



Compilation of Draft  
Revised Criminal Code Statutes  
To Date

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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.ccrdc.dc.gov](http://www.ccrdc.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.<sup>1</sup>**

- (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.<sup>2</sup>**

- (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.<sup>3</sup>**

- (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.
- (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.

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<sup>1</sup> Per First Draft of Report #4 (March 13, 2017).

<sup>2</sup> Per First Draft of Report #4 (March 13, 2017).

<sup>3</sup> Per First Draft of Report #4 (March 13, 2017).



**RCC § 22A-104. APPLICABILITY OF THE GENERAL PART.<sup>4</sup>**

Unless otherwise provided by law, provisions in subtitle I of Title 22A apply to all other provisions of Title 22A.

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<sup>4</sup> Per First Draft of Report #4 (March 13, 2017).

**Subtitle I. General Part**  
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**RCC § 22A-201. PROOF OF OFFENSE ELEMENTS BEYOND A REASONABLE DOUBT.<sup>5</sup>**

- (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.

**RCC § 22A-202. CONDUCT REQUIREMENT.<sup>6</sup>**

- (a) *Conduct Requirement.* No person may be convicted of an offense unless the person’s liability is based on an act, omission, or possession.

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<sup>5</sup> Per First Draft of Report #2 (December 21, 2016).

<sup>6</sup> Per First Draft of Report #2 (December 21, 2016).

- (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.<sup>7</sup>**

- (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.

**RCC § 22A-204. CAUSATION REQUIREMENT.<sup>8</sup>**

- (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.

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<sup>7</sup> Per First Draft of Report #2 (December 21, 2016).

<sup>8</sup> Per First Draft of Report #2 (December 21, 2016).

**RCC § 22A-205. CULPABLE MENTAL STATE REQUIREMENT.<sup>9</sup>**

- (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.<sup>10</sup>**

- (a) *Purpose Defined.*
  - (1) A person acts purposely with respect to a result when that person consciously desires to cause the result.
  - (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

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<sup>9</sup> Per First Draft of Report #2 (December 21, 2016).

<sup>10</sup> Per Third Draft of Report #2 (December 21, 2017).

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.<sup>11</sup>**

(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.

(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).

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<sup>11</sup> Per First Draft of Report #2 (December 21, 2016).

**RCC § 22A-208. PRINCIPLES OF LIABILITY GOVERNING ACCIDENT, MISTAKE, AND IGNORANCE.**<sup>12</sup>

- (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.\

**RCC § 22A-209. PRINCIPLES OF LIABILITY GOVERNING INTOXICATION.**<sup>13</sup>

- (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

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<sup>12</sup> Per First Draft of Report #3 (March 13, 2017).

<sup>13</sup> Per First Draft of Report #3 (March 13, 2017).

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.

#### **RCC § 22A-210. ACCOMPLICE LIABILITY.<sup>14</sup>**

(a) *Definition of Accomplice Liability.* A person is an accomplice in the commission of an offense by another when, acting with the culpability required by that offense, the person:

- (1) Purposely assists another person with the planning or commission of conduct constituting that offense; or
- (2) Purposely encourages another person to engage in specific conduct constituting that offense.

(b) *Principle of Culpable Mental State Elevation Applicable to Circumstances of Target Offense.* Notwithstanding subsection (a), to be an accomplice in the commission of an offense, the defendant must intend for any circumstances required by that offense to exist.

(c) *Principle of Culpable Mental State Equivalency Applicable to Results When Determining Degree of Liability.* An accomplice in the commission of an offense that is divided into degrees based upon distinctions in culpability as to results is liable for any grade for which he or she possesses the required culpability.

(d) *Relationship Between Accomplice and Principal.* An accomplice may be convicted of an offense upon proof of the commission of the offense and of his or her complicity therein, although the other person claimed to have committed the offense:

- (1) Has not been prosecuted or convicted; or
- (2) Has been convicted of a different offense or degree of an offense; or
- (3) Has been acquitted.

#### **RCC § 22A-211. LIABILITY FOR CAUSING CRIME BY AN INNOCENT OR IRRESPONSIBLE PERSON.<sup>15</sup>**

(a) *Using Another Person to Commit an Offense.* A person is legally accountable for the conduct of another person when, acting with the culpability required by an offense, that

<sup>14</sup> Per First Draft of Report #22 (May 18, 2018).

<sup>15</sup> Per First Draft of Report #22 (May 18, 2018).

person causes an innocent or irresponsible person to engage in conduct constituting an offense.

- (b) *Innocent or Irresponsible Person Defined.* An “innocent or irresponsible person” within the meaning of subsection (a) includes a person who, having engaged in conduct constituting an offense:
- (1) Lacks the culpable mental state requirement for that offense; or
  - (2) Acts under conditions that establish an excuse defense, such as insanity, immaturity, duress, or a reasonable mistake as to a justification.

**RCC § 22A-212. EXCEPTIONS TO LEGAL ACCOUNTABILITY.<sup>16</sup>**

- (a) *Exceptions to General Principles of Legal Accountability.* A person is not legally accountable for the conduct of another under RCC § 210 or RCC § 211 when:
- (1) The person is a victim of the offense; or
  - (2) The person’s conduct is inevitably incident to commission of the offense as defined by statute.
- (b) *Exceptions Inapplicable Where Liability Expressly Provided by Offense.* The exceptions established in subsection (a) do not limit the criminal liability expressly provided for by an individual offense.

**RCC § 22A-213. WITHDRAWAL DEFENSE TO LEGAL ACCOUNTABILITY.<sup>17</sup>**

- (a) *Withdrawal Defense.* It is an affirmative defense to a prosecution under RCC § 210 and RCC § 211 that the defendant terminates his or her efforts to promote or facilitate commission of an offense before it has been committed, and either:
- (1) Wholly deprives his or her prior efforts of their effectiveness;
  - (2) Gives timely warning to the appropriate law enforcement authorities; or
  - (3) Otherwise makes proper efforts to prevent the commission of the offense.
- (b) *Burden of Proof for Withdrawal Defense.* The defendant has the burden of proof for this affirmative defense and must prove the affirmative defense by a preponderance of the evidence.

**RCC § 22A-214. MERGER OF RELATED OFFENSES.<sup>18</sup>**

- (a) *Presumption of Merger Applicable to Commission of Multiple Related Offenses.* There is a presumption that multiple convictions for two or more offenses arising from the same course of conduct merge whenever:
- (1) One offense is established by proof of the same or less than all the facts required to establish the commission of the other offense;
  - (2) The offenses differ only in that:
    - (A) One prohibits a less serious harm or wrong to the same person, property, or public interest;
    - (B) One may be satisfied by a lesser kind of culpability; or

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<sup>16</sup> Per First Draft of Report #30 (September 26, 2018).

<sup>17</sup> Per First Draft of Report #30 (September 26, 2018).

<sup>18</sup> Per First Draft of Report #25 (July 20, 2018).



- (C) One is defined to prohibit a designated kind of conduct generally, and the other is defined to prohibit a specific instance of such conduct;
- (3) One offense requires a finding of fact inconsistent with the requirements for commission of the other offense;
- (4) One offense reasonably accounts for the other offense given the harm or wrong, culpability, and penalty proscribed by each;
- (5) One offense consists only of an attempt or solicitation toward commission of:
  - (A) The other offense; or
  - (B) A different offense that is related to the other offense in the manner described in paragraphs (1)-(4); or
- (6) Each offense is a general inchoate offense designed to culminate in the commission of:
  - (A) The same offense; or
  - (B) Different offenses that are related to one another in the manner described in paragraphs (1)-(4).
- (b) *Presumption of Merger Inapplicable Where Legislative Intent Is Clear.* The presumption of merger set forth in subsection (a) is inapplicable whenever the legislature clearly manifests an intent to authorize multiple convictions for different offenses arising from the same course of conduct.
- (c) *Alternative Elements.* The court shall, in applying subsections (a) and (b) to an offense comprised of alternative elements that protect distinct societal interests, limit its analysis to the elements upon which a defendant's conviction is based.
- (d) *Rule of Priority.* When two or more convictions for different offenses arising from the same course of conduct merge, the offense that remains shall be:
  - (1) The most serious offense among the offenses in question; or
  - (2) If the offenses are of equal seriousness, any offense that the court deems appropriate.
- (e) *Final Judgment of Liability.* A person may be found guilty of two or more offenses that merge under this section; however, no person may be subject to a conviction for more than one of those offenses after:
  - (1) The time for appeal has expired; or
  - (2) The judgment appealed from has been affirmed.

**RCC § 22A-215. DE MINIMIS DEFENSE.<sup>19</sup>**

- (a) *De Minimis Defense Defined.* It is an affirmative defense to any misdemeanor or a Class 6, 7 or 8 felony that the person's conduct and accompanying state of mind are insufficiently blameworthy to warrant the condemnation of a criminal conviction under the circumstances.
- (b) *Relevant Factors.* In determining whether subsection (a) is satisfied, the factfinder shall consider, among other appropriate factors:
  - (1) The triviality of the harm caused or threatened by the person's conduct;
  - (2) The extent to which the person was unaware that his or her conduct would cause or threaten that harm;

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<sup>19</sup> Per First Draft of Report #34 (December 28, 2018).

- (3) The extent to which the person’s conduct furthered or was intended to further legitimate societal objectives; and
  - (4) The extent to which any individual or situational factors for which the person is not responsible hindered the person’s ability to conform his or her conduct to the requirements of law.
- (c) Burden of Proof. The defendant has the burden of proof and must prove all requirements of this affirmative defense by a preponderance of the evidence.

DRAFT

**Subtitle I. General Part**  
**Chapter 3. Inchoate Liability**

- § 22A-301. Criminal Attempt.
- § 22A-302. Solicitation.
- § 22A-303. Criminal Conspiracy.
- § 22A-304. Exceptions to General Inchoate Liability.
- § 22A-305. Renunciation Defense to Attempt, Conspiracy, and Solicitation.

**RCC § 22A-301 CRIMINAL ATTEMPT.<sup>20</sup>**

(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.]

**§ 22A-302 SOLICITATION.<sup>21</sup>**

(a) *Definition of Solicitation.* A person is guilty of a solicitation to commit an offense when, acting with the culpability required by that offense, the person:

- (1) Purposely commands, requests, or tries to persuade another person;
- (2) 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
- (3) The offense solicited is, in fact, [a crime of violence].

(b) *Principles of Culpable Mental State Elevation Applicable to Results and Circumstances of Target Offense.* Notwithstanding subsection (a), to be guilty of a

<sup>20</sup> Per First Draft of Report #7 (June 7, 2017) and First Draft of Report #13 (December 21, 2017).

<sup>21</sup> Per First Draft of Report #18 (March 16, 2018).

solicitation to commit an offense, the defendant must intend to bring about any results and circumstances required by that offense.

(c) *Uncommunicated Solicitation*. It is immaterial under subsection (a) that the intended recipient of the defendant's command, request, or efforts at persuasion fails to receive the communication provided that the defendant does everything he or she plans to do to effect the communication.

(d) *Penalty*. [Reserved].

## § 22A-303 CRIMINAL CONSPIRACY.<sup>22</sup>

(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 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.

(f) *Penalty*. [Reserved].

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<sup>22</sup> Per First Draft of Report #12 (June 7, 2017).

**RCC § 304. EXCEPTIONS TO GENERAL INCHOATE LIABILITY.<sup>23</sup>**

(a) *Exceptions to General Inchoate Liability.* A person is not guilty of solicitation to commit an offense under RCC § 302 or conspiracy to commit an offense under RCC § 303 when:

- (1) The person is a victim of the target offense; or
- (2) The person's criminal objective is inevitably incident to commission of the target offense as defined by statute.

(b) *Exceptions Inapplicable Where Liability Expressly Provided by Offense.* The exceptions established in subsection (a) do not limit the criminal liability expressly provided for by an individual offense.

**§ 22A-305. RENUNCIATION DEFENSE TO ATTEMPT, CONSPIRACY, AND SOLICITATION.<sup>24</sup>**

(a) *Defense for Renunciation Preventing Commission of the Offense.* In a prosecution for attempt, solicitation, or conspiracy in which the target offense was not committed, it is an affirmative defense that:

- (1) The defendant engaged in conduct sufficient to prevent commission of the target offense;
- (2) Under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent.

(b) *Voluntary and Complete Renunciation Defined.* A renunciation is not "voluntary and complete" within the meaning of subsection (a) when it is motivated in whole or in part by:

- (1) A belief that circumstances exist which:
  - (A) Increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise; or
  - (B) Render accomplishment of the criminal plans more difficult; or
- (2) A decision to:
  - (A) Postpone the criminal conduct until another time; or
  - (B) Transfer the criminal effort to another victim or similar objective.

(c) *Burden of Proof for Renunciation.* The defendant has the burden of proof for this affirmative defense and must prove the affirmative defense by a preponderance of the evidence.

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<sup>23</sup> Per First Draft of Report #30 (September 26, 2018).

<sup>24</sup> Per First Draft of Report #18 (March 16, 2018).

**Subtitle I. General Part**  
**Chapter 8. Offense Classes, Penalties, & Enhancements**

- § 22A-801. Offense Classifications.
- § 22A-802. Authorized Dispositions.
- § 22A-803. Authorized Terms of Imprisonment.
- § 22A-804. Authorized Fines.
- § 22A-805. Limitations on Penalty Enhancements.
- § 22A-806. Repeat Offender Penalty Enhancements.
- § 22A-807. Hate Crime Penalty Enhancement.
- § 22A-808. Pretrial Release Penalty Enhancements

**RCC § 22A-801. OFFENSE CLASSIFICATIONS.**<sup>25</sup>

- (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.**<sup>26</sup>

- (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:
- (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;

<sup>25</sup> Per First Draft of Report #5 (May 5, 2017).

<sup>26</sup> Per First Draft of Report #5 (May 5, 2017).

- (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.<sup>27</sup>**

- (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 § 22A-301.
- (c) *Penalty Enhancements.* A court may increase the authorized terms of imprisonment for an offense with a penalty enhancement pursuant to § 22A-805.

**RCC § 22A-804. AUTHORIZED FINES.<sup>28</sup>**

- (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.

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<sup>27</sup> Per First Draft of Report #5 (May 5, 2017).

<sup>28</sup> Per First Draft of Report #5 (May 5, 2017).

- (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.
- (f) *Penalty Enhancements.* A court may decrease the authorized fines for an offense pursuant to § 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.<sup>29</sup>**

- (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.

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<sup>29</sup> Per First Draft of Report #6 (June 7, 2017).



- (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 § 22A-70[X] of this Title.

**RCC § 22A-806. REPEAT OFFENDER PENALTY ENHANCEMENTS.<sup>30</sup>**

- (a) *Misdemeanor Repeat Offender Penalty Enhancement.* A misdemeanor repeat offender penalty enhancement applies to a misdemeanor when the defendant, in fact, 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:

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<sup>30</sup> Per First Draft of Report #6 (June 7, 2017).

- (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.**<sup>31</sup>

- (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
    - (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.**<sup>32</sup>

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<sup>31</sup> Per First Draft of Report #6 (June 7, 2017).

- (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].
  - (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 § 22A-XXX].
  - (2) *Felony.* “Felony” has the meaning specified in § 22A-801.
  - (3) *Misdemeanor.* “Misdemeanor” has the meaning specified in § 22A-801.

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<sup>32</sup> Per First Draft of Report #6 (June 7, 2017).

**Subtitle II. Offenses Against Persons.**  
**Chapter 10. Offenses Against Persons Subtitle Provisions.**

§ 22A-1001. Offense Against Persons Definitions.

§ 22A-1002. [Reserved].

**RCC § 22A-1001. OFFENSE AGAINST PERSONS DEFINITIONS.**<sup>33</sup>

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);

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<sup>33</sup> Per First Draft of Report #14 (December 21, 2017) and Second Draft of Report #14 (March 16, 2018, for the definitions of “adult,” “child,” “duty of care,” elderly person,” and “serious mental injury” in subsections (22)-(26)).

- (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.
- (22) “Adult” means a person who is 18 years of age or older.
- (23) “Child” mean a person who is less than 18 years of age.
- (24) “Duty of care” means a legal responsibility for the health, welfare, or supervision for another person.
- (25) “Elderly person” means a person who is 65 years of age or older.
- (26) “Serious mental injury” means substantial, prolonged harm to a person’s psychological or intellectual functioning, which may be exhibited by severe anxiety, depression, withdrawal, or outwardly aggressive behavior, or a combination of those behaviors, and which may be demonstrated by a change in behavior, emotional response, or cognition.

**RCC § 22A-1002. [Reserved].**

## Chapter 11. Homicide

- § 22A-1101. Murder.
- § 22A-1102. Manslaughter.
- § 22A-1103. Negligent Homicide.

### RCC § 22A-1101. MURDER.<sup>34</sup>

(a) *Aggravated Murder.* A person commits the offense of aggravated murder when that person:

- (1) Knowingly causes the death of another person; and
- (2) Either:
  - (A) The death is caused with recklessness as to whether the decedent is a protected person; or
  - (B) The death is caused with the purpose of harming the decedent because of the decedent'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;
  - (C) The defendant knowingly inflicted extreme physical pain or mental suffering for a prolonged period of time immediately prior to the decedent's death;
  - (D) The defendant mutilated or desecrated the decedent's body;
  - (E) The defendant committed the murder after substantial planning;
  - (F) The defendant committed the murder for hire;
  - (G) The defendant committed the murder because the victim was or had been a witness in any criminal investigation or judicial proceeding, or because the victim was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;
  - (H) The defendant committed the murder for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; or
  - (I) In fact, the death is caused by means of a dangerous weapon.

(b) *First Degree Murder.* A person commits the offense of first degree murder when that person:

- (1) Knowingly causes the death of another person; or
- (2) Commits second degree murder and either:
  - (A) The death is caused with recklessness as to whether the decedent is a protected person;
  - (B) The death 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;

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<sup>34</sup> Per First Draft of Report #19 (March 16, 2018).



- (C) The defendant knowingly inflicted extreme physical pain or mental suffering for a prolonged period of time immediately prior to the decedent's death;
- (D) The defendant mutilated or desecrated the decedent's body;
- (E) The defendant committed the murder after substantial planning;
- (F) The defendant committed the murder for hire;
- (G) The defendant committed the murder because the victim was or had been a witness in any criminal investigation or judicial proceeding, or because the victim was capable of providing or had provided assistance in any criminal investigation or judicial proceeding;
- (H) The defendant committed the murder for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody; or
- (I) In fact, the death is caused by means of a dangerous weapon.

(c) *Second Degree Murder.* A person commits the offense of second degree murder when that person:

- (1) Recklessly, under circumstances manifesting extreme indifference to human life, causes the death of another person; or
- (2) Negligently causes the death of another person, other than an accomplice, in the course of and in furtherance of committing, or attempting to commit aggravated arson, first degree arson, [first degree sexual abuse, first degree child sexual abuse,] first degree child abuse, second degree child abuse, [aggravated burglary], aggravated robbery, first degree robbery, second degree robbery, [aggravated kidnaping, or kidnaping]; provided that the person or an accomplice committed the lethal act.

(d) *Penalties.*

- (1) *Aggravated Murder.* Aggravated murder is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (2) *First Degree Murder.* First degree murder is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (3) *Second Degree Murder.* Second degree murder is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Definitions.* The terms "purpose," "knowledge," "recklessness," "negligence," and "circumstances manifesting extreme indifference" have the meanings specified in § 22A-206; the terms "protected person," "law enforcement officer," "public safety employee," "District official or employee," and "citizen patrol" have the meanings specified in § 22A-1001.

(f) *Defenses.*

- (1) *Mitigation Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, the presence of mitigating circumstances is a defense to prosecution under this section. Mitigating circumstances means:
  - (A) Acting under the influence of an extreme emotional disturbance for which there is a reasonable cause as determined from the viewpoint of a reasonable person in the defendant's situation under the circumstances as the defendant believed them to be;
  - (B) Acting with an unreasonable belief that the use of deadly force was necessary to prevent the decedent from unlawfully causing death or serious bodily injury; or
  - (C) Any other legally-recognized partial defense which substantially diminishes either the defendant's culpability or the wrongfulness of the defendant's conduct.
- (2) *Burden of Proof for Mitigation Defense.* If evidence of mitigation is present at trial, the government must prove the absence of such circumstances beyond a reasonable doubt.

(3) *Effect of Mitigation Defense.*

- (A) If the government fails to prove the absence of mitigating circumstances beyond a reasonable doubt, but proves all other elements of murder, the defendant shall not be found guilty of murder, but may be found guilty of first degree manslaughter.
- (B) If the government fails to prove the absence of mitigating circumstances beyond a reasonable doubt, but proves all other elements of murder, and that the defendant was reckless as to the victim being a protected person, the defendant shall not be found guilty of murder, but may be found guilty of aggravated manslaughter.

**RCC § 22A-1102. MANSLAUGHTER.**<sup>35</sup>

(a) *Aggravated Manslaughter.* A person commits the offense of aggravated manslaughter when that person:

- (1) Knowingly causes the death of another;
- (2) Recklessly, under circumstances manifesting extreme indifference for human life, causes death of another; or
- (3) Negligently causes the death of another person in the course of and in furtherance of committing or attempting to commit aggravated arson, first degree arson, [first degree sexual abuse, first degree child sexual abuse,] first degree child abuse, second degree child abuse, [aggravated burglary], aggravated robbery, first degree robbery, second degree robbery, [aggravated kidnaping, or kidnaping], provided that the person or an accomplice committed the lethal act; and
- (4) Either:
  - (A) The death is caused with recklessness as to whether the decedent is a protected person;
  - (B) The death 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; or
  - (C) In fact, the death is caused by means of a dangerous weapon.

(b) *First Degree Manslaughter.* A person commits the offense of first degree manslaughter when that person:

- (1) Knowingly causes the death of another,
- (2) Recklessly, under circumstances manifesting extreme indifference for human life, causes death of another;
- (3) Negligently causes the death of another person in the course of and in furtherance of committing or attempting to commit aggravated arson, first degree arson, [first degree sexual abuse, first degree child sexual abuse,] first degree child abuse, second degree child abuse, [aggravated burglary], aggravated robbery, first degree robbery, second degree robbery, [aggravated kidnaping, or kidnaping], provided that the person or an accomplice committed the lethal act; or

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<sup>35</sup> Per First Draft of Report #19 (March 16, 2018).

(4) Recklessly causes the death of another and:

(A) The death is caused with recklessness as to whether the decedent is a protected person;

(B) The death 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; or

(C) In fact, the death is caused by means of a dangerous weapon.

(c) *Second Degree Manslaughter.* A person commits the offense of second degree manslaughter when that person recklessly causes the death of another person.

(d) *Penalties.*

(1) *Aggravated manslaughter.* Aggravated manslaughter is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(2) *First degree manslaughter.* First degree manslaughter is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(3) *Second degree manslaughter.* Second degree manslaughter is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(e) *Definitions.* The terms "knowledge," "recklessness," "negligence," and "circumstances manifesting extreme indifference," have the meanings specified in § 22A-206; the terms "protected person," "law enforcement officer," "public safety employee," "District official or employee," and "citizen patrol" have the meanings specified in § 22A-1001.

**RCC § 22A-1103 NEGLIGENT HOMICIDE.<sup>36</sup>**

(a) *Offense Definition.* A person commits the offense of negligent homicide when that person negligently causes the death of another person.

(b) *Penalties.* Negligent homicide is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(c) *Definitions.* The term "negligently" has the meaning specified in § 22A-206.

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<sup>36</sup> Per First Draft of Report #19 (March 16, 2018).

## Chapter 12. Robbery, Assault, and Threat Offenses

- § 22A-1201. Robbery.
- § 22A-1202. Assault.
- § 22A-1203. Criminal Menacing.
- § 22A-1204. Criminal Threats.
- § 22A-1205. Offensive Physical Contact.

### RCC § 22A-1201. ROBBERY.<sup>37</sup>

(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

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<sup>37</sup> 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.<sup>38</sup>**

(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:

<sup>38</sup> 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.<sup>39</sup>**

- (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.*
- (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.

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<sup>39</sup> Per First Draft of Report #17 (December 21, 2017).



- (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.<sup>40</sup>**

- (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:
    - (A) Assault, as defined in RCC § 22A-1202(e)-(f); or
    - (B) 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*.
- (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.

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<sup>40</sup> Per First Draft of Report #17 (December 21, 2017).

- (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.<sup>41</sup>**

- (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.
- (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 “law enforcement officer” and “effective consent” have the meaning specified in § 22A-1001.
- (e) *Defenses.*

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<sup>41</sup> Per First Draft of Report #15 (December 21, 2017).

(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. Sexual Assault and Related Provisions.

- § 22A-1301. Sexual Offense Definitions.
- § 22A-1302. Limitations on Liability and Sentencing for RCC Chapter 13 Offenses.
- § 22A-1303. Sexual Assault.
- § 22A-1304. Sexual Abuse of a Minor.
- § 22A-1305. Sexual Exploitation of an Adult.
- § 22A-1306. Sexually Suggestive Conduct with a Minor.
- § 22A-1307. Enticing a Minor.
- § 22A-1308. Arranging for Sexual Conduct with a Minor.
- § 22A-1309. Nonconsensual Sexual Conduct.

#### **RCC § 22A-1301. SEXUAL OFFENSE DEFINITIONS.**<sup>42</sup>

For the purposes of this chapter, the term:

- (1) “Actor” means a person accused of any offense proscribed under this chapter.
- (2) “Bodily injury” means significant physical pain, illness, or any impairment of physical condition.
- (3) “Coercion” means threatening that any person will do any one of, or a combination of, the following:
  - (A) Engage in conduct constituting an offense against persons as defined in subtitle II of Title 22A, or a property offense as defined in subtitle III of Title 22A;
  - (B) Accuse another person of a criminal offense or failure to comply with an immigration law or regulation;
  - (C) Assert a fact about another person, including a deceased person, that would tend to subject that person to hatred, contempt, or ridicule, or to impair that person’s credit or repute;
  - (D) Take or withhold action as an official, or cause an official to take or withhold action;
  - (E) Inflict a wrongful economic injury;
  - (F) Limit a person’s access to a controlled substance as defined in D.C. Code 48-901.02 or restrict a person’s access to prescription medication; or
  - (G) Cause any harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to comply.
- (4) “Complainant” means a person who is alleged to have been subjected to any offense proscribed under this chapter.
- (5) “Consent” means words or actions that indicate an agreement to particular conduct. Consent may be express or it may be inferred from behavior—both action and inaction—in the context of all the circumstances. In addition, for offenses against property in Subtitle III of this Title:
  - (A) Consent includes words or actions that indicate indifference towards particular conduct; and

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<sup>42</sup> Per First Draft of Report #26 (September 26, 2018).

- (B) 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.
- (6) “Domestic partner” shall have the same meaning as provided in D.C. Code § 32-701(3).
- (7) “Domestic partnership” shall have the same meaning as provided in D.C. Code § 32-701(4).
- (8) “Effective consent” means consent obtained by means other than physical force, coercion, or deception.
- (9) “Person of authority in a secondary school” includes any teacher, counselor, principal, or coach in a secondary school.
- (10) “Physical force” means the application of physical strength.
- (11) “Position of trust with or authority over” includes a relationship with respect to a complainant of:
- (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 complainant;
  - (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 complainant 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.
- (12) “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 or organ.
- (13) “Sexual act” means:
- (A) The penetration, however slight, of the anus or vulva of any person by an object or body part, with intent to sexually degrade, arouse, or gratify any person; or
  - (B) Contact between the mouth of any person and the penis of any person, the mouth of any person and the vulva of any person, or the mouth of any person and the anus of any person with intent to sexually degrade, arouse, or gratify any person.
- (14) “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 intent to sexually degrade, arouse, or gratify any person.

**RCC § 22A-1302. LIMITATIONS ON LIABILITY AND SENTENCING FOR RCC CHAPTER 13 OFFENSES.**<sup>43</sup>

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<sup>43</sup> Per First Draft of Report #26 (September 26, 2018).

- (a) *Age of Liability.* Notwithstanding any other provision of law, a person under the age of 12 is not subject to liability for offenses in this subchapter other than:
  - (1) RCC § 22A-1303(a) first degree sexual assault; or
  - (2) RCC § 22A-1303(c) third degree sexual assault.
- (b) *Merger of Related Sex Offenses.* Multiple convictions for two or more offenses in this Chapter arising from the same course of conduct shall merge in accordance with the rules and procedures established in RCC § 212(d)-(e).

**RCC § 22A-1303. SEXUAL ASSAULT.**<sup>44</sup>

- (a) *First Degree Sexual Assault.* An actor commits the offense of first degree sexual assault when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to a sexual act;
  - (2) In one or more of the following ways:
    - (A) By using a weapon or physical force that overcomes, restrains, or causes bodily injury to the complainant;
    - (B) By threatening:
      - (i) To kill or kidnap any person;
      - (ii) To commit an unwanted sexual act or cause significant bodily injury to any person; or
    - (C) By administering or causing to be administered to the complainant, without the complainant's effective consent, a drug, intoxicant, or other substance:
      - (i) With intent to impair the complainant's ability to express unwillingness; and
      - (ii) In fact, the drug, intoxicant, or other substance renders the complainant:
        - (I) Asleep, unconscious, or passing in and out of consciousness;
        - (II) Substantially incapable, mentally or physically, of appraising the nature of the sexual act; or
        - (III) Substantially incapable, mentally or physically, of communicating unwillingness to engage in the sexual act.
- (b) *Second Degree Sexual Assault.* An actor commits the offense of second degree sexual assault when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to a sexual act;
  - (2) In one or more of the following ways:
    - (A) By coercion; or
    - (B) When the complainant is:
      - (i) Asleep, unconscious, or passing in and out of consciousness;
      - (ii) Mentally or physically incapable of appraising the nature of the sexual act; or

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<sup>44</sup> Per First Draft of Report #26 (September 26, 2018).

- (iii) Mentally or physically incapable of communicating unwillingness to engage in the sexual act.
- (c) *Third Degree Sexual Assault.* An actor commits the offense of third degree sexual assault when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to sexual contact;
  - (2) In one or more of the following ways:
    - (A) By using a weapon or physical force that overcomes, restrains, or causes bodily injury to the complainant;
    - (B) By threatening:
      - (i) To kill or kidnap any person;
      - (ii) To commit an unwanted sexual act or cause significant bodily injury to any person; or
    - (C) By administering or causing to be administered to the complainant, without the complainant's effective consent, a drug, intoxicant, or other substance:
      - (i) With intent to impair the complainant's ability to express unwillingness; and
      - (ii) In fact, the drug, intoxicant, or other substance renders the complainant:
        - (I) Asleep, unconscious, or passing in and out of consciousness;
        - (II) Substantially incapable, mentally or physically, of appraising the nature of the sexual contact; or
        - (III) Substantially incapable, mentally or physically, of communicating unwillingness to engage in the sexual contact.
- (d) *Fourth Degree Sexual Assault.* An actor commits the offense of fourth degree sexual assault when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to sexual contact;
  - (2) In one or more of the following ways:
    - (A) By coercion; or
    - (B) When the complainant is:
      - (i) Asleep, unconscious, or passing in and out of consciousness;
      - (ii) Mentally or physically incapable of appraising the nature of the sexual contact; or
      - (iii) Mentally or physically incapable of communicating unwillingness to engage in the sexual contact.
- (e) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancements in subsection (i) of this section:
  - (1) First degree sexual assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree sexual assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) Third degree sexual assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

- (4) Fourth degree sexual assault is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (f) *Offense Penalty Enhancements.* The penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense gradation, one or more of the following is proven:
- (1) The actor recklessly caused the sexual conduct by displaying or using what, in fact, was a dangerous weapon or imitation dangerous weapon;
  - (2) The actor knowingly acted with one or more accomplices that were present at the time of the offense;
  - (3) The actor recklessly caused serious bodily injury to the complainant during the sexual conduct; or
  - (4) At the time of the offense:
    - (A) The complainant, in fact, was under 12 years of age and the actor was, in fact, at least four years older than the complainant;
    - (B) The actor recklessly disregarded that the complainant was under 16 years of age and the actor was, in fact, at least four years older than the complainant;
    - (C) The actor recklessly disregarded that the complainant was under 18 years of age, that the actor was in a position of trust with or authority over the complainant, and that the actor, in fact, was at least four years older than the complainant;
    - (D) The actor recklessly disregarded that the complainant was under 18 years of age and the actor was, in fact, 18 years of age or older and at least 2 years older than the complainant;
    - (E) The actor recklessly disregarded that the complainant was 65 years of age or older and the actor was, in fact, under 65 years old; or
    - (F) The actor recklessly disregarded that the complainant was a vulnerable adult.
- (g) *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 “serious bodily injury,” “significant bodily injury,” “dangerous weapon,” “imitation dangerous weapon,” “bodily injury,” “physical force,” “effective consent,” “coercion,” “sexual act,” “sexual contact,” “position of trust with or authority over,” and “vulnerable adult” have the meanings specified in § 22A-1301.
- (h) *Effective Consent Defense.* In addition to any defenses otherwise applicable to the actor’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, provided that:
- (1) The conduct does not inflict significant bodily injury or serious bodily injury, or involve the use of a dangerous weapon; or
  - (2) At the time of the conduct, none of the following is true:
    - (A) The complainant is under 16 years of age and the actor is more than four years older than the complainant;
    - (B) The complainant is under 18 years of age and the actor is in a position of trust with or authority over the complainant, at least 18 years of age, and at least four years older than the complainant;



- (C) The complainant is legally incompetent; or
  - (D) The complainant is substantially incapable, mentally or physically, of appraising the nature of the proposed sexual act or sexual contact.
- (3) If evidence is present at trial of the complainant's effective consent or the actor's reasonable belief that the complainant gave effective consent to the actor's conduct, the government must prove the absence of such circumstances beyond a reasonable doubt.

**RCC § 22A-1304. SEXUAL ABUSE OF A MINOR.**<sup>45</sup>

- (a) *First Degree Sexual Abuse of a Minor.* An actor commits the offense of first degree sexual abuse of a minor when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to a sexual act; and
  - (2) In fact:
    - (A) The complainant is under 12 years of age; and
    - (B) The actor is at least four years older than the complainant.
- (b) *Second Degree Sexual Abuse of a Minor.* An actor commits the offense of second degree sexual abuse of a minor when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to a sexual act; and
  - (2) In fact:
    - (A) The complainant is under 16 years of age; and
    - (B) The actor is at least four years older than the complainant.
- (c) *Third Degree Sexual Abuse of a Minor.* An actor commits the offense of third degree sexual abuse of a minor when that actor:
  - (1) Knowingly causes the complainant to engage in or submit to a sexual act;
  - (2) While in a position of trust with or authority over the complainant; and
  - (3) In fact:
    - (A) The complainant is under 18 years of age; and
    - (B) The actor is at least 18 years of age and at least four years older than the complainant.
- (d) *Fourth Degree Sexual Abuse of a Minor.* An actor commits the offense of fourth degree sexual abuse of a minor when that actor:
  - (1) Knowingly engages in sexual contact with the complainant, or causes the complainant to engage in or submit to sexual contact; and
  - (2) In fact:
    - (A) The complainant is under 12 years of age; and
    - (B) The actor is at least four years older than the complainant.
- (e) *Fifth Degree Sexual Abuse of a Minor.* An actor commits the offense of fifth degree sexual abuse of a minor when that actor:
  - (1) Knowingly engages in sexual contact with the complainant, or causes the complainant to engage in or submit to sexual contact; and
  - (2) In fact:
    - (A) The complainant is under 16 years of age; and
    - (B) The actor is at least four years older than the complainant.

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<sup>45</sup> Per First Draft of Report #26 (September 26, 2018).

- (f) *Sixth Degree Sexual Abuse of a Minor.* An actor commits the offense of sixth degree sexual abuse of a minor when that person:
- (1) Knowingly engages in sexual contact with the complainant or causes the complainant to engage in or submit to sexual contact;
  - (2) While in a position of trust with or authority over the complainant; and
  - (3) In fact:
    - (A) The complainant is under 18 years of age; and
    - (B) The actor is, in fact, at least 18 years of age and at least four years older than the complainant.
- (g) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808:
- (1) First degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) Third degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (4) Fourth degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (5) Fifth degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (6) Sixth degree sexual abuse of a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (h) *Definitions.* The term “knowingly,” has the meaning specified in § 22A-206; the term “in fact” has the meaning specified in § 22A-207; and the terms “sexual act,” “sexual contact,” “domestic partnership,” and “position of trust with or authority over” have the meanings specified in § 22A-1001.
- (i) *Defenses.* In addition to any defenses otherwise applicable to the actor’s conduct under District law:
- (1) It is an affirmative defense to prosecution under this section for conduct involving only the actor and the complainant, which the actor must prove by a preponderance of the evidence, that the actor and the complainant were in a marriage or domestic partnership at the time of the offense.
  - (2) It is an affirmative defense to prosecution under subsections (b) and (e), which the actor must prove by a preponderance of the evidence, that the actor reasonably believed that the complainant was 16 years of age or older at the time of the offense.
  - (3) It is an affirmative defense to prosecution under subsections (c) and (f), which the actor must prove by a preponderance of the evidence, that the actor reasonably believed that the complainant was 18 years of age or older at the time of the offense.

**RCC § 22A-1305. SEXUAL EXPLOITATION OF AN ADULT.**<sup>46</sup>

- (a) *First Degree Sexual Exploitation of an Adult.* An actor commits the offense of first degree sexual exploitation of an adult when that actor:

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<sup>46</sup> Per First Draft of Report #26 (September 26, 2018).

- (1) Knowingly causes the complainant to engage in or submit to a sexual act;
  - (2) In one or more of the following ways:
    - (A) The actor is a person of authority in a secondary school and recklessly disregards that the complainant is an enrolled student in the same school system and is under the age of 20 years;
    - (B) The actor knowingly and falsely represents that he or she is someone else who is personally known to the complainant;
    - (C) The actor is a healthcare provider or member of the clergy, or purports to be a healthcare provider or member of the clergy, and:
      - (i) Falsely represents that the sexual act is for a bona fide professional purpose;
      - (ii) Commits the sexual act during a consultation, examination, treatment, therapy, or other provision of professional services; or
      - (iii) Commits the sexual act while the complainant is a patient or client of the actor, and recklessly disregards that the mental, emotional, or physical condition of the complainant is such that he or she is impaired from declining participation in the sexual act; or
    - (D) The actor knowingly works at a hospital, treatment facility, detention or correctional facility, group home, or other institution housing persons who are not free to leave at will, or transports or is a custodian of persons at such an institution, and recklessly disregards that the complainant is a ward, patient, client, or prisoner at such an institution.
- (b) *Second Degree Sexual Exploitation of an Adult.* An actor commits the offense of second degree exploitation of an adult when that actor:
- (1) Knowingly causes the complainant to engage in or submit to sexual contact;
  - (2) In one or more of the following ways:
    - (A) The actor is a person of authority in a secondary school and recklessly disregards that the complainant is an enrolled student in the same school system and is under the age of 20 years;
    - (B) The actor knowingly and falsely represents that he or she is someone else who is personally known to the complainant.
    - (C) The actor is a healthcare provider or member of the clergy, or purports to be a healthcare provider or member of the clergy:
      - (i) Falsely represents that the sexual contact is for a bona fide professional purpose;
      - (ii) Commits the sexual contact during a consultation, examination, treatment, therapy, or other provision of professional services; or
      - (iii) Commits the sexual contact while the complainant is a patient or client of the actor, and recklessly disregards that the mental, emotional, or physical condition of the complainant is such that he or she is impaired from declining participation in the sexual contact; or
    - (D) The actor knowingly works at a hospital, treatment facility, detention or correctional facility, group home, or other institution housing persons who are not free to leave at will, or transports or is a custodian of persons at such an institution, and recklessly disregards that the complainant is a ward, patient, client, or prisoner at such an institution.

- (c) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808:
  - (1) First degree sexual exploitation of an adult is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree sexual exploitation of an adult is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* In this section, the terms “knowingly” and “recklessly” have the meaning specified in § 22A-206; the term “in fact” has the meaning specified in § 22A-207; and the terms “sexual act,” “sexual contact,” “person of authority in a secondary school,” and “domestic partnership” have the meanings specified in § 22A-1001.
- (e) *Defenses.* In addition to any defenses otherwise applicable to the actor’s conduct under District law it is an affirmative defense to prosecution under this section, which the actor must prove by a preponderance of the evidence, that the actor and the complainant were in a marriage or domestic partnership at the time of the offense.

**RCC § 22A-1306. SEXUALLY SUGGESTIVE CONDUCT WITH A MINOR.<sup>47</sup>**

- (a) *Sexually Suggestive Contact with a Minor.* An actor commits the offense of sexually suggestive contact with a minor when that actor:
  - (1) With intent to cause the sexual arousal or sexual gratification of any person;
  - (2) Knowingly:
    - (A) Touches the complainant inside his or her clothing;
    - (B) Touches the complainant inside or outside his or her clothing close to the genitalia, anus, breast, or buttocks;
    - (C) Places the actor’s tongue in the mouth of the complainant; or
    - (D) Touches the actor’s genitalia or that of a third person in the sight of the complainant; and
  - (3) The actor, in fact, is at least 18 years of age and at least four years older than the complainant; and:
    - (A) The actor recklessly disregarded that the complainant is under 16 years of age; or
    - (B) The actor recklessly disregarded that the complainant is under 18 years of age and the actor knows that he or she is in a position of trust with or authority over the complainant.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808, sexually suggestive contact with a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *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 “sexual act,” “sexual contact,” “position of trust with or authority over,” and “domestic partnership” have the meanings specified in § 22A-1001.
- (d) *Marriage or Domestic Partnership Defense.* In addition to any defenses otherwise applicable to the actor’s conduct under District law, it is an affirmative defense to prosecution under this section for conduct involving only the actor and the complainant, which the actor must prove by a preponderance of the evidence, that the actor and the complainant were in a marriage or domestic partnership at the time of the offense.

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<sup>47</sup> Per First Draft of Report #26 (September 26, 2018).

**RCC § 22A-1307. ENTICING A MINOR.**<sup>48</sup>

- (a) *Enticing a Minor.* An actor commits the offense of enticing a minor when that actor:
- (1) Knowingly:
    - (A) Persuades or entices, or attempts to persuade or entice, the complainant to engage in or submit to a sexual act or sexual contact; or
    - (B) Persuades or entices, or attempts to persuade or entice, the complainant to go to another location in order to engage in or submit to a sexual act or sexual contact; and
  - (2) The actor, in fact, is at least 18 years of age and at least four years older than the complainant, and:
    - (A) The actor recklessly disregards that the complainant is under 16 years of age; or
    - (B) The actor recklessly disregards that the complainant is under 18 years of age, and the actor is in a position of trust with or authority over the complainant; or
    - (C) The complainant, in fact, is a law enforcement officer who purports to be a person under 16 years of age, and the actor recklessly disregards that complainant purports to be a person under 16 years of age.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808, sexually suggestive contact with a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *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 “sexual act,” “sexual contact,” “position of trust with or authority over,” “law enforcement officer,” and “domestic partnership” have the meanings specified in § 22A-1001.
- (d) *Marriage or Domestic Partnership Defense.* In addition to any defenses otherwise applicable to the actor’s conduct under District law, it is an affirmative defense to prosecution under this section for conduct involving only the actor and the complainant, which the actor must prove by a preponderance of the evidence, that the actor and the complainant were in a marriage or domestic partnership at the time of the offense.

**RCC § 22A-1308. ARRANGING FOR SEXUAL CONDUCT WITH A MINOR.**<sup>49</sup>

- (a) *Arranging for Sexual Conduct with a Minor.* An actor commits the offense of arranging for sexual conduct with a minor when that actor:
- (1) Knowingly arranges for a sexual act or sexual contact between:
    - (A) The actor and the complainant; or
    - (B) A third person and the complainant; and
  - (2) The actor and any third person, in fact, are at least 18 years of age and at least four years older than the complainant; and
  - (3) The actor recklessly disregards that:

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<sup>48</sup> Per First Draft of Report #26 (September 26, 2018).

<sup>49</sup> Per First Draft of Report #26 (September 26, 2018).

- (A) The complainant is under 16 years of age;
  - (B) The complainant is under 18 years of age, and the actor knows that he or she or the third person is in a position of trust with or authority over the complainant; or
  - (C) The complainant purports to be a person under 16 years of age, while, in fact, the complainant a law enforcement officer.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808, sexually suggestive contact with a minor is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *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 “sexual act,” “sexual contact,” “law enforcement officer” and “position of trust with or authority over” have the meanings specified in § 22A-1001.

**RCC § 22A-1309. NONCONSENSUAL SEXUAL CONDUCT.<sup>50</sup>**

- (a) *First Degree Nonconsensual Sexual Conduct.* An actor commits the offense of first degree nonconsensual sexual conduct when that actor recklessly causes the complainant to engage in or submit to a sexual act without the complainant's effective consent.
- (b) *Second Degree Nonconsensual Sexual Conduct.* An actor commits the offense of second degree nonconsensual sexual contact when that actor recklessly causes the complainant to engage in or submit to sexual contact without the complainant's effective consent.
- (c) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808:
  - (1) First degree nonconsensual sexual conduct of an adult is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree nonconsensual sexual conduct of an adult is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* The term “recklessly” has the meaning specified in § 22A-206; the terms “sexual act,” “sexual contact,” and “effective consent” have the meanings specified in § 22A-1001.
- (e) *Exclusion from Liability.* An actor shall not be subject to prosecution under this section for a use of deception to induce the complainant to consent to the sexual act or sexual contact. An actor may be subject to prosecution under this section for a use of deception as to the nature of the sexual act or sexual contact.

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<sup>50</sup> Per First Draft of Report #26 (September 26, 2018).

## Chapter 14. Kidnapping and Criminal Restraint

- § 22A-1401. Aggravated Kidnapping.
- § 22A-1402. Kidnapping.
- § 22A-1403. Aggravated Criminal Restraint.
- § 22A-1404. Criminal Restraint.

### RCC § 22A-1401. AGGRAVATED KIDNAPPING.<sup>51</sup>

- (a) *Offense Definition.* A person commits aggravated kidnapping when that person:
  - (1) Commits kidnapping as defined in RCC 22-1402;
  - (2) In one or more of the following ways:
    - (A) Reckless as to the fact that the complainant is a protected person;
    - (B) With the purpose of harming the complainant because of the complainant's status as a:
      - (A) Law enforcement officer;
      - (B) Public safety employee;
      - (C) Participant in a citizen patrol;
      - (D) District official or employee; or
      - (E) Family member of a District official or employee; or
    - (C) By means of knowingly displaying or touching another person with a dangerous weapon or imitation dangerous weapon.
- (b) *Penalty.* Aggravated kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section, the terms “reckless,” “purpose,” and “knowingly,” have the meanings specified in § 22A-206; and the terms “citizen patrol,” “dangerous weapon,” “District official or employee,” “family member,” “imitation dangerous weapon,” “law enforcement officer,” “protected person,” and “public safety employee” have the meanings specified in § 22A-1001.
- (d) *Multiple Convictions for Related Offenses.* A person may not be sentenced for aggravated kidnapping if the interference with another person's freedom of movement was incidental to commission of any other offense.

### RCC § 22A-1402. KIDNAPPING.<sup>52</sup>

- (a) *Offense Definition.* A person commits the offense of kidnapping when that person:
  - (1) Knowingly interferes to a substantial degree with another person's freedom of movement;
  - (2) In one of the following ways;
    - (A) Without that person's consent;
    - (B) With that person's consent obtained by causing bodily injury or a threat to cause bodily injury;
    - (C) With that person's consent obtained by deception, provided that, if the deception had failed, the defendant immediately would have obtained or

<sup>51</sup> Per First Draft of Report #21 (May 18, 2018).

<sup>52</sup> Per First Draft of Report #21 (May 18, 2018).

attempted to obtain consent by causing bodily injury or a threat to cause bodily injury; or

(D) When that person is a child under the age of 16 or a person assigned a legal guardian, without the effective consent of that person's parent, person how has assumed the obligations of a parent, or legal guardian; and

(3) With intent to:

(A) Hold the complainant for ransom or reward;

(B) Use the complainant as a shield or hostage;

(C) Facilitate the commission of any felony or flight thereafter;

(D) Inflict bodily injury upon the complainant, or to commit a sexual offense as defined in RCC XX-XXXX against the complainant;

(E) Cause any person to believe that the complainant will not be released without suffering significant bodily injury, or a sex offense as defined in RCC XX-XXXX;

(F) Permanently deprive a parent, legal guardian, or other lawful custodian of custody of a minor; or

(G) Hold the person in a condition of involuntary servitude.

(b) *Penalty.* Kidnapping is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(c) *Definitions.* In this section:

(1) The terms “knowingly,” and “with intent,” have the meanings specified in § 22A-206; the term “in fact” has the meaning specified in § 22A-207; and the terms “bodily injury,” “consent,” “deception,” “effective consent,” and “significant bodily injury” have the meanings specified in § 22A-1001.

(2) The term “relative” means a parent, grandparent, sibling, cousin, aunt, or uncle.

(d) *Defenses.* It is a defense to prosecution under this section that the defendant is a relative of the complainant, acted with intent to assume personal custody of the complainant, and did not cause bodily injury or threaten to cause bodily injury to the complainant.

(e) *Multiple Convictions for Related Offenses.* A person may not be sentenced for kidnapping if the interference with another person's freedom of movement was incidental to commission of offense.

### **RCC § 1403. AGGRAVATED CRIMINAL RESTRAINT.<sup>53</sup>**

(a) *Offense Definition.* A person commits the offense of aggravated criminal restraint when that person:

(1) Commits criminal restraint as defined in RCC § 22-1404;

(2) In one or more of the following ways:

(A) Reckless as to the fact that the complainant is a protected person;

(B) With the purpose of harming the complainant because of the complainant's status as a:

(A) Law enforcement officer;

(B) Public safety employee;

(C) Participant in a citizen patrol;

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<sup>53</sup> Per First Draft of Report #21 (May 18, 2018).



- (D) District official or employee; or
- (E) Family member of a District official or employee; or
- (C) By means of knowingly displaying or touching another person with a dangerous weapon or imitation dangerous weapon.
- (b) *Penalty.* Aggravated criminal restraint is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section, the terms “reckless,” “purpose,” and “knowingly,” have the meanings specified in § 22A-206; and the terms “citizen patrol,” “dangerous weapon,” “District official or employee,” “family member,” “imitation dangerous weapon,” “law enforcement officer,” “protected person,” and “public safety employee” have the meanings specified in § 22A-1001.
- (d) *Multiple Convictions for Related Offenses.* A person may not be sentenced for aggravated criminal restraint if the interference with another person’s freedom of movement was incidental to commission of any other offense.

**RCC § 1404. CRIMINAL RESTRAINT.**<sup>54</sup>

- (a) *Offense Definition.* A person commits the offense of criminal restraint when that person:
  - (1) Knowingly interferes to a substantial degree with another person’s freedom of movement;
  - (2) In one of the following ways:
    - (A) Without that person’s consent;
    - (B) With that person’s consent obtained by causing bodily injury or a threat to cause bodily injury;
    - (C) With that person’s consent obtained by deception, provided that, if the deception had failed, the defendant immediately would have obtained or attempted to obtain consent by causing bodily injury or a threat to cause bodily injury; or
    - (D) When that person is a child under the age of 16 or a person assigned a legal guardian, without the effective consent of that person’s parent, person how has assumed the obligations of a parent, or legal guardian.
- (b) *Penalty.* Criminal restraint is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
  - (1) The term “knowingly” has the meaning specified in § 22A-206; the terms “bodily injury,” “consent,” “deception,” and “effective consent” have the meanings specified in § 22A-1001.
  - (2) The term “relative” means a parent, grandparent, sibling, aunt, uncle, or any other person related to the person by consanguinity to the second degree.
- (d) *Defenses.* It is a defense to prosecution under subsection (a)(2)(D) that the defendant is a relative of the complainant.
- (e) *Multiple Convictions for Related Offenses.* A person may not be sentenced for criminal restraint if the interference with another person’s freedom of movement was incidental to commission of any other offense.

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<sup>54</sup> Per First Draft of Report #21 (May 18, 2018).

## Chapter 15. Abuse and Neglect of Children and Vulnerable Persons

§ 22A-1501. Child Abuse.

§ 22A-1502. Child Neglect.

§ 22A-1503. Abuse of a Vulnerable Adult or Elderly Person.

§ 22A-1504. Neglect of a Vulnerable Adult or Elderly Person.

### § 22A-1501. CHILD ABUSE.<sup>55</sup>

(a) *First Degree Child Abuse.* A person commits the offense of first degree child abuse when that person:

(1) Either:

(A) Purposely causes serious mental injury to another person, with recklessness that the other person is a child; or

(B) Recklessly, under circumstances manifesting extreme indifference to human life, causes serious bodily injury to another person, with recklessness that the other person is a child; and

(2) In fact:

(A) That person is an adult at least two years older than the child; or

(B) That person is a parent, legal guardian, or other person who has assumed the obligations of a parent.

(b) *Second Degree Child Abuse.* A person commits the offense of second degree child abuse when that person:

(1) Recklessly:

(A) Causes serious mental injury to a child; or

(B) Causes significant bodily injury to a child; and

(2) In fact:

(A) That person is an adult at least two years older than the child; or

(B) That person is a parent, legal guardian, or other person who has assumed the obligations of a parent.

(c) *Third Degree Child Abuse.* A person commits the offense of third degree child abuse when that person:

(1)

(A) In fact, commits harassment per § 22A-XXXX, menacing per § 22A-1203, threats per § 22A-1204, restraint per § 22A-XXXX, or first degree offensive physical contact per § 22A-1205(a) against another person, with recklessness that the other person is a child; or

(B) Recklessly causes bodily injury to, or uses physical force that overpowers, a child; and

(2) In fact:

(A) That person is an adult at least two years older than the child; or

(B) That person is a parent, legal guardian, or other person who has assumed the obligations of a parent.

(d) *Penalties.*

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<sup>55</sup> Per First Draft of Report #20 (March 16, 2018).

- (1) *First Degree Child Abuse.* First degree child abuse is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) *Second Degree Child Abuse.* Second degree child abuse is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) *Third Degree Child Abuse.* Third degree child abuse is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (e) *Definitions:* The terms “purposely,” “recklessly, under circumstances manifesting extreme indifference to human life,” and “recklessly” have the meanings specified in § 22A-206; and the terms “serious mental injury,” “serious bodily injury,” “significant bodily injury,” “bodily injury,” “physical force,” “child,” and “adult,” have the meanings specified in § 22A-1001.
- (f) *Defenses.*
- (1) *Parental Discipline Defense.* In addition to any defenses otherwise applicable to the defendant’s conduct under District law, it is an affirmative defense to third degree child abuse if:
    - (A) A parent, legal guardian, or other person who has assumed the obligations of a parent:
      - (i) Caused bodily injury to a child 18 months or older, other than by means of a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded;
      - (ii) Used overpowering physical force against any child, other than by means of a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded; or
      - (iii) Committed harassment per RCC § 22A-XXXX, menacing per RCC § 22A-1203, threats per RCC § 22A-1204, restraint per RCC § 22A-XXXX, or first degree offensive physical contact per RCC § 22A-1205(a) against any child, other than by means of a firearm as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded;
    - (B) The bodily injury, use of overpowering physical force, or harassment, menacing, threats, restraint, or offensive physical contact was for the purpose of exercising discipline;
    - (C) The exercise of such discipline was reasonable in manner and degree; and
    - (D) The conduct did not include:
      - (i) Burning, biting, or cutting;
      - (ii) Striking with a closed fist;
      - (iii) Shaking, kicking, or throwing; or
      - (iv) Interfering with breathing.
  - (2) *Burden of Proof for Parental Discipline Defense.* If evidence is present at trial of the defendant’s purpose of exercising reasonable discipline, the government must prove the absence of such circumstances beyond a reasonable doubt.

**§ 22A-1502. CHILD NEGLECT.**<sup>56</sup>

- (a) *First Degree Child Neglect.* A person commits the offense of first degree child neglect when that person:
- (1) Recklessly created, or failed to mitigate or remedy, a substantial and unjustifiable risk that a child would experience serious bodily injury or death;
  - (2) That person knows he or she has a duty of care to the child; and
  - (3) In fact, that person violated his or her duty of care to the child.
- (b) *Second Degree Child Neglect.* A person commits the offense of second degree child neglect when that person:
- (1) Recklessly created, or failed to mitigate or remedy, a substantial and unjustifiable risk that a child would experience:
    - (A) Significant bodily injury; or
    - (B) Serious mental injury;
  - (2) That person knows he or she has a duty of care to the child; and
  - (3) In fact, that person violated his or her duty of care to the child.
- (c) *Third Degree Child Neglect.* A person commits the offense of third degree child neglect when that person:
- (1) Either:
    - (A) Recklessly fails to make a reasonable effort to provide food, clothing, shelter, supervision, medical services, medicine, or other items or care essential for the physical health, mental health, or safety of a child; or
    - (B) Knowingly leaves a child in any place with intent to abandon the child; and
  - (2)
    - (A) That person knows she or he has a duty of care to the child; and
    - (B) In fact, that person violated his or her duty of care to the child.
- (d) *Penalties.*
- (1) *First Degree Child Neglect.* First degree child neglect is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) *Second Degree Child Neglect.* Second degree child neglect is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) *Third Degree Child Neglect.* Third degree child neglect is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (e) *Definitions:* The terms “recklessly” and “knows” have the meanings specified in § 22A-206; and the terms “serious mental injury,” “serious bodily injury,” “significant bodily injury,” “duty of care,” and “child” have the meanings specified in § 22A-1001.
- (f) *Exception to Liability for Newborn Safe Haven.* No person shall be guilty of child neglect for the surrender of a newborn child in accordance with D.C. Code § 4-1451.01 *et seq.*

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<sup>56</sup> Per First Draft of Report #20 (March 16, 2018).

**§ 22A-1503. ABUSE OF A VULNERABLE ADULT OR ELDERLY PERSON.**<sup>57</sup>

- (a) *First Degree Abuse of a Vulnerable Adult or Elderly Person.* A person commits the offense of first degree abuse of a vulnerable adult or elderly person when that person:
- (1) Purposely causes serious mental injury to a another person, with recklessness that the other person is a vulnerable adult or elderly person; or
  - (2) Recklessly, under circumstances manifesting extreme indifference to human life, causes serious bodily injury to another person, with recklessness that the other person is a vulnerable adult or elderly person.
- (b) *Second Degree Abuse of a Vulnerable Adult or Elderly Person.* A person commits the offense of second degree abuse of a vulnerable adult when that person:
- (1) Recklessly causes serious mental injury to a vulnerable adult or elderly person; or
  - (2) Recklessly causes significant bodily injury to a vulnerable adult or elderly person.
- (c) *Third Degree Abuse of a Vulnerable Adult or Elderly Person.* A person commits the offense of third degree abuse of a vulnerable adult or elderly person when that person:
- (1) In fact, commits harassment per § 22A-XXXX, menacing per § 22A-1203, threats per § 22A-1204, restraint per § 22A-XXXX, or first degree offensive physical contact per § 22A-1205(a) against another person, with recklessness that the other person is a vulnerable adult or elderly person; or
  - (2) Recklessly causes bodily injury to, or uses physical force that overpowers, a vulnerable adult or elderly person.
- (d) *Penalties.*
- (1) *First Degree Abuse of a Vulnerable Adult or Elderly Person.* First degree abuse 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) *Second Degree Abuse of a Vulnerable Adult or Elderly Person.* Second degree abuse 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.
  - (3) *Third Degree Abuse of a Vulnerable Adult or Elderly Person.* Third degree abuse 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.
- (e) *Definitions:* The terms “purposely,” “recklessly, under circumstances manifesting extreme indifference to human life,” and “recklessly” have the meanings specified in § 22A-206; and the terms “serious mental injury,” “serious bodily injury,” “significant bodily injury,” “bodily injury,” “physical force,” “effective consent,” “vulnerable adult,” and “elderly person” have the meanings specified in § 22A-1001.
- (f) *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 victim gave effective consent to the defendant’s conduct is an affirmative defense to prosecution under this section if:

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<sup>57</sup> Per First Draft of Report #20 (March 16, 2018).

- (A) The conduct did not inflict significant bodily injury, serious bodily injury, serious mental 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; or
- (C) The conduct involved was the use of religious prayer alone, in lieu of medical treatment which the defendant otherwise had a duty to provide.

(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.

**§ 22A-1504. NEGLECT OF A VULNERABLE ADULT OR ELDERLY PERSON.**<sup>58</sup>

- (a) *First Degree Neglect of a Vulnerable Adult or Elderly Person.* A person commits the offense of first degree neglect of a vulnerable adult or elderly person when that person:
  - (1) Recklessly created, or failed to mitigate or remedy, a substantial and unjustifiable risk that a vulnerable adult or elderly person would experience serious bodily injury or death;
  - (2) That person knows he or she has a duty of care to the vulnerable adult or elderly person; and
  - (3) In fact, that person violated his or her duty of care to the vulnerable adult or elderly person.
- (b) *Second Degree Neglect of a Vulnerable Adult or Elderly Person.* A person commits the offense of second degree neglect of a vulnerable adult or elderly person when that person:
  - (1) Recklessly created, or failed to mitigate or remedy, a substantial and unjustifiable risk that a vulnerable adult or elderly person would experience:
    - (A) Significant bodily injury; or
    - (B) Serious mental injury;
  - (2) That person knows he or she has a duty of care to the vulnerable adult or elderly person; and
  - (3) In fact, that person violated his or her duty of care to the vulnerable adult or elderly person.
- (c) *Third Degree Neglect of a Vulnerable Adult or Elderly Person.* A person commits the offense of third degree neglect of a vulnerable adult or elderly person when that person:
  - (1) Recklessly fails to make a reasonable effort to provide food, clothing, shelter, supervision, medical services, medicine or other items or care essential for the physical health, mental health, or safety of a vulnerable adult or elderly person;
  - (2) That person knows she or he has a duty of care to the vulnerable adult or elderly person; and
  - (3) In fact, that person violated his or her duty of care to the vulnerable adult or elderly person.

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<sup>58</sup> Per First Draft of Report #20 (March 16, 2018).

(d) *Penalties.*

- (1) *First Degree Neglect of a Vulnerable Adult or Elderly Person.* First degree neglect 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) *Second Degree Neglect of a Vulnerable Adult or Elderly Person.* Second degree neglect 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.
- (3) *Third Degree Neglect of a Vulnerable Adult or Elderly Person.* Third degree neglect 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.

(e) *Definitions:* The terms “recklessly” and “knows” have the meanings specified in § 22A-206; and the terms “serious mental injury,” “serious bodily injury,” “significant bodily injury,” “effective consent,” “duty of care,” “vulnerable adult,” and “elderly person” have the meanings specified in § 22A-1001.

(f) *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 the conduct did not involve a firearm, as defined at D.C. Code § 22-4501(2A), regardless of whether the firearm is loaded
- (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.

## Chapter 16. Human Trafficking

- § 22A-1601. Human Trafficking Definitions.
- § 22A-1602. Limitations on Liability and Sentencing for RCC Chapter 16 Offenses.
- § 22A-1603. Forced Labor or Services.
- § 22A-1604. Forced Commercial Sex.
- § 22A-1605. Trafficking in Labor or Services.
- § 22A-1606. Trafficking in Commercial Sex.
- § 22A-1607. Sex Trafficking of Minors.
- § 22A-1608. Benefitting from Human Trafficking.
- § 22A-1609. Misuse of Documents in Furtherance of Human Trafficking.
- § 22A-1610. Sex Trafficking Patronage.
- § 22A-1611. Forfeiture.
- § 22A-1612. Reputation or Opinion Evidence.
- § 22A-1613. Civil Action.

### **RCC § 22A-1601. HUMAN TRAFFICKING DEFINITIONS.**<sup>59</sup>

For the purposes of this chapter, the term:

- (1) “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.
- (2) “Coercion” means threatening that any person will do any one of, or a combination of, the following:
  - (A) Engage in conduct constituting an offense against persons as defined in subtitle II of Title 22A, or a property offense as defined in subtitle III of Title 22A;
  - (B) Accuse another person of a criminal offense or failure to comply with an immigration regulation;
  - (C) Assert a fact about another person, including a deceased person, that would tend to subject that person to hatred, contempt, or ridicule, or to impair that person’s credit or business repute;
  - (D) Take or withhold action as an official, or cause an official to take or withhold action;
  - (E) Inflict a wrongful economic injury;
  - (F) Limit a person’s access to a controlled substance as defined in D.C. Code 48-901.02 or restrict a person’s access to prescription medication; or
  - (G) Cause any harm that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to comply.
- (3) “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.
- (4) “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:

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<sup>59</sup> Per First Draft of Report #27 (September 26, 2018).



- (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.
- (5) “Labor” means work that has economic or financial value, other than a commercial sex act.
  - (6) “Service” means legal or illegal duties or work done for another, whether or not compensated, other than a commercial sex act.
  - (7) “Sexual act” shall have the same meaning as provided in RCC § 22A-1301.
  - (8) “Sexual contact” shall have the same meaning as provided in RCC § 22A-1301.

**RCC § 22A-1602. LIMITATIONS ON LIABILITY AND SENTENCING FOR RCC CHAPTER 16 OFFENSES.<sup>60</sup>**

- (a) *Merger.* Multiple convictions for two or more offenses in Chapter 16 arising from the same course of conduct shall merge in accordance with the rules and procedures established in RCC § 212(d)-(e).
- (b) *Exceptions to Liability.* Any parent, legal guardian, or other person who has assumed the obligations of a parent who requires his or her child under the age of 18 to perform common household chores under threat of typical parental discipline shall not be liable for such conduct under sections 22A-1603, 22A-1605, and 22A-1609 of this Chapter, provided that the threatened discipline did not include:
  - (1) Burning, biting, or cutting;
  - (2) Striking with a closed fist;
  - (3) Shaking, kicking, or throwing; or
  - (4) Interfering with breathing.

**RCC § 22A-1603. FORCED LABOR OR SERVICES.<sup>61</sup>**

- (a) *Offense Definition.* An actor or business commits the offense of forced labor or services when that actor or business:
  - (1) Knowingly causes another person to engage in labor or services;
  - (2) By means of coercion or debt bondage.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (c) of this section, forced labor or services is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Offense Penalty Enhancements.* The penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense, one or more of the following is proven:

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<sup>60</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>61</sup> Per First Draft of Report #27 (September 26, 2018).

- (1) The person or business was reckless that the complainant was under 18 years of age; or
  - (2) The complainant was held or provides services for more than 180 days.
- (d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in RCC § 22A-206. The terms “business,” “labor,” “services,” “coercion” and “debt bondage” have the meanings specified in § 22A-1601.
- (e) *Exclusions from Liability.* An actor or business shall not be subject to prosecution under this section for threats of ordinary and legal employment actions, such as threats of termination, demotion, reduced pay or benefits, or scheduling changes, in order to compel an employee to provide labor or services.

#### **RCC § 22A-1604. FORCED COMMERCIAL SEX.<sup>62</sup>**

- (a) *Forced Commercial Sex.* A person or business commits the offense of forced commercial sex when that person or business:
- (1) Knowingly causes another person to engage in a commercial sex act;
  - (2) By means of coercion or debt bondage.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (c) of this section, forced commercial sex is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Offense Penalty Enhancements.* The penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense, one or more of the following is proven:
- (1) The person or business was reckless that the complainant was under 18 years of age; or
  - (2) The complainant was held or provides commercial sex acts for more than 180 days.
- (d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in § 22A-206. The terms “business,” “commercial sex act,” “coercion,” and “debt bondage” have the meanings specified in RCC § 22A-1601.

#### **RCC § 22A-1605. TRAFFICKING IN LABOR OR SERVICES.<sup>63</sup>**

- (a) *Offense Definition.* A person or business commits the offense of trafficking in labor or services when that person or business:
- (1) Knowingly recruits, entices, harbors, transports, provides, obtains, or maintains by any means, another person;
  - (2) With recklessness that the person is being caused, or will be caused to provide labor or services;
  - (3) By means of coercion or debt bondage.
- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (c) of this section, trafficking in labor

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<sup>62</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>63</sup> Per First Draft of Report #27 (September 26, 2018).

or services is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(c) *Offense Penalty Enhancements.* The penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense, one or more of the following is proven:

(1) The person or business was reckless that the complainant was under 18 years of age; or

(2) The complainant was held or provides services for more than 180 days.

(d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in § 22A-206. The terms “business,” “coercion,” and “debt bondage” have the meanings specified in § 22A-1601.

### **RCC § 22A-1606. TRAFFICKING IN COMMERCIAL SEX.<sup>64</sup>**

(a) *Offense Definition.* A person or business commits the offense of trafficking in commercial sex when that person or business:

(1) Knowingly recruits, entices, harbors, transports, provides, obtains, or maintains by any means, another person;

(2) With recklessness that the person is being caused, or will be caused to engage in a commercial sex act;

(3) By means of coercion or debt bondage.

(b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (c) of this section, trafficking in commercial sex is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

(c) *Offense Penalty Enhancements.* The penalty classification for any gradation of this offense may be increased in severity by one class when, in addition to the elements of the offense, one or more of the following is proven:

(1) The person or business was reckless that the complainant was under 18 years of age; or

(2) The complainant was held or provides commercial sex acts for more than 180 days.

(d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in § 22A-206. The terms “business,” “coercion,” “debt bondage,” and “commercial sex act” have the meanings specified in § 22A-1601.

### **RCC § 22A-1607. SEX TRAFFICKING OF MINORS.<sup>65</sup>**

(a) A person or business commits the offense of sex trafficking of minors when that person or business:

(1) Knowingly recruits, entices, harbors, transports, provides, obtains, or maintains by any means, another person;

(2) Who will be caused to engage in a commercial sex act;

(3) With recklessness as to the complainant being under the age of 18.

<sup>64</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>65</sup> Per First Draft of Report #27 (September 26, 2018).

- (b) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (c) of this section, trafficking in commercial sex is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Offense Penalty Enhancements.* The penalty classification for this offense may be increased in severity by one class when, in addition to the elements of the offense, the complainant was held or provides commercial sex acts for more than 180 days.
- (d) *Definitions.* The terms “knowingly,” and “recklessly” have the meanings specified in § 22A-206. The term “commercial sex act” has the meaning specified in § 22A-1601.

**RCC § 22A-1608. BENEFITING FROM HUMAN TRAFFICKING.<sup>66</sup>**

- (a) *First Degree Benefiting from Human Trafficking.* A person or business commits the offense of first degree benefiting from human trafficking when that person or business:
  - (1) Knowingly obtains any financial benefit or property;
  - (2) By participation in a group of two or more persons;
  - (3) Reckless that the group has engaged in conduct constituting forced commercial sex under RCC 22A-1604 or trafficking in commercial sex under RCC 22A-1606.
- (b) *Second Degree Benefiting from Human Trafficking.* A person or business commits the offense of second degree benefiting from human trafficking when that person or business:
  - (1) Knowingly obtains any financial benefit or property;
  - (2) By participation in a group of two or more persons;
  - (3) Reckless that the group has engaged in conduct constituting forced labor or services under RCC 22A-1603 or trafficking in labor or services under RCC 22A-1605.
- (c) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808 and the offense penalty enhancement in subsection (d) of this section:
  - (1) First degree benefitting from human trafficking is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree benefitting from human trafficking is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (d) *Definitions.* The terms “knowingly,” and “reckless” have the meanings specified in § 22A-206.

**RCC § 22A-1609. MISUSE OF DOCUMENTS IN FURTHERANCE OF HUMAN TRAFFICKING.<sup>67</sup>**

- (a) *Offense Definition.* A person or business commits the offense of misuse of documents in furtherance of human trafficking when that person or business:
  - (1) Knowingly destroys, conceals, removes, confiscates, or possesses any actual or purported government identification document, including a passport or other immigration document of any person;

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<sup>66</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>67</sup> Per First Draft of Report #27 (September 26, 2018).

- (2) With intent 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, services, or performance of a commercial sex act by that person.
- (b) *Penalty.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808, misuse of documents in furtherance of human trafficking is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* The terms “knowingly,” and “with intent” have the meanings specified in § 22A-206. The terms “commercial sex act,” “labor,” and “service” have the meanings specified in § 22A-1601.

**RCC § 22A-1610. SEX TRAFFICKING PATRONAGE.<sup>68</sup>**

- (a) *First Degree Sex Trafficking Patronage.* A person commits the offense of first degree sex trafficking patronage when that person:
  - (1) Knowingly engages in a commercial sex act;
  - (2) When coercion or debt bondage was used to cause the person to submit to or engage in the commercial sex act;
  - (3) With recklessness that the complainant is under 18 years of age.
- (b) *Second Degree Sex Trafficking Patronage.* A person commits the offense of first degree sex trafficking patronage when that person:
  - (1) Knowingly engages in a commercial sex act;
  - (2) When coercion or debt bondage was used to cause the person to submit to or engage in the commercial sex act.
- (c) *Third Degree Sex Trafficking Patronage.* A person commits the offense of third degree sex trafficking patronage when that person:
  - (1) Knowingly engages in a commercial sex act;
  - (2) When the complainant was recruited, enticed, harbored, transported, provided, obtained, or maintained for the purpose of causing the person to submit to or engage in the commercial sex act;
  - (3) With recklessness that the complainant is under 18 years of age.
- (d) *Penalties.* Subject to the general penalty enhancements in RCC §§ 22A-805 - 22A-808:
  - (1) First degree sex trafficking patronage is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) Second degree sex trafficking patronage is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) Third degree sex trafficking patronage is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (e) *Definitions.* The terms “knowingly,” and “reckless” have the meanings specified in § 22A-206. The terms “coercion,” “commercial sex act,” “debt bondage” have the meanings specified in § 22A-1601.

**RCC § 22A-1611. FORFEITURE.<sup>69</sup>**

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<sup>68</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>69</sup> Per First Draft of Report #27 (September 26, 2018).

- (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.

**RCC § 22A-1612. REPUTATION OR OPINION EVIDENCE.<sup>70</sup>**

In a criminal case in which a person or business is accused of trafficking in commercial sex, as prohibited by § 22A-1606; sex trafficking of minors, as prohibited by § 22A-1607; or benefitting from human trafficking, as prohibited by § 22A-1608; 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.

**RCC § 22A-1613. CIVIL ACTION.<sup>71</sup>**

- (a) An individual who is a victim of an offense prohibited by § 22A-1603, § 22A-1604, § 22A-1605, § 22A-1606, § 22A-1607, § 22A-1608, or § 22A-1609 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 § 22A-1603, § 22A-1604, § 22A-1605, § 22A-1606, § 22A-1607, § 22A-1608, or § 22A-1609 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.

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<sup>70</sup> Per First Draft of Report #27 (September 26, 2018).

<sup>71</sup> Per First Draft of Report #27 (September 26, 2018).

**Chapter 17. Terrorism [Reserved]**

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## Chapter 18. Invasions of Privacy

§ 22A-1805. Stalking.

### RCC § 22A-1801. STALKING.<sup>72</sup>

- (a) *Stalking*. A person commits stalking when that person:
- (1) Purposely engages in a pattern of conduct directed at a specific individual that consists of any combination of the following:
    - (A) Physically following or physically monitoring;
    - (B) Communicating to the individual, by use of a telephone, mail, delivery service, electronic message, in person, or any other means, after knowingly having received notice from the individual, directly or indirectly, to cease such communication; or
    - (C) In fact: committing a threat as defined in § 22A-1204, a predicate property offense, a comparable offense in another jurisdiction, or an attempt to commit any of these offenses;
  - (2) Either:
    - (A) With intent to cause that individual to:
      - (i) Fear for his or her safety or the safety of another person; or
      - (ii) Suffer significant emotional distress; or
    - (B) Negligently causing that individual to:
      - (i) Fear for his or her safety or the safety of another person; or
      - (ii) Suffer significant emotional distress.
- (b) *Penalty*. Stalking is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Offense Penalty Enhancements*. The penalty classification for this offense may be increased in severity by one class when, in addition to the elements of the offense, one or more of the following is proven:
- (1) The person, in fact, was subject to a court order or condition of release prohibiting contact with the specific individual;
  - (2) The person, in fact, has one prior conviction in any jurisdiction for stalking any person within the previous 10 years;
  - (3) The person recklessly disregarded that the individual was under 18 years of age and the actor was, in fact, 18 years of age or older and at least 4 years older than the individual; or
  - (4) The person caused more than \$2,500 in financial injury.
- (d) *Definitions*. In this section:
- (1) The terms “purposely”, “with intent”, “recklessly”, and “negligently” have the meanings specified in § 22A-206; the term “in fact” has the meaning specified in § 22A-207;
  - (2) The term “comparable offense” means a criminal offense committed against the District of Columbia, a state, a federally-recognized Indian tribe, or the United States and its territories, with elements that would necessarily prove the elements of the corresponding District criminal threat offense or predicate property offense;

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<sup>72</sup> Per First Draft of Report #28 (September 26, 2018).



- (3) The term “pattern of conduct” means conduct on two or more separate occasions, with continuity of purpose. Where conduct is of a continuing nature, each 24-hour period constitutes one occasion.
  - (4) The term “financial injury” means the reasonable monetary costs, debts, or obligations incurred as a result of the stalking by the specific individual, a 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.
  - (5) The term “physically monitoring” means being in the immediate vicinity of the specific individual’s residence, workplace, or school to detect the individual’s whereabouts or activities;
  - (6) The term “predicate property offense” means:
    - (A) Theft as defined in § 22A-2101;
    - (B) Unauthorized use of property as defined in § 22A-2102;
    - (C) Forgery as defined in § 22A-2204;
    - (D) Identity theft as defined in § 22A-2205;
    - (E) Arson as defined in § 22A-2501;
    - (F) Damage to property as defined in § 22A-2503;
    - (G) Graffiti as defined in § 22A-2504;
    - (H) Trespass as defined in § 22A-2601; or
    - (I) Trespass of motor vehicle as defined in § 22A-2602;
  - (7) The term “safety” means ongoing security from unlawful intrusions on one’s bodily integrity or bodily movement; and
  - (8) The term “significant emotional distress” means substantial, ongoing mental suffering that may, but does not necessarily, require medical or other professional treatment or counseling.
- (e) *Exclusions from Liability.*
- (1) Nothing in this section shall be construed to prohibit conduct permitted by the U.S. Constitution or the First Amendment Assemblies Act of 2004 codified at § 5-331.01 et al.
  - (2) A person shall not be subject to prosecution under this section for a communication that:
    - (A) Is directed to a government official, candidate for elected office, or employee of a business that serves the public;
    - (B) While that person is involved in their official duties; and
    - (C) Expresses an opinion on a political or public matter.
  - (3) A person shall not be subject to prosecution under this section for conduct, if:

- (A) The person is a journalist, law enforcement officer, licensed private investigator, attorney, process server, *pro se* litigant, or compliance investigator; and
  - (B) Is acting within the reasonable scope of his or her official duties.
- (f) *Defenses.*
- (1) *Parental Discipline Defense.* In addition to any defenses otherwise applicable to the defendant's conduct under District law, it is an affirmative defense to stalking if:
    - (A) A parent, legal guardian, or other person who has assumed the obligations of a parent engaged in conduct constituting stalking of the person's minor child;
    - (B) The conduct constituting stalking was for the purpose of exercising discipline; and
    - (C) The exercise of such discipline was reasonable in manner and degree.
  - (2) *Burden of Proof for Parental Discipline Defense.* If evidence is present at trial of the defendant's purpose of exercising reasonable discipline, the government must prove the absence of such circumstances beyond a reasonable doubt.

**Subtitle III. Property Offenses.**  
**Chapter 20. Property Offense Subtitle Provisions.**

- § 22A-2001. Property Offense Definitions.
- § 22A-2002. Aggregation To Determine Property Offense Grades.
- § 22A-2003. Limitation on Convictions for Multiple Related Property Offenses.

**RCC § 22A-2001. PROPERTY OFFENSE DEFINITIONS.**<sup>73</sup>

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.
- (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

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<sup>73</sup> Per First Draft of Report #8 (August 11, 2017).

- 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.<sup>74</sup>**

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.<sup>75</sup>**

- (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

<sup>74</sup> Per First Draft of Report #8 (August 11, 2017).

<sup>75</sup> Per First Draft of Report #8 (August 11, 2017).

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.

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## Chapter 21. Theft Offenses

- § 22A-2101. Theft.
- § 22A-2102. Unauthorized Use of Property.
- § 22A-2103. Unauthorized Use of a Vehicle.
- § 22A-2104. Shoplifting.
- § 22A-2105. Unlawful Creation or Possession of a Recording.

### RCC § 22A-2101. THEFT.<sup>76</sup>

- (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) A person is guilty of third degree theft if the person commits theft and:
      - (i) The property, in fact, has a value of \$250 or more; or
      - (ii) The property, in fact, is taken from the immediate actual possession of another person.

<sup>76</sup> Per Second Draft of Report #9 (December 28, 2018).



- (B) 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.

**RCC § 22A-2102. UNAUTHORIZED USE OF PROPERTY.<sup>77</sup>**

- (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.<sup>78</sup>**

- (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

<sup>77</sup> Per First Draft of Report #9 (August 11, 2017).

<sup>78</sup> Per First Draft of Report #9 (August 11, 2017).

conviction may be entered pursuant to the procedural requirements in RCC § 22A-2003(c).

**RCC § 22A-2104. SHOPLIFTING.**<sup>79</sup>

(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.**<sup>80</sup>

(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;

<sup>79</sup> Per First Draft of Report #9 (August 11, 2017).

<sup>80</sup> Per First Draft of Report #9 (August 11, 2017).

(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;

(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

- § 22A-2201. Fraud.
- § 22A-2202. Payment Card Fraud.
- § 22A-2203. Check Fraud.
- § 22A-2204. Forgery.
- § 22A-2205. Identity Theft.
- § 22A-2206. Identity Theft Civil Provisions.
- § 22A-2207. Unlawful Labeling of a Recording.
- § 22A-2208. Financial Exploitation of a Vulnerable Adult.
- § 22A-2209. Financial Exploitation of a Vulnerable Adult Civil Provisions.

### RCC § 22A-2201. FRAUD.<sup>81</sup>

- (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.
  - (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]

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<sup>81</sup> Per First Draft of Report #10 (August 11, 2017).

crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.

**RCC § 22A-2202. PAYMENT CARD FRAUD.**<sup>82</sup>

- (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.
  - (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

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<sup>82</sup> Per First Draft of Report #10 (August 11, 2017).

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.<sup>83</sup>**

(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.

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<sup>83</sup> Per First Draft of Report #10 (August 11, 2017).

**RCC § 22A-2204. FORGERY.**<sup>84</sup>

- (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;

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<sup>84</sup> Per First Draft of Report #10 (August 11, 2017).

- (v) 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
  - (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.<sup>85</sup>**

- (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;

<sup>85</sup> Per First Draft of Report #10 (August 11, 2017).



- (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.
- (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. IDENTITY THEFT CIVIL PROVISIONS.<sup>86</sup>**

- (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.

#### **RCC §22A-2207. UNLAWFUL LABELING OF A RECORDING.<sup>87</sup>**

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<sup>86</sup> Per First Draft of Report #10 (August 11, 2017).

- (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.
- (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

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<sup>87</sup> Per First Draft of Report #10 (August 11, 2017).

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.<sup>88</sup>**

- (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.
  - (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

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<sup>88</sup> Per First Draft of Report #10 (August 11, 2017).

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.<sup>89</sup>**

- (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
  - (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

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<sup>89</sup> Per First Draft of Report #10 (August 11, 2017).

injunction or order is sought if the court finds that facts offered in support of the motion establish that:

- (1) There is a substantial likelihood that the person committed financial exploitation of a vulnerable adult or elderly person;
  - (2) The harm that may result from the injunction or order is clearly outweighed by the risk of harm to the vulnerable adult or elderly person if the injunction or order is not issued; and
  - (3) If the Attorney General or the United States Attorney has petitioned for an order temporarily freezing assets, the order is necessary to prevent dissipation of assets obtained in violation of § 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

§ 22A-2301. Extortion.

### RCC § 22A-2301. EXTORTION.<sup>90</sup>

- (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.

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<sup>90</sup> Per First Draft of Report #11 (August 11, 2017).

## Chapter 24. Stolen Property Offenses

§ 22A-2401. Possession of Stolen Property.

§ 22A-2402. Trafficking of Stolen Property.

§ 22A-2403. Alteration of Motor Vehicle Identification Number.

§ 22A-2404. Alteration of Bicycle Identification Number.

### RCC § 22A-2401. POSSESSION OF STOLEN PROPERTY.<sup>91</sup>

- (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.<sup>92</sup>

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<sup>91</sup> 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.*
- (1) *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.
  - (2) *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.
  - (3) *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.
  - (4) *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.
  - (5) *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.<sup>93</sup>**

- (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;

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<sup>92</sup> Per First Draft of Report #10 (August 11, 2017).

<sup>93</sup> 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.<sup>94</sup>**

- (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 D.C. Code § 50-1609.
- (c) *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.

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<sup>94</sup> Per First Draft of Report #10 (August 11, 2017).

## Chapter 25. Property Damage Offenses

- § 22A-2501. Arson.
- § 22A-2502. Reckless Burning
- § 22A-2503. Criminal Damage to Property.
- § 22A-2504. Criminal Graffiti.

### RCC § 22A-2501. ARSON.<sup>95</sup>

- (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.

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<sup>95</sup> Per First Draft of Report #9 (August 11, 2017).

**RCC § 22A-2502. RECKLESS BURNING.<sup>96</sup>**

- (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.<sup>97</sup>**

- (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:

<sup>96</sup> Per First Draft of Report #9 (August 11, 2017).

<sup>97</sup> 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.**<sup>98</sup>

- (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.

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<sup>98</sup> Per First Draft of Report #9 (August 11, 2017).

## Chapter 26. Trespass Offenses

- § 22A-2601. Trespass.
- § 22A-2602. Trespass of a Motor Vehicle.
- § 22A-2603. Criminal Obstruction of a Public Road or Walkway.
- § 22A-2604. Unlawful Demonstration.
- § 22A-2605. Criminal Obstruction of a Bridge to Virginia.

### RCC § 22A-2601. TRESPASS.<sup>99</sup>

- (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.<sup>100</sup>

- (a) *Offense.* A person commits the offense of unlawful entry of a motor vehicle when that person:

<sup>99</sup> Per First Draft of Report #11 (August 11, 2017).

<sup>100</sup> Per First Draft of Report #11 (August 11, 2017).

- (1) Knowingly enters or remains in;
  - (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.<sup>101</sup>**

- (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.<sup>102</sup>**

- (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.

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<sup>101</sup> Per First Draft of Report #11 (August 11, 2017).

<sup>102</sup> 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.**<sup>103</sup>

- (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 § 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.

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<sup>103</sup> Per First Draft of Report #11 (August 11, 2017).



## Chapter 27. Burglary Offenses

### § 22A-2701. Burglary.

### § 22A-2702. Possession of Burglary and Theft Tools.

#### RCC § 22A-2701. BURGLARY.<sup>104</sup>

- (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.<sup>105</sup>

- (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.
- (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.

<sup>104</sup> Per First Draft of Report #11 (August 11, 2017).

<sup>105</sup> Per First Draft of Report #11 (August 11, 2017).

- (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.

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**Subtitle III. Offenses Against Government Operation.**

**Chapter 34. Government Custody Offenses.**

- § 22A-3401. Escape from Institution or Officer.
- § 22A-3402. Tampering with a Detection Device.
- § 22A-3403. Correctional Facility Contraband.

**RCC § 22E-3401. ESCAPE FROM INSTITUTION OR OFFICER.<sup>106</sup>**

- (a) *Escape from Institution or Officer.* A person commits escape from institution or officer when that person:
  - (1) In fact:
    - (A) Is subject to a court order that authorizes the person’s confinement in a correctional facility; or
    - (B) Is in the lawful custody of a law enforcement officer of the District of Columbia or of the United States; and
  - (2) Knowingly, without the effective consent of the correctional facility or law enforcement officer:
    - (A) Leaves custody;
    - (B) Fails to return to custody; or
    - (C) Fails to report to custody.
- (b) *Gradations and Penalties.*
  - (1) *First Degree.* A person commits first degree escape from institution or officer when that person violates subsection (a)(2)(A). First degree escape from institution or officer is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) *Second Degree.* A person commits second degree escape from institution or officer when that person violates subsection (a)(2)(B) or (C). Second degree escape from institution or officer is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (3) *Consecutive Sentencing.* If the person is serving a sentence at the time escape from institution or officer is committed, the sentence for escape from institution or officer shall run consecutive to the sentence that is being served at the time of the escape from institution or officer.
- (c) *Definitions.* In this section:
  - (1) The term “knowingly” has the meaning specified in § 22E-206; “in fact” has the meaning specified in § 22E-207;
  - (2) The term “effective consent” has the meaning specified in § 22E-1001;
  - (3) The terms “law enforcement officer” and “building” have the meanings specified in § 22E-2001; and
  - (4) The term “correctional facility” means:

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<sup>106</sup> Per First Draft of Report #31 (December 28, 2018).

- (A) Any building or building grounds located in the District of Columbia operated by the Department of Corrections for the secure confinement of persons charged with or convicted of a criminal offense;
- (B) Any building or building grounds located in the District of Columbia used for the confinement of persons participating in a work release program; or
- (C) Any building or building grounds, whether located in the District of Columbia or elsewhere, operated by the Department of Youth Rehabilitation Services for the secure confinement of persons committed to the Department of Youth Rehabilitation Services.

**RCC § 22E-3402. TAMPERING WITH A DETECTION DEVICE.**<sup>107</sup>

- (a) *Tampering with a Detection Device.* A person commits tampering with a detection device when that person:
  - (1) Knows he or she is required to wear a detection device while:
    - (A) Subject to a protection order;
    - (B) On pretrial release;
    - (C) On presentence or predisposition release;
    - (D) Incarcerated or committed to the Department of Youth Rehabilitation Services; or
    - (E) On supervised release, probation, or parole; and
  - (2) Purposely:
    - (A) Removes the detection device or allows an unauthorized person to do so;
    - (B) Alters, masks, or interferes with the operation of the detection device or allows an unauthorized person to do so.
- (b) *Penalties.* Tampering with a detection device is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
  - (1) The terms “knows” and “purposely” have the meaning specified in § 22E-206; and
  - (2) The term “detection device” means any wearable equipment with electronic monitoring capability, global positioning system, or radio frequency identification technology; and
  - (3) The term “protection order” means an order issued pursuant to D.C. Code § 16-1005(c).

**RCC § 22E-3403. CORRECTIONAL FACILITY CONTRABAND.**<sup>108</sup>

- (a) Except as provided in subsection (d), a person commits correctional facility contraband when that person:
  - (1) With intent that an item be received by someone confined to a correctional facility:
    - (A) Knowingly brings the item to a correctional facility;

<sup>107</sup> Per First Draft of Report #32 (December 28, 2018).

<sup>108</sup> Per First Draft of Report #33 (December 28, 2018).

- (B) Without the effective consent of the Mayor, the Director of the Department of Corrections, or the Director of the Department of Youth Rehabilitation Services; and
    - (C) The item, in fact, is Class A contraband or Class B contraband; or
  - (2) In fact, is someone confined to a correctional facility and:
    - (A) Knowingly possesses an item in a correctional facility;
    - (B) Without the effective consent of the Mayor, the Director of the Department of Corrections, or the Director of the Department of Youth Rehabilitation Services; and
    - (C) The item, in fact, is Class A contraband or Class B contraband.
- (b) *Gradations and Penalties.*
  - (1) *First Degree.* A person commits first degree correctional facility contraband when the item is Class A contraband. First degree correctional facility contraband is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
  - (2) *Second Degree.* A person commits second degree correctional facility contraband when the item is Class B contraband. Second degree correctional facility contraband is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
  - (1) The terms “knowingly” and “intent” have the meanings specified in § 22E-206; “in fact” has the meaning specified in § 22E-207;
  - (2) The terms “effective consent,” “dangerous weapon,” and “imitation dangerous weapon” have the meanings specified in § 22E-1001;
  - (3) The term “building” has the meaning specified in § 22E-2001;
  - (4) The term “possession” has the meaning specified in § 22E-202; and
  - (5) The term “correctional facility” means:
    - (A) Any building or building grounds located in the District of Columbia operated by the Department of Corrections for the secure confinement of persons charged with or convicted of a criminal offense;
    - (B) Any building or building grounds located in the District of Columbia used for the confinement of persons participating in a work release program; or
    - (C) Any building or building grounds, whether located in the District of Columbia or elsewhere, operated by the Department of Youth Rehabilitation Services for the secure confinement of persons committed to the Department of Youth Rehabilitation Services.
  - (6) The term “Class A contraband” means:
    - (A) A dangerous weapon or imitation dangerous weapon;
    - (B) Ammunition or an ammunition clip;
    - (C) Flammable liquid or explosive powder;
    - (D) A knife, screwdriver, ice pick, box cutter, needle, or any other tool capable of cutting, slicing, stabbing, or puncturing a person;
    - (E) A shank or homemade knife;
    - (F) Tear gas, pepper spray, or other substance capable of causing temporary blindness or incapacitation;

- (G) A tool created or specifically adapted for picking locks, cutting chains, cutting glass, bypassing an electronic security system, or bypassing a locked door;
  - (H) Handcuffs, security restraints, handcuff keys, or any other object designed or intended to lock, unlock, or release handcuffs or security restraints;
  - (I) A hacksaw, hacksaw blade, wire cutter, file, or any other object or tool capable of cutting through metal, concrete, or plastic;
  - (J) Rope; or
  - (K) A correctional officer's uniform, law enforcement officer's uniform, medical staff clothing, or any other uniform.
- (7) The term "Class B contraband" means:
- (A) Any controlled substance listed or described in [Chapter 9 of Title 48 [§ 48-901.01 et seq.] or any controlled substance scheduled by the Mayor pursuant to § 48-902.01];
  - (B) Any alcoholic liquor or beverage;
  - (C) A hypodermic needle or syringe or other item that can be used for the administration of a controlled substance; or
  - (D) A portable electronic communication device or accessories thereto.
- (d) *Exclusions from Liability.*
- (1) Nothing in this section shall be construed to prohibit conduct permitted by the U.S. Constitution.
  - (2) A person does not commit correctional facility contraband when the item:
    - (A) Is a portable electronic communication device used by an attorney during the course of a legal visit; or
    - (B) Is a controlled substance prescribed to the person.
- (e) *Detainment Authority.* If there is probable cause to suspect a person of possession of contraband, the warden or director of a correctional facility may detain the person for not more than 2 hours, pending surrender to a police officer with the Metropolitan Police Department.

**Subtitle IV. Public Order and Safety Offenses.**

**Chapter 40. Disorderly Conduct and Public Nuisance.**

§ 22A-4001. Disorderly Conduct.

§ 22A-4002. Public Nuisance.

**RCC § 22A-4001. DISORDERLY CONDUCT.<sup>109</sup>**

- (a) *Offense.* A person commits disorderly conduct when that person:
- (1) Recklessly engages in conduct that:
    - (A) Causes another person to reasonably believe that there is likely to be immediate and unlawful:
      - (i) Bodily injury to another person;
      - (ii) Damage to property; or
      - (iii) Taking of property; and
    - (B) Is not directed at a law enforcement officer in the course of his or her official duties;
  - (2) While that person is in a location that, in fact, is:
    - (A) Open to the general public; or
    - (B) A communal area of multi-unit housing.
- (b) *Penalty.* Disorderly conduct is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
- (1) The term “recklessly,” has the meaning specified in § 22A-206;
  - (2) The terms “bodily injury” and “law enforcement officer” have the meanings specified in § 22A-1001;
  - (3) The term “property” has the meaning specified in § 22A-2001;
  - (4) The phrase “open to the general public” excludes locations that require payment or permission to enter or leave.
- (d) *Exclusions 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.
- (e) *Prosecutorial Authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.

**RCC § 22A-4002. PUBLIC NUISANCE.<sup>110</sup>**

- (a) *Offense.* A person commits public nuisance when that person:
- (1) Purposely engages in conduct that causes an unreasonable interruption of:
    - (A) a lawful public gathering;
    - (B) the orderly conduct of business in a public building;
    - (C) any person’s lawful use of a public conveyance; or

<sup>109</sup> Per First Draft of Report #23 (July 20, 2018).

<sup>110</sup> Per First Draft of Report #23 (July 20, 2018).

- (D) any person’s quiet enjoyment of his or her residence between 10:00 pm and 7:00 am;
- (2) While that person is in a location that, in fact, is:
  - (A) Open to the general public; or
  - (B) A communal area of multi-unit housing.
- (b) *Penalty.* Public nuisance is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
  - (1) The term “purposely,” has the meaning specified in § 22A-206;
  - (2) The term “bodily injury” has the meaning specified in § 22A-1001;
  - (3) The term “property” has the meaning specified in § 22A-2001;
  - (4) The term “lawful public gathering” includes any religious service, funeral, or similar organized proceeding;
  - (5) The term “public building” means a building that is occupied by the District of Columbia or federal government;
  - (6) The term “public conveyance” means any government-operated air, land, or water vehicle used for the transportation of persons, including but not limited to any airplane, train, bus, or boat; and
  - (7) The phrase “open to the general public” excludes locations that require payment or permission to enter or leave at the time of the offense.
- (d) *Exclusions 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.
- (e) *Prosecutorial Authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.



## Chapter 41. Rioting and Failure to Disperse.

§ 22A-4101. Rioting.

§ 22A-4102. Failure to Disperse.

### RCC § 22A-4101. RIOTING.<sup>111</sup>

- (a) *Offense.* A person commits rioting when that person:
- (1) Commits disorderly conduct as defined in § 22A-4001;
  - (2) Reckless as to the fact that four or more other persons in the immediate vicinity are simultaneously engaged in disorderly conduct;
  - (3) And the conduct is committed:
    - (A) With intent to commit or facilitate the commission of a crime involving:
      - (i) Bodily injury to another person;
      - (ii) Damage to property of another; or
      - (iii) The taking of property of another;
    - (B) While knowingly possessing a dangerous weapon; or
    - (C) While knowing any participant in the disorderly conduct is using or plans to use a dangerous weapon.
- (b) *Penalties.* Rioting is a Class [X] crime, subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
- (1) The terms “reckless”, “with intent”, and “knowing” have the meanings specified in § 22A-206;
  - (2) The terms “bodily injury” and “dangerous weapon” have the meaning specified in § 22A-1001; and
  - (3) The term and “property of another” has the meaning specified in § 22A-2001.
- (d) *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.

### RCC § 22A-4102. FAILURE TO DISPERSE.<sup>112</sup>

- (a) *Offense.* A person commits failure to disperse when that person:
- (1) In fact:
    - (A) Is in the immediate vicinity a course of disorderly conduct, as defined in § 22A-4001, being committed by five or more persons;
    - (B) The course of disorderly conduct is likely to cause substantial harm to persons or property; and
    - (C) The person’s continued presence substantially impairs the ability of a law enforcement officer to stop the course of disorderly conduct; and
  - (2) The person knowingly fails to obey a law enforcement officer’s dispersal order;
  - (3) When the person could safely have done so.

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<sup>111</sup> Per First Draft of Report #24 (July 20, 2018).

<sup>112</sup> Per First Draft of Report #24 (July 20, 2018).

- (b) *Penalties.* Failure to disperse is a Class [X] crime subject to a maximum term of imprisonment of [X], a maximum fine of [X], or both.
- (c) *Definitions.* In this section:
  - (1) The term “knowingly” has the meaning specified in § 22A-206;
  - (2) The term “in fact” has the meaning specified in § 22A-207; and
  - (3) The term “law enforcement officer” has the meaning specified in § 22A-1001.
- (d) *Prosecutorial Authority.* The Attorney General for the District of Columbia shall prosecute violations of this section.
- (e) *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.

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