D.C. Criminal Code Reform Commission

2017 Annual Report*

SUBMITTED TO THE COUNCIL
January 18, 2018

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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*This document also serves as the agency's report on activities for the quarter that ended Dec. 31, 2017.

INTRODUCTION

The D.C. Criminal Code Reform Commission (CCRC) is pleased to present its Annual Report for calendar year 2017, in compliance with its statutory mandate.[1] To avoid unnecessary duplication, this Annual Report also serves as the agency's quarterly report on activities for the first quarter of fiscal year 2018 that ended on December 31, 2017.[2]

The CCRC began operation as a new, independent District agency on October 1, 2016, pursuant to language in the Council of the District of Columbia's Fiscal Year 2017 Budget Support Act of 2016. The CCRC is tasked with submitting to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes within specified parameters, with a statutory deadline of October 1, 2018.[3] In preparing these reform recommendations, the CCRC is required to consult with a Code Revision Advisory Group, a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.[4] A majority vote of the Advisory Group is required for any

[1] The CCRC's statutory mandate for an annual report requires that:

> The Commission shall file an annual report with the Council before March 31 of each year that includes: (1) A summary and copy of all recommendations for reforms to criminal statutes developed by the Commission during the previous calendar year; (2) A summary and copy of comments received from the Advisory Group during the previous calendar year and their disposition; (3) A summary of other Commission activities during the previous calendar year; (4) A description of any problems discovered with prior Commission work or changes to prior work that are necessary due to legislative changes or court rulings; (5) A description of any issues that could delay or prevent the Commission from timely fulfilling its statutory duties; and (6) A work plan and schedule, or revisions to an existing work plan and schedule, for carrying out the responsibilities of the Commission to meet statutory requirements.

D.C. Code § 3-154(b).

[2] The CCRC's statutory mandate for quarterly reports states that: "The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter." D.C. Code § 3-154(a).

[3] The CCRC's mandate states:

> By October 1, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to: (1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses; (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary; and (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

D.C. Code § 3-152(a).

[4] The current voting members of the Advisory Group are: Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General (Designee of the Attorney General for the District of Columbia).

recommendations to be submitted to the Council and the Mayor.[5] In preparing its reform recommendations the CCRC also reviews criminal code reforms in other jurisdictions, changes to criminal offenses recommended by the American Law Institute, and best practices recommended by criminal law experts.[6]

This Annual Report is divided into six sections, each corresponding to one of the CCRC's statutory requirements for its Annual Report.[7]

I. SUMMARY OF REFORM RECOMMENDATIONS DEVELOPED IN 2017

The agency's development of reforms to criminal statutes in 2017 followed the agency's Work Plan and Schedule issued with its 2016 Annual Report on February 9, 2017. Specifically, the CCRC's activities in 2017 have focused on completing Phase 1 (Recommendations regarding enactment of Title 22 of the D.C. Code and other minor amendments to criminal statutes), beginning and substantially completing Phase 2 (creation of a General Part providing definitions, interpretive rules, and culpability principles), and beginning Phase 3 (revision of specific offenses). Apart from some preliminary data analysis and review of offense gradations, work on Phase 4 (penalty proportionality) did not occur in 2017.

Phase 1.

- Regarding Phase 1, the CCRC's first major report to the Council and Mayor was completed and issued on May 5, 2017. Issuance of *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes* completed Phase 1. The report addressed several of the agency's statutory mandates that require minor, often technical changes to District criminal statutes.[8] Appendices to the report included: A) detailed information on affected statutes; B) Advisory Group comments; C) relevant crime statistics; and D) an appendix containing a draft bill that would enact the proposed changes into law. Several of the agency's Advisory Group members provided

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The current non-voting members of the Advisory Group are: Kate Mitchell, Committee Director, Committee on the Judiciary and Public Safety (Designee of the Chairperson of the Council Committee on the Judiciary and Public Safety); and Helder Gil, Chief of Staff, Office of the of the Deputy Mayor for Public Safety and Justice (Designee of the Deputy Mayor for Public Safety and Justice).

[5] Criminal Code Reform Commission Establishment Act of 2016, Bill 21-669, Section 3123, Fiscal Year 2017 Budget Support Act of 2016 (June 21, 2016).

[6] *Id.*

[7] *See supra* note 1.

[8] D.C. Code § 3-152(a) ("(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (5) Eliminate archaic and unused offenses; (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate; (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment; (10) Propose such other amendments as the Commission believes are necessary . . . .").

written and oral comments in the development of the recommendations, and the vote to approve the report was unanimous.

- Adoption of the CCRC's recommendations in *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes* would significantly improve the District's criminal statutes, particularly Title 22 of the D.C. Code, which includes most crimes that are not concerned with regulation of an industry. Several archaic and unused offenses, such as "Playing Games in Streets,"[9] would be repealed, and outdated references, such as to the "Workhouse of the District of Columbia," would be updated. Language in current statutes that has been ruled unconstitutional by District courts would be amended and the specter of common law crimes, whose authority is old judicial opinions, rather than legislation, would be definitively ended. Title 22 of the D.C. Code, the title originally designed to contain only criminal offenses, would be reorganized such that non-criminal and procedural matters are moved to other titles. And Title 22 would be "enacted" as law of its own, easing the administrative burden of future amendments to Title 22.

Phase 2.

- Regarding Phase 2, in 2017 the CCRC developed draft recommendations regarding a wide variety of general provisions and circulated them to its Advisory Group for review.[10] Work for this phase addresses several of the agency's statutory mandates,[11] and began in late 2016 with the issuance of multiple draft recommendations.[12] The CCRC's Phase 2 recommendations for a set of general provisions are intended to prescribe definitions and rules of liability that apply to all revised offenses (e.g. theft, assault, etc.). Such general provisions are essential tools to improve the completeness, consistency, and

[9] D.C. Code § 22-1308:

> It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the City of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the City of Washington, under a penalty of not more than $5 for each and every such offense.

[10] Staff's estimate of the time necessary to complete draft general provisions—particularly inchoate offenses such as attempts, conspiracy, solicitation, and accomplice liability—in the agency's Work Plan and Schedule (2-9-17) was inaccurate. By the end of 2017 the CCRC had developed and distributed draft recommendations for most expected general provisions. However, solicitation and accomplice liability, and a provision on merger, remain issues for 2018 that will require staff time that had been planned to revise additional offenses. The agency's updated Work Plan and Schedule (1-12-18) reflects the new estimate for completion of general provision recommendations.

[11] D.C. Code § 3-152(a) ("(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; (7) Organize existing criminal statutes in a logical order; (10) Propose such other amendments as the Commission believes are necessary . . . .").

[12] *See First Draft of Report #2,* Recommendations for Chapter 2 of the Revised Criminal Code: Basic Requirements of Offense Liability (December 21, 2016). The report contained general provisions establishing a voluntariness requirement, a causation requirement, a culpable mental state requirement, a hierarchy of culpable mental states, and rules of interpretation applicable to the culpable mental state requirement.

precision of specific offenses. The CCRC's draft general provisions follow the design of the American Law Institute's Model Penal Code (MPC), which has been adopted by a majority of states and has recently been adopted by the D.C. Court of Appeals (DCCA) to resolve statutory ambiguity.[13]

- Specifically in 2017, the CCRC issued new draft recommendations concerning principles of liability in instances of accidents, mistakes, and where the defendant is intoxicated.[14] The CCRC also issued draft recommendations providing general rules of interpretation for revised offenses,[15] and liability rules for situations where the defendant attempted[16] or conspired[17] to commit a crime. The CCRC also created draft standardized penalty classes (e.g. setting a Class 2 felony at a maximum of 45 years imprisonment, a fine of $250,000 or both)[18] and revised several penalty enhancements that apply to all revised offenses.[19] The CCRC discussed these drafts with its Advisory Group and received many written comments from Advisory Group members (see Annual Report section II, below). Updates to the draft general provisions distributed to the Advisory Group in late 2016 also were issued in 2017.[20]

Phase 3.

- Regarding Phase 3, in 2017 the CCRC developed draft recommendations regarding a wide variety of specific offenses and circulated them to its Advisory Group for review.[21]

[13] *See, e.g., Carrell v. United States*, 165 A.3d 314, 320, 324 (D.C. 2017) (*en banc*).
[14] First Draft of Report #3 - Recommendations for Chapter 2 of the Revised Criminal Code: Mistake, Deliberate Ignorance, and Intoxication (March 13, 2017).
[15] First Draft of Report #4 – Recommendations for Chapter 1 of the Revised Criminal Code: Preliminary Provisions (March 13, 2017).
[16] First Draft of Report #7, Definition of a Criminal Attempt (June 7, 2017); First Draft of Report #13, Criminal Attempt Penalties (December 21, 2017).
[17] First Draft of Report #12, Definition of a Criminal Conspiracy (November 6, 2017).
[18] First Draft of Report #5, Recommendations for Chapter 8 of the RCC – Offense Classes and Penalties (May 5, 2017).
[19] First Draft of Report #6, Penalty Enhancements (June 7, 2017).
[20] Third Draft of Report No. 2: Recommendations for Chapter 2 of the Revised Criminal Code— Basic Requirements of Offense Liability (December 21, 2017).
[21] Staff's estimate of the time necessary to complete draft revised offenses—particularly drug offenses—in the agency's Work Plan and Schedule (2-9-17) was inaccurate. By the end of 2017 the CCRC had not developed or distributed draft recommendations for revised controlled substance offenses to its Advisory Group. After significant preparatory work, the decision was made in 2017 to postpone work on drug offenses at least until after revision of offenses against persons. Extended, unanticipated leave by lead staff on drug reform work, the Congressional appropriations bar on Council changes to drug offense penalties, and the greater importance of completing serious offenses against persons (murder, assault, sex assault, robbery, etc.) weighed in favor of postponing drug offenses rather than risk the timeline for completion of offenses against persons. The agency's updated Work Plan and Schedule (1-12-18) reflects the new estimate for completion of recommendations for revised offenses and does not include drug offenses. Depending on the speed of staff work and Advisory Group feedback in 2018, the CCRC may be able to propose revision of some drug offenses before the scheduled September 2018 sunset. Staff developed and distributed draft recommendations for expected property offenses and most offenses against persons, though on a slightly delayed timeline.

Work for this phase addresses several of the agency's statutory mandates.[22] The Phase 3 recommendations modernize the structure and language of the most serious, frequently-sentenced District offenses, consistent with the general definitions, rules, and principles for establishing liability established by the general provisions developed in Phase 2. Draft recommendations for specific offenses differentiate gradations in liability but do not propose specific penalties or fines, which will be addressed in Phase 4.

- Specifically in 2017, the CCRC issued new draft recommendations concerning dozens of revised property offenses and offenses against persons. The draft recommendations for revised property offenses include theft and damage to property offenses,[23] fraud and stolen property offenses,[24] and extortion, trespass, and burglary offenses.[25] In addition, the CCRC developed drafts of revised definitions for property offenses and other provisions concerning the aggregation of amounts in property offense charges.[26] The CCRC's draft revisions to offenses against persons include robbery,[27] assault,[28] and threats[29] charges, as well as revised definitions[30] for these offenses. The CCRC discussed the property offense drafts with its Advisory Group and received many written comments from Advisory Group members (see Annual Report section II, below). Discussion and written comments on draft offenses against persons are scheduled for early 2018.

A copy of the CCRC recommendations completed in 2017, *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes*, is attached as Appendix A to this Annual Report.

The recommendations developed in Phases 2, 3, and 4 will be combined, forming a single, cohesive set of reformed crimes in a new Title 22A. The combined reform recommendations will be presented in the CCRC's second (and final) major report to the Council and Mayor by the statutory deadline of September 30, 2018. A copy of the draft CCRC recommendations'

[22]. D.C. Code § 3-152(a) ("(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; 4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses . . . (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate . . . (10) Propose such other amendments as the Commission believes are necessary . . . .").
[23] First Draft of Report #9 - Recommendations for Theft and Damage to Property Offenses (August 11, 2017).
[24] First Draft of Report #10 - Recommendations for Fraud and Stolen Property Offenses (August 11, 2017).
[25] First Draft of Report #11 - Recommendations for Extortion, Trespass, and Burglary Offenses (August 11, 2017).
[26] First Draft of Report #8 - Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions (August 11, 2017).
[27] First Draft of Report #16, Robbery (December 21, 2017).
[28] First Draft of Report #15, Assault and Offensive Physical Contact Offenses (December 21, 2017).
[29] First Draft of Report #17, Criminal Menace and Criminal threat Offenses (December 21, 2017).
[30] First Draft of Report #14, Definitions for Offenses Against Persons (December 21, 2017).

statutory language developed in 2017, *Compilation of Draft Revised Criminal Code Statutes To Date (December 21, 2017)* is attached as Appendix B to this Annual Report.[31]

II. SUMMARY OF COMMENTS RECEIVED FROM THE CCRC ADVISORY GROUP IN 2017

In preparing its reform recommendations, the CCRC is statutorily required to consult with a Code Revision Advisory Group, a statutorily designated group of stakeholders who review and provide information and suggestions on proposals prepared by the CCRC. The Advisory Group consists of 5 voting members and 2 nonvoting members.[32] Advisory Group members have the opportunity to provide written comments[33] on all draft recommendations developed by the CCRC, and additional oral discussion on draft recommendations is held during the Advisory Group's monthly meetings. All Advisory Group recommendations are considered and the CCRC's final recommendations have and shall continue to be based on the comments received.[34]

In January 2017 the CCRC received written comments from the Advisory Group on the first draft of *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes*. Those written comments are summarized here and reproduced in Appendix C attached to this Annual Report, along with the memorandum the CCRC provided to the Advisory Group addressing their comments.

For Report #1, the CCRC timely received written comments from the Office of the Attorney General for the District of Columbia (OAG), the U.S. Attorney's Office for the District of Columbia (USAO), and the Public Defender Service for the District of Columbia (PDS). The majority of the comments suggested clarifications to the wording of the Report or additional technical amendments to criminal statutes, and the CCRC made the suggested changes in the second draft of Report #1 and its accompanying appendices. Several Advisory Group written comments raised substantive questions regarding: 1) the effect of repealing several archaic and unused property damage offenses on the scope of the remaining property offenses; 2) the effect of enactment on court decisions construing the laws contained in Title 22; 3) whether the District of Columbia Court of Appeals would consider legislative intent in conducting statutory interpretation of an enacted title; and 4) how best to establish the legislative intent behind enacting Title 22.

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[31] Copies of the draft commentary entries explaining the draft recommendations' statutory language in Appendix B—totaling nearly 1,000 pages—are available on the CCRC website at https://ccrc.dc.gov/page/ccrc-documents.

[32] See footnote #4, above, for a list of current members of the Advisory Group.

[33] D.C. Code § 3-153(c) ("The Commission shall provide drafts of its recommended reforms to criminal statutes to the Advisory Group in the form of reports. Advisory Group members may provide to the Commission written comments in response to those recommendations within a reasonable period of time, to be determined by the Executive Director, but not less than one month.").

[34] D.C. Code § 3-153(d) ("The Commission shall consider all written comments that are timely received from Advisory Group members under subsection (c) of this section and propose all final recommendations to the Council based on the comments received.").

In response to these Advisory Group comments on Report #1, the CCRC addressed the concern about the effect of repealing several property damage offenses by removing those offenses from the Report and the draft legislation. Those offenses are no longer recommended for repeal as part of this enactment legislation and will be discussed in conjunction with more comprehensive review of the District's property offenses (see Work Plan and Schedule in Part VI of this Annual Report). To address the concern about the effect of enactment on court decisions interpreting the laws contained in Title 22, the CCRC added additional language to the Statement of Legislative Intent contained in the prefatory section of the enactment bill that states that enactment is not intended to indicate legislative approval or disapproval of any court decisions interpreting the laws therein. Regarding the relevant canons of statutory construction that the District of Columbia Court of Appeals could use to determine legislative intent, the CCRC added text to the Report noting recent trends in the case law.

The Advisory Group members provided no additional comments to the second (voting) draft of Report #1. On April 5, 2017, the voting members of the Advisory Group unanimously approved *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes.*

In 2017, the CCRC also received nearly 90 pages of written comments on other draft reports summarized in Part I of this Annual Report. Specifically, the following voting members provided written comments to draft reports in 2017, regarding the following topics:

- *First Draft of Report # 2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability.*
    - On 2/22/17 the Designee of the Attorney General (OAG) submitted 8 pages of written comments on all sections of the draft.
    - On 2/22/17 the Designee of the United States Attorney for the District of Columbia (USAO) submitted 3 pages of written comments on the definition of possession, the definition of causation, and the culpable mental state of recklessness.
- *First Draft of Report #3 - Recommendations for Chapter 2 of the Revised Criminal Code: Mistake, Deliberate Ignorance, and Intoxication.*
    - On 4/24/17, OAG submitted 3 pages of written comments on all sections of the draft.
    - On 4/24/17, the Designee of the Director of the Public Defender Service (PDS) submitted 5 pages of written comments on all sections of the draft.
    - On 4/24/17, USAO submitted 2 pages of written comments on all sections of the draft.
- *First Draft of Report #4 – Recommendations for Chapter 1 of the Revised Criminal Code: Preliminary Provisions.*
    - On 4/24/17, OAG submitted 2 pages of written comments on the rules of interpretation and the interaction of Title 22A with other District laws.

  - On 4/24/17, USAO submitted 2 pages of written comments on the rule of lenity.
- *Second Draft of Report #2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability.*
  - On 6/15/17, OAG submitted 3 pages of written comments on the draft hierarchy of culpable mental states.
- *First Draft of Report #5, Recommendations for Chapter 8 of the RCC – Offense Classes and Penalties.*
  - On 6/15/17, OAG submitted 5 pages of written comments on offense classifications, authorized terms of imprisonment, and authorized fines.
  - On 6/16/17, PDS submitted 5 pages of written comments on authorized terms of imprisonment.
- *First Draft of Report #6, Penalty Enhancements.*
  - On 7/17/17, OAG submitted 3 pages of written comments on all sections of the draft.
  - On 7/18/17, PDS submitted 4 pages of written comments on the draft repeat offender and hate crime penalty enhancements.
  - On 7/21/17, USAO submitted 1 page of written comments on the draft limitation on penalty enhancements and the hate crime penalty enhancement.
- *First Draft of Report #7, Definition of a Criminal Attempt.*
  - On 7/18/17, PDS submitted 3 pages of written comments on all sections of the draft.
  - On 7/21/17, USAO submitted 1 page of written comments on all sections of the draft.
- *First Draft of Report #8 - Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions.*
  - On 11/3/17, USAO submitted 5 pages of written comments on the draft definitions of "coercion," "consent," "deceive," and "effective consent," as well as the limitation on convictions for multiple property offenses.
  - On 11/3/17, PDS submitted 7 pages of written comments on the draft revisions to the definitions of "coercion," "deceive and deception," "dwelling," "financial injury," "motor vehicle," and "services," as well as the limitation on convictions for multiple property offenses.
- *First Draft of Report #9 - Recommendations for Theft and Damage to Property Offenses.*
  - On 11/3/17, USAO submitted 4 pages of written comments on the draft revisions to unauthorized use of a motor vehicle, shoplifting, and criminal graffiti.
  - On 11/3/17, PDS submitted 6 pages of written comments on the draft revisions to theft, unauthorized use of a motor vehicle, shoplifting, arson, reckless burning, criminal damage to property, and criminal graffiti.
- *First Draft of Report #10 - Recommendations for Fraud and Stolen Property Offenses.*

  - On 11/3/17, USAO submitted 5 pages of written comments on the draft revisions to fraud, identity theft, and financial exploitation of a vulnerable adult or elderly person.
  - On 11/3/17, PDS submitted 2 pages of written comments on the draft revisions to check fraud, unlawful labeling of a recording, and alteration of a motor vehicle identification number.
- *First Draft of Report #11 - Recommendations for Extortion, Trespass, and Burglary Offenses.*
  - On 11/3/17, USAO submitted 3 pages of written comments on the draft revisions to criminal obstruction of a public way, unlawful demonstration, burglary, and possession of burglary and theft tools.
  - On 11/3/17, PDS submitted 3 pages of written comments on the draft revisions to burglary and trespass.
- *First Draft of Report #12, Definition of a Criminal Conspiracy.*
  - On 12/18/17, PDS submitted 4 pages of written comments on all sections of the draft.
  - On 12/19/17, OAG submitted 3 pages of written comments on all sections of the draft.

III. SUMMARY OF OTHER COMMISSION ACTIVITIES IN 2017

In addition to its primary mission of developing criminal code reform recommendations, the agency has engaged in a variety of supporting activities, including the following highlights.

Data.

- On January 31, 2017 the agency received a partial response to a request to the D.C. Sentencing Commission for data on District charging and sentencing. The CCRC staff, with help from the Lab @ DC in the Office of the City Administrator, subsequently analyzed the information that was made available.
- On April 19, 2017, the agency formally executed a Memorandum of Understanding (MOU) with the Office of the City Administrator (OCA) concerning provision of data analysis services by the OCA's Lab @ DC to the CCRC. OCA agreed to provide these services at no cost to the CCRC, resulting in a substantial savings to the CCRC's budget.
- On May 8, 2017 the agency submitted a request to the D.C. Superior Court for data on District charging, sentencing, and other relevant statistics.
- On July 17, 2017, the CCRC completed a Data Use Agreement (DUA) with the D.C. Superior Court in connection with its May 8, 2017 request certain data on District charging, sentencing, and other relevant statistics. The DUA restricts the CCRC's ability to conduct certain analyses on, and share, the requested data.

- On August 7, 2017 the agency received a data set in response to its May 8, 2017 request to the D.C. Superior Court.
- On September 6, 2017, the agency formally issued a request to the Metropolitan Police Department (MPD), through the Lab @ DC at the Office of the City Administrator (OCA), for certain data on District arrests and citations. The data request was not fulfilled by September 30 (but has since been received in early October).
- On September 7, 2017, after consultation with D.C. Superior Court staff, a follow-up data request was made to the D.C. Superior Court. Unfortunately, on beginning its analysis the CCRC discovered that the data set provided on August 7, 2017 did not distinguish charges and convictions for attempt (versus completed) crimes, and only provided the latest sentence for convictions (versus the initial sentence). The follow-up request of September 8, 2017 was for a data set distinguishing these matters. (As of the date of this report in 2018, an updated data set had not been received.)

Council Testimony.

- On February 16, 2017 CCRC Executive Director Richard Schmechel testified before the Committee on the Judiciary and Public Safety at the agency's annual performance oversight hearing.
- On February 17, 2017 the agency submitted written testimony to the Committee on the Judiciary and Public Safety for the record of its public oversight roundtable on Sentencing in the District of Columbia: Agency Roles and Responsibilities held on February 9, 2017.
- On June 22, 2017, the agency submitted written testimony to the Committee on the Judiciary and Public Safety for the record of its June 22, 2017, Hearing on the Sexual Assault Victims' Rights Amendment Act of 2017. The CCRC's testimony related only to Section 5 of the bill, which would establish a new criminal offense entitled "Unlawful removal of another person's clothing."
- On October 19, 2017 the agency submitted written testimony to the Committee on the Judiciary and Public Safety for the record of its October 17, 2017, Hearing on the Sexual Fare Evasion Decriminalization Act of 2017.

Staffing.

- In the spring of 2017 a member of the agency's staff was trained and became an Equal Employment Opportunity (EEO) Counselor.
- On April 20-21, 2017 three agency staff attended a Rutger's Law School conference entitled "Theorizing Criminal Law Reform."
- On May 23, 2017 three agency staff attended the American Law Institute Annual Meeting discussion of "Model Penal Code: Sexual Assault and Related Offenses."
- On May 30, 2017 three legal interns joined the agency for the summer, providing *pro bono* legal research in aid of the CCRC's mission for the following ten weeks.

- On August 30, 2017 the CCRC welcomed a new, part-time legal intern to provide *pro bono* legal research to the agency during the fall semester.
- On October 13, 2017 the Executive Director attended an American Law Institute meeting entitled "Model Penal Code: Sexual Assault and Related Offenses."
- On October 26, 2017 the Executive Director attended the Charles Koch Institute Conference: Advancing Justice.
- On October 27, 2017 two agency staff attended a George Washington University School of Law Symposium, "The Challenge of Crime in a Free Society: 50 Years Later."
- In 2017 staff attended in-person trainings provided by the District that are required for use of the District's Purchase Card and PASS systems (3 trainings) and becoming an EEO Counselor (1 training). All agency staff attended annual ethics training per consultation with the D.C. Board of Ethics and Government Accountability (BEGA).

Transparency & Community Outreach.

- Throughout 2017 the agency posted all its draft and final recommendations regarding criminal code reform to the agency's website to provide maximum transparency.
- On September 7, 2017, the CCRC Executive Director and an agency attorney gave a presentation to judges of the District of Columbia Court of Appeals on the agency's mission and recent work. The presentation was followed by a lively discussion during which several judges expressed strong support for the agency's mission.

IV. STATUS OF PRIOR COMMISSION WORK

The CCRC is not aware of any problems with or changes that are necessary to its prior work due to legislative changes or court rulings. The agency monitors appellate decisions and legislation on a weekly basis and has incorporated changes into its draft recommendations as necessary. For example, the agency's draft recommendations for revising the District's threats and related statutes had to be rewritten (prior to issuance to the Advisory Group) in light of the D.C. Court of Appeals' recent en banc decision on culpable mental states for a criminal threat charge in *Carrell v. United States*, 165 A.3d 314, 317 (D.C. 2017).

V. ISSUES POTENTIALLY DELAYING OR PREVENTING COMMISSION WORK

The Work Plan and Schedule attached as Appendix D to this Annual Report describes the number and type of recommendations for code revision that the CCRC expects to submit to the Council and Mayor. The Work Plan and Schedule also contains a section labeled "Limitations & Assumptions" that provides detail on various factors that may affect the CCRC's ability to timely fulfill its statutory mandate.

However, there are two matters of particular concern. The first is the possibility of significant staff attrition and/or hiring difficulties due to the agency's current statutory sunset date of October 1, 2018. The agency's staff has developed unique expertise with the code revision process. In case of staff departure prior to the sunset, it will be extremely difficult to attract highly qualified individuals (given the time-limited nature of the employment) and train them in time to significantly advance agency work. In January 2018 one employee resigned and the time-limited nature of the agency's current authorization has complicated hiring for the vacancy. Should the agency's statutory authorization be extended, advanced notice of this intent, to the degree possible, could be crucial to retaining and/or attracting replacement staff in 2018.

Second, under the agency's statute, its Advisory Group's voting members must approve by majority vote all final recommendations of the CCRC before they may be transmitted to the Mayor and Council. To date, no Advisory Group members have stated that they cannot support the agency's draft recommendations, and the differences of opinion that are apparent in Advisory Group members' comments to the agency do not appear to jeopardize final approval. However, the possibility remains that Advisory Group members, perhaps even a majority, may yet raise fundamental objections to the agency's proposals. Should such objections be raised, significant additional time may be needed for staff to restructure its proposals and reengage the Advisory Group with respect to the revisions.

VI. WORK PLAN AND SCHEDULE FOR COMMISSION WORK

See Appendix D, attached.

D.C. CRIMINAL CODE REFORM COMMISSION
2017 ANNUAL REPORT
APPENDIX A

Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes

D.C. Criminal Code Reform Commission

441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrc.dc.gov

May 5, 2017

Dear Mayor Bowser, Chairman Mendelson, Councilmembers,

Please find attached for your review a Report and accompanying appendices that provide recommendations from the D.C. Criminal Code Reform Commission ("Commission") for certain changes to District criminal statutes. The recommendations were approved by the Commission's statutorily-designated Advisory Group in April 2017 and address several of the topics specified in the agency's statute. (See D.C. Code §§ 3-152 – 3-253.)

The recommendations are an essential step toward modernization of the District's criminal statutes. Clearly archaic and outdated criminal statutes like "Playing games in streets" should be repealed. Outdated references to the District's "Workhouse" and unnecessarily gendered language should be corrected. Sections of criminal statutes that courts have held to be unconstitutional and are no longer used in practice should be struck from the D.C. Code. The possibility of being convicted of judicially-created common law offenses, which have not been created by the legislature nor been used in decades, should be eliminated. Extraneous procedural and non-criminal provisions in Title 22 of the D.C. Code should be relocated to other titles, thereby limiting Title 22 to a compilation of District criminal offenses and penalties. Lastly, the entire text of Title 22 of the D.C. Official Code should be enacted as a single law to ease the administrative burden of making future amendments.

Given the relatively uncontroversial nature of these recommendations and the immediate improvements they will bring to the clarity and functionality of the District's criminal statutes, the Commission submits this Report and accompanying appendices for Mayoral and Council consideration as the agency develops further reform recommendations pursuant to its statute. Please do not hesitate to contact the Commission with any questions about these recommendations or the agency's continued work.

Sincerely,

Richard Schmechel
Executive Director

cc: Nyasha Smith, Council Secretary (For distribution to Councilmembers)
Kevin Donahue, Deputy Mayor for Public Safety

Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes

Submitted to the Council & Mayor
May 5, 2017

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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INTRODUCTION

This Report and the accompanying Appendices consolidate and update prior recommendations and draft bills concerning the District's criminal statutes that were developed by the D.C. Sentencing Commission (Sentencing Commission). In September 2015, the Sentencing Commission unanimously approved and submitted to the Council and Mayor recommendations and several corresponding draft bills that would amend various criminal statutes and enable the adoption of Title 22 as an enacted title of the D.C. Code. The Council did not subsequently take action on the draft recommendations or draft legislation.

The D.C. Criminal Code Reform Commission (Criminal Code Reform Commission), pursuant to its new mandate,[1] has reviewed, updated, and consolidated the Sentencing Commission's September 2015 recommendations and corresponding draft bills in this Report. This Report's recommendations and draft legislation differ slightly, but significantly, from those the Sentencing Commission submitted in September 2015. The chief differences are: 1) this Report resolves certain ambiguities in the current text of Title 22 that were noted but left to legislative resolution in the Sentencing Commission's recommendations; 2) this Report addresses the few criminal laws that have been passed since September 2015; 3) this Report makes fewer technical amendments to non-Title 22 criminal statutes and some statutes referencing federal property; and 4) The portion of the draft legislation that enacts Title 22 directly amends the text to reflect the recommended revisions for that title. These minor changes have allowed the Criminal Code Reform Commission to combine the recommendations into one updated bill.

[1] The Criminal Code Reform Commission Act of 2016, part of the Council's Fiscal Year 2017 Budget Support Act of 2016, established the Criminal Code Reform Commission and transferred staff and responsibility for developing recommendations to reform the criminal code from the Sentencing Commission. The Criminal Code Reform Commission's mandate is as follows:

> (a) By October l, 2018, the Commission shall submit to the Mayor and the Council comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to:
>
> (1) Use clear and plain language;
> (2) Apply consistent, clearly articulated definitions;
> (3) Describe all elements, including mental states, that must be proven;
> (4) Reduce unnecessary overlap and gaps between criminal offenses;
> (5) Eliminate archaic and unused offenses;
> (6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;
> (7) Organize existing criminal statutes in a logical order;
> (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
> (9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment;
> (10) Propose such other amendments as the Commission believes are necessary; and
> (11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code.

This Report's recommendations are presented in six parts: I. Archaic and unused offenses and provisions to repeal; II. Technical amendments to correct outdated language; III. Unconstitutional statutes to amend; IV. Common law offenses to repeal; V. Relocation of Title 22 provisions to other D.C. Code titles; and VI. Enactment of Title 22.

Appendices to this Report provide additional detail on the Criminal Code Reform Commission's recommendations, and include relevant statistics (Appendix VII), comments from the agency's Advisory Group (Appendix VIII), and a draft bill that would pass the recommended revisions into law (Appendix IX). The bill in Appendix IX contains multiple sections, some making changes to titles other than Title 22, and one section that both enacts and makes certain changes to Title 22. Although the bill is lengthy and contains a copy of Title 22 offenses for purposes of enactment, the bill is designed to not change any laws other than those specified in this Report.

Adoption of the Criminal Code Reform Commission's recommendations in this Report and passage of the bill in Appendix IX would significantly improve the District's criminal statutes, particularly Title 22 of the D.C. Code, which includes most crimes that are not concerned with regulation of an industry. Several archaic and unused offenses, such as "Playing Games in Streets,"[2] would be repealed, and outdated references, such as to the "Workhouse of the District of Columbia," would be updated. Language in current statutes that has been ruled unconstitutional by District courts would be amended and the specter of common law crimes, whose authority is old judicial opinions, rather than legislation, would be definitively ended. Title 22 of the D.C. Code, the title originally designed to contain only criminal offenses, would be reorganized such that non-criminal and procedural matters are removed to other titles. And Title 22 would be "enacted" as law of its own, easing the administrative burden of future amendments to Title 22.

The Criminal Code Revision Advisory Group (Advisory Group), a statutorily-designated group comprised of five voting and two non-voting members,[3] has reviewed

[2] D.C. Code § 22-1308:

> It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the City of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the City of Washington, under a penalty of not more than $5 for each and every such offense.

[3] The current voting members of the Advisory Group are: 1) Don Braman, Associate Professor of Law, George Washington University School of Law (Council Appointee); 2) Paul Butler, Professor of Law, Georgetown University Law Center (Council Appointee); 3) Renata Kendrick Cooper, Special Counsel for Policy and Legislative Affairs, United States Attorney's Office for the District of Columbia (Designee of the United States Attorney for the District of Columbia); 4) Laura Hankins, General Counsel, Public Defender Service for the District of Columbia (Designee of the Director of the Public Defender Service for the District of Columbia); and 5) Dave Rosenthal, Senior Assistant Attorney General, Office of the Attorney General (Designee of the Attorney General for the District of Columbia). The current non-voting members of the Advisory Group are: 1) Chanell Autrey, Legislative Counsel, Committee on the Judiciary (Designee of the Chairperson of the Council Committee on the Judiciary); and

this Report and its Appendices. The Advisory Group received a copy of the First Draft of the Report and Appendices on November 2, 2016 with a request for written comments by January 13, 2017. The Criminal Code Reform Commission revised its First Draft and Appendices based on three sets of written comments that were timely received. The Advisory Group received a copy of the Second Draft of the Report and Appendices on January 25, 2017 with a request for written comments by February 27, 2017. No written comments were received on the Second Draft. The Criminal Code Reform Commission performed a final review of the draft recommendations and submitted a Voting Draft and Appendices to the Advisory Group on March 3, 2017.

On April 5, 2017 all five voting members of the Advisory Group approved the final recommendations of the Criminal Code Reform Commission on these matters. A copy of the Advisory Group's written comments on the First and Second Drafts of the recommendations is attached as Appendix VIII of this Report.

I. ARCHAIC AND UNUSED OFFENSES AND PROVISIONS TO REPEAL

Advancing its legislative mandate to "eliminate archaic and unused offenses,"[4] the Criminal Code Reform Commission has identified multiple D.C. Code offenses that it recommends for repeal. For information on the review process originally used to identify these offenses, see page 4 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified twelve offenses[5] and two penalty provisions[6] scattered across eight titles of the D.C. Code as archaic and unused, based, in part, upon a review of available adult sentencing and charging data.[7] The fact

2) Helder Gil, Legislative and Policy Advisory, Office of the City Administrator (Designee of the Deputy Mayor for Public Safety and Justice).

[4] *See supra* note 1.

[5] D.C. Code § 22-1003 (Rest, water and feeding for animals transported by railroad company); D.C. Code § 22-1012(a) (Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments); D.C. Code § 22-1308 (Playing games in streets); D.C. Code § 22-3303 (Grave robbery; buying or selling dead bodies); D.C. Code § 22-3320 (Obstructing public road; removing milestones); D.C. Code § 3-206 (Unlawful acts); D.C. Code § 4-125 (Assisting child to leave institution without authority; concealing such child; duty of police); D.C. Code § 9-433.01 (Permit required; exceptions); D.C. Code § 34-701 (False statements in securing approval for stock issue); D.C. Code § 34-707 (Destruction of apparatus or appliance of Commission); D.C. Code § 36-153 (Unauthorized use, defacing, or sale of registered vessel); D.C. Code § 47-102 (Total indebtedness not to be increased).

[6] D.C. Code § 8-305; D.C. Code § 9-433.02.

[7] To determine whether an offense is unused the Criminal Code Reform Commission reviewed two data sets it currently has access to: 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015. Although the two data sets overlap, they were provided on different dates and contain slightly different data. The data sets were provided by the D.C. Sentencing Commission using its Guidelines Reporting Information Data System (GRID System). The first data set is comprised of data received on March 10, 2014 (covering

that an offense was not recently charged in adult court was a necessary, but not sufficient, condition for being deemed "archaic and unused" for purposes of this Report. The Criminal Code Reform Commission also sought consensus approval of its Advisory Group as to a list of "archaic and unused" offenses for purposes of this Report.

Appendix I lists the text of these archaic and unused offenses and provisions. The draft legislation to repeal these offenses is in Titles 1 and 5 of the bill in Appendix IX. The Criminal Code Reform Commission recommends repeal of an additional procedural provision as archaic and unused, D.C. Code § 22-2714, but neither the list of the archaic and unused provisions in Appendix I nor the draft legislation in Appendix IX contain § 22-1714 due to possible Home Rule Act restrictions.[8]

An example of one of the offenses recommended for repeal as archaic and unused is D.C. Code § 47-102, "Total indebtedness not to be increased," which provides:

> There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on

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2009-2013), and June 2, 2015 (covering 2014), and the second set is comprised of data received on April 6, 2016. It should be noted that the GRID System only includes adult information; it does not include juvenile information. It should also be noted that the Sentencing Commission gave notice in its 2015 Annual Report that some data had not been properly accounted for in previously provided data request responses: *See* page 33 of the *D.C. Sentencing Commission and Criminal Code Revision Commission 2015 Annual Report*, available at: http://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%202015%20Website%205-2-16.pdf (last accessed 10/27/16). The Sentencing Commission also has given notice that there may be data reliability and validity issues with the supplied GRID data for 2009 and misdemeanors.
The Criminal Code Reform Commission has requested updated charging and sentencing data to confirm that the offenses identified as archaic and unused in this Report were not charged in 2010-2015, but has not yet received a response. With few exceptions, the offenses identified as archaic were passed by Congress in the late 19th or early 20th century and have undergone little or no subsequent amendment. There are two exceptions: 1) D.C. Code § 4-125 (Assisting child to leave institution without authority; concealing such child; duty of police), enacted in 1942; and 2) D.C. Code §§ 9–433.01 and 9-433.02 (Cutting Trenches in Highways), enacted in 2000, but identical to immediately preceding D.C. Code §§ 9–431.01 and 9-431.02, which were enacted in 1898. The reason for the unusual duplication of statutes for Cutting Trenches in Highways is unclear, as only one set of these statutes is necessary to prohibit the described conduct. The newer versions of the statutes rather than the originals are recommended for repeal, out of concern that the 2000 version may have been enacted in error.
The Criminal Code Reform Commission was unable to locate a single published D.C. Court of Appeals (DCCA) decision involving a defendant charged with, or convicted of, any of the offenses identified as archaic and unused.

[8] The District of Columbia Self–Government and Governmental Reorganization Act (Home Rule Act) provides, in relevant part, that: "The Council shall have no authority to…(8) Enact any act or regulation relating to…the duties or powers of the United States Attorney or the United States Marshal for the District of Columbia." D.C. Code § 1-206.02(a). The procedural provision D.C. Code § 22-1714 concerns a requirement for witnesses to testify or produce documents in a proceeding concerning certain gambling offenses when doing so is necessary to the public interest "in the judgment of the United States Attorney."

> conviction thereof, shall be punished by imprisonment not exceeding 10 years, and by fine not more than the amount set forth in [§ 22-3571.01].

Apart from an amendment to the fine amount for the offense under the Fine Proportionality Act in 2013, this felony has not changed since passed by Congress in 1878. The statute predates the passage of the federal Antideficiency Act[9] and other laws addressing conduct that causes unauthorized indebtedness.

As noted in a D.C. Council Committee Report on a prior bill that repealed crimes determined to be outdated,[10] repealing archaic and unused crimes benefits the District's criminal justice system in multiple ways. Repeal of archaic and unused offenses prevents the "improper application of outmoded and unnecessary criminal penalties" and helps to "simplify the code so that it is more fair and transparent."[11] There is no loss to the Code's effectiveness because the conduct prohibited by these archaic and unused offenses is either covered by another broader or more recent provision of law, or is no longer a public concern.

B. Differences from 2015 Draft Legislation

With regard to the repeal of archaic and unused offenses and provisions, there are a few differences between this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015.

First, the archaic and unused offenses discussed in this Report that are currently located in Title 22 have simply been deleted from title 1 of Appendix IX, which enacts Title 22. These archaic and unused offenses will no longer be law if the legislation in Appendix IX is passed. The archaic and unused offenses that would be repealed from Title 22 are marked as "Repealed" in title 1 of the bill in Appendix IX. In the future, the Criminal Code Reform Commission plans to finalize a recommendation for the reorganization of Title 22 that eliminates the sections of the enacted Title 22 draft legislation marked as "Repealed."

Second, the Sentencing Commission in September 2015 recommended deleting as an archaic and unused offense § 22-3306, Defacing books, manuscripts, publications, or works of art. In this Report and the accompanying legislation in Appendix IX, however, § 22-3306 is not included for deletion to avoid possible Home Rule Act concerns.[12]

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[9] 31 U.S.C. § 1341.

[10] Council of the District of Columbia, *Judiciary Committee Report on Bill 15-79, the "Elimination of Outdated Crimes Amendment Act of 2003,"* June 23, 2003.

[11] Council of the District of Columbia, *Judiciary Committee Report on Bill 15-79, the "Elimination of Outdated Crimes Amendment Act of 2003,"* June 23, 2003 at 1.

[12] Section 22-3306 specifically mentions property of the United States. D.C. Code § 1-206.02(a)(3) ("The Council shall have no authority to . . Enact any act, or enact any act to amend or repeal any Act of Congress, which concerns the functions or property of the United States or which is not restricted in its application exclusively in or to the District.").

Third, the Sentencing Commission in September 2015 recommended deleting as an archaic and unused five property offenses that appear to be covered by other District property offenses: (1) Destroying or defacing public records (D.C. Code § 22-3307); (2) Destroying boundary markers (D.C. Code § 22-3309); (3) Destroying or defacing building material for streets (D.C. Code § 22-3313); (4) Destroying cemetery railing or tomb (D.C. Code § 22-3314); and (5) Placing obstructions on or displacement of railway tracks (D.C. Code § 22-3319). In this Report and the accompanying legislation in Appendix IX, however, these five offenses are not included for deletion due to differing opinions by the Advisory Group.

Finally, the Criminal Code Reform Commission recommends two conforming amendments to accommodate the deletion of two of the archaic and unused offenses, D.C. Official Code § 8-304[13] and § 36-153.[14] The conforming amendments are included in title 5 of the proposed legislation in Appendix IX. The Criminal Code Reform Commission also recommends that Council's Office of the General Counsel amend the title of § 36-154 to "Use or possession of vessel without purchase" to more accurately describe the offense codified therein.

II. TECHNICAL AMENDMENTS TO CORRECT OUTDATED LANGUAGE

Further addressing its legislative mandate to "use clear and plain language,"[15] the Criminal Code Reform Commission has identified statutory provisions throughout the D.C. Code that it recommends for technical amendments, including: 1) references to government agencies that have been succeeded by another agency or renamed (e.g., "Corporation Counsel" or "Workhouse of the District of Columbia"); 2) unnecessarily gendered language; and 3) statutory designations of prosecutorial authority in clear violation of the Home Rule Act under the DCCA's 2009 ruling in *In re Crawley*.[16] For information on the review process originally used to identify these technical amendments, see pages 6-7 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified thirty-seven statutes in eleven titles of the D.C. Code that contain outdated language within the above stated parameters. The Criminal Code Reform Commission recommends corrective technical

[13] D.C. Official Code § 8-304 refers to § 8-305, which is recommended for deletion. The conforming amendment for § 8-304 replaces the reference to § 8-305 with the penalty information currently codified in § 8-305.

[14] D.C. Official Code § 36-154 refers to § 36-153, which is recommended for deletion. The conforming amendment for § 36-154 replaces the reference to § 36-153 with the penalty information currently codified in § 36-153.

[15] *See supra* note 1.

[16] 978 A.2d 608, 620 (D.C. 2009) (holding that the statutory designation of the Office of the Attorney General as prosecutorial authority for D.C. Code § 2-381.09, which criminalizes false claims against the District government, exceeded the Council's authority under the Home Rule Act).

amendments that will clarify the D.C. Code without making any substantive change to the law.

The technical amendments are listed in Appendix II. The draft legislation to make these amendments is in titles 1 and 2 of the bill in Appendix IX. Outdated references to institutions were located in fifteen offenses, many of which pertain to "Corporation Counsel," which is now the Attorney General for the District of Columbia. Twenty-four instances of unnecessarily gendered language and two instances of clearly improper delegations of prosecutorial authority under *In re Crawley* were identified.[17]

An example of an outdated, improper delegation of prosecutorial authority is D.C. Code § 2-381.09, the District's false claims statute, which states that, "The Attorney General for the District of Columbia shall prosecute violations of this section." However, D.C. Code § 23-101 specifies a limited set of offenses that may be prosecuted by the Attorney General for the District of Columbia (OAG), while all other crimes are to be prosecuted by the United States Attorney's Office for the District of Columbia (USAO). The D.C. Court of Appeals held in *In re Crawley* that an OAG prosecution of the false claims statute was improper. The court reasoned that, per D.C. Code § 23-101, the false claims statute should have been prosecuted by the USAO, and, per the Home Rule Act, the Council may not enact legislation that affects the "duties or powers" of the U.S. Attorney's Office.[18] Unfortunately, neither the false claims statute nor the other statutes that clearly and improperly delegate prosecutorial authority have been corrected in the D.C. Code to reflect the holding in *In re Crawley*.

B. Differences from 2015 Draft Legislation

With regard to the identification of criminal statutes in need of technical amendment, there are a few differences between the process followed for this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. For this Report and its accompanying legislation, the Criminal Code Reform Commission examined all statutes in Title 22, as well as a smaller set of non-Title 22 offenses that are criminal in nature. The non-Title 22 offenses were limited to offenses that are actually in use, based on two sets of data provided by the D.C. Sentencing Commission: 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015.[19]

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[17] The total number of edits exceeds the number of statutes due to some statutes being edited for both outdated institution names and gendered language.

[18] D.C. Code § 1-206.02(a)(8).

[19] Although there is some overlap between the two data sets, they were provided on different dates and contain slightly different data. The first data set is comprised of data received on March 10, 2014 (covering 2009-2013), and June 2, 2015 (covering 2014), and the second set is comprised of data received on April 6, 2016. As noted above, these two data sets were provided by the D.C. Sentencing Commission, which generated the sets using its Guidelines Reporting Information Data System (GRID System). It should be noted that the GRID System only includes adult information; it does not include juvenile information. It

In addition, for the offenses that were included in the 2015 Report that was submitted to the Council, additional instances of gendered language were identified and corrected.[20]

Finally, title I of the legislation in Appendix IX, which enacts Title 22, makes technical amendments directly to the statutes in Title 22. These changes will become law if the legislation in Appendix IX is passed and Title 22 becomes an enacted title.

III. UNCONSTITUTIONAL STATUTES TO AMEND

In response to its mandate to "[i]dentify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment," the Criminal Code Reform Commission recommends amendments to two criminal offenses. For information on the process used to review relevant court opinions, see page 8 of the "Report on Enactment of the D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified two current D.C. Code offenses as containing unconstitutional provisions, and both are recommended for amendment: D.C. Code § 7-2506.01, Unlawful Possession of Ammunition (UA), and D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons (AIM).[21] Titles 1 and 3 in the bill in Appendix IX amend both offenses.

1. D.C. Code § 7-2506.01, Unlawful Possession of Ammunition (UA).

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should also be noted that the Sentencing Commission gave notice in its 2015 Annual Report that some data had not been properly accounted for in previously provided data request responses:
See page 33 of the *D.C. Sentencing Commission and Criminal Code Revision Commission 2015 Annual Report*, available at:
http://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%202015%20Website%205-2-16.pdf (last accessed 10/27/16). The Sentencing Commission also has given notice that there may be data reliability and validity issues with the supplied GRID data for 2009 and misdemeanors.

[20] D.C. Code §§ 22-302; 22-722; 22-935; 22-1311; 22-1406; 22-1702; 22-1810; 22-3214.01; 22-3226.01; 22-4504.02; 24-241.05; 47-2829; 50-2201.05b. Appendix II contains the specific revisions to these statutes. Several of the Title 22 statutes for which the 2015 Report recommended technical revisions are now recommended for relocation out of Title 22. Of these statutes, an instance of unnecessarily gendered language was identified and recommended for correction in § 22-2714. Appendix V lists the Title 22 statutes recommended for removal and includes recommendations for technical amendments to those statutes.

[21] The Sentencing Commission previously gave the Council notice of the unconstitutionality of D.C. Code § 22-2511, Presence in a Motor Vehicle Containing a Firearm (PMVCF), in its 2013 Annual Report. *See D.C. Sentencing and Criminal Code Revision Commission 2013 Annual Report*, at 84-85 (April 25, 2014). The Council has since repealed the PMVCF statute. *See* License to Carry a Pistol Amendment Act of 2014, Act No. 20-621 (D.C. Law 20-279), effective June 16, 2015.

The DCCA has held that the crime of UA unconstitutionally punishes behavior that is protected by the Second Amendment.[22] The DCCA also held, however, that a conviction for UA is permissible if the government adopts the burden of proving beyond a reasonable doubt an additional element not present in the statute.[23] Thus, the statute has not been declared wholly unconstitutional, and the defect may be cured by incorporating the DCCA's holding into the text of the offense.[24] Specifically, if the statute is amended to include the extra element of the offense now required by the DCCA, then the offense should survive constitutional scrutiny in the future.[25]

The DCCA ruling of unconstitutionality appears to be widely accepted in current legal practice, but has not resulted in a change to the D.C. Code. Pattern jury instructions frequently used in the District already recognize that the government has the burden of proving this extra element at trial.[26]

To bring clarity to the criminal code, the Criminal Code Reform Commission recommends that the additional element deemed constitutionally necessary be explicitly codified in the statute. The agency has amended the offense language in title 3 of Appendix IX to: 1) ensure that the constitutional rights of persons in the District are respected; 2) clarify to the general public what precisely constitutes the crime of UA; and 3) guide practitioners in the future.

2. D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons (AIM).

The DCCA has held that a portion of the AIM statute is unconstitutional.[27] AIM punishes a person who alters or obliterates serial numbers on firearms. Unlike UA, the DCCA has not declared the statutory elements of the offense to be unconstitutional. Rather, the DCCA evaluated a smaller provision within the AIM statute and held that it violated due process.

The unconstitutional provision in the AIM statute is its permissive inference, or statutory presumption. In criminal law, a permissive inference is a provision that allows a jury to assume one fact from another. Thus, a statute may require that the government prove some fact, X. But the statute may also say that, rather than proving X, the

[22] *Herrington v. United States*, 6 A.3d 1237, 1240 (D.C. 2010).
[23] *Id.* at 1245. The DCCA held in *Herrington* that a conviction for UA is permissible if the government adopts the burden of proving beyond a reasonable doubt that the defendant had not lawfully registered a firearm that takes ammunition of the same caliber or gauge as the particular ammunition at issue.
[24] *See supra* note 23.
[25] *See supra* note 23
[26] *See* D.C. Crim. Jur. Instr. § 6.505 (including the added element). The D.C. Criminal Jury Instructions, referred to as the "Redbook" by practitioners, are a useful guide to the current practice of criminal law in the District. The Criminal Code Reform Commission emphasizes, however, that the Redbook is not a binding source of law.
[27] *Reid v. United States*, 466 A.2d 433, 435-36 (D.C. 1983).

government may instead prove Y, from which the jury may infer X, in order to meet its burden of proving X.

In AIM, one element the government must prove is that the defendant obliterated serial marks on a firearm. But the statute's permissive inference allows the government to instead prove only that the defendant possessed a weapon with obliterated serial marks. The statutory presumption permits the jury to infer that a person who possesses a weapon with obliterated markings is the same person who did, in fact, obliterate those markings, thus rendering that person guilty of AIM.

Applying Supreme Court precedent that requires a permissive inference to survive a "more likely than not" test, the DCCA has held that the AIM statute's permissive inference violates due process. The DCCA reasoned that because guns frequently change hands it is not "more likely than not" that a person who merely possesses a weapon with obliterated markings is the same person who obliterated the markings.[28] The court accordingly held that the permissive inference is unconstitutional.

To bring clarity to the criminal code, the Criminal Code Reform Commission recommends that the statutory presumption, which DCCA case law says renders the offense unconstitutional, be deleted. The agency has amended the language for D.C. Code § 22-4512 in title 1 of the bill in Appendix IX, which enacts Title 22, to remove the AIM statute's permissive inference.

B. Differences from 2015 Draft Legislation

There are no substantive differences between the amendment of UA and AIM in this Report and the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. However, title 1 of the bill in Appendix IX, which enacts Title 22, amends the AIM offense, D.C. Code § 22-4512, directly. When the legislation in Appendix IX is passed, the revised AIM offense will become the law because Title 22 will be an enacted title.

IV. COMMON LAW OFFENSES TO REPEAL AND FURTHER CODIFY

To "[i]dentify any crimes defined in common law that should be codified,"[29] the Criminal Code Reform Commission examined District judicial opinions and D.C. Code criminal offenses. For more information on the review process used to identify these offenses, see pages 11-12 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

[28] *Reid*, 466 A.2d at 435-36.
[29] *See supra* note 1.

A. Findings

The Criminal Code Reform Commission has identified nineteen crimes whose elements are currently defined only in court opinions (common law), rather than in the D.C. Code. For sixteen of these offenses,[30] statutes in the current D.C. Code codify the penalties of the offenses, but not the elements. For example, current D.C. Code § 22-2105 merely states "Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01."

The remaining three common law offenses that the Criminal Code Reform Commission identified are not mentioned anywhere in the D.C. Code: 1) negligent escape; [31] 2) disturbing public worship;[32] and 3) being a common scold.[33]

Negligent escape occurs when a "party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him."[34] In other words, it is a crime for police or jail officials to fail to pursue an escapee. The last documented case of a defendant being prosecuted and convicted of this offense was in 1948.[35] The offenses of disturbing public worship[36] and being a common scold[37] arise from cases decided in the early 1800s.

An individual could potentially be held liable for any of these three offenses recognized in common law because the reception statute in D.C. Code § 45-401 recognizes the validity of common law offenses.[38] Moreover, given the broad scope of

[30] D.C. Code § 11-944 (Contempt); D.C. Code § 22-401 (Assault with intent to kill, rob, or poison or to commit first degree sexual abuse, second degree sexual abuse or child sexual abuse); D.C. Code § 22-402 (Assault with intent to commit mayhem or with a dangerous weapon); D.C. Code § 22-403 (Assault with intent to commit any other offense); D.C. Code § 22-404 (Assault or threatened assault in a menacing manner; stalking); D.C. Code § 22-406 (Mayhem or malicious disfiguring); D.C. Code § 22-407 (Threats to do bodily harm); D.C. Code § 22-1301 (Affrays); D.C. Code § 22-1803 (Attempts to commit a crime); D.C. Code § 22-1805 (Aiding and abetting); D.C. Code § 22-1805a (Conspiracy); D.C. Code § 22-1806 (Accessories after the fact); D.C. Code § 22-2105 (Manslaughter); D.C. Code § 22-2107 (Solicitation of murder or other crimes of violence); D.C. Code § 22-2722 (Keeping bawdy or disorderly houses); D.C. Code § 48-904.09 (Attempt, conspiracy for drug offenses).
Some of the above-cited statutory sections arguably contain multiple offenses. However, for purposes of tallying common law crimes the prohibitions in these statutory sections were treated as one offense.
[31] *United States v. Davis*, 167 F.2d 228, 229 (D.C. Cir. 1948).
[32] *United States v. Brooks*, 24 F. Cas. 1244, 1245 (C.C.D.D.C. 1834). D.C. Official Code § 22-1314, Disturbing Religious Congregation, was repealed and replaced with D.C. Official Code § 22-1321(b).
[33] *United States v. Royall*, 27 F. Cas. 906, 910 (C.C.D.D.C. 1829).
[34] *Davis*, 167 F.2d at 229.
[35] *Id.* at 229.
[36] *Brooks*, 24 F. Cas.at 1245.
[37] *Royall*, 27 F. Cas. At 910.
[38] The District's reception statute, § 45-401, states that "the common law . . . in force in Maryland on February 27, 1801 . . . shall remain in force except insofar as the same are inconsistent with, or are replaced by, some provision of the 1901 Code." By 1801. Maryland had adopted all British common law as of

the reception statute, it is possible that many additional common law offenses exist that simply have not been charged or recorded in the District's appellate case law.[39]

Common law offenses may still result in substantial penalties. The District also has a general penalty statute which provides for a penalty of up to $1,000 or up to five (5) years imprisonment, or both, for violations of "any criminal offense not covered by the provisions of any section of this [D.C.] Code, or of any general law of the United States not locally inapplicable in the District of Columbia."[40] Together with the reception statute, the general penalty statute of the D.C. Code allows for convictions of crimes described only in judicial opinions, including opinions in other American jurisdictions and England[41] that may date back centuries.

The Criminal Code Reform Commission recommends that the sixteen common law offenses that have statutorily defined penalties be fully defined in the D.C. Code, and that the three additional common law offenses be repealed. Pursuant to its mandate, the Criminal Code Reform Commission will propose recommended language to codify many of the offenses that currently only have a penalty codified in the code. In addition, the Criminal Code Reform Commission recommends amending the District's reception statute, D.C. Code § 45-401, which would abolish any unidentified common law offenses. Amending the District's reception statute, as proposed in title 4 of the bill in Appendix IX, would not affect the validity of the District's codified criminal statutes, including D.C. Official Code § 22-1321.

All common law offenses identified by the Criminal Code Reform Commission are listed in Appendix IV.

B. Differences from 2015 Legislation

The Criminal Code Reform Commission has identified two additional common law offenses that were not included in the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015. In two cases from the early 1800s, defendants were charged with the common law offenses of disturbing public worship[42] and being a common scold.[43] The Criminal Code Reform Commission

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1776. *See Wisneski v. State*, 921 A.2d 273, 279-80 (Md. 2007); Section 3 of Maryland's Original Declaration of Rights. Therefore, under the reception statute, any common law offenses recognized under British common law as of 1776 are prosecutable offenses under current District law. It is possible that additional common law offenses exist that have never been charged in the District.

[39] Under the reception statute, any common law offenses recognized under British common law as of 1776 are prosecutable offenses under current District law. *See supra note* 38. It is possible that additional common law offenses exist that have never been charged in the District.

[40] D.C. Code § 22-1807.

[41] When the District was formed in 1801, the portion of the District that territorially had belonged to Maryland adopted Maryland common law as of 1801. Maryland common law, in turn, reflected the adoption of English common law as it existed as of November 3, 1776, except as explicitly repealed by the Maryland legislature. *See Wisneski v. State*, 921 A.2d 273, 279-80 (Md. 2007); M.D. Const. Decl. of Rights, art. III.

[42] *Brooks*, 24 F. Cas.at 1245.

was unable to find any subsequent cases in which defendants were prosecuted for either of these common law offenses in the last 180 years, but presumably they could still be prosecuted under the reception statute in D.C. Code § 45-401 and penalized for up to five years under D.C. Code § 22-1807.

V. RELOCATION OF TITLE 22 PROVISIONS TO OTHER D.C. CODE TITLES

Advancing its legislative mandate to "organize existing criminal statutes in a logical order,"[44] the Criminal Code Reform Commission recommends relocating several provisions from Title 22 of the D.C. Code to other titles. For information on the review process used to identify these statutes, see page 15 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

A. Findings

The Criminal Code Reform Commission has identified 127 statutes in Title 22 that it recommends for relocation to other D.C. Code titles. In many instances the Criminal Code Reform Commission has developed suggestions on the appropriate new title for these relocated statutes. All Title 22 statutes recommended for relocation (and, if applicable, suggestions for the title to which they should be relocated) are listed in Appendix V. Appendix V also lists technical amendments that the Criminal Code Reform Commission recommends for these relocated statutes.

For example, Chapter 42A of Title 22 (D.C. Code §§ 22-4231 through 22-4244) creates and describes the duties of the D.C. Criminal Justice Coordinating Council. None of these statutes describe a criminal offense, and it is unclear why the provisions should not be moved to Title 3 of the D.C. Code which includes the organic legislation for other criminal justice bodies such as the Sentencing Commission. Another example is Chapter 38, Sexual Psychopaths, which sets forth the requirements for the civil commitment of certain criminal offenders, but contains no actual criminal prohibitions. These types of statutes logically belong in other titles of the D.C. Code.

Because Title 22 is not an enacted title, no bill is necessary to relocate the identified statutory provisions out of the title. The Council's Office of the General Counsel will determine where to relocate these titles; the Council need not decide where to move these relocated titles.

However, conforming amendments will be necessary throughout the entire D.C. Code to update references to the relocated statutes. Specifically, before the proposed enactment legislation in title 1 of the bill in Appendix IX can be passed, the following statutes in Title 22 will need conforming amendments because they refer to statutes that are relocated out of Title 22:

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[43] *Royall*, 27 F. Cas. at 910.
[44] *See supra* note 1.

1. D.C. Official Code § 22-2701.01: Refers to §§ 22-2713 through 22-2720.
2. D.C. Official Code § 22-1831: Refers to §§ 22-2713 through 22-2720.
3. D.C. Official Code § 22-1839: Refers to § 22-3022(b).
4. D.C. Official Code § 22-3226.06: Refers to § 22-3226.09.
5. D.C. Official Code § 22-4134: Contains terms that are defined in § 22-4131.
6. D.C. Code § 22-4329: Refers generally to the provisions and authority of this "chapter," which is otherwise being relocated.
7. D.C. Code § 22-4331: Refers generally to the requirements in the "chapter," which is otherwise being relocated.
8. D.C. Official Code § 22-4015: Refers generally to the requirements in the "chapter," which is otherwise being relocated.

The Criminal Code Reform Commissions recommends that the Office of the General Counsel check for other conforming amendments that may be necessary in Title 22.

B. Differences from 2015 Draft Legislation

Unlike the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015, title 1 of the bill in Appendix IX, which enacts Title 22, deletes the provisions relocated from Title 22 and marks these provisions as "Transferred." The practice of marking statutory sections in Title 22 that previously held content as "Transferred," "Repealed," or "Reserved" is continued in title 1 of the bill in Appendix IX.

Three additional statutes, § 22-4251, "Comprehensive Homicide Elimination Strategy Task Force established," § 22-1842, "Training Program" (that MPD and other agencies are required to provide on human trafficking), and § 22-1843 "Public Posting of Human Trafficking Hotline" are recommended for removal from Title 22. In addition, § 22-4331, which codifies a penalty for violations of Game and Fish laws in Chapter 43 of Title 22, and § 22-4329, which codifies an offense, are no longer recommended for removal in this Report. Section 22-4331 is a penalty provision and an Advisory Group comment suggested not removing § 22-4329 at this time. The remainder of Chapter 43 is still recommended for removal.

VI. ENACTMENT OF TITLE 22

To "[e]nable the adoption of Title 22 as an enacted title of the District of Columbia Official Code,"[45] the Criminal Code Reform Commission has prepared title I of the proposed legislation in Appendix IX, the "Enactment of Title 22 and Criminal

[45] *See supra* note 1.

Code Amendments Act of 2017." The text of title I of the bill in Appendix IX reflects the changes to Title 22 statutes discussed in this Report and the text of Title 22 in the D.C. Official Code as of April 5, 2016, when the online LexisNexis D.C. Official Code was last updated at the time this Report and accompanying appendices were prepared.[46] For information on the review process used to determine the text of Title 22 of the D.C. Official Code, see pages 17-19 of the of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

"Enactment" of Title 22 refers to legislative adoption of the text of Title 22 as a single authoritative law. Currently, Title 22 is not enacted, which means that the Council's "D.C. Official Code" text for Title 22 has never been legislatively adopted and is not a legally binding statement of the law. The current "D.C. Official Code" text for Title 22 is merely "prima facie"[47] evidence of the numerous criminal laws that have been adopted by the legislature since the founding of the District. Codification lawyers[48] over time have compiled the District's legislatively approved laws into the current unenacted Title 22 that is in D.C. Official Code.

The compilation of criminal laws into Title 22 is essential for the public and practitioners to efficiently locate District criminal laws. But, so long as Title 22 remains unenacted, even the D.C. Official Code text remains a cutting and pasting of past legislatively approved laws (and, as described below, errors may occur in that process). Moreover, every time the Council changes a criminal statute that appears in the unenacted Title 22, it must laboriously locate and amend the original legislatively approved criminal statute, which may be decades or a century old, as well as any subsequent amendments. However, if the Council enacts Title 22 as provided in title 1 of Appendix IX, and approves it as a whole law, future legislative changes to Title 22 will be less laborious. Future amendments would only require that Title 22 itself be amended, rather than the original law and all the subsequent amendments created thereafter.

A. Findings

The Criminal Code Reform Commission recommends the resolution of over a dozen discrepancies between the text of Title 22 in the D.C. Official Code and the

[46] The Report and accompanying appendices were prepared in October 2016. Before the Council can vote on title 1 of Appendix IX, which enacts Title 22, the Council's Codification Counsel will need to update the bill to reflect any criminal laws or amendments that have become effective since April 5, 2016, to the date of the Council vote to enact Title 22.

[47] *See Burt v. District of Columbia*, 525 A.2d 616, 619 & n.3 (D.C. 1987) ("The District of Columbia Code establishes prima facie the laws of the District of Columbia.") (citing 1 U.S.C. § 204(b)). Under its general legislative authority, D.C. Official Code § 1-203.02, the Council has previously enacted multiple Titles of the D.C. Code, such as Title 29 (Business Organizations) and Title 47 (Taxation and Fiscal Affairs).

[48] The Council's Office of General Counsel currently has a Codification Counsel who is primarily responsible for updating Title 22 (and other titles) as new legislation is approved. Decisions about the numbering, formatting, and location of the text of a new criminal law are up to the Codification Counsel.

original legislation (and amendments) that are the source of Title 22. All identified discrepancies are discussed in Appendix VI.

Most of these discrepancies between the text of Title 22 in the D.C. Official Code and the original legislation (and amendments) are minor, and their resolution is obvious. For example, D.C. Code § 22-4514, Possession of certain dangerous weapons prohibited, states that members of the "Air Force" are exempt from a provision of the statute. However, the underlying organic legislation does not mention "Air Force." Rather, "Air Force" appears to have been added by codification counsel after the Air Force became a branch of the armed services. The inclusion of "Air Force" in D.C. Code § 22-4514 appears to be consistent with Congressional intent for the statute, but lacks an identifiable foundation in law. The Criminal Code Reform Commission's recommendation is to resolve this discrepancy by explicitly adding "Air Force" into the enacted text of Title 22, providing a legal basis for that term.

B. Differences from 2015 Draft Legislation

Unlike the Sentencing Commission's recommendations and draft bill that were submitted to the Council in September 2015, title 1 of the bill in Appendix IX, which enacts Title 22, resolves the discrepancies between the current text of Title 22 in the D.C. Official Code and the underlying organic legislation. When the legislation in Appendix IX becomes law, the resolution of these discrepancies in Title 22 will become the law because they will be the text of an enacted Title 22. The underlying organic legislation will be repealed.

In addition to resolving the discrepancies between the organic legislation and the text of Title 22 in the D.C. Official Code, title 1 of the bill in Appendix IX makes many other amendments discussed elsewhere in this Report directly to the text of Title 22:

1. Repealing archaic and unused offenses and provisions (Part I of this Report);
2. Technical amendments to correct outdated or unnecessarily gendered language and improper delegations of prosecutorial authority (Part II of this Report); and
3. Amending unconstitutional statutes (Part III of this Report).

If the proposed legislation in Appendix IX is approved and becomes law, these amendments will become part of the enacted Title 22.

Enactment of Title 22 as provided in title 1 of the bill in Appendix IX will make no change to existing criminal statutes to Title 22 other than the specific amendments and the resolved discrepancies which are clearly stated in the "Statement of Legislative Intent." Established judicial canons of construction state that legislative intent is the

primary principle of statutory interpretation[49] and the proposed enactment legislation, title 1 of the bill in Appendix IX, flatly states in the "Statement of Legislative Intent for the Enactment of Title 22":

> The Council of the District of Columbia finds it necessary to enact Title 22. The Council does not intend enactment of Title 22 to substantively change the laws therein, except for the specific changes noted in this Statement of Legislative Intent for the Enactment of Title 22. Nor does the Council intend enactment of Title 22 to indicate legislative approval or disapproval of any court decisions construing the laws therein.

By adopting this language in Appendix IX the Council would explicitly reject any argument that the Council intended for enactment to substantively change Title 22 other than through the specified amendments in the Statement of Legislative Intent, or that prior court rulings construing the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment.[50]

The Commission's Advisory Group members had differing opinions as to whether, beyond the statement of intent in the preface of the draft bill, it also was

[49] When interpreting the meaning of a statute, the DCCA "first look[s] at the language of the statute by itself to see if the language is plain and admits of no more than one meaning." *Peoples Drugs Stores, Inc. v. District of Columbia*, 470 A.2d 751, 753 (D.C. 1983) (*en banc*). Although the plain meaning rule is "certainly the first step in statutory interpretation, it is not always the last or most illuminating step." *Id.*); *see also In re Smith*, 138 A.3d 1181, 1184-86 (D.C. 2016) (stating that the plain language of a statute must be the court's "starting point for statutory interpretation" and finding that the language of the statute at issue was plain, but also analyzing the structure and objectives of the statute). The DCCA has "found it appropriate to look beyond the plain language meaning of statutory language in several different situations," including to "'effectuate the legislative purpose' . . . as determined by a reading of the legislative history or by an examination of the statute as a whole." *Id.* at 754 (quoting *Mulky v. United States*, 451 A.2d 855, 857 (D.C. 1982)); s*ee, e.g.*, *Floyd E. Davis Mortgage Corp. v. District of Columbia*, 455 A.2d 910, 911 (D.C. 1983) (*per curiam*) ("[A] statute is to be construed in the context of the entire legislative scheme."); *Dyer v. D.C. Department of Housing and Community Development*, 452 A.2d 968, 969–70 (D.C. 1982) ("The use of legislative history as an aid in interpretation is proper when the literal words of the statute would bring about a result completely at variance with the purpose of the Act."); *District of Columbia v. Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968) ("[T]he 'plain meaning' doctrine has always been subservient to a truly discernible legislative purpose however discerned, by equitable construction or recourse to legislative history.").

[50] Without a clear statement of legislative intent that enactment is not intended to indicate approval of past court interpretations of the unenacted statutes, it is possible that courts would infer such legislative approval. The DCCA has recognized that "reenactment of a statute without change in its language indicates approval of interpretations rendered prior to the reenactment," and that, "if the court interprets a statute and the legislature fails to take action to change that interpretation, it is presumed that the legislature has acquiesced in the court's interpretation." *Marshall v. D.C. Rental Hous. Comm'n*, 533 A.2d 1271, 1275-76 (D.C. 1987) (quoting 2A SUTHERLAND ON STATUTORY CONSTRUCTION, § 45.12, at 55 (Sands 4th ed. 1985)). However, neither the *Marshall* court nor any other controlling District case law has involved an enactment bill affirmatively stating that it may not be construed as making a substantive change in law or that the legislature does not intend for enactment to indicate legislative approval or disapproval of court decisions.

necessary and proper to codify a short statement of legislative intent at the beginning of enacted Title 22. With the agreement of the Code Revision Advisory group, the Commission therefore qualifies its recommendations regarding enactment of Title 22 and the draft bill in Appendix IX with a request that the Council's Office of the General Counsel consider this matter.

VII. CONCLUSION

The recommendations in this Report are essential to any modernization of the District's criminal statutes. Clearly archaic and outdated criminal statutes like "Playing games in streets" should be repealed. Outdated references to the District's "Workhouse" and unnecessarily gendered language should be corrected. Sections of criminal statutes that courts have held to be unconstitutional and are no longer used in practice should be struck from the D.C. Code. The possibility of being convicted of judicially-created common law offenses, which have not been created by the legislature nor been used in decades, should be eliminated. Extraneous procedural and non-criminal provisions in Title 22 of the D.C. Code should be relocated to other titles, limiting Title 22 to a compilation of District criminal offenses and penalties. Lastly, the entire text of Title 22 of the D.C. Official Code should be enacted as a single law to ease the administrative burden of making future amendments.

While essential, the recommendations in this Report are only a small portion of the work that is necessary to create a modern criminal code for the District. Even among the topics addressed in this Report, work remains to be done. For example, hundreds of crimes—nearly all misdemeanors linked to regulatory violations of some sort—scattered outside Title 22 of the D.C. Code merit further review as to whether they should be repealed as archaic and unused. More urgently, the commonly used felonies and misdemeanors in Title 22 need to be revised to describe all their elements, reduce unnecessary overlap and gaps in liability, use consistent definitions and clear language, and have proportionate penalties. This is the work that the Criminal Code Reform Commission has turned to. Given the relatively uncontroversial nature of its recommendations and the immediate improvements they will bring to the clarity and functionality of the District's criminal statutes, the Criminal Code Reform Commission submits this Report and accompanying Appendices for Council and Mayoral consideration as it develops further reform recommendations.

Appendices I-VIII to Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes

Submitted to the Council & Mayor
May 5, 2017

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Note: Appendix IX: Draft Bill: "Enactment of Title 22 and Criminal Code Amendments Act of 2017" is a separate document.

APPENDIX I: ARCHAIC AND UNUSED OFFENSES AND PROVISIONS LIST & TEXT

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

Part 1: Archaic and Unused Statutes in Title 22.

D.C. Code § 22-1003. Rest, water and feeding for animals transported by railroad company.

> No railroad company, in the carrying or transportation of animals, shall permit the same to be confined in cars for a longer period than 24 hours, without unloading the same, for rest, water, and feeding, for a period of at least 5 consecutive hours, unless prevented from so unloading by storm or other accidental causes. In estimating such confinement the time during which such animals have been confined without such rest on connecting roads from which they are received shall be included; it being the intent of this section to prohibit their continuous confinement beyond the period of 24 hours, except upon contingencies hereinbefore stated. Animals so unloaded shall be properly fed, watered, and sheltered during such rest by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company transporting the same, at the expense of said owner or persons in custody thereof. And said company shall, in such case, have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals authorized by this section. Any company, owner, or custodian of such animals who fails to comply with the provisions of this section shall, for each and every such offense, be liable for and forfeit and pay a penalty of not less than $1 nor more than $500; provided, however, that when animals shall be carried in cars in which they can and do have proper food, water, space, and opportunity for rest, the foregoing provisions in regard to their being unloaded shall not apply.

D.C. Code § 22-1012(a). Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

> (a) A person being the owner or possessor or having charge or custody of a maimed, diseased, disabled, or infirm animal who abandons such animal, or leaves it to lie in the street or road, or public place, more than 3 hours after he or she receives notice that it is left disabled, is guilty of a misdemeanor punishable by a fine of not less than $10 and not more than the amount set forth in § 22-3571.01, or by imprisonment in jail not more than 180 days, or both. Any agent or officer of the Washington Humane Society may lawfully destroy, or cause to be destroyed, any animal found abandoned and not properly cared for, appearing, in the judgment of 2 reputable citizens called by such officer to view the same in such officer's presence, to be glandered, injured, or diseased past recovery for any

useful purpose. When any person arrested is, at the time of such arrest, in charge of any animal, or of any vehicle drawn by any animal, or containing any animal, any agent of said society may take charge of such animal and such vehicle and its contents and deposit the same in a place of safe custody or deliver the same into the possession of the police authorities, who shall assume the custody thereof; and all necessary expenses incurred in taking charge of such property shall be a lien thereon.

D.C. Code § 22-1308. Playing games in streets.

It shall not be lawful for any person or persons to play the game of football, or any other game with a ball, in any of the streets, avenues, or alleys in the City of Washington; nor shall it be lawful for any person or persons to play the game of bandy, shindy, or any other game by which a ball, stone, or other substance is struck or propelled by any stick, cane, or other substance in any street, avenue, or alley in the City of Washington, under a penalty of not more than $5 for each and every such offense.

D.C. Code § 22-3303. Grave robbery; buying or selling dead bodies.

Whoever, without legal authority or without the consent of the nearest surviving relative, shall disturb or remove any dead body from a grave for the purpose of dissecting, or of buying, selling, or in any way trafficking in the same, shall be imprisoned not less than 1 year nor more than 3 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.

D.C. Code § 22-3320. Obstructing public road; removing milestones.

If any person shall alter or in any manner obstruct or encroach on a public road, or cut, destroy, deface, or remove any milestones set up on such road, or place any rubbish, dirt, logs, or make any pit or hole therein, such person may be indicted, and, upon conviction thereof before the proper court, shall be fined or imprisoned, in the discretion of the court, according to the nature of the offense.

Part 2: Archaic and Unused Offenses Outside of Title 22.

D.C. Code § 3-206. Unlawful acts.

Any person who shall, in the District of Columbia, sell or buy any body aforesaid, or in any way traffic therewith, or transmit or convey any such body to any place outside of said District, or cause or procure any such body to be so transmitted or conveyed, or who shall, in said District, disturb or remove, without legal permit, any body from any grave or vault, shall, on conviction thereof, be fined not more than $200 or imprisoned in the Workhouse of said District for not more than 1 year.

D.C. Code § 4-125. Assisting child to leave institution without authority; concealing such child; duty of police.

> Any person who shall entice or attempt to entice, away from any home or institution, any child legally committed to the Board of Public Welfare and placed by said Board in such home or institution, or any person who shall assist or attempt to assist any such child to leave without permission such home or institution, knowing such child to be an inmate of such institution or to have been placed in such home, or any person who shall harbor, conceal, or aid in harboring or concealing any such child who shall be absent without leave from a home or institution in which he has been placed by the Board of Public Welfare, shall, upon conviction thereof, be deemed guilty of a misdemeanor and shall pay a fine of not less than $10 nor more than $100; and any policeman shall have power, and it is hereby made his duty, to take into custody any child, when in his power to do so, who shall be absent without leave from a home or institution in which he has been placed and return him thereto or to the Receiving Home.

D.C. Code § 8-305. Penalty.

> Any person who shall violate any of the provisions of §§ 151 - 154 [repealed], 156 - 161 [repealed] and 162 - 164a [repealed] of Title 7, United States Code, or who shall forge, counterfeit, alter, deface, or destroy any certificate provided for in said sections, or in the regulations of the Secretary of Agriculture, shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year, or both such fine and imprisonment, in the discretion of the court; provided, that no common carrier shall be deemed to have violated the provisions of §§ 152 [repealed], 154 [repealed], 156 - 161 [repealed] and 162 [repealed] of Title 7, United States Code, on proof that such carrier did not knowingly receive for transportation or transport nursery stock or other plants or plant products as such from 1 state, territory, or district of the United States into or through any other state, territory, or district; and it shall be the duty of the United States Attorneys diligently to prosecute any violations of §§ 151 - 154 [repealed], 156 - 161 [repealed] and 162 - 164a [repealed] of Title 7, United States Code which are brought to their attention by the Secretary of Agriculture or which come to their notice by other means.

D.C. Code § 9-433.01. Permit required; exceptions.

> It shall be unlawful for any person to make any cut or trench in any highway, reservation, or public space in the District of Columbia, or to disturb or remove any public work or material therein, without a permit so to do from the Mayor of the District of Columbia. The person obtaining such a permit shall abide by all conditions and provisions of the permit; provided, that nothing in this section shall be construed to apply to public buildings of the United States, or to diminish

the authority of the officer in charge of public buildings and grounds, or the Architect of the Capitol.

D.C. Code § 9-433.02. Penalty; prosecution.

Any person violating any of the provisions of § 9-433.01 shall on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than $100 nor more than $1,000; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding 6 months; and all prosecutions shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia.

D.C. Code § 34-701. False statements in securing approval for stock issue.

Each and every director, president, secretary, or other official of any such public utility who shall make any false statement to secure the issue of any stock, certificate of stock, bond, mortgage, or other evidence of indebtedness, or who shall, by false statement knowingly made, procure of the Commission the making of the certificate herein provided, or issue, with knowledge of such fraud, negotiate, or cause to be negotiated, any such stock, certificate of stock, bond, mortgage, or other evidence of indebtedness in violation of this subtitle, shall be guilty of a felony, and, upon conviction thereof, shall be punished by a fine of not less than $1,000 or by imprisonment for a term of not less than 1 year, or by both such fine and imprisonment, in the discretion of the court.

D.C. Code § 34-707. Destruction of apparatus or appliance of Commission.

Any person who shall destroy, injure, or interfere with any apparatus or appliance owned or operated by or in charge of the Commission or its agent shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by fine not exceeding $100 or imprisonment for a period not exceeding 30 days, or both.

D.C. Code § 36-153. Unauthorized use, defacing, or sale of registered vessel.

Whoever, except the person who shall have filed and published a description of the same as aforesaid, fills with milk or cream, or other beverage, as aforesaid, with intent to sell the same, any vessel so marked and distinguished as aforesaid, the description of which shall have been filed and published as provided in § 36-152, or defaces, erases, covers up, or otherwise removes or conceals any such name or mark as aforesaid, or the word "registered," thereon, or sells, buys, gives, takes, or otherwise disposes of, or traffics in the same without having purchased the contents thereof from the person whose name is in or upon such vessel, or without the written consent of such person, shall, for the 1st offense, be punished by a fine of not less than $.50 for each such vessel, or by imprisonment for not less than 10 days nor more than 1 year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than $1 nor more than $5 for

each such vessel, or by imprisonment for not less than 20 days nor more than 1 year, or by both such fine and imprisonment.

D.C. Code § 47-102. Total indebtedness not to be increased.

There shall be no increase of the amount of the total indebtedness of the District of Columbia existing on June 11, 1878; and any officer or person who shall knowingly increase, or aid or abet in increasing, such total indebtedness, shall be deemed guilty of a high misdemeanor, and, on conviction thereof, shall be punished by imprisonment not exceeding 10 years, and by fine not more than the amount set forth in [§ 22‑3571.01].

APPENDIX II: TECHNICAL AMENDMENTS LIST & TEXT

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

Part 1 of this Appendix lists the technical amendments made to statutes in Title 22. The revised text of each statute is in the portion of the legislation in Appendix IX that enacts Title 22. Part 2 of this Appendix contains side-by-side comparison of the current and revised statutes outside of Title 22 for which technical amendments are recommended. The righthand columns in Part 2 reflect the amendments as drafted in title 2 of the bill in Appendix IX.

Part 1 begins on the next page.

Part 1: List of Technical Amendments to Statutes in Title 22.

1. D.C. Code § 22-302: Inserting "or her" after "his."

2. D.C. Code § 22-722(a)(3)(5): Inserting "or her" after the second reference to "his."

4. D.C. Code § 22-935: Inserting "or she" after both references to "he."

5. D.C. Code § 22-1102: Striking "in the Workhouse of the District of Columbia."

6. D.C. Code § 22-1311:

a. Inserting "or she" after "he" both times it appears.

b. Inserting "or her" after "him" in subsection (b).

7. D.C. Code § 22-1317: Striking "City of Washington" and inserting "District of Columbia."

8. D.C. Code § 22-1406: Inserting "or herself" after "himself."

9. D.C. Code § 22-1702: Inserting "or her" after the second reference to "his."

10. D.C. Code § 22-1809: Striking "committed to the Workhouse of the District of Columbia" and inserting "imprisoned."

11. D.C. Code § 22-1810: in the title of the statute, inserting "or her" after "his."

12. D.C. Code § 22-2305: Striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia."

13. D.C. Code § 22-2703: Striking "the Women's Bureau of the Police" and inserting "the Metropolitan Police Department".

14. D.C. Code § 22-3020(c): Striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia."

15. D.C. Code § 22-3214.01(c)(2): Inserting "or her" after "his" both times it appears.

16. D.C. Code § 22-3225.05(c): Striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia."

17. D.C. Code § 22-3226.01(8): Inserting "or herself" after "himself."

18. D.C. Code § 22-3318:

a. Striking "City of Washington" and inserting "District of Columbia."

b. Striking "at hard labor" and inserting "for."

19. D.C. Code § 22-3403:

a. Striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia."

b. Striking "Assistant Corporation Counsel" and inserting "Assistant Attorney General for the District of Columbia.

c. Striking the last sentence.

20. D.C. Code § 22-4331: Striking "Corporation Counsel or any Assistant Corporation Counsel" and inserting "Attorney General for the District of Columbia or any Assistant Attorney General for the District of Columbia.

21. D.C. Code § 22-4504.02(a): Inserting "or she" after "he" both times it appears.

Part 2: List of Technical Amendments to Statutes Outside Title 22.

For the sake of space, some statutes are excerpted below to only show sections that are being amended. Omissions are indicated by "[. . .]".

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 2-381.09. Penalties for false representations.	**D.C. Code § 2-381.09. Penalties for false representations.**
Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than $ 100,000 for each violation of this chapter. The Attorney General for the District of Columbia shall prosecute violations of this section. The fine set forth in this section shall not be limited by § 22-3571.01.	Whoever makes or presents to any officer or employee of the District of Columbia government, or to any department or agency thereof, any claim upon or against the District of Columbia, or any department or agency thereof, knowing such claim to be false, fictitious, or fraudulent, shall be imprisoned not more than one year and assessed a fine of not more than $ 100,000 for each violation of this chapter. ~~The Attorney General for the District of Columbia shall prosecute violations of this section.~~ The fine set forth in this section shall not be limited by § 22-3571.01.

D.C. Code § 4-218.01. Fraud in obtaining public assistance; repayment; liability of family members; penalties.

(a) Any person who, with the intent to defraud, by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain: (1) any grant or payment of public assistance to which he is not entitled; (2) a larger amount of public assistance than that to which he or she is entitled; (3) payment of any forfeited grant of public assistance; or (4) a public assistance identification card; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than $ 500, or to imprisonment not to exceed one year, or both.

(b) Any person who for any reason obtains any payment of public assistance to which he is not entitled, or in excess of that to which he is entitled, shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment of General Public Assistance required by this subsection may, in the discretion of the Mayor, be waived in whole or in part, upon a finding by the Mayor that such repayment would deprive such person, his spouse, parent, or child of shelter or subsistence needed to enable such person, spouse, parent, or child to maintain a minimum

D.C. Code § 4-218.01. Fraud in obtaining public assistance; repayment; liability of family members; penalties.

(a) Any person who, with the intent to defraud, by means of false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain or any person who knowingly aids or abets such person in the obtaining or attempting to obtain: (1) any grant or ~~payment of public assistance to which he~~ payment of public assistance to which he or she is not entitled; (2) a larger amount of public assistance than that to which he or she is entitled; (3) payment of any forfeited grant of public assistance; or (4) a public assistance identification card; or any person who with intent to defraud the District aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor and shall be sentenced to pay a fine of not more than $ 500, or to imprisonment not to exceed one year, or both.

(b) Any person who for any reason obtains any payment of public assistance to which ~~he~~ he or she is not entitled, or in excess of that to which ~~he~~ he or she is entitled, shall be liable to repay such sum, or if continued on assistance, shall have future grants proportionately reduced until the excess amount received has been repaid. In any case in which, under this section, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the District. Any repayment of General Public Assistance required by this subsection may, in the discretion of the Mayor, be waived in whole or in part, upon a finding by the Mayor that such repayment would deprive such person, ~~his~~ his or her spouse, parent, or child of shelter or subsistence needed to enable such

person, standard of health and well-being. Collections of overpayments from TANF, POWER, or former Aid to Families with Dependent Children or former GPA recipients shall be made in accordance with rules promulgated by the Mayor.

[. . .]

spouse, parent, or child to maintain a minimum standard of health and well-being. Collections of overpayments from TANF, POWER, or former Aid to Families with Dependent Children or former GPA recipients shall be made in accordance with rules promulgated by the Mayor.

[. . .]

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 4-218.05. Penalties.	**D.C. Code § 4-218.05. Penalties.**
(a) Any person who knowingly uses, transfers, acquires, alters, purchases, possesses, or transports one or more food stamp coupons or access devices in a manner not authorized by the Food Stamp Act of 1964, approved August 31, 1964 (78 Stat. 703; 7 U.S.C. § 2011 et seq.) ("Food Stamp Act"), or by regulations issued pursuant to that Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined no more than $1,000 or imprisoned for not more than 180 days, or both.	(a) Any person who knowingly uses, transfers, acquires, alters, purchases, possesses, or transports one or more food stamp coupons or access devices in a manner not authorized by the Food Stamp Act of 1964, approved August 31, 1964 (78 Stat. 703; 7 U.S.C. § 2011 et seq.) ("Food Stamp Act"), or by regulations issued pursuant to that Act, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined no more than $1,000 or imprisoned for not more than 180 days, or both.
(b) In addition to the penalty in subsection (a) of this section, any person convicted of a misdemeanor under this section shall be subject to suspension by the Superior Court from participation in the District of Columbia food stamp program for a period of one year consecutive to that period of suspension mandated by section 6(b)(1) of the Food Stamp Act (7 U.S.C. § 2015(b)(1)).	(b) In addition to the penalty in subsection (a) of this section, any person convicted of a misdemeanor under this section shall be subject to suspension by the Superior Court from participation in the District of Columbia food stamp program for a period of one year consecutive to that period of suspension mandated by section 6(b)(1) of the Food Stamp Act (7 U.S.C. § 2015(b)(1)).
(c) Prosecution under this section shall be conducted in the Superior Court by the Corporation Counsel.	(c) Prosecution under this section shall be conducted in the Superior Court by the ~~Corporation Counsel~~ Attorney General for the District of Columbia.
[. . .]	[. . .]

D.C. Code § 6-641.09. Building permits; certificates of occupancy.

(a) It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the Inspector of Buildings, and said Inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants in the name of said District and which Court is hereby authorized to hear and determine such cases be punished by a fine of not more than $ 100 per day for each and every day such violation shall continue. The Corporation Counsel of the District of Columbia or any neighboring property

D.C. Code § 6-641.09. Building permits; certificates of occupancy.

(a) It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the ~~Inspector of Buildings, and said Inspector~~ Department of Consumer and Regulatory Affairs, and the Department of Consumer and Regulatory Affairs shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of this subchapter and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the ~~Corporation Counsel or any of his assistants~~ Attorney General for the District of Columbia or any of his or her assistants in the name of said District and which Court is hereby authorized to hear and determine

owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(b) A building permit shall not be issued to or on behalf of the District government unless proper notice has been given under § 1-309.10. The Department of Consumer and Regulatory Affairs shall issue a cease and desist order to enjoin any construction project that is issued in noncompliance with this section.

such cases be punished by a fine of not more than $ 100 per day for each and every day such violation shall continue. The ~~Corporation Counsel of~~ Attorney General for the District of Columbia or any neighboring property owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. Civil fines, penalties, and fees may be imposed as alternative sanctions for any infraction of the provisions of this subchapter, or any rules or regulations issued under the authority of these sections, pursuant to Chapter 18 of Title 2. Adjudication of any infraction of this chapter shall be pursuant to Chapter 18 of Title 2.

(b) A building permit shall not be issued to or on behalf of the District government unless proper notice has been given under § 1-309.10. The Department of Consumer and Regulatory Affairs shall issue a cease and desist order to enjoin any construction project that is issued in noncompliance with this section.

CURRENT STATUTE

D.C. Code § 7-2502.01. Registration requirements.

[. . .]

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

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license; provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of his business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on his way to or from such activity in another jurisdiction; provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that he is on his way to or from such activity, and that his possession or control of such firearm is

PROPOSED STATUTE

D.C. Code § 7-2502.01. Registration requirements.

[. . .]

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

(1) Any law enforcement officer or agent of the District or the United States, or any law enforcement officer or agent of the government of any state or subdivision thereof, or any member of the armed forces of the United States, the National Guard or organized reserves, when such officer, agent, or member is authorized to possess such a firearm or device while on duty in the performance of official authorized functions;

(2) Any person holding a dealer's license; provided, that the firearm or destructive device is:

(A) Acquired by such person in the normal conduct of business;

(B) Kept at the place described in the dealer's license; and

(C) Not kept for such person's private use or protection, or for the protection of ~~his~~ his or her business;

(3) With respect to firearms, any nonresident of the District participating in any lawful recreational firearm-related activity in the District, or on ~~his~~ his or her way to or from such activity in another jurisdiction; provided, that such person, whenever in possession of a firearm, shall upon demand of any member of the Metropolitan Police Department, or other bona fide law enforcement officer, exhibit proof that ~~he~~ he or she is on ~~his~~ his or her way to or from such activity, and that ~~his~~ his or her possession or control of such firearm

lawful in the jurisdiction in which he resides; provided further, that such weapon shall be transported in accordance with § 22-4504.02;

(4) Any person who temporarily possesses a firearm registered to another person while in the home or place of business of the registrant; provided, that the person is not otherwise prohibited from possessing firearms and the person reasonably believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to himself or herself; or

(5) Any person who temporarily possesses a firearm while participating in a firearms training and safety class conducted by a firearms instructor.

(c) For the purposes of subsection (b)(3) of this section, the term "recreational firearm-related activity" includes a firearms training and safety class.

is lawful in the jurisdiction in which ~~he~~ he or she resides; provided further, that such weapon shall be transported in accordance with § 22-4504.02;

(4) Any person who temporarily possesses a firearm registered to another person while in the home or place of business of the registrant; provided, that the person is not otherwise prohibited from possessing firearms and the person reasonably believes that possession of the firearm is necessary to prevent imminent death or great bodily harm to himself or herself; or

(5) Any person who temporarily possesses a firearm while participating in a firearms training and safety class conducted by a firearms instructor.

(c) For the purposes of subsection (b)(3) of this section, the term "recreational firearm-related activity" includes a firearms training and safety class.

D.C. Code § 10-503.16. Unlawful conduct.

[. . .]

(c) Nothing contained in this section shall forbid any act of any member of the Congress, or any employee of a member of the Congress, any officer or employee of the Congress or any committee or subcommittee thereof, or any officer or employee of either House of the Congress or any committee or subcommittee thereof, which is performed in the lawful discharge of his official duties.

D.C. Code § 10-503.16. Unlawful conduct.

[. . .]

(c) Nothing contained in this section shall forbid any act of any member of the Congress, or any employee of a member of the Congress, any officer or employee of the Congress or any committee or subcommittee thereof, or any officer or employee of either House of the Congress or any committee or subcommittee thereof, which is performed in the lawful discharge of ~~his~~ his or her official duties.

D.C. Code § 23-1327. Penalties for failure to appear.

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of his sentence after conviction of any offense, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned for not less than ninety days and not more than 180 days, or (3) if he was released for appearance as a material witness, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is wilful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was wilful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice.

D.C. Code § 23-1327. Penalties for failure to appear.

(a) Whoever, having been released under this title prior to the commencement of ~~his~~ his or her sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for ~~his~~ his or her release, and, in addition, shall, (1) if ~~he~~ he or she was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of ~~his~~ his or her sentence after conviction of any offense, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned not less than one year and not more than five years, (2) if ~~he~~ he or she was released in connection with a charge of misdemeanor, be fined not more than the amount set forth in [§ 22-3571.01] and imprisoned for not less than ninety days and not more than 180 days, or (3) if ~~he~~ he or she was released for appearance as a material witness, be fined not more than the amount set forth in [§ 22-3571.01] or imprisoned for not more than 180 days, or both.

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(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

defendant, by ~~his~~ his or her own actions, has frustrated the receipt of actual notice.

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

D.C. Code § 23-1329. Penalties for violation of conditions of release.

[. . .]

(b) (1) Proceedings for revocation of release may be initiated on motion of the United States Attorney or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the person has violated any other condition of his release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense

D.C. Code § 23-1329. Penalties for violation of conditions of release.

[. . .]

(b) (1) Proceedings for revocation of release may be initiated on motion of the United States Attorney or on the court's own motion. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia ~~he~~ he or she shall be brought before a judicial officer in the district where ~~he~~ he or she is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer:

(A) Finds that there is:

(i) Probable cause to believe that the person has committed a federal, state, or local crime while on release; or

(ii) Clear and convincing evidence that the person has violated any other condition of ~~his~~ his or her release; and

(B) Finds that:

(i) Based on the factors set out in § 23-1322(e), there is no condition or combination of conditions of release which will reasonably assure that the person will not flee or pose a danger to any other person or the community; or

(ii) The person is unlikely to abide by a condition or conditions of release.

(2) If there is probable cause to believe that while on release, the person committed

under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than the amount set forth in [§ 22-3571.01], or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

[. . .]

a dangerous or violent crime, as defined by § 23-1331, or a substantially similar offense under the laws of any other jurisdiction, a rebuttable presumption arises that no condition or combination of conditions will assure the safety of any other person or the community.

(3) The provisions of § 23-1322(d) and (h) shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of ~~his~~ his or her release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than the amount set forth in [§ 22-3571.01], or both. A judicial officer or a prosecutor may initiate a proceeding for contempt under this section.

[. . .]

D.C. Code § 24-241.05. Suspension of work release privilege; violations of work release plan.

(a) The Director of the Department of Corrections may suspend or revoke the work release privilege for any breach of discipline or infraction of institution regulations. The Court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director of the Department of Corrections.

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than $ 1,000 or imprisoned not more than 180 days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants.

D.C. Code § 24-241.05. Suspension of work release privilege; violations of work release plan.

(a) The Director of the Department of Corrections may suspend or revoke the work release privilege for any breach of discipline or infraction of institution regulations. The Court may revoke the work release privilege at any time, either upon its own motion or upon recommendation of the Director of the Department of Corrections.

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in ~~his~~ his or her work release plan shall be fined not more than $ 1,000 or imprisoned not more than 180 days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the ~~Corporation Counsel of~~ Attorney General for the District of Columbia or any of ~~his~~ his or her assistants.

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 25-1002. Purchase, possession or consumption by persons under 21; misrepresentation of age; penalties.	**D.C. Code § 25-1002. Purchase, possession or consumption by persons under 21; misrepresentation of age; penalties.**
[. . .]	[. . .]
(c) [. . .] (2) In lieu of proceeding to trial or disposition under paragraph (1) of this subsection, the Mayor shall offer persons who are arrested, or criminally charged by information, for a first or second violation of this section, the option of completing a diversion program authorized and approved by the Mayor. The Mayor shall determine the content of the diversion program, which may include community service and alcohol awareness and education. If the person rejects enrollment in, or fails to comply with the requirements of, or fails to complete within 6 months, the diversion program, he or she may continue to be prosecuted in accordance with paragraph (1) of this section [subsection]. The Mayor, may, at his discretion, decline to offer diversion to any person who has previously been convicted of, any felony, misdemeanor, or other criminal offense.	(c) [. . .] (2) In lieu of proceeding to trial or disposition under paragraph (1) of this subsection, the Mayor shall offer persons who are arrested, or criminally charged by information, for a first or second violation of this section, the option of completing a diversion program authorized and approved by the Mayor. The Mayor shall determine the content of the diversion program, which may include community service and alcohol awareness and education. If the person rejects enrollment in, or fails to comply with the requirements of, or fails to complete within 6 months, the diversion program, he or she may continue to be prosecuted in accordance with paragraph (1) of this section [subsection]. The Mayor, may, at ~~his~~ his or her discretion, decline to offer diversion to any person who has previously been convicted of, any felony, misdemeanor, or other criminal offense.
[. . .]	[. . .]

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 47-2828. Classification of buildings containing living quarters for licenses; fees; buildings exempt from license requirement.	**D.C. Code § 47-2828. Classification of buildings containing living quarters for licenses; fees; buildings exempt from license requirement.**
(a) The Council of the District of Columbia is authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the business operated in each such building as in its judgment requires inspection, supervision or regulation by any municipal agency or agencies, and the Mayor of the District of Columbia is authorized and empowered to fix a schedule of license fees therefor in such amount as, in his judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision or regulation: owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such business.	(a) The Council of the District of Columbia is authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the business operated in each such building as in its judgment requires inspection, supervision or regulation by any municipal agency or agencies, and the Mayor of the District of Columbia is authorized and empowered to fix a schedule of license fees therefor in such amount as, in ~~his~~ his or her judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision or regulation: owners of residential buildings in which one or more dwelling units or rooming units are offered for rent or lease shall obtain from the Mayor a license to operate such business.
[. . .]	[. . .]

D.C. Code § 47-2829. Vehicles for hire; identification tags on vehicles; vehicles for school children; ambulances, private vehicles for funeral purposes; issuance of licenses; payment of fees.

[. . .]

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, shall, on or before the first day of October in each year, or before commencing such operation, submit to the Mayor, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle miles to be operated with such vehicles within the District of Columbia during the 12-month period beginning with the first day of November in the same year; provided, that the provisions of this subsection shall not apply to companies operating both street railroad and bus services in the District of Columbia which pay taxes to the District of Columbia on their gross receipts; provided, that the provisions of this subsection shall not apply to the Washington Metropolitan Area Transit Authority. The Mayor shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement. Upon receipt of the approved copy, and prior to the first day of November in the same year, or before commencing such operation, each such applicant shall pay to the Collector of Taxes, in lieu of any other personal or license tax, in connection with such operation, the sum of $.01 for each vehicle

D.C. Code § 47-2829. Vehicles for hire; identification tags on vehicles; vehicles for school children; ambulances, private vehicles for funeral purposes; issuance of licenses; payment of fees.

[. . .]

(b) Any person, partnership, association, trust, or corporation operating or proposing to operate any vehicle or vehicles not confined to rails or tracks for the transportation of passengers for hire over all or any portion of any defined route or routes in the District of Columbia, shall, on or before the first day of October in each year, or before commencing such operation, submit to the Mayor, in triplicate, an application for license, stating therein the name of such person, partnership, association, trust, or corporation, the number and kind of each type of vehicle to be used in such operation, the schedule or schedules and the total number of vehicle miles to be operated with such vehicles within the District of Columbia during the 12-month period beginning with the first day of November in the same year; provided, that the provisions of this subsection shall not apply to companies operating both street railroad and bus services in the District of Columbia which pay taxes to the District of Columbia on their gross receipts; provided, that the provisions of this subsection shall not apply to the Washington Metropolitan Area Transit Authority. The Mayor shall thereupon verify and approve, or return to the applicant for correction and resubmission, each such statement. Upon receipt of the approved copy, and prior to the first day of November in the same year, or before commencing such operation, each such applicant shall pay to the ~~Collector of Taxes~~ Office of Tax and Revenue, in lieu of any other personal or license tax, in

mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the Mayor of the District of Columbia or his designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of this subsection without the approval of the Mayor.

[. . .]

(i) No person shall engage in driving or operating any vehicle licensed under the terms of subsection (h) of this section without having procured from the Mayor of the District of Columbia or his designated agent a license which shall only be issued upon evidence satisfactory to the Mayor of the District of Columbia, that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of an amount set by the Mayor. Such license shall be carried upon the person of the licensee or in the vehicle while engaged in driving such vehicle when such vehicle is being used for hire. Application for such license shall be made in such form as shall be prescribed by the Mayor of the District of Columbia. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Office of Taxicabs a record containing the name of each person so licensed, his annual license number and all matters affecting his qualifications to be licensed hereunder. No license issued under

connection with such operation, the sum of $.01 for each vehicle mile proposed to be operated in the District of Columbia in accordance with the application as approved. Upon presentation of the receipt for such payment, the Mayor of the District of Columbia or ~~his~~ his or her designated agent shall issue a license authorizing the applicant to carry on the operations embodied in the approved application. No increase of operations shall be commenced or continued unless and until an application similar to the original and covering such increase in operation shall have been approved and forwarded in the same manner and the corresponding additional payment made and license issued. No license shall be issued under the terms of this subsection without the approval of the Mayor.

[. . .]

(i) No person shall engage in driving or operating any vehicle licensed under the terms of subsection (h) of this section without having procured from the Mayor of the District of Columbia or ~~his~~ his or her designated agent a license which shall only be issued upon evidence satisfactory to the Mayor of the District of Columbia, that the applicant is a person of good moral character and is qualified to operate such vehicle, and upon payment of an annual license fee of an amount set by the Mayor. Such license shall be carried upon the person of the licensee or in the vehicle while engaged in driving such vehicle when such vehicle is being used for hire. Application for such license shall be made in such form as shall be prescribed by the Mayor of the District of Columbia. Each annual license issued under the provisions of this paragraph shall be numbered, and there shall be kept in the Office of Taxicabs a record containing the name of each person so licensed, ~~his~~ his or her annual license number and all matters

the provisions of this subsection shall be assigned or transferred.

affecting ~~his~~ his or her qualifications to be licensed hereunder. No license issued under the provisions of this subsection shall be assigned or transferred.

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 48-904.01. Prohibited acts A; penalties.	**D.C. Code § 48-904.01. Prohibited acts A; penalties.**
[. . .]	[. . .]
(e) [. . .] (2) Upon the dismissal of such person and discharge of the proceedings against him under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.	(e) [. . .] (2) Upon the dismissal of such person and discharge of the proceedings against ~~him~~ him or her under paragraph (1) of this subsection, such person may apply to the court for an order to expunge from all official records (other than the nonpublic records to be retained under paragraph (1) of this subsection) all recordation relating to his or her arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this subsection. If the court determines, after hearing, that such person was dismissed and the proceedings against him or her discharged, it shall enter such order. The effect of such order shall be to restore such person, in the contemplation of this law, to the status he or she occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge such arrest, or indictment, or trial in response to any inquiry made of him or her for any purpose.
[. . .]	[. . .]

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 50-405. Penalties.	**D.C. Code § 50-405. Penalties.**
(a) If the Mayor has reason to believe that a person has violated any of the requirements in § 50-403 or § 50-404, the alleged violation shall be enforced in accordance with Chapter 23 of this title, and rules issued by the Mayor pursuant to § 50-409. Any person who is determined by the Mayor, after notice and opportunity to be heard, to have violated § 50-403 or § 50-404, shall be liable to the District for a civil fine of not less than $ 100 nor more than $ 1000 for the first violation, of not less than $ 500 nor more than $ 2000 for the second violation, or of not less than $ 1000 nor more than $ 5000 for the third or a subsequent violation.	(a) If the Mayor has reason to believe that a person has violated any of the requirements in § 50-403 or § 50-404, the alleged violation shall be enforced in accordance with Chapter 23 of this title, and rules issued by the Mayor pursuant to § 50-409. Any person who is determined by the Mayor, after notice and opportunity to be heard, to have violated § 50-403 or § 50-404, shall be liable to the District for a civil fine of not less than $ 100 nor more than $ 1000 for the first violation, of not less than $ 500 nor more than $ 2000 for the second violation, or of not less than $ 1000 nor more than $ 5000 for the third or a subsequent violation.
(b) (1) As an alternative sanction, any person who knowingly or willfully violates § 50-403 or § 50-404 shall be guilty of an offense and, upon conviction, may be:	(b) (1) As an alternative sanction, any person who knowingly or willfully violates § 50-403 or § 50-404 shall be guilty of an offense and, upon conviction, may be:
(A) Fined not less than $ 100 and not more than the amount set forth in § 22-3571.01, imprisoned for not more than 6 months, or both, for the first violation;	(A) Fined not less than $ 100 and not more than the amount set forth in § 22-3571.01, imprisoned for not more than 6 months, or both, for the first violation;
(B) Fined not less than $ 500 and not more than the amount set forth in § 22-3571.01, imprisoned not less than 6 months nor more than 9 months, or both, for the second violation; or	(B) Fined not less than $ 500 and not more than the amount set forth in § 22-3571.01, imprisoned not less than 6 months nor more than 9 months, or both, for the second violation; or
(C) Fined not less than $ 1000 and not more than the amount set forth in § 22-3571.01, imprisoned for not less than 9 months nor more than 1 year, or both, for the third or a subsequent violation.	(C) Fined not less than $ 1000 and not more than the amount set forth in § 22-3571.01, imprisoned for not less than 9 months nor more than 1 year, or both, for the third or a subsequent violation.
(2) Prosecutions for violations of this subsection shall be brought by the Corporation Counsel.	(2) Prosecutions for violations of this subsection shall be brought by the ~~Corporation Counsel~~ Attorney General for the District of Columbia.

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.	**D.C. Code § 50-1401.01. Fee; examination; age requirements; lost permits; provisions for armed forces personnel; contents; operation without permit prohibited; restrictions for minors.**
(a) [. .] (3) Any pupil 15 years of age or over enrolled in a high school or junior high school driver education and training course approved by the Mayor or his designated agent may, without obtaining either an operator's or a learner's permit, operate a dual control motor vehicle between the hours of 6 a.m. and 11 p.m., where the pupil is under instruction and accompanied by a licensed motor vehicle driving instructor; provided, that such instructor shall at all times while he is engaged in such instruction have on his person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to him such certificate.	(a) [. .] (3) Any pupil 15 years of age or over enrolled in a high school or junior high school driver education and training course approved by the Mayor or ~~his~~ his or her designated agent may, without obtaining either an operator's or a learner's permit, operate a dual control motor vehicle between the hours of 6 a.m. and 11 p.m., where the pupil is under instruction and accompanied by a licensed motor vehicle driving instructor; provided, that such instructor shall at all times while ~~he~~ he or she is engaged in such instruction have on ~~his~~ his or her person a certificate from the principal or other person in charge of such school, stating that such instructor is officially designated to instruct pupils enrolled in such course, and whenever demand is made by a police officer such instructor shall display to ~~him~~ him or her such certificate.
[. . .]	[. . .]
(6) Notwithstanding the provisions of this subsection, the Mayor or his designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of 6 years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the armed forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.	(6) Notwithstanding the provisions of this subsection, the Mayor or ~~his~~ his or her designated agent may, upon compliance with such regulations as the Mayor may prescribe, extend for a period not in excess of 6 years the validity of the operator's permit of any person who is a resident of the District and who is on active duty outside the District in the armed forces or the Merchant Marine of the United States and who was at the time of leaving the District the holder of a valid operator's permit.
[. . .]	[. . .]

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 50-2201.05b. Fleeing from a law enforcement officer in a motor vehicle.	**D.C. Code § 50-2201.05b. Fleeing from a law enforcement officer in a motor vehicle.**
[. . .]	[. . .]
(d) (1) The Mayor or his designee, pursuant to § 50-1403.01, may suspend the operating permit of a person convicted under subsection (b)(1) of this section for a period of not more than 180 days and may suspend the operating permit of a person convicted under subsection (b)(2) of this section for a period of not more than 1 year.	(d) (1) The Mayor or ~~his~~ his or her designee, pursuant to § 50-1403.01, may suspend the operating permit of a person convicted under subsection (b)(1) of this section for a period of not more than 180 days and may suspend the operating permit of a person convicted under subsection (b)(2) of this section for a period of not more than 1 year.
(2) A suspension of an operator's permit under paragraph (1) of this subsection for a person who has been sentenced to a term of imprisonment for a violation of subsection (b)(1) or (2) of this section shall begin following the person's release from incarceration.	(2) A suspension of an operator's permit under paragraph (1) of this subsection for a person who has been sentenced to a term of imprisonment for a violation of subsection (b)(1) or (2) of this section shall begin following the person's release from incarceration.
(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.	~~(e) Prosecution for violations under this section shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia, or his or her assistants, in the Superior Court of the District of Columbia.~~

CURRENT STATUTE	PROPOSED STATUTE
D.C. Code § 50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.	**D.C. Code § 50-2421.04. Removal of abandoned and dangerous vehicles from public space; penalties.**
[. . .]	[. . .]
(e) Any person violating the provisions of subsection (d) of this section, shall be prosecuted by the Office of the Corporation Counsel, and shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment of not more than 90 days, or both.	(e) Any person violating the provisions of subsection (d) of this section, shall be prosecuted by the Office of the ~~Corporation Counsel~~ Attorney General for the District of Columbia, and shall be punished by a fine of not more than the amount set forth in § 22-3571.01, imprisonment of not more than 90 days, or both.

APPENDIX III: UNCONSTITUTIONAL STATUTES LIST & TEXT

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

The Criminal Code Reform Commission has identified two current D.C. Code offenses as unconstitutional, and both are recommended for amendment: D.C. Code § 7-2506.01, Unlawful Possession of Ammunition (UA), and D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons (AIM).[1] The charts on the following pages contain side-by-side comparisons of the current and revised statutes. Unlike the legislation in titles 1 and 3 of the bill in Appendix IX, which contain only the new language, the charts show the additions and deletions to the statutes.

[1] The Sentencing Commission previously gave the Council notice of the unconstitutionality of D.C. Code § 22-2511, Presence in a Motor Vehicle Containing a Firearm (PMVCF), in its 2013 Annual Report. *See D.C. Sentencing and Criminal Code Revision Commission 2013 Annual Report*, at 84-85 (April 25, 2014). The Council has since repealed the PMVCF statute. *See* License to Carry a Pistol Amendment Act of 2014, Act No. 20-621 (D.C. Law 20-279), effective June 16, 2015.

Current D.C. Code § 7-2506.01. (UA)

(a) No person shall possess ammunition in the District of Columbia unless:

(1) He is a licensed dealer pursuant to subchapter IV of this unit;
(2) He is an officer, agent, or employee of the District of Columbia or the United States of America, on duty and acting within the scope of his duties when possessing such ammunition;
(3) He is the holder of a valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets;
(4) He holds an ammunition collector's certificate on September 24, 1976; or
(5) He temporarily possesses ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

(b) No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm. For the purposes of this subsection, the term "large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

Revised D.C. Code § 7-2506.01. (UA)

(a) ~~No person in the District shall possess, sell, or transfer any large capacity ammunition feeding device regardless of whether the device is attached to a firearm.~~ *Definitions.* For the purposes of this ~~subsection~~ section, the term "large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

(b) *Offense.* ~~No person shall possess~~ A person commits the crime of unlawful possession of ammunition ~~in the District of Columbia~~ when that person:

(1) Possesses ammunition, and that person has not lawfully registered a firearm of the same caliber or gauge of ammunition pursuant to subchapter IV of this unit;
(2) Possesses one or more restricted pistol bullets as defined in § 7-2501.01(13A)(A); or
(3) Possesses, sells, or transfers any large capacity ammunition feeding device regardless of whether the device is attached to a firearm.

~~(b)~~ (c) *Affirmative Defense.* ~~unless~~ It is an affirmative defense to the crime of unlawful possession of ammunition for subsections (b)(1) and (b)(2) that the person charged:

(1) ~~He~~ Is a licensed dealer pursuant to subchapter IV of this unit;

~~(2) He~~ Is an officer, agent, or employee of the District of Columbia or the United

[*Column intentionally left blank.*]

States of America, and was on duty and acting within the scope of ~~his~~ his or her duties when ~~possessing~~ that person possessed such ammunition;

~~(3) He is the holder of a valid registration certificate for a firearm pursuant to subchapter II of this chapter; except, that no such person shall possess one or more restricted pistol bullets;~~

~~(4) He~~ (3) Holds an ammunition collector's certificate on September 24, 1976; or

~~(5) He~~ (4) Temporarily ~~possesses~~ possessed ammunition while participating in a firearms training and safety class conducted by a firearms instructor.

Current D.C. Code § 22-4512. (AIM)

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia; provided, however, that nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work.

Revised D.C. Code § 22-4512. (AIM)

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. ~~Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia; provided, however, that nothing~~ Nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in experimental work.

APPENDIX IV: COMMON LAW OFFENSES LIST & TEXT

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

Part 1: Common Law Offenses that Will be Repealed with the Amendment of the Reception Statute, D.C. Code § 45-401.

Being a Common Scold

> "The defendant has been convicted upon the second count of this indictment, which is in the following words: 'And the jurors aforesaid, upon their oath aforesaid, do further present that the said Ann Royall, being an evil disposed person as aforesaid, and a common scold and disturber of the peace of her honest and quiet neighbors, on the first day of June, in the year of our Lord one thousand eight hundred and twenty-nine, as aforesaid, at the county of Washington aforesaid, and on divers other days and times, as well before as after, was and yet is a common scold, and disturber of the peace and happiness of her quiet and honest neighbors residing in the county aforesaid[.]"
>
> *United States v. Royall*, 27 F. Cas. 906, 908 (C.C.D.D.C. 1829)

Disturbing Public Worship

> "The principles upon which the disturbance of public worship becomes an offence at common law are these: Every man has a perfect right to worship God in the manner most conformable to the dictates of his conscience, and to assemble and unite with others in the same act of worship, so that he does not interfere with the equal rights of others. The common law protects this right, either by giving the party his private action for damages on account of the injury he has sustained; or if the violation of the right be directly, or consequentially injurious to society, by a public prosecution."
>
> *United States v. Brooks*, 24 F. Cas. 1244, 1245 (C.C.D.D.C. 1834).

Negligent Escape

> "A negligent escape is when the party arrested or imprisoned doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken again, before he hath lost the sight of him."
>
> *United States v. Davis*, 167 F.2d 228, 229 (D.C. Cir. 1948).

Part 2: Common Law Offenses with Only a Penalty Codified in the D.C. Code.

D.C. Code § 11-944. Contempt.

(a) Subject to the limitation described in subsection (b), and in addition to the powers conferred by section 402 of title 18, United States Code, the Superior Court, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court.

(b) (1) In any proceeding for custody of a minor child conducted in the Family Division of the Superior Court under paragraph (1) or (4) of section 11-1101, no individual may be imprisoned for civil contempt for more than 12 months (except as provided in paragraph (2)), pursuant to the contempt power described in subsection (a), for disobedience of an order or for contempt committed in the presence of the court. This limitation does not apply to imprisonment for criminal contempt or for any other criminal violation.

(2) Notwithstanding the provisions of paragraph (1), an individual who is charged with criminal contempt pursuant to paragraph (3) may continue to be imprisoned for civil contempt until the completion of such individual's trial for criminal contempt, except that in no case may such an individual be imprisoned for more than 18 consecutive months for civil contempt pursuant to the contempt power described in subsection (a).

(3) (A) An individual imprisoned for 6 consecutive months for civil contempt for disobedience of an order in a proceeding described in paragraph (1) who continues to disobey such order may be prosecuted for criminal contempt for disobedience of such order at any time before the expiration of the 12-month period that begins on the first day of such individual's imprisonment, except that an individual so imprisoned as of the date of the enactment of this subsection may be prosecuted under this subsection at any time during the 90-day period that begins on the date of the enactment of this subsection.

(B) The trial of an individual prosecuted for criminal contempt pursuant to this paragraph --

(i) shall begin not later than 90 days after the date on which such individual is charged with criminal contempt;

(ii) shall, upon the request of the individual, be a trial by jury; and

(iii) may not be conducted before the judge who imprisoned the individual for disobedience of an order pursuant to subsection (a).

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

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

D.C. Code §22-402. Assault with intent to commit mayhem or with a dangerous weapon.

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

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

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

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

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

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

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

D.C. Code §22-406. Mayhem or malicious disfiguring.

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

D.C. Code § 22-407. Threats to do bodily harm.

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

D.C. Code § 22-1301. Affrays.

Whoever is convicted of an affray in the District shall be fined not more than the amount set forth in § 22‑3571.01 or imprisoned not more than 180 days, or both.

D.C. Code § 22-1803. Attempts to commit a crime.

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

D.C. Code § 22-1805. Aiding and abetting.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

D.C. Code § 22-1805a. Conspiracy.

(a) (1) If 2 or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than 5 years, the maximum

penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.

(2) If 2 or more persons conspire to commit a crime of violence as defined in § 23-1331(4), each shall be fined not more than the amount set forth in § 22-3571.01 nor the maximum fine prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or imprisoned not more than 15 years nor the maximum imprisonment prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or both.

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by 1 of the conspirators pursuant to the conspiracy and to effect its purpose.

(c) When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if:

(1) Such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein; or

(2) Such conduct would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia even if performed outside the District of Columbia.

(d) A conspiracy contrived in another jurisdiction to engage in conduct within the District of Columbia which would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia if performed within the District of Columbia is a violation of this section when an overt act pursuant to the conspiracy is committed within the District of Columbia. Under such circumstances, it is immaterial and no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction.

D.C. Code § 22-1806. Accessories after the fact.

Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than 20 years. Whoever shall be convicted of being accessory after the fact to any crime punishable by imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than 1/2 the maximum fine or imprisonment, or both, to which the principal offender may be subjected.

D.C. Code § 22-2105. Manslaughter.

> Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22‑3571.01.

D.C. Code § 22-2107. Solicitation of murder or other crimes of violence.

> (a) Whoever is guilty of soliciting a murder, whether or not such murder occurs, shall be sentenced to a period of imprisonment not exceeding 20 years, a fine not more than the amount set forth in § 22-3571.01, or both.
>
> (b) Whoever is guilty of soliciting a crime of violence as defined by § 23-1331(4), whether or not such crime occurs, shall be sentenced to a period of imprisonment not exceeding 10 years, a fine of not more than the amount set forth in § 22-3571.01, or both.

D.C. Code § 22-2722. Keeping bawdy or disorderly houses.

> Whoever is convicted of keeping a bawdy or disorderly house in the District shall be fined not more than the amount set forth in § 22‑3571.01 or imprisoned not more than 5 years, or both.

D.C. Code § 48-904.09. Attempt, conspiracy (Note that this is a different offense than general attempt in § 22-1803).

> Any person who attempts or conspires to commit any offense defined in this subchapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

APPENDIX V: RELOCATION OF TITLE 22 PROVISIONS LIST & TEXT

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

The chart on the following pages lists all the statutes in Title 22 that are being relocated from Title 22, and for several of the statutes, a recommended title for the relocation. It is the responsibility of the Council's Office of the General Counsel to determine where to place all relocated statutes.

However, the Criminal Code Reform Commission notes that conforming amendments will be necessary in many titles of the D.C. Official Code to adjust to the relocation of these statutes from Title 22. First, any statutes that are relocated to an enacted title may require new legislation to so relocate them. Second, some relocated statutes may be dependent on definitions or other sections that will remain in Title 22. In order to ensure definitions continue to apply to these relocated statutes, conforming amendments to the relocated statutes will be necessary.

Additionally, as was noted in the Report accompanying these appendices, before the proposed enactment legislation in title 1 of the bill in Appendix IX can be passed, the following statutes in Title 22 will need to be amended:

1. D.C. Code § 22-2701.01: Refers to §§ 22-2713 through 22-2720.
2. D.C. Code § 22-1831: Refers to §§ 22-2713 through 22-2720.
3. D.C. Code § 22-1839: Refers to § 22-3022(b).
4. D.C. Code § 22-3226.06: Refers to § 22-3226.09.
5. D.C. Code § 22-4134: Contains terms that are defined in § 22-4131.
6. D.C. Code § 22-4015: Refers generally to the requirements in the "chapter," which is otherwise being relocated.
7. D.C. Code § 22-4329: Refers generally to the provisions and authority of this "chapter," which is otherwise being relocated.
8. D.C. Code § 22-4331: Refers generally to the requirements in the "chapter," which is otherwise being relocated.

The Criminal Code Reform Commission recommends that the Office of the General Counsel check for other conforming amendments that may be necessary in Title 22. The chart of the relocated statutes from Title 22 begins on the next page.

Part 1: Chart: Statutes Being Relocated from Title 22.

Code Section & Offense Name	Recommendation for Relocation Outside of Title 22
D.C. Code § 22-1002.01, Reporting requirements.	Title 8, Chapter 18, Animal Control.
D.C. Code § 22-1004, Arrests without warrants authorized; notice to owner.	Title 23, Chapter 5, Warrants and Arrests; Subchapter V, Arrest Without Warrant.
D.C. Code § 22-1005, Issuance of search warrants.	Title 23, Chapter 5, Warrants and Arrests; Subchapter II, Search Warrants.
D.C. Code § 22-1006, Prosecution of offenders.	No recommendation for relocation.
D.C. Code § 22-1008, Relief of Impounded Animals.	Title 8, Chapter 18, Animal Control
D.C. Code § 22-1716, Statement of Purpose.	Title 3, Chapter 13, Lottery and Charitable Games Control Board.
D.C. Code § 22-1717, Permissible gambling activities.	Title 3, Chapter 13, Lottery and Charitable Games Control Board.
D.C. Code § 22-1718, Advertising and promotion.	Title 3, Chapter 13, Lottery and Charitable Games Control Board.
D.C. Code § 22-1839, Reputation or opinion evidence.	The Criminal Code Reform Commission recommends that this provision be moved to Title 23, and a new chapter containing evidentiary provisions be created therein.
D.C. Code § 22-1840, Civil action.	No recommendation for relocation. The Criminal Code Reform Commission agrees that it is desirable to remove all crime-dependent civil actions into one place in the D.C. Code. However, to provide notice of the civil provisions, it is recommended that mention of this civil action should be placed in the "Penalties" sections of the corresponding criminal statute (e.g., "Crime punishable by X years, and the possibility of civil action as codified at [new civil section].")
D.C. Code § 22-1841, Data collection and dissemination.	No recommendation for relocation. The Criminal Code Reform Commission does recommend, however, that this statute be relocated with other data collection requirements. The language in the bill states: "(e) This section shall apply upon the inclusion of its fiscal effect in an approved budget

	and financial plan." However, no such budget and financial plan has been so completed. Hence, while the statute appears to have been properly passed in to law, it does not currently "apply." This section should be more properly labeled to ensure the reader is aware of the non-funded provisions.
D.C. Code § 22-1842, Training Program.	No recommendation for relocation.
D.C. Code § 22-1843, Public posting of human trafficking hotline.	No recommendation for relocation.
D.C. Code § 22-2603.04, Detainment Power.	Title 23, Chapter 5, Warrants and Arrests.
D.C. Code § 22-2713, Premises for lewdness.	Title 42, Subtitle VI, § 3120 series.
D.C. Code § 22-2714, Abatement of nuisance.	Title 42, Subtitle VI, § 3120 series. The Criminal Code Reform Commission recommends replacing "Corporation Counsel", which appears twice in this statute, with "Attorney General for the District of Columbia". The Criminal Code Reform Commission recommends replacing "at his instance" with "at the defendant's instance" to avoid unnecessarily gendered language.
D.C. Code § 22-2715, Abatement of nuisance.	Title 42, Subtitle VI, § 3120 series.
D.C. Code § 22-2716, Violation of injunction.	Title 42, Subtitle VI, § 3120 series.
D.C. Code § 22-2717, Order of abatement.	Title 42, Subtitle VI, § 3120 series.
D.C. Code § 22-2718, Disposition of proceeds of sale	Title 42, Subtitle VI, § 3120 series.
D.C. Code § 22-2719, Bond for abatement.	Title 42, Subtitle VI, § 3120 series. The Criminal Code Reform Commission recommends replacing both "Collector of Taxes" and "Department of Finance and Revenue" with "Office of Tax and Revenue."
D.C. Code § 22-2720, Tax for maintaining such nuisance.	Title 42, Subtitle VI, § 3120 series. The Criminal Code Reform Commission recommends replacing "Collector of Taxes" with "Office of Tax and

	Revenue.”
D.C. Code § 22-3020.51, Definitions.	Title 4, Chapter 13, Child Abuse and Neglect.
D.C. Code § 22-3020.52, Child sexual abuse reporting requirements and privileges.	Title 4, Chapter 13, Child Abuse and Neglect.
D.C. Code § 22-3020.53, Defense to child sexual abuse non-reporting.	Title 4, Chapter 13, Child Abuse and Neglect.
D.C. Code § 22-3020.54, Penalties for child sexual abuse non-reporting.	Title 4, Chapter 13, Child Abuse and Neglect.
D.C. Code § 22-3020.55, Immunity from liability for child sexual abuse non-reporting.	Title 4, Chapter 13, Child Abuse and Neglect.
D.C. Code § 22-3021, Reputation or opinion evidence of victim's past sexual behavior inadmissible.	The Criminal Code Reform Commission recommends that this provision be moved to Title 23, and a new chapter containing evidentiary provisions be created therein.
D.C. Code § 22-3022, Admissibility of other evidence of victim's past sexual behavior.	The Criminal Code Reform Commission recommends that this provision be moved to Title 23, and a new chapter containing evidentiary provisions be created therein.
D.C. Code § 22-3023, Prompt reporting.	The Criminal Code Reform Commission recommends that this provision be moved to Title 23, and a new chapter containing evidentiary provisions be created therein.
D.C. Code § 22-3024, Privilege inapplicable for spouses and domestic partners.	The Criminal Code Reform Commission recommends that this provision be moved to Title 23, and a new chapter containing evidentiary provisions be created therein.
D.C. Code § 22-3225.08, Investigation and report of insurance fraud.	No recommendation for relocation.
D.C. Code § 22-3225.09, Insurance fraud prevention and detection.	No recommendation for relocation.

D.C. Code § 22-3225.10, Regulations.	No recommendation for relocation.
D.C. Code § 22-3225.11, Limited law enforcement authority.	No recommendation for relocation. The Criminal Code Reform Commission recommends that "Corporation Counsel" be replaced by "Attorney General for the District of Columbia."
D.C. Code § 22-3225.12, Annual anti-fraud activity reporting requirement.	No recommendation for relocation.
D.C. Code § 22-3225.13, Immunity.	No recommendation for relocation.
D.C. Code § 22-3225.14, Prohibition of solicitation.	No recommendation for relocation. The Criminal Code Reform Commission recommends that the phrase "his or her" replace all instances of "his" in the statute.
D.C. Code § 22-3226.02, Application for a certificate of registration of telephone solicitor.	No recommendation for relocation.
D.C. Code § 22-3226.03, Surety bond requirements for telephone solicitors.	No recommendation for relocation.
D.C. Code § 22-3226.04, Security alternative to surety bonds.	No recommendation for relocation.
D.C. Code § 22-3226.05, Exemptions.	No recommendation for relocation.
D.C. Code § 22-3226.09, Civil Penalties.	No recommendation for relocation. The Criminal Code Reform Commission also agrees that it is desirable to remove all crime-dependent civil actions into one place in the D.C. Code. However, to provide notice of the civil provisions, it is recommended that mention of this civil action should be placed in the "Penalties" sections of the corresponding criminal statute (e.g., "Crime punishable by X years, and the possibility of civil action as codified at [new civil section].")
D.C. Code § 22-3226.11, Private right of action.	No recommendation for relocation. The Criminal Code Reform Commission also agrees that it is desirable to remove all crime-dependent civil actions into one place in the D.C. Code. However, to provide notice of the civil provisions, it is recommended that mention of this civil action should be placed in the "Penalties" sections of the corresponding criminal statute (e.g., "Crime punishable by X years, and the

	possibility of civil action as codified at [new civil section].”).
D.C. Code § 22-3226.12, Statute of limitations period.	No recommendation for relocation.
D.C. Code § 22-3226.13, Task force to combat fraud.	No recommendation for relocation. The Criminal Code Reform Commission recommends that “Office of Corporation Counsel” be replaced with “Office of the Attorney General for the District of Columbia.”
D.C. Code § 22-3226.14, Fraud Prevention Fund.	No recommendation for relocation.
D.C. Code § 22-3226.15, General disclosures.	No recommendation for relocation.
D.C. Code § 22-3704, Civil action.	No recommendation for relocation. The Criminal Code Reform Commission also agrees that it is desirable to remove all crime-dependent civil actions into one place in the D.C. Code. However, to provide notice of the civil provisions, it is recommended that mention of this civil action should be placed in the “Penalties” sections of the corresponding criminal statute (e.g., “Crime punishable by X years, and the possibility of civil action as codified at [new civil section].”).
Chapter 38, Sexual Psychopaths (D.C. Code §§ 22-3801 - 22-3811).	Title 24.
Chapter 39, HIV Testing of Certain Criminal Offenders. (D.C. Code §§ 22-3901 - 22-3903).	Title 23.
Chapter 40, Sex Offender Registration (D.C. Code §§ 22-4001 - 22-4014; 22-4016; 22-4017).	Title 24. The Criminal Code Reform Commission notes that § 22-4015 provides a penalty for failing to register as a sex offender. This provision will remain in Title 22.
Chapter 41A, DNA Testing and Post-Conviction Relief for Certain Persons (D.C. Code §§ 22-4131 - 22-4133; 22-4135).	Title 23. The Criminal Code Reform Commission notes that § 22-4134 provides a penalty for destroying or tampering with evidence. This provision will remain in Title 22. In D.C. Code § 22-4131, the Criminal Code Reform Commission recommends that “Corporation Counsel” be replaced by “Attorney General for the District of Columbia.”
Chapter 41B, DNA Sample Collection (D.C. Code §22-4151).	Title 24. The Criminal Code Reform Commission notes that § 22-

	4151(a)(3) refers to subsection (b) of § 22-1312. However, subsection (b) was deleted from § 22-1312 in 2011 and much of the behavior criminalized in former § 22-1312(b) appears to have been decriminalized. The deletion of subsection (b) from § 22-1312 affects the scope of § 22-4151 and the Council may wish to revise § 22-4151.
Chapter 42, National Institute of Justice Appropriations (D.C. Code § 22-4201).	No recommendation for relocation.
Chapter 42A, Criminal Justice Coordinating Council (D.C. Code §§ 22-4231 - 22-4244).	Title 3, Chapter 9.
Chapter 42B, Homicide Elimination (D.C. Code § 22-4251).	No recommendation for relocation.
Chapter 43. Game and Fish Laws (D.C. Code §§ 22-4301 - 22-4328; 22-4330; 22-4332; 22-4333).	No recommendation for relocation. The Criminal Code Reform Commission notes that § 22-4331 provides a penalty for violating any provision of this chapter and § 22-4329 codifies an offense. These provisions will remain in Title 22. For §§ 22-4328, 22-4332, and 22-4333, the Criminal Code Reform Commission notes that the references to "Mayor" and "Council of the District of Columbia" are not contained in the organic legislation, which instead refers to the "Commissioners." However, as is discussed in Part 2.B.i of Appendix VI of this Report, the references to "Mayor" and "Council of the District of Columbia" in these statutes correctly replace references to the "Commissioners." In D.C. Code § 22-4330, the Criminal Code Reform Commission recommends that "District of Columbia Council" in subsection (a) be replaced with the "Council of the District of Columbia." Otherwise, the reference to "Mayor" in this statute correctly replaces the reference to the "Commissioners" in the organic legislation (discussed in Part 2.B.i of Appendix VI). In D.C. Code § 22-4331, the Criminal Code Reform Commission recommends that "Corporation Counsel" be replaced by "Attorney General for the District of Columbia," and that "Assistant Corporation Counsel" be replaced with

	"Assistant Attorney General."
D.C. Code § 22-4401, Harbor Regulations.	Title I. The Criminal Code Reform Commission notes that this statute was repealed on March 11, 2015.

Part 2: Text of Statutes Suggested for Relocation from Title 22.

D.C. Code § 22-1002.01. Reporting requirements.

(a) (1) Any law enforcement or child or protective services employee who knows of or has reasonable cause to suspect an animal has been the victim of cruelty, abandonment, or neglect, or observes an animal at the home of a person reasonably suspected of child, adult, or animal abuse, shall provide a report within 2 business days to the Mayor. If the health and welfare of the animal is in immediate danger, the report shall be made within 6 hours.

(2) The report shall include:

(A) The name, title, and contact information of the individual making the report;

(B) The name and contact information, if known, of the owner or custodian of the animal;

(C) The location, along with a description, of where the animal was observed; and

(D) The basis for any suspicion of animal cruelty, abandonment, or neglect, including the date, time, and a description of the observation or incident which led the individual to make the report.

(b) When 2 or more law enforcement or child or protective services employees jointly suspect an animal has been the victim of cruelty, abandonment, or neglect, or jointly observe an animal at the home of a person reasonably suspected of child, adult, or animal abuse, a report may be made by one person by mutual agreement.

(c) No individual who in good faith reports a reasonable suspicion of abuse shall be liable in any civil or criminal action.

(d) Upon receipt of a report, any agency charged with the enforcement of animal cruelty laws shall make reasonable attempts to verify the welfare of the animal.

(e) For the purposes of this section, the terms "reasonable cause to suspect", "suspect", "reasonably suspected", and "reasonable suspicion" mean a basis for reporting facts leading a person of ordinary care and prudence to believe and entertain a reasonable suspicion that criminal activity is occurring or has occurred.

D.C. Code § 22-1004. Arrests without warrant authorized; notice to owner.

(a) Any person found violating the laws in relation to cruelty to animals may be arrested and held without a warrant, in the manner provided by § 44-1505 and the person making an arrest, with or without a warrant, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for such animals until the owner thereof shall take charge of the same; provided, the owner shall take charge of the same within 20 days from the date of said notice. The person making the arrest or the humane officer taking possession of an animal shall have a lien on said animals for the expense of such care and provisions.

(b) (1) A humane officer of the Washington Humane Society may take possession of any animal to protect it from neglect or cruelty. The person taking possession of the animal or animals, shall use reasonable diligence to give notice thereof to the owner of animals found in the charge or custody of the person arrested, and shall properly care and provide for the animals until the owner shall take charge of the animals; provided that, the owner shall take charge of the animals within 20 days from the date of the notice.

(2) If the owner or custodian of the animal or animals fails to respond after 20 days, the animal or animals shall become the property of the Washington Humane Society and the Washington Humane Society shall have the authority to:

(A) Place the animal or animals up for adoption in a suitable home;

(B) Retain the animal or animals, or

(C) Humanely destroy the animal or animals.

(c) (1) The Mayor shall establish by rulemaking a notice and hearing process for the owner of the animal to contest the seizure, detention, and terms of release and treatment of the animal, the allegation of cruelty, abandonment, or neglect, and the imposition of the lien and costs assessed for caring and providing for the animal.

(2) Within 30 days of December 5, 2008, the proposed rules shall be submitted to the Council for a 45-day period of review, excluding weekends, legal holidays, and days of Council recess. If the Council does not approve or disapprove of the proposed rules, by resolution, within the 45-day review period, the rules shall be deemed approved.

D.C. Code § 22-1005. Issuance of search warrants.

When complaint is made by any humane officer of the Washington Humane Society on oath or affirmation, to any magistrate authorized to issue warrants in

criminal cases, that the complainant believes, and has reasonable cause to believe, that the laws in relation to cruelty to animals have been or are being violated in any particular building or place, such magistrate, if satisfied that there is reasonable cause for such belief, shall issue a search warrant, authorizing any marshal, deputy marshal, police officer, or any humane officer of the Washington Humane Society to search such building or place.

D.C. Code § 22-1006. Prosecution of offenders; disposition of fines.

It shall be the duty of all marshals, deputy marshals, police officers, or any humane officer of the Washington Humane Society, to prosecute all violations of the provisions of §§ 22‑1001 to 22‑1009 and §§ 22‑1011, 22‑1013, and 22‑1014, which shall come to their notice or knowledge, and fines and forfeitures collected upon or resulting from the complaint or information of any humane officer of the Washington Humane Society under §§ 22‑1001 to 22‑1009 and §§ 22‑1011, 22‑1013, and 22‑1014 [repealed] shall inure and be paid over to said association, in aid of the benevolent objects for which it was incorporated.

D.C. Code § 22-1008. Relief of impounded animals.

In case any creature shall be at any time impounded as aforesaid, and shall continue to be without necessary food and water for more than 12 successive hours, it shall be lawful for any officer of the Washington Humane Society, from time to time, and as often as it shall be necessary, to enter into and upon any pound in which such creature shall be so confined, and supply it with necessary food and water so long as it shall remain so confined; such person shall not be liable to any action for such entry, and the reasonable cost for such food and water may be collected of the owner of such creature, and the said creature shall not be exempt from levy and sale upon execution issued upon a judgment thereof.

D.C. Code § 22-1716. Statement of purpose.

It is the purpose of this subchapter to legalize lotteries, daily numbers games, bingo, raffles, and Monte Carlo night parties, which activities are to be conducted only by the District of Columbia and only those licensed by the District of Columbia and subject to the jurisdiction, authority, and control of the District of Columbia. These activities will provide revenue to the District of Columbia and will provide the citizens of the District of Columbia financial benefits.

D.C. Code § 22-1717. Permissible gambling activities.

Nothing in subchapter I of this chapter shall be construed to prohibit the operation of or participation in lotteries and/or daily numbers games operated by and for the benefit of the District of Columbia by the Lottery and Charitable Games Control Board; bingo, raffles, and Monte Carlo night parties organized for educational and

charitable purposes, regulated by the District of Columbia Lottery and Charitable Games Control Board.

D.C. Code § 22-1718. Advertising and promotion; sale and possession of lottery and numbers tickets and slips.

(a) Nothing in subchapter I of this chapter shall be construed to prohibit the advertising and promotion of excepted permissible gambling activities pursuant to § 22‑1717, hereof, including, but not limited to, the sale, by agents authorized by the District of Columbia, and the possession of tickets, certificates, or slips for lottery and daily numbers games excepted and permissible pursuant to § 22‑1717, hereof, and the sale, lease, purchase, or possession of tickets, slips, certificates, or cards for bingo, raffles, and Monte Carlo night parties, excepted and permissible pursuant to § 22‑1717, hereof.

(b) Nothing in § 22‑1701 shall prohibit advertising a lottery by the Maryland State Lottery so long as Maryland does not prohibit advertising or otherwise publishing an account of a lottery by the District of Columbia.

D.C. Code § 22-1839. Reputation or opinion evidence.

In a criminal case in which a person is accused of trafficking in commercial sex, as prohibited by § 22‑1833, sex trafficking of children, as prohibited by § 22‑1834, or benefitting financially from human trafficking, as prohibited by § 22‑1836, reputation or opinion evidence of the past sexual behavior of the alleged victim is not admissible. Evidence of an alleged victim's past sexual behavior other than reputation or opinion evidence also is not admissible, unless such evidence other than reputation or opinion evidence is admitted in accordance with § 22‑3022(b), and is constitutionally required to be admitted.

D.C. Code § 22-1840. Civil action.

(a) An individual who is a victim of an offense prohibited by § 22‑1832, § 22‑1833, § 22‑1834, § 22‑1835 or § 22‑1836 may bring a civil action in the Superior Court of the District of Columbia. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and any other appropriate relief. A prevailing plaintiff shall also be awarded attorney's fees and costs. Treble damages shall be awarded on proof of actual damages where a defendant's acts were willful and malicious.

(b) Any statute of limitation imposed for the filing of a civil suit under this section shall not begin to run until the plaintiff knew, or reasonably should have known, of any act constituting a violation of § 22‑1832, § 22‑1833, § 22‑1834, § 22‑1835 or § 22‑1836, or until a minor plaintiff has reached the age of majority, whichever is later.

(c) If a person entitled to sue is imprisoned, insane, or similarly incapacitated at the time the cause of action accrues, so that it is impossible or impracticable for him or her to bring an action, then the time of the incapacity is not part of the time limited for the commencement of the action.

(d) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action.

D.C. Code § 22-1841. Data collection and dissemination. [Not funded]

[Not funded].

D.C. Code § 22-1842. Training program.

(a) The Metropolitan Police Department ("MPD"), the Child and Family Services Agency ("CFSA"), and the Department of Youth Rehabilitation Services ("DYRS") shall provide training on human trafficking to:

(1) New law enforcement officers, social workers, and case managers; and

(2) Current law enforcement officers, social worker employees, and case managers who have not previously received comparable training.

(b) The training shall be a minimum of 4 hours and shall include:

(1) The nature and dimension of human trafficking;

(2) The legal rights and remedies available to a victim of human trafficking;

(3) The services and facilities available to a victim of human trafficking;

(4) The legal duties imposed on a police officer, social worker, or case manager to enforce the provisions of D.C. Law 20-276, and to offer protection and assistance to a victim of human trafficking;

(5) Techniques for determining when a person may be a victim of trafficking;

(6) Techniques for handling a human trafficking offense that promotes the safety of the victim; and

(7) The particular needs of youth and minor trafficking victims;

(c) MPD, CFSA, and DYRS shall consult with community organizations that provide training, resources, advocacy, or services to victims of human trafficking for assistance in developing and presenting training on human trafficking.

D.C. Code § 22-1843. Public posting of human trafficking hotline.

[Not funded].

D.C. Code § 22-2603.04. Detainment power.

Any person who, being lawfully upon the grounds of the penal institution, introduces or attempts to introduce contraband prohibited by § 2-2603.02(a) may be taken into custody by the warden and detained for not more than 2 hours, pending surrender to a police officer with the Metropolitan Police Department.

D.C. Code § 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

(a) Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place used for the purpose of lewdness, assignation, or prostitution in the District of Columbia is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such lewdness, assignation, or prostitution is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, musical instruments, and contents are also declared a nuisance, and shall be enjoined and abated as hereinafter provided.

(b) Whoever shall erect, establish, continue, maintain, use, own, occupy, or release any building, erection, or place which is resorted to by persons using controlled substances in violation of Chapter 9 of Title 48, for the purpose of using any of these substances or for the purpose of keeping or selling any of these substances in violation of Chapter 9 of Title 48, is guilty of a nuisance, and the building, erection, or place, or the ground itself in or upon which such activity is conducted, permitted, or carried on, continued, or exists, and the furniture, fixtures, and contents thereof, are also declared a nuisance and disorderly house, and shall be enjoined and abated as hereinafter provided.

D.C. Code § 22-2714. Abatement of nuisance under § 22-2713 by injunction - Temporary injunction.

Whenever a nuisance is kept, maintained, or exists, as defined in § 22‑2713, the United States Attorney for the District of Columbia, the Attorney General of the United States, the Corporation Counsel of the District of Columbia, or any citizen of the District of Columbia, may maintain an action in equity in the name of the United States of America or in the name of the District of Columbia, upon the

relation of such United States Attorney for the District of Columbia, the Attorney General of the United States, the Corporation Counsel of the District of Columbia, or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists. In such action the court, or a judge in vacation, shall, upon the presentation of a petition therefor alleging that the nuisance complained of exists, allow a temporary writ of injunction, without bond, if it shall be made to appear to the satisfaction of the court or judge by evidence in the form of affidavits, depositions, oral testimony, or otherwise, as the complainant may elect, unless the court or judge by previous order shall have directed the form and manner in which it shall be presented. Three days notice, in writing, shall be given the defendant of the hearing of the application, and if then continued at his instance the writ as prayed shall be granted as a matter of course. When an injunction has been granted it shall be binding on the defendant throughout the District of Columbia and any violation of the provisions of injunction herein provided shall be a contempt as hereinafter provided.

D.C. Code § 22-2715. Abatement of nuisance under § 22-2713 by injunction - Trial; dismissal of complaint; prosecution; costs.

The action when brought shall be triable at the first term of court, after due and timely service of the notice has been given, and in such action evidence of the general reputation of the place shall be admissible for the purpose of proving the existence of said nuisance. If the complaint is filed by a citizen, it shall not be dismissed, except upon a sworn statement made by the complainant and the complainant's attorney, setting forth the reasons why the action should be dismissed, and the dismissal approved by the United States Attorney for the District of Columbia or the Attorney General of the United States of America in writing or in open court. If the court is of the opinion that the action ought not to be dismissed, it may direct the United States Attorney for the District of Columbia to prosecute said action to judgment; and if the action is continued more than 1 term of court, any citizen of the District of Columbia, or the United States Attorney for the District of Columbia, may be substituted for the complaining party and prosecute said action to judgment. If the action is brought by a citizen, and the court finds there was no reasonable ground or cause for said action, the costs may be taxed to such citizen.

D.C. Code § 22-2716. Violation of injunction granted under § 22-2714.

In case of the violation of any injunction granted under the provisions of § 22-2714, the court, or, in vacation, a judge thereof, may summarily try and punish the offender. The proceedings shall be commenced by filing with the clerk of the court an information, under oath, setting out the alleged facts constituting such violation, upon which the court or judge shall cause a warrant to issue, under which the defendant shall be arrested. The trial may be had upon affidavits, or either party may at any stage of the proceedings demand the production and oral

examination of the witnesses. A party found guilty of contempt, under the provisions of this section, shall be punished by a fine of not less than $200 and not more than the amount set forth in § 22-3571.01 or by imprisonment in the District Jail not less than three nor more than 6 months or by both fine and imprisonment.

D.C. Code § 22-2717. Order of abatement; sale of property; entry of closed premises punishable as contempt.

If the existence of the nuisance be established in an action as provided in §§ 22-2713 to 22-2720, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of 1 year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed such person shall be punished as for contempt, as provided in § 22-2716.

D.C. Code § 22-2718. Disposition of proceeds of sale.

The proceeds of the sale of the personal property as provided in § 22-2717, shall be applied in the payment of the costs of the action and abatement and the balance, if any, shall be paid to the defendant.

D.C. Code § 22-2719. Bond for abatement; order for delivery of premises; effect of release.

If the owner appears and pays all costs of the proceeding and files a bond, with sureties to be approved by the clerk, in the full value of the property, to be ascertained by the court or, in vacation, by the Collector of Taxes of the District of Columbia, conditioned that such owner will immediately abate said nuisance and prevent the same from being established or kept within a period of 1 year thereafter, the court, or, in vacation, the judge, may, if satisfied of such owner's good faith, order the premises closed under the order of abatement to be delivered to said owner and said order of abatement canceled so far as the same may relate to said property; and if the proceeding be an action in equity and said bond be given and costs therein paid before judgment and order of abatement, the action shall be thereby abated as to said building only. The release of the property under the provisions of this section shall not release it from judgment, lien, penalty, or liability to which it may be subject by law.

D.C. Code § 22-2720. Tax for maintaining such nuisance.

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or

used for the purpose prohibited by §§ 22‑2713 to 22‑2720, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of $300. The assessment of said tax shall be made by the Director of the Department of Finance and Revenue of the District of Columbia and shall be made within 3 months from the date of the granting of the permanent injunction. In case the Director fails or neglects to make said assessment the same shall be made by the Chief of Police, and a return of said assessment shall be made to the Collector of Taxes. Said tax shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections.

D.C. Code § 22-3020.51. Definitions.

For the purposes of this subchapter, the term:

(1) "Child" means an individual who has not yet attained the age of 16 years.

(2) "Person" means an individual 18 years of age or older.

(3) "Police" means the Metropolitan Police Department.

(4) "Sexual abuse" means any act that is a violation of:

(A) Section 22-1834;

(B) Section § 22-2704;

(C) This chapter (§ 22-3001 et seq.); or

(D) Section 22-3102.

D.C. Code § 22-3020.52. Reporting requirements and privileges.

(a) Any person who knows, or has reasonable cause to believe, that a child is a victim of sexual abuse shall immediately report such knowledge or belief to the police. For the purposes of this subchapter, a call to 911, or a report to the Child and Family Services Agency, shall be deemed a report to the police.

(b) Any person who is or has been a victim of sexual abuse is not required to report pursuant to subsection (a) of this section if the identity of the alleged perpetrator matches the identity of the victim's abuser.

(c) No legally recognized privilege, except for the following, shall apply to this subchapter:

(1) A lawyer or a person employed by a lawyer is not required to report pursuant to subsection (a) of this section if the lawyer or employee is providing representation in a criminal, civil, or delinquency matter, and the basis for the knowledge or belief arises solely in the course of that representation.

(2) (A) The notification requirements of subsection (a) of this subsection do not apply to a priest, clergyman, rabbi, or other duly appointed, licensed, ordained, or consecrated minister of a given religion in the District of Columbia, or a duly accredited practitioner of Christian Science in the District of Columbia, if the basis for the knowledge or belief is the result of a confession or penitential communication made by a penitent directly to the minister if:

(i) The penitent made the confession or penitential communication in confidence;

(ii) The confession or penitential communication was made expressly for a spiritual or religious purpose;

(iii) The penitent made the confession or penitential communication to the minister in the minister's professional capacity; and

(iv) The confession or penitential communication was made in the course of discipline enjoined by the church or other religious body to which the minister belongs.

(B) A confession or communication made under any other circumstances does not fall under this exemption.

(d) This section should not be construed as altering the special duty to report by persons specified in § 4-1321.02(b).

D.C. Code § 22-3020.53. Defense to non-reporting.

(a) Any survivor of domestic violence may use such domestic violence as a defense to his or her failure to report under this subchapter.

(b) For the purposes of this section, the term "domestic violence" means intimate partner violence, as defined in § 16‑1001(7), and intrafamily violence, as defined in § 16‑1001(9).

D.C. Code § 22-3020.54. Penalties.

(a) Any person required to make a report under this subchapter who willfully fails to make such a report shall be subject to a civil fine of $300.

(b) Adjudication of any infraction of this subchapter shall be handled by the Office of Administrative Hearings pursuant to § 2‑1831.03(b‑6).

D.C. Code § 22-3020.55. Immunity from liability.

(a) Any person who in good faith makes a report pursuant to this subchapter shall have immunity from liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making of the report or any participation in any judicial proceeding involving the report. In all civil or criminal proceedings concerning the child or resulting from the report, good faith shall be presumed unless rebutted.

(b) Any person who makes a good-faith report pursuant to this subchapter and, as a result thereof, is discharged from his or her employment or in any other manner discriminated against with respect to compensation, hire, tenure, or terms, conditions, or privileges of employment, may commence a civil action for appropriate relief. If the court finds that the person is an individual who was required to report, who in good faith made a report, and who was discharged or discriminated against as a result, the court may issue an order granting appropriate relief, including reinstatement with back pay. The District may intervene in any action commenced under this subsection.

D.C. Code § 22-3021. Reputation or opinion evidence of victim's past sexual behavior inadmissible.

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under subchapter II of this chapter, reputation or opinion evidence of the past sexual behavior of an alleged victim of such offense is not admissible.

(b) For the purposes of this subchapter, "past sexual behavior" means sexual behavior other than the sexual behavior with respect to which an offense under subchapter II of this chapter is alleged.

D.C. Code § 22-3022. Admissibility of other evidence of victim's past sexual behavior.

(a) Notwithstanding any other provision of law, in a criminal case in which a person is accused of an offense under subchapter II of this chapter, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is:

(1) Admitted in accordance with subsection (b) of this section and is constitutionally required to be admitted; or

(2) Admitted in accordance with subsection (b) of this section and is evidence of:

(A) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of semen or bodily injury; or

(B) Past sexual behavior with the accused where consent of the alleged victim is at issue and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.

(b) (1) If the person accused of committing an offense under subchapter II of this chapter intends to offer under subsection (a) of this section, evidence of specific instances of the alleged victim's past sexual behavior, the accused shall make a written motion to offer such evidence not later than 15 days before the date on which the trial in which such evidence is to be offered is scheduled to begin, except that the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case. Any motion made under this paragraph, and the accompanying offer of proof, shall be filed under seal and served on all other parties and on the alleged victim.

(2) The motion described in paragraph (1) of this subsection shall be accompanied by a written offer of proof. If the court determines that the offer of proof contains evidence described in subsection (a) of this section, the court shall order a hearing in chambers to determine if such evidence is admissible. At such hearing, the parties may call witnesses, including the alleged victim, and offer relevant evidence. If the relevancy of the evidence which the accused seeks to offer in the trial depends upon the fulfillment of a condition of fact, the court, at the hearing in chambers, or at a subsequent hearing in chambers scheduled for such purpose, shall accept evidence on the issue of whether such condition of fact is fulfilled and shall determine such issue.

(3) If the court determines on the basis of the hearing described in paragraph (2) of this subsection that the evidence which the accused seeks to offer is relevant and that the probative value of such evidence outweighs the danger of unfair prejudice, such evidence shall be admissible in the trial to the extent an order made by the court specifies evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined.

D.C. Code § 22-3023. Prompt reporting.

Evidence of delay in reporting an offense under subchapter II of this chapter to a public authority shall not raise any presumption concerning the credibility or veracity of a charge under subchapter II of this chapter.

D.C. Code § 22-3024. Privilege inapplicable for spouses or domestic partners.

Laws attaching a privilege against disclosure of communications between spouses or domestic partners are inapplicable in prosecutions under subchapter II of this chapter where the defendant is or was married to the victim, or is or was a domestic partner of the victim, or where the victim is a child.

D.C. Code § 22-3225.08. Investigation and report of insurance fraud.

(a) Based upon a reasonable belief, an insurer, insurance professional, and any other pertinent person, shall report to the Metropolitan Police Department or the Department of Insurance, Securities, and Banking, actions that may constitute the commission of insurance fraud, and assist in the investigation of insurance fraud by reasonably providing information when required by an investigating authority.

(b) The Commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance. Nothing in this subchapter shall preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

(c) An insurer, insurance professional, or any other pertinent person who fails to reasonably assist the investigation of an insurance fraud or fails to report an insurance fraud, and who is injured by that insurance fraud, shall be estopped from receiving restitution as provided in § 22‑3225.05.

(d) Any information, documentation, or other evidence provided under this section by an insurer, its employees, producers, or agents, or by any other person, to the Department of Insurance, Securities, and Banking, the Metropolitan Police Department, or any other law enforcement agency in connection with any investigation of suspected fraud is not subject to public inspection as long as the Commissioner or law enforcement agency deems the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person or entity investigated from unwarranted injury.

(e) Repealed.

D.C. Code § 22-3225.09. Insurance fraud prevention and detection.

(a) Within 6 months of April 27, 1999, every insurer licensed in the District shall submit to the Department of Insurance and Securities Regulation, an insurance

fraud prevention and detection plan ("plan"). The plan shall indicate specific procedures for the accomplishment of the following:

(1) Prevention, detection, and investigation of insurance fraud;

(2) Orientation of employees on insurance fraud prevention and detection;

(3) Employment of fraud investigators;

(4) Reporting of insurance fraud to the appropriate authorities; and

(5) Collection of restitution for financial loss caused by insurance fraud.

(b) The Commissioner may review the plan for compliance with this section and may order reasonable modification or request a summary of the plan. The Commissioner may establish by regulation a fine for an insurer failing to comply with the plan. The plan shall not be deemed a public record for the purposes of any public records or subchapter II of Chapter 5 of Title 2.

(c) Notwithstanding any other provisions of law, an insurer who fails to submit an insurance prevention and detection plan, or the warning provision required by subsection (d) of this section shall be subject to a fine of $ 500 per day, not to exceed $ 25,000.

(d) No later than 6 months after April 27, 1999, all insurance application forms and all claim forms shall contain a conspicuous warning in language the same or substantially similar to the following:

"WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.".

(e) None of the requirements of this section shall be deemed to apply to reinsurers, reinsurance contracts, reinsurance agreements, or reinsurance claims transactions.

D.C. Code § 22-3225.10. Regulations.

The Commissioner may promulgate regulations deemed necessary by the Commissioner for the administration of this subchapter.

D.C. Code § 22-3225.11. Limited law enforcement authority.

(a) The Commissioner shall have the power to issue and serve subpoenas, to compel witnesses to appear and testify, and to produce all books, records, papers, or documents in any insurance investigation or examination.

(b) Any willful false testimony by a witness before the Commissioner as to any material fact shall constitute perjury and shall be punished in the manner prescribed by law for such offense.

(c) If any witness having been personally summoned shall neglect or refuse to obey the subpoena issued pursuant to subsection (a) of this section, the Commissioner may, through the Corporation Counsel, report that fact to the Superior Court of the District of Columbia or one of the judges thereof and the Court, or any judge thereof, may compel obedience to the subpoena to the same extent as witnesses may be compelled to obey the subpoenas of the Court.

(d) The Commissioner may administer oaths to witnesses summoned in any investigation or examination as set forth in subsection (a) of this section.

D.C. Code § 22-3225.12. Annual anti-fraud activity reporting requirement.

Each insurer and health maintenance organization licensed in the District shall file an annual anti-fraud activity report on March 31st of each year with the Commissioner, which shall contain information about the special investigation unit's insurance fraud activities during the preceding calendar year. Annual anti-fraud activity reports filed with the Commissioner shall be kept confidential and shall not be subject to the disclosure requirements of subchapter II of Chapter 5 of Title 2.

D.C. Code § 22-3225.13. Immunity.

No person shall be subject to civil liability or criminal prosecution for reporting any suspected insurance fraud if:

(1) The report was made to:

(A) The Department of Insurance, Securities, and Banking, the Metropolitan Police Department, or any other law enforcement authority; or

(B) Any insurer, insurance agent, or other person who collects, reviews, or analyzes information concerning insurance fraud; and

(2) The person or entity reporting the suspected fraud acted without malice when making the report.

D.C. Code § 22-3225.14. Prohibition of solicitation.

(a) (1) Except as provided in paragraph (2) of this subsection, it is unlawful for a practitioner, whether directly or through a paid intermediary, to solicit for financial gain a client, patient, or customer within 21 days of a motor vehicle accident with the intent to seek benefits under a contract of insurance or to assert a claim against an insured, a governmental entity, or an insurer on behalf of any person arising out of the accident.

(2) The prohibition in paragraph (1) of this subsection does not prohibit:

(A) A practitioner from soliciting a client, patient, or customer by regular mail through the U.S. Postal Service or through the use of general advertising directed to the public;

(B) A practitioner or his agents from contacting a potential client, patient, or customer, or a family member, friend, or coworker of the potential client, patient, or customer, where the practitioner has a preexisting business or personal relationship with the potential client, patient, or customer;

(C) A practitioner or his agents from contacting a potential client, patient, or customer where the contact was initiated by the potential client, patient, or customer, or by a family member, friend, or coworker of the potential client, patient or customer; or

(D) Providing advice and assistance to incarcerated persons in pursuing administrative remedies that may be a prerequisite to suit or in seeking appropriate medical care and treatment.

(b) Except as provided in subsection (a)(2) of this section, it is unlawful for a person to solicit for financial gain a client, patient, or customer within 21 days of a motor vehicle accident for the purpose of directing the client, patient, or customer to a practitioner.

(c) A person or practitioner found by clear and convincing evidence to have violated the provisions of this section shall be subject to a civil penalty of $ 1,000. The Mayor may increase this penalty by rulemaking.

(d) (1) If a person involved in an automobile accident, or his parent or guardian, executes, within 21 days of a motor vehicle accident, a release of liability, without the assistance or guidance of legal counsel, pursuant to the settlement of a claim for personal injury, that person or his parent or guardian may void the release; provided, that the insurance carrier or other settling party receives written notice of the intent to void the release within 14 days of the date that the release was executed, and the written notice is accompanied by any check or settlement

proceeds related to the claim for personal injury that had been delivered to the claimant.

(2) A release of liability executed within 21 days of the accident giving rise to the claim of personal injury by a person who is not represented by counsel shall contain a notice of the claimant's right to rescind conspicuously and separately stated on the release.

(e) The provisions of this section are not severable.

D.C. Code § 22-3226.02. Application for a certificate of registration of telephone solicitor.

(a) No person shall transact any business as a telephone solicitor without first having obtained a certificate of registration from the Mayor.

(b) The application for certificate of registration shall be made at least 60 business days prior to offering for sale consumer goods or services by telephone.

(c) The Mayor shall provide an application form for the annual certificate of registration.

(d) The application for a certificate of registration as a telephone solicitor shall include, but not be limited to, the following information:

(1) The true name, current address, telephone number and location of the telephone solicitor and the telemarketing business, including each name and trade name under which the telephone solicitor intends to engage in telephone solicitations;

(2) Each occupation or business that the telemarketing business' principal owner or owners have engaged in for the 2 years immediately preceding the date of the application;

(3) Whether the applicant has been convicted or pled guilty to, or is being prosecuted by indictment for racketeering, violations of state or federal securities laws, or a theft offense;

(4) Whether there has been entered against the applicant an injunction, temporary restraining order or a final judgment in any civil or administrative action involving fraud, theft, racketeering, embezzlement, fraudulent conversion or misappropriation of property, including any pending litigation;

(5) Whether the applicant, at any time during the previous 7 years, has filed for bankruptcy, been adjudged bankrupt or been reorganized because of insolvency;

(6) The true name, mailing address, and date of birth of the following:

(A) Each seller or other person employed by the applicant;

(B) Each person participating in or responsible for the management of the applicant's business;

(C) Each person principally responsible for the management of the applicant's business; and

(7) The name and true address of a registered agent for service of process in the District of Columbia for the applicant's business.

(e) The Mayor shall serve as the registered agent if no registered agent is appointed or if the individual or organization named ceases to serve as the registered agent and no successor is appointed.

(f) The Mayor shall investigate the veracity of an application.

(g) The Mayor shall deny a certificate of registration when the Mayor determines that an application contains false information.

(h) The Mayor shall provide written notification to an applicant when an application has been denied.

(i) The Mayor shall notify the applicant in writing of the information that the Mayor finds to be false.

(j) No person may conduct telemarketing in the District of Columbia without having first obtained a certificate of registration.

(k) The Mayor shall either deny or grant an application within 30 days of the filing of an application.

(l) The Mayor may establish reasonable fees for filing of applications. The Mayor shall make available printed license application forms as well as electronic forms, which may be downloaded by computer.

(m) Certificates of registration issued in accordance with this subchapter shall be valid for one year. Prior to expiration of a certificate of registration, an applicant may obtain a new certificate by the filing of a new application.

(n) If any person has obtained a certificate of registration under false pretenses, including providing false information in an application, the certificate of registration shall be revoked and may be reinstated only upon proof of correction.

D.C. Code § 22-3226.03. Surety bond requirements for telephone solicitors.

(a) The application for registration or renewal shall be accompanied by a surety bond in the amount of $50,000. The bond shall provide for the indemnification of any person suffering a loss as the result a violation of this subchapter.

(b) The surety may terminate the bond upon giving a 60-day written notice to the principal and to the Mayor.

(c) Unless the bond is replaced by that of another surety before the expiration of the 60-day notice of cancellation, the registration of the principal shall be treated as lapsed.

D.C. Code § 22-3226.04. Security alternative to surety bonds.

(a) An applicant required under this subchapter to file a bond with a registration application may file with the Mayor, in lieu thereof, a certificate of deposit or government bond in the amount of $50,000.

(b) The Mayor shall hold the certificate of deposit or government bond for 3 years starting from the date the telemarketing business ceases to operate or the registration lapses in order to pay claims made against the telemarketing business during its period of operation after which time the Mayor shall return any remaining balance.

(c) The registration of the telemarketing business shall be treated as lapsed if, at any time, the amount of bond, cash, certificate of deposit or government bonds falls below the amount required by this section.

(d) The surety bond shall remain in effect for 3 years from the period the telemarketing business ceases to operate in the District.

(e) The aggregate liability of the surety company to all persons injured by a telephone solicitor's violations of this subchapter shall not exceed the amount of the bond.

D.C. Code § 22-3226.05. Exemptions.

(a) A telephone solicitor shall be exempt from the registration and bonding requirements of this subchapter if the telephone solicitor is engaged in any of the following activities:

(1) Telephone solicitation for religious or political purposes, or for a charitable or educational institution, or fundraising for other tax-exempt, nonprofit organizations;

(2) A home solicitation sale that involves a subsequent face to face meeting between the seller and the consumer;

(3) Sales by a licensed securities, commodities, investment broker, or investment advisor when soliciting over the telephone within the scope of the person's license;

(4) A solicitation for the sale of a newspaper of general circulation and other publications that have a predominantly editorial or news-related content;

(5) A solicitation for a sale regulated by the Commodities Futures Trading Commission;

(6) A solicitation for the sale of any goods whenever the person allows a 7-day review period and a full refund within 30 days after the return of such goods to the person;

(7) A solicitation by a financial institution, such as a bank, trust company, a saving and loan association, a credit union, a commercial and consumer finance lender, regulated by the United States government;

(8) A solicitation by an insurance company or other organization that is licensed or authorized to conduct business in the District of Columbia;

(9) A solicitation for the sale of cable television services operating under the authority of a governmental franchise or permit;

(10) Fundraising on behalf of a college or university or any other public or private educational institution;

(11) A solicitation for sales pursuant to a catalog that includes clear disclosure of sales prices, shipping, handling and other charges;

(12) A solicitation by a political subdivision or instrumentality of the United States or any state of the United States, or any public utility that is subject to regulation by the District of Columbia Public Service Commission;

(13) A solicitation by a person who is a licensed travel agent acting within the scope of the agent's license; or

(14) A solicitation by a person who is a licensed real estate broker within the scope of the broker's license.

D.C. Code § 22-3226.09. Civil penalties.

(a) The following penalties may be imposed in addition to those otherwise available at law:

(1) Any telephone solicitor who violates any provision of this subchapter may be fined up to $ 1,000 per violation.

(2) A permit or license shall be revoked or suspended if the seller or telephone solicitor fails to comply with the registration requirements of this subchapter.

(3) A judge may impose treble damages against any telephone solicitor who knowingly targets elderly persons or persons with disabilities.

(b) Fines shall be payable to the Fraud Prevention Fund established in § 22-3226.14.

D.C. Code § 22-3226.11. Private right of action.

(a) Any consumer injured as a result of a violation of § 22-3226.06, § 22-3226.07, or § 22-3226.08 may bring an action in the Superior Court of the District of Columbia to recover or obtain any of the following:

(1) A declaratory judgment;

(2) Injunctive relief;

(3) Reasonable attorney's fees and costs;

(4) Actual damages;

(5) Punitive damages; and

(6) Any other equitable relief which the court deems proper.

(b) Nothing in this subchapter shall prevent any consumer who is injured by any other trade practice from exercising any right or seeking any remedy to which the consumer might be entitled.

D.C. Code § 22-3226.12. Statute of limitations period.

Claims for damages or compensation under this subchapter shall be filed within 3 years of the time the seller or telephone solicitor initiated the solicitation telephone call.

D.C. Code § 22-3226.13. Task force to combat fraud.

(a) The Mayor shall form a task force for the following purposes:

(1) Collecting information on telephone fraud;

(2) Taking steps to educate the public about fraud, including telephone fraud;

(3) Sharing information related to telephone fraud with District government agencies;

(4) Sharing information related to telephone fraud with other state and federal law enforcement agencies; and

(5) Advising the Mayor on enforcement of the provisions of this subchapter.

(b) The task force may include representatives from the following agencies:

(1) Metropolitan Police Department;

(2) Department of Consumer and Regulatory Affairs;

(3) Office of Corporation Counsel; and

(4) Any other agency the Mayor deems appropriate.

D.C. Code § 22-3226.14. Fraud Prevention Fund.

(a) There is established a Fraud Prevention Fund ("Fund"). This Fund shall be nonlapsing. Monies in the Fund shall not be commingled with the General Fund, nor shall the operation of the Fund impose a burden or charge on the General Fund.

(b) Monies in the Fund shall consist of fines paid pursuant to this subchapter.

(c) Monies from this fund may be used for the purposes of educating the public regarding fraud and crime prevention, supporting the task force to combat fraud, and enforcing this subchapter.

(d) The District of Columbia Auditor shall perform an annual audit of the Fraud Prevention Fund.

D.C. Code § 22-3226.15. General disclosures.

(a) Within the first 30 seconds of a telephone call, the telephone solicitor shall identify himself or herself by stating his or her true name, the company on whose behalf the solicitation is being made, and the goods or services to be sold.

(b) Any person who violates this section shall be subject to civil penalties pursuant to § 22‑3226.09.

D.C. Code § 22-3704. Civil action.

(a) Irrespective of any criminal prosecution or the result of a criminal prosecution, any person who incurs injury to his or her person or property as a result of an intentional act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act shall have a civil cause of action in a court of competent jurisdiction for appropriate relief, which includes:

(1) An injunction;

(2) Actual or nominal damages for economic or non-economic loss, including damages for emotional distress;

(3) Punitive damages in an amount to be determined by a jury or a court sitting without a jury; or

(4) Reasonable attorneys' fees and costs.

(b) In a civil action pursuant to subsection (a) of this section, whether an intentional act has occurred that demonstrates an accused's prejudice based on the actual or perceived color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act shall be determined by reliable, probative, and substantial evidence.

(c) The parent of a minor shall be liable for any damages that a minor is required to pay under subsection (a) of this section, if any action or omission of the parent or legal guardian contributed to the actions of the minor.

D.C. Code §§ 22-3801, 22-3802. Indecent acts with children; sodomy. [Repealed]

Repealed.

D.C. Code § 22-3803. Definitions.

For the purposes of this chapter:

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his or her sexual impulses as to be dangerous to other persons because he or she is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his or her desire.

(2) The term "court" means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from the time the person is indicted, charged by an information, or charged with a delinquent act, to the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

D.C. Code § 22-3804. Filing of statement.

(a) Whenever it shall appear to the United States Attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such Attorney may file with the clerk of the Superior Court of the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

(b) Whenever it shall appear to the United States Attorney for the District of Columbia that any defendant in any criminal proceeding prosecuted by such Attorney or any Assistant United States Attorney is a sexual psychopath, such Attorney may file with the clerk of the court in which such proceeding is pending a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(c) Whenever it shall appear to any court that any defendant in any criminal proceeding pending in such court is a sexual psychopath, the court may, if it deems such procedure advisable, direct the officer prosecuting the defendant to file with the clerk of such court a statement in writing setting forth the facts tending to show that such defendant is a sexual psychopath.

(d) Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of this section may be filed only:

(1) Before trial;

(2) After conviction or plea of guilty but before sentencing; or

(3) After conviction or plea of guilty but before the completion of probation.

(e) This section shall not apply to an individual in a criminal proceeding who is charged with first degree sexual abuse, second degree sexual abuse, or assault with intent to commit first or second degree sexual abuse.

D.C. Code § 22-3805. Right to counsel.

A patient shall have the right to have the assistance of counsel at every stage of the proceeding under this chapter. Before the court appoints psychiatrists pursuant to § 22‑3806 it shall advise the patient of his or her right to counsel and shall assign counsel to represent him or her unless the patient is able to obtain counsel or elects to proceed without counsel.

D.C. Code § 22-3806. Examination by psychiatrists.

(a) When a statement has been filed with the clerk of any court pursuant to § 22‑3804, such court shall appoint 2 qualified psychiatrists to make a personal examination of the patient. The patient shall be required to answer questions asked by the psychiatrists under penalty of contempt of court. Each psychiatrist shall file a written report of the examination, which shall include a statement of his or her conclusion as to whether the patient is a sexual psychopath.

(b) The counsel for the patient shall have the right to inspect the reports of the examination of the patient. No such report and no evidence resulting from the personal examination of the patient shall be admissible against him or her in any judicial proceeding except a proceeding under this chapter to determine whether the patient is a sexual psychopath.

D.C. Code § 22-3807. When hearing is required.

If, in their reports filed pursuant to § 22‑3806, both psychiatrists state that the patient is a sexual psychopath, or if both state that they are unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, or if one states that the patient is a sexual psychopath and the other states that he or she is unable to reach any conclusion by reason of the partial or complete refusal of the patient to submit to thorough examination, then the court shall conduct a hearing in the manner provided in § 22‑3808 to determine whether the patient is a sexual psychopath. If, on the basis of the reports filed, the court is not required to conduct such a hearing, the court shall

enter an order dismissing the proceeding under this chapter determine whether the patient is a sexual psychopath.

D.C. Code § 22-3808. Hearing; commitment.

Upon the evidence introduced at a hearing held for that purpose, the court shall determine whether or not the patient is a sexual psychopath. Such hearing shall be conducted without a jury unless, before such hearing and within 15 days after the date on which the second report is filed pursuant to § 22‑3806, a jury is demanded by the patient or by the officer filing the statement. The rules of evidence applicable in judicial proceedings in the court shall be applicable to hearings pursuant to this section; but, notwithstanding any such rule, evidence of conviction of any number of crimes the commission of which tends to show that the patient is a sexual psychopath and of the punishment inflicted therefor shall be admissible at any such hearing. The patient shall be entitled to an appeal as in other cases. If the patient is determined to be a sexual psychopath, the court shall commit him or her to an institution to be confined there until released in accordance with § 22‑3809.

D.C. Code § 22-3809. Parole; discharge.

Any person committed under this chapter may be released from confinement when an appropriate supervisory official finds that he or she has sufficiently recovered so as to not be dangerous to other persons, provided if the person to be released be one charged with crime or undergoing sentence therefor, that official shall give notice thereof to the judge of the criminal court and deliver him or her to the court in obedience to proper precept.

D.C. Code § 22-3810. Stay of criminal proceedings.

Any statement filed in a criminal proceeding pursuant to subsection (b) or (c) of § 22-3804 shall stay such criminal proceeding until whichever of the following first occurs:

(1) The proceeding under this chapter to determine whether the patient is a sexual psychopath is dismissed pursuant to § 22-3807 or withdrawn;

(2) It is determined pursuant to § 22-3808 that the patient is not a sexual psychopath; or

(3) The patient is discharged from an institution pursuant to § 22-3809.

D.C. Code § 22-3811. Criminal law unchanged.

Nothing in this chapter shall alter in any respect the tests of mental capacity applied in criminal prosecutions under the laws of the District of Columbia.

D.C. Code § 22-3901. Definitions.

For the purposes of this chapter, the term:

(1) "Convicted" means having received a verdict, or a finding, of guilt in a criminal proceeding, adjudicated as being delinquent in a juvenile proceeding, or having entered a plea of guilty or nolo contendere.

(2) "HIV test" means blood testing for the human immunodeficiency virus ("HIV") or any other identified causative agent of the acquired immune deficiency syndrome ("AIDS").

(3) "Mayor" means the Mayor of the District of Columbia, or his or her designee.

(4) "Offense" means any prohibited activity involving a sexual act that includes contact between the penis and the vulva or the penis and the anus, however slight, or contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus.

(5) "Victim" means a person injured by the commission of an offense, and includes the parent or legal guardian of the victim, if the victim is a minor, or the spouse, domestic partner, or child of a victim, if the victim is deceased or incapacitated.

D.C. Code § 22-3902. Testing and counseling.

(a) Upon the request of a victim, the court shall order any individual convicted of an offense, as defined by § 22‑3901, to furnish a blood sample to be tested for the presence of HIV.

(b) The court shall promptly notify the Mayor of any court order for an HIV test. Upon receipt of a court order for an HIV test, the Mayor shall promptly collect a blood sample from the convicted individual and conduct an HIV test on the blood sample.

(c) After conducting the HIV test, the Mayor shall promptly notify the victim and the convicted individual of the results of the HIV test. The Mayor shall not disclose the results of the HIV test without also providing, offering, or arranging for appropriate counselling and referral for appropriate health care and support services to the victim and the convicted individual.

(d) The victim may disclose the results of the HIV test to any other individual to protect the health and safety of the victim, the victim's sexual partners, or the victim's family.

(e) The result of any HIV test conducted under this section shall not be admissible as evidence of guilt or innocence in any criminal proceeding.

D.C. Code § 22-3903. Rules.

(a) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue rules to implement this chapter.

(b) The rules shall include provisions regarding notification to the victim of his or her right to request an HIV test, confidentiality of the test results, free counselling for the victim and the convicted individual concerning HIV testing and HIV disease, and referral for appropriate health care and supportive services.

D.C. Code § 22-4001. Definitions.

For the purposes of this chapter, the term:

(1) "Agency" means the Court Services and Offender Supervision Agency for the District of Columbia, established pursuant to § 24-133 or, until that agency assumes its duties, the Trustee appointed under § 24-132(a).

(2) "Attends school" means being enrolled on a full-time or part-time basis in any type of public or private educational institution.

(3) (A) "Committed a registration offense" means:

(i) Was convicted or found not guilty by reason of insanity of a registration offense; or

(ii) Was determined to be a sexual psychopath under §§ 22-3803 through 22-3811.

(B) A person is not deemed to have committed a registration offense for purposes of this chapter, if the disposition described in subparagraph (A) of this paragraph has been reversed or vacated, or if the person has been pardoned for the offense on the ground of innocence.

(4) "Court" means the Superior Court of the District of Columbia.

(5) "In custody or under supervision" means:

(A) Detained, incarcerated, confined, hospitalized, civilly committed, on probation, on parole, on supervised release, or on conditional release because of:

(i) Being convicted of or found not guilty by reason of insanity of an offense under the District of Columbia Official Code; or

(ii) A sexual psychopath determination under §§ 22-3803 through 22-3811; or

(B) In any comparable status under the jurisdiction of the District of Columbia pursuant to subchapter II of Chapter 4 of Title 24, Chapter 10 of Title 24, or any other transfer agreement between the District of Columbia and another jurisdiction.

(6) "Lifetime registration offense" means:

(A) First or second degree sexual abuse as proscribed by § 22-3002 or § 22-3003; forcible rape as this offense was proscribed until May 23, 1995 by § 22-4801 [repealed]; or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) where the offense was forcible;

(B) First degree child sexual abuse as proscribed by § 22-3008 committed against a person under the age of 12 years, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by § 22-4801 [repealed] committed against a person under the age of 12 years, or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) committed against a person under the age of 12 years;

(C) Murder or manslaughter as proscribed by § 22-2101 committed before, during or after engaging in or attempting to engage in a sexual act or sexual contact, or rape as this offense was proscribed until May 23, 1995 by § 22-4801 [repealed];

(D) An attempt or conspiracy to commit an offense as proscribed by § 22-1803 or § 22-1805a or § 22-3018 or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by § 22-401, which involved an attempt, conspiracy or assault with intent to commit an offense described in subparagraphs (A) through (C) of this paragraph; and

(E) An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described in subparagraphs (A) through (D) of this paragraph if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct which is substantially similar to that described in subparagraphs (A) through (D) of this paragraph.

(7) "Minor" means a person under 18 years of age.

(8) "Registration offense" means:

(A) An offense under Chapter 30 of this title;

(B) Forcible rape, carnal knowledge or statutory rape as these offenses were proscribed until May 23, 1995 by § 22-4801 [repealed]; indecent acts with children as this offense was proscribed until May 23, 1995 by § 22-3801(a); enticing a child as this offense was proscribed until May 23, 1995 by § 22-3801(b); or sodomy as this offense was proscribed until May 23, 1995 by § 22-3802(a) where the offense was forcible or committed against a minor;

(C) Any of the following offenses where the victim is a minor: acts proscribed by § 22-1312 (lewd, indecent, or obscene acts), acts proscribed by § 22-2201 (obscenity), acts proscribed by § 22-3102 (sexual performances using minors), acts proscribed by § 22-1901 (incest), acts proscribed by § 22-2001 (kidnapping), and acts proscribed by §§ 22-2701, 22-2701.01, 22-2703, 22-2704, 22-2705 to 22-2712, 22-2713 to 22-2720, 22-2722 and 22-2723 (prostitution; pandering);

(D) Any offense under the District of Columbia Official Code that involved a sexual act or sexual contact without consent or with a minor, assaulting or threatening another with the intent to engage in a sexual act or sexual contact or with the intent to commit rape, or causing the death of another in the course of, before, or after engaging or attempting to engage in a sexual act or sexual contact or rape;

(E) An attempt or a conspiracy to commit a crime, as proscribed by § 22-1803 or § 22-1805a which involved an attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph, or assault with intent to commit rape, carnal knowledge, statutory rape, first degree sexual abuse, second degree sexual abuse, or child sexual abuse, as proscribed by § 22-401;

(F) Assault with intent to commit any other crime, as proscribed by § 22-403, or kidnapping or burglary, as proscribed by § 22-801 or § 22-2001 where the offense involved an intent, attempt or conspiracy to commit an offense described in subparagraphs (A) through (D) of this paragraph;

(G) An offense under the law of any state, under federal law, or under the law of any other jurisdiction, which involved conduct that would constitute an offense described in subparagraphs (A) through (F) of this paragraph if committed in the District of Columbia or prosecuted under the District of Columbia Official Code, or conduct which is substantially similar to that described in subparagraphs (A) through (F) of this paragraph; and

(H) Any other offense where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

(9) "Sex offender" means a person who lives, resides, works, or attends school in the District of Columbia, and who:

(A) Committed a registration offense on or after July 11, 2000;

(B) Committed a registration offense at any time and is in custody or under supervision on or after July 11, 2000;

(C) Was required to register under the law of the District of Columbia on the day before July 11, 2000; or

(D) Committed a registration offense at any time in another jurisdiction and, within the registration period, enters the District of Columbia to live, reside, work or attend school.

(10) "Sexual act" has the meaning stated in § 22-3001(8).

(11) "Sexual contact" has the meaning stated in § 22-3001(9).

(12) "State" means a state of the United States, or any territory, commonwealth, or possession of the United States.

(13) "Works" means engaging in any type of full-time or part-time employment or occupation, whether paid or unpaid, for a period of time exceeding 14 calendar days or for an aggregate period of time exceeding 30 days during any calendar year.

D.C. Code § 22-4002. Registration period.

(a) Except as set forth in subsection (b) of this section, the registration period shall start when a disposition described in § 22-4001(3)(A) occurs and continue until the expiration of any time being served on probation, parole, supervised release, conditional release, or convalescent leave, or 10 years after the sex offender is placed on probation, parole, supervised release, conditional release, or convalescent leave, or is unconditionally released from a correctional facility, prison, hospital or other place of confinement, whichever is latest, except that:

(1) The Agency may give a sex offender credit for the time the sex offender was registered in another jurisdiction;

(2) The Agency may deny a sex offender credit for any time in which the sex offender is detained, incarcerated, confined, civilly committed, or hospitalized and for any time in which a sex offender was registered prior to a revocation of probation, parole, supervised release, conditional release, or convalescent leave; and

(3) The registration period is tolled for any time the sex offender fails to register or otherwise fails to comply with the requirements of this chapter.

(b) The registration period shall start when a disposition described in § 22-4001(3)(A) occurs and continue throughout the lifetime of a sex offender who:

(1) Committed a registration offense that is a lifetime registration offense;

(2) Was determined to be a sexual psychopath under §§ 22-3803 through 22-3811;

(3) Has been subject on 2 or more occasions to a disposition described in § 22-4001(3)(A) that involved a felony registration offense or a registration offense against a minor; or

(4) Has been subject to 2 or more dispositions described in § 22-4001(3)(A), relating to different victims, each of which involved a felony registration offense or a registration offense against a minor.

(c) The Agency may suspend the requirement to register or any other requirement under this chapter during any period of time in which a sex offender is detained, incarcerated, confined, civilly committed or hospitalized in a secure facility.

(d) Other than a suspension under subsection (c) of this section, a sex offender shall not be eligible for relief from the registration requirements.

D.C. Code § 22-4003. Certification duties of the Superior Court.

(a) Upon a finding that a defendant committed a registration offense, the Court shall enter an order certifying that the defendant is a sex offender and that the defendant will be subject to registration for the period set forth in § 22-4002(a) or (b). The Court shall advise the sex offender of that person's duties under this chapter, shall order the sex offender to report to the Agency to register as required by the Agency and to comply with the requirements of this chapter, and shall require the sex offender to read and sign the order.

(b) The Court shall provide to the Agency a copy of the certification and order and such other records and information as will assist in the registration of the sex offender.

(c) In any case where the Court orders the release of a sex offender into the community following a period of detention, incarceration, confinement, civil commitment, or hospitalization, the Court shall:

(1) If the sex offender has been certified as a sex offender under subsection (a) of this section, provide the sex offender with a copy of the order required under

subsection (a) of this section and require the sex offender to read and sign the copy of the order; or

(2) If the sex offender has not been certified as a sex offender under subsection (a) of this section, follow the procedures set forth under subsection (a) of this section.

(d) The applicability of the requirements of this chapter to a person otherwise subject to this chapter does not depend on the Court's making a certification under subsection (a) of this section. The Court is required to enter an order certifying that a person is a sex offender only when --

(1) A defendant is found in a proceeding before the Court to have committed a registration offense;

(2) The Court, on or after July 11, 2000, orders the release of a sex offender into the community following a period of detention, incarceration, confinement, civil commitment, or hospitalization;

(3) The government makes a motion for such a certification and the Court grants the motion; or

(4) A motion is filed as authorized under § 22-4004 and the Court denies the motion.

D.C. Code § 22-4004. Dispute resolution procedures in the Superior Court.

(a) (1) A person, other than a person for whom a certification has been made under § 22-4003(a), may seek review of a determination by the Agency that the person is required to register or to register for life under this chapter if:

(A) The determination depends on a finding or findings which are not apparent from the disposition described in § 22-4001(3)(A), including, but not limited to, a finding not apparent from the disposition as to:

(i) Whether the victim of an offense was a minor or under 12 year of age;

(ii) Whether certain sexual acts or contacts were forcible;

(iii) Whether the exemption of § 22-4016(b) applies; or

(iv) Whether the standards under § 22-4001(6)(E) or (8)(G) for coverage offenses under the laws of other jurisdictions are satisfied; or

(B) The person asserts that the records establishing that he or she was convicted or found not guilty by reason of insanity of a registration offense or

offenses or a lifetime registration offense or offenses, or that he or she was determined to be a sexual psychopath as provided in § 22-4001(3)(A)(ii), are erroneous.

(2) In order to seek review of a determination, as authorized by paragraph (1) of this subsection, the person shall:

(A) At the time the person is first informed by the Agency that it has determined that the person must register as a sex offender or must register as a sex offender for life, provide the Agency with a notice of intent to seek review of the determination; and

(B) Within 30 days of providing the notice of intent described in subparagraph (A) of this paragraph, file a motion in the Court setting forth the facts which he or she disputes and attaching any documents or affidavits upon which he or she intends to rely. The Court shall decide the motion within 60 days of its filing.

(3) If a person fails to follow the procedures set forth in paragraph (2) of this subsection, he or she may nevertheless seek review of a determination, as authorized by paragraph (1) of this subsection, but only for good cause shown and to prevent manifest injustice, by filing a motion within 3 years of the date on which a determination is made by the Agency that the person must register as a sex offender or must register as a sex offender for life. The release and dissemination of information concerning the person, including community notification, as authorized by this chapter for sex offenders will, however, proceed unless and until the Court issues an order that the person is not required to register as a sex offender.

(b) Unless the motion described in subsection (a) of this section and attached documents and affidavits conclusively show that the person is entitled to no relief, the Court shall cause notice thereof to be served upon the prosecuting attorney.

(c) (1) The Court may, in its sole discretion, decide a motion made under subsection (a) of this section on the basis of the motion, affidavits, the files and records of the case, other written documents, proffers of the parties, or an evidentiary hearing. If the Court determines that a hearing is necessary to decide the issue or if the interests of justice otherwise require, the Court shall appoint counsel for the person if he or she is not represented by counsel and meets the financial criteria for the appointment of counsel.

(2) If the Court concludes that the person is required to register under this chapter, the Court shall follow the procedures set forth in § 22-4003(a) and (b). If the Court concludes that the person is not required to register under this chapter or is not required to register for life under this chapter, the Court shall enter an order certifying that the person is not required to register under this chapter or is not

required to register for life under this chapter and shall provide the Agency with a copy of that order.

D.C. Code § 22-4005. Duties of the Department of Corrections.

(a) Immediately before the release into the community of a sex offender in its custody or under its supervision, or immediately before the transfer of a sex offender to a halfway house, whichever is earlier, the Department of Corrections shall notify the Agency of the sex offender's proposed release, and shall provide to the Agency such records and information as will assist the Agency in carrying out its responsibilities under this chapter.

(b) Immediately before the release into the community of a sex offender in its custody or under its supervision or immediately before a sex offender transfers to a halfway house, whichever is earlier, the Department of Corrections shall inform the sex offender orally and in writing of the duty to register and of the time when and place where he or she is to appear to register and shall require the sex offender to read and sign the notice.

D.C. Code § 22-4006. Duties of the Department of Mental Health.

(a) The Agency shall have the authority to notify the Department of Mental Health in writing of those sex offenders in the custody or under the supervision of the Department of Mental Health who are required to register pursuant to this chapter.

(b) With respect to sex offenders for whom notice has been given pursuant to subsection (a) of this section, the Department of Mental Health shall inform the Agency when a sex offender:

(1) Is first granted unaccompanied access to the hospital grounds or is placed on convalescent leave;

(2) If first conditionally or unconditionally released; or

(3) Is on unauthorized leave.

(c) The information provided to the Agency by the Department of Mental Health shall include:

(1) The name of and other identifying information about a sex offender, including a physical description and photograph, if available;

(2) The action taken under subsection (b) of this section;

(3) The date on which the action was taken;

(4) To the extent known, the address at which the sex offender is living or intends to live, works or intends to work, or attends school or intends to attend school; and

(5) Administrative information that may assist the Agency or the Metropolitan Police Department in locating the sex offender.

(d) The Agency and the Metropolitan Police Department are authorized to make further disclosures of the information provided by the Department of Mental Health pursuant to this section as necessary to ensure compliance with this chapter and to prosecute violations of this chapter.

D.C. Code § 22-4007. Registration functions of the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for the registration of sex offenders under this chapter. The procedures and requirements may include, but need not be limited to, requirements that a responsible officer or official shall:

(1) Inform the sex offender of the duty to register and the penalties for failure to register;

(2) Obtain the information required for registration, which may include such information as the sex offender's name, all aliases used, date of birth, sex, race, height, weight, eye color, identifying marks and characteristics, driver's license number, social security number, PDID, DCDC, FBI and NCIC numbers, home address or expected place of residence, and any current or expected place of employment or school attendance;

(3) Obtain a photograph and set of fingerprints of the sex offender;

(4) Obtain a detailed description of the offense on the basis of which the sex offender is required to register, the victim impact statement, the date of conviction or other disposition related to the offense, and any sentence imposed;

(5) Obtain the sex offender's criminal record and a detailed description of any relevant offense;

(6) Inform the sex offender of the duty to report any change of address, and of any duty to update other registration information, and the procedures for reporting such changes;

(7) Inform the sex offender that if the sex offender moves to another state, or works or attends school in another state, then the sex offender also must report this information, and must register in any such state;

(8) Require the sex offender to read and sign a form stating that the duties of the sex offender under this chapter have been explained; and

(9) Inform a person that if the person disagrees with the determination that he or she is required to register or to register for life under this chapter, he or she must follow the procedures set forth in § 22-4004.

(b) The Agency shall have the authority to direct that a sex offender meet with a responsible officer or official at a reasonable time for the purpose of complying with any requirement adopted by the Agency under this chapter.

(c) The Agency shall have the authority to ensure that the sex offender registry is updated regularly and that outdated information is promptly removed from publicly available information.

D.C. Code § 22-4008. Verification functions of the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for verification of address information and other information required for registration under this chapter. The procedures and requirements may include, but need not be limited to, requirements that the sex offender:

(1) Verify address information or other information at least annually, or at more frequent intervals as specified by the Agency;

(2) Return address verification forms;

(3) Appear in person for purposes of verification;

(4) Cooperate in the taking of fingerprints and photographs, as part of the verification process; and

(5) Update any information that has changed since any preceding registration or verification as part of the verification process.

(b) The Agency shall have the authority to immediately notify the Metropolitan Police Department if the Agency is unable to verify the address of or locate a sex offender who is required to register under this chapter or if the sex offender otherwise fails to comply with any requirements of this chapter.

D.C. Code § 22-4009. Change of address or other information.

(a) The Agency shall have the authority to adopt and implement procedures and requirements for the reporting by sex offenders of changes in address and changes in other information required for registration.

(b) (1) The Agency shall have the authority to notify the responsible registration agency or authorities in any other jurisdiction to which a sex offender moves, or in which a sex offender works or attends school.

(2) The Agency shall have the authority to provide to the responsible agency or authorities in the other jurisdiction all information concerning the sex offender that may be necessary or useful for registration of the sex offender in that jurisdiction, or for purposes of risk assessment, community notification, or other comparable functions in that jurisdiction.

D.C. Code § 22-4010. Maintenance and release of sex offender registration information by the Court Services and Offender Supervision Agency.

(a) The Agency shall have the authority to maintain and operate the sex offender registry for the District of Columbia, including the authority to maintain the information obtained on sex offenders.

(b) The Agency shall have the authority to enter the information obtained on sex offenders into appropriate record systems and databases and:

(1) Ensure that conviction data and fingerprints are promptly transmitted to the Federal Bureau of Investigation;

(2) Participate in the National Sex Offender Registry on behalf of the District, including providing to the Federal Bureau of Investigation all information required for such participation;

(3) Ensure that information concerning sex offenders is promptly provided or made available to the Metropolitan Police Department, and to other law enforcement and governmental agencies as appropriate; and

(4) Inform the Metropolitan Police Department that a person has provided the Agency with a notice of intent to seek review of the determination that he or she must register under this chapter in conformity with § 22-4004(a)(2)(A) and that registration information on the person shall not be made publicly available unless and until the Agency informs the Metropolitan Police Department that the Court has certified that the person must register under this chapter, the person has failed to file a motion in the Court within the time allowed by § 22-4004(a)(2)(B), or the person's motion seeking review of the determination has been withdrawn or dismissed.

(c) This chapter does not authorize the Agency to make sex offender registration information publicly available, except as authorized by the rules promulgated under § 22-4011(g), or through the provision of such information to the Metropolitan Police Department or other agencies or authorities as authorized by this chapter.

D.C. Code § 22-4011. Community notification and education duties of the Metropolitan Police Department.

(a) The Metropolitan Police Department shall have the authority to release and disseminate the information obtained on sex offenders. The authorized activities of the Metropolitan Police Department under this section include, but are not limited to, active and passive notification to all or parts of the community concerning a sex offender, including but not limited to:

(1) Victims and witnesses;

(2) Public and private educational institutions, day care entities and other institutions or organizations that provide services to or employ individuals who may be victimized by a sex offender;

(3) Members of the public or governmental agencies requesting information on identified individuals for employment or foster care background checks or similar purposes;

(4) The public at large; and

(5) Any unit of the Metropolitan Police Department and other law enforcement agencies.

(b) (1) (A) Active notification under this section refers to affirmatively informing persons or entities about sex offenders. Authorized means of active notification include, but are not limited to, community meetings, flyers, telephone calls, door-to-door contacts, electronic notification, direct mailings, and media releases.

(B) Passive notification under this section refers to making information about sex offenders available for public inspection or in response to inquiries. Authorized means of passive notification include, but are not limited to, Internet postings, making registration lists and information about registrants available for inspection at police stations and other locations, and responding to written or oral inquiries in person, through the mail, by telephone, or through email or other electronic means. The Metropolitan Police Department shall develop and implement a system to make available for public inspection by means of the

Internet all or part of the portions of the sex offender registry relating to Class A and Class B offenders, as defined in paragraph (2) of this subsection.

(2) For purposes of this section:

(A) Class A offenders shall consist of sex offenders who are required to register for life as provided in § 22-4002(b);

(B) Class B offenders shall consist of sex offenders, other than Class A offenders, who are required to register for an offense against a minor, or who are required to register for sexual abuse of a ward or sexual abuse of a patient or client under Chapter 30 of this title; and

(C) Class C offenders shall consist of sex offenders other than Class A and Class B offenders.

(3) Passive notification may be carried out concerning any sex offender, except that information made available under this section for public inspection by means of the Internet shall be limited to information on Class A and Class B offenders. Active notification concerning Class A offenders may be provided to any person or entity. Active notification concerning Class B and Class C offenders may be provided to:

(A) Law enforcement agencies;

(B) Organizations that deal with or provide services to vulnerable populations or victims of sexual offenses, including but not limited to schools, day care centers, other child care and youth-serving organizations, facilities caring for or providing services to the elderly or persons with impairments, shelters, churches, and victims rights and victims services entities;

(C) Victims of and witnesses to a sex offender's crime or crimes and parents, guardians, and family member of such persons; and

(D) Any person where the Metropolitan Police Department has information indicating that the sex offender may pose a specific risk to that person, and parents, guardians, and family members of such a person.

(c) The Metropolitan Police Department shall conduct community education about the appropriate use of sex offender registration information.

(d) All publicly disseminated sex offender registration information shall contain a warning that crimes committed against sex offenders will be prosecuted to the full extent of the law.

(e) This section does not limit the authority of the Metropolitan Police Department to release information concerning any person, except that the identity of a victim of an offense requiring registration shall be treated as confidential information as provided in the regulations issued under subsection (g) of this section.

(f) If the Agency informs the Metropolitan Police Department that a person has provided the Agency with a notice of intent to seek review of the determination that he or she must register under this chapter in conformity with § 22-4004(a)(2)(A), the Metropolitan Police Department shall not release registration information on the person to the public unless and until the Agency informs the Metropolitan Police Department that the Court has certified that the person must register under this chapter, the person has failed to file a motion in the Court within the time allowed by § 22-4004(a)(2)(B), or the person's motion for review of the determination has been withdrawn or dismissed.

(g) Within 210 days of the effective date of this chapter, the Mayor shall promulgate proposed rules, in accordance with subchapter I of Chapter 5 of Title 2, to carry out all functions of this chapter. Not less than 75 days prior to the proposed effective date of the proposed rules, the Mayor shall submit them to the Council for a 30-day review period, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the proposed rules, or amendments to existing rules in whole or in part, by resolution within this 30-day review period, the proposed rules or amendments to existing rules shall be deemed approved.

D.C. Code § 22-4012. Interagency coordination.

(a) The Agency may request that any agency of the District of Columbia, of another state, or of the United States provide assistance in carrying out the functions described in this chapter.

(b) Notwithstanding any other law, all agencies of the District of Columbia shall:

(1) Have the authority to provide any requested assistance to the Agency in carrying out the functions described in this chapter;

(2) Make available to the Agency information requested by the Agency for the purpose of identifying sex offenders and otherwise carrying out its functions under this chapter; and

(3) Cooperate with the Agency in posting notices and making available information concerning registration requirements in locations where persons entering the District from other jurisdictions may apply for driver's licenses, motor vehicle tags and inspections, housing, or other public assistance or benefits.

(c) Except for the disclosure of information authorized by § 22-4006, nothing in this chapter shall supersede the non-disclosure provisions of Chapter 12 of Title 7.

D.C. Code § 22-4013. Immunity.

(a) The District of Columbia government and its agencies, officials, employees, and agents and the United States government and its agencies, officials, employees, and agents shall be immune from suit for any claim arising from any good faith act of omission under this chapter.

(b) Notwithstanding subsection (a) of this section, the District of Columbia government may be held liable for the negligent disclosure of information to the public in violation of this chapter. A person subjected to such a violation may bring suit in the Court for injunctive or declaratory relief to abate a continuing violation, and for compensatory damages. The action under this subsection shall be the exclusive remedy under the law of the District of Columbia for the negligent disclosure of information in violation of this chapter. Except as provided by this subsection or § 22‑4004(a), nothing in this chapter shall be construed to create any private right of action or give rise to any rights enforceable by injunction, mandamus, or otherwise.

(c) If the Court has made a determination under § 22‑4003 or § 22‑4004 that a person must register or must register for life, or if the Agency has made such a determination and the person has failed to seek review of the determination in conformity with § 22‑4004, then the person shall be barred in a suit under this section from contesting the determination or any fact, finding, or issue that was resolved by or necessary to the determination.

(d) Nothing in this section shall be construed as limiting any other defense or immunity that would otherwise be available to the District of Columbia government, its agencies, officials, employees, or agents or the United States government, its agencies, officials, employees, or agents, or to obligate the District of Columbia government or the United States government to represent or indemnify any official, employee, or agent where such person acts beyond the scope of his or her authority.

D.C. Code § 22-4014. Duties of sex offenders.

During the registration period, a sex offender shall, in the time and manner specified by the Agency:

(1) Register with the Agency as a sex offender;

(2) Provide any information required for registration, and cooperate in photographing and fingerprinting;

(3) Report any change of residence or other change in registration information;

(4) Periodically verify address and such other registration information as the Agency may specify, including complying with any requirement to return address verification forms or appear in person for the purpose of verification;

(5) Report if the sex offender is moving to another state, or works or attends school in another state, and register in any such state;

(6) Acknowledge receipt of information concerning the sex offender's duties under this chapter, including reading and signing a form or forms stating that these duties have been explained to the sex offender; and

(7) Meet with responsible officers and officials for the purpose of carrying out any requirements adopted by the Agency under this chapter.

D.C. Code § 22-4016. No change in age of consent; registration not required for offenses between consenting adults.

(a) This chapter does not change the age of consent for any sexual conduct under any law of the District of Columbia.

(b) Notwithstanding any other provision of this chapter, the following do not constitute registration offenses:

(1) Any sexual offense between consenting adults or an attempt, conspiracy or solicitation to commit such an offense, except for offenses to which consent is not a defense as provided in § 22-3017;

(2) Any misdemeanor offense that involved a person's sexual touching or attempted or solicited sexual touching of an undercover law enforcement officer where the person believed that the officer was an adult; and

(3) Any misdemeanor offense committed against an adult, except where the offender agrees in a plea agreement to be subject to sex offender registration requirements.

D.C. Code § 22-4017. Freedom of Information Act exception.

Except for records made public according to the regulations promulgated by the Mayor pursuant to § 22‑4011(g), no sex offender registration information shall be available as a public record under § 2‑532.

D.C. Code § 22-4131. Definitions.

For the purposes of this chapter, the term:

(1) "Actual innocence" or "actually innocent" means that the person did not commit the crime of which he or she was convicted.

(2) "Biological material" means the contents of a sexual assault examination kit, bodily fluids (including, but not limited to, blood, semen, saliva, and vaginal fluid), hair, skin tissue, fingernail scrapings, bone, or other human DNA source matter which apparently derived from the perpetrator of a crime or, under circumstances that may be probative of the perpetrator's identity, apparently derived from the victim of a crime. This definition applies equally to material that is present on other evidence, including, but not limited to, clothing, ligatures, bedding or other household material, drinking cups, or cigarettes, and to material that is recovered from evidence and thereafter maintained separately from that evidence, including, but not limited to, on a slide, on a swab, in cuttings, or in scrapings.

(3) "Crime of violence" means the crimes cited in § 23-1331(4).

(4) "DNA" means deoxyribonucleic acid.

(5) "DNA testing" means forensic DNA analysis of biological material.

(6) "Law enforcement agencies" means the Metropolitan Police Department, the Corporation Counsel for the District of Columbia, prosecutors, or any other governmental agency that has the authority to investigate, make arrests for, or prosecute or adjudicate District of Columbia criminal or delinquency offenses. The term "law enforcement agencies" shall include law enforcement agencies that have entered into cooperative agreements with the Metropolitan Police Department pursuant to § 5-133.17, to the extent the law enforcement agency is acting pursuant to such a cooperative agreement.

(7) "New evidence" means evidence that:

(A) Was not personally known and could not, in the exercise of reasonable diligence, have been personally known to the movant at the time of the trial or the plea proceeding;

(B) Was personally known to the movant at the time of the trial or the plea proceeding, but could not be produced at that time because:

(i) The presence or the testimony of a witness could not be compelled or, in the exercise of reasonable diligence by the movant, otherwise obtained; or

(ii) Physical evidence, in the exercise of the movant's reasonable diligence, could not be obtained; or

(C) Was obtained as a result of post-conviction DNA testing.

D.C. Code § 22-4132. Pre-conviction DNA testing.

(a) Prior to trial for or the entry of a plea to a crime of violence, the defendant shall be informed in open court of physical evidence seized or recovered in the investigation or prosecution of the case which may contain biological material and of the results of any DNA testing that has been performed on such evidence.

(b) A defendant charged with a crime of violence shall be informed in open court:

(1) That he or she may request or waive independent DNA testing prior to trial or the entry of a plea if:

(A) (i) DNA testing has resulted in the inclusion of the defendant as a source of the biological material; or

(ii) Under circumstances that are probative of the perpetrator's identity, DNA testing has resulted in the inclusion of the victim as a source of the biological material; and

(B) There is sufficient biological material to conduct another DNA test;

(2) That he or she may request or waive DNA testing of biological material prior to trial or the entry of a plea if the biological material has not been subjected to DNA testing; and

(3) Of the potential evidentiary value of DNA evidence in the defendant's case and the consequences of requesting or waiving DNA testing.

(c) A defendant who makes a knowing, intelligent, and voluntary waiver of DNA testing or independent DNA testing pursuant to subsection (b) of this section prior to trial or the entry of a plea is not eligible for post-conviction DNA testing under § 22-4133 unless the defendant is entitled to have the conviction to which the DNA evidence relates set aside under § 23-110 or Rule 32 of the Superior Court Rules of Criminal Procedure.

D.C. Code § 22-4133. Post-conviction DNA testing.

(a) A person in custody pursuant to the judgment of the Superior Court of the District of Columbia for a crime of violence may, at any time after conviction or adjudication as a delinquent, apply to the court for DNA testing of biological material that:

(1) Was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent or can otherwise be identified as evidence in the case;

(2) Is in the actual or constructive possession of the District of Columbia or the United States, or has been retained by any other person or entity under conditions sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect; and

(3) (A) Was not previously subject to DNA testing because DNA testing was not readily available in criminal cases in the District of Columbia at the time of conviction or adjudication as a delinquent;

(B) Was not previously subjected to the type of DNA testing being requested and the new type of DNA testing would have a reasonable probability of providing a more probative result than tests previously conducted;

(C) Was not previously subjected to DNA testing because of circumstances that would entitle the applicant to relief under § 23-110 or Rule 32 of the Superior Court Rules of Criminal Procedure; or

(D) Was not previously subjected to DNA testing because it is new evidence as defined in § 22-4131(7)(A) or (B).

(b) The application shall:

(1) Include an affidavit by the applicant, under penalty of perjury, stating that the applicant is actually innocent of the crime that is the subject of the application; provided, that the denial of an application for testing or an inconclusive result produced by DNA testing shall not be admissible in any prosecution based on the filing of a false affidavit;

(2) Identify the specific evidence for which DNA testing is requested;

(3) Set forth the reason that the requested DNA testing was not previously obtained; and

(4) Explain how the DNA evidence would help establish that the applicant is actually innocent despite having been convicted at trial or having pled guilty.

(c) Unless the application and files and records of the case conclusively show that the applicant is entitled to no relief, the court shall notify the prosecution of an application made pursuant to subsection (a) of this section and shall afford the prosecution an opportunity to respond. Upon receiving notice of an application made pursuant to subsection (a) of this section, the prosecution shall take the necessary steps to ensure that any remaining biological material that was obtained

in connection with the case or investigation is preserved pending the completion of proceedings under this section.

(d) The court shall order DNA testing pursuant to an application made under subsection (a) of this section upon a determination that the application meets the criteria set forth in subsections (a) and (b) of this section and there is a reasonable probability that testing will produce non-cumulative evidence that would help establish that the applicant was actually innocent of the crime for which the applicant was convicted or adjudicated as delinquent.
(e) (1) The cost of DNA testing ordered pursuant to subsection (d) of this section shall be paid by the District of Columbia, to the same extent provided for in § 11-2605, if the court finds that the applicant is financially unable to pay for the testing. If the applicant is financially able to pay for the testing, the cost shall be borne by the applicant.

(2) The court may appoint counsel for an applicant for DNA testing pursuant to this section who is financially unable to obtain adequate representation.

(3) The provisions of Chapter 26 of Title 11 shall apply with equal force to applications made pursuant to this section.

(f) An order granting or denying relief under this section is a final order for purposes of appeal.

D.C. Code § 22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence.

(a) A person convicted of a criminal offense in the Superior Court of the District of Columbia may move the court to vacate the conviction or to grant a new trial on grounds of actual innocence based on new evidence.

(b) Notwithstanding the time limits in any other provision of law, a motion for relief under this section may be made at any time.

(c) The motion shall set forth specific, non-conclusory facts:

(1) Identifying the specific new evidence;

(2) Establishing how that evidence demonstrates that the movant is actually innocent despite having been convicted at trial or having pled guilty; and

(3) Establishing why the new evidence is not cumulative or impeaching.

(d) (1) The motion shall include an affidavit by the movant, under penalty of perjury, stating that movant is actually innocent of the crime that is the subject of

the motion, and that the new evidence was not deliberately withheld by the movant for purposes of strategic advantage.

(2) The denial of a motion for relief under this section shall not be admissible in any prosecution based on the filing of a false affidavit.

(e) (1) Unless the motion and files and records of the case conclusively show that the movant is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

(2) The court may appoint counsel for an indigent movant under this section pursuant to Chapter 26 of Title 11.

(3) The court may entertain and determine the motion without requiring production of the movant at the hearing.

(4) A movant shall be entitled to invoke the processes of discovery available under Superior Court Rules of Criminal Procedure or Civil Procedure, or elsewhere in the usages and principles of law if, and to the extent that, the judge, in the exercise of the judge's discretion and for good cause shown, grants leave to do so, but not otherwise.

(f) A motion for relief made pursuant to this section may be dismissed if the government demonstrates that it has been materially prejudiced in its ability to respond to the motion by the delay in its filing, unless the movant shows that the motion is based on grounds which the movant could not have raised by the exercise of reasonable diligence before the circumstances prejudicial to the government occurred.

(g) (1) In determining whether to grant relief, the court may consider any relevant evidence, but shall consider the following:

(A) The new evidence;

(B) How the new evidence demonstrates actual innocence;

(C) Why the new evidence is or is not cumulative or impeaching;

(D) If the conviction resulted from a trial, and if the movant asserted a theory of defense inconsistent with the current claim of innocence, the specific reason the movant asserted an inconsistent theory at trial; and

(E) If the conviction resulted from a guilty plea, the specific reason the movant pleaded guilty despite being actually innocent of the crime.

(2) If, after considering the factors in paragraph (1) of this subsection, the court concludes that it is more likely than not that the movant is actually innocent of the crime, the court shall grant a new trial.

(3) If, after considering the factors in paragraph (1) of this subsection, the court concludes by clear and convincing evidence that the movant is actually innocent of the crime, the court shall vacate the conviction and dismiss the relevant count with prejudice.

(4) If the conviction resulted from a plea of guilty, and other charges were dismissed as part of a plea agreement, the court shall reinstate any charges of which the defendant has not demonstrated that the defendant is actually innocent.

(h) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same movant.

(i) An order entered on the motion is a final order for purposes of appeal.

D.C. Code § 22-4151. Qualifying offenses.

(a) The following criminal offenses shall be qualifying offenses for the purposes of DNA collection under the DNA Analysis Backlog Elimination Act of 2000, approved December 19, 2000 (Pub. L. No. 106-546; 114 Stat. 2726) [42 U.S.C. §§ 14135-14135e]:

(1) Any felony;

(2) Any offense for which the penalty is greater than one year imprisonment;

(3) § 22-1312(b) (lewd, indecent, or obscene acts (knowingly in the presence of a child under the age of 16 years));

(4) § 22-2201 (certain obscene activities involving minors);

(5) § 22-3102 (sexual performances using minors);

(6) § 22-3006 (misdemeanor sexual abuse);

(7) § 22-3010.01 (misdemeanor sexual abuse of a child or minor); and

(8) Attempt or conspiracy to commit any of the offenses listed in paragraphs (1) through (7) of this subsection.

(b) DNA collected by an agency of the District of Columbia shall not be searched for the purpose of identifying a family member related to the individual from whom the DNA sample was acquired.

D.C. Code § 22-4201. Technical assistance and research.

There are authorized to be appropriated to the National Institute of Justice in each fiscal year (beginning with fiscal year 1998) such sums as may be necessary for the following activities:

(1) Research and demonstration projects, evaluations, and technical assistance to assess and analyze the crime problem in the District of Columbia, and to improve the ability of the criminal justice and other systems and entities in the District of Columbia to prevent, solve, and punish crimes.

(2) The establishment of a locally-based corporation or institute in the District of Columbia supporting research and demonstration projects relating to the prevention, solution, or punishment of crimes in the District of Columbia, including the provision of related technical assistance.

D.C. Code § 22-4231. Definitions.

For the purposes of this chapter, the term:

(1) "Criminal Justice Coordinating Council" or "CJCC" means the Criminal Justice Coordinating Council for the District of Columbia that was established by and has been operating pursuant to the Memorandum of Agreement dated May 28, 1998.

(2) "Independent agency" shall have the meaning provided that term in § 1-603.01(13).

D.C. Code § 22-4232. Establishment of the Criminal Justice Coordinating Council.

There is established as an independent agency within the District of Columbia government the Criminal Justice Coordinating Council.

D.C. Code § 22-4233. Membership.

(a) The Criminal Justice Coordinating Council shall include the following members:

(1) Mayor, District of Columbia (Chair);

(2) Chairman, Council of the District of Columbia;

(3) Chairperson, Judiciary Committee, Council of the District of Columbia;

(4) Chief Judge, Superior Court of the District of Columbia;

(5) Chief, Metropolitan Police Department;

(6) Director, District of Columbia Department of Corrections;

(7) Attorney General for the District of Columbia;

(8) Director, Department of Youth Rehabilitation Services;

(9) Director, Public Defender Service;

(10) Director, Pretrial Services Agency;

(11) Director, Court Services and Offender Supervision Agency;

(12) United States Attorney for the District of Columbia;

(13) Repealed;

(14) Director, Federal Bureau of Prisons;

(15) Chair, United States Parole Commission; and

(16) Repealed;

(17) Repealed;

(18) The United States Marshal, Superior Court of the District of Columbia.

D.C. Code § 22-4234. Duties.

(a) The Criminal Justice Coordinating Council shall:

(1) Make recommendations concerning the coordination of the activities and the mobilization of the resources of the member agencies in improving public safety in, and the criminal justice system of, the District of Columbia;

(2) Cooperate with and support the member agencies in carrying out the purposes of the CJCC;

(3) Define and analyze issues and procedures in the criminal justice system, identify alternative solutions, and make recommendations for improvements and changes in the programs of the criminal justice system;

(4) Receive information from, and give assistance to, other District of Columbia agencies concerned with, or affected by, issues of public safety and the criminal justice system;

(5) Make recommendations regarding systematic operational and infrastructural matters as are believed necessary to improve public safety in District of Columbia and federal criminal justice agencies;

(6) Advise and work collaboratively with the Office of the Deputy Mayor for Public Safety and Justice, Justice Grants Administration in developing justice planning documents and allocating grant funds;

(7) Select ex-officio members to participate in Criminal Justice Coordinating Council planning sessions and subcommittees as necessary to meet the organization's goals;

(8) Establish measurable goals and objectives for reform initiatives; and

(b) The CJCC shall also report, on an annual basis, on the status and progress of the goals and objectives referenced in subsection (a)(8) of this section, including any recommendations made by the CJCC and its subcommittees to the membership of the CJCC, the public, the Mayor, and the Council. The report shall be submitted to the Mayor and the Council within 90 days after the end of each fiscal year and shall be the subject of a public hearing before the Council during the annual budget process. The CJCC's budget and future funding requests shall also be the subject of a hearing before the Council during the annual budget process.

(c) The CJCC is designated as a criminal justice agency for purposes of transmitting electronically to local, state, and federal agencies criminal-justice-related information, as required by CJCC to perform the duties specified under this section and in accordance with the terms and conditions regarding data sharing approved by the agency that is the source of the information for transmission.

D.C. Code § 22-4235. Administrative support.

(a) There are authorized such funds as may be necessary to support the CJCC.

(b) The CJCC is authorized to hire staff and to obtain appropriate office space, equipment, materials, and services necessary to carry out its responsibilities.

(b-1) Notwithstanding the provisions of Unit A of Chapter 14 of Title 2, each qualified District resident applicant shall receive an additional 10-point preference over a qualified non-District resident applicant for all positions within the CJCC unless the applicant declines the preference. This 10-point preference shall be in addition to, and not instead of, qualifications established for the position. All persons hired after February 6, 2008, shall submit proof of residency upon employment in a manner determined by the CJCC[.] An applicant claiming the

hiring preference under this section shall agree in writing to maintain bona fide District residency for a period of 7 consecutive years from the effective date of hire and shall provide proof of such residency annually to the director of personnel for the CJCC for the first 7 years of employment. Failure to maintain District residency for the consecutive 7-year period shall result in forfeiture of employment. The CJCC shall submit to the Mayor and Council annual reports detailing the names of all new employees and their pay schedules, titles, and place of residence.

(c) The CJCC shall serve as the personnel authority for all employees of the CJCC. The CJCC shall exercise this authority consistent with Chapter 6 of Title 1.

(d) The CJCC may exercise procurement authority to carry out the responsibilities of the CJCC, including contracting and contract oversight. The CJCC shall exercise this authority consistent with Chapter 3A of Title 2 [§ 2‑351.01 et seq.], except § 2‑352.01(a) shall not apply.

D.C. Code § 22-4241. Authorizing federal officials.

(a) In general. -- Each of the individuals described in subsection (b) is authorized to serve on the District of Columbia Criminal Justice Coordinating Council, participate in the Council's activities, and take such other actions as may be necessary to carry out the individual's duties as a member of the Council.

(b) Individuals described. -- The individuals described in this subsection are as follows:

(1) The Director of the Court Services and Offender Supervision Agency for the District of Columbia.

(2) The Director of the District of Columbia Pretrial Services Agency.

(3) The United States Attorney for the District of Columbia.

(4) The Director of the Bureau of Prisons.

(5) The chair of the United States Parole Commission.

(6) The Director of the United States Marshals Service.

D.C. Code § 22-4242. Annual reporting requirement.

Not later than 60 days after the end of each calendar year, the District of Columbia Criminal Justice Coordinating Council shall prepare and submit to the President, Congress, and each of the entities of the District of Columbia

government and federal government whose representatives serve on the Council a report describing the activities carried out by the Council during the year.

D.C. Code § 22-4243. Federal contribution to Criminal Justice Coordinating Council.

There are authorized to be appropriated for fiscal year 2002 and each succeeding fiscal year such sums as may be necessary for a federal contribution to the District of Columbia to cover the costs incurred by the District of Columbia Criminal Justice Coordinating Council.

D.C. Code § 22-4244. District of Columbia Criminal Justice Coordinating Council defined.

In this subchapter, the term "District of Columbia Criminal Justice Coordinating Council" means the entity established by the Council of the District of Columbia under subchapter I of this chapter.

D.C. Code § 22-4251. Comprehensive Homicide Elimination Strategy Task Force established.

(a) There is established a Comprehensive Homicide Elimination Strategy Task Force ("Task Force"). The Task Force shall consider the most effective elements of a comprehensive plan that would lead to the elimination of murder in Washington.

(b) The Task Force shall be comprised of representatives appointed by the Mayor from the government, non-profit organizations, business, schools, victims services organizations, arts, social services, religious, mental health, organized labor, Advisory Neighborhood Commission, and criminology professionals. The Mayor shall designate 2 co-chairs of the Task Force, one each from the government and non-government sectors.

(c) The Task Force shall hold at least 3 public meetings, and shall present a report to the Mayor and the Council at the end of one year.

D.C. Code §§ 22-4301 to 22-4306. Prohibition and control of net fishing in Potomac River; catching and killing bass; "person" defined; sale of bass prohibited; sale and possession of shad or herring; sale of small striped bass; use of explosives and drugs in fishing prohibited. [Repealed].

Repealed.

D.C. Code § 22-4307. Penalties. [Transferred].

Transferred.

D.C. Code §§ 22-4308 to 22-4327. Confiscation of fishing equipment used in violation of the law; sale and possession of woodcocks, squirrels, rabbits, wild chicks, wild geese, and certain game birds; inspection of premises to detect violation of game laws; trespassing for purposes of hunting; shooting or having guns in possession on a Sunday; killing or capturing game beyond District jurisdiction; compensation for persons securing convictions under game laws; killing game birds and permits therefor; hunting squirrels, chipmunks and rabbits without a permit; killing of English sparrow or wild animal suffering from disease or injury; hunting or disbursing of ducks, geese, and waterfowl; sale, possession, or purchase of certain types of birds prohibited; license for certain scientific purposes; sale of birds raised in captivity or for propagation. [Repealed].

Repealed.

D.C. Code § 22-4328. Council's authority with respect to wild animals, fishing licenses, and migratory birds; exception; "wild animals" defined.

The Council of the District of Columbia is authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession, and sale of wild animals in the District; provided, that the District assents to the provisions of the Dingell-Johnson Sport Fish Restoration Act, approved August 9, 1950 (64 Stat. 430; 16 U.S.C. §§ 777-777n), the Pittman-Robertson Wildlife Restoration Act, approved September 2, 1937 (50 Stat. 917; 16 U.S.C. §§ 669-669k), and 18 U.S.C. § 701, including a prohibition against the diversion of fishing license fees paid by sport fishermen for any purpose other than the administration of the District's fish and wildlife agency; provided further, that nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. §§ 703-712) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior; and provided further, that nothing herein contained shall authorize the Council to prohibit, restrict, regulate, or control the sale or possession of wild animals taken legally in any state, territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated.

D.C. Code § 22-4330. Seizure of hunting and fishing equipment; sale at public auction and disposal of proceeds; disposal of property not sold at auction; payment of valid liens after sale.

(a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal, or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer, or any designated

civilian employee of the Metropolitan Police Department, upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to the Mayor. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the District of Columbia Council.

(b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of the court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof.

D.C. Code § 22-4332. Delegation of functions by Secretary of the Interior and Mayor; Council to make regulations; "Mayor" and "Secretary of the Interior" defined.

(a) The Secretary of the Interior and the Mayor, respectively, are authorized to delegate any of the functions to be performed by them under the authority of this chapter.

(b) The Council of the District of Columbia is authorized to make such regulations as may be necessary to carry out the purpose of this chapter; provided, that any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under the appropriate administrative jurisdiction.

(c) As used in this chapter the word "Mayor" means the Mayor of the District of Columbia or the appropriate designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or the appropriate designated agent or agents.

D.C. Code § 22-4333. Existing authority of Secretary of the Interior not impaired.

Nothing in this chapter or in any regulation promulgated by the Council of the District of Columbia under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish

and wildlife on the land and waters in the District of Columbia under the Secretary of the Interior's administrative jurisdiction.

D.C. Code § 22-4401. Harbor regulations; authority vested in Council; compliance with federal law required; District and federal statutes and regulations supplemented. [Repealed].

Repealed.

APPENDIX VI: RESOLUTION OF DISCREPANCIES IN D.C. OFFICIAL CODE

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. The texts in the Official Code are current through April 5, 2016*.

This Appendix summarizes the resolution of the identified discrepancies between the text of Title 22 in the D.C. Official Code as of April 5, 2016 and the underlying organic legislation. Part 1 of this Appendix discusses non-substantive discrepancies and Part 2 discusses substantive discrepancies that affect the substance of the law.

For information on the review process used to identify these discrepancies, see pages 16-19 of the "Report on Enactment of D.C. Code Title 22 and Other Criminal Code Revisions" that was submitted to the Council in September 2015.

The Appendix summarizes the organic legislation and subsequent amendments. Copies of this legislation are available for review.

Part 1: Non-Substantive Discrepancies And Recommendations.

This part of the Appendix summarizes and recommends resolutions for the non-substantive discrepancies between the organic legislation and the text of Title 22 in the D.C. Official Code as of April 5, 2016.

1. **D.C. Code § 22-2701.01. Definitions for prostitution, pandering, and related statutes.**

   a. **Relevant language:** Section 22-2701.01 codifies the definitions that apply to prostitution, pandering, and related statutes in Chapter 27 of Title 22. The relevant language is in the lead-in language to the list of definitions and is italicized:

   > For the purposes of this section, §§ 22-2701, 22-2703, and 22-2723, *§ 22-2704*, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722 [list of definitions].

   b. **Discrepancy with the organic legislation:** Section 22-2701.01 states that the definitions codified in that section apply to § 22-2704, abducting or enticing a child from his or her home for purposes of prostitution. However, the organic legislation for § 22-2701.01, as modified by a subsequent amendment, incorrectly cites § 22-2704.

   A 2007 amendment to § 22-2701.01 refers to "*Section 812* of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat 1322; D.C.

Official Code § 22-2704)."[2] However, Section 812 of the 1901 Act contains the kidnapping offense, which is codified at § 22-2001, not § 22-2704. *Section 813* of the 1901 Act is codified at § 22-2704.

c. Recommendation: Keep the discrepancy so that § 22-2701.01 continues to reference § 22-2704. It appears that the 2007 amendment to § 22-2701.01 erroneously refers to Section 812, and that what was intended was Section 813. None of the terms defined in § 22-2701.01 appear in the kidnapping statute. By codifying a reference to § 22-2704, the D.C. Official Code resolves an error in the 2007 amendment.

2. D.C. Code § 22-4505. Exceptions to certain weapons statutes.

a. Relevant language: Section 22-4505 codifies the exceptions to certain weapons statutes. The relevant language is italicized:

> (a) The provisions of §§ 22-4504(a) and 22-4504(a-1) shall not apply to:
>
> [. . .]
>
> (2) Special police officers and campus police officers who carry a firearm in accordance with D.C. Official Code § 5-129.02, and rules promulgated pursuant to *that section*.

b. Discrepancy with the organic legislation: Section 22-4505(a)(2) refers to "[s]pecial police officers and campus police officers who carry a firearm in accordance with D.C. Official Code § 5-129.02, and rules promulgated pursuant to *that section*." The language in the organic act (as modified by a 2012 amendment) refers to "rules promulgated to *that act*."

c. Recommendation: Keep the discrepancy so that § 22-4505(a)(2) continues to refer to "that section." Section 5-129.02 has a specific subsection regarding rules for special police officers and campus police officers. By referring to "that section," the D.C. Official Code resolves confusion that may arise from reference to "that act" in the 2012 amendment.

3. D.C. Code § 22-3312.01. Defacing public or private property.

a. Relevant language: Section 22-3312.01 prohibits defacing public or private property. The relevant language is in the first clause and is italicized:

> *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

[2] Omnibus Public Safety Amendment Act of 2006, 2006 District of Columbia Laws 16-306 (Act 16-482), effective April 24, 2007 (emphasis added).

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.

b. Discrepancy with the organic legislation: In the organic legislation, the first clause concludes with "upon," so that the clause reads: "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 upon."

c. Recommendation: Correct the discrepancy so that the first clause of § 22-3312.01 concludes with "upon" as it does in the organic legislation. The other two clauses in the organic legislation conclude with "upon" because the statute requires the defacement "upon" property. The D.C. Official Code appears to inadvertently omit "upon" from the first clause. The revised statute would read as follows:

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 upon; 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.

4. D.C. Code § 22-2104.01. Sentencing procedure for first degree murder.

a. Relevant language: Subsection(b) of § 22-2104.01 lists the aggravating factors that determine whether the sentence for first degree murder may be increased to more than 60 years up to, and including, life imprisonment without release. The relevant language is italicized in aggravating factor number 12:

> (a) If a defendant is convicted of murder in the first degree, and if the prosecution has given the notice required under § 22-2104(a), a separate sentencing procedure shall be conducted as soon as practicable after the trial has been completed to determine whether to impose a sentence of more than 60 years up to, and including, life imprisonment without possibility of release.
>
> (b) In determining the sentence, a finding shall be made whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:
>
> [. . .]
>
> (12) At the time of the commission of the murder, the defendant had previously been convicted and sentenced, whether in a court of the District of Columbia, of the United States, or of any state, for (A) murder, (B) manslaughter, (C) any attempt, solicitation, or conspiracy to commit murder, (D) assault with intent to kill, (E) assault with intent to murder, or (F) at least twice, for any offense or offenses, described in *§ 22-4501(f) [now § 22-4501(4)]*, whether committed in the District of Columbia or any other state, or the United States. A person shall be considered as having been convicted and sentenced twice for an offense or offenses when the initial sentencing for the conviction in the first offense preceded the commission of the second offense and the initial sentencing for the second offense preceded the commission of the instant murder.

b. Discrepancy with the organic legislation: Subsection 12 of § 22-2104.01 codifies as an aggravating factor for first degree murder whether the defendant "had previously been convicted and sentenced . . . at least twice, for any offense or offenses, described in § 22-4501(f) [now § 22-4501(4)]." However, § 22-4501(4) codifies the definition of "machine gun," which does not make sense in the context of an aggravating factor that requires prior convictions.

When subsection (12) was added to § 22-2104.01 in 1995, subsection (f) of § 22-4501 codified the definition of "crime of violence." In 2009,[3] however, the list of definitions in § 22-4501 was expanded, numbered, and reorganized. This legislation

[3] Title 22 Amendment Act of 2008, 2008 District of Columbia Laws 17-390 (Act 17-524), effective May 15, 2009.

made "machine gun" subsection (4) and made "crime of violence" subsection (1). As a result, § 22-4501(4) no longer refers to the definition of "crime of violence."

c. Recommendation: Correct the text of § 22-2104.01 so that it refers to § 22-4501(1), which is the definition of "crime of violence." It appears that the text of § 22-2104.01 the official D.C. Code was not updated to reflect the reorganization of the definitions in § 22-4501. The revised statute would read as follows:

> (a) If a defendant is convicted of murder in the first degree, and if the prosecution has given the notice required under § 22-2104(a), a separate sentencing procedure shall be conducted as soon as practicable after the trial has been completed to determine whether to impose a sentence of more than 60 years up to, and including, life imprisonment without possibility of release.
>
> (b) In determining the sentence, a finding shall be made whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:
>
> [. . .]
>
> (12) At the time of the commission of the murder, the defendant had previously been convicted and sentenced, whether in a court of the District of Columbia, of the United States, or of any state, for (A) murder, (B) manslaughter, (C) any attempt, solicitation, or conspiracy to commit murder, (D) assault with intent to kill, (E) assault with intent to murder, or (F) at least twice, for any offense or offenses, described in *§ 22-4501(1)*, whether committed in the District of Columbia or any other state, or the United States. A person shall be considered as having been convicted and sentenced twice for an offense or offenses when the initial sentencing for the conviction in the first offense preceded the commission of the second offense and the initial sentencing for the second offense preceded the commission of the instant murder.

5. D.C. Code § 22-1801. "Writing" and "paper" defined.

a. Relevant language: Section 22-1801 codifies open-ended definitions for "writing" and "paper" for Title 22. The relevant language is italicized below:

> Except where otherwise provided for where such a construction would be unreasonable, the words "writing" and "paper," wherever mentioned *in this title*, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing.

b. Discrepancy with the organic legislation: The 1901 organic legislation limits the applicability of the definitions to "this chapter," instead of "this title." The referenced

chapter is chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901. The Act was the original criminal code for D.C., but the criminal code has been significantly expanded since 1901. As a result, many statutes in the current Title 22 that were not part of the original criminal code use the terms "writing" and "paper." Applying the definitions of these terms in § 22-1801 to these newer statutes may substantively affect these newer statutes.

c. Recommendation: Keep the discrepancy so that § 22-1801 continues to refer to "this title." The Criminal Code Reform Commission has reviewed all statutes in Title 22 that were not part of the original 1901 code that use the terms "writing"[4] or "paper."[5] Applying the open-ended definitions in § 22-1801 does not change the scope of or conflict with these statutes.

6. D.C. Code § 22-1802. "Anything of value" defined.

a. Relevant language: Section 22-1802 codifies an open-ended definition for "anything of value" for Title 22 and the District of Columbia Theft and White Collar Crimes Act of 1982 (1982 Theft Act). The relevant language is italicized below:

> The words "anything of value," wherever they occur *in this title* and the District of Columbia Theft and White Collar Crimes Act of 1982, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value.

[4] For "writing" specifically, the majority of the statutes use "writing" as an adjective, such as providing a notice or statement "in writing." Section 22-1801 limits the applicability of the definition to "except where . . . such construction would be unreasonable," thus permitting these statutes to be construed with "writing" as an adjective. These are the statutes in Title 22 that were not part of the original 1901 criminal code that use the term "writing." D.C. Code §§ 22-3804 (filing of statement for sexual psychopaths); 22-4005 (duties of the Department of Corrections regarding sex offenders); 22-4505 (exceptions to § 22-4504, carrying pistols or deadly or dangerous weapons; possession of weapons during crime of violence); 22-3401 (use of "District of Columbia" or similar designation by private detective or collection agency); 22-3312.05 (definitions for §§ 22-3312.01 through 22-3312.05); 22-2752 (unlawful protests targeting residences); 22-2715 (abatement of nuisance under § 22-2713 by injunction-trial; dismissal of complaint; prosecution; costs); 22-3225.01 (definitions for insurance fraud); 22-4235 (administrative support for the Criminal Justice Coordinating Council); 22-2404 (false swearing); 22-2405 (false statements); 22-2714 (abatement of nuisance under § 22-2713 by injunction- temporary injunction); 22-4006 (duties of the Department of Mental Health regarding sex offenders); 22-3223 (credit card fraud); 22-3020 (aggravating circumstances for the sexual abuse offenses); 22-1319 (false alarms and false reports; hoax weapons); 22-3226.02 (application for a certificate of registration of telephone solicitor); 22-4517 (dangerous articles); 22-1510 (making, drawing, or uttering check, draft, or order with intent to defraud); 22-3803 (definitions for sexual psychopaths). The descriptive parentheticals listed here are provided for convenience of reference and may not be identical to the statute labels in the D.C. Official Code.

[5] These are the statutes in Title 22 that were not part of the original 1901 criminal code that use the term "paper." D.C. Code §§ 22-3225.11 (limited law enforcement authority for the Commissioner of the Department of Insurance, Securities, and Banking, the Commissioner's designee, or the Commission itself); 22-3227.05 (correction of public records in cases of identity theft); 22-3241 (forgery statute using "commercial paper."). The descriptive parentheticals listed here are provided for convenience of reference and may not be identical to the statute labels in the D.C. Official Code.

b. Discrepancy with the organic legislation: The 1901 organic legislation limits the applicability of the definition to "this chapter," instead of "this title." The referenced chapter is chapter 19 of An Act to establish a code of law for the District of Columbia, approved March 3, 1901. The Act was the original criminal code for D.C., but the criminal code has been significantly expanded since 1901. As a result, many statutes in the current Title 22 that were not part of the original criminal code use the term "anything of value." Applying the definition of this term in § 22-1802 to these newer statutes may substantively affecting the law of these statutes, with the exception of the statutes in the 1982 Theft Act.

c. Recommendation: Keep the discrepancy so that § 22-1802 continues to refer to "this title." The Criminal Code Reform Commission has reviewed all statutes in Title 22 that were not part of the original 1901 code or the 1982 Theft Act that use the terms "anything of value."[6] Applying the open-ended definition in § 22-1802 does not change the scope of or conflict with these statutes.

7. D.C. Code § 22-1809. Manner of prosecutions and penalties for specified offenses.

a. Relevant language: Section 22-1809 specifies the manner of prosecution and penalties for specific offenses. The relevant language is italicized:

> All prosecutions for violations of § 22-1321 or any of the provisions of any of the laws or ordinances provided for by this act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. *Any person convicted of any violation of § 22-1321 or any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the Workhouse of the District of Columbia for a term not exceeding 6 months for each and every offense. The second sentence of this section shall not apply with respect to any violation of § 22-1312(b).*

b. Discrepancy with the organic legislation: Subsection (b) of § 22-1312 was deleted in 2011,[7] yet is still referenced in § 22-1809.

c. Recommendation: Correct the discrepancy by deleting the last sentence of § 22-1809. The revised statute would read:

> All prosecutions for violations of § 22-1321 or any of the provisions of any of

[6] These are the statutes in Title 22 that were not part of the original 1901 criminal code that use the phrase "anything of value." D.C. Code §§ 22-2701.01 (definitions for prostitution, pandering, and related statutes); 22-2701 (engaging in and soliciting for prostitution); 22-1511 (fraudulent advertising); 22-1831 (definitions for human trafficking statutes); 22-1836 (benefiting financially from human trafficking); 22-1402 (recordation of deed, contract, or conveyance with intent to extort money). The descriptive parentheticals listed here are provided for convenience of reference and may not be identical to the statute labels in the D.C. Official Code.

[7] Disorderly Conduct Amendment Act of 2010, 2010 District of Columbia Laws 18-375 (Act 18-699), effective May 26, 2011.

> the laws or ordinances provided for by this act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of § 22-1321 or any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be committed to the Workhouse of the District of Columbia for a term not exceeding 6 months for each and every offense.

Deleting the reference to subsection (b) does not change current law because subsection (b) of § 22-1312 was deleted in 2011 and there is no equivalent provision in current § 22-1312.[8]

d. Additional revisions: It should also be noted that the legislation in tile 1 of Appendix IX, which enacts Title 22, strikes the language "committed to the Workhouse of the District of Columbia" and inserts "imprisoned" instead.

Part 2: Substantive Discrepancies and Recommendations.

This part of the Appendix summarizes and recommends resolutions for the substantive discrepancies between the organic legislation and the text of Title 22 in the D.C. Official Code as of April 5, 2016. Unlike the discrepancies discussed in Part I, resolving these discrepancies may change the state of the law.

Part 2.A addresses statutes with discrepancies unique to those statutes. Part 2.B addresses the use of "Mayor" and "Council" in statutes when the organic legislation originally referred to "Commissioners" or "Board of Commissioners."

[8] The exemption for subsection (b) of § 22-1312 was added to § 22-1809 in 1953. Section 22-1312, until its deletion in 2011, read:

> (a) It shall not be lawful for any person or persons to make any obscene or indecent exposure of his or her person, or to make any lewd, obscene, or indecent sexual proposal, or to commit any other lewd, obscene or indecent act in the District of Columbia, under penalty of not more than $300 fine, or imprisonment of not more than ninety days, or both, for each and every such offense.
> (b) Any person or persons who shall commit an offense described in subsection (a), knowing he or she or they are in the presence of a child under the age of sixteen years, shall be punished by imprisonment of not more than one year, or fined in an amount not to exceed $1,000, or both, for each and every such offense.

As can be seen, subsection (b) of § 22-1312 had a higher possible penalty than subsection (a) of § 22-1312, with a maximum possible jail sentence of up to one year in jail, or a fine of up to $1,000, or both.
Given the higher penalty in subsection (b), it was necessary for § 22-1809 to exempt subsection (b) from the penalty provision permitting a 6 month sentence. Exempting subsection (b) of § 22-1312 ensured that the defendant was subject to the maximum penalty of one year in § 22-1809 if the defendant failed to pay a fine.
Subsection (b) was deleted from § 22-1312 in 2011. Disorderly Conduct Amendment Act of 2010, 2010 District of Columbia Laws 18-375 (Act 18-699), effective May 26, 2011. The current penalty for § 22-1312 is a maximum sentence of 90 days in jail, a maximum fine of $500, or both. Since the current penalty is less than the six months possible under § 22-1809, there is no need to exempt § 22-1312 from § 22-1809. Theoretically, a defendant convicted of current § 22-3312 who received a fine and failed to pay it could still be subjected to the higher 6 month penalty in § 22-1809.

Part 2.A: Statutes with Unique Discrepancies.

1. **D.C. Code § 22-1011. Neglect of sick or disabled animals.**

   a. **Relevant language:** Section 22-1011 in its current form prohibits neglecting sick or disabled animals. The relevant language is italicized:

> If any maimed, sick, infirm, or disabled animal *shall fail to receive proper food or shelter* from said owner or person in charge of the same for more than 5 consecutive hours, such person shall, for every such offense, be punished in the same manner provided in § 22-1001.

   b. **Discrepancy with the organic legislation:** The statute omits "be abandoned by its owner, or" which is present in the original 1871 organic legislation.[9]

   c. **Recommendation:** Correct the discrepancy so that § 22-1011 includes "be abandoned by its owner, or" as it does in the organic legislation. The text in the D.C. Official Code appears to erroneously omit this language. The revised statute reads as follows:

> If any maimed, sick, infirm, or disabled animal shall *be abandoned by its owner, or fail to receive proper food or shelter* from said owner or person in charge of the same for more than 5 consecutive hours, such person shall, for every such offense, be punished in the same manner provided in § 20-1001.

2. **D.C. Code § 22-4514. Possession of certain dangerous weapons prohibited; exceptions.**

   a. **Relevant language:** Subsection (a) of § 22-4514 prohibits the possession of certain dangerous weapons, but states that "machine guns, or sawed-off shotgun, knuckles, and blackjacks may be possessed" by members of certain military branches, including "the Army, Navy, Air Force, or Marine Corps of the United States." This list of institutions is the relevant language and is italicized:

> (a) No person shall within the District of Columbia possess any machine gun, sawed-off shotgun, knuckles, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, sand club, sandbag, switchblade knife, nor any instrument, attachment, or appliance for causing the firing of any firearm to be silent or intended to lessen or muffle the noise of the firing

[9] The legislative history in the D.C. Official Code lists § 22-1011 as being codified from section 10 of chapter 106 of the Acts of the Legislative Assembly, August 23, 1871. This organic act includes the language "be abandoned by its owner, or." The only other amendment listed in the legislative history for § 22-1011 is section 4 of An act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892. The D.C. Official Code Disposition tables list this 1892 amendment for § 22-1011 as well.
However, the Criminal Code Reform Commission cannot discern any change section 4 of the 1892 Act made to § 22-1011. Rather, section 4 of the 1892 Act appears to have added subsection (a) to § 22-1012. Both the legislative history and the Disposition Tables state that section 4 of the 1892 Act amended § 22-1012 as well as § 22-1011.

> of any firearms; provided, *however, that machine guns, or sawed-off shotgun, knuckles, and blackjacks may be possessed by the members of the Army, Navy, Air Force, or Marine Corps of the United States*, the National Guard, or Organized Reserves when on duty, the Post Office Department or its employees when on duty, marshals, sheriffs, prison or jail wardens, or their deputies, policemen, or other duly-appointed law enforcement officers, including any designated civilian employee of the Metropolitan Police Department, or officers or employees of the United States duly authorized to carry such weapons, banking institutions, public carriers who are engaged in the business of transporting mail, money, securities, or other valuables, wholesale dealers and retail dealers licensed under § 22-4510. . . . .

b. Discrepancy with the organic legislation: The official text of § 22-4514(a) includes the Air Force. The organic legislation, however, is limited in relevant part to "Army, Navy, or Marine Corps of the United States" and excludes the Air Force.

c. Recommendation: Keep the discrepancy so that § 22-4514(a) includes Air Force. The omission of "Air Force" in the organic act may reflect the fact that the Air Force was not established as a separate military service department until 1947.[10] By codifying a reference to the Air Force, the D.C. Official Code appears to resolve an anachronistic error in the 1932 organic statute.[11]

Part 2.B: Use of "Mayor" and "Council" in Title 22.

For the statutes in this part of the Appendix, the organic legislation refers to early bodies of local governance in the District of Columbia, like the Board of Commissioners, which have been abolished. Contrary to the actual text of the organic act (which retains the names of the abolished forms of government), the text of the official D.C. Code replaces these references with "Mayor" and "Council of the District of Columbia."

The statutes themselves were never individually amended to reflect these changes. Instead, the authority for codification counsel to make these changes comes from the legislation that abolished the earlier bodies of local District government.[12] This legislation also establishes

[10] *The U.S. Air Force*, (Jan. 18, 2006), http://www.af.mil/AboutUs/FactSheets/Display/tabid/224/Article/104613/the-us-air-force.aspx (last visited Sep. 25, 2015).

[11] Notably, while the codification counsel appears to have fixed the omission of "Air Force" in § 22-4514, 2012 legislation fixed the omission of "Air Force" in § 22-4505(a)(3). The 1932 organic act for § 22-4505 similarly omitted "Air Force": "Army, Navy, or Marine Corps of the United States, the National Guard, or Organized Reserves when on duty." A 2012 amendment revised the statute and inserted "Air Force" so that the list now reads "Army, Navy, Air Force, or Marine Corps of the United States." Firearms Amendment Act of 2012, 2012 District of Columbia Laws 19-170 (Act 19-366), effective September 26, 2012.

[12] D.C. Code § 1-207.14(a) ("Any statute, regulation, or other action in respect of (and any regulation or other action issued, made, taken, or granted by) any officer or agency from which any function is transferred by this chapter shall, except to the extent modified or made inapplicable by or under authority of law, continue in effect as if such transfer had not been made; but after such transfer, references in such statute, regulation, or other action to an officer or agency from which a transfer is made by this chapter shall be held and considered to refer to the officer or agency to which the transfer is made.").

whether a reference to an earlier body of government should be replaced with either Mayor or Council.

Part 2.B.i contains the statutes with the discrepancies, including those that are recommended for relocation from Title 22 (listed in Appendix V). Part 2.B.ii contains a detailed discussion of the changes in District government that are relevant to these discrepancies.

Part 2.B.i: The Affected Statutes.

1. **D.C. Code § 22-4328. Council's authority with respect to wild animals.**

   a. **Relevant language:** Section 22-4328 codifies the authority of the Council to legislate hunting and fishing and the taking, possession, and sale of wild animals in the District. The relevant language is italicized:

> *The Council* of the District of Columbia is authorized to restrict, prohibit, regulate, and control hunting and fishing and the taking, possession, and sale of wild animals in the District; provided, that the District assents to the provisions of the Dingell-Johnson Sport Fish Restoration Act, approved August 9, 1950 (64 Stat. 430; 16 U.S.C. §§ 777-777n), the Pittman-Robertson Wildlife Restoration Act, approved September 2, 1937 (50 Stat. 917; 16 U.S.C. §§ 669-669k), and 18 U.S.C. § 701, including a prohibition against the diversion of fishing license fees paid by sport fishermen for any purpose other than the administration of the District's fish and wildlife agency; provided further, that nothing herein contained shall authorize *the Council* to prohibit, restrict, regulate, or control the killing, capture, purchase, sale, or possession of migratory birds as defined in regulations issued pursuant to the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. §§ 703-712) and taken for scientific, propagating, or other purposes under permits issued by the Secretary of the Interior; and provided further, that nothing herein contained shall authorize *the Council* to prohibit, restrict, regulate, or control the sale or possession of wild animals taken legally in any state, territory or possession of the United States or in any foreign country, or produced on a game farm, except as may be necessary to protect the public health or safety. As used in this section the term "wild animals" includes, without limitation, mammals, birds, fish, and reptiles not ordinarily domesticated.

   b. **Discrepancy with the organic legislation:** The organic legislation referred to the "Commissioners" instead of the "Council."

   c. **Recommendation:** Keep the discrepancy so that § 22-4328 continues to refer to the "Council." As Part 2.B.ii of this Appendix discusses, under the Home Rule Act, the "Council" is the correct replacement for the "Commissioners" in the organic legislation.

2. D.C. Code § 22-4329. Inspection of certain business or vocational establishments.

a. Relevant language: Section 22-4329 authorizes inspections of certain buildings or premises. The relevant language is italicized:

> Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by *the Council* of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Council."

c. Recommendation: Keep the discrepancy so that § 22-4329 continues to refer to the "Council." As Part 2.B.ii of this Appendix discusses, under the Home Rule Act, the "Council" is the correct replacement for the "Commissioners" in the organic legislation.

3. D.C. Code § 22-4330. Seizure of hunting and fishing equipment.

a. Relevant language: Section 22-4330 authorizes inspections of certain buildings or premises. The relevant language is italicized:

> (a) All rifles, shotguns, ammunition, bows, arrows, traps, seines, nets, boats, and other devices of every nature or description used by any person within the District of Columbia when engaged in killing, ensnaring, trapping, or capturing any wild bird, wild mammal, or fish contrary to this chapter or any regulation made pursuant to this chapter shall be seized by any police officer, or any designated civilian employee of the Metropolitan Police Department, upon the arrest of such person on a charge of violating any provision of this chapter or any regulations made pursuant thereto, and be delivered to *the Mayor*. If the person so arrested is acquitted, the property so seized shall be returned to the person in whose possession it was found. If the person so arrested is convicted, the property so seized shall, in the discretion of the court, be forfeited to the District of Columbia, and be sold at public auction, the proceeds from such sale to be deposited in the Treasury to the credit of the District of Columbia. If any item of such property is not purchased at such auction, it shall be disposed of in accordance with regulations prescribed by the *District of Columbia Council*.
>
> (b) If any property seized under the authority of this section is subject to a lien which is established by intervention or otherwise to the satisfaction of the

> court as having been created without the lienor's having any notice that such property was to be used in connection with a violation of any provision of this chapter or any regulation made pursuant thereto, the court, upon the conviction of the accused, may order a sale of such property at public auction. The officer conducting such sale, after deducting proper fees and costs incident to the seizure, keeping, and sale of such property, shall pay all such liens according to their priorities, and such lien or liens shall be transferred from the property to the proceeds of the sale thereof.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Mayor" and "District of Columbia Council."

c. Recommendation: Keep the discrepancy that refers to the "Mayor." As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Mayor" is the correct replacement for this reference to the "Commissioners" in the organic legislation.

However, the reference to the "District of Columbia Council" should be replaced with the "Council of District of Columbia." As Part 2.B.ii of this Appendix discusses, the Home Rule Act abolished the "District of Columbia Council" and replaced it with the "Council of the District of Columbia."

4. D.C. Code § 22-4332. Delegation of power under game and fish laws chapter.

a. Relevant language: Section 22-4332 delineates the powers of the Council and the Mayor under the game and fish laws of the District in Chapter 43. The relevant language is italicized:

> (a) The Secretary of the Interior and *the Mayor*, respectively, are authorized to delegate any of the functions to be performed by them under the authority of this chapter.
>
> (b) The *Council of the District of Columbia* is authorized to make such regulations as may be necessary to carry out the purpose of this chapter; provided, that any regulations issued pursuant to this chapter shall be subject to the approval of the Secretary of the Interior insofar as they involve any areas or waters of the District of Columbia under the appropriate administrative jurisdiction.
>
> (c) As used in this chapter the word "*Mayor*" means the *Mayor* of the District of Columbia or the appropriate designated agent or agents, and the words "Secretary of the Interior" means the Secretary of the Interior or the appropriate designated agent or agents.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Mayor" and the "Council of the District of Columbia."

c. Recommendation: Keep the discrepancy so that § 22-4332 continues to refer to the "Mayor" and the "Council." As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Mayor" and the "Council" are the correct replacements for the "Commissioners" in the organic legislation.

5. D.C. Code § 22-4333. Authority of Secretary of the Interior.

a. Relevant language: Section 22-4333 maintains the existing authority of the Secretary of the Interior to control and manage fish and wildlife in the District. The relevant language is italicized:

> Nothing in this chapter or in any regulation promulgated by *the Council* of the District of Columbia under the authority of this chapter shall in any way impair the existing authority of the Secretary of the Interior to control and manage fish and wildlife on the land and waters in the District of Columbia under the Secretary of the Interior's administrative jurisdiction.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Council."

c. Recommendation: Keep the discrepancy so that § 22-4333 continues to refer to the "Council." As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Council" is the correct replacement for the "Commissioners" in the organic legislation.

6. D.C. Code § 22-4402. Throwing or depositing matter in Potomac River.

a. Relevant language: Section 22-4402 prohibits depositing specified matter in the Potomac River or its tributaries in the District. The relevant language is italicized:

> (a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below highwater mark, unless for the purpose of making a wharf, after permission has been obtained from *the Mayor* of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.
>
> (b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its

> tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.
>
> (c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States government.
>
> (d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not more than the amount set forth in § 22-3571.01, or by imprisonment not exceeding 6 months, or both, in the discretion of the court.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Mayor."

c. Recommendation: Keep the discrepancy so that § 22-4402 continues to refer to the "Mayor." As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Mayor" is the correct replacement for the "Commissioners" in the organic legislation.

7. D.C. Code § 22-4510. Licenses of weapons dealers.

a. Relevant language: Section 22-4510 codifies the authority of the Mayor to grant licenses for certain weapons dealers. The relevant language is italicized:

> (a) *The Mayor* of the District of Columbia may, in his or her discretion, grant licenses and may prescribe the form thereof, effective for not more than 1 year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail within the District of Columbia subject to the following conditions in addition to those specified in § 22-4509, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter:
>
> > (1) The business shall be carried on only in the building designated in the license.
> >
> > (2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.
> >
> > (3) No pistol shall be sold: (A) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by § 22-4503 to possess a pistol [now "firearm"] or is under the age of 21 years; and (B) unless the purchaser is personally known to the seller or shall present clear evidence of his or her identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same,

and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia.

(4) A true record shall be made in a book kept for the purpose, the form of which may be prescribed by *the Mayor*, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

(5) A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by *the Mayor* of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that the purchaser is not forbidden by § 22-4503 to possess a pistol [now "firearm"]. One copy of said record shall, within 7 days, be forwarded by mail to the Chief of Police of the District of Columbia and the other copy retained by the seller for 6 years.

(6) No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

(b) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Official Code [§ 47-2851.01 et seq.].

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioners" instead of the "Mayor."

c. Recommendation: Keep the discrepancy so that § 22-4510 continues to refer to the "Mayor." As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Mayor" is the correct replacement for the "Commissioners" in the organic legislation.

8. D.C. Code § 22-4515a. Manufacture, transfer, use, possession or transportation of certain devices.

a. Relevant language: Section 22-4515a prohibits the manufacture, transfer, use, possession, or transportation of a molotov cocktail, as well as other similar devices. The relevant language is italicized:

> (a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means: (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited; or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.
>
> (b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.
>
> (c) No person shall, during a state of emergency in the District of Columbia declared by *the Mayor* pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of Chapter 15 of Title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his or her residence or place of business.
>
> (d) Whoever violates this section shall: (1) for the first offense, be sentenced to a term of imprisonment of not less than 1 and not more than 5 years; (2) for the second offense, be sentenced to a term of imprisonment of not less than 3 and not more than 15 years; and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than 5 years and not more than 30 years. In the case of a person convicted of a third or subsequent violation of this section, Chapter 402 of Title 18, United States Code (Federal Youth Corrections Act) shall not apply. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the third or subsequent conviction for an offense defined by this section is a Class A felony.
>
> (e) In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

b. Discrepancy with the organic legislation: The organic legislation referred to the "Commissioner" instead of the "Mayor."

c. Recommendation: Keep the discrepancy so that § 22-4515a continues to refer to the "Mayor." The organic legislation was congressionally approved in 1970,[13] under the Reorganization Plan of 1967, but before the Home Rule Act of 1973. As Part 2.B.ii of this Appendix details, under the Home Rule Act, the "Mayor" is the correct replacement for "the Commissioner" in the organic legislation.

Part 2.B.ii: Discussion of history of D.C. Government.

In order to identify whether a statute should use "Mayor" or "Council" instead of an earlier form of D.C. government like the "Commissioners," it is necessary to trace the delegation of power under that statute through two significant restructurings of District government: 1) The reorganization in 1967; and 2) The Home Rule Act.

The Reorganization of 1967

"From 1874 to 1967, the District of Columbia was governed by a three-member Board of Commissioners appointed by the President of the United States which held both legislative and executive power."[14] Statutes that originated during this time refer to both the "Board of Commissioners" and "the Commissioners."

In 1967, the Reorganization Plan No. 3 of 1967 ("Reorganization Plan") abolished the Board of Commissioners. In its place, there was a new "District of Columbia Council," also referred to as the "Council,"[15] and a new "Commissioner of the District of Columbia," also referred to as the "Commissioner."[16]

The Reorganization Plan specifically transferred the powers of the former Commissioners to the new District of Columbia Council and new Commissioner. Two sections of the Reorganization Plan should be highlighted. Section 401 of the Reorganization Plan addresses the transfer of powers from the abolished Commissioners to the new Commissioner:

> Sec. 401. *Transfer of functions to Commissioner*. *Except as otherwise provided in this reorganization plan*, all functions of the Board of Commissioners of the District of Columbia, including all functions of the President of that Board and all functions of each other member of that Board and including also the executive power vested therein (D.C. Code, sec. 1-218), are hereby transferred to the Commissioner of the District of Columbia. (Emphasis added).

[13] The legislative history in the D.C. Official Code lists § 22-4515a as being codified from the July 8, 1932 An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes (47 Stat 654). However, the Criminal Code Reform Commission cannot find the language of § 22-4515a in the 1932 Act. Rather, the section was added to the 1932 organic act in a 1970 amendment in the District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 603).

[14] "About this Collection" on Dig DC website: http://digdc.dclibrary.org/cdm/landingpage/collection/p16808coll8.

[15] Reorganization Plan No. 3 of 1967, § 201.

[16] Reorganization Plan No. 3 of 1967, § 301.

Section 402 of the Reorganization Plan lists the specific powers of the abolished Board of Commissioners that are transferred to the new District of Columbia Council. Italics emphasize the statutes relevant to the discrepancies:

> Sec. 402. *Transfer of functions to Council*. The following regulatory and other functions now vested in the Board of Commissioners of the District of Columbia are hereby transferred to the Council (subject to the provisions of section 406 of this reorganization plan):
>
> [. . .]
>
> 12. CRIMINAL OFFENSES
>
> *(204) Restricting, prohibiting, regulating, and controlling hunting and fishing and the taking, possession, and sale of wild animals under D.C. Code, sec. 22-1628 [now 22-4328]*.
>
> *(205) Prescribing regulations regarding the disposal of property under D.C. Code, sec. 22-1630(a) (last sentence) [now 22-4330]*.
>
> *(206) Making, altering, and amending harbor regulations under D.C. Code, sec. 22-1701 [now 22-4401, which was repealed in 2015]*.
>
> [. . .]

Reading Section 401 and Section 402 of the Reorganization Plan together, if Section 402 does not specifically transfer a statute to the District of Columbia Council, Section 401 transfers that function to the new Commissioner.

The Home Rule Act

The Home Rule Act of 1973 abolished the District of Columbia Council and the Commissioner that were formed under the 1967 Reorganization.[17] The Home Rule Act replaced these institutions with the Council of the District of Columbia and the Mayor. Similar to the 1967 Reorganization Plan, the Home Rule Act specifically transferred power from the old institutions to the new.

The powers of the Council:

Under § 1-204.04, subject to specific limitations, any functions belonging to the former District of Columbia Council under the Reorganization Plan of 1967 are transferred to the new Council of the District of Columbia:

> (a) Subject to the limitations specified in §§ 1-206.01 to 1-206.04, the legislative power granted to the District by this chapter is vested in and shall be exercised by

[17] D.C. Code § 1-207.11.

> the Council in accordance with this chapter. *In addition, except as otherwise provided in this chapter, all functions granted to or imposed upon, or vested in or transferred to the District of Columbia Council, as established by Reorganization Plan No. 3 of 1967, shall be carried out by the Council in accordance with the provisions of this chapter*.[18]
>
> [. . .]
>
> The powers of the Mayor:

Under § 1-204.22, subject to specific limitations, any functions belonging to the former Commissioner under the Reorganization Plan of 1967 are transferred to the Mayor:

> The executive power of the District shall be vested in the Mayor who shall be the chief executive officer of the District government. *In addition, except as otherwise provided in this chapter, all functions granted to or vested in the Commissioner of the District of Columbia, as established under Reorganization Plan No. 3 of 1967, shall be carried out by the Mayor in accordance with this chapter*. The Mayor shall be responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control, including but not limited to the following powers, duties, and functions . . . .[19]

As can be seen from the above discussion, a statute's designation under the Reorganization Plan of 1967 determines whether a statutory function is delegated to the Council or to the Mayor under the Home Rule Act and in the current statutory text. None of the exceptions referenced in § 1-204.04 or § 1-204.22 affect the statutes discussed in this Appendix.

The chart and discussion on the next page summarize the delegation of authority to the Council and the Mayor through the changes in the District government.

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[18] D.C. Code § 1-204.04(a) (emphasis added). The grant of legislative power is very broad:

> Except as provided in §§ 1-206.01 to 1-206.03, the legislative power of the District shall extend to all rightful subjects of legislation within the District consistent with the Constitution of the United States and the provisions of this chapter subject to all the restrictions and limitations imposed upon the states by the 10th section of the 1st article of the Constitution of the United States.

D.C. Code § 1-203.02.

[19] D.C. Code § 1-204.22 (emphasis added).

Summary:

This chart summarizes the transfer of statutory functions from the initial Board of Commissioners to the current statutes.

Initial Designation	**Designation under Reorganization Plan of 1967**	**Designation under Home Rule Act of 1973**	**Correct reference in current legislation**
Board of Commissioners or Commissioners	District of Columbia Council, if specifically designated under § 402 (§ 402)	Council of the District of Columbia, unless otherwise provided (D.C. Code § 1-204.04)	Council of the District of Columbia
Board of Commissioners or Commissioners	The Commissioner, unless otherwise designated under the Plan (§ 401)	Mayor, unless otherwise provided (D.C. Code § 1-204.22)	Mayor

Of the statutes that have discrepancies with "Commissioners" or "Board of Commissioners" in the organic statutes, only two, § 22-4328 and the last sentence of § 22-4330(a), were specifically transferred to the former District of Columbia Council under Section 402 of the Reorganization Plan of 1967. Under the Home Rule Act, these statutes were transferred to the new Council of the District of Columbia and the current references to the Council of the District of Columbia are correct.

Some of the statutes that currently refer to the Council of the District of Columbia were not specifically transferred to the former District of Columbia Council under Section 402 of the Reorganization Plan: § 22-4329, § 22-4332(b), and § 22-4333. However, these statutes refer generally to the Council's authority under the Game and Fish Laws chapter to make regulations, which is established in § 22-4328 and § 22-4330 and was transferred to the new Council of the District of Columbia under the Home Rule Act. The current references to the Council of the District of Columbia in § 22-4329, § 22-4332(b), and § 22-4333 are correct

The remaining statutes, the first part of § 22-4330(a), subsections (a) and (c) of § 22-4332, § 22-4402, § 22-4510, and § 22-4515a,[20] were not specifically transferred to the former District of Columbia Council under Section 402 of the 1967 Reorganization Plan. By default, under Section 401 of the Reorganization Plan, these statutes were transferred to the former

[20] Section 22-4515a was actually enacted in 1970 under the Reorganization Plan of 1967. Thus, its organic legislation refers to "the Commissioner." It should be noted that the legislative history in the D.C. Official Code lists § 22-4515a as being codified from the July 8, 1932 An Act to control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes (47 Stat 654). However, the Criminal Code Reform Commission cannot find the language of § 22-4515a in the 1932 Act. Rather, the section was added to the 1932 organic act in a 1970 amendment in the District of Columbia Court Reform and Criminal Procedure Act of 1970 (84 Stat. 603).

Commissioner. Under the Home Rule Act, the Mayor replaced the Commissioner. The current references to the Mayor in these statutes are correct.

APPENDIX VII: CHARGING AND SENTENCING STATISTICS

Appendix VII provides the number of counts charged and sentenced from 2009-2014 for all offenses in the Report that the Criminal Code Reform Commission recommends be substantively amended, repealed, or codified. This appendix includes all obsolete offenses recommended for repeal; all common law offenses to be codified; and all offenses identified as unconstitutional. This appendix does not include statutes that the Criminal Code Reform Commission has recommended be technically amended or moved as part of Title 22 enactment. This appendix was based on data provided by the D.C. Sentencing Commission using its Guidelines Reporting Information Data System (GRID System) received on March 10, 2014 (covering 2009-2013), and June 2, 2015 (covering 2014].[21]

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
11-944	Contempt	5	16	30	26	28	23	29	11	17	0	0	0
22-1003	Rest, water and feeding for animals transported by railroad company.	0	0	0	0	0	0	0	0	0	0	0	0

[21] It should be noted that the GRID System only includes adult information; it does not include juvenile information. It should also be noted that the Sentencing Commission gave notice in its 2015 Annual Report that some data had not been properly accounted for in previously provided data request responses: *See* page 33 of the *D.C. Sentencing Commission and Criminal Code Revision Commission 2015 Annual Report*, available at: http://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%202015%20Website%205-2-16.pdf (last accessed 10/27/16). The Sentencing Commission also has given notice that there may be data reliability and validity issues with the supplied GRID data for 2009 and misdemeanors. The Criminal Code Reform Commission has requested updated charging and sentencing data from the Sentencing Commission to confirm that the offenses identified as archaic and unused in this Report were not charged in 2010-2015, but has not yet received any data.

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
22-1012(a)	Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.	0	0	0	0	0	0	0	0	0	0	0	0
22-1102	Refusal or neglect of guardian to provide for child under 14 years of age	0	0	0	0	0	0	0	0	0	0	0	0
22-1301	Affrays	0	0	0	0	0	0	0	0	0	0	0	0
22-1308	Playing games in streets	0	0	0	0	0	0	0	0	0	0	0	0
22-1714	Immunity of witnesses; record	0	0	0	0	0	0	0	0	0	0	0	0
22-1803	Attempts to commit a crime	0	0	0	0	0	0	0	0	0	0	0	0
22-1805	Aiding and abetting	0	0	0	0	0	0	0	0	0	0	0	0
22-1805a	Conspiracy	18	47	22	39	65	57	105	42	76	25	65	31
22-1806	Accessories after the fact	0	0	0	0	0	0	0	0	0	0	0	0
22-1807	Punishment for offenses not covered by provisions of Code	0	0	0	0	0	0	0	0	0	0	0	0

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
22-2105	Manslaughter	12	39	9	33	25	30	22	26	28	24	24	26
22-2107	Solicitation of murder or other crimes of violence	0	0	0	0	0	0	0	0	0	0	0	0
22-2511	Presence in a motor vehicle containing a firearm. [Repealed]	0	0	7	0	32	12	35	8	40	0	2	0
22-2722	Keeping bawdy or disorderly houses	0	0	0	0	1	0	2	2	0	1	0	2
22-3303	Grave robbery; buying or selling dead bodies	0	0	0	0	0	0	0	0	0	0	0	0
22-3307	Destroying or defacing public records	0	0	0	0	0	0	0	0	0	0	0	0
22-3309	Destroying boundary markers	0	0	0	0	0	0	0	0	0	0	0	0
22-3313	Destroying or defacing building material for streets	0	0	0	0	0	0	0	0	0	0	0	0
22-3314	Destroying cemetery railing or tomb	0	0	0	0	0	0	0	0	0	0	0	0

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
22-3319	Placing obstructions on or displacement of railway tracks	0	0	0	0	0	0	0	0	0	0	0	0
22-3320	Obstructing public road; removing milestones	0	0	0	0	0	0	0	0	0	0	0	0
22-401	Assault w/intent to kill, rob, poison, commit 1st deg. Sexual abuse, 2nd deg. Sexual abuse or child sexual abuse	59	98	47	67	127	95	139	67	217	50	216	45
22-402	Assault with intent to commit mayhem or with a dangerous weapon	181	156	1555	154	316	137	339	181	405	142	421	170
22-403	Assault with intent to commit any other offense	2	0	3	1	4	0	7	0	3	0	4	2
22-404	Assault or threatened assault in a menacing manner; stalking	2831	1433	2658	1434	3987	1460	4285	1463	4476	1307	4462	1386
22-406	Mayhem or malicious disfiguring	0	4	1	3	7	4	4	8	28	2	14	0

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
22-407	Threats to do bodily harm	863	386	809	400	1184	383	1258	396	1349	354	1478	413
22-4512	Alteration of Identifying Marks of Weapons	0	0	0	0	0	0	0	0	0	0	0	0
22-4514	Possession of certain dangerous weapons prohibited; exceptions	689	255	539	240	851	239	953	234	1007	235	1028	220
2-381.09	Penalties for false representations	0	0	0	0	0	0	0	0	0	0	0	0
3-206	Unlawful acts	0	0	0	0	0	0	0	0	0	0	0	0
34-701	False statements in securing approval for stock issue	0	0	0	0	0	0	0	0	0	0	0	0
34-707	Destruction of apparatus or appliance of Commission	0	0	0	0	0	0	0	0	0	0	0	0
36-153	Unauthorized use, defacing, or sale of registered vessel	0	0	0	0	0	0	0	0	0	0	0	0

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
36-154	Use or possession of vessel without purchase of contents prima facie evidence of unlawful use.	0	0	0	0	0	0	0	0	0	0	0	0
4-125	Assisting child to leave institution without authority; concealing such child; duty of police	0	0	0	0	0	0	0	0	0	0	0	0
45-401	Reception Statute	0	0	0	0	0	0	0	0	0	0	0	0
47-102	Total indebtedness not to be increased	0	0	0	0	0	0	0	0	0	0	0	0
48-904.09	Attempt, conspiracy for drug offenses	0	0	0	0	0	0	0	0	0	0	0	0
7-2506.01	Unlawful Possession of Ammunition	376	165	342	159	558	135	623	150	703	184	759	184
7-2506.01(b)	Possession of Large Capacity Ammunition Feeding Device	52	7	23	7	21	0	6	1	0	0	0	0
8-304	Plant diseases and insect pest control.	0	0	0	0	0	0	0	0	0	0	0	0
8-305	Penalty.	0	0	0	0	0	0	0	0	0	0	0	0

Statute	Name	'14 Ch.	'14 Sent.	'13 Ch.	'13 Sent.	'12 Ch.	'12 Sent.	'11 Ch.	'11 Sent.	'10 Ch.	'10 Sent.	'09 Ch.	'09 Sent.
9-431.01	Cutting Trenches in Highways	0	0	0	0	0	0	0	0	0	0	0	0
9-431.02	Penalty; prosecution	0	0	0	0	0	0	0	0	0	0	0	0
9-433.01	Permit required; exceptions	0	0	0	0	0	0	0	0	0	0	0	0
9-433.02	Penalty; prosecution	0	0	0	0	0	0	0	0	0	0	0	0

APPENDIX VIII: COMMENTS RECEIVED FROM ADVISORY GROUP

Advisory Group comments are listed here in the order of their receipt.

Comments of U.S. Attorney's Office of the District of Columbia on D.C. Criminal Code Commission Phase I Materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes)

Submitted Jan. 11, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on the Phase I materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes) provided for Advisory Group review:

- Page 17 (Final paragraph that begins "Enactment of Title 22 . . ." and FN48)
  - This paragraph states that "[e]stablished canons of construction state that legislative intent is the primary principle of statutory interpretation . . . ."
  - However, this language (and accompanying text of footnote 48) relies on old cases that give legislative history more weight.
  - The current trend is to rely exclusively on the plain meaning of the text, if it is clear.
  - It is only if there is some resulting ambiguity or absurdity that the court looks to legislative history.
  - The language here, therefore, likely will not change how the District of Columbia Court of Appeals proceeds. *See, e.g., In re Smith*, 138 A.3d 1181, 1185 n.8 (D.C. 2016) (citing *In re Al–Baseer*, 19 A.3d 341, 344 (D.C.2011) ("The court's task in interpreting a statute begins with its language, and, where it is clear, and its import not patently wrong or absurd, our task comes to an end.").
- Page 18 (Final paragraph before Section VII (Conclusion) and FN 49)
  - This paragraph states that "[b]y adopting this language in Appendix IX, the Council would explicitly reject any argument that prior court rulings construing

the language of uncnacted Title 22 statutes are being given tacit or explicit legislative approval through enactment."

- This refers to the prior paragraph which states that "Title 22 . . . is enacted into law . . . with no substantive change to law intended except as otherwise noted in the 'Statement of Legislative Intent for Enactment of Title 22' included in this bill."

- N.B.: The court still could construe reenactment as approval, by interpreting the "intends no substantive change" language as meaning "no substantive change" to the statute *as it has been interpreted* by the Court *at the time of enactment.*

➢ APPENDICES

- IV: Common Law Offenses List & Text; Part 2 (Offenses w/ Only a Penalty Codified)

  - What will the basis for "elementizing" the substance of these offenses be? The Advisory Group should agree and recommend to the Commission that any such elementizing be based, as an initial matter, on the relevant jury instruction crafted by the "Redbook Committee" (to the extent that any such instruction exists) that provides guidance as to the elements of the particular uncodified offense.

- V: Relocation of Title 22 Provisions List and Text

  - There is no objection to reorganization of various sections to reflect a more sensible structure.

  - However, the Commission should exercise great care when reorganizing evidentiary provisions (in particular) so as to avoid important provisions getting "lost" (*e.g.*, D.C. Code Section 22-3021, regarding the inadmissibility of reputation or opinion evidence of a victim's past sexual behavior).

  - Cross-references within Title 22 -- as well as reorganization by subject, category, statute, etc., when provisions are moved to other titles -- should be employed.

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	January 13, 2017
Re:	Comments on First Draft of Report #1: Recommendations for Enactment of D.C. Code title 22 and Other Changes to Criminal Statutes

In general, the Public Defender Service approves the recommendations in the first draft of Report #1. The Report and accompanying Appendices reflect the numerous hours of painstaking work done by the D.C. Sentencing Commission Code Revision Project staff in 2014 and 2015 and the considerable work done by the Commissioners working on the Code Revision Project. PDS particularly appreciates that the D.C. Criminal Code Reform Commission is not merely resubmitting to the D.C. Council the September 2015 report that was unanimously approved the D.C. Sentencing Commission. Rather, the Criminal Code Reform Commission has revisited its work and makes a number of additional recommendations. For example, the September 2015 report recommended deleting D.C. Code § 22-3306 as one of many archaic and unused offenses in the D.C. Code but now recognizes that such deletion may conflict with the Home Rule Act.

Report #1 is an important first step by the Commission towards the fulfillment of its mandate. Specifically, the Report and accompanying Appendices satisfy or make considerable progress towards completing the Commission's mandate that it identify criminal statutes that have been held unconstitutional and recommend their amendment; identify crimes defined in common law that should be codified; organize existing criminal statutes in a logical order; and most notably, enable the adoption of Title 22 as an enacted title of the D.C. Official Code. PDS notes however that the more important and, not coincidentally, more difficult work of the Commission is still to come. Revising the language of the District's criminal statutes to describe all elements, including mental states, that must be proven; reducing unnecessary overlap and gaps between criminal offenses; and adjusting penalties, fines, and the gradation of offenses to provide for proportionate penalties are, in the view of PDS, the most critical aspects of the Commission's mandate and must be done if the District is to have a fair, just and modern criminal justice system.

PDS suggests the following edits to the Report:

1. In the first sentence of footnote 16 insert a space between "to" and the section symbol,"§," for statute 36-153.

2. In Part A. Findings, of Section II, Technical Amendments to Correct Outdated Language,[1] change the word "discussed" to "stated," to have that sentence read, "The …Commission has identified thirty-seven statutes in eleven titles of the D.C. Code that contain outdated language within the above stated parameters." The paramaters are not "discussed" in the preceding paragraph, only outlined. Any discussion, or explanation, of the parameters would seem to be in the September 2015 report that was submitted to the Council, which the preceding paragraph references.

3. In Subpart 1, D.C. Code § 7-2506.01, of Part A., Findings, of Section III, Unconstitutional Statutes to Amend,[2] state what the extra element is. The explanation need not be in the text and can be relegated to a footnote, but the report is unnecessarily vague without it.

4. Delete the extra word in the text of the sentence containing footnote 50. "Established judicial canons of construction….[50] and the proposed enactment legislation ~~in~~ flatly states in the 'Statement of Legislative Intent…."

[1] At page 8.

[2] At page 10.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: January 13, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report #1 Recommendations for Enactment and Other Changes

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #1 Recommendations for Enactment and Other Changes (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

Archaic and Unused Offenses in Title 22

Though OAG does not oppose repealing the recommended provisions contained in Appendix I, we do not agree that just because an offense had not been charged in adult court in the past 7 years means that the offense is necessarily archaic or unused.[2]

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

[2] See footnote 8 of the Report which states that the CCRC reviewed two data sets which included 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015.

Footnote 13, on page 7 of the Report, observes that five of the offenses proposed to be eliminated are closely related to the contemporaneous Malicious Destruction of Property statute, and therefore suggests that the legislative history of the bill associated with the Report should indicate that the current Malicious Destruction of Property statute - and therefore the codified version of it in this bill - does not automatically exclude the conduct covered by those five statutes. Since the purpose of this history appears to state the current Council's interpretation of existing law, we believe that that this observation in the legislative history may carry little interpretive weight. *See, e.g., Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("subsequent legislative history is a hazardous basis for inferring the intent of an earlier Congress") (internal quotation omitted). We, therefore, recommend that the text of the bill be amended to explicitly state that conduct that had previously been prohibited by these provisions are covered by the remaining provision.

In Appendix I, Archaic and Unused Offenses and Provisions List & Text, the Report recommends striking the phrase ", the Women's Bureau of the Police." from D.C. Official Code § 22-2703.[3] OAG objects to the mere striking of the phrase and instead suggests that the phrase be replaced with a reference to the Metropolitan Police Department (MPD). D.C. Official Code § 22-2703 permits the court to impose conditions upon a person who is found guilty of engaging in prostitution or soliciting for prostitution in violation of D.C. Official Code § 22-2701. Section 22-2703 states "…The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant." Removal of the reference to "the Women's Bureau of the Police Department" would remove law enforcement's authorization and direction to perform certain duties. Replacing "the Women's Bureau of the Police Department" with a reference to MPD would modernize the language contained in this Code provision while preserving the current state of the law.

[3] D.C. Official Code § 22-2703, Suspension of sentence; conditions; enforcement, states, "The court may impose conditions upon any person found guilty under § 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include an order to stay away from the area within which the offense or offenses occurred, submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant."

Technical Amendments to Correct Outdated Language

In Appendix II: Technical Amendments List & Text there is a list of Technical Amendments to Statutes in Title 22. See page 10 of Appendices I-VIII. Included in the list is a recommendation pertaining to D.C. Official Code § 22-811, Contributing to the delinquency of a minor. The recommendation is to strike subsection (e) delegating prosecutorial authority to the Attorney General or his or her assistants. OAG would ask that the Commission remove this recommendation. We believe that do to an early Congressional grant of authority, OAG has jurisdiction to prosecute misdemeanor offenses under this provision.

Common Law Offenses to Repeal and Further Codify

The Report recommends that the Council repeal the common law offense of "disturbing public worship." While OAG does not object to its repeal, the Report should note that D.C. Official Code § 22-1314 initially codified this offense and, upon its repeal was replaced with D.C. Official Code § 22-1321 (b). D.C. Official Code § 22-1321 (b) states, " It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding."

Relocation of Title 22 Provisions to Other D.C. Code Titles

The Report states, on page 15, that "In addition, § 22-4331, which codifies a penalty for violations of Game and Fish laws in Chapter 43 of Title 22 is no longer recommended for removal because it is a penalty provision. The remainder of Chapter 43 is still recommended for removal. " While OAG agrees that this penalty provision should not be moved, we also believe that D.C. Official Code § 22-4329 also should not be moved. This provision makes it an offense for a person to refuse to permit an inspection.[4] The penalty for refusing to permit an inspection is found in § 22-4331 and, so, should also be kept in Chapter 43. A conforming amendment would also have to be made to § 22-4329, similar to the conforming amendment needed for § 22-4331, that would replace the language "for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter" with the citation to wherever the remainder of Chapter 43 is moved.

Enactment of Title 22

[4] D.C. Official Code § 22-4329, Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours, states "Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

The discussion concerning enactment of Title 22 indirectly cites language that is codified in the United States Code and describes the status of the D.C. Official Code. See pages 15-18 of the Report. The discussion states that Title 22 will remain a prima facie statement of District law unless it is enacted into the Code, but the discussion then references statutory language (and case language) stating that the D.C. Official Code "*shall . . .* establish prima facie the laws" of the District. 1 U.S.C. § 204(b) (cited on page16, footnote. 48). The Council's authority to enact titles of the D.C. Official Code into positive law is, to OAG's understanding, long settled, but to avoid any confusion, it may be beneficial to accompany that statutory and case cite with a brief citation to the Council's legislative power.

Page 18 of the Report quotes section 102 of the bill as saying "Title 22 of the District of Columbia Official Code is enacted into law to read as follows, *with no substantive change to law intended, except as otherwise noted in the "Statement of Legislative Intent for Enactment of Title 22" included in this bill.*" The actual draft bill does not contain the italicized language and, so, should be amended accordingly.

Page 18 also discusses the significance of statements about the intent of the bill. It states that by adopting these statements, the bill would "explicitly reject any argument that prior court rulings construing the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment." That is not correct. The only way for provisions of Title 22 to mean the same thing post-enactment that they meant pre-enactment is for controlling judicial constructions of their pre-enactment language to carry through into the enacted bill. Stripping away controlling judicial interpretations of a provision would be tantamount to amending that provision.

COMMENTS ON THE DRAFT BILL

The very beginning of the bill, prior to any numbered sections, includes a "Statement of Legislative Intent." A Statement of Legislative Intent would be beneficial as part of this bill's legislative history, but in order for it be incorporated into the bill, it should be given a section number, formatted according to the "Council of the District of Colombia Legislative Drafting Manual", and placed after the "Be It Enacted" portion.

The bill's amendment to D.C. Official Code § 50-1401.01(a)(3) would replace several references to "him" with references to "him or her." It would leave untouched, however, the final phrase "whenever demand is made by a police officer such instructor shall display *to him* such certificate." For consistency, this should be replaced with "to him *or her*."

The bill repeals D.C. Official Code § 36-153, Unauthorized use, defacing, or sale of registered vessel. The bill also makes a conforming amendment to § 36-154, Use or possession of vessel without purchase of contents prima facie evidence of unlawful use. The conforming amendment replaces the reference to § 36-153 with the penalty provision that is currently contained within that Code section. While making this conforming amendment, OAG suggests that the title to § 36-154 be amended. Once § 36-153 is repealed, § 36-154 would be a

standalone Code provision. While this offense does establish when there is prima facie evidence of unlawful use, it also establishes an offense. We, therefore, recommend that the Title of this offense be shortened and renamed, "Use or possession of vessel without purchase."

APPENDIX IX: ENACTMENT OF TITLE 22 AND CRIMINAL CODE AMENDMENTS ACT OF 2017

Note: *All statute texts are taken from the online LexisNexis District of Columbia Official Code. At the time this draft bill was prepared in October 2016, the texts in the Official Code were current through April 5, 2016. The text of the enacted title 22 reflects the revisions discussed in the Report #1*: *Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes (Report): 1) Repeal of archaic and unused offenses; 2) Technical amendments; 3) Amendment of statutes held to be unconstitutional; 4) Resolution of discrepancies between the text of the D.C. Official Code and the underlying organic legislation; and 5) Relocation of numerous statutes from Title 22.*

Before the Council can vote on title 1 of the bill in this Appendix IX, the Council's Office of the General Counsel will need to update the bill to reflect any criminal laws or amendments that have become effective since April 5, 2016, to the date of the Council vote to enact Title 22, as well as any conforming amendments necessary to accommodate the relocated titles (discussed further on page 14 of the Report. In addition, footnotes in the bill highlight potential drafting issues for the Office of the General Counsel to review.

***

_____

A BILL

_____

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

_____

To enact Title 22, "Criminal Offenses and Penalties," of the District of Columbia Official Code into law and repeal the underlying organic legislation without effecting substantive change to the law unless noted in the "Statement of Legislative Intent" that is included in this bill; to make technical amendments to certain criminal statutes to correct outdated institutions, gendered language, and prosecutorial jurisdiction; to amend statutes that have been held by the District of Columbia Court of Appeals as unconstitutional; and to abolish common law offenses in the District by amending the reception statute in Title 45.

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Statement of Legislative Intent

The Council of the District of Columbia finds it necessary to enact Title 22 of the District of Columbia Official Code. The Council does not intend enactment of Title 22 to substantively change the laws therein, except for the specific changes noted in this Statement of Legislative Intent. Nor does the Council intend enactment of Title 22 to indicate legislative approval or disapproval of any court decisions construing the laws therein.

1. The Council intends to repeal the following archaic offenses in Title 22. The text of Title 22 in the "Title 22 Enactment Act of 2016" reflects these deletions:

(1) D.C. Official Code § 22-1003, titled "Rest, water and feeding for animals transported by railroad company."

(2) Subsection (a) of D.C. Official Code § 22-1012, titled "Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

(3) D.C. Official Code § 22-1308, titled "Playing games in streets."

(4) D.C. Official Code § 22-3303, titled "Grave robbery; buying or selling dead bodies."

(5) D.C. Official Code § 22-3320, titled "Obstructing public road; removing milestones."

2. The Council intends to make the following technical amendments to the statutes in Title 22. The text of Title 22 in the "Title 22 Enactment Act of 2016" reflects these amendments:

(1) In D.C. Official Code § 22-302, striking the word "his" and inserting the phrase "his or her" in its place.

(2) In D.C. Official Code § 22-722(a)(5), striking the second reference to "his" and inserting the phrase "his or her" in its place.

(3) In D.C. Official Code § 22-935, striking the word "he" both times it appears and inserting the phrase "he or she" in its place.

(4) In D.C. Official Code § 22-1102, striking the phrase "in the Workhouse of the District of Columbia."

(5) In D.C. Official Code § 22-1311:

A. In subsection (a):

i. Striking the word "he" and inserting the phrase "he or she" in its place.

ii. Striking the word "him" and inserting the phrase "him or her" in its place.

B. In subsection (b), striking the word "he" and inserting the phrase "he or she" in its place.

(6) In D.C. Official Code § 22-1317, striking the phrase "City of Washington" and inserting the phrase "District of Columbia" in its place.

(7) In D.C. Official Code § 22-1406, striking the word "himself" and inserting the phrase "himself or herself" in its place.

(8) In D.C. Official Code § 22-1702, striking the word "his" the second time it appears and inserting the phrase "his or her" in its place.

(9) In D.C. Official Code § 22-1809, striking the phrase "committed to the Workhouse of the District of Columbia" and inserting the word "imprisoned" in its place.

(10) In D.C. Official Code § 22-1810, in the title of the statute, striking the word "his" and inserting the phrase "his or her" in its place.

(11) In D.C. Official Code § 22-2305, striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

(12) In D.C. Official Code § 22-2703, striking the phrase "the Women's Bureau of the Police" and inserting the phrase "the Metropolitan Police Department" in its place.

(13) In D.C. Official Code § 22-3020(c), striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

(14) In D.C. Official Code § 22-3214.01(c)(2), striking the word "his" both times it appears and inserting the phrase "his or her" in its place.

(15) In D.C. Official Code § 22-3225.05(c), striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

(16) In D.C. Official Code § 22-3226.01(8), striking the word "himself" and inserting the phrase "himself or herself" in its place.

(17) In D.C. Official Code § 22-3318:

A. Striking the phrase "City of Washington" and inserting the phrase "District of Columbia" in its place.

B. Striking the phrase "at hard labor" and inserting the word "for" in its place.

(18) In D.C. Official Code § 22-3403:

A. Striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

B. Striking the phrase "Assistant Corporation Counsel" and inserting the phrase "Assistant Attorney General for the District of Columbia."

C. Striking the last sentence.

(20) In D.C. Official Code § 22-4331(b):

A. Striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

B. Striking the phrase "Assistant Corporation Counsel" and inserting the phrase "Assistant Attorney General for the District of Columbia" in its place.

(21) In D.C. Official Code § 22-4504.02(a), striking the word "he" both times it appears and inserting the phrase "he or she" in its place.

3. The Council intends to make the following substantive revisions to the laws in Title 22. The text of Title 22 in the "Title 22 Enactment Act of 2016" reflects these revisions:

(1) In D.C. Official Code § 22-1011, inserting the phrase "be abandoned by its owner, or", which appears in the organic legislation, but is missing from the current text of Title 22 in the D.C. Official Code.

(2) In D.C. Official Code § 22-1801, codifying the reference to "this title" even though the language differs from the underlying organic legislation.

(3) In D.C. Official Code § 22-1802, codifying the reference to "this title" even though the language differs from the underlying organic legislation.

(4) In D.C. Official Code § 22-1809, deleting the last sentence because D.C. Official Code § 22-1312(b) has been deleted.

(5) In D.C. Official Code § 22-2104.01(b)(12), striking the phrase "§ 22-4501(f) [now § 22-4501(4)]" and inserting the phrase in "§ 22-4501(1)" in order to cite to the correct subsection in § 22-4501.

(6) In § 22-2701.01, codifying the reference to § 22-2704 because it corrects an error in the underlying organic legislation.

(7) In D.C. Official Code § 22-3312.01, inserting "upon" at the end of the first clause.

(8) In D.C. Official Code § 22-4402, codifying the reference to "Mayor"

because “Mayor” is the correct replacement for the “Commissioners” in the organic legislation.

(9) In D.C. Official Code § 22-4505(a)(2), codifying the reference to “that section” because it clarifies the scope of the underlying organic legislation.

(10) In D.C. Official Code § 22-4510, codifying the references to “Mayor” because “Mayor” is the correct replacement for the “Commissioners” in the organic legislation.

(11) In D.C. Official Code § 22-4512, striking from the second sentence, “Possession of any pistol, machine gun, or sawed-off shotgun upon which any such mark shall have been changed, altered, removed, or obliterated shall be prima facie evidence that the possessor has changed, altered, removed, or obliterated the same within the District of Columbia; provided, however, that nothing” and inserting “Nothing” as the start of the sentence.

(12) In subsection (a) of D.C. Official Code § 22-4514, codifying the reference to “Air Force” even though the reference is missing from the organic legislation.

(13) In D.C. Official Code § 22-4515a, codifying the reference to “Mayor” because “Mayor” is the correct replacement for the “Commissioner” in the organic legislation.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the Enactment of the District of Columbia Official Code Title 22 and Other Criminal Code Revisions Act of 2017.

TITLE 1. ENACTMENT OF TITLE 22 OF THE DISTRICT OF COLUMBIA OFFICAL CODE

Sec. 101. Short Title.

This subtitle may be cited as the “District of Columbia Official Code Title 22 Enactment Act of 2016”.

Sec. 102. Title 22 of the District of Columbia Official Code is amended and enacted into law to read as follows:

“TITLE 22.
CRIMINAL OFFENSES AND PENALTIES.

———————————

SUBTITLE I.

CRIMINAL OFFENSES.

Chapter.

[1] The online LexisNexis D.C. Official Code has not updated the chapter heading to reflect that the statute has been repealed. However, the actual statute in the LexisNexis D.C. Official Code is correctly marked as "repealed."

SUBTITLE VI.
REGULATION AND POSSESSION OF WEAPONS.

45. Weapons and Possession of Weapons.

SUBTITLE VII
REPEALED PROVISIONS.
[REPEALED].

46. Embezzlement. [Repealed].
47. Larceny; Receiving Stolen Goods. [Repealed].
48. Rape. [Repealed].
49. Seduction. [Repealed].
50. Warehouse Receipts. [Repealed].
51. Libel; Blackmail; Extortion; Threats. [Repealed].
52. Miscellaneous Provisions. [Repealed].

SUBTITLE I.
CRIMINAL OFFENSES.

CHAPTER 1. ABORTION.
[REPEALED].

Sec.
22-101. Definition and penalty. [Repealed].

§ 22-101. Definition and penalty. [Repealed].
Repealed.

CHAPTER 2. ADULTERY.
[REPEALED].

Sec.
22-201. Definition and penalty. [Repealed].

§ 22–201. Definition and penalty. [Repealed].
Repealed.

CHAPTER 3. ARSON.

Sec.
22-301. Definition and penalty.
22-302. Burning one's own property with intent to defraud or injure another.
22-303. Malicious burning, destruction, or injury of another's property.
22-304. Malicious burning of fences, woods, crops. [Repealed].

§ 22-301. 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 or her 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.

§ 22-304. Malicious burning of fences, woods, crops. [Repealed].

Repealed.

CHAPTER 4. ASSAULT.

Sec.
22-401. Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse.
22-402. Assault with intent to commit mayhem or with dangerous weapon.
22-403. Assault with intent to commit any other offense.
22-404. Assault or threatened assault in a menacing manner; stalking.
22-404.01. Aggravated assault.
22-404.02. Assault on a public vehicle inspection officer.
22-404.03. Aggravated assault on a public vehicle inspection officer.

22-405. Assault on member of police force, campus or university special police, or fire department.
22-406. Mayhem or maliciously disfiguring.
22-407. Threats to do bodily harm.
22-408. Penalty for assaulting, beating, or fighting on account of money won by gaming. [Repealed].

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

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

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

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

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

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

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

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

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

(b) Repealed.

(c) Repealed.

(d) Repealed.

(e) Repealed.

§ 22-404.01. Aggravated assault.

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

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

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

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

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

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

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

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

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

(2) Have his or her license or licenses for operating a public vehicle-for-hire, as required by the Commission pursuant to subchapter I of Chapter 3 of Title 50 [§ 50-301 et seq.], revoked without further administrative action by the Commission.

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

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

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

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

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

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

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

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

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

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

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

(2) Have his or her license or licenses for operating a public vehicle-for- hire, as required by the Commission pursuant [to] subchapter I of Chapter 3 of Title 50 [§ 50-301 et seq.], revoked without further administrative action by the Commission.

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

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

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

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

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

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

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

(b) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with a law enforcement officer on account of, or while that law enforcement officer is engaged in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both.

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

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

§ 22-406. Mayhem or maliciously disfiguring.

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

§ 22-407. Threats to do bodily harm.

Whoever is convicted in the District of threats to do bodily harm shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 6 months, or both, and, in

addition thereto, or in lieu thereof, may be required to give bond to keep the peace for a period not exceeding 1 year.

§ 22-408. Penalty for assaulting, beating, or fighting on account of money won by gaming. [Repealed].

Repealed.

CHAPTER 5. BIGAMY.

Sec.

22-501. Bigamy.

§ 22-501. Bigamy.

(a) Whoever, having a spouse or domestic partner living, marries or enters a domestic partnership with another shall be deemed guilty of bigamy, and on conviction thereof shall suffer imprisonment for not less than 2 nor more than 7 years; provided, that this section shall not apply to any person whose:

(1) Spouse or domestic partner has been continually absent for 5 successive years next before such marriage or domestic partnership without being known to such person to be living within that time;

(2) Marriage to said living spouse shall have been dissolved by a valid decree of a competent court, or shall have been pronounced void by a valid decree of a competent court on the ground of the nullity of the marriage contract; or

(3) Domestic partnership with said living domestic partner has been terminated in accordance with § 32-702(d).

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

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

(1) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(2) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

CHAPTER 6. BREAKING INTO DEVICES DESIGNED TO RECEIVE CURRENCY.

Sec.

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

§ 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.

CHAPTER 7. BRIBERY; OBSTRUCTING JUSTICE; CORRUPT INFLUENCE.

Subchapter I.

Corrupt Influence.

Sec.

22-701 to 22-703. Definition and penalty; offering or receiving money, property, or valuable consideration to procure office or promotion from Council; obstructing justice. [Repealed].

22-704. Corrupt influence; officials.

Subchapter II.
Bribery.

Sec.

22-711. Definitions.

22-712. Prohibited acts; penalty.

22-713. Bribery of witness; penalty.

Subchapter III.
Obstructing Justice.

Sec.

22-721. Definitions.

22-722. Prohibited acts; penalty.

22-723. Tampering with physical evidence; penalty.

Subchapter I.
Corrupt Influence.

§§ 22-701 to 22-703. Definition and penalty; offering or receiving money, property, or valuable consideration to procure office or promotion from Council; obstructing justice. [Repealed].

[Repealed].

§ 22-704. Corrupt influence; officials.

(a) Whosoever corruptly, directly or indirectly, gives any money, or other bribe, present, reward, promise, contract, obligation, or security for the payment of any money, present, reward, or thing of value to any ministerial, administrative, executive, or judicial officer of the District of Columbia, or any employee, or other person acting in any capacity for the District of Columbia, or any agency thereof, either before or after the officer, employee, or other person acting in any capacity for the District of Columbia is qualified, with intent to influence such official's action on any matter which is then pending, or may by law come or be brought before such official in such official's official capacity, or to cause such official to execute any of the powers in such official vested, or to perform any duties of such official required, with partiality or favor, or otherwise than is required by law, or in consideration that such official being authorized in the line of such official's duty to contract for any advertising or for the furnishing of any labor or material, shall directly or indirectly arrange to receive or shall receive, or shall withhold from the

parties so contracted with, any portion of the contract price, whether that price be fixed by law or by agreement, or in consideration that such official has nominated or appointed any person to any office or exercised any power in such official vested, or performed any duty of such official required, with partiality or favor, or otherwise contrary to law; and whosoever, being such an official, shall receive any such money, bribe, present, or reward, promise, contract, obligation, or security, with intent or for the purpose or consideration aforesaid shall be deemed guilty of bribery and upon conviction thereof shall be punished by imprisonment for a term not less than 6 months nor more than 5 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

(b) Whosoever corrupts or attempts, directly or indirectly, to corrupt any special master, auditor, juror, arbitrator, umpire, or referee, by giving, offering, or promising any gift or gratuity whatever, with intent to bias the opinion, or influence the decision of such official, in relation to any matter pending in the court, or before an inquest, or for the decision of which such arbitrator, umpire, or referee has been chosen or appointed, and every official who receives, or offers or agrees to receive, a bribe in any of the cases above mentioned shall be guilty of bribery and upon conviction thereof shall be punished as hereinbefore provided.

Subchapter II.
Bribery.

§ 22-711. Definitions.

For the purposes of this subchapter, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Juror" means any grand, petit, or other juror, or any person selected or summoned as a prospective juror of the District of Columbia.

(3) "Official action" means any decision, opinion, recommendation, judgment, vote, or other conduct that involves an exercise of discretion on the part of the public servant.

(4) "Official duty" means any required conduct that does not involve an exercise of discretion on the part of the public servant.

(5) "Official proceeding" means any trial, hearing, investigation, or other proceeding in a court of the District of Columbia or conducted by the Council of the District of Columbia or an agency or department of the District of Columbia government, or a grand jury proceeding.

(6) "Public servant" means any officer, employee, or other person authorized to act for or on behalf of the District of Columbia government. The term "public servant" includes any person who has been elected, nominated, or appointed to be a public servant or a juror. The term "public servant" does not include an independent contractor.

§ 22-712. Prohibited acts; penalty.

(a) A person commits the offense of bribery if that person:

(1) Corruptly offers, gives, or agrees to give anything of value, directly or indirectly, to a public servant; or

(2) Corruptly solicits, demands, accepts, or agrees to accept anything of value, directly or indirectly, as a public servant;

in return for an agreement or understanding that an official act of the public servant will be influenced thereby or that the public servant will violate an official duty, or that the public

servant will commit, aid in committing, or will collude in or allow any fraud against the District of Columbia.

(b) Nothing in this section shall be construed as prohibiting concurrence in official action in the course of legitimate compromise between public servants.

(c) Any person convicted of bribery shall be fined not more than the amount set forth in § 22-3571.01 or twice the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than 10 years, or both.

§ 22-713. Bribery of witness; penalty.

(a) A person commits the offense of bribery of a witness if that person:

(1) Corruptly offers, gives, or agrees to give to another person; or

(2) Corruptly solicits, demands, accepts, or agrees to accept from another person; anything of value in return for an agreement or understanding that the testimony of the recipient will be influenced in an official proceeding before any court of the District of Columbia or any agency or department of the District of Columbia government, or that the recipient will absent himself or herself from such proceedings.

(b) Nothing in subsection (a) of this section shall be construed to prohibit the payment or receipt of witness fees provided by law, or the payment by the party upon whose behalf a witness is called and receipt by a witness of a reasonable cost of travel and subsistence incurred and the reasonable value of time lost in attendance at any such proceeding, or, in case of expert witnesses, a reasonable fee for time spent in the preparation of a technical or professional opinion and appearing and testifying.

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

Subchapter III.
Obstructing Justice.

§ 22-721. Definitions.

For the purpose of this subchapter, the term:

(1) "Court of the District of Columbia" means the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.

(2) "Criminal investigator" means an individual authorized by the Mayor or the Mayor's designated agent to conduct or engage in a criminal investigation, or a prosecuting attorney conducting or engaged in a criminal investigation.

(3) "Criminal investigation" means an investigation of a violation of any criminal statute in effect in the District of Columbia.

(4) "Official proceeding" means any trial, hearing, investigation, or other proceeding in a court of the District of Columbia or conducted by the Council of the District of Columbia or an agency or department of the District of Columbia government, or a grand jury proceeding.

§ 22-722. Prohibited acts; penalty.

(a) A person commits the offense of obstruction of justice if that person:

(1) Knowingly uses intimidation or physical force, threatens or corruptly persuades another person, or by threatening letter or communication, endeavors to influence, intimidate, or impede a juror in the discharge of the juror's official duties;

(2) Knowingly uses intimidating or physical force, threatens or corruptly persuades another person, or by threatening letter or communication, endeavors to influence, intimidate, or impede a witness or officer in any official proceeding, with intent to:

(A) Influence, delay, or prevent the truthful testimony of the person in an official proceeding;

(B) Cause or induce the person to withhold truthful testimony or a record, document, or other object from an official proceeding;

(C) Evade a legal process that summons the person to appear as a witness or produce a document in an official proceeding; or

(D) Cause or induce the person to be absent from a legal official proceeding to which the person has been summoned by legal process;

(3) Harasses another person with the intent to hinder, delay, prevent, or dissuade the person from:

(A) Attending or testifying truthfully in an official proceeding;

(B) Reporting to a law enforcement officer the commission of, or any information concerning, a criminal offense;

(C) Arresting or seeking the arrest of another person in connection with the commission of a criminal offense; or

(D) Causing a criminal prosecution or a parole or probation revocation proceeding to be sought or instituted, or assisting in a prosecution or other official proceeding;

(4) Injures or threatens to injure any person or his or her property on account of the person or any other person giving to a criminal investigator in the course of any criminal investigation information related to a violation of any criminal statute in effect in the District of Columbia;

(5) Injures or threatens to injure any person or his or her property on account of the person or any other person performing his or her official duty as a juror, witness, or officer in any court in the District of Columbia; or

(6) Corruptly, or by threats of force, any way obstructs or impedes or endeavors to obstruct or impede the due administration of justice in any official proceeding.

(b) Any person convicted of obstruction of justice shall be sentenced to a maximum period of incarceration of not less than 3 years and not more than 30 years, or shall be fined not more than the amount set forth in § 22-3571.01, or both. For purposes of imprisonment following revocation of release authorized by § 24-403.01, obstruction of justice is a Class A felony.

§ 22-723. Tampering with physical evidence; penalty.

(a) A person commits the offense of tampering with physical evidence if, knowing or having reason to believe an official proceeding has begun or knowing that an official proceeding is likely to be instituted, that person alters, destroys, mutilates, conceals, or removes a record, document, or other object, with intent to impair its integrity or its availability for use in the official proceeding.

(b) Any person convicted of tampering with physical evidence shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 3 years, or both.

CHAPTER 8. BURGLARY.

Sec.

22-801. Definition and penalty.

§ 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.

CHAPTER 8A. CRIMES COMMITTED AGAINST MINORS.

Sec.

22-811. Contributing to the delinquency of a minor.

§ 22-811. Contributing to the delinquency of a minor.

(a) It is unlawful for an adult, being 4 or more years older than a minor, to invite, solicit, recruit, assist, support, cause, encourage, enable, induce, advise, incite, facilitate, permit, or allow the minor to:

(1) Be truant from school;

(2) Possess or consume alcohol or, without a valid prescription, a controlled substance as that term is defined in § 48-901.02(4);

(3) Run away for the purpose of criminal activity from the place of abode of his or her parent, guardian, or other custodian;

(4) Violate a court order;

(5) Violate any criminal law of the District of Columbia for which the penalty constitutes a misdemeanor, except for acts of civil disobedience;

(6) Join a criminal street gang as that term is defined in § 22-951(e)(1); or

(7) Violate any criminal law of the District of Columbia for which the penalty constitutes a felony, or any criminal law of the United States, or the criminal law of any other jurisdiction that involves conduct that would constitute a felony if committed in the District of Columbia, except for acts of civil disobedience.

(b)(1) Except as provided in paragraphs (2), (4) and (5) of this subsection, a person convicted of violating subsection (a)(1)-(6) of this section shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 6 months, or both.

(2) A person convicted of violating subsection (a)(2)-(6) of this section, having previously been convicted of an offense under subsection (a)(2)-(6) of this section or a substantially similar offense in this or any other jurisdiction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.

(3) Except as provided in paragraphs (4) and (5) of this subsection, a person convicted of violating subsection (a)(7) of this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(4) A person convicted of violating subsection (a) of this section that results in serious bodily injury to the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(5) A person convicted of violating subsection (a) of this section that results in the death of the minor or any other person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(c) The penalties under this section are in addition to any other penalties permitted by law.

(d) It is not a defense to a prosecution under this section that the minor does not engage in, is not charged with, is not adjudicated delinquent for, or is not convicted as an adult, for any conduct set forth in subsection (a)(1)-(7) of this section.

(e) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (a) of this section for which the penalty is set forth in subsection (c)(1) of this section.

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

(1) "Adult" means a person 18 years of age or older at the time of the offense.

(2) "Minor" means a person under 18 years of age at the time of the offense.

CHAPTER 8B. CRIMES AGAINST PUBLIC OFFICIALS.

Sec.

§ 22-851. Protection of District public officials.

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

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

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

(b) A person who corruptly or, by threat or force, or by any threatening letter or communication, intimidates, impedes, interferes with, or retaliates against, or attempts to intimidate, impede, interfere with, or retaliate against any official or employee, while the official or employee is engaged in the performance of his or her duties or on account of the performance

of those duties, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

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

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

CHAPTER 8C. PROTECTION OF POLICE ANIMALS.

Sec.

§ 22-861. Harassing, interfering with, injuring, or obstructing a police animal.

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

(1) "Police animal" means a dog, horse, or other animal used by a law enforcement agency, correctional facility, police department, fire department, or search and rescue unit or agency for the purpose of aiding in the detection of criminal activity, enforcement of laws, apprehension of criminal offenders, or search and rescue efforts, whether or not the dog, horse, or other animal is engaged in the performance of its official duties when a violation of this section occurs.

(2) "Significant bodily injury" means an injury that requires hospitalization or immediate medical attention.

(b)(1) Any person who intentionally and without justifiable and excusable cause, harasses, interferes with, injures, or obstructs a police animal when he or she has reason to believe the animal is a police animal shall be guilty of a misdemeanor and, upon conviction, shall be imprisoned 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 (b) of this section and causes significant bodily injury to, or the death of, a police animal shall be guilty of a felony and, upon conviction, shall be imprisoned not more than 10 years, or fined not more than the amount set forth in § 22-3571.01, or both.

(3) The penalties set forth in paragraphs (1) and (2) of this subsection shall also apply to an owner or keeper of a dog or other animal who intentionally and without justifiable and excusable cause fails to restrain the dog or animal from attacking a police animal when the owner or keeper has reason to believe the animal is a police animal.

CHAPTER 9. COMMERCIAL COUNTERFEITING.

Sec.

22-902. Trademark counterfeiting.

§ 22-901. Definitions.

For the purposes of this chapter, the term:

(1) "Counterfeit mark" means:

(A) Any unauthorized reproduction or copy of intellectual property; or

(B) Intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, picture, seal, word, or advertisement or any combination of these adopted or used by a person to identify such person's goods or services and which is lawfully filed for record in the Office of the Secretary of State of any state or which the exclusive right to reproduce is guaranteed under the laws of the United States or the District of Columbia.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

§ 22-902. Trademark counterfeiting.

(a) A person commits the offense of counterfeiting if such person willfully manufactures, advertises, distributes, offers for sale, sells, or possesses with intent to sell or distribute any items, or services bearing or identified by a counterfeit mark. There shall be a rebuttable presumption that a person having possession, custody, or control of more than 15 items bearing a counterfeit mark possesses said items with the intent to sell or distribute.

(b) A person convicted of counterfeiting shall be subject to the following penalties:

(1) For the first conviction, except as provided in paragraphs (2) and (3) of this subsection, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 180 days, or both;

(2) For the second conviction, or if convicted under this section of an offense involving more than 100 but fewer than 1,000 items, or involving items with a total retail value greater than $ 1,000 but less than $ 10,000, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 3 years, or both; and

(3) For the third or subsequent conviction, or if convicted under this section of an offense involving the manufacture or production of items bearing counterfeit marks involving 1,000 or more items, or involving items with a total retail value of $ 10,000 or greater, by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 10 years, or both.

(c) For the purposes of this chapter, the quantity or retail value of items or services shall include the aggregate quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant manufactures, advertises, distributes, offers for sale, sells, or possesses.

(d) The fines provided in subsection (b) of this section shall be no less than twice the retail value of the items bearing, or services identified by, a counterfeit mark, unless extenuating circumstances are shown by the defendant.

(e) Any items bearing a counterfeit mark and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities, or vehicles of any

kind, employed or used in connection with a violation of this chapter shall be seized by any law enforcement officer, including any designated civilian employee of the Metropolitan Police Department, in accordance with the procedures established by § 48-905.02.

(1) All seized personal property shall be subject to forfeiture pursuant to the standards and procedures set forth in D.C. Law 20-278.

(2) Upon the request of the owner of the intellectual property, all seized items bearing a counterfeit mark shall be released to the intellectual property owner for destruction or disposition.

(3) If the owner of the intellectual property does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the owner of the intellectual property consents to another disposition.

(f) Any state or federal certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(g) The remedies provided for herein shall be cumulative to the other civil and criminal remedies provided by law.

CHAPTER 9A. CRIMINAL ABUSE AND NEGLECT OF VULNERABLE ADULTS.

Sec.

§ 22-931. Short title.

This chapter may be cited as the "Criminal Abuse and Neglect of Vulnerable Adults Act of 2000".

§ 22-932. Definitions.

For the purpose of this chapter "vulnerable adult" means a person 18 years of age or older who has a physical or mental condition which substantially impairs the person from adequately providing for his or her own care or protection.

§ 22-933. Criminal abuse of a vulnerable adult.

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

(1) Inflicts or threatens to inflict physical pain or injury by hitting, slapping, kicking, pinching, biting, pulling hair or other corporal means;

(2) Uses repeated or malicious oral or written statements that would be considered by a reasonable person to be harassing or threatening; or

(3) Imposes unreasonable confinement or involuntary seclusion, including but not limited to, the forced separation from other persons against his or her will or the directions of any legal representative.

§ 22-934. Criminal negligence.

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

§ 22-935. Exception.

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

§ 22-936. Penalties.

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

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

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

CHAPTER 9B. CRIMINAL STREET GANGS.

Sec.

§ 22-951. Criminal street gangs.

(a)(1) It is unlawful for a person to solicit, invite, recruit, encourage, or otherwise cause, or attempt to cause, another individual to become a member of, remain in, or actively participate in what the person knows to be a criminal street gang.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 6 months, or both.

(b)(1) It is unlawful for any person who is a member of or actively participates in a criminal street gang to knowingly and willfully participate in any felony or violent misdemeanor committed for the benefit of, at the direction of, or in association with any other member or participant of that criminal street gang.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(c)(1) It is unlawful for a person to use or threaten to use force, coercion, or intimidation against any person or property, in order to:

(A) Cause or attempt to cause an individual to:

(i) Join a criminal street gang;
(ii) Participate in activities of a criminal street gang;
(iii) Remain as a member of a criminal street gang; or
(iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state; or

(B) Retaliate against an individual for a refusal to:
(i) Join a criminal street gang;
(ii) Participate in activities of a criminal street gang;
(iii) Remain as a member of a criminal street gang; or
(iv) Submit to a demand made by a criminal street gang to commit a felony in violation of the laws of the District of Columbia, the United States, or any other state.

(2) A person convicted of a violation of this subsection shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(d) The penalties under this section are in addition to any other penalties permitted by law.

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

(1) "Criminal street gang" means an association or group of 6 or more persons that:

(A) Has as a condition of membership or continued membership, the committing of or actively participating in committing a crime of violence, as defined by § 23-1331(4)); or

(B) Has as one of its purposes or frequent activities, the violation of the criminal laws of the District, or the United States, except for acts of civil disobedience.

(2) "Violent misdemeanor" shall mean:

(A) Destruction of property (§ 22-303);
(B) Simple assault (§ 22-404(a));
(C) Stalking (§ 22-404(b) [see now § 22-3132]);
(D) Threats to do bodily harm (§ 22-407);
(E) Criminal abuse or criminal neglect of a vulnerable adult (§ 22-936(a));
(F) Cruelty to animals (§ 22-1001(a)); and
(G) Possession of prohibited weapon (§ 22-4514).

CHAPTER 10. CRUELTY TO ANIMALS.

Sec.

warrant.
22-1010. Penalty for engaging in cock fighting or animal fighting. [Repealed].
22-1011. Neglect of sick or disabled animals.
22-1012. Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.
22-1013. Definitions.
22-1014. Docking tails of horses. [Repealed].
22-1015. Penalty for engaging in animal fighting. [Renumbered].

§ 22-1001. Definitions and penalties.

(a)(1) Whoever knowingly overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, cruelly chains, cruelly beats or mutilates, any animal, or knowingly causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, cruelly chained, cruelly beaten, or mutilated, and whoever, having the charge or custody of any animal, either as owner or otherwise, knowingly inflicts unnecessary cruelty upon the same, or unnecessarily fails to provide the same with proper food, drink, air, light, space, veterinary care, shelter, or protection from the weather, shall for every such offense be punished by imprisonment in jail not exceeding 180 days, or by fine not exceeding $ 250, or by both.

(2) The court may order a person convicted of cruelty to animals:

(A) To obtain psychological counseling, psychiatric or psychological evaluation, or to participate in an animal cruelty prevention or education program, and may impose the costs of the program or counseling on the person convicted;

(B) To forfeit any rights in the animal or animals subjected to cruelty;

(C) To repay the reasonable costs incurred prior to judgment by any agency caring for the animal or animals subjected to cruelty; and

(D) Not to own or possess an animal for a specified period of time.

(3) The court may order a child adjudicated delinquent for cruelty to animals to undergo psychiatric or psychological evaluation, or to participate in appropriate treatment programs or counseling, and may impose the costs of the program or counseling on the person adjudicated delinquent.

(b) For the purposes of this section, "cruelly chains" means attaching an animal to a stationary object or a pulley by means of a chain, rope, tether, leash, cable, or similar restraint under circumstances that may endanger its health, safety, or well-being. Cruelly chains includes, but is not limited to, the use of a chain, rope, tether, leash, cable or similar restraint that:

(1) Exceeds 1/8 the body weight of the animal;

(2) Causes the animal to choke;

(3) Is too short for the animal to move around or for the animal to urinate or defecate in a separate area from the area where it must eat, drink, or lie down;

(4) Is situated where it can become entangled;

(5) Does not permit the animal access to food, water, shade, dry ground, or shelter; or

(6) Does not permit the animal to escape harm.

(c) For the purposes of this section, "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, mutilation, or protracted loss or impairment of the function of a bodily

member or organ. Serious bodily injury includes, but is not limited to, broken bones, burns, internal injuries, severe malnutrition, severe lacerations or abrasions, and injuries resulting from untreated medical conditions.

(d) Except where the animal is an undomesticated and dangerous animal such as rats, bats, and snakes, and there is a reasonable apprehension of an imminent attack by such animal on that person or another, whoever commits any of the acts or omissions set forth in subsection (a) of this section with the intent to commit serious bodily injury or death to an animal, or whoever, under circumstances manifesting extreme indifference to animal life, commits any of the acts or omissions set forth in subsection (a) of this section which results in serious bodily injury or death to the animal, shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment not exceeding 5 years, or by a fine not exceeding $ 25,000, or both.

§ 22-1002. Other cruelties to animals.

Every owner, possessor, or person having the charge or custody of any animal, who cruelly drives or works the same when unfit for labor, or cruelly abandons the same, or who carries the same, or causes the same to be carried, in or upon any vehicle, or otherwise, in an unnecessarily cruel or inhuman manner, or knowingly and wilfully authorizes or permits the same to be subjected to unnecessary torture, suffering, or cruelty of any kind, shall be punished for every such offense in the manner provided in § 22-1001.

§ 22-1002.01. Reporting requirements. [Transferred].

Transferred.

§ 22-1003. Rest, water and feeding for animals transported by railroad company. [Repealed].

Repealed.

§ 22-1004. Arrests without warrant authorized; notice to owner. [Transferred].

Transferred.

§ 22-1005. Issuance of search warrants. [Transferred].

Transferred.

§ 22-1006. Prosecution of offenders; disposition of fines. [Transferred].

Transferred.

§ 22-1006.01. Penalty for engaging in animal fighting.

(a) Any person who: (1) organizes, sponsors, conducts, stages, promotes, is employed at, collects an admission fee for, or bets or wagers any money or other valuable consideration on the outcome of an exhibition between two or more animals of fighting, baiting, or causing injury to each other; (2) any person who owns, trains, buys, sells, offers to buy or sell, steals, transports, or possesses any animal with the intent that it engage in any such exhibition; (3) any person who knowingly allows any animal used for such fighting or baiting to be kept, boarded, housed, or trained on, or transported in, any property owned or controlled by him; (4) any person who owns, manages, or operates any facility and knowingly allows that facility to be kept or used for the purpose of fighting or baiting any animal; (5) any person who knowingly or recklessly permits

any act described in this subsection, to be done on any premises under his or her ownership or control, or who aids or abets that act; or (6) any person who is knowingly present as a spectator at any such exhibition, is guilty of a felony, punishable by a fine of not more than the amount set forth in § 22-3571.01, imprisonment not to exceed 5 years, or both. The court may also impose any penalties listed in § 22-1001(a).

(b) [Reserved].

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

(1) "Animal" means a vertebrate other than a human, including, but not limited to, dogs and cocks.

(2) "Baiting" means to attack with violence, to provoke, or to harass an animal with one or more animals for the purpose of training an animal for, or to cause an animal to engage in, fights with or among other animals.

(3) "Fighting" means an organized event wherein there is a display of combat between 2 or more animals in which the fighting, killing, maiming, or injuring of an animal is a significant feature, or main purpose, of the event.

§ 22-1007. Impounded animals to be supplied with food and water.

Any person who shall impound, or cause to be impounded in any pound, any creature, shall supply the same, during such confinement, with a sufficient quantity of good and wholesome food and water; and in default thereof shall, upon conviction, be punished for every such offense in the same manner provided in § 22-1001.

§ 22-1008. Relief of impounded animals. [Transferred].

Transferred.

§ 22-1009. Keeping or using place for fighting or baiting of fowls or animals; arrest without warrant.

Any person or persons who shall keep or use, or in any way be connected with or interested in the management of, or shall receive money for the admission of any person to any place kept or used for the purpose of fighting or baiting of fowls or animals, may be arrested without a warrant, as provided in § 44-1505, and for every such offense be punished in the same manner provided in § 22-1001.

§ 22-1010. Penalty for engaging in cockfighting or animal fighting. [Repealed].

Repealed.

§ 22-1011. Neglect of sick or disabled animals.

If any maimed, sick, infirm, or disabled animal shall be abandoned by its owner, or fail to receive proper food or shelter from said owner or person in charge of the same for more than 5 consecutive hours, such person shall, for every such offense, be punished in the same manner provided in § 22-1001.

§ 22-1012. Abandonment of maimed or diseased animal; destruction of diseased animals; disposition of animal or vehicle on arrest of driver; scientific experiments.

(a) Repealed.

(b) Nothing contained in §§ 22-1001 to 22-1009, inclusive, and §§ 22-1011 and 22-1309 shall be construed to prohibit or interfere with any properly conducted scientific experiments or investigations, which experiments shall be performed only under the authority of the faculty of some regularly incorporated medical college, university, or scientific society.

§ 22-1013. Definitions.

In §§ 22-1001 to 22-1009, inclusive, and § 22-1011, the word "animals" or "animal" shall be held to include all living and sentient creatures (human beings excepted), and the words "owner," "persons," and "whoever" shall be held to include corporations and incorporated companies as well as individuals.

§ 22-1014. Docking tails of horses. [Repealed].

Repealed.

§ 22-1015. Penalty for engaging in animal fighting. [Renumbered].

Renumbered as § 22-1006.01.

CHAPTER 11. CRUELTY TO CHILDREN.

Sec.

§ 22-1101. Definition and penalty.

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

(b) A person commits the crime of cruelty to children in the second degree if that person intentionally, knowingly, or recklessly:

(1) Maltreats a child or engages in conduct which causes a grave risk of bodily injury to a child; or

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

(c)(1) Any person convicted of cruelty to children in the first degree shall be fined not more than $ 10,000 or be imprisoned not more than 15 years, or both.

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

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

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

§§ 22-1103 to 22-1106. Wilful neglect or refusal to support wife or minor child; punishment; order of allowance; recognizance; trial under original charge; evidence of marriage; competency of witnesses; proof of wilful desertion; weekly payments by Superintendent of Workhouse for each day's confinement; collections by Clerk of Court to be deposited with Collector of Taxes and covered into Treasury. [Repealed].
Repealed.

CHAPTER 12. DEBT ADJUSTING. [REPEALED].

Sec.
22-1201. Debt adjusting; prohibitions; exceptions; penalties; prosecutions for violations. [Repealed].

§ 22–1201. Debt adjusting; prohibitions; exceptions; penalties; prosecutions for violations. [Repealed].
Repealed.

CHAPTER 12A. DETECTION DEVICE TAMPERING.

Sec.
22-1211. Tampering with a detection device.

§ 22-1211. Tampering with a detection device.

(a)(1) It is unlawful for a person who is required to wear a device as a condition of a protection order, pretrial, presentence, or predisposition release, probation, supervised release, parole, or commitment, or who is required to wear a device while incarcerated, to:

(A) Intentionally remove or alter the device, or to intentionally interfere with or mask or attempt to interfere with or mask the operation of the device;

(B) Intentionally allow any unauthorized person to remove or alter the device, or to intentionally interfere with or mask or attempt to interfere with or mask the operation of the device; or

(C) Intentionally fail to charge the power for the device or otherwise maintain the device's battery charge or power.

(2) For the purposes of this subsection, the term "device" includes a bracelet, anklet, or other equipment with electronic monitoring capability or global positioning system or radio frequency identification technology.

(b) Whoever violates this section shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.

CHAPTER 13. DISTURBANCES OF THE PUBLIC PEACE.

Sec.

§ 22-1301. Affrays.

Whoever is convicted of an affray in the District shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

§ 22-1302. Dueling challenges. [Repealed].

Repealed.

§ 22-1303. Assault for refusal to accept challenge. [Repealed].

Repealed.

§ 22-1304. Leaving District to give or receive challenge. [Repealed].

Repealed.

§§ 22-1305, 22-1306. Prize fighting and animal fights prohibited; "pugilistic encounter" defined. [Repealed].

Repealed.

§ 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.

§ 22-1308. Playing games in streets. [Repealed].

Repealed.

§ 22-1309. Throwing stones or other missiles.

It shall not be lawful for any person or persons within the District of Columbia to throw any stone or other missile in any street, avenue, alley, road, or highway, or open space, or public square, or inclosure, or to throw any stone or other missile from any place into any street, avenue, road, or highway, alley, open space, public square, or inclosure, under a penalty of not more than $ 500 for every such offense.

§ 22-1310. Urging dogs to fight or create disorder.

It shall not be lawful for any person or persons to entice, induce, urge, or cause any dogs to engage in a fight in any street, alley, road, or highway, open space, or public square in the District of Columbia, or to urge, entice, or cause such dogs to continue or prolong such fight, under a penalty of not more than $ 1,000 for each and every offense; and any person or persons who shall induce or cause any animal of the dog kind to run after, bark at, frighten, or bite any person, horse, or horses, cows, cattle of any kind, or other animals lawfully passing along or standing in or on any street, avenue, road, or highway, or alley in the District of Columbia, shall forfeit and pay for such offense a sum not exceeding $ 1,000.

§ 22-1311. Allowing dogs to go at large.

(a) If any owner or possessor of a fierce or dangerous dog shall permit the same to go at large, knowing said dog to be fierce or dangerous, to the danger or annoyance of the inhabitants, he or she shall upon conviction thereof, be punished by a fine not exceeding $ 5,000; and if such animal shall attack or bite any person, the owner or possessor thereof shall, on conviction, be punished by a fine not exceeding $ 10,000, and in addition to such punishment the court shall adjudge and order that such animal be forthwith delivered to the poundmaster, and said poundmaster is hereby authorized and directed to kill such animal so delivered to him or her.

(b) If any owner or possessor of a female dog shall permit her to go at large in the District of Columbia while in heat, he or she shall, upon conviction thereof, be punished by a fine not exceeding $ 20.

§ 22-1312. Lewd, indecent, or obscene acts; sexual proposal to a minor.

It is unlawful for a person, in public, to make an obscene or indecent exposure of his or her genitalia or anus, to engage in masturbation, or to engage in a sexual act as defined in § 22-3001(8). It is unlawful for a person to make an obscene or indecent sexual proposal to a minor. 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.

§ 22-1313. Kindling bonfires.

It shall not be lawful for any person or persons within the limits of the District of Columbia to kindle or set on fire, or be present, aiding, consenting, or causing it to be done, in any street, avenue, road, or highway, alley, open ground, or lot, any box, barrel, straw, shavings, or other combustible, between the setting and rising of the sun; and, any person offending against the provisions of this section shall on conviction thereof, forfeit and pay a sum not exceeding $ 10 for each and every offense.

§ 22-1314. Disturbing religious congregation. [Repealed].

Repealed.

§ 22-1314.01. Definitions.

For the purpose of § 22-1314.02, the term:

(1) "Health professional" means a person licensed to practice a health occupation in the District pursuant to § 3-1201.01.

(2) "Medical facility" includes a hospital, clinic, physician's office, or other facility that provides health or surgical services.

(3) "Person" shall not include:

(A) The chief medical officer of the medical facility or his or her designee;

(B) The chief executive officer of the medical facility or his or her designee;

(C) An agent of the medical facility; or

(D) A law enforcement officer in the performance of his or her official duty.

§ 22-1314.02. Prohibited acts.

(a) It shall be unlawful for a person, except as otherwise authorized by District or federal law, alone or in concert with others, to willfully or recklessly interfere with access to or from a medical facility or to willfully or recklessly disrupt the normal functioning of such facility by:

(1) Physically obstructing, impeding, or hindering the free passage of an individual seeking to enter or depart the facility or from the common areas of the real property upon which the facility is located;

(2) Making noise that unreasonably disturbs the peace within the facility;

(3) Trespassing on the facility or the common areas of the real property upon which the facility is located;

(4) Telephoning the facility repeatedly to harass or threaten owners, agents, patients, and employees, or knowingly permitting any telephone under his or her control to be so used for the purpose of threatening owners, agents, patients, and employees; or

(5) Threatening to inflict injury on the owners, agents, patients, employees, or property of the medical facility or knowingly permitting any telephone under his or her control to be used for such purpose.

(b) A person shall not act alone or in concert with others with the intent to prevent a health professional or his or her family from entering or leaving the health professional's home.

(c) Subsections (a) and (b) of this section shall not be construed to prohibit any otherwise lawful picketing or assembly.

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

§ 22-1315. Interference with foreign diplomatic and consular offices, officers, and property -- Prohibited. [Repealed].

Repealed.

§ 22-1316. Interference with foreign diplomatic and consular offices, officers, and property -- Penalties; exception. [Repealed].

Repealed.

§ 22-1317. Flying fire balloons or parachutes.

It shall not be lawful for any person or persons to set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public enclosure, or square within the limits of the District of Columbia, under a penalty of not more than $ 10 for each and every such offense.

§ 22-1318. Driving or riding on footways in public grounds.

If any person shall drive or lead any horse, mule, or other animal, or any cart, wagon, or other carriage whatever on any of the paved or graveled footways in and on any of the public grounds belonging to the United States within the District of Columbia, or shall ride thereon, except at the intersection of streets, alleys, and avenues, each and every such offender shall forfeit and pay for each offense a sum not less than $ 1 nor more than $ 5.

§ 22-1319. False alarms and false reports; hoax weapons.

(a) It shall be unlawful for any person or persons to willfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this subsection shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than

6 months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this subsection shall be on information filed in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.

(a-1) It shall be unlawful for any person or persons to willfully or knowingly use, or allow the use of, the 911 call system to make a false or fictitious report or complaint which initiates a response by District of Columbia emergency personnel or officials when, at the time of the call or transmission, the person knows the report or complaint is false. Any person or persons violating the provisions of this subsection shall, upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 6 months. Prosecutions for violation of the provisions of this subsection shall be on information filed in the Superior Court of the District of Columbia by the Office of the Attorney General for the District of Columbia.

(b)(1) It shall be unlawful for any person to willfully or knowingly make, or cause to be made, a false or fictitious report to any individual which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves, is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully and knowingly give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a misdemeanor and be punished by imprisonment of not more than one year or fined in an amount not more than the amount set forth in § 22-3571.01 or the costs of responding to and consequential damages resulting from the offense, or both.

(c)(1) It shall be unlawful for anyone to willfully or knowingly, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, make, or cause to be made, a false or fictitious report to any individual, which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves, is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully or knowingly, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a felony and may be punished by imprisonment of not more than 5 years or fined in an amount not more than the amount set forth in § 22-3571.01 or the costs of responding to and consequential damages resulting from the offense, or both.

(d)(1) It shall be unlawful for any person to willfully or knowingly, during a state of emergency, as declared by the Mayor pursuant to § 7-2304, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, make, or cause to be made, a false or fictitious report to any individual, which initiates a response by District of Columbia emergency personnel or officials, wherein such report involves,

is alleged to involve, or may reasonably be deemed to involve, the delivery, presence, or use of a weapon of mass destruction, as defined by § 22-3152(12), within the District of Columbia.

(2) It shall be a violation of this subsection for any person to willfully or knowingly, during a state of emergency, as declared by the Mayor pursuant to § 7-2304, with the intent of intimidating or frightening people, causing panic or civil unrest, extorting profit, or causing economic damage, give, transport, mail, send, or cause to be sent any hoax weapon of mass destruction, as defined by § 22-3152(3), to another person or to place any such hoax weapon of mass destruction in or upon any real or personal property.

(3) Any person violating the provisions of this subsection shall, upon conviction, be guilty of a felony and may be punished by imprisonment of not more than 10 years or fined in an amount not more than the amount set forth in § 22-3571.01 or the cost of responding to and consequential damages resulting from the offense, or both.

(e) For the purposes of subsections (b), (c), and (d) of this section, the manner in which the false or fictitious report is communicated may include, but is not limited to:

(1) A writing;

(2) An electronic transmission producing a visual, audio, or written result;

(3) An oral statement; or

(4) A signing.

(f) There is jurisdiction to prosecute any person who participates in the commission of any offense described in this section if any act in furtherance of the offense occurs in the District of Columbia or where the effect of any act in furtherance of the offense occurs in the District of Columbia.

§ 22-1320. Sale of tobacco to minors under 18 years of age.

Recodified as § 7-1721.02.

§ 22-1321. Disorderly conduct.

(a) In any place open to the general public, and in the communal areas of multi-unit housing, it is unlawful for a person to:

(1) Intentionally or recklessly act in such a manner as to cause another person to be in reasonable fear that a person or property in a person's immediate possession is likely to be harmed or taken;

(2) Incite or provoke violence where there is a likelihood that such violence will ensue; or

(3) Direct abusive or offensive language or gestures at another person (other than a law enforcement officer while acting in his or her official capacity) in a manner likely to provoke immediate physical retaliation or violence by that person or another person.

(b) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding.

(c) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct with the intent and effect of impeding or disrupting the lawful use of a public conveyance by one or more other persons.

(c-1) It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct in a public building with the intent and effect of impeding or disrupting the orderly conduct of business in that public building.

(d) It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.

(e) It is unlawful for a person to urinate or defecate in public, other than in a urinal or toilet.

(f) It is unlawful for a person to stealthily look into a window or other opening of a dwelling, as defined in § 6-101.07, under circumstances in which an occupant would have a reasonable expectation of privacy. It is not necessary that the dwelling be occupied at the time the person looks into the window or other opening.

(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.

§ 22-1322. Rioting or inciting to riot.

(a) A riot in the District of Columbia is a public disturbance involving an assemblage of 5 or more persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons.

(b) Whoever willfully engages in a riot in the District of Columbia shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(c) Whoever willfully incites or urges other persons to engage in a riot shall be punished by imprisonment for not more than 180 days or a fine of not more than the amount set forth in § 22-3571.01, or both.

(d) If in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of $ 5,000, every person who willfully incited or urged others to engage in the riot shall be punished by imprisonment for not more than 10 years or a fine of not more than the amount set forth in § 22-3571.01, 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.

CHAPTER 13A. ENTRY INTO A MOTOR VEHICLE; UNLAWFUL.

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

§ 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.

CHAPTER 14. FALSE PRETENSES; FALSE PERSONATION.

Sec.
22-1401. False pretenses. [Repealed].
22-1402. Recordation of deed, contract, or conveyance with intent to extort money.
22-1403. False personation before court, officers, notaries.
22-1404. Falsely impersonating public officer or minister.
22-1405. False personation of inspector or departments of District.
22-1406. False personation of police officer.
22-1407, 22-1408. Wearing or using insignia of certain organizations; false certificate of acknowledgement. [Repealed].
22-1409. Use of official insignia; penalty for unauthorized use.

§ 22-1401. False pretenses. [Repealed].

Repealed.

§ 22-1402. Recordation of deed, contract, or conveyance with intent to extort money.

Whoever having no title or color of title to the land affected shall maliciously cause to be recorded in the office of the Recorder of Deeds of the District of Columbia any deed, contract, or other instrument purporting to convey or to relate to any land in said District with intent to extort money or anything of value from any person owning such land, or having any interest therein, shall be fined not less than $ 1,000 and not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

§ 22-1403. False personation before court, officers, notaries.

(a) Whoever falsely personates another person before any court of record or judge thereof, or clerk of court, or any officer in the District authorized to administer oaths or take the acknowledgment of deeds or other instruments or to grant marriage licenses or accepts domestic partnership registrations, with intent to defraud, shall be imprisoned for not less than 1 year nor more than 5 years.

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

(b) For the purposes of this section, the term "domestic partnership" shall have the same meaning as provided in § 32-701(4).

§ 22-1404. Falsely impersonating public officer or minister.

Whoever falsely represents himself or herself to be a judge of the Superior Court of the District of Columbia, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his or her appointment or commission has expired or he or she has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than 1 year nor more than 3 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.

§ 22-1405. False personation of inspector of departments of District.

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the Department of Human Services of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the Superior Court of the District of Columbia shall be punished by a fine of not less than $ 10 nor more than $ 50 for the 1st offense, and for each subsequent offense by a fine of not less than $ 50 and not more than the amount set forth in § 22-3571.01, or imprisonment in the Jail of the District not exceeding 6 months, or both, in the discretion of the court.

§ 22-1406. False personation of police officer.

It shall be a misdemeanor, punishable by imprisonment in the District jail or penitentiary not exceeding 180 days, or by a fine not more than the amount set forth in § 22-3571.01, for any person, not a member of the police force, to falsely represent himself or herself as being such member, with a fraudulent design.

§§ 22-1407, 22-1408. Wearing or using insignia of certain organizations; false certificate of acknowledgment. [Repealed].

Repealed.

§ 22-1409. Use of official insignia; penalty for unauthorized use.

(a) The Metropolitan Police Department and the Fire and Emergency Medical Services Department shall have the sole and exclusive rights to have and use, in carrying out their respective missions, the official badges, patches, emblems, copyrights, descriptive or designating marks, and other official insignia displayed upon their current and future uniforms.

(b) Any person who, for any reason, makes or attempts to make unauthorized use of, or aids or attempts to aid another person in the unauthorized use or attempted unauthorized use of the official badges, patches, emblems, copyrights, descriptive or designated marks, or other official insignia of the Metropolitan Police Department or the Fire and Emergency Medical Services Department shall, upon conviction, be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than one year, or both.

CHAPTER 15. FORGERY; FRAUDS.

Sec.

§ 22–1501. Forgery. [Repealed].

Repealed.

§ 22-1502. Forging or imitating brands or packaging of goods.

Whoever wilfully forges, or counterfeits, or makes use of any imitation calculated to deceive the public, though with colorable difference or deviation therefrom, of the private brand, wrapper, label, trademark, bottle, or package usually affixed or used by any person to or with the goods, wares, merchandise, preparation, or mixture of such person, with intent to pass off any work, goods, manufacture, compound, preparation, or mixture as the manufacture or production of such person which is not really such, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

§ 22-1503. Stealing, destroying, mutilating, secreting, or withholding will. [Repealed].

Repealed.

§§ 22-1504, 22-1505. Decedent's estate -- Secreting or converting property, documents, or assets; taking away or concealing writings. [Repealed].

Repealed.

§ 22-1506. Sale or concealment by conditional vendee, with intent to defraud. [Repealed].

Repealed.

§§ 22-1507 to 22-1509. Fraud by use of slugs to operate coin-controlled mechanism; manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism; "person" defined. [Repealed].

Repealed.

§ 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.

§ 22-1511. Fraudulent advertising.

It shall be unlawful in the District of Columbia for any person, firm, association, corporation, or advertising agency, either directly or indirectly, to display or exhibit to the public in any manner whatever, whether by handbill, placard, poster, picture, film, or otherwise; or to insert or cause to be inserted in any newspaper, magazine, or other publication printed in the District of Columbia; or to issue, exhibit, or in any way distribute or disseminate to the public; or to deliver, exhibit, mail, or send to any person, firm, association, or corporation any false, untrue, or misleading statement, representation, or advertisement with intent to sell, barter, or exchange any goods, wares, or merchandise or anything of value or to deceive, mislead, or induce any person, firm, association, or corporation to purchase, discount, or in any way invest in or accept as collateral security any bonds, bill, share of stock, note, warehouse receipt, or any security; or with the purpose to deceive, mislead, or induce any person, firm, association, or corporation to purchase, make any loan upon or invest in any property of any kind; or use any of the aforesaid methods with the intent or purpose to deceive, mislead, or induce any other person, firm, or

corporation for a valuable consideration to employ the services of any person, firm, association, or corporation so advertising such services.

§ 22-1512. Prosecution under § 22-1511.

Prosecution under § 22-1511 shall be in the Superior Court of the District of Columbia upon information filed by the United States Attorney for the District of Columbia or an Assistant U.S. Attorney.

§ 22-1513. Penalty under § 22-1511.

Any person, firm, or association violating any of the provisions of § 22-1511 shall upon conviction thereof, be punished by a fine of not more than the amount set forth in § 22-3571.01 or by imprisonment of not more than 60 days, or by both fine and imprisonment, in the discretion of the court. A corporation convicted of an offense under the provisions of § 22-1511 shall be fined not more than the amount set forth in § 22-3571.01, and its president or such other officials as may be responsible for the conduct and management thereof shall be imprisoned not more than 60 days, in the discretion of the court.

§ 22-1514. Fraudulent interference or collusion in jury selection.

If any person shall fraudulently tamper with any box or wheel used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box or wheel, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box or wheel the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box or wheel a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 180 days, or both.

CHAPTER 16. FORNICATION. [REPEALED].

Sec.

§ 22–1601. Fornication. [Repealed].

Repealed.

§ 22–1602. Fornication. [Repealed].

Repealed.

CHAPTER 17. GAMBLING.

Subchapter I.
General Provisions.

Sec.

Subchapter II.
Legalization.

Subchapter I.
General Provisions.

§ 22–1701. Lotteries; promotion; sale or possession of tickets.

If any person shall within the District keep, set up, or promote, or be concerned as owner, agent, or clerk, or in any other manner, in managing, carrying on, promoting, or advertising, directly or indirectly, any policy lottery, policy shop, or any lottery, or shall sell or transfer any chance, right, or interest, tangible or intangible, in any policy lottery, or any lottery or shall sell or transfer any ticket, certificate, bill, token, or other device, purporting or intended to guarantee or assure to any person or entitle him or her to a chance of drawing or obtaining a prize to be drawn in any lottery, or in a game or device commonly known as policy lottery or policy or shall sell or transfer, or have in his or her possession for the purpose of sale or transfer, a chance or ticket in or share of a ticket in any lottery or any such bill, certificate, token, or other device, he or she shall be fined upon conviction of each said offense not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 3 years, or both. The possession of any copy or record of any such chance, right, or interest, or of any such ticket, certificate, bill, token, or other

device shall be prima facie evidence that the possessor of such copy or record did, at the time and place of such possession, keep, set up, or promote, or was at such time and place concerned as owner, agent, or clerk, or otherwise in managing, carrying on, promoting, or advertising a policy lottery, policy shop, or lottery.

§ 22–1702. Possession of lottery or policy tickets.

If any person shall, within the District of Columbia, knowingly have in his or her possession or under his or her control, any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing, current or not current, used or to be used in violating the provisions of § 22-1701, § 22-1704, or § 22-1708, he or she shall, upon conviction of each such offense, be fined not more than the amount set forth in § 22-3571.01 or be imprisoned for not more than 180 days, or both. For the purpose of this section, possession of any record, notation, receipt, ticket, certificate, bill, slip, token, paper, or writing shall be presumed to be knowing possession thereof.

§ 22–1703. Permitting sale of lottery tickets on premises.

If any person shall knowingly permit, on any premises under his or her control in the District, the sale of any chance or ticket in or share of a ticket in any lottery or policy lottery, or shall knowingly permit any lottery or policy lottery, or policy shop on such premises, he or she shall be fined not less than $50 and not more than the amount set forth in § 22-3571.01, or be imprisoned not more than 180 days, or both.

§ 22–1704. Gaming; setting up gaming table; inducing play.

Whoever shall in the District set up or keep any gaming table, or any house, vessel, or place, on land or water, for the purpose of gaming, or gambling device commonly called A B C, faro bank, E O, roulette, equality, keno, thimbles, or little joker, or any kind of gaming table or gambling device adapted, devised, and designed for the purpose of playing any game of chance for money or property, or shall induce, entice, and permit any person to bet or play at or upon any such gaming table or gambling device, or on the side of or against the keeper thereof, shall be punished by imprisonment for a term of not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01. For the purposes of this section, the term "gambling device" shall not include slot machines manufactured before 1952, intended for exhibition or private use by the owner, and not used for gambling purposes. The term "slot machine" means a mechanical device, an essential part of which is a drum or reel which bears an insignia and which when operated may deliver, as a result of the application of an element of chance, a token, money, or property, or by operation of which a person may become entitled to receive, as a result of this application of an element of chance, a token, money, or property.

§ 22–1705. Gambling premises; definition; prohibition against maintaining; forfeiture; liens; deposit of moneys in Treasury; penalty; subsequent offenses.

(a) Any house, building, vessel, shed, booth, shelter, vehicle, enclosure, room, lot, or other premises in the District of Columbia, used or to be used in violating the provisions of § 22-1701 or § 22-1704, shall be deemed "gambling premises" for the purpose of this section.

(b) It shall be unlawful for any person in the District of Columbia knowingly, as owner, lessee, agent, employee, operator, occupant, or otherwise, to maintain, or aid, or permit the maintaining of any gambling premises.

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used in:

(1) Carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of § 22-1701;

(2) Setting up or keeping any gaming table, bank, or device contrary to the provisions of § 22-1704; or

(3) Maintaining any gambling premises shall be subject to forfeiture consistent with the standards and procedures set forth in D.C. Law 20-278.

(d) Whoever violates this section shall be imprisoned not more than 180 days or fined not more than the amount set forth in § 22-3571.01, or both, unless the violation occurs after the person has been convicted of a violation of this section, in which case the person may be imprisoned for not more than 5 years, or fined not more than the amount set forth in § 22-3571.01, or both.

§ 22–1706. Three-card monte and confidence games.

Whoever shall in the District deal, play, or practice, or be in any manner accessory to the dealing or practicing, of the confidence game or swindle known as 3-card monte, or of any such game, play, or practice, or any other confidence game, play, or practice, shall be deemed guilty of a misdemeanor, and shall be punished by a fine not more than the amount set forth in § 22-3571.01 and by imprisonment for not more than 180 days.

§ 22–1707. "Gaming table" defined.

All games, devices, or contrivances at which money or any other thing shall be bet or wagered shall be deemed a gaming table within the meaning of §§ 22-1704 to 22-1706; and the courts shall construe said sections liberally, so as to prevent the mischief intended to be guarded against.

§ 22–1708. Gambling pools and bookmaking; athletic contest defined.

It shall be unlawful for any person, or association of persons, within the District of Columbia to purchase, possess, own, or acquire any chance, right, or interest, tangible or intangible, in any policy lottery or any lottery, or to make or place a bet or wager, accept a bet or wager, gamble or make books or pools on the result of any athletic contest. For the purpose of this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis, golf, or wrestling match, or a tennis or golf tournament, or a prize fight or boxing match, or a trotting or running race of horses, or a running race of dogs, or any other athletic or sporting event or contest. Any person or association of persons violating this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

§ 22-1709. Bucketing, and bucket-shopping and bucket-shops; definitions. [Repealed].

Repealed.

§ 22-1710. Penalty for bucketing or keeping bucket-shop. [Repealed].

Repealed.

§ 22-1711. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices. [Repealed].

Repealed.

§ 22-1712. Bucketing; written statement to be furnished; contents. [Repealed].

Repealed.

§ 22–1713. Corrupt influence in connection with athletic contests.

(a) It shall be unlawful to pay or give, or to agree to pay or give, or to promise or offer, any valuable thing to any individual:

(1) With intent to influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit such individual or his or her team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) With intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause:

(A) The loss of such athletic contest by such contestant, participant, or team; or

(B) The margin of victory or score of such contestant, participant, or team to be limited; or

(3) With intent to influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause:

(A) The loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or

(B) The margin of victory or score of any such contestant, participant, or team to be limited.

(b) It shall be unlawful for any individual to solicit or accept, or to agree to accept, any valuable thing or a promise or offer of any valuable thing:

(1) To influence such individual to lose or cause to be lost, or to attempt to lose or cause to be lost, or to limit or attempt to limit such individual or his or her team's margin of victory or score in, any professional or amateur athletic contest in which such individual is or may be a contestant or participant; or

(2) To influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual (as a manager, coach, owner, second, jockey, trainer, handler, groom, or otherwise) has or will have any duty or responsibility with respect to a contestant, participant, or team who or which is engaging or may engage therein, to cause or attempt to cause:

(A) The loss of such athletic contest by such contestant, participant, or team; or

(B) The margin of victory or score of such contestant, participant, or team to be limited; or

(3) To influence such individual, in the case of any professional or amateur athletic contest in connection with which such individual is to be or may be a referee, judge, umpire, linesman, starter, timekeeper, or other similar official, to cause or attempt to cause:

(A) The loss of such athletic contest by any contestant, participant, or team who or which is engaging or may engage therein; or

(B) The margin of victory or score of any such contestant, participant, or team to be limited.

(c) Whoever violates any provision of subsection (a) of this section shall be guilty of a felony, and, upon conviction thereof, shall be punished by imprisonment for not less than 1 year nor more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

(d) Whoever violates any provision of subsection (b) of this section shall, upon conviction thereof, be punished by imprisonment for not more than 1 year and by a fine of not more than the amount set forth in § 22-3571.01.

(e) As used in this section, the term "athletic contest" means any of the following, wherever held or to be held: a football, baseball, softball, basketball, hockey, or polo game, or a tennis or wrestling match, or a prize fight or boxing match, or a horse race or any other athletic or sporting event or contest.

(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his or her duties.

§ 22–1714. Immunity of witnesses; record. .

(a) Whenever, in the judgment of the United States Attorney for the District of Columbia, the testimony of any witness, or the production of books, papers, or other records or documents, by any witness, in any case or proceeding involving a violation of this subchapter before any grand jury or a court in the District of Columbia, is necessary in the public interest, such witness shall not be excused from testifying or from producing books, papers, and other records and documents on the grounds that the testimony or evidence, documentary or otherwise, required of such witness may tend to incriminate such witness, or subject such witness to penalty or forfeiture; but such witness shall not be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such witness is compelled, after having claimed his or her privilege against self-incrimination, to testify or produce evidence, documentary or otherwise; except that such witness so testifying shall not be exempt from prosecution and punishment for perjury or contempt committed in so testifying.

(b) The judgment of the United States Attorney for the District of Columbia that any testimony, or the production of any books, papers, or other records or documents, is necessary in the public interest shall be confirmed in a written communication over the signature of the United States Attorney for the District of Columbia, addressed to the grand jury or the court in the District of Columbia concerned, and shall be made a part of the record of the case or proceeding in which such testimony or evidence is given.

§ 22-1715. Presence in illegal establishments. [Repealed].

Repealed.

Subchapter II.

Legalization.

§ 22–1716. Statement of purpose. [Transferred].
[Transferred].

§ 22–1717. Permissible gambling activities. [Transferred].
[Transferred].

§ 22–1718. Advertising and promotion; sale and possession of lottery and numbers tickets and slips. [Transferred].
[Transferred].

CHAPTER 18. GENERAL OFFENSES.

Sec.

§ 22-1801. "Writing" and "paper" defined.

Except where otherwise provided for where such a construction would be unreasonable, the words "writing" and "paper," wherever mentioned in this title, are to be taken to include instruments wholly in writing or wholly printed, or partly printed and partly in writing.

§ 22-1802. "Anything of value" defined.

The words "anything of value," wherever they occur in this title and the District of Columbia Theft and White Collar Crimes Act of 1982, shall be held to include not only things possessing intrinsic value, but bank notes and other forms of paper money, and commercial paper and other writings which represent value.

§ 22-1803. Attempts to commit crime.

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

§ 22-1804. Second conviction.

(a) If any person: (1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia; and (2) was previously convicted of a criminal offense under any law of the United States or of a state or territory of the United States which offense, at the time of the conviction referred to in clause (1) of this subsection, is the same as, constitutes, or necessarily includes, the offense referred to in that clause, such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction. If such person was previously convicted more than once of an offense described in clause (2) of this subsection, such person may be sentenced to pay a fine in an amount not more than 3 times the maximum fine prescribed for the conviction referred to in clause (1) of this subsection and sentenced to imprisonment for a term not more than 3 times the maximum term of imprisonment prescribed for that conviction. No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(b) This section shall not apply in the event of conflict with any other provision of law which provides an increased penalty for a specific offense by reason of a prior conviction of the same or any other offense.

§ 22-1804a. Penalty for felony after at least 2 prior felony convictions.

(a) (1) If a person is convicted in the District of Columbia of a felony, having previously been convicted of 2 prior felonies not committed on the same occasion, the court may, in lieu of any sentence authorized, impose such greater term of imprisonment as it deems necessary, up to, and including, 30 years.

(2) If a person is convicted in the District of Columbia of a crime of violence as defined by § 22-4501, having previously been convicted of 2 prior crimes of violence not committed on the same occasion, the court, in lieu of the term of imprisonment authorized, shall impose a term of imprisonment of not less than 15 years and may impose such greater term of imprisonment as it deems necessary up to, and including, life without possibility of release.

(3) For purposes of imprisonment following revocation of release authorized by § 24-403.01, the third or subsequent felony committed by a person who had previously been convicted of 2 prior felonies not committed on the same occasion and the third or subsequent crime of violence committed by a person who had previously been convicted of 2 prior crimes of violence not committed on the same occasion are Class A felonies.

(b) For the purposes of this section:

(1) A person shall be considered as having been convicted of a felony if the person was convicted of a felony by a court of the District of Columbia, any state, or the United States or its territories; and

(2) A person shall be considered as having been convicted of a crime of violence if the person was convicted of a crime of violence as defined by § 22-4501, by a court of the District of Columbia, any state, or the United States or its territories.

(c)(1) A person shall be considered as having been convicted of 2 felonies if the person has been convicted of a felony twice before on separate occasions by courts of the District of Columbia, any state, or the United States or its territories.

(2) A person shall be considered as having been convicted of 2 crimes of violence if the person has twice before on separate occasions been convicted of a crime of violence as defined by § 22-4501, by courts of the District of Columbia, any states, or the United States or its territories.

(d) No conviction or plea of guilty with respect to which a person has been pardoned shall be taken into account in applying this section.

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

§ 22-1805. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

In prosecutions for any criminal offense all persons advising, inciting, or conniving at the offense, or aiding or abetting the principal offender, shall be charged as principals and not as accessories, the intent of this section being that as to all accessories before the fact the law heretofore applicable in cases of misdemeanor only shall apply to all crimes, whatever the punishment may be.

§ 22-1805a. Conspiracy to commit crime.

(a)(1) If 2 or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than 5 years, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.

(2) If 2 or more persons conspire to commit a crime of violence as defined in § 23-1331(4), each shall be fined not more than the amount set forth in § 22-3571.01 nor the maximum fine prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or imprisoned not more than 15 years nor the maximum imprisonment prescribed for the offense, the commission of which was the object of the conspiracy, whichever is less, or both.

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by 1 of the conspirators pursuant to the conspiracy and to effect its purpose.

(c) When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if:

(1) Such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein; or

(2) Such conduct would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia even if performed outside the District of Columbia.

(d) A conspiracy contrived in another jurisdiction to engage in conduct within the District of Columbia which would constitute a criminal offense under an act of Congress exclusively applicable to the District of Columbia if performed within the District of Columbia is a violation of this section when an overt act pursuant to the conspiracy is committed within the District of

Columbia. Under such circumstances, it is immaterial and no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction.

§ 22-1806. Accessories after the fact.

Whoever shall be convicted of being an accessory after the fact to any crime punishable by death shall be punished by imprisonment for not more than 20 years. Whoever shall be convicted of being accessory after the fact to any crime punishable by imprisonment shall be punished by a fine or imprisonment, or both, as the case may be, not more than 1/2 the maximum fine or imprisonment, or both, to which the principal offender may be subjected.

§ 22-1807. Punishment for offenses not covered by provisions of Code.

Whoever shall be convicted of any criminal offense not covered by the provisions of any section of this Code, or of any general law of the United States not locally inapplicable in the District of Columbia, shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 5 years, or both.

§ 22-1808. Offenses committed beyond District.

Any person who by the commission outside of the District of Columbia of any act which, if committed within the District of Columbia, would be a criminal offense under the laws of said District, thereby obtains any property or other thing of value, and is afterwards found with any such property or other such thing of value in his or her possession in said District, or who brings any such property or other such thing of value into said District, shall, upon conviction, be punished in the same manner as if said act had been committed wholly within said District.

§ 22-1809. Prosecutions.

All prosecutions for violations of § 22-1321 or any of the provisions of any of the laws or ordinances provided for by this act shall be conducted in the name of and for the benefit of the District of Columbia, and in the same manner as provided by law for the prosecution of offenses against the laws and ordinances of the said District. Any person convicted of any violation of § 22-1321 or any of the provisions of this act, and who shall fail to pay the fine or penalty imposed, or to give security where the same is required, shall be imprisoned for a term not exceeding 6 months for each and every offense.

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

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

CHAPTER 18A. HUMAN TRAFFICKING.

Sec.

22-1834. Sex trafficking of children.
22-1835. Unlawful conduct with respect to documents in furtherance of human trafficking.
22-1836. Benefitting financially from human trafficking.
22-1837. Penalties.
22-1838. Forfeiture.
22-1839. Reputation or opinion evidence. [Transferred].
22-1840. Civil action. [Transferred].
22-1841. Data collection and dissemination. [Not funded] [Transferred].
22-1842. Training program. [Transferred].
22-1843. Public posting of human trafficking hotline. [Transferred].

§ 22-1831. Definitions.

For the purposes of this chapter, the term:

(1) "Abuse or threatened abuse of law or legal process" means the use or threatened use of law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) "Business" means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock, trust, and any legal entity through which business is conducted.

(3) "Coercion" means any one of, or a combination of, the following:

(A) Force, threats of force, physical restraint, or threats of physical restraint;

(B) Serious harm or threats of serious harm;

(C) The abuse or threatened abuse of law or legal process;

(D) Fraud or deception;

(E) Any scheme, plan, or pattern intended to cause a person to believe that if that person did not perform labor or services, that person or another person would suffer serious harm or physical restraint;

(F) Facilitating or controlling a person's access to an addictive or controlled substance or restricting a person's access to prescription medication; or

(G) Knowingly participating in conduct with the intent to cause a person to believe that he or she is the property of a person or business and that would cause a reasonable person in that person's circumstances to believe that he or she is the property of a person or business.

(4) "Commercial sex act" means any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any person. The term "commercial sex act" includes a violation of § 22-2701, § 22-2704, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722.

(5) "Debt bondage" means the status or condition of a person who provides labor, services, or commercial sex acts, for a real or alleged debt, where:

(A) The value of the labor, services, or commercial sex acts, as reasonably assessed, is not applied toward the liquidation of the debt;

(B) The length and nature of the labor, services, or commercial sex acts are not respectively limited and defined; or

(C) The amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(6) "Labor" means work that has economic or financial value.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm.

(8) "Services" means legal or illegal duties or work done for another, whether or not compensated.

(9) "Sexual act" shall have the same meaning as provided in § 22-3001(8).

(10) "Sexual contact" shall have the same meaning as provided in § 22-3001(9).

(11) "Venture" means any group of 2 or more individuals associated in fact, whether or not a legal entity.

§ 22-1832. Forced labor.

(a) It is unlawful for an individual or a business knowingly to use coercion to cause a person to provide labor or services.

(b) It is unlawful for an individual or a business knowingly to place or keep any person in debt bondage.

§ 22-1833. Trafficking in labor or commercial sex acts.

It is unlawful for an individual or a business to recruit, entice, harbor, transport, provide, obtain, or maintain by any means a person, knowing, or in reckless disregard of the fact that:

(1) Coercion will be used or is being used to cause the person to provide labor or services or to engage in a commercial sex act; or

(2) The person is being placed or will be placed or kept in debt bondage.

§ 22-1834. Sex trafficking of children.

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

(b) In a prosecution under subsection (a) of this section in which the defendant had a reasonable opportunity to observe the person recruited, enticed, harbored, transported, provided, obtained, or maintained, the government need not prove that the defendant knew that the person had not attained the age of 18 years.

§ 22-1835. Unlawful conduct with respect to documents in furtherance of human trafficking.

It is unlawful for an individual or business knowingly to destroy, conceal, remove, confiscate, or possess any actual or purported government identification document, including a passport or other immigration document, or any other actual or purported document, of any person to prevent or restrict, or attempt to prevent or restrict, without lawful authority, the person's liberty to move or travel in order to maintain the labor or services of that person.

§ 22-1836. Benefitting financially from human trafficking.

It is unlawful for an individual or business knowingly to benefit, financially or by receiving anything of value, from voluntarily participating in a venture which has engaged in any

act in violation of § 22-1832, § 22-1833, § 22-1834, or § 22-1835, knowing or in reckless disregard of the fact that the venture has engaged in the violation.

§ 22-1837. Penalties.

(a)(1) Except as provided in paragraph (2) of this subsection, whoever violates § 22-1832, § 22-1833, or § 22-1834 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 20 years, or both.

(2) Whoever violates sections § 22-1832, § 22-1833, or § 22-1834 when the victim is held or provides services for more than 180 days shall be fined not more than 11/2 times the maximum fine authorized for the designated act, imprisoned for not more than 11/2 times the maximum term authorized for the designated act, or both.

(b) Whoever violates § 22-1835 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both.

(c) Whoever violates § 22-1836 shall be fined or imprisoned up to the maximum fine or term of imprisonment for a violation of each referenced section.

(d) Whoever attempts to violate § 22-1832, § 22-1833, § 22-1834, § 22-1835 or § 22-1836 shall be fined not more than 1/2 the maximum fine otherwise authorized for the offense, imprisoned for not more than 1/2 the maximum term otherwise authorized for the offense, or both.

(e) No person shall be sentenced consecutively for violations of §§ 22-1833 and 22-1834 for an offense arising out of the same incident.

§ 22-1838. Forfeiture.

(a) In imposing sentence on any individual or business convicted of a violation of this chapter, the court shall order, in addition to any sentence imposed, that the individual or business shall forfeit to the District of Columbia:

(1) Any interest in any property, real or personal, that was used or intended to be used to commit or to facilitate the commission of the violation; and

(2) Any property, real or personal, constituting or derived from any proceeds that the individual or business obtained, directly or indirectly, as a result of the violation.

(b) The following shall be subject to forfeiture to the District of Columbia and no property right shall exist in them:

(1) Any property, real or personal, used or intended to be used to commit or to facilitate the commission of any violation of this chapter.

(2) Any property, real or personal, which constitutes or is derived from proceeds traceable to any violation of this chapter.

§ 22-1839. Reputation or opinion evidence. [Transferred].

Transferred.

§ 22-1840. Civil action. [Transferred].

Transferred.

§ 22-1841. Data collection and dissemination. [Not funded]. [Transferred].

Transferred. [Not funded].

§ 22-1842. Training program. [Transferred].

Transferred.

§ 22-1843. Public posting of human trafficking hotline. [Transferred].

[Transferred]. [Not funded].

CHAPTER 19. INCEST.

Sec.

22-1901. Definition and penalty.

§ 22-1901. Definition and penalty.

If any person in the District related to another person within and not including the fourth degree of consanguinity, computed according to the rules of the Roman or civil law, shall marry or cohabit with or have sexual intercourse with such other so-related person, knowing him or her to be within said degree of relationship, the person so offending shall be deemed guilty of incest, and, on conviction thereof, shall be punished by imprisonment for not more than 12 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.

CHAPTER 19A. INTERFERING WITH REPORTS OF CRIME.

Sec.

22-1931. Obstructing, preventing, or interfering with reports to or requests for assistance from law enforcement agencies, medical providers, or child welfare agencies.

§ 22-1931. Obstructing, preventing, or interfering with reports to or requests for assistance from law enforcement agencies, medical providers, or child welfare agencies.

(a) It shall be unlawful for a person to knowingly disconnect, damage, disable, temporarily or permanently remove, or use physical force or intimidation to block access to any telephone, radio, computer, or other electronic communication device with a purpose to obstruct, prevent, or interfere with:

(1) The report of any criminal offense to any law enforcement agency;

(2) The report of any bodily injury or property damage to any law enforcement agency;

(3) A request for ambulance or emergency medical assistance to any governmental agency, or any hospital, doctor, or other medical service provider, or

(4) The report of any act of child abuse or neglect to a law enforcement or child welfare agency.

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

CHAPTER 20. KIDNAPPING.

Sec.

22-2001. Definition and penalty; conspiracy.

§ 22-2001. Definition and penalty; conspiracy.

Whoever shall be guilty of, or of aiding or abetting in, seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, or carrying away any individual by any means whatsoever, and holding or detaining, or with the intent to hold or detain, such individual for ransom or reward or otherwise, except, in the case of a minor, by a parent thereof, shall, upon conviction thereof, be punished by imprisonment for not more than 30 years. For purposes of imprisonment following revocation of release authorized by § 24-403.01, the offense defined by this section is a Class A felony. This section shall be held to have been violated if either the seizing, confining, inveigling, enticing, decoying, kidnapping, abducting, concealing, carrying away, holding, or detaining occurs in the District of Columbia. If 2 or more individuals enter into any agreement or conspiracy to do any act or acts which would constitute a violation of the provisions of this section, and 1 or more of such individuals do any act to effect the object of such agreement or conspiracy, each such individual shall be deemed to have violated the provisions of this section. 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.

CHAPTER 21. MURDER; MANSLAUGHTER.

Sec.

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

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

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

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

§ 22-2103. Murder in the second degree.

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

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

(a) The punishment for murder in the first degree shall be not less than 30 years nor more than life imprisonment without release, except that the court may impose a prison sentence in excess of 60 years only in accordance with § 22-2104.01 or § 24-403.01(b-2). The prosecution shall notify the defendant in writing at least 30 days prior to trial that it intends to seek a sentence of life imprisonment without release as provided in § 22-2104.01; provided that, no person who was less than 18 years of age at the time the murder was committed shall be sentenced to life imprisonment without release.

(b) Notwithstanding any other provision of law, a person convicted of murder in the first degree shall not be released from prison prior to the expiration of 30 years from the date of the commencement of the sentence.

(c) Whoever is guilty of murder in the second degree shall be sentenced to a period of incarceration of not more than life, except that the court may impose a prison sentence in excess of 40 years only in accordance with § 24-403.01(b-2).

(d) For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), murder in the first degree and murder in the second degree are Class A felonies.

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

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

(a) If a defendant is convicted of murder in the first degree, and if the prosecution has given the notice required under § 22-2104(a), a separate sentencing procedure shall be conducted as soon as practicable after the trial has been completed to determine whether to impose a sentence of more than 60 years up to, and including, life imprisonment without possibility of release.

(b) In determining the sentence, a finding shall be made whether, beyond a reasonable doubt, any of the following aggravating circumstances exist:

(1) The murder was committed in the course of kidnapping or abduction, or an attempt to kidnap or abduct;

(2) The murder was committed for hire;

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

(4) The murder was especially heinous, atrocious, or cruel;

(5) The murder was a drive-by or random shooting;

(6) There was more than 1 offense of murder in the first degree arising out of 1 incident;

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

(8) The murder was committed while committing or attempting to commit a robbery, arson, rape, or sexual offense;

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

(10) The murder victim was especially vulnerable due to age or a mental or physical infirmity;

(11) The murder is committed after substantial planning; or

(12) At the time of the commission of the murder, the defendant had previously been convicted and sentenced, whether in a court of the District of Columbia, of the United States, or of any state, for (A) murder, (B) manslaughter, (C) any attempt, solicitation, or conspiracy to commit murder, (D) assault with intent to kill, (E) assault with intent to murder, or (F) at least twice, for any offense or offenses, described in § 22-4501(1), whether committed in the District of Columbia or any other state, or the United States. A person shall be considered as having been convicted and sentenced twice for an offense or offenses when the initial sentencing for the conviction in the first offense preceded the commission of the second offense and the initial sentencing for the second offense preceded the commission of the instant murder.

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

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

§ 22-2105. Penalty for manslaughter.

Whoever is guilty of manslaughter shall be sentenced to a period of imprisonment not exceeding 30 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-2106. Murder of law enforcement officer.

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

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

(1) "Law enforcement officer" means:

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

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

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

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

(E) Metro Transit police officers; and

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

(2) "Public safety employee" means:

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

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

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

§ 22-2107. Penalty for solicitation of murder or other crime of violence.

(a) Whoever is guilty of soliciting a murder, whether or not such murder occurs, shall be sentenced to a period of imprisonment not exceeding 20 years, a fine not more than the amount set forth in § 22-3571.01, or both.

(b) Whoever is guilty of soliciting a crime of violence as defined by § 23-1331(4), whether or not such crime occurs, shall be sentenced to a period of imprisonment not exceeding 10 years, a fine of not more than the amount set forth in § 22-3571.01, or both.

CHAPTER 22. OBSCENITY.

Sec.

§ 22-2201. Certain obscene activities and conduct declared unlawful; definitions; penalties; affirmative defenses; exception.

(a)(1) It shall be unlawful in the District of Columbia for a person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) To present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) To pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) To create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) To advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) To advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than 3 copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1) of this subsection, which were named in the charge against such person and which were found in the possession or under the control of such person at the time of such person's arrest.

(b)(1) It shall be unlawful in the District of Columbia for any person knowingly:

(A) To sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor:

(i) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) Any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(B) To exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of 17 years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast

with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of:

(i) The character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

(ii) The age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 (47 U.S.C. § 151 et seq.) while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the 1st offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both. A person convicted of a 2nd or subsequent offense under subsection (a) or (b) of this section shall be fined not less than $ 1,000 and not more than the amount set forth in § 22-3571.01 or imprisoned not less than 6 months or more than 3 years, or both.

CHAPTER 23. PANHANDLING.

Sec.

§ 22-2301. Definitions.

For the purposes of this chapter, the term:

(1) "Aggressive manner" means:

(A) Approaching, speaking to, or following a person in a manner as would cause a reasonable person to fear bodily harm or the commission of a criminal act upon the person, or upon property in the person's immediate possession;

(B) Touching another person without that person's consent in the course of asking for alms;

(C) Continuously asking, begging, or soliciting alms from a person after the person has made a negative response; or

(D) Intentionally blocking or interfering with the safe or free passage of a person by any means, including unreasonably causing a person to take evasive action to avoid physical contact.

(2) "Ask, beg, or solicit alms" includes the spoken, written, or printed word or such other act conducted for the purpose of obtaining an immediate donation of money or thing of value.

§ 22-2302. Prohibited acts.

(a) No person may ask, beg, or solicit alms, including money and other things of value, in an aggressive manner in any place open to the general public, including sidewalks, streets, alleys, driveways, parking lots, parks, plazas, buildings, doorways and entrances to buildings, and gasoline service stations, and the grounds enclosing buildings.

(b) No person may ask, beg, or solicit alms in any public transportation vehicle; or at any bus, train, or subway station or stop.

(c) No person may ask, beg, or solicit alms within 10 feet of any automatic teller machine (ATM).

(d) No person may ask, beg, or solicit alms from any operator or occupant of a motor vehicle that is in traffic on a public street.

(e) No person may ask, beg, or solicit alms from any operator or occupant of a motor vehicle on a public street in exchange for blocking, occupying, or reserving a public parking space, or directing the operator or occupant to a public parking space.

(f) No person may ask, beg, or solicit alms in exchange for cleaning motor vehicle windows while the vehicle is in traffic on a public street.

(g) No person may ask, beg, or solicit alms in exchange for protecting, watching, washing, cleaning, repairing, or painting a motor vehicle or bicycle while it is parked on a public street.

(h) No person may ask, beg, or solicit alms on private property or residential property, without permission from the owner or occupant.

§ 22-2303. Permitted activity.

Acts authorized as an exercise of a person's constitutional right to picket, protest, or speak, and acts authorized by a permit issued by the District of Columbia government shall not constitute unlawful activity under this chapter.

§ 22-2304. Penalties.

(a) Any person convicted of violating any provision of § 22-2302 shall be fined not more than the amount set forth in § 22-3571.01 or be imprisoned not more than 90 days or both.

(b) In lieu of or in addition to the penalty provided in subsection (a) of this section, a person convicted of violating any provision of § 22-2302 may be required to perform community service as provided in § 16-712.

§ 22-2305. Conduct of prosecutions.

Prosecutions for violations of this chapter shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia.

§ 22-2306. Disclosure.

Any arrest or conviction under this chapter shall be disclosed to public and private social service agencies that request the Metropolitan Police Department or the court to be notified of such events.

CHAPTER 24. PERJURY; RELATED OFFENSES.

Sec.

§ 22-2401. Perjury; subornation of perjury. [Repealed].

Repealed.

§ 22-2402. Perjury.

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

(1) Having taken an oath or affirmation before a competent tribunal, officer, or person, in a case in which the law authorized such oath or affirmation to be administered, that he or she will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by that person subscribed is true, wilfully and contrary to an oath or affirmation states or subscribes any material matter which he or she does not believe to be true and which in fact is not true;

(2) As a notary public or other officer authorized to take proof of certification, wilfully certifies falsely that an instrument was acknowledged by any party thereto or wilfully certifies falsely as to another material matter in an acknowledgement; or

(3) In any declaration, certificate, verification, or statement made under penalty of perjury in the form specified in § 16-5306 or 28 U.S.C. § 1746(2), the person willfully states or subscribes as true any material matter that the person does not believe to be true and that in fact is not true.

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

§ 22-2403. Subornation of perjury.

A person commits the offense of subornation of perjury if that person wilfully procures another to commit perjury. Any person convicted of subornation of perjury shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

§ 22-2404. False swearing.

(a) A person commits the offense of false swearing if under oath or affirmation he or she wilfully makes a false statement, in writing, that is in fact material and the statement is one which is required by law to be sworn or affirmed before a notary public or other person authorized to administer oaths.

(b) Any person convicted of false swearing shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 3 years, or both.

§ 22-2405. False statements.

(a) A person commits the offense of making false statements if that person wilfully makes a false statement that is in fact material, in writing, directly or indirectly, to any instrumentality of the District of Columbia government, under circumstances in which the statement could reasonably be expected to be relied upon as true; provided, that the writing indicates that the making of a false statement is punishable by criminal penalties or if that person makes an affirmation by signing an entity filing or other document under Title 29 of the District of Columbia Official Code, knowing that the facts stated in the filing are not true in any material respect or if that person makes an affirmation by signing a declaration under § 1-1061.13, knowing that the facts stated in the filing are not true in any material respect;

(b) Any person convicted of making false statements shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 180 days, or both. A violation of this section shall be prosecuted by the Attorney General for the District of Columbia or one of the Attorney General's assistants.

CHAPTER 25. POSSESSION OF IMPLEMENTS OF CRIME.

Sec.

§ 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 and, in addition, 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.

CHAPTER 25A. PRESENCE IN A MOTOR VEHICLE CONTAINING A FIREARM. [REPEALED].

Sec.

§ 22-2511. Presence in a motor vehicle containing a firearm. [Repealed].

Repealed.

CHAPTER 26. PRISON MISCONDUCT.

Subchapter I.
Escape.

Sec.

Subchapter I.
Escape.

§ 22-2601. Escape from institution or officer.

(a) No person shall escape or attempt to escape from:

(1) Any penal or correctional institution or facility in which that person is confined pursuant to an order issued by a court of the District of Columbia;

(2) The lawful custody of an officer or employee of the District of Columbia or of the United States: or

(3) An institution or facility, whether located in the District of Columbia or elsewhere, in which a person committed to the Department of Youth Rehabilitation Services is placed.

(b) Any person who violates subsection (a) of this section shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both, said sentence to begin, if the person is an escaped prisoner, upon the expiration of the original sentence or disposition for the offense for which he or she was confined, committed, or in custody at the time of his or her escape.

Subchapter II.
Misprisons.

§ 22–2602. Misprisions by officers or employees of jail. [Repealed].

[Repealed].

Subchapter III.
Introduction of Contraband into Penal Institutions.

§ 22-2603.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Cellular telephone or other portable communication device and accessories thereto" means any device carried, worn, or stored that is designed, intended, or readily converted to create, receive or transmit oral or written messages or visual images, access or store data, or connect electronically to the Internet, or any other electronic device that enables communication in any form. The term "cellular telephone or other portable communication device and accessories thereto" includes portable 2-way pagers, hand-held radios, cellular telephones, Blackberry-type devices, personal digital assistants or PDAs, computers, cameras, and any components of these devices. The term "cellular telephone or other portable communication device and accessories thereto" also includes any new technology that is developed for communication purposes and includes accessories that enable or facilitate the use of the cellular telephone or other portable communication device.

(2)(A) "Class A Contraband" means:

(i) Any item, the mere possession of which is unlawful under District of Columbia or federal law;

(ii) Any controlled substance listed or described in Unit A of Chapter 9 of Title 48 [§ 48-901.01 et seq.] or any controlled substance scheduled by the Mayor pursuant to § 48-902.01;

(iii) Any dangerous weapon or object which is capable of such use as may endanger the safety or security of a penal institution or secure juvenile residential facility or any person therein, including,:

(I) A firearm or imitation firearm, or any component of a firearm;

(II) Ammunition or ammunition clip;

(III) A stun gun, taser, or other device capable of disrupting a person's nervous system;

(IV) Flammable liquid or explosive powder;

(V) A knife, screwdriver, ice pick, box cutter, needle, or any other object or tool that can be used for cutting, slicing, stabbing, or puncturing a person;

(VI) A shank or homemade knife; or

(VII) Tear gas, pepper spray, or other substance that can be used to cause temporary blindness or incapacitation;

(iv) Any object designed or intended to facilitate an escape;

(v) Handcuffs, security restraints, handcuff keys, or any other object designed or intended to lock, unlock, or release handcuffs or security restraints;

(vi) A hacksaw, hacksaw blade, wire cutter, file, or any other object or tool that can be used to cut through metal, concrete, or plastic;

(vii) Rope; or

(viii) When possessed by, given to, or intended to be given to an inmate or securely detained juvenile, a correctional officer's uniform, law enforcement officer's uniform, medical staff clothing, any other uniform, or civilian clothing.

(B) The term "Class A contraband" does not include any object or substance which a person is authorized to possess in the penal institution or secure juvenile residential facility by the director of the penal institution or secure juvenile residential facility and that is in the form or quantity for which it was authorized.

(3)(A) "Class B Contraband" means:

(i) Any alcoholic liquor or beverage;

(ii) A hypodermic needle or syringe or other item that can be used for the

administration of unlawful controlled substances; or

(iii) A cellular telephone or other portable communication device and accessories thereto.

(B) The term "Class B contraband" does not include any object or substance which a person is authorized to possess in the penal institution or secure juvenile residential facility by the director of the penal institution or secure juvenile residential facility and that is in the form or quantity for which it was authorized.

(4)(A) "Class C Contraband" means any article or thing which a person confined in a penal institution or secure juvenile residential facility is prohibited from obtaining or possessing by rule. The Mayor, pursuant to subchapter I of Chapter 5 of Title 2 [§ 2-501 et seq.], shall promulgate by rulemaking the articles or things that are Class C contraband. The rules shall be posted in the facility to give notice of the prohibited articles or things.

(B) The term "Class C contraband" does not include any object or substance which a person is authorized to possess in the penal institution or secure juvenile residential facility by the director of the penal institution or secure juvenile residential facility and that is in the form or quantity for which it was authorized.

(5) "Grounds" means the area of land occupied by the penal institution or secure juvenile residential facility and its yard and outbuildings, with a clearly identified perimeter.

(6) "Penal institution" means any penitentiary, prison, jail, or secure facility owned, operated, or under the control of the Department of Corrections, whether located within the District of Columbia or elsewhere.

(7) "Secure juvenile residential facility" means a locked residential facility providing custody, supervision, and care for one or more juveniles that is owned, operated, or under the control of the Department of Youth Rehabilitation Services, excluding residential treatment facilities and accredited hospitals.

§ 22-2603.02. Unlawful possession of contraband.

(a) Except as authorized by law, the Mayor, the Director of the Department of Corrections, or the Director of the Department of Youth Rehabilitation Services, it is unlawful to:

(1) Knowingly bring Class A, Class B, or Class C contraband into or upon the grounds of a penal institution or a secure juvenile residential facility with the intent that it be given to or received by an inmate or securely detained juvenile;

(2) Knowingly cause another to bring Class A, Class B, or Class C contraband into or upon the grounds of a penal institution or a secure juvenile residential facility with the intent that it be given to or received by an inmate or securely detained juvenile; or

(3) Knowingly place Class A, Class B, or Class C contraband in such proximity to a penal institution or a secure juvenile residential facility with the intent to give an inmate, a securely detained juvenile, a staff member, or a visitor access to the contraband.

(b) It is unlawful for an inmate, or securely detained juvenile, to possess Class A, Class B, or Class C contraband, regardless of the intent with which he or she possesses it.

(c) It is unlawful for an employee of the Department of Corrections or Department of Youth Rehabilitation Services who becomes aware of any violation of this section to fail to report such knowledge as required by department regulations, policies, or procedures.

(d)(1) Any item listed as contraband is not deemed to be contraband when issued by a penal institution or secure juvenile residential facility to an employee and the item is being used

in the performance of the employee's duties within the penal institution or secure juvenile residential facility.

(2) Any item listed as contraband is not deemed to be contraband when issued by a law enforcement agency to its sworn officers and the item is being used in the performance of his or her duties.

(e) It is not unlawful for an attorney, or representative or agent of an attorney, during the course of a visit for the purpose of legal representation of the inmate or securely detained juvenile, to:

(1) Possess a cellular telephone or other portable communication device and accessories thereto for the purpose of the legal visit for use by the attorney, representative, or agent, and not for the personal use of any inmate or securely detained juvenile; or

(2) Give or transmit to an inmate or securely detained juvenile legal written or recorded communication pertaining to his or her legal representation.

(f) It is not unlawful for a person to possess or carry a controlled substance that is prescribed to that person and that is medically necessary for that person to carry.

§ 22-2603.03. Penalties.

(a) A person convicted of violating this subchapter with regard to Class A contraband shall be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

(b) A person convicted of violating this subchapter with regard to Class B contraband shall be imprisoned for not more than 2 years, fined not more than the amount set forth in § 22-3571.01, or both.

(c) A person convicted of violating § 22-2603.02(c) shall be imprisoned for not more than 1 year, fined not more than the amount set forth in § 22-3571.01, or both.

(d) Any term of imprisonment imposed on an inmate or prisoner pursuant to this section shall be:

(1) Consecutive to the term of imprisonment being served at the time this offense was committed; or

(2) If the inmate was confined pending trial or sentencing, consecutive to any term of imprisonment imposed in the case in which the inmate was being detained at the time this offense was committed.

(e) The violation of this subchapter with regard to Class C contraband shall be an administrative penalty prescribed by the Department of Corrections or the Department of Youth Rehabilitation Services.

§ 22-2603.04. Detainment power. [Transferred]

Transferred.

CHAPTER 27. PROSTITUTION; PANDERING.

Subchapter I.
General.

Sec.

Subchapter II.
Prostitution Free Zone.

Subchapter I.
General.

§ 22-2701. Engaging in prostitution or soliciting for prostitution.

(a) Except as provided in subsection (d) of this section, it is unlawful for any person to engage in prostitution or to solicit for prostitution.

(b)(1) Except as provided in paragraph (2) of this subsection, a person convicted of prostitution or soliciting for prostitution shall be:

(A) Fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 90 days, or both, for the first offense; and

(B) Fined not more than the amount set forth in § 22-3571.01, imprisoned not more than 180 days, or both, for the second offense.

(2) A person convicted of prostitution or soliciting for prostitution who has 2 or more prior convictions for prostitution or soliciting for prostitution, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 2 years, or both.

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

(1) This section;

(2) A statute in one or more other jurisdictions prohibiting prostitution or soliciting for prostitution; or

(3) Conduct that would constitute a violation of this section if committed in the District of Columbia.

(d)(1) A child who engages in or offers to engage in a sexual act or sexual contact in return for receiving anything of value shall be immune from prosecution for a violation of subsection (a) of this section.

(2) The Metropolitan Police Department shall refer any child suspected of engaging in or offering to engage in a sexual act or sexual contact in return for receiving anything of value to an organization that provides treatment, housing, or services appropriate for victims of sex trafficking of children under § 22-1834.

(3) For the purposes of this subsection, the term "child" means a person who has not attained the age of 18 years.

§ 22-2701.01. Definitions.

For the purposes of this section, §§ 22-2701, 22-2703, and 22-2723, § 22-2704, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722:

(1) "Arranging for prostitution" means any act to procure or attempt to procure or otherwise arrange for the purpose of prostitution, regardless of whether such procurement or arrangement occurred or anything of value was given or received.

(2) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(3) "Prostitution" means a sexual act or contact with another person in return for giving or receiving anything of value.

(4) "Prostitution-related offenses" means those crimes and offenses defined in this act and in the acts cited in the lead-in language of this section.

(5) "Sexual act" shall have the same meaning as provided in § 22-3001(8).

(6) "Sexual contact" shall have the same meaning as provided in § 22-3001(9).

(7) "Solicit for prostitution" means to invite, entice, offer, persuade, or agree to engage in prostitution or address for the purpose of inviting, enticing, offering, persuading, or agreeing to engage in prostitution.

§ 22-2702. Inmate or frequenter of house of ill fame. [Repealed].

Repealed.

§ 22-2703. Suspension of sentence; conditions; enforcement.

The court may impose conditions upon any person found guilty under § 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include an order to stay away from the area within which the offense or offenses occurred, submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Department of Human Services of the District of Columbia, the Metropolitan Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant.

§ 22-2704. Abducting or enticing child from his or her home for purposes of prostitution; harboring such child.

(a) It is unlawful for any person, for purposes of prostitution, to:

(1) Persuade, entice, or forcibly abduct a child under 18 years of age from his or her home or usual abode, or from the custody and control of the child's parents or guardian; or

(2) Secrete or harbor any child so persuaded, enticed, or abducted from his or her home or usual abode, or from the custody and control of the child's parents or guardian.

(b) A person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years, or by a fine of not more than the amount set forth in § 22-3571.01, or both.

§ 22-2705. Pandering; inducing or compelling an individual to engage in prostitution.

(a) It is unlawful for any person, within the District of Columbia to:

(1) Place or cause, induce, entice, procure, or compel the placing of any individual in the charge or custody of any other person, or in a house of prostitution, with intent that such individual shall engage in prostitution;

(2) Cause, compel, induce, entice, or procure or attempt to cause, compel, induce, entice, or procure any individual:

(A) To reside with any other person for the purpose of prostitution;

(B) To reside or continue to reside in a house of prostitution; or

(C) To engage in prostitution; or

(3) Take or detain an individual against the individual's will, with intent to compel such individual by force, threats, menace, or duress to marry the abductor or to marry any other person.

(b) It is unlawful for any parent, guardian, or other person having legal custody of the person of an individual, to consent to the individual's being taken, detained, or used by any person, for the purpose of prostitution or a sexual act or sexual contact.

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) or (b) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years, or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) or (b) of this section when the individual so placed, caused, compelled, induced, enticed, procured, taken, detained, or used or attempted to

be so placed, caused, compelled, induced, enticed, procured, taken, detained, or used is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

§ 22-2706. Compelling an individual to live life of prostitution against his or her will.

(a) It is unlawful for any person, within the District of Columbia, by threats or duress, to detain any individual against such individual's will, for the purpose of prostitution or a sexual act or sexual contact, or to compel any individual against such individual's will, to reside with him or her or with any other person for the purposes of prostitution or a sexual act or sexual contact.

(b)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 15 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) of the section when the individual so detained or compelled is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

§ 22-2707. Procuring; receiving money or other valuable thing for arranging assignation.

(a) It is unlawful for any person, within the District of Columbia, to receive any money or other valuable thing for or on account of arranging for or causing any individual to engage in prostitution or a sexual act or contact.

(b)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

(2) A person who violates subsection (a) of this section when the individual so arranged for or caused to engage in prostitution or a sexual act or contact is under the age of 18 years shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 20 years or by a fine of not more than the amount set forth in § 22-3571.01, or both.

§ 22-2708. Causing spouse or domestic partner to live in prostitution.

Any person who by force, fraud, intimidation, or threats, places or leaves, or procures any other person or persons to place or leave, a spouse or domestic partner in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned not less than one 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.

§ 22-2709. Detaining an individual in disorderly house for debt there contracted.

Any person or persons who attempt to detain any individual in a disorderly house or house of prostitution because of any debt or debts such individual has contracted, or is said to have contracted, while living in said house of prostitution or disorderly house shall be guilty of a felony, and on conviction thereof be imprisoned for a term not less than one year nor more than 5 years. In addition to any other penalty provided under this section, a person may be fined an

amount not more than the amount set forth in § 22-3571.01.

§ 22-2710. Procuring for house of prostitution.

Any person who, within the District of Columbia, shall pay or receive any money or other valuable thing for or on account of the procuring for, or placing in, a house of prostitution, for purposes of sexual intercourse, prostitution, debauchery, or other immoral act, any individual, shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

§ 22-2711. Procuring for third persons.

Any person who, within the District of Columbia, shall receive any money or other valuable thing for or on account of procuring and placing in the charge or custody of another person for sexual intercourse, prostitution, debauchery, or other immoral purposes any individual shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

§ 22-2712. Operating house of prostitution.

Any person who, within the District of Columbia, knowingly, shall accept, receive, levy, or appropriate any money or other valuable thing, without consideration other than the furnishing of a place for prostitution or the servicing of a place for prostitution, from the proceeds or earnings of any individual engaged in prostitution shall be guilty of a felony and, upon conviction, shall be punished by imprisonment for not more than 5 years and by a fine of not more than the amount set forth in § 22-3571.01.

§ 22-2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance. [Transferred].

Transferred.

§ 22-2714. Abatement of nuisance under § 22-2713 by injunction -- Temporary injunction. [Transferred].

Transferred.

§ 22-2715. Abatement of nuisance under § 22-2713 by injunction -- Trial; dismissal of complaint; prosecution; costs. [Transferred].

Transferred.

§ 22-2716. Violation of injunction granted under § 22-2714. [Transferred].

Transferred.

§ 22-2717. Order of abatement; sale of property; entry of closed premises punishable as contempt. [Transferred].

Transferred.

§ 22-2718. Disposition of proceeds of sale. [Transferred].

Transferred.

§ 22-2719. Bond for abatement; order for delivery of premises; effect of release. [Transferred].

Transferred.

§ 22-2720. Tax for maintaining such nuisance. [Transferred].

Transferred.

§ 22-2721. Granting immunity to witnesses. [Repealed].

Repealed.

§ 22-2722. Keeping bawdy or disorderly houses.

Whoever is convicted of keeping a bawdy or disorderly house in the District shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 5 years, or both.

§ 22-2723. Property subject to seizure and forfeiture.

(a) The following are subject to forfeiture:

(1) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate a violation of a prostitution-related offense; and

(2) All money, coins, and currency which are used, or intended for use, in violation of a prostitution-related offense.

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

§ 22-2724. Impoundment.

(a) Any vehicle used in furtherance of a violation of a prostitution-related offense shall be subject to impoundment pursuant to this section.

(b) Whenever a police officer has probable cause to believe that a vehicle is being used in furtherance of a violation of a prostitution-related offense, and an arrest is made for that violation, the police officer, other member of the Metropolitan Police Department, or duly authorized agent thereof shall:

(1) Arrange for the towing of the vehicle by the Department of Public Works, or other designee of the Mayor, to a facility controlled by the District of Columbia or its agents, as designated by the Mayor, or, if towing services are not immediately available, arrange for the immobilization of the vehicle until such time as towing services become available; and

(2) Provide written notice to the owner of record of the vehicle and to the person who is found to be in control of the vehicle at the time of the seizure conveying the fact of seizure and impoundment of the vehicle, as well as the right to obtain immediate return of the vehicle pursuant to subsection (d) of this section, in lieu of requesting a hearing.

(c) The notices to be given pursuant to this section shall be provided by hand delivery at the time of the seizure and impoundment of the vehicle to the person in control of the vehicle or to the owner of record of the vehicle. If the owner of record of the vehicle is not available to receive such notice at the time of the seizure, the notice shall be mailed by first class mail, no later than 5 days after the vehicle is received at an impoundment or storage facility, to the last known address of the owner or owners of record of the vehicle, as that information is indicated in

the records of the Department of Motor Vehicles or in the records of the appropriate agency of the jurisdiction where the vehicle is registered.

(d) An owner, or a person duly authorized by an owner, shall, upon proof of same, be permitted to repossess or secure the release of the immobilized or impounded vehicle at any time (subject to administrative availability) by paying to the District government, as directed by the Department of Public Works, an administrative civil penalty of $ 150, a booting fee, if applicable, all outstanding fines and penalties for infractions for which liability has been admitted, deemed admitted, or sustained after hearing, and all applicable towing and storage costs for impounded vehicles as provided by § 50-2421.09(a)(6). Payment of such fees shall not be admissible as evidence of guilt in any criminal proceeding.

(e) An owner, or person duly authorized by an owner, shall be entitled to refund of the administrative civil penalty, booting fee, and 2 days' towing and storage costs by showing that the prosecutor dropped the underlying criminal charges (except for instances of nolle prosequi or because the defendant completed a diversion program), that the Superior Court of the District of Columbia dismissed the case after consideration of the merits, or that the case resulted in a finding of not guilty on all prostitution-related charges, or by providing a police report demonstrating that the vehicle was stolen at the time that it was subject to seizure and impoundment. If the vehicle had been stolen at the time of seizure and impoundment, a refund of all towing and storage costs shall be made.

(f) An owner, or person duly authorized by an owner, shall be entitled to a due process hearing regarding the seizure of the vehicle.

(g) Vehicles seized and impounded under this section shall not be subject to replevin, but shall be deemed to be in the custody of the Mayor.

(h) Vehicles that remain unclaimed for 30 days may be disposed of pursuant to §§ 50-2421.07(c), (d), (e), and (f), 50-2421.08, 50-2421.09, and 50-2421.10; provided, that if the owner wants to claim the vehicle before it is auctioned, the owner must pay the administrative civil penalty imposed by subsection (d) of this section in addition to the amounts required in § 50-2421.09.

(i) The Attorney General for the District of Columbia, or his or her assistants, shall represent the District of Columbia in all proceedings under this section.

(j) The Mayor shall issue rules setting forth the process by which a refund shall be obtained timely pursuant to subsection (e) of this section. Until such rules are published in the District of Columbia Register, this section shall not be enforceable.

§ 22-2725. Anti-Prostitution Vehicle Impoundment Proceeds Fund.

(a) There is established as a nonlapsing fund the Anti-Prostitution Vehicle Impoundment Proceeds Fund ("Fund"), which shall be used for the purpose set forth in subsection (b) of this section. All funds collected from the assessment of civil penalties, booting, towing, impoundment, and storage fees pursuant to § 22-2723, and any and all interest earned on those funds, shall be deposited into the Fund, and shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section with regard to fiscal year limitation, subject to authorization by Congress.

(b) The Fund shall be used solely to fund expenses directly related to the booting, towing, and impoundment of vehicles used in furtherance of prostitution-related activities, in violation of a prostitution-related offense.

(c) The Mayor shall submit to the Council, as part of the annual budget, a requested appropriation for expenditures from the Fund.

Subchapter II.
Prostitution Free Zones.

§ 22-2731. Prostitution free zone; penalty. [Repealed].
[Repealed].

CHAPTER 27A. PROTEST TARGETING A RESIDENCE.

Sec.
22-2751. Definitions.
22-2752. Engaging in an unlawful protest targeting a residence.

§ 22-2751. Definitions.

For the purposes of this chapter, the term:

(1) "Demonstration" means marching, congregating, standing, 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.

(2) "Mask" means a covering for the face or part of the face whereby the identity of the wearer is disguised. The term "Mask" shall not include clothing worn for the purpose of providing protection from the elements nor clothing worn as a religious covering.

(3) "Residence" means a building or structure, but not a hotel, used or designed to be used, in whole or in part, as a living or a sleeping place by one or more human beings.

§ 22-2752. Engaging in an unlawful protest targeting a residence.

(a)(1) It is unlawful for a person, as part of a group of 3 or more persons, to target a residence for purposes of a demonstration:

(A) Between 10:00 p.m. and 7:00 a.m.;

(B) While wearing a mask; or

(C) Without having provided the Metropolitan Police Department notification of the location and approximate time of the demonstration.

(2) The notification required by paragraph (1)(C) of this subsection shall be provided in writing to the operational unit designated for such purpose by the Chief of Police not less than 2 hours before the demonstration begins. The Metropolitan Police Department shall post on its website the e-mail and facsimile number by which the operational unit may be notified 24 hours a day, and the address to which notification may be hand delivered, as an alternative, during business hours.

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

CHAPTER 28. ROBBERY.

Sec.

§ 22-2801. Robbery.

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

§ 22-2802. Attempt to commit robbery.

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

§ 22-2803. Carjacking.

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

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

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

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

(c) Notwithstanding any other provision of law, a person convicted of carjacking shall not be released from prison prior to the expiration of 7 years from the date of the commencement of the sentence, and a person convicted of armed carjacking shall not be released from prison prior to the expiration of 15 years from the date of the commencement of the sentence.

CHAPTER 29. SALE OF UNWHOLESOME FOOD. [REPEALED].

Sec.

§ 22-2901. Sale of unwholesome food -- prohibited. [Repealed].
Repealed.

§ 22-2902. Sale of unwholesome food -- "Food" defined. [Repealed].
Repealed.

§ 22-2903. Sale of unwholesome food -- Inspection authorized. [Repealed].
Repealed.

§ 22-2904. Sale of unwholesome food -- Council to make rules and regulations. [Repealed].
Repealed.

§ 22-2905. Sale of unwholesome food -- Prosecutions for violations. [Repealed].
Repealed.

§ 22-2906. Sale of unwholesome food -- Penalty. [Repealed].
Repealed.

§ 22-2907. Chapter supplemental to Federal Food, Drug, and Cosmetic Act. [Repealed].
Repealed.

CHAPTER 30. SEXUAL ABUSE.

Subchapter I.
General Provisions.

Subchapter II.
Sex Offenses.

Subchapter II-A.
Reporting Requirements in Child Sexual Abuse Offense Cases.

Subchapter III.
Admission of Evidence in Sexual Abuse Offense Cases.

Subchapter I.
General Provisions.

§ 22-3001. Definitions.

For the purposes of this chapter:

(1) "Actor" means a person accused of any offense proscribed under this chapter.

(2) "Bodily injury" means injury involving loss or impairment of the function of a bodily member, organ, or mental faculty, or physical disfigurement, disease, sickness, or injury involving significant pain.

(3) "Child" means a person who has not yet attained the age of 16 years.

(4) "Consent" means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.

(4A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).

(4B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).

(5) "Force" means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.

(5A) "Minor" means a person who has not yet attained the age of 18 years.

(6) "Official custody" means:

(A) Detention following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion;

(B) Custody for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; or

(C) Probation or parole.

(7) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(8) "Sexual act" means:

(A) The penetration, however slight, of the anus or vulva of another by a penis;

(B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or

(C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.

(9) "Sexual contact" means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(10) "Significant relationship" includes:

(A) A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;

(B) A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;

(C) The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and

(D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor.

(11) "Victim" means a person who is alleged to have been subject to any offense set forth in subchapter II of this chapter.

Subchapter II.
Sex Offenses.

§ 22-3002. First degree sexual abuse.

(a) A person shall be imprisoned for any term of years or for life, and in addition, may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

(1) By using force against that other person;

(2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;

(3) After rendering that other person unconscious; or

(4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.

(b) The court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

§ 22-3003. Second degree sexual abuse.

A person shall be imprisoned for not more than 20 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

(1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or

(2) Where the person knows or has reason to know that the other person is:

(A) Incapable of appraising the nature of the conduct;

(B) Incapable of declining participation in that sexual act; or

(C) Incapable of communicating unwillingness to engage in that sexual act.

§ 22-3004. Third degree sexual abuse.

A person shall be imprisoned for not more than 10 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

(1) By using force against that other person;

(2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;

(3) After rendering that person unconscious; or

(4) After administering to that person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.

§ 22-3005. Fourth degree sexual abuse.

A person shall be imprisoned for not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

(1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or

(2) Where the person knows or has reason to know that the other person is:

(A) Incapable of appraising the nature of the conduct;

(B) Incapable of declining participation in that sexual contact; or

(C) Incapable of communicating unwillingness to engage in that sexual contact.

§ 22-3006. Misdemeanor sexual abuse.

Whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without that other person's permission, shall be imprisoned for not more than 180 days and, in addition, may be fined in an amount not more than the amount set forth in § 22-3571.01.

§ 22-3007. Defense to sexual abuse.

Consent by the victim is a defense to a prosecution under §§ 22-3002 to 22-3006, prosecuted alone or in conjunction with charges under § 22-3018 or §§ 22-401 and 22-403.

§ 22-3008. First degree child sexual abuse.

Whoever, being at least 4 years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act shall be imprisoned for any term of years or for life and, in addition, may be fined not more than the amount set forth in § 22-3571.01. However, the court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

§ 22-3009. Second degree child sexual abuse.

Whoever, being at least 4 years older than a child, engages in sexual contact with that child or causes that child to engage in sexual contact shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not more than the amount set forth in § 22-3571.01.

§ 22-3009.01. First degree sexual abuse of a minor.

Whoever, being 18 years of age or older, is in a significant relationship with a minor, and engages in a sexual act with that minor or causes that minor to engage in a sexual act shall be

imprisoned for not more than 15 years and may be fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3009.02. Second degree sexual abuse of a minor.

Whoever, being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact shall be imprisoned for not more than 7 1/2 years and may be fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3009.03. First degree sexual abuse of a secondary education student.

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in a sexual act with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in a sexual act, shall be imprisoned for not more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3009.04. Second degree sexual abuse of a secondary education student.

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in sexual conduct with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in sexual conduct, shall be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3010. Enticing a child or minor.

(a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 and §§ 22-3008 to 22-3009.02, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01, or both.

(b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined not more than the amount set forth in § 22-3571.01, or both.

(c) No person shall be consecutively sentenced for enticing a child or minor to engage in a sexual act or sexual contact under subsection (a)(2) of this section and engaging in that sexual act or sexual contact with that child or minor, provided, that the enticement occurred closely associated in time with the sexual act or sexual contact.

§ 22-3010.01. Misdemeanor sexual abuse of a child or minor.

(a) Whoever, being 18 years of age or older and more than 4 years older than a child, or being 18 years of age or older and being in a significant relationship with a minor, engages in sexually suggestive conduct with that child or minor shall be imprisoned for not more than 180 days, or fined not more than the amount set forth in § 22-3571.01, or both.

(b) For the purposes of this section, the term "sexually suggestive conduct" means engaging in any of the following acts in a way which is intended to cause or reasonably causes the sexual arousal or sexual gratification of any person:

(1) Touching a child or minor inside his or her clothing;

(2) Touching a child or minor inside or outside his or her clothing close to the genitalia, anus, breast, or buttocks;

(3) Placing one's tongue in the mouth of the child or minor; or

(4) Touching one's own genitalia or that of a third person.

§ 22-3010.02. Arranging for a sexual contact with a real or fictitious child.

(a) It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than 5 years, fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3011. Defenses to child sexual abuse and sexual abuse of a minor.

(a) Neither mistake of age nor consent is a defense to a prosecution under §§ 22-3008 to 22-3010.01, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403.

(b) Marriage or domestic partnership between the defendant and the child or minor at the time of the offense is a defense, which the defendant must establish by a preponderance of the evidence, to a prosecution under §§ 22-3008 to 22-3010.01, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403, involving only the defendant and the child or minor.

§ 22-3012. State of mind proof requirement.

In a prosecution under §§ 22-3008 to 22-3010, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403, the government need not prove that the defendant knew the child's age or the age difference between himself or herself and the child.

§ 22-3013. First degree sexual abuse of a ward, patient, client, or prisoner.

Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner, who engages in a sexual act with a ward, patient, client, or prisoner, or causes a ward, patient, client, or prisoner to engage in or submit to a sexual act shall be imprisoned for not more than 10 years or fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3014. Second degree sexual abuse of a ward, patient, client, or prisoner.

Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who

is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner, who engages in a sexual contact with a ward, patient, client, or prisoner, or causes a ward, patient, client, or prisoner, to engage in or submit to a sexual contact shall be imprisoned for not more than 5 years or fined not more than the amount set forth in § 22-3571.01, or both.

§ 22-3015. First degree sexual abuse of a patient or client.

(a) A person is guilty of first degree sexual abuse who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, and engages in a sexual act with another person who is a patient or client of the actor, or is otherwise in a professional relationship of trust with the actor; and

(1) The actor represents falsely that the sexual act is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;

(2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client are such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual act;

(3) The actor represents falsely that he or she is licensed as a particular type of professional; or

(4) The sexual act occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

(b) Any person found guilty pursuant to subsection (a) of this section shall be imprisoned for not more than 10 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01.

§ 22-3016. Second degree sexual abuse of a patient or client.

(a) A person is guilty of second degree sexual abuse who purports to provide, in any manner, professional services of a medical, therapeutic, or counseling (whether legal, spiritual, or otherwise) nature, and engages in a sexual contact with another person who is a patient or client of the actor, or is otherwise in a professional relationship of trust with the actor; and

(1) The actor represents falsely that the sexual contact is for a bona fide medical or therapeutic purpose, or for a bona fide professional purpose for which the services are being provided;

(2) The nature of the treatment or service provided by the actor and the mental, emotional, or physical condition of the patient or client are such that the actor knows or has reason to know that the patient or client is impaired from declining participation in the sexual contact;

(3) The actor represents falsely that he or she is licensed as a particular type of professional; or

(4) The sexual contact occurs during the course of a consultation, examination, treatment, therapy, or other provision of professional services.

(b) Any person found guilty pursuant to subsection (a) of this section shall be imprisoned for not more than 5 years and, in addition, may be fined not more than the amount set forth in §

22-3571.01.

§ 22-3017. Defenses to sexual abuse of a ward, patient, or client.

(a) Consent is not a defense to a prosecution under §§ 22-3013 to 22-3016, prosecuted alone or in conjunction with charges under § 22-3018.

(b) That the defendant and victim were married or in a domestic partnership at the time of the offense is a defense, which the defendant must prove by a preponderance of the evidence, to a prosecution under §§ 22-3013 to 22-3016, prosecuted alone or in conjunction with charges under § 22-3018.

§ 22-3018. Attempts to commit sexual offenses.

Any person who attempts to commit an offense under this subchapter shall be imprisoned for a term of years not to exceed 15 years where the maximum prison term authorized for the offense is life or for not more than 1/2 of the maximum prison sentence authorized for the offense and, in addition, may be fined an amount not to exceed 1/2 of the maximum fine authorized for the offense.

§ 22-3019. No immunity from prosecution for spouses or domestic partners.

No actor is immune from prosecution under any section of this subchapter because of marriage, domestic partnership, or cohabitation with the victim; provided, that marriage or the domestic partnership of the parties may be asserted as an affirmative defense in prosecution under this subchapter where it is expressly so provided.

§ 22-3020. Aggravating circumstances.

(a) Any person who is found guilty of an offense under this subchapter may receive a penalty up to 11/2 times the maximum penalty prescribed for the particular offense, and may receive a sentence of more than 30 years up to, and including life imprisonment without possibility of release for first degree sexual abuse or first degree child sexual abuse, if any of the following aggravating circumstances exists:

(1) The victim was under the age of 12 years at the time of the offense;

(2) The victim was under the age of 18 years at the time of the offense and the actor had a significant relationship to the victim;

(3) The victim sustained serious bodily injury as a result of the offense;

(4) The defendant was aided or abetted by 1 or more accomplices;

(5) The defendant is or has been found guilty of committing sex offenses against 2 or more victims, whether in the same or other proceedings by a court of the District of Columbia, any state, or the United States or its territories; or

(6) The defendant was armed with, or had readily available, a pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon.

(b) It is not necessary that the accomplices have been convicted for an increased punishment (or enhanced penalty) to apply under subsection (a)(4) of this section.

(c) No person who stands convicted of an offense under this subchapter shall be sentenced to increased punishment (or enhanced penalty) by reason of the aggravating factors set forth in subsection (a) of this section, unless prior to trial or before entry of a plea of guilty, the United States Attorney or the Attorney General for the District of Columbia, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the

person or counsel for the person, stating in writing the aggravating factors to be relied upon.

Subchapter II-A.
Reporting Requirements in Child Sexual Abuse Offense Cases

§ 22-3020.51. Definitions. [Transferred].
Transferred.

§ 22-3020.52. Reporting requirements and privileges. [Transferred].
Transferred.

§ 22-3020.53. Defense to non-reporting. [Transferred].
Transferred.

§ 22-3020.54. Penalties. [Transferred].
Transferred.

§ 22-3020.55. Immunity from liability. [Transferred].
Transferred.

Subchapter III.
Admission of Evidence in Sexual Abuse Offense Cases.

§ 22-3021. Reputation or opinion evidence of victim's past sexual behavior inadmissible. [Transferred].
Transferred.

§ 22-3022. Admissibility of other evidence of victim's past sexual behavior. [Transferred].
Transferred.

§ 22-3023. Prompt reporting. [Transferred].
Transferred.

§ 22-3024. Privilege inapplicable for spouses or domestic partners. [Transferred].
Transferred.

CHAPTER 30A.
NON-CONSENSUAL PORNOGRAPHY.

Sec.
22-3051. Definitions.
22-3052. Unlawful disclosure.
22-3053. First-degree unlawful publication.
22-3054. Second degree unlawful publication.
22-3055. Exclusions.
22-3056. Affirmative defenses.

§ 22-3051. Definitions.

For the purposes of this chapter, the term:

(1) "Disclose" means to transfer or exhibit to 5 or fewer persons.

(2) "Harm" means any injury, whether physical or nonphysical, including psychological, financial, or reputational injury.

(3) "Internet" means an electronically available platform by which sexual images can be disseminated to a wide audience, including social media, websites, and smartphone applications; provided, that the term "Internet" does not include a text message.

(4) "Private area" means the genitals, anus, or pubic area of a person, or the nipple of a developed female breast, including the breast of a transgender female.

(5) "Publish" means to transfer or exhibit to 6 or more persons, or to make available for viewing by uploading to the Internet.

(6) "Sexual conduct" shall have the same meaning as provided in § 22-3101(5).

(7) "Sexual image" means a photograph, video, or other visual recording of an unclothed private area or of sexual conduct.

§ 22-3052. Unlawful disclosure.

(a) It shall be unlawful in the District of Columbia for a person to knowingly disclose one or more sexual images of another identified or identifiable person when:

(1) The person depicted did not consent to the disclosure of the sexual image;

(2) There was an agreement or understanding between the person depicted and the person disclosing that the sexual image would not be disclosed; and

(3) The person disclosed the sexual image with the intent to harm the person depicted or to receive financial gain.

(b) A person who violates 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 180 days, or both.

§ 22-3053. First-degree unlawful publication.

(a) It shall be unlawful in the District of Columbia for a person to knowingly publish one or more sexual images of another identified or identifiable person when:

(1) The person depicted did not consent to the disclosure or publication of the sexual image;

(2) There was an agreement or understanding between the person depicted and the person publishing that the sexual image would not be disclosed or published; and

(3) The person published the sexual image with the intent to harm the person depicted or to receive financial gain.

(b) A person who violates this section shall be guilty of a felony and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 3 years, or both.

§ 22-3054. Second degree unlawful publication.

(a) It shall be unlawful in the District of Columbia for a person to knowingly publish one or more sexual images of another identified or identifiable person obtained from a third party or other source when:

(1) The person depicted did not consent to the disclosure or publication of the sexual image; and

(2) The person published the sexual image with conscious disregard that the sexual image was obtained as a result of a previous disclosure or publication of the sexual image made with an intent to harm the person depicted or to receive financial gain.

(b) A person who violates 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 180 days, or both.

§ 22-3055. Exclusions.

(a) This chapter shall not apply to:

(1) Constitutionally protected activity; or

(2) A person disclosing or publishing a sexual image that resulted from the voluntary exposure of the person depicted in a public or commercial setting.

(b) Nothing in this chapter shall be construed to impose liability on an interactive computer service, as defined in section 230(e)(2) of the Communications Act of 1934, approved February 8, 1996 (110 Stat. 139; 47 U.S.C. § 230(f)(2)), for content provided by another person.

§ 22-3056. Affirmative defenses.

It shall be an affirmative defense to a violation of § 22-3052, § 22-3053, or § 22-3054 if the disclosure or publication of a sexual image is made in the public interest, including the reporting of unlawful conduct, the lawful and common practices of law enforcement, or legal proceedings.

CHAPTER 31.
SEXUAL PERFORMANCE USING MINORS.

Sec.

§ 22-3101. Definitions.

For the purposes of this chapter, the term:

(1) "Knowingly" means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry, or both.

(2) "Minor" means any person under 18 years of age.

(3) "Performance" means any play, motion picture, photograph, electronic representation, dance, or any other visual presentation or exhibition.

(4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(5) "Sexual conduct" means:

(A) Actual or simulated sexual intercourse:

(i) Between the penis and the vulva, anus, or mouth;

(ii) Between the mouth and the vulva or anus; or

(iii) Between an artificial sexual organ or other object or instrument used in the manner of an artificial sexual organ and the anus or vulva;

(B) Masturbation;

(C) Sexual bestiality;

(D) Sadomasochistic sexual activity for the purpose of sexual stimulation; or

(E) Lewd exhibition of the genitals.

(6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a person under 18 years of age.

§ 22-3102. Prohibited acts.

(a) It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual performance by a minor.

(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 18 years of age to engage in a sexual performance or being the parent, legal guardian, or custodian of a minor, he or she consents to the participation by a minor in a sexual performance.

(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.

(b) It shall be unlawful in the District of Columbia for a person, knowing the character and content thereof, to attend, transmit, or possess a sexual performance by a minor.

(c) If the sexual performance consists solely of a still or motion picture, then this section:

(1) Shall not apply to the minor or minors depicted in a still or motion picture who possess it or transmit it to another person unless at least one of the minors depicted in it does not consent to its possession or transmission; and

(2) Shall not apply to possession of a still or motion picture by a minor, or by an adult not more than 4 years older than the minor or minors depicted in it, who receives it from a minor depicted in it unless the recipient knows that at least one of the minors depicted in the still or motion picture did not consent to its transmission.

(d) For the purposes of subsections (b) and (c) of this section, the term:

(1) "Possess," "possession," or "possessing" requires accessing the sexual performance if electronically received or available.

(2) "Still or motion picture" includes a photograph, motion picture, electronic or digital representation, video, or other visual depiction, however produced or reproduced.

(3) "Transmit" or "transmission" includes distribution, and can occur by any means, including electronically."

§ 22-3103. Penalties.

Violation of this chapter shall be a felony and shall be punished by:

(1) A fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 10 years, or both for the first offense; or

(2) A fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 20 years, or both for the 2nd and each subsequent offense.

§ 22-3104. Affirmative defenses.

(a) Under this chapter it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was 18 years of age or over.

(b)(1) Except as provided in paragraph (2) of this subsection, in any prosecution for an offense pursuant to § 22-3102(2) it shall be an affirmative defense that the person so charged was:

(A) A librarian engaged in the normal course of his or her employment; or

(B) A motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter, or in any other nonmanagerial or nonsupervisory capacity in a motion picture theater.

(2) The affirmative defense provided by paragraph (1) of this subsection shall not apply if the person described therein has a financial interest (other than his or her employment, which employment does not encompass compensation based upon any proportion of the gross receipts) in:

(A) The promotion of a sexual performance for sale, rental, or exhibition;

(B) The direction of any sexual performance; or

(C) The acquisition of the performance for sale, retail, or exhibition.

(c) It shall be an affirmative defense to a charge under § 22-3102 that the defendant:

(1) Possessed or accessed less than 6 still photographs or one motion picture, however produced or reproduced, of a sexual performance by a minor; and

(2) Promptly and in good faith, and without retaining, copying, or allowing any person, other than a law enforcement agency, to access any photograph or motion picture:

(A) Took reasonable steps to destroy each such photograph or motion picture; or

(B) Reported the matter to a law enforcement agency and afforded that agency access to each such photograph or motion picture.

CHAPTER 31A.
STALKING.

Sec.

§ 22-3131. Legislative intent.

(a) The Council finds that stalking is a serious problem in this city and nationwide. Stalking involves severe intrusions on the victim's personal privacy and autonomy. It is a crime that can have a long-lasting impact on the victim's quality of life, and creates risks to the security and safety of the victim and others, even in the absence of express threats of physical harm. Stalking conduct often becomes increasingly violent over time. The Council recognizes the dangerous nature of stalking as well as the strong connections between stalking and domestic violence and between stalking and sexual assault. Therefore, the Council enacts this law to encourage effective intervention by the criminal justice system before stalking escalates into behavior that has even more serious or lethal consequences.

(b) The Council enacts this stalking statute to permit the criminal justice system to hold stalkers accountable for a wide range of acts, communications, and conduct. The Council recognizes that stalking includes a pattern of following or monitoring the victim, or committing violent or intimidating acts against the victim, regardless of the means.

§ 22-3132. Definitions.

For the purposes of this chapter, the term:

(1) "Any device" means electronic, mechanical, digital or any other equipment, including: a camera, spycam, computer, spyware, microphone, audio or video recorder, global positioning system, electronic monitoring system, listening device, night-vision goggles, binoculars, telescope, or spyglass.

(2) "Any means" includes the use of a telephone, mail, delivery service, e-mail, website, or other method of communication or any device.

(3) "Communicating" means using oral or written language, photographs, pictures, signs, symbols, gestures, or other acts or objects that are intended to convey a message.

(4) "Emotional distress" means significant mental suffering or distress that may, but does not necessarily, require medical or other professional treatment or counseling;

(5) "Financial injury" means the monetary costs, debts, or obligations incurred as a result of the stalking by the specific individual, member of the specific individual's household, a person whose safety is threatened by the stalking, or a person who is financially responsible for the specific individual and includes:

(A) The costs of replacing or repairing any property that was taken or damaged;

(B) The costs of clearing the specific individual's name or his or her credit, criminal, or any other official record;

(C) Medical bills;

(D) Relocation expenses;

(E) Lost employment or wages; and

(F) Attorney's fees.

(6) "Personal identifying information" shall have the same meaning as provided in § 22-3227.01(3).

(7) "Specific individual" or "individual" means the victim or alleged victim of stalking.

(8) "To engage in a course of conduct" means directly or indirectly, or through one or more third persons, in person or by any means, on 2 or more occasions, to:

(A) Follow, monitor, place under surveillance, threaten, or communicate to or about another individual;

(B) Interfere with, damage, take, or unlawfully enter an individual's real or personal property or threaten or attempt to do so; or

(C) Use another individual's personal identifying information.

§ 22-3133. Stalking.

(a) It is unlawful for a person to purposefully engage in a course of conduct directed at a specific individual:

(1) With the intent to cause that individual to:

(A) Fear for his or her safety or the safety of another person;

(B) Feel seriously alarmed, disturbed, or frightened; or

(C) Suffer emotional distress;

(2) That the person knows would cause that individual reasonably to:

(A) Fear for his or her safety or the safety of another person;

(B) Feel seriously alarmed, disturbed, or frightened; or

(C) Suffer emotional distress; or

(3) That the person should have known would cause a reasonable person in the individual's circumstances to:

(A) Fear for his or her safety or the safety of another person;

(B) Feel seriously alarmed, disturbed, or frightened; or

(C) Suffer emotional distress.

(b) This section does not apply to constitutionally protected activity.

(c) Where a single act is of a continuing nature, each 24-hour period constitutes a separate occasion.

(d) The conduct on each of the occasions need not be the same as it is on the others.

§ 22-3134. Penalties.

(a) Except as provided in subsections (b) and (c) of this section, a person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 12 months, or both.

(b) A person who violates § 22-3133 shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 5 years, or both, if the person:

(1) At the time, was subject to a court, parole, or supervised release order prohibiting contact with the specific individual;

(2) Has one prior conviction in any jurisdiction of stalking any person within the previous 10 years;

(3) At the time, was at least 4 years older than the specific individual and the specific individual was less than 18 years of age; or

(4) Caused more than $ 2,500 in financial injury.

(c) A person who violates § 22-3133 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 person has 2 or more prior convictions in any jurisdiction for stalking any person, at least one of which was for a jury demandable offense.

(d) A person shall not be sentenced consecutively for stalking and identify theft based on the same act or course of conduct.

§ 22-3135. Jurisdiction.

(a) An offense shall be deemed to be committed in the District of Columbia if the conduct on at least one occasion was initiated in the District of Columbia or had an effect on the specific individual in the District of Columbia.

(b) A communication shall be deemed to be committed in the District of Columbia if it is made or received in the District of Columbia or, if the specific individual lives in the District of Columbia, it can be electronically accessed in the District of Columbia.

CHAPTER 31B.
TERRORISM.

Sec.

§ 22-3151. Short title.

This chapter may be cited as the "Anti-Terrorism Act of 2002".

§ 22-3152. Definitions.

For the purposes of this chapter, the term:

(1) "Act of terrorism" means an act or acts that constitute a specified offense as defined in paragraph (8) of this section and that are intended to:

(A) Intimidate or coerce a significant portion of the civilian population of:

(i) The District of Columbia; or

(ii) The United States; or

(B) Influence the policy or conduct of a unit of government by intimidation or coercion.

(2) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any such microorganism, virus, infectious substance, or biological product, capable of causing:

(A) Death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(B) Deterioration of food, water, equipment, supplies, or material of any kind; or

(C) Deleterious alteration of the environment.

(3) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics, appears to be or to contain, or is represented to be or to contain a weapon of mass destruction, even if it is, in fact, an inoperative facsimile or imitation of a weapon of mass destruction, or contains no weapon of mass destruction.

(4) "Material support or resources" means:

(A) Expert services or assistance;

(B) Currency, financial securities or other monetary instruments, financial services, lodging, training, false documentation or identification, equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets; or

(C) A weapon of mass destruction.

(5) "Nuclear material" means material containing any:

(A) Plutonium;

(B) Uranium not in the form of ore or ore residue that contains the mixture of isotopes as occurring in nature;

(C) Enriched uranium, defined as uranium that contains the isotope 233 or 235 or both in such amount that the abundance ratio of the sum of those isotopes to the isotope 238 is greater than the ratio of the isotope 235 to the isotope 238 occurring in nature; or

(D) Uranium 233.

(6) "Provision of material support or resources for an act of terrorism" means the act of

providing material support or resources to a person or an organization with the purpose or knowledge that the material support or resources will be used, in whole or in part, to plan, prepare, or carry out an act of terrorism, or to flee after committing an act of terrorism.

(7) "Solicitation of material support or resources to commit an act of terrorism" means the act of raising, soliciting, or collecting material support or resources with the purpose or knowledge that such material support or resources will be used, in whole or in part, to plan, prepare, or carry out an act of terrorism, or to flee after committing an act of terrorism.

(8) "Specified offense" means:

(A) Section 22-2101 (Murder in the first degree);

(B) Section 22-2102 (Murder in the first degree -- placing obstructions upon or displacement of railroads);

(C) Section 22-2106 (Murder of law enforcement officer or public safety employee);

(D) Section 22-2103 (Murder in the second degree);

(E) Section 22-2105 (Manslaughter);

(F) Section 22-2001 (Kidnapping and conspiracy to kidnap);

(G) Section 22-401 (Assault with intent to kill only);

(H) Section 22-406 (Mayhem or maliciously disfiguring);

(I) Section 22-301 (Arson);

(J) Section 22-303 (Malicious burning, destruction, or injury of another's property, if the property is valued at $ 500,000 or more); or

(K) An attempt or conspiracy to commit any of the offenses listed in subparagraphs (A) through (J) of this paragraph.

(9) "Toxic or poisonous chemical" means any chemical which, through its chemical action on life processes, can cause death, permanent incapacitation, or permanent harm to humans.

(10) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(A) Any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(B) Any poisonous isomer or biological product, homolog, or derivative of such a substance;

(11) "Unit of government" means:

(A) The office of the President of the United States;

(B) The United States Congress;

(C) Any federal executive department or agency;

(D) The office of the Mayor of the District of Columbia;

(E) Any executive department or agency of the District of Columbia, including any independent agency, board, or commission;

(F) The Council of the District of Columbia;

(G) The Superior Court of the District of Columbia;

(H) The District of Columbia Court of Appeals;

(I) The United States Court of Appeals for the District of Columbia;

(J) The United States District Court for the District of Columbia; or

(K) The Supreme Court of the United States.

(12) "Weapon of mass destruction" means:

(A) Any destructive device that is designed, intended, or otherwise used to cause death or serious bodily injury, including:

(i) An explosive, incendiary, or poison gas:

(I) Bomb;

(II) Grenade;

(III) Rocket;

(IV) Missile;

(V) Mine; or

(VI) Device similar to any of the devices described in the preceding clauses;

(ii) A mortar, cannon, or artillery piece; or

(iii) Any combination of parts either designed or intended for use in converting any device into a device described in sub-subparagraphs (i) through (iii) of this paragraph and from which such device may be readily assembled;

(B) An object similar to or used to achieve the same destructive effect of any of the devices described in subparagraph (A) of this paragraph;

(C) Any weapon that is designed, intended, or otherwise used to cause death or serious bodily injury through the release, dissemination, or impact of a toxic or poisonous chemical;

(D) Any weapon that is designed, intended, or otherwise used to cause death or serious bodily injury through the release, dissemination, or impact of a biological agent or toxin; or

(E) Any weapon that is designed, intended, or otherwise used to cause death or serious bodily injury through the release, dissemination, or impact of radiation or radioactivity, or that contains nuclear material.

§ 22-3153. Acts of terrorism; penalties.

(a) A person who commits first degree murder that constitutes an act of terrorism shall, upon conviction, be punished by imprisonment for life without the possibility of release.

(b) A person who commits murder of a law enforcement officer or public safety employee that constitutes an act of terrorism shall, upon conviction, be punished by imprisonment for life without the possibility of release.

(c) A person who commits murder in the second degree that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for life.

(d) A person who commits manslaughter that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for life.

(e) A person who commits kidnapping that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for life.

(f) A person who commits any assault with intent to kill that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for not more than 30 years.

(g) A person who commits mayhem or maliciously disfiguring another that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

(h) A person who commits arson that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

(i) A person who commits malicious burning, destruction, or injury of another's property, if such property is valued at $ 500,000 or more, that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

(j) A person who attempts or conspires to commit first degree murder, murder of a law enforcement officer or public safety employee, murder in the second degree, manslaughter, or kidnapping that constitutes an act of terrorism may be punished by imprisonment for not more than 30 years.

(k) A person who attempts or conspires to commit any assault with intent to kill that constitutes an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

(l) A person who attempts or conspires to commit mayhem or maliciously disfiguring another, arson, or malicious burning, destruction, or injury of another's property, if such property is valued at $ 500,000 or more, that constitutes an act of terrorism may, upon conviction, be punished by imprisonment of not more than 15 years.

(m) A person who provides material support or resources for an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

(n) A person who solicits material support or resources to commit an act of terrorism may, upon conviction, be punished by imprisonment for not more than 20 years.

§ 22-3154. Manufacture or possession of a weapon of mass destruction.

(a) A person who manufactures or possesses a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for life.

(b) A person who attempts or conspires to manufacture or possess a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for not more than 30 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.

§ 22-3155. Use, dissemination, or detonation of a weapon of mass destruction.

(a) A person who uses, disseminates, or detonates a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for life.

(b) A person who attempts or conspires to use, disseminate, or detonate a weapon of mass destruction capable of causing multiple deaths, serious bodily injuries to multiple persons, or massive destruction of property may, upon conviction, be punished by imprisonment for not more than 30 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.

§ 22-3156. Jurisdiction.

There is jurisdiction to prosecute any person who participates in the commission of any offense described in this chapter if any act in furtherance of the offense occurs in the District of Columbia or where the effect of any act in furtherance of the offense occurs in the District of Columbia.

CHAPTER 32. THEFT; FRAUD; STOLEN PROPERTY; FORGERY; AND EXTORTION.

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Subchapter I.
General Provisions.

§ 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.

Subchapter II.
Theft; Related Offenses.

§ 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 10 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) Section 22-3211;

(2) A statute in one or more jurisdictions prohibiting theft or larceny; or

(3) Conduct that would constitute a violation of section 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 or her own home, for his or her 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 and not more than the amount set forth in § 22-3571.01, 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.

Subchapter II-A.
Theft of Utility Service.

§ 22-3218.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Company" means a person or enterprise engaged in the generation or distribution of natural gas or electricity.

(2) "Person" means any individual, corporation, company, association, firm, partnership, joint stock company, or other entity.

§ 22-3218.02. Unlawful acts.

Unless a person shall be authorized, or employed by, a company engaged in the generation or distribution of natural gas or electricity, a person shall not willfully connect or disconnect an electrical conductor belonging to the company; make any connection with an electrical conductor for the purpose of using or wasting the electric current or gas; tamper with a meter used to register gas or current consumed; interfere with the operation of an electrical or gas appliance of the company; or tamper, or interfere, with the poles, wires, or conduits used by the company. Nothing in this section shall prevent the lawful governmental regulation of gas or electric companies or electricity suppliers, or their conductors, appliances, machinery, and poles.

§ 22-3218.03. Presumptions and rebuttal evidence.

(a) The presence of a connection, wire, conductor, meter alteration, or any device which effects the diversion of electric current or gas without the current or gas being measured or registered by or on a meter installed by a company engaged in the generation or distribution of electricity or natural gas, whether on a single property or within a multiple-unit building or complex, shall constitute prima facie evidence of intent to violate § 22-3218.02.

(b) If a check or test meter installed or employed by a company engaged in the generation or distribution of electricity or natural gas shows that a person is using a larger amount of electricity than is registered on the meter installed by the company on the person's premises for the purpose of registering the natural gas or electricity used by the person, and the company has verified that the meter is not malfunctioning, it shall constitute prima facie evidence that the unregistered current or gas has been wrongfully diverted by such person and shall constitute prima facie evidence of intent to violate § 22-3218.02.

(c) The presumptions created by this section may be rebutted by a preponderance of the evidence to the contrary that the person alleged to have violated § 22-3218a did not do so. If the person in actual possession of the property or unit has not received the direct benefit of the

reduction of the cost in electric or gas services, the presumptions created by this section shall apply to the owner of the property or unit; provided, that the owner has received the direct benefit of unregistered services for at least one full billing cycle.

§ 22-3218.04. Penalties for violation.

(a) A person who violates § 22-3218.02 shall be guilty of a misdemeanor, and, upon a conviction, shall be imprisoned for not more than 60 days, or fined, not more than the amount set forth in § 22-3571.01, or both. In the case of a second or subsequent conviction, a person who violates § 22-3218.02 shall be imprisoned for not more than 180 days, or fined, not more than the amount set forth in § 22-3571.01, or both.

(b) In addition to the criminal penalties in subsection (a) of this section, a person who is found to have violated § 22-3218.02 in a civil proceeding shall be liable to the company using or engaged in the generation or distribution of electricity or gas for restitution of the amount of any losses or damage sustained.

Subchapter III.
Fraud; Related Offenses.

§ 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.

Subchapter III-A.
Insurance Fraud.

§ 22-3225.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Business of insurance" means the writing of insurance or reinsuring the risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

(2) "Commissioner" means the Commissioner of the Department of Insurance, Securities, and Banking, the Commissioner's designee, or the Department of Insurance, Securities, and Banking.

(3) "District" means the District of Columbia.

(4) "Insurance" means a contract or arrangement in which one undertakes to:

(A) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;

(B) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;

(C) Pay an annuity to another; or

(D) Act as a surety.

(5) "Insurance professional" means insurance sales agents or managing general agents, insurance brokers, insurance producers, insurance adjusters, and insurance third party administrators.

(6) "Insurer" includes any company defined by § 31-4202 and § 31-2501.03, authorized to do the business of insurance in the District, a hospital and medical services corporation, a fraternal benefit society, or a health maintenance organization. The term "insurer" shall not apply to a Medicaid health maintenance organization.

(7) "Malice" means an intentional or deliberate infliction of injury, by furnishing or disclosing information with knowledge that the information is false, or furnishing or disclosing information with reckless disregard for a strong likelihood that the information is false and that injury will occur as a result.

(8) "Person" means a natural person, company, corporation, joint stock company, unincorporated association, partnership, professional corporation, trust, or any other entity or combination of the foregoing.

(9) "Practitioner" means a person, licensed to practice a profession or trade in the District, whose services are compensated either in whole or in part, directly or indirectly, by insurance proceeds.

(10) "Premium" means the money paid or payable as the consideration for coverage under an insurance policy.

§ 22-3225.02. Insurance fraud in the first degree.

A person commits the offense of insurance fraud in the first degree if that person knowingly engages in the following conduct with the intent to defraud or to fraudulently obtain

property of another and thereby obtains property of another or causes another to lose property and the value of the property obtained or lost is $ 1,000 or more:

(1) Presenting false information or knowingly conceals information regarding a material fact in any of the following transactions:

(A) Application for, rating of, or renewal of an insurance policy or reinsurance contract;

(B) Claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(C) Premiums paid on an insurance policy or reinsurance contract;

(D) Payment made in accordance with the terms of an insurance policy or reinsurance contract;

(E) Application used in a premium finance transaction;

(F) Solicitation for sale of an insurance policy;

(G) Application for a license or certificate of authority filed with the Commissioner or the chief insurance regulatory official of another jurisdiction;

(H) Financial statement or condition of any insurer or reinsurer;

(I) Acquisition, formation, merger, affiliation, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in the District by an insurer or reinsurer;

(J) Issuance of written evidence of insurance; or

(K) Application for reinstatement of an insurance policy;

(2) Soliciting or accepting insurance or renewal of insurance by or for an insurer which the person knows is insolvent or has a strong likelihood of insolvency;

(3) Removal or tampering with the records of transaction, documentation, and other material assets of an insurer from the insurer or from the Department of Insurance and Securities Regulation;

(4) Diversion, misappropriation, conversion, or embezzlement of funds of an insurer, an insured, claimant or applicant regarding any of the following:

(A) Insurance transaction;

(B) Other insurance business activities by an insurer or insurance professional; or

(C) Acquisition, formation, merger, affiliation or dissolution of an insurer.

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or

(6) Employing or using any other person or acting as the agent of any other person to procure a client, patient, or customer for the purpose of falsely or fraudulently obtaining benefits under a contract of insurance or asserting a false or fraudulent claim against an insured or insurer.

§ 22-3225.03. Insurance fraud in the second degree.

A person commits the offense of insurance fraud in the second degree if that person knowingly engages in conduct specified in § 22-3225.02 with the intent to defraud or to fraudulently obtain property of another and the value of the property which is sought to be obtained is $ 1,000 or more.

§ 22-3225.03a. Misdemeanor insurance fraud.

A person commits the offense of misdemeanor insurance fraud if that person knowingly engages in conduct specified in § 22-3225.02 with the intent to defraud or to fraudulently obtain property of another.

§ 22-3225.04. Penalties.

(a) Any person convicted of insurance 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 15 years, or both.

(b)(1) Except as provided in paragraph (2) of this subsection, any person convicted of insurance 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 5 years, or both.

(2) Any person convicted of insurance fraud in the second degree who has been convicted previously of insurance fraud pursuant to § 22-3225.02 or § 22-3225.03, or a felony conviction based on similar grounds in any other jurisdiction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

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

(d) A person convicted of a felony violation of this subchapter shall be disqualified from engaging in the business of insurance, subject to 18 U.S.C. § 1033(e)(2).

§ 22-3225.05. Restitution.

(a) In addition to the penalties provided under § 22-3225.04, a person convicted under this subchapter shall make monetary restitution for any loss caused by the offense. The court shall determine the form and method of payment which, if by installment, shall not exceed 5 years.

(b) Any person, including the District, injured as the result of an insurance fraud in the first degree may bring suit in the appropriate court to recover ordinary damages including attorney's fees and other costs and punitive damages which shall not be less than $ 500 nor more than $ 50,000. Except where punitive damages are sought, the court shall award treble damages where the offense is proven by clear and convincing evidence to be in accordance with an established pattern or practice.

(c) Notwithstanding any action that may be brought by the United States Attorney's office to recoup its costs in prosecuting these cases, the Attorney General for the District of Columbia may bring a civil suit against any person convicted under this subchapter in order to recover investigation and prosecution-related costs incurred by the District.

(d) A suit under subsection (b) of this section must be filed within 3 years of the act constituting the offense or within 3 years of the time the plaintiff discovered or with reasonable diligence could have discovered the act, whichever is later. This 3 year statute of limitations shall not apply to the District.

(e) Remedies provided in this section shall be exclusive and may not be claimed in conjunction with any other remedies available under the law.

§ 22-3225.06. Indemnity.

An insurer shall not be liable for the following:

(1) Damages or restitution provided by this subchapter, either jointly, severably, or as a third party, for insurance fraud offense committed by an insured; or

(2) The defense of an insured or other person who is charged with insurance fraud.

§ 22-3225.07. Practitioners.

(a) Notwithstanding any other provisions of law, the offenses of insurance fraud in the first degree or the second degree shall be deemed a crime of moral turpitude for the purposes of professional or trade license.

(b) The Commissioner, court, or prosecutor shall notify the appropriate licensing authority, and the person who is injured by the offense may notify the appropriate licensing authority of any conviction.

§ 22-3225.08. Investigation and report of insurance fraud. [Transferred].

Transferred.

§ 22-3225.09. Insurance fraud prevention and detection. [Transferred].

Transferred.

§ 22-3225.10. Regulations. [Transferred].

Transferred.

§ 22-3225.11. Limited law enforcement authority. [Transferred].

Transferred.

§ 22-3225.12. Annual anti-fraud activity reporting requirement. [Transferred].

Transferred.

§ 22-3225.13. Immunity. [Transferred].

Transferred.

§ 22-3225.14. Prohibition of solicitation. [Transferred].

Transferred.

§ 22-3225.15. 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 insured, insurer, claimant, or applicant is a resident of, or located in, the District of Columbia;

(2) A District of Columbia address is used on an application, policy, or claim for payment or benefit;

(3) The services for which a claim is made were provided or alleged to have been provided in the District of Columbia;

(4) Payment of a claim or benefit was made or was to be made to an address in the District of Columbia;

(5) The loss occurred or is alleged to have occurred in the District of Columbia; or

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

Subchapter III-B.

Telephone Fraud.

§ 22-3226.01. Definitions.

For the purposes of this subchapter, the term:

(1) "Applicant" means any individual, sole proprietorship, partnership, association, cooperative, corporation, nonprofit organization, and any other organization required to register with the District to conduct telemarketing in the District of Columbia.

(2) "Certificate of registration" means a document issued by the District government showing that a named individual or business has registered as a telephone solicitor with the Mayor of the District of Columbia.

(3) "Consumer" means a person who is or may be required to pay for goods or services offered by a telephone solicitor through telemarketing.

(4) "Goods" or "services" means any real property or any tangible or intangible personal property or services of any kind provided or offered to a consumer.

(5) "Licensed securities, commodities or investment broker" means a licensed or registered securities, commodities or investment broker.

(6) "Seller" means any person, who, in connection with a telemarketing transaction, provides, offers to provide, or arranges for others to provide goods or services to the customer in exchange for consideration.

(7) "Telemarketing" means a plan, program or campaign which is conducted to induce the purchase of goods or services by use of one or more telephones. Telemarketing does not include a one-time or infrequent transaction unrelated to a pattern of repeated transactions. Telemarketing does not include a telephone call to a consumer:

(A) As a one-time or infrequent transaction unrelated to a pattern of repeated transactions;

(B) To provide information to a consumer and in which payment for the sale of good or services is not accepted in that telephone call;

(C) To administer an existing account or service an existing customer (including product safety recalls);

(D) To respond to a consumer's request; or

(E) In which payment for the sale of good or services is not accepted in that telephone call.

(8) "Telephone solicitor" means a person (acting himself or herself or itself, or through an agent) who initiates a telephone call to a consumer in the District of Columbia as a part of a plan, program, or campaign which is conducted to induce the purchase of goods or services by the use of one or more telephones. A telephone solicitor does not include a person who initiates a telephone call to a consumer:

(A) As a one-time or infrequent transaction unrelated to a pattern of repeated transactions;

(B) To provide information to a consumer and in which payment for the sale of good or services is not accepted in that telephone call;

(C) To administer an existing account or service an existing customer (including product safety recalls);

(D) To respond to a consumer's request; or

(E) Does not accept payment for the sale of good or services in that telephone call.

§ 22-3226.02. Application for a certificate of registration of telephone solicitor. [Transferred].

Transferred.

§ 22-3226.03. Surety bond requirements for telephone solicitors. [Transferred].

Transferred.

§ 22-3226.04. Security alternative to surety bonds. [Transferred].

Transferred.

§ 22-3226.05. Exemptions. [Transferred].

Transferred.

§ 22-3226.06. Unlawful acts and practices.

(a) A telephone solicitor commits the offense of telephone solicitation fraud when engaged in any one of the following:

(1) Fails to obtain or maintain a valid certificate of registration;

(2) Obtains a certificate of registration through any false or fraudulent pretence or representation in any registration application;

(3) Knowingly fails to have received written consent to use the name of a charitable organization;

(4) Knowingly misrepresents any of the following:

(A) The total cost of the goods or services that are the subject of the telephone solicitation sales call;

(B) Material restrictions, material limitations, or material conditions to the purchase of goods or services that are the subject of a telephone solicitation;

(C) Material aspects of the performance, efficacy, nature or characteristics of goods or services that are the subject of a telephone solicitation; or

(D) Material aspects of the nature of terms of the telephone solicitor's refund, cancellation, exchange or repurchase policies;

(5) Induces a consumer to purchase goods or services by means of a false or fraudulent pretense, representation or promise;

(6) Charges a consumer's checking or savings account without the consumer's express written authorization; or

(7) Procures the services of any professional delivery, courier, or other pickup service to obtain immediate receipt and/or possession of a consumer's payment unless the goods are delivered with the opportunity to inspect before payment is collected.

(b) A person who violates any provision of this section shall be subject to the penalties provided in §§ 22-3226.09 and 22-3226.10.

§ 22-3226.07. Deceptive acts and practices prohibited.

(a) It is a deceptive telemarketing act or practice for any seller or telephone solicitor to misrepresent any of the following material information:

(1) The total purchase cost to the consumer of the goods or services to be received;

(2) The true name of the telephone solicitor; or

(3) Material aspects of the quality or basic characteristics of the goods or services purchased.

(b) It is a deceptive telemarketing act or practice for any seller or telephone solicitor to misrepresent any material fact regarding the goods or services purchased that has a tendency to mislead.

(c) No person shall commit a deceptive telemarketing act or practice.

§ 22-3226.08. Abusive telemarketing acts or practices.

It is an abusive telemarketing act or practice and violation of this subchapter for a seller or telephone solicitor to engage in the following conduct:

(1) Cause a telephone to ring more than 15 times in an intended telephone solicitation call;

(2) Initiate a telephone solicitation call to a consumer after the same consumer has expressly stated that he or she does not wish to receive solicitation calls from that seller; or

(3) Engage in telephone solicitation to a consumer's residence at any time before 8:00 a.m. and after 9:00 p.m., local time at the place of the consumer called.

§ 22-3226.09. Civil penalties. [Transferred].

Transferred.

§ 22-3226.10. Criminal penalties.

Any telephone solicitor who violates § 22-3226.06 and obtains property thereby shall be guilty of the crime of telemarketing fraud, which is punishable as follows:

(1) If the amount of the transaction is valued at $ 20,000 or more, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 4 years, or both.

(2) If the amount of the transaction is valued at less than $ 20,000 but more than $ 5,000, the seller or telephone solicitor shall upon conviction be guilty of a felony, and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 3 years, or both.

(3) If the amount of the transaction is valued at less than $ 5,000 or less, the seller or telephone solicitor shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 6 months, or both.

§ 22-3226.11. Private right of action. [Transferred].

Transferred.

§ 22-3226.12. Statute of limitations period. [Transferred].

Transferred.

§ 22-3226.13. Task force to combat fraud. [Transferred].

Transferred.

§ 22-3226.14. Fraud Prevention Fund. [Transferred].

[Transferred].

§ 22-3226.15. General disclosures. [Transferred].
[Transferred].

Subchapter III-C.
Identity Theft.

§ 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) [Reserved].
(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) $ 10,000, (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 the amount set forth in § 22-3571.01 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) Enhanced penalty. -- Any person who commits the offense of identity theft against an individual who is 65 years of age or older, at the time of the offense, may be punished by a fine of up to 11/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 11/2 times the maximum term of imprisonment otherwise authorized for the offense, or both. It is an affirmative defense that the accused:

(1) Reasonably believed that the victim was not 65 years of age or older at the time of the offense; or

(2) Could not have determined the age of the victim because of the manner in which the offense was committed.

§ 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.

Subchapter IV.
Stolen Property.

§ 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 the amount set forth in § 22-3571.01, 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).

Subchapter V.
Forgery.

§ 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.

Subchapter VI.
Extortion.

§ 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.

CHAPTER 33.
TRESPASS; INJURIES TO PROPERTY.

Sec.

§ 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.

§ 22-3303. Grave robbery; buying or selling dead bodies. [Repealed].

Repealed.

§ 22-3304. Depredation of fixtures in houses. [Repealed].

Repealed.

§ 22-3305. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destroy, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not more than the amount set forth in § 22-3571.01 and by imprisonment for not less than 2 years or more than 10 years.

§ 22-3306. Defacing books, manuscripts, publications, or works of art.

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.

§ 22-3307. Destroying or defacing public records.

Whoever maliciously or with intent to injure or defraud any other person defaces, mutilates, destroys, abstracts, or conceals the whole or any part of any record authorized by law to be made, or pertaining to any court or public office in the District, or any paper duly filed in such court or office, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 180 days, or both.

§ 22-3308. Cutting down or destroying things growing on or attached to the land of another. [Repealed].

Repealed.

§ 22-3309. Destroying boundary markers.

Whoever maliciously cuts down, destroys, or removes any boundary tree, stone, or other mark or monument, or maliciously effaces any inscription thereon, either of his or her own lands or of the lands of any other person whatsoever, even though such boundary or bounded trees should stand within the person's own land so cutting down and destroying the same, shall be fined not more than the amount set forth in § 22-3571.01 and imprisoned not exceeding 180 days.

§ 22-3310. Destroying vines, bushes, shrubs, trees or protections thereof; penalty.

It shall be unlawful for any person willfully to top, cut down, remove, girdle, break, wound, destroy, or in any manner injure any vine, bush, shrub, or tree not owned by that person, or any of the boxes, stakes or any other protection thereof, under a penalty not to exceed, for each and every such offense:

(1) In the case of any tree 55 inches or greater in circumference when measured at a height of four and one half feet, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 90 days, or both; or

(2) For vines, bushes, shrubs, and smaller trees, a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 30 days, or both.

§ 22-3311. Disorderly conduct in public buildings or grounds; injury to or destruction of United States property.

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 willfully 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.

§ 22-3312. Destroying or defacing buildings, statutes, or monuments. [Repealed].

Repealed

§ 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 upon; 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.

§ 22-3312.02. Defacing or burning cross or religious symbol; display of certain emblems.

(a) It shall be unlawful for any person to burn, desecrate, mar, deface, or damage a religious or secular symbol on any private premises or property in the District of Columbia primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, creed, religion, or any other category listed in § 2-1401.01, or on any public property in the District of Columbia; or to place or to display in any of these locations a sign, mark, symbol, emblem, or other physical impression including, but not limited to, a Nazi swastika, a noose, or any manner of exhibit which includes a burning cross, real or simulated, where it is probable that a reasonable person would perceive that the intent is:

(1) To deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing to all persons within the District of Columbia equal protection of the law;

(2) To injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws;

(3) To threaten another person whereby the threat is a serious expression of an intent to inflict harm; or

(4) To cause another person to fear for his or her personal safety, or where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability.

(b) Reserved.

(c) Nothing in this section shall be deemed to amend or repeal any provision of the District of Columbia Fire Prevention Code (7 DCRR).

§ 22-3312.03. Wearing hoods or masks.

(a) No person or persons over 16 years of age, while wearing any mask, hood, or device whereby any portion of the face is hidden, concealed, or covered as to conceal the identity of the wearer, shall:

(1) Enter upon, be, or appear upon any lane, walk, alley, street, road highway, or other public way in the District of Columbia;

(2) Enter upon, be, or appear upon or within the public property of the District of Columbia; or

(3) Hold any manner of meeting or demonstration.

(b) The provisions of subsection (a) of this section apply only if the person was wearing the hood, mask, or other device:

(1) With the intent to deprive any person or class of persons of equal protection of the law or of equal privileges and immunities under the law, or for the purpose of preventing or hindering the constituted authorities of the United States or the District of Columbia from giving or securing for all persons within the District of Columbia equal protection of the law;

(2) With the intent, by force or threat of force, to injure, intimidate, or interfere with any person because of his or her exercise of any right secured by federal or District of Columbia laws, or to intimidate any person or any class of persons from exercising any right secured by federal or District of Columbia laws;

(3) With the intent to intimidate, threaten, abuse, or harass any other person;

(4) With the intent to cause another person to fear for his or her personal safety, or, where it is probable that reasonable persons will be put in fear for their personal safety by the defendant's actions, with reckless disregard for that probability; or

(5) While engaged in conduct prohibited by civil or criminal law, with the intent of avoiding identification.

§ 22-3312.03a. Abatement of graffiti. [Repealed].

Repealed.

§ 22-3312.03b. Collection against owner. [Repealed].

Repealed.

§ 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) Reserved.

(3) Reserved.

(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) Reserved.

(8) Reserved.

(9) "Public or private property" shall include any building, bridge, fence or other structure, any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, any article of street furniture, lamppost, bus shelter, newspaper box, or trash receptacle, any tree, rock, or other natural fixture, any utility or public service equipment, or any other personal property located outdoors, whether publicly or privately owned.

(10) "Sign" means a name, identification, description, display, or illustration which is affixed to, or represented directly or indirectly upon a building, structure, or piece of land and which directs attention to an object, product, place, activity, person, institution, organization, or business.

§ 22-3313. Destroying or defacing building material for streets.

It shall not be lawful for any person or persons to destroy, break, cut, disfigure, deface, burn, or otherwise injure any building materials, or materials intended for the improvement of any street, avenue, alley, foot pavement, roads, highways, or inclosure, whether public or private property, or remove the same (except in pursuance of law or by consent of the owner) from the place where the same may be collected for purposes of building or improvement as aforesaid; or to remove, cut, destroy, or injure any scaffolding, ladder, or other thing used in or about such building or improvement, under a penalty of not more than $ 25 for each and every such offense.

§ 22-3314. Destroying cemetery railing or tomb.

If any person shall maliciously cut down, demolish, or otherwise injure any railing, fence, or inclosure around or upon any cemetery, or shall injure or deface any tomb or inscription thereon, such person shall be fined not more than $ 100.

§§ 22-3315 to 22-3317. Offenses against property of electric lighting, heating, or power companies; tapping gas pipes; tapping or injuring water pipes; tampering with water meters. [Repealed].
Reserved.

§ 22-3318. Malicious pollution of water.

Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the District of Columbia, becomes impure, filthy, or unfit for use, shall be fined not less than $ 500 and not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 3 years nor less than 1 year.

§ 22-3319. Placing obstructions on or displacement of railway tracks.

Whoever maliciously places an obstruction on or near the track of any steam or street railway, or displaces or injures anything appertaining to such track, with intent to endanger the passage of any locomotive or car, shall be imprisoned for not more than 10 years. In addition to any other penalty provided under this section, a person may be fined an amount not more than the amount set forth in § 22-3571.01.

§ 22-3320. Obstructing public road; removing milestones. [Repealed].

Repealed.

§ 22-3321. Obstructing public highway.

Any person who, without lawful authority, shall obstruct the free use of any of the public highways, which had been used and recognized as public county roads for 25 years prior to May 3, 1862, and which were thereafter duly surveyed, recorded, and declared public highways according to law, shall be subject to a fine for each offense of not less than $ 100 nor more than $ 250 and be imprisoned till the fine and the costs of suit and collection of the same are paid.

§ 22-3322. Fines under § 22-3321 to be collected in name of United States.

The fines provided for in § 22-3321 shall be collected in the name of the United States.

CHAPTER 34. USE OF “DISTRICT OF COLUMBIA” BY CERTAIN PERSONS.

Sec.

§ 22-3401. Use of "District of Columbia" or similar designation by private detective or collection agency — Prohibited.

No person engaged in the business of collecting or aiding in the collection of private debts or obligations, or engaged in furnishing private police, investigation, or other private

detective services, shall use as part of the name of such business, or employ in any communication, correspondence, notice, advertisement, circular, or other writing or publication, the words "District of Columbia", "District", the initials "D.C.", or any emblem or insignia utilizing any of the said terms as part of its design, in such manner as reasonably to convey the impression or belief that such business is a department, agency, bureau, or instrumentality of the municipal government of the District of Columbia or in any manner represents the District of Columbia. As used in this section and § 22-3402, the word "person" means and includes individuals, associations, partnerships, and corporations.

§ 22-3402. Use of "District of Columbia" or similar designation by private detective or collection agency — Penalty.

Any person who violates § 22-3401 shall be punished by a fine not more than the amount set forth in § 22-3571.01 or by imprisonment for not more than 90 days, or by both such fine and imprisonment.

§ 22-3403. Use of "District of Columbia" or similar designation by private detective or collection agency — Prosecutions for violations.

All prosecutions for violations of § 22-3401 shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia or any Assistant Attorney General for the District of Columbia.

CHAPTER 35. VAGRANCY. [REPEALED].

Sec.

§ 22-3501. "Vagrancy" defined; prosecution and the giving of security. [Repealed].

Repealed.

§ 22-3502. "Vagrants" defined. [Repealed].

Repealed.

§ 22-3503. Prosecutions; burden of proof to show lawful employment. [Repealed].

Repealed.

§ 22-3504. Penalty; conditions imposed by court. [Repealed].

Repealed.

§ 22-3505. Prosecutions. [Repealed].

Repealed.

§ 22-3506. Right to strike or picket not abrogated. [Repealed].

Repealed.

CHAPTER 35A. VOYEURISM.

Sec.

22-3531. Voyeurism.

§ 22-3531. Voyeurism.

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

(1) "Electronic device" means any electronic, mechanical, or digital equipment that captures visual or aural images, including cameras, computers, tape recorders, video recorders, and cellular telephones.

(2) "Private area" means the naked or undergarment-clad genitals, pubic area, anus, or buttocks, or female breast below the top of the areola.

(b) Except as provided in subsection (e) of this section, it is unlawful for any person to occupy a hidden observation post or to install or maintain a peephole, mirror, or any electronic device for the purpose of secretly or surreptitiously observing an individual who is:

(1) Using a bathroom or rest room;

(2) Totally or partially undressed or changing clothes; or

(3) Engaging in sexual activity.

(c)(1) Except as provided in subsection (e) of this section, it is unlawful for a person to electronically record, without the express and informed consent of the individual being recorded, an individual who is:

(A) Using a bathroom or rest room;

(B) Totally or partially undressed or changing clothes; or

(C) Engaging in sexual activity.

(2) Express and informed consent is only required when the individual engaged in these activities has a reasonable expectation of privacy.

(d) Except as provided in subsection (e) of this section, it is unlawful for a person to intentionally capture an image of a private area of an individual, under circumstances in which the individual has a reasonable expectation of privacy, without the individual's express and informed consent.

(e) This section does not prohibit the following:

(1) Any lawful law enforcement, correctional, or intelligence observation or surveillance;

(2) Security monitoring in one's own home;

(3) Security monitoring in any building where there are signs prominently displayed informing persons that the entire premises or designated portions of the premises are under surveillance; or

(4) Any electronic recording of a medical procedure which is conducted under circumstances where the patient is unable to give consent.

(f)(1) A person who violates subsection (b), (c), or (d) of this section is guilty of a misdemeanor and, upon conviction, 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) A person who distributes or disseminates, or attempts to distribute or disseminate, directly or indirectly, by any means, a photograph, film, videotape, audiotape, compact disc, digital video disc, or any other image or series of images or sounds or series of sounds that the person knows or has reason to know were taken in violation of subsection (b), (c), or (d) of this section is guilty of a felony and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

(g) The Attorney General for the District of Columbia, or his or her assistants, shall prosecute a violation of subsection (b), (c), or (d) of this section for which the penalty is set forth in subsection (f)(1) of this section.

CHAPTER 35B. FINES FOR CRIMINAL OFFENSES.

Sec.

§ 22-3571.01. Fines for criminal offenses.

(a) Notwithstanding any other provision of the law, and except as provided in § 22-3571.02, a defendant who has been found guilty of an offense under the District of Columbia Official Code punishable by imprisonment may be sentenced to pay a fine as provided in this section.

(b) An individual who has been found guilty of such an offense may be fined not more than the greatest of:

(1) $ 100 if the offense is punishable by imprisonment for 10 days or less; (2) $ 250 if the offense is punishable by imprisonment for 30 days, or one month, or less but more than 10 days;

(3) $ 500 if the offense is punishable by imprisonment for 90 days, or 3 months, or less but more than 30 days;

(4) $ 1,000 if the offense is punishable by imprisonment for 180 days, or 6 months, or less but more than 90 days;

(5) $ 2,500 if the offense is punishable by imprisonment for one year or less but more than 180 days;

(6) $ 12,500 if the offense is punishable by imprisonment for 5 years or less but more than one year;

(7) $ 25,000 if the offense is punishable by imprisonment for 10 years or less but more than 5 years;

(8) $ 37,500 if the offense is punishable by imprisonment for 15 years or less but more than 10 years;

(9) $ 50,000 if the offense is punishable by imprisonment for 20 years or less but more than 15 years;

(10) $ 75,000 if the offense is punishable by imprisonment for 30 years or less but more than 20 years;

(11) $ 125,000 if the offense is punishable by imprisonment for more than 30 years; or

(12) $ 250,000 if the offense resulted in death.

(c) An organization that has been found guilty of an offense punishable by imprisonment for 6 months or more may be fined not more than the greatest of:

(1) Twice the maximum amount specified in the law setting forth the penalty for the offense;

(2) Twice the applicable amount under subsection (b) of this section; or

(3) Twice the applicable amount under § 22-3571.02(a).

§ 22-3571.02. Applicability of fine proportionality provision.

(a) Notwithstanding any other provision of law, a sentence to pay a fine under § 22-3571.01 shall be subject to the following:

(1) If a law setting forth the penalty for such an offense specifies a maximum fine that is lower than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may not be fined more than the maximum amount specified in the law setting forth the penalty for the offense.

(2) If a law setting forth the penalty for such an offense specifies a maximum fine that is higher than the fine otherwise applicable under § 22-3571.01 and such law, by specific reference, exempts the offense from the applicability of the fine otherwise applicable under § 22-3571.01, the defendant may be fined the maximum amount specified in the law setting forth the penalty for the offense.

(3) If a law setting forth the penalty for such an offense specifies no fine and such law, by specific reference, does not exempt the offense from the fine otherwise applicable under § 22-3571.01, the defendant may be fined pursuant to § 22-3571.01.

(b)(1) If any person derives pecuniary gain from such an offense, or if the offense results in pecuniary loss to a person other than the defendant, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss.

(2) The court may impose a fine under this subsection in excess of the fine provided for by § 22-3571.01 only to the extent that the pecuniary gain or loss is both alleged in the indictment or information and is proven beyond a reasonable doubt.

(c) [This chapter and the provisions of D.C. Law 19-317] shall not apply to any provision of Title 11 of the District of Columbia Official Code.

SUBTITLE II.
ENHANCED PENALTIES.

CHAPTER 36. CRIMES COMMITTED AGAINST CERTAIN PERSONS.

Sec.

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

(a) Any person who commits any offense listed in subsection (b) of this section against an individual who is 60 years of age or older, at the time of the offense, may be punished by a fine of up to 11/2 times the maximum fine otherwise authorized for the offense and may be imprisoned for a term of up to 11/2 times the maximum term of imprisonment otherwise authorized for the offense, or both.

(b) The provisions of subsection (a) of this section shall apply to the following offenses: Abduction, arson, aggravated assault, assault with a dangerous weapon, assault with intent to kill, commit first degree sexual abuse, or commit second degree sexual abuse, assault with intent to commit any other offense, burglary, carjacking, armed carjacking, extortion or blackmail accompanied by threats of violence, kidnapping, malicious disfigurement, manslaughter, mayhem, murder, robbery, sexual abuse in the first, second, and third degrees, theft, fraud in the first degree, and fraud in the second degree, or an attempt or conspiracy to commit any of the foregoing offenses.

(c) It is an affirmative defense that the accused knew or reasonably believed the victim was not 60 years old or older at the time of the offense, or could not have known or determined the age of the victim because of the manner in which the offense was committed. This defense shall be established by a preponderance of the evidence.

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

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

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

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

CHAPTER 36A. CRIMES COMMITTED AGAINST MINORS.

Sec.

§ 22-3611. Enhanced penalty for committing crime of violence against minors.

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

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

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

(1) "Adult" means a person 18 years of age or older at the time of the offense.

(2) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(3) "Minor" means a person under 18 years of age at the time of the offense.

CHAPTER 37. BIAS-RELATED CRIMES.

Sec.

§ 22-3701. Definitions.

For the purposes of this chapter, the term:

(1) "Bias-related crime" means a designated act that demonstrates an accused's prejudice based on the actual or perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation of a victim of the subject designated act.

(2) "Designated act" means a criminal act, including arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry, and attempting, aiding, abetting, advising, inciting, conniving, or conspiring to commit arson, assault, burglary, injury to property, kidnapping, manslaughter, murder, rape, robbery, theft, or unlawful entry.

(3) "Gender identity or expression" shall have the same meaning as provided in § 2-1401.02(12A).

(4) "Homelessness" means:

(A) The status or circumstance of an individual who lacks a fixed, regular, and adequate nighttime residence; or

(B) The status or circumstance of an individual who has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare motels, hotels, congregate shelters, and transitional housing for the mentally ill;

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

§ 22-3702. Collection and publication of data.

(a) The Metropolitan Police force shall afford each crime victim the opportunity to submit with the complaint a written statement that contains information to support a claim that the designated act constitutes a bias-related crime.

(b) The Mayor shall collect and compile data on the incidence of bias-related crime.

(c) Data collected under subsection (b) of this section shall be used for research or statistical purposes and may not contain information that may reveal the identity of an individual crime victim.

(d) The Mayor shall publish an annual summary of the data collected under subsection (b) of this section and transmit the summary and recommendations based on the summary to the Council.

§ 22-3703. Bias-related crime.

A person charged with and found guilty of a bias-related crime shall be fined not more than 11/2 times the maximum fine authorized for the designated act and imprisoned for not more than 11/2 times the maximum term authorized for the designated act.

§ 22-3704. Civil action. [Transferred].

Transferred.

CHAPTER 37A. CRIMES COMMITTED AGAINST TAXICAB DRIVERS AND CERTAIN TRANSIT WORKERS.

Sec.

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

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

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

(a) Any person who commits an offense enumerated in § 22-3752 against a transit operator, who, at the time of the offense, is authorized to operate and is operating a mass transit vehicle in the District of Columbia, or against Metrorail station manager while on duty in the District of Columbia, may be punished by a fine of up to one and 1/2 times the maximum fine

otherwise authorized for the offense and may be imprisoned for a term of up to one and 1/2 times the maximum term of imprisonment otherwise authorized by the offense, or both.

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

(1) "Mass transit vehicle" means any publicly or privately owned or operated commercial vehicle for the carriage of 6 or more passengers, including any Metrobus, Metrorail, Metroaccess, or DC Circulator vehicle or other bus, trolley, or van operating within the District of Columbia.

(2) "Metrorail station manager" means any Washington Metropolitan Area Transit Authority employee who is assigned to supervise a Metrorail station from a kiosk at that station.

(3) "Transit operator" means a person who is licensed to operate a mass transit vehicle.

§ 22-3752. Enumerated offenses.

The provisions of §§ 22-3751 and 22-3751.01 shall apply to the following offenses or any attempt or conspiracy to commit any of the following offenses: murder, manslaughter, aggravated assault, assault with a dangerous weapon, mayhem or maliciously disfiguring, threats to do bodily harm, first degree sexual abuse, second degree sexual abuse, third degree sexual abuse, fourth degree sexual abuse, misdemeanor sexual abuse, robbery, carjacking, and kidnapping.

SUBTITLE III. SEX OFFENDERS.

CHAPTER 38. SEXUAL PSYCHOPATHS. [TRANSFERRED].

Sec.

§§ 22-3801, 22-3802. Indecent acts with children; sodomy. [Transferred]. [Repealed].

Transferred. Repealed.

§ 22-3803. Definitions. [Transferred].

Transferred.

§ 22-3804. Filing of statement. [Transferred].
Transferred.

§ 22-3805. Right to counsel. [Transferred].
Transferred.

§ 22-3806. Examination by psychiatrists. [Transferred].
Transferred.

§ 22-3807. When hearing is required. [Transferred].
Transferred.

§ 22-3808. Hearing; commitment. [Transferred].
Transferred.

§ 22-3809. Parole; discharge. [Transferred].
Transferred.

§ 22-3810. Stay of criminal proceedings. [Transferred].
Transferred.

§ 22-3811. Criminal law unchanged. [Transferred].
Transferred.

CHAPTER 39. HIV TESTING OF CERTAIN CRIMINAL OFFENDERS. [TRANSFERRED].

Sec.

§ 22-3901. Definitions. [Transferred].
Transferred.

§ 22-3902. Testing and counseling. [Transferred].
Transferred.

§ 22-3903. Rules. [Transferred].
Transferred.

CHAPTER 40. SEX OFFENDER REGISTRATION.

Sec.

§ 22-4001. Definitions. [Transferred].

Transferred.

§ 22-4002. Registration period. [Transferred].

Transferred.

§ 22-4003. Certification duties of the Superior Court. [Transferred].

Transferred.

§ 22-4004. Dispute resolution procedures in the Superior Court. [Transferred].

Transferred.

§ 22-4005. Duties of the Department of Corrections. [Transferred].

Transferred.

§ 22-4006. Duties of the Department of Mental Health. [Transferred].

Transferred.

§ 22-4007. Registration functions of the Court Services and Offender Supervision Agency. [Transferred].
Transferred.

§ 22-4008. Verification functions of the Court Services and Offender Supervision Agency. [Transferred].
Transferred.

§ 22-4009. Change of address or other information. [Transferred].
Transferred.

§ 22-4010. Maintenance and release of sex offender registration information by the Court Services and Offender Supervision Agency. [Transferred].
Transferred.

§ 22-4011. Community notification and education duties of the Metropolitan Police Department. [Transferred].
Transferred.

§ 22-4012. Interagency coordination. [Transferred].
Transferred.

§ 22-4013. Immunity. [Transferred].
Transferred.

§ 22-4014. Duties of sex offenders.
Transferred.

§ 22-4015. Penalties; mandatory release condition.

(a) Any sex offender who knowingly violates any requirement of this chapter, including any requirement adopted by the Agency pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned for not more than 180 days, or both. In the event that a sex offender convicted under this section has a prior conviction under this section, or a prior conviction in any other jurisdiction for failing to comply with the requirements of a sex offender registration program, the sex offender shall be fined not more than the amount set forth in § 22-3571.01, or imprisoned not more than 5 years, or both.

(b) Compliance with the requirements of this chapter, including any requirements adopted by the Agency pursuant to this chapter, shall be a mandatory condition of probation, parole, supervised release, and conditional release of any sex offender.

§ 22-4016. No change in age of consent; registration not required for offenses between consenting adults. [Transferred].
Transferred.

§ 22-4017. Freedom of Information Act exception. [Transferred].

Transferred.

CHAPTER 41. SEX OFFENDER REGISTRATION. [REPEALED].

Sec.

§ 22-4101. Definitions. [Repealed].

Repealed.

§ 22-4102. Persons required to register. [Repealed].

Repealed.

§ 22-4103. Establishment of the Sex Offender Registration Advisory Council. [Repealed].

Repealed.

§ 22-4104. Duties of the Advisory Council. [Repealed].

Repealed.

§ 22-4105. Duties of the Court. [Repealed].

Reserved.

§ 22-4106. Duties of the Department of Corrections. [Repealed].

Repealed.

§ 22-4107. Transfer of information to the Department and Federal Bureau of Investigation. [Repealed].
Repealed.

§ 22-4108. Duties of the Board of Parole. [Repealed].
Repealed.

§ 22-4109. Verification. [Repealed].
Repealed.

§ 22-4110. Notification of change of address. [Repealed].
Repealed.

§ 22-4111. Registration for change of address to another state. [Repealed].
Repealed.

§ 22-4112. Length of registration. [Repealed].
Repealed.

§ 22-4113. Penalties. [Repealed].
Repealed.

§ 22-4114. Transfer of information and central database. [Repealed].
Repealed.

§ 22-4115. Release of information. [Repealed].
Repealed.

§ 22-4116. Absolute immunity for members of the Advisory Council; immunity for good faith conduct for others. [Repealed].
Repealed.

§ 22-4117. Applicability. [Repealed].
Repealed.

SUBTITLE III-A.
DNA TESTING.

CHAPTER 41A. DNA TESTING AND POST-CONVICTION RELIEF FOR INNOCENT PERSONS.

Sec.

§ 22-4131. Definitions. [Transferred].

Transferred.

§ 22-4132. Pre-conviction DNA testing. [Transferred].

Transferred.

§ 22-4133. Post-conviction DNA testing. [Transferred].

Transferred.

§ 22-4134. Preservation of evidence.

(a) Law enforcement agencies shall preserve biological material that was seized or recovered as evidence in the investigation or prosecution that resulted in the conviction or adjudication as a delinquent for a crime of violence and not consumed in previous DNA testing for 5 years or as long as any person incarcerated in connection with that case or investigation remains in custody, whichever is longer.

(b) Notwithstanding subsection (a) of this section, the District of Columbia may dispose of the biological material after 5 years, if the District of Columbia notifies any person who remains incarcerated in connection with the investigation or prosecution and any counsel of record for such person (or, if there is no counsel of record, the Public Defender Service), of the intention of the District of Columbia to dispose of the evidence and the District of Columbia affords such person not less than 180 days after the notification to make an application for DNA testing of the evidence.

(c) The District of Columbia shall not be required to preserve evidence that must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable. If practicable, the District of Columbia shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it. (d) Whoever willfully or maliciously destroys, alters, conceals, or tampers with evidence that is required to be preserved under this section with the intent to (1) impair the integrity of that evidence, (2) prevent that evidence from being subjected to DNA testing, or (3) prevent the production or use of that evidence in an official proceeding, shall be subject to a fine not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both.

§ 22-4135. Motion to vacate a conviction or grant a new trial on the ground of actual innocence. [Transferred].

Transferred.

CHAPTER 41B. DNA SAMPLE COLLECTION. [TRANSFERRED].

Sec.
22-4151. Qualifying offenses. [Transferred].

§ 22-4151. Qualifying offenses. [Transferred].
Transferred.

SUBTITLE IV. PREVENTION, SOLUTION, AND PUNISHMENT OF CRIMES. [TRANSFERRED].

CHAPTER 42. NATIONAL ISTITUTE OF JUSTICE APPROPRIATIONS. [TRANSFERRED].

Sec.
22-4201. Technical assistance and research. [Transferred].

§ 22-4201. Technical assistance and research. [Transferred].
Transferred.

CHAPTER 42A. CRIMINAL JUSTICE COORDINATING COUNCIL. [TRANSFERRED].

Subchapter I. General.

Sec.
22-4231. Definitions. [Transferred].
22-4232. Establishment of the Criminal Justice Coordinating Council. [Transferred].
22-4233. Membership. [Transferred].
22-4234. Duties. [Transferred].
22-4235. Administrative Support. [Transferred].

Subchapter II. Authorization of Certain Federal Officials.

Subchapter I.
General.

Subchapter II.
Authorization of Certain Federal Officials.

CHAPTER 42B. HOMICIDE ELIMINATION.
[TRANSFERRED].

Sec.

§ 22-4251. Comprehensive Homicide Elimination Strategy Task Force established. [Transferred].
Transferred.

SUBTITLE V.
HARBOR, GAME AND FISH LAWS.

CHAPTER 43. GAME AND FISH LAWS.

Sec.

§§ 22-4301 to 22-4306. Prohibition and control of net fishing in Potomac River; catching and killing bass; "person" defined; sale of bass prohibited; sale and possession of shad or

herring; sale of small striped bass; use of explosives and drugs in fishing prohibited. [Repealed]. [Transferred].
Repealed.

§ 22-4307. Penalties. [Transferred].
Transferred.

§§ 22-4308 to 22-4327. Confiscation of fishing equipment used in violation of the law; sale and possession of woodcocks, squirrels, rabbits, wild chicks, wild geese, and certain game birds; inspection of premises to detect violation of game laws; trespassing for purposes of hunting; shooting or having guns in possession on a Sunday; killing or capturing game beyond District jurisdiction; compensation for persons securing convictions under game laws; killing game birds and permits therefor; hunting squirrels, chipmunks and rabbits without a permit; killing of English sparrow or wild animal suffering from disease or injury; hunting or disbursing of ducks, geese, and waterfowl; sale, possession, or purchase of certain types of birds prohibited; license for certain scientific purposes; sale of birds raised in captivity or for propagation. [Repealed]. [Transferred].
Repealed.

§ 22-4328. Council's authority with respect to wild animals, fishing licenses, and migratory birds; exception; "wild animals" defined. [Transferred].
Transferred.

§ 22-4329. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

§ 22-4330. Seizure of hunting and fishing equipment; sale at public auction and disposal of proceeds; disposal of property not sold at auction; payment of valid liens after sale. [Transferred].
Transferred.

§ 22-4331. Penalties; prosecutions.

(a) Any person convicted of violating any provision of this chapter, or any regulation made pursuant to this chapter, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

(b) Prosecutions for violations of this chapter, or the regulations made pursuant thereto,

shall be conducted in the name of the District of Columbia by the Attorney General for the District of Columbia or any Assistant Attorney General for the District of Columbia.

§ 22-4332. Delegation of functions by Secretary of the Interior and Mayor; Council to make regulations; "Mayor" and "Secretary of the Interior" defined. [Transferred].

Transferred.

§ 22-4333. Existing authority of Secretary of the Interior not impaired. [Transferred].

Transferred.

CHAPTER 44. HARBOR REGULATIONS.

Sec.

§ 22-4401. Harbor regulations; authority vested in Council; compliance with federal law required; District and federal statutes and regulations supplemented. [Transferred]. [Repealed].

Transferred. Repealed.

§ 22-4402. Throwing or depositing matter in Potomac River.

(a) It shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any stone, gravel, sand, ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below highwater mark, unless for the purpose of making a wharf, after permission has been obtained from the Mayor of the District of Columbia for that purpose, which wharf shall be sufficiently inclosed and secured so as to prevent injury to navigation.

(b) It shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, or filth of any kind whatsoever.

(c) Nothing in this section contained shall be construed to interfere with the work of improvement in or along the said river and harbor under the supervision of the United States government.

(d) Any person or persons violating any of the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction shall be punished by a fine not more than the amount set forth in § 22-3571.01, or by imprisonment not exceeding 6 months, or both, in the discretion of the court.

§ 22-4403. Deposits of deleterious matter in Rock Creek or Potomac River.

No person shall allow any tar, oil, ammoniacal liquor, or other waste products of any gas works or works engaged in using such products, or any waste product whatever of any mechanical, chemical, manufacturing, or refining establishment to flow into or be deposited in Rock Creek or the Potomac River or any of its tributaries within the District of Columbia or into any pipe or conduit leading to the same.

§ 22-4404. Penalties for violation of § 22-4403.

Any person who shall violate any provision of § 22-4403 shall for each such offense be fined not more than the amount set forth in § 22-3571.01 or imprisoned not more than 90 days, or both.

SUBTITLE VI.
REGULATION AND POSSESSION OF WEAPONS.

CHAPTER 45. WEAPONS AND POSSESSION OF WEAPONS.

Sec.

22-4516. Severability.
22-4517. Dangerous articles; definition; taking and destruction; procedure.

§ 22-4501. Definitions.

For the purposes of this chapter, the term:

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4).

(2) "Dangerous crime" means distribution of or possession with intent to distribute a controlled substance. For the purposes of this definition, the term "controlled substance" means any substance defined as such in the District of Columbia Official Code or any Act of Congress.

(2A) "Firearm" means any weapon, regardless of operability, which will, or is designed or redesigned, made or remade, readily converted, restored, or repaired, or is intended to, expel a projectile or projectiles by the action of an explosive. The term "firearm" shall not include:

(A) A destructive device as that term is defined in § 7-2501.01(7);

(B) A device used exclusively for line throwing, signaling, or safety, and required or recommended by the Coast Guard or Interstate Commerce Commission; or

(C) A device used exclusively for firing explosive rivets, stud cartridges, or similar industrial ammunition and incapable for use as a weapon.

(3) "Knuckles" means an object, whether made of metal, wood, plastic, or other similarly durable material that is constructed of one piece, the outside part of which is designed to fit over and cover the fingers on a hand and the inside part of which is designed to be gripped by the fist.

(4) "Machine gun" shall have the same meaning as provided in § 7-2501.01(10).

(5) "Person" includes individual, firm, association, or corporation.

(6) "Pistol" shall have the same meaning as provided in § 7-2501.01(12).

(6A) "Place of business" shall have the same meaning as provided in § 7-2501.01(12A).

(7) "Playground" means any facility intended for recreation, open to the public, and with any portion of the facility that contains one or more separate apparatus intended for the recreation of children, including, but not limited to, sliding boards, swingsets, and teeterboards.

(7A) "Registrant" means a person who has registered a firearm pursuant to Unit A of Chapter 25 of Title 7.

(8) "Sawed-off shotgun" shall have the same meaning as provided in § 7-2501.01(15).

(9) "Sell" and "purchase" and the various derivatives of such words shall be construed to include letting on hire, giving, lending, borrowing, and otherwise transferring.

(9A) "Shotgun" shall have the same meaning as provided in § 7-2501.01(16).

(10) "Video arcade" means any facility legally accessible to persons under 18 years of age, intended primarily for the use of pinball and video machines for amusement, and which contains a minimum of 10 pinball or video machines.

(11) "Youth center" means any recreational facility or gymnasium (including any parking lot appurtenant thereto), intended primarily for use by persons under 18 years of age, which regularly provides athletic, civic, or cultural activities.

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

(a) Any person who commits a crime of violence, or a dangerous crime in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation

thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machine gun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles):

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

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

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

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

(b) [Reserved].

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

(d) [Reserved].

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

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

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

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

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

§ 22-4502.01. Gun free zones; enhanced penalty.

(a) All areas within, 1000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, youth center, or public library, or in and around 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 United States Department of Housing and Urban Development, or in or around housing that is owned, operated, or financially assisted by the District of Columbia Housing Authority, or an event sponsored by any of the above entities shall be declared a gun free zone. For the purposes of this subsection, the term "appropriately identified" means that there is a sign that identifies the building or area as a gun free zone.

(b) Any person illegally carrying a gun within a gun free zone shall be punished by a fine up to twice that otherwise authorized to be imposed, by a term of imprisonment up to twice that otherwise authorized to be imposed, or both.

(c) The provisions of this section shall not apply to a person legally licensed to carry a firearm in the District of Columbia who lives or works within 1000 feet of a gun free zone or to members of the Army, Navy, Air Force, or Marine Corps of the United States; the National Guard or Organized Reserves when on duty; the Post Office Department or its employees when on duty; marshals, sheriffs, prison, or jail wardens, or their deputies; policemen or other duly-appointed law enforcement officers; officers or employees of the United States duly authorized to carry such weapons; banking institutions; public carriers who are engaged in the business of transporting mail, money, securities, or other valuables; and licensed wholesale or retail dealers.

§ 22-4503. Unlawful possession of firearm.

(a) No person shall own or keep a firearm, or have a firearm in his or her possession or under his or her control, within the District of Columbia, if the person:

(1) Has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;

(2) Is not licensed under § 22-4510 to sell weapons, and the person has been convicted of violating this chapter;

(3) Is a fugitive from justice;

(4) Is addicted to any controlled substance, as defined in § 48-901.02(4);

(5) Is subject to a court order that:

(A)(i) Was issued after a hearing of which the person received actual notice, and at which the person had an opportunity to participate; or

(ii) Remained in effect after the person failed to appear for a hearing of which the person received actual notice;

(B) Restrains the person from assaulting, harassing, stalking, or threatening the petitioner or any other person named in the order; and

(C) Requires the person to relinquish possession of any firearms;

(6) Has been convicted within the past 5 years of an intrafamily offense, as defined in

D.C. Official Code § 16-1001(8), punishable as a misdemeanor, or any similar provision in the law of another jurisdiction.

(b)(1) A person who violates subsection (a)(1) of this section shall be sentenced to imprisonment for not more than 10 years and shall be sentenced to imprisonment for a mandatory-minimum term of 1 year, unless she or he has a prior conviction for a crime of violence other than conspiracy, in which case she or he shall be sentenced to imprisonment for not more than 15 years and shall be sentenced to a mandatory-minimum term of 3 years.

(2) A person sentenced to a mandatory-minimum term of imprisonment under paragraph (1) of this subsection shall not be released from prison or granted probation or suspension of sentence prior to serving the mandatory-minimum sentence.

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

(c) A person who violates subsection (a)(2) through (a)(6) of this section shall be sentenced to not less than 2 years nor more than 10 years, fined not more than the amount set forth in § 22-3571.01, or both.

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

(1) "Crime of violence" shall have the same meaning as provided in § 23-1331(4), or a crime under the laws of any other jurisdiction that involved conduct that would constitute a crime of violence if committed in the District of Columbia, or conduct that is substantially similar to that prosecuted as a crime of violence under the District of Columbia Official Code.

(2) "Fugitive from justice" means a person who has:

(A) Fled to avoid prosecution for a crime or to avoid giving testimony in a criminal proceeding; or

(B) Escaped from a federal, state, or local prison, jail, halfway house, or detention facility or from the custody of a law enforcement officer.

§ 22-4503.01. Unlawful discharge of a firearm.

Except as otherwise permitted by law, including legitimate self-defense, no firearm shall be discharged or set off in the District of Columbia without a special written permit from the Chief of Police issued pursuant to Section 1 of Article 9 of the Police Regulations of the District of Columbia, effective September 29, 1964 (C.O. 64-1397F; 24 DCMR § 2300.1) [CDCR 24-2300.1].

§ 22-4503.02. Prohibition of firearms from public or private property.

(a) The District of Columbia may prohibit or restrict the possession of firearms on its property and any property under its control.

(b) Private persons or entities owning property in the District of Columbia may prohibit or restrict the possession of firearms on their property; provided, that this subsection shall not apply to law enforcement personnel when lawfully authorized to enter onto private property.

§ 22-4504. Carrying concealed weapons; possession of weapons during commission of crime of violence; penalty.

(a) No person shall carry within the District of Columbia either openly or concealed on or about their person, a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon. Whoever violates this section shall be punished as provided in § 22-4515, except that:

(1) A person who violates this section by carrying a pistol, without a license issued pursuant to District of Columbia law, or any deadly or dangerous weapon, in a place other than the person's dwelling place, place of business, or on other land possessed by the person, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 5 years, or both; or

(2) If the violation of this section occurs after a person has been convicted in the District of Columbia of a violation of this section or of a felony, either in the District of Columbia or another jurisdiction, the person shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 10 years, or both.

(a-1) Except as otherwise permitted by law, no person shall carry within the District of Columbia a rifle or shotgun. A person who violates this subsection shall be subject to the criminal penalties set forth in subsection (a)(1) and (2) of this section.

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

(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.

§ 22-4504.01. Authority to carry firearm in certain places and for certain purposes.

Notwithstanding any other law, a person holding a valid registration for a firearm may carry the firearm:

(1) Within the registrant's home;

(2) While it is being used for lawful recreational purposes;

(3) While it is kept at the registrant's place of business; or

(4) While it is being transported for a lawful purpose as expressly authorized by District or federal statute and in accordance with the requirements of that statute.

§ 22-4504.02. Lawful transportation of firearms.

(a) Any person who is not otherwise prohibited by the law from transporting, shipping, or receiving a firearm shall be permitted to transport a firearm for any lawful purpose from any place where he or she may lawfully possess and carry the firearm to any other place where he or she may lawfully possess and carry the firearm if the firearm is transported in accordance with this section.

(b)(1) If the transportation of the firearm is by a vehicle, the firearm shall be unloaded, and neither the firearm nor any ammunition being transported shall be readily accessible or directly accessible from the passenger compartment of the transporting vehicle.

(2) If the transporting vehicle does not have a compartment separate from the driver's compartment, the firearm or ammunition shall be contained in a locked container other than the glove compartment or console, and the firearm shall be unloaded.

(c) If the transportation of the firearm is in a manner other than in a vehicle, the firearm shall be:

(1) Unloaded;

(2) Inside a locked container; and

(3) Separate from any ammunition.

§ 22-4505. Exceptions to § 22-4504.

(a) The provisions of §§ 22-4504(a) and 22-4504(a-1) shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens, or their deputies, policemen or other duly appointed law enforcement officers, including special agents of the Office of Tax and Revenue, authorized in writing by the Deputy Chief Financial Officer for the Office of Tax and Revenue to carry a firearm while engaged in the performance of their official duties, and criminal investigators of the Office of the Inspector General, designated in writing by the Inspector General, while engaged in the performance of their official duties;

(2) Special police officers and campus police officers who carry a firearm in accordance with D.C. Official Code § 5-129.02, and rules promulgated pursuant to that section;

(3) Members of the Army, Navy, Air Force, or Marine Corps of the United States or of the National Guard or Organized Reserves when on duty, or to the regularly enrolled members of any organization duly authorized to purchase or receive such weapons from the United States; provided, that such members are at or are going to or from their places of assembly or target practice;

(4) Officers or employees of the United States duly authorized to carry a concealed pistol;

(5) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of any such person having in his or her possession, using, or carrying a pistol in the usual or ordinary course of such business; and

(6) Any person while carrying a pistol, transported in accordance with § 22-4504.02, from the place of purchase to his or her home or place of business or to a place of repair or back to his or her home or place of business or in moving goods from one place of abode or business to another, or to or from any lawful recreational firearm-related activity.

(b) The provisions of § 22-4504(a) with respect to pistols shall not apply to a police officer who has retired from the Metropolitan Police Department, if the police officer has registered a pistol and it is concealed on or about the police officer.

(c) For the purposes of subsection (a)(6) of this section, the term "recreational firearm-related activity" includes a firearms training and safety class.

§ 22-4506. Issue of a license to carry a pistol.

(a) The Chief of the Metropolitan Police Department ("Chief") may, upon the application of a person having a bona fide residence or place of business within the District of Columbia, or of a person having a bona fide residence or place of business within the United States and a license to carry a pistol concealed upon his or her person issued by the lawful authorities of any State or subdivision of the United States, issue a license to such person to carry a pistol concealed upon his or her person within the District of Columbia for not more than 2 years from the date of issue, if it appears that the applicant has good reason to fear injury to his or her person or property or has any other proper reason for carrying a pistol, and that he or she is a suitable person to be so licensed.

(b) A non-resident who lives in a state that does not require a license to carry a concealed pistol may apply to the Chief for a license to carry a pistol concealed upon his or her person

within the District of Columbia for not more than 2 years from the date of issue; provided, that he or she meets the same reasons and requirements set forth in subsection (a) of this section.

(c) For any person issued a license pursuant to this section, or renewed pursuant to § 7-2509.03, the Chief may limit the geographic area, circumstances, or times of the day, week, month, or year in which the license is effective, and may subsequently limit, suspend, or revoke the license as provided under § 7-2509.05.

(d) The application for a license to carry shall be on a form prescribed by the Chief and shall bear the name, address, description, photograph, and signature of the licensee.

(e) Except as provided in § 7-2509.05(b), any person whose application has been denied or whose license has been limited or revoked may, within 15 days after the date of the notice of denial or notice of intent, appeal to the Concealed Pistol Licensing Review Board established pursuant to § 7-2509.08.

§ 22-4507. Certain sales of pistols prohibited.

No person shall within the District of Columbia sell any pistol to a person who he or she has reasonable cause to believe is not of sound mind, or is forbidden by § 22-4503 to possess a pistol [now "firearm"], or, except when the relation of parent and child or guardian and ward exists, is under the age of 21 years.

§ 22-4508. Transfers of firearms regulated.

No seller shall within the District of Columbia deliver a firearm to the purchaser thereof until 10 days shall have elapsed from the date of the purchase thereof, except in the case of sales to marshals, sheriffs, prison or jail wardens or their deputies, policemen, or other duly appointed law enforcement officers, and, when delivered, said firearm shall be transported in accordance with § 22-4504.02. At the time of purchase, the purchaser shall sign in duplicate and deliver to the seller a statement containing his or her full name, address, occupation, date and place of birth, the date of purchase, the caliber, make, model, and manufacturer's number of the firearm and a statement that the purchaser is not forbidden by § 22-4503 to possess a firearm. The seller shall, within 6 hours after purchase, sign and attach his or her address and deliver one copy to such person or persons as the Chief of Police of the District of Columbia may designate, and shall retain the other copy for 6 years. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia. This section shall not apply to sales at wholesale to licensed dealers.

§ 22-4509. Dealers of weapons to be licensed.

No retail dealer shall within the District of Columbia sell or expose for sale or have in his or her possession with intent to sell, any pistol, machine gun, sawed-off shotgun, or blackjack without being licensed as provided in § 22-4510. No wholesale dealer shall, within the District of Columbia, sell, or have in his or her possession with intent to sell, to any person other than a licensed dealer, any pistol, machine gun, sawed-off shotgun, or blackjack.

§ 22-4510. Licenses of weapons dealers; records; by whom granted; conditions.

(a) The Mayor of the District of Columbia may, in his or her discretion, grant licenses and may prescribe the form thereof, effective for not more than 1 year from date of issue, permitting the licensee to sell pistols, machine guns, sawed-off shotguns, and blackjacks at retail

within the District of Columbia subject to the following conditions in addition to those specified in § 22-4509, for breach of any of which the license shall be subject to forfeiture and the licensee subject to punishment as provided in this chapter:

(1) The business shall be carried on only in the building designated in the license.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can be easily read.

(3) No pistol shall be sold: (A) if the seller has reasonable cause to believe that the purchaser is not of sound mind or is forbidden by § 22-4503 to possess a pistol [now "firearm"] or is under the age of 21 years; and (B) unless the purchaser is personally known to the seller or shall present clear evidence of his or her identity. No machine gun, sawed-off shotgun, or blackjack shall be sold to any person other than the persons designated in § 22-4514 as entitled to possess the same, and then only after permission to make such sale has been obtained from the Chief of Police of the District of Columbia.

(4) A true record shall be made in a book kept for the purpose, the form of which may be prescribed by the Mayor, of all pistols, machine guns, and sawed-off shotguns in the possession of the licensee, which said record shall contain the date of purchase, the caliber, make, model, and manufacturer's number of the weapon, to which shall be added, when sold, the date of sale.

(5) A true record in duplicate shall be made of every pistol, machine gun, sawed-off shotgun, and blackjack sold, said record to be made in a book kept for the purpose, the form of which may be prescribed by the Mayor of the District of Columbia and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other and shall contain the date of sale, the name, address, occupation, color, and place of birth of the purchaser, and, so far as applicable, the caliber, make, model, and manufacturer's number of the weapon, and a statement by the purchaser that the purchaser is not forbidden by § 22-4503 to possess a pistol [now "firearm"]. One copy of said record shall, within 7 days, be forwarded by mail to the Chief of Police of the District of Columbia and the other copy retained by the seller for 6 years.

(6) No pistol or imitation thereof or placard advertising the sale thereof shall be displayed in any part of said premises where it can readily be seen from the outside. No license to sell at retail shall be granted to anyone except as provided in this section.

(b) Any license issued pursuant to this section shall be issued by the Metropolitan Police Department as a Public Safety endorsement to a basic business license under the basic business license system as set forth in subchapter I-A of Chapter 28 of Title 47 of the District of Columbia Official Code [§ 47-2851.01 et seq.].

§ 22-4511. False information in purchase of weapons prohibited.

No person shall, in purchasing a pistol or in applying for a license to carry the same, or in purchasing a machine gun, sawed-off shotgun, or blackjack within the District of Columbia, give false information or offer false evidence of his or her identity.

§ 22-4512. Alteration of identifying marks of weapons prohibited.

No person shall within the District of Columbia change, alter, remove, or obliterate the name of the maker, model, manufacturer's number, or other mark or identification on any pistol, machine gun, or sawed-off shotgun. Nothing contained in this section shall apply to any officer or agent of any of the departments of the United States or the District of Columbia engaged in

experimental work.

§ 22-4513. Exceptions.

Except as provided in § 22-4502, § 22-4504(b), and § 22-4514(b), this chapter shall not apply to toy or antique pistols unsuitable for use as firearms.

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

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

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

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

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

§ 22-4515. Penalties.

Any violation of any provision of this chapter for which no penalty is specifically provided shall be punished by a fine of not more than the amount set forth in § 22-3571.01 or imprisonment for not more than 1 year, or both.

§ 22-4515a. Manufacture, transfer, use, possession, or transportation of Molotov cocktails, or other explosives for unlawful purposes, prohibited; definitions; penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means: (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited; or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Mayor pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of Chapter 15 of Title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his or her residence or place of business.

(d) Whoever violates this section shall: (1) for the first offense, be sentenced to a term of imprisonment of not less than 1 and not more than 5 years; (2) for the second offense, be sentenced to a term of imprisonment of not less than 3 and not more than 15 years; and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than 5 years and not more than 30 years. In the case of a person convicted of a third or subsequent violation of this section, Chapter 402 of Title 18, United States Code (Federal Youth Corrections Act) shall not apply. For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the third or subsequent conviction for an offense defined by this section is a Class A felony.

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

§ 22-4516. Severability.

If any part of this chapter is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this chapter.

§ 22-4517. Dangerous articles; definition; taking and destruction; procedure.

(a) As used in this section, the term "dangerous article" means:

(1) Any weapon such as a pistol, machine gun, sawed-off shotgun, blackjack, slingshot, sandbag, or metal knuckles; or

(2) Any instrument, attachment, or appliance for causing the firing of any firearms to be silent or intended to lessen or muffle the noise of the firing of any firearms.

(b) A dangerous article unlawfully owned, possessed, or carried is hereby declared to be a nuisance.

(c) When a police officer, in the course of a lawful arrest or lawful search, or when a designated civilian employee of the Metropolitan Police Department in the course of a lawful search, discovers a dangerous article which the officer reasonably believes is a nuisance under subsection (b) of this section the officer shall take it into his or her possession and surrender it to the Property Clerk of the Metropolitan Police Department.

(d)(1) Within 30 days after the date of such surrender, any person may file in the office of the Property Clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the Property Clerk shall notify each such claimant, by registered mail addressed to the address shown on the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within 60 days after the date of such surrender.

(2) At the hearing the Property Clerk shall hear and receive evidence with respect to the claims filed under paragraph (1) of this subsection. Thereafter he or she shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his or her decision to writing. The Property Clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within 30 days after the day on which the copy of such decision

was mailed to such claimant, file an appeal in the Superior Court of the District of Columbia. If the claimant files an appeal, he or she shall at the same time give written notice thereof to the Property Clerk. If the decision of the Property Clerk is so appealed, the Property Clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he or she shall dispose of such dangerous article in accordance with the judgment of such court. The Superior Court of the District of Columbia is authorized to determine which claimant, if any, is entitled to possession of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f) of this section.

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the Property Clerk shall dispose of such dangerous article in accordance with subsection (f) of this section.

(5) The Property Clerk shall make no disposition of a dangerous article under this section, whether in accordance with his or her own decision or in accordance with the judgment of the Superior Court of the District of Columbia, until the United States Attorney for the District of Columbia certifies to the Property Clerk that such dangerous article will not be needed as evidence.

(e) A person claiming a dangerous article shall be entitled to its possession only if: (1) such person shows, on satisfactory evidence, that such person is the owner of the dangerous article or is the accredited representative of the owner, and that the ownership is lawful; (2) such person shows on satisfactory evidence that at the time the dangerous article was taken into possession by a police officer or a designated civilian employee of the Metropolitan Police Department, it was not unlawfully owned and was not unlawfully possessed or carried by the claimant or with his or her knowledge or consent; and (3) the receipt of possession by the claimant does not cause the article to be a nuisance. A representative is accredited if such person has a power of attorney from the owner.

(f) If a person claiming a dangerous article is entitled to its possession as determined under subsections (d) and (e) of this section, possession of such dangerous article shall be given to such person. If no person so claiming is entitled to its possession as determined under subsections (d) and (e) of this section, or if there be no claimant, such dangerous article shall be destroyed. In lieu of such destruction, any such serviceable dangerous article may, upon order of the Mayor of the District of Columbia, be transferred to and used by any federal or District Government law-enforcing agency, and the agency receiving same shall establish property responsibility and records of these dangerous articles.

(g) The Property Clerk shall not be liable in damages for any action performed in good faith under this section.

SUBTITLE VII.
REPEALED PROVISIONS.
[REPEALED].

CHAPTER 46. EMBEZZLEMENT.
[REPEALED].

Sec.
22-4601 to 22-4611. Embezzlement of property of District; embezzlement by agent, attorney, clerk, servant, or agent of a corporation; embezzlement of note not delivered; receiving embezzled property; embezzlement by carriers and innkeepers; embezzlement by warehouseman, factor, storage, forwarding, or commission merchant; violations of §§ 22-4602 to 22-4606 where value of property less than $ 100; conversion by commission merchant, consignee, person selling goods on commission, and auctioneers; embezzlement by mortgagor of personal property in possession; embezzlement by executors and other fiduciaries; taking property without right. [Repealed].

§§ 22-4601 to 22-4611. Embezzlement of property of District; embezzlement by agent, attorney, clerk, servant, or agent of a corporation; embezzlement of note not delivered; receiving embezzled property; embezzlement by carriers and innkeepers; embezzlement by warehouseman, factor, storage, forwarding, or commission merchant; violations of §§ 22-4602 to 22-4606 where value of property less than $ 100; conversion by commission merchant, consignee, person selling goods on commission, and auctioneers; embezzlement by mortgagor of personal property in possession; embezzlement by executors and other fiduciaries; taking property without right. [Repealed].

Repealed.

CHAPTER 47. LARCENY; RECEIVING STOLEN GOODS. [REPEALED].

Sec.
22-4701 to 22-4708. Grand larceny; petit larceny; order of restitution; larceny after trust; unauthorized use of vehicles; theft from vehicles; receiving stolen goods; stealing property of District; receiving property stolen from District; destroying stolen property. [Repealed].

§§ 22-4701 to 22-4708. Grand larceny; petit larceny; order of restitution; larceny after trust; unauthorized use of vehicles; theft from vehicles; receiving stolen goods; stealing property of District; receiving property stolen from District; destroying stolen property. [Repealed].

Repealed.

CHAPTER 48. RAPE. [REPEALED].

Sec.
22-4801. Definition and penalty. [Repealed].

§ 22-4801. Definition and penalty. [Repealed].

Repealed.

CHAPTER 49. SEDUCTION. [REPEALED].

Sec.

22-4901 to 22-4902. Seduction; seduction by teacher. [Repealed].

§§ 22-4901, 22-4902. Seduction; seduction by teacher. [Repealed].
Repealed.

CHAPTER 50. WAREHOUSE RECEIPTS. [REPEALED].

Sec.
22-5001 to 22-5006. Issue of receipt for goods not received; issue of receipt containing false statement; issue of duplicate receipts not so marked; issue of receipt that does not state warehouseman's ownership of goods; delivery of goods without obtaining negotiable receipts; negotiation of receipt for mortgaged goods. [Repealed].

§§ 22-5001 to 22-5006. Issue of receipt for goods not received; issue of receipt containing false statement; issue of duplicate receipts not so marked; issue of receipt that does not state warehouseman's ownership of goods; delivery of goods without obtaining negotiable receipts; negotiation of receipt for mortgaged goods. [Repealed].
Repealed.

CHAPTER 51. LIBEL; BLACKMIAL; EXTORTION; THREATS. [REPEALED].

Sec.
22-5101 to 22-5106. Libel (penalty; publication; justification); false charges of unchastity; blackmail; intent to commit extortion by communication of illegal threats and demands. [Repealed].

§§ 22-5101 to 22-5106. Libel (penalty; publication; justification); false charges of unchastity; blackmail; intent to commit extortion by communication of illegal threats and demands. [Repealed].
Repealed.

CHAPTER 52. MISCELLANEOUS PROVISIONS. [REPEALED].

Sec.
22-5201. "Gift enterprise" defined. [Repealed].
22-5202, 22-5203. Gift enterprise -- Prohibited; penalty. [Repealed].
22-5204 to 22-5206. Kosher meat -- Sale; labeling; signs displayed where kosher and nonkosher meats sold; definitions; penalties. [Repealed].
22-5207, 22-5208. Limitation of hours of daily service for laborers and mechanics on public works; penalty for violation of § 22-5207. [Repealed].
22-5209 to 22-5213. Mislabeling potatoes (prohibited; sign to show grade; exception for seed potatoes; penalties); procuring enlistment of criminals. [Repealed].
22-5214. Use of the flag for advertising purposes; mutilation of the flag. [Repealed].

22-5215. Discrimination by theatre proprietors against persons wearing uniform of armed services prohibited. [Repealed].

§ 22-5201. "Gift enterprise" defined. [Repealed].
Repealed.

§§ 22-5202, 22-5203. Gift enterprise -- Prohibited; penalty. [Repealed].
Repealed.

§§ 22-5204 to 22-5206. Kosher meat -- Sale; labeling; signs displayed where kosher and nonkosher meats sold; definitions; penalties. [Repealed].
Repealed.

§§ 22-5207, 22-5208. Limitation of hours of daily service for laborers and mechanics on public works; penalty for violation of § 22-5207. [Repealed].
Repealed.

§§ 22-5209 to 22-5213. Mislabeling potatoes (prohibited; sign to show grade; exception for seed potatoes; penalties); procuring enlistment of criminals. [Repealed].
Repealed.

§ 22-5214. Use of the flag for advertising purposes; mutilation of the flag. [Repealed].
Repealed.

§ 22-5215. Discrimination by theatre proprietors against persons wearing uniform of armed services prohibited. [Repealed].
Repealed."

Sec. 3. Conforming amendments.

(a) Chapter 106 of the Acts of the Legislative Assembly, adopted August 23, 1871, is amended as follows:

(1) Section 1 (D.C. Official Code § 22-1001) is repealed.

(2) Section 2 (D.C. Official Code § 22-1002) is repealed.

(3) Section 3 (D.C. Official Code § 22-1003) is repealed.

(4) Section 7 (D.C. Official Code § 22-1007) is repealed.

(5) Section 9 (D.C. Official Code § 22-1009) is repealed.

(6) Section 10 (D.C. Official Code § 22-1011) is repealed.

(7) Section 11 (D.C. Official Code § 22-1012(b)) is repealed.

(8) Section 12 (D.C. Official Code § 22-1013) is repealed.

(b) The Revised Statutes of the District of Columbia are amended as follows:

(1) Sections 268 through 270 (D.C. Official Code §§ 22-3320 through 22-3322) are repealed.

(2) Sections 432 and 433 (D.C. Official Code §§ 22-405 and 22-1406) are repealed.

(3) Section 1806 (D.C. Official Code § 22-3318) is repealed. [2]

(c) Section 9 of An Act To create revenue in the District of Columbia by levying a tax upon all dogs therein, to make such dogs personal property, and for other purposes, approved June 19, 1878 (20 Stat. 174; D.C. Official Code § 22-1311), is repealed.

(d) Section 3 of An Act For the protection of children in the District of Columbia and for other purposes, approved February 13, 1885 (23 Stat. 303; D.C. Official Code § 22-1101), is repealed.

(e) Sections 4 and 6a of An Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, approved June 25, 1892 (27 Stat. 60; D.C. Code §§ 22-1012(a)[3] and 22-1006.01), are repealed.

(f) An Act For the preservation of the public peace and the protection of property within the District of Columbia, approved July 29, 1892 (27 Stat. 322; codified in scattered sections of the District of Columbia Official Code), is amended as follows:

(1) Section 2 (D.C. Official Code § 22-3313) is repealed.

(2) Section 3 (D.C. Official Code § 22-1309) is repealed.

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[2] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correction citation to repeal § 22-3318. D.C. Code § 22-3318 does not actually appear to be a Revised Statute of the District of Columbia. Rather, the statute appears to be a Revised Statute of the United States. *See* https://archive.org/stream/revisedstatutes01statgoog#page/n341/mode/2up.
However, the only other amendatory act for this statute, the Fine Proportionality Act of 2012, cites the Revised Statutes of the District of Columbia as the organic act. Using the Fine Proportionality Act as a model, the current bill language cites the Revised Statutes of the District of Columbia, even though the correct organic act for citation appears to be the Revised Statutes of the United States.

[3] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that the June 25, 1892 Act to prevent cruelty to children or animals in the District of Columbia, and for other purposes, is the correct organic act for § 22-1012(a). Both the print and the online versions of the LexisNexis D.C. Official Code list the legislative history for § 22-1012 as: "Aug. 23, 1871, Leg. Assem., p. 138, ch. 106, § 11; June 25, 1892, 27 Stat. 60, ch. 135, § 4; May 21, 1994, D.C. Law 10-119, § 6, 41 DCR 1639; Aug. 20, 1994, D.C. Law 10-151, § 102(b), 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 209(b), 60 DCR 2064."
However, section 11 of Chapter 106 of Acts of the Legislative Assembly only contains the text codified at § 22-1012(b). Staff found the text codified at § 22-1012(a) in section 4 of the June 25, 1892 Act, and cited this Act as the organic act for § 22-1012(a). Staff used section 11 of Chapter 106 of the Acts of the Legislative Assembly as the organic act for § 22-1012(b).

(3) Section 4 (D.C. Official Code § 22-1317) is repealed.

(4) Section 6 (D.C. Official Code § 22-1307) is repealed.

(5) Section 9 (D.C. Official Code § 22-1312) is repealed.

(6) Section 10 (D.C. Official Code §§ 22-1310) is repealed.

(7) Sections 11a and 11b (D.C. Official Code §§ 22-1314.01 and 22-1314.02) are repealed.

(8) Section 13 (D.C. Official Code § 22-3310) is repealed.

(9) Section 14 (D.C. Official Code § 22-1313) is repealed.

(10) Section 15 (D.C. Official Code § 22-3311) is repealed.

(11) Section 16 (D.C. Official Code § 22-1318) is repealed.

(12) Section 17 (D.C. Official Code § 22-1308) is repealed.

(13) Section 18 (D.C. Official Code § 22-1809) is repealed.

(g) An Act To punish the impersonation of inspectors of the health and other departments of the District of Columbia, approved March 2, 1897 (29 Stat. 619; D.C. Official Code § 22-1405), is repealed.

(h) An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; codified in scattered sections of the D.C. Official Code), is amended as follows:

(1) Section 213 (D.C. Official Code § 22-1514) is repealed.

(2) Sections 798 through 802b (D.C. Official Code §§ 22-2101through 2107) are repealed.

(3) Sections 803 through 806c (D.C. Official Code §§ 22-401 through 22-404.03) are repealed.

(4) Section 807 (D.C. Official Code § 22-406) is repealed.

(5) Section 810 through 811a (D.C. Official Code § 22-2801 through 22-2803) are repealed.

(6) Section 812 (D.C. Official Code § 22-2001) is repealed.

(7) Section 813 (D.C. Official Code § 22-2704) is repealed.

(8) Sections 820 and 821 (D.C. Official Code §§ 22-301 and 22-302) are repealed.

(9) Section 823 (D.C. Official Code § 22-801) is repealed.

(10) Section 824 (D.C. Official Code § 22-3302) is repealed.

(11) Section 825a (D.C. Official Code § 22-3305) is repealed.

(12) Section 836a (D.C. Official Code § 22-1808) is repealed.

(13) Section 844 (D.C. Official Code § 22-3307) is repealed.

(14) Section 846 (D.C. Official Code § 22-3319) is repealed.

(15) Section 848 (D.C. Official Code § 22-303) is repealed.

(16) Section 849 (D.C. Official Code § 22-3306) is repealed.

(17) Section 850 (D.C. Official Code § 22-3314) is repealed.

(18 Section 851 (D.C. Official Code § 22-3301) is repealed.

(19) Sections 859 and 860 (D.C. Official Code §§ 22-1403 and 22-1404) are repealed.

(20) Sections 863 through 869 (D.C. Official Code §§ 22-1701 through 22-1708) are repealed.

(21) Section 870 (D.C. Official Code § 22-501) is repealed.

(22) Sections 869(e) and 869(f) (D.C. Official Code §§ 22-1713 and 22-17114) are repealed.

(23) Section 872 (D.C. Official Code § 22-2201) is repealed.

(24) Section 875 (D.C. Official Code § 22-1901) is repealed.

(25) Section 879 (D.C. Official Code § 22-1502) is repealed.

(26) Section 880 (D.C. Official Code § 22-3309) is repealed.

(27) Section 891 (D.C. Official Code § 22-3303) is repealed.

(28) Sections 901 and 902 (D.C. Official Code §§ 22-4403 and 22-4404) are repealed.

(29) Sections 904 and 910 (D.C. Official Code §§ 22-1801 through 22-1807) are repealed.

(i) Section 4 of An Act To enlarge the powers of the courts of the District of Columbia in cases involving delinquent children, and for other purposes, approved March 3, 1901 (31 Stat. 1095; D.C. Official Code § 22-1102), is repealed.

(j) Section 845a of An Act To amend an Act entitled "An Act to establish a code of law for the District of Columbia," approved June 30, 1902 (32 Stat. 535; D.C. Official Code § 22-1402) is repealed.[4]

(k) An Act To prevent the giving of false alarms in the District of Columbia, approved June 8, 1906 (34 Stat. 220; D.C. Official Code § 22-1319) is repealed.

(l) An Act In relation to pandering, to define and prohibit the same and to provide for the punishment thereof, approved June 25, 1910 (36 Stat. 833; D.C. Official Code §§ 22–2705 through 22-2712), is repealed. [5]

(m) An Act To confer concurrent jurisdiction on the police court of the District of Columbia in certain jurisdictions, approved July 16, 1912 (37 Stat. 192; D.C. Official Code §§ 22-407, 22-1301, and 22-2722), is repealed.

(n) An Act To amend section eight hundred and ninety-five of the Code of Law for the District of Columbia, approved February 3, 1913 (37 Stat. 656; D.C. Official Code § 22–4402), is repealed.[6]

(o) An Act To prevent fraudulent advertising in the District of Columbia, approved May 29, 1916 (39 Stat. 165; D.C. Official Code §§ 22-1511 through 22-1513), is repealed.

(p) An Act regulating the issuance of checks, drafts, and orders for the payment of money within the District of Columbia, approved July 1, 1922 (47 Stat. 820; D.C. Official Code § 22-1510), is repealed.

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[4] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code § 22-1402. Both the print and the online versions of the LexisNexis D.C. Official Code list the legislative history for § 22-1012 as: "June 30, 1902, 32 Stat. 535, ch. 1329, § 845a; Aug. 20, 1994, D.C. Law 10-151, § 106, 41 DCR 2608; June 11, 2013, D.C. Law 19-317, § 217, 60 DCR 2064."
This legislative history suggests that the June 30, 1902 act is the organic act for D.C. Code § 22-1402. However, the text of the June 30, 1902 act adds § 845a to the 1901 Act to establish a code of law for the District of Columbia. It is not clear which of the two acts ought to be cited as the organic act.

[5] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code §§ 22-2710 through 22-2712. D.C. Code §§ 22-2710 through 22-2712 were added to the organic act by an amendatory act on January 30, 1941. Because the entire June 25, 1910 organic act is being repealed, the bill does not the cite the amendatory act which added those statutes.

[6] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code § 22-4402. Both the print and the online versions of the LexisNexis D.C. Official Code list the legislative history for § 22-4402 as: "Feb. 3, 1913, 37 Stat. 656, ch. 25; June 11, 2013, D.C. Law 19-317, § 239, 60 DCR 2064.)"
This legislative history suggests that the February 3, 1913 act is the organic act for D.C. Code § 22-4402. However, the text of the February 3, 1913 act adds § 895a to the 1901 Act to establish a code of law for the District of Columbia. It is not clear which of the two acts ought to be cited as the organic act. It should also be noted that the legislative history as listed in the LexisNexis D.C. Official omits the section number for this statute.

(q) An Act To control the possession, sale, transfer, and use of pistols and other dangerous weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code §§ 22-4501 through 22-4517), is repealed.[7]

(r) Section 8 of An Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes, approved July 15, 1932 (47 Stat. 698; D.C. Official Code § 22-2601), is repealed.

(s) An Act For the suppression of prostitution in the District of Columbia, approved August 15, 1935 (49 Stat. 651; D.C. Official Code § 22–2701 *et seq*.), is amended as follows:

(1) Section 1 (D.C. Official Code § 22-2701) is repealed.

(2) Section 3 (D.C. Official Code § 22-2703) is repealed.

(3) Sections 5 through 7 (D.C. Official Code §§ 22-2723 through 22-2725) are repealed.

(t) An Act To define the crime of bribery and to provide for its punishment, approved February 26, 1936 (49 Stat. 1143; D.C. Code § 22-704), is repealed.

(u) Sections 2 through 4 of An Act To prohibit the introduction of contraband into the District of Columbia penal institutions, approved December 15, 1941 (55 Stat. 800; D.C. Official Code § 22-2603.01 through 22-2603.03), are repealed.

(v) The District of Columbia Law Enforcement Act, approved June 29, 1953 (67 Stat. 90; codified in scattered sections of the District of Columbia Official Code) is amended as follows:

(1) Section 209(a) (D.C. Official Code § 22-2501) is repealed.

(2) Section 211(a) (D.C. Official Code § 22-1321) is repealed.

(w) Section 4 of An Act To revise and modernize the fish and game laws of the District of Columbia, and for other purposes, approved August 23, 1958 (72 Stat. 815; D.C. Official Code § 22-4331), is repealed.

(x) An Act To prohibit the use by collecting agencies and private detective agencies of any name, emblem, or insignia which reasonably tends to convey the impression that any such

[7] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code §§ 22-4503.01, 22-4504.01, 22-4504.02, 22-4515a, and 22-4517. Various amendatory acts added these statutes to the July 8, 1932 organic act which codifies the other weapons statutes in chapter 45 of Title 22. Because the entire July 8, 1932 organic act is being repealed, the bill does not the cite the amendatory acts which added these statutes.

agency is an agency of the government of the District of Columbia, approved October 16, 1962 (76 Stat. 1071; D.C. Official Code §§ 22–3401 through 22-3403), is repealed.

(y) Section 901 of An Act Relating to crime and criminal procedure in the District of Columbia, approved December 27, 1967 (81 Stat. 742; D.C. Official Code § 22-1322), is repealed.

(z) Section 1502 of the Omnibus Crime Control and Safe Streets Act of 1968, approved June 19, 1968 (82 Stat. 238; D.C. Official Code § 22-1810), is repealed.

(aa) Section 203 of the District of Columbia Court Reform and Criminal Procedure Act of 1970, approved July 29, 1970 (84 Stat. 600; D.C. Official Code § 22-601), is repealed.

(bb) Section 2 of the Control Prostitution and Sale of Controlled Substances in Public Places Criminal Control Act of 1981, effective December 10, 1981 (D.C. Law 4-57; D.C. Code § 22-2701.01), is repealed.

(cc) The District of Columbia Theft and White Collar Crimes Act of 1982, effective December 1, 1982 (D.C. Law 4-164; codified in scattered sections of the D.C. Official Code)[8] is amended as follows:

(1) Sections 101 through 125g (D.C. Official Code §§ 22-3201 through 22-3225.07 are repealed.

(2) Section 125o (D.C. Official Code § 22-3225.15) is repealed.

(3) Section 126a (D.C. Official Code § 22-3226.01) is repealed.

(4) Sections 126f through 126h (D.C. Official Code §§ 22-3226.06 through 22-3226.08) are repealed.

(5) Section 126j (D.C. Official Code § 22-3226.10) is repealed.

(6) Sections 301 through 303 (D.C. Official Code §§ 22-711 through 22-713) are repealed.

(7) Sections 401 through 404 (D.C. Official Code §§ 22-2402 through 22-2405) are repealed.

(8) Sections 501 through 503 (D.C. Official Code §§ 22-721 through 22-723) are repealed.

[8] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code §§ 22-3227.01 through 22-3227.08, 22-3233, and 22-3234. Various amendatory acts added these statutes to the December 1, 1982 organic act which codifies the other statutes in Chapter 32 of Title 22.

(9) Sections 3601 and 3602 (D.C. Official Code §§ 22-3601 and 22-3602) are repealed.

(dd) The District of Columbia Protection of Minors Act of 1982, effective March 9, 1983 (D.C. Law 4–173; D.C. Official Code § 22–3101 through 22-3104), is repealed.

(ee) The Anti–Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4–203; D.C. Code §§ 22-3312.01 *et seq.*), is amended as follows:

(1) Section 1a (D.C. Official Code § 22-3312.05) is repealed.

(2) Section 2 (D.C. Official Code § 22-3312.01) is repealed.

(3) Section 3 (D.C. Official Code § 22-3312.02) is repealed.

(4) Section 4 (D.C. Official Code §§ 22-3312.03) is repealed.

(5) Section 5 (D.C. Official Code § 22-3312.04) is repealed.[9]

(ff) Sections 2 through 4 of the Bias–Related Crime Act of 1989, effective May 8, 1990 (D.C. Law 8–121; D.C. Official Code § 22–3701 through 22-3703) are repealed.

(gg) Sections 2 through 7 of The Panhandling Control Act of 1993, effective November 17, 1993 (D.C. Law 10–54; D.C. Official Code §§ 22–2301 through 22-2306), are repealed.

(hh) Sections 101 through 219 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code §§ 22-3001 through 22-3020), are repealed.[10]

(ii) The Commercial Counterfeiting Criminalization Act of 1996, effective June 3, 1997 (D.C. Law 11–271; D.C. Code §§ 22-901 and 22-902), is repealed.

(jj) Section 11712(e) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (111 Stat. 782; D.C. Official Code § 22-1323) is repealed.

(kk) Section 16 of The Sex Offender Registration Act of 1999, effective July 11, 2000 (D.C. Law 13–137; D.C. Official Code § 22-4015), is repealed.

[9] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code § 22-3312.05. An amendatory act added this statute to the March 10, 1983 organic act.

[10] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code §§ 22-3309.01 through 22-3009.04, 22-3010.01, and 22-3010.02. An amendatory act added these statutes to the May 23, 1995 organic act.

(ll) Sections 201 through 206 of the Seniors Protection Amendment Act of 2000, effective June 8, 2001 (D.C. Law 13–301; D.C. Code §§ 22-931 through 22-936), are repealed.

(mm) Sections 2, 2a, and 3 of the Taxicab Drivers Protection Act of 2000, effective June 9, 2001 (D.C. Law 13–307; D.C. Official Code §§ 22–3751, 22-3751.01, and 22-3752), are repealed.[11]

(nn) Section 5 of the Innocence Protection Act of 2001, effective May 17, 2002 (D.C. Law 14–134; D.C. Official Code § 22–4134), is repealed.

(oo) The Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; codified in scattered sections of the District of Columbia Official Code), is amended as follows:

(1) Sections 101 through 106 (D.C. Code §§ 22-3151 through 22-3156) are repealed.

(2) Section 702 (D.C. Code § 22-1409) is repealed.

(pp) The Omnibus Public Safety Amendment Act of 2006, effective April 24, 2007 (D.C. Law 16-306; codified in scattered sections of the District of Columbia Official Code) is amended as follows:

(1) Section 101 (D.C. Official Code § 22-951) is repealed.

(2) Section 102 (D.C. Official Code § 22-3611) is repealed.

(3) Section 103 (D.C. Official Code § 22-811) is repealed.

(4) Section 105 (D.C. Official Code § 22-3531) is repealed.

(5) Section 106 (D.C. Official Code § 22-851) is repealed.

(6) Section 107 (D.C. Official Code § 22-1931) is repealed.

(qq) The Omnibus Public Safety and Justice Amendment Act of 2009, effective December 10, 2009 (D.C. Law 18–88; codified in scattered sections of the District of Columbia Official Code), is amended as follows:

(1) Section 102 (D.C. Code § 22-1341) is repealed.

(2) Section 103 (D.C. Code §§ 22-1211) is repealed.

(3) Sections 501 through 505 (D.C. Code §§ 22-3131 through 22-3135) is repealed.

[11] Prior to introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to repeal D.C. Code § 22-3751.01. An amendatory act added this statute to the June 9, 2001 organic act.

(rr) Sections 101 through 108 of the Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18–239; D.C. Official Code §§ 22–1831 through 22-1838), are repealed.

(ss) Sections 2 and 3 of the Residential Tranquility Act of 2010, effective May 26, 2011 (D.C. Law 18–374; D.C. Official Code §§ 22–2751 and 22-2752), are repealed.

(tt) Sections 101 and 102 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code §§ 22-3571.01 and 22-3571.02), are repealed.

(uu) The Prohibition of the Harm of Police Animals Act of 2014, effective April 24, 2015 (D.C. Law 20-242; D.C. Official Code § 22-861), is repealed.

(vv) The Criminalization of Non–Consensual Pornography Act of 2014, effective May 7, 2015 (D.C. Law 20-275; D.C. Official Code §§ 22-3051 through 22-3057) is repealed.

TITLE 2. TECHNICAL AMENDMENTS TO STATUTES OUTSIDE OF TITLE 22

Sec. 201. Short title.

This title may be cited as the "Technical Amendments to Criminal Statutes Outside of Title 22 Act of 2017."

SUBTITLE A. TECHNICAL AMENDMENTS TO TITLE 2

Sec. 202. Section 821 of the District of Columbia Procurement Practices Act of 1985, effective May 8, 1998 (D.C. Law 12-104; D.C. Official Code § 2-381.09) is amended by striking the phrase "The Attorney General for the District of Columbia shall prosecute violations of this section.".[12]

SUBTITLE B. TECHNICAL AMENDMENTS TO TITLE 4

Sec. 203. The District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; codified in scattered sections of the D.C. Official Code) is amended as follows:

(a) Section 1801 (D.C. Official Code § 4-218.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "payment of public

[12] Prior to introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to amend D.C. Code § 2-381.09. The online version of the LexisNexis D.C. Official Code list the legislative history for § 2-381.09 as: "Feb. 21, 1986, D.C. Law 6-85, § 821, 32 DCR 7396, as added May 8, 1998, D.C. Law 12-104, § 2(g), 45 DCR 1687; Mar. 19, 2013, D.C. Law 19-232, § 2(g), 59 DCR 13632; June 11, 2013, D.C. Law 19-317, § 112(a), 60 DCR 2064."

assistance to which he is not entitled" and inserting the phrase "payment of public assistance to which he or she is not entitled" in its place.

(2) Subsection (b) is amended as follows:

(A) By striking the word "he" both times it appears and inserting the phrase "he or she" in its place.

(B) By striking the word "his" and inserting the phrase "his or her" in its place.

(b) Section 1805(c) (D.C. Official Code § 4-218.05(c)) is amended by striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia" in its place.

SUBTITLE C. TECHNICAL AMENDMENTS TO TITLE 6

Sec. 204. Section 10(a) of An Act Providing for the zoning of the District of Columbia and the regulation of the location, height, bulk, and uses of buildings and other structures and of the uses of land in the District of Columbia, and for other purposes, approved June 20, 1938 (52 Stat. 800; D.C. Official Code § 6–641.09(a)), is amended as follows:

(a) By striking the phrase "Inspector of Buildings, and said Inspector" and inserting the phrase "Department of Consumer and Regulatory Affairs, and the Department of Consumer and Regulatory Affairs" in its place.

(b) By striking the phrase "Corporation Counsel or any of his assistants" and inserting the phrase "Attorney General for the District of Columbia or any of his or her assistants" in its place.

(c) By striking the phrase "Corporation Counsel of" and inserting the phrase "Attorney General for" in its place.

SUBTITLE D. TECHNICAL AMENDMENTS TO TITLE 7

Sec. 205. Section 201(b) of the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2502.01(b)) is amended as follows:

(a) Subparagraph (2)(C) is amended by striking the word "his" and inserting the phrase "his or her" in its place.

(b) Paragraph (3) is amended as follows:

(1) By striking the word "his" wherever it appears and inserting the phrase "his or her" in its place.

(2) By striking the word "he" wherever it appears and inserting the

phrase “he or she” in its place.

SUBTITLE E. TECHNICAL AMENDMENTS TO TITLE 10

Sec. 206. Section 6(c) of An Act To define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes, approved July 31, 1946 (60 Stat. 718; D.C. Official Code § 10-503.16(c)) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

SUBTITLE F. TECHNICAL AMENDMENTS TO TITLE 23

Sec. 207. Title 23 of the District of Columbia Official Code is amended as follows:

(a) Section 23-1327 is amended as follows:

(1) Subsection (a) is amended as follows:

(A) By striking the word “his” wherever it appears and inserting the phrase “his or her” in its place.

(B) By striking the word “he” wherever it appears and inserting the phrase “he or she” in its place.

(2) Subsection (c) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

(b) Section 23-1329 is amended as follows:

(1) Subsection (b)(1) is amended as follows:

(A) By striking the word “he” both times it appears and inserting the phrase “he or she” in its place.

(B) By striking the word “his” and inserting the phrase “his or her” in its place.

(2) Subsection (c) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

SUBTITLE G. TECHNICAL AMENDMENTS TO TITLE 24

Section 208. Section 6(b) of the District of Columbia Work Release Act, approved November 10, 1966 (80 Stat. 1520; D.C. Official Code § 24-241.05(b)) is amended as follows:

(a) By striking the word “his” both times it appears and inserting the phrase “his or her” in its place.

(b) By striking the phrase “Corporation Counsel of” and inserting the phrase “Attorney General for” in its place.

SUBTITLE H. TECHNICAL AMENDMENTS TO TITLE 25

Sec. 209. Section 25-1002(c)(2) of the District of Columbia Official Code is amended by striking the word "his" and inserting the phrase "his or her" in its place.

SUBTITLE I. TECHNICAL AMENDMENTS TO TITLE 47

Sec. 210. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2828(a) is amended by striking the word "his" and inserting the phrase "his or her" in its place.

(b) Section 47-2829 is amended as follows:

(1) Subsection (b) is amended as follows:

(A) By striking "Collector of Taxes" and inserting "Office of Tax and Revenue" in its place.

(B) By striking the word "his" and inserting the phrase "his or her" in its place.

(2) Subsection (i) is amended by striking the word "his" wherever it appears and inserting the phrase "his or her" in its place.

SUBTITLE J. TECHNICAL AMENDMENTS TO TITLE 48

Sec. 211. Section 401(e)(2) of the District of Columbia Uniform Controlled Substances Act of 1981, effective August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-904.01(e)(2)) is amended by striking the word "him" and inserting the phrase "him or her" in its place.

SUBTITLE K. TECHNICAL AMENDMENTS TO TITLE 50

Sec. 212. Section 6(b)(2) of the Uniform Classification and Commercial Driver's License Act of 1990, effective September 20, 1990 (D.C. Law 8-161; D.C. Official Code § 50-405(b)(2)) is amended by striking "Corporation Counsel" and inserting "Attorney General for the District of Columbia" in its place.

Sec. 213. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; codified in scattered cites of the D.C. Official Code) is amended as follows:

(a) Section 7(a) (D.C. Official Code § 50-1401.01(a)) is amended as follows:

(1) Paragraph (3) is amended as follows:

(A) By striking the word "his" both times it appears and inserting the phrase "his or her" in its place.

(B) By striking the word "he" and inserting the phrase "he or she"

in its place.

(C) By striking the word “him” and inserting the phrase “him or her” in its place.

(2) Paragraph (6) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

(b) Section 10b (D.C. Official Code § 50-2201.05b is amended as follows:

(1) Paragraph (d)(1) is amended by striking the word “his” and inserting the phrase “his or her” in its place.

(2) By striking subsection (e).

Sec. 214. Section 4(e) of the Removal and Disposition of Abandoned and Other Unlawfully Parked Vehicles Reform Act of 2003, effective October 28, 2003 (D.C. Law 15-35; D.C. Official Code § 50-2421.04(e)) is amended by striking “Corporation Counsel” and inserting “Attorney General for the District of Columbia” in its place.

TITLE 3. AMENDMENT OF AN UNCONSTITUTIONAL STATUTE

Sec. 301. Short title.

This title may be cited as the “Possession of Unlawful Ammunition Offense Amendment Act of 2017.”

Sec. 302. Section 601 of the Firearms Control Regulations Act of 1975, effective September 24, 1976 (D.C. Law 1-85; D.C. Code § 7-2506.01), is amended to read as follows:

"Sec. 601. (a) *Definitions*. For the purposes of this section, the term "large capacity ammunition feeding device" means a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 10 rounds of ammunition. The term "large capacity ammunition feeding device" shall not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition.

"(b) *Offense*. A person commits the crime of unlawful possession of ammunition when that person:

"(1) Possesses ammunition, and that person has not lawfully registered a firearm of the same caliber or gauge of ammunition pursuant to subchapter IV of this unit;

"(2) Possesses one or more restricted pistol bullets as defined in § 7-

2501.01(13A)(A); or

"(3) Possesses, sells, or transfers any large capacity ammunition feeding device regardless of whether the device is attached to a firearm.

"(c) *Affirmative defense*. It is an affirmative defense to the crime of unlawful possession of ammunition for subsections (b)(1) and (b)(2) that the person charged:

"(1) Is a licensed dealer pursuant to subchapter IV of this unit;

"(2) Is an officer, agent, or employee of the District of Columbia or the United States of America, and was on duty and acting within the scope of his or her duties when that person possessed such ammunition;

"(3) Holds an ammunition collector's certificate on September 24, 1976; or

"(4) Temporarily possessed ammunition while participating in a firearms training and safety class conducted by a firearms instructor."

TITLE 4. ABOLITION OF COMMON LAW OFFENSES

Sec. 401. Short title.

This title may be cited as the "Abolition of Common Law Offenses Act of 2017."

Sec. 402. Section 1 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1189; D.C. Code § 45-401), is amended as follows:

(a) Subsection (a) is amended by striking the phrase "some provision of the 1901 Code" and inserting the phrase "some provision of the 1901 Code or this section" in its place.

(b) Subsection (b) is amended to read as follows:

"Common law offenses are abolished and no act or omission constitutes an offense unless made so by an Act of Congress, this Code, or a municipal regulation of the District of Columbia. This subsection does not affect the power to punish for contempt, or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree. This subsection shall not be construed to repeal any common law defenses or any legal precedent other than that which recognizes common law offenses."

TITLE 5. REPEAL OF ARCHAIC AND UNUSED OFFENSES OUTSIDE OF TITLE 22

Sec. 501. Short title.

This title may be cited as the "Abolition of Common Law Offenses Act of 2017."

Sec. 502. Section 6 of An Act for the promotion of anatomical science and to prevent the desecration of graves in the District of Columbia, approved April 29, 1902 (32 Stat. 175; D.C. Official Code § 3-206), is repealed.

Sec. 503. Section 2 of An Act To give additional powers to the Board of Public Welfare of the District of Columbia, and for other purposes, approved January 12, 1942 (55 Stat. 883; D.C. Official Code § 4-125), is repealed.

Sec. 504. Section 10 of An Act To regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes, approved August 20, 1912 (37 Stat. 318; D.C. Official Code § 8-305), is repealed.

Sec. 505. The Permit Restoration Act of 1999, effective April 12, 2000 (D.C. Law 13-91; D.C. Official Code §§ 9-433.01 and 9-433.02) is repealed.[13]

Sec. 506. Section 8 of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes, approved March 4, 1913 (37 Stat. 974; codified in scattered sections of the District of Columbia Official Code), is amended as follows:

(a) Paragraph 80 (D.C. Official Code § 34-701) is repealed.

(b) Paragraph 86 (D.C. Official Code § 34-707) is repealed.

Sec. 507. Section 878c of An Act To establish a code of law for the District of Columbia, approved February 27, 1907 (34 Stat. 1007; D.C. Official Code § 36-153), is repealed.[14]

Sec. 508. Section 47-102 of the District of Columbia Official Code is repealed.

Sec. 509. Conforming amendments.

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[13] D.C. Official Code §§ 9–433.01 and 9–433.02 ("Cutting Trenches in Highways") were enacted in 2000 but are identical to immediately preceding provisions in the D.C. Official Code, §§ 9–431.01 and 9–431.02, which were enacted in 1898. The reason for this unusual duplication is unclear, as only one set of these statutes is necessary to prohibit the described conduct. The Criminal Code Reform Commission recommends repeal of the newer versions of the statutes rather than the originals from 1898, only out of concern that the 2000 version may have been enacted in error.

[14] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to amend D.C. Code § 36-153. The online version of the LexisNexis D.C. Official Code list the legislative history for § 36-153 as: "Mar. 3, 1901, ch. 854, § 878c; Feb. 27, 1907, 34 Stat. 1007, ch. 2086."
Section 878c of the 1907 amendatory act adds § 36-153 to the March 3, 1901 organic act. However, the later amendatory act of 1907 is cited because the language in this act is being amended.

(a) Section 15 of An Act To regulate the importation of nursery stock and other plants and plant products; to enable the Secretary of Agriculture to establish and maintain quarantine districts for plant diseases and insect pests; to permit and regulate the movement of fruits, plants, and vegetables therefrom, and for other purposes, approved May 31, 1920 (41 Stat. 726; D.C. Code § 8-304) is amended by striking the phrase "punished, as provided in § 8-305" and inserting the phrase "guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment not exceeding 1 year, or both such fine and imprisonment, in the discretion of the court" in its place.[15]

(b) Section 878d of An Act To establish a code of law for the District of Columbia, approved February 27, 1907 (34 Stat. 1007; D.C. Official Code § 36-154) is amended by striking the phrase "shall be punished as provided in § 36-153" and inserting the phrase "shall, for the 1st offense, be punished by a fine of not less than $.50 for each such vessel, or by imprisonment for not less than 10 days nor more than 1 year, or by both such fine and imprisonment; and for each subsequent offense by a fine of not less than $1 nor more than $5 for each such vessel, or by imprisonment for not less than 20 days nor more than 1 year, or by both such fine and imprisonment" in its place.[16]

TITLE 6. APPLICABILITY DATE; FISCAL IMPACT; EFFECTIVE DATE

Sec. 601. Applicability.

This Act shall apply as of [insert correct date].

Sec. 602. Fiscal impact statement.

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[15] Prior to introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to amend D.C. Code § 8-304. The online version of the LexisNexis D.C. Official Code list the legislative history for § 8-304 as: "Aug. 20, 1912, ch. 308, § 15; May 31, 1920, 41 Stat. 726, ch. 217; May 16, 1928, 45 Stat. 565, ch. 572; July 7, 1932, 47 Stat. 640, ch. 443; Mar. 26, 1934, 48 Stat. 486, ch. 89; Apr. 1, 1942, 56 Stat. 190, 192, ch. 207, §§ 1-4; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, 84 Stat. 570, Pub. L. 91-358, title I, § 155(a)."
The May 31, 1920 amendatory act added § 15 to the August 20, 1912 organic act. However the later amendatory act of 1920 is cited because the language in this act is being amended.

[16] Prior to the introduction of an enactment bill the Criminal Code Reform Commission recommends that the Council's Office of the General Counsel confirm that this is the correct citation to amend D.C. Code § 36-154. The online version of the LexisNexis D.C. Official Code list the legislative history for § 36-154 as: "Mar. 3, 1901, ch. 854, § 878d; Feb. 27, 1907, 34 Stat. 1007, ch. 2086."
Section 878d of the 1907 amendatory act adds § 36-154 to the March 3, 1901 organic act. However, the later amendatory act of 1907 is cited because the language in this act is being amended.
In addition, the Criminal Code Reform Commission also recommends that Council's Office of the General Counsel amend the title of § 36-154 to "Use or possession of vessel without purchase" to more accurately describe the offense codified therein.

[Insert appropriate language].

Section 603. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

D.C. CRIMINAL CODE REFORM COMMISSION
2017 ANNUAL REPORT
APPENDIX B

Compilation of Draft Revised Criminal Code Statutes To Date (December 21, 2017)

Compilation of Draft Revised Criminal Code Statutes To Date

December 21, 2017

DISTRICT OF COLUMBIA CRIMINAL CODE REFORM COMMISSION
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This document presents the latest compilation of the draft recommendations for a Revised Criminal Code (RCC). **Please note this is a draft document—none of the statutory language or commentary in the compilation has been finalized by the CCRC or received final approval from the CCRC's Advisory Group.** The draft Commentary intended to accompany this draft RCC language is available on the Commission's website at www.ccrc.dc.gov.

This compilation will be regularly updated to reflect successive drafts of prior recommendations and recommendations on new topics.

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RCC § 22A-101. SHORT TITLE AND EFFECTIVE DATE.[1]

(a) SHORT TITLE. This title may be cited as the "Revised Criminal Code."

(b) EFFECTIVE DATE. This title takes effect at 12:01 am on [A DATE AT LEAST ONE YEAR FROM ENACTMENT].

(c) PRIOR OFFENSES. Offenses committed prior to the effective date of the Revised Criminal Code are subject to laws in effect at that time. For purposes of this subsection, an offense is "committed prior to the effective date" if any one of the elements of the offense was satisfied prior to the effective date.

RCC § 22A-102. RULES OF INTERPRETATION.[2]

(a) GENERALLY. To interpret a statutory provision of this title, the plain meaning of that provision shall be examined first. If necessary, the structure, purpose, and history of the provision also may be examined.

(b) RULE OF LENITY. If two or more reasonable interpretations of a statutory provision remain after examination of that provision's plain meaning, structure, purpose, and history, then the interpretation that is most favorable to the defendant applies.

(c) EFFECT OF HEADINGS AND CAPTIONS. Headings and captions that appear at the beginning of chapters, subchapters, sections, and subsections of this title, may aid the interpretation of statutory language.

RCC § 22A-103. INTERACTION OF TITLE 22A WITH OTHER DISTRICT LAWS.[3]

(a) GENERAL INTERACTION OF TITLE 22A WITH PROVISIONS IN OTHER LAWS. Unless otherwise provided by law, a provision in this title applies to this title alone.

[1] Per First Draft of Report #4 (March 13, 2017).
[2] Per First Draft of Report #4 (March 13, 2017).
[3] Per First Draft of Report #4 (March 13, 2017).

(b) INTERACTION OF TITLE 22A WITH CIVIL PROVISIONS IN OTHER LAWS. The provisions of this title do not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action.

RCC § 22A-104. APPLICABILITY OF THE GENERAL PART.[4]

Unless otherwise provided by law, provisions in subtitle I of Title 22A apply to all other provisions of Title 22A.

[4] Per First Draft of Report #4 (March 13, 2017).

Subtitle I. General Part
Chapter 2. Basic Requirements of Offense Liability

RCC § 22A-201. PROOF OF OFFENSE ELEMENTS BEYOND A REASONABLE DOUBT.[5]

(a) PROOF OF OFFENSE ELEMENTS BEYOND A REASONABLE DOUBT. No person may be convicted of an offense unless each offense element is proven beyond a reasonable doubt.

(b) OFFENSE ELEMENT DEFINED. "Offense element" includes the objective elements and culpability requirement necessary to establish liability for an offense.

(c) OBJECTIVE ELEMENT DEFINED. "Objective element" means any conduct element, result element, or circumstance element. For purposes of this Title:

(1) "Conduct element" means any act or omission, as defined in § 22A-202, that is required to establish liability for an offense.

(2) "Result element" means any consequence that must have been caused by a person's conduct in order to establish liability for an offense.

(3) "Circumstance element" means any characteristic or condition relating to either a conduct element or result element the existence of which is required to establish liability for an offense.

(d) CULPABILITY REQUIREMENT DEFINED. "Culpability requirement" includes each of the following:

(1) The voluntariness requirement, as provided in § 22A-203;

(2) The causation requirement, as provided in § 22A-204; and

(3) The culpable mental state requirement, as provided in § 22A-205.

[5] Per First Draft of Report #2 (December 21, 2016).

RCC § 22A-202. CONDUCT REQUIREMENT.[6]

(a) CONDUCT REQUIREMENT. No person may be convicted of an offense unless the person's liability is based on an act, omission, or possession.

(b) ACT DEFINED. "Act" means a bodily movement.

(c) OMISSION DEFINED. "Omission" means a failure to act when (i) a person is under a legal duty to act and (ii) the person is either aware that the legal duty to act exists or, if the person lacks such awareness, the person is culpably unaware that the legal duty to act exists. For purposes of this Title, a legal duty to act exists when:

(1) The failure to act is expressly made sufficient by the law defining the offense; or

(2) A duty to perform the omitted act is otherwise imposed by law.

(d) POSSESSION DEFINED. "Possession" means knowingly exercising control over property, whether or not the property is on one's person, for a period of time sufficient to allow the actor to terminate his or her control of the property.

RCC § 22A-203. VOLUNTARINESS REQUIREMENT.[7]

(a) VOLUNTARINESS REQUIREMENT. No person may be convicted of an offense unless the person voluntarily commits the conduct element necessary to establish liability for the offense.

(b) SCOPE OF VOLUNTARINESS REQUIREMENT.

(1) *Voluntariness of Act.* Where a person's act provides the basis for liability, a person voluntarily commits the conduct element of an offense when that act was the product of conscious effort or determination, or was otherwise subject to the person's control.

(2) *Voluntariness of Omission.* Where a person's omission provides the basis for liability, a person voluntarily commits the conduct element of an offense when the person had the physical capacity to perform the required legal duty, or the failure to act was otherwise subject to the person's control

[6] Per First Draft of Report #2 (December 21, 2016).
[7] Per First Draft of Report #2 (December 21, 2016).

RCC § 22A-204. CAUSATION REQUIREMENT.[8]

(a) CAUSATION REQUIREMENT. No person may be convicted of an offense that contains a result element unless the person's conduct was the factual cause and legal cause of the result.

(b) FACTUAL CAUSE DEFINED. "Factual cause" means:

(1) The result would not have occurred but for the person's conduct; or

(2) In a situation where the conduct of two or more persons contributes to a result, the conduct of each alone would have been sufficient to produce that result.

(c) LEGAL CAUSE DEFINED. "Legal cause" means the result was a reasonably foreseeable consequence of the person's conduct. A consequence is reasonably foreseeable if its occurrence is not too remote, accidental, or otherwise dependent upon an intervening force or act to have a just bearing on the person's liability.

RCC § 22A-205. CULPABLE MENTAL STATE REQUIREMENT.[9]

(a) CULPABLE MENTAL STATE REQUIREMENT. No person may be convicted of an offense unless the person acts with a culpable mental state with respect to every result and circumstance required by the offense, with the exception of any result or circumstance for which that person is strictly liable under § 22A-207(b).

(b) CULPABLE MENTAL STATE DEFINED. "Culpable mental state" means purpose, knowledge, recklessness, negligence, as defined in § 22A-206, or any comparable mental state specified in this Title.

(c) STRICTLY LIABILITY DEFINED. "Strictly liable" or "strict liability" means liability in the absence of purpose, knowledge, recklessness, or negligence, as defined in § 22A-206, or any comparable mental state specified in this Title.

RCC § 22A-206. HIERARCHY OF CULPABLE MENTAL STATES.[10]

(a) PURPOSE DEFINED.

(1) A person acts purposely with respect to a result when that person consciously desires to cause the result.

[8] Per First Draft of Report #2 (December 21, 2016).
[9] Per First Draft of Report #2 (December 21, 2016).
[10] Per Third Draft of Report #2 (December 21, 2017).

(2) A person acts purposely with respect to a circumstance when that person consciously desires that the circumstance exists.

(b) KNOWLEDGE DEFINED.

(1) A person acts knowingly with respect to a result when that person is aware that conduct is practically certain to cause the result.

(2) A person acts knowingly with respect to a circumstance when that person is practically certain that the circumstance exists.

(c) INTENT DEFINED.

(1) A person acts intentionally with respect to a result when that person believes that conduct is practically certain to cause the result.

(2) A person acts intentionally with respect to a circumstance when that person believes it is practically certain that the circumstance exists.

(d) RECKLESSNESS DEFINED.

(1) A person acts recklessly with respect to a result when:

(A) That person is aware of a substantial risk that conduct will cause the result; and

(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.

(2) A person acts recklessly with respect to a circumstance when:

(A) That person is aware of a substantial risk that the circumstance exists; and

(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.

(3) A person's reckless conduct occurs "under circumstances manifesting extreme indifference" to the interests protected by an offense when the conduct constitutes an extreme deviation from the standard of care that a reasonable person would observe in the person's situation.

(e) NEGLIGENCE DEFINED.

(1) A person acts negligently with respect to a result when:

(A) That person should be aware of a substantial risk that conduct will cause the result; and

(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.

(2) A person acts negligently with respect to a circumstance when:

(A) That person should be aware of a substantial risk that the circumstance exists; and

(B) The person's conduct grossly deviates from the standard of care that a reasonable person would observe in the person's situation.

(f) PROOF OF GREATER CULPABLE MENTAL STATE SATISFIES REQUIREMENT FOR LOWER.

(1) *Proof of Negligence.* When the law requires negligence as to a result or circumstance, the requirement is also satisfied by proof of recklessness, intent, knowledge, or purpose.

(2) *Proof of Recklessness.* When the law requires recklessness as to a result or circumstance, the requirement is also satisfied by proof of intent, knowledge, or purpose.

(3) *Proof of Intent*. When the law requires intent as to a result or circumstance, the requirement is also satisfied by proof of knowledge or purpose.

(4) *Proof of Knowledge.* When the law requires knowledge as to a result or circumstance, the requirement is also satisfied by proof of purpose.

RCC § 22A-207. RULES OF INTERPRETATION APPLICABLE TO CULPABLE MENTAL STATE REQUIREMENT.[11]

(a) DISTRIBUTION OF ENUMERATED CULPABLE MENTAL STATES. Any culpable mental state specified in an offense applies to all subsequent results and circumstances until another culpable mental state is specified, with the exception of any result or circumstance for which the person is strictly liable under § 22A-207(b).

(b) IDENTIFICATION OF ELEMENTS SUBJECT TO STRICT LIABILITY. A person is strictly liable for any result or circumstance in an offense:

(1) That is modified by the phrase "in fact," or

(2) To which legislative intent explicitly indicates strict liability applies.

[11] Per First Draft of Report #2 (December 21, 2016).

(c) DETERMINATION OF WHEN RECKLESSNESS IS IMPLIED. A culpable mental state of "recklessly" applies to any result or circumstance not otherwise subject to a culpable mental state under § 22A-207(a), or subject to strict liability under § 22A-207(b).

RCC § 22A-208. PRINCIPLES OF LIABILITY GOVERNING ACCIDENT, MISTAKE, AND IGNORANCE.[12]

(a) EFFECT OF ACCIDENT, MISTAKE, AND IGNORANCE ON LIABILITY. A person is not liable for an offense when that person's accident, mistake, or ignorance as to a matter of fact or law negates the existence of a culpable mental state applicable to a result or circumstance in that offense.

(b) CORRESPONDENCE BETWEEN MISTAKE AND CULPABLE MENTAL STATE REQUIREMENTS. For purposes of determining when a particular mistake as to a matter of fact or law negates the existence of a culpable mental state applicable to a circumstance:

(1) *Purpose.* Any reasonable or unreasonable mistake as to a circumstance negates the existence of the purpose applicable to that element.

(2) *Knowledge.* Any reasonable or unreasonable mistake as to a circumstance negates the existence of the knowledge applicable to that element.

(3) *Recklessness.* Any reasonable mistake as to a circumstance negates the recklessness applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the recklessness applicable to that element if the person did not recklessly make that mistake.

(4) *Negligence.* Any reasonable mistake as to a circumstance negates the existence of the negligence applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the negligence applicable to that element if the person did not recklessly or negligently make that mistake.

(c) IMPUTATION OF KNOWLEDGE FOR DELIBERATE IGNORANCE. When a culpable mental state of knowledge applies to a circumstance in an offense, the required culpable mental state is established if:

(1) The person was reckless as to whether the circumstance existed; and

(2) The person avoided confirming or failed to investigate whether the circumstance existed with the purpose of avoiding criminal liability.

[12] Per First Draft of Report #3 (March 13, 2017).

RCC § 22A-209. PRINCIPLES OF LIABILITY GOVERNING INTOXICATION.[13]

(a) RELEVANCE OF INTOXICATION TO LIABILITY. A person is not liable for an offense when that person's intoxication negates the existence of a culpable mental state applicable to a result or circumstance in that offense.

(1) *Definition of Intoxication.* "Intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body.

(b) CORRESPONDENCE BETWEEN INTOXICATION AND CULPABLE MENTAL STATE REQUIREMENTS.

(1) *Purpose.* A person's intoxication negates the existence of the culpable mental state of purpose applicable to a result or circumstance when, due to the person's intoxicated state, that person does not consciously desire to cause that result or that the circumstance exists.

(2) *Knowledge*. A person's intoxication negates the existence of the culpable mental state of knowledge applicable to a result or circumstance when, due to the person's intoxicated state, that person is not practically certain that the person's conduct will cause that result or that the circumstance exists.

(3) *Recklessness*. A person's intoxication negates the existence of the culpable mental state of recklessness applicable to a result or circumstance when, due to the person's intoxicated state, that person is not aware of a substantial risk that the person's conduct will cause that result or that the circumstance exists, unless that person's conduct satisfies subsection (c), in which case the culpable mental state of recklessness is established.

(c) IMPUTATION OF RECKLESSNESS FOR SELF-INDUCED INTOXICATION. When a culpable mental state of recklessness applies to a result or circumstance in an offense, recklessness is established if:

(1) The person, due to self-induced intoxication, fails to perceive a substantial risk that the person's conduct will cause that result or that the circumstance exists; and

(2) The person is negligent as to whether the person's conduct will cause that result or as to whether that circumstance exists.

[13] Per First Draft of Report #3 (March 13, 2017).

Subtitle I. General Part
Chapter 3. Inchoate Liability

RCC § 22A-301 CRIMINAL ATTEMPT.[14]

(a) DEFINITION OF ATTEMPT. A person is guilty of an attempt to commit an offense when that person engages in conduct planned to culminate in that offense:

(1) With the intent to cause any result required by that offense;

(2) With the culpable mental state, if any, applicable to any circumstance required by that offense; and

(3) The person is either:

(A) Dangerously close to committing that offense; or

(B) Would be dangerously close to committing that offense if the situation was as the person perceived it, provided that the person's conduct is reasonably adapted to commission of that offense.

(b) PROOF OF COMPLETED OFFENSE SUFFICIENT BASIS FOR ATTEMPT CONVICTION. A person may be convicted of an attempt to commit an offense based upon proof that the person actually committed the target offense, provided that no person may be convicted of both the target offense and an attempt to commit the target offense arising from the same conduct.

(c) PENALTIES FOR CRIMINAL ATTEMPTS.

(1) An attempt to commit an offense is subject to one-half the maximum imprisonment or fine or both applicable to the offense attempted, unless a different punishment is specified in RCC § 301(c)(2).

(2) Notwithstanding RCC § 301(c)(1), attempts to commit the following offenses may be punished accordingly:

[RESERVED: List of exceptions and accompanying penalties.]

[14] Per First Draft of Report #7 (June 7, 2017) and First Draft of Report #13 (December 21, 2017).

§ 22A-303 CRIMINAL CONSPIRACY.[15]

(a) DEFINITION OF CONSPIRACY. A person is guilty of a conspiracy to commit an offense when, acting with the culpability required by that offense, the person and at least one other person:

(1) Purposely agree to engage in or aid the planning or commission of conduct which, if carried out, will constitute that offense or an attempt to commit that offense; and

(2) One of the parties to the agreement engages in an overt act in furtherance of the agreement.

(b) PRINCIPLES OF CULPABLE MENTAL STATE ELEVATION APPLICABLE TO RESULTS AND CIRCUMSTANCES OF TARGET OFFENSE. Notwithstanding subsection (a), to be guilty of a conspiracy to commit an offense, the defendant and at least one other person must intend to bring about any result or circumstance required by that offense.

(c) JURISDICTION WHEN OBJECT OF CONSPIRACY IS LOCATED OUTSIDE THE DISTRICT OF COLUMBIA. When the object of a conspiracy formed within the District of Columbia is to engage in conduct outside the District of Columbia, the conspiracy is a violation of this section if:

(1) That conduct would constitute a criminal offense under the D.C. Code if performed in the District of Columbia; and

(2) That conduct would also constitute a criminal offense under:

(A) The laws of the other jurisdiction if performed in that jurisdiction; or

(B) The D.C. Code even if performed outside the District of Columbia.

(d) JURISDICTION WHEN CONSPIRACY IS FORMED OUTSIDE THE DISTRICT OF COLUMBIA. A conspiracy formed in another jurisdiction to engage in conduct within the District of Columbia is a violation of this section if:

(1) That conduct would constitute a criminal offense under the D.C. Code if performed within the District of Columbia; and

(2) An overt act in furtherance of the conspiracy is committed within the District of Columbia.

(e) LEGALITY OF CONDUCT IN OTHER JURISDICTION IRRELEVANT. Under circumstances where §§ (d)(1) and (2) can be established, it is immaterial and no defense to a

[15] Per First Draft of Report #12 (June 7, 2017).

prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a criminal offense under the laws of the jurisdiction in which the conspiracy was formed.

(__) PENALTY. [Reserved].

Subtitle I. General Part
Chapter 8. Offense Classes, Penalties, & Enhancements

RCC § 22A-801. OFFENSE CLASSIFICATIONS.[16]

(a) OFFENSE CLASSIFICATIONS. Each offense in this title is classified as a:

(1) Class 1 felony;
(2) Class 2 felony;
(3) Class 3 felony;
(4) Class 4 felony;
(5) Class 5 felony;
(6) Class 6 felony;
(7) Class 7 felony;
(8) Class 8 felony;
(9) Class A misdemeanor;
(10) Class B misdemeanor;
(11) Class C misdemeanor;
(12) Class D misdemeanor; or a
(13) Class E misdemeanor.

(b) DEFINITIONS. For purposes of this title:

(1) "Felony" means an offense with an authorized term of imprisonment that is more than one (1) year or, in other jurisdictions, death.

(2) "Misdemeanor" means an offense with an authorized term of imprisonment that is one (1) year or less.

RCC § 22A-802. AUTHORIZED DISPOSITIONS.[17]

(a) AUTHORIZED DISPOSITIONS. Except as otherwise provided by statute, a court may sentence a defendant upon conviction to sanctions that include one or more of the following:

[16] Per First Draft of Report #5 (May 5, 2017).
[17] Per First Draft of Report #5 (May 5, 2017).

(1) imprisonment as authorized in D.C. Code § 22A-803;

(2) fines as authorized in D.C. Code § 22A-804;

(3) probation as authorized in D.C. Code § 16-710;

(4) restitution or reparation as authorized in D.C. Code § 16-711;

(5) community service as authorized in § 16-712;

(6) postrelease supervision as authorized in D.C. Code § 24-903; and

(7) work release as authorized in D.C. Code § 24-241.01.

RCC § 22A-803. AUTHORIZED TERMS OF IMPRISONMENT.[18]

(a) AUTHORIZED TERMS OF IMPRISONMENT. Except as otherwise provided by law, the maximum term of imprisonment authorized for an offense is:

(1) For a Class 1 felony, life without possibility of release;
(2) For a Class 2 felony, not more than forty-five (45) years;
(3) For a Class 3 felony, not more than thirty (30) years;
(4) For a Class 4 felony, not more than twenty (20) years;
(5) For a Class 5 felony, not more than fifteen (15) years;
(6) For a Class 6 felony, not more than ten (10) years;
(7) For a Class 7 felony, not more than five (5) years;
(8) For a Class 8 felony, not more than three (3) years;
(9) For a Class A misdemeanor, not more than one (1) year;
(10) For a Class B misdemeanor, not more than one hundred and eighty (180) days;
(11) For a Class C misdemeanor, not more than ninety (90) days;
(12) For a Class D misdemeanor, not more than thirty (30) days; and
(13) For a Class E misdemeanor, no imprisonment.

(b) ATTEMPTS. A court shall decrease the authorized terms of imprisonment for an attempt to commit an offense pursuant to Section 22A-301.

(c) PENALTY ENHANCEMENTS. A court may increase the authorized terms of imprisonment for an offense with a penalty enhancement pursuant to Section 22A-805.

[18] Per First Draft of Report #5 (May 5, 2017).

RCC § 22A-804. AUTHORIZED FINES.[19]

(a) AUTHORIZED FINES. Except as otherwise provided by law, the maximum fine for an offense is:

(1) For a Class 1 felony, not more than $500,000;
(2) For a Class 2 felony, not more than $250,000;
(3) For a Class 3 felony, not more than $75,000;
(4) For a Class 4 felony, not more than $50,000;
(5) For a Class 5 felony, not more than $37,500;
(6) For a Class 6 felony, not more than $25,000;
(7) For a Class 7 felony, not more than $12,500;
(8) For a Class 8 felony, not more than $6,000;
(9) For a Class A misdemeanor, not more than $2,500;
(10) For a Class B misdemeanor, not more than $1,000;
(11) For a Class C misdemeanor, not more than $500;
(12) For a Class D misdemeanor, not more than $250; and
(13) For a Class E misdemeanor, not more than $250.

(b) LIMITS ON MAXIMUM FINE PENALTIES. A court may not impose a fine that would impair the ability of the defendant to make restitution or deprive the defendant of sufficient means for reasonable living expenses and family obligations.

(c) ALTERNATIVE MAXIMUM FINE BASED ON PECUNIARY LOSS OR GAIN. Subject to the limits on maximum fine penalties in subsection (b) of this section, if the offense of conviction results in pecuniary loss to a person other than the defendant, or if the offense of conviction results in pecuniary gain to any person, a court may fine the defendant:

(1) not more than twice the pecuniary loss,

(2) not more than twice the pecuniary gain, or

(3) not more than the economic sanction in subsection (a) that the defendant is otherwise subject to, whichever is greater. The pecuniary loss or pecuniary gain must be alleged in the indictment and proved beyond a reasonable doubt.

(d) ALTERNATIVE MAXIMUM FINE FOR ORGANIZATIONAL DEFENDANTS. Subject to the limits on maximum fine penalties in subsection (b) of this section, if an organizational defendant is convicted of a Class A misdemeanor or any felony, a court may fine the organizational defendant not more than double the applicable amount under subsection (a) of this section.

(e) ATTEMPTS. A court shall decrease the authorized fines for an attempt to commit an offense pursuant to Section 22A-301.

[19] Per First Draft of Report #5 (May 5, 2017).

(f) PENALTY ENHANCEMENTS. A court may decrease the authorized fines for an offense pursuant to Section 22A-805.

(g) DEFINITIONS. For purposes of this section:

(1) "Organizational Defendant" means any person other than an individual human being. The term includes corporations, partnerships, associations, joint-stock companies, unions, trusts, pension funds, unincorporated organizations, governments and political subdivisions thereof, and non-profit organizations.

(2) "Pecuniary loss" means actual harm that is monetary or readily measurable in money.

(3) "Pecuniary gain" means before-tax profit, including additional revenue or cost savings.

RCC § 22A-805 LIMITATIONS ON PENALTY ENHANCEMENTS.[20]

(a) PENALTY ENHANCEMENTS NOT APPLICABLE TO OFFENSES WITH EQUIVALENT ELEMENTS. Notwithstanding any other provision of law, an offense is not subject to a penalty enhancement in this Chapter when that offense contains an element in one of its gradations which is equivalent to the penalty enhancement.

(b) CHARGING OF PENALTY ENHANCEMENTS. A person is not subject to additional punishment for a penalty enhancement unless notice of the penalty enhancement is provided by an information or indictment.

(c) STANDARD OF PROOF FOR PENALTY ENHANCEMENTS. Except for the establishment of prior convictions as provided in D.C. Code § 23-111, a person is not subject to additional punishment for a penalty enhancement unless each objective element and culpable mental state of the penalty enhancement is proven beyond a reasonable doubt.

(d) MULTIPLE PENALTY ENHANCEMENTS PERMITTED IN CHARGING AND PROOF. Multiple penalty enhancements may be applied to an offense for purposes of charging and proof at trial. However an offense with multiple penalty enhancements is subject to Section 22A-70[X] of this Title.

RCC § 22A-806 REPEAT OFFENDER PENALTY ENHANCEMENTS.[21]

(a) MISDEMEANOR REPEAT OFFENDER PENALTY ENHANCEMENT. A misdemeanor repeat offender penalty enhancement applies to a misdemeanor when the defendant, in fact,

[20] Per First Draft of Report #6 (June 7, 2017).
[21] Per First Draft of Report #6 (June 7, 2017).

has two or more prior convictions for District of Columbia offenses or offenses equivalent to current District of Columbia offenses.

(b) FELONY REPEAT OFFENDER PENALTY ENHANCEMENT. A felony repeat offender penalty enhancement applies to a felony when the offender, in fact, has two or more prior convictions for District of Columbia felonies or offenses equivalent to current District of Columbia felonies.

(c) CRIME OF VIOLENCE REPEAT OFFENDER PENALTY ENHANCEMENT. A crime of violence repeat offender penalty enhancement applies to a crime of violence when the offender, in fact, has one or more prior convictions for a District of Columbia crime of violence or an offense equivalent to a current District of Columbia crime of violence.

(d) ADDITIONAL PROCEDURAL REQUIREMENTS. No person shall be subject to additional punishment for a repeat offender penalty enhancement in this section unless the requirements of § 23-111 are satisfied.

(e) PENALTIES.

(1) *Misdemeanor Repeat Offender.* A misdemeanor repeat offender penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(2) *Felony Repeat Offender.* A felony repeat offender penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(3) *Crime of Violence Repeat Offender.* A crime of violence repeat offender penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(f) DEFINITIONS.

(1) *Crime of Violence.* For purposes of this section, "crime of violence" has the meaning defined in §22A-[XXX]. .

(2) *Equivalent.* For purposes of this section, "equivalent" means a criminal offense with elements that would necessarily prove the elements of a District criminal offense.

(3) *Felony.* "Felony" has the meaning specified in §22A-801.

(4) *Misdemeanor.* "Misdemeanor" has the meaning specified in §22A-801.

(5) *Prior Convictions.* For purposes of this section, "prior convictions" means convictions by any court or courts of the District of Columbia, a state, a federally-recognized Indian tribe, or the United States and its territories, provided that:

(i) Convictions for two or more offenses committed on the same occasion or during the same course of conduct shall be counted as only one conviction;

(ii) A conviction for an offense with a sentence that was completed more than 10 years prior to the commission of the instant offense shall not be counted for determining repeat misdemeanor offender and repeat felony offender penalty enhancements;

(iii) An offense that was committed when the defendant was a minor shall not be counted for determining misdemeanor repeat offender or felony repeat offender penalty enhancements; and

(iv) A conviction for which a person has been pardoned shall not be counted as a conviction.

RCC § 22A-807 HATE CRIME PENALTY ENHANCEMENT.[22]

(a) HATE CRIME PENALTY ENHANCEMENT: A hate crime penalty enhancement applies to an offense when the offender commits the offense with intent to injure or intimidate another person because of prejudice against that person's perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation.

(b) PENALTY. A hate crime penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(c) DEFINITIONS.

(1) *Definition of Gender Identity or Expression.* For purposes of this section, "Gender identity or expression" shall have the same meaning as provided in section 2-1401.02 (12A).

(2) *Definition of Homelessness.* For purposes of this section, "Homelessness" means:

(i) The status or circumstance of an individual who lacks a fixed, regular, and adequate nighttime residence; or

[22] Per First Draft of Report #6 (June 7, 2017).

(ii) The status or circumstance of an individual who has a primary nighttime residence that is:

(iii) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare motels, hotels, congregate shelters, and transitional housing for the mentally ill;

(iv) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(v) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

RCC § 22A-808 PRETRIAL RELEASE PENALTY ENHANCEMENTS.[23]

(a) MISDEMEANOR PRETRIAL RELEASE PENALTY ENHANCEMENT. A misdemeanor pretrial release penalty enhancement applies to a misdemeanor when the offender committed the misdemeanor while on release pursuant to D.C. Code § 23-1321 for another offense.

(b) FELONY PRETRIAL RELEASE PENALTY ENHANCEMENT. A felony pretrial release penalty enhancement applies to a felony when the offender committed the felony while on release pursuant to D.C. Code § 23-1321 for another offense.

(c) CRIME OF VIOLENCE PRETRIAL RELEASE PENALTY ENHANCEMENT. A crime of violence pretrial release penalty enhancement applies to a crime of violence when the defendant committed the crime of violence while on release pursuant to D.C. Code § 23-1321 for another offense.

(d) PENALTY ENHANCEMENT NOT APPLICABLE WHERE CONDUCT PUNISHED AS CONTEMPT OR VIOLATION OF CONDITION OF RELEASE. Notwithstanding any other provision of law, a penalty enhancement in this section does not apply to an offense when a person is convicted of contempt pursuant to D.C. Code § 11-741 or violation of a condition of release pursuant to D.C. Code § 23-1329 for the same conduct.

(e) PENALTIES.

(1) *Misdemeanor Pretrial Release Penalty Enhancement.* A misdemeanor pretrial release penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

[23] Per First Draft of Report #6 (June 7, 2017).

(2) *Felony Pretrial Release Penalty Enhancement.* A felony pretrial release penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(3) *Crime of Violence Pretrial Release Penalty Enhancement.* A crime of violence pretrial release penalty enhancement [increases the maximum punishment for an offense by X class(es), X years, X.X times, or carries a mandatory minimum of X years].

(f) DEFINITIONS.

(1) *Crime of Violence.* For purposes of this section, "crime of violence" has the meaning defined in section 22A-[XXX].

(2) *Felony.* "Felony" has the meaning specified in section §22A-801.

(3) *Misdemeanor.* "Misdemeanor" has the meaning specified in section §22A-801.

Subtitle II. Offenses Against persons.
Chapter 10. Offenses Against Persons Subtitle Provisions.

RCC § 22A-1001. OFFENSE AGAINST PERSONS DEFINITIONS.[24]

In this subtitle, the term:

(1) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(2) "Citizen patrol" means a group of residents of the District of Columbia organized for the purpose of providing additional security surveillance for District of Columbia neighborhoods with the goal of crime prevention.

(3) "Coercion" means causing another person to fear that, unless that person engages in particular conduct, then another person will:
- (A) Inflict bodily injury on another person;
- (B) Damage or destroy the property of another person;
- (C) Kidnap another person;
- (D) Commit any other offense;
- (E) Accuse another person of a crime;
- (F) Assert a fact about another person, including a deceased person, that would tend to subject that person to hatred, contempt, or ridicule;
- (G) Notify a law enforcement official about a person's undocumented or illegal immigration status;
- (H) Take, withhold, or destroy another person's passport or immigration document;
- (I) Inflict a wrongful economic injury on another person;
- (J) Take or withhold action as an official, or take action under color or pretense of right; or
- (K) Perform any other act that is calculated to cause material harm to another person's health, safety, business, career, reputation, or personal relationships.

(4) (A) "Consent" means words or actions that indicate an agreement to particular conduct.

(B) For offenses against property in Subtitle III of this Title:

(i) Consent includes words or actions that indicate indifference towards particular conduct; and

(ii) Consent may be given by one person on behalf of another person, if the person giving consent has been authorized by that other person to do so.

(5) "Dangerous weapon" means:
- (A) A firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded;
- (B) A prohibited weapon as defined at § 22A-1001(14);

[24] Per First Draft of Report #14 (December 21, 2017).

(C) A sword, razor, or a knife with a blade over three inches in length;
(D) A billy club;
(E) A stun gun; or
(F) Any object or substance, other than a body part, that in the manner of its actual, attempted, or threatened use is likely to cause death or serious bodily injury.

(6) (A) "Deceive" and "deception" mean:
(i) Creating or reinforcing a false impression as to a material fact, including false impressions as to intention to perform future actions;
(ii) Preventing another person from acquiring material information;
(iii) Failing to correct a false impression as to a material fact, including false impressions as to intention, which the person previously created or reinforced, or which the deceiver knows to be influencing another to whom he or she stands in a fiduciary or confidential relationship; or
(iv) For offenses against property in Subtitle III of this Title, failing to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he or she transfers or encumbers in consideration for property, whether or not it is a matter of official record.

(B) The terms "deceive" and "deception" do not include puffing statements unlikely to deceive ordinary persons, and deception as to a person's intention to perform a future act shall not be inferred from the fact alone that he or she did not subsequently perform the act.

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

(8) "Effective consent" means consent obtained by means other than coercion or deception.

(9) "Family member" means an individual to whom a person is related by blood, legal custody, marriage, domestic partnership, having a child in common, the sharing of a mutual residence, or the maintenance of a romantic relationship not necessarily including a sexual relationship.

(10) "Imitation dangerous weapon" means an object used or fashioned in a manner that would cause a reasonable person to believe that the article is a dangerous weapon.

(11) "Law enforcement officer"
(A) A sworn member or officer of the Metropolitan Police Department, including any reserve officer or designated civilian employee of the Metropolitan Police Department;
(B) A sworn member or officer of the District of Columbia Protective Services;
(C) A licensed special police officer;
(D) The Director, deputy directors, officers, or employees of the District of Columbia Department of Corrections;
(E) Any probation, parole, supervised release, community supervision, or pretrial services officer or employee of the Court Services and Offender Supervision Agency or the Pretrial Services Agency;
(F) Metro Transit police officers;

(G) An employee of the Family Court Social Services Division of the Superior Court charged with intake, assessment, or community supervision; and

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

(12) "Owner" means a person holding an interest in property that the accused is not privileged to interfere with.

(13) "Physical force" means the application of physical strength.

(14) "Prohibited weapon" means:

(A) A machine gun or sawed-off shotgun, as defined at D.C. Code § 7-2501;

(B) A firearm silencer;

(C) A blackjack, slungshot, sandbag cudgel,or sand club;

(D) Metallic or other false knuckles as defined at D.C. Code § 22-4501; or

(E) A switchblade knife.

(15) "Protected person" means a person who is:

(A) Less than 18 years old, and, in fact, the defendant is at least 18 years old and at least 2 years older than the other person;

(B) 65 years old or older;

(C) A vulnerable adult;

(D) A law enforcement officer, while in the course of official duties;

(E) A public safety employee while in the course of official duties;

(F) A transportation worker, while in the course of official duties;

(G) A District official or employee, while in the course of official duties; or

(H) A citizen patrol member, while in the course of a citizen patrol.

(16) "Public safety employee" means:

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

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

(17) "Serious bodily injury" means bodily injury or significant bodily injury that involves:

(A) A substantial risk of death;

(B) Protracted and obvious disfigurement; or

(C) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(18) "Significant bodily injury" means a bodily injury that, to prevent long-term physical damage or to abate severe pain, requires hospitalization or immediate medical treatment beyond what a layperson can personally administer. The following injuries constitute at least a significant bodily injury: a fracture of a bone; a laceration that is at least one inch in length and at least one quarter inch in depth; a burn of at least second degree severity; a temporary loss

of consciousness; a traumatic brain injury; and a contusion or other bodily injury to the neck or head caused by strangulation or suffocation.

(19) "Strangulation or suffocation" means a restriction of normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.

(20) "Transportation worker" means:

(A) A person who is licensed to operate, and is operating, a publicly or privately owned or operated commercial vehicle for the carriage of 6 or more passengers, including any Metrobus, Metrorail, Metroaccess, or DC Circulator vehicle or other bus, trolley, or van operating within the District of Columbia;

(B) Any Washington Metropolitan Area Transit Authority employee who is assigned to supervise a Metrorail station from a kiosk at that station within the District of Columbia;

(C) A person who is licensed to operate, and is operating, a taxicab within the District of Columbia; and

(D) A person who is registered to operate, and is operating within the District of Columbia, a personal motor vehicle to provide private vehicle-for-hire service in contract with a private vehicle-for-hire company as defined by D.C. Code § 50-301.03(16B).

(21) "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 their daily needs or safeguard their person, property, or legal interests.

RCC § 22A-1002. Reserved [Possession of Firearm and Dangerous Weapons During Crime of Violence].

Chapter 11. Homicide [Reserved]

Chapter 12. Robbery, Assault, and Threat Offenses

RCC § 22A-1201. ROBBERY.[25]

(a) *Aggravated Robbery*. A person commits the offense of aggravated robbery when that person:

(1) Commits Third degree robbery; and

(2) In the course of doing so:

(A) Recklessly causes serious bodily injury to someone physically present, other than an accomplice, by means of what, in fact, is a dangerous weapon; or

(B) Recklessly causes serious bodily injury to someone physically present, other than an accomplice, who is a protected person.

(b) *First Degree Robbery*. A person commits the offense of first degree robbery when that person:

(1) Commits Third degree robbery and;

(2) Either:

(A) In the course of doing so:

(i) Recklessly causes serious bodily injury to someone physically present, other than an accomplice;

(ii) Recklessly causes significant bodily injury to someone physically present, other than an accomplice, by means of what, in fact, is a dangerous weapon; or

(iii) Recklessly causes significant bodily injury to someone physically present, other than an accomplice, who is a protected person; or

(B) Knowingly takes or exercises control over, or attempts to take or exercise control over what is, in fact, a motor vehicle, by means of a dangerous weapon.

(c) *Second Degree Robbery*. A person commits the offense of second degree robbery when that person:

(1) Commits Third degree robbery; and

(2) Either:

(A) In the course of doing so:

(i) Recklessly causes significant bodily injury to someone physically present, other than an accomplice; or

(ii) Recklessly causes bodily injury to, or commits a first degree criminal menace as defined in RCC 22A-1203(a) against, someone physically present other than an accomplice, who is a protected person; or

[25] Per First Draft of Report #16 (December 21, 2017).

(B) In fact, the property that is the object of the offense is a motor vehicle.

(d) *Third Degree Robbery*. A person commits the offense of third degree robbery when that person:

(1) Knowingly takes, exercises control over, or attempts to take or exercise control over;
(2) The property of another;
(3) That is in the immediate actual possession or control of another person;
(4) By means of or facilitating flight by:
(A) Using physical force that overpowers any other person present, other than an accomplice;
(B) Causing bodily injury to any other person present, other than an accomplice, or
(C) Committing conduct constituting a second degree criminal menace as defined in RCC 22A-1203(b) against any other person present, other than an accomplice;
(5) With intent to deprive the owner of the property.

(e) *Penalties.*

(1) *Aggravated Robbery.* Aggravated robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(2) *First Degree Robbery.* First degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(3) *Second Degree Robbery*. Second degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(4) *Third Degree Robbery.* Third degree robbery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(f) *Definitions.* The terms "knowingly," "with intent," and "recklessly" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "serious bodily injury," "protected person," "significant bodily injury," "dangerous weapon" and "bodily injury," "physical force" and "" have the meanings specified in § 22A-1001.

RCC § 22A-1202. ASSAULT.[26]

(a) *Aggravated Assault.* A person commits the offense of aggravated assault when that person:

(1) Purposely causes serious and permanent disfigurement to another person;
(2) Purposely destroys, amputates, or permanently disables a member or organ of another person's body;
(3) Recklessly, under circumstances manifesting extreme indifference to human life, causes serious bodily injury to another person by means of what, in fact, is a dangerous weapon; or
(4) Recklessly, under circumstances manifesting extreme indifference to human life, causes serious bodily injury to another person; and
(A) Such injury is caused with recklessness as to whether the complainant is a protected person; or
(B) Such injury is caused with the purpose of harming the complainant because of the complainant's status as a:

[26] Per First Draft of Report #15 (December 21, 2017).

(i) Law enforcement officer;
(ii) Public safety employee;
(iii) Participant in a citizen patrol;
(iv) District official or employee; or
(v) Family member of a District official or employee;

(b) *First Degree Assault.* A person commits the offense of first degree assault when that person:
(1) Recklessly, under circumstances manifesting extreme indifference to human life, causes serious bodily injury to another person; or
(2) Recklessly causes significant bodily injury to another person by means of what, in fact, is a dangerous weapon;

(c) *Second Degree Assault.* A person commits the offense of second degree assault when that person:
(1) Recklessly causes bodily injury to another person by means of what, in fact, is a dangerous weapon;
(2) Recklessly causes significant bodily injury to another person; and
(A) Such injury is caused with recklessness as to whether the complainant is a protected person; or
(B) Such injury is caused with the purpose of harming the complainant because of the complainant's status as a:
(i) Law enforcement officer;
(ii) Public safety employee;
(iii) Participant in a citizen patrol;
(iv) District official or employee; or
(v) Family member of a District official or employee;

(d) *Third Degree Assault.* A person commits the offense of third degree assault when that person recklessly causes significant bodily injury to another person;

(e) *Fourth Degree Assault.* A person commits the offense of fourth degree assault when that person:
(1) Recklessly causes bodily injury to, or uses physical force that overpowers, another person; and
(A) Such injury is caused with recklessness as to whether the complainant is a protected person; or
(B) Such injury is caused with the purpose of harming the complainant because of the complainant's status as a:
(i) Law enforcement officer;
(ii) Public safety employee;
(iii) Participant in a citizen patrol;
(iv) District official or employee; or
(v) Family member of a District official or employee;
(2) Negligently causes bodily injury to another person by means of what, in fact, is a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded;

(f) *Fifth Degree Assault.* A person commits the offense of fifth degree assault when that person recklessly causes bodily injury to, or uses physical force that overpowers, another person.

(g) *Penalties.*

(1) *Aggravated Assault.* Aggravated assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *First Degree Assault.* First degree assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3) *Second Degree Assault.* Second degree assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4) *Third Degree Assault.* Third degree assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(5) *Fourth Degree Assault.* Fourth degree assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(6) *Fifth Degree Assault.* Fifth degree assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(h) *Definitions.* The terms "purposely," "recklessly, under circumstances manifesting extreme indifference to human life," "recklessly," and "negligently" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "serious bodily injury," "protected person," "law enforcement officer," "citizen patrol," "District official or employee," "significant bodily injury," "dangerous weapon" "bodily injury," "physical force," "public safety officer," "family member," and "effective consent" have the meanings specified in § 22A-1001.

(i) *Defenses.*

(1) *Effective Consent Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, the complainant's effective consent or the defendant's reasonable belief that the complainant gave effective consent to the defendant's conduct is an affirmative defense to prosecution under this section if:

(A) The conduct did not inflict significant bodily injury or serious bodily injury, or involve the use of a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded; or

(B) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic contest or competitive sport or other concerted activity not forbidden by law.

(2) *Burden of Proof for Effective Consent Defense.* If evidence is present at trial of the complainant's effective consent or the defendant's reasonable belief that the complainant consented to the defendant's conduct, the government must prove the absence of such circumstances beyond a reasonable doubt.

(3) *Limitation on Justification and Excuse Defenses To Assault on a Law Enforcement Officer.* For prosecutions brought under this section, it is neither a justification nor an excuse for a person to actively oppose the use of force by a law enforcement officer when:

(A) The person was reckless as to the fact that the complainant was a law enforcement officer;

(B) The use of force occurred during an arrest, stop, or detention for a legitimate police purpose; and

(C) The law enforcement officer used only the amount of physical force that appeared reasonably necessary.

(j) *Jury Demandable Offense.* When charged with a violation or inchoate violation of subsection (f) of this section and either the complainant is a law enforcement officer, while in the course of his or her official duties, or the conduct was committed with the purpose of harming the complainant because of his or her status as a law enforcement officer, the defendant may demand a jury trial. If the defendant demands a jury trial, then the court shall impanel a jury.

RCC § 22A-1203. CRIMINAL MENACE.[27]

(a) *First Degree Criminal Menace.* A person commits first degree criminal menace when that person:
  (1) Knowingly communicates to another person physically present;
  (2) By displaying or making physical contact with a dangerous weapon or imitation dangerous weapon;
  (3) That the defendant or an accomplice immediately will engage in conduct against that person or a third person constituting one of the following offenses:
    (A) Homicide, as defined in RCC § 22A-1101;
    (B) Robbery, as defined in RCC § 22A-1201;
    (C) Sexual assault, as defined in RCC § 22A-13XX;
    (D) Kidnapping, as defined in RCC § 22A-14XX; or
    (E) Assault, as defined in RCC § 22A-1202;
  (4) With intent that the communication would be perceived as a threat; and
  (5) In fact, the communication would cause a reasonable recipient to believe that the harm would immediately take place.

(b) *Second Degree Criminal Menace.* A person commits criminal menace when that person:
  (1) Knowingly communicates to another person physically present;
  (2) That the defendant or an accomplice immediately will engage in conduct against that person or a third person constituting one of the following offenses:
    (A) Homicide, as defined in RCC § 22A-1101;
    (B) Robbery, as defined in RCC § 22A-1201;
    (C) Sexual assault, as defined in RCC § 22A-13XX;
    (D) Kidnapping, as defined in RCC § 22A-14XX; or
    (E) Assault, as defined in RCC § 22A-1202;
  (3) With intent that the communication would be perceived as a threat; and
  (4) In fact, the communication would cause a reasonable recipient to believe that the harm would immediately take place.

(c) *Penalties.*

[27] Per First Draft of Report #17 (December 21, 2017).

(1) *First Degree Criminal Menace.* First degree criminal menace is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Menace.* Second degree criminal menace is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Definitions.* The terms "knowingly" and "intent" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "dangerous weapon" and "imitation weapon" have the meanings specified in § 22A-1001.

(e) *Effective Consent Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, the complainant's effective consent or the defendant's reasonable belief that the complainant gave effective consent to the defendant's conduct is a defense to prosecution under this section. If evidence is present at trial of the complainant's effective consent or the defendant's reasonable mistake that the complainant consented to the defendant's conduct, the government must prove the absence of such circumstances beyond a reasonable doubt.

RCC § 22A-1204. CRIMINAL THREAT.[28]

(a) *First Degree Criminal Threat.* A person commits a first degree criminal threat when that person:

(1) Knowingly communicates to another person;

(2) That the defendant or an accomplice will engage in conduct against that person or a third person constituting one of the following offenses:

(A) Homicide, as defined in RCC § 22A-1101;

(B) Robbery, as defined in RCC § 22A-1201;

(C) Sexual assault, as defined in RCC § 22A-13XX;

(D) Kidnapping, as defined in RCC § 22A-14XX; or

(E) Assault, as defined in RCC § 22A-1202(a)-(d);

(3) With intent that the communication would be perceived as a threat; and

(4) In fact, the communication would cause a reasonable recipient to believe that the harm would take place.

(b) *Second Degree Criminal Threat.* A person commits a second degree criminal threat when that person**:**

(1) Knowingly communicates to another person;

(2) That the defendant or an accomplice will engage in conduct against that person or a third person constituting one of the following offenses:

(1) Assault, as defined in RCC § 22A-1202(e)-(f); or

(2) Criminal damage to property, as defined in RCC § 22A-2503(c)(1) – (c)(4);

(3) With intent that the communication be perceived as a threat; and

(4) In fact, the communication would cause a reasonable recipient to believe that the harm would take place.

(c) *Penalties.*

[28] Per First Draft of Report #17 (December 21, 2017).

(1) First Degree Criminal Threat. First degree criminal threat is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Criminal Threat.* Second degree criminal threat is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Definitions.* The terms "knowingly" and "intent" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "dangerous weapon," "imitation weapon," and effective consent have the meanings specified in § 22A-1001.

(e) *Effective Consent Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, the complainant's effective consent or the defendant's reasonable belief that the complainant gave effective consent to the defendant's conduct is a defense to prosecution under this section. If evidence is present at trial of the complainant's effective consent or the defendant's reasonable mistake that the complainant consented to the defendant's conduct, the government must prove the absence of such circumstances beyond a reasonable doubt.

(f) *[Jury Demandable Offense.* When charged with a violation of this section or an inchoate violation of this section, the defendant may demand a jury trial. If the defendant demands a jury trial, then a court shall impanel a jury.]

RCC § 22A-1205. OFFENSIVE PHYSICAL CONTACT.[29]

(a) *First Degree Offensive Physical Contact.* A person commits the offense of first degree offensive physical contact when that person:

(1) Knowingly causes physical contact with another person;

(2) With bodily fluid or excrement;

(3) With intent that the physical contact be offensive to that other person; and

(4) In fact, a reasonable person in the situation of the recipient of the physical contact would regard it as offensive.

(b) *Second Degree Offensive Physical Contact.* A person commits the offense of second degree offensive physical contact when that person:

(1) Knowingly causes physical contact with another person;

(2) With intent that the physical contact be offensive to that other person; and

(3) In fact, a reasonable person in the situation of the recipient of the physical contact would regard it as offensive.

(c) *Penalty.*

(1) *First Degree Offensive Physical Contact.* First degree offensive physical contact is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Offensive Physical Contact.* First degree offensive physical contact is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[29] Per First Draft of Report #15 (December 21, 2017).

(d) *Definition*s. The terms "knowingly" and "intent" have the meanings specified in § 22A-206; the term "in fact" has the meaning specified in § 22A-207; and the terms "law enforcement officer" and "effective consent" have the meaning specified in § 22A-1001.

(e) *Defenses.*

(1) *Effective Consent Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, the complainant's effective consent or the defendant's reasonable belief that the complainant gave effective consent to the defendant's conduct is an defense to prosecution under this section.

(2) *Burden of Proof for Effective Consent Defense.* If evidence is present at trial of the complainant's effective consent or the defendant's reasonable belief that the complainant consented to the defendant's conduct, the government must prove the absence of such circumstances beyond a reasonable doubt.

(3) *Limitation on Justification and Excuse Defenses to Offensive Physical Contact Against a Law Enforcement Officer.* For prosecutions brought under this section, it is neither a justification nor an excuse for a person to actively oppose the use of force by a law enforcement officer when:

(A) The person was reckless as to the fact that the complainant was a law enforcement officer;

(B) The use of force occurred during an arrest, stop, or detention for a legitimate law enforcement purpose; and

(C) The law enforcement officer used only the amount of physical force that appeared reasonably necessary.

(f) *Jury Demandable Offense.* When charged with a violation or inchoate violation of subsection (b) of this section and either the complainant is a law enforcement officer, while in the course of his or her official duties, or the conduct was committed with the purpose of harming the complainant because of his or her status as a law enforcement officer, the defendant may demand a jury trial. If the defendant demands a jury trial, then the court shall impanel a jury.

Chapter 13. Sex Offenses [Reserved]

Chapter 14. Kidnapping and Coercion [Reserved]

Chapter 15. Criminal Abuse and Neglect of Vulnerable Persons [Reserved]

Chapter 16. Human Trafficking [Reserved]

Chapter 17. Terrorism [Reserved]

Chapter 18. Invasions of Privacy [Reserved. Stalking; Voyeurism]

Subtitle III. Property Offenses.
Chapter 20. Property Offense Subtitle Provisions.

RCC § 22A-2001. PROPERTY OFFENSE DEFINITIONS.[30]

In this subtitle, the term:

(1) "Attorney General" means the Attorney General for the District of Columbia.

(2) "Building" means a structure affixed to land that is designed to contain one or more human beings.

(3) "Business yard" means securely fenced or walled land where goods are stored or merchandise is traded.

(4) "Check" means any written instrument for payment of money by a financial institution.

(5) "Coercion" means causing another person to fear that, unless that person engages in particular conduct, then another person will:
- (A) Inflict bodily injury on another person;
- (B) Damage or destroy the property of another person;
- (C) Kidnap another person;
- (D) Commit any other offense;
- (E) Accuse another person of a crime;
- (F) Assert a fact about another person, including a deceased person, that would tend to subject that person to hatred, contempt, or ridicule;
- (G) Notify a law enforcement official about a person's undocumented or illegal immigration status.
- (H) Inflict a wrongful economic injury on another person;
- (I) Take or withhold action as an official, or take action under color or pretense of right; or
- (J) Perform any other act that is calculated to cause material harm to another person's health, safety, business, career, reputation, or personal relationships.

(6) "Consent" means words or actions that indicate an agreement to particular conduct. Consent includes words or actions that indicate indifference towards particular conduct. Consent may be given by one person on behalf of another person, if the person giving consent has been authorized by that other person to do so.

(7) "Court" means the Superior Court of the District of Columbia.

[30] Per First Draft of Report #8 (August 11, 2017).

(8) "Deceive" and "deception" mean:

(A) Creating or reinforcing a false impression as to a material fact, including false impressions as to intention to perform future actions.

(B) Preventing another person from acquiring material information;

(C) Failing to correct a false impression as to a material fact, including false impressions as to intention, which the person previously created or reinforced, or which the deceiver knows to be influencing another to whom he or she stands in a fiduciary or confidential relationship; or

(D) Failing to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which he or she transfers or encumbers in consideration for property, whether or not it is a matter of official record;

(E) Provided that the term "deception" does not include puffing statements unlikely to deceive ordinary persons, and deception as to a person's intention to perform a future act shall not be inferred from the fact alone that he or she did not subsequently perform the act.

(9) "Deprive" means:

(A) To withhold property or cause it to be withheld from an owner permanently, or for so extended a period or under such circumstances that a substantial portion of its value or its benefit is lost to that person; 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.

(10) "Dwelling" means a structure that is either designed for lodging or residing overnight, or that is actually used for lodging or residing overnight. In multi-unit buildings, such as apartments or hotels, each unit is an individual dwelling.

(11) "Effective consent" means consent obtained by means other than coercion or deception.

(12) "Elderly person" means a person who is 65 years of age or older.

(13) "Fair market value" means the price which a purchaser who is willing but not obligated to buy would pay an owner who is willing but not obligated to sell, considering all the uses to which the property is adapted and might reasonably be applied.

(14) "Financial injury" means all monetary costs, debts, or obligations incurred by a person as a result of another person's criminal act, including, but not limited to:

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

(B) The expenses related to any civil or administrative proceeding to satisfy or contest a debt, lien, judgment, or other obligation of the person,;

(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; and

(E) Legal fees.

(15) "Motor vehicle" means any automobile, all-terrain vehicle, self-propelled mobile home, motorcycle, moped, truck, truck tractor, truck tractor with semitrailer or trailer, bus, or other vehicle propelled by an internal-combustion engine or electricity, including any non-operational vehicle that is being restored or repaired.

(16) "Occupant" means a person holding a possessory interest in property that the accused is not privileged to interfere with."

(17) "Owner" means a person holding an interest in property that the accused is not privileged to interfere with.

(18) "Payment card" means an instrument of any kind, including an instrument known as a credit card or debit card, issued for use of the cardholder for obtaining or paying for property, or the number inscribed on such a card. "Payment card" includes the number or description of the instrument.

(19) "Person" means an individual, whether living or dead, a trust, estate, fiduciary, partnership, company, corporation, association, organization, union, government, governmental instrumentality, or any other legal entity.

(20) "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.

(21) "Property of another" means any property that a person has an interest in that the accused is not privileged to interfere with, regardless of whether the accused also has an interest in that property. The term "property of another" does not include any property in the possession of the accused that the other person has only a security interest in.

(22) "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.

(23) "United States Attorney" means the United States Attorney for the District of Columbia.

(24) "Value" means:

(A) The fair market value of the property at the time and place of the offense; or

(B) If the fair market value cannot be ascertained:

(i) For property other than a written instrument, the cost of replacement of the property within a reasonable time after the offense;

(ii) For a written instrument constituting evidence of debt, such as a check, draft, or promissory note, the amount due or collectible thereon, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied; and

(iii) For any other written instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation, the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the written instrument.

(C) Notwithstanding subsections (A) and (B) of this section, the value of a payment card is $[X] and the value of an unendorsed check is $[X].

(25) "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.

(26) "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) A will, contract, deed, or any other document purporting to have legal or evidentiary significance;

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

(D) Stock certificate, money order, money order blank, traveler's check, evidence of indebtedness, certificate of interest or participation in any profit sharing 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;

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

(F) 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.

RCC § 22A-2002. AGGREGATION TO DETERMINE PROPERTY OFFENSE GRADES.[31]

When a single scheme or systematic course of conduct could give rise to multiple charges of the same offense, the government instead may bring one charge and aggregate the values, amounts of damage, or quantities of the property in the scheme or systematic course of conduct to determine the grade of the offense. This rule applies to the following offenses:

(a) § 22A-2101 Theft;
(b) § 22A-2105 Unlawful Creation or Possession of a Recording;
(c) § 22A-2201 Fraud;
(d) § 22A-2202 Payment Card Fraud;
(e) § 22A-2203 Check Fraud;
(f) § 22A-2204 Forgery;
(g) § 22A-2205 Identity Theft;
(h) § 22A-2206 Unlawful Labeling of a Recording;
(i) § 22A-2208 Financial Exploitation of a Vulnerable Adult;
(j) § 22A-2301 Extortion;
(k) § 22A-2401 Possession of Stolen Property;
(l) § 22A-2402 Trafficking of Stolen Property;
(m) § 22A-2403 Alteration of Motor Vehicle Identification Number; and,
(n) § 22A-2503 Criminal Damage to Property.

RCC § 22A-2003. LIMITATION ON CONVICTIONS FOR MULTIPLE RELATED PROPERTY OFFENSES.[32]

(a) *Theft, Fraud, Extortion, Stolen Property, or Property Damage Offenses.* A person may be found guilty of any combination of offenses contained in Chapters 21, 22, 23, 24 or 25 for which he or she satisfies the requirements for liability; however, the court shall not enter a judgment of conviction for more than one of these offenses based on the same act or course of conduct.
(b) *Trespass and Burglary Offenses.* A person may be found guilty of any combination of offenses contained in Chapters 26 and 27 for which he or she satisfies the requirements for liability; however, the court shall not enter a judgment of conviction for more than one of these offenses based on the same act or course of conduct.
(c) *Judgment to be Entered on Most Serious Offense.* Where subsections (a) or (b) prohibit judgments of conviction for more than one of two or more offenses based on the same act or course of conduct, the court shall enter a judgment of conviction for the offense, or grade of an offense, with the most severe penalty; provided that, where two or more offenses subject to subsection (a) or (b) have the most severe penalty, the court may impose a judgment of conviction for any one of those offenses.

[31] Per First Draft of Report #8 (August 11, 2017).
[32] Per First Draft of Report #8 (August 11, 2017).

Chapter 21. Theft Offenses

RCC § 22A-2101. THEFT.[33]

(a) *Offense.* A person commits the offense of theft if that person:
(1) Knowingly takes, obtains, transfers, or exercises control over;
(2) The property of another;
(3) Without the consent of the owner; and
(4) With intent to deprive that person of the property.

(b) *Definitions.* The term "possess" has the meaning specified in § 22A-202, the terms "knowingly," and "intent," have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "consent," "property," "property of another," "owner" and "value," have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties*.

(1) *Aggravated Theft.* A person is guilty of aggravated theft if the person commits theft and the property, in fact, has a value of $250,000 or more. Aggravated theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2)*First Degree Theft*.

(A) A person is guilty of first degree theft if the person commits theft and:

(i) The property, in fact, has a value of $25,000 or more; or

(ii) The property, in fact: is a motor vehicle, and the value of the motor vehicle is $25,000 or more.

(B) Second degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3)*Second Degree Theft.*

(A) A person is guilty of second degree theft if the person commits theft and:

(i) The property, in fact, has a value of $2,500 or more; or

(ii) The property, in fact, is a motor vehicle.

(B) Second degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4)*Third Degree Theft*. A person is guilty of third degree theft if the person commits theft and the property, in fact, has a value of $250 or more. Third degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(5) *Fourth Degree Theft*. A person is guilty of fourth degree theft if the person commits theft and the property, in fact, has any value. Fourth degree theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[33] Per First Draft of Report #9 (August 11, 2017).

RCC § 22A-2102. UNAUTHORIZED USE OF PROPERTY.[34]

(a) *Offense.* A person commits the offense of unauthorized use of property if that person:
(1) Knowingly takes, obtains, transfers, or exercises control over;
(2) The property of another;
(3) Without the effective consent of the owner.

(b) *Definitions.* The term "possess" has the meaning specified in § 22A-202, the term "knowingly" has the meaning specified in § 22A-206, and the terms "effective consent," "consent," "property," "property of another," and "owner," have the meanings specified in § 22A-2001.

(c) *Penalty*: Unauthorized use of property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2103. UNAUTHORIZED USE OF A MOTOR VEHICLE.[35]

(a) *Offense.* A person commits the offense of unauthorized use of a motor vehicle if that person:
(1) Knowingly operates or rides as a passenger in;
(2) A motor vehicle;
(3) Without the effective consent of the owner.

(b) *Definitions.* The term "knowingly" has the meaning specified in § 22A-206, and the terms "motor vehicle," "effective consent," "consent," and "owner," have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties*.
(1) *First Degree Unauthorized Use of a Motor Vehicle*. A person is guilty of first degree unauthorized use of a motor vehicle if the person commits unauthorized use of a motor vehicle by knowingly operating the motor vehicle. First degree unauthorized use of a motor vehicle is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(2) *Second Degree Unauthorized Use of a Motor Vehicle.* A person is guilty of first degree unauthorized use of a motor vehicle if the person commits unauthorized use of a motor vehicle by knowingly operating or riding as a passenger in the motor vehicle. Second degree unauthorized use of a motor vehicle is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *No Multiple Convictions for Unauthorized Use of a Rented or Leased Motor Vehicle or Carjacking.* No person may be convicted of unauthorized use of a motor vehicle and either unauthorized use of a rented or leased motor vehicle, D.C. Code § 22-3215, or carjacking, RCC § 22A-1XXX based on the same act or course of conduct. A person may be found guilty of any combination of these offenses, but only one judgment of conviction may be entered pursuant to the procedural requirements in RCC § 22A-2003(c).

RCC § 22A-2104. SHOPLIFTING.[36]

[34] Per First Draft of Report #9 (August 11, 2017).
[35] Per First Draft of Report #9 (August 11, 2017).
[36] Per First Draft of Report #9 (August 11, 2017).

(a) *Offense*. A person commits the offense of shoplifting if that person:

(1) Knowingly:

(A) Conceals or takes possession of;

(B) Removes, alters, or transfers the price tag, serial number, or other identification mark that is imprinted on or attached to; or

(C) Transfers from one container or package to another container or package;

(2) Personal property of another that is displayed, held, stored, or offered for sale;

(3) With intent to take or make use of the property without complete payment.

(b) *Definitions.* The term "possess" has the meaning specified in § 22A-202, the terms "knowingly," and "intent," have the meanings specified in § 22A-206, and the terms "property" and "property of another" have the meanings specified in § 22A-2001.

(c) *Penalty*. Shoplifting is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *No Attempt Shoplifting Offense*. It is not an offense to attempt to commit the offense described in this section.

(e) *Qualified Immunity.* A person who displays, holds, stores, or offers for sale personal property as specified in subsection (a)(2), or an employee or agent of such a person, who detains or causes the arrest of a person in a place where such property is displayed, held, stored, or 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.

RCC § §22A-2105. UNLAWFUL CREATION OR POSSESSION OF A RECORDING.[37]

(a) *Offense*. A person commits the offense of unlawful creation or possession of a recording if that person:

(1) Knowingly makes, obtains, or possesses;

(2) Either:

(A) A sound recording that is a copy of an original sound recording that was fixed prior to February 15, 1972, or

(B) A sound recording or audiovisual recording of a live performance;

(3) Without the effective consent of the owner;

(4) With intent to sell, rent, or otherwise use the recording for commercial gain or advantage.

(b) *Definitions*. In this section:

(1) "Audiovisual recording" means a material object 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;

[37] Per First Draft of Report #9 (August 11, 2017).

(2) "Sound recording" means a material object in which sounds, other than those accompanying a motion picture or other audiovisual recording, are fixed by any method now known or later developed, from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device; and

(3) The term "possess" has the meaning specified in § 22A-202, the terms "knowingly," and "intent," have the meanings specified in § 22A-206, and the terms "property" "property of another," and "owner," have the meanings specified in § 22A-2001.

(c) *Exclusion from Liability.* 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) *Permissive Inference.* A fact finder may, but is not required to, infer that a person had an intent to sell, rent or otherwise use the recording for commercial gain or advantage if the person possesses 5 or more unlawful recordings either of the same original sound recording or the same live performance.

(e) *Gradations and Penalties.*

(3) *First Degree Unlawful Creation or Possession of a Recording*. A person is guilty of first degree unlawful creation or possession of a recording if the person commits the offense and, in fact, the number of unlawful recordings made, obtained, or possessed was 100 or more. First degree unlawful creation or possession of a recording is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4) *Second Degree Unlawful Creation or Possession of a Recording.* A person is guilty of second degree unlawful creation or possession of a recording if the person commits the offense and, in fact, any number of unlawful recordings were made, obtained, or possessed. Second degree unlawful creation or possession of a recording is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(f) *Forfeiture.* 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 recordings, and equipment used, or attempted to be used, in violation of this section.

Chapter 22. Fraud Offenses

RCC § 22A-2201. FRAUD.[38]

(a) *Offense.* A person commits the offense of fraud if that person:
(1) Knowingly takes, obtains, transfers, or exercises control over;
(2) The property of another;
(3) With the consent of the owner;
(4) The consent being obtained by deception; and
(5) With intent to deprive that person of the property.

(b) *Definitions.* The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "property," "property of another," "consent," "deception," "deprive," and "value" have the meanings specified in § 22A-2001.

(c) Gradations and Penalties.

(1) *Aggravated Fraud.* A person is guilty of aggravated fraud if the person commits fraud and the property, in fact, has a value of $250,000 or more. Aggravated fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2)*First Degree Fraud*. A person is guilty of first degree fraud if the person commits fraud and the property, in fact, has a value of $25,000 or more. First degree fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3) *Second Degree Fraud.* A person is guilty of second degree fraud if the person commits fraud and the property, in fact, has a value, of $2,500 or more. Second degree fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4)*Third Degree Fraud*. A person is guilty of third degree fraud if the person commits fraud and the property, in fact, has a value of $250 or more. Third degree fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[38] Per First Draft of Report #10 (August 11, 2017).

(5) *Fourth Degree Fraud*. A person is guilty of fourth degree fraud if the person commits fraud and the property, in fact, has any value. Fourth degree fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2202. PAYMENT CARD FRAUD.[39]

(a) *Offense.* A person commits the offense of payment card fraud if that person:
  (1) Knowingly obtains or pays for property;
  (2) By using a payment card:
    (A) Without the effective consent of the person to whom the payment card was issued;
    (B) After the payment card was revoked or cancelled;
    (C) When the payment card was never issued; or
    (D) For the employee's or contractor's own purposes, when the payment card was issued to or provided to an employee or contractor for the employer's purposes.

(b) *Definitions.* In this section:
  (1) "Revoked or canceled" means that notice, in writing, of revocation or cancellation either was received by the named holder, as shown on the payment card, or was recorded by the issuer.
  (2) The terms "knowingly," and "intent," have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "payment card" and "property" have the meanings specified in § 22A-2001.

(c) Gradations and Penalties.
  (1) *Aggravated Payment Card Fraud*. A person is guilty of aggravated payment card fraud if the person commits payment card fraud and obtains or pays for property that, in fact, has a value of $250,000 or more. Aggravated payment card fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *First Degree Payment Card Fraud*. A person is guilty of first degree payment card fraud if the person commits payment card fraud and obtains or pays for property that, in fact, has a value of $25,000 or more. First degree payment card fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Second Degree Payment Card Fraud*. A person is guilty of second degree payment card fraud if the person commits payment card fraud and obtains or pays for property that, in fact, has a value of $2,500 or more. Second degree payment card fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (4) *Third Degree Payment Card Fraud*. A person is guilty of third degree payment card fraud if the person commits payment card fraud and obtains or pays for property that, in fact, has a value of $250 or more. Third degree payment card fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[39] Per First Draft of Report #10 (August 11, 2017).

(5) *Fourth Degree Payment Card Fraud*. A person is guilty of fourth degree payment card fraud if the person commits payment card fraud and obtains or pays for property that, in fact, has any value. Fourth degree payment card fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Jurisdiction.* An offense under this section 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 payment card was issued or in whose name the payment card was issued is a resident of, or located in, the District of Columbia;

(2) The person who was the target of the offense 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.

RCC § 22A-2203. CHECK FRAUD.[40]

(a) *Offense.* A person commits the offense of check fraud if that person:

(1) Knowingly obtains or pays for property;

(2) By using a check;

(3) Which will not be honored in full upon its presentation to the bank or depository institution drawn upon.

(b) *Permissive Inference.* Unless the check is postdated, a fact finder may, but is not required to, infer that subsection (a)(3) is satisfied if:

(1) The person who obtained or paid for property;

(2) Failed to repay the amount not honored by the bank or depository institution and any associated fees;

(3) To the holder of the check;

(4) Within 10 days of receiving notice in person or writing that the check was not paid by the financial institution.

(c) *Definitions*. In this section:

(1) "Credit" means an arrangement or understanding, express or implied, with the bank or depository institution for the payment of a check.

(2) The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "property" and "value" have the meanings specified in § 22A-2001.

(d) *Gradations and Penalties*.

(1) *First Degree Check Fraud*. A person is guilty of first degree check fraud if the person commits check fraud and, in fact: the amount of the loss to the check holder is $2,500 or more. First degree check fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Check Fraud.* A person is guilty of second degree check fraud if the person commits check fraud and, in fact: the amount of the loss to the check holder is any amount. Second degree check fraud is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[40] Per First Draft of Report #10 (August 11, 2017).

RCC § 22A-2204. FORGERY.[41]

(a) *Offense.* A person commits the offense of forgery if that person:
  (1) Knowingly alters:
    (A) A written instrument
    (B) Without authorization; and
    (C) The written instrument is reasonably adapted to deceive a person into believing it is genuine; or
  (2) Knowingly makes or completes;
    (A) A written instrument;
    (B) That appears:
      (i) To be the act of another who did not authorize that act, or
      (ii) To have been made or completed at a time or place or in a numbered sequence other than was in fact the case, or
      (iii) To be a copy of an original when no such original existed; and
    (C) The written instrument is reasonably adapted to deceive a person into believing the written instrument is genuine; or
  (3) Knowingly transmits or otherwise uses:
    (A) A written instrument;
    (B) That was made, signed, or altered in a manner specified in subsections (a)(1) or (a)(2);
  (4) With intent to:
    (A) Obtain property of another by deception, or
    (B) Harm another person.

(b) *Definitions*. The terms "knowingly," and "intent," have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "deception," "property," "property of another," and "value" have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties*.
  (1) *First Degree Forgery*.
    (A) A person is guilty of first degree forgery if the person commits forgery and the written instrument appears to be, in fact:
      (i) A stamp, legal tender, bond, check, or other valuable instrument issued by a domestic or foreign government or governmental instrumentality;
      (ii) A stock certificate, bond, or other instrument representing an interest in or claim against a corporation or other organization of its property;
      (iii) A public record, or instrument filed in a public office or with a public servant;
      (iv) A written instrument officially issued or created by a public office, public servant, or government instrumentality;
      (v) A deed, will, codicil, contract, assignment, commercial instrument, or other instrument which does or may evidence, create, transfer,

[41] Per First Draft of Report #10 (August 11, 2017).

terminate, or otherwise affect a legal right, interest, obligation, or status; or

(vi) A written instrument having a value of $25,000 or more.

(B) First degree forgery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Forgery.*

(A) A person is guilty of second degree forgery if the person commits forgery and the written instrument appears to be, in fact:

(i) 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;

(ii) 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

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

(iv) A written instrument having a value of $2,500 or more.

(B) Second degree forgery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3) *Third Degree Forgery*. A person is guilty of third degree forgery if the person commits forgery of any written instrument. Third degree forgery is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2205. IDENTITY THEFT.[42]

(a) *Offense.* A person commits the offense of identity theft if that person:

(1) Knowingly creates, possesses, or uses;

(2) Personal identifying information belonging to or pertaining to another person;

(3) Without that other person's effective consent; and

(4) With intent to use the personal identifying information to:

(A) Obtain property of another by deception;

(B) Avoid payment due for any property, fines, or fees by deception; or

(C) Give, sell, transmit, or transfer the information to a third person to facilitate the use of the identifying information by that third person to obtain property by deception.

(b) *Definitions.*

(1) In this section, the term "identifying information" shall include, 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;

[42] Per First Draft of Report #10 (August 11, 2017).

(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.

(2) The term "possess" has the meaning specified in § 22A-202, the terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "consent," "deception," "financial injury," "property," "property of another," and "value." have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties.*

(1) Aggravated Identity Theft. A person is guilty of aggravated identity theft if the person commits identity theft and the value of the property sought to be obtained or the amount of the payment intended to be avoided, or the financial injury, whichever is greater, in fact, is $250,000 or more. Aggravated identity theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) First Degree Identity Theft. A person is guilty of first degree identity theft if the person commits identity theft and the value of the property sought to be obtained or the amount of the payment intended to be avoided, or the financial injury, whichever is greater, in fact, is $25,000 or more. First degree identity theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3) Second Degree Identity Theft. A person is guilty of second degree identity theft if the person commits identity theft and the value of the property sought to be obtained or the amount of the payment intended to be avoided, or the financial injury, whichever is greater, in fact, is $2,500 or more. Second degree identity theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4) Third Degree Identity Theft. A person is guilty of third degree identity theft if the person commits identity theft and the value of the property sought to be obtained or the amount of the payment intended to be avoided, or the financial injury, whichever is greater, in fact, is $250 or more. Third degree identity theft is a

Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(5) Fourth Degree Identity Theft. A person is guilty of fourth degree identity theft if the person commits identity theft and the value of the property sought to be obtained or the amount of the payment intended to be avoided, or the financial injury, whichever is greater, in fact, is of any amount.. Fourth degree identity theft is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Unit of Prosecution and Calculation of Time to Commence Prosecution of the Offense.* Creating, possessing, or using a person's personal identifying information in violation of this section shall constitute a single course of conduct for purposes of determining the applicable time limitation under § 23-113(b). The applicable time limitation under § 23-113 shall not begin to run until after the course of conduct has been completed or terminated.

(e) *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.

(f) *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.

RCC § 22A-2206. <u>IDENTITY THEFT CIVIL PROVISIONS.</u>[43]

(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 § 22A-2206.

(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 § 22A-2206. 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 § 22A-2206.

(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.

[43] Per First Draft of Report #10 (August 11, 2017).

RCC §22A-2207. UNLAWFUL LABELING OF A RECORDING.[44]

(a) A person commits the offense of unlawful labeling of a recording if that person:
  (1) Knowingly possesses;
  (2) A sound recording or audiovisual recording;
  (3) That does not clearly and conspicuously disclose the true name and address of the manufacturer on its label, cover, or jacket;
  (4) With intent to sell or rent the sound recording or audiovisual recording.

(b) *Definitions*. In this section:
  (1) "Audiovisual recording" means a material object 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;
  (2) "Sound recording" means a material object in which sounds, other than those accompanying a motion picture or other audiovisual recording, are fixed by any method now known or later developed, from which the sounds can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device; and
  (3) "Manufacturer" means the person who affixes, or authorizes the affixation of, sounds or images to a sound recording or audiovisual recording.
  (4) The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the term "possess" has the meaning specified in § 22A-202.

(c) *Exclusion from Liability.* 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, transfers any sounds or images recorded on a sound recording or audiovisual work.

(d) *Permissive Inference.* A fact finder may, but is not required to, infer that a person had an intent to sell, rent or otherwise use the recording commercial advantage if the person possesses 5 or more recordings of the same sound or audiovisual material that do not clearly and conspicuously disclose the true name and address of the manufacturer on their labels, covers, or jackets.

(e) *Gradations and Penalties*.
  (1) *First Degree Unlawful Labeling of a Recording*. A person is guilty of first degree unlawful labeling of a sound and audiovisual recording if the person commits the offense by possessing, in fact, 100 or more recordings. First degree unlawful labeling of a recording is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *Second Degree Unlawful Labeling of a Recording.* A person is guilty of second degree unlawful labeling of a recording if the person commits the offense by possessing, in fact, any number of recordings. Second degree unlawful labeling of a recording is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[44] Per First Draft of Report #10 (August 11, 2017).

(f) *Forfeiture.* 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 recordings, and equipment used, or attempted to be used, in violation of this section.

RCC § 22A-2208. FINANCIAL EXPLOITATION OF A VULNERABLE ADULT OR ELDERLY PERSON.[45]

(a) A person is guilty of financial exploitation of a vulnerable adult or elderly person if that person:
  (1) Knowingly:
    (A) Takes, obtains, transfers, or exercises control over;
    (B) Property of another;
    (C) With the consent of the owner;
    (D) Who is a vulnerable adult or elderly person;
    (E) The consent being obtained by undue influence; and
    (F) With intent to deprive that person of the property, or
  (2) Commits theft, extortion, forgery, fraud, or identity theft knowing the victim to be a vulnerable adult or elderly person.

(b) *Definitions.* In this section:
  (1) The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "property," "property of another," "coercion," "consent," "deprive," "vulnerable adult," "elderly person," and "value" have the meanings specified in §22A-2001.
  (2) 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.

(c) *Gradations and Penalties.*
  (1) Aggravated Financial Exploitation of a Vulnerable Adult or Elderly Person. A person is guilty of aggravated financial exploitation of a vulnerable adult or elderly person if the person commits financial exploitation of a vulnerable adult or elderly person and the value of the property or the amount of the financial injury, whichever is greater, in fact, is $250,000 or more. Aggravated financial exploitation of a vulnerable adult or elderly person is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) First Degree Financial Exploitation of a Vulnerable Adult or Elderly Person. A person is guilty of first degree financial exploitation of a vulnerable adult or elderly person if the person commits financial exploitation of a vulnerable adult or elderly person and the value of the property or the amount of the financial injury, whichever is greater, in fact, is $25,000 or more. First degree financial exploitation of a vulnerable adult or elderly person is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[45] Per First Draft of Report #10 (August 11, 2017).

(3) Second Degree Financial Exploitation of a Vulnerable Adult or Elderly Person. A person is guilty of second degree financial exploitation of a vulnerable adult or elderly person if the person commits financial exploitation of a vulnerable adult or elderly person and the value of the property or the amount of the financial injury, whichever is greater, in fact, is $2,500 or more. Second degree financial exploitation of a vulnerable adult or elderly person is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4) Third Degree Financial Exploitation of a Vulnerable Adult or Elderly Person. A person is guilty of third degree financial exploitation of a vulnerable adult or elderly person if the person commits financial exploitation of a vulnerable adult or elderly person and the value of the property or the amount of the financial injury, whichever is greater, in fact, is $250 or more. Third degree financial exploitation of a vulnerable adult or elderly person is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(5) Fourth Degree Financial Exploitation of a Vulnerable Adult or Elderly Person. A person is guilty of fourth degree financial exploitation of a vulnerable adult or elderly person if the person commits financial exploitation of a vulnerable adult or elderly person and the value of the property or the amount of the financial injury, whichever is greater, in fact, is of any amount. Fourth degree financial exploitation of a vulnerable adult or elderly person is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Restitution.* In addition to the penalties set forth in paragraphs (c)(1)-(5) of this section, a person shall make restitution, before the payment of any fines or civil penalties.

RCC § 22A-2209. FINANCIAL EXPLOITATION OF A VULNERABLE ADULT OR ELDERLY PERSON CIVIL PROVISIONS.[46]

(a) *Additional Civil Penalties.* In addition to other penalties provided by law, a person who violates § 22A-2207 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.
  (4) Restitution under § 22A-2207 shall be paid before the payment of any fines or civil penalties under this section.

(b) *Petition for Injunctive Relief and Protections.* 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 §22A-2207, 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

[46] Per First Draft of Report #10 (August 11, 2017).

(4) Any other relief the court deems just.

(c) *Standard for Court Review of Petition.* The court may grant an ex-parte motion authorized by subsection (b) 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 inunction 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 § 22A-2207.

(d) *Effect of Order to Temporarily Freeze Assets.* (1) An order temporarily freezing assets without notice to the person pursuant to subsections (b)(3) and (c) 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.

(e) *Appointment of Receiver or Conservator.* 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.

Chapter 23. Extortion

Section 2301. Extortion.

RCC § 22A-2301. EXTORTION.[47]

(a) *Offense.* A person commits the offense of extortion if that person:
  (1) Knowingly takes, obtains, transfers, or exercises control over;
  (2) The property of another;
  (3) With the consent of the owner;
  (4) The consent being obtained by coercion; and
  (5) With intent to deprive that person of the property.

(b) *Definitions.* The terms "knowingly," and "intent," in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "property," "property of another," "consent," "coercion," "deprive," and "value" have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties*.
  (1) *Aggravated Extortion.* A person is guilty of aggravated extortion if the person commits extortion and the property, in fact, has a value of $250,000 or more. Aggravated extortion is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *First Degree Extortion*. A person is guilty of first degree extortion if the person commits extortion and the property, in fact, has a value of $25,000 or more. First degree extortion is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Second Degree Extortion.* A person is guilty of second degree extortion if the person commits extortion and the property, in fact, has a value of $2,500 or more. Second degree extortion is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (4) *Third Degree Extortion*. A person is guilty of third degree extortion if the person commits extortion and the property, in fact, has a value of $250 or more. Third degree extortion is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (5) *Fourth Degree Extortion*. A person is guilty of fourth degree extortion if the person commits extortion and the property, in fact, has any value. Fourth degree extortion is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[47] Per First Draft of Report #11 (August 11, 2017).

Chapter 24. Stolen Property Offenses

RCC § 22A-2401. POSSESSION OF STOLEN PROPERTY.[48]

(a) *Offense.* A person commits the offense of receiving stolen property if that person:
  (1) Knowingly buys or possesses;
  (2) Property;
  (3) With intent that the property be stolen; and
  (4) With intent to deprive the owner of the property.

(b) *Definitions.* The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, the term "possess" has the meaning specified in § 22A-202, and the terms "property" and "deprive" have the meaning specified in §22A-2001.

(c) *Gradations and Penalties*.
  (1) *Aggravated Possession of Stolen Property*. A person is guilty of aggravated possession of stolen property if the person commits possession of stolen property and the property, in fact, has a value of $250,000 or more. Aggravated possession of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *First Degree Possession of Stolen Property*. A person is guilty of first degree possession of stolen property if the person commits possession of stolen property and the property, in fact, has a value of $25,000 or more. Second degree possession of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Second Degree Possession of Stolen Property.* A person is guilty of second degree possession of stolen property if the person commits possession of stolen property and the property, in fact, has a value of $2,500 or more. Second degree possession of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (4) *Third Degree Possession of Stolen Property*. A person is guilty of third degree possession of stolen property if the person commits possession of stolen property and the property, in fact, has a value of $250 or more. Third degree possession of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (5) *Fourth Degree Possession of Stolen Property*. A person is guilty of fourth degree possession of stolen property if the person commits possession of stolen property and the property, in fact, has any value. Fourth degree possession of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2402. TRAFFICKING OF STOLEN PROPERTY.[49]

[48] Per First Draft of Report #10 (August 11, 2017).

(a) *Offense.* A person commits the offense of trafficking of stolen property if that person:
  (1) Knowingly buys or possesses;
  (2) Property;
  (3) On two or more separate occasions;
  (4) With intent that the property be stolen; and
  (5) With intent to sell, pledge as consideration, or trade the property.

(b) *Definitions.* The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, the term "possess" has the meaning specified in § 22A-202, and the term "property" has the meaning specified in §22A-2001.

(c) *Gradations and Penalties*.
  a. *Aggravated Trafficking of Stolen Property.* A person is guilty of aggravated trafficking of stolen property if the person commits trafficking of stolen property and the property, in fact, has a value of $250,000 or more. Aggravated trafficking of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  b. *First Degree Trafficking of Stolen Property*. A person is guilty of first degree trafficking of stolen property if the person commits trafficking of stolen property and the property, in fact, has a value of $25,000 or more. Second degree trafficking of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  c. *Second Degree Trafficking of Stolen Property.* A person is guilty of second degree trafficking of stolen property if the person commits trafficking of stolen property and the property, in fact, has a value of $2,500 or more. Second degree trafficking of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  d. *Third Degree Trafficking of Stolen Property*. A person is guilty of third degree trafficking of stolen property if the person commits trafficking of stolen property and the property, in fact, has a value of $250 or more. Third degree trafficking of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  e. *Fourth Degree Trafficking of Stolen Property*. A person is guilty of fourth degree trafficking of stolen property if the person commits trafficking of stolen property and the property, in fact, has any value. Fourth degree trafficking of stolen property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2403. ALTERATION OF MOTOR VEHICLE IDENTIFICATION NUMBER.[50]

(a) A person commits the offense of altering a vehicle identification number if that person:
  (1) Knowingly alters;
  (2) An identification number;
  (3) Of a motor vehicle or motor vehicle part;

[49] Per First Draft of Report #10 (August 11, 2017).
[50] Per First Draft of Report #10 (August 11, 2017).

(4) With intent to conceal or misrepresent the identity of the motor vehicle or motor vehicle part.

(b) *Definitions.* In this section, "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. The terms "knowingly," and "intent" have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the term "motor vehicle" has the meaning specified in § 22A-2001.

(c) *Gradations and Penalties*.

(1) *First Degree Altering Vehicle Identification Number*. A person is guilty of first degree altering a vehicle identification number if the person commits the offense and the value of the motor vehicle or motor vehicle part, in fact, is $1,000 or more. First degree altering a vehicle identification number is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *Second Degree Altering Vehicle Identification Number.* A person is guilty of second degree altering a vehicle identification number if the person commits the offense and the motor vehicle or motor vehicle part, in fact, has any value. Second degree altering a vehicle identification number is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2404. ALTERATION OF BICYCLE IDENTIFICATION NUMBER.[51]

(a) A person commits the offense of altering bicycle identification numbers if that person:

(1) Knowingly alters;

(2) An identification number;

(3) Of a bicycle or bicycle part;

(4) With intent to conceal or misrepresent the identity of the bicycle or bicycle part.

(b) *Definitions.* The terms "knowingly," and "intent" have the meanings specified in § 22A-206. Definitions for the terms "bicycle" and "identification number" are provided in section D.C. Code § 50-1609.

(a) *Penalty*. Alteration of a bicycle identification number is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[51] Per First Draft of Report #10 (August 11, 2017).

Chapter 25. Property Damage Offenses

RCC § 22A-2501. ARSON.[52]

(a) *Offense.* A person commits the offense of arson if that person:
  (1) Knowingly starts a fire or causes an explosion;
  (2) That damages or destroys;
  (3) A dwelling, building, business yard, watercraft, or motor vehicle.

(b) *Definitions.* The terms "knowingly" and "recklessly," have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, the terms "dwelling," "building," "business yard," and "motor vehicle," have the meanings specified in § 22A-2001, and the term "serious bodily injury" has the meaning specified in § 22A-XXXX.

(c) *Gradations and Penalties.*
  (1) *Aggravated Arson*.
    (A) A person is guilty of aggravated arson if that person commits arson:
      (i) Of what the person knows to be a dwelling or building;
      (ii) Reckless as to the fact that a person who is not a participant in the crime is present in the dwelling or building; and
      (iii) The fire or explosion, in fact, causes death or serious bodily injury to any person who is not a participant in the crime.
    (B) Aggravated arson is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *First Degree Arson.*
    (A) A person is guilty of first degree arson if that person commits arson:
      (i) Of what the person knows to be a dwelling or building; and is
      (ii) Reckless as to the fact that a person who is not a participant in the crime is present in the dwelling or building.
    (B) First degree arson is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Second Degree Arson.* A person is guilty of second degree arson if that person commits arson. Second degree arson is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Affirmative Defense.* It is an affirmative defense to commission of second degree arson that the defendant must prove by a preponderance of the evidence, that he or she had a valid blasting permit issued by the District Of Columbia Fire and Emergency Medical Services Department, and complied with all the rules and regulations governing the use of such a permit.

[52] Per First Draft of Report #9 (August 11, 2017).

RCC § 22A-2502. RECKLESS BURNING.[53]

(a) *Offense.* A person commits the offense of reckless burning if that person:
  (1) Knowingly starts a fire or causes an explosion;
  (2) With recklessness as to the fact that the fire or explosion damages or destroys;
  (3) A dwelling, building, business yard, watercraft, or motor vehicle.

(b) *Definitions.* The terms "knowingly" and "recklessly," have the meanings specified in § 22A-206, and the terms "dwelling," "building," "business yard," and "motor vehicle," have the meanings specified in § 22A-2001.

(c) *Penalty.* Reckless burning is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *Affirmative Defense.* It is an affirmative defense to commission of reckless burning that the defendant must prove by a preponderance of the evidence, that he or she had a valid blasting permit issued by the District Of Columbia Fire and Emergency Medical Services Department, and complied with all the rules and regulations governing the use of such a permit.

RCC § 22A-2503. CRIMINAL DAMAGE TO PROPERTY.[54]

(a) *Offense.* A person commits the offense of criminal damage to property if that person:
  (1) Recklessly damages or destroys;
  (2) What the person knows to be property of another;
  (3) Without the effective consent of the owner.

(b) *Definitions.* The terms "knowingly" and "recklessly," have the meanings specified in § 22A-206, the term "in fact" has the meaning specified in § 22A-207, and the terms "consent," "effective consent," "property," "property of another," and "owner," the meanings specified in § 22A-2001.

(c) *Gradations and Penalties*.
  (1) *Aggravated Criminal Damage to Property.* A person is guilty of aggravated criminal damage to property if the person commits criminal damage to property by knowingly damaging or destroying property and, in fact, the amount of damage is $250,000 or more. Aggravated criminal damage to property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *First Degree Criminal Damage to Property*. A person is guilty of first degree criminal damage to property if the person commits criminal damage to property by knowingly damaging or destroying property and, in fact, the amount of damage is $25,000 or more. First degree criminal damage to property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Second Degree Criminal Damage to Property.*
    (A) A person is guilty of second degree criminal damage to property if the person commits criminal damage to property and:

[53] Per First Draft of Report #9 (August 11, 2017).
[54] Per First Draft of Report #9 (August 11, 2017).

(i) Knowingly damages or destroys property and, in fact, the amount of damage is $2,500 or more;

(ii) Knowingly damages or destroys property that, in fact: is a cemetery, grave, or other place for the internment of human remains;

(iii) Knowingly damages or destroys property that, in fact: is a place of worship or a public monument; or

(iv) Recklessly damages or destroys property and, in fact, the amount of damage is $25,000 or more.

(B) Second degree criminal damage to property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(4) *Third Degree Criminal Damage to Property*. A person is guilty of third degree criminal damage to property if the person commits criminal damage to property and, in fact, the amount of damage is $250 or more. Third degree criminal damage to property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(5) *Fourth Degree Criminal Damage to Property*. A person is guilty of fourth degree criminal damage to property if the person commits criminal damage to property and, in fact, the amount of damage is any amount. Fourth degree criminal damage to property is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2504. CRIMINAL GRAFFITI.[55]

(a) *Offense.* A person commits the offense of criminal graffiti if that person:

(1) Knowingly places;

(2) Any inscription, writing, drawing, marking, or design;

(3) On property of another;

(4) That is visible from a public right-of-way;

(5) Without the effective consent of the owner.

(b) *Definitions.* In this section, "minor" means a person under 18 years of age. The term "knowingly" has the meaning specified in § 22A-XXX, and the terms "property," "property of another" "consent," "effective consent," and "owner" have the meanings specified in § 22A-2001.

(c) *Penalty.* Criminal graffiti is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both. However,

(d) *Mandatory Restitution*. The court shall order the person convicted to make restitution to the owner of the property for the damage or loss caused, directly or indirectly, by the graffiti, in a reasonable amount and manner as determined by the court.

(e) *Parental Liability.* 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.

[55] Per First Draft of Report #9 (August 11, 2017).

Chapter 26. Trespass Offenses

RCC § 22A-2601. TRESPASS.[56]

(a) *Offense*. A person commits the offense of trespass when that person:
  (1) Knowingly enters or remains in;
  (2) A dwelling, building, land, or watercraft, or part thereof;
  (3) Without the effective consent of the occupant or, if there is no occupant, the owner.

(b) *Permissive Inference.* A jury may infer that a person lacks effective consent of the occupant or owner if the person enters or remains in a dwelling, building, land, or watercraft that:
  (1) Is vacant and secured in a manner that reasonably conveys that it is not to be entered; or
  (2) Displays signage that is reasonably visible from the person's point of entry, and that sign says "no trespassing" or reasonably indicates that the person may not enter.

(c) *Definitions.* The term "knowingly" has the meaning specified in § 22A-206, and the terms "dwelling," "building," "effective consent," "occupant," and "owner" have the meanings specified in § 22A-2001.

(d) *Gradations and Penalties.*
  (1) *First Degree Trespass.* A person is guilty of first degree trespass if that person commits trespass knowing the location is a dwelling. First degree trespass is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *Second Degree Trespass.* A person is guilty of second degree trespass if the person commits trespass. Second degree trespass is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Jury Trial*. If the District of Columbia or federal government is alleged to be the occupant of the building or land entered upon, then the defendant may demand a jury trial. If the defendant demands a jury trial, then a court shall impanel a jury.

RCC § 22A-2602. TRESPASS OF A MOTOR VEHICLE.[57]

(a) *Offense*. A person commits the offense of unlawful entry of a motor vehicle when that person:
  (1) Knowingly enters or remains in;

[56] Per First Draft of Report #11 (August 11, 2017).
[57] Per First Draft of Report #11 (August 11, 2017).

(2) A motor vehicle, or part thereof;
(3) Without the effective consent of the owner.

(b) *Definitions.* The term "knowingly" has the meaning specified in § 22A-206, and the terms "motor vehicle," "effective consent," and "owner" have the meanings specified in § 22A-2001.

(c) *Penalty.* Unlawful entry of a motor vehicle is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2603. CRIMINAL OBSTRUCTION OF A PUBLIC WAY.[58]

(a) *Offense*. A person commits the offense of criminal obstruction of a public way when that person:
(1) Knowingly obstructs;
(2) A public street, public sidewalk, or other public way;
(3) After receiving a law enforcement order to stop such obstruction.

(b) *Definitions.* The term "knowingly" has the meaning specified in § 22A-206. In this section, the term "obstruct" means to render impassable without unreasonable hazard to any person, the term "road" includes any road, alley, or highway, and the term "walkway" includes a sidewalk, trail, railway, bridge, passageway within a public building or public conveyance, or entrance of a public or private building or business yard.

(c) *Exclusion from Liability.* Nothing in this section prohibits conduct permitted by the First Amendment Assemblies Act of 2004 codified at 5-331.01 et seq.

(d) *Penalty.* Criminal obstruction of a public way is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Prosecutorial Authority*. The Attorney General for the District of Columbia shall prosecute violations of this section.

RCC § 22A-2604. UNLAWFUL DEMONSTRATION.[59]

(a) *Offense*. A person commits the offense of unlawful demonstration when that person:
(1) Knowingly engages in a demonstration;
(2) In a location where demonstration is otherwise unlawful;
(3) After receiving a law enforcement order to stop such demonstration.

(b) *Definitions.* The term "knowingly" has the meaning specified in § 22A-206. In this section, the term "demonstration" includes any assembly, rally, parade, march, picket line, or other similar gathering by one or more persons conducted for the purpose of expressing a political, social, or religious view.

(c) *Exclusion from Liability.* Nothing in this section shall be construed to prohibit conduct permitted by the First Amendment Assemblies Act of 2004 codified at 5-331.01 et seq.

(d) *Penalty.* Unlawful demonstration is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[58] Per First Draft of Report #11 (August 11, 2017).
[59] Per First Draft of Report #11 (August 11, 2017).

(e) *Prosecutorial Authority*. The Attorney General for the District of Columbia shall prosecute violations of this section.
(f) *Jury Trial*. A defendant charged with violating this offense may demand a jury trial. If the defendant demands a jury trial, then a court shall impanel a jury.

RCC § 22A-2605. UNLAWFUL OBSTRUCTION OF A BRIDGE TO THE COMMONWEALTH OF VIRGINIA.[60]

(a) *Offense*. A person commits the offense of unlawful obstruction of a bridge to the Commonwealth of Virginia when that person:
    (1) Purposely obstructs;
    (2) A bridge that connects the District of Columbia to the Commonwealth of Virginia.
(b) *Definitions.* The term "purposely" has the meaning specified in section § 22A-206. In this section, the term "obstruct" means to render impassable without unreasonable hazard to any person.
(c) *Exclusion from Liability.* Nothing in this section shall be construed to prohibit conduct permitted by the First Amendment Assemblies Act of 2004 codified at 5-331.01 et seq..
(d) *Penalty.* Unlawful obstruction of a bridge to the Commonwealth of Virginia is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

[60] Per First Draft of Report #11 (August 11, 2017).

Chapter 27. Burglary Offenses

RCC § 22A-2701. BURGLARY.[61]

(a) *Offense*. A person commits the offense of burglary when that person:
  (1) Knowingly enters or surreptitiously remains in;
  (2) A dwelling, building, watercraft, or business yard, or part thereof;
  (3) Without the effective consent of the occupant or, if there is no occupant, the owner; and
  (4) With intent to commit a crime therein.

(b) *Definitions.* The terms "knowingly," "intent," and "in fact," have the meanings specified in § 22A-206 and the terms "dwelling," "building," "business yard," "effective consent," "occupant," and "owner" have the meanings specified in § 22A-2001.

(c) *Gradations and Penalties.*
  (1) *First Degree Burglary.* A person is guilty of first degree burglary if that person commits burglary, knowing the location is a dwelling and, in fact, a person who is not a participant in the crime is present in the dwelling. First degree burglary is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (2) *Second Degree Burglary.* A person is guilty of first degree burglary if that person commits burglary, either: knowing the location is a dwelling; or knowing the location is a building and, in fact, a person who is not a participant in the crime is present in the building. Second degree burglary is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  (3) *Third Degree Burglary.* A person is guilty of third degree burglary if the person commits burglary. Third degree burglary is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

RCC § 22A-2702. POSSESSION OF BURGLARY AND THEFT TOOLS.[62]

(a) *Offense.* A person commits the offense of possession of burglary and theft tools if that person:
  (1) Knowingly possesses;
  (2) A tool, or tools, created or specifically adapted for picking locks, cutting chains, bypassing an electronic security system, or bypassing a locked door;
  (3) With intent to use the tool or tools to commit a crime.

(b) *Definitions.* The terms "knowingly," and "intent" have the meanings specified in § 22A-206.

[61] Per First Draft of Report #11 (August 11, 2017).
[62] Per First Draft of Report #11 (August 11, 2017).

(c) *Penalty*. Possession of burglary and theft tools is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(d) *No Attempt Possession of Burglary and Theft Tools Offense*. It is not an offense to attempt to commit the offense described in this section.

D.C. CRIMINAL CODE REFORM COMMISSION
2017 ANNUAL REPORT
APPENDIX C

Compilation of Comments Received from Advisory Group Members 2017

Comments of U.S. Attorney's Office of the District of Columbia on D.C. Criminal Code Commission Phase I Materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes)

Submitted Jan. 11, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on the Phase I materials (Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes) provided for Advisory Group review:

- Page 17 (Final paragraph that begins "Enactment of Title 22 . . ." and FN48)
    - This paragraph states that "[e]stablished canons of construction state that legislative intent is the primary principle of statutory interpretation . . . ."
    - However, this language (and accompanying text of footnote 48) relies on old cases that give legislative history more weight.
    - The current trend is to rely exclusively on the plain meaning of the text, if it is clear.
    - It is only if there is some resulting ambiguity or absurdity that the court looks to legislative history.
    - The language here, therefore, likely will not change how the District of Columbia Court of Appeals proceeds. *See, e.g., In re Smith*, 138 A.3d 1181, 1185 n.8 (D.C. 2016) (citing *In re Al–Baseer*, 19 A.3d 341, 344 (D.C.2011) ("The court's task in interpreting a statute begins with its language, and, where it is clear, and its import not patently wrong or absurd, our task comes to an end.").
- Page 18 (Final paragraph before Section VII (Conclusion) and FN 49)
    - This paragraph states that "[b]y adopting this language in Appendix IX, the Council would explicitly reject any argument that prior court rulings construing

the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment."

- This refers to the prior paragraph which states that "Title 22 . . . is enacted into law . . . with no substantive change to law intended except as otherwise noted in the 'Statement of Legislative Intent for Enactment of Title 22' included in this bill."

- N.B.: The court still could construe reenactment as approval, by interpreting the "intends no substantive change" language as meaning "no substantive change" to the statute *as it has been interpreted* by the Court *at the time of enactment.*

➢ APPENDICES

- IV: Common Law Offenses List & Text; Part 2 (Offenses w/ Only a Penalty Codified)

  - What will the basis for "elementizing" the substance of these offenses be? The Advisory Group should agree and recommend to the Commission that any such elementizing be based, as an initial matter, on the relevant jury instruction crafted by the "Redbook Committee" (to the extent that any such instruction exists) that provides guidance as to the elements of the particular uncodified offense.

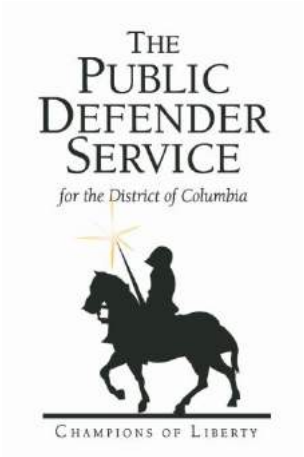
- V: Relocation of Title 22 Provisions List and Text

  - There is no objection to reorganization of various sections to reflect a more sensible structure.

  - However, the Commission should exercise great care when reorganizing evidentiary provisions (in particular) so as to avoid important provisions getting "lost" (*e.g.*, D.C. Code Section 22-3021, regarding the inadmissibility of reputation or opinion evidence of a victim's past sexual behavior).

  - Cross-references within Title 22 -- as well as reorganization by subject, category, statute, etc., when provisions are moved to other titles -- should be employed.

MEMORANDUM



To: Richard Schmechel, Executive Director
D.C. Criminal Code Reform Commission

From: Laura E. Hankins, General Counsel

Date: January 13, 2017

Re: Comments on First Draft of Report #1: Recommendations for Enactment of D.C. Code title 22 and Other Changes to Criminal Statutes

In general, the Public Defender Service approves the recommendations in the first draft of Report #1. The Report and accompanying Appendices reflect the numerous hours of painstaking work done by the D.C. Sentencing Commission Code Revision Project staff in 2014 and 2015 and the considerable work done by the Commissioners working on the Code Revision Project. PDS particularly appreciates that the D.C. Criminal Code Reform Commission is not merely resubmitting to the D.C. Council the September 2015 report that was unanimously approved the D.C. Sentencing Commission. Rather, the Criminal Code Reform Commission has revisited its work and makes a number of additional recommendations. For example, the September 2015 report recommended deleting D.C. Code § 22-3306 as one of many archaic and unused offenses in the D.C. Code but now recognizes that such deletion may conflict with the Home Rule Act.

Report #1 is an important first step by the Commission towards the fulfillment of its mandate. Specifically, the Report and accompanying Appendices satisfy or make considerable progress towards completing the Commission's mandate that it identify criminal statutes that have been held unconstitutional and recommend their amendment; identify crimes defined in common law that should be codified; organize existing criminal statutes in a logical order; and most notably, enable the adoption of Title 22 as an enacted title of the D.C. Official Code. PDS notes however that the more important and, not coincidentally, more difficult work of the Commission is still to come. Revising the language of the District's criminal statutes to describe all elements, including mental states, that must be proven; reducing unnecessary overlap and gaps between criminal offenses; and adjusting penalties, fines, and the gradation of offenses to provide for proportionate penalties are, in the view of PDS, the most critical aspects of the Commission's mandate and must be done if the District is to have a fair, just and modern criminal justice system.

PDS suggests the following edits to the Report:

1. In the first sentence of footnote 16 insert a space between "to" and the section symbol,"§," for statute 36-153.

2. In Part A. Findings, of Section II, Technical Amendments to Correct Outdated Language,[1] change the word "discussed" to "stated," to have that sentence read, "The …Commission has identified thirty-seven statutes in eleven titles of the D.C. Code that contain outdated language within the above stated parameters." The paramaters are not "discussed" in the preceding paragraph, only outlined. Any discussion, or explanation, of the parameters would seem to be in the September 2015 report that was submitted to the Council, which the preceding paragraph references.

3. In Subpart 1, D.C. Code § 7-2506.01, of Part A., Findings, of Section III, Unconstitutional Statutes to Amend,[2] state what the extra element is. The explanation need not be in the text and can be relegated to a footnote, but the report is unnecessarily vague without it.

4. Delete the extra word in the text of the sentence containing footnote 50. "Established judicial canons of construction….[50] and the proposed enactment legislation ~~in~~ flatly states in the 'Statement of Legislative Intent…'"

[1] At page 8.

[2] At page 10.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: January 13, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report #1 Recommendations for Enactment and Other Changes

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #1 Recommendations for Enactment and Other Changes (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

Archaic and Unused Offenses in Title 22

Though OAG does not oppose repealing the recommended provisions contained in Appendix I, we do not agree that just because an offense had not been charged in adult court in the past 7 years means that the offense is necessarily archaic or unused.[2]

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

[2] See footnote 8 of the Report which states that the CCRC reviewed two data sets which included 1) a list of all felonies or misdemeanors charged or sentenced from 2009 – 2014; and 2) a list of all felonies for which a defendant had been sentenced for 2010 – 2015.

Footnote 13, on page 7 of the Report, observes that five of the offenses proposed to be eliminated are closely related to the contemporaneous Malicious Destruction of Property statute, and therefore suggests that the legislative history of the bill associated with the Report should indicate that the current Malicious Destruction of Property statute - and therefore the codified version of it in this bill - does not automatically exclude the conduct covered by those five statutes. Since the purpose of this history appears to state the current Council's interpretation of existing law, we believe that that this observation in the legislative history may carry little interpretive weight. *See, e.g., Pension Benefit Guaranty Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990) ("subsequent legislative history is a hazardous basis for inferring the intent of an earlier Congress") (internal quotation omitted). We, therefore, recommend that the text of the bill be amended to explicitly state that conduct that had previously been prohibited by these provisions are covered by the remaining provision.

In Appendix I, Archaic and Unused Offenses and Provisions List & Text, the Report recommends striking the phrase ", the Women's Bureau of the Police." from D.C. Official Code § 22-2703.[3] OAG objects to the mere striking of the phrase and instead suggests that the phrase be replaced with a reference to the Metropolitan Police Department (MPD). D.C. Official Code § 22-2703 permits the court to impose conditions upon a person who is found guilty of engaging in prostitution or soliciting for prostitution in violation of D.C. Official Code § 22-2701. Section 22-2703 states "…The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant." Removal of the reference to "the Women's Bureau of the Police Department" would remove law enforcement's authorization and direction to perform certain duties. Replacing "the Women's Bureau of the Police Department" with a reference to MPD would modernize the language contained in this Code provision while preserving the current state of the law.

[3] D.C. Official Code § 22-2703, Suspension of sentence; conditions; enforcement, states, "The court may impose conditions upon any person found guilty under § 22-2701, and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period remand such sentence or cause it to be executed. Conditions thus imposed by the court may include an order to stay away from the area within which the offense or offenses occurred, submission to medical and mental examination, diagnosis and treatment by proper public health and welfare authorities, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The Department of Human Services of the District of Columbia, the Women's Bureau of the Police Department, and the probation officers of the court are authorized and directed to perform such duties as may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant."

Technical Amendments to Correct Outdated Language

In Appendix II: Technical Amendments List & Text there is a list of Technical Amendments to Statutes in Title 22. See page 10 of Appendices I-VIII. Included in the list is a recommendation pertaining to D.C. Official Code § 22-811, Contributing to the delinquency of a minor. The recommendation is to strike subsection (e) delegating prosecutorial authority to the Attorney General or his or her assistants. OAG would ask that the Commission remove this recommendation. We believe that do to an early Congressional grant of authority, OAG has jurisdiction to prosecute misdemeanor offenses under this provision.

Common Law Offenses to Repeal and Further Codify

The Report recommends that the Council repeal the common law offense of "disturbing public worship." While OAG does not object to its repeal, the Report should note that D.C. Official Code § 22-1314 initially codified this offense and, upon its repeal was replaced with D.C. Official Code § 22-1321 (b). D.C. Official Code § 22-1321 (b) states, " It is unlawful for a person to engage in loud, threatening, or abusive language, or disruptive conduct, with the intent and effect of impeding or disrupting the orderly conduct of a lawful public gathering, or of a congregation of people engaged in any religious service or in worship, a funeral, or similar proceeding."

Relocation of Title 22 Provisions to Other D.C. Code Titles

The Report states, on page 15, that "In addition, § 22-4331, which codifies a penalty for violations of Game and Fish laws in Chapter 43 of Title 22 is no longer recommended for removal because it is a penalty provision. The remainder of Chapter 43 is still recommended for removal. " While OAG agrees that this penalty provision should not be moved, we also believe that D.C. Official Code § 22-4329 also should not be moved. This provision makes it an offense for a person to refuse to permit an inspection.[4] The penalty for refusing to permit an inspection is found in § 22-4331 and, so, should also be kept in Chapter 43. A conforming amendment would also have to be made to § 22-4329, similar to the conforming amendment needed for § 22-4331, that would replace the language "for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter" with the citation to wherever the remainder of Chapter 43 is moved.

Enactment of Title 22

[4] D.C. Official Code § 22-4329, Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours, states "Authorized officers and employees of the government of the United States or of the government of the District of Columbia are, for the purpose of enforcing the provisions of this chapter and the regulations promulgated by the Council of the District of Columbia under the authority of this chapter, empowered, during business hours, to inspect any building or premises in or on which any business, trade, vocation, or occupation requiring a license or permit is carried on, or any vehicle, boat, market box, market stall, or cold-storage plant. No person shall refuse to permit any such inspection.

The discussion concerning enactment of Title 22 indirectly cites language that is codified in the United States Code and describes the status of the D.C. Official Code. See pages 15-18 of the Report. The discussion states that Title 22 will remain a prima facie statement of District law unless it is enacted into the Code, but the discussion then references statutory language (and case language) stating that the D.C. Official Code "*shall* . . . establish prima facie the laws" of the District. 1 U.S.C. § 204(b) (cited on page16, footnote. 48). The Council's authority to enact titles of the D.C. Official Code into positive law is, to OAG's understanding, long settled, but to avoid any confusion, it may be beneficial to accompany that statutory and case cite with a brief citation to the Council's legislative power.

Page 18 of the Report quotes section 102 of the bill as saying "Title 22 of the District of Columbia Official Code is enacted into law to read as follows, *with no substantive change to law intended, except as otherwise noted in the "Statement of Legislative Intent for Enactment of Title 22" included in this bill."* The actual draft bill does not contain the italicized language and, so, should be amended accordingly.

Page 18 also discusses the significance of statements about the intent of the bill. It states that by adopting these statements, the bill would "explicitly reject any argument that prior court rulings construing the language of unenacted Title 22 statutes are being given tacit or explicit legislative approval through enactment." That is not correct. The only way for provisions of Title 22 to mean the same thing post-enactment that they meant pre-enactment is for controlling judicial constructions of their pre-enactment language to carry through into the enacted bill. Stripping away controlling judicial interpretations of a provision would be tantamount to amending that provision.

COMMENTS ON THE DRAFT BILL

The very beginning of the bill, prior to any numbered sections, includes a "Statement of Legislative Intent." A Statement of Legislative Intent would be beneficial as part of this bill's legislative history, but in order for it be incorporated into the bill, it should be given a section number, formatted according to the "Council of the District of Colombia Legislative Drafting Manual", and placed after the "Be It Enacted" portion.

The bill's amendment to D.C. Official Code § 50-1401.01(a)(3) would replace several references to "him" with references to "him or her." It would leave untouched, however, the final phrase "whenever demand is made by a police officer such instructor shall display *to him* such certificate." For consistency, this should be replaced with "to him *or her*."

The bill repeals D.C. Official Code § 36-153, Unauthorized use, defacing, or sale of registered vessel. The bill also makes a conforming amendment to § 36-154, Use or possession of vessel without purchase of contents prima facie evidence of unlawful use. The conforming amendment replaces the reference to § 36-153 with the penalty provision that is currently contained within that Code section. While making this conforming amendment, OAG suggests that the title to § 36-154 be amended. Once § 36-153 is repealed, § 36-154 would be a

standalone Code provision. While this offense does establish when there is prima facie evidence of unlawful use, it also establishes an offense. We, therefore, recommend that the Title of this offense be shortened and renamed, "Use or possession of vessel without purchase."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: February 22, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

§ 22A-201, Proof of Offense Elements Beyond a Reasonable Doubt

On page 1, the Report begins with § 22A-201, Proof of Offense Elements Beyond a Reasonable Doubt. Subparagraph (c)(2) defines a result element. It states that a "Result element" means any consequence that must have been caused by a person's conduct in order to establish liability for an offense." The problem is that while "Conduct element" is defined on page 1 in 22A-201

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

(c)(1)[2] and "Conduct Requirement" is defined on page 9 in 22A-202 (a), the word "conduct," itself, is not defined. It appears that the interpreter is left to assume that the word takes on the meanings associated with their usage in those separate definitions (or at least the one in 22A-201 (c)(1)). The need for the word "conduct" to be replaced, or defined, is highlighted by the Report's observations on page 6. There it recognizes that conduct includes an action or omission. To make § 22A-201 (c) (2) clearer, we propose incorporating the concepts from pages 6 and substituting them for the word "conduct" in 22A-201(c)(2) The definition would then read "Result element" means any consequence that must have been caused by a person's act or omission in order to establish liability for an offense." The advantage of this definition is that the terms "act" and "omission" are defined in 22A-202.

§ 22A-202, Conduct Requirement

On page 9, in paragraph (c) the term "Omission" is defined. It states ""Omission" means a failure to act when (i) a person is under a legal duty to act and (ii) the person is either aware that the legal duty to act exists or, if the person lacks such awareness, the person is culpably unaware that the legal duty to act exists…" Neither the text of the proposed Code nor the Commentary explains what is meant by the term "culpably unaware." The Code should define this term, or at least, the Commentary should focus on this term and give examples of when a person is "culpably unaware" that a legal duty to act exists as opposed to merely being unaware that there is a legal duty to act.

In § 22A-202 (d) the term "Possession" is defined. Included in that definition is a requirement that the person exercise control over the property "for a period of time sufficient to allow the actor to terminate his or her control of the property." As noted in the Report, this is a departure from current District law. On page 15 of the Report it states "The latter temporal limitation dictates that a person who picks up a small plastic bag on the floor in a public space, notices that it contains drug residue, and then immediately disposes of it in a nearby trash can has not "possessed" the bag for purposes of the Revised Criminal Code…." What this definition of possession misses, or at least what the Commentary does not address, is that there are times when a person may be culpable for possession even in less time than it would take to "immediately dispose[] of it in a nearby trash." Consider the following hypothetical. Two people walk over to a person who is selling heroin. One of them hands the seller money in exchange for the drug. As soon as the transaction is completed, the other person, who is an undercover police officer, arrests both the buyer and the seller. In that case, though the buyer literally had possession of the heroin for a fraction of a second, there is no question that the buyer knew that he or she possessed illegal drugs and intended to do so. In this situation, there is

[2] Subparagraph (1) states that a "Conduct element" means any act or omission, as defined in § 22A-202, that is required to establish liability for an offense."

no reason why there should be a temporal limitation on how long the heroin must have been in the buyer's possession before a law violation would have occurred.

§ 22A-203, Voluntariness Requirement

On page 20, the Report defines the scope of the voluntariness requirement. Subsection (b)(1) states that an act is voluntary if the "act was the product of conscious effort or determination" or was "otherwise subject to the person's control." Based on the associated Commentary, it seems to be designed to capture circumstances, such as intoxication or epilepsy, when someone with a condition that can cause dangerous involuntary acts knowingly enters circumstances in which that condition may endanger others. The theory seems to be that, for example, driving while intoxicated is "subject to [a] person's control" because the person can prevent it by not drinking and driving in the first instance. The same analysis applies to an accident that could arise due to an epileptic seizure. This makes sense; a person cannot willfully expose others to a risk at point X, and when the actual act that would constitute the offense takes place, insist that the act was not voluntary so that they cannot be held responsible for it. The question is whether there is some threshold of risk to trigger voluntariness here; otherwise, any involuntary act that was brought about in circumstances that were voluntarily chosen would be considered to be voluntary. Is this what was intended? If not, what is the threshold of risk that would "trigger" voluntariness here – and how would a court make that determination? Take the epilepsy example. Suppose a person knows that there is a .05% (or .005%) chance that he or she will experience an epileptic seizure if they don't take their medication, but drives that way anyway. If a crash occurs, will driving the vehicle have been enough to trigger the "otherwise subject to the person's control" prong of voluntariness or is it too remote? The Commentary should address this issue.

§ 22A-204, Causation Requirement

On page 29, the Report defines the "Causation Requirement." In paragraph (a) it states "No person may be convicted of an offense that contains a result element unless the person's conduct was the factual cause and legal cause of the result." Paragraphs (b) and (c) then define the terms "Factual cause" and "Legal cause." Section 22A-204 (b) states ""Factual cause" means:

> (1) The result would not have occurred but for the person's conduct; or
>
> (2) In a situation where the conduct of two or more persons contributes to a result, the conduct of each alone would have been sufficient to produce that result."

On pages 30 and 31, the Commentary addresses "Factual cause." It states:

> In the vast majority of cases, factual causation will be proven under § 22A-204(b)(1) by showing that the defendant was the logical, but-for cause of a result. The inquiry required by subsection 22A-204(b)(1) is essentially empirical, though also

> hypothetical: it asks what the world would have been like if the accused had not performed his or her conduct. In rare cases, however, where the defendant is one of multiple actors that independently contribute to producing a particular result, factual causation may also be proven under § 22A-204(b)(2) by showing that the defendant's conduct was sufficient—even if not necessary—to produce the prohibited result. Although in this situation it cannot be said that but for the defendant's conduct the result in question would not have occurred, the fact that the defendant's conduct was by itself sufficient to cause the result provides a sufficient basis for treating the defendant's conduct as a factual cause.

While much of this explanation is intuitive, what may be more difficult for people to understand is how factual causation works when the result element is satisfied by a person's omission to act. Consider the following hypothetical. A father takes his toddler to the pool. He sees the child crawl to the deep end of the pool and fall in. The father sits there, doesn't move, and watches the child drown. In this situation it is awkward to think about the father's lack of movement as "performing" conduct, as opposed to doing nothing. The Commission should review whether there needs to be a third definition of "factual cause" that addresses acts of omission or whether merely an explanation and example in the Commentary about how to apply factual causation in cases of omission is sufficient. Clearly in this example, the father had a duty to perform the omitted act of saving his child. See § 22A-202 (c)(2).

§ 22A-206, Hierarchy of Culpable Mental States

On page 49, the Report defines the Hierarchy of Culpable Mental States. In paragraph (c) Recklessness is defined. It states

> RECKLESSNESS DEFINED. "Recklessly" or "recklessness" means:
>
> (1) With respect to a result, being aware of a substantial risk that one's conduct will cause the result.
>
> (2) With respect to a circumstance, being aware of a substantial risk that the circumstance exists.
>
> (3) In order to act recklessly as to a result or circumstance, the person's conduct must grossly deviate from the standard of care that a reasonable person would observe in the person's situation.
>
> (4) In order to act recklessly as to a result or circumstance "under circumstances manifesting extreme indifference" to the interests protected by an offense, the

person's conduct must constitute an extreme deviation from the standard of care that a reasonable person would observe in the person's situation.[3]

While it is meaningful to say that recklessly means … "With respect to a result, being aware of a substantial risk that one's conduct will cause a result, it is not meaningful to say that recklessly means "In order to act recklessly as to a result or circumstance, the person's conduct must grossly deviate from the standard of care that a reasonable person would observe in the person's situation." The formulation of paragraphs (3) and (4) do not flow from the lead in language. It lacks symmetry. While it appears that paragraph (3) relates in a meaningful way to paragraph (1), as paragraph (4) relates in a meaningful way to paragraph (2), the text does not explain how each of these sets of definitions relate to each other internally. A tenant of a well written definition for use in a Code provision is that, niceties of grammar aside, the definition should be able to be substituted for the defined term in the substantive offense and the sentence should retain its meaning. One cannot do that with the definition of recklessness.[4] We propose that the definition of recklessness be redrafted so that the terms have more exacting meanings within the context of an offense.[5] One way to accomplish this is to redraft the definition as follows:

RECKLESSNESS DEFINED. "Recklessly" or "recklessness" means:

(1) With respect to a result, being aware of a substantial risk that one's conduct will cause the result and that either the person's conduct *viewed as a whole* grossly deviates from the standard of care that a reasonable person would observe in the person's situation or under circumstances manifesting extreme indifference to the interests protected by an offense, the person's conduct must constitute an extreme deviation from the standard of care that a reasonable person would observe in the person's situation.[6]

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[3] It is unclear why the term" under circumstances manifesting extreme indifference" is in quotes in paragraph 4.

[4] Similarly, it is unclear at this time whether the definition of "Factual Cause" in § 22A-204 suffers from the same infirmity. After seeing how this term is actually used in the revised Code it may need to be amended. At this time, the definition appears not to define "factual cause" as such, rather it appears to operate more like an if-then ("A person's is a factual cause of a result if the result would not have occurred without the conduct"). We will be able to evaluate this definition when we are able to take the phrase "the result would not have occurred but for the person's conduct" and substitute it for the term "factual cause" in the text of the Code. If the sentence has meaning than the definition works.

[5] The same issues concerning the definition of Recklessness exists in the definition of Negligence.

[6] In the proposed text we added, in italics the phrase "viewed as a whole." Italics was used to show that the phrase was not in the original Code text. This language is taken from the explanation of the gross deviation analysis on page 68 of the Report. Given the importance of this statement, we propose that it be added to the actual definition of Recklessness.

> (2) With respect to a circumstance, being aware of a substantial risk that the circumstance exists and that either the person's conduct *viewed as a whole* must grossly deviate from the standard of care that a reasonable person would observe in the person's situation or under circumstances manifesting extreme indifference to the interests protected by an offense, the person's conduct must constitute an extreme deviation from the standard of care that a reasonable person would observe in the person's situation.

On page 58, in regard to § 22A-206(c)(3) it states "In many cases where a person consciously disregarded a substantial risk of prohibited harm, it is likely to be obvious whether the person's conduct constituted a "gross deviation" from a reasonable standard of care under § (c)(3). In these situations, further elucidation of this broad phrase to the factfinder is unnecessary. Where, however, it is a closer call, the discretionary determination reflected in § 22A-206(c)(3) is intended to be guided by the following framework."[7] If this definition is to remain, the comment should be expanded to explain which part of (c)(3) the Commission believes is discretionary or otherwise explain this point. Paragraph (c)(3) does not contain the word "discretionary" nor does it use a term that would lead the reader to believe that any part of it could be discretionary.

Of perhaps greater concern is that the Commentary elucidates a precise three-factor test to determine whether something is a "gross deviation" but does not actually incorporate that test into the codified text. The Commission should consider whether a legal standard of that nature should be codified.

The definition of recklessness states that in order for someone to act recklessly, his or her conduct must "grossly deviate from the standard of care that a reasonable person would observe in the person's situation," and in order for that conduct to take place "under circumstances manifesting extreme indifference" to the interests protected by a particular offense, the conduct must be an "extreme deviation from the standard of care that a reasonable person would observe in the person's situation." The difference between "grossly deviating" and an "extreme deviation" is not clear, and the Report does not clarify it. On page 58 the Report states that "[t]he difference between enhanced recklessness [requiring extreme deviation] and normal recklessness [requiring gross deviation] is . . . one of degree." This does not sufficiently illuminate the distinction. Whether through additional explanations, examples, or a combination of the two, the Commentary should make clear the distinction between a gross deviation and an extreme deviation.

There is another aspect of the recklessness definition: being "aware of a substantial risk" which should be further explained. The Report maintains that "recklessness entails awareness of a

[7] While we suspect the word "discretionary" means not that a court can choose whether to apply it, but rather that its application in any particular case requires significant case-specific judgment, the Report does not actually say that.

risk's substantiality, but not its unjustifiability." The language, however, is not altogether clear in that respect. Being aware of a substantial risk doesn't necessarily mean being aware that the risk is substantial – the very same kind of ambiguity that inspired element analysis to begin with. Take the following hypothetical. Suppose a person drives down a little used street at 150 miles an hour at 3:00 am. In order to be considered reckless, does the person have to be aware that there is a substantial risk that he will hit and kill someone or that if he hits someone they will be killed.

§ 22A-207 Rules of Interpretation Applicable to Culpable Mental State Requirement

On page 73, in § 22A-207 (b)(2), the proposed text states one of two ways that the Council can indicate that an element is subject to strict liability. It states that a person is strictly liable for any result or circumstance in an offense "[t]o which legislative intent explicitly indicates strict liability applies." This language is subject to multiple interpretations. If the phrase "legislative intent " is meant to include indicia from legislative history, it's not clear what it means for the legislative history to "explicitly indicate" something (leaving aside the tension in the phrase "explicitly indicate"). Does this provision mean that if a committee report explicitly says "strict liability should apply to X," that's good enough? What if there are contrary statements at the hearing, by a witness or a councilmember? If, alternatively, the phrase was meant to simply mean "when another statutory provision can fairly be read to indicate that strict liability should apply" the language should be modified to refer to other statutory provisions explicitly indicating that strict liability applies, rather than the "legislative intent explicitly" so indicated.

In the Commentary following the Rules of Interpretation Applicable to Culpable Mental State Requirement there are a few examples that demonstrate how the "rule of distribution" works. We believe that two additional examples are needed to fully explain how it works in situations of strict liability.

The first example in the Commentary explains how to interpret "knowingly causing bodily injury to a child" and the second, in the footnote, contrasts that explanation with the explanation for how to interpret "knowingly causing injury to a person, negligent as to whether the person is a child. Given the rule that strict liability only applies to the element specified (and does not follow through to subsequent elements), we suggest that the Commentary add two additional examples. The first would be where there is a mental state provided for the first element, the second element is modified by the phrase "in fact", and where there is no mental state associated with the third element. The purpose of that example would be to show that the mental state associated with the first element would also apply to the third element. The second example would contrast the previous examples with one where there is a mental state stated for the first element, the second element is modified by the phrase "in fact", and the third element is also modified with the phrase "in fact."

The following examples could be used, "Knowingly causing injury to a person, who is, in fact, a child, with a knife. Under the rules of interpretation the mental state of "knowingly" would apply not only to the causing injury to a person, but would also apply to the circumstance of the knife. This illustration could be contrasted with "Knowingly causing injury to a person, who is, in fact, a child, with what is, in fact, a knife." We leave it to the Commission to decide where in the presentation of the Commentary it would be most informative to place these additional examples.

Comments of U.S. Attorney's Office for the District of Columbia
on D.C. Criminal Code Commission Recommendations
for Chapter 2 of the Revised Criminal Code: Basic Requirements of Offense Liability
Submitted Feb. 22, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on the Recommendations for Chapter 2 of the Revised Criminal Code (Basic Requirements of Offense Liability) provided for Advisory Group review:

- Temporal Aspect of Possession (pages 15-17)
    - Section 22A-202(d) requires that the government prove that the defendant exercised control over property for period of time sufficient to provide an opportunity to terminate the defendant's control over the property.
    - Commission staff authors acknowledge that this approach takes a component of the "innocent or momentary possession" affirmative defense (the momentary possession component) and makes it an element that the government must now prove (versus an affirmative defense that the defendant must prove).
    - The Advisory Group should discuss this change further inasmuch as it is a substantive to D.C. law.

- Causation Requirement: § 22A-204
    - Factual Cause
        - Page 29: The Advisory Group should consider the "factual cause" definition in light of gun-battle liability, which is predicated upon "substantial factor" causation.

- Page 31 re: § 22A-204(b) (Definition of Factual Cause)

    - Commission staff authors appropriately concede that the proposed definition for "factual cause" would be a substantive change from current D.C. law. Specifically, the proposed rule would eliminate the "substantial factor" test, and would thereby appear to eliminate the basis for urban gun-battle causation as a theory of factual causation.

    - However, in cases such as *Roy* and *Fleming*, factual cause includes situations where the defendant's actions were a "substantial factor" in bringing about the harm. The D.C. Court of Appeals has stated that "[i]n this jurisdiction[,] we have held findings of homicide liability permissible where: (1) a defendant's actions contribute substantially to or are a substantial factor in a fatal injury . . . and (2) the death is a reasonably foreseeable consequence of the defendant's actions." *Fleming v. United States*, 148 A.3d 1175, 1180 (D.C. 2016) (quoting *Roy v. United States, 871 A.2d 498* (D.C. 2005) **(petition for rehearing *en banc* pending**))

    - Concerns regarding an "unnecessarily complex analysis" required by a "substantial factor" test in all cases can be addressed easily by a jury instruction (*e.g.*, if the jury finds "but for" causation, the analysis ends; where there is no "but for" causation, the jury would consider whether defendant's conduct was a "substantial factor" – and this would be unnecessary in most cases, where causation is not meaningfully at issue).

    - Of course, as noted above, the *Roy* petition for rehearing is pending and the decision of the D.C. Court of Appeals *en banc* would be decisive on this point.

o Legal Cause

- Page 29: Delete the "or otherwise dependent upon an intervening force or act" language. An intervening force or act does not negate legal causation if that intervening force or act is reasonably foreseeable.

- Similar/conforming revisions should be made at page 35 (to the text that immediately precedes footnote 31) and at page 38 (to the text that immediately precedes footnote 49).

- Culpable Mental State Requirement: § 22A-205

    - Regarding mens rea as to results and circumstances (the last sentence of page 42), USAO-DC notes that, more recently, the D.C. Court of Appeals has held in *Vines* that "it is clear that a conviction for ADW can be sustained by proof of reckless conduct alone. If reckless conduct is sufficient to establish the requisite intent to convict a defendant of ADW, it necessarily follows that it is enough to establish the intent to convict him of simple assault." *Vines v. United States*, 70 A.3d 1170, 1180 (D.C. 2013), as amended (Sept. 19, 2013). By "reckless conduct," the D.C. Court of Appeals meant that the defendant was reckless as to the possibility of causing injury*, i.e.*, the defendant was reckless as to the result.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: April 24, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report No. 3, Recommendations for Chapter 2 of the Revised Criminal Mistake, Deliberate Ignorance, and Intoxication

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report No. 3, Recommendations for Chapter 2 of the Revised Criminal Code Chapter 2 of the Revised Criminal Code: Mistake, Deliberate Ignorance, and Intoxication (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

§ 22A-208, Principles of Liability Governing Accident, Mistake, and Ignorance.

On page 3, the Report discusses § 22A-208, Principles of Liability Governing Accident, Mistake, and Ignorance. We believe that the Commentary, if not the provision itself, should clarify the types of mistakes or ignorance of law, if any, to which this applies.[2] For example, it is our

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

[2] While the Commentary, at the top of page 5 of the Report does have a brief discussion concerning mistake of fact or non-penal law, we do not believe that that explanation is sufficient to address the issues raised here. Similarly while, footnote 20, on page 8, quotes LaFave that

understanding from the meetings that this provision does not mean that the government would have to prove that the defendant was aware that the act itself was illegal or the exact parameters of the prohibition. Two examples may be helpful. First, a person would be guilty of distribution of a controlled substance even if what the government proved was that the defendant thought that she was selling heroin, but she was really selling cocaine. Second, the government would not need to prove that a person knew that he was a mandatory reporter and that mandatory reporters must report child abuse in order to secure a conviction for failing to report child abuse.[3]

Section 22A-208 (b) is entitled "Correspondence between mistake and culpable mental state requirements. Subparagraph (3) states, "Recklessness. Any reasonable mistake as to a circumstance negates the recklessness applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the recklessness applicable to that element if the person did not recklessly make that mistake." [Emphasis added] Subparagraph (4) states, "Negligence. Any reasonable mistake as to a circumstance negates the existence of the negligence applicable to that element. An unreasonable mistake as to a circumstance only negates the existence of the negligence applicable to that element if the person did not recklessly or negligently make that mistake. " [Emphasis added] At the meeting the Commission staff explained why these two subparagraphs are not parallel and why the inclusion of the word "recklessly" logically follows from the rules of construction already agreed upon. To be parallel, subparagraph (b)(4) on "Negligence" would not include the phrase "recklessly or." If the Commission is going to keep this nonparallel structure then the Commentary should explain the reason why a reference to "recklessness' is included in the statement on "negligence." This is not a concept that may be intuitive to persons who will be called upon to litigate this matter.

§ 22A-209, Principles of Liability Governing Intoxication

On page 25, the Report discusses § 22A-209, Principles of Liability Governing Intoxication. Paragraph (b) is entitled "Correspondence between intoxication and culpable mental state requirements." The subparagraphs explain the relationship between a person's intoxication and the culpable mental states of purpose, knowledge, and recklessness. However, there is a forth mental state. Section 22A-205, Culpable mental state definitions, in addition to defining purpose, knowledge, and recklessness, also defines the culpable mental state of "negligently." [4] To avoid needless arguments in litigation over the relationship between intoxication and the culpable mental state of negligently, § 22A-209 should include a statement that explicitly states that a person's intoxication does not negate the culpable mental state of negligence. A litigator should not have to go to the Commentary to find the applicable law.

"mistakes or ignorance as to a matter of penal law typically was not, nor is currently, recognized as a viable defense since such issues rarely negate the mens rea of an offense..." this provision is speaking in terms of the current law and not what the law would be if § 22A-208 were enacted. The Commentary should make it clear that no change in the law is intended.

[3] See D.C. Code §§ 4-1321.01 through 4-1321.07.

[4] On page 26 of the Report there is a statement that says, "Notably absent from these rules, however, is any reference to negligence, the existence of which generally cannot be negated by intoxication."

On page 28 of the report it states, "Subsections (a) and (b) collectively establish that evidence of self-induced (or any other form of) intoxication may be adduced to disprove purpose or knowledge, while § (c) precludes exculpation based on self-induced intoxication for recklessness or negligence." However, § (c) is entitled "Imputation of recklessness for self-Induced intoxication." While referring to a person being "negligent" as a factor in determining if there should be imputation of recklessness for self-induced intoxication, that paragraph does not, as written, appear to actually preclude exculpation of negligence (probably because it is not needed for the reasons stated above). This portion of the Commentary should be rephrased.

Section 22A-209 was clearly drafted to explain the relationship between intoxication and culpable mental states in general and not when the offense itself includes the requirement that the government prove – as an element of the offense - that the person was intoxicated at the time that the offense was committed.[5] The Commentary should note this.

[5] For example, it would be an ineffectual offense statute that permitted a person's self-induced intoxication to negate the mental state necessary to prove driving while impaired (intoxicated).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: April 24, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report No. 4, Recommendations for Chapter 1 of the Revised Criminal Code: Preliminary Provisions

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report No. 4, Recommendations for Chapter 1 of the Revised Criminal Code: Preliminary Provisions [1]

COMMENTS ON THE DRAFT REPORT

§ 22A-102, Rules of Interpretation

On page 3, the Report discusses § 22A-102, Rules of Interpretation. Paragraph (a) states, "(a) GENERALLY. To interpret a statutory provision of this title, the plain meaning of that provision shall be examined first. If necessary, the structure, purpose, and history of the provision also may be examined." [Emphasis added]. The provision does not state "necessary for what." The Commentary, does include the statement that "However, in addition to its plain meaning, a provision also may be interpreted based on its structure, purpose, and history when necessary to determine the legislative intent." To make the Code clearer, we suggest that the phrase "to determine the legislative intent" be added to the text of § 22A-102 (a). The amended provision would read "(a) GENERALLY. To interpret a statutory provision of this title, the

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

plain meaning of that provision shall be examined first. If necessary to determine legislative intent, the structure, purpose, and history of the provision also may be examined."

§ 22A-102, Interaction of Title 22A with other District Laws

On page 7, the Report discusses § 22A-103, Interaction of Title 22A with civil provisions in other laws. Paragraph (b) states, "The provisions of this title do not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil action.". The Commentary says that this is intended to mean, for instance, that "the conviction or acquittal of a defendant for a crime will not affect subsequent civil litigation arising from the same incident, unless otherwise specified by law." [Emphasis added] We have two concerns about that statement, both of which suggest that the language needs to be clarified or changed. First, it is unclear if paragraph (b) means what the Commentary says that it does. Paragraph (b) says simply that the "provisions of this title" – i.e., the existence and interpretation of the criminal offenses listed in this title – does not alter any right or liability to damages. However, that statement is different from saying that being convicted of any one of those crimes will not alter someone's right or liability to damages. Despite the statement in the Commentary that "Relation to Current District Law. None," saying that conviction of a crime will not "affect" any civil action for the same conduct seems to be a significant change to existing law. Being convicted of a crime for certain conduct can collaterally estop someone, or otherwise prevent them from relitigating the issue of liability based on that same conduct. For example see *Ross v. Lawson*, 395 A.2d 54 (DC 1978) where the Court of Appeals held that having been convicted by a jury of assault with a dangerous weapon and that conviction having been affirmed on appeal, appellee, when sued in a civil action for damages resulting from that assault, could not relitigate the issue of liability for the assault.[2] So the Commentary is not correct when it says that "the conviction... will not affect subsequent litigation..." Unfortunately, the phrase in the Commentary that "unless otherwise specified by law" actually compounds the issue. The question then becomes whether the example, of *Ross,* falls under the "unless otherwise specified by law" statement in the Commentary. It is not clear whether the caveat is a reference to statutory law or common-law. An argument could be made that for common-law purposes, there is no impact because this is the result that the common-law actually requires.

[2] It is true, however, that an "acquittal" is less likely to have an impact on civil cases because the acquittal simply allows the conduct at issue to be re- litigated in a subsequent civil proceeding. But note that an "acquittal" or "dismissal for want of prosecution" is one key requirement for a malicious tort claim (plaintiff must show that he or she prevailed on the underlying claim – in this case a criminal matter—that was instituted in bad faith or for malicious purposes).

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia

CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	April 24, 2017
Re:	Comments on First Draft of Report No. 3: Recommendations for Chapter 2 of the Revised Criminal Code: Mistake, Deliberate Ignorance, and Intoxication

In general, the Public Defender Service approves the recommendations in the First Draft of Report No. 3. However, PDS has the following concerns and makes the following suggestions:

1. With respect to the Principles of Liability Governing Accident, Mistake, and Ignorance -- Although the Report explains that mistake and accident are not defenses but are "conditions that preclude the government from meeting its burden of proof" with respect to a mental state,[1] the proposed statutory language at §22A-208 does not make that point clear. This is particularly important because, in the view of PDS, judges and practitioners too often incorrectly (whether mistakenly or accidentally) view "accident" or "mistake" as "defenses," creating a serious risk of burden shifting, a risk, as the Report notes, the DCCA has warned against.

   PDS proposes adding language to subsection (a) of § 22A-208 that states plainly that accident and mistake are not defenses and that is explicit with regard to how accident and mistake relate to the *government's* burden of proof. Specifically, PDS proposes changing §22A-208(a) to read as follows:

[1] "Viewing claims of mistake or accident through the lens of offense analysis has, on occasion, led Superior Court judges to treat issues of mistake and accident as true defenses, when, in fact, they are simply conditions that preclude the government from meeting its burden of proof with respect to an offense's culpability requirement. In practical effect, this risks improperly shifting the burden of proof concerning an element of an offense onto the accused—something the DCCA has cautioned against in the context of both accident and mistake claims." First Draft of Report No. 3, March 13, 2017, at page 7. (footnotes omitted)

> Effect of Accident, Mistake, and Ignorance on Liability. A person is not liable for an offense when that person's accident, mistake, or ignorance as to a matter of fact or law negates the existence of a culpable mental state applicable to a result or circumstance in that offense. Accident, mistake and ignorance are not defenses. Rather, accident, mistake, and ignorance are conditions that may preclude the government from establishing liability.

This proposal exposes another problem however. While the above proposal refers to the government establishing liability, the Revised Criminal Code General Provisions are silent with respect to the government having such burden. Indeed, all of the proposed General Provisions are written in the passive voice. There is no clear statement that the government bears the burden of proving each element beyond a reasonable doubt. Certainly the constitutional principle is itself beyond any doubt and therefore including it in the Code might seem superfluous. The problem is that a statute explaining the effect of mistake or accident on liability, without a statement about who bears the burden of proving liability, allows confusion about whether it is the government or the defense that has the burden of proof with the (mistakenly termed) "mistake and accident *defenses*."

PDS further notes that the General Provisions frequently speak in terms of a person's "liability." For example -- § 22A-201(b): "'Offense element' includes the objective elements and culpability requirement necessary to establish *liability*;" §22A-203(b)(1): "Where a person's act provides the basis for *liability*, a person voluntarily commits the conduct element of an offense when that act was the product of conscious effort...;" §22A-204(c): "'Legal cause' means the result was a reasonably foreseeable consequence of the person's conduct. A consequence is reasonably foreseeable if its occurrence is not too remote, accidental, or otherwise dependent upon an intervening force or act to have a just bearing on the person's *liability*." However, the most important subsection in the General Provision Chapter, §22A-201(a), Proof of Offense Elements Beyond a Reasonable Doubt, speaks only in terms of *convicting* a person and not at all in terms of the person's *liability*. Thus, PDS strongly believes the General Provisions generally should make more explicit the connection between the proof beyond a reasonable doubt requirement and a person's liability for an offense. Therefore, PDS proposes the following change to §22A-201(a):

> Proof of Offense Elements Beyond a Reasonable Doubt. No person may be convicted of an offense unless the government establishes the person's liability by proving each offense element ~~is proven~~ beyond a reasonable doubt.

The above proposed statement that the government bears the burden of establishing the person's liability now provides an express link for PDS's proposed language that accident, mistake and ignorance may preclude the government from establishing that liability. Together, these proposals should correct the too common misconception that mistake and accident are "defenses" and will prevent the unconstitutional burden shifting that can result from such misconception.

2. With respect to the Imputation of Knowledge for Deliberate Ignorance, at §22A-208(c) – PDS proposes a higher threshold before knowledge can be imputed to a person. Specifically, PDS proposes the following change to §22A-208(c):

> When a culpable mental state of knowledge applies to a circumstance in an offense, the required culpable mental state is established if: ...
>
> (1) The person was reckless as to whether the circumstance existed; and
>
> (2) The person avoided confirming or failed to investigate whether the circumstance existed with the primary purpose of avoiding criminal liability.

The central problem, and PDS's main concern, with the willful indifference doctrine is that it permits culpability under a diluted *mens rea* standard. The willful indifference doctrine will allow convictions for offenses where knowledge of a circumstance is required when the person, in fact, did not have knowledge of the particular circumstance or when the government fails to prove that the person had the required knowledge. If the Revised Criminal Code is going to allow a backdoor for the government to use to convict someone for a crime serious enough that its *mens rea* is knowledge, then the backdoor should be difficult to open. Or more formally phrased, the Revised Criminal Code should distinguish between willfully blind actors who are more like knowing actors from those who are merely negligent or reckless. *See* Criminal Law – Willful Blindness – Ninth Circuit Holds That Motive Is Not an Element of Willful Blindness, 121 Harv. L. Rev. 1245, 1248-49 (2008).

It is PDS's position that the language in First Draft of Report No. 3 for §22A-208(c) creates a backdoor that is too easy for the government to open; it so dilutes the knowledge requirement that it is barely a shade more onerous than requiring proof of mere recklessness. The lock on the backdoor, as it were, has two parts that work together – sub-subsections (1) and (2) of §22A-208(c). Focusing on the first part, the required level of circumstance-awareness the person must have, PDS proposed for discussion at the April 5, 2017 meeting of the Advisory Group that the appropriate standard, instead of the reckless standard, should be the "high probability" standard used in the Model Penal Code at § 2.02(7); that is, our Code would read "the person was aware of a high probability that the circumstance existed." As was noted at that meeting and more fully explained in the Commission's Report No. 2: Basic Requirements of Offense Liability, the

difference between awareness to a practical certainty (the Revised Criminal Code proposed language) and awareness of a high probability (MPC's willful blindness language) might be so narrow that the distinction is not worth recognizing.[2] PDS acknowledges that if the Revised Criminal Code is to have a deliberate ignorance provision at all, then it cannot be worded so as to require the same level of awareness as that required for knowledge.

If PDS is agreeing not to create a new level of awareness that would be less than knowledge but more than recklessness, then the strength of the "lock on the backdoor" must come from the second part. That is, if to satisfy the knowledge requirement, the government need only prove the reckless-level of awareness of the circumstance, then the purpose the person had for avoiding confirming the existence of the circumstance has to be a stringent enough test that it significantly distinguishes the deliberate avoider from the merely reckless person. Therefore, PDS proposes that to hold the person liable, the person must have avoided confirming the circumstance or failed to investigate whether the circumstance existed with the *primary* purpose of avoiding criminal liability. A primary purpose test embeds a *mens rea* element in that in order to have a primary purpose of avoiding criminal liability, a person must have had something approaching knowledge that the circumstance existed. Adding the requirement that avoiding liability was the person's primary purpose sufficiently separates the more culpable from those who were merely negligent or reckless.

3. With respect to § 22A-209, Principles of Liability Governing Intoxication – PDS recommends stating the correspondence between intoxication and negligence. The correspondence for this culpable mental state may be obvious or self-evident, but explaining the correspondence between three of the culpable mental state requirements and failing to explain the last comes across as a negligent (or even reckless) omission. PDS recommends the following language:

> (4) *Negligence.* A person's intoxication negates the existence of the culpable mental state of negligence applicable to a result or circumstance when, due to the person's intoxicated state, that person failed to perceive a substantial risk that the person's conduct will cause that result or that the circumstance exists, and the person's intoxication was not self-induced.

4. With respect to §22A-209(c), Imputation of Recklessness for Self-Induced Intoxication, PDS strongly recommends defining the term "self-induced intoxication." The imputation of recklessness for self-induced intoxication turns on whether the intoxication is self-induced. The outcome of some cases, perhaps of many cases, will depend entirely on whether the defendant's intoxication was "self-induced." The term will have to be defined; the only question is who should define it. While perhaps only a few of the modern recodifications have codified such

[2] First Draft of Report No. 2, dated December 21, 2016 at page 57.

general definitions and those that have codified intoxication definitions have drafted flawed ones,[3] the Commission cannot duck its responsibility to recommend the District's legislature proscribe criminal laws and define the terms used. The purpose of modernizing the District's Code is to reduce significantly the need for courts to create law by interpretation.

PDS recommends a definition that is based on the Model Penal Code definition at § 2.08. PDS's proposed definition differs from that of the Model Penal Code in how it treats substances that are introduced into the body pursuant to medical advice. PDS would agree to differentiate between individuals who abuse prescription drugs in order to induce intoxication and individuals who suffer unforeseen intoxicating consequences from prescribed medication. PDS does not disagree with treating the former as "self-induced intoxication," even if the substance was originally prescribed for a legitimate medical purpose. The latter, however, is <u>not</u> self-induced.

Specifically, PDS recommends the following definition:

> <u>"Self-induced intoxication" means intoxication caused by substances the person knowingly introduces into the body, the tendency of which to cause intoxication the person knows or ought to know, unless the person introduces the substances under such circumstances as would afford a defense to a charge of crime. Intoxication is not "self-induced" if it occurs as an unforeseen result of medication taken pursuant to medical advice.</u>

[3] First Draft of Report No. 3, March 13, 2017, at page 40.

Comments of U.S. Attorney's Office for the District of Columbia
on D.C. Criminal Code Commission Recommendations
for Chapter 2 (Mistake, Deliberate Ignorance, and Intoxication) (1st Draft of Report No. 3)
and for Chapter 1 (Preliminary Provisions) (1st Draft of Report No. 4)
Submitted April 24, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on these materials provided for Advisory Group review:

COMMENTS ON RECOMMENDATIONS FOR CHAPTER 2 (MISTAKE, DELIBERATE IGNORANCE, AND INTOXICATION) (First Draft of Report No. 3)

- Section 22A-208: PRINCIPLES OF LIABILITY GOVERNING ACCIDENT, MISTAKE, AND IGNORANCE

  - In discussing the imputation of knowledge for deliberate ignorance (at 3), the Report states that the required culpable mental state is established if, among other things, "[t]he person avoided confirming or failed to investigate whether the circumstance exited with **the purpose of avoiding criminal liability**" (emphasis added).

  - This phrase could be misinterpreted as to require proof that a defendant knew that his/her actions would be against the law. In fact, what is relevant is a defendant's awareness of the circumstances, not the legality of his/her actions in that circumstance.

  - This language should be revised so that "criminal liability" is replaced with "knowledge of whether the circumstance existed." Thus, prong (2) would read: The person avoided confirming or failed to investigate whether the circumstance exited with the purpose of avoiding knowledge of whether the circumstance existed."

  - This revised language also would avoid the problem identified in the Commentary (at 23); that is, for example, the incurious defendant.

- Section 22A-209: PRINCIPLES OF LIABILITY GOVERNING INTOXICATION (at 25-40)

    - As footnote 27 indicates (at 29), for certain non-conforming offenses (*i.e.*, "those offenses that the [D.C. Court of Appeals] has classified as "general intent" crimes, yet has also interpreted to require proof of one or more purpose of knowledge-like mental states"), the Commission, staff, and Advisory Group will need to re-visit this principle as substantive offenses are addressed.

COMMENTS ON RECOMMENDATIONS FOR CHAPTER 1 OF THE REVISED CRIMINAL CODE: PRELIMINARY PROVISIONS (First Draft of Report No. 4)

- § 22A-102: RULES OF INTERPRETATION

  - Rule of Lenity

    The current language proposed (at 3) allows for an arguably broader application of the rule of lenity than under current D.C. Court of Appeals case law. USAO-DC proposes rephrasing as follows: "If ~~two or more reasonable interpretations~~ the meaning of a statutory provision remains genuinely in doubt after examination of that provision's plain meaning, structure, purpose, and history, then the interpretation that is most favorable to the defendant applies." *See United States Parole Comm'n v. Noble*, 693 A.2d 1084, 1104 (D.C. 1997).

  - Effect of Headings and Captions

    - The draft commentary regarding Section 102(c) is incorrect in saying (at 7) that "There appears to be no case law in in the District assessing the significance of headings and captions for interpreting criminal statutes." In fact, the proposed language reflects the current practice of the D.C. Court of Appeals, , i.e., the D.C. Court of Appeals is willing to look at titles, captions, and headings, but the Court of Appeals recognizes that they may not always be illuminating. *See In re: J.W.*, 100 A.3d 1091, 1095 (D.C. 2014) (interpreting the offense captioned "possession of implements of crime").

    - Also, the commentary text that precedes footnote 36 is misleading in suggesting that the proposed language is consistent with national trends. Specifically, the commentary is imprecise in saying that several jurisdictions have provisions "describing the relevance" of captions and headings. In fact, all of the jurisdictions cited in footnote 36 (Illinois, New Jersey, and Washington) expressly prohibit reliance on headings, as does South Carolina. *See* S.C. Stat. § 2-13-175 ("Catch line heading or caption not part of Code section."). And although the commentary notes that "two recent code reform efforts have adopted a similar provision," those reform efforts were not adopted, and instead both jurisdictions at issue expressly prohibit reliance upon captions or headings (*i.e.*, Illinois, (discussed *supra*) and Delaware (*see* 1 Del. C. § 306 ("titles, parts, chapters, subchapters and sections of this Code, and the descriptive headings or catchlines . . . do not constitute part of the law. All derivation and other notes set out in this Code are given for the purpose of

convenient reference, and do not constitute part of the law"). Thus, it appears that no jurisdiction has enacted a provision authorizing reliance on titles, captions, and headings.

- If the goal is to be consistent with current case law, USAO-DC proposes that Section 102(c) be revised as follows: EFFECT OF HEADINGS AND CAPTIONS. Headings and captions that appear at the beginning of chapters, subchapters, sections, and subsections of this title, may aid the interpretation of otherwise ambiguous statutory language. *See Mitchell v. United States*, 64 A.3d 154, 156 (D.C. 2013) ("The significance of the title of the statute should not be exaggerated. The Supreme Court has stated that the title is of use in interpreting a statute only if it "shed[s] light on some ambiguous word or phrase in the statute itself." *Carter v. United States*, 530 U.S. 255, 267, 120 S. Ct. 2159, 147 L.Ed.2d 203 (2000). It "cannot limit the plain meaning of the text," *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212, 118 S. Ct. 1952, 141 L.Ed.2d 215 (1998), although it may be a "useful aid in resolving an ambiguity" in the statutory language. 359 U.S. 385, 388–89, 79 S. Ct. 818, 3 L.Ed.2d 893 (1959). We agree with the Supreme Court of Arizona that in determining the extent and reach of an act of the legislature, the court should consider not only the statutory language, but also the title, *Maricopa County v. Douglas*, 69 Ariz. 35, 208 P.2d 646, 648 (1949), and we shall do so here.").

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: June 15, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission Second Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's Second Draft of Report No. 2, Recommendations for Chapter 2 of the Revised Criminal Code - Basic Requirements of Offense Liability (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

§ 22A-206, Hierarchy of Culpable Mental States

On page 3, the Report defines the Hierarchy of Culpable Mental States. It states:

(a) PURPOSE DEFINED.

(1) A person acts purposely with respect to a result when that person consciously desires that one's conduct cause the result.

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

(2) A person acts purposely with respect to a circumstance when that person consciously desires that the circumstance exists.

(b) KNOWLEDGE & INTENT DEFINED.

(1) A person acts knowingly with respect to a result when that person is aware that one's conduct is practically certain to cause the result.

(2) A person acts knowingly with respect to a circumstance when that person is practically certain that the circumstance exists.

(3) A person acts intentionally with respect to a result when that person believes that one's conduct is practically certain to cause the result.

(4) A person acts intentionally with respect to a circumstance when that person believes it is practically certain that the circumstance exists.

Paragraphs (a)(1), (b)(1), and (b)(3) use the same sentence construction and word choice. We believe that a slight non-substantive change to each would make these sentences clearer. They each start with "A person" then refer to "that person" and then discuss "one's" conduct. By changing the word "one's" to "his or her" there would be no question that it is the same person whose mental state and conduct is being considered.[2]

To be consistent with paragraph (a) of the proposed code, and the rest of the first paragraph of the commentary, the last sentence of the first paragraph of the commentary should also be changed. The sentence currently reads,, "However, the conscious desire required by § 206(a) must be accompanied by a belief on behalf of the actor that it is at least possible that the person's conduct will cause the requisite result or that the circumstance exists." The rest of that paragraph refers to the "person" and not the "actor." To make the commentary more clear and consistent this sentence should be modified to say, "However, the conscious desire required by § 206(a) must be accompanied by a belief on behalf of the person that it is at least possible that his or her conduct will cause the requisite result or that the circumstance exists."

On page 4, of the Report the commentary discusses inchoate liability. While footnote 2 appropriately gives examples of hypothetical offenses, there is no footnote that shows the difference in proof if these offenses used the phrase "with intent" rather than "with knowledge." To better explain these concepts the commentary should have another footnote. That footnote

[2] For example, Section 22A-206 (a)(1) would read, "A person acts purposely with respect to a result when that person consciously desires that his or her conduct causes the result."

should contain the same hypothetical offenses as footnote 2, but with the substitution of "with intent" for "with knowledge."[3]

[3] For example, "A hypothetical receipt of stolen property offense phrased in terms of possessing property "with intent that it is stolen" suggests that the property need not have actually been stolen."

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: June 15, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report No. 5, Recommendations for Chapter 8 of the Revised Criminal Code – Offense Classes & Penalties.

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report No. 5, Recommendations for Chapter 8 of the Revised Criminal Code – Offense Classes & Penalties. (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

§ 22A-801, Offense Classifications

On pages 3 and 4, the Report proposes offense classifications and defines the terms "felony" and "misdemeanor."

Paragraph (b) (1) states "'Felony' means an offense with an authorized term of imprisonment that is more than one (1) year or, in other jurisdictions, death ." We assume that by the inclusion of the phrase "or, in other jurisdictions, death" that the term "felony" will be used to define both

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

in jurisdiction and out of state conduct. To avoid any confusion, we suggest that the language be redrafted as follows:

> "Felony" means any offense punishable:
> (A) By an authorized term of imprisonment that is more than one (1) year; or
> (B) By death, in the case of a felony from a jurisdiction that permits capital punishment.

In addition, under current District law, there is one use of the word "felony" that does not comply with the definition in the proposal and which must be retained in the Revised Criminal Code. D.C. Official Code § 16-1022 establishes the offence of parental kidnapping. Section 22A-801 must be amended to account for offense.

Under certain circumstances the penalty for parental kidnapping is defined as a felony even though the maximum penalty is one year or less. D.C. Code § 16-1024 (b) states:

> **(b)** A person who violates any provision of § 16-1022 and who takes the child to a place outside the District or detains or conceals the child outside the District shall be punished as follows:
>
> **(1)** If the child is out of the custody of the lawful custodian for not more than 30 days, the person is guilty of a felony and on conviction is subject to a fine not more than the amount set forth in [§ 22-3571.01] or imprisonment for 6 months, or both…
>
> **(2)** If the child is out of the custody of the lawful custodian for more than 30 days, the person is guilty of a felony and on conviction is subject to a fine of not more than the amount set forth in [§ 22-3571.01] or imprisonment for 1 year, or both …

The reason why these penalties are defined as "felonies" is so that persons who are charged with parental kidnapping may be extradited. See D.C. Code 23-563.[2] To allow for parental kidnapping to be designated a felony, and for any other situations where the Council may want to create a felony offense that has a penalty of one year or less or a misdemeanor offense of more than a year, 22A-801 (a) should be amended to say "Unless otherwise provided by statute."

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[2]D.C. Official Code § 23-563 states:

> **(a)** A warrant or summons for a felony under sections 16-1022 and 16-1024 or an offense punishable by imprisonment for more than one year issued by the Superior Court of the District of Columbia may be served at any place within the jurisdiction of the United States.
>
> **(b)** A warrant or summons issued by the Superior Court of the District of Columbia for an offense punishable by imprisonment for not more than one year, or by a fine only, or by such imprisonment and a fine, may be served in any place in the District of Columbia but may not be executed more than one year after the date of issuance…. [emphasis added]

Similar language should be added to the definitions of "Felony" and "Misdemeanor" found in 22A-801 (a) and (b).[3]

§ 22A-803, Authorized Terms of Imprisonment

Section 22A-803 (a) establishes the definitions for the various classes of felonies and misdemeanors. Paragraph (a) begins by saying that "… the maximum term of imprisonment authorized for an offense is ..." Except for a Class A felony, the definitions for all of the felony and misdemeanor offenses include the phrase "not more than..." The use of the term "not more than" appears redundant following that introductory language. For example, compare "the maximum term of imprisonment authorize for an offense is... for a Class 2 felony forty-five (45) years" with "the maximum term of imprisonment authorize for an offense is... for a Class 2 felony, not more than forty-five (45) years".[4]

In the commentary, in the last paragraph on page 8 of the Report, it states "Under Supreme Court precedent, offenses involving penalties of six months or more are subject to a Sixth Amendment right to jury trial…" We believe that this is a typo and that the phrase should say "Under Supreme Court precedent, offenses involving penalties of more than six months are subject to a Sixth Amendment right to jury trial…" [emphasis added][5]

RCC § 22A-804. AUTHORIZED FINES.

Section 22A-804 (c) establishes an alternative maximum fine based on pecuniary loss to the victim or gain to the defendant. This provision states:

> (c) ALTERNATIVE MAXIMUM FINE BASED ON PECUNIARY LOSS OR GAIN. Subject to the limits on maximum fine penalties in subsection (b) of this section, if the offense of conviction results in pecuniary loss to a person other than the defendant, or if the offense of conviction results in pecuniary gain to any person, a court may fine the defendant:
>
> (1) not more than twice the pecuniary loss,
>
> (2) not more than twice the pecuniary gain, or

[3] Additionally, for the sake of clarity, the language "except as otherwise provided by statute" should also be added to the beginning of the paragraph that lists the penalty for "attempts." See § 22A-803 (b).

[4] The repeated use of term "not more than" pertaining to fines in § 22A-804 appears also to be redundant.

[5] See *Blanton v. City of N. Las Vegas*, 489 U.S. 538, 543 (1989) and Lewis v. *United States*, 518 U.S. 322 (1996).

(3) not more than the economic sanction in subsection (a) that the defendant is otherwise subject to, whichever is greater. The pecuniary loss or pecuniary gain must be alleged in the indictment and proved beyond a reasonable doubt.

OAG recommends that the sentence "The pecuniary loss or pecuniary gain must be alleged in the indictment and proved beyond a reasonable doubt" be modified and made into its own paragraph. In addition, OAG suggests changing the paragraph structure and language in the subparagraphs from "not more than" to "Up to" to make the paragraph clearer. Paragraph (c) should be amended to read:

(c) (1) ALTERNATIVE MAXIMUM FINE BASED ON PECUNIARY LOSS OR GAIN. Subject to the limits on maximum fine penalties in subsection (b) of this section, if the offense of conviction results in pecuniary loss to a person other than the defendant, or if the offense of conviction results in pecuniary gain to any person, a court may fine the defendant:

(A) Up to twice the pecuniary loss;

(B) Up to twice the pecuniary gain; or

(C) Up to the economic sanction in subsection (a) that the defendant is otherwise subject to.[6]

(2) If the pecuniary loss or pecuniary gain exceeds the amount of fine authorized by subsection (a), the amount of gain or loss must be alleged in the indictment and proved beyond a reasonable doubt.

By rewording and breaking out new paragraph (c)(2) from former paragraph (c)(3) it is clear that the government only has to allege gain or loss in an indictment and prove the amount beyond a reasonable amount when it seeks an alternative maximum fine and not merely when the government wants to justify the court's imposition of a fine based on pecuniary loss or gain which is less than or equal to the statutory amount in subsection (a). This rewording makes it clear that it is only when the alternative maximum fine is sought that the government should have to allege and prove the amount of gain or loss.

OAG recommends that the Commission consider two substantive changes to § 22A-804 (d). This paragraph addresses the alternative maximum fine for organizational defendants. Paragraph (d) states, "Subject to the limits on maximum fine penalties in subsection (b) of this section, if an

[6] As there are three choices, we recommend that the word "greater" be replaced with the word "greatest." This would clarify what the court's options are if both the pecuniary loss and pecuniary gain are greater than the sanction in subsection (a), but are of unequal amounts. Under our proposed change it would be clear that the court could impose the largest sanction (not merely the greater of one of the sanctions and subsection (a)).

organizational defendant is convicted of a Class A misdemeanor or any felony, a court may fine the organizational defendant not more than double the applicable amount under subsection (a) of this section."[7] First, there is no reason why the misdemeanor portion of this paragraph should be limited to Class A misdemeanors. Organizational defendants are frequently motivated by financial gain when committing offenses and a court should be able to set a fine that acts as a deterrent to such conduct. As the Council wrote in the Report on Bill 19-214, Criminal Fine Proportionality Amendment Act of 2012,

> The reason for imposing an unusually high fine is appropriate for certain offenses in the interest of deterring violations. Of the listed offenses many were designed to deter corporate entities from engaging in prohibited conduct… While the penalty provisions may have low imprisonment terms, the larger fine currently associated with the provision is deemed important to deterring the specified conduct. In addition, organizational defendants are subject to section 1002(b) of the legislation – which effectively doubles any fine amount authorized under the law.[8]

The court should be authorized, in appropriate circumstance, to double the fine when an organizational defendant is convicted of any misdemeanor offense – not just a Class A misdemeanor.

Second, § 22A-804 (d) limits the court's ability to "double the applicable amount under subsection (a) of this section." This paragraph does not address the courts authority to double fines for organizational defendants when the underlining fine is established in the individual offense, as an exception to the standard fine.[9] Section 22A-804 (d) should be amended to add that "… a court may fine the organizational defendant not more than double the applicable amount under subsection(a) of this section or twice the maximum specified in the law setting forth the penalty for the offense." [Proposed language underlined]

[7] OAG recognizes that this paragraph is substantially based on D.C. Official Code § 22-3571.01(c).
[8] See Section 1102 on page 15 of the Report on Bill 19-214, Criminal Fine Proportionality Amendment Act of 2012. Section 22A-804 (d) is based upon §1002(b) of Bill 19-214
[9] The Criminal Fine Proportionality Amendment Act of 2012 exempts numerous offenses that carry higher fines than those established in the Act.

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia
CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	June 16, 2017
Re:	Comments on First Draft of Report No. 5: Recommendations for Chapter 8 of the Revised Criminal Code: Offense Classes & Penalties

PDS understands that the proposed classification system and the corresponding penalties are preliminary and subject to significant revision during the final phrase of the Commission's work. Despite the preliminary nature of the proposals in Report No. 5, PDS has two grave concerns it requests the Commission consider at this time.

1. With respect to RCC § 22A-803, Authorized Terms of Imprisonment, specifically regarding the felony classes – PDS disagrees with the Commission's approach of aligning its proposed felony classes and corresponding maximum imprisonment terms with current District sentencing norms. PDS believes that criminal code reform is an opportunity to rationally recalibrate our criminal justice system to reflect evidence-based research about public safety and crime. To start, PDS recommends the Commission eliminate the excessive sentence of life without release and all sentences above 20 years of incarceration. Sentences of life without release, particularly where there is no "second look" provision or parole eligibility, are not supported by evidence about dangerousness of the offender and are inhumane. The association between age and general criminal behavior is well established: most crimes are committed by young people and older adults have low rates of recidivism.[1] For instance, the Justice Policy Institute reported on the release of a large number of people, mostly age 60 and up who had been convicted of homicides in Maryland but released due to an appellate ruling. As of March 2016, of the more than 100

[1] See Alfred Blumstein, Jacqueline Cohen, and P. Hsieh, *The Duration of Adult Criminal Careers*, (1982).

people who had been released, none had been convicted of a new felony offense.[2] Over the past decade, New Jersey, New York, and Michigan reduced their prison populations by a range of 20 percent through front end reforms such as decreasing sentence length and through back end reforms in their parole systems. No adverse impacts on public safety were observed in these states.[3]

The Commission, and ultimately the Council, should also consider the fiscal impact of constructing such an expensive sentencing system. Because persons convicted of felony offenses and sentenced to prison are in the legal custody of the Bureau of Prisons,[4] the fiscal impact statements that accompany legislation creating felonies or changing felony penalties have not had to assess the costs of incarceration. When the Council promulgates new felony offenses, sets mandatory minimum prison sentences or increases the maximum term of imprisonment possible for a felony offense, it need never ask itself what the additional prison time will cost the District taxpayer. Many states are considering sentence reform because of budget deficits and the cost of prison overcrowding due to long sentences.[5] The National Conference of State Legislatures estimated that the taxpayers paid approximately $24 billion dollars to incarcerate persons convicted of something other than a non-violent offense; that estimate excludes spending on county and city jails and the federal corrections budget.[6] Given the tremendous support in the District for statehood,[7] and repeated calls for more local control over prosecutions and of the District's criminal justice system, the Commission, and ultimately the Council, should be mindful about building a sentencing system it would never be able to afford. Criminal code reform presents an ideal opportunity to weigh the high cost of long prison sentences against the little to no benefit in terms of increased public safety and propose the general reduction of

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[2] *Defining Violence: Reducing Incarceration by Rethinking America's Approach to Violence*, ("Defining Violence") Justice Policy Institute, August 2016. http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_definingviolence_final_report_9.7.2016.pdf.

[3] Judith Greene & Marc Mauer, *Downscaling Prisons: Lessons from Four States*, The Sentencing Project (2010).

[4] D.C. Code § 24-101.

[5] See e.g., "Skyrocketing prison costs have states targeting recidivism, sentencing practices." https://www.washingtonpost.com/blogs/govbeat/wp/2015/05/19/skyrocketing-prison-costs-have-states-targeting-recidivism-sentencing-practices/?utm_term=.a13e38050348; "Fiscal and prison overcrowding crises could lead to Three-Strikes reform." http://www.mercurynews.com/2011/07/22/fiscal-and-prison-overcrowding-crises-could-lead-to-three-strikes-reform/.

[6] *Defining Violence* at page 20.

[7] "District voters overwhelmingly approve referendum to make D.C. the 51st state." https://www.washingtonpost.com/local/dc-politics/district-voters-overwhelmingly-approve-referendum-to-make-dc-the-51st-state/2016/11/08/ff2ca5fe-a213-11e6-8d63-3e0a660f1f04_story.html?utm_term=.5234e8fc29f3.

maximum terms of imprisonment for felonies and the elimination of the life without possibility of release penalty.

In further support of reducing the prison terms proposed for the felony classes in Report No. 5, PDS focuses on and strongly objects to the proposed 45-year term of imprisonment for the Class 2 felony. A 45-year term penultimate penalty is significantly more severe than the 20-year maximum recommended by the American Law Institute and than the 30-year maximum recommended in the Proposed Federal Criminal Code. Further, the 45-year penalty is not justified by the data included in Memorandum #9, which supplements Report No. 5.

According to Figure 1, there are nine criminal offenses in Title 22 that have a maximum penalty of 30 years imprisonment. This grouping of offenses would correspond with the proposed Class 3 felony and its recommended 30-year maximum. There are six offenses that have a maximum penalty of life without possibility of release (LWOR). This grouping corresponds with the proposed Class 1 felony. Between the 30-year maximum grouping of offenses and the LWOR maximum grouping in the D.C. Code, Figure 1 shows that there is one offense with a maximum penalty of 40 years (which I assume is armed carjacking) and one offense with a maximum penalty of 60 years (which I assume is first-degree murder).

Figure 3 is a little more complicated in that it compares the Sentencing Guidelines groups and the proposed felony classifications; the correspondence between the two is a little tricky. Category 3 on Figure 3 compares the maximum proposed penalty for Class 3 (30 years or 360 months) and the top of the box for the Master Grid Group 3 for column A and for column D. Figure 3 indicates that a maximum of 360 months for Class 3 felony offenses would more than adequately accommodates the top of the box for Column A, 180 months, and Column D, 216 months. PDS recommends lowering the penalty proposed for Class 3 to significantly less than 30 years. Category 2 in Figure 3 compares the 45-year (540 months) penalty proposed for Class 2 felony to the Master Grid Group 2 for column A and column D. Again, Figure 3 indicates that a maximum of 45 years for Class 2 felony offenses is significantly higher than top of the box for Column A, 288 months (24 years), and Column D, 324 months (27 years). PDS acknowledges that the maximum prison term for the class should be higher than the top of the box in Column D, for example to allow for aggravating circumstances of the particular incident. A maximum penalty of 45 years, however, allows for an excessive 18 years "cushion" above the top of the box for Master Grid group 2, column D. Category 1 in Figure 3 corresponds to Master Group 1, the group into which first-degree murder is ranked. Thus the one offense with a statutory maximum of 60 years (720 months), as shown on Figure 1, is the main offense (and variations of it) in Master Group 1 and the maximum penalty is 720 months for column A and column D.

Figure 4 is perhaps more helpful for recognizing the proposed penalty for Class 2 felony should be much lower than 45 years, even if that class were reserved for the most serious offense in the

Code. Figure 4 in Memo #9 shows that the average sentence and the mean sentence for Category 1 (meaning the average sentence for murder I) are both 30 years, both well below the 45-year penalty proposed for Class 2 felony. Category 2 on Figure 4 compares the 45-year (540 months) proposed for Class 2 felony to the average and mean sentences for Master Grid Group 2 offenses and also demonstrates that the 45-year penalty proposed for Class 2 could be greatly reduced and still well accommodate current sentencing practice for those offenses. The average sentence for that category is 225 months (18 years, 9 months) and the mean sentence is 228 months (19 years), lower than the proposed 45-year maximum by 26 years, 3 months and 26 years respectively.

While PDS focuses here on the maximum imprisonment terms proposed for the three most serious classes for RCC §22A-803, all of the penalties should be examined in light of the sentencing practices but also in light of evidence-based research on public safety and of the potential fiscal impact of incarceration.

2. With respect to RCC § 22A-803, Authorized Terms of Imprisonment, specifically regarding the Class B misdemeanor penalty – The Commission proposes in Report No. 5 to eliminate the 6-month prison term as the penultimate penalty for misdemeanor offenses and instead to have the 180-day prison term as the penultimate misdemeanor penalty.[8] The 180-day/6-month distinction is important because, as the Report notes, D.C. Code §16-705 requires a jury trial as compelled by the Constitution[9] or if the offense is punishable by imprisonment for *more than 180 days*.[10] Six months is longer than 180 days;[11] therefore offenses with a penalty of 6 months imprisonment are jury demandable; those with a penalty of 180 days are not. PDS would prefer that the maximum penalty for Class B be set at 6 months. PDS acknowledges that, under current law, a 6-month penalty would make every offense assigned to that class jury-demandable and that flexibility around this misdemeanor mid-point might have merit. Thus, to provide for such flexibility, PDS would not object to Class B having a maximum penalty of 180 days **IF** there were also a statutory provision that stated offenses categorized in Class B were jury demandable unless otherwise provided by law. Report No. 5 proposes the opposite default rule – that Class B misdemeanors would be non-jury demandable unless there were a plain statement in the offense definition that the offense was to be jury demandable. Because "trial by jury in criminal cases is fundamental to the American scheme of justice,"[12] the default should be that Class B misdemeanors are jury demandable unless there is a plain statement in the offense definition that the offense is not jury demandable.

[8] The ultimate term of imprisonment penalty for a misdemeanor is one year.

[9] D.C. Code § 16-705(a).

[10] D.C. Code § 16-705(b)(1).

[11] *Turner v. Bayly*, 673 A.2d 596, 602 (D.C. 1996).

[12] *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968).

Trial by jury is critical to fair trials for defendants. "The history of trial by jury in criminal cases has been frequently told. It is sufficient for present purposes to say that by the time our Constitution was written, jury trial in criminal cases had been in existence in England for several centuries and carried impressive credentials traced by many to Magna Carta…. The guarantees of jury trial in the Federal and State Constitutions reflect a profound judgment about the way in which law should be enforced and justice administered. A right to jury trial is granted to criminal defendants in order to prevent oppression by the Government." [13]

Requiring jury trials is not only a acknowledgement of the core principle of American justice that a defendant should be tried by a jury of his or her peers, it also recognizes the importance to the community of serving as jurors. As the Supreme Court noted in *Batson v. Kentucky*, "Racial discrimination in selection of jurors harms not only the accused whose life or liberty they are summoned to try…. [B]y denying a person participation in jury service on account of his race, the State unconstitutionally discriminated against the excluded juror."[14] Constructing a system that by default precludes jury trials harms not only the defendant but the community as a whole. The ability of District residents to participate in civic life is already curtailed compared to residents of States; the Commission should not restrict that participation further by default.

When the Commission engages in the work of adjusting penalties and gradation of offenses to provide for proportionate penalties[15] and when the D.C. Council promulgates new misdemeanors, they should have to explicitly decide to deprive the defendant and the community of a jury trial and they should have to publicly declare they made that decision, not hide behind a default rule buried in a penalty classification system.

[13] *Id*. at 151, 156.

[14] *Batson v. Kentucky*, 476 U.S. 79, 87 (1986).

[15] D.C. Code § 3-152(a)(6).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: July 17, 2017

SUBJECT: Comments to D.C. Criminal Code Reform Commission First Draft of Report No. 6, Recommendations for Chapter 8 of the Revised Criminal Code – Penalty Enhancements

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report No. 6, Recommendations for Chapter 8 of the Revised Criminal Code – Penalty Enhancements (the Report). OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

§ 22A-805, Limitations on Penalty Enhancements

Section 22A-805 (a) uses the word "equivalent" but does not define it. Because it is defined in a later section the use of the word here is confusing, if not misleading.

Section 22A-805 (a) states:

> PENALTY ENHANCEMENTS NOT APPLICABLE TO OFFENSES WITH EQUIVALENT ELEMENTS. Notwithstanding any other provision of law, an offense is not subject to a

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

penalty enhancement in this Chapter when that offense contains an element in one of its gradations which is equivalent to the penalty enhancement.

In giving definitions to undefined Code terms the Court of Appeals has looked to definitions found in Code provisions that were enacted at a different time for a different purpose. See *Nixon v. United States*, 730 A.2d 145 (D.C. 1999), where the Court applied the definition of "serious bodily injury" found in a sex offense statute to the offense of aggravated assault. Because the very next section after **§** 22A-805 contains a definition for the word "equivalent" it is possible that, notwithstanding the limiting language in **§** 22A-806 (f)(2)[2], the Court of Appeals may look to that enacted definition when determining the meaning of the earlier use of the word "equivalent" in **§** 22A-805 (a). Clearly this is not what the Commission intends. To avoid any confusion about what the word means, to avoid making the Court of Appeals define the term, and to avoid unnecessary litigation, OAG suggests that the word "equivalent" be defined in **§** 22A-805 (a), a different word be used in **§** 22A-805 (a), or a definition be drafted that can be used in both sections.

Section 22A-805 (a) also uses the word "gradations." This word is also not defined. OAG suggests that the sentence be rewritten so that the word "gradations" is replaced by a term that includes "lesser included offenses."[3]

On page 4 of the Report there is a discussion of the holding in *Bigelow v. United States*, 498 A.2d 210 (D.C. 1985), and its application after the enactment of **§** 22A-805. The discussion initially leads the reader to believe that multiple repeat offender provisions would continue to apply when the dictates of *Lagon v. United Sta*tes, 442 A.2d 166, 169 (D.C. 1982), have been met. The paragraph then concludes with the statement "However, insofar as RCC § 22A-805 is intended to reduce unnecessary overlap in statutes, courts may construe the term "equivalent" in RCC § 22A-805 more broadly than under current law." It is OAG's position that this determination not be left to the courts to resolve. Rather, the Commission should unequivocally state that the holding in *Bigelow* would apply after enactment of these provisions.

§ 22A-806, Repeat Offender Penalty Enhancements

On page 8 of the Report the term "Prior Convictions" is defined. Section 22A-806 (f)(5)(i) states, "Convictions for two or more offenses committed on the same occasion or during the same course of conduct shall be counted as only one conviction…" However, the proposed language does not clarify what is meant by the word "occasion." Unfortunately, the addition of the phrase "during the same course of conduct" does not clarify it. Take, for example, the following scenario. An in-home worker who visits an elderly patient once a week is convicted for stealing from the victim. Afterwards, the government learns that the in-home worker actually started working for the patient at an earlier time and also stole from the patient during that

[2] Section 22A-806 (f)(2) states "For the purposes of this section, 'equivalent' means a criminal offense with elements that would necessarily prove the elements of the District criminal offense."

[3] For example, § 22A-805 (a) could be rewritten to say "Notwithstanding any other provision of law, an offense is not subject to a penalty enhancement in this Chapter when that offense ~~contains an~~ or any of its lesser included offenses contains an element ~~in one of its gradations~~ which is equivalent to the penalty enhancement. "

previous time period. Would a second conviction of the in-home worker be the subject of an enhancement under § 22A-806 (f)(5)(i) or would it be considered "the same course of conduct"? Either the proposed code provision or the Commentary should address this issue. To the extent that there is current case law on this issue, it should be fleshed out in the Commentary.

In § 22A-806 (f)(5)(iv) it states "A conviction for which a person has been pardoned shall not be counted as a conviction. OAG suggests that this exception be expanded to include convictions that have been sealed by a court on grounds of actual innocence.

§ 22A-807, Hate Crime Penalty Enhancement

On page 17 of the Report the Hate Crime Penalty Enhancement is explained. Section 22A-807 (a) states:

> A hate crime penalty enhancement applies to an offense when the offender commits the offense with intent to injure or intimidate another person because of prejudice against that person's perceived race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibility, homelessness, physical disability, matriculation, or political affiliation. [Emphasis added]

Though not expounded upon in the Commentary, this penalty enhancement has narrower application than the current bias-related crime penalty. The definition of a "Designated act" in D.C. Code § 22-3701 includes not only injury to another person but property crimes as well. So long as the act is based upon prejudice, a bias-related crime penalty can currently be given when a defendant is guilty of injuring property, theft, and unlawful entry. See § 22-3701 (2). The Hate Crime Penalty Enhancement should be expanded to cover all of the offenses currently included under the law.

§ 22A-808, Pretrial Release Penalty Enhancement

On page 24 of the Report there are definitions for the misdemeanor, felony, and crime of violence pretrial release penalty enhancements. To be consistent with the wording of § 22A-806 (a), (b), and (c) two changes should be made to these provisions. First, the term "in fact" should be added to each of the pretrial release penalty enhancements. For example, § 22A-808 (a) should be redrafted to say "A misdemeanor pretrial release penalty enhancement applies to a misdemeanor when the offender, *in fact,* committed the misdemeanor while on release pursuant to D.C. Code § 23-1321 for another offense." [Additional term italicized] Second, penalty enhancements found in § 22A-806 refer to "the defendant" whereas the penalty enhancements found in § 22A-808 refer to "the offender." To avoid arguments about whether the difference in wording has legal significance, the same term should be used in both sections.

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia
CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	July 18, 2017
Re:	Comments on First Draft of Report No. 6: Recommendations for Chapter 8 of the Revised Criminal Code: Penalty Enhancements

PDS has the following concerns and makes the following suggestions:

1. With respect to RCC § 22A-806, Repeat Offender Penalty Enhancements, PDS recommends the complete elimination of this section. Repeat offender penalty enhancements represent a triple counting of criminal conduct and work a grave miscarriage of justice for individuals who have already paid their debt to society in the form of a prior sentence. Repeat offender penalty enhancements exacerbate existing racial disparities in the criminal justice system and increase sentences that are already too long.

   The United States incarcerates more people than any other country in the world. The last forty years have seen relentless growth in incarceration.[1] The expansion in prison population is driven by greater numbers of people entering the system, less diversion, and longer sentences.[2] Enhancements create even longer sentences – beyond what the legislature originally envisioned for a particular offense committed by a broad range of potential culpable actors.

[1] The Sentencing Project, Ending Mass Incarceration: Charting a New Justice Investment, available at: http://www.sentencingproject.org/publications/ending-mass-incarceration-charting-a-new-justice-reinvestment.

[2] James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. Rev. 21, 48 (2012).

The commentary to the Revised Criminal Code ("RCC") justifies, in part, the continued use of prior convictions to enhance criminal sentences on the lack of evidence on how the operation of criminal history in sentencing may affect racial disparities.[3] But evidence of the criminal justice system's disparate impact on African-Americans abounds. The Black-white "disparity-ratio" in male imprisonment rates was nearly 6:1 in 2014.[4] Hispanic-white ratios for males were 2.3:1.[5] In the District, nearly fifty percent of black males between the ages of 18-35 were under criminal justice supervision according to a study by the National Center on Institutions and Alternatives.[6] The Sentencing Commission's statement that "the number of non-black, felony offenders present too small a sample size for meaningful statistical analysis" tells the picture of who in fact is being sentenced on felony offenses.[7] While enhancements may not necessarily cause disparity in sentencing, the use of penalty enhancements has the effect of amplifying racial disparities already present in the criminal justice system.

For instance, consider the evidence of disparate prosecution for drug offenses. Although blacks and whites use drugs at roughly the same rates, African Americans are significantly more likely to be arrested and imprisoned for drug offenses.[8] "Black arrest rates are so much higher than white rates because police choose as a strategic matter to invest more energy and effort in arresting blacks. So many more blacks than whites are in prison because police officials have adopted practices, and policy makers have enacted laws, that foreseeably treat black offenders much more harshly than white ones."[9] Sentencing enhancements for multiple prior misdemeanor or felony drug offenses create a feedback effect that amplifies the existing bias, or choices, already made by the criminal justice system.

PDS is not arguing that consideration of prior convictions should have no place in our criminal justice system, but rather that the place these prior convictions hold is already sufficient. As noted in the commentary, a defendant's criminal history is a dominant feature in the Sentencing

[3] Commentary for RCC§ 22A-806 at 12.

[4] *See* Bureau of Justice Statistics, Prisoners in 2014 (2015), available at: https://www.bjs.gov/content/pub/pdf/p14.pdf; *see also*, The Sentencing Project, Fact Sheet, available at: http://www.sentencingproject.org/publications/trends-in-u-s-corrections

[5] *Id*.

[6] Eric R. Lotke, "*Hobbling a Generation*," National Center on Institutions and Alternatives, August 1997.

[7] Commentary for RCC§ 22A-806 at 12.

[8] Tonry, M., & Melewski, M. (2008), *The Malign Effects of Drug and Crime Control Policy on Black Americans*. In M. Tonry (Ed.), Crime and justice: A review of research (pp. 1-44). Chicago, IL: University of Chicago Press; James Forman, Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. Rev. 21, 48 (2012).

[9] *Id*.

Guidelines.[10] A prior felony conviction will often mean that probation is excluded as a guidelines-compliant sentencing option. Because it will move a defendant to a higher column on the guidelines grid, a prior felony conviction will also mean that the corresponding guidelines-compliant prison sentence the defendant will face is longer. This is important because judges overwhelmingly comply with the Sentencing Guidelines and thus already abide by a system that heavily weighs prior criminal history. [11] In addition to being determinative of which box a defendant will fall into on the Sentencing Guidelines, prior criminal history must be considered in sentencing the defendant within that box. This is the case because the D.C. Code explicitly requires judges to "impose a sentence that reflects the seriousness of the offense and the criminal history of the offender."[12] Enhancements therefore create a system that triple counts prior convictions for individuals who have already faced consequences as a direct result of the prior conviction.

While misdemeanors are not covered by the Sentencing Guidelines or by D.C. Code § 24-403.01, there is no doubt that judges consider criminal history in deciding whether to impose incarceration and in deciding the amount of incarceration to impose. Prosecutors routinely argue for a sentencing result based in substantial part on the defendant's criminal history. Penalty enhancements for misdemeanors create the same issue of over-counting criminal history for offenses where the defendant has already paid a debt to society. Further, as acknowledged in the commentary, misdemeanor enhancements exist in a tiny minority of jurisdictions. According to the commentary, only Maine, Missouri, and New Hampshire allow enhancements for prior misdemeanor convictions.[13]

There is no evidence that longer sentences for defendants who have committed multiple misdemeanors produce meaningful long-term improvements in community safety or better individual outcomes. To the contrary, many misdemeanor offenses can be addressed through comprehensive community based programming rather than ever longer periods of incarceration. For example, repeated drug possession offenses or offenses that stem from drug addiction such as theft may be successfully addressed through referrals to drug treatment. [14] Current Superior Court policies establishing specialized courts for individuals with mental illness or issues with

[10] Commentary for RCC§ 22A-806 at 12.

[11] Voluntary Sentencing Guidelines Manual (June 27, 2016) at 1. The 2015 annual report for the District of Columbia Sentencing and Criminal Code Revision Commission lists compliance as "very high" and "consistently above 90% since 2011" and 96% in 2015. Available at: https://scdc.dc.gov/sites/default/files/dc/sites/scdc/publication/attachments/Annual%20Report%202015%20Website%205-2-16.pdf .

[12] D.C. Code § 24-403.01(a)(1).

[13] Commentary for RCC§ 22A-806 at 13 fn. 43.

[14] Justice Policy Institute, Substance Abuse Treatment and Public Safety January 2008 available at: http://www.justicepolicy.org/uploads/justicepolicy/documents/08_01_rep_drugtx_ac-ps.pdf.

drug addiction reflect the community sentiment that there are better solutions to crime than more incarceration.

While the RCC does not propose specific mandatory minimums for enhancements, it contemplates a structure that would force a judge to sentence a defendant to a mandatory minimum once the prosecution proves the applicability of a repeat offender enhancement.[15] PDS opposes the use of mandatory minimums in the RCC. PDS believes that judges should be trusted to exercise discretion in sentencing defendants. Judges are in the best position to review the facts in each case and the unique history of each defendant. Judges make decisions informed by a presentence report, statements of victims, the community, and sometimes medical professionals. Judges should be trusted to weigh the equities in each case and impose, consistent with the law, a fair sentence.

2. With respect to RCC § 22A-807, Hate Crime Penalty Enhancement, PDS appreciates that the causal nexus between the crime and the bias is clarified in RCC § 22A-807. However, PDS has concerns about several of the broad categories of bias listed in the RCC. As acknowledged in the commentary for RCC § 22A-807, the list of protected categories is broader than other jurisdictions and includes several characteristics many states do not recognize, such as personal appearance, matriculation, marital status, and family responsibility.[16] PDS believes that it is appropriate to include these categories in the District's human rights law which prohibits discrimination in employment, housing, public accommodation, and education.[17] However, when used in the criminal code, these categories may allow for prosecution outside of the intended scope of the hate crime statute. For instance, by including marital status and family responsibility, a defendant who kills an ex-husband because of a bitter divorce or because the ex-husband fails to take on family responsibility may be subject to a hate crime enhancement. A teenager who commits a robbery motivated by anger at a complainant's flashy personal appearance could similarly be subject to a hate crime enhancement.[18] This expansion of the hate crime categories would allow for a sentencing enhancement to apply to what the legislature likely envisioned to be within the standard range of motives for the commission of an offense. Thus, PDS recommends removing the following categories from proposed §22A-807: marital status, personal appearance, family responsibility, and matriculation.

[15] The RCC § 22A-806(e) provides for at least the possibility of mandatory minimum sentences for the commission of repeat offenses. PDS understands that sentencing will be fully considered by the Commission at a later time.

[16] Commentary for RCC§ 22A-806 at 21.

[17] D.C. Code § 2-1402.01-§2-1402.41.

[18] PDS does not disagree with treating as a hate crime a crime committed because of a prejudice against a person's appearance or dress that is or appears to be different than the person's gender but believes that bias is covered by the "gender identity or expression" term in §22A-807.

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia
CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	July 18, 2017
Re:	Comments on First Draft of Report No. 7: Recommendations for Chapter 3 of the Revised Criminal Code: Definition of a Criminal Attempt

In general, the Public Defender Service approves the recommendations in the First Draft of Report No. 7. PDS has the following concerns, however, and makes the following suggestions:

1. The Commentary refers to two cases with the name "*Jones v. United States*": *(Richard C.) Jones v. United States*, 124 A.3d 127 (D.C. 2015), cited on pages 7 and 10; and *(John W.) Jones v. United States*, 386 A.2d 308 (D.C. 1978), cited on pages 13-14 and 18. We suggest that the defendants' first names be added to these citations to make it easier to distinguish between the two cases.

2. We suggest omitting two hypothetical examples from Footnotes 2 and 8 of the Commentary to avoid unnecessary confusion about the scope and application of attempt.

   ▪ The last sentence of Footnote 2, on page 4, poses the following hypothetical: "For example, to determine whether a person arrested by police just prior to pulling a firearm out of his waistband acted with the intent to kill a nearby victim entails a determination that the person planned to retrieve the firearm, aim it at the victim, and pull the trigger."

   As written, this example suggests that a defendant could be convicted of attempted assault with intent to kill where he had not yet pulled a firearm out of his waistband. We believe that this conduct, without more, would be insufficient to sustain a conviction for attempted assault with intent to kill. Moreover, the example raises complex questions that this group has yet to resolve concerning the interplay between attempt and gradations of assault offenses. We therefore propose that the footnote be deleted to avert the risk that readers will draw incorrect inferences about sufficiency.

   ▪ Footnote 8, on page 5, includes among its examples of incomplete attempts "the attempted felony assault prosecution of a person who suffers a debilitating heart attack just as he or she is

about to exit a vehicle and repeatedly beat the intended victim." We believe that these facts, without more, provide an insufficient basis for an attempted felony assault conviction. This hypothetical likewise raises questions about the type of proof necessary to establish an attempted felony assault, where felony assault requires a specific degree of harm. We propose that the hypothetical be deleted.

3. PDS proposes modifying § 22A-301(a)(3) to read as follows (alterations are underlined):

> (3) The person<u>'s conduct</u> is either:
>
> > (A) <u>Reasonably adapted to and</u> dangerously close to <u>the accomplishment of</u> that offense; or
> >
> > (B) Would be dangerously close to <u>the accomplishment of</u> that offense if the situation was as the person perceived it, provided that the person's conduct is reasonably adapted to <u>the accomplishment of</u> that offense.

First, we suggest changing the subject of (a)(3) from "the person" to "the person's conduct," to make more explicit that the jury's focus should be on the conduct of the defendant.

Second, PDS proposes modifying subsection (A) to insert the phrase "reasonably adapted to" before the phrase "dangerously close," to make clear that the requirement of conduct "reasonably adapted" to completion of the target offense applies to *all* attempt charges, and not only those that fall under subsection (B). This alteration would comport with case law from the D.C. Court of Appeals, which has held that "[t]he government must establish conduct by the defendant that is reasonably adapted to the accomplishment of the crime . . . ." *Seeney v. United States*, 563 A.2d 1061, 1083 (D.C. 1989); *see also Williams v. United States*, 966 A.2d 844, 848 (D.C. 2009); *(John W.) Jones v. United States*, 386 A.2d 308, 312 (D.C. 1978). The current draft, which uses the "reasonably adapted" language only in subsection (B), creates the impression—at odds with case law—that this requirement does not exist for attempts that fall under subsection (A), and could lead the jury to conclude that the conduct requirements under subsection (A) are looser than under subsection (B). This alteration would also align the draft provision with the current Red Book instruction, which reflects current District law in this area and which requires proof that the defendant "did an act reasonably adapted to accomplishing the crime." Criminal Jury Instructions for the District of Columbia No. 7.101, Attempt (5th ed. rel. 14).

Inclusion of the "reasonably adapted" language in subsection (A) would have the additional benefit of giving some substance to the "dangerously close" requirement and ensuring that innocent conduct is not punished as an attempt. PDS supports the draft's adherence to the "dangerously close" standard for conduct, which reflects current case law. The term "dangerously close," however, is not defined. Consistent use of the "reasonably adapted" language in both (A) and (B) would help to establish a clearer limitation on the conduct that can give rise to an attempt conviction. We believe that clear and exacting conduct standards are essential in the context of attempt, because the defendant's thoughts and plans play such a critical role in the question of guilt, but must often be inferred from a defendant's actions.

Third, we suggest modifying both (A) and (B) to replace the phrases "committing that offense" and "commission of that offense" with the phrase "the accomplishment of that offense." Like the

phrase "reasonably adapted," the "accomplishment" language appears in both the current Redbook instruction on Attempt and DCCA case law. *See, e.g.*, *Seeney*, 563 A.2d at 1083; *Williams*, 966 A.2d at 848. Maintaining that terminology in the statutory provision would thus provide continuity and consistency. It would also avert confusion about the point at which the target offense has been "committed." Just as the "dangerously close" standard requires the jury to focus on the defendant's proximity to completing the target offense, rather than his preparatory actions, the "accomplishment" language keeps the jury's focus on the completion of the target crime.

Comments of the U.S. Attorney's Office for the District of Columbia on D.C. Criminal Code Commission Recommendations

for Chapter 3 of the Revised Criminal Code: Definition of a Criminal Attempt (First Draft of Report No. 7)

and for Chapter 8 of the Revised Criminal Code: Penalty Enhancements (First Draft of Report No. 6)

Submitted July 21, 2017

The U.S. Attorney's Office for the District of Columbia maintains the positions it previously has articulated in its correspondence on December 18, 2014, to the former D.C. Sentencing and Criminal Code Revision Commission, and on June 16, 2016, to Kenyan McDuffie (then chairman of the Committee on the Judiciary & Public Safety of the District of Columbia Council). In response to the request of the District of Columbia Criminal Code Reform Commission, we provide the following preliminary comments on these materials provided for Advisory Group review:

RECOMMENDATIONS FOR CHAPTER 3 OF THE REVISED CRIMINAL CODE (DEFINITION OF A CRIMINAL ATTEMPT) First Draft of Report No. 7

- Section 22A-301(a): Definition of Attempt - COMMENTARY
  - Page 3: tenant → tenet
  - Pages 5 (text accompanying footnotes 8 and 9), 14-15, 37: Advisory Group should discuss further whether the DCCA sees a meaningful distinction between the "dangerous proximity" and "substantial step" tests, considering *Hailstock*

RECOMMENDATIONS FOR CHAPTER 8 OF THE REVISED CRIMINAL CODE
(PENALTY ENHANCEMENTS)
First Draft of Report No. 6

- Section 22A-805: Limitations on Penalty Enhancements - COMMENTARY

    - Page 4: USAO-DC agrees that subsections (b) and (c) "codify procedural requirements for penalty enhancements . . . required in *Apprendi* . . . and subsequent case law."

- Section 22A-807: Hate Crime Penalty Enhancement (at page 17)

    - Section title: Labeling it a "hate" crime is a change from current law, which refers to this as a "bias-related crime."

    - (c) Definitions: (iii)-(v) should be subheadings within (ii)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: November 3, 2017

SUBJECT: First Draft of Report #8, Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #8, Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions. OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

RCC § 22A-2001. Property Offense Definitions

RCC § 22A-2001 defines "coercion", "consent", "deceive", and "effective consent." Those definitions are then used throughout the offenses contained in the first drafts of Reports number 9, 10, and 11. When reviewing some of the offenses that use one or more of these terms it is unclear what the penalty would be for a person who meets all of the other elements of the offense except that the "victim" turns out to be law enforcement involved in a sting operation. As written it would appear that the person would only be guilty of an attempt. Assuming, that the Commission will recommend that, in general, the penalty for an attempt will be lower than the penalty for a completed offense, we believe that that penalty is insufficient in this context. Take

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

the offense of Financial Exploitation of a Vulnerable Adult or Elderly Person under RCC §22A-2208. The elements of that offense in Report #10 are:

(a) A person is guilty of financial exploitation of a vulnerable adult or elderly person if that person:

(1) Knowingly:

(A) Takes, obtains, transfers, or exercises control over;

(B) Property of another;

(C) With consent of the owner;

(D) Who is a vulnerable adult or elderly person;

(E) The consent being obtained by undue influence; and

(F) With intent to deprive that person of the property, or

(2) Commits theft, extortion, forgery, fraud, or identity theft knowing the victim to be a vulnerable adult or elderly person.[2]

Let's say that the police learn of a ring of criminals who prey on vulnerable adults. They set up a sting where the perpetrators believe that the police officer is a vulnerable adult. The perpetrators go through all of the acts to exercise undue influence[3], believe that they have excercised undue influence, and the police officer eventually gives them property. In this hypothetical, at the time that the perpetrator receives the property they "are practically certain that the police officer is a vulnerable adult and that they obtained his or her consent due to undo influence.[4] In this situation there is no reason why the perpetrators should not be subject to the same penalty as if they did the exact same things and obtained property from a person who was actually a vulnerable adult. To change the outcome, the Commission could change the definitions contained in RCC § 22A-2001 or have a general provision that states that in sting operations the person has committed the offense if the facts were as they believed it to be.

§ 22A-2003, Limitation on Convictions for Multiple Related Property Offenses.

Section 22A-2003 establishes a procedure whereby the trial court will only enter judgment of conviction on the most serious of certain specified property offenses that arise out of the same act or course of conduct. Should the Court of Appeals reverse the conviction it directs the trial court to resentence the defendant on the next most serious offense. Should the person have been found guilty at trial for multiple offenses that would merge under this standard, there could be successive appeals and resentencings.[5] Such a procedure would lead to increased litigation and

[2] See page 50 of First Draft of Report #10 – Recommendations for Fraud and Stolen Property Offenses.

[3] Undue influence is defined as "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."

[4] See the definition of "knowingly" in § 22A-205, Culpable Mental State Definitions.

[5] The charges that merge under RCC § 22A-2003 (a) are theft, fraud, extortion, stolen property, and other property damage offenses (including any combination of offenses contained in

costs and an increase in the amount of time before a conviction can be finalized. Rather than create such a system, OAG recommends that the RCC instead adopt a procedure which has already been accepted by the Court of Appeals for barring multiple convictions for overlapping offenses.

Section 22A-2003 (c) states, "Where subsections (a) or (b) prohibit judgments of conviction for more than one of two or more offenses based on the same act or course of conduct, the court shall enter a judgment of conviction for the offense, or grade of an offense, with the most severe penalty; provided that, where two or more offenses subject to subsection (a) or (b) have the most severe penalty, the court may impose a judgment of conviction for any one of those offenses." The Commentary, at page 52, states:

> The RCC limitation on multiple convictions statute does not raise double jeopardy issues or create significant administrative inefficiency… jeopardy does not attach to a conviction vacated under subsection (c), and the RCC statute does not bar subsequent entry of a judgment of conviction for an offense that was previously vacated under subsection (c)… A conviction vacated pursuant to subsection (c) of the RCC statute may be re-instated at that time with minimal administrative inefficiency. Sentencing for a reinstated charge may entail some additional court time as compared to concurrent sentencing on multiple overlapping charges at the close of a case. However, any loss to procedural inefficiency appears to be outweighed by the benefits of improving penalty proportionality and reducing unnecessary collateral consequences convictions concerning substantially overlapping offenses. [emphasis added]

Notwithstanding the Commentary's assertion that multiple appeals and resentencings would have minimal administrative inefficiency and take some additional court time, such a procedure would lead to increased court inefficiencies and increased litigation costs and times.[6] For example, a person could be found guilty of three property offenses that would merge under the provisions proposed by the RCC. At sentencing the judge would sentence the person only to the offense with the most severe penalty. The defendant's attorney would then file an appeal based solely on the issues that pertain to that count, write a brief, and argue the appeal. The prosecutors would have to respond in kind. After some amount of time, perhaps years, should the Court of Appeals

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Chapters 21, 22, 23, 24, or 25 of the RCC for which the defendant satisfies the requirements for liability). The charges that merge under RCC § 22A-2003 (b) are Trespass and Burglary (and any combination of offenses contained in Chapters 26 and 27 of the RCC for which the defendant satisfies the requirements for liability.)

[6] It should be noted that the increase in litigation expenses would not only be born by the prosecution entities and by some defendants, but by the court who, under the Criminal Justice Act, must pay for court appointed attorneys to brief and argue multiple appeals and appear at multiple sentencings.

agree with the defense position on that one count, the count would be reversed and the case would be sent back to the trial court for resentencing. The process would then repeat itself with an appeal on the count with the next most severe penalty. Should the defense win again, the process would repeat again. It is more efficient to have all the issues in a case briefed and argued once before the Court of Appeals and have the judgment finalized at the earliest time.

In *Garris v. United States*, 491 A.2d 511, 514-515 (D.C. 1985), the D.C. Court of Appeals noted with approval the following practice where two or more counts merge. It suggested that the trial court can permit convictions on both counts, allowing the Court of Appeals to determine if there was an error that affected one count but not the other. *Id.* ("No legitimate interest of the defendant is served by requiring a trial court to guess which of multiple convictions will survive on appeal."). Then, if no error is found, this Court will remand the case to the trial court to vacate one conviction, and double jeopardy will be avoided. If error was found concerning one count but not the other, no double jeopardy problem will arise because only one conviction would stand. *Id.*

On a separate note, Section 22A-2003 (c) ends by saying "where two or more offenses subject to subsection (a) or (b) have the most severe penalty, the court may impose a judgment of conviction for any one of those offenses." The Commentary does not explain, however, what standards the judge should use in choosing which offense should be retained and which offense should be vacated. As the penalty is the same, the defendant has reduced interest in which offense remains and which is vacated. Given the broad authority that the prosecutor has in choosing what, if any, offenses to charge and to negotiate a plea offer that meets the state's objectives, after a sentence has been imposed, it should be the prosecutor that decides which sentences should be retained and which should be vacated.

To accomplish the more efficient procedure proposed in *Garris* and to address how the determination should be made concerning which conviction should stand and which should be vacated, OAG proposes that the following language be substituted for RCC § 22A-2003:

(a) *Theft, Fraud, Extortion, Stolen Property, or Property Damage Offenses.* A person may initially be found guilty of any combination of offenses contained in Chapters 21, 22, 23, 24, or 25 for which he or she satisfies the requirements for liability; however, pursuant to paragraph (c), following an appeal, or if no appeal following the time for filing an appeal, the court shall retain the conviction for the offense, or grade of an offense, with the most severe penalty and vacate any other offense within these chapters which is based on the same act or course of conduct.

(b) *Trespass and Burglary Offenses.* A person may initially be found guilty of any combination of offenses contained in Chapters 26 and 27 for which he or she satisfies the requirements for liability; however, pursuant to paragraph (c), following an appeal, or if no appeal following the time for filing an appeal, the court shall retain the conviction for

the offense, or grade of an offense, with the most severe penalty and vacate any other offense within these chapters which is based on the same act or course of conduct.

(c) *Judgment to be Finalized after Appeal or Appeal Time has Run.* Following a remand from the Court of Appeals, or the time for filing an appeal has run, the court shall, in addition to vacating any convictions as directed by the Court of Appeals, retain the conviction for the offense, or grade of an offense, with the most severe penalty within subsection (a) or (b) and vacate any other offense within these chapters which are based on the same act or course of conduct. Where two or more offenses subject to subsection (a) or (b) have the same most severe penalty, the court shall impose a judgment of conviction for the offense designated by the prosecutor.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: November 3, 2017

SUBJECT: First Draft of Report #9, Recommendations for Theft and Damage to Property Offenses[1]

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #9, Recommendations for Theft and Damage to Property Offenses. OAG reviewed this document and makes the recommendations noted below.[2]

[1] In OAG's memo on the First Draft of Report #8, Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions, we argued against the proposal for successive appeals and resentencings proposed in § 22A-2003, Limitation on Convictions for Multiple Related Property Offenses. We proposed a system based upon *Garris v. United States*, 491 A.2d 511, 514-515 (D.C. 1985) were there would be a single appeal and then a remand where the court would retain the sentence for the offense with the most severe penalty and then dismiss specified offenses that arose out of the same act or course of conduct. If that proposal were adopted, conforming amendments would have to be made to the provisions in this Report. For example, RCC § 22A-2103, (e) pertaining to Multiple Convictions for Unauthorized Use of a Rented or Leased Motor Vehicle or Carjacking would have to reflect the new procedure.

[2] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

COMMENTS ON THE DRAFT REPORT

§ 22A-2103, Unauthorized Use of a Motor Vehicle

Section 22A-2103 (a) establishes that a person commits this offense if he or she knowingly operates or rides as a passenger in a motor vehicle without the effective consent of the owner. Paragraph (c) states that only the operator of the motor vehicle is guilty of First Degree Unauthorized Use of a Motor Vehicle. A person who is a passenger in a vehicle he or she knows is being operated without effective consent is only guilty of second degree Unauthorized Use of a Motor Vehicle. This is a change from current law. As the commentary notes:

> … The current UUV statute is limited to a single grade, and it is unclear whether it reaches use as a passenger. However, liability for UUV as a passenger has been upheld in case law. In the revised UUV offense, liability for a passenger is explicitly adopted as a lesser grade of the offense. Codifying UUV case law for a passenger in the RCC does not change District case law establishing that mere presence in the vehicle is insufficient to prove knowledge, such as *In re Davis* and *Stevens v. United States*. Nor does codification of UUV for a passenger change the requirement in existing case law that a passenger is not liable if he or she does not have a reasonable opportunity to exit the vehicle upon gaining knowledge that its operation is unauthorized." [internal footnotes removed]

There are at least two reasons why the current single penalty scheme should be retained. First, a person who can be charged as a passenger in a UUV is necessarily an aider and abettor to its illegal operation and, therefore, faces the same penalty as the operator.[3] In fact, driving passengers in the stolen car is frequently the reason why the operator is using the vehicle in the first place. Second, stolen cars are frequently passed from driver to driver. A person who is a driver one moment may be a passenger the next and the passenger in a UUV may soon become the driver. The penalty for unlawful use of a motor vehicle should not be dependent on the luck of when the stolen car is stopped by the police.

§ 22A-2104. Shoplifting

The shoplifting proposal contains a qualified immunity provision. One of the requirements to qualify for the immunity under § 22A-2104(e)(1) is that "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…" [emphasis added]

[3] See Redbook Instruction 3.200 AIDING AND ABETTING which states "To find that a defendant aided and abetted in committing a crime, you must find that the defendant knowingly associated himself/herself with the commission of the crime, that s/he participated in the crime as something s/he wished to bring about, and that s/he intended by his/her actions to make it succeed."

However, stores frequently rely on surveillance and other technology to identify would be shoplifters and so, not all persons who are validly stopped for shoplifting committed the offense "in that person's presence." For example, stores frequently rely on video technology to observe people in the store. A security officer may be in a room on a different floor observing someone hide merchandise or exchange price tags. Without a definition of "committed in the in the person's presence" that includes the use of surveillance technology, store personnel would not have qualified immunity for stopping a person based on watching them commit the offense through a surveillance system.

Another, common anti-theft feature that stores rely on to reduce shoplifting is the use of Radio frequency (RF and RFID) tags. When someone goes through the store's doorway without paying for something, the radio waves from the transmitter (hidden in on one of the door gates) are picked up by something hidden in a label or attached to the merchandise. This generates a tiny electrical current that makes the label or attachment transmit a new radio signal of its own at a very specific frequency. This in turn sets off an alarm. People who set off the alarm are justifiably stopped to see if they have merchandise that was not paid for even though the offense, arguably, did not occur in the store employee's presence (or at least the store employee did not actually notice the merchandise being hidden. If the person, in fact, has such merchandise, and are held for the police, the store personnel should still qualify for immunity. The gravamen for having qualified immunity should not be whether the offense occurred in the store employee's presence, but whether the store employee's stop was reasonable. The Commission should either remove the requirement that the offense occur "in that person's presence" or it should define that term to include situations where the shoplifter is identified because of some technology, wherever the store employee is actually located.

RCC § 22A-2504. Criminal Graffiti

(a) RCC § 22A-2504 (a) states that "A person commits the offense of criminal graffiti if that person:
    (1) knowingly places;
    (2) Any inscription, writing, drawing, marking, or design;
    (3) On property of another;
    (4) That is visible from a public right-of-way;
    (5) Without the effective consent of the owner."

There is no reason why this offense needs to have the element that the graffiti "…is visible from a public right-of-way…" A person who paints a marking on the back of a person's house (that is not visible from a public right-of-way) has caused just as much damage to the house as if he painted something on the front of the house. In addition, to the extent that Criminal Graffiti may

be considered as a plea option for an offense that has a greater penalty, its availability should not be contingent on whether the marking is visible from a public right-of-way. In fact, it is counter-intuitive that if more people can see the marking Criminal Graffiti could be used as a plea down offense, but if fewer people can see it, because of its location, that the defendant would only be exposed to an offense with a greater penalty.

Paragraph (e) provides for parental liability when a minor commits criminal graffiti. It states, "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." While OAG appreciates that the Commission would want to include a provision that establishes parental responsibility, we request that paragraph (e) be stricken. We do this for two reasons. First, D.C. Code § 16-2320.01 authorizes the court to enter a judgment of restitution in any case in which the court finds a child has committed a delinquent act and it also provides that the court may order the parent or guardian of a child, a child, or both to make such restitution. The inclusion of RCC § 22A-2504 (e) is, therefore, unnecessary and could cause litigation concerning whether it trumps D.C. Code § 16-2320.01 or merely provides for a separate means to make parents and guardians liable for their children's behavior. In addition, there are no fine provisions contained in the juvenile disposition (sentencing) statute and, so, the court would never be in a position to require parents and guardians to be responsible for its payment. See D.C. Code § 16-2320.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: November 3, 2017

SUBJECT: First Draft of Report #10, Recommendations for Fraud and Stolen Property Offenses

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the Commission's First Draft of Report #10, Recommendations for Fraud and Stolen Property Offenses. OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

RCC § 22A-2201. Fraud.

Section 22A-2201 (a) establishes the offense of Fraud. It states:

Offense. A person commits the offense of fraud if that person:
(1) Knowingly takes, obtains, transfers, or exercises control over;
(2) The property of another;
(3) With the consent of the owner;
(4) The consent being obtained by deception; and
(5) With intent to deprive that person of the property.

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

In the Commentary, on page 5, it discusses what is meant by "Knowingly takes, obtains, transfers, or exercises control over…" It states, "For instance, the revised statute would reach conduct that causes the transfer of the victim's property (and otherwise satisfies the elements of the offense), whether or not the transfer is to the defendant or received by the defendant. The breadth of the new language in practice may cover all or nearly all fact patterns covered under the prior "causes another to lose" language." While we agree that the statute should reach this behavior, we suggest slightly modifying the statutory language to ensure that it is clear that it does. Section 22A-2201 (a)(1) actually states, that a person commits the offense when he or she "Knowingly … transfers…" the property. Before a person can transfer something, they must possess it in some way, which is not the case presented in the hypothetical. To ensure that the activity stated there is covered by the statute, it should actually say "causes the transfer." Then it is clear that a person is guilty of fraud "whether or not the transfer is to the defendant or received by the defendant."

RCC § 22A-2205. Identity Theft.

RCC § 22A-2205 criminalizes identity theft. We suggest that two additional situations be added to paragraph (a)(4) to cover situations where a person's identity was used to harm that person and where a person uses another's identifying information to falsely identify himself when being issued a ticket, a notice of infraction, during an arrest, to conceal his commission of a crime, or to avoid detection, apprehension, or prosecution for a crime. RCC § 22A-2205 states:

(a) A person commits the offense of identity theft if that person:
    (1) Knowingly creates, possesses, or uses;
    (2) Personal identifying information belonging to or pertaining to another person;
    (3) Without that other person's effective consent; and
    (4) With intent to use the personal identifying information to:
        (A) Obtain property of another by deception;
        (B) Avoid payment due for any property, fines, or fees by deception; or
        (C) Give, sell, transmit, or transfer the information to a third person to facilitate the use of the identifying information by that third person to obtain property by deception.

All the conditions outlined in RCC § 22A-2205 (a)(4) have to do with using somebody's identity to enrich the person committing identity theft or some third party. Unfortunately, people also use identity theft to embarrass someone or to get even with them for a perceived slight. For example, a person may setup a Facebook account, or other social media, using the identity of a person that they would like to hurt, "friend" their friends,

and then put up false or embarrassing posts and pictures.[2] While some stalking statutes might cover repeated behavior similar to what is presented here, a single use of someone's identity would not come under a stalking statute no matter how traumatizing the use of the victim's identity may be to the victim. The traumatic effects on the person whose identity was impersonated can be just as devastating to him or her as the financial loss that may occur under the statute as written. We, therefore, suggest that a paragraph (D) be added to RCC § 22A-2205 (a)(4) which states, "Harm the person whose identifying information was used."[3]

The other issue with RCC § 22A-2205 is that it narrows the scope of the current law. As noted in the Commentary, on page 39, "the revised statute eliminates reference to use of another person's identifying information to falsely identify himself at an arrest, to facilitate or conceal his commission of a crime, or to avoid detection, apprehension, or prosecution for a crime—conduct included in the current identity theft statute.[4] Most such conduct already is criminalized under other offenses, including the obstructing justice,[5] false or fictitious reports to Metropolitan Police,[6] and false statements.[7] All such conduct is criminalized under other offenses in the RCC, including the revised obstructing justice[8] and revised false statements offenses." Contrary to the assertion made in the quoted text, giving out false identifying information belonging to or pertaining to another person to identify himself at an arrest, to facilitate or conceal his commission of a crime, or to avoid detection, apprehension or prosecution for a crime is not criminalized elsewhere in the Code. OAG takes no position on whether RCC § 22A-

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[2] The practice is so common that there are numerous websites that explain what a person can attempt to do to report an account for impersonation. See for example, https://www.facebook.com/help/167722253287296

[3] If the Commission accepts this suggestion, then an amendment would have to be made to paragraph (c), gradations and penalties, to establish what penalty, or penalties, this non-value based offense would have. This would could be handled similarly to how the Commission ranked a motor vehicle as a Second Degree Theft, in RCC § 22A-2101 without it having a stated monetary value.

[4] D.C. Code § 22-3227.02(3). Notably, while the current identity theft statute purports to criminalize use of another's personal identifying information without consent to identify himself at arrest, conceal a crime, etc., current D.C. Code § 22-3227.03(b) only provides a penalty for such conduct in the limited circumstance where it results in a false accusation or arrest of another person. [This footnote and the following three are footnotes to the quoted text.]

[5] D.C. Code § 22-722(6).

[6] D.C. Code § 5-117.05.

[7] D.C. Code § 22-2405. Further, supporting treating this offense as more akin to false statements is the fact that under current law penalty for 22-3227.02(3) versions of identity theft is just 180 days.

[8] RCC § 22A-XXXX.

2205 should be amended to add back the language that is currently in D.C. Code § 22-3227.02(3) or whether there should be a stand-alone offense that covers using personal identifying information belonging to or pertaining to another person, without that person's consent, to identify himself or herself at the time of he or she is given a ticket, a notice of infraction, is arrested; or to facilitate or conceal his or her commission of a crime; or to avoid detection, apprehension, or prosecution for a crime.[9] Note that under both the current law and OAG's suggestion the giving out of a fictitious name would not be an offense. The person has to give out the personal identifying information belonging to or pertaining to another person, without that person's consent. See D.C. Code § 22-3227.02(3).

RCC §22A-2208. Financial Exploitation of a Vulnerable Adult or Elderly Person

RCC §22A-2208 establishes an offense for the financial exploitation of a vulnerable adult or elderly person. The Commentary, on page 52, correctly notes that D.C. Code § 22-933.01. "…provides an affirmative defense if the defendant "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." Further, the statute states that "[t]his defense shall be established by a preponderance of the evidence." [internal citations omitted]. RCC §22A-2208 would change current law and would instead require the government to prove the mental state of "knowingly" about the element that the victim was a vulnerable adult or elderly person and would remove the self-defense provision. If passed, the government would frequently not be able to meet its burden. How could the government prove the mental state of "knowingly" to the element that the person was 65 years old or that a given individual met the definition of a vulnerable adult[10] when all the defendant would have to do is put on something to show that he or she thought the person was 64 years old or had limitations that impaired the person's ability but that those limitations were not "substantial"? (Note that "substantial" is not a defined term.)

The current statute correctly establishes the burdens. It requires that government prove that the victim was, in fact, a vulnerable adult or elderly person and it provides an

[9] OAG's suggested language slightly expands the current law. While under current law it is illegal for a person to give someone else's name out at time of arrest, under OAG's proposal it would also prohibit the giving of such false information when the person is given a ticket or a notice of infraction. These two additional situations may also trigger state action against an innocent person and should likewise be made criminal.

[10] RCC § 22A-2001 (25) states that a 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."

affirmative defensive, established by a preponderance of the evidence, that would allow the person to prove that he reasonably believed the victim was not a vulnerable adult of elderly person. All of the evidence concerning the person's belief are peculiarly within that persons' possession.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: November 3, 2017

SUBJECT: First Draft of Report #11, Recommendations for Extortion, Trespass, and Burglary Offenses

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the First Draft of Report #11, Recommendations for Extortion, Trespass, and Burglary Offenses. OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT[2]

RCC § 22A-2603. Criminal Obstruction of a Public Way[3]

The offense of Criminal Obstruction of a Public Way would replace D.C. Code § 22-1307(a), crowding, obstructing, or incommoding. It omits clarifying language that was added in the

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.
[2] The Extortion statute, RCC § 22A-2301, is limited to obtaining property by coercion. We assume that the Commission is planning to draft a separate provision that criminalizes forcing a person to commit an act or refrain from committing an act by coercion, so we did not recommend changes to that proposal.
[3] To the extent that the comments and recommendations to this provision apply to RCC § 22A-2605, Unlawful Obstruction of a Bridge to the Commonwealth of Virginia, they should be considered as comments and recommendations to that provision.

Disorderly Conduct Amendment Act of 2010 (the Act). Although prior to 2010, D.C. Code § 22-1307(a) did not state a minimum number of people who had to obstruct the public way, the Court of Appeals read the common law requirement that three or more persons must act in concert for an unlawful purpose before anyone could be convicted of this offense.[4] To address this Court interpretation and to make it clear that a single person or two could arrange their bodies in such a way that they could obstruct a public way, the Act added that it was unlawful for a person to act alone or in concert with others. We, therefore, recommend that this language be added back into the lead in language contained in paragraph (a).

In addition, the current law makes it unlawful for a person to "crowd, obstruct, or incommode" the public way.[5] The proposal would limit the reach of the law to people who "render impassable without unreasonable hazard."[6] Under this formulation, it arguably would not be a crime for two people to lie down and block two lanes of a highway if police were on the scene directing traffic around them to avoid them being run over. Because of the police presence, despite the affect on traffic the two people may not be considered causing an unreasonable hazard. This despite the ensuing traffic jam and inconvenience to drivers, commuters, and pedestrians. To address this situation, and others, RCC § 22A-2603 (a) should be redrafted to state "obstruct or inconvenience. [proposed addition underlined].[7]

Finally, D.C. Code § 22-1307(a) makes it illegal to obstruct "The passage through or within any park or reservation."[8] The Commentary does not explain why RCC § 22A-2603 omits these areas. Absent a strong reason why it should be permissible to obstruct one of these areas, we suggest that they be retained in the law. To accomplish this, RCC § 22A-2603(a)(2) should be redrafted to say, "A park, reservation, public street, public sidewalk, or other public way."

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[4] For example, see *Odum v. District of Columbia*, 565 A.2d 302 (D.C. 1989).

[5] D.C. Code § 22-1307 **(a)** states:

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.

[6] See the definition of "obstruct" in RCC § 22A-2603 (b).

[7] The current law makes it a crime to inconvenience people and so adding this language would not expand the scope of the current law. To express this concept, D.C. Code § 22-1307(a) uses the word "incommode" which means "to inconvenience."

[8] See D.C. Code § 22-1307(a)(1)(D).

RCC § 22A-2604. Unlawful Demonstration

Paragraph (b) defines demonstration as including "any assembly, rally, parade, march, picket line, or other similar gathering by one or more persons conducted for the purpose of expressing a political, social, or religious view." D.C. § 22-1307(b)(2) describes a demonstration as "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." We believe that the current definition of a demonstration better describes the behavior that this provision is trying to reach. As the Commentary states that there is no intention to change the scope of the law on this point, we believe that RCC § 22A-2604 should be redrafted to include the current definition.

RCC § 22A-2701. Burglary

We have two suggested amendments to RCC § 22A-2701.[9] First, we agree with the basic formulation that "A person is guilty of first degree burglary if that person commits burglary, knowing the location is a dwelling and, in fact, a person who is not a participant in the crime is present in the dwelling…" However, the law should be clear that should the person enter the dwelling simultaneously with the victim or proceeds the victim by a couple of steps that those occurrences should also constitute first degree burglary. For example, it should not matter whether a person with gun forces someone to walk just a head of them into a dwelling to rape them or whether the person walks backwards with the gun on the victim into a dwelling intending on raping them; either way the statute should be clear that the person is guilty of burglary. The same should amendment should be made to second degree burglary.

Second, we suggest that the gradations and penalty section makes it clear that where a watercraft is used as a dwelling (e.g. houseboat), a person who commits the offense in paragraph (a) when a person is in the watercraft/dwelling is guilty of First Degree Burglary.

RCC § 22A-2702. Possession of Burglary and Theft Tools

Paragraph (a) states:

(a) Offense. A person commits the offense of possession of burglary and theft tools if that person:
(1) Knowingly possesses;
(2) A tool, or tools, created or specifically adapted for picking locks, cutting chains, bypassing an electronic security system, or bypassing a locked door;
(3) With intent to use the tool or tools to commit a crime.

As people are just as likely to commit a burglary by going through a window as a locked door, we suggest that RCC § 22A-2702(a)(2) be expanded to include tools created or specifically adapted for cutting glass.

[9] See RCC § 22A-2701(c)(1).

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia
CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	November 3, 2017
Re:	Comments on First Drafts of Reports 8 through 11, Property Offenses

The Public Defender Service makes the following comments.

Report #8: Recommendations for Property Offense Definitions, Aggregation, and Multiple Convictions

1. Coercion.[1]

PDS makes two recommendations regarding the commentary explaining the meaning of "coercion." First, PDS recommends the modifying the explanation of sub-definition (H) of the definition at page 10 to read as follows:

> Subsection (H) covers threats to inflict wrongful economic injury on another person. It is intended to include not only causing wrongful financial losses but also situations such as threatening labor strikes or consumer boycotts when ~~. While labor activities are not inherently problematic, when~~ threats of labor or consumer activity are issued to order to personally enrich a person, and not to benefit the workers as a whole~~, such threats may constitute a criminal offense~~.

As currently written, the second sentence implies that simply threatening a labor strike or a consumer boycott may be "coercion." The rest of the paragraph, however, seems to say that such threat is only coercion if it is done for the personal enrichment of a person, rather than for the benefit of a group. The paragraph should be modified such that it is clear that a mere threat of a labor strike, without more, does not meet the definition of "coercion."

Second, PDS recommends rewriting the explanation for (J), the residual sub-definition of coercion. The residual sub-definition states that "'coercion' means causing another person to fear

[1] RCC § 22A-2001(5).

that, unless that person engages in particular conduct then another person will … perform any other act that is calculated to cause *material harm* to another person's health, safety, business, career, reputation, or personal relationships."[2] Currently, the explanation, at page 10 of Report #8, states that the conduct of threatening to lower a student's grade would fall within the provision, implying that any threat to lower any grade would necessarily constitute "material harm." PDS strongly disagrees. PDS agrees with the suggestion made during the November 1, 2017 public meeting of the Advisory Group to explain this residual sub-definition with an example that is clearly a threat of material harm, falling within the sub-definition, and an example that equally clearly is a threat of de minimis harm, falling outside the sub-definition.

2. Deceive and deception.[3]

The definition of "deceive" has unequal sub-definitions. Sub-definitions (A), (B), and (C) each have a "materiality" requirement as well as additional negative conduct. Sub-definitions (A) and (C) require a "false impression" and sub-definition (B) requires a person act to prevent another. Sub-definition (D), in contrast, makes it "deception" merely to fail to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property. Thus, it would be "deception" for a person to disclose an adverse claim to someone whom the person knows already has knowledge of the adverse claim. As was discussed at the November 2, 2017 public meeting of the Advisory Group, this sub-definition is most likely to be used when "deceive" is used in Fraud, RCC § 22A-2201, and perhaps also when used in Forgery, RCC § 22A-2205. PDS requests that the explanations for those offenses in Report #9 and the explanation of this sub-definition in Report #8, state that the deception must be causally connected to the consent. Thus to be convicted of Fraud, the person must not merely have obtained the owner's consent and failed to disclose a known lien or adverse claim, the person must have, knowingly, obtained the owner's consent ***because*** the person failed to disclose a known lien or adverse claim, etc.

3. Dwelling. [4]

PDS strongly recommends rewriting the definition of "dwelling" to read:

> "Dwelling" means a structure, or part of a structure, that is ~~either designed for lodging or residing overnight, or that is~~ used for lodging or residing ~~overnight~~. In multi-unit buildings, such as apartments or hotels, each residential or lodging unit is an individual dwelling.

The most significant problem with the Report #8 proposed definition is that by including structures that are "designed" for residing or lodging it is vague and if strictly applied, too broad. Across the original City of Washington, particularly in the Capitol Hill and Foggy Bottom neighborhoods, and in Georgetown, there are numerous structures that were "designed" as residences or lodgings, and were even used that way for years, that have since been converted solely for office or business use. The rooms inside some of these structures may not have even

[2] Report #8 at page 3 (emphasis added).

[3] RCC § 22A-2001(8).

[4] RCC §22A-2001(10).

changed. The kitchen and bathrooms may remain the same but the living and bedroom areas are now full of desks, bookshelves and computers.[5] To avoid the possibility that a converted house will be defined as a "dwelling" because of its original "design" and to avoid the courts defining which "design" is dispositive, the original or the redesigned interior, the definition of "dwelling" should be rewritten so that the actual use of the structure is dispositive.

Rewriting the definition to exclude "design" solves another problem. PDS does not disagree with categorizing as a "dwelling" "a car if a person is using the car as the person's primary residence." PDS does disagree, however, with categorizing as a "dwelling" a camper that is "designed" for residing or lodging but that is parked in front of a person's primary residence and used more often as a family vehicle than for camping.[6] It would be disproportionate, a result the reformed code should avoid, to treat a camper differently from a car merely because of "design."

The reason "dwelling" is distinguished from other structures in the RCC should inform the definition. The term is used in RCC arson, reckless burning, trespass, and burglary. In each, the term is used in a gradation with a higher punishment. PDS posits that this distinction is justified because "dwellings" are places where people expect privacy, where people can lock the door and feel it is safe to rest and safe to keep their possessions, where they can control who enters and who must leave. The Report #8 defines "dwelling" as a place "used for residing and lodging overnight". "Residing" and "lodging" are easy to understand terms; neither needs further modification.[7] The use of the word "overnight" is confusing. Is it to convey that even a single night could make a structure a "dwelling?" Is it meant to imply that sleep, which most people do at night, is a strong factor to consider when determining if a structure is for residing or lodging? Is it meant to exclude structures where sleeping might take place during the daytime? If someone consistently works a night shift and always sleeps in his rented room during the day, is that room not a "lodging" and therefore not a "dwelling"?

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[5] Importantly, the proposed "dwelling" definition does not allow for the reverse problem. There are also many buildings in D.C. that were originally designed for commercial or public use, such as warehouses or schools, that have since been converted to "loft" residences or condominiums, though the façade and even some internal design elements of the original building have not been changed. See for example, The Hecht Co. Warehouse, http://www.hechtwarehouse.com/. Because the Report #8 definition includes structures "used" as residences or for lodging, that the structures were "designed" for commercial use is not disqualifying. (Shockingly, see also the Liberty Crest Apartments, located on the grounds of Lorton Reformatory and their tasteless and insensitive retention of some original design elements. https://libertycrestapartments.com/).

[6] From this writer's childhood, see, the VW camper, https://en.wikipedia.org/wiki/Volkswagen_Westfalia_Camper, which the writer regularly drove in high school and college. See also, the RoadTrek, which was also parked regularly in front of a primary residence and was a family car far more often than a camping "residence." http://www.roadtrek.com/

[7] "Reside" means to settle oneself or a think in a place; to dwell permanently or continuously: have a settled abode for a time; "lodging" means a place to live, a place in which to settle or come to rest, a sleeping accommodation, a temporary place to stay. See Webster's Third New International Dictionary.

While sleeping in a place is a strong indication that the place is a "dwelling," it should not be dispositive. PDS objects to the term "dwelling" including, as Report #8 says it would, "a room in a hospital where surgeons or resident doctors might sleep between lengthy shifts." Other than the fact that people sleep there, there is nothing else about such a room that makes it a "dwelling." The people intended to sleep there do not control who else has access to the room; presumably, anyone hired by the hospital into certain positions and given certain security badges can enter the room. Such a room would not be distinguishable from a daycare center, where the infants and toddlers might sleep during their long "shifts," or from the pre-kindergarten rooms in the elementary school where those children might be expected to sleep during naptime every day. A person who enters the daycare room or the pre-k classroom with the intent to steal a computer therein has burgled a building, not a dwelling.

Finally, the definition and the explanation should make clear that in a multi-unit building, each residential or lodging unit is a separate dwelling but that also necessarily means that areas of the building that are not used for residing or lodging are not dwellings. The vestibule of the apartment building, the lounge in the college dorm, and the "party room" and the fitness room in the condominium building are not "dwellings."

4. Financial Injury. [8]

The "legal fees" sub-definition of "financial injury" is a significant and unwarranted expansion of the current law. [9] The Report #8 proposed definition's separate listing of "legal fees" is supposed to be "clarificatory" and "not intended to substantively change current District law." (See page 28.) However, the definition to which it "generally corresponds,"[10] D.C. Code § 22-3227.01, links "attorney fees" to the cost of clearing a person's credit rating, to expenses related to a civil or administrative proceeding to satisfy a debt or contest a lien, etc. Unmooring "legal fees" from those categories of losses, expands what fees could be considered part of "financial injury." For example, if the allegedly financially injured person is a witness at the criminal trial but hires an attorney because of a 5th Amendment issue that could arise tangentially, adding in the cost of that attorney could be considered "legal fees" under the Report #8 definition but definitely would not be considered "attorney fees" pursuant to D.C. Code § 22-3227.01. PDS recommends rewriting the definition to read as follows:

> "Financial injury" means all monetary costs, debts ….including, but not limited to:
>
> (A) The costs of clearing the person's credit rating, …;
>
> (B) The expenses…;
>
> (C) The costs of repairing…;
>
> (D) Lost time or wages …; and

[8] RCC §22A-2001(14).

[9] No doubt as a result of auto-formatting, the "legal fees" sub-definition of financial injury" is labeled as (J). All of the sub-definitions are mislabeled as (F) through (J). Correct formatting would label them (A) through (E), with (E) being "legal fees."

[10] Report #8 at page 28.

(E) Legal fees incurred for representation or assistance related to (A) through (D).

5. Motor vehicle. [11]

The term "motor vehicle" should more clearly exclude modes of transportation that can be propelled by human effort. A "moped" can be propelled by a small engine but it can also be pedaled, meaning it can operate simply as a bicycle. It should not qualify as a "motor vehicle." Also, the definition should be clear that it is a "truck tractor" that is a "motor vehicle;" a semitrailer or trailer, if detached from the truck tractor, is not a motor vehicle. The definition should be rewritten as follows:

> "Motor vehicle" means any automobile, all-terrain vehicle, self-propelled mobile home, motorcycle, ~~moped,~~ scooter, truck, ~~truck tractor,~~ truck tractor with or without a semitrailer or trailer, bus, or other vehicle solely propelled by an internal combustion engine or electricity or both, including any such ~~non-operational~~ vehicle temporarily non-operational that is being restored or repaired.

6. Services. [12]

The definition of "services" should be rewritten as follows to except fare evasion:

> "Services" includes, but is not limited to:
> (A) Labor, whether professional or nonprofessional
> (B) …
> (C) ~~Transportation, telecommunications,~~ Telecommunications, energy, water, sanitation, or other public utility services, whether provided by a private or governmental entity;
> (D) Transportation, except transportation in vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority or other governmental entity;
> (E) The supplying of food ….

As "services" is defined in Report #8, fare evasion could be prosecuted as theft or, potentially as fraud, both of which would be prosecuted by the U.S. Attorney's Office. There is a separate fare evasion offense in the D.C. Code, at D.C. Code §35-216. It is prosecuted by the Office of the Attorney General for D.C.[13] and because it is, it may be resolved through the post-and-forfeit

[11] RCC § 22A-2001(15).

[12] RCC § 22A-2001(22).

[13] D.C. Code § 35-253.

process.[14] Offenses prosecuted by the USAO, including theft and fraud, are categorically not eligible for resolution through post-and-forfeit.

The PDS recommendation to modify the definition of "services" would still provide for a "U.S. offense," theft, or even possibly fraud, but would make exclusively a D.C. offense that of fare evasion on a WMATA vehicle or other public transportation.

If fare evasion is criminalized as theft, it would exacerbate the consequences of the enforcement of what is really a crime of poverty. It will subject more people to the arrest, detention, criminal record and other consequences of contact with the criminal justice system as a result of failing to pay a fare that ranges from $2 to $6.

PDS supports Bill 22-0408, currently pending before the D.C. Council, to decriminalize fare evasion (D.C. Code §35-216). Even if that effort is unsuccessful, however, the Revised Criminal Code should exclude the conduct of fare evasion on WMATA or public transportation, allowing for exclusive local enforcement.

7. Limitation on Convictions for Multiple Related Property Offenses.

PDS strongly supports proposed RCC § 22A-2003, Limitation on Convictions for Multiple Related Property Offenses. The proposal represents a more thoughtful, comprehensive approach with predictable results than having to resort to the "Blockburger test" or the scattershot inclusion of offenses at D.C. Code § 22-3203. However, the grouping of theft, fraud and stolen property offenses pursuant to subsection (a) as completely separate from the grouping of trespass and burglary offenses pursuant to subsection (b) leaves one notable gap. Though likely not strictly a lesser included offense, a person necessarily commits the offense of trespass of a motor vehicle[15] every time he or she commits the offense of unauthorized use of a vehicle.[16] A person cannot knowingly operate or ride in as a passenger a motor vehicle without the effective consent of the owner without having first knowingly entered and remained in a motor vehicle without the effective consent of the owner. It may also be the case that a person necessarily commits the offense of trespass of a motor vehicle when he or she commits the offense of unauthorized use of property and the property is a motor vehicle.[17] However, because UUV and UUP are in Chapter 21 and TMV is in Chapter 26, RCC § 22A-2003 provides no limitation on convictions for these

[14] D.C. Code § 5-335.01(c). "The post-and-forfeit procedure may be offered by a releasing official to arrestees who: (1) meet the eligibility criteria established by the OAG; and (2) are charged with a misdemeanor that the OAG, in consultation with the MPD, has determined is eligible to be resolved by the post-and-forfeit procedure." Fare evasion may not have been determined eligible for resolution by the post-and-forfeit procedure and an individual arrested for it may not meet other eligibility criteria; however, because it is an OAG misdemeanor, it is an offense that the OAG could determine, in consultation with MPD, to be eligible for post-and-forfeit resolution. In contrast, no offense prosecuted by the USAO is eligible.

[15] RCC §22A-2602.

[16] RCC § 22A-2103.

[17] RCC § 22A-2102.

multiple *related* property offenses. PDS recommends amending RCC § 22A-2003 to address this problem.

Report #9: Recommendations for Theft and Damage to Property Offenses

1. Theft.[18]

PDS recommends changes to the gradations of theft[19] to make penalties for theft of labor more fair and proportionate. "Labor" as a type of property should be valued as time and not as a monetary fair market value. As currently structured, "property" is defined to include "services," which is defined to include "labor, whether professional or nonprofessional." Theft of property, therefore, includes "theft of labor." "Value" means the fair market value *of the property* at the time and place of the offense.[20] The gradations for theft are keyed to different levels of "value." For example, it is third degree theft if the person commits theft and "the property, in fact, has a value of $250 or more." Presumably, if the "property" obtained without consent of the owner were the owner's labor, the fair market value of that labor would be calculated based on the wages or salary of the owner. This would mean that stealing, to use the colloquial term, 8 hours of labor from a professional who charges $325 per hour would result in a conviction of 2nd degree theft. Second degree theft requires the property have at least a value of $2,500 (or that property be, in fact, a motor vehicle). $325 x 8 = $2,600. In contrast, stealing 8 hours of labor from a worker in the District making minimum wage would result in a charge of 4th degree theft. Fourth degree theft requires the property have any value. As of July 1, 2017, the minimum wage in the District was $ 12.50 per hour.[21] $12.50 x 8 = $100. The Fair Shot Minimum Wage Amendment Act will increase the minimum wage every year until July 1, 2020 when the wage will be set at $15 per hour. A full day's work at that top minimum wage rate still will not pass the third-degree theft threshold of $250. $15 x 8 = $120. Stealing a full days' work at the top minimum wage rate is <u>two</u> gradations lower than stealing even the rustiest of clunkers. The professional robbed of 8 hours of labor is not 26 times more victimized than the minimum wage worker robbed of 8 hours of labor. (325 ÷ 12.50 = 26.) And the person convicted of stealing 8 hours from the professional should not be punished as if his crime was categorically worse than had he or she stolen from a low-wage worker. PDS proposes that when the property is labor, the gradation should be keyed to time, specifically to hours of labor, rather than to monetary value. Thus, PDS proposes rewriting the gradations for theft as follows:

Aggravated theft -
(1) the property, in fact, has a value of $250,000 or more; <u>or</u>
<u>(2) the property, in fact, is labor, and the amount of labor is 2080 hours[22] or more.</u>

[18] RCC § 22A-2101.

[19] RCC § 22A-2101(c).

[20] RCC § 22A-2001(24)(A).

[21] See D.C. Law 21-044, the Fair Shot Minimum Wage Amendment Act of 2016.

[22] 2080 hours is fifty-two 40-hour weeks, or one year of work.

1st degree -
(1) the property, in fact, has a value of $25,000 or more; or
(2) the property, in fact, is a motor vehicle and the value of the motor vehicle is $25,000 or more; or
(3) the property, in fact, is labor, and the amount of labor is 160 hours[23] or more

2nd degree -
(1) the property, in fact, has a value of $2,500 or more; or
(2) the property, in fact, is a motor vehicle; or
(3) the property, in fact, is labor, and the amount of labor is 40 hours[24] or more

3rd degree -
(1) the property, in fact, has a value of $250 or more; or
(2) the property, in fact, is labor and the amount of labor is 8 hours[25] or more.

4th degree -
(1) the property, in fact, has any value; or
(2) the property, in fact, is labor and is any amount of time.

PDS recommends this same penalty structure be used for fraud, RCC § 22A-2201(c), and extortion, RCC §22A-2301(c).

2. Unauthorized Use of a Motor Vehicle. [26]

PDS recommends amending unauthorized use of a motor vehicle to eliminate riding as a passenger in a motor vehicle from criminal liability. Being in a passenger in a car, even without the effective consent of the owner, should not be a crime. Where the passenger is aiding and abetting the driver, the passenger can be held liable. Where the passenger and the driver switch roles, and the government can prove that the passenger has also been a driver, liability would lie. But merely riding in a car should not result in criminal liability. Decriminalizing the passenger also eliminates the problem of having to determine when the passenger knew he or she lacked effective consent of the owner and whether, after that time, the passenger had an opportunity to leave the vehicle but failed to do so. If riding as a passenger were decriminalized, there would only be a single penalty grade for the offense.

[23] 160 hours is four 40-hour weeks, or one month of work.

[24] 40 hours is five 8-hour days, or one workweek.

[25] 8 hours is one workday.

[26] RCC § 22A-2103.

3. Shoplifting.[27]

PDS recommends two amendments to the offense of shoplifting. First, element (2) should be amended to read: "personal property that is or was displayed, held, stored, or offered for sale." This change would take care of the problem of property that is still in "reasonably close proximity to the customer area"[28] but that is not presently for sale. For example, a person shoplifts[29] a seasonal item, such as a snow shovel or beach ball, that has just been moved to the back store room. Two, the qualified immunity provision at subsection (e) should be amended to replace the phrase "within a reasonable time" where it appears[30] with the phrase "as soon as practicable." Qualified immunity should only be allowed for a person who as promptly as possible notifies law enforcement, releases the individual or surrenders him or her to law enforcement. The District should not shield from liability a shop owner or agent who engages in a form of vigilante justice by locking a person in a room and taking their time to contact law enforcement.

4. Arson. [31]

PDS strongly objects to the revision of arson as proposed in Report #9. First, PDS objects to the significant lowering of the mental state for arson. While the D.C. Code may be silent as to the required mental state for a number of criminal offenses, the Code is explicit that malice is the culpable mental state for arson.[32] The D.C. Court of Appeals has held that the definition of "malice" is the same for arson and malicious destruction of property, which is the same as the malice required for murder.[33] The Court has defined malice as "(1) the absence of all elements of justification, excuse or recognized mitigation, and (2) the presence of either (a) an actual intent to cause the particular harm which is produced or harm of the same general nature, or (b) the wanton and willful doing of an act with awareness of a plain and strong likelihood that such harm may result."[34] The Court has noted that the "actual intent to cause the particular harm" corresponds to the "purposely" state of mind in the Model Penal Code and the "wanton and willful" act with "awareness of a plain and strong likelihood that such harm may result" "blends

[27] RCC § 22A-2104.

[28] Report #9 at page 36.

[29] Knowingly takes possession of the personal property of another that is *or was* offered for sale with intent to take or make use of it without complete payment.

[30] The phrase "within a reasonable time" appears once in RCC § 22A-2104(e)(3) and twice in RCC § 22A-2104(e)(4). RCC § 22A-2104(e)(4) should be rewritten: "The person detained or arrested was released ~~within a reasonable time of~~ as soon as practicable after detention or arrest, or was surrendered to law enforcement authorities ~~within a reasonable time~~ as soon as practicable.

[31] RCC § 22A-2501.

[32] D.C. Code § 22-301; "Whoever shall maliciously burn or attempt to burn any dwelling…" (emphasis added).

[33] *See Carter v. United States*, 531 A.2d 956, 963 (D.C. 1987); *Thomas v. United States*, 557 A.2d 1296, 1299 (D.C. 1989)

[34] *Harris v. United States*, 125 A.3d 704, 708 (D.C. 2015).

the Model Penal Code's 'knowingly' and 'recklessly' states of mind."[35] The Revised Criminal Code proposes to use the mental state of "knowing" and eliminates mitigation. The effect is a significant and unjustifiable lowering of the mental state, which then greatly expands the conduct the revised offense criminalizes. PDS proposes that the mental state of "purpose" be applied to the RCC offense of arson.[36]

Second, the revised arson offense should not extend to a "business yard." A "business yard" is *land*, which is securely fenced or walled and where goods are stored or merchandise is traded.[37] It is "mainly *areas* that are surrounded by some sort of barrier, such as a fence, where goods are kept for sale."[38] While it is possible to damage land as a result of starting a fire or an explosion, it does not make sense to criminalize causing damage to land that happens to be securely fenced. If the point is to punish conduct that damages the fence or the wall, that is criminalized by criminal damage to property.[39] Similarly if the point is to punish conduct that damages the goods stored within the business yard, that too can be prosecution as a violation of the criminal damage to property offense. But there is no reason to distinguish between starting a fire that damages goods stored in a business yard and goods that happen to be within a fenced area but not for sale, or goods for sale but stored momentarily in an open parking lot. If, however, a fire set in a business yard damages the adjacent business *building*, then that is arson.

Third, the term "watercraft" is too broad. It would include canoes and rubber rafts, particularly a raft fitted for oars. Starting a fire that damages a rubber raft is not of the same seriousness as fire that damages a dwelling or building. PDS is not suggesting that damaging a canoe or a raft should not be a crime, only that it not be deemed "arson." Damaging a canoe or raft should be prosecuted as "criminal damage to property." The definition of "watercraft" should be similar to that of "motor vehicle"; it should be restricted to vessels that are not human-propelled. PDS recommends the following definition be added to RCC §22A-2001.

> <u>"Watercraft" means a vessel for travel by water that has a permanent mast or a permanently attached engine.</u>

Fourth, arson should require that the dwelling, building, (narrowly-defined) watercraft, or motor vehicle be *of another*. That is the current law of arson and it should remain so. Damaging one's own dwelling, building, etc. should be proscribed by the reckless burning offense.[40] Setting fire to one's own dwelling <u>knowing</u> that it will damage or destroy another's dwelling would be arson.

Fifth, the gradation of second degree arson should read: "A person is guilty of second degree arson if that person commits arson and the amount of damage is $2,500 or more." What is

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[35] *Harris*, 125 A.3d at 708 n.3.

[36] PDS would also accept a mental state of knowing <u>plus</u> the absence of all elements of justification, excused or recognized mitigation.

[37] RCC § 22A-2001(3).

[38] Report #8 at page 8 (emphasis added).

[39] RCC § 22A-2503.

[40] RCC § 22A-2502.

proposed as revised second degree arson, that the person merely commits arson," should be third degree arson and it should have a misdemeanor classification. Thus, there will be four gradations of arson in total.

5. Reckless Burning. [41]

PDS recommends amending the revised reckless burning offense. First, for the reasons explained above with respect to arson, "building yard" should be removed from the offense and "watercraft" should be defined. Second, there should be gradations created as follows:

(c) *Gradations and Penalties*.
(1) *First Degree Reckless Burning*.
(A) A person is guilty of first degree reckless burning if that person commits reckless burning and the dwelling, building, watercraft, or motor vehicle, in fact, is of another.
(B) First degree reckless burning is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
(2) *Second Degree Reckless Burning*.
(A) A person is guilty of second degree reckless burning if that person commits reckless burning.
(B) Second degree reckless burning is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

Starting a fire to one's own building *purposely* to damage another's building would be arson. Starting a fire to one's own building *reckless* as to the fact that the fire damages another's building would be first degree reckless burning. Starting a fire that damages only one's own building would be second degree reckless burning.

6. Criminal Damage to Property. [42]

PDS strongly objects to the revision that eliminates the offense of malicious destruction of property and replaces it with the much broader offense of criminal damage to property. Like revised arson, the offense of criminal damage to property significantly and unjustifiably lowers the mental state that currently explicitly applies to the offense, thereby greatly expanding the conduct criminalized by the offense. As it does for revised arson and for the same reasons, PDS strongly recommends that the mental state for criminal damage to property be "purposely."[43]

PDS also recommends adding mental states to two of the gradations. As currently written, it is second degree criminal damage to property to knowingly damage or destroy property that, <u>in fact</u>, is a cemetery, grave, or other place for the internment of human remains,[44] or that, <u>in fact</u>, is

[41] RCC § 22A-2502.

[42] RCC § 22A-2503.

[43] PDS would also accept a knowing mental state <u>plus</u> the absence of all elements of justification, excused or recognized mitigation.

[44] RCC § 22A-2503(c)(3)(ii) (emphasis added).

a place of worship or a public monument.[45] Rather than strict liability, PDS recommends that these elements require that the person be reckless as to the fact the property is a grave, etc. or a place of worship. An object weathered and worn down over time may not appear to be grave marker. A building with a façade of a residence or a business may be used as a place of worship but because of the façade, will not appear to be a place of worship.

7. Criminal Graffiti. [46]

With respect to revised criminal graffiti, PDS recommends eliminating the mandatory restitution and parental liability provisions. Without speculating as to the reasons why, indigent people are charged with crimes in D.C. Superior Court in numbers that are grossly higher than their numbers in the District of Columbia. Requiring restitution from individuals and families that cannot afford to pay it is a waste of judicial resources. A mandatory restitution order cannot be enforced through contempt because the person is unable, not unwilling, to pay. Most such orders, therefore, will simply be unenforceable. Restitution when the person can afford it is fair and the law should provide courts the discretion to impose such an order.

Report #10: Recommendations for Fraud and Stolen Property Offenses

1. Check Fraud.[47]

PDS recommends amending the offense for clarity.

> A person commits the offense of check fraud if that person:
> (1) Knowingly obtains or pays for property;
> (2) By using a check;
> (3) Knowing at the time of its use that the check ~~which~~ will not be honored in full upon its presentation to the bank or depository institution drawn upon.

If the revised offense does not require an "intent to defraud," then it is important that it be clear that the "knowing" that the check will not be honored occur at the time the check is used. It must be clear that gaining knowledge after using the check that the check will not be honored is not check fraud.

PDS objects to the permissive inference stemming from a failure to promptly repay the bank.[48] While true that a *permissive* inference means a jury is not required to apply it, such inferences still unfairly and inappropriately point the jury towards conviction. A law that serves to highlight

[45] RCC § 22A-2503(c)(3)(iii) (emphasis added).

[46] RCC § 22A-2504.

[47] RCC § 22A-2203.

[48] This permissive inference currently exists in the Redbook Jury Instructions at §5-211, though not in D.C. Code § 22-1510 which criminalizes uttering.

certain facts and suggests how those facts should be interpreted, allows the ignoring of other facts or context. Permissive inferences operate as an explicit invitation to make one specific factual inference and not others; though nominally permissive, such inferences signal that this is *the* inference jurors should draw. The permissive inference in revised check fraud, like others of its kind, "eases the prosecution's burden of persuasion on some issue integrally related to the defendant's culpability" and "undercut[s] the integrity of the jury's verdict."[49] "By authorizing juries to "find" facts despite uncertainty, such inferences encourage arbitrariness, and thereby subvert the jury's role as a finder of fact demanding the most stringent level of proof."[50]

The permissive inference in check fraud is additionally problematic *because* the revised check fraud offense has eliminated the explicit element that the person have an "intent to defraud.". For revised check fraud, the person must knowingly obtain or pay for property by using a check, knowing <u>at the time the person uses the check</u> that it will not be honored in full upon its presentation to the bank. The problem with this permissive inference is that it suggests that it is check fraud to fail to make good on the check within 10 days of receiving notice that the check was not paid by the bank. The permissive inference is supposed to mean that failing to make good on the check within 10 days of notice tells jurors something about what the person was thinking <u>at the time</u> the person presented the check. What the permissive inference does, however, is expand the time frame by suggesting that notice (or knowledge) that the check will not be honored, has not thus far been honored, constitutes check fraud if the bank is not made whole.

2. Unlawful Labeling of a Recording.[51]

   For the reasons explained above about the unfairness of highlighting certain facts and then sanctioning by law a particular interpretation of those facts, PDS objects to the permissive inference in the revised unlawful labeling of a record offense.

3. Alteration of Motor Vehicle Identification Number.[52]

   PDS recommends amending the gradations to clarify that whether it is the value of the motor vehicle or the value of the motor vehicle part that determines the gradation depends on whether the alteration of the identification number was intended to conceal the motor vehicle or the part. If the intention was to conceal the part, then the gradation will not be decided based on the value of the motor vehicle, but rather based on the value of the part.

   PDS also has concerns that the revised alteration of motor vehicle identification number offense sets too low the value used to distinguish the first degree from second degree gradation. If set at $1,000 as currently proposed almost all alteration of VINs would be charged as a first degree offense and second degree altering a vehicle identification number would only be available after

[49] Charles R. Nesson, *Reasonable Doubt and Permissive Inferences: The Value of Complexity*, 92 Harv. L. Rev. 1187, 1216 (1979).

[50] *Id.*

[51] RCC §22A-2207.

[52] RCC §22A-2403.

a plea. If the purpose of separating the offense into degrees is to distinguish between offenses with different levels of severity, than the $1000 dollar limit will fail to do so.

Report #11 Recommendations for Extortion, Trespass, and Burglary Offenses

1. Trespass.[53]

PDS again objects to the creation of a statutory permissive inference. The prosecution can argue and prove that property was signed and demarcated in such a way that it would be clear that entry is without the effective consent of the owner. The revised offense should not be drafted in such a way that alleviates or lessens the prosecution's burden of persuasion. If the revised offense maintains this permissive inference, PDS recommends that the language regarding signage should state that the signage must be visible *prior to* or *outside of* the point of entry.

Consistent with the intent of the RCC to separate attempt to commit trespass from the trespass statute and make attempt trespass subject to the general attempt statute, revised trespass should not criminalize the partial entry of a dwelling, building, land, or watercraft.[54] A partial entry of the physical space properly should be treated as an attempt to trespass. For instance, if a person tries to squeeze under a chain link fence in order to trespass on land, but he gives up because his head and chest cannot fit under the fence, that conduct should be charged as attempted trespass, not trespass. To the extent that the partial entry is to commit another crime, for instance to take property through a hole in the fence, numerous other statutes would cover that offense. To truly treat attempted trespass differently than trespass, the revised offense cannot accept partial entry as satisfying the element of knowingly entering or remaining.

The commentary explains: "A person who has been asked to leave the premises must have a reasonable opportunity to do so before he or she can be found guilty of a remaining-type trespass."[55] PDS believes that this provision should be added to the statutory language for the clarity of judges and practitioners.

The revised trespass offense defines the consent element of trespass as "without the effective consent of the occupant, or if there is no occupant, the owner." This element fails to address joint possession, joint occupancy, and joint ownership of property. The commentary explains that it is creating a "legal occupancy" model of trespass to address the conflicting rights of owners and occupants. This approach seems sensible when dealing with court orders barring a particular individual's access. But it leaves roommates, cohabitating spouses, and business cotenants subject to a trespass charge when they remain in a space that they lawfully occupy after an equal co-tenant demands that they vacate. It also subjects the guests of a cotentant to a trespass charge

[53] RCC § 22A-2601.

[54] See Report #11 at page 12.

[55] Report #11 at page 12.

when another tenant opposes the guest.[56] For instance, one roommate feuding with another over the upkeep of space could demand that the first roommate leave and not come back. When the messy roommate returns to occupy her rightful place in the home, pursuant to the revised offense, the messy roommate would be subject to arrest for trespass. The definition would also subject to arrest any visitor approved by one roommate but not another.

The revised offense creates this anomaly that one can be guilty of trespass on one's own land, because it discards the "entry without lawful authority" element of the unlawful entry statute.[57] To address the rights of cotenants, including their right to remain on property and have guests on property despite objections of an equal cotenant, PDS recommends rewriting the third element of the offense as follows:

> Without the effective consent of ~~the~~ an occupant, or if there is no occupant, ~~the~~ an owner.

This phrasing would establish that the accused could provide the consent to enter or remain on the property. In addition, the commentary should explicitly state that more than one person can be an occupant and that absent a superior possessory interest of the other occupant, it is not trespass for an occupant to enter or remain in a dwelling, building, land, or watercraft, or part therefore, even if the other occupant does not consent.

The commentary recognizes that trespass on public property is inherently different because of First Amendment concerns: "[T]he DCCA has long held that individual citizens may not be ejected from public property on the order of the person lawfully in charge absent some additional, specific factor establishing their lack of right to be there."[58] PDS believes that this statement should be included in the statutory language rather than in the commentary. A similar statement regarding the exclusion of liability for First Amendment activity is included in the statutory language of revised criminal obstruction of a public way,[59] and revised unlawful demonstration.[60]

2. Burglary.[61]

The revised burglary offense has the same joint occupancy problem as revised trespass does. Revised burglary, by doing away with the current burglary statute's requirement that the property

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[56] Under property law, tenants and cotenants generally have a right to have invited guests on the property. Without a contractual limitation on a tenant's right to invite guests of his choosing, a landlord cannot unconditionally bar a tenant's guests from visiting the tenant or traversing common areas in order to access the tenant's apartment. *State v. Dixon*, 725 A.2d 920, 922 (Vt. 1999).

[57] *See Jones v. United States*, 282 A.2d 561, 563 (D.C. 1971), (noting entry without lawful authority is a requisite element of the offense of unlawful entry).

[58] Report #11 at page 20.

[59] RCC §22A-2603.

[60] RCC §22A-2604.

[61] RCC § 22A-2701.

is "of another," allows the burglary conviction of a joint tenant who, after being told to leave the apartment by a roommate without lawful authority to do, enters his own home with intent to steal a television belonging to the roommate. While the theft of the television would be unlawful, the conduct should not give rise to the additional, more severely punished, offense of burglary since the individual in fact had authority to enter the residence. As in trespass, the burglary definition fails to address the rights of cotenants and their guests. PDS again recommends amending the third element as follows:

> Without the effective consent of ~~the~~ an occupant, or if there is no occupant, ~~the~~ an owner.

Additionally, as with trespass, the commentary should explain that an equal occupant cannot be convicted of burglary though another occupant does not consent to the entry.

PDS strongly objects to treating partial entry the same as a full entry. Reaching in through a home's open window to steal something laying just inside is not the same as picking a lock and entering the same home at night and stealing the same object now laying on the floor of the bedroom of sleeping children. Revised burglary should distinguish between these two vastly different scenarios. To do so, PDS urges the RCC make partial entry into a dwelling or building, watercraft, or part thereof an attempt burglary rather than a completed offense. As stated in the commentary, burglary is a location aggravator. A location based aggravator makes sense because of the potential danger posed by individuals entering or remaining inside of dwellings or buildings. The danger inherent in that situation is not present when someone reaches a hand through a window or puts a stick through a chain link fence to extract an item.

PDS further proposes that, like with arson, a defendant must be *reckless* as to the fact that a person who is not a participant is present in the dwelling or building, rather than having an "in fact" strict liability standard. In the vast majority of cases when a defendant enters a home and that home happens to be occupied, the defendant will have been reckless as to occupancy. When a dwelling or building is used as a home or business, defendants can expect occupants or guests to be inside at any time, regardless of whether the lights are on or off, whether there is a car near the building, or whether there looks like there is activity from the windows. However, there will be instances, when a defendant enters a dwelling that truly appears to vacant and abandoned. For instance, if a defendant uses a crowbar to open a boarded up door in what appears to be an abandoned rowhouse in order to steal copper pipes and discovers inside this house, which lacks heat or running water, a squatter who entered through other means, without a *mens rea* applicable to the occupancy status of the home, that conduct would constitute first degree burglary. It would constitute first degree burglary although the defendant had every reason to believe that the seemingly abandoned building was unoccupied. By adding the requirement that a defendant must be reckless as to whether the dwelling is occupied, the RCC would appropriately limit the severely increased penalties of first degree burglary to situations that warrant the increased penalty. Further because recklessness could typically be proved contextually – in that the home does not appear to be boarded up – providing the mens rea does not decrease the applicability of the first degree burglary statute.

MEMORANDUM

THE PUBLIC DEFENDER SERVICE
for the District of Columbia
CHAMPIONS OF LIBERTY

To:	Richard Schmechel, Executive Director D.C. Criminal Code Reform Commission
From:	Laura E. Hankins, General Counsel
Date:	December 18, 2017
Re:	Comments on First Draft of Report No. 12: Recommendations for Chapter 3 of the Revised Criminal Code – Definition of a Criminal Conspiracy

The Public Defender Service makes the following comments on the First Draft of Report No. 12.

1. PDS recommends the offense of criminal conspiracy be applicable only to conduct that involves conspiring to commit a felony offense. It is PDS's belief that conspiracy to commit a misdemeanor offense is almost never charged by the Office of the United States Attorney. Thus, limiting liability to felony offenses would merely reflect, not restrict, current practice. The underlying rationale for a separate substantive offense of criminal conspiracy is that agreement by multiple individuals for concerted unlawful action has the potential to increase the danger of the crime and the likelihood of its successful commission.[1] If the RCC accepts the notion that a criminal agreement is a "distinct evil,"[2] that "evil" is certainly less when the object of the conspiracy is a misdemeanor offense. A conspiracy to commit a misdemeanor offense frequently lacks the complex planning and commitment to criminal enterprise that warrants the punishment of the agreement and a single overt act as a separate additional offense. For instance, an agreement to shoplift may be formed by two teenagers, one who agrees to distract the clerk by asking for something behind the counter while the other takes something from the store. This conspiracy required *de minimis* planning, and resulted in no more harm than action by one individual. Both teenagers could be found guilty of shoplifting, under a theory of liability of

[1] See Developments in the Law-Criminal Conspiracy, 72 Harv. L. Rev. 922, 923-924 (1959).

[2] *United States v. Recio*, 537 U.S. 270, 274 (2003) (quoting *Salinas v. United States*, 522 U.S. 52, 65 (1997)).

aiding and abetting or conspiracy, but where the societal harm did not increase as a result of the agreement itself, the teenagers should not be subject to the separate offense of conspiracy to commit shoplifting.

Misdemeanor conduct should be a line of demarcation below which separate offense liability cannot attach. This would be similar to the line of demarcation in the present statute of possession of a firearm during a crime of violence. The crime of violence serves as a demarcation line above which there can be liability for a separate offense. We do not separately punish possession of a firearm while driving recklessly or while committing disorderly conduct as a third substantive offense in addition to the possession of the firearm. Finally, allowing conspiracy liability where the underlying offense is a misdemeanor creates unfettered discretion for prosecutors. Since RCC § 22A-303 does not at this time propose penalty gradations, it appears likely that conspiracy would be criminalized as a felony; prosecutors could escalate misdemeanor conduct into a felony conviction without any showing of greater societal harm in the majority of instances when defendants act together.

2. PDS recommends technical amendments to two subsections to increase the clarity of the language of criminal conspiracy.

   A) PDS supports having the RCC continue the District's current bilateral approach to conspiracy. PDS believes, however, that the requirement that a criminal conspiracy must be bilateral or mutual could be written more clearly. To that end, PDS proposes amending to RCC § 22A-303(a)(1) to read as follows: "Purposely ~~agree~~ came to an agreement to engage in or aid the planning or commission of conduct which, if carried, out, will constitute every element of that planned [felony] offense or an attempt to commit that planned [felony] offense." Replacing "purposefully agree" with "purposefully come to an agreement" more clearly conveys the mutuality of the agreement that is the *sine quo non* of the District's current approach to conspiracy.[3]

   Clarifying that the (alleged) coconspirators must agree to engage in (or aid the planning or commission of) conduct which would constitute every element of the planned offense further bolsters the joint nature of the agreement required for criminal conspiracy liability. While "proof of a formal agreement or plan in which everyone sat down together and worked out the details"[4] is not required for conviction, liability does require that the "coconspirators" come to an agreement about the same conduct, conduct that if engaged in would result in the commission of the specific planned (charged) offense. So if the charge is conspiracy to commit a robbery and the evidence demonstrates that while coconspirator X believed the agreed upon conduct was to rob someone, coconspirator Y believed the agreed upon conduct was to assault someone, the lack of mutual agreement would result in a not guilty finding for the conspiracy to commit robbery charge. Though cited in the section explaining intent

[3] Report #12 at pages 6-7 codifying a bilateral approach to conspiracy.

[4] Report #12 at page 7, quoting D.C. Crim. Jur. Instr. § 7.102.

elevation, the Connecticut Supreme Court's opinion in *State v. Pond* is instructive here as well.[5] While the Connecticut Supreme Court in *Pond* extended its "specific intent" analysis to "attendant circumstances," its analysis began with requiring "specific intent" with respect to conduct elements, stating the "general rule" that "a defendant may be found guilty of conspiracy … only when he specifically intends that *every element of the object crime* be committed."[6]

B) PDS recommends amending the Principles of Culpable Mental State Elevation subsection, RCC §22A-303(b), to substitute "and any" where the draft uses the disjunctive "or." The commentary to the RCC makes clear that the principle of intent elevation, adopted by the RCC, requires that in forming an agreement the parties intend to cause any result required by the target offense and that the parties act with intent as to the circumstances required by the target offense.[7] The use of "or" as the bridge might wrongly suggest to a reader that the mental state elevation requirement is satisfied if applied to a required circumstance or result. PDS asserts that the proposed amendment better conveys the principle that mental state elevation applies to any required circumstance[8] and to any required result.[9]

3. Finally, PDS recommends that the RCC include language that acknowledges that where a conspiracy crosses jurisdictional lines and the conspiracy is planned in a jurisdiction where the conduct is not against the law, the legality of the conduct in the place where the agreement was formed may be relevant to the determination of whether the government has proved sections (a) and (b). As currently drafted section (e) could be read to bar the defense from arguing that the cross-jurisdiction disparity in legality is relevant to the considerations in (a) and (b).

[5] Report #12 at page 38; *State v. Pond*, 108 A.3d. 1083 (Conn. 2015).

[6] *Pond*, 108 A.3d at 463 (emphasis added).

[7] Report #12 at page 41.

[8] If an offense has more than one possible circumstance, such as whether something is dwelling or business yard, then it applies to at least one such circumstance.

[9] If an offense has more than possible result, such as damaging or destroying, then it applies to at least one such result.

Fully revised as PDS recommends, criminal conspiracy in the RCC would read as follows:

§ 22A-303 CRIMINAL CONSPIRACY

(a) DEFINITION OF CONSPIRACY. A person is guilty of ~~a~~ conspiracy to commit ~~an offense~~ a felony when, acting with the culpability required by that felony offense, the person and at least one other person:

(1) Purposely ~~agree~~ come to an agreement to engage in or aid the planning or commission of conduct which, if carried out, will constitute every element of that planned felony offense or an attempt to commit that planned felony offense; and

(2) One of the parties to the agreement engages in an overt act in furtherance of the agreement.

(b) PRINCIPLES OF CULPABLE MENTAL STATE ELEVATION APPLICABLE TO RESULTS AND CIRCUMSTANCES OF TARGET OFFENSE. Notwithstanding subsection (a), to be guilty of a conspiracy to commit ~~an offense~~ a felony, the defendant and at least one other person must intend to bring about any result ~~or~~ and any circumstance required by that planned felony offense.

(c) JURISDICTION WHEN OBJECT OF CONSPIRACY IS LOCATED OUTSIDE THE DISTRICT OF COLUMBIA. When the object of a conspiracy formed within the District of Columbia is to engage in conduct outside the District of Columbia, the conspiracy is a violation of this section if:

(1) That conduct would constitute a ~~criminal~~ felony offense under the D.C. Code performed in the District of Columbia; and

(2) That conduct would also constitute a criminal offense under:

(A) The laws of the other jurisdiction if performed in that jurisdiction; or

(B) The D.C. Code even if performed outside the District of Columbia.

(d) JURISDICTION WHEN CONSPIRACY IS FORMED OUTSIDE THE DISTRICT OF COLUMBIA. A conspiracy formed in another jurisdiction to engage in conduct within the District of Columbia is a violation of this section if:

(1) That conduct would constitute a ~~criminal~~ felony offense under the D.C. Code performed within the District of Columbia; and

(2) An overt act in furtherance of the conspiracy is committed within the District of Columbia.

(e) LEGALITY OF CONDUCT IN OTHER JURISDICTION IRRELEVANT. Under circumstances where §§ (d)(1) and (2) can be established, it is ~~immaterial and~~ no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a criminal offense under the laws of the jurisdiction in which the conspiracy was formed, however it may be relevant to whether the defendant acted with the mental states required by RCC § 22A-303(a) and (b).

(__) PENALTY. [Reserved].

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General for the District of Columbia

Public Safety Division

MEMORANDUM

TO: Richard Schmechel
Executive Director
D.C. Criminal Code Reform Commission

FROM: Dave Rosenthal
Senior Assistant Attorney General

DATE: December 19, 2017

SUBJECT: First Draft of First Draft of Report #12, Definition of a Criminal Conspiracy

The Office of the Attorney General for the District of Columbia (OAG) and the other members of the Code Revision Advisory Group of the D.C. Criminal Code Reform Commission (CCRC) were asked to review the First Draft of Report #12, Definition of a Criminal Conspiracy. OAG reviewed this document and makes the recommendations noted below.[1]

COMMENTS ON THE DRAFT REPORT

RCC § 22A-303 CRIMINAL CONSPIRACY

The offense of Criminal Conspiracy would replace D.C. Code § 22-1805a. The current offense is broader than that proposed in the Draft Report. D.C. Code § 22-1805a (1) states in relevant part:

> If 2 or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined … or imprisoned … [emphasis added]

[1] This review was conducted under the understanding that the structure of the code revision process allows the members of the Code Revision Advisory Group an opportunity to provide meaningful input without limiting the position that the members may take at any subsequent hearing that the Council may have on any legislation that may result from the Report.

RCC § 22A-303 (a) states:

> DEFINITION OF CONSPIRACY. A person is guilty of a conspiracy to commit an offense when, acting with the culpability required by that offense, the person and at least one other person:
>
> (1) Purposely agree to engage in or aid the planning or commission of conduct which, if carried out, will constitute that offense or an attempt to commit that offense; and
>
> (2) One of the parties to the agreement engages in an overt act in furtherance of the agreement.

The proposed language does not contain the underlined provision in D.C. Code § 22-1805a (1) pertaining to "defraud[ing] the District of Columbia or any court or agency thereof in any manner or for any purpose." OAG suggests that either RCC § 22A-303 be redrafted so that the Code continues to criminalize conspiracy to defraud "the District of Columbia or any court or agency thereof" or that the Commission draft a separate offense which reaches this behavior. The Commission should not recommend the repeal of D.C. Code § 22-1805a unless the replacement(s) criminalizes both conspiracy to commit a crime and conspiracy to defraud the District of Columbia or any court or agency thereof.

What is less clear is whether § 22A-303 narrows the applicability of current conspiracy law pertaining to whether a person can be prosecuted for conspiracy when that person "conspires" with an undercover law enforcement officer in a sting operation. RCC § 22A-303 (b) states, "Notwithstanding subsection (a), to be guilty of a conspiracy to commit an offense, the defendant and at least one other person must intend to bring about any result or circumstance required by that offense." Arguably a person who "conspires" with an undercover officer has not "conspired" with another person who intends to bring about a particular result or circumstance.[2] There are good reasons, however, that such behavior should be illegal. As Report #12, on page 25, quotes, an actor "who fails to conspire because her 'partner in crime' is an undercover officer feigning agreement is no less personally dangerous or culpable than one whose colleague in fact possesses the specific intent to go through with the criminal plan." [citation omitted].[3] OAG was only able to find one D.C. Court of Appeals case where a person was convicted at trial of conspiracy based upon conversations with an undercover officer. The case, however, does not discuss the issue of whether a person can be convicted of "conspiring" with a police officer. It was reversed on other grounds.[4]

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[2] See footnote 7, on page 2, and related text.

[3] In addition, Report #12, on page 26, notes that the unilateral approach to conspiracy, the one that permits prosecution for conspiracy where the other party is an undercover officer, "reflects the majority practice in American criminal law…" See page 25 of Report #12 for an explanation of the "unilateral approach to conspiracy."

[4] See *Springer v. United States*, 388 A.2d 846, where the appellant was convicted by a jury of conspiracy to commit first-degree murder and of solicitation to commit a felony based upon evidence of tape recordings -- and transcripts thereof -- of conversations between the appellant and an undercover MPD detective.

OAG suggests that either RCC § 22A-303 (b) be redrafted so that a person may be convicted of conspiracy notwithstanding that the "co-conspirator" is an undercover officer working a sting operation or that the Commission draft a separate offense which reaches this behavior. The Commission should not recommend the repeal of D.C. Code § 22-1805a unless the replacement criminalizes conspiracy in a sting context or unless a separate offense is created that criminalizes this behavior.

RCC § 22A-303 (c) and (d) would narrow the current scope of the District's jurisdiction to prosecute offenses when the object of the conspiracy is located outside the District or when the conspiracy is formed outside the District. Both paragraphs contain the phrase "That conduct would constitute a criminal offense under the D.C. Code if performed in the District of Columbia."[5] [emphasis added] Unless the intent is to only encompass offenses in enacted titles (such as this one), these paragraphs should use the phrase "District law"; it should not be specific to the Code. OAG, therefore, recommends that all references to "D.C. Code" in paragraphs (c) and (d) be changed to "District law."[6]

[5] Paragraph (c)(2)(B) also contains a reference to "The D.C. Code."
[6] D.C. Code § 22-1805a (d) uses the phrase "would constitute a criminal offense." It is not limited to D.C. Code offenses.

D.C. CRIMINAL CODE REFORM COMMISSION
2017 ANNUAL REPORT
APPENDIX D

Agency Work Plan & Schedule (1-12-18)

CCRC Agency Work Plan & Schedule (1-12-18)

This combined CCRC Agency Work Plan & Schedule (1-12-18) presents the planned activities of the D.C. Criminal Code Reform Commission (CCRC) during its remaining statutory authorization (through October 1, 2018). The Work Plan & Schedule guides agency operations, subject to changes by the CCRC Executive Director to better meet the CCRC's statutory mandate with available resources.

This document consists of the following parts:

I. Overview.
II. Limitations & Assumptions.
III. Sequence of Code Reform Recommendations.
IV. Ongoing Activities Supporting the Development of Recommendations.
V. Schedule.

I. Overview.

The Work Plan & Schedule (1-12-18) addresses all remaining aspects of the CCRC's core statutory mandate to develop comprehensive criminal code reform recommendations that revise the language of the District's criminal statutes to:

(1) Use clear and plain language;
(2) Apply consistent, clearly articulated definitions;
(3) Describe all elements, including mental states, that must be proven;
(4) Reduce unnecessary overlap and gaps between criminal offenses;
(5) Eliminate archaic and unused offenses;
(6) Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties;
(7) Organize existing criminal statutes in a logical order;
(8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate;
(9) Identify criminal statutes that have been held to be unconstitutional and recommend their removal or amendment;
(10) Propose such other amendments as the Commission believes are necessary; and
(11) Enable the adoption of Title 22 as an enacted title of the District of Columbia Official Code. [1]

[1] D.C. Code § 3-151 *et seq*.

On May 5, 2017 the CCRC issued to the Council and Mayor *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes*. That report contained recommendations partially or wholly responding to items (1) (5), (8), (9), and (11) of the agency's statutory responsibilities.

This Work Plan & Schedule (1-12-18) addresses the CCRC's remaining statutory responsibilities with the goal of maximizing the recommendations for comprehensive criminal code reform that are issued by the agency's current sunset date of October 1, 2018. These recommendations will be issued to the Council and Mayor in the form of a second major report, to be issued by September 30, 2018. The second report will provide recommendations for reform of many of the most serious, routinely sentenced District offenses currently in use.[2] The second report will recommend that reformed offenses be enacted chiefly in a new Title 22A, with unreformed offenses remaining in their current locations in other titles.

Consistent with the past six decades of modern American criminal code reform efforts, the recommended Title 22A will consist of two distinct components.[3] First, Title 22A will contain a "General Part," which provides a legislative statement of the key general definitions, essential interpretive rules, and most important culpability principles applicable to all reformed offenses, as well as a coherent classification scheme for grading reformed offenses. Second, Title 22A will contain a "Special Part," which codifies clearly articulated reformed versions of individual offenses. Collectively, the components of the new Title 22A will provide a full and accurate statutory description of the elements for every reformed offense.

The second report will consist of draft statutory language, as well as a commentary (suitable for adoption as legislative history) that explains how and why the reformed statutes change existing District law, analyses of how other jurisdictions with reformed codes treat relevant points of law, and charging, sentencing, and other relevant statistics regarding affected offenses.

In preparing its reform recommendations, the CCRC will consult with its statutorily-created Advisory Group. The Advisory Group will review, comment, and ultimately vote on all CCRC recommendations that go to the Council and Mayor. The final recommendations will be based on the Advisory Group's comments, and a copy of those comments will be appended to the report. In preparing its reform recommendations, the CCRC also will review criminal code reforms in other jurisdictions, recommend changes to criminal offenses by the American Law Institute, and survey best practices recommended by criminal law experts.

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[2] Based on conviction data for recent years, the offenses that will be reformed, per this Work Plan & Schedule, constitute about 50% of *all* annual adult convictions, or over 75% of annual adult convictions *with weapon possession and drug crime convictions excluded*.

[3] For a brief summary of the history of modern American criminal code reform efforts, see CCRC Memorandum No. 2, *Adoption of a Comprehensive General Part in the Revised Criminal Code* (December 21, 2016) available on the agency's website at https://ccrc.dc.gov/page/ccrc-documents).

The below "Limitations & Assumptions" section of the Work Plan & Schedule (1-12-18) provides context for the scope and practical ability of the agency to meet its statutory mandate. The below "Sequence of Code Reform Recommendations" section of the Work Plan & Schedule (1-12-18) provides details of the general components and steps involved in producing this report for the Council and Mayor. The "Other Ongoing Activities" section of the Work Plan describes CCRC activities that support the development of specific code reform recommendations.

II. Limitations & Assumptions.

The scope of the Work Plan & Schedule (1-12-18) is limited in two major ways, both of which are a product of current time and resource constraints.

First, the Work Plan & Schedule (1-12-18) excludes reform recommendations for many of the more than 700 criminal statutes scattered throughout the D.C. Code.[4] The majority of the criminal statutes not addressed in the Work Plan & Schedule (1-12-18) are of a regulatory nature, impose misdemeanor penalties, or do not appear to have been sentenced in recent years (or ever). However, there are also some serious, frequently-sentenced District offenses currently in use that are excluded, such as firearm registration and firearm possession crimes. Second, the Work Plan & Schedule (1-12-18) does not cover reform recommendations for codifying, clarifying, or filling in District case law governing general defenses. Codification of general defenses—e.g., self-defense—is a standard component of modern criminal codes, and greatly affects how criminal statutes are used. Nevertheless, given the current less than nine months of the agency's current authorization and staffing levels of the CCRC, codification of general defenses or key weapons offenses is not achievable. The Work Plan & Schedule (1-12-18) lists some additional crimes that, time permitting, may be revised by the agency.

Second, the feasibility of the Work Plan & Schedule (1-12-18) assumes that CCRC assessments are approximately correct regarding the following variables:

- The difficulty of researching and drafting reform recommendations for specified District statutes;
- The nature and extent of Advisory Group comments on draft reform recommendations;
- The ability to secure at least majority approval from the Advisory Group to issue draft reform recommendations;
- The possibility of new court rulings or legislation that require reworking of research or draft reform recommendations;

[4] This estimate is based on an internal review by CCRC staff of the D.C. Code.

- The ability to obtain and analyze charging, sentencing, and other relevant statistics regarding offenses affected by the draft reform recommendations;
- The possibility of a major shift in other jurisdictions' criminal code reforms or best practices that require reworking of research or draft reform recommendations;
- The possibility of a Council request that the agency perform legal analysis of proposed legislation concerning criminal offenses; and
- Retention of the CCRC's experienced staff.

The CCRC has assessed these variables to the best of its ability based on its prior experience working on code reform. However, unexpected changes in any of these variables could significantly hinder the agency's ability to complete the Work Plan & Schedule (1-12-18). Of particular concern is the possibility of staff attrition as the agency's sunset approaches and employees seek new employment.

Should the CCRC's statutory authorization be extended, this Work Plan & Schedule (1-12-18) will need to be updated.

III. Sequence of Code Reform Recommendations.

The CCRC's development of code reform recommendations follows four sequential (though overlapping) phases, which can be summarized as follows:

- *Phase 1.* Facilitate enactment of Title 22 of the D.C. Code, which contains most District offenses, and propose other minor amendments to District criminal statutes. Phase 1 recommendations are intended to ease the administrative burden of future amendments to District criminal laws.
    - Phase 1 was completed May 5, 2017 when the CCRC issued to the Council and Mayor *Report #1: Recommendations for Enactment of D.C. Code Title 22 and Other Changes to Criminal Statutes.*

- *Phase 2.* Develop key general definitions, essential interpretive rules, and the most important culpability principles applicable to all reformed offenses. Phase 2 recommendations are intended to facilitate the clear and comprehensive drafting of reformed offenses, which will be consistently interpreted and applied by the courts.

- *Phase 3.* Develop reformed individual offenses consistent with general provisions using language that is accessible, intuitive, and complete. Phase 3 recommendations are intended to facilitate the clear articulation and consistent interpretation of District offenses.

- *Phase 4.* Review all reformed offenses together as a whole, creating an ordinal ranking of offense severity and establishing the classification of all individual offenses. Phase 4 recommendations are intended to facilitate proportionate penalties for all reformed District offenses.

These four phases follow an overarching logic: prepare Title 22 for reform, create a general framework applicable to all reformed offenses, reform offenses using that general framework, and then reform the penalties for all offenses to be proportionate.

It is important to note, however, that it is neither possible nor desirable for the CCRC to issue or finalize all the recommendations for phases 2-4 before starting the next. For example, practically, the development of some of the Phase 2 recommendations will take significant time, such that, in order to accomplish as much as possible by the CCRC's September 30, 2018 deadline, work on Phase 3 recommendations must commence before completion of Phase 2. It is also expected, however, that work on later phases may reveal the need to rework aspects of earlier phases. Consequently, while the general sequence of code reform work is fixed, some overlap in the completion of Phases is necessary. With that in mind, the CCRC has structured the planned release of individual recommendations to ensure that members of the Advisory Group have the information necessary to provide informed comments and feedback on distributed materials.

The work of Phases 2, 3, and 4 cumulatively builds recommendations for a second report to the Council and Mayor at the end of FY 2018 containing its final reform recommendations. The report will consist of: 1) statutory text for a new general part (providing common definitions and rules of liability applicable to revised offenses) and a new special part (consisting of dozens of reformed offenses against persons and property); 2) a commentary explaining how and why the revisions change current District law and highlighting relevant practices in other jurisdictions and District statistics; 3) an appendix providing a copy of all Advisory Group written comments on the drafts and final versions of recommendations; and 4) an appendix providing additional statistical information on charging and sentencing.

Below is a more detailed overview of how Phases 2, 3, and 4 are expected to operate in the remainder of FY 18.

<u>Phase 2. General Provisions for a New Title 22A.</u>

During Phase 2, the CCRC will develop a standard toolkit of rules, definitions, and principles for establishing criminal liability that will apply to all reformed offenses. The CCRC will also develop a coherent classification scheme for grading offenses and setting penalties, as well as penalty enhancements that apply to many or all offenses. Note, however, that the development

of draft recommendations for penalty classes and general penalty enhancements during this phase will describe the penalty classes and differentiate gradations in penalty enhancements, but will not propose specific penalties or fines for any offenses. Recommendations for specific penalties or fines, including for penalty enhancements, will be addressed in Phase 4. Phase 2 work addresses several of the agency's statutory mandates.[5]

- *Phase 2 Recommendations* (for a list of specific statutes, see the Schedule, below):
    - Preliminary provisions.
    - Basic requirements of offense liability.
    - Inchoate crimes.
    - Standardized penalty classes.
    - Generally applicable penalty enhancements.
    - Handling multiple counts at sentencing.

- *Key Dates*:
    - To maximize the Advisory Group's time for review, the CCRC will issue recommendations developed in Phase 2 as they become available. Draft recommendations for solicitation and renunciation will be issued in the second quarter of FY 18. General provisions, concerning accomplice liability, merger and consecutive sentencing of multiple counts will be issued in the third quarter of FY 18.
    - A final (voting) draft of the combined report containing Phase 2, 3, and 4 recommendations will be issued and voted on in the fourth quarter of FY 18.

Phase 3. Reformed Offenses for a New Title 22A.

During Phase 3, the CCRC will develop recommendations for modernizing the structure and language of the most serious, frequently-sentenced District offenses, consistent with the general definitions, rules, and principles for establishing liability established by the General Part. Draft recommendations for specific offenses will differentiate gradations in liability but will not propose specific penalties or fines, which will be addressed in Phase 4. Work for this phase addresses several of the agency's statutory mandates.[6]

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[5] D.C. Code § 3-152(a) ("(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; . . . (7) Organize existing criminal statutes in a logical order; . . . (10) Propose such other amendments as the Commission believes are necessary . . . .").

[6]. D.C. Code § 3-152(a) ("(1) Use clear and plain language; (2) Apply consistent, clearly articulated definitions; (3) Describe all elements, including mental states, that must be proven; 4) Reduce unnecessary overlap and gaps between criminal offenses; (5) Eliminate archaic and unused offenses . . . (7) Organize existing criminal statutes in a logical order; (8) Identify any crimes defined in common law that should be codified, and propose recommended language for codification, as appropriate . . . (10) Propose such other amendments as the Commission believes are necessary . . . .").

- *Phase 3 Recommendations* (for a list of specific statutes, see the Schedule, below):
    - Offenses against property.
    - Offenses against persons.
    - Possession of a firearm during a crime of violence.

- *Key Dates*:
    - To allow the Advisory Group to evaluate similar offenses together, the CCRC will distribute draft recommendations developed in Phase 3 in staggered clusters.
    - Draft recommendations for homicide and cruelty and neglect offenses will be issued in the second quarter of FY 18. Draft recommendations for kidnapping, sex offenses, and possession of a firearm during a crime of violence[7] will be issued in the third quarter of FY 18.
    - A final (voting) draft of the combined report containing Phase 2, 3, and 4 recommendations will be issued and voted on in the fourth quarter of FY 18.

Phase 4. Proportionate Penalties for Title 22A Offenses.

During Phase 4, the CCRC will evaluate the relative seriousness of reformed District offenses, and accordingly recommend proportionate penalties and fines in a manner that fulfills several CCRC mandates.[8] Draft recommendations regarding the ranking of offense severity and classification of offenses may be comprised of alternatives for Council consideration.

- *Phase 4 Recommendations* (for a list of specific statutes, see the Schedule, below):
    - Ordinal ranking of revised offenses and their gradations severity.
    - Grouping revised offenses and their gradations (using the above ordinal ranking) into standardized penalty classes with specific imprisonment and fine punishments.

- *Key Dates*:
    - Draft recommendations for ordinal ranking and classification of revised offenses will be issued in the third quarter of FY 18.
    - A final (voting) draft of the combined report containing Phase 2, 3, and 4 recommendations will be issued and voted on in the fourth quarter of FY 18.

[7] Revision of this weapon possession offense is necessary to create a consistent system of penalties in revised offenses which include gradations more severely penalizing the use of a weapon in commission of the crime.
[8] D.C. Code § 3-152(a)(6) ("Adjust penalties, fines, and the gradation of offenses to provide for proportionate penalties.").

IV. Ongoing Activities Supporting the Development of Recommendations.

The CCRC's development of specific code reform recommendations is supported by a variety of ongoing agency work.

Monitoring District Criminal Legislation & Case Law.

The starting place for criminal code reform is existing District law, whether legislative or judicial. A sound understanding of current District law is critical to providing commentary to the Council on how CCRC recommendations affect District law, a statutory mandate.[9] Since the inception of the CCRC, staff has conducted a weekly review of legislative and judicial developments in the District and will continue to do so until all recommendations are finalized.

Monitoring Best Practices & Other Jurisdictions' Criminal Code Reforms.

By statute,[10] the process the CCRC uses to review District statutes also involves review of reforms in other jurisdictions' code reforms and the recommendations of criminal law experts. In recent years there has been a major surge in state-level criminal justice reforms, often through Justice Reinvestment Initiatives (JRIs) that seek to improve public safety and reduce costs. There also has been progress on new model recommendations for Sentencing and Sexual Assault through the American Law Institute (ALI). Recognizing that the public safety needs, norms and history of each jurisdiction are unique, the CCRC staff conducts a monthly review of new national developments that may be useful to the District's reform efforts.

Outreach & Collaboration.

To examine best practices and models of reform in other jurisdictions, and to better understand public perspectives on topics like penalty proportionality, the CCRC must conduct outreach to other organizations and individuals. Additional outreach to legal experts, criminal justice stakeholders, and the public are being planned.

Data Acquisition & Analysis.

The CCRC statute requires the agency to provide "charging, sentencing, and other relevant statistics" with its final recommendations to the Council and Mayor. However, such statistical information is also critical to the initial development of recommendations. For example, the sentences for a specific offense may show what District judges believe to be a proportionate penalty for that offense. To acquire data, the CCRC is statutorily authorized to request

[9] D.C. Code § 3-152(b)(3).
[10] D.C. Code § 3-152(c)(2).

information from other District agencies. An updated data request was made of the D.C. Superior Court in the fourth quarter of FY 17, and a new dataset is expected in 2018. The CCRC plans to work with social scientists in the Office of the City Administrator to analyze the data it acquires.

Agency Legal Compliance.

The CCRC is a relatively new independent agency in the District government, and has both agency-specific[11] and District-wide responsibilities to operate efficiently, transparently, and lawfully. Since its inception on October 1, 2016, the CCRC has worked with a number of District agencies to set up appropriate financial, budgetary, human relations, facilities, ethics and other operations. To the best of its knowledge, the agency is fully in compliance with District rules and regulations. However, oversight of spending and the long-term development of a document retention system (within the statutory timeframe) remain work activities for the CCRC through FY 18.

Staff Development & Training.

The legal challenges of criminal code reform are unique, and the CCRC has been mostly fortunate in retaining a staff with significant experience working on such challenges. Employee development and training is critical to maintaining the staff's unique skills and motivation. In FY 18 staff will be able to hear discussion of new, nationwide recommendations for Sentencing and Sexual Assault laws issued by the American Law Institute and will seek out additional development and training opportunities. In FY 18 at least one new hire is planned, to fill a vacancy due to a resignation on January 5, 2018.

V. Schedule.

The below chart provides details on the specific topics of CCRC recommendations during Phases 2-4, with the target dates for completion of work. Phase 1 scheduling information is not included because the CCRC has already substantially completed that work. Please note that the target dates of release for Advisory Group review are estimates, subject to the limitations and assumptions listed in Part II, above. When feasible, the CCRC will issue draft recommendations before the target date.

[11] D.C. Code § 3-151(d)(4) ("Develop and institute internal policies, procedures, and processes to ensure efficient operations;"); D.C. Code § 3-154(a) ("The Commission shall file quarterly reports with the Council that provide a summary of activities during the prior quarter."); D.C. Code § 3-154(b) ("The Commission shall file an annual report with the Council before March 31 of each year . . . .").

Target Schedule for Remainder of FY 18

Subtitle	Chapter	Current DC Code Section	Statute or Topic for Reform Recommendation	1st Draft On or By	Final Draft On or By
General Part	Inchoate Liability	22-2107	Solicitation	3/9/18	7/16/2018
General Part	Inchoate Liability	NA	Renunciation	3/9/18	7/16/2018
Persons	Cruelty & Neglect	22-1101	Cruelty to Children	3/9/18	7/16/2018
Persons	Cruelty & Neglect	22-2202	Neglect of Children	3/9/18	7/16/2018
Persons	Homicide	22-2101	First degree Murder	3/9/18	7/16/2018
Persons	Homicide	22-2102	First Degree Murder Railroads	3/9/18	7/16/2018
Persons	Homicide	22-2103	Second degree Murder	3/9/18	7/16/2018
Persons	Homicide	22-2105	Manslaughter	3/9/18	7/16/2018
Persons	Homicide	22-2106	Murder Law Enforcement Officer	3/9/18	7/16/2018
Persons	Homicide	22-2107a	Solicitation	3/9/18	7/16/2018
Persons	Kidnapping	22-2001	Kidnapping	5/9/18	7/16/2018
Persons	Sexual Offenses	22-1312	Lewd acts	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3001	Definitions	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3002	First Degree Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3003	Second Degree Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3004	Third Degree Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3005	Fourth Degree Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3006	Misdemeanor Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3007	Defense to Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3008	First Degree Child Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3009	Second Degree Child Sexual Abuse	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3009.01	First degree sexual abuse of a minor	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3009.02	Second degree sexual abuse of a minor	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3009.03	First degree sexual abuse of a secondary education student	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3009.04	Second degree sexual abuse of a secondary education student	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3010	Enticing a child or minor	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3010.01	Misdemeanor sexual abuse of a child or minor	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3010.02	Arranging for a sexual contact with a real or fictitious child	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3013	First degree sexual abuse of a ward, patient, client, or prisoner	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3014	Second degree sexual abuse of a ward, patient, client, or prisoner	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3015	First degree sexual abuse of a patient or client	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3016	Second Degree Sexual Abuse of a Patient or Client	5/9/18	7/16/2018
Persons	Sexual Offenses	22-3101	Sex performance using minors	5/9/18	7/16/2018
Other	Firearm	22-4504(b)	Possession of a firearm during a crime of violence	5/9/18	7/16/2018
General Part	Liability	NA	Merger of Offenses	5/9/18	7/16/2018
General Part	Liability	22-3203	Consecutive & Concurrent Sentencing	5/9/18	7/16/2018
General Part	Inchoate Liability	NA	Accomplice Liability	6/8/18	7/16/2018
Ordinal Ranking and Classification of Revised Offenses				6/8/18	7/16/2018

Potential Additional Offenses to Revise in FY 18 (Time Permitting)					
Subtitle	**Chapter**	**Current DC Code Section**	**Statute or Topic for Reform Recommendation**	**1st Draft On or By**	**Final Draft On or By**
Persons	Threats	22-3133	Stalking	NA	NA
Persons	Reckless Endangerment	22-1322	Rioting	NA	NA
Persons	Assault	22-1301	Affrays	NA	NA
Persons	Assault	22-1321	Disorderly Conduct	NA	NA