



D.C. Criminal Code Reform Commission

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To: Code Revision Advisory Group (Advisory Group)
From: Criminal Code Reform Commission (CCRC)
Date: December 21, 2017
Re: Advisory Group Memo #15, Supplementary Materials to First Drafts of Reports #13-17

This memorandum supplements the first drafts of reports #13-17,¹ which provide recommendations for attempt penalties, robbery, assault, criminal menacing, and criminal threats in the Revised Criminal Code (RCC). The memorandum notes some points about past and future revision work that may be relevant to Advisory Group members' review. Appendix A provides a compilation of existing D.C. Code statutes relevant to provisions in the draft reports. Appendix B provides a compilation of statistics relevant to the revised offenses.²

As always, the CCRC welcomes all comments from Advisory Group members. Please bear in mind that there will be a second draft of draft reports #13-17, and changes may be substantial depending on Advisory Group feedback and review of statistical information. Consequently, minor corrections to spelling, formatting, and style in the commentary to these reports may best be held for the second draft or communicated to staff apart from members' formal written comments.

FIRST DRAFT OF REPORT #13, *CRIMINAL ATTEMPT PENALTIES*

The new default attempt penalty in RCC § 22A-301(c)(1) in the First Draft of Report #13, *Criminal Attempt Penalties* provides a fifty percent decrease in the maximum imprisonment or fine or both applicable to the target offense. No exceptions are currently planned to this fifty percent decrease under RCC § 22A-301(c)(2). It is expected that the RCC § 22A-301(c)(1) provision will apply to the RCC property offenses previously submitted to the Advisory Group

¹ First Draft of Report #13, *Criminal Attempt Penalties* (12-21-17); First Draft of Report #14, *Definitions for Offenses Against Persons* (12-21-17); First Draft of Report #15, *Assault and Offensive Physical Contact Offenses* (12-21-17); First Draft of Report #16, *Robbery* (12-21-17); First Draft of Report #17, *Criminal Menace and Criminal Threat Offenses* (12-21-17).

² The recommendations in draft reports #13-17 do not reflect a full review of relevant statistical data on charging and sentencing in the District, and the commentary entries do not describe relevant statistical patterns. In the summer of 2017 the CCRC received a sizable dataset from Superior Court to allow the agency to analyze the frequency of misdemeanor and felony charges, sentencing, and other pertinent information. Unfortunately, the dataset did not differentiate attempts and the sentencing data was incomplete as to initial sentences imposed. A follow-up data request was sent to the Superior Court some months ago to address these issues, but a new dataset has not been received to date. As relevant analyses are completed, they will be shared with the Advisory Group, though all use of the dataset is limited by a Data Use Agreement. Some preliminary information on frequency of charges and convictions based on the dataset we have from the Superior Court is provided in Appendix B.

for review. The second drafts of RCC property offenses previously submitted to the Advisory Group for review will explicitly address changes to those statutes due to the fifty percent decrease in RCC § 22A-301(c)(1). However, Advisory Group feedback would be much appreciated on whether an exception to the fifty percent decrease in RCC § 22A-301(c)(1) for RCC revised offenses previously submitted for review or submitted for review in the future.

Also, for a summary of statistics on criminal attempts, please see Advisory Group Memorandum #11, at pgs. 1-9 (June 7, 2017) (supplementing Report No. 7). The CCRC is awaiting updated statistics on attempts from the Superior Court.³ More detailed statistics on criminal attempts should be available in early 2018.

FIRST DRAFT OF REPORT #14, *DEFINITIONS FOR OFFENSES AGAINST PERSONS*

At this time the CCRC has drafted RCC § 22A-1001 to include its own set of defined terms applicable to the subtitle containing offenses against persons. However, if feasible, we hope to recommend identical statutory definitions and commentary entries for terms used in both offenses against persons and property offenses. To that end, six⁴ of the statutory definitions and commentary entries for offenses against persons in RCC § 22A-1001 are identical to property offense terms in RCC § 22A-2001 and have been drafted in a manner to cover *both* offenses against persons and property offenses. The CCRC proposal for the Second Draft of Report #8 Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions will update property offense definitions to reflect the new statutory language and commentary in RCC § 22A-1001 for the six shared terms. Our ultimate goal is to create consistent definitions and commentary across as many offenses as possible.

The downside of creating identical definitions across property offenses and offenses against persons is some redundancy. For example, in Report #14 the “consent” definition has been reformatted to say that part of the definition applies only to property offenses, and there are examples in the corresponding commentary that apply to both offenses against persons and property. The presence of statutory language and commentary language relevant to property offenses may be distracting for a reader interested only in how the definition of “consent” applies to offenses against persons. However, the CCRC has drafted the statutory definitions and commentary entries to minimize any confusion and staff does not believe the included property offense statutory language or commentary examples compromise the meaning of such statutory language and commentary for offenses against persons.

Looking forward, some of the definitions used in the new RCC § 22A-1001 may also be usable in other subtitles. For example the new definitions of "dangerous weapon" and "prohibited weapon" may be used in weapons offenses. Again, to the extent feasible, the CCRC is seeking to define and use consistent definitions across offenses.

³ See *supra*, note 2.

⁴ Specifically, the following six terms are identical in RCC § 22A-1001 and RCC § 22A-2001: “coercion”; “consent”; “deceive and deception”; “effective consent”; “owner”; and “vulnerable adult.” The draft statutory language defining “effective consent,” “owner,” and “vulnerable adult” is identical in both the First Draft of Report #8 (for property offenses) and the First Draft of Report #14 (for offenses against persons). However, for “coercion,” one additional type of threat has been included in the statutory definition in Report #14: “(H) Take, withhold, or destroy another person’s passport or immigration document.” For “consent,” Report #14 has reformatted the statutory definition to specify that the last two sentences apply only to property offenses. For “deceive” and “deception,” Report #14 also has reformatted the statutory definition to clarify that the provision about failure to disclose a lien, etc. applies only to property offenses.

One significant issue that the CCRC is aware of but still examining is whether to change the definition of effective consent to exclude consent by minors (under 18) and/or legally incompetent persons. Some jurisdictions⁵ address such matters by statute. However, the matter is complex, and care is necessary to avoid negating the rights of minors and legally incompetent persons.⁶ Defining “effective consent” for purposes of sexual activities may also pose special difficulties and necessitate a special definition for sexual offenses.

FIRST DRAFTS OF REPORTS #15-17

The most significant change to current law in the RCC robbery, assault, criminal menace, and criminal threat offenses may be the integration of various penalty enhancements in the offense gradations. Penalty enhancements for use of a dangerous weapon or firearm in the commission of these offenses replace the separate “while armed” penalty enhancement under current D.C. Code 22-4502. Penalty enhancements for harms to “protected persons”—a newly defined term that includes minors, seniors, vulnerable adults, law enforcement officers while in the course of their duties, public safety employees while in the course of their duties, transportation workers while in the course of their duties, District officials and employees while in the course of their duties, and citizen patrol members while in the course of a citizen patrol—replace a host of freestanding D.C. Code statutory provisions.⁷

The current recommendations to integrate penalty enhancements in the RCC robbery, assault, criminal menace, and criminal threat offenses would only replace the corresponding enhancements in current law *as to these offenses*—i.e., the revised robbery, assault, criminal menace, and criminal threat offenses. The CCRC will review whether the incorporation of such enhancements into other offenses against persons (e.g. murder or kidnapping) is appropriate when reviewing those offenses. Similarly, the second draft of various property offenses (e.g. burglary and arson, now considered “crimes of violence” subject to many of these penalty enhancements) will consider whether the incorporation of penalty enhancements is appropriate to those offenses. Likewise, the second draft of the general part’s recidivist penalty enhancements for crimes of violence, RCC § 22A-806 will address whether the incorporation of a weapon penalty enhancement⁸ is appropriate to that provision.

Integration of the D.C. Code’s many enhancement provisions into the revised offenses has many benefits, including the specification of culpable mental states as to enhancement elements, clarification of relevant grading factors, and in some instances more proportionate penalties.⁹ However, a different organizational strategy could be used, retaining some or all

⁵ See, e.g., Tex. Penal Code § 1.07 (19): “Effective consent” includes consent by a person legally authorized to act for the owner. Consent is not effective if:

- (A) induced by force, threat, or fraud;
- (B) given by a person the actor knows is not legally authorized to act for the owner;
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or
- (D) given solely to detect the commission of an offense.”

⁶ For example, if categorically excluded from being able to give effective consent, a minor or legally incompetent person may not be able to engage in sports or other mutual activities that involve overpowering physical force or bodily injury as defined in RCC § 22A-1001.

⁷ See Commentary to RCC § 22A-1001(15) “Protected person” for relevant D.C. Code citations and discussion.

⁸ D.C. Code § 22-4502 (a)(2), (c).

⁹ At least as compared to enhancements that apply a flat penalty regardless of the harm inflicted. For example D.C. Code 22-4502(a) provides a possible additional 30 year maximum imprisonment penalty to an array of offenses.

enhancements as separate statutory provisions. Advisory Group feedback on this point would be much appreciated.

With respect to the incorporation of penalty enhancements for the use of a dangerous weapon or firearm in the RCC robbery, assault, criminal menace, and criminal threat offenses, it should also be noted that the proposed revisions do not address the current offense of possessing a firearm during a crime of violence or dangerous crime (PFCOV).¹⁰ In current law, PFCOV is a separate offense carrying a mandatory minimum five years imprisonment and up to fifteen years as a maximum that does not merge with armed robbery or other while-armed offenses. The CCRC has not yet fully reviewed PFCOV and is not prepared to make a reform recommendation at this time.

However, one possibility under consideration is to broaden a PFCOV-type offense to cover the possession of other dangerous weapons (besides firearms) during the commission of specified crimes. Such a PFCOV-type offense would then include within its scope the conduct covered by the current enhancements for committing a crime of violence or similar offense when “armed with or having readily available” a firearm or other dangerous weapon as provided in current D.C. Code § 22-4502. In combination with the RCC offenses against persons that incorporate use of a dangerous weapon in their enhancements, such a PFCOV-type offense would ensure all¹¹ conduct penalized under the current D.C. Code § 22-4502 while armed enhancement and the current D.C. Code § 22-4504 PFCOV offense would remain criminalized. Advisory Group feedback on this possibility would be much appreciated, particularly whether such an offense would make the changes to incorporate dangerous weapon penalties in the RCC robbery, assault, and criminal menace statute more acceptable.

The current offenses against persons recommendations do not address possible merger issues, unlike in RCC § 2003, Limitation on Convictions for Multiple Related Property Offenses. When recommendations are developed for additional offenses against persons, the CCRC will consider whether and how to address such merger issues. The structure of the revised robbery offense, RCC § 22A-1201 clearly provides that an assault or criminal menace is a lesser included offense. However, neither the RCC criminal menace nor the RCC criminal threat offense would satisfy an elements test when compared to the revised assault offense, which is potentially problematic and a departure from current District law. Advisory Group feedback on whether there should be statutorily specified provisions on merger between robbery, assault, a criminal menace, and a criminal threat (and what kind of merger) would be helpful as the CCRC reviews this matter for future recommendations on offenses against persons.

Lastly, please note that the RCC robbery statute, RCC § 22A-1201, requires proof that the defendant “take or exercise control over” property of another. This conduct is intended to capture the various means of committing the revised theft offense, RCC § 22A-2101. However,

¹⁰ D.C. Code § 22-4504(b) (“No person shall within the District of Columbia possess a pistol, machine gun, shotgun, rifle, or any other firearm or imitation firearm while committing a crime of violence or dangerous crime as defined in § 22-4501. Upon conviction of a violation of this subsection, the person may be sentenced to imprisonment for a term not to exceed 15 years and shall be sentenced to imprisonment for a mandatory-minimum term of not less than 5 years and shall not be released on parole, or granted probation or suspension of sentence, prior to serving the mandatory-minimum sentence.”).

¹¹ And, insofar as mere possession of a dangerous weapon (e.g. a long-bladed knife) during a crime of violence is not covered by the current while-armed enhancement (because the knife is not “readily available”) or the current PFCOV enhancement (because it is limited to firearms), such a revised PFCOV-type offense that includes dangerous weapons would expand coverage compared to current law. But see the similar crime in D.C. Code § 22-4514(b) (prohibiting possession “with intent to use unlawfully against another” of a dangerous weapon).

per the First Draft of Report #9, *Recommendations for Theft and Damage to Property Offenses* the theft offense uses the language “takes, obtains, transfers, or exercises control over.” The CCRC will recommend in the Second Draft of Report #9, *Recommendations for Theft and Damage to Property Offenses* that the revised theft offense (and related offenses with identical formulations) be revised to refer only to “takes or exercises control over.” This is not intended as a substantive change, rather the verbs “obtains” and “transfers” appear superfluous to “take or exercise control over.”

APPENDIX A: RELEVANT DISTRICT CRIMINAL STATUTES

§ 22-401. Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse.

Every person convicted of any assault with intent to kill or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not less than 2 years or more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-402. Assault with intent to commit mayhem or with dangerous weapon.

Every person convicted of an assault with intent to commit mayhem, or of an assault with a dangerous weapon, shall be sentenced to imprisonment for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-403. Assault with intent to commit any other offense.

Whoever assaults another with intent to commit any other offense which may be punished by imprisonment in the penitentiary shall be imprisoned not more than 5 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-404. Assault or threatened assault in a menacing manner; stalking.

(a)(1) Whoever unlawfully assaults, or threatens another in a menacing manner, shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 180 days, or both.

(2) Whoever unlawfully assaults, or threatens another in a menacing manner, and intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both. For the purposes of this paragraph, the term “significant bodily injury” means an injury that requires hospitalization or immediate medical attention.

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

§ 22-404.01. Aggravated assault.

(a) A person commits the offense of aggravated assault if:

(1) By any means, that person knowingly or purposely causes serious bodily injury to another person; or

(2) Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury.

(b) Any person convicted of aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 10 years, or both.

(c) Any person convicted of attempted aggravated assault shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 5 years, or both.

§ 22-404.02. Assault on a public vehicle inspection officer.

(a) A person commits the offense of assault on a public vehicle inspection officer if that person assaults, impedes, intimidates, or interferes with a public vehicle inspection officer while that officer is engaged in or on account of the performance of his or her official duties.

(b) A person who violates this subsection shall be guilty of a misdemeanor and, upon conviction, shall:

(1) Be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 180 days; and

(2) Have his or her license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to subchapter I of Chapter 3 of Title 50, revoked without further administrative action by the Commission.

(c) It is neither justifiable nor excusable for a person to use force to resist the civil enforcement authority exercised by an individual believed to be a public vehicle inspection officer, whether or not such enforcement action is lawful.

(d) For the purposes of this section, the term:

(1) “Commission” shall have the same meaning as provided in § 50-303(6).

(2) “Public vehicle-for-hire” shall have the same meaning as provided in § 50-303(17).

(3) “Public vehicle inspection officer” shall have the same meaning as provided in § 50-303(19).

§ 22-404.03. Aggravated assault on a public vehicle inspection officer.

(a) A person commits the offense of aggravated assault on a public vehicle inspection officer if that person assaults, impedes, intimidates, or interferes with a public vehicle inspection officer while that officer is engaged in or on account of the performance of his or her official duties, and:

(1) By any means, that person knowingly or purposely causes serious bodily injury to the public vehicle inspection officer; or

(2) Under circumstances manifesting extreme indifference to human life, that person intentionally or knowingly engages in conduct which creates a grave risk of serious bodily injury to another person, and thereby causes serious bodily injury.

(b) A person who violates this section shall be guilty of a felony and, upon conviction, shall:

(1) Be fined not more than the amount set forth in § 22-3571.01, or be imprisoned for not more than 10 years, or both; and

(2) Have his or her license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to subchapter I of Chapter 3 of Title 50, revoked without further administrative action by the Commission.

(c) It is neither justifiable nor excusable for a person to use force to resist the civil enforcement authority exercised by an individual believed to be a public vehicle inspection officer, whether or not such enforcement action is lawful.

(d) For the purposes of this section, the term:

(1) "Commission" shall have the same meaning as provided in § 50-303(6).

(2) "Public vehicle-for-hire" shall have the same meaning as provided in § 50-303(17).

(3) "Public vehicle inspection officer" shall have the same meaning as provided in § 50-303(19).

§ 22-405. Assault on member of police force, campus or university special police, or fire department.

(a) For the purposes of this section, the term "law enforcement officer" means any officer or member of any police force operating and authorized to act in the District of Columbia, including any reserve officer or designated civilian employee of the Metropolitan Police Department, any licensed special police officer, any officer or member of any fire department operating in the District of Columbia, any officer or employee of any penal or correctional institution of the District of Columbia, any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District of Columbia regardless of whether such institution or facility is located within the District, any investigator or code inspector employed by the government of the District of Columbia, or any officer or employee of the Department of Youth Rehabilitation Services, Court Services and Offender Supervision Agency, the Social Services Division of the Superior Court, or Pretrial Services Agency charged with intake, assessment, or community supervision.

(b) Whoever without justifiable and excusable cause assaults a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 6 months or fined not more than the amount set forth in § 22-3571.01, or both.

(c) A person who violates subsection (b) of this section and causes significant bodily injury to the law enforcement officer, or commits a violent act that creates a grave risk of causing significant bodily injury to the officer, shall be guilty of a felony and, upon conviction, shall be imprisoned not more than 10 years or fined not more than the amount set forth in § 22-3571.01, or both.

(d) It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such an arrest is made by an individual he or she has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

§ 22-405.01. Resisting arrest by individual reasonably believed to be law enforcement officer.

(a) For the purposes of this section, the term "law enforcement officer" shall have the same meaning as provided in § 22-405(a).

(b) Whoever without justifiable and excusable cause intentionally resists an arrest by an individual who he or she has reason to believe is a law enforcement officer or prevents that individual from making or attempting to make an arrest of or detain another person shall be

guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 6 months or fined not more than the amount set forth in § 22-3571.01, or both.

(c) It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such an arrest is made by an individual he or she has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

§ 22-406. Mayhem or maliciously disfiguring.

Every person convicted of mayhem or of maliciously disfiguring another shall be imprisoned for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-407. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 6 months, or both, and, in addition thereto, or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding 1 year.

§ 22-851. Protection of District public officials.

(a) For the purposes of this section, the term:

(1) “Family member” means an individual to whom the official or employee of the District of Columbia is related by blood, legal custody, marriage, domestic partnership, having a child in common, the sharing of a mutual residence, or the maintenance of a romantic relationship not necessarily including a sexual relationship.

(2) “Official or employee” means a person who currently holds or formerly held a paid or unpaid position in the legislative, executive, or judicial branch of government of the District of Columbia, including boards and commissions.

(b) A person who corruptly or, by threat or force, or by any threatening letter or communication, intimidates, impedes, interferes with, or retaliates against, or attempts to intimidate, impede, interfere with, or retaliate against any official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

(c) A person who stalks, threatens, assaults, kidnaps, or injures any official or employee or vandalizes, damages, destroys, or takes the property of an official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 3 years, or both, in addition to any other penalties authorized by law.

(d) A person who stalks, threatens, assaults, kidnaps, or injures a family member or vandalizes, damages, destroys, or takes the property of a family member on account of the performance of the official or employee’s duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 3 years, or both, in addition to any other penalties authorized by law.

§ 22-932. Definitions.

For the purposes of this chapter, the term:

- (1) “Attorney General” means the Attorney General for the District of Columbia.
- (2) “Court” means the Superior Court of the District of Columbia.
- (3) “Elderly person” means a person who is 65 years of age or older.
- (4) “United States Attorney” means the United States Attorney for the District of Columbia.
- (5) “Vulnerable adult” means a person who is 18 years of age or older and has one or more physical or mental limitations that substantially impair the person’s ability to independently provide for his or her daily needs or safeguard his or her person, property, or legal interests.

§ 22-933. Criminal Abuse of a Vulnerable Adult.

A person is guilty of criminal abuse of a vulnerable adult or elderly person if that person intentionally or knowingly:

- (1) Inflicts or threatens to inflict physical pain or injury by hitting, slapping, kicking, pinching, biting, pulling hair or other corporal means;
- (2) Uses repeated or malicious oral or written statements that would be considered by a reasonable person to be harassing or threatening; or
- (3) Imposes unreasonable confinement or involuntary seclusion, including but not limited to, the forced separation from other persons against his or her will or the directions of any legal representative.

§ 22-934. Criminal Negligence.

A person who knowingly, willfully or through a wanton, reckless or willful indifference fails to discharge a duty to provide care and services necessary to maintain the physical and mental health of a vulnerable adult or elderly person, including but not limited to providing adequate food, clothing, medicine, shelter, supervision and medical services, that a reasonable person would deem essential for the well-being of the vulnerable adult or elderly person is guilty of criminal negligence.

§ 22-935. Exception.

A person shall not be considered to commit an offense of abuse or neglect under this chapter for the sole reason that he provides or permits to be provided treatment by spiritual means through prayer alone in accordance with a religious method of healing, in lieu of medical treatment, to the vulnerable adult or elderly person to whom he has a duty of care with the express consent or in accordance with the practice of the vulnerable adult or elderly person.

§ 22-936. Penalties.

(a) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable adult or elderly person shall be subject to a fine not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(b) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable adult or elderly person which causes serious bodily injury or severe mental distress shall be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisoned up to 10 years, or both.

(c) A person who commits the offense of criminal abuse or criminal neglect of a vulnerable adult or elderly person which causes permanent bodily harm or death shall be subject to a fine of not more than the amount set forth in § 22-3571.01, imprisoned up to 20 years, or both.

§ 22-1803. Attempts to commit crime.

Whoever shall attempt to commit any crime, which attempt is not otherwise made punishable by chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321), shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 180 days, or both. Except, whoever shall attempt to commit a crime of violence as defined in § 23-1331 shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 5 years, or both.

§ 22-1810. Threatening to kidnap or injure a person or damage his property.

Whoever threatens within the District of Columbia to kidnap any person or to injure the person of another or physically damage the property of any person or of another person, in whole or in part, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 20 years, or both.

§ 22-2106. Murder of law enforcement officer.

(a) Whoever, with deliberate and premeditated malice, and with knowledge or reason to know that the victim is a law enforcement officer or public safety employee, kills any law enforcement officer or public safety employee engaged in, or on account of, the performance of such officer's or employee's official duties, is guilty of murder of a law enforcement officer or public safety employee, and shall be sentenced to life without the possibility of release. It shall not be a defense to this charge that the victim was acting unlawfully by seizing or attempting to seize the defendant or another person.

(b) For the purposes of subsection (a) of this section, the term:

(1) "Law enforcement officer" means:

(A) A sworn member of the Metropolitan Police Department;

(B) A sworn member of the District of Columbia Protective Services;

(C) The Director, deputy directors, and officers of the District of Columbia Department of Corrections;

(D) Any probation, parole, supervised release, community supervision, or pretrial services officer of the Court Services and Offender Supervision Agency or The Pretrial Services Agency;

(E) Metro Transit police officers; and

(F) Any federal, state, county, or municipal officer performing functions comparable to those performed by the officers described in subparagraphs (A), (C), (D), (E), and (F) of this paragraph, including but not limited to state, county, or municipal police officers, sheriffs, correctional officers, parole officers, and probation and pretrial service officers.

(2) "Public safety employee" means:

(A) A District of Columbia firefighter, emergency medical technician/ paramedic, emergency medical technician/intermediate paramedic, or emergency medical technician; and

(B) Any federal, state, county, or municipal officer performing functions comparable to those performed by the District of Columbia employees described in subparagraph (A) of this paragraph.

(c) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-2801. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than 2 years nor more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-2802. Attempt to commit robbery.

Whoever attempts to commit robbery, as defined in § 22-2801, by an overt act, shall be imprisoned for not more than 3 years or be fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-2803. Carjacking.

(a)(1) A person commits the offense of carjacking if, by any means, that person knowingly or recklessly by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, or attempts to do so, shall take from another person immediate actual possession of a person's motor vehicle.

(2) A person convicted of carjacking shall be fined not more than the amount set forth in § 22-3571.01 and be imprisoned for a mandatory-minimum term of not less than 7 years and a maximum term of not more than 21 years, or both.

(b)(1) A person commits the offense of armed carjacking if that person, while armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switch-blade knife, razor, blackjack, billy, or metallic or other false knuckles), commits or attempts to commit the offense of carjacking.

(2) A person convicted of armed carjacking shall be fined not more than the amount set forth in § 22-3571.01 and be imprisoned for a mandatory-minimum term of not less than 15 years and a maximum term of not more than 40 years, or both. However, the court may impose a prison sentence in excess of 30 years only in accordance with § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), armed carjacking is a Class A felony.

(c) Notwithstanding any other provision of law, a person convicted of carjacking shall not be released from prison prior to the expiration of 7 years from the date of the commencement of the

sentence, and a person convicted of armed carjacking shall not be released from prison prior to the expiration of 15 years from the date of the commencement of the sentence.

§ 22-3601. Enhanced penalty for crimes committed against senior citizen victims.

(a) Any person who commits any offense listed in subsection (b) of this section against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 1 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) of this section shall apply to the following offenses:

Abduction, arson, aggravated assault, assault with a dangerous weapon, assault with intent to kill, commit first degree sexual abuse, or commit second degree sexual abuse, assault with intent to commit any other offense, burglary, carjacking, armed carjacking, extortion or blackmail accompanied by threats of violence, kidnapping, malicious disfigurement, manslaughter, mayhem, murder, robbery, sexual abuse in the first, second, and third degrees, theft, fraud in the first degree, and fraud in the second degree, identity theft, financial exploitation of a vulnerable adult or elderly person, or an attempt or conspiracy to commit any of the foregoing offenses.

(c) It is an affirmative defense that the accused knew or reasonably believed the victim was not 65 years old or older at the time of the offense, or could not have known or determined the age of the victim because of the manner in which the offense was committed. This defense shall be established by a preponderance of the evidence.

§ 22-3602. Enhanced penalty for committing certain dangerous and violent crimes against a citizen patrol member.

(a) For purposes of this section, the term “citizen patrol” means a group of residents of the District of Columbia organized for the purpose of providing additional security surveillance for certain District of Columbia neighborhoods with the goal of crime prevention. The term shall include, but is not limited to, Orange Hat Patrols, Red Hat Patrols, Blue Hat Patrols, or Neighborhood Watch Associations.

(b) Any person who commits any offense listed in subsection (c) of this section against a member of a citizen patrol (“member”) while that member is participating in a citizen patrol, or because of the member's participation in a citizen patrol, may be punished with a fine up to 1 1/2 times the maximum fine otherwise authorized for the offense or may be imprisoned for a term of up to 1 1/2 times the maximum term of imprisonment otherwise authorized for this offense, or both.

(c) The provisions of subsection (b) of this section shall apply to the following offenses: taking or attempting to take property from another by force or threat of force, forcible rape, or assault with intent to commit forcible rape, murder, mayhem, kidnapping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, assault with a deadly weapon, simple assault, aggravated assault, or a conspiracy to commit any of the foregoing offenses as defined by an Act of Congress or law of the District of Columbia if the offense is punishable by imprisonment for more than 1 year.

§ 22-3611. Enhanced penalties for crimes against minors.

(a) Any adult, being at least 2 years older than a minor, who commits a crime of violence against that minor may be punished by a fine of up to 1 ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 1 ½ times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) It is an affirmative defense that the accused reasonably believed that the victim was not a minor at the time of the offense. This defense shall be established by a preponderance of the evidence.

(c) For the purposes of this section, the term:

- (1) “Adult” means a person 18 years of age or older at the time of the offense.
- (2) “Crime of violence” shall have the same meaning as provided in § 23-1331(4).
- (3) “Minor” means a person under 18 years of age at the time of the offense.

§ 22-3751. Enhanced penalties for offenses committed against taxicab drivers.

Any person who commits an offense listed in § 22-3752 against a taxicab driver who, at the time of the offense, has a current license to operate a taxicab in the District of Columbia or any United States jurisdiction and is operating a taxicab in the District of Columbia may be punished by a fine of up to one and 1/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to one and 1/2 times the maximum term of imprisonment otherwise authorized for the offense, or both.

§ 22-3751.01. Enhanced penalties for offenses committed against transit operators and Metrorail station managers.

(a) Any person who commits an offense enumerated in § 22-3752 against a transit operator, who, at the time of the offense, is authorized to operate and is operating a mass transit vehicle in the District of Columbia, or against Metrorail station manager while on duty in the District of Columbia, may be punished by a fine of up to one and ½ times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to one and ½ times the maximum term of imprisonment otherwise authorized by the offense, or both.

(b) For the purposes of this section, the term:

- (1) “Mass transit vehicle” means any publicly or privately owned or operated commercial vehicle for the carriage of 6 or more passengers, including any Metrobus, Metrorail, Metroaccess, or DC Circulator vehicle or other bus, trolley, or van operating within the District of Columbia.
- (2) “Metrorail station manager” means any Washington Metropolitan Area Transit Authority employee who is assigned to supervise a Metrorail station from a kiosk at that station.
- (3) “Transit operator” means a person who is licensed to operate a mass transit vehicle.

§ 22-3752. Enumerated offenses.

The provisions of §§ 22-3751 and 22-3751.01 shall apply to the following offenses or any attempt or conspiracy to commit any of the following offenses: murder, manslaughter,

aggravated assault, assault with a dangerous weapon, mayhem or maliciously disfiguring, threats to do bodily harm, first degree sexual abuse, second degree sexual abuse, third degree sexual abuse, fourth degree sexual abuse, misdemeanor sexual abuse, robbery, carjacking, and kidnapping.

§ 22-4502. Additional penalty for committing crime when armed.

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, stun gun, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

(1) May, if such person is convicted for the first time of having so committed a crime of violence, or a dangerous crime in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to, and including, 30 years for all offenses except first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, and first degree child sexual abuse while armed, and shall, if convicted of such offenses while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 5 years; and

(2) Shall, if such person is convicted more than once of having so committed a crime of violence, or a dangerous crime in the District of Columbia, or an offense in any other jurisdiction that would constitute a crime of violence or dangerous crime if committed in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than 5 years and, except for first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed and first degree child sexual abuse while armed, not more than 30 years, and shall, if convicted of such second offense while armed with any pistol or firearm, be imprisoned for a mandatory-minimum term of not less than 10 years.

(3) Shall, if such person is convicted of first degree murder while armed, second degree murder while armed, first degree sexual abuse while armed, or first degree child sexual abuse while armed, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment of not less than the minimum and mandatory minimum sentences required by subsections (a)(1), (a)(2), (c) and (e) of this section and § 22-2104, and not more than life imprisonment or life imprisonment without possibility of release as authorized by § 24-403.01(b-2); § 22-2104; § 22-2104.01; and §§ 22-3002, 22-3008, and 22-3020.

(4) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offenses defined by this section are Class A felonies.

(b) Repealed.

(c) Any person sentenced pursuant to paragraph (1), (2), or (3) of subsection (a) above for a conviction of a crime of violence or a dangerous crime while armed with any pistol or firearm, shall serve a mandatory-minimum term of 5 years, if sentenced pursuant to paragraph (1) of subsection (a) of this section, or 10 years, if sentenced pursuant to paragraph (2) of subsection (a) of this section, and such person shall not be released, granted probation, or granted suspension of sentence, prior to serving such mandatory-minimum sentence.

(d) Repealed.

(e)(1) Subchapter I of Chapter 9 of Title 24 shall not apply with respect to any person sentenced under paragraph (2) of subsection (a) of this section or to any person convicted more than once of having committed a crime of violence or a dangerous crime in the District of Columbia sentenced under subsection (a)(3) of this section..

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) or (3) of subsection (a) of this section may not be suspended and probation may not be granted.

(e-1) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(f) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(g) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

§ 22-4514. Possession of certain dangerous weapons prohibited; exceptions.

(a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, knuckles, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing of any firearms; provided, however, that machine guns, or sawed-off shotgun, knuckles,s, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-4510.

(b) No person shall within the District of Columbia possess, with intent to use unlawfully against another, an imitation pistol, or a dagger, dirk, razor, stiletto, or knife with a blade longer than 3 inches, or other dangerous weapon.

(c) Whoever violates this section shall be punished as provided in § 22-4515 unless the violation occurs after such person has been convicted in the District of Columbia of a violation of this section, or of a felony, either in the District of Columbia or in another jurisdiction, in which case such person shall be imprisoned for not more than 10 years.

(d) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

APPENDIX B: RELEVANT STATISTICS

In the summer of 2017, the CCRC obtained data from the D.C. Superior Court pursuant to a data request filed earlier in the year. The data pertain to all adult criminal dispositions in Superior Court from 2010 through 2016.¹² The CCRC has performed analysis of this data, with help from the Lab in the Office of the City Administrator. The statistics provided below are based on the CCRC and Lab analysis, which is subject to the following caveats.

First, there is a possibility of error in the analysis due to CCRC misinterpretation of codes in the data. The Superior Court does not currently have a publicly-available data dictionary that explains the meaning of its data codes. While some data fields are easily identifiable on their own terms (e.g., “charge_code” refers to the statute citation within the D.C. Code for a given offense, while “charge_description” is the general name for the offense), others are not.

Second, some relevant statistics cannot be reported per the CCRC’s Data Use Agreement (DUA) with the Superior Court. One of the DUA’s terms requires that reports produced by CCRC will not contain a table with a cell indicating a value less than twenty. The purpose of this provision is to ensure that no statistical work is done on a sample size too small to give meaningful information. Therefore, in some of the figures below, if a value would be less than twenty, the figure will so indicate with the following notation: “< 20.”

Third, the D.C. Code separately codifies robbery in D.C. Code §22-2801 and attempted robbery in D.C. Code §22-2802. Figure 7, below, contains information coded for robbery under D.C. Code §22-2801 only.

With the above caveats, the CCRC analysis of the frequency of offenses against persons charges and convictions is as follows:

<i>Figure 1: Number of Adult Simple Assault Convictions (By Year)</i>		
Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	1722	611
2011	1864	580
2012	1936	541
2013	1767	513
2014	1850	624
2015	1790	586
2016	2234	647
Total	13163	4102

¹² Because of the nature of the request, some cases and charges from years prior to 2010 are included in the dataset. These cases appear where the final disposition or sentencing occurred in the 2010 to 2016 range. For example, a defendant charged with robbery in 2009 who is then sentenced for the case in 2010 would be present in the data the CCRC received. However, a defendant charged with robbery in 2009 who is sentenced for the case in 2009 would *not* be present. In other words, the dataset provides only a portion of cases prior to 2010. To ensure accuracy, charges occurring prior to 2010 are not included in the information below.

Figure 2: Number of Adult Felony Assault Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	165	87
2011	190	103
2012	193	93
2013	161	94
2014	170	87
2015	110	58
2016	114	55
Total	1103	577

Figure 3: Number of Adult Aggravated Assault Convictions (By Year)¹³

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	148	42
2011	139	57
2012	89	42
2013	98	53
2014	95	43
2015	77	36
2016	53	22
Total	699	295

Figure 4: Number of Adult Assault with a Dangerous Weapon Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	396	134
2011	388	153
2012	349	116
2013	350	148
2014	349	130
2015	385	145
2016	405	167
Total	2622	993

¹³ Combines multiple charge descriptions, including: “Aggravated Assault,” “Aggravated Assault Knowingly,” “Aggravated Aslt Knowingly Grave Risk,” and “Aggravated Aslt-Grave Risk.”

Figure 5: Number of Adult Assault with Intent to (AWI) Convictions (By Year)¹⁴

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	208	56
2011	196	58
2012	172	68
2013	193	82
2014	175	93
2015	110	32
2016	116	34
Total	1170	423

Figure 6: Number of Adult Assault on a Police Officer Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	911	344
2011	847	310
2012	890	319
2013	913	284
2014	923	298
2015	850	289
2016	1026	309
Total	6360	2153

Figure 7: Number of Adult Robbery Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	440	244
2011	439	232
2012	562	311
2013	445	247
2014	441	242
2015	433	215
2016	389	226
Total	3149	1717

¹⁴ This table includes: "Aslt W/I to Commit 3rd Degree Sex Abuse," "Assault w/Intent to Commit First Degree Sexual Abuse (Force)," "Assault w/Intent to Commit First Degree Sexual Abuse (Threatening)," "Assault W/I to Kill," "Aslt W/I to Commit First Deg Sex Abuse," "Assault W/I to Commit Robbery," "Asslt W/I to Commit First Deg Child Abuse," Aslt W/I to Commit Mayhem," "Assault W/I To Commit Any Other Offense."

Figure 8: Number of Adult Unarmed Carjacking Convictions (By Year)¹⁵

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	33	< 20
2011	26	< 20
2012	< 20	< 20
2013	< 20	< 20
2014	< 20	< 20
2015	< 20	< 20
2016	< 20	< 20
Total	118	68

Figure 9: Number of Adult Misdemeanor Threats Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	644	198
2011	622	190
2012	611	204
2013	618	179
2014	702	215
2015	619	187
2016	729	168
Total	4545	1341

Figure 10: Number of Adult Felony Threats Convictions (By Year)

Year	Number of Charges	Number of Charges Resulting in Guilty Verdict
2010	104	22
2011	156	47
2012	108	42
2013	101	< 20
2014	85	23
2015	59	< 20
2016	98	28
Total	711	200

¹⁵ CCRC also constructed a table displaying the number of adult, armed carjacking convictions by year. However, all the cells are populated by numbers less than twenty, meaning that the number of charges and convictions for each year is less than twenty. The total number of armed carjacking charges is seventy-two, and the total number of guilty verdicts is also less than twenty.