⁷ Under the revised code, the actual infliction of death, serious or significant injury is criminalized under the animal cruelty statute, whereas failure to provide proper care for animals is criminalized under the revised animal neglect statute. Criminalizing animal neglect under a single statute, apart from the revised animal *cruelty* statute improves both the clarity and proportionality of the revised criminal code.

an actor has a responsibility for. While many cases would charge conduct that is clearly one or the other, it is anticipated that some conduct could fall under both statutes. For instance, the conduct described in D.C. Code § 22-1001 regarding cruelly chaining would be one such example.⁵⁸ Under the revised code if an actor were to engage in the conduct described in D.C. Code § 22-1001(b) they could be found guilty of Animal Cruelty if the facts of the case showed that they had the necessary state of mind and that the harm to the animal sustained a finding of either first or second-degree Animal Cruelty. Alternatively, if they engaged in the same conduct but there was either not the intent or the resulting harm, a fact finder would still be able to find that the actor violated the code under subparagraph (b)(2)(B) of the revised criminal neglect of an animal statute⁵⁹. The revised code offers more concise language that still prohibits the same conduct as the current statute.

Second, the revised code specifies clear mental states for the offense. The current code criminalizes neglect of animals under several statutes.⁶⁰ Some of these statutes do not specify any culpable mental state⁶¹, while others require that the neglect occur “knowingly”⁶² or “knowingly and willfully.”⁶³ The terms “knowingly” and “willfully” are not defined in statute, though the D.C. Court of Appeals has interpreted “knowingly” in the context of animal cruelty to

⁵⁷ D.C. Code § 22-1001(a).

⁵⁸ (b) For the purposes of this section, “cruelly chains” means attaching an animal to a stationary object or a pulley by means of a chain, rope, tether, leash, cable, or similar restraint under circumstances that may endanger its health, safety, or well-being. Cruelly chains includes, but is not limited to, the use of a chain, rope, tether, leash, cable or similar restraint that:

- (1) Exceeds 1/8 the body weight of the animal;
- (2) Causes the animal to choke;
- (3) Is too short for the animal to move around or for the animal to urinate or defecate in a separate area from the area where it must eat, drink, or lie down;
- (4) Is situated where it can become entangled;
- (5) Does not permit the animal access to food, water, shade, dry ground, or shelter; or
- (6) Does not permit the animal to escape harm.

⁵⁹ After finding that an actor had a responsibility for an animal, a fact-finder would find that if the actor chained an animal as described in D.C. Code § 22-1001(b) that they “created or failed to mitigate or remedy, a substantial risk that the animal would experience unnecessary significant bodily injury, pain, or suffering.” There does not need to be actual injury, just the substantial risk that such an injury, pain, or suffering could occur.

⁶⁰ D.C. Code §§ 22-1001-1003, 1007, 1011, 1012.

⁶¹ E.g., D.C. Code § 22-1001 criminalizes “unnecessarily fail[ing] to provide [the animal] with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather[.]”

⁶² E.g., D.C. Code § 22-1001 criminalizes “knowingly” depriving an animal of “necessary sustenance.”

⁶³ D.C. Code § 22-1002.

require “general intent with malice.”⁶⁴ By contrast, the revised criminal neglect of an animal offense clearly defines the mental state requirement for each offense, generally requiring “recklessness” for all elements of the offense.⁶⁵ This change improves the clarity of the revised code.

Third, the revised animal neglect offense prohibits the abandonment of an animal when the actor has a legal responsibility for that animal, regardless of the animal’s health. Under the current code, two separate sections criminalize abandonment of an animal. D.C. Code § 22-1012 prohibits abandoning an animal that is “maimed, diseased, disabled, or infirm.”⁶⁶ D.C. Code § 22-1002 prohibits “cruelly abandon[ing]” an animal.⁶⁷ The statute does not provide a definition of what it means to “cruelly abandon” and there is no case law to provide guidance. The revised criminal neglect of an animal statute only criminalizes abandonment when the actor is legally responsible for the animal, and imposes the same responsibility of care for animals that are healthy as well as those that are not. The revised statute improves the clarity of the revised criminal code by clarifying which animals would be covered by the statute.

Fourth, the revised code creates two degrees of criminal neglect of an animal depending on the potential for harm to the animal. Under the previous code, conduct that is prohibited by this section was described in multiple subsections in slightly different ways.⁶⁸ All neglectful conduct is subject to the same maximum penalties. By contrast, the revised criminal neglect of an animal statute uses two penalty gradations to distinguish between conduct that creates a risk of greater harm to the animal. The first-degree offense prohibits either abandonment or neglect that results in a risk of death or serious bodily injury. This offense anticipates actors who either leave an animal they are responsible for away from their home or place of safety with no intent to recover it, or people who leave an animal in such a dangerous predicament that their death or serious injury is reasonably foreseeable. The second-degree offense anticipates actors who failed to make the proper arrangements for their animal’s basic health and safety needs, and where the risk of harm is significant, but not the same risk to the animal’s life. By using two penalty gradations distinguished by the severity of potential harm to the animal, the revised statute improves the proportionality of the revised criminal code.

Fifth, the revised code creates a legal defense for the reasonable refusal of medical treatment for an animal. The current code does not offer such a defense. The revised code, by contrast, provides a defense for criminal neglect of an animal where someone who is responsible for an animal’s wellbeing declines medical treatment where that refusal is reasonable. This would be a fact sensitive defense that would consider, among other things, the prognosis, the potential costs, and the circumstances of the actor. In a jurisdiction found to be among the highest in veterinarian costs in the country⁶⁹ it is understandable that some people would choose not to receive cost prohibitive medical treatment for their animals. Making such a potentially

⁶⁴ *Regalado v. United States*, 572 A.2d 416, 417 (D.C. 1990). *Regalado* was a case that involved a person actively beating a dog. It is unclear whether the state of mind elaborated in this case would also apply to neglectful conduct that was prohibited under the same statute.

⁶⁵ The one exception is under subparagraph (a)(2)(B), which requires that the actor knowingly leave an animal with intent to abandon the animal.

⁶⁶ D.C. Code § 22-1012.

⁶⁷ D.C. Code § 22-1002.

⁶⁸ D.C. Code §§ 22-1001; 22-1002, 22-1007, 22-1011, and 22-1012.

⁶⁹ <https://www.cbsnews.com/news/sick-pet-highest-and-lowest-veterinary-costs-cats-dogs-by-state/> (Last visited 7/28/23).

difficult choice should not subject someone to criminal liability in instances where the actor’s decision is reasonable, even when the decision results in risk of physical harm or death.

Beyond these five changes to current District law, two other aspects of the revised statute may constitute substantive changes to current District law.

First, the revised code states that an actor can only be liable for the first or second degree offense if the actor is responsible for the animal as its owner or custodian as defined by D.C. Code § 8-1801. Under the current code, the neglect of an animal offense applies to any person “having the charge or custody of any animal, either as owner or otherwise[.]”⁷⁰ Under the revised criminal neglect of an animal statute, the actor must be either the “owner” or “custodian” as defined by law. “Owner” is defined under § 8-1801(16) as a person in the District of Columbia who purchases or keeps an animal in temporary or permanent custody, except as provided in § 8-1804.⁷¹ “Custodian” is a defined under D.C. Code § 8-1801(10) as a person who has assumed responsibility for the care and well-being of an animal in place of the animal’s owner with the owner’s knowledge and permission. It is unclear if these terms differ in scope from a person who has “charge or custody of any animal, either as owner or otherwise.” The limited case law interpreting this language suggests that the term “custody” as used in the current statute has a similar meaning to “custodian” as defined under § 8-1801.⁷² Relying on these statutory defined terms improves the clarity of the code as it defines the relationships between an actor and an animal required for liability for animal neglect.

Second, the revised code includes an exclusion from liability under subparagraph (a)(2)(B) when an actor reasonably believes that they are surrendering an animal to someone who will provide that animal with adequate care. Under this exclusion, it is not a crime to leave an animal with intent to abandon it when the actor reasonably believes they are surrendering the animal to a person who will provide for the health, welfare, and supervision of the animal. For example, if a person leaves a pet with an animal shelter, they would not be guilty of criminal neglect, despite abandoning the animal. There is no similar exclusion explicitly stated under the current code. However, the current code requires that the actor “*cruelly* abandons”⁷³ the animal. It is possible that abandoning an animal under conditions specified in this exclusion would not constitute “*cruelly*” abandoning, although there is no relevant case law.

⁷⁰ D.C. Code § 22-1001(a)(1).

⁷¹ D.C. Code § 8-1804 excludes veterinary hospitals, pet shops, and animal welfare agencies.

⁷² *Stroman v. United States*, 905 A.2d 194, 195 (D.C. 2006) (holding that “[a]ppellant’s admissions to police and her possession of the dog crate, located in the center of her living room, and dog food suffice to show “custody” under the statute.”).

⁷³ D.C. Code § 22-1002 (emphasis added).

§ 22A-5504. Animal Fighting.

- (a) *Offense.* An actor commits animal fighting when the actor knowingly:
- (1) Causes an animal to engage in an animal fight; or
 - (2) Trains, buys, sells, owns, possesses, transports, or transfers an animal with intent that the animal will be caused to engage in an animal fight or be used in furtherance of an animal fight; or
 - (3) Attacks, provokes, or harasses an animal with one or more animals for the purpose of training or preparing an animal to engage in fights with other animals.
- (b) *Penalty.* Animal fighting is a Class 8 felony.

Explanatory Note. *This section establishes the animal fighting offense for the Revised Criminal Code (RCC). The offense prohibits causing an animal to engage in fighting, or training, buying, selling, owning, possessing, transporting, or transferring an animal with the intent for it to engage in animal fighting, as well as using an animal to train or prepare another animal for animal fighting. The offense replaces portions of the animal cruelty chapter including D.C. Code § 22-1006.01, as well as D.C. Code § 22-1009.*

Subsection (a) specifies the prohibited conduct for animal fighting. Subsection (a) specifies that the culpable mental state “knowingly” applies, a term defined at RCC § 22A-206 to mean that the actor must have been aware or believed to a practical certainty that they would cause one of three result elements to occur. Paragraphs (a)(1)-(3) specify three alternate means of committing animal fighting. “Animal fight” is a defined term in RCC § 22A-5501(2) which means an exhibition between two or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature or main purpose, of the event. Paragraph (a)(1) requires that the actor causes an animal to engage in an animal fight. Paragraph (a)(2) requires that the actor trained, bought, sold, owned, possessed, transported, or transferred an animal with the intent that it be a part of an animal fight. Paragraph (a)(3) requires that the actor attacked, provoked, or harassed an animal with the intent to train or prepare it to engage in fights with other animals. Both paragraphs (a)(2) and (a)(3) use the phrase “with intent.” Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. Under paragraphs (a)(2) and (a)(3), it is not necessary to prove that the actor actually caused the animal to engage in an animal fight, or trained or prepared it to engage in fights, only that they believed to a practical certainty that the actor would do so.

Subsection (b) specifies relevant penalties for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. *The revised animal fighting statute clearly changes current District law in three main ways.*

First, the term “animal” is defined to mean any nonhuman mammal, bird, reptile, or amphibian. Under the current animal fighting statute, “animal” is defined as a “vertebrate other than a human, including, but not limited to, dogs and cocks.”⁷⁴ The revised definition is slightly

⁷⁴ D.C. Code § 22-1006.01(c)(1). Note that the separate definition of “animal” under D.C. Code § 22-1013 applies to the animal fighting statute, § 22-1006.01.

narrower, and excludes fish from the definition of “animal.”⁷⁵ The revised definition clearly specifies which living creatures are covered by this statute, and makes the scope of the revised animal fighting statute consistent with the revised animal cruelty and neglect statutes.

Second, the revised statute states a clear mental state for the offense. The current statute criminalizes several types of conduct related to animal fighting, but does not use consistent defined mental states. Under the current statute, different conduct related to animal fighting is prohibited, some of which has a mental state of “knowingly” while other forms of conduct have no specified mental state.⁷⁶ The revised code clarifies that for all conduct elements, an actor must be acting knowingly.⁷⁷ This revision is intended to make it clear that such a person should not be held criminally liable. Stating one defined mental state provides greater clarity as to the state of mind required to commit this offense.

Third, the revised code separates attendance and wagering on an animal fight into a separate offense. Under the previous code a person who is knowingly present at an animal fight is subject to the same penalty as those who organized the exhibition and who are more directly involved in the active abuse of the animals.⁷⁸ The revised offense for attending or wagering on an animal fight remains a felony, but is a lower penalty class in order to reflect that mere presence as a spectator is less serious than the active mistreatment of animals engaged in animal fighting. This change improves the proportionality of the revised criminal code.

Beyond these three changes to current District law, one other aspect of the revised statute may constitute substantive changes to current District law.

The revised code reorganizes the potential conduct elements into three clear categories, any one of which is sufficient to commit the offense. Under the previous code the animal fighting subsection describes six different list of conduct, some with mental states and others without, that constitute the offense of animal fighting.⁷⁹ They could be generally categorized as (1) working at the site of an animal fight; (2) training or preparing animals for fighting, (3) engaging in “baiting” as a means of preparing an animal for fighting, (4) owning or operating a facility used for animal fighting, (5) owning or operating a facility knowing *or* with recklessness as to whether animal fighting occurs at their facility; and (6) being present as spectators or gambling on animal fighting. By contrast, the revised statute defines the offense using three categories of conduct, and the separate revised attending or wagering on an animal fight offense criminalizes attending and wagering on animal fights. This improves the organization and proportionality of the revised criminal code. In addition, conduct covered by the current statute that is not explicitly included in the revised animal fighting statute may still be prosecuted under the general accomplice liability provision.⁸⁰

⁷⁵ There are five classes of vertebrates: amphibians, birds, mammals, reptiles, and fish.

⁷⁶ D.C. Code § 22-1006.01(a)(1) and (2) do not contain mental states for those subparagraphs. By contrast D.C. Code § 22-1006.01(a)(3), (4), (5), and (6) state that the conduct must be done knowingly.

⁷⁷ For instance, a hired driver might transport an animal, not knowing that they are taking it to an organized fight. Without knowledge of where it was going, this would be insufficient to commit the offense. Similarly, a property owner who rented out a space that unbeknownst to them, was being used for animal fighting, would not be criminally liable under this revised statute.

⁷⁸ D.C. Code § 22-1006.01(a)(6).

⁷⁹ D.C. Code § 22-1006.01(a)(1)-(6).

⁸⁰ RCC § 22A-210. For example, if a person owns a building and allows it to be used with the *purpose* of assisting or encouraging another person to engage in animal fighting, the building owner can be prosecuted as an accomplice to animal fighting.

§ 22A-5505. Attending or Wagering on an Animal Fight.

- (a) *Offense.* An actor commits attending or wagering on an animal fight when the actor knowingly attends or wagers on an animal fight.
- (b) *Penalty.* Attending or wagering on an animal fight is a Class 9 felony.

Explanatory Note. This section establishes the offense of attending or wagering on an animal fight and the penalty for the Revised Criminal Code (RCC). The offense prohibits attending or wagering on an animal fight. The offense replaces portions of the animal cruelty chapter including D.C. Code § 22-1006.01(a)(1), and (a)(6).

Subsection (a) specifies the elements of attending or wagering on an animal fight, and requires that that an actor knowingly attends or wagers on an animal fight. Subsection (a) specifies that the culpable mental state “knowingly” applies, a term defined at RCC § 22A-206, which here requires that the actor must have been aware or believed to a practical certainty that they would attend or wager on an animal fight. “Animal fight” is a term defined in RCC § 22A-5501 that means an exhibition between two or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature or main purpose, of the event.

Subsection (b) specifies the relevant penalty for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. The revised attending or wagering on an animal fight statute clearly changes current District law in three main ways.

First, the revised offense includes wagering on an animal fight, regardless of whether the actor was in physical attendance. Under the previous code, it was prohibited for a person to be knowingly present as a spectator at such an exhibition.⁸¹ The revised offense, by contrast, prohibits knowingly attending or wagering on an animal fight. This expands the breadth of the offense by prohibiting wagering on an animal fight even if the actor is not in attendance. As wagering may indirectly encourage animal fighting, this change improves the proportionality of the revised criminal code.

Second, the revised offense includes “attending” an animal fight, while the current statute requires that the defendant was a “spectator”. Under the current statute, a person who attended but did not actually view the animal fight arguably would not satisfy the elements of the offense. By contrast, the revised statute criminalizes merely attending an animal fight, without requiring proof that the person actually viewed the fight. This revision makes it clear that anyone in attendance at an animal fight is violating the law, not just those who are actively watching. This change improves the clarity and completeness of the offense.

Third, the revised code separates attendance and wagering on an animal fight into a separate offense. Under the previous code a person who is knowingly present at an animal fight is subject to the same penalty as those who organized the exhibition and who are more directly involved in the active abuse of the animals.⁸² The revised offense for attending or wagering on an animal fight remains a felony, but under a lower penalty classification in order to reflect that mere presence as a spectator is less serious than the active mistreatment of animals engaged in animal fighting. This change improves the clarity and proportionality of the offense.

⁸¹ D.C. Code § 22-1006.01(a)(6).

⁸² D.C. Code § 22-1006.01(a)(6).

§ 22A-5506. Possession of Implements of Animal Fighting.

- (a) *Offense.* An actor commits possession of implements of animal fighting when the actor knowingly possesses the following objects with intent to train, prepare, or breed an animal to engage in animal fighting.
- (1) A breaking stick designed for insertion behind the molars of an animal to break the animal’s grip on another animal or object;
 - (2) A slatmill, carpetmill or another form of improvised treadmill;
 - (3) A springpole that has a biting surface attached to a stretchable device, suspended at a height sufficient to prevent an animal from reaching the biting surface while touching the ground;
 - (4) A fighting pit or other confined area designed to contain an animal fight; or
 - (5) A breeding stand or rape stand used to immobilize female animals for breeding purposes.
- (b) *Penalty.*
- (1) Possession of implements of animal fighting is a Class D misdemeanor.
 - (2) Each implement of animal fighting possessed in violation of this section shall constitute a separate offense.
 - (3) Notwithstanding subsection (b)(2) of this subsection, no person shall be consecutively sentenced to more than 30 days for violations of this section that occurred within a single 90-day period.

Explanatory Note. This section establishes the offense of possession of implements of animal fighting for the Revised Criminal Code (RCC). The offense prohibits possessing certain listed implements with intent that they be used for animal fighting. The offense replaces portions of the animal cruelty chapter including parts of D.C. Code § 22-1006.02.

Subsection (a) specifies the prohibited conduct for possession of implements of animal fighting. Subsection (a) specifies that the culpable mental state “knowingly” applies. This term, defined at RCC § 22A-206, here means that the actor must have been aware or believed to a practical certainty that they possess one or more of the items specified in paragraphs (a)(1) through (a)(5). Additionally, subsection (a) states that the actor must possess one of these items with the intent to use them to train, prepare, or breed an animal to engage in animal fighting. Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the actor used the items to train, prepare, or breed an animal to engage in animal fighting, only that the actor believed to a practical certainty that they would do so.

Paragraphs (a)(1)-(5) list the various items that are considered implements of animal fighting.

Subsection (b) specifies the relevant penalty for the offense, the unit of prosecution, and limits on the maximum consecutive penalty for possession of implements in a 90 day period. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. Two aspects of the revised statute may constitute a substantive change to current District law.

First, the revised possession of implements of animal fighting offense changes the required mental state to commit the offense to “knowingly”. Under the current code, an actor commits the offense if they had a mental state of “purposely”⁸³. If this were maintained, it would require that the actor consciously desired to possess implements of animal fighting.⁸⁴ Under the revised code, in order to prove that an actor’s mental state was knowing, it would require that the actor must have been aware or believed to a practical certainty that they were in possession of implements of animal fighting. This change makes this offense more consistent with other offenses that involve the illegal possession of an item.⁸⁵

Second, the revised possession of implements of animal fighting offense does not require that the actor actually use an implement to train, prepare, or breed an animal to engage in animal fighting, only that they had intent to do so. The current statute criminalizes possession of an implement of animal fighting “*with intent* to use it in furtherance of engaging in animal fighting[.]”⁸⁶ However, the current statute defines “implement of animal fighting” as an object “when *used* in preparation for, or in furtherance of, animal fighting[.]”⁸⁷ The current statute uses ambiguous and conflicting language as to whether the defendant must actually use the implement in furtherance of animal fighting, or merely possess the implement *with intent* to do so. The revised statute clarifies this ambiguity and specifies that the offense only requires possession of an object listed in paragraphs (a)(1)-(5), with intent to use it to train, prepare, or breed an animal to engage in animal fighting.

⁸³ D.C. Code § 22-1006.02

⁸⁴ RCC §§ 22A-206(a)

⁸⁵ See, for example, RCC §§ 22A-2808 (Possession of an Obscene Image of a Minor); 22A-3501 (Possession of Stolen Property); 22A-3802 (Possession of Tools to Commit a Property Crime); 22A-5103 (Possession of a Prohibited Weapon); 22A-5104 (Carrying a Dangerous Weapon); and 22A-5107 (Possession of a Firearm by an Unauthorized Person).

⁸⁶ D.C. Code § 22-1006.02(a) (emphasis added).

⁸⁷ D.C. Code § 22-1006.02(c) (emphasis added).

§ 22A-5507. Sexual Activity Between a Person and an Animal.

- (a) *Offense.* An actor commits sexual activity between a person and animal when the actor knowingly engages in sexual activity with an animal.
- (b) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation.
- (c) *Defenses.* It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of:
 - (1) a lawful veterinary procedure;
 - (2) a lawful artificial insemination for the purpose of procreation;
 - (3) a lawful husbandry practice; or
 - (4) lawful conformation judging.
- (d) *Penalties.* Sexual activity between a person and animal is a Class B misdemeanor.

Explanatory Note. This section establishes the offense of sexual activity between a person and an animal for the Revised Criminal Code (RCC). The offense prohibits sexual activity with an animal. An exclusion is provided for conduct specifically permitted by a District statute. Defenses are provided for when an act is part of lawful veterinary, husbandry, confirmation judging, or artificial insemination practices. The offense replaces portions of the animal cruelty chapter including D.C. Code § 22-1012.01.

Subsection (a) specifies that an actor commits sexual activity between a person and an animal if the actor knowingly engages in sexual activity with an animal. Subsection (a) specifies that the culpable mental state “knowingly” applies, a term defined at RCC § 22A-206 to mean here that the actor must have been aware or believed to a practical certainty that they were engaging in sexual activity with an animal. “Sexual activity with an animal” is defined in RCC § 22A-5501(4) as any of the following acts between a person and an animal committed with the purpose to sexually arouse or gratify any person, or at the direction of someone with such a purpose: (A) Contact between the genitalia or anus of one and the mouth, anus or genitalia of the other; (B) Touching or fondling by a person of the genitalia or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose; (C) A transfer or transmission of semen by the person upon any part of the animal; or (D) The insertion, however slight, of a part of a person’s body or an object into the vaginal or anal opening of an animal or the insertion of a part of the animal’s body into the vaginal or anal opening of the person.

Subsection (b) specifies an exclusion from liability. Subsection (b) states that an actor does not commit an offense under the sexual activity between a person and an animal statute when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation. Subparagraph (b) uses the term “in fact,” a defined term in RCC § 22A-207 that indicates there is no culpable mental state requirement as to a given element – in this case the element being that the actor’s conduct is specifically permitted by a District statute or regulation.

Subsection (c) specifies four defenses to the sexual activity between a person and an animal statute. The general provision in RCC § 22A-201 establishes the requirements for the burden of production and the burden of proof for all defenses in the RCC.

Paragraph (c)(1) establishes as a defense to subsection (a) of the revised statute that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary

procedure. A lawful veterinary procedure is performed by a licensed veterinarian under conditions acceptable to the Board of Veterinary Medicine.⁸⁸ The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful veterinary procedure.

Paragraph (c)(2) establishes as a defense to subsection (a) of the revised statute that the actor, in fact, engages in the conduct constituting the offense as part of a lawful artificial insemination of an animal practice. The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful artificial insemination of an animal practice.

Paragraph (c)(3) establishes as a defense to subsection (a) of the revised statute that the actor, in fact, engages in the conduct constituting the offense as part of a lawful husbandry practice. The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful husbandry practice.

Paragraph (c)(4) establishes as a defense to subsection (a) of the revised statute that the actor, in fact, engages in the conduct constituting the offense as part of conformation judging of an animal. The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful conformation judging.

Subsection (d) specifies the relevant penalty for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. *The revised sexual activity between a person and an animal statute clearly changes current District law in three main ways.*

First, the revised code repeals the offense of first-degree sexual contact between a person and animal. Under the current code an actor commits first-degree sexual contact between a person and an animal when the actor knowingly causes another person to engage in sexual contact with an animal by means of debt bondage, or making an explicit or implicit coercive threat; or when the other person is under 18 years of age or a vulnerable adult.⁸⁹ The conduct criminalized under this offense relates to harm that an actor is inflicting on another person. The RCC’s sexual assault offenses include using coercive threats or debt bondage to cause a person to engage in sexual acts with an animal, or causing a minor to engage in sexual acts with an animal.⁹⁰ The revised second degree sexual assault offense encompasses almost all conduct criminalized under current first degree sexual contact between a person and animal but does not limit the victim by age.⁹¹ The revised third degree sexual abuse of a minor would also address much of the conduct described in current first degree sexual contact between a person and animal.⁹² This conduct is more appropriately prosecuted as a sex offense as opposed to an animal

⁸⁸ Established in D.C. Code § 3-1202.21.

⁸⁹ D.C. Code § 22-1012.01 (a).

⁹⁰ RCC § 22A-2301; RCC § 22A-2302. The term “sexual act” is defined under RCC § 22A-101 to include various forms of sexual acts, whether between persons, or between a person and an animal.

⁹¹ RCC § 22A-2301(d) (Emphasis added). An actor commits second degree sexual assault when the actor:

(1) Knowingly engages in a sexual act with the complainant or causes the complainant to engage in or submit to a sexual act;

(2) In one or more of the following ways:

(A) *By making a coercive threat, explicit or implicit; or...*

⁹² RCC § 22A-2302(c). An actor commits third degree sexual abuse of a minor when the actor:

cruelty offense. This change improves the organization and proportionality of the revised criminal code.

Second, the definition of “sexual act” in the RCC includes acts between a person and an animal, and nearly every act contained in the “sexual contact”⁹³ definition in the current statute is stated in the definition of “sexual act” in the RCC.⁹⁴ While there are some minor differences, the current RCC language prohibits the most serious conduct referenced in the current code such as sexual penetration and oral copulation. It also provides for significantly higher penalties than under the current code. Repealing this subsection removes a law about protecting people from a statute designed to protect animals. This change improves the clarity and proportionality of the offense.

Third, the revised offense does not include making contact with an animal for “financial gain.” Under the current code, the term “sexual contact” is defined as making contact with an animal’s sex organs or anus, transfer or transmittal of semen, or insertion into a vaginal or anal opening for “financial gain”, regardless of whether there is any additional intent to sexually arouse, gratify, or abuse. By contrast, the revised code prohibits sexual activity with an animal when it is done with a “purpose to sexually arouse or gratify any person, or at the direction of someone with such a purpose.”⁹⁵ The revised offense still prohibits touching an animal for financial gain in order to sexually arouse or gratify another person.⁹⁶ The current statute as written would criminalize non-sexual activity for financial gain, such as dog grooming that results in touching of the dog’s anus or genitals. Requiring intent to sexually arouse or gratify any person prevents criminalization of non-sexual touching of an animal and improves the proportionality of the revised criminal code.

(1) Knowingly engages in a sexual act with the complainant or causes the complainant to engage in or submit to a sexual act;

(2) While in a position of trust with or authority over the complainant; and

(3) In fact:

(A) The complainant is under 18 years of age; and

(B) The actor is 18 years of age or older and at least 4 years older than the complainant.

⁹³ D.C. Code § 22-1012.01 (e)(3) “Sexual contact” means an act between a person and an animal for the purpose of sexual arousal, sexual gratification, abuse, or financial gain that involves:

(A) Contact between the sex organs or anus of one and the mouth, anus or sex organs of the other;

(B) Touching or fondling by a person of the sex organs or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose;

(C) A transfer or transmission of semen by the person upon any part of the animal; or

(D) The insertion, however slight, of a part of a person's body or an object into the vaginal or anal opening of an animal or the insertion of a part of the animal's body into the vaginal or anal opening of the person.

⁹⁴ RCC § 22A-101 (129) “Sexual act” means:

(A) Penetration, however slight, of the anus or vulva of any person by a penis;

(B) Contact between the mouth of any person and another person’s penis, vulva, or anus;

(C) Penetration, however slight, of the anus or vulva of any person by any body part or by any object, with the desire to abuse, humiliate, harass, degrade, or sexually arouse or gratify any person, or at the direction of someone with such a desire; or

(D) *Conduct described in subparagraphs (A)-(C) of this paragraph between a person and an animal.*

⁹⁵ RCC definition of “Sexual activity with an animal” (RCC § 22A-5501).

⁹⁶ For example, a person who touches an animal’s genitals in exchange for money in order to arouse a third party would still be guilty of sexual activity with an animal.

Beyond these three changes to current District law, one other aspect of the revised statute may constitute a substantive change to current District law.

The revised code clarifies that the defenses listed are not affirmative defenses. The current sexual contact between a person and animal statute includes four “affirmative defenses.”⁹⁷ The revised statute provides for the same defenses but labels them as “defenses” and not as “affirmative defenses”. The DCCA has held that when evidence of a defense is presented at trial, “from either the prosecution or defense case,”⁹⁸ the government bears the burden of disproving the defense beyond a reasonable doubt.⁹⁹ The DCCA has upheld “affirmative defenses” which require that the defendant prove the defense by a preponderance of the evidence.¹⁰⁰ Under the RCC, actors have the burden of proving the elements of affirmative defenses.¹⁰¹ By contrast, under the revised statute the four defenses are ordinary defenses, not affirmative defenses. Under the RCC, if there is any evidence of a statutory defense at trial, the government must prove the absence of at least one element of the defense beyond a reasonable doubt.¹⁰² Designating the four defenses as ordinary defenses may change current law.

⁹⁷ D.C. Code § 22-1012.01(c).

⁹⁸ *Lihlakha v. United States*, 123 A.3d 167, 169 (D.C. 2015).

⁹⁹ *E.g., Richardson v. United States*, 98 A.3d 178, 187 (D.C. 2014).

¹⁰⁰ *Russell v. United States*, 698 A.2d 1007, 1016 (D.C. 1997).

¹⁰¹ RCC § 22A-201(b)(3).

¹⁰² RCC § 22A-201(b)(2).

§ 22A-5508. Unlawful Cat Declawing.

- (a) *Offense.* An actor commits unlawful cat declawing when the actor knowingly performs a partial or complete onychectomy (declawing), phalangectomy, or tendonectomy procedure on a cat, except when necessary for a veterinary purpose.
- (b) *Penalty.* Unlawful cat declawing is a Class D misdemeanor.
- (c) *Definition:* For this subsection “veterinary purpose” means the practice of veterinary medicine that is:
 - (1) Performed by a licensed veterinarian or a certified veterinary, intended address the medical condition of the animal, such as an existing or recurring illness, infection, disease, injury, or abnormal condition in the claw that compromises the animal's health; and
 - (2) Does not include cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the animal.

Explanatory Note. *This section establishes the offense of unlawful cat declawing for the Revised Criminal Code (RCC). The offense prohibits performing or causing to be performed a declawing of a cat. An exclusion is provided for conduct that is part of lawful veterinary practices. The offense replaces portions of the animal cruelty chapter including D.C. Code § 22-1012.03.*

Subsection (a) specifies the prohibited conduct for unlawful cat declawing. Subsection (a) specifies that the actor must perform, or cause to be performed, a partial or complete onychectomy (declawing), phalangectomy, or tendonectomy procedure. Subsection (a) also specifies that the culpable mental state “knowingly” applies, a term defined at RCC § 22A-206 to mean here that the actor must have been aware or believed to a practical certainty that they were actually removing a cat’s claws (or related anatomy) or causing another person to do it. Subsection (a) also provides an exception when such a procedure is necessary for veterinary purposes.

Subsection (b) specifies the relevant penalty for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Subsection (c) defines the term “veterinary purposes” for use in this section. It specifically excludes from the definition, “cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the animal.”

Relation to Current District Law. *One aspect of the revised statute may constitute a substantive change to current District law against cat declawing.*

The revised code removes the language “or causes to be performed” from the statute. Under the current code it is unlawful to perform *or causes to be performed*, a declawing procedure.¹⁰³ The revised code removes that language as redundant. A person who caused such a procedure to be performed would in most cases presumably be someone bringing their cat somewhere to have someone else perform the procedure. In such an instance, this person would be subject to the same liability and penalties as the person who actually performed the procedure.¹⁰⁴ Under RCC § 22A-210(a) an actor is an accomplice to the commission of an

¹⁰³ D.C. Code § 22-1012.03 (Emphasis added).

¹⁰⁴ RCC § 22A-210

offense by another person when the actor purposely assists another person with the planning or commission of conduct constituting an offense and, in fact, acts with the culpability required for the offense. Any person who causes a cat declawing procedure to be performed would necessarily be acting to either plan or commit the procedure. This change improves the clarity of the statute by removing redundant language.

The only other changes in the revised statute are clarificatory in nature and are not intended to substantively change District law on cat declawing.

The revised code clarifies the language forbidding unlawful cat declawing. Under the current statute the procedure of removing a cat’s claws is prohibited whether by a partial or complete onychectomy (declawing), phalangectomy, or tendonectomy procedure, by any means, on a cat.¹⁰⁵ The revised code removes the language “by any means” since that is redundant and creates a potential for confusion.

The only other difference between the current statute and the revised statute is the penalty level. These changes improve the clarity and proportionality of the offense.

¹⁰⁵ D.C. Code § 22-1012.03

§ 22A-5509. Interference with a Police Animal.

- (a) *First degree.* An actor commits first degree interference with a police animal when:
 - (1) The actor knowingly causes death or serious bodily injury, prolonged pain, or extreme suffering to an animal;
 - (2) With recklessness as to whether the animal is a police animal.
- (b) *Second degree.* An actor commits second degree interference with a police animal when the actor recklessly causes death or significant physical injury to a police animal.
- (c) *Third degree.* An actor commits third degree interference with a police animal when:
 - (1) The actor knowingly interferes with or harasses a police animal:
 - (A) With recklessness as to the fact that the police animal is actively engaged in the services for which it was trained; and
 - (B) In fact, the police animal is significantly stopped from providing the service for which it was trained; or
 - (2) The actor knowingly causes bodily injury to an animal, with recklessness as to whether the animal is a police animal.
- (d) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by District law.
- (e) *Defenses.*
 - (1) It is a defense to liability under this section that the actor, in fact:
 - (A) Engages in the conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering; and
 - (B) Such conduct is reasonable under all the circumstances.
 - (2) It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure.
 - (3) It is a defense to liability under this section that, in fact, the actor reasonably believes that:
 - (A) The actor, another person, or an animal is in imminent danger of bodily injury or death; and
 - (B) The conduct constituting the offense:
 - (i) Will protect against the harm; and
 - (ii) Is necessary in degree.
- (f) *Exception.* The defense under subsection (e)(3) is not available when the actor is reckless as to the fact that the police animal is engaged in lawful conduct.
- (g) *Penalties.*
 - (1) First degree interference with a police animal is a Class 7 felony.
 - (2) Second degree interference with a police animal is a Class A misdemeanor.
 - (3) Third degree interference with a police animal is a Class B misdemeanor.

Explanatory Note. This section establishes the offense of interference with a police animal for the Revised Criminal Code (RCC). The offense prohibits knowingly causing death, serious bodily injury, or prolonged pain, or extreme suffering to a police animal, recklessly causing death or significant bodily injury to a police animal, or knowingly interfering with or harassing a police animal. The penalty gradations are based on the intent of the actor and the

nature of the harm. The offense replaces the definitions and penalties section of D.C. Code § 22-861.

Subsection (a) specifies the prohibited conduct for first degree interference with a police animal. Paragraph (a)(1) requires that the actor caused death or serious bodily injury, prolonged pain, or extreme suffering to an animal. “Serious bodily injury” is a defined term in RCC § 22A-101 that means bodily injury involving a substantial risk of death, or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member or organ or protracted unconsciousness. Paragraph (a)(1) specifies that the culpable mental state “knowingly” applies. This term, defined at RCC § 22A-206, here means that the actor must have been aware or believed to a practical certainty that they would cause death or serious bodily injury, prolonged pain, or extreme suffering to a police animal. Paragraph (a)(2) requires that the actor was reckless as to whether the animal was a police animal. “Recklessly” is a defined term in RCC § 22A-206, which here means that the actor consciously disregarded a substantial risk that the animal was a police animal. “Police animal” is a defined term in RCC § 22A-5501(3). The term is defined as “a dog, horse, or other animal used by a law enforcement agency, correctional facility, fire department, or search and rescue unit or agency for the purpose of aiding in the detection of criminal activity, enforcement of laws, apprehension of criminal offenders, or search and rescue efforts, whether or not the dog, horse, or other animal is engaged in the performance of its official duties when a violation of this section occurs.”

Subsection (b) specifies the prohibited conduct for second degree interference with a police animal. Subsection (b) requires that the actor recklessly causes death or significant physical injury to a police animal. “Significant bodily injury” is a defined term in RCC § 22A-101 that means a bodily injury that, to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer.¹⁰⁶ “Recklessly” is a defined term in RCC § 22A-206, which here means that the actor consciously disregarded a substantial risk of causing the death, significant bodily injury, prolonged pain, or extreme suffering to a police animal. Subsection (b) also requires that the actor was reckless as to whether the animal was a police animal.

Subsection (c) specifies the prohibited conduct for third degree interference with a police animal. Paragraphs (c)(1) and (c)(2) provide two alternate means of committing third degree interference with a police animal. Paragraph (c)(1) requires that the actor knowingly interferes with or harasses a police animal. The paragraph specifies that a “knowingly” mental state applies to this element, which here requires that the actor was practically certain that they would interfere with or harass a police animal. Subparagraph (c)(1)(A) requires that the actor is reckless as to the fact that the police animal is actively engaged in the services for which it was trained. Subparagraph (c)(1)(B) requires that, in fact, the police animal is significantly stopped from providing the service for which it was trained. The subparagraph uses “in fact”, a defined term in RCC § 22A-207 that indicates there is no culpable mental state requirement as to a given element – in this case the element being that the actor’s conduct caused the police animal to be significantly stopped from providing the service for which it was trained.

¹⁰⁶ In addition, the following injuries constitute at least a significant bodily injury: a fracture of a bone; a laceration that is at least one inch in length and at least one quarter of an inch in depth; a burn of at least second-degree severity; a brief loss of consciousness; a traumatic brain injury; and a contusion, petechia, or other bodily injury to the neck or head sustained during strangulation or suffocation.

Paragraph (c)(2) specifies an alternate means of committing third degree interference with a police animal. The paragraph requires that an actor knowingly cause bodily injury to an animal. “Knowingly”, defined at RCC § 22A-206, here means that the actor must have been aware or believed to a practical certainty that they would cause bodily injury to the animal. “Bodily injury” is a defined term in RCC § 22A-101 that means physical pain, physical injury, illness, or impairment of physical condition. Paragraph (c)(2) also requires that the actor is reckless as to the fact that the animal is a police animal, which here requires that the actor consciously disregarded a substantial risk that the animal is a police animal.

Subsection (d) codifies an exclusion from liability for the offense. The general provision in RCC § 22A-201 establishes the burdens of proof and production for all exclusions from liability in the RCC. An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation. Subsection (d) specifies “in fact,” a defined term in RCC §22A-207 that indicates there is no culpable mental state requirement as to a given element – in this case the element being that the actor’s conduct is specifically permitted by a District statute or regulation. This exclusion ensures that conduct authorized by District law that would otherwise constitute interference with a police animal is not criminalized.

Subsection (e) codifies three defenses for the interference with a police animal statute. The general provision in RCC § 22A-201 establishes the requirements for the burden of production and the burden of proof for all defenses in the RCC.

Paragraph (e)(1) establishes a defense to subsections (a)-(c) of the revised statute if the actor in fact engages in conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering, and that the conduct is reasonable under all the circumstances. “Intent” is a defined term in RCC § 22A-206, that here means the actor was practically certain they would safeguard or promote the welfare of the animal. Per RCC § 22A-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the actor safeguarded or promoted the welfare of the animal, only that the actor believed to a practical certainty that they would do so.

Paragraph (e)(2) establishes a defense to subsections (a)-(c) of the revised statute when the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure. A lawful veterinary procedure is performed by a licensed veterinarian under conditions acceptable to the Board of Veterinary Medicine.¹⁰⁷ The term “in fact” specifies that there is no required mental state as to whether the conduct was performed as part of a lawful veterinary procedure.

Paragraph (e)(3) establishes a defense to subsections (a)-(c) of the revised statute that the actor reasonably believes¹⁰⁸ that the actor, another person, or an animal is in imminent danger of bodily injury or death, that their actions will protect against the harm, and that their actions are necessary in degree. “Bodily injury” is a defined term in RCC § 22A-101 that means physical pain, physical injury, illness, or impairment of physical condition.

¹⁰⁷ Established in D.C. Code § 3-1202.21.

¹⁰⁸ To satisfy this defense, the actor must only reasonably believe that the actor, another person, or animal is in imminent danger. Even if no person or animal is actually in danger, a reasonable belief, even if mistaken, satisfies this requirement of the defense.

Paragraph (e)(4) establishes an exception to the defense in paragraph (e)(3). The right to harm a police animal in defense of oneself or others is not available if the actor is reckless to the fact that the police animal is engaged in lawful conduct. For example, if a police animal is being lawfully used to apprehend a person and that person injures the animal, the defense under (e)(3) is unavailable, even if the person was only trying to prevent the animal from causing bodily injury.

Subsection (f) specifies relevant penalties for the offense. [See, RCC §§ 22A-603 and 22A-604 for the imprisonment terms and fines for each penalty class.]

Relation to Current District Law. *The revised interference with a police animal statute clearly changes current District law in four main ways.*

First, the revised code uses clearly defined mental states for various elements of each degree of the offense. The current statute requires that a person “intentionally . . . harasses, interferes with, injures, or obstructs a police animal when he or she *has reason to believe* the animal is a police animal.”¹⁰⁹ “Intentionally” and “has reason to believe” are undefined under the current statute. The phrase “has reason to believe” is especially vague, as this language can be interpreted to require either recklessness or negligence.¹¹⁰ The felony version of the current offense requires causing death or significant bodily injury but specifies no mental state as to this element of the offense. In contrast, the RCC provides standardized definitions for each culpable mental state and specifies the relevant culpable mental states for each element of each grade of the revised interference with a police animal offense. These changes improve the clarity, completeness, and proportionality of the revised criminal code.

Second, the revised interference with a police animal offense includes three penalty grades as opposed to two under the current statute. The current statute includes misdemeanor and felony versions of the offense. Harassing, interfering with, injuring, or obstructing a police animal is a misdemeanor, and felony liability applies if the defendant causes death or significant bodily injury to the police animal.¹¹¹ The revised code rearranges the statute into three different grades, the first two of which largely mirror the same conduct prohibited in the animal cruelty subsection. The third degree interference with a police animal offense recognizes that police animals have important responsibilities that other animals do not have and criminalizes the interference with those activities, regardless of whether the police animal suffers any physical injury. Additionally, the third degree offense makes it an offense to intentionally cause any bodily injury to a police animal.

Third, the revised code raises the level of injury, from significant bodily injury to serious bodily injury, required for first degree interference with a police animal. In the current code, an actor committing the offense is committing the felony version when their actions result in significant bodily injury to the police animal. Significant bodily injury is defined in D.C. Code § 22-861(a)(2) as an injury that requires hospitalization or immediate medical attention. The revised code requires that for first degree interference with a police animal an actor must cause serious bodily injury. The term “serious bodily injury” is defined in RCC § 22A-101 as an injury

¹⁰⁹ D.C. Code § 22-861(b)(1) (emphasis added).

¹¹⁰ See, *Owens v. United States*, 90 A.3d 1118, 1121 (D.C. 2014) (noting that courts in other jurisdictions have interpreted “reason to believe” language differently).

¹¹¹ Significant bodily injury is defined in this subsection as an injury that requires hospitalization or immediate medical attention. D.C. Code § 22-861(a)(2).

“that involves: a substantial risk of death; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member or organ.” This revision creates a distinction between two levels of the offense based on the amount of harm that is inflicted upon the animal. This change to the result element improves the clarity, completeness, and proportionality of the offenses.

Fourth, the definition of significant bodily injury is modified in the revised offense. In the current code, significant bodily injury is defined in D.C. Code § 22-861(a)(2) as an injury that requires hospitalization or immediate medical attention. The revised code defines “significant bodily injury” as a bodily injury that, to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer.”¹¹² The revised definition of “significant bodily injury” also includes several types of injuries that are *per se* significant bodily injuries.¹¹³ This definition improves the clarity and proportionality of the revised offense.

Beyond these four changes to current District law, two other aspects of the revised statute may constitute substantive changes to current District law.

First, the revised interference with a police animal statute includes three separate defenses. The current statute does not include any defenses. However, the current statute does require that the person acted “without justifiable and excusable cause.”¹¹⁴ There is no explanation either in the statute or case law as to what justifiable and excusable causes would relieve an actor of criminal liability. Without any guidance, it is unclear what defenses could potentially apply. By contrast, the revised code sets out three clearly defined defenses, which largely mirror the same defenses available for animal cruelty. Codifying the defenses improves the clarity and proportionality of the revised offense.

Second, the revised statute requires that an actor must be reckless as to whether the animal is a police animal.¹¹⁵ Under the current code the actor must have “reason to believe” that the animal is a police animal.¹¹⁶ The phrase “reason to believe” is undefined, and there is no case law directly on point. However, the D.C. Court of Appeals has interpreted the current receiving stolen property statute, which requires that the defendant possesses property knowing “or having reason to believe” the property was stolen. Although this language could be interpreted to mean that the accused should have known that the property was stolen, and a negligence mental state could suffice, the DCCA has rejected this interpretation. Instead, the DCCA held that this language requires that the accused had an actual subjective belief, even if erroneous, that the property was stolen.¹¹⁷ The DCCA has not held that the “reason to believe” language under the current harassing, interfering with, injuring, or obstructing a police animal statute has the same meaning as under the current receiving stolen property statute. If the meaning is the same, then

¹¹² RCC § 22A-101.

¹¹³ The following injuries constitute at least a significant bodily injury: a fracture of a bone; a laceration that is at least one inch in length and at least one quarter of an inch in depth; a burn of at least second-degree severity; a brief loss of consciousness; a traumatic brain injury; and a contusion, petechia, or other bodily injury to the neck or head sustained during strangulation or suffocation.

¹¹⁴ D.C. Code § 22-861.

¹¹⁵ One exception is under paragraph (c)(1), which requires that the actor knew that the animal was a police animal.

¹¹⁶ D.C. Code § 22-861 (b)(1).

¹¹⁷ *Owens v. United States*, 90 A.3d 1118, 1121 (D.C. 2014).

the use of “recklessness” under the revised statute would constitute a change to current district law. Specifying the mental state for this element improves the clarity of the revised statute.

STATUTES RECOMMENDED FOR REPEAL

The CCRC recommends repealing two statutes related to animal cruelty: D.C. Code §§ 22-1012.02 and 22-1310. As discussed below, both statutes are redundant as other provisions in the RCC adequately criminalize conduct covered by these offenses.

D.C. Code § 22-1012.02. Creating or Distributing an Obscene Image or Audio Recording of an Animal.

The CCRC recommends repealing D.C. Code § 22-1012.02, creating or distributing an obscene image or audio recording of an animal. The RCC includes two offenses, distribution of an obscene image¹¹⁸, and distribution of an obscene image to a minor¹¹⁹, that criminalize nearly all conduct criminalized under the current creating or distributing an obscene image or audio recording of an animal offense.

There are two types of conduct criminalized under the creating or distributing an obscene image or audio recording of an animal offense that are not criminalized under the RCC's obscenity offenses. First, the RCC's obscenity offenses do not criminalize distribution of *audio* recordings of sexual acts with animals. The RCC obscenity offenses criminalize distribution of obscene *images*, and the term "image" is defined as a "a visual depiction" including photographs, videos, and other visual media.¹²⁰ The RCC obscenity offenses are limited to images, because other mediums are less vivid, poignant, or memorable than visual representations, and it appears highly unlikely that they may be said to be "patently offensive" under modern community standards per *Miller v. California*.¹²¹ This change improves the consistency and proportionality of the revised offense and may ensure its constitutionality.

Second, the RCC's obscenity offenses require *distribution* of obscenity. The mere creation of such materials is not criminalized, as it is under the current creating or distributing an obscene image or audio recording of an animal statute. To the extent that creation of obscene materials involving animals involves sexual activity between a person or an animal or other forms of animal cruelty, it may still be prosecuted under the revised sexual activity between a person and animal and animal cruelty offenses.

Repealing the creating or distributing an obscene image or audio recording of an animal statute eliminates unnecessary overlap, while maintaining criminal liability for distribution of obscene images involving animals, or creation of obscenity that involves a person engaging in sexual acts with an animal, or that otherwise involve animal cruelty.

¹¹⁸ RCC § 22A-2805.

¹¹⁹ RCC § 22A-2806

¹²⁰ RCC § 22A-101.

¹²¹ 413 U.S. 15 (1973).

D.C. Code § 22-1310. Urging Dogs to Fight or Create Disorder.

The CCRC recommends repealing D.C. Code § 22-1310, urging dogs to fight or create disorder. The RCC includes five offenses, animal cruelty¹²², criminal neglect of an animal¹²³, animal fighting¹²⁴, disorderly conduct¹²⁵, assault¹²⁶, and criminal threats¹²⁷ that criminalize virtually all conduct criminalized under the current urging dogs to fight or create disorder offense.

The urging dogs to fight or create disorder statute criminalizes two categories of conduct. First, it makes it unlawful for someone to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight.¹²⁸ Second, it makes it unlawful to induce or cause any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia.¹²⁹

Other provisions in the revised code criminalize the first category of conduct. If someone were to entice, induce, urge or cause dogs to engage in a fight their actions could violate the animal fighting statute.¹³⁰ Because “animal fight” is defined as an “exhibition,” causing dogs to fight without spectators may not constitute animal fighting. However, causing dogs to fight would also likely constitute animal cruelty¹³¹, which criminalizes recklessly causing death or significant bodily injury to an animal, if the dog fight results in death or significant bodily injury. If the fight does not result in death or injury, causing dogs to fight could still constitute criminal neglect of an animal¹³² if the fight creates a substantial risk of death or significant bodily injury. In addition, causing dogs to fight in public may cause bystanders to fear for their safety. In these cases, causing dogs to fight may constitute disorderly conduct, which includes engaging in conduct that causes any person present to reasonably believe that they are likely to suffer immediate criminal bodily injury, or damage to property.¹³³

There may be cases in which causing a dogs to fight does not result in any injuries, create a substantial risk of significant injury, or cause any persons present to reasonably believe they will suffer injury or property damage. To the extent that this conduct is criminalized under current D.C. Code § 22-1310, repealing this statute changes District law.¹³⁴ However, this possible change improves the proportionality of the revised criminal code, as urging or causing dog fights that do not cause or create risks of these harms do not warrant criminalization.

¹²² RCC § 22A-5502.

¹²³ RCC § 22A-5503.

¹²⁴ RCC § 22A-5504.

¹²⁵ RCC § 22A-5201.

¹²⁶ RCC § 22A-2202.

¹²⁷ RCC § 22A-2205.

¹²⁸ D.C. Code § 22-1310.

¹²⁹ *Id.*

¹³⁰ RCC § 22A-5504.

¹³¹ RCC § 22A-5502.

¹³² RCC § 22A-5503.

¹³³ RCC § 22A-5201.

¹³⁴ There is no relevant case law as to whether D.C. Code § 22-1310 covers these types of trivially dangerous and disruptive dog fights.

The revised code also criminalizes the second category of conduct. If a person were to induce an “animal of the dog kind” to run after, bark at, frighten, or bite a person or animal in a public place, that person would be violating the laws prohibiting disorderly conduct¹³⁵, assault¹³⁶, criminal threats¹³⁷, or animal cruelty¹³⁸ depending on the result of their actions.

Repealing urging dogs to fight or create disorder statute eliminates unnecessary overlap, while maintaining criminal liability for the conduct described therein.

¹³⁵ RCC § 22A-5201.

¹³⁶ RCC § 22A-2202.

¹³⁷ RCC § 22A-2205.

¹³⁸ RCC § 22A-5502.

Appendix A – Black Letter Text of Draft Revised Statutes

RCC § 22A-5501. Definitions.

“Animal” means any nonhuman mammal, bird, reptile, or amphibian.

“Animal fight” means an exhibition between two or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event.

“Police animal” means a dog, horse, or other animal used by a law enforcement agency, correctional facility, fire department, or search and rescue unit or agency for the purpose of aiding in the detection of criminal activity, enforcement of laws, apprehension of criminal offenders, or search and rescue efforts, whether or not the dog, horse, or other animal is engaged in the performance of its official duties when a violation of this section occurs.

“Sexual activity with an animal” means any of the following acts between a person and an animal committed with the purpose to sexually arouse or gratify any person, or at the direction of someone with such a purpose:

- (A) Contact between the genitalia or anus of one and the mouth, anus or genitalia of the other;
- (B) Touching or fondling by a person of the genitalia or anus of an animal, either directly or through clothing, without a bona fide veterinary or animal husbandry purpose;
- (C) A transfer or transmission of semen by the person upon any part of the animal; or
- (D) The insertion, however slight, of a part of a person’s body or an object into the vaginal or anal opening of an animal or the insertion of a part of the animal’s body into the vaginal or anal opening of the person.

RCC § 22A-5502. Animal Cruelty.

- (a) *First degree.* An actor commits first degree animal cruelty when the actor knowingly causes death or serious bodily injury, prolonged pain, or extreme suffering to an animal.
- (b) *Second degree.* An actor commits second degree animal cruelty when the actor recklessly causes death or significant bodily injury, prolonged pain, or extreme suffering to an animal.
- (c) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by District law.
- (d) *Defenses.*
 - (1) It is a defense to liability under this section that the actor in fact:
 - (A) Engages in the conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering; and

- (B) Such conduct is reasonable under all the circumstances.
 - (2) It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure.
 - (3) It is a defense to liability under this section that, in fact, the actor reasonably believes that:
 - (A) The actor, another person, or an animal is in imminent danger of bodily injury or death; and
 - (B) The conduct constituting the offense:
 - (i) Will protect against the harm; and
 - (ii) Is necessary in degree.
- (e) *Penalties.*
- (1) First degree animal cruelty is a Class 9 felony.
 - (2) Second degree animal cruelty is a Class A misdemeanor.

RCC § 22A-5503. Criminal Neglect of an Animal.

- (a) *First degree.* An actor commits first degree criminal neglect of an animal when the actor:
- (1) Is reckless as to the fact that the actor is responsible for the animal as its owner or custodian as defined by D.C. Code § 8-1801; and
 - (2) Either:
 - (A) Creates or fails to mitigate or remedy, a substantial risk that the animal would experience serious bodily injury or death; or
 - (B) Knowingly leaves the animal in any place with intent to abandon the animal.
- (b) *Second degree.* An actor commits second degree criminal neglect of an animal when the actor:
- (1) Is reckless as to the fact that the actor is responsible for the animal as its owner or custodian as defined by D.C. Code § 8-1801; and
 - (2) Either:
 - (A) Fails to make a reasonable effort to provide food, shelter, supervision, medical services, medicine, or other items or care essential for the physical health or safety of the animal; or
 - (B) Creates, or fails to mitigate or remedy, a substantial risk that the animal would experience significant bodily injury or extreme suffering.
- (c) *Exclusions from liability.*
- (1) An actor does not commit an offense under (a)(2)(B) of this section when the actor, in fact, reasonably believes they are surrendering the animal to a person who will provide for the health, welfare, and supervision of the animal.
 - (2) An actor does not commit an offense under this section when the actor's conduct is specifically permitted by District law.
 - (3) An actor does not commit an offense under this section when they engage in the conduct constituting the offense as part of a lawful veterinary procedure.

- (4) An actor does not commit an offense under this section when the conduct constituting the offense is a reasonable refusal to obtain medical care for the animal.

(d) *Penalties.*

- (1) First degree criminal neglect of an animal is a Class B misdemeanor.
- (2) Second degree criminal neglect of an animal is a Class C misdemeanor.

RCC § 22A-5504. Animal Fighting.

(a) *Offense.* An actor commits animal fighting when the actor knowingly:

- (1) Causes an animal to engage in an animal fight; or
- (2) Trains, buys, sells, owns, possesses, transports, or transfers an animal with intent that the animal will be caused to engage in an animal fight or be used in furtherance of an animal fight; or
- (3) Attacks, provokes, or harasses an animal with one or more animals for the purpose of training or preparing an animal to engage in fights with other animals.

(b) *Penalty.* Animal fighting is a Class 8 felony.

RCC § 22A-5505. Attending or Wagering on an Animal Fight.

(a) *Offense.* An actor commits attending or wagering on an animal fight when the actor knowingly attends or wagers on an animal fight.

(b) *Penalty.* Attending or wagering on an animal fight is a Class 9 felony.

RCC § 22A-5506. Possession of Implements of Animal Fighting.

(a) *Offense.* An actor commits possession of implements of animal fighting when the actor knowingly possesses the following objects with intent to train, prepare, or breed an animal to engage in animal fighting.

- (1) A breaking stick designed for insertion behind the molars of an animal to break the animal's grip on another animal or object;
- (2) A slatmill, carpetmill or another form of improvised treadmill;
- (3) A springpole that has a biting surface attached to a stretchable device, suspended at a height sufficient to prevent an animal from reaching the biting surface while touching the ground;
- (4) A fighting pit or other confined area designed to contain an animal fight; or
- (5) A breeding stand or rape stand used to immobilize female animals for breeding purposes.

(b) *Penalty.*

- (1) Possession of implements of animal fighting is a Class D misdemeanor.
- (2) Each implement of animal fighting possessed in violation of this section shall constitute a separate offense.
- (3) Notwithstanding subsection (b)(2) of this subsection, no person shall be consecutively sentenced to more than 30 days for violations of this section that occurred within a single 90-day period.

RCC § 22A-5507. Sexual Activity Between a Person and Animal.

- (a) *Offense.* An actor commits sexual activity between a person and animal when the actor knowingly engages in sexual activity with an animal.
- (b) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by a District statute or regulation.
- (c) *Defenses.* It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of:
 - (1) a lawful veterinary procedure;
 - (2) a lawful artificial insemination for the purpose of procreation;
 - (3) a lawful husbandry practice; or
 - (4) lawful conformation judging.
- (d) *Penalties.* Sexual activity between a person and animal is a Class B misdemeanor.

RCC § 22A-5508. Unlawful Cat Declawing.

- (a) *Offense.* An actor commits unlawful cat declawing when the actor knowingly performs a partial or complete onychectomy (declawing), phalangectomy, or tendonectomy procedure on a cat, except when necessary for a veterinary purpose.
- (b) *Penalty.* Unlawful cat declawing is a Class D misdemeanor.
- (c) *Definition:* For this subsection “veterinary purpose” means the practice of veterinary medicine that is:
 - (1) Performed by a licensed veterinarian or a certified veterinary, intended address the medical condition of the animal, such as an existing or recurring illness, infection, disease, injury, or abnormal condition in the claw that compromises the animal's health; and
 - (2) Does not include cosmetic or aesthetic reasons or reasons of convenience in keeping or handling the animal.

RCC § 22A-5509. Interference with a Police Animal.

- (a) *First degree.* An actor commits first degree interference with a police animal when:
 - (1) The actor knowingly causes death or serious bodily injury, prolonged pain, or extreme suffering to an animal;
 - (2) With recklessness as to whether the animal is a police animal.
- (b) *Second degree.* An actor commits second degree interference with a police animal when the actor recklessly causes death or significant physical injury to a police animal.
- (c) *Third degree.* An actor commits third degree interference with a police animal when:
 - (1) The actor knowingly interferes with or harasses a police animal:
 - (A) With recklessness as to the fact that the police animal is actively engaged in the services for which it was trained; and
 - (B) In fact, the police animal is significantly stopped from providing the service for which it was trained; or

- (2) The actor knowingly causes bodily injury to an animal, with recklessness as to whether the animal is a police animal.
- (d) *Exclusion from liability.* An actor does not commit an offense under this section when, in fact, the actor’s conduct is specifically permitted by District law.
- (e) *Defenses.*
 - (1) It is a defense to liability under this section that the actor, in fact:
 - (A) Engages in the conduct constituting the offense with intent to safeguard or promote the welfare of the animal, including the prevention of the animal’s suffering; and
 - (B) Such conduct is reasonable under all the circumstances.
 - (2) It is a defense to liability under this section that the actor, in fact, engages in the conduct constituting the offense as part of a lawful veterinary procedure.
 - (3) It is a defense to liability under this section that, in fact, the actor reasonably believes that:
 - (A) The actor, another person, or an animal is in imminent danger of bodily injury or death; and
 - (B) The conduct constituting the offense:
 - (i) Will protect against the harm; and
 - (ii) Is necessary in degree.
 - (4) *Exception.* The defense under subsection (e)(3) is not available when the actor is reckless as to the fact that the police animal is engaged in lawful conduct.
- (f) *Penalties.*
 - (1) First degree interference with a police animal is a Class 7 felony.
 - (2) Second degree interference with a police animal is a Class A misdemeanor.
 - (3) Third degree interference with a police animal is a Class B misdemeanor.