

APPENDIX K.
FUTURE ISSUES TO BE ADDRESSED &
KNOWN CONFORMING AMENDMENTS

Appendix K summarizes a list of issues that remain to be addressed but fall outside the scope of the RCC. Some of these issues will require a conforming amendment to target inconsistencies between D.C. Code and RCC provisions. Other issues are ones that the CCRC believes need reform but would require a substantive review that the CCRC did not have the time or capacity to address.

Future Issues to be Addressed

While many additional reforms to D.C. Code statutes that are unaddressed (to-date) by the RCC may be necessary, the CCRC wishes to highlight the following future issues relating to current RCC provisions that the CCRC believes merit further substantive review:

1. There should be further review of the possibility of decriminalizing possession of small amounts of a controlled substance. There is significant and increasing evidence that the costs to public health and welfare from criminal laws that punish possession of small amounts of controlled substances outweigh the benefits, and a public health approach may be more appropriate. Notably, however, as other jurisdictions have expanded decriminalization of possession of controlled substances beyond marijuana, they have enacted significant changes to the provision of other, related health and social services. The development of reform legislation that involves decriminalization of possession of small amounts of a controlled substance would require a lengthy review of existing and model legislation in concert with a different set of stakeholders than currently represented in the CCRC's statutorily-designated Advisory Group.
2. There should be further review of the possibility of decriminalizing prostitution, at least for sex workers. There is significant and increasing evidence that the costs to public health and welfare from criminal laws that punish those selling their own sexual services outweigh the benefits, and a public health approach may be more appropriate. However, decriminalization of this sort may necessitate significant changes to the provision of other, related health and social services. The development of reform legislation that involves decriminalization of the sale of sexual services would require a lengthy review of legislation in concert with a different set of stakeholders than currently represented in the CCRC's statutorily-designated Advisory Group.
3. There may need to be changes to the CCRC recommendations regarding penalties for controlled substance offenses if Congressional appropriations legislation continues to restrict District expenditures to "enact any law, rule, or regulation to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any schedule I substance under the Controlled Substances Act (21 U.S.C. 801 et seq.) or any tetrahydrocannabinols derivative for recreational purpose."¹
4. The CCRC should review any new and/or pending Council legislation regarding record sealing, as well as possible Home Rule Act restrictions, in conjunction with the RCC § 22E-602(c) and RCC § 48-904.01a(g) provisions regarding records. See also, Advisory Group comments at App. C at 558-560; 674.

¹ Consolidated Appropriations Act, 2021, PL 116-260, December 27, 2020, 134 Stat 1182. The CCRC, in consultation with other authorities, has concluded that this appropriations provision does not restrict the CCRC from developing recommendations for changes to District controlled substance crimes or penalties. However, this appropriations provision would prevent full Council enactment of any CCRC recommendations to change drug offense penalties—if the Congressional funding provision is still in place at that time. On its face, the appropriations provision does not prohibit changes to statutory definitions for drug offenses, changes relating to drug paraphernalia, or changes regarding possession of a weapon in connection with a drug offense.

5. The CCRC should review whether to codify a general provision regarding jurisdiction under the RCC. No general jurisdiction provision exists, although several specific offenses in the D.C. Code and RCC contain provisions regarding jurisdiction.
6. The CCRC should review current D.C. Code statutes that raise potential Home Rule issues, such as § 22-3306² and § 22-3311³ which specifically prohibit damaging or engaging in disorderly conduct on property that belongs to the United States.
7. The CCRC should review definitions currently used throughout Title 48 of the D.C. Code for consistency. For example, the definition of “distribute” currently includes “attempted” transfers in a manner inconsistent with the RCC.

² D.C. Code § 22-3306 (“Any person who shall wrongfully deface, injure, or mutilate, tear, or destroy any book, pamphlet, or manuscript, or any portion thereof belonging to the Library of Congress, or to any public library in the District of Columbia, *whether the property of the United States* or of the District of Columbia or of any individual or corporation in said District, or who shall wrongfully deface, injure, mutilate, tear, or destroy any book, pamphlet, document, manuscript, public record, print, engraving, medal, newspaper, or work of art, *the property of the United States* or of the District of Columbia, shall be held guilty of a misdemeanor, and, on conviction thereof, shall, when the offense is not otherwise punishable by some statute of the United States, be punished by a fine of not less than \$10 and not more than the amount set forth in § 22-3571.01, and by imprisonment for not less than 1 month nor more than 180 days, or both, for every such offense.”) (emphasis added).

³ D.C. Code § 22-3311 (“Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds *belonging to the United States* within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, *or other property of the United States*, or any other part of the public grounds or lots *belonging to the United States* in the District of Columbia, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 6 months, or both.”) (emphasis added).

Conforming Amendments

While adoption of the RCC will entail many conforming amendments to other D.C. Code statutes to update citations, the following are RCC provisions that the CCRC wishes to highlight the following conforming amendments:

1. Title 16 Chapter 23 provisions may need revision to provide additional notice to juvenile justice practitioners regarding OAG prosecutorial jurisdiction under RCC § 22E-216, Minimum Age for Offense Liability. Specifically, as recommended by OAG in App. C at 570, a new subsection (c) may be added to D.C. Code § 16-2305 that states: “No charges can be filed in a petition against a child for a delinquent act that was committed when the child was under 12 years of age.”
2. The phrase “mental disease or defect” in D.C. Code § 24-531.01(5) should be replaced with “mental disability.” This would align D.C. Code § 24-531.01(5) with RCC § 22E-504, the mental disability defense. The term “mental defect” is rejected as being particularly outdated and stigmatizing.
3. D.C. Code § 7-403⁴ will need conforming amendments to reflect the RCC equivalent offenses such as contributing to the delinquency of a minor.
4. D.C. Code § 23-1331 and other sections of Titles 23 and 24 should be updated to reflect the new definition of crime of violence in RCC § 22E-2503.
5. The term “controlled substance” is defined under D.C. Code § 48-901.02, but D.C. Code § 48-904.01, which defines various controlled substance offenses, includes several limitations to the definition relating to marijuana.⁵ The RCC’s revised drug offense statutes

⁴ D.C. Code § 7-403(a), (b) (“(a) Notwithstanding any other law, the offenses listed in subsection (b) of this section shall not be considered crimes and shall not serve as the sole basis for revoking or modifying a person’s supervision status: (1) For a person who: (A) Reasonably believes that he or she is experiencing a drug or alcohol-related overdose and in good faith seeks health care for himself or herself; (B) Reasonably believes that another person is experiencing a drug or alcohol-related overdose and in good faith seeks healthcare for that person; or (C) Is reasonably believed to be experiencing a drug or alcohol-related overdose and for whom health care is sought; and (2) The offense listed in subsection (b) of this section arises from the same circumstances as the seeking of health care under paragraph (1) of this subsection. (b) The following offenses apply to subsection (a) of this section: (1) Unlawful possession of a controlled substance prohibited by § 48-904.01(d); (2) Unlawful use or possession with intent to use drug paraphernalia as prohibited by § 48-1103(a); (3) Unlawful possession of drug paraphernalia with the intent to use it for the administration of a controlled substance as prohibited by § 48-904.10); (4) Possession of alcohol by persons under 21 years of age as prohibited by § 25-1002; and (5) Provided that the minor is at least 16 years of age and the provider is 25 years of age or younger: (A) Purchasing an alcoholic beverage for the purpose of delivering it to a person under 21 years of age as prohibited by § 25-785(a); (B) Contributing to the delinquency of a minor with regard to possessing or consuming alcohol or, without a prescription, a controlled substance as prohibited by § 22-811(a)(2) and subject to the penalties provided in § 22-811(b)(1); and (C) The sale or delivery of an alcoholic beverage to a person under 21 years of age as prohibited by § 25-781(a)(1).”).

⁵ D.C. Code § 48-904.01 (1A)(A) (“The terms ‘controlled substance’ and ‘controlled substances,’ as used in the District of Columbia Official Code, shall not include:

(i) Marijuana that is or was in the personal possession of a person 21 years of age or older at any specific time if the total amount of marijuana that is or was in the possession of that person at that time weighs or weighed 2 ounces or less;

(ii) Cannabis plants that are or were grown, possessed, harvested, or processed by a person 21 years of age or older within the interior of a house or rental unit that constitutes or at the time constituted, such person’s principal residence, if such person at that time was growing no more than 6 cannabis plants with 3 or fewer being mature flowering plants

do not include the marijuana-related limitations to the definition of “controlled substance.” Those limitations should be added to the definition of the term under D.C. Code § 48-901.02.

and if all persons residing within that single house or single rental unit at that time did not possess, grow, harvest, or process, in the aggregate, more than 12 cannabis plants, with 6 or fewer being mature, flowering plants; or

(iii) The marijuana produced by the plants which were grown, possessed, harvested, or processed by a person who was, pursuant to sub-subparagraph (ii) of this subparagraph, permitted to grow, possess, harvest, and process such plants, if such marijuana is or was in the personal possession of that person who is growing or grew such plants, within the house or rental unit in which the plants are or were grown.”).