


**D.C. Criminal Code Reform Commission**  
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001  
(202) 442-8715 [www.ccrdc.dc.gov](http://www.ccrdc.dc.gov)

**To:** Councilmember Charles Allen  
Chairperson, Committee on the Judiciary and Public Safety  
**From:** Richard Schmechel  
Executive Director, Criminal Code Reform Commission (CCRC)   
**Date:** October 17, 2017  
**Re:** Written testimony for the October 19, 2017 Public Hearing on the Fare Evasion Decriminalization Act of 2017

---

Dear Chairman Allen,

Thank you for the opportunity to provide written testimony for the record of the public hearing on the Fare Evasion Decriminalization Act of 2017 (FEDA bill), to be held on October 19, 2017. I write on behalf of the Criminal Code Reform Commission (CCRC).

The CCRC is a small, independent District agency that began operation October 1, 2016. The CCRC's mission is to prepare comprehensive recommendations for the Mayor and Council on reform of the District's criminal statutes. Specifically, the CCRC's work is focused on developing possible reforms to the District's "substantive" criminal statutes—i.e., laws that define crimes and punishments. Given the CCRC's limited time to develop recommendations, the agency has been focused on the most serious and common crimes in the District.

The CCRC below provides information on the relationship between the fare evasion conduct at issue in the FEDA bill and overlapping District criminal laws which punish such behavior. However, the CCRC has no recommendation concerning the proposed FEDA bill itself, and, at this time, the agency has no plans to develop recommendations for the D.C. Code sections affected by the FEDA bill: D.C. Code § 35-216<sup>1</sup> and § 35-253<sup>2</sup>.

Specifically, the CCRC notes that a person engaging in fare evasion likely would remain subject to criminal prosecution under the District's theft statute, D.C. Code § 22-3211,<sup>3</sup> notwithstanding decriminalization of fare evasion conduct under D.C. Code § 35-216 and § 35-253 in the FEDA bill. Per the relevant definitions of "property"<sup>4</sup> and "services,"<sup>5</sup> the District's theft statute criminalizes the unauthorized use of transportation. In fact, the current theft statute contains a special evidentiary provision<sup>6</sup> that provides an alternative means of proving theft of services (such as a ride on public transportation). This evidentiary provision may make it easier to prove a theft charge for fare evasion than a charge under the statutes targeted by the FEDA bill.<sup>7</sup>

Prosecution for fare evasion under the District's theft statute would provide significantly greater penalties as compared to the statutes targeted by the FEDA bill. Under current District law, fare evasion would be prosecuted as theft in the second degree and would be subject to imprisonment of 180 days or a fine of up to \$1,000 for the first conviction, or both.<sup>8</sup> If that person has *one prior conviction* for theft, he or she would be subject to an enhanced penalty of 270 days imprisonment and a fine up to \$1,500.<sup>9</sup> If that person has *two prior convictions* for thefts on different occasions, he or she would be subject to a mandatory minimum imprisonment sentence of one year, a maximum imprisonment term of 15 years, and a fine of up to \$37,500, or both.<sup>10</sup> By contrast, a first conviction for fare evasion prosecuted under D.C. Code § 35-216 and § 35-253, targeted in the FEDA bill, would be subject to imprisonment of only 10 days or a fine of not more than \$300, or both.<sup>11</sup> A person with *one prior conviction* under D.C. Code § 35-216 and § 35-253 would be subject to an enhancement of 15 days imprisonment and a fine up to \$450.<sup>12</sup> A person with *two such prior convictions* would be subject to an enhancement of 30 days imprisonment and a fine up to \$900.<sup>13</sup>

Prosecutorial authority for fare evasion under the District's theft statute is also different from the authority specified in D.C. Code § 35-216 and § 35-253, the statutes targeted by the FEDA bill. Prosecutorial authority for an adult alleged to have committed theft of services (such as a ride on public transportation) would fall to the Office of the United States Attorney for the District of Columbia (USAO-DC). By contrast, the statutes targeted by the FEDA bill provide prosecutorial authority to the District's Office of the Attorney General (OAG).

It is unknown to the CCRC whether, or to what extent, fare evasion currently is prosecuted as theft of services instead of D.C. Code § 35-216, the focus of the FEDA bill. The Superior Court does not record the precise type of conduct involved in its records for theft convictions. Regardless of existing practice, passage of the FEDA bill could change future charging practices and convictions. Moreover, depending on the facts of the case, fare evasion might also constitute a violation of District criminal laws besides theft and D.C. Code § 35-216—e.g., unlawful entry of a motor vehicle.<sup>14</sup>

The CCRC is currently developing recommendations for the Council and Mayor for reform of the District's theft and unlawful entry of a motor vehicle offenses. At present, however, the CCRC is not planning to recommend a change that would eliminate the overlap between theft, unlawful entry of a motor vehicle, and the statutes in the FEDA bill, D.C. Code § 35-216 and § 35-253. For questions about this testimony or the CCRC's work, please do not hesitate to contact our office. Additional information on the agency's work is available at [www.ccrcc.dc.gov](http://www.ccrcc.dc.gov).

Testimony Submitted by Richard Schmechel  
Executive Director  
D.C. Criminal Code Reform Commission

---

<sup>1</sup> D.C. Code § 35-216 (“No person shall either knowingly board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, which is transporting passengers within the corporate limits of the District of Columbia; or knowingly board a rail transit car owned and/or operated by the Washington Metropolitan Area Transit Authority which is transporting passengers within the corporate limits of the District of Columbia; or knowingly enter or leave the paid area of a real transit station owned and/or operated by the Washington Metropolitan Area Transit Authority which is located within the corporate limits of the District of Columbia without paying the established fare or presenting a valid transfer for transportation on such public passenger vehicle or rail transit car. No person shall board a public or private passenger vehicle for hire, including vehicles owned and/or operated by the Washington Metropolitan Area Transit Authority, through the rear exit door, unless so directed by an employee or agent of the carrier.”).

<sup>2</sup> D.C. Code § 35-253 (“Violation of § 35-251(b) shall be punishable by a fine of not less than \$10 nor more than \$50 for a 1st offense and by a fine of not less than \$50 nor more than \$100 or by imprisonment for not more than 10 days or both for each 2nd or subsequent offense. A violation of § 35-251(c) or (d) shall be punishable by a fine of not more than \$300, imprisonment of not more than 90 days, not fewer than 30 hours of community service, or a combination of any 2 penalties, except that imprisonment and community service shall not be imposed together. A violation of § 35-216 shall be punishable by a fine of not more than \$300, by imprisonment for not more than 10 days, or both. All prosecutions under §§ 35-216 and 35-251 to 35-253 shall be brought by the Corporation Counsel.”).

<sup>3</sup> D.C. Code § 22-3211 (“(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.”).

<sup>4</sup> D.C. Code § 22-3201(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.”).

<sup>5</sup> D.C. Code § 22-3201(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.”).

<sup>6</sup> D.C. Code § 22-3211(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.”).

<sup>7</sup> The theft evidentiary provision appears to require only a negligent mental state on the part of the defendant (“had reason to believe”)—a lower burden of proof than the “knowing” mental state required in D.C. Code § 35-216.

<sup>8</sup> D.C. Code § 22-3212(b). (“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.”).

<sup>9</sup> D.C. Code § 22-1804. (“(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.”).

<sup>10</sup> D.C. Code § 22-3212(c). (“A person convicted of theft in the first or second degree who has 2 or more prior convictions for theft, not committed on the same occasion, shall be fined not more than the amount set forth in § 22-3571.01 or imprisoned for not more than 15 years and for a mandatory-minimum term of not less than one year, or both. A person sentenced under this subsection shall not be released from prison, granted probation, or granted suspension of sentence, prior to serving the mandatory-minimum. (d) For the purposes of this section, a person shall be considered as having 2 or more prior convictions for theft if he or she has been convicted on at least 2 occasions of violations of: (1) § 22-3211; (2) A statute in one or more jurisdictions prohibiting theft or larceny; or (3) Conduct that would constitute a violation of § 22-3211 if committed in the District of Columbia.”).

<sup>11</sup> D.C. Code § 35-253.

<sup>12</sup> D.C. Code § 22-1804(a).

<sup>13</sup> D.C. Code § 22-1804(a).

<sup>14</sup> D.C. Code § 22-1341 (“(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.”).