



D.C. Criminal Code Reform Commission

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To: Code Revision Advisory Group (Advisory Group)
From: Criminal Code Reform Commission (CCRC)
Date: August 11, 2017
Re: Advisory Group Memo #12, Property Offense Supplementary Materials

This memorandum supplements the first drafts of reports #8-11,¹ which provide recommendations for the revision of District property offenses. The memorandum provides some general qualifying points on the intent and meaning of the recommendations. Appendix A provides a compilation of existing D.C. Code statutes that correspond to provisions in the draft reports. Appendix B provides a compilation of draft recommendations for revision of property offenses prepared by the D.C. Sentencing Commission in 2016.²

GENERAL NOTES ON FIRST DRAFTS OF REPORTS #8-11

Scope. The property offenses in draft reports #8-11 cover nearly all felony property offenses for which there was more than one annual conviction in recent years.³ The corresponding provisions in the D.C. Code are from various chapters of Title 22, mostly in Chapter 32 concerning theft-type offenses. These offenses form the core of liability for property offenses and, it should not be assumed that recommendations will be made to additional property offenses or provisions. However, recommendations for a few additional, more rarely used minor property offenses may be included with the second draft of these reports.

Organization. The recommendations in draft reports #8-11 are broken out into seven chapters. Chapter 20 contains provisions that generally apply to the property offense subtitle, including definitions, rules on aggregation of value, and rules limiting convictions for groups of offenses based on the same act or course of conduct. Chapters 21-24 concern, respectively, theft-type offenses, fraud-type offenses, extortion, and stolen property-type offenses. The recommendations do not provide for a “consolidated theft” provision as in the Model Penal Code (MPC) and many jurisdictions. However, the recommendations do align the elements among these offenses, with broad distinctions by the presence or lack of consent. E.g., theft involves

¹ First Draft of Report #8 Recommendations for Property Offense Definitions, Aggregation, Multiple Convictions (8-11-17); First Draft of Report #9 Recommendations for Theft and Damage to Property Offenses (8-11-17); First Draft of Report #10 Recommendations for Fraud and Stolen Property Offenses (8-11-17); First Draft of Report #11 Recommendations for Extortion, Trespass, and Burglary Offenses (8-11-17).

² The draft recommendations prepared by the D.C. Sentencing Commission are not referenced or relied upon in the CCRC’s current recommendations. However, per the request of an Advisory Group member, this information is provided for ease of reference.

³ Estimate based on public data of the D.C. Sentencing Commission, available online at <https://scdc.dc.gov/node/1192395> (last visited August 8, 2017).

takings without consent, fraud involves takings with consent obtained by deception, and extortion involves takings with consent obtained by coercion. This structure allows the revised code to avoid overlapping offenses while preserving the distinctions familiar to District practitioners. Chapter 25 concerns damage to property-type offenses, and dramatically reduces the profusion of offenses dealing with damage to certain types of property in the current D.C. Code. Chapter 26 provides trespass-type offenses and Chapter 27 includes burglary.

Use of Gradations. The revised property offenses in many cases expand the use of gradations, and frequently use five gradations based on the same value cutoffs (any value, \$250+, \$2,500+, \$25,000+, \$250,000+). As a drafting choice, the gradations are part of the penalties for each offense rather than separate code sections. This means that that in offenses with gradations, the offense definition subsection provides a “base definition” that the penalty and gradations subsection build upon by requiring additional or more stringent elements. This drafting style has the benefit of reducing repetition of definitions and putting in immediate proximity to one another the various gradations so a reader can assess the distinctions. This drafting style also helps clarify lesser included offense relationships. A complication of this style, however, is that with some of the elements in the penalty gradations, there may be questions about the corresponding culpable mental states. For clarity, the recommendations specify the culpable mental states applicable to elements in the penalty gradations, using the same rules we’ve used in the past, described in the general provision (e.g., use of “in fact” means the following element is a matter of strict liability). Alternative drafting styles are possible, of course, and feedback on this would be appreciated. Provisions in the D.C. Code Title 22 vary widely in drafting styles, with some specifying value elements and gradations in their penalties.

Statistics. The recommendations in draft reports #8-11 do not reflect a full review of relevant statistical data on charging and sentencing in the District, and the commentary entries do not describe relevant statistical patterns. The CCRC recently succeeded in reaching an agreement with the Superior Court that will allow the agency⁴ to analyze the frequency of misdemeanor and felony charges and sentencing and other pertinent information. As relevant analyses are completed, they will be shared with the CCRC.⁵ Some preliminary information relevant to property offenses may be available in late August or early September. The new data are expected to provide a more complete picture of offense-specific charging and sentencing practices than has previously been developed for the District.

Advisory Group Comments. As always, the CCRC welcomes all comments from Advisory Group members. Please bear in mind that there will be a second draft of draft reports #8-11 released this winter, and changes may be substantial depending on Advisory Group feedback and review of statistical information. Consequently, minor corrections to spelling, formatting, and style in the commentary to these reports may best be held for the second draft.

⁴ Data scientists in the Lab, a division in the Office of the City Administrator, will be conducting the analysis in consultation with the CCRC.

⁵ CCRC release of information, including to the Advisory Group, is limited by a Data Use Agreement that conditions the agency’s use of the data.

APPENDIX A: RELEVANT DISTRICT CRIMINAL STATUTES

§ 22-301. [Arson] Definition and penalty.

Whoever shall maliciously burn or attempt to burn any dwelling, or house, barn, or stable adjoining thereto, or any store, barn, or outhouse, or any shop, office, stable, store, warehouse, or any other building, or any steamboat, vessel, canal boat, or other watercraft, or any railroad car, the property, in whole or in part, of another person, or any church, meetinghouse, schoolhouse, or any of the public buildings in the District, belonging to the United States or to the District of Columbia, shall suffer imprisonment for not less than 1 year nor more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-302. Burning one's own property with intent to defraud or injure another.

Whoever maliciously burns or sets fire to any dwelling, shop, barn, stable, store, or warehouse or other building, or any steamboat, vessel, canal boat, or other watercraft, or any goods, wares, or merchandise, the same being his own property, in whole or in part, with intent to defraud or injure any other person, shall be imprisoned for not more than 15 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-303. Malicious burning, destruction, or injury of another's property.

Whoever maliciously injures or breaks or destroys, or attempts to injure or break or destroy, by fire or otherwise, any public or private property, whether real or personal, not his or her own, of the value of \$1,000 or more, shall be fined not more than the amount set forth in § 22-3571.01 or shall be imprisoned for not more than 10 years, or both, and if the property has some value shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

§ 22-601. Breaking and entering vending machines and similar devices.

Whoever in the District of Columbia breaks open, opens, or enters, without right, any parking meter, coin telephone, vending machine dispensing goods or services, money changer, or any other device designed to receive currency, with intent to carry away any part of such device or anything contained therein, shall be sentenced to a term of imprisonment of not more than 3 years or to a fine of not more than the amount set forth in § 22-3571.01 , or both.

§ 22-801. Definition and penalty.

(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than 5 years nor more than 30 years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car, or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part

thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than 2 years nor more than 15 years.

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

§ 22-932. Definitions.

For the purposes of this chapter, the term:

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

§ 22-933.01. Financial exploitation of a vulnerable adult or elderly person.

(a) A person is guilty of financial exploitation of a vulnerable adult or elderly person if the person intentionally and knowingly:

- (1) Uses deception, intimidation, or undue influence to obtain the property, including money, of a vulnerable adult or elderly person, with the intent to deprive the vulnerable adult or elderly person of the property or use it for the advantage of anyone other than the vulnerable adult or elderly person;
- (2) Uses deception, intimidation, or undue influence to cause the vulnerable adult or elderly person to assume a legal obligation on behalf of, or for the benefit of, anyone other than the vulnerable adult or elderly person; or
- (3) Violates any provision of law proscribing theft, extortion, forgery, fraud, or identity theft against the vulnerable adult or elderly person, so long as the offense was undertaken to obtain the property, including money, of a vulnerable adult or elderly person, or to cause the vulnerable adult or elderly person to assume a legal obligation on behalf of, or for the benefit of, anyone other than the vulnerable adult or elderly person.

(b) It is an affirmative defense that the accused knew or reasonably believed the victim was not a vulnerable adult or elderly person at the time of the offense, or could not have known or determined that the victim was a vulnerable adult or elderly person because of the manner in which the offense was committed. This defense shall be established by a preponderance of the evidence.

(c) For the purposes of this section, the term “undue influence” means mental, emotional, or physical coercion that overcomes the free will or judgment of a vulnerable adult or elderly person and causes the vulnerable adult or elderly person to act in a manner that is inconsistent with his or her financial, emotional, mental, or physical well-being.

§ 22-936.01. Criminal penalties for financial exploitation of a vulnerable adult or elderly person.

(a) Any person who commits the offense of financial exploitation of a vulnerable adult or elderly person in violation of § 22-933.01 shall be subject to the following criminal penalties:

- (1) When the value of the property or legal obligation is \$1,000 or more, a fine of not more than the amount set forth in § 22-3571.01, or imprisonment for not more than 10 years, or both.
 - (2) When the property or legal obligation has some value, a fine of not more than the amount set forth in § 22-3571.01, or imprisonment for not more than 180 days, or both.
 - (3) In addition to the penalties set forth in paragraphs (1) and (2) of this subsection, a person shall make restitution, before the payment of any fines or civil penalties.
- (b) A person convicted of a violation of § 22-933.01 who has 2 or more prior convictions for violating § 22-933.01, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 15 years, or both.

§ 22-937. Civil penalties for financial exploitation of a vulnerable adult or elderly person.

(a) In addition to other penalties provided by law, a person who violates § 22-933.01 shall be subject to the following civil penalties:

- (1) A fine of up to \$5,000 per violation;
 - (2) Revocation of all permits, certificates, or licenses issued by the District of Columbia authorizing the person to provide services to vulnerable adults or elderly persons; and
 - (3) A temporary or permanent injunction.
- (b) Restitution under § 22-936.01 shall be paid before the payment of any fines or civil penalties under this section.

§ 22-938. Injunctive relief and protections.

(a) Whenever the Attorney General or the United States Attorney has reason to believe that a person has engaged in financial exploitation of a vulnerable adult or elderly person in violation of § 22-933.01, the Attorney General or the United States Attorney may petition the court, which may be by ex-parte motion and without notice to the person, for one or more of the following:

- (1) A temporary restraining order;
 - (2) A temporary injunction;
 - (3) An order temporarily freezing the person's assets; or
 - (4) Any other relief the court deems just.
- (b) The court may grant an ex-parte motion authorized by subsection (a) of this section without notice to the person against whom the injunction or order is sought if the court finds that facts offered in support of the motion establish that:
- (1) There is a substantial likelihood that the person committed financial exploitation of a vulnerable adult or elderly person;
 - (2) The harm that may result from the injunction or order is clearly outweighed by the risk of harm to the vulnerable adult or elderly person if the injunction or order is not issued; and
 - (3) If the Attorney General or the United States Attorney has petitioned for an order temporarily freezing assets, the order is necessary to prevent dissipation of assets obtained in violation of § 22-933.01.
- (c)(1) An order temporarily freezing assets without notice to the person pursuant to subsections (a)(3) and (b) of this section shall expire on a date set by the court, not later than 14 days after the court issues the order unless, before that time, the court extends the order for good cause shown.

(2) A person whose assets were temporarily frozen under paragraph (1) of this subsection may move to dissolve or modify the order after notice to the Attorney General for the United States Attorney. The court shall hear and decide the motion or application on an expedited basis.

(d) The court may issue an order temporarily freezing the assets of the vulnerable adult or elderly person to prevent dissipation of assets; provided, that the court also appoints a receiver or conservator for those assets. The order shall allow for the use of assets to continue care for the vulnerable adult or elderly person, and can only be issued upon a showing that a temporary injunction or temporary restraining order authorized by this section would be insufficient to safeguard the assets, or with the consent of the vulnerable adult or elderly person or his or her legal representative.

§ 22-1307. Crowding, obstructing, or incommoding.

(a) It is unlawful for a person, alone or in concert with others:

(1) To crowd, obstruct, or incommode:

(A) The use of any street, avenue, alley, road, highway, or sidewalk;

(B) The entrance of any public or private building or enclosure;

(C) The use of or passage through any public building or public conveyance; or

(D) The passage through or within any park or reservation; and

(2) To continue or resume the crowding, obstructing, or incommoding after being instructed by a law enforcement officer to cease the crowding, obstructing, or incommoding.

(b)(1) It is unlawful for a person, alone or in concert with others, to engage in a demonstration in an area where it is otherwise unlawful to demonstrate and to continue or resume engaging in a demonstration after being instructed by a law enforcement officer to cease engaging in a demonstration.

(2) For purposes of this subsection, the term “demonstration” means marching, congregating, standing, sitting, lying down, parading, demonstrating, or patrolling by one or more persons, with or without signs, for the purpose of persuading one or more individuals, or the public, or to protest some action, attitude, or belief.

(c) A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

§ 22-1321. Disorderly conduct.

(g) It is unlawful, under circumstances whereby a breach of the peace may be occasioned, to interfere with any person in any public place by jostling against the person, unnecessarily crowding the person, or placing a hand in the proximity of the person’s handbag, pocketbook, or wallet.

(h) A person who violates any provision of this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned not more than 90 days, or both.

§ 22-1323. Obstructing bridges connecting D.C. and Virginia.

Effective with respect to conduct occurring on or after August 5, 1997, whoever in the District of Columbia knowingly and willfully obstructs any bridge connecting the District of Columbia and the Commonwealth of Virginia:

- (1) Shall be fined not less than \$1,000 and not more than \$5,000, and in addition may be imprisoned not more than 30 days; or
- (2) If applicable, shall be subject to prosecution by the District of Columbia under the provisions of District law and regulation amended by the Safe Streets Anti-Prostitution Amendment Act of 1996.
- (3) The fine set forth in this section shall not be limited by § 22-3571.01.

§ 22-1341. Unlawful entry of a motor vehicle.

(a) It is unlawful to enter or be inside of the motor vehicle of another person without the permission of the owner or person lawfully in charge of the motor vehicle. A person who violates this subsection shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both.

(b) Subsection (a) of this section shall not apply to:

- (1) An employee of the District government in connection with his or her official duties;
- (2) A tow crane operator who has valid authorization from the District government or from the property owner on whose property the motor vehicle is illegally parked; or
- (3) A person with a security interest in the motor vehicle who is legally authorized to seize the motor vehicle.

(c) For the purposes of this section, the term “enter the motor vehicle” means to insert any part of one’s body into any part of the motor vehicle, including the passenger compartment, the trunk or cargo area, or the engine compartment.

§ 22-1510. Making, drawing, or uttering check, draft, or order with intent to defraud; proof of intent; “credit” defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, order, or other instrument in full upon its presentation, shall, if the amount of such check, draft, order, or other instrument is \$1,000 or more, be guilty of a felony and fined not more than the amount set forth in § 22-3571.01 or imprisoned for not less than 1 year nor more than 3 years, or both; or if the amount of such check, draft, order, or other instrument has some value, be guilty of a misdemeanor and fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, order, or other instrument, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository,

provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within 5 days after receiving notice in person, or writing, that such check, draft, order, or other instrument has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, order, or other instrument.

§ 22-2501. Possession of implements of crime; Penalty

No person shall have in his or her possession in the District any instrument, tool, or implement for picking locks or pockets, with the intent to use such instrument, tool, or implement to commit a crime. Whoever violates this section shall be imprisoned for not more than 180 days and may be fined not more than the amount set forth in § 22-3571.01, unless the violation occurs after he or she has been convicted in the District of a violation of this section or of a felony, either in the District or another jurisdiction, in which case he or she shall be imprisoned for not less than one year nor more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

§ 22-3201. Definitions.

For the purposes of this chapter, the term:

- (1) "Appropriate" means to take or make use of without authority or right.
- (2) "Deprive" means:
 - (A) To withhold property or cause it to be withheld from a person permanently or for so extended a period or under such circumstances as to acquire a substantial portion of its value; or
 - (B) To dispose of the property, or use or deal with the property so as to make it unlikely that the owner will recover it.
- (2A) "Person" means an individual (whether living or dead), trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government department, agency, or instrumentality, or any other legal entity.
- (3) "Property" means anything of value. The term "property" includes, but is not limited to:
 - (A) Real property, including things growing on, affixed to, or found on land;
 - (B) Tangible or intangible personal property;
 - (C) Services;
 - (D) Credit;
 - (E) Debt; and
 - (F) A government-issued license, permit, or benefit.
- (4) "Property of another" means any property in which a government or a person other than the accused has an interest which the accused is not privileged to interfere with or infringe upon without consent, regardless of whether the accused also has an interest in that property. The term "property of another" includes the property of a corporation or other legal entity established pursuant to an interstate compact. The term "property of another" does not include any property in the possession of the accused as to which any other person has only a security interest.

(5) “Services” includes, but is not limited to:

(A) Labor, whether professional or nonprofessional;

(B) The use of vehicles or equipment;

(C) Transportation, telecommunications, energy, water, sanitation, or other public utility services, whether provided by a private or governmental entity;

(D) The supplying of food, beverage, lodging, or other accommodation in hotels, restaurants, or elsewhere;

(E) Admission to public exhibitions or places of entertainment; and

(F) Educational and hospital services, accommodations, and other related services.

(6) “Stolen property” includes any property that has been obtained by conduct previously known as embezzlement.

(7) “Value” with respect to a credit card, check, or other written instrument means the amount of money, credit, debt, or other tangible or intangible property or services that has been or can be obtained through its use, or the amount promised or paid by the credit card, check, or other written instrument.

§ 22-3202. Aggregation of amounts received to determine grade of offense.

Amounts or property received pursuant to a single scheme or systematic course of conduct in violation of § 22-3211 (Theft), § 22-3221 (Fraud), § 22-3223 (Credit Card Fraud), § 22-3227.02 (Identity Theft), § 22-3231 (Trafficking in Stolen Property), or § 22-3232 (Receiving Stolen Property) may be aggregated in determining the grade of the offense and the sentence for the offense.

§ 22-3203. Consecutive sentences.

(a) A person may be convicted of any combination of theft, identity theft, fraud, credit card fraud, unauthorized use of a vehicle, commercial piracy, and receiving stolen property for the same act or course of conduct; provided, that no person shall be consecutively sentenced for any such combination or combinations that arise from the same act or course of conduct.

(b) Convictions arising out of the same act or course of conduct shall be considered as one conviction for purposes of any application of repeat offender sentencing provisions.

§ 22-3204. Case referral.

For the purposes of this chapter, in cases involving more than one jurisdiction, or in cases where more than one District of Columbia agency is responsible for investigating an alleged violation, the investigating agency to which the report was initially made may refer the matter to another investigating or law enforcement agency with proper jurisdiction.

§ 22-3211. Theft.

(a) For the purpose of this section, the term “wrongfully obtains or uses” means: (1) taking or exercising control over property; (2) making an unauthorized use, disposition, or transfer of an interest in or possession of property; or (3) obtaining property by trick, false pretense, false token, tampering, or

deception. The term “wrongfully obtains or uses” includes conduct previously known as larceny, larceny by trick, larceny by trust, embezzlement, and false pretenses.

(b) A person commits the offense of theft if that person wrongfully obtains or uses the property of another with intent:

- (1) To deprive the other of a right to the property or a benefit of the property; or
- (2) To appropriate the property to his or her own use or to the use of a third person.

(c) In cases in which the theft of property is in the form of services, proof that a person obtained services that he or she knew or had reason to believe were available to him or her only for compensation and that he or she departed from the place where the services were obtained knowing or having reason to believe that no payment had been made for the services rendered in circumstances where payment is ordinarily made immediately upon the rendering of the services or prior to departure from the place where the services are obtained, shall be prima facie evidence that the person had committed the offense of theft.

§ 22-3212. Penalties for theft.

(a) *Theft in the first degree.* -- Any person convicted of theft in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both, if the value of the property obtained or used is \$1,000 or more.

(b) *Theft in the second degree.* -- Any person convicted of theft in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained or used has some value.

(c) A person convicted of theft in the first or second degree who has 2 or more prior convictions for theft, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 15 years and for a mandatory-minimum term of not less than one year, or both. A person sentenced under this subsection shall not be released from prison, granted probation, or granted suspension of sentence, prior to serving the mandatory-minimum.

(d) For the purposes of this section, a person shall be considered as having 2 or more prior convictions for theft if he or she has been convicted on at least 2 occasions of violations of:

- (1) § 22-3211;
- (2) A statute in one or more jurisdictions prohibiting theft or larceny; or
- (3) Conduct that would constitute a violation of § 22-3211 if committed in the District of Columbia.

§ 22-3213. Shoplifting.

(a) A person commits the offense of shoplifting if, with intent to appropriate without complete payment any personal property of another that is offered for sale or with intent to defraud the owner of the value of the property, that person:

- (1) Knowingly conceals or takes possession of any such property;
- (2) Knowingly removes or alters the price tag, serial number, or other identification mark that is

imprinted on or attached to such property; or

(3) Knowingly transfers any such property from the container in which it is displayed or packaged to any other display container or sales package.

(b) Any person convicted of shoplifting shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(c) It is not an offense to attempt to commit the offense described in this section.

(d) A person who offers tangible personal property for sale to the public, or an employee or agent of such a person, who detains or causes the arrest of a person in a place where the property is offered for sale shall not be held liable for detention, false imprisonment, malicious prosecution, defamation, or false arrest, in any proceeding arising out of such detention or arrest, if:

(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed in that person's presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

§ 22-3214. Commercial piracy.

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

(1) "Owner", with respect to phonorecords or copies, means the person who owns the original fixation of the property involved or the exclusive licensee in the United States of the rights to reproduce and distribute to the public phonorecords or copies of the original fixation. In the case of a live performance the term "owner" means the performer or performers.

(2) "Proprietary information" means customer lists, mailing lists, formulas, recipes, computer programs, unfinished designs, unfinished works of art in any medium, process, program, invention, or any other information, the primary commercial value of which may diminish if its availability is not restricted.

(3) "Phonorecords" means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. The term "phonorecords" includes the material object in which the sounds are first fixed.

(b) A person commits the offense of commercial piracy if, with the intent to sell, to derive commercial gain or advantage, or to allow another person to derive commercial gain or advantage, that person reproduces or otherwise copies, possesses, buys, or otherwise obtains phonorecords of a sound recording, live performance, or copies of proprietary information, knowing or having reason to believe that the phonorecord or copies were made without the consent of the owner. A presumption of the requisite intent arises if the accused possesses 5 or more unauthorized phonorecords either of the same sound recording

or recording of a live performance.

(c) Nothing in this section shall be construed to prohibit:

(1) Copying or other reproduction that is in the manner specifically permitted by Title 17 of the United States Code; or

(2) Copying or other reproduction of a sound recording that is made by a licensed radio or television station or a cable broadcaster solely for broadcast or archival use.

(d) Any person convicted of commercial piracy shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both.

(e) This section does not apply to any sound recording initially fixed on or after February 15, 1972.

§ 22-3214.01. Deceptive labeling.

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

(1) “Audiovisual works” means material objects upon which are fixed a series of related images which are intrinsically intended to be shown by the use of machines or devices such as projectors, viewers, or electronic equipment, now known or later developed, together with accompanying sounds, if any, regardless of the nature of the material objects, such as films or tapes, in which the works are embodied.

(2) “Manufacturer” means the person who authorizes or causes the copying, fixation, or transfer of sounds or images to sound recordings or audiovisual works subject to this section.

(3) “Sound recordings” means material objects in which sounds, other than those accompanying a motion picture or other audiovisual work, are fixed by any method now known or later developed, and from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

(b) A person commits the offense of deceptive labeling if, for commercial advantage or private financial gain, that person knowingly advertises, offers for sale, resale, or rental, or sells, resells, rents, distributes, or transports, or possesses for such purposes, a sound recording or audiovisual work, the label, cover, or jacket of which does not clearly and conspicuously disclose the true name and address of the manufacturer thereof.

(c) Nothing in this section shall be construed to prohibit:

(1) Any broadcaster who, in connection with, or as part of, a radio or television broadcast transmission, or for the purposes of archival preservation, transfers any sounds or images recorded on a sound recording or audiovisual work; or

(2) Any person who, in his own home, for his own personal use, and without deriving any commercial advantage or private financial gain, transfers any sounds or images recorded on a sound recording or audiovisual work.

(d)(1) Any person convicted of deceptive labeling involving less than 1,000 sound recordings or less than

100 audiovisual works during any 180-day period shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 1 year, or both.

(2) Any person convicted of deceptive labeling involving 1,000 or more sound recordings or 100 or more audiovisual works during a 180-day period shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(e) Upon conviction under this section, the court shall, in addition to the penalties provided by this section, order the forfeiture and destruction or other disposition of all sound recordings, audiovisual works, and equipment used, or attempted to be used, in violation of this section.

§ 22-3214.02. Unlawful operation of a recording device in a motion picture theater.

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

(1) “Motion picture theater” means a theater or other auditorium in which a motion picture is exhibited.

(2) “Recording device” means a photographic or video camera, audio or video recorder, or any other device not existing, or later developed, which may be used for recording sounds or images.

(b) A person commits the offense of unlawfully operating a recording device in a motion picture theater if, without authority or permission from the owner of a motion picture theater, or his or her agent, that person operates a recording device within the premises of a motion picture theater.

(c) Any person convicted of unlawfully operating a recording device in a motion picture theater shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

(d) A theater owner, or an employee or agent of a theater owner, who detains or causes the arrest of a person in, or immediately adjacent to, a motion picture theater shall not be held liable for detention, false imprisonment, malicious prosecution, defamation, or false arrest in any proceeding arising out of such detention or arrest, if:

(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed, or attempted to commit, in that person’s presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

§ 22-3215. Unauthorized use of motor vehicles.

(a) For the purposes of this section, the term “motor vehicle” means any automobile, self-propelled mobile home, motorcycle, truck, truck tractor, truck tractor with semitrailer or trailer, or bus.

(b) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, without the consent of the owner, the person takes, uses, or operates a motor vehicle, or causes a motor vehicle to

be taken, used, or operated, for his or her own profit, use, or purpose.

(c)(1) A person commits the offense of unauthorized use of a motor vehicle under this subsection if, after renting, leasing, or using a motor vehicle under a written agreement which provides for the return of the motor vehicle to a particular place at a specified time, that person knowingly fails to return the motor vehicle to that place (or to any authorized agent of the party from whom the motor vehicle was obtained under the agreement) within 18 days after written demand is made for its return, if the conditions set forth in paragraph (2) of this subsection are met.

(2) The conditions referred to in paragraph (1) of this subsection are as follows:

(A) The written agreement under which the motor vehicle is obtained contains the following statement: "WARNING -- Failure to return this vehicle in accordance with the terms of this rental agreement may result in a criminal penalty of up to 3 years in jail". This statement shall be printed clearly and conspicuously in a contrasting color, set off in a box, and signed by the person obtaining the motor vehicle in a space specially provided;

(B) There is displayed clearly and conspicuously on the dashboard of the motor vehicle the following notice: "NOTICE -- Failure to return this vehicle on time may result in serious criminal penalties"; and

(C) The party from whom the motor vehicle was obtained under the agreement makes a written demand for the return of the motor vehicle, either by actual delivery to the person who obtained the motor vehicle, or by deposit in the United States mail of a postpaid registered or certified letter, return receipt requested, addressed to the person at each address set forth in the written agreement or otherwise provided by the person. The written demand shall state clearly that failure to return the motor vehicle may result in prosecution for violation of the criminal law of the District of Columbia punishable by up to 3 years in jail. The written demand shall not be made prior to the date specified in the agreement for the return of the motor vehicle, except that, if the parties or their authorized agents have mutually agreed to some other date for the return of the motor vehicle, then the written demand shall not be made prior to the other date.

(3) This subsection shall not apply in the case of a motor vehicle obtained under a retail installation contract as defined in § 50-601(9).

(4) It shall be a defense in any criminal proceeding brought under this subsection that a person failed to return a motor vehicle for causes beyond his or her control. The burden of raising and going forward with the evidence with respect to such a defense shall be on the person asserting it. In any case in which such a defense is raised, evidence that the person obtained the motor vehicle by reason of any false statement or representation of material fact, including a false statement or representation regarding his or her name, residence, employment, or operator's license, shall be admissible to determine whether the failure to return the motor vehicle was for causes beyond his or her control.

(d)(1) Except as provided in paragraphs (2) and (3) of this subsection, a person convicted of unauthorized use of a motor vehicle under subsection (b) of this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both.

(2)(A) A person convicted of unauthorized use of a motor vehicle under subsection (b) of this section who took, used, or operated the motor vehicle, or caused the motor vehicle to be taken, used, or operated, during the course of or to facilitate a crime of violence, shall be:

(i) Fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, consecutive to the penalty imposed for the crime of violence; and

(ii) If serious bodily injury results, imprisoned for not less than 5 years, consecutive to the penalty imposed for the crime of violence.

(B) For the purposes of this paragraph, the term “crime of violence” shall have the same meaning as provided in § 23-1331(4).

(3)(A) A person convicted of unauthorized use of a motor vehicle under subsection (b) of this section who has 2 or more prior convictions for unauthorized use of a motor vehicle or theft in the first degree, not committed on the same occasion, shall be fined not less than \$5,000 nor more than \$15,000, or imprisoned for not less than 30 months nor more than 15 years, or both.

(B) For the purposes of this paragraph, a person shall be considered as having 2 prior convictions for unauthorized use of a motor vehicle or theft in the first degree if the person has been twice before convicted on separate occasions of:

(i) A prior violation of subsection (b) of this section or theft in the first degree;

(ii) A statute in one or more other jurisdictions prohibiting unauthorized use of a motor vehicle or theft in the first degree;

(iii) Conduct that would constitute a violation of subsection (b) of this section or a violation of theft in the first degree if committed in the District of Columbia; or

(iv) Conduct that is substantially similar to that prosecuted as a violation of subsection (b) of this section or theft in the first degree.

(4) A person convicted of unauthorized use of a motor vehicle under subsection (c) of this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 3 years, or both.

§ 22-3216. Taking property without right.

A person commits the offense of taking property without right if that person takes and carries away the property of another without right to do so. A person convicted of taking property without right shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

§ 22-3221. Fraud.

(a) *Fraud in the first degree.* -- A person commits the offense of fraud in the first degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise and thereby obtains property of another or causes another to lose property.

(b) *Fraud in the second degree.* -- A person commits the offense of fraud in the second degree if that person engages in a scheme or systematic course of conduct with intent to defraud or to obtain property of another by means of a false or fraudulent pretense, representation, or promise.

(c) *False promise as to future performance.* -- Fraud may be committed by means of false promise as to future performance which the accused does not intend to perform or knows will not be performed. An intent or knowledge shall not be established by the fact alone that one such promise was not performed.

§ 22-3222. Penalties for fraud.

(a) *Fraud in the first degree.* -- (1) Any person convicted of fraud in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or twice the value of the property obtained or lost, whichever is greater, or imprisoned for not more than 10 years, or both, if the value of the property obtained or lost is \$1,000 or more; and

(2) Any person convicted of fraud in the first degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained or lost has some value.

(b) *Fraud in the second degree.* -- (1) Any person convicted of fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or twice the value of the property which was the object of the scheme or systematic course of conduct, whichever is greater, or imprisoned for not more than 3 years, or both, if the value of the property which was the object of the scheme or systematic course of conduct is \$1,000 or more; and

(2) Any person convicted of fraud in the second degree shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property that was the object of the scheme or systematic course of conduct has some value.

§ 22-3223. Credit card fraud.

(a) For the purposes of this section, the term “credit card” means an instrument or device, whether known as a credit card, debit card, or by any other name, issued for use of the cardholder in obtaining or paying for property or services.

(b) A person commits the offense of credit card fraud if, with intent to defraud, that person obtains or pays for property or services by:

(1) Knowingly using a credit card, or the number or description thereof, which has been issued to another person without the consent of the person to whom it was issued;

(2) Knowingly using a credit card, or the number or description thereof, which has been revoked or cancelled;

(3) Knowingly using a falsified, mutilated, or altered credit card or number or description thereof;

(4) Representing that he or she is the holder of a credit card and the credit card had not in fact been issued; or

(5) Knowingly using for the employee’s or contractor’s own purposes a credit card, or the number on or

description of the credit card, issued to or provided to an employee or contractor by or at the request of an employer for the employer's purposes.

(c) A credit card is deemed cancelled or revoked when notice in writing thereof has been received by the named holder as shown on the credit card or by the records of the issuer.

(d)(1) Except as provided in paragraph (2) of this subsection, any person convicted of credit card fraud shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

(2) Any person convicted of credit card fraud shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 10 years, or both, if the value of the property or services obtained or paid for is \$1,000 or more.

§ 22-3224. Fraudulent registration.

(a) A person commits the offense of fraudulent registration if, with intent to defraud the proprietor or manager of a hotel, motel, or other establishment which provides lodging to transient guests, that person falsely registers under a name or address other than his or her actual name or address.

(b) Any person convicted of fraudulent registration shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 90 days, or both.

§ 22-3224.01. Jurisdiction.

An offense under this subchapter shall be deemed to be committed in the District of Columbia, regardless of whether the offender is physically present in the District of Columbia, if:

(1) The person to whom a credit card was issued or in whose name the credit card was issued is a resident of, or located in, the District of Columbia;

(2) The person who was defrauded is a resident of, or located in, the District of Columbia at the time of the fraud;

(3) The loss occurred in the District of Columbia; or

(4) Any part of the offense takes place in the District of Columbia.

§ 22-3227.01. Definitions.

For the purposes of this subchapter, the term:

(1) “Financial injury” means all monetary costs, debts, or obligations incurred by a person as a result of another person obtaining, creating, possessing, or using that person’s personal identifying information in violation of this subchapter, including, but not limited to:

(A) The costs of clearing the person’s credit rating, credit history, criminal record, or any other official record, including attorney fees;

(B) The expenses related to any civil or administrative proceeding to satisfy or contest a debt, lien, judgment, or other obligation of the person that arose as a result of the violation of this subchapter, including attorney fees;

(C) The costs of repairing or replacing damaged or stolen property;

(D) Lost time or wages, or any similar monetary benefit forgone while the person is seeking redress for damages resulting from a violation of this subchapter; and

(E) Lost time, wages, and benefits, other losses sustained, legal fees, and other expenses incurred as a result of the use, without permission, of one’s personal identifying information by another as prohibited by § 22-3227.02.

(2) Repealed.

(3) “Personal identifying information” includes, but is not limited to, the following:

(A) Name, address, telephone number, date of birth, or mother’s maiden name;

(B) Driver’s license or driver’s license number, or non-driver’s license or non-driver’s license number;

(C) Savings, checking, or other financial account number;

(D) Social security number or tax identification number;

(E) Passport or passport number;

(F) Citizenship status, visa, or alien registration card or number;

(G) Birth certificate or a facsimile of a birth certificate;

(H) Credit or debit card, or credit or debit card number;

(I) Credit history or credit rating;

(J) Signature;

(K) Personal identification number, electronic identification number, password, access code or device, electronic address, electronic identification number, routing information or code, digital signature, or telecommunication identifying information;

(L) Biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(M) Place of employment, employment history, or employee identification number; and

(N) Any other numbers or information that can be used to access a person's financial resources, access medical information, obtain identification, act as identification, or obtain property.

(4) "Property" shall have the same meaning as provided in § 22-3201(3) and shall include credit.

§ 22-3227.02. Identity theft.

A person commits the offense of identity theft if that person knowingly:

(1) Uses personal identifying information belonging to or pertaining to another person to obtain, or attempt to obtain, property fraudulently and without that person's consent;

(2) Obtains, creates, or possesses personal identifying information belonging to or pertaining to another person with the intent to:

(A) Use the information to obtain, or attempt to obtain, property fraudulently and without that person's consent; or

(B) Give, sell, transmit, or transfer the information to a third person to facilitate the use of the information by that third person to obtain, or attempt to obtain, property fraudulently and without that person's consent; or

(3) Uses personal identifying information belonging to or pertaining to another person, without that person's consent, to:

(A) Identify himself or herself at the time of his or her arrest;

(B) Facilitate or conceal his or her commission of a crime; or

(C) Avoid detection, apprehension, or prosecution for a crime.

§ 22-3227.03. Penalties for identity theft.

(a) *Identity theft in the first degree.* -- Any person convicted of identity theft shall be fined not more than (1) the amount set forth in § 22-3571.01, (2) twice the value of the property obtained or (3) twice the amount of the financial injury, whichever is greatest, or imprisoned for not more than 10 years, or both, if the property obtained, or attempted to be obtained, or the amount of the financial injury is \$1,000 or more.

(b) *Identity theft in the second degree.* -- Any person convicted of identity theft shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both, if the property obtained, or attempted to be obtained, or the amount of the financial injury, has some value, or if another person is falsely accused of, or arrested for, committing a crime because of the use, without permission, of that person's personal identifying information.

(c) Repealed.

§ 22-3227.04. Restitution.

When a person is convicted of identity theft, the court may, in addition to any other applicable penalty, order restitution for the full amount of financial injury.

§ 22-3227.05. Correction of public records.

(a) When a person is convicted, adjudicated delinquent, or found not guilty by reason of insanity of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subchapter.

(b) In all other cases, a person who alleges that he or she is a victim of identity theft may petition the court for an expedited judicial determination that a District of Columbia public record contains false information as a result of a violation of this subchapter. Upon a finding of clear and convincing evidence that the person was a victim of identity theft, the court may issue such orders as are necessary to correct any District of Columbia public record that contains false information as a result of a violation of this subchapter.

(c) Notwithstanding any other provision of law, District of Columbia agencies shall comply with orders issued under subsection (a) of this section within 30 days of issuance of the order.

(d) For the purposes of this section, the term “District of Columbia public record” means any document, book, photographic image, electronic data recording, paper, sound recording, or other material, regardless of physical form or characteristic, made or received pursuant to law or in connection with the transaction of public business by any officer or employee of the District of Columbia.

§ 22-3227.06. Jurisdiction.

The offense of identity theft shall be deemed to be committed in the District of Columbia, regardless of whether the offender is physically present in the District of Columbia, if:

- (1) The person whose personal identifying information is improperly obtained, created, possessed, or used is a resident of, or located in, the District of Columbia; or
- (2) Any part of the offense takes place in the District of Columbia.

§ 22-3227.07. Limitations.

Obtaining, creating, possessing, and using a person’s personal identifying information in violation of this subchapter shall constitute a single scheme or course of conduct, and the applicable period of limitation under § 23-113 shall not begin to run until after the scheme or course of conduct has been completed or terminated.

§ 22-3227.08. Police reports

The Metropolitan Police Department shall make a report of each complaint of identity theft and provide the complainant with a copy of the report.

§ 22-3231. Trafficking in stolen property.

(a) For the purposes of this section, the term “traffics” means:

- (1) To sell, pledge, transfer, distribute, dispense, or otherwise dispose of property to another person as consideration for anything of value; or
- (2) To buy, receive, possess, or obtain control of property with intent to do any of the acts set forth in paragraph (1) of this subsection.

(b) A person commits the offense of trafficking in stolen property if, on 2 or more separate occasions, that person traffics in stolen property, knowing or having reason to believe that the property has been stolen.

(c) It shall not be a defense to a prosecution under this section, alone or in conjunction with § 22-1803,

that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

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

§ 22-3232. Receiving stolen property.

(a) A person commits the offense of receiving stolen property if that person buys, receives, possesses, or obtains control of stolen property, knowing or having reason to believe that the property was stolen.

(b) It shall not be a defense to a prosecution under this section, alone or in conjunction with § 22-1803, that the property was not in fact stolen, if the accused engages in conduct which would constitute the crime if the attendant circumstances were as the accused believed them to be.

(c)(1) Any person convicted of receiving stolen property shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 7 years, or both, if the value of the stolen property is \$1,000 or more.

(2) Any person convicted of receiving stolen property shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both, if the stolen property has some value.

(d) For the purposes of this section, the term “stolen property” includes property that is not in fact stolen if the person who buys, receives, possesses, or obtains control of the property had reason to believe that the property was stolen.

§ 22-3233. Altering or removing motor vehicle identification numbers.

(a) It is unlawful for a person to knowingly remove, obliterate, tamper with, or alter any identification number on a motor vehicle or a motor vehicle part.

(b)(1) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01 , or both.

(2) Any person who violates subsection (a) of this section shall be guilty of a felony if the value of the motor vehicle or motor vehicle part is \$1,000 or more and, upon conviction, shall be imprisoned for not more than 5 years, or fined not more than \$5000, or both.

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

(1) "Identification number" means a number or symbol that is originally inscribed or affixed by the manufacturer to a motor vehicle or motor vehicle part for purposes of identification.

(2) "Motor vehicle" means any automobile, self-propelled mobile home, motorcycle, motor scooter, truck, truck tractor, truck semi trailer, truck trailer, bus, or other vehicle propelled by an internal-combustion engine, electricity, or steam, including any non-operational vehicle that is being restored or repaired.

§ 22-3234. Altering or removing bicycle identification numbers.

(a) It is unlawful for a person to knowingly remove, obliterate, tamper with, or alter any identification number on a bicycle or bicycle part.

(b) Any person who violates subsection (a) of this section shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01, or both.

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

(1) "Bicycle" shall have the same meaning as provided in § 50-1609(1).

(2) "Identification number" shall have the same meaning as provided in § 50-1609(1A).

§ 22-3241. Forgery.

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

(1) "Forged written instrument" means any written instrument that purports to be genuine but which is not because it:

(A) Has been falsely made, altered, signed, or endorsed;

(B) Contains a false addition or insertion; or

(C) Is a combination of parts of 2 or more genuine written instruments.

(2) “Utter” means to issue, authenticate, transfer, publish, sell, deliver, transmit, present, display, use, or certify.

(3) “Written instrument” includes, but is not limited to, any:

(A) Security, bill of lading, document of title, draft, check, certificate of deposit, and letter of credit, as defined in Title 28;

(B) Stamp, legal tender, or other obligation of any domestic or foreign governmental entity;

(C) Stock certificate, money order, money order blank, traveler’s check, evidence of indebtedness, certificate of interest or participation in any profitsharing agreement, transferable share, investment contract, voting trust certificate, certification of interest in any tangible or intangible property, and any certificate or receipt for or warrant or right to subscribe to or purchase any of the foregoing items;

(D) Commercial paper or document, or any other commercial instrument containing written or printed matter or the equivalent; or

(E) Other instrument commonly known as a security or so defined by an Act of Congress or a provision of the District of Columbia Official Code.

(b) A person commits the offense of forgery if that person makes, draws, or utters a forged written instrument with intent to defraud or injure another.

§ 22-3242. Penalties for forgery.

(a) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both, if the written instrument purports to be:

(1) A stamp, legal tender, bond, check, or other valuable instrument issued by a domestic or foreign government or governmental instrumentality;

(2) A stock certificate, bond, or other instrument representing an interest in or claim against a corporation or other organization of its property;

(3) A public record, or instrument filed in a public office or with a public servant;

(4) A written instrument officially issued or created by a public office, public servant, or government instrumentality;

(5) A check which upon its face appears to be a payroll check;

(6) A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(7) A written instrument having a value of \$10,000 or more.

(b) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both, if the written instrument is or purports to be:

(1) A token, fare card, public transportation transfer certificate, or other article manufactured for use as a symbol of value in place of money for the purchase of property or services;

(2) A prescription of a duly licensed physician or other person authorized to issue the same for any controlled substance or other instrument or devices used in the taking or administering of controlled substances for which a prescription is required by law; or

(3) A written instrument having a value of \$1,000 or more.

(c) Any person convicted of forgery shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both, in any other case.

§ 22-3251. Extortion.

(a) A person commits the offense of extortion if:

(1) That person obtains or attempts to obtain the property of another with the other's consent which was induced by wrongful use of actual or threatened force or violence or by wrongful threat of economic injury; or

(2) That person obtains or attempts to obtain property of another with the other's consent which was obtained under color or pretense of official right.

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

§ 22-3252. Blackmail.

(a) A person commits the offense of blackmail, if, with intent to obtain property of another or to cause another to do or refrain from doing any act, that person threatens:

(1) To accuse any person of a crime;

(2) To expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule; or

(3) To impair the reputation of any person, including a deceased person.

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

§ 22-3301. Forcible entry and detainer.

Whoever shall forcibly enter upon any premises, or, having entered without force, shall unlawfully detain the same by force against any person previously in the peaceable possession of the same and claiming right thereto, shall be punished by imprisonment for not more than 1 year or a fine of not more than the amount set forth in § 22-3571.01 , or both.

§ 22-3302. Unlawful entry on property.

(a)(1) Any person who, without lawful authority, shall enter, or attempt to enter, any private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01 , imprisonment for not more than 180 days, or both. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.

(2) For the purposes of this subsection, the term "private dwelling" includes a privately owned house, apartment, condominium, or any building used as living quarters, or cooperative or public housing, as defined in section 3(1) of the United States Housing Act of 1937, approved August 22, 1974 (88 Stat. 654; 42 U.S.C. § 1437a(b)), the development or administration of which is assisted by the Department of Housing and Urban Development, or housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority.

(b) Any person who, without lawful authority, shall enter, or attempt to enter, any public building, or other property, or part of such building, or other property, against the will of the lawful occupant or of the

person lawfully in charge thereof or his or her agent, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof or his or her agent, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than the amount set forth in § 22-3571.01 , imprisonment for not more than 6 months, or both.

§ 22-3312.01. Defacing public or private property.

It shall be unlawful for any person or persons willfully and wantonly to disfigure, cut, chip, or cover, rub with, or otherwise place filth or excrement of any kind; to write, mark, or print obscene or indecent figures representing obscene or objects upon; to write, mark, draw, or paint, without the consent of the owner or proprietor thereof, or, in the case of public property, of the person having charge, custody, or control thereof, any word, sign, or figure upon:

- (1) Any property, public or private, building, statue, monument, office, public passenger vehicle, mass transit equipment or facility, dwelling or structure of any kind including those in the course of erection; or
- (2) The doors, windows, steps, railing, fencing, balconies, balustrades, stairs, porches, halls, walls, sides of any enclosure thereof, or any movable property.

§ 22-3312.04. Penalties.

(a) Any person who violates any provision of § 22-3312.01 shall be fined not less than \$250 and not more than the amount set forth in § 22-3571.01, or imprisoned for a period not to exceed 180 days, or both. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of § 22-3312.01, pursuant to Chapter 8 of Title 8.

(b) Any person who violates any provision of § 22-3312.02 or § 22-3312.03 shall be guilty of a misdemeanor punishable by a fine not more than the amount set forth in § 22-3571.01, or imprisonment not to exceed 180 days, or both.

(c) In addition to the penalties provided in subsection (a) of this section, a person convicted of violating any provision of § 22-3312.01 may be required to perform community service as provided in § 16-712.

(d) Any person who willfully places graffiti on property without the consent of the owner shall be subject to the sanctions in subsection (a) of this section.

(e) Any person who willfully possesses graffiti material with the intent to place graffiti on property without the consent of the owner shall be fined not less than \$100 or more than \$1,000.

(f) In addition to any fine or sentence imposed under this section, the court shall order the person convicted to make restitution to the owner of the property, or to the party responsible for the property upon which the graffiti has been placed, for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.“.

(g) The District of Columbia courts shall find parents or guardians civilly liable for all fines imposed or payments for abatement required if the minor cannot pay within a reasonable period of time established by the court.

§ 22-3312.05. Definitions.

For the purposes of §§ 22-3312.01 through 22-3312.05, the term:

- (1) “Abate” means to effectively remove.

(2) Repealed.

(3) Repealed.

(4) “Graffiti” means an inscription, writing, drawing, marking, or design that is painted, sprayed, etched, scratched, or otherwise placed on structures, buildings, dwellings, statues, monuments, fences, vehicles, or other similar materials that are on public or private property without the consent of the owner, manager, or agent in charge of the property, and the graffiti is visible from a public right-of-way.

(5) “Graffiti material” means any aerosol can, bottle, spray device or other mechanism designed to dispense paint or a similar substance under pressure, indelible marker, paint stick, adhesive label, and engraving device capable of leaving a visible mark on a natural or man-made surface.

(6) “Minor” means a person less than 18 years of age.

(7) Repealed.

(8) Repealed.

§ 50-1609. Definitions.

For the purposes of this subchapter the term:

(1) “Bicycle” means a human-powered vehicle with wheels designed to transport, by pedaling, one or more persons seated on one or more saddle seats on its frame. “Bicycle” also includes a human-powered vehicle, and any attachment to the vehicle designed to transport by pedaling when the vehicle is used on a public roadway, public bicycle path or other public right-of-way. The term “Bicycle” also includes a “tricycle,” which is a 3-wheeled human-powered vehicle designed for use as a toy by a single child under 6 years of age, the seat of which is no more than 2 feet from ground level.

(1A) “Identification number” means a numbered stamp, sticker, or other label or plate issued for a bicycle for the purpose of identifying the bicycle as having been registered, including any sticker or label provided by the National Bike Registry or a registry established by the Mayor for the purpose of bicycle registration. The term “identification number” shall also include a serial number that is originally inscribed or affixed by the manufacturer to a bicycle frame or a bicycle part for the purpose of identification.

(1B) “National Bike Registry” means the nationwide computer database for the registration of bicycles that is an official licensee of the National Crime Prevention Council and is accessible at www.nationalbikeregistry.com or at 1-800-848-BIKE.

(2) “Operator” means a person under 16 years of age who travels on a bicycle seated on a saddle seat from which that person is intended to and can pedal the bicycle.

(3) “Other public right-of-way” means any right of way other than a public roadway or public bicycle path that is under the jurisdiction and control of the District of Columbia and is designed for use and used by vehicular or pedestrian traffic.

(4) “Passenger” means any person, under 16 years of age, who travels on a bicycle in any manner except as an operator.

(5) “Protective bicycle helmet” means a piece of headgear which meets or exceeds the impact standards for protective bicycle helmets set by the American National Standards Institute (ANSI) or the Snell Memorial Foundation's standards for protective headgear or the American Society for testing and

Materials (ASTM) for use in bicycling.

(6) “Public bicycle path” means a right-of-way under the jurisdiction and control of the District of Columbia for use primarily by bicycles and pedestrians.

(7) “Public roadway” means a right-of-way under the jurisdiction and control of the District of Columbia for use primarily by motor vehicles.

APPENDIX B: 2016 DRAFT RECOMMENDATIONS OF THE D.C. SENTENCING COMMISSION

The following draft recommendations for District property offenses were submitted to the Council and Mayor in September 2016 by the D.C. Sentencing Commission (DCSC) as part of a larger set of documents. As noted in the transmittal letter accompanying the draft recommendations, the DCSC Committee on Criminal Code Revision did not give final approval to these recommendations, and the full DCSC neither reviewed nor approved the draft recommendations.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

§ 22A-401 THEFT AND RELATED OFFENSE DEFINITIONS
(Original Source CRM #23; Last Change/Agreement 12-9-15)

<u>1 Current Statute (D.C. Code § 22-3201)</u>	<u>40 Revised Statute</u>
2	41
3 For the purposes of this chapter, the term:	42 For purposes of this chapter, the term:
4	43
5 (1) "Appropriate" means to take or make use	44 Deleted.
6 of without authority or right.	45
7	46
8 (2) "Deprive" means:	47 "Deprive" means:
9 (A) To withhold property or cause it to	48 (A) To withhold property or cause it to
10 be withheld from a person permanently	49 be withheld from a person permanently
11 or for so extended a period or under such	50 or for so extended a period or under such
12 circumstances as to acquire a substantial	51 circumstances that a substantial portion
13 portion of its value; or	52 of its value or a substantial portion of its
14 (B) To dispose of the property, or use or	53 benefit is lost to that person; or
15 deal with the property so as to make it	54 (B) To dispose of the property, or use or
16 unlikely that the owner will recover it.	55 deal with the property so as to make it
17	56 unlikely that the owner will recover it.
18 (2A) "Person" means an individual (whether	57 "Person" means an individual (whether
19 living or dead), trust, estate, fiduciary,	58 living or dead), trust, estate, fiduciary,
20 partnership, company, corporation,	59 partnership, company, corporation,
21 association, organization, union, government	60 association, organization, union,
22 department, agency, or instrumentality, or	61 government, government subdivision or
23 any other legal entity.	62 instrumentality, or any other legal entity.
24	63
25 (3) "Property" means anything of value. The	64 "Property" means anything of value. The
26 term "property" includes, but is not limited	65 term "property" includes, but is not limited
27 to:	66 to:
28 (A) Real property, including things	67 (A) Real property, including things
29 growing on, affixed to, or found on land;	68 growing on, affixed to, or found on land;
30 (B) Tangible or intangible personal	69 (B) Tangible or intangible personal
31 property;	70 property;
32 (C) Services;	71 (C) Services;
33 (D) Credit;	72 (D) Credit;
34 (E) Debt; and	73 (E) Debt; and
35 (F) A government-issued license, permit,	74 (F) A government-issued license, permit,
36 or benefit.	75 or benefit.
37	76
38 CONTINUED ON NEXT PAGE	77 CONTINUED ON NEXT PAGE
39	

Comment [S5]: 6/10/14 Minutes: Comment should clarify that this definition is not intended change the current state of the law.

Comment [S6]: 7/22/14 Minutes: Comment should clarify that this definition is not intended change the current state of the law.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

78 <u>Current Statute (Continued)</u>	119 <u>Revised Statute (Continued)</u>
79	120
80 (4) "Property of another" means any	121 "Property of another" means any property in
81 property in which a government or a person	122 which a person other than the accused has an
82 other than the accused has an interest which	123 interest, regardless of whether the accused
83 the accused is not privileged to interfere	124 also has an interest in that property. The
84 with or infringe upon without consent,	125 term "property of another" does not include
85 regardless of whether the accused also has	126 any property in the possession of the
86 an interest in that property. The term	127 accused in which the other person has only a
87 "property of another" includes the property	128 security interest.
88 of a corporation or other legal entity	129
89 established pursuant to an interstate	130
90 compact. The term "property of another"	131
91 does not include any property in the	132
92 possession of the accused as to which any	133
93 other person has only a security interest.	134
94	135
95 (5) "Services" includes, but is not limited to:	136 "Services" includes, but is not limited to:
96 (A) Labor, whether professional or	137 (A) Labor, whether professional or
97 nonprofessional;	138 nonprofessional;
98 (B) The use of vehicles or equipment;	139 (B) The use of vehicles or equipment;
99 (C) Transportation, telecommunications,	140 (C) Transportation, telecommunications,
100 energy, water, sanitation, or other public	141 energy, water, sanitation, or other
101 utility services, whether provided by a	142 public utility services, whether
102 private or governmental entity;	143 provided by a private or governmental
103 (D) The supplying of food, beverage,	144 entity;
104 lodging, or other accommodation in	145 (D) The supplying of food, beverage,
105 hotels, restaurants, or elsewhere;	146 lodging, or other accommodation in
106 (E) Admission to public exhibitions or	147 hotels, restaurants, or elsewhere;
107 places of entertainment; and	148 (E) Admission to public exhibitions or
108 (F) Educational and hospital services,	149 places of entertainment; and
109 accommodations, and other related	150 (F) Educational and hospital services,
110 services.	151 accommodations, and other related
111	152 services.
112	153
113 (6) "Stolen property" includes any property	154 Deleted.
114 that has been obtained by conduct	155
115 previously known as embezzlement.	156
116	157
117	158
118 CONTINUED ON NEXT PAGE	159 CONTINUED ON NEXT PAGE

Comment [S7]: 11/6/15 Minutes: Comment should state that current law is ambiguous as to meaning of the "security interest" language, but that the Committee reached agreement on the change after consideration of relevant legislative history and case law.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

160 **Current Statute (Continued)**

161
162 (7) “Value” with respect to a credit card,
163 check, or other written instrument means the
164 amount of money, credit, debt, or other
165 tangible or intangible property or services
166 that has been or can be obtained through its
167 use, or the amount promised or paid by the
168 credit card, check, or other written
169 instrument.

170 **Revised Statute (Continued)**

171
172 “Value” with respect to a credit card, check,
173 or other written instrument means the
174 amount of money, credit, debt, or other
175 tangible or intangible property or services
176 that {has been or can be obtained} through
177 its use, or the amount promised or paid by
178 the credit card, check, or other written
179 instrument.

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§ 22A-402 AGGREGATION OF AMOUNTS RECEIVED TO DETERMINE GRADE OF OFFENSE
(Original Source CRM #23; Last Change/Agreement 6-24-14)

<u>1 Current Statute (D.C. Code § 22-3202)</u>	<u>13 Revised Statute</u>
2	14
3 Amounts or property received pursuant to a	15 Amounts or property received pursuant to a
4 single scheme or systematic course of	16 single scheme or systematic course of
5 conduct in violation of § 22-3211 (Theft), §	17 conduct in violation of § 22A-XXX (Theft),
6 22-3221 (Fraud), § 22-3223 (Credit Card	18 § 22A-XXX (Fraud), § 22-3223 (Credit
7 Fraud), § 22-3227.02 (Identity Theft), § 22-	19 Card Fraud), § 22A-XXX (Identity Theft),
8 3231 (Trafficking in Stolen Property), or §	20 {{ § 22A-XXX (Trafficking in Stolen
9 22-3232 (Receiving Stolen Property) may be	21 Property}}, or § 22A-XXX (Receiving
10 aggregated in determining the grade of the	22 Stolen Property) may be aggregated in
11 offense and the sentence for the offense.	23 determining the grade of the offense and the
12	24 sentence for the offense.

DRAFT

§ 22A-403 CONSECUTIVE SENTENCES
(Original Source CRM #23; Last Change/Agreement 7-22-14)

<u>1 Current Statute (D.C. Code § 22-3203)</u>	<u>19 Revised Statute</u>
2	20
3 (a) A person may be convicted of any	21 (a) A person may be convicted of any
4 combination of theft, identity theft, fraud,	22 combination of theft, identity theft, fraud,
5 credit card fraud, unauthorized use of a	23 credit card fraud, unauthorized use of a
6 vehicle, commercial piracy, and receiving	24 vehicle, failure to return a vehicle,
7 stolen property for the same act or course of	25 commercial piracy, and receiving stolen
8 conduct; provided, that no person shall be	26 property for the same act or course of
9 consecutively sentenced for any such	27 conduct; provided, that no person shall be
10 combination or combinations that arise from	28 consecutively sentenced for any such
11 the same act or course of conduct.	29 combination or combinations that arise from
12	30 the same act or course of conduct.
13 (b) Convictions arising out of the same act	31
14 or course of conduct shall be considered as	32 (b) Convictions arising out of the same act
15 one conviction for purposes of any	33 or course of conduct shall be considered as
16 application of repeat offender sentencing	34 one conviction for purposes of any
17 provisions.	35 application of repeat offender sentencing
18	36 provisions.

§ 22A-404 CASE REFERRAL
(Original Source CRM #23; Last Change/Agreement 6-10-14)

1 <u>Current Statute (D.C. Code § 22-3204)</u>	12 <u>Revised Statute (No Change)</u>
2	13
3 For the purposes of this chapter, in cases	14 For the purposes of this chapter, in cases
4 involving more than one jurisdiction, or in	15 involving more than one jurisdiction, or in
5 cases where more than one District of	16 cases where more than one District of
6 Columbia agency is responsible for	17 Columbia agency is responsible for
7 investigating an alleged violation, the	18 investigating an alleged violation, the
8 investigating agency to which the report was	19 investigating agency to which the report was
9 initially made may refer the matter to	20 initially made may refer the matter to
10 another investigating or law enforcement	21 another investigating or law enforcement
11 agency with proper jurisdiction.	22 agency with proper jurisdiction.

DRAFT

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

§ 22A-405 THEFT

(Original Source CRM #13.3; Last Change/Agreement 2-9-16)

<u>1 Current Statute (D.C. Code § 22-3211)</u>	<u>44 Revised Statute</u>
2	45
3 (a) For the purpose of this section, the term	46 (a) A person commits the offense of theft
4 “wrongfully obtains or uses” means: (1)	47 when that person:
5 taking or exercising control over property;	48 (1) Intentionally:
6 (2) making an unauthorized use, disposition,	49 A. Takes,
7 or transfer of an interest in or possession of	50 B. Exercises control over,
8 property; or (3) obtaining property by trick,	51 C. Uses,
9 false pretense, false token, tampering, or	52 D. Disposes,
10 deception. The term “wrongfully obtains or	53 E. Transfers an interest in or
11 uses” includes conduct previously known as	54 possession of, or
12 larceny, larceny by trick, larceny by trust,	55 F. Obtains by deception;
13 embezzlement, and false pretenses.	56 (2) The property of another;
14	57 (3) Without authority or right;
15 (b) A person commits the offense of theft if	58 (4) With intent to deprive the other of
16 that person wrongfully obtains or uses the	59 the property; and
17 property of another with intent:	60 (5) The property, in fact, has some value.
18 (1) To deprive the other of a right to	61
19 the property or a benefit of the	62 (b) { In cases in which the theft of property
20 property; or	63 is in the form of services, proof that a person
21 (2) To appropriate the property to his	64 obtained services that he or she knew or had
22 or her own use or to the use of a	65 reason to believe were available to him or
23 third person.	66 her only for compensation and that he or she
24	67 departed from the place where the services
25 (c) In cases in which the theft of property is	68 were obtained knowing or having reason to
26 in the form of services, proof that a person	69 believe that no payment had been made for
27 obtained services that he or she knew or had	70 the services rendered in circumstances
28 reason to believe were available to him or	71 where payment is ordinarily made
29 her only for compensation and that he or she	72 immediately upon the rendering of the
30 departed from the place where the services	73 services or prior to departure from the place
31 were obtained knowing or having reason to	74 where the services are obtained, shall be
32 believe that no payment had been made for	75 prima facie evidence that the person had
33 the services rendered in circumstances	76 committed the offense of theft. }
34 where payment is ordinarily made	77
35 immediately upon the rendering of the	78
36 services or prior to departure from the place	79
37 where the services are obtained, shall be	80
38 prima facie evidence that the person had	81
39 committed the offense of theft.	82
40	83
41	84
42	85
43 CONTINUED ON NEXT PAGE	86 CONTINUED ON NEXT PAGE

Comment [S9]: 1/28/14 Minutes: Comm should clarify that “deception” is intended the same scope of conduct as is covered in terms in the third definition of “wrongfully” i.e. “obtaining property by trick, false pretense, token, tampering, or deception.”

Comment [S8]: 1/28/14 Minutes: Comm should clarify that despite deleting this language, larceny by trick, larceny by trust, embezzlement and false pretense are all still covered under revised theft statute.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

<p>87 <u>Current Penalties (D.C. Code § 22-3212)</u> 88 89 (a) Theft in the first degree. -- Any person 90 convicted of theft in the first degree shall be 91 fined not more than the amount set forth in § 92 22-3571.01 or imprisoned for not more than 93 10 years, or both, if the value of the property 94 obtained or used is \$1,000 or more. 95 96 (b) Theft in the second degree. -- Any 97 person convicted of theft in the second 98 degree shall be fined not more than the 99 amount set forth in § 22-3571.01 or 100 imprisoned for not more than 180 days, or 101 both, if the property obtained or used has 102 some value. 103 104 (c) A person convicted of theft in the first or 105 second degree who has 2 or more prior 106 convictions for theft, not committed on the 107 same occasion, shall be fined not more than 108 the amount set forth in § 22-3571.01 or 109 imprisoned for not more than 10 years and 110 for a mandatory-minimum term of not less 111 than one year, or both. A person sentenced 112 under this subsection shall not be released 113 from prison, granted probation, or granted 114 suspension of sentence, prior to serving the 115 mandatory-minimum. 116 117 (d) For the purposes of this section, a person 118 shall be considered as having 2 or more 119 prior convictions for theft if he or she has 120 been convicted on at least 2 occasions of 121 violations of: 122 (1) § 22-3211; 123 (2) A statute in one or more jurisdictions 124 prohibiting theft or larceny; or 125 (3) Conduct that would constitute a violation 126 of § 22-3211 if committed in the District of 127 Columbia. 128 129 130</p>	<p>131 <u>Revised Statute (Continued)</u> 132 133 (c) <i>Penalties.</i> 134 (1) <i>First degree theft.</i> A person is guilty 135 of first degree theft, (a Class X 136 felony; \$25,000 fine, 10 years, or 137 both) when the person commits theft 138 and the property has a value, in fact, 139 of more than \$1,000. 140 (2) <i>Second degree theft.</i> A person is 141 guilty of second degree theft, (a 142 Class X misdemeanor; \$1,000 fine, 143 180 days, or both), when the person 144 commits theft and the property has, 145 in fact, some value. 146 147 (d) (The Committee did not consider 148 revisions to Theft with two or more prior 149 theft convictions (§ 22-3212(c)-(d)).) 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174</p>
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§ 22A-406 TAKING PROPERTY WITHOUT RIGHT
(Original Source CRM #15.1; Last Change/Agreement 2-9-16)

<u>1 Current Statute (D.C. Code § 22-3216)</u>	<u>24 Revised Statute</u>
2	25
3 A person commits the offense of taking	26 (a) A person commits the offense of taking
4 property without right if that person takes	27 property without right when that person:
5 and carries away the property of another	28 (1) Intentionally:
6 without right to do so. A person convicted of	29 A. Takes,
7 taking property without right shall be fined	30 B. Exercises control over,
8 not more than the amount set forth in § 22-	31 C. Uses,
9 3571.01 or imprisoned for not more than 90	32 D. Disposes,
10 days, or both.	33 E. Transfers an interest in or
11	34 possession of, or
12	35 F. Obtains by deception;
13	36 (2) The property of another;
14	37 (3) Without authority or right; and
15	38 (4) The property, in fact, has some
16	39 value.
17	40
18	41 (b) <i>Penalty.</i> A person convicted of taking
19	42 property without right is guilty of (a Class X
20	43 misdemeanor; \$500 maximum fine or
21	44 imprisoned for not more than 90 days, or
22	45 both.)
23	

§ 22A-407 UNAUTHORIZED USE OF A MOTOR VEHICLE
(Original Source CRM #16.1; Last Change/Agreement 2-9-16)

<u>1 Current Statute (D.C. Code § 22-3215)</u>	<u>44 Revised Statute</u>
2	45
3 (a) For the purposes of this section, the term	46 (a) For the purposes of this section, the term
4 “motor vehicle” means any automobile, self-	47 “motor vehicle” means any automobile, self-
5 propelled mobile home, motorcycle, truck,	48 propelled mobile home, motorcycle, truck,
6 truck tractor, truck tractor with semitrailer or	49 truck tractor, truck tractor with semitrailer or
7 trailer, or bus.	50 trailer, or bus.
8	51
9 (b) A person commits the offense of	52 (b) A person commits the offense of
10 unauthorized use of a motor vehicle under	53 unauthorized use of a motor vehicle when
11 this subsection if, without the consent of the	54 that person:
12 owner, the person takes, uses, or operates a	55 (1) Intentionally takes, uses, or operates
13 motor vehicle, or causes a motor vehicle to	56 a motor vehicle;
14 be taken, used, or operated, for his or her	57 (2) Does so for his or her own profit,
15 own profit, use, or purpose.	58 use, or purpose; and
16	59 (3) Lacks authority or right.
17 ((c) FAILURE TO RETURN PROVISIONS	60
18 NOT PART OF REVISED CODE, SEE	61 (c) <i>Penalty.</i> A person convicted of
19 REVISED § 22A-3215, BELOW)	62 unauthorized use of a motor vehicle is guilty
20	63 of a (Class X felony; \$12,500 fine, 5 years,
21 (d)(1) Except as provided in paragraphs (2)	64 or both.)
22 and (3) of this subsection, a person	65
23 convicted of unauthorized use of a motor	66 (The Committee did not consider revisions
24 vehicle under subsection (b) of this section	67 to Unauthorized Use of a Motor Vehicle
25 shall be fined not more than the amount set	68 During a Crime of Violence (§ 22-
26 forth in § 22-3571.01, imprisoned for not	69 3215(d)(2)) or Unauthorized Use of a Motor
27 more than 5 years, or both.	70 Vehicle with prior convictions (§ 22-
28 (2)(A) A person convicted of	71 3215(d)(3).)
29 unauthorized use of a motor vehicle	72
30 under subsection (b) of this section who	73
31 took, used, or operated the motor vehicle,	74
32 or caused the motor vehicle to be taken,	75
33 used, or operated, during the course of or	76
34 to facilitate a crime of violence, shall be:	77
35 (i) Fined not more than the amount	78
36 set forth in § 22-3571.01, imprisoned	79
37 for not more than 10 years, or both,	80
38 consecutive to the penalty imposed	81
39 for the crime of violence; and	82
40 CONTINUED ON NEXT PAGE	83
41	84
42	85
43	86

Comment [S10]: 2/18/14 Minutes: The Committee declined to add “occupying” to the list of result elements, but commentary should be added to ensure that the revised statute still covers conduct currently prosecuted as UUV Passenger.

The Committee agreed that voluntariness in the context of this statute means a *reasonable* standard. The Committee did not decide how to draft the statute to do otherwise, but did not decide how to draft the statute to do otherwise.

Comment [S11]: 2/9/16 Minutes: Commentators should specify that ambiguity in cases of joint ownership are not resolved by this revision, and that the Committee did not intend to take action on this issue.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

87	<u>Current Statute (Continued)</u>	133	[Column left intentionally blank]
88		134	
89	(ii) If serious bodily injury results,	135	
90	imprisoned for not less than 5 years,	136	
91	consecutive to the penalty imposed	137	
92	for the crime of violence.	138	
93	(B) For the purposes of this	139	
94	paragraph, the term “crime of	140	
95	violence” shall have the same meaning	141	
96	as provided in § 23-1331(4).	142	
97	(3)(A) A person convicted of	143	
98	unauthorized use of a motor vehicle	144	
99	under subsection (b) of this section who	145	
100	has 2 or more prior convictions for	146	
101	unauthorized use of a motor vehicle or	147	
102	theft in the first degree, not committed	148	
103	on the same occasion, shall be fined not	149	
104	less than \$5,000 nor more than \$15,000,	150	
105	or imprisoned for not less than 30	151	
106	months nor more than 15 years, or both.	152	
107	(B) For the purposes of this	153	
108	paragraph, a person shall be	154	
109	considered as having 2 prior	155	
110	convictions for unauthorized use of a	156	
111	motor vehicle or theft in the first	157	
112	degree if the person has been twice	158	
113	before convicted on separate occasions	159	
114	of:	160	
115	(i) A prior violation of subsection (b)	161	
116	of this section or theft in the first	162	
117	degree;	163	
118	(ii) A statute in one or more other	164	
119	jurisdictions prohibiting	165	
120	unauthorized use of a motor vehicle	166	
121	or theft in the first degree;	167	
122	(iii) Conduct that would constitute a	168	
123	violation of subsection (b) of this	169	
124	section or a violation of theft in the	170	
125	first degree if committed in the	171	
126	District of Columbia; or	172	
127	(iv) Conduct that is substantially	173	
128	similar to that prosecuted as a	174	
129	violation of subsection (b) of this	175	
130	section or theft in the first degree.	176	
131		177	
132	CONTINUED ON NEXT PAGE	178	

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

179	(4) (FAILURE TO RETURN	201	[Column left intentionally blank]
180	PROVISIONS, SEE REVISED § 22A-3215,	202	
181	BELOW)	203	
182		204	
183		205	
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§ 22A-408 TRAFFICKING IN STOLEN PROPERTY
(Original Source CRM #18.1; Last Change/Agreement 6-10-14)

<u>1 Current Statute (D.C. Code § 22-3231)</u>	<u>36 Revised Statute</u>
2	37
3 (a) For the purposes of this section, the term	38 (a) A person commits the offense of
4 "traffics" means:	39 trafficking in stolen property when that
5 (1) To sell, pledge, transfer, distribute,	40 person, on two or more separate occasions:
6 dispense, or otherwise dispose of	41
7 property to another person as	42 (1) Knowingly:
8 consideration for anything of value;	43 A. Buys,
9 or	44 B. Receives,
10 (2) To buy, receive, possess, or obtain	45 C. Possesses, or
11 control of property with intent to do	46 D. Obtains control of property;
12 any of the acts set forth in paragraph	47
13 (1) of this subsection.	48 (2) With intent to sell, pledge, transfer,
14	49 distribute, dispense, or otherwise
15 (b) A person commits the offense of	50 dispose of property to another person
16 trafficking in stolen property if, on 2 or	51 as consideration for anything of
17 more separate occasions, that person	52 value;
18 traffics in stolen property, knowing or	53
19 having reason to believe that the	54 (3) With intent that the property was
20 property has been stolen.	55 stolen; and
21	56
22 (c) It shall not be a defense to a prosecution	57 (4) The property, in fact, has some
23 under this section, along or in	58 value.
24 conjunction with § 22-1803, that the	59
25 property was not in fact stolen, if the	60 (b) <i>Penalty.</i> A person convicted of
26 accused engages in conduct which	61 trafficking in stolen property is guilty of (a
27 would constitute the crime if the	62 Class X felony; \$10,000 max. or 10 years, or
28 attendant circumstance were as the	63 both.)
29 accused believed them to be.	64
30	65
31 (d) Any person convicted of trafficking in	66
32 stolen property shall be fined not more	67
33 than \$10,000 or imprisoned for not more	68
34 than 10 years, or both.	69
35	70

§ 22A-409 RECEIVING STOLEN PROPERTY
(Original Source CRM #18.1; Last Change/Agreement 6-10-14)

<u>1 Current Statute (D.C. Code §22-3232)</u>	<u>38 Revised Statute</u>
2 (a) A person commits the offense	39
3 of receiving stolen property if that person	40 (a) A person commits the offense of
4 buys, receives, possesses, or obtains control	41 receiving stolen property when that person:
5 of stolen property, knowing or having	42 (1) Knowingly
6 reason to believe that	43 A. Buys property;
7 the property was stolen.	44 B. Receives property;
	45 C. Possesses property; or
8 (b) It shall not be a defense to a prosecution	46 D. Obtains control of property;
9 under this section, alone or in conjunction	47 (2) {With intent to deprive another of
10 with § 22-1803, that the property was not in	48 property};
11 fact stolen, if the accused engages in	49 (3) With intent that the property was
12 conduct which would constitute the crime if	50 stolen; and
13 the attendant circumstances were as the	51 (4) The property, in fact, has some
14 accused believed them to be.	52 value.
	53
15 (c)(1) Any person convicted	54 (b) Penalties.
16 of receiving stolen property shall be fined	55 (1) <i>First degree receiving stolen</i>
17 not more than the amount set forth in § 22-	56 <i>property</i> . A person is guilty of first
18 3571.01 or imprisoned not more than 7	57 degree receiving stolen property, (a
19 years, or both, if the value of	58 Class X felony; \$5,000 fine, 7 years,
20 the stolen property is \$1,000 or more.	59 or both) when the person commits
	60 receiving stolen property and the
21 (2) Any person convicted	61 property has a value, in fact, of more
22 of receiving stolen property shall be fined	62 than \$1,000.
23 not more than the amount set forth in §	63 (2) <i>Second degree receiving stolen</i>
24 22-3571.01 or imprisoned not more than	64 <i>property</i> . A person is guilty of
25 180 days, or both, if	65 second degree receiving stolen
26 the stolen property has some value.	66 property, (a Class Y misdemeanor;
	67 \$500 max, or 180 days, or both)
27 (d) For the purposes of this section, the term	68 when the person commits receiving
28 "stolen property" includes property that is	69 stolen property and the property has,
29 not in fact stolen if the person who	70 in fact, some value.
30 buys, receives, possesses, or obtains control	71
31 of the property had reason to believe that the	72 (c) {It is a defense to prosecution for this
32 property was stolen.	73 offense that the person purchased, received,
33	74 possessed, or obtained control over the
34	75 stolen property with intent to restore the
35	76 property to its true owner or another person
36	77 entitled to the property.}
37	78

Comment [S12]: 2/9/16 Minutes: The Committee agreed that person possessing stolen property intending to return it to rightful owner should not be guilty of RSP, but could not reach agreement on language. The Committee agreed to postpone further discussion on this issue.

§ 22A-410 SHOPLIFTING

(Original Source CRM #19.1; Last Change/Agreement 2-9-16)

<u>1 Current Statute (D.C. Code § 22-3213)</u>	<u>44 Revised Statute</u>
2	45
3 (a) A person commits the offense of	46 (a) A person commits the offense of
4 shoplifting if, with intent to appropriate	47 shoplifting when that person:
5 without complete payment any personal	48 (1) Knowingly:
6 property of another that is offered for	49 A. Conceals or takes possession of
7 sale or with intent to defraud the owner	50 personal property of another
8 of the value of the property, that person:	51 that in fact is offered for sale;
9 (1) Knowingly conceals or takes	52 B. Removes or alters the price tag,
10 possession of any such property;	53 serial number, or other
11 (2) Knowingly removes or alters the price	54 identification mark imprinted
12 tag, serial number, or other	55 on or attached to personal
13 identification mark that is imprinted	56 property of another that in fact
14 on or attached to such property; or	57 is offered for sale; or
15 (3) Knowingly transfers any such	58 C. Transfers personal property of
16 property from the container in which	59 another that in fact is offered
17 it is displayed or packaged to any	60 for sale from the container in
18 other display container or sales	61 which it is displayed or
19 package.	62 packaged to any other display
20	63 container or sales package;
21 (b) Any person convicted of shoplifting shall	64 (2) Without authority or right; and
22 be fined not more than the amount set	65 (3) With intent to:
23 forth in § 22-3571.01 or imprisoned for	66 A. Take the property without
24 not more than 90 days, or both.	67 complete payment; or
25	68 B. Deceive or cheat the owner of
26 (c) It is not an offense to attempt to commit	69 the value of the property.
27 the offense described in this section.	70
28	71 (b) It is not an offense to attempt to commit
29 (d) A person who offers tangible personal	72 the offense described in this section.
30 property for sale to the public, or an	73
31 employee or agent of such a person, who	74 (c) <i>Penalty.</i> Shoplifting is (a Class X
32 detains or causes the arrest of a person in a	75 misdemeanor; 90 days imprisonment,
33 place where the property is offered for sale	76 \$500 fine or both.)
34 shall not be held liable for detention, false	77 (d) A person who offers tangible personal
35 imprisonment, malicious prosecution,	78 property for sale to the public, or an
36 defamation, or false arrest, in any	79 employee or agent of such a person, who
37 proceeding arising out of such detention or	80 detains or causes the arrest of a person in a
38 arrest, if:	81 place where the property is offered for sale
39	82 shall not be held liable for detention, false
40	83 imprisonment, malicious prosecution,
41	84 defamation, or false arrest, in any
42	85 proceeding arising out of such detention or
43 CONTINUED ON NEXT PAGE	86 CONTINUED ON NEXT PAGE

Comment [S13]: 4/8/14 Minutes: Comm should clarify that the revised statute is not intended to alter case law interpreting what "offered for sale" means.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

<u>Current Statute (Continued)</u>	<u>Revised Statute (Continued)</u>
87	106
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(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed in that person's presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

arrest, if:

(1) The person detaining or causing the arrest had, at the time thereof, probable cause to believe that the person detained or arrested had committed in that person's presence, an offense described in this section;

(2) The manner of the detention or arrest was reasonable;

(3) Law enforcement authorities were notified within a reasonable time; and

(4) The person detained or arrested was released within a reasonable time of the detention or arrest, or was surrendered to law enforcement authorities within a reasonable time.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

§ 22A-411 FRAUD

(Original Source CRM #20.1; Last Change/Agreement 4-22-14)

1 **Current Statute (D.C. Code § 22-3221)**
2
3 (a) *Fraud in the first degree.* -- A person
4 commits the offense of fraud in the first degree
5 if that person engages in a scheme or
6 systematic course of conduct with intent to
7 defraud or to obtain property of another by
8 means of a false or fraudulent pretense,
9 representation, or promise and thereby obtains
10 property of another or causes another to lose
11 property.
12
13 (b) *Fraud in the second degree.* -- A person
14 commits the offense of fraud in the second
15 degree if that person engages in a scheme or
16 systematic course of conduct with intent to
17 defraud or to obtain property of another by
18 means of a false or fraudulent pretense,
19 representation, or promise.
20
21 (c) *False promise as to future performance.* --
22 Fraud may be committed by means of false
23 promise as to future performance +which the
24 accused does not intend to perform or knows
25 will not be performed. An intent or knowledge
26 shall not be established by the fact alone that
27 one such promise was not performed.
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42 **CONTINUED ON NEXT PAGE**

43 **Revised Statute**
44
45 (a) A person commits the offense of fraud in
46 the first degree when that person:
47 (1) Intentionally engages in a systematic
48 course of conduct;
49 (2) With intent to obtain property of
50 another by means of false or
51 fraudulent representation or promise;
52 (3) The person, in fact, thereby obtains
53 property of another or causes another
54 to lose property; and
55 (4) The value of the property obtained or
56 lost is, in fact, \$1,000 or more.
57
58 (b) A person commits the offense of fraud in
59 the second degree when that person:
60 (1) Intentionally engages in a systematic
61 course of conduct;
62 (2) With intent to obtain property of
63 another by means of false or
64 fraudulent representation or promise;
65 and
66 (3) The value of the property that was
67 the object of the scheme is, in fact,
68 \$1,000 or more.
69
70 (c) A person commits the offense of fraud in
71 the third degree when that person:
72 (1) Intentionally engages in a systematic
73 course of conduct;
74 (2) With intent to obtain property of
75 another by means of false or
76 fraudulent representation, or
77 promise; and
78 (3) The value of the property that was
79 the object of the scheme, in fact, has
80 some value.
81
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85 **CONTINUED ON NEXT PAGE**

Comment [S14]: 2/9/16 Minutes: The Committee agreed not to include a "with authority or right" element, but Comment specify that police officers acting under the law do not fall under this statute (e.g. if police acquire property in a systematic sting operation that would not constitute fraud).

Comment [S15]: 7/22/14 Minutes: Comment should note that deletion of the word "scheme" use of only "systematic course of conduct" intended to change the scope of the law.

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

<p>86 <u>Current Penalties (D.C. Code § 22-3222)</u></p> <p>87</p> <p>88 (a) Fraud in the first degree.</p> <p>89 (1) Any person convicted of fraud in the</p> <p>90 first degree shall be fined not more than the</p> <p>91 amount set forth in § 22-3571.01 or twice</p> <p>92 the value of the property obtained or lost,</p> <p>93 whichever is greater, or imprisoned for not</p> <p>94 more than 10 years, or both, if the value of</p> <p>95 the property obtained or lost is \$1,000 or</p> <p>96 more; and</p> <p>97 (2) Any person convicted of fraud in the</p> <p>98 first degree shall be fined not more than the</p> <p>99 amount set forth in § 22-3571.01 or</p> <p>100 imprisoned for not more than 180 days, or</p> <p>101 both, if the property obtained or lost has</p> <p>102 some value.</p> <p>103 (b) Fraud in the second degree.</p> <p>104 (1) Any person convicted of fraud in the</p> <p>105 second degree shall be fined not more than</p> <p>106 the amount set forth in § 22-3571.01 or</p> <p>107 twice the value of the property which was</p> <p>108 the object of the scheme or systematic</p> <p>109 course of conduct, whichever is greater, or</p> <p>110 imprisoned for not more than 3 years, or</p> <p>111 both, if the value of the property which was</p> <p>112 the object of the scheme or systematic</p> <p>113 course of conduct is \$1,000 or more; and</p> <p>114 (2) Any person convicted of fraud in the</p> <p>115 second degree shall be fined not more than</p> <p>116 the amount set forth in § 22-3571.01 or</p> <p>117 imprisoned for not more than 180 days, or</p> <p>118 both, if the property that was the object of</p> <p>119 the scheme or systematic course of conduct</p> <p>120 has some value.</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p>	<p>128 <u>Revised Statute (Continued)</u></p> <p>129</p> <p>130 (d) <i>False promise as to future</i></p> <p>131 <i>performance.</i> Fraud may be committed</p> <p>132 by means of a false promise as to future</p> <p>133 performance which the accused does not</p> <p>134 intend to perform or knows will not be</p> <p>135 performed. An intent or knowledge shall</p> <p>136 not be established by the fact alone that</p> <p>137 one such promise was not performed.</p> <p>138</p> <p>139 (e) <i>Penalties.</i></p> <p>140 (1) <i>Fraud in the first degree.</i> Any person</p> <p>141 convicted of fraud in the first degree shall</p> <p>142 be guilty of (a Class X felony; Fined not</p> <p>143 more than \$5,000 or 3 times the value of</p> <p>144 the property obtained or lost, whichever is</p> <p>145 greater, or imprisoned for not more than 10</p> <p>146 years, or both.)</p> <p>147 (2) <i>Fraud in the second degree.</i> Any</p> <p>148 person convicted of fraud in the second</p> <p>149 degree shall be guilty of (a Class Y felony;</p> <p>150 fined not more than the amount set forth in</p> <p>151 § 22-3571.01 or twice the value of the</p> <p>152 property which was the object of the</p> <p>153 scheme or systematic course of conduct,</p> <p>154 whichever is greater, or imprisoned for not</p> <p>155 more than 3 years, or both.)</p> <p>156 (3) <i>Fraud in the third degree.</i> Any person</p> <p>157 convicted of fraud in the third degree shall</p> <p>158 be guilty of (a Class X misdemeanor; Fined</p> <p>159 not more than the amount set forth in § 22-</p> <p>160 3571.01 or imprisoned for not more than</p> <p>161 180 days, or both.)</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p>
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Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

§ 22A-412 ARSON
(Original Source CRM #22.1; Last Change/Agreement 7-22-14)

<u>1 Current Statute (D.C. Code § 22-301)</u>	<u>37 Revised Statute</u>
2	38
3 Whoever shall maliciously burn or attempt	39 (a) For purposes of this section, the term
4 to burn any dwelling, or house, barn, or	40 "building," has the meaning described in
5 stable adjoining thereto, or any store, barn,	41 burglary (22A-XXX), including the
6 or outhouse, or any shop, office, stable,	42 definitions of "structure" and "dwelling."
7 store, warehouse, or any other building, or	43 However, for purposes of this section,
8 any steamboat, vessel, canal boat, or other	44 "building" does not include a business yard.
9 watercraft, or any railroad car, the property,	45
10 in whole or in part, of another person, or any	46 (b) A person commits the offense of arson
11 church, meetinghouse, schoolhouse, or any	47 when that person:
12 of the public buildings in the District,	48 (1) Intentionally Purposely sets fire
13 belonging to the United States or to the	49 to,
14 District of Columbia, shall suffer	50 (2) What is, in fact, a building,
15 imprisonment for not less than 1 year nor	51 watercraft, or railroad car that is the
16 more than 10 years. In addition to any other	52 property, in whole or in part, of
17 penalty provided under this section, a person	53 another person; and
18 may be fined an amount not more than the	54 (3) {Recklessly, under circumstances
19 amount set forth in § 22-3571.01.	55 manifesting extreme indifference to
20	56 human life}, endangers human life.
21	57
22	58 (c) If evidence of mitigating circumstances
23 is present at trial, the government must	59 is present at trial, the government must
24 prove the absence of mitigating	60 prove the absence of mitigating
25 circumstances beyond a reasonable doubt.	61 circumstances beyond a reasonable doubt.
26	62
27	63 (d) <i>Penalty.</i> Arson is (a Class X felony;
28 shall be imprisoned not less than 1 year nor	64 shall be imprisoned not less than 1 year nor
29 more than 10 years, may be fined an amount	65 more than 10 years, may be fined an amount
30 not to exceed \$25,000.)	66 not to exceed \$25,000.)
31	67
32	68 {(e) <i>Attempt Arson.</i> An attempt to commit
33 arson is subject to the same penalty as the	69 arson is subject to the same penalty as the
34 completed offense.}	70 completed offense.}
35	
36	

Comment [S16]: 5/27/14 Minutes: Committee should clarify that the Committee's intent is to codify the mental state in current law, but there is not agreement on whether this was "intentionally" or "purposely."

Comment [S17]: 5/13/14 Minutes: Committee should clarify that by deleting "burns or attempts to burn" and using "sets fire to" is not intended to change the scope of the offense.

Comment [S18]: 6/23/15 Minutes: Attempt provisions will be reviewed in conjunction with Committee's consideration of the general attempt statute.

§ 22A-413 CRIMINAL DAMAGE TO PROPERTY
(Original Source CRM #21.1; Last Change/Agreement 2-9-16)

<u>1 Current MDP (D.C. Code § 22-303)</u>	<u>43 Revised Statute</u>
2	44
3 Whoever maliciously injures or breaks or	45 (a)A person commits the offense of criminal
4 destroys, or attempts to injure or break or	46 damage to property when that person:
5 destroy, by fire or otherwise, any public or	47 (1) {Recklessly, under circumstances
6 private property, whether real or personal,	48 manifesting extreme indifference to
7 not his or her own, of the value of \$1,000 or	49 property}, damages or destroys;
8 more, shall be fined not more than the	50 (2) What is, in fact, real or personal
9 amount set forth in § 22-3571.01 or shall be	51 property;
10 imprisoned for not more than 10 years, or	52 (3) Knowing that he or she lacks
11 both, and if the property has some value	53 authority or right; and
12 shall be fined not more than the amount set	54 (4) That the property is not his or her
13 forth in § 22-3571.01 or imprisoned for not	55 own.
14 more than 180 days, or both.	56
15	57 (b) If evidence of mitigating circumstances
16	58 is present at trial, the government must
17	59 prove the absence of mitigating
18	60 circumstances beyond a reasonable doubt.
19	61
20	62 (c) <i>Penalties.</i>
21	63 (1) Destruction of property is (a Class X
22	64 felony; Not more than 10 years, fine of
23	65 not more than \$25,000, or both) if the
24	66 property, in fact, has a value of \$1,000 or
25	67 more.
26	68 (2) Destruction of property is (a Class Y
27	69 misdemeanor; Not more than 180 days, a
28	70 fine of not more than \$1,000, or both) if
29	71 the property, in fact, has some value.
30	72
31	73 {(e) <i>Attempt Criminal Damage to Property.</i>
32	74 An attempt to commit criminal damage to
33	75 property is subject to the same penalty as the
34	76 completed offense.}
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Comment [S19]: 5/13/14 Minutes: Comm should clarify that deleting "by fire or otherwise" not intended to change the scope of the offense.

Comment [S20]: 5/13/14 Minutes: Comm should clarify that deleting "any public or private" not intended to change the scope of offense.

Comment [S21]: 6/23/15 Minutes: Attempt provisions will be reviewed in conjunction with Committee's consideration of the general attempt statute.

§ 22A-414 BURGLARY
(Original Source CRM #17.3; Last Change/Agreement 5-13-14)

<u>1 Current Statute (D.C. Code § 22-801)</u>	<u>44 Revised Statute</u>
2	
3 (a) Whoever shall, either in the nighttime or	45 (a) For purposes of this section, the term:
4 in the daytime, break and enter, or enter	46 (1) "Building" means any structure that is
5 without breaking, any dwelling, or room	47 designed for humans to occupy and
6 used as a sleeping apartment in any	48 that humans use for purposes including
7 building, with intent to break and carry	49 business, education, religion,
8 away any part thereof, or any fixture or	50 entertainment, government activities,
9 other thing attached to or connected	51 or the storage of goods.
10 thereto or to commit any criminal	52 (2) "Business yard" means any enclosed
11 offense, shall, if any person is in any part	53 or fenced yard where tangible personal
12 of such dwelling or sleeping apartment	54 property is kept for the purposes of
13 at the time of such breaking and	55 trade.
14 entering, or entering without breaking,	56 (3) "Dwelling" means (A) any building
15 be guilty of burglary in the first degree.	57 used for either human residence or
16 Burglary in the first degree shall be	58 lodging; or (B) a section or room of
17 punished by imprisonment for not less	59 any building similarly used.
18 than 5 years nor more than 30 years.	60 (4) "Structure" means (A) something that
19	61 is built by putting parts together and
20 (b) Except as provided in subsection (a) of	62 that usually stands on its own,
21 this section, whoever shall, either in the	63 including trailers, motor homes,
22 night or in the daytime, break and enter,	64 houseboats, and railroad cars, but not
23 or enter without breaking, any dwelling,	65 automobiles; or (B) a business yard.
24 bank, store, warehouse, shop, stable, or	66
25 other building or any apartment or room,	67 (b) <i>First Degree Burglary.</i> A person
26 whether at the time occupied or not, or	68 commits first degree burglary when that
27 any steamboat, canalboat, vessel, or	69 person:
28 other watercraft, or railroad car, or any	70 (1) Intentionally enters without
29 yard where any lumber, coal, or other	71 authority or right what is in fact a
30 goods or chattels are deposited and kept	72 dwelling;
31 for the purpose of trade, with intent to	73 (2) With intent to commit any criminal
32 break and carry away any part thereof or	74 offense therein; and
33 any fixture or other thing attached to or	75 (3) Any person other than the defendant
34 connected with the same, or to commit	76 or an accomplice is in fact
35 any criminal offense, shall be guilty of	77 {lawfully} in any part of the
36 burglary in the second degree. Burglary	78 dwelling at the time of the entry.
37 in the second degree shall be punished	79
38 by imprisonment for not less than 2	80
39 years nor more than 15 years.	81
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42 CONTINUED ON NEXT PAGE	84 CONTINUED ON NEXT PAGE
43	

Comment [S22]: 2/25/14 Minutes: should note that deleting the "breaking" not intended to change case law holding unlawful entry is a lesser included offense burglary.

Comment [S23]: 3/25/14 Minutes: should clarify that "lodging" covers hotel not an office that someone occasionally

Appendix A: Criminal Code Revision Committee Draft Revised Criminal Code

<u>85 Current Statute (Continued)</u>	<u>118 Revised Statute (Continued)</u>
86	119
87 (c) In addition to any other penalty provided	120 (c) <i>Second Degree Burglary.</i> A person
88 under this section, a person may be fined	121 commits second degree burglary
89 an amount not more than the amount set	122 when that person:
90 forth in § 22-3571.01.	123 (1) Intentionally enters without
91	124 authority or right what is in fact a
92	125 building;
93	126 (2) With intent to commit any criminal
94	127 offense therein.
95	128
96	129 (d) <i>Penalties.</i>
97	130 (1) First degree burglary is (a Class Y
98	131 felony; not less than 5 years nor
99	132 more than 30 years and \$75,000.)
100	133 (2) Second degree burglary is (a Class
101	134 Y felony; not less than 2 years nor
102	135 more than 15 years and \$37,500.)
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