



D.C. Criminal Code Reform Commission

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To: Code Revision Advisory Group (Advisory Group)
From: Criminal Code Reform Commission (CCRC)
Date: March 16, 2018
Re: Advisory Group Memorandum #17, Supplemental Materials to the First Drafts of Reports #19-20.

This memorandum supplements the first drafts of reports #19-20,¹ which provide recommendations for murder, manslaughter, negligent homicide, child abuse, child neglect, abuse of a vulnerable adult or elderly person, and neglect of a vulnerable adult or elderly person 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 #19-20, 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.

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

The RCC First Draft of Report #20 makes use of five new defined terms: "adult," "child"; "duty of care"; "elderly person"; and "serious mental injury." The draft statutory definitions and corresponding Commentary for these five new terms is provided in the Second Draft of Report #14, *Definitions for Offenses Against Persons* as RCC § 22A-1001(22)-(26).³ The Second Draft of Report #14 makes no other changes to the First Draft of Report #14 besides the addition of

¹ First Draft of Report #19, Homicide; First Draft of Report #20, Abuse & Neglect of Children, Elderly, and Vulnerable Adults.

² The recommendations in draft reports #19-20 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. The agency recently received an updated dataset from Superior Court, but has not yet fully reviewed or analyzed the data. Some preliminary information on frequency of charges and convictions based on the dataset we have from the Superior Court is provided in Appendix B.

³ RCC § 22A-1001: (22) "Adult" means a person who is 18 years of age or older." (23) "Child" means a person who is less than 18 years of age. (24) "Duty of care" means a legal responsibility for the health, welfare, or supervision for another person. (25) "Elderly person" means a person who is 65 years of age or older. (26) "Serious mental injury" means substantial, prolonged harm to a person's psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

RCC § 22A-1001(22)-(26), and revising the commentary for “vulnerable adult” to reflect that the term is now used in the revised abuse of a vulnerable adult or elderly person statute and the revised neglect of a vulnerable adult or elderly person statute. The Second Draft of Report #14 does not reflect the Advisory Group’s March 9, 2018 written comments on the First Draft, but the Third Draft of Report #14 will be based on review of those comments.

FIRST DRAFT OF REPORT #19, *HOMICIDE*

Summary

The RCC First Draft of Report #19 makes several significant changes to the law of homicide in the District. The RCC re-organizes murder and manslaughter offenses so that the penalty gradations generally vary by the culpable mental state that is applicable, with exceptions in most gradations to include killings committed with a lower culpable mental state but with one or more aggravating circumstances.

Purposely or knowingly causing the death of another now generally constitutes first degree murder, regardless of premeditation and deliberation. Unintentional forms of murder—either recklessly causing death with extreme indifference to human life, or while committing or attempting to commit a specified felony—now are generally categorized as second degree murder. Aggravated murder criminalizes committing first degree murder with proof of at least one aggravating factor, and first degree murder includes committing second degree murder with proof of at least one aggravating circumstance.

Manslaughter is also divided into gradations to replace the current voluntary and involuntary manslaughter offenses. First degree manslaughter is similar to the current voluntary manslaughter offense. Second degree manslaughter more significantly changes current District law by requiring the defendant *recklessly* cause death of another, and replaces “misdemeanor manslaughter” and “criminal negligence manslaughter,” the two versions of involuntary manslaughter recognized under current law. In addition, aggravated manslaughter criminalizes committing first degree manslaughter with proof of at least one aggravating circumstance. The RCC’s negligent homicide offense replaces the current negligent homicide offense, but requires that the defendant cause the death with a culpable mental state of negligence as defined in the RCC⁴, instead of civil tort negligence, and no longer is limited to deaths caused by operation of a motor vehicle. The RCC’s reorganization of homicide offenses improves the proportionality of penalties as compared to the current homicide offenses. Under current law, unintentional killings may be punished as severely, or more severely, than purposeful killings.⁵ By contrast, the RCC’s homicide offenses roughly correspond to the hierarchy of culpable mental states defined the General Part.

⁴ RCC § 22A-206.

⁵ For example, accidentally causing the death of another while committing robbery may be punished more severely than purposely causing the death of another without premeditation. Purposely causing the death of another without premeditation may be punished as severely as recklessly causing the death of another under circumstances manifesting extreme indifference to human life.

The RCC also incorporates various penalty enhancements and aggravating circumstances that exist in current law as elements of the homicide offenses. Under current law, two separate statutes list aggravating circumstances applicable to first or second degree murder that authorize a maximum lifetime sentence.⁶ In addition, separate penalty enhancements based on the defendant being armed with a dangerous weapon, or the victim’s status as an elderly person, minor, or otherwise apply broadly to crimes of violence, including homicide. In parallel fashion to the RCC’s treatment of penalty enhancements in the RCC robbery and assault statutes, the revised homicide offenses incorporate the “while armed” penalty enhancement under current D.C. Code 22-4502 by increasing penalties for killing by means of a dangerous weapon. Grading factors based on causing death of a “protected person” —a 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 In addition, the aggravating circumstance for murder based on the decedent being a law enforcement officer or public safety employee replaces the current murder of a law enforcement officer offense.⁸

Incorporating the D.C. Code’s many aggravating circumstances and enhancement provisions into the revised homicide offenses has many benefits, including the specification of culpable mental states as to enhancement elements, clarification of relevant grading factors, and in many instances more proportionate penalties. However, a different organizational strategy could be used, retaining some or all enhancements as separate statutory provisions, and 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 homicide 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).⁹ 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 murder, armed manslaughter, 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 homicide offenses that incorporate use of a dangerous

⁶ D.C. Code §§ 22-2104.01, 24-403.01.

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

⁸ D.C. Code § 22-2106.

⁹ 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.”).

weapon in their enhancements, such a PFCOV-type offense would ensure all¹⁰ 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 homicide offense statutes more acceptable.

Possible Issues for Subsequent Drafts

There are several issues which the CCRC staff may address in subsequent draft reports, and specific statutory language and policy decisions may depend on how other offenses or general provisions are drafted. Advisory Group feedback on these possibilities would be much appreciated.

First, staff may draft additional limitations to accomplice liability for felony murder. Under current law, an accomplice to the predicate felony may be held liable for felony murder if his or her co-felon committed the fatal act as long as death was “foreseeable” even if there was no agreement to kill, and the accomplice “attempts to prevent the homicide.”¹¹ CCRC staff is currently developing statutory language defining accomplice liability, and in light of those recommendations, staff may propose additional language pertaining to accomplice liability for felony murder.

Second, the predicate offenses for felony murder include some offenses that the CCRC staff has not yet reviewed fully. Specifically, staff has not reviewed or proposed revised language for kidnapping or sex offenses, and may propose updates to the revised burglary offense, creating an aggravated form that requires proof of being armed with a dangerous weapon. When staff has proposed revisions to those offenses, it may be necessary to revisit which offenses or offense grades to include in the list of specified offenses for felony murder.

Third, CCRC staff is considering drafting a definition for the word “person” to be used across all offenses against persons. At this time the term is undefined in the RCC, and it is unclear if the word “person” includes corporations, animals, or the unborn.

Fourth, subsequent drafts may address whether, and under what circumstances, inducing another person to commit suicide may constitute criminal homicide. Such provisions would necessarily take into account the “Death with Dignity Act” codified under Chapter 6B of the D.C. Code.

Fifth, staff may revisit the decision in the current draft to eliminate a separate hearing to determine if an aggravating circumstance was present that authorizes imposition of a life sentence. Advisory Group comments on the procedural costs and benefits of such a hearing

¹⁰ 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).

¹¹ *Lee v. United States*, 699 A.2d 373, 385 (D.C. 1997).

would be valuable. Also, when assessing penalty proportionality, staff will also consider if any additional provisions are required to prevent unconstitutional sentences under *Graham v. Florida*, 560 U.S. 48 (2010).

Sixth, based on the development of the revised homicide statutes, CCRC staff will reexamine whether and how it may be necessary to revise other offenses against persons statutes and Commentary regarding the culpable mental state necessary with respect to use of a dangerous weapon. The revised homicide statutes list as one possible aggravating circumstance that, “In fact, the death is caused by means of a dangerous weapon.” The homicide statutes use of “in fact” in the aggravating circumstance does not lower the culpable mental state otherwise necessary as to causing the death of another as specified in each gradation.¹² As explained in the corresponding Commentary entries’ explanatory notes, proof of the aggravating circumstance concerning use of a dangerous weapon does not require any culpable mental state as to whether use of the dangerous weapon caused the death. Mere use of the dangerous weapon to cause the death is sufficient to prove the aggravating circumstance. In contrast, the RCC § 22A-1202 Assault draft statute and other provisions in current drafts refers to engaging in conduct “by means of what, in fact, is a dangerous weapon.” The culpable mental states of recklessness or recklessness under circumstances manifesting extreme indifference to human life in the RCC § 22A-1202 Assault draft currently extends to the words “by means of,” whereas the fact that the object used is a “dangerous weapon” is a matter of strict liability. CCRC staff will reexamine whether and how the RCC § 22A-1202 Assault draft statute and other provisions in current drafts may be changed to improve consistency with the homicide offense and avoid unnecessary litigation over causation in situations involving the use of a dangerous weapon in conjunction with other conduct (e.g. a punch) that results in physical harm. CCRC staff review of this matter will also include review of the Advisory Group’s March 9, 2018 written comments on the First Drafts of RCC § 22A-1202 Assault and other offenses against persons.

Seventh, the first draft includes as an aggravating circumstance that the murder was committed by means of a dangerous weapon. However, staff is undertaking additional research to determine the basis, weight, and relative importance of this aggravating factor compared to other aggravators. Homicide offenses present a unique circumstance where there is no greater risk of harm to the victim from the use of a dangerous weapon, as the maximum harm, death, is committed.

Eighth, the first draft does not address possible merger issues. Staff does not anticipate change to current law with respect to merger of homicide offense related to a single death, or to merger of felony murder and the predicate felony. However, staff may revisit the decision in the first draft to omit as an aggravating factor for murder that the death was caused while committing or attempting to commit kidnapping, abduction, arson, robbery, rape, or other sexual offense.¹³ Per the first draft, committing a murder while committing or attempting to commit one of these offenses is not an aggravating circumstance, but a defendant could be convicted of both murder and the separate felony. In the context of assessing proportionate penalties, it may be necessary

¹² RCC § 22A-1101(a)(1); RCC § 22A-1101(b)(1); RCC § 22A-1101(c); RCC § 22A-1102 (a)(1)-(3); RCC § 22A-1102(b)(1)-(3); RCC § 22A-1102(b)(4)(A).

¹³ D.C. Code § 22-2104.01.

to revisit whether to including this aggravating factor in the RCC murder statutes, but requiring that the separate conviction merges with murder.

Ninth, the first draft does not address the effect of intoxication in the context of extreme emotional disturbance. The commentary specifies that certain physical traits or emotional states should be taken into account in determining whether the cause of the extreme emotional disturbance was reasonable, but does not clarify whether intoxication, voluntary or involuntary, should be taken into account. It may be necessary to clarify whether, and how, intoxication is relevant to extreme emotional disturbance mitigation.

FIRST DRAFT OF REPORT #20, ABUSE & NEGLECT OF CHILDREN, ELDERLY, AND VULNERABLE ADULTS

Summary

The RCC First Draft of Report #20 makes several significant changes to the law of abuse and neglect of children, the elderly, and vulnerable adults in the District. The RCC re-organizes and clarifies the distinction between abuse and neglect statutes such that abuse statutes are limited to actual physical or mental harms, while the neglect statutes criminalize creating, or failing to mitigate or remedy, risks of physical or mental harm to a person (a child, elderly person, or vulnerable adult) to whom one has a duty of care. In addition, the abuse statutes are primarily graded according to the three main types of bodily harm (serious bodily injury, significant bodily injury, and bodily injury) that are used to grade the current and revised assault offenses. These changes clarify the culpable mental states and other elements of the revised child abuse, child neglect, vulnerable adult or elderly person abuse, and vulnerable adult or elderly person neglect statutes (collectively “revised abuse and neglect statutes”), improve their consistency with similar assault offenses, and, by distinguishing degrees of harm, improve penalty proportionality.

Possible Issues for Subsequent Drafts

First, based on the development of the revised abuse and neglect statutes, the CCRC staff expects to further codify a parental discipline defense in RCC statutes. The first draft of the revised child abuse statute codifies a parental discipline defense that is substantially similar to the defense as recognized in current DCCA case law. Current DCCA case law also recognizes that the parental discipline defense applies to simple assault,¹⁴ and the revised child abuse statute extends the parental discipline defense to conduct that does not result in bodily injury to the child.¹⁵ A future report will recommend codifying the parental discipline defense for the revised assault statute and other revised offenses against persons, or recommend some other mechanism by which to clarify the offenses to which the parental discipline defense applies.

¹⁴ See, e.g., *Longus v. United States*, 935 A.2d 1108, 1111 (D.C. 2007) (“A defendant who is charged with assault may raise the privilege of parental discipline.”).

¹⁵ Subsection f)(1)(A)(iii) of the revised child abuse statute extends the parental discipline defense to harassment (RCC § 22A-XXXX), menacing (RCC § 22A-1203), threats (RCC § 22A-1204), or first degree offensive physical contact (RCC § 22A-1205(a)).

Second, the revised assault statute (RCC § 22A-1202) contains gradations that elevate the penalty for complainants that are a “protected person.” The definition of “protected person” in RCC § 22A-1001 includes several of the individuals that are covered under the revised abuse and neglect statutes: people less than 18 years old when, in fact, the defendant is at least 18 years old and at least 2 years older than the other person; people 65 years of age or older; and vulnerable adults. The definition of “protected person” in the revised assault statute (and its consequent penalty enhancement for the revised assault statute) overlaps with the revised abuse and neglect statutes. CCRC staff will evaluate how to address this overlap in a future report.

Third, based on the development of the revised abuse and neglect statutes, CCRC staff is considering whether to recommend changing the definition of effective consent to exclude consent by minors (under 18) and/or legally incompetent persons. Some jurisdictions¹⁶ address such matters by statute. The matter is particularly complex with respect to minors, and may vary for different offenses against persons. E.g., defining “effective consent” for purposes of sexual activities may also pose special difficulties and necessitate a special definition for sexual offenses. However the RCC does or does not address the matter, care is necessary to avoid negating the rights of minors and legally incompetent persons.¹⁷

Fourth, the First Draft of Report #20 for the revised abuse and neglect offenses implicates and briefly discusses omission liability. Both the revised child neglect and vulnerable adult or elderly person neglect statutes prohibit creating a risk of harm, as well as failing to mitigate or remedy a risk of harm. The draft Commentary makes clear that the “failed to mitigate or remedy” language in these draft statutes is technically unnecessary under the general provision in RCC § 22A-202 regarding omission liability. However, forthcoming revisions to RCC § 202(c) in the general part will make the general principle of omission liability—that omissions are equivalent to affirmative conduct and sufficient for liability for any offense in the RCC where the defendant had a duty of care to the complainant—even more explicit.

CCRC staff expects the updated draft of RCC § 202(c) will incorporate OAG’s recommended revision to the definition of result element, which currently utilizes the undefined term “conduct.” More specifically, RCC § 201(c)(2) currently reads: “‘Result element’ means any consequence that must have been caused by a person’s *conduct* in order to establish liability for an offense.” OAG recommended replacing this italicized term—which is not defined elsewhere—with the phrase “act or omission.” Staff agrees with OAG that the definition of result element would be clearer if the term “conduct” is replaced with the phrase “act or omission,” such that “[r]esult element” would be defined as “any consequence that must have been caused by a person’s *act or omission, as defined in § 22A-202*, in order to establish liability

¹⁶ 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.”

¹⁷ 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.

for an offense.” This revised definition, when read in relevant context, will help to clarify that omissions which cause statutorily prohibited harm provide a viable basis for criminal liability. To add further clarity on this point, however, the updated draft of RCC § 202(c) will also incorporate a second related revision to the commentary on RCC § 202(c) (definition of omission). More specifically, the end of that commentary entry will incorporate the following statement: “Proof of a person’s omission, if consistent with the requirements set forth in this subsection, may provide the basis for liability for any criminal offense.”

CCRC staff may also update the Commentary for RCC § 204, the draft general provision regarding causation, to better explain the relationship between that requirement and omission liability. Application of the factual causation requirement to prosecutions premised on omission liability is conceptually different but substantively the same. Factual causation generally presumes a chain of causal forces that affirmatively change the circumstances of the world. In contrast, omissions do not affirmatively change the circumstances of the world; at most, they can be seen as failures to interfere with the changes being made by other forces. For example, a parent may kill a child by omission by not feeding him and permitting him to starve; or by letting a child who cannot swim jump into a pool and permitting him to drown. The parent’s failure to feed or rescue the child is a factual cause of the child’s death in each case; however, so is the failure of every other person in the world, since the intervention by anybody could have stopped the starvation or drowning. As a result, the factual causation requirement will rarely be a useful test for assigning liability in the context of prosecutions premised on omission liability. At the same time, it is certainly possible for an omission to fail to meet the factual causation requirement, such as, for example, where a parent fails to seek medical treatment of a child’s illness under circumstances where such medical treatment could not have saved, prolonged, or otherwise improved the quality of that child’s life. In this situation, it cannot be said that, but for the parent’s failure to seek medical attention, the child would have avoided harm. It therefore follows that this parent, if prosecuted for a crime for which causing harm—whether serious mental injury, bodily injury, or death—is a statutorily required element, cannot be held liable due to the absence of factual causation.

Fifth, based on the development of the revised abuse and neglect offenses, the CCRC staff may recommend modification of the effective consent defense codified in the revised assault statute in RCC § 22A-1202. RCC § 22A-1202(i)(1)(A) now states that the defense does not apply if “[t]he conduct did not inflict significant bodily injury or serious bodily injury, or involve the use of a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded.” And the draft statutory language in Report #20 for the effective consent and parental discipline defenses in the revised abuse and neglect offenses similarly excludes conduct that involves the use of a firearm. However, CCRC staff is considering whether the effective consent defense in both the revised assault statute and the revised abuse and neglect statutes should exclude conduct that involves a “dangerous weapon” rather than just a firearm.

APPENDIX A: RELEVANT DISTRICT CRIMINAL STATUTES

§ 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.

§ 22-1101. Child Cruelty.

- (a) A person commits the crime of cruelty to children in the first degree if that person intentionally, knowingly, or recklessly tortures, beats, or otherwise willfully maltreats a child under 18 years of age or engages in conduct which creates a grave risk of bodily injury to a child, and thereby causes bodily injury.
- (b) A person commits the crime of cruelty to children in the second degree if that person intentionally, knowingly, or recklessly:
 - (1) Maltreats a child or engages in conduct which causes a grave risk of bodily injury to a child;
 - or

(2) Exposes a child, or aids and abets in exposing a child in any highway, street, field house, outhouse or other place, with intent to abandon the child.

(c)(1) Any person convicted of cruelty to children in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 15 years, or both.

(2) Any person convicted of cruelty to children in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 10 years, or both.

§ 22-1102. Refusal or neglect of guardian to provide for child under 14 years of age.

Any person within the District of Columbia, of sufficient financial ability, who shall refuse or neglect to provide for any child under the age of 14 years, of which he or she shall be the parent or guardian, such food, clothing, and shelter as will prevent the suffering and secure the safety of such child, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be subject to punishment by a fine of not more than the amount set forth in § 22-3571.01, or by imprisonment in the Workhouse of the District of Columbia for not more than 3 months, or both such fine and imprisonment.

§ 22-2101. Murder in the first degree—Purposeful killing; killing while perpetrating certain crimes.

Whoever, being of sound memory and discretion, kills another purposely, either of deliberate and premeditated malice or by means of poison, or in perpetrating or attempting to perpetrate an offense punishable by imprisonment in the penitentiary, or without purpose to do so kills another in perpetrating or in attempting to perpetrate any arson, as defined in § 22-301 or § 22-302, first degree sexual abuse, first degree child sexual abuse, first degree cruelty to children, mayhem, robbery, or kidnaping, or in perpetrating or attempting to perpetrate any housebreaking while armed with or using a dangerous weapon, or in perpetrating or attempting to perpetrate a felony involving a controlled substance, is guilty of murder in the first degree. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the first degree is a Class A felony.

§ 22-2102. Murder in the first degree--Placing obstructions upon or displacement of railroads.

Whoever maliciously places an obstruction upon a railroad or street railroad, or displaces or injures anything appertaining thereto, or does any other act with intent to endanger the passage of any locomotive or car, and thereby occasions the death of another, is guilty of murder in the first degree. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the first degree is a Class A felony.

§ 22-2103. Murder in the second degree.

Whoever with malice aforethought, except as provided in §§ 22-2101, 22-2102, kills another, is guilty of murder in the second degree. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the second degree is a Class A felony.

§ 22-2104. Penalty for murder in first and second degrees.

- (a) The punishment for murder in the first degree shall be not less than 30 years nor more than life imprisonment without release, except that the court may impose a prison sentence in excess of 60 years only in accordance with § 22-2104.01 or § 24-403.01(b-2). The prosecution shall notify the defendant in writing at least 30 days prior to trial that it intends to seek a sentence of life imprisonment without release as provided in § 22-2104.01; provided that, no person who was less than 18 years of age at the time the murder was committed shall be sentenced to life imprisonment without release.
- (b) Notwithstanding any other provision of law, a person convicted of murder in the first degree shall not be released from prison prior to the expiration of 30 years from the date of the commencement of the sentence.
- (c) Whoever is guilty of murder in the second degree shall be sentenced to a period of incarceration of not more than life, except that the court may impose a prison sentence in excess of 40 years only in accordance with § 24-403.01(b-2).
- (d) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the first degree and murder in the second degree are Class A felonies.
- (e) 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.

§ 22-2104.01. Sentencing procedure for murder in the first degree.

- (a) If a defendant is convicted of murder in the first degree, and if the prosecution has given the notice required under § 22-2104(a), a separate sentencing procedure shall be conducted as soon as practicable after the trial has been completed to determine whether to impose a sentence of more than 60 years up to, and including, life imprisonment without possibility of release.
- (b) In determining the sentence, a finding shall be made whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:
 - (1) The murder was committed in the course of kidnapping or abduction, or an attempt to kidnap or abduct;
 - (2) The murder was committed for hire;
 - (3) The murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;
 - (4) The murder was especially heinous, atrocious, or cruel;
 - (5) The murder was a drive-by or random shooting;
 - (6) There was more than 1 offense of murder in the first degree arising out of 1 incident;
 - (7) The murder was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));
 - (8) The murder was committed while committing or attempting to commit a robbery, arson, rape, or sexual offense;
 - (9) The murder was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding, or the victim was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;
 - (10) The murder victim was especially vulnerable due to age or a mental or physical infirmity;
 - (11) The murder is committed after substantial planning; or

(12) At the time of the commission of the murder, the defendant had previously been convicted and sentenced, whether in a court of the District of Columbia, of the United States, or of any state, for (A) murder, (B) manslaughter, (C) any attempt, solicitation, or conspiracy to commit murder, (D) assault with intent to kill, (E) assault with intent to murder, or (F) at least twice, for any offense or offenses, described in § 22-4501(f), whether committed in the District of Columbia or any other state, or the United States. A person shall be considered as having been convicted and sentenced twice for an offense or offenses when the initial sentencing for the conviction in the first offense preceded the commission of the second offense and the initial sentencing for the second offense preceded the commission of the instant murder.

(c) The finding shall state in writing whether, beyond a reasonable doubt, 1 or more of the aggravating circumstances exist. If 1 or more aggravating circumstances exist, a sentence of more than 60 years up to, and including, life imprisonment without release may be imposed.

(d) If the trial court is reversed on appeal because of error only in the separate sentencing procedure, any new proceeding before the trial court shall pertain only to the issue of sentencing.

§ 22-2105. Penalty for manslaughter.

Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 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.

§ 22-2106. 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.

§ 22-3601. 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.

§ 24-403.01. Sentencing, supervised release, and good time credit for felonies committed on or after August 5, 2000.

(b-2)(1) The court may impose a sentence in excess of 60 years for first degree murder or first degree murder while armed, 40 years for second degree murder or second degree murder while armed, or 30 years for armed carjacking, first degree sexual abuse, first degree sexual abuse while armed, first degree child sexual abuse or first degree child sexual abuse while armed, only if:

(A) Thirty-days prior to trial or the entry of a plea of guilty, the prosecutor files an indictment or information with the clerk of the court and a copy of such indictment or information is served on the person or counsel for the person, stating in writing one or more aggravating circumstances to be relied upon; and

(B) One or more aggravating circumstances exist beyond a reasonable doubt.

(2) Aggravating circumstances for first degree murder are set forth in § 22-2104.01. Aggravating circumstances for first degree sexual abuse and first degree child sexual abuse are set forth in § 22-3020. In addition, for all offenses, aggravating circumstances include:

(A) The offense was committed because of the victim's race, color, religion, national origin, sexual orientation, or gender identity or expression (as defined in § 2-1401.02(12A));

(B) The offense was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding or was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;

(C) The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody;

(D) The offense was especially heinous, atrocious, or cruel;

(E) The offense involved a drive-by or random shooting;

(F) The offense was committed after substantial planning;

(G) The victim was less than 12 years old or more than 60 years old or vulnerable because of mental or physical infirmity; or

(H) Except where death or serious bodily injury is an element of the offense, the victim sustained serious bodily injury as a result of the offense.

(3) This section does not limit the imposition of a maximum sentence of up to life imprisonment without possibility of release authorized by § 22-1804a; § 22-2104.01; § 22-2106; and § 22-3020.

§ 50-2203.01. Negligent homicide.

Any person who, by the operation of any vehicle in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, including a pedestrian in a marked crosswalk, or unmarked crosswalk at an intersection, shall be guilty of a felony, and shall be punished by imprisonment for not more than 5 years or by a fine of not more than the amount set forth in § 22-3571.01 or both.

APPENDIX B: RELEVANT STATISTICS

In early 2018, the CCRC received 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 2016.¹⁸ The CCRC has performed preliminary 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.”

With these caveats, the CCRC analysis of the frequency of offenses against persons charges and convictions is as follows on the next page:

¹⁸ 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.

2010-2016 (7 years) Total Adult Dispositions in Superior Court			
Charge Code	Charge Description	# Charges	# Convictions
	Homicide		
22DC2101-X	Felony Murder W/Armed	<20	<20
	Felony Murder	86	25
22DC2101-Y	Murder I	307	108
22DC2103	Murder II	275	215
22DC2105-V	Voluntary Manslaughter	158	153
22DC2105-I	Involuntary Manslaughter	26	20
50DC2203.01 X	Negligent Homicide -Felony	<20	<20
	Abuse & Neglect Elderly & Vulnerable Adults		
22DC933	Criminal Abuse of a Vulnerable Adult or Elderly Person	35	<20
22DC934	Criminal Negligence of a Vulnerable Adult or Elderly Person	<20	<20
	Abuse & Neglect Children		
22DC1101	Cruelty to Children (Unspecified grade)	<20	<20
22DC1101A1-X	1st Degree Cruelty to Children (Grave Risk)	29	<20
22DC1101A1-Y	1st Degree Cruelty to Children	21	<20
22DC1101B	Second Degree Cruelty to Children Unspec.	168	61
22DC1101B1	Second Degree Cruelty to Children Grave Risk	61	30
22DC1101B2	Second Degree Cruelty to Children-Abandonment	<20	<20