



D.C. Criminal Code Reform Commission
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ADVISORY GROUP MEMORANDUM #34

To: Code Revision Advisory Group
From: Criminal Code Reform Commission (CCRC)
Date: May 18, 2020
Re: Supplemental Materials to the Second Draft of Report #27.

This Advisory Group memorandum supplements the Second Draft of Report #27—*Human Trafficking and Related Statutes*. Appendices attached to this memorandum include red-linked versions of updated human trafficking statutes, and selected portions of the commentary that have been updated to reflect statutory changes. The Second Draft of Report #27 is not in response to Advisory Group comments with respect to the First Draft of Report #50; the CCRC will respond to those comments at a later date.

APPENDIX A. RED-INK VERSIONS OF PRIOR DRAFTS OF CHAPTER 16 STATUTES.

RCC § 22E-1601. Forced Labor or Services.

(a) *Offense.* An actor commits forced labor or services when that actor:

- (1) Knowingly causes a person to engage in labor or services;
- (2) By means of ~~an explicit or implicit~~ coercive threat, **express or implied**, or debt bondage.

(b) *Exclusions from Liability.* A person does not commit an offense under this section for threats of legal employment actions, such as threats of termination, demotion, reduced pay or benefits, or scheduling changes, in order to compel an employee to provide labor or services.

(c) *Penalties.*

(1) Subject to any general penalty enhancements under this title, and the offense penalty enhancement in subsection (c) of this section, forced labor or services is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) ~~Offense~~ **Penalty Enhancements.** In addition to any general penalty enhancements under this title, the penalty classification for any gradation of this offense is increased in severity by one class when, in addition to the elements of the offense:

- (A) The actor was reckless as to the fact that the complainant was under 18 years of age; or
- (B) The actor held the complainant, or caused the complainant to provide services, for more than 180 days.

(d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in RCC § 22E-206; the terms “coercive threat” “debt bondage” “labor,” and “services,” have the meanings specified in RCC § 22E-701.

RCC § 22E-1602. Forced Commercial Sex.

(a) *Offense.* An actor commits forced commercial sex when that actor:

- (1) Knowingly causes the complainant to engage in **or submit to** a commercial sex act ~~other than with the actor~~ with or for another person;
- (2) ~~By means of an explicit or implicit coercive threat or debt bondage.~~ In one or more of the following ways:
 - (A) ~~By using physical force that causes bodily injury to, overcomes, or restrains any person;~~
 - (B) ~~By making a coercive threat, express or implied;~~
 - (C) ~~By debt bondage; or~~
 - (D) ~~By administering or causing to be administered to the complainant, without the complainant’s effective consent, a drug, intoxicant, or other substance:~~
 - (i) ~~With intent to impair the complainant’s ability to express unwillingness to engage in the commercial sex act; and~~
 - (ii) ~~In fact, the drug, intoxicant, or other substance renders the complainant:~~
 - (I) ~~Asleep, unconscious, substantially paralyzed, or passing in and out of consciousness;~~

- (II) Substantially incapable of appraising the nature of the commercial sex act; or
- (III) Substantially incapable of communicating unwillingness to engage in the commercial sex act.

(b) *Penalties.*

- (1) Subject to the general penalty enhancements in under this title, and the offense penalty enhancement in subsection (c) of this section, forced commercial sex is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (2) ~~Offense~~ *Penalty Enhancements.* In addition to any general penalty enhancements in under this title, the penalty classification for any gradation of this offense is increased in severity by one class when, in addition to the elements of the offense:
 - (A) The actor was reckless as to the fact that the complainant was under 18 years of age, or, in fact, the complainant was under 12 years of age; or
 - (B) The actor recklessly held the complainant, or caused the complainant to provide commercial sex acts, for a total of more than 180 days.
- (c) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC §22E-207; the terms “business,” “coercive threat” “commercial sex act,” and “debt bondage” have the meanings specified in RCC § 22E-701.

RCC § 22E-1603. Trafficking in Labor or Services.

(a) *Offense.* An actor commits trafficking in labor or services when that actor:

- (1) Knowingly recruits, entices, houses, transports, provides, obtains, or maintains by any means, a person;
- (2) With intent that, as a result, the person will be caused to provide labor or services by means of ~~an explicit or implicit~~ coercive threat, ~~express or implied~~, or debt bondage.

(b) *Penalties.*

- (1) Subject to the general penalty enhancements under this title, and the offense penalty enhancement in subsection (c) of this section, trafficking in labor or services is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (2) *Penalty Enhancements.* In addition to any general penalty enhancements in under this title, the penalty classification for any gradation of this offense is increased in severity by 1 class when, in addition to the elements of the offense, 1 or more of the following is proven:
 - (A) The actor was reckless as to the fact that the complainant was under 18 years of age; or
 - (B) The actor held the complainant, or caused the complainant to provide services, for a total of more than 180 days.
- (c) *Definitions.* The terms “intent,” “knowingly,” and “recklessly” have the meanings specified in RCC § 22E-206; the terms “actor,” “coercive threat,” “commercial sex act,” “complainant,” and “debt bondage” have the meanings specified in RCC § 22E-701.

RCC § 22E-1604. Trafficking in ~~Forced~~ Commercial Sex.

- (a) *Offense.* An actor commits trafficking in ~~forced~~ commercial sex when that actor:
- (1) Knowingly recruits, entices, houses, transports, provides, obtains, or maintains by any means, the complainant;
 - (2) With intent that, as a result, the complainant will be caused to engage in ~~or submit to~~ a commercial sex act ~~other than with the actor~~ with or for another person ~~by means of an explicit or implicit coercive threat or debt bondage~~; in one or more of the following ways:
 - (A) ~~By physical force that causes bodily injury to, overcomes, or restrains any person;~~
 - (B) ~~By a coercive threat, express or implied;~~
 - (C) ~~By debt bondage;~~
 - (D) ~~By a drug, intoxicant, or other substance, administered to the complainant without the complainant's effective consent.~~
- (b) *Penalties.*
- (1) Subject to any general penalty enhancements under this title, and the offense penalty enhancement in paragraph (b)(1) of this section, trafficking in ~~forced~~ commercial sex is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) *Penalty ~~E~~nhancements.* In addition to any general penalty enhancements under this title, the penalty classification for any gradation of this offense is increased in severity by 1 class when, in addition to the elements of the offense, 1 or more of the following is proven:
 - (A) The actor was reckless as to the fact that the complainant was under 18 years of age, or, in fact, the complainant was under 12 years of age; or
 - (B) The actor recklessly held the complainant, or caused the complainant to provide commercial sex acts, for a total of more than 180 days.
- (c) *Definitions.* The terms “intent,” “knowingly,” and “recklessly,” have the meanings specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC § 22E-207; the terms “actor,” “coercive threat,” “commercial sex act,” and “debt bondage” have the meanings specified in RCC § 22E-701.

RCC § 22E-1605. Sex Trafficking of a Minor ~~or Adult Incapable of Consenting~~.

- (a) *Offense.* An actor commits sex trafficking of ~~a minors~~ or adult ~~incapable of consenting~~ when that actor:
- (1) Knowingly recruits, entices, houses, transports, provides, obtains, or maintains by any means the complainant;
 - (2) With intent that the complainant, as a result, will be caused to engage in ~~or submit to~~ a commercial sex act ~~with or for another person other than with the actor~~;
 - (3) With recklessness as to the fact that complainant is:
 - (A) Under the age of 18 years;
 - (B) ~~Incapable of appraising the nature of the commercial sex act or of understanding the right to give or withhold consent to the commercial sex~~

act, either due to a drug, intoxicant, or other substance, or, due to an intellectual, developmental, or mental disability or mental illness when the actor has no similarly serious disability or illness; or

- (C) Incapable of communicating unwillingness to engage in the commercial sex act.

(b) *Penalties.*

- (1) Subject to any general penalty enhancements in this title and the offense penalty enhancement in subsection ~~(e)~~ (b) of this section, trafficking in commercial sex is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) ~~Offense~~ *Penalty Enhancements.* In addition to any general penalty enhancements under this title, the penalty classification for this offense is increased in severity by one class when, in addition to the elements of the offense, the person recklessly held the complainant, or caused the complainant to provide commercial sex acts for a total of more than 180 days.
- (c) *Definitions.* The terms “intent,” “knowingly,” and “recklessly,” have the meanings specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC § 22E-207; the terms “actor,” and “commercial sex act” have the meanings specified in RCC § 22E-701.

RCC § 22E-1606. Benefiting from Human Trafficking.

- (a) *First Degree.* An actor commits first degree benefiting from human trafficking when that actor:
- (1) Knowingly obtains any financial benefit or property;
 - (2) By participating in a group of 2 or more persons;
 - (3) Reckless as to the fact that the group is engaging in conduct that, in fact: constitutes forced commercial sex under RCC § 22E-1604, trafficking in forced commercial sex under RCC § 22E-1606, or sex trafficking of a minors or adult incapable of consenting under RCC § 22E-1605; and
 - (4) The actor’s participation in the group furthers, in any manner, the conduct that constitutes a human trafficking offense.
- (b) *Second Degree.* An actor commits second degree benefiting from human trafficking when that actor:
- (1) Knowingly obtains any financial benefit or property;
 - (2) By participation in a group of 2 or more persons;
 - (3) Reckless as to the fact that the group is engaging in conduct that, in fact: constitutes forced labor or services under RCC § 22E-1603 or trafficking in labor or services under RCC § 22E-1605; and
 - (4) In fact, the actor’s participation in the group furthers, in any manner, the conduct that constitutes a human trafficking offense.
- (c) *Penalties.* Subject to any general penalty enhancements under this title:
- (1) First degree benefitting from human trafficking is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) Second degree benefitting from human trafficking is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

- (d) *Definitions.* The terms “knowingly” and “reckless” have the meanings specified in RCC § 22E-206; and the terms “actor” and “property” have the meanings specified in RCC § 22E-701.

RCC § 22E-1608. Commercial Sex with a Trafficked Person.

- (a) *First ~~D~~egree.* An actor commits first degree commercial sex with a trafficked person when that actor:
- (1) Knowingly engages in a commercial sex act;
 - (2) When an ~~explicit or implicit~~ coercive threat, **express or implied**, or debt bondage by another person causes the complainant to submit to or engage in the commercial sex act;
 - (3) Reckless as to the fact that the complainant is under 18 years of age, or, in fact, the complainant is under 12 years of age.
- (b) *Second ~~D~~egree.* An actor commits second degree commercial sex with a trafficked person when that actor:
- (1) Knowingly engages in a commercial sex act;
 - (2) When either:
 - (A) An ~~explicit or implicit~~ coercive threat, **express or implied**, or debt bondage by another person causes the complainant to submit to or engage in the commercial sex act; or
 - (B) The complainant is recruited, enticed, housed, transported, provided, obtained, or maintained for the purpose of causing the person to submit to or engage in the commercial sex act; and the actor is reckless that the complainant is ~~under 18 years of age, or in fact, the complainant is under 12 years of age;~~
 - (i) **Under 18 years of age;**
 - (ii) **Incapable of appraising the nature of the commercial sex act or of understanding the right to give or withhold consent to the commercial sex act, either due to a drug, intoxicant, or other substance, or, due to an intellectual, developmental, or mental disability or mental illness when the actor has no similarly serious disability or illness; or**
 - (iii) **Incapable of communicating unwillingness to engage in the commercial sex act; or**
 - (iv) **The complainant is, in fact, under 12 years of age.**
- (c) *Penalties.* Subject to any general penalty enhancements under this title:
- (1) First degree commercial sex with a trafficked person is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
 - (2) Second degree commercial sex with a trafficked person is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* The terms “knowingly” and “recklessly” have the meanings specified in RCC § 22E-206; the term “in fact” has the meaning specified in RCC § 22E-206; the terms “actor,” “coercive threat,” “commercial sex act,” “complainant,” and “debt bondage” have the meanings specified in RCC § 22E-701.

RCC § 22E-1613. Civil Forfeiture.

- (a) *Property subject to forfeiture.* The following are subject to civil forfeiture:
 - (1) All conveyances, including aircraft, vehicles or vessels, which are intended to be used, or are, in fact, used, to facilitate the commission of an offense under Chapter 16 of the RCC; and
 - (2) All money, coins, and currency which are intended to be used, or are, in fact, used, to facilitate a the commission of an offense under Chapter 16 of the RCC.
- (b) *Requirements for forfeiture.* All seizures and forfeitures under this section shall be pursuant to the standards and procedures set forth in D.C. Law 20-278.
- (c) *Definitions.* The term “intended to” has the meaning specified in RCC § 22E-206; and the term “in fact” has the meaning specified in RCC § 22E-207.

APPENDIX B. UPDATED COMMENTARY FOR RCC §§ 22E-1602; 22E-1604; 22E-1605; 22E-1608; 22E-1613.

The relevant portions of the commentaries that have been updated since the First Draft of Report #19 to reflect changes to the statutory text are highlighted in yellow.

RCC § 22E-1602. Forced Commercial Sex.

Commentary

***Explanatory Note.** This section establishes the forced commercial sex offense for the Revised Criminal Code (RCC). This offense criminalizes knowingly causing a person to engage in a commercial sex act by means of physical force, a coercive threat, debt bondage, or by administering a drug or other intoxicant. There is no analogous offense under the current human trafficking chapter, although conduct constituting forced commercial sex may violate the current forced labor statute. This offense also replaces aspects of several offenses in chapter 27 of the current D.C. Code, including: conduct to “compel” or attempt to compel a person into prostitution under the pandering statute;¹ compelling an individual to live life or prostitution against his or her will;² and causing a spouse or domestic partner “by force, fraud, coercion, or threats...to lead a life of prostitution.”³ To the extent that certain statutory provisions authorizing extended periods of supervised release⁴ apply to the current forced labor or services*

¹ D.C. Code §22-2705. The pandering statute makes it a crime to “cause, compel . . . or attempt to cause or compel . . . any individual . . . to engage in prostitution[.]” The precise effect on D.C. law is unclear, as the D.C. Court of Appeals has not clearly defined what constitutes “compelling” a person to engage in prostitution. It is possible that some coercive means that would constitute “compelling” under the pandering statute do not fall within the revised “coercive threat” definition. In addition, the pandering statute provides for enhanced penalties when the person caused or compelled to engage in prostitution is under the age of 18. D.C. Code §22-2705 (2). The penalty provision under the RCC’s forced commercial sex statute replaces this provision in the current pandering statute.

² D.C. Code § 22-2706. This statute makes it a crime to “by threats or duress, to detain any individual against such individual’s will, for the purpose of prostitution or a sexual act or sexual contact, or to compel any individual against such individual’s will, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact.” This conduct may also be criminalized under the RCC’s kidnapping statute, RCC § 22E-1401 or criminal restraint statute, RCC § 22E-1402.

³ D.C. Code § 22-2708. This statute makes it a crime to “by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, a spouse or domestic partner in a house of prostitution, or to lead a life of prostitution[.]” This conduct will be criminalized under the RCC’s forced commercial sex statute. However, the RCC’s forced commercial sex statute is narrower than § 22-2708. The forced commercial sex statute does not criminalize causing another person to provide commercial sex acts by means of deception or fraud.

⁴ D.C. Code § 24-403.01(b)(4) (“ In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of: . . . (A) Not more than 10 years[.]” D.C. Code §22-4001(8) defines “registration offense” to include “Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor[.]” To the extent the current forced labor or services offense covers sexual acts or contacts without consent, D.C. Code § 22-403.01 may authorize an extended period of supervised release.

statute, these provisions are replaced in relevant part by the revised offensive forced commercial sex offense.

Paragraph (a)(1) specifies that forced commercial sex requires that an actor knowingly causes the complainant to engage in or submit to a commercial sex act with or for⁵ another person.⁶ The paragraph specifies that a “knowingly” culpable mental state applies, which requires that the accused was practically certain that he or she would cause another person to engage in or submit to a commercial sex act. The term “commercial sex act” is defined under RCC § 22E-701.⁷ Paragraph (a)(1) also specifies that the actor must cause the complainant to engage in or submit to commercial sex act with or for another person, which means that the act must be with or for someone other than the actor. This element may be satisfied if the actor causes the complainant to engage in a commercial sex act with a third party, or if the actor causes the complainant to engage in masturbatory conduct for a third party.⁸

Paragraph (a)(2) specifies the prohibited means by which the actor must cause a person to engage in or submit to a commercial sex act. Per the rule of interpretation under RCC § 22E-207, the “knowingly” culpable mental state also applies to this paragraph, which requires that the actor is practically certain that the means listed in subparagraphs (a)(2)(A)-(D) *cause* the complainant to engage in or submit to a commercial sex act.

Under subparagraph (a)(2)(A) the actor must use physical force that causes “bodily injury” to, overcomes, or restrains any person. “Bodily injury” is defined in RCC § 22E-701 as “physical pain, physical injury, illness, or any impairment of physical condition.” Per the rule of interpretation under RCC § 22E-207, the “knowingly” culpable mental state also applies to this subparagraph, which here requires that the actor was practically certain that the actor used force that caused bodily injury to overcome or restrain any person.

Under subparagraph (a)(2)(B), the actor must use an **express or implied** coercive threat to cause person to engage in or submit to a commercial sex act. “Coercive threat” is defined under RCC § 22E-701 and includes multiple per se types of threats, as well as a flexible standard referring to a threat of any harm sufficiently serious to cause a reasonable person in the complainant’s situation to comply.⁹ Per the rule of interpretation under RCC § 22E-207, the “knowingly” culpable mental state also applies to this subparagraph, which here requires that the actor was practically certain he was explicitly or implicitly making a coercive threat.

Under subparagraph (a)(2)(C), the actor must use debt bondage to cause a person to engage in or submit to a commercial sex act. “Debt bondage” is defined under RCC § 22E-701 and requires that the person perform labor or services to pay off a real or alleged debt under one of three specified circumstances.¹⁰ Per the rule of interpretation under RCC § 22E-207, the “knowingly” culpable mental state also applies to this element. The actor must be practically

⁵ The words “or for” clarify that the offense includes a person engaging masturbatory conduct for another person to observe.

⁶ An actor who compels a person to engage in a commercial sex act with *the actor* himself or herself may be subject to liability under sex assault offenses defined under Chapter 13.

⁷ For further discussion of these terms, see Commentary to RCC § 22E-1601.

⁸ Masturbation is not explicitly included in the definition of “commercial sex act.” However, the term “commercial sex act” is defined to include any sexual act or sexual contact performed in exchange for anything of value. To the extent that conduct commonly understood as masturbation meets the definition of sexual act or sexual contact, if it performed in exchange for anything of value, it constitutes a “commercial sex act.”

⁹ For further discussion of this term, see Commentary to RCC § 22E-701.

¹⁰ For further discussion of this term, see Commentary to RCC § 22E-701.

certain both that he or she is using coercive threats or debt bondage, and that the coercive threat or debt bondage *causes* the other person to engage in a commercial sex act.

Under subparagraph (a)(2)(D), the actor must administer, or cause to be administered, to the complainant an intoxicant or other substance without the complainant's "effective consent." "Effective consent" is a defined term in RCC § 22E-701 that means "consent other than consent induced by physical force, an express or implied coercive threat, or deception." In addition, the actor must administer the intoxicant or other substance "with intent" to impair the complainant's ability to express unwillingness to engage in the sexual act (sub-subparagraph (a)(2)(D)(i)). "Intent" is a defined term in RCC § 22E-206 that here means the actor was practically certain that administering the intoxicant or other substance would impair the complainant's unwillingness to engage in the sexual act. Per RCC § 22E-205, the object of the phrase "with intent to" is not an objective element that requires separate proof—only the actor's culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the drug or intoxicant "impaired the complainant's ability to express unwillingness to engage in the sexual act," only that the actor believed to a practical certainty that it would. However, sub-subparagraph (a)(2)(D)(ii) does require that the intoxicant or other substance have a specified effect on the complainant. The intoxicant or other substance must, "in fact," render the complainant asleep, unconscious, substantially paralyzed, or passing in and out of consciousness (sub-subparagraph (a)(2)(D)(ii)(I)), "substantially incapable of appraising the nature of the sexual act" (sub-subparagraph (a)(2)(D)(ii)(II)), or "substantially incapable of communicating unwillingness to engage in the sexual act (sub-subparagraph (a)(2)(D)(ii)(III)). "In fact," a defined term in RCC § 22E-207, is used to indicate that there is no culpable mental state requirement as to a given element, here the required effect of the intoxicant or other substance on the complainant.

Subsection (b)(1) specifies relevant penalties for the offense.

Paragraph (b)(2) provides penalty enhancements applicable to this offense. Subparagraph (b)(2)(A) specifies that if a person commits forced commercial sex and was reckless as to the complainant being under 18 years of age, an enhancement of one penalty class applies. "Reckless" is a defined term,¹¹ here requiring that the actor was aware of a substantial risk that the complainant was under 18 years of age and such conduct deviated from a reasonable standard of care. Alternatively, subparagraph (b)(2)(A) also specifies that if a person commits forced commercial sex, and in fact, the complainant is under the age of 12, an enhancement of one penalty class applies. The term "in fact" specifies that no culpable mental state is required as to the complainant being under the age of 12. Subparagraph (b)(2)(B) specifies that if the actor held the complainant or caused the complainant to engage in commercial sex acts for a total of more than 180 days, the offense classification may be increased in severity by one class.¹² Subparagraph (b)(2)(B) specifies that a "recklessly" culpable mental state applies to this enhancement. Even if more than one penalty enhancement is proven, the most the penalty can be increased is one class. The penalty enhancement under subsection (b) shall be applied in addition to any general penalty enhancements in RCC §§ 22E-605-608.

Subsection (c) cross references applicable definitions located elsewhere in the RCC.

¹¹ RCC § 22E-206.

¹² This enhancement may apply if the combined time in which a person was held and engaged in commercial sex acts is greater than 180 days, even if the person did not engage in commercial sex acts for the entire time. If a person was held for 100 days, and engaged in commercial sex acts for 81 days, this penalty enhancement would apply.

Relation to Current District Law. *The RCC's forced commercial sex offense changes current District law in three main ways.*

First, RCC forced commercial sex act creates a standardized penalty and enhancements for coercing or using debt bondage to cause a person to engage in a commercial sexual act. Although the current human trafficking chapter does not have a separate forced commercial sex offense, conduct constituting forced commercial sex could be charged under several current Chapter 27 offenses, with maximum sentences ranging from five years¹³ to twenty years.¹⁴ In contrast, the revised forced commercial sex act provides a single penalty, with applicable enhancements. This change improves the consistency and proportionality of the revised statutes.

Second, by reference to the RCC's "coercive threats" definition, the forced commercial sex statute criminalizes restricting another person's access to a controlled substance that the person owns or to prescription medication that the person owns. The current D.C. Code statutory definition of "coercion" in the human trafficking chapter provides liability for "facilitating or controlling" a person's access to any controlled substance or addictive substance. These terms are not defined by statute and have not been interpreted by the DCCA. By contrast, the forced commercial sex offense only provides liability for threatening to restrict a person's access to controlled substances that the person owns or prescription medication that the person owns.¹⁵ Restricting a person's access to a controlled substance or prescription medication that the person does not yet own does not constitute this form of per se coercive threat.¹⁶ Similarly, restricting a person's access to an addictive substance that is not a controlled substance or prescription medication also does not constitute this form of per se coercive threat. This change likely eliminates liability for compensating someone with a controlled substance or prescription medication as part of an otherwise clear and consensual transaction,¹⁷ and precludes arguments that an actor's attempts to limit another person's access to legal and readily available addictive substances like tobacco or alcohol constitute forced commercial sex.¹⁸ However, in some circumstances, such conduct may still fall within another per se form of coercive threat or the catch-all form of coercive threat.¹⁹ Eliminating the facilitation of access to any addictive substance as a form of coercive threats prevents the possibility of criminalizing relatively less coercive conduct.²⁰ This change improves the clarity and proportionality of the revised statute.

¹³ D.C. Code § 22-2705.

¹⁴ D.C. Code § 22-2706.

¹⁵ A person can satisfy this subsection by providing a controlled substance, so long as that person explicitly or implicitly threatens that his or her access to those substances will be limited. For example, a person can behave coercively by giving heroin to a heroin addict to compel him to behave in a particular way if the person causes the addict to fear that his access to heroin will be limited in the future.

¹⁶ For example, a drug trafficker refusing to sell a controlled substance to a person does not constitute this form of coercive threat.

¹⁷ For example, compensating a person with a controlled substance may constitute "facilitation" under the current forced labor statute due to the definition of "coercion."

¹⁸ For example, an actor who limits a person's access to tobacco or alcohol may be liable for "controlling" the person's access to the substance.

¹⁹ For example, if a person is severely addicted to a controlled substance, and relies on the actor as the sole provider of that substance, threatening to restrict the person's access to that substance may in some cases constitute a coercive threat under the catch all provision.

²⁰ For example, under current law inducing a person who is a regular tobacco user to perform any service by offering cigarettes in exchange arguably constitutes forced labor, an offense punishable by up to 20 years imprisonment. In addition, although alcohol is an addictive substance, it is not a controlled substance and thus is readily available.

Third, the revised forced commercial sex offense authorizes enhanced penalties if the actor was reckless as to whether the complainant was under 18 years of age, or if the complainant was, in fact, under 12 years of age. It is unclear if the current forced labor and services statute criminalizes forced commercial sex acts, but even if it does, the current forced labor and services statute offense does not authorize enhanced penalties based on the age of the complainant. The D.C. Code includes a general penalty enhancement for “crimes of violence” committed against persons under the age of 18, but forced labor or services is not currently a “crime of violence.”²¹ By contrast, the revised trafficking in forced commercial sex offense provides a penalty enhancement based on recklessness as to whether the complainant was under the age of 18, or based on strict liability if the complainant was under the age of 12. This change improves the consistency and proportionality of the revised statutes.

Eight other changes to the forced commercial sex statute may constitute a substantive change to current District law that improve the clarity, consistency, and proportionality of the revised offense, and eliminate overlap with other offenses.

First, by reference to the RCC’s definition of “coercive threats,” the forced commercial sex statute does not provide liability for causing another to engage in commercial sex by fraud or deception. The current forced labor offense criminalizes using “coercion to cause person to provide labor or services”²² and “coercion” is defined to include “fraud or deception.”²³ If commercial sex acts fall within the definition of “labor or services,” then under current law using fraud or deception to cause a person to engage in commercial sex acts constitutes forced labor. However, the current code does not specify whether “labor or services” includes commercial sex acts, and there is no relevant DCCA case law. The RCC’s “coercive threats” definition does not include fraud or deception,²⁴ and such conduct is not a sufficient basis for forced commercial sex liability. A person who uses deception or fraud to cause another person to engage in commercial sex has not committed forced commercial sex unless that person also uses one of the other coercive means listed in the RCC’s definition or holds another person in debt bondage.²⁵ While using deception to cause another to engage in commercial sex is wrongful, it does not warrant equal punishment to using other means of coercion or debt bondage and could provide major felony liability for what amount to disputes over payments for consensual commercial sex.²⁶ Rather, a person who causes another to engage in commercial sex through fraud or deception may still be liable under the RCC’s revised fraud²⁷ statute, a property offense with penalties based on the economic harm suffered. This change improves the penalty proportionality of the revised statutes.

Facilitating a person’s access to alcohol is not inherently coercive, as it is relatively easy for a person to obtain alcohol by other means, as compared to controlled substances.

²¹ D.C. Code § 22-1331 (4).

²² D.C. Code § 22-1832.

²³ D.C. Code § 22-1831.

²⁴ RCC § 22E-1601.

²⁵ Forced commercial sex may involve deceptive or fraudulent conduct *in addition* to other coercive means. For example, if a person initially lures a sex worker with the false promise of high wages, and then coerces the person to provide labor under threat of bodily injury could be convicted under the RCC’s forced commercial sex statute. *E.g., United States v. Bradley*, 390 F.3d 145 (1st Cir. 2004).

²⁶ For instance, under the current statutory definition of “coercion,” a person would coerce another if he or she causes that person to engage in a commercial sex act by a lie about how much would be paid.

²⁷ RCC §22E-2201. The revised fraud statute criminalizes taking property of another by means of deception. The term “property” is defined as “anything of value” including “services[.]” RCC § 22E-701.

Second, by reference to the RCC's definition of "coercive threats" the forced commercial sex offense includes causing a person to engage in a commercial sex act by threatening that any person will commit an offense against persons, or property offense.²⁸ The current "coercion" definition does not explicitly include threats to commit any "an offense against persons" but does include threats of "force, threats of force, physical restraint, or threats of physical restraint," conduct that appears to constitute the criminal offenses of assault or kidnapping. In addition, the current statutory definition of "coercion" generally includes "serious harm or threats of serious harm," which broadly covers "any harm . . . that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm."²⁹ By contrast, the revised definition of "coercive threats" and the RCC crime of forced commercial sex together specify that a threat to commit any offense against persons or property offense is categorically a basis for liability, even if it would otherwise be unclear whether the crime would constitute "serious harm" under the residual clause in paragraph (2)(G) of the current coercion definition. This change improves the clarity and consistency of the revised statutes.

Third, RCC forced commercial sex act offense specifies what types of conduct constitute a crime when used to compel a person to engage in prostitution. Various offenses under Chapter 27 of the current D.C. Code make it a crime to "compel" a person to "engage in prostitution"³⁰; "by threats or duress, to detain any individual against such individual's will for the purpose of prostitution or a sexual act or sexual contact"³¹; to "compel any individual, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact"³²; or to use "force, fraud, intimidation, or threats" to "place[] or leave[] . . . a spouse or domestic partner in a house of prostitution, or to lead a life of prostitution[.]"³³ The current D.C. Code does not define the terms "threats," "duress," "detain," "force," "fraud," or "intimidation" for the as used in Chapter 27, and there is no relevant D.C. Court of Appeals (DCCA) case law interpreting these terms. In contrast, the revised statute refers to the defined terms "coercive threat" and "debt bondage," and specifies that physical force that causes bodily injury, and administering a drug, intoxicant, or other substance are barred means of compelling a person to engage in a commercial sex act constitutes a criminal offense. This change improves the clarity and consistency of the revised statutes.

Fourth, the RCC forced commercial sex offense requires a person to act with a "knowing" culpable mental state. Statutes under Chapter 27³⁴ that are replaced in whole or in part by the RCC's forced commercial sex offense do not specify culpable mental states, and there is no relevant DCCA case law on this issue. In contrast, the RCC forced commercial sex act offense specifies one consistent, defined culpable mental state. Applying a knowledge or intent requirement to statutory elements that distinguish innocent from criminal behavior is a well-

²⁸ RCC § 22E-701.

²⁹ D.C. Code § 22-1831 (7).

³⁰ D.C. Code § 22-2705.

³¹ D.C. Code § 22-2706.

³² *Id.*

³³ D.C. Code § 22-2708.

³⁴ D.C. Code § 22-2705; D.C. Code § 22-2706; D.C. Code 22-2708.

established practice in American jurisprudence.³⁵ This change improves the clarity, consistency, and proportionality of the revised statutes.

Fifth, the RCC forced commercial sex offense requires only a single commercial sexual act for liability. Offenses under Chapter 27 criminalize detaining a person “for the purpose of prostitution,”³⁶ or compelling a person to “lead a life of prostitution,”³⁷ and make no reference to the number of occasions in which a person is compelled to engage in prostitution. There is no relevant DCCA case law on the unit of prosecution for these offenses, and it appears that compelling a person to engage in prostitution numerous times may constitute only a single violation of these statutes. In addition, it is possible that coercing a person to engage in a commercial sex act may constitute forced labor under the current statute.³⁸ However, the current forced labor statute does not specify whether commercial sex acts constitute labor or services, and if they do, whether multiple commercial sex acts may be prosecuted as more than one instance of forced labor. In contrast, the RCC forced commercial sex act offense provides liability for each separate commercial sexual act. This change improves the clarity and proportionality of the revised statutes.³⁹

Sixth, the RCC forced commercial sex statute requires that the actor caused the complainant to engage in a commercial sex act with or for a person other than the actor. It is unclear if the current forced labor or services statute criminalizes coerced commercial sex, and if it does, whether the actor must have caused the complainant engage in a commercial sex act with someone other than the actor. There is no relevant DCCA case law. To resolve this ambiguity, the revised statute specifies that the offense requires that the actor caused the person to engage in a commercial sex act with another person. This change improves the clarity of the revised statute, and reduces unnecessary overlap.

Seventh, the revised statute allows for enhanced penalties if the actor recklessly held the complainant or caused the complainant to engage in commercial sex acts for a total of more than 180 days. The D.C. Code forced labor, trafficking in labor or commercial sex, and sex trafficking of children statutes are subject to a penalty enhancement if “the victim is held or provides services for more than 180 days[.]”⁴⁰ However, the current statute does not specify any culpable mental state, nor does it clarify whether this 180 day threshold is based on the *total* of the days the complainant engaged in labor or services in addition to the days the complainant was held. There is no relevant DCCA case law. To resolve these ambiguities, the revised statute specifies that the enhancement applies if the actor recklessly holds the complainant, or causes the complainant to engage in commercial sex acts for a total number of days exceeds that 180. This change clarifies and may improve the proportionality of the revised statute.

³⁵ See, *Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) (“[O]ur cases have explained that a defendant generally must ‘know the facts that make his conduct fit the definition of the offense,’ even if he does not know that those facts give rise to a crime. (Internal citation omitted)”).

³⁶ D.C. Code § 22-2706.

³⁷ *Id.*

³⁸ D.C. Code § 22-1832.

³⁹ Under the revised offense, a person who uses a coercive threat or debt bondage to compel another person to engage in more than one commercial sex act may be convicted for multiple counts of forced commercial sex. However, whether multiple convictions are permitted in a given case is governed by the merger analysis set for under RCC § 22E-214.

Eighth, the revised offense allows for offense-specific penalty enhancements and general penalty enhancements. The current D.C. Code forced labor, trafficking in labor or commercial sex, and sex trafficking of children statutes are subject to a penalty enhancement if “the victim is held or provides services for more than 180 days[.]”⁴¹ However, neither this penalty enhancement nor other general penalty enhancements defined in the D.C. Code applicable to human trafficking specify how the enhancements interrelate—e.g., whether multiple enhancements can be applied, and to what effect. DCCA case law does not specifically address the relationship between the penalty enhancements applicable to human trafficking statutes specifically, and the D.C. Code provisions concerning repeat offender enhancements,⁴² hate crime enhancements,⁴³ and pretrial release penalty enhancements.⁴⁴ To resolve this ambiguity, the revised statute specifies that the revised statute’s penalty enhancements apply in addition to any general penalty enhancements based on RCC § 22E-605 Limitations on Penalty Enhancements, § 22E-606 Repeat Offender Penalty Enhancements, § 22E-607 Hate Crime Penalty Enhancement, or § 22E-608 Pretrial Release Penalty Enhancements. This change improves the clarity and may improve the proportionality of the revised statute.

Three changes to the forced commercial sex offense statute are clarificatory in nature and not intended to substantively change current District law.

First, the forced commercial sex offense explicitly criminalizes as a human trafficking offense causing a person to engage in commercial sex acts by means of coercive threat or debt bondage. It is unclear whether the current forced labor statute criminalizes the use of coercion or debt bondage to cause a person to engage in commercial sex acts. The current forced labor offense requires that the actor “use coercion to cause a person to provide labor or services” or to “keep any person in debt bondage.”⁴⁵ However, the current D.C. Code does not specify whether “labor or “services” include commercial sex acts. “Labor” is currently defined as “work that has economic or financial value,” and “services” is currently defined as “legal or illegal duties or work done for another, whether or not compensated.”⁴⁶ There is no relevant D.C. DCCA case law. The current D.C. Code, however, contains several prostitution-related offenses that do appear to criminalize coercing a person to engage in commercial sex acts.⁴⁷ The revised statute, however, specifies that the use of coercive threats to cause a person to engage in commercial sex is not only criminal, but a human trafficking offense. There is no clear justification for distinguishing the harm of using coercive threats to cause a person perform commercial sex when the complainant is a person who other times chooses to engage in commercial sex work from someone who has not engaged in such work. This change improves the clarity, organization, and proportionality of the revised statutes.

Second, the RCC defines a “commercial sex act” as “any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any

⁴² D.C. Code §§ 22-1804; 22-1804a.

⁴³ D.C. Code §§ 22-3701; 22-3702; 22-3703.

⁴⁴ D.C. Code § 23-1328.

⁴⁵ D.C. Code § 22-1832.

⁴⁶ D.C. Code § 22-1831.

⁴⁷ D.C. Code §22-2705; D.C. Code §22-2706; D.C. Code §22-2708.

person.”⁴⁸ Chapter 27 defines “prostitution” as “a sexual act or contact with another person in return for giving or receiving anything of value.”⁴⁹ The RCC’s definition of “commercial sexual act” definition is essentially equivalent to the current Chapter 27 definition of prostitution. The RCC’s definition of “commercial sex act” is not intended to differ in any substantive way from the current code’s definition of “prostitution.”

Third, the revised statute uses the term “actor” instead of the terms “individual or business,” as used in the current forced labor statute.⁵⁰ “Actor” is a defined term⁵¹, which means “a person accused of any offense.” The term “person” is also a defined term⁵², and includes a “partnership, company, corporation, association, organization[.]” The term “actor” includes both individuals and businesses, and the use of this term is not intended to change current District law.

RCC § 22E-1604. Trafficking in Forced Commercial Sex.

Commentary

***Explanatory Note.** This section establishes the trafficking in forced commercial sex offense for the Revised Criminal Code (RCC). This offense criminalizes knowingly recruiting, enticing, housing, transporting, providing, obtaining, or maintaining another person, with intent that, as a result, the person will be caused to engage in a commercial sex act by means of physical force that causes bodily injury, an explicit or implicit coercive threat, debt bondage, or administering a drug, intoxicant, or other substance. The RCC’s trafficking in forced commercial sex offense, along with the RCC’s trafficking in labor or services offense⁵³, replaces the trafficking in labor or commercial sex acts statute⁵⁴ under the current D.C. Code. The revised offense also replaces portions of the pandering statute⁵⁵ the compelling an individual to live life or prostitution against his or her will statute,⁵⁶ and the abducting or enticing a child from his or her home for purposes of prostitution; harboring such child statute⁵⁷ in Chapter 27 of the current D.C. Code. To the extent that certain statutory provisions authorizing extended periods of supervised release⁵⁸ apply to the current trafficking in labor or commercial sex acts*

⁴⁸ RCC § 22E-701.

⁴⁹ D.C. Code § 22-2701.01(3).

⁵⁰ D.C. Code § 22-1832.

⁵¹ RCC § 22E-701.

⁵² RCC § 22E-701.

⁵³ RCC § 22E-1603.

⁵⁴ D.C. Code § 22-1833.

⁵⁵ D.C. Code § 22-2705. The pandering statute makes it a crime for “any parent, guardian, or other person having legal custody of the person of an individual, to consent to the individual’s being taken, detained, or used by any person, for the purpose of prostitution or a sexual act or sexual contact.” This conduct will be criminalized under the RCC’s trafficking in forced commercial sex statute.

⁵⁶ D.C. Code § 22-2706. This statute makes it a crime to “by threats or duress, to detain any individual against such individual’s will, for the purpose of prostitution or a sexual act or sexual contact, or to compel any individual against such individual’s will, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact.” This conduct may also be criminalized under the RCC’s kidnapping statute, RCC § 22E-1401 or criminal restraint statute, RCC § 22E-1402.

⁵⁷ D.C. Code § 22-2704.

⁵⁸ D.C. Code § 24-403.01(b)(4) (“ In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that

statute, these provisions are replaced in relevant part by the revised trafficking in forced commercial sex acts statute.

Paragraph (a)(1) specifies that trafficking in forced commercial sex requires that an actor knowingly recruits, entices, houses, transports, provides, obtains, or maintains by any means, the complainant. The words entice, transport, provide, obtain, and maintain by any means are intended to have the same meaning as under current law. The word “houses” is intended to include provision of shelter, even if only temporarily. Paragraph (a)(1) specifies that a “knowingly” culpable mental state applies, which requires that the actor was practically certain that he or she would entice, house, transport, provide, obtain, or maintain the complainant.

Paragraph (a)(2) specifies that the actor must have acted with intent that the complainant will be caused, as a result, to engage in or submit to a “commercial sex act” by one of the means listed in subparagraphs (a)(2)(A)-(D). The term “commercial sex act” is a defined term.⁵⁹ “Intent” is a defined term in RCC § 22E-206 that here means the actor was practically certain that the complainant will be caused to engage in or submit to a commercial sex act by means specified in subparagraphs (a)(2)(A)-(D). Per RCC § 22E-205, the object of the phrase “with intent that” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the trafficked person actually engages in or submits to a commercial sex act, only that the actor believed to a practical certainty that he or she would do so. The words “as a result” require a nexus between the trafficking activity, and the commercial sex act that the trafficked person will engage in or submit to. Housing, transporting, etc. a person in a manner that is unrelated to that person providing labor or services is not criminalized under this section, even if the actor was practically certain that the person would be caused to engage in or submit to a commercial sex act by one of the means listed in subparagraphs (a)(2)(A)-(D).⁶⁰

Paragraph (a)(2) also specifies that the actor must cause the complainant to engage in or submit to a commercial sex act with or for another person, which means that the act must be with or for someone other than the actor.⁶¹ This element may be satisfied if the actor intends that the complainant will engage in or submit to a commercial sex act with a third party, or that the complainant will engage in masturbatory conduct for a third party.⁶²

Under subparagraph (a)(2)(A) the actor must intend that the trafficked person will be caused to engage in or submit to a commercial sex act by means of physical force that causes

required or authorized by paragraph (2) or (3) of this subsection, of: . . . (A) Not more than 10 years[.]” D.C. Code §22-4001(8) defines “registration offense” to include “Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor[.]” To the extent the current trafficking in labor or commercial sex acts offense involves sexual acts or contacts without consent, D.C. Code § 22-403.01 may authorize an extended period of supervised release.

⁵⁹ RCC § 22E-701.

⁶⁰ For example, if a taxi driver gives a ride to a person running an errand, practically certain that the next day that person will be coerced into performing a commercial sex act, if there is no relationship between that errand and the commercial sex act the person will perform, the taxi driver cannot be held liable for trafficking in forced commercial sex.

⁶¹ An actor who traffics a person with intent that the person engage in a commercial sex act *with the actor* by means of a coercive threat or debt bondage may be subject to liability under sex assault offenses defined under Chapter 13.

⁶² Masturbation is not explicitly included in the definition of “commercial sex act.” However, the term “commercial sex act” is defined to include any sexual act or sexual contact performed in exchange for anything of value. To the extent that conduct commonly understood as masturbation meets the definition of sexual act or sexual contact, if it performed in exchange for anything of value, it constitutes a “commercial sex act.”

“bodily injury” to, overcomes, or restrains any person. “Bodily injury” is defined in RCC § 22E-701 as “physical pain, physical injury, illness, or any impairment of physical condition.”

Under subparagraph (a)(2)(B), the actor must intend that an explicit or implicit coercive threat will be used to cause the complainant to engage in or submit to a commercial sex act. “Coercive threat” is defined under RCC § 22E-701 and includes multiple per se types of threats, as well as a flexible standard referring to a threat of any harm sufficiently serious to cause a reasonable person in the complainant’s situation to comply.⁶³

Under subparagraph (a)(2)(C), the actor must intend that debt bondage will be used to cause a person to engage in or submit to a commercial sex act. “Debt bondage” is defined under RCC § 22E-701 and requires that the person perform labor or services to pay off a real or alleged debt under one of three specified circumstances.⁶⁴

Under subparagraph (a)(2)(D), the actor must intend that the administration of an intoxicant or other substance without the complainant’s “effective consent” will be used to cause the complainant to engage in or submit to a commercial sex act. “Effective consent” is a defined term in RCC § 22E-701 that means “consent other than consent induced by physical force, an express or implied coercive threat, or deception.” “Intent” is a defined term in RCC § 22E-206 that here means the actor was practically certain that the complainant would be caused to engage in or submit to a commercial sex act by administration of a drug, intoxicant or other substance. Per RCC § 22E-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that anyone administered a drug, intoxicant, or other substance.

Subsection (b)(1) specifies relevant penalties for the offense.

Paragraph (b)(2) provides penalty enhancements applicable to this offense. Subparagraph (b)(2)(A) specifies that if a person commits trafficking in forced commercial sex and was reckless as to the complainant being under 18 years of age, an enhancement of one penalty class applies. “Reckless” is a defined term,⁶⁵ here requiring that the actor was aware of a substantial risk that the complainant was under 18 years of age and such conduct deviated from a reasonable standard of care. Alternatively, subparagraph (b)(2)(A) also specifies that if a person commits trafficking in forced commercial sex, the complainant was, in fact, under the age of 12, an enhancement of one penalty class applies. The term “in fact” specifies that no culpable mental state is required if the complainant was under the age of 12. Paragraph (b)(2)(B) specifies that if the actor held the complainant or caused the complainant to engage in commercial sex acts for a total of more than 180 days, the offense classification may be increased in severity by one class.⁶⁶ Subparagraph (b)(2)(B) specifies that a “recklessly” culpable mental state applies to this enhancement. Even if more than one penalty enhancement is proven, the most the penalty can be increased is one class. The penalty enhancement under paragraph (b)(2) shall be applied in addition to any general penalty enhancements in RCC §§ 22E-605-608.

Subsection (c) cross references applicable definitions located elsewhere in the RCC.

⁶³ For further discussion of this term, see Commentary to RCC § 22E-701.

⁶⁴ For further discussion of this term, see Commentary to RCC § 22E-701.

⁶⁵ RCC § 22E-206.

⁶⁶ This enhancement may apply if the combined time in which a person was held and provided labor or services is greater than 180 days, even if the person did not provide labor or services for the entire time. If a person was held for 100 days, and provided labor or services for 81 days, this penalty enhancement would apply.

Relation to Current District Law. *The trafficking in forced commercial sex statute changes current District law in seven main ways.*

First, the RCC trafficking in forced commercial sex offense is codified in a separate and distinct manner from the offense of trafficking in labor or services. The D.C. Code currently criminalizes in one statute trafficking persons who will engage in labor, services, *or* commercial sex acts.⁶⁷ In contrast, the RCC re-organizes the current trafficking in labor or commercial sex acts into two separate offenses and clarifies that commercial sex acts are not part of the revised definitions of “labor” and “services.” This change improves the organization of the revised offenses.

Second, by reference to the RCC’s “coercive threats” definition, the trafficking in forced commercial sex statute does not provide liability for trafficking a person who will be caused to engage in or submit to a commercial sex act by means of fraud or deception. The current statutory definition of “coercion” includes “fraud or deception,”⁶⁸ and by extension the current trafficking in labor or commercial sex acts statute references using fraud or deception to cause a person to engage in a commercial sex act. By contrast, the RCC’s “coercive threat” definition does not include fraud or deception,⁶⁹ and trafficking a person will be tricked into performing commercial sex is not a sufficient basis for liability under the revised trafficking in forced commercial sex offense. The revised offense only provides liability for trafficking a person who will be caused to engage in a commercial sex act under threat of one of the means listed in the RCC’s definition of “coercive threat,” or by subjecting the person to debt bondage.⁷⁰ While using deception to cause another to engage in commercial sex is wrongful, it does not warrant equal punishment to using other means of coercion or debt bondage.⁷¹ Rather, a person who encourages or assists a person who causes another to provide commercial sex through fraud or deception may still be liable as an accessory⁷² under the RCC’s revised fraud⁷³ statute, a property offense with penalties based on the economic harm suffered. This change improves the penalty proportionality of the revised statute.

Third, by reference to the RCC’s “coercive threat” definition, the revised trafficking in forced commercial sex offense criminalizes trafficking when the coercion at issue is restricting another person’s access to a controlled substance that the person owns or to prescription medication that the person owns. The current D.C. Code statutory definition of “coercion” in the human trafficking chapter provides liability for “facilitating or controlling” a person’s access to any addictive substance, and by extension the current trafficking in labor or commercial sex acts statute references facilitating or controlling access to addictive substances to cause a person to

⁶⁷ D.C. Code § 22-1833.

⁶⁸ D.C. Code § 22-1831 (3)(D).

⁶⁹ RCC § 22E-701.

⁷⁰ Trafficking in forced commercial sex may involve deceptive or fraudulent conduct *in addition* to other coercive means. For example, a person who traffics a worker knowing that he or she was initially lured with the false promise of high wages, and will also be coerced into engaging in commercial sex acts under threat of bodily injury may be convicted under the RCC’s trafficking in forced commercial sex statute. *E.g., United States v. Bradley*, 390 F.3d 145 (1st Cir. 2004).

⁷¹ For instance, under the current statutory definition of “coercion,” a person may be liable for trafficking in labor or commercial sex acts, subject to a [] year maximum imprisonment, for transporting a laborer to a job, knowing that the employer at the time of hire falsely stated the rate of pay or work duties that will be expected.

⁷² RCC § 22E-210.

⁷³ RCC § 22E-2201. The revised fraud statute criminalizes taking property of another by means of deception. The term “property” is defined as “anything of value” including “services[.]” RCC § 22E-701.

engage in a commercial sex act. These terms are not defined by statute and have not been interpreted by the DCCA. By contrast, the revised trafficking in forced commercial sex offense only provides liability for trafficking a person who will caused to provide a commercial sex act under threat of restricting access to controlled substances that the person owns or prescription medication that the person owns. Restricting a person's access to a controlled substance or prescription medication that the person does not yet own does not constitute this form of coercive threat.⁷⁴ Restricting a person's access to an addictive substance that is not a controlled substance or prescription medication also does not constitute this form of coercive threat. This change eliminates liability for trafficking someone knowing that they will be compensated with a controlled substance or prescription medication as part of an otherwise clear and consensual transaction,⁷⁵ and precludes arguments that trafficking a person knowing that someone will seek to limit that person's access to legal and readily available addictive substances like tobacco or alcohol constitutes trafficking in forced commercial sex acts.⁷⁶ However, in some circumstances, such conduct may still fall within another per se form of coercive threat or the catch-all form of coercive threat.⁷⁷ Eliminating liability for trafficking where the harm is the facilitation of access to any addictive substance as a form of coercion prevents the possibility of criminalizing relatively less coercive conduct.⁷⁸ These changes improve the clarity and proportionality of the revised statute.

Fourth, the revised trafficking in forced commercial sex offense requires that the actor acted *with intent* that the complainant will be caused to engage a commercial sex act by means of coercive threat or debt bondage. The current statute includes acting "with reckless disregard of the fact that" coercion or debt bondage will be used to cause the person to engage in a commercial sex act. By contrast, the revised statute requires that the actor was practically certain that the complainant will be caused to engage in a commercial sex act by means of a coercive threat or debt bondage.⁷⁹ Requiring that the actor was at least practically certain that the person will be caused to engage in a commercial sex act by means of coercive threat or debt bondage avoids disproportionate penalties for persons who were unaware that the person would be

⁷⁴ For example, a drug trafficker refusing to sell a controlled substance to a person does not constitute this form of coercive threat.

⁷⁵ For example, compensating a person with a controlled substance may constitute "facilitation" under the current forced labor statute due to the definition of "coercion."

⁷⁶ For example, a person who recruits someone to perform commercial sex acts, knowing that another will predicate performance of the commercial sex work on not smoking tobacco or drinking alcohol may be liable for "controlling" the employee's access to the substance, and may be liable for trafficking.

⁷⁷ For example, if a person is severely addicted to a controlled substance, and relies on the actor as the sole provider of that substance, threatening to restrict the person's access to that substance may in some cases constitute a coercive threat under the catch all provision.

⁷⁸ For example, under current law inducing a person who is a regular tobacco user to perform any service by offering cigarettes in exchange arguably constitutes coercion, and knowingly recruiting a person into such employment an offense punishable by up to [] years imprisonment. In addition, although alcohol is an addictive substance, it is not a controlled substance and thus is readily available. Facilitating a person's access to alcohol is not inherently coercive, as it is relatively easy for a person to obtain alcohol by other means, as compared to controlled substances.

⁷⁹ For example, if a taxi driver overhears his passenger make comments which suggest that upon arrival at her destination, she may be coerced into performing a commercial sex act, the driver is not guilty of trafficking in forced commercial sex if the driver is only aware of a substantial risk, but not practically certain, that the passenger will be coerced into engaging in a commercial sex act.

coerced into providing labor or services.⁸⁰ This change improves the proportionality of the revised statute.

Fifth, the revised trafficking in forced commercial sex offense requires that an actor's trafficking activity occur with intent that the complainant *as a result will* provide a commercial sex act. The current D.C. Code trafficking in labor or commercial sex acts statute does not specify any relationship between the transporting, housing, etc., and the performance of labor or services. Consequently, it appears that there is criminal liability when a person transports, houses, etc. a person in a manner that is entirely unrelated to the coerced labor or services.⁸¹ The current D.C. Code statute also states that it applies when "coercion will be used or is being used."⁸² By contrast, the revised statute requires a causal relationship between the trafficking activity, and the person performing a commercial sex act. The actor's trafficking conduct need not be the sole or primary cause of the complainant being coerced by a threat or debt bondage, but there must be a causal link to such a future result.⁸³ This revision excludes persons who may provide assistance to a complainant (e.g. housing, meals) that are unrelated to the coerced acts.⁸⁴ This change improves the proportionality of the revised criminal code.

Sixth, the revised trafficking in forced commercial sex offense authorizes enhanced penalties if the actor was reckless as to whether the complainant was under 18 years of age, or if the complainant was, in fact, under 12 years of age. The current trafficking in labor or commercial sex acts offense does not authorize enhanced penalties based on the age of the complainant. The D.C. Code includes a general penalty enhancement for "crimes of violence" committed against persons under the age of 18, but trafficking in labor or commercial sex acts is not currently a "crime of violence."⁸⁵ By contrast, the revised trafficking in forced commercial sex offense provides a penalty enhancement based on recklessness as to whether the complainant was under the age of 18, or based on strict liability if the complainant was under the age of 12. This change improves the consistency and proportionality of the revised statutes.

Seventh, the revised RCC trafficking in forced commercial sex offense specifies what types of conduct are sufficient to "compel" a person to engage in prostitution.⁸⁶ Under Chapter 27, the current code makes it a crime "by threats or duress, to detain any individual against such

⁸⁰ Under the rule of imputation of knowledge for deliberate ignorance set forth in RCC § 22E-208, an actor who traffics a person with recklessness that the person will be caused to engage in a commercial sex act by means of coercive threat or debt bondage may be held liable, if the actor avoided confirming or failed to investigate whether the trafficked person will be coerced into engaging a commercial sex act, with the purpose of avoiding criminal liability.

⁸¹ For example, if a taxi driver gives a ride to a person running an errand, knowing that the next day that person will be coerced into performing a commercial sex act, if there is no relationship between that errand and the commercial sex act that the person will perform, the taxi driver cannot be held liable for trafficking in forced commercial sex.

⁸² D.C. Code § 22-1833.

⁸³ The result may be imminent or in the distant future, so long as the actor's conduct is causally linked and other elements of the offense are met. For example, an actor who drives people in a van to a District house and believes to a practical certainty that as a result they will perform commercial sex acts by coercive threats, either immediately or weeks later, may be guilty of trafficking in forced commercial sex.

⁸⁴ For example, there is not the required causal link where a waiter in a public restaurant serves a meal to a person, believing (due to an overheard conversation) to a practical certainty that the person will perform a commercial sex act under coercive threat later that week. Also, there would not be a causal link to a future commercial sex act, or liability for trafficking in forced commercial sex for a shelter driver who transports persons known to have performed commercial sex acts by coercive threats to a shelter.

⁸⁵ D.C. Code § 22-1331 (4).

⁸⁶ D.C. Code § 22-2706.

individual's will for the purpose of prostitution or a sexual act or sexual contact"⁸⁷ or to "compel any individual, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact,"⁸⁸ or to "forcibly abduct a child under 18 from his or her home or usual abode, or from the custody and control of the child's parents or guardian."⁸⁹ The current code also makes it a crime to use "force, fraud, intimidation, or threats" to "place[] or leave[] . . . a spouse or domestic partner in a house of prostitution, or to lead a life of prostitution[.]"⁹⁰ The current code does not define the terms "threats," "duress," "detain," "force," "forcibly," "fraud," or "intimidation," and there is no relevant D.C. Court of Appeals (DCCA) case law interpreting these terms. In contrast, the revised statute refers to the defined terms "coercive threat" and "debt bondage," and specifies that physical force that causes bodily injury, and administering a drug, intoxicant, or other substance are barred means of compelling a person to engage in a commercial sex act constitutes a criminal offense. This change improves the clarity and consistency of revised statutes.

Eighth, the RCC trafficking in forced commercial sex offense requires a person to act with a "knowing" culpable mental state. Statutes under Chapter 27⁹¹ that are replaced in whole or in part by the RCC's trafficking in forced commercial sex offense do not specify culpable mental states, and there is no relevant DCCA case law on this issue. In contrast, the RCC trafficking in forced commercial sex act offense specifies one consistent, defined culpable mental state of knowing. Applying a knowledge or intent requirement to statutory elements that distinguish innocent from criminal behavior is a well-established practice in American jurisprudence.⁹² This change improves the clarity and consistency of the criminal code, and improves the proportionality of penalties.

Ninth, the RCC trafficking in forced commercial sex offense creates a standardized penalty and enhancements. The offenses under Chapter 27 that are replaced by the RCC's trafficking in forced commercial sex offense allow for a variety of penalties. Depending on which Chapter 27 offense an actor was prosecuted under, conduct that would constitute trafficking in forced commercial sex could be subject to maximum penalties ranging from 5 years⁹³ to 20 years.⁹⁴ In contrast, the RCC forced commercial sex offense applies a consistent penalty and enhancements. This change improves the consistency of the criminal code, and proportionality of the revised statutes.

Beyond these nine changes to current District law, four other aspects of the revised trafficking in forced commercial sex acts may constitute a substantive change to current District law.

First, by reference to the RCC's definition of "coercive threat," trafficking in forced commercial sex includes trafficking a person, with intent that, as a result, the person will be compelled to engage in a commercial sex act under threat that any person will commit an offense

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ D.C. Code §22-2704.

⁹⁰ D.C. Code § 22-2708.

⁹¹ D.C. Code § 22-2704; D.C. Code § 22-2705; D.C. Code 22-2706.

⁹² *See, Elonis v. United States*, 135 S. Ct. 2001, 2009 (2015) ("[O]ur cases have explained that a defendant generally must 'know the facts that make his conduct fit the definition of the offense,' even if he does not know that those facts give rise to a crime. (Internal citation omitted)").

⁹³ D.C. Code § 22-2705.

⁹⁴ D.C. Code § 22-2704.

against persons or a property offense.”⁹⁵ The current “coercion” definition does not explicitly include threats to commit any offenses against persons or property offenses but does include threats of “force, threats of force, physical restraint, or threats of physical restraint,” conduct that appears to constitute the criminal offenses of assault or kidnapping. In addition, the current statutory definition of “coercion” generally includes “serious harm or threats of serious harm,” which broadly covers “any harm . . . that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm.”⁹⁶ The revised definition of “coercive threats” and the RCC crime of forced commercial sex together specify that a threat to commit any criminal offense against persons or property offense is categorically a basis for liability, even if it would otherwise be unclear whether the crime would constitute “serious harm” under the residual clause in paragraph (2)(G) of the coercion definition. This change improves the clarity and consistency of the revised statutes.

Second, the revised trafficking in forced commercial sex offense includes acting with intent that a person will administer a drug, intoxicant, or other substance to the complainant without the complainant’s effective consent. The current trafficking statute does not explicitly include trafficking a person who will be administered a drug, intoxicant, or other substance without that person’s effective consent. However, the statute includes the use of “coercion,” which is defined to include force, and “facilitating or controlling a person’s access to an addictive or controlled substance or restricting a person’s access to prescription medication[.]”⁹⁷ Administering a drug, intoxicant, or other substance without effective consent may constitute force, or facilitation of a person’s access to an addictive or controlled substance. There is no relevant D.C. Court of Appeals (DCCA) case law. To resolve this ambiguity, the revised statute clarifies that trafficking a person with intent that the person will engage in or submit to a commercial sex act by means of administration of a drug, intoxicant, or other substance without effective consent constitutes trafficking in forced commercial sex. This change clarifies and may improve the proportionality of the revised statute.

Third, the revised trafficking in forced commercial sex statute replaces the word “harbor” with “houses.” The current D.C. Code trafficking statute refers to “harboring” as one of many types of predicate conduct, including “recruit, entice, harbor, transport, provide, obtain, or maintain.” “Harboring” is not statutorily defined, and there is no relevant D.C. Court of Appeals (DCCA) case law. To resolve this ambiguity, in the revised statute the word “houses” replaces the word “harbor.” The RCC reference to “houses” may be narrower than “harbor,”⁹⁸ although the term “houses” is intended to broadly refer to the provision of physical shelter, including temporary shelter. This change clarifies and may improve the proportionality of the revised statute.

Fourth, the revised trafficking in forced commercial sex statute requires that the actor had intent that the complainant would be caused to engage in or submit to a commercial sex act with a person other than the actor. The current statute does not specify whether the actor must have intent that the complainant engage in a commercial sex act with someone other than the actor,

⁹⁵ RCC § 22E-701.

⁹⁶ D.C. Code § 22-1831 (7).

⁹⁷ D.C. Code § 22-1831 (3)(F).

⁹⁸ The verb form of the word “harbor” is defined by Meriam-Webster’s Dictionary as, “to give shelter or refuge to[.]” <https://www.merriam-webster.com/dictionary/harbor>

and there is no relevant DCCA case law. In contrast, the revised statute specifies that the actor must have had intent that the complainant would engage in a commercial sex act with someone other than the actor. This change improves the clarity of the revised criminal code, and reduces unnecessary overlap.

Fifth, the revised statute allows for enhanced penalties if the actor recklessly held the complainant or caused the complainant to engage in commercial sex acts for a total of more than 180 days. The D.C. Code trafficking in labor or commercial sex statute is subject to a penalty enhancement if “the victim is held or provides services for more than 180 days[.]”⁹⁹ However, the current statute does not specify any culpable mental state, nor does it clarify whether this 180 day threshold is based on the *total* of the days the complaint engaged in commercial sex acts in addition to the days the complainant was held. There is no relevant DCCA case law. To resolve these ambiguities, the revised statute specifies that the enhancement applies if the actor recklessly holds the complainant, or causes the complainant to engage in commercial sex acts for a total number of days exceeds that 180. This change clarifies and may improve the proportionality of the revised statute.

In addition, one change to the trafficking in forced commercial sex statute is clarificatory, and not intended to substantively change current District law.

The revised statute uses the term “actor” instead of the terms “individual or business,” as used in the current forced labor statute.¹⁰⁰ “Actor” is a defined term¹⁰¹, which means “a person accused of any offense.” The term “person” is also a defined term¹⁰², and includes a “partnership, company, corporation, association, organization[.]” The term “actor” includes both individuals and businesses, and the use of this term is not intended to change current District law.

RCC § 22E-1605. Sex Trafficking of a Minor or Adult Incapable of Consenting.

Commentary

Explanatory Note. *This section establishes the sex trafficking of a minor or adult incapable of consenting offense for the Revised Criminal Code (RCC). This offense criminalizes knowingly recruiting, enticing, housing, transporting, providing, obtaining, or maintaining another person, with intent that, as a result, the person will be caused to engage in a commercial sex act, and with recklessness as to that person being under the age of 18, or incapable of appraising the nature of the commercial sex act or communicating unwillingness to engage in the commercial sex act. The revised sex trafficking of a minor or adult incapable of consenting offense replaces the current sex trafficking of children statute¹⁰³ and part of the abducting or enticing a child from his or her home for purposes of prostitution; harboring such child*

⁹⁹ D.C. Code §22-1837 (a)(2).

¹⁰⁰ D.C. Code § 22-1832.

¹⁰¹ RCC § 22E-701.

¹⁰² RCC § 22E-701.

¹⁰³ D.C. Code § 22-1834.

statute.¹⁰⁴ *To the extent that certain statutory provisions authorizing extended periods of supervised release¹⁰⁵ apply to the current sex trafficking of children statute, these provisions are replaced in relevant part by the revised sex trafficking of a minor or adult incapable of consenting statute.*

Paragraph (a)(1) specifies that sex trafficking of a minor or adult incapable of consenting requires that a person knowingly recruits, entices, houses, transports, provides, obtains, or maintains by any means, another person. The words “entice, transport, provide, obtain, and maintain by any means” are intended to have the same meaning as under current law. The word “houses” is intended to include provision of shelter, even if only temporarily. Paragraph (a)(1) specifies that a “knowingly” culpable mental state applies, which requires that the actor was practically certain that he or she would entice, house, transport, provide, obtain, or maintain another person.

Paragraph (a)(2) specifies that sex trafficking of a minor or adult incapable of consenting requires that the actor acted “with intent that” the trafficked person, as a result, would be caused to engage in or submit to a commercial sex act with or for another person. The term “commercial sex act” is a defined term.¹⁰⁶ “Intent” is a defined term in RCC § 22E-206 that here means the actor was practically certain that the complainant would be caused to engage in a commercial sex act with another person. Per RCC § 22E-205, the object of the phrase “with intent that” is not an objective element that requires separate proof—only the actor’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the trafficked person actually performs a commercial sex act, only that the actor believed to a practical certainty that he or she would do so. The words “as a result” require a nexus between the trafficking activity, and the commercial sex act that the trafficked person will perform. Housing, transporting, etc. a person in a manner that is unrelated to that person providing labor or services is not criminalized under this section, even if the actor was practically certain that the person would be caused to engage in a commercial sex act.¹⁰⁷

This paragraph also specifies that the actor must cause the complainant to engage in a commercial sex act with or for another person.¹⁰⁸ This element may be satisfied if the actor causes the complainant to engage in a commercial sex act with a third party, or if the actor causes the complainant to engage in masturbatory conduct for a third party.¹⁰⁹

¹⁰⁴ D.C. Code § 22-2704.

¹⁰⁵ D.C. Code § 24-403.01(b)(4) (“ In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of: . . . (A) Not more than 10 years[.]” D.C. Code §22-4001(8) defines “registration offense” to include “Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor[.]” To the extent the current sex trafficking of children offense covers sexual acts or contacts with a minor, D.C. Code § 22-403.01 may authorize an extended period of supervised release.

¹⁰⁶ RCC § 22E-701.

¹⁰⁷ For example, if a taxi driver gives a ride to a person running an errand, knowing that the next day that person will be coerced into engaging in a commercial sex act, if there is no relationship between that errand and the commercial sex act, the taxi driver cannot be held liable for trafficking in forced commercial sex.

¹⁰⁸ An actor who traffics a person with intent that the person engage in a commercial sex act *with the actor* may be subject to liability under sex assault offenses defined under Chapter 13.

¹⁰⁹ Masturbation is not explicitly included in the definition of “commercial sex act.” However, the term “commercial sex act” is defined to include any sexual act or sexual contact performed in exchange for anything of value. To the extent that conduct commonly understood as masturbation meets the definition of sexual act or sexual contact, if it performed in exchange for anything of value, it constitutes a “commercial sex act.”

Paragraph (a)(3) specifies that the actor was reckless as to the trafficked person satisfying one of the elements listed in subparagraphs (a)(3)(A)-(C). Subparagraph (a)(3)(A) requires that the complainant is under the age of 18. Subparagraph (a)(3)(B) requires that the complainant is incapable of appraising the nature of the commercial sex act or of understanding the right to give or withhold consent to the commercial sex act, either due to a drug, intoxicant, or other substance, or, due to an intellectual, developmental, or mental disability or mental illness when the actor has no similarly serious disability or illness. Subparagraph (a)(3)(C) requires that the complainant is incapable of communicating unwillingness to engage in the commercial sex act, regardless of the complainant's state of mind. The "reckless" mental state in paragraph (a)(3) applies to subparagraphs (a)(3)(A)-(C), which requires that the actor consciously disregarded a substantial risk that the trafficked person is under the age of 18, incapable of appraising the nature of the commercial sex act or of understanding the right to give or withhold consent, or incapable of communicating unwillingness to engage in the commercial sex act.

Subsection (b)(1) specifies relevant penalties for the offense.

Paragraph (b)(2) provides a penalty enhancement applicable to this offense. If the actor recklessly held the complainant, or caused the complainant to provide commercial sex acts for a total of more than 180 days, the offense classification may be increased in severity by one class.¹¹⁰ The penalty enhancement under paragraph (b)(2) shall be applied in addition to any general penalty enhancements in RCC §§ 22E-605-608.

Subsection (c) cross references applicable definitions located elsewhere in the RCC.

Relation to Current District Law. *The RCC's sex trafficking of a minor or adult incapable of consenting offense clearly changes current District law in one main way with respect to the current sex trafficking of children offense. To the extent it replaces current D.C. Code § 22-2704, the revised sex trafficking of a minor or adult incapable of consenting offense clearly changes current District law in three main ways. The revised statute also clearly changes current District law by explicitly criminalizing trafficking adults who are unable to consent to commercial sex acts.*

First, the revised sex trafficking of a minor or adult incapable of consenting statute requires proof that a person was reckless as to the person trafficked being under 18. Subsection (a) of the current sex trafficking of children offense requires the actor to be "knowing or in reckless disregard of the fact that the person has not attained the age of 18 years," but does not define the culpable mental state terms.¹¹¹ However, subsection (b) of the current statute further states that "In a prosecution... in which the defendant had a reasonable opportunity to observe the person recruited, enticed... or maintained, the government need not prove that the defendant knew that the person had not attained the age of 18 years."¹¹² Consequently, the current statute's drafting is ambiguous as to whether "recklessness" always suffices to prove liability (as appears to be stated in subsection (a)) or whether a knowing culpable mental state always is required for liability except where there is a reasonable opportunity to view the complainant (as appears to be stated in subsection (b)). There is no case law on point, however legislative history indicates that

¹¹⁰ This enhancement may apply if the combined time in which a person was held and engaged in commercial sex acts is greater than 180 days, even if the person did not engage in commercial sex acts for the entire time. If a person was held for 100 days, and engaged in commercial sex acts for 81 days, this penalty enhancement would apply.

¹¹¹ D.C. Code § 22-1834.

¹¹² D.C. Code § 22-1834 (b).

the latter interpretation of the statute is correct,¹¹³ and recklessness as to the complainant's age is insufficient for liability except when the actor has a reasonable opportunity to observe the complainant. Notably, D.C. Code § 22-2704 requires that the trafficked person is under the age of 18, but does not specify a culpable mental state for this element, and there is no relevant DCCA case law. In contrast, the RCC sex trafficking of a minor or adult incapable of consenting statute requires a culpable mental state of recklessness, a defined term, and omits the limitation about a reasonable opportunity to observe the child. It is not clear why reasonable observation, uniquely, is treated as being such strong evidence of age that the a lower culpable mental state is required where there is such an opportunity.¹¹⁴ Requiring recklessness as to a complainant being under 18 years of age is consistent with similar age-based circumstances required in other offenses in the RCC and current D.C. Code. This change improves the clarity and consistency of the revised statute.

Second, the revised sex trafficking of a minor or adult incapable of consenting statute specifies that a "knowingly" mental state applies to result elements of the offense. A knowing culpable mental state already is required for the similar sex trafficking of children offense.¹¹⁵ However, D.C. Code § 22-2704 also makes it a crime to "secrete" or "harbor" a child under the age of 18 "for the purposes of prostitution."¹¹⁶ The current code does not specify any culpable mental state for these elements of D.C. Code § 22-2704, and there is no relevant D.C. Court of Appeals (DCCA) case law. In contrast, the revised sex trafficking of a minor or adult incapable of consenting statute specifies that the actor must knowingly recruit, entice, harbor, transport, provide, obtain, or maintain by any means, another person. This change improves the clarity and consistency of the revised statutes.

Third, the revised sex trafficking of a minor or adult incapable of consenting statute specifies that the actor act "with intent" that the trafficked person will be caused to engage in a commercial sex act. A knowing culpable mental state is required for the current sex trafficking of children offense.¹¹⁷ However, D.C. Code § 22-2704 requires that the actor secrete or harbor another person "for the purposes of prostitution." D.C. Code § 22-2704 does not further specify the meaning of "for the purposes" or specify (other) culpable mental states, and there is no relevant DCCA case law. In contrast, the revised sex trafficking of a minor or adult incapable of consenting statute specifies that the actor must act "with intent" that the person will be caused to engage in a commercial sex act. This change improves the clarity and consistency of the revised statutes.

¹¹³ Council of the District of Columbia Committee on Public Safety and the Judiciary Committee Report on Bill 18-70 "Prohibition Against Human Trafficking Amendment Act of 2010" at 8. March 9, 2010. ("Section 104 Creates the crime of sex trafficking of children. A child is defined as under the age of 18 for commercial sex. The prosecution does not have to prove that coercion was used or that the defendant had actual knowledge of the minor's age. However, if the defendant did not have an opportunity to observe the victim, the government needs to prove the defendant had actual knowledge of the victim's age.").

¹¹⁴ On the one hand, a reasonable opportunity to observe the complainant does not mean that an actor still could not reasonably mistake the complainant's age as being significantly older than 17 years old. On the other hand, other circumstances may provide an actor equally strong evidence of the complainant's age, even though he or she is never seen—e.g. a report from a trusted source as to the complainant apparently being a minor.

¹¹⁵ D.C. Code § 22-1834. ("It is unlawful for an individual or a business knowingly to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person who will be caused as a result to engage in a commercial sex act knowing or in reckless disregard of the fact that the person has not attained the age of 18 years.").

¹¹⁶ D.C. Code § 22-2704 (a)(2).

¹¹⁷ D.C. Code § 22-1834.

Fourth, the revised sex trafficking of a minor or adult incapable of consenting statute includes a penalty enhancement if the trafficked person was held or provides commercial sex acts for more a total of more than 180 days. The current sex trafficking of children offense contains this penalty enhancement.¹¹⁸ However, D.C. Code § 22-2704 does not provide for heightened penalties. In contrast, the revised sex trafficking of a minor or adult incapable of consenting statute allows that the offense classification may be increased by one class if the trafficked person is held or caused to engage in commercial sex act for more than 180 days. This change improves the proportionality and consistency of the revised statutes.

Fifth, the revised statute criminalizes trafficking of an adult incapable of consenting to commercial sex acts. The current sex trafficking of a minor offense only applies to complainants under the age of 18.¹¹⁹ Trafficking of an adult is criminalized under the trafficking in labor or commercial sex acts statute.¹²⁰ However, that statute requires intent that the complainant will be caused to engage in a commercial sex act by means of “coercion” or debt bondage. The statute does not explicitly cover trafficking of adults who are unable to appraise the nature of the commercial sex act, or who are unable to communicate their consent to engage in or submit to a commercial sex act. By contrast, the revised statute clarifies that trafficking adults who are incapable of appraising the nature of the commercial sex act or of communicating unwillingness to engage in a commercial sex act is criminalized. This change closes a gap in current law, and improves the proportionality of the revised statute.

Beyond these five changes to current District law, two other aspects of the revised sex trafficking of a minor or adult incapable of consenting statute may constitute substantive changes to current District law.

First, the revised sex trafficking of a minor or adult incapable of consenting statute requires that the actor had intent that the complainant would be caused to engage in a commercial sex act *with or for another person*. The current statute does not specify whether the actor must have intent that the complainant engage in a commercial sex act with someone other than the actor, and there is no relevant DCCA case law. To resolve this ambiguity, the revised statute specifies that the actor must have had intent that the complainant will engage in a commercial sex act with someone other than the actor. This change improves the clarity of the revised statute, and reduces unnecessary overlap.

Second, the revised statute allows for enhanced penalties if the actor recklessly held the complainant or caused the complainant to engage in commercial sex acts for a total of more than 180 days. The D.C. Code sex trafficking of children statute is subject to a penalty enhancement if “the victim is held or provides services for more than 180 days[.]”¹²¹ However, the current statute does not specify any culpable mental state, nor does it clarify whether this 180 day threshold is based on the *total* of the days the complaint engaged in commercial sex acts in addition to the days the complainant was held. There is no relevant DCCA case law. To resolve these ambiguities the revised statute specifies that the enhancement applies if the actor recklessly holds the complainant, or causes the complainant to engage in commercial sex acts for a total number of days exceeds that 180. This change clarifies and may improve the proportionality of the revised statute.

¹¹⁸ D.C. Code § 22-1834.

¹¹⁹ D.C. Code § 22-1834.

¹²⁰ D.C. Code § 22-1833.

¹²¹ D.C. Code §22-1837 (a)(2).

RCC § 22E-1608. Commercial Sex with a Trafficked Person.

Commentary

***Explanatory Note.** This section establishes the commercial sex with a trafficked person offense for the Revised Criminal Code (RCC). The commercial sex with a trafficked person offense is divided into two penalty gradations. Both grades require that the actor knowingly engage in a commercial sex act, and the penalty grades are distinguished based on the presence of one or more additional circumstances relating to whether the other party to the commercial sex act had been coerced or trafficked, and whether the other party was under the age of 18, or an adult incapable of consenting. There is no analogous offense under current District law. The current D.C. Code does not distinctly criminalize engaging in commercial sex acts with human trafficking victims.¹²² To the extent that certain statutory provisions authorizing extended periods of supervised release¹²³ would apply to the commercial sex with a trafficked person, these provisions are replaced in relevant part by the revised commercial sex with a trafficked person statute.*

Subsection (a) establishes the elements for first degree commercial sex with a trafficked person. Paragraph (a)(1) specifies that the actor must engage in a “commercial sex act,” a defined term.¹²⁴ The paragraph specifies that a “knowingly” culpable mental state applies, a

¹²² It is possible that some conduct that constitutes first and second degree commercial sex with a trafficked person in the RCC could be prosecuted under the current D.C. Code as sexual abuse under an accomplice theory. Under this theory, by making a payment, the patron/accomplice would have encouraged the principal to coerce the commercial sex act, with the purpose to encourage the principal to succeed in coercing the commercial sex act.

It also is possible that some conduct that constitutes second degree commercial sex with a trafficked person in the RCC could also be prosecuted under the current D.C. Code as either first or second degree child sexual abuse, or first or second degree sexual abuse of a minor. A patron who engages in a commercial sex act with a person under 16 years of age would be guilty of either first degree child sexual abuse (if a sexual act) or second degree child sexual abuse (if a sexual contact). A patron who engages in a commercial sex act with a person 16 or 17 years of age would be guilty of sexual abuse of a minor, however, only if he or she is in a “significant relationship” (e.g. a teacher, religious leader, or uncle) to the minor. Conduct constituting second degree commercial sex with a trafficked person may also be prosecuted under a variety of other sex offenses (e.g. misdemeanor sexual abuse of a child or minor; sexual abuse of a secondary education student) in the current D.C. Code in some circumstances.

However, no current D.C. Code offenses distinctly account for the fact that a minor who engaged in commercial sex was trafficked, or that a person of any age engaged in commercial sex was trafficked by means of coercive threat or debt bondage.

¹²³ D.C. Code § 24-403.01(b)(4) (“ In the case of a person sentenced for an offense for which registration is required by the Chapter 40 of Title 22, the court may, in its discretion, impose a longer term of supervised release than that required or authorized by paragraph (2) or (3) of this subsection, of: . . . (A) Not more than 10 years[.]” D.C. Code §22-4001(8) defines “registration offense” to include “Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor[.]” To the extent the commercial sex with a trafficked person statute covers sexual acts or contacts without consent, D.C. Code § 22-403.01 would authorize an extended period of supervised release.

¹²⁴ RCC § 22E-701

defined term¹²⁵ which here requires that the actor was practically certain that he or she is engaged in a commercial sex act.

Paragraph (a)(2) specifies that first degree commercial sex with a trafficked person requires that an explicit or implicit coercive threat,¹²⁶ or debt bondage, both defined terms,¹²⁷ was used to cause the other person to engage in the commercial sex act with the actor. The paragraph specifies that a “knowingly” culpable mental state applies, a defined term¹²⁸ which here requires that the actor was practically certain that a coercive threat or debt bondage was used to cause the other person to engage in the commercial sex act.

Paragraph (a)(3) specifies that first degree commercial sex with a trafficked person requires that the actor was reckless as to whether the other person was under the age of 18, or, in fact, the complainant was under 12 years of age. “Recklessness,” a defined term,¹²⁹ here requires that the actor consciously disregarded a substantial risk that that was clearly blameworthy that the other person was under the age of 18. “In fact” is a defined term that here means no culpable mental state need be proven if the complainant is under 12 years of age.

Subsection (b) establishes the elements for second degree commercial sex with a trafficked person. Paragraph (b)(1) specifies that the actor must engage in a commercial sex act. The paragraph specifies that a “knowingly” culpable mental state applies, a defined term¹³⁰ which here requires that the actor was practically certain that he or she is engaged in a commercial sex act.

Paragraph (b)(2) specifies that two forms of second degree commercial sex with a trafficked person. Subparagraph (b)(2)(A) requires that an explicit or implicit “coercive threat,” or “debt bondage,” both defined terms¹³¹, was used to cause the other person to engage in the commercial sex act with the actor. The paragraph specifies that a “knowingly” culpable mental state applies, a defined term¹³² which here requires that the actor was practically certain that a coercive threat or debt bondage was used to cause the other person to engage in the commercial sex act. Subparagraph (b)(2)(B) requires that the other person had been recruited, enticed, housed, transported, provided, obtained, or maintained for the purpose of causing the person to submit to or engage in the commercial sex act. The paragraph specifies that a “knowingly” culpable mental state applies, a defined term¹³³ which here requires that the actor was practically certain that the other person had been recruited, enticed, housed, transported, provided, obtained, or maintained for the purpose of causing the person to submit to or engage in the commercial sex act. Subparagraph (b)(2)(B) also requires that the actor was reckless that the complainant falls under one of the categories specified in sub-subparagraphs (b)(2)(B)(i)-(iii). Sub-subparagraph (b)(2)(B)(i) requires that the complainant is under the age of 18. Sub-subparagraph (b)(2)(B)(ii)

¹²⁵ RCC § 22E-206 (b).

¹²⁶ A coercive threat may come in the form of a verbal or written communication, however gestures or other conduct may also suffice. In addition, the statute specifies that the coercive threat need not be explicit. Communications and conduct that are implicitly threatening given the circumstances may satisfy this element. For example, if a person consistently beats people who refuse to comply with his demands, this pattern of conduct may constitute a coercive threat when that person makes similar demands of others. In addition, ongoing infliction of harm may constitute a coercive threat, if it communicates that harm will continue in the future.

¹²⁷ RCC § 22E-701.

¹²⁸ RCC § 22E-206 (b).

¹²⁹ RCC § 22E-206 (d).

¹³⁰ RCC § 22E-206 (b).

¹³¹ RCC § 22E-701.

¹³² RCC § 22E-206 (b).

¹³³ RCC § 22E-206.

requires that the complainant is incapable of appraising the nature of the commercial sex act or of understanding the right to give or withhold consent to the commercial sex act, either due to a drug, intoxicant, or other substance, or, due to an intellectual, developmental, or mental disability or mental illness when the actor has no similarly serious disability or illness. Sub-subparagraph (b)(2)(B)(iii) requires that the complainant was incapable of communicating unwillingness to engage in the commercial sex act. In addition, sub-subparagraph (b)(2)(B)(iv) requires that the complainant was, in fact, under the age of 12. This sub-subparagraph uses the term “in fact,” which specifies that no culpable mental state is required as to the complainant being under the age of 12.

***Relation to Current District Law.** The commercial sex with a trafficked person offense changes current District law by criminalizing the knowingly engaging in a commercial sex act with a victim of trafficking in forced commercial sex, forced commercial sex, or sex trafficking of a minor or adult incapable of consenting.*

The RCC statute distinctly criminalizes and punishes as a form of human trafficking knowingly engaging in a commercial sex act with a trafficked person. Under the current D.C. Code, engaging in a commercial sex act with another person, with knowledge that the other person has been coerced into engaging in the commercial sex act, or was trafficked for the purposes of engaging in commercial sex acts, is not distinctly criminalized. In situations where the complainant is under 16 years of age or an adult incapable of consenting, an actor engaging in such conduct may be liable under various sexual abuse charges under Chapter 30 of Title 22.¹³⁴ Under current D.C. Code § 22–2701, such conduct may be prosecuted as solicitation of prostitution and subject to a maximum 90 days imprisonment for a first offense. In contrast, the revised statute distinctly treats such conduct as a type of human trafficking offense and provides a correspondingly more serious penalty. This change the proportionality of the revised statutes.

RCC § 22E-1613. Civil Forfeiture.

***Explanatory Note.** This section establishes civil asset forfeiture rules for conveyances and money that are intended to be used, or are used, to commit RCC human trafficking offenses. The RCC replaces all prostitution offenses that involve non-consensual commercial sex acts with human trafficking offenses. The civil forfeiture statute in part replaces the current forfeiture statute applicable to prostitution and related offenses,¹³⁵ and all seizures and forfeitures under this section shall be pursuant to D.C. Law 20-278. This statute both changes current law by allowing asset forfeiture as to all human trafficking offenses, and preserves current District law by ensuring that offenses involving non-consensual prostitution are still subject to forfeiture.*

Subsection (a) establishes the types of property that are subject to civil forfeiture under the revised statute. Paragraph (a)(1) applies to any property that is, in fact, a conveyance, including aircraft, vehicles, or vessels. “In fact” is a defined term that indicates there is no

¹³⁴ If A engages in a commercial sex act with B, knowing that a third party coerced B into engage in the commercial sex act, A is not guilty of a sexual assault offense. However, B may be guilty of a sexual assault offense.

¹³⁵ D.C. Code § 22-2723.

culpable mental state for a given element. Here, “in fact” means that there is no culpable mental state required for the fact that the property possessed is a conveyance. In addition, paragraph (a)(1) requires that the conveyance is possessed with intent to facilitate commission of an offense under Chapter 16 of the RCC. “Possess” is a defined term in RCC § 22E-701 that here means a specified item that one holds or carries on one’s person or has the ability and desire to exercise control over. “Intent” is a defined term in RCC § 22E-206 that here means a person was practically certain that a conveyance would be used to facilitate commission of an RCC human trafficking offense. Per RCC § 22E-205, the object of the phrase “with intent to” is not an objective element that requires separate proof—only the person’s culpable mental state must be proven regarding the object of this phrase. It is not necessary to prove that the conveyance was used to facilitate commission of an RCC human trafficking offense, just that a person believed to a practical certainty that a conveyance would be so used. Applying the RCC definition of “intent” does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹³⁶

Paragraph (a)(1) specifies an alternative basis of forfeiture for a conveyance—a conveyance which is, “in fact,” used to facilitate the commission of an RCC human trafficking offense. “In fact” is a defined term in RCC § 22E-207 that indicates there is no culpable mental state for a given element. Here, “in fact” means that there is no culpable mental state required for the fact that the conveyance was used to facilitate the commission of an RCC human trafficking offense. Applying strict liability does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹³⁷

Paragraph (a)(2) applies to all items that are, “in fact,” money, coins, and currency. “In fact” is a defined term that indicates there is no culpable mental state for a given element. Here, “in fact” means that there is no culpable mental state required for the fact that the item is money, coins, or currency. In addition, paragraph (a)(2) requires that the money, coins, or currency are possessed with intent to facilitate commission of an offense under Chapter 16 of the RCC. “Possess” is a defined term in RCC § 22E-701 that here means a specified item that one holds or carries on one’s person or has the ability and desire to exercise control over. The culpable mental state requirement of “intent” and the strict liability requirements of “in fact” are the same in paragraph (a)(2) as they are in paragraph (a)(1).

Paragraph (a)(2) specifies an alternative basis of forfeiture of money, coins or currency—if it is, “in fact,” used to facilitate the commission of an RCC human trafficking offense. “In fact” is a defined term in RCC § 22E-207 that indicates there is no culpable mental state for a given element. Here, “in fact” means that there is no culpable mental state required for the fact that the money, coins or currency were used to facilitate the commission of an RCC human trafficking offense. Applying strict liability does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹³⁸

Paragraph (b) establishes that the seizures and forfeitures under this section shall be pursuant to the standards and procedures set forth in D.C. Law 20-278.

Subsection (c) cross-references applicable definitions located elsewhere in the RCC.

¹³⁶ This issue is discussed in detail later in the commentary to this revised statute.

¹³⁷ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

¹³⁸ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

Relation to Current District Law. *The revised forfeiture statute changes current District law in two main ways.*

First, the revised human trafficking civil forfeiture statute specifies that human trafficking offenses are subject to civil asset forfeiture. The current D.C. Code generally specifies that alleged violations of a “forfeitable offense” can give rise to civil asset forfeiture.¹³⁹ Human trafficking offenses are not included in the definition of “forfeitable offense,” and alleged violations of human trafficking offenses are not explicitly subject to civil forfeiture. However, the definition of “forfeitable offense” does include prostitution offenses, including prostitution offenses involving non-consensual conduct,¹⁴⁰ that can give rise to forfeiture under D.C. Code § 22-2723. In contrast, the revised forfeiture statute changes law by clarifying that all human trafficking offenses are subject to civil asset forfeiture. This change improves the proportionality and consistency of the revised statutes.

Second, the revised human trafficking forfeiture provision applies to money, coins, and currency which are used, or intended to be used, “to facilitate commission” of an RCC human trafficking offense. The current D.C. Code prostitution forfeiture statute, which applies in part to prostitution offenses involving non-consensual conduct,¹⁴¹ applies to conveyances that are used, or intended to be used, “to facilitate a violation” of the current D.C. Code prostitution statutes¹⁴² and to currency that is used, or intended to be used, “in violation” of the current D.C. Code prostitution statutes.¹⁴³ “In violation” appears to be narrower than “to facilitate the commission,” but there is no D.C. Court of Appeals (DCCA) case law on this issue. In contrast, the revised forfeiture provision applies to currency that is used, or possessed with intent to be used, “to facilitate the commission” of the RCC human trafficking offenses, which is consistent with the scope of conveyances subject to forfeiture. It is inconsistent to include in forfeiture conveyances that are used, or possessed with intent to be used, “to facilitate the commission” of a trafficking offense, but to limit forfeiture of currency to currency that is used, or possessed with intent to be used “in violation” of a trafficking offense. This change improves the clarity, consistency, and proportionality of the revised statute.

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

¹³⁹ D.C. Code § 41-301.

¹⁴⁰ Current Chapter 27 of the D.C. Code, which defines prostitution-related offenses, includes several offenses that criminalize nonconsensual commercial sex acts. For example, D.C. Code § 22-2706 makes it a crime to “[use] threats or duress, to detain any individual against such individual’s will, for the purpose of prostitution or a sexual act or sexual contact[.]” Compelling a person to engage in or submit to nonconsensual commercial sex acts is criminalized as a human trafficking offense under Chapter 16 of the RCC, not as a prostitution-related offense.

¹⁴¹ Current Chapter 27 of the D.C. Code, which defines prostitution-related offenses, includes several offenses that criminalize nonconsensual commercial sex acts. For example, D.C. Code § 22-2706 makes it a crime to “[use] threats or duress, to detain any individual against such individual’s will, for the purpose of prostitution or a sexual act or sexual contact[.]” Compelling a person to engage in or submit to nonconsensual commercial sex acts is criminalized as a human trafficking offense under Chapter 16 of the RCC, not as a prostitution-related offense.

¹⁴² D.C. Code Ann. § 22-2723(a)(1) (“(a) The following are subject to forfeiture: (1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense.”).

¹⁴³ D.C. Code Ann. § 22-2723(a)(2) (“(a) The following are subject to forfeiture: . . . (2) All money, coins, and currency which are used, or intended for use, in violation of a prostitution-related offense.”).

First, the RCC definition of “intent to” applies to the revised forfeiture provision. The current D.C. Code prostitution forfeiture provision applies to conveyances and money that are “intended for use” in a prostitution offense.¹⁴⁴ The meaning of “intended to” is unclear and there is no DCCA case law on this issue.¹⁴⁵ Resolving this ambiguity, the revised prostitution forfeiture provision applies the RCC definition of “intent” in RCC § 22E-206. “Intent” is a defined term in RCC § 22E-206 that here means the actor was practically certain that the property would be used in a prostitution offense.¹⁴⁶ Applying the RCC definition of “intent” does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹⁴⁷ This change improves the clarity, consistency, and proportionality of the revised statutes.

Second, the RCC establishes that strict liability is a distinct basis for the forfeiture of property. The current D.C. Code prostitution forfeiture provision applies to conveyances and money that are “are used” in a prostitution offense.¹⁴⁸ It is unclear whether “are used” applies strict liability. There is no DCCA case law on this issue. Resolving this ambiguity, the revised prostitution forfeiture provision, by use of the phrase “in fact,” clarifies that strict liability is a distinct basis for the forfeiture of property. Applying strict liability does not change the mental state requirements for forfeiture in D.C. Law 20-278.¹⁴⁹ This change improves the clarity, consistency, and proportionality of the revised statutes.

¹⁴⁴ D.C. Code § 22-2723(a)(1), (a)(2).

¹⁴⁵ The words “intended to” as used in the current prostitution forfeiture statute may refer to what was commonly known as “specific intent.” However, even if this is the case, current District case law is unclear as to whether “specific intent” may be satisfied by mere knowledge, or if conscious desire is required. Compare, *Logan v. United States*, 483 A.2d 664, 671 (D.C. 1984) (“[a] specific intent to kill exists when a person acts with the purpose . . . of causing the death of another,”) with *Peoples v. United States*, 640 A.2d 1047, 1055-56 (D.C. 1994) (proof that the appellant, who set fire to a building “knew” people inside a would suffer injuries sufficient to infer that the appellant “had the requisite specific intent to support his convictions of malicious disfigurement”).

¹⁴⁶ Relying on the RCC definition of “intent” may produce an additional change in current District law. Under the RCC, the “intent” mental state may be satisfied by knowledge of a circumstance or result. The RCC also provides that knowledge of a circumstance may be imputed if a person is reckless as to whether the circumstance exists, and with the purpose of avoiding criminal liability, avoids confirming or fails to investigate whether the circumstance exists. Applied to this forfeiture provision, if an owner does *not* know that property is to be used to violate the trafficking in forced commercial sex offense, but was reckless as to this fact, and avoided investigating whether this circumstance exists in order to avoid criminal liability, the imputation rule may allow a fact finder to impute knowledge to the owner. It is unclear under current District law it is unclear whether a similar rule of imputation would apply. Current D.C. Code § 41-306 states that “[n]o property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.” However, this provision applies when an actual *act or omission* is the basis for forfeiture. It is unclear whether an owner’s willful blindness as to *intended* uses of property still authorizes civil forfeiture. If this provision does apply even when property has not yet been used, the term “willfully blind” is undefined, and it is unclear how it differs from the deliberate ignorance provision under the RCC.

¹⁴⁷ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

¹⁴⁸ D.C. Code § 22-2723(a)(1), (a)(2).

¹⁴⁹ See, e.g., D.C. Code § 41-302(b) (“No property shall be subject to forfeiture by reason of an act or omission committed or omitted without the actual knowledge and consent of the owner, unless the owner was willfully blind to the knowledge of the act or omission.”).

The remaining changes are clarificatory and are not intended to substantively change current District law.

First, the revised forfeiture provision deletes the language “to transport.” The current D.C. Code prostitution forfeiture provision includes “[a]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense.” The term “conveyances” sufficiently communicates an object designed to transport. The verb “to transport” is unnecessary and deleting it improves the clarity of the revised statutes.

Second, the revised forfeiture provision deletes the language “in any manner.” The current D.C. Code prostitution forfeiture provision includes “[a]ll conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense.” “To facilitate” is sufficiently broad to encompass all methods of facilitation, particularly since the revised statute, as is discussed above, no longer specifies “to transport.” Deleting “in any manner” improves the clarity of the revised statutes.

Third, the revised forfeiture provision deletes the term “property.” The current D.C. Code prostitution forfeiture provision states that “All seizures and forfeitures of property under this section shall be pursuant to the standards and procedures set forth in D.C. Law 20-278.”¹⁵⁰ The term “property” is unnecessary because paragraphs (a)(1) and (a)(2) of the revised provision and of the current forfeiture provision,¹⁵¹ limit the provision to types of property—vehicles and money. This change improves the clarity of the revised statutes.

¹⁵⁰ D.C. Code § 22-2723(b).

¹⁵¹ D.C. Code § 22-2723(a)(1), (a)(2).